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# UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,  
UNGA77, AGENDA ITEM 78

CRIMES AGAINST HUMANITY: CLUSTER 5

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*Check against delivery*

**Thank you Mr/Madam Chair.**

1. The UK will now comment on draft Articles 11 and 12 in turn.

**Draft Article 11 – Fair Treatment of Alleged Offender**

2. The need to be treated fairly and the right to a fair trial and full protection of one's rights are fundamental tenets of the rule of law. The ability of any person against whom measures are being taken to contest those measures is essential to the proper functioning of justice. As such, we welcome the Commission's drafting of draft Article 11.

*Draft Article 11(1) – Reference to human rights law and international humanitarian law*

3. Specifically on that point, the UK notes the Commission's decision to include references to human rights law and international humanitarian law in draft Article 11(1) and notes positively the references, in paragraph 7 of the Commentary to draft Article 11, to the specific standards found in Article 14 of the ICCPR and also the 1949 Geneva Conventions and Additional Protocols 1 and 2.

*Draft Article 11(2) – Entitlement to visitation and Stateless person and consular access*

4. The UK has two short observations on draft Article 11(2). First, the UK underlines the importance of ensuring that the provisions of paragraph 2 in respect of the State of nationality are fully consistent with the provisions in Article 36 of the Vienna Convention on Consular Relations, which in general regulates communication and contact with nationals of a sending State. Second, it notes that the language in draft Article 11(2)(a), which provides that a state can exercise a consular function over a stateless person, appears to be novel in international law and it is not clear how this process would work in practice.

## **Draft Article 12 – Victims, witnesses and others**

5. Turning to draft Article 12, the real cost of crimes against humanity is the devastating impact upon victims, survivors, their families and communities. The UK government is determined to prevent crimes against humanity, as putting an end to such crimes is the greatest legacy we can leave to those who have suffered from them.

6. However, when crimes against humanity do occur, we must listen and respond appropriately to victims and survivors. It is important to engage with, and respond to, the needs of victims and survivors, as accountability in their eyes may be broader than criminal proceedings. The absence of a crimes against humanity framework fails to give the victims and survivors of such crimes the recognition and redress they deserve. For justice to be delivered, it is absolutely essential that victims, survivors and witnesses be empowered to have their voices heard in proceedings. Lastly, they must not be prevented from obtaining appropriate reparations. The UK welcomes the extensive work that the ICC has undertaken in this space to place victim participation at the heart of their policy approach, as set out in their 2010 Policy Paper on Victim Participation.<sup>1</sup>

### *Draft Article 12(1) – Right to Complain to Competent Authorities*

7. In draft Article 12(1), the UK welcomes the right to complain being available to “any person who alleges that acts constituting crimes against humanity have been or are being committed.” The UK notes that the Commentary to draft Article 12, at paragraph 8, clarifies that “any person” includes but is not limited to a victim or witness of a crime against humanity, and may include legal persons such as religious bodies or non-governmental organizations.

### *Definition of victim*

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<sup>1</sup> ICC Policy Paper on Victims’ Participation. Available [here](#)

8. The UK has previously supported the decision of the Commission to avoid defining the term “victim” given the need to reflect the differing approaches at national level. However, we are aware that some states, experts and organisations see benefits in including such a definition and we are reflecting on that position accordingly. We would welcome the views of other members of this Committee on this point. The UK notes that Rule 85 of the Rules of Procedure and Evidence of the International Criminal Court defines “victim”. The UK is also aware that some have called for such definitions of victims to be broadened to include those who have witnessed traumatic crimes against humanity, or those who have endured indirect harms years after such crimes have been committed, such as children born of sexual violence.

#### *Draft Article 12(1)(b) – Protective measures*

9. Draft article 12(1)(b) sets out certain protective measures that states must take and provides that complainants, victims, witnesses, their relatives, representatives and others shall be protected against ill treatment or intimidation.

10. While the Commentary to draft Article 12 helpfully clarifies at paragraph 11 that: *“The term “ill-treatment” relates not just to the person’s physical well-being, but also includes the person’s psychological well-being, dignity or privacy”*, the UK wonders if it would be preferable to set that out on the face of the Convention in the draft Article and in so doing more closely replicate Article 68 of the Rome Statute. In addition, we could set out the need for States when considering the protection of witnesses and victims to have regard to all relevant factors, including their age, gender, health and the nature of the crime. This is particularly important where the crime involves sexual or gender violence or violence against children.

#### *Draft Article 12(3) – Reparation*

11. The UK supports the decision of the Commission to frame the right to obtain reparation in broad terms and the focus on a comprehensive reparative concept which provides for various ways in which reparation can be provided. For example, the UK

notes that the right to reparations should not necessarily be dependent on the conclusion or result of criminal proceedings. Draft article 12(3), follows this approach by setting forth a non-exclusive list of forms of reparation. This approach should ensure that victim's ability to access reparations is not limited. The UK notes that the Commentary to draft Article 12, at paragraphs 17 to 24 sets out the wide variety of different ways in which reparations can be provided and that these are "as appropriate" to acknowledge that States must have some flexibility and discretion to determine the appropriate form of reparation for their own circumstances. Because repairing harms is paramount to survivors and victims, the UK would be open to explore further any proposals that Committee members may have, and most importantly, in consultation with survivors, to consider if the language on reparations could be strengthened further.

Thank you Mr/Madam Chair.