



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

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Committee on Enforced Disappearances

**Report submitted by Malta under article 29 (1) of
the Convention, due in 2017***

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* The present document is being issued without formal editing.



I. General information

1. Malta is a unitary parliamentary constitutional republic consisting of an archipelago in the central Mediterranean Sea. It has a population of 515,000 and an area of 316km². Its official languages are Maltese and English.

Brief outline of Human Rights in Malta

2. The sources of human rights in Malta find themselves grounded in the Constitution of Malta of 1964.¹ Nevertheless, in 1961, when Malta was still a Crown Colony, it received a constitution otherwise known as the 'Blood Constitution'. This Constitution had at its source the Nigerian Constitution of 1960 which, in turn, was based on the European Convention of Human Rights and on the Sierra Leone Constitution. The 'Blood Constitution' provided, for the first time in Malta, for a general Bill of Rights and a mechanism for redress where a person's rights were violated or threatened with violation.

3. Article 5 of this Constitution asserted the entitlement of every person in Malta to the fundamental rights and freedoms of the individual, which rights are to be enjoyed subject to respect for the rights and freedoms of others and the public interest.

4. The fundamental rights were described as being the right to: "(a) Life, liberty, security of the person and protection of the law; (b) freedom of conscience, of expression and of assembly and association; and (c) protection for the privacy of his home and other property and from deprivation of property without compensation".

5. In 1964, Malta gained its independence from Great Britain. This saw the enactment of the Malta Independence Act, 1964 which legally gave independence to the country and the Malta Independence Order, 1964 which incorporated the Independence Constitution.

6. This Constitution contains, in its Chapter IV, an extensive and judicially enforceable bill of rights, largely based on the European Convention on Human Rights model. The provisions contained in the 1961 'Blood Constitution' were in substance retained and also amplified. New clauses which were introduced provided for non-discrimination; protection of freedom of movement and the restriction of deportation of Maltese citizens. Other protected rights are, the right to life and security of the person, privacy of the home and other property, freedom of expression, right to a fair trial, freedom of association and peaceful assembly and the right not to be subjected to inhuman and degrading treatment and arbitrary arrest.

7. In 1987, the European Convention on Human Rights became part of Maltese law when the European Convention Act was promulgated by means of Act XIV of 1987. Today it is Chapter 319 of the Laws of Malta. Act XIV of 1987 incorporated (1) the fundamental freedoms and rights as set out in article 3 to 18 of the Convention and articles 1 to 3 of the First Protocol, as part of Maltese law. It also provides for the supremacy of its provisions vis-a-vis ordinary law where the latter is inconsistent with such rights and freedoms and (2) made judgments delivered by the European Court of Human Rights directly enforceable by the Constitutional Court of Malta. Such judgments are enforceable locally.

8. Infringements of human rights in Malta are heard by the First Hall of the Civil Court sitting in its Constitutional Jurisdiction whether in terms of the provisions of the Constitution or in terms of the European Convention Act. Appeals are then reviewed by the Constitutional Court. If the plaintiff loses his appeal before the Constitutional Court, he can exercise his right to individual petition before the European Court of Human Rights in Strasbourg.

9. The Constitutional Court has both an original and an appellate jurisdiction. As an appellate court it hears appeals from decisions of other courts on questions relating to the interpretation of the Constitution and on the validity of laws, and, as indicated above, appeals from decisions on alleged breaches of fundamental human rights. As a court of original jurisdiction, the Constitutional Court decides questions concerning the validity of the election

¹ <https://legislation.mt/eli/const/eng>.

of members of the House of Representatives, the requirement in certain cases for a member to vacate his seat in the said House, and the validity of the election of the Speaker from among persons who are not members of the House. As a court of original jurisdiction, the Constitutional Court also decides questions concerning the validity of general elections, including allegations of illegal or corrupt practices or foreign interference in such elections. No appeal lies from a decision of the Constitutional Court given in its original jurisdiction.

10. The Constitutional Court is composed of three judges (the Chief Justice as President and two other judges). A provision in the Constitution guarantees that this court is constituted at all times, and this provision can only be amended by a two-thirds majority vote of all members of the House of Representatives.

II. Relevant Provisions of Maltese Legislation

11. Enforced disappearance constitutes a serious violation of human rights, *inter alia*, the right to recognition as a person before the law, the right to life, the right to liberty and security, the right to a fair trial and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. It also violates the right to family life as well as various economic, social and culture rights such as the right to an adequate standard of living and the right to education.

12. The concept of personal liberty is upheld primarily in Section 34 of the Constitution. It is also reflected in article 5 of the First Schedule of the European Convention Act, Chapter 319 of the Laws of Malta. The Constitution specifically states that, “No person shall be deprived of his personal liberty save as may be authorised by law [...]”.

13. Moreover, both the Constitution and the European Convention Act permit arrest or detention if there is a reasonable suspicion that a criminal offence has been committed, or if this measure is reasonably considered necessary to prevent a criminal offence or to prevent flight after an offence has been committed. This provision requires that everyone who is detained shall be brought promptly before a judicial authority (and in any case, not later than 48 hours) and is entitled to trial within a reasonable time or to release pending trial.

14. The International Criminal Court (ICC) Act, Chapter 453 of the Laws of Malta, came into being by virtue of Act XXIV of 2002. The purpose of the International Criminal Court Act is to make further provisions in Malta for the punishment of certain international crimes, namely genocide, crimes against humanity and war crimes, thereby enabling the State to cooperate with the ICC and to authorize ratification of the Rome Statute. The Act introduces genocide, crimes against humanity and war crimes into the Criminal Code, Chapter 9 of the Laws of Malta, using the similar definitions for these crimes as those found in the Rome Statute. In fact, Article 7(1)(i) of the ICC Act characterises ‘enforced disappearances’ when committed as part of a widespread or systematic attack directed against any civilian population and with knowledge of the attack, as a crime against humanity. This wording is also mirrored in Article 54C(1)(i) of the Criminal Code.

15. The ICC Act defines the responsibility of commanders and other superiors, and includes extraterritorial jurisdiction whenever one of the above mentioned crimes is committed by a person subject to military law, and jurisdiction over any citizen or permanent resident of Malta who, outside the country, conspires to commit such an offence either within or outside Malta. The Act also regulates assistance to the ICC, offences in relation to the ICC, the enforcement of sentences and orders, and arrest and surrender. Lastly, it contains a special clause on State or diplomatic immunity and provides for an amendment of other Acts.

16. Several international instruments which provide prevention measures against enforced disappearances were also ratified by Malta. These are:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 4 November 1950;
- International Covenant on Civil and Political Rights of 16 December 1966;

- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987, establishing the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the Optional Protocol thereto of 18 December 2002;
- Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977, insofar as they empower the International Committee of the Red Cross (ICRC) to visit prisoners of war;
- Rome Statute of 17 July 1998 on the creation of the ICC.

III. Information Relating to the Implementation of the Convention in Malta

Article 1

17. Maltese legislation does not provide for the possibility of any derogation for the fundamental protections of individuals except for those that are permissible in the European Convention for the Protection of Human Rights and Fundamental Freedoms that are also reflected in the Constitution of Malta. The ratification of the Convention was made through a resolution of the House of the Representatives as per article 3(2)(b) of the Ratification of Treaties Act, Chapter 305 of the Laws of Malta.

18. Moreover, 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 of unacceptable behaviour from 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. Furthermore, article 4.6.3 of the Code of Ethics of the Malta Police Force states, that police officers shall not subject persons in custody, regardless of the circumstances, to violence, inhumane or degrading treatment and that police officers are responsible for the life and health of the person in custody.

Article 2

19. In the Maltese legal system, the definition of “enforced disappearance” per se features in article 54C(2)(i) of the Criminal Code under the title “Of Genocide, Crimes against Humanity, War Crimes and Crimes of Aggression”. Criminal proceedings under this article are instituted by or with the consent of the Attorney General and a person convicted for the offence of enforced disappearance is liable to imprisonment for a term not exceeding thirty years. Nevertheless, if the offence is accompanied with murder, then the offender would be liable to life imprisonment (Article 54I of the Criminal Code).

20. Malta applies the nationality principle of jurisdiction in prosecuting and punishing any Maltese citizen or permanent resident in Malta (extended nationality principle) who in any place or on board any ship or vessel or on board any aircraft wherever it may be shall have become guilty of genocide, crimes against humanity (including enforced disappearances), war crimes and crimes of aggression.

21. The definition of “enforced disappearance” is also mirrored in Article 7(1)(i) of the International Criminal Court Act, Chapter 453 of the Laws of Malta.

22. Article 34 of the Constitution and article 5 of the European Convention Act provide for protection from arbitrary arrest and detention.

23. Other provisions of the law that provide against the conduct pertaining to the crime under reference include article 199 of the Criminal Code which punishes the abduction of

any person with the 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 offender avails himself of his capacity of public officer or if the offence is committed on any prisoner by the person charged with the custody or conveyance of such crime.

24. Article 86 of the Criminal Code also regulates illegal arrest, detention or confinement. Any person who without a lawful order from the competent authorities arrests, detains or confines any person against his will or provides a place for carrying out such arrest, detention or confinement, shall be liable on conviction to imprisonment from seven months to two years. As per article 87 of the Criminal Code, the punishment is increased to thirteen months and up to three years if, inter alia, the detention or confinement of the person illegally arrested, detained or confined, continues for more than 20 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.

25. Article 90 of the Criminal Code 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).

26. Maltese law specifically in the Criminal Code provides that a person under arrest must be released without undue delay and in no case beyond 48 hours, if not charged in Court. This period of police detention cannot be extended and for a person to be re-arrested, his release from detention must be manifest and effective. Articles 137 and 409A of the Criminal Code provides for a writ of *habeas corpus* and any magistrate who fails or refuses to attend to a lawful complaint touching an unlawful detention, and any officer of the Executive Police, who on a similar complaint made to him, fails to prove that he reported the same to his superior authorities within 24 hours, are, if convicted, liable to imprisonment for a term from one to six months.

Article 3

27. Article 346 of the Criminal Code stipulates that, it is the duty of the Police to preserve public order and peace, to prevent and to detect and investigate offences, to collect evidence, whether against or in favour of the person suspected of having committed that offence, and to bring the offenders, whether principals or accomplices, before the judicial authorities.

28. As per article 3 of the Attorney General's Ordinance, Chapter 90 of the Laws of Malta, the Attorney General is the Chief Prosecutor for Malta. Nevertheless, cases of abduction and illegal arrest, are prosecuted by the Police in the inferior courts. Cases dealing with crimes against humanity which include enforced disappearance of persons, as well as murder, the discretion to prosecute and the actual prosecution falls within the prosecutorial remit of the Attorney General as per Legal Notice 378 of 2020 (Prosecution of Offences (Transitory Provisions) Regulations, after the case would have been investigated by the Executive Police.

29. The investigative measures for all criminal offences in Malta are contained in Book II of the Criminal Code which regulates criminal procedure.

Article 4

30. This has already been amplified in Article 2 above. Enforced disappearance was already a punishable crime in Malta before the Convention entered into force.

Article 5

31. As in Articles 2 and 4 above.

Article 6

32. The general conditions for criminal responsibility in Malta are grounded with sufficient accuracy in the old legal maxim; “*actus non facit reum, nisi mens sit rea*”. The act alone does not amount to guilt; it must be accompanied by a guilty mind. That is to say, there are two conditions to be fulfilled before criminal responsibility can arise. These are the material and the formal conditions of liability. The material condition is the *actus reus* that is, the doing of some act (either of commission or omission) by the person to be held liable. The formal condition, on the other hand, is the *mens rea*, or the guilty mind, with which the act is done.

33. Article 42 of the Criminal Code deems a person to be an accomplice in a crime if he, inter alia, commands another to commit the crime; or instigates the commission of the crime [...] by abuse of authority; or knowingly aids or abets the perpetrator of the crime; or procures weapons or other instruments used in the commission of the crime; or gives instructions for the commission of the crime. In Maltese criminal law, an accomplice in a crime shall be liable to the punishment established for the principal.

34. Article 42 above, is a general provision which is applicable to all crimes.

35. Article 54E of the Criminal Code provides for the responsibility of military commanders and other superiors and encapsulates ‘in toto’ the elements indicated in Article 6 of the Convention.

36. In fact, a criminal action for an offence of ‘enforced disappearance’ committed as a crime against humanity may be prosecuted in Malta if committed by a person subject to military law in terms of the Malta Armed Forces Act, Chapter 220 of the Laws of Malta or against any citizen of Malta or permanent resident in Malta, who outside Malta, conspires to commit the offence, even if the offence is committed outside Malta.

Article 7

37. Apart from what has already been indicated above, in connection with the crime of abduction as per article 199 of the Criminal Code, the punishment is increased by one or two degrees where the person abducts, by fraud or seduction, any person under the age of eighteen years.

38. Extenuating circumstances do exist, in terms of article 89 of the Criminal Code, for the punishment of illegal arrest, detention or confinement of a person without the concurrence of the following circumstances: (a) the unauthorised use of a uniform, an assumed name, or a warrant falsely purporting to be issued by a public authority; (b) the infliction of bodily harm or the threat of death; (c) the continued detention in spite of a writ or warrant for the release or delivery of the person detained or confined has been issued by the competent authority; (d) the crime is committed with the object of extorting money; (e) the act is committed for the purpose of forcing another person to do or to omit an act; and (f) the crime is committed as a means of compelling a person to do an act or to submit to treatment injurious to the modesty of that person’s sex.

39. In such cases, the term of imprisonment shall be from seven months to one year, where the offender, before the commencement of any proceedings at law, restores to liberty the person arrested, detained or confined, within twenty-four hours after the arrest, detention or confinement, provided that during this interval the offender had not attained the object for which such person had been arrested, detained or confined.

Article 8

40. Article 691 of the Criminal Code deals with the commencement of prescription. In fact sub-article (1) states that with regard to a completed offence, the period of prescription shall run from the day on which the offence was completed; with regard to an attempted offence, from the day on which the last act of execution was committed; with regard to a

continuous offence, from the day on which the last violation took place; and with regard to a continuing offence from the day on which the continuance ceased.

41. Article 688 of the Criminal Code establishes six (6) periods of prescription. In the case of crimes, these range from 2 to 20 years, depending on the gravity of the offence. The running of the time periods depends on whether the offence is completed, attempted, continuous or continuing as indicated above.

42. The period of prescription is also suspended from the moment a charge or bill of indictment is served on the person charged or accused.

43. Article 692 of the Criminal Code provides that the period of prescription in respect of crimes shall not commence to run when the offender is unknown.

44. Nevertheless, in terms of Article 54I(5) of the Criminal Code, prescription does not apply in relation to crimes against humanity, including enforced disappearance.

45. The Victims of Crime Act, Chapter 539 of the Laws of Malta, makes provision for the rights, support and protection of victims, and for matters concerning therewith or incidental thereto.

Article 9

46. Within the Maltese Islands, criminal jurisdiction is exercised in accordance with the provisions found in Article 5 of the Criminal Code. This article incorporates in it the personal aspect of jurisdiction, which together with the territorial principle, forms the basis of criminal jurisdiction in Malta.

47. Section 5(1)(a) states that jurisdiction is exercised “*against any person who commits an offence in Malta or on the sea in any place within the territorial jurisdiction of Malta*”. This article indicates the presence of the territorial as well as the personal principle of jurisdiction. To a limited extent, there is also the application of the self-preservation theory as well as an application of universal jurisdiction.

48. As regards offences committed on ships within the territorial waters of Malta, the nationality of the ship is irrelevant. Maltese courts would still assume jurisdiction (except for warships). In accordance with Article 5(1)(b) and 5(1)(c), Maltese courts have jurisdiction to try and punish offenders, whether Maltese or foreign, who commit an offence on board any ship or vessel belonging to Malta even beyond the limits of Malta’s territorial jurisdiction.

49. Domestic law extends jurisdiction to offences committed on the high seas, provided the offender and ship are Maltese. Nevertheless if one of the aforementioned criteria is lacking, Malta may still claim jurisdiction under Article 5(1)(d) against any citizen of Malta or permanent resident in Malta in Malta, who in any place or on board any ship or vessel or on board any aircraft wherever it may be shall have become guilty, inter alia, of the offence of genocide, a crime against humanity (enforced disappearance), a war crime or a crime of aggression. Article 5(1)(g) provides that the nationality of the agent is immaterial provided that he is in Malta either as a principal or as an accomplice, inter alia, in the above-mentioned offences.

50. According to the International Criminal Court Act and without prejudice to Article 5 of the Criminal Code, Malta has also jurisdiction against any citizen of Malta or permanent resident in Malta who shall have become guilty of an offence related to Article 70.1 of the ICC Treaty.

Article 10

51. Our Criminal Code as well as our Extradition Act, Chapter 276 of the Laws of Malta, also provide for pre-trial detention for a person who is being investigated within the framework of criminal national or extradition proceedings (not more than 48 hours).

52. Persons who are remanded in custody are also given access to consular/embassy assistance if they so request. Article 355AUE of the Criminal Code provides for this right. In

fact, as per Schedule E of the Criminal Code, the letter of rights of the arrested person in its para. “F” denotes that foreign detainees have the right to request the Police to have their consular or embassy authorities informed of their detention. Several Police Circulars also emphasise that the embassy/consular authority of a foreign person who is in police custody is to be informed immediately preceding arrest. This in accordance with the protection afforded by Article 36 of the Vienna Convention on Consular Relations of 24 April 1963 which Malta ratified on 10 December 1997.

Article 11

53. The principle of “*aut dedere aut judicare*”, is regulated in Malta by means of Article 5(1)(h) of the Criminal Code, which provides, that a criminal offence may be prosecuted in Malta, “*against any person in respect of whom an authority to proceed, or an order for his return, following a request by a country for his extradition from Malta, is not issued or made by the Minister responsible for justice on the ground that the said person is a Maltese citizen or that the offence for which his return was requested is subject to the death penalty in the country which made the request, even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person*”.

54. Moreover, Part VI of the Extradition Act, Chapter 276 of the Laws of Malta, regulates for the arrest and surrender of a person alleged to have committed a crime over which the ICC has jurisdiction, or of a person alleged to have been convicted by the ICC.

55. The protective rights afforded by both the Constitution and the European Convention Act are also applicable to “*aut dedere aut judicare*” proceedings, even though to date, the procedure has been rarely applied in judicial practice.

Article 12

56. This article is regulated by Book Second of the Criminal Code which regulates criminal procedure in Malta.

57. Reports and complaints concerning domestic/international crimes are investigated by the Executive Police ex officio, nonetheless, they are prosecuted by the Attorney General as Chief Prosecutor (vide our reply to Article 3).

58. Article 4(c) of the Police Act, Chapter 164 of the Laws of Malta, ensures that the police apply the law without discrimination on any ground such as race, colour, language, religion, sex, sexual orientation, gender identity, disability, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

59. Protection of witnesses is regulated by Articles 40–56 of the Police Act and the Whistle-blower Act, Chapter 527 of the Laws of Malta.

60. Article 6A of the Criminal Code provides that a criminal action should be resolved without any unreasonable delay having due regard to the need to protect the safety and well-being of the injured party.

Article 13

61. Extradition in Malta is regulated by the Extradition Act, Chapter 276 of the Laws of Malta. Malta employs a dualist approach when it comes to extradition. Part II of the Extradition Act deals with the return of offenders to Commonwealth countries whilst Part III deals with the rendition of fugitive offenders to other foreign countries. Malta adopts a blend of both the ‘enumerative’ and the ‘eliminative’ approach. In the case of Commonwealth countries, if the person is accused or convicted of an extraditable crime, he may be committed to extradition if the offence is one of the listed offences in the Schedule to the Act and is punishable with a term of imprisonment of twelve months or greater. Inter alia, the schedule contains offences such as illegal arrest, detention or confinement or dealing with slaves, and

the unlawful removal of persons to a foreign country or confinement therein. In the case of other foreign countries, only the eliminative method (length of sentence approach) is utilised.

62. As per the Extradition (Designated Countries) Order, Legal Notice 320 of 2004 as subsequently amended [S.L.276.05], Malta may also surrender a fugitive offender to another Member State of the European Union in terms of a European Arrest Warrant as per EU Council Framework Decision of the 13th June, 2002 on the European arrest warrant and the surrender procedures between Member States done at Luxembourg on the 13th June, 2002, adopted pursuant to Title VI of the Treaty, the terms of which are set out in the relative arrangement published in the Government Gazette dated the 1st June, 2004, as amended by Council Framework Decision 2009/299/JHA of the 26th February, 2009.

63. The Constitution of Malta, in its article 41, makes it mandatory that any extradition arrangement with another country is to be made by treaty. In respect of Commonwealth countries, any general arrangement in force between Malta and the other Commonwealth country, is deemed to be an arrangement made by treaty.

Article 14

64. Malta has signed the Convention on Mutual Assistance in Criminal Matters of the Council of Europe on 6 September 1993 and ratified it on the 3 March 1994 which affords each Member State the widest measure of mutual assistance with a view to gathering evidence, hearing witnesses, experts and prosecuted persons, etc.

65. The Convention sets out rules for the enforcement of letters rogatory by the authorities of a Party (“requested Party”) which aim to procure evidence (audition of witnesses, experts and prosecuted persons, service of writs and records of judicial verdicts) or to communicate the evidence (records or documents) in criminal proceedings undertaken by the judicial authorities of another Party (“requesting Party”).

66. Moreover, Article 399 of the Criminal Code allows for evidence by commission whenever the court decides that the examination of the inquiry by a foreign authority is indispensably necessary.

67. Furthermore, Malta also adheres to EU Framework Directive 2014/41/EU regarding the “European Investigation Order”.

Article 15

68. Apart from the judicial tools available as per Article 14 above, Malta will also use available domestic and international judicial and police channels to provide the greatest extent of mutual assistance in assisting victims of enforced disappearance, in searching, locating and releasing disappeared persons. In the event of death, assistance will also be rendered in their exhumation and in the identification and in the returning of their remains.

Article 16

69. Maltese legislation prohibits the expulsion, return (refoulement), surrender or extradition of a person to a State where there are substantial grounds for believing that he/she might be subject to enforced disappearance.

70. Article 36 of the Constitution of Malta prohibits inhuman or degrading punishment or treatment (also Article 3 of the First Schedule of the European Convention Act). This particular right has been interpreted by our courts, as well as by the European Court of Human Rights, not only as affording protection from physical ill-treatment (which must reach a certain severity) but whether mental ill-treatment amounts also to a breach of this fundamental human right. The court will take a cumulative effect of these acts and omissions in deciding as to whether a breach of Article 36 of the Constitution (or Article 3 of the European Convention Act) has been committed.

71. Malta adheres to the decision imparted by the European Courts of Human Rights Case in *Soering v. the United Kingdom*, particularly in its dictum:

“For a state knowingly to surrender a fugitive to another state where there were substantial grounds for believing that he would be in danger of being subjected to torture or inhuman or degrading treatment would plainly be contrary to the spirit of Article 3.”

72. As such no deportation of foreigners will take place in Malta if this would be contrary to Article 36 of the Constitution and Article 3 of the First Schedule of the European Convention Act.

73. Article 46 of the Constitution provides redress to any person in Malta who alleges that the human rights provisions of the Constitution are being breached in relation to him/herself or in respect of any other person.

74. In respect of the removal of persons under the Immigration Act, Chapter 217 of the Laws of Malta, Article 14 states that a removal order would be suspended if a prohibited immigrant files an application for asylum in terms of the International Protection Act, pending the final determination of the asylum application.

Articles 17 and 18

75. Article 34 of the Constitution of Malta deals with the right to protection from arbitrary arrest and detention. It states that “*No person shall be deprived of his liberty, save as may be authorised by law in the following cases [...]*”.

76. The most important exception is under sub-section (f) which states: “*upon reasonable suspicion of his having committed, or being about to commit a criminal offence*”. The Police may detain a person for 6 hours, after which, a Magistrate has to be informed as to the time and place where the person is being held. Any person arrested, who is not brought before a court within 48 hours of his arrest, shall be released.

77. It is the Executive Police who may proceed to arrest a person in Malta, although in very special circumstances as indicated by law, Armed Forces of Malta personnel as well as Customs officers, may also be vested with police powers and hence, may also detain a person.

78. Arrested persons can only be kept in designated places of detention as per the Designated Places of Detention Order, Legal Notice 437 of 2003 [S.L.9.08]. These places of detention are supervised by Police custody officers in terms of articles 64–69 of the Police Act, Chapter 164 of the Laws of Malta.

79. Persons who are remanded in police custody are also given access to consular/embassy assistance if they so request. In fact, as per Schedule E of the Criminal Code, the letter of rights of the arrested person in its para. “F” denotes that foreign detainees have the right to inform a family of their detention and to request the Police to have access to their legal counsel (who may be present during the interview), a medical doctor of their choice (if need be) as well as their consular or embassy authorities informed of their detention. Several Police Circulars also emphasise that the embassy/consular authority of a foreign person who is in police custody is to be informed immediately on arrest. This in accordance with the protection afforded by Article 36 of the Vienna Convention on Consular Relations of 24 April 1963 which Malta ratified on 10 December 1997.

80. In 2014, Malta introduced the right of disclosure in its criminal laws, thereby granting suspects accused of a crime, the right to have access to information during criminal procedures.

81. Article 139A of the Criminal Code states that “any public officer or servant or any other person acting in an official capacity who intentionally inflicts on a person severe pain or suffering, whether physical or mental – (a) for the purpose of obtaining from him or a third person information or a confession; or (b) for the purpose of punishing him for an act he or a third person has committed or is suspected of having committed; or (c) for the purpose of intimidating him or a third person or of coercing him or a third person to do, or to omit to do,

any act; or (d) for any reason based on discrimination of any kind, shall, on conviction, be liable to imprisonment for a term from five to nine years.

82. A Code of Practice for the Interrogation of Arrested Persons is also annexed as Schedule Three of the Police Act for use of police officers and custody officers.

83. Article 64(d) of the Police Act also makes it incumbent on custody officers to keep *inter alia* a record of anything that needs to be recorded with reference to a detained person under their charge.

84. In Malta, as already explained, there is the *habeas corpus* procedure (already described above) in respect of any allegation made of a person who has been illegally detained by the authorities as per articles 137 and 409A of the Criminal Code.

85. The Independent Police Complaints Board has also the function, as per article 36(1)(e) of the Police Act, to monitor, supervise and visit any cells where persons are or may be detained and to report thereon to the Police Governance Board or to the Minister responsible for the police.

86. Malta ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1988. Since that time the Committee for the Prevention of Torture visited Malta nine times.

Article 19

87. The use and collection of information, including intimate and non-intimate samples in criminal proceedings is regulated by both the Criminal Code of Malta and the Police Act.

88. Article 62 of the Police Act stipulates that the police can hold, process and classify any information relevant to the commission of any crime in or outside Malta which information may be preserved by any system whatsoever, including in electronic format, subject to the provisions of any law on the protection of data. Such information may relate to fingerprints, photographs, measurements, blood-samples, intimate or non-intimate samples, patterns of criminal behaviours and methodology in the perpetration of an offence and similar details for the purposes of any future identification of offenders.

89. The Criminal Code, by virtue of articles 355AV to 355BD, regulates the taking of intimate samples or when the person withholds his consent to provide a sample according to law. This procedure in the taking of such samples is nonetheless regulated by a Magistrate. Malta adheres to the principle that any unjustified interference in the taking of samples will be in breach of article 8 of the First Schedule of the European Convention Act unless it is “according to the law”, as pursuing one or more of the legitimate aims listed therein, and as being “necessary in a democratic society” in order to achieve the aim or aims concerned.

Article 20

90. At the pre-trial stage, a suspected person has the right to have a third person informed of the deprivation of his/her liberty without undue delay (Article 355AUC(1) of the Criminal Code). However, according to sub-article (4) of the above mentioned article, it is permissible to derogate from the application of this right where justified in the light of the particular circumstances of the case, mainly, where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person or where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised. This delay shall not be later than six hours from the time when the arrest was affected.

91. Article 355AUD stipulates that a suspect or accused person deprived of his liberty has the right to communicate without undue delay with at least one third person, such as a relative, friend or other person nominated by him. However, following a written request by the Police, or any other law enforcement authority, this right may be limited or deferred in view of imperative requirements or proportionate operational requirements.

Article 21

92. This obligation is fulfilled in respect of the rules governing pre-trial detention. The rule that a person is to be effectively released from detention (if not charged in court within 48 hours of his arrest), is established in the Criminal Code. This obligation is also mirrored in the current Police Act which inter alia provides in its Article 64, that the custody officer shall release from custody a person in police detention if upon the lapse of the period of 48 hours from his arrest that person has not been brought before a court within that period. However, before effecting such release, the custody officer or officer performing the functions of a custody officer shall inform the investigating officer and a Magistrate and the final decision shall rest with the Magistrate.

93. Custody officers are also obliged to release any person when so ordered by the investigation officer who had proceeded to or requested his arrest. Similar provisions are also found in the Code of Practice for the Interrogation of Arrested Persons which is annexed to the Police Act and in article 355AL of the Criminal Code.

94. The physical integrity and well-being of the arrested person is also protected by articles 355AL to article 355UK of the Criminal Code which deal with detention and the right to legal assistance and other rights during detention. Of particular importance is article 355UJ(1) which states that the Police and any other law enforcement or judicial authority are to ensure the particular needs of vulnerable suspects and vulnerable accused persons. Article 355UK provides that the rights of persons during detention shall not be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Constitution, the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights, or other relevant provisions of international or national law which are enforceable in the courts of Malta, and which provide a higher level of protection.

Article 22

95. This article touches on the writ of *habeas corpus* which is found in our Criminal Law as per articles 137 and 409A. *Habeas corpus* applications are met with urgency and the court summarily hears the applicant and the respondents and any relevant evidence produced by them in support of their submissions and on the reasons and circumstances militating in favour or against the lawfulness of the continued detention of the applicant. The court will then decide whether to allow or refuse the application. If the court allows the application, the Attorney General may, within two working days, appeal the decision.

96. In case there is a refusal to provide information on the deprivation of liberty or the provision of inaccurate information, since these are decisions pertaining to an administrative nature, one could lodge a complaint with the Internal Audit and Internal Affairs Unit of the Police, the Independent Police Complaints Board or the Ombudsman. Appropriate remedial or disciplinary action will be taken against all those concerned if the complaint is found to be justified.

Article 23

97. Training of law enforcement officials falls under the remit of the Academy for Disciplined Forces. Basic recruitment courses which include Police Ethics and Policing, and fundamental human rights are held for both police trainees and Officer Cadets. In-service training, which all serving police officers must follow, includes specifically lectures on fundamental human rights and reference is also made to the Convention during such training. Recruit Correctional Officers also follow similar training. Immigration Officers and border guards' courses contain elements of European and International law, Asylum law and fundamental rights.

98. Maltese police officers also regularly participate in CEPOL and FRONTEX courses and webinars on international and human rights law.

Article 24

99. The position of victims in Malta is regulated in the Victims of Crime Act, Chapter 539 of the Laws of Malta which is in line with Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

100. In article 2 of the Act, a victim is defined as (a) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (b) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death; (c) minors who are witnesses of forms of violence.

101. Victims of crime in Malta have the following rights: (a) they shall be communicated, verbally or in writing, in simple understandable language; (b) on first contact with a competent authority may be accompanied by a person of his choice in order to understand or be understood; (c) the first competent authority in contact with the victim must inform the person with all the rights; (d) be able to file a police report and given a copy of the report as expedient as possible; (e) be informed about the criminal proceedings and if the offender is released from detention; (f) be assisted with legal aid services.

102. A person who is identified as a victim of crime, after getting in contact with the first competent authority, may ask to be assisted with legal aid services. The person will be referred to Legal Aid Malta Agency to initiate the process to assign the person with a legal aid lawyer.

103. The Criminal Injuries Compensation Scheme, Legal Notice 186 of 2012 [S.L.9.12] also provides for adequate remedies to victims in several specified offences, including homicide and grievous bodily harm.

Article 25

104. In Malta, children have the right to be protected against all forms of abandonment, discrimination and oppression. This is regulated in a number of laws including the Civil Code, Chapter 16 of the Laws of Malta and the Criminal Code (articles 245–248 re: abandonment, exposure or ill-treatment of children). Malta has also ratified the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction which entered into force in Malta on 1 August 2000 as per the Child Abduction and Custody Act, Chapter 410 of the Laws of Malta.

105. Malta is also bound by the Brussels II Regulation (Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in marriage-related matters and the matters of parental responsibility that contribute for child protection in case of wrongful removal or retention of the child.

106. Additionally, Malta is a contracting state party to the 1996 Hague Child Convention which was acceded to on 24 February 2011 and entered into force on 1 January 2012. The implementing domestic legislation for this Convention is the Protection of Children (Hague Convention) Act, Chapter 507 of the Laws of Malta.

107. Malta provides mutual legal assistance, including the search, identification and the tracking of children subject to enforced disappearance or parents or legal guardian have subjected to enforced disappearance, or of children born during the captivity of a mother who has been subjected to enforced disappearance.

108. The Malta Police, apart from its dedicated unit to track down missing persons and minors, is also teamed up with AMBER ALERT, Europe, to better protect missing children. AMBER ALERT enables countries to quickly involve the public in the search for missing children using an array of media, such as television, radio, variable-message road signs,

public transport, text messages, e-mail, website banners, advertising screens, PC screensavers, smartphone apps and the social media.

109. Recognised unaccompanied minors who arrive in Malta in an irregular manner are placed under the care of the Ministry for Social Policy through a Care Order and placed in residential hostels. There, social workers and other staff offer a safe home, implement individualised care plans, and work to offer them social, educational and leisure opportunities.

110. Finally, articles 248D–248DB of the Criminal Code, provide against the traffic of minors for purposes of exploitation, prostitution, pornographic performances as well as exploitation in the removal of organs. The punishment of these offences range from six months to 12 years of imprisonment.
