

Report on the 2022 General Elections in Malta

Roberta Spiteri

Legal Officer, The Daphne Caruana Galizia Foundation

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This report has been compiled by The Daphne Caruana Galizia Foundation (the “**Foundation**”) in fulfilment of its wide mandate to fight for the principles of democracy using journalism as well as legal and political mechanisms.¹

With this report, the Foundation would like to complement the Needs Assessment Mission (“**NAM**”) Report² produced by the OSCE Office for Democratic Institutions and Human Rights (“**ODIHR**”) relating to the pre-electoral environment. It provides additional instances of concern with respect to the current state of the electoral system in Malta that we strongly believe also warrant assessment by the ODIHR ahead of the 2022 Election Assessment Mission Final Report.

This report does not repeat information already provided in the NAM Report or in the 2017 OSCE/ODIHR Election Assessment Mission Final Report (“**Final Report**”). It is by no means exhaustive and is meant only to provide ODIHR with information on pressing issues which, in the Foundation’s view, also require attention.

This report was updated on 26 April 2022 with a few minor additions in the sections on “auditing” and “voting by persons with dementia”.

C-Planet data leak

At the end of March 2020, independent Maltese media reported that a database containing 337,384 records of Maltese voters’ personal information had been freely accessible online for at least a year.³ The data did not only include the fields available in the published electoral register but also included mobile and fixed telephone numbers, dates of birth, polling booth and polling box numbers, and a numerical identifier indicating an individual’s political affiliation.⁴

In October 2020, civil society organisations Repubblika and The Daphne Caruana Galizia Foundation, assisted by NOYB – European Centre for Digital Rights, initiated a collective action

¹“The Foundation.” *The Daphne Caruana Galizia Foundation*, <https://www.daphne.foundation/en/about/the-foundation/>. Accessed 4 April 2022.

² (10 March 2022). ‘Malta Parliamentary Elections 26 March 2022: ODIHR Needs Assessment Mission Report, 28 February - 4 March 2022’. OSCE, <https://www.osce.org/files/f/documents/4/8/513907.pdf>.

³ (1 April 2020) ‘Investigation after a huge data leak leaves 337,000 voters’ records exposed’, *The Times of Malta*. <https://timesofmalta.com/articles/view/massive-data-leak-leaves-more-than-377000-voting-records-exposed.782483>

⁴ (27 May 2020). ‘Massive data leak in Malta’, NOYB. <https://noyb.eu/en/massive-political-data-leak-malta>

that is currently ongoing.⁵ In November 2020, NOYB separately filed a complaint to the Information and Data Protection Commissioner (“IDPC” or “**Commissioner**”) against C-Planet IT Solutions,⁶ the company holding this database.⁷

On 14 January 2022, the IDPC found that the data were processed without any valid legal basis under Articles 6 and 9 GDPR. Article 6(1) of the Regulation concerns processing of personal data without any valid lawful basis. Article 9(1) concerns processing of personal data revealing political opinions. The IDPC found that none of the exemptions listed in article 9(2) of the Regulation applied in this case. Furthermore, the Commissioner concluded that the numerical identifier (a figure from 1 to 4) that was included in the database, referred to the political opinions of the affected data subjects.

C-Planet alleged in its testimony that the data was provided to them by one of their clients, a financial services company, however, the client in question rejected the allegations. The name of this client was redacted from the IDPC’s decision, however, A *Times of Malta* report had identified the governing Labour Party (“PL”)⁸ as the source.⁹ C-Planet is closely connected to PL which has been in government since 2013.¹⁰ The company is owned by Philip Farrugia. Farrugia is a former production director at One Productions (the media wing of PL) and is also the brother-in-law of Stefan Zrinzo Azzopardi, a current PL MP and Minister of Public Works and Planning, and former Parliamentary Secretary for EU Funds (2020-2022)¹¹ and president of PL¹². C-Planet’s clients include the Office of the Prime Minister, the Health Ministry, the Home Affairs Ministry, the Ministry for Transport, the Building Construction Agency, ARMS Ltd¹³, the Foundation for Medical Services, the Public Health Regulation Department as well as the Association of Local Councils. C-Planet also services the former law firm of Zrinzo Azzopardi. The confidential client data of that firm was exposed as part of a separate, but similar, leak from C-Planet.¹⁴

The Commissioner concluded that C-Planet had failed to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, which then led to the data breach. The investigation found that the company, as data controller, had failed to notify the personal data breach to the Commissioner within the deadline stipulated by law and had failed to communicate the breach to the affected data subjects. The IDPC thus issued a fine of €65,000, taking into account the potential severe impact on the individuals and the high risk to their rights

⁵ (3 April 2020). ‘Collective action against C-Planet data breach’, *The Daphne Caruana Galizia Foundation*. <https://www.daphne.foundation/en/2020/04/03/collective-action-data-breach>

⁶ (12 November 2020). ‘Maltese voter data leaked online. noyb files complaint.’ Noyb. <https://noyb.eu/en/maltese-voter-data-leaked-online-noyb-files-complaint>

⁷ Schembri, Gabriel. “Old’ data no excuse for severity of information leaked – lawyer’, *The Shift News*. <https://theshiftnews.com/2020/04/02/old-data-no-excuse-for-severity-of-information-leaked-lawyer/>

⁸ PL refers to the acronym of ‘Labour Party’ translated into Maltese as ‘Partit Laburista’.

⁹ <https://timesofmalta.com/articles/view/voter-list-in-huge-data-breach-was-compiled-by-the-labour-party.782708>

¹⁰ Martin, I. (17 January 2022). ‘IT firm C-Planet fined €65,000 over massive voter data breach’, *The Times of Malta*. <https://timesofmalta.com/articles/view/it-firm-c-planet-fined-65000-over-massive-voter-data-breach.928486>

¹¹ See the Maltese Parliament’s bio on Stefan Zrinzo Azzopardi:

<https://www.parlament.mt/13th-leg/political-groups/partit-laburista/zrinzo-azzopardi-stefan/>

¹² See the Labour Party’s bio on Stefan Zrinzo Azzopardi: <https://partitlaburista.org/lead-mentors/stefan-zrinzo-azzopardi/>

¹³ ‘About us’, ARMS. <https://arms.com.mt/en/information/our-company/about-us>

¹⁴ Agius, M. (2 April 2020). ‘SZA law firm data floating around on web’, *Newsbook*. <https://newsbook.com.mt/en/sza-law-firm-data-floating-around-on-web/>

and freedoms. The IDPC also ordered C-Planet to erase all personal data that had been processed unlawfully, however, it did not order the source to do the same. It is indeed concerning that the Commissioner made no mention of the fact that compiling the list in the first place would have involved another breach of data protection, especially since it is probable that the internal list of voters was compiled by PL.

While it is currently unknown to us whether C-Planet has actually erased the data, the Labour Party undoubtedly has a copy, and it is possible that other entities, including the Nationalist Party (“PN”)¹⁵, also downloaded a copy when it was leaked and publicly available. It is additionally concerning that crucial information as to how and why an IT company collected and stored this type of data remains a mystery and particularly worrying that the Electoral Commissioner has remained silent on the matter despite its gravity. As the Cambridge Analytica scandal has shown, it is incredibly easy to influence elections in the digital age.¹⁶ Data such as that found in the possession of C-Planet that exposes individuals’ political preferences and that is readily available to the major political parties that contested this year’s general election has the great potential of subjecting voters to prejudice, for instance to access to a public service or an employment opportunity, as well as malicious targeting even outside the electoral periods.

Shortfalls in the electoral process

The electoral process in Malta is plagued with numerous deficiencies and falls short of international democratic standards required for free and fair elections.

Neutral and impartial administration of elections

According to the ‘Existing Commitments for Democratic Elections in OSCE Participating States’ (the “**Existing Commitments**”) published by the OSCE ODIHR in 2003, “[i]mpartial election administration may be achieved through a mainly non-partisan composition or consist of a balanced membership that includes a range of political organisations (parties or other nominating organisations). When an election administration includes political party representatives, the best practice is to provide for inclusion of representatives of a full spectrum of parties, ensuring that no one party or alliance of parties controls the commission.” Moreover, a condition established by the Venice Commission, two decades ago, is for the electoral commission to include at least one member of the judiciary.¹⁷

The Maltese Electoral Commission is composed only of representatives of the two existing parliamentary parties. To a limited extent this ensures impartiality in matters of conflicting interests. However, where parties share interests that are contrary to the interests of potential

¹⁵ PN refers to the acronym of ‘Nationalist Party’ translated into Maltese as ‘Partit Nazzjonalista.

¹⁶ See *The Guardian* landing page for all articles on Cambridge Analytica:

<https://www.theguardian.com/news/series/cambridge-analytica-files>

¹⁷ See CDL-AD(2002)023rev2-cor-e, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report - Adopted by the Venice Commission at its 51st and 52nd sessions (Venice, 5-6 July and 18-19 October 2002), <https://rm.coe.int/090000168092af01>, para. 75.

competitors, i.e. other political parties, or the wider public interest, the Electoral Commission is exclusively driven by the shared partisan interests of the parties that control it. In a situation in which both parties are guilty of the same original sin, such as receiving large quantities of illicit donations or accounting fraud, there would be mutual agreement for the parties to ensure that there is no accountability.

Effective system of appeal

The Venice Commission's guidelines on elections from 2002 (the "**guidelines**") require a recourse to a final appeal from decisions of the Electoral Commission to a court.¹⁸ The appeal procedure must be simple and devoid of formalism,¹⁹ and the court must have the authority to annul the election (or merely in one constituency or polling station) and call a new election in the area concerned.²⁰

The Maltese Constitutional Court, however, ruled on 23 March 2022 that it lacked the jurisdiction to do so after rejecting PN's plea for the early vote conducted inside the prisons to be cancelled and redone.²¹ In brief, out of 180 prisoners who voted in the early ballot because they appeared on the electoral register, around 40 were not eligible to do so according to Maltese law, since they were serving a prison sentence exceeding 12 months. At the same time, electoral law states that people appearing on the electoral register have a right to vote.

Article 95(2)(b) of Malta's Constitution is explicit when it says that the Constitutional Court "shall have jurisdiction to hear and determine [...] any matter referred to it in accordance with any law relating to the election of members of the House of Representatives." This court failed to consider this provision in this case. This oversight thus begs the crucial question as to who, if not the Constitutional Court, has jurisdiction to decide on complaints of decisions taken by the Electoral Commission.

In this case, the Electoral Commission argued that the PN's appeal should not be heard because the party did not object to the names of the ineligible voters when they first appeared on the register. This is precisely the kind of formalism in an appeal procedure that the guidelines warn against. The rationale behind this guideline is that it matters far more that people believe in the integrity of an election than if the right forms were filled out on time.

The guidelines also state that "[t]he appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility."²² This means that if it is correct that the Constitutional Court does not have the jurisdiction to deal with a ballot where

¹⁸ Ibid, p. 11, para. 3.3.a.

¹⁹ Ibid, para. 3.3.b.

²⁰ Ibid, para. 3.3.e.

²¹ Brincat, E. (23 March 2022). 'PN loses court case to have prisons vote re-run', *The Times of Malta*.
<https://timesofmalta.com/articles/view/pn-loses-court-case-to-have-prisons-vote-re-run.943524>

²² CDL-AD(2002)023rev2-cor-e, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report - Adopted by the Venice Commission at its 51st and 52nd sessions (Venice, 5-6 July and 18-19 October 2002),
<https://rm.coe.int/090000168092af01>, p. 11, para. 3.3.d.

ineligible voters were allowed to vote, and nobody else does either, the violation of international standards is obvious.

Moreover, PN was requesting the revision of the early voting in prison, as permitted by the guidelines, and not the annulment or postponement of the general election. It would have likely taken less than a couple of hours for the 180 votes cast in prison to be taken again, this time with only eligible voters participating. This would have had absolutely no impact on the timeliness of the process, but would have safeguarded the integrity of the electoral process in the prison.

The gravity of the situation, therefore, lies in the fact that there seems to be no effective redress when a government official makes a mistake. Possible mistakes could include, for example, the inclusion in the electoral register of people living in Malta who are eligible to vote in local elections but ineligible to vote in national elections, or people who bought Maltese passports never meaning to and never actually living in Malta. The court's decision that it has no jurisdiction to consider appeals from decisions of the electoral commission is an implicit invitation to camouflage electoral fraud as "mistakes".

Discrimination against third parties and independent candidates

Several small third parties and an independent candidate, namely ADPD, ABBA and Arnold Cassola, have complained of discrimination against them during the electoral process for various reasons.

Proportional representation in Parliament

Immediately following the official electoral results, ADPD launched a constitutional challenge, arguing that the constitution and the electoral law discriminate against it and any other political grouping which is not the PL or the PN, by only offering a proportionate number of seats to the parties whose candidates are individually elected in constituencies.²³ The challenge is based on Article 3 of Protocol No. 1 to the European Convention on Human Rights on the right to free election and the provision of Article 52 of the Maltese Constitution which states that the allocation of extra seats in parliament to reflect proportionality with votes only applies to parties already represented in parliament.²⁴ This provision also applies in the allocation of extra seats to meet the quota of women's representation in the House.

The leader of ADPD, Carmel Cacopardo, observed that as a consequence of the electoral result, an extra two seats have been added to the PN so that its representation in parliament is proportional

²³ (30 March 2022). 'ADPD claims discrimination as extra parliamentary seats are added to PL, PN', *The Times of Malta*. <https://timesofmalta.com/articles/view/adpd-claims-discrimination.944973>

²⁴ (30 March 2022). 'ADPD takes Electoral Commission, State Advocate to constitutional court over electoral discrimination', *The Shift News*. <https://theshiftnews.com/2022/03/30/adpd-takes-electoral-commission-state-advocate-to-constitutional-court-over-electoral-discrimination/>

to the first count votes given to its candidates. However, ADPD was ignored even though its votes amounted to more than a district quota. Cacopardo noted that “[t]his discrimination is a devaluation of the democratic process as it gives weight to votes cast in favour of PL and PN but ignores completely the votes cast for ADPD.”²⁵ He added that the allocation of an extra six seats each to the PN and the PL for women's representation in parliament in accordance with the newly introduced gender corrective mechanism amounted to further discrimination against the other parties. The party has filed a legal challenge in this regard.²⁶

Access to vote counting process

ADPD and its former leader Arnold Cassola separately complained that the Electoral Commission refused to give them full access to the vote-counting process, as it did to the main political parties.²⁷ The Commission argued that in terms of the electoral law, it is bound to give such access only to the parties represented in parliament. Carmel Cacopardo argued that when vote-counting was manual, the party could oversee the whole counting process, but this would no longer be possible with electronic vote-counting unless they were given access to the electronic data. Arnold Cassola said in a statement that the Electoral Commission refused to give him access to the area where ‘dubious’ votes are examined once they are rejected by the electronic counters. Eventually, the Commission issued him an access pass, however, the fact that representatives of smaller parties and independent candidates are not automatically granted such access is concerning.

ABBA also complained of structural discrimination against small parties with unvaccinated members. Members of ABBA were not granted access to the counting hall because they were all unvaccinated per principle, however, vaccinated PL and PN members were able to replace their unvaccinated members in the counting hall. ABBA further complained that they had been under-represented on national television. Moreover, the party protested the gender quota mechanism since it guarantees an increase in parliamentary seats for the under-represented sex only for the two parties elected to the House, and therefore, is unconstitutional. The party has already notified the OSCE of its experience.²⁸

Selective and non-enforcement of the Day of Silence

According to Article 114 of Malta's General Elections Act, “no person shall address any public meeting or any other gathering whatsoever in any place or building accessible to the public, or on the broadcasting media, on any matter *intended or likely to influence* voters in the exercise of the franchise, or *publish or cause to be published* any news paper, printed matter or *other means of*

²⁵ (30 March 2022). ‘ADPD claims discrimination as extra parliamentary seats are added to PL, PN’, *The Times of Malta*.

<https://timesofmalta.com/articles/view/adpd-claims-discrimination.944973>

²⁶ Cordina, John Paul. (21 April 2021). ‘ADPD to challenge Parliament's gender-corrective mechanism in court’, *Newsbook*.

<https://newsbook.com.mt/en/adpd-to-challenge-parliaments-gender-corrective-mechanism-in-court/>

²⁷ (22 March 2022). ‘ADPD, Cassola demand access to vote-counting process, just like big parties’, *The Times of Malta*.

<https://timesofmalta.com/articles/view/adpd-cassola-demand-access-to-vote-counting-process-just-like-big.943284>

²⁸ Vassallo, Sebastian. (23 March 2022). ‘ABBA complain to OSCE about discrimination on vaccine pass to counting hall’, *MaltaToday*.

https://www.maltatoday.com.mt/news/election-2022/115887/abba_complain_to_osce_about_discrimination_on_vaccine_pass_to_counting_hall

communication to the public containing any matter aforesaid, or *issue or cause to be issued* any statement or declaration on any matter aforesaid or *knowingly distribute* any newspaper, printed matter, or *other means of communication*, or any statement or declaration as aforesaid” on the day of the election and the day immediately preceding it.²⁹ The penalty for violating this law is €1,164.69 or six months imprisonment, or both.

While the law may no longer make practical sense in an age when online content is permanent, the more pressing concern is that it can be weaponised to target critics through selective enforcement. On the night before the 2013 election, three police officers were sent to the home of Daphne Caruana Galizia with an arrest warrant. Daphne Caruana Galizia, an independent journalist, was targeted for publishing a personal blog on the day of reflection when the rest of the country was discussing politics on social media, and news articles written the day before were still online. Although the police wouldn’t say who had filed the complaint, their questions made it clear: “Do you confirm that you wrote and uploaded an article about the Leader of the Opposition, at around 7pm this evening, with the aim of influencing people on how to vote?”³⁰ The Leader of the Opposition at the time was Joseph Muscat and the blog post was intended to poke fun at him.³¹

This episode left a chilling effect on journalists and independent media who now strictly follow this law out of fear of also getting arrested. On the other hand, despite this electoral law clearly forbidding political communications on both election day and the day before, there was no shortage of Facebook and Google Ads still carrying advertising from both of the major political parties and their candidates on the eve of the election. The Meta Ad Library Report for Malta on 25 March (eve of the election) shows numerous adverts published by PL, PN and candidates from both parties that were still active on that day (see Annex 1).

If this law is to remain in effect despite the major challenges in adequately respecting it in the digital age we live in, then enforcement of it should be impartial, and the law should apply not only to independent media, but also to all candidates and parties contesting the election. The law does not distinguish between these two categories of people.

Campaign financing and spending

The Existing Commitments state that restrictions on campaign fundraising and spending “may include disclosure of sources of funding, auditing, and regular reporting on political accounts; a limitation on the amount of money raised and/or spent by election contestants; and regulation of

²⁹ Cap. 354 of the Laws of Malta, emphasis added.

³⁰ Caruana Galizia, Daphne. (9 March 2013). ‘Arrested at 9.30pm for posting three videos mocking Joseph Muscat at 7.30pm: THE GOLDEN YEARS OF LABOUR+POLICE HELL’, *Running Commentary*.
<https://daphnecaruana galizia.com/2013/03/arrested-at-9-30pm-for-posting-three-videos-mocking-joseph-muscat-at-7-30pm-the-golden-years-of-labourpolice-hell/>

³¹ Caruana Galizia, Daphne. (8 March 2013). ‘[THIS IS THE POST FOR WHICH I WAS ARRESTED] Is this the man you want as your prime minister? Well, tough – it’s what we’re going to get. Malta represented by the first ‘hamallu’ since Dom Mintoff’, *Running Commentary*.
<https://daphnecaruana galizia.com/2013/03/is-this-the-man-you-want-as-your-prime-minister-well-tough-its-what-were-going-to-get-malta-represented-by-the-first-hamallu-since-dom-mintoff/>

funding by interest groups that may support or oppose particular candidates or parties in elections.”³²

Maltese party funding rules and regulations³³ are not reasonably enforced and neither are candidates’ financial declarations adequately declared and verified. The government party’s power of incumbency guarantees them inequitable resources for campaigns. In addition, the two large political parties own major broadcasting media platforms,³⁴ while their candidates have ties to corporate interests that are not transparent to voters. This substantially tilts the scale in their favour and contributes to the decreasing space for smaller political parties to have a fair chance at campaigning on a level playing field.

Sources of funding

As the ODIHR has noted in its NAM Report on Malta, there is no requirement for televised fundraising events (or “telethons”) to be subject to the disclosure requirements of other donations.³⁵ No obligation exists for political parties to record, audit, or declare the identities of donors and the amounts donated during telethons.³⁶ Moreover, there is no legal mechanism that can compel political parties to reveal information about these donors. This means there is opacity with respect to donations from this source.

Those who donate large sums to political parties may certainly do so for ideological or pragmatic considerations.³⁷ At the same time, however, there may be others who only do so with an expectation of receiving something in return, that is a monetary gain by means of public contracts that are awarded unfairly or illegally, or a change in public policy to favour private interest that is negotiated and carried out in secret. This is why large donations are normally subject to scrutiny.

There is also the issue of what the *International Institute for Democracy and Electoral Assistance* (IDEA) refers to as “bundling”. This technique involves an organisation that assumes “an intermediate position between individual donors and fundraising politicians” with the purpose of “[collecting] small cheques and delivering them in a bundle”.³⁸ Funds collected from such telethons, therefore, could purposefully also serve as a front for illicit payments from unknown sources or precisely to avoid the disclosure requirements that large donations are subject to. The Labour and

³² (October 2003). ‘Existing Commitments for democratic elections in OSCE participating states’, OSCE, p. 67. <https://www.osce.org/files/f/documents/6/e/42930.pdf>.

³³ See Financing of Political Parties Act, Cap. 544 of the Laws of Malta, https://www.legislationline.org/download/id/7817/file/Malta_Financing_Political_Parties_Act_2016_en.pdf

³⁴ A landmark legal challenge on political party ownership of broadcasting stations is ongoing. See Walsh, D. (26 January 2021). Legal bid seeks to stop Malta’s political parties owning TV stations. *Euronews*. Retrieved April 7, 2022, from <https://www.euronews.com/my-europe/2021/01/25/landmark-legal-challenge-seeks-to-stop-malta-s-political-parties-owning-tv-stations>.

³⁵ (10 March 2022). ‘Malta Parliamentary Elections 26 March 2022: ODIHR Needs Assessment Mission Report, 28 February - 4 March 2022’. OSCE, <https://www.osce.org/files/f/documents/4/8/513907.pdf>, p. 9.

³⁶ On this point, see Arnold Cassola’s comments at [1:16:10 - 1:17:00] here: <https://www.facebook.com/movimentgraffitti/videos/283358770396874>.

³⁷ (2014). ‘Funding of Political Parties and Election Campaigns: A Handbook on Political Finance’, *International Institute for Democracy and Electoral Assistance* (IDEA), p. 266. See more: <https://www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf>.

³⁸ *ibid.*

Nationalist parties declared collections of €1.9 million and €1.4 million respectively via telethons on each of the broadcasting stations they own (ONE TV and NET TV respectively) in December 2021.³⁹ That is a total sum of €3.3 million in unaudited and anonymous donations that may have been used, in part or in full, to fund the 2022 general election.

Besides money sourced from telethons, political parties represented in Parliament benefit from a €100,000 payment to cover their legislative activities in Parliament. There is no requirement for these funds not to be spent on campaigning activities and the Electoral Commission does not require a separate account to be kept and audited for the funds once they are received.⁴⁰ Independent candidate Arnold Cassola has also raised concerns about the recent legislation which offsets income tax and duty on documents and transfers on the sale of properties up to €750,000.⁴¹ An investigation into any potential abuse of this law for financial gain during the electoral campaign would require assessing whether the political parties - which have failed to publish their annual reports since 2018⁴² - have sold properties before the elections and whether any of this income was used during the 2022 parliamentary elections.

Auditing

There is a critical issue regarding the failure of PN and PL to publish their audited annual accounts. *The Shift News* reported that PN only published their audited accounts for 2020 in January 2022 while the PL has still not published them. All parties were required to publish them in April 2021. However, due to the pandemic, the Electoral Commission gave the political parties an extension for presenting their financial statements. While it did not give a definite end date for this concession, it commented that it “remain[s] valid up to three months from the date when the government authorities withdraw measures related to social contact during the pandemic”.⁴³ In a response to an email sent by the Foundation, the Chief Electoral Commissioner, Joseph Fenech, confirmed that no political party has ever been sanctioned by the Electoral Commission for failing to submit their audited accounts on time.

In any case, should the PL fail to present its 2020 audited accounts, the Electoral Commission does not have the authority to take any further action. We find this to be extremely concerning since it means that in any election, Maltese citizens may go to vote without knowing from where the

³⁹ Sansone, Kurt. (9 December 2021). ‘Labour and Nationalist parties collect €3.3 million in 2021 televised fund raisers’. *MaltaToday*, paras. 1-2.

https://www.maltatoday.com.mt/news/national/113728/labour_and_nationalist_parties_collect_33_million_in_2021_televised_fund_raisers#.YkbK5yhBy5c.

⁴⁰ (9 October 2017). ‘Republic of Malta Early Parliamentary Elections 3 June 2017: OSCE/ODIHR Election Assessment Mission Final Report’. OSCE, pp. 11 - 12.

⁴¹ See Legal Notice 461 of 2021: <https://legislation.mt/eli/in/2021/461/eng>. See also explanation of this legislation at https://cfr.gov.mt/en/inlandrevenue/legal-technical/Documents/Guidelines_on_Income_Tax_and_Stamp_Duty_Benefits_on_Certain_Property_Transfers-Budget_2022.pdf.

⁴² See the most recent financial reporting by the Labour and Nationalist parties at: <https://electoral.gov.mt/finance2018-en>; see also comments on the failures of the Electoral Commission in [1:13:27 - 1:14:46] of the video in this link: <https://www.facebook.com/movimentgraffiti/videos/283358770396874>

⁴³ (10 March 2022). ‘EXCLUSIVE: Labour Party out of line – audited accounts not presented despite election requirements’, *The Shift News*. <https://theshiftnews.com/2022/03/10/labour-party-out-of-line-audited-accounts-not-presented-despite-election-requirements/>.

political parties receive their funding. The Electoral Commission has made campaign financing laws a dead letter.

Campaign spending

On the eve of the election, the Foundation researched the amount spent by candidates on Meta (formerly Facebook) advertising for that day (see Annex 2). Moreover, the Volt Party's online surveillance tool reports most of the Maltese political parties' and candidates' Facebook advertising spending from the last thirty days.⁴⁴



Figure 1: Political party spending tracker from Volt Party's #PolitikaOnesta campaign
Screenshot taken on 01.04.2022

The spending on Facebook advertising reveals just one aspect of election campaign spending. Total opacity remains for spending on so-called 'taħt it-tinda' ('under the tent') events,⁴⁵ billboards, freebies, direct communications, and other campaigning efforts. *The Shift News* investigated the extent of roadside advertising by each party on four major arterial routes and found at least 80 billboards and streamers from PL and 30 from PN.⁴⁶ 110 political billboards were visible along stretches of road of a total length of over 53.3km. Market rates for billboards vary according to location and duration. The Foundation obtained one quote for a billboard on an arterial road which is not enough data to make an inference on overall in-kind or actual spending. Even given more

⁴⁴ See more about the #PolitikaOnesta campaign: <https://www.voltmalta.org/politika-onesta>.

⁴⁵ See examples of 'taħt it-tinda' events: <https://www.pn.org.mt/taht-it-tinda-l-isla>; see also <https://www.facebook.com/watch/?v=3058930407754192>.

⁴⁶ See more in (24 March 2022). 'Over 100 billboards on 50km stretch, at least €670,000 spent on digital advertising', *The Shift News*. <https://theshiftnews.com/2022/03/24/over-100-billboards-on-50km-stretch-at-least-e670000-spent-on-digital-advertising/>.

time for research, such a study would be difficult, making the need for proper and transparent spending data more important and urgent.

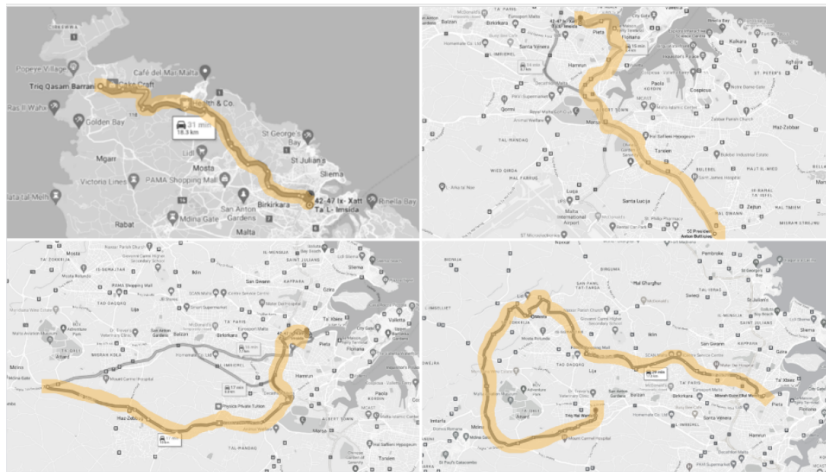


Figure 2: The four routes surveyed by 'The Shift News'

It's important to bear in mind that Article 46 of the Fourteenth Schedule of the General Elections Act precludes candidates from spending more than €20,000 on their campaign.⁴⁷ The law, however, does not exclude in-kind contributions, such as staff time or billboard providers offering free billboards. According to Article 50 of the Fourteenth Schedule candidates are obliged to declare their “election expenses” no more than 31 days after the publication of the election result in the Government Gazette. Elected candidates must declare their expenses within ten days from when they were declared elected. The law is vague with respect to what such election expenses are to include. It is unclear whether in-kind contributions to the campaign by third parties should also be declared. Moreover, there is no requirement for the statements of payments to be audited by an independent auditor. This legal vacuum diminishes transparency, raising many questions with respect to the amounts spent, particularly on certain grandiose campaigns, and consequently, who funded them.⁴⁸

The screenshot below from the #PolitikaOnesta campaign displays the large discrepancies between the candidates and leaders from a few of the parties contesting the general election with respect to their spending on Facebook ads.

⁴⁷ See article 46(1) of the General Elections Act Chapter 354 of the Laws of Malta, which states that “...all money provided by any person other than the candidate for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance or deposit, shall be paid to the candidate or the election agent of the candidate...”: <https://legislation.mt/eli/cap/354/eng/pdf>.

⁴⁸ See Borg, V. P., & Bonnici, J. (24 March 2022). Clint Camilleri's Grandiose Campaign For Gozo Ministry Leaves Colleagues Raising Questions About Funding. *Lovin Malta*. <https://lovinmalta.com/news/election-2022/clint-camilleri-campaign-spending-gozo/>

Spending Tracker

Amount spent on ads about social issues, elections or politics across Facebook apps and services.

Spending from the last 30 days

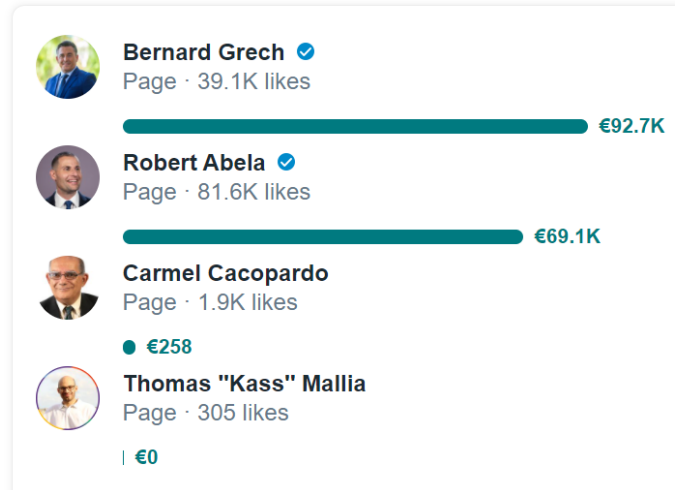


Figure 3: Individual candidate spending tracker from Volt Party's #PolitikaOnesta campaign⁴⁹
Screenshot taken on 01.04.2022

This gap is widened when referring to Google's Transparency Report tool,⁵⁰ which shows that political party leaders Robert Abela and Bernard Grech published videos paid for by their respective political parties on their individual candidate accounts.⁵¹ This could have potentially given them an unfair advantage in their campaign and could be reviewed as another way of circumventing the law limiting campaign spending.

In addition to a severe lack of transparency regarding the election campaign finances of the two major political parties and their candidates, there are also reports in the media alleging that taxpayer money could have been used to service the Labour Party's final mass rally.⁵² Three days before Robert Abela announced the date for the general elections, government agency Festivals Malta issued four tenders for stage equipment at the Malta Fairs & Conventions Centre (MFCC) for 'Muzika Muzika', which was planned for 24 to 26 March. Just as the works were close to being completed, the Film Agency announced that the event would be postponed. Instead, the MFCC was used as the venue for the PL's final mass rally, as reported in the media.

The lack of effective political accountability for candidates and the political parties to record, audit and declare all of the sources of funding for their campaigns should in theory instigate the independent media to investigate this matter. However, there is a conflict of interest here since

⁴⁹ See more about the #PolitikaOnesta campaign: <https://www.voltmalta.org/politika-onesta>.

⁵⁰ See the Google Transparency Report tool on the [Labour Party](#) spending on election campaign Google ads. See also the Google Transparency Report tool on the [Nationalist Party](#) spending on election campaign Google ads.

⁵¹ See, for example, this [video](#) featuring Robert Abela that was paid by the Labour Party and published to Abela's [YouTube account](#).

⁵² (23 March 2022), 'Taxpayers to foot bill for Labour's final mass rallies', *The Shift News*.
<https://theshiftnews.com/2022/03/23/taxpayers-to-foot-bill-for-labours-final-mass-rallies/>

mainstream independent and partisan media directly benefit from huge financial gains during election campaigns. Political parties spend hundreds of thousands of euros on Google advertising that is then featured on local media websites. It is therefore not in their interest to independently investigate election campaign spending by the two major political parties.⁵³

The several monitoring gaps present in Malta's electoral process have already been rightly highlighted in the 2022 NAM Report⁵⁴ and in the 2017 Final Report⁵⁵ and do not therefore need to be repeated here.

The power of incumbency and corrupt practices

As rightly highlighted in the NAM Report, there are concerns regarding the extreme advantage of incumbency. This is because there have been allegations of misuses of state resources for electoral purposes and lack of separation between official duties and campaigning.⁵⁶

During this year's campaign, there have been multiple examples of breaches of the lack of separation between official duties and campaigning. Between 21 February 2022 and 22 March 2022, throughout the electoral campaign period, the caretaker government launched, announced or inaugurated over 20 investments and projects in various constituencies.⁵⁷ It is hard to imagine such perfect timing being a coincidence.

Two weeks prior to the election, the caretaker government also disbursed COVID-relief and tax refund cheques.⁵⁸ Although tax refund cheques are a common practice in Malta, such cheques are conventionally disbursed in the second half of the year, and never as early as March. Moreover, the COVID-relief cheques were sent with a leaflet signed by the Prime Minister and the Minister of Economy. This is a clear indicator of the blurred line between official duties and electioneering during the electoral campaign. The cheques have also been used by candidates to directly influence the electorate to vote for them. PL candidate Clyde Caruana uploaded the following post in Maltese on his Facebook page (see Annex 3):

⁵³ See the comments at [49:15 - 50:10] here: <https://www.facebook.com/movimentgraffitti/videos/283358770396874>.

⁵⁴ (10 March 2022). 'Malta Parliamentary Elections 26 March 2022: ODIHR Needs Assessment Mission Report, 28 February - 4 March 2022'. OSCE, p. 9.

⁵⁵ (9 October 2017). 'Republic of Malta Early Parliamentary Elections 3 June 2017: OSCE/ODIHR Election Assessment Mission Final Report'. OSCE, p. 12.

⁵⁶ NAM Report, p. 8.

⁵⁷ Vella, Luke. (24 March 2022). 'Power of incumbency: the art of government projects timed for elections', *MaltaToday*. <https://www.maltatoday.com.mt/news/election-2022/115914/power-of-incumbency-the-art-of-government-projects-timed-for-elections#.Ykb42G4zY1L>

⁵⁸ Vella, Matthew. (17 March 2022). 'Cassola throws down the gauntlet on 'corrupt practice' of COVID cheques in mid-election', *MaltaToday*. <https://www.maltatoday.com.mt/news/election-2022/115712/cassola-lays-down-the-gauntlet-on-corrupt-practice-of-covid-cheques-in-midelection#.YjrvtJrMI1I>



Figure 4: Post on Clyde Caruana's official Facebook page.⁵⁹
Screenshot taken on 07.04.2022

The words on the poster translate to “This Saturday you can either vote for more expensive bills or for more cheques”. The caption then translates to “The choice is yours”. This post directly links the cheques with their intended use for soliciting votes. Caruana has denied it.⁶⁰

Independent candidate Arnold Cassola denounced such practices to the Electoral Commission,⁶¹ but the Police have now stated that the disbursement of the cheques during the election campaign does not amount to a breach of the law.⁶²

Another instance of exploitation of the power of incumbency involves Alex Muscat, the former Parliamentary Secretary for Citizenship and Communities within the Ministry for Home Affairs, National Security & Law Enforcement, who, in the previous legislature, used his position to

⁵⁹

https://www.facebook.com/story.php?story_fbid=381948317268153&id=100063589636239&__rdar__source=timeline&__rdar__

⁶⁰ Borg, J. (14 March 2022). Cost of living cheques in the mail as minister denies vote-buying. *Times of Malta*.

<https://timesofmalta.com/articles/view/cost-of-living-cheques-in-the-mail-as-minister-denies-vote-buying.941241>

⁶¹ Vella, Matthew. (17 March 2022). ‘Cassola throws down the gauntlet on ‘corrupt practice’ of COVID cheques in mid-election’, *MaltaToday*,

https://www.maltatoday.com.mt/news/election-2022/115712/cassola_lays_down_the_gauntlet_on_corrupt_practice_of_covid_cheques_in_midelection#.YjrvtJrMI1I.

⁶² Borg, Jacob. (30 March 2022). ‘Pre-election cheques not a corrupt practice, say police’, *The Times of Malta*.

<https://timesofmalta.com/articles/view/pre-election-cheques-not-a-corrupt-practice-say-police.944874>. See also (30 March 2022). ‘The habit of corrupt practices’, *Times of Malta*.

<https://timesofmalta.com/articles/view/the-habit-of-corrupt-practices.944730>

advance his re-election prospects in the 2022 general election.⁶³ The National Development and Social Fund (NSDF), which fell under Muscat's responsibility, approved almost €3 million worth of grants funded through the sale of passports scheme for which Muscat was also responsible. The grants were used for highly visible public projects in the parliamentary secretary's districts. These included €1 million spent on an abandoned field in Mosta to turn it into a playing field; €850,000 to install panoramic lighting on the Mosta church, located in the heart of Muscat's constituency; and €1 million for a new system of lighting on Mdina's walls.

The power of incumbency was further abused when numerous high value direct orders from public coffers were handed to party loyalists throughout the government's mandate. This ensured that loyalty and support were rewarded and maintained.⁶⁴ Moreover, Candidate Clint Camilleri gave his canvasser a phantom job with the Gozo Ministry where she was given the designation of secretariat officer and the salary to match it, despite never seeming to have ever set foot inside the ministry.⁶⁵ This is only the latest in a string of phantom jobs given out by the Labour Party in government.⁶⁶

Treating and bribery

According to Article 54, Fourteenth Schedule of the General Elections Act, any person who "either before, during or after an election, directly or indirectly, gives or provides, or pays wholly or in part the expense of giving or providing any food, drink, entertainment, for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election [...]" is guilty of treating. Article 56 of the same Act outlines different instances of bribery during the electoral campaign, which intend to influence a person's vote; amongst others, these include payment of money, procurement of employment, and the offer of gifts.

A few instances of treating throughout the campaign and beforehand include:

- Various candidates from both PL and PN offering free food and drinks and campaign events in their constituency;⁶⁷

⁶³ (10 February 2022). '€3 million in passport funds diverted to parliamentary secretary's district', *The Shift News*. <https://theshiftnews.com/2022/02/10/e3-million-in-passport-funds-diverted-to-parliamentary-secretarys-district/>

⁶⁴ See (4 March 2022). 'Labour pollster given 28 direct orders in four years', *The Shift News*. <https://theshiftnews.com/2022/03/04/labour-pollster-given-28-direct-orders-in-four-years/>; see also (4 March 2022). 'Three ministers hand out €1.3 million in direct orders', *The Shift News*. <https://theshiftnews.com/2022/03/04/three-ministers-hand-out-e1-3-million-in-direct-orders/>; and (23 March 2022). 'Taxpayers to foot bill for Labour's final mass rallies', *The Shift News*. <https://theshiftnews.com/2022/03/23/taxpayers-to-foot-bill-for-labours-final-mass-rallies/>

⁶⁵ (22 March 2022). 'Gozo Minister employs Labour stalwart to support campaign, paid by taxpayers', *The Shift News*. <https://theshiftnews.com/2022/03/21/gozo-minister-employs-labour-stalwart-to-support-campaign-paid-by-taxpayers/>

⁶⁶ (4 August 2021). 'Labour's Charlon Gouder lands 'phantom' €35,000-a-year job at Arts Council', *The Shift News*. <https://theshiftnews.com/2021/08/04/labours-charlon-gouder-lands-phantom-e35000-a-year-job-at-arts-council/>

⁶⁷ See Annex 4, and Delia, Manuel. (7 March 2022). 'Treating', *Manuel Delia*. <https://manueldelia.com/2022/03/treating/>

- PL candidate Ray Abela gifting virtual reality headsets worth around €35, embellished with his name, website and the districts in which he was running, to a primary school in his district;⁶⁸
- PL candidate Dr Edward Cassar Delia gifting €10 fuel vouchers with his name and photo displayed on them;⁶⁹
- PL candidate Silvio Scembri gifting buns to his constituents;⁷⁰
- PL candidate Jose Herrera gifting hampers worth €200 to his constituents;⁷¹
- PL candidate Michael Farrugia gifting a 32-inch LCD TV worth around €200⁷² to one constituent;⁷³
- PL candidate Rosianne Cutajar distributing oranges to the residents of a care home in a town forming part of her constituency and where she was formerly mayor;⁷⁴ giving sweets and toothpaste with her name on the package to primary school children in her electoral districts;⁷⁵ and gifting mugs with her name on them to her constituents outside a school on Women's Day.⁷⁶

Article 56(b) of the General Elections Act also prescribes that offering or procuring, or promising employment to influence an individual's vote amounts to bribery. During the electoral campaign, the General Workers' Union, which is politically affiliated with PL, hired various individuals during the election campaign and their employment is due to start in the first week of April. The voters are employed under a community work scheme operated by a company wholly owned by the Union, which is guaranteed a public sector contract by the government.⁷⁷

Voting by persons with dementia

According to Principle 5.4 of the Existing Commitments, "suffrage cannot be suspended or withdrawn except for reasons of legal incapacity (e.g., based on mental incapacity) or conviction for

⁶⁸ Arena, J. (9 March 2022). 'Tech treat? Labour candidate hands out VR headsets to schoolchildren', *The Times of Malta*. <https://timesofmalta.com/articles/view/tech-treat-labour-candidate-hands-out-vr-headsets-to-schoolchildren.940125>

⁶⁹ Delia, Manuel. (24 March 2022). 'This is no European democracy', *Manuel Delia*. <https://manueldelia.com/2022/03/this-is-no-european-democracy/>

⁷⁰ See image of bread gift sponsored by Silvio Scembri on Delia, Manuel. (23 March 2022). *Manuel Delia*. <https://manueldelia.com/wp-content/uploads/2022/02/WhatsApp-Image-2022-03-23-at-2.49.47-PM.jpeg>

⁷¹ Agius, Monique. (24 March 2022). 'We called Herrera for a hamper, this is how it went down', *Newsbook*. <https://newsbook.com.mt/en/we-called-herrera-for-a-hamper-this-is-how-it-went-down/>

⁷² See the price for a 32-inch LCD TV at Maltese tech store, *Klikk*: <https://www.klikk.com.mt/product/18149-skyworth-32-inch-hd-smart-television>

⁷³ Delia, Manuel. (24 March 2022). 'This one was going in the joke picture collection. But it shouldn't be funny', *Manuel Delia*. <https://manueldelia.com/2022/03/this-one-was-going-in-the-joke-picture-collection-but-it-shouldnt-be-funny/>

⁷⁴ Arena, Jessica. (18 June 2021). 'Police asked to investigate Rosianne Cutajar's oranges for the elderly', *The Times of Malta*. <https://timesofmalta.com/articles/view/rosianne-cutajars-oranges-for-the-elderly-illegal-say-repubblika.880292>

⁷⁵ Magri, Giulia. (31 October 2021). 'Trick or treat? Rosianne Cutajar's sweet initiative irks Arnold Cassola', *The Times of Malta*. <https://timesofmalta.com/articles/view/trick-or-treat-rosianne-cutajars-sweet-initiative-irks-arnold-cassola.911769>

⁷⁶ Bonnici, Julian. (8 March 2022). 'Treating? Rosianne Cutajar Hands Out Gifts To Voters Outside Qormi School On Woman's Day', *Lovin Malta*. <https://lovinmalta.com/news/election-2022/treating-rosianne-cutajar-hands-out-gifts-to-voters-outside-qormi-school-on-womans-day/>

⁷⁷ Delia, Manuel. (24 March 2022). "'Jobs mal-Gvern": Dozens of Gozitans signed full-time public sector contracts today', *Manuel Delia*. <https://manueldelia.com/2022/03/jobs-mal-gvern-dozens-of-gozitans-signed-full-time-public-sector-contracts-today/>

a serious criminal offence. Withdrawal of individual franchise must be based on judicial action [...]”. Article 58(a) of the Constitution of Malta states that an individual who is determined to be of unsound mind cannot vote for the election for the members of the House of Representatives. Article 27(1) of the General Elections Act further specifies that the Electoral Commission cannot “refuse an application by a person to be registered as a voter, or cancel the registration of a voter, or expunge his name from the Electoral Register” unless either the Medical Board or a court has certified the person to be mentally unsound.

The Medical Board is chaired by a person chosen by the Electoral Commission. Each political party represented in Parliament can nominate a medical practitioner as a board member, as per Article 14(2) of the General Elections Act. In a response to an email sent by the Foundation, the Chief Electoral Commissioner, Joseph Fenech, confirmed that there a total of 103 cases were referred to the said Medical Board for assessment of their mental capacity this year. Out of these, 50 patients were found to be incapable, with the remaining 53 being declared capable and consequently retaining their right to vote.

During the final days of the electoral campaign, various testimonies from relatives of people diagnosed with dementia while living in care home facilities featured in news reports. These testimonies highlighted that a number of people diagnosed with dementia were made to vote, even though their relatives deemed them unfit to vote. The relatives remarked that the patients could not even recognise them, let alone make an informed decision as to who they wanted to vote for.⁷⁸ Particularly, two people separately confirmed that they receive weekly calls regarding every detail pertaining to their mother’s stay in the dementia ward of St Vincent de Paul yet they only learnt about the possibility of her being asked to vote, by chance. When the relatives asked if their mother had been certified as fit to vote by a psychiatrist or psychologist, care workers informed them that she hadn’t been.⁷⁹

A doctor working at Mater Dei Hospital, whose identity is known to the Foundation but who wished to remain anonymous and whose name is therefore being withheld, sent us the following message, which he agreed for us to reproduce here in full:

As doctors, part of our jobs on a day to day basis includes deciding whether a patient has the mental capacity to refuse treatment, refuse interventions and even to discharge from hospital against medical advice. We take decisions that can grossly affect a patient’s life, and we have the power to decide, when we feel a patient is approaching death, to issue do not resuscitate orders. We have the power to start a vast array of medications and send patients to Mount Carmel⁸⁰ against their will.

⁷⁸ Zammit, Mark Laurenz. (21 March 2022). “Mum cannot tell the difference between Kinnie and tea, but they made her vote”, *The Times of Malta*.

<https://timesofmalta.com/articles/view/mum-cannot-tell-the-difference-between-kinnie-and-tea.942936>

⁷⁹ *ibid.*

⁸⁰ This refers to Mount Carmel Hospital, a mental health hospital in Malta. See <https://deputyprimeminister.gov.mt/en/ahcs/Pages/physiotherapy/mchphysio.aspx>

But during an election we are not allowed to decide whether a patient has the mental capacity to vote.

We are told only the electoral commission can decide that a patient is not mentally fit to vote. These are non-medical 'professionals' who never even see the patient. They override any opinion we have and automatically assume any patient can vote.

This leaves us with absurd, farcical situations where, for example, elderly patients with end stage dementia, bedbound, full of sores and contractures, with no clue at all as to who they are, where they are or what is going on, are made to vote. One such patient under my care, with mittens on both hands to prevent her from removing her nasogastric tube (so she could barely hold a pen!) was made to vote, with her relatives nearby shouting at her to vote Labour. But as doctors we are powerless to stop it.

I'm sending you this message as I feel this has to be amended.

Engagement with the media

Lack of engagement with independent media

Since Prime Minister Robert Abela took office in January 2020, he has failed to sit for a one-on-one interview with independent media, despite repeated invitations.⁸¹ He was only interviewed on his party media, ONE News, and the state broadcaster, TVM.⁸² Candidates from the incumbent government party also routinely stonewalled and dodged journalists seeking to hold them accountable.⁸³ Meanwhile, PN Leader Bernard Grech accepted to be interviewed during the electoral campaign. The Prime Minister's lack of engagement with independent media does not augur well for someone who had promised to work on a robust programme of reforms and to have a serious discussion on the future of journalism in Malta following the publication of the public inquiry into the assassination of Daphne Caruana Galizia.⁸⁴

State capture of public broadcaster

During any election campaign, the public service media has a general obligation to inform the public in an objective and comprehensive manner about matters relevant to the elections. The Committee of Ministers to member States of the Council of Europe recently adopted the

⁸¹ Zammit, Mark Laurence. (23 March 2022). 'Watch: The Robert Abela interview that never happened', *The Times of Malta*. <https://timesofmalta.com/articles/view/watch-the-robert-abela-interview-that-never-happened.943530>; <https://www.independent.com.mt/articles/2020-01-11/local-news/Robert-Abela-fails-to-live-up-to-TMI-interview-promise-6736218266>

⁸² (17 February 2022). 'Robert Abela on Xtra: the highlights', *The Journal*. <https://thejournal.mt/robert-abela-on-xtra-the-highlight/>

⁸³ Delia, Julian. (29 March 2022). 'The Shift takes a look at the difficulties faced by independent media covering the 2022 elections', *The Shift*. <https://theshiftnews.com/2022/03/29/stonewalling-politicians-and-word-salad-manifestos/>

⁸⁴ Arena, Jessica. (1 August 2021). 'We want a discussion on the future of journalism in the country - Robert Abela', *The Times of Malta*. <https://timesofmalta.com/articles/view/we-want-a-discussion-on-the-future-of-journalis.890623>

recommendations on promoting a favourable environment for quality journalism in the digital age.

⁸⁵ Recommendation 2.5.2 includes a point on public service media's contribution to society:

“independent public service media, in particular, have an important social function as a trusted source of information. They play a central role in portraying events in a comprehensive and inclusive manner, explaining complex situations and changes, allowing the public to distinguish the important from the trivial and highlighting constructive solutions to important challenges. States have the specific obligation of ensuring that public service media enjoy editorial autonomy and are able to operate independently, and that their content is universally available, including online”.

In Malta, however, the state broadcaster, PBS, has failed to heed to this advice. In comparison with the thorough reporting throughout the election campaign done by most independent media organisations, TVM's news and social media platforms under-reported or simply ignored the string of controversies casting the prime minister, the government, and PL in a negative light.⁸⁶ This situation perhaps becomes less surprising when taking into account that following the 2013 change in administration, PBS mostly employed personnel directly from PL's TV station, ONE, including the Chair, CEO, and Head of News.⁸⁷ The most recent display of the state capture of the public broadcaster is its failure to report on Pope Francis' strong warning against corruption, the keynote message of his recent apostolic visit to Malta.⁸⁸

Various international reports have raised concern about the public broadcaster's failure to fulfil its public service obligations. The Media Pluralism Monitor report published last August draws attention to concerns about political influence on public broadcasting in Malta:

“PSM [Public Sector Media] is particularly vulnerable to political influence. The government has a significant and direct influence on the PSM, in view of the fact that members of its Board of Directors, as well as its Editorial Board, are appointed by the State.”⁸⁹

⁸⁵ Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age adopted by the CoE Committee of Ministers on 17 March 2022. https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5ddd0

⁸⁶ De Gaetano, E. (24 March 2022). 'How the public broadcaster is letting us down', *The Shift News*.

<https://theshiftnews.com/2022/03/24/how-the-public-broadcaster-is-letting-us-down/>

⁸⁷ See Demarco, Joanna. (11 January 2022). 'New PBS editor is former head of engineering at One Productions', *The Shift News*.

<https://theshiftnews.com/2022/01/11/new-pbs-editor-is-former-head-of-engineering-at-one-productions/#:~:text=Apart%20from%20these%2C%20Dalli%20joined,role%20as%20head%20of%20news>; see also (5 April 2021). 'New PBS chair only six months after government appointed a new board', *The Shift News*.

<https://theshiftnews.com/2021/04/05/new-pbs-chair-only-six-months-after-government-appointed-a-new-board/#:~:text=A%20government%20statement%20on%20Maundy,been%20appointed%20PBS%20executive%20chairman>.

⁸⁸ Borg, Jacob. (5 April 2022). 'Pope sent Malta an anti-corruption message. Why did TVM not report it?', *The Times of Malta*.

<https://timesofmalta.com/articles/view/pope-sent-malta-an-anti-corruption-message-why-did-tvm-not-report-it.946161>

⁸⁹ Vassallo, Louiselle. (July 2021). 'Monitoring Media Pluralism in the Digital Era', *Robert Schuman Centre*, p. 16.

https://cadmus.eui.eu/bitstream/handle/1814/71955/malta_results_mpm_2021_cmpf.pdf?sequence=1.

Additional concerns and observations

Collection of data of non-voters without permission

Both PN and PL have a tradition of collecting the voting document numbers of those eligible voters who choose not to cast their vote on election day, after the voting period ends. This practice is known to the Electoral Commission and is completely tolerated and unquestioned. Roberta Spiteri, a Legal Officer of the Foundation and author of this report, witnessed this personally while serving as Assistant Electoral Commissioner in this year's election.

Relatedly, it is common for eligible voters to receive phone calls in the run up to the election and on election day itself from representatives of PL and PN asking if they are “in need” of anything that the party could help with. These calls are made on the basis of an official list of eligible voters to which the parties add phone numbers, and are intended to sway people's vote.

Co-option

The practice of co-option in Malta means that a person who did not submit themselves as a candidate for the electorate's scrutiny can nevertheless be given a seat in Parliament. In the Foundation's view, this stratagem used by political parties is undemocratic and unmeritocratic, turning parliament into a chess board. Seats that are not filled by members elected directly by the voters should rather be assigned to candidates in the official party list according to the order of preference in that list.

Following this year's general election, PL CEO Randolph Debattista,⁹⁰ who was not even a candidate in the election, was co-opted as a Member of Parliament by PL. The party decided that its candidates elected on two districts should vacate districts strategically so that Prime Minister Robert Abela gets to pick a candidate of his choice.⁹¹ In the previous legislature, Abela had co-opted five Members of Parliament in less than two years.

Debattista's co-option is especially concerning when taking into consideration the fact that he is presently the editor of The Journal, an online portal owned by PL that attempts to portray itself as a news channel in English. The Journal spent over €13,000 promoting its 'coverage' of the general elections with partisan headlines at the expense of PN and to the benefit of PL. These adverts were

⁹⁰ (5 April 2022). 'Randolph Debattista to return as Labour's CEO', *The Times of Malta*.

<https://timesofmalta.com/articles/view/randolph-debattista-to-return-as-labours-ceo.946360>

⁹¹ See Cordina, John Paul. (29 March 2022). 'Yet another co-option under Abela: Randolph Debattista becomes MP', *Newsbook*. <https://newsbook.com.mt/en/yet-another-co-option-under-abela-randolph-debattista-becomes-mp/>; see also (29 March 2022). 'PL decides on seats to be vacated, needs co-option for district 9, chooses Randolph Debattista', *Malta Independent*.

<https://www.independent.com.mt/articles/2022-03-29/local-news/PL-decides-on-seats-to-be-vacated-needs-co-option-for-district-9-6736241863>

documented as being paid for by PL.⁹² The ultimate source of the payments, however, is not transparent to voters.

Gender quotas

In April 2021, the Maltese Parliament approved the introduction of a Gender Corrective Mechanism (the “**Mechanism**”) that seeks to enhance women’s representation in parliament and the Electoral Commission.⁹³ If only two parties are elected to Parliament and one gender gets fewer than 40% of seats, the Mechanism allows the addition of up to 12 seats (six on each side of the House of Representatives).⁹⁴ At the Electoral Commission, four members must be women and four must be men.⁹⁵ The constitutional reforms received cross-party support.

With respect to this Mechanism applying to parliamentary elections, the Foundation is of the view that this Mechanism is undemocratic. The Mechanism only serves to reinforce the status quo to the benefit of the two main political parties and does not respect the choice of those voters. Moreover, it can be used to strategically engineer who makes it to the House of Representatives.⁹⁶ Proper electoral reform that would truly be in the interest of promoting more female representation in Parliament would seek to ensure that Members of Parliament work full-time, parliamentary sittings are held in the morning, there is a day care centre in Parliament, and both maternity and paternity leave helps those women trying to find a balance between work and family life.

A more democratic and meritocratic alternative to the Mechanism in its current form would be to have a minimum share of women on the candidate lists as a legal requirement rather than having reserved seats for women in Parliament. Having quotas in candidates’ lists would make it the parties’ responsibility to address Malta’s low percentage of female parliamentary representatives without resulting in an increase in parliamentary seats or placing even more power at the hands of the two main parties. A similar system to this is found in Kosovo.⁹⁷

⁹² (24 March 2022). ‘Over 100 billboards on 50km stretch, at least €670,000 spent on digital advertising’, *The Shift News*.

<https://theshiftnews.com/2022/03/24/over-100-billboards-on-50km-stretch-at-least-e670000-spent-on-digital-advertising/>

⁹³ Meilak, Nicole. (14 April 2021). ‘Gender corrective mechanism to become law as Parliament votes in favour of bill’, *MaltaToday*.

https://www.maltatoday.com.mt/news/national/108966/gender_corrective_mechanism_to_become_law_as_parliament_votes_in_favour_of_bill#.YkxTSG5Bw1I

⁹⁴ (14 April 2021). ‘Parliament approves ‘corrective mechanism’ to increase female participation’, *Malta Independent*.

<https://www.independent.com.mt/articles/2021-04-14/local-news/Parliament-approves-corrective-mechanism-to-increase-female-participation-6736232625>

⁹⁵ Azzopardi, Karl. (10 September 2021). ‘Women are on Malta electoral commission after legal changes’, *MaltaToday*.

https://www.maltatoday.com.mt/news/national/111971/women_are_on_malta_electoral_commission_after_legal_changes#.YkxTP25Bw1I

⁹⁶ (7 April 2022). ‘PN’s Janice Chetcuti will not contest casual election, will be elected through gender mechanism’, *The Malta Independent*.

<https://www.independent.com.mt/articles/2022-04-07/local-news/PN-s-Janice-Chetcuti-will-not-contest-casual-election-will-be-elected-through-gender-mechanism-6736242059>

⁹⁷ See Kosovo legislation on gender quotas, Articles 27, 110 - 112: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544>.

Voting by persons living overseas

The only voting option available in Malta is in special polling stations.⁹⁸ Maltese people living abroad, including those serving in diplomatic missions, embassies and European Union institutions, have to travel back to Malta to vote. This causes great disruption and unnecessary inconvenience for many, and can act as a deterrent for people to exercise their fundamental right to vote. Not everyone can afford to take time off work, leave their young children with a nanny, or is even physically able to travel. Moreover, Malta bears substantial additional costs due to the established practice of subsidising flights at election time and flying diplomats business class from diplomatic missions all over the world, including those as far afield as Ghana, Beijing, New Delhi and Washington, DC. In any case, subsidised flights to Malta are only available to non-diplomats from the cities that Air Malta flies from, and the outstanding amount to be paid for the flight must still be borne by the individual, as do other costs relating to travel. This creates two classes of voters, with diplomats who by selection and self-selection favour the governing party being the privileged class of voters.

Matthew Mangion, PN's Electoral Commission Director, believes that "[t]he introduction of a trusted electronic system, available even through embassies abroad, including possible cooperation with other EU member states' embassies where ours are not present, would significantly reduce the cost and inconvenience both to voters and to the government."⁹⁹ The Foundation is in full agreement with this viewpoint.

List of Annexed Documents

[Annex 1](#): Annex 1 - 20220325 Ad Library active elections ads.pdf

[Annex 2](#): Annex 2 - FacebookAdLibraryReport_2022-03-25_MT_yesterday_advertisers - FacebookAdLibraryReport_2022-03-25_MT_yesterday_advertisers.pdf

[Annex 3](#): Annex 3 - Screen Shot 2022-04-07 at 13.19.20.png

[Annex 4](#): Annex 4 - Joe Giglio - Get Together _ Facebook.pdf

⁹⁸ See more on page 73 of the 'Study on the Benefits and Drawbacks of Remote Voting' report by the European Commission: https://ec.europa.eu/info/sites/default/files/remote_voting_technical_appendices.pdf.

⁹⁹ See here for the advantages and risks of remote voting in Malta: Camilleri, Joseph and Mangion, Matthew. (3 June 2017). 'Remote voting', *The Times of Malta*. <https://timesofmalta.com/articles/view/Remote-voting.649780>.