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

**PART VI MODULE 14 – ANALYSING EVIDENCE AND INFORMATION**

**Session objectives:**

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

* Understand basic analysis skills – how to organise, evaluate and strengthen evidence
* Identify gaps in information to inform documentation strategy
* Recognise and establish patterns of violations

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

**Exercise:** None

**Relevant sections of International Protocol:**

Pages 210-229; Module 4 – Individual Criminal Responsibility; Module 5 – State Responsibility; Module 7 – Do No Harm; Module 9 – Planning; Module 10 – Types of Evidence of Sexual Violence; Module 11 – Interviewing; Module 12 – Collecting Additional Information; Module 13 – Storing and Handling Information; Module 15 – Trauma; Module 16 – Sexual Violence against Children; Annex 1 – Evidence Workbook

The trainer for this module should have professional experience dealing with witnesses and evidence in an investigation or documentation context and should have specific expertise in information management and analysis.

This module, and the Protocol chapter on which it is based, offer a very basic overview of analysis. Depending on the specifics of the training course, the content will have to be supplemented to comprehensively cover analysis in more depth.

This module builds upon the methodology presented in Module 4 (Individual Criminal Responsibility) and Module 5 (State Responsibility) to establish the legal elements of international crimes or violations as further developed in the Evidence Workbook. It brings together numerous issues discussed in previous modules such as Do No Harm, information collection strategy and other planning considerations, and organising, storing and handling information. This module is also closely linked to Module 11 (Interviewing), the last phase of the PEACE framework on evaluating the impact and significance of a witness’ interview on the documentation plan, and Module 15 (Trauma) dealing with the effects of trauma on witnesses’ memory and testimony.

While conducting advanced evidence analysis is a specialist skill beyond the scope of the guidance included in the Protocol, it is important that anyone collecting CARSV information should be able to understand and apply basic evidence analysis skills and be in a position to know how to organise, evaluate and strengthen information collected. This is an essential skill in order to appropriately assess the credibility of witnesses’ testimony and the authenticity and reliability of other evidence, identify evidentiary gaps and redirect documentation efforts where they are most needed. Giving due weight to witnesses’ testimony – keeping in mind that a witness can be simultaneously traumatised *and* credible – is also important to avoid doing harm by conducting unnecessary interviews with witnesses where information collected is already strong enough.

The trainer should encourage participants to discuss the methods, steps and possible tools – whether they have access to advanced technologies or rely on more basic methodologies - that they or their organisations may be using to analyse evidence and information gathered, or the consequences of failing to properly assess information throughout the documentation process. Even participants who may feel that they do not have much experience with this topic probably already apply some sort of basic assessment and analysis to their work without realising it. When you ask a witness to clarify a point that does seem odd or does not fit with other parts of his/her story, or get a gut feeling that a document or video that someone hands out to you looks too good to be true, you are applying your innate analysing skills. The more methodically you apply those skills, the stronger your evidence will be. However, there is also a risk that viewing such matters through our own cultural or communal lenses might lead us to analyse credibility incorrectly; this risk must be mitigated through internal procedures.

The first part of the module (slides 3-6) covers why it is important to constantly evaluate and analyse information and provides a basic framework consisting of four key steps: (i) evaluating the information, (ii) establishing the elements, (iii) strengthening the information and (iv) establishing patterns. The trainer should emphasise that the process of collecting and analysing information is generally not strictly sequential but happens concurrently in some circular form. Ongoing evaluation of information gathered and analysis of evidentiary gaps lead to additional information gathering which requires further analysis. Evaluation of information may somehow take place instinctively at a very basic level but methods and tools may help to structure this process to achieve the best evidence possible.

After that, the module is split into four sections covering the four steps to follow: A) Step 1: Evaluating information (slides 7-14), itself split between evaluating testimonial evidence (slides 8-12) and evaluating documentary, physical and digital evidence (slides 13-14), B) Step 2: Establishing elements (slides 15-16), C) Step 3: Strengthening evidence (slides 17-20) and D) Step 4: Identifying patterns (slides 21-28).

Evaluating information implies answering two distinct questions to assess the credibility of the source and the validity of the information: (i) is the source trustworthy (*credibility*) and (ii) does the information accurately reflect the truth (*validity*)? The trainer should stress that is it important to assess the credibility of the source and the reliability of the information separately to avoid automatically associating a credible source with reliable information, and vice versa. The trainer should ask participants to discuss real or hypothetical examples where the source may be credible but the information inaccurate, or the other way round. The trainer should also stress that participants documenting CARSV will primarily be evaluating testimonial evidence – assessing the witness’ credibility and attempting to explain possible inconsistencies within the testimony itself or between the testimony and other evidence. Proper evaluation of documentary, digital or physical evidence is usually done by forensic experts or other trained professionals and is beyond the scope of the Protocol. The trainer should remind participants here that it is essential that they keep notes of their evaluation separate from the evidence itself to ensure it is considered as work product and not disclosable.

The trainer should ask participants to think about factors and criteria that may be relevant to assess the *credibility* of a witness (e.g. who provided the testimony and their possible affiliation to any political, social or other group; in which capacity they are testifying; what their motivations are and any vested interest that they may have in shaping a particular narrative; how the witness was identified and by whom). For instance, the I-DOC database (developed by Case Matrix Network CMN) identifies a list of criteria which can help practitioners in categorising and evaluating the credibility of testimonial evidence. The trainer should reiterate that participants need to make sure not to judge the credibility of witnesses based on their own assumptions, mindsets and cultural outlook.

When assessing the *validity* and accuracy of information, the key message to put across is that inconsistencies and contradictions are very common. Inconsistencies and contradictions do not necessarily (and often do not) mean that the witness is lying or dishonest, or that the information is unreliable.

What is important is that practitioners keep an open mind and, if becoming aware of an inconsistency during an interview, address it during the clarification phase of the PEACE interviewing process. If practitioners become aware of inconsistencies in witnesses’ versions after interviews, they should seek, if possible, to involve the witnesses in the clarification process as they may be able to provide a valid explanation or other information to support their version.

The trainer should stress that not all inconsistencies necessarily are of concern, and that some inconsistencies may not only be expected, but also can be consistent with how people recall and describe events. Actual or seeming inconsistencies can be the result of many different cultural, psychological, practical and other factors (e.g. misunderstandings, poor interpretation, embarrassment to share details, fear of retaliation, intimidation by family or community members, influence.). It is the responsibility of practitioners to create a safe space in which victims/witnesses feel comfortable and empowered to share their whole experience as they recall it.

Inconsistencies in children’s testimonies may result from any of these factors as well as factors specifically linked to a child’s age and development. Children are generally more sensitive to badly framed suggestive questions and they might also give an answer even if they do not know the answer in order to please the interviewer. In addition, they - and especially young children - may find abstracts concepts (e.g. times, dates, ages, frequency, size, height, weight, numbers, for instance of perpetrators) difficult to understand which can result in them giving information which may not be consistent with other information provided by others. Strategies to minimise this risk are further discussed in Module 16 (Sexual Violence against Children).

Evaluating documentary, physical and digital evidence can be complex and usually requires the involvement of forensic experts. That said, non-expert practitioners can sometimes conduct a basic lay assessment of a piece of evidence to get a preliminary determination about its authenticity and reliability by answering simple questions, obtaining a similar type of document for comparison and/or assessing the reliability of the source. The trainer should re-emphasise that a piece of evidence may be genuine (e.g. an authentic medico-legal report) but unreliable (e.g. conducted by an inexperienced clinician using an unsound medical protocol, negative psychological assessment undermining a victim’s credibility based on myths and stereotypes about how a “normal” victim should behave).

Slides 15-16 cover the second step of the process consisting of mapping all the pieces of information gathered with the legal elements that you must satisfy to establish a CARSV crime or violation, and identifying any additional information that may be required to avoid leaving any evidentiary gaps. The trainer should stress the importance of using a structured framework and methodology and encourage the participants to use the Evidence Workbook as a template to develop their own evidence grid.

Slides 17-20 cover the third step of the process consisting of strengthening the evidence gathered through *corroboration* and *contextual information*. The trainer should remind participants that, as previously explained, corroboration is not a legal requirement for proving sexual violence and other crimes under international law, but that domestic rules of procedure and evidence may require corroboration even when sexual violence is being investigated as an international crime. Regardless, corroborating evidence is always useful to strengthen a case. That said, finding additional information to support a victim’s testimony, in whatever form, may sometimes be challenging for allegations of sexual violence. The trainer should emphasise that even if you cannot corroborate the act of sexual violence, corroborating the victim’s timeline of events, their movements and behaviour before and after the attack can be extremely useful to establish the overall credibility of the victim. Evidence can also be strengthened with the testimony of experts who can provide authoritative explanations on a variety of topics (e.g. customs, use of language to describe sexual violence, the impact of stigma in a particular community as an explanation for silence or denial), or other forms of evidence which can provide political, social, racial, ethnic and cultural histories and descriptions to help understand a particular context, country or population.

The last section of the module and step of the process of analysing information (slides 21-28) consists of trying to establish patterns of crimes and violations. The trainer should encourage participants to think about and discuss why finding common features between separate incidents or otherwise establishing patterns might be important (e.g. spikes in SDT testing or unwanted pregnancies in a specific areas may be a clue that sexual violence is or was taking place; similarities in the profile of victims, perpetrators or the modus operandi may help to establish certain legal elements and prove that an act of sexual violence was part of a widespread or systematic attack, or help link the act to remote perpetrators).

The trainer should ask participants if they are familiar with methods and tools to establish patterns (e.g. identifying typologies of crimes/violations, searchable databases, statistical analysis and crime mapping). While certain of these tools may use advanced technologies (e.g. geographic information systems (GIS) used to visualise and organise spatial data which can help plot troop movement on a map against areas where rapes occurred and other geospatial technologies), the trainer should highlight that documenters without access to these technologies can also use more basic tools and questions to establish patterns. The trainer should encourage participants to discuss their experience using specific methods, software and other tools, which ones they found useful, what features were particularly helpful and what the potential down sides were. New analytical tools are constantly being developed as technology evolves, and the sharing of information among the group about these can, as the case may be, constitute an important part of the module.

Looking for shared features between separate incidents in an attempt to create typologies of crimes/violations can be done by looking for similarities in (i) the profile of victims targeted, whether public statements have been made targeting specific individuals or groups, whether legislation or other state measures exist against specific groups or individuals (e.g. minority ethnic group, women human rights defenders), (ii) the profile of perpetrators, (iii) modus operandi/methods of attack across multiple incidents (e.g. type of violation such as gang rape, genital mutilation, sexual slavery; rights and freedoms violated; time and location of incidents; factors triggering victimisation such as being a single woman or a girl attending a secular school; and overall circumstances such as kidnapping, use of drugs, group attacks) and whether particular methods have been used by known groups or forces before, and (iv) similarities in place and time.

In addition to looking for common features between incidents, practitioners can also use other methodologies and tools to conduct crime pattern analysis, such as using searchable databases to store and organise their information. Statistical analysis (e.g. analysis of census data, prison records or other official data, or analysis of statistical records kept by health professionals regarding the number/type of interventions, gender, age of patient, type of injuries), can also be a useful tool to quantify the number of victims and type of violations, when and where victims were attacked, the harm caused and the profile of victims.