

**Public Conference on Free Speech and the Protection of Journalists
24 February 2022, Corinthia Palace Hotel, Attard**

The aim of the conference was to evaluate proposals that have been made since the Public Inquiry into the assassination of Daphne Caruana Galizia published its recommendations.

All those present were welcome to participate actively in the evaluation debate and present their testimony regarding their experience as journalists, editors and media workers.

The event was organised with the support of the Embassy of the United States.

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Conference Minutes

Opening remarks

Claudia Taylor East, moderator

- Mentions what's happening in Ukraine - colleagues of journalists in this group this morning.
- Thanks and introductions.
- Overall objectives:
 - Suggestions and stories from journalists in the context of what we will be discussing
- Prof MC: authored "A mission to inform - journalists at risk speak out"¹
 - The book complements the 2017 Study "Journalists under pressure. Unwarranted interference, fear and self-censorship in Europe" which surveyed nearly 1,000 journalists from CoE (Council of Europe) member states and Belarus.

Keynote Speech

Professor Marilyn Clark, academic and lecturer

- Discussed the insights from the books published by the Council of Europe: A mission to inform - journalists at risk speak out, authored by Marilyn Clark and William Horsley (2020), and Journalists under Pressure: Unwarranted interference, fear and self censorship, authored by Marilyn Clark & Anna Grech (2017).
- Landing page of Council of Europe (CoE) safety of journalists platform: 1,164 alerts in CoE countries since 2015 ... [cited statistics from the platform]: media actors in Europe and Malta are at risk from interference by those who fear their work (pressures are psychological, financial, judicial intimidation).
- Death of Daphne Caruana Galizia² exemplifies the trend to stifle voices and free speech:
 - journalists are subject to physical, psychological, judicial, economic intimidation;

¹ The study is based on in-depth interviews with 20 journalists from 18 different countries. See <https://book.coe.int/en/human-rights-and-democracy/8492-a-mission-to-inform-journalists-at-risk-speak-out.html>
An executive summary extract is available at <https://www.coe.int/en/web/freedom-expression/-/a-mission-to-inform-journalists-at-risk-speak-out-a-new-book-on-the-safety-of-journalists-to-be-launched-on-14-october-2020>

² An abridged version of the interview with Daphne Caruana Galizia is available at <https://rm.coe.int/prems-092120-gbr-2018-daphne-caruana-galizia-16x24-web/16809ff1e3>

- o role of media is fundamental to democracy;
 - o freedom of expression is a necessary attainment for active citizenship;
 - o unfortunately, this climate is a deteriorating one.
- There is no democracy without freedom of expression. Globally, the media faces:
 - o deteriorating climate for freedom of expression;
 - o declining trust in the ability to protect sources;
 - o unwarranted interference, in the forms of legal, physical, or psychological harassment;
 - o concerns regarding personal security or that of family and friends.
- The (2017) Council of Europe study showed us that the climate of freedom of expression in Europe is not a happy one. CoE wanted to understand more in-depth how journalists negotiate these fears and analyse the strategies that are in play.
- At the end of 2021, there were 26 ongoing alerts for impunity for murder on CoE platform. Reference to [2021 study](#).
- Experiences of journalists included in Prof. Clarke's report:
 - o **Daphne Caruana Galizia:** physical violence was not new to her. There were attempts of burning down her house and attempts on her life;
 - o **Daniele Piervincenzi:** was chased by mafia with guns. In Dec 2018, 21 journalists in Italy were reportedly living under close police protection due to death threats;
 - o **Stevan Dojčinović:** received emails and land-mail messages threatening to shoot him;
 - o Psychological pressure from politicians - **Can Dündar** recounted how he was attacked by a gunman on the day of his trial. He firmly believes that the attack was inspired by the government in Turkey;
 - o **Jessikka Aro:** experienced concerted online discrimination campaign from Russia. Her biggest fear was that she would be targeted as a result of online hate speech.
- Defamation law that is overly protective of reputational interests can put journalists at risk
- Biggest threat to journalists: being sued by lawyers. These can compound intimidation.

- Advertising - journalists face difficulties when writing negatively about companies/state as media outlets won't receive funding / advertising.
 - Chilling effect is the impact of sustained intimidation and hostility. Journalists say that there is a high price on their personal lives that they have to pay.
 - Self-censorship is motivated by fear.
 - Journalists also spoke about a strong sense of resilience. Personal and social circumstances that motivated journalists to persevere; sense of **mission** - powerful sense of purpose.
 - The Council of Europe study concludes with urgent and resolute responses that states should implement to secure journalists' safety and wellbeing:
 - o enhancing protection of journalists against violent attacks;
 - o ending verbal threats, insults and smear campaigns against journalists;
 - o addressing gender specific and other identity-related threats;
 - o improving legislation;
 - o improving reporting mechanisms;
 - o prosecution [of crimes against journalists] and ending impunity;
 - o education, training and awareness raising;
 - o ensuring media independence;
 - o promoting and supporting investigative journalism.
 - *"The obligation to create an environment in which journalists can work free from fear of violence and intimidation rests primarily with **national authorities**. They alone have the power to enact journalist-friendly legislation, to establish the conditions for a pluralist media landscape and to investigate and prosecute instances of unwarranted interference"*³
- Thorbjørn Jagland, Secretary General, Council of Europe, 2009-2019

³ Clark, M., Grech, A. (2017), p. 9, Journalists Under Pressure: Unwarranted interference, fear and self censorship

Opening Remarks

Nicole Meilak, journalist

- Crisis of Maltese journalism, apart from financial and legal, desire for transparency in a society that is bound by partisan loyalists and parties with ties to big business.
- There are factors that work against female journalists (mentioned in passing).
- Journalists of all kinds are besieged by pressures of the small island community.
- Whether you are writing an obituary or parliamentary speech, it is hard work in the midst of loud voices of critical readers.
- At a Covid-19 press conference, Nicole Meilak asked whether Charmaine Gauci should resign over a haphazard response. She received a merciless response online; she was mocked just for asking Gauci whether she was taking the right decisions. She dealt with this by stepping back from social media for a while. Few other media houses would have asked that question. It does boil down to self-censorship.
- Even the most highly regarded people need to be held accountable. However, Malta is a small society with intensely polarised pressures - this makes it difficult to be critical.
- Meilak talked about all the hate she receives. Party mobilisers are very quick to call out journalists and editors for speaking out.
- “Colleagues and I do suffer in this silence due to interference in our jobs.”
- Journalism is a vocation. You face online intimidation with no backup, no psychological support. “You’ve got to take it on the chin. Journalists receive online hate just for doing their work.”
- It is difficult to attract young people to jobs in journalism. How to nurture independent-minded journalists, who believe in the discipline of verification, so that they are able to navigate this environment?
- At the simplest economic level, journalists are workers who need serenity in their job. Journalism should serve the people [public interest].
- Small Malta - it is easy to see how the power of journalism can be scary to those in power and those who serve those in power. “I think we are at an important juncture in the history of our nation. [Journalists are] part of a growing group of independent-minded professions chipping away at old/bad habits of Malta’s young democracy.
- Recommendations:
 - legal and financial protection; regulation of Government spending in the media;
 - mediating interests with political stakeholders - creation of consultative council of journalists and industry interests chaired by ombudsman;

- important media arbitration process that stops litigation being resorted to so quickly;
- advocate for greater transparency of the Government press commission: “I believe our colleagues should not be mis-presented simply because they are executing a government mandate on reforms; but we can demand transparency into proceedings and ensure that all points of view are delivered, with a strong voice, to a group of people who are our colleagues as well.”

Claudia Taylor-East, SOS Malta, moderator

- Opens the floor and focuses on lived experiences.
- “We want to take your contributions to and after this conference today. Let’s think about what we heard from Prof. Clarke and this young journalist [Nicole Meilak] with lived experience.”

Roundtable Discussion

Natalino Fenech, journalist: harassment

- The problem in journalism in Malta is politics: “There are more politicians than journalists. There is no solution to this, I don’t think that anyone can be banned from the journalism profession, but there are journalists who use the profession for personal goals.”
 - So when someone criticises journalists, that too falls under the category of free speech. We should not tolerate hate speech but we can’t expect to question someone and not expect questions back. Bots = soldered to push people
 - If a journalist reports on criminal activity taking place in his regard, they report it to the police yet - more often than not - the criminal remains on the street. It is important to protect journalists, journalists have to keep standing up.
- *Louiselle Vassallo, academic, activist: IGM*
 - Disappointed in the output of the institute. Needs to be a bit more vocal in its criticism of attacks on journalists. It had improved in 2020/2021.
 - Many people spoke out against what happened to Victor Vella [an editor suspended from his post], yet there wasn’t that much action from IGM, except a short press release.

- e.g. Last year, many news sites were spoofed. It took IGM a few days to react. Although they issued a press release, the PR is not on the website. It's like they did it half-heartedly and did not want to stir up much.
- I wish to see a Malta where the IGM shows teeth.
- I implore those involved to contribute to the effort for IGM to be more vocal about important issues affecting our democracy.

- *Alica Mohnert, researcher:* Journalist seeking legal aid
 - Question for Nicole Meilak: I'm interested in knowing how you personally dealt with online hate. Did you seek legal advice? Did you think legal help/remedies would be worth it?
 - Nicole Meilak: I did not do so. I decided to keep off Facebook to avoid comments. While there was an outpouring of hate and abuse, there was also an outpouring of support and help. IGM was very kind enough to file a report on my behalf. However, IGM does need more resources.

- *Claudia Taylor-East, moderator:*

What legal framework, or contribution to the framework, should journalists be asking for?

- *[name withheld], journalist:* IGM, legal reforms
 - I think IGM needs to be completely dismantled [and rebuilt] and needs to be more in favour of journalists.
 - It works on you filing a report to them so that they protect you. When we filed a case when we were held in Castille, IGM did not help.
 - We're waiting for the appeal [court case] and the AG did really good work.
 - IGM does not work where you have the institute at forefront protecting journalists.
 - Responding to Claudia Taylor-East: I have an issue that, while it is because of the board of the public inquiry that we have a committee of media experts, what we actually have is the Government coming up with [legal] proposals and the committee simply rubber-stamping.
 - At the same time that the Government is proposing these laws, they came up with cyberbullying laws. I can see politicians using that to abuse law and claim they are being cyber-bullied.

- **Ranier Fsadni, *academic and journalist*:** Cyber-bullying and cyber-stalking
 - One of the reasons why this kind of cyber stalking can be defended in the way you have said - and why individual rights can be redefined by the Government as rights that the State and its personnel have - is because the media itself doesn't define/understand the laws themselves.
 - Journalists often report that someone is *de facto* guilty of hate speech when, in fact, it's protected if offensive speech, not hate speech. Thus, journalists normalise a definition of hate that has a basis in colloquial terms, but not in law.
 - Daphne: she could be said to have been many things, including, sometimes, unkind -- but, though she was routinely called a hate blogger, she was never taken to court for hate speech as her political accusers knew they would have lost in court.

- **Corinne Vella, *The Daphne Caruana Galizia Foundation*:** Cyber-bullying / cyber-stalking law
 - The proposed cyber-bullying law is modelled on an existing law that includes defences, but it excludes those defences.
 - Line of defence: under the proposed law, journalists [and activists, human rights defenders, and other public watchdogs] could be prosecuted for cyber-stalking and cyber-bullying; they can defend themselves under the cyber stalking law, but not under the cyberbullying law.
 - Journalists can face the possibility of jail or fine and will not have the possibility of defence against cyber-bullying claims.
 - Cyber-stalking claims: you could defend yourself but will have to go through court proceedings to do that, and still end up with a jail sentence or fine.
 - The processing of this proposed law has been disrupted by the dissolution of parliament. When parliament returns, the legislation could pass and journalists [and other public watchdogs] will be at risk; as citizens we will be denied our right to know.

- **Benna Chase, *clinical psychologist and psychotherapist*:** sense of mission and also the immense threat and loneliness
 - I am wondering if we also need to look at a different level(s) of support. One-to-one psychological sessions.

- We can get together, connect and review the sense of mission of journalists so that the person is not threatened and feels alone. It's about time we get together and give support.
- [politicians and business] have got all the resources in their hands. Without journalists, we won't know what is happening. We need to support these individuals who are doing this important work.
- *Therese Comodini Cachia, former MP, human rights lawyer: Freedom of expression*
 - Whatever I say will probably be taken as either blue or red. Please try not to take it that way. What I wanted to say is that I've heard here the same blame shifting game I've been hearing for the last few years.
 - I have been involved in Daphne's cases. What the public inquiry taught me most is about the situation of free speech and freedom of expression in Malta - the issue is much broader than just journalists.
 - The IGM, journalists, activists, politicians - we're all working in the same society. That society has no idea what freedom of expression is, does not cherish free speech, does not want or accept criticism.
 - Anything that is perceived to be against one's personal political allegiance or in disagreement to one's own opinion is seen as criticism that should have never been uttered and once uttered needs to be derided.
 - We're unable to debate; we're always offended because someone has disagreed with us. We attack people personally, rather than argue or raise points on that same debate.
 - Take that on a bigger scale: if we're unable to debate one-to-one, how do we expect society to accept journalists doing their work? Journalists ask questions the person being asked doesn't want to hear or answer. The reaction is an attack on or mockery of the journalist. Once this is made public, the comment boards are filled with reactions much similar to that of the interviewee or in line with the 'don't touch our guys' attitude.
 - Concern: how are we going to make this society a culture that appreciates free speech?
 - Legislative proposal: we don't need just a law. We need a set of measures to effectively bring about an enabling environment for free speech. This will mean new laws, amendments to current laws and also all other measures that can bring about a change in the cultural mindset. These will need to include action plans, guidelines, awareness raising programmes and other measures. Not least, they must include measures to stamp out political rhetoric which dehumanises,

mocks, and degrades journalists and other public watchdogs. Then journalists will be able to work freely, and their work will be appreciated.

- *Manuel Delia, Repubblika/PEN Malta, journalist & activist: Psychology*
 - Personal experience a few months ago. I am blessed with lawyers who do public interest work who help me. They have helped me with very problematic legal cases.
 - Some time towards the end of last summer, I melted down. I could not cope with the daily harassment and I went away for a while and the first thing I was given was not lawyers, but psychologists.
 - I recommend therapy to my colleagues. I think it threw light on some very basic concepts we think we know. When we are stuck in a situation and we cannot fight or fly. We doubt fighting because, you know we spoke about the power of journalism and you expose something and bring down power.
 - Well, most of the time you expose something and nothing is happening. You cannot fly either because of a sense of mission. You're in the trenches and achieving nothing.
 - Point of bullying: there is confusion about what we mean by hate speech and hateful work. Bullying we get for doing our job. Our job is annoying to people we expose and the things we discover. Our job is unkind. The cyberbullying we get does not become acceptable or become an equal retort to what we do.
 - In 2013, 2017 elections: the PL campaign included a roll call of PN politicians people love to hate in both years. In 2013 and 2017 it was Daphne, this year it's Robert Aquilina and myself.
 - Public lynching is part of the system and it happens coordinatedly and from the top.
 - A week ago the court decided on a case after YF sued me for the right of reply that he thought he had the right to. In his evidence, he produced a list of the hundreds of articles I wrote about him. He argued that I was obsessed with him. A £70 million lawsuit in the UK was going to be filed by YF against me. This is the type of legal abuse journalists are exposed to.

Claudia Taylor-East, moderator, SOS Malta

- No comment on unwarranted interference. Good that we embarked on psychological pressures

Keynote Speech

Karl Schembri, former journalist, media adviser, Norwegian Refugee Council

- Halfway through our chat, [a colleague] tells me he's tired of having to be an activist. Being a journalist these days feels like being in a constant campaign. And journalists are held to a different standard – everyone has an opinion about them and feels they can decide who's a 'real journalist' and who isn't.
- Journalists are by default on the frontline of our democracy. They are the craftspeople putting together this nebulous planet of free speech. You are constantly on a quest to defend your right.
- An editor was 'outed' for having a coffee with a PN strategist. [Also mentions Editor Victor Vella being suspended from his job.]
- These incidents are partly because we allow them to happen by not standing up for each other, but also because of a culture of impunity.
- If you chip away at journalists, then you undermine democracy.
- Unless you have the right people drafting reforms, then you will have more of the same.
- The party in government: we need to lobby them relentlessly because we need to hold them to transparency, rule of law.
- There is a shocking level of impunity in the world; we are living in a world where more war criminals are committing more war crimes than ever. Russia - invading another country.
- Our own governments, western democracies are held accountable for this. The same Saudi Arabia that killed [Jamal] Kashoggi is the same one bombing Yemeni children with British, French soldiers.
- Global conspiracy that sees the West sleeping comfortably while aiding and abetting these war crimes.
- This is the time where men with guns around the world believe they can get away with anything. Blocking of humanitarian aid: because they believe they can get away with anything, they do.
- With an overloaded stock market and profits, our government takes advantage of big business.
- Western governments are only too keen to let bygones be bygones, and get along with business.
- Trying to remind foreign governments about their human rights obligations, only to be undermined by human rights violations by our own government - migrant pushbacks. This is official policy.

- We are on our own. But we are learning. The more we expose it, the more the networks sustain it, the more resilient we become.
- We need to hold the Government to account when it comes to the conclusion of the public inquiry. We need to stand together in solidarity to challenge those in power. It is unrealistic to expect the Government that allowed [Daphne's] death to prevent it from happening again.
- Although it is tiring, we need you to continue your work.

Claudia Taylor-East, moderator:

- What are the human rights obligations?
- We need to bring back Prof. Clarke's last quote - our national governments are responsible. What responsibilities do we want our national government to have - an enabling environment for journalists and to protect journalists? Journalists, what proposals can you help us present today?

Roundtable Discussion

- *Natalino Fenech, journalist:* Journalists vs. journalists
 - I would like to latch on to the point that Delia mentioned: journalists are to blame for a lot of what is happening. When Delia felt he had to go away because he felt it was too much, he received attacks from other journalists.
 - Journalists with an agenda are the problem.
 - Power of press: it wasn't always like this. Today we've had shocking stories, and yet those in the wrong are continuously defended.
 - I'm of the opinion that we've lost the ability to tell right from wrong. Right and wrong today depends on who does it. If a wrong is committed by someone people like, it becomes right, they justify it.
- *Corinne Vella, The Daphne Caruana Galizia Foundation:* State vs. journalists
 - The public inquiry report said the Maltese state must shoulder responsibility for Daphne's murder, because it fostered a culture of impunity. Remember that the [ultimate] enemy of journalists is the state and the protector of journalists is [ultimately] also the state. We have to put pressure on the state to protect. It's not enough to say we have to stand in solidarity.

- **Ġorġ Mallia, Head of the Media and Communications Department at University of Malta (UoM):** Government vs the state
 - The Government is made up of politicians and those tend to be on the other side of journalism.
 - There is enormous impunity at the moment that fosters the intransigence that runs through Maltese society.
 - I was interviewed about the logos of political parties and I received an immediate barrage of commentary. There is an unspoken impunity.
 - These people are organised to [act in this way] and speak out against anything that goes against what the Government says. Even those who aren't organised, they now do so because they model themselves on those who are directed to react. The rampant impunity is a threat to journalists.
 - A straw-poll I carried out indicated clearly that UoM students are pushed away from the idea of being journalists. We're not creating journalists, because the threat of being demonised constantly persists and is persistently propagated, also by the government.

- **Marianna Calleja, student and journalist:** Feeling hope
 - Calleja published articles on anti-SLAPP legislation for *Illum*.Joan
 - “When we say that we lost hope when someone tells me that the state needs to help me. I also lost hope for the alternate party, an ex-leader of the party is currently harassing a Lovin Malta editor. This tells me that we're not protected”.
 - This conference does give me hope.

- **Joanna Demarco, photo-journalist:** Transparency
 - Added to what Karl said: as the media, we need to lobby the Government for transparency.
 - I think that we are often denied access to things that access would normally be allowed or needs to be allowed.
 - I had issues with reporting on the pandemic itself, e.g. on vaccination. It was something simple being reported all over the world. In Malta, doors were closed, I was told “don't photograph because of data protection”.
 - Denial of access to [migrant] asylum centres and prisons.

- Recommendation: There is resistance to providing information through FOI Act. Requests are met with a lot of resistance. Consider this element of access to information, and the struggle of providing information and access to journalists.

- *Herman Grech, editor*: Reluctance of people to become journalists, harassment
 - I can confirm that I asked a class of 30 people [about becoming journalists] and 2-3 said they're interested. You don't blame them. We're talking about underpaid, overworked professions. People are facing unprecedented pressures.
 - I think that the pressures that journalists are facing today, I've never seen anything like it. I asked for police protection for two people in my newsroom. What journalists can do without is the relentless attack from people who should be on their side.
 - Sometimes I fear the kind of flak our journalists have to face; it's incredibly unfair. Jacob Borg was recently torn to pieces by people I didn't expect it from. Just because Jacob Borg put a microphone in front of [Joseph] Muscat, does that make him a party to Muscat's camp?
 - Journalists do [sometimes] screw up and we should admit it. Sometimes it would really help to understand what journalists are going through but often they are working against the odds to get to the bottom of the story. So let's please try to identify that fact.

- *Ranier Fsadni, academic and journalist*: State, society, journalists.
 - We've mentioned various actors – the State, society and journalists. I would tend to agree with Corinne that the state is the most relevant actor.
 - Keep in mind:
 - Liberal states are liberal when they guarantee individual rights against majority rule. Journalists need specific protections against libel not in order to get a 'pass' that others don't have. It is because, unlike ordinary people, they are investigating and make claims about public officials routinely. They are bound to get some things wrong; but it's an unintended consequence of the public service they perform. They need a comfort zone for bona fide mistakes (while demonstrable malice and culpable carelessness with the truth and still be punished).
 - The problem is that the press does not explain the principles involved. Many readers will thus continue to misunderstand what freedom of the press is.
 - We do live in a society where freedom of expression is seen as something that is granted from on high, rather than an inalienable right that States must respect. It's therefore seen as something that can be controlled and contained in the name

of public order. Once you see freedom of speech as inalienable, then the picture of what public order is changes: it becomes a dynamic market of ideas. Debate and even adversarial disagreement are not disruptions of that order; on the contrary, they are what order looks like in a lively society. A public sphere with no debate is a public square with no life in it.

- Once this picture of the public sphere is accepted, then the proper role of the authorities (the police or otherwise) can be seen more clearly. It is not to contain and police debate; it is to facilitate and guarantee it. But if you yourselves [the media] don't say it, then how do you expect others to know it?

- *Corinne Vella, The Daphne Caruana Galizia Foundation: police protection*
 - Police protection should only ever be an interim measure. It should not be normalised. It is not normal for journalists to be under police protection.
 - The best protection for journalists is [for law enforcement] to go after the people who journalists expose.
 - If the people journalists expose are not taken off the street, then you are in a situation where police protection becomes necessary and is normalised. Look at Italy, for example. It is, unfortunately, necessary.

- *Eve Borg Costanzi, human rights lawyer: SLAPP legislation*
 - There should be a new defence plea added to the current defences against a libel suit, in the form of a preliminary plea, where a journalist can plead that a libel suit is frivolous and vexatious and constitutes a SLAPP action. The law should provide that a Magistrate would be able to dismiss the case after hearing the parties on whether or not there exist specific listed criteria the fulfilment of which would be tantamount to a SLAPP lawsuit.
 - Examples of what such criteria should include:
 - 1) if the applicant is a big business or politician and the respondent is an independent journalist;
 - 2) if it appears *prima facie* that the claim is frivolous and vexatious;
 - 3) if the applicant had other (less extreme and more accessible) remedies available to them;
 - 4) if the journalist is not in his home jurisdiction.
 - Another amendment could be in the form of security paid on filing a libel suit against a journalist/activist. It is suggested that a potential applicant be made to deposit in court double the costs as security for his claim. The law should also then provide, that if, either through the new preliminary plea or after hearing the

case, the Magistrate deems the lawsuit frivolous and vexatious, then the court should be able to penalise the applicant by awarding double the costs to be paid by the applicant to the journalist/activist.

- *Joanna Demarco, photojournalist*: Access to court information
 - Recommendation: A discussion should be started with the authorities on the possibility of recording and photographing in court. This discussion should be had.

- *Nicole Meilak, journalist*: Socio-political characteristics of Malta
 - Meilak raised the issue of failing to accept certain socio-political characteristics of a small country like Malta.
 - A lot of other small island states have the same problems: “I think we should understand our context and start from there.”
 - Meilak: “No government is ever going to change access to information so that we are helped as journalists. For any governing party, this is not in their interest. We need to understand it, accept it, not necessarily resign ourselves to it, and then change it.”
 - There are certain characteristics we need to work around. E.g. clientelism problem in Malta: it is along the party lines. A job guaranteed by the Government shows that party/government lines are blurred.

- *John Said, interested party*: Journalism and quality of life
 - During discussions with people from developing nations, I observed aspects of western democracy [freedom of expression, Rule of Law] was absent from their societies. They wished that their societies were more like western democracies in terms of freedoms.
 - What I feel is happening in our society is that the general public is not making the link between the importance of free, independent and investigative journalism and the quality of life (incl Rule of Law, etc.) that is associated with western democracies. This is slowly degrading. Our liberties are being taken for granted by society, and the slow steady deterioration is being missed, notwithstanding a few journalists pointing this out. The narrative locally is being dictated by politicians who have a vested interest in this deterioration as it ensures impunity against their indiscretions persists.
 - It’s good to have legislation that protects journalists, but the root cause of this aggression/attack by society towards journalism is because society is no longer

making the link between the importance of journalism and the quality of life. Legislation needs to go hand in hand with an educational campaign.

- *Manuel Delia, Repubblika/PEN Malta, journalist & activist: Free speech and impunity*
 - There is an ongoing discussion on protecting journalists and enhancing free speech. But those are not the first take-home lines from the public inquiry.
 - The starting point: we have laws that the authorities are entirely willing to ignore and breach.
 - Yes, we can have laws that are better. But what we need is public indignation when the laws are ignored. We have a society that perceives the role of the press as enemies. Society wrongly perceives the call for improved conditions for journalists as an expectation of a set of privileges (e.g. police protection or the right to say what we like with no repercussions).
 - In free speech, journalists are merely a function of the right of people to know. They have a right to know because, ultimately, citizens are the state (voters). If citizens are not informed, they will vote within the limits of what they know.
 - I cannot accept these weaknesses of our system as our point of arrival. It is our point of departure. Those who killed Daphne Caruana Galizia did so because they thought they could do what they wanted and that, because of who they are, they could get away with it.
 - We need to persuade people out there who troll us and hate us that we are on their side, on the side of the people.

- *Prof Marilyn Clarke, academic and lecturer: Democracy*
 - This issue of journalism being construed as a crime; violence against journalists - this is happening in the oldest democracies. I interviewed a journalist from Greece who commented on democracy in their country as we do now about Maltese democracy.
 - The issue around politicians who get into bed with business - this is happening around the world. Where you have journalists making this known, people are going to react and be shocked. It is more evident here because we know each other. But this phenomenon is happening around the world.

- *Louiselle Vassallo, academic and activist: Law and practice*

- This thing of having nice laws (e.g. whistleblower acts, FOI acts) - we have those laws. Those who should be observing them, ignore them.
 - You asked about responsibilities of the state and what should be done - education is so important
 - Journalists, apart from enjoying free speech, enjoy it within the framework of ethics, which is why we depend on them (and trust them) to inform us accurately.
 - Another step would be that the population needs to be educated, formally and informally (i.e. through the media). Media literacy is a form of education.
 - We have an issue in Malta with media ownership and where TV is most influential. Most people watch TV, and that's all they get.
 - Recommendation: media literacy is not currently obligatory in all schools. Nowadays, private schools teach this. It should be part of the formal curriculum and taught at all levels, not just in senior years.
 - The more people are informed, the more the Government will be held to account and face demands [from people] to know about what they're doing.
- *Therese Comodini Cachia, former MP, human rights lawyer*: Democracy and culture
 - I'm angry because we are in this room because we are interested in press freedom but we're not angry enough.
 - Malta is a country where, as recognised in the public inquiry report, a journalist was followed and the journalist's meeting with a source was surveilled by persons linked to the Government in Castille and then almost immediately the source was threatened with his livelihood.
 - We do need to realise exactly what's happening. It's true that there is a deficit in press freedom that has been growing and happening everywhere but what is happening on our island is very particular not just because it is taking place within our island identity and culture. What happened here did not happen all over the globe.
 - I understand that this Conference will pass on its report to the Committee of Experts appointed by the Government. The Committee of Experts must study the situation of press freedom in Malta and then make proposals in line with the requirements of democracy and human rights. The committee needs to recognise the real situation in Malta and understand the different aspects that feed this democratic deficit. They need to have a very good understanding of what journalists are experiencing in Malta.
 - If we want our democracy to mature, we can no longer allow an environment which does anything but enable press freedom and other public watchdogs.

- I would like to see the Committee of Experts look not only at legislation. But if we had to start from legislation then at least eight pieces of legislation which need review come to mind.
- The Committee needs to look at the Constitution. The Constitution does not entrench press freedom, freedom of expression and free speech in the personality of this country.
- Current culture gives politicians and others the *perceived* right to do what they want. To bring about the required culture change we need to first have a strong recognition of freedom of expression and press freedom in the Constitution.
- We need to protect **sources**. Our Constitution needs to recognise source protection and ordinary law needs to be updated. We need to have strong source protection - if we cannot protect sources, journalists can't work.
 - I appreciate that journalists speak about funding and funding is an issue. But what they need to do their work is sources. Sources don't have protection. State authorities are carrying out investigations to find out who some protected sources are; journalists are called to be asked questions that would disclose their sources. This is not what state entities should be doing.
- **Whistleblower act:** Only some time ago Parliament amended the Whistleblowers Act. This Act really hurts journalists because it prejudices their sources. A weak whistleblower law that discourages whistleblowing only makes the situation more dangerous and onerous to sources.
- **Freedom of information:** We do have a law which on paper appears to be in line with EU legislation. It is however implemented in line with Maltese rule of law culture, not EU culture. Many of our journalists present FOI requests just to present them - they know requests are just going to die there. They know that they will get information when the information becomes irrelevant. How is the right to know and access to information served by this?
- **Libel/defamation law:** Needs to be reviewed to strengthen public interest defences and editorial discretion, and to protect from chilling effect.
- **SLAPPs:** The abuse of procedures which threatens press freedom requires legal measures that will neutralise the chilling effect of SLAPPs. Strong defences in law need to be introduced for an effective anti-SLAPP position to be taken.
- **Threats of SLAPPs:** SLAPPs are not threatening to journalists only when the legal proceeding has started. The threat [of a SLAPP] is itself threatening. I'm sure that there are stories in journalists' laptops and drawers that were not published because they were threatened - the outcome of a threat is self-censorship, the leaving out of some information, or to not publish all the

information. Some have to negotiate on how the story will appear. This is not in the public interest. We need to find measures which will make it seen as distasteful and disgusting as possible for someone to threaten a media outlet with slapp. That threat is to be seen as threatening the right to know.

- **Data protection legislation:** we seem to apply it in a way to the detriment of access to information. In a country of gossip, we use the privacy aspect [of legislation] to withhold information. The application of data protection legislation needs to be reviewed to ensure that the public interest in accessing data is not prejudiced.
- **Political parties:** We do need to get political parties to recognise that they have obligations whether they are in government or in opposition. I used to be an MP until a few days ago and so I have an idea of how political parties work. Yet irrespective of what you may think of them, you still need to work with political parties. Furthermore, I fail to understand why the MPs rules of ethics have no mention to recognise their obligations towards the media. The Speaker of the house has not produced any guidelines/policies on how parliamentarians may speak of journalists and the media. Politicians [use their parliamentary privilege] to talk against journalists in parliament, doing so freely even within the highest institution in the country.
- **Enforcement and investigation:** What we need if we want journalism to be recognised for its true worth or value is that when a journalist publishes an investigation and shows some intelligence (i.e. data/information) that could lead to a breach of the law or ethics, than we need that information to be thoroughly investigated and action taken against the offender irrespective of who he is. Rather than having the police behind journalist's doors to protect them, we need the police to investigate the stories - not to ask how a journalist got that information, but to turn the [published] information into evidence, rather than keep it as intelligence.

Claudia Taylor-East, moderator

- New areas, like education.
- Measures and action plans: What would you like to see in the action plan?
- In the conclusions, we need to concretise what you've been hearing - concrete proposals to help the organisers of this conference to contribute to the Committee of Experts.

Remarks from the US Embassy

Elizabeth F. Canellakis, Public Affairs Officer, US Embassy

- A free and responsible press is essential to democracy, which is why it is often referred to as the fourth pillar of democracy.
- The U.S. Constitution specifies the importance of freedom of speech and freedom of the press in the first amendment of the Bill of Rights.
- We bring that fundamental belief to our work overseas.
- Without freedom of the press, we cannot tackle some of the most pressing issues of our time.
- Protections for journalists are pressing in the local context. Just in October, we commemorated the 4-year anniversary of the murder of Daphne Caruana Galizia.
- We welcomed the work of the public inquiry and the efforts made by the government to provide greater protections for journalists. We similarly recognize efforts in the European Parliament that could provide for the greater protection of journalists.
- These are important developments, but there is still more to do. The embassy works with local partners to teach media literacy, fact-checking, and other best practices in the media sector. The U.S. embassy seeks to continue and expand these lines of effort.

Remarks from Article 19

Sarah Clarke, lawyer, Head of Europe and Central Asia, Article 19

- It's important to mark that this is the first transparent discussion to be had on the implementation of the public inquiry recommendations in Malta.
- Article 19 is a global organisation. We're legal experts in freedom of expression and information, and in the global fight against impunity for the killings of journalists. To us, the process in Malta concerning the assassination of Daphne Caruana Galizia and the public inquiry that followed is of global significance in the fight for justice for journalists who have been killed. Many organisations have come together on Daphne's case because of this significance.
- While journalists are killed in many parts of the world, what we saw in Malta is quite unique. The findings and conclusions of the public inquiry, which ultimately find the Maltese state responsible for the assassination of Daphne Caruana Galizia, is a unique finding in Europe. It's an extraordinary and monumental indictment of the state and its treatment of journalists.
- The measures introduced post-public inquiry need to be commensurate with the gravity of the [public inquiry] findings to change the culture of impunity in Malta to ensure that this never happens again to another journalist.
- At this point, our organisations have not found that the response of the state has been commensurate to the findings and recommendations of the public inquiry. It is crucial at this moment that the Government introduces adequate responses to deal with the gravity of the situation uncovered by the public inquiry.

- Because of the gravity, our organisations monitored the public inquiry and provided submissions, and are conducting research on how the public inquiry model could be applied in other ECHR jurisdictions. We saw the process [of the public inquiry] as extremely important and something that we could replicate in other countries.
- Our worry, which we repeatedly noted in our meetings with Prime Minister Abela and former prime minister Muscat, is that the context of safety of journalists and freedom of expression in Malta has not sufficiently improved to the point where this cannot happen again.
- It's important to note that those recommendations of the Public Inquiry around corruption and its prosecution haven't been touched by the Government.
- Corruption was the main source of the threat against Daphne and it remains the main source of the threat against journalists in Malta. Journalists conducting investigations into corruption in Malta remain at great risk.
- The underlying principle of the public inquiry findings is to recognise journalism as the 4th pillar of democracy and to create an enabling environment for press freedom.
- All steps towards the implementation of the recommendations must be grounded in recognition of these principles. Legal amendments must be commensurate with the gravity of these findings and ensure that they are put into law.
- We noted in our meeting with the prime minister that we are aware of [the government's] draft legal proposals and our concern that they are aimed more at regulating the media than enabling it.
- We highlighted our concern at what seems to be a lack of transparency in the process since the public inquiry, in particular the lack of publication of the proposals. This is of particular concern since it is the Government rather than the Committee of Experts who has presented the proposals [under consideration].
- Usually, when it comes to legislation on freedom of expression and the safety of journalists, we would expect governments to openly publish proposals and to engage in a transparent consultation, enabling expert organisations such as the Council of Europe, the OSCE, and organisations like our own [free expression iNGOs] to contribute our technical assistance throughout the drafts.
- The Government has claimed to have consulted with international freedom of expression organisations like Article19, we [together with other iNGOs] actually had to release a statement⁴ in response to say that while a meeting had been held, this offer of technical assistance has not been taken up by the prime minister. We stand ready to assist and we hope that we are included in the process.

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<https://rsf.org/en/news/malta-implementation-public-inquiry-recommendations-must-meet-international-standards>

- An enabling environment is recognised by the Council of Europe as essential for independent media and journalists to function as the fourth estate serving the public interest. Only in an enabling environment can the media fulfil their vital role by bringing reliable and timely information to people and by holding decision-makers and power-holders to account.
- An enabling environment requires a functioning rule of law and legislation that guarantees freedom of expression and press freedom. Journalism and independent media need to be able to function in an environment that supports their role without fear of retaliation.
- Economic environment is important for independent media - transparent media ownership divided among several players without political interference.
- There is a long way to go for these criteria to be fulfilled. Even after the publication of the public inquiry report, we see that journalists are facing enormous challenges. They require police protection, they are subject to smear campaigns, to SLAPPs, and to really serious obstacles to access information and to access politicians.
- The public inquiry underscored the need for a cultural shift in Malta that recognises journalists' key role. We can all agree that, to date, that shift has not been created.
- The proposals by the Government and [also those by] the Opposition are welcome and go some way toward starting to redress what has till today not met these requirements. There are a number of areas where further development is necessary.
- There are several proposals on the table from the Government and the Opposition. As a whole, the proposals are a step forward. Article 19 is currently conducting a legal analysis of these proposals' compliance with international standards.
- The issue of SLAPPs has come up repeatedly. There's been some confusion at international institutions and organisations like our own because the Government's proposals have not been published [they were leaked] and the process [of developing the legislation] has not been transparent. Usually, we'd expect all draft proposals to be sent to Brussels [European Commission] and to Strasbourg [Council of Europe] for a thorough analysis.
- What we have seen is that the [government] proposals focus on three separate amendments to the Media and Defamation Act and the Criminal Code.
- The proposed amendments look to SLAPP suits that have been instituted abroad against Malta-domiciled authors. They're silent on whether a defendant has entered a defence abroad or not. They do not safeguard the defendant from the cost of entering a defence abroad. This is usually prohibitive for Malta-domiciled media actors. [Under the proposals] defence must be claimed in Malta once the plaintiff seeks execution of the foreign judgement.

- Opposition proposals are focussed on making the chilling effect a consideration where libel cases are defended on the grounds of public interest. They introduce concepts of editorial judgement and chilling effect, address both abusive suits presented in Malta and those presented abroad, and support participation in public debates on matters of public interest without fear of legal action.
- The application of the chilling effect test is not limited only to journalists. It's open to public participation on all matters of public interest. It would therefore protect civil society, the general public, and bloggers. This wider definition of journalism is really important when it comes to SLAPPs. They have to be applicable to all public watchdogs.
- Also under the Opposition proposals, SLAPP suits won abroad would not be executed in Malta if that foreign judgement is likely to have a chilling effect on public participation on matters of public interest.
- One of the areas where the Opposition proposal could be amended is, where the chilling effect test fails, a libel judgement against a Maltese author would only lead to the payment of damages that are not more than the maximum allowed under Maltese law.
- Overall what we've seen in the Government proposals on SLAPPs is that they fail to tackle some of the realities that journalists in Malta are facing. The vast majority of SLAPPs are instituted domestically and these need to be subject to a process of early dismissal. There must be damages payable and penalties for those plaintiffs who take repeated SLAPP action.
- The context here is important. We're at the point of the European Commission unveiling its anti-SLAPP proposals and a huge amount of momentum in Brussels that has brought us to this point has really been driven by Daphne's family and by organisations that have been looking at SLAPPs in Malta. Without this pressure, Brussels would not be taking these steps.
- It was the cases against Daphne that really brought the issue of SLAPPs against journalists in Europe to the fore. So it's crucial that Malta really addresses SLAPPs because it's from Malta that the entire movement around anti-SLAPP has originated. It would be a real shame - and, practically speaking, it would fall far short - to proceed with the government's anti-SLAPP proposals as they stand.
- One area that is not addressed in either set of proposals is the *threat* of SLAPPs. We know that the vast majority of SLAPPs are preceded by pre-action legal letters that are marked private and confidential, that threaten proceedings. It's usually on receipt of these letters that we see self-censorship by the author or negotiation on what is published.
- Elsewhere in Europe, the Coalition Against SLAPPs in Europe [[CASE](#)], we look at exposing these letters, publicly naming and shaming the law firms and the plaintiffs.

- In Malta, journalists and media houses have started going public, publishing these letters. That is a really important step, but, as Therese mentioned earlier, we need to deal with the cultural aspect around SLAPPS, to discourage law firms and plaintiffs taking up these [SLAPP] cases. There's a huge amount more to be done to effectively tackle SLAPPs in Malta.
- The Government's proposal to amend the Criminal Code to make crimes against journalists an aggravated crime punishable by a higher penalty is welcome. It is a step toward reversing the social norm of attacks against journalists.
- We also need to see a commensurate change to the Constitution to fulfil the recommendation of the Public Inquiry, entrenching journalism and media freedom as the fourth pillar of democracy.
- The Constitutional amendments to Articles 38 and 41 as they stand do not entrench this principle. They provide some additional emphasis on the right to privacy but they restate the applicability of the ECHR article 10 on freedom of expression. This is already in ordinary legislation in Malta. The amendments that have been announced do not add anything new to the Constitution and to the recognition of journalism as the fourth pillar.
- Another proposed amendment looks at public authorities providing access to information. This is qualified by saying the duty is regulated by conditions found in ordinary law. This gives the state the possibility to limit the obligation to provide access to information. It retains the status quo for information access under Freedom of Information [law]. We know this is a huge issue and we're concerned that the amendment will not improve the current situation.
- Overall, the constitutional amendments as proposed do not reflect the tenets of the public inquiry, that of entrenching media freedom as the fourth pillar of democracy and of creating an enabling environment for journalism. This is significant as [the proposals are] not living up to the recommendations of the public inquiry.
- The Opposition proposition would entrench a number of key principles, and would describe the character of the country - which is really what we've been talking about in terms of the cultural shift in recognising media freedom as an essential pillar of democracy, with a pre-eminent role in the state governed by the rule of law.
- Among other issues, the Opposition proposals give formal recognition to the state's obligation to provide access to information. This would give the press the right to sue constitutionally for freedom of information requests that are not provided or where there's a systemic pattern of the state refusing to provide information.
- The Opposition also put forward an amendment which would give protection to sources as an explicit part of freedom of expression for journalists. This would recognise the importance of sources and journalists' obligation for confidentiality.

- There is a welcome proposed amendment to the Media and Defamation Act to address the issues which arise when an author or an editor dies and defamation suits against their heirs continue.
- One of the most egregious issues that the international community have noted is the continuation of libel suits against Daphne's heirs. However, the proposal stops short of defamation proceedings which can continue. The heirs may not have to pay damages, but they're not in a position to defend the author or the editor.
- There's also the problem that the proposal shifts responsibility onto the publisher, so those cases [against a deceased author] can still continue to be taken against the publisher or editor. That raises a lot of issues around how the editor or the publisher could defend these cases.
- We see that there is really a long way to go in the Government's proposals. The important thing to keep in mind at this point, and as we continue to remind the Government, is the fundamental importance of transparency and meaningful consultation in this process, in particular with the OSCE, with the Council of Europe, and with international freedom of expression organisations like Article 19.
- We would like to see the proposed constitutional amendments revised to fully implement the recommendations of the public inquiry, and entrench journalism as the fourth pillar of democracy. We would like to see anti-SLAPP proposals that are strengthened and brought into line with international standards.
- Beyond these legal changes, there is a very clear need for a cultural shift towards recognition of the role of journalists in a society.
- In particular, as we approach elections, I want to restate what we asked Prime Minister Abela in our meeting with him, which we would also like to ask of the Opposition, is to desist from partisan polemic attacks on journalists. We know that these attacks rise in the context of elections. We're very concerned that this type of ongoing denigration and smearing of journalists can reach fever pitch in the lead up to elections. We're asking the parties and their media to desist from such attacks.

Concluding session

- *Paul Borg Olivier, lawyer*: State-run media and broadcasting
 - The public inquiry report highlights this deficit with respect to the state-run broadcaster. Many times, investigations are kept at the doorstep of state-run media.
 - Freedom of expression opens up to the right to information and the right to be informed.
 - Only 48.4% state that public broadcasting news is considered to be balanced. The majority of viewers think that state-run news media and bulletins are biased.
 - We live in a situation where there is a strong duopoly of a capture of broadcast media. 90% of viewers are captured by these two [political party] stations. Investigative journalists are fighting against a broadcasting media service fully funded by the government.
 - One really needs to look at the recommendations made by the public inquiry with respect to the importance of impartiality and balance. As the conclusions state, investigative journalists are kept at the doorstep.

- *Christoph Schwaiger, journalist*: recommendations for newsrooms⁵
 - Newsrooms should pool resources to fund a new IGM with full time staff. It is not feasible for the core IGM team to juggle between two full time jobs.
 - Demand weekly press conferences at the Prime Minister's office and demand to be able to ask questions and follow-ups.
 - Improved security for journalists is non-negotiable. If you expose a criminal and they're left on the street, you're probably their next target. You're unlikely to expose a second criminal or a third following this initial dangerous experience. It will lead to self-censorship for self-preservation.

- *Manuel Delia, Repubblika/PEN Malta, journalist & activist*: No space for discussion
 - Famously, one whistleblower had to escape in fear of her life.
 - Another had been warned by a backbencher in parliament that they will be sent to prison if they reveal information in pursuit of their application for whistleblower status..
 - The Whistleblower Act still gives an appointee of the prime minister the power to grant or deny whistleblower status on someone proposing to reveal

⁵ Mr Schwaiger's comments were presented by a colleague on his behalf as he was unable to be present.

embarrassing or incriminating information about the prime minister who appoints them.

- All members of the media and free speech community must insist that change is made for meaningful dialogue and free discussion. Every tinkering of the Constitution can be manipulated to make things worse. Consider that a law that looks like it's protecting children from being bullied, is a threat of criminal defamation being reintroduced.
- No meaningful conversation has been had on the concrete proposals of the public inquiry recommendations. It is insane that secrecy is the way that you manage a process of reforming the laws that are supposed to make the Government transparent.
- *Therese Comodini Cachia, former MP, human rights lawyer:* enabling environment
 - The takeaway message is that we're not after regulation. We're after having an enabling environment.
 - [For every change it proposes] the Committee of Experts needs to ask whether this is being done to regulate journalism or to enable it. If it is to enable journalism, it is a good proposal. If the answer is to regulate journalism, then it's a bad proposal – that's the main message.”

Claudia Taylor-East, moderator

- This morning has been an opportunity which has encouraged us to carry on the dialogue for this fourth pillar of democracy. We need to redefine what it means to us as Maltese society.
- This is a seed that has been planted.

Recommendations

The following recommendations by civil society groups *Repubblika*, *The Daphne Caruana Galizia Foundation*, *SOS Malta*, and *PEN Malta* include the proposals made at the public conference on freedom of speech and the protection of journalists on Thursday, February 24.

1. The process of reform, including the operation and deliberations of the Committee of Experts, should be transparent and involve meaningful consultation with civil society and with relevant organisations including the OSCE, the Council of Europe, the European Commission, and international freedom of expression and press freedom organisations.
2. The Committee of Experts must not concern itself with regulating journalism, the organisation of journalists, or the ethics of journalism. These concerns are the domain of the media sector itself and should be addressed through self-regulation.
3. The technical assistance of enabling expert organisations such as the Council of Europe, the OSCE, and press freedom and free expression iNGOs should be welcomed in the reform process, including by the Committee of Experts (“the Committee”) to ensure that the Committee’s proposals to the Maltese government meet international standards.
4. The Public Inquiry report includes recommendations to address impunity. These must be fully implemented to ensure an enabling environment for press freedom and the protection of journalists are created and are effective.
5. All deliberations on and steps taken towards the implementation of the recommendations of the public inquiry must be founded on the principle that media freedom is the fourth pillar of democracy.
6. The objective of reforms should be the creation of an enabling environment for journalism, as this is fundamental to the protection of public interest media and journalists.
7. Reform proposals should be aimed at enabling (not regulating) journalism and journalists. The test that the Committee must apply to every proposal under consideration is whether it will enable or regulate journalists and journalism. In the latter case, the proposal should be rejected.
8. Malta’s Constitution must formally recognise, define, and defend freedom of expression, and must explicitly recognise media freedom as the fourth pillar of democracy.

9. The Constitution must include clear and strong recognition of press freedom rights that have been recognised by the European Court of Human Rights. These include, but not only, decisions concerning the protection of sources, timely and effective access to information, protection of journalists, and recognition of journalism for its function as a public watchdog.
10. The Constitution must also recognise State obligations towards the press.
11. Legal reform must be complemented by non-legislative measures to protect freedom of speech and to ensure a cultural shift in Maltese society leading to recognition of the essential role of public interest journalism in a democracy.
12. Journalists must be enabled to form a strong organisational body that represents them. Formal recognition of an organisation of journalists is required for it to take a fully effective and proactive role on issues concerning public interest journalism and, by extension, Malta's democracy. The representative organisation needs to have effective powers and be properly resourced. In its current state, the Istitut tal-Ġurnalisti Maltin (IGM) does not meet these requirements.
13. Consider the creation of a fully autonomous consultative council of journalists and other media actors, chaired by an ombudsman, to mediate interests with political stakeholders.
14. Government spending in the media must be regulated to ensure fair distribution and full transparency of that spending. The Committee should demand transparency in the use of public funds in the media and determine guidelines for State entities on marketing and advertising in media.
15. Media ownership should be transparent and assured through self-regulation by the media sector.
16. Systems of psychological support for journalists need to be instituted. These are necessary due to the chilling effect of SLAPPs and intimidatory actions against journalists.
17. Anti-SLAPP legislation needs to tackle both domestic SLAPP cases and address the execution in Malta of foreign SLAPP cases.
 - a. In domestic cases, anti-SLAPP legislation needs to focus on neutralising the chilling effect by allowing early dismissal of the claim, introducing a strong public interest defence, and introducing the imposition of the payment of damages and/or penalties by the claimant to the defendant for lawsuits which are abusive, frivolous or vexatious.
 - b. There should be a new defence plea added to the current defences against a libel suit, in the form of a preliminary plea, where a journalist (or other public watchdog) can plead that a libel suit is frivolous and vexatious and constitutes a SLAPP action enabling the court to dismiss the case on the basis of criteria such as:

- if the applicant is a big business or politician and the respondent is an independent journalist;
 - if it appears *prima facie* that the claim is frivolous and vexatious;
 - if the applicant had other (less extreme and more accessible) remedies available to them;
 - if the journalist is not in his home jurisdiction.
- c. Execution of foreign SLAPP cases should be halted on the basis of Malta's public policy, providing for early dismissal of such a claim, introducing a strong public interest defence, and the award of damages to the defendant and/or payment of penalties by the party seeking the execution of judgments delivered by foreign courts and identified as SLAPP suits by the Maltese court.
- d. Common measures: When applicants file a libel case or file for the execution of a foreign libel case, they should deposit double the cost as security.
- e. The execution of foreign libel judgments which are *not* recognised by the Maltese courts as SLAPP suits should, as a consequence of the amendment to Malta's public policy, only lead to an award of damages against a Maltese-owned, controlled, and registered media that does not exceed the amount of compensation that is possible under Maltese law for libel/defamation.
18. To bring about a change in mindset on access to information, the state's obligation to provide timely access to information needs to be recognised in the Constitution and the relevant ordinary legislation must be reviewed and brought in line. The Constitution, ordinary laws, and practices, need to respect the right to know by recognising the right to information and the work of journalists rather than obstructing them (and others) from receiving timely information.
19. The Freedom of Information Act must ensure that access to information remains the rule while exceptions are restrictively applied. Information must be provided in a timely manner, with the process of objection and appeal to be terminated within a prescribed time that meets the requirements of public interest reporting.
20. The protection of sources must be secured through strong formal recognition in the Constitution and in the Media and Defamation Act. The Committee of Experts should consider establishing guidelines and training for State entities such as the police on how to deal with journalists and the assessment and rejection of requests from third parties made to the police to identify and prosecute journalistic sources.
21. The Whistleblower Act must be amended to facilitate the effective use of whistleblowing channels to minimise the risks to persons acting in the public interest and consequently minimising the risks to journalistic sources.
22. The state's obligation to provide access to information should be formally recognised. This would enable journalists and media houses to file an application in the

Constitutional court when FOI requests are not met fully and in a timely manner through the exhaustion of domestic remedies.

23. Digital access to information should be facilitated, not restricted. To this end the Committee of Experts should establish guidelines for State entities on providing digital access to information thereby restoring, for example, full digital access to all public court judgements as well as full digital access to the Registry of Companies' documentation, even of companies that have been struck off.
24. The notarial archives, the land registry, and the registry for public deeds should be freely and openly accessible.
25. In the interests of transparency and accountability, the Prime Minister should hold regular press conferences that are open to all journalists. Questions from journalists should be addressed directly and informatively.
26. Those who harm journalists in their line of duty or by reason of them being journalists must be penalised.
27. Harassment, threats, and vilification of a journalist and obstruction of a journalist's work must all be penalised to a higher degree than currently possible under the Criminal Code.
28. Psychological and physical harm to journalists must both be recognised as criminal offences. Where these offences are already recognised in general, these should carry a higher penalty when committed against journalists.
29. In the interests of openness and transparency and better access to information the Committee of Experts should recommend that a discussion should be started between the authorities, media houses, and journalists, on the possibility of enabling video and photojournalists to report from court, recording and photographing court proceedings, subject to predetermined and published guidelines negotiated with journalists.
30. Provide access to journalists to State administered entities and places such as prisons and detention centres, subject to predetermined and published guidelines that uphold the principles of transparency and accountability.
31. End political rhetoric and smear campaigns against journalists. Possible measures to achieve this objective include:
 - the introduction of a breach of ethics in the MPs' code of conduct for misconduct towards journalists and other media actors the disallowing of parliamentary speech to attack journalists and other media actors,
 - the introduction of suitable facilities in parliament for journalists, and
 - the drafting of guidelines for all MPs, and for cabinet members, to facilitate openness to scrutiny and accountability.

32. Media literacy must be part of the mandatory school curriculum, and that part of the curriculum must be developed by experts independently of the Government. Actions to raise media literacy among the wider public are also needed.
33. Sufficient resources to facilitate professional development of journalists in best practices should be made available to media houses, freelancers, and the organisation representing journalists, according to predetermined and transparent criteria designed to ensure fair and equitable distribution and to ensure that training is delivered by entities that are independent of the state and political parties.
34. Launch an action plan to develop resources of support for journalists and their employers as are needed to ensure personal safety and security. The plan should involve, on the one hand, media employers, editors and journalists, and, on the other hand, police officers and security experts.
35. A protocol must be established for the police to be followed when receiving and dealing with reports of harm from journalists and with requests for protection.
36. Train police officers tasked with dealing with offences against or with providing protection to journalists and media workers, and police officers dealing with journalists and media workers, to international standards of best practice. Training programmes should be organised in consultation with a formally recognised organisation representing journalists and media workers.
37. The State has a duty to identify whether a journalist is at risk of harm and to take all necessary measures to protect that journalist from harm. Such measures must not jeopardise or be an obstacle to the journalist's work.
38. The assessment of harm or risk of harm to journalists should be a systemic practice of policing and law enforcement, and should take account of all information that is known to the relevant authority, may become known to that authority, or ought to be known to them. Risk assessment should be pre-emptive and not rely on journalist's reporting such risks to the police.
39. Systemic practices should be instituted to ensure that all information that becomes known to state agencies that indicates risk to a journalist or journalists should be immediately reported to authorities tasked with taking pre-emptive action.
40. As a minimum measure, the Police should appoint a lead officer in charge of investigating crimes against journalists and appoint a journalist safety liaison officer responsible for receiving notice of risks or the commission of an offence from journalists.
41. A publicly-financed emergency safety fund for journalists should be established and accessed by journalists directly or by their employers, for the purpose of securing emergency protection measures. The fund should be operated by an independent entity such as the organisation representing journalists. Such measures should complement,



not substitute, those systemic measures that should be instituted by the state as a matter of course.

ANNEX

1. Conference a/v recording

Abridged version <https://www.youtube.com/watch?v=T4lvj2RUg4k&feature=youtu.be>

Livestream part 1 <https://www.facebook.com/103195548013061/posts/547368413595770/>

Live stream part 2 <https://www.facebook.com/103195548013061/posts/547429316923013/>

2. Keynote speech by Karl Schembri - full text

Journalism on the frontline of democracy

As I was preparing for this event, I had a conversation with an editor and old friend of mine.

I wanted to know more about the daily challenges that he faces.

Halfway through our chat, he tells me he's tired of having to be an activist. Being a journalist these days feels like being in a constant campaign. And journalists are held to a different standard – everyone has an opinion about them and feels they can decide who's a 'real journalist' and who isn't.

It's tiring. It's exhausting. For someone who does this daily, like the majority of you today, it's never-ending. "I'd just like to be a journalist and write stories," my exasperated friend said.

But it has always been like that, I told him. It has to be. Journalists are by default on the frontline of our democracy.

They are the daily craftsmen and women orbiting around this nebulous planet of free speech.

Add to that the contempt by people in power towards an inquisitive press – and this will come out even more brutally this year being an election year – and you are inevitably on a quest of sorts to constantly defend your patch.

In just one week, last week, we saw an editor being 'outed' in all seriousness by the prime minister for having a coffee with the PN's strategist. And we learnt that another editor – Victor Vella – was facing disciplinary charges of insubordination because he didn't seek permission to change a headline.

These are far from isolated incidents. They actually happen because there is an entire culture of contempt and impunity towards journalists and freedom of information by the people in power.

When you chip at the messenger on a daily basis, you are undermining their space in the public sphere. You are undermining our democracy.

It doesn't have to be this way. Reforming our laws is an essential step. But we've seen time and again, that unless you have the right people enforcing those laws, they will keep getting flouted with impunity. And unless these reforms are championed by the people in power, we are bound to keep struggling and arguing for the most basic of information.

This is where I feel we have to do a better job of spotting our allies, even in the party in government, and lobby with them relentlessly to seek transparency, freedom of information, whistleblower protection, and accountability.

One thing that strikes me in my current role as media adviser with a humanitarian organisation is the shocking level of impunity that goes on in the world. Just like with journalism and attacks on journalists that go unpunished – from Daphne Caruana Galizia to Jamal Khashoggi – we are likewise living in a world where more war criminals are committing more war crimes than ever, with no repercussions.

Russia right now stands out: The same Russia that poisoned Navalny and Skripal on foreign soil is the same one that is now invading another country and bombing ambulances and hospitals in Syria.

But our governments, our Western democracies, are sleeping with other butchers and war criminals. The same Saudi Arabia that butchered Khashoggi is the same one bombing school children on a bus in Yemen, with British, American and French weapons.

Israel which carries out ethnic cleansing of Palestinians on a daily basis is the same Israel that is fully supported, financially and militarily, by the United States, while it supplies spying software to rogue states to kill journalists and activists.

In other words, we are facing a global conspiracy of impunity that sees the liberal west – our democracies – sleeping very comfortably, if not directly aiding and abetting, the transgressions of the rest. This has a tremendous impact on our direct civil liberties, including our journalistic freedoms, where the bombing of an ambulance and the killing of a journalist will become the norm.

This is a time when men with guns around the world believe they can get away with anything – chemical weapons, cluster bombs, land mines, bombing of school buses, besiegement of cities, blocking of humanitarian aid, targeting of journalists and aid workers. And because they can get away with anything they do everything, with our governments' blessing.

Confronted by the imperative of the stock markets and profits, our own governments are only too eager to overlook our rights to be able to do business with autocratic regimes. President Putin high-fived Crown Prince Mohammed bin Salman at the G-20 summit just weeks after the killing of Jamal Khashoggi. But the rest of the governments that boycotted the G-20 summit in Riyadh are only too keen to let bygones be bygones and get back to business.

This conspiracy of impunity feeds off the retreat of democratic governance and the rule of law at home. Time and again I find myself with my humanitarian colleagues trying to remind foreign governments of their human rights obligations, only to be undermined by the blatant disregard for human rights by our own governments. Case in point, the deadly pushbacks by our government, and the entire European Union, that leads to poor migrants drowning in the Mediterranean.

We are indeed on our own, but we're many. Journalists, researchers, activists are facing a global conspiracy of impunity, but the more we expose it and the networks that sustain it, the more indefensible it becomes.

Beyond changes to the law entrusted to the suspicious people in power, the need for journalists' collaboration has never been as sorely needed as today. We need to hold our government to account when it comes to the inquiry conclusions into the assassination of Daphne Caruana Galizia. But we'd be



naive to think that our government, any government, would work against its own very petty interests in the name of the rule of law.

We need journalists to stand together in solidarity but also in sharing their resources and capacities to unveil the work carried out in darkness by the people in power.

Yes, it's inevitable, in Malta and beyond, that journalists are activists on the frontline of democracy. As exhausting as it is, we need you more than ever to take on this role. And thank you for doing it.

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