

# Public Inquiry into the assassination of Daphne Caruana Galizia

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Authored by:



Supported by:



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## Introduction

1. Our organisations, experts in freedom of expression and media freedom who work on research and advocacy on freedom of expression in Malta, are grateful for the opportunity to contribute our submission to this important process. Our submission will focus on the following areas of the Terms of Reference<sup>1</sup>:
  - *“To determine whether any wrongful action or omission by or within, any State entity facilitated the assassination or failed to prevent it. In particular whether (a) any State entity knew or ought to have known of, or caused, a real and immediate risk to Daphne Caruana Galizia’s life including from the criminal acts of a third party and (b) failed to take measures within the scope of its powers which, judged reasonably, it might have been expected to take in order to avoid that risk;*
  - *“To determine whether the State has fulfilled and is fulfilling its positive obligation to take preventive operational measures to protect individuals whose lives are at risk from criminal acts in particular in the case of journalists.”*

## The Establishment of the Public Inquiry

2. Our organisations have long supported the establishment of an independent, impartial and effective Public Inquiry into the assassination of Daphne Caruana Galizia, Malta’s leading investigative journalist, following her brutal assassination on 16 October 2017.<sup>2</sup> From the outset, our organisations saw the essential role of a Public Inquiry compliant with Article 2 of the European Convention on Human Rights (ECHR) in establishing the wider question as to whether the Maltese state is responsible for the circumstances that led to Ms Caruana Galizia’s death and in establishing lessons to be learned and implemented by the Maltese Government in order to fulfil their obligations to protect all other journalists and media workers in Malta continuing to pursue public interest reporting, who remain at risk.
3. We were involved in the two-year campaign of sustained pressure on the Government of Malta, through our meetings with the Government of Malta and advocacy before international human rights bodies,<sup>3</sup> in support of the mandate of the PACE Rapporteur, Pieter Omtzigt which led to the Resolution of the Parliamentary Assembly of the Council of Europe of 26 June 2019 (Resolution 2293 (2019)) calling for the establishment of the Public Inquiry.<sup>4</sup>
4. We repeatedly noted our dismay at the repeated delays and obstructionism of the Maltese Government in establishing a public inquiry that is fully compliant with Malta’s obligations under Article 2 of the European Convention on Human Rights (ECHR). It remains a deep concern that a

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<sup>1</sup> <https://www.gov.mt/en/Government/DOI/Press%20Releases/Documents/PR192460b%20%28Terms%20of%20Reference%29.pdf>

<sup>2</sup> <https://pen-international.org/news/malta-appeal-to-establish-a-public-inquiry-into-the-assassination-of-ms-daphne-caruana-galizia>

<sup>3</sup> <https://rsf.org/en/news/international-mission-finds-maltese-authorities-are-failing-safeguard-press-freedom-calls-public>

<sup>4</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28053&lang=en>

bereaved family had to mount a two-year advocacy campaign and prepare to litigate against their own government to fulfil its legal obligations to ensure justice for Daphne.<sup>5</sup>

5. We therefore welcomed the establishment of the revised Terms of Reference, including the appointment of the current board members, and the initiation of the Public Inquiry in December 2019.<sup>6</sup> Since its establishment, our organisations have closely monitored and participated in the work of the independent Board of Inquiry, including by providing in person testimony and observing the proceedings.<sup>7</sup> We have repeatedly highlighted our support for the diligent work of the Board of Inquiry. In accordance with its broad mandate, it has heard astonishing evidence about incompetence, negligence, misconduct, corruption, and criminal conspiracy by public officials.<sup>8</sup> It is unlikely that in the absence of the Public Inquiry, this evidence would have come to light. In its first year, the public inquiry has made remarkable progress, despite disruption due to the Covid-19 pandemic, in its mission to investigate whether the Maltese State facilitated or failed to prevent Daphne's assassination, to establish whether the State allowed an environment of impunity for serious crime to develop, and to determine whether the State has fulfilled and is fulfilling its positive obligation to protect individuals at risk, particularly in the case of journalists.<sup>9</sup>
6. It is important to note that the substantial progress made by the Board of Inquiry has been made despite limited cooperation from the Maltese Government. Witnesses representing Government and State entities had to be summoned to testify and many withheld information relevant to the Public Inquiry's mission. We remain concerned at attempts by Prime Minister Roberta Abela's Government's attempts to undermine the independence of the Board of Inquiry by imposing time limits on the inquiry.<sup>10</sup> Clause 8 of the inquiry's terms of reference state that it "shall endeavour to conclude its work within a time frame of nine months without prejudice to the proper fulfilment of these terms of reference". In late August 2020, the Chair of the Inquiry wrote to the Prime Minister to request additional time to complete its work. The Prime Minister replied that he would grant a one-off, three-month extension until 15 December 2020. The Prime Minister has also expressed "reservations about the way in which the inquiry is failing to keep to the terms of reference given to it". Glenn Bedingfield, a governing Labour party MP and person of interest to the inquiry, has expressed outrageous and unfounded criticism of the inquiry, accusing its members of deliberately delaying its conclusion in order to make more money from it.<sup>11</sup>
7. In response to these threats, our organisations have repeatedly told Prime Minister Robert Abela that it is only if the public inquiry completes its mission, as set out in its Terms of Reference, that lessons can be learnt from Daphne's assassination, however uncomfortable this process may be for those who bear responsibility.<sup>12</sup> It is only then that the country can begin a process of real change

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<https://www.ecpmf.eu/archive/news/ecpmf/joint-statement-on-establishment-of-public-inquiry-into-the-assassination-of-daphne-caruana-galizia.html>

<sup>6</sup> <https://www.gov.mt/en/Government/DOI/Press%20Releases/Documents/PR192460b%20%28Terms%20of%20Reference%29.pdf>

<sup>7</sup> <https://rsf.org/en/news/rsf-set-testify-public-inquiry-assassination-daphne-caruana-galizia-key-witness-found-slit-throat>;

<https://www.article19.org/resources/malta-international-organisations-urge-close-scrutiny-of-public-inquiry-into-murder-of-daphne-caruana-galizia/>

<sup>8</sup> <https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2020/AS-JUR-2020-42-EN.pdf>

<sup>9</sup> <https://www.ecpmf.eu/anniversary-of-the-public-inquiry-into-the-murder-of-daphne-caruana-galizia/>

<sup>10</sup> <https://ifex.org/malta-must-ensure-independence-of-daphne-caruana-galizia-assassination-public-inquiry/>

<sup>11</sup> <https://timesofmalta.com/articles/view/caruaana-galizia-inquiry-turned-into-a-political-exercise-glenn.818722>

<sup>12</sup> <https://www.article19.org/resources/threats-public-inquiry-daphne>

that ensures nothing like this ever happens again to Malta's institutions and journalists. We therefore expect the government to provide the Public Inquiry with sufficient resources to complete its work in good time.

8. It is our hope that the evidence gathered by the Public Inquiry will prevent other journalists being killed in Malta and beyond. The findings of the Public Inquiry may therefore be of global importance in battling impunity for crimes against journalists. In particular in the jurisdiction of the European Convention on Human Rights on which the Public Inquiry is based, the Public Inquiry may establish a crucial precedent for ensuring justice for assassinated journalists. Finally, we expect that the government will promptly implement any recommendations made by the Public Inquiry.

## **International standards**

### ***Article 2, ECHR - Right to Life***

9. Malta is Party to the European Convention on Human Rights (ETS No. 5, "the Convention"). Article 2 of the Convention protects the right to life. Under Article 2, States are subject to a "negative" obligation not to deprive individuals of their right to life in violation of the provisions of the article, as well as positive and procedural obligations.
10. The positive obligation under Article 2 has two aspects. The first requires the State to "put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life".<sup>13</sup> The second aspect arises when the authorities "knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party". In such circumstances, the authorities are required to "take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk".<sup>14</sup>
11. The procedural obligation requires an investigation into any suspicious death that may arguably have occurred in breach of the substantive (positive and negative) obligations. The basic requirements of the procedural obligation are that the investigation be independent, prompt and expeditious, with the capacity to establish the facts and accessible to the public and relatives of the victim.<sup>15</sup>
12. Strasbourg has repeatedly emphasised the importance of the role of journalists in society. In cases concerning the murders of investigative journalists, the European Court of Human Rights (ECtHR) has highlighted the importance of investigating the wider context, including, but not limited to, identifying the intellectual authors of the killing. Decisions by the ECtHR provide insights into elements that the court would consider in assessing if the obligation has been met:
  - In *Gongadze v Ukraine*, (concerning the killing of investigative journalist Georgiy Gongadze) the court found the Ukrainian authorities in violation of Article 2 of the ECHR

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<sup>13</sup> *Kolyadenko and others v. Russia*, Application No. 17423/05 et al, judgment of 28 February 2012.

<sup>14</sup> *Osman v. United Kingdom*, Application No. 23452/94, judgment of 28 October 1998.

<sup>15</sup> *Edwards v. United Kingdom*, Application No. 46477/99, judgment of 14 March 2002

for failing to conduct an effective investigation as ‘authorities were more preoccupied with proving the lack of involvement of high-level State officials in the case than discovering the truth about the circumstances of the disappearance and death’ of journalist Georgiy Gongadze, who covered politically sensitive topics and was murdered in 2000 outside Kyiv.<sup>16</sup>

- In *Dink v Turkey*, the court held that the Turkish Government violated Articles 2 (Right to Life), 10 (Freedom of Expression) and 13 (Right to an Effective Remedy) of the ECHR when authorities failed to protect journalist Hrant Dink, resulting in his murder. Dink was an outspoken member of the Armenian minority in Turkey and was murdered for his writing. The court found that Turkish authorities were aware of an assassination plot preceding Dink’s murder and did not act on the information. Further, the court found that states have a positive obligation to create a favourable environment for participation in public debate.<sup>17</sup>
- In *Mazepa v Russia*, the court found that the Russian Federation had ‘failed to take adequate investigatory steps to find the person or persons who had commissioned the murder’ of investigative journalist Anna Politkovskaya.<sup>18</sup>

13. The ECtHR has also stressed the need for the authorities to investigate whether the murder of a journalist is in connection with their work:

*“in cases where the victim of a killing is a journalist, it is of utmost importance to check a possible connection of the crime to the journalist’s professional activity. In this connection, the Court would also refer to Recommendation CM/Rec (2016)4 on the protection of journalism and safety of journalists and other media actors, in which the Committee of Ministers recommended in paragraph 19 that the conclusions of an investigation must be based on a thorough, objective and impartial analysis of all the relevant elements, including the establishment of whether there is a connection between the threats and violence against journalists and other media actors and the exercise of journalistic activities or contributing in similar ways to public debate... [T]he Court takes the view that the investigation into a contract killing cannot be considered adequate to the extent of discharging the obligation of means implicit in the procedural limb of Article 2 in the absence of genuine and serious investigative efforts taken with the view to identifying the intellectual author of the crime, that is, the person or people who commissioned the assassination. The domestic authorities’ scrutiny in the case concerning a contract killing must aim to go beyond identification of a hitman and it is incumbent on the Court to satisfy itself that the investigation in the present case has addressed this important point.”<sup>19</sup>*

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<sup>16</sup> *Gongadze v Ukraine*, 34056/02, 8 November 2005, para 175 et al.

<sup>17</sup> *Dink v Turkey*, 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010, para 82 et al.

<sup>18</sup> *Mazepa and Others v Russia*, 15086/07, 17 July 2018, para 69 et al.

<sup>19</sup> *Mazepa and Others v Russia*, 15086/07, 17 July 2018, para 73 and 75 et al.

## **Article 10, ECHR: Freedom of Expression**

14. Many of the key principles governing the right to freedom of expression (which includes the right to both impart and receive information) and the duties upon States to safeguard the constituents of that right, as protected by Article 10 of the Convention, were recently reaffirmed in a Joint Declaration on Media Independence and Diversity in the Digital Age by the Special Rapporteurs/Representatives on Freedom of Expression from the United Nations, the Organization for Security and Co-operation in Europe, the Organization of American States, and the African Commission on Human and Peoples' Rights.<sup>20</sup> Of particular relevance to both the assassination of Daphne Caruana Galizia and the environment for the safety of journalists in Malta in its aftermath, it recalls:

*4.23.1 deploring ongoing threats to the safety of journalists and others disseminating information in the public interest, including high levels of assassinations, and the persistent impunity for such attacks, both of which undermine media independence and freedom of expression;*

*4.23.2 denouncing the special challenges faced by female journalists, including gender-specific attacks, online harassment, inequality within the media and general discrimination against women in society which creates barriers to working as a journalist;...*

*4.23.3 alarmed by new threats to the role of free media in democratic societies, including statements by leading politicians that are specifically designed to attack and undermine media independence and the rise of populism;*

*4.23.4 emphasizing the important role that investigative journalism can play through exposing corruption and other crimes, including at the international level;*

15. The Joint Declaration goes on to set out minimum standards for states wishing to comply with their duties in relation to the right to freedom of expression, including:

*1. General Principles:*

*a. States are under a positive obligation to create a general enabling environment for seeking, receiving and imparting information and ideas (freedom of expression), including through the following measures: ...*

*v. ensuring that defamation laws are exclusively civil rather than criminal in nature and do not provide for excessive damages awards.*

*b. States also have a positive obligations to protect media freedom, including through the following measures:*

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<sup>20</sup> <https://www.osce.org/files/f/documents/9/c/425282.pdf>

- i. enabling a safe working environment for journalists; ...*
- vii. guaranteeing the right to protect confidential sources of information, including through protection of source-identifying material such as notes and professional archives in different ways, including through the encryption of communications; ...*
- ix. creating appropriate safeguards against search and seizure of journalistic material.*

## *2. Threats to Media Safety:*

- a. States are under a positive obligation to provide protection to journalists and others who are at risk of being attacked for exercising their right to freedom of expression, to launch effective investigations when such attacks do occur, so that those responsible may be held accountable, and to offer effective remedies to victims.*

### **Article 10 - Strategic Litigation against Public Participation (SLAPP) lawsuits**

16. States have a far-reaching positive obligation to create a favourable, or “enabling”, environment for freedom of expression. In *Dink v. Turkey* it held, “States are obliged to put in place an effective system of protection for authors and journalists as part of their broader obligation to create a favourable environment for participation in public debate by everyone and to enable the expression of opinions and ideas without fear, even when they are contrary to those held by the authorities or by a significant section of public opinion and even if they are annoying or shocking for the latter”.<sup>21</sup>
17. The positive obligation of States to ensure by law both the protection of the right to freedom of expression and the protection of individuals’ reputation, also requires that on taking measures to protect the latter, States must do so in a manner that do not inhibit the press from reporting on matters of general public interest nor unduly deter the media from fulfilling their role of alerting the public to apparent or suspected misuse of public power.<sup>22</sup> The ECtHR has highlighted that the chilling effect caused by the fear of certain sanctions, imposed against the exercise of journalistic freedom of expression, works to the detriment of society as a whole and, therefore, must be asserted as a proportionality factor when considering sanctions on the grounds of protecting reputation under Article 8 of the Convention.<sup>23</sup>
18. Notwithstanding that the press and those involved in journalism are bound to the duties and responsibilities under Article 10 of the Convention, in particular in respect of the reputation and rights of others, certain subjects should anticipate public exposure and public scrutiny by journalists, the media and all those that serve a watchdog function in a democratic society. As noted, international and regional standards afford heightened protection to political and journalistic expression, the ECtHR has set out that there is little scope under Article 10 paragraph 2 of the Convention for restrictions on political speech – where freedom of expression is of the utmost importance<sup>24</sup> – or on debate on questions of public interest.<sup>25</sup>

<sup>21</sup> European Court, *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, para 137 and 14.

<sup>22</sup> European Court, *Campana and Mazare v. Romania*, [App. no. 33348/96](#), 17 December 2004, para 113.

<sup>23</sup> *Ibid.*, para 114.

<sup>24</sup> European Court, *Eon v. France*, [App. No. 26118/10](#), 14 June 2007, para. 59.

<sup>25</sup> European Court, *Braun v. Poland*, [App. no. 30162/10](#), 4 November 2014, para 37.

The ECtHR case law has stressed the following considerations when assessing whether the protection of reputation comes into play or the primacy of the freedom of expression is over the right to respect of private life:

**Politicians and public officials:** The European Court has stressed that politicians as well as civil servants<sup>26</sup> are subject to wider limits of acceptable criticism than private individuals.<sup>27</sup> Politicians lay themselves open to scrutiny of their every word and action by both journalism and the public, therefore, they must display a greater degree of tolerance.<sup>28</sup> The European Court has reiterated, and supported the Council of Europe's position,<sup>29</sup> "that public officials must accept that they will be subject to public scrutiny and criticism, particularly through the media, over the way in which they have carried out their functions, insofar as this is necessary for ensuring transparency and the responsible exercise of their functions."<sup>30</sup> The Court recognises that they are certainly entitled to have their reputation protected, even when they are not acting in their private capacity, "but the requirements of that protection have to be weighed against the interests of open discussion of political issues, since exceptions to freedom of expression must be interpreted narrowly"<sup>31</sup> Acceptable criticism against politicians and public officials includes, but is not limited to, humorous tone as well as satire, "a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate."<sup>32</sup> The Court has also found that offensive and insulting expressions are acceptable criticism towards public figures, including shocking and disturbing expressions - such as "idiot" and "fascist".<sup>33</sup>

**Public figures by action<sup>34</sup> or position<sup>35</sup>:** Individuals who, despite not holding any public office or official responsibilities, occupy certain prominent positions in society, also have to tolerate a larger degree of criticism and intrusion than ordinary citizens. The European Court expanded the application of the rule to include "anyone who is part of the public sphere, either because of their action or by their position. In other words, one must distinguish between private individuals and individuals acting in a public context."<sup>36</sup> In addition to being part of a matter of public interest, the rationale for assimilating public figures to officials is that these persons find themselves in a position where they have easier access to the media to repair the harm suffered by their reputation. A significant proportion of the case-law in the European Court relating to balancing privacy and free expression relates to actors, members of royal families, celebrities and other

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<sup>26</sup> European Court, *Thoma v. Luxembourg*, [App. no. 38432/97](#), 29 March 2001, para 47.

<sup>27</sup> European Court, *Colombani v. France*, [App. No. 51279/99](#), 25 September 2002, para 56.

<sup>28</sup> *Idem*.

<sup>29</sup> Council of Europe (CoE), Declaration on political debate in the media, 872nd meeting of the Ministers' Deputies, 12 February 2004.

<sup>30</sup> European Court, *OOO Izdatelskiy Tsentri Kvartirnyy Ryad V. Russia*, [App. No. 38748/05](#), 18 September 2017, para 38.

<sup>31</sup> European Court, *Colombani v. France*, *op. cit.*

<sup>32</sup> European Court, *Eon v. France*, *op. cit.*, para 60.

<sup>33</sup> European Court, *Bodrozic v. Serbia*, [App. No. 32550/05](#), 2 June 2009, para 51.

<sup>34</sup> European Court, *Krone Verlag GmbH v. Austria*, [App. no. 27306/07](#), 19 June 2012, para 37.

<sup>35</sup> European Court, *Verlagsgruppe News GmbH v. Austria (no. 2)*, [App. no. 10520/02](#), 14 December 2006, para 36.

<sup>36</sup> European Court, *Morar v. Romania*, [Appl. No 25217/06](#), 7 July 2015, para 55.

public figures and the publication of information about their personal lives, such as affairs, alleged offences and criminal convictions, or the publication of paparazzi photographs of their personal lives. The application of the reasoning extends, beyond political figures, to any person who could be regarded as a public figure, namely persons who, through their acts or even their position, have entered the public arena.<sup>37</sup> The Court has held that a businessman was a public figure.<sup>38</sup> The Court places particular importance on whether the information serves public interest, which can only be established in the particular circumstances of the case.<sup>39</sup> According to the Court, the relevant factors for striking the right balance between the rights to respect for private life and freedom of expression in this type of cases include: contribution to a debate of general or public interest; the degree of notoriety of the person affected; the subject of the report and the nature of the information; prior conduct of the person concerned; method of obtaining the information; content, form and consequences of the impugned publication; and the severity of the sanction imposed.<sup>40</sup> The court has found there is little scope for restrictions on political speech or on debate of questions of public interest.<sup>41</sup>

**General or public interest** The European Court has held that “the public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community.”<sup>42</sup> In relation to this, the European Court has clarified that it puts a higher value on information which would contribute to public debate rather than a lesser interest in merely providing to the public’s curiosity.<sup>43</sup>

### **Attacks and threats against Daphne Caruana Galizia**

19. The assassination of Daphne Caruana Galizia was preceded by years of attacks on her home, smear campaigns, vexatious legal actions and other forms of harassment that were clearly linked to her journalism. As Reporters Without Borders (RSF) testified to the public inquiry on 24 July, the singling out of Daphne Caruana Galizia "was not normal" and "it was very clear given this context that something was wrong." RSF also testified that journalists remain at risk of similar attack in Malta, which has fallen 34 places down its World Press Freedom Index since Caruana Galizia's assassination, to a current ranking of 81st out of 180 countries.
20. Caruana Galizia’s front door was set on fire in 1995 and her dog’s throat was slit. In 2006, car tires packed with petrol bombs were piled against the back door of her house and set on fire with the

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<sup>37</sup> European Court, *Kapsis and Danikas v. Greece*, App. no. 52137/12, para 35.

<sup>38</sup> European Court, *Verlagsgruppe News GmbH v. Austria* (no. 2), para 36.

<sup>39</sup> European Court, *Von Hannover v. Germany* (no. 2) [GC], para 109; *Leempoel & S.A. ED. Ciné Revue v. Belgium*, para 68; *Standard Verlags GmbH v. Austria*, para 46; *Von Hannover v. Germany*, para 60.

<sup>40</sup> European Court, *Couderc and Hachette Filipacchi Associes v France*, [App. no. 40454/07](#), 10 November 2015, para 93; European Court, *Ólafsson v. Iceland*, [App. no. 58493/13](#), 16 March 2017, para 48.

<sup>41</sup> European Court, *Castells v. Spain*, para 43; *Wingrove v. the United Kingdom*, para 58.

<sup>42</sup> European Court, *Couderc and Hachette Filipacchi Associes v France*, op. cit., para 103.

<sup>43</sup> European Court, *Von Hannover no. 2 v. Germany*, op. cit., para 110.

family inside, an attempt on her life that was only foiled by the chance arrival home of one of her sons. In 2013, she was forced to seek refuge in a convent while being chased through the streets of the Maltese town of Rabat by a crowd of people led by a local mayor.<sup>44</sup> While the mayor was prosecuted and found guilty, he faced no punitive action due to a judicial error. Alongside this flawed prosecution, no one else has been held accountable for this attack, creating an environment of pervasive impunity.

21. In the course of her work, Ms Caruana Galizia was the subject of smear campaigns by the subjects of her investigations or people close to them. No one was ever brought to justice or otherwise held to account for this harassment, which was actively encouraged by the Maltese authorities. This in turn encouraged members of the public to participate in the vilification of the journalist, exacerbating the hostile environment in which she continued to carry out her journalistic work. The Government's press office issued statements containing personal attacks on Ms Caruana Galizia's character and professionalism.<sup>45</sup> Glenn Bedingfield, a Labour party MP and media adviser in the office of Prime Minister Muscat, encouraged people to take photographs of Ms Caruana Galizia going about her private daily business, and then published hundreds of these pictures on his blog. Daphne spoke of the impact of this "hate campaign":

*"For years I have been the target of sustained assaults by the Labour Party – and not just me, but also my sons and other members of my family – across all its media, print, broadcast and the internet, official and unofficial. The fascist, totalitarian targeting has been so ghastly that there is not a single person left on the island who doesn't know my name, even if they can't spell or pronounce it and even if they can't read Maltese let alone English and so have never read a single thing I have written. They don't know what I write, but they know they should hate me and insult me."*<sup>46</sup>

22. Just one day prior to her assassination, Caruana Galizia was stalked and photographed by Neville Gafà, a Government official and person of trust in the Office of the Prime Minister whom the journalist had written about in connection with a medical visa racket in which Gafà was alleged to have pocketed thousands of euros while working at the Health Ministry.<sup>47</sup> Gafà faced no sanction for his action and following Caruana Galizia's assassination has gone on to harass other journalists including Jacob Borg and Nello Scavo (see below).
23. In the immediate aftermath of Ms Caruana Galizia's death, the authorities confirmed that there was no fixed-point security at her home prior to her death, although an anonymous police officer was reported as saying that the police did provide either fixed-point security or mobile patrols.<sup>48</sup> Police Commissioner Lawrence Cutajar told the members of the European Parliament's ad hoc Delegation to Malta that "it would have been regarded as intrusive to enact ... protection against her will", which suggests that protective measures were not in place.<sup>49</sup>

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<sup>44</sup> <https://www.coe.int/en/web/portal/-/daphne-caruana-galizia-s-final-interview-released-on-third-anniversary-of-her-death>

<sup>45</sup> <https://daphnecaruanagalizia.com/2017/02/straight-mouth-fascism-economy-ministers-statement-yesterday-evening/>

<sup>46</sup> <https://daphnecaruanagalizia.com/2016/05/labour-party-always-intolerant-free-press/>

<sup>47</sup> <https://timesofmalta.com/articles/view/opm-official-accused-of-stalking-caruana-galizia.663770>

<sup>48</sup> <https://timesofmalta.com/articles/view/caruana-galizias-police-protection-relaxed-after-2013-election.660826>

<sup>49</sup> <https://www.europarl.europa.eu/cmsdata/135961/report-mission-malta.pdf>

## Legal harassment

24. In addition to these attacks and state-sanctioned smear campaigns, Daphne Caruana Galiza faced extraordinary financial and psychological pressure through the Strategic Litigation against Public Participation (SLAPP) suits taken against her throughout her career, but overwhelmingly in the last 18 months of her life, which greatly contributed to the atmosphere of hostility towards her. At the time of her assassination, she was facing 47 libel suits. These included 42 civil and 5 criminal suits, “brought by political representatives from across the political spectrum in Malta”, and “had her bank accounts frozen this year by a court order issuing precautionary warrants relating to a libel case brought by a government minister”.<sup>50</sup>
25. All of the main actors implicated in her reporting on corruption brought libel cases against her. Former Prime Minister Muscat sued her over the report that his wife was the ultimate beneficial owner of a Panama-based company, Egrant.<sup>51</sup> In April 2017, then Minister for Tourism Konrad Mizzi and the former Prime Minister’s Chief of Staff Keith Schembri both sued Ms Caruana Galizia for allegations that they had an offshore company in Panama.<sup>52</sup> Mizzi also sued over Ms Caruana Galizia’s claims that in September 2015 he had visited Pilatus Bank.<sup>53</sup> Silvio Debono, a property developer, brought 19 cases all relating to a single set of reports on largely the same subject matter.<sup>54</sup> In addition, Henley and Partners, the company that administers Malta’s golden passports scheme, had threatened to sue her in London, allegedly with the encouragement of Prime Minister Muscat, Mr Schembri and Minister of Justice, Owen Bonnici.<sup>55</sup> Unbeknown to Ms Caruana Galizia, at the time of her death Pilatus Bank - and its owner, Ali Sadr - was suing her for defamation in the United States.<sup>56</sup> The claim was for US\$40,000,000 in damages.
26. Daphne wrote that the people who were suing her for libel were doing so “as an intimidation strategy as they retreat under siege”.<sup>57</sup> In a 2017 interview she noted, “There is no penalty to be paid by those who file cases unnecessarily, even if they eventually lose the case. Meanwhile, the journalist who has been sued has to pay a lawyer to defend him/her, pay fees to file a formal response to the suit, and go to many court hearings over the course of several years. Even if the journalist is cleared of libel, he or she has still paid a heavy price in terms of stress, time wasted and money spent.”<sup>58</sup>

## Concerns with the police investigation

27. The shortcomings of the police investigation into the assassination of Daphne Caruana Galizia, and concerns over political influence into the magisterial investigation have been documented in reports

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<sup>50</sup> European Parliament resolution of 15 November 2017 on the rule of law in Malta, P8\_TA(2017)0438, at K.

<sup>51</sup> <https://timesofmalta.com/articles/view/caruana-galizia-family-rejects-muscat-offer-to-accept-inquiry.704513>

<sup>52</sup> <https://www.independent.com.mt/articles/2017-04-15/local-news/Keith-Schembri-to-sue-Daphne-Caruana-Galizia-6736173023>

<sup>53</sup> [https://daphnecaruanagalizia.com/?s=pilatus+bank&from\\_date=&to\\_date=](https://daphnecaruanagalizia.com/?s=pilatus+bank&from_date=&to_date=)

<sup>54</sup> <https://timesofmalta.com/articles/view/daphne-caruana-galizia-slapped-with-19-libel-cases-from-db-group.642063>

<sup>55</sup> <https://timesofmalta.com/articles/view/IIP-henley-emails-daphne-caruana-galizia-inquiry.821251>

<sup>56</sup> <https://www.theguardian.com/world/2018/feb/02/daphne-caruana-galizia-was-being-sued-defamation-at-time-of-her-murder>

<sup>57</sup> <https://daphnecaruanagalizia.com/2017/05/ones-suing-disaster-theyve-brought-malta/>

<sup>58</sup> International Press Institute (2017) “Q&A: the abuse of libel laws in Malta”, 1 February, <https://ipi.media/qa-the-abuse-of-libel-laws-in-malta/>

including by the Legal Affairs Committee of the Council of Europe<sup>59</sup> and Reporters Without Borders (RSF).<sup>60</sup> A year after her death, not a single politician or government official who Caruana Galizia had been investigating or who had taken vexatious suits against her had been interviewed by the police or magistrate regarding Ms Caruana Galizia's assassination. This fact has underscored concerns around the preservation of any and all relevant evidence regarding any state complicity or neglect.<sup>61</sup> It is also of concern that in February 2021, following the arrest of two additional suspects, the Chief of Police appears to have ruled out further investigations into politicians or state officials noting, "With the evidence we have, we are in a position to say that every person involved, be it mastermind or accomplice, is under arrest or facing charges."<sup>62</sup>

### **Continuing threats to the safety of journalists in Malta**

28. The Public Inquiry is also charged "*To determine whether the State has fulfilled and is fulfilling its positive obligation to take preventive operational measures to protect individuals whose lives are at risk from criminal acts in particular in the case of journalists.*"
29. Caruana Galizia's assassination contributed to an already hostile environment for independent journalism in Malta, where most of the media are directly owned and controlled by political parties. Investigative reporting is lacking, with only a handful of journalists continuing to pursue the kind of public interest investigative reporting that Caruana Galizia had carried out. The total lack of accountability faced by those high level officials whose corruption Caruana Galizia was investigating at the time of her death, in particular in relation to the Electrogas, 17 Black and other Panama Papers related investigations, continues to contribute to a context of impunity and unsafe environment for journalists investigating corruption. We are deeply concerned that those journalists continuing her investigations face serious pressure, harassment and acts of reprisal.<sup>63</sup>
30. The Maltese authorities are failing in their positive obligations under Article 10 (freedom of expression) to ensure an enabling environment for seeking, receiving and imparting information and ideas. The concerns highlighted below regarding media ownership, SLAPP lawsuits, attacks and smear campaigns against independent journalists and a lack of compliance with freedom of information requests illustrate a deeply concerning picture of the continuing threats to the safety of journalists in the country.

### **Media Ownership**

31. Malta is unique among EU countries for having extensive political party control of the news media. The two main political parties own their own television and radio stations, as well as both daily and weekly print media and online news portals. Reflecting these concerns, in February 2021, the online outlet, *Lovin Malta* filed a case to declare propaganda by political party stations unconstitutional.<sup>64</sup>

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<sup>59</sup> [https://pace.coe.int/en/files/27724/html#\\_TOC\\_d19e610](https://pace.coe.int/en/files/27724/html#_TOC_d19e610) and

<https://assembly.coe.int/LifeRay/IUR/Pdf/DocsAndDecs/2020/AS-IUR-2020-42-EN.pdf>

<sup>60</sup> <https://rsf.org/en/news/rsf-report-assassination-daphne-caruana-galizia-and-maltas-deteriorating-press-freedom-climate>

<sup>61</sup> <https://www.doughtystreet.co.uk/sites/default/files/media/document/Opinion%20III%20Daphne%20Caruana%20Galizia.pdf>

<sup>62</sup> <https://www.theguardian.com/world/2021/feb/24/all-suspects-in-daphne-caruana-galizia-arrested-says-police-chief>

<sup>63</sup> <https://rsf.org/en/news/rsf-report-assassination-daphne-caruana-galizia-and-maltas-deteriorating-press-freedom-climate>

<sup>64</sup> <https://lovinmalta.com/news/lovin-malta-files-historic-case-to-declare-propaganda-by-political-party-stations-unconstitutional/>

The most recent annual Media Pluralism Monitor report, published by the Centre for Press and Media Pluralism and Media Freedom, cited a lack of political independence of the media as the worst risk identified for Malta.<sup>65</sup> Analysis shows that the state broadcast media is so heavily biased towards the Government that major corruption stories often go unreported. An investigation by *The Shift* revealed that the Public Broadcasting Service, an outlet which has a constitutional obligation to be strictly impartial, has also been co-opted by the ruling Labour Party. In addition to owning its own party-controlled news outlets, the Government also uses political advertising as a way to channel money to media outlets that have links to, or are supportive of, the ruling Labour Party.<sup>66</sup> There is no legal framework for, or transparency in, the allocation of state advertising in Malta. Malta's independent media are increasingly dependent on government-funded advertising, a pathway to government control of information and an emphasis on pro-government agendas.

### **SLAPP lawsuits**

32. A serious form of pressure against independent media in Malta is the threat and use of SLAPPs to silence public interest reporting.

### **Ongoing cases against the estate of Daphne Caruana Galizia**

33. As of October 2020, 25 civil lawsuits for libel against Ms Caruana Galizia's estate remain pending before domestic courts, according to the eCourts case management system for Malta<sup>67</sup>: 1 case brought in 1999 by Mario Vella, then Professor at the University of Malta, now Governor of the Central Bank of Malta; 1 case filed in 2014 by Konrad Mizzi, former Minister for Tourism and Sai Liang Mizzi, former Consul General at Shanghai; 1 case brought in 2016 by Lindsey Gambin, former Communications Coordinator to the Minister for Tourism; 19 cases filed in 2017 by Silvio Debono, owner of the real estate investment company DB Group; 2 cases brought in 2017 by Konrad Mizzi; 1 case filed in 2017 by Joseph Muscat, former Prime Minister, and his wife, Michelle Muscat<sup>68</sup>
34. In April 2017, former Prime Minister Joseph Muscat and his wife, Michelle Muscat, sued Ms Caruana Galizia over her claim that Michelle Muscat was the ultimate beneficial owner of Egrant, a secret company in Panama.<sup>69</sup> At a news conference that he promptly called, he said that Ms Caruana Galizia's claims were "the biggest lie in [Malta's] political history". Following the journalist's death, the lawsuits were inherited by her heirs. On 31 January 2019, Muscat said in court that he was ready to drop the lawsuit if Ms Caruana Galizia's family agreed to withdraw her original

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<sup>65</sup> [https://cadmus.eui.eu/bitstream/handle/1814/67811/malta\\_results\\_mpm\\_2020\\_cmpf.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/67811/malta_results_mpm_2020_cmpf.pdf?sequence=1&isAllowed=y)

<sup>66</sup> <https://theshiftnews.com/2018/05/20/pbs-a-public-disservice/>

<sup>67</sup> <https://mappingmediafreedom.usahidi.io/posts/23543>

<sup>68</sup> Council of Europe Platform on the Safety of Journalists, 26 October 2020,

[https://www.coe.int/en/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesoiportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-3&p\\_p\\_col\\_pos=1&p\\_p\\_col\\_count=11&sojdashboard\\_WAR\\_coesoiportlet\\_alertPK=75015088&sojdashboard\\_WAR\\_coesoiportlet\\_displayLink=SojPortlet.getDashboardPortletId%28%29](https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoiportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoiportlet_alertPK=75015088&sojdashboard_WAR_coesoiportlet_displayLink=SojPortlet.getDashboardPortletId%28%29)

<sup>69</sup> <https://timesofmalta.com/articles/view/prime-minister-calls-press-conference-after-caruana-galizia-claims.645761>

allegation<sup>70</sup> Daphne's family rejected his offer, saying, "We will not concede to extortion by our public servants. Our position on not accepting blackmail will never change."<sup>71</sup> The case is ongoing.

35. The SLAPPs inherited by the family of Daphne Caruana Galizia on her assassination have taken up substantial time and resources to defend. From 1 April 2019 to 20 October 2020, a total of 160 court hearings were scheduled in libel cases against Caruana Galizia, out of which 87 were adjourned.<sup>72</sup> The Representative on the Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), Harlem Désir, stated in 2018 that the 34 civil libel suits inherited by Ms Caruana Galizia's family on her death exerted "extreme financial and psychological pressure on the family." Calling the practice "outrageous", he noted it should not be possible to pass on future liabilities to heirs or successors in defamation cases and called on the plaintiffs to drop them.<sup>73</sup> In a 2019 letter to the former Prime Minister Joseph Muscat, the Human Rights Commissioner of the Council of Europe, Dunja Mijatović noted that "these cases put unwarranted psychological and financial pressure on the family of Daphne Caruana Galizia. Continuing these claims - many of which were lodged by public officials - including yourself - is not only perceived as an intimidation of a family faced with the loss of a loved one but also raises questions regarding the Maltese authorities' commitment to finding and bringing the masterminds of this horrific crime to justice".<sup>74</sup>

### **Ongoing SLAPP actions against Maltese journalists and media outlets**

36. Despite the decriminalisation of defamation in 2018, legal threats and actions remain a persistent and aggressive threat to journalists in Malta, in particular those journalists who have investigated the assassination of Daphne Caruana Galizia and followed up on her investigations. What the European Parliament and the Venice Commission have called "serious shortcomings" in Malta's rule of law intensify the climate of fear and intimidation facing the media.<sup>75</sup>
37. In addition to defending the posthumous cases against his mother, Daphne's son Matthew Caruana Galizia is also facing numerous domestic cases with the hallmarks of SLAPPs. Joseph Muscat, former Prime Minister of Malta, is a serial SLAPP plaintiff. In addition to the case he continues against the estate of Daphne Caruana Galizia, he also filed a claim in 2018 against Matthew Caruana Galizia over a 2017 Facebook post in which he described how it is possible to launder kickbacks from the sale of passports.<sup>76</sup> The case is ongoing.
38. Ellul & Schranz, a corporate services firm which retained Slovakian businessman Marián Kočner, is currently suing two journalists, Matthew Caruana Galizia and Caroline Muscat of the *The Shift* outlet, for libel over a series of tweets and an article. The plaintiffs allege that these

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<https://www.independent.com.mt/articles/2019-01-31/local-news/PM-offers-to-drop-libel-cases-against-Caruana-Galizia-if-heirs-concede-she-was-wrong-about-Egrant-6736202933>

<sup>71</sup> <https://timesofmalta.com/articles/view/caruana-galizia-family-rejects-muscat-offer-to-accept-inquiry.704513>

<sup>72</sup> Council of Europe Platform on the Safety of Journalists, 26 October 2020,

[https://www.coe.int/en/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesoiportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-3&p\\_p\\_col\\_pos=1&p\\_p\\_col\\_count=11&sojdashboard\\_WAR\\_coesoiportlet\\_alertPK=75015088&sojdashboard\\_WAR\\_coesoiportlet\\_displayLink=SojPortlet.getDashboardPortletId%28%29](https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoiportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoiportlet_alertPK=75015088&sojdashboard_WAR_coesoiportlet_displayLink=SojPortlet.getDashboardPortletId%28%29)

<sup>73</sup> <https://www.osce.org/representative-on-freedom-of-media/381355>

<sup>74</sup> <https://rm.coe.int/letter-to-joseph-muscat-prime-minister-of-malta-by-dunja-mijatovic-cou/168097562f>

<sup>75</sup> <https://www.europarl.europa.eu/news/en/press-room/20190218IPR26964/malta-and-slovakia-serious-shortcomings-in-the-rule-of-law>

<sup>76</sup> <https://theshiftnews.com/2018/03/19/prime-minister-sues-matthew-caruana-galizia-over-facebook-post/>

communications were ‘damaging’ the company’s reputation when disclosing links between Kočner – the Slovak businessman who was tried as the main suspect in commissioning the deaths of Slovak journalist Ján Kuciak and his fiancée Martina Kušnírová – and Ellul, who was married to his daughter and set up companies for him in Malta, since closed.<sup>77</sup> The firm's partners, Christian Ellul and Karl Schranz, are also suing Matthew Caruana Galizia in their own names. Ellul & Schranz had set up offshore firms for Kočner, who has been implicated in financial crimes including money laundering. One of Caruana Galizia's tweets said "Chief suspect in the murder of #JánKuciak, Marián Kočner, used Malta for money laundering/tax evasion. His daughter is married to his Maltese lawyer, Christian Ellul, of Ellul & Schranz Group, a sort of mini-Mossack Fonseca. It is corruption which threatens journalism in Europe."<sup>78</sup> Ellul & Schranz were investigated independently by an Estonian publication which referred to them as "financial sharks who have made consulting foreigners their bread and butter."<sup>79</sup> In May 2020, the Malta Financial Services Authority (MFSA) banned Christian Ellul and his business partner Karl Schranz from taking any positions in licensed companies for five years for their “lack of honesty and integrity”.<sup>80</sup> Despite the decision of the MFSA, leaving Ellul & Schranz with no reputation to defend, the libel cases against Matthew Caruana Galizia and *The Shift* continue.

39. In September 2019, the law firm Carter Ruck – acting on behalf of the Maltese government and instructed by former Prime Minister Joseph Muscat, his wife, Michelle, his former Chief of Staff Keith Schembri, former Minister Konrad Mizzi, and former Minister Christian Cardona – sent a letter marked “private and confidential” to blogger Manuel Delia who, with journalists Carlo Bonini and John Sweeney, authored the book *Murder on the Malta Express: Who Killed Daphne Caruana Galizia?* The letter alleged that the book’s contents were highly defamatory.<sup>81</sup> Instead of answering the questions put by the authors, the Government of Malta asked a law firm to inform the journalists that they “reserve all their rights in relation to the publication and repetition of any allegation that is defamatory and untrue”.
40. Maltese journalists and media outlets have repeatedly received legal threats and lawsuits from abroad, especially from the UK and the United States<sup>82</sup> but also from Russia (against *The Shift*)<sup>83</sup> and EU jurisdictions including Bulgaria (against blogger Manuel Delia)<sup>84</sup> and Croatia (against *The Shift*)<sup>85</sup>, in apparent cases of libel tourism. Several public officials have been implicated in such cases. A Private Member’s Bill to prevent international lawsuits from being brought to bear on the

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<sup>77</sup> <https://mappingmediafreedom.usahidi.io/posts/23029>

<sup>78</sup> <https://twitter.com/mcaruanagalizia/status/968153667806248962?s=20>

<sup>79</sup> <https://news.postimees.ee/4507950/the-bermans-peculiar-transactions>

<sup>80</sup> <https://theshiftnews.com/2020/05/15/mfsa-bans-two-from-holding-directorships-for-five-years/>

<sup>81</sup>

[https://www.coe.int/en/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesoportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-3&p\\_p\\_col\\_pos=1&p\\_p\\_col\\_count=11&\\_sojdashboard\\_WAR\\_coesoportlet\\_alertPK=53830661&\\_sojdashboard\\_WAR\\_coesoportlet\\_displayLink=SojPortlet.getDashboardPortletId%28%29](https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&_sojdashboard_WAR_coesoportlet_alertPK=53830661&_sojdashboard_WAR_coesoportlet_displayLink=SojPortlet.getDashboardPortletId%28%29)

<sup>82</sup> <https://manueldelia.com/2018/01/pilatus-filed-lawsuit-usa-daphne-caruana-galizia-never-knew/>

<sup>83</sup> <https://rsf.org/en/news/new-threat-against-shift-news-malta-highlights-growing-international-abuse-defamation-laws>

<sup>84</sup>

[https://www.coe.int/en/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesoportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_pos=1&p\\_p\\_col\\_count=2&\\_sojdashboard\\_WAR\\_coesoportlet\\_alertId=60528325](https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_pos=1&p_p_col_count=2&_sojdashboard_WAR_coesoportlet_alertId=60528325)

<sup>85</sup>

[https://www.coe.int/en/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesoportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-3&p\\_p\\_col\\_count=7&\\_sojdashboard\\_WAR\\_coesoportlet\\_alertPK=74620687](https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_count=7&_sojdashboard_WAR_coesoportlet_alertPK=74620687)

Maltese media was defeated in parliament in January 2018.<sup>86</sup> Maltese journalists are facing defamation suits outside Malta and the threat of more such suits - as listed below - are of growing concern. This is especially significant when considering the activities of organised crime in Malta. Organised crime has extensively used Malta's main economic activities as tools for its smuggling, racketeering and money-laundering activities. Journalistic investigations into banks, financial institutions, gaming companies, fuel companies and similar large corporate entities have often faced threats of or actual international defamation suits that have a chilling effect on investigative journalism. This in turn creates an environment of impunity that allows these criminal activities to remain and grow.

41. Transnational threats against the Maltese media are usually made by corporations, also against journalists and politicians. However, there is evidence that in some instances these corporations act as proxies for the government. In the case of Henley and Partners, it is a matter of record that all such threats were agreed with the Government of Malta, including the former Prime Minister.<sup>87</sup> Indeed, in a meeting representatives of Henley and Partners had with the European Parliament's delegation in 2018, investigating the rule of law in Malta, representatives of the cash-for-passports concessionaires said they only sue Maltese journalists if they get an 'OK' from the government.<sup>88</sup>
42. Independent news portal *The Shift* faced such threats from Henley and Partners. The threatening letter came just three weeks after *The Shift*'s launch. Henley and Partners demanded that *The Shift* remove an article from its site that revealed the company's alleged involvement in a passport scandal in the Caribbean country of Grenada. Rather than remove the article in question, *The Shift* chose to publish Henley and Partners' threat in full.<sup>89</sup> It later emerged that most of the independent news outlets in Malta had already complied after receiving similar threats, effectively altering the public record without informing citizens.
43. The sheer cost of mounting a defence in cross-border cases can be so high that publishers, newspapers and NGOs agree to delete or alter content to ward off the threat of litigation. For example, Malta Today reported that it had withdrawn articles "not because they were wrong, but because it could not afford the astronomical costs of fighting a lawsuit in the United States where the legal claims were lodged."<sup>90</sup> Other major Maltese newspapers and online portals reported removing articles due to similar threats. "The threat itself can be enough to silence the story" says Caroline Muscat founder of *The Shift*.<sup>91</sup>
44. In addition to ongoing libel suits against Daphne Caruana Galizia's estate, a dehumanisation campaign continued even after her assassination. An undercover investigation into secret and closed online Labour Party hate groups, published by *The Shift*, revealed Labour Party supporters celebrating the journalist's brutal murder within hours of the event, describing her as 'sahhara

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<sup>86</sup> <https://theshiftnews.com/2018/01/16/parliament-to-debate-law-amendments-to-protect-journalists-against-crippling-lawsuits/>

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<https://daphnecaruanagalizia.com/2017/05/prime-minister-chief-staff-use-josephmuscat-com-addresses-deal-secretly-henley-partners-chairman-addresses-keith-joseph-order/>

<sup>88</sup> <https://theshiftnews.com/2018/05/07/henley-and-partners-says-it-only-sues-maltese-journalists-if-government-gives-its-ok/>

<sup>89</sup> <https://ipi.media/maltese-journalists-face-slapp-threat-even-as-criminal-libel-repeal-proceeds/>

<sup>90</sup> [https://www.maltatoday.com.mt/news/national/83370/igm\\_calls\\_for\\_action\\_against\\_slapp\\_lawsuits#.XiONfxd7IIa](https://www.maltatoday.com.mt/news/national/83370/igm_calls_for_action_against_slapp_lawsuits#.XiONfxd7IIa)

<sup>91</sup> <https://www.greenpeace.org/static/planet4-eu-unit-stateless/2020/07/20200722-SLAPPs-Sued-into-Silence.pdf>

hadra' ('evil witch') and calling on fellow members to let her burn in hell.<sup>92</sup> Posthumous attacks against Caruana Galizia were not confined to these secret groups. The chairman of Valletta 2018, Jason Micallef, mocked the murdered journalist by appropriating her last published words in a Facebook post that read, "St Patrick's Day in Malta. The situation is desperate. There is [sic] happy people everywhere you look." Justice Minister Owen Bonnici refused to fire Micallef, insisting that the comments were not hate speech but "freedom of expression." Prime Minister Muscat also defended Micallef on the same grounds.<sup>93</sup> The scandal resulted in a rift with Malta's twin capital of culture, Leeuwarden-Friesland, with LF2018 freezing administrative contacts and refusing to send representatives to Malta for European Capital of Culture events.<sup>94</sup> Rather than facing accountability for his behaviour, Micallef was subsequently promoted.<sup>95</sup>

## Safety of journalists

45. Since Daphne's assassination, attacks, threats and smear campaigns have continued against other journalists, in particular those investigating her stories. Further concerns relating to the safety of journalists include coordinated attacks on websites, the detention of journalists in the Prime Minister's office and an attempt to bribe a journalist by the defence team of the alleged mastermind of the assassination of Daphne Caruana Galizia.
46. On the night of 24 May 2020, the car belonging to veteran Maltese journalist Dione Borg was set on fire in an arson attack outside his home in Attard.<sup>96</sup> Borg is a well-known journalist who works for the Maltese TV channel NET. The channel is owned by Medialink Communications, the media arm of the opposition Nationalist Party. Borg also previously unsuccessfully ran as a candidate for the Nationalist Party in European Parliament elections in 2019. A suspect was captured on CCTV dousing the car with fuel and then fleeing the scene on an electric scooter. Borg's laptop was in the car at the time. Police and fire crews attended the scene at around 11.20pm to put out the blaze, which destroyed Borg's vehicle and had spread to another car. Police confirmed an investigation had been opened. The authorities must conduct a transparent investigation to establish whether the motive of the attack was linked to Borg's work in the media.
47. The ongoing harassment of journalists by members of the Office of the Prime Minister (OPM) and individuals connected to the government demonstrate that lessons have not been learned or implemented by the government following Daphne Caruana Galizia's assassination in terms of verbal harassment of the independent media. The incidents below highlight our organisations' ongoing concerns about high level verbal abuse of the independent media which is known to pave the way to broader smear campaigns, harassment and intimidation by pro-government members of the public.

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<sup>92</sup> <https://theshiftnews.com/2018/05/14/investigating-joseph-muscats-online-hate-machine/>

<sup>93</sup>

<https://www.independent.com.mt/articles/2018-04-24/local-news/PM-reiterates-support-for-Jason-Micallef-refuses-to-comment-directly-on-17-BIack-6736188736>

<sup>94</sup> <https://lovinmalta.com/news/humiliation-for-jason-micallef-as-valletta-2018s-dutch-partner-imposes-malta-boycott/>

<sup>95</sup> <https://pen-international.org/print/7477>

<sup>96</sup> <https://mappingmediafreedom.usahidi.io/posts/23329>

48. In January 2020, Office of the Prime Minister, in Malta, consultant Tony Zarb branded The Malta Independent's reporters as "political terrorists", following their attempt to take a comment from disgraced former prime minister and MP Joseph Muscat, as he left parliament. Muscat refused to give a comment.<sup>97</sup> The Malta Independent had been trying to get a comment from Muscat about his presence at a meeting between the current prime minister, Robert Abela, and Steward Healthcare, a company embroiled in a questionable deal signed with Muscat's government. As a former trade union official, Zarb has some influence on public opinion, particularly supporters of Joseph Muscat.
49. In 2019, in a response filed in court to the request for a magisterial inquiry on a suspect privatisation deal involving public hospitals, three ministers used abusive language in regard to *The Shift*, which investigated and reported extensively on the suspect deal. The ministers' formal response in court attempts to dismiss the scandal on the basis of "hate", "mediocrity" and "agendas".<sup>98</sup> One of the ministers concerned, Konrad Mizzi, is deeply implicated in alleged financial crime and is mentioned in the Panama Papers. Another minister, Chris Cardona, in a separate case, took the unprecedented step of freezing Ms Caruana Galizia's assets over two undecided libel cases. The third minister, Edward Scicluna, who was responsible for the finance portfolio, did not take any action in relation to either one of his cabinet colleagues.
50. *The Shift* was also targeted by another member of the Office of the Prime Minister, Josef Caruana, who dismissed its reporting as "fake news" after the outlet ran a series of stories about government officials' declarations of assets.<sup>99</sup> Caruana's harassment follows the same pattern of behaviour adopted by another former OPM official (and current ruling Labour party MP) Glenn Bedingfield, who harassed and discredited journalist Daphne Caruana Galizia up until her death on 16 October 2017, and then continued to discredit her and harass her family after her assassination. Josef Caruana has also promoted sinister rumours implicating Daphne Caruana Galizia's family in her assassination. Despite his behaviour, he has retained his post in the prime minister's office and was allowed to contest the MEP elections on the ruling Labour Party ticket.
51. In January 2020, journalists at *The Shift* were targeted by hate speech following the Maltese government's response to their report about being denied access to a national event organised by the Maltese president's office.<sup>100</sup> The president's office responded to the news outlet's report by issuing a press release to all media, rather than by addressing the news outlet directly. The press release, distributed through the government's department of information, incorrectly stated that no journalists were barred from the national event.
52. On 20 March, 2019, Patrick Dalli, husband of a Maltese Government minister and a business owner, harassed the editor of *The Shift*, Caroline Muscat. Following social media posts with threats and inciting public anger against Caroline Muscat ("Do not worry Caroline, it is far from over."), Patrick Dalli escalated his media-silencing campaign with a judicial protest in court referring to

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<sup>97</sup> <https://mappingmediafreedom.usahidi.io/posts/23196>;

<https://www.independent.com.mt/articles/2020-01-28/local-news/Political-terrorists-Tony-Zarb-lashes-out-at-The-Malta-Independent-673621897>

<sup>98</sup>

<https://mappingmediafreedom.usahidi.io/posts/23045>

<sup>99</sup> <https://mappingmediafreedom.usahidi.io/posts/23121>

<sup>100</sup> <https://mappingmediafreedom.usahidi.io/posts/23185>

investigative journalism as “vitriolic” (aspru) and “untrue”.<sup>101</sup> This was in response to an 8 March 2019 decision of the Court of Appeal in Malta which overturned a judgement handed down in 2018 by the Court of Magistrates, concluding that spouses of sitting public officials including ministers should not be subject to media scrutiny. The effects of the original judgement were toxic, resulting in anti-journalist memes being generated and shared including by government officials. One government employee also commented on social media that “maybe Caroline Muscat needs some bombs” (see photo in referenced alert), referring to the assassination of Daphne Caruana Galizia a year earlier.

53. In December 2019, Neville Gafà, a former person of trust in the Office of the Maltese Prime Minister Joseph Muscat, threatened *Times of Malta* reporter, Jacob Borg. Gafà has been seen shuttling between Muscat's home and the home of his outgoing chief of staff, Keith Schembri, who resigned when he was named in investigations into the assassination of Daphne Caruana Galizia. The *Times of Malta* reporter followed Gafà in his car to report on the story. Gafà stopped his car and threatened to report the journalist. Gafà is implicated in illicit visa sales and therefore connected to criminal networks. He stalked Daphne Caruana Galizia the day before she was killed.<sup>102</sup>
54. On 27 June 2020, Gafà also issued a threat against Nello Scavo of the Italian newspaper *Avvenire*. In response to a tweet posted by AlarmPhone, an independent support organisation for people crossing the Mediterranean, Gafà called on the organisation to “stop your dirty business”. When Scavo responded, questioning the former official's record, Gafà called for him to “stop your dirty business. If not, we will be stopping you.” On 1 October 2020, Scavo was harassed and verbally abused by a crowd of people as he left a court proceeding related to the case in Valletta. Upon leaving the hearing, Scavo and Maltese blogger Manuel Delia were insulted with vulgar epithets shouted in Italian by a crowd of people who had amassed in apparent support of Gafà. The crowd called them 'stronzo' (Italian for asshole), 'enemy of Malta' and 'assassin'. The police intervened to ensure they could leave the area safely. Scavo, who works for the Italian national newspaper *Avvenire*, later told the media: "it is unacceptable that a journalist is threatened and slandered".<sup>103</sup>
55. In a decision on the case, a Maltese magistrate found that Scavo's initial response to the tweet did not indicate he had perceived it as a threat. To support this, she noted that Scavo did not file a police report in Italy, although he has been under police protection, following threats related to his reporting on immigration and organised crime, since October 2019. In his defence, Gafà had said that he did not have the intention to threaten Scavo and that his tweet was a political comment about illegal immigration directed towards AlarmPhone. Overall, the judge found there was insufficient evidence to support the criminal charge and acquitted Gafà. In response to the verdict, ECPMF noted that Gafà's acquittal is not only an injustice to Scavo. In failing to recognise how journalists are pressured and intimidated, it is also a disappointment for everyone who considers that receiving threats and insults should not be a routine “part of the job” for journalists.

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<sup>101</sup> <https://mappingmediafreedom.usahidi.io/posts/23020>

<sup>102</sup> <https://mappingmediafreedom.usahidi.io/posts/23184>

<sup>103</sup> <https://mappingmediafreedom.usahidi.io/posts/23516>

56. In January 2019 the independent Maltese online news platform *The Shift* experienced a Distributed Denial of Service (DDoS) attack. The attack followed the publication of a series of investigative stories on a controversial hospital deal concerning Vitals Global Healthcare. Such DDoS attacks are designed to take sites and servers offline at critical times.<sup>104</sup>
57. On the night of 29 November, following a press conference by former Prime Minister Joseph Muscat concerning developments related to the assassination, a group of Maltese journalists including Daphne Caruana Galizia's son, Paul, were locked inside the office of the Prime Minister. No explanation was provided by those responsible: a group of men who claimed to be security guards but were not officially identified and not in uniform.<sup>105</sup> The Government of Malta, in its reply, stated that "no journalists were locked anywhere following a press conference" however<sup>106</sup> footage of the incident contradicts this assertion.<sup>107</sup> A court case cleared three of the security officials - Jody Pisani, Mark Gauci and Emanuel McKay – of detaining journalists against their will due to a lack of sufficient evidence to prove that there had been illegal arrest. The Institute of Maltese Journalists (IGM) responded to the verdict by saying that the police had not presented enough evidence to prove that journalists had been held against their will. In February 2021, the Office of the Prime Minister (OPM) was found to have breached the ministerial code of ethics during the incident.<sup>108</sup>
58. On 2 November 2020, lawyer Gianluca Caruana Curran, in the presence of lawyer Charles Mercieca, allegedly attempted to hand over several high-value banknotes to Times of Malta journalist Ivan Martin at the end of a meeting. Caruana Curran is a member of the legal team defending businessman Yorgen Fenech, who faces multiple charges related to the assassination of investigative journalist Daphne Caruana Galizia. Martin says that at the end of their meeting, in Valletta, the lawyer handed over a bundle of folded €500 notes, which he rejected, informing him that he could not accept payment and is paid only by the Times of Malta. Martin says Caruana Curran told him he meant no disrespect and only offered the money because he had never dealt with a journalist before. Martin immediately reported the incident to his editor. Later that day, Caruana Curran claimed that Martin had led him and Mercieca to believe that he was offering his services to help neutralise biased reporting in the media. Caruana Curran also made various other allegations, all denied by Martin, including that Martin approached the defence team, that Martin expressed the opinion that the Times of Malta is under the control of the Caruana Galizia family, that Martin requested information on people related to the case, and that Martin disclosed some of his sources during the conversation. Caruana Curran also claimed that Martin had said "that any article which could even remotely be taken to be in favour of Yorgen Fenech was immediately censored, withdrawn or buried." This has been denied by Martin and the Times of Malta. On 4 November, Caruana Curran and Mercieca offered a different version of events, saying that Caruana Curran had offered Martin money because the journalist was "posing as an investigator interested in helping

<sup>104</sup> <https://theshiftnews.com/2019/01/19/second-cyber-attack-targets-the-shift-news/>

<sup>105</sup>

[https://www.coe.int/en/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesoportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-3&p\\_p\\_col\\_count=7&\\_sojdashboard\\_WAR\\_coesoportlet\\_alertPK=56164604](https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_count=7&_sojdashboard_WAR_coesoportlet_alertPK=56164604)

<sup>106</sup> <https://go.coe.int/AgoNb>

<sup>107</sup> <https://lovinmalta.com/news/watch-journalists-locked-inside-castille-by-security-guards-following-joseph-muscats-press-conference/>

<sup>108</sup>

<https://www.independent.com.mt/articles/2021-02-17/local-news/OPM-breached-ethics-when-it-detained-journalists-in-Castille-after-2019-press-conference-6736231108>

our client (outside his job with the Times) by way of investigative services, as well as sources and information.”<sup>109</sup> Both lawyers have been charged following a police investigation and the case is forthcoming.<sup>110</sup>

59. On 26 March 2021, a Maltese magistrate ordered action to be taken against journalists for reporting conversations between Yorgen Fenech and politicians as well as officials in state entities, and ordered the decree to be communicated to the police.<sup>111</sup> This followed a November 2020 court decree, issued at the request of the defence team of Yorgen Fenech, which banned any publication of the data from the defendant’s phone on any medium. Following an application by the defence team, citing five news articles including four *Times of Malta* articles by Jacob Borg relating to the actions and behaviour of persons in public office, the court issued a second decree on 26 March 2021 to be communicated to the Commissioner of Police who will decide whether to proceed with investigations aimed at prosecution for any resulting crime and/or proceedings for contempt of court. The court also ordered the Registrar of the Court to, without delay, institute proceedings against “the author or authors” of the four *Times of Malta* articles which were attached to the application filed by the defence. These articles all focus on informing the public of facts on how persons elected or appointed to public office have facilitated, assisted or were engaged in actions which create a conflict of interest when dealing with the businessman charged with the assassination of Daphne Caruana Galizia.
60. There is concern that the court in its order failed to consider that the press is fundamental in a democracy and is obliged to publish information which is of public interest and which fosters public debate on matters of public interest. The decree may have a chilling effect on public interest reporting, abruptly preventing the public’s access to information and hampering public debate on holding persons in public office to account on the execution of their public duties. Further, the court decree of 26 March 2021 may bring about a situation where the press is being ordered not to publish investigations about government corruption and abuse of power if those investigations show that the businessman who now stands charged with a journalist’s assassination benefitted from that corruption. The decree could therefore have an immediate post-publication censorship effect on the media house in question and a pre-publication censorship effect on every media house and journalist in Malta. In effect, the decree implies that any information about alleged corruption and abuse of power by persons in public office cannot be published if this also relates to the businessman charged with the assassination of a journalist and if there is evidence of such corruption in the data that was extracted from the accused’s devices which were seized by the police in their investigations and presented as evidence before the court.

### **Undue limitations on access to information**

61. The Freedom of Information Act, which was brought fully into force in 2012, on paper, guarantees access to information. This said, journalists often encounter difficulties when requesting government information, which include unnecessary delays, no reply scenarios, and the application of diversionary tactics. One particular newsroom reported that 80% of requests made to government

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<sup>109</sup> <https://go.coe.int/m8WEP>

<sup>110</sup> <https://timesofmalta.com/articles/view/police-ordered-to-give-journalist-statement-to-defence-in-bribery-case.852203>

<sup>111</sup> <https://timesofmalta.com/articles/view/magistrate-criminalised-journalism-by-ordering-action-in-fenech-leaks.861484>

entities remained unanswered.<sup>112</sup> The press is not provided with opportunities to ask questions and matters of national importance are communicated directly by political figures over media they own or on social media through paid advertising. A number of recent events highlight concerns over barriers to the media at press conferences during the pandemic.<sup>113</sup> Furthermore, in January 2021, journalists working for *The Shift* were denied access to MP's tax declarations by the Speaker of the House of Parliament, in a move its managing editor described as a discriminatory effort to hamper an investigation.<sup>114</sup>

## Recommendations

62. The Maltese authorities should immediately take demonstrable steps to fully implement the Council of Europe's *Recommendation (2016) of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors* in consultation with national and international press freedom and anti-corruption organisations and bodies, to implement long-term legislative and policy measures to protect journalists and create an enabling environment for critical, independent journalism in Malta.
63. Such measures could be included in a National Safety Action Plan for Journalists (in line with Malta's obligations with Article 10 of the European Convention on Human Rights) and could encompass the full range of physical, legal and psychological threats posed to journalists, including a full adherence to gender concerns.
64. General press and media freedom reforms should include:
  - Legislation criminalising violence against journalists, with political support and full resources to enable law enforcement machinery and redress mechanisms for victims (and their families) that are effective in practice. Clear and adequate provision should be made for effective injunctive and precautionary forms of interim protection for those who face threats of violence.
  - State officials and public figures should immediately condemn all past and future attacks on journalists, and take immediate concrete and effective remedial action against public officials or individuals who openly verbally abuse and threaten journalists for their legitimate work.
  - Fully implement, without exception, the existing Freedom of Information Act<sup>115</sup> that provides for public access to information (including the swift response to freedom of information requests); the Data Protection Act<sup>116</sup> that provides privacy and data protection; the Whistleblower Act<sup>117</sup> that provides confidentiality and security of communications and

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<sup>112</sup> [https://cadmus.eui.eu/bitstream/handle/1814/67811/malta\\_results\\_mpm\\_2020\\_cmpf.pdf?sequence=1&isAllowed=v](https://cadmus.eui.eu/bitstream/handle/1814/67811/malta_results_mpm_2020_cmpf.pdf?sequence=1&isAllowed=v)

<sup>113</sup> <https://mappingmediafreedom.usahidi.io/posts/23541>

<sup>114</sup> <https://mappingmediafreedom.usahidi.io/posts/23811>

<sup>115</sup> <https://legislation.mt/eli/cap/496/eng/pdf>

<sup>116</sup> <https://legislation.mt/eli/cap/586/eng/pdf>

<sup>117</sup> <https://legislation.mt/eli/cap/527/eng/pdf>

protection of journalistic sources and whistle-blowers. Government officials should immediately prioritize providing full access to official/government press conferences.

- Measures to promptly address online harassment, threats and cyberattacks, and other illegal behaviour, including trolling, cyberstalking and hacking of e-mail and social media accounts, electronic storage, websites and mobile phones or other devices. Particular attention must be given to developing gender-specific responses to the online harassment, threats, abuse and violations of female journalists.
- Abolish the inheritance of libel suits, on the grounds that the possibility of inheritance has a potentially chilling effect.
- Measures to address vexatious lawsuits must be taken by ensuring that national procedural law:
  - provides a mechanism enabling SLAPP-type suits that are filed to be dismissed at an early stage, before they become a major drain on the defendant's resources;
  - makes available full financial and legal support to defendants;
  - prevents the use of forum shopping in conjunction with SLAPPs;
  - puts in place a system of sanctions for those who bring SLAPPs.
- Establish a journalist safety committee, composed of government officials, civil society, the security services and the international community, whose role it will be to assess, contribute and evaluate media reforms in Malta, with clear independence, established timeframes and the capacity to make recommendations.
- Carry out an official study into self-censorship within the journalist community in Malta by a trusted and independent expert, with a view to seeking the extent to which journalists have not reported abuse out of fear and what types of professional and psychosocial support could be offered to those who are at risk or feel vulnerable. Such a study could look to provide practical recommendations to address under-reporting of abuse, under-documentation, lack of access to justice, social barriers and constraints concerning gender-based violence, including stigmatisation, lack of recognition of the seriousness of the problem and discriminatory attitudes by extremist sections of society.
- Establish an Independent Media Authority, which would allow for the full inclusion of all journalists including those considered freelance or independent, and replace the existing Broadcasting Authority (which is currently selective regarding the question of which media outlets belong to it).

- The Government should relinquish control over the issuing of press cards, whether directly or indirectly through any state authority and institute the practice of recognising national and international press cards issued by media, journalists' organisations, and free press NGOs.
- Through Malta's Media Literacy Board, establish a comprehensive Media Literacy Policy that includes an education strategy on the positive contributions that journalism can make to upholding democracy and the rule of law.
- Set up a full and independent study into the delivery of COVID 19 state aid provided to media outlets and organizations. Such a study should include recommendations for any potential remedial action.

65. Within the Council of Europe:

- Establish an inter-ministerial structure designed to respond to alerts published on the Council of Europe Journalist Safety Platform, and define a clear commitment outlining concrete steps to be taken by the Maltese authorities to provide quality responses with full details of how remedy was provided to the individual concerned. .

## **Conclusion**

66. As the submission details, the Public Inquiry presents a crucial mechanism in the fight for truth and justice for the assassination of Daphne Caruana Galizia and the prevention of further attacks on journalists in Malta, especially those who continue her investigations at great risk. It is essential that the inquiry is protected from any political inference. If its mandate is completed and recommendations implemented it has the potential to form an important precedent for achieving justice for journalists globally. Its work is vital to the non-repetition of attacks against journalists and is essential for ensuring reparations for the victim, her family and Maltese society.