

## Country File

# MALTA



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<b>Region</b>	Europe
<b>Legal system</b>	Civil Law/Common Law
<b>UNCAT Ratification/ Accession (a)/ Succession (d)</b>	13 September 1990 (a)
<b>Relevant Laws</b>	<ul style="list-style-type: none"><li>• Constitution of 21 September 1964</li><li>• Criminal Code of 10 June 1854</li><li>• Police Act of 10 February 1961</li></ul>
<b>Relevant Articles</b>	<ul style="list-style-type: none"><li>• <b>Prohibition of Torture:</b><ol style="list-style-type: none"><li>1. Article 36 of the Constitution</li><li>2. Articles 54C and 54D of the Criminal Code</li></ol></li><li>• <b>Definition of Torture:</b> Articles 54C and 139A of the Criminal Code</li><li>• <b>Penalties:</b><ol style="list-style-type: none"><li>1. Articles 54A in conjunction with 54C and 54D of the Criminal Code</li><li>2. Article 139A of the Criminal Code</li><li>3. Article 16 of the Police Act</li></ol></li><li>• <b>Others:</b><ol style="list-style-type: none"><li>1. <b>Jurisdiction:</b> Article 5 of the Criminal Code</li><li>2. <b>Lawful Sanctions:</b><ul style="list-style-type: none"><li>- Article 36 of the Constitution</li><li>- Articles 54C and 139A Criminal Code</li></ul></li></ol></li></ul>
<b>Languages Available</b>	<ul style="list-style-type: none"><li>• English (official language)</li></ul>
<b>Other Relevant Information</b>	Full texts of the laws are available at <a href="http://www.legal-malta.com/law/laws-of-malta.htm">http://www.legal-malta.com/law/laws-of-malta.htm</a>

## Relevant Articles – MALTA

### ENGLISH

#### Constitution of 21 September 1964

##### ***Article 36 Protection from inhuman treatment***

- (1) No person shall be subjected to inhuman or degrading punishment or treatment.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question authorises the infliction of any description of punishment which was lawful in Malta immediately before the appointed day.
- (3) (a) No law shall provide for the imposition of collective punishments.  
(b) Nothing in this sub-article shall preclude the imposition of collective punishments upon the members of a disciplined force in accordance with the law regulating the discipline of that force.

#### Criminal Code of 10 June 1854

##### ***Article 5 Persons subject to prosecution***

(Amended by: Act No. XXIV.2002.13.)

- (1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta –
  - (a) against any person who commits an offence in Malta, or on the sea in any place within the territorial jurisdiction of Malta;
  - (b) against any person who commits an offence on the seabeyond such limits on board any ship or vessel belonging to Malta;
  - (c) against any person who commits an offence on board any aircraft while it is within the air space of Malta or on board any aircraft belonging to Malta wherever it may be;  
For the purposes of this paragraph the expression "air space" means the air space above the land areas and territorial waters of Malta;
  - (d) without prejudice to the preceding paragraphs of this subarticle, against any citizen of Malta or permanent resident 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 of the offences mentioned in article 54A or of an offence against the safety of the Government or of the offences mentioned in articles 133, 139A, or

of the offences mentioned in articles 311 to 318 and in article 320 when these are committed or are directed against or on a state or government facility, an infrastructure facility, a public place or a place accessible to the public, a public transportation system, or of forgery of any of the Government debentures referred to in article 166 or of any of the documents referred to in article 167, or of the offence mentioned in article 196, or of any other offence against the person of a citizen of Malta or of any permanent resident in Malta;

For the purposes of this paragraph:

"permanent resident" means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in article 7 of the Immigration Act; "offence against the person" includes the offences mentioned in articles 86 to 90 and in articles 198 to 205;

the expressions "state or government facility", "infrastructure facility" and "public transportation system" shall have the same meaning assigned to them respectively by article 314A(4);

#### **Article 54A General**

- (1) It is a crime for a person to commit genocide, a crime against humanity or a war crime.
- (2) In this Title -
  - "the ICC Treaty" means the Statute of the International Criminal Court, done at Rome on 17th July, 1988;
  - "the ICC" means the International Criminal Court established by the ICC Treaty;
  - "genocide" means an act of genocide as defined in article 54B;
  - "crime against humanity" means a crime against humanity as defined in article 54C;
  - "war crime" means a war crime as defined in article 54D;
  - "Minister" means the Minister responsible for Justice.
- (3) In interpreting and applying the provisions of this Title the court shall take into account the original text of the ICC Treaty and of any treaty and convention referred to in the ICC Treaty.
- (4) In interpreting and applying the provisions of articles 54B, 54C and 54D, hereinafter, in this Title, referred to as "the relevant articles", the court shall take into account -
  - (a) any relevant Elements of Crimes adopted in accordance with article 9 of the ICC Treaty, and
  - (b) until such time as Elements of Crimes are adopted under that article, any relevant Elements of Crimes contained in the report of the Preparatory Commission for the International Criminal Court adopted on 30<sup>th</sup> June, 2000.
- (5) The Minister may set out in regulations the text of the Elements of Crimes referred to in subarticle (2), as amended from time to time.
- (6) The relevant articles shall for the purposes of this Title be construed subject to and in accordance with any relevant reservation or declaration

made by Malta when ratifying any treaty or agreement relevant to the interpretation of those articles.

- (7) The Minister may by regulations set out the terms of any reservation or declaration referred to in subarticle (5) and where any such reservation or declaration is withdrawn in whole or in part may revoke or amend any regulations as aforesaid which contain the terms of that reservation or declaration.
- (8) In interpreting and applying the provisions of the relevant articles the court shall take into account any relevant judgment or decision of the ICC and may also take into account any other relevant international jurisprudence.

#### **Article 54B Genocide**

- (1) Genocide is committed where any of the following acts is committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such –
  - (a) killing members of the group;
  - (b) causing serious bodily or mental harm to members of the group;
  - (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - (d) imposing measures intended to prevent births within the group;
  - (e) forcibly transferring children of the group to another group.
- (2) Whosoever directly and publicly incites others to commit genocide shall be guilty of a crime.

#### **Article 54C Crimes against humanity**

(Added by: Act No. XXIV.2002.13.)

- (1) A crime against humanity is committed where any of the following acts is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
  - (a) ...
  - (f) torture;
  - (g) ...
  - (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
- (2) For the purpose of subarticle (1) –
  - (a) ...
  - (e) "torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
  - (f) ...

#### **Article 54D War crimes**

(Added by: XXIV. 2002.13.)

A war crime is committed where any of the following acts is committed:

- (a) grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
  - (i) ...
  - (ii) torture or inhuman treatment, including biological experiments;
  - (iii) ...
- (b) ...
- (c) in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:
  - (i) violence to life and person, in particular murder of all kind, mutilation, cruel treatment and torture;
  - (ii) ...
- (d) paragraph (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature;
- (e) ...

**Article 133 Disclosing Official Secrets**

Any public officer or servant who communicates or publishes any document or fact, entrusted or known to him by reason of his office, and which is to be kept secret, or who in any manner facilitates the knowledge thereof, shall, where the act does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine (*multa*).

**Article 139A Torture and other cruel, inhuman or degrading treatment or punishment**

(Added by: Act No. XXIX. 1990.5.)

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:

Provided that no offence is committed where pain or suffering arises only from, or is inherent in or incidental to, lawful sanctions or measures:

Provided further that nothing in this article shall affect the applicability of other provisions of this Code or of any other law providing for a higher punishment.

***Article 311 Causing explosion likely to endanger life or property***

Any person who maliciously causes, by an explosive substance, an explosion of a nature likely to endanger the life or to cause serious injury to the property of any other person, shall be liable, on conviction, to imprisonment for a term from three to fourteen years, even though no injury to such person or property has been actually caused.

***Article 318 Arson without danger of life***

Whosoever shall wilfully set fire to any building, shed or other place mentioned in article 316, no person being therein at the time, and such building, shed or other place being so situated that the fire would not communicate to any other building, shed or place in which there is a person at the time, shall, on conviction, be liable to imprisonment for a term from two to four years.

***Article 320 Destruction by a springing of a mine***

For the purposes of punishment, the destruction of any such matter or thing as in the last five preceding articles mentioned, by the springing of a mine, shall be deemed to constitute the offence therein mentioned.

**Police Act of 10 February 1961**

***Article 16 Oppression***

Any form of behaviour which may amount to inhuman or degrading treatment, or any form of physical or mental torture is not only prohibited but amounts to an offence under article 139A of the Criminal Code. The offence carries a punishment of a maximum of nine (9) years imprisonment.

Consequently all steps should be taken not only so that such behaviour does not occur, but also that no action be committed which may even give rise to allegations of ill-treatment.

Therefore,

- (a) the person being interrogated shall always and at all times be seated, if he so wishes, during the questioning;
- (b) foul language, threats, deprecatory laughter and menacing gestures are forbidden;
- (c) under no circumstances shall any person present during the questioning hold or exhibit any firearm or other weapon, even if jokingly; however, the detained person may be shown such firearms or weapons connected with the investigation, where this is necessary;
- (d) no person being questioned shall be bound by any rope, chain or other shackle, but may be handcuffed if this is reasonably justified for his own safety or that of others or to prevent his escape.

The investigating officer must keep in mind the particular circumstances of individual detainees and must take special care with particularly timid or frail persons that nothing is done that puts the voluntariness of the statement into doubt.