



**Statement on behalf of the Republic of South
Africa**

by

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**Permanent Mission of South Africa to the
United Nations**

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Thematic Cluster 2

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Chairperson,

South Africa supports the use and inclusion, in the draft articles, of an almost verbatim definition of Crimes Against Humanity taken from Article 7 of the Rome Statute as a basis for the discussion on a possible convention on Crimes Against Humanity. This definition formed part of the extensive negotiable elements over years of negotiation and has been applied even by non-states parties to the Rome Statute in their jurisprudence at a domestic level. The reference to the Rome Statute provisions is in no way an obligation to comply thereto unless a state is a State Party thereto.

Having said that, South Africa understands that the definition may not be perfect and may not be consistent with the realities facing the world currently. We welcome contributions that will demonstrate areas where the current definition lacks, if any, and lead to the improvement of the definition in order to give effect to the realities facing us in the current times. For an example, the definition of forced pregnancy in both the Rome Statute and the current draft articles does not include girls. The girl child by virtue of their sex and/or gender is vulnerable and requires protection especially against forced pregnancies which in most cases will be a resultant of rape emanating from the commission of international crimes. We therefore call for the inclusion of girls in the definition forced pregnancy to ensure specific protection of the girl child but also to avoid ambiguity.

Similarly, South Africa supports calls for the inclusion of forced marriage as a crime against humanity. It is again this crime that puts women and in most cases, the girl child in a vulnerable position where they will be forced, without any consent and mostly without the ability to make an informed decision, into marriages committed as part of a widespread or systematic attack during the commission of these horrendous international crimes.

South Africa welcomes the provisions of draft Articles 3 and 4. The South African Constitution, which is the supreme law of the Republic provides in section 232 that Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament. Additionally, Section 233 of the Constitution obliges the national courts, when interpreting any legislation, to prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law. In this regard, where international law provides more protection, the South African courts are obliged to prefer international law provisions. The obligations in these draft articles are already provided for in either our domestic laws or our international obligations and therefore are greatly welcomed.

I thank you.