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PRINCIPLES ON EFFECTIVE INVESTIGATIVE INTERVIEWS: A NEW INSTRUMENT OF INTERNATIONAL LAW

by *Juan E. Mendez**
& *Matthew Ilsley***

I. Introduction

International law absolutely prohibits torture and ill-treatment, yet such abuses remain prevalent and widespread. It most frequently occurs in the questioning of individuals by law enforcement, intelligence officials, and military personnel in the context of “fighting crime,” obtaining confessions, controlling detainees, and “counterterrorism.” The “Torture Memorandums,”¹ exemplifying the deeply misguided practices used in the global fight against terror following the attacks of September 11, 2001, illuminated the pervasiveness of these practices.

While not the first reported justification for methods of interrogation techniques that replicate society’s understanding of what constitutes torture, the notorious Torture Memorandums are indicative of the level at which states are willing to permit the means and methods of torture and to legally wrangle these means and methods to present them as lying outside the scope of what constitutes torture and ill-treatment under well-established rules of international customary

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1 See OFF. OF DEP. ASS. ATT’Y GEN., DOJ, MEMORANDUM REGARDING MILITARY INTERROGATION OF ALIEN UNLAWFUL COMBATANTS HELD OUTSIDE THE UNITED STATES (Jan. 2, 2002), available at https://www.aclu.org/sites/default/files/pdfs/safefree/yoo_army_torture_memo.pdf.

and treaty law binding on the United States.²

Although the then-newly seated George W. Bush Administration withdrew the Torture Memorandums as soon as they were leaked to the press,³ they exist today as a shameful example of a misguided and unethical attempt at a justification for today’s continued application of coercive means in the conduct of interviews and investigations around the world. In its latest report to the U.N. General Assembly (UNGA), the Committee Against Torture (the Committee) noted that since providing its last report to the UNGA in 2021, it had received a further 58 complaints of torture and ill-treatment against State parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁴

The Committee’s report illustrated that between July 12, 2021, and May 13, 2022, it had made 47 findings of torture and ill-treatment committed by state parties, including nations such as Burundi, Serbia, Mexico, Morocco, Slovakia, and Algeria.⁵ A number of these findings included decisions that deportations and removals by state parties to countries such as Eritrea, China, Iran, and Afghanistan would amount to a violation of the principle of non-refoulement in the circumstances of each case,⁶ thus expanding the list of countries where torture and ill-treatment are known to occur unabated.

In 2016, recognizing the widespread use of torture, co-author Juan E. Mendez, in his capacity as UN Special Rapporteur on Torture, submitted a thematic report to the UN General Assembly.⁷ This report

2 OFF. OF ASS. ATT’Y GEN., DOJ, MEMORANDUM FROM JAY S. BYBEE ON THE INTERROGATION TECHNIQUES USED AGAINST ALLEGED AL QAEDA OPERATIVE ABU ZUBAYDAH, TO JOHN RIZZO (Aug. 1, 2002), <https://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-bybee2002.pdf>. See, generally, Ross L. Weiner, *The Office of Legal Counsel and Torture: The Law as Both a Sword and Shield*, 77 GEO. WASH. L. REV. 524 (2009).

3 David J. Barron, then Acting Assistant General, stated in the Withdrawal Memorandum that, “[i]n connection with the consideration of these opinions *for possible public release*, the Office has reviewed them and has decided to withdraw them. They no longer represent the views of the Office of Legal Counsel.”

OFF. OF ASS. ATT’Y GEN., DOJ, WITHDRAWAL OF OFFICE OF LEGAL COUNSEL CIA INTERROGATION OPINIONS (April. 15, 2009) <https://irp.fas.org/agency/doj/olc/withdraw-0409.pdf> (emphasis added).

4 See Rep. of the Comm. Against Torture, U.N. Doc., A/77/44, at 10–12, (2021–2022).

5 *Id.* at 10–12.

6 *Id.*

7 See Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, U.N. Doc., A/71/298 (Aug. 5, 2016) [hereinafter “The Thematic Report”].

recalled the right of all persons to be free from torture and ill-treatment and that this right is one protected by customary international law.⁸ In noting this protected right, the report highlighted the continued violation of the right to be free from torture by states that persist in their use of unlawful and improper means of interviews and interrogations.⁹ With these violations in mind, the report called for the development of a universal set of standards for non-coercive interviewing techniques and associated procedural safeguards during investigations to ensure that no person—including suspects, witnesses, victims, and other interviewees—is subject to torture, ill-treatment, or coercion while being questioned by state bodies.¹⁰

The 2016 report has since developed into a framework of concrete guidance to authorities on non-coercive interviewing processes and standards. It details the legal and procedural safeguards states should implement during investigations conducted by law enforcement agencies and other crime-fighting institutions. In May 2021, a Steering Committee of Experts published the framework as “The Principles on Effective Interviewing for Investigations and Information Gathering” (The Principles).¹¹

This article analyzes the context in which the need for The Principles arose, provides an overview of The Principles and their development, and summarizes the substance of the six Principles in the hope of inspiring the continued support of their application by states, their law-enforcement authorities, and the international community at large.

II. The Pervasive Culture of Coercion-based Interviews and the Ensuing Need for the Principles

Questioning during investigations is a primary function of law enforcement and other authorities with investigative mandates. The information obtained from interviews and interrogations plays a central role in criminal justice, ultimately impacting the entire system’s fairness. State bodies must conduct interviews in a manner that complies with human rights, upholds the fundamental principle of the prohibition of torture, and places at its center the rights of every person to dignity and physical and mental integrity.

8 *Id.* ¶ 6.

9 *Id.* ¶¶ 6, 9.

10 *Id.* ¶¶ 101–103.

11 See *Principles on Effective Interviewing for Investigations and Information Gathering*, STEERING COMM. OF EXPERTS, (May 2021), https://www.apt.ch/sites/default/files/publications/apt_PoEI_EN_11.pdf [hereinafter “The Principles”].

Evidence has clearly shown that the use of torture, ill-treatment, and coercion does not work to elicit trustworthy information.¹² Such practices not only harm the areas of the brain responsible for memory and general cognitive functions, thereby effectuating physical and psychological harm to the interviewee, but also lead to false confessions and unreliable information, as individuals become disoriented and say anything to stop the abuse, such as providing fabricated memories.¹³ Confessions and declarations obtained under torture or coercion are not only ineffective but counterproductive, squandering valuable resources and eroding the public’s trust in law enforcement agencies.¹⁴

There is abundant scientific literature to show that coercion adversely affects the establishment of the truth. These multidisciplinary studies rely on extensive empirical evidence and benefit from the recent use of DNA to nullify false confession-based convictions. DNA evidence has not only assisted the criminal justice system in correcting egregious judicial errors, but it has also prompted new research on why and under what circumstances some persons confess to crimes they could not have committed.¹⁵

Psychologists have persuasively shown that coerced confessions mislead investigative efforts, not only to solve crime but also to gather intelligence; in turn, unreliable confessions and declarations against interest are traceable to faulty interrogation techniques and abusive practices. Poor interviewing techniques that include the brutality of torture and coercion frequently result in unreliable information.¹⁶ For their part, neuroscience researchers have demonstrated that

12 See G.H. GUDJONSSON, *THE PSYCHOLOGY OF FALSE CONFESIONS: FORTY YEARS OF SCIENCE AND PRACTICE* (Graham M. Davies & Ray Bull eds., 1st ed. 2018); see also Aldert Vrij et al., *Psychological Perspectives on Interrogation*, 12(6) *PERSP. ON PSYCH. SCI.* 927 (2017); SHANE O’MARA, *WHY TORTURE DOESN’T WORK: THE NEUROSCIENCE OF INTERROGATION* (Cambridge, Harvard Uni. Press eds., 2015); Saul M. Kassir et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 *L. & HUM. BEHAV.* 3, 1–37 (2010).

13 See, O’Mara, *supra* note 12; see also Charles A. Morgan et al., *Misinformation Can Influence Memory for Recently Experienced, Highly Stressful Events*, 36 *INT’L J. OF L. & PSYCH.* 11, 11–17 (2013); Kymberly Young et al., *Dose-dependent Effects of Hydrocortisone Infusion on Autobiographical Memory Recall*, 125 *BEHAV. NEUROSCI.* 735 (2011).

14 See The Principles, at 23, ¶ 128; see also The Thematic Report, *supra* note 7, at ¶ 20.

15 See *DNA Exonerations in the United States (1988–2020)*, INNOCENCE PROJECT, <https://innocenceproject.org/dna-exonerations-in-the-united-states/>.

16 See *id.*; see also Vrij et al., *supra* note 12.

coercive interviews interfere with the memory-retrieval capacities of the brain and can even damage memory.¹⁷

The debates over the legitimacy and effectiveness of the use of torture in the aftermath of the transnational terrorist attacks of September 11, 2001, have generated more rigorous multidisciplinary studies.¹⁸ Contributions already cited from medicine, psychiatry, and psychology have supported the findings of criminologists and jurists. The overwhelming thrust of this literature shows that it is simply not true that “torture works,” as prevailing popular media leads one to believe. Science demonstrates that coercion results in unjust convictions and inefficient uses of investigative resources to pursue false leads.¹⁹ Indeed, while some information retrieved in this manner may be factual, the interviewers who only seek confirmation of what they already believe to be true will often miss other crucial pieces of information.²⁰

Bending the rules on coercion and the absolute prohibition of torture and ill-treatment also has a corrosive impact on the effectiveness of policing and the credibility of law enforcement bodies. The brutality of coerced interrogation and the bad faith evidenced by tactics of deceit and skullduggery may, at times, provide shortcuts to investigations. However, the diminished trust of the citizenry in institutions whose primary mission is to serve and protect them far outweighs any benefits shortcuts may provide.

Faithful observance of The Principles—of the rapport-based practice that inspires them—is capable of restoring law enforcement institutions to the civic trust that is essential to the effectiveness of policing. Community cooperation is required not only for crime prevention but also for effective investigation and establishment of criminal responsibilities. A community whose members are intimidated by police is not likely to offer that cooperation, at least not voluntarily and certainly not spontaneously.

17 See O’MARA, *supra* note 12.

18 Elizabeth F. Loftus, *Intelligence Gathering Post 9/11*, 66 AM. PSYCH. 532, 539 (2011).

19 Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 898 (2004); Mark A. Costanzo & Ellen Gerrity, *The Effects and Effectiveness of Using Torture as an Interrogation Device: Using Research to Inform the Policy Debate*, 3 SOC. ISSUES & POL’Y REV. 179, 183 (2009).

20 See Fadia M. Narchet et al., *Modeling the Influence of Investigator Bias on the Elicitation of True and False Confessions*, 35 L. & HUM. BEHAV., 452 (2011); see also Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2 WIS. L. REV. 291, 309–316 (2006).

In addition, interview practices that comply with human rights standards are more likely to protect the force members already laboring in a dangerous environment. If law enforcement personnel mistreat a criminal suspect during arrest and interrogation, that suspect is more likely to resist arrest and compliance with those personnel. Therefore, policing that respects the rights and basic safeguards of all individuals who interact with law enforcement is crucial for protecting law enforcement personnel’s life, health, and security.

It is worth considering that the preceding critique is not confined to the use of torture, whether physical, mental, or both. Ethical, professional, legal, and effectiveness challenges also apply to techniques involving deception, manipulation, and leading or suggestive questions that can contaminate the interviewee’s memory.²¹

III. Overview and Development of The Principles

Given the widespread use of torture and ill-treatment during investigations and the birth of the thematic report, consultations with several key stakeholders ensued prior to the finalization of The Principles. These consultations saw the collaboration of U.N. agencies, civil society organizations, criminologists, psychologists, and experts from various other disciplines to distill the thematic report into The Principles that exist today.

These consultations were organized and supported by an institutional partnership between the Anti-Torture Initiative at American University Washington College of Law, the Geneva-based Association for the Prevention of Torture, and the Norwegian Center for Human Rights, convened for the sole purpose of promoting and coordinating the development of The Principles. A fifteen-member Steering Committee of Experts carried out the work of this institutional partnership, overseeing the development of The Principles. Experts on this Committee were recognized authorities in policing, law enforcement, counterterrorism, intelligence gathering, psychology, law, and human rights protection. Under the guidance of the Steering Committee, a drafting group—later assisted by an Editorial Group—drafted the text that forms the substance of The Principles that we see today.

While not a training manual *per se*, The Principles exist as a set of guidelines to authorities on non-coercive interviewing processes and standards,

21 Brandon L. Garrett, *Contaminated Confessions Revisited*, 101 VA. L. REV. 395, 427 (2015).

along with the legal and procedural safeguards that should be implemented during investigations. Rooted in established norms, scientific research, and best practices, the guidance provided in The Principles applies in all investigative contexts—including national security—and to all categories of interviewees (*i.e.*, suspects, witnesses, victims, and other persons).

IV. Incorporation of the Principles into Law and Practice

The Principles were drafted to serve as a standard by which to judge each country's respect for its international obligations, ultimately to be enshrined in domestic policies and legislation. Since the publication of the Principles in May 2021, the Principles have gained significant support in the international and domestic fora, eliciting approving statements and references from various international, regional, and domestic law sources.

Chief among them are two references in resolutions of the UNGA on December 15, 2022. The first reference was included in the omnibus resolution on torture and other cruel, inhuman, or degrading treatment or punishment that is discussed every two years, whereby the UNGA had the following to say: “[The General Assembly] *takes note with appreciation of the Principles on Effective Interviewing [. . .] and encourages States to use them as appropriate through the implementation of national measures . . .*”²²

It is worth noting that the Preamble of the omnibus resolution recognized further:²³

“ . . . that police and other law enforcement officials play a vital role in the protection of the right to life, liberty and security of persons [and urged them to employ] non-coercive interviewing techniques and implement[ing] associated legal safeguards to prevent torture and to effectively obtain accurate and reliable information.”

The second reference was inserted in the biannual resolution on Human Rights in the Administration of Justice,²⁴ in connection with the obligation of States to keep “. . . *under systematic review the rules, instructions, methods and practices on interviewing . . .*” and included a recommendation to consider, as appropriate, The Principles.²⁵

The UN Office of Drug and Crime, on the other hand, “*encourage[d] the use and sharing of good practices on legally-grounded, evidence-based interviewing methods designed to obtain only voluntary statements*”;²⁶ while the Human Rights Council adopted a Resolution on “*Torture and other cruel, inhuman or degrading treatment or punishment: The roles and responsibilities of police and other law enforcement officials,*” which welcomed the process of elaboration of the Principles that would be finalized a few weeks later.²⁷

In a report to the Human Rights Council on Human Rights in the Administration of Justice, the then High Commissioner on Human Rights, Mme. Michele Bachelet, also praised the initiative to elaborate a set of universal standards for non-coercive interviewing methods and procedural safeguards.²⁸ High Commissioner Bachelet was the keynote speaker at the launch of the Principles in June 2021.

The Committee, as the organ of implementation of the CAT, has had several occasions to refer approvingly to The Principles. It did so in Concluding Observations on the initial report of Malawi,²⁹ on its Concluding Observations to the second report of Chad;³⁰ as well as in similar concluding observations with respect to Somalia,³¹ Botswana,³² Sweden³³ and Belgium.³⁴ It bears noting that during the periodic

26 G.A. Res. 234/6 A, *Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law*, (Feb. 17, 2021).

27 *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Roles and Responsibilities of Police and Other Law Enforcement Officials*, Human Rights Council Res., U.N. Doc. A/46/15, at 1 (Mar. 23, 2021).

28 *Human Rights and Indigenous Peoples: Mandate of the Special Rapporteur on the Rights of Indigenous Peoples*, Human Rights Council Res., U.N. Doc. A/42/20, (Aug. 21, 2019).

29 Comm. against Torture, Rep. on Concluding Observations on the Initial Report of Malawi, U.N. Doc. CAT/C/MWI/CO/1, (Dec. 9, 2022).

30 Comm. against Torture, Rep. on Concluding Observations on the Second Periodic Report of Chad, U.N. Doc. CAT/C/TCD/CO/2, (Dec. 7, 2022).

31 Comm. against Torture, Rep. on Concluding Observations on the Initial Report of Somalia, U.N. Doc. CAT/C/SOM/CO/1, (Dec. 2, 2022).

32 Comm. against Torture, Rep. on Concluding Observations on the Initial Report of Botswana, U.N. Doc. CAT/CBWA/CO/1, (Aug. 23, 2022).

33 Comm. against Torture, Rep. on Concluding Observations on the Eighth Periodic Rep. of Sweden, U.N. Doc. CAT/C/SWE/CO/8, (Nov. 26, 2021).

34 Comm. against Torture, Rep. on Concluding Observations on

22 G.A. Res. 77/209, at 16 (Dec. 15, 2022).

23 *Id.*

24 G.A. Res. 77/210, at 14 (Dec. 15, 2022).

25 *Id.*

review, Sweden announced its intention to integrate the Principles in legislation to end accusatory and coercive practices during law enforcement investigations.³⁵

The Subcommittee on Prevention of Torture, as the implementation organ of the Optional Protocol to CAT, referred to the Principles in its Fifteenth Annual Report, encouraging national prevention mechanisms to familiarize, endorse, and absorb them into their systems and procedures, stating that The Principles “constitute an essential step in the needed cultural shift towards the respect of human rights at all stages of the criminal justice process.”³⁶

The Special Rapporteurs on Torture have also supported the Principles in their reports to the Human Rights Council.³⁷ Most recently, the Principles formed part of Dr. Alice Jill Edwards’ report to the U.N. Human Rights Council during its fifty-second session on Good Practices in National Criminalization, Investigation, Prosecution, and Sentencing for Offenses of Torture.³⁸ In her capacity as the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dr. Edwards affirmed the relevance of the Principles in relation to the duty of state parties to the CAT to investigate crimes of torture in national law and practice,³⁹ and made the specific recommendation that state parties “[a]dopt guidelines and standards for investigators, prosecutors, lawyers, medical and forensic experts and judges on . . . interviewing techniques for victims, witnesses and suspects in alignment with the Mendez Principles.”⁴⁰

On December 12, 2017, at the regional level, the African Commission on Human and Peoples’ Rights (ACHPR) issued a Resolution on the Principles, which extensively discussed the normative precedents in the region that support them.⁴¹ In welcoming the Principles, the ACHPR encouraged state Parties to use the Principles as a framework for preventing torture and entrusted the Committee on the Prevention of Torture in Africa and the Special Rapporteur on Prisons in Africa with the task of integrating the Principles into

the Fourth Periodic Report of Belgium, U.N. Doc. CAT/C/BEL/CO/4, (Aug. 25, 2021).

35 *Id.*

36 Comm. against Torture, Rep. on Subcomm. on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. CAT/C/73/2, (Mar. 10, 2021).

37 Hum. Rts. Council Res. 49/50, at 13 (Dec. 28, 2021).

38 *See* Hum. Rts. Council Res. 52/30, at 6 (Mar. 13, 2023).

39 *Id.* at 2.

40 *Id.* at 18.

41 African Commission on Human and People’s Rights Res. 514 (LXXIII) (Dec. 12, 2022).

their promotional mandates.⁴²

In Europe, the Committee for the Prevention of Torture of the Council of Europe was one of the first intergovernmental organs to endorse and promote The Principles. It did so in the context of its visit to Romania and Serbia and in a press release at the end of its 105th Plenary Meeting on 6 July 2021.⁴³ Mr. Josep Borrell, High Representative and Vice-President of the European Union, expressed support for the Principles in a Statement of 25 June 2021, on the International Day in Support of Victims of Torture.⁴⁴

At a domestic level, national institutions like public defenders’ offices, prosecution services, and courts have expressed interest in The Principles and have started the process of capacity building through training courses. In a prime example of domestic application of The Principles, the Colombian Special Jurisdiction for Peace (“JEP,” for its acronym in Spanish) expressly referred to The Principles in an appellate decision in which it remanded for further proceedings a lower court decision to deny amnesty on the grounds that the petitioner had not provided complete and truthful testimony.⁴⁵ The Appeals panel of the JEP found that the lower court had not conducted the interview with the petitioner in a manner consistent with the Principles and therefore had not given her sufficient opportunity to explain herself and clarify her statements.⁴⁶

Members of the Steering Committee and the three organizations that formed the Coordination Group for the Principles have continued to disseminate the document in their training sessions and other interactions with academic centers specializing in criminology and related disciplines, as well as with police academies

42 *Id.*

43 Council of Europe, *105th Plenary Meeting of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, (Jun. 7, 2021), <https://www.coe.int/en/web/cpt/-/105th-plenary-meeting-of-the-european-committee-for-the-prevention-of-torture-and-inhuman-or-degrading-treatment-or-punishment-cpt->.

44 European Union External Action, *International Day in Support of Victims of Torture: Statement by the High Representative/Vice-President Joseph Borrell*, (May 25, 2021), https://www.eeas.europa.eu/eeas/international-day-support-victims-torture-statement-high-representativevice-president-josep_en.

45 Nancy Conde Rubio v. Resolución, Providencia no. Auto TP-SA 1296 de 2022, Negativa del Beneficio de Amnistía [Ruling no. Auto TP SA 1296 of 2022, Denying the Benefit of Amnesty], Jurisdicción Especial para La Paz, Sección de Apelación [Special Jurisdiction for La Paz, Appellate Section], 16–17 n.30 (Nov. 23, 2022), <https://www.legal-tools.org/doc/wz4leh/>.

46 *Id.*

in various countries and with institutions devoted to criminal justice, like prosecution services, public defenders' offices, judicial councils, ombudspersons' offices and national preventive mechanisms monitoring and combatting torture.

To name but a few of these exercises, in November 2022, three Steering Committee members participated in a three-day training session organized by the Federal Prosecutor's Office of Mexico with trainers and teachers of the country's federal police academy. In March 2023, the Argentine Federal Public Defender's office invited Juan E. Mendez to present the Principles at the III World Forum on Human Rights in Buenos Aires. In September 2021, Mr. Mendez presented the instrument in Dublin, Ireland, at a national conference of public defenders and university research centers. In November 2023, he spoke at a worldwide webinar hosted by the School of Justice of the University of Canterbury, England, a major center for research and teaching in European criminal justice and law enforcement. In early December 2023, the Director of the Civil Police Academy of the State of Rio de Janeiro, Brazil, hosted a meeting in which he announced the incorporation of The Principles into the curriculum of the courses to train investigators.

With the auspices and financial support of the European Union, various centers of learning are building a network of researchers and practitioners dedicated to implementing The Principles in domestic law and practice. The examples above show a significant shift toward integrating The Principles into international, regional, and domestic legal frameworks. As the Principles gain momentum, it is crucial to remember their overall purpose and substance, as discussed below.

V. So, What Exactly Are The Principles?

The Principles contain a set of six non-binding but highly authoritative guidelines on non-coercive interviewing. Effective interviews gather accurate and reliable information to discover the truth of matters under investigation. For this reason, The Principles provide a human rights-based approach to interviewing to ensure that interviews conducted by law enforcement, intelligence officials, and military personnel are carried out with the highest levels of professionalism, careful planning, and rigorous evaluation, thus enhancing the effectiveness of their work. This approach to interviewing aims to improve the operational functions of law enforcement and further societies' trust in public institutions while ensuring that guilty convictions are secured and wrongly accused persons are acquitted

before having to endure the hardships of most (if not all) domestic criminal justice systems.

Importantly, the Principles address the first few hours of custody, the time during which the risk for torture and ill-treatment is the greatest.⁴⁷ It is vital, therefore, that the foundational concept of the presumption of innocence and the overall human-rights-based approach enumerated by The Principles' substance underscore its application. With this background in mind, the following section will individually discuss each of the six principles.

A. Principle 1 – On Foundations

Principle 1 discusses the research undertaken within various fields—including psychology, criminology, sociology, neuroscience, and medicine—of interview practices that are both effective and ineffective.⁴⁸ The unreliability of information obtained by coercive means is explained in detail, along with the impact that tortuous means of interviewing have on the actual ability of the victim to recall information due to, for example, heightened states of stress.⁴⁹

Practices have evolved over the last three decades from the careful empirical observation of concrete outcomes resulting from interviews that do not violate the interviewee's rights. A methodology based on law and the interviewer's professional ethics is also the most effective way to obtain the truth, which is the objective of the investigative interview.

As has been stated above, The Principles contribute to debunking the myth that “torture works,” as conventional wisdom—influenced by popular culture—wants us to believe. Torture may yield some information, and some of it may indeed correspond to reality. However, it also exacts a heavy price on the legitimacy of institutions like the courts and law enforcement, making them less effective in fighting crime because they instill fear and erode the citizenry's trust. Torture also makes it more likely for suspects to resist arrest rather than submit to coercive interrogation, which also contributes to endangering the life and health of law enforcement personnel. In the end, science demonstrates that the information obtained under torture is highly unreliable, even on the matter of whether it corresponds to the truth, since the person

47 Alice Jill Edwards (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), *Rep. on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/77/2972 (Oct. 4, 2022).

48 The Principles, *supra* note 11, at 6, ¶ 21; 9, ¶ 29.

49 *Id.* at 6–10.

coerced will say anything to make the torture stop.⁵⁰

The good news is that the methodology already practiced—and thoroughly studied—in some societies is also more effective than the brutality of coercion and torture. It is more effective because it is more likely to obtain results that correspond to the facts and are complete and subject to corroboration. Therefore, these outcomes are more likely to result in safe judicial decisions about guilt or innocence and healthier relationships between law enforcement and the community.

With the aforementioned in mind, Principle 1 details the importance of rapport-based, non-coercive means of interviewing and details the benefits of approaching interviews in a manner consistent with the values and objectives espoused by the Principles,⁵¹ thus providing the reader with a solid foundation on the importance of this document and clarifying that the Principles are scientifically and empirically proven to work to enhance the objectives and effectiveness of law enforcement and intelligence gathering.⁵²

Over and above the foundations of research that underpin the Principles, Principle 1 also emphasizes that The Principles are “*firmly anchored in international law, drawing on non-derogable jus cogens norms, customary international law, treaty obligations, and international, regional, and national jurisprudence.*”⁵³

The importance of the solid, human rights-based legal foundations supporting The Principles cannot be overlooked, and ought to play a central role in their implementation in all domestic jurisdictions around the world.

Lastly, Principle 1 emphasizes the need for professional regulations governing the conduct of officials tasked with gathering information from interviewees and insists that those professional regulations—such as professional codes of ethics governing the duties of relevant officials—champion values of respect, fairness, and honesty.⁵⁴

50 See, .e.g., LISA HAJAR, *THE LIBERAL IDEOLOGY OF TORTURE: A CRITICAL EXAMINATION OF THE AMERICAN CASE 95* (Charles P. Webel & John A. Arnaldi eds., 1st ed. 2011) (“Indeed, the American experience [in the torture policies espoused by the Torture Memos] has verified the ageless truism that many people will say anything to make the torture stop . . .”).

51 The Principles, *supra* note 11, at 9, ¶¶ 31–32.

52 *Id.* at 7, ¶ 22.

53 *Id.* at 10, ¶ 36.

54 *Id.* at 14, ¶ 51.

B. Principle 2 – On Practice

Principle 2 develops the customs and practices shown to yield more reliable and complete information to assist in the investigation and eventual adjudication of criminal offenses.⁵⁵ To effectively assist the investigation and eventually yield criminal prosecution, society, the system, and the interviewee must see the interview as a comprehensive process, not a single event.⁵⁶ It requires careful planning and thorough familiarity with the evidence already available. Most importantly, a state apparatus cannot undertake an interview with the ultimate aim of obtaining a confession but rather an honest and impartial approach to ascertain the truth of the facts under investigation.⁵⁷ The interviewer must flexibly approach and adapt the process to the personality and behavior of the interviewee and must strive to elicit collaboration toward that purpose.⁵⁸

Crucial to that end is rigorous respect for all procedural safeguards in the law that are meant precisely to ensure that all contributions by persons interviewed are genuinely voluntary.⁵⁹ This means that it is the interviewer’s responsibility to inform the interviewee of their rights, particularly—in the case of suspects—of the right to remain silent and be assisted by counsel of their own choosing.⁶⁰

In addition, the interviewer must keep an open mind and not be guided by preconceptions of what they believe in advance to be the truth. They should not seek confirmation of that preconception, as that “confirmation bias” can easily lead the interview away from the facts and, in some scenarios, to coercion and pressure to elicit self-incriminating information. An open-minded approach to questions contributes to a non-coercive environment and establishes and maintains rapport.⁶¹

Rapport is the opposite of coercion and should be understood as a relationship based on mutual respect and trust.⁶² The interviewee is more likely to be cooperative if they believe that the interviewer is honest about the object of the interview and its purpose and will not violate the rules governing it. The rapport that needs to be established and maintained requires empathy and a willingness to listen on the interviewer’s

55 *Id.* at 16, ¶ 57.

56 *Id.* at 15, ¶¶ 54–55.

57 The Principles, *supra* note 11, at 16, ¶ 58.

58 *Id.* at 16, ¶ 55.

59 *Id.* at 16, ¶ 61.

60 *Id.* at 16, ¶ 62; 20, ¶ 80–85.

61 *Id.* at 17, ¶ 63; 18, ¶ 69; 24, ¶ 106.

62 *Id.* at 24, ¶ 105.

part.⁶³ Active listening means that interviewers must encourage their subjects to speak freely, completely, and without interruption;⁶⁴ there will always be opportunities to come back to statements to seek clarification.

Finally, each interview must be followed by an immediate assessment and evaluation, not only of its immediate results, *i.e.*, information actually obtained, but of the practices that may have been successful or not in pursuing the objective.⁶⁵ In its most fundamental principles, the methodology that inspires this instrument requires specific steps to be taken before, during, and after the interview, precisely to ensure the careful planning and the rigorous execution of the rapport-based interview at all its stages.

C. Principle 3 – On Vulnerabilities

Principle 3 recognizes the interviewee's vulnerable position when being questioned.⁶⁶ This position of vulnerability stems from the "inherent unequal bargaining power" between the interview authorities and the interviewee. It is crucial to acknowledge that feelings of vulnerability become more intense in certain circumstances. These include situations where the person being interviewed is in detention at the time of questioning,⁶⁷ where the interview coincides with "specific risk factors" inherently relevant to the interviewee (such as age, gender, nationality, ethnicity and language),⁶⁸ where certain situational features (such as the health status of the interviewee) arise at the time of questioning,⁶⁹ and in cases where institutional prejudice and discrimination may affect judgment and actions.⁷⁰

Considering the adverse effects that feelings of vulnerability may have on the effectiveness of interviews,⁷¹ Principle 3 acknowledges the need for authorities to implement enhanced protections and special measures to cater to the specific needs of vulnerable interviewees⁷² and calls interviewers to conduct formal written assessments to be formally recorded, to ensure that the potential vulnerabilities of any given interviewee are appropriately attended to,

investigated, and considered.⁷³

D. Principle 4 – On Training

Principle 4 advocates for the proper training of all persons responsible for conducting interviews,⁷⁴ and specifically notes the need for training that is adequately specific and supported by the recruitment of professional interviewing personnel and reinforced through the provision of continuous professional development programs.⁷⁵

The specificity of the training that ought to be provided to the relevant personnel is set out in detail, and the "key elements" of effective interview training are provided for to ensure that states are properly informed of the substance that should be incorporated into training standards and programs.⁷⁶

E. Principle 5 – On Accountability

Principle 5 builds on the obligations imposed on state parties by Article 11 of the Convention Against Torture, which states that "[e]ach State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture."⁷⁷

Principle 5 affirms the review obligations of state parties and advocates for states to adopt operating standards, policies, and procedures consistent with international norms and standards.⁷⁸

Central to Principle 5 are the prerequisite values of transparency and accountability.⁷⁹ Not only should the operating policies of law enforcement and other institutions responsible for conducting interviews in cases that could lead to the ill-treatment of interviewees be available to all relevant stakeholders, such as the interviewees themselves, their families, and lawyers,⁸⁰ but the levels of transparency and accountability should remain uniform to all levels of authority, no matter rank

63 The Principles, *supra* note 11, at 6, ¶ 21; 25, ¶ 113–115.

64 *Id.* at 25, ¶ 115.

65 *Id.* at 27, ¶¶ 128–131.

66 *Id.* at 28, ¶¶ 132–133.

67 *Id.* at 28–29, ¶¶ 132–133, 135–141.

68 *Id.* at 28–29, ¶ 135–136.

69 The Principles, *supra* note 11, at 29, ¶ 136.

70 *Id.* at 29, ¶ 137.

71 *Id.* at 28, ¶ 133.

72 *Id.* at 30, ¶ 142.

73 *Id.* at 31, ¶ 146.

74 *Id.* at 32, ¶ 149.

75 The Principles, *supra* note 11, at 32–34, ¶¶ 152–165.

76 *Id.* at 33, ¶ 154.

77 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), Art. 11, 1465 UNTS 85, [1989] ATS 21, UN Doc. A/RES/39/46; *see also* A/HRC/RES/31/31, ¶¶ 11–12; *see also* A/HRC/RES/46/15, ¶ 10.

78 The Principles, *supra* note 11, at 35, ¶ 167.

79 *Id.* at 35–36, ¶¶ 170–172.

80 *Id.*

and seniority.⁸¹

To match the standards of accountability and transparency expected by The Principles, agencies responsible for conducting interviews must ensure the proper maintenance of effective record keeping⁸² and, if possible, should ensure that audio-visual recordings monitor interviews.⁸³

Should an interviewee feel as if the interview was conducted in an unlawful or otherwise coercive manner, that interviewee should have the ability to lodge a formal complaint that triggers an appropriate response from the institutions involved.⁸⁴ The complaint process ought to be accessible, straightforward, and promptly and impartially investigated by the relevant authorities.⁸⁵

Should findings be made that certain legal obligations have been truncated or contravened, criminal procedures and sanctions ought to follow to ensure that those responsible are held to account.⁸⁶ Nevertheless, criminal liability is not in itself sufficient to overcome the harm ostensibly done to the victim, and adequate forms of redress must follow violations of the absolute prohibition of torture and ill-treatment. Redress must include, as Article 15 of CAT requires,⁸⁷ the prompt and opportune application of the exclusionary rule that obliges States to exclude from any proceedings illegally and abusively obtained evidence. Additional forms of redress must include a variety of actions, like restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁸⁸

F. Principle 6 – On Implementation

Principle 6 calls for the effective implementation of The Principles through the enactment of a robust domestic legal framework,⁸⁹ the proper dissemination of The Principles to all relevant state organs,⁹⁰ the

81 *Id.*

82 *Id.* at 36, ¶¶ 174–177.

83 *Id.* at 36, ¶ 176–177.

84 The Principles, *supra* note 11, at 36–39, ¶¶ 178–200.

85 *Id.* at 38–39, ¶¶ 195–200.

86 *Id.* at 36–37, ¶ 180.

87 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), Art. 15, 1465 UNTS 85, [1989] ATS 21, UN Doc. A/RES/39/46 (providing that “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”).

88 The Principles, *supra* note 11, at 39, ¶¶ 201–203.

89 *Id.* at 40–41, ¶¶ 205, 208.

90 *Id.* at 42, ¶¶ 222–224.

guarantee of judicial independence and due process rights,⁹¹ and the creation of an institutional culture within State organs that promotes support for effective interviewing standards.⁹²

A state employing The Principles should bring its domestic legal framework in line with its international legal obligations⁹³ and the overarching prohibition against torture and ill-treatment.⁹⁴ An institutional culture that respects the values underpinned by The Principles and is supported financially and implemented in collaboration with all stakeholders—including law enforcement agencies, researchers, and the academic community—will best serve a domestic legal framework.⁹⁵

Lastly, it is important to recognize that Principle 6 derives support from Article 15 of the CAT by recalling the obligations of states to treat as inadmissible any information extracted through torturous means unless that information is to be used as evidence against the suspected torturer.⁹⁶

While obvious, it needs to be emphasized that without the proper implementation of The Principles, the intention of states to support The Principles will remain an aim rather than a practice. As the old adage suggests, “actions speak louder than words.”

VI. Conclusion

Torture does not work. It is plain and simple. Yet, despite the unreliable information it yields, torture remains a tool used by law enforcement agencies around the world, and the more pervasive it becomes, the harder it is for society to put its trust in agencies mandated to serve and protect. There is no justification for torture, especially given the existence of a protracted legal and academic lineage that has culminated in The Principles, which envision an approach to interviews and interrogations founded upon rigorous scientific research and informed by studies from an array of relevant fields, including medicine, psychiatry, psychology, criminology, and law. It is time for states to accept The Principles and affirm their commitment to a system of interrogation and interviewing that not only produces trustworthy information but respects the fundamental human rights of all people.

91 *Id.* at 42, ¶¶ 216–221.

92 *Id.* at 41, ¶¶ 211–215.

93 *Id.* at 40, ¶ 207.

94 The Principles, *supra* note 11, at 40, ¶ 207.

95 *Id.* at 41, ¶¶ 211–215.

96 *Id.* at 42, ¶¶ 219.