

**STATEMENT OF
THE DELEGATION OF THE REPUBLIC OF INDONESIA
ON THE SECOND RESUMED SESSION OF THE SIXTH COMMITTEE
TO CONTINUE ITS CONSIDERATION OF AGENDA ITEM 80
ON CRIMES AGAINST HUMANITY**

**Thematic Debate 3:
Draft Articles 6, 7, 8, 9, and 10
of the International Law Commission Draft Articles
on the Prevention and Punishment of Crimes against Humanity**

Wednesday, 3 April 2024

Thank you, Mr. Chair,

Draft Articles contained in Thematic Cluster 3, namely Draft Articles 6, 7, 8, 9 and 10 are **very important** as it prescribes issues of ***National Measures***.

These five Draft Articles provide States to exercise their jurisdiction in accordance with their national law **to establish its jurisdiction and to criminalize, to investigate, to take measures**, as well as **to prosecute or to extradite** the alleged offender.

Allow me to provide several observations.

FIRST, Indonesia welcomes the formulation of Draft Articles 6 and 7 on the criminalization under national law and establishment of national jurisdiction respectively.

It is important to ensure that **the primary responsibility with respect to the prevention and prosecution of crimes against humanity remains with the states in whose jurisdiction the alleged crimes against humanity occur**.

In this regard, Indonesia enacted **Law Number 26 Year 2000 on the Human Rights Court**, which criminalizing crimes against humanity and asserting domestic jurisdiction.

The law stipulates that Indonesia Human Rights Court is **competent to hear and to rule on cases of crimes against humanity**, including cases perpetrated by Indonesian citizens **outside the territory of Indonesia**.

The definitions of crimes against humanity under the law are similar with the definitions prescribed by the Rome Statute, including the elements of the crimes.

Judicial procedures are well-described, encompassing every phase of the judiciary process, from arrest, detention, investigation, prosecution, hearings, and sentencing.

The Law also provides provisions relating to the **protection of witnesses and victims of crimes against humanity**, while also guaranteeing fair treatment of the alleged offender, at all stages of the proceedings.

In addition, to further complement the national legal infrastructure, Indonesia also **stresses the importance of cooperation among states**.

In this regard, until today, Indonesia has concluded **12 Extradition Treaties (ET) and 11 Mutual Legal Assistance in Criminal Matters Treaties (MLAT)** including one regional MLA Treaty among ASEAN countries...and still committed to further cooperation in international criminal law to deny safe heaven and impunity of such crimes.

Our recently inaugurated Penal Code, **Law Number 1 Year 2023**, enshrines an article **singularly devoted to the criminalization of crimes against humanity**.

Article 599, in its scope and breadth, delineates the defining characteristics of these crimes and prescribes stringent punitive measures for violators.

SECOND, on Draft Article 10 and its relationship with the question of whether there is a need to address the issue of amnesties.

My Delegation is of the view that there is **no need to address this issue**.

Historically, amnesties have been **used as tools for national reconciliation**, to heal the wounds of conflict, or to transition from periods of turmoil to peace.

They can be traced back in history when victorious leaders would offer amnesty to the defeated to ensure peace and stability.

In modern contexts, amnesties have been used in various scenarios, including after civil wars, during democratic transitions, or after periods of authoritarian rule.

Amnesty can play a role in **national reconciliation and peacebuilding**.

Its relationship with the obligation to prosecute or extradite is **fraught with legal, ethical, and political complexities**.

The challenge lies in finding a path that respects international obligations while acknowledging the nuanced realities of transitional justice and reconciliation processes.

Therefore, **the approach** taken by the Commission **not to include amnesty** in the Draft Article is **wise**.

Let this question be decided upon by the domestic legal and political processes of States, in light of their specific circumstances when such question arises.

A tailored amnesties accompanied by truth-seeking mechanisms, reparations, and guarantees of non-recurrence are more likely to be accepted than blanket amnesties that offer unconditional immunity for serious crimes.

FINALLY, national measures contained in Draft Articles of this Thematic Cluster 3 are heavily related to the issue of individual criminal responsibility.

This **Draft Articles does not cover state responsibility**, particularly on situations where a state is alleged to aiding or assisting, or directing, controlling, or coercing, another State in the commission of crimes against humanity.

Article 9 of the **Convention on the Prevention and Punishment of the Crime of Genocide** 1948 might be a good example to approach this issue, where such article contained an element of “***including those relating to the responsibility of a State***”.

This too might be a good point for us to ponder.

I thank you.
