

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in the Russian Federation and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL RUS 7/2024
(Please use this reference in your reply)

23 August 2024

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in the Russian Federation and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 4/14, 51/8, 54/23 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged enforced disappearance of soldiers, including officers of the National Guard of Ukraine, following their capture by the Russian armed forces at the Chornobyl Nuclear Powerplant on 24 February 2022, their subsequent transfer to the territory of the Russian Federation, through the territory of Belarus, their subsequent prolonged incommunicado detention, torture and ill-treatment.**

Previous communication under reference AL [RUS 8/2023](#), sent on 12 June 2023, expressed concerns in relation to the allegations of the widespread use of torture or other cruel, inhuman or degrading treatment or punishment inflicted by Russian military officials against Ukrainian civilians and prisoners of war (POWs), held in detention facilities run by Russian military forces in Ukraine, within the context of the ongoing armed attack by the Russian Federation against Ukraine. We regret that thus far no reply has been received and wish to invite again your Excellency's Government to submit a substantive response to the letter.

According to the information received:

On 24 February 2022, in the first hours of the Russian invasion of Ukraine, Russian armed forces captured 178 soldiers and officers of the National Guard of Ukraine (NGU, military unit No. 3041), and one serviceman of the Main Directorate of the NGU, in the territory of the Chornobyl Nuclear Power Plant (ChNPP).

The servicemen of the military unit 3041 of the NGU have been stationed at the ChNPP, in accordance with Ukraine's international obligations to ensure the safety of nuclear facilities, the system and standards defined by the International Atomic Energy Agency (IAEA), as well as the Convention on the Physical Protection of Nuclear Material of 26 October 1979. They were captured by the Russian military, who invaded the Kyiv region from the territory of the Republic of Belarus, with heavy military equipment and weapons in the first hours of the invasion.

From 24 February to 31 March 2022, they were held in the premises of the ChNPP, having thus spent more than 1,100 hours in the ionizing radiation zone, which exceeds the monthly maximum of 154 hours, subject to compliance with radiation safety measures. Furthermore, during this period, the Ukrainian POWs were reportedly not provided with adequate food, water, or medical treatment, were kept in closed rooms under constant psychological pressure and threatened with weapons. On 31 March 2022, several Russian soldiers allegedly tried to kill all the captured National Guardsmen, threatening to blow them up with grenades and cut their throats.

On 31 March 2022, the Russian troops retreated from the Kyiv region and reportedly transferred 168 captured servicemen¹ to the Republic of Belarus. For three days they were held in two small rooms in an old barn in an unidentified location, where they could only stand or sit on the concrete floor, without food, water, medicines, or personal hygiene products, and with just a bucket for urination and defecation. Russian officials would take Ukrainian POWs out for interrogation, one by one, constantly beat them, and subject to mock executions.

From 2 to 3 April 2022, the 168 POWs were transferred to SIZO 2 (“investigative isolator”, pre-trial detention facility) in Novozybkov, Bryansk region of the Russian Federation, where they have been held for more than a year. From 11 to 13 May 2023, some POWs were transferred to Penal Colony No. 7 in Pakino in Vladimir region, others to Penal Colony No. 1 in Donskoy, Tula region or to a detention facility in the Republic of Mordovia, Russian Federation. During these so-called transfers between colonies, the POWs have reportedly been severely beaten, and tortured until they lost consciousness.

As of August 2024, 84 of the 168 POWs have been released, the fate and whereabouts of 84 others remain unknown.

Enforced disappearance

Through the International Committee of the Red Cross (ICRC), families of all 168 Ukrainian POWs received confirmation of their capture by the Russian armed forces on 30 June 2022. Reportedly, access to POWs has not been possible.

The families have also received no capture cards from their captured since February 2022, neither immediately upon capture, nor after arrival to the detention facility. In addition, the rare letters, that the POWs were allowed to send were subjected to strict censorship, which did not allow them to disclose their whereabouts or the state of health.

To date, the Russian Federation has not disclosed the place of detention of 84 Ukrainian POWs who remain in captivity. For more than two years, the only source of information concerning their whereabouts, or state of health have been submissions from other Ukrainian POWs released from captivity.

¹ On 20 March 2022, 9 servicemen, including 8 women were released. Another serviceman managed to flee during the transfer to the territory of the Republic of Belarus.

In the absence of official information concerning the state of health and whereabouts of the POWs, as well as the regular correspondence, the abundance of reports on the level of inhumane treatment and torture that Ukrainian soldiers and civilians go through while in captivity of Russian forces exacerbates the emotional upheaval of their families, including wives, mothers and daughters.

On a separate note, despite the previous confirmation of captivity of two Ukrainian POWs, their fate remains unknown in connection with the crash of the Russian Il-76M aircraft in the Belgorod region of the Russian Federation on 24 January 2024, which according to some reports was carrying Ukrainian POWs on board. The leaked list of POWs on board included two servicemen from the ChNPP: Mr. Valerii Oleksiienko, born on 3 December 1973, and Ivan Roi, born on 6 July 2002. Yet, there has been no official confirmation of this information from the Russian authorities and attempts to obtain further information from Russian authorities and clarify their fate and whereabouts have been unsuccessful.

Long-term (Permanent) Incommunicado Detention

Reportedly, POWs did not have communication with their family and the outside world until May 2023, when 26 out of 131 POWs in captivity at that time, were allowed to call their families. In October 2023, 6 out of 108 POWs in captivity were allowed to call their families. These calls were reportedly made under the control of the Russian military, using a pre-approved text. For instance, none of the POWs disclosed his whereabouts.

Beatings and mutilation

Reportedly, constant beatings occurred in interrogation rooms with rubber truncheons, wooden and metal pipes, feet, hands, and by pushing prisoners against walls and other objects. The beatings often involved a group of Russian military personnel attacking a single prisoner, who was stripped naked during the assault. The prisoners were beaten until they could no longer stand and were then beaten while lying down. As a result of these beatings, POWs in military unit 3041 of the NGU suffered injuries, including wounds that festered and took a long time to heal, bruises, hematomas, rib fractures, broken fingers and other bodily fractures, and concussions. There were also reported instances where tattoos with Ukrainian symbols were cut off, scraped off with stones, or burned with a hot metal object until the skin peeled away with the tattoo image.

Electrocution

This type of torture reportedly involved stripping POWs naked and applying electric shocks to various parts of the body, including the head, neck, torso, lower back, buttocks, and male genitals. Sometimes, the POWs were reportedly forced to pick up the stun gun themselves and turn on the current while holding the stun gun.

Stress positions and excessive physical exercise imposed as a punishment

When POWs were held in cells, they had to stand on their feet from 6.00 a.m. to 10.00 p.m. and were allowed to sit down only during meals. If someone could not stand, with the permission of the Russian military, they could kneel, keeping their eyes open and not talking. Video surveillance cameras were installed in almost all the rooms where POWs were held and are currently held in military unit 3041 of the NGU. If the guards saw or heard disobedience by Ukrainian POWs, they were subjected to severe beatings. Movement around the place of detention took place in uncomfortable positions with the head down, eyes down, hands behind the back, and bending as low as possible to the ground, all at a fast pace, with noise, shoving, and blows to the legs and other parts of the body. Abusive exercises, such as squats and push-ups, had reportedly to be done 500 times or more until the prisoners were completely exhausted from hunger and lack of sleep.

Strangulation

According to the reports received, during interrogations, the POWs from military unit 3041 of the NGU repeatedly suffered strangulation. This involved using a rope, lace, or strap to obtain information or for mockery, for the Russian military's amusement.

Forcing to watch others being tortured

This type of torture was also reportedly used against POWs from military unit 3041 of the NGU. There were constant beatings in the cell of one POW, carried out by a group of Russian soldiers, while other prisoners were ordered to watch and could do nothing. One or several POWs were taken out into the corridor and continued to be beaten there until they could not get up and return to their cell. Other prisoners had to carry them back to their cell. Prisoners were reportedly forced to beat their fellow prisoners and perform natural needs, and if they failed, another prisoner would be beaten.

Mock execution

This type of torture was reportedly common for Ukrainian POWs. The Russian military would take them out of the cell with the word “execution”, lead them to a wall, reload their weapons, point them at the prisoners, and wait for the order to shoot. During interrogations, they would bring a weapon to the prisoners' heads and pull the trigger to imitate a shot, but the weapon was not loaded.

Detention in inappropriate facilities

Contrary to the provisions of the Geneva Convention (III), the Russian Federation reportedly holds Ukrainian POWs in pre-trial detention facilities and high-security penal colonies, without repurposing them into POW camps.

There are many more people in the cold cells than the area allows, fungus, mold, rats and mice are running on the walls. A line is drawn on the floor, on which POWs are constantly standing, movement around the cell is prohibited.

If a POW no longer has the strength to stand on his feet, then with the permission of the guards he can kneel down, sitting down is allowed only during meals or after a break. The light does not turn off at night. In order to suppress morale and willpower, POWs are reportedly transferred to solitary cells.

Deprivation of food and water

Sometimes POWs do not receive food for several days, as decided by the Russian military. The portions of food reportedly were very small, consisting of rotten vegetables in water, porridge with fish bones, and a small piece of bread. The water provided was not potable, not to be considered suitable for human consumption. POWs had to drink large amounts of water before eating, to satisfy hunger and create a feeling of satiation. POWs that were freed and returned to Ukraine lost between 20 and 40 kilograms of weight.

Prolonged refusal to provide medical, including dental care

Medical assistance was reportedly provided only when the condition became serious, and even then, the pills given were unknown, with their purpose and effects unclear. Prisoners were allegedly beaten for taking a pill. Teeth could not be treated and were simply removed or knocked out. There was a case of a bedridden POW from military unit 3041 of the NGU, who became bedridden during his detention in the Russian Federation despite being captured as a healthy man. He was reportedly not provided with medical care.

Constant Noise, Sleep Deprivation

In Correctional Colony No. 1 in Donskoy, Tula region of the Russian Federation, since 11 May 2023, after the transfer of some POWs from military unit 3041 of the NGU, they were reportedly awakened twice every night. Prisoners had to stand up in the middle of the night for 2-3 hours, so their sleep was constantly interrupted. Nightly inspections of the cells and the prisoners themselves were also conducted. There was no normal sleep, and even after returning to Ukraine, they could only sleep for 3 hours as their bodies were accustomed to constant interruptions during the night.

Use of excessively bright light

The lights were allegedly constantly on in places where POWs were held. During interrogations, bright lights were used, especially after placing something over the prisoners' heads or covering their eyes, followed by sharply directing the light at them.

Constant uncertainty about the time and place of detention

POWs were not informed of the time, day of the week, or place of their detention. They had to rely on their own observations to determine dates and times, such as seeing the guard's watch, overhearing information, or learning the date during interrogation when signing testimony. Some prisoners used the position of the sun and marks on cloth or brickwork to estimate the time.

The POWs would only learn of their whereabouts during the interrogations or from inscriptions seen when moving around the territory.

Psychological pressure

Prisoners were reportedly subjected to psychological pressure, being told that Ukraine had abandoned them and that they were not needed. They were told that their relatives had died and that they had no home. They were forced to consider defecting to the Russian side and obtaining Russian citizenship. Prisoners were allegedly made to sing the Russian anthem and Russian songs every day and speak only Russian. They were severely beaten and called Nazis for anything related to Ukraine.

Prisoners were reportedly also put against the wall and moved to new places of detention or cells with their heads covered (wrapped in duct tape so that they could not see anything). According to released prisoners, during such actions, they repeatedly believed they were being led to execution. This type of torture was also used during prisoner exchanges; some of the released prisoners were not fed for three days before the exchange and were beaten constantly during transportation. At such moments, the prisoners said goodbye to their lives, believing it was the end.

When returned from captivity, POWs of war are in a very bad state of health. All have problems with their eyes, thyroid gland, teeth, legs, back (spine), kidneys, stomach, liver, and suffer from numerous concussions and broken ribs at the stage of consolidation. They all have problems with joints and blood vessels, and many have diseases requiring immediate surgical intervention. Their skin has a grey-pale color due to lack of exposure to the outdoors. Mental activity is severely depressed, and the released prisoners have completely lost touch with the outside world and technology. Almost everyone has to relearn how to write, use phones, and perform ordinary tasks. Feelings of fear, anxiety, emotional instability, and psychological and physical trauma are all consequences of the treatment endured while in captivity. Recovery from captivity to a more or less normal life takes a very long time, up to a year.

Without prejudging the accuracy of the information received, we are writing to express our most heightened alarm at these allegations which could indicate, if confirmed, the existence of a deliberate and consistent practice of enforced disappearance, torture and other physical and psychological ill-treatment of Ukrainian POWs for the purposes of extracting information or forcing a confession, or for punitive or discriminatory reasons. We would like to recall that certain inhumane acts always remain prohibited and cannot be made subject to lawful derogations. These include the prohibitions of enforced disappearances, or unacknowledged detention and use of torture.

Failure of the responsible authorities of the Russian Federation to acknowledge the captivity in a timely manner and disclose the place of detention, ensure the rights of POWs to send and receive letters and cards, as well as to grant full and unimpeded access to the ICRC, may amount to enforced disappearance, the prohibition of which is absolute and cannot be justified by any circumstances whatsoever, including a state of war. Indeed, enforced disappearance is prohibited

under customary international humanitarian law and such a prohibition has attained the status of *jus cogens*. We emphasize that detention records should always be kept, including in times of armed conflict, and should include the number of detainees, their nationality and the legal basis on which they are held, whether as POWs or civilian internees. Internal inspections and independent mechanisms should have timely access to all places where persons are deprived of their liberty for monitoring purposes, at all times. In times of armed conflict, the location of all detention facilities should be disclosed to the ICRC. Enforced disappearances entail violations of articles 6, 7, 9, 10 and 16, read alone and in conjunction with article 2(3), of the ICCPR with regard to disappeared persons and of article 7, read alone and in conjunction with article 2(3), of the ICCPR with regard to their relatives.

The use of electric shocks, beatings, hooding, mock executions and other threats of death, used against Ukrainian POWs in detention, would constitute torture or other cruel, inhuman or degrading treatment or punishment, prohibited at all times and in all circumstances under international human rights and humanitarian law.

The consistency in the manner and methods in which these practices are reported suggests that they are committed within the framework of a higher order policy requiring a level of coordination, planning and organisation, as well as the direct authorization, deliberate policy or official tolerance from superior State's authorities.² Similarly, the reported pattern of enforced disappearances by taking individuals away and not disclosing their whereabouts appears to be used to spread terror and anguish among local population.

Should these allegations be factually established, the conduct described would be in violation of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

Torture and other cruel, inhuman or degrading treatment or punishment, including the poor and degrading conditions of detention, may seriously affect a person's physical and mental health, violate the victim's right to the enjoyment of the highest attainable standard of physical and mental health, recognized in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Russian Federation on 16 October 1973, and further generate the risk of an arbitrary deprivation of life in a violation of article 6 of the ICCPR.

Under international human rights law and international humanitarian law, States have an obligation to investigate alleged violations effectively, promptly, thoroughly and impartially. Such obligation is made most explicit in articles 12 and 13 of the CAT and articles 13, 17 and 87 of Geneva Convention III and articles 27 and 32 of Geneva Convention IV. Furthermore, pursuant to the CAT, States parties to the treaty are obligated to provide mutual judicial assistance to permit such investigations and prosecutions in torture or other ill-treatment to proceed (article 9).

As the Special Rapporteur on torture and other cruel, inhuman or degrading treatment emphasized in her most recent report to the Human Rights Council, the obligation to investigate and prosecute crimes of torture falls first to the national

² See AL RUS 8/2023 quoted above; as well as Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on her country visit to Ukraine ([A/HRC/55/52/Add.1](#)).

authorities and does not vary in times of armed conflict.³

Victims of human rights or humanitarian law violations shall be provided with equal and effective access to justice. They shall also be provided with remedy and reparation for the harm suffered. Accountability should lead to the adoption of measures to prevent future violations.⁴

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 any information on the procedures followed to register POWs, to inform the competent authorities and institutions about their fate and whereabouts and to allow and enable their communication and correspondence with their families.
3. Please provide detailed and updated information on whether an investigation is underway or has been carried out in relation to the above-mentioned allegations and the asserted policy and pattern of torture or other cruel, inhuman, or degrading treatment or punishment, as well as alleged enforced disappearances, perpetrated against Ukrainian POWs by Russian military personnel with support of acquiescence of the Republic of Belarus.
4. Please explain whether any investigation is being or was conducted in accordance with international standards, including the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2022 edition) and please provide details on any result achieved, particularly in terms of accountability of perpetrators, including persons in positions of command; adoption of measures to halt any ongoing violation and to prevent recurrence of future incidents; and with regard to the rights of victims and their families to truth, justice and reparations, as appropriate. If no investigation has been carried out, please explain why.
5. Please provide information as to directives, policies and laws applicable to military personnel to ensure that torture and other cruel, inhuman or degrading treatment or punishment are prevented, including training and education protocols and reviews of interrogation and custody rules, including those applicable in armed conflict.

³ See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/52/30).

⁴ Ibid.

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 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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Given the seriousness of these allegations, which question the adherence to the fundamental principles of the Geneva Conventions by the Russian armed forces involved in warfare in Ukraine, we would greatly appreciate a prompt response from your Excellency's Government, including the possibility of discussing these matters of concern directly with your Excellency's Government diplomatic representatives in Geneva. We also reserve the right to express our concerns publicly. Any public expression of concern on our part will indicate that we 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 be transmitted to Governments of Ukraine and the Republic of Belarus.

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

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Matthew Gillett
Vice-Chair of the Working Group on Arbitrary Detention

Mariana Katzarova
Special Rapporteur on the situation of human rights in the Russian Federation

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 alleged facts and concerns, we would like to refer your Excellency's Government to the following:

Absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment

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 the Russian Federation on 16 October 1973; and at least articles 1 and 2 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), ratified by the Russian Federation on 3 March 1987, establish the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

Such prohibition is absolute, 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). Such acts described in this letter would also violate international humanitarian law as a matter of customary international law (*jus cogens*) and pursuant to the relevant Geneva Conventions, which prohibits torture and other cruel, inhuman or degrading treatment or punishment or comparable brutality. Torture and other inhuman treatment are war crimes, while the systematic or widespread practice of torture constitutes a crime against humanity.

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 or extradite suspects, to punish those responsible and to provide remedies to victims.⁵

States parties to the CAT have the obligation to establish all acts of torture as offences under domestic law (art. 4), to exercise jurisdiction over said offences (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 that obligation, such as statutes of limitations, immunities or amnesties, are considered contrary to the non-derogable nature of the prohibition (art. 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 (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

⁵ For 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.

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). The CAT further imposes duties to extradite alleged offenders when they are not prosecuted (arts. 5 (2) and 7 (1)).

At no time shall torture be used to extract information or a confession (art. 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 (art. 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).

Under international humanitarian law, torture and related ill-treatment is likewise absolutely prohibited. This prohibition is contained in the customary (rule 90), as well as in the treaty-based international humanitarian law. Similarly, the customary international humanitarian law requires that civilians and persons *hors de combat* must be treated humanely (rule 87) and prohibits corporal punishment (rule 91).

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 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.

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.

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 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.

Absolute prohibition of enforced disappearances

Enforced disappearance is prohibited under both international human rights and humanitarian law, and such a prohibition, along with the corresponding obligation to investigate enforced disappearance, has attained the status of jus cogens. According to the UN Declaration on the Protection of all Persons from Enforced Disappearance (Declaration), States shall not practise, permit or tolerate enforced disappearances (article 2) and that no circumstances whatsoever, including the state of war can justify enforced disappearances (article 7).

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. In particular, the Working Group on Enforced or Involuntary Disappearances recalls that the Declaration sets out the necessary protection by the State, in particular articles 9, 10, 11 and 12, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons. Article 13 also stipulates that steps shall be taken to ensure that all involved in the investigation, including the complainant, relatives, counsel, witnesses and those

conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

Enforced disappearance is also prohibited under the customary international humanitarian law (Customary IHL – rule 98). Furthermore, each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate (rule 117).

Furthermore, we would like to recall that under the international humanitarian law, the parties to the conflict have obligations to: whenever circumstances permit, and particularly after an engagement, take all possible measures to search for, collect and evacuate the dead without adverse distinction; take all possible measures to prevent the dead from being despoiled, and to refrain from mutilation of bodies, which is prohibited; facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin; dispose of the dead in a respectful manner and to respect and properly maintain their graves; and to record all available information prior to disposal and mark the location of the graves in order to ensure the identification of the dead (Customary IHL, rules 112-116).

Enforced disappearance, which, under certain circumstances, may amount to a crime against humanity, entails violations of articles 6, 7, 9, 10 and 16, read alone and in conjunction with article 2(3), of the ICCPR with regard to the disappeared person and of article 7, read alone and in conjunction with article 2(3), of the ICCPR with regard to family members.

Prohibition of arbitrary deprivation of life

We also remind that article 3 of the UDHR and article 6 of the ICCPR recognize and protect the right to life of all human beings.

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. 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.⁶

Article 6 of the ICCPR is included in the list of non-derogable rights in article 4 (2) of the Covenant. Hence, the guarantees against arbitrary deprivation of life contained in article 6 continue to apply in all circumstances, including in situations of armed conflict and other public emergencies.

Wars and other acts of mass violence [are] a scourge of humanity resulting in the loss of many thousands of lives every year. Efforts to avert the risks of war and any other armed conflict, and to strengthen international peace and security, are among the most important safeguards of the right to life.

⁶ See Human Rights Committee, general comment No. 36, Article 6: right to life, CCPR/C/CG/36.

Under IHL, persons who have surrendered or are otherwise *hors de combat* must be treated humanely. Any attacks against them, including wilfully killing or murdering such persons constitutes a war crime. States have an obligation to investigate all potentially unlawful killings committed by their armed forces or nationals or committed on their territory. Where there is sufficient evidence of the commission of the offence, States have a duty to prosecute those responsible. A State responsible for such violations must make full reparation for the loss suffered.

Treatment of prisoners of war

The treatment of prisoners of war (POWs) is specifically regulated by the Third Geneva Convention relative to the treatment of POWs and applicable customary international humanitarian law. States have a fundamental obligation to treat all POWs in their power humanely at all times, from the moment of their capture until their release and repatriation.⁷

Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited and will be regarded as a serious breach of the Third Geneva Convention relative to the treatment of prisoners of war (article 13).⁸

The obligation of humane treatment is the cornerstone of the protection conferred by the four Geneva Conventions. The specific prohibitions under article 13(1) derive from this obligation. It is further reflected in many of the provisions of the Third Convention that deal with the treatment during captivity and conditions of internment of prisoners of war. As a correlative of the obligation to treat all prisoners of war humanely, article 13(2) comprises an obligation on the Detaining Power to protect prisoners of war at all times, in particular against acts of violence or intimidation and against insults and public curiosity. This obligation involves protecting them from any physical or psychological abuse or threat thereof, and encompasses a prohibition on humiliating them, in particular by way of insults or exposure to public curiosity.

Article 121 complements article 13, by adding a procedural safeguard that requires the Detaining Power to open an official enquiry as soon as the death or serious injury of a prisoner of war is caused or suspected to have been caused by a sentry, a prisoner of war or any other person.⁹

Duty to investigate, prosecute and sanction perpetrators

Concerning the obligation to prosecute persons allegedly responsible for grave breaches of International Humanitarian Law, we would like to recall article 146 of the Geneva Convention (IV) according to which the High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the Convention defined in article 147. In addition, each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the

⁷ See <https://ihl-databases.icrc.org/ihl/full/GCIII-commentary>.

⁸ See ICRC, Prisoners of war: what you need to know: [Prisoners of war: What you need to know | ICRC](#).

⁹ See [Prisoners of war | How does law protect in war? - Online casebook \(icrc.org\)](#).

provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a 'prima facie' case. Furthermore, each Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in article 147. In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.

In addition, article 2 of the ICCPR sets out the duty of States to ensure that any person whose rights were violated has an effective remedy, and that the competent authorities enforce such remedies. As established by the Human Rights Committee in its general comment No. 31, States have an obligation to investigate and punish serious human rights violations, such as torture, extrajudicial killings and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties (paragraph 18). Impunity for such violations can be an important element contributing to the recurrence of violations.

Similarly, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, to undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and to ensure that those responsible for serious crimes under international law are prosecuted, tried and duly punished (principle 19).