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

**PART 1 MODULE 2 –SEXUAL VIOLENCE AS AN INTERNATIONAL CRIME**

**Session objectives:**

* Understanding how sexual violence can constitute an international crime
* Identifying the different legal elements which must be proven to hold someone accountable for an international crime
* Learning to use the Evidence Workbook as a checklist to avoid leaving in gaps in evidence

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

**Exercise:** Recognising Elements of International Crimes

(60-120 minutes, group work and feedback)

**Relevant sections of International Protocol:**

Pages 16-26; Module 1 – Understanding Sexual Violence; Annex 1 – Evidence Workbook; Annex 9 – Rules of Evidence and Procedure

This module should ideally be scheduled on the first day of the training. It sets out the legal foundations for treating sexual violence as an international crime and provides participants with a framework for what is needed to document and prove international crimes. In order to be able to deliver the information in this session effectively, the trainer should have a legal background and should be very familiar with the relevant law. International law as set out in the Protocol in some respects differs from the law in other legal systems. Moreover, the Protocol does not address all legal issues that may be important to the investigation or documentation work of participants; for example, the law on evidence (which differs between legal systems) may require more attention in the training.

For the non-lawyers among the participants, this session should help to give them a grounding in basic principles and concepts of international criminal law, to understand the three main categories of evidence needed to hold someone accountable for an international crime (specific, contextual and linkage evidence) and to provide them with a helpful tool or checklist to make sure that they document information which can satisfy all three categories of evidence. For the participants with legal experience, this session should give them a more detailed understanding of the kind of evidence which would be needed to prove the legal elements which must be satisfied in order to hold someone individually criminally responsible for the various sexual violence crimes under international law. It should also enable them to identify any relevant and important differences between the law covered in the Protocol and the law relevant to their investigation and documentation work.

The trainer should evaluate the level of legal expertise among the participants and adjust his/her emphasis accordingly. The trainer should also clearly set out and explain that practitioners often have different understandings of even basic concepts such as “international criminal law”. It may be necessary to adjust the slides as a consequence.

First, the module provides a general introduction to international crimes. The trainer can use this as an opportunity to gauge whether any of the participants are familiar with international law and what their understanding of it is. The Protocol, and hence the bulk of these training materials, focuses mainly on aspects of the law of the International Criminal Court. However, that law may or may not be relevant to the participants. The trainer may have to make related adjustments to the slides.

For example, the trainer may also have to deal with relevant similarities and differences between the International Criminal Court and its law, and other national and international accountability mechanisms and their applicable law. Such accountability mechanisms may include ad hoc international or hybrid criminal courts; the International Court of Justice; regional and sub-regional human rights courts; other international human rights monitoring and accountability fora, including those of the United Nations, Europe and the African Union; and national courts, human rights commissions and truth and reconciliation commissions. If there is any international court or other accountability mechanism currently examining crimes that participants are working on, the trainer should highlight that fact for the participants and explain how the court or other accountability mechanism operates.

If relevant and necessary, the trainer should ensure that he or she has researched and is able to clearly explain the following issues, and should ensure the participants have fully understood them:

* the differences between various sources of international law, including treaty law (such as the Rome Statute of the International Criminal Court), custom and jurisprudence;
* how the international law set out in the Protocol interacts with the law that the participants use in their work, including (if relevant) applicable domestic law;
* the important differences for investigation or documentation work between relevant accountability mechanisms, including variations in both substantive law (such as the definitions of particular sexual violence crimes, modes of liability, grounds for excluding liability and bars to the prosecution of perpetrators) and, importantly, evidentiary law and procedural law.

For example, in slide 2, and depending on the needs of the participants, the trainer should make sure that they understand the differences between international human rights law, international humanitarian law and international criminal law, particularly in terms of who those bodies of law bind and can be enforced against. If relevant, the trainer may also have to explain how international law is or can be applied in domestic legal systems. It may also be necessary to deal, in addition to the criminal liability of individuals, with the non-criminal liability of individuals, and the responsibility of states, organised armed groups and other actors, both under international law and domestic law.

The trainer must clearly show the practical relevance of the law to the investigation or documentation work of participants. The trainer should also be aware of the potential for confusion, particularly among participants who do not have a legal background. The trainer should repeatedly check that the participants understand the material that has been covered so far and should encourage questions and discussion if not.

After slides 2 and 3, the information in this module is split into three main sections: a) the specific elements of international crimes; b) the contextual elements of international crimes; and c) linkage elements of international crimes. The trainer should spend an equal amount of time on all three as they are equally important in proving international crimes, making sure to allow enough time for the exercise. For the section on specific elements of international crimes, the trainer should encourage the participants to refer to the more detailed information set out in the Protocol. The relevant sections or page numbers are set out at the top of each slide. As suggested earlier, some of the specific crimes mentioned – such as rape or torture – might have different definitions and legal elements in different legal systems. If relevant, either the trainer or lawyers in the group should highlight these differences and emphasise that as a matter of international law, international law trumps any contrary domestic law.

For the section on contextual elements of international crimes, the trainer should ensure that the participants understand the relationship between war crimes, crimes against humanity and genocide, and how the same act could satisfy the elements for all three categories of crime, depending on the background circumstances. If there has been a situation of armed conflict or widespread human rights abuses in the geographical areas of work of participants, the trainer should encourage the participants to discuss and analyse which category or categories of crime could apply. For the section on linkage elements, the trainer should emphasise that the exact requirements to hold someone individually criminally responsible can vary from jurisdiction to jurisdiction, but that the most important thing to increase accountability is to try to gather as much information as possible about those who were directly or indirectly responsible for crimes of sexual violence and what form their involvement took.

**Exercise instructions**

For the ‘Recognising Elements of International Crimes’ exercise, depending on the size of the group and the time available for this module, the trainer should split the participants into groups (ideally three). The trainer should try to make sure that any participants with legal expertise are spread out throughout the groups to help guide their fellow participants. The specific scenarios from the Evidence Workbook highlighted in the slide are just intended as examples – the trainer should research and select common factual scenarios (i.e. from newspaper stories or NGO reports) that are more relevant for the specific needs of the group of participants. Whichever factual scenarios are chosen, one should be assigned to each of the groups to read and discuss.

Each group must choose a specific international crime – rape, torture, sexual slavery – that they feel is most appropriate for the factual scenario they are dealing with. Using the Protocol and the Evidence Workbook, they should try to identify the legal elements which must be proven for that specific crime. What information do they already have which could satisfy those elements, and how would they go about finding additional information to fill any outstanding gaps? For the contextual elements, each group should be assigned a specific category of crime, so if the participants are split into three groups, one group should focus on war crimes, one group on crimes against humanity and the third on genocide. Each group should carefully examine the legal elements which must be proven to establish that category of crime, and as with the other categories, using the factual scenario from the Workbook, assess which elements they can already establish from the available information and which will require more evidence. Finally, for the linkage elements, each group should discuss whether they can identify a potential perpetrator from their factual scenario. Depending on which individual they choose, they should then analyse what mode of liability or form of individual responsibility would be most appropriate to hold that suspect accountable. If they are missing information that must be proven, how would they go about pursuing and documenting that information?

The trainer should make sure that enough time is scheduled to allow the groups to discuss all three of these issues, and that there is enough space in the training area for them to split up and work comfortably within the groups. Each group should be given paper or a whiteboard to make notes of their conclusions under each of the three headings. When the discussion time is finished (at least 30-60 minutes is recommended) the trainer should re-assemble all the participants into one large group and ask representatives from each of the three groups to report back on their findings. It may help to pretend that they are evaluating preliminary evidence for their own organisation and making recommendations about how to find or collect additional information to improve the strength of the evidence.