



Resumption of the seventy-seventh session of the Sixth Committee, exchange of substantive views on draft articles on prevention and punishment of crimes against humanity, Cluster V (safeguards).

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Malta Statement delivered by Ms Augustina Siman, Senior Policy Advisor for Legal Affairs

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I thank you Mister Chair,

We have carefully studied draft articles under Cluster V as well as their commentaries, adopted by the International Law Commission at its seventy-first session. We would like therefore, to share our following observations:

With reference to draft article 5, the principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law. Generally, it prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations. Under international human rights law the prohibition of refoulement is explicitly included in several universal and regional instruments, amongst which: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention for the Protection of All Persons from Enforced Disappearance; the Inter-American Convention on the Prevention of Torture, the American Convention on



Human Rights, and the Charter of Fundamental Rights of the European Union. As an inherent element of the prohibition of torture and other forms of ill-treatment, the principle of non-refoulement is characterised by its absolute nature without any exception. Therefore, we strongly support the decision of including in the draft articles the prohibition to expel, return, surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to a crime against humanity.

Referring to draft article 12, and particularly the “right of reparations for victims of crimes against humanity” as part of the accountability efforts, the respective right (in the form of restitution, compensation, satisfaction, rehabilitation, cessation and guarantees of non-repetition) serves a fundamental purpose of responding to the harm suffered by victims through the provision of direct benefits, and is widely recognized by a rich network of legal instruments at global and regional level, such as: 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 International Humanitarian Law; Human Rights Council Resolution 22/21 on rehabilitation of torture victims; ICRC customary Rule 150 on Reparations; The 2019 Report of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence – which gathers information on States’ practice concerning reparations; Reparations and costs judgements of regional human rights bodies and courts, such as the case-law of the Inter-American Court of Human Rights; Similarly, the African institutions have drawn consistent conclusions. For



instance, the General Comment No. 4 on the African Charter on Human and Peoples' Rights, prescribes that victim shall be able to seek and obtain an appropriate reparation for the particular circumstances of the victim and proportionate to the gravity of the harm suffered.

All this is being exemplified to also confirm the fit of the draft article 12 in the architecture of global legal efforts to ensure justice for victims of such cruel, inhuman or degrading treatment. Reparation is the indispensable complement of a failure to apply a convention and therefore its inclusion in the overall body of the Crimes Against Humanity Draft Articles is highly appreciated.

Finally, we would like to highlight that when choosing between different forms of reparations, states should adopt a victim-oriented approach and put victims and their individual needs at the center of redress procedures. In this sense, although states may have a certain degree of flexibility when deciding the specific forms of reparation in each specific case, they should consider establishing a minimum criteria that limit their discretion. One of the criteria to be met might be, for instance, the participation of victims in the process of determining the reparations, which is necessary to ensure that reparation measures are adequate to redress the damages and take into consideration any specific interest, necessity or vulnerability of the victim.

I thank you.