



**Statement on behalf of the Republic of South
Africa**

by

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**Permanent Mission of South Africa to the
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Committee of the of the United Nations General
Assembly**

Thematic Cluster 3

Agenda Item 80: “Crimes Against Humanity”

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Chairperson,

Thank you for affording us the floor to make a few observations on Cluster 3.

South Africa supports the content and spirit of draft Article 6. Crimes Against Humanity was criminalised in 2002 through the enactment and entry into force of the Implementation of the Rome Statute of the International Criminal Court Act. The purpose of that enactment, in addition to providing for a framework to ensure the effective implementation of the Rome Statute, was among others, to provide for the criminalisation of genocide, crimes against humanity and war crimes; to provide for the prosecution in South African courts of persons accused of having committed those crimes in South Africa and beyond the borders of South Africa in certain circumstances; and to provide for the arrest of persons having been accused of such crimes and their surrender thereof.

We welcome the inclusion of draft Article 6 sub-Articles 4 and 5 as they relate to accountability irrespective of having carried out an unlawful order or holding a certain position. Carrying out unlawful orders is not permitted in South African law and any official abiding thereto is eligible to be held personally liable for their act. Similarly, section 9 of the Constitution provides that everyone is equal before the law which essentially removes the invocation of one's official position where accountability for crimes is considered. The exclusion of the applicability of the statute of limitations in sub-Article 6 is greatly welcomed by my delegation.

On Article 6 sub-Article 7 our interpretation of the words "punishable by appropriate penalties that take into account their grave nature" is that such penalties will be to the exclusion of death penalty. The Bill of Rights which is the cornerstone of the South African constitution provides for an inherent right to life. As a matter of law and principle, South Africa shall abide by the provisions of the constitution and where the exclusion of a death penalty as a sentence cannot be guaranteed, South Africa will not heed the call for extradition or surrender.

We welcome the inclusion of draft Article 7 on the establishment of national jurisdiction, and we are in support thereof. The creation of jurisdiction at national levels will ensure that the States have the first right to try crimes against humanity in their domestic jurisdictions and therefore reinforces the principle of complementarity.

We welcome the inclusion of Article 8 and 9. Similarly, we express support to the provisions of draft Article 10 *aut dedere aut judicare*. In terms of our domestic law, South Africa has universal jurisdiction over crimes against humanity, if the perpetrator is present in the country.

I thank you.