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

**PART III MODULE 4 – INDIVIDUAL CRIMINAL RESPONSIBILITY**

**Session objectives:**

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

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

**Suggested duration of session:** 120 to 270 minutes

**Exercise:** Recognising Elements of International Crimes

(90-120 minutes, group work and feedback)

**Relevant sections of International Protocol:**

Pages 40-63; Module 2 – Understanding Sexual Violence; Module 3 – Accountability Avenues and Remedies; Module 6 – Reparations; Annex 1 – Evidence Workbook

Ideally, this module should be scheduled on the first day or at the start of the second day of the training. Depending on the time allowed to cover previous modules, the theoretical part of this module could be covered on the first day of training and the exercise at the start of the second day of the training. The module 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 crimes under international law. In order to be able to deliver the information in this session effectively, the trainer for this module and all other legal modules (Modules 3-6) should have a legal background and should be very familiar with the relevant law. Importantly, international law as set out in the Protocol may in some respects differ from the law which applies in national and some international legal systems. The Protocol does not cover all relevant aspects of the applicable law (including substantive law) in the detail and with the nuance that may be required by trainers and documenters working on specific cases or in particular jurisdictions. For example, the law on evidence (which differs between legal systems) may require more attention in the training.

The trainer should highlight that this module deals with the individual criminal responsibility of individuals, while Module 5 deals with state responsibility.

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 or documentation work.

As for all other legal modules (Modules 3-6), the trainer should evaluate the level of legal expertise among the participants and adjust his/her language and emphasis accordingly. 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 criminal law and what their understanding of it is. The Protocol, and hence the bulk of these training materials, focusses 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. The trainer should remind participants that Module 5 (State Responsibility) specifically covers the law applicable to accountability mechanisms dealing with the responsibility of states. 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.

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 and should encourage questions and discussion.

After slides 3 and 4, the information in this module is split into three main sections: A) the specific elements of underlying crimes; B) the common elements of the category of crime; and C) linkage elements or modes of liability 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 underlying crimes, the trainer should encourage the participants to refer to the more detailed information set out in the Protocol and Evidence Workbook (Annex 1). As suggested earlier, some of the specific underlying 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 common elements of the category of crime (war crimes, crimes against humanity and genocide), 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 (with due respect for and awareness of any related sensitivities that there may exist among participants). For the section on linkage elements/modes of liability, the trainer should emphasise that the exact requirements to hold someone individually criminally responsible 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 (i.e. how they were involved, what their roles were).

**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 amongst the groups to help guide their fellow participants. The fact scenario associated to this exercise is provided as an example (in a separate document). The trainer can use the fact scenario proposed as such, adapt it or research and select a factual scenario (i.e. from newspaper stories or NGO reports) that is more relevant for the specific needs of the group of participants and their context. Whichever factual scenario is chosen, the trainer should hand it out to each group.

Each group will have to identify evidence to satisfy the specific, common and linkage elements of an international crime. Ideally, each group will work on a different underlying crime, a different category of crime, and a different mode of liability, so as to give all the participants exposure to how the exercise would play out in a variety of criminal contexts. The primary purpose of the exercise is for the participants to show their understanding of the kind of evidence (facts) which could prove the elements of particular crimes. An additional benefit is to give each team the opportunity to advocate for their findings under circumstances where their conclusions might be challenged. That is a useful skill for those working in human rights documentation and advocacy groups.

The trainer should allow 60 to 90 minutes for participants to:

* read the factual scenario distributed, identifying the most relevant passages to answer the questions mentioned in the fact scenario document;
* discuss among the group the answers to be given to the questions using the Evidence Workbook (Annex 1) as a guide; and
* choose a representative to present to the plenary the outcome of the discussion within the group.

Each group must choose (or be assigned) a specific underlying 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 evidence from the factual scenario which could satisfy each of 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 common/contextual elements, each group should think about what categories of international crimes might be relevant to the facts and select (or be assigned) a specific category of crime (war crimes, crimes against humanity or genocide), 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 factual scenario to identify which evidence could satisfy each of the legal elements which must be proven to establish that category of crime, and, using the factual scenario, assess which elements they can already establish from the available information and which will require more evidence. Finally, for the modes of liability/linkage elements, each group should discuss whether they can identify a potential perpetrator from their factual scenario. Depending on which individual they choose or are assigned, they should then analyse what mode of liability or form of individual responsibility would be most appropriate to hold that suspect accountable, and what factual information could help satisfy the elements of that mode of liability. 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 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. When the discussion time is finished (at least 60-90 minutes depending on the factual scenario is recommended, with a ¼ of the time to focus on the specific elements of the crime and the remainder ¾ of the time to be split between the common and linkage elements, since these are more challenging to establish) 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 a fact-finding mission or their own organisation and making recommendations about how to find or collect additional information to improve the strength of the evidence.

As an alternative to asking them how they would go about pursuing additional evidence, the trainer may also suggest that, if the evidence in the fact scenario is or appears to be incomplete, participants could “make up” or “imagine” additional evidence that could best support the legal elements in question; the trainer could then ask them to present such “additional” evidence and discuss that evidence with them. This approach could be used in relation to all three categories of evidence.