

# Documentation Training Guide

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# Documentation Training Guide

2022



The Syria Justice and Accountability Centre

For more information or to provide feedback, please contact SJAC at [info@syriaaccountability.org](mailto:info@syriaaccountability.org) or visit our website <https://syriaaccountability.org>

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# Introduction

Over 10 years ago, Syrian activists and human rights groups began collecting documentation and evidence on violations of human rights and international law in Syria. However, many activists lacked prior experience in the field necessary to collect detailed, accurate, and standardized documentation that could be used for future justice mechanisms.

To fill this gap in expertise, SJAC began offering publically available training programs in 2016. These documentation courses were based on experiences gathered in the field, international best practices, and consultation with likeminded organizations. [Through online](#) Arabic language videos, fact sheets, and quizzes, SJAC provides customized trainings both in-person and online to ensure high quality documentation of human rights violations is available during and after a conflict. This document provides an English language summary of the more in-depth, Arabic language trainings on SJAC's website. If your organization is interested in setting up a live training, in Arabic or English with SJAC, please contact us at [info@syriaaccountability.org](mailto:info@syriaaccountability.org).



# EXTRATERRITORIAL JURISDICTION

## What is Extraterritorial Jurisdiction?

A state generally has the right to prosecute a crime that occurred on its territory, meaning the act was committed inside the state. Extraterritorial jurisdiction refers to the power of a state to prosecute a crime that was not committed on its soil. Several states, particularly those in Europe, have accepted extraterritorial jurisdiction over serious international crimes, including war crimes, crimes against humanity, and genocide, under the principle that international law obligates the entire world to act to prevent impunity for such crimes.

## What are the types of extraterritorial jurisdiction?

There are three relevant principles of extraterritorial jurisdiction:

- **Active nationality principle** allows a state to prosecute its own nationals for crimes committed in Syria. Example: If a French national traveled to Syria, joined an armed group, and committed grave crimes, such as torture, France would have the right to prosecute them.
- **Passive nationality principle** allows a state to prosecute individuals who committed crimes against its nationals. For example, if a dual Syrian-Spanish national were the victim of a crime in Syria, Spain would have the right to prosecute the perpetrator under this principle.
- **Universality principle** requires no nexus between the prosecuting jurisdiction and

the individual in cases involving the most serious crimes of international concern.

Whether these principles can be utilized, and which one, depends on the policies of each particular country. Some countries have accepted jurisdiction under all three principles, some under only one or two, and others do not utilize any of them.

## How can extraterritorial jurisdiction apply to Syrian perpetrators?

In the case of Syria, many traditional avenues for accountability are not available. While ideally perpetrators are prosecuted in the national court system where a crime is committed, it is highly unlikely Syria would prosecute. Also, Syria is not a state party to the International Criminal Court, so the only way the Court could prosecute crimes committed in Syria is via a unanimous vote of the UN Security Council, which China and Russia have vetoed. Similarly, the UN Security Council has not shown an interest in creating an independent tribunal to prosecute crimes. Extraterritorial jurisdiction provides an alternative in cases in which there are no viable venues for prosecution. Hence, prosecution in foreign national courts is the most feasible and immediate path to criminal justice for Syrians.

Since the ICC does not have jurisdiction in Syria, there is no special tribunal, and Syria is unwilling to prosecute most cases, extraterritorial jurisdiction is the only clear path to justice for many Syrians.



## Why is universal jurisdiction so important?

While all three principles of extraterritorial jurisdiction can be applied to perpetrators of crimes in Syria, the majority of crimes do not involve the citizen of a country other than Syria. Universal jurisdiction is a principle that allows states or international organizations to claim criminal jurisdiction over an accused person regardless of where the alleged crime was committed and the accused's nationality or country of residence. This principle is based on the idea that the most serious crimes violate universal values held by all people, and hence should be eligible for prosecution by any court, anywhere, and at any time. In the case of Syria, universal jurisdiction gives nations the opportunity to prosecute a larger number of perpetrators than could be done under the active or passive personality principle.

While prosecution via national courts may be the best option for justice currently, there are serious drawbacks to this process. First, in most cases, countries will only pursue cases against perpetrators who are present in their country. In practice, this has meant that European countries are prosecuting perpetrators who fled to Europe as part of the refugee flow. While these prosecutions are important, they are often directed at relatively low-level perpetrators, while the perpetrators of the most serious crimes remain in Syria.

Alternatively, in cases where countries issue arrest warrants against perpetrators currently in Syria, such as when Germany issued a warrant for Jamil Hassan, the court will either need to wait until the accused turns themselves in voluntarily or is extradited, unlikely scenarios in Syria. Otherwise, the court can try the case in absentia, which means hold a trial without the accused present and wait to apprehend and carry out the punishment at a later date. If the accused remains in a position to continue committing abuses following the issuance of arrest warrants, this potentially could undermine the faith of Syrians in the possibilities of pursuing

justice. Ultimately, prosecution via national courts will never result in the type of comprehensive justice that can be achieved through a holistic transitional justice process. However, it is the most immediate option for pursuing criminal accountability.

## Which countries will prosecute Syrian perpetrators in national courts?

Every country has different rules about whether they will prosecute under extraterritorial jurisdiction. In the case of Syria, countries with large Syrian refugee populations have the greatest potential to prosecute these cases, as refugees can serve as defendants and witnesses. However, the largest hosts of refugees, such as Turkey, Jordan, and Lebanon, have not accepted the principle of universal jurisdiction. This leaves Europe as the primary focus of possible universal jurisdiction cases. A number of European countries are working actively to identify and prosecute those who committed crimes in Syria, and some have created dedicated prosecutor's offices to investigate war crimes. For example, both Sweden and Germany respect the principle of universal jurisdiction and have actively pursued criminal cases against Syrian perpetrators. Each country has specific rules about which cases they will undertake, and individuals looking to file a complaint should look into the specific legislation in that country.

## Has extraterritorial jurisdiction been successful in achieving justice for Syrians?

There have been multiple successful cases of perpetrators of crimes in Syria being held accountable in European courts, and prosecutors are actively working on pursuing more cases. For example, in the summer of 2012, Mouhannad Droubi and other FSA militants assaulted an unidentified man allegedly affiliated with the Syrian army. Droubi travelled to Sweden as a refugee in September 2013, where he received permanent residency and asylum status. In July 2014, Swedish police discovered a video of the assault and Droubi

was arrested in October 2014. On 26 February 2015, Droubi was convicted for “extremely gross assault and violation of international law” for violating the Common article 3 of the Geneva Conventions, and customary international humanitarian law. He was sentenced to five years in prison. Swedish prosecutors successfully argued that Droubi’s actions amounted to torture and a war crime.

### **How can documenters and human rights activists support prosecution through national courts?**

Through collecting and sharing high-quality documentation, documenters can directly support the work of national prosecutors. Organizations such as SJAC work directly with prosecutors’ offices to provide information to ongoing cases. SJAC also works with the IIIM, which is planning on building cases for national prosecution as well. Along with documentation, pursuit of justice through national courts will require victims and witnesses living outside of Syria to play an active role in filing cases and cooperating with prosecutors in ongoing cases. For this reason, educating Syrians abroad about their right to pursue justice through foreign courts and supporting them through the process will also be important to supporting justice efforts.

# THE CRIME OF CRIMES: GENOCIDE



The word “genocide” was first coined by Polish lawyer Raphaël Lemkin in 1944 in his book, *Axis Rule, in Occupied Europe*. Genocide was only recognized as a crime under international law in 1946 by the United Nations General Assembly. It was codified as an independent crime in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention). The Convention has been ratified by 152 states (as of July 2019). The International Court of Justice (ICJ) has repeatedly stated that the Convention embodies principles that are part of general customary international law. This means that whether or not states have ratified [the Genocide Convention](#), they are all bound as a matter of law by the principle that genocide is a crime prohibited under international law. The ICJ has also stated that the prohibition of genocide is a peremptory norm of international law (or *jus cogens*) and consequently, no derogation from it is allowed.

**Definition:** Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, this includes the mental element, such as criminal intent, knowledge, recklessness or negligence, and any one of the following physical elements:

- Killing members of the group
- Causing serious bodily or mental harm to members of the group
- Deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part
- Imposing measures intended to prevent births within the group

- Forcibly transferring children of the group to another group

The Genocide Convention states in [Article I](#) that the crime of genocide may occur in the context of an armed conflict, international or non-international, but also in the context of a peaceful situation. The latter is less common, but still possible. The same article stipulates the obligation of the contracting parties to prevent and punish the crime of genocide.

The ultimate victim of genocide is the group, although its destruction necessarily requires the commission of crimes against its members, that is, against individuals belonging to the group.

The intent is the most difficult element to determine. To constitute genocide, there must be a proven intent on the part of perpetrators to physically destroy a national, ethnical, racial or religious group. Cultural destruction does not suffice, nor does an intention to simply disperse a group. It is this special intent, that makes the crime of genocide so unique. In addition, case law has associated intent with the existence of a state or organizational plan or policy – although this is not strictly an element of the crime.

It is also significant that the victims of genocide are targeted deliberately, not indiscriminately, owing to their membership in one of the four groups protected by the Convention.



Any of the following considerations may be used to prove specific intent:

- Speech
- Extent of crimes
- Systematic or patterned behavior
- Elements that suggest hate as the ultimate aim of acts
- Orders or directives
- Proven existence of premeditation
- Large number of victims
- Methodical way of planning
- Behavior of the perpetrators when committing the crimes

## Considerations:

Genocide can occur in times of peace and in times of war, just like crimes against humanity, while war crimes occur within the context of an international or non-international armed conflict only. Intent to commit genocide crimes can be determined by the following actions:

- An act or failure to act which results in the destruction of a national, ethnical, racial or religious group
- Attempts to direct or influence public incitement, conspiracy and complicity

Intent must be specific. That is, the intent to destroy must be shown. However, the International Court of Justice held in its decision, 373/ 2007, that it can be deduced that the behavior in question indicates the intent to destroy if it refers to behavior directed against that group or behavior that could in itself lead to the total or partial destruction of the group.

If intent to destroy cannot be proved, war crimes and crimes against humanity may still apply.

**Is “cultural genocide” included in the crime of genocide?**

Answer: NO

This was [confirmed by the ICTY](#). Although the ICTY determined that systematic crimes against cultural heritage can amount to crimes against

humanity, “for all of humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects,” it found that such actions did not amount to genocide. It is nonetheless a serious international crime.

The ICJ further confirmed in one of its [reports of judgments, advisory opinions and orders](#), that cultural genocide is not genocide. The Court further held in 2007 that “the destruction of historical, cultural and religious heritage cannot be considered to constitute the deliberate infliction of conditions of life calculated to bring about the physical destruction of the group.” Thus, this type of destruction does not satisfy the physical element of the crime.

## Gaps and challenges:

**1. The genocide convention has a number of gaps:** The proof of the crime of genocide requires the presence of a special intent and the existence of prior intent to totally or partially destroy a group. Without establishing special intent, the crime of genocide cannot be determined, no matter how terrible the action. Intent is largely based on moral factors which makes it even more difficult to ascertain. In the [Jelisić case](#), the ICTY found that the material factor for the crimes that were committed was available and proven, but could not be considered the crime of genocide because the special intent was not proven. Rather, the crimes could be considered a crime against humanity or a war crime.

**2. The second gap in the Genocide Convention is that it did not define which groups are subject to the crime of genocide.** Rather it stipulated that they fit in certain categories based on their national, racial, ethnic and religious affiliations. For example, the International Tribunal for Rwanda in the [Akayesu case](#) had to define each of the four groups mentioned in Article (2) of the 1948 Convention. This forced the court to determine if the victims (Tutsi), or the moderates (Hutus) who were also victims of violence, fell into the same groups protected by the genocide convention.

**3. Non-inclusion of political groups in the agreement:** Although political groups are liable to be victims of crimes approaching genocide, the lack of agreement on the status of these groups means systematic crimes committed against political

groups are not considered genocide. This lack of definition leaves a serious gap in the convention and is inconsistent with the spirit and objectives of this document. Numerous genocide-like crimes have been committed against political groups, but cannot be classified or tried as genocide crimes. Nearly a million people were killed in Cambodia by the (Khmer Rouge) between the years 1975-1985, or nearly 40% of the population, but these crimes against Cambodians were not considered genocide because the targeted group of victims was political and not covered by the convention.

The International Criminal Tribunal for Rwanda also ruled out some genocide crimes because the victims were a political group. After defining the four groups, the court reached a strange conclusion, as it considered that the (Tutsi) in Rwanda constitute a fixed and defined group and fell within the parameters of having a fixed national, racial, ethnic and religious identity. However, moderate Hutu who were also killed by the Hutu genocidaires were considered to be merely a political group.

## History of the prosecution of genocide:

- In 1998 the International Criminal Tribunal for Rwanda issued the world's first conviction for the crime of genocide. As part of the [Akayesu case](#), the accused was convicted for his involvement in and oversight of acts of genocide and crimes against humanity while serving as mayor of the Rwandan town of Tapa. The ICTR subsequently convicted 61 individuals, most of whom were convicted for genocide.
- In 2007, the [International Criminal Tribunal for the former Yugoslavia \(ICTY\)](#) passed legally binding verdicts against 17 people indicted for genocide and crimes committed in Srebrenica since 1993. You can learn more [here](#).
- On 26 February 2007 the ICJ presented its [judgment](#), in which it confirmed the ICTY judgment that the Srebrenica massacre was genocide.
- On October 19, 2005, Mr. Munyaneza, a Rwandan national, was arrested in Toronto for alleged activities relating to the Rwandan genocide in 1994. A Canadian court charged Mr. Munyaneza with two counts of genocide,

two counts of crimes against humanity, and three counts of war crimes, pursuant to the Crimes Against Humanity and War Crimes Act.

Following a rogatory commission held in Kigali, Rwanda, and a trial before the Superior Court of Quebec, Mr. Munyaneza was convicted on May 22, 2009, of all seven counts of war crimes, crimes against humanity, and genocide. In October 2009, he was sentenced to life imprisonment without parole for 25 years. Mr. Munyaneza's appeals of his conviction and sentence were dismissed by the Quebec Court of Appeal on May 7, 2014. On August 5, 2014, Mr. Munyaneza filed an application for leave to appeal to the Supreme Court of Canada, which was dismissed on December 18, 2014.

- On 4 March 2009, the ICC, issued the first arrest warrant for [Omar Hassan Ahmad Al Bashir](#). A second warrant was later issued on 12 July 2010. Omar was accused of serious international crimes as well as three counts of genocide: by killing, by causing serious bodily or mental harm, and by deliberately imposing conditions of life on each target group meant to bring about the group's physical destruction. These crimes were allegedly committed between 2003 and 2008 in Darfur, Sudan.
- In 2019 a Brussels court found a former Rwandan official [guilty of genocide](#) after hearing of his role in the 1994 Rwandan massacres.
- In 2022 a French court [sentenced a former senior Rwandan official](#) 20 years after finding him guilty of complicity in the African nation's genocide.
- From 2021 - 2023, at the national level, the Higher Regional Court of Hamburg utilized its authority under Germany's universal jurisdiction laws to convict a number of former ISIS members. This included the following individuals:
  - German ISIS member Jalda A. was convicted of aiding and abetting genocide as well as of crimes against humanity and war crimes for the enslavement and abuse of a young Yazidi woman. The defendant was sentenced to five years and six months in prison.

- Nadine K. was charged as an accessory to genocide, war crimes, and crimes against humanity. It alleges that she and her husband stored and moved weapons for ISIS and that they enslaved a Yazidi woman in 2016, who was repeatedly raped by Nadine K's partner.
- Taha A.-J. was convicted of genocide, crimes against humanity and war crimes following his enslavement and abuse of Yazidis in Fallujah, Iraq and sentenced the defendant to life imprisonment. His wife, "Jennifer W.", was sentenced in a separate trial to 10 years in prison for her own involvement in the crimes against Reda and her mother.



# CHAIN OF CUSTODY

Chain of custody refers to the preservation of evidence from the time it is collected in the field to when it is presented in court. In a stable, non-conflict setting, what typically happens after a crime occurs is that the police enter a crime scene, collect forensic or documentary evidence using gloves, put the evidence in bags, tag the bags, and store the bags in a secure locker at the police station. Anytime anyone wants to view the evidence, it must be checked out and checked back in to the lockers. The purpose of this process is to ensure that the evidence is always accounted for and no one is given the opportunity to manipulate or destroy information that could be used in a trial. If there is any indication that the evidence has been altered while in police custody, the defense lawyers could motion to have the evidence dismissed, diminishing the prosecutor's case.

## Why is Chain of Custody Important?

Sloppy and incomplete documentation collection may cast doubt on a future case that relies on the documentation as evidence to prove the guilt of a defendant. It is important to view chain of custody as one aspect of the collection and storage process – when chain of custody is incomplete, the documentation as a whole is also incomplete. With proper chain of custody, every person who ever handled the documentation is known and can be called to appear before the court to testify about the handling of the evidence. The fewer people who have handled the documentation, the lower the risk of evidence tampering and the easier it will be for the prosecutor to use the evidence in trial.

## What is Required?

There is no set standard that all courts use. American courts are stricter than European courts and hybrid tribunals have their own standards. What is most important is that your organization develops a standard practice and applies that standard uniformly in all situations and by all staff.

As a general principle, the following information should be included for proper chain of custody documentation:

- Description of the item(s)
- The identity of the person who collected the item(s)
- The time and date at which the item(s) was collected
- The location from which the item(s) was retrieved
- The time, date, and location where the item(s) changed hands and the identity/signatures of the people who released and received the item(s)
- The purpose for the transfer and any other relevant information

Your chain of custody practice is closely linked to your security practices. How do you store documentation after it is collected? If you do not securely lock up the documentation in a safe location only you can access, who else has possible access to the documentation? If others can access the documentation, you need to record who accessed the information, when, and for what purpose to ensure you don't jeopardize your chain of custody.

## Digital vs Physical Evidence

New technologies have complicated traditional chain of custody practices. Digital data requires different considerations than a physical document or bloody weapon. On one hand, digital data contains metadata that can more easily track information and automatically signal when something has been changed. On the other hand, it is also easier to access digital data, and with the right tech knowledge, delete, edit, or fabricate data without anyone knowing. Physical hard drives, phones, and computers can be tagged and locked up like other types of physical data, but there also needs to be a certain level of cyber security in place. All data should be encrypted, password protected, and backed up so that no one can overwrite or rearrange the data without your knowledge. This is especially important if your organization stores data online, even on secure databases.

## Working in a Conflict Setting?

Throughout the evidence collection process, it is important to be realistic. You are working in a conflict setting. An iron-clad, uninterrupted chain-of-custody is not always possible. If you were not able to record chain of custody, this does not mean that your evidence will have zero value in court. For example, the International Criminal Tribunal for Yugoslavia (ICTY) ruled that “gaps in the chain of custody are not fatal, provided that the evidence as a whole demonstrates without reasonable doubt that that the piece of evidence concerned is what it purports to be.” (Judgment in Prosecutor v. Orić, 30 June 2006). Do your best given your knowledge of the standards and what is possible in your situation. Even if your documentation is not used in court, it can still be valuable in other justice proceedings that do not have such strict procedural standards, including truth commissions, reparations programs, or memorialization projects.





# DUAL REFERRAL FACTSHEET

SJAC is committed to expanding and improving its ability to document violations of sexual and gender-based violence (SGBV), while maintaining the highest ethical standards. SJAC's Dual Referral System is designed to facilitate access to survivors while ensuring that Documentation Coordinators can refer survivors to support services following a documentation interview. This fact-sheet provides guidelines on conducting referral partnerships.

## Referrals to SJAC

Once a partnership has been established, the partner's local staff is put in contact with SJAC's local Coordinator. When the service provider encounters a survivor who experienced SGBV in the Syrian conflict, its local staff will inform the survivor about the option to document his or her experience with SJAC. If the survivor is interested, the local staff will put the survivor in touch with the SJAC Coordinator. The method of connecting the Coordinator with the survivor will depend on the specific security conditions of that locality and is determined on a case-by-case basis in collaboration with the referral partner. Survivor support services include medical, psychosocial, economic assistance, and protection organizations.

## Referrals to Partners

In addition to training Coordinators in techniques that avoid retraumatization according to the Do No Harm principle, SJAC aims to meet survivors' needs after they go through the difficult process of recounting the details of the abuse during the documentation interview. Although SJAC is not equipped to provide survivor support, SJAC intends that referrals to other organizations can enable the survivor to access the type of support s/he needs.

Following the interview, the Coordinators provide the survivor with information about nearby available resources and assist the survivor with accessing those services. However, Coordinators provide realistic expectations of those services, explaining that SJAC has no control over whether the services can or will be provided.

## Scope of Partnership

Referral partners are provided with information on SJAC's mission, confidentiality and informed consent procedures, and methodology so they can provide the survivor with information about the purposes and process of documentation. However, referral partners are not required to gather documentation on behalf of SJAC or to provide SJAC with the documentation that they already gather. Rather, the referral partner simply makes a connection between the survivor and the Documentation Coordinator. The survivor may feel intimidated or coerced to agree to whatever the referral partner's local staff asks of them. Thus, the referral partner must be clear that it is the survivor's choice whether to participate or even contact SJAC and that services are not hinged on participation in SJAC documentation.

## Incentives

Although referral partners often times collect some form of documentation from survivors (such as medical records), SJAC Coordinators do more in depth documentation, touching on the facts that could elicit a legal determination of whether a violation occurred. Referral partners can aid in the documentation of these abuses to enable the potential for a justice process that could bring attention to

serious violations and deter the use of sexual violence as a weapon of war in future conflicts.

Referrals also serve survivors' interests: survivors have a right to justice and reparations, even in the absence of immediately available justice mechanisms. Although resulting benefits may be indirect or long-term, survivors may wish to take what steps they can to influence overall attention to addressing human rights violations as well the likelihood that they see personal, direct benefits in the future.



# SEXUAL AND GENDER-BASED VIOLENCE

## What is sexual violence?

These are acts of a sexual nature against a person, by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, or by taking advantage of a coercive environment or a person's incapacity to give genuine consent. Thus, sexual violence includes but is not limited to rape, forced nudity and other non-physical acts are also types of sexual-based violence.

## What is gender-based violence?

Gender-based violence are acts committed against persons, whether male or female, because of their sex and/or socially constructed gender roles. These incidents may include non-sexual attacks and persecution on the grounds of gender. Minor/forced marriage, female genital mutilation, honor killings, forced conscription, the denial of resources, and psychological abuse can all be types of gender-based violence.

## Why document SGBV?

While SGBV has been committed on a large scale by a variety of perpetrators in Syria, these types of violations are not always openly discussed in Syrian society. This can mean that this type of violence often goes undocumented, making it difficult to seek justice in the future. Additionally, when such violations are shrouded in silence, they are often misunderstood, leaving survivors feeling more isolated. Documentation ensures that this crime is recorded and that survivors have a chance

to seek justice. Accurate documentation can also help alleviate misunderstandings surrounding sexual and gender-based violence. For example, while sexual and gender-based violence is often associated with women, both men and women can be victims of these crimes. Documenters should not make assumptions about who might be a victim, so that documentation can better depict the diverse experiences of survivors.

## Why is documenting SGBV in Syria important?

- Thorough documentation will increase the chance for future justice
- Documenting these crimes, which are often suffered in silence, will ensure they are better understood
- The process of sharing their stories may help survivors heal

## Where does SGBV take place?

SGBV survivors experience violations in a large variety of settings. In Syria, many acts of sexual violence have been committed in detention centers, but others are committed in homes or at checkpoints. Sexual violence often, but certainly not always, accompanies torture. When interviewing survivors of other violations, documenters should remain alert to the possibility that the interviewee may also have experienced sexual violence, and inquire about this possibility, even if this was not the original focus of the interview.

## Ethically Documenting SGBV

Survivors of SGBV may find that reliving their experience through an interview can be traumatizing or shameful. Since explaining incidents of SGBV may require a survivor to share intimate details, interviewees should be particularly sensitive. While concerns regarding confidentiality and informed consent should always be of utmost importance during documentation, these issues take on even more importance in the context of SGBV. The following principles should be at the center of all SGBV documentation efforts.

### Do No Harm

The principle of “do no harm” forms the foundation of SJAC’s documentation work. This means that survivors come first. If collecting documentation would put the interviewee at risk of excessive harm, or if the interviewee has extreme difficulty telling his/her account of the events, then SJAC’s documenters do not continue. Additionally, SJAC makes efforts to avoid re-traumatizing the interviewee by conducting only one interview and demonstrating sensitivity during the process.

Documenters should also allow the survivor to choose when and where an interview will be conducted to ensure that they are able to choose a location where they will feel most comfortable.

The following policies are all in line with the principle of do no harm:

- Allowing the interviewee to choose the location for the interview
- Choosing not to conduct an interview with a survivor who has previously provided an interview to another organization
- Offering to pause or finish an interview because an interviewee is upset by the discussion

## Informed Consent

Prior to conducting any interviews, SJAC’s documentation team first obtains signed informed consent. Informed consent is never assumed, and requires that the interviewee is made aware of SJAC and its mission, the confidentiality standard and its limits, the possible uses of the documentation, the types of questions that will be asked, and the fact that the interviewee has total choice over whether to proceed. For children, consent is obtained from legal guardians. In the case of interviews regarding sexual and gender-based violence documenters should be explicit about the nature of the questions they plan to ask.

Recounting an incident of SGBV can be a traumatic experience in its own right. Interviewees must have all the information about what they will be asked to share with a documenter before an interview begins.

### Confidentiality

Because of the private nature of sexual and gender-based violations, the confidentiality of the information shared by survivors is of particular importance. Documenters should take care to protect the privacy of all information, both by securing any physical records of the interview, and by ensuring that information from the interview is not shared unless all identifying information has been redacted. The organization’s policy for storing and sharing the interview should be made clear to the interviewee during the informed consent process.

How and whether the information in an interview will be shared should be detailed in the informed consent paperwork and discussion. In regards to SGBV interviews, organizations should implement strict confidentiality measures, since such information being publicly revealed could put survivors at serious risk.

## Offering Additional Services

After completing an SGBV interview, documenters should ask the interviewee whether or not he or she would like to have access to any medical or psychosocial services. If they are interested, documenters should refer them to local partners. In support of this practice, SJAC maintains a network of dual referral partners in communities where it collects documentation. These are medical, humanitarian, and psychosocial support organizations that are willing to receive referrals from SJAC, as well as refer their own beneficiaries that are interested in participating in documentation efforts.





# 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.



# 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.



# DOCUMENTATION OF HUMAN TRAFFICKING IN THE SYRIAN CONFLICT

SJAC Documentation Coordinators have been trained on how to identify the signs of human trafficking while interviewing victims. Human rights documenters are in a unique position to access survivors and, therefore, should be prepared to identify the signs of trafficking and ask appropriate questions. Otherwise, victims might not readily volunteer the information, either because they do not know that they experienced a violation of international law or because they are reluctant to speak about it.

## What is Human Trafficking?

Human trafficking is commonly referred to as modern day slavery, but is formally defined in the [Protocol to Prevent, Suppress, and Punish Trafficking in Persons](#), which was added to the UN Convention against Transnational Organizations in December 2000. According to Article 3 of the Protocol, human trafficking is “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

This complex definition can be divided into three parts:

**The Act:** Relevant acts include recruitment, transportation, transfer, harboring or receipt. Note that trafficking does not require “movement” even though movement is commonly associated with

trafficking crimes. Keeping a person in one place or recruiting them can also constitute trafficking.

**The Means:** This relates to how the perpetrator committed the act. The perpetrator need not physically harm a person in order for there to be coercion. The perpetrator can also deceive, threaten, or take advantage of power imbalances to make the person feel like they have no choice but to agree.

**The Purpose:** The act and means must be for the purpose of exploitation – using someone for the perpetrator’s own benefit. Exploitation can be monetary, sexual, labor-related, or other.

Many countries have adopted the Protocol into their national legislation. However, precise definitions, punishments, and implementation vary greatly. Syria signed the Protocol in 2000 (with reservations) and ratified it in 2009, but has not fully implemented the law and does not meet its reporting requirements.

The ICC Rome Statute also criminalizes human trafficking through three of its crimes: enslavement as a crime against humanity (Art. 7(1)(c)), sexual slavery as a crime against humanity (Art. 7(1)(g)-2) and sexual slavery as a war crime (Art. 8(2)(e)(vi)-2). For each of these crimes, the conduct of the crime is understood to include trafficking in persons, in particular women and children.

## Types of Human Trafficking

Human trafficking is often discussed in the context of sexual slavery, but persons can be trafficked for reasons unrelated to sexual and gender-based violence (SGBV). Although this is not an exhaustive list, the following are common situations of trafficking:

- Sex trafficking and child sex trafficking
- Forced labor and child forced labor
- Domestic servitude in private residences
- Bonded labor or debt bondage
- Unlawful recruitment, including use of child soldiers
- Organ harvesting

Note that this list does not include what is commonly referred to as “human smuggling.” In 2015, the height of Syrian refugee flows to Europe, smugglers made \$6 billion through the Syrian conflict. Both smuggling and trafficking are profitable multibillion criminal businesses that involve human beings, but it is important not to conflate the two. Even though smugglers often charge exorbitant fees for their services, the individuals being smuggled freely agree to pay the fee and to be transported. There is no force, threat of force, coercion, or deception. Once the smuggled individuals reach their destination, they are free to do as they please and are not held by the smugglers or their affiliates for the purpose of exploitation. Also, smuggling always involves crossing international borders illegally, while human trafficking does not necessarily involve border crossings or illegal means of crossing – a person can be trafficked using legal paperwork, visas, and passports. Of course, smuggling can lead to human trafficking if the smugglers victimize or exploit the smuggled individual, changing the circumstances and purpose of the journey without the free consent of the smuggled individuals.

## Human Trafficking and Conflict

Worldwide, 21 million people are victims of human trafficking. In areas of conflict, people are particularly vulnerable to exploitation – erosion of the rule of law and government institutions creates a state of impunity where criminals act without fear of arrest and evade prosecution. Wartime societies are also less equipped to address trafficking due to a lack of resources, political will or capability to enforce laws.

Moreover, displacement, impoverishment, and lack of income-generating opportunities make people particularly vulnerable to trafficking because they are left with few, if any, alternatives. Families are forced to rely on risky survival strategies such as early marriage, child labor, and prostitution, increasing exposure to trafficking. In many conflicts, trafficking is used to fund war activities and can also serve a group’s ideological objectives by systematically targeting ethnic or religious minorities.

In Syria, the displacement crisis has made Syrians extremely vulnerable to trafficking. To date in Syria, reports have shown several high-profile cases of trafficking, including the use of trafficking as a weapon of war.

### Analysis of Human Trafficking in Syria and Neighboring Countries

Due to the conflict and increased media attention, news outlets have reported on several well-documented cases of human trafficking related to the conflict.

In 2016, 75 Syrian women in Lebanon were rescued from a human trafficking ring in which they faced physical and psychological abuse as well as forced prostitution. The perpetrators barred the windows and kept the women from sunlight, only allowing them to leave the caged apartment complex for abortions and treatment of venereal diseases. According to police, the women were



trafficked from Syria while they were seeking to flee from war and economic hardship, recruited for legitimate jobs in Lebanon, and then imprisoned in the apartment. In this case, the perpetrators transported the women from Syria and harbored them in Lebanon (the act), through deception and physical and psychological force (the means), in order to profit from selling the women into prostitution (the purpose).

There are reports that Syrian children are being forced to work in fields in the Bekaa Valley of Lebanon. Landowners will set up tents for families to stay and then recruit their children to work on the farm for little to no pay. Having nowhere else to go, the families will often agree. In this case, the perpetrators recruited and harbored the children (the act), through a power imbalance between the families and the landowners (the means), in order to profit from the children's cheap labor (the purpose).

In Lebanon, certain people are not allowed to register as refugees, including Palestinians who fled Syria and Syrians who arrived in Lebanon after May 2015. As a result, they often cannot access benefits from UN agencies and NGOs. Due to their vulnerable economic position, some have decided to sell their organs for cash. They are driven to a secret location, operated on by doctors, and given payment – approximately \$8,000 for a kidney, for example. In this case, the perpetrators recruited, transported, and received the victims (the act), by taking advantage of their vulnerability (the means), for the purpose of extracting invaluable, vital organs from their bodies so they could profit by reselling (the purpose).

## The Signs of Human Trafficking

Victims of human trafficking might be reluctant to speak about their experience, particularly if they have not yet been able to escape the exploitation. As a Documentation Coordinator, you are in a unique position to be asking personal questions about a victim's past. Through the interview, you

might be able to identify signs of human trafficking if you know what to look for. Here are common signs:

- Owes/owed a large debt that they are/were working to pay off
- Lives/lived or works/worked somewhere that does not allow people to come and go as they wish
- Inability to travel outside the house without being accompanied by an employer or manager
- Lives/lived or works/worked somewhere with high security (barred windows, barbed wire, etc.)
- Is/was unpaid, paid very little, or only paid through tips
- Has/had their work payments collected by another person
- Has moved frequently, including from city to city, without an explanation why
- Sleeps/slept at their work premises
- Has/had poor or non-existent access to medical treatment and exhibits chronic health conditions that have gone untreated

## Sample Documentation Questions

If you have reason to believe that the individual you are interviewing is or was the victim of human trafficking, there are additional follow-up questions that you can ask to get more information. Keep in mind that different forms of human trafficking will require different types of questions. The questions listed below are only intended to clarify whether a possible case of trafficking occurred.

- Under what circumstances did you leave your home?
- Were you asked to pay any money for help to leave your home or to get a job?



- Did you have a choice or no choice in the decision? (If not, then) why not?
  - Were you treated well ? If not, then how ?
  - Did anyone hurt you or threaten you?
  - Once you arrived at your new destination, were the circumstances that you found yourself in different than what you had originally been promised?
  - Were you free to leave at any time? If not, why not?
  - Please describe your living conditions.
  - Please describe your working conditions.
  - For the next questions, only ask them depending on the answers received so far – and carefully so as to not be leading:
- (*If you weren't free to leave at any time*), were there conditions placed on your freedom (ie, were you asked to do anything in return for your freedom)?
  - Were you asked to do anything in return for financial payments? If so, what?
  - Were you given money directly or through another person?
  - Were you alone in your situation or were others in the same situation as you? How many other people were in this same situation?

Based on the answers to your questions, you should have better understanding about whether there has been a possible case of trafficking. If the individual is still being victimized or is in another vulnerable situation, it is important to get help right away.



# FORCED CONSCRIPTION UNDER INTERNATIONAL LAW

Conscription refers to compulsory military service. The issue is treated differently depending on whether the conscription is compelled by the government or a nonstate actor. Under international law, conscription is viewed as an exercise of a state's sovereignty, and no provisions of international law prohibits it. For nonstate armed actors (rebels/paramilitary/extremist groups), forced conscription is always a violation, similar to involuntary servitude or abduction, because nonstate actors do not have the same privileges as a sovereign state. Recruitment by nonstate actors must always be voluntary, and free of any and all coercion.

Despite its sovereign privileges, the state may still violate an individual's rights by compelling military service in certain cases. The following situations may be considered examples of violations:

- Picked up arbitrarily without any conscription order/notice
- Sent to fight without any opportunity to appeal the conscription order (no due process)
- Given an extreme ultimatum: either fight for the state or die/be tortured
- Sent to fight when suffering from a serious medical issue or disability
- Recruited as a child (discussed in more detail below)

In countries with compulsory military service, some states allow for conscientious objection on strictly religious grounds. But the right to object is

not clearly protected under international law. The Human Rights Council has said that states should refrain from repeated punishment for conscientious objection, implying that some punishment might be okay. On the issue of whether a person can claim refugee status after deserting or evading military service, the UNHCR Handbook states that "it is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could.... be regarded as persecution."

## Child Recruitment Under International Law

Unlike adults, child recruitment is forbidden by all parties to conflict, whether they are state or nonstate actors. The age at which a child can legally be recruited varies, but according to the Additional Protocols of the Geneva Conventions and the Rome Statute, it is a war crime to use children under the age of 15 for military purposes. The Convention on the Rights of the Child raises the age threshold to children younger than 18. Most countries, including Syria, have signed the Convention. The Convention's Optional Protocol on Armed Conflict (OPAC) is focused solely on the military recruitment of children, prohibiting a state's conscription of children and nonstate group's voluntary recruitment of children under the age of 18. For states, it makes a narrow exception for children 16 and older, as long as the recruited child

is not sent to war. The use of child soldiers may also be considered human trafficking in most situations, but an individual state's human trafficking laws would apply.

## Documentation of Child Recruitment

Since there is a strict prohibition on enlisting children, this is a relatively easy atrocity to document. The major factors turn on 1) if the victim was recruited into the armed forces of a state or nonstate group; and 2) the age of the victim at the time of the recruitment. If the victim was 14 or younger, then it is a clear violation of international humanitarian law, no matter which group was responsible. If the victim was between 15 and 17, then there is likely a violation of international human rights law, but it would depend on the circumstances of the case and the affiliation of the responsible party. Remember that no matter how old or young the victim is, a nonstate group can never forcibly recruit because this is always considered a violation.

The difficulty arises in how to collect the documentation. If the victim is still a child, there are many ethical considerations to take into account. In armed conflict, children are the most vulnerable members of society. Young children have not developed sufficiently to be able to process the horrors they witness in conflict, and for child soldiers who repeatedly witnessed and participated in these horrors, they are likely to suffer from deep psychological trauma. As such, it is incredibly important to avoid causing additional harm to the victim. Thus, you should ask yourself the following: is it possible to document this case without interviewing the child? Is the child old enough to provide informed consent? Is it appropriate to include the parents during the interview in this situation (it may be preferable to include the parents unless they aided in the recruitment)? Do I have the training to ethically interview children? Are there psychological support services available to which I can refer the child? Is the child still vulnerable to exploitation and do I have the tools to extract the child from the situation?

If you determine that you are not capable of ethically conducting an interview without causing additional harm to the child, then record as much information as you can about the case without the interview and, if possible, contact another trusted documentation or investigatory group that has the proper tools available. Do not refer the child without his/her full consent or the consent of the parents.

## Killing Child Soldiers on the Battlefield

Recruitment is clearly forbidden, but once a child has been recruited and is fighting on the battlefield, how should they be treated by the opposing force? There is no definitive answer in international law, but it is generally accepted that if a combatant faces an armed child in battle, and the child is shooting or is threatening to shoot, the combatant is justified in using lethal force against the child. Self-defense is not a war crime. Of course, shooting the child should be the last resort, but in the midst of battle, it may be difficult to judge proper alternatives. Ideally, armed units that know they will face children on the battlefield should receive training on how to better assess the situation and encourage the children to surrender so they can be taken into protective care.

## Justice for the Crimes of Child Soldiers

In human rights literature, child soldiers are treated as victims who suffered a violation and need to be protected. But what if the child committed grave violations themselves? How should a child soldier be dealt with if s/he murdered innocent civilians, committed rape, or tortured detained combatants? International humanitarian law does not stipulate an age of responsibility for war crimes, crimes against humanity, and genocide. The ICC will not prosecute anyone under the age of 18, not because it believes they should not be prosecuted, but because it prefers to leave such trials to states. The ICC is mandated to prosecute those most responsible, which would likely never include a child. The age of criminal responsibility

is set by national jurisdictions, which differs from country to country. Experts advise that child soldiers who commit atrocities should be held accountable, but through alternative justice mechanisms that focus on rehabilitation rather than retribution. Transitional justice mechanisms have the opportunity to strike the right balance of accountability and protection/rehabilitation. For example, post-conflict commissions in Sierra Leone and Liberia decided not to prosecute children and instead treat them as victims, only prosecuting the adults who forced them into the wars. Instead, both countries focused on rehabilitation and restoration instead.

Post-conflict states generally adopt disarmament, demobilization, and reintegration (DDR) programs to rehabilitate combatants into society. These programs can include a focus on children to address the specialized needs of child soldiers,

such as mechanisms to trace and reunify children with their families, school programs that help kids catch up on missed education, and funding for psychological care.

Aside from rehabilitation programs, transitional justice mechanisms can provide a platform for restorative justice, facilitating redress to victims without putting a child on trial. For example, South Africa's Truth and Reconciliation Commission requested that children testify to the atrocities they suffered and committed, without assigning guilt or recommending a prison sentence. Another option is to have the child sit with the victim(s) and a facilitator/mediator to give the victim(s) an opportunity to share their experiences and the harms they suffered and have the child acknowledge the harm, make an apology, and perhaps pay reparations.



# DOCUMENTING MISSING PERSONS

A missing person is a person who has disappeared and whose status as alive or dead cannot be confirmed as their location and condition are not known. Families of the missing have no communication with the individual, and no reliable information as to their whereabouts.

A person may go missing due to an accident, crime, natural disaster, or death in a location where they cannot be found (such as at sea). In most parts of the world, a missing person will usually be found quickly. However, in the context of active conflict or large-scale human rights violations, large numbers of people can go missing for complex and varied reasons. Such cases are much harder to resolve. The investigation and resolution of missing persons cases is an important aspect of justice processes that often continues for many years after a conflict has ended.

Unresolved missing persons cases have complex and serious repercussions for families. The lack of closure or traditional mourning rituals, such as a funeral, make it difficult for families to grieve and move past the loss. Many families spend huge amounts of time and resources attempting to locate their loved one. A missing husband can leave women vulnerable and stigmatized, unable to remarry. The situation also leads to legal difficulties. In many jurisdictions, relatives and third parties may not deal with a person's assets until their death is considered proven by law and a formal death certificate issued.

In the case of Syria, thousands of individuals have gone missing due to conflict and on migration routes. However, the primary cause of missing

persons in the country is enforced disappearance. Enforced disappearance is when state officials (or someone acting with state consent) or other armed groups, grab a person from the street or from their homes and then deny it, or refuse to say where they are or provide any updates on their status. In some cases, an individual may be detained with the knowledge of their families, but the state stops providing information on the individual, effectively 'disappearing' them days or even months after their original detention. Enforced disappearance is always a crime under international law.

Victims of enforced disappearance are often never released and their fate remains unknown. Victims are frequently tortured and many are killed, or live in constant fear of being killed. They know their families have no idea where they are and that there is little chance anyone is coming to help them. Even if they escape death and are eventually released, the physical and psychological scars stay with them. The victims of these crimes are not only those who are disappeared but include their family members as the uncertainty of a loved one's fate, and the inability to mourn them, creates pain and suffering unique to this type of crime.

## Missing persons and international law

The following provisions are only applicable in the context of an armed conflict.

[Article 32 from the Protocol Additional](#) to the Geneva Conventions -- General principle

In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to



the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives

[Article 33](#) from the Protocol Additional to the Geneva Conventions-- Missing persons

1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches.
2. In order to facilitate the gathering of information pursuant to the preceding paragraph, each Party to the conflict shall, with respect to persons who would not receive more favorable consideration under the Conventions and this Protocol:
  - a. Record the information specified in [Article 138](#) of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention;
  - b. To the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation.
3. Information concerning persons reported missing pursuant to paragraph 1 and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the International

Committee of the Red Cross and its Central Tracing Agency, each Party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency.

4. The Parties to the conflict shall endeavor to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse Party while carrying out these missions in areas controlled by the adverse Party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties.

## Enforced Disappearances as a Crime Against Humanity (outside of armed conflict)

[The International Convention for the Protection of All Persons from Enforced Disappearance](#) came into effect in 2010. It aims to prevent enforced disappearances, uncover the truth when they do happen and ensure that survivors and victims' families receive justice, truth and reparation. There are 98 signatories and 63 states party to the Treaty, indicating that it has gained importance though not universal acceptance.

## Documentation of missing person's cases:

The documentation of missing persons can support a variety of justice processes. Such documentation can support criminal accountability for underlining crimes including enforced disappearance and extrajudicial killing. It also can support missing persons investigations and truth telling processes which help families discover the fates of their loved ones and, if they are deceased, gain possession of their remains for proper burial.

Documenting missing persons cases is difficult due to the lack of information available and the fact that the primary victim of the crime, the person who is missing, is not present. However, information can still be collected through a number of sources. First, families or other loved ones of the missing can supply important information about the circumstances of the disappearance, as well as potentially identifying features. Second, witnesses and survivors of detention centers and sites of other crimes related to disappearance, can provide valuable contextual information on how these systems operate. Third, forensic archeologists and anthropologists can analyze grave sites and unidentified human remains in order to identify the missing. This course will focus specifically on how to collect information on missing persons and victims of enforced disappearance from family members or friends of the missing.

## Types of Questions:

### Basic information about the Missing Person

Full name, Date of birth, Birthplace, Nicknames, if any, and current and previous addresses. Marital status, sex. If female, is she pregnant? Identity document: If available, enclose photocopy or photograph of ID. Are fingerprints available?

Occupation? Education? And his/her Religion?

### Basic information on the Interviewee

Information about the information providers: their names, their father and mother's names, Place and date of birth and place of residence, the degree of relationship with the missing, and contact information.

### Information about the last time the Missing Person was seen

- The time and location of where he/she was last seen
- The name and contact of the individual who last saw the missing person

- The name and contact of the individual who last talked at length with the missing person

### If it is known that the person was detained:

- Location and date/time of their detention/arrest
- Any information on the arrest, identity of arresting entity etc.
- Were there witnesses to the arrest? Who?
- Were others arrested at the same time? What were their names? Are their current whereabouts known?
- Do you know of any detention facility where the missing person was held? When was he/she held there? How do you know?
- Are there any witnesses who have seen the missing person since their arrest? What is their name and contact?
- When did you last receive information on the missing person? What information did you receive? From whom?

### If it is unknown whether the missing person was kidnapped or detained:

- What were the missing person's plans and/or activities on the day they went missing?
- Where was he/she going? Why was he/she going there?
- If the individual was traveling by car, can you provide the make and model number, license plate number, as well as registration (if possible)? Could you provide information about any other vehicles or mode of travel the missing person may have access too?
- What was the attitude of the missing person the last time seen? Was the missing person complaining of or concerned about anything before he/she went missing?

- Are there particular patterns of behavior/ travel that the individual has? For instance, does he/she go to a particular spot for coffee each day?

Remember to collect: Place, date, time, events leading to disappearance, other victims

### Potential People that the Individual would contact

List all of the person's friends and acquaintances who the missing person may try to contact. Try to include addresses and telephone numbers.

### Antemortem Data

The following questions on a missing individual's physical appearance, past injuries, dental records etc., are known as 'antemortem data' and are designed to produce data which can be compared with forensic data collected from human remains. Because this data is specifically designed to assist in looking for an individual who has passed, it may be particularly sensitive to family members. Families should be allowed to skip this section of the interview if they are not comfortable with it. In areas where grave openings have not begun, documenters should assess whether the potential emotional toll of asking these questions is worth the limited investigatory value.

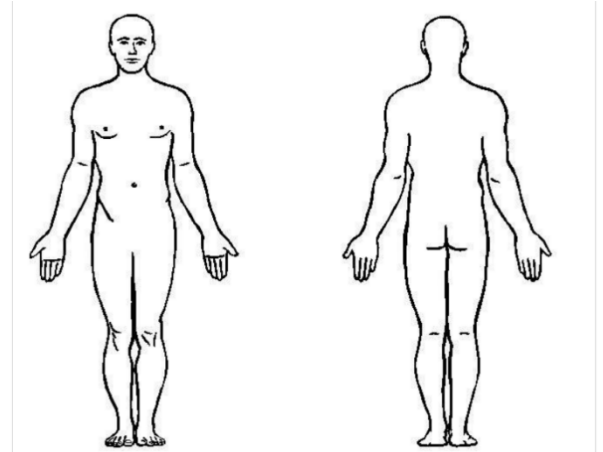
### Physical description of the Missing Person

Height, weight, age, hair color/length of hair, eye color, skin color, body hair, any distinguishing marks – such as tattoos, birthmarks, scars, etc. beard/mustache/sideburns and find the most recent photo of the missing person

Continue on additional sheets if needed. Use drawings and/or mark the main findings on the body chart:

Any Past injuries: amputations include location, side, fractured bone, joint, (e.g. knee), and if person limped? Any other operations, diseases?

Any implants like: pacemaker, artificial hip, IUD, metal plates or screws from operation, prosthesis etc.



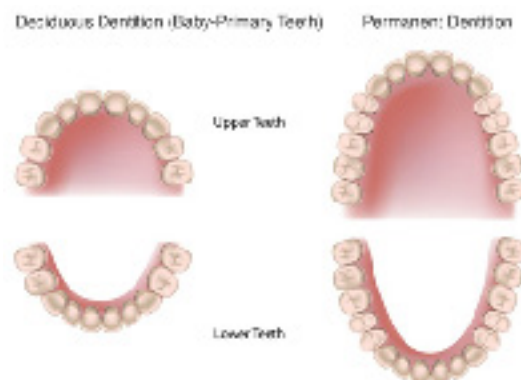
### Dental condition: Please describe

General characteristic: Missing teeth, broken teeth, Decayed teeth, Discolorations such as stains from disease, smoking or other?

Any Gaps between teeth? Crowded or crooked? Any overlapping teeth? Any Jaw inflammation or abscess? Any adornments? Inlays, filed teeth? Any other special feature?

### Dental Treatment:

Has the Missing Person received any dental treatment such as crowns, gold-capped teeth?



Color: gold, silver, white?

Fillings (color if known)

False teeth: upper, lower, Any Bridge or other special dental treatment? Or any Extractions?

## Habits and Personality of Missing Person

Does the individual smoke?

## Clothing that the Missing Person was wearing the last time seen

Clothing worn when last seen: Style and color of shirt, style and color of pants, style and color of jacket or outerwear. If applicable, type of headwear, type of glasses, (glasses color, shape,) contact lenses, type of gloves and type of footwear (boot, shoes, sandals, color, brand, size.) Describe these in as much detail as possible.

Any watch, jewelry, wallet, keys, photographs, mobile phone (include make, provider, number), medication, cigarettes, etc. Describe in as much detail as possible.

## Overall health and condition of the missing person

Physical condition: Any known medical problems? Is the person suffering from Alzheimer's disease/dementia/memory loss? If so, is he wearing an identification bracelet or carrying an identification card? Any handicaps or disabilities? Any psychological problems? Any medications that the individual is taking? Any addictions that the individual has? Provide the name of the missing person's family physician and their health card number, if possible. Could you provide the name of the missing person's main dentist, if possible?

## Ethics of Documentation:

The first principle of investigating missing persons is that one should always assume that the missing individual is alive until proven otherwise. This

is true even if you are collecting documentation intended to help identify human remains. When interviewing families of missing persons documenters should be sensitive about the uncertainty of the persons safety and never uses language that presumes that the individual is dead or will not return.

When preparing to document a missing person with their loved one, it is important to manage their expectations regarding the prospects of the investigation. Many missing persons will never be discovered, and those that are often take many years to find. While participating in a missing persons interview is a valuable way for family members to support the effort to find their loved ones, it is important that they understand that the process does not guarantee them any resolution.

And remember "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.

# IMPARTIALITY

According to the Red Cross/Red Crescent, impartiality means to not discriminate based on nationality, race, religious belief, class, or political opinions. Instead, responses should be based on need. If, for example, a barrel bomb hits a building full of Christian, Sunni, and Alawite families, to be impartial a human rights documenter should interview all the victims and not focus on one group over another.

## Objectivity and Impartiality vs. Neutrality

Neutrality should not be confused with impartiality. Neutrality is about not taking sides or expressing viewpoints. For humanitarian workers, it is important to be both neutral and impartial so they can work without political interference. But human rights activists do not need to be neutral to do their jobs. For example, you can criticize the Assad government for harming civilians as long as you document violations happening against government supporters equally and fairly. It is not neutral, but it is impartial.

### How to be Impartial

- Follow human rights standards and guidelines
- Use documentation to advocate for principles, not ideologies or political positions
- Use objective language (ex: “martyr” and “fatasa” glorify one side and put down

another. They are politicized terms that show bias and decrease impartiality. Use “deceased” or “victim” instead.)

- Be reliable and accurate; lies and even small exaggerations discredit the work
- Draft a clear methodology or policy for documentation and follow it
- Corroborate documentation by collecting and comparing many different pieces of information
- Utilize diverse sources of information
- Hire staff who are impartial and come from diverse backgrounds
- Collect all types of documentation, no matter the perpetrator or victim (if you want to specialize in a certain type of documentation, be upfront and transparent)
- Be consistent – use the same language and standards in all your documentation
- Do not make legal determinations (ex: calling something a “crime against humanity” or labeling someone a “criminal” shows bias. Use “incident” and “suspect” or “actor” instead.)



## Reasons to Stay Impartial

- **Credibility and reputation** – Impartiality is a key principle internationally for human rights documentation, journalism, and even advocacy. By developing a reputation for being impartial, the documentation you collect will be more credible and your work will be taken more seriously.
- **High standards for justice**– Documentation has the potential to be used in future prosecutions or truth commissions, but only if it is impartial and objective. Courts have very high standards for accepting evidence so following best practices like impartiality could increase the future impact of your work.
- **Due process** – Fair and just judicial systems require impartiality. By describing individuals as criminals you are making a judgement before a court has been able to weigh the evidence and come to a fair determination. As members of the human rights community, due process is an important value we should all uphold in order to set a good precedent for Syria's future judicial system.
- **Working in vain** – Documentation is difficult work and can be very dangerous. By being biased, all that hard work is at risk of being dismissed and not used.
- **Upholding quality of documentation** –Lack of impartiality undermines the quality of the documentation.

## Victim-centric approach

Being impartial does not mean ignoring victims. Human rights documenters should remain sensitive to their needs. Some victims do not want to speak and you cannot force them. But if they are willing, their consent is required to conduct interviews, take pictures, or use their personal information. You should also explain to them all the risks, benefits, and reasons for the documentation without overpromising anything. If they have experienced serious trauma, connect them with support services if possible.

Impartiality is not easy. Everyone has been affected by this war, and many people have lost loved ones. It is difficult to put aside personal hatred and remain impartial. Also, others might pressure you to be harsher towards one side over another. But in the long-run, staying impartial will have greater benefits. Ultimately, the facts should be able to speak for themselves, so focus on gathering all the facts through high quality documentation.

# POST-INTERVIEW REFLECTIONS

One of SJAC's policies is to request that Documentation Coordinators write reflections following the interview process. After an interaction with a victim/witness, it is normal to leave with strong impressions about the interview. You might feel particularly moved, they might have said something you want to verify, or you might have overall doubts about the truth of their statements. The sooner you write impressions, the fresher they will be in your mind. Your impressions can serve as a reminder to yourself later, can help others gain insight into your state of mind after the interview, and can contribute to SJAC's ability to assess the reliability of the documentation.

## Assessing Credibility

Consistency is one of the most essential aspects of assessing credibility and should be recorded in the post-interview reflection. There are three types of consistency that you should consider:

- **Internal consistency (objective)** refers to whether the victim/witness provided consistent facts throughout the interview. (e.g., if the interviewee first says that the incident took place in solitary confinement and later says that three other detainees were present, then there is a problem with internal consistency.)
- **External consistency (objective)** refers to whether the interviewee's facts match known, verifiable facts, such as news reports. (e.g., if the interviewee says the incident took place on a sunny day, but weather reports indicate there was a big blizzard at that time, there is an external consistency problem.)
- **Plausibility or apparent reasonableness (subjective)** refers to your own sense of whether the testimony seems reasonable based on your knowledge and experience conducting interviews on similar topics. (e.g., if the interviewee says a Japanese officer gave orders in the facility to torture detainees, that fact might seem implausible if no other interviewees or media reports have ever said that Japan is involved in the conflict.)

## What Type of Information Should I Reflect On?

In addition to the internal and external consistencies explained above, you should also focus on the following during your post-interview reflection:

- **Level of detail** – generally, a victim/witness should be able to provide substantial detail about firsthand experiences. If s/he cannot, even when you press for more information, this is something to reflect upon.
- **Challenging questions** – how does the victim/witness respond to difficult questions and do they remain consistent even when you ask similar questions in different ways?
- **Biases** – everyone has biases, but certain biases might cause someone to exaggerate the harm they suffered. If you sense discernible bias during the interview, it is important to point this out in the reflection.
- **Confidence** – whether s/he responds to questions with confidence should be included in the reflection.
- **Corroboration** – if the victim/witness is able to

corroborate the testimony with photos, videos, documents, or names of other witnesses who can be interviewed, this can be a factor in your post-interview reflection.

- **Emotional responses** – you should not expect everyone to cry when they describe torture, but people will usually exhibit some emotional responses, whether it is sadness, anger, or dark humor. Record these responses, including whether you thought their emotional responses were out of the ordinary. If you are conducting the interview over a call, you may not be able to see the respondent's face, but you can comment upon the intonation of their voice and other types of cues.

note these signs, but you should not use it as a basis to judge the truthfulness or falsehood of testimony.

- Victim/witness recollection is inherently unreliable. Even if someone is not lying, it is human nature to forget details of events, especially if the event happened long ago. Science shows that our brains often fill in gaps for lost memory, leading people to misremember and mischaracterize even basic facts. This is also why it is important not to ask leading questions. Memories are incredibly suggestive, and the victim/witness might unconsciously use the version of facts stated in the question to replace their own lost memories.

## Certainty is Impossible

Your job is to explain WHY you did or did not believe a victim's account of events. Your job is NOT to give definitive judgment on whether something was true. Certainty is impossible, and it is ultimately up to a judge to make the final determination. An inconsistent interview with low level of detail does not necessarily mean the victim/witness was purposefully lying. There are other explanations. For example:

- Victims may have experienced substantial trauma. Torture, sexual violence, and the death or suffering of others can leave marks on a person's memory and cause difficulty recalling details or proper time sequences. Memory gaps and confusion could easily be mistaken for lying. Through experience and training, you should be able to identify signs of trauma, but the exact reason for inconsistencies is still difficult to ascertain.
- Ordinarily, we give more credence to people who express themselves with confidence. These are usually signs that a person is telling the truth. However, due to gender dynamics or trauma, a victim/witness may act shy or hesitant. Their voice might be shaky, and they might feel uncomfortable. It is important to

## Timing and Length of Reflections

The sooner you write down your reflections, the better. If you have time in the interview room, after the victim/witness leaves, then spend a few minutes reflecting. If not, then be sure to write down your reflections later at home, the same day as the interview. You should not spend more than 30 minutes, and five to six sentences are sufficient. But you might want to write more if you have several impressions and/or there were many inconsistencies in the testimony.



# INTERVIEW SKILLS

Interviewing is a very common method of gathering information from survivors and other witnesses, and can be useful if done correctly, sensitively, and professionally.

## As an Interviewer, you should always remember:

- 1-To seek truth and accept it even if it contradicts the theory of your investigation
- 2-To keep an objective mindset
- 3-To avoid agenda driven investigations
- 4- To be curious, but patient
- 5-That good people sometimes lie
- 6-Cooperative and helpful people can be mistaken
- 7-Innocent people may withhold information

## Before conducting in interview, you should prepare by asking yourself questions, such as:

- What is your relationship to the investigation? Why are you doing the interview?
- Do you know background information about the incidents that you are going to interview the witness about?
- What are the points you want to prove or topics you want to raise during the interview?

## Prior to the interview, create a written interview plan that includes:

- 1- Basic background questions, as well as specialized questions related to the investigation
- 2- Documents that a witness could help verify, or to aid in their recall of the incident
- 3- Visual aids such as maps, sketches, pictures of officials/badges, vehicles, or weapons related to the incident, if relevant

During the planning phase, the interviewer should work to ensure that the interview will be carried out to the highest possible legal standards and leave no room for ethical or legal criticism by public prosecutors, defense attorneys, or anyone with an interest in the investigation.

## Do your best to create a controlled environment by:

- 1-Setting up of the interview space yourself (places tables and chairs in a triangle and away from open doors and windows)
- 2- Making sure the space is easily accessible for the interviewee
- 3- Ensuring the space is private and secure
- 4- Preparing necessary recording devices (audio, video, written)

## Inform an interviewee that they can bring a support person to the interview

- 1- The support person should not be a witness to the same incident as the interviewee
- 2- The support person must be discreet and not divulge information about the interview
- 3- It is preferable that the support person should be present only during breaks and not during the interview itself, although they can be in the same room at the witness's request. When interviewing a minor, a parent or guardian should always be present in the same room
- 4- The presence of a support person does not negate the need for a witness to be psychologically prepared for the interview, and they should not act as stand-in for professional psychosocial support if the witness becomes distressed

## Engage with the witness & explain the interview process:

- Remember that building rapport with an interviewee doesn't only happen during an interview. It starts from your very first introduction, and continues through the full relationship
- Introduce yourself and others in the room
- Advise the interviewee of the purpose of the interview and what will happen
- Advise them of any legal consideration
- Explain your organization's mission and objectives
- Reduce the subject's anxiety by answering questions regarding security, confidentiality, etc
- Collect informed consent before commencing the formal interview

- Explain the type of questions that will be asked
- Reassure the witness regarding safety within the interview location
- Record background info regarding the witness such as: full name, date of birth, sex, nationality, ethnicity, and method for long term contact

## Set a good impression at the start of an interview:

- Exhibit signs of sincerity such as keeping an open posture, leaning forward, giving reactive touch (depends on the gender and culture)
- Maintain eye contact, nods, supportive sounds, but give silence when necessary
- Remember that body language and voice volume are most of communication

## Questions and considerations during the interview:

- Encourage free narrative – obtain an uninterrupted account from the subject
- Follow-up with open ended questions: who, what, when, where, why & how
- Use phrases like: “tell me ...,” “explain to me...,” “describe to me ...”

## Always pay special attention to:

- 1- The duration that the interviewee witnessed an event
- 2- How far they were from the event
- 3- How much visibility they had, and were there any obstructions to their view
- 4- Did they know any of the people involved in the incident?
- 5- How long ago did the events occur?
- 6- What factual errors did they make in their interview



## Ask yourself, “how do they know what they know?”

- Check a witness’s level of expertise regarding a specific incident
- Ask questions related to the identification of people/equipment
- Don’t assume their concept of a specific object or incident is the same as your understanding of it. A different understanding of something does not make it false

## Challenge inconsistencies, when appropriate:

- When you notice conflicting information that was collected from a previous interview
- When there is a difference between details provided during the current interview
- When there are gaps related to self-preservation or the protection of close friends and family

## Always conduct a post-interview assessment:

- Assess what effect any new information has on the investigation and if the new information is consistent with what is already known.
- Evaluate how new interviews affect the investigation.
- Did your witness have any “specialist” knowledge? Did you fully collect that information?

**Obtaining Informed Consent**  
Checklist for Documentation Coordinators

**Sample use only. Edit with your organization's details before using**

**Date:** \_\_\_\_\_

**Informed Consent Obtained by:** \_\_\_\_\_

**Respondent (Name or Index#):** \_\_\_\_\_

**Checklist:**

When was Informed Consent obtained? *Informed consent is REQUIRED for all SJAC interviews. This must be done BEFORE the interview; in cases where this is not possible, Coordinators must attempt to obtain informed consent after the interview.*

- ☐ Prior to interview
- ☐ After interview
- ☐ After interaction with third party

How was informed consent obtained?

- ☐ An official SJAC Informed Consent Form BEST OPTION (If the respondent cannot read the informed consent, you must verbally read it to him or her)
- ☐ A handwritten informed consent (the handwriting says that the respondent has understood the purpose, benefits, and risks of documentation as well as SJAC's confidentiality and security policies and their right to not participate)
- ☐ Filmed on Video (you must explain the informed consent on video)
- ☐ Voice Recording (you must explain the informed consent while recording)
- ☐ Emailed informed consent (only use this option if it is the only way to obtain informed consent)

How is the respondent identified? A signature or recorded/filmed acceptance signifies consent so it is very important. If the respondent does not wish to be identified, you must assign a number to his or her file. The number corresponds with the name.

- ☐ Signed and Dated
- ☐ Index # and Dated
- ☐ Filmed with face showing in video – verbally says “I agree to be documented”
- ☐ Filmed without face showing, index # spoken – verbally says “I agree to be documented”
- ☐ Voice recording with name – verbally says “I agree to be documented”
- ☐ Voice recording without name, index number spoken – verbally says “I agree to be documented”

Discussed with Respondent? Give the respondent enough time to read the form. If the respondent cannot read, then read the form to them. After s/he has finished reading, go through each section, explaining the points. During and after this explanation, ask if the respondent has any other questions.

- ☐ General information about informed consent
- ☐ Purpose of Documentation (SJAC will USE this documentation to push for justice and by documenting with SJAC respondent's experience has a greater likelihood of coming into the hands of any future justice mechanism)
- ☐ What Is Involved in Documentation
- ☐ Benefits of Participation (manage expectations and be clear that SJAC cannot guarantee that the respondent will every directly benefit – possible that justice mechanisms are never established) Risks (explain each risk even if it seems obvious)
- ☐ Confidentiality and Security (explain beyond what is in the form – the personal measures you take to ensure security)

- Remember to be VERY clear that SJAC may share information in LIMITED situations and that they MAY be contacted at a later date (by a prosecutor for example)

- ☐ Respondents' rights (interview is voluntary; if respondent chooses to end the interview in the middle, do not pressure the respondent to stay or to answer any questions that s/he does not feel comfortable with)

## Informed Consent Form

Sample use only. Edit with your organization's details before using

This form represents your consent to document information about abuses and violations in the Syrian conflict (your experiences or observations) with the Syria Justice and Accountability Centre (SJAC). Please take the time you need to decide whether to participate. Whether you participate is **your choice**. As a prerequisite for your participation, SJAC wishes to ensure that you are fully informed about the purposes and potential results of your participation. **Note that this interview does not constitute legal advice, or any other form of service or support imparted by SJAC and its staff to interviewees. Interviewees should contact an attorney to obtain advice with respect to any particular legal matter. Only your individual attorney can provide assurances regarding information from the interview that is applicable to your particular situation.** If you have **any remaining questions**, feel free to ask the SJAC Documentation Coordinator.

**PURPOSE:** SJAC is a Syrian-led, multilaterally supported nonprofit that envisions a Syria defined by justice, respect for human rights, and rule of law. SJAC promotes transitional justice and accountability processes in Syria by collecting and preserving documentation, analyzing and cataloging this data, and using it to encourage public discourse within Syria and internationally. The purpose of the documentation SJAC collects is to create a record of the conflict and to push for appropriate justice mechanisms that will respond to the needs and interests of Syrians. These could include criminal trials, reparations, missing persons programs, truth commissions, criteria for who is allowed to hold public office, and the reform of institutions.

**WHAT IS INVOLVED:** If you decide to participate, the SJAC Documentation Coordinator will ask you to provide details on what you saw and experienced, where the events happened, who was involved, and the physical and psychological harm that you or others endured. The questions might be sensitive and could bring back traumatic or difficult memories. Interviews generally last between 30 to 90 minutes. The Documentation Coordinator may also ask if you have pictures, videos, medical records, or other forms of documentation. You are under no obligation to share these materials, but it could help greatly in SJAC's documentation process.

**BENEFITS OF PARTICIPATION:** The benefits of participating in an interview with SJAC are that you 1) help build a record that can be used to drive justice and accountability overall for Syria and 2) that you have lodged your personal experience with an organization that has high chances of direct contribution to future justice mechanisms. Although lodging your story with SJAC will not by itself make you eligible for victims programs, it ensures that your story is on the record and increases the chance that a future justice mechanism will actually see and address the violations you experienced or observed. However, SJAC cannot guarantee that you will personally experience direct benefits from participating. The benefits, if any, will most likely be seen in the long term, and you will receive no monetary compensation for your participation in the interview.

**RISKS:** Participating in the interview involves some risks. SJAC takes significant precautions to ensure your safety both during and after the interview, but the ongoing conflict creates a high degree of insecurity. There is a risk that the security precautions SJAC has in place are subverted and your documentation or personal information is obtained by individuals who could cause physical or psychological harm to you or your family. There is also a risk that by recounting the details of your experience or observations, you may re-experience psychological trauma. There may also be other unexpected risks that SJAC cannot predict.

**CONFIDENTIALITY & SECURITY:** We will take the following steps to keep information about you confidential, and to protect it from unauthorized disclosure, tampering, or damage: 1) the interview location is secure and private; 2) the Documentation Coordinator does not speak about the interview to anyone outside of SJAC; and 3) your information is stored on hard drives and in a database that are kept safe and secure. Furthermore, SJAC will not share your interview, or other information about you, with any person or institution unless SJAC receives a formal request for data from an institution with the capacity to use the data for justice and accountability purposes and the institution follows confidentiality and security protocols that are as strict or stricter than SJAC's. **Should you exercise your right to remain anonymous, SJAC will anonymize your interview prior to sharing it with third parties.** \*\*\**By consenting to this interview, you acknowledge that SJAC may possibly share documentation of this interview with institutions that meet these criteria, and that this means there is a chance that persons acting on behalf of these institutions will try to contact you in the future if you do not request anonymity.*\*\*\*

**YOUR RIGHTS:** The interview is voluntary. You have the right not to participate and can end the interview at any time. Refusing to participate will not result in any penalty, and will not harm your relationship with SJAC.

**Name or Index # of Participant:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Syria Justice and  
Accountability Centre



[syriaaccountability.org](http://syriaaccountability.org) | [@SJAC\\_info](https://twitter.com/SJAC_info)