

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions

Ref.: AL PSE 3/2023

(Please use this reference in your reply)

3 January 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 52/7 and 53/4.

In this connection we would like to bring to the attention of your Excellency's Government, as well as the de facto authorities in Gaza by copy of this letter, information we have received concerning the attacks allegedly perpetrated by armed members of Hamas, and/or other Palestinian armed groups, on 7 October 2023, and involving mass unlawful killings; torture and other cruel, inhumane, or degrading treatment or punishment, including mutilation, decapitations, and burning people alive; sexual torture in the forms of rapes (including gang rapes), sexual assaults and mutilations of sexual organs; and hostage-taking, in certain circumstances tantamount to enforced disappearances, of civilians, including children, of Israeli and other nationalities. Most of these alleged acts correspond to war crimes and, when perpetrated as part of a widespread or systematic attack, they would constitute crimes against humanity.

We support the need for independent and transparent investigations into all crimes committed in Israel and the occupied Palestinian territory (oPt), including those being conducted by the International Criminal Court and the Independent Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (COI/OPT/EJ/I). This letter should be read without prejudice to the outcome of those investigations.

We welcome the recent release of 110 hostages. However, we express our deepest concern for the life, safety and well-being of those taken hostage, whose fate and whereabouts remain unknown, and call for their immediate and unconditional release.

We wish to take this opportunity to acknowledge the tragic situation of the Palestinian people in light of the current armed conflict in Gaza, including the killing of thousands of civilians, among them a large and disproportionate number of women and children. As you are aware, we have issued communications urging for a ceasefire and parties to abide by international humanitarian and human rights law, to investigate all allegations of violations and bring perpetrators to justice and to end and prevent human rights violations of the people of Gaza and the West Bank.

The accession of Palestine to various international human rights and humanitarian law and international criminal law treaties engages its responsibility, to the extent of its jurisdiction and effective control. Within the Gaza Strip, the Hamas-led de facto authorities bear human rights and humanitarian law obligations in light of their exercise of government-like functions. Under the treaties ratified by the State of

Palestine and customary international law, the de facto authorities are internationally responsible for violations they commit in Gaza or from within Gaza¹. Armed groups are also bound under international humanitarian law. Each individual is individually liable for any international crime committed.

We recognise further the role being played by the State of Palestine as an Observer State to the United Nations through its diplomatic missions abroad in representations at the United Nations and other international fora.

According to the information received:

On 7 October 2023, approximately 2,200 rockets were fired indiscriminately from the Gaza strip into Israel.

In parallel, following paraglider, vehicle, and motorbike incursions, as well as attempted infiltrations by sea, an attack by armed actors was conducted into approximately 22 villages within Israeli territory. An open-air music festival was also subjected to attacks.

According to reports, armed men rampaged the streets, entered homes, including bomb shelters, ransacked and burned property. The attacks have been described by the United Nations Secretary General as inexcusable involving the deliberate killing, injuring and abducting of civilians and launching of rockets against civilian targets².

The armed combatants allegedly killed a total of approximately 1,200 Israeli and foreign nationals³, including the mass murder of a large, unspecified number of civilian men, women and children, and injured thousands more.

Hamas, as well as Palestinian armed groups (“armed groups”) reportedly claimed responsibility for the attack, including in widely publicized social media.

It is alleged that a number of individuals were burnt alive in their homes, bomb shelters or other locations (e.g. dying from smoke inhalation and suffocation); some bodies were found decapitated and/or mutilated; many bodies had signs of trauma consistent with executions (e.g. close range gunshot wounds to the back of the head); and peri-mortem trauma consistent with beatings (e.g. rib fractures and defensive wounds to forearms).

There is also growing circumstantial evidence and allegations made by survivors regarding sexual torture, in the form of rapes (including gang rapes), sexual assaults, as well as reports of mutilations of sex organs and gunshots to genital areas.

¹ See A/HRC/8/17, paras. 4 and 9; A/HRC/28/45, para. 6; A/HRC/29/52, paras. 12 and 17; and A/HRC/40/CRP.2, para. 50; A/HRC/50/21, paras. 23-24. It is also recognized that the State of Israel has its own international human rights obligations, which are not addressed in this letter and shall be taken up with the State of Israel separately.

² <https://www.un.org/sg/en/content/sg/statement/2023-10-24/secretary-generals-remarks-the-security-council-the-middle-east-delivered>.

³ It is acknowledged that this figure is the estimated total, incorporating both civilians as well as soldiers of the Israeli Defence Force; the exact breakdown is not yet available.

A number of women's dead bodies were reportedly found with their clothing pulled up to their waists; their underwear removed, torn or stained with blood. Some others had close-range and contact gunshot wounds to the skull, eyes, face, breasts and genitalia.

A young woman requiring medical attention informed a first responder that she had been raped by four men. She was heavily bleeding from her genital area.

Two weeks following the attacks, representatives of the World Health Organization (WHO) visited Israel and reported the vast majority of survivors they had spoken to had "severe injuries from gun shots, shrapnel and burns"⁴. The WHO described the villages and kibbutz where the alleged attacks occurred as "ghost towns (...) [with] still the terrible stench of death" and noted that many survivors were in need of urgent mental health support⁵.

An estimated 240 individuals, including older persons, children and infants, women and men, some of whom allegedly requiring medical care due to pre-existing medical conditions, were taken hostage by the armed groups. Approximately 30 children and babies were kidnapped. Some of these children were allegedly separated from their parents or taken hostage after their parents had been killed.

During the humanitarian pause between 24 and 30 October, 86 Israeli and 24 foreign nationals who had been held hostage were released. Three further hostages are reported to have been killed by Israeli Defence Forces inside Gaza. To date, however, the fate, conditions, and whereabouts of those still being held remain unknown.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we wish to record our utmost condemnation of the attacks of 7 October. Unlawful killing and torture, including sexual torture, are absolute and non-derogable prohibitions for which no circumstances, whether a state of war, occupation or other state of emergency may be invoked to justify their perpetration. These acts further constitute serious violations of international humanitarian law and international criminal law, for which there can be no impunity. They are recognized as war crimes, and when committed as part of a widespread or systematic attack against a civilian population, with knowledge of the attack, they amount to crimes against humanity.

Hostage-taking and acts tantamount to enforced disappearances are prohibited under international customary law as well as relevant international humanitarian law treaties. We implore the de facto authorities and any other actor holding hostages to release them without further delay and unconditionally.

We recall that discriminate and indiscriminate attacks, acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited under international humanitarian law.

⁴ <https://news.un.org/en/story/2023/10/1142812>; <https://www.who.int/europe/news/item/23-10-2023-shock-grief-and-the-challenge-of-healing-israel-health-system-responds-to-the-october-attacks>.

⁵ Ibid.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law and international humanitarian and criminal law** attached to this letter which cites provisions relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. In respect of the duty to investigate all allegations of unlawful killing, torture and other cruel, inhuman or degrading treatment or punishment (including sexual torture), and hostage-taking and acts tantamount to enforced disappearances, please provide information on all measures and efforts taken to fulfil this duty, including cooperation with international investigations, including those by the International Criminal Court, and the Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, and any other investigations that may be undertaken by other UN agencies, including the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, by Member States or States parties to relevant international treaties, including in respect of universal jurisdiction.
3. Please provide information on any legislative, administrative, judicial, diplomatic or other measures taken – or are planned to be taken to – prohibit and prevent acts of torture and other cruel, inhuman or degrading treatment or punishment and their recurrence, as required by inter alia the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, such as effectively criminalising torture (arts. 2, 4 etc), investigating and prosecuting or extraditing persons accused of acts of torture (arts. 5-9 etc), education and training on the applicable standards (art. 10), and review of procedures and practices of relevant authorities (art. 11).
4. Please provide information on any legislative, administrative, judicial, diplomatic or other measures taken – or are planned to be taken to – prohibit, prevent and investigate all unlawful killings in accordance with art. 6 of the ICCPR and the Revised UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol 2016), including the use of the UNODC Manual for Forensic Pathologists published in 2015 in partnership with the Palestinian Ministries of Justice and Interior
5. Please provide updated information on the conditions, fate and whereabouts of persons reported to be held hostage, as well as on measures taken (including diplomatic representations) to protect their life, physical and mental integrity, including information on medical and other assistance being provided. Please provide information on the efforts taken to release the hostages and to cooperate with international

monitors.

6. Please provide information on measures taken to “ensure respect” for international humanitarian law, as required by common article 1 of the four Geneva Conventions of 1949.

We recognise that there is an ongoing armed conflict in Gaza, however it is incumbent on us to remind the various actors that the duty to comply with international human rights and international humanitarian law obligations, including to investigate and to prohibit and prevent the types of international crimes alleged in this letter continues even in times of emergency. We stand ready to offer technical advice, including on the forensic and medico-legal standards promoted by our respective mandates, to assist in these investigations.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we reiterate our call for the immediate and unconditional release of any person being held hostage; and urge that all necessary interim measures be taken to prevent any irreparable harm to their life and personal integrity and to halt any alleged violation, prevent any similar reoccurrence and, in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations. We stand ready to support the relevant authorities’ efforts in this regard.

Given the public interest in these matters and the seriousness of the allegations, we may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency’s Government and the de facto authorities to clarify the issue/s in question.

We advise that we shall be sending a copy of this allegation letter to the Head of the Council on International Relations in Gaza, Mr. Basin Naim.

A copy of the present allegation letter is also being sent to the Government of Israel for their information.

Please accept, Excellency, the assurances of our highest consideration.

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex

Reference to international human rights law, humanitarian law, and international criminal law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government and the de facto authorities in Gaza to the following provisions of international human rights law, international humanitarian law, and international criminal law.

Protection of the right to life and prohibition of indiscriminate attacks

Article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by the State of Palestine on 2 April 2014, protect the inherent right to life of all human beings.

We recall that the right to life is the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies that threaten the life of the nation⁶. The right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights⁷.

States parties must respect the right to life. This entails the duty to refrain from engaging in conduct resulting in arbitrary deprivation of life. States parties must also ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State. The obligation to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life⁸.

An important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving allegations of excessive use of force with lethal consequences⁹.

Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated

⁶ Human Rights Committee, General Comment No. 36 ([CCPR/C/CG/36](#)).

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

violations¹⁰.

We stress that investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates. Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, and comparable measures leading to de facto or de jure impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy¹¹.

We emphasize that investigations must always be independent, impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including, adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future¹².

Where relevant, the investigation should include an autopsy of the victim's body, whenever possible, in the presence of a representative of the victim's relatives¹³.

States parties need to take, among other things, appropriate measures to establish the truth relating to the events leading to the deprivation of life, including the reasons and legal basis for targeting certain individuals and the procedures employed by State forces before, during and after the time at which the deprivation occurred, and identify the bodies of the individuals who have lost their lives. States parties should also disclose relevant details about the investigation to the victim's next of kin, allow the next of kin to present evidence, afford the next of kin legal standing in the investigation, and make public information about the investigative steps taken and the findings, conclusions and recommendations emanating from the investigation, subject to absolutely necessary redactions justified by a compelling need to protect the public interest or the privacy and other legal rights of directly affected individuals¹⁴.

States parties must also take the necessary steps to protect witnesses, victims and their relatives and persons conducting the investigation from threats, attacks and any act of retaliation¹⁵.

Furthermore, we also refer to the relevant provisions of international humanitarian law which prohibit indiscriminate attacks and acts or threats of violence the primary purpose of which is to spread terror among the civilian population, namely articles 51(2)(4) of the Additional Protocol I to the Four Geneva Conventions¹⁶; 52(1) in conjunction with customary international humanitarian law rules 1, 2, 7, 11 and 12.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ See: <https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-protection-civilian-persons-time-war>.

Indiscriminate attacks include attacks which may be expected to cause incidental loss of civilian life because of the indiscriminate nature of the methods and means employed.

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

We recall that the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is an *erga omnes* and *jus cogens* norm. Torture and other cruel, inhuman or degrading treatment or punishment is prohibited conduct established in (at least) article 5 UDHR, article 7 ICCPR alone and in conjunction with article 2(3) ICCPR, article 37(a) and (b) of the Convention on the Rights of the Child, as well as in multiple articles of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), to which the State of Palestine acceded in April 2014.

We stress that attached to the peremptory and absolute prohibition of torture are obligations to investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to provide remedies to victims¹⁷. Such investigations are recommended to be carried out in line with the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Istanbul Protocol” revised 2022 edition).

States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have explicit treaty duties to establish all acts of torture as offences under domestic law (art. 4 CAT), to exercise jurisdiction over said offences, including under universal jurisdiction (art. 5), to receive complaints and examine them promptly and impartially (art. 13), and to investigate those allegations promptly and impartially (art. 12). Defendants cannot rely on orders of a superior or public authority, or states of emergency, to exonerate their actions (art. 2 (3) and 2. (2)), while any legal mechanisms which interfere with the prohibition, such as statutes of limitations, immunities or amnesties, are considered contrary to the non-derogable nature. Amnesties provided at domestic law do not remove criminal liability pursuant to international tribunals or universal jurisdiction. States parties undertake to cooperate and exercise mutual legal assistance in respect of investigations (arts. 6, 9) and either prosecute or extradite a person alleged to have committed any offence of torture (art. 7). The Convention against Torture may be considered the legal basis for extradition in the absence of an extradition treaty where one is required (art. 8). Prosecutors and courts have a duty to refuse evidence obtained, or suspected of having been obtained, through torture or other illicit means, and no torture shall be used to extract information or a confession (art. 15). Victims are to be protected from reprisals or intimidation during said investigations (art. 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (art. 14). States are to establish jurisdiction over all acts of torture on territoriality, flag State, active nationality, passive nationality, and universal jurisdiction principles (art. 5)¹⁸.

¹⁷ See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment ([AHRC/52/30](#)).

¹⁸ Ibid.

Under international humanitarian law, similar investigative obligations exist. As a grave breach of each of the four Geneva Conventions of 1949, the High Contracting Parties are obliged: to enact legislation to provide penal sanctions for persons committing, or ordering to be committed, torture and inhuman treatment; to search for such persons in order to bring them to justice; and to prosecute suspects of acts of torture as grave breaches under universal jurisdiction, which is considered obligatory¹⁹.

The preamble to the Rome Statute of the International Criminal Court recalls that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”. The Statute disregards immunity for Heads of State or Government (art. 27), establishes responsibility of those in command (art. 28), excludes statutes of limitations (art. 29) and disregards the excuse of following superior orders (art. 33). The duty to investigate and prosecute torture as genocide, war crimes or crimes against humanity is also determined to be customary law, applicable for crimes committed in international (and non-international) armed conflict, which requires States to establish jurisdiction and investigate war crimes allegedly committed by its nationals or armed forces, or on their territory, and, if appropriate, to prosecute the suspects²⁰.

Sexual torture, and sexual and gender-based violence

In addition to the above-mentioned provisions in respect of torture and other cruel, inhuman or degrading treatment or punishment, we would like to refer to the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the State of Palestine acceded on 2 April 2014, which calls on States to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation. Article 2 of the Convention also calls on States Parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

We would like to recall the CEDAW Committee’s General Recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, which calls on States Parties to protect women’s human rights at all times, advance substantive gender equality before, during and after conflict as well as to provide access to justice for victims of sexual violence (CEDAW/C/GC/30). Furthermore, in General Recommendation No. 35 (2017) on gender-based violence against women, updating the General Recommendation No. 19 (1992), the CEDAW Committee clarifies that the due diligence obligation underpins the Convention as a whole and that States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women (CEDAW/C/GC/35).

In addition, article 1 of the United Nations Declaration on the Elimination of Violence against Women adopted by the General Assembly resolution 48/104 of 20 December 1993 provides that the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or

¹⁹ Ibid.

²⁰ Ibid.

arbitrary deprivation of liberty, whether occurring in public or in private life. Article 4 of the Declaration further stipulates that States should implement policies that eliminate violence against women by all appropriate means and without delay.

Rape and other forms of sexual violence are prohibited under international humanitarian law (article 3 of the Four Geneva Conventions; article 27 of the Fourth Geneva Convention; articles 75(2)(a)(1)(iv), 75 (2)(b), and 76 of the Additional Protocol I to the Four Geneva Conventions; and rule 93 customary international humanitarian law.

We also stress that according to a well-established international case law, rape can be a form of torture prosecutable under domestic and international law when it satisfies the definition in article 1 of the CAT; it is also a war crime when “it is used for such purposes of intimidation, degradation, humiliation, discrimination, punishment, control, or destruction of a person; and “[it is] inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”²¹. When committed as part of a widespread or systematic attack against a civilian population, with knowledge of the attack, singular or collective rape can be prosecuted as crimes against humanity, pursuant to article 7 (1)(g) of the Rome Statute.

Pursuant to international jurisprudence, being forced to watch serious sexual assaults inflicted on a female acquaintance has been determined to be torture for the observer, as well as for the person being raped²².

Children’s rights

Article 6 of the Convention on the Rights of the Child, which the State of Palestine acceded to in April 2014, recognises the inherent right of every child to life (art. 6(1)) and establishes the obligations upon States to ensure to the maximum extent possible the survival of the child (art. 6(2)). Article 37 (a) and (b) protects children against any act of torture or other cruel, inhuman or degrading treatment or punishment, as well as against unlawful and arbitrary deprivation of liberty. We refer to the General Comment of the Committee on the Rights of the Child on the ‘right of the child to freedom from all forms of violence’ (No. 13/2011), and reference non-exhaustively further articles 19, 20, and 24.

Furthermore, under international humanitarian law, article 77 of the Additional Protocol I to the Four Geneva Conventions establishes that in addition to the general protection as members of the civilian population, children shall be the object of special respect against the effects of warfare.

Hostage-taking and acts tantamount to enforced disappearances

In relation to the allegations of hostage-taking, we wish to recall that, pursuant to article 3 of the Four Geneva Conventions; article 34 and 47 of the Fourth Geneva Convention: and article 75 (2)(c) of the Additional Protocol I of the Four Geneva

²¹ ICTR, *The Prosecutor versus Jean-Paul Akayesu*, Case No. ICTR-96-4-T, para. 597; ICTY, *Prosecutor v. Kunarac, Kovac and Vukovic*, ICTY, Case No. IT-96-23-T and IT-96-23/I-T, 22 February 2001, upheld on appeal Case No. IT-96-23 and IT-96-23/1; ICC, *The Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15, paras 35-36.

²² ICTY, *Prosecutor v. Miroslav Kvocka, Milojica Kos, Mlado Radic, Zoran Zigic, Dragoljub Prcać*, Case No. IT-98-30/1, paras 149 - 151.

Conventions in conjunction with rule 96 of customary international humanitarian law, hostage-taking is prohibited as a grave breach. Along the same lines, rule 98 of the customary international humanitarian law prohibits enforced disappearance.

We also note that, as long as the fate and whereabouts of those taken hostage is not clarified, the above-mentioned allegations could also constitute acts tantamount to enforced disappearance and acts of torture or other cruel, inhuman or degrading treatment against their family members.

In this regard, we stress that the lack of information on their loved ones may cause “anguish and sorrow” to the relatives of a disappeared person, a suffering that may reach the threshold of torture. Relatives of a disappeared person have the right to know the truth on the fate and whereabouts of their loved ones²³.

We draw your Excellency’s Government’s attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit, or tolerate enforced disappearances. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We further recall that the Declaration sets out the necessary guarantees to be offered by the State. In particular, articles 2, 3, 7 and 13, which provide that no state shall practice, permit or tolerate enforced disappearances and should at all levels take legislative, administrative, judicial or other measures to prevent and eradicate enforced disappearance. Furthermore, no circumstances whatsoever may be invoked to justify enforced disappearances. States have the obligation to ensure that any person who alleges that a person has been subjected to enforced disappearance has the right to complain and to have that complaint promptly, thoroughly and impartially investigated. We would also like to draw the attention of your Excellency’s Government on the fact that, according to the Declaration, prompt and effective investigations should be carried out in order to search for, and to clarify the fate and whereabouts of disappeared persons and to ensure that their rights are protected in accordance with the Guiding Principles for the search for disappeared persons.

Crimes under International Criminal Law

We wish to recall that, under international criminal law, wilful killings; torture or inhumane treatment; rape and other forms of sexual violence; wilfully causing great suffering, or serious injury to body or health; taking of hostages; outrages upon personal dignity; and rape, can also constitute war crimes according to article 8(2)(a)(i)(ii)(iii)(viii) and article 8 (b)(xxi)(xxii) of the Rome Statute.

Given the reported scale of the attacks as well as the alleged systematic or widespread nature of the attacks of 7 October 2023, we stress that they could also constitute crimes against humanity according to article 7(1)(a)(e)(f)(g)(i)(k) in conjunction with article 7(2)(a)(e)(i) of the Rome Statute.

²³ Working Group on Enforced and Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearance, para.4.