Promoting Organizational Change to Ensure Respect for Human Rights while Countering Terrorism

Liat Shetret and Tony Camerino

Introduction

Mass protests are helping to change the political landscape in many countries across the Middle East. Regimes that ignored human rights, largely in the name of regime preservation but also in the name of countering terrorism, have been challenged by protestors who demanded change. Uprisings in Egypt, Tunisia, Libya, and elsewhere denounced unlawful state actions such as arbitrary arrest, indefinite detention, and torture.[1] Yet more than a year after the protests began, it is unclear whether lasting institutional change that embraces human rights while countering terrorism has taken hold within the security services of those countries, or the tigers have merely changed their stripes.

Incorporating international human rights standards and principles in day to day counterterrorism activities and operations remains a challenge for law enforcement agencies in countries around the world, regardless of their Gross Domestic Product or level of development. This brief focuses on practical recommendations for change that can be applied to all jurisdictions in the areas of interrogation, detention, prosecution, and investigation. It argues that countering terrorism within a rule of law framework, while adhering to international human rights principles, coincides with long-term strategic benefits to law enforcement institutions across all regions and jurisdictions. Practical

recommendations for change and transformation are briefly highlighted at the end of each of the sections.

When attempting to affect sustainable change in the conduct of intelligence and law enforcement agencies, it is useful to consider basic principles of organizational transformation. These principles are well established in business but much less so in the area of governance, especially in countries with limited resources. For transformation to be permanent, it is not enough to temporarily influence officials with ad hoc training sessions or one-time foreign assistance missions. If the end goal is a change in attitudes and perceptions across institutions engaged in counterterrorism and policing, assistance must be sustainable and, more importantly, self-sustaining in the absence of such aid.

Numerous, ongoing capacity-building initiatives are being implemented by bilateral and multilateral actors as well as by civil society around the world, and an increasing amount of money and resources are being spent on such programming and initiatives. In FY2011, the U.S. Department of State granted US$70.9 million for law enforcement capacity-building on the African continent alone and requested US$73.2 million for the region the following year.[2] Institutional transformation, however, is not necessarily an expensive task. Sustainable change in institutional practices can be accomplished by implementing efficient and selective actions that foster a culture able to

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embrace change. Some essential programming principles to consider are (1) leadership, (2) buy-in from key stakeholders, (3) creation of an institutional culture that embraces change, (4) incentives, (5) training, and (6) independent oversight. Within each of these areas are significant challenges to transformation. Change does not come easy, yet law enforcement institutions have achieved it by enacting a well-planned strategy that embraces these key principles.

Background

After 9/11, many governments enacted national security laws to protect against terrorist attacks.[3] Some of these laws, however, were abused in the haste to prevent further attacks and to arrest suspected terrorists, some of whom were merely political opposition members.[4] Many countries engaged or aided in acts such as extraordinary renditions, indefinite detentions, and torture and abuse of suspects during interrogations.[5] These actions have long-term negative consequences, including helping terrorists to recruit new members.[6] As a result, unlawful and counterproductive practices became commonplace in law enforcement organizations tasked with countering terrorism. Some of these practices, such as torture and abuse during interrogation, were already common practice in law enforcement organizations and were further leveraged against new suspects.

Following revelations of torture and abuse of detainees at U.S. administered detention facilities such as Abu Ghraib in Iraq, Guantánamo Bay Naval Base in Cuba, and CIA black sites, multilateral organizations like the United Nations as well as civil society organizations became more vocal in their calls for adherence to international human rights standards while countering terrorism and initiated programs to address these issues within rule of law frameworks. Regional meetings, training sessions, awareness

campaigns, and government-to-government meetings took place to reemphasize pre-9/11 progress made on human rights in international law, such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[7]

Despite extensive national and international efforts, there has been little change, even in countries that were part of the so-called Arab Spring and Arab Winter.[9] Torture and abuse remain common practice, as do other unlawful activities. The question has become how to enact sustainable institutional transformation. This can be achieved through cost-efficient actions that leverage the six key principles of organizational transformation summarized below. Similarly, tenets from other fields such as business, psychology, and economics offer useful insights directly applicable to transformation of intelligence and law enforcement agencies.

1. Leadership

Although ideas for change can originate from any level of an organization, transformation can best be led from the top and may even be more impactful in significantly hierarchical institutions and governments. The leaders of intelligence and law enforcement organizations must embrace transformation and the methods to achieve it. If they buy into the change with not just words but actions, then the first step would be to create an organizational vision. The vision may be, for example, to respect human rights while countering terrorism or to prioritize the rule of law. It may also include long-term considerations emphasizing terrorism is a crime that requires strategic actions rather than quick fixes. The leaders' vision should be publicized and reinforced through public statements.

Leaders need to be actively involved in overseeing transformation by holding

subordinates accountable. For instance, they could conduct random unit visits to ensure compliance. They are also responsible for systems of rewards and punishments, and can place incentives appropriately to recognize behavior that embraces change. Initiatives should focus initially on senior leaders to ensure they are committed to the pursuit of change and will appropriately use resources dedicated to the transformation of the institution.

Individual law enforcement officers often complain that they are forced to take unlawful actions due to pressures from above. It is therefore vital that senior leadership understand the long-term benefits of the rule of law and the real, negative consequences of unlawful behavior. They must also understand the reality of investigations and operations, which do not usually offer instantaneous results. This is especially true following terrorist attacks in which public officials and governmental leaders often want expeditious justice and pressure law enforcement officers to get quick results. Raising awareness of these two issues may be a good place to start when garnering support for long-term transformation within agencies. Leaders must be educated and trained on realistic time constraints of investigations and the real world dilemmas and complexities that are part and parcel of interrogations and prosecutions.

Yet, senior officials are not the only leaders in an organization. Sometimes, the key power holders are lower-level leaders and officers, such as operations officers or senior enlisted supervisors. It is therefore critical for program designers and officials alike to identify and engage these power holders early in the process to ensure they embrace the leader's vision for change and are committed to leading by example. At some point during the change process, it may become apparent that some individuals are unwilling to accept change. In such cases, if retraining and feedback mechanisms fail, leaders will need to be

prepared to remove certain individuals from the organization who are unwilling to accept the changes. This part of the transformation process is often the most difficult.

Recommendation 1: Foster Political Will Among Senior Leadership

Securing senior-level political support for change initiatives and programming is crucial to the success of the program, as are consistent external support-building engagements and corresponding activities. This is particularly the case when looking at effecting change in strictly hierarchical institutions, such as militaries and police forces, as well as governance structures and largely authoritarian regimes.

2. Buy-in From Key Stakeholders

To catalyze a change process that facilitates the embracing of human rights practices and norms within law enforcement and intelligence agencies, buy-in from key stakeholders must be accomplished early in the process at the same time that the leadership promotes its vision. Key stakeholders are officials who control vital resources for the organization, such as personnel, money, and equipment, as well as senior officials who control political capital. In some countries, the key stakeholders may be the same as the senior leadership. In other countries, key stakeholders are policymakers or senior government officials with oversight responsibilities for the organization. Securing support from these key stakeholders will help build political will to accomplish the transformation so that human rights become integrated into law enforcement and intelligence activities and operations.

These key stakeholders are critical to the transformation process because they can hold ransom the resources the organization needs to conduct operations or even to pay its personnel. On the other hand, they can also contribute additional resources to support the

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change to embrace human rights. For example, they may offer funds for additional training or write policies that would embed the changes into laws and regulations, thereby requiring their implementation. They also may make available equipment or facilities needed to enact the changes.

Other key stakeholders could be politicians, parliamentarians, judicial officers, donor countries, and multilateral organizations conducting capacity-building programming to aid the organization in training. Civil society groups are also essential partners to the change process of law enforcement institutions and often offer nonmonetary support, such as the creation of a dialogue space and advocacy work. An important aspect of getting buy-in from these key stakeholders is enlisting the help of the law enforcement leadership and leveraging their relationships with others in the government and community. Leaders must enthusiastically sell the change to embrace human rights to ensure the initiatives have enough momentum to be carried through.

Recommendation 2: Maintain Sustained Engagement and Realistic Expectations

Short-term wins along the strategic road toward change are positive signals. These repeated signals of a commitment and demonstration of early results build confidence in and momentum for long-term change. Continued and sustained engagement is crucial for the implementation of change within any organization, particularly in law enforcement institutions with deeply entrenched extrajudicial habits and behaviors. Donors and organizations supporting institutional transformation initiatives should recognize that organizational transformation is a marathon that requires long-term commitment; although early results and wins are signs of progress, they should not be interpreted as deep-rooted change.

3. Creating an Institutional Culture that Embraces Change

Creating an institutional culture that embraces chance is critical to successful transformation. Individual behavior is frequently driven to a great extent by entrenched habitual culture. For instance, in some law enforcement organizations, torture is seen as a way of proving loyalty to the organization and can be perceived as a competition between members—those who are willing to torture are the ones that must be the most committed to the organization because they are willing to go the farthest to prove it. [11] Competition among officers can be healthy when it focuses on lawful actions and job performance, but an institutional culture that promotes unlawful activity will produce disastrous results. For example, officers may torture detained individuals to show how far they are willing to go in their allegiance to the institution or they may be willing to hide exculpatory evidence. In addition, the culture of some institutions may encourage insulating their employees by creating "legal" justifications for practices that clearly break domestic and international laws.

It is incumbent on the leadership of organizations to ensure that the culture of their institution does not encourage, reward, or overlook such unlawful actions when they occur. One of the worst things a leader can do is offer informal immunity to members of the group, hinting that unlawful behavior will go unpunished, which breeds similar behavior among other officers who might perceive passive acceptance as actual endorsement.

Organizational culture starts with the leadership who must set the example that the rule of law must always be followed. Then, they must reinforce this through messaging, a system of rewards and punishments, as well as informal signals about the behavior they expect from their subordinates. Training that focuses

only on mid- to lower-level ranks of law enforcement officers and does not include members of the leadership is likely to have limited impact in scope.

Leaders can also establish a culture that does not retaliate against whistleblowers or hide infractions behind curtains of state secrecy, as has been used to shield intelligence agencies in the past, such as in the CIA.[12] This is a vital element to ensuring that violations are reported and addressed.

Change in organizational cultural is best accomplished by including all team members in the change initiative. For example, institutions can ensure the integration of new law enforcement trainees and recruits with senior officials on interrogation teams. Similarly, ensuring the integration of women into law enforcement agencies is crucial. Specialized training for law enforcement personnel and sensitization to the unique needs of vulnerable communities, including ethnic and religious minorities, youth, and women, is a way to reassure communities that law enforcement agencies are attentive to the needs and realities of the citizens they serve. In the long run, this helps foster tolerance and better facilitates change in day-to-day operational habits.

Other actors that may assist in entrenching institutional change include members of civil society and the media. Law enforcement and intelligence organizations are dependent on society to do their jobs, and honest feedback and evaluation of initiatives from the media and civil society will assist in making and sustaining changes and improvements to organizational culture.

Recommendation 3: Plan and Prepare for Individual and Organizational Resistance

Embarking on organizational and institutional change will inevitably encounter challenges and obstacles. Resistance may most strongly be triggered and supported by those benefiting from the current state of play. Advance preparation of a plan for handling the anticipated opposition is very important. Responses should be in the spirit of the new law-abiding trajectory and should promote the isolation and exclusion of negative behaviors from the organizational culture within a rule-of-law framework.

4. Incentives

Social pressures to conform to traditionally acceptable working habits and norms often inhibit change. Individuals base their behavior not only on a personal moral code, but also on incentives. If unlawful behavior is rewarded with promotions or other forms of compensation and favors, then individuals will be motivated to act in accordance. Incentives are intimately tied into institutional culture, and leaders have tremendous power to control the culture through the placement of incentives, including negative incentives, such as punishments.

Other intangible incentives are often more potent than monetary rewards, promotions, or punishments. Leaders can offer public praise or prestigious duties and responsibilities as a reward. They can also turn to law-abiding officers over others for information, which is a way of rewarding good behavior with trust and attention.

Performance reports are the most prominent manifestation of tangible incentives. Supervisors can use performance reports to establish incentives for promotions and to reward or punish behavior. Many law enforcement organizations have compliance inspections, and the results of such assessments may personally affect members, especially the leadership. This is another opportunity for offering incentives for compliance with the

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law, which can then have trickle-down effects on individual promotions.

Recommendation 4: Encourage Creative Innovation with Positive Reinforcement

Consulting with organizational and team leaders to structure a positive reinforcement plan to replace perks and rewards given to unwanted and unlawful behaviors will shift the day-to-day environment. Encouraging creativity and innovation with human rights–compliant tactics and methodologies will slowly recondition officials to embrace such tactics, particularly because they will be rewarded by positive results that directly benefit them.

5. Training

A commitment to intensive, ongoing training is essential. Law enforcement officers should be offered continued training, conducted by competent experts. It is not enough to conduct one-time trainings to transform an entire institution. Training must be realistic, repetitive, ongoing, and deeply rooted in a coherent strategic vision. Law enforcement officers must maintain proficiency in firing a weapon throughout their entire career. Similarly, they should be consistently trained on respect for human rights while countering terrorism and the importance of rule of law at an operational level. Training should take place at all levels, including the strategic and operational levels, and include everyday considerations for the respect of basic human rights. [13]

Training conducted or facilitated by external donors should emphasize building domestic training capacities by training trainers who are then able to conduct their own training without outside assistance. This will also aid in deputizing members of the organization as "agents of change," thereby shifting some of the responsibility for change to the organization

itself. The more effort members put into the change initiatives, the more committed they will become to ensuring its success. There are numerous entry points for providing capacity-building assistance to law enforcement organizations. Familiarity with institutions will help to identify when assistance delivery is most appropriate. Although consultation with foreign colleagues and outside experts is extremely valuable in designing training programs, consultation with members of the native organization is essential for success.

Recommendation 5: Tailor Program Design and Identify Viable Entry Points

Designing culturally relevant and contextualized training programs is critical for achieving change goals, particularly when foreign trainers come into a country to share ideas and best practices. Programming should have clear strategic goals and foster interactivity between trainers and participants but also among participants.

6. Measuring Change and Independent Oversight

It is easy for transformation initiatives to slide backward if not subjected to oversight in the form of inspections or assessments. Oversight is best performed by independent agents outside of the organization to ensure objectivity and should occur regularly and involve testing, exercises, interviews, record reviews, and observation. Results should be transparent, and law enforcement institutions should be given adequate opportunity to correct deficiencies. For major infractions that involve lawbreaking, oversight officials should refer cases to the appropriate authorities. It is important that inspections be performed unannounced and randomly so that units do not have a chance to cover up infractions.

In addition, individuals performing inspection

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functions must be beyond reproach in

integrity. They should have sufficient authority so that they cannot be threatened or influenced. Members of civil society, human rights groups in particular, are therefore strong allies in a change process and contribute to the reality and perception of accountable governance and transparent institutions.

Accountability is critical to implementing and sustaining effective transformation. Impunity for crimes holds the risk that these crimes will be repeated. Such was the case with U.S. torture, where early infractions of abuse at the Guantánamo Bay and Bagram, Afghanistan, prisons later spread to Iraq and may have contributed to abuses at Abu Ghraib and various other detention facilities.

Finally, compliance should be tracked and measured to evaluate progress. This assessment can include measuring changes in attitudes and perceptions of the change initiatives.

Recommendation 6: When Possible, Measure and Assess Impact

Measuring success is crucial to a change plan. This can be done using a checklist criterion to assess progress over time or through regional-level mutual evaluations or civil society–led independent oversight exercises. It may even be useful for donor states to require that programming partners build methods of evaluation into programming and supplement them by independent evaluation.

Conclusion

Even before 9/11, there were numerous cases in which human rights were neglected by law enforcement and intelligence agencies. With the enactment of national security laws after 9/11 that have given some states even broader powers, there is renewed focus on human

rights. A more concerted effort is needed to stop human rights abuses, particularly in criminal justice systems, in the areas of interrogation, detention, prosecution, and investigation. All of these areas will benefit from organizational transformation that seeks to promote respect for human rights while countering terrorism.

This brief has introduced six key principles drawn from the field of organizational management in order to promote and achieve law enforcement institutional transformation: (1) leadership, (2) buy-in from key stakeholders, (3) creation of an institutional culture that embraces change, (4) incentives, (5) training, and (6) measuring change and independent oversight. The brief also suggested six corresponding and highly practical recommendations for immediate implementation by donors, policymakers, and law enforcement and intelligence agencies: (1) foster political will among senior leadership, (2) maintain sustained engagement and realistic expectations, (3) plan and prepare for individual and organizational resistance, (4) encourage creative innovation with positive reinforcement, (5) tailor program design and identify viable entry points, and (6) when possible, measure and assess impact.

Building trust between communities and law enforcement agents can best be accomplished if the public perceives that leaders in the law enforcement community are serious about their commitment to change. In return, law enforcement benefits from the improved interaction with the community through increased threat reporting, which is crucial because the public is often the counterterrorism official's best eyes and ears. In turn, this leads to better security for all. ♦

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Notes

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