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

**PART IV MODULE 10 – TYPES OF EVIDENCE OF SEXUAL VIOLENCE**

**Session objectives:**

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

* Identify the different categories of CARSV evidence
* Recognise the impact of applicable evidentiary and procedural requirements
* Understand the professional, ethical and other limitations on evidence collection

**Suggested duration of session:**  60 to 90 minutes

**Exercise:** None

**Relevant sections of International Protocol:**

Pages 140-159; Module 4 - Individual Criminal Responsibility; Module 5 – State Responsibility; Module 7 – Do No Harm; Module 8 – Safety and Security; Module 9 – Planning; Module 11 – Interviewing; Module 13 – Storing and Handling Information; Module 14 – Analysing Evidence and Information; Annex 1 – Evidence Workbook; Annex 3 – Reasons not to Collect Physical Evidence; Annex 4 – Sample Sexual Assault Medical Certificate; Annex 9 – Chain of Custody Form

This module is closely linked with Module 7 (Do No Harm), Module 8 (Safety and Security) and Module 9 (Planning), and constitutes the last module of Part IV of the Protocol dealing with the planning and preparation phase of an investigation or documentation process. It provides detailed information about potential types of information/evidence and risks associated with collecting different types of evidence. It is also closely linked with Module 11 (Interviewing) and Module 12 (Collecting Additional Information). It is essential for participants to understand the professional and ethical requirements for evidence collection, and to consider whether they have the relevant authority, professional training and/or resources to safely collect and store each type of evidence before gathering it. The trainer for this session should have experience in planning and managing an investigation or documentation process and dealing with witnesses and various forms of evidence. As already mentioned, the issues covered in Modules 7-10 will need to be carefully considered *before* conducting any inquiries in the field.

Throughout the module, the trainer should encourage the participants to discuss the types of information that they are already collecting, who in their organisation does so and how, where and how it is stored, whether they could consider collecting other types of evidence (e.g. information posted on social media), whether they have procedures in place for mitigating the risks associated with handling and storing different types of evidence, whether they have the necessary authority or professional training to do so, and/or what additional skills, equipment and/or resources they would need to do so safely. Participants should also discuss any applicable law, including how rules of procedure and evidence (RPE) applicable in their context compare with RPE applicable before international courts and tribunals, and what the importance is of any differences in applicable or potentially relevant law (including, for example, differences concerning the need for or not of corroboration evidence and the use or not of hearsay evidence).

The module first presents the four main categories of evidence (testimonial evidence, documentary evidence, digital evidence and physical evidence) and highlights the critical importance of applicable RPE. The trainer should in particular emphasise that applicable standards of proof may vary depending on the legal system and the purpose of documentation: standards of proof applicable in criminal prosecutions are usually higher than those applicable to other forms of accountability. The trainer should also stress that participants should find out what type of evidence or proof of sexual violence needs to be provided for civil, criminal or other claims as appropriate and which organisations and individuals are permitted to collect and/or store certain categories of evidence in the context in which they are operating. They should refrain from collecting evidence if they don’t have the necessary authority or training to do so as they may otherwise mishandle the information and make it inadmissible in court. The trainer should also highlight that applicable RPE may not be in line with international standards and may impact upon access to justice for CARSV victims. For instance, in certain national jurisdictions, the testimony of a victim of sexual violence alone is not sufficient to obtain a criminal conviction, and there is a requirement – whether formal or informal – for such testimony to be corroborated by medico-legal and/or other evidence. In some contexts, a CARSV victim must first report a sexual assault to the police in order to obtain an official medical certificate from a government approved doctor. These requirements can constitute a significant barrier to accessing justice for victims, in particular where the crimes were committed by government officials (e.g. army, police), where the victim was not able to report the crime or see a doctor immediately after the assault, or where the victim did not sustain physical injuries. An absence of ano-genital trauma or sperm in the victim’s body does not mean that sexual violence did not occur.

The trainer should warn the participants that in many CARSV contexts, because the crimes were committed far in the past, because of deterioration or tampering with evidence, because of the lack of medical services during contexts of mass atrocities, or due to other factors, there may not be any documentary, physical, medical, or audiovisual evidence.  This may be more common than not.  However, the trainer should also emphasise that an absence of documentary, forensic, physical, medical or audiovisual evidence does not necessarily mean that there can be no justice for those crimes.  It should be highlighted that in international courts such as the International Criminal Court physical and forensic evidence is not necessary to prove sexual violence as an international crime, and that international crimes can be established solely on the basis of victim and witness testimony.  Even in jurisdictions where it is uncommon or would be a new practice, the relevant authorities may gradually evolve to accept witness testimony where no other evidence exists.  This evolution will ultimately be necessary if the jurisdiction seeks to provide access to justice for CARSV crimes. The trainer should urge the participants to look for additional corroborating evidence where possible (as corroborating evidence is always useful) or where necessary, if the relevant legal system demands that, but also to consider information obtained directly from victims and witnesses as a central and critical component of their investigation/documentation efforts.

After slide 9, the module is split into four main sections: A) Testimonial evidence (slides 10-14); B) Documentary evidence (slides 15-17); C) Digital evidence (slides 18-21); and D) Physical evidence (slides 22-26).

The collection and handling of each type of evidence requires specific skills and experience. In addition, some jurisdictions have standards in place for the collection and exploitation of digital evidence and most provide that physical evidence can only be collected and handled by trained law enforcement investigators or health professionals complying with strict chain of custody requirements to be admissible in court. The trainer should reiterate that considering the sensitivity of the topic and unique risks faced by CARSV victims/witnesses (e.g. stigma, family rejection, imprisonment), taking witness testimony from CARSV victims/witnesses can only be done by practitioners with specific experience and skills. While these training materials on the Protocol, including Module 11 dealing with interviewing techniques, can be used to enhance the capacity of practitioners in that respect, participation in a training on the Protocol will not automatically and instantly make participants experts in the field. Participants without any prior experience dealing with CARSV victims/witnesses should only approach and interview CARSV victims after receiving additional mentoring and/or under the close supervision of more experienced colleagues. Dealing with male victims and child victims/witnesses require additional expertise as discussed in further details in Module 16 (Sexual Violence against Children) and Module 17 (Sexual Violence against Men and Boys).

In the section on testimonial evidence (slides 10-14), the trainer should in particular discuss the different categories of witnesses (survivors/victims; eyewitnesses; corroborating witnesses; insider witnesses; expert witnesses; and overview/pattern witnesses) and what elements of international crimes they are most likely to help establish. For instance, overview/pattern witnesses (e.g. doctors, nurses, military or human rights observers) can provide extremely valuable information to help establish the common elements of international crimes and contextualise sexual violence. The trainer should highlight that approaching co-perpetrators and other insiders is a risky business and can only be done by trained investigators. It is also important to stress the need to discuss with victims/witnesses *all* the crimes that they may have experienced or witnessed, in order to show how the sexual violence fits within a broader campaign of violations. Finally, the trainer should emphasise the fact that in international courts and tribunals corroborating evidence in the form of physical and forensic evidence is not legally necessary to prove an international crime (but usually is very helpful), that international courts and tribunals rely heavily on witness testimony and that cases built almost exclusively on witness testimony have led to successful prosecutions and convictions.

In the section on documentary evidence (slides 15-17), the trainer should encourage participants to discuss the different types of official and non-official documentary evidence that they may or may not already be collecting, where they can find them and their role. The trainer should ensure that participants understand that when talking about documentary evidence, the actual evidence is the information recorded in the physical document, as opposed to the document itself. The document itself can sometimes also constitute physical evidence and be subject to chain of custody requirements, for instance if it has an official stamp or signature which can help authenticate it. When talking about medical certificates and other health records, the trainer should highlight that these documents cannot be obtained without the informed consent of victims and that many health providers will choose not to share medical records due to privacy concerns. The trainer should also highlight here that anonymous clinical records, statistics and other programmatic data - showing for instance changes in the number of unwanted pregnancies, fistula surgeries or spikes in sexually transmitted diseases over a given period - can provide useful clues or substantiate evidence establishing specific patterns of abuse.

In the section of the module dealing with digital evidence (slides 18-21), the trainer should encourage participants to discuss different forms of digital evidence (e.g. emails, text messages, pictures and videos taken with electronic devices or posted on social media), where to find them, which ones they are already collecting, and specific risks associated with extracting and handling digital evidence. For non-mandated actors, taking pictures and/or videos of sites of violations or injuries is likely to be the most straightforward and appropriate way of documenting CARSV by using digital evidence. The trainer should emphasise that open-source information such as photos and videos posted online will need to be carefully authenticated by digital experts to ensure they are not fabricated and actually represent the events they purport to document.

In the section dealing with physical evidence (slides 22-26), the main message to get across is that – contrary to common belief - physical evidence is not necessarily the best evidence, that it is generally useless unless it is accompanied by explanatory evidence, including from expert witnesses, and that unless participants have the legal authority, professional capacity and adequate resources to safely store, transport and preserve physical evidence, they should stay away from it. Participants should be encouraged instead to document physical evidence by taking notes, sketching, photographing and video-recording it as further discussed in Module 12 (Collecting Additional Information) and contacting someone appropriately mandated, qualified and equipped to collect the physical evidence.

In relation to forensic evidence, the trainer should underline two key points: i) that relevant forensic information about sexual violence can be much broader than just biological or medical evidence, and can overlap with physical, documentary and even digital information (e.g. clothing, ropes/ligatures, photographs, mobile phone records, bullet casings); and ii) that the collection and proper storage of forensic evidence should only be done with the assistance of trained professionals, since physical or forensic evidence which has not been handled or stored properly may degrade and become useless or may not be admissible in subsequent court proceedings.