

PUBLIC INQUIRY INTO DAPHNE CARUANA GALIZIA'S ASSASSINATION

Our expectations of the reform process and outcome

16 February 2023

1. Introduction

The 2019 initiation of the Public Inquiry into the circumstances of Daphne Caruana Galizia's assassination and the publication of its report on 29 July 2021 were major steps towards justice for a murder that could and should have been prevented, and for a death for which the Maltese State has been found to bear responsibility.¹ We expect the State to implement the conclusions of the Public Inquiry report holistically so that lessons learned from Daphne's murder may yet save the lives of others. Measures to address impunity, corruption and abuse of power must therefore also be an integral part of the reform.² In the spirit of transparency which we hope will characterise the reform from hereon, we set out below our understanding of what an effective reform process and outcome should look like.

2. Holistic reform is essential to safeguard journalists and public interest journalism

2.1 For years before she was assassinated with a car bomb, Daphne was the target of intense harassment. To ensure that journalists are empowered to fulfil their role, reform must not only ensure that physical attacks are deterred, but also that journalists are not harassed and threatened, nor subjected to attacks on their integrity. This necessitates the creation of an enabling environment for public interest journalism.

2.2 As we have stated before, an enabling and safe environment for journalists today can only exist within a legislative and administrative framework that truly protects society from the harms of corruption and abuse of power, and which ensures that the corrupt and those who abuse power do not continue to enjoy impunity. Reform that does not address these concerns leaves journalists exposed to the conditions that enabled Daphne's assassination. The Public Inquiry report's recommendations concerning specific amendments for the

¹ Rapport tal-Inkjesta Pubblika Daphne Caruana Galizia, p. 387, <https://www.gov.mt/en/Documents/DCG%20final%20version%20as%20at%2012.08.2021.pdf>

² Emendi speċifiċi għall-introduzzjoni ta' reati ġodda u tishih ta' liġijiet eżistenti, Rapport tal-Inkjesta Pubblika Daphne Caruana Galizia, p.420, <https://www.gov.mt/en/Documents/DCG%20final%20version%20as%20at%2012.08.2021.pdf>

introduction of new crimes and strengthening existing legislation³ must therefore be implemented as an integral part of the reform.

2.3 Nothing will bring Daphne back, but in delivering full justice for her and for her work, our country can evolve and mature into a modern democracy that respects and protects press freedom as its fourth pillar. The process and outcome of reforms must be holistic and address *all* of the conclusions of the Public Inquiry. In this context, we recall the following.

2.3.1 As established by the European Court of Human Rights, States have a procedural obligation under article 2 of the European Convention on Human Rights to carry out an effective investigation the purpose of which, as described in the leading opinion of the late Lord Bingham, is “...to ensure so far as possible that the full facts are brought to life, that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; **and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.**”⁴

2.3.2 Referring to the testimony given by journalists and editors on what is needed to strengthen journalism and the right to freedom of expression in Malta, the Public Inquiry found that “*had journalism in Malta been strong and had it had the means to react to the circumstances considered by the Board in this report, Mrs Caruana Galizia would have been in a position to find backing and support from a sector which would have been able to defend her from all types of aggression and violence.*”⁵ Furthermore, the Board found that “*the point of departure that everyone now accepts as certain, is that the assassination is intimately connected with the investigative journalism of Mrs Caruana Galizia and with revelations which she had published or intended to publish, concerning the behaviour of people in public administration and big business in the implementation of aforementioned projects and other matters*”.⁶

³ *ibid.*

⁴ R(Amin) v Secretary of State for the Home Department [2003] UKHL 51, [2004] 1 AC 653, [31], cited in Doughty Street Chambers, Bhatt Murphy Solicitors, third opinion, Public Inquiry into the Assassination of Daphne Caruana Galizia, p.10, (emphasis added), <https://www.daphne.foundation/documents/legal-advice/daphne-caruana-galizia-legal-advice-3.pdf>

⁵ Rapport tal-Inkjestta Pubblika Daphne Caruana Galizia, p. 430, <https://www.gov.mt/en/Documents/DCG%20final%20version%20as%20at%2012.08.2021.pdf>

⁶ *Ibid.* p. 150

- 2.3.3 As the Public Inquiry report⁷ makes clear, when all other pillars of our democracy failed, it was journalism that held up what was left of our democracy's three other pillars. Fulfilling the conclusions of the report effectively is therefore crucial for the protection of journalists and journalism, for our country's democracy, and consequently for the country's democratic obligations as part of the international community and for its standing in international fora.
- 2.3.4 The Public Inquiry found that: “[...] *the State must bear responsibility for the assassination because it created an atmosphere of impunity generated from the highest levels in the heart of the administration within the Office of the Prime Minister that like an octopus spread to other entities, such as regulatory institutions and the police, leading to the collapse of the rule of law and, therefore (a) the State and the entities that make it up did not recognise as they should have the real and immediate risks, including from the criminal intent of third parties, to Daphne Caruana Galizia's life; and (b) failed to take measures within the scope of its powers which it was reasonably expected to take to avoid that risk.*”⁸
- 2.3.5 The Public Inquiry also found that the State not only failed to protect Daphne from harassment, dehumanisation, and attacks on her personal and professional integrity, but also that State actors were complicit in such actions.⁹

3. Malta's reform must meet international standards at a minimum

- 3.1 Reform can only be as effective as the standards to which it aspires, including the State obligations determined by the European Court of Human Rights, the recommendations and resolutions of multilateral institutions, and the analyses of multilateral bodies and international organisations whose remit is media freedom. In particular, the following identify and define minimum standards that the process of reform in Malta should meet.

⁷ *ibid.*

⁸ *ibid.*, p. 387

⁹ See, for example, “Dak li kien ovvju u car..”, p. 168 onwards; “Dehumanisation campaign”, p. 249; “Il-Bord sema' kif fiż-żmien tal-mewt tagħha...il-proġett ġie abbandunat wara ftit żmien.”, p.366-367; Rapport tal-Inkjestta Pubblika Daphne Caruana Galizia, <https://www.gov.mt/en/Documents/DCG%20final%20version%20as%20at%2012.08.2021.pdf>

- 3.1.2 Malta's obligation under Article 10 ECHR¹⁰ (freedom of expression) is defined by the ruling of the European Court of Human Rights in *Dink v. Turkey*.¹¹ In recognising the vital role of independent journalism and the need to protect it, the Court imposes upon the State the obligation to establish effective systems which adequately protect journalists and promote independent journalism. In doing so the State is obliged not only to provide structures which guarantee journalists' personal safety but also to create a favourable environment which enables journalists to exercise their role safely and effectively. This favourable environment for public debate holding power to account is not only an essential element in the creation of that participatory democracy to which every democratic state should aspire, but is also necessary for strengthening democracy, human rights, and the rule of law.
- 3.1.3 Council of Europe Committee of Ministers Recommendation CM/Rec(2016)4¹² on the protection of journalism and safety of journalists and other media actors states that Member States should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear.
- 3.1.4 Legal analyses¹³ commissioned by the OSCE Office of the Representative on Freedom of the Media have examined legal amendments proposed by the Government. Where these were found to fall short of international standards, the legal analyses present recommendations to address such flaws. The legal amendments presented by the Government to Parliament as Bills 17, 18, and 19 of 2022 do not address these recommendations, as the following non-exhaustive list of examples shows.

¹⁰ European Convention on Human Rights, p.10, https://www.echr.coe.int/documents/convention_eng.pdf

¹¹ Cited in *Rapport tal-Inkjesta Pubblika Daphne Caruana Galizia*, p.66, <https://www.gov.mt/en/Documents/DCG%20final%20version%20as%20at%2012.08.2021.pdf>

¹² Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9#_ftn1
Malta signed the Recommendation in 2016 but did not implement it. The Council of Europe implementation guide is published at <https://www.coe.int/en/web/freedom-expression/implementation-guide>

¹³ Legal analysis on the draft law of Malta to implement various measures for the protection of the media and of journalists, October 2021, <https://www.osce.org/files/f/documents/c/5/513130.pdf>

Legal analysis on the draft law of Malta to implement various measures for the protection of the media and of journalists, February 2022, <https://www.osce.org/files/f/documents/f/e/518019.pdf>

- 3.1.4.1. The legal analysis of February 2022 reiterated the inclusion of “*the right to seek information as a basic component of the right to freedom of expression and freedom of information*”¹⁴ in the Constitutional provision. This is not included in Bill 18 of 2022.
- 3.1.4.2 Referring to the anti-SLAPP proposals, the legal analysis recommends that the provision for the recognition and enforcement of defamation judgements from third countries be “*eliminated and replaced by a comprehensive anti-SLAPP legal regime*”¹⁵, after having considered that the proposed amendment is based on “*confusing and vague criteria thus leaving to courts the possibility to embrace different contradictory interpretations*”.¹⁶ In addition to this, the provisions included in the proposal may represent an additional burden for the defendants, as “*the implementation of the defence included in the proposal will only increase the chilling effect intrinsic to a defamation lawsuit in a foreign country as it will force the defendant to face responsibilities and all the burdens associated to any lawsuit in not only one, but two different jurisdictions*.”¹⁷ Bill 19 of 2022 changes the original proposal, but it retains largely the same “*confusing and vague criteria*”.
- 3.1.4.3 In relation to the establishment of a structure for the protection of journalists, the legal analysis found the proposal did not properly contemplate how the structure could deal with “*particular events and providing effective protection and immediate responses [which] requires the designation and establishment of concrete units and the definition of clear protocols*.”¹⁸ The legal analysis also proposed the introduction of “*or contemplate the formulation of proper engagement and coordination mechanisms with civil society and media organisations regarding the operation of early-warning and rapid-response mechanisms...*” The analysis went on to recommend “*that the proposal indicates the setting up of protocols and training programmes for State authorities responsible for the protection of journalists and other media actors*.”¹⁹ Bill 17 of 2022 does not include these recommendations.

¹⁴ P.19, *ibid.*

¹⁵ P.3, *ibid.*

¹⁶ P.15, *ibid.*

¹⁷ P.23, *ibid.*

¹⁸ P.4, *ibid.*

¹⁹ P.25, *ibid.*

3.1.5 European Commission Recommendation C(2021) 6650 of 16.9.2021 on the protection, safety and empowerment of journalists and other media professionals in the European Union²⁰ is aimed at ensuring safer working conditions for all media professionals, free from fear and intimidation, whether online or offline. It sets out concrete actions for Member States to take, with a particular attention to female journalists.

4. Essential parameters of reform

We have identified the following parameters for the reform process and outcome as critical, based on the information and knowledge available to us at the time of writing. It may be necessary to set additional parameters as additional information and knowledge become available.

4.1 The process and outcome of media reform are inseparable. A bad process can never deliver a good outcome, and the opportunity for change will be lost. A strong process based on the fundamental aims and values of reform should include an action plan with a clear timeline and milestones, and should bring about cultural as well as legislative, administrative, and policy reform.

4.2 The public inquiry report speaks of fighting corruption and money laundering, which is where the threat to journalism in Malta and most of Europe is most deadly.²¹ Efforts to protect journalism will fail without an equal effort to fight corruption and money laundering, and the fight against corruption and money laundering can never be won without a strong press. Both challenges need to be addressed in the reform process. Implementing the Public Inquiry report's recommendations on criminal legislation should therefore be an integral part of the reform.²²

²⁰ <https://digital-strategy.ec.europa.eu/en/library/recommendation-protection-safety-and-empowerment-journalists>

²¹ Caruana Galizia, Paul, Impunity for murders of journalists: a challenge to freedom of the media, keynote speech, OSCE, Vienna, 11 December 2017. <https://www.osce.org/files/f/documents/a/b/362021.pdf>, based on data compiled by the Committee to Protect Journalists showed that two thirds of journalists killed were covering political corruption in their home country. <https://cpj.org/reports/2017/10/impunity-index-getting-away-with-murder-killed-justice-2/>

²² Emendi speċifiċi għall-introduzzjoni ta' reati ġodda u tishih ta' liġijiet eżistenti, Rapport tal-Inkjestta Pubblika Daphne Caruana Galizia, p.420, <https://www.gov.mt/en/Documents/DCG%20final%20version%20as%20at%2012.08.2021.pdf>

- 4.3 A holistic approach to reform must consider the risk of parallel legislative initiatives on the media sector. As a guiding principle, legislation should be drafted and enacted only once civil society, parliament, and the Government have a fuller picture of how much and what change is required.
- 4.4 The draft legislative amendments that the Government tabled in parliament in October 2022 fall short of what is required to create an enabling environment for journalists and for a high standard of press freedom. Reforms must be legal, administrative, and policy-related, and must fully address the systemic problems identified in the Public Inquiry, meet international standards, and address the shortcomings and recommendations identified in legal analyses commissioned by the OSCE Office of the Representative on Media Freedom (see also para. 3.1.4 above).
- 4.5 As indicated in the Public Inquiry report, justice following the assassination of a journalist requires the swift and effective investigation of all the journalistic investigations that she published. Reform must include the introduction of sanctions for institutional inaction.
- 4.7 State regulation of journalism should have no place in any reform as it has no place in the protection of media freedom as the fourth pillar of democracy or in the effort to create an enabling environment for journalists. A focus on regulating the work of journalists assumes that journalists, and not State failures, are the problem. Journalism is incomparable to any other profession and therefore should not be regulated in the same manner. Regulating the work of journalists would not have saved Daphne's life nor would it make the work of journalists in Malta freer or safer.
- 4.8 Any restriction of the right to freedom of expression that is unnecessary in a democratic society, which does not represent an imminent and pressing social need, and which does not meet at least the minimum international standards for justifying such a restriction, should be excluded from the reform.

4.9 Measures which undermine the recommendations established in Recommendation CM/Rec(2016)4 should be excluded from the reform.

4.10 All and any measures must address the heightened risks that female journalists face online and offline.²³ As stated in the Public Inquiry report, the dehumanisation campaign against Daphne Caruana Galizia, originating in and enabled from within the Office of the Prime Minister,²⁴ is an aggravating factor in the State's responsibility for her death,²⁵ and, in Daphne's own words, "*my gender is a significant factor in the moral violence I experience on a daily basis as a critic of male politicians in the southern Mediterranean.*"²⁶

5. Expected process and outcomes of reform

The reform should be meaningful and comprehensive, and bring about an enabling environment for journalists and public engagement in matters of public interest. This requires legal, political, social and cultural change, and particular attention paid to the heightened risks for female journalists, given that misogyny was central to the dehumanisation campaign against Daphne Caruana Galizia. Reform therefore requires legislative and policy measures, as well as actions for their implementation and enforcement, and must address all of the conclusions of the Public Inquiry, not solely those directly concerned with journalism. The following are, in our view, the minimal (not exclusive) requirements for such reform and must be combined with measures to counter criminality, if they are to be effective. Their implementation should take account of the evolving context, including increasing and entrenched risks due to delayed implementation. The nature of the challenges and threats to media freedom changes as it reflects political, social, economic, and cultural developments. Meaningful reform is therefore not a one-time event, but requires monitoring to ensure that it remains effective.

5.1 The nature of reform

²³ UNESCO research discussion paper, The Chilling: Global trends in online violence against women journalists, published April 2021, <https://web.archive.unesco.org/web/20220703123945/https://en.unesco.org/sites/default/files/the-chilling.pdf>

²⁴Rapport tal-Inkjestta Pubblika Daphne Caruana Galizia, p.350
<https://www.gov.mt/en/Documents/DCG%20final%20version%20as%20at%2012.08.2021.pdf>

²⁵ ibid. p.405

²⁶<https://daphnecaruanaGalizia.com/2017/02/e66500-1-day-thank-giving-economy-minister-labour-party-deputy-leader-two-fingered-salute/>

5.1.1 As stated above, reform must be holistic if it is to be effective. Implementing the Public Inquiry report's recommendations on criminal legislation should therefore be an integral part of the reform.²⁷ Measures should not be singular but should form a national policy that supports press freedom within the ambit of freedom of expression and public participation on matters of public interest and addresses the need to end impunity for corruption and for financial and organised crime. This should be accompanied by a structured action plan whose implementation is monitored by an independent authority.

5.1.1.2 The legislative and policy measures should address all authorities and entities that have a direct role in safeguarding media freedom. These include persons holding public office, prosecutors, the Police, members of the legal profession, members of the judiciary, and political parties. Reform must institute laws, policies, and training to equip said authorities and entities to act in line with the value of press freedom as a pillar of democracy.

5.1.1.3 The legislative and policy measures should support journalists and other media actors in fulfilling their role free from fear and threats against themselves and their sources through:

- a. the timely provision of accurate, true and full information held by public authorities,
- b. access to rapid mechanisms to secure their safety,
- c. the timely investigation and prosecution of wrongdoing exposed through journalistic work,
- d. the effective investigation and prosecution of offences committed against journalists and media actors,
- e. broad protection of sources and whistleblowers, and
- f. strong and effective self-regulation.

5.1.1.4 The measures should include prevention, protection, prosecution, and promotion of information, including education to generate media literacy and awareness

²⁷ Emendi speċifiċi għall-introduzzjoni ta' reati ġodda u tishih ta' liġijiet eżistenti, Rapport tal-Inkjestta Pubblika Daphne Caruana Galizia, p.420, <https://www.gov.mt/en/Documents/DCG%20final%20version%20as%20at%2012.08.2021.pdf>

raising activities focused on the vital role of journalists and other media actors in a democracy.

5.2 **Constitutional measures to protect public interest journalism**

To protect the civic space for the exercise of public interest journalism, the reform must at least ensure the following.

5.2.1 Journalism must be recognised as a fundamental and valuable contribution to democracy, and journalists' work as being in the public interest and shoring up democracy.

5.2.3 The Constitution must recognise:

- a. everyone's right to freedom of expression, including those rights which support participation in public debate, i.e., the right to seek information, hold and express opinions, receive and impart information and ideas,
- b. the role of journalism as a pillar of Malta's democracy,
- c. the role of journalists as public watchdogs,
- d. the State's positive obligation to facilitate an enabling environment for journalists and other media actors, and for public interest journalism,
- f. the State's obligation to promote and protect independent and pluralistic media, to provide access to information and to provide for the protection of journalistic sources,
- g. the obligation of all public authorities to refrain from interfering with the press.

5.2.4 The Constitution must refrain from allowing any restrictions which exceed Malta's obligations under article 10 of the ECHR.

5.3 **Protection measures in ordinary law**

Constitutional protection must be translated into practice through new ordinary laws, policy, and actions, including the following.

5.3.1 Freedom of expression, including press freedom, and their protection from any chilling effect, must be adopted as a principle of national public policy. Effective legislative and soft measures must be implemented to neutralise abusive strategic lawsuits against public

participation (SLAPPs). Malta should adopt the provisions of the proposed EU anti-SLAPP Directive,²⁸ informally known as “Daphne’s law”, as a minimum standard and work to strengthen the Directive at European Council level. At a minimum, Malta must implement the EU Recommendation announced as part of the same anti-SLAPP package.

- 5.3.2 Legislation must deter SLAPPs through effective, appropriate, and proportionate measures, including early dismissal of existing SLAPPs. The legislation must provide for rapid determination of proceedings, provide journalists, media houses, publishers and other media actors with security for costs and damages, allow for the allocation of all costs (including legal and judicial costs) to the claimant, and for penalties to be imposed on the claimant. These measures must be applicable to domestic claims, to claims made elsewhere in the EU, and to third country judgements.
- 5.3.3 At a minimum, in relation to domestic SLAPPs and the recognition and enforcement of third country judgments, Government must take all steps necessary to adhere with and fulfil the recommendations made by the European Commission in its Recommendation (EU) 2022/758 on protecting journalists and human rights defenders who engage in public participation from unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)
- 5.3.4 For third country judgements against journalists and other media actors, Malta’s legislation must ensure a procedure obliging the Maltese court to review the foreign judgement in line with Maltese law and Malta’s public policy, and to give the court the discretion to disallow recognition and enforcement of such judgement. Where the court allows the recognition and enforcement of a foreign judgement, the law must cap the amount of damages and costs payable by the defendant.
- 5.3.5 In relation to cross border cases, the Maltese Government should adopt, at a minimum, the European Commission’s proposal for a Directive on protecting persons who engage in public participation from unfounded or abusive court proceedings (“Strategic lawsuits

²⁸ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0177>

against public participation”), and promote the strengthening and adoption of that proposal at the European Council.

5.4 Freedom of Information policy and practice

- 5.4.1 Government should adopt a policy for the public sector that establishes rules for recording matters of public administration, and for the publication of such records, to increase transparency and accountability of public administration.
- 5.4.2 Timely access to information held by public authorities should be made the rule, and public authorities should proactively publish accurate and objective information on matters of public interest and which refer to matters of public administration. The freedom of information process must be available to all physical and legal persons, must be easy and efficient to use, and must support a public administration culture of transparency and accountability, as opposed to secrecy.
- 5.4.3 Government must publish the legal advice it has already received on the review of the Freedom of Information Act, and undertake consultation with relevant stakeholders, including civil society and the media, to enact effective reform of the legislation and its implementation.
- 5.4.4 The long-overdue review of the Freedom of Information Act must be completed with the objective of eliminating a “culture of confidentiality and secrecy that has little to do with the exercise of democracy”. Administrative discretion in the refusal of requests for information must be limited, timeframes within which requests are determined must be shortened, and guidelines must be established for those exercising discretion in determining such requests for information.
- 5.4.5 Public authorities must provide journalists with free and unencumbered access to public registers and databases, including information held by the Malta Business Registry such as access to the Ultimate Beneficial Owners’ register. The argument that providing access

breach data protection law is unfounded. It is well established that public interest access to such information does not breach data protection law.

5.5 Protection of sources

5.5.1 The protection of journalistic sources must be safeguarded in all circumstances and at all stages of a journalist's work, including preparatory work which may not lead to a story being published. Protection of sources is required not only when their identity is directly disclosed, but also where their identity is capable of being exposed through the publication, or making available of, information which makes it possible to identify the source.

5.5.2 All public authorities, including security forces such as the Malta Security Service and the Police, must be formally and legally obliged not to violate the protection of journalistic sources. Protocols are needed to guide their investigative or intelligence collecting work to ensure that where this involves or touches upon the relationship of journalists and sources or whistleblowers, the identity of that source or whistleblower is not disclosed, and the journalist's work is not jeopardised.

5.5.3 The identity of journalistic sources must be protected in judicial and legal proceedings.

5.6 Protection of whistleblowers

5.6.1 To remove nepotism, corruption, and abuse of power from public administration, people who become aware of wrongdoing must be made to feel comfortable and protected enough to report it.

5.6.2 The Protection of the Whistleblower Act must be reformed to provide whistleblowers with reporting structures that are independent of or, at least, at arm's length from the Government. Whistleblowers as well as those who assist them in reporting, including journalists and media houses through public disclosure, must have access to protection measures, including immunity from legal claims, based solely on their act of reporting.

5.7 Improved protection from libel action

Protection from libel, which protects the reputation of claimants without chilling public debate, especially on matters of public interest, must be improved to encourage public participation. The following are minimum (not exhaustive) requirements.

- 5.7.1 The Media and Defamation Act must, at the very least, be amended to incorporate all of the recommendations stated in the Legal Analysis of the OSCE Office of the Representative on Freedom of the Media of November 2017.²⁹ As noted by the Representative in a January 2018 letter³⁰ to the Maltese Minister of Justice and an attached Legal Analysis³¹, there are a number of areas where the recommendations of the November 2017 analysis were not taken on board.
- 5.7.2 If the defendant in a libel or slander suit dies before the case is concluded, the case may only continue against the defendant's heirs if the author's death does not prejudice their defence rights in the case. In the event that the rights of defence of the defendants are prejudiced, the Court shall order the discontinuance of the proceedings. In any event, where the proceedings continue to be heard against those entering the suit or being called into the suit following the death of the author, the Court shall only provide a judgement determining the claim, without awarding or liquidating damages against the defendants.
- 5.7.2 The defences of truth and honest opinion must be available against all claimants, not only against those who are public figures.
- 5.7.3 The defence of honest opinion applies to a privileged statement when the publication is on a matter of public interest, in line with the defence of public interest, and irrespective

²⁹ Legal analysis of the draft law of the Republic of Malta to provide for the updating of the regulation of media and defamation matters and for matters consequential or ancillary thereto, OSCE Office of the Representative on Freedom of the Media, November 2017, <https://www.osce.org/files/f/documents/1/3/358906.pdf>

³⁰ Letter ref. 025/18 from the OSCE Representative on Freedom of the Media, Harlem Desir, to Minister of Justice Owen Bonnici, 24 January 2018, available at <https://parlament.mt/media/93389/dok-5.pdf>

³¹ Note on the actions taken by the national authorities regarding the draft law of the Republic of Malta “to provide for the updating of the regulation of media and defamation matters and for matters consequential or ancillary thereto”, Office of the OSCE Representative on the Freedom of the Media, January 2018, available at <https://parlament.mt/media/93387/dok-3.pdf>

of the type or volume of publicity that the matter had already received prior to the statement complained of.

5.7.4 In determining the claim, as well as when liquidating damages and allocating costs, the court is to consider whether a libel claim has or is capable of having a chilling effect on participation in public engagement on matters of public interest.

5.7.5 The law must recognise that the limits of admissible criticism are wider if a public figure is involved, as s/he inevitably and knowingly exposes her/himself to public scrutiny and must therefore display a particularly high degree of tolerance of criticism.

5.8 Promotion of Press Freedom

5.8.1 Government must stop using rhetoric which denigrates the value of journalism and demeans the work of journalists and their integrity.

5.8.2 Rules of ethics must be established for all persons in public life, whether elected or appointed, in relation to their dealing with journalists. Enforceable codes of ethics must oblige all persons elected or appointed to public office to act in a manner that is respectful of the media and its democratic role, and must deter those elected or appointed to public office from using anti-media rhetoric.

5.8.2 Civil society's undertaking of awareness-raising activities and programmes on press freedom and media literacy must be supported by public funds, without any direct or indirect State authority influence on their content, format, and delivery, nor any direct or indirect State authority interference with civil society's access to relevant audiences.

5.9 Protecting media independence

The independence of the media must be safeguarded from pressure and undue influence from the Government and public authorities.

- 5.9.1 The framework, procedures, and processes of disbursing public funds to media must be transparent and fair, according to the needs of the independent media, and provided at arm's length from Government and the influence of Government officials.
- 5.9.2 Arbitrary disbursement of funds through opaque procedures and decisions, which often provides far more assistance to the public broadcaster and the political party-owned media than to independent media, must end as it devalues the fundamental importance of a free, objective, and non-politically controlled media landscape. This principle must apply to all types of public funding, such as emergency funds allocated during the pandemic, government advertising, or resources to address the need to strengthen the financial stability of the media in Malta.
- 5.9.3 Objective criteria and guidelines must be set for the allocation of publicly-funded advertising. Both the criteria and guidelines must be published ahead of the allocation of advertising and disbursement of funds.
- 5.9.4 Government must publish clear and objective criteria for the allocation and distribution of financial support and contributions to the media and must publish all financial assistance granted to media houses, including broadcasters. The criteria should be applied uniformly to all media houses and across all media platforms.
- 5.9.5 Objective criteria must be set to restrict the employment of or appointment to public administration and to the public service media of persons from the political party-owned media or political party related structures.
- 5.9.6 Government must refrain from regulating journalists through legislation or other State action, and must instead promote and support self-regulation which is fully independent of public authorities. Equally, the Government must refrain from subjecting journalists to a public authority, whether through the monitoring of adherence to codes of ethics, or by any other form of regulation of the profession. Financial support or allocations to structures representing journalists or media houses should come from the State through mechanisms which are independent of Government itself.

5.9.7 The public broadcasting service (PBS) must be reformed in a manner that removes it from the actual and perceived influence of the Government on its administration and editorial decisions. Appointment of persons to serve within PBS, as well as engagement of employees of PBS, must be based on the person's expertise and capability of making independent and impartial decisions which benefit the public interest alone.

5.9.8 The Broadcasting Authority must be freed from political appointments and allegiances to be able to enforce impartiality within the public service provider, and eliminate the practice that assumes that political media balance each other. If this practice is thought to be established on an interpretation of a legal provision, that provision must be amended to ensure impartiality in all broadcast media.

5.10 Measures to physically protect journalists

5.10.1 Representation of journalists must be strengthened. While it is for journalists to decide how they are to exercise their right of association, how to organise their representation, and how to bring about effective self regulation, any entity having this role should be recognised by the State but not subjected to formal regulation.

5.10.2 Legislation must deter harassment, threats, and harm to journalists for reasons linked to his/her work. The law must allow for an increased punishment for the commission of any offence against a person which is related to the victim's participation in public engagement or the victim's role as a journalist or other media actor.

5.10.3 Legal amendments must be designed to provide journalists and other media actors who are victims of crime with quick access to preventive measures of protection, including court-issued protection orders and other personal protection measures taken by the Police.

5.10.6 Legislative recognition must be accompanied by clear public and systematic statements made by persons in public office to condemn violence, intimidation, threats and attacks

against journalists and the press. A parliamentary debate to monitor press freedom with the participation of relevant stakeholders, including media representatives, press freedom experts, and civil society should be held annually. Alternatively, the Office of the Speaker of the House should annually host a parliamentary debate on press freedom with participants from the elected Members of the House, public administration, Ombudsman, National Audit Office, IGM, editors, media house owners and civil rights organisations.

5.10.7 Government must support the establishment of civil society-run support mechanisms for journalists and other media actors, including an early warning and rapid response mechanism. Should the Government itself provide an early warning and rapid response mechanism itself, this should include the effective participation of representatives of journalists and civil society.

5.11 Early response and protection mechanisms

Prosecutors and security forces, including the police and security services, have a role not only in protecting journalists and other media actors from threats to life but also to safeguard journalists in the performance of their role. The obligations of prosecutors, investigators, and public order forces arise from both Article 2 and Article 10 of the ECHR. To fulfil these obligations they must do the following.

5.11.1 As a first port of call for journalists and other media actors to report offences, a dedicated police unit must be set up, well-trained to international standards and sensitised to the role of journalists. Among other considerations, the unit must investigate the probability that the journalist is being targeted because of their work and apply investigative protocols which do not infringe on journalistic work practices.

5.11.2 Prosecutors and security forces must establish processes and protocols capable of preventing harm to journalists' physical integrity, and measures capable of providing effective protection.

5.11.3 Such processes and protocols need to be independent, in no way involving or being answerable to Government, or capable of being influenced by Government, in the

performance of the task to detect the risk of violence against a journalist, to prevent such violence, and to protect the journalist from violence.

- 5.11.4 The determination of whether a journalist is at risk and the provision of protection must not be subject to interests which are extraneous to the protection of journalists and press freedom.
- 5.11.5 Investigative units and prosecutors must be well trained in understanding the democratic role of journalists and capable of identifying where risks and offences occur due to the journalist's role.
- 5.11.6 Adopt protocols and methods of investigation and prosecution of offences against journalists which reflect the role of journalists and their right to seek and impart information on matters of public interest irrespective of who and what is the subject of their journalistic work; and adopt protocols and methods of investigation and prosecution of other offences in a manner that respects the role of journalists and their rights under Article 10.
- 5.11.7 Conduct impartial, prompt, thorough, independent, and effective investigations into all alleged violence, threats and attacks against journalists; bring all perpetrators, irrespective of their role in the commission of the offence, to justice; and provide victims and their families with access to information on the investigation and prosecution, appropriately recognising their standing as victims of crime, and provide appropriate restitution, compensation, and assistance.
- 5.11.8 Investigate and prosecute in a timely and effective manner all cases of wrongdoing exposed by journalistic work. Legislation should introduce sanctions for neglect or omission to investigate and prosecute perpetrators exposed by public interest journalism.

6. Conclusion

This document sets out the minimal requirements of reform expected from the implementation of the Public Inquiry conclusions. Malta must - as a matter of democratic

necessity – create and maintain an enabling environment in which the country’s public interest media are able to fulfil their essential democratic function. By instituting the far-reaching reform required to create such an enabling environment, the State would make the assassination of another journalist not only impossible but unimaginable, and would clearly signal that dehumanisation, threats, and attacks against journalists are unacceptable. There is no middle road to holistic reform. It must ensure that the corrupt and those who abuse power do not continue to enjoy impunity. The choice the State faces is stark: to implement effective reform to prevent future deaths, or to perpetuate the systemic State failures that enabled Daphne Caruana Galizia’s contract killing.

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