



Submission to the Human Rights Committee by The Daphne Caruana Galizia Foundation

*130th Session, 12th October 2020 - 6th November 2020
Malta's third periodic review
Under the International Covenant on Civil and Political Rights*

I. Introduction

1. Submitting Parties

The Daphne Caruana Galizia Foundation welcomes the Human Rights Committee's (HRC) request for information regarding human rights issues concerning the 'State Party' of Malta. The Daphne Caruana Galizia Foundation is a **non-profit, independent and non-governmental** organisation registered in Malta and was established by the family of the investigative journalist, Daphne Caruana Galizia, who was assassinated in a car bomb attack in Malta on 16th October 2017.

2. The Foundation's mission is accordingly; ensuring the public interest of full justice for Daphne's assassination; supporting efforts to protect investigative journalists; ending impunity for the murder of journalists; ensuring the guardianship of Daphne's work; promoting a culture of public interest litigation; supporting independent, non-partisan media.¹ In doing so, we advocate for the complete fulfilment of the core values of international human rights laws, including but not limited to, the International Covenant of Civil and Political Rights (ICCPR) to which Malta is a state party.
3. Our submission will focus specially on the failures to implement Article 2, Article 14, Article 17 and Article 19 of the ICCPR in Malta. The Foundation hopes that our assessment of these issues will contribute towards the Human Right Committee's evaluation of Malta's adherence to their obligations under international law. We support the full adherence to the 2018 Venice Commission recommendations to Malta, many of which are outstanding. The Foundation urges the HRC to invite Malta to address the discrepancies in their adherence to the ICCPR.

¹ For more information on the mission of our Foundation, details can be found at: <https://www.daphne.foundation/en/mission/>

II. Failure to establish a National Human Rights Institution - Article 2

4. There has been a failure to establish a National Human Rights Institution (NHRI) in accordance with the Paris Principles - this follows the second periodic review of Malta (CCPR), where the Human Rights Committee noted their concern in their Concluding Observations of the lack of such a body.² This matter was addressed again during the 40th Session of the UPR on Malta in 2019, and to date domestic conversations have yet to materialise into action, despite ongoing promises.³
5. Another major concern of the UN's Concluding Observations in 2015, was that despite the adoption of certain improvements in legislation, Malta has demonstrated a lack of enforcement and implementation of these legislative measures.
6. This seems to be a recurring issue for Malta, and one which is the root of the Daphne Caruana Galizia Foundation's current concerns. The Directorate for Human Rights and Integration was established in Malta in 2015 to implement any UPR recommendations⁴ - this, however, has been ineffective and even precedes a significant period of gross state negligence of the Convention.⁵
7. The Council of Europe recommendation CM/Rec(2016)4[1], of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors was signed by Malta.⁶ Despite the recommendation being adopted by the Committee of Ministers on 13 April 2016, at the 1253rd meeting of the Ministers' Deputies, there has not been any implementation on Malta's part. The Foundation calls for the full implementation of a National Human Rights Institution (NHRI) to be implemented within the State party.

² Human Rights Committee, Concluding Observations on the second periodic report on Malta, November 2014

³ Report of the Working Group on the Universal Periodic Review, Fortieth Session, February- March 2019

⁴ Report of the Working Group on the Universal Periodic Review, Fortieth Session, February- March 2019

⁵ The Directorate for Human Rights and Integration is now, as of 2020, referred to as the Human Rights Directorate (HRD), <https://humanrights.gov.mt/en/Pages/About-Us.aspx>

⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9

III. Issues relating to the Right to a Fair Trial - Article 14

8. The failure to implement the Right to Fair Trial, enshrined in Article 14 of the ICCPR, remains a concern of the Foundation. Public outcry for justice - particularly in the wake of the assassination of Daphne Caruana Galizia - alongside recommendations by international institutions, notably the Venice Commission, has resulted in certain reforms proposed as bills tabled in parliament.⁷ Although these reforms can be viewed as progress, the road towards a strong and well-functioning justice system is still long. The weakness of the Maltese judicial system is clearly exposed by the lack of judicial independence and the length of proceedings. The preservation of a functioning justice system is essential to the promotion of the rule of law.
9. One of the positive reforms undertaken is the elimination of conditions that withheld legal representation to detainees - a reform that is welcomed by the Foundation. The thirty-first session of the Human Rights Council, held in 2018, highlighted that whilst a person arrested could have access to a lawyer immediately after their arrest, this right was not guaranteed during a police interrogation.⁸ This has since changed, and the right to access legal representation can be exercised even during a police interrogation.

Judicial Independence

10. Judicial independence stands as an essential facet of the right to a fair trial. The involvement of government officials in the process of judicial appointments remains a concern for the Foundation. Since 2010, the public perception concerning judicial independence has deteriorated, with a large portion of the population blaming political and governmental interference. This has resulted in the Maltese population questioning the existence of judicial independence more so than other EU states.⁹
11. The process of judicial appointments remains a matter of concern to the Foundation in the implementation of the right to a fair trial. Members of the Judiciary are appointed by the President, acting on advice from the Prime Minister. In 2016, a Judicial Appointment Commission (JAC) was established with the task of vetting candidates for judicial appointments and then recommending the suitable applicants to the Prime Minister. Notably, vacancies are not published, instead lawyers express their interest at any time

⁷ <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2020/July/22/pr201392en.aspx>

⁸ Report of the Working Group on the Universal Periodic Review, Thirty-First Session, November 2018

⁹ The European Commission, The 2020 EU Justice Scoreboard

and then, after the vetting process, the JAC includes the suitable candidates in a registry. The Prime Minister, consequently, can choose any candidate from the registry.¹⁰

12. Prior to the limited implementation of the recommendations of the Venice Commission,¹¹ the JAC was a politicised institution in terms of its membership that encompassed the Chief Justice and the Attorney General (both appointed at the discretion of the Prime Minister), the Auditor General and the Ombudsman (both appointed by a two-thirds majority in Parliament) and the President of the Chamber of Advocates.¹² In July 2020, the composition of the JAC was changed to conform with the “European Standards” set forth in the Commission.¹³ The situation, however, is far from the one recommended.
13. Even since the Venice Commission, the composition of the JAC still does not ensure judicial independence and any new appointees remain in the minority.¹⁴ The power to appoint judges and magistrates ultimately resides with the Prime Minister, with the former Prime Minister’s appointments being deemed as ‘controversial’ by the Special Rapporteur. With the Commission only having the power to vet and shortlist candidates, the Prime Minister still retains the power to reject shortlisted candidates at his own discretion.
14. The Venice Commission also offered recommendations to enact transparency within the impeachment processes. However, the process of removing a judge is rarely successful as it still relies on the involvement of parliament.¹⁵ The impeachment procedure entails a removal decision of the President acting on the request of a two-thirds parliamentary majority. The decision to enact impeachment can be based only on grounds of impossibility to perform judiciary functions and proved misbehaviour. Therefore, the ‘controversial’ appointees will almost certainly remain sitting judges without anyone being able to question their appointment due to the difficulty in the success of the impeachment process.

¹⁰ P. Omtzigt, Daphne Caruana Galizia’s assassination and the Rule of Law in Malta and Beyond: ensuring that the whole truth emerges, 2019

¹¹ <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2020/July/22/pr201392en.aspx>

¹² P. Omtzigt, Daphne Caruana Galizia’s assassination and the Rule of Law in Malta and Beyond: ensuring that the whole truth emerges, 2019

¹³ Venice Commission Opinion on the Constitutional Arrangements and Separation of Powers and the Independence of the judiciary and Law Enforcement

¹⁴ Over the last seven years, the former Prime Minister, Joseph Muscat, has appointed 64% of the currently sitting judiciary, many of whom are closely connected to the ruling party.

<https://manueldelia.com/2020/04/reforms-to-retain-prime-ministers-power-to-block-deserving-candidates-for-the-judiciary/>

¹⁵ Venice Commission Opinion on the Constitutional Arrangements and Separation of Powers and the Independence of the judiciary and Law Enforcement

15. The Foundation believes that the reforms that have so far been implemented are insufficient to ensure judicial independence and, therefore, to fulfil the Right to a Fair Trial.

Length of Judicial Proceedings

16. The length of judicial proceedings in Malta also stands as a hindrance to the full enjoyment of the right to a fair trial. Within the European Union, the length of the Maltese proceedings among the longest of all party states.¹⁶ For instance, proceedings in the administrative courts require an average of 1,120 days to be completed.¹⁷
17. It was recently reported in the *Times of Malta*, in an interview with former Chief Justice and judge on the European Court of Human Rights, Vincent De Gaetano, that the European median for number of days in a civil appeal case is 122 days, whereas in Malta it is 783 days.¹⁸ The rate is worse in regards to criminal appeals, where the European median is 77 days, this goes up to 1,025 days in Malta.¹⁹
18. Regarding cases specifically dealing with money laundering, cases take longer to be dealt with in Malta than any other EU state, averaging 1400 days in 2017. Notably, for Malta, the aforementioned average of 1400 days jumped from an average of 600 in 2016 - this is a significant increase coinciding with the exposure of money laundering allegations in Malta in 2017.
19. Delayed proceedings can contribute to a culture of impunity, an issue facing the state party and a matter of concern to the Foundation. Impunity is often cited by media freedom organisations, such as *Article 19* and *Reports without Borders*, as one of the most prominent threats facing journalists.²⁰ Ensuring that judicial proceedings are conducted within a 'reasonable' time-frame is also specified under Article 6 of the European Convention on Human Rights, to which Malta is a signatory to.

¹⁶The European Commission, The 2020 EU Justice Scoreboard

¹⁷The European Commission, The 2020 EU Justice Scoreboard

¹⁸The European Commission, The 2020 EU Justice Scoreboard

¹⁹ <https://timesofmalta.com/articles/view/dedicated-judiciary-hampered-by-system-inefficiency-former-chief.813597>

²⁰ <https://www.article19.org/resources/international-organisations-demand-an-end-to-impunity-two-years-after-the-assassination-of-journalist-daphne-caruana-galizia-in-malta/>

IV. Right to privacy, family life and protection of reputation - Article 17

20. The Maltese government has engaged in hate campaigns towards journalists, opposition MPs and activists in general, directly in violation of Article 17 of the ICCPR, the right to privacy, family life and protection of reputation. This is part of a wider effort to undermine the right to free expression.
21. These government driven hate campaigns have been ongoing throughout Ms. Caruana Galizia's career, but have yet to be brought to the attention of the UN as direct violations of the ICCPR or other human rights conventions. The fact that these campaigns are still ongoing is a blatant indicator of the government's continuing stance on journalists who critique the state. The Foundation is concerned by the widespread hate campaigns against critics of the government, and wishes to raise this concern to the international community.
22. Caroline Muscat, founder of *The Shift News*, conducted an investigation into these hate campaigns, specifically on the Facebook groups administered by Labour Party officials. The membership of these groups, which included high ranking government officials, engaged in misogynistic, violent and abusive content, some of which was directed at Ms. Muscat. Often these comments also incited direct violence against journalists. These hate campaigns have also been directed at employees of the Foundation in their pursuit for justice. The behavioral perpetuation by governmental officials, compounded by the failure of former Prime Minister Joseph Muscat and current Prime Minister Robert Abela to distance themselves from the Facebook groups, of which they are members, has legitimised this activity.
23. Participants of these groups defended their actions by claiming freedom of expression. However, these campaigns resulted in denigration to the targets' reputations and, in some instances, threats to the wellbeing and lives of the ones attacked. The Government has systematically failed to protect people who, in consequence of the aforementioned campaign, have had attempts on their lives.
24. The perpetuation of the hate campaign and the systemic failings of the Government have been particularly evident in the case of the journalist Daphne Caruana Galizia. The journalist was subject to various attacks, both physically and to her reputation, prior to her assassination. The harassment intensified after the Labour Party became the ruling party, where they began the campaign of labelling her the 'The Witch of Bidnija'. On two occasions, Ms Caruana Galizia's house was set alight - in 1995 and 2006, with her family



dog being killed on the first occasion. In 2013, Ms Caruana Galizia was followed and insulted by a crowd of people led by a Labour Party mayor, only seeking refuge in a convent until the police arrived.

25. Importantly, the hate campaigns did not stop with Daphne Caruana Galizia's assassination. Instead, they spread to other working independent journalists, such as Caroline Muscat, citizen journalists, the Caruana Galizia family and other activists.²¹ In the aftermath of the assasssnation, many posts celebrating her death were published. Press freedom activists have also been harassed at the memorial site in Valletta.²² The Foundation wishes to re-emphasise the dangers that unregulated hate campaigns have on individuals' lives, and calls for a greater protection of Article 17 of the ICCPR to be enforced.

²¹<https://www.ecpmf.eu/archive/news/threats/daphne-caruana-galizia-the-two-faced-approach-to-a-journalist-murder.html>

²²<https://timesofmalta.com/articles/view/press-freedom-activist-called-bitch-at-daphne-memorial-site.729682>

V. Restrictions on the Freedom to Hold Opinions Without Interference - Article 19

26. The role of a free and independent press is a cornerstone in a well-functioning democratic society. However, since Malta's last Universal Periodic Review (UPR) in 2018, it is clear that despite making legislative changes, the state has still failed to address restrictions on the freedom of expression. The Maltese government has a "positive obligation" to uphold the right to freedom of expression under Article 19 of the ICCPR. Effective exercise of this obligation does not merely depend on Malta's duty not to interfere, but also may require positive measures to foster a safe environment for the enjoyment of Article 19.²³
27. The Foundation notes that the State Parties have an obligation under international law to ensure that the media can actively participate in public life, particularly with regard to their right to scrutinise government officials in the spirit of public interest. The 2018 Venice Commission report reiterates this obligation on Malta's part, noting that "criticism of those in power is part of the political debate essential to democratic governance."²⁴ Not only have there been tepid efforts to veritably enforce the Commission's recommendation, but the CMPF's 2018 recommendation for Malta to revise its media regulatory environment is still outstanding, as well.
28. The following three issues will be raised as failure in the State Parties adherence to their obligations to freedom of expression: Libel and Defamation laws, the failure to protect independent journalists and whistleblowers and the lack of media pluralism within Malta.

Libel and Defamation Laws

29. In May 2018, the government enacted the *Media and Defamation Act*, which, as a welcome step forward, decriminalised defamation and introduced a new civil tort of slander.²⁵ During the 40th session of the UPR, Malta claimed that the Act "strengthened the right to freedom of expression."²⁶ There are, however, still significant problems affecting freedom of expression in Malta, which the aforementioned Act does not address.

²³ https://www.echr.coe.int/Documents/Research_report_article_10_ENG.pdf

²⁴ European Commission for Democracy through Law (Venice Commission, 17 December 2018)

²⁵ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=28292&l=1>

²⁶ Report of the Working Group on the Universal Periodic Review, Fortieth Session, February- March 2019

30. Importantly, the burden of proof in Maltese defamation cases still lies with the defendant. This is problematic where journalistic investigations are based on revelations by anonymous sources, whose identity requires protection and therefore cannot be summoned as witness for defence. Defendants are at a clear disadvantage here, particularly in cases instituted by senior government officials. These libel laws are open to misuse by the claimant as there are no barriers to instituting a case, and no preliminary case test. As a result, there is a legislative gateway to fostering an inhospitable environment for publishing investigative work or criticism.
31. In recent years, these suits - with special regard to the case of Daphne Caruana Galizia - constitute an atmosphere of intimidation and restriction upon the freedom of expression of journalists. The majority of the 47 libel cases faced at the time of Ms Caruana Galizia's death have been posthumously inherited by her family, where 33 of those proceedings have been instituted by senior officials or other public figures, including by former Prime Minister Joseph Muscat.²⁷ These suits place unwarranted financial pressures on the parties involved and signify a decline in the protections granted through freedom of expression.²⁸
32. The anti-SLAPP "provisions" introduced by Malta are insufficient in establishing any significant deterrents to arbitrary SLAPP suits, given the limited legal protection. During the sponsorship period of the *Media and Defamation Act*, the Maltese government rejected amendments that were proposed to protect journalists against the enforcements of SLAPPs. Malta noted in their responses to other states' concerns on the protection of journalists against SLAPPs, that 'anti SLAPP provisions were introduced in so far as actions of civil libel are started in Malta against media practitioners in Malta.'²⁹ This fundamentally disregards the international approach that SLAPP suits can take. Furthermore, in June 2018, the Justice Commissioner for Malta claimed the *Anti-SLAPP Bill* conflicted with EU law - however, in response, this has been denied by the European Commissioner for Justice, Vera Jourova, who confirmed its compatibility.³⁰
33. Despite Malta's rejection of the amendment and their subsequent stance that there are sufficient measures in place to tackle arbitrary SLAPPs, many contemporary media figures are still experiencing nefarious threats. *The Shift News*, since facing threats in 2017 from *Henley and Partners*, have also been threatened by Russian banker, Ruben

²⁷ <https://euobserver.com/justice/146011>

²⁸ The Representative on the Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), Harlem Désir, has stated that these lawsuits "continue to exert extreme financial and psychological pressure on the family" and called on the plaintiffs to drop them.

²⁹ Report of the Working Group on the Universal Periodic Review, Addendum, Fortieth Session, Feb-March 2019

³⁰ <https://timesofmalta.com/articles/view/no-legal-obstacle-to-malta-introducing-anti-slapp-legislation.681648>

Vardanyan. More recently in February 2020, the Bulgarian owner of Maltese Satabank filed suits in Bulgaria against *The Times of Malta*, as well as Maltese blogger, Manuel Delia - both had written about or referred to money laundering allegations.³¹ The confidential nature and lack of transparency around SLAPPs has a chilling effect on the journalism climate in Malta, discouraging journalists from speaking freely in fear of legal and financial consequences.

The Protection of Independent Journalists and Whistleblowers

34. During the Fortieth session of the UN's UPR in 2019, many states raised concerns regarding Malta's handling of Daphne Caruana Galizia's assassination case and the general protection of whistleblowers - concerns the Foundation also believe are harmful to freedom of expression. The state party noted that they implemented *The Whistleblower Act* in 2013 as a measure "to ensure Whistle-blower protection and encourage [the] reporting of corruption."³² *The Whistleblower Act*, in reality, has proven ineffective in cases involving high-level corruption, particularly considering that the power to enforce the Bill lies with the Prime Minister.
35. The unsuitability of measures to protect the whistleblower has been made apparent in cases beyond Ms Caruana Galizia's. The government denied whistleblower protection to a former police inspector in the economic crimes unit, Jonathan Ferris.³³ Maria Efimova, who was a former employee of Pilatus Bank, was issued an arrest warrant and had her licence withdrawn by the European Banking Authority.³⁴ If Malta has acknowledged to the UN that this mechanism was in place since 2013, it must be questioned why it was not implemented in these cases which occurred in the years following the Act.
36. Highlighting how there are no institutionalised procedures for the protection of journalists, is the testimony of several outgoing police commissioners, as part of the public inquiry into the circumstances of Daphne Caruana Galizia's assassination. The lack of protocol occurring after a complaint has been made remains a strong concern for the Foundation. This can be seen most prominently in the lead up to Ms Caruana Galizia's assassination; despite her filing a police report saying she had been receiving threats, there was no adequate response or procedure employed on the police's part. The police, even in the aftermath of Ms Caruana Galizia's death, have still not sought to establish any formal protection protocol for threatened journalists or whistleblowers.

³¹ <https://theshiftnews.com/2020/02/27/opposition-files-bill-to-protect-journalists-from-slapp-suits-again/>

³² Report of the Working Group on the UPR, Addendum, Fortieth Session, Feb-March 2019

³³ <https://timesofmalta.com/articles/view/jonathan-ferris-will-not-be-given-whistleblower-protection.674310>

³⁴ https://www.maltatoday.com.mt/news/national/87564/pilatus_whistleblower_maria_efimova_will_not_be_extradited_to_malta#.XOPST5MzbfZ

Former police commissioners who testified have individually given contrasting views of risk assessment and protection - this can be seen in Carmelo Magri's testimony³⁵ and Peter Paul Zammit's.³⁶

Media Pluralism

37. The most prominent concerns regarding the plurality of the media in Malta stem from the lack of political and commercial independence within media institutions, including public service media and the regulatory authorities that supposedly govern them.³⁷ Media impartiality is integral in granting civilians the free and unadulterated choice and information to critique and scrutinise their governing authorities.
38. It is the state's duty to enable an environment whereby media transparency is common practice and media outlets do not experience undue limitations on their reporting by part of the financial pressure wielded by the government or media owners (particularly considering the current economic strain on Malta's media bodies).
39. The Centre for Media Pluralism and Media Freedom (CMPF) 2020 report on 'Media Pluralism in Malta' highlights acute concerns. Malta's given score for Market Pluralism was 69% and for Political Independence was 67%, which are both considered 'High Risk.'³⁸
40. Furthermore, in contrast to its fellow EU member states, Malta is unique in that it has such substantial media ownership on the part of political parties and is one of the few countries in the EU that has no domestic policy on media literacy. With the lack of domestic policy, and the failure to implement international human rights law on a national level, the risk that the lack of media pluralism plays is of greater concern.
41. *The Broadcasting Authority*, as Malta's only media authority (including none for print and online media) and which supervises the *Public Broadcasting Service* (PBS), retains a dubious appointment procedure and composition - on the advice of the Prime Minister, and after consultation with the Leader of the Opposition, the Authority's Chairman is appointed by the President.

³⁵https://www.maltatoday.com.mt/news/national/102993/live_caruana_galizia_public_inquiry_to_hear_acting_police_commissioners_testimony#.X0PTNZMzbfZ

³⁶https://www.maltatoday.com.mt/news/court_and_police/99652/caruana_galizia_public_inquiry_20200109#.X0PTRZMzbfZ

³⁷ <https://cmpf.eu.eu/media-pluralism-monitor/mpm-2016-results/malta/>

³⁸https://cadmus.eu.eu/bitstream/handle/1814/67811/malta_results_mpm_2020_cmpf.pdf?sequence=1&isAllowed=y

42. *The Broadcasting Act*,³⁹ which to date has never been applied, nor has been used to monitor the impartiality of the two broadcasters owned by the state's two largest political parties. In the context of the Authority's composition comprising three government selected members and two Opposition selected, impunity of political party-owned media from the impartiality provisions of *the Broadcasting Act* is de facto guaranteed. Just last week, the Authority made a "final" decision to make the national TV station censor journalist questions at live press conferences, using the current Covid-19 pandemic as justification.⁴⁰ Even if journalists can still ask questions, the Authority negates the opportunity for national TV viewers by proxy of the journalists, their right to question authority. Core media regulatory responsibilities, namely in enforcing the Act, are therefore extremely vulnerable to politically charged interference or bias.

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³⁹<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8820&l=1>

⁴⁰<https://lovinmalta.com/news/decision-to-censor-journalists-questions-on-state-television-is-final-maltas-broadcasting-authority-says/>