



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
5 April 2023

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

List of issues in relation to the report submitted by Malta under article 29 (1) of the Convention*

I. General information

1. Please provide information on the steps taken to establish an independent national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).
2. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications (arts. 31 and 32).
3. Please provide examples of any jurisprudence in which the provisions of the Convention have been directly invoked by national courts or administrative authorities.
4. Please provide further information on the participation of civil society, in particular of organizations of victims, human rights defenders working on the issue of enforced disappearance and non-governmental organizations, in the preparation of the State party's report.¹

II. Definition and criminalization of enforced disappearance (arts. 1–7)

5. As relates to paragraphs 19 to 26 of the report, please provide up-to-date statistical information on the number of disappeared persons in and from the State party, disaggregated by sex, gender identity, sexual orientation, age, nationality, ethnic origin, religious affiliation and occupation of the victim or other characteristics relevant in national contexts, specifying the date of their disappearance, the number of those persons who have been located and the number of cases in which there may have been some form of State participation within the meaning of article 2 of the Convention, including the disappearances that occurred in the context of migration or trafficking of persons (arts. 1–3).

6. Please specify whether there is a unified and operational register of disappeared persons regardless of the circumstances and, if so, the kind of information that it contains, and whether such information could enable differentiation between cases of enforced disappearance as defined under article 2 of the Convention and the other cases of disappearance that do not fall under that category. Please describe the measures taken: (a) to ensure that relevant information about all alleged cases of disappearance is promptly entered into the register and duly updated; (b) to compare and consolidate the information contained in the register with the information on disappeared persons held by other State institutions, including those providing forensic services or administering DNA databases; (c) to share,

* Adopted by the Committee at its twenty-fourth session (20–31 March 2023).

¹ CED/C/MLT/1.



whenever necessary, the registered information with other States potentially related to the disappearance at stake (arts. 1–3, 12, 14, 15 and 24).

7. Please indicate whether there have been any reports of persons disappeared in the context of trafficking in persons, illegal adoption or migratory movements that may qualify as cases of enforced disappearance or as acts of a similar nature. If so, please provide information on the measures taken to search for the disappeared persons, to investigate their disappearance, to bring perpetrators to justice and to provide comprehensive reparation to victims (arts. 1–3, 12, 24 and 25).

8. Please indicate whether domestic law specifically prohibits the invocation of exceptional circumstances as a justification for enforced disappearance. Please indicate whether, during a state of war or threat of war, internal political instability or any other public emergency, domestic law permits 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. If so, please enumerate the rights and/or procedural guarantees from which it is possible to derogate, specifying in which circumstances, under which legal provisions and for how long. In addition, please specify whether any measures taken by the State party 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 (art. 1).

9. In relation to paragraph 19 of the report, please specify which disposition of the Criminal Code would apply for alleged cases of enforced disappearances that cannot be classified as a crime against humanity as defined in applicable international law (arts. 2 and 5).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

10. Please indicate whether domestic law establishes the State party's competence to exercise jurisdiction over the offence of enforced disappearance in the cases contemplated in article 9 (2) of the Convention (art. 9).

11. Please indicate whether military authorities are competent under domestic law to investigate and prosecute persons accused of enforced disappearance and, if so, please provide information about the applicable legislation (art. 11).

12. Considering paragraph 28 of the State party's report, please provide the number of cases of enforced disappearance of persons that have been investigated by the Executive Police and prosecuted by the Attorney General and those that were not prosecuted. Please provide information on measures taken to ensure the impartiality of such investigations and the way to ensure that those who are allegedly involved do not take part in the search and investigation (art. 12).

13. In view of the provisions of the Malta Armed Forces Act on false accusations and the exception provided by the Whistle-blower Act on the non-applicability of the latter Act to members of a “disciplined force”, to members of the Security Service or to persons employed in the foreign, consular or diplomatic service of the Government that may hinder any denunciation or investigation against a person listed in the Act, please provide information on measures for protecting internal whistle-blowers and witnesses of crimes against humanity in general and enforced disappearances in particular (art. 12).

14. In relation to paragraph 18 of the report, please specify whether 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. Please also describe existing mechanisms to ensure that law enforcement or security forces do not participate in the investigation of a case of enforced disappearance when one or more of their officials are suspected of having been involved in the commission of the offence (art. 12).

15. In relation to paragraphs 61 to 63 of the report, please:
- (a) Clarify the “eliminative method” for extradition to non-Commonwealth countries;
 - (b) Specify whether any extradition agreement has been concluded with other States parties since the entry into force of the Convention and, if so, whether enforced disappearance has been included in such agreements. If so, please provide the list and texts of the extradition treaties that include enforced disappearance as an extraditable offence or demonstrate that enforced disappearance is not considered to be a political offence (art. 13).
16. Please provide information on any mutual legal assistance or cooperation in connection with criminal proceedings brought in respect of an offence of enforced disappearance based on the European Convention on Mutual Assistance in Criminal Matters or Directive 2014/41/EU of the European Parliament and of the Council (art. 14).
17. In relation to paragraph 68 of the report, please provide information on the existing cooperation procedures to search for and release disappeared persons, and to identify and return their remains in case of death, indicating the applicable time frames and protocols. In that connection, please describe the action taken, and the results thereof, to search for, locate and, in case of death, identify disappeared persons since the entry into force of the Convention (art. 15).

IV. Measures to prevent enforced disappearances (arts. 16–23)

18. Please provide information on the mechanisms and criteria applied prior to an extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance or serious human rights violations. Please also indicate whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, before which authority and under which procedure, and whether the appeal has suspensive effect (arts. 13 and 16).
19. In relation to paragraph 78 of the report, please:
- (a) Provide information about the official registers and/or records of persons deprived of liberty that exist in all places of deprivation of liberty, regardless of their nature, including pretrial and temporary detention centres, penitentiaries, mental health and social care institutions and immigration detention facilities;
 - (b) Specify whether all such registers and records include all the elements listed in article 17 (3) of the Convention, are immediately and duly completed following any type of deprivation of liberty and are systematically updated;
 - (c) Describe the measures taken to guarantee that no one is subjected to secret detention or held in unofficial places of detention (art. 17).
20. Taking into account the recommendations of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment following its visit to Malta in 2014,² please provide information about the conformity of the definition of “places of deprivation of liberty” in national legislation with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Please also provide information about:
- (a) Steps taken for the establishment of a central register of all places of deprivation of liberty existing on the national territory, regardless of the institution to which they belong;
 - (b) Steps taken to extend the mandate of the Maltese national preventive mechanism to all places of deprivation of liberty, including facilities in which migrants and asylum-seekers are sent for medical treatment or deportation, for example, the Mount Carmel

² CAT/OP/MLT/1.

Psychiatric Hospital and the police lock-ups referenced by the Subcommittee during the 2014 visit (art. 17).

21. In relation to paragraph 79 of the report, please provide information about:

(a) The measures taken to ensure the due application of the provisions of Schedule E of the Criminal Code and the letter of rights of the arrested person in its paragraph F;

(b) The way detainees are informed of their rights during detention and if a translation is always available whenever necessary;

(c) The mechanisms available for relatives, legal representatives and civil society organizations to obtain information on detained persons, especially for foreign nationals (art. 18).

22. As regards paragraph 90 of the report, please provide examples of “particular circumstances” allowing the derogation of the right – at the pretrial stage – to have a third person informed of the deprivation of liberty without “undue delay” in compliance with article 355AUC (1) of the Criminal Code of Malta (art. 20).

23. In relation to paragraph 96 of the report, please specify the numbers and outcomes of the complaints that have been submitted to the Internal Audit and Internal Affairs Unit of the Police, the Independent Police Complaints Board or the Ombudsman for refusal to provide information on the deprivation of liberty or the provision of inaccurate information (art. 22).

24. With respect to paragraphs 97 and 98, please indicate which of the courses provided by the Academy for Disciplined Forces to law enforcement personnel include specific training on the Convention, as well as their frequency. Please also specify if the State party envisages providing such training in the terms set forth in article 23 of the Convention to other audiences, such as medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice (art. 23).

V. Measures to protect and ensure the rights of victims of enforced disappearance (art. 24)

25. With respect to paragraphs 100 to 102 of the report, please provide information on the nature and number of cases in which victims of enforced disappearance, as defined by the Victims of Crime Act, chapter 539 of the Laws of Malta, were assisted by the Legal Aid Malta Agency.

26. With respect to paragraph 103 of the report, please indicate the proportion of victims of enforced disappearance that have received reparation since the entry into force of the Convention and the type of reparation received. Please also specify whether there is a time limit on claiming compensation and/or reparation.

27. Please provide information about applicable law regarding the legal situation of disappeared persons whose fate has not been clarified and that of their relatives in matters such as social welfare, financial matters, family law and property rights (art. 24).

VI. Measures to protect children against enforced disappearance (art. 25)

28. Please indicate whether any complaints concerning the wrongful removal, in the terms described in article 25 (1) (a) of the Convention, have been made since the entry into force of the Convention for the State party and, if so, please provide information on the measures taken, and the results thereof, to locate those children and prosecute and punish those responsible, and on the procedures to return them to their families of origin (art. 25).

29. Please indicate the measures taken by the State party to protect children, especially unaccompanied minors, from enforced disappearance, in particular in the context of migration and trafficking. Please describe the measures taken to ensure that information on unaccompanied minors is adequately recorded, including in the genetic and forensic databases, to facilitate the identification of disappeared children (art. 25).
