

Presentation by

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or Punishment**

“Global perspectives on preventing coercive interrogations and forced confessions: The
Mendez Principles on Effective Interviewing”

For

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Preventing Coercive Interrogations and Forced Confessions: The Role of the Legal
Profession

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Baroness Kennedy, organisers, speakers, and participants,

Thank you for the kind invitation to speak to you today as the new UN Special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, on this important topic of the prevention of torture in relation to confession oriented criminal justice systems. And I am also thrilled to be speaking to a perfect audience of lawyers, academics and other practitioners who have an important role to play and to think through and to implement some of these new approaches.

In particular, today’s panel provides an opportunity to exchange on experiences around these criminal justice systems that are oriented to prioritizing confessions above all other forms

of evidence – so-called ‘confession cultures’ within police and investigators. Why are we talking about this?

Well, because confession cultures have been identified as a leading cause of a range of coercive tactics, the most extreme of them being torture and other inhuman treatment. Miscarriages of justice, including wrongful convictions and therefore arbitrary imprisonment, are also extremely problematic consequences of such cultures.

Investigations that focus wholly or primarily on confessions incentivise manipulation and abuse – and such unlawful practices can become institutionalised – meaning that it becomes so commonplace as to be unremarked, a form of dehumanization of the officers and the structures in which they work. This is especially so when crime resolution rates are used for purposes such as promotions and other rewards.

Ladies and Gentlemen,

The position of vulnerability that an accused is in upon arrest or apprehension cannot be under-estimated.

Studies have documented that in the first hours after arrest or apprehension there is a heightened risk of mistreatment. While there are many reasons for this including discrimination, oppression, corruption; it is also the case that many such incidents are linked to circumstances involving an over-reliance on confessions – a confession-at-all-costs mentality.

The period after apprehension or arrest is a key target spot for work to prevent torture and ill-treatment and that is why developments – such as the Mendez Principles on Effective Interviewing¹ - are so valuable; they offer an alternative to coercive tactics, towards humane and rights-respecting approaches to interviews and interrogations.

¹ <https://www.apt.ch/en/resources/publications/principles-effective-interviewing-investigations-and-information-gathering>

Ladies and Gentlemen,

Public confidence in our national authorities and institutions relies on multiple factors. Let me mention five of them here for the purposes of today's discussion, although there are several more:

1. Competence and training of officers;
2. Clear rules and guidelines about operational matters, rights of suspects, witnesses and victims, and rules of engagement;
3. Disciplinary and accountability mechanisms that are activated when the rules are not followed;
4. Absence or very few instances of misconduct or abuse, reinforced because of leadership and a zero tolerance direction from that leadership;
5. Transparency via external and independent oversight.

The Mendez Principles on Effective Interviewing support in particular the first two areas: competencies, and clear rules and guidelines.

They provide a structure as to how to conduct investigative interviews with suspects, as well as witnesses and victims, and reinforce important legal and procedural safeguards. They are relevant in criminal justice settings, but equally in counter-terrorism and other contexts when interviews for purposes of extracting information are being conducted.

They contain an element of performance evaluation too, and they pay particular attention to preparation ahead of an interview as well as the strategic disclosure of evidence during the interview. They are not wishy-washy standards, they are being applied by many police forces around the world to important effect. This structure of the interview helps to guide interviewing strategy, and keeps officers' emotions in check, especially in high stress scenarios.

The Mendez Principles give investigators and interrogators an effective alternative to coercive, abusive, aggressive or other forms of manipulative interrogation, which infringe on suspects' rights and are contrary to the fair administration of justice. They must be coupled with the implementation of the full spectrum of rights, standards and safeguards.

I want to bring a number of studies to your attention. This is because it's important that we have an evidence base to show that these principles and the interviewing techniques underpinning them, actually work. First to note is that the Mendez Principles are rooted in decades of research and inquiries into how to improve police interviewing, carried out by psychologists, neuroscientists and police academies in a number of countries, in order to avoid the very serious consequences of forced or false confessions, for individuals, systems, and clearly also for victims of crime too.

A number of studies of convicted criminals show that a substantial proportion of suspects have an intention to confess, to provide an accurate account or share other information when they are first arrested or brought in for questioning. However, if they are treated badly – for example yelled at, insulted, threatened, or where there is aggressive posturing or violence – they are highly likely to clamp up and actually refuse to speak, or otherwise refuse to cooperate in the process. These studies and others can be found also in the Convention against Torture Initiative's Training Module on Investigative Interviewing for Criminal Cases,² which I would recommend to you also as a short guide focused on the implementation of the interviewing techniques underpinning the Mendez Principles. That training module is now translated into 15 languages.

But let those studies sink in for a moment ... that the more coercive the interview the less cooperative the suspect. If that's the case, then the Mendez Principles, built on establishing rapport and humane conditions for interviews, should result in the reverse outcomes, more cooperation, more information, and more secure and safe justice outcomes. I believe these studies are key to change mind-sets. The studies will not work alone, but coupled with strong leadership and accountability structures, the risks of torture and other inhuman and other degrading treatment during interviews and those first hours after arrest or detention should be lessened.

The Mendez Principles present a simple solution – easily implementable and without great cost, which is especially relevant in systems where financial resources are limited. They will

² https://cti2024.org/wp-content/uploads/2021/01/CTI-Training_Tool_Investigative-Interviewing.pdf

not solve all problems in relation to misconduct and ill-treatment, of course; but they are certainly a step in the right direction. They will also not solve all criminal investigations, nor lead necessarily to confessions or the truth. But they should end the long line of legal challenges from suspects and convicted criminals wrongly handled by the criminal justice system; and importantly, reduce the unlawful practices of interrogators and interviewers and the serious consequences that follow. Furthermore systems reliant on expecting confessions will need to adjust their mind-sets, not only of the police but equally prosecutors and judges. Finally, there will need to be investments made in improving other detective, forensic and investigative strategies.

The fight to end torture is a long one. I consider the Mendez Principles to be a breakthrough development. We have been waiting for some hope in this fight, let's get behind these Principles.

I wish you well in your discussions.

Thank you.