

**TEAM CODE: 213A**

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**MONROE E. PRICE MEDIA LAW MOOT COURT COMPETITION 2020-2021**

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**XANA AND THE SOCIAL DEMOCRATIC WORKERS UNION**

**(APPLICANTS)**

**v.**

**STATE OF IZED**

**(RESPONDENTS)**

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**MEMORIAL FOR THE APPLICANTS**

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**WORD COUNT: 4999**

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## LIST OF ABBREVIATIONS

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<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>ACtHPR</b>	African Court of Human and Peoples' Right
<b>ACHR</b>	American Convention of Human Rights
<b>CCPR</b>	Centre for Civil and Political Rights
<b>CPP</b>	Central Public Park
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>HRC</b>	Human Rights Committee
<b>IACHR</b>	Inter-American Commission on Human Rights
<b>IACtHR</b>	Inter-American Court of Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>NIDV</b>	Novel Immuno-Deficiency Virus
<b>NSA</b>	National Security Act, 2020
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organisation
<b>UNGA</b>	United Nations General Assembly
<b>UNHRC</b>	United Nations Human Rights Council
<b>US</b>	United States of America
<b>WHO</b>	World Health Organization

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<i>Pioneer Urban Land and Infrastructure Ltd. v Union of India</i> , (2019) 8 SCC 416 .....	18
<i>R v Zundel</i> [1992] 2 SCR 747 .....	30
<i>Ramlila Maidan Incident v Home Secretary, Union of India &amp; Ors.</i> (2012) 5 SCC 1. ....	1
<i>Re Ontario Film and Video Appreciation Society v Ontario Board of Censors</i> , (1983) 31 O.R. (2d) 583 (Ont. H.C.).....	3
<i>Rechtbank Brussel (Kort Ged.)</i> , Case of 22 Aug. 1991 .....	27
<i>Satish; Chander Ahuja v Sneha Ahuja</i> Civil Appeal No. 2483 of 2020 .....	18
<i>Schwartzmiller v Gardner</i> , 752 F.2d 1341, 1346 (9th Cir. 1984).....	26
<i>Secretary of State for the Home Department v Rehman</i> , (2001) UKHL 47.....	13
<i>Shreya Singhal v Union of India</i> AIR 2015 SC 1523 .....	19

<i>Smt. S Vanitha v Dy Commr. Bengaluru Urban District &amp; Ors</i> CA 3822/2020 .....	18
<i>State of West Bengal v Associated Contractors</i> , 2014 (10) SCALE 394 .....	18
<i>Thornhill v Alabama</i> , 310 U.S. 88, 97 (1939).....	26
<i>Town of Hooksett v Sidney Baines</i> 813 A.2d 474 (N.H. 2002) .....	19
<i>VFslg</i> 12394/1990 .....	27
<i>Vill. of Hoffman Estates v Flipside, Hoffman Estates, Inc.</i> , 455 U.S. 489,494 (1982) .....	26
<i>William Mahoney, Jr., Another v George W. Baldwin another, trustees</i> , 543 N.E.2d 435 (Mass. App. Ct. 1989) .....	19
<i>Zwickler v Koota</i> 389 US 241 (1967).....	19

**STATUTES:**

The Spanish Constitution 1978 .....	7
-------------------------------------	---

**ARTICLES:**

Kitsuron Sangsuvan, 'Balancing Freedom of Speech on the Internet under International Law' (2013) 39 N.C. J. Int'l L. & Com. Reg. 701 .....	23
Lucas Powe, 'Brandenburg: Then and Now' (2011) 44 Texas Tech Law Review 69 .....	13
Susan Gilles, 'Brandenburg v State of Ohio: An "Accidental", "Too Easy", and "Incomplete" Landmark Case' (2010) 38 Capital University Law Review 517 .....	13

**BOOKS AND COMMENTARIES:**

Cherilyn Ireton and Julie Posetti, *Journalism, Fake News’ & Disinformation Handbook for Journalism Education and Training* (UNSECO 2018)..... 22

Office of the United Nations High Commissioner for Human Rights, *Guidance on Less-Lethal Weapons in Law Enforcement* (UN Publication 2020)..... 15

Oliver De Schutter, *International Human Rights Law Cases, Materials, Commentary* (Cambridge 2010) ..... 20

Sarah Joseph and Adam McBeth (eds.), *Research Handbook on International Human Rights Law* (2010) ..... 10

W Blackstone, *Commentaries on the Law of England* (1765)..... 27

World Health Organization, *Managing Epidemics: Key Facts about Major Deadly Diseases* (Geneva, 2018)..... 29, 32

**MATERIALS FROM THE INTERNET:**

‘Azerbaijan's Coronavirus Disinformation Law Could Curb Press Freedom, OSCE Says’ (RFE/RL 25 March 2020) <<https://www.rferl.org/a/azerbaijan-s-coronavirus-disinformation-law-could-curb-press-freedom-osce-says/30509266.html>> accessed 2 January 2021 ..... 30

‘Cambodia: COVID-19 Clampdown on Free Speech’ (*Human Rights Watch* 24 March 2020) <[https://www.hrw.org/news/2020/03/24/cambodia-covid-19-clampdown-free-speech?utm\\_source=dailybrief&utm\\_medium=email&utm\\_campaign=DailyBrief2020Mar24&utm\\_term=DailyNewsBrief](https://www.hrw.org/news/2020/03/24/cambodia-covid-19-clampdown-free-speech?utm_source=dailybrief&utm_medium=email&utm_campaign=DailyBrief2020Mar24&utm_term=DailyNewsBrief)> accessed 2 January 2021. .... 29

‘Coronavirus: Fake news crackdown by UK government’ (*BBC News*, 29 March 2020)  
 <<https://www.bbc.com/news/technology-52086284>> accessed 2 January 2021 ..... 24

‘Fighting Ebola is hard. In Congo, fake news makes it harder’ (*Science Magazine* 14 January 2019)  
 <<https://www.sciencemag.org/news/2019/01/fighting-ebola-hard-congo-fake-news-makes-it-harder>> accessed 2 January 2021 ..... 32

‘Finland is winning the war on fake news. What it’s learned may be crucial to Western democracy’ (*CNN* 2019) <<https://edition.cnn.com/interactive/2019/05/europe/finland-fake-news-intl/>> accessed 2 January 2021 ..... 33

‘Li Wenliang: Coronavirus death of Wuhan doctor sparks anger’ (*BBC* 7 February 2020)  
 <<https://www.bbc.com/news/world-asia-china-51409801>> accessed on 30 October 2020 ... 31

‘Russian Doctor Detained After Challenging Virus Figures’ (*The New York Times* 3 April 2020)  
 <<https://www.nytimes.com/2020/04/03/world/europe/russian-virus-doctor-detained.html>> ..... 31

‘Thailand: COVID-19 Clampdown on Free Speech’ (*Human Rights Watch* 25 March 2020)  
 <<https://www.hrw.org/news/2020/03/25/thailand-covid-19-clampdown-free-speech>>  
 accessed 2 January 2021 ..... 29

‘Turkey detains 19 people over 'provocative' coronavirus posts’ (*Reuters* 17 March 2020)  
 <<https://www.reuters.com/article/us-health-coronavirus-turkey/turkey-detains-19-people-over-provocative-coronavirus-posts-idUSKBN2140T9>> accessed 2 January 2021 ..... 29

ANI, 'WhatsApp 'Namaste' on '9013151515' and get coronavirus facts instantly: PM Modi' (*Economic Times*, 25 March 2020) < <https://economictimes.indiatimes.com/news/politics->

and-nation/whatsapp-namaste-on-9013151515-and-get-coronavirus-facts-instantly-pm-modi/videoshow/74816014.cms> accessed January 2 2021 ..... 25

Anumeha Chaturvedi, 'Govt launches chatbot on WhatsApp to create awareness about coronavirus, curb misinformation' (*Economic Times*, 22 March 2020) <<https://economictimes.indiatimes.com/tech/internet/govt-launches-chatbot-on-whatsapp-to-create-awareness-about-coronavirus-curb-misinformation/articleshow/74750648.cms>> accessed on 2 January 2021 ..... 24

Article 19, 'Prohibiting incitement to discrimination, hostility, and violence' (*Article 19*, December 2012) <<https://www.refworld.org/pdfid/50bf56ee2.pdf>> accessed 2 January 2021 ..... 34

Article 19, 'The Camden Principles of Freedom of Expression and Equality' (Article 19, April 2009) <<http://www.refworld.org/docid/4b5826fd2.html>> accessed 2 January 2021 .... 26

'Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19' (OHCHR, 3 June 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25920>> accessed 2 January 2021 ..... 31

Cabinet Office, 'Government launches Coronavirus Information Service on WhatsApp' (*UK Government*, 25 March 2020) <<https://www.gov.uk/government/news/government-launches-coronavirus-information-service-on-whatsapp>> accessed 2 January 2021 ..... 25

Clement Voule , 'States responses to Covid 19 threat should not halt freedoms of assembly and association – UN expert on the rights to freedoms of peaceful assembly and of association' (*OHCHR*, 14 April 2020)

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>> accessed 2 January 2021 ..... 23

Daniel Joyce, 'Internet Freedom and Human Rights' (2015) 26(2) EJIL <<https://academic.oup.com/ejil/article/26/2/493/423010> by guest on 29 October 2020> assessed on 2 January 2021 ..... 23

Devesh Pandey, 'Coronavirus | Press Information Bureau sets up fact-check portal' (*The Hindu*, April 2 2020) <<https://www.thehindu.com/news/national/coronavirus-press-information-bureau-sets-up-fact-check-portal/article31231972.ece>> accessed 2 January 2021 ..... 24

Eszter Zalan, "Hungary's Orban Seeks Indefinite Power in Virus Bill," (*EU Observer*, March 23 2020) <<https://euobserver.com/coronavirus/147834>> ..... 10

'Fake News' and Disinformation: A Handbook for Journalism Education and Training' (*UNESCO*) <<https://en.unesco.org/fightfakenews>> accessed 2 January 2021 ..... 22

Gouri Sharma, 'Covid-19 is changing the way people protest around the world' (*TRT World*, 8 April 2020) <<https://www.trtworld.com/magazine/covid-19-is-changing-the-way-people-protest-around-the-world-35229>> accessed 2 January 2021 ..... 23

Helen Davidson 'Animal Crossing game removed from sale in China over Hong Kong democracy messages' (*The Guardian*, 14 April 2020) <<https://www.theguardian.com/world/2020/apr/14/animal-crossing-game-removed-from-sale-in-china-over-hong-kong-democracy-messages>> accessed 2 January 2021 ..... 23

Ivan Mehta, 'World Health Organization's WhatsApp bot texts you coronavirus facts' (*The Next Web*) <<https://thenextweb.com/apps/2020/03/20/world-health-organizations-whatsapp-bot-texts-you-coronavirus-facts/>> accessed 2 January 2021 ..... 25

Kalhan Rosenblatt, 'A summer of digital protest: How 2020 became the summer of activism both online and offline' (*NBC News*, 26 September 2020) <<https://www.nbcnews.com/news/us-news/summer-digital-protest-how-2020-became-summer-activism-both-online-n1241001>> accessed 2 January 2021 ..... 23

Kari Paul, 'Here are all the steps social media made to combat misinformation. Will it be enough?' (*The Guardian*, 30 October 2020) <<https://www.theguardian.com/technology/2020/oct/29/here-are-all-the-steps-social-media-made-to-combat-misinformation-will-it-be-enough>> accessed on 2 January 2021 ..... 25

'Managing the COVID-19 infodemic: Promoting healthy behaviours and mitigating the harm from misinformation and disinformation' (*WHO*, 23 September 2020) <<https://www.who.int/news/item/23-09-2020-managing-the-covid-19-infodemic-promoting-healthy-behaviours-and-mitigating-the-harm-from-misinformation-and-disinformation>> accessed on 2 January 2021 ..... 33

Marko Milanovic, 'Viral Misinformation and the Freedom of Expression: Part I' (*EJIL Talk*, 13 April 2020) <<https://www.ejiltalk.org/viral-misinformation-and-the-freedom-of-expression-part-i/>> accessed 2 January 2021 ..... 31

Michael, Safi 'Egypt forces Guardian journalist to leave after coronavirus story' (*The Guardian* 26 March 2020) <<https://www.theguardian.com/world/2020/mar/26/egypt-forces-guardian-journalist-leave-coronavirus-story-ruth-michaelson>> accessed 2 January 2021 ..... 29

Michelle Bachelet, ‘COVID-19: Exceptional measures should not be cover for human rights abuses and violations’ (OHCHR, 27 April 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25828&LangID=E>> accessed 2 January 2021 ..... 21

NA Karlova, KE Fisher, ‘A social diffusion model of misinformation and disinformation for understanding human information behaviour; Journalism’ (2013)Information Research <[https://www.researchgate.net/publication/285954290\\_A\\_social\\_diffusion\\_model\\_of\\_misinformation\\_and\\_disinformation\\_for\\_understanding\\_human\\_information\\_behaviour](https://www.researchgate.net/publication/285954290_A_social_diffusion_model_of_misinformation_and_disinformation_for_understanding_human_information_behaviour)> accessed 2 January 2021 ..... 22

OHCHR, ‘COVID-19: States should not abuse emergency measures to suppress human rights – UN experts’ (OHCHR, 16 March 2020). <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>> accessed 2 January 2021 ..... 21, 29

Organization for Security and Co-operation in Europe ‘Joint Declaration On Freedom Of Expression And “Fake News”, Disinformation And Propaganda (2017) (OSCE, 3 March 2017) <<https://www.osce.org/files/f/documents/6/8/302796.pdf>> accessed 2 January 2021 29, 30

Rutvi Zamare, 'From streets to tweets: Surveying the impact of online activism' (*Observer Research Foundation*, 8 September 2020) <<https://www.orfonline.org/expert-speak/streets-tweets-surveying-impact-online-activism/>> accessed 2 January 2021 ..... 23

Selam Gebrekidan, 'For Autocrats, and Others, Coronavirus Is a Chance to Grab Even More Power' (New York Times, 14 April 2020) <

<https://www.nytimes.com/2020/03/30/world/europe/coronavirus-governments-power.html>>  
accessed 2 January 2021 ..... 27

Shibani Mahtani, 'Singapore introduced tough laws against fake news. Coronavirus has put them to the test' (*The Washington Post* 16 March 2020)  
<[https://www.washingtonpost.com/world/asia\\_pacific/exploiting-fake-news-laws-singapore-targets-tech-firms-over-coronavirus-falsehoods/2020/03/16/a49d6aa0-5f8f-11ea-ac50-18701e14e06d\\_story.html](https://www.washingtonpost.com/world/asia_pacific/exploiting-fake-news-laws-singapore-targets-tech-firms-over-coronavirus-falsehoods/2020/03/16/a49d6aa0-5f8f-11ea-ac50-18701e14e06d_story.html)> accessed 2 January 2021 ..... 29

Subcommittee on Online harm and disinformation, 'Disinformation on social media about Covid 19 to be investigated' (*UK Parliament*, 2019)  
<<https://committees.parliament.uk/committee/438/subcommittee-on-online-harms-and-disinformation/news/145761/disinformation-and-misinformation-on-social-media-about-covid19-to-be-investigated/>> accessed 17 December 2020 ..... 24

Tanya Chen, 'Instagram Is Trying To Reroute People Clicking Into The #Coronavirus Hashtag To More Credible Sources' (Buzzfeed News, 11 February 2020)  
<<https://www.buzzfeednews.com/article/tanyachen/instagram-coronavirus-cdc-warning>>  
accessed 2 January 2021 ..... 25

Tri Indah Oktavianti, 'Online Kamisan: Activism goes digital during COVID-19 pandemic' (*Jakarta Post*, 23 April 2020) <<https://www.thejakartapost.com/news/2020/04/23/online-kamisan-activism-goes-digital-during-covid-19-pandemic.htm>> accessed on 2 January 2021  
..... 23

Damian Tambini, 'Fake news: public policy responses' (LSE Research Online, 7 April 2017)  
<[http://eprints.lse.ac.uk/73015/1/LSE%20MPP%20Policy%20Brief%2020%20-%20Fake%20news\\_final.pdf](http://eprints.lse.ac.uk/73015/1/LSE%20MPP%20Policy%20Brief%2020%20-%20Fake%20news_final.pdf)> accessed 2 January 2021 ..... 29

US Embassy, 'Ambassador Godec and U.S. Embassy Counter Fake News with Media Literacy Campaign' (US Embassy in Kenya, 14 March 2018) <<https://ke.usembassy.gov/ambassador-godec-u-s-embassy-counter-fake-news-media-literacy-campaign/>> accessed 2 January 2021..... 33

WHO, 'Immunizing the public against misinformation' (*WHO*, 25 August 2020) <<https://www.who.int/news-room/feature-stories/detail/immunizing-the-public-against-misinformation>> accessed on 2 January 2021..... 24, 33

WHO, 'Managing the COVID-19 infodemic: Promoting healthy behaviours and mitigating the harm from misinformation and disinformation' (*WHO*, 23 September 2020) <<https://www.who.int/news/item/23-09-2020-managing-the-covid-19-infodemic-promoting-healthy-behaviours-and-mitigating-the-harm-from-misinformation-and-disinformation>> accessed on 2 January 2021 ..... 24

**MISCELLAENOUS:**

AComHPR, 'Report of the Study Group on Freedom of Association and Assembly in Africa', (2014)..... 7

ACPHR, 'Policing Assemblies in Africa: Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa' (*ACHPR*, 2017) <<https://www.achpr.org/legalinstruments/detail?id=65>> accessed 4 January 2021. .... 15

Article 19, 'The Public's Right to Know: Principles on Right to Information Legislation' (*Article 19*, 2016) <[https://www.article19.org/data/files/RTI\\_Principles\\_Updated\\_EN.pdf](https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf)> 28

IACHR 'Report on Citizen Security and Human Rights' (31 December 2009) OEA/Ser.L/V/II..... 1

IACHR ‘Report on the Situation of Human Rights Defenders in the Americas’ (6 March 2006) OEA/Ser.L/V/II.124.....	1
IACHR, ‘Annual Report 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression’ ( 27 February 2006) OEA/Ser.L/V/II.124 Doc.....	6
IACHR, ‘Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008’ (25 February 2009) OEA/Ser.L/V/II.134 Doc. 5, Doc. 5 rev. 1 .....	16
IACHR, ‘Inter-American Declaration of Principles on Freedom of Expression’ (20 October 2000).....	27
IACHR, ‘Report on the Criminalization of the Work of Human Rights Defenders’ (31 December 2015) OEA/Ser.L/V/II, Doc.49/15 .....	16
IACHR, ‘Report on the Criminalization of the Work of Human Rights Defenders’, (31 December 2015) OEA/Ser.L/V/II, Doc.49/15 .....	16
IACHR, ‘Report on the Criminalization of the Work of Human Rights Defenders’, OEA/Ser.L/V/II, Doc.49/15, 31 December 2015.....	2
IACHR, ‘Report on the Situation of Human Rights Defenders in the Americas’ OEA/Ser.L/V/II.124.....	7
IACtHR ‘Annual Report of the Inter-American Commission on Human Rights 1994’ (17 February 1995) OEA/SerL/V/V 211 Doc 9 .....	13
Julie Posetti and Kalina Bontcheva, ‘Disinfodemic: Deciphering COVID-19 disinformation’ (UNESCO 2020) vol. 2 .....	25

OHCHR, ‘States responses to COVID-19 Threat Should Not Halt Freedoms of Assembly and Association,’ (OHCHR Display News, April 2020, < <a href="https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&amp;LangID=E">https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&amp;LangID=E</a> > accessed 23 December 2020 .....	14
Organization for Security and Co-operation in Europe, ‘Joint Declaration of Freedom of Expression and Elections in the Digital Age’ (OSCE, 30 April 2020) < <a href="https://www.osce.org/files/f/documents/9/8/451150_0.pdf">https://www.osce.org/files/f/documents/9/8/451150_0.pdf</a> > .....	27
OSCE & Venice Commission, ‘Guidelines on Freedom of Peaceful Assembly’ (8 July 2019) CDL-AD (2019)017 .....	13
OSCE & Venice Commission, ‘Guidelines on Freedom of Peaceful Assembly’ (8 July 2019) CDL-AD(2019)017 .....	9
OSCE-ODIHR and Venice Commission, ‘Guidelines on Freedom of Peaceful Assembly Explanatory Notes’ (2010).....	12
OSCE-ODIHR and Venice Commission, ‘Guidelines on Freedom of Peaceful Assembly’ (2010) .....	7, 12
United Nations Human Rights Special Procedures, ‘Mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings (#COVI19 Human Rights Dispatch- Number 1: Policy and Military Use of Force in a State of Emergency)’ (OHCHR, 2 April 2020) < <a href="https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch1.pdf">https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch1.pdf</a> > .....	14

## STATEMENT OF RELEVANT FACTS

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### BACKGROUND

1. Ized is a country with two major political parties: The National United Alliance (hereinafter, “*NUA*”), which promotes free market economic policies, and the Democratic Socialist Party (hereinafter, “*DSP*”), which promotes state-funded education and healthcare.

### THE NET

2. National Network is a privately-owned media organisation which also hosts a popular social media platform, ‘The Net’. The Net permits users to post their opinions, follow other users, share posts by the other users, and organise ‘Net-Assemblies’. The Social Democratic Workers Union (hereinafter, “*The Union*”) is a trade union comprising of healthcare workers employed in the state healthcare service.

### ELECTIONS AND NEW POLICIES

3. Parliamentary elections in Ized were announced to be held in January. The main election issue concerned the spread of a disease named Novel Immuno-Deficiency Virus (hereinafter, “*NIDV*”). The means through which it is transmitted has not been conclusively determined yet. Some experts believe the virus is sexually transmitted, whereas others believe that it is a vector-borne disease.
4. The numbers reported by the government regarding people infected and deceased were challenged by independent organisations and media channels. NUA won the elections and introduced a series of reforms including the privatisation of healthcare services.

## **NATIONAL SECURITY ACT, 2020**

5. NUA enacted the National Security Act (hereinafter, “*NSA*”). Section 22 of the Act penalized conducting or facilitating any gathering at a public place, in the event of a public emergency, unless the site has been designated by regulation by the Ministry of Defence.
6. Section 23 of the Act provided that in the event of a public emergency, the Minister of Defence may issue guidelines on the publication of any news, opinion, or other form of expression. Failure to comply with these guidelines was made a punishable offence.
7. On 1 February, the Minister of Defence issued a regulation declaring a state of public emergency for a period of three months. The regulation designated Ized’s Central Public Park ((hereinafter, “*CPP*”) as the site on which gatherings may be held during the emergency period.

## **DEMONSTRATIONS**

8. The Union organized a demonstration on 14 February to protest the privatisation of healthcare services in Ized, outside the Vaai General Hospital. The Ministry of Defence released a statement specifying that the planned demonstration was unlawful under Section 22 of the NSA, and that any person attending the demonstration would be arrested. Despite the same, the demonstration was joined by approximately 400 people, led by the leader of the Union, Jo Xana. During Xana’s speech, around 40 demonstrators blocked the entrance of the hospital.
9. Security sector vehicles sped to the demonstration site from multiple directions, and baton-wielding officers began arresting demonstrators. Xana was among those who were

arrested. The security officers also used tear gas and fired ‘blanks’ into the air to disperse the crowd.

### **XANA’S CONVICTION**

10. Xana was charged under Section 22 of the NSA and all other demonstrators were released, without pressing charges. The High Court of Ized found Xana guilty of conducting a gathering at a public site that was not a designated site under the Act. The Court sentenced her to three months imprisonment but suspended the sentence for one year. On appeal, the Supreme Court of Ized upheld her conviction and the sentence.

### **UNION NET-ASSEMBLY**

11. The Union decided to launch a ‘digital demonstration’ on The Net, on 10 March 2020. Union members launched a series of Net-Assemblies to criticise the government’s healthcare reforms and to protest the use of the NSA. The same slogans used at the 14 February demonstration were used as Net Tags. Netizens and several articles in the weekly magazine, Unite, claimed that the virus can only be transmitted sexually.

### **STATEMENT AND GUIDELINES BY THE MINISTER OF DEFENCE**

12. On 16 March, the Minister of Defence issued a statement announcing that the Ministry will be taking strong action under Section 22 of the NSA to arrest persons who organise unauthorised gatherings on social media platforms. It also issued guidelines under Section 23 of the NSA prohibiting the publication of any opinion with respect to NIDV, without obtaining prior authorisation from the Ministry of Health. The board of directors of National Network decided that the Net-Assembly feature would be temporarily discontinued until further notice.

### **SUPREME COURT PROCEEDINGS**

13. On 20 March, both Xana and the Union decided to file petitions before Ized’s Supreme Court complaining that their right to freedom of expression under Article 10, and the right to freedom of peaceful assembly under Article 11 of the Constitution of Ized had been violated. The Supreme Court determined that neither Xana’s nor the Union’s rights had been violated.

### **UNIVERSAL COURT OF HUMAN RIGHTS**

14. After exhausting all domestic remedies, Xana and the Union have filed applications before the Universal Court of Human Rights alleging violations of Article 19 and Article 21 of the International Covenant on Civil and Political Rights (hereinafter, “*ICCPR*”).

## **STATEMENT OF JURISDICTION**

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Xana, the Social Democratic Workers Union and the state of Ized, which is a party to the ICCPR, have submitted their differences to the Universal Court of Human Rights ('this Court') and hereby submit to this Court their dispute concerning Articles 19 and 21 of the ICCPR.

On the basis of the foregoing, this Court is requested to adjudge the dispute in accordance with the rules and principles of international law, including any applicable declarations and treaties.

## QUESTIONS PRESENTED

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~ I ~

WHETHER IZED'S DECISION TO ENACT SECTION 22 OF THE NATIONAL SECURITY ACT, AND TO DESIGNATE THE CENTRAL PUBLIC PARK AS THE SOLE PUBLIC SITE TO HOLD PUBLIC GATHERINGS, VIOLATED XANA'S AND THE SOCIAL DEMOCRATIC WORKERS UNION'S RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

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~ II ~

WHETHER IZED'S DECISION TO CONVICT XANA UNDER SECTION 22 OF THE NATIONAL SECURITY ACT VIOLATED HER RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

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~ III ~

WHETHER IZED'S DECISION TO ISSUE THE STATEMENT OF 16 MARCH VIOLATED THE SOCIAL DEMOCRATIC WORKERS UNION'S RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

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~ IV ~

WHETHER IZED'S DECISION TO ISSUE GUIDELINES UNDER SECTION 23 OF THE NATIONAL SECURITY ACT ON 16 MARCH VIOLATED THE SOCIAL DEMOCRATIC WORKERS UNION'S RIGHTS RECOGNISED BY ARTICLE 19 OF THE ICCPR

## SUMMARY OF ARGUMENTS

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- I.** Ized's decision to enact Section 22 of the NSA and to designate the CPP as the sole public site to hold public gatherings, violated Xana's and the Union's rights recognised by Article 19 and 21 of ICCPR. This is because Section 22 is violative of Article 19 and 21. First, it has not been imposed in conformity with the law because it is vague and confers unfettered discretion upon the Ministry of Defence of Ized. Second, it is not in pursuance of a legitimate aim because the restriction under Section 22 is driven by an abstract interpretation of a general risk. It is not fulfilling the objectives of public safety or health which is evident from its application in relation to the NIDV outbreak. Third, Section 22 is not necessary in a democratic society as there is no pressing social need attached to the implementation of such measures which are not proportionate. The restriction through designation of CPP is not limited to the achievement of legitimate aim and is not the least intrusive method. In any event the designation of CPP is wrongful application of Section 22 as NIDV is not a threat to the life of the nation. States cannot limit fundamental rights in the garb of public health issues when the same is not required by the exigencies of the situation.
- II.** Xana's conviction under the NSA is violative of her rights recognised under Article 19 and 21 as Xana is within the scope of protection offered by the right to peaceful protest and her conviction is a disproportionate sentence. First, the demonstration was peaceful as there was no intent to cause disruption or incite violence. Second, Xana did not incite lawless action as her speech was limited to address concerns regarding privatization of hospitals. Third, the police accrued an unwarranted sabotage upon the peaceful assembly as no warnings were issued to enable dispersal of the demonstration. Lastly, Xana's conviction is a disproportionate sentence as she cannot be penalized for merely participating in the demonstration.

**III.** Ized’s decision to issue the statement of 16 March extending the application of Section 22 to prohibit gatherings on online platforms has violated the rights recognized under Article 19 and 21 of the Covenant. First, the decision is not in conformity with law as Section 22 does not apply to online spaces. Furthermore, the usage of imprecise and vague terms does not allow the people to foresee liability and regulate their conduct accordingly. It gives unfettered discretion to the authorities in imposing a criminal law. Lastly, the interference is not narrowly tailored to meet its aims and can be utilized to quash dissent. Second, the decision is not in pursuance of a legitimate aim as the decision to extend the application to online spaces is motivated by a desire to stifle dissent and dialogue under the garb spreading of controlling disinformation. Third, the decision denies access to the online space for campaigning and dissent and shrinks the civic space available to the people of Ized. Lastly the decision does not adopt the least restrictive means for achieving its purported aim and thus is not necessary in a democratic society.

**IV.** Ized’s decision to issue guidelines under Section 23 of the NSA violates the Union’s rights under Article 19 of the ICCPR. First, such action is not prescribed by law as the guidelines issued are vague and overbroad because they prohibit the publication of any opinion with respect to NIDV without prior authorization from the Ministry of Health. This prevents legitimate criticism of the government and its policies. Further, prior censorship laws are arbitrary in their application and grant unfettered powers to the State. Second, such action pursues no legitimate aim as the State is merely utilizing the NIDV crisis as a pathogen of repression to stifle any dissent against the new healthcare policies. Third, such action is unnecessary in a democratic society since the guidelines can cast a chilling effect on freedom of expression and prevent the influx of precise and accurate information in relation to NIDV. Further, the

guidelines are not proportional as it prevents the spread of crucial information to Netizens instead of correcting the existing rumours with reliable information.

## ARGUMENTS

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### **I. IZED'S DECISION TO ENACT SECTION 22 OF THE NATIONAL SECURITY ACT AND TO DESIGNATE THE CENTRAL PUBLIC PARK AS THE SOLE PUBLIC SITE TO HOLD PUBLIC GATHERINGS, VIOLATED XANA'S AND THE SOCIAL DEMOCRATIC WORKERS UNION'S RIGHTS RECOGNISED BY ARTICLE 19 AND 21 OF THE ICCPR**

1. The right to assembly<sup>1</sup> is a catalyst in allowing 'exercise of many other civil, cultural, economic, political and social rights.'<sup>2</sup> States have the obligation to respect and protect the right of peaceful assembly and freedom of expression<sup>3</sup> of each individual espousing minority or dissenting views.<sup>4</sup>

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<sup>1</sup> Universal Declaration of Human Rights (*UDHR*) (adopted 10 December 1948 UNGA Res 217 A(III), Article 20; International Covenant on Civil and Political Rights (*ICCPR*) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 21; United Nations Declaration on Human Rights Defenders (*UNDHRD*) (adopted 8 March 1999) UNGA Res 53/144 Article 5; European Convention on Human Rights (*ECHR*) (adopted 4 November 1950, entered into force 3 September 1953), Article 11; American Convention on Human Rights (*ACHR*) (adopted 22 November 1969, entered into force 18 July 1978), Article 15; African Charter on Human and Peoples' Rights (*ACHPR*) (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58, Article 11; Arab Charter on Human Rights (*ArCHR*) (adopted 22 May 2004, entered into force 15 March 2008), Article 24; IACHR 'Report on the Situation of Human Rights Defenders in the Americas' (6 March 2006) OEA/Ser.L/V/II.124 Doc. 5 rev.1; IACHR 'Report on Citizen Security and Human Rights' (31 December 2009) OEA/Ser.L/V/II. Doc. 57.

<sup>2</sup> UNGA 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai' (14 April 2014) UN Doc A/HRC/26/29 [12] (*UN Doc A/HRC/26/29*); UNHRC, 'Resolution on Promotion and Protection of Human Rights in the Context of Peaceful Protests (23 March 2012) A/HRC/19/L.17; UNGA, 'Right to freedom of peaceful assembly and of association' (14 July 2017) UN Doc. A/72/135, [14] [17]; UNGA, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' (7 August 2018), UN Doc A/73/279; HRC, *Mecheslav Gryb v Belarus* (Communication No. 1316/2004) UN Doc. CCPR/C/103/D/1316/2004 [9.5].

<sup>3</sup> UDHR, Article 19; ICCPR, Article 19; ECHR, Article 10; ACHR, Article 13; ACHPR Article 9; *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49] (*Handyside v United Kingdom*); *Ramlila Maidan Incident v Home Secretary, Union of India & Ors.* (2012) 5 SCC 1.

<sup>4</sup> UN Doc A/HRC/26/29 [22]; HRC, *Denis Turchenyak et al. v Belarus*, (Communication No. 1948/2010) UN Doc. CCPR/C/108/D/1948/2010 [7.4] (*Denis Turchenyak*); HRC, *Praded v Belarus* (Communication No. 2029/2011) UN Doc. CCPR/C/112/D/2029/2011 [7.4] (*Praded v Belarus*); HRC, *Alekseev v Russian Federation* (Communication No. 1873/2009) UN Doc. CCPR/C/109/D/1873/2009 [9.6] (*Alekseev v Russian*); *Barankevich v Russia* App no 10519/03 (ECtHR, 26 July 2007) [31-32]; *Plattform "Arzte für das Leben" v Austria* App no 10126/82 (ECtHR, 21 June 1988) [32]; *Lashmankin and Others v Russia* App no 57818/09 (ECtHR, 7 February 2017) [425] (*Lashmankin and Others v Russia*).

2. In the present case, an interference with the above-mentioned rights is not permissible as
  - (A) Section 22 of the NSA violates Article 19 and Article 21 of ICCPR and in any event,
  - (B) Ized’s decision to designate the CPP as the sole public site to hold gatherings is inconsistent with Article 19 and Article 21.

**A. Section 22 of the NSA is in violation of Article 19 and 21 of ICCPR**

3. Article 21 protects peaceful assemblies through demonstrations<sup>5</sup> in every form and place.<sup>6</sup> Demonstrations allow assembly and free flow of opinion and information.<sup>7</sup> The guarantee of freedom of peaceful assembly is *lex specialis*, which is interpreted in light of freedom of expression which is *lex generalis*.<sup>8</sup> Any restrictions on these rights must be strictly constructed and their necessity convincingly established.<sup>9</sup>
4. Section 22 of the NSA is violative of Article 19 and 21 of the ICCPR as restrictions of criminalizing<sup>10</sup> conduct or facilitation of gathering at a public site unless designated through regulations under NSA,<sup>11</sup> have not been imposed (i) in conformity with the law, (ii) in pursuance of a legitimate aim and (iii) in compliance with the test of necessity and proportionality.

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<sup>5</sup> *Alekseev v Russian Federation* [9.6]; *Galstyan v Armenia* App no 26986/03 (ECtHR, 15 November 2007) (*Galstyan v Armenia*).

<sup>6</sup> HRC, ‘General comment No. 37, Article 21, Right of Peaceful Assembly’ (17 September 2020) UN Doc CCPR/C/GC/37 [6]. (*General comment No. 37*).

<sup>7</sup> IACHR, ‘Report on the Criminalization of the Work of Human Rights Defenders’, OEA/Ser.L/V/II, Doc.49/15, 31 December 2015, [119] (*OEA/Ser.L/V/II, Doc.49/15*).

<sup>8</sup> HRC, *Kivenmaa v Finland*, (Communication No. 412/1990) UN Doc. CCPR/C/50/D/412/1990; HRC, *Galina Youbko v Belarus* (Communication No. 1903/2009) UN Doc. CCPR/C/110/D/1903/2009; *Yaroslav Belousov v Russia* App no 2653/13 and 60980/14 (ECtHR, 4 October 2016) [166-167]; *Ezelin v France* App no 11800/85 (ECtHR, 26 April 1991) [35-37] (*Ezelin v France*); *Women On Waves and Others v Portugal* App no 31276/05 (ECtHR, 3 February 2009) [28].

<sup>9</sup> *Zana v Turkey* App no 18954/91 (ECtHR, 25 November 1997); *Handyside v UK* [71]; *Jersild v Denmark* App no 15890/89 (ECtHR, 22 August 1994).

<sup>10</sup> Compromis, ¶ 14 (3).

<sup>11</sup> Compromis, ¶ 14 (1).

*(i) Section 22 is not imposed in conformity with law*

5. The restrictions on the right to assembly must be based on an appropriate instrument of domestic law.<sup>12</sup> Where powers are given to executive bodies to restrict the right to assemble, “*the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise.*”<sup>13</sup> Section 22 confers the power to designate public sites through regulations issued under the NSA by the Ministry of Defence.<sup>14</sup> There is a lack of clarity in terms of scope of the discretion and manner of its exercise.
6. First, to ensure sufficient precision of a law, no unfettered or sweeping discretion must be conferred on the implementation authority.<sup>15</sup> Vagueness of terms such as ‘public emergency’, ‘conducting’, ‘facilitating’ and ‘gathering’ under Section 22<sup>16</sup> allow excessively broad discretionary powers to the Ministry of Defence of Ized.<sup>17</sup>
7. Second, to ensure foreseeability the law must provide “*effective safeguards against prosecution, conviction or punishment.*”<sup>18</sup> This must equip the individual enough to be

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<sup>12</sup> IACtHR, *The Word "Laws" in Article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86, May 9, 1986, [38].

<sup>13</sup> *Lashmankin and Others v Russia* [411].

<sup>14</sup> Compromis, ¶ 14 (1).

<sup>15</sup> HRC 'General Comment No. 34, Article 19, Freedoms of opinion and expression' (12 September 2011) UN Doc. CCPR/C/GC/34 [25] (**General Comment No. 34**); HRC, *Nepomnyashchiy v Russian Federation* (Communication No 2318/2013) UN Doc CCPR/C/123/D/2318/2013 [7.7] (**Nepomnyashchiy v Russian Federation**); *Shmushkovych v Ukraine* App no 3276/10 (ECtHR, 14 November 2013) [37]; *Rekvenyi v Hungary* App no 25390/94 (ECtHR, 20 May 1999) [34]; *Fontevicchia and D'Amico v Argentina* Petition 775/01 IACtHR, Report no. 51/05 (28 October 2005) [90]; AComHPR, 'Report of the Study Group on Freedom of Association and Assembly in Africa', (ACPHR, 2014) <[https://www.achpr.org/public/Document/file/English/report\\_of\\_the\\_study\\_group\\_on\\_freedom\\_of\\_association\\_\\_assembly\\_in\\_africa.pdf](https://www.achpr.org/public/Document/file/English/report_of_the_study_group_on_freedom_of_association__assembly_in_africa.pdf)> accessed on 3 January 2021 [5]; *Himat Lal K. Shah v Commissioner of Police, Ahmedabad & Anr.*, (1973) 1 SCC 227.

<sup>16</sup> Compromis, ¶ 14 (1).

<sup>17</sup> *Re Ontario Film and Video Appreciation Society v Ontario Board of Censors*, (1983) 31 O.R. (2d) 583 (Ont. H.C.), [592].

<sup>18</sup> *Vasiliauskas v Lithuania* App no 35343/05 (ECtHR, 17 June 2009) [153].

able to regulate his conduct according to the restrictions<sup>19</sup> Section 22 holds any person guilty of an offence liable for an imprisonment up to 1 year, or fine up to USD 500, or both.<sup>20</sup> The lack of precise indication of what would amount as an offence under Section 22, does not allow individuals to regulate their conduct or foresee the consequences of their role as a part of the gathering.

8. Accordingly, Section 22 of the NSA is not prescribed by law as it is not precise and foreseeable.

**(ii) Section 22 has not been applied in pursuance of a legitimate aim**

9. To pursue a legitimate aim the restriction must be applied only to the purpose ascribed to it and relate directly to the specific aim.<sup>21</sup> The onus of justification in terms of limitations upon the right of peaceful assembly lies with the authority imposing the restrictions.<sup>22</sup> The purpose of imposing a restriction cannot be provided in *abstracto* or by general unspecified risks.<sup>23</sup> Section 22 mentions that the restriction on gathering at a public site would be applied in event of a public emergency which threatens the life of the nation.<sup>24</sup>

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<sup>19</sup> General Comment No. 34 [25]; HRC, *Toktakunov v Kyrgyzstan* (Communication No 1470/2006) UN Doc CCPR/C/101/D/1470/2006 [7.6]; *Kimel v Argentina* IACtHR Series C no. 177 (2 May 2008) [63] (***Kimel v Argentina***); *Plechkov v Romania* App no 1660/03 (ECtHR, 16 September 2014) [71].

<sup>20</sup> Compromis, ¶ 14 (3).

<sup>21</sup> General Comment No. 34 [22, 33, 34]; *Balsytė-Lideikienė v Lithuania* App no 72596/01 (ECtHR, 4 November 2008) [76]; *Pastörs v Germany* App no 55225/14 (ECtHR, 3 October 2019) [98]; *Karácsony and Others v Hungary* App nos. 42461/13 and 44357/13 (ECtHR, 17 May 2016) [54]; *Mouvement Raëlien Suisse v Switzerland* App no 16354/06 (ECtHR, 13 July 2012) [48]; *Animal Defenders International v The United Kingdom* App no 48876/08 (ECtHR, 22 May 2013) [100].

<sup>22</sup> HRC, *Vladimir Sekerko v Belarus* (Communication No. 1851/2008) UN Doc. CCPR/C/109/D/1851/2008 [9.4]; *Gryb v Belarus* (CCPR/C/103/D/1316/2004) [13.4].

<sup>23</sup> *Alekseev v Russian Federation* [9.6]; HRC, *Mr. Jeong-Eun Lee v Republic of Korea* (Communication No. 1119/2002) UN Doc. CCPR/C/84/D/1119/2002 [7.3]; HRC, *Schumilin v Belarus* (Communication No. 1784/2008) UN Doc. CCPR/C/105/D/1784/2008 [9.4]; HRC, *Keun-Tae Kim v Republic of Korea* (Communication No. 574/1994) UN Doc. CCPR/C/64/D/574/1994 [12.5].

<sup>24</sup> Compromis, ¶ 14 (1).

The purpose of only allowing gatherings at CPP and no other area in Ized<sup>25</sup> has not been substantiated with any legitimate purpose.

10. First, to establish restriction of public safety for right to peaceful assembly<sup>26</sup> it is essential to prove that the assembly creates real and significant risk to the safety of the people or serious damage to property.<sup>27</sup> There is no real or significant harm that can be presumed by organisation of an assembly to voice dissent against the government policies.<sup>28</sup>
11. Second, Siracusa Principles provide that the States can take measures to limit rights and freedoms to deal with serious threat to the health of the population however, the measures should specifically prevent the disease.<sup>29</sup> In the present case, the mode of transmission has not been confirmed by the state with absolute certainty.<sup>30</sup> Limitation of assemblies to CPP and no other area<sup>31</sup> has no specific purpose to prevent the disease.
12. Accordingly, the designation of the CPP is not in pursuance of any legitimate aim.

***(iii) Section 22 is not necessary in a democratic society***

13. Any restriction on the rights guaranteed under Article 19 and 21 must conform to the strict test of necessity and proportionality.<sup>32</sup>

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<sup>25</sup> Clarifications, ¶ 17.

<sup>26</sup> *Alekseev v Russian Federation* [9.5] ; CCPR/C/MKD/CO/3 [19].

<sup>27</sup> ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN4/1984/4 [33] (*Siracusa Principles*).

<sup>28</sup> Clarifications, ¶ 19.

<sup>29</sup> Siracusa Principles [25].

<sup>30</sup> Compromis, ¶ 27.

<sup>31</sup> Clarifications, ¶ 17.

<sup>32</sup> *Praded v Belarus* [7.4]

a) Designation of CPP is not necessary

14. Necessity requires the restriction to be of compelling need, which must outweigh the importance of freedom of assembly.<sup>33</sup> It must meet a “*pressing social need, necessary in a democratic society*” wherein the reasons pursued by the national authorities are ‘relevant and sufficient’.<sup>34</sup>
15. The freedom of peaceful assembly and expression are fundamental elements of a democracy wherein dissent can be voiced towards policies.<sup>35</sup> Limitation cannot be implemented with the intent to discourage participation and cause a chilling effect.<sup>36</sup> The fear of arrest under Section 22(3) deters individuals from expressing their views through public gatherings.<sup>37</sup>

b) Designation of the park is not proportional

16. Proportionality necessitates that the restriction must be limited to the achieve the legitimate aim and must be the least intrusive method.<sup>38</sup> Each restriction must undergo value assessment to determine the nature and detrimental impact of the same on the right

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<sup>33</sup> *Ricardo Canese v Paraguay* IACtHR Series C No. 111 (August 31, 2004) [96] (*Ricardo Canese v Paraguay*).

<sup>34</sup> *Kasparov and Others v Russia* App no 21613/07 (ECtHR, 3 October 2013) [86] (*Kasparov and Others v Russia*).

<sup>35</sup> IACHR, ‘Annual Report 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression’ ( 27 February 2006) OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly [6]; *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC 5/85, IACtHR Series A No. 5 (13 November, 1985) [69]; *Vogt v Germany* App no 17851/91 (ECtHR, 1996) [64]; *Rekvényi v Hungary* App no 25390/94 (ECtHR 20 May 1999)[58]; *Young, James, and Webster v United Kingdom* App no 7601/76 and 7806/77 Series A, No. 44 (ECtHR, 1981) [57]; *Refah Partisi (the Welfare Party) and Others v Turkey* App no 41340/98, 41342/98,41343/98 and 41344/98, (ECtHR, 13 February 2003) [44]; *United Communist Party of Turkey and Others v Turkey*, App no 19392/92 Report 1998-I (ECtHR, 1998) [42]; *Christine Mulundika and 7 Others v The People*, 2 LCR 175 (1996); UNHRC ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’ (21 May 2012) UN Doc A/HRC/20/27 [12] (*UN Doc A/HRC/20/27*).

<sup>36</sup> General comment No. 37 [36].

<sup>37</sup> Compromis, National Security Act, 2020, Section 22(3).

<sup>38</sup> HRC, *Vasily Poliakov v Belarus* (Communication No. 2030/2011) UN Doc. CCPR/C/111/D/2030/2011 [8.3].

against the resultant benefit.<sup>39</sup> If the detriment outweighs the benefit, the restriction would be invalid.<sup>40</sup> The fundamental freedom of assembly cannot be subject to previous authorization.<sup>41</sup>

17. In the present case, the assembly has been convened to voice the concerns against the privatization of healthcare in the country during an infectious outbreak.<sup>42</sup> Not only will this decision result in potential loss of employment for over 12,000 healthcare workers, but will also lead to an exponential increase in the cost of healthcare.<sup>43</sup> It is essential to highlight the detrimental impacts of the policy through such demonstrations to stop the blatant misuse of NIDV to restrict civil rights.
18. Any restriction on the time, place and manner of assembly must allow the participants to assemble ‘within sight and sound’ of their target audience, which is important for their purpose.<sup>44</sup> Sufficient opportunity and time must be allowed to manifest one’s views or to pursue other purposes effectively.<sup>45</sup> The gathering was planned outside the Vaai General

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<sup>39</sup> HRC, *Toregozhina v Kazakhstan* (Communication No. 2137/2012) UN Doc. CCPR/C/112/D/2137/2012 [7.4] [7.6]; OSCE & Venice Commission, ‘Guidelines on Freedom of Peaceful Assembly’ (8 July 2019) CDL-AD(2019)017 [131] (*CDL-AD(2019)017*).

<sup>40</sup> General comment No. 37 [40].

<sup>41</sup> The Spanish Constitution 1978, Art. 21(1); CDL-AD(2019)017 [63]; Inter-American Commission on Human Rights, ‘Report on the Situation of Human Rights Defenders in the Americas’ OEA/Ser.L/V/II.124 [57].

<sup>42</sup> Compromis, ¶ 18.

<sup>43</sup> Compromis, ¶ 17.

<sup>44</sup> UNHRC, ‘Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, (24 April 2013) UN Doc. A/HRC/23/39 [60] (*UN Doc. A/HRC/23/39*); OSCE-ODIHR and Venice Commission, ‘Guidelines on Freedom of Peaceful Assembly’ (2010) Guideline 3.5 and Explanatory Notes, [45]; AComHPR, ‘Report of the Study Group on Freedom of Association and Assembly in Africa’, (2014) [17]; *Denis Turchenyak* [7.4]; HRC, *Pavel Kozlov et al. v Belarus*, (Communication No. 1949/2010) UN Doc. CCPR/C/113/D/1949/2010 [7.4]; HRC, *Leonid Sudalenko v Belarus* (Communication No. 2016/2010) UN Doc. CCPR/C/115/D/2016/2010 [8.4]; *Lashmankin and Others v Russia* [405]; *Saska v Hungary* App no 58050/08 (ECtHR, 27 November 2012) [21].

<sup>45</sup> *Éva Molnár v Hungary* App NO. 10346/05 (ECtHR 7 October 2008) [42].

Hospital because it is the first hospital scheduled to be privatised.<sup>46</sup> Hence, this particular place of protest was crucial to further the concerns with privatization, in the sight and sound of the Vaai Hospital.

19. Accordingly, Section 22 of the NSA and designation of the CPP under the same is violative of Article 19 and 21 of the ICCPR.

**B. Ized’s decision to designate the Central Public Park (CPP) as the sole public site to hold gatherings is inconsistent with Article 19 and Article 21.**

20. In any event, the designation of the CPP as the sole public site to hold gatherings is the wrongful application of Section 22 as (i) NIDV is not a threat to the life of the nation and (ii) the designation is not warranted by the exigencies of the situation.

**(i) NIDV is not a threat to the life of the nation**

21. A threat to the life of the nation must affect the whole population.<sup>47</sup> Public health emergencies under Article 4 must fulfil all criteria of restrictions<sup>48</sup> and be ‘exceptional and temporary in nature’.<sup>49</sup> States must not limit the exercise of fundamental rights under the garb of public health issues.<sup>50</sup> Restriction of human rights is not a solution to

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<sup>46</sup> Compromis, ¶ 18.

<sup>47</sup> Siracusa Principles [39]; HRC, *Jorge Landinelli Silva v Uruguay* (Communication No. R.8/34) UN Doc. Supp. No. 40 (A/36/40) at 130 [8.3].

<sup>48</sup> Andraž Zidar, ‘WHO International Health Regulations and Human Rights’ (2015) *The International Journal of Human Rights* [508].

<sup>49</sup> Siracusa Principles [63]; HRC ‘General Comment No. 29: Article 4, States of Emergency’ (31 August 2001) UN Doc CCPR/C/21/Rev.1/Add.11 Article 4 [2] (**General Comment No. 29**).

<sup>50</sup> Committee on Economic, Social and Cultural Rights, ‘CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)’ (11 August 2000) UN Doc. E/C.12/2000/4 [28]; *Lawless v Ireland* App No 332/57 (ECtHR, 1 July 1961) [28] (**Lawless v Ireland**); *Zambrano Velez v Ecuador*, IHRL 3040 (IACHR, 4 July 2007), [45]-[47].

national difficulties.<sup>51</sup> The health crisis declared due to NIDV is not a threat to the life of the nation.

22. Additionally, the threat to life has to be actual or imminent<sup>52</sup> and must threaten the organised life of the community.<sup>53</sup> These standards place a much higher onus on the States to establish a threat.<sup>54</sup> The means of transmission of NIDV have not been properly established.<sup>55</sup> However, it has been identified that it is not as deadly as HIV.<sup>56</sup> No indication of disruption to the organised life of the community in Ized has been established.
23. Accordingly, it can be inferred that the implementation of Section 22 was not warranted by the idea of threat to the life of the nation.

***(ii) The designation is not required by the exigencies of the situation***

24. Derogations must be strictly required by the exigencies of the situation and comply with the conditions under Article 4.<sup>57</sup> The authorities can take such measures that can limit the transgression of a situation but they cannot impose prior restraint.<sup>58</sup>
25. HRC does not look favorably upon blanket restrictions on assemblies<sup>59</sup> as it is considered presumptively disproportionate.<sup>60</sup> The government of Ized has imposed a blanket

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<sup>51</sup> *Amnesty International and Ors. v Sudan*, Comm. Nos. 48/90-50/91-52/91-89/93 (ACHPR, 1999).

<sup>52</sup> *Denmark, Norway, Sweden, Netherlands v Greece* (I) App no 3321/67, 3322/67, 3323/67, 3344/67 (ECtHR, 5 November 1969).

<sup>53</sup> *Lawless v Ireland* [28].

<sup>54</sup> General Comment No 29 [4.2].

<sup>55</sup> *Compromis*, ¶ 10.

<sup>56</sup> *Compromis*, ¶ 10.

<sup>57</sup> General Comment No. 29 [5–9].

<sup>58</sup> CDL-AD(2019)017 [132, 220–222].

restriction on the right to protest under Section 22 rather than imposing measures to supplement the free exercise of the fundamental right to protest.

26. The emergency laws that have been passed by the states during COVID-19 to suspend constitutional guarantees have been heavily criticised.<sup>61</sup> The lawfulness of derogations from human rights obligations can be reviewed judicially.<sup>62</sup> However unlike Article 15 of ECHR, Article 4 of ICCPR warrants no deference or margin of appreciation in judicial review as the basis of derogation.<sup>63</sup> Public emergencies cannot be abused to achieve alternative discriminating motives. Ized's decision to declare an emergency warrants no deference or margin of appreciation.

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<sup>59</sup> HRC, 'List of Issues in relation to the fourth periodic report of Algeria' (11 December 2014) UN Doc. CCPR/C/DZA/Q/4 [24]; HRC, 'Concluding observations on the second periodic report of Thailand' (25 April 2017) UN Doc. CCPR/C/THA/CO/2 [39]; HRC 'List of issues in relation to the fourth periodic report of the Democratic Republic of the Congo' (1 May 2017) UN Doc. CCPR/C/COD/Q/4 [23]; HRC 'List of issues in relation to the second periodic report of Cambodia' (4 March 2015) UN Doc. CCPR/C/KHM/Q/2/Add.1 [20]; HRC 'Concluding observations on the seventh periodic report of Ukraine' (22 August 2013) UN Doc. CCPR/C/UKR/CO/7 [21]; HRC 'Concluding observations on the second periodic report of Bosnia and Herzegovina, adopted by the Committee at its 106th session (15 October–2 November 2012)' (13 November 2012) CCPR/C/BIH/CO/2 [19]; HRC, 'Consideration of reports submitted by States parties under article 40 of the Covenant' (19 August 2011) UN Doc. CCPR/C/KAZ/CO/1 [26]; HRC, 'Consideration of reports submitted by States parties under article 40 of the Covenant' (3 September 2010) UN Doc. CCPR/C/ISR/CO/3 [20]; HRC, 'Concluding observations of the Human Rights Committee' (1 November 1999) UN Doc. CCPR/C/79/Add.114 [18]; HRC, 'Consideration of reports submitted by States parties under article 40 of the Covenant' (5 May 1997) UN Doc. CCPR/C/79/Add.78 [26]; HRC, 'List of issues prior to submission of the fifth periodic report of the Netherlands' (3 May 2017) UN Doc. CCPR/C/NLD/QPR/5 [29].

<sup>60</sup> HRC, *Belyazeka v Belarus* (Communication No. 1772/2008) U.N. Doc. CCPR/C/104/D/1772/2008 [11.6]; *Praded v Belarus* [7.8]; HRC, *Zaleskaya v Belarus* (Communication No 1604/2007) UN Doc. CCPR/C/101/D/1604/2007 [10.6]; HRC, *Kovalenko v Belarus* (Communication No 1808/2008) UN Doc. CCPR/C/108/D/1808/2008 [8.8]; HRC, *Komarovsky v Belarus* (Communication No 1839/2008) UN Doc. CCPR/C/109/D/1839/2008 [9.4]; HRC, *Kuznetsov et al. v Belarus* (Communication No. 1976/2010) UN Doc. CCPR/C/111/D/1976/2010 [9.8]; *Lozenko v Belarus* (Communication No. 1929/2010) UN Doc. CCPR/C/112/D/1929/2010 [7.7]

<sup>61</sup> OHCHR, 'States responses to COVID-19 Threat Should Not Halt Freedoms of Assembly and Association,' (*OHCHR Display News, April 14* 2020, <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>> accessed 23 December 2020; Eszter Zalan, "Hungary's Orban Seeks Indefinite Power in Virus Bill," (*EU Observer*, March 23 2020) <<https://euobserver.com/coronavirus/147834>> accessed 23 December 2020.

<sup>62</sup> *Ireland v United Kingdom* (1978) Series A No 35 [214].

<sup>63</sup> Sarah Joseph and Adam McBeth (eds.), *Research Handbook on International Human Rights Law* (2010).

27. Accordingly, Ized's decision to designate the CPP as the sole public site to hold gatherings is wrongful application of Section 22.

**II. IZED'S DECISION TO CONVICT XANA UNDER SECTION 22 OF THE NATIONAL SECURITY ACT VIOLATED HER RIGHTS RECOGNISED BY ARTICLE 19 AND 21 OF THE ICCPR.**

28. The right to peaceful assembly can facilitate a constructive dialogue, which is necessary to further shared interest in times of competing priorities.<sup>64</sup> Xana's conviction under the NSA is violative of her rights recognised under Article 19 and 21 as (A) Xana is within the scope of protection offered by the right to peaceful protest and (B) Xana's conviction is a disproportionate sentence.

**A. Xana is within the scope of protection offered by the right to peaceful assembly**

29. Xana was within the scope of protection because (i) The demonstration was peaceful (ii) Xana did not incite violence and (iii) there was unwarranted police sabotage on the peaceful assembly.

***(i) Demonstration was peaceful***

30. There is a presumption in favour of considering assemblies peaceful.<sup>65</sup> If the organisers of an assembly intent to hinder or obstruct an entity against which a demonstration is directed, it would not imply that their intent is not peaceful.<sup>66</sup> Violence is regarded as use

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<sup>64</sup> UNGA, 'Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies' (4 February 2016) UN Doc A/HRC/31/66 [6].

<sup>65</sup> UNHRC 'Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies' (4 February 2016) UN Doc A/HRC/31/66 [18]; UN Doc. A/HRC/20/27 [25]; OSCE-ODIHR and Venice Commission, 'Guidelines on Freedom of Peaceful Assembly Explanatory Notes' (2010) [25]; *Christian Democratic People's Party v Moldova* App no 28793/02 (ECtHR, 14 February 2006) [23]; *Frumkin v Russia* App no 74568/12 (ECtHR, 5 January 2016) [98]; *Karpyuk and Others v Ukraine* App no 30582/04 and 32152/04 (ECtHR, 6 October 2015) [202] (*Karpyuk and Others v Ukraine*); OSCE-ODIHR and Venice Commission, 'Guidelines on Freedom of Peaceful Assembly' (2010) [1.3]; *Schwabe and M.G. v Germany* App no 8080/08 (ECtHR, 1 December 2011) [103].

<sup>66</sup> OSCE-ODIHR and Venice Commission, 'Guidelines on Freedom of Peaceful Assembly' (2010) [1.3]; *Karpyuk and Others v Ukraine* [207].

of physical force against others which is likely to result in injury, death, or serious damage to the property.<sup>67</sup>

31. The hinderance to the entrance of the hospital cannot be used to imply that the assembly was not peaceful. No physical force has been used by the gathering.<sup>68</sup> The intention was only to voice dissent and present the potential impact of privatization of the hospitals.<sup>69</sup>

**(ii) *Xana did not incite lawless action***

32. A speech can be prohibited if its purpose is to incite or produce imminent lawless action.<sup>70</sup> A direct connection must exist between the expression and the likelihood or occurrence of the violence.<sup>71</sup> Xana’s speech was neither advocating any violence nor was likely to promote occurrence of the same. The speech was limited to addressing the concerns of privatization of hospitals alone and there was no intention to create public chaos.<sup>72</sup>

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<sup>67</sup> OSCE & Venice Commission, ‘Guidelines on Freedom of Peaceful Assembly’ (8 July 2019) CDL-AD (2019)017 [51].

<sup>68</sup> Compromis, ¶ 19.

<sup>69</sup> Compromis, ¶ 19.

<sup>70</sup> *Brandenburg v Ohio*, 395 U.S. 444 [447].

<sup>71</sup> Article 19 & Centre for Applied Legal Studies, University of Witwatersrand, ‘Johannesburg Principles on national security, freedom of expression and access to information’ (1 October 1995) UN Doc E/CN.4/1996/39 [6]; *Karatas v Turkey*, App No. 23168/94 (ECtHR, 8 July 1999) [53]; *Athukoral v Attorney General*, SD Nos. 1-15/1997; *Secretary of State for the Home Department v Rehman*, (2001) UKHL 47; Council of Europe Convention on the Prevention of Terrorism (*entered into force* 1 June 2007) ETS No. 196, Art. 5(1); IACtHR ‘Annual Report of the Inter-American Commission on Human Rights 1994’ (17 February 1995) OEA/SerL/V/V 211 Doc 9 [40]; *Hess v Indiana*, 414 US 105, 108 (1973); *NAACP v Claiborne Hardware Co.*, 458 US 886, 928 (1982); Michael Curtis, *Free Speech, The People’s Darling Privilege* (2000) [394-397]; James Weinstein, *Extreme Speech and Democracy* (OUP 2010) [41]; Susan Gilles, ‘Brandenburg v State of Ohio: An “Accidental”, “Too Easy”, and “Incomplete” Landmark Case’ (2010) 38 Capital University Law Review 517, 522-525; Lucas Powe, ‘Brandenburg: Then and Now’ (2011) 44 Texas Tech Law Review 69, 75-7.

<sup>72</sup> Compromis, ¶ 19.

33. Alternatively, if the assembly is considered to be violent, a single protester must be allowed comparable protections under the ICCPR.<sup>73</sup> The right to peaceful assembly would not cease to exist for an individual due to sporadic violence by other,<sup>74</sup> if the individual in consideration is peaceful in their own behaviour.<sup>75</sup> Xana never actively participated in blocking the hospital entrance or resisted arrest<sup>76</sup> and she must not be convicted solely for her presence at the protest.

***(iii) Unwarranted police sabotage on the peaceful assembly***

34. There must be no unwarranted state interference without any compelling justification.<sup>77</sup> “*Demonstrations in a public space may cause some level of disruption to ordinary life*”, but the authorities must show certain degree of tolerance towards peaceful gatherings.<sup>78</sup>

35. First, use of force and firearms has to be avoided, with non-violent means being exhausted before resorting to violence.<sup>79</sup> In the present case, the police did not issue any warning for the demonstrators in front of the Vaai Hospital before breaking up the

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<sup>73</sup> HRC, *Coleman v Australia* (Communication No. 1157/2003) UN Doc CCPR/C/87/D/1157/2003 [6].

<sup>74</sup> UN Doc. A/HRC/23/39 [49].

<sup>75</sup> *Ziliberberg v Moldova* App no 61821/00 (ECtHR, 5 February 2004) [2]; UN Doc. A/HRC/20/27 [25].

<sup>76</sup> Clarification ¶ 21.

<sup>77</sup> General comment No. 37 [23].

<sup>78</sup> *Disk and Kesk v Turkey* App no 38676/08 (ECtHR, 27 November 2012) [29]; *Ashughyan v Armenia* App no 33268/03 (ECtHR, 17 July 2008) [90]; *Barraco v France* App no 31684/05 (ECtHR, 5 March 2009) [43]; *Gun and Others v Turkey* App no 4870/02 (ECtHR, 18 June 2013) [74]; *Kudrevičius and Others v Lithuania* App no 37553/05 (ECtHR, 15 October 2015) [155] (*Kudrevičius and Others v Lithuania*).

<sup>79</sup> United Nations Human Rights Special Procedures, ‘Mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings (#COVID19 Human Rights Dispatch- Number 1: Policy and Military Use of Force in a State of Emergency)’ (OHCHR, 2 April 2020) <<https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch1.pdf>> accessed 1 January 2021; HRC ‘Concluding observations on the sixth periodic report of Morocco’ (1 December 2016) UN Doc CCPR/C/MAR/CO/6 [45]; HRC ‘Concluding observations on the initial report of Bahrain’ (15 November 2018) UN Doc CCPR/C/BHR/CO/1 [55].

assembly.<sup>80</sup> Force was employed<sup>81</sup> without first resorting to non-violent measures to disperse the assembly.

36. Second, use of water cannons and tear gas leads to an indiscriminate, wide area effect.<sup>82</sup>

The impact of the weapon used on the rights of those affected by it must be evaluated and monitored.<sup>83</sup> Additionally, indiscriminate mass arrests during an assembly are arbitrary and thus unlawful.<sup>84</sup> The use of water cannon upon the demonstrators near Vaai hospital<sup>85</sup> without any justification is unlawful as no situation warranted such an action.

37. Third, the use of military by Ized to disperse the crowd cannot be encouraged.<sup>86</sup> The

security of the citizens cannot be based on use of force paradigm but to protect and control the civilians participating in the demonstration.<sup>87</sup> Security sector vehicles were used to contain the demonstrators from multiple directions and baton-wielding officers

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<sup>80</sup> Clarification ¶ 18.

<sup>81</sup> Compromis, ¶ 20.

<sup>82</sup> General comment No. 37 [87].

<sup>83</sup> HRC ‘General Comment No. 36: Article 6, Right to life’ (3 September 2020) UN Doc CCPR/C/GC36 [14] (**General Comment No. 36**); Office of the United Nations High Commissioner for Human Rights, *Guidance on Less-Lethal Weapons in Law Enforcement* (UN Publication 2020) 13.

<sup>84</sup> HRC ‘Concluding observations on the sixth periodic report of Canada’ (13 August 2015) UN Doc CCPR/C/CAN/CO/6 [15].

<sup>85</sup> Compromis, ¶ 20.

<sup>86</sup> HRC ‘Concluding observations on the fourth periodic report of the Bolivarian Republic of Venezuela’ (14 August 2015) UN Doc CCPR/C/VEN/CO/4 [14]; ACPHR, ‘Policing Assemblies in Africa: Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa’ (ACHPR, 2017) <<https://www.achpr.org/legalinstruments/detail?id=65>> accessed 4 January 2021.

<sup>87</sup> *Montero Aranguren et al. (Detention Center of Catia) v Venezuela* IACtHR Series C No. 150 (July 5 2006) [78]; *Case of Women Victims of Sexual Torture in Atenco v Mexico* IACtHR Series C, No. 371 (November 28 2018) [167].

started arresting them.<sup>88</sup> The use of tear gas and firing of blanks into the air to disperse the crowd has caused injuries to the demonstrators.<sup>89</sup>

38. Accordingly, Xana is within the scope of protection offered by the right to peaceful protest.

### **B. Xana's conviction is a disproportionate sentence**

39. Criminalisation of the exercise of right to peaceful assembly is an unwarranted restriction on the exercise of the right to assembly.<sup>90</sup> There must not be any threat of sanction for participation in assemblies.<sup>91</sup> Non-violent conduct during a peaceful assembly cannot be criminally sanctioned with a prison sentence.<sup>92</sup> Xana has not incited or undertaken any lawless action.
40. Sanctions which are punitive and deterrent in nature and deprive individuals of their liberty even briefly so would be considered 'criminal' in nature.<sup>93</sup> Provisions which make mere participation in a protest a criminal offense must not be deployed.<sup>94</sup> The ECtHR has held that "*a person cannot be subject to sanction even at the lower end of the*

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<sup>88</sup> Compromis, ¶ 20.

<sup>89</sup> Compromis, ¶ 20

<sup>90</sup> UNHRC, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' (26 May 2018) UN Doc. A/HRC/38/34 [39]; OEA/Ser.L/V/II, Doc.49/15 [12].

<sup>91</sup> UN Special Rapporteur and Human Rights Centre of the University of Ghent, 'Third Party Intervention before the European Court of Human Rights in Mahammad Majidli v. Azerbaijan (no. 3) and three other applications November 2015' (*Human Rights Centre*) < <https://hrc.ugent.be/clinic/third-party-interventions-before-ecthr/>> accessed on 29 December 2020.

<sup>92</sup> *Kudrevičius and Others v Lithuania* [146]; *Akgöl and Göl v Turkey* App no 28495/06 (ECtHR, 17 May 2011) [43]; *Pekaslan and Others v Turkey* App no 4572/06 and 5684/06 (ECtHR, 20 March 2012) [81]; *Yılmaz Yıldız and Others v Turkey* App no 74552/01 (ECtHR, 14 October 2014) [46].

<sup>93</sup> *Kasparov and Others v Russia* [41] [45].

<sup>94</sup> OEA/Ser.L/V/II, Doc.49/15 [127]; IACHR, 'Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008' (25 February 2009) OEA/Ser.L/V/II.134 Doc. 5, Doc. 5 rev. 1, Chapter IV, [70].

*scale of disciplinary penalties for participation in a demonstration*".<sup>95</sup> This creates a chilling effect on legitimate recourse to protests.<sup>96</sup> Thus, even a suspended sentence of imprisonment<sup>97</sup> cannot be imposed upon Xana for merely participating in the demonstration.

41. Accordingly, Xana's conviction is a disproportionate sentence and the decision to convict her under Section 22 of the NSA is in violation of her rights recognised under Article 19 and 21 of ICCPR.

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<sup>95</sup> *Kudrevičius and Others v Lithuania* [149]; *Ezelin v France* [53]; *Galstyan v Armenia* [115].

<sup>96</sup> *Novikova and Others v Russia*, App no 25501/07 (ECtHR, 26 April 2016) [211].

<sup>97</sup> Clarification ¶ 22.

**III. THE DECISION TO ISSUE THE STATEMENT OF MARCH 16, 2020 BY THE MINISTRY OF DEFENSE IS VIOLATIVE OF ARTICLE 19 AND ARTICLE 21**

42. The decision to issue the statement of March 16, 2020, extending the application of Section 22 to restrict online gatherings, is violative of Article 19 and 21 as (A) it is not in conformity with law and (B) is not necessary in a democratic society.

**A. The Statement is not in conformity with law**

43. The statement extending the application of Section 22 of the NSA does not satisfy the test of legality as (i) it does not apply to online spaces and (ii) is vague and overboard.

**(i) Section 22 does not apply to online spaces**

44. For a restriction to be in conformity with law it must be grounded in domestic law<sup>98</sup> and must be strictly construed.<sup>99</sup> Where the legislations use the terms ‘means’ and ‘and includes’ in defining a term it implies that the legislature intended the definition and enumeration to be exhaustive.<sup>100</sup> This principle applies even where the two terms are separated by additional words.<sup>101</sup> Furthermore, with respect to ‘including but not limited

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<sup>98</sup> *Sunday Times v United Kingdom*, (1979) 2 EHRR 245; *Malone v United Kingdom*, (1984) 7 EHRR 14 (*Malone v United Kingdom*).

<sup>99</sup> General comment No. 34 [28].

<sup>100</sup> *P. Kasilingam v P.S.G. College of Technology*, 1995 Supp (2) SCC 348; *Gough v Gough* (1891) 2 QB 665; *Smt. S Vanitha v Dy Commr. Bengaluru Urban District & Ors* CA 3822/2020; *BHP Billiton Iron Ore Pty Ltd v National Competition Council* (2008) 236 CLR 145; [2008] HCA 45 [32] *Council of the Law Society of New South Wales v Bouzanis* [2017] NSWCA 330 [89]; *Mahalakshmi Oil Mills v State of A.P* 1989 AIR 335, 1988; *Satish Chander Ahuja v Sneha Ahuja* Civil Appeal No. 2483 of 2020; *Hamdard (Wakf) Laboratories v Dy. Labour Commissioner* (2007) 5 SCC 281; *State of West Bengal v Associated Contractors*, 2014 (10) SCALE 394; *D.A.V. College Trust & Management Society v Director of Public Instructions* (2019) 9 SCC 185.

<sup>101</sup> *Pioneer Urban Land and Infrastructure Ltd. v Union of India*, (2019) 8 SCC 416.

to' the courts have held that it limits the applicability of the provision to the types of items particularized after it.<sup>102</sup>

45. Section 22(2) of the NSA uses the word 'means' to define a public site and then qualifies the definition with as "*including public parks, public squares, public thoroughfares, and means of public transportation*".<sup>103</sup> Thus, it is *prima facie* evident that the legislative intent was to apply the restrictive provisions of Section 22 to physical gatherings only.

**(ii) The application of Section 22 to online spaces is vague and overboard**

46. Vague<sup>104</sup> and overbroad<sup>105</sup> laws fail the test of legality. Laws must be precise and their consequences foreseeable,<sup>106</sup> particularly when they are criminal in nature.<sup>107</sup> They must clearly define the instances where the restrictions are applicable and not give unfettered discretion in the hands of the authorities.<sup>108</sup> The people of Ized should be able to

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<sup>102</sup> *In re Clark*, 910 A.2d 1198, 1200 (N.H. 2006); *Horse Cave State Bank v Nolin Production Credit Ass'n*, 672 S.W.2d 66 (Ky. Ct. App. 1984); *Dennis S. Roberts v General Motors Corporation*; 138 N.H. 532 (N.H. 1994); *Town of Hooksett v Sidney Baines* 813 A.2d 474 (N.H. 2002); *In the Matter of The Liquidation of The Home Insurance Company* 2009 N.H. Lexis 22; *William Mahoney, Jr., Another v George W. Baldwin another, trustees*, 543 N.E.2d 435 (Mass. App. Ct. 1989).

<sup>103</sup> Compromis ¶ 14.

<sup>104</sup> *Jordan v DeGeorge* 341 US 223 (1951); *Gorin v United States* 312 US 19 (1940); *Keyishian v Board of Regents* 385 US 589 (1967); *Grayned v City of Rockford* 408 US 104 (1972) (***Grayned v City of Rockford***); *Jones v Opelika* 316 US 584 (1942); *Lovell v City of Griffin* 303 US 444 (1938).

<sup>105</sup> *Broadrick v Oklahoma* 413 US 601 (1973); *New York v Ferber* 458 U.S. 747, 770-73 (1982); *Zwickler v Koota* 389 US 241 (1967).

<sup>106</sup> General Comment No. 34 [25]; UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' (20 April 2010) UN Doc A/HRC/14/23 [78]; *Olafsson v Iceland* ([2017] ECHR 259) [36]; *Chauvy v France* App No 64915/01 (ECtHR, 29 June 2004) [43] (***Chauvy v France***); *Lindon, Otchakovsky-Laurens and July v France* App No 21279/02 and 36448/02 (ECtHR, 22 October 2007), [41]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993), [40]; *Ramirez v Venezuela* Case 577-05, Report No. 36/06, Inter-Am. C.H.R., OEA/Ser.L/V/II.127 Doc. 4 rev. 1 (2007). [56-57]; *Kimel v Argentina* [63]; *City of Chicago v Morales* 527 U.S. 41 (1999); *Kartar Singh v State of Punjab* 1994 3 SCC 569; *Shreya Singhal v Union of India* AIR 2015 SC 1523.

<sup>107</sup> *Kimel v Argentina* [63].

<sup>108</sup> *MM v United Kingdom* Appl. No. 24029/07 (ECtHR 13 November 2012) [193]; *Huvig v France* Appl. No. 11105/84 (ECtHR 24 April 1990) [32]; *Malone v The United Kingdom* [66]-[68]; *Rotaru v Romania* App. No 28341/95 (ECtHR, 4 May 2000) [52] & [55]; *Liberty and Others v The United Kingdom* App no. 58243/00 (ECtHR, 1 July 2008) [59]; *S. and Marper v The United Kingdom* [2008] ECHR 1581 [95].

determine from the wording of the statute what kind of acts on the internet will attract criminal sanction.<sup>109</sup>

47. The application of Section 22 to online spaces is vague as it fails to define what constitutes a gathering.<sup>110</sup> This is of particular importance to the online space as unlike physical gatherings a congregation of persons cannot be a *prima facie* determinant of whether an event constitutes a gathering. As such the lack of clarity does not allow people to regulate their conduct online<sup>111</sup> and has a chilling effect on the usage of online space.<sup>112</sup>
48. Even where significant governmental interest is involved limitations must be narrowly tailored and they cannot chill protected speech by sweeping an unnecessarily broad field.<sup>113</sup> They must be targeted at a specific objective and must not intrude upon other rights of the targeted person.<sup>114</sup>
49. A blanket restriction on all gatherings is in excess of what is necessary to achieve the purpose of controlling the spread of disinformation. By virtue of its overbroad nature, Section 22 is inherently incapable of being targeted at a specific objective. It unduly encroaches upon a broad spectrum of incidental rights such as political dissent and

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<sup>109</sup> *Jorgic v Germany* App No 74613/01 (ECtHR, 12 July 2007) [100]; *Streletz, Kessler and Krenz v Germany* App Nos 34044/96, 35532/97 and 44801/98 (ECtHR, 22 March 2001) [50]; *Cantoni v France* Application No, 45/1995/551/637 (15 November 1996) [9].

<sup>110</sup> Compromis, National Security Act, 2020, Section 22.

<sup>111</sup> *Nepomnyashchiy v Russian Federation* [7.7]; General Comment No. 37 [39].

<sup>112</sup> Oliver De Schutter, *International Human Rights Law Cases, Materials, Commentary* (Cambridge 2010) 296.

<sup>113</sup> *Grayned v City of Rockford* 408 U.S. 104 (1972); *NAACP v Alabama* 377 US 288 (1964); *NAACP v Button* 371 U.S. 415; *Cantwell v Connecticut* 310 U S 296 (1940).

<sup>114</sup> UNGA, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye' (22 May 2015) A/HRC/29/32 [35]; UNGA, 'Promotion and protection of the right to freedom of opinion and expression' (6 September 2016) A/71/373 [17].

campaigning and can be weaponised to quash dissent. Such actions have been denounced by the international community.<sup>115</sup>

### **B. The Statement is not in pursuance of a legitimate aim**

50. When a State invokes a legitimate ground for restriction of freedom of expression, it must establish a direct and immediate connection between the expression and the threat said to exist.<sup>116</sup> Further, restrictions taken to counter a public health crisis must be motivated by legitimate public health goals and should not be used simply to quash dissent.<sup>117</sup>
51. First, the government is utilizing the NIDV crisis as a pathogen of repression to stifle any dissent against the new healthcare policies.<sup>118</sup> There exists no conclusive evidence on the means by which the disease could be transmitted<sup>119</sup> and to curtail the rights of The Union on the basis of mere conjecture amounts to arbitrary usage of executive powers.
52. Second, restrictions on gatherings must be content specific<sup>120</sup> and not generic.<sup>121</sup> The statement issued by the Ministry on March 16 was for the purpose of restricting

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<sup>115</sup> Michelle Bachelet, 'COVID-19: Exceptional measures should not be cover for human rights abuses and violations' (OHCHR, 27 April 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25828&LangID=E>> accessed 2 January 2021.

<sup>116</sup> General Comment No. 34 [35].

<sup>117</sup> UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression', (23 April 2020) U.N. Doc. A/HRC/44/49; OHCHR, 'COVID-19: States should not abuse emergency measures to suppress human rights – UN experts' (OHCHR, 16 March 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>> accessed 2 January 2021.

<sup>118</sup> Compromis, ¶ 30.

<sup>119</sup> Compromis, ¶ 12.

<sup>120</sup> General comment No. 37 [38].

<sup>121</sup> UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue' (21 March 2011) UN Doc. A/HRC/17/27/Add.2 [70]; UNGA, 'Promotion and protection of the right to freedom of opinion and expression' (10 August 2011) UN Doc. A/66/290 [39].

disinformation<sup>122</sup> which is the malicious spread of false information with an intent to mislead.<sup>123</sup> By adopting the generic restriction under Section 22 to regulate the flow of information, six days after<sup>124</sup> the Unions declaration to host digital demonstrations<sup>125</sup> is a blatant attempt to stifle dissent and dialogue under the garb of securing public health.

53. Accordingly, the guidelines issued under Section 23 did not pursue a legitimate aim.

### **C. The Statement is not necessary in a democratic society**

54. The extension of Section 22 to online spaces is not necessary in a democratic society as (i) it has the effect of shrinking civic space for dissent and (ii) is not the least restrictive measure.

#### ***(i) The decision has the effect of shrinking civil space for dissent***

55. States have an obligation to ensure that the civic space is available even in the midst of public health crisis.<sup>126</sup> The internet has a very important role in the regulation and sustenance of political discourse and providing a forum for the criticism of the Government.<sup>127</sup>

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<sup>122</sup> Compromis, ¶ 27.

<sup>123</sup> Cherilyn Ireton and Julie Posetti, *Journalism, Fake News' & Disinformation Handbook for Journalism Education and Training* (UNSECO 2018) 46; NA Karlova, KE Fisher, 'A social diffusion model of misinformation and disinformation for understanding human information behaviour; Journalism' (2013) *Information Research* <[https://www.researchgate.net/publication/285954290\\_A\\_social\\_diffusion\\_model\\_of\\_misinformation\\_and\\_disinformation\\_for\\_understanding\\_human\\_information\\_behaviour](https://www.researchgate.net/publication/285954290_A_social_diffusion_model_of_misinformation_and_disinformation_for_understanding_human_information_behaviour)> accessed 2 January 2021; 'Fake News' and Disinformation: A Handbook for Journalism Education and Training' (UNESCO) <<https://en.unesco.org/fightfakenews>> accessed 2 January 2021.

<sup>124</sup> Compromis, ¶ 27.

<sup>125</sup> Compromis, ¶ 24.

<sup>126</sup> UNHRC, 'Statement on derogations from the Covenant in connection with the COVID-19 pandemic' (30 April 2020) UN Doc. CCPR/C/128/2 [2(f)].

<sup>127</sup> UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' Frank La Rue (16 May 2011) UN Doc. A/HRC/17/27 [20] Daniel Joyce, 'Internet Freedom and Human Rights' (2015) 26(2) *EJIL* <<https://academic.oup.com/ejil/article/26/2/493/423010> by

56. In situations where physical gatherings are for some reason inaccessible then the state has a positive obligation to ensure that the digital space is available to people so as to provide a platform for political discourse and criticism.<sup>128</sup> Armenia,<sup>129</sup> India,<sup>130</sup> USA,<sup>131</sup> Hong Kong,<sup>132</sup> Germany,<sup>133</sup> Indonesia<sup>134</sup> have witnessed the used of the internet for raising social and political issues in a time when physical restrictions were not possible.
57. With the invocation of Section 22 of the NSA all physical gatherings at public sites are suspended except for one location in the whole country.<sup>135</sup> CPP located in Vaai is not accessible to all 20 million residents of Ized living in other areas.<sup>136</sup> Thus, the denial of

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guest on 29 October 2020> assessed on 2 January 2021; Kitsuron Sangsuvan, 'Balancing Freedom of Speech on the Internet under International Law' (2013) 39 N.C. J. Int'l L. & Com. Reg. 701.

<sup>128</sup> Clement Voule , 'States responses to Covid 19 threat should not halt freedoms of assembly and association – UN expert on the rights to freedoms of peaceful assembly and of association' (*OHCHR*, 14 April 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>> accessed 2 January 2021.

<sup>129</sup> UNHRC, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' (17 May 2019) UN Doc. A/HRC/41/41 [11].

<sup>130</sup> Rutvi Zamare, 'From streets to tweets: Surveying the impact of online activism' (*Observer Research Foundation*, 8 September 2020) <<https://www.orfonline.org/expert-speak/streets-tweets-surveying-impact-online-activism/>> accessed 2 January 2021.

<sup>131</sup> Kalhan Rosenblatt, 'A summer of digital protest: How 2020 became the summer of activism both online and offline' (*NBC News*, 26 September 2020) <<https://www.nbcnews.com/news/us-news/summer-digital-protest-how-2020-became-summer-activism-both-online-n1241001>> accessed 2 January 2021.

<sup>132</sup> Helen Davidson 'Animal Crossing game removed from sale in China over Hong Kong democracy messages' (*The Guardian*, 14 April 2020) <<https://www.theguardian.com/world/2020/apr/14/animal-crossing-game-removed-from-sale-in-china-over-hong-kong-democracy-messages>> accessed 2 January 2021.

<sup>133</sup> Gouri Sharma, 'Covid-19 is changing the way people protest around the world' (*TRT World*, 8 April 2020) <<https://www.trtworld.com/magazine/covid-19-is-changing-the-way-people-protest-around-the-world-35229>> accessed 2 January 2021.

<sup>134</sup> Tri Indah Oktavianti, 'Online Kamisan: Activism goes digital during COVID-19 pandemic' (*Jakarta Post*, 23 April 2020) <<https://www.thejakartapost.com/news/2020/04/23/online-kamisan-activism-goes-digital-during-covid-19-pandemic.htm>> accessed on 2 January 2021.

<sup>135</sup> Comrpomis, Section 22, National Security Act, 2020.

<sup>136</sup> Comrpomis, ¶ 1.

online spaces disempowers millions of people in Ized from having a say in the political discourse of the country for over 61 days.<sup>137</sup>

**(ii) *The decision is not the least restrictive measure***

58. Blanket restrictions are valid only if the danger or disorder resulting from the gathering cannot be countered by less intrusive means.<sup>138</sup>
59. States have been encouraged to combat the spread of misinformation by disseminating accurate and scientific information while respecting freedom of expression<sup>139</sup> and using other post facto measures.<sup>140</sup>
60. Countries like the UK, India have adopted fact checking<sup>141</sup> and use of other mechanisms targeted at debunking false information and disseminating accurate information.<sup>142</sup> Similarly, South Africa too has passed an order requiring all websites on .za domain to

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<sup>137</sup> Compromis, ¶ 27.

<sup>138</sup> *Kablis v Russia* Applications nos. 48310/16 and 59663/17 (ECtHR 30 April 2019).

<sup>139</sup> WHO, 'Managing the COVID-19 infodemic: Promoting healthy behaviours and mitigating the harm from misinformation and disinformation' (*WHO*, 23 September 2020) <<https://www.who.int/news/item/23-09-2020-managing-the-covid-19-infodemic-promoting-healthy-behaviours-and-mitigating-the-harm-from-misinformation-and-disinformation>> accessed on 2 January 2021.

<sup>140</sup> WHO, 'Immunizing the public against misinformation' (*WHO*, 25 August 2020) <<https://www.who.int/news-room/feature-stories/detail/immunizing-the-public-against-misinformation>> accessed on 2 January 2021.

<sup>141</sup> Devesh Pandey, 'Coronavirus | Press Information Bureau sets up fact-check portal' (*The Hindu*, April 2 2020) <<https://www.thehindu.com/news/national/coronavirus-press-information-bureau-sets-up-fact-check-portal/article31231972.ece>> accessed 2 January 2021.

<sup>142</sup> Subcommittee on Online harm and disinformation, 'Disinformation on social media about Covid 19 to be investigated' (*UK Parliament*, 2019) <<https://committees.parliament.uk/committee/438/subcommittee-on-online-harms-and-disinformation/news/145761/disinformation-and-misinformation-on-social-media-about-covid19-to-be-investigated/>> accessed 17 December 2020; Anumeha Chaturvedi, 'Govt launches chatbot on WhatsApp to create awareness about coronavirus, curb misinformation' (*Economic Times*, 22 March 2020) <<https://economictimes.indiatimes.com/tech/internet/govt-launches-chatbot-on-whatsapp-to-create-awareness-about-coronavirus-curb-misinformation/articleshow/74750648.cms>> accessed on 2 January 2021; 'Coronavirus: Fake news crackdown by UK government' (*BBC News*, 29 March 2020) <<https://www.bbc.com/news/technology-52086284>> accessed 2 January 2021.

host a landing page linking to the official coronavirus response page.<sup>143</sup> Countries have also allied with social media platforms to promote official information and guidelines and takedown content which is false.<sup>144</sup> Other technical measures such as flagging, suspension etc. are also available to control the spread of misinformation on social media sites.<sup>145</sup>

61. Accordingly, the extension of Section 22 to online spaces is not necessary in a democratic society.

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<sup>143</sup> Julie Posetti and Kalina Bontcheva, 'Disinfodemic: Deciphering COVID-19 disinformation' (UNESCO 2020) Vol. 2.

<sup>144</sup> Cabinet Office, 'Government launches Coronavirus Information Service on WhatsApp' (*UK Government*, 25 March 2020) <<https://www.gov.uk/government/news/government-launches-coronavirus-information-service-on-whatsapp>> accessed 2 January 2021; ANI, 'WhatsApp 'Namaste' on '9013151515' and get coronavirus facts instantly: PM Modi' (*Economic Times*, 25 March 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/whatsapp-namaste-on-9013151515-and-get-coronavirus-facts-instantly-pm-modi/videoshow/74816014.cms>> accessed January 2 2021; Ivan Mehta, 'World Health Organization's WhatsApp bot texts you coronavirus facts' (*The Next Web*) <<https://thenextweb.com/apps/2020/03/20/world-health-organizations-whatsapp-bot-texts-you-coronavirus-facts/>> accessed 2 January 2021; Tanya Chen, 'Instagram Is Trying To Reroute People Clicking Into The #Coronavirus Hashtag To More Credible Sources' (Buzzfeed News, 11 February 2020) <<https://www.buzzfeednews.com/article/tanyachen/instagram-coronavirus-cdc-warning>> accessed 2 January 2021.

<sup>145</sup> Kari Paul, 'Here are all the steps social media made to combat misinformation. Will it be enough?' (*The Guardian*, 30 October 2020) <<https://www.theguardian.com/technology/2020/oct/29/here-are-all-the-steps-social-media-made-to-combat-misinformation-will-it-be-enough>> accessed on 2 January 2021.

**IV. IZED'S DECISION TO ISSUE GUIDELINES UNDER SECTION 23 OF THE NATIONAL SECURITY ACT VIOLATED THE SOCIAL DEMOCRATIC WORKERS' UNION'S RIGHTS RECOGNISED BY ARTICLE 19 OF THE ICCPR**

62. Freedom of speech and expression serves as the cornerstone of modern democratic societies, and it promotes transparency and accountability in governance.<sup>146</sup> The guidelines issued under Section 23 do not fulfil the three-part test of the ICCPR adumbrated above.

**A. The guidelines issued under Section 23 are not prescribed by law**

63. The guidelines under Section 23 are (i) vague and overbroad and (ii) arbitrary and unreasonable.

***(i) The guidelines are vague and overbroad***

65. Based on the 'overbreadth principle' if a statute's language is so broad that the statute's sanctions may unnecessarily apply to conduct that the state is not entitled to regulate, it is overbroad.<sup>147</sup> Restrictions must not limit speech in a wide or untargeted way, or go beyond the scope of harmful speech and rule out legitimate speech.<sup>148</sup>

66. The guidelines under Section 23 were overbroad because they prohibited the publication of any opinion with respect to NIDV without prior authorization from the Ministry of

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<sup>146</sup> General Comment No. 34 [3].

<sup>147</sup> *Thornhill v Alabama*, 310 U.S. 88, 97 (1939); *Schwartzmiller v Gardner*, 752 F.2d 1341, 1346 (9th Cir. 1984); *Vill. of Hoffman Estates v Flipside, Hoffman Estates, Inc.*, 455 U.S. 489,494 (1982); *Brockett v Spokane Arcades, Inc.*, 472 U.S. 491,503 (1985); *New York v Ferber* 458 U.S. 747 (1982).

<sup>148</sup> Article 19, 'The Camden Principles of Freedom of Expression and Equality' (Article 19, April 2009) <<http://www.refworld.org/docid/4b5826fd2.html>> accessed 2 January 2021.

Health.<sup>149</sup> This would rule out legitimate speech in the form of discussion of the government's policies and would effectively prevent any criticism of the government with respect to NIDV, impeding free speech and compromising democratic process.<sup>150</sup>

**(ii) *The guidelines are arbitrary and unreasonable***

67. Restrictions on expression must not restrict speech via prior censorship.<sup>151</sup> Such laws are invalid<sup>152</sup> because they impose undue restrictions on the 'free circulation of ideas and opinions.'<sup>153</sup> This could lead to a parallel epidemic of authoritarian and repressive measures following close on the heels of a health epidemic.<sup>154</sup> The guidelines under Section 23, requiring 'prior authorization' from the Ministry of Health, obstructs free speech in Ized because it restricts the Union from exercising their role as the public watchdog of Netizens.
68. Vague prohibitions of disinformation effectively empower government officials with the ability to determine the truthfulness or falsity of content in the public and political

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<sup>149</sup> Compromis, ¶ 27.

<sup>150</sup> Compromis, ¶ 30.

<sup>151</sup> American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 (ACHR) art 12(3); Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2); Organization for Security and Co-operation in Europe, 'Joint Declaration of Freedom of Expression and Elections in the Digital Age' (OSCE, 30 April 2020) < [https://www.osce.org/files/f/documents/9/8/451150\\_0.pdf](https://www.osce.org/files/f/documents/9/8/451150_0.pdf)> accessed 2 January 2021; W Blackstone, *Commentaries on the Law of England* (1765).

<sup>152</sup> *Near v Minnesota*, 283 U.S. 697 (1931); *Rechtbank Brussel (Kort Ged.)*, Case of 22 Aug. 1991; *VFslg* 12394/1990.

<sup>153</sup> IACHR, 'Inter-American Declaration of Principles on Freedom of Expression' (20 October 2000) [5]; *Ricardo Canese v Paraguay* [95].

<sup>154</sup> UNHRC, 'Disease pandemics and the freedom of opinion and expression' (23 April 2020) UN Doc. A/HRC/44/49 [5]; Selam Gebrekidan, 'For Autocrats, and Others, Coronavirus Is a Chance to Grab Even More Power' (New York Times, 14 April 2020) < <https://www.nytimes.com/2020/03/30/world/europe/coronavirus-governments-power.html>> accessed 2 January 2021.

domain.<sup>155</sup> Hence, the application of section 23 to restrict any publication in relation to the NIDV exceeds the scope of this law and grants unfettered power to the government to undermine public debate and the free flow of information.<sup>156</sup> This will tantamount to denying the Netizens their right to information<sup>157</sup> which allows them to scrutinise the actions of a government.<sup>158</sup>

69. Accordingly, the guidelines issued under section 23 are not prescribed by law.

**B. The Guidelines issued under Section 23 are not in pursuance of a legitimate aim**

70. As adumbrated above,<sup>159</sup> the State's efforts to control the flow of information are not motivated by legitimate public health goals.

71. Accordingly, the guidelines under Section 23 are not in pursuance of a legitimate aim

**C. The Guidelines issued under Section 23 are not necessary in a democratic society**

72. The guidelines under Section 23 are not necessary in a democratic society as they (i) cast a chilling effect on freedom of expression and (ii) are not proportional.

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<sup>155</sup> United Nations Human Rights Special Procedures, 'Freedom of Expression and Elections in the Digital Age, Research Paper 1/2019' (OHCHR, June 2019) <<https://www.ohchr.org/Documents/Issues/Opinion/ElectionsReportDigitalAge.pdf>> accessed 2 January 2021.

<sup>156</sup> Compromis, ¶ 30.

<sup>157</sup> African Charter on Human and Peoples' Rights, art. 9; American Convention on Human Rights, art. 13; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 10; Rio Declaration on Environment and Development, principle 10; United Nations Convention against Corruption, Art. 13.

<sup>158</sup> Article 19, 'The Public's Right to Know: Principles on Right to Information Legislation' (*Article 19*, 2016) <[https://www.article19.org/data/files/RTI\\_Principles\\_Updated\\_EN.pdf](https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf)> accessed 3 January 2021.

<sup>159</sup> Arguments [50] & [51].

*(i) The guidelines cast a chilling effect on freedom of expression*

73. First, disinformation presents a danger to democracies and undermines people's right to receive and impart information.<sup>160</sup> However, any attempts to criminalise information relating to the disease outbreak may create distrust in institutional information, delay access to reliable information and have a chilling effect on freedom of expression.<sup>161</sup>
74. Applications of fake news<sup>162</sup> restrictions during a disease outbreak have been utilized as a weapon against critics and dissidents, in countries such as Egypt,<sup>163</sup> Singapore,<sup>164</sup> Thailand,<sup>165</sup> Cambodia,<sup>166</sup> Turkey,<sup>167</sup> and Azerbaijan<sup>168</sup> which have been previously

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<sup>160</sup> World Health Organization, *Managing Epidemics: Key Facts about Major Deadly Diseases* (Geneva, 2018) [34].

<sup>161</sup> UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression', (23 April 2020) U.N. Doc. A/HRC/44/49 [42]; OHCHR, 'COVID-19: States should not abuse emergency measures to suppress human rights – UN experts' (OHCHR, 16 March 2020). <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>> accessed 2 January 2021.

<sup>162</sup> UNHRC, 'Concluding observations of the Human Rights Committee – Cameroon' (1999) UN Doc. CCPR/C/79/Add.116 [24]; Organization for Security and Co-operation in Europe 'Joint Declaration On Freedom Of Expression And "Fake News", Disinformation And Propaganda (2017) (OSCE, 3 March 2017) <<https://www.osce.org/files/f/documents/6/8/302796.pdf>> accessed 2 January 2021; *United States v Alvarez* 132 US 2544, 2545 (2012); Damian Tambini, 'Fake news: public policy responses' (LSE Research Online, 7 April 2017) <[http://eprints.lse.ac.uk/73015/1/LSE%20MPP%20Policy%20Brief%20%20-%20Fake%20news\\_final.pdf](http://eprints.lse.ac.uk/73015/1/LSE%20MPP%20Policy%20Brief%20%20-%20Fake%20news_final.pdf)> accessed 2 January 2021.

<sup>163</sup> Michael, Safi 'Egypt forces Guardian journalist to leave after coronavirus story' (*The Guardian* 26 March 2020) <<https://www.theguardian.com/world/2020/mar/26/egypt-forces-guardian-journalist-leave-coronavirus-story-ruth-michaelson>> accessed 2 January 2021.

<sup>164</sup> Shibani Mahtani, 'Singapore introduced tough laws against fake news. Coronavirus has put them to the test' (*The Washington Post* 16 March 2020) <[https://www.washingtonpost.com/world/asia\\_pacific/exploiting-fake-news-laws-singapore-targets-tech-firms-over-coronavirus-falsehoods/2020/03/16/a49d6aa0-5f8f-11ea-ac50-18701e14e06d\\_story.html](https://www.washingtonpost.com/world/asia_pacific/exploiting-fake-news-laws-singapore-targets-tech-firms-over-coronavirus-falsehoods/2020/03/16/a49d6aa0-5f8f-11ea-ac50-18701e14e06d_story.html)> accessed 2 January 2021.

<sup>165</sup> 'Thailand: COVID-19 Clampdown on Free Speech' (*Human Rights Watch* 25 March 2020) <<https://www.hrw.org/news/2020/03/25/thailand-covid-19-clampdown-free-speech>> accessed 2 January 2021.

<sup>166</sup> 'Cambodia: COVID-19 Clampdown on Free Speech' (*Human Rights Watch* 24 March 2020) <[https://www.hrw.org/news/2020/03/24/cambodia-covid-19-clampdown-free-speech?utm\\_source=dailybrief&utm\\_medium=email&utm\\_campaign=DailyBrief2020Mar24&utm\\_term=DailyNewsBrief](https://www.hrw.org/news/2020/03/24/cambodia-covid-19-clampdown-free-speech?utm_source=dailybrief&utm_medium=email&utm_campaign=DailyBrief2020Mar24&utm_term=DailyNewsBrief)> accessed 2 January 2021.

<sup>167</sup> 'Turkey detains 19 people over 'provocative' coronavirus posts' (*Reuters* 17 March 2020) <<https://www.reuters.com/article/us-health-coronavirus-turkey/turkey-detains-19-people-over-provocative-coronavirus-posts-idUSKBN2140T9>> accessed 2 January 2021.

taken to task for human rights violations.<sup>169</sup> Similar provisions in Canada,<sup>170</sup> Antigua and Barbuda,<sup>171</sup> Zimbabwe,<sup>172</sup> Uganda,<sup>173</sup> and Zambia<sup>174</sup> have also been struck down on the same ground. Thus, general prohibitions on the dissemination of information based on vague and ambiguous ideas, such as ‘fake news’ are incompatible with human rights law and should be abolished.<sup>175</sup>

75. Hence, the government of Ized cannot restrict the Union’s right of free speech specifically in times of a health crisis when there is no expert consensus on the means of transmission of the virus under the pretext of disinformation.<sup>176</sup> Such a chilling effect can be especially problematic as it will prevent the influx of precise and accurate information in relation to NIDV.
76. Second, protecting whistle-blowers<sup>177</sup> is crucial to exposing serious errors and ensuring that such errors are rectified.<sup>178</sup> Authoritarian regimes like China<sup>179</sup> and Russia<sup>180</sup> have

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<sup>168</sup> ‘Azerbaijan's Coronavirus Disinformation Law Could Curb Press Freedom, OSCE Says’ (*RFE/RL* 25 March 2020) <<https://www.rferl.org/a/azerbaijan-s-coronavirus-disinformation-law-could-curb-press-freedom-osce-says/30509266.html>> accessed 2 January 2021.

<sup>169</sup> David Kaye, 'United Nations Special Rapporteur on the right to freedom of opinion and expression David Kaye Visit to Ethiopia, 2-9 December 2019 End of mission statement' (*OHCHR*, 9th December 2019) <[www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25402&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25402&LangID=E)> accessed 2 January 2021

<sup>170</sup> *R v Zundel* [1992] 2 SCR 747 (*R v Zundel*).

<sup>171</sup> *Hector v Attorney General of Antigua and Barbuda* [1990] 2 AC 312.

<sup>172</sup> *Chavunduka and Anor v Minister of Home Affairs and Anor* 2000 (1) ZLR 571 (S).

<sup>173</sup> *Charles Onyango Obbo and Andrew Mujuni Mwenda v Attorney General* (2004) AHRLR 256.

<sup>174</sup> *Chipenzi v The People* HPR/03/2014.

<sup>175</sup> Organization for Security and Co-operation in Europe ‘Joint Declaration On Freedom Of Expression And “Fake News”, Disinformation And Propaganda (2017) (OSCE, 3 March 2017) <<https://www.osce.org/files/f/documents/6/8/302796.pdf>> accessed 2 January 2021.

<sup>176</sup> Compromis, ¶ 12.

<sup>177</sup> *Guja v Moldova*, App no 14277/04 (ECtHR 12 February 2008) [72]; *Heinisch v Germany*, Application No. 28274/08 (ECtHR 21 July 2011); *Matúz v Hungary*, Application No. 73571/10 [2014] ECHR 1112.

imposed blanket bans on health professionals to silence whistle-blowers about their faulty response to COVID-19 which had created a chilling effect on their freedom to distribute knowledge and truth without restriction.<sup>181</sup>

77. In the present case, the state healthcare workers are unwilling to come forward and publish their findings as they are under pressure from the government to maintain that the virus could be transmitted through mosquitos.<sup>182</sup> They fear that they would lose their employment during the government's healthcare reform process if they publicly disclosed their opinion.<sup>183</sup> Thus, a chilling effect is cast on their freedom to distribute their export opinion without any impediments.

***(ii) The guidelines are not proportional***

78. Any actions taken to stop the spread of false information must be proportionate.<sup>184</sup>

79. First, as a general rule, restrictions in the form of prior restraints are an extreme and disproportionate measure and call for the most careful scrutiny on the part of the Court<sup>185</sup>

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<sup>178</sup> WHO, 'Whistleblowing and protection against retaliation' (*WHO*, ) < [https://www.who.int/docs/default-source/documents/ethics/whistleblowing-and-protection-against-retaliation-pamphlet-en.pdf?sfvrsn=7e6cc69\\_2#:~:text=The%20WHO%20policy%20on%20Whistleblowing,of%20retaliation%20as%20a%20result.&text=Sexual%20exploitation%20and%20abuse.&text=%2D%20address%20wrongdoing%20by%20taking%20disciplinary%20action%20as%20appropriate.](https://www.who.int/docs/default-source/documents/ethics/whistleblowing-and-protection-against-retaliation-pamphlet-en.pdf?sfvrsn=7e6cc69_2#:~:text=The%20WHO%20policy%20on%20Whistleblowing,of%20retaliation%20as%20a%20result.&text=Sexual%20exploitation%20and%20abuse.&text=%2D%20address%20wrongdoing%20by%20taking%20disciplinary%20action%20as%20appropriate.)> accessed 2 January 2021; Marko Milanovic, Viral Misinformation and the Freedom of Expression: Part I (*EJIL Talk*, 13 April 2020) <<https://www.ejiltalk.org/viral-misinformation-and-the-freedom-of-expression-part-i/>> accessed 2 January 2021.

<sup>179</sup> 'Li Wenliang: Coronavirus death of Wuhan doctor sparks anger' (*BBC* 7 February 2020) <<https://www.bbc.com/news/world-asia-china-51409801>> accessed on 30 October 2020.

<sup>180</sup> 'Russian Doctor Detained After Challenging Virus Figures' (*The New York Times* 3 April 2020) <<https://www.nytimes.com/2020/04/03/world/europe/russian-virus-doctor-detained.html>>.

<sup>181</sup> *Kula v Turkey*, application No. 20233/06 (Judgment, 19 June 2019) [38].

<sup>182</sup> *Compromis*, ¶ 26.

<sup>183</sup> *Compromis*, ¶ 26.

<sup>184</sup> 'Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19' (OHCHR, 3 June 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25920>> accessed 2 January 2021.

Further, national authorities have only a limited margin of appreciation to decide whether there is a need to take such measures.<sup>186</sup>

80. Governments must instead develop policies and responses to the disease outbreak that embrace freedom of expression and access to information similar to Democratic Republic of Congo that created a WhatsApp tip line amid the Ebola outbreak to field misinformation about the disease.<sup>187</sup>
81. However, the Government of Ized instead took the most intrusive measure possible – prohibiting the publication of any opinion with respect to NIDV without prior authorisation.<sup>188</sup> The Union, a trade union with over 1000 members including state healthcare workers, is being deprived from publishing its weekly magazine called ‘Unite’ in relation to NIDV.<sup>189</sup> This has the effect of depriving the public of valuable information about the disease by medical experts considering the wide reach of the magazine.
82. Second, WHO identified the most suitable method for management of rumours in relation to COVID-19, which involves “*listening to such misinformation and correcting examples of it in appropriate ways without delay.*”<sup>190</sup> Moreover, the International

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<sup>185</sup> *Chauvy v France* (2005) 41 EHRR 29; *Társaság a Szabadságjogokért v Hungary*, [2009] ECHR 618; *Gawęda v Poland*, (2004) 39 EHRR 4; *Observer and Guardian v the United Kingdom*, 26 November 1991 Series A No. 216, 14 EHRR 153, [60] (*Observer and Guardian*).

<sup>186</sup> *Editions Plon v France*, 42 Eur. H.R. Rep. 36 (2006).

<sup>187</sup> ‘Fighting Ebola is hard. In Congo, fake news makes it harder’ (*Science Magazine* 14 January 2019) <<https://www.sciencemag.org/news/2019/01/fighting-ebola-hard-congo-fake-news-makes-it-harder>> accessed 2 January 2021.

<sup>188</sup> *Compromis*, ¶ 27.

<sup>189</sup> *Compromis*, ¶ 7.

<sup>190</sup> World Health Organization, *Managing Epidemics: Key Facts about Major Deadly Diseases* (Geneva, 2018) 34.

Health Regulations mandate the implementation of global public health policies with full respect for the dignity, human rights and fundamental freedoms of persons.<sup>191</sup>

83. Approaches to disinformation that rely on prior censorship and criminal sanctions should be replaced with those emphasising media literacy and regulation<sup>192</sup> similar to countries such as Finland,<sup>193</sup> Canada,<sup>194</sup> and Kenya.<sup>195</sup> Hence, the State's prior censorship of any information related to NIDV is not proportionate as it prevents the spread of crucial information to the Netizens instead of correcting the existing rumours with reliable information.
84. Third, no time limit for approval of publication in relation to NIDV is specified<sup>196</sup> and this measure is disproportionate because news is a perishable commodity and to delay its publication deprives it of all its value and interest.<sup>197</sup>
85. Fourth, while pecuniary damage may be prescribed, excessive damage can be disproportionate and cause a chilling effect.<sup>198</sup> In the present case, the fine prescribed of

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<sup>191</sup> UNHRC, 'Disease pandemics and the freedom of opinion and expression' (23 April 2020) UN Doc. A/HRC/44/49 [8]; International Health Regulations (2005), art. 3 (1); 'Managing the COVID-19 infodemic: Promoting healthy behaviours and mitigating the harm from misinformation and disinformation' (*WHO*, 23 September 2020) <<https://www.who.int/news/item/23-09-2020-managing-the-covid-19-infodemic-promoting-healthy-behaviours-and-mitigating-the-harm-from-misinformation-and-disinformation>> accessed on 2 January 2021; WHO, 'Immunizing the public against misinformation' (*WHO*, 25 August 2020) <<https://www.who.int/news-room/feature-stories/detail/immunizing-the-public-against-misinformation>> accessed on 2 January 2021.

<sup>192</sup> UNHRC, 'Disease pandemics and the freedom of opinion and expression' (23 April 2020) UN Doc. A/HRC/44/49 [47].

<sup>193</sup> 'Finland is winning the war on fake news. What it's learned may be crucial to Western democracy' (*CNN* 2019) <<https://edition.cnn.com/interactive/2019/05/europe/finland-fake-news-intl/>> accessed 2 January 2021.

<sup>194</sup> *R v Zundel* 731.

<sup>195</sup> US Embassy, 'Ambassador Godec and U.S. Embassy Counter Fake News with Media Literacy Campaign' (US Embassy in Kenya, 14 March 2018) <<https://ke.usembassy.gov/ambassador-godec-u-s-embassy-counter-fake-news-media-literacy-campaign/>> accessed 2 January 2021.

<sup>196</sup> Clarification ¶ 9.

<sup>197</sup> *Observer and Guardian* [60].

USD 2,000<sup>199</sup> for failure to comply with the guidelines is excessive and will cast a chilling effect on free speech in Ized.

86. Accordingly, the guidelines issued under Section 23 are not necessary in a democratic society.

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<sup>198</sup> Article 19, ‘Prohibiting incitement to discrimination, hostility, and violence’ (*Article 19*, December 2012) <<https://www.refworld.org/pdfid/50bf56ee2.pdf>> accessed 2 January 2021.

<sup>199</sup> Compromis, National Security Act, 2020, Section 23(2).

## PRAYER

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For the foregoing reasons, the Applicants respectfully request this Court to adjudge and to declare that:

- I. Ized's decision to enact Section 22 of the NSA, and to designate the CPP as the sole public site to hold public gatherings, violates Xana's and the Social Democratic Workers Union's rights recognised by Articles 19 and 21 of the ICCPR.
- II. Ized's decision to convict Xana under Section 22 of the NSA violates her rights recognised by Articles 19 and 21 of the ICCPR.
- III. Ized's decision to issue the statement of 16 March violates the Social Democratic Workers Union's rights recognised by Articles 19 and 21 of the ICCPR.
- IV. Ized's decision to issue guidelines under Section 23 of the NSA on 16 March violates the Social Democratic Workers Union's rights recognised by Article 19 of the ICCPR.

*All of which is respectfully submitted.*

*On Behalf of the Applicants*

**COUNSEL FOR APPLICANTS**