

## Malta UPR: Summary and updated recommendations

This joint submission by PEN International, ARTICLE 19, Reporters Without Borders (RSF), the International Press Institute (IPI) and the European Centre for Press and Media Freedom (ECPMF) (the coalition) focuses on Malta's compliance with international human rights obligations with respect to freedom of expression (Article 19) and, in relation to the killing of journalists and the issue of impunity, the investigative duty under the right to life (Article 6) of the International Covenant on Civil and Political Rights (ICCPR) to which Malta is a state party. In particular it details the coalition's concerns relating to:

1. **Safety of journalists and the issue of impunity for violence and the killing of journalists;**
2. **Legislative restrictions on freedom of expression;**
3. **Freedom of information;**
4. **Lack of media pluralism.**

During Malta's last UPR cycle, no recommendations on freedom of expression or freedom of the press were submitted by states. Since 2013, however, the climate for freedom of expression has deteriorated significantly in Malta, in particular in the lead up to and aftermath of the assassination of the country's best-known investigative journalist and anti-corruption campaigner, **Daphne Caruana Galizia** on 16 October 2017.<sup>1</sup> The threats and violence Ms Caruana Galizia was subjected to in the course of her life and lead up to her assassination were tolerated with impunity by the Maltese authorities. The coalition are firmly of the opinion that this impunity laid the way to her brutal assassination which was in direct response to her journalistic activities in exposing corruption at the highest levels of the Maltese authorities. The tolerance of the authorities for this violence, and ultimately the assassination with impunity of such an important freedom of expression figure demonstrates key violations of freedom of expression in Malta since the last review and has profound implications for the right to freedom of expression of Malta as a whole.

The widespread failures in the investigation into her murder, and the on-going threats and harassment against her family and those fighting corruption in Malta are a deep cause of concern for the coalition, in particular for their implications for press freedom and the safety of journalists in Malta. Since the Coalition's submission<sup>2</sup> was released in March 2018 there have been several developments relating to the investigation of the assassination of Daphne Caruana Galizia and the newly adopted Media and Defamation Law. These are addressed below.

### 1. Safety of journalists and the issue of impunity for violence and the killing of journalists

It is now almost one year since Daphne Caruana Galizia was assassinated. At the time, four UN experts issued a statement urging a "*prompt, thorough and independent public inquiry and investigation, followed by a full judicial process to hold all the perpetrators to account. [...] They further noted "It is also crucial that the Government [...] devote resources to protect journalists and activists and to encourage a vibrant space for the watchdog role of independent reporting, especially reporting critical of government, officials and politicians."*

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<sup>1</sup> Malta experienced the sharpest drop in press freedom of all 180 countries covered by the 2018 *Reporter Without Borders* World Press Freedom Index: <https://rsf.org/en/ranking>. Malta also received the steepest score decline in Western Europe in *The Economist's Democracy Index*: <https://infographics.economist.com/2018/DemocracyIndex/>

<sup>2</sup> <https://pen-international.org/app/uploads/Malta-UPR-Final-copy-web.pdf>

<sup>3</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22262&LangID=E>

In December 2017, three Maltese men unknown to Caruana Galizia were charged for their role in executing the crime. However the commissioners and intermediaries of what is widely viewed as a contract killing in retaliation for her investigative reporting remain unidentified. Prominent subjects of Caruana Galizia's reporting, who may bear responsibility for her death, have not been placed under formal investigation or questioned. Further, on 5 October 2018, the Constitutional Court ruled that the senior officer leading the police investigation into her death, Deputy Police Commissioner Silvio Valletta, should cease to have any involvement in that investigation.

The lack of progress in the investigation has been widely criticised by international bodies. In April 2018, the Legal Affairs and Human Rights Committee of the Council of Europe appointed the Dutch MP Pieter Omtzigt to produce a special report into the assassination of Caruana Galizia, the first time that a special rapporteur has been appointed by the Council of Europe to scrutinise an EU state.<sup>4</sup> In October, Omtzigt announced that the Maltese delegation had tried to withdraw his mandate, but did not win the support of the committee.<sup>5</sup>

Three delegations of MEPs have visited Malta since the assassination, raising major concerns around the failures of the investigation both into the assassination and the crimes upon which Caruana Galizia was reporting, and citing serious threats to the rule of law in the country. In June 2018 a Rule of Law Monitoring Group was established by the European Parliament's Civil Liberties Committee to address these concerns.

Neither has there been an inquiry into whether Caruana Galizia's assassination could have been prevented, into whether the state bears indirect responsibility for its failure to protect her, or into its role in fostering a hostile environment for critical and independent journalism. An attempt by an opposition MP to launch an inquiry into the main investigative strands of Caruana Galizia's work was defeated by the governing majority in Malta's parliament last December. That no such wider investigation is underway a year after her death is a matter of the utmost concern including for the protection of other investigative journalists and anti-corruption campaigners. In August 2018, lawyers for the Caruana Galizia family advised Malta to institute a public inquiry in line with Article 2 of the European Convention of Human Rights to which Malta is a state party.<sup>6</sup> In its interim reply to the request, the Maltese government indicated it would not undertake such an inquiry.<sup>7</sup>

#### **Recommendations to the Government of Malta:**

- **Establish without delay a public inquiry into the killing of journalist Daphne Caruana Galizia to probe whether her death could have been prevented and to learn lessons for the future. The public inquiry should have comprehensive and transparent terms of reference; ensure meaningful involvement of the deceased's family; ensure the protection of sources; and include public hearings. The public inquiry can be established under Malta's Inquiries Act and must be completely independent of the Maltese police, Government and politicians, conducted by a panel of respected international judges and jurists with no political or government links;**
- Fully support and cooperate with the PACE Special Rapporteur's inquiry into the context of the murder of Daphne Caruana Galizia;
- Adopt effective measures to guarantee the right to life and the physical integrity of Maltese journalists, as well as the exercise of freedom of expression and adopt all possible measures to carry out investigations in order to end impunity for the killing of journalists.

<sup>4</sup> Interim findings available here: <http://website-pace.net/documents/19838/4228475/20180807-doc302018-EN.pdf/8468f4c9-34a3-45c4-8ada-5dd090380df5>

<sup>5</sup> <https://www.timesofmalta.com/articles/view/20180912/local/labour-mps-request-to-remove-coe-rapporteur-on-caruana-galizia-murder.688946>

<sup>6</sup> [https://www.doughtystreet.co.uk/documents/uploaded-documents/Legal Opinion in Support of Public Inquiry-TPM20180808201224364 \(002\).pdf](https://www.doughtystreet.co.uk/documents/uploaded-documents/Legal%20Opinion%20in%20Support%20of%20Public%20Inquiry-TPM20180808201224364%20(002).pdf)

<sup>7</sup> <https://gov.mt/en/Government/Press%20Releases/Pages/2018/September/01/pr181859en.aspx>

## Attacks from public figures concerning Daphne Caruana Galizia

It is of particular concern that public officials continue to publicly denigrate the legacy of Daphne Caruana Galizia, contributing to a climate of increasing hostility towards independent media.<sup>8</sup> A public memorial which was built in protest to the ongoing impunity in the case of Daphne Caruana Galizia has been cleared some twenty times and in September 2018 was removed and boarded up by the government. High-level authorities have repeatedly and publically denigrated her memory and called for the removal of the spontaneous memorial which was created as a public protest of her assassination, notably the chair of Valletta 2018, the European Capital of Culture, a role tasked with promoting culture and media.<sup>9</sup>

Since her death, the family of Daphne Caruana Galizia have also been repeatedly harassed. In September 2018 a delegation of MEPs urged an end to the animosity and hatred towards Daphne Caruana Galizia's memory and her family.<sup>10</sup>

Impunity in her case, as well as surrounding the corruption upon which she was reporting, appears to have emboldened abuse against other women journalists and human rights defenders. Since her murder, female human rights defenders and investigative journalists who have been campaigning for justice in Daphne Caruana Galizia's case, including Martina Urso of anti-corruption group *Il-Kenniesa* and Caroline Muscat, editor of *The Shift News* have been subjected to online vilification campaigns by hate-groups and legal harassment.<sup>11</sup>

### Recommendations:

- Ensure a safe and enabling environment for freedom of assembly and the right to protest, including at the site of the protest memorial to Daphne Caruana Galizia;
- Fully investigate all threats and harassment of journalists and human rights defenders, and bring perpetrators to justice.

## 2. Legislative restrictions on freedom of expression

The coalition welcomes the decriminalisation of defamation in the Media and Defamation Act which entered into force in May 2018.<sup>12</sup> It is also welcome that the new legislation establishes maximum compensation amounts to be granted by civil courts; courts will be obliged to consider the effect that the payment of damages will have on the person who is ordered to pay; and the protection of informants will be extended to apply to any editor, publisher, author or website or broadcast operator.

Important problems persist however. In particular, the burden of proof in defamation cases remains with the defendant, including in cases instituted by senior members of government. This enables claimants to misuse defamation law with a view to silencing criticism and/or creating an environment in which it is difficult for the press to publish investigative work.<sup>13</sup> The problem is especially acute in situations in which journalistic investigations are based on revelations by sources whose identity requires protection, and who cannot, therefore, be summoned as witnesses for the defence.

Furthermore, several civil defamation lawsuits continue to exert extreme financial and psychological pressure on the family of Daphne Caruana Galizia who faced 47 libel lawsuits at her death. In 33 of

<sup>8</sup> <http://theshiftnews.com/2018/07/02/pen-international-call-for-action-against-public-officials-who-threaten-freedom-of-speech/>

<sup>9</sup> <https://pen-international.org/news/leading-international-writers-join-pen-international-in-calling-on-europe-to-protect-press-freedom-in-malta>

<sup>10</sup> [https://www.maltatoday.com.mt/news/national/89614/meps\\_urge\\_ministers\\_to\\_condemn\\_hate\\_speech\\_towards\\_daphne\\_caruana\\_galizia#.W6T1xWRKiu0](https://www.maltatoday.com.mt/news/national/89614/meps_urge_ministers_to_condemn_hate_speech_towards_daphne_caruana_galizia#.W6T1xWRKiu0)

<sup>11</sup> <https://ecpmf.eu/news/threats/malta-anti-corruption-activist-defies-online-hate-campaign>  
<https://ecpmf.eu/news/threats/daphne-caruana-galizia-the-two-faced-approach-to-a-journalist-murder>

<sup>12</sup> <http://iurismalta.com/media-defamation-act-2018/>

<sup>13</sup> [https://www.barcouncil.org.uk/media/61907/james\\_hamerton-stove\\_57\\_.pdf](https://www.barcouncil.org.uk/media/61907/james_hamerton-stove_57_.pdf)

these lawsuits, all of them civil libel proceedings instituted by senior officials or other public figures, the plaintiffs continue to seek damages from the journalist's family.

During the sponsorship procedure of the new Media and Defamation law, the government voted down amendments proposed by the opposition to protect journalists against the enforcement of foreign Strategic Lawsuits Against Public Participation (SLAPPs) lawsuits in Malta. While the Justice Minister claimed the Anti-SLAPP Bill conflicted with EU law this has been denied by European Commissioner for Justice, Vera Jourova.<sup>14</sup>

Since the last review, excessive use was made of SLAPPs by senior government figures and economically powerful individuals to harass and intimidate journalists from all media houses in Malta into silence by threatening them to make repeated court appearances and pay highly exorbitant legal fees. For example, in December 2017, *The Shift News* was threatened with legal action by the private firm which sells Maltese passports, *Henley and Partners*. The same firm was documented as colluding with the Maltese government to threaten to financially cripple Daphne Caruana Galizia for her reporting.<sup>15</sup>

#### **Recommendations:**

- Introduce legislation to transfer the burden of proof in defamation cases where there is a legitimate public interest from the defendant to the claimant;
- Prohibit the passing of future liabilities to heirs or successors in defamation cases and ensure that public officials drop all libel cases inherited by the Caruana Galizia family;
- To the extent possible, prohibit the recognition of foreign defamation judgments to protect Maltese journalists from threats emanating or arising from SLAPP and libel tourism.
- Exert influence through the European Council and the Council of the European Union to ensure the introduction of legislation amending the Brussels I Regulation Recast with a view to (a) grounding jurisdiction in defamation cases in the Member State of the defendant's domicile; (b) considering the introduction of common legislation to make less attractive the initiation of SLAPPs in courts outwith the European Union.<sup>16</sup>

### **3. Freedom of information**

Concerns have been raised by numerous newspapers and the Malta Institute of Journalists (IGM) that freedom of information requests made under the Freedom of Information Act 2012 are frequently declined by the government on the grounds of "commercial sensitivity", impeding critical reporting on transparency and accountability in government.<sup>17</sup> It has also been reported that the government often does not engage with international or critical journalists and that only pro-government outlets are given access to government figures and press conferences.<sup>18</sup> A further problem in this context is the exertion of government influence by way of advertising, over which there is no independent oversight or clear rules

#### **Recommendations:**

- Enhance efforts to guarantee freedom of information in accordance with international standards.

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<sup>14</sup> <https://www.timesofmalta.com/articles/view/20180613/local/no-legal-obstacle-to-malta-introducing-anti-slapp-legislation.681648>

<sup>15</sup> <https://daphnecaruanagalizia.com/2017/05/prime-minister-chief-staff-use-josephmuscat-com-addresses-deal-secretly-henley-partners-chairman-addresses-keith-joseph-order/>

<sup>16</sup> Justin Borg-Barthet, 'The Brussels I Regulation as an Instrument for the Undermining of Press Freedoms and the Rule of Law: an Urgent Call for Reform' (forthcoming 2018) *University of Aberdeen, Centre for Private International Law, Working Paper Series* [WP.2018/6].

<sup>17</sup> <https://www.timesofmalta.com/articles/view/20171130/local/over-400-freedom-of-information-requests-in-3-years.664474>

<sup>18</sup> <http://theshiftnews.com/2018/09/22/disinformation-watch-19-unfreedom-of-expression/>

#### **4. Lack of media pluralism**

The coalition is concerned by several “high risk” indicators for media pluralism in the country including the lack of political independence of media; lack of independence of public service media governance and funding; commercial and owner influence over editorial content; cross-media concentration of ownership and lack of media literacy.<sup>19</sup>

The OSCE has criticised the Maltese Broadcasting Authority which supervises Malta’s Public Broadcasting Service (PBS), noting that “owing to its composition and the appointment procedure, the BA is generally not perceived as an independent regulator.”<sup>20</sup> Furthermore, Malta is the only EU country where political parties hold such extensive media ownership, while the appointment procedures for Malta’s Public Broadcasting Service and the Broadcasting Authority do not guarantee independence from political interference.<sup>21</sup> Malta is also one of a handful of countries in Europe that to date have no policy on media literacy.

#### **Recommendations**

- Take concrete steps to promote pluralism of the media and their independent work, including the exercise of their watchdog function
- Ensure that a sufficient variety of media outlets provided by a range of different owners, both private and public, is available to the public, taking into account the characteristics of the media market, notably the specific commercial and competition aspects.
- Adopt rules aimed at limiting the influence which a single person, company or group may have in one or more media sectors as well as ensuring a sufficient number of diverse media outlets.
- To increase public trust and foster representation of wider political positions and societal interests, consideration could be given to revising the rules for the appointment of members of the broadcasting regulator and PBS management in a manner which enhances independence.

#### **Suggested Advance Question**

- Is the Government of Malta giving active consideration to opening an independent judicial inquiry under the Public Inquires Act, comprised of international judges and jurists with powers and means of investigation entirely independent of the Maltese authorities; and free of any influence from those who were the subject of journalistic investigation by Daphne Caruana Galizia deceased?

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<sup>19</sup> <http://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/malta/>

<sup>20</sup> <https://www.osce.org/odihr/elections/malta/348671?download=true>

<sup>21</sup> <http://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/malta/>