***Training Materials on the International Protocol***

**PART 2 MODULE 6 – TESTIMONY**

**Session objectives:**

* Recognising the importance of and requirements for obtaining informed consent
* Understanding potential sources of testimony and confidentiality obligations
* Identifying available referral options and relevant practical issues for referrals

**Suggested duration of session:**  90 to 150 minutes

**Exercise:** None

**Relevant sections of International Protocol:**

Pages 44-50; Module 3 – Preliminary Considerations; Module 4 – Key Planning Topics; Module 5 – Identifying Survivors and Other Witnesses; Module 7 – Interviewing; Annex 2 – Multi-Sectoral Responses; Annex 5 – Referral Systems

This module provides more detail on some key planning and ethical considerations for dealing with survivors and witnesses and lays the groundwork for Module 7 on Interviewing. The trainer for these sessions must therefore have professional experience in investigation/documentation and interacting with witnesses.

The trainer should be conscious of terminology in this module – some participants may be authorised to collect formal *testimony*, some may only be collecting *statements* from survivors or witnesses, some may use the two terms interchangeably. The trainer should research and be aware of any specific legal requirements for witness testimony in the legal frameworks relevant to participants (i.e. taken under oath, formally recorded, collected by relevant authorities) and highlight these to the participants. It should be emphasised that they can still collect relevant information in the form of statements, but that there may be obstacles to using those statements as evidence in future legal proceedings if they do not comply with any requirements for formal testimony. The participants should be encouraged to discuss and carefully consider whether it is necessary or appropriate for them to collect statements, from survivors in particular, or whether they could document the same information through other means. Participants should understand that, depending on the relevant legal system, convictions or findings of responsibility in relation to sexual violence against a particular survivor may not require testimony or statements from that survivor. The trainer should also make clear that whether the participants are collecting testimony or statements, when they are dealing with survivors, witnesses or other individuals affected by sexual violence, they must be sure to respect their ethical and procedural obligations in relation to confidentiality, informed consent and the Do No Harm principle.

In the section on informed consent, the trainer should emphasise that this is both a legal and ethical requirement. If the participants are dealing with people who have survived or witnessed horrific acts of sexual violence, they must have the professional and personal sensitivity to realise how important it is to give that person a sense of control over their involvement in the investigation or documentation process and to respect their wishes. Providing a statement can be a difficult and emotionally draining experience, so interviewers should take every opportunity to make sure that survivors or witnesses are comfortable with cooperating, that they are treated with dignity, care and respect, and that they do not feel pressured, manipulated or exploited by the process.

The participants should also realise that survivors or witnesses may have no idea who the investigation/documentation team are, where they have come from, what they want to talk about and why, what their agenda is or whether they constitute a threat. It is the responsibility of those investigating or documenting sexual violence to patiently and clearly explain all the relevant details to survivors or witnesses – several times if necessary, and in language they can easily understand – and to ensure that they fully comprehend what has been explained to them and are capable of agreeing. The trainer should also emphasise the issue of power dynamics (particularly for international investigators) and highlight how survivors or witnesses might not feel comfortable refusing to participate or asking for more time to consider their options when dealing with a stranger or someone who seems to be in a position of authority. Likewise, when dealing with children or those with limited capacity, it is important to make sure that the person is able to comprehend what you are telling them and to try to assess whether they are capable of giving consent. The participants should also consider how best to record or certify that survivors or witnesses have given their informed consent.

In relation to confidentiality, the trainer should refer back to sections on working with interpreters in Module 4 and working with intermediaries in Module 5 to emphasise that confidentiality requirements apply to the whole team and any support staff. Confidentiality is also relevant to risk assessments and potential impacts of sexual violence, since survivors or witnesses may be extremely anxious about anyone finding out that they have been directly affected by sexual violence or that they have cooperated with the investigation/documentation process. Participants should be made aware of special considerations that may apply to interviewing male and child survivors or witnesses.

The participants should be particularly cautious with their planning, information storage and field activities to avoid accidentally or negligently revealing confidential or potentially identifying information. They should also think carefully about the ultimate use of the information they collect (i.e. sharing with national authorities/international organisations) and what impact that could have on their ability to guarantee the security or confidentiality of their information. The trainer should make clear that confidentiality is often a major issue for survivors and witnesses and that they are likely to seek reassurances about anonymity or keeping their information private. If investigators cannot personally guarantee the ongoing confidentiality of the information – and in most circumstances, no matter how good their intentions, it simply will not be practically possible – they must understand that they should not make any promises to the survivor or witness. Not only does it have the potential to damage trust if that promise is later broken, it may also have been a critical or decisive factor in their decision to cooperate and therefore be capable of undermining their informed consent. It should be emphasised to participants that if (or more commonly, when) interviewers cannot guarantee confidentiality, they should not promise it. The trainer should encourage discussion about this issue and how it might be applied to their work.

The final section of this module relates to referrals and the availability of suitable support services for survivors and witnesses. The trainer should research relevant referral and support systems for sexual violence in their areas where participants work and highlight these to the participants, and should also ask them for examples of useful medical, psycho-social, legal or protective services that they have worked with in the past. The participants should understand that many survivors and witnesses of sexual violence may not have received any support or assistance since the event and may be struggling with the long-term physical, psychological and emotional consequences. In such cases, it may be necessary to make a referral before even approaching the survivor or witness. Even those who have previously received support or referrals can be re-traumatised or distressed by being asked to re-live and discuss what happened, so it may be necessary to arrange a follow-up referral after meeting with them. The participants should view referrals as part of their professional and ethical obligations, including the Do No Harm principle, and use them as a means of mitigating any potential risk or damage caused by the investigation or documentation process. They must also make clear that referrals are a humanitarian response, not a bribe or inducement – the survivor or witness should not feel that the referral is dependent on their cooperation or the information they can provide. The trainer should also emphasise that many existing support services for sexual violence are designed and provided for women only and may not be able or willing to accept referrals of male survivors or witnesses. Referral services for children also need to be adapted to meet their specific needs.