

# The Méndez Principles on Effective Interviewing: a tool for the implementation of the United Nations Convention against Torture

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association for  
the prevention  
of torture

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### Abbreviations

ACHR	American Convention on Human Rights
ACHPR	African Charter on Human and People's Rights
APT	Association for the Prevention of Torture
ATI	Anti-Torture Initiative
CAT	Committee against Torture
CCPR	Human Rights Committee
ECHR	European Convention on Human Rights
GA	General Assembly
ICCPR	International Covenant on Civil and Political Rights
ICTY	International Criminal Tribunal for the former Yugoslavia
NCHR	Norwegian Centre for Human Rights
OPCAT	Optional Protocol to the Convention against Torture
UDHR	Universal Declaration of Human Rights
UNCAT	United Nations Convention against Torture

## Introduction

International law absolutely prohibits torture and ill-treatment.<sup>1</sup> Yet, such abuses remain prevalent and widespread worldwide. In particular, torture, ill-treatment or coercion are frequently used in the course of the interrogation of suspects and for the purpose of obtaining confessions or declarations against others.<sup>2</sup>

Built on that premise, in 2016, former UN Special Rapporteur on Torture Juan E. Méndez called for the development of “a set of standards for non-coercive interviewing methods and procedural safeguards that ought, as a matter of law and policy, to be applied at a minimum to all interviews by law enforcement officials, military and intelligence personnel and other bodies with investigative mandates.”<sup>3</sup>

The [Principles on Effective Interviewing for Investigations and Information Gathering](#), also known as the “Méndez Principles”,<sup>4</sup> are the fruit of that appeal. The text, which consists of six core Principles, was finalised in May 2021, following a four-year, expert-driven drafting process, supported by the Association for the Prevention of Torture (APT), together with the Anti-Torture Initiative (ATI) and the Norwegian Centre for Human Rights (NCHR).<sup>5</sup>

The Méndez Principles provide an alternative to coercive and confession-based interrogation. They promote rapport-based interviewing, combined with the implementation of safeguards, during criminal justice investigations and other forms of information gathering processes. As such, they provide guidance for policy-makers and decision-makers on effective interviewing that avoids torture and ill-treatment, while making the investigation and prevention of crime much more effective and consistent with existing obligations under international human rights law.<sup>6</sup>

The Principles provide a crucial reference for the implementation of the United Nations Convention against Torture (UNCAT). This Convention, in force for 35 years, contains general obligations to respect and protect the human right not to be subjected to torture and ill-treatment, as well as specific duties to fulfil on effective measures to prevent acts of torture and ill-treatment.<sup>7</sup>

Through an analysis of both general and specific preventive obligations under the UNCAT, and correlated practice of the UN Committee against Torture (CAT),<sup>8</sup> this paper describes the critical role that the Principles play to assist States parties fulfil their obligations under articles 2(1) and 16(1), 11, 10(1), and 15 of the UNCAT in particular.

This paper is primarily addressed to State authorities responsible for implementing UNCAT obligations, be it at the executive, legislative or judicial level. Civil society organisations and other relevant stakeholders may also find this document useful for raising awareness of how to implement the UNCAT and, where necessary, advocate for better compliance by States parties with obligations therein included.

## I. The Méndez Principles contribute to fulfil the obligations to prevent torture and ill-treatment under articles 2(1) and 16(1) of the UNCAT

Under article 2(1) of the UNCAT, States parties “shall take effective legislative, administrative, judicial or other measures to prevent acts of torture” in any territory under their jurisdiction.<sup>9</sup> In a similar vein, article 16(1) of the UNCAT requires that States “shall undertake to prevent other acts of cruel, inhuman or degrading treatment or punishment.”<sup>10</sup>

In its General Comment No. 2, the CAT stated that States parties are obliged to undertake “effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture as defined in the Convention.”<sup>11</sup> Further, the CAT highlighted that States bear responsibility not only for the acts and omissions of their officials, but also for others, such as agents, private contractors, and others acting in official capacity or on behalf of the State, in conjunction with the State under its direction or control, or otherwise under colour of law.<sup>12</sup>

With regard to the type of measures to prevent torture and ill-treatment in accordance with articles 2(1) and 16(1), it is general practice for the CAT to recommend States parties take a combination of measures – i.e., a mix of legislative, administrative, judicial and practical implementation measures – especially to ensure their effectiveness.<sup>13</sup>

As part of the obligation to prevent torture or ill-treatment, the CAT also emphasised the need for States parties to put in place procedural safeguards at the moment of arrest, interrogation and detention in order to effectively fulfil their preventive obligations.<sup>14</sup> Further, the CAT recommended particular measures be taken to protect persons in a situation of vulnerability and heightened risk of torture or other forms of ill-treatment.<sup>15</sup>

While the CAT has developed a wealth of measures for States parties to effectively prevent torture and ill-treatment, it has also emphasised that no exhaustive list exists.<sup>16</sup> For instance, as methods of prevention are continuously evolving, the Committee noted that article 2 of the UNCAT provides authority to expand the scope of the measures required to prevent torture by building on other articles.<sup>17</sup>

Within this context, the Méndez Principles provide a particularly helpful reference framework for States parties to effectively fulfil their preventive obligations under articles 2(1) and 16(1) of the UNCAT for a variety of reasons.

## The Principles provide comprehensive guidance to develop effective measures

First, the Méndez Principles propose concrete and comprehensive guidance for States parties to develop effective legislative, administrative, judicial or other measures for interviews that avoid torture and ill-treatment in any territory within their jurisdiction. Accordingly, the practice and solution-oriented approach set out in the Principles provide a reference that assists States parties to implement relevant CAT recommendations and concluding observations.

Importantly, as part of this holistic approach, the guidance provided in the Principles applies in all investigative contexts, including criminal justice and national security, as well as for all categories of interviewee (i.e., suspects, witnesses, victims and any other persons being interviewed).<sup>18</sup> Further, by integrating law with empirical evidence and scientific research on questioning methods that most effectively elicit accurate and reliable information,<sup>19</sup> the Principles assist State authorities to implement holistic and institutional-level measures that help prevent torture and ill-treatment, in line with existing obligations under the UNCAT.

## The Principles focus on fundamental safeguards in the first hours of custody

Second, the Méndez Principles address the first hours of custody, the time during which the risk for torture and ill-treatment is greatest. On this basis, the Principles advance the importance of implementing legal and procedural safeguards throughout the entire interview process.<sup>20</sup> Hence, in accordance with the CAT practice outlined above, the Principles emphasise the need for authorities to ensure the effective implementation of procedural safeguards before, during and after the interview. These safeguards help ensure the observance of fair treatment from the first moment of contact between the authorities and the interviewee, as well as throughout the information gathering and judicial processes (Principle 2).<sup>21</sup>

## The Principles focus on persons in situations of vulnerability

Third, in an innovative way, the Méndez Principles include specific guidance with regard to the interview of persons in situations of vulnerability (Principle 3).<sup>22</sup> Building on the recognition that any interview places the person being interviewed in a situation of vulnerability due to the inherent power imbalance,<sup>23</sup> the Principles provide guidance on interviewing methods likely to prevent risks of torture and ill-treatment in accordance with UNCAT obligations.

Reflecting the CAT practice mentioned above, the Principles emphasise the importance of assessing the specific needs and rights of persons in situations of heightened vulnerability (i.e., due to their age, sex, gender identity, nationality or ethnic origin, disability and other risks factors).<sup>24</sup> Further, the Principles recommend authorities to address any specific need of the

person being interviewed, providing concrete guidance for authorities on how to conduct such types of interviews.<sup>25</sup>

## **II. The Méndez Principles contribute to fulfil the obligations to systematically review interrogations rules, instructions, methods and practices under article 11 of the UNCAT**

Article 11 of the UNCAT reads: “Each 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.”

This provision constitutes one of the most important safeguards for the prevention of torture and ill-treatment.<sup>26</sup> In particular, by setting up a duty for States parties to review their interrogation rules and practices systematically, article 11 plays a key role in the practical implementation of the preventive obligations under article 2(1) and article 16(1) of the UNCAT.<sup>27</sup>

Two main elements lie at the core of this provision. First, as the CAT highlighted, States parties are under an obligation to establish a system of regular and independent monitoring and inspections of all places of detention,<sup>28</sup> such as the one provided for by the Optional Protocol to the Convention against Torture (OPCAT). Second, since the “systematic review” aims to prevent any cases of torture, a State’s rules and practices should adhere to relevant procedural and substantive standards in relation to methods of interrogation, conditions of detention, and the treatment of persons deprived of liberty in general.<sup>29</sup>

In light of the above, the CAT has developed a rich jurisprudence on the required standards of review in relation to persons deprived of liberty, including in the context of interrogations. In particular, the CAT emphasised the importance of applying specific safeguards from the very start of custody, including among others:

- (i) the rights to information about respective rights, the reasons for arrest and any charges at the time of arrest;<sup>30</sup>
- (ii) the right to notify a relative or third party about the detention;<sup>31</sup>
- (iii) the right to remain silent;<sup>32</sup>
- (iv) the right of access to a lawyer;<sup>33</sup>
- (v) the right of access to a doctor and an independent medical examination;<sup>34</sup>
- (vi) the right to be brought promptly before a judge or other judicial authority;<sup>35</sup> and
- (vii) the registration of persons held in detention.<sup>36</sup>

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With regard to interrogations, the CAT further specified there should be audio-visual recordings of all interrogations conducted.<sup>37</sup> Further, while condemning the use of “confusing interrogation rules” and techniques defined in vague and general terms, it urged States parties to rescind all interrogation techniques that constitute torture or ill-treatment in all places of detention.

Furthermore, the CAT urged States to “improve methods of criminal investigation to end practices whereby confessions are relied on as the primary and central element of proof in criminal prosecution, in some cases in the absence of any other evidence.”<sup>38</sup>

By emphasising the effectiveness of interviewing and the importance of legal and procedural safeguards, the Méndez Principles respond to the obligation of article 11 of the UNCAT.<sup>39</sup> Indeed, since “the principal safeguard against mistreatment during questioning is the interviewing methodology itself”,<sup>40</sup> the Principles not only recognise that the systematic review of interrogations rules and practices is a key element to effectively prevent torture and ill-treatment, but they also offer a concrete, practical and effective approach to conduct questioning.

First, by proposing evidence-based alternatives to coercive interrogations,<sup>41</sup> and uniquely combining effective interviewing techniques with the implementation of legal and procedural safeguards, the Principles assist authorities to shift mindsets and institutional practices and cultures away from confession-driven practices towards rapport-based interviewing.<sup>42</sup>

Second, building on the CAT practice cited above, the Principles underline that “investigative authorities should adopt and make known standard operating procedures, policies and codes of conduct to set enforceable standards for agents performing interviews”.<sup>43</sup> Moreover, they state that relevant norms must be consistent with internationally recognised standards of conduct for law enforcement personnel and other officials responsible for interviews (Principle 5).<sup>44</sup>

Crucially, the Principles go beyond merely restating the obligation to review interrogation rules and practice. Indeed, they highlight the importance of regular reviews by authorities “to assess the level of financial resources invested in interviewing, including the appropriate use of technology”, as well as the need for transparency and accountability throughout the review process, which is crucial “to maintaining public confidence in an institution’s integrity and the overall administration of justice” (Principle 5).<sup>45</sup> To achieve this, the Principles note that “[a]uthorities should make available their internal rules and procedures related to interviewing”.<sup>46</sup> Further, specific safeguards should be put in place to ensure respect for, among others, the right of access to information, the principles of confidentiality and privacy, as well as data protection legislation and regulations (Principle 5).<sup>47</sup>

Finally, the Principles stress that effective recording of information is essential.<sup>48</sup> Reflecting the CAT recommendations, they highlight that the use of audio-visual technology to record interviews should be implemented over time, as it facilitates the investigation of any

allegations of ill-treatment or torture during an interview and, at the same time, protects the interests of both parties involved in the interviewing process (Principle 5).<sup>49</sup>

### **III. The Méndez Principles contribute to fulfil the obligations on education and training of all law enforcement personnel (civil or military), public officials and other persons involved interrogation under article 10(1) of the UNCAT**

Article 10(1) of the UNCAT requires States parties to ensure that all law enforcement personnel, both civil and military, medical personnel, public officials, and all persons involved in the custody, interrogation or treatments of individuals in any form of arrest, detention or imprisonment, are aware of the provisions of the Convention. It also stresses that breaches must be investigated and offenders prosecuted.

The list of persons mentioned in article 10(1) of the UNCAT is generally understood to be illustrative and non-exhaustive in nature. For instance, the CAT interpreted this provision as applicable to all personnel involved in the use of force,<sup>50</sup> all persons responsible for persons deprived of their liberty,<sup>51</sup> as well as any other professionals involved in the documentation and investigation of allegations of torture and other forms of ill-treatment.<sup>52</sup>

With respect to the training of personnel, a central message is that torture and other forms of ill-treatment are absolutely prohibited under all circumstances. In addition, the personnel must understand that torture constitutes a serious crime that will be punished with appropriate penalties and with no justifications admitted.<sup>53</sup> Importantly, personnel should be reminded of their duty to report every case of torture and ill-treatment, whether committed by a person of equal, higher or lower rank or function, to a judge or other independent official entrusted with the task of carrying out a proper investigation and bringing the perpetrator to justice.<sup>54</sup>

Moreover, all respective personnel should be provided with relevant information, education and practical training on how to prevent torture and ill-treatment. Thus, when referring to the content of training, the CAT consistently recommended States parties to systematically train all relevant staff to identify and document signs/cases of torture and ill-treatment, as well as to refer such cases to competent investigative authorities, in accordance with international standards.<sup>55</sup> Moreover, the CAT underlined the need to provide specialised training and raise awareness on gender-specific issues,<sup>56</sup> on the rights of lesbian, gay, bisexual, transgender and intersex persons,<sup>57</sup> and on the treatment of other vulnerable groups at risk of torture and ill-treatment.<sup>58</sup>

The CAT also emphasised that States parties should develop and implement a specific methodology to regularly evaluate the effectiveness and impact of such training and programmes in the reduction of cases of torture, violence and ill-treatment.<sup>59</sup> To that end, the



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CAT recommended to several States parties to consider introducing training programmes on non-coercive investigation techniques as part of its reporting procedure.<sup>60</sup>

Training of interviewing personnel in accordance with article 10(1) of the UNCAT is another key element of the Méndez Principles, with Principle 4 specifically dedicated to this issue.<sup>61</sup>

Recognising that education is critical to effectively prevent torture and ill-treatment, the Principles require specific training – theoretical and practical – for all personnel who conduct interviews, including law enforcement officials, intelligence and military personnel, and any other relevant actors involved in investigation and other information-gathering processes.<sup>62</sup>

In line with the CAT recommendations, the Principles state that training should emphasise the effectiveness of interviewing and relevant safeguards as key elements for States parties to comply with existing obligations under the UNCAT, as well as to strengthen the prohibition of torture and ill-treatment (Principle 4).<sup>63</sup>

To that end, the Principles elaborate on the key components of effective interview training,<sup>64</sup> specifying the requirement for training programmes to be regularly updated to reflect the evolution of international human rights standards, scientific research and techniques validated in practice.<sup>65</sup> Finally, the Principles stress the importance of continuous development programmes to refine interviewing techniques, correct errors and present interviewers with the latest relevant research (Principle 4).<sup>66</sup>

The importance of establishing training on effective interviewing, as set out in the Principles, has already been integrated in the most recent practice of the CAT. The initial reference can be found in the CAT's Concluding Observations on Belgium in August 2021, when the CAT called on the State party to "be guided by the new principles on effective interviewing for investigations and information gathering known as the "Méndez Principles"<sup>67</sup> as part of its recommendations on police training. Moreover, in the Concluding Observations on Sweden in November 2021, the CAT welcomed the State party's initiatives to revise and introduce legislation in areas of relevance to the UNCAT, including the "steps taken to integrate, as governing principles in Sweden, the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles, launched in June 2021), which are aimed at ending accusatory, coercive and other confession practices during investigations".<sup>68</sup> Similarly, in subsequent reviews of State parties, the CAT has explicitly called on authorities to develop training modules for law enforcement, police, and military personnel, judges and public prosecutors on non-coercive interviewing and investigation techniques, in accordance with the Principles.<sup>69</sup>

## IV. The Méndez Principles contribute to fulfil the obligations on the exclusionary rule under article 15 of the UNCAT

Under article 15 of the UNCAT, confessions and other evidence obtained by torture are inadmissible in any proceedings, except against a person accused of such treatment as evidence that the statement was made.

This article, which is otherwise known as the “exclusionary rule”, is an important provision supplementing the absolute prohibition of torture.<sup>70</sup> The rationales behind the exclusionary rule are manifold. First, this provision aims to protect the right to a fair trial in any proceedings, be they criminal, civil, or of administrative nature, judicial and non-judicial.<sup>71</sup> Second, it protects equally the rights of victims and the principle of judicial integrity.<sup>72</sup> Third, article 15 has a very important preventive effect<sup>73</sup> as the inadmissibility of the evidence removes the incentive for law enforcement officials and other relevant actors to use torture, thereby contributing to the prevention of such acts.<sup>74</sup>

Importantly, the exclusionary rule shall not be limited to acts of torture. As the CAT stated in its General Comment No. 2, this provision, as articles 10 and 11, is also meant to apply to evidence obtained through other forms of ill-treatment.<sup>75</sup> In a similar vein, the CAT suggested repeatedly that statements made as a result of cruel, inhuman or degrading treatment (and therefore not only torture) may not be used as evidence in any proceedings.<sup>76</sup>

With regard to the type of evidence falling within the scope of article 15 of the UNCAT, the CAT practice indicates that this provision should be interpreted broadly.<sup>77</sup> This may include, for instance, derivative evidence (i.e., or secondary evidence to which the coerced statements have led to),<sup>78</sup> foreign torture evidence (i.e., evidence obtained as a result of the acts of officials of a foreign State and without the complicity of the first State party’s officials),<sup>79</sup> as well as secret or closed evidence.<sup>80</sup> Likewise, the CAT interpreted the wording of article 15 as including any type of statements, regardless of their legal classification (confessions or any other type of information), form (oral or written) or author (defendant, co-defendant or third party).<sup>81</sup>

The Méndez Principles provide concrete guidance for States parties to the UNCAT on how to implement the exclusionary rule in practice. They emphasise that effective interviewing is based on the requirement that statements made under torture or other ill-treatment or coercion must be excluded from any legal proceedings, in accordance with article 15 of the UNCAT (Principles 1 and 6).<sup>82</sup> Accordingly, torture-tainted evidence, or any other type of evidence extracted through coercion, is to be considered inadmissible in all circumstances, irrespective of the specific context and purpose in which it is collected.<sup>83</sup>

Notably, the Principles state that judicial authorities play an essential role to ensure the effective implementation of such a rule, thereby calling for the removal of incentives for investigation authorities to obtain a confession by any means and to instead promote the use of ethical and scientifically-proven interviewing methods. Further, judicial authorities are called

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upon to ensure that only lawfully-obtained evidence is admissible in any proceedings and to be vigilant to any signs that a statement may have been made under coercion or ill-treatment (Principle 6).<sup>84</sup>

The Principles also provide for a duty to report where criminal justice professionals see, hear of, or suspect interview-related wrongdoing. Similarly, considering that an over-reliance on confessions in judicial proceedings provides an improper incentive for interviewers to seek confessions as the sole objective, the Principles call for a shift in the ultimate goal of an interview, with the objective being to collect reliable and accurate information and not a confession (Principle 5).<sup>85</sup>

Importantly, the Principles stress that excluding evidence obtained under torture or other ill-treatment is an interviewee's right. Accordingly, this constitutes an effective remedy against wrongdoing by interviewers (Principle 5).<sup>86</sup>

Building on the above, the CAT has already made important recommendations based on the Principles into its reviews of State parties, urging the judiciary to invalidate confessions and witness statements obtained under torture.<sup>87</sup>

## Conclusion

The Méndez Principles provide a critical reference framework for States parties to the UNCAT to implement their obligations to prohibit and prevent torture and ill-treatment. Building upon the CAT practice, they significantly contribute to strengthening existing international obligations and their effective implementation in law and practice.

At the same time, the Principles are a major step forward that goes beyond reinforcing the current normative framework on torture prevention.

Importantly, the constructive and solution-oriented approach of the Principles contributes to move away from coercive and confession-driven practices, towards effective, fair and human rights-based investigation and justice processes. Their use is particularly encouraged to ensure the protection of human rights in the administration of justice, as well as the implementation of safe, just and inclusive societies in accordance with the United Nations Sustainable Development Goals.<sup>88</sup>

## About

The *Association for the Prevention of Torture* (APT) is an independent international non-governmental human rights organisation based in Geneva, Switzerland. It was founded in 1977, with the simple idea that by opening places of deprivation of liberty to independent oversight, we could reduce the risks of torture and other ill-treatment and better protect the human rights and dignity of all. Today, the APT works to address and reduce risks of torture and other ill-treatment wherever they may occur. The APT's approach to prevention of torture is based on a careful analysis of why and where high risks of torture occur.

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<sup>1</sup> See e.g., UDHR, article 5; UNCAT, articles 2 (2) and 16; ICCPR, article 7; ACHR, article 5; ACHPR, article 5; Arab Charter on Human Rights, articles 4(2) and 8; ASEAN Human Rights Declaration, article 14; and ECHR, article 3. The prohibition of torture and of cruel, inhuman and degrading treatment or punishment has also become accepted as a fundamental principle of customary law and a *jus cogens* norm, meaning a peremptory norm from which derogation is not permitted. See Human Rights Committee, *General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant*, CCPR/C/21/Rev.1/Add.6, 4 November 1994, para. 8; CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, CAT/C/GC/2, 24 January 2008, paras. 1 and 3; ICTY, *Prosecutor v Furundzija*, IT-95-17/1-T, Trial Chamber Judgment, 10 December 1998, para. 153.

<sup>2</sup> See Méndez J. E., "The need for the Principles on Effective Interviewing for Investigations and Information Gathering", *Torture Journal*, Vol. 31(3), pp. 117–120.

<sup>3</sup> See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/71/298, 5 August 2016.

<sup>4</sup> Principles on Effective Interviewing for Investigations and Information Gathering (hereinafter Méndez Principles), May 2021. Retrieved from <https://interviewingprinciples.com/>.

<sup>5</sup> The drafting process involved a multidisciplinary, gender balanced, and geographically representative group of international experts, including police investigators, academics, human rights lawyers and civil society organisations representatives from all over the world. For more information on the origins and process behind the Principles, see APT dedicated page <https://www.apr.ch/en/mendez-principles-effective-interviewing>.

<sup>6</sup> Méndez Principles, foreword, p. iii.

<sup>7</sup> See Nowak M., Birk M. and Monina G. (2019) *The United Nations Convention Against Torture and Its Optional Protocol: A Commentary*, p.

<sup>8</sup> CAT practice is intended here as to include State reporting, individual complaints, general comments, country-specific comments, and observations in States reporting procedures. Where strictly relevant, this document also refers to the practice of the Human Rights Committee and other sources.

<sup>9</sup> UNCAT, article 2(1).

<sup>10</sup> UNCAT, article 16(1). The CAT stated that the obligation to prevent torture and other ill-treatment under articles 2 and 16 are "indivisible, interdependent and interrelated" and that the obligation to prevent cruel, inhuman or degrading treatment in practice very much overlaps and is largely congruent with the obligation to prevent torture. See CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, para. 3. This interpretation is also reflected in the practice of the CAT, as it usually references articles 2 and 16 together in its recommendations to States as part of the Concluding Observations. See Nowak M., Birk M. and Monina G. (2019) *The United Nations Convention Against Torture and Its Optional Protocol: A Commentary*, pp. 78, 446, and 450.

<sup>11</sup> CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, para. 17.

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<sup>12</sup> *Ibid.*

<sup>13</sup> See, e.g., CAT, *Concluding Observations: Peru*, in Report of the Committee against Torture to the General Assembly, Fiftieth Session, Supplement 44, A/50/44, 1995, paras. 62-73, where the CAT expressed the opinion that the legislative and administrative measures adopted in order to comply with the UNCAT were not effective and accordingly recommended a comprehensive set of measures to prevent torture. In addition, the CAT recommended States parties to make sure at the same time that public officials, judges, magistrates, prosecutors, and lawyers receive training so that they can apply the Convention and the jurisprudence of the Committee. See e.g.: CAT, *Concluding Observations: Rwanda* (2012), CAT/C/RWA/CO/1, para. 8; *Concluding Observations: Mauritania* (2013), CAT/C/MRT/CO/1, para. 9; *Concluding Observations: Netherlands* (2013), CAT/C/NLD/CO/5-6, para. 9; *Concluding Observations: New Zealand* (2015), CAT/C/NZL/CO/6, para. 8. With regard to the latter, see also below section on article 11 of the UNCAT in this document.

<sup>14</sup> See e.g., CAT, *Summary account of the results of the proceedings concerning the inquiry on Lebanon*, in Report of the Committee against Torture to the General Assembly, Sixty-ninth session, Supplement 44, A/69/44, 2014, Annex XIII, para. 32. With regard to the right to access to a lawyer and legal aid, see e.g.: *Concluding Observations: Armenia* (2012), CAT/C/ARM/CO/3, para. 11; *Concluding Observations: Austria* (2010), CAT/C/AUT/CO/4-5, para. 11; *Concluding Observations: Azerbaijan* (2009), CAT/C/AZE/CO/3, para. 11; *Concluding Observations: Azerbaijan* (2016), CAT/C/AZE/CO/4, para. 12; *Concluding Observations: Belarus* (2011), CAT/C/BLR/CO/4, para. 6; *Concluding Observations: Mexico* (2012), CAT/C/MEX/CO/5-6, para. 9; *Concluding Observations: Mongolia* (2011), CAT/C/MNG/CO/1, para. 8; *Concluding Observations: Montenegro* (2014), CAT/C/MNE/CO/2, para. 7; *Concluding Observations: Morocco* (2011), CAT/C/MAR/CO/4, para. 7; *Concluding Observations: Paraguay* (2011), CAT/C/PRY/CO/4-6, para. 11; *Concluding Observations: Philippines* (2009), CAT/C/PHL/CO/2, para. 7; *Concluding Observations: Poland* (2013) CAT/C/POL/CO/5-6, para. 8. With regard to the right to notify relatives, see e.g.: CAT, *Summary Records 51th meeting, Consideration of report by China* (1990), CAT/C/SR.51, para. 34; *Summary records 130<sup>th</sup> meeting, Consideration of report by Libya* (1992), CAT/C/SR.130, para. 13; *Summary records 201<sup>st</sup> meeting Consideration of report by Libya* (1994), CAT/C/SR.201, paras. 16 and 26; *Summary records 201<sup>st</sup> meeting Consideration of report by UK* (1995), CAT/C/SR.234, para 79; *Concluding Observations: Armenia* (2012), CAT/C/ARM/CO/3, para. 11; *Concluding Observations: Azerbaijan* (2016), CAT/C/AZE/CO/4, para 12; *Concluding Observations: Belarus* (2011), CAT/C/BLR/CO/4, para. 6; *Concluding Observations: Mauritius* (2011) CAT/C/MUS/CO/3, para. 10. Concerning the right to access to medical assistance, see e.g.: *Summary records 201<sup>st</sup> meeting Consideration of report by Libya* (1994), CAT/C/SR.201, paras. 16 and 26; *Concluding Observations: Andorra* (2013) CAT/C/AND/CO/1, para. 8; *Concluding Observations: Armenia* (2012), CAT/C/ARM/CO/3, para. 11; *Concluding Observations: Azerbaijan* (2009), CAT/C/AZE/CO/3, para. 11; *Concluding Observations: Azerbaijan* (2016), CAT/C/AZE/CO/4, para. 12; *Concluding Observations: Portugal* (2008), CAT/C/PRT/CO/4, para. 9; *Concluding Observations: Romania* (2015), CAT/C/ROU/CO/2, para. 7. Regarding the right to be informed of charges and the right to be silent, see e.g.: *Concluding Observations: Belarus* (2011), CAT/C/BLR/CO/4, para. 6; *Concluding Observations: Madagascar*, (2011), CAT/C/MDG/CO1, para. 9; *Concluding Observations: Portugal* (2008), CAT/C/PRT/CO/4, para. 8. For further details on the CAT practice on safeguards, see Nowak M., Birk M. and Monina G. (2019) *The United Nations Convention Against Torture and Its Optional Protocol: A Commentary*, pp. 83-85.

<sup>15</sup> For example, with regard to the situation of asylum seekers and migrants, see e.g., CAT, *Concluding Observations: Ireland* (2017), CAT/C/IRL/CO/2, para. 12(b). With regard to the situation of homosexual and transgender persons, see e.g., *Concluding Observations: Costa Rica* (2008) CAT/C/CRI/CO/2, para. 18. The CAT also repeatedly recommended States parties to their efforts' to prevent and combat violence against women, including femicide, gender-based murders, disappearances, rape and sexual harassment, violence against children as well as against persons with disabilities. See e.g., *Concluding Observations: Mexico* (2012), CAT/C/MEX/CO/5-6, para. 13; *Concluding Observations: Monaco* (2011), CAT/C/MCO/CO/4-5, para. 11; *Concluding Observations: Paraguay* (2011), CAT/C/PRY/CO/4-6 para. 21; *Concluding Observations: Peru* (2013), CAT/C/PER/CO/5-6, paras. 14 and 20; *Concluding Observations: Senegal* (2013), CAT/C/SEN/CO/3, para. 15.

<sup>16</sup> CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, paras. 13-25.

<sup>17</sup> *Ibid.*, para. 14. Notably, the CAT equally emphasised that a States party must take measures that are effective and consistent with the object and purpose of the Convention. In the reporting procedure, the Committee interprets this provision in the broadest sense and requests States parties to take a variety of measures aimed at preventing torture.

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<sup>18</sup> Méndez Principles, Introduction, paras. 8-10.

<sup>19</sup> *Ibid.*, para. 5.

<sup>20</sup> *Ibid.*, para. 4.

<sup>21</sup> Méndez Principles, Principle 2, para. 61. On the implementation of safeguards throughout the specific phases of the interview process, see paras. 63-131.

<sup>22</sup> Méndez Principles, Principle 3.

<sup>23</sup> *Ibid.*, paras. 132-134.

<sup>24</sup> *Ibid.*, paras. 135-141.

<sup>25</sup> *Ibid.*, paras. 142-148.

<sup>26</sup> See, e.g., Human Rights Committee, *General Comment No 20: Article 7 on the Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 March 1992, para. 11.

<sup>27</sup> The scope of application of article 11 extends not only to torture but also to other forms of cruel, inhuman or degrading treatment or punishment. See article 16(1) of the UNCAT; CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, para. 3.

<sup>28</sup> In its Concluding observations, the CAT clarified that such systematic review requires the establishment of an effective monitoring and inspection of all places of detention through “unrestricted”, “regular”, and “unannounced” visits by independent national and international monitors in order to prevent torture and other forms ill-treatment. See, e.g., CAT, *Concluding Observations: Morocco*, (2011) CAT/C/MAR/CO/4, para. 15; *Concluding Observation: Croatia* (2014), CAT/C/HRV/CO/4-5, para. 10; *Concluding Observations: Jordan* (2016), CAT/C/JOR/CO/3, para 32; *Concluding Observations: Japan* (2013), CAT/C/JPN/CO/2, para. 22; *Summary Account of the Results of the Proceedings Concerning the Inquiry on Lebanon* (2014) A/69/44 Annex XIII; *Concluding Observations: Burundi* (2014) CAT/C/BDI/CO/2, para. 19; *Concluding Observations: Azerbaijan* (2016) CAT/C/AZE/CO/4, para. 23. Monitoring bodies should also include non-governmental organizations. See e.g., CAT, *Concluding Observations: Turkmenistan* (2011), CAT/C/TKM/CO/1, para. 14(b). Furthermore, States parties should also follow up on the outcome of such monitoring process. See e.g., CAT, *Concluding Observations: Thailand* (2014), CAT/C/THA/CO/1, para 24; *Concluding Observations: Yemen* (2010), CAT/C/YEM/CO/2/Rev.1, para. 10; *Report on Nepal Adopted by the Committee Against Torture Under Article 20 of the Convention and Comments and Observations by the State Party* (2012), A/67/44, para. 110.

<sup>29</sup> The CAT repeatedly affirmed the importance of adhering to international standards, such as articles 9 and 14 of the ICCPR but also Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), as well as other UN Standards such as Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), for the Prevention of Juvenile Delinquency (Riyadh Guidelines), for Non-custodial Measures (Tokyo Rules), for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).

<sup>30</sup> See e.g., CAT, *Concluding Observations: Albania* (2012) CAT/C/ALB/CO/2, para. 13; *Concluding Observations: Belarus* (2011), CAT/C/BLR/CO/4 para. 6; *Concluding Observations: Portugal* (2013), CAT/C/PRT/CO/5-6, para. 8; *Concluding Observations: Saudi Arabia* (2016), CAT/C/SAU/CO/2, para. 14.

<sup>31</sup> See e.g., CAT, *Report on Mexico Produced by the Committee Under Article 20 of the Convention and Reply from the Government of Mexico* (2003), CAT/C/75, para. 220 (e); *Concluding Observations: China* (2016), CAT/C/CHN/CO/5 para. 13; *Concluding Observations: Morocco* (2011), CAT/C/MAR/CO/4, para. 7; *Concluding Observations: Cuba* (2012), CAT/C/CUB/CO/2, para. 8.

<sup>32</sup> See e.g., CAT, *Concluding Observations: Iraq* (2015) CAT/C/IRQ/CO/1, para. 14.

<sup>33</sup> See e.g., CAT, *Observations of the Committee against Torture on the revision of the Standard Minimum Rules for the Treatment of Prisoners* (2014), CAT/C/51/4, paras. 48-49. For a detailed analysis of all necessary requirements concerning the right to access a lawyer under the CAT practice, see Nowak M., Birk M. and Monina G. (2019) *The United Nations Convention Against Torture and Its Optional Protocol: A Commentary*, p. 326.

<sup>34</sup> See e.g., CAT, *Concluding Observations: Jordan* (2016), CAT/C/JOR/CO/3, para. 18; *Concluding Observations: Andorra* (2013), CAT/C/AND/CO/1, para. 8; *Concluding Observations: Azerbaijan* (2009), CAT/C/AZE/CO/3, para. 11. See also see Nowak M., Birk M. and Monina G. (2019) *The United Nations Convention Against Torture and Its Optional Protocol: A Commentary*, pp. 326-327.

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<sup>35</sup> See e.g., CAT, *Report on Mexico Produced by the Committee Under Article 20 of the Convention and Reply from the Government of Mexico* (2003), CAT/C/75, para 220 (b); *Concluding Observations: Israel* (2016), CAT/C/ISR/CO/5 para. 16.

<sup>36</sup> See e.g., CAT, *Observations of the Committee against Torture on the revision of the Standard Minimum Rules for the Treatment of Prisoners* (2014), CAT/C/51/4, para. 52; *Concluding Observations: Sri Lanka* (2011), CAT/C/LKA/CO/3-4, para. 12; *Concluding Observations: Algeria* (2008), CAT/C/DZA/CO/3, para. 5.

<sup>37</sup> See e.g., CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, paras 13–14; *Concluding Observations: China* (2016), CAT/C/CHN/CO/5 (n 40) para 34; *Concluding Observations: Liechtenstein* (2016), CAT/C/LIE/CO/4, para. 12; *Concluding Observations: Qatar* (2013), CAT/C/QAT/CO/2, para 10; *Concluding Observations: Armenia* (2017), CAT/C/ARM/CO/4, para. 12. See also Nowak M., Birk M. and Monina G. (2019) *The United Nations Convention Against Torture and Its Optional Protocol: A Commentary*, p. 333.

<sup>38</sup> See e.g., CAT, *Concluding Observations: Lithuania* (2014) CAT/C/LTU/CO/3, para 22; *Concluding Observations: Kazakhstan* (2014), CAT/C/KAZ/CO/3, para. 23; *Concluding Observations: Syria* (2010), CAT/C/SYR/CO/1, para. 33; *Concluding Observations: Moldova* (2010), CAT/C/MDA/CO/2, para. 21; *Concluding Observations: Chad* (2009), CAT/C/TCD/CO/1, para 29; *Concluding Observations: Uzbekistan* (2013), CAT/C/UZB/CO/4, para. 16; *Concluding Observations: Ukraine* (2014), CAT/C/UKR/CO/6, para. 22 (b).

<sup>39</sup> See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/71/298, 5 August 2016, para. 27.

<sup>40</sup> *Ibid.*, para. 25.

<sup>41</sup> *Ibid.*, Principle 1, paras. 21–35.

<sup>42</sup> *Ibid.*, Introduction, para. 5.

<sup>43</sup> Méndez Principles, Principle 5, para. 167.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*, para. 168.

<sup>46</sup> *Ibid.*, para. 171.

<sup>47</sup> *Ibid.*, paras. 172–173.

<sup>48</sup> *Ibid.*, para. 174.

<sup>49</sup> *Ibid.*, paras. 176–177.

<sup>50</sup> For instance, this includes police security, intelligence, and other law enforcement personnel, whether civil or military, public or private, uniformed or without uniforms.

<sup>51</sup> For example, civil, military, police, intelligence, medical, and other staff working in prisons, pre-trial detention centres, police lock-ups, psychiatric hospitals, detention centres for minors, drug addicts, aliens pending deportation, asylum seekers, or refugees.

<sup>52</sup> Notably, these include judges, including judges, prosecutors, and lawyers. See e.g., CAT, *Concluding Observations: Philippines* (2016), CAT/C/PHL/CO/3, para. 36.

<sup>53</sup> See e.g., CAT, *Concluding Observations: Togo* (2019), CAT/C/TGO/CO/3, para. 37; *Concluding Observations: Qatar* (2018), CAT/C/QAT/CO/3, para. 18. See also Nowak M., Birk M. and Monina G. (2019) *The United Nations Convention Against Torture and Its Optional Protocol: A Commentary*, pp. 313–314.

<sup>54</sup> See Nowak M., Birk M. and Monina G. (2019) *The United Nations Convention Against Torture and Its Optional Protocol: A Commentary*, p. 314.

<sup>55</sup> See e.g., CAT, *Concluding Observations: Cyprus* (2014), CAT/C/CYP/CO/4, para. 20(c).

<sup>56</sup> See e.g., CAT, *Concluding Observations: Djibouti* (2011), CAT/C/COG/1, para. 21.

<sup>57</sup> See e.g., CAT, *Concluding Observations: Germany* (2011), CAT/C/DEU/CO/5 para. 20; *Concluding Observations: China* (2016), CAT/C/CHN/CO/5, para. 55.

<sup>58</sup> See e.g., CAT, *Concluding Observations: Bulgaria* (2011), CAT/C/BGR/CO/4-5, para. 20 (b); *Concluding Observations: Slovenia* (2011), CAT/C/SVN/CO/3, para. (20)(d); *Concluding Observations: Turkmenistan* (2011), CAT/C/TKM/CO/1, para. 24 (d); *Concluding Observations: Ireland* (2011), CAT/C/IRL/CO/1, para. 30 (e).

<sup>59</sup> See e.g., CAT, *Concluding Observations: Cyprus* (2014), CAT/C/CYP/CO/4, para. 20(c); *Conclusions and Recommendations: United States of America* (2006), CAT/C/USA/CO/2, para. 23.

<sup>60</sup> See e.g., *Concluding Observations: Korea* (2017), CAT/C/KOR/CO/3-5, para. 46; *Concluding Observations: Guatemala* (2018), CAT/C/GTM/CO/7, para. 43; *Concluding Observations: Qatar*, (2018) CAT/C/QAT/CO/3, para. 30;

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*Concluding Observations: Portugal* (2019), CAT/C/PRT/CO/7, para. 34; *Concluding Observations: México* (2019), CAT/C/MEX/CO/7, para. 21.

<sup>61</sup> Méndez Principles, Principle 4.

<sup>62</sup> *Ibid.*, para. 149.

<sup>63</sup> *Ibid.*, para. 153.

<sup>64</sup> *Ibid.*, para. 154.

<sup>65</sup> *Ibid.*, para. 162.

<sup>66</sup> *Ibid.*, paras. 163-165.

<sup>67</sup> CAT, *Concluding Observations: Belgium* (2021), CAT/C/BEL/CO/4, para. 12(b).

<sup>68</sup> CAT, *Concluding Observations: Sweden* (2021), CAT/C/SWE/CO/8, para. 5(d).

<sup>69</sup> For a comprehensive overview of the existing practice on the Principles as developed by the CAT and other UN human rights treaty bodies and special procedures, see APT dedicated page <https://www.apr.ch/en/mendez-principles-effective-interviewing>.

<sup>70</sup> See, e.g., CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, para. 6; CAT, *GK v. Switzerland*, CAT/C/30/D/219/2002, 7 May 2003, para. 6.10. See also Human Rights Committee, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, para. 12.

<sup>71</sup> CAT, *GK v. Switzerland*, CAT/C/30/D/219/2002, 7 May 2003, para. 6.10.

<sup>72</sup> See Nowak M., Birk M. and Monina G. (2019) *The United Nations Convention Against Torture and Its Optional Protocol: A Commentary*, pp. 417-418.

<sup>73</sup> See General Assembly Resolution 67/161 of 20 December 2012, para. 16, recalling the preventive nature of the exclusionary rule and stating that the “adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment”.

<sup>74</sup> See e.g., Human Rights Committee, *CCPR General Comment No. 7: Article 7 (Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment)*, 30 May 1982, para. 1, where the exclusionary rule was the listed among the safeguards which may make the control against torture effective.

<sup>75</sup> CAT, *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, para. 6. See also Human Rights Committee, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, para. 12; and Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/25/60, 10 April 2014, para. 26.

<sup>76</sup> See e.g., CAT, *Concluding Observations: Canada* (2012), CAT/C/CAN/CO/6, para. 17; *Concluding Observations: Azerbaijan* (2016), CAT/C/AZE/CO/4, para. 19; *Concluding Observations: Belgium* (2014) CAT/C/BEL/CO/3, para. 24; *Concluding Observations: Colombia* (2015), CAT/C/COL/CO/5, para. 23; *Concluding Observations: UK* (2013), CAT/C/GBR/CO/5, para. 11. See also CAT, *Report of the Committee to the General Assembly, A/48/44/Add.1*, 15 November 1993, para. 28. It is important to note however that in the individual complaint procedure the CAT decided in the negative and in the 2014 decision of *Kirsanov v. Russia* it explicitly clarified that “[w]ith regard to the alleged violations of articles 14 and 15 of the Convention, the Committee notes that the scope of application of the said provisions only refers to torture in the sense of article 1 of the Convention and does not cover other forms of ill-treatment. Moreover, article 16, paragraph 1, of the Convention, though specifically referring to articles 10, 11, 12 and 13, does not mention articles 14 and 15 of the Convention.” See CAT, *Kirsanov v. Russia*, No 478/2011, CAT/C/52/D/478/2011, 19 June 2014, para. 11.4.

<sup>77</sup> For a comprehensive analysis of the type of evidence falling under article 15 of the UNCAT, see Nowak M., Birk M. and Monina G. (2019) *The United Nations Convention Against Torture and Its Optional Protocol: A Commentary*, pp. 421-426.

<sup>78</sup> See e.g., CAT, *General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 19 of the Convention* (2005), CAT/C/4/Rev.3, para. 24; CAT, *Concluding Observations: Germany* (1998), A/53/44, para. 193. See also HRC, *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, para. 6.



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<sup>79</sup> See e.g., CAT, *Conclusions and Recommendations: UK* (2004), CAT/C/CR/33/3, para. 4. See also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/25/60, 10 April 2014.

<sup>80</sup> See e.g. CAT, *Concluding Observations: UK* (2013), CAT/C/GBR/CO/5, para. 12, where the Committee recommended the State party to “[e]nsure that intelligence and other sensitive material be subject to possible disclosure if a court determines that it contains evidence of human rights violations such as torture or cruel, inhuman or degrading treatment.”

<sup>81</sup> See e.g. CAT, *Oleg Evloev v. Kazakhstan*, No 441/2010, CAT/C/51/D/441/2010, 5 November 2013, paras. 2.2, , and 9.8; *Ramiro Ramírez Martínez et al v. Mexico*, No 500/2012, CAT/C/55/D/500/2012, 4 August 2015, para. 17.11 (regarding oral and written statements); *PE v. France*, No 193/2001, CAT/C/29/D/193/2001, 21 November 2002, para. 10; CAT, *Summary Record* (1992), CAT/C/SR111, para. 44 (in relation to statements by co-defendants and third parties).

<sup>82</sup> Méndez Principles, Principle 1, para. 39, and Principle 6, para. 219.

<sup>83</sup> *Ibid.*, Introduction, para. 8 stating that the Principles apply also to “different forms of questioning by intelligence personnel, including strategic and tactical debriefings and interrogation by military and intelligence authorities.”

<sup>84</sup> *Ibid.*, Principle 6, paras. 218-219.

<sup>85</sup> *Ibid.*, Principle 5, paras. 185-187.

<sup>86</sup> *Ibid.*, Principle 5, para. 203.

<sup>87</sup> For a full overview of the existing practice on the Principles as developed by the CAT and other UN human rights treaty bodies, see APT dedicated page <https://www.apt.ch/en/mendez-principles-effective-interviewing>.

<sup>88</sup> *Ibid.*, Introduction, para. 7. See also Sustainable Development Goal No. 16.