

THE 2021-2022 PRICE MEDIA LAW MOOT COURT COMPETITION

Emilia Bos and Santos Darl

(Applicants)

v.

State of Sargon

(Respondent)

MEMORIAL FOR RESPONDENT

WORD COUNT: 4,978

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	IV
LIST OF AUTHORITIES	V
STATEMENT OF RELEVANT FACTS	XVII
STATEMENT OF JURISDICTION	XX
QUESTIONS PRESENTED	XXI
SUMMARY OF ARGUMENTS	XXII
ARGUMENTS	1
I. SARGON DID NOT VIOLATE EMILIA BOS’S RIGHTS UNDER ARTICLE 19 READ WITH ARTICLE 25(B) OF THE ICCPR BY UPHOLDING THE NATTER OVERSIGHT COUNCIL’S DECISIONS TO SUSPEND AND PERMANENTLY BLOCK HER FROM NATTER.....	1
A. The restriction is prescribed by law.....	2
1. The restriction is prescribed by the CSP.....	2
2. The restriction is prescribed by the Constitution and the RSMA.....	5
B. The restriction pursues legitimate aims.....	7
1. The restriction aims to protect the rights and reputations of others.....	7
2. The restriction aims to protect public order.....	9
C. The restriction is necessary and proportionate.....	16
1. The restriction corresponds to a pressing social need.....	16

2. The restriction was proportionate to the legitimate aims pursued.....	17
II. SARGON’S DECISION TO UPHOLD THE REMOVAL OF THE 31 MAY TO 2 JUNE 2021 POSTS OF SANTOS DARL DID NOT VIOLATE HIS RIGHTS UNDER ARTICLE 19 READ WITH ARTICLE 25(B) OF THE ICCPR.....	20
A. The restriction was prescribed by law.....	20
1. The restriction is prescribed by the CSP.....	20
2. The restriction is prescribed by the Constitution and the RSMA.....	21
B. The restriction pursued a legitimate aim.....	22
1. The restriction aims to protect the rights and reputations of others.....	22
2. The restriction aims to protect public order.....	25
C. The restriction was necessary and proportionate.....	27
1. The restriction corresponds to a pressing social need.....	27
2. The restriction was proportionate to the legitimate aims pursued.....	28
RELIEF SOUGHT.....	32

LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and People’s Rights
CSP	Community Standards Policy
ECOSOC	Economic and Social Council
HRC	United Nations Human Rights Committee
ECtHR	European Court of Human Rights
ICCPR	International Convention on Civil and Political Rights
ICEARD	International Convention on the Elimination of All Forms of Racial Discrimination
NOC	Natter Oversight Council
PAS	Penal Act of Sargon
OAS	Organization of American States
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Office for Security and Co-Operation in Europe
RSMA	Regulation of Social Media Act
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States

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STATEMENT OF RELEVANT FACTS

Sargon

1. Sargon is an island nation of over 60 million people. Over 60% of its population are adherents of Phi, a religion that has been practiced on the island for four centuries.
2. A strong nationalist discourse has recently emerged wherein some Sargonians claim that their ancestors were the original inhabitants of Sargon but were banished by Phi invading forces. This led to anti-Phi campaigns with the banner slogan “We Were Here First.”

Natter

3. Natter is the most popular social media platform in Sargon. It is run by a privately-owned company. Its Community Standards Policy (CSP) provides guidelines on prohibited content on the platform and a grievance mechanism through which any user can report content that violates the CSP.

The Regulation of Social Media Act and the Natter Oversight Council

4. Sargon enacted the Regulation of Social Media Act (RSMA) which requires social media service providers to establish “transparent and independent oversight mechanisms to curb online hate speech.”
5. In compliance with the RSMA, Natter created the Natter Oversight Council (NOC) to resolve cases of CSP violations. All decisions of the NOC are published on its website.

Presidential Election Campaigns

6. Incumbent President Emilia Bos and Philemon Gen, the Spiritual Leader of the Phi religion ran as presidential candidates in the 2021 presidential elections. Bos is a vocal critic of Phi.

7. Both candidates ran media campaigns on Natter. Posts by Bos supporters at the time used the hashtags “#WeWereHereFirst” and “#Phinished,” After receiving several complaints from users, Natter began to remove posts with “#Phinished” and stayed the algorithm with respect to posts with “#WeWereHereFirst.”

Santos Darl’s posts

8. Santos Darl is a social media influencer, Bos supporter, and a critic of Phi. He made a total of 55 posts on Natter between 31 May and 2 June 2021, all containing “#Phinished” and “#WeWereHereFirst.” One of the posts referred to adherents of Phi as “interlopers.” Natter removed these posts, and Darl voluntarily deactivated his profile in protest.

Emilia Bos’s Posts

9. As the Election Commission began counting the votes on the night of the election, early results favored Gen. On Natter, Bos supporters alleged election fraud with calls to “Stop the Phraud.”
10. At midnight, Bos posted on Natter: “It has come to my attention that the election has been undermined by undemocratic and extremist forces. STOP THE FRAUD!!!”
11. The Commission called an emergency meeting to deliberate on the accusation. At 12:35 AM, while deliberations were ongoing, Bos posted on Natter: “The Election Commission now suspects that FRAUD has been committed. Will justice prevail?”
12. At 1:00 AM, the Election Commission declared that there was no evidence of election fraud. At 1:05 AM, Bos posted a photograph of the crowd of her supporters outside the Commission’s headquarters, with the caption “This is crazy!!! They are going to let the religious extremists win. STOP THE PHRAUD! #Phinished!”

13. Moments after Bos's 1:05 AM post, her supporters started a violent riot. One of them threw a projectile at an officer, severely injuring him. As the violence escalated, riot police were called to disperse the crowd.

14. At 1:25 AM, Bos's 1:05 AM post was taken down by Natter due to several complaints. At 2:00 AM, her profile was suspended until further notice for serious and repeated violations of the CSP, and the case was referred to the NOC for a decision.

Natter Oversight Council Decision

15. The NOC decided to permanently block Bos from Natter, for serious and repeated violations of Section 4 of the CSP, which prohibits hate speech. Moreover, the NOC found that Bos had committed a serious violation of Section 8 of the CSP by deliberately misrepresenting facts and advocating for violence in relation to the elections.

16. A few days after the elections, Darl reactivated his profile and filed a complaint with the NOC challenging Natter's decision to remove his posts. The NOC dismissed Darl's complaint and held that his posts violated Section 4 of the CSP.

Supreme Court Decision

17. Upon appeal by Bos and Darl, the Supreme Court of Sargon upheld the NOC's decision. The Supreme Court found that the NOC decided objectively and that neither case involved a violation of Article 10 of the Constitution, which governs freedom of expression and other fundamental rights.

STATEMENT OF JURISDICTION

Emilia Bos, Santos Darl, and the State of Sargon, the latter being a party to the International Covenant on Civil and Political Rights (ICCPR), submitted their differences to the Universal Court of Human Rights (“this Court”), and hereby submit to this Court their dispute concerning Articles 19 and 25(b) of the ICCPR.

On the basis of the foregoing, the Respondent respectfully requests for this Honorable Court to adjudge the dispute in accordance with the rules and principles of international law, including any applicable declarations and treaties.

QUESTIONS PRESENTED

- I. Whether Sargon violated Emilia Bos's rights under Article 19 read with Article 25(b) of the ICCPR by upholding the Natter Oversight Council's decisions to suspend and permanently block her from Natter.
- II. Whether Sargon violated Santos Darl's rights under Article 19 read with Article 25(b) of the ICCPR by upholding Natter's decision to remove every single post by Darl from 31 May to 2 June 2021.

SUMMARY OF ARGUMENT

I. SARGON'S DECISION TO UPHOLD THE SUSPENSION AND PERMANENT BLOCKING OF EMILIA BOS'S NATTER PROFILE DID NOT VIOLATE HER RIGHTS UNDER ARTICLE 19 READ WITH ARTICLE 25(B) OF THE ICCPR.

The right to freedom of expression is not absolute, and may be subjected to restrictions. The decision to uphold the suspension and permanent blocking of Bos's profile was a valid restriction on her right to freedom of expression.

- A. The decision was prescribed by law. The decision finds basis in Natter's CSP, which is a norm that can be characterized as a law, being both accessible and foreseeable. Even assuming the CSP cannot be characterized as a law, the decision is still prescribed by the Constitution of Sargon and the Regulation of Social Media Act (RSMA). Both laws are accessible, being duly enacted laws of Sargon. Both laws are also foreseeable, as they are formulated with sufficient precision as to enable Bos to foresee the consequences of particular actions. Moreover, given that Sargon is a party to the ICCPR, the Constitution states that interpretations of its provisions on fundamental rights must be consistent with international law standards for the terms "hate speech" and "disinformation."
- B. The decision pursued the legitimate aims of the protection (a) of the rights and reputations of others and (b) of public order. The decision sought to protect the right of Phi adherents against religious discrimination and their right to freedom of religion. The decision also sought to preserve public order, as Bos's statements constituted hate speech that incited to violence, hostility, and discrimination, considering the statements' context, speaker, intent, content, extent, and likelihood to cause harm. Hate speech disrupts public order as it is a

menace to democratic values, social stability, and peace. Bos' statements thus constituted threats to public order.

- C. The decision was necessary and proportionate to the legitimate aims pursued. It was necessary as the pressing social need addressed by the decision was the need to restore public order after Bos's statements incited violence outside the Election Commission headquarters. The decision was also proportionate. There is a reasonable balance between the interests at stake. The importance of the right to freedom of expression does not bestow any freedom of forum for the exercise of that right nor does it require the automatic creation of rights of entry to private property. Suspension and permanent blocking were already the least intrusive means to achieve the legitimate aims pursued, as to allow Bos and her statements to remain on Natter would expose the public to continued risk of incitement to violence and expose Phi adherents to further discrimination. Moreover, the penalty imposed is already the least intrusive means as opposed to criminal sanctions under the Penal Act of Sargon. The penalty imposed is thus proportionate.

II. SARGON'S DECISION TO UPHOLD THE REMOVAL OF THE 31 MAY TO 2 JUNE 2021 POSTS OF SANTOS DARL DID NOT VIOLATE HIS RIGHTS UNDER ARTICLE 19 READ WITH ARTICLE 25(B) OF THE ICCPR.

The decision to uphold the removal of Darl's posts was a valid restriction on his right to freedom of expression.

- A. The decision to uphold the removal of Darl's posts was prescribed by law. The decision finds basis in Natter's CSP, which is a norm that can be characterized as a law, being both accessible and foreseeable. Even assuming the CSP cannot be characterized as a law, the

decision is still prescribed by the Constitution of Sargon and the Regulation of Social Media Act (RSMA). Both laws are accessible, being duly enacted laws of Sargon. Both laws are also foreseeable, as they are formulated with sufficient precision as to enable Bos to foresee the consequences of particular actions. Moreover, given that Sargon is a party to the ICCPR, the Constitution states that interpretations of its provisions on fundamental rights must be consistent with international law standards for the term “hate speech.”

- B. The decision to uphold the removal of Darl’s posts pursued the legitimate aims of the protection (a) of the rights and reputations of others and (b) of public order. The decision protected the rights of Phi adherents against religious discrimination and their right to freedom of religion, as Darl’s posts constituted expressions of contempt and hate speech that incited to hostility and discrimination against Phi adherents on the basis of their religion. The decision also sought to uphold public order, as Darl’s posts constituted hate speech inciting to violence, given the national tensions in Sargon at the time.
- C. The decision to uphold the removal of Darl’s posts was necessary and proportionate to the legitimate aims pursued. It was necessary as Darl’s posts constituted hate speech inciting to violence, hostility, and discrimination. Given that they were uttered amid a tense political climate in Sargon, the targeted groups are more susceptible to threats of violence or harassment on the basis of their religion. This gives rise to a pressing social need to be addressed by the removal. The decision to uphold the removal of Darl’s posts was also proportionate. There is a reasonable balance between the interests at stake, as the right to freedom of expression does not give Darl the right to demand that Natter disseminate his hateful content. The removal of all Darl’s posts containing the harmful hashtags was already the least restrictive means available to achieve the legitimate aims pursued. The

mere removal of select posts will not achieve the legitimate aim, since the speech sought to be suppressed pertains to the hashtags themselves. Hashtags are an integral part of a social media platform's ability to link together strangers, resulting in a rise in hate speech incidents. Because all Darl's posts contained the violative hashtags, they are subject to valid restriction.

ARGUMENTS

I. SARGON DID NOT VIOLATE EMILIA BOS'S RIGHTS UNDER ARTICLE 19 READ WITH ARTICLE 25(B) OF THE ICCPR BY UPHOLDING THE NATTER OVERSIGHT COUNCIL'S DECISIONS TO SUSPEND AND PERMANENTLY BLOCK HER FROM NATTER.

1. The ICCPR in Article 25(b) recognizes the fundamental right of citizens to take part in the conduct of public affairs as voters or as candidates for election.¹ An essential condition for the effective exercise of this right is freedom of expression, a cornerstone right enshrined in Article 19 of the ICCPR.²
2. However, the right to freedom of expression is not absolute, and carries with it special duties and responsibilities.³ Restrictions on its exercise are justified, provided they **(A) are prescribed by law, (B) pursue legitimate aims, and (C) are necessary and proportionate.**⁴

¹ HRC, 'General Comment No 25 Art 25: The right to participate in public affairs, voting rights and the right of equal access to public service' (12 July 1996) CCPR/C/21/Rev.1/Add.7 ('General Comment no 25') [9]; Michael O'Flaherty, Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No 34' (2012) 12 HLR <<https://academic.oup.com/hrlr/articleabstract/12/4/627/628921>> accessed 10 Oct 2021.

² European Convention on Human Rights ('ECHR') (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 art 10; General Comment no 25 (n 1) [12]; HRC, 'General Comment No 34 Art 19: Freedoms of opinion and expression' (12 September 2011) CCPR/C/GC/34 ('General Comment no 34') [4]; Council of the European Union, 'EU Human Rights Guidelines on Freedom of Expression Online and Offline' (12 May 2014) [8].

³ International Covenant on Civil and Political Rights ('ICCPR') (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 19 [3].

⁴ ICCPR (n 3) art 19 [3]; General Comment no 34 (n 2) [7], [22], [24]–[36]; *Handyside v The United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) ('*Handyside v UK*') [43]; *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986); *Zana v Turkey* App no 18954/91 (ECtHR, 25 November 1997) ('*Zana v Turkey*') [46]; *Gündüz v Turkey* no 35071/97 (ECtHR, 4 December 2003) [37]–[38]; *Hak-Chul Shin v Republic of Korea* Communication no 926/2000 UN Doc CCPR/C/80/D/926/2000 (HRC, 19 March 2004) [7.2]; *Fernando v Sri Lanka* Communication no 1189/2003 UN Doc CCPR/C/83/D/823/1998 (HRC, 21 March 2005) [3.4]; *Marques de Morais v Angola* Communication no 1128/2002 UN Doc CCPR/C/83/D/1128/2002 (HRC, 18 April 2005) [6.8]; *Pavel Levinov v Belarus* Communication no 2239/2013 UN Doc CCPR/C/123/D/2239/2013 (HRC, 14 August 2018) [6.3]; *Kirill Nepomnyashchiy v Russian*

3. The NOC's decisions to suspend and permanently block Bos's profile satisfied the three-fold test. Therefore, Sargon correctly found no violation of Bos's right to freedom of expression.

A. The restriction is prescribed by law.

4. A restriction is prescribed by law when it finds basis in a national law of general application.⁵

This law must be accessible to the person concerned and foreseeable as to its effects.⁶ A norm may also be characterized as law, provided it meets the same criteria of accessibility and foreseeability.⁷

5. In this case, the restriction is prescribed by Natter's CSP, which is a norm that may be characterized as law. Even assuming the CSP is not a law, the restriction is also prescribed by the Constitution of Sargon and the RSMA.

1. The restriction is prescribed by the CSP.

a. The CSP is a norm that can be characterized as law.

6. For the purposes of Article 19(3) of the ICCPR, a norm may be characterized as law provided it is accessible and foreseeable.⁸ Thus, rules created by social media companies to regulate

Federation Communication no 2318/2013 UN Doc CCPR/C/123/D/2318/2013 (HRC, 23 August 2018) [7.6]; *Sagiyev and Huseynov v Azerbaijan* App no. 13274/08 (ECtHR, 5 December 2019) [33]; *Gawlik v Liechtenstein* App no 23922/19 (ECtHR, 16 February 2021) [49]; HRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye' (6 April 2018) ('April 2018 Report of UN Special Rapporteur David Kaye') [7]; Manfred Nowak, U.N. Covenant on Civil and Political Rights (2nd revised edition, N.P. Engel Publisher, 2005).

⁵ Economic and Social Council ('ECOSOC'), "Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR" (28 September 1984) E/CN.4/1984/4 ('Siracusa Principles') [15].

⁶ *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) ('*Delfi AS v Estonia*') [120]–[121]; *Satukunnan Markkinapörssi Oy and Satamedia Oy v Finland* App no 931/13 (ECtHR, 27 June 2017) ('*Oy v Finland*') [142]–[143]; *Sekmadienis Ltd. v Lithuania* App no 69317/14 (ECtHR, 30 April 2018) ('*Sekmadienis Ltd. v Lithuania*') [63].

⁷ General Comment no 34 (n 2) [25].

⁸ *The Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979) ('*Sunday Times v UK*') [49]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) ('*Perinçek v Switzerland*') [131]; General

their platforms, such as Natter’s CSP, are norms that may qualify as law provided they meet these two requisites.

b. The restriction is accessible.

7. A law is accessible when citizens have adequate indication of the legal rules that apply to a given set of circumstances.⁹ In this case, the requirement of accessibility was adequately fulfilled since Natter users can easily access the CSP through its “Help Center” tab.¹⁰

c. The restriction is foreseeable.

8. A law is foreseeable when it is formulated with sufficient precision as to enable individuals to regulate their conduct accordingly¹¹ and clear in its terms to give individuals adequate indication as to the conditions which permit authorities to interfere with their rights.¹² Foreseeability requires sufficient precision, not absolute certainty.¹³

Comment no 34 (n 2) [25]; Susan Benesch, ‘But Facebook’s Not a Country: How to Interpret Human Rights Law for Social Media Companies’ (2020–2021) 38 JREG Bulletin 86.

⁹ *Sunday Times v UK* (n 8) [49]; *Silver and Others v The United Kingdom* App nos 5947/72, 6205/73, 7052/75, 7061/75, 7107/75 (ECtHR, 25 March 1983) (‘*Silver and Others v UK*’) [87]; Steven Greer, ‘The exceptions to Articles 8 to 11 of the European Convention on Human Rights’ (1997), Council of Europe Publishing, 10.

¹⁰ Clarifications [15].

¹¹ *Sunday Times v UK* (n 8) [49]; *Silver and Others v UK* (n 9) [88]; *Rekvényi v Hungary* App no 25390/94 (ECtHR, 20 May 1999) [34]; *Gorzelik and Others v Poland* App no 44158/98 (ECtHR, 17 February 2004) (‘*Gorzelik and Others v Poland*’) [64]; *Sekmadienis Ltd. v Lithuania* (n 6) [64]; *Marina Kockish v Belarus* Communication no. 1985/2010 UN Doc CCPR/C/111/D/1985/2010 (HRC, 26 August 2014) [8.5].

¹² *Gorzelik and Others v Poland* (n 11); *Liu v Russia* App no 42086/05 (ECtHR, 2 June 2008) [56]; *Engels v Russia* App no 35550/18 (ECtHR, 16 January 2020) [23].

¹³ *Sunday Times v UK* (n 8) [49]; *Delfi AS v Estonia* (n 6) [121]; *Lindon, Otchakovsky-Laurens and July v. France* App nos 21279/02 and 36448/02 (ECtHR, 22 October 2007) [41]; *Kudrevičius and Others v Lithuania* App no 37552/05 (ECtHR, 15 October 2015) [109]; *Magyar Jeti Zrt v. Hungary* App no 11257/16 (ECtHR, 4 December 2018) (‘*Magyar Jeti Zrt v. Hungary*’) [49]; *Panioglu v Romania* App no 33794/14 (ECtHR, 8 December 2020) [101].

9. The CSP is foreseeable because it contains clear and sufficient definitions of content liable to be taken down on Natter.¹⁴ Bos's posts were found to have violated Sections 4 and 8 of the CSP pertaining to hate speech and election-related disinformation, respectively.
10. Section 4 defines hate speech as an attack against people on the basis of, among others, religious affiliation which may include statements of superiority or inferiority, expressions of contempt, and calls for exclusion or segregation.¹⁵
11. Section 8 prohibits deliberate misrepresentation of facts concerning the outcomes of elections and any calls for action or advocacy for violence due to outcomes of elections.¹⁶
12. Furthermore, the definitions in the CSP are consistent with international law standards regarding both hate speech and disinformation.
13. The United Nations (UN) defines hate speech as communication that attacks or uses discriminatory language with reference to a person or a group based on an identity factor such as religion.¹⁷ If such hate speech constitutes incitement to discrimination, hostility, or violence, it is prohibited under international law.¹⁸

¹⁴ Fact pattern [14].

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ UN, UN Strategy and Plan of Action on Hate Speech: Detailed Guidelines on Implementation for United Nations Field Presences ('2020 UN Strategy and Plan of Action on Hate Speech Implementation Guidelines') (September 2020) [10].

¹⁸ ICCPR (n 3) art 20 [2]; *Rabbae v Netherlands* Communication no 2124/2011 (HRC, 18 November 2016) [6.9]; UN Secretary-General António Guterres, UN Strategy and Plan of Action on Hate Speech (May 2019) ('May 2019 UN Strategy and Plan of Action on Hate Speech') [5]
<<https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>> accessed 12 November 2021.

14. Meanwhile, disinformation has been defined as false information that is knowingly shared with the intention to cause harm.¹⁹

15. Furthermore, the restriction is consistent with how the NOC has decided previous cases. The NOC's decisions are published on its public website.²⁰ Three of its eight decisions involved permanent blocking due to serious violations of Section 4.²¹ Therefore, there were clear standards to guide Bos's conduct.

2. The restriction is prescribed by the Constitution and the RSMA.

16. Even assuming that the CSP is not law, the restriction is still prescribed by domestic laws of Sargon, specifically the Constitution of Sargon and the RSMA.

a. Both laws are national laws of general application.

17. Domestic laws are those adopted by the national government through regular legislative processes.²² In this case, the decision of Sargon was grounded on Article 10 of the Constitution and the RSMA,²³ enacted by the government of Sargon.

¹⁹ HRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan' (13 April 2021) ('April 2021 Report of UN Special Rapporteur Irene Khan') A/HRC/47/25 [15].

²⁰ Fact pattern [25].

²¹ *ibid.*

²² April 2018 Report of UN Special Rapporteur David Kaye (n 4) [7]; HRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye' (9 October 2018) A/74/486 ('October 2018 Report of UN Special Rapporteur David Kaye') [6].

²³ Fact pattern [70].

18. The Constitution states that although the right to freedom of expression is a fundamental right, this right may be limited by law.²⁴ It identifies classes of unprotected speech such as advocacy of religious hatred that constitutes incitement to cause harm.²⁵
19. Pursuant to this, the RSMA limits freedom of expression²⁶ by requiring social media platforms to establish transparent and independent oversight mechanisms to curb online hate speech.²⁷ In compliance with the RSMA, Natter established the NOC.²⁸
20. Therefore, the restrictions imposed by the NOC have legal basis in the Constitution and the RSMA. Accordingly, Sargon’s decision to uphold the actions of the NOC finds basis in Sargon law.

b. The restriction is accessible.

21. The RSMA and the Constitution are accessible since they are both laws duly enacted by Sargon.²⁹

c. The restriction is foreseeable.

22. Article 10 of the Constitution provides that freedom of expression does not cover advocacy of hatred.³⁰ Article 25 provides that interpretations of the fundamental rights in the Constitution

²⁴ Fact pattern [67].

²⁵ *ibid.*

²⁶ Fact pattern [21].

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ Fact pattern [67].

must be “consistent with Sargon’s obligations under international law.”³¹ Sargon is a party to the ICCPR.³²

23. Thus, the standards surrounding the term “hate speech” in Sargon law can be interpreted with international law standards that define hate speech. Moreover, responses to the spread of disinformation must be grounded on international human rights law.³³

24. Because Sargon law itself provides that the standards of hate speech to be used must be consistent with international law, the restriction was foreseeable.

B. The restriction pursues legitimate aims.

25. Restrictions on the right to freedom of expression are permissible if they pursue a legitimate aim.³⁴ Article 19(3) of the ICCPR enumerates the legitimate aims that may be invoked. In this case, the restrictions were imposed for **(1) the protection of the rights or reputations of others** and **(2) public order**.

1. The restriction aims to protect the rights and reputations of others.

26. The exercise of freedom of expression may be restricted when it attacks the reputation and undermines the rights of private individuals.³⁵ The rights covered include human rights recognized in the ICCPR and international human rights law.³⁶

³¹ Fact pattern [68].

³² Fact pattern [71].

³³ April 2021 Report of UN Special Rapporteur Irene Khan (n 19) [30].

³⁴ ICCPR (n 3) art 19 [3]; General Comment no 34 (n 2) [27]–[31].

³⁵ *Bladet Tromsø and Stensaas v Norway* [GC] App no 21980/93 (ECtHR, 20 May 1999) [65].

³⁶ HRC, ‘Resolution on the promotion, protection and enjoyment of human rights on the Internet’ (‘HRC Resolution on the promotion, protection and enjoyment of human rights on the Internet’) (5 July 2012) A/HRC/20/8; United Nations Educational, Scientific and Cultural Organization (UNESCO), *Countering Online Hate Speech* (‘UNESCO: Countering Online Hate Speech’) (UNESCO Publishing 2015); April 2018 Report of UN Special Rapporteur David Kaye (n 4) [7]; General Comment no 34 (n 2) [28].

27. In this case, the restriction aims to protect the right of the adherents of Phi against religious discrimination.³⁷ The principle of non-discrimination embraces the right to freedom of religion³⁸ for all religions.³⁹ States are obliged to create conditions conducive to the enjoyment of this freedom without fear of discrimination, which may require restricting freedom of expression.⁴⁰

28. In the past, the European Court of Human Rights (ECtHR) has restricted the freedom of expression of political leaders whose statements constituted religious discrimination. These include statements promoting hostility against the Muslim community that fostered public fear of Muslims⁴¹ and anti-Semitic speech boycotting Israeli products.⁴²

29. In the context of social media, the ECtHR has upheld the restriction of homophobic comments⁴³ and racist videos that stirred up discord,⁴⁴ as well as statements that do not call for violence but nevertheless constitute hate speech based on content and delivery.⁴⁵

³⁷ ICCPR (n 3) arts 18, 20 [2].

³⁸ HRC ‘Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir’ UN Doc A/HRC/10/8 (6 January 2009) (‘January 2009 Report of UN Special Rapporteur Asma Jahangir’) [30].

³⁹ ICCPR (n 3) arts 2 [1], 18 [1] and [2], 26, 27; January 2009 Report of UN Special Rapporteur Asma Jahangir (n 38) [33].

⁴⁰ January 2009 Report of UN Special Rapporteur Asma Jahangir (n 38) [9].

⁴¹ *Le Pen v France* App no 18788/09 (ECtHR, 7 May 2010).

⁴² *Willem v France* App no 10883/05 (ECtHR, 16 July 2009).

⁴³ *Lilliendahl v Iceland* App no 29297/18 (ECtHR, 11 June 2010) (‘*Lilliendahl v Iceland*’).

⁴⁴ *Kilin v Russia* App no 10271/12 (ECtHR, 5 May 2021) (‘*Kilin v Russia*’).

⁴⁵ *Lilliendahl v Iceland* (n 43) [36].

30. In this case, Bos, as the incumbent President of Sargon, made her anti-Phi position clear when she indiscriminately labelled Phi adherents as “undemocratic, religious extremist forces,”⁴⁶ leading to the baseless assertion that their mere participation tainted the election with fraud.⁴⁷

31. Freedom of expression cannot be invoked to destroy the rights and freedoms of others.⁴⁸ In one case, a poster on a window implying that Muslims were terrorists was validly taken down for being an attack against a religious group.⁴⁹ In another, a website post insinuating a Jewish political conspiracy was validly restricted for inciting hatred.⁵⁰ In this case, Bos’s deliberate misspelling of the word “fraud” as “phraud” produces the same effect by imputing sweeping allegations of electoral fraud to adherents of Phi. Therefore, her statements are likewise classified as incitement to hatred subject to valid restriction.

2. The restriction aims to protect public order.

32. Public order is defined as the maintenance of public peace and safety.⁵¹ Restrictions may be imposed on speech that disrupts order and incites violence.⁵²

⁴⁶ Fact pattern [47].

⁴⁷ Fact pattern [52].

⁴⁸ *Norwood v United Kingdom* App no 23131/03 (ECtHR, 16 November 2004).

⁴⁹ *ibid.*

⁵⁰ *The Case of Mr. K* 1 BvR 479/20 (German Federal Constitutional Court, 7 July 2020) [18].

⁵¹ *Scanlen and Holderness v Zimbabwe Communication* 297/05 (ACHPR, 3 April 2009) [19]; *Ramburn v Stock Exchange Commission* [1991] LRC (Const) 272; *Elliott v Commissioner of Police* [1997] 3 LRC 15.

⁵² Joseph, S. & Castan, M. ‘The International Covenant on Civil and Political Rights: Cases, materials, and Commentary. (Oxford University Press, 2013) [18.63].

33. In this case, Bos’s posts at 12:00 AM and 1:05 AM constitute threats to public order.

Considering the potential consequences of allegations of election fraud, the State must closely examine the existence of the sufficient factual basis for such.⁵³

34. Bos’s 12:00 AM post claiming that the elections had been “undermined by undemocratic and extremist forces”⁵⁴ was baseless and reckless since there was no evidence of electoral fraud at the time of posting. Bos’s 1:05 AM post was made five minutes after the Election Commission declared that there was no election fraud.⁵⁵ Nevertheless, she persisted in claiming that the Commission was “going to let the religious extremists win”⁵⁶ and attached a photo of the crowd of her supporters outside the Commission headquarters.⁵⁷

35. Inflammatory speech published at a time of serious disturbance is a threat to national security and public safety.⁵⁸ Bos’s statements were made amid a volatile political climate,⁵⁹ during the counting of votes⁶⁰ and right before violence erupted outside the Commission headquarters.⁶¹

⁵³ *Rungainis v Latvia* App no 40597/08 (ECtHR, 14 June 2018) [59].

⁵⁴ Fact pattern [47].

⁵⁵ Fact pattern [51], [52].

⁵⁶ Fact pattern [52].

⁵⁷ Fact pattern [52].

⁵⁸ *Zana v Turkey* (n 4) [50].

⁵⁹ Fact pattern [5], [6].

⁶⁰ Fact pattern [51].

⁶¹ Fact pattern [53].

36. The freedom of political debate, even during elections, is not absolute.⁶² To protect public order, States may penalize hate speech that is devoid of foundation or formulated in bad faith.⁶³ Bos's posts made at the height of political unrest during election season⁶⁴ could have been reasonably expected to lead to escalating tension.
37. Bos supporters have a history of violence. During the 2017 presidential elections, they attacked campaigners of a rival party during a rally.⁶⁵ These incidents demonstrate the danger of violence if left unchecked.
38. In a similar instance, Twitter, the world's second largest social networking site,⁶⁶ upheld the permanent suspension of Trump's profile following the 2021 attacks on the US Capitol Building,⁶⁷ citing risk of further incitement to violence in light of the ongoing political tensions.⁶⁸

⁶² General Comment no 34 (n 2) [11], [20], [28]; General Comment no 25 (n 1) [25].

⁶³ *Castells v Spain*, App no 11798/85 (HRC, 23 April 1992) [46].

⁶⁴ Fact pattern [47], [49], [52].

⁶⁵ Fact pattern [33].

⁶⁶ Alexandra Krallman, Mark Pelletier, and Frank Adams, '@Size vs. #Impact: Social Media Engagement Differences Amongst Facebook, Twitter, and Instagram' (*Developments in Marketing Science: Proceedings of the Academy of Marketing Science*, 11 March 2006) (Social Media Engagement Differences Amongst Facebook, Twitter, and Instagram) <https://doi.org/10.1007/978-3-319-26647-3_112> accessed 2 November 2021.

⁶⁷ Twitter, 'Permanent suspension of @realDonaldTrump' (*Twitter*, January 2021) ('Twitter Permanent Trump Ban'). <https://blog.twitter.com/en_us/topics/company/2020/suspension> accessed 12 November 2021.

⁶⁸ *ibid.*

39. Section 8 of the CSP also prohibits deliberate misrepresentation of facts with regard to the outcome of elections.⁶⁹ Speech may be restricted when it contains disinformation, which is understood as false information disseminated intentionally to cause serious social harm.⁷⁰
40. Disinformation has been used to undermine the right to free and fair elections.⁷¹ In the 2016 presidential and 2018 midterm elections in the US, Russian operatives developed racially targeted digital disinformation strategies⁷² and voter suppression tactics including deception, and intimidation.⁷³
41. During the 2020 US presidential elections, then-President Trump and his supporters made baseless claims about election fraud on social media,⁷⁴ consequently inspiring the attack on the US Capitol Building.⁷⁵

⁶⁹ Fact pattern [14].

⁷⁰ April 2021 Report of UN Special Rapporteur Irene Khan (n 19) [15].

⁷¹ *ibid* [24].

⁷² April 2021 Report of UN Special Rapporteur Irene Khan (n 19) [25]; Young Mie Kim, ‘Voter suppression has gone digital’ (*Brennan Center for Justice*, 20 November 2018) <<https://www.brennancenter.org/our-work/analysis-opinion/voter-suppression-has-gone-digital>> (‘Voter suppression has gone digital’) accessed 2 November 2021; Young Mie Kim, ‘Uncover: Strategies and Tactics of Russian Interference in US Elections’ (*University of Wisconsin*, 4 September 2018) <https://journalism.wisc.edu/wp-content/blogs.dir/41/files/2018/09/Uncover.Kim_.v.5.0905181.pdf> (‘Uncover: Strategies and Tactics of Russian Interference in US Elections’) accessed 2 November 2021; ‘Foreign Threats to the 2020 US Federal Elections’, (*National Intelligence Council*, 10 March 2021) <<https://www.dni.gov/files/ODNI/documents/assessments/ICA-declass-16MAR21.pdf>> (‘Uncover: Strategies and Tactics of Russian Interference in US Elections’) accessed 2 November 2021.

⁷³ Voter suppression has gone digital (n 72); Uncover: Strategies and Tactics of Russian Interference in US Elections (n 72); Uncover: Strategies and Tactics of Russian Interference in US Elections (n 72).

⁷⁴ April 2021 Report of UN Special Rapporteur Irene Khan (n 29) [24]; The Washington Post, ‘Before, During and After The Attack.’ *The Washington Post* (Washington D.C., 31 October 2021) (‘The Washington Post: Before, During and After The Attack’) <www.wapo.st/theattack> accessed 13 November 2021; Michael Bender, Alexa Corse and Joshua Jamerson, ‘Trump’s False Claims of Voter Fraud Test Republican Candidates’ *Wall Street Journal* (New York City, 23 November 2021).<<https://www.wsj.com/articles/trumps-voter-fraud-claims-test-republican-candidates-election-youngkin-campaign-11637679164>> accessed 23 November 2021.

⁷⁵ The Washington Post: Before, During and After The Attack (n 74).

42. In this case, Bos spread disinformation when she claimed—based on unfounded allegations from her supporters on Natter⁷⁶—that election fraud had been committed.⁷⁷ This disinformation campaign sparked the violence outside the Commission headquarters.

(i) Bos's posts constitute hate speech that incites violence and discrimination.

43. Hate speech disrupts public order as it is a menace to democratic values, social stability, and peace.⁷⁸

44. Under the UN Rabat Plan of Action, the determination of whether hate speech constitutes incitement—which is prohibited under Article 20(2) of the ICCPR—is decided by (i) context, (ii) the speaker, (iii) intent, (iv) content, (v) extent, and (vi) the likelihood, including imminence.⁷⁹

(i) Context

45. Sargon was politically volatile in the days leading up to the elections amid a strong anti-Philin nationalist discourse.⁸⁰ The elections intensified this, making it more likely for Bos's posts to incite hostility and discrimination.

(ii) Speaker

⁷⁶ Fact pattern [45].

⁷⁷ Fact pattern [51].

⁷⁸ May 2019 UN Strategy and Plan of Action on Hate Speech (n 18) [1].

⁷⁹ HRC, 'Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence' (2012) ('Rabat Plan of Action'); HRC, 'Promotion and protection of the right to freedom of opinion and expression, Frank La Rue' UN Doc A/67/357 (7 September 2012) [45]; HRC, 'Report of the Special Rapporteur on Freedom of Religion or Belief' (26 December 2013) UN Doc A/HRC/25/58 [54]–[57]; 2020 UN Strategy and Plan of Action on Hate Speech Implementation Guidelines (n 17) [17].

⁸⁰ Fact pattern [5].

46. Bos, as the incumbent President of Sargon, wields considerable power and influence over her audience. Her statements during a political campaign are bound to be received by a wide audience and to have more impact than if they had been made by a regular citizen.⁸¹

(iii) Intent

47. Intent underlying incitement speech includes intent to engage in advocacy to hatred, target a group on the basis of a protected characteristic, and have knowledge of the consequences of their action and knowing that these will or might occur in the ordinary course of events.⁸²

48. Bos’s posts reveal an unmistakable intent to advocate hatred against Phi adherents based on the unfounded accusation that they committed election fraud. Her use of the hashtag “#Phinished” and of the term “phraud” directly advocate for contempt against Phi adherents.

(iv) Content

49. Content analysis includes the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed or the balance struck between arguments.⁸³

50. Bos’s statements made minutes before the riot by their very utterance inflict injury or tend to incite an immediate breach of peace.⁸⁴ The words “STOP THE PHRAUD!” incited violence⁸⁵ as it was an explicit call to action to stop the vote-counting.

(v) Extent of the publication

⁸¹ *Féret v Belgium* App no 15615/07 (ECtHR, 16 July 2009).

⁸² ARTICLE 19, ‘*Hate Speech’ Explained A Toolkit*’ (2016) [78]
<<https://www.article19.org/data/files/medialibrary/38231/'Hate-Speech'-Explained---A-Toolkit-%282015-Edition%29.pdf>> accessed 2 October 2021.

⁸³ Rabat Plan of Action (n 79) [29].

⁸⁴ *Chaplinsky v New Hampshire* 315 U.S. 568 (1942) (‘*Chaplinsky v New Hampshire*’) [572]–[573].

⁸⁵ Fact pattern [53].

51. Online hate speech poses a strong risk of harm to human rights since it can be disseminated worldwide in a matter of seconds and remain publicly available.⁸⁶ This risk is considerably higher when compared to traditional press.⁸⁷

52. The risk is magnified in this case considering Bos's four million followers on Natter,⁸⁸ her political position,⁸⁹ and Sargon's political climate.⁹⁰

(vi) Likelihood, including imminence

53. The likelihood of violence arising from Bos's posts is evident in the tenor of her words. Her posts signify an explicit call to action, which can reasonably be expected to incite, and in fact did incite, violence.

54. As previously discussed,⁹¹ the probability of tensions rising to violence is supported by previous incidents involving Bos supporters⁹² which demonstrate their tendency to commit violence.

55. Given the continuing threat to public order posed by Bos's camp, permanently blocking her profile is a necessary step to prevent her from further provoking disorder.

56. Considering the foregoing, it is clear that Bos's posts constitute incitement to discrimination, hostility, and violence which is not covered by the right to freedom of expression. Therefore,

⁸⁶ *Delfi AS v Estonia* (n 6) [110]; *Kilin v Russia* (n 44) [78].

⁸⁷ *Magyar Jeti ZRT v Hungary* (n 13) [66].

⁸⁸ Fact pattern [30].

⁸⁹ Fact pattern [1], [27].

⁹⁰ Fact pattern [5], [6].

⁹¹ Arguments [39].

⁹² Fact pattern [33].

the ultimate decision of Sargon to uphold the NOC's permanent blocking of Bos from Natter⁹³ was justified on the ground of protection of public order.

C. The restriction is necessary and proportionate.

57. For a restriction to be necessary, it must **(1) correspond to a pressing social need and (2) be proportionate to the legitimate aim pursued.**⁹⁴

1. The restriction corresponds to a pressing social need.

58. The requirement of corresponding to a pressing social need is satisfied by the relevancy and sufficiency of the State's reasons for imposing the restriction.⁹⁵

59. The ECtHR has upheld the suppression of content likely to initiate violence and disrupt public order.⁹⁶ These include a mayor's speech made amid an explosive situation in the region⁹⁷ and a drawing that idealized the September 11 attacks that triggered a hostile public reaction.⁹⁸

⁹³ Fact pattern [63].

⁹⁴ *Stoll v Switzerland* App no 69698/01 (ECtHR, 10 December 2007) ('*Stoll v Switzerland*') [101]; *Balsytė-Lideikienė v Lithuania* App no 72596/01 (ECtHR, 4 November 2008) ('*Balsytė-Lideikienė v Lithuania*') [76]; *Animal Defenders International v The United Kingdom* App no 48876/08 (ECtHR, 22 May 2013) ('*Animal Defenders International v UK*') [100]; *Morice v France* App no 29369/10 (ECtHR, 23 April 2015) ('*Morice v France*') [124]; *Bédat v Switzerland* App no 56925/08 (ECtHR, 29 March 2016) ('*Bédat v Switzerland*') [48]; *Velichkin v Belarus* Communication no 1022/2001 UN Doc CCPR/C/85/D/1022/2001 (HRC, 20 October 2005) [7.3]; UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and People's Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 'Joint Declaration on Freedom of Expression and the Internet' ('*Joint Declaration on Freedom of Expression and the Internet*') (1 June 2011). [6d].

⁹⁵ *Janowski v Poland*, App no 25716/94 (ECtHR, 21 January 1999) [30(iii)].

⁹⁶ *Sürek and Özdemir v Turkey* App no. 23927/94 and 24277/94 (ECtHR, 8 July 1999) [51].

⁹⁷ *Zana v Turkey* (n 6) [49], [60].

⁹⁸ *Leroy v France* App no 36109/03 (ECtHR, 2 October 2008).

60. In this case, a violent riot ensued moments after Bos's 1:05 AM post.⁹⁹ The post contained a picture of the protesters outside the Election Commission headquarters along with an explicit call to action¹⁰⁰ addressed to the protesting Bos supporters which raised tensions among them. There is clearly a direct and immediate connection¹⁰¹ between Bos's post and the riot that posed imminent danger to public safety.

61. Due to the political tension at the time, Bos's posts must be read in the context of not only its content but also its consequences, specifically the way in which these posts incited her audience to commit violence. Accordingly, the exigency of the situation warranted immediate suspension and subsequent permanent blocking of her profile.

2. The restriction was proportionate to the legitimate aims pursued.

62. Proportionality requires (a) a reasonable balance between the interests at stake¹⁰² and (b) the use of the least intrusive means to achieve the legitimate aim being pursued.¹⁰³

a. There is a reasonable balance between the interests at stake.

⁹⁹ Fact pattern [53].

¹⁰⁰ Fact pattern [52].

¹⁰¹ General Comment no 34 (n 2) [35].

¹⁰² *Rodrigues da Silva and Hoogkamer v The Netherlands* App no 5043195/99 (ECtHR, 31 January 2006) ('*Rodrigues da Silva and Hoogkamer v The Netherlands*') [39]; *Evans v United Kingdom* App no 6339/05 (ECtHR, 10 April 2007) ('*Evans v United Kingdom*') [64]; *Perincek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) ('*Perincek v Switzerland*') [228]; *Couderc and Hachette Filipacchi Associés v France* App no 40454/07 (ECtHR, 10 November 2015) ('*Couderc and Hachette Filipacchi Associés v France*') [90]–[91]; *Medžlis Islamske Zajednice Brčko v Bosnia and Herzegovina* App no 17224/11 (ECtHR 27 June 2017) ('*Medžlis Islamske Zajednice Brčko v Bosnia and Herzegovina*') [74]; *Dareskizb LTD v Armenia* App no 64004/11 (ECtHR, 18 May 2021) ('*Dareskizb LTD v Armenia Judgment*') [36].

¹⁰³ General Comment no 34 (n 2) [34]; *Lashmankin v Russia* App no 57818/09 (ECtHR, 29 May 2017) ('*Lashmankin v Russia*') [317]; *Toregozhina v Kazakhstan* Communication no 2137/2012 UN Doc CCPR/C/112/D/2137/2012 (HRC, 21 October 2014) [7.4]; *Sviridov v Kazakhstan* Communication no 2158/2012 UN Doc CCPR/C/12D/2158/2012 (HRC, 13 July 2017) [10.3].

63. The importance of the right to freedom of expression does not bestow any freedom of forum for the exercise of that right nor does it require the automatic creation of rights of entry to private property.¹⁰⁴ Bos cannot claim that she was, as a result of the refusal of the private company, prevented from communicating her views.¹⁰⁵

64. Furthermore, intermediaries like Natter have the duty and responsibility to prevent their platforms from becoming a vehicle for dissemination of hate speech and promotion of hostility and discrimination, especially in situations of national conflict and tension.¹⁰⁶

65. Thus, Bos cannot claim a right to a Natter profile.

b. The restriction is the least intrusive means to achieve the legitimate aim.

66. In this case, a permanent blocking from Natter is proportionate to the severity of Bos's violations.

67. Twitter justified the suspension of Trump's profile following the attacks on the US Capitol Building. It cited the risk of further incitement to violence in light of the ongoing political tension in the US.¹⁰⁷ Similarly, Sargon's decision was in response to Bos's posts inciting the violence at the Election Commission headquarters.

¹⁰⁴ *Appleby and Others v the United Kingdom* App no 44306/98 (ECtHR, 6 May 2003) [44].

¹⁰⁵ *ibid* [48].

¹⁰⁶ *Erdogdu and Ince v Turkey* App no 25723/94 (ECtHR, 15 June 2000); Matthew P. Hooker, 'Censorship, Free Speech & Facebook: Applying the First Amendment to Social Media Platforms via the Public Function Exception' (2019) 15 Wash. J.L. Tech & Arts. See Hunt Allcott & Matthew Gentzkow, Social Media and Fake News in the 2016 Election, (2017) 31 J Econ. Perspect. 211, 211.

¹⁰⁷ Twitter Permanent Trump Ban (n 67).

68. Although proportionality requires employment of the least intrusive means, these least intrusive means must achieve the legitimate aim being pursued.¹⁰⁸

69. A permanent blocking from Natter is the least intrusive means to achieve the legitimate aims.

70. Digital technology has enabled pathways for false or manipulated information to be created, disseminated, and amplified at a scale, speed, and reach never known before.¹⁰⁹ A mere temporary suspension or removal of posts allows Bos to make future posts of the same tenor that would expose the public to the risk of further incitement to violence and Phi adherents to continued discrimination.

71. Furthermore, the penalty imposed is already the least intrusive means as opposed to criminal sanctions under the Penal Act of Sargon (PAS). The threat of criminal sanctions against forms of non-violent expression is generally frowned upon in international law.¹¹⁰

72. Article 25(b) of the ICCPR aims to protect the free expression of the will of the electorate.¹¹¹ There was no obstacle to this because the suspension of Bos's account was effected ten hours after polls closed.¹¹² Prior to that, she had unrestricted access to her profile, allowing her to communicate her thoughts on the elections throughout the campaign period.

¹⁰⁸ *Lashmankin v Russia* (n 103) [317]; General Comment no 34 (n 2) [34].

¹⁰⁹ April 2021 Report of UN Special Rapporteur Irene Khan (n 19) [2].

¹¹⁰ *Murat Vural v Turkey* App No. 9540/07 (ECtHR, 21 October 2014) [66]; *Dickinson v Turkey* App No. 25200/11 (ECtHR, 2 February 2021) [56]; General Comment No 34 (n 4) [9]; Sandra Coliver, 'Commentary to: The Johannesburg Principles on National Security, Freedom of Expression and Access to Information' (1998) 20 Human Rights Quarterly 12, 79.

¹¹¹ ICCPR (n 3) art 25(b).

¹¹² Fact pattern [54].

73. Since the restriction was prescribed by law, pursued a legitimate aim, and was necessary and proportionate, Sargon’s decision to uphold said restriction did not violate Bos’s rights under Article 19 read with Article 25(b) of the ICCPR.

II. SARGON’S DECISION TO UPHOLD THE REMOVAL OF THE 31 MAY TO 2 JUNE 2021 POSTS OF SANTOS DARL DID NOT VIOLATE HIS RIGHTS UNDER ARTICLE 19 READ WITH ARTICLE 25(B) OF THE ICCPR.

74. The removal of Darl’s posts is **(A) prescribed by law, (B) pursues a legitimate aim, and (C) is necessary and proportionate.**¹¹³

A. The restriction was prescribed by law.

75. The restriction is prescribed by the CSP, which is a norm that may be characterized as law. Even assuming the CSP is not a law, the restriction is also prescribed by the Constitution of Sargon and the RSMA.

1. The restriction is prescribed by the CSP.

a. The CSP is a norm that can be characterized as law.

76. The CSP is a norm that qualifies as a law,¹¹⁴ since it is both accessible and foreseeable.

b. The CSP is accessible.

77. Natter users can easily access the CSP through Natter’s “Help Center” tab.¹¹⁵

c. The CSP is foreseeable.

¹¹³ *Handyside v United Kingdom* (n 4) [42]; General Comment no 34 (n 2) [22]; Joint Declaration on Freedom of Expression and the Internet (n 94) [6d].

¹¹⁴ Arguments [6]–[15].

¹¹⁵ Clarifications [15]; Arguments [7].

78. Darl's posts violated Section 4 of the CSP, which clearly identifies what forms of hate speech are prohibited and liable to be taken down.¹¹⁶ Moreover, the definitions in the CSP are consistent with international law standards regarding hate speech.¹¹⁷

2. The restriction is prescribed by the Constitution and the RSMA.

79. Even assuming that the CSP is not law, the restriction is still prescribed by both the Constitution of Sargon and the RSMA.

a. The Constitution and the RSMA are national laws of general application.

80. The decision of Sargon was grounded on Article 10 of the Constitution of Sargon and the RSMA,¹¹⁸ both of which are validly enacted laws of Sargon.

b. The Constitution and the RSMA are accessible.

81. The Constitution and the RSMA are accessible since both are laws duly and regularly enacted by Sargon.¹¹⁹

c. The Constitution and the RSMA are foreseeable.

82. Section 4 of the CSP explicitly identifies hate speech as content liable to be taken down. It defines hate speech as an attack against people on the basis of, among others, religious affiliation¹²⁰ which may include statements of superiority or inferiority, expressions of contempt, and calls for exclusion or segregation.

¹¹⁶ Fact pattern [14], [65].

¹¹⁷ Arguments [12]–[14].

¹¹⁸ Fact pattern [70].

¹¹⁹ Fact pattern [21].

¹²⁰ Fact pattern [14].

83. Other social media platforms provide similar definitions for hate speech. Facebook, the world’s largest social media site,¹²¹ defines hate speech as a direct attack against people based on protected characteristics, and prohibits posts with such content.¹²²

84. With the CSP’s definition of hate speech and international law standards defining the same, Darl is able to foresee that “#Phinished”—an expression of contempt directly towards the religion of Phi—and “#WeWereHereFirst”—a statement of superiority on the basis of ethnicity—would be classified as hate speech liable to be taken down.

B. The restriction pursued a legitimate aim.

85. A restriction is allowed if it protects, among others, **(1) the rights and reputations of others** and **(2) public order.**¹²³

1. The restriction aims to protect the rights and reputations of others.

86. Rights recognized in the Covenant and in international human rights law¹²⁴ include the right to freedom of religion¹²⁵ and the right against discrimination.¹²⁶

¹²¹ Social Media Engagement Differences Amongst Facebook, Twitter, and Instagram (n 66); Maeve Duggan, Nicole Ellison, Cliff Lampe, Amanda Lenhart, “Social Media Update 2014”, Pew Research Internet Project, 9 January 2015, <https://media.myworshiptimes22.com/wp-content/uploads/sites/6/2015/07/20140539/Social-Media-Site-Usage-2014-_-Pew-Research-Centers-Internet-American-Life-Project.pdf> accessed 2 November 2021.

¹²² ‘Facebook Community Standards’ (Facebook, 2021) <<https://transparency.fb.com/policies/community-standards/hate-speech/>> accessed 2 November 2021.

¹²³ ICCPR (n 3) art 19.

¹²⁴ General Comment no 34 (n 3) [28]; April 2018 Report of UN Special Rapporteur David Kaye (n 4) [7]; HRC Resolution on the promotion, protection and enjoyment of human rights on the Internet (n 36); UNESCO: Countering Online Hate Speech (n 36).

¹²⁵ ICCPR (n 3) art 18.

¹²⁶ ICCPR (n 3) art 2.

87. Under Article 18 of the ICCPR, States have a positive obligation¹²⁷ to create favorable conditions for the enjoyment of freedom of religion without fear of discrimination.¹²⁸
88. Although freedom of expression includes the right to criticize any sector,¹²⁹ restriction is permissible if its exercise infringes on another fundamental right, such as the right to adopt or manifest a religion.¹³⁰ Moreover, the fact that followers of a religion comprise the majority of the population shall not result in an impairment of this right.¹³¹
89. In balancing the rights to freedom of religion and of expression,¹³² the latter can be legitimately restricted if the expression is equivalent to advocacy of violence or discrimination against individuals on the basis of religion.¹³³

¹²⁷ HRC, Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, and the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, further to Human Rights Council Decision 1/107 on Incitement to Racial and Religious Hatred and the Promotion of Tolerance, UN Doc A/HRC/2/3 (20 September 2006) ('September 2006 Report of UN Special Rapporteurs Jahangir and Diène') [36].

¹²⁸ HRC, 'Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt', UN Doc A/HRC/31/18 (23 December 2015) [9].

¹²⁹ *Handyside v United Kingdom* (n 4) [49]; General Comment no 34 (n 2) [11]; Alice Donald & Erica Howard, 'The right to freedom of religion or belief and its intersection with other rights' (2015) ILGA-Europe; ARTICLE 19, The Camden Principles on Freedom of Expression and Equality, 12.3 (April 2009).

¹³⁰ ICCPR (n 3) art 18; HRC, 'General Comment No 22: The right to freedom of thought, conscience and religion (Art. 18)' (7 July 1993) ('General Comment no 22') CCPR/C/21/Rev.1/Add.4; [8]; HRC, 'Resolution 2005/40 on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief', E/CN.4/RES/2005/40 (19 April 2005) ('April 2005 Resolution on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief').

¹³¹ General Comment no 22 (n 130) [9].

¹³² *E.S. v Austria* App no 38450/12 (ECtHR, 25 October 2018).

¹³³ *İ.A. v Turkey* App no 42571/98 (ECtHR, 15 September 2005); September 2006 Report of UN Special Rapporteurs Jahangir and Diène (n 127) [37].

90. In this case, Darl’s posts impaired the fundamental right of Phi adherents to be free from religious discrimination.¹³⁴ The hashtag “#Phinished”—a deliberate misspelling of the word “finished”—is a mockery of their religion. This, together with “#WeWereHereFirst,” displays contempt for Phi adherents and calls for exclusion amounting to advocacy of religious hatred and incitement to discrimination and hostility.¹³⁵
91. Furthermore, Darl’s use of the term “interlopers”¹³⁶ in describing Phi adherents constitutes hate speech, as this term has been recognized as derogatory and is often used to call for the exclusion of followers of a certain religion.¹³⁷
92. Thus, Darl’s impugned posts—which were regularly featured on Natter Matter¹³⁸—threatened the rights of Phi adherents to be free from religious discrimination and hostility.
93. With respect to racial discrimination, the prohibition against the same is fundamental and recognized as a *jus cogens* norm that creates obligations *erga omnes* from which no derogation is allowed.¹³⁹

¹³⁴ Universal Declaration of Human Rights (‘UDHR’) (adopted 10 December 1948) UNGA Res 217 A(III) arts 1, 2, 7; ICCPR (n 3) arts 2, 18; April 2005 Resolution on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (n 130).

¹³⁵ Towards an interpretation of article 20 of the ICCPR: Thresholds for the prohibition of incitement to hatred Work in Progress, Article 19: Global Campaign for Free Expression (‘Towards an interpretation of article 20 of the ICCPR’) <<https://www.ohchr.org/documents/issues/expression/iccpr/vienna/crp7callamard.pdf>> accessed 10 November 2021.

¹³⁶ Fact pattern [38].

¹³⁷ Ronan Lee, ‘Myanmar’s Citizen Law as State Crime: A Case for the International Criminal Court,’ *State Crime Journal* (2019) <<https://www.jstor.org/stable/pdf/10.13169/statecrime.8.2.0241.pdf?refreqid=excelsior%3A39c458480b0ddefda2b1fa625bd715ab>> accessed 10 October 2021; Wai Wai Nu and Rin Fujimatsu, ‘“RAPE HER”: Gendered Hate Speech Against Rohingya Women,’ *Arrow for Change* (2020), <https://arrow.org.my/wp-content/uploads/2020/12/AFC_Right-to-Freedom-of-Speech-Expression.pdf> accessed 10 October 2021.

¹³⁸ Fact pattern [37], [38].

¹³⁹ International Convention on the Elimination of All Forms of Racial Discrimination (ICEARD), entered into force 4 January 1969.

94. Section 4 of the CSP is consistent with these international standards as it classifies an attack on the basis of specific identity factors like race, ethnicity, and religious affiliation as hate speech.¹⁴⁰ The hashtag “#WeWereHereFirst” is discriminatory and asserts the superiority of the “returnee community” over Phi adherents.¹⁴¹

2. The restriction aims to protect public order.

a. Darl’s posts constitute hate speech that incites violence.

95. Under the UN Rabat Plan of Action, the hashtags “#WeWereHereFirst” and “#Phinished” amount to racial and religious hatred constituting incitement to discrimination, hostility, or violence that is prohibited by law.

(i) Context

96. The elections further intensified the ongoing anti-Phi nationalistic discourse,¹⁴² making it highly likely that Darl’s popular posts would incite hostility and discrimination.

(ii) Speaker

97. Darl has significant influence in Sargon given his status as a social media influencer with over 400,000 followers on Natter.¹⁴³

(iii) Intent

98. There is a distinction between intending critical discussion and advocating contempt against a group.¹⁴⁴

¹⁴⁰ Fact pattern [14].

¹⁴¹ Towards an interpretation of article 20 of the ICCPR (n 135).

¹⁴² Fact pattern [5], [6].

¹⁴³ Fact pattern [37].

¹⁴⁴ *Malcolm Ross v Canada* Communication No. 736/1997 UN Doc CCPR/C/70/D/736/1997 (HRC, 1 May 1996).

99. Darl’s intent to advocate contempt against adherents of Phi may be inferred from the hostile and mocking tenor of his posts.¹⁴⁵ The intent of his speech surpassed the limits of critical discussion.¹⁴⁶

(iv) Content

100. Content analysis includes the degree to which the speech was provocative and direct.¹⁴⁷

101. Darl makes a direct reference to Phi adherents with his use of “#Phinished,”¹⁴⁸ which is a mockery of the Phi religion, a direct attack that displayed contempt, and a call for their exclusion.¹⁴⁹ On the other hand, “#WeWereHereFirst” manifestly promotes racial superiority.

102. Furthermore, Darl’s use of derogatory terms like “interlopers” and “extremism” makes the tone and form of his statements provocative.¹⁵⁰

(v) Extent of the publication

103. The likelihood of discrimination and hostility arising from Darl’s posts is aggravated by Natter’s status as the dominant social media platform in Sargon.¹⁵¹ The viral character of social media makes it easy to spread harmful and hateful statements without fear of consequences.¹⁵²

¹⁴⁵ *Jersild v Denmark* App no 15890/89 (ECtHR, 23 September 1994) [31]; Toby Mendel, ‘Study on International Standards Relating to Incitement to Genocide or Racial Hatred: For the UN Special Advisor on the Prevention of Genocide’ (2006) [48] <http://www.concernedhistorians.org/content_files/file/TO/239.pdf> accessed 10 October 2021; Article 19, ‘Prohibiting Incitement’ (n 46) 27.

¹⁴⁶ Arguments [99].

¹⁴⁷ Rabat Plan of Action (n 79) [29].

¹⁴⁸ Fact pattern [38].

¹⁴⁹ Fact pattern [63].

¹⁵⁰ Fact pattern [38], [65].

¹⁵¹ Fact pattern [7]; Clarifications [63].

¹⁵² UN Office on Drugs and Crime, ‘The Use of the Internet for Terrorist Purposes (2012) UN Office on Drugs and Crime [3], [17].

(vi) Likelihood, including imminence

104. The standard of likelihood only requires a reasonable probability of imminent harm.¹⁵³

Incitement, by definition, is an inchoate crime.¹⁵⁴ The action being advocated for does not have to be committed for the speech to amount to an incitement.¹⁵⁵

105. Hashtags—by their nature—increase the likelihood and imminence of discrimination.¹⁵⁶

Their susceptibility to instant dissemination increase the likelihood and imminence of widespread discrimination. In this case, the hashtag “#Phinished” became very popular within one day from Bos’s televised interview where she vocally criticized Phi.

C. The restriction was necessary and proportionate.

106. For an interference to be necessary, it must **(1) correspond to a pressing social need** and

(2) be proportionate to the legitimate aims pursued.¹⁵⁷ The removal of Darl’s posts meets these requisites.

1. The restriction corresponds to a pressing social need.

¹⁵³ Rabat Plan of Action (n 79) [29].

¹⁵⁴ *ibid.*

¹⁵⁵ *ibid.*

¹⁵⁶ Dhiraj Murthy, *Twitter: Social Communication in the Digital Age* (Polity Press 2013) (‘Twitter: Social Communication in the Digital Age’) [3]–[4].

¹⁵⁷ General Comment no 34 (n 2) [22], [33], [34]; *Stoll v Switzerland* (n 94) [101]; *Balsytė-Lideikienė v Lithuania* (n 94) [76]; *Animal Defenders International v UK* (n 94) [100]; *Morice v France* (n 94) [124]; *Bédat v Switzerland* (n 94) [48]; Joint Declaration on Freedom of Expression and the Internet (n 94) [6d].

107. The removal of Darl’s posts sought to protect the right of Phi adherents from discrimination on the ground of religion¹⁵⁸ and to prevent Darl from inciting to further discrimination and hostility.¹⁵⁹

108. These restrictions are especially important during national elections.¹⁶⁰ In such contexts, individuals are more susceptible to threats of violence or harassment based on their identity,¹⁶¹ necessitating restrictions on freedom of expression for their protection.¹⁶² Therefore, there was an immediate need to remove Darl’s inflammatory posts.

2. The restriction was proportionate to the legitimate aims pursued.

109. Proportionality requires (a) a reasonable balance between the interests at stake¹⁶³ and (b) the use of the least intrusive means to achieve the legitimate aim being pursued,¹⁶⁴

a. There is a reasonable balance between the interests at stake.

110. Natter, a private entity, has a business interest to regulate the content on its platform, as inflammatory content can cause substantial damage to Natter’s image.¹⁶⁵ Conversely, Darl cannot claim the right to demand that Natter disseminate his hateful content.

¹⁵⁸ ICCPR (n 3) arts 2, 18.

¹⁵⁹ ICCPR (n 3) art 20.

¹⁶⁰ 2020 UN Strategy and Plan of Action on Hate Speech Implementation Guidelines (n 17).

¹⁶¹ *ibid.*

¹⁶² *ibid.*

¹⁶³ *Rodrigues da Silva and Hoogkamer v The Netherlands* (n 102) [39] and [44]; *Evans v United Kingdom* (n 102) [64]; *Perincek v Switzerland* (n 102) [75]; *Couderc and Hachette Filipacchi Associés v France* (n 102) [62]; *Medžlis Islamske Zajednice Brčko v Bosnia and Herzegovina* (n 102) [74], [77]; *Dareskizb LTD v Armenia Judgment* (n 102) [36].

¹⁶⁴ *Lashmankin v Russia* (n 103) [317]; General Comment no 34 (n 2) [34].

¹⁶⁵ *Ein Prozent v Facebook Ireland Ltd.* (4 U 2890/19) (Regional Court of Görlitz 16/06/2020).

- b. The restriction is the least intrusive means to achieve the legitimate aim.

111. The removal of Darl’s posts is proportionate because it is the least intrusive means to suppress his inflammatory speech to achieve the legitimate aim pursued.¹⁶⁶
112. Reviewing and taking down each post individually will not be sufficient to achieve the legitimate aims since the problematic speech that must be restricted are the hashtags themselves. Hashtags have been recognized as an integral part of a social media platform’s ability to link strangers together.¹⁶⁷ By facilitating the impromptu interaction of strangers online, hashtags are useful in social movements and other offline actions.¹⁶⁸
113. Because hashtags can affect offline actions, they may likewise contribute to a rise in hate incidents.¹⁶⁹ Examples include “#StopIslam”—which often trends following a terrorist attack by Muslim extremists¹⁷⁰—and “#coronojihad”—which trended in India following the announcement of numerous COVID-19 cases in the Muslim community.¹⁷¹
114. Consequently, hashtags are expressions that may be restricted, subject to the conditions under Article 19(3). In this case, the hashtag “#Phinished” constitutes religious hatred inciting

¹⁶⁶ *R v Keegstra* (1990) 3 S.C.R. 697; General Comment no 34 (n 2).

¹⁶⁷ Twitter: Social Communication in the Digital Age (n 156) [3].

¹⁶⁸ *ibid* [3]–[4].

¹⁶⁹ Karsten Muler and Carlo Schwarz, ‘From Hashtag to Hate Crime: Twitter and Anti-Minority Sentiment’ (2020) University of Warwick; Sabina Civila, Luis Romero-Rodriguez, Amparo Civila, ‘The Demonization of Islam through Social Media: A Case Study of #Stopislam in Instagram’ (2020) *Publications* 8, no 4: 52. <https://doi.org/10.3390/publications8040052>.

¹⁷⁰ Fernando Miró-Llinares and Jesús Javier Rodríguez-Sala, ‘Cyber hate speech on twitter: Analyzing disruptive events from social media to build a violent communication and hate speech taxonomy’ (2016) *Intl J Design & Nature and Ecodynamics* 406.

¹⁷¹ HRC, ‘Report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed’, UN Doc A/HRC/46/30 (13 April 2021) (‘April 2021 Report of UN Special Rapporteur Ahmed Shaheed’) [21].

hostility, violence, and discrimination towards the Phi adherents. The hashtag “#WeWereHereFirst” promotes both the racial superiority of the returnee community and the ethnic discrimination of Phi adherents.

115. Furthermore, removal of the posts is milder relative to suspension or permanent blocking.¹⁷² Mere removal of posts does not preclude the user from posting other content as long as the violative hashtags are not used.

(i) The removal of Darl’s posts did not violate his rights under Article 25(b) of the ICCPR.

116. Restrictions on the exercise of the rights under Article 25(b) are valid provided they are based on objective and reasonable criteria.¹⁷³ The restriction must pursue a legitimate aim and be reasonably and fairly related to the end pursued.¹⁷⁴

117. The removal of Darl’s posts did not prevent him from expressing his will as a voter. The posts that contained “#VoteBos” were removed not because of the expression of his preference as a voter, but because of the hateful language it contained¹⁷⁵ as it was coupled with the hashtags “#WeWereHereFirst” and “#Phinished.”¹⁷⁶

118. Furthermore, the removal of Darl’s posts did not bar him from taking part in online discussions of the elections. He was not precluded from posting election-related content that does not violate the CSP.

¹⁷² Fact pattern [15], [17].

¹⁷³ General Comment no 25 (n 1) [4].

¹⁷⁴ *Statehood Solidarity Committee v United States*, Case 11.204, Report no 98/03, IACHR, OEA/Ser./L/V/II.114 Doc. 70 rev. 1 at 725 (2003) 725.

¹⁷⁵ Arguments [86]–[95].

¹⁷⁶ Fact pattern [37]–[38].

119. Additionally, it was Darl himself who deactivated his account.¹⁷⁷ He should not fault Sargon for his own actions.

120. Considering that the removal of Darl's posts was prescribed by law, pursued a legitimate aim, was necessary and proportionate, and did not prevent Darl from expressing his will as a voter, Sargon's decision to uphold their removal did not violate Article 19 read with Article 25(b) of the ICCPR.

¹⁷⁷ Fact pattern [39].

RELIEF SOUGHT

For the foregoing reasons, the Respondent respectfully requests this Honorable Court to adjudge and declare that:

1. Sargon did not violate Emilia Bos's rights under Article 19 read with Article 25(b) of the ICCPR by upholding the Natter Oversight Council's decisions to suspend and permanently block her from Natter.
2. Sargon did not violate Santos Darl's rights under Article 19 read with Article 25(b) of the ICCPR by upholding Natter's decision to remove every single post by Darl from 31 May to 2 June 2021.

Respectfully submitted 24 November 2021,

702R

Agents for the Respondent