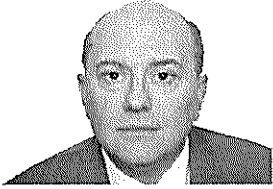


Debate & Analysis

The culture of impunity – two years on



KEVIN AQUILINA

On 29 July 2022, I had published in this newspaper an article entitled 'The Culture of Impunity – One Year On'.

In that article I complained that the Daphne Caruana Galizia Assassination Board of Inquiry report had fallen on deaf ears. On 29 July 2023 (today), two years have elapsed since that report was penned and the result is total inertia by government. To date, no concrete action has been taken by government to implement that report; nor is any in sight. As a matter of fact, not even one recommendation of that report has seen the light of day.

There is no doubt that government has buried that report and does not have the political will to do anything recommended by the three judges in their report. What a waste of time, energy, and state resources! Clearly, government is not in good faith when it gives the impression that it is working to have the report implemented. By now we have all fully realized that through words to this effect we are being taken for a ride. We know that Joseph Muscat, then Prime Minister, went out of his way to ensure that no board of inquiry would be appointed to investigate the assassination of Daphne as that would have revealed – as it eventually did – his gross maladministration. Months passed by and the government dragged on and on interminably its feet as much as it possibly could, until one fine day the inevitable arrived – international pressure cornered Muscat into acting. He had no other alternative but to comply. Disgruntledly, Muscat appointed the inquiry. The latter was appointed, concluded its task, drew up a report, submitted it to the Prime Minister, but two years later the result is very much the same as before it was appointed – nothing: with or without the report, the status quo was maintained. Inquiry or no inquiry we are still back to square one.

Impunity continues to be the order of the day. Daphne has suffered a triple injustice at the hands of the Labour government: her assassination; the pro-



crastination not to appoint a Board of Inquiry; and – two years' later – the non-implementation of one iota of the recommendations made in that report. Only God knows what subsequent injustices government has in reserve for Daphne to over kill her a fourth and fifth time over and over again as, it appears, that her death was not enough. We have read on 24 July 2023 that Judge Michael Mallia has presented his Committee's report to the Prime Minister and justice minister. So far, neither the first report nor the 24 July 2023 reports have been published. This is part of government's procrastination process – commissioning reports that remain unimplemented.

Recently another public inquiry has been requested to investigate administrative maladministration in relation to the death of a youngster of 20 years. Robert Abela, who boasts that he is the continuation of Joseph Muscat, followed blindly in the footsteps of his predecessor. He refused to appoint a board of inquiry to investigate into the administrative failures of his own government. Nothing new. We know how much government is averse to the truth. The Prime Minister brought a feeble excuse that the then ongoing magisterial inquiry would suffice to address all the matters involved. But it is a known fact that there have been several occasions in the past where a magisterial inquiry was carried out in parallel to an administrative inquiry. For the terms of reference of the public inquiry differ from those of a magisterial inquiry. Of course, it is the administrative inquiry that worries the Prime Minister more than that of the inquiring magistrate because it will reveal maladministration by the government that he leads and he cannot therefore afford to have more bad publicity and egg on his face than he already has. Jus-

tice and truth are not values cherished by the Labour Parliamentary group. That group, like the rats in the Pied Piper of Hamelin legend, follow their master blindly to the river once the order is imparted by the party whip, in this case, to vote in the House of Representatives against the Opposition motion to hold such inquiry, as this could end out to be another embarrassing board of inquiry report on the lines of Daphne's inquiry that would stress this time not his predecessor's incompetence at good governance but his own poor leadership skills. Jean Paul Sofia's mother Isabelle Bonnici, suffered a double injustice at the hands of the state – first the state's inability from protecting the youngster's life and second the injustice committed to the youngster's family with the Prime Minister shrinking from his responsibility to attempt to investigate, let alone, establish administrative maladministration.

The Prime Minister attempted to comfort Sofia's family by declaring that the magisterial inquiry report – that was concluded on 21 July 2023 – would be published – in fact it was published on 26 July 2023. It was only after he made that declaration that a few days later he wrote to the Attorney General requesting a copy of the inquiry report to publish it. First, he ties the hands of the Attorney General, and subsequently he politely writes to her to be allowed to have a copy of the inquiry to publish it. He took it for granted that the inquiry would be published once he was requesting it. The Attorney General had no problem to comply with this direction.

But did he consult the Attorney General before he made a promise to publish the inquiry? Did he have a written declaration under the hand of the Attorney General

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that once she received the Magisterial inquiry she would rush to his office as fast as she could to pass it on, lock stock and barrel, to the Prime Minister so that it can be published? Did not this Prime Ministerial declaration prejudice what the Attorney General were to decide? Is the Attorney General no longer an independent officer of the state?

Once the Attorney General passed on the inquiry to the Prime Minister, can she not be considered to have succumbed to the Prime Minister's direction, notwithstanding that she enjoys total independence from government? Who is to answer for this, the Prime Minister, the Attorney General, or both? On which grounds can the Prime Minister direct how the Attorney General is to proceed when the Constitution states that the Attorney General is not subject to the direction and control of any body or person, including the Prime Minister? Once the Attorney General passed on the magisterial inquiry report to the Prime Minister, the point is that in the public's eye the Attorney General is not an independent officer but a puppet of the Prime Minister. For the Attorney General did not

publish the process-verbal herself. Once the Attorney General is not in a position to guarantee her office's independence from government, she should forthwith relinquish her office.

The purpose of the magisterial inquiry is not to establish guilt but to preserve any evidence that may be used in future prosecutions. The inquiring magistrate may identify what ulterior procedures would need to be taken by the Police before criminal proceedings are instituted, and also identify against whom those proceedings are to be taken depending on the evidence at hand. However, it is not the purpose of a magisterial inquiry to investigate whether there was any form of maladministration by government. That is a totally different matter. Here we are in the realm of Administrative Law, not Criminal Law. Hence, the magisterial inquiry will not tie all loose ends; on the contrary, it will leave several matters related to the way how government entities functioned unaddressed.

Lately the Prime Minister has adopted a new hobby – writing to the Chief Justice. Letters that are contemptuous of the independence of the judiciary as they serve only to put undue pressure on the judiciary. As these are nothing but bullying tactics against the judiciary, they do not deserve a reply for they interfere with the proper administration of justice. An acknowledgment would suffice, but nothing more than that. In his second letter to his newly acquired pen pal, the Prime Minister is requested the Chief Justice to possibly breach the latter's oath of office and/or Code of Ethics and put pressure on the inquiring magistrate concerned to conclude the inquiry. The Prime Minister, however, did not inform the Chief Justice what concrete measures was his government taking to further increase the efficiency of the courts. Did the Prime Minister's letter refer to the establishment of a pool of magistrates whose sole duties would be to expedite magisterial inquiries? No. Did the Prime Minister inform the Chief Justice of the building that has been purposely designated or built to house this pool of inquiring magistrates? No. Did the Prime Minister outline the budget of this pool of inquiring magistrates to carry out their duties expeditiously? No. Did the Prime Minister inform the Chief Justice of all human resources that would be allocated to the pool of inquiring magistrates to assist them in their duties? No. Did the Prime Minister submit to the Chief Justice, by way of information, a Bill to amend the Criminal Code to reform the office of inquiring magistrate? No.

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Essentially, the purpose of the Prime Minister's letter was to deflate the pressure upon him and to pass on the buck to the Chief Justice, an innocent third party that was being used as a scapegoat. But what can the Chief Justice or the Inquiring Magistrate do when the judiciary do not have the space, money, human resources, capacity, and fully exclusively dedicated full-time magistrates to conclude magisterial inquiries as expeditiously as possible? By writing to the Chief Justice, the Prime Minister is flogging a dead horse and the Prime Minister should know that his letters serve only one beneficial and utilitarian purpose: to wrap the trash can in the Office of the Chief

Justice with the Prime Minister's letters.

Prime Minister, your job is not to spend the Chief Justice's time by sending letters to him requesting the Chief Justice to act as a policeman of the judiciary and quiz judges and magistrates when they are going to conclude a magisterial inquiry or decide a case. Your job is to provide the judiciary with the necessary resources to do their job. If the judiciary are given the resources but, this notwithstanding, they fail to deliver; that is another matter indeed. But we are still light years away from empowering the judiciary to do their job promptly and effectively. Suffice it to note the latest international report that has found that the judiciary do not have adequate

support staff to perform their duties. Is this the fault of the Chief Justice? No. Is it the fault of your government? Yes, indeed. Prime Minister, you need to set your priorities right before putting pen to paper.

Now we have read in the 18 July 2023 newspapers, after government crushed and rode rough shot over the Opposition's motion in the House of Representatives to hold such inquiry, of another volte face that has become typically synonymous with Abela's bad governance. Worried by the huge turnout for the vigil called by the victim's mother; including the General Workers Union, who were all on the side of justice not cruelty, government was cornered, this time not by the Opposition in the House but

by the victim's mother support in the streets. Suddenly, quite hypocritically indeed, the government had a change of heart. The monster has been tamed. Now that the public has clearly sided with Isabelle Bonnici and not with the Pied Piper and his rats (metaphorically speaking of course), the Prime Minister – whilst laying the blame for the delay of the inquiry firmly and squarely on the Inquiring Magistrate (who does not have the necessary resources to do her job) rather than on his minister of justice who has not even taken one single concrete measure since he was appointed to the office to solve the backlog of magisterial inquiries – announced that a public inquiry will be undertaken. It is totally unbelievably how – be-

cause of adverse publicity against the government – the latter renounces to its rant and sees the light of day.

But all this could have been avoided if Abela's Cabinet practised good governance and was more receptive to the demands of a mourning mother that has broken the heart of all Maltese but not of the soulless and heartless Abela and his parliamentary group who gave in only belatedly because of public pressure. Yet, notwithstanding the Prime Minister's announcement, the terms of reference of the inquiry, at the moment of writing, are still unknown.

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