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

**PART III MODULE 6 – REPARATIONS**

**Session objectives:**

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

* Set out some possible avenues for reparations
* Describe what constitutes adequate remedy and reparation
* Identify what information to gather for different forms of harm, and how

**Suggested duration of session:** 45 to 60 minutes

**Exercise:** Analysing concrete measures of reparation (30-45 minutes, group work and feedback)

**Relevant sections of International Protocol:**

Pages 74-83; Module 2 – Understanding Sexual Violence; Module 3 – Accountability Avenues and Remedies; Module 4 – Individual Criminal Responsibility; Module 7 – Do No Harm; Module 10 – Types of Evidence of Sexual Violence; Annex 1 – Evidence Workbook

This module sets out basic principles of reparations and provides participants with a framework for what is needed to comprehensively document the harm caused to CARSV victims for reparation purposes. It is the last legal module and complements Module 4 (Individual Criminal Responsibility) and Module 5 (State Responsibility). The trainer should highlight that reparations for victims of CARSV is part of a process consisting of obtaining truth, justice, redress and guarantees on non-repetition. Reparations that strive to address the root causes of violence and foster social change can play a critical role in restoring victims’ dignity and empowering them.

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 law and principles and guidance applicable to reparations for victims of CARSV and other gross human rights violations. References to relevant provisions of human rights treaties, case law and international practice on reparations are mentioned in Chapter 6 of the Protocol. The trainer should also research the applicable legal framework for reparations and associated practice relevant to the participants’ context (e.g. whether compensation can be adjudicated directly by criminal courts or not; if not, whether a criminal conviction is required before a victim can submit a civil compensation claim or if a civil action can be pursued independently; and what the legal and/or practical barriers to victims seeking reparation or the implementation of reparation orders are – such as cost, excessive formality, lack of confidentiality, complex administrative proceedings, etc).

The principle of “Do No Harm” is closely linked to the concept of reparation and should guide practitioners at all stages of the reparation process to shield victims from further harm. In addition, international practice’s trend is to require reparations to go a step further and have a transformative effect by addressing pre-existing structural gender inequalities and other forms of discrimination which have caused or contributed to the violations and their impact, and allowing CARSV victims to assume a proactive and empowering role in obtaining and designing reparations.

The module first lays down the legal foundations of the right to an effective remedy under international law, what this right entails and who can benefit from it. Ideally, the trainer should encourage participants to consider the questions mentioned on the slides and think about the relevant issues before revealing the information contained in the slides. As much as possible throughout the session and the exercise, the trainer should facilitate discussion among participants and ask them to critically consider how their understanding and experience of reparations in their specific context compares to relevant international standards and, as the case may be, what changes may be required.

After slides 3 and 4, the information in this module is split into three main sections. The first section covers some of the possible avenues for reparations available to CARSV victims (slides 5-6), followed by key principles and forms of reparation (slides 7-15), and finally the different forms of harm to document and the information to look for to get a comprehensive picture of the full impact that CARSV has had on the victims and their reparation needs (slides 16-17).

In relation to the first section on avenues for reparations (slides 5-6), the trainer should highlight certain key points:

* CARSV victims can seek different forms of reparations at the domestic, regional or international level; different forms of reparations may be sought not only from the perpetrator(s) of CARSV, but also from a corporate or other responsible entity and/or the responsible state.
* CARSV victims should be entitled to seek reparations through judicial and non-judicial channels; reparations may be adjudicated in the context of civil and human rights litigation, or criminal prosecution, by domestic and international courts as well as quasi-judicial bodies and other human rights mechanisms.
* When violations take place on a large scale or the parties liable for the violations are unable or unwilling to provide reparations, states should establish administrative reparation programmes and other assistance programmes to victims; such administrative reparations programmes are particularly suited and favored for CARSV reparations for various reasons, including confidentiality, ease of access and timeliness, but these should not preclude CARSV victims from complementarily obtaining reparations or compensation through court proceedings.

The second section (slides 7-15) highlights key reparation principles based on the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian Law (2006), the Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence (2014), principles developed by the ICC in the Lubanga judgement (2015) and other international guidance. The trainer should highlight certain key points:

* Reparation can take many forms and means much more than mere financial compensation.
* Adequate remedy and reparation can include a combination of five forms (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition); these five forms of reparation are not mutually exclusive but complement each other as they each address different needs that CARSV victims may have.
* Whether collective or individual, reparations should strive to be transformative and aim at addressing the structural inequalities and gender stereotypes which serve and create a context conducive to sexual violence.
* Consultation with and meaningful participation of CARSV victims in the design, implementation and monitoring of reparations are essential in order to ensure that the measures adopted are victim-based and empowering.

The slides on reparation principles are followed by slides containing more detailed information about what each of the five forms of reparation means in practice, from appropriate sanctions against the perpetrators, public apologies, provision of services and employment opportunities, to empowerment projects and changes in relevant laws and practice.

The third and last section (slides 16-17) constitutes the more practical part of the module and sets out the various forms of harm (physical, mental, social and economic harm) that practitioners should document in order for CARSV victims to be able to seek gender-sensitive reparations that are comprehensive, tailored to their specific needs and proportionate to the gravity and nature of the harm suffered. The trainer should reiterate that thorough documentation of the harm caused is essential not only for reparation purposes, but also to prove certain crimes (e.g. genocide which can be committed by causing “*severe bodily or mental harm*”, or torture which requires the infliction of “*severe pain or suffering, whether physical or mental*”) and for sentencing.

During this part of the session, the trainer should encourage participants to discuss certain challenges associated with quantifying the harm caused to CARSV victims, such as moral damage suffered by women and girls who will often be blamed for and considered as tainted by the sexual violence, or how to calculate the loss of income or earning potential of victims who do not receive any income because they are working in the home or on family land. Certain courts and other bodies have done an excellent job at finding creative solutions to address these issues which should inspire practitioners and pave the way for fairer and more adequate reparations for CARSV victims in other contexts. Challenges in quantifying the harm caused to male CARSV victims should also be identified and discussed.

**Exercise instructions**

For the “Analysing concrete measures of reparation” exercise, the trainer may use the same case used for the “Analysing a concrete case to assess state responsibility” exercise which is part of Module 5 (State Responsibility). The trainer should refer to the instructions for the exercise on state responsibility as necessary.

Depending on the size of the group and time available for this module, the trainer should split the participants into groups (ideally two), ensuring that participants with legal expertise are equally spread out between the groups to help guide their fellow participants. The composition of the groups may be the same as for the previous exercise with the two groups simply swapping roles (i.e. Group 1 which represented the applicant in the previous exercise will pretend to represent the human rights mechanism for this exercise and Group 2 which represented the human rights mechanism in the previous exercise will pretend to represent the applicant for this exercise).

The relevant excerpts of the factual part of the case will already have been handed out and reviewed by participants. The trainer should allow about 15 minutes for participants to:

* based on the factual part or relevant factual excerpts of the case which they should already be familiar with, identify 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 15 minutes, the exercise should continue in plenary. The representative for each group should be given about 5-10 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, including measures of reparation, 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.