

## PART VI

### Conclusions

The Board comes to the following conclusions and recommendations which may also serve as the “Executive Summary” of the report:

With regard to the reply to the first term of reference, an answer has already been given in the concluding part entitled “Liability of State Entities”. But it is succinctly reiterated that while no evidence has emerged that the State, as such, played a role in the assassination of Ms Caruana Galizia, for the reasons amply set out in the body of this report, the State must bear responsibility for the assassination as it created an atmosphere of impunity, generated at the highest levels in the heart of the administration in Castille<sup>1</sup>, which like an octopus spread to other entities such as regulatory institutions and the Police which led to the collapse of the rule of law and (a) the State and its constituent entities did not recognize the real and immediate risk, including from the criminal actions of third parties, to the life of Daphne Caruana Galizia; and (b) failed to take measures within its extensive powers which, with reasonable judgment, it was expected to take to prevent such a risk.

01. All the evidence in this inquiry leads to the conclusion that the murder of Daphne Caruana Galizia is intrinsically, if not exclusively, linked to her investigative work, which included allegations of irregularities and administrative abuses in the commission of major development projects in the country.
02. Even if it transpires that there could have been a causal link between the assassination and other elements extraneous to the public administration – a possibility which has not been ruled out by the police but which is not borne out by the evidence seen by the Board -- it has been ascertained that the police’s findings about how the assassination was carried out, which led to those who in the police’s opinion are allegedly responsible as perpetrators or material executors, remain at the heart of what happened. The Commissioner of Police confirmed this before the Board while indicating that investigations are still ongoing and the possibility of involving other persons and other lines of investigation is not excluded.
03. The duty of this Board is not to investigate or identify or to hold persons liable for alleged direct or indirect involvement in the assassination. Every individual is presumed innocent and has the right to a fair hearing. The Board is only interested in the actions of the public administration

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<sup>1</sup> The seat of the Office of the Prime Minister of Malta

and how they may have played a role in the assassination, irrespective of who the perpetrators and executors were.

**Responsibility of some State entities including the Police and regulatory authorities**

04. All of the evidence presented before the Board, which was intended to establish the circumstances in which the assassination took place, revealed a culture of impunity, not only for senior officials in the public administration, including "persons of trust"<sup>2</sup>, but also for a restricted circle of politicians, businessmen and criminals.
05. The ties between politics and big businesses, which have always existed and which must be reined in and regulated through appropriate steps, found their best outlet in the Government's policy, declared prior to its ascension to power in 2013, that the public administration should be "business friendly". This is a policy on which the Board does not pass judgment, and which can be positive as long as it is not abused and strictly applied within the tracks of applicable laws and regulations. Being "business friendly" should never mean being "money friendly". The public administration is obliged to uphold the rule of law and must never allow a businessman's or public official's greed to undermine correctness and good governance.
06. The Board gained ample evidence of the intricacies and overfamiliarity between officials in top-level public administration and powerful businessmen interested in promoting large development projects. This overfamiliarity was a determining factor for why most of the major projects carried out in the relevant period ended up under the scrutiny of the Auditor General and Magisterial Inquiries, among others. These investigations confirmed that there were major irregularities to the extent that in some such cases there was suspicion that the entire process may have been vitiated.
07. The Board was confronted with situations whereby although the established procedures dictated by good governance appeared to be followed on paper, they were, in fact, only the means by which those involved managed to accomplish their goals. This is also confirmed in the reports of the Auditor General which is the constitutional institution tasked with verifying the correctness of the conduct of public administration. In this context, the Board subscribes to the findings reached by the Auditor General to the extent that it has identified misconduct by the public administration; Behavior that, although not always illegal, is certainly illicit.

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<sup>2</sup> Public officials or advisers appointed directly by political office holders.

08. The reality is that, unsurprisingly, certain powerful business interests exploited the opportunity to be able to operate and carry out their projects with the least administrative hindrance possible and through the manipulation of high-ranking public officials, with whom they weaved ties of common interest.
09. In order to understand how these links developed and how the public administration operated at the relevant time, the Board must not only consider the “business friendly” policy but it is also crucial to consider the role of the Chief of Staff of the Prime Minister, who united in his person the roles of highest-level official and powerful businessman.
10. It is established that at a relevant time, the assassinated journalist’s reporting was highly critical of the public administration’s actions and the links that existed with certain powerful businessmen in carrying out projects. These ties created two power centres - one political and the other economic. When the journalist began directly and credibly attacking these two powers, it inevitably resulted in a direct confrontation with those in power. From the outset, the pressing need to contest the journalist was felt in order to neutralize the repercussions of her writing which affected Government policy and in order to avoid any prejudice to the plans for certain individuals to thrive through the connections they had with the public administration.
11. This confrontation reached its climax after the publication of the Panama Papers and the circumstances surrounding the establishment of the offshore company 17 Black, when it became obvious that the journalist had obtained and continued to acquire the most sensitive and damning evidence that could irreparably prejudice not only the plans of those who were taking undue advantage of the projects in which they were involved, but the very stability of the Government itself. This confrontation continued to escalate until the moment she was assassinated.
12. It transpired that the confrontation was so strong that the government had, for some time after the 2013 election, started to consider the journalist as the only opposition in the country. These were the words of the Prime Minister of the time. The confrontation was accentuated by the admitted fact, essentially universally acknowledged, that the information and facts on which the allegations were based by journalist Daphne Caruana Galizia were substantially correct and her writing was "an open source" even for the Police.
13. The political response to this confrontation was mainly a sustained campaign of personalized attacks of slander and hatred, incidents of verbal abuse, abusive stalking and financial pressure, including through judicial means. Incidents like these, some of which were grievous, may

perhaps in some way be considered passable though always reprehensible, in the context of a conflict between political parties. It can never be accepted, however, that a State entity engages in or promotes such initiatives. The State has an obligation to defend through every means the value of journalism in a democratic society and defend the fundamental right to freedom of expression and the safety and lives of journalists. This obligation falls on the State even when a journalist is expressing harsh opinions against the policy and administration of the government of the day.

14. It was proven that at the relevant time, some government entities not only failed in their obligation to extend full protection to Daphne Caruana Galizia, but there were persons in State entities who actively and directly acted in a manner that seriously prejudiced her right to exercise her profession freely and safely while being instrumental in exponentially increasing the degree of risk to which the journalist was exposed.
15. The evidence conclusively shows that both elements in political power and in business had the same interest in neutralizing the effect of the strong writing of the assassinated journalist. This does not mean that at this stage, there is any evidence of the involvement of the public administration as such in the execution of the assassination. There is no evidence in this regard and the Board needs to dismiss allegations made in this context. The fact remains, however, that the denigrating campaign that demonized Daphne Caruana Galizia, in a scenario of impunity, created a favorable climate so that those who wanted to eliminate her, could do so with the least consequences. The fact remains that for the Board, it was Daphne Caruana Galizia's writing about the intricacies between significant deals and politics that led to her assassination. It is in this direction that evidence acquired by the Board and that in the public domain points. On a probability basis, the Board took this reality as a starting point. In fact, none of the witnesses who testified before it opposed this reality.
16. This denigratory campaign started before the 2013 election, when the confrontation was only political. After that election the confrontation intensified and developed into a confrontation between a journalist and the public administration, in addition to the political element. At this time, Daphne Caruana Galizia was subjected to attacks by elements within the public administration. Attacks began to escalate with the journalist's revelation of alleged irregularities and scandals in the award and implementation of major development projects. It was at this time that the risks to her person and her property began to escalate, because it became obvious that she was targeting the power of the state and the interests of powerful businesses. This risk escalated after the disclosure of the Panama Papers and even more so after the facts about the offshore company 17 Black. On the latter, Daphne Caruana Galizia also acted following a draft FIAU report, through which leaked the allegation based on close links

between powerful businessmen and persons in the public administration of a specific charge of serious crimes in the financial field. From that moment on, it was obvious to everyone that the journalist was risking a strong reaction from political and economic powers along with a real and imminent risk that remained sustained until the moment of the assassination.

17. For the Board this was the moment in time when the need arose to suppress and silence Daphne Caruana Galizia, not for political reasons but because she was targeting powerful financial interests expressed in and baked into an incestuous marriage between elements within politics and business.
18. What was obvious to all, was not obvious to the Commissioner of Police, security services or regulatory authorities whose function it is to maintain law and order, ensure good governance and demand compliance with laws and regulations governing the various areas of economic activity including financial activities. This lethargic inactivity of the institutions, not only not to investigate serious allegations of violations of law, even criminal ones, but also not to investigate other allegations of maladministration is inexplicable and reprehensible. It cannot be explained by mere incompetence or indifference. The Board, in such bleak circumstances, also considered the web controlling the public administration that was created so that it would disregard these serious allegations. It cannot help but conclude that there was an orchestrated plan to neutralize the investigative work of the assassinated journalist. This was before all else, on the one hand, to limit its damage to political power, and on the other hand, the irreparable prejudice those parties could have suffered whose interests lay in the continuation of the concerned projects, including due to their personal interests.
19. This plan was successful precisely because it was centrally organized by the Prime Minister's office and that led to the complete isolation of a journalist at a time when she was also the target of the then leader of the opposition. Her isolation, taken with the reality of the impunity created by the deliberate inactivity of the institutions to perform their duties, translated into a climate of great risk. A climate in which those who wished, tried and succeeded in eliminating it found an opportunity and the opportune time to do so. Whoever planned and carried out the assassination certainly had or felt they had the assurance that they would be protected by those most interested in silencing the journalist.
20. The Board is satisfied with the evidence that this was a crime committed for remuneration and on commission. Whoever physically committed it had no personal interest in eliminating her. He had only an interest to be paid for his work. The Board was astonished at the way Vince Muscat, his brother, as well as Melvin Theuma the middleman who admitted to his involvement for which he obtained a presidential pardon, described in shocking detail the cold-blooded way

in which the crime had been planned at length and executed. These facts have yet to be verified by the competent Courts and the Board does not rule in any way on the innocence or guilt of those allegedly involved. What impressed the Board, however, and which is of great relevance to this inquiry, is the casual and safe manner in which anyone who was allegedly involved in the material execution of the crime, openly revealed his contacts with ministers, the Chief of Staff and other people at the heart of power. They were sound in their conviction that in the end they would find support from them and be let off lightly. The mere fact that this mentality existed at the level of organized crime to the extent that the Chief of Staff and the then Prime Minister were referred to as No. 1, “ix-xih” (the elder) and “l-king” (the king), is in itself a demonstration of the confidence with which they boasted of the culture of impunity that reigned and through which they felt protected.

21. For the purpose of this inquiry it is sufficient that the Board established that this culture of impunity existed, supported also by a web of control that was created to concentrate power in the hands of a few people. The Board appreciates that neither corruption nor impunity for the commission of crimes are characteristic features or a monopoly of the administration under investigation. They have always existed and will continue to exist under every administration. Impunity, especially gaining an advantage or receiving favors due to connections, friendships, familiarity and convergence of interests, is unfortunately a characteristic of society.

This is in fact the weak defence that various ministers and also senior officials of the public administration have tried to give, inter alia Mr. Alfred Camilleri, a respected Permanent Secretary in the Ministry of Finance. The defence was that any major project that any government has ever done would be somehow marred by allegations of irregularities. But there is a big and glaring difference. The difference is that at other times there were those who abused the system to take undeserved advantages. This is in some cases even with the involvement of some public officials. Generally, however, the regulatory institutions worked, the abuses were investigated as soon as they were discovered and the necessary steps were taken against the alleged abuser. Naturally, not everything has always been perfect.

On the other hand, during the period in question, the system itself which was designed to provide checks and balances was undermined in order to circumvent good governance. The institutions on many occasions did not function and no steps were taken to investigate the serious allegations that were being made and to call those who were allegedly responsible to account for their actions.

What is impressive in this case is the severity and extent of this impunity at the highest levels which made those who committed the crime feel safe in doing so. Another shocking factor was

the fact that all the institutions in the country failed to react appropriately and effectively to counteract this impunity as they were duty-bound to do, a shortcoming which can be attributed precisely to the ties which were exploited between those in power and those who advanced their dubious interests.

22. The Board, as already stated, cannot reach the conclusion that the State, as an actor, bears responsibility for the commission of the crime, but the Board cannot but arrive at the following reality:
- a. While it is ascertained that State entities have, for the most part, performed their duties with loyalty, dedication, professionalism and correctness, it has been proven in this case that an important contingent of public officials in the control of certain entities failed to perform their duties both before and after the homicide was committed.
  - b. Most notable in this regard is the inactivity of the Commissioner of Police and senior police officers who should have performed their duties first and foremost by investigating the allegations made by the assassinated journalist against senior members of the public administration and powerful businessmen. This is particularly the case following the publication of the Panama Papers, the charges against Pilatus Bank and 17 Black. Equally reprehensible is the near-total inactivity of regulatory institutions such as the MFSA [Malta Financial Services Authority] and the FIAU [Financial Intelligence Analysis Unit]. There have been occasions when officials in these institutions have taken correct investigatory and regulatory initiatives but their efforts for one reason or another were foiled.
  - c. There also emerges not only a lack of awareness of the value that the State should give to investigative journalism, but also the proven hostile attitude shown against Daphne Caruana Galizia, much of it orchestrated by people holding positions in State entities including the office of Prime Minister. The Board considers that this hostility was an illicit act that vilified and demonized the journalist. This behaviour could not but have contributed to the creation of a hostile environment, serving therefore as an element of encouragement for those who intended to commit the crime.
  - d. Daphne Caruana Galizia had the misfortune of targeting both the political and economic centres of power at the same time. The Board emphasizes that the evidence is all in the direction that the homicide involved a small group of people who planned and executed it for their own interests and from principals who considered her a threat to their future plans. This means that while there was a contributory element by State entities in creating an environment that favoured the homicide, it cannot be said that it was the State that planned or favored it.

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- e. On the other hand, this does not mean that the State has fulfilled its positive obligation to take preventive measures to protect journalist Caruana Galizia when she was manifestly at risk of violent acts against her by criminals.
- f. In its considerations the Board elaborated on the State's failure to fulfill this positive obligation which should mainly be identified as the failure of entities responsible both to act properly to materially protect the journalist and the failure, to act promptly to prevent the crime by adequately investigating the journalist's allegations.
- g. The particular characteristic of this case which aggravates the State's responsibility is its direct involvement in creating the climate of impunity and dehumanization and, in addition, and far worse, the allegations that still have to be verified that persons within State entities directly or indirectly contributed to or favoured the commission of the crime.
- h. In fact, the Board obtained a great deal of evidence which, together with what was in the public domain, conclusively proves that after the crime took place, senior officials in the police administration and in public authorities acted in a manifestly illicit, if not illegal manner, in order to assist suspected persons or persons of interest in police investigations, or to divert their investigation by directing journalists away from the reality of what happened. It can reasonably be concluded that this reprehensible behaviour was rooted in friendships, admitted or disclosed by electronic communications between such persons, and those who were or still are of interest to the police in the investigation of the crime.
- i. The Board is satisfied that the evidence leads to the conviction that the State was ultimately responsible for the environment which favoured the commission of the crime, both by the inactivity of the responsible entities and by the positive acts of vilification, insulting and harassment by senior officials in the administration. But if one eliminates, as the Board necessarily needs to do, the serious allegations made against key figures in the public administration, such as Dr. Chris Cardona, who deny the allegations about their alleged involvement in the homicide and / or their proximity to organized crime, as mentioned, it cannot lead to the conclusion that the evidence established so far qualifies the crime as an "omicidio di stato" [State assassination]. Italian jurists review this crime, even though it may not be codified yet, where it turns out that the state was directly or indirectly involved in the planning and carrying out of the homicide. This is not clear so far and the allegations are all denied by the people involved, some of whom are and others perhaps should be persons of interest to the police. This conclusion of the Board will change if it is proved by the competent Court that any Minister or public official was involved in the planning and execution of the assassination. In this case, the concept of "Omicidio di Stato" will be applicable to the facts in question.

- j. The Board, however, came to the conclusion that the first term of reference was amply proven insofar as acts, certainly illicit if not illegal, were committed by persons within State entities that created an environment that facilitated the assassination. This even by failing to do their duty to act promptly and effectively to give proper protection to the journalist. This has been extensively addressed in the body of this report. While there is no proof that any State entity was aware of the planning and execution of the crime, the Board is satisfied that the State entities knew, or should have known, that the assassinated journalist was exposed to a real and immediate risk which may have provoked criminal conduct. This is precisely because there were people within the institutions who created the environment within which the real risk of facilitating homicide grew. All this has been extensively dealt with by the Board.
- k. The Board also identified what action should have been taken, in the circumstances, by the responsible entities such as the Police and the security services, the office of the Prime Minister and regulatory authorities to avoid or minimize that risk. It is proven that these entities took virtually no action in this regard. Rather, as has been said, some of them were instrumental in escalating that risk.
- l. The Board rules out, as it should, at this stage the unproven allegation that another attempt was going to be made to kill Daphne Caruana Galizia in 2014-2015. Even if this were eventually proven, its motive could not be the link between public administration and organized crime. This is precisely because the disclosure of scandals as a result of this connection began to be made by the murdered journalist later. That is why the Board is convinced that the real risk to which the assassinated journalist was exposed reached its peak upon her publication of the Panama Papers and beyond.

### **Collective responsibility of the Cabinet**

- 23. The Board concludes that, given that the crime was necessarily linked to Daphne Caruana Galizia's serious allegations regarding the public administration which were revealed with more detail when she published her Panama Papers and 17 Black reporting, the Board cannot but review the collective responsibility of the members of the Cabinet given they failed to take the required action. While one can somehow excuse the Cabinet that no timely action was taken when the Panama Papers were published against the Chief of Staff [Keith Schembri] because Prime Minister Muscat assumed personal responsibility for Mr Schembri's behaviour, the same can certainly not be said when specific allegations of offences were published in connection with 17 Black. Surely at this stage no member of the Cabinet can exonerate themselves from the obligation they had at that point to assert their will that those involved should have had no place in Cabinet.

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It is emphasised that this situation precipitated itself several months before the assassination, at a time when violent attacks on the journalist were escalating.

24. For the Board, this inactivity is inexplicable if not for the fact that the Cabinet was more concerned with the creation of wealth in the hands of a small group of trusted people, some of whom were implicated in the allegations being made, rather than acting to defend those who were at grave risk because they were performing their duty. Nor have they given priority to ensuring good governance and the rule of law. The situation of the Cabinet worsens considering that, except for a few who expressed to the Prime Minister their disapproval for what was happening, they were undoubtedly aware that one of them, Minister Evarist Bartolo, was openly and publicly critical of the lack of action taken in a timely manner. Days after its publication, Minister Bartolo described the Panama Papers in a tweet on 10 May 2016 as "another case of a law for Gods and another for animals." A shocking assertion by a Cabinet member that the rule of law has collapsed in the country.
25. Not only did the Government take no action to remedy this situation; the Cabinet and the whole parliamentary group continued to give its support to the implicated individuals through parliamentary votes of confidence.
26. For the Board, the Cabinet's inactivity under the circumstances, which failed as a government to demand action to ensure that the rule of law be respected by choosing to close an eye for the purposes of not losing the wealth that was being created, means that all Ministers individually, one way or another, were subscribing to and endorsing the Prime Minister's decision to let everything slide. A decision that sent a strong political signal that the sense of impunity that was being created at the heart of the administration had the silent approval, if not the blessing, of the Cabinet in its entirety.
27. In the Board's view, this fact, even if one considers that it may not have been a determining factor in the assassination, as the Board considers it to be, is an act of grave omission and amounts to reprehensible wrongdoing. It is a fact that as the law currently stands such conduct is not subject to any legal sanctions. However, in a country that respects democratic values it must attract political sanctions. This aspect is relevant to this Inquiry but goes beyond the strict limits of the terms of reference given to the Board.
28. This failure of Cabinet and the parliamentary group to value the investigations of the assassinated journalist and ensure the strengthening of the institutions and restore the rule of law, must also be seen against the background of the denigration campaign against her, which

turned out to have been orchestrated mainly by elements within the Prime Minister's office, and even prior to the 2013 election.

### **Responsibility of Prime Minister Joseph Muscat**

29. The Board holds former Prime Minister Joseph Muscat responsible for what happened, even if not directly, first and foremost for his decision not to take serious action against his Chief of Staff and Minister Mizzi when they became implicated in the aforementioned Panama Papers and even more so when he decided to keep them in office, even after the publication of the 17 Black story. While Dr. Muscat was able to justify his decision regarding the Panama Papers by qualifying it as a wrong political decision - which the Board does not accept - he certainly could not have done so in the case of 17 Black, where a serious allegation was made of criminal conduct implicating both of them.

In the opinion of the Board, these decisions of the Prime Minister, together with the confidence expressed by Parliament, strengthened the culture of impunity in which operated all the persons involved in the intricacies between political administrators and powerful businessmen about whom Daphne Caruana Galizia wrote. Such impunity was essential for the persons involved in organized crime, irrespective of who they were, and it certainly also facilitated the assassination.

### **Regarding the Second Term of Reference**

30. With regard to the Second Term of Reference, the Board concludes that while the provisions of criminal law are generally adequate to deal with normal circumstances which could lead to a de facto state of impunity, they should be reviewed to ensure redress for exceptional situations such as those considered by the Board in this inquiry. The circumstances of the case led the Board to the conclusion that it could not qualify the developments which led to a near collapse of the country's institutions and the rule of law, as the creation of a mafia-run state. It concludes, however, that there are serious indications that what happened was bringing the country closer to such a situation and that it would have happened if the assassination had not taken place. The assassination was the cruel means through which the system that was eroding democracy in the country broke down.
31. There are indications that measures are being taken in order to strengthen the institutions and steps are being taken to restore the rule of law. Only in this way can crimes of this severity be prevented, including against journalists.

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32. The Board acknowledges the legislative reforms introduced in recent months to strengthen institutions driven by the powerful reaction from civil society, attention from the international media as well as the work and recommendations of the Venice Commission and others. The Board considers, however, that these reforms themselves are living proof of the level of institutional turmoil generated by a state of governance that has allowed serious and unprecedented abuses to take place, both for its planning and organization, and also to the high degree of impunity enjoyed by the perpetrators. Abuses that were at the heart of Caruana Galizia's investigative journalism.
33. The fact that reforms have been and are being made is promising. However, further periodical improvements and amendments in the future are required nonetheless. This is largely the direct result of the tragedy experienced by the Caruana Galizia family, who may find a little comfort in the fact that she might not have been killed in vain.
34. On the other hand, the Board cannot fathom why a journalist had to be killed to bring about these reforms, whose need had been felt for a long time, but which the assassination rendered urgent. The fact that reforms are being made does not excuse past mistakes. Whoever committed crimes and abused their power to generate a personal profit or exploited the system at the expense of the general population, should be investigated and made to pay for their misdeeds.
35. The responsibility of the Ministry of Justice is not only to ensure that legal reforms are carried out but, above all, to guarantee the rule of law, by ensuring that the strong arm of justice reaches anyone who breaks the law, irrespective of who the perpetrator may be and whatever position they hold or held, however high or wealthy.
36. A de facto state of impunity develops in the first place at an administrative level because the public administrator fails to adhere to its obligation to act correctly and in compliance with the laws and rules applicable to everyone equally. In this case, it is not the laws that are insufficient but the people in a position of authority that should enforce them; they either abuse their position, or are unfit for a position they hold or even succumb to the corrupt or incorrect conduct of third parties. For the Board, at the root of a culture of impunity is the erosion of the values that should guide the public administrator, whoever it may be, and the loss of a sense of right and wrong, and what is correct and incorrect.
37. This inquiry has manifestly revealed the reality that a business culture motivated by personal profit took precedence over that of a correct administration working in the interest of the common good. This was perpetrated even, if necessary, by manipulating or circumventing the

applicable laws or regulations. To cater to this eventuality not only do there need to be strict rules of ethics binding the public administrator especially when it comes to conflicts of interest but also a structure of effective enforcement of these rules. In this respect it is imperative to have clear binding rules in the selection of ‘persons of trust’ or appointments to public authorities or boards in order to eliminate as far as possible improper contact between the public administration and business.

**On the Third Term of Reference**

38. With regard to the Third Term of Reference, the Board concludes that the State did not fulfil its positive obligation to take operational preventive measures to protect the life of journalist Daphne Caruana Galizia. From the point of view of effective measures to protect her life, the Board concludes that the Police and other authorities whose function was to protect her safety were certainly unaware when they should have been, of the serious and imminent risk to which she was exposed, certainly since the publication of the contents of the Panama Papers and thereafter. The rudimentary, ineffective and unprofessional police protection measures were withdrawn and limited only to elections and similar events. The Board finds the behaviour of the Police inexplicable and unacceptable in the context of the dramatic circumstances that the journalist was going through. It is certainly a confirmation of inefficiency and incompetence if not worse. Apart from this, the Board found that there is no established protocol on how the Police should react to protect individuals who are at personal risk from criminal acts. Everything is left to the personal discretion of the Commissioner of Police to act as expected which, in the case of the assassination of Daphne Caruana Galizia, the then Commissioner, Lawrence Cutajar certainly did not do.

## **Section VII**

### **Recommendations**

The first recommendation that the Board feels it should make is that the Police and all other related regulatory authorities continue with their investigations to identify all individuals who were in any way involved with the assassination and ensure that all answer for their actions in court. This inquiry has shown that there is scope for further investigation and that not everything is certain and finalised. The Board understands that this is being done and that is what the results indicate.

The Board has already made recommendations pertinent to the second and third considerations of the terms of reference of this inquiry. It therefore limits itself, at this stage, to the following recommendations to emphasise those measures which, in the Board's view, should be taken. This is so that the rule of law continues to be reinstated, avoiding the possibility of the repetition of the tragic events which led to this inquiry.

1. The Board adopts as its own the recommendations of the Venice Commission, of the GRECO report and of the legal affairs committee of the European Parliament to strengthen good governance, in particular the opinion of the Venice Commission adopted on 8/9 October 2000 concerning legislation proposed by the Government to implement recommendations of the said Commission in relation to their preceding opinion of 19 June 2000. The Board also adopts as its own the recommendations of the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe in its report of 8 June 2019. The Board is conscious of the commitment of the authorities to implement these recommendations and the legal steps which have been taken and which are being taken in this direction.
2. It is in this context of reform that amendments must be introduced to criminal laws, to laws which regulate financial institutions and others to prevent the development of the "de facto" state of impunity that, as the Board has established, occurred in this case. Amendments to the law which will help in no small way to combat the mentality that one may evade laws and even commit certain serious crimes because one is in a position of political or economic power, or because one is a member of a criminal organisation protected by this power. In this regard it is essential that the laws provide for political sanctioning of irregularities and illegalities to be reduced to a minimum and exceptional cases. Whoever breaks the law should suffer the consequences of their behaviour, and should not have the expectation that money can buy them that to which

they have no right at law. It is this mentality which is prevalent in society that strengthens the arrogance of those who hold political and economic power. It is the seed from which corruption sprouts.

3. This legal reform must be reflected in and reinforced by administrative practices which regulate properly and effectively relationships which could be created between public administration and business people with whom State entities must deal in order to generate wealth. In this regard transparency and accountability are absolutely necessary. Above all, to reinforce existing laws and regulations, where necessary these should be amended to be more rigorous and correctly applied to avoid abuse. Among these the Board indicates the strengthening of the whistleblower law, the law on political party financing, the laws which regulate the granting of contracts including tenders and direct orders.

The laws should ensure that covert business deals between public administrators and business people are not permitted. It should be especially prohibited that any contact involving prospective investment should not use means of communication which are not governmental and official. It is also essential that lobbying should be regulated by law especially where this involves contracts with investors and business people to promote initiatives and projects. The Board understands that these matters are already being given attention by the competent authorities. Excessive closeness to business people which may lead to inappropriate contacts should be regulated. The mentality that through personal contacts, friendships and familiarity or common interests one may acquire that to which one has no right at law, has to be eradicated.

The Board now turns to making recommendations in two separate sections: **A:** Those that concern legislative measures to strengthen the rule of law; **B:** Measures to strengthen the protection of journalists and journalism.

**A. Specific amendments for the introduction of new crimes and strengthening of existing laws**

4. While it is important to update laws in line with the full extent of this new reality to avoid the development of a state of impunity with mafia connotations and while it is essential to reinforce laws rigorously and effectively, it is perhaps more important and difficult for the public administration to make the effort to change the mentality of how public wealth should be administered. The direction, in this context, should be set from the very top in policy-making which should reflect these principles. This applies to the

entire political sphere and perhaps even more strongly to those who are in charge of public administration.

**Recommendations for legal reform to strengthen the Rule of Law**

- a) The findings related to the second term of reference show there is need of a law to fight financial crime including bribery and corruption by means of “Unexplained Wealth Orders”;
- b) The definition of a specific crime to address cases of public officials who interfere with or attempt to interfere with the Police or other authorities in carrying out their duties involving the investigation of crimes;
- c) There is a need to introduce the definition of crimes similar to those in article 416 *bis* of the Italian Criminal Code which contemplates the crime of “associazione di stampo mafioso” [mafia-style association];
- d) Introduce into the Maltese Criminal Code the new criminal offence of “Abbużo d’Ufficio” [abuse of office] committed by a public official or someone in charge of a public service in the performance of his duties or in the exercise of his functions;
- e) There is a need for a revision of the Attorney General’s law to fully implement the recommendations of the Venice Commission as regards full control of the investigation of serious crimes together with the Police as well as regards the Attorney General him/herself initiating investigation;
- f) Testimony before the Board shows the need for the introduction into the Criminal Code of the criminal offence of obstruction of justice similar to that of obstruction of justice in many foreign codes. This with adequate penalties that will also cover the attempt at “*depistaggio*” [misleading investigators];
- g) The need for legal provisions in the Code of Ethics to counter inappropriate behaviour by public officials in the exercise of their duties;
- h) The best protection that should be given to anyone exposed to serious risk is that the Police are in a position to identify the cause of that risk in order to be able to counter it. In the case of the journalist this means, among other things, timely and effective investigation of the cause of the risk or risks.

For this to be achieved, it is necessary for there to be an ad hoc structure in the Police Corps.

**B. Recommendations for the strengthening of journalism**

**Regarding the protection of the lives of journalists and the strengthening of journalism**

The Board synthetically lists the following recommendations, also with reference to what has already been set out in its considerations on the third term of reference.

**Regarding the protection of journalists**

- a) There is a need for a formal structure within the Police which can regularly and reliably identify which people, and not just journalists, are for some reason exposed to serious attacks of any kind which may escalate to physical violence. This assessment should not be, as it currently is, the preserve of the Commissioner of Police. There should be a specialized unit with trained people able to identify which people are at risk, to objectively assess that risk, its causes and how this relates to the profession and / or work of the person at risk. This specialized operational unit would be similar to others that already exist in the Police Corps to provide protection to other categories of vulnerable persons.
- b) It is necessary that in such a unit there is an element that focuses on journalists who may be at serious risk. An element capable of appreciating risk in relation to the nature of the investigation being conducted by a journalist, that which the journalist is publishing, the effect on the persons or organizations targeted by the investigation as well as the actual or potential risk that such a reaction may create. This unit can serve as an immediate contact between the Police and the journalist who would thus feel safe and protected to perform his/her duties freely.
- c) Another operational measure that the Police must take not only to reduce the element of risk but also to validate the work of the journalist as a major contributor in the fight against abuse and crime, is the timely investigation of serious allegations being made as a result of journalists' investigations.

The Board concluded that this failure of the Police, but also of other regulatory authorities, to promptly and effectively intervene to investigate allegations made by a journalist who was "an open source" to them, favored the implementation of the assassination. It is reasonable to assume that if steps were taken that should have been taken at the opportune time, they would have significantly reduced, if not completely eliminated, the elements of illicit or illegal acts that caused the escalation of risk to the life of the assassinated journalist. It is a fact that for one reason or another the Police in this case failed to identify who and what was the cause of this serious and imminent risk.

This, in addition to the measures that need to be taken and hopefully are already being taken to deal with situations of dubious and inappropriate relationships and contacts between big business and senior and non-senior officials, in the Police Force and in regulatory authorities along with elements in public administration. Situations that obviously prejudice their independence and correctness in the

performance of their duties. It is necessary for the Police Corps to have a thorough understanding of the role of the journalist as a guardian of democracy in the country and of the value of journalism as a valid collaborator with law enforcement to ensure the rule of law. This not only against organized crime but also against abuse of power and illegality in public administration. Police and regulatory authorities are not there to defend those in power or to conceal their actions. They should not then consider journalists, especially those who dare to investigate behavior which to them seems incorrect or suspicious, as enemies. On the contrary, they should seek to build bridges and contact between themselves and journalists so that, as far as possible and within the permitted parameters, they could continue their investigations to verify the credibility and veracity of the serious allegations which often emerge from journalists' investigations.

For this to happen it is necessary for the Police Force, and in particular its specialized elements, to be well trained not only in the value of journalism but also in the knowledge of the techniques used by journalists in their investigations, the methods used to obtain results and value the conclusions they reach by the analysis they carry out. The Police must do this with full respect for the independence and autonomy of the journalist while respecting their professional secrecy as well as the inviolability of their sources of information.

#### **Regarding the strengthening of journalism in the country**

In the course of this Inquiry, as stated, members of the Caruana Galizia family and other journalists close to them made valuable contributions not only because they provided valuable, credible and pertinent evidence and materials originating from sources immediately close to the murdered journalist but also because, looking to the future, they gave their opinion on what should be done to protect and place journalism and the fundamental right to freedom of expression on solid foundations. Many leading editors and journalists did the same, offering their testimony without being asked. Together with others they submitted notes of observations in this regard for the attention of the Board. The Board considers that, while all this material is of the greatest interest to it in the broad context of the terms of reference under consideration, it can't be said that it is necessary to determine whether any illicit act or omission by or within a state entity facilitated the assassination or failed to anticipate it. It becomes relevant, however, in the context of the fact that, had journalism in the country been strong and had the means to react to cater for situations the Board considered in this report, Ms Caruana Galizia would have been in a position to find support and backing from a sector that would have been able to defend her from all kinds of aggression and violence.

It must be considered that this journalist was conducting an investigative campaign on her own without the support of any media house or any journalistic organization behind her. This was over the years and not simply at the time of the final aggression when she was killed. In this regard the Board will limit

itself by outlining and listing the main proposals made for the strengthening of journalism in the country while making full reference to the extensive notes of observations made and which it considers, exceptionally, should be deemed part of this report.

### **At a Constitutional level**

1. Consideration should be given to whether it is necessary to amend the Constitution so that articles concerning freedom of expression free journalism is recognised as one of the pillars of a democratic society and that the State has an obligation to guarantee and protect it. An amendment that should also recognize the right of an individual to receive information from the State and public administration and that the State and public authorities are obliged to provide such information. This is of course subject to precautions and reservations which would be specified in the same provision.
2. It is suggested that in order to ensure a high level of journalism and the observance, including by journalists, of the principles of ethics governing the profession, the Office of an Ombudsman or Commissioner for journalistic ethics should be created on the same lines of the Commissioner for Standards in Public Life. This authority would be fully autonomous and impartial and would have the function of implementing laws and regulations designed to protect the freedom of the media, the safety of journalists, and the right to information. It would be a point of reference for journalists who want direction or protection but also a means of ensuring the observance by journalists of the Rules of Ethics and correct conduct in the exercise of their functions.
3. It is also repeatedly emphasized that there is a need to revise the provision of the Constitution establishing the Broadcasting Authority, because it was submitted that the public service broadcaster had failed in its duty of impartiality when serious allegations of corruption revealed as a result of investigative journalism were not reported or treated correctly or adequately. On the other hand, this impartiality has so far incorrectly always been considered to apply only to the public service but not to political party stations which are wrongly considered to balance each other.

### **At the Legislative Level**

1. There is a need to revise the Freedom of Information Act (Chapter 496) to limit the cases in which the public administration may arbitrarily refuse to provide information that is in the public interest and that the public is entitled to. The culture of confidentiality and secrecy under the pretext of privacy or commercial prejudice has little to do with democracy when it

comes to the administration of the common good which must always be transparent and accountable.

As elaborated on in this report, the refusal to provide information, or to provide limited and late information, especially to a journalist investigating a matter of public interest, has only served to increase speculation and increase unnecessary division. In the search for truth, there needs to be an open public administration to ensure participatory democracy.

2. The Board has already referred to the Media Defamation Act (Chapter 579) in its conclusions for the third term of reference. Emphasis was placed on the need to address the problem of the possibility of so-called SLAPP libels. There is also a need to revise this Act to eliminate the possibility of frivolous libel cases filed against journalists by public office holders who have a duty to defend the right to free expression. It is also suggested that there are no grounds for libel lawsuits against journalists to continue after their death.

### **From an Organizational Point of View**

1. From an organizational point of view, all the Editors who testified before this Board complained about the precarious financial situation in which the media houses must operate. You could say they all rely on advertising, much of which originates from Government Departments or Public Authorities that regularly use the services of newspapers to advertise their services to the public. They complain that the funds allocated to these advertisements are more often than not, spent in a discriminatory way in the sense of favouring the public service or those media organizations that are inclined in favour of the Government. This is a matter that requires attention so that at least as far as public funds are concerned the distribution of funds spent on advertising is fair, equitable and non-discriminatory. Unless this is done, there is always the possibility that journalists will remain open to undue pressure, if not blackmail, from government agencies telling them that they can withdraw their funds if they do not follow government policy.

### **Final Recommendation**

#### **Law to Regulate the Profession of Journalism**

All the journalists who testified before the Board expressed the opinion that the journalistic profession is not only not recognised by the State but is not even valued or appreciated. There seems to be a need for a law that provides an organizational framework in which journalists could operate freely and completely cut off from undue interference or pressure. A law that reflects the important role that the

media should play in a democratic society while providing an adequate structure that offers them protection in the exercise of their profession.

Such a law should ensure that the profession of journalists is self-regulated in the same way that other laws have regulated other professions such as accountants, architects, pharmacists and so on. It may also be entrusted with the observance of the ethical standards of the profession with powers to also take disciplinary measures where appropriate and as indicated in the previous recommendations. It is important in this context that any board or authority holding this function be fully independent and financially autonomous. Suffice it to say that all journalists agreed that the Maltese journalism institute [IGM], while useful, is not adequate to serve the purpose of effective protection, has no resources and relies on private funding. In fact, it turns out that for many years the IGM relied for its funding on contributions from the Tumas Foundation.<sup>[3]</sup>

### **Establishment of a Committee of Experts**

In the light of all the findings of this Inquiry, the Board is of the opinion that the State should examine in depth the state of journalism and the exercise of the fundamental right to freedom of expression with a view to implementing, among others, the recommendations of this Board in a holistic and organic framework also aimed at giving the profession of journalists the recognition it deserves and giving value to the work they do in the interest of democracy. This exercise could involve amendments to the Constitution and the Laws, also aimed at ensuring adequate protection and support for the profession.

In the Board's view, this exercise could be entrusted to a committee of experts composed of academics, media law experts, journalists and media house owners.

This study should lead to specific recommendations being made for consideration by Parliament within a short timeframe, to be established.

The Board considers it appropriate that such a procedure be initiated under the auspices of His Excellency the President of Malta, also as part of the extension of a Presidential project for the reform of the Constitution and to ensure good governance and the rule of law.

### **The state must acknowledge its shortcomings**

In the light of the above considerations the Board recommends in the first place that the State, having considered what the Board found in this Inquiry but also what has been proven and is still emerging in

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<sup>3</sup> Tumas Foundation is owned by the Tumas Group, which was run by Yorgen Fenech up until his arrest in connection with the assassination of Daphne Caruana Galizia.

the public domain, formally and publicly acknowledge the serious shortcomings of the public administration surrounding the assassination of journalist Daphne Caruana Galizia. The deficiencies of omission and commission of certain State entities or persons within them are certainly singular in their seriousness, extent and brazenness. This behaviour favoured the creation of a de facto state of impunity that could have facilitated the execution of the crime.

The Government should consider taking all appropriate and opportune steps to ensure that the State reconciles with the family of the murdered journalist and thus initiates the healing of the serious and traumatic injury that the country has suffered and continues to suffer.

Judge Michael Mallia  
Chairman

Chief Justice Emeritus Joseph Said Pullicino  
Member

The Hon. Judge Abigail Lofaro  
Member

**Disclaimer**

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