

repubblika

**Public Inquiry
into the assassination of
Daphne Caruana Galizia**

Written Submissions

29 January 2021



Executive Summary

Repubblika believes that this Inquiry has been exceptional when compared with the response of the State to the killing of Daphne Caruana Galizia. It has asked difficult questions to witness and forced the only form of proper examination of the circumstances in which Daphne Caruana Galizia was assassinated and the causes of the crime, how it was allowed to happen and the failings of the State in dealing properly with the matter after the fact.

In our submissions, we will attempt to address the Inquiry's substantive terms of reference.

1. We show how Joseph Muscat and people within his circle enjoyed and continue to enjoy impunity in spite of mounting evidence that should have led to proper investigations and prosecution for crimes under existing law. We cite examples such as events connected with John Dalli's return from Brussels, the Pilatus affair, the Panama Papers and others. We argue that this level of impunity coupled with police failure to act appropriately after a string of car bombings allowed the perpetrators of their crime to believe they would not be caught.
2. We show how Joseph Muscat and his circle led a campaign to dehumanise Daphne Caruana Galizia, frustrating her right to privacy, family and property, ultimately denying her the right to her very life.
3. We list the failures of the State to mitigate the risks to Daphne Caruana Galizia's life, including the effect of her isolation as a result of slander and vilification on political party media.
4. We argue that the assassination of Daphne Caruana Galizia should be seen in the context of mafia infiltration in the fabric of Malta's governance and society which we content is dangerously underestimated. We put forward proposals for the adoption of anti-mafia and anti-racketeering legislation and procedures. We also make recommendations with respect to legislation to address unexplained wealth, abuse of office and other gaps in our legislative framework.



5. We highlight the significance of public inquiries as tools for the growth of our democracy and as a means to document and learn lessons from administrative mistakes, systemic failings or willful wrongdoing.
6. We discuss how the State continues to fail to provide adequate protection to journalists and other agents of civil society that act independently in government and therefore, wrongly perceived by it as a form of opposition it should seek to suppress.

Finally, we argue that at the heart of the values we aspire to as a democracy, there should be the service of independent and critical journalism. Children should be taught to appreciate it, expect it and contribute to it as a key component of their formal education. The State must be reminded by a demanding citizenry that it must protect the independence of this democratic pillar from the intrusion, censorship, even violence of those among us who are better served by the suppression of these freedoms.

In our submissions, we recall that Repubblica was founded by individuals who came together in the wake of the assassination of Daphne Caruana Galizia. We did this because we were angry and dissatisfied with the action of, or failure to act by, the authorities before and after Daphne Caruana Galizia was killed.

Even as we demand that justice in Daphne Caruana Galizia's case is served without any further delay, our concerns today are more profound than they were in our shock and anger on the afternoon of 16 October 2017.

We are grateful for the opportunity to document those concerns and hope that our submissions can add value to this important process.



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The Honourable Michael Mallia
The Honourable Abigail Lofaro
The Honourable Joseph Said Pullicino

Madam, gentlemen of the Inquiry Board,

We thank the Board for the opportunity to submit our considerations in writing before it draws up its final conclusions.

1. Repubblica

Repubblica was formally constituted on 25 January 2019 in terms of the Voluntary Organisations Act (Cap. 492 of the Laws of Malta) “to promote civil rights, democratic life, the rule of law, free speech, personal freedoms, social inclusion, environmental conservation, economic sustainability and equality of access, by means of active participation in the national discourse and related educational, social and charitable initiatives.”

Our statute (Article 3, 1) asserts *inter alia* that:

“The Association considers the following principles as inherent to any civil society in a democracy operating under the Rule of Law and in giving effect to these shall not act in any way that is inconsistent with them:

- *“Civil society comprises the entire range of individuals, organised groups and institutions independent of the State, acting in a voluntary or non-profit environment and at least to some extent self-generating and self-reliant. This includes non-governmental organisations, independent media, think tanks, universities and social and religious groups. Civil society participants respect the rule of law, the rights of individuals and the rights of other groups to express their interests and opinions with full respect for the concepts of pluralism and diversity.*
- *“A democratic State is well-functioning and authoritative and incorporates ways and means to check, monitor and restrain the power of political leaders and State officials. In this context civil society oversees how State officials use their powers and raises public concern about any abuse and lobbies for access to information to carry out this function.*



- *“Civil society exposes the corrupt conduct of public officials and lobbies for good governance reforms.”¹*

We also assert (Article 4, 1, vii) the view that:

“The Association asserts that the State has a duty to promote respect for human rights and fundamental freedoms, and the obligation to protect the rights of civil society. In this regard, the State’s duty is both negative (i.e., to refrain from interference with human rights and fundamental freedoms) and positive (i.e., to ensure respect for human rights and fundamental freedoms). The State’s duty includes an accompanying obligation to ensure that the law is appropriately enabling and that the necessary institutional mechanisms are in place to ensure the recognised rights of all individuals.”

For us, this is more than a declaration of principles. Repubblica was founded by individuals who came together in the wake of the assassination of Daphne Caruana Galizia. We did this because we were angry and dissatisfied with the action of, or failure to act by, the authorities before and after Daphne Caruana Galizia was killed.

1.1. The immediate aftermath of Daphne’s killing

From the outset, our protest movement attributed in part the assassination of Daphne Caruana Galizia to institutional failures and the failure of individuals in institutional positions to fulfil their duty to protect the life of Daphne Caruana Galizia as an individual and as a component of civil society that acts independently of, and free from, government control.

Within hours of the assassination of Daphne Caruana Galizia, we called for the removal or resignation of people in authority – within the government, the prosecution service, the police and others. We did so because our immediate judgement was that several individuals had failed both in their duty to prevent, as well as in their duty to respond adequately to, the assassination of Daphne Caruana Galizia. What we have learnt since those fateful hours confirmed to us that this initial judgement was correct.

We, eventually individual founders and eventual leaders and members of Repubblica, have examined our conscience and our share of responsibility in what happened. The foundation of Repubblica is a result of that examination.

¹ <https://repubblica.org/statute/>



1.2. The failure of civil society

We realised that as citizens we watched and read Daphne's work as some spectator-sport, almost as a form of entertainment from which we were detached. We acted as if we had no responsibility to work to change what was occurring. We had limited our participation in democratic life to casting our ballots in elections but otherwise abdicated our responsibility as citizens in spite of Daphne's shining example of commitment to the public good, direct engagement and defiance in the face of wrongdoing, institutional bullying and oppressive censorship.

In this sense, we became accomplices in the conscious and coordinated effort perpetrated by her enemies to isolate her, to dehumanise her and to deprive her of the protection that a cohesive, active and participatory civil society should provide to people who are targeted by people in power. While Daphne spoke truth to power, we just looked on as her detractors were creating an enabling environment for her demise.

Of all the failings that led to the assassination of Daphne Caruana Galizia, we opted first to address the failure for which we were responsible, namely a weak civil society with little to no attention given to issues of democratic erosion, corruption, institutional bullying and failure of the rule of law.

In its 2018 opinion "on Constitutional arrangements and Separation of Powers and the Independence of the Judiciary and Law Enforcement,"² the Venice Commission found that:

"The media and civil society are essential for democracy in any State. Their role as watchdogs is an indispensable precondition for the accountability of Government. The delegation of the Venice Commission had the impression that in Malta the media and civil society have difficulty in living up to these needs. Some interlocutors of the Commission even referred to a prevailing 'law of omertà'. Even when it is stressful for the authorities to endure their criticism, the latter have a duty to ensure that the media and civil society can freely express themselves."

We founded Repubblika to address the difficulty of living up to the expectation of the essential role of civil society in a democracy.

The assassination of Daphne Caruana Galizia was not merely a catalyst for our existence. It was and remains the defining test of the transformation Maltese democracy needs to undergo in order to live up to that name, not least in respect of the functioning

² [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)028-e)



of civil society and in delivering on the indispensable precondition of the accountability of the government.

1.3. Since Daphne was killed

At the time of writing, Daphne Caruana Galizia has been dead for 39 months. The campaign to isolate her, to discredit her and to ostracise her is much older than that and remains very much an ongoing function of the undemocratic and the corrupt.

No one has faced trial for her murder yet.

Joseph Muscat, Keith Schembri, Konrad Mizzi, Chris Cardona and several others are no longer in office, and whether they admit to it or not, they were forced out of office in disgrace in the aftermath of the assassination of Daphne Caruana Galizia. In spite of arrests, interrogations, police bail and other displays of half-hearted institutional muscle-flexing, they have as yet faced no criminal consequences for their actions and continue to deny any wrongdoing.

On the political level the government, the political party in government, its media and its support base have never truly confronted the true horror of the assassination of Daphne Caruana Galizia. The truth is hidden or denied. There has been no apology, no regret, no political apportionment of responsibility. Instead, Robert Abela, the head of the government and of the party in government, insists that it is time to turn the page on the case of Daphne Caruana Galizia. This even though the page remains unread by many.

We remain therefore frustrated, angry and disappointed as even now our institutions fail, or refuse, to realise that the assassination of Daphne Caruana Galizia should have a transformative effect on the workings of Malta's polity and society. The manner in which institutions persist in ignoring, suppressing and denying the truth about what happened and what continues to happen is not merely a grave injustice to Daphne and her family – though it is also that – but an outrage to Malta's democracy.

The official story plays to the tune that Daphne's memory is an impediment to the country's welfare.

In the midst of all this, this Inquiry has been a shining exception to Malta's broad institutional failure. Irrespective of what your final conclusions might be, the experience of this Inquiry has been exceptional for several reasons but particularly for the fact that people in authority were forced to answer questions they would rather not have had to answer in a room that was open to the public.



For this, Republika is deeply grateful to the Board.

In the rest of this document, we will submit for your consideration our views on the questions asked of it by its terms of reference.³

³<https://www.gov.mt/en/Government/DOI/Press%20Releases/Documents/PR192460b%20%28Terms%20of%20Reference%29.pdf>



2. Terms of reference

The Inquiry's terms of reference seek the following deliverables:

- *“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 establish whether the State had and has in place effective criminal law provisions and other practical means to avoid the development of a de facto State of impunity through the frequent occurrence of unresolved criminal acts and to deter the commission of serious criminal offences, backed up by law enforcement machinery for the prevention, suppression, investigation and punishment of serious breaches of the law;*
- *“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.”*

Our view is that the killing of Daphne Caruana Galizia is the result of a series of concentric circles set up to allow for the murder to occur, for its perpetrators to organise and execute it, and allow them to enjoy impunity after the fact.



3. Concentric circles

It is not the scope of the Inquiry to determine criminal responsibility in the case and these submissions will therefore express no views on the charges brought against a number of individuals who have been accused of perpetrating the murder or of hiring accomplices therein or of covering up for them, and on the evidence heard against them up to now. It is clear, however, that even though this conspiracy may have involved a number of persons, those engaged in organising the murder itself would appear to be limited to a restricted few.

Anyone who instigates or allows oneself to participate in a murder, certainly one in which the action of the perpetrator is concealed in an event such as a remotely-detonated car-bomb, does so in the conviction that he or she is likely not to face consequences.

3.1. A series of car bombings

Daphne Caruana Galizia's assassination by car-bomb was not the first murder or attempted murder in this style in the years leading up to her killing. However, in all the years and after the several car bombings⁴ that occurred before October 2017, we are not aware of a single arrest by the police in connection with the bombings.

The arrests that occurred in the aftermath of the assassination of Daphne Caruana Galizia followed forensic investigations that connected the bombing to the alleged perpetrators. The evidence suggests that the *modus operandi* in the case of Daphne's killing had been used in prior bombings.

It is, therefore, reasonable to suggest that if the same forensic methodology had been applied to the investigation of earlier cases, the method used to kill Daphne Caruana Galizia might have been prevented by earlier police action.

This is not to say that those who wanted Daphne Caruana Galizia dead may not have found other ways of achieving their aim.

⁴https://www.maltatoday.com.mt/news/national/81438/maltas_explosive_history_19_bomb_attacks_since_2010#.YAVDyi1Q2jg



It is axiomatic that one way of protecting potential victims of crime is by finding and punishing perpetrators of crime. Until authorities perceived public and international pressure to show they were investigating a murder because of the high-profile nature of the victim in Daphne Caruana Galizia's case, car bombs were allowed to happen without consequence.

The people who killed Daphne Caruana Galizia using a car bomb had every reason to believe no one would identify them as no one was identified in connection with all the other prior car bombings. That is a consequence of the failure of the State to enforce the law in prior cases that used the same method or *modus operandi*.

3.2. A commissioned murder

Without prejudice to the presumption of innocence of the persons charged with perpetrating Daphne's killing or with being accomplices therein, it appears clear that the alleged assassins acted on the instructions of 'clients' or 'bosses' who engaged them or ordered them to commit the crime. The boss or bosses too will have felt it would be unlikely for them to face any consequence for doing so. In part, it may be presumed that they thought so because murder by car-bomb appeared to be a police-proof method of eliminating enemies.

In part, however, it is a result of a systematic failure of the State to enforce the law in crimes committed by people of influence.

Fourteen days before Daphne Caruana Galizia was killed, Chief Justice Silvio Camilleri said in a public speech:

"The rule of law cannot rule if the laws are not applied and enforced. The laws need to be enforced by the authorities empowered to do so. If the persons in these authorities (the police and the Attorney General) do not do their duties impartially and independently, the rule of law will be undermined. Every system ultimately depends on the persons entrusted with its functioning. Should they fail, we would have just a façade, a façade of distraction and alienation without substance. Should there be punishment for some but not for others, the courts would no longer be the administrators of justice, but become the administrators of injustice."⁵

⁵ <https://cdn-others.timesofmalta.com/ccfd59e4445d05a0abb463995bb6762745fe3798.pdf>



There is a context in which this declaration must be framed which, given the coincidence of time and place, is also the context in which Daphne Caruana Galizia was killed two weeks later.

4. Impunity for the powerful

The Inquiry has heard detailed evidence that shows that the rule of law was being systematically eroded as a result of the consistent failure of the responsible authorities to bring to justice a certain category of criminal. We will not re-examine the evidence or the testimony given to the Inquiry but we will list for illustration some of the most important examples that led to the belief that in October 2017 the rule of law in Malta was in a very questionable state.

4.1. Dismantling the barriers of restraint

Immediately upon his election, Joseph Muscat asked all serving Permanent Secretaries to submit their resignation, even before he appointed the Cabinet of Ministers. This effectively decapitated the public service, preventing it from exercising its function of ensuring institutional memory, administrative continuity and to act as a legal conscience for the political leadership of the administration.

The signal sent from the first hours of the administration was that the civil service was expected not merely to serve loyally the government of the day - which is, of course, its function - but to do so unquestioningly. This is reflected in some of the responses heard by the Inquiry from senior civil servants. The public had a right to expect these officials to recommend restraint in several decisions that are only explained by taking into account the corrupt interests of people outside the public administration and their accomplices within it.

The impact of this overture to Joseph Muscat's government is nowhere more evident than the consequences of the removal of John Rizzo from the position of Police Commissioner. John Rizzo was widely admired for his no-nonsense approach to corruption. He led investigations and brought to prosecution and conviction high profile cases of corruption without regard to any political consequence suffered by anyone in authority.

His handling of cases such as the investigation and prosecution of Judges Noel Arrigo, Patrick Vella and Ray Pace, the investigation and prosecution of corruption in oil procurement at Enemalta, of corruption in licensing at the transport regulator's office



and other cases, will have been a warning to anyone coming into power in March 2013 that John Rizzo would be an obstacle to the execution of a corrupt roadmap.

Evidence heard by this Inquiry shows that Joseph Muscat's government offered John Rizzo any position he might wish, and eventually even a consultancy, as long as he agreed to leave vacant the office of the Police Commissioner.

Given John Rizzo's record, it is hard to imagine that the impunity enjoyed in several of the cases heard by this Inquiry and summarised below could have persisted for as long as they did.

Moreover, this signal cascaded down to lower levels. It is worth pointing out that less than ten days after the 2013 election, on 19 March, the Mayor of Żurrieq, Ignatius Farrugia, and others harassed Daphne in public to the point that she had to seek refuge in a convent. In her testimony, Daphne said that while she was in the convent for protection, the people who chased her were shouting: "Take her out, take her out. Power belongs to us."⁶

4.2. John Dalli

Before the March 2013 general elections, the police signalled their interest in John Dalli who had left office in disgrace, dismissed from the European Commission in October 2012 on the basis of evidence collected by the European Anti-Fraud Office (OLAF). Following further investigation by the Maltese Police, they and the Attorney General considered that there were sufficient grounds to prosecute John Dalli.

Angelo Gafà, then police investigator and now Police Commissioner, testified to the Parliamentary Privileges Committee that Police Commissioner Peter Paul Zammit, who succeeded John Rizzo, ignored the Attorney General's advice to arraign John Dalli.⁷ We are quoting press reports rather than referring to the transcript of this meeting in Parliament (14 January 2015) since the transcript is not yet available on the Parliament's website⁸ although six years have passed.

Submitting a former Finance Minister and European Commissioner to criminal proceedings for corruption would have sent a clear signal that no one was above the law. But the tactical removal of Commissioner John Rizzo made it possible for John

⁶ <https://timesofmalta.com/articles/view/columnist-describes-how-zurrieq-mayor-harassed-her.465265>

⁷ <https://www.independent.com.mt/articles/2015-01-14/local-news/Former-Police-Commissioner-did-not-act-on-A-G-advice-to-charge-John-Dalli-former-investigator-6736128717>

⁸ <https://parlament.mt/en/12th-leg/privileges-committee/?type=committeedocuments>



Dalli to return to Malta free of the risk of criminal prosecution, to be later engaged in a public ceremony as a senior consultant to the government led by Joseph Muscat.

The public record shows that John Dalli was engaged to advise the government on health policy, the area for which he was responsible in Brussels before his forced resignation. The most prominent policy initiative in the health sector was the privatisation of three public hospitals in an initiative mired in scandal and which is the subject of ongoing criminal investigations.

4.3. Pilatus Bank

In the first months after the March 2013 election, the government licensed Ali Sadr Hashemi Nejad, an Iranian national with multiple identities and citizenships, to open a European bank in Malta. In spite of protestations by Malta's authorities that Pilatus Bank was clean as a whistle, investigations by the European Central Bank determined that Pilatus Bank was a money-laundering machine for its clients and the bank was ultimately shut down. But that only happened after the bank's owner was arrested in the USA and charged with bank fraud alleged to have been committed before Pilatus Bank was set up. The charges against him were dropped because of Brady violations after he was convicted by a jury in a federal court. It is a reasonable conclusion, however, that the evidence showed that Pilatus Bank itself was funded from proceeds of earlier crimes.

Daphne Caruana Galizia reported extensively on money-laundering at Pilatus Bank. Her sources, those that were discovered, were subjected to a systematic campaign of intimidation. She was subjected to potentially the most expensive SLAPP suit in the country's libel history.

An inquiry into allegations that Joseph Muscat or his wife used Pilatus Bank to receive and transfer illicit funds did not find evidence of these transactions. It is not the scope of this Inquiry to review the conclusions or re-examine the findings of a magisterial inquiry. It is, however, pertinent to point out that the State denied any and all of Daphne's reporting about Pilatus Bank whether this was about the "Michelle Muscat account" or not. The denials proved untruthful and the bank was shut down.

4.4. The Panama Papers

When Daphne Caruana Galizia exposed Keith Schembri and Konrad Mizzi for setting up Panama companies after they came to office in March 2013, her investigations were flatly denied. When her reporting was independently confirmed by publications made by



the International Consortium of Investigative Journalists, the two were kept in office right up to November 2019.

The government first argued that Daphne's reporting was untruthful. When that argument was no longer plausible, the government argued that there had been no wrongdoing.

Eventually, the purpose of the Panama companies would be exposed because of the discovered connection with Dubai-registered companies owned by Yorgen Fenech, who was also leading the Electrogas project.

Like John Dalli before them, Keith Schembri and Konrad Mizzi faced no material consequence after being exposed, and at the time of the assassination of Daphne Caruana Galizia, had and perhaps still have every reason to believe they would never face consequence at all.

4.5. Henley & Partners

Another 2013/2014 key policy initiative by Joseph Muscat's government was the scheme to sell Maltese citizenship to largely anonymised customers. The scheme, that was not anticipated in Joseph Muscat's party electoral manifesto for the 2013 election, was shrouded in secrecy. A number of beneficiaries were exposed by Daphne Caruana Galizia and others for involvement in illegal or illicit activities that should have made them ineligible for the scheme.

The scheme was operated by Henley and Partners. Its chief executive Christian Kälin threatened Daphne and others with SLAPP suits and this with the tacit, if not overt, approval of government exponents. At least in some cases, the threat of SLAPP suits has had the effect of journalists retracting their stories. In spite of international concern and criticism of the scheme, it remains in place broadly unchanged.

4.6. Fuel and other smuggling

For several years after the outbreak of civil war in Libya, Malta-based operators participated in and coordinated fuel smuggling between Libyan militias and warlords, and Italian organised crime. The smuggling operations used Maltese waters, harbour and infrastructural facilities to conduct their operations.

In March 2016, the United Nations Panel on Libya, reporting to the Security Council, claimed that fuel smuggled from Libya was being transferred between ships on the high



seas and brought to Malta. It stated that the mastermind was a Libyan national, who co-owned a company with a Maltese and an Egyptian national. In a detailed annexe on fuel smuggling, the UN report linked this company to fuel smuggling and pointed out that the Maltese authorities were aware of the company's activities.⁹

Despite this, and despite years of reporting, including by Daphne Caruana Galizia, identifying suspects by name, no arrests occurred and the illicit activities were allowed to persist uninterrupted.

There are indications that the same elements who allowed these illicit activities to go on may have used them to derail the investigations into Daphne's murder and draw the public attention away from the real culprits.

4.7. ITS-site concession

In March 2020, the National Audit Office found that the process to transfer the site formerly occupied by the Institute for Tourism Studies in Pembroke to the DB Group was mired in administrative failures. The NAO reported¹⁰ that the Office of the Prime Minister and the Ministry for Tourism gave conflicting reports with regards to the decision to dispose of the land "each assigning responsibility to the other" (7.3.1). It expressed doubts whether the Public Procurement Regulations were observed (7.3.6) and listed a number of serious failures.

Nevertheless, Parliament did not even discuss these findings, let alone attempted to address them. It is worth pointing out that Silvio Debono, chair of the DB Group to whom this land was transferred, had instituted 19 libel cases against Daphne Caruana Galizia for exposing details of the deal and for criticising it. This in spite of a view widely held in the real estate and construction industry was that the price for the transfer of the land was generous to the extent that it could not be explained by any legitimate commercial logic.

4.8. Vexatious legal action by Chris Cardona

⁹https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_209.pdf

¹⁰ <https://cdn-others.timesofmalta.com/b286f435a57c42f1d2d261f02909304b899896f0.pdf>



When Daphne Caruana Galizia reported that Chris Cardona acted inappropriately while on an official business trip, he retaliated with vexatious libel suits and a paralysing garnishee order. He remained unable to sustain his claim that he had been wrongfully accused and in fact abandoned his case in court, with the result that Daphne Caruana Galizia's reporting stands.

At the time of Daphne Caruana Galizia's assassination, Joseph Muscat, Keith Schembri, Konrad Mizzi, Chris Cardona and others had no reason to believe that any of the innumerable scandals in which they were involved, would have led them to suffer any consequences, and force them to resign. Daphne Caruana Galizia had exposed most of these scandals and brought them to public attention.

The above and other episodes demonstrate in our view that proximity to Joseph Muscat guaranteed impunity to perpetrators of crime or wrongdoing, creating a very dangerous atmosphere for the journalist exposing them.



5. Preventing immediate risk to Daphne Caruana Galizia's life

The Inquiry has been asked to determine whether any State entity knew or ought to have known of, or constituted, a real and immediate risk to Daphne Caruana Galizia's life including from the criminal acts of a third party.

The Inquiry has been provided with ample documented evidence that shows that Daphne Caruana Galizia was systematically threatened. Besides this, an enabling environment was created, to which several people holding public office actively contributed, that led to her isolation, dehumanisation and annihilation. This manifested itself on several levels.

5.1. Systematic threats initiated by people in positions of political power

The political leadership of the country – from Joseph Muscat down – systematically branded Daphne Caruana Galizia a liar and a fabricator of fiction, and that for partisan reasons she misrepresented this fiction as truth. These political leaders repeatedly and falsely attributed to Daphne Caruana Galizia opinions or statements she did not hold or make or twisted quotes out of context to miscast her as driven by partisanship or even by unbridled and irrational hatred. People in positions of political power who were exposed by Daphne Caruana Galizia did not respond substantively to her accusations but instead led a dehumanising charge against their accuser.

These threats continued after Daphne's assassination with regards to developments related to this murder. One example is the behaviour of Josef Caruana, then an officer within the Prime Minister's private secretariat. He was found by the Commissioner for Standards in Public Life to have breached the public sector's code of ethics when he published on Facebook the names and ID card number of 304 academics who signed a petition at the height of the December 2019 political crisis. The Commissioner stated that Josef Caruana imparted an ominous 'we know who you are' warning to the academics who freely expressed their call for Joseph Muscat to resign.¹¹

¹¹<https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K018.pdf>



On a separate occasion, Josef Caruana lent his credibility as a senior official in the prime minister's office, a former editor of a newspaper and a Labour Party candidate for a seat in the European Parliament to spread the slander that Matthew Caruana Galizia may have deliberately participated in the murder of his own mother or conspired to hide evidence. He later retracted this but not before the damage was done.

The suggestions that Daphne was murdered by her sons or that her family hid evidence from the police in order to pervert the course of justice is habitually alluded to by government and Labour Party exponents and repeated by their followers.

5.2. Mobilisation of the media

The dehumanising campaign initiated by political leaders was sustained by the media owned or controlled by the senior political figures concerned. Overwhelmingly this pressure came from the media owned and controlled by the Labour Party. But it was also true for some time of the media owned and controlled by the Nationalist Party whose former leader was also the subject of Daphne Caruana Galizia's investigations and whose response to the accusations was in the same vein as that more usually expected from the Labour Party.

The Public Broadcasting Services (PBS), the national broadcaster in Malta, contributed to Daphne's isolation. While she was among Malta's main and most followed journalists, the national broadcaster did not investigate or follow the stories she broke, such as the Panama Papers and the Pilatus Bank. At best, PBS operates as the government's marketing department that sometimes lends itself to become a partisan tool to neutralise voices and views that are in conflict with the government's.

TV media were used to stalk Daphne Caruana Galizia, portray her as awkward or as hiding from scrutiny. They lampooned her, persecuted her, falsely accused her and her relatives and sought to isolate her.

5.3. Online trolling

This long-standing reality that Daphne Caruana Galizia had had to face for decades had been aggravated in recent years by massive and coordinated online trolling, unbridled and unrestrained hatred that completed her dehumanisation in the eyes of many people. This to the extent that even when she was killed by a car bomb, her more extreme detractors publicly rejoiced in her death or accused her own children of killing her, fully expecting, and in many cases obtaining, the approval of their online peers.



Prior to Daphne's assassination, her characterisation as a 'witch' or any one of any number of dehumanising attributes attempted to strip her of basic human dignity, including her right to privacy, family life, and property.

On 30 May 2017, four days before the election, Member of Parliament Silvio Schembri posted on Facebook that the upcoming election was the instrument whereby the Maltese people were going "to get rid of people like (Matthew Caruana Galizia) and his mother Daphne."¹²

Two days after the election, on 5 June, a meme shared on Facebook depicted Daphne Caruana Galizia with satanic horns on a mock memorial card for her imaginary funeral with the text: "With great happiness we welcome the death of Daphnie (sic) Caruana Galizia, known as the witch of Bidnija...who leaves to mourn her loss no one. Oh Lord, give her that which she gave to others."¹³

Daphne had been so dehumanised that within few hours after her murder, police sergeant Ramon Mifsud stated publicly on Facebook: "Had wara had tasal ta kullhadd demel!!!!!! Feeling happy." (Sic). (What goes around comes around, cow dung! Feeling happy.) He added a smiling face emoji for good measure. Although suspended, in line with the impunity that is pervasive in all institutions, Sergeant Mifsud was still receiving half his salary three years later.¹⁴ We do not know if that has changed.

The ultimate dehumanisation came with her assassination.

It is worth pointing out that the unleashed dynamics continued after her assassination. Seven months later, The Shift published the findings of its investigation into six of the biggest pro-Joseph Muscat Facebook groups – numbering 60,000 members – finding coordinated attacks on anti-corruption activists and Daphne Caruana Galizia's memory and her family.¹⁵

Besides the prime minister himself, at least eight senior staff working for him were members of these Facebook groups replete with violent comments, including the distribution of anti-corruption activists' personal details and calls for them to be physically attacked, sexually assaulted, and stalked.

¹² <https://twitter.com/andazz/status/1203245250296332288/photo/1>

¹³ <https://theshiftnews.com/2018/05/24/behind-the-scenes-how-labour-online-groups-reacted-to-the-assassination-of-daphne-caruana-galizia/>

¹⁴ <https://lovinmalta.com/news/police-sergeant-who-celebrated-caruana-galizias-murder-still-on-payroll-despite-never-turning-up-for-disciplinary-sittings/>

¹⁵ <https://theshiftnews.com/2018/05/14/investigating-joseph-muscats-online-hate-machine/>



The senior staff includes Keith Schembri (then Prime Minister's Chief of Staff), Konrad Mizzi (then Minister for Tourism), Chris Cardona (then Minister for the Economy), Glenn Bedingfield (MP and then a consultant to the Prime Minister), Neville Gafà (then a consultant to the Prime Minister), Tony Zarb (consultant to the Prime Minister), Rosianne Cutajar (MP and then communications coordinator in the Prime Minister's Office), and Robert Musumeci (then a consultant to the Prime Minister's Office).

5.4. What was the duty of the State in this context?

- The State had the duty to investigate and act on the revelations exposed by Daphne Caruana Galizia in a timely manner, without any consideration of the power and influence enjoyed by the perpetrators of the crimes she documented.
- The State had the duty to ensure that as a journalist and an active citizen providing a service to the country with her journalism and activism, Daphne Caruana Galizia was protected from any retribution.
- The State had and has the duty to investigate threats to Daphne's life, family and property, to prosecute perpetrators of acts of intimidation and violence against her over the years including acts of vandalism on her property, which in one case at least was life-threatening, and the killing or harming of her dogs.
- The State had the duty to ensure that broadcasters, including broadcasting media owned by political parties, cover matters of political controversy with due impartiality as is required by the Constitution. That would have included allowing Daphne Caruana Galizia's point of view to be broadcast along with the attacks on her credibility by people she reported on.
- The State had the duty to treat Daphne Caruana Galizia and her family fairly and not subject them to retribution such as the premature and unjustified punitive redeployment of one of her sons in the diplomatic service.

The State failed in all of these duties before Daphne Caruana Galizia's assassination in spite of the fact that institutions were fully aware of the facts described here. These are the facts that led Chief Justice Silvio Camilleri to express his concerns in his speech of October 2017.¹⁶ These are the facts that created the environment in which Daphne Caruana Galizia was killed a few days later.

¹⁶ <https://judiciary.mt/en/Documents/Documents/CJ%20Speech%202017.pdf>



6. Measures that could have avoided the risk to Daphne Caruana Galizia's life

The Inquiry is also being asked to determine whether the State failed to take measures within the scope of its powers which, judged reasonably, it might have been expected to take in order to avoid the risk to Daphne Caruana Galizia's life.

6.1. Inadequate investigation of prior crimes

As has already been pointed out, the State did not investigate the car bombs that occurred before the killing of Daphne Caruana Galizia, at least with comparable vigour as was done after Daphne Caruana Galizia was killed.

6.2. Independent assessment of risk

There is nothing to suggest the State has any viable ability, or protocol in place, to assess and decide on the risk to the life and limb of journalists, their families and their property, or that it can take effective decisions to provide protection autonomously from anyone in power who may be inconvenienced by such protection.

There are at present 24 Italian journalists who live under armed protection. The decision to provide them with protection is taken by law enforcement agencies without reference to the government and under the oversight of an independent parliamentary commission. Journalists are assured that their escorts act independently of the people they are investigating – including political and government figures – and they are therefore also assured that their journalistic independence is not threatened by State-imposed shackles placed on them under the pretext of providing for their safety.

6.3. Failure to provide appropriate security

The Maltese State failed to provide Daphne Caruana Galizia either with appropriate security that could have kept her safe or any form of security that would have been granted to her independently of the intervention and supervision of the political figures she was investigating. She was unsafe and she was made to prefer to remain unsafe in order to be able to conduct her journalism with the confidentiality her work demanded,



to protect sources and to prevent the people she would expose from covering their tracks.

We emphasise that we see no evidence that the State has recognised these failures or has demonstrated any intention to address them.

6.4. The State and independent media

Critical journalists and activists continue to be the target of personal attacks from political leaders they expose or criticise. The public broadcaster acts as if it is the government's public relations office. TV stations owned by a political party are exploited as a tool for persecution and intimidation of critics, with citizens exposed to political lynching as a retributive consequence of having the temerity to protest within the limits of the law. Social media trolling remains systematic, centrally coordinated, as vile as ever and almost never prosecuted.

Although some corrupt politicians lost their political jobs, any criminal consequence remains highly unlikely and they – and others who aspire to replace them – appear reasonably confident in their continued impunity.

Journalists remain exposed to the risks that led to the assassination of Daphne Caruana Galizia. Providing journalists and activists with security would, as the government sees it, lend them credibility, which the government will not countenance.

The fundamental difference between the reality on the eve of Daphne Caruana Galizia's assassination and the present moment is that civil society has started to find its voice and some journalists and activists have stepped up to continue her work, thereby reducing the isolation to which any journalist acting alone risks being made a victim.

6.5. International interest

This new collegiality and solidarity are especially pronounced because of the international interest that Daphne Caruana Galizia's assassination attracted, which very likely surprised the perpetrators of the crime. Journalists and activists concerned with human rights, focused their attention on the state of play in Malta, making the prospect of a repetition of what was done to Daphne rather unlikely in the foreseeable future. Or so we hope.



Where the Maltese State has failed and continues to fail, international activism, solidarity and journalism have stepped in to mitigate the risks that in Daphne's isolation led to her killing.



7. Effective criminal law provisions

The Inquiry is required to ask whether the State had and has in place effective criminal law provisions and other practical means to avoid the development of a *de facto* state of impunity through the frequent occurrence of unresolved criminal acts and to deter the commission of serious criminal offences, backed up by law enforcement machinery for the prevention, suppression, investigation and punishment of serious breaches of the law.

7.1. A mafia crime

If we were to apply Italian criminal law to the killing of Daphne Caruana Galizia, the assassination would be branded a terrorist act “*di stampo mafioso*”. The killing of Daphne Caruana Galizia was not only intended to terminate her life. It was also intended to replace her work and her activism with the silence that would allow the people who decided on her killing to continue to thrive unimpeded. They wanted to inflict fear on sources, journalists, activists, opposition politicians and anyone who might have continued the work that she was doing.

We use the term ‘mafia’ advisedly. Even in countries with decades of experience of fighting the mafia by whichever name it would be calling itself in their context, the authorities are slow to recognise the threat of organised crime.

The intuitive tendency of public authorities is to underestimate the significance of crime syndicates. It is easier to see episodes of crime as isolated incidents rather than as manifestations of an invisible but giant entity that uses crime to pursue complex interests.

The mafia is presumed not to exist, to be a myth fabricated by the delusional self-importance of criminals or by journalists with a taste for the dramatic. Where its existence is reluctantly acknowledged, the mafia is either presumed to be foreign and alien (‘it only happens in Sicily’), or romantic and admirable (mostly due to the glorification of the noble criminal in cinema), or petty and ordinarily violent (and therefore unrelated to sophisticated racketeering involving complex public procurement and the licensing of high-yield economic activities).

We argue that the evidence before this Inquiry, the evidence heard in ongoing criminal proceedings, and the investigations of local and international journalists, demonstrated



convincingly that there exists in Malta a crime syndicate that brings together people in business, in politics and in crime that broker, arrange, transact and agree public and private contracts using bribery or coercion.

The mafia thrives when its existence is disputed or ignored and when authorities do not feel the need to develop the legislative and enforcement framework to fight an enemy they do not accept exists.

Misguided denial of the existence of the mafia is by no means a uniquely Maltese problem. European police forces outside Italy, including ours, struggle with the concept when they are confronted by Italian colleagues chasing Mafiosi throughout the continent.

However, the extensive mafia infiltration into our country because of the necessarily vulnerable nature of our porous economic activities such as financial services and online gambling, and the association of international mafia actors with local partners and accomplices, has made Malta a dangerous place for people resisting organised crime.

The need to address this shortfall is, in our view, desperately urgent.

7.2. Anti-mafia legislation

Where anti-mafia legislation exists (such as Italy's 416bis¹⁷ provision in that country's criminal code and the Racketeer Influenced and Corrupt Organisations Act¹⁸ in the USA), a mafia-type organisation is defined as an organisation whose members use the power of intimidation deriving from the bonds of membership, the state of subjugation and conspiracy of silence that it engenders to commit an offence, to acquire direct or indirect control of economic activities, licenses, authorisations, public procurement contracts and services or to obtain unjust profits or advantages for themselves or others, or to prevent or obstruct the free exercise of vote, or to procure votes for themselves or others at elections.

Membership of such an organisation is in and of itself a punishable offence even if a Mafioso cannot be directly linked to the execution of any crime committed by Mafiosi on the organisation's behalf. Penalties are aggravated if the members of the organisation are found to have access to weapons or explosives for the purposes of furthering the aims of the organisation.

¹⁷ <https://www.brocardi.it/codice-penale/libro-secondo/titolo-v/art416bis.html>

¹⁸ https://en.wikipedia.org/wiki/Racketeer_Influenced_and_Corrupt_Organizations_Act



The absence of the legal option to pursue component members of an organised criminal organisation whose membership and association can be proven, even if their direct involvement in the commissioning or execution of a specific crime perpetrated on behalf of that organisation cannot be proven, risks allowing people who should rightly be held responsible for what happened to Daphne Caruana Galizia to get away without giving account to their action.

There is no doubt that murder – the termination of Daphne Caruana Galizia’s life – is the gravest crime that requires the gravest consequence. But this murder cannot be separated from the corrupt public procurement, the money laundering, the bribery and the voting manipulation that Daphne was killed for exposing. Daphne was killed to allow the other activities of this organisation to continue unhindered. It is not just people who are proven to have been directly involved in Daphne’s murder who should suffer consequences, but the punishment should extend to all those whose illicit profits and electoral clout were protected as a result of her elimination.

In seeking to prosecute this organised criminal conspiracy piecemeal, by picking on narrow elements and manifestations of the action of the mafia, without regard to the existence of the mafia in and of itself, allows the conspiracy to survive relatively unscathed.

For as long as our laws deny the existence of the mafia and fail to recognise that its mere existence is a threat to the viability of the State itself, we will have no way of addressing the violent scam to which the country is subjugated.

This is not about someone killing a journalist because she was about to expose their secrets. Or rather it is not just about that. This is about an organisation that systematically and secretly manipulates the relationship between private interests and the public sector to profit from those interests.

7.3. Federal law enforcement for federal crimes

Organised crime is globalised and within the European context exploits freedoms of movement of people and money. Criminals benefit from the combination of the integration of the European market and the fragmentation of its policing and justice.

The current structures of cooperation depend on the goodwill and cooperation of local forces. Certainly, in the case of the assassination of Daphne Caruana Galizia, this was not always



forthcoming. Europol's former executive director lamented in diplomatic language that cooperation of Malta's police with Europol had "some room for improvement".¹⁹

This must be seen in the context of the subsequent discovery that top officials of Malta's police had direct relationships with suspects.

The Italian press²⁰ reported that for years prior to his arrest in Malta, Italian police sought to notify Yorgen Fenech of an investigation into match-fixing he is believed to have been part of. All notifications, however, were not served because the Maltese police would return correspondence addressed to Yorgen Fenech as his address was 'not known'.

Malta licences more than 25 international banks processing billions of euro. It issues thousands of passports to third-country nationals that do not live and barely visit the country. It hosts a large portion of Europe's gaming industry. The potential victims of crimes using these tools are often outside of Malta.

We would argue that to keep up with federalised crime, European law enforcement and criminal justice should also be federalised. Cross-border crime should be defined as federal, empowering federal police to investigate, if necessary without reference to local authorities and charged in front of federal courts.

We do not underestimate the political complexity of such a proposal but lack of political imagination rolls out the red carpet for sophisticated crime, particularly financial crime.

7.4. Unexplained wealth

Laws against financial crime, including bribery and corruption, are notoriously difficult to enforce because of the tools available to criminals to cover their tracks. However, anyone displaying considerably more wealth than their explained income can justify must be the beneficiary of income they cannot justify. We mention by way of illustration the case of Alfred Degiorgio who stands accused of murder in the case of Daphne Caruana Galizia. He has been able to acquire cars and boats and to gamble at local casinos considerable amounts of cash, in spite of the fact that he has been officially unemployed for decades.

¹⁹ <https://www.theguardian.com/world/2018/apr/27/europol-warns-of-hurdles-in-daphne-caruana-galizia-case>

²⁰ <https://www.lasicilia.it/news/catania/305936/giornalista-uccisa-a-malta-mandante-coinvolto-in-un-inchiesta-a-catania.html>



Our legislative framework is not equipped with measures that in the UK are described as “unexplained wealth orders”, a type of court order issued by a British court to compel a target to reveal the sources of their unexplained wealth. These were introduced by sections 1-2 of the Criminal Finances Act (2017) and are governed by sections 362A-362T of Part 8 of the Proceeds of Crime Act (2002). Persons who fail to account are liable to have assets seized after an enforcement authority, such as the National Crime Agency, makes a successful appeal to the High Court.

The power of unexplained wealth orders in fighting money laundering lies in their reverse onus principle. We understand that Malta’s government has considered adopting a similar provision in our legislation but then decided to discard it or postpone it indefinitely.

We have reason to believe this decision was taken by persons within the government and others close to it because they would not be able to reply appropriately to an unexplained wealth order. This belief is supported by reports that members of the Labour Parliamentary group are refusing to comply with demands by the Commissioner for Standards in Public Life for further information about their assets and income than the minimum that is statutorily required in their periodical declarations.²¹

7.5. Defeating or obstructing the course of justice

There should be a clear deterrent to prevent people in political authority from using and abusing their power to prevent investigations and prosecutions into their conduct or their political associates and allies.

It should be a specific offence for a person in public office to seek to obstruct the police, prosecutors, investigators or other officials such as the National Auditor, the Ombudsman or the Commissioner for Standards in Public Life from carrying out inquiries of the nature such as the present one.

Obstruction can include perjury, making false statements to officials, witness tampering, jury tampering, destruction of evidence and others. Obstruction should also apply to overt coercion of court or government officials via the means of threats or actual physical harm, and also apply to deliberate sedition against a court or law enforcement official to undermine the appearance of legitimate authority.

A possible model could be Section 139 of the Canadian criminal code.²²

²¹ <https://timesofmalta.com/articles/view/mps-refuse-to-divulge-families-assets.831823>

²² https://en.wikipedia.org/wiki/Perverting_the_course_of_justice



Had we had these legislative tools in place, law enforcement would have been empowered to act on several occasions before and after Daphne Caruana Galizia was killed. There have been several episodes of suspect destruction of public records, the use of private email accounts for official business to undermine the audit and verification process, refusal to give evidence or contradictory - and therefore at least in part necessarily opaque - evidence and other measures taken by Joseph Muscat and people close to him to circumvent obstacles to the corrupt initiatives they undertook.

As in several other jurisdictions, we think it should be a criminal offence for a public official to conduct official business using private means of communication, such as using private email accounts or private messaging tools.

These recommendations and others in this section carrying suggestions for legislative reforms will no doubt fractionally overlap with existing, and under-utilised, provisions in our Criminal Code such as specific provisions on misappropriation, malversation, obstructing or assaulting public officers in the course of their duty and other provisions covered in specific administrative laws.

Needless to say, the introduction of such legislative improvements will require detailed research and extensive consultation.

7.6. Abuse of and misconduct in office

Our legislative framework has also proved weak in the fight against corruption. It should be an offence to spend public funds irresponsibly, wastefully or in a manner that benefits private interests over public interest or a contribution to the common good.

The manner in which Joseph Muscat's government used public funds to compensate potential witnesses of corruption in order to secure their silence or continued complicity should, rightly, be punishable. We mention, by way of example, a contract granted by order of Joseph Muscat between the tourism agency and Konrad Mizzi as compensation for his resignation in disgrace from the office of the minister responsible for that same agency because he was exposed for unrelated corruption scandals.

Although the contract has been deemed unacceptable by both Prime Minister Robert Abela and the Commissioner for Standards in Public Life, neither Joseph Muscat nor Konrad Mizzi has faced any form of consequence. Parliament's Speaker recently ruled that once Joseph Muscat is no longer an MP the matter cannot be taken any further by Parliament's Committee for Standards in Public Life. This consolidated further the culture of impunity when power is abused for corrupt purposes.



It is our view that abuse of office should be a specific offence that, except when an even graver crime has been committed, attracts appropriate punishment when a public official, in carrying out their responsibilities, breaches rules of conduct provided in law or acts beyond the powers given to them by law or fails to abstain in cases in which they are conflicted or seeks to obtain for themselves or others an unfair or undue advantage or cause anyone unfair disadvantage.

A possible model could be Article 323 of the Italian criminal code.²³

In English law, misconduct in public office is an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.

The offence is committed when a public officer acting as such wilfully neglects to perform their duty and/or wilfully misconducts themselves to such a degree as to amount to an abuse of the public's trust in the office holder without reasonable excuse or justification.²⁴ The evidence heard by this Inquiry suggests to us that the criteria for this offence have been satisfied numerous times in the past few years.

7.7. Campaign finance

Within this context, the underlying and unwritten constitution of our power structures remains unregulated and fundamentally vulnerable to corruption. Political parties are only in small part, funded by the State. The bulk of their resources is obtained from private funding. Private funding of political parties is a reflection of free expression but the poor regulation and oversight that exists forces parties into dependent relationships with their contributors.

A peculiar local feature of the money that big business donates to political parties is that it is rarely motivated ideologically or even in support of any programmatic consideration to speak of. Business magnates claim that they donate “equally” to both political parties, making their payments more like an informal tax or protection money than the free expression of political opinion.

²³ <https://www.brocardi.it/codice-penale/libro-secondo/titolo-ii/capo-i/art323.html>

²⁴ <http://www.uniset.ca/other/css/20051QB73.html>



Sandro Chetcuti, head of the Malta Developers' Association, testified to this Inquiry that he donates to both parties "in equal measure,"²⁵ while Nazzareno Vassallo, one of Malta's major contractors, declared that "for the past 40 years I've been asked for donations by both parties and I helped both equally."²⁶ Within this scenario, it is difficult not to consider such 'donations' as investments or loans that must be repaid with considerable interest, naturally funded by the taxpayer.

This is also the case in the personal relationships between individual candidates for public office and their private funders. Parliamentary candidates have no public funding whatsoever and depend on their own personal wealth or contributions made by donors in a grey poorly regulated system that is not overseen in any material sense by any independent agency.

Corruption is entrenched in the very foundations of our democratic system and fundamental reform will require decision-makers (Parliamentarians) to re-examine the very existence of the system that has given them political power.

7.8. Whistleblower protection

In the context of inherent secrecy for reasons of fair competition, particularly in public procurement, credible evidence of wrongdoing can only be secured with the voluntary cooperation of people breaching confidentiality to provide the press, the public, and eventually the authorities, with evidence only they are privy to.

Whistleblowers are by definition vulnerable. They are liable to lose their income and suffer the consequences of breaches of confidentiality and secrecy rules. They are also likely to hurt their employment prospects no matter how noble their sacrifice.

Whistleblowers are also imperfect people. For a time at least they may have been complicit in the wrongdoing they decide to expose. Their motivation for exposing their former colleagues or superiors may be unsavoury. This exposes them to attacks on their credibility and character in order to discredit the value of the information they provide, however truthful.

Existing whistleblower legislation only grants legal protection to witnesses if the government agrees to grant it. This has been exploited by Joseph Muscat's administration that declined to grant protection to witnesses who could expose its

²⁵<https://lovinmalta.com/news/malta-developers-head-confirms-he-donates-to-both-major-political-parties-in-equal-measure/>

²⁶ <https://timesofmalta.com/articles/view/parties-ask-everyone-for-donations.362042>



wrongdoing. The government instead conducted full-scale campaigns of intimidation to silence them. This has extended to the persecution of a witness outside the country using the apparatus of the State for attempts at extradition. In the prominent case of Maria Efimova, a whistleblower in the Pilatus Bank scandal, it was only thanks to the intervention of the courts of another EU Member State that she is, for the time being, protected from punitive measures taken against her in the Maltese courts by the former employer she exposed and by Joseph Muscat.

We recommend that the transposition of the new EU Directive on the protection of whistleblowers²⁷ is used as an opportunity for credible reform in this sector. We are dismayed that the government has just announced it will only transpose the Directive at the last possible moment allowed (December 2021) in contrast with other EU member states that have started the transposition process in earnest. We are also frustrated that the government has not yet published any draft legislation, let alone commenced material consultations with civil society on the subject.

7.9. Fighting corruption

The government shows a remarkable lack of enthusiasm for reforms to fight corruption within its ranks. We refer the Board to findings by the Council of Europe's Group of States Against Corruption (GRECO) that has made recommendations²⁸ that in great part remain ignored. They should be restated as their adoption could help reduce the toxicity of the environment in which Daphne Caruana Galizia, an anti-corruption journalist, ended up assassinated.

GRECO recommended:

1. *“that measures be taken to solve the legal situation of persons of trust and to limit the number of such discretionarily appointed officials to an absolute minimum, and that those who would perform top executive functions be required to comply with the highest standards of integrity, including as regards rules of conduct, conflicts of interest, declaratory obligations, and supervision by the Commissioner for Standards in Public Life.”*

Parliament is currently debating a law “to solve the legal situation of persons of trust” but we fear this will be a measure in breach of Article 110 of the Constitution, effectively trying to legitimise through an illegitimate act of parliament the current system of using public sector employment to create a tax-payer-funded caste who operate in fertile ground for corruption, clientelism

²⁷ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1937>

²⁸ <https://rm.coe.int/grecoeval5rep-2018-6-fifth-evaluation-round-preventing-corruption-and-/168093bda3>



and the abuse of citizens' rights. The Commissioner for Standards in Public Life has criticised the draft law and warned that it will have the result of reducing his competence of supervision and diluting further standards of integrity, the opposite of the intended effect of GRECO's proposals.

2. *“that on the basis of proper risk assessments an integrity strategy be developed and implemented in respect of all pertinent categories of persons entrusted with top executive functions;*
3. *“that i) more robust and systematic awareness-raising measures (e.g. refresher training and workshops, guidance documents, written reminders) be provided to all persons entrusted with top executive functions, at the start of their term and at regular intervals throughout their term and ii) that information about the integrity requirements for public officials and their observance is made readily available, including by posting such information on the websites of public authorities;*
4. *“dissociating the functions of confidential advice and of enforcement by the Commissioner on Standards in Public Life, entrusting other persons or bodies with the former;*
5. *“i) that the implementation of the Freedom of Information Act of 2008 be subject to an independent and thorough analysis and ii) that in light of the findings, additional measures be taken so that exceptions to the rule of public disclosure are interpreted and applied more specifically and narrowly;*
6. *“to provide for the disclosure, as a rule, of governmental draft legislation and other texts of particular public interest, accompanied by an appropriate level of consultations and in that context (i) that only specific and limited exceptions to this rule are possible and clearly regulated and (ii) that the outcomes of public consultation procedures are published online in a timely and easily accessible manner;*
7. *“that rules be laid down to govern (i) contacts between persons with top executive functions and lobbyists/third parties that seek to influence the public decision-making process and (ii) the disclosure of such contacts and the subject-matters discussed;*
8. *“that a strategy be developed and implemented in order to increase the capacity, authority and public accountability of State institutions entrusted with regulatory and control functions in relation to the management of public resources;*
9. *“that the system for managing conflicts of interest be supplemented with clear provisions and guidance regarding i) a requirement upon persons exercising top executive functions to disclose conflicts ad hoc and ii) clear procedures,*



responsibilities and deadlines for solving situations of conflict of interest, including following complaints by the public or other institutions;

10. *“(i) that the current provisions on incompatibilities and side-activities applicable to persons with top executive functions be made more coherent and robust for all categories of such persons, with clearer and stricter limits on permissible parallel activities, and (ii) that specific procedures, responsibilities and deadlines for solving such situations, upon ad-hoc disclosures and/or complaints by the public or other institutions be introduced;*
11. *“that the current regime of asset and interest declaration be further developed by (i) extending to persons entrusted with top executive functions, including persons of trust who are associated with a minister’s decision-making, the duty to file a detailed declaration with the Commissioner for Standards in Public Life, and considering including information on the spouses (it being understood that the latter information would not necessarily be made public), and (ii) ensuring that all declarations are made systematically, easily and publicly accessible on-line;*
12. *“to ensure (i) that asset and interest declarations of persons entrusted with top executive functions are subject to effective and proactive checks by the Commissioner for Standards in Public Life and that the institution is therefore provided with adequate legal, human and other means and required to report publicly and regularly about its work (ii) that clear consequences and effective, proportionate and dissuasive sanctions are applicable to guarantee the accuracy and correctness of information declared as well as the actual filing of a declaration, including the possibility to refer a matter to a criminal investigation;*
13. *“(i) that the criminal investigation and prosecution system in relation to persons entrusted with top executive functions be reformed along the lines identified by the Venice Commission in its assessment from December 2018, giving a central active role to the prosecutors and without retaining the parallel jurisdiction of the Permanent Commission against Corruption and (ii) that it be made clear for criminal investigative bodies that the launching of an inquest or investigation can be based on reasonable suspicion and does not require that evidence is readily submitted to them;*
14. *“that i) legislation be issued giving criminal investigation bodies the authority to seek and use special investigative techniques (such as wiretaps and other similar measures) in the investigation of corruption offences, empowering the judicial authority to authorise their use, and making the evidence obtained thereby admissible in court while respecting the case-law of the European Court of Human Rights and that ii) it be made clear to all authorities involved in the investigation of corruption that the evidence lawfully obtained by such means is admissible evidence in court;*



15. *“(i) that all persons with top executive functions be subjected, as a rule, to the supervision of the Commissioner for Standards in Public Life, who should be equipped with the appropriate means and possibilities to conduct inquiries and to propose effective, proportionate and dissuasive sanctions, and (ii) that the jurisdiction of the commissioner extends to on-going situations even where these result from actions which predate the enactment of the Standards in Public Life Act.”*

We are aware of no evidence of any government action to implement these measures with any seriousness, in spite of the fact that given the country’s experience over the last 8 years, these reforms should rightly be a matter of priority.

7.10. Inadequate institutional framework

The inadequacy of our legislative framework is then exacerbated by the weakness of the Maltese State to enforce even the laws that we do have, for a crime of this scale and significance.

The Inquiry has heard evidence of collusion, or at least unacceptable and compromising proximity, between the leadership of the police investigation into the commissioning of the murder and the person eventually charged for allegedly masterminding the assassination: the case of former Deputy Police Commissioner Silvio Valletta. This proximity existed in the environment of impunity described above, which is aggravated by the involvement of senior police officers. The fact that some of that unacceptable proximity was exposed suggests to us that certain elements of the police are far more complicit in crime than has been openly established. The ongoing investigation into the conduct of former Police Commissioner Lawrence Cutajar is relevant in this regard.

This, coupled with the openly confessed kid gloves with which Attorney General Peter Grech treated suspects of white-collar crimes during his tenure, paints a horrific picture of indifference to the law and to a State-funded protection regime for the mafia.

However, even allowing for the (remote) possibility that everyone at the police, at the prosecution service and in the courts fulfils their duty with a conscience, the legal and institutional framework is wholly inadequate for the present circumstances.

If we had anti-mafia legislation, we could introduce specific measures that empower law enforcement to keep up with the special challenges crimes of this nature and scale present. We do not suggest that anyone’s human rights, including the rights of persons charged with mafia crimes, should be for any reason compromised or suspended. But we do suggest special security provisions during detention that would prevent Mafiosi



from continuing to conduct their criminal affairs from within prison. We also feel that our laws and systems should provide for secure detention and trial facilities. We should consider improving the transparency of criminal proceedings of this nature by televising them. We should consider procedures that allow the police in specific, well-defined cases, and under judicial oversight, to extend the time of arrest of suspects before charging them beyond the 48-hour limit.

We have in mind the spectacle of alternating arrests and release of Yorgen Fenech in November and December 2019; the cramped and impractical set-up of the courtrooms in this case with the victim's family sharing seats with supporters of the accused and limited access to the public; the public good that would have been achieved had the present Inquiry been televised; and the compelling evidence that suggests that persons detained in connection with the killing of Daphne Caruana Galizia remain in a position to negotiate their own interests outside the scope of the legal process.

We are also concerned about the safety of magistrates, court officials, prosecutors, police officers, lawyers, witnesses and journalists working on this case. Threats, online and in person, have been made that, given the stakes, must be taken seriously. We are concerned also that apart from the safety of these public servants, these threats could be having a chilling effect on officials' ability to fulfil their duties. Special anti-mafia proceedings should be designed to empower the State to ensure justice is served on all criminals, however organised or dangerous.

7.11. "The country deserves justice"

Prime Minister Joseph Muscat said soon after the killing of Daphne Caruana Galizia that "the country deserves justice".²⁹ The comment was in the same vein of remarks he made elsewhere that this had been an outrage to Maltese democracy and free expression.

These words framed the importance of this crime in the correct context. No doubt as with any other crime, the victim and her mourning relatives deserve swift and firm justice. Those accused of perpetrating the crime are entitled to timely and fair justice.

But this is not "any other crime". This was an attack on the fabric of society and words alone do not cut it.

Malta's democracy and free expression continue to be exposed to this outrage for as long as the country does not get the justice it deserves. We have here more than a

²⁹<https://timesofmalta.com/articles/view/shock-outrage-and-concern-reactions-to-caruana-galizias-murder-pour-in.660580>



murder, although it is that too, and we do not propose for a moment to diminish the right Daphne's family have for justice after their loss and the unjustifiably prolonged suffering they continue to be subjected to. But we also have an existential challenge to our democracy to address. Democracy is meaningless if it is unable to protect free expression and to serve justice on those who would suppress it.

And yet, in spite of the extraordinary nature of the crime, the State has dealt with this case in the most ordinary manner. The inquiring magistrate worked on this case on a part-time basis as though it were like any other. Upon the Executive's intervention, the inquiring magistrate was changed mid-stream. The compilation of evidence against the accused is tortuously prolonged and presiding magistrates carry the duty along with all their remaining ordinary activities and heavy caseloads. Proceedings are heard at the ordinary pace of ordinary cases, without regard to the scale and consequence of the case, which is anything but ordinary.

The State, in fact, continues to act as if it is not indeed fighting an existential challenge from a mafia-state within it.

To defeat the mafia and to frustrate its activities - whether violent, such as the murder of a journalist that exposes it, or not, such as the corruption, the manipulation of public procurement and the infiltration in public institutions to name a few examples that are directly relevant to this case - we feel there is a very strong case for dedicated magistrates, equipped with investigative and prosecutorial resources, able to work on their own initiative, without external dependencies, and focused exclusively to bring prosecutions to dedicated anti-mafia courts.

We also underline the importance of victim restitution. Organised crime saps the resources of the community by exploiting and over-exploiting land, the landscape, air and the economic resources that should support and enhance the wellbeing of the community instead of lining the pockets of the greedy. Proceeds from crime should be confiscated and redistributed within the communities from which the mafia had taken them away, by using those funds to fund initiatives by local government, churches and NGOs working to mitigate the environmental, social and economic hardship suffered by the community at the hands of organised crime.

We acknowledge that the killing of Daphne Caruana Galizia is in many respects unprecedented. That said, the country is not altogether unfamiliar with at least the attempted assassination of an individual which the perpetrators hoped would eliminate obstacles to their pursuit of illicit gains. And the country could have perhaps learnt more lessons from past failures to bring to justice perpetrators of violent, politically-motivated crimes.



But even if we were to allow for the fact that the killing of Daphne Caruana Galizia presented the State with a challenge for which its institutions were found structurally wanting, we have seen no evidence of any effort to scale up the State's ability to respond.



8. The utility of public inquiries

We would, by way of substantiating our argument in this respect, refer to this Inquiry itself. The setting up of this Inquiry happened in spite of the government, rather than because of it. Daphne Caruana Galizia's family, with the support of civil society and the independent media, campaigned for two years for the Inquiry's setting up and faced forceful and determined resistance by the government and other State agencies.

8.1. This Inquiry in context

The interest of international agencies was crucial in forcing the government to launch the Inquiry. In this case, the direct intervention of the Parliamentary Assembly of the Council of Europe combined with significant public protest that forced Prime Minister Joseph Muscat to resort to any means of political survival he felt was available to him, brought to an end two years of obdurate recalcitrance by the government.

This Inquiry has, after its inception, sustained continued pressure from the government with a view to limiting the extent of its competence more narrowly than its terms of reference and to pressure it to fold itself earlier than the time it needed to fulfil its obligation.

The experience of this Board is direct evidence, on top of everything else, of just how unwilling the government has been to permit the State to react appropriately to the killing of Daphne Caruana Galizia, to uncover all the truth and to present it openly such that appropriate consequent action is taken.

8.2. Further Inquiry needed

Although it is no doubt stressful for governments to sit through inquiries into their conducts, examining administrative decisions and failings and seeking to learn from them for the benefit of future occurrences should be a key consequence of the separation of powers and the growth of the national experience.

It should be within the discretion of the legislative branch, acting independently of the government (and therefore also with the initiative of the parliamentary opposition) to launch inquiries to receive evidence and conduct hearings in a public forum to focus on specific occurrences. Interested members of the public and organisations should not



only be able to make evidential submissions as is the case with most inquiries but also listen to oral evidence given by other parties.

Public inquiries should be automatically opened in cases of multiple deaths, such as public transport crashes or mass murders.

Conclusions of the inquiry should in principle be public, with regulations to allow prosecutors and investigators to request that information be redacted to preserve evidence. Inquiries would be expected to make recommendations to improve the quality of government or management of public organisations in the future.

People in an executive office should be obliged to cooperate with public inquiries, including Parliamentary commissions of inquiry. We recall the refusal of Keith Schembri and Konrad Mizzi to attend meetings and answer questions from fact-finding and investigating commissions of the European Parliament, before and after Daphne Caruana Galizia was killed.

The present Inquiry has touched upon areas that require further study for the country and the administration to learn the appropriate lessons and to recommend to parliament and the government reforms that may help us prevent the repetition of the experience of the last 8 years.

We would ask then for public inquiries into:

- Mafia infiltration in Malta's economy and public administration
- The Electrogas contract
- The privatisation of the hospitals
- The conduct of institutions after the Panama Papers leak
- The funding of political parties
- The bias in the planning process towards the interests of big business



9. Measures to protect journalists

The Inquiry is asked 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.

We have argued above why we believe this has not been the case. We would add reasons why we believe the State persists in its failure in this obligation in particular in the case of journalists.

- Parliament has considered, but then failed to adopt, legislation that can protect journalists from strategic defamation suits filed overseas (SLAPP). Maltese journalists are facing defamation suits outside Malta and the threat of more such suits are a clear and present danger.

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.

- Intimidation and isolation of activists remain the order of the day. This includes exclusion from public broadcasting media; consistent assault from party-owned media; and centrally-organised social media trolling.
- The pressure to introduce institutional reforms by agencies such as the European Parliament and the Council of Europe has led to half-hearted legislative or administrative initiatives intended to paint a picture of compliance and reform. The government has frozen out civil society from any semblance of consultation. It has removed the opportunity for the free press to report on, analyse and comment reforms. It in effect has put in place limited and cosmetic reforms.

Most of these changes have no material impact on the mafia's hold on the state's institutions. Civil society is excluded from any and all deliberations on the preparation of these reforms. No draft legislative documents are published before



a matter is placed for debate in Parliament, by which time it is too late to participate meaningfully in the process in any manner.

- Questions by independent journalists and challenges by civil society are routinely ignored. 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.

The Freedom of Information Act is complied with in the breach with the government refusing requests for puerile reasons, too often finding the backing of regulators that do not act independently of it.

The intermediating and oversight role of the media in our democracy continues to be frustrated and in spite of a more coherent effort by the journalistic community since the killing of Daphne Caruana Galizia, the government is largely successful in elbowing aside any and all challenges to its authority.



10. Our concerns today

Even as we demand that justice in Daphne Caruana Galizia's case is served without any further delay, our concerns today are more profound than they were in our shock and anger on the afternoon of 16 October 2017.

- We find that the political leadership of the government and the party in government has not repudiated the actions and failures of Joseph Muscat's government.
- We find that the police have not brought to prosecution any of their investigations into dozens of crimes in which senior members of Joseph Muscat's regime have been compellingly implicated by evidence that has been in the public domain for years. As to conviction and punishment, these remain even further distant.
- We find that the unlimited and unchecked power of the prime minister within our institutional framework remains in practice unhindered and uninhibited.
- We find that people in political leadership are as willing as ever to exploit their authority for personal interests.
- We find that the police remain poorly equipped and persistently fail to give us any form of confidence in their willingness, their ability and a combination of both to ensure that the law rules.
- We find that the prosecution service remains under-resourced and nowhere near anything capable of giving honest citizens equality of arms with powerful criminal defendants.
- We find that parliament is entirely captured by the government and unable or unwilling to oversee and call out administrative failings or wrongdoing, or to bring forward legislative reform to address weaknesses that are there for all to see.
- We find that the standing of politicians and public officers in the community has diminished, collectively tarnished by the misconduct of, and the impunity enjoyed by, those among them who are corrupt or who are unwilling to stand up to the corrupt, creating an ominous mistrust in the democratic process.



- We find that appointments made to the judiciary over the past 8 years put into serious question the independence of the judiciary from government control and influence.
- We find a TV media landscape that is stacked against pluralism, restricted instead to a cacophony of partisan untruths that political parties have no qualms in using to assault critical and independent thinking.
- As a result, we are not surprised then to find a tired, sceptical citizenry, detached from interminable and unproductive partisan feuds, preferring to believe the mafia does not exist, allowing it thereby to tighten its invisible but firm grip on the formal and informal power structures of the country.

We remain firm in our belief that we must continue to hope in meaningful change. That we must hope that the exemplary and selfless determination of Daphne Caruana Galizia, which her family has so demonstrably inherited, will drive us to continue to believe that our country can emerge from this darkness.

We must hope that the efforts of this Inquiry to ask pointed questions and the conclusions it has yet to draw up may have the cathartic and transformative impact the life, work and death of Daphne Caruana Galizia should have had.



11. 'Daphne' should not be a controversy

The civic growth of this community depends on how it deals with its own history. The anti-mafia effort in places like Italy relies on the collective memory of its victims. This is not a process of beatification or lionization as opponents to the cause of justice for Daphne Caruana Galizia falsely suggest. This is a process of dissemination of truth, without which there can be no justice, no reconciliation and no national growth.

Some of the witnesses giving evidence before the Inquiry gave their 'reasons' for disliking Daphne Caruana Galizia or her work. This was irrelevant and it was counterproductive by design. The simple fact of the matter is that Daphne Caruana Galizia was killed because she held power to account and worked against all odds to expose wrongdoing.

By any objective account, that is a sacrifice no functioning democracy should require of any of its citizens. And yet it happened. The least we can do as a community now is to learn from Daphne's killing, to fix what we know is broken. And to show Daphne's example to younger generations such that they may grow to imitate her civic commitment, her courage and her determination selflessly to give everything for the cause of truth.

At the heart of the values we aspire to as a democracy, there should be the service of independent and critical journalism. Children should be taught to appreciate it, expect it and contribute to it as a key component of their formal education. The State must be reminded by a demanding citizenry that it must protect the independence of this democratic pillar from the intrusion, censorship, even violence of those among us who are better served by the suppression of these freedoms.

It is saddening to see that the holders of the highest political and institutional offices in the country stay away from recalling Daphne Caruana Galizia's great sacrifice and to give voice to the cry for justice in her case. It is saddening to see that the holders of the highest political and institutional offices prefer to allow, as a result of their absence, their ambivalence and in some case their outright and persistent hostility, the false impression that Daphne belongs to some elitist, entitled or partisan caste instead of belonging to the country as a whole.

We hope that your findings can go some way to reversing this unjust reality.



We respectfully inform the Board that in the spirit of open testimony so jealously protected by the Inquiry that these submissions will be made public.

We thank you, madam, gentlemen of the Board for the opportunity to make these submissions and remain at your disposal.

Submitted with respect,

Robert Aquilina
President

Alessandra Dee Crespo
President-Elect

Sammi Davis
Secretary General

Emanuel Delia
Executive Officer