

TEAM CODE: 213R

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

XANA AND THE SOCIAL DEMOCRATIC WORKERS UNION

(APPLICANTS)

v.

STATE OF IZED

(RESPONDENTS)

MEMORIAL FOR THE RESPONDENTS

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LIST OF ABBREVIATIONS

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

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TREATIES:

American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978).....	1, 7
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International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171	1, 2, 7
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UNITED NATIONS DOCUMENTS:

‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN4/1984/4	2, 8, 14
---	----------

CESCR, ‘General Comment No. 14: The Right to the Highest Attainable Standard of Health’ UN Doc. E/C.12/2000/4.....	8
HRC ‘Statement on Derogations from the Covenant in Connection with the COVID-19 Pandemic’ (24 April 2020) UN Doc CCPR/C/128/2.....	1, 2
HRC, ‘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.....	20, 28
HRC, 'Concluding observations on Equatorial Guinea in the absence of its initial report' (22 August 2019) UN Doc. CCPR/C/GNQ/CO/1	10
HRC, 'Concluding observations on the second periodic report of Benin' (23 November 2015) UN Doc. CCPR/C/BEN/CO/2.....	13
HRC ‘General Comment No 29: Article 4, States of Emergency’ (31 August 2001) UN Doc CCPR/C/21/Rev.1/Add.11	2, 4, 9
HRC ‘General Comment No 34: Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34	passim
HRC 'Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective' (5 May 2017) UN Doc. A/HRC/35/9	19
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	19
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	13

UNHRC 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai' (27 April 2015) UN Doc. A/HRC/29/25/Add.1	19
UNHRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (17 April 2013) UN Doc A/HRC/23/40	5
UNHRC, 'The promotion and protection of human rights in the context of peaceful protests' (29 June 2018) UN Doc A/HRC/38/L.16.....	13
UNHRC, 'Annual report of the United Nations High Commissioner for Human Rights' (11 January 2013) UN Doc. A/HRC/22/17/Add.4	12
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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	19
UNHRC, '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	19
UNHRC, 'Rights to freedom of peaceful assembly and of association' (17 May 2019) UN Doc. A/HRC/41/41.....	18

UNGA 'Promotion and protection of the right to freedom of opinion and expression' (6 September 2016) UN Doc. A/71/373	23
UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression David Kaye' (22 May 2015) UN Doc. A/HRC/29/32	23
UNGA, 'Human Rights Council Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression - Frank La Rue' (2010) A/HRC/14/23	4
UNGA, 'Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (2013) UN Doc. A/HRC/23/40	5
HRC 'General comment No. 37, Article 21, Right of Peaceful Assembly' (17 September 2020) UN Doc CCPR/C/GC/37	11, 13, 17
HRC 'General Comment No. 6, Article 6, Right to Life' (30 April 1982) UN Doc HRI/GEN/1/Rev.9.....	19
HRC 'General comment no. 36, Article 6 (Right to Life)' (3 September 2019) UN Doc. CCPR/C/GC/36	19
HRC, 'Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia' (17 August 2015) UN Doc. CCPR/C/MKD/CO/3	14

CASES FROM THE HRC:

<i>Alekseev v Russian Federation</i> (Communication No. 1873/2009) CCPR/C/109/D/1873/2009	10
---	----

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<i>Malcolm Ross v Canada</i> (Communication No. 736/1997) UN Doc CCPR/C/70/D/736/1997	5
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--	------

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<i>Colorado Common Cause v Meyer</i> 731 P.2d 744 (Colo. App.1986)	18
<i>Commercial Taxation Officer, Udaipur v Rajasthan Taxchem Ltd.</i> 2008[12] S.T.R.660;	
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<i>Commissioner of Central Excise v M/s. Detergents India Ltd.</i> (2015) 7 SCC 198	18

<i>Elliott v Commissioner of Police</i> [1997] 3 LRC 15	14
<i>GJ Fernandez v State of Mysore & Ors.</i> AIR 1967 SC 1753	25
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The Delhi Epidemic Diseases, COVID-19 Regulations, 2020 26, 27

ARTICLES:

Ahmed Siddiqui MY, Mushtaq K, Mohamed MFH, et al. 'Social Media Misinformation- An Epidemic within the COVID-19 Pandemic.' (2020) *The American Journal of Tropical Medicine and Hygiene*. <DOI: 10.4269/ajtmh.20-0592.> 29

Caitlin E. Borgmann, 'Abortion Exceptionalism and Undue Burden Preemption' (2014) 71 *WASH. & LEE L. REV.* 30

Caroline Mala Corbin, 'Abortion Distortions' (2014) 71 *WASH. & LEE L. REV.*..... 30

D Freeman, F Waite, L Rosebrock, A Petit, C Causier, A East, et al. 'Coronavirus conspiracy beliefs, mistrust, and compliance with government guidelines in England.' (2020) *Psychol. Med.* <doi: 10.1017/S0033291720001890> accessed on 3 January 2021 20

Fabio Tagliabue, Luca Galassi, Pierpaolo Mariani, 'The "Pandemic" of Disinformation in COVID-19' (2020) *SN Compr Clin Med.* 0<
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7395797/>> accessed on 3 January 2021 30

Fang Jin, Wei Wang, Liang Zhao, Edward Dougherty, Yang Cao, Chang-Tien Lu, and Naren Ramakrishnan, 'Misinformation Propagation in the Age of Twitter' (Virginia Tech, December 2014) < <https://people.cs.vt.edu/naren/papers/Ebola-rumors.pdf>> 28

G Pennycook, T Cannon, and DG Rand, 'Prior exposure increases perceived accuracy of fake news'. (2018) *J. Exp. Psychol.* 1865 20

H Allcott., L Boxell, J Conway, C Gentzkow M Thaler and DY Yang ‘Polarization and Public Health: Partisan Differences in Social Distancing during the Coronavirus Pandemic (No. 26946)’ (<i>National Bureau of Economic Research</i> , 2020) < https://www.nber.org/papers/w26946 >.....	22
Janneke Gerrards, ‘How to improve the necessity test of the European Court of Human Rights’ (2013) <i>EJIL</i> < https://academic.oup.com/icon/article/11/2/466/753628 > accessed 2 January 2021	23
JE Uscinski, AM Enders, C KLoftstad, M Seelig, J Funchion, C Everett, et al. ‘Why do people believe COVID-19 conspiracy theories?’ (2020) <i>HKS Misinform. Rev.</i> <doi: 10.37016/mr-2020-015>	20
Jemimah Steinfeld, ‘Disease Control’ (2020) <i>Index on Censorship</i> < https://www.eurozine.com/disease-control/ >	26
R Imhoff and P Lamberty ‘A bioweapon or a hoax? The link between distinct conspiracy beliefs about the Coronavirus disease (COVID-19) outbreak and pandemic behavior’ (2020) <i>Sage Journals</i> <doi: 10.1177/1948550620934692>	22
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SC Greer, ‘The exceptions to Articles 8 to 11 of the European Convention on Human Rights’ (1997) <i>Council of Europe Publishing</i> < <a 477="" 522="" 900="" 919"="" data-label="Page-Footer" href="https://research-</td> <td></td> </tr> </table> </div> <div data-bbox="> <p>xviii</p> 	

information.bris.ac.uk/en/publications/the-exceptions-to-articles-8-to-11-of-the-european-convention-on->	6
T A O'Donnell, 'The Margin of Appreciation Doctrine: Standards in the Jurisprudence of the European Court of Human Rights' (1982) 4(4) <i>Human Rights Quarterly</i>	4
Ullrich K. H. Ecker, Stephan Lewandowsky, David T. W. Tang, 'Explicit warnings reduce but do not eliminate the continued influence of misinformation' (2010) <i>Mm. Cogn.</i> 1087	24
'Venezuela's Supreme Court Upholds Prior Censorship & (and) Insult Laws' (2003) 1 <i>Int'l J Civ Soc'y</i> L 79	27

BOOKS AND COMMENTARIES:

GP Singh J, <i>Principles of Statutory Interpretation</i> (2010).....	18
K Partsch, 'Freedom of Conscience and Expression, and Political Freedoms' , in L Henkin (ed), <i>The International Bill of Rights</i> (Columbia University Press , 1981)	17
Manfred Nowak, <i>UN Covenant on Civil and Political Rights: CCPR Commentary</i> (NP Engel, 2005).....	17, 18
MJ Bossuyt, <i>Guide to the 'Travaux Preparatoires' of the International Covenant on Civil and Political Rights</i> (Kluwer Academic Publishers, Netherlands, 1987).....	2
Sarah Joseph and Melissa Castan, <i>The international Covenant on Civil and Political Rights: cases, materials, and commentary</i> (3rd. ed. OUP 2013).....	15
World Health Organization, <i>Managing Epidemics: Key Facts about Major Deadly Diseases</i> (Geneva, 2018).....	28, 31

MATERIALS FROM THE INTERNET:

‘During this coronavirus pandemic, ‘fake news’ is putting lives at risk: UNESCO’ (*UN News* 13 April 2020) <<https://news.un.org/en/story/2020/04/1061592>> accessed on 30 October 2020..... 28

‘Iran: Over 700 dead after drinking alcohol to cure coronavirus’ (*Aljazeera* 27 April 2020) <<https://www.aljazeera.com/news/2020/04/27/iran-over-700-dead-after-drinking-alcohol-to-cure-coronavirus/>> accessed 2 January 2021 29

‘Russia’s Health Ministry bans doctors from making public statements about the coronavirus’ (*Meduza* 28 October 2020) <https://meduza.io/amp/en/news/2020/10/28/russia-s-health-ministry-bans-doctors-from-making-public-statements-about-the-coronavirus?__twitter_impression=true> accessed on 30 October 2020..... 26

‘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 on 30 October 2020 32

‘WHO Coronavirus Disease (COVID-19) Dashboard’ (*WHO*) <<https://covid19.who.int/>> accessed 22 December 2020. 3

Akhileshwari Reddy, 'The Pandemic Is Amplifying India's Fake News Crisis' (*The Wire*, 2 April 2020) <<https://thewire.in/media/medical-fake-news-coronavirus>> accessed on 2 January 2021 20

Alistair Coleman 'Hundreds dead' because of Covid-19 misinformation' (*BBC News*, 12 August 2020) <<https://www.bbc.com/news/world-53755067>> accessed 2 January 2021 22

Angela Giuffrida, 'Italy's Five Star Movement blamed for surge in measles cases' (The Guardian, 23 March 2017) <<https://www.theguardian.com/world/2017/mar/23/italys-five-star-movement-blamed-for-surge-in-measles-cases>> accessed 2 January 2021 21

Arunabh Saikia, 'The other virus: Hate crimes against India's Muslims are spreading with Covid-19' (*Scroll*, April 8 2020) <<https://scroll.in/article/958543/the-other-virus-hate-crimes-against-indias-muslims-are-spreading-with-covid-19>> accessed on 2 January 2021 21

CDC, 'Responding to Rumors and Misinformation' (*Centre for Disease Control*) <https://emergency.cdc.gov/cerc/cerccorner/article_072216.asp> accessed on 2 January 2021 28, 31

Centers for Disease Control and Prevention, 'CDC media statement: measles cases in the U.S. are highest since measles was eliminated in 2000 [press release]'. (*Centre for Disease Control*, 25 April 2019) <<https://www.cdc.gov/media/releases/2019/s0424-highest-measles-cases-since-elimination.html>> accessed February 11, 2020. 29

Chris Baynes, 'Coronavirus: Patients refusing treatment because of fake news on social media, NHS staff warn' (*The Independent*, 5 June 2020) <<https://www.independent.co.uk/news/uk/home-news/coronavirus-fake-news-conspiracy-theories-antivax-5g-facebook-twitter-a9549831.html>> accessed 31 December 2020 20

COVID-19 Civic Freedom Tracker' (*ICNL*)..... 3

David P Fidler, 'Disinformation and Disease: Social Media and the Ebola Epidemic in the Democratic Republic of the Congo' (*Council on Foreign Relations*, 20 August 2019) <<https://www.cfr.org/blog/disinformation-and-disease-social-media-and-ebola-epidemic-democratic-republic-congo>> accessed 2 January 2021 21

Francesca Bernasconi, 'Fontana: "Il coronavirus è poco più di una normale influenza"' (*Gironale Politica*, 25 March 2020). <<https://www.ilgiornale.it/news/politica/fontana-coronavirus-poco-pi-normale-influenza-1831891.html>> accessed on 2 January 2021 31

Howard A Zucker, 'Tackling Online Misinformation: A Critical Component of Effective Public Health Response in the 21st Century' (2020) 110(Suppl 3):S269 *AJPH* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7532324/>> accessed 2 January 2021..... 20

Marianna Spring, 'Coronavirus: The human cost of virus misinformation' (*BBC News*, 27 May 2020) < <https://www.bbc.com/news/stories-52731624>> accessed 2 January 2021..... 22

Mark Hall 'Report: More Than 800 Deaths And 5,800 Hospitalizations Globally May Have Resulted From COVID-19 Misinformation Online' (*Forbes*, 23 August 2020) < <https://www.forbes.com/sites/markhall/2020/08/23/coronavirus-misinformation/?sh=645ae8ac1684>> accessed on 3 January 2021 22

Mark Scott, 'Facebook's private groups are abuzz with coronavirus fake news' (*Politico*, 30 March 2020) <<https://www.politico.eu/article/facebook-misinformation-fake-news-coronavirus-covid19/>> accessed 2 January 2021 24

Niranjan Sahoo, 'How fake news is complicating India's war against COVID-19', (*Observer Research Foundation*, 13 May 2020) <<https://www.orfonline.org/expert-speak/how-fake-news-complicating-india-war-against-covid19-66052/>> accessed 2 January 2021 20

'Ofcom: Covid-19 5G theories are 'most common' misinformation' (*BBC News*, 21 April 2020) < <https://www.bbc.com/news/technology-52370616>> accessed on 3 January 2021.... 22

Pablo Uchoa, 'Brazil coronavirus: 'Our biggest problem is fake news'', (<i>The British Broadcasting Channel</i> , 20 May 2020) < https://www.bbc.com/news/world-latin-america-52739734 > accessed on 31 December 2021	20
Shibani Mahtani, 'Singapore introduced tough laws against fake news. Coronavirus has put them to the test' (<i>The Washington Post</i> 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 > accessed on 30 October 2020	32
Shruti Menon, 'Coronavirus: The human cost of fake news in India' (<i>The British Broadcasting Channel</i> , 30 June 2020) < https://www.bbc.com/news/world-asia-india-53165436 > accessed on 2 January 2021	21
Son Güncelleme, '9 more died from pure alcohol' (<i>CNN Turkey</i> 25 March 2020) < https://www.cnnturk.com/video/turkiye/9-kisi-daha-saf-alkolden-oldu > accessed on 2 January 2021	29
Staff Reporter, 'Twelve Taken Ill after Consuming 'Coronavirus Shaped' Datura Seeds' (<i>The Hindu</i> 7 April 2020) < https://www.thehindu.com/news/national/andhra-pradesh/twelve-taken-ill-after-consuming-coronavirus-shaped-datura-seeds/article31282688.ece > accessed on 2 January 2021	29
Steven Greer, 'The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights' (<i>Human Rights files No. 17</i> , July 2000)	4
Tyler Pager, 'Measles outbreak: How fake news is fuelling US health emergency' (<i>The Independent</i> , 10 April, 2019) < https://www.independent.co.uk/news/world/americas/measles-	

outbreak-vaccine-us-autism-abortion-fake-news-brooklyn-a8863091.html> accessed 3
January 2021 20

Warren Cornwall, 'Officials gird for a war on vaccine misinformation' (2020) 369 Sci. Mag.
<<https://science.sciencemag.org/content/369/6499/14.summary>> accessed 3 January 2021 . 22

Web Desk, 'Amid the coronavirus pandemic, a fake news 'infodemic" (*The Week*, 5 April
2020) <<https://www.theweek.in/news/india/2020/04/05/amid-the-coronavirus-pandemic-fake-news-infodemic.html>> accessed on 2 January 2021 21

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 3 January 2021 20

Yochai Benkler, 'Cautionary Notes on Disinformation and the Origins of Distrust'
(*MediaWell*, 22 October 2019) < [https://mediawell.ssrc.org/expert-reflections/cautionary-
notes-on-disinformation-benkler/](https://mediawell.ssrc.org/expert-reflections/cautionary-notes-on-disinformation-benkler/)> accessed 2 January 2021 30

MISCELLAENOUS:

ACommHPR, 'Resolution on the Adoption of the Declaration of Principles of Freedom of
Expression in Africa' (2002) ACHPR/Res 62(XXXII)02 5

Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,
Havana, Cuba, 27 August to 7 September 1990, 'Basic Principles on the Use of Force and
Firearms by Law Enforcement Officials' (OHCHR, 7 September 2019) <

<https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx#:~:text=13.,to%20the%20minimum%20extent%20necessary.>> accessed 2 January 2021 13

IACHR, ‘Report of the Special Rapporteur for Freedom of Expression’ (2009) OEA/SER L/V/II Doc 51 5

OSCE and Venice Commission, ‘Guidelines on Freedom of Peaceful Assembly’ (2019) CDL-AD (2019)017 8

STATEMENT OF RELEVANT FACTS

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

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

~ 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

~ 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

~ 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

~ 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

- 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, does not violate Xana’s and the Union’s rights recognised by Article 19 and 21 of ICCPR. First, Section 22 of the NSA is consistent with Article 4 of ICCPR because NIDV is a threat to the lie of the nation, the state of emergency has been officially proclaimed and the derogation was required by the exigencies of the situation. To ensure the protection of the people in the health crisis due to NIDV it is pertinent to take the restrictive measure under Section 22. Second, Ized’s decision to designate CPP as the sole site to hold public gatherings is consistent with Article 19 and 21 of ICCPR. The designation is prescribed by law as Section 22 is accessible and is formulated with sufficient precision and foreseeability. The government of Ized has pursued a legitimate aim to ensure public health is not compromised and assemblies in the CPP are allowed with all the required precautionary measures. The designation was necessary and proportionate as the duration of the restriction was only 3 months and it was the least intrusive measure taken by the government.
- II. Ized’s decision to convict Xana under Section 22 of the NSA is not violative of her rights recognised by Article 19 and 21 of ICCPR as Xana did not fall within the scope of protection offered by the right of peaceful assembly and her conviction is not a disproportionate sentence. First, the demonstration outside the Vaai Hospital was not peaceful. It was declared as illegal and the possibility of arrest upon participation were made abundantly clear by the authorities. Xana through her speech tried to incite lawless action through the participants and encouraged them to block entry to the hospital at a time where Ized is facing a health emergency. Second, the restrictions that had been declared upon the intended demonstration outside the hospital were legitimate

as the intent was to ensure public safety and order. Lastly, Xana's conviction is not a disproportionate sentence as it was prescribed by law and was necessary to implore awareness among the masses about the severity of the disease.

III. Ized's decision to issue the statement of 16th March 2020, indicating the states intent to take action under Section 22 of the NSA against those that organize Online Gatherings on social media platforms does not violate Article 19 and 21. First, the decision to issue the statement is issued in conformity with law as online platforms such as the net fulfil all criterions of a public site as defined under Section 22 of the NSA. Further, the application of the law with respect to online spaces is reasonably foreseeable and allows people to regulate their conduct accordingly. Second, the statement was issued in pursuance of a legitimate aim as it seeks to control the rapid spread of disinformation over social media platforms. Third, the interference caused is necessary in a democratic society as it is a response to the sudden outbreak of blatantly false information in relation to NIDV which can compromise the healthcare response. Further, the interference is narrowly tailored to fulfill the object it pursues and does not deny access to the online space for campaign and dissent. Lastly, the means adopted are the least restrictive means available to the state to achieve the legitimate aim.

IV. Ized's decision to issue guidelines under Section 23 of the NSA does not violate the Union's rights under Article 19 of the ICCPR. First, such action is prescribed by law under Section 23 of the NSA and can be executed during the ongoing public emergency. Further, prior restraints are permissible with adequate safeguards. Ized ensured that these safeguards exist and indefinite restrictions are not placed against the rights of the Netizens beyond what is necessary. Second, it pursues a legitimate aim, which is to prevent the surge of disinformation in relation to NIDV which has the

potential to increase the spread of the viral disease. Third, it is necessary in a democratic society to regulate and verify the information in relation to NIDV to avoid panic and confusion amongst the Netizens and combat fake news.

ARGUMENTS

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, DID NOT VIOLATE XANA'S AND SOCIAL DEMOCRATIC WORKERS UNION'S RIGHTS RECOGNISED BY ARTICLE 19 AND 21 OF ICCPR

1. States in times of public emergency, threatening the life of the nation can take measures derogating from its obligations under the ICCPR.¹ Exceptional emergency powers can be proclaimed to protect the life of the nation.² Freedom of expression and assembly are not absolute rights and derogation is permissible subject to reasonable restrictions.³
2. Thus, the restrictions adopted by the government of Ized were justified as (A) Section 22 of the NSA is consistent with Article 4 of ICCPR and (B) Ized's decision to designate CPP as the sole public site to hold public gatherings is consistent with Article 19 and 21 of ICCPR.

A. Section 22 of the NSA is consistent with Article 4 of ICCPR

3. Article 4 of ICCPR provides for the possibility of derogation from its provisions. States are obligated to take effective measures to protect the right to life and health of

¹ International Covenant on Civil and Political Rights (*ICCPR*) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 4; European Convention on Human Rights (*ECHR*) (adopted 4 November 1950, entered into force 3 September 1953), Article 15; American Convention on Human Rights (*ACHR*) (adopted 22 November 1969, entered into force 18 July 1978), Article 27.

² HRC 'Statement on Derogations from the Covenant in Connection with the COVID-19 Pandemic' (24 April 2020) UN Doc CCPR/C/128/2 (*Statement on Derogations*).

³ Universal Declaration of Human Rights (*UDHR*) (adopted 10 December 1948) UNGA Res 217A, Article 29(2); ICCPR, Article 19(3); ECHR, Article 10(2); ACHR, Article 13(2); HRC, *Chebotareva v Russian Federation* (Communication No. 1866/2009) UN Doc CCPR/C/104/D/1866/2009 [9.2]; *Worm v Austria* Application No. 22714/93 (ECtHR, 29 August 1997; *Tristán Donoso v Panamá* IACtHR Series C No. 184 (27 January 2009); *Kimel v Argentina* IACtHR Series C no. 177 (2 May 2008).

individuals within their territory.⁴ Ized's decision to implement Section 22 of NSA is consistent with Article 4 because (i) NIDV is a threat to the life of the nation, (ii) the state of emergency has been officially proclaimed, and (iii) the derogation was required by the exigencies of the situation.⁵

(i) NIDV is a threat to the life of the nation

4. First, a public emergency must threaten the life of the nation.⁶ The *Travaux Préparatoires* of ICCPR underline that emergency has to threaten the life of the nation as a whole.⁷ It constitutes a “*threat to the organized life of the community of which the state is composed.*”⁸ NIDV is a viral disease that has affected more than 30,000 people⁹ and the death rate is significantly higher than the official records of the previous government.¹⁰
5. Second, a public emergency must be actual or imminent.¹¹ Imminence cannot be interpreted to mean that the State must wait for disaster to strike before taking measures to combat it.¹² COVID-19 has prompted 96 states to declare a state of public health

⁴ Statement on Derogations [1].

⁵ ICCPR, Article 4; ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN4/1984/4, (**Siracusa Principles**) Principle 39; Richard B. Lillich, ‘The Paris Minimum Standards of Human Rights Norms in a State of Emergency’ (1998) 36 *The American Journal of International Law* 225.

⁶ HRC ‘General Comment No 29: Article 4, States of Emergency’ (31 August 2001) UN Doc CCPR/C/21/Rev.1/Add.11 (**General Comment 29**) [2].

⁷ MJ Bossuyt, *Guide to the ‘Travaux Préparatoires’ of the International Covenant on Civil and Political Rights* (Kluwer Academic Publishers, Netherlands, 1987) [86].

⁸ *Lawless v Ireland* App No 332/57 (ECtHR, 1 July 1961) [28].

⁹ Compromis, ¶ 10.

¹⁰ Compromis, ¶ 11.

¹¹ *Denmark, Norway, Sweden, Netherlands v Greece* (I) Application No. 3321/67, 3322/67, 3323/67, 3344/67 (ECtHR, 5 November 1969).

¹² *A v the United Kingdom* Application No. 3455/05 (ECtHR, 19 February 2009).

emergency even as the modalities of its mode of transmission are disputed.¹³ NIDV is posing an actual and imminent threat to life in Ized. The disease has been infecting over 10,000 people a month with a fatality rate of almost 7 per cent¹⁴ which is 3 times higher than in the recent coronavirus outbreak.¹⁵ Thus, to ensure protection of the people and to limit the health disaster, it is essential to undertake the derogation.

(ii) The state of emergency has been officially proclaimed

6. The state must provide a detailed declaration of public emergency and the subversion of fundamental rights thereof through a government official.¹⁶ HRC has provided that the “right to take derogatory measures may not depend on a formal notification being made”¹⁷ as the failure to notify states is *de minimis*.
7. Regardless, the state of emergency has been officially proclaimed by Ized on February 1 through their Minister of Defence.¹⁸

(iii) The derogation is required by the exigencies of the situation

8. First, derogations under Article 4 must strictly reflect the principles of proportionality wherein the duration, geographical coverage and material scope of a state of emergency

¹³‘COVID-19 Civic Freedom Tracker’ (*ICNL*)

<<https://www.icnl.org/covid19tracker/?location=&issue=2&date=&type=>> accessed 22 December 2020.

¹⁴ Compromis, ¶ 10-11.

¹⁵ ‘WHO Coronavirus Disease (COVID-19) Dashboard’ (*WHO*) <<https://covid19.who.int/>> accessed 22 December 2020.

¹⁶ *Brannigan and McBride v UK* [1994] 17 EHRR 21.

¹⁷ *Jorge Landinelli Silva v Uruguay* (Communication No. R.8/34) UN Doc. Supp. No. 40 (A/36/40) at 130 [8.3]; HRC, *William Torres Ramirez v Uruguay* (Communication No. 4/1977) UN Doc (A/35/40) at 121 [17].

¹⁸ Compromis, ¶ 16.

are evaluated.¹⁹ The regulations issued by the Ministry of Defence have been issued for a limited period of 3 months.²⁰ The measures undertaken by the state have in fact allowed the containment of spread of the disease as the number of new cases of NIDV have significantly decreased.²¹

9. Second, the margin of appreciation allows the balancing of the sovereignty of nation with their obligations under ICCPR.²² The margin of appreciation allows the state to ascertain the necessity and scope of measures that derogate and protect the rights of the people.²³ Ized has implemented measures strictly warranted by the exigency of the situation.
10. Accordingly, the enactment of Section 22 does not violate Article 19 and 21 of ICCPR.

B. Ized’s decision to designate CPP as the sole public site to hold public gatherings is consistent with Article 19 and 21 of ICCPR.

11. Freedom of expression is one of the objectives of freedom of assembly.²⁴ These rights are intrinsically linked²⁵ and must be interpreted in light of each other.²⁶ The right to

¹⁹ ‘General Comment 29’, [4].

²⁰ Compromis, ¶ 16.

²¹ Compromis, ¶ 27.

²² Steven Greer, ‘The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights’ (*Human Rights files No. 17, July 2000*) <[https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-17\(2000\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-17(2000).pdf)> accessed on 22 December 2020.

²³ *Ireland v United Kingdom* (1978) Series A No 35, [78] [79]; *Brannigan and McBride v United Kingdom* (1993) 17 EHRR 539, [41]; T A O’Donnell, ‘The Margin of Appreciation Doctrine: Standards in the Jurisprudence of the European Court of Human Rights’ (1982) 4(4) *Human Rights Quarterly* 474.

²⁴ *Ezelin v France* App no 11800/85 (ECtHR, 26 April 1991) (*Ezelin v France*) [37]; *Djavit An v Turkey* App No 20652/92 (ECtHR, 2003) [39]; *Women On Waves and Others v Portugal* App no 31276/05 (ECtHR, 3 February 2009) (*Women on Waves v Portugal*) [28]; *Barraco v France* App no 31684/05 (ECtHR, 5 March 2009) [26]; *Palomo Sánchez and Others v Spain* App no 28955/06, 28957/06, 28959/06 and 28964/06 (ECtHR, 12 September 2011) [52].

²⁵ UNGA, ‘Human Rights Council Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression - Frank La Rue’ (2010) A/HRC/14/23 [27]; *Ezelin v France* [37] [51]; *Djavit An v Turkey* App no 20652/92 (ECtHR, 20 February 2003), [39]; *Christian Democratic People’s*

assembly can be restricted under Article 21 of ICCPR when the same is in (i) conformity with law, (ii) in pursuance of a legitimate aim and (iii) is necessary and proportionate.²⁷ These requirements have been endorsed by the UNHRC,²⁸ the IACtHR,²⁹ the ECtHR,³⁰ and the ACommHPR.³¹

Party v Moldova App no 28793/02 (ECtHR, 14 February 2006) [62]; *Öllinger v Austria* App no 76900/01 (ECtHR, 29 June 2006) [38].

²⁶ *Women on Waves v Portugal* [28].

²⁷ UNGA, ‘Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (2013) UN Doc. A/HRC/23/40 [28]; HRC, *Denis Turchenyak et al. v Belarus*, (Communication No. 1948/2010) UN Doc. CCPR/C/108/D/1948/2010 (*Denis Turchenyak et al. v Belarus*) [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* App no 57818/09 (ECtHR, 7 February 2017 [405 – 409]; *Saska v Hungary* App no 58050/08 (ECtHR, 27 November 2012 [21].

²⁸ HRC, *Womah Mukong v Cameroon* (Communication No. 458/1991) UN Doc CCPR/C/51/D/458/1991 [9.7]; HRC, *Jong-Kyu Sohn v Republic of Korea* (Communication No. 518/1992) UN Doc CCPR/C/54/D/518/1992 [10.4]; HRC, *Malcolm Ross v Canada* (Communication No. 736/1997) UN Doc CCPR/C/70/D/736/1997 [11.2]; HRC, *Velichkin v Belarus* (Communication No. 1022/2001) UN Doc CCPR/C/85/D/1022/2001 [7.3]; HRC ‘General Comment No 34: Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 (**General Comment 34**) [35]; UNHRC, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (17 April 2013) UN Doc A/HRC/23/40 [29].

²⁹ *Francisco Martorell v Chile* IACtHR Series C No. 11/96 (3 May 1996) [55]; *Herrera-Ulloa v Costa Rica*, IACtHR Series C No 107 (2 July 2004) [120]; IACHR, ‘Report of the Special Rapporteur for Freedom of Expression’ (2009) OEA/SER L/V/II Doc 51 [626].

³⁰ *Handyside v UK* App no 5393/72 (ECtHR, 7 December 1976) (*Handyside v UK*) [49]; *Sunday Times v UK* App no 6538/74 (ECtHR, 26 April 1979) (*Sunday Times v UK*) [45]; *Ceylan v Turkey* App no 23556/94 (ECtHR 8 July 1999) (*Ceylan v Turkey*) [24]; *Murat Vural v Turkey* App no 9540/07 (ECtHR, 21 January 2015) [59].

³¹ ACommHPR, ‘Resolution on the Adoption of the Declaration of Principles of Freedom of Expression in Africa’ (2002) ACHPR/Res 62(XXXII)02 Principle II; *Interights v Mauritania* AHRLR 87 Comm no 242/2001 (ACommHPR, 2004) (*Interights v Mauritania*) [78–79]; *Zimbabwe Lawyers for Human Rights & Institute for Human Rights and Development in Africa v Zimbabwe* AHRLR 268 Comm no 294/04 (ACommHPR, 2009) [80].

(i) Designation of CPP has been prescribed by law

12. The restrictions imposed must be accessible, sufficiently precise and foreseeable to meet the threshold of being prescribed by law.³²

a) Section 22 is accessible

13. To establish accessibility, it is essential for citizens to have an indication of the legal rules applicable to a particular case.³³ The NSA has been enacted by the government as a domestic law.³⁴ Its applicability has been officially announced³⁵ and therefore it is set out in an accessible manner.³⁶

b) Section 22 is formulated with sufficient precision and foreseeability

14. The restrictions imposed must be precise and the consequences of contravening actions must be foreseeable.³⁷ A statute would be sufficiently precise if individuals can reasonably foresee that their conduct will attract liability under it³⁸ and absolute precision of terms is therefore not required.³⁹

³² *Sunday Times v UK* [49]; *Hashman and Harrup v the United Kingdom* App no 25594/94 (ECtHR, 25 November 1999) [31]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) (***Kokkinakis v Greece***) [40]; *Lambert v California* 350 US 225, 229-230 (1957).

³³ *Sunday Times v UK* [50]; SC Greer, 'The exceptions to Articles 8 to 11 of the European Convention on Human Rights' (1997) Council of Europe Publishing < <https://research-information.bris.ac.uk/en/publications/the-exceptions-to-articles-8-to-11-of-the-european-convention-on->>.

³⁴ *Gorzelik and Others v Poland* App no 44158/98 (ECtHR, 17 February 2004) (***Gorzelik v Poland***).

³⁵ Compromis, ¶ 16.

³⁶ *Murphy v Ireland* App no 44179/98 (ECtHR, 10 July 2003) [62].

³⁷ *Sunday Times v UK* [49]; *Muller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) (***Muller v Switzerland***) [29]; *S.W. v the United Kingdom* App No 20166/92 (ECtHR, 22 November 1995); *Halford v the United Kingdom* App No 20605/92 (ECtHR 25 June 1997).

³⁸ *Nepomnyashchiy v Russian Federation* (Communication No. 1873/2009) CCPR/C/123/D/2318/2013, [7.7]; 'General Comment 34' [25]. *Wingrove v UK* App no 17419/90 (ECtHR, 25 November 1996) [40]; *Dmitriyevskiy v Russia* App no 42168/06 (ECtHR, 3 October 2017) [78].

³⁹ *Kokkinakis v Greece* [49].

15. First, Section 22 prohibits every person from conducting or facilitating any gathering at a public site which is not designated by the regulations during a public emergency.⁴⁰ The designation of CPP has been done through the regulations issued as per Section 22 by the Ministry of Defence.⁴¹ Thus, the regulation is direct and clearly mentions that protests can only be undertaken in CPP.
16. Second, the lack of an express definition for each and every term does not imply that the law is framed insufficiently,⁴² but rather, can be used to avoid rigid and unfavourable interpretations.⁴³ The degree of precision depends on the content and field that the law is designed to cover.⁴⁴ Thus, all the terms under the NSA have not been defined to avoid rigid interpretation of the law.

(ii) Designation of CPP is in pursuance of a legitimate aim

17. Restrictions on right to freedom of expression and assembly are permissible if they pursue a legitimate aim.⁴⁵ Restrictions imposed upon outbreak of an infectious disease

⁴⁰ Compromis, ¶ 14(1).

⁴¹ Compromis, ¶ 16.

⁴² *Gorzelik v Poland* [64]; *Rekvényi v Hungary* App no 25390/94 (ECtHR 20 May 1999) [34]; *Refah Partisi (the Welfare Party) and Others v Turkey* App no 41340/98, 41342/98, 41343/98 and 41344/98, (ECtHR, 13 February 2003) [57].

⁴³ *Muller v Switzerland* [29]; *Kokkinakis v Greece* [40]; *Gorzelik v Poland* [64]; *Lindon, Otchakovsky-Laurens and July v France* App no 21275/02 (ECtHR, 22 October 2007) [41].

⁴⁴ *Centro Europa 7 SRL and Di Stefano v Italy* App no 38433 (ECtHR, 7 June 2012) [142]; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 10 October 2013) [72]; *Karáscony v Hungary* App no 42461/13 and 44357/13 (ECtHR, 17 May 2016) [125]; *Satakunnan Markkinaporssi Oy and Satamedia Oy v Finland* App no 931/13 (ECtHR, 27 June 2017) [144].

⁴⁵ ICCPR Article 19(3)(b), Article 21; ACHR, Article 13(2); ;General Comment 34' [27]; *Dahlab v Switzerland* App no 42393/98 (ECtHR, 15 February 2001); *Interights v Mauritania* [79].

are permissible if gatherings are dangerous and pose a substantial risk to the general public or the participants.⁴⁶

18. Furthermore, the right to health also includes the right to control the spread of infectious diseases through restrictive measures.⁴⁷ It is essential that the restrictions allow protection and promotion of health of individuals.⁴⁸ Authorities can justify their restrictions to regulate time, place and manner of assemblies on a case-to-case basis.⁴⁹
19. In the present case, NIDV affects the immune system of those infected.⁵⁰ To control the spread, the state has declared a public emergency and designated the CPP to undertake public gatherings.⁵¹ The designation is to ensure that ample space is available for gatherings and the exposure to mosquitoes that are the carriers of the disease, can be mitigated through regular fumigation.⁵²

⁴⁶ *Cisse v France* App no 51346/99 (ECtHR, 9 April 2002).

⁴⁷ CESCR, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health' UN Doc. E/C.12/2000/4.

⁴⁸ Sircasua Principles Principle 25.

⁴⁹ OSCE and Venice Commission, 'Guidelines on Freedom of Peaceful Assembly' (2019) CDL-AD (2019)017 [132].

⁵⁰ *Compromis*, ¶ 10.

⁵¹ *Compromis*, ¶ 16.

⁵² *Compromis*, ¶ 16.

(iii) Designation of CPP is necessary and proportionate

a) Designation of CPP is in response to a social need

The threshold for necessity must meet a pressing social need.⁵³ Precautionary measures must be put in place to ensure adaption to changing circumstances.⁵⁴ The designation of the Central Park for public gatherings has been done to facilitate the right to assembly.⁵⁵ The severity of the virus warrants restrictive measures to prevent catastrophic breakdown of the whole healthcare system of Ized.

b) Designation of CPP is a proportionate measure

20. Proportionality requires the restriction to be the least intrusive method to the aim pursued.⁵⁶
21. First, the duration of a restriction is noted to assess the measure of interference.⁵⁷ In the present case, the duration is limited to the period of emergency declared by the Ministry of Defence, i.e., 3 Months.⁵⁸ Second, the restriction imposed must be content neutral.⁵⁹ All assemblies have to take place at CPP irrespective of the motive sought.⁶⁰

⁵³ *Observer and Guardian v the United Kingdom* App No 13585/88 (ECtHR, 26 November 1991); *Zana v Turkey* App no 18954/91 (ECtHR, 25 November 1997) [51]; *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) (***Zana v Turkey***) [39] [40].

⁵⁴ 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 May 2016) UN Doc. A/HRC/31/66 (***UNHRC May 2016 Report***) [37].

⁵⁵ *Denis Turchenyak et al. v Belarus* [7.4].

⁵⁶ *Toregozhina v Kazakhstan* (CCPR/C/112/D/2137/2012), [7.4]; *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976); *Goodwin v United Kingdom* App no 28957/95 (ECtHR 11 July 2002); *Observer and Guardian v United Kingdom* App no 13585/88 (ECtHR 26 November 1992); *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) [39] [40]; *R. v Oakes*, 1986 1 SCR 103, [46]; 'General Comment No 34' [34]; *Enhorn v Sweden* App no 56529/00 (ECtHR, 25 January 2005).

⁵⁷ 'General Comment No 29' [2]; *Rassemblement jurassien v Switzerland* App no 8191/78 (ECtHR, 10 October 1979) (***Rassemblement jurassien v Switzerland***) [11].

⁵⁸ Compromis, ¶ 16.

22. For instance, the Supreme Court of India has held that demonstrations must take place at a designated area⁶¹ and encroachments or obstructions have to be accounted for by the authorities.⁶² CPP was designated to ensure that there are no unwarranted obstructions and so that NIDV can be contained.
23. Accordingly, Ized's decision to designate CPP as the sole public site to hold gatherings is consistent with Article 19 and 21 of ICCPR.

⁵⁹ *Alekseev v Russian Federation* (Communication No. 1873/2009) CCPR/C/109/D/1873/2009 (*Alekseev v Russian Federation*) [9.6]; *Amelkovich v Belarus* (Communication No. 2720/2016) CCPR/C/125/D/2720/2016 [6.6]; HRC, 'Concluding observations on Equatorial Guinea in the absence of its initial report' (22 August 2019) UN Doc. CCPR/C/GNQ/CO/1 [54–55].

⁶⁰ Compromis, ¶ 23.

⁶¹ *Amit Sahni v Commissioner of Police & Ors.*, Civil Appeal No. 3282 of 2020 [17].

⁶² *Amit Sahni v Commissioner of Police & Ors.*, Civil Appeal No. 3282 of 2020 [18].

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 ICCPR

24. Ized's decision to convict Xana under Section 22 of the NSA is violative of her rights recognised by Article 19 and 21 of ICCPR as (A) Xana did not fall within the scope of protection offered by the right of peaceful assembly and (B) Xana's conviction is not a disproportionate sentence.

A. Xana did not fall within the scope of protection offered by the right of peaceful assembly

25. Xana did not fall within the scope of protection offered by the right to peaceful assembly as (i) the demonstration was not peaceful and (ii) the restrictions applied in exercise of the right are legitimate.

(i) The demonstration was not peaceful

a) The demonstration was unlawful

26. The broadcasting and communication of a law allows the citizens to avail legal recourse, wherein the participants can access the courts to challenge it.⁶³

27. First, the regulations under Section 22 were announced on February 1 by the Ministry of Defence.⁶⁴ On February 4 the Union announced that a demonstration would be held on February 14.⁶⁵ During this period awareness was created about the planned

⁶³ HRC 'General comment No. 37, Article 21, Right of Peaceful Assembly' (17 September 2020) UN Doc CCPR/C/GC/37 ('General Comment 37') [72].

⁶⁴ Compromis, ¶ 16

⁶⁵ Compromis, ¶ 17.

demonstration. This implies that the same was not spontaneous and the gathering had enough time to challenge the restriction of undertaking the assembly only in CPP.

28. Second, the demonstration was organised even after the permission for the same was immediately denied by the authorities.⁶⁶ It was clearly notified that the planned demonstration was unlawful and the attendees would be arrested.⁶⁷

b) Xana incited lawless actions during the demonstration

29. The conduct of a few participants during an assembly may be deemed violent if the authorities present credible evidence that during the event, they incited others to use violence or such actions that are likely to cause violence.⁶⁸ The organisers and the participants are expected to comply with all the legal requirements made for a peaceful assembly and any unlawful conduct such as incitement of others would be accounted for.⁶⁹
30. During the demonstration, Xana encouraged people to block the entrance of the hospital and prevent people from entering or leaving the building.⁷⁰ Thus, Xana's statements clearly incited lawless action⁷¹ considering around forty participants actually started turning people away from the hospital.⁷²

⁶⁶ Compromis, ¶ 18.

⁶⁷ Compromis, ¶ 18.

⁶⁸ UNHRC, 'Annual report of the United Nations High Commissioner for Human Rights' (11 January 2013) UN Doc. A/HRC/22/17/Add.4 [29 (f)].

⁶⁹ 'UNHRC May 2016 Report' [26].

⁷⁰ Compromis, ¶ 19.

⁷¹ *Bradenburg v Ohio* 395 US 444, 447 (1969).

⁷² Compromis, ¶ 19.

c) There was no unwarranted interference during the demonstration

31. First, State parties have a positive duty to facilitate peaceful assemblies and allow the participants to achieve their objective.⁷³ However, law enforcement officials can seek to de-escalate situations which are likely to result in violence.⁷⁴ In the present case, it was essential to take cognizance of the blockage caused to the entrance of the hospital⁷⁵ as Ized is undergoing a health crisis.
32. Second, generic contingency plans and training protocols can be deployed by the law enforcement agencies for assemblies which have not been notified in advance and are likely to disrupt public order.⁷⁶ When the demonstrators started resisting arrest, water cannons were used only to subdue the crowd.⁷⁷
33. Third, an assembly can be dispersed if it causes high level of disruption and the same is serious and sustained.⁷⁸ Only minimum force necessary was used by the forces to undertake dispersion of the crowd near the hospital.⁷⁹ Thus, the interference during the demonstration was not unwarranted.

⁷³ *Denis Turchenyak et al. v Belarus* [7.4]; HRC, 'Concluding observations on the second periodic report of Benin' (23 November 2015) UN Doc. CCPR/C/BEN/CO/2 [33]; 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 [33]; UNHRC, 'The promotion and protection of human rights in the context of peaceful protests' (29 June 2018) UN Doc A/HRC/38/L.16.

⁷⁴ 'General Comment 37' [78].

⁷⁵ Compromis, ¶ 19.

⁷⁶ 'UNHRC May 2016 Report' [37].

⁷⁷ Compromis, ¶ 20.

⁷⁸ 'UNHRC May 2016 Report' [62].

⁷⁹ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, 'Basic Principles on the Use of Force and Firearms by Law Enforcement Officials' (OHCHR, 7 September 2019) <<https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx#:~:text=13.,to%20the%20minimum%20extent%20necessary.>> accessed 2 January 2021; UNHRC, 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns' (1 April 2014) UN Doc. A/HRC/26/36 [75]

(ii) The restrictions applied in exercise of the right are legitimate

a) The restrictions on the demonstrations have been imposed for public safety

34. Public safety as a ground for restriction upon right to peaceful assembly⁸⁰ requires real and significant risk to the safety of persons to be established.⁸¹ Any foreseeable danger to public safety warrants imposition of restrictions.⁸² The rights and freedoms of the people not participating in the assembly must be protected to ensure ordinary life is not disrupted.⁸³
35. In the present case, Vaai General Hospital was an undesignated area for the demonstration.⁸⁴ Forty protesters were blocking the entrance to the hospital and preventing people from entering or leaving the building.⁸⁵ Hence, to achieve the aim of public safety restrictions had to be imposed upon the demonstration.

b) The restrictions on the demonstrations have been imposed for public order

36. Public order is synonymous with the maintenance of public peace, safety and tranquillity.⁸⁶ Restrictions can be justified in the light of demand of public order.⁸⁷

⁸⁰ UNHRC, 'Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia' (17 August 2015) UN Doc. CCPR/C/MKD/CO/3 [19]; *Alekseev v Russian Federation* [9.5].

⁸¹ *Sircausa Principles*, Principle 33.

⁸² *Rassemblement jurassien v Switzerland* [9]; *Handyside v UK* [48].

⁸³ HRC, *Stambrovsky v Belarus* (Communication No. 1987/2010) UN Doc CCPR/C/112/D/1987/2010 [7.6]; HRC, *Pugach v Belarus* (Communication No. 1984/2010) UN Doc CCPR/C/114/D/1984/2010 [7.8].

⁸⁴ *Compromis*, ¶ 18.

⁸⁵ *Compromis*, ¶ 19.

⁸⁶ *Ramburn v Stock Exchange Commission* [1991] LRC (Const) 272; *Re Munhumeso* [1994] 1 LRC 282; *Elliott v Commissioner of Police* [1997] 3 LRC 15; *Scanlen and Holderness v Zimbabwe* Communication No. 297/2005 (ACHPR, 3 April 2009) [19].

⁸⁷ *Driemand and Others v Norway* App no 33678/96 (ECtHR 4 May 2000).

Speeches which have the capability to incite crime, violence or mass panic⁸⁸ can be limited in situations where there is a concrete threat to an important legally protected interest.⁸⁹ The situations that present security issues are usually taken into account to evaluate the aim of the restrictions.⁹⁰ Xana's speech intended on inciting mass panic and confusion by giving out unverified information⁹¹ about NIDV.

37. Accordingly, Xana did not fall within the scope of protection offered by the right of peaceful assembly.

B. Xana's conviction is not a disproportionate sentence

38. Xana's conviction is not disproportionate because it is provided by law, in pursuit of a legitimate aim and necessary in a democratic society.

39. First, the punishment ascribed to Xana was provided by Sec 22(3) of the NSA and it pursued the legitimate aim of protecting public health, safety and order.

40. Second, it was necessary for in a democratic society because the application of law was proportionate⁹² to the severity of the penalty.⁹³ A reprehensible act of obstruction in disregard of police orders would invite criminal sanctions.⁹⁴

⁸⁸ *Surek v Turkey* (No. 1) App no 26682/95 (ECtHR, 8 July 1999); *Dogan v Turkey* (No. 3) App no 4119/02 (ECtHR 10 October 2006); Sarah Joseph and Melissa Castan, *The international Covenant on Civil and Political Rights: cases, materials, and commentary* (3rd. ed. OUP 2013) 618.

⁸⁹ *Rassemblement jurassien v Switzerland* [9];; Siracusa Principles [22]-[24].

⁹⁰ HRC, *Kim Jong-Cheol v Republic of Korea* (Communication no 968/2001) UN Doc. CCPR/C/84/D/968/2001; *Zana v Turkey* App no 18954/91 (ECtHR, 25 November 1997).

⁹¹ Compromis, ¶ 19.

⁹² 'General Comment 34' [34]; HRC, *Marques v Angola* (Communication no 1128/2002) UN Doc CCPR/C/83/D/1128/2002; HRC, *Coleman v Australia* (Communication no 1157/2003) UN Doc CCPR/C/87/D/1157/2003.

⁹³ *Ceylan v Turkey*; *Tammer v Estonia* App no 41205/98 (ECtHR 2001); *Skalka v Poland* App no 43425/98 (ECtHR 27 May 2003).

41. Third, in cases of incitement of violence a prison sentence could be justified.⁹⁵ The punishment imposed on Xana is less severe and even lower compared to the maximum penalty of 1 year as granted under Section 22 of NSA.⁹⁶ Thus, it is not excessive and has been imposed as a deterrent to future violations.
42. Fourth, organizers and participants of an assembly are expected to comply with the legal requirements of the assembly.⁹⁷ Hence, they would be liable for their own unlawful conduct and incitement of others.⁹⁸ Xana was aware about the impending arrest as she did not comply with the regulations and overlooked the warnings issued by the Ministry of Defence declaring the demonstration as unlawful.⁹⁹
43. Accordingly, Xana's prosecution under NSA is not violative of international principles, including Article 19 and 21 of ICCPR.

⁹⁴ *Kudrevičius and Others v Lithuania* App no 37553/05 (ECtHR, 15 October 2015) [174]

⁹⁵ *Gün ü v Turkey* App no 59745/00 (ECtHR 13 November 2003)

⁹⁶ *Compromis*, ¶ 22.

⁹⁷ 'UNHRC May 2016 Report' [26].

⁹⁸ 'UNHRC May 2016 Report' [26].

⁹⁹ *Compromis*, ¶ 18.

III. IZED'S DECISION TO ISSUE THE STATEMENT OF 16 MARCH DID NOT VIOLATE THE SOCIAL DEMOCRATIC WORKERS UNION'S RIGHTS RECOGNISED BY ARTICLE 19 AND ARTICLE 21 OF THE ICCPR

44. The decision to issue the statement of 16 March applying Section 22 of the NSA to online gatherings is not violative of Article 19 and 21 as it is (A) in conformity with law, (B) in pursuance of a legitimate aim and (C) necessary in a democratic society.

A. The statement issued is in conformity with law

(i) The statement has basis in domestic law

45. To be in conformity with law a restriction must be imposed through law or by an administrative decision based on law.¹⁰⁰ This distinguished from the test of provided by law as it gives the state greater administrative discretion.¹⁰¹ Section 22 defines public sites as every location or space that is used by the public and visible to the members of public.¹⁰² Online gatherings such as the Net Assembly feature, fulfil all three requirements of this definition.

46. First, every net assembly is a website of its own¹⁰³ and therefore they are a location on the internet.

47. Second, forums like the Net Assembly have been used over the years for people to organise gathering and raise socio-political issues.¹⁰⁴

¹⁰⁰ 'General Comment 37' [39].

¹⁰¹ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (NP Engel, 2005) 489–90, K Partsch, 'Freedom of Conscience and Expression, and Political Freedoms' , in L Henkin (ed), *The International Bill of Rights* (Columbia University Press , 1981) 232.

¹⁰² Compromis, ¶ 14.

¹⁰³ Compromis, ¶ 6.

48. Third, forums like the net assembly feature the opinions of all participants of the gathering in one place which is visible to all.¹⁰⁵
49. Furthermore, the usage of ‘and shall include’ and the following enumeration of other sites do not narrow the scope of the main definition.¹⁰⁶ It extends the meaning of the main definition to the enumerated terms and together they are exhaustive.¹⁰⁷
50. As features such as the net assembly satisfies all three elements of the main definition of a public site, the decision to issue the statement extending the application of the provision to online spaces is in conformity with domestic law.

(ii) The law is precise and reasonably foreseeable

51. The mere fact that there is scope for interpretation does not mean that a law is not sufficiently precise.¹⁰⁸ Section 22 penalises the organisers of gatherings at a public site. A gathering in common parlance is an assembly of people for a purpose.¹⁰⁹ Digital gatherings are not an unknown entity and have been recognised.¹¹⁰

¹⁰⁴ Compromis, ¶ 6.

¹⁰⁵ Compromis, ¶ 6.

¹⁰⁶ *Brigham v United States* 160 F.3d 759 (1st Cir. 1998); *Southern Ute Indian Tribe. v King Consol. Ditch Co.* 250 P.3d 1226, 1233 (Colo. 2010.); *Bharat Cooperative Bank (Mumbai) Ltd. v Employees Union* (2007) 4 SCC 685; *Hamdard (Wakf) Laboratories v Dy. Labour Commissioner* (2007) 5 SCC 281; *Commercial Taxation Officer, Udaipur v Rajasthan Taxchem Ltd.* 2008[12] S.T.R.660; *Commissioner of Central Excise v. M/s. Detergents India Ltd.* (2015) 7 SCC 198.

¹⁰⁷ *Pioneer Urban Land and Infrastructure Ltd. v Union of India*, (2019) 8 SCC 416; GP Singh J, *Principles of Statutory Interpretation* (2010) 181, *M/S. Mamta Surgical Cotton v Asstt. Commnr.(Anti-Evasion)* CIVIL APPEAL NO. 7084 OF 2005; *Commissioner of Central Excise v M/s. Detergents India Ltd.* (2015) 7 SCC 198; *Colorado Common Cause v Meyer* 731 P.2d 744 (Colo. App.1986); *P. Kasilingam v P.S.G. College of Technology*, 1995 Supp (2) SCC 348; *Black Diamond Beverages v Commercial Tax Office, Central Section, Assessment Wing, Calcutta*, (1998) 1 SCC 458.

¹⁰⁸ *Gorzelik v Poland* [65].

¹⁰⁹ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (NP Engel, 2005), 484.

¹¹⁰ UNHRC, 'Rights to freedom of peaceful assembly and of association' (17 May 2019) UN Doc. A/HRC/41/41 [21]; UNHRC 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of

52. Features such as the Net assembly allow people to organise and invite people to gather and share their opinions on various matters.¹¹¹ Such gatherings have a topic and collate opinions of all participants at one place which is visible to all and is broadly accessible.¹¹² Thus, such online features can be reasonably construed to constitute a gathering at a public site making the law foreseeable.

B. The statement issued is in pursuance of a legitimate aim

53. The States have an obligation to ensure and uphold the highest standards of health at all times.¹¹³ This includes the states duty to control the outbreak of diseases and epidemics.¹¹⁴ The HRC broadly, underlined that States' duty to protect life requires them to adopt measures to address the general conditions in society that may give rise to direct threats to life.¹¹⁵

association' (26 May 2018) UN Doc. A/HRC/38/34 [80]; UNHRC 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai' (27 April 2015) UN Doc. A/HRC/29/25/Add.1 [24]; UNHRC 'Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective' (5 May 2017) UN Doc. A/HRC/35/9 [34]; 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 [84(k)]; UNHRC, '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 [74].

¹¹¹ Compromis, ¶ 6.

¹¹² Compromis, ¶ 6.

¹¹³ International Covenant on Economic, Social and Cultural Rights (Adopted on 16 December 1966, entered into force 3 January 1976), Article 12; The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (Adopted 21 December 1965, entered into force 4 January 1969): art. 5 (e) (iv), The 1979 Convention on the Elimination of All Forms of Discrimination against Women: arts. 11 (1) (f), 12 and 14 (2) (b), The 1989 Convention on the Rights of the Child: art. 24, The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: arts. 28, 43 (e) and 45 (c), The 2006 Convention on the Rights of Persons with Disabilities: art. 25.

¹¹⁴ International Covenant on Economic, Social and Cultural Rights, Article 12.

¹¹⁵ HRC 'General Comment No. 6, Article 6, Right to Life' (30 April 1982) UN Doc HRI/GEN/1/Rev.9 [5]; HRC 'General comment no. 36, Article 6 (Right to Life)' (3 September 2019) UN Doc. CCPR/C/GC/36 ('General Comment 36') [26].

54. Exposure to health-related misinformation distorts the risk perception of the virus.¹¹⁶ Repeated exposure to misinformation, particularly in a vacuum of information,¹¹⁷ can increase belief in it.¹¹⁸ This creates a distrust in institutional information and an increased propensity to reject it.¹¹⁹
55. The WHO¹²⁰ and the HRC¹²¹ have recognised the adverse effect of health disinformation and have called upon states to control their spread. In USA,¹²² UK,¹²³ Brazil,¹²⁴ India,¹²⁵

¹¹⁶ Nicole M. Krause, Isabelle Freiling, Becca Beets & Dominique Brossard, 'Fact-checking as risk communication: the multi-layered risk of misinformation in times of COVID-19' (2020) 23 J. Ris. Re. <10.1080/13669877.2020.1756385> accessed 2 January 2021.

¹¹⁷ Howard A Zucker, 'Tackling Online Misinformation: A Critical Component of Effective Public Health Response in the 21st Century' (2020) 110(Suppl 3): S269 AJPH <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7532324/>> accessed 2 January 2021.

¹¹⁸ G Pennycook, T Cannon, and DG Rand, 'Prior exposure increases perceived accuracy of fake news'. (2018) *J. Exp. Psychol.* 1865; D Freeman, F Waite, L Rosebrock, A Petit, C Causier, A East, et al. 'Coronavirus conspiracy beliefs, mistrust, and compliance with government guidelines in England.' (2020) *Psychol. Med.* <doi: 10.1017/S0033291720001890> accessed on 3 January 2021.

¹¹⁹ JE Uscinski, AM Enders, C KLoftstad, M Seelig, J Funchion, C Everett, et al. 'Why do people believe COVID-19 conspiracy theories?' (2020) *HKS Misinform. Rev.* <doi: 10.37016/mr-2020-015> accessed on 3 January 2021.

¹²⁰ 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 3 January 2021.

¹²¹ 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 ('**UNHRC Report on Disease Pandemics April 2020**') [41].

¹²² Tyler Pager, 'Measles outbreak: How fake news is fuelling US health emergency' (*The Independent*, 10 April, 2019) <<https://www.independent.co.uk/news/world/americas/measles-outbreak-vaccine-us-autism-abortion-fake-news-brooklyn-a8863091.html>> accessed 3 January 2021.

¹²³ Chris Baynes, 'Coronavirus: Patients refusing treatment because of fake news on social media, NHS staff warn' (*The Independent*, 5 June 2020) <<https://www.independent.co.uk/news/uk/home-news/coronavirus-fake-news-conspiracy-theories-antivax-5g-facebook-twitter-a9549831.html>> accessed 31 December 2020.

¹²⁴ Pablo Uchoa, 'Brazil coronavirus: 'Our biggest problem is fake news'', (*The British Broadcasting Channel*, 20 May 2020) <<https://www.bbc.com/news/world-latin-america-52739734>> accessed on 31 December 2021.

¹²⁵ Niranjana Sahoo, 'How fake news is complicating India's war against COVID-19', (*Observer Research Foundation*, 13 May 2020) <<https://www.orfonline.org/expert-speak/how-fake-news-complicating-india-war-against-covid19-66052/>> accessed 2 January 2021; Akhileshwari Reddy, 'The Pandemic Is Amplifying India's Fake News Crisis' (*The Wire*, 2 April 2020) <<https://thewire.in/media/medical-fake-news-coronavirus>> accessed on 2 January 2021; Web Desk, 'Amid the coronavirus pandemic, a fake news 'infodemic'' (*The Week*, 5 April 2020) <<https://www.theweek.in/news/india/2020/04/05/amid-the-coronavirus-pandemic-fake-news->

Italy,¹²⁶ and Africa¹²⁷ the spread of health disinformation has led to significant challenges of public health and order.

56. Accordingly, undertaking measures to control and mitigate the spread of such falsehoods is in pursuance of a legitimate aim.

C. The statement is necessary in a democratic society

(i) *The spread of disinformation during the NIDV gives rise to a pressing social need*

57. For a measure to be necessary it must seek to address a pressing social need.¹²⁸
58. As adumbrated above, NIDV is a novel disease which poses a grave threat¹²⁹ and disinformation related to health is a detriment to public health and order.¹³⁰ Online gatherings have been used by the members of the Union¹³¹ to disseminate deliberate

infodemic.html> accessed on 2 January 2021; Arunabh Saikia, 'The other virus: Hate crimes against India's Muslims are spreading with Covid-19' (*Scroll*, April 8 2020) <<https://scroll.in/article/958543/the-other-virus-hate-crimes-against-indias-muslims-are-spreading-with-covid-19>> accessed on 2 January 2021; Shruti Menon 'Coronavirus: The human cost of fake news in India' (*The British Broadcasting Channel*, 30 June 2020) <<https://www.bbc.com/news/world-asia-india-53165436>> accessed on 2 January 2021.

¹²⁶ Angela Giuffrida, 'Italy's Five Star Movement blamed for surge in measles cases' (*The Guardian*, 23 March 2017) <<https://www.theguardian.com/world/2017/mar/23/italys-five-star-movement-blamed-for-surge-in-measles-cases>> accessed 2 January 2021.

¹²⁷ David P Fidler, 'Disinformation and Disease: Social Media and the Ebola Epidemic in the Democratic Republic of the Congo' (*Council on Foreign Relations*, 20 August 2019) <<https://www.cfr.org/blog/disinformation-and-disease-social-media-and-ebola-epidemic-democratic-republic-congo>> accessed 2 January 2021.

¹²⁸ *Handyside v UK* [48]. *Dudgeon v United Kingdom*, (1981) 4 EHRR 149. *Sunday Times v UK* [51]; *GayNews Ltd and Lemon v United Kingdom*, (1982) 5 EHRR 123; *Barthold v Germany*, (1983) 6 EHRR 82; *Muller v Switzerland* [32]; *Autronic AG v. Switzerland*, (1990) 12 EHRR 485; *The Observer and The Guardian v United Kingdom*, (1991) 14 EHRR 153; *Castells v Spain* (1992) 14 EHRR 445; *Open Door and Dublin Well Woman v Ireland*, (1992) 15 EHRR 244; *Keegan v United Kingdom* Appl. No. 28867/03 (ECtHR 18 July 2006).

¹²⁹ Arguments ¶ [4]-[5]

¹³⁰ Arguments ¶ [53]-[56]

¹³¹ Compromis, ¶ 24.

falsehoods about the mode of transmission of the virus and deny its existence.¹³² They have also been used to underplay the seriousness of the virus and encouraged people to not approach healthcare facilities for treatment.¹³³ Such disinformation has reached over forty times the initial participation of the gathering.¹³⁴

59. The spread of such blatantly false information, particularly when it is claimed to be backed by scientific credence,¹³⁵ can cause mass hysteria and panic.¹³⁶ This can cost the lives of innocent civilians¹³⁷ and compromise the states healthcare response.¹³⁸ Twenty percent of Izeds population is on the Net¹³⁹ and thus, the spread of disinformation using online gathering arrangements such as the Net Assembly can be extremely detrimental.

¹³² Compromis, ¶ 24.

¹³³ Compromis, ¶ 25.

¹³⁴ Compromis, ¶ 24.

¹³⁵ Compromis, ¶ 25.

¹³⁶ Marianna Spring, 'Coronavirus: The human cost of virus misinformation' (*BBC News*, 27 May 2020) <<https://www.bbc.com/news/stories-52731624>> accessed 2 January 2021; 'Ofcom: Covid-19 5G theories are 'most common' misinformation' (*BBC News*, 21 April 2020) <<https://www.bbc.com/news/technology-52370616>> accessed on 3 January 2021.

¹³⁷ Alistair Coleman 'Hundreds dead' because of Covid-19 misinformation' (*BBC News*, 12 August 2020) <<https://www.bbc.com/news/world-53755067>> accessed 2 January 2021; Mark Hall 'Report: More Than 800 Deaths And 5,800 Hospitalizations Globally May Have Resulted From COVID-19 Misinformation Online' (*Forbes*, 23 August 2020) <<https://www.forbes.com/sites/markhall/2020/08/23/coronavirus-misinformation/?sh=645ae8ac1684>> accessed on 3 January 2021.

¹³⁸ R Imhoff and P Lamberty 'A bioweapon or a hoax? The link between distinct conspiracy beliefs about the Coronavirus disease (COVID-19) outbreak and pandemic behavior' (2020) Sage Journals <doi: 10.1177/1948550620934692> accessed on 2 January 2021; H Allcott., L Boxell, J Conway, C Gentzkow M Thaler and DY Yang 'Polarization and Public Health: Partisan Differences in Social Distancing during the Coronavirus Pandemic (No. 26946)' (*National Bureau of Economic Research*, 2020) <<https://www.nber.org/papers/w26946>> accessed 2 January 2021; Warren Cornwall, 'Officials gird for a war on vaccine misinformation' (2020) 369 *Sci. Mag.* <<https://science.sciencemag.org/content/369/6499/14.summary>> accessed 3 January 2021.

¹³⁹ Compromis ¶ 3.

(ii) The statement issued is proportional to a legitimate aim

60. The Statement is proportional as it (a) does not deny access to the online space and (b) is not unduly intrusive.

a) The decision does not deny access to the online space

61. Restrictions when limited to specific objective they seek to achieve and do not intrude upon other rights are permissible.¹⁴⁰ Restriction on online gatherings is not a denial of the online space as it applies only to features such as the Net Assembly. Other features of social media platforms are still available for people to exercise their freedom of expression and assembly.

62. The regular feature of the net for instance allows people to share their opinions with their followers who can reply to the same¹⁴¹ and share it with their followers.¹⁴² This feature is not fundamentally different from the net assembly with the only difference being the rate of spread of information or opinion.¹⁴³

b) The decision is the least restrictive measure to achieve the purpose

63. The state must choose the least intrusive measure to achieve the desired restriction.¹⁴⁴ However, this test presupposes a parity of the efficacy of all measures.¹⁴⁵ This implies

¹⁴⁰ UNGA 'Promotion and protection of the right to freedom of opinion and expression' (6 September 2016) UN Doc. A/71/373 [17]; UNHRC, 'Report of the Special Rapporteur on the promotion and protection of their right to freedom of opinion and expression David Kaye' (22 May 2015) UN Doc. A/HRC/29/32 [35].

¹⁴¹ Clarification ¶ 3.

¹⁴² Compromis, ¶ 5.

¹⁴³ Clarification ¶ 4.

¹⁴⁴ *Ürper and Others v Turkey* Application nos. 14526/07 (ECtHR 20 October 2009).

¹⁴⁵ Janneke Gerrards, 'How to improve the necessity test of the European Court of Human Rights' (2013) EJIL <<https://academic.oup.com/icon/article/11/2/466/753628>> accessed 2 January 2021.

that where the measures are not equally effective in resolving the problem the least intrusive test cannot be relied on by the court to interfere with the states margin of appreciation in selecting the impugned measure.

64. Ized's decision to temporarily restrict the public gatherings over the internet to combat the rapid spread of misinformation has been taken after the assessment of the extraordinary circumstances that prevailed at the time in the country. While there are theoretically less intrusive steps such as media literacy campaigns and fact checking campaigns, they are expensive, have a long gestation period¹⁴⁶ and have been found to be ineffective in addressing the problem of spread of false information.¹⁴⁷ The objective in restricting public gatherings was to contain the rapid spread of misinformation which is not fulfilled by the alternative measures adopted.
65. Accordingly, the restriction on online gatherings does not deny access to online spaces and is only directed at achieving its objective of controlling and mitigating the spread of disinformation.

¹⁴⁶ Sander Van Linden, Jon Rozenbook, Josh Compton, 'Inoculating Against Fake News About Covid 19' (*Frontier Psychology*, 23 October 2020) <<https://doi.org/10.3389/fpsyg.2020.566790>> accessed 2 January 2021.

¹⁴⁷ Ullrich K. H. Ecker, Stephan Lewandowsky, David T. W. Tang, 'Explicit warnings reduce but do not eliminate the continued influence of misinformation' (2010) *Mm. Cogn.*1087; Mark Scott, 'Facebook's private groups are abuzz with coronavirus fake news' (*Politico*, 30 March 2020) <<https://www.politico.eu/article/facebook-misinformation-fake-news-coronavirus-covid19/>> accessed 2 January 2021.

IV. IZED'S DECISION TO ISSUE GUIDELINES UNDER SECTION 23 OF THE NATIONAL SECURITY ACT DID NOT VIOLATE THE SOCIAL DEMOCRATIC WORKERS UNION'S RIGHTS RECOGNISED BY ARTICLE 19 OF THE ICCPR

66. The guidelines issued under Section 23 of the NSA prohibiting the publication of any opinion with respect to NIDV, without obtaining prior authorisation from Ministry of Health¹⁴⁸ are (A) prescribed by law, (B) in pursuance of a legitimate aim and (C) necessary in a democratic society.

A. The Guidelines issued under Section 23 were prescribed by law

67. The guidelines under Section 23 are (i) binding and have basis in domestic law and (ii) prior restraints are permissible with adequate safeguards.

(i) The guidelines are binding and have basis in domestic law

68. Restrictions must be grounded in domestic law¹⁴⁹ and must be strictly construed.¹⁵⁰ For the guidelines to have the force of statutory rules they must be issued under the authority conferred on the Government by a particular statute.¹⁵¹

69. First, Section 23 is a published law¹⁵² under the NSA and it clearly lays down that 'guidelines' can be issued by the Ministry of Defence on the publication of any news,

¹⁴⁸ Compromis, ¶ 27.

¹⁴⁹ *Sunday Times v UK* [48]; *Malone v United Kingdom* (1984) 7 EHRR 14.

¹⁵⁰ 'General Comment 36' [33].

¹⁵¹ *Indian Council for Enviro-Legal Action v Union of India* (1996) 5 SCC 281; *GJ Fernandez vs. State of Mysore & Ors.* AIR 1967 SC 1753; *Bell Canada v Canadian Telephone Employees' Association*, [2003] 1 S.C.R. 884, 2003 SCC 36.

¹⁵² Compromis, ¶ 15.

opinion, or other form of expression.¹⁵³ Hence, Section 23 is sufficiently precise in authorising the government of India to regulate publications during a public emergency.¹⁵⁴

70. Second, there is nothing exceptional about the guidelines issued under Section 23. Similar applications of prior restraint laws in relation to disease outbreak has been implemented in various jurisdictions including South Africa,¹⁵⁵ Russia,¹⁵⁶ and India.¹⁵⁷
71. In India, various State governments including Maharashtra¹⁵⁸, Delhi¹⁵⁹, Karnataka¹⁶⁰ and Telangana¹⁶¹ have also issued regulations to deal with COVID-19¹⁶² which prohibit organizations or individuals from publicizing information about the coronavirus without ascertaining prior clearance from relevant government health authorities, in order to avoid the spread of misinformation.

¹⁵³ Compromis, National Security Act, 2020, Section 23.

¹⁵⁴ Compromis, ¶ 15.

¹⁵⁵ Jemimah Steinfeld, 'Disease Control' (2020) Index on Censorship <<https://www.eurozine.com/disease-control/>> accessed 31 December 2021.

'Russia's Health Ministry bans doctors from making public statements about the coronavirus' (*Meduza* 28 October 2020) <https://meduza.io/amp/en/news/2020/10/28/russia-s-health-ministry-bans-doctors-from-making-public-statements-about-the-coronavirus?__twitter_impression=true> accessed on 30 October 2020.

¹⁵⁷ Disaster Management Act, No. 53 of 2005.

¹⁵⁸ Maharashtra Epidemic Diseases COVID-19 Regulations, 2020.

¹⁵⁹ The Delhi Epidemic Diseases, COVID-19 Regulations, 2020.

¹⁶⁰ Karnataka Epidemic Diseases, COVID-19 Regulations, 2020.

¹⁶¹ Telangana Epidemic Diseases COVID-19 Regulations of 2020.

¹⁶² Epidemic Diseases Act of 1897.

72. The term ‘prior authorisation’ in the guidelines under Section 23 which includes a clearance from the Ministry of Health is *pari materia* with such regulations.¹⁶³ In light of Section 23 of the NSA, the guidelines issued prohibiting the publication of any opinion with respect to NIDV, without prior authorisation from the Ministry of Health are binding and will apply during the ongoing public health emergency.¹⁶⁴

(ii) Prior restraints are permissible with adequate safeguards

73. Prior restraints are permissible,¹⁶⁵ so long as there is a legal framework to ensure tight control over the scope of any bans and effective judicial review to prevent abuses.¹⁶⁶

74. First, the Union on 20 March, filed a petition before the Supreme Court of Ized complaining that its rights under Article 10 were violated by the guidelines.¹⁶⁷ However, the Court found that the Union’s rights under the Constitution had not been violated as they complied with the strict requirements of Article 10.¹⁶⁸ Hence, the prior restraints implemented by Ized are permissible as they were subject to effective judicial review which prevented the abuse of power by the government.

75. Second, these guidelines adopted under Section 23 are temporary in nature and have been employed for a period of three months to curtail the present threat of the virus.¹⁶⁹

¹⁶³ Maharashtra Epidemic Diseases COVID-19 Regulations, 2020; The Delhi Epidemic Diseases, COVID-19 Regulations, 2020; Karnataka Epidemic Diseases, COVID-19 Regulations, 2020; Telangana Epidemic Diseases COVID-19 Regulations of 2020.

¹⁶⁴ Compromis, ¶ 16.

¹⁶⁵ 'Venezuela's Supreme Court Upholds Prior Censorship & (and) Insult Laws' (2003) 1 Int'l J Civ Soc'y L 79.

¹⁶⁶ *RTBF v Belgium* Application no. 50084/06 (ECtHR, 29 March 2011) [105] & [115]; *Ahmet Yildirim v Turkey* [2012] ECHR 3003 [64]; *Association Ekin v France* Application no. 39288/98 (ECtHR, 17 July 2001) [58]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no. 33014/05 (ECtHR, 5 May 2011) [55].

¹⁶⁷ Compromis, ¶ 29.

¹⁶⁸ Compromis, ¶ 31.

¹⁶⁹ Compromis, ¶ 16.

Thus, there exist adequate safeguards to ensure that indefinite restrictions are not placed against the rights of the Netizens beyond what is necessary.

B. The Guidelines issued under Section 23 are in pursuance of a legitimate aim

76. State can invoke a legitimate ground for restriction of freedom of expression by establishing a direct and immediate connection between the expression and the existing threat.¹⁷⁰ The surge of disinformation in relation to NIDV is directly connected to public health as the spread of such information has the potential to increase the spread of the viral disease.
77. First, the WHO noted that “*fake news spreads faster and more easily than the virus, and is just as dangerous*”.¹⁷¹ International health agencies have also recognized rumour and conspiracy theories as emerging threats to pandemic preparedness and control.¹⁷² The UN has also recognized the international spread of ‘fake news’ related to COVID-19 as a threat to human lives.¹⁷³
78. For example, during the West Africa Ebola epidemic, misinformation about the disease transmission led to fear, uncertainty, and confusion amongst the public¹⁷⁴ and during the

¹⁷⁰ ‘General Comment 34’ [35].

¹⁷¹ ‘UNHRC Report on Disease Pandemics April 2020’ [41].

¹⁷² World Health Organization, *Managing Epidemics: Key Facts about Major Deadly Diseases* (Geneva, 2018); CDC, ‘Responding to Rumors and Misinformation’ (*Centre for Disease Control*) <https://emergency.cdc.gov/cerc/cerccorner/article_072216.asp> accessed on 2 January 2021.

¹⁷³ ‘During this coronavirus pandemic, ‘fake news’ is putting lives at risk: UNESCO’ (*UN News* 13 April 2020) <<https://news.un.org/en/story/2020/04/1061592>> accessed on 30 October 2020.

¹⁷⁴ Fang Jin, Wei Wang, Liang Zhao, Edward Dougherty, Yang Cao, Chang-Tien Lu, and Naren Ramakrishnan, ‘Misinformation Propagation in the Age of Twitter’ (Virginia Tech, December 2014) <<https://people.cs.vt.edu/naren/papers/Ebola-rumors.pdf>> accessed on 2 January 2021.

nationwide measles outbreak in US, the US Centers for Disease Control and Prevention specifically noted that misinformation contributed to the spread of the disease.¹⁷⁵

79. In particular, there has been rapid disinformation in relation to COVID-19 in various countries like India,¹⁷⁶ Iran,¹⁷⁷ Turkey,¹⁷⁸ and Qatar¹⁷⁹ which has led to ruinous consequences creating a chaotic information environment which is undermining the effectiveness of public health measures.
80. In the present case, NIDV is a serious disease which if not controlled at the earliest can result in long-term societal harm.¹⁸⁰ The disinformation in relation to NIDV by various platforms including the Union is undermining the damage the disease can cause and preventing the Netizens from accessing help and going to the hospital.¹⁸¹ These false rumours being spread about the transmission of the disease will have serious implications if prioritized over evidence-based guidelines. Hence, there is a need to centralise the information in relation to NIDV to ensure that there is a single line of communication which would aid the Netizens to differentiate between authority and noise.

¹⁷⁵ Centers for Disease Control and Prevention, 'CDC media statement: measles cases in the U.S. are highest since measles was eliminated in 2000 [press release]'. (*Centre for Disease Control*, 25 April 2019) <<https://www.cdc.gov/media/releases/2019/s0424-highest-measles-cases-since-elimination.html>> accessed February 11, 2020.

¹⁷⁶ Staff Reporter 'Twelve Taken Ill after Consuming 'Coronavirus Shaped' Datura Seeds' (*The Hindu* 7 April 2020) <<https://www.thehindu.com/news/national/andhra-pradesh/twelve-taken-ill-after-consuming-coronavirus-shaped-datura-seeds/article31282688.ece>> accessed on 2 January 2021.

¹⁷⁷ 'Iran: Over 700 dead after drinking alcohol to cure coronavirus' (*Aljazeera* 27 April 2020) <<https://www.aljazeera.com/news/2020/04/27/iran-over-700-dead-after-drinking-alcohol-to-cure-coronavirus/>> accessed 2 January 2021.

¹⁷⁸ Son Güncelleme '9 more died from pure alcohol' (*CNN Turkey* 25 March 2020) <<https://www.cnnturk.com/video/turkiye/9-kisi-daha-saf-alkolden-oldu>> accessed on 2 January 2021.

¹⁷⁹ Ahmed Siddiqui MY, Mushtaq K, Mohamed MFH, et al. 'Social Media Misinformation- An Epidemic within the COVID-19 Pandemic.' (2020) *The American Journal of Tropical Medicine and Hygiene*. <DOI: 10.4269/ajtmh.20-0592.> accessed 3 January 2021.

¹⁸⁰ Compromis, ¶ 27.

¹⁸¹ Compromis, ¶ 25.

81. Second, disinformation campaigns are strategic and play on public mistrust of government and authority.¹⁸² The spread of disinformation by the Union is deliberate and highly political with an agenda to create mistrust in the ruling party based on their affiliation with the DSP.¹⁸³ The experts who have provided their medical opinion to the ‘Unite’ magazine regarding the source of transmission of the disease are state healthcare workers¹⁸⁴ that are possibly members of the Union itself. Hence, the information is unreliable as there is a political motive behind it.
82. Third, laws regulating the speech of health care professionals should be subject to heightened scrutiny.¹⁸⁵ Further, prohibitions of professional speech are constitutional if they directly advance the State’s interest in protecting its citizens from harmful or ineffective professional practices.¹⁸⁶
83. For example, during the coronavirus outbreak the medical community played a significant role in making the situation confusing by giving inaccurate and contradictory statements that judged the epidemic as a simple influenza.¹⁸⁷ This lowered social

¹⁸² Yochai Benkler, 'Cautionary Notes on Disinformation and the Origins of Distrust' (*MediaWell*, 22 October 2019) < <https://mediawell.ssrc.org/expert-reflections/cautionary-notes-on-disinformation-benkler/>> accessed 2 January 2021.

¹⁸³ *Compromis*, ¶ 7.

¹⁸⁴ *Compromis*, ¶ 26.

¹⁸⁵ Caitlin E. Borgmann, 'Abortion Exceptionalism and Undue Burden Preemption' (2014), 71 WASH. & LEE L. REV. 1047, 1087; Caroline Mala Corbin, 'Abortion Distortions' (2014) 71 WASH. & LEE L. REV. 1175, 1176.

¹⁸⁶ *King v Governor of N.J.*, 767 F.3d 216, 233 (3d Cir. 2014).

¹⁸⁷ Fabio Tagliabue, Luca Galassi, Pierpaolo Mariani, 'The “Pandemic” of Disinformation in COVID-19' (2020) *SN Compr Clin Med.* 0< <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7395797/>> accessed on 3 January 2021.

attention on the virus and instilled in some people conspiracy or denial ideas supported by statements through doctors who said, “*it’s just a flu.*”¹⁸⁸

84. In the present case, several medical experts have confidently claimed that NIDV can only be transmitted sexually, and that there is no evidence that it could be transmitted in any other manner.¹⁸⁹ These claims have lowered the social attention on NIDV and downplayed the gravity of the disease.

85. Accordingly, the guidelines under Section 23 are in pursuance of a legitimate aim.

C. The Guidelines issued under Section 23 are necessary in a democratic society

86. Restrictions must be directly related to the specific need on which they are predicated,¹⁹⁰ and the need for restrictions on expression must outweigh the need for enjoyment of full rights.¹⁹¹ WHO has noted the emergence of what it calls, an ‘infodemic’ which involves “*the rapid spread of information of all kinds, including rumours, gossip and unreliable information*”¹⁹² and therefore, recommended systematic monitoring and control measures.¹⁹³

¹⁸⁸ Francesca Bernasconi, 'Fontana: "Il coronavirus è poco più di una normale influenza"' (*Gironale Politica*, 25 March 2020). <<https://www.ilgiornale.it/news/politica/fontana-coronavirus-poco-pi-normale-influenza-1831891.html>> accessed on 2 January 2021.

¹⁸⁹ Compromis, ¶ 26.

¹⁹⁰ ‘General Comment 34’ [22].

¹⁹¹ *Ricardo Canese v Paraguay* IACtHR (2004) Series C No 111, [96].

¹⁹² World Health Organization, *Managing Epidemics: Key Facts about Major Deadly Diseases* (Geneva, 2018); CDC, 'Responding to Rumors and Misinformation' (*Centre for Disease Control*) <https://emergency.cdc.gov/cerc/cerccorner/article_072216.asp> accessed on 2 January 2021.

¹⁹³ World Health Organization, *Managing Epidemics: Key Facts about Major Deadly Diseases* (Geneva, 2018); CDC, 'Responding to Rumors and Misinformation' (*Centre for Disease Control*) <https://emergency.cdc.gov/cerc/cerccorner/article_072216.asp> accessed on 2 January 2021.

87. In general, applications of fake news restrictions during a disease outbreak have been commonly utilized as a weapon against disinformation in various democracies such as Singapore,¹⁹⁴ Turkey,¹⁹⁵ Kenya,¹⁹⁶ and Pakistan.¹⁹⁷
88. In the present case, the measures taken by the government of Ized are merely aimed at combating fake news and streamlining the flow of information. Hence, the government is not restricting the right of free expression entirely but is merely regulating and verifying the information to avoid panic and confusion amongst the Netizens.
89. Accordingly, the guidelines issued under Section 23 are necessary in a democratic society.

¹⁹⁴ 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> accessed on 30 October 2020.

¹⁹⁵ '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 on 30 October 2020.

¹⁹⁶ Computer Misuse and Cybercrimes Act No. 5 of 2018, § 23; *Bloggers Association of Kenya (BAKE) v. Attorney General & 3 others; Article 19 East Africa & another (Interested Parties)* [2020] eKLR at D.

¹⁹⁷ Mumtaz Alvi 'Interior minister says applications received for action against Ayaz Sadiq under Article 6' (*The International News*, 1 November 2020) <<https://www.thenews.com.pk/print/737471-interior-minister-says-applications-received-for-action-against-ayaz-sadiq-under-article-6>> accessed 3 January 2021.

PRAYER

For the foregoing reasons, the Respondents 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, does not violate 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 does not violate her rights recognised by Articles 19 and 21 of the ICCPR.
- III. Ized's decision to issue the statement of 16 March does not violate 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 does not violate the Social Democratic Workers Union's rights recognised by Article 19 of the ICCPR.

All of which is respectfully submitted.

On Behalf of the Respondents

COUNSEL FOR RESPONDENTS