

CONFERENCE REPORT

The Impacts of Strategic Litigation on Custodial Torture

ISTANBUL, 18-19 NOVEMBER 2015

The Open Society Justice Initiative convened a meeting of some 40 litigators, judges, activists, torture survivors, policy analysts and legal scholars from Kenya, Argentina, Turkey and elsewhere to discuss the preliminary findings of a field-based research report on the impact of strategic litigation in relation to custodial torture. Cases examined seek to hold perpetrators of torture accountable, provide redress to victims, and prevent torture in the future. The participants examined comparative examples from Argentina, Kenya and Turkey and how to maximize the value of the forthcoming study. This document is a summary of broad conclusions and of several illustrative case studies.

This consultation was the third in a four-part comparative, qualitative inquiry by the Open Society Justice Initiative looking at the impacts of human rights litigation as one among many social-change agents. The broad, multi-year inquiry seeks to contribute to shared understanding principally among litigators and activists by exploring three types of impacts—outcomes, policy and attitudes/behaviors—across diverse jurisdictions and human rights areas.

Introduction

1. As UN Special Rapporteur on Torture and Other Ill-Treatment Juan Méndez noted in his opening remarks, international law against torture is sophisticated in its normative framework, and torture and other ill-treatment has been heavily litigated worldwide; however, implementation remains difficult to ensure and torture persists. Evaluating the impacts of strategic litigation on the realization of this absolute prohibition must be located within the context of the larger social movement against torture, where litigation is one tool to bring about social change among many. The social movement may include progress toward transitional processes, such as accession to the European Union, as is the case in Turkey, or transitioning from a military junta to a democratic government, as in Argentina.
2. Litigation has taken many forms and addressed torture in detention in diverse contexts and for distinct purposes. These included the torture of those imprisoned for common crimes, which often manifests in torture as a form of control and/or a disciplinary method for governing prison populations; to extract confessions; in response to real or perceived security threats; the torture of political opponents or activists, where the purpose of torture may be for retribution, political punishment, administration of justice, information, forcing the individuals to renounce their beliefs, and/or sending a silencing message for other real or potential dissenters.
3. The months of research leading up to the Peer Consultation surfaced some preliminary findings. Among them are that strategic litigation against torture can have impacts on the law, policy and practice, and attitudes and behaviors.
4. Legal impacts can include changes in jurisprudence; the adoption of new laws or amendments, or the nullification of existing laws, including the criminalization of torture; changes in standards of proof, evidence and/or procedure; and changes in the statutes of limitation for torture and other ill-treatment.
5. Impact for victims, and others, can be felt through the provision of diverse remedies and reparations, such as restitution, recognition and compensation. Impacts on policy and practice may include the introduction of a “zero tolerance” policy regarding the use of torture; changes in the volume and/or accuracy of government data collection on the crime; and changes in torture techniques, such as from visible to “white” or invisible torture.
6. Strategic litigation can also generate changes in the public agenda, including recognition of the existence of torture and/or the issuance of an apology; countering the vilification of the victim; providing a sense of redress particularly in cases where the legal remedies include monetary compensation; changes in levels of post hoc monitoring; and changes in access to information, including the number of freedom of information filings as evidence of recognition of the problem.
7. Strategic litigation in these countries has also catalyzed considerable changes in judiciary, such as transforming its rules, practice, and institutional composition.
8. All three countries have ratified the UN Convention Against Torture, as well as the International Covenant for Civil and Political Rights. Additionally, all countries prohibit torture in their constitution. However, their legal systems differ, with Argentina and Turkey having a civil law tradition, while Kenya’s legal system is a

mixture of English common law, indigenous and Islamic law.

9. Argentina, Kenya and Turkey have a common history of torture and other ill-treatment practices, as well as a rich body of litigation. The three countries have all struggled with internal conflicts or dictatorships involving the torture and ill-treatment of activists or people opposed to the government. As they emerge from the past conflicts, they are attempting to seek accountability for past human rights abuses through litigation and other means.
10. But the study reveals the substantial diversity of approaches used. Each country has pursued a distinctive strategy, from criminal prosecution for torture cases during Argentina's dictatorship, to trans-national civil litigation in Kenya, to regional litigation in Turkey. Studying the different impacts of those very different approaches should offer insights into combatting one of the world's most universal and most intractable human rights violations.
11. The Argentine litigation cases analyzed in this research cover a broad period of time and include different phenomena. On the one hand, it considers litigating systemic torture committed during State terrorism from 1976 to 1983. On the other, it also examines cases against the torture of detainees in prisons and police stations during democratic rule. Litigation deployed against torture and other ill-treatment in Kenya has focused on civil claims concerning atrocities during British colonialisation (until 1963) and the Daniel arap Moi regime (1978-2002), where political opponents of the government and others were subjected to arbitrary detention and torture. A third wave focused on the post-election violence that occurred between 2007 and 2008. Faced with particular obstacles in Turkish courts, much of the strategic litigation for Turkey has taken place at the European Court of Human Rights and addressed torture that occurred during the 12 September 1980 Coup regime and the armed conflict in southeast Turkey (1978-present).
12. By definition, custodial torture is carried out behind closed doors and by officers of the state who should be reporting the violations, giving rise to particular challenges. As a result, the occurrence of torture and other ill-treatment is notoriously under-reported and impossible to measure accurately, still less to prove.
 12. The impacts of strategic litigation against the number of instances of torture are also hard to determine with much certainty. Litigation may have immediate effects, such as striking down amnesty laws or statutes of limitations; but these outcomes may or may not translate into a decrease in the use of torture or its prevention. Further, factors that influence torture are wide-reaching and its incidence fluctuates greatly, often with the changing political climate and factors such as the perceived threat of terrorism. Therefore, progress may quickly dissipate depending on the environment. However, the preliminary research discussed suggests that litigation contributes to the overall culture against torture in the state, public policy, civil society, and legislation.
13. Another complexity inherent in assessing the impacts of strategic litigation on torture is the highly subjective nature of "justice" in the eyes of survivors. Whereas in Kenya the target remedy and result was compensation for victims and their families, external recognition of the practice of torture and other ill-treatment and state responsibility has often been the focus of litigation on Turkey, and individual accountability in relation to both Argentina and Turkey.

Comparative Perspectives

14. Argentina's litigation against torture has focused predominately on addressing torture and other human rights abuses that occurred during the dictatorship. After the transition to democracy, civil society was instrumental in demanding justice. NGOs, including Centro De Estudios Legales y Sociales, represented several victims. Additionally, the Inter-American Commission on Human Rights also had a singularly powerful deterrent effect on torture during the dictatorship, as no remedy was possible domestically.
15. In addition, human rights organizations have developed different strategies both on national and international levels to promote judicial trials for torture cases under democracy. The preliminary research suggests that the torture of those deprived of liberty during democracy is not a continuation of dictatorship-era torture practices, but a process of another nature. It is not systematically promoted by the State though it is actually performed by State officials, members of the police, penitentiary services, asylum, and minor places of detention, with some cooperation from the justice system. In response, the Committee against Torture, which is part of the Buenos Aires' provincial government's autonomous Commission for Memory, focuses on assisting people in police custody by filing habeas corpus petitions.
16. Kenya has experienced different periods of oppressive rule that has increased instances of torture and ill-treatment. During British colonization of Kenya, the British administration tortured Kenyans who opposed their authority. After the downfall of the British administration, President Moi's regime also resorted to the torture of political dissidents. Torture also surged as a result of the 2007-2008 election violence. The culture of torture in Kenya has been inherited by each successive administration, as they retain similar structures that fosters torture. However, despite prohibiting torture in the constitution, it is not currently criminalized. Combating torture and bringing cases for compensation is generally done by NGOs, like the Kenyan Human Rights Commission, International Commission of Jurists Kenyan Section neeand law firms. Civil society is active in combatting torture, as well as mobilizing victims to demand compensation and change. Civil society also concentrates on providing documentation and regularly reports to UN mechanisms.
17. As in Kenya and Argentina, terrorism and internal conflict is used as a justification for torture in Turkey, which has seen a recent uptick in terrorist attacks. During the 1980 coup, the state of emergency between 1985 and 2002, as well as the conflict with the Kurdish Workers Party, there was a rise in the reported incidence of torture, enforced disappearances, and arbitrary detention, particularly against political opponents. Current efforts to combat terrorism has also led to the use of torture to intimidate and extract information. According to many participants, cultural acceptance of violence in Turkey has led to the long history of torture.
18. NGOs, including the Kurdish Human Rights Project, pursued litigation in the ECtHR to address torture. In addition, regional organizations contribute greatly to the progress against torture, including European Union and the Council of Europe. The Committee of Ministers of the Council of Europe also works on implementing ECtHR holdings in Turkey.

Some Points of Discussion

19. The prohibition of torture has a strong international legal framework, it is established

as a *jus cogens* norm, and several international treaties prohibit it. Every state has the obligation to prevent and punish torture, as well as provide redress to victims, regardless of whether the torture is systematic.

20. In Argentina, strategic litigation regarding torture in democracy has created a culture of greater general concern for human rights. For example, the Verbitsky case prompted the administration of the Buenos Aires province to recognize that the prison situation was very critical and highlighted the judges' responsibility in the execution of the sentences, prompting broader societal discussion. More recently, in 2015, the Argentine government convicted four prison guards for torture (the Brian Nuñez and Patricio Barros Cisneros cases), which is unprecedented and the result of years of mobilization. Cautionary measures and class action lawsuits, such as suits for habeas corpus or the improvement of prison conditions, have also had a greater impact than cases that focus on a single claimant. Additional successes include securing the right to take pictures in prison. Broadly speaking, strategic litigation in Argentina has helped create a culture of greater public concern for human rights.
21. Judges are now more concerned with their human rights record and want to have cases where they made a decision in favor of human rights. There is also less reprisal against judges and prosecutors. Although, the litigation has made judges more aware of the problems associated with torture, it also has the effect of desensitizing judges to less severe forms of torture or ill-treatment that persist in Argentina.
22. The surrounding circumstances of a social movement can also have a positive impact on litigation. Victims speaking at truth commissions in Argentina contributed to the Supreme Court's decision to strike down amnesty laws. Since 2010, the highest courts have sentenced several individuals for custodial violence, which sends a message that torture will not be tolerated. This has a more profound impact on civil servants and can serve to deter would-be torturers, for fear of losing their jobs, family, or money.
23. Timing in Kenya has been critical in making positive changes. The end of the Moi regime and the creation of the constitution allowed a space for conversations on national security and torture. Strategic litigation has had an impact on legislation, by striking down laws that prevent litigation, such as amnesty laws or statutes of limitations, as well as beginning the process of drafting new legislation, such as the Anti-Torture Bill. Successful litigation may also open up the possibility for further litigation, as was the case when more victims of torture from British colonial rule came forward after a group of victims received compensation.
24. Policy and societal impacts include creating a place for political dialogue, as well as dialogue at the executive level. Litigation also led to the creation of more institutions to address torture, such as Truth Commissions in Kenya, and training programs. The social movement against torture also led to people calling for the release of political prisoners, as well as establishing organizations that support victims.
25. In Turkey's civil-law environment, cases there do not change the law directly; continual litigation is necessary to establish norms against torture. However, decisions of the ECtHR have been used in domestic cases to influence the outcome. Domestic courts also refer to the case law of the ECtHR in their reasoned judgments. Pursuing criminal investigations against the individuals and seeking compensation from the state institutions, mostly the Ministry of Interior, are other legal steps used to litigate against torture in Turkey. According to one participant, domestic litigation may have impact on torture in custody when taken together with the disciplinary

- proceedings followed against the law enforcement officials.
26. Positive developments in Turkey resulting from litigation and progress toward accountability for torture include the adoption of a legal definition of torture under the Turkish Penal Code that is consistent with international human rights norms; stricter regulations, such as increased monitoring in prison and police custody and the use of cameras in prisons and jail cells; and decreasing the instances of torture, particularly of political opponents.
 27. However, impunity and a biased judiciary continue to be problems, as well as custodial torture for common crimes. A perverse consequence has been that perpetrators often alter the methods of torture to minimize visible signs of torture (“white torture”) in order to evade more protective regulation, without actually reducing the use of torture.
 28. The lack of effective investigation into the incidences of torture, enforced disappearances, and arbitrary detention in Turkey led the European Court of Human Rights and the European Commission of Human Rights to hold fact-finding hearings there during the 1990s and early 2000s. A number of victims, witnesses, suspects, law enforcement officials and prosecutors were heard during the hearings. For victims who were able to present evidence in the Kurdish language before the ECt/ComHR, the impact on the judges and witnesses was strongly positive, as until that moment, using the Kurdish language before an official establishment had been banned for decades.
 29. According to one participant, the regional strategic litigation in Turkey had a direct positive correlation with similar efforts even outside Turkish borders. Indeed, it was suggested, the Strasbourg judgements in favor of the Kurdish complainants had a stronger impact on the volume of cases brought against the Russian Federation for torture committed in Chechnya (250 cases) than in Turkey itself. That, in turn, pushed Ukraine to change how it addresses torture violations. The case also changed the laws on statute of limitations.
 30. The success of strategic litigation is largely dependent on the environment of the country and civil society, including the existence of judicial independence, as well as the demand for justice from society. Successful litigation also requires proper documentation, legal aid, and civil remedies. Advancements in technology, resources, and forensic evidence also improves the chances of successful litigation.
 31. In pursuing strategic litigation as part of a larger movement against torture, the strategic components are not only related to the courtroom but also other strategies relevant to the litigation. Accordingly, the timing and sequencing of bringing a case can be crucial to the success of litigation. When public opinion is in favor of a case, pursuing litigation is likely to bring a better result and be more impactful. However, strategic litigation can also be the catalyst to change public opinion and challenge conventional wisdom. Lawyers and activists must also consider the feasibility of goals. For instance, criminal liability is hard to secure, whereas political concessions may be a more reasonable goal of strategic litigation. Administrative and civil litigation may also have a greater impact than criminal trials.
 32. Strategic litigation also contributes to a culture of justice, where torture is less acceptable, by providing accountability and redress. Strategic litigation exposes the truth, as well as acknowledges past harms, empowers victims, and provides dignity. This process in turn can have an effect on other human rights abuses and the

acceptance of violence in general. Successful strategic litigation may also improve investigations of torture, prosecutions, and the exposure of information related to torture.

33. The impact of strategic litigation is not necessarily direct, but rather has an ongoing influence on the norms and ideas of a society. Impact may be on other cases, policy, including administrative rules and practices, as well as the political agenda, including civil society, media, and political discourse. A clearer correlation exists between strategic litigation and impacts on policy and practice, than other areas, such as legal remedies. Strategic litigation can also have an impact on institutional change, as well as an effect on other actions, such as interim measures or precautionary measures.
34. The success of litigation may also have a positive influence on the behavior of people in the government, for instance the fear of losing one's job may prevent a public servant from engaging in torture. In a criminal trial, strategic litigation directly addresses impunity and, if successful, holds perpetrators accountable. In addition, adequate sentencing fulfills the requirement to not just prosecute, but also punish perpetrators. This may also have a preventive effect on future torture, if a potential perpetrator fears prosecution and punishment.
35. In all focus countries, strategic litigation was deemed to have had a profound impact on victims because they are able to go through the restorative process where their voices are heard and their truth is validated independently. This experience can be empowering for victims and their families. Victims have also reported feeling humanized throughout the process. They may also have the opportunity to receive compensation for their suffering or receive rehabilitative services.
36. However, some victims may face reprisal for participating in the trials or be ostracized and vilified as appearing to be "greedy." Indeed, the pursuit of compensation has created fractures in some communities. However, researchers were advised that the report should demonstrate the benefit of monetary compensation and how it positively affects the lives of victims. For example, if the compensation is obtained from an individual perpetrator, then it can act as punishment and may deter others from engaging in torture. (Turkish law prevents cases from being lodged against individual law enforcement officials; however, the state can seek reimbursement from the perpetrators after the proceeding is concluded, though this provision has not yet been invoked by the state.)
37. Problems strategic litigation often faces are records on torture are inherently flawed because of underreporting. A lack of political will can also inhibit the impact of strategic litigation. Further, as strategic litigation changes the cultural perception of torture, the perpetrators may also change their strategies to evade regulations and hide torture. Although instances of torture against political dissidents has decreased, democratic societies are increasingly using torture to extract information from people deemed to be terrorists.
38. Further considerations must be made in regards to the impact of reparation on victims and their family, as well as how to reconcile the outcome of a case with a victim's expectations. Difficulties also arise in regards to the goals of individual victims and groups of victims, as the desired impact and needed litigation strategies may diverge. Further evaluation is also needed for the differing experience of torture based on gender and the impact of litigation on the torture of different genders. Attention must also be afforded to how different cultures perceive impact and the

effect of strategic litigation on the hope of society.

39. Civil society must also contend with the belief that torturing “bad people” is not a problem and thus justified in certain circumstances. This issue is also evident in the public perception that prisoners are inherently bad. Accordingly, when pursuing litigation, a lot of value is placed on finding a sympathetic petitioner. However, the absolute nature of the prohibition of torture requires changing perspectives, so that torture is not acceptable, regardless of the subject of the torture or the circumstances. Strategic litigation has previously contributed to changing cultural perceptions, as was the case with domestic violence.

Contributing Factors

40. Litigation as part of a social movement against torture relies on external political dynamics that contribute to the progression of litigation and the elimination of torture. These include civil society engagement, engagement by regional organizations, such as the Inter-American Commission on Human Rights in Argentina during the junta, the creative use of trans-national civil litigation, such as to secure justice for Mau Mau victims of torture in British courts, and public support. In Turkey, the desire to accede to the European Union contributed to some measurable curbs in the state’s use of torture. Argentina and Kenya’s strong NGOs and victim advocacy played pivotal roles in addressing torture.

Discussion

41. The IACHR helped influence litigation and grow the movement against torture in Argentina in the early 90’s. The IACHR provided a venue to address these issues at a time when other options and litigation were not available. Public opinion was also strongly for accountability, as the new government began to form and had to account for atrocities of the past. However, concern also existed in regards to tackling such a strong issue as a new democracy was forming. Argentina also benefits from a strong civil society and NGOs, as well as victim and family advocacy groups. The organizations work together for consensus and to grow as a movement.
42. Kenya has a strong civil society, student movement, and victim networks that organized a strong movement calling for truth and organizing a unified strategy against torture. Long-term relationships between victims and advocacy groups influence public opinion, which in turn can progress litigation or make the results more impactful. Other effective contributing factors include victim mapping and documentation. International governmental and donor support from influential actors that speak out against torture also contributes to the overall impact. Inconsistencies between the African Court for Human and People’s Rights and domestic courts provided opportunities to pursue litigation.
43. Turkey has benefited from a strong NGO community and international media attention, in addition to benefiting from regional organizations, such as the European Union and the ECtHR. ECtHR holdings have influenced domestic law in Turkey and influenced Turkey to create an action plan against torture.
44. However, the changes are not always permanent, and decisions by the Constitutional Court that may have been influenced by the ECtHR do not become mandatory jurisprudence. Decisions of the Court have also changed judicial processes, as well as the behavior of judges and prosecutors. If or when Turkey properly adopts its

obligations under the Optional Protocol to the UN Convention Against Torture to create a competent national preventive mechanism, its passage of the OP-CAT may also have an effect on torture in the long term.

45. It was noted that decisions of the ECtHR can also have an unintended negative effect, such as when cases are rejected and the merits are not assessed.
46. It was broadly agreed that impediments to successful litigation include the lack of public and/or political will to address torture. In Kenya, rigid donor support creates a hindrance, rather than a supportive environment. The method of donating money should be considered in order to make the largest impact. Donating to multiple organizations that provide a variety of services has a greater impact than providing funding for only one or two organizations in a community. Targeting donors by communicating the impact of litigation will cause the donor to evaluate the lasting results of the litigation, rather than just the conclusion of the trial. Further, progress may have the appearance that a problem no longer exists, which causes donors to decrease funding.
47. In Turkey, attorneys and civil society struggle with gaps in statistics and the lack of information. Proper documentation is not collected in regards to how many people submit applications to the prosecutor and how many are rejected. Further, statistics on medical evaluations that reveal torture would also provide information on the trends of torture. Providing greater access to information and respecting the freedom of information would contribute to obtaining better documentation and information for litigation. In addition, to proper statistics, prosecutors and judges must be monitored and their performance assessed.
48. The long duration of trials also acts as a hindrance, as it is hard to maintain scrutiny and media attention. Successful litigation also requires the contribution of experts. However, as in the case of Argentina, many forensic experts are police trained and may not consider injuries as being serious. However, independent experts require further resources that might not be available.

Case Study: Argentina

Julio Simón et al. v. Public Prosecutor (2005)

Corte Suprema de Justicia de la Nación (Supreme Court)

49. During Argentina's dictatorship (1976-83) the state tortured, killed, and forcibly disappeared thousands of people. After the fall of the dictatorship, prosecutors began pursuing military members for human rights abuses, including torture. However, the state passed several laws to protect the military and provide immunity from prosecution, which was originally upheld by the Supreme Court of Argentina. Consequently, most prosecutions against human rights abusers of the Dirty War stopped, including cases of torture.
50. The memory, truth and justice process in Argentina began with the trial of the military junta in 1985 and the Nunca Más report elaborated by CONADEP. The trial was fostered by the national government, led by President Raul Alfonsín. As a result of this process, the existence of a systematic plan of extermination was recognized by the justice system.
51. Then, major setbacks occurred under the Punto final and Obediencia Debida laws passed in 1986 and 1987. These laws served as a general amnesty and put an end to the

vast majority of investigations in progress. Then, between 1989 and 1990, arguing the need for national peace, President Carlos Menem pardoned the military leaders convicted in 1985 and the few individuals who remained under investigation for acts not covered by the impunity laws.

52. However, in 2005, the Supreme Court of Argentina struck down the amnesty laws, allowing for the prosecution of human rights abusers. The defendant in this case was Julio Simon, a member of the Argentinean Federal Police. On November 19, 2003, Simon was indicted for kidnapping, torture, and engaging in enforced disappearances. Simon claimed he was immune from prosecution as a result of the amnesty laws. However, the court ruled that the amnesty laws were unconstitutional. The Constitution of Argentina was amended in 1994 to give superiority to human rights treaties. The court stated that international law prohibits amnesty for crimes against humanity, which included enforced disappearances and kidnapping. Further, because Argentina ratified the American Convention for Human Rights and the International Covenant for Civil and Political Rights, Argentina had an obligation to prosecute crimes against humanity. After the Supreme Court struck down the amnesty laws, Simon was convicted in two separate case of illegal detention, torture, kidnapping, and perpetrating enforced disappearances.

Striking down the amnesty laws opened the doors for further litigation against perpetrators of human rights abuses. According to the Center for Legal and Social Studies, criminal proceedings were initiated in 514 cases. Sentences were handed down to 679 individuals (trials resulted in 622 convictions and 57 acquittals) and 883 defendants are still awaiting trial; the procedural situation of another 196 suspects questioned and charged remains unresolved. In addition, charges against 113 defendants were declared without merit; 11 cases were dismissed; 57 are fugitives and 227 died unpunished.¹ Currently, over a thousand people are under investigation.

Case Studies: Kenya

Ndiki Mutua et al. v. The Foreign Commonwealth Office (2012)

High Court of Justice, Queen's Bench Division

53. During the 1950's British colonial rule over Kenya, thousands of people were tortured, including beatings, castration, and sexual abuse. In response to the oppressive colonial administration, the Mau Mau soldiers revolted against the British and suffered reprisal. In 2012, the Kenya Human Rights Commission and the Mau Mau Veterans Association brought a case on behalf of three Mau Mau veterans to the High Court of Justice in the UK, arguing for the right to bring a claim for damages against the British government. The court held the veterans had the right to bring a claim against the British government, emphasizing that ample evidence existed to bring a claim and the time elapsed since the torture did not prevent a fair trial.
54. As a result of the high court ruling, thousands of Kenyans brought claims against the UK government for torture and other ill-treatment. As a result of the litigation, the British government paid a total of £19.9 million to 5,528 victims, which amounted to around £3,000 (about USD \$4,300) for each person. The UK government also publicly acknowledged the atrocities, although it did not accept any legal liability. However, this marked the first time the British government acknowledged the human rights abuses that occurred in Kenya during the colonial rule. The British government also paid for a memorial to be erected in Nairobi for all the victims who suffered from

human rights violations during the colonial rule. The successful litigation in Kenya and the allocation of compensation has opened the door for more victims to seek redress. Currently, over 40,000 Kenyans are seeking additional compensation from the British Foreign Commonwealth Office for physical violence, as well as a range of other abuses, including forced labor and false imprisonment.

The Nyayo House Torture Chambers Cases - Oduor Ong'wen and 20 others v. The Attorney General (2008)

The High Court of Kenya

55. The Nyayo House was a detention facility in the basement of the Nyayo skyscraper, known as the location where citizens were tortured during the presidential reign of Daniel arap Moi, who served as president from 1978 to 2002. Victims of the Nyayo House were often activists and individuals opposed to the Moi regime. Torture tactics were used to force victims to confess to crimes, including sedition. Methods of torture included beatings, locking victims in rooms with snakes and vicious ants, sexual abuse, rape, hanging from ceilings, and exposure to extreme temperatures. In 2004, the Kenya Human Rights Commission represented 21 former political prisoners whom the state tortured in the Nyayo House, in the 1980's. While in the Nyayo House, the authorities accused the victims of treason and associating with an unlawful society. The treatment they endured included suspension from the ceiling, beatings, as well as the deprivation of food and water.
56. The defense argued that the victims' claims were not valid because the statute of limitations had expired. Further, the accusations were overly broad and did not identify specific perpetrators. However, the high court rejected these arguments and ruled in favor of the victims, stating that their right to liberty and freedom from torture were violated. The court found that a proper case could not be filed, when the victims originally tried to bring it in 1988 because Moi was still in office, thus the delay in time was inconsequential. Furthermore, the court held that the executive arm of the government was responsible for the torture. The court ordered the state to provide approximately KES 40 million (about US \$490,496) in compensation to the 21 victims.

Case Study: Turkey

The Death of Engin Ceber

14th High Criminal Court

57. On September 28, 2008, Turkish police officers arrested Engin Ceber, a human rights activist, and three other activists, all of whom worked with the non-governmental Rights and Freedom Association. The activists were passing out literature and peacefully protesting the excessive use of police force at the time. They were held in police custody until 29 September 2009, where they were heavily beaten by police. The public prosecutor requested for their pre-trial detention for resisting/preventing police to conduct their job. Following a judge decision accepting the prosecutor's request, they were transferred to Metris Prison.
58. Ceber told his lawyer that prison guards were beating him regularly. After collapsing from his injuries on 7 October 2008, Ceber was transferred to a hospital, where he died on October 10, 2008. An autopsy report from the Forensic Medicine Institute

indicated that Ceber's death was the result of a brain hemorrhage caused by repeated blows to Ceber's head and body.

59. During the initial trial of the perpetrators, the Supreme Court of Appeals overturned the conviction of the four officials because they shared a lawyer, which in the court's opinion, violated the right to a fair trial. Following a re-trial, on 2 October 2012 the court convicted 19 officials for their role in the torture and death of Ceber, as well as the torture of the other activists. Three guards received life sentences, while two other guards received a sentence of seven years and three months for the torture of Ceber and two other activists. Additionally, several police officers were convicted of the torture of the activists while they were held in police custody. Their sentences ranged from two to seven and a half years. A prison doctor received three years in prison for falsifying records that stated the activists received a medical examination upon arrival to the prison.
60. Senior prison official, Fuat Karaosmanoğlu, was convicted and received a life sentence. He was held responsible for the torture that occurred by guards under his authority, as well as being aware the torture was occurring, but failing to stop it. The conviction of Karaosmanoğlu marked a rare case where a senior official was found guilty for the role that was played in the torture.
61. The death of Ceber received a lot of attention from the media and the public. The Minister of Justice at the time, Mehmet Ali Sahin, publicly apologized to the Ceber family. Some civil society actors also believe that the conviction of several prison guards and police officers for torture will send a signal to officials that Turkey is no longer tolerating the use of torture, particularly at senior levels.

Sharing the Learning

62. The final report will draw on this discussion as well as on other consultations and the field research interviewing a broad spectrum of stakeholders. The findings of the report are intended to be relevant for people in government, in civil society, and for the community. We will consider producing a number of other outputs from the inquiry to share the learning of the study with specific audiences, including:
 - *Country reports.* Shorter summaries for each focus country that can be distributed separately.
 - *Judges Report.* A short version of the report or briefing note for judges that explains the legal basis of such claims in a non-confrontational way.
 - *Activist Report.* A short version of the report or introduction for activists and social movements.
 - *Case Book.* A case book with summaries of key examples of strategic litigation of custodial torture cases (i.e. not just the judgment, but why it was strategic).
 - *Case Law Analysis.* Prepare an analysis of case law, both national and international, as well as civil and criminal. Use pro bono law firms or a clinic to support this. Plan to disseminate it.
 - *Litigating Custodial Torture.* Develop a practice note or guide on litigating custodial torture cases, and the specific issues that arise, including accountability, compensation, and monitoring judgments. This might include (a) policy and social science arguments that work, (b) novel legal arguments and tactics, such as litigating the financing of litigation, (c) advocacy in support of the litigation, at regional, national, and international level, (d) placing the litigation in an activist

framework, (e) engaging the teaching profession and other professionals, and (f) strategies for maximizing impact.

Promotion of the Report

63. It was suggested that it could be useful to consider making the findings more accessible to broad audiences through a strong website that has graphics and audio-visual illustrations, e.g. of interviews with litigators and activists.
64. It was also suggested that it would be valuable to translate the report into other languages.

Engagement with Stakeholders

65. The report and the side products should educate, inform, and engage activists, judges, litigators, survivors and their families and supporters. We might also consider:
 - *Lawyers*. Organise country level meetings of lawyers/activists; use the report at existing regional meetings of human rights litigators; or at other events on torture or litigation.
 - *International Bodies*. Introduce the report at side events of international meetings, or in individual meetings with international experts.
 - *Academics*. Promote the report to the academic community through blogs and presentations at relevant conferences.

Strategic Litigation in general

66. The report might contextualize how litigation works with other tools and demonstrate the gains and backlash that litigation can bring in the different countries in a way that may inform policy and strategic approaches to litigation elsewhere.
67. The report could also be relevant to others' efforts to articulate good practices for civil and criminal torture litigation, as well as for generating greatest mutual benefit from working with activists and the community.

For further information about the conference, contact
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The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Brussels, Budapest, The Hague, London, Mexico City, New York, Paris, Santo Domingo, and Washington, D.C.

¹ Information as of September 20, 2015