



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

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Consideration of reports of States parties to the Convention

**Replies of Malta to the list of issues in relation to its report
submitted under article 29 (1) of the Convention***

[Date received: 12 January 2024]

* The present document is being issued without formal editing.



Reply to paragraph 1 of the list of issues (CED/C/MLT/Q/1)

1. In July 2019, the Human Rights and Equality Commission Bill was presented to Parliament, which aimed to establish a National Human Rights Institution (NHRI) with its independence guaranteed in law and with a mandate to promote and protect human rights and equality, in line with the Paris Principles. However, due to the 2022 general elections in Malta, Parliament was dissolved when this Bill had not yet been enacted into law. The Bill is currently under review and will be presented to Parliament in due course.

Reply to paragraph 3 of the list of issues

2. There have been no examples to date.

Reply to paragraph 4 of the list of issues

3. No participation of civil society took place in the preparation of the State of the party's report (CED/C/MTQ/1 – the report).

Reply to paragraph 5 of the list of issues

4. No data is available concerning enforced disappearances as outlined in Articles 1–3 of the Convention.

Reply to paragraph 6 of the list of issues

5. The Malta Police Force statistics office compiles data on missing persons in general. However, this is not specifically for subjects involved in enforced disappearance.

Reply to paragraph 7 of the list of issues

6. The Malta Police Force confirms that there have been no such reports.

Reply to paragraph 8 of the list of issues

7. Specific prohibition on invocation of exceptional circumstances justifying enforced disappearance: Article 4 of the Emergency Powers Act, Chapter 178 of the Laws of Malta, empowers the President, acting on the advice of the Prime Minister, to make necessary regulations for, *inter alia*, public safety, health, and the defence of Malta. However, the second proviso to the article states that it cannot be construed to authorise the making of any regulation making provision for the deportation or exclusion of persons from Malta.

8. While it is true that the Emergency Powers Act enables the President to make regulations on the advice of the Prime Minister, he may only do so “subject to the provisions of the Constitution of Malta” (article 4 of the Act). It may therefore be concluded that, during a state of war or threat of war, internal political instability or any other public emergency, this law does not permit derogation from any of the rights and/or procedural guarantees, including judicial guarantees, that are embodied therein or in international human rights instruments to which Malta is a party that might be relevant to preventing and combating enforced disappearance, because such rights are guaranteed by the Constitution of Malta and the European Convention on Human Rights, part of Malta's constitutional law.

9. No measures taken by Malta concerning emergency situations, such as those relating to the coronavirus disease (COVID-19) pandemic, have had any impact on the effective implementation of the Convention.

Reply to paragraph 9 of the list of issues

10. The provisions of the Criminal Code which criminalise enforced disappearance, but which cannot be classified as a crime against humanity under international law, are the following:

- Article 199 punishes the abduction of any person with intent to harm such person with a term of imprisonment from six to twelve years. The offence is aggravated, and the punishment is increased by one to two degrees if the person abducted is under the age of eighteen years;
- Article 86 also regulates illegal arrest, detention, or confinement. Any person who without a lawful order from the competent authorities and saving the cases where the law authorizes private individuals to apprehend offenders, arrests, detains or confines any person against the will of the same, or provides a place for carrying out such arrest, detention or confinement, shall, on conviction, be liable to imprisonment for a term from seven months to two years. As per article 87, the punishment is increased to a term of imprisonment from thirteen months up to three years if, *inter alia*, the detention or confinement of the person illegally arrested, detained, or confined, continues for more than twenty days or if the individual so arrested, detained or confined, is subjected to bodily harm or is threatened with death. If the bodily harm committed is accompanied with any kind of torture, the punishment is imprisonment for a term from four to six years;
- Article 90 provides that whosoever unlawfully and forcibly removes any person to any other country, or wrongfully detains, arrests, or confines any citizen of Malta in any country shall, on conviction, be liable to the punishment laid down in article 87 (indicated above).

Reply to paragraph 10 of the list of issues

11. Article 9(2) of the Convention states the following:

“2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.”

12. Without prejudice to its obligations under international criminal law, Malta exercises jurisdiction over persons alleged to have participated in enforced disappearance via article 54G of the Criminal Code. Persons subject to military law may be prosecuted in Malta for, *inter alia*, crimes against humanity (including forced disappearance) even where the offence was committed outside Malta. Moreover, and according to article 7 of the International Criminal Court (ICC) Act, Malta shall have jurisdiction over any citizen or permanent resident in Malta who outside Malta commits any ICC crime. Additionally, where a citizen or permanent resident of Malta even conspires to commit any ICC Crime, article 54G allows for the prosecution of that conspiracy, in Malta.

Reply to paragraph 11 of the list of issues

13. As empowered by article 91 of the Malta Armed Forces Act, a court-martial shall have power to try any person subject to military law for any offence which under the Act is triable by court-martial. By virtue of article 75 of said Act, a person subject to military law under articles 178, 179 and 180 may be tried by court-martial for a civilian offence committed outside Malta, with the offender being liable to the same punishment as he would suffer before a civilian court. Persons subject to military law are moreover liable to court-martial where, in any country or territory outside Malta, they commit any offence against the person or property of any member of the civil population.

Reply to paragraph 12 of the list of issues

14. Data is being provided for the following:
- Number of decisions to prosecute based on article 54C of the Criminal Code (crime against humanity): 0;
 - Number of decisions not to prosecute based on article 54C of the Criminal Code (crime against humanity): 0;
 - Number of decisions to prosecute based on article 86 of the Criminal Code (illegal arrest, detention or confinement) as aggravated by article 87: (2023) 1;
 - Number of decisions not to prosecute based on article 86 of the Criminal Code (illegal arrest, detention or confinement) as aggravated by article 87: 0;
 - Number of decisions to prosecute based on article 90 of the Criminal Code (unlawful removal of persons to a foreign country or unlawful confinement therein): 0;
 - Number of decisions not to prosecute based on article 90 of the Criminal Code (unlawful removal of persons to a foreign country or unlawful confinement therein): 0;
 - Number of decisions to prosecute based on article 199 of the Criminal Code (abduction): (2022) 1;
 - Number of decisions not to prosecute based on article 199 of the Criminal Code (abduction): 0.

Reply to paragraph 13 of the list of issues

15. The Code of Ethics of Police Officers clearly states that police officers should obey consciously all lawful orders emanating from their superior officers. If they become a witness to displays of unacceptable behaviour by their colleagues, or if they witness acts of violence, inhumane or offensive treatment to any person, they should undertake such actions as necessary for terminating such acts and report to their superior or Professional Standards Office without any undue delay, regardless of the hierarchical position of the perpetrator of such acts.

16. Protection of witnesses is regulated by articles 40–56 of the Police Act.

Reply to paragraph 14 of the list of issues

17. Domestic law provides for suspension from duties, from the outset and for the duration of an investigation, when the alleged offender is a state official. This is stipulated principally in regulations 10, 11 and 12 of the Public Service Commission Disciplinary Regulations as Subsidiary Legislation Const.03 to the Constitution of Malta. Such summary suspension forced leave or precautionary suspension are for public officers and are at the discretion of their respective Head of Department to administer. However, according to article 13(1) of the Regulations, when it comes to the notice of a Head of Department that an offence allegedly committed by a public officer under his responsibility may be of a criminal nature, he shall consult the Attorney General as to whether prosecutorial or disciplinary action should be instituted. In the latter case, the charges framed against the officer shall be approved by the Attorney General before the officer is required to answer them or before any disciplinary proceedings are instituted.

18. Any participation by a public officer who has been dismissed, interdicted, or suspended in lieu of an investigation involving himself as a suspect, and nevertheless continues in the exercise of his office or employment, is punishable by article 134 of the Criminal Code.

Reply to paragraph 15 of the list of issues

19. The enumerative method determines extraditable offences by listing all offences which allow for extradition in an extradition agreement. The eliminative method determines extraditable offences by reference to the punishments that they carry.

20. For Commonwealth countries, the two methods are blended, as per article 5 of the Extradition Act, Chapter 276 of the Laws of Malta, embodying a dualist approach. For non-Commonwealth countries (designated foreign countries), reference is being made to article 8(1) of the aforementioned Act:

“(1) For the purposes of this Act, an offence of which a person is accused or has been convicted in a designated foreign country is an extraditable offence in respect of that country if –

(a) it is an offence in respect of which a fugitive criminal may be returned to that country in accordance with the arrangement and is punishable under that law with imprisonment for a term of twelve months or a greater punishment; and

(b) the act or omission constituting the offence or the equivalent act or omission, would constitute an offence against the law of Malta if it took place within Malta or, in the case of an extra-territorial offence, in corresponding circumstances outside Malta.”

21. Only the eliminative method is used for non-Commonwealth countries. Without prejudice to the double criminality rule, the standard of severity for an extraditable offence to non-Commonwealth countries is that of an offence punishable by imprisonment for at least one year.

22. The Convention came into force on the 23rd of December 2010. No agreements to reach an extradition arrangement via treaty have been concluded since.

Reply to paragraph 16 of the list of issues

23. Requests for mutual legal assistance concerning crime against humanity (article 54C of the Criminal Code): 0.

24. Requests for mutual legal assistance concerning illegal arrest, detention, and confinement (article 86 of the Criminal Code): 0.

25. Requests of mutual legal assistance concerning unlawful removal of persons to a foreign country or unlawful confinement therein (article 90 of the Criminal Code): 0.

26. Requests for mutual legal assistance concerning abduction (article 199 of the Criminal Code): (Incoming request 2022) 1.

Reply to paragraph 17 of the list of issues

27. The Malta Police Force confirms that there have been no reports related to enforced disappearances as outlined in Articles 1–3 of the Convention. Relevant protocols in place for missing Persons apply.

Reply to paragraph 18 of the list of issues

28. With regard to return/expulsion orders, an appeal can be submitted to the Immigration Appeals Board. These have a suspensive effect.

29. A decision by the Courts concerning extradition can be appealed before the relevant Court:

“Cap 276 Article 21 (2) A person shall not be returned to any country under this Act –

(a) in any case, until the expiration of the period of fifteen days beginning with the day on which the order for his committal is made;

(b) if the person committed to custody is entitled to institute any proceedings, whether of appeal or otherwise, which may lead to the reversal, annulment or modification of the court's order of committal, and the person committed has instituted such proceedings or, if there is established by law or there has been fixed by a court's order or judgment a time-limit within which such proceedings are to be instituted, until the expiration of such time-limit;

(c) if any proceedings referred to in the last preceding paragraph have been instituted, until the conclusion of such proceedings: Provided that the proceedings shall be deemed to have been concluded also if they have been withdrawn or abandoned;

* For the applicability of this article to the Republic of Tunisia and the United States of America, vide Subsidiary Legislation S.L.276.06 and S.L.276.07 respectively."

Reply to paragraph 19 of the list of issues

30. The Malta Police can only keep a person under detention for a breach of Criminal law for a maximum period of 48 hours. In the case of any arrest that exceeds 6 hours, the duty Magistrate is to be informed and validate this arrest.

31. All arrested persons, if staying overnight in Police Custody, are to be registered at General Headquarters (GHQ) Custody Centre in Floriana or the Gozo Custody Centre in Victoria Gozo (according to which island the offence took place in). A Detainee book is present in hard copy format (book) in all places where deprivation of liberty could take place even for less than six hours. There is also a digital version of the registry at GHQ Custody in Floriana.

Reply to paragraph 20 of the list of issues

32. While there is no central register of all places of deprivation of liberty, any institutions or facilities that may deprive persons of liberty are regulated by national law, and subject to safeguards. These include, inter alia, migrant detention facilities operated by the Detention Service, and Prison facilities operated by the Correctional Services Agency.

33. To date the mandate of the Maltese NPM has not been extended; however, Mount Carmel Psychiatric Hospital is subject to scrutiny by the Commissioner for the Rights of Persons with Mental Disorders. Moreover, the treatment of persons in the lock-up is subject to scrutiny by the Independent Police Complaints Board. While the Commissioner and the Board have not been formally identified as NPMs, they perform similar functions.

Reply to paragraph 21 of the list of issues

34. Article 355AT(3) of the Criminal Code states that persons suspected or accused of an offence shall have the right to a lawyer, to a third party informed of the deprivation of their liberty, and to communicate with third persons and with consular authorities whilst deprived of their liberty.

35. As per article 355AUC(1), the third party may be at least one person, and may be anybody so long as that person is not himself reasonably suspected of being involved in the offence being investigated. There is a derogation from this right in terms of sub-section (4) of this article 355AUC where there is an urgent need to avert serious adverse consequences to a person or the criminal proceedings. The right to communication with third persons may be limited by a Magistrate at the written request of the Executive Police, as per article 355AUD(2).

36. None of these derogations or limitations may come about where they are not proportionate, strictly limited in time, not based exclusively on the severity of the offence,

and where they prejudice the overall fairness of the proceedings. This is reflected in article 355AUF.

Reply to paragraph 22 of the list of issues

37. It shall be permissible to temporarily derogate from the application of the rights set out in article 355AUC “where justified in the light of the particular circumstances of the case,” but only on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised.

38. That delay should not be later than six hours from the time when the arrest was effected. The “particular circumstances of the case” are the set of facts upon which a decision to derogate from this right is made. The derogation is made where, for example, it is believed that telling the suspect’s person of choice would hinder the recovery of the proceeds of the crime, or alert any other suspects not yet arrested. The variables that might influence this decision are potentially infinite, and so article 355AUC elects to mention merely “the particular circumstances of the case,” which may or may not justify a decision to derogate from the right in question – and only in the situations stipulated in article 355AUC(4) as discussed above.

Reply to paragraph 23 of the list of issues

39. Neither the Independent Police Complaints Board nor the Office of the Ombudsman have ever received any complaints of this sort, at least during the last 7 years.

40. Furthermore, the Malta Police Force clarified that what is being referred to as the “Internal Audit and Internal Affairs Unit” is effectively comprised of (a) Professional Standards, and (b) Internal Audit Office. No such complaints have been received by either section.

Reply to paragraph 24 of the list of issues

41. Three officers of the Malta Police Force participated in related training provided by the European Union Agency for Law Enforcement Training (CEPOL), namely: Linking Missing Persons & Unidentified Human Remains, Nationally & Internationally (3070/2023/WEB) and The Use of social media in Missing Person Cases (3071/2023/WEB).

42. Furthermore, the in-service training conducted for all serving police officers at the Academy for Disciplined Forces, and which includes specifically lectures on fundamental human rights with references also made to the Convention during such training, were attended by 289 police officers. Induction courses for Border Control Officers that contain elements of European and International law, asylum law and fundamental rights were attended by 28 officers. Other courses such as basic training courses and those leading to higher ranks are also held.

Reply to paragraph 25 of the list of issues

43. The Legal Aid Malta Agency only retains information on ‘victims of crime’ but not specifically on ‘enforced disappearances’.

Reply to paragraph 26 of the list of issues

44. The relevant Maltese authorities are not that there have been any cases of victims of enforced disappearance to date.

Reply to paragraph 28 of the list of issues

45. No complaints against the wrongful removal of minors are known to have been made.

Reply to paragraph 29 of the list of issues

46. Nil reply.
