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

**PART IV MODULE 7 – DO NO HARM**

**Session objectives:**

By the end of the session, participants should be in a position to:

* Recognise the fundamental importance of the Do No Harm principle and a survivor-centred approach to documentation
* Explain what informed consent means and when and how to obtain it
* Identify categories of measures to prevent, mitigate or respond to potential harm

**Suggested duration of session:**  90 to 120 minutes

**Exercise:** None

**Relevant sections of International Protocol:**

Pages 84-103; Module 2 – Understanding Sexual Violence; Module 8 – Safety and Security; Module 9 – Planning; Module 11 – Interviewing; Module 13 - Storing and Handling Information; Module 16 – Sexual Violence against Children; Module 17 – Sexual Violence against Men and Boys; Annex 2 – Conducting Threat and Risk Assessments; Annex 5 – Organisational Security Good Practices Checklist

This module is the first module relating to Part IV of the Protocol (Documentation in Practice - Preparation). Part IV covers the Do No Harm principle, safety and security issues, planning considerations and an overview of types of evidence of sexual violence. It should be closely linked with Module 8 (Safety and Security), Module 9 (Planning) and Module 10 (Types of Evidence of Sexual Violence), as these four modules cover important topics for the planning and preparation phase of any investigation or documentation. The trainer for these modules should therefore have experience in planning and managing documentation processes. It should be emphasised to the participants that the issues covered in Modules 7-10 will need to be carefully considered *before* conducting any inquiries in the field. Taking time and care in the planning and preparation phase will result in more organised documentation processes, stronger and more relevant evidence or information, increased clarity about the roles and responsibilities of different members of the documentation team, more detailed recognition of potential risks or security considerations, and, ultimately, a better chance to pursue accountability for sexual violence crimes or violations. If any of the participants are already engaged in documentation and have not encountered or considered these issues before, they should be encouraged to assess and discuss whether they could usefully be applied to their current work.

This module covers the fundamental ethical principle of Do No Harm. The trainer should start the session by asking the participants if any of them have heard of this principle, and if so what it means to them. The basic postulate of the Do No Harm principle – that individuals should not be exposed to unnecessary risk or left in a worse situation as a result of their interaction with investigators or documenters – is part of the ethical requirements for many different professions, but the exact details of how it is applied in practice can vary (between doctors and humanitarian field workers, for example). If participants have encountered it before, they should be encouraged to discuss their experiences and any challenges they faced.

If the participants are not familiar with it, the trainer should emphasise that the Do No Harm principle requires them to adopt a survivor-centred approach to documentation and support survivors’ autonomy. This means that they have to prioritise the needs and wishes of victims and witnesses ahead of the objectives of their documentation process. The trainer should remind participants that to Do No Harm constitutes a minimum requirement and that they should aim to go further and empower survivors through participation and decision-making throughout the documentation process. The principle of Do No Harm requires participants to think carefully about potential risks or harm that could affect not only individual victims or witnesses and their families and communities as a result of interacting with them but also members of the documentation team. Participants should make every effort to avoid or minimise the risk of harm, and if identified risks are unacceptable, they should stop the process. The trainer should remind participants that victims are first harmed by the perpetrator(s), but that they can then be further harmed by their families and communities, poorly trained practitioners and service providers as well as unresponsive or inadequate police or justice mechanisms as illustrated by the visual on slide 4.

The participants must understand that they have a responsibility to consider the impact that their actions will have on those with whom they come into contact (including but also beyond victims and witnesses) and to make an effort to treat them all with care and respect. It may be useful to return to some of the slides in Module 2 (Understanding Sexual Violence), for example to review the impacts of sexual violence as potential sources of harm and to underline the importance of avoiding stereotyping of victims/survivors. Slide 6 introduces the second and third part of the module by highlighting that the Do No Harm principle obliges us to fully - and upfront - disclose to victims/witnesses potential risks associated with their participation in the documentation process in order for them to make an informed decision, as well as putting in place appropriate measures to mitigate risks.

The second component of the module (slides 7-10) relates to the legal and ethical obligation to obtain informed consent – which is grounded in the principle of autonomy - from victims/witnesses regarding their participation in the documentation process and, as the case may be, its modalities. The trainer should underscore that informed consent is not a simple box-ticking exercise to complete when practitioners first meet a victim or witness, but a *process* which requires victims/witnesses to consent throughout all stages and regarding all aspects of documentation, based on full disclosure by practitioners who should ensure that victims/witnesses, and/or their legal representatives when children are involved, have the competency to consent, have clearly understood all risks involved and are making their decision based on their free will.

The third and last component of the module (slides 11-25) covers the four main categories of measures that practitioners should put in place to prevent, mitigate or respond to potential harm, detailed under the following headings: (i) threat and risk assessments; (ii) coordination; (iii) confidentiality; and (iv) referrals.

Slides 12-14 deal with the concept of threat and risk assessments and the methodology of how to conduct them. Further details about possible threats and practical measures to mitigate identified risks are covered in Module 8 (Safety and Security). The trainer should emphasise the difference between threat and risk – a threat assessment involves identifying any and all *potential threats or vulnerabilities* which could cause harm to victims, witnesses or team members, or the security of equipment, infrastructure or information, whether those threats arise from current or former perpetrators, the physical environment or any other source. A risk assessment analyses the *individual risk or likelihood* that those threats could come to pass, and tries to identify *mitigating measures* which could reduce the impact or likelihood of harm. The trainer should consider including examples of both from their own professional background. In situations where the risk is too significant and cannot be mitigated, then that witness or information should not be pursued.

In order to assess or minimise the potential harm to any individual, a (formal or informal) threat and risk assessment will be needed. The steps to follow are presented on slide 14 and further detailed with some examples in Annex 2 of the Protocol (Conducting Threat and Risk Assessments). When thinking about the safety of others, it is also necessary for participants to consider themselves and their own team. The most important thing is to remember to think and plan carefully rather than simply taking action or taking no action with good intentions. The participants must understand that in doing this kind of work, their actions can have both positive and negative consequences and that they are responsible for those consequences.

Another way to mitigate potential harm is to ensure proper coordination (slides 15-17) with referral services and other documentation efforts which may be under way in the context where the participants operate. Participants should be encouraged to critically consider how much they know about other actors involved in documentation in their context, their activities and mandate, and the impact that multiple lines of inquiry may have on victims/witnesses and their communities. The trainer should highlight that poor coordination between various agencies and organisations dealing with a specific crisis or conflict can seriously harm individuals who are made to repeat their traumatic stories multiple times to different people for different reasons and lead to assessment fatigue and mistrust from communities who may be left feeling used – even by well-meaning initiatives - when promises have not been fulfilled or expectations not properly managed. This can prevent other organisations to work effectively and create conflicting factual statements whose inconsistencies - if the statements or information are not excluded for that reason - can be exploited to damage the credibility of victims/witnesses in court or before other accountability mechanisms at a later stage.

Practitioners should always ask themselves: Can I find the piece of information I am looking for without having to interview victims/witnesses? Do I really need to interview this specific victim/witness? Is this in the best interest of the victim/witness and is it what s/he wants? The main point to get across here is that a survivor-centred approach requires that every effort should be made to avoid CARSV victims having to repeat their stories. Re-documentation should only take place in exceptional circumstances and after careful considerations of all applicable factors, which may include, among others, the purpose of the initial and envisaged documentation processes, the actors involved - keeping in mind that mandated documentation efforts should generally be prioritised, though only after a proper assessment of those mandated efforts in terms of their goals, reach, efficacy, etc. – and whether the initial and envisaged documentation relate to the same or different CARSV incidents. The safety, wellbeing and wishes of the victims/witnesses should always take priority over the information.

Confidentiality (slides 18-21) measures are another safeguard that participants are required to put in place to prevent or minimise potential harm to individuals and information. The trainer should highlight certain key points:

* Confidentiality is not only an ethical obligation but an operational necessity as privacy and security measures are often critical in building trust with victims/witnesses and a pre-requisite to them accepting to disclose information.
* Confidentiality may have a different meaning to different people and it is the responsibility of documenters to clarify to victims/witnesses what they mean by confidentiality and avoid any misunderstandings (e.g. what information will be kept confidential, how, who will have access to it, etc.).
* Facilities and procedures should be designed to ensure confidentiality - as will be further developed in Module 8 (Safety and Security).
* Confidentiality can however only be guaranteed to the best of one’s abilities - complete anonymity or confidentiality should never be promised as participants are not immune to information leaks or hacking.
* They may be also subject to official requests for information or court appearances from criminal justice authorities to which they may not be in a position to oppose a legal privilege; depending on the context, the consequences of a refusal to comply with a court order may include fines, suspension of activities or even imprisonment.
* As a result, in situations where there is a high risk of subpoena or court appearance order and the public disclosure of information raises serious concerns about the victim’s/witness’ safety and security, participants may have to refrain from taking the testimony, identifying information or information about the whereabouts of the victim.

The last four slides (slides 22-25) cover referrals, as the final key set of measures to mitigate harm to victims/witnesses. During the preliminary research and planning phase - which will be covered in detail in Module 9 (Planning) - practitioners should find out which support services (medical, psychological, legal and social/protection) are available to female, male and child victims of CARSV. Preliminary research may show that referral services are unavailable, or that they are not open to all survivors (for example, male survivors cannot make use of their services).  If possibly relevant for the participants' work, the trainer should elicit discussion among and provide guidance to participants on what to do in such situations before revealing the information on the slides. The trainer should also stress that referring victims to service providers should not be dependent on or be perceived to be dependent upon victims/witnesses’ participation in the documentation process.