



**PERMANENT MISSION OF THE REPUBLIC OF
SIERRA LEONE TO THE UNITED NATIONS**

STATEMENT

by

**H.E. DR. MICHAEL IMRAN KANU
Ambassador and Deputy Permanent Representative**

**Resumed Session of the Sixth Committee
of the United Nations General Assembly**

**Agenda Item 78: “Crimes Against Humanity”
Second Cluster: Definition and General Obligations
(Articles 2, 3 and 4)**

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**336 East 45th Street, New York NY 10017
Tel: (212) 688 1656 - FAX (212) 688 4924 email: sierraleone@un.int**

**Chair,
Co-Facilitators,
Excellencies,
Distinguished Delegates,**

1. In consideration of the second cluster of the exchange of substantive views by member States on the agenda item, focusing on the **definition and general obligations, Articles 2, 3 and 4**, of the International Law Commission's ("ILC" or "Commission") articles on prevention and punishment of crimes against humanity, the delegation of Sierra Leone will highlight the following points given the time allocated for interventions.
2. In relation to **Article 2, definition of crimes against humanity**, my delegation in general is supportive of the approach taken by the Commission to largely ensure consistency with the Rome Statute of the International Criminal Court ("Rome Statute").
3. Indeed, Articles 2 paragraphs 1 and 2, save for the few changes which will be addressed shortly, are transplanted from Article 7 paragraphs 1 and 2 of the Rome Statute. The Commission made three changes to the definition of crimes against humanity, for which the most significant is the deletion of Article 7(3) of the Rome Statute, which defines the term "gender" "for the purpose of [the Rome] Statute."
4. In considering a horizontal future crime against humanity treaty, the deletion of the gender definition may seem to serve a pragmatic purpose without more. However, my delegation, is not persuaded by the explanation in the commentary. From

a policy perspective, we continue to support the general consistency approach, to inter alia, safeguard the Rome Statute complementarity principle, and to elaborate a future treaty on crimes against humanity that is universal, complementary, and implementable, as we have already outlined in our cluster 1 intervention.

5. On the other issues relating to the definition of crime against humanity, including the contextual threshold in paragraph 2 (a) of Article 7 – “attack directed against any civilian population”, with the retention of the element that the attack has to be committed “pursuant to or in furtherance of a State or organizational policy” ; the scope of the definition and issue of vagueness of the phrase “prolonged period of time” in the definition of enforced disappearance; and the narrow definition of persecution, my delegation wishes to note that we had previously addressed these issues in our referenced written comment submitted on 30 November 2018 (see A/CN.4/726). We will incorporate those views by reference, and we hope to elaborate further in the resumed 78th session of the Sixth Committee.
6. On the additional **paragraph 3 of Article 2**, which contains a “without prejudice” clause, the point is made clear that the inclusion of the Rome Statute’s definition was without prejudice to broader definitions that may exist in international instruments, customary international law, or national law. My delegation is supportive of this useful addition.
7. Yesterday, 10 April 2023, in the format of a “mini debate” the Distinguished Representative of the Republic of Cameroon

raised the important point of the necessity to expand the definition of “crimes against humanity” to address matters that could be progressive development, in particular to extend the list of prohibited acts to include, for instance, economic, land and mineral exploitation, and environmental degradation.

8. My delegation was already alive to this point and in our written comment, we noted that:

*[A]lthough it is true that the Statute definition of crimes against humanity is considered to largely reflect customary international law, in the view of Sierra Leone, the Commission should not lose sight of the fact that the International Criminal Court's definition of crimes against humanity is narrower in some respects than the definition of crimes against humanity under customary international law. **For this reason, an important question for us is whether, in adopting in its entirety the Statute definition of the crime, minor adjustments could not be made to improve it** [...] This would reflect the fact that, twenty[-five] years after the Statute, case law interpreting the crime contained in Article 7 to concrete cases has begun to accumulate. That same jurisprudence, which will no doubt continue to evolve and should inform future interpretations of this definition based on the International Criminal Court, has revealed some drafting mistakes that were not evident when the Rome Statute of the International Criminal Court was negotiated in 1998.*

9. In view of the above, the delegation of Sierra Leone has identified legal gaps that result in manifest impunity for slavery and slave trade crimes under the Rome Statute. The Rome Statute includes provisions for enslavement and sexual slavery

as crimes against humanity and transplanted in Article 2 of the Commission's articles on prevention and punishment of crimes against humanity.

10. Regrettably and critically, the Rome Statute does not contain provisions for the slave trade, which governs the intent to bring a person into – or maintain them in – a situation of slavery. Given Sierra Leone's experience, particularly on the prohibitive act of forced marriages and the notion of the so-called “bush wife” which in our view are acts of slavery and slave trade in the repeated distribution to fighters, we are in the process of submitting proposals to amend the Rome Statute to enumerate, inter alia, “*the slave trade under crimes against humanity in Article 7 of the Rome Statute*”. We would therefore put forward the same proposal for any future crimes against humanity treaty.

11. In relation to **Article 3, general obligations**, we note the importance of the provisions in the three paragraphs. We are generally supportive of the provisions; including for paragraph 1, the reference or inspiration provided by the judgment of the International Court of Justice in *Application of the Convention on the Prevention and Punishment of the Crimes of Genocide (Bosnia & Herzegovina v. Serbia & Montenegro, ICJ reports, 2007, para. 166)*, which concerned interpretation of Article I of the 1948 Genocide Convention.

12. We understand with approval the obligation in paragraph 2 and the judgment of the ICJ in *Bosnia v. Serbia*, which clarifies that the word “undertake” in the said article 1 of the 1948 Genocide Convention imposes “*a clear obligation [on the*

parties]to do all in their power to prevent the commission of any such acts in the future". We also understand with approval the inclusion of the non-invocation of the "no exceptional circumstances whatsoever" as a justification for crimes against humanity in paragraph 3, as inspired by provisions in existing international law instruments, including Article 2(2) of the Convention Against Torture. We hope to provide further comments on Article 3 in the resumed 78th session.

13. Regarding the **obligation of prevention** in **Article 4**, my delegation understands the importance of the reference to States undertaking to prevent crimes against humanity in the chapeau, to be "in conformity with international law", as fundamental to ensure conformity with the Charter of the United Nations on the use of force. The goal of prevention of crimes against humanity must not and never be a pretext for intervention in the internal affairs of other states, in violation of international law.

14. My delegation also wishes to point out that the modes of prevention listed in paragraph (b) of Article 4 are helpful to put into perspective the general obligations to "undertake" to prevent, and of "due diligence" in Article 3. We note that the commentary provides helpful guidance as to what measures should be taken, including the adoption of laws penalizing crimes against humanity, the investigation of credible allegations, and the education of governmental officials.

15. It is therefore appropriate to note that this gives rise to the issue of capacity and the need for capacity development. A future treaty on crimes against humanity must have provisions

addressing capacity building to ensure effective horizontal cooperation. We look forward to views on this issue and possible elaboration of provisions to address the importance of capacity development.

16. I thank you.