



**PERMANENT MISSION OF THE REPUBLIC OF
SIERRA LEONE TO THE UNITED NATIONS**

STATEMENT

by

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Ambassador and Deputy Permanent Representative**

**Resumed Session of the Sixth Committee
of the United Nations General Assembly**

**Agenda Item 78: “Crimes Against Humanity”
Fifth Cluster: *Safeguards*
(*Articles 5, 11 and 12*)**

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**Chair,
Co-Facilitators,
Distinguished Colleagues,**

1. The delegation of Sierra Leone is very pleased to highlight some important points in the consideration of the fifth cluster focusing on “**safeguards**” covering Articles 5, 11, and 12 of the International Law Commission’s (“ILC” or “Commission”) articles on prevention and punishment of crimes against humanity.
2. On **Article 5, non-refoulement**, my delegation had previously noted the importance of the article to indirectly prevent crimes against humanity. We support the absolute nature of this rule and commend the Commission in not introducing any exception to the principle of *non-refoulement* under customary international law. We also commend the Commission for addressing concerns we had raised in our written comments, with reference to the text of the provision adopted by the Commission upon its first reading.
3. Regarding **Article 11, fair treatment of the alleged offender**, Sierra Leone welcomes the provision on fair treatment of persons. Far too often, in international criminal law, the rights of suspects and defendants are not emphasized.
4. For a future convention on crimes against humanity, inspiration may be drawn from Rome Statute of the International Criminal Court (“Rome Statute”), in which we note that the distinction between the rights of suspects, and those of accused persons, which has been recognized in international criminal law for

many years, was adopted. We make reference to article 55 of the Rome Statute, which addresses the “[r]ights of persons during an investigation” on the one part, and separately sets out the “[p]resumption of innocence” and the “[r]ights of the accused” in articles 66 and 67 respectively. This will help bring about clarity and consistency.

5. Regarding **Article 12, victims, witnesses and others**, Sierra Leone considers that the rights of victims under international law are of paramount importance. We noted that the Commission provided for a broad provision, addressing participation and reparation for persons alleged to be victims of crimes against humanity. On the basis of the work of the Commission, the future crimes against humanity treaty could set out minimum standards for the treatment of victims.
6. Sierra Leone retains a big concern regarding paragraph 3 of Article 12. In our view, it imposes too stringent an obligation to provide that the State must ensure that the victims of a crime against humanity have the right to obtain reparation for material and moral damages on an individual or collective basis. While we are grateful to the Commission for caveating this expansive duty, with the language of “consisting, as appropriate, of one or more of the following forms” of reparation and through the further explanation in the commentary, the experience of Sierra Leone with the mass commission of crimes against humanity suggests this could still be problematic on the basis of the disproportionate burden on fragile States or States affected by conflict.

7. Over the course of a decade of brutal war, nearly two-thirds of our population of 5 million people were displaced from their homes. Many lost lives, limbs and all their property. Hundreds of thousands sought refuge in neighbouring countries. In such a context, when the war eventually ended, Sierra Leone relied on external assistance to help resettle its people and to rebuild. It took many years for our nation to recover from a decade of experiencing atrocity crimes. We had therefore asked the Commission, in our written comments, to deliberate further, in such a context, whether the obligation might not be imposing too ambitious a burden on a conflict-torn State that may be a party to a crimes against humanity convention containing this article.
8. This commendable idea, which may be appropriate where a small number of persons are victims of rights violations, seems hardly appropriate for a mass atrocity crimes context. Such contexts would of course vary, but often, would include thousands if not hundreds of thousands of victims of crimes against humanity. Indeed, even after the atrocities have ended, the resources may simply be unavailable and the number of victims too large for the State to satisfy the demands of Article 12, paragraph 3.
9. Moreover, many crimes against humanity contexts indicate that the State would typically be facing many other competing national priorities to disarm, demobilize, rebuild and reintegrate former combatants and to address the needs of the population. In such circumstances, Sierra Leone is doubtful about the inclusion of such a provision without further consideration of the burden on conflict-torn and fragile States.

10. As we suggest further consideration of the Commission's work, and the Rome Statute model and its evolutionary development of the International Criminal Court's jurisprudence, another suggestion will be to add a new paragraph 4 of Article 12, which may be loosely based on article 4, paragraph 1, of the International Covenant on Civil and Political Rights.

Chair,

11. It will be a missed opportunity to discuss crimes against humanity and the issue of reparation without addressing the gravest of crimes against humanity committed in human history, and for which reparation is still being resisted, that is, slavery and the Transatlantic Slave Trade.

12. This discussion must shine light on the need to “*achieve reparatory justice for the victims of genocide, slavery, slave trading and racial apartheid*”. We know serious political opposition to reparations for colonialism and slavery remains among the countries that benefited the most from both, as outline in the report of the Special Rapporteur, Tendayi Achiume, on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (**A/74/321**), prepared pursuant to General Assembly resolution **73/262**.

13. Conventional analysis of international law, including by former colonial nations, identifies a number of legal hurdles to the pursuit of claims for reparations for slavery and colonialism.

Among the most noticeable legal hurdles identified is the intertemporal principle in international law, incorporated in article 13 of the articles on responsibility of States for internationally wrongful acts.

14. The intertemporal principle stresses that a State is responsible for violations of international law only if, at the time of the violation or its continuing effects, the State was bound by the legal provisions it transgressed. Numerous States have appealed to the non-retroactive application of international law to deny that they have a legal obligation to provide reparations. However, we have seen States that had hitherto stressed the intertemporal principle as a barrier to its international responsibility, for example, genocide and reparations, with suggestions of their obligations to be “historical” and “moral”, are addressing reparation, owing to political consideration.

15. From the legal perspective, and as explained the report A/74/32, we recognize that: “

[T]he intertemporal principle is subject to exception, including when (a) an act is ongoing and continues into a time when international law considered the act a violation, or (b) the wrongful act’s direct ongoing consequences extend into a time when the act and its consequences are considered internationally wrongful. That means that racial discrimination rooted in or caused by colonialism and slavery that occurred after each had been outlawed cannot be subject to the intertemporal bar. Second, the intertemporal principle

does not apply to present-day racially discriminatory effects of slavery and colonialism, which States are obligated to remediate, including through reparations. The intertemporal principle cannot be said, per se, to bar all claims for reparations for racial discrimination rooted in the events and structures of slavery and colonialism.

16. Special Rapporteur, Tendayi Achiume, called on “*Member States, and international lawyers involved in the interpretation and articulation of international law, [...to] do more to explore the application of the intertemporal principle’s exceptions, especially as a mechanism for overcoming overstated legal hurdles to the pursuit of racial justice*”.

17. We agree with the need to do more, and certainly with the position that:

To the extent that the intertemporal principle is understood to bar reparations for colonialism and slavery, States must recognize that the very same international law that provides for the intertemporal principle has a long history of service to both slavery and colonialism. As mentioned above, international law itself played an important role in consolidating the structures of racial discrimination and subordination throughout the colonial period, including through customary international law, which was co-constitutive with colonialism.

18. Member States are now afforded another legal opportunity to articulate ways to overcome stated legal hurdles to the pursuit of slavery and racial justice.
19. Let me close, **Chair**, by noting that the study by the Commission of the topic "*Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law*" will be helpful to develop further understanding on this important issue.
20. Finally, allow me to extend my delegation's profound gratitude to the Chair of the Sixth Committee, and the Bureau members who also served as co-facilitators for the excellent work in guiding us during this productive exchange of views.
21. Our deep thanks to the Secretariat of the Sixth Committee for the excellent preparations and facilitation.
22. I thank Distinguished Colleagues for the enriching engagement.
23. I thank you.