



DOCUMENTING TORTURE

The prohibition against torture is firmly engrained in international law, and has become such a widely adopted principle, that experts now consider it to be customary international law, meaning the prohibition is binding on states even if they have not adopted laws, conventions, or treaties on torture. And contrary to popular belief, torture is prohibited under any and all circumstances, including in times of war and in the case of terrorist threats. This prohibition is enshrined in Article 5 of the 1948 Universal Declaration of Human Rights, Common Article 3 of the Geneva Conventions, Articles 7 and 10 of the International Covenant for Civil and Political Rights, the UN Convention Against Torture, the Rome Statute of the International Criminal Court (ICC), as well as in numerous decisions of international and regional tribunals.

Definition of Torture

Sources all define torture slightly differently, but in general, torture can be differentiated from other types of cruel and inhuman treatment. The war crime of torture is the infliction of severe pain and suffering for the purpose of punishment, intimidation/coercion, discrimination, or obtaining information/confessions. In contrast, the poor conditions in which a detainee was held, including overcrowding, lack of food and water, and exposure to cold, would be considered cruel and inhuman, but not torture because these conditions affected the prison population as a whole and not only one person for a specific purpose. Who may be accountable for torture also varies, but the Rome Statute of the ICC does not require official state action. Individuals acting

outside of an official legal or state capacity may be held accountable.

Documentation Considerations: These considerations are not exhaustive. Many of the same considerations apply to documenting torture as with other types of violations, including security, confidentiality, chain of custody, and do no harm.

- Obtain informed consent **beforehand**. Informed consent requires that the interviewee is made aware of the documenter's organization and mission, confidentiality standards and limitations, the possible uses of the documentation, the types of questions that will be asked, and interviewee's freedom to choose whether to proceed.
- An interview with the survivor or witness is usually the first step since there is often little evidence other than first-hand testimony. The interview should be tape-recorded, if possible, and transcribed, and include the who, what, when, how, and why of the incident. DO NOT ask leading questions that **assume** a violation occurred like, "were you tortured?" Instead, ask open-ended questions about the facts in order to **show** whether a violation occurred.
- Allow the interviewee to tell his/her story. Ask questions to elicit more detail, like what s/he smelled, heard, saw, and felt. You can ask the interviewee to close their eyes to recall specifics,

but remember that the experience was likely traumatic and humiliating so it will be difficult for the interviewee to openly share. Be cognizant of his/her emotional state and do not push. End the interview early if needed and instead ask to schedule follow up interviews.

- After the interview, request to take photographs or video of any signs of physical injuries. The interviewee may have also taken his/her own photos after the incident. If so, ask to obtain copies, but still take pictures of the injury area even if it is not very visible. Take two photos of each injury, one close-up with a pen or ruler next to the injury and one from further away, as well as one photo that also shows the interviewee's face (when possible).
- If available, request copies of medical records or statements that describe physical and/or psychological injuries.
- If available, request other supporting documentation, such as proof of interviewee's detention (detention records).

Type of Questions: These questions offer general guidance and are not meant as a checklist. There is no standard form for conducting an open-ended interview about torture.

- **About the survivor:** Full name, current address/location, city/town of origin, date of birth, age at the time of the incident, parents' names and other identifying information
- **About the events leading up to the incident(s):** If the interviewee was detained, what led to his/her detention? How do you know this is the reason for the detention? What happened before the incident?

- **About the time and location:** Where did the incident(s) take place? What time(s) and date(s)? Was it daytime or nighttime? (if the interviewee was in detention when the incident(s) happened, s/he may not know dates or times. Try to determine the chronology, but remember that the trauma can cause fuzziness and confusion of details).
- **About the alleged perpetrator(s):** Who committed the incident(s)? How do you know (badges, clothing, etc.)? How many people were involved? What were their names, ranks, positions? Who was in charge or giving orders?
- **About the methods and acts:** What exactly was done to you? What weapons/instruments were used? What parts of your body were harmed? Did they threaten your family? Was there any mental/psychological pressure? What happened after the incident(s)? When/how did you leave custody? Were you sexually assaulted? (This may be a difficult subject to bring up, but it is important because it implicates other violations. Sexual assault not only includes rape, but also forced nudity, groping, verbal assaults, electric shocks to the genitals, etc.)
- **About the reason for the torture:** What was the reason for the incident(s)? How do you know this was the reason? What did the guard/assailant say before and after the incident? Did the guard/assailant try to obtain information?
- **About the routine and patterns:** How many times did this treatment occur? Did you notice a pattern? Did you see or hear others being treated the same or similarly? If so, please describe what you saw or heard.

- **About the injuries:** Did the acts leave any mental or physical injuries? Are there scars or other permanent injuries?
- **About witnesses:** Were there others present? Do you know them? (If safe, obtain witness names and current location to conduct corroborating interviews, but keep the names secure and do not include directly in your interview notes.)

Ethics

“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.) in case s/he needs assistance.