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

**PART III MODULE 3 – ACCOUNTABILITY AVENUES & REMEDIES**

**Session objectives:**

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

* Define sexual violence as a violation or crime under international law
* Explain the different legal frameworks applicable to CARSV and their interplay
* Describe the rights of CARSV victims and key accountability avenues and remedies available to them

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

**Exercise:** Exploring Accountability Avenues and Remedies (30-60 minutes)

**Relevant sections of International Protocol:**

Pages 28-39; Module 4 – Individual Criminal Responsibility; Module 5 – State Responsibility; Module 6 – Reparations; Module 18 – Conclusion

This module should ideally be scheduled on the first day of training. It serves as an introduction and lays down the legal foundations for treating sexual violence as a crime or violation of international law on which all the modules in Part III – which deals with sexual violence under international law - will build. It also aims to help participants think about accountability in broad terms, from criminal prosecution to civil compensation claims, administrative reparations programmes, human rights litigation and beyond. The trainer should stress that it is essential that participants get a clear idea of what they will do with the information gathered before embarking on any documentation process, in part because admissibility and evidentiary requirements usually vary from one accountability mechanism to another. In addition, some processes may be exclusive of each other, some may be used in parallel while others may only be used subsequently. For instance, filing an individual communication against the state before a regional or international human rights body can usually be done only after having (unsuccessfully) used all possible domestic remedies.

In order to be able to deliver the information in this session effectively, the trainer for this session and subsequent legal modules (Modules 4-6) must have a strong background in international law, and should ideally be able to draw upon his/her own experience to provide examples of how different accountability mechanisms have been used to deliver justice and reparation to CARSV victims and how to develop successful litigation strategies. If possible, the trainer should be familiar with (or prepare for the training through research on) domestic and regional accountability avenues available to CARSV victims in the country or region where the participants work and share examples where they have been successfully used. Depending on the time available, the trainer should encourage as much discussion as possible among the participants, both during the session itself and as part of the exercise. If relevant, participants should in particular be encouraged to discuss their own experiences using certain accountability mechanisms in their local context, including – as the case may be - the challenges they may have faced and strategies used to overcome these.

The trainer should assess 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” or “international crime”. It may be necessary to adjust the slides as a consequence.

If relevant and necessary before introducing Modules 4-6, the trainer should ensure that he or she has researched and is able to clearly explain the following issues, and should ensure that 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 (case-law);
* the prohibition of sexual violence as a matter of customary international law;
* the different legal frameworks applicable to CARSV, in which circumstances these various regimes apply, how they complement each other and how, depending on the circumstances, they can apply simultaneously;
* 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; and
* 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 or violations, 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 4, 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 is bound by and punishable pursuant to those bodies of law. If relevant, the trainer may also have to explain how international law is or can be applied in domestic legal systems. It will also be necessary to deal, in addition to the criminal liability of individuals, with the civil liability of individuals, and the responsibility of states, organised armed groups and other actors, both under international law and domestic law.

The trainer should lead the group in a discussion of the questions on the slides: what constitutes an international crime or violation; what are the legal consequences of sexual violence amounting to an international crime or violation and what additional accountability avenues open as a result; what human rights violations can sexual violation give rise to; etc. The trainer can then reveal the rest of the information on those slides and highlight any issues which have not already come up during the discussion. The trainer should underscore certain key points: it is the context in which sexual violence is committed (e.g. sexual violence committed in conflict or committed as part of a widespread or systematic attack against a civilian population) which can make it amount to an international crime or violation of international law; international law contains norms and standards which not only provide definitions of the acts themselves but determine how certain acts are being classified under international law; and factual circumstances determine whether a specific act of sexual violence amounts to a crime or violation of international law rather than domestic laws. Participants should be instructed that this module provides an overview of accountability avenues and remedies available to victims of CARSV and that specific legal definitions and elements of crimes and human rights violations to be proven to hold someone or a state accountable are covered in Module 4 (Individual Criminal Responsibility) and Module 5 (State Responsibility).

For slide 8 on factors to consider when determining the range of accountability avenues available in a specific case, the trainer should encourage the participants to come up with questions they need to clarify, such as:

* What does the applicable domestic legal framework provide?
* Is there a specific legal regime dealing with war crimes, crimes against humanity and genocide applicable in the context in which I am operating?
* Which domestic courts are competent to deal with international crimes (ordinary criminal courts, military courts, special courts, other)?
* Are there specific war crimes/international crimes investigative units?
* When dealing with male victims, does the domestic legal framework recognise men as potential victims of sexual violence? Is homosexual activity criminalised, regardless of whether the conduct was consensual or not? (The trainer should underscore that the issue here is not the sexual orientation of the victim and/or perpetrator. One of the reasons for knowing the law on such issues is that it may help documenters avoid or mitigate the risk of exposing, through the process of documentation, male victims of sexual violence by other men to criminal prosecution in countries where homosexual acts are outlawed.)
* What international legal instruments or human rights treaties has the country in which the crimes took place ratified? When did these instruments enter into force for that country? Were the crimes committed before or after their entry into force?
* How can the national jurisdiction deal with the principle of legality?
* Have domestic legal remedies been exhausted? If not, why not? Etc.

When talking about regional and international human rights instruments, the trainer should encourage participants to discuss what substantive or procedural rights guaranteed by key human rights legal instruments CARSV can give rise to, before revealing slide 15. The point here is to highlight that even when human rights treaties do not explicitly prohibit sexual violence – as this is often the case – sexual violence itself and the response to sexual violence by relevant authorities can give rise to violations of a series of other rights and freedoms guaranteed by most human rights treaties.

When presenting the overview of accountability avenues and remedies on slide 19, the trainer should mention that there are mechanisms which might not - strictly speaking - be considered as “accountability” mechanisms as such but are nevertheless important elements of the broader framework of transitional justice mechanisms. While truth and reconciliation commissions appear on the visual, others like memorialisation, conflict mapping or archiving do not. These other mechanisms may form an important part of transitional justice and are discussed further in Module 6 (Reparations). They should not be considered as a substitute or alternative to accountability mechanisms but as complementary measures to ensure that CARSV victims obtain adequate remedy.

**Exercise instructions**

For the ‘Exploring Accountability Avenues and Remedies’ exercise, the trainer should ask participants to discuss accountability mechanisms they are familiar with or that victims they are working with may have used. The trainer should encourage participants to come up with examples of accountability options at the domestic, regional and international level and discuss whether these mechanisms deal with criminal responsibility, state responsibility and/or the responsibility of other actors, as well as whether these bodies are judicial, quasi-judicial or non-judicial. If there is enough time and provided this is relevant considering the participants’ background and experience, the trainer could ask the participants to highlight potential barriers to accessing justice and reparations victims may have faced using these accountability avenues (e.g. domestic statute of limitations, inappropriate legal qualification of the crimes, lack of political will, lack of independence) and how they have dealt with these.

To make the exercise more interactive and help participants to visualise the different categories of accountability mechanisms, the trainer could draw on a flip chart an empty semi-circle similar to the one appearing on slide 19 and ask participants to write the name of the mechanism they wish to discuss on a piece of paper and stick it in the appropriate section of the semi-circle. The main point of this exercise is to enable participants to appreciate the broad range of accountability options available to CARSV victims beyond criminal prosecution, and enable them to select the most appropriate in a given case based on the wishes of the victim.