



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Forty-fifth session**

1-19 November 2010

**List of issues prior to the submission of the third periodic report of  
Malta (CAT/C/MLT/3)\***

**Specific information on the implementation of articles 1 to 16  
of the Convention, including with regard to the Committee's  
previous recommendations.**

**Articles 1 and 4**

1. Please provide information on the number of cases which have been investigated and prosecuted for the crime of torture as defined in article 1 of the Convention and article 139A of the State party's Criminal Code including for attempted torture, complicity or participation within the context of article 4 of the Convention. Please provide the number of convictions and punishments imposed for the aforementioned crimes <sup>1</sup>

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\* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute the next periodic report under article 19 of the Convention.

<sup>1</sup> CAT/C/12/Add.7, para. 45.

**Article 2<sup>2</sup>**

2. Please provide information on the measures taken by the State party to ensure that all persons deprived of their liberty are afforded, in law and in practice, fundamental safeguards as from the outset of their detention, including the right to access to a lawyer, the right to access to an independent doctor and the right to inform a relative. Please also indicate whether a statement of detainee rights is available at all places of detention for consultation by detainees at the outset of their detention. Please provide information on the measures taken to guarantee by law that at the outset of detention, a person under arrest is entitled to receive free legal aid.<sup>3</sup>

3. Please provide detailed information on measures taken to address the use of prolonged pretrial detention. Please also provide detailed information on measures taken to enforce the 48-hour time limit prescribed by the law for detention in police custody to be charged and have access to a lawyer or to be released.<sup>4</sup>

4. Please provide information on measures taken by the State party to change its laws and policies related to administrative detention of migrants in an irregular situation and asylum-seekers, so that detention is decided upon by a court of law, on a case-by-case basis and pursuant to clearly and exhaustively defined criteria in legislation.<sup>5</sup> Also, please provide information on steps take to provide in all cases for automatic periodic review by a court of law on the necessity and legality of detention and to provide for an effective remedy for detainees to challenge the necessity and legality of detention at any time of the detention period and ex post facto and define the circumstances.

5. Please provide detailed information on the measures taken by the State party to define the maximum length of detention by law for all detainees?<sup>6</sup>

6. Please provide information on measures taken by the State party to rule out detention of vulnerable groups of migrants, including unaccompanied minors, families with minor children, pregnant women, breastfeeding mothers, elderly persons, persons with disabilities and people with serious and/or chronic physical or mental health problems.

7. Please provide information on the measures taken by the State party to secure the separation of minors from adults in all prisons and pretrial detention places? What measures have been taken to limit the pretrial detention of children?<sup>7</sup> Please provide detailed information on steps taken to increase the minimum age of 9 years for criminal responsibility of minors.<sup>8</sup> Please provide information on steps taken to establish by law a minimum age for the voluntary recruitment into its national armed forces under which recruitment of children would be prohibited with no exceptions. Also, what measures have

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<sup>2</sup> The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As general comment n°2, paragraph 3, states "the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture....In practice, the definitional threshold between ill-treatment and torture is often not clear." See further Chapter V of the same general comment.

<sup>3</sup> CAT/C/29/Add.6.

<sup>4</sup> Ibid., para.6.

<sup>5</sup> A/HRC/13/30/Add.2, para. 79(e).

<sup>6</sup> Ibid., para. 61.

<sup>7</sup> Concluding observations of the Committee on the Rights of the Child (CRC/C/OPAC/MLT/CO/1).

<sup>8</sup> A/HRC/13/30/Add.2, p. 2.

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been adopted to provide educational and vocational training, medical and recreational facilities to help reintegrate young offenders into society?<sup>9</sup>

8. Please provide information on any legal and administrative measures taken to guarantee that no exceptional circumstances whatsoever, including an order from a superior officer or a public authority, may be invoked as a justification of torture. Please clarify whether recourse procedures are available to permit subordinates to oppose an order involving acts of torture. If so, where and how are these utilized and how have public authorities responded to the prohibition.

9. Please elaborate on the Domestic Violence Bill of 2005 and whether there has been an evaluation of the impact of such law. Please indicate whether any cases were brought under this law and their outcomes.

10. Please provide detailed information on measures taken to prosecute and convict trafficking offenders; ensure convicted trafficking offenders, including officials complicit in trafficking, receive adequate punishment; continue to develop and implement procedures for identifying and caring for victims, including possible child victims, among migrants and other vulnerable population; continue to develop procedures, in relevant source countries to ensure safe, voluntary repatriation for victims; and consider raising awareness to deter the possibility of child sex tourism.

11. Please provide information on the status, membership, mandate and functions of the National Preventive Mechanism designated under the Optional Protocol to the Convention against Torture. Also information on any visits carried out by it in places of detention and any recommendations made.

### Article 3

12. Please indicate whether measures have been taken to strengthen the guarantees provided in domestic law concerning the expulsion and return (refoulement) of foreigners, to a State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture, accordance with article 3 of the Convention?<sup>10</sup>

13. Please elaborate on any measures that have been taken towards the implementation of the Refugees Act of 2001<sup>11</sup>, as well as related investigations, prosecutions, and penal and disciplinary sentences. Please also indicate whether the Refugees Act is consistent with the provisions of the Convention.

14. Please provide data, disaggregated by age, sex and nationality on:

- (a) The number of asylum requests registered;
- (b) The number of asylum requests approved;
- (c) The number of applications based on the ground that the applicants would be in danger of being subjected to torture if they were returned to their country of origin and the number of requests granted on this ground;
- (d) The number of forcible deportations or expulsions (please indicate how many of them involved rejected asylum-seekers);
- (e) The countries to which these persons were expelled.

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<sup>9</sup> A/HRC/WG.6/5/MLT/2, paras. 43 and 48.

<sup>10</sup> CAT/C/12/Add.7, para. 51.

<sup>11</sup> *Refugees Act (Chapter 420)* [Malta], 1 October 2001, available at: <http://www.unhcr.org/refworld/docid/3fd9d0787.html>.

### **Articles 5 and 7**

15. Please provide detailed information on how the State party has exercised its universal jurisdiction over persons responsible for acts of torture, wherever they occurred and regardless of the nationality of the perpetrator or victim, and provide specific examples and texts of any decisions on the subject.<sup>12</sup>

### **Article 8**

16. Please provide information on whether the State party has rejected, for any reason, requests for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. Please clarify the number of cases that have reached trial and with what result.

### **Article 10**

17. Please provide detailed information on training on the provisions of the Convention and the absolute prohibition of torture for law enforcement personnel, government officials, prosecutors and judges.<sup>13</sup>

18. Please provide information on steps taken to ensure adequate training for all medical personnel involved with detainees, in the detection of signs of torture and ill-treatment in accordance with international standards, as outlined in the Istanbul Protocol, also that the Istanbul Protocol is part of the training of those involved in the documentation and investigation of torture.

19. Please indicate if the State party has developed a methodology to assess the effectiveness and impact of training/educational programmes on the reduction of torture, violence and ill-treatment. Please provide information on the content and implementation of such methodology.

### **Article 11**

20. Please indicate whether the State party has kept under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing any cases of torture. If so, please provide detailed information.

21. Please provide information on any rules adopted by the State party with regard to interrogations and in particular, to guarantee the presence of defence counsel during interrogation and audio or video recording.

### **Articles 12 and 13**

22. Please provide information on measures taken by the State party to carry out prompt and impartial investigation into all alleged cases of torture and cruel, inhuman or degrading treatment and to prosecute and punish the perpetrators. Please include relevant data.

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<sup>12</sup> CAT/C/12/Add.7, para. 61.

<sup>13</sup> CAT, *Official Records of the General Assembly, fifty-fifth session, Supplement No. 44 (A/55/44)*, para. 44 (d).

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23. Please provide statistical data or any information as regards discrimination against detained persons. Please also provide detailed information on any measures taken to ensure that criminal charges are brought against police officers who were found to have treated persons in a discriminatory manner in the course of their duties.<sup>14</sup>

24. Please provide information on mechanisms to detect and investigate misconduct of both police and prison officials, especially cases of ill-treatment and excessive use of force.<sup>15</sup> Furthermore, please provide relevant statistical data on the number of complaints received and investigated during the reporting period, as well as the number of prosecutions and convictions thereof.<sup>16</sup>

25. Please provide information on what mechanisms exist to handle complaints, and how persons deprived of their liberty are made aware of their right to complain and are able to exercise this right. Furthermore, what measures are taken to ensure that the body receiving the complaints is an independent entity? Also, provide information on how follow-up to complaints are handled and by whom.<sup>17</sup>

26. Please provide detailed information on the investigation and prosecution of allegations of excessive use of force by the police and armed forces against detainees who were peacefully protesting their detention at the Safi Detention Center in 2005 which reportedly resulted to injuries incurred by detainees.

27. Please provide detailed statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture or acts amounting to cruel, inhuman or degrading treatment, which have been filed during the reporting period, on related investigations, prosecutions, convictions and penal and disciplinary sanctions applied.

28. According to the Committee's previous concluding observations, please provide detailed information on measures taken by the State party to ensure that victims of torture are not dissuaded from lodging a complaint by any intimidation or threats, including threats of legal measures being taken against them.<sup>18</sup>

## Article 14

29. Please provide information on any redress and compensation provisions within the legal framework of the State party and the number of cases ordered by the courts and actually provided to victims of torture, or their families.<sup>19</sup> This information should include the number of requests filed, the number granted, the amounts of compensation ordered and those actually provided in each case. Also, please include information on other avenues for redress and compensation when the accountable party cannot provide it.<sup>20</sup>

## Article 15

30. Please provide further information on the law and practice relating to the admissibility of evidence obtained through torture or ill-treatment. Please provide examples

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<sup>14</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.94), para. 12.

<sup>15</sup> CPT/Inf (2007) 37, para. 21

<sup>16</sup> Ibid., para. 23

<sup>17</sup> Ibid., para. 22

<sup>18</sup> A/55/44, para. 45(b).

<sup>19</sup> CAT/C/29/Add.6, para. 5.

<sup>20</sup> CAT/C/SR.255, para. 21.

of any cases where evidence was excluded and the decisions reached. In this connection, please also clarify whether confessions made by a person in police detention without the presence of a lawyer are considered as evidence admissible in Court.<sup>21</sup>

## **Article 16**

31. According to information before the Committee, please provide detailed information on measures taken to address overcrowding and inhumane conditions of detention in detention centres for immigrants and asylum-seekers, in particular in the Safi Detention Centre for aliens. Please also indicate measures taken to improve the material conditions of detention centres throughout the State party.<sup>22</sup>

## **Other issues**

32. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

## **General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

33. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the second periodic report, including any relevant jurisprudential decisions.

34. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level, that have occurred since the second periodic report, including on any national human rights plans or programmes, and the resources allocated to it, its means, objectives and results.

35. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the second periodic report in 1999, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.

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<sup>21</sup> CAT/C/12/Add.7, para. 79.

<sup>22</sup> CPT/Inf (2007) 37, para. 28.