

## **A PUBLIC INQUIRY INTO JEAN PAUL SOFIA'S DEATH IS CRUCIAL AND URGENT**

**Statement by members of the Public Interest Litigation Network (PILN) & supporting organisations**

**31 May 2023**

### **A series of deaths and injuries on building sites**

Jean Paul Sofia's body was found buried under tons of rubble following the partial collapse of a multi-storey building while works were being carried out on the building. It took at least 14 hours to find his dead body. He was 20 years old and an only son. His parents and relatives are left devastated by his death. They are also left with too many unanswered questions that no magisterial inquiry into the criminal responsibility for his death can answer.

In this single collapse, Jean Paul Sofia lost his life while five other persons were injured and hospitalised, three of whom were seriously injured. One person was left hanging on for his life from a concrete pumping pipe on the site of the collapse.

Other cases of deaths or injury on construction sites have made the headlines. In Santa Venera, Miriam Pace died beneath the rubble of her own home when it collapsed as an adjacent plot was being excavated. In Bormla, one man lost his life and another was injured during [shoddy demolition works](#). A teenager was grievously injured in Sliema as he tried to run from a collapsing wall that was being constructed. [Two men died](#) in Gwardamangia as the ceiling they were standing on gave way while it was being constructed.

In other instances, families were left powerless, watching helplessly as the walls in their homes collapsed as construction was being carried out next door. The Civil Protection Department has been called in to rescue people from their homes that were severely damaged by neighbouring construction projects, exposing families to heightened risk of injury and taking up valuable

public resources. Workers [rushed out](#) of a warehouse in Mriehel as its ceiling and wall [collapsed](#) while [construction was taking place](#) on an adjacent plot.

Several people, often construction workers, have fallen from considerable heights on construction sites where safety codes are flagrantly violated. At least one construction worker was [dumped on the roadside](#), dehydrated and unable to move, after having suffered serious injuries in a fall at a building site. The Occupational Health and Safety Authority documented 81 fatalities at construction sites between 2002 and 2022.<sup>1</sup>

From data provided to the Daphne Caruana Galizia Foundation by the OHSA,<sup>2</sup> since 2010 there have been 49 construction worker fatalities. Of these, only 15 cases were closed while 69% of the 49 cases are still open. Ten cases were closed because nobody could be prosecuted. Out of the 49 fatalities of construction workers between 2010 and 2022, court decisions were issued in only five cases. The last court decision was issued in 2015. 34 of the 47 fatalities on construction sites have occurred since then.

## Involvement of public administration

Every development permit issued and every new construction site involves the participation of public authorities or authorities established by law. This participation ranges from the issuing of planning permits by the Planning Authority, the safeguarding of third parties and safe working practices by the Building & Construction Authority, the monitoring of occupational health and safety at construction sites by the Occupational Health & Safety Authority, and the regulation of related professions by bodies such as the Kamra tal-Periti.

Different regulations, administrative processes, and mechanisms were brought into effect as a reaction to incidents, and often only when these incidents caused some public outcry. The appointment of site managers, the requirement of insurance cover for third party damages, the setting up of the Building & Construction Authority itself, are all examples of piecemeal reaction.

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<sup>1</sup> Information provided by OHSA in 2023 in reply to Freedom of Information request number 274230383586

<sup>2</sup> Information provided by OHSA in 2023

There is nothing to show that the Executive or Parliament have established policies, mechanisms or laws which are based on a holistic study of all the layers of involvement related to development and construction, that safety has been secured through policy, regulation or administrative practice in each related aspect, or indeed that the safety of construction workers and of third parties was meaningfully considered and acted upon.

While planning policy changes brought about an apparent [increase](#) in building applications and permits being approved, little, if any, consideration was given to the social impact of construction and little thought was given to securing the safety of workers, neighbours and the public. Although the OHSa is not the only authority that has a role in preventing injuries and fatalities on construction sites, and its role is directly focused on the safety of workers, it appears that despite the increase in building development, the number of OHSa officers entrusted with enforcing safety regulations has remained at an average of 13 throughout the years [2010 to 2023](#).

Prevention of fatalities and injuries of workers at construction sites, and prevention of fatalities and injuries of other persons due to construction work, does not appear to have been meaningfully integrated in the whole process of development and construction. Meanwhile, with every fatality or injury that makes the headlines a question that always remains unanswered is: where did the system fail? Was it a failure in regulation, enforcement, prevention, the exercise of administrative discretion? Was it a failure due to lack of capacity or capability? Was it a failure that could have been prevented if the regulation and processes put to paper were scrupulously followed? Could the fatality have been prevented if a lacuna in regulation, policy or administrative practice was addressed?

With every fatality or injury, much consideration is given to who is criminally responsible for having directly caused that death or injury. Little consideration is given to how to prevent that fatality or injury from happening again. A robust system developed by an independent analysis which is capable of reviewing and assessing every aspect of the development and building process can help save lives.

The responsibility of public entities in the case of Jean Paul Sofia goes beyond the development and building process, and in a way that exposes how incorporating good governance principles at all levels of government can help to prevent injury to life.

The site at Kordin Industrial Estate belongs to the Government of Malta and is administered by Malta Industrial Parks Limited. On 4 February 2020, Malta Industrial Parks Limited gave AllPlus Limited an emphyteusis over the site binding the company to further develop the site. Title over the land is initially for a 35-year period, which is renewable for a further 30 years.

The note of inscription for the allocation of the property does not indicate the specific use for its allocation to AllPlus Limited. That the site was acquired for an industrial purpose is only a presumption. Nor does the note of inscription indicate the process followed by Malta Industrial Parks which led to this property being granted to AllPlus Limited, possibly as opposed to others.

The grant indicates that Malta Industrial Parks was to approve the detailed plans of the building that was to continue being developed over the site, and that were works undertaken in a manner which did not comply with the property concession Malta Industrial Parks could have instructed AllPlus Limited to execute remedial works.

In granting public property to AllPlus Limited, Malta Industrial Parks [granted the property](#) to two persons, one of whom has faced accusations of human smuggling, and the other accusations of hiring thugs to assault his ex-wife's father. All the while, one of these persons is employed by another public authority. He was hired as the driver for the Lands Authority's CEO, and then moved on to be a senior administration officer within the CEO's office. The other AllPlus Limited partner appears to have been the beneficiary of several government contracts. Meanwhile, the architect engaged for the design of the collapsed building is an employee of yet another public entity.

The case of Jean Paul Sofia therefore not only reinforces the need for a holistic analytical overview of the process of development and building from start to finish, but also necessitates a

review of administrative processes carried out by public authorities in the light of good governance principles.

Other fatalities brought about only piecemeal changes to the development and building process. Following the death of Miriam Pace, a technical committee was appointed by Prime Minister Robert Abela to evaluate the construction sector and recommend reforms. In March 2023 the Building and Construction Authority opened a consultation on the Draft Construction Industry Licensing Regulations.

Piecemeal changes are not meaningful and effective changes. An analysis is needed to keep the sector under review, covering whether the recommendations of this technical committee were fully implemented, identification of any further lacunae that need to be addressed, verification of whether these recommendations are sufficient or insufficient measures of prevention and protection of safety, and verification of whether adequate resources and capacity have been invested in authorities trusted with securing safety for workers and third parties.

Despite several fatalities and injuries on construction sites, the exercise of discretion by public authorities, whether in relation to planning and development or to the allocation of public property to third parties for the purpose of development or redevelopment, has not been reviewed. Are standards of practice and good governance criteria established and followed in the exercise of public discretion? Do these standards sufficiently meet the demands on the ground? Are these standards and regulations implemented? Do public authorities have sufficient resources to execute regulations and keep high standards? Are the processes they follow protected against abuse?

## State obligations

The right to life is a basic value of democratic societies<sup>3</sup> protected in Article 2 of the European Convention for the protection of Human Rights and Fundamental Freedoms, and in Article 33 of the Constitution of Malta. That “*everyone’s right to life shall be protected by law*” has repeatedly been held by the European Court of Human Rights to enjoin “*the state not only to refrain from the*

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<sup>3</sup> Makaratzis v. Greece (2005) 41 EHRR 46, [56] (Grand Chamber)

*intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction<sup>4</sup>.”*

To fulfil its obligations in terms of the right to life, a State must “*establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life.*”<sup>5</sup> This “systems duty” generally requires a State to put in place adequate and appropriate systems for the protection of life. Systems must reflect the context of any activity, whether public or not, in which the right to life is at risk. Where that risk is identified, the authorities are required to consider all the potential risks inherent in that activity, and take practical measures to protect the lives of those placed at risk.

Irrespective of whether the authorities knew, or ought to have known that a specific person is at a real and immediate risk, the State must take steps within the scope of their powers to avoid risk to life.<sup>6</sup> Where such steps are not reasonably taken, the State may be in breach of its obligation to protect life.

Are the circumstances in which Jean Paul Sofia lost his life such that the State failed to fulfil its “systems obligation” and its “protection obligation”? Are there processes and mechanisms which, when judged reasonably, are capable of preventing loss of life? Considering that the Executive had in April 2020 already been provided with recommendations by the Building Industry Technical Committee, did the Executive, when judged reasonably, fail to take the recommended action? Three years down the line, and other fatalities and injuries having taken place at construction sites, are there still lacunae in regulation or its execution which need to be filled in?

The criminal investigation including the magistrate’s inquiry does not answer these questions. Its purpose is to question who broke criminal law. The criminal investigation works with the rules and regulations currently in force. A criminal investigation is only capable of seeing whether a criminal offence already established at law has been committed. It focuses on whether a crime occurred in the particular case. It does not look at whether there are administrative or

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<sup>4</sup> *Kemaloglu v. Turkey* (2015) 61 EHRR 36, [32]

<sup>5</sup> *Oneryildiz v. Turkey*, (2005) 41 EHRR 20, [89]

<sup>6</sup> *Osman v. UK* (2000) 29 EHRR 245, [116]

executive failures that go against the obligation of the State to have a “*framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life.*”

## Need for public process

Regardless of the outcome of the criminal investigation, without an inquiry into the most glaring questions, that is, could Jean Paul Sofia’s death have been prevented, were there and are there failures in the system that are contributing to fatalities and injuries on construction sites, and how can reasonable action be taken to prevent as much as is reasonably possible such fatalities and injuries, society will continue to be faced with fatalities and injuries on construction sites that could have been prevented. These are not only burdensome to the victims and their families, but also bring about social, cultural and economic burdens on society as a whole.

The inquiry into the death of Jean Paul Sofia cannot be closed and secret. While keeping the families of Jean Paul Sofia and of other victims at its centre, such an inquiry is also needed to address the needs of the wider society. Several stakeholders would need to contribute towards the collection of relevant information. The purpose of the inquiry is to consider whether public authorities have failed Jean Paul Sofia, as much as whether they are failing society.

Only a transparent and public process of inquiry can bring about justice for Jean Paul Sofia, for his family, and for society in general. A transparent and public inquiry process will contribute towards justice for Jean Paul Sofia and will promote a better understanding of the importance of standards designed to fulfil their purpose and the attendant obligation to adhere to them. The setting up of a public inquiry to answer queries such as those raised in this statement, in an independent and impartial manner, is an essential first step towards securing the protection of the right to life as well as to securing good governance in the exercise of administrative and executive discretion and relative processes.

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Moviment Graffitti

aditus

Repubblika

SOS Malta

Friends of the Earth

Flimkien għall Ambjent Ahjar