



DOCUMENTING DETENTION

What is a detainee?

Any person who is held against his or her will is considered a detainee. Depending on the circumstances, detention is not necessarily illegal under international law, for example if a detainee had been actively participating in the conflict or committed another crime. However, many detainees in Syria are considered political prisoners, meaning that they are being detained because of their political beliefs. In this case their detention is inherently illegal. No matter whether or not a detention is legal, detainees have certain rights, including to humane treatment. All of the legal standards and rights discussed in this factsheet are according to international law, and Syrian domestic law may differ on some issues.

What Rights do Detainees Have?

Any person who is detained retains certain rights including, but not limited to:

- Protection against inhuman treatment, including torture
- Access to basic material needs such as food, clean water, hygiene products, and medical care
- Ability to correspond with people outside the prison, including family, to the extent possible. Those holding the detainee also must make information about detainees and their status, including where they are held, publicly available. Failure to do so may constitute enforced disappearance, which is a crime under customary international law.

- Knowledge of the charges against them
- If a person has been accused of a crime, they have the right to a fair and speedy trial. Under no circumstances can a detainee be executed or face other criminal punishment without due process protections. This applies equally to courts constituted by both state and nonstate actors, though legal experts are divided on the circumstances under which nonstate courts can legally try and punish individuals, even if they follow due process. If a person is not facing a criminal accusation, but is being held because they were participating in the conflict, they have the right to a periodic review to their detention and release once they are no longer a threat.

Who do these protections apply to?

These rights apply to all detainees, no matter their affiliation. This includes members of extremist groups such as ISIS. Similarly, all detaining authorities, including the government and non-state armed group, are required to respect detainee rights.

Documenting Detention

When interviewing former detainees, documenting the following information can be helpful in establishing whether the detainee's rights were respected.

- 1. Circumstances of the arrest:** Interviewers should inquire as to how the interviewee was originally detained. Questions can include:

- a. Where and when were you taken into custody? What were you doing at the time?
- b. Who detained you? What was their affiliation and how could you tell? Were they wearing uniforms or any other identifying clothing/symbols?
- c. Were you told why you were being detained? Were you accused of fighting?
- d. Were you told where you were being taken or when you may be released?

2. Circumstances of detainment: Interviewers should note the site of detention, and any movement between detention facilities. They should ask when the interviewee was released, and if they were provided a reason. Questions can include:

- a. How many detention facilities were you in? Where were they? Can you provide a rough timeline of when you were in which facility?
- b. How did you know where you were? Did guards ever inform you where you were or where you were being moved to? Did you ever receive documentation with this information?
- c. When were you released? When did you learn you would be released? Were you provided a reason for your release?

3. Access to justice: Interviewers should ask whether the detainee ever appeared in front of a court or participated in any other justice mechanism. If they did, ask for the dates of each event, to the best of their recollection. Questions can include:

- a. Were you ever told your official charge?
- b. Did you ever have access to a lawyer?
- c. Were you asked to confess? Did you feel undue pressure to do so?
- d. Did you ever appear in a court? When and where did this take place? Describe the proceedings.

4. Communication: Ask whether they were able to communicate with their family, or if their family was informed of their whereabouts during their detention. Questions can include:

- a. When you were first detained, did your family know what had happened?
- b. Did your family ever receive any official communication from those detaining you? Did they receive any information through informal sources?
- c. Did you ever have the opportunity to communicate with anyone outside of the prison?

5. Conditions during detention: Detainee treatment is a broad topic, and there are no single set of questions that are required. Rather, interviewers should ask general questions in order to encourage former detainees to describe their experiences, and follow up when necessary. Interviewers can start with general questions such as, can you describe where you were held or, can you describe an average day during your detention. Oftentimes, prisoners in Syria are expected to cover their eyes in the presence of guards, and light can be very limited. Asking former detainees what they remember hearing or smelling can

provide a more detailed understanding of their experience. As the person tells their story, interviewers can encourage them to elaborate on the conditions in the prison. Some specific questions that documenters can ask include:

- a. How often did you receive food and water? Did you feel this was adequate?
- b. Where did you sleep? Did you have a mattress, sleeping pad or sheets? Were they clean? How many people slept in the same room as you?
- c. Did you have access to a toilet and shower? How often were you allowed to access these facilities? Were you provided with soap and other necessary hygiene products?
- d. Did you have any health problems while in detention? Did you ever ask for medical care? Did you receive it? Did you feel that the medical care you received was sufficient?

6. Mistreatment and Abuse: Many detainees in Syria have experienced serious abuse, including torture and/or sexual violence. Documenting these crimes is an important aspect of documenting detention, and SJAC offers separate guides on documenting torture and SGBV. Along with following these guides, interviewers should collect information on the identity of the abusers, where they received their orders, and any patterns to the abuse. Questions may include:

- a. How were you treated by the prison guards? When and where did you typically interact with the guards?
- b. Was there a pattern to mistreatment or abuse by guards? When did it happen? How often? In what context?

- c. Do you remember the names of any of the guards that you interacted with? Did you know their ranks? What was their affiliation, and how do you know? Were they wearing uniforms?

- d. Did you ever hear guards receiving orders from their superiors? Did the guards ever receive orders to mistreat or abuse detainees? If so, do you know the name, rank or any identifying information about the person who gave these orders?

7. What the detainee witnessed in detention:

Many former detainees are not only victims of abuse but witnesses as well. Interviewers should ask former detainees for the identity of anyone they were held with if they are comfortable sharing that information. They should also be asked about whether they witnessed the mistreatment of others, or whether any of their fellow-detainees might be willing to corroborate their claims about the conditions of detention. Questions can include:

- a. Do you know the names or identifying information of anyone who was detained with you?
- b. Is there anyone else who may be able to corroborate what you've shared in this interview?
- c. Did you witness the abuse of any fellow detainees? Describe what you saw.
- d. Did anyone who was detained with you die while in detention? Can you describe what happened?

Accuracy

While many of these questions ask interviewees to recall specific dates, recalling such information is not always possible. Former detainees may provide a timeline that is internally inconsistent, or not be able to provide dates at all. In these cases, interviewers should not pressure interviewees to provide accurate dates for every event, and should not assume that their confusion means that they are not telling the truth. For many detainees, their experience in detention was traumatic, and this can lead to difficulties in recalling specific details. Additionally, detainees who spend long periods of time in isolation or without leaving a detention facility may lose track of time.

Ethics

As always, when interviewing survivors, documenters should be sensitive to the ways in which providing an interview can place interviewees at risk. Recalling and discussing past abuses may cause interviewees psychological distress, and cooperating with human rights documenters may be a security risk. “Do No Harm” is the guiding principle of documentation. Put the safety and psychological well-being of the interviewee first, from choosing the interview location to safeguarding your digital and physical data. It is your duty to work with the highest standards, without over-promising or putting pressure on the interviewee. Connect the interviewee with available support services that are in the area (medical, psychosocial, economic, etc.) if they need assistance.