

TESTIMONIES FROM BEHIND BARS

Short leaflet on collecting
testimonies from detained
asylum seekers

This leaflet has been drafted mainly for attorneys and legal counsels to help them with gathering effective information for litigation purposes. As *de facto* detention of asylum seekers is becoming more common in Europe, while information on the facilities where people are detained is scarce, we hope that the guide will prove useful for advocacy purposes as well.

De facto detention is a deprivation of liberty that occurs in the absence of a detention order and it is not classified as detention under domestic law. Additionally, asylum seekers detained in such establishments cannot make use of procedural guarantees and have no opportunity to seek judicial review of their detention. In such situations, the litigation needs to start by showing that **the placement in question actually amounts to deprivation of liberty**. It is crucial that situations of detention are properly identified, in order to assure that a person has proper safeguards related to detention. The difference between restriction and deprivation of liberty is consistently explained by the European Court of Human Rights as a question of degree or intensity, and not one of nature or substance.¹ Determining whether a person is detained or is subject to mere movement or residence restrictions requires first and foremost **a factual assessment of the concrete situation of the individual concerned**. The determining factor is not the name of the place, neither how the confinement is classified in domestic law. The purpose of measures taken by the authorities depriving individuals of their liberty is not decisive for the assessment of whether there has in fact been a deprivation of liberty. Even measures intended for protection or taken in the interest of the person concerned may be regarded as a deprivation of liberty.²

There are several factors that should be taken into consideration when determining the intensity of restrictions. These include but are not limited to:

- type,
- duration,
- effects,
- manner of implementation of the restrictive measures in question,
- degree of coercion used,
- size of the area of confinement,
- level, frequency and intrusiveness of supervision and control over the person's movements,
- the extent of isolation,
- the extent to which contact with the outside world is permitted.

The assessment of detention raises an objective element of deprivation of liberty, as well as a subjective element pointing to the individual's understanding that his or her freedom is taken away.

More often than not, human rights monitoring groups and attorneys have difficulty gaining unrestricted access to facilities where asylum seekers are kept. The lack of access results in the lack of reliable, transparently obtained first-hand information that could be used as evidence by the legal representatives. A possible way to obtain at least some of the information contained in traditional monitoring reports is the collection of testimonies from detainees currently or previously kept in such a facility, and/or those working at these sites. In order to have a high evidentiary value (in advocacy or litigation), these testimonies should be taken with great care, following a professional protocol.

This short guide provides a step-by-step introduction to taking testimonies in this context.

1. Have a **clear plan** of exactly what you want to find out (e.g. available services at the facility, physical layout of the facility, a general overview of the situation inside the facility or an individualised assessment of the conditions of detention of a specific individual).
2. Based on your plan, try to **devise a few profiles** of the individuals you would like to interview: e.g. do you need child-specific information, or you only need data on single adult men, etc. If you need a general overview of the facility, identify profiles that when taken together are most likely to provide you with a comprehensive description.
3. **Know your interviewee**: try to obtain in advance at least basic information of the person: e.g. single or married, do they have children, do they have any special needs or vulnerabilities, do they have any serious medical conditions or posttraumatic symptoms, are they on medication, what language do they speak, are they eventually illiterate, etc. This will help you better tailor your questions and make sure you can accommodate language and gender specific requirements.
4. **Inform** the interviewee what will happen with the information and the data shared during the interview. If needed, ask the interviewee to sign a consent form. The interview should be voluntary.

1 *Khlaifia and others v. Italy* (Grand Chamber), Appl. No. 16483/12, 15 December 2016, para. 64.

2 *Idem.*, para. 71.

5. When conducting interviews, keep in mind the following techniques:
 - **Privacy** – Conduct interviews in private settings, preferably one-on-one with the interviewee.
 - **Corroboration** – It is always better to have several individuals describing the same facility: if possible, crosscheck previous statements in order to confirm claims or expose exaggerations.
 - **Focus on details** – By focusing on details, interviewers can identify false or misleading statements or whether statements concern personally experienced events and circumstances, as opposed to hearsay.
 - **Repetition** – Asking interviewees to repeat or clarify information that they have given earlier in the interview is another technique used to expose false statements.
6. It is never only about questions: the interviewee might be able to provide you with **photos, video recordings** of the life inside or **draw** the layout of the facility, so be ready to make a copy of these.
7. Use adequate **plain language**, adapted to the educational/socio-cultural background of the person. Also instead of metric/imperial measurement ask them to show sizes with steps or arms or define size, temperature, etc. relatively (compared to other things).
8. Avoid re-traumatisation and unnecessary intrusion into private sphere, as well as sensitive questioning.
9. Always **start with general questions**: e.g. what one day looked like inside.
10. Then proceed with more **specific ones regarding the physical circumstances**: e.g. was he/she allowed to leave freely/with permission/not at all; how big was the living space; was the temperature adequate; what did the toilets look like; was there a community space, if so, what did it look like; did the interviewee have access to an open-air area, if so, what did it look like; was access regulated to it, etc.
11. After obtaining an understanding of the physical conditions of the facility, proceed to the **questions on services**: e.g. how interpretation was provided and which services included interpretation; how food was provided; were they able to buy items and/or to cook; how health care was provided; were there any activities, if so, what type of activities and how often; did they have access to the external world, if so, by what means, etc.
12. After understanding both the physical conditions and the available services, always ask questions regarding the **treatment**: were they handcuffed at any time, if so, what were the reasons; have they been separated or isolated from other people against their will; have they been ill-treated in any way, etc.
13. The **last question** should always be: What were your biggest problems in the camp/jail that you have not mentioned so far?
14. When **writing the report**:
 - Adopt a clear structure that best suits your needs and the data you have.
 - Use as many direct quotes as possible.
 - Unless the report is used in the case of the interviewee, reference interviewees in a general way, e.g. a single mother from Central Asia.