

Thank you for giving me the floor on cluster V, covering articles 5, 11 and 12 – which form an important ensemble of human rights provisions that are absolutely key within the general framework, intent and operationalization of the these draft articles (and like in other clusters, we align our statement with the one delivered by the European Union)

Article 5 *Non-refoulement*:

- We welcome the explicit reference to the principle of *Non-refoulement* in Draft Article 5. This principle constitutes an essential protection under international human rights law, refugee law, humanitarian and customary law, and thus – while not new or specific to the draft articles on crimes against humanity – we support the inclusion of a provision that clearly prohibits States from expelling, returning, surrendering or extraditing 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.

Article 11 Fair treatment of the alleged offender:

- We welcome draft article 11 and the clarification that the rights of the alleged offender must be guaranteed ‘at all stages of the proceedings’. We see the respect for the rules of fair treatment and for the rights of alleged offenders under applicable national and international law as an indispensable element to ensure the legitimacy of the efforts carried out in national courts to end impunity for CaH.
- We note that the Commission recognized that the expression “fair treatment at all stages of the proceedings” is intended to incorporate all the guarantees generally recognized under international law to a detained or accused person, in particular those contained in article 14 of the International Covenant on Civil and Political Rights. We welcome the specific reference to “fair trial”, which under human rights law includes the need for an independent judiciary to investigate and judge these crimes, the defendant’s access to lawyers of their choosing, the ability to confront evidence, and thus appears to be incompatible with investigation and judgement carried out by military courts. We also welcome paragraph 2, which includes a right of consular access consistent with Article 36 of the Vienna Convention on Consular Relations and with customary international law.

Article 12 Victims, witnesses and others

- Like we highlighted when commenting on the preamble, Portugal welcomes the particular importance afforded in the draft articles to the rights of victims, witnesses and other persons affected by the commission of a crime against humanity, and we therefore consider draft Article 12 of particular relevance. Ensuring the protection of the rights of victims, witnesses and other persons affected by the commission of these crimes is not only consistent with international law, but is also instrumental to empower victims to speak up, report crimes, participate in criminal proceedings and, ultimately, it is instrumental to promote the conditions that bring about accountability and justice.
- We also note that, in accordance with paragraph 2, the obligation contained therein is to be implemented 'in accordance with national law', which grants States enough flexibility to tailor the requirement included in this provision to the characteristics of their criminal law system, and is without prejudice of additional obligations that each domestic system has established or might establish.
- Finally, we support the principle contained in paragraph 3 according to which victims have the right to obtain reparation for damages, and this includes both material and moral damages. While we welcome the principle reflected in this provision, we would be supportive of a stand-alone article dealing specifically with the right to obtain reparation for material and moral damages resulting from the commission of crimes against humanity.

I thank you.