

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL MLT 1/2018

10 August 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 35/15, 34/3, 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of Government interference into the investigation of the killing of investigative journalist, Daphne Caruana Galizia, and the large number of pending civil lawsuits against her family, including lawsuits initiated by public officials.**

Ms. Caruana Galizia was one of the most prominent investigative journalists in Malta for many years. She was an outspoken critic of illicit financial flows, including tax evasion and money laundering, and all forms of corruption, both within Malta and abroad. She reported extensively based on her own findings and the collection of leaked financial and legal information that has come to be known as the 'Panama Papers'. Before her murder, she had testified before the Committee of Inquiry on money laundering and tax evasion established by the European Parliament after the so-called Panama Papers. In her work, Ms. Caruana Galizia exposed the involvement of financial intermediaries within the country making use of the jurisdiction in Malta to facilitate corruption, money laundering and tax evasion by politically exposed persons and international corporations. Her final blog post was critical of the opposition in Malta. She was assassinated by a car bomb close to her home on 16 October 2017.

Concerns at the assassination of Ms. Daphne Caruana Galizia were raised in a joint communication by Special Procedures mandate holders on 18 October 2017 (case no. UA MLT 2/2017). We thank your Excellency's Government for the response of 20 October 2017, assuring that an independent investigation had been launched into the assassination, and for your subsequent dialogue with several mandate holders. However, we remain concerned in light of the new information received.

According to the new information received:

Concerning the investigation

Immediately after the assassination, responsibility for the first stages of the investigation was given to Duty Magistrate Consuelo Scerri Herrera. Ms. Caruana Galizia had published highly critical articles about Ms. Scerri Herrera, most recently in January 2017, arguing that “she [was] unfit to be a magistrate”. The family of Ms. Caruana Galizia filed a court request that Ms. Scerri Herrera recuse herself. The following day, she was replaced by Magistrate Anthony Vella, who has remained in charge of the investigation ever since. It has been reported that Mr. Vella has been recommended for promotion to judge, which would ultimately remove him from the investigation. This has been interpreted by many as a way to delay and stall the investigation.

On 4 December 2017, ten persons were arrested as suspects for the assassination of Ms. Caruana Galizia. The following day, three of them were charged, all with long criminal records.

The investigation into the assassination of Ms. Caruana Galizia has been led by a police team which included Deputy Commissioner, Mr. Silvio Valletta. Mr. Valletta is married to a member of the Government. Both the Deputy Commissioner and his wife had been subject of Ms. Daphne Caruana Galizia’s reporting.

On 12 June 2018, the Constitutional Court of Malta ruled that the police investigation into the assassination of Daphne Caruana Galizia was in breach of article 2 of the European Convention of Human Rights, and ordered the removal of the Head of the investigation and a review of the investigation by his replacement. Prior to this, the Government had encouraged the family of Ms. Caruana Galizia to withdraw the case. The Government has appealed the decision of the Constitutional Court and insists that the investigation is independent as it is led by an inquiring magistrate. The Constitutional Court has, however, noted the inquiring magistrate’s lack of effective authority over the police investigation.

Moreover, there are concerns about the proximity between leading Government officials and actors with major commercial or financial interests in Malta who were subject of Ms. Caruana Galizia’s investigative reporting.

Raising concerns at the rule of law in Malta, the lack of progress made in the investigation and the attitude of certain senior public officials, the Parliamentary Assembly of the Council of Europe appointed a Special Rapporteur, Mr. Pieter Omtzigt, and mandated him to prepare a report on the investigation into the assassination of Ms. Caruana Galizia. In an introductory memorandum, declassified on 25 June 2018, the Special Rapporteur stated that he would proceed with his report based on three working assumptions: 1) that the murder was “planned and premeditated long in advance”; 2) that the persons ultimately

responsible for her death “were motivated by her investigative work”; and 3) that the “three arrested suspects were most likely acting under instructions”.

Concerning the pending civil lawsuits against the family

During her lifetime, Ms. Daphne Caruana Galizia was sued for libel close to 60 times. Most of these cases were brought against her by public officials, including the Prime Minister and cabinet ministers. At the time of her assassination, 47 of these cases were still pending, including five criminal defamation cases. Prior to the assassination, her bank accounts were frozen after a request brought by the Economy Minister and his aide as part of four libel cases they had filed against her.

While the criminal defamation cases have been discontinued following her assassination, the family of Ms. Caruana Galizia have inherited 34 civil lawsuits of the 47 cases filed against her. In addition, one of her sons, Mr. Matthew Caruana Galizia, has been sued by the Prime Minister. There are currently no penalties for frivolous suits in civil cases in Malta.

Concerning the harassment and threats against Ms. Caruana Galizia and her family

In addition to the multiplicity of lawsuits, Ms. Caruana Galizia in the course of her career was also subject of harassing public statements and campaigns by the subjects of her investigations. On several occasions, the Government’s press office had issued statements containing personal attacks on Ms. Caruana Galizia’s character and professionalism. An advisor in the Prime Minister’s office had encouraged people to take photographs of Ms. Caruana Galizia and then published hundreds of these pictures on his blog. In 2013, she was pursued through the streets of a town in Malta by a crowd led by the local mayor. She had also been subject to violent reprisals on at least two occasions. In 1995, her front door was set on fire and her dog’s throat was cut. In 2006, tyres were piled up by the back door of her house and set on fire.

Moreover, the family of Ms. Caruana Galizia has been subject of threats and harassments, both through letters and on social media. These include:

- Officials from the Office of the Prime Minister have publicised slander about Ms. Caruana Galizia’s husband, Mr. Peter Caruana Galizia.
- Officials from the Office of the Prime Minister have stated that Mr. Matthew Caruana Galizia, one of Ms. Caruana Galizia’s sons, has been involved in the assassination of Ms. Caruana Galizia.
- Mr. Matthew Caruana Galizia, an investigative journalist who was also working on cases of corruption, has received several hundreds of threatening messages on social media. The threats are reportedly more frequent subsequent to the assassination of Ms. Caruana Galizia.

- The family of Ms. Caruana Galizia has received at least one written death threat, which has been reported to the inquiring magistrate.
- The Prime Minister has reportedly asked journalists to investigate one of Ms. Caruana Galizia's sons, Mr. Paul Caruana Galizia, in relation to Malta's passports sales programme and money laundering.
- An impromptu memorial to Ms. Caruana Galizia in Valletta, consisting of candles, flowers and placards on a national monument in front of the law courts, has been vandalised or completely removed 10 times since October 2017. Two people caught in this action are reportedly connected to the Office of the Prime Minister.
- A traditional May Day demonstration organized by the governing political party was promoted on social media as an opportunity to "respond" to the family's "provocation".
- On 12 December 2017, the sister of Ms. Caruana Galizia was followed by an unidentified man as she walked from her home to a neighbourhood hotel for a meeting relating to Ms. Caruana Galizia's assassination. When challenged, he covered his face, covered her phone lens, pulled his hood up and ran away. A report was filed at the Mosta police station. There has been no further communication on the matter.
- Ms. Caruana Galizia's family was characterised as "in open contempt of the State" by the Government in an official press release in December for opening a constitutional case against the police.
- Chairman of the Valletta European Cultural Capital 2018 project publicly mocked Ms. Caruana Galizia's last words and called for the removal of her impromptu memorial.

Concerning issues related to illicit financial flows

Over the years, and in particular in the last months of her life, an important issue of investigation and reporting by Ms. Daphne Caruana Galizia was allegations of corruption and money laundering at the highest levels of government, including with regard to suspicious transactions linked to Pilatus Bank, a fully-licensed eurozone bank, currently under criminal investigations.

In this regard, at least three European Parliament reports in the last months have singled out for scrutiny the operation of the Pilatus Bank, the PANA Committee of Inquiry's report (8 November 2017), the European Parliament's resolution on the rule of law in Malta (15 November 2017) and the report of the European Parliament PANA/LIBE ad hoc fact-finding mission report (11 January 2018). In a letter to the European Banking Authority dated 14 February 2018, the PANA Committee members "observed with deepening concern the apparent impunity with which the bank continue[d] to operate in Malta". Furthermore, they added: "we view the reluctance of the competent Maltese authorities to act as further evidence of regulatory capture, where the close personal and financial links between Pilatus Bank, the national supervisory authority and the executive branch

of government, have worked to suppress any effective national checks on the banks' operations".

On 11 July 2018, the European Banking Authority issued a recommendation to the Maltese Financial Intelligence Analysis Unit (FIAU) on action to comply with the Anti-Money Laundering and Countering Terrorism Financing Directive (EBA/REC/2018/02). The European Banking Authority concluded that the Financial Intelligence Analysis Unit shows 'general and systematic shortcomings' with regard to the mandate to act to combat illicit financial flows, including money laundering, in compliance with article 39 of Directive 2005/60/EC, of 26 October 2005 (On the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (AMLD3)). The EBA offers a number of recommendations, including: a) the need to enhance the application of Directive 2015/849, of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD4), which is the currently applicable Union Law; and b) enhance its assessment of money laundering and terrorisms financing risk associated with its financial sector to ensure it is comprehensive and relevant, and to allow the identification risk factors both domestic and foreign affecting the Maltese financial sector.

The issue of illicit financial flows, and more specifically of transparency in the financial sector, includes addressing aggressive corporate tax havens and the negative consequences of a race-to-the bottom on corporate tax. It is also closely linked to the importance of international cooperation in curtailing illicit financial flows by ensuring compliance with international standards as well as enhancing its domestic regulatory and supervisory mechanisms. As Oxfam has pointed out, foreign direct investments, in some territories such as Malta, represent more than 1,000% of GDP, which can be indicators of corporate tax avoidance structures, significantly lower tax rates, loose controls and high impunity.

In April 2017, an inquiry was launched into Ms. Daphne Caruana Galizia's allegations that the Prime Minister's wife was the ultimate beneficial owner of the company Egrant Inc, an anonymous shell company created in Panama that no longer exists.

On 22 July 2018, media outlets reported about the inconclusiveness of the inquiry. While the conclusion of the inquiry has not been announced formally, it has been confirmed by the Attorney General's office following media reports. The Attorney General had by this time accepted a request by the Prime Minister for him to have a copy of the report, as one of the subjects of inquiry. The full report of 1500 pages, which includes a section recommending further investigations, into named individuals has not been made public,.

We express concern at the allegations of the Government's interference and political influence over the investigation of the assassination of Ms. Daphne Caruana Galizia. We express equal concern that public officials, including Government Ministers,

through the use of civil lawsuits continue the pressure against the family of Ms. Caruana Galizia, in what may amount to a form of intimidation and harassment. Moreover, we express concern at the threats and harassing statements made against the family of Ms. Caruana Galizia, at statements made by public officials aiming to defame Ms. Caruana Galizia's memory following her assassination, and at the vandalization of her impromptu memorial. We also express concern about failing to enforce EU anti-money laundering rules, as money-laundering and corruption were some of the central issues that Ms Daphne Caruana's reporting brought to light.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the details and the current status of the investigation into the assassination of Ms. Daphne Caruana Galizia, in particular, efforts to identify the mastermind behind her killing. Please also indicate if Malta has accepted the offer of continued assistance by relevant international agencies, in particular the FBI, in this regard. If not, please explain how Malta is guaranteeing that the investigation is conducted in an independent, efficient and timely manner without undue interference by anyone that has been the subject of Ms. Caruana Galizia's investigative reporting.
3. Please provide detailed information concerning measures taken by the Government to encourage public officials to drop the civil lawsuits against the family of Ms. Caruana Galizia, regardless of whether they have been filed in their personal capacity.
4. Please provide information about legislative measures taken to discourage libel suits – "SLAPP" – against journalists and media outlets in Malta.
5. Please provide detailed information concerning investigations carried out by the authorities of Malta in response to the allegations made by Ms. Caruana Galizia, concerning the involvement of politically exposed persons, financial intermediaries and international corporations in tax evasion, money laundering and corruption.
6. Please provide information on measures taken to protect the memory of Ms. Daphne Caruana Galizia and her family from harassment and intimidation, including by holding those responsible to account.

7. Please provide detailed information about steps taken to combat illicit financial flows, in particular money laundering, and to ensure that the Financial Intelligence Analysis Unit as well as all other bodies act in a timely, independent and efficient manner to ensure proper regulation in line with EU rules.
8. Please provide detailed information of the measures taken to put in place an effective regulatory and supervisory authority for financial and banking institutions in place at the domestic level.
9. Please provide detailed information of the measures and mechanisms put in place to protect investigative journalists and whistleblowers, and to ensure guarantees of non-repetition for current and future investigators and journalists who are facing or could be facing threats, intimidation, harassment due to their work.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may choose to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting continued attention. We also believe that the wider public should be alerted to the potential implications of the murder of Ms. Caruana Galizia. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

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Juan Pablo Bohoslavsky

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Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forward by the situation described above.

Concerning the investigation and harassment, and threats

Article 6 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Malta on 13 September 1990, and article 2 of the European Convention on Human Rights (ECHR), ratified by Malta in 1967, guarantee the inherent right to life of every human being and that no one shall be arbitrarily deprived of one's life. In its General Comment No. 31, the Human Rights Committee, recalled that it is the responsibility of the State party to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice or redress the harm caused by both State and non-State actors (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). A failure on the part of the State to do so could in and of itself give rise to a separate breach of the ICCPR (Ibid, para. 15).

As underlined by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, acts of reprisals and other attacks against whistle-blowers and the disclosure of confidential sources must be thoroughly investigated and those responsible for those acts held accountable (A/70/361). When the attacks are condoned or perpetrated by authorities in leadership positions, they consolidate a culture of silence, secrecy and fear within institutions and beyond. Authorities in leadership positions should publicly recognize the contribution sources and whistle-blowers make by sharing information of public relevance and condemn attacks against them (A/70/361).

The Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ECOSOC resolution 1989/65 of 24 May 1989), are of particular relevance in this context. Principle 4, in relation to the harassment and threats made against Daphne Caruana Galizia, specifies that effective protection of persons at risk of being killed should be guaranteed through judicial and other means. Moreover, Principle 15, in relation to the threats made against the family following her killing, states that they shall be protected from violence, threats of violence or any other form of intimidation.

Principle 9 recalls the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. Furthermore, Principle 11 imposes that "in cases where the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. [...] In particular, [members of

such a commission] shall be independent from any institution, agency or person that may be the subject of the inquiry.”

Moreover, Principle 16 adds that the family and legal representative shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. In addition, according to Principle 17 “[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations.” This report must be made public immediately detail, inter alia, specific events that were found to have occurred and the evidence for these findings.

In this regard, we would also like to highlight that the Human Rights Committee in General Comment No. 34 has stated that under no circumstance can an attack on a person, because of the exercise of his freedom of opinion or expression be compatible with article 19. The Committee furthermore states that as journalists are frequently subjected to threats, intimidation and attacks because of their activities, all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted (CCPR/C/GC/34). As underlined by the Special Rapporteur on freedom of expression, an attack against a journalist is not only a violation of his or her right to impart information, but also undermines the right of individuals and society at large to seek and receive information, both of which are guaranteed under articles 19 of the ICCPR. An attack against a journalist is therefore an attack against the principles of transparency and accountability, as well as the right to hold opinions and to participate in public debates, which are essential for democracy (A/HRC/20/17).

Concerning the pending civil lawsuits against the family

The protection of sources of information rests on the public’s right to know. As highlighted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, laws should favor disclosures of information in the public interest. Moreover, punishment for defamation of government officials directly interferes with freedom of expression, whether by imposing penalties on expression or dissuading individuals from criticizing officials or government policy, and States should avoid imposing obstacles, such as defamation lawsuits, that undermine independent media (A/71/373).

Concerning issues related to regulation of money-laundering

Human Rights Council resolution 31/11 addresses the link between illicit financial flows and their negative impact on human rights. The resolution explicitly emphasizes the links between inequality, social exclusion and the occurrence of financial crisis, which in turn adversely hinder the rule of law and affect human rights. Tax evasion and abuse are considered to be responsible for the majority of all illicit financial outflows, followed by illicit financial flows relating to criminal activities, such as drug and human trafficking, the illicit arms trade, terrorism and corruption.

The Independent Expert on foreign debt and human rights has discussed -in his thematic report (A/HRC/28/60) on illicit financial flows- the numerous connections between illicit financial flows and human rights, especially because they deprive Governments of crucial resources needed to put in place effective and independent institutions to implement human rights. Often, the Independent Expert argues, lack of adequate public resources impacts on the most vulnerable and marginalized groups of society. Illicit financial flows debilitate the rule of law and deter due process with lasting effects with regard to equality before the law. They play a critical role in widening impunity, corruption and abuse of authority which can become a breeding ground for human rights violations and abuses. He has also underlined the importance of protecting journalists who report on this issues, and has recommended specifically that States strengthen the legal frameworks and practical arrangements for the protection of journalists; and enhance investigative and prosecutorial efforts in relation to tax evasion and corruption in consonance with international human rights standards.