

Mandates of the Special Rapporteur on violence against women and girls, its causes and consequences; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and the Working Group on discrimination against women and girls

Ref.: AL ISR 1/2024
(Please use this reference in your reply)

7 February 2024

We have the honour to address you in our capacities as Special Rapporteur on violence against women and girls, its causes and consequences; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 50/7, 1993/2A and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **detention, extrajudicial execution of Palestinian women and girls and the reported subjugation of Palestinian female detainees to sexual assaults as well as threats of rape.**

The information received takes place within the wider context of the conflict in Gaza that followed the attacks perpetuated by armed members of Hamas and other Palestinian armed groups on 7 October 2023, in which an estimated 1,200 Israelis were reportedly killed and 240 persons were reportedly taken hostage, including 19 women and 33 children. Of these, 110 were reportedly released by Hamas. An estimated 27 Israeli hostages were allegedly killed while in Hamas captivity during the Israeli bombardment of the Gaza strip. Another 3 hostages were reportedly killed by the Israeli military. Hamas also allegedly committed sexual violence against Israeli women on 7 October 2023. Furthermore, between 7 October 2023 and 28 January 2024, it is estimated that more than 26,400 Palestinians were reportedly killed in Gaza by Israeli forces and more than 65,000 Palestinians were reportedly injured. Around 70 per cent of the victims were reportedly women and children. During the same period, an estimated 300 Palestinians were killed in the West Bank.

Many of the allegations made against Israel are the subject of an ongoing examination by the International Court of Justice (ICJ) in a case brought forward by South Africa against Israel. On 26 January 2024, the ICJ delivered its Order on the Request for the indication of provisional measures submitted by South Africa in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, noting that the conditions for indicating provisional measures are met. Amongst the measures, the Court considered that Israel must take all measures within its power to prevent the commission of all acts within the scope of Article II of the Convention on the prevention of Genocide when they are committed with the intent to destroy in whole or in part a group as such. Alleged crimes committed by any State or non-State actor in the Occupied Palestinian Territory (OPT) are furthermore the subject of an investigation by the International Criminal Court and the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel. Several Special Procedures mandates are also in communication with both your Excellency's Government, the State of Palestine, and other Palestinian actors regarding a number of the alleged crimes that are reported to have taken place on and since 7 October 2023 in the OPT and Israel.

According to the information received:

The Israeli Defense Forces (IDF) has reportedly carried out summary executions of Palestinian civilians displaced as a result of bombardments. Such executions have allegedly been committed against multiple members of the same family, including many women. Amongst those arbitrarily executed is reportedly [REDACTED]. She and her entire family had left the house of a relative after the house was hit in an Israeli bombardment. They were reportedly gunned down and their bodies were seen on the street [REDACTED]. On 13 December 2023, the IDF reportedly executed [REDACTED] civilians, including children, [REDACTED] where displaced civilians were seeking refuge. Amongst those executed were one woman and several of her children. Some were reportedly shot dead on site, despite posing no threat. Furthermore, on 21 December 2023, [REDACTED] woman and her husband were reportedly killed by fire by the IDF after they were taken out of their homes [REDACTED] in Gaza. They were reportedly left to bleed to death and only buried after the IDF withdrew from the area.

An estimated 200 women and girl detainees are amongst the 3,000 Palestinians alleged to have been detained in Gaza since 7 October 2023. Amongst those reportedly detained are women doctors, nurses, human rights defenders, journalists, and humanitarian workers. Tens of women and children, including girls, have also been reportedly detained from the informal shelters and their homes in [REDACTED] in Gaza. They were reportedly taken to the [REDACTED], where their head scarves were forcefully taken off and where they underwent body searches by male IDF officers, who are also accused of acts of sexual assault, severe beating, and deliberate humiliation. Reportedly, one of the women that was detained is over [REDACTED] years old, and mothers are also detained with their infant children.

An undetermined number of women and children, including girls, have gone missing, and are believed to have been forcibly taken by the IDF. A Palestinian detainee reportedly released in January 2024 from Israeli custody after being detained with his family [REDACTED] and removed from their home in the [REDACTED], reported that the whereabouts of his wife and [REDACTED] children remain unknown.

In January 2024, a Palestinian female infant was reportedly taken by the IDF from her home in Gaza to Israel by an Israeli officer, [REDACTED], a commander in the [REDACTED], after the alleged killing of her family members, in what appears to be a forced transfer of a child out of Gaza. The IDF has so far not returned the infant and her exact location is reportedly unknown. There have been reports of other missing Palestinian children who have been forcefully separated from their parents and whose whereabouts remain unknown. There are serious concerns that some of the children may have been abducted and forcefully carried off and transferred to Israel or killed.

Palestinian women who have been detained have reportedly experienced inhumane and degrading treatment, including severe beatings, extortion, denial of food, water and visits by their lawyers or members of the

International Committee of the Red Cross. One of the detained women was reportedly placed in a truck with Palestinian men who had been detained and was stripped naked by the Israeli military in the place where she was detained.

In addition, ten female prisoners were reportedly detained in Gaza while moving from [REDACTED] that were declared safe zones. Two women allegedly received orders to abandon their children and to hand them over to other Palestinian civilians who were strangers and also fleeing the region. Ten female prisoners were reportedly put in a cage in the street for three days without food, in the cold and under the rain. They were then allegedly brought to [REDACTED] prison, which may constitute deportation. [REDACTED] The veils of the women were reportedly removed. Allegedly, during their detention, the women and girls did not receive enough food.

A number of women that have been detained in Gaza since 7 October have allegedly been threatened with rape. Two female detainees were reportedly raped and sexually assaulted, both verbally and physically. One woman was also reportedly threatened to be raped in front of her father. In addition, in the West Bank, of the estimated 3,700 Palestinians that were detained there until the end of December 2023, 147 were reportedly women and 245 children, including girls. Several women and girls were reportedly arrested and detained in the middle of the night, in their nightwear, and they were not allowed to change their clothes. Women were also reportedly detained in [REDACTED].

Moreover, 260 Palestinians detained in Gaza since 7 October 2023, including women, have reportedly been classified as “illegal combatants”. Israel is reportedly introducing changes to its laws with regards to illegal combatants. The last set of these changes was introduced on 5 December, which allegedly allows Israel to informally keep someone in detention for 42 days before issuing an arrest warrant. Detainees are reportedly prevented from meeting lawyers for up to 80 days and the legal review of the detention can only take place after 45 days of detention. The Government of Israel has reportedly created a new special unit called Elketer, which is heavily armed and has police dogs and which specializes in beating prisoners.

Women who were detained from Gaza or the West Bank were reportedly subjected to body searches, including while naked. It is informed that they also experienced the use of physical force, including severe beating, and violence while in detention. Some women were reportedly beaten after being partially stripped. Sick detainees have reportedly been prevented from accessing medicine and medical treatment. Furthermore, Palestinian women and girls detained in the West Bank were reportedly denied sanitary pads during menstruation. One detainee had to wear her soaked menstruation pad for three days. Reportedly, some women did not receive any menstruation pads for three days while menstruating and had to wash their clothes and wear them again while they were wet. Female detainees were also reportedly threatened with rape and with burning their families alive. Five female detainees in one prison were collectively stripped naked and allegedly asked to perform degrading motions such as opening their legs.

Women and girls from the West Bank that were detained prior to 7 October 2023 have reportedly witnessed a worsening of detention conditions for Palestinian prisoners. They reportedly became completely isolated and are prevented from seeing family members and lawyers. Furthermore, they were allegedly denied possession of a radio or a television. Their food and clothes have reportedly been taken, as well as cleaning material and small stoves. The cells have also allegedly become more crowded. Concerningly, women and girls detained in both Gaza and the West Bank reportedly had photos of them taken by Israeli forces soldiers without their hijabs. Photos were also reportedly taken of female prisoners in degrading conditions that Israeli soldiers have then reportedly published.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we are gravely concerned by the indications that your Excellency's Government may have violated the right to life, health, personal integrity, liberty, and that the security engaged in unlawful killings, ill-treatment, inhuman, degrading treatment and torture of Palestinian women and girls, as well as extreme discrimination and violence. Furthermore, the information received alleges that Palestinian women and girls have been denied due process of law, fair trial, access to justice and humane treatment and deprived of their liberty. Such acts of discrimination include the intentional deprivation of Palestinian women and girls in detention of sanitary products.

Taken together, these acts may constitute serious violations of international human rights and international humanitarian law, amounting to core crimes in international criminal law, prosecutable under the Rome Statute. More specifically, these acts may constitute war crimes and, when committed as part of a widespread or systematic attack against a civilian population, with knowledge of the attack, crimes against humanity. The Rome Statute establishes liability for unlawful deprivation of liberty as a crime against humanity when the practice is part of an attack against a civilian population, defined as a "course of conduct involving the multiple commission of [prohibited] acts". These acts must also be carried out "pursuant to or in furtherance of a State or organizational policy to commit such attack".

Of grave concern to us are also that the reports of the abduction and the forceful transfer of Palestinian children out of Gaza, which, if confirmed, would constitute a violation of Israel's obligation under the Convention on the Rights of the Child and the Geneva Conventions.

The poor and degrading conditions of detention in which Palestinian women and girls have been reportedly kept may seriously affect a person's physical and mental health and violate the victim's right to the enjoyment of the highest attainable standard of physical and mental health in violation of Israel's obligations under international human rights law.

In reference to the detention of Palestinian girls, we also recall that in the cases of child detention, the Convention on the Rights of the Child prohibits deprivation of liberty – unless as a last resort, for the shortest period necessary, and with stringent safeguards – conditions which reportedly have not been met.

The reported repetition and continuation of the practice suggests coordinated planning and authorization from higher authorities. Similarly, the reported abduction

and transfer of children is suggestive of an intent to spread terror among local population.

Your Excellency's Government also has an obligation to conduct an independent, impartial, prompt, thorough, effective investigation of the above allegations. If violations have taken place, the victims and their families are entitled to full reparations and justice, including to see the perpetrators of the alleged crimes held accountable. The Government of Israel is also under an obligation to take steps to prevent the occurrence of similar violations in the future.

We further wish to emphasize that engaging in killing, torture, deportation, and ill-treatment, violating the right to fair trial (notably by denying access to a timely, independent and impartial court and effective legal defense), and failing to ensure that subordinates do not engage in these actions, carry criminal liability. There is also criminal responsibility for a superior's role in permitting gross violations of international criminal law to occur or for failing to investigate or punish those violations or to prevent their recurrence.

In connection with this, we also urge your Excellency's Government to indicate, insofar as known, the whereabouts of those abducted and return them to Gaza. We would also like to remind your Excellency's government that the Israeli forces are bound by the core principles of international humanitarian law, such as distinction among combatants and civilians the principle of proportionality and precaution.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards 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. Please provide updated information on the conditions and whereabouts of women and children, including girls, reportedly separated from their families or in detention, as well as measures taken to protect their life, physical and mental integrity, including information on access to medicines, medical treatment, and other assistance being provided.
3. Please provide updated information on the situation of children and infants that may have been abducted and/or transferred out of the Gaza strip as well as the measures that will be taken to ensure that they are returned to their families and/or communities.
4. Please explain why women in detention are reportedly not allowed access to independent medical examinations and what has been done to ensure access to adequate medical treatment.

5. Please indicate what measures have been taken to prevent and protect women in detention against any form of mistreatment that may amount to ill-treatment, torture or other cruel, inhumane, degrading treatment or punishment.
6. Please clarify what measures are taken to document and investigate alleged cases of ill-treatment, torture or other cruel, inhumane, degrading treatment or punishment, including sexual assault, and threats of use of rape and torture and specify how many perpetrators have been held accountable for their actions.
7. Please provide information on the access of families and lawyers to visit these women in detention.
8. Please explain what measures are taken to ensure that detained women and girls have access to dignity kits and menstruation pads.
9. Please explain what complaint and redress mechanisms are available to women in prison to raise grievances about their prison conditions and the mistreatment to which they have been subjected to the authorities and the follow-up that is available.

We would appreciate receiving a response within 60 days. At the expiration of 60 days, 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 urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence 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 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. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

A copy of the present allegation letter will be sent to the Government of the State of Palestine for their information.

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

Reem Alsalem

Special Rapporteur on violence against women and girls, its causes and consequences

Francesca Albanese
Special Rapporteur on the situation of human rights in the Palestinian territory
occupied since 1967

Dorothy Estrada-Tanck
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with the 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, safety and security

Article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the State of Israel on 3 October 1991, protect the inherent right to life of all human beings.

We recall the General Comment No. 36 of the Human Rights Committee that stated 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 nation (CCPR/C/GC/36). 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 rights.

The Human Rights Committee also emphasized that “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 life” (CCPR/C/GC/36, para. 7). The Human Rights Committee further stressed that “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 consequences” (CCPR/C/GC/36, para. 27). Furthermore, “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 violations” (CCPR/C/GC/36, para. 27).

As underscored by the Human Rights Committee, 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 remedy” (CCPR/C/GC/36, para. 27). We also 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 future” (CCPR/C/GC/36, para. 28). Furthermore, “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 individuals. 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 retaliation” (Ibid.).

In addition, 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 Conventions¹; 52(1) in conjunction with customary international humanitarian law rules 1, 2, 7, 11 and 12. Indiscriminate attacks include attacks which may be expected to cause incidental loss of civilian life due to 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 Israel ratified on 3 October 1991.

We recall the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on the good practices in national criminalization, investigation, prosecution and sentencing for offences of torture and stress that attached to the peremptory and absolute prohibition of torture are

¹ See: <https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-protection-civilian-persons-time-war>.

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 victims (A/HRC/52/30). 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; Istanbul Protocol; Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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, 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. 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).

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 to bring them to justice; and to prosecute suspects of acts of torture as grave breaches under universal jurisdiction, which is considered obligatory. Also, common article 3 insists that civilians are treated humanely, without any adverse distinction among others on race, sex and religion, and to refrain from “cruel treatment and torture”, and “outrages upon personal dignity, in particular humiliating and degrading treatment.”

In the preamble of its Rome Statute, the International Criminal Court (ICC), which has jurisdiction over grave crimes committed in the occupied Palestinian territory 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 suspects.

Right to liberty and security of persons

We stress that States parties to the ICCPR have an obligation to respect and ensure the rights under article 9 of the Convention to all persons who may be within

their territory and subject to their jurisdiction. Given that arrest and detention bring a person within a State's effective control, States parties must not arbitrarily or unlawfully arrest or detain individuals outside their territory. States parties must not subject persons outside their territory to, inter alia, prolonged incommunicado detention or deprive them of review of the lawfulness of their detention.

With regard to article 4 of the ICCPR, the Human Rights Committee observed that "(...) article 9 applies also in situations of armed conflict, to which the rules of international humanitarian law are applicable. While rules of international humanitarian law may be relevant for the purposes of the interpretation of article 9, both law branches are complementary and not mutually exclusive. During an armed conflict, access to the International Committee of the Red Cross to all places of detention, becomes an essential additional safeguard for the rights to liberty and security of persons.

There are other elements in article 9 of the ICCPR that cannot be made subject to lawful derogation under article 4. The fundamental guarantee against arbitrary detention is non-derogable, insofar as even situations covered by article 4 cannot justify a deprivation of liberty that is unreasonable or unnecessary under the circumstances. The existence and nature of a public emergency which threatens the life of the nation may, however, be relevant to a determination of whether a particular arrest or detention is arbitrary. Valid derogations from other derogable rights may also be relevant when a deprivation of liberty is characterized as arbitrary because of its interference with another right protected by the Covenant.

During international armed conflict, substantive and procedural rules of international humanitarian law remain applicable and limit the ability to derogate, thereby helping to mitigate the risk of arbitrary detention. Outside that context, the requirements of strict necessity and proportionality constrain any derogating measures involving security detention, which must be limited in duration and accompanied by procedures to prevent arbitrary application, including review by a court (...). The procedural guarantees protecting liberty of person may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights. In order to protect non-derogable rights, including those in articles 6 and 7 of the ICCPR, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention must not be diminished by measures of derogation.

In its report on women deprived of liberty (A/HRC/41/33), the Working Group on Discrimination against Women and Girls noted that recent armed conflicts have seen both State and non-State actors using women's deprivation of liberty as a tool to further their ends. In situations of conflict, women's liberty and bodies are instrumentalized in multiple ways leading to deprivation of liberty. It has recommended that State ensure that measures addressing conflict, crisis, terrorism and national security incorporate a women's human rights focus and do not instrumentalize women's deprivation of liberty for the purposes of pursuing government aims.

Conditions of deprivation of liberty

Poor and degrading conditions of detention may seriously affect their physical and mental health, violate their right to the enjoyment of the highest attainable

standard of physical and mental health in violation of the obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the State of Israel on 3 October 1991, and further generate the risk of an arbitrary deprivation of life in a violation of its commitments under the ICCPR. In this regard, we also wish to refer to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (resolution 65/229, annex), including rules on personal hygiene and gender-specific health care, among others (rule 5 ff). The Bangkok rules acknowledges that women prisoners are particularly vulnerable and that the health screening of women prisoners shall include comprehensive screening to determine primary health-care needs (rule 6 a)). Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures. Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches (rules 19-20). Moreover, women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation. Women prisoners who have been subjected to sexual abuse shall receive appropriate medical advice and counselling and shall be provided with the requisite physical and mental health care, support and legal aid (rule 25). Women prisoners' contact with their families and legal representatives "shall be encouraged and facilitated by all reasonable means" (rule 26).

Discrimination and violence against Palestinian women and girls, including sexual violence, sexual assault and the threat thereof.

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 arbitrary deprivation of liberty, whether occurring in public or in private life. Article 4 of the United Nations 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, including sexual assaults, and acts that qualify as "outrages on personal dignity" are also prohibited under international humanitarian law, including article 3 of the Fourth Geneva Conventions; article 27 of the Fourth Geneva Convention; articles 75(2)(a)(1)(iv), 75 (2)(b)and (e), and 76 of the Additional Protocol I to the Four Geneva Conventions; and rule 93 customary international humanitarian law. Article 14 of the Third Geneva Convention also stipulates that "women [prisoners of war] shall be treated with all considerations due to their sex" and that prisoners of war are "in all circumstances entitled to respect for persons and honor". Article 4(2)e of the Additional Protocol II prohibits - amongst others - outrages upon personal dignity, in particular humiliating and degrading treatment, rape and any form of indecent assault for civilians and persons *hors de combat*. In international humanitarian law, the actual use of force or situations where the perpetrator threatens to use force, or where the perpetrator creates the fear of violence, or where the perpetrator holds the victim to a coercive environment

constitute conditions under which the sexual autonomy of the victim has been compromised, reflect the Elements of Crimes definition of rape and sexual violence.

We also stress that according to a well-established international case law, sexual abuse and violence, including rape, can be forms of torture prosecutable under domestic and international law when they satisfy the definition in article 1 of the CAT. They are also war crimes when “used for such purposes of intimidation, degradation, humiliation, discrimination, punishment, control, or destruction of a person; and “[when they are] 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”.² When committed as part of a widespread or systematic attack against a civilian population, with knowledge of the attack, singular or collective rapes or other forms of sexual abuse can be prosecuted as crimes against humanity, pursuant to article 7(1)(g) of the Rome Statute.

We would also like to refer to the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the State of Israel ratified on 3 October 1991, 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.

General Recommendation No. 19 of the CEDAW Committee (1992) on violence against women defines gender-based violence as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” We would also 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).

We also wish to recall that the Working Group on Discrimination against Women and Girls, in its report on sexual and reproductive health rights in crisis (A/HRC/47/38), acknowledged the widespread impunity for violations of the sexual and reproductive health rights of women and girls and emphasized that women and girls are entitled to receive adequate reparations, including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition, for violations of their sexual and reproductive health rights, and States have a core obligation to ensure

² 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.

access to effective and transparent reparations. The Working Group stressed that international human rights standards concerning sexual and reproductive health continue to apply during situations of crisis and States have the duty to continue to meet their core obligations. International human rights obligations concerning sexual and reproductive health rights are complementary to those in international humanitarian, refugee and criminal law. It also underscored that women and girls continue to face a variety of barriers to access to justice in situations of crisis, from the lack of recognition of the harm caused to them as being a violation of human rights to the absence of procedures and formal mechanisms.

Moreover, we recall that UN experts have urged Israel, as the occupying power, to fulfil its duty to prevent and protect women and girls, including women human rights defenders, from arbitrary detention, discrimination and violence and to ensure access to justice and accountability for those responsible.³

We also wish to stress that acts of unlawful discrimination against women and girls based on their sex include the intentional deprivation of women and girls in detention of sanitary products, contrary article 5 of the United Nations Rules for the Treatment of women prisoners. According to the Special Rapporteur on violence against women in her report on the pathways to, conditions and consequences of incarceration of women, intentionally denying access to menstruation hygiene products has been documented to be used as forms of ill-treatment and torture of prisoners (A/68/340).

Protection of children's rights, including the right to life

As pointed out by the Special Rapporteur on the oPt in her report to the General Assembly of the UN (A/78/545), the CRC, including the Optional Protocol on the Involvement of Children in Armed Conflict, establishes the most comprehensive framework for safeguarding children's rights. The Convention, ratified by Israel in 1991 and the State of Palestine in 2014, is applicable in the oPt. Signatories must respect, protect, and fulfil the rights of children within their jurisdiction or subject to their effective control. The State of Palestine's accession to the Convention and other international human rights treaties does not absolve the Israeli occupying authorities of their responsibilities toward Palestinian children under occupation. The Convention is a vital instrument for promoting and defending the rights and dignity of every child. It enshrines four guiding principles underpinning all other rights: the principle of non-discrimination, the principle of safeguarding the best interests of the child, the right to life that spans from survival to development, and the right to participate in decisions and actions that affect them. The Convention shields them from discrimination, exploitation, ill-treatment, and violence. It ensures access to education, healthcare, and a nurturing environment conducive to their physical, mental, and emotional growth. It affords special psychosocial support to children exposed to abuse, neglect or armed conflict.

Article 6 of the Convention on the Rights of the Child, which the State of Israel ratified on 3 October 1991, 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

³ See: <https://www.ohchr.org/en/press-releases/2023/12/occupied-palestinian-territory-and-israel-un-experts-call-permanent>

punishment, as well as against unlawful and arbitrary deprivation of liberty. It further upholds the right of the child to preserve his or her identity, name, and family relations as recognized by law without interference (art 8.1), as well as not to be separated from his or her parents against their will (art 9.1). We also refer to the General Comment No. 13 (2011) of the Committee on the Rights of the Child on the right of the child to freedom from all forms of violence, 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.

War crimes and crimes against humanity

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; outrages upon personal dignity; and rape, intentionally directing attacks against civilian population 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.

Unlawful deprivation of liberty and the denial of the right to a fair trial may amount to crimes against humanity and war crimes under certain circumstances. Under the Rome Statute of the International Criminal Court, “imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law” constitutes a crime against humanity when committed as part of a widespread or systematic attack against the civilian population. To establish liability for this crime, the unlawful deprivation of liberty must be part of an attack against a civilian population, defined as a “course of conduct involving the multiple commission of [prohibited] acts.” These acts must also be carried out “pursuant to or in furtherance of a State or organizational policy to commit such attack”. When this attack targets an identified group or its members, the Rome Statute qualifies the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collective” as persecution, which is a crime against humanity.

We recall that the Special Rapporteur on the Occupied Palestinian Territories underlined that international criminal law establishes individual criminal responsibility for “grave breaches” of the Geneva Conventions as war crimes, when “committed as part of a plan or policy or as part of a large-scale commission.” Such breaches include wilfully depriving protected persons of the “rights of fair and regular trial.” This war crime punishes the deprivation of “one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the Third and Fourth Geneva Conventions (A/HRC/53/59).

As mentioned by the Special Rapporteur on the Occupied Palestinian Territories, such breaches also constitute war crimes, especially “when committed as part of a plan or policy or as part of a large-scale commission of such crimes.” Under international criminal law, some of these violations may amount to crimes against humanity, such as deportation or forcible transfer of population, arbitrary deprivation of liberty, torture, and persecution against an identifiable group, or other inhumane acts, when carried out “as part of a widespread and systematic attack directed against

the civilian population.” While these crimes do not specifically refer to children, the International Criminal Court’s Office of the Prosecutor recognises that crimes against or affecting children are “regarded as particularly grave, given the commitment made to children in the Statute, and the fact that children enjoy special recognition and protection under international law.” (A/78/545).

Prevention and punishment of the Crime of Genocide

Many of the alleged crimes described could potentially constitute acts that would fall under the definition of article 2 of the Genocide Convention, which are: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

In its Order of 26 January 2024 regarding the Application of the Convention on the Prevention and Punishment of the Crime of Genocide Strip (*South Africa versus Israel*), the ICJ recalled that “these acts fall within the scope of Article II of the Convention when they are committed with the intent to destroy in whole or in part.

In the afore-mentioned Order, the Court expressed the view that according to the facts and circumstances presented by South Africa, there was a plausible risk of genocide against the Palestinians in Gaza. The Court also ordered provisional measures to protect the Palestinians in Gaza from the acts of genocide and related prohibited acts identified in Article III of the Convention. The provisional measures included an order to Israel to take all measures within its power to prevent the commission of all acts within the scope of Article II of the Convention and ensuring with immediate effect that its military forces do not commit any of the above-described acts.