



**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"
Third Cluster: *National Measures*
(Articles 6, 7, 8, 9 and 10)**

**Seventy-Seventh Session
12 April 2023**

UNHQ, New York

[Please Check Against Delivery]

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

**Chair,
Co-Facilitators,**

1. In consideration of the third cluster focusing on “**national measures**” covering Articles 6, 7, 8, 9 and 10 of the International Law Commission’s (“ILC” or “Commission”) articles on prevention and punishment of crimes against humanity, the delegation of Sierra Leone will state as follows:
2. In relation to **Article 6, criminalization under national law**, my delegation generally supports this provision, especially the obligation contained in paragraph 1. As we did in our written comments previously referred to in the first-two clusters, and we have concerned about some aspects of the provisions of Article 6.
3. Regarding paragraph 2 of Article 6, we note as a general matter that the Commission appears to have been selective and not comprehensive in the listing of the various forms of criminal participation that are established in State practice at the national and international levels. The Commission included some inchoate crimes, such as attempts, but left out other forms such as conspiracy. The same is true of “incitement” as a mode of liability.
4. We had previously submitted, and we maintain that incitement as a form of accessory liability is well established in customary international law. It is an important form of criminal participation in relation to the crime of genocide, and given the systemic nature of such core crimes, thus, also in relation to crimes against humanity. This mode of criminal participation is

reflected in State practice and in the practice of international criminal courts and tribunals that have prosecuted crimes against humanity. Sierra Leone would therefore propose the addition of “inciting” and possibly “conspiracy” to the list of forms of participation mentioned in paragraph 2 (c) of Article 6.

5. In relation to paragraph 5 of Article 6, the delegation of Sierra Leone notes the nexus to the issue of procedural immunities a State official may have, even though official position is not a ground for excluding criminal liability. My delegation prefers to track the work of the Commission on immunities, and the continuing consideration by the Sixth Committee of the topic universal jurisdiction, which has been subjected to misuse and abuse, to ensure there is comprehensive examination of these important issues.
6. In relation to **Article 7, establishment of national jurisdiction**, the delegation of Sierra Leone welcomes the provisions, and would simply refer to our previously referenced written comments, in the interest of time. We wish to further note the importance of paragraph 3, regarding the non-exclusion of the “exercise of any criminal jurisdiction established by a state in accordance with its national law”. This safeguards the application of the domestic law of the State concerned, consistent with the sovereign exercise of adjudicative, prescriptive and enforcement jurisdiction on national territory.
7. Regarding **Article 8, investigation**, the delegation of Sierra Leone agrees with the view that, when crimes against humanity are committed, it is the duty of a State and its

competent authorities to proceed not only to a prompt and impartial investigation but a thorough one. Reference to a “prompt, thorough and impartial investigation” is helpful to address potential loopholes of a State carrying out a sham investigation, thereby undermining the essence of its obligations under this provision.

8. In relation to **Article 9, preliminary measures when an alleged offender is present**, the delegation of Sierra Leone, having previously noted that the provision is based on Article 6 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention against Torture”), and we therefore deem it appropriate for the present crimes against humanity articles. Article 9 establishes three inter-related obligations: 1) the duty to take the person into custody or take other legal measures to ensure his presence; 2) the duty to immediately make a preliminary inquiry; and 3) the duty to notify other states.
9. We consider that the International Court of Justice’s authoritative interpretation of the equivalent provision of the Convention against Torture applies to Article 9. (*See Questions relating to the Obligation to Prosecute or Extradite, Belgium v. Senegal*).
10. Considering **Article 10, aut dedere aut judicare**, Sierra Leone understands the Commission’s decision to refer to the duty, contained in Article 10, using its more common description (aut dedere aut judicare). Nonetheless, despite the convenience of the nomenclature, we understand that the actual obligation on States would be for them to submit the relevant

case to their competent authorities for the purpose of the conduct of credible investigations, and if sufficient evidence is uncovered, to thereafter submit the case for prosecution if deemed appropriate.

- 11.** Submission of the case to competent authorities does not mean that those national authorities' discretion to decide whether or not to proceed with formal charges or a trial is taken away. Such decisions would necessarily have to be made, as in the normal course in any criminal proceedings, based on the available evidence and their assessment of all relevant factors including the interests of justice and the likelihood of securing a conviction. To address concerns of effectiveness, a monitoring system is worth considering and we will address this issue in the next cluster.
- 12.** On a related matter, Sierra Leone notes that the Commission did not include an explicit clause precluding grants of amnesties or pardons for crimes against humanity. Rather, the issue of amnesty is only addressed in the commentary to Draft Article 10. The Commission's commentary explains that the ability of a State to implement an amnesty might not be compatible with the obligation to submit the case to the competent authorities for investigation and possible prosecutions. We agree with this assessment. We also have the further concern regarding whether grants of amnesties might not undermine or conflict with other provisions of the articles, including Articles 8, 9 and 12.
- 13.** Based on our national experience, we appreciate and underscore that these are complex issues. There are no easy

answers, or one size fits all solutions. Nonetheless, since the purpose of the present articles include the goal of putting an end to impunity for the perpetrators of crimes against humanity, and thus to the prevention of such crimes, we consider that an express clause addressing amnesties, particularly blanket amnesties may be of high valuable.

14. I thank you.