



**United Nations General Assembly | Sixth Committee
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**Crimes against humanity
(Agenda item 80)**

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(check against delivery)

Mr./Madam Chair,

Turning to cluster 2, Brazil understands that the definition of crimes against humanity could benefit from some improvements with regard to its mental elements, its gender aspects and the phrasing or inclusion of certain conducts.

The chapeau of article 2 should mention not only knowledge, but also intention as a possible "mens rea" of a crime against humanity. An express reference to "intent" in addition to "knowledge" might facilitate the task of domestic courts, when applying a future convention, of deciding on the appropriate penalty to be imposed in accordance with the specific conduct in analysis.

Brazil welcomes the elimination of former paragraph 3 of the article on the definition of crimes against humanity, as has been suggested by Brazil since 2018. The definition of gender contained therein was not on a par with its current meaning under international human rights law.

At the same time, considering the current discussions on this topic, it would be a pragmatic decision to avoid a definition of what constitutes gender in a future convention, which does not preclude the development of customary law. Leaving for Member States to interpret the meaning of the term in accordance with their national legislations can avoid concerns that would prevent ratification of a future convention.

While Brazil supports the inclusion of the crimes already described in the draft articles that are connected with sexual and gender-based violence, we understand that these conducts do not exhaust all forms of sexual and gender-based violence of such gravity as that of a crime against humanity. It would be desirable to specify as much as possible, in light of the principle of strict legality that guides criminal law, other forms of sexual and gender-based violence of comparable gravity.

In this vein, a future convention is an opportunity to also codify conducts of such nature already identified in jurisprudence. This

is the case, for example, of forced marriage, considered an inhumane criminal conduct by the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the International Criminal Court. This also applies to manifestations of reproductive violence of similar gravity as that of forced pregnancy and enforced sterilization, such as forced abortion and forced contraception.

Similarly, we are open discuss the criminalization, in a future convention, of inhumane acts in the context of a regime of deliberate, systematic and complete subjugation of an entire social group based on their gender with the intention to maintain a regime, resulting in a severe deprivation of fundamental rights.

As for the conduct of persecution referred to in paragraph 1 (h), it is our view that it should be a stand-alone crime, as it was in the Statutes of the International Criminal Tribunals for former Yugoslavia and Rwanda. The ICTY, in the Kupreskic case and others, rejected the notion that persecution should be linked to crimes found elsewhere in its Statute and affirmed that a narrow definition of persecution is not supported in customary international law.

When it comes to the definition of enforced disappearance in paragraph 2 (i), we believe that it should not be more restrictive

than the definition of the crime set forth in the International Convention for the Protection of All Persons from Enforced Disappearance. The removal from the protection of the law is not a constituent element of the crime but a consequence of it, while the duration of the disappearance is irrelevant to the gravity of risks inflicted upon its victims.

Domestic courts of States in which the principle of strict legality plays a central role in criminal law may face legal challenges in applying a provision such as the one in paragraph 1 (k) concerning "other inhumane acts". Therefore, it is necessary to strike a balance between, on the one hand, the need to ensure accountability for serious crimes of international law still not narrowly codified in law, in light of the practical unfeasibility of exhausting all acts of such nature, and, on the other hand, the importance of specifying as much as possible punishable conducts.

Brazil would favor the inclusion in the list of crimes against humanity, alongside enslavement in paragraph 1 (c), of slave trade, understood as the abduction, kidnapping, acquisition or disposal of any person, regardless of, *inter alia*, age, race, gender, migration, refugee or statelessness status for the purpose of reducing them to or maintaining them in any form of enslavement.

In article 3, Brazil considers that the explicit reference to the obligation of States not to engage in acts that amount to crimes against humanity is an important provision, as it is a corollary of the obligation to prevent them. We are also supportive of the notion that crimes against humanity are not exclusively perpetrated in conflict settings (paragraph 2) and of the language according to which no circumstances whatsoever could ever justify the perpetration of such heinous crimes (paragraph 3).

As for draft article 4 (a), Brazil believes that the provision could benefit from an express reference to both de jure and de facto jurisdictions. It would enhance the legal certainty of the article as to the obligation of States to prevent crimes against humanity in any territory they control.

I thank you.