

Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL ISR 10/2024
(Please use this reference in your reply)

16 May 2024

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 52/7.

I am writing to bring to the attention of your Excellency's Government information I have received concerning **allegations of acts of torture and/or other cruel, inhuman or degrading treatment or punishment inflicted on Palestinian individuals deprived of liberty, in addition to conditions of detention that fall below international standards, within the context of Israel's response to the attacks of Hamas and other armed groups on 7 October 2023.**

At the outset, I wish to express my sincere condolences to the Government of Israel, as well as the relatives and friends of all those who lost their lives or were injured in such horrific attacks. I remain concerned about the more than 100 hostages still being held, and who are unaccounted for. I wish to recall the concerns I expressed in allegation letter AL PSE 3/2023 addressed to the Permanent Mission of the State of Palestine in January 2024, a copy of which was also sent to your Excellency's Government for information.¹

In respect of the serious allegations raised in the present communication, I am requesting that they be investigated promptly, transparently and effectively, in accordance with international standards and pursuant to your Excellency's Government international obligations to prohibit and prevent all crimes of torture and other cruel, inhuman or degrading treatment or punishment. This should include allowing access to international human rights and humanitarian observers to all places where Palestinians are deprived of liberty.

In this regard, I wish to reiterate my interest and availability to conduct a country visit to Israel, as expressed in a letter sent to your Excellency's Government on 28 February 2024. I am of the view that a country visit by the torture mandate I hold could serve, *inter alia*, as an opportunity to work constructively with your Excellency's Government, including towards addressing effectively the allegations detailed below.

Therefore, it is my hope that the country visit request may soon be accepted. Until then, and in any event, I stand ready to provide expert assistance and advice to all the relevant authorities of Israel, as may be considered appropriate.

¹ See allegation letter AL PSE 3/2023: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28655>; the State of Palestine's reply is accessible through the following link: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=38210>.

According to the information received:

Palestinians from the West Bank, including East Jerusalem

Large numbers of Palestinians, estimated to be in the thousands, including children and adults (men and women) are reportedly being held in custody² by Israeli authorities, since the attacks of 7 October 2023.

An estimated several thousand of them are allegedly kept as so-called “security detainees”, in prisons run by the Israeli Prison Service (IPS), within Israel. They are mostly Palestinian individuals from the West Bank, including East Jerusalem, who were reportedly arrested during military operations conducted by the Israeli Defense Forces (IDF) in different cities and towns, and/or on occasions of security controls at checkpoints. They are reported to include Palestinian political figures, community leaders, activists, journalists, students, and family members of wanted persons.³

Among those detained, many are reportedly held in administrative detention, with no charges or trial, under Military Order no. 1651. This Order as amended allows judicial review of such detention to take place at some point during a period of eight days following the person’s arrest; and access to a lawyer after up to two days from the same arrest. Due to the emergency regulations currently in force in Israel, access to legal assistance may take place remotely, through audio/video technology.⁴

Palestinians in the West Bank, including East Jerusalem, have been allegedly arrested often in circumstances involving violence. Before or while being brought to prison, they would be allegedly beaten - including, in some cases, on genitals - stripped naked, blindfolded, handcuffed and with their legs tied for hours, spat at, slammed against walls, threatened with violence including with rape, and insulted.⁵ It is alleged that at least one autopsy following a death in custody has shown signs of torture and other ill-treatment.

By the end of October 2023, a large number of pictures and videos showing IDF’s soldiers hitting and mistreating Palestinians apprehended in the West Bank, including East Jerusalem, had reportedly been published on the internet. On 1 November 2023, the IDF stated that those allegations would be investigated.⁶

There have been reports that inside prisons, Palestinians have been beaten and subjected to physical violence, as well as to sleep deprivation, sexual harassment, threats, intimidation and acts of humiliation, including being

² In the present allegation letter, the terminology “arrested”, “apprehended”, “held in custody”, “detainees”/“detention”, “prisoners” or “deprived of liberty” may be used interchangeably to include all situations of deprivation of personal liberty.

³ See OHCHR in Occupied Palestinian Territory (OPT), The human rights situation in the occupied West Bank including East Jerusalem, 7 October - 20 November 2023, Flash report, 27 December 2023: <https://www.ohchr.org/sites/default/files/documents/countries/palestine/2023-12-27-Flash-Report.pdf>

⁴ *Ibid.*

⁵ See OHCHR in OPT, The human rights situation in the occupied West Bank including East Jerusalem, quoted above; as well as OHCHR in OPT, Dramatic rise in detention of Palestinians across occupied West Bank, 1 December 2023: <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-dramatic-rise-detention-palestinians-across-occupied-west-bank>.

⁶ See OHCHR, The human rights situation in the occupied West Bank including East Jerusalem, quoted above.

forced to listen to the national anthem of Israel every day for hours, and to Arabic songs with explicit content during prayer times.⁷

Conditions inside prisons are reported to have deteriorated gravely following the “incarceration emergency” declared in Israel after the attacks of 7 October 2023.⁸

Access to lawyers, families, and medical care, including in cases of prisoners suffering chronic diseases in need of treatment, as well as the use of water and electricity have reportedly been severely restricted or *de facto* revoked; basic daily food and water rations have been reduced, which is allegedly leading to weight loss in several inmates. Detainees’ personal belongings, including books and electronic devices, are regularly confiscated, leaving prisoners with limited or no access to news and information.⁹

The increase in the Palestinian population held within the IPS since October 2023 has significantly exacerbated a pre-existing overcrowding problem and has led to poor hygiene¹⁰. An official authorization to allow a lowering of conditions including the space size per prisoner has resulted in inmates being forced to sleep on mattresses on the floor¹¹. In some instances, prisoners have reportedly been kept in their cells for 23.5 hours per day, on a continuous basis, with only half an hour for outside time to shower and exercise¹².

⁷ Allegations brought to the attention of the Special Rapporteur include a) the case of an individual held in the Gilboa prison in November 2023 who, following release, reported that he, and other inmates, were subjected to beatings in their cells, including at nights and during roll calls, where they were obliged to stay on their knees with their hands on their heads. They were also forced to curse themselves and to crawl while carrying an Israeli flag on their back and were threatened with beatings if they failed to do so; b) the case of an individual held in the Ofer prison in November 2023, who reported that he was beaten while there and sustained, as a result, a broken nose; c) the case of an individual held in the Megiddo prison who reported he was beaten by personnel of the IPS before entering prison in October 2023, and while deprived of liberty there; d) the case of an individual held between October and November 2023 in the so-called “Russian Compound Detention Centre”, in Jerusalem, where he was beaten on four occasions by wardens, including through kicks, punches and with batons, which caused bruises on his body; e) the case of an individual held in the Ketziot prison who reported that he and other inmates, some of them while naked, were beaten with metal batons on the day of their release by members of the Keter unit. They were also held for hours with their hands behind their backs, forced to sit on their knees, prohibited from moving their heads. Other testimonies from the Ketziot prison also include allegations of prisoners being subjected to physical and verbal abuses, including beatings on genitals as well as insults and threats of a sexual nature, and strip searches. Furthermore, in at least some areas of the prison, the windows were reportedly removed by the prison administration causing extreme cold in cells during the night, with inmates being forced to sleep on iron beds without mattresses, hugging each other to try to warm up; f) the case of two women held in the Hasharon prison who reported they were respectively beaten while naked and threatened with rape. On this, see also, *inter alia*, Amnesty International, Israel/OPT: Horrifying cases of torture and degrading treatment of Palestinian detainees amid spike in arbitrary arrests, 9 November 2023: <https://www.amnesty.org/en/latest/news/2023/11/israel-opt-horrifying-cases-of-torture-and-degrading-treatment-of-palestinian-detainees-amid-spike-in-arbitrary-arrests/>; and Physicians for Human Rights Israel, Systematic Violation of Human Rights: The Incarceration Conditions of Palestinians in Israel since October 7, 29 February 2024: <https://reliefweb.int/report/occupied-palestinian-territory/systematic-violation-human-rights-incarceration-conditions-palestinians-israel-october-7-february-2024-enarhe>.

⁸ See, *inter alia*, Prison Insider, Israel: Knesset extends ‘incarceration emergency’ as prisons near capacity: <https://www.prison-insider.com/en/articles/israel-knesset-extend-incarceration-emergency>; as well as Report of the Public Defender of Israel, February 2023 <https://www.gov.il/BlobFolder/news/conditions-of-incarceration/he/Conditions-of-incarceration-in-prison-service-facilities.pdf>.

⁹ See OHCHR, The human rights situation in the occupied West Bank including East Jerusalem, quoted above.

¹⁰ See, *inter alia*, Report of the Public Defender of Israel, quoted above.

¹¹ On detention conditions, see also Physicians for Human Rights Israel, Systematic Violation of Human Rights, quoted above.

¹² OHCHR, The human rights situation in the occupied West Bank including East Jerusalem, quoted above.

Palestinians from Gaza

Hundreds of Palestinians from Gaza are reported to be held in *ad hoc* military camps or barracks, one of them allegedly being in Sede Teiman.

The IDF has reportedly not disclosed information on the identities, fates and whereabouts of those kept in such camps nor has it permitted monitoring bodies, including the International Committee of the Red Cross (ICRC), to visit them.

Prisoners in the camps are reportedly deprived of liberty pursuant to the Unlawful Combatants Law, as amended in December 2023,¹³ which allows the IDF to detain individuals without a warrant of arrest for up to 45 days; to defer judicial review of the detention over a period of up to 75 days; and to deny access to a lawyer for a period of up to 180 days from the moment of the person's arrest.

There are reports that some prisoners have been subjected to torture or other cruel, inhuman or degrading treatment or punishment before being transported to the camps, as well as in the camps.

Prior to transfer to the camps, prisoners would be reportedly forced to strip down to their underwear, blindfolded and handcuffed, filmed and photographed in humiliating positions.¹⁴ Within the camps, they would allegedly be held in open-air cages, blindfolded and handcuffed, beaten, insulted, forced to strip naked and/or to kneel for long hours, deprived of sleep and/or food, denied access to a toilet, photographed, filmed and subjected to various acts of humiliation, such as being made to act like animals or being urinated on their bodies.¹⁵ Detainees also reported denial of the right to pray and prolonged use of tightly locked handcuffs causing open wounds and friction injuries. Reports also included alleged beatings included blunt force trauma to the head, shoulders, kidneys, neck, back and legs with metal bars and the butts of guns and boots, in some cases resulting in broken ribs, separated shoulders and other injuries.¹⁶

While I do not wish to prejudge the accuracy of the above-mentioned allegations, among them are acts and conditions that, should they be established, would implicate the prohibition of torture and/or other cruel, inhuman or degrading treatment or punishment, set forth in article 5 of the Universal Declaration of Human Rights (UDHR); article 7, read alone and in conjunction with article 2(3), of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel in 1991; and at least, articles 1, 2, 15 and 16 of the United Nations Convention against

¹³ See Library of Congress, Israel: Parliament Adopts Law Expanding Authority to Detain Unlawful Combatants During Wartime or Significant Military Action: <https://www.loc.gov/item/global-legal-monitor/2024-01-24/israel-parliament-adopts-law-expanding-authority-to-detain-unlawful-combatants-during-wartime-or-significant-military-action/>.

¹⁴ See OHCHR in OPT, Disturbing reports from the north of Gaza of mass detentions, ill-treatment and enforced disappearances of possibly thousands of Palestinians, 16 December 2023: <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-disturbing-reports-north-gaza-mass-detentions-ill-treatment-and-enforced-disappearances-possibly-thousands-palestinians>

¹⁵ See UNRWA, Detention and alleged ill-treatment of detainees from Gaza during Israel-Hamas War: https://www.unrwa.org/sites/default/files/content/resources/summary_on_detention_and_alleged_ill-treatmentupdated.pdf.

¹⁶ *Ibid.*

Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), also ratified by Israel in 1991. Furthermore, article 37 of the Convention on the Rights of the Child, to which Israel ratified in 1991, explicitly prohibits any treatment that would constitute torture or other cruel, inhuman or degrading treatment or punishment of a child, and that children deprived of their liberty should at all times be treated with humanity and dignity and which takes account of their needs according to their age, and always with their best interests as a primary consideration.

I am particularly concerned that the material presented in this letter may suggest that there is an emerging pattern of violations, and that real or perceived lack of accountability and lack of transparency is having an effect of perpetuating an environment of impunity for abusive and humiliating treatment of Palestinians. Such treatment can never be justified, and requires immediate measures to prevent any further alleged harms (article 2, CAT).

Additionally, I am concerned about what appears to amount to official approval of the downgrading of conditions in certain places of detention, such that the overall conditions of treatment in prisons and military camps appear not to meet the accepted international standards contained in article 10 of the ICCPR and the United Nations Minimum Rules for the Treatment of Prisoners. Conditions of persons deprived of their liberty must always be humane and dignified, regardless of the type or purpose of the incarceration. Conditions of detention can never be used to humiliate, or to punish those detained.¹⁷

I wish to emphasize that the prohibition against torture is absolute. This means that no derogation from it is ever possible, even in times of armed conflict or any other security situation or state of emergency (article 4(2) of the ICCPR; and article 2(2) of the CAT). Furthermore, defendants cannot rely on orders of a superior or public authority to exonerate their actions (article 2(3) of the CAT); statutes of limitations, immunities or amnesties, are also contrary to the non-derogable nature of the prohibition.¹⁸ The State of Israel has a duty to prevent by legislative, executive, judicial and other means any acts of torture or other cruel, inhuman or degrading treatment or punishment (articles 2 and 16 of CAT).

Furthermore, I wish to stress that persons deprived of liberty should be held in custody only in official places of detention, duly registered and recorded, treated with humanity at all times, and provided with all the protections required under international human rights and humanitarian law. These include, *inter alia*, access to legal representation and medical assistance, prompt judicial review of their deprivation of liberty and access to remedies for any violations, as well as the possibility to communicate with their relatives and to be visited by independent human rights monitoring bodies and humanitarian actors. Persons deprived of liberty have the right to be informed at the time of arrest of the reasons for their arrest, and subsequently of any charges brought against them. If not promptly charged or convicted of any crime, they should be released.

¹⁷ See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Current issues and good practices in prison management (A/HRC/55/50).

¹⁸ See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Good practices in national criminalization, investigation, prosecution and sentencing for offences of torture (A/HRC/52/30):
<https://documents.un.org/doc/undoc/gen/g23/033/16/pdf/g2303316.pdf?token=clzfg4HLIHmm6KknXQ&fe=true>

Furthermore, as a matter of both customary international law, and pursuant to the relevant Geneva Conventions, which prohibit torture and other cruel, inhuman or degrading treatment or punishment, the above-mentioned acts and conditions may violate international humanitarian law. Torture and other inhuman treatment are war crimes; the systematic or widespread practice of torture constitutes a crime against humanity. Customary law also establishes that soldiers have a duty to disobey orders of a superior for grave breaches such as torture, and that there is no relief for following superior orders; it also provides for rules against amnesties and statutes of limitation.¹⁹

With this in mind, I recall that, under international human rights law and international humanitarian law, Israel has an obligation to investigate alleged violations effectively, promptly, and impartially. Such obligation is made most explicit in articles 12 and 13 of the CAT; articles 13, 17 and 87 of the Third Geneva Convention and articles 27 and 32 of the Fourth Geneva Convention.

Lastly, I wish to recall that victims of human rights or humanitarian law violations shall be provided with effective access to justice, including remedy and reparation for the harm suffered, including in the case of torture, to compensation; and accountability should lead to the adoption of measures to prevent future violations.²⁰

In connection with the above-mentioned allegations and related concerns, please also refer to the **Annex on Reference to international human rights and humanitarian law** attached to this letter which cites international human rights and humanitarian law instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify cases brought to my attention, I 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. Please provide detailed and updated data on the location and number of Palestinians held, within prisons run by the Israeli Prison Service, since the attacks of 7 October 2023, disaggregated by gender/sex, age, and other relevant demographics. Please explain whether and how they are provided with all the protections and standards required under international human rights and humanitarian law, including with regard to access to legal assistance, medical care, food, bedding and clothing and general conditions, and contacts with their families.
3. Please provide detailed and updated information on the number and status of investigations raising allegations of torture and/or other ill-treatment against Palestinian individuals deprived of liberty, opened since the attacks of 7 October 2023, disaggregated by gender/sex, age and other relevant demographics. In respect of closed cases, please provide a breakdown of the outcomes of those cases.

¹⁹ *Ibid.*

²⁰ *Ibid.*

4. Please provide information regarding the methods and procedures for the carrying out of investigations into allegations of torture and/or other ill-treatment and whether, or how, international standards are being complied with, including the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2022 edition).
5. Please provide details of any judgments rendered by the courts, in respect of criminal proceedings involving torture and other cruel, inhuman or degrading treatment or punishment as alleged above, including with regard to persons in positions of command. Please provide details of the sentences and/or other penalties that have been applied; and any remedies for victims and survivors.
6. Please provide details of any decisions or judgments rendered by the courts, tribunal or other bodies in respect of civil cases relating to the above-mentioned allegations; and with regard to the rights of victims and their families to truth, justice and reparations, as appropriate. Please provide information as the status of these cases and if concluded, the outcomes and if applicable, penalties and/or remedies provided.
7. Please provide information as to the directives, policies and laws applicable to members of the Israeli Defense Forces and staff of the Israeli Prison Service to prevent the commission of acts of torture and other cruel, inhuman or degrading treatment or punishment, including training and education protocols (article 10 CAT) and reviews of interrogation and custody rules (article 11 CAT), including those applicable in armed conflict. Please provide information about the number of officials who have been disciplined, if any, for what charge, and the discipline imposed.
8. Please provide information on the military camps allegedly used to hold Palestinians from Gaza (number, locations, relevant regulations, conditions of detention) and please explain the legal, procedural and practical aspects as to how they comply with international human rights and humanitarian law, in a manner consistent with Israel's international obligations. Please also provide information on the number of individuals reportedly held in such camps (disaggregated by gender/sex, age, and other relevant demographics). Please respond to questions 3, 4, 5 and 6 in respect of cases brought against the IDF.

I 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, I urge that all necessary interim measures be taken to halt the alleged violations and prevent any similar violations 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.

At this stage, in particular, I respectfully call on your Excellency's Government to consider allowing immediate access to international human rights and humanitarian observers to all places where Palestinians are currently deprived of liberty, following the attacks of 7 October 2023, so that their location and conditions of detention may be independently verified, without delay.

I stand ready to support your Excellency's Government's efforts to make this possible, and I remain available to complement them, as may be appropriate, in a consultative manner with all relevant authorities, for the purpose of strengthening human rights protection for all.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention and to prevent potentially irreparable harm to individuals. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government to clarify the issue/s in question.

Please be informed that a copy of this letter will also be sent to the Permanent Mission of the State of Palestine for their information.

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

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

Annex

Reference to international human rights law

In connection with above allegations and concerns, I refer your Excellency's Government to the following applicable international human rights law and international humanitarian law provisions and standards:

Article 5 of the Universal Declaration of Human Rights (UDHR); article 7, read alone and in conjunction with article 2(3), of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel in 1991; and at least, articles 1, 2, 15 and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), also ratified by Israel in 1991, which establish the absolute and non-derogable prohibition of torture or other cruel, inhuman or degrading treatment or punishment. Article 37 of the Convention on the Rights of the Child, also ratified by Israel in 1991, provides special protection for children against torture and other cruel, inhuman or degrading treatment or punishment, as well as special considerations for children deprived of their liberty.

Attached to such prohibition are obligations to criminalize and investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute suspects, to punish those responsible and to provide remedies to victims.²¹

States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) have explicit treaty duties to establish all acts of torture as offences under domestic law (article 4), to exercise jurisdiction over said offences (article 5), to receive complaints and examine them promptly and impartially (article 13), and to investigate those allegations promptly and impartially (article 12).

Defendants cannot rely on orders of a superior or public authority, or states of emergency, to exonerate their actions (articles 2(3) and 2(2)), while any legal mechanisms which interfere with that obligation, such as statutes of limitations, immunities or amnesties, are considered contrary to the non-derogable nature of the prohibition (article 2(2)). Amnesties provided at domestic law do not remove criminal liability pursuant to international tribunals or universal jurisdiction. Prosecutors and courts have a duty to refuse evidence obtained, or suspected of having been obtained, through torture or other illicit means (article 15).

Victims are to be protected from reprisals or intimidation during said investigations (article 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (article 14).

States are to establish jurisdiction over all acts of torture on territoriality, flag State, active nationality, passive nationality and universal jurisdiction principles (article 5). The CAT further imposes duties to extradite alleged offenders when they are not prosecuted (articles 5(2) and 7(1)).

²¹ For a full explanation of the obligations to criminalize, investigate and prosecute the crimes of torture and related ill-treatment, see Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/77/502): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/610/77/PDF/N2261077.pdf?OpenElement>

At no time shall torture be used to extract information or a confession (article 1), and any statement which has been obtained via such methods, shall be excluded from any proceedings except against a person accused of torture as evidence that the statement was made (article 15).

States parties to CAT have overarching obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment via effective legislative, administrative, judicial and other measures (articles 2 and 16), to educate and train relevant personnel including military officials on the prohibition (article 10) and to keep all rules, instructions, methods and practices relating to interrogation, custody and treatment under systematic review (article 11).

Article 10(1) of the ICCPR reiterates that persons deprived of their liberty must be treated with humanity and with respect to the inherent dignity of the human being; while articles 10(2) provides certain standards of treatment. The standards of conditions and treatment of persons deprived of their liberty are further contained in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which establish that all prisoners shall be treated with dignity and no prisoner shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.²²

Under international humanitarian law, torture and related ill-treatment is likewise absolutely prohibited. The main instruments: the 1907 Hague Regulations respecting the Laws and Customs of War on Land (art. 4); the four Geneva Conventions of 1949 (GC I, art. 12; GC II, art. 12; GC III, arts 13, 17 and 87; GC IV, arts 27 and 32; GC I-IV common article 3 and arts 50, 51, 130 and 147 respectively; Additional protocol I of 1977 (art. 75(2)(a)(ii)); and Additional protocol II of 1977 (art. 4(2)(a)).

Article 17, fourth paragraph, of the 1949 Geneva Convention III provides: “No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.” - Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, article 17, fourth para.

Article 87, third paragraph, of the 1949 Geneva Convention III provides: “Any form of torture or cruelty is forbidden.” - Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, article 87, third para.

Article 89 of the 1949 Geneva Convention III provides: “In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.” - Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, article 89.

Article 32 of the 1949 Geneva Convention IV provides: “The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering ... of protected persons in their hands. This prohibition applies not only to ... torture ... but also to any other

²² See further Special Rapporteur on Torture’s report on Current Issues and Good Practices in Prison Management, A/HRC/55/52: <https://www.ohchr.org/en/documents/thematic-reports/ahrc5552-current-issues-and-good-practices-prison-management-report>

measures of brutality whether applied by civilian or military agents.” - Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, article 32.

According to article 50 of the 1949 Geneva Convention I, article 51 of the 1949 Geneva Convention II, article 130 of the 1949 Geneva Convention III and article 147 of the 1949 Geneva Convention IV, “torture or inhuman treatment” and “wilfully causing great suffering or serious injury to body or health” are grave breaches of these instruments. Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, article 50; Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949, article 51; Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, article 130; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, article 147.

Also under international humanitarian law, similar investigative obligations exist as those under CAT. 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, including biological experiments; 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 obligatory. States may discharge their obligation to investigate war crimes and prosecute the suspects by setting up international or mixed tribunals.²³

The duty to investigate and prosecute torture as war crime 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 including outside their territory, and, if appropriate, to prosecute the suspects. Customary law has also established that soldiers have a duty to disobey orders of a superior for grave breaches and that there is no relief for following superior orders. Also considered customary norms are the rules against amnesties and statutes of limitation.²⁴

²³ *Ibid.*

²⁴ *Ibid.*