

General Principles for Testimonial Evidence

PREAMBLE

The Conference of International Investigators (CII) has endorsed the Uniform Principles and Guidelines for Investigations (“Investigation Guidelines”).¹ These General Principles for Testimonial Evidence supplement the Investigation Guidelines and were endorsed by the CII at its 21st Conference in May 2021.

The purpose of these General Principles is to provide non-binding reference and guidance for the collection of Testimonial Evidence undertaken by an Organisation’s Investigative Office.² This document may also guide external service providers or other functions within the Organisation that conduct investigations on behalf of, or in collaboration with, its Investigative Office.

Testimonial evidence is defined as any oral or written statement provided by persons connected to an investigation by an Investigative body. The Investigative Office’s mandate, internal guidelines, and the Organisation’s rules, policies and procedures further inform this process. While testimonial evidence may be obtained at any stage of the assessment or investigation, it is most often provided during or after investigative interviews.

The scope and detail of the testimonial evidence collected remain within the discretion of each Organisation. The collection and preservation of testimonial evidence should be undertaken by qualified investigations’ personnel in line with the principles of objectivity, impartiality and fairness as outlined in the Investigation Guidelines.³ The present text aims to contribute to efficiency, consistency, accuracy, transparency, and accountability during this stage of the Investigative Office’s activities.

These General Principles do not, and are not intended to, bind any Organisation, its Investigative Office, or its personnel; confer, impose, or imply any duties, obligations, or rights on them or on any third parties; or affect their rights and obligations under applicable rules, policies, and procedures (their “Policies”), including any privileges and immunities afforded to them by international treaty, customary international law, or the laws of any respective member state. These General Principles are to be utilized within the framework of each Organisation’s Policies and the exercise of an Investigative Office’s professional judgment and expertise.

GENERAL

1. Testimonial evidence is critical to an investigation. While more often than not it should supplement other evidence, it may, in certain circumstances be the only evidence available. Hence, collecting it fairly, accurately and without influence is important to the integrity of the assessment or investigation.
2. The primary means of collecting testimonial evidence is through investigative interviews. It can also be collected via handwritten, electronic (video and audio) and documentary formats in response to requests or questions from the Investigative Office.

¹ The Investigation Guidelines were endorsed by the Fourth CII in 2003. The second edition was endorsed by the Tenth CII in 2009.

² Consistent with the Investigation Guidelines, "Organisation" includes all institutions participating in the CII, and "Investigative Office" refers to the units or functions of an Organisation mandated to investigate allegations of wrongdoing—as defined by the Organisation—within the Organisation or associated with its projects and activities.

³ See: Investigation Guidelines, General Principles, para 3

PRINCIPLES APPLICABLE TO ALL TESTIMONIAL EVIDENCE

3. Testimonial evidence may be obtained in oral or written form, in person or remotely.
4. If testimonial evidence is obtained orally and cannot be audio or video recorded, it should be documented in the words of the complainant or as close to the actual words, as is possible, to limit the possibility of any distortion or omission. Whenever possible, the content of this document should be reviewed and confirmed by the interviewee. This should be done expeditiously to ensure that the information remains “fresh”, relevant, and uncompromised.
5. To be reliable, investigators should make every reasonable effort to verify and corroborate the veracity of the information obtained to be able to withstand further scrutiny and meet the threshold of the Organisation’s standards of proof.
6. Accurate accounts ensure that the investigation can progress further lines of enquiry and act as a basis for additional testimonial evidence collection. Furthermore, inaccurate, or false testimony may affect the outcome or findings of an investigation.
7. Testimonial evidence not collected in person may be obtained by phone, Video Teleconferencing (VTC) or other appropriate means, provided that the Investigative Office makes reasonable efforts to confirm the identity of the person providing the testimony, as well as the confidentiality of the location where the interview is taking place, the integrity of the communication,⁴ and that the interviewee is not accompanied by an unauthorised person.
8. Additionally, testimonial evidence may be produced during an oral interview or soon after, in the form of interview notes, summaries, written statements, recordings, and/or affidavits produced by the interviewee.
9. Collection and dissemination of testimonial evidence should be in accordance with the Investigative Office’s mandate, and applicable Policies.

PRINCIPLES APPLICABLE TO ALL INTERVIEWS

10. There are numerous mediums in which interviews may be conducted due to advances in technology and the different methodologies of conducting investigations. However, investigators should endeavour to ensure that the following principles are applied:
 - a. An opening statement or proforma may form part of the interview process outlining the investigative process, confidentiality requirements, rights, and where applicable, obligations of the interviewee.
 - b. To the extent possible, interviews conducted by the Investigative Office should be conducted by at least two people.
 - c. Where practicable, only one interviewee at a time should be interviewed.⁵
 - d. Subject to the discretion of the Investigative Office, interviews may be conducted in the language of the person being interviewed, where appropriate using interpreters. If interpreters are being used, clear instructions will be given to them in advance such as repeating, word-for-word (to the best extent possible) what the investigators say and what the interviewee states.

⁴ For incidents involving Anonymous complainants, whistleblowers or the affected population, this may not be possible.

⁵ This helps to maintain candour and forthrightness during the interview, clarity in the transcript, as well as confidentiality of the process.

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- e. Interviews must be conducted without threat, coercion, or inducement to the interviewee.⁶
- f. The Investigative Office will not pay a witness for information or cooperation. Subject to the Organisation's applicable Policies, the Investigative Office may assume responsibility for reasonable expenses incurred by witnesses or other sources of information to meet with the Investigative Office.
- g. Interviewers must ensure that they do not misrepresent themselves, use any form of deception or oppressive tactics, and that the interview is conducted in an ethical manner whilst respecting due process for all the participants.
- h. In accordance with the Organisation's Policies, the investigator should inform the interviewee of the identity and role of individuals present, purpose of interviews, authorities and legal framework, investigative process, confidentiality requirements.
- i. Prior to commencing an interview, interviewers should assess any risks related to the interviewee regarding security, retaliation, psychological and social support, re-victimisation, age of consent and any cognitive impairments. Mitigating these circumstances may require the presence of a support person or legal guardian during the interview.
- j. Special measures should be considered when interviewing vulnerable witnesses, including but not limited to victims or witnesses of sexual exploitation and abuse, members of the affected population, incidents involving a minor and/or requests for anonymity. In addition, and in assessing that there is risk to any of the interviewees above, special measures or considerations should be adopted or implemented.

PRINCIPLES APPLICABLE TO SUBJECT INTERVIEWS

- 11. When obtaining testimonial evidence from the Subject of an investigation, the same principles as set out in the preceding section will apply.
- 12. As part of the investigation process, the Subject of an investigation shall be given an opportunity to explain his or her conduct, and review and challenge evidence against them. The determination of when such an opportunity is provided for the Subject is regulated by the Policies of the Organisation.
- 13. In addition, it is of the utmost importance that the investigation office ensures that the gathering of testimony from Subjects complies with the principles of procedural fairness, also known as due process rights. They include:
 - a. **Right to Fair Notice:** Means informing the individual that they are the subject of an investigation/inquiry. The procedural part of the notice normally contains information regarding the nature of the alleged misconduct/violation, the identity and function of the investigator/inquiry lead, and the time, date, place, and expected duration of the interview.
 - b. **Right to Know the Nature of the Allegations:** In accordance with the Organisation's procedures, prior to or at the beginning of the interview, the Subject will be fully informed of the allegations and be given an opportunity to respond to them.⁷
 - c. **Right to Provide Evidence:** The Subject has a right to provide exonerating or exculpatory evidence. When the Subject identifies witnesses, who could corroborate

⁶ This rule does not apply to consequences of the legal/contractual obligations that the interviewee may have to cooperate in investigations and participate in interviews conducted by the Investigative Office.

⁷ Questioning a Subject is not tantamount to informing them of the nature of the allegations.

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their story or provide relevant information, due process requires that the investigator interview such witnesses, unless circumstances make such an interview impossible, unduly complicated or deemed not relevant to the investigation.

- d. **Right to Respond to Evidence:** If the investigator intends to rely on documentary, testimonial, or other types of evidence that the Subject is unaware of, the investigator/inquiry lead has a duty to disclose the nature of that evidence and give the Subject an opportunity to respond to it.
- e. **Right to Review the Record of Interview:** The Subject may be provided with a summary, transcript or recording of their interview in accordance with Organisation's Policies.
- f. **Other Rights:** If the Subject refuses to be interviewed, or fails to respond to requests for interview, they should be advised of the consequences of their failure to cooperate with an investigation, and that it may adversely affect the outcome or findings of the investigation subject to the Organisation's Policies.

PRINCIPLES FOR THE RECORDING AND DOCUMENTATION OF TESTIMONIAL EVIDENCE

14. The Investigative Office should make all efforts necessary to ensure that an accurate record of the interview is made and retained, using available audio and video technology. Wherever possible and subject to the Organisation's applicable Policies, interviews should be recorded, to produce the most reliable account of the interview. The interviewee must be advised upfront that the interview is being recorded.
15. Where usual means of recording interviews through digital or video recording are not possible, Investigation Offices should implement alternative procedures to record the interviews through other mechanisms, such as mobile phones, tablets, iPad, laptop recording, etc.
16. Interviews captured in an audio/video format may need to be documented in writing for use in the subsequent proceedings. This could include verbatim transcription, usually used in Subject interviews and interviews that have required a translator to be present, or non-verbatim summary form.
17. Safeguarding testimonial evidence is an essential part of the investigation/inquiry process. Following the interview, the Investigative Office will ensure that the evidence is securely preserved, in a manner that limits the possibility of adulteration, manipulation or it being compromised.

PUBLICATION AND IMPLEMENTING GUIDELINES

18. These General Principles have been endorsed by the CII. Any Organisation may refer to these General Principles in its own policies or may publish them itself in accordance with its Policies. In addition to these General Principles, the CII may develop and publish detailed *Implementing Guidelines for Testimonial Evidence* as further non-binding guidance for Investigative Offices in their collection of testimonial evidence.