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

**PART III MODULE 5 – STATE RESPONSIBILITY**

**Session objectives:**

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

* Explain how sexual violence can give rise to state responsibility
* Identify the substantive and procedural violations of human rights law that sexual violence can give rise to
* Recognise the information which may help establish a violation of a state’s obligations

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

**Exercise:** Analysing a concrete case to assess state responsibility (60-75 minutes, group work and feedback)

**Relevant sections of International Protocol:**

Pages 64-73; Module 2 – Understanding Sexual Violence; Module 3 – Accountability Avenues and Remedies; Module 4 – Individual Criminal Responsibility; Module 6 – Reparations; Module 10 – Types of Evidence of Sexual Violence; Annex 1 – Evidence Workbook

The module sets out the legal foundations for sexual violence to engage state responsibility and provides participants with a framework for what is needed to document and prove human rights violations. This module is the counterpart of module 4 on individual criminal responsibility. It is important for the trainer to reiterate that different legal frameworks govern each form of responsibility and that the same act of sexual violence can give rise to both forms of responsibility.

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. In addition, the trainer for this module should be familiar with international human rights law and ideally have practical experience submitting individual communications and/or other submissions to regional and/or international human rights mechanisms. The trainer should research which human rights mechanisms are relevant for the context in which the participants are working, in particular:

* which human rights treaties and other instruments the relevant state has ratified (in addition to customary international law which may be relevant);
* when such instruments came into force;
* whether the relevant state has accepted the competence of a specific court, commission or other body to monitor the implementation of its international obligations and how these bodies operate, as appropriate;
* whether the relevant human rights instruments and applicable customary international law contain explicit prohibitions of sexual violence;
* whether the previous exhaustion of domestic remedies is a requirement - and relevant exemptions – as well as other admissibility criteria; and
* whether there are decisions and other relevant communications for CARSV victims that such mechanisms have issued.

This session should give non-lawyers among the participants a basic understanding of general principles of international human rights law, the two main categories of information needed to hold a state accountable for a violation of fundamental rights (which rights were violated and how the state is responsible) and provide them with a basic tool to ensure that they document information which can satisfy each category of information. For participants with legal experience, this session should give them a more detailed understanding of the kind of information which would be needed to prove the legal elements which must be satisfied in order to engage a state’s responsibility for (i) the acts or omissions of state agents or persons acting with the state’s authorisation, acquiescence or support, or (ii) failure to comply with its positive obligations to prevent, investigate, prosecute and sanction, and provide adequate reparation to victims of CARSV and other human rights violations.

The trainer should flag early on that the specific rights guaranteed by various human rights instruments and the legal elements to establish a violation of a state’s obligations may vary. For instance, the definition of torture in the UN Torture Convention[[1]](#footnote-1) and the Inter-American Convention to Prevent and Punish Torture[[2]](#footnote-2) requires the involvement or acquiescence of a public official, whereas this is not a legal element in the International Covenant on Civil and Political Rights, or, arguably, under customary international law generally, nor under the national law of various countries. The methodology presented in the Protocol and the Evidence Workbook provides a framework which must be adapted to the specific requirements of a particular human rights mechanism and its applicable law.

Human rights accountability mechanisms may include domestic constitutional and ordinary courts; national human rights commissions; regional and sub-regional human rights courts such as the European Court of Human Rights; regional and international human rights commissions, committees and other monitoring bodies, such as special rapporteurs and working groups; the International Court of Justice; commissions of inquiry and other fact-finding bodies set up at the national, regional or international level; and truth and reconciliation commissions. The mandate, applicable substantive law, and admissibility and evidentiary requirements will vary between different mechanisms. The trainer can refer to Module 3 (Accountability Avenues and Remedies) for examples of human rights mechanisms which may be relevant to the context of the participants.

The module first provides a general introduction to states’ obligations and the categories of conduct which may constitute violations of individuals’ fundamental rights and engage state responsibility. The trainer should use this as an opportunity to assess the level of legal expertise among the participants, how familiar they are with international human rights law and their understanding of it. The trainer should adapt his/her language and emphasis accordingly and consider whether the content of the slides needs to be tailored as a result.

The trainer should encourage participation and generate discussion among participants during the session and the exercise, in particular by asking them questions to prompt their thinking about the content covered in the slides and encouraging those who may have relevant experience submitting information to human rights mechanisms to share it with the group.

After slides 3 and 4, the information in this module is split into two main sections. The first section sets out states’ obligations (slides 5-12): A) in relation to the act of sexual violence itself (slides 6-7) and states’ obligation to prevent CARSV by state and non-state actors; and B) in relation to the response to CARSV (slides 8-11) and states’ obligations to investigate, prosecute and sanction, and provide reparation to victims, regardless of whether the sexual violence crimes were committed by state officials, militia groups or private individuals. The trainer is encouraged to refer to his own experience or case law referenced in the Protocol to illustrate instances where states have been found to be in violation of their international obligations.

The second section (slides 13-19) provides a framework to document human rights violations and sets out the two categories of elements (which rights were violated and how the state is responsible) in relation to which information must be gathered to hold a state accountable for its actions or omissions. The trainer should stress certain key points:

* Many human rights treaties do not contain a specific or explicit prohibition of sexual violence - sexual violence is prohibited primarily as a violation of the right to physical and mental integrity and as a form of torture and other ill-treatment.
* A single act of sexual violence can give rise to the violations of a myriad of substantive and procedural rights (from the right to life to the right to health, education, non-discrimination and the right to an effective remedy and reparation, to mention only a few).
* These rights and the legal elements to prove may vary depending on the applicable legal framework.
* Case law from international tribunals and human rights courts and commissions has recognised that rape and other forms of sexual violence may amount to a violation of the absolute prohibition of torture and other ill-treatment.
* States’ failure to comply with their obligations to prevent and respond to gross human rights violations, including torture and CARSV, can give rise to independent procedural violations, regardless of whether any substantive rights have been violated.

In terms of information to gather, the trainer should reiterate the importance of documenting the harm caused to the victim as this can help to prove that certain legal elements of a violation are satisfied (e.g. in the case of torture, that the act inflicted severe pain or suffering, whether physical or mental) and provide a foundation for reparations. Evidence showing that the state knew or should have known that CARSV occurred - in the form of direct communications or UN, NGO or media reports - but nevertheless failed to protect persons under its jurisdiction is always useful to collect. Finally, although CARSV and other gross human rights violations trigger an obligation for the state to initiate an investigation without the victim having to launch a complaint, it is always useful to collect evidence demonstrating that the victim has been proactive about seeking justice and reparation, for instance by providing information to investigative authorities. Such information will also be necessary if the victim does not get satisfaction at the domestic level and needs to show that s/he has unsuccessfully exhausted domestic remedies before seeking redress at the regional or international level.

**Exercise instructions**

For the “Analysing a concrete case to assess state responsibility” exercise, the trainer should select a real case adjudicated by a human rights mechanism (e.g. decision from a UN Treaty Body such as the CAT or CEDAW, or from a human rights commission or court from the European, African or Inter-American systems). The same case may be used for the “Analysing concrete measures of reparation” exercise which is part of Module 6 (Reparations). If module 6 is covered as part of the training, the trainer may either conduct each exercise at the end of the relevant module, or consider conducting a single exercise combining all the questions on state responsibility and measures of reparations at the end of Module 6 (Reparations). As the case may be, the trainer should ensure that the selected decision orders or recommends different forms of reparations.

Depending on the size of the group and time available for this module, the trainer should split the participants into groups (ideally two). The trainer should try to ensure that the composition of the groups is different from that of the previous exercise and make sure that participants with legal expertise are equally spread out between the groups to help guide their fellow participants.

Wherever possible, the trainer should select a decision from a human rights mechanism relevant to the participants’ context and specific needs. Chapter 5 of the Protocol contains various references to relevant case law which could potentially be used for this exercise and the exercise suggested for Module 6 (Reparations). The trainer should hand out relevant excerpts of the factual part of a case. The excerpts distributed should not be too long in order to allow plenty of time for discussion. Generally speaking, decisions from UN Treaty Bodies are not too lengthy. Group 1 will pretend to represent the applicant while Group 2 will pretend to represent the relevant human rights mechanism.

The trainer should allow about 30 minutes for participants to:

* read the factual part or relevant factual excerpts of the case, identifying the most relevant passages to answer the questions mentioned on the exercise slide;
* discuss among the group the answers to be given to the questions; and
* choose a representative to present to the plenary the outcome of the discussion within the group.

Each group should be given paper or a whiteboard to make notes of their answers to each of the questions. After the first 30 minutes, the exercise should continue in plenary. The representative for each group should be given about 15 minutes to report back in plenary on his/her group’s findings. After each presentation, the trainer can ask if other members of the relevant group have additional information to add before complementing the answers.

At the end of the exercise, the trainer can distribute a second set of relevant excerpts from the judgement or decision selected including the allegations and legal findings made by the human rights mechanism. The participants should end up with either a full decision or relevant excerpts of the factual and legal parts which they can study for further details if they are interested. If the training covers Module 6 (Reparations) and uses the same case for the exercise on reparations, the second set of relevant excerpts should only be distributed at the end of the exercise suggested for Module 6 (Reparations).

1. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984. [↑](#footnote-ref-1)
2. Inter-American Convention to Prevent and Punish Torture adopted by the General Assembly of the Organization of American States on 9 December 1985. [↑](#footnote-ref-2)