

THE 2020-2021 PRICE MEDIA LAW

MOOT COURT COMPETITION

JO XANA, SOCIAL DEMOCRATIC WORKERS UNION

(APPLICANTS)

V

THE STATE OF IZED

(RESPONDENT)

MEMORIAL FOR RESPONDENT

Words: 4994

TABLE OF CONTENTS

TABLE OF CONTENTS I

LIST OF ABBREVIATIONS IV

LIST OF AUTHORITIES..... VII

STATEMENT OF RELEVANT FACTS.....XXXVIII

STATEMENT OF JURISDICTION.....XLIII

QUESTIONS PRESENTEDXLIV

SUMMARY OF ARGUMENTS..... XLV

ARGUMENTS.....1

**I. IZED’S DECISION TO ENACT SECTION 22 OF THE NSA AND DESIGNATION OF THE
PARK AS THE ONLY PUBLIC SITE DID NOT VIOLATE XANA’S AND THE UNION’S
RIGHTS UNDER ARTICLE 19 AND ARTICLE 21 OF THE ICCPR1**

**A. Ized Lawfully Designated the Park As A Public Site Pursuant To Its
Emergency Powers Under Section 22 of the NSA3**

1. Ized officially proclaimed a public emergency.....4

2. NIDV was an exigency threatening the life of the nation.....6

**B. Ized’s Designation of the Park as A Public Site Complied With Article 21
Of The ICCPR.....7**

1. The assembly by Xana and the Union was not peaceful7

2. Alternatively, Ized’s interference with the freedom of assembly of Xana and the
Union was permissible.....9

a.	<i>Ized’s interference was provided by law</i>	9
b.	<i>Ized’s interference was necessary to protect public health</i>	11
c.	<i>Ized’s interference was proportionate</i>	13
II.	IZED’S CONVICTION OF XANA UNDER SECTION 22 OF THE NSA DID NOT VIOLATE ARTICLE 19 AND ARTICLE 21 OF THE ICCPR	14
A.	Xana’s Protest Neither Peaceful nor Protected Under Article 21 of the ICCPR	15
B.	Ized’s Conviction Of Xana Was Permissible Under Article 21 Of The ICCPR	16
1.	Ized’s conviction of Xana was provided by law	16
2.	Ized’s conviction of Xana was necessary to protect public health	18
3.	Ized’s suspended sentence of Xana was proportionate.....	20
a.	<i>The protest was significantly disruptive</i>	20
b.	<i>Xana was directly responsible for reprehensible acts</i>	21
c.	<i>Leniency breeds delinquency during health emergencies</i>	22
d.	<i>Xana’s conviction casts minimal chilling effect</i>	23
III.	IZED’S DECLARATION PROHIBITING UNAUTHORISED GATHERINGS ON SOCIAL MEDIA DID NOT VIOLATE THE UNION’S RIGHTS UNDER ARTICLES 19 AND 21 OF THE ICCPR	23
A.	Ized’s Declaration Did Not Interfere with the Union’s Rights Under Articles 19 And 21 of the ICCPR	24
1.	Freedom of assembly does not protect non-physical gatherings	24

2.	Ized was not responsible for the suspension of Net-Assemblies	26
B.	Alternatively, Ized’s Interference Was Lawful, Necessary and Proportionate.....	27
1.	Ized’s declaration was provided by law	27
2.	Ized’s declaration was necessary to protect public health and public order	28
3.	Ized’s declaration was proportionate	30
a.	<i>The prohibition was content neutral</i>	<i>30</i>
b.	<i>The prohibition was non-discriminatory.....</i>	<i>30</i>
c.	<i>The prohibition targeted amplification of disinformation.....</i>	<i>31</i>
d.	<i>The prohibition ensured the political neutrality of healthcare workers</i>	<i>31</i>
IV.	IZED’S GUIDELINES UNDER SECTION 23 OF THE NSA DID NOT VIOLATE THE UNION’S RIGHTS UNDER ARTICLE 19 OF THE ICCPR.....	32
A.	Freedom of Expression Does Not Protect Falsehood.....	33
B.	Alternatively, Ized’s guidelines were permissible to protect public health under Article 19 of the ICCPR	34
1.	Ized’s guidelines were provided by law.....	35
2.	Ized’s guidelines were necessary to protect public health	37
3.	Ized’s guidelines were proportionate	38
a.	<i>Technical counter-measures against disinformation are ineffective</i>	<i>39</i>
b.	<i>Centralisation enhances communication of risks.....</i>	<i>40</i>
	PRAYER.....	42

LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACmHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
AI	Artificial Intelligence
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CDC	Centers for Disease Control and Prevention
CEO	Chief Executive Officer
COVID-19	Coronavirus Disease 2019
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
H1N1	Influenza A Virus Subtype H1N1
HIV	Human Immunodeficiency Virus
HRC	United Nations Human Rights Committee
IACtHR	Inter-American Court of Human Rights

ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
MINDEF	Ized Ministry of Defence
MOH	Ized Ministry of Health
NIDV	Novel Immuno-Deficiency Virus
NSA	Ized National Security Act
OECD	The Organisation for Economic Co-operation and Development
Park	Ized Central Public Park
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund

US

United States

WHO

World Health Organization

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African Charter on the Rights and Welfare of the Child (ACRWC) (adopted 1 July 1990, entered into force 29 November 1999)	2
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Arab Charter on Human Rights (adopted 22 March 2004, entered into force 15 March 2008) 2	
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Charter of Fundamental Rights of the European Union (CFR) (adopted 7 December 2000, entered into force 1 December 2009).....	2
CIS Convention on Human Rights and Fundamental Freedoms (adopted 26 May 1995, entered into force 11 August 1998).....	2
<i>Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism</i> , Advisory Opinion OC-5/85, Inter-American Court of Human Rights Series A No. 5 (13 November 1985).....	11
Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNGA Res 34/180 (CEDAW).....	19
Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNGA Res 44/25.....	2
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EU Code of Practice on Disinformation (2018)	29
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OSCE and Venice Commission, <i>Guidelines on Freedom of Peaceful Assembly</i> , (3 rd edn, OSCE Office for Democratic Institutions and Human Rights 2020)	1
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UNESCO ‘COVID-19: The Role of Judicial Operators in the Protection and Promotion of the Right to Freedom of Expression’ (2020) Guidelines CI-2020/FEJ/ME-1	36
Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR)	19

UN DOCUMENTS

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UN, 'Depositary Notification by the Government of Guatemala' (23 November 1998) C.N.866.1998.TREATIES-IV.4 (Depositary Notification)	6
UN, 'Depositary Notification by the Permanent Mission of Ecuador' (15 March 2017) C.N.210.2017.TREATIES-IV.4 (Depositary Notification)	6
UN, 'Depositary Notification by the Permanent Mission of Ecuador' (20 May 2009) C.N.347.2009.TREATIES-IV.4 (Depositary Notification)	6
UN, 'Depositary Notification by the Permanent Mission of Guatemala' (15 January 2013) C.N.151.2013.TREATIES-IV.4 (Depositary Notification).	6
UN, 'Depositary Notification by the Permanent Mission of Jamaica' (24 August 2007) C.N.832.2007.TREATIES-IV.4 (Depositary Notification).	6
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UN, 'Depositary Notification by the Permanent Mission of Colombia' (25 March 2020) C.N.131.2020.TREATIES-IV.4 (Depositary Notification)	5
UN, 'Depositary Notification by the Permanent Mission of Ecuador' (24 March 2020) C.N.119.2020.TREATIES-IV.4 (Depositary Notification)	5
UN, 'Depositary Notification by the Permanent Mission of El Salvador' (14 April 2020) C.N.134.2020.TREATIES-IV.4 (Depositary Notification)	5

UN, ‘Depositary Notification by the Permanent Mission of Estonia’ (20 March 2020)	
C.N.113.2020.TREATIES-IV.4 (Depositary Notification)	5
UN, ‘Depositary Notification by the Permanent Mission of Ethiopia’ (9 June 2020)	
C.N.243.2020.TREATIES-IV.4 (Depositary Notification)	5
UN, ‘Depositary Notification by the Permanent Mission of Georgia’ (21 March 2020)	
C.N.125.2020.TREATIES-IV.4 (Depositary Notification)	5
UN, ‘Depositary Notification by the Permanent Mission of Guatemala’ (23 March 2020)	
C.N.117.2020.TREATIES-IV.4 (Depositary Notification)	5
UN, ‘Depositary Notification by the Permanent Mission of Latvia’ (16 March 2020)	
C.N.105.2020.TREATIES-IV.4 (Depositary Notification)	5
UN, ‘Depositary Notification by the Permanent Mission of Peru’ (30 March 2020)	
C.N.126.2020.TREATIES-IV.4 (Depositary Notification)	5
UN, ‘Depositary Notification by the Permanent Mission of Romania’ (20 March 2020)	
C.N.121.2020.TREATIES-IV.4 (Depositary Notification)	5
UN, ‘Depositary Notification by the Permanent Mission of the Dominican Republic’ (25 June 2020)	
C.N.279.2020.TREATIES-IV.4 (Depositary Notification)	5
UN, ‘Depositary Notification by the Permanent Mission of the Kyrgyz Republic’ (31 March 2020)	
C.N.129.2020.TREATIES-IV.4 (Depositary Notification)	5
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UNHRC, ‘Promotion and Protection of Human Rights and Fundamental Freedoms, Including the Rights to Peaceful Assembly and Freedom of Association’ (adopted 17 December 2018) UNGA Res A/RES/73/173.....	25
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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	14, 23, 25
UNHRC, ‘The Promotion and Protection of Human Rights in the Context of Peaceful Protest’ (adopted 6 July 2018) UNGA Res A/HRC/RES/38/11	26

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UNHRC, ‘The Promotion, Protection and Enjoyment of Human Rights on the Internet’ (adopted 5 July 2012) UNGA Res A/HRC/RES/20/8	25
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UNHRC, CCPR General Comment No. 37, Article 21, Right of Peaceful Assembly, 27 July 2020, CCPR/C/GC/37	1, 2, 7, 8, 9, 10, 11, 14, 15, 16, 18, 20, 25, 26, 30
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<i>Abildayeva v Kazakhstan</i> Communication no. 2309/2013, CCPR/C/125/D/2309/2013 (HRC, 29 March 2019).....	13
---	----

<i>Adelaida Kim v Uzbekistan</i> Communication No. 2175/2012, CCPR/C/122/D/2175/2012 (HRC, 4 April 2018).....	38
<i>Adilkhanov v Kazakhstan</i> Communication no 2686/2015, CCPR/C/128/D/2015 (HRC, 12 March 2020).....	13
<i>Adimayo M. Aduayom v Togo</i> Communications no. 422/1990, 423/1990 and 424/1990, CCPR/C/55/D/422-424/1990 (HRC, 12 July 1996).....	18
<i>Alekseev v Russian Federation</i> Communication no. 1873/2009, CCPR/C/109/D/1873/2009 (HRC, 25 October 2013).....	19, 30
<i>Amelkovich v Belarus</i> Communication no. 2720/2016, CCPR/C/124/D/2720/2016 (HRC, 29 March 2019).....	1, 14, 16, 30
<i>Androsenko v Belarus</i> Communication no. 2092/2011, CCPR/C/116/D/2092/2011 (HRC, 30 March 2016).....	16
<i>Benhadj v Algeria</i> Communication no. 1173/2003, CCPR/C/90/D/1173/2003 (HRC, 20 July 2007).....	34
<i>Chebotareva v Russian Federation</i> Communication no. 1866/2009, CCPR/C/104/D/1866/2009 (HRC, 26 March 2012).....	9
<i>Coleman v Australia</i> Communication no. 1157/2003, CCPR/C/87/D/1157/2003 (HRC, 10 August 2006).....	7, 20
<i>de Groot v The Netherlands</i> Communication no. 578/1994, CCPR/C/54/D/578/1994 (HRC, 14 July 1995).....	17
<i>Dzhumanbaev v Kazakhstan</i> Communication no. 2308/2013, CCPR/C/125/D/2308/2013 (HRC, 29 March 2019).....	9, 14
<i>Faurisson v France</i> Communication no. 550/1993, CCPR/C/58/D/550/1993 (HRC, 8 November 1996).....	34

<i>Gimenez v Paraguay</i> Communication no. 2372/2014, CCPR/C/123/D/2372/2014 (HRC, 25 July 2018).....	1, 16
<i>Gryb v Belarus</i> Communication no. 1315/2004, CCPR/C/103/D/1316/2004 (HRC, 26 October 2011).....	1
<i>Insenova v Kazakhstan</i> Communication nos. 2542/2015 and 2543/2015, CCPR/C/126/D/2542/2015 and CCPR/C/126/2543/2015 (HRC, 26 July 2019).....	14, 16
<i>Jong-Kyu Sohn v Republic of Korea</i> Communication no. 518/1992, CCPR/C/54/D/518/1992 (HRC, 19 July 1995)	18
<i>Kim v Uzbekistan</i> Communication no. 2175/2012, CCPR/C/122/D/2175/2012 (HRC, 4 April 2018).....	8, 13
<i>Kivenmaa v Finland</i> Communication no. 412/1990, CCPR/C/50/D/412/1990 (HRC, 31 March 1994).....	2, 3, 7
<i>Koktish v Belarus</i> Communication no. 1985/2010, CCPR/C/111/D/1985/2010 (HRC, 24 July 2014).....	10
<i>Korol v Belarus</i> Communication no. CCPR/C/117/D/2089/2011 (HRC, 14 July 2016)	16
<i>Kovalenko v Belarus</i> Communication no. 1808/2008, CCPR/C/108/D/1808/2008 (HRC, 17 July 2013).....	8
<i>Levinov v Belarus</i> Communication no. 1867/09, CCPR/C/105/D/1867/2009 (HRC, 19 July 2012).....	7
<i>Levinov v Belarus</i> Communication no. 2239/2013, CCPR/C/123/D/2239/2013 (HRC, 19 July 2018).....	8
<i>Lopasov v Belarus</i> Communication no. 2269/2013, CCPR/C/126/2269/2013 (HRC, 25 July 2019).....	13
<i>Malcolm Ross v Canada</i> Communication no. 736/1997, CCPR/C/70/D/736/1997 (HRC, 18 October 2000).....	20

<i>Marques v Angola</i> Communication no. 1128/2002, CCPR/C/83/D/1128/2002 (HRC, 29 March 2005).....	20
<i>Nepomnyashchiy v Russian Federation</i> Communication no. 2318/2013, CCPR/C/123/D/2318/2013 (HRC, 17 July 2018).....	9, 34, 36
<i>Poliakov v Belarus</i> Communication no. 2103/2011, CCPR/C/111/D/2103/2011 (HRC, 17 July 2014).....	13
<i>Poplavny and Sudalenko v Belarus</i> Communication no. 2139/2012, CCPR/C/118/D/2139/2012 (HRC, 3 November 2016).....	2
<i>Poplavny v Belarus</i> Communication no. 2190/2012, CCPR/C/122/D/2190/2012 (HRC, 5 November 2015).....	16
<i>Popova v Russian Federation</i> Communication no. 2217/2012, CCPR/C/122/2217/2012 (HRC, 6 April 2018).....	1, 14, 26
<i>Praded v Belarus</i> Communication no. 2029/2011, CCPR/C/112/D/2029/2011 (HRC, 10 October 2014).....	16
<i>Reyes et al. v Chile</i> Communication no. 2627/2015, CCPR/C/121/D/2627/2015 (HRC, 7 November 2017).....	10
<i>Rybchenko v Belarus</i> Communication no. 2266/2013, CCPR/C/124/D/2266/2013 (HRC, 17 October 2018).....	8
<i>Sadykov v Kazakhstan</i> Communication no. 2456/2014, CCPR/C/129/D/2456/2014 (HRC, 23 July 2020).....	9, 14
<i>Saidov v Tajikistan</i> Communication no. 2680/2015, CCPR/C/122/D/2680/2015 (HRC, 4 April 2018).....	13
<i>Sekerko v Belarus</i> Communication no. 1851/2008, CCPR/C/109/D/1851/2008 (HRC, 28 October 2013).....	2

<i>Severinets v Belarus</i> Communication no. 2230/2012, CCPR/C/123/D/2230/2012 (HRC, 19 July 2018).....	1, 8, 14, 26
<i>Shin v Republic of Korea</i> Communication no. 926/2000, CCPR/C/80/D/926/2000 (HRC, 16 March 2004)	18
<i>Silva and Ors v Uruguay</i> Communication no. 34/1978, CCPR/C/12/D/34/1978 (HRC, 8 April 1981).....	4
<i>Strizhak v Belarus</i> Communication no. 2260/2013, CCPR/C/124/D/2260/2013 (HRC, 1 November 2018).....	1, 14, 16
<i>Suleymenova v Kazakhstan</i> Communication no. 2416/2014, CCPR/C/126/D/2416/2014 (HRC, 17 July 2019)	13
<i>Sviridov v Kazakhstan</i> Communication no. 2158/2012, CCPR/C/120/D/2158/2012 (HRC, 13 July 2017).....	13
<i>Tae-Hoon Park v Republic of Korea</i> Communication no. 628/1995, CCPR/C/64/D/628/1995 (HRC, 3 November 1998)	34
<i>Telibekov v Kazakhstan</i> Communication no. 2687/2015, CCPR/C/128/D/2687/2015 (HRC, 14 March 2020)	13, 14
<i>Timoshenko et al. v Belarus</i> Communication no. 2461/2014, CCPR/C/129/D/2461/2014 (HRC, 23 July 2020)	9
<i>Toregozhina v Kazakhstan</i> Communication no. 2311/2013, CCPR/C/112/D/2311/2013 (HRC, 25 July 2019).....	1, 8, 14, 26
<i>Tulzhenkova v Belarus</i> Communication no. 1838/2008, CCPR/C/103/D/1838/2008 (HRC, 26 October 2011).....	25
<i>Turchenyak et al. v Belarus</i> Communication no. 1948/2010, CCPR/C/108/D/1948/2010 (HRC, 24 July 2013)	1, 14, 26

<i>Ukteshbaev v Kazakhstan</i> Communication no. 2420/2014, CCPR/C/126/D/2420/2014 (HRC, 17 July 2019).....	9
<i>Velichkin v Belarus</i> Communication no. 1022/2001, CCPR/C/85/D/1022/2001 (HRC, 20 October 2005).....	34
<i>Zhagiparov v Kazakhstan</i> Communication no. 2441/2014, CCPR/C/124/D/2441/2014 (HRC, 25 October 2018).....	1, 16
<i>Zhukovsky v Belarus</i> Communication no. 2724/2016, CCPR/C/127/2724/2016 (HRC, 8 November 2019).....	1, 16

CASES from ECtHR

<i>A. and Others v United Kingdom</i> App no 3455/05 (ECtHR, 19 February 2009).....	3
<i>Adali v Turkey</i> App no 38187/97 (ECtHR, 31 March 2005).....	8, 18
<i>Ahmet Yildirim v Turkey</i> App no 3111/10 (ECtHR, 18 December 2012).....	31
<i>Akgol and Gol v Turkey</i> App nos 28495/06 and 28516/06 (ECtHR, 17 May 2011).....	14
<i>Aksoy v Turkey</i> App no 21987/93 (ECtHR, 18 December 1996).....	3
<i>Alekseyev v Russia</i> App nos 4916/07, 25924/08 and 14599/09 (ECtHR, 21 October 2010)....	9
<i>Animal Defenders International v The United Kingdom</i> App no 48876/08 (ECtHR, 22 April 2013).....	11, 34
<i>Annenkov and Others v Russia</i> App no 31475/10, (ECtHR, 25 July 2017).....	8, 9
<i>Ashughyan v Armenia</i> App no 33268/03 (ECtHR, 17 July 2008).....	3, 20, 21
<i>Association of Citizens Radko & Paunkovski v The Former Yugoslav Republic of Macedonia</i> App no 74651/01 (ECtHR, 15 January 2009).....	3
<i>Axel Springer AG v Germany</i> App no 39954/08 (ECtHR, 7 February 2012).....	31
<i>Bączkowski and Others v Poland</i> App no 1543/06 (ECtHR, 3 May 2007).....	30
<i>Balçık and Others v Turkey</i> App no 25/02 (ECtHR, 29 November 2007).....	19, 20
<i>Balsytė-Lideikienė v Lithuania</i> App no 72596/01 (ECtHR, 4 November 2008).....	11

<i>Barankevich v Russia</i> App no 10519/03 (ECtHR, 26 July 2007).....	8
<i>Barraco v France</i> App no 31684/05 (ECtHR, 5 March 2009)	15, 20
<i>Barthold v Germany</i> App no 8734/79 (ECtHR, 25 March 1985).....	35
<i>Bédat v Switzerland</i> App no 56925/08 (ECtHR, 29 March 2016).....	31
<i>Berladir and Others v Russia</i> App no 34202/06 (ECtHR, 10 July 2012).....	14
<i>Brannigan and McBride v United Kingdom</i> App nos 14553/89 and 14554/89 (ECtHR, 26 May 1993).....	3
<i>Bukta and Others v Hungary</i> App no 25691/04 (ECtHR, 17 July 2007)	14, 20
<i>Centro Europa 7 S.r.l. and Di Stefano v Italy</i> App no 38433/09 (ECtHR, 7 June 2012).....	28
<i>Chassagnou and Others v France</i> App nos 25088/94, 28331/95 and 28443/95 (ECtHR, 29 April 1999).....	30
<i>Christian Democratic People’s Party v Moldova (No. 2)</i> App no 25196/04 (ECtHR, 2 February 2010).....	30
<i>Christians Against Racism and Fascism (CARAF) v the United Kingdom</i> App no 8440/78, (Commission Decision, 16 July 1980).....	8
<i>Chumak v Ukraine</i> App no 44529/09 (ECtHR, 6 March 2018)	10
<i>Çiloglu and Others v Turkey</i> App no 73333/01 (ECtHR, 6 March 2007).....	14
<i>Cisse v France</i> App no 51346/99 (ECtHR, 9 April 2002).....	18
<i>Cumpănă and Mazăre v Romania</i> App no 33348/96 (ECtHR, 17 December 2004).....	23
<i>Cyprus v Turkey</i> App nos 6780/74 and 6950/75 (Commission Decision, 10 July 1976).....	4
<i>De Haes and Gijssels v Belgium</i> App no 19983/92 (ECtHR, 24 February 1997).....	33
<i>De Wilde, Ooms and Versyp v Belgium</i> App nos 2832/66, 2835/66 and 2899/66 (ECtHR, 18 June 1971)	35
<i>Delfi AS v Estonia</i> App no 64569/09 (ECtHR, 16 June 2015)	10, 28, 40
<i>Djavit An v Turkey</i> App no 20652/92 (ECtHR, 20 February 2003)	1

<i>Dubrovina and Others v Russia</i> App no 31333/07 (ECtHR, 25 February 2020).....	9
<i>Editorial Board of Pravoye Delo and Shtekel v Ukraine</i> App no 33014/05 (ECtHR, 5 May 2011).....	36
<i>Eğitim Ve Bilim Emekçileri Sendikası v Turkey</i> App no 20641/05 (ECtHR, 25 September 2012).....	16
<i>Elvira Dmitriyeva v Russia</i> App nos 60921/17 and 7202/18 (ECtHR, 9 September 2019).....	14, 20
<i>Eva Molnár v Hungary</i> App no 10346/05 (ECtHR, 7 October 2008).....	14, 20
<i>Ezelin v France</i> App no 11800/85 (ECtHR, 26 April 1991)	3, 15, 21
<i>Faber v Hungary</i> App no 40721/08 (ECtHR, 24 July 2012).....	8
<i>Feldek v Slovakia</i> App no 29032/95 (ECtHR, 12 July 2001).....	31
<i>Frumkin v Russia</i> App no 74568/12 (ECtHR, 5 January 2016)	15
<i>Fuentes Bobo v Spain</i> App no 39293/98 (ECtHR, 29 February 2000).....	38
<i>G. v Germany</i> App no 13079/87 (Commission Decision, 6 March 1989)	8
<i>Galstyan v Armenia</i> App no 26986/03 (ECtHR, 15 November 2007)	3, 15, 21
<i>Gasparyan v Armenia (No. 1)</i> App no 35944/03 (ECtHR, 13 January 2009).....	21
<i>Gorzelik and Others v Poland</i> App no 44158/98 (ECtHR, 17 February 2004).....	10, 28
<i>Gün and v Turkey</i> App no 8029/07 (ECtHR, 18 June 2013).....	21
<i>Gunduz v Turkey</i> App no 35071/97 (ECtHR, 4 December 2003)	16
<i>Hachette Filipacchi Associes v France</i> App no 71111/01 (ECtHR, 14 June 2007).....	34
<i>Hakim Aydin v Turkey</i> App no 4048/09 (ECtHR, 26 May 2020).....	3
<i>Handyside v United Kingdom</i> App no 5493/72 (ECtHR, 7 December 1976)	16, 34
<i>Hasan and Chaush v Bulgaria</i> App no 30985/96 (ECtHR, 26 October 2000).....	10, 17

<i>Hashman and Harrup v The United Kingdom</i> App no 25594/94 (ECtHR, 25 November 1999)	17
<i>Hyde Park v Moldova</i> App no 33482/06 (ECtHR, 31 March 2009)	30
<i>Identoba and Others v Georgia</i> App no 33482/06 (ECtHR, 12 May 2015)	30
<i>Ilaşcu v Moldova and Russia</i> App no 48787/99 (ECtHR, 8 July 2004)	27
<i>Ireland v The United Kingdom</i> App no 5310/71 (ECtHR, 18 January 1978)	6, 7
<i>Ismail Sezer v Turkey</i> App no 36807/07 (ECtHR, 24 March 2015)	15, 22
<i>Jankovskis v Lithuania</i> App no 21575/08 (ECtHR, 17 January 2017)	25
<i>Jerusalem v Austria</i> App no 26958/95 (ECtHR, 27 February 2001)	33
<i>Jhangiryan v Armenia</i> App no 44841/08 (ECtHR, 8 October 2020)	16
<i>Kablis v Russia</i> App nos 48310/16 and 59663/17 (ECtHR, 30 April 2019)	31, 36
<i>Kafkaris v Cyprus</i> App no 21906/04 (ECtHR, 12 February 2008)	9, 35, 36
<i>Kalda v Estonia</i> App no 17429/10 (ECtHR, 19 January 2016)	25
<i>Kandzhov v Bulgaria</i> App no 68294/01 (ECtHR, 6 November 2008)	14
<i>Karácsony v Hungary</i> App nos 42461/13 and 44357/13 (ECtHR, 17 May 2016)	10
<i>Karpyuk and Others v Ukraine</i> App nos 30582/04 and 32152/04 (ECtHR, 6 October 2015)	8
<i>Kazantsev and Others v Russia</i> App no 61978/08 (ECtHR, 16 June 2020)	8
<i>Kemal Çetin v Turkey</i> App no 3704/13 (ECtHR, 26 May 2020)	21
<i>Kokkinakis v Greece</i> App no 14307/88 (ECtHR, 25 May 1993)	17
<i>Kruslin v France</i> App no 11801/805 (ECtHR, 24 April 1990)	4
<i>Kudrevičius & Others v Lithuania</i> App no 37553/05 (ECtHR, 15 October 2015)	1, 9, 14, 15, 20, 28
<i>Laguna Guzman v Spain</i> App no 41462/17 (ECtHR, 6 October 2020)	8
<i>Larissis and Others v Greece</i> App nos 23372/94 and 26378/94 (ECtHR, 24 February 1998)	17

<i>Lashmankin and Ors v Russia</i> App nos 57818/09 and 14 others (“Lashmankin”) (ECtHR, 7 February 2017)	2, 8, 9, 10, 14
<i>Lawless v Ireland (No.3)</i> App no 332/57 (ECtHR, 1 July 1961).....	6, 7
<i>Lewandowska-Malec v Poland</i> App no 39660/07 (ECtHR, 18 September 2012).....	23
<i>Leyla Şahin v Turkey</i> App no 44774/98 (ECtHR, 10 November 2005).....	35
<i>Lindon, Otchakovsky-Laurens and July v France</i> App nos 21279/02 and 36448/02 (ECtHR, 22 October 2007).....	10, 28, 31
<i>Loizidou v Turkey</i> App no 15318/89 (ECtHR, 18 December 1996).....	27
<i>Lütfiye Zengin and Ors v Turkey</i> App no 36443/06 (ECtHR, 14 April 2015).....	3
<i>Lütfiye Zengin and Others v Turkey</i> App no 36443/06 (ECtHR, 14 April 2015).....	14
<i>Maestri v Italy</i> App no 39748/98 (ECtHR, 17 February 2004)	4, 17, 28
<i>Magyar Kétfarkú Kutya Párt v Hungary</i> App no 201/17 (ECtHR, 20 January 2020)	9
<i>Makhmudov v Russia</i> App no 35082/04 (ECtHR, 26 July 2007)	18
<i>Malone v The United Kingdom</i> App no 8691/79 (ECtHR, 2 August 1984).....	4
<i>Mamere v France</i> App no 12697/03 (ECtHR, 7 November 2006).....	38
<i>Mătăşaru v The Republic Of Moldova</i> App nos 69714/16 and 71685/16 (ECtHR, 15 January 2019).....	16
<i>Mehmet Hasan Altan v Turkey</i> App no 13237/17 (ECtHR, 20 March 2018).....	3
<i>Mesut Yildiz v Turkey</i> App no 8157/10 (ECtHR, 18 July 2017).....	21, 23
<i>Mkrtchyan v Armenia</i> App no 6562/03 (ECtHR, 11 January 2007).....	17, 18
<i>Mouvement Ralien Suisse v Switzerland</i> App no 16354/06 (ECtHR, 13 July 2012)	34
<i>Müller and Others v Switzerland</i> App no 10737/84 (ECtHR, 24 May 1988)	10
<i>Navalnyy and Yashin v Russia</i> App no 76204/11 (ECtHR, 4 December 2014)	14
<i>Navalnyy v Russia</i> App nos 29580/12 and 4 others (ECtHR, 15 November 2018).....	1, 3, 8, 14, 20
<i>Nemtsov v Russia</i> App no 1774/11 (ECtHR, 31 July 2014)	18, 22

<i>Nikula v Finland</i> App no 31611/96 (ECtHR, 21 March 2002).....	23
<i>Nosov and Others v Russia</i> App nos 9117/04 and 10441/04 (ECtHR, 20 February 2014).....	14
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<i>Nurettin Aldemir and Others v Turkey</i> App nos 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02 (ECtHR, 18 December 2007).....	20
<i>Oberschlick v Austria (no. 2)</i> App no 20834/92 (ECtHR, 1 July 1997).....	33
<i>Obote v Russia</i> App no 58954/09 (ECtHR, 19 November 2019).....	8
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<i>Otegi Mondragon v Spain</i> App no 2034/07 (ECtHR, 15 September 2011)	38
<i>Ouranio Toxo v Greece</i> App no 74989/01 (ECtHR, 20 October 2005)	18
<i>Oya Ataman v Turkey</i> App no 74552/01 (ECtHR, 5 December 2006).....	20
<i>Özbent and Others v Turkey</i> App nos 56395/08 and 58241/08 (ECtHR, 9 September 2015).....	23
<i>Palomo Sanchez and Others v Spain</i> App nos 28955/06, 28957/06, 28959/06 and 28964/06 (12 September 2011).....	34
<i>Pastörs v Germany</i> App no 55225/14 (ECtHR, 3 October 2019)	11
<i>Pedersen and Baadsgaard v Denmark</i> App no 49017/99 (ECtHR, 17 December 2004).....	33
<i>Perinçek v Switzerland</i> App no 27510/08 (ECtHR, 15 October 2015)	11, 31
<i>Perna v Italy</i> App no 48898/99 (ECtHR, 6 May 2003).....	34
<i>Primov and Ors v Russia</i> App no 17391/06 (ECtHR, 12 June 2014).....	3
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<i>Rotaru v Romania</i> App no 28341/95 (ECtHR, 4 May 2000)	4, 17, 28
<i>Saghatelyan v Armenia</i> App no 23086/08 (ECtHR, 20 September 2018).....	8
<i>Sahin Alpay v Turkey</i> App no 16538/17 (ECtHR, 20 March 2018)	3
<i>Samut Karabulut v Turkey</i> App no 16999/04 (ECtHR, 27 January 2009)	14, 20
<i>Satakunnan Markkinaporssi Oy and Satamedia Oy v Finland</i> App no 931/13 (ECtHR, 27 June 2017).....	10
<i>Schwabe and M.G. v Germany</i> App nos 8080/08 and 8577/08 (ECtHR, 1 December 2011).....	3, 15
<i>Sergey Kuznetsov v Russia</i> App no 10877/04 (ECtHR, 23 October 2008)	9, 26, 31
<i>Sindicatul “Păstorul cel Bun” v Romania</i> App no 2330/09 (ECtHR, 9 July 2013).....	28
<i>Stankov and the United Macedonian Organisation Ilinden v Bulgaria</i> App nos 29221/95 and 29225/95 (ECtHR, 2 October 2001)	8, 30
<i>Stephen Peter Gough v United Kingdom</i> App no 49327/11 (ECtHR, 28 October 2014).....	34
<i>Sürek v Turkey (No. 1)</i> App no 26682/95 (ECtHR, 8 July 1999)	31
<i>Taranenko v Russia</i> App no 19554/05 (ECtHR, 15 March 2014).....	9
<i>Tatár And Fáber v Hungary</i> App no 26005/08 (ECtHR, 12 June 2012).....	23
<i>The Sunday Times v The United Kingdom (No.1)</i> App no 6538/74 (ECtHR, 26 April 1979).....	16, 34, 35
<i>Times Newspapers Ltd (Nos. 1 And 2) v The United Kingdom</i> App nos 3002/03 and 23676/03 (ECtHR, 10 March 2009).....	31
<i>Trade Union of the Police v Slovakia</i> App no 11828/08 (ECtHR, 25 September 2012).....	38
<i>Vajnai v Hungary</i> App no 33629/06 (ECtHR, 8 July 2008).....	30

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<i>Vogt v Germany</i> App no 17851/91 (ECtHR, 26 September 1995).....	10
<i>Vyerentsov v Ukraine</i> App no 20372/11 (ECtHR, 11 April 2013).....	10, 17, 18, 28
<i>Yazar and Others v Turkey</i> App nos 22723/93, 22724/93 and 22725/93 (ECtHR, 9 April 2002)	38
<i>Zakharov and Varzhabetyan v Russia</i> App nos 35880/14 and 75926/17 (ECtHR, 13 October 2020).....	8
<i>Zhdanov and Others v Russia</i> App no 12200/08, 35949/11 and 58282/12 (ECtHR, 16 July 2019).....	16

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<i>Baena-Ricardo v Panama</i> , Inter-American Court of Human Rights Series C No. 72 (Merits, Reparations and Costs) (2 February 2001).....	16
<i>Canese v Paraguay</i> , Inter-American Court of Human Rights Series C No. 111 (Merits, Reparations and Costs) (31 August 2004).....	16
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<i>Gomes Lund v Brazil</i> , Inter-American Court of Human Rights Series C No. 219 (Preliminary Objections, Merits, Reparations, and Costs) (24 November 2010)	16
<i>Herrera Ulloa v Costa Rica</i> , Inter-American Court of Human Rights Series C No. 107 (22 July 2004).....	11, 16
<i>Kimel v Argentina</i> , Inter-American Court of Human Rights Series C No. 177 (Merits, Reparations and Costs) (2 May 2008).....	17

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<i>Uson Ramirez v Venezuela</i> , Inter-American Court of Human Rights Series C No. 207 (Preliminary Objections, Merits, Reparations, and Costs) (20 November 2009)	17
<i>Women Victims of Sexual Torture in Atenco v Mexico</i> , Inter-American Court of Human Rights Series C No. 371 (Preliminary Objection, Merits, Reparations and Costs) (28 November 2018).....	8

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<i>Konaté v Burkina Faso</i> App no 004/2013 (ACtHPR, 5 December 2014).....	16
<i>Umuhoza v Rwanda</i> App no 003/2014 (ACtHPR, 24 November 2017)	16
<i>Zimbabwe Lawyers for Human Rights v Zimbabwe</i> App no 294/2004 (ACtHPR, 3 April 2009)	16

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<i>The Case of Max Kebenuly Bokaev and Talgat Tulepkalievich Ayanov</i> App no 1-501/2016, November 28, 2016 (Kazakhstan).....	28
<i>Time v Hill</i> 385 US 374 (1967).....	33
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Assembly and Demonstration Act 2016 (South Korea)	10
Australian Capital Territory Public Health Act 1997, A1997-69 (Australia).....	5
Basic Law for the Federal Republic of Germany	10
Biosecurity Act 2015 No. 61, 2015 (Australia)	5
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Code No. 235-V of 5 July 2014 on Administrative Offences, 2014 (Kazakhstan)	28
Constitution of India	10
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Constitution of the Republic of Korea	10
Coronavirus Act 2020, 2020 c.7 (United Kingdom).....	5
COVID-19 Public Health Response (Alert Level Requirements) Order 2020 (New Zealand).....	13
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Criminal Code (Canada)	10
Criminal Code (Germany)	10
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Decree on Spreading of Panic and False News in a State of Emergency (19 March 2020) (Bosnia and Herzegovina).....	36
Decree on the State of Emergency (24 March 2020) (Armenia).....	36
Decree signed by the President of Romania, Mr. Klaus Iohannis, Regarding the Establishment Oof the State of Emergency on the Romanian Territory 2020 (Romania)	36
Disaster Management Act 2005 (India).....	37
Federal Act on Assemblies and Processions 1953 (Germany)	10
Federal Law of 01.04.2020 No. 100-FZ "On Amendments to the Criminal Code of the Russian Federation and Articles 31 and 151 of the Criminal Procedure Code of the Russian Federation" (Russia).....	35
Indian Penal Code (India).....	10
Infectious Diseases Act (Act 21 of 1976) (Singapore)	22

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Law Decree No. 19 of 25 March 2020 (Italy).	22
Law Decree No. 6 of 23 February 2020 (Italy)	22
Law on Information, Informatization, and Protection of Information 1998 (Azerbaijan).....	35
Movement and Gathering Direction (No. 7) (Queensland) (Australia).....	13
New South Wales Public Health Act 2010 No 127 (Australia).....	5
O. Reg. 263/20: Rules for Areas in Stage 2 (Ontario) (Canada)	13
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O. Reg. 82/20: Rules for Areas in Stage 1 (Ontario) (Canada)	13
Ordinance on Measures to Combat the Coronavirus (COVID-19) (Switzerland).....	22
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Penal Code of the Republic of Kazakhstan, 2014.....	28
Police Act 1959 (Cyprus).....	20
Protection from Online Falsehoods and Manipulation (Act 18 of 2019) (Singapore)	28
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Queensland Public Health Act 2005 (Australia).....	5
Reopening Ontario (A Flexible Response to COVID-19) Act 2020 (Canada)	22
Reopening Ontario (A Flexible Response to COVID-19) Act 2020, S.O. 2020, Chapter 17 (Canada)	13
Stay Safe Directions (No. 8) (Victoria) (Australia).....	13
The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (United Kingdom)	13, 22
The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (United Kingdom)	13, 22

The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (United Kingdom)	13
The Health Protection (Coronavirus, Restrictions) (All Tiers) Regulations 2020 (UK)	22
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STATEMENT OF RELEVANT FACTS

SOCIO-POLITICAL BACKDROP

- [1] Ized is a tropical country home to 20 million people, infested with diurnal and nocturnal mosquitos. Two major political parties vie for power. The conservative National United Alliance [‘**NUA**’] advocates for free market, lower taxes, and tighter security laws. The liberal Democratic Socialist Party [‘**DSP**’] favours the opposite, and espouses for state-funded education and healthcare.
- [2] The media sector is virtually monopolised by the National Network which owns two radio channels and ‘The Net’, Ized’s most popular social media platform (over 4 million users). NUA’s general secretary, Gus Dabyu, sits on its Board of Directors.

THE NET AND NET-ASSEMBLIES

- [3] The Net’s general interface allows users (Netizens) to post opinions (maximum 200 characters), follow other Netizens, and share their posts.
- [4] Additionally, The Net allows Netizens to host a webpage called ‘Net-Assemblies’ with a unique ‘Net-Tag’ beginning with a hash (#) showing all opinions by Netizens joining a Net-Assembly. A Net-Assembly is discoverable by searches on its Net-Tag or member’s post. A Net-Tag can be endorsed by any Netizen.

SOCIAL DEMOCRATIC WORKERS UNION

- [5] The Social Democratic Workers Union [‘**Union**’] is a trade union with legal personality, loosely affiliated with the DSP and led by Jo Xana [‘**Xana**’]. Its membership includes workers in Ized’s state healthcare service.
- [6] The Union regularly promotes campaigns on Net-Assemblies to raise public awareness. The Union publishes the weekly magazine ‘Unite’ which sells 4,000 copies weekly.

2020 ELECTIONS AND NIDV

- [7] In early January 2020, fresh Parliamentary elections were held in Ized. A major electoral concern was the outbreak of a new disease, NIDV. There is no clear scientific consensus whether NIDV transmits via vectors *i.e.* mosquitoes or sexual contact. Official statistics recorded 30,000 cases and 420 deaths in Ized since September 2019.
- [8] Two days prior to elections, the National Network publicised leaked information stating that the actual death toll was close to 2,000 deaths. The next day, the independent Institute of Medical Research [“**IMR**”] reported that the government statistics and reports were inconclusive. Both publications garnered wide media coverage.
- [9] After the elections, NUA secured a clear majority and formed a new government. One major reform proposal was the privatisation of the state healthcare service to ensure high quality and affordable services, and weed out inefficient and unprofessional staff.

NATIONAL SECURITY ACT

- [10] The NUA-led government enacted the National Security Act [“**NSA**”]. Section 22 empowers the Minister of Defence [“**MINDEF**”] to designate a public site to be used for public gatherings upon declaration of an emergency. Section 23 of the NSA empowers the MINDEF to issue guidelines on publications.
- [11] On 1 February, the MINDEF declared an emergency for three months, and invoked Section 22 to designate the Central Public Park [“**Park**”] in Ized’s capital Vaai as the sole public site for public gatherings due to its ample space and regular fumigation.

THE UNION'S DEMONSTRATION

- [12] On 4 February 2020, the Union announced its organisation of a demonstration against the government's healthcare privatisation reform. In the following days, the Union's members publicised the event on The Net. On 13 February, the Union urged its supporters to gather outside the Vaai General Hospital [**"hospital"**]. The MINDEF immediately issued a statement warning that the planned demonstration was unlawful and that demonstrators would be arrested.
- [13] On 14 February, the Union's members numbering 400 persons including Xana gathered outside the hospital. Some waved placards with slogans concerning NIDV and threat of retrenchment following the healthcare reforms. Xana addressed the crowd with a loudspeaker. She claimed that NUA '*manufactured*' the NIDV crisis and were using the NSA and healthcare reform as an authoritarian power grab. She encouraged demonstrators to block the hospital's entrance to prevent anyone from entering.
- [14] Security forces armed with batons arrived to disperse the demonstrators with water cannons, tear gas, and firing of 'blanks' into the air. Some demonstrators were arrested (including Xana) and suffered minor injuries. The next day, all demonstrators were released, except Xana who was charged.
- [15] On 3 March 2020, Xana was convicted in the High Court under Section 22 of the NSA for conducting a gathering at a non-designated site. She was sentenced to three months imprisonment, suspended for one year. Her conviction and sentence were upheld on appeal by the Supreme Court.

THE UNION'S NET-ASSEMBLY DEMONSTRATION

- [16] On 10 March, the Union's leadership decided to pivot to '*digital demonstration*' on The Net. Its members launched a series of Net-Assemblies with its slogans as Net Tags. The two Net-Assemblies displayed #FiredForFakeVirus and #Care4Healthcare, attracting endorsements from over 40,000 Netizens. Such Net Tags spurred several Netizens to call for boycotts of healthcare services.
- [17] On 15 March, the Union's magazine 'Unite' published articles encouraging support for its digital demonstrations. One article authored by 'Joxx' claimed that medical experts refrained from publishing their findings that the NIDV could only be sexually-transmitted due to governmental pressure and fear of losing employment.

MINISTERIAL GUIDELINES

- [18] On 16 March, Ized's Ministry of Health [**"MOH"**] reported on the latest NIDV statistics (4,300 new infections and 140 new deaths) and '*credible evidence*' that the virus could be transmitted through mosquitoes. The MINDEF declared that strong action would be taken to arrest persons organising unauthorised gatherings on social media platforms under Section 22 of the NSA.
- [19] Additionally, the MINDEF issued guidelines pursuant to Section 23 prohibiting publications of any medical expert opinion on NIDV without the MOH's authorisation and for all communication concerning NIDV to be '*centralised*' due to the rapid increase of disinformation threatening public health.
- [20] The next day, the National Network's Board of Directors unanimously resolved to indefinitely discontinue the Net-Assembly feature due to the spread of disinformation and its irresponsible use '*by political forces*'.

LEGAL PROCEEDINGS

- [21] On 20 March, Xana and the Union filed petitions before the Ized Supreme Court claiming violations of their constitutional rights, particularly on freedom of expression and assembly enshrined under Articles 10 and 11 of Ized's Constitution.
- [22] Upon the Supreme Court dismissing their petitions, they presented the same complaints before the Universal Court of Human Rights under Articles 19 and 21 of the ICCPR.

STATEMENT OF JURISDICTION

Xana, the Union and the State of Ized [**'Ized'** or **'Respondent'**] which is a party to the International Covenant on Civil and Political Rights (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 designation of the Park as a '*public site*' for '*public gatherings*' under Section 22 of the NSA does not violate the freedom of expression and assembly under Articles 19 and 21 of the ICCPR. *First*, Ized validly invoked Section 22 of the NSA in officially proclaiming a public emergency to stem NIDV infections. Similar laws have been enacted by States worldwide during the COVID-19 pandemic to impose lockdowns and restrict public gatherings outdoor. *Second*, the demonstration by Xana and the Union was not a peaceful assembly protected under Article 21 of the ICCPR. The demonstrators showcased violent intentions by blocking the only entry point of the hospital. In any event, Ized's designation of the Park as the sole site for public gatherings was provided under Section 22 of the NSA, and was necessary and proportionate to protect public health. The precautionary principle dictates that States should take preventive measures in the face of life-threatening risks shrouded by scientific uncertainties.

II

Ized's conviction of Xana did not infringe her freedom of expression and assembly under Articles 19 and 21 of the ICCPR. *First*, as earlier addressed, Xana led a protest outside the hospital harbouring violent intentions and elements. Hence, she was not entitled to protection under Article 21 of the ICCPR (*lex specialis*). *Second*, alternatively, the criminal sanction imposed upon Xana was permissible under Articles 19 and 21 of the ICCPR due to fulfilment of the three-part test of legality, necessity, and proportionality. Section 22 of the NSA was formulated with sufficient precision to enable the public to foresee that conducting gatherings at public sites (except those designated by the MINDEF) was a criminal offence. A day before the protest, the MINDEF even released a public statement warning that any person attending

the Union's planned protest would be arrested. Nevertheless, Xana persisted to lead the protest and directly instructed protestors to block the hospital's only entrance, which effectively prevented patients from obtaining essential and timely medical treatment. Since she was the mastermind of the entire protest, Ized decided to only charge and convict Xana, whilst letting other protestors free. The suspended sentence of three-month imprisonment was well-balanced to set a strong deterrence of future delinquencies against emergency health measures, whilst casting minimal chilling effect on freedom of speech.

III

Ized's prohibition of unauthorised gatherings on social media platforms did not interfere with the Union's rights under Articles 19 and 21 of the ICCPR. *First*, the freedom of assembly does not protect non-physical gatherings. The Net-Assembly function is merely a webpage functioning as a repository of online posts and cannot be *analogised* to physical demonstrations constrained by time and space. Further, the Union's grievance lies with the conduct of a private actor – the suspension of Net-Assemblies as resolved unanimously by National Network's Board of Directors. Such suspension is not attributable to Ized. *Second*, in any event, any interference with Articles 19 and 21 of the ICCPR was provided by law, necessary to protect public health and public order, and proportionate to achieve such aims. Ized had to impose temporary brakes on online gatherings during the three-month emergency period to stem the rapid spread of the malicious NIDV *infodemic*. Particularly, there was a pressing social need to reduce the proliferation of '*echo chambers*' from causing mass panic, undermining institutional health advisories, and even resulting to loss of life.

IV

Ized's guidelines to centralise all communications concerning NIDV does not violate the Union's right to freedom of expression under Article 19 of the ICCPR. *First*, freedom of

expression does not protect malicious falsehood. Further, especially during a health crisis, States have a positive duty to impart critical health information to the public, as well as preventing inaccurate information from being disseminated. Ized's guidelines to control the flow of communication on NIDV facilitate the public's access to information and their ability to make informed health decisions. *Second*, alternatively, any interference was lawful, necessary, and proportionate to protect public health in accordance with Article 19(3) of the ICCPR. Ized's guidelines issued under Section 23 of the NSA were specific as to its scope and effect – all opinions concerning NIDV had to be vetted and authorised by the MOH prior to publication. The aim was to prevent disinformation (deliberate malicious falsehood) from becoming an '*infodemic*' more dangerous than the virus itself (akin to the WHO Director-General Dr Tedros' repeated warnings at the peak of COVID-19). Technical measures alone are insufficient to promptly detect and remove 'fake news', as evinced by the recent experiences of established intermediaries (*e.g.* Twitter and Facebook). Ultimately, there needs to be close coordination between national health authorities, intermediaries, and independent third-party fact-checkers to effectively suppress the NIDV infodemic.

ARGUMENTS

I. IZED’S DECISION TO ENACT SECTION 22 OF THE NSA AND DESIGNATION OF THE PARK AS THE ONLY PUBLIC SITE DID NOT VIOLATE XANA’S AND THE UNION’S RIGHTS UNDER ARTICLE 19 AND ARTICLE 21 OF THE ICCPR

[1] The freedom of expression¹ and assembly² form the foundation stones of every free and democratic society. Both freedoms closely intersect and are complementary, as observed by the HRC,³ international courts,⁴ civic society organisations,⁵ and scholars.⁶

¹ UNHRC, CCPR General Comment No. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34 (“General Comment No. 34”) [2]; *Gryb v Belarus* Communication no. 1315/2004, CCPR/C/103/D/1316/2004 (HRC, 26 October 2011) [13.3]; *Zhagiparov v Kazakhstan* Communication no. 2441/2014, CCPR/C/124/D/2441/2014 (HRC, 25 October 2018) (“*Zhagiparov*”) [13.3]; *Strizhak v Belarus* Communication no. 2260/2013, CCPR/C/124/D/2260/2013 (HRC, 1 November 2018) (“*Strizhak*”) [6.3]; *Amelkovich v Belarus* Communication no. 2720/2016, CCPR/C/124/D/2720/2016 (HRC, 29 March 2019) (“*Amelkovich*”) [6.3]; *Zhukovsky v Belarus* Communication no. 2724/2016, CCPR/C/127/2724/2016 (HRC, 8 November 2019) (“*Zhukovsky*”) [7.3].

² UNHRC, CCPR General Comment No. 37, Article 21, Right of peaceful assembly, 27 July 2020, CCPR/C/GC/37 (“General Comment No. 37”) [1]; *Turchenyak et al. v Belarus* Communication no. 1948/2010, CCPR/C/108/D/1948/2010 (HRC, 24 July 2013) (“*Turchenyak*”) [7.4], [7.7]; *Toregozhina v Kazakhstan* Communication no. 2311/2013, CCPR/C/112/D/2311/2013 (HRC, 25 July 2019) (“*Toregozhina*”) [8.4]; *Severinets v Belarus* Communication no. 2230/2012, CCPR/C/123/D/2230/2012 (HRC, 19 July 2018) (“*Severinets*”) [8.4] – [8.5]; *Popova v Russian Federation* Communication no. 2217/2012, CCPR/C/122/2217/2012 (HRC, 6 April 2018) (“*Popova*”) [7.3]; *Gimenez v Paraguay* Communication no. 2372/2014, CCPR/C/123/D/2372/2014 (HRC, 25 July 2018) (“*Gimenez*”) [8.3]; *Djavit an v Turkey* App no 20652/92 (ECtHR, 20 February 2003) [56].

³ General Comment No. 34 (n 1) [4]; General Comment No. 37 (n 2) [9].

⁴ *Navalnyy v Russia* App nos 29580/12 and 4 others (ECtHR, 15 November 2018) (“*Navalnyy*”) [101]; *Kudrevičius & Others v Lithuania* App no 37553/05 (ECtHR, 15 October 2015) (“*Kudrevičius*”) [85]; *López Lone et al. v Honduras*, Inter-American Court of Human Rights Series C No. 302 (Preliminary Objections, Merits, Reparations and Costs) (5 October 2015) [160]; *Castañeda Gutman v México*, Inter-American Court of Human Rights Series C No. 184 (Preliminary Objections, Merits, Reparations and Costs) (6 August 2008) [140].

⁵ OSCE and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, (3rd edn, OSCE Office for Democratic Institutions and Human Rights 2020) (“OSCE Guidelines”) [5]; Edison Lanza, ‘Protest and Human Rights’ Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (September 2019) OEA/SER.L/V/II/CIDH/RELE/INF.22/19 [1] – [2], [17] – [18].

⁶ Rhona K. M Smith, *Textbook on International Human Rights Law* (6th edn, Oxford University Press 2014) 305; Dominika Bychawska-Siniarska, ‘Protecting The Right To Freedom Of Expression Under The European Convention On Human Rights’ (*Council of Europe*, 2017) <<https://rm.coe.int/handbook-freedom-of-expression-eng/1680732814>> accessed 15 November 2020, 10; IACHR, ‘Report on the Criminalization of the Work of Human Rights Defenders’ (December 2015) OEA/SER.L/V/II/Doc.49/15, [119].

[2] Both freedoms are enshrined under the ICCPR,⁷ regional conventions (in Europe,⁸ Americas,⁹ Africa,¹⁰ and Asia¹¹), and specific regimes protecting the rights of children,¹² the disabled,¹³ migrant workers,¹⁴ and indigenous peoples.¹⁵

[3] The right to assemble peacefully under Article 21 of the ICCPR embodies dual expressive¹⁶ and associational purposes.¹⁷ In short, such freedom protects the *individual right to express one's opinion collectively*.¹⁸

⁷ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts. 19 – 20.

⁸ European Convention on Human Rights (ECHR) (adopted 4 November 1950, entered into force 3 September 1953), arts. 10–11; Charter of Fundamental Rights of the European Union (adopted 7 December 2000, entered into force 1 December 2009), arts. 11 – 12.

⁹ American Declaration of the Rights and Duties of Man (adopted 2 May 1948), arts. 4, 21; American Convention on Human Rights (ACHR) (adopted 22 November 1969, entered into force 18 July 1978), arts. 13, 15.

¹⁰ African Charter on Human and Peoples' Rights (ACHPR) (adopted 27 June 1981, entered into force 21 October 1986), arts. 9, 11.

¹¹ CIS Convention on Human Rights and Fundamental Freedoms (adopted 26 May 1995, entered into force 11 August 1998), arts. 11 – 12; Arab Charter on Human Rights (adopted 22 March 2004, entered into force 15 March 2008), arts. 26, 28; ASEAN Declaration on Human Rights (adopted 9 November 2012), arts. 23 – 24.

¹² Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNGA Res 44/25 (CRC), arts. 13(1), 15(1); African Charter on the Rights and Welfare of the Child (ACRWC) (adopted 1 July 1990, entered into force 29 November 1999), arts. 7 – 8.

¹³ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) UNGA Res 61/106 (CPRD), arts. 21, 29.

¹⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered in force 1 July 2003) UNGA Res 45/158 (ICRMW), arts. 13, 26.

¹⁵ United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) A/RES/61/295, arts. 5, 16, 31.

¹⁶ *Kivenmaa v Finland* Communication no. 412/1990, CCPR/C/50/D/412/1990 (HRC, 31 March 1994) (“*Kivenmaa*”) [7.6]; *Sekerko v Belarus* Communication no. 1851/2008, CCPR/C/109/D/1851/2008 (HRC, 28 October 2013) [9.3]; *Poplavny and Sudalenko v Belarus* Communication no. 2139/2012, CCPR/C/118/D/2139/2012 (HRC, 3 November 2016) [8.5].

¹⁷ Dragan Golubovic, ‘Freedom of Association in the Case Law of the European Court of Human Rights’, (2013) *International Journal of Human Rights* 17(7) – (8), 758 – 771; Ashutosh Bhagwat, ‘Associational Speech’, (2011) *Yale Law Journal* 120(5), 978 – 1277.

¹⁸ General Comment No. 37 (n 2) [4]; *Lashmankin and Ors v Russia* App nos 57818/09 and 14 others (“*Lashmankin*”) (ECtHR, 7 February 2017) [363].

[4] The Applicants' complaint over Ized's designation of the Park as a '*public site*' for '*public gatherings*' under Section 22 of the NSA¹⁹ principally concerns the freedom of assembly.²⁰ Since Article 21 operates as *lex specialis*, there is no need for this Court to separately consider Article 19 being *lex generalis*.²¹ Any finding of non-violation under Article 21 of the ICCPR *ipso facto* entails a non-violation of Article 19.

[5] Such designation constituted a (A) lawful measure passed during a public emergency; and (B) permissible restriction under Article 21 of the ICCPR.

A. Ized Lawfully Designated the Park As A Public Site Pursuant To Its Emergency Powers Under Section 22 of the NSA

[6] Under Article 4 of the ICCPR, States may temporarily suspend their obligations during public emergencies.²² A wide margin of appreciation is left to States.²³ Ized fulfilled the two constituent conditions: (1) official proclamation; and (2) threat to the life of the nation.

¹⁹ Facts [14], [16].

²⁰ *Galstyan v Armenia* App no 26986/03 (ECtHR, 15 November 2007) ("*Galstyan*") [95] – [96]; *Schwabe and M.G. v Germany* App nos 8080/08 and 8577/08 (ECtHR, 1 December 2011) ("*Schwabe*") [101]; *Primov and Ors v Russia* App no 17391/06 (ECtHR, 12 June 2014) [91]; *Lashmankin* (n 18) [363].

²¹ *Hakim Aydin v Turkey* App no 4048/09 (ECtHR, 26 May 2020) [41]; *Razvozzhayev v Russia and Ukraine and Udaltsov v Russia* App nos 75734/12, 269515 and 55325/15 (ECtHR, 19 November 2019) [278]; *Navalnyy* (n 4) [101]; *Lütfiye Zengin and Ors v Turkey* App no 36443/06 (ECtHR, 14 April 2015) [35]; *Schwabe* (n 20) [99] – [101]; *Association of Citizens Radko & Paunkovski v The Former Yugoslav Republic of Macedonia* App no 74651/01 (ECtHR, 15 January 2009) [80]; *Ashughyan v Armenia* App no 33268/03 (ECtHR, 17 July 2008) ("*Ashughyan*") [71]; *Ezelin v France* App no 11800/85 (ECtHR, 26 April 1991) ("*Ezelin*") [35]; *Kivenmaa* (n 16) (Dissenting Opinion of Committee Member Kurt Herndl) [3.5].

²² ICCPR (n 7), art. 4; UNHRC, CCPR General Comment No. 29, Article 4, State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11 ("General Comment No. 29") [1].

²³ *Brannigan and McBride v United Kingdom* App nos 14553/89 and 14554/89 (ECtHR, 26 May 1993) [43]; *Aksoy v Turkey* App no 21987/93 (ECtHR, 18 December 1996) [68]; *A. and Others v United Kingdom* App no 3455/05 (ECtHR, 19 February 2009) [173]; *Mehmet Hasan Altan v Turkey* App no 13237/17 (ECtHR, 20 March 2018) [91]; *Sahin Alpay v Turkey* App no 16538/17 (ECtHR, 20 March 2018) [75].

1. Ized officially proclaimed a public emergency

[7] States may only proclaim a public emergency within their constitutional and legislative framework,²⁴ in accordance with the principle of legality and rule of law.²⁵

[8] In January 2020, Ized enacted Section 22 of the NSA to prohibit gatherings at public site not designated by its MINDEF during public emergencies.²⁶ On 1 February, Ized's MINDEF issued a regulation declaring a state of emergency for three months, and designating the Park as the public site during such period.²⁷

[9] It is immaterial that Ized did *not* formally derogate from the ICCPR.²⁸ Notification to the UN is merely a procedural step²⁹ to enable the HRC and international community to monitor its compliance with the ICCPR.³⁰

²⁴ General Comment No. 29 (n 22) [2]; UNCHR, 'Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR' (1984) UN Doc E/CN.4/1985/4, ("Siracusa Principles") Principle 43.

²⁵ General Comment No. 29 (n 22) [2]; *Cyprus v Turkey* App nos 6780/74 and 6950/75 (Commission Decision, 10 July 1976) [527]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [67]; *Kruslin v France* App no 11801/805 (ECtHR, 24 April 1990) [30]; *Rotaru v Romania* App no 28341/95 (ECtHR, 4 May 2000) ("*Rotaru*") [52]; *Maestri v Italy* App no 39748/98 (ECtHR, 17 February 2004) ("*Maestri*") [30]; Dominic McGoldrick, 'The Interface Between Public Emergency Powers and International Law' (2004) 2(2) *International Journal of Constitutional Law* 380 <<https://academic.oup.com/icon/article/2/2/380/665861>> accessed 18 January 2021; OHCHR and IBA, 'The Administration of Justice during States of Emergency' in *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (United Nations 2003); Joseph Sarah, 'Human Rights Committee: General Comment 29' (2002) 2 *Human Rights Law Review* 81, 83.

²⁶ Facts [14].

²⁷ *ibid* [16].

²⁸ Clarifications [16].

²⁹ ICCPR (n 7) art. 4(3); *Silva and Ors v Uruguay* Communication no. 34/1978, CCPR/C/12/D/34/1978 (HRC, 8 April 1981) [8.3]; Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd edition, Kehl: N.P Engel, 2005) 373; OSCE Guidelines (n 5) [43].

³⁰ General Comment No. 29 (n 22) [17]; Hafner-Burton EM, Helfer LR and Fariss CJ, 'Emergency and Escape: Explaining Derogations from Human Rights Treaties' (2011) 65(4) *International Organization* 673 <<https://doi.org/10.1017/S002081831100021X>> accessed 18 January 2021; Christopher Michaelsen, 'International Human Rights on Trial – The United Kingdom's and Australia's Response to 9/11' (2003) 25 *Sydney L Rev* 275, 290.

[10] During the COVID-19 pandemic, notification was deposited by few States in Africa (Ethiopia and Namibia³¹), Europe (Latvia, Armenia, Estonia, Romania, Georgia, and Moldova³²), Americas (Ecuador, Colombia, Guatemala, Peru, El Salvador, and Dominican Republic³³), and Asia (Kyrgyzstan³⁴). Yet, many other States also invoked emergency powers to impose lockdowns *without* notification (e.g., Australia,³⁵ New Zealand,³⁶ and UK³⁷). Similarly, Ized's lack of notification does not invalidate its invocation of the NSA.

³¹ UN, 'Depositary Notification by the Permanent Mission of Ethiopia' (9 June 2020) C.N.243.2020.TREATIES-IV.4 (Depositary Notification); UN, 'Depositary Notification by the Permanent Mission of the Republic of Namibia' (6 July 2020) C.N.303.2020.TREATIES-IV.4 (Depositary Notification).

³² UN, 'Depositary Notification by the Permanent Mission of Latvia' (16 March 2020) C.N.105.2020.TREATIES-IV.4 (Depositary Notification); UN, 'Depositary Notification by the Permanent Mission of Armenia' (20 March 2020) : C.N.114.2020.TREATIES-IV.4 (Depositary Notification); UN, 'Depositary Notification by the Permanent Mission of Estonia' (20 March 2020) C.N.113.2020.TREATIES-IV.4 (Depositary Notification); UN, 'Depositary Notification by the Permanent Mission of Romania' (20 March 2020) C.N.121.2020.TREATIES-IV.4 (Depositary Notification); UN, 'Depositary Notification by the Permanent Mission of Georgia' (21 March 2020) C.N.125.2020.TREATIES-IV.4 (Depositary Notification); UN, 'Depositary Notification by the Permanent Mission of the Republic of Moldova' (4 May 2020) C.N.164.2020.TREATIES-IV.4 (Depositary Notification).

³³ UN, 'Depositary Notification by the Permanent Mission of Ecuador' (24 March 2020) C.N.119.2020.TREATIES-IV.4 (Depositary Notification); UN, 'Depositary Notification by the Permanent Mission of Colombia' (25 March 2020) C.N.131.2020.TREATIES-IV.4 (Depositary Notification); UN, 'Depositary Notification by the Permanent Mission of Guatemala' (23 March 2020) C.N.117.2020.TREATIES-IV.4 (Depositary Notification); UN, 'Depositary Notification by the Permanent Mission of Peru' (30 March 2020) C.N.126.2020.TREATIES-IV.4 (Depositary Notification); UN, 'Depositary Notification by the Permanent Mission of El Salvador' (14 April 2020) C.N.134.2020.TREATIES-IV.4 (Depositary Notification); UN, 'Depositary Notification by the Permanent Mission of the Dominican Republic' (25 June 2020) C.N.279.2020.TREATIES-IV.4 (Depositary Notification).

³⁴ UN, 'Depositary Notification by the Permanent Mission of the Kyrgyz Republic' (31 March 2020) C.N.129.2020.TREATIES-IV.4 (Depositary Notification).

³⁵ Biosecurity Act 2015 No. 61, 2015 (Australia), ss 353, 475, 477 – 478; Queensland Public Health Act 2005 (Australia), ss 319, 345, 349; Victoria Public Health and Wellbeing Act 2008, No. 46 of 2008 (Australia), ss 198 – 200; Australian Capital Territory Public Health Act 1997, A1997-69 (Australia), ss 119 – 120; New South Wales Public Health Act 2010 No 127 (Australia), s 7.

³⁶ Civil Defence Emergency Management Act 2002 (New Zealand), s 66; COVID-19 Public Health Response Act 2020 (New Zealand), ss 9 – 11.

³⁷ Public Health (Control of Disease) Act 1984, 1984 c.22 (United Kingdom), ss 45C(1), (3)(c), (4)(b), (4)(d), 45F(2); Coronavirus Act 2020, 2020 c.7 (United Kingdom), schs 18 – 19.

2. NIDV was an exigency threatening the life of the nation

[11] A public emergency which ‘*threatens the life of the nation*’³⁸ encompasses a wide range of catastrophes, whether man-made (*e.g.*, armed conflict³⁹ and economic recession⁴⁰) or natural (*e.g.*, hurricane⁴¹ and earthquake⁴²). Historically, lethal outbreaks have compelled States to declare health emergencies (*e.g.*, H1N1,⁴³ Zika,⁴⁴ and Ebola⁴⁵).

[12] Furthermore, measures derogating from a State’s obligation can only be taken ‘*to the extent strictly required by the exigencies*’⁴⁶ by its temporal, geographical, and material scope.⁴⁷

[13] NIDV is a novel lethal disease that attacks the human immune system (akin to the still-

³⁸ ICCPR, (n 7) art. 4(1).

³⁹ General Comment No. 29 (n 22) [3]; UN, ‘Depositary Notification by the Permanent Mission of Ukraine’ (6 July 2016) C.N.502.2016.TREATIES-IV.4 (Depositary Notification).

⁴⁰ *Continental Casualty Company v Argentine Republic*, ICSID Case No. ARB/03/9 (5 September 2008) [180]; *LG&E Energy Corp., LG&E Capital Corp., LG&E International INC. v Argentine Republic*, ICSID Case No. ARB/02/1 (Decision on Liability) (3 October 2006) [238].

⁴¹ UN, ‘Depositary Notification by the Government of Guatemala’ (23 November 1998) C.N.866.1998.TREATIES-IV.4 (Depositary Notification); UN, ‘Depositary Notification by the Permanent Mission of Jamaica’ (24 August 2007) C.N.832.2007.TREATIES-IV.4 (Depositary Notification).

⁴² UN, ‘Depositary Notification by the Permanent Mission of Ecuador’ (15 March 2017) C.N.210.2017.TREATIES-IV.4 (Depositary Notification); UN, ‘Depositary Notification by the Permanent Mission of Guatemala’ (15 January 2013) C.N.151.2013.TREATIES-IV.4 (Depositary Notification).

⁴³ UN, ‘Depositary Notification by the Permanent Mission of Ecuador’ (20 May 2009) C.N.347.2009.TREATIES-IV.4 (Depositary Notification); United States Department of Health and Human Services, ‘2009 H1N1 Flu Outbreak: Determination That A Public Health Emergency Exists’ (United States Department of Health and Human Services 2009).

⁴⁴ United States Department of Health and Human Services, ‘Determination That A Public Health Emergency Exists In Puerto Rico As A Consequence Of The Zika Virus Outbreak’ (United States Department of Health and Human Services 2016).

⁴⁵ BBC News, ‘Liberia Declares State of Emergency Over Ebola Virus’ (*BBC News*, 2014) <<https://www.bbc.com/news/world-28684561>> accessed 19 January 2021.

⁴⁶ ICCPR (n 7) art 4(1); *Lawless v Ireland (No.3)* App no 332/57 (ECtHR, 1 July 1961) (“Lawless”) [22]; *Ireland v The United Kingdom* App no 5310/71 (ECtHR, 18 January 1978) (“Ireland”) [206] – [207].

⁴⁷ General Comment No. 29 (n 22) [4].

uncurable HIV) believed by medical experts to either be sexually-transmitted or vector-borne through mosquitos.⁴⁸ Since September 2019, 30,000 cases and 420 deaths have been traced to NIDV from Ized’s total population of 20 million.⁴⁹

[14] Indeed, the HRC recognises the necessity of restricting freedom of assembly during emergencies,⁵⁰ particularly for outbreaks of infectious diseases.⁵¹ Since NIDV posed a serious threat to the organised life of the community, Ized was justified in declaring a public emergency to prohibit public assemblies on a temporary three-month basis.⁵²

B. Ized’s Designation of the Park as A Public Site Complied With Article 21 Of The ICCPR

[15] Ized’s designation of the Park as a ‘*public site*’ under Section 22 of the NSA involves a two-stage analysis: (1) non-interference; and (2) restrictions.⁵³

1. The assembly by Xana and the Union was not peaceful

[16] An ‘*assembly*’ is an intentional temporary gathering of two or more persons for a common expressive purpose.⁵⁴ An assembly encompasses both *moving* processions

⁴⁸ Facts [10].

⁴⁹ *ibid.*

⁵⁰ General Comment No. 29 (n 22) [5].

⁵¹ General Comment No. 37 (n 2) [45].

⁵² *Lawless* (n 46) [28] – [30]; *Ireland* (n 46) [206] – [214].

⁵³ General Comment No. 37 (n 2) [11].

⁵⁴ General Comment No. 37 (n 2) [12] – [13]; Manfred Nowak (n 29) 484; OSCE Guidelines (n 5) [41]; *Kivenmaa* (n 16) [7.6]; *Coleman v Australia* Communication no. 1157/2003, CCPR/C/87/D/1157/2003 (HRC, 10 August 2006) (“*Coleman*”) [6.4]; *Levinov v Belarus* Communication no. 1867/09, CCPR/C/105/D/1867/2009 (HRC, 19 July 2012) [9.7].

(e.g., parades⁵⁵) and static meetings (e.g., flash mobs,⁵⁶ sit-ins,⁵⁷ pickets,⁵⁸ and religious gatherings⁵⁹).

[17] The terms ‘peaceful’ and ‘non-violent’ are interchangeable.⁶⁰ The presumption of assemblies being peaceful is displaced when its participants harbour violent intentions.⁶¹ The critical test is whether the violence was sporadic or severe.⁶²

[18] From 4 to 13 February, the Union urged its supporters to protest outside the hospital against Ized’s healthcare privatisation scheme.⁶³ Despite the MINDEF warning of its unlawfulness, 400 persons gathered on 14 February.⁶⁴ Upon Xana’s cajoling, 40

⁵⁵ *Lashmankin* (n 18), [402]; *Christians Against Racism and Fascism (CARAF) v the United Kingdom* App no 8440/78, (Commission Decision, 16 July 1980) (“CARAF”) 148.

⁵⁶ *Toregozhina* (n 2) [7.5] – [7.6]; *Obote v Russia* App no 58954/09 (ECtHR, 19 November 2019) [46].

⁵⁷ *Annenkov and Others v Russia* App no 31475/10, (ECtHR, 25 July 2017) (“Annenkov”) [123]; *G. v Germany* App no 13079/87 (Commission Decision, 6 March 1989) 256.

⁵⁸ *Kim v Uzbekistan* Communication no. 2175/2012, CCPR/C/122/D/2175/2012 (HRC, 4 April 2018) (“Kim”) [13.7]; *Levinov v Belarus* Communication no. 2239/2013, CCPR/C/123/D/2239/2013 (HRC, 19 July 2018) [6.4]; *Rybchenko v Belarus* Communication no. 2266/2013, CCPR/C/124/D/2266/2013 (HRC, 17 October 2018) [8.5], [8.8]; *Navalnyy* (n 4) [102].

⁵⁹ *Severinets* (n 2) [8.10]; *Kovalenko v Belarus* Communication no. 1808/2008, CCPR/C/108/D/1808/2008 (HRC, 17 July 2013) [9]; *Barankevich v Russia* App no 10519/03 (ECtHR, 26 July 2007) [35]; *Adali v Turkey* App no 38187/97 (ECtHR, 31 March 2005) (“Adali”) [266].

⁶⁰ General Comment No. 37 (n 2) [15].

⁶¹ *Saghatelyan v Armenia* App no 23086/08 (ECtHR, 20 September 2018) [230]; *Karpyuk and Others v Ukraine* App nos 30582/04 and 32152/04 (ECtHR, 6 October 2015) [206]; *CARAF* (n 55) 148; *Stankov and the United Macedonian Organisation Ilinden v Bulgaria* App nos 29221/95 and 29225/95 (ECtHR, 2 October 2001) (“Stankov”) [77]; *Faber v Hungary* App no 40721/08 (ECtHR, 24 July 2012) [37].

⁶² *Women Victims of Sexual Torture in Atenco v Mexico*, Inter-American Court of Human Rights Series C No. 371 (Preliminary Objection, Merits, Reparations and Costs) (28 November 2018) [175]; *Kazantsev and Others v Russia* App no 61978/08 (ECtHR, 16 June 2020) [47]; *Zakharov and Varzhabetyan v Russia* App nos 35880/14 and 75926/17 (ECtHR, 13 October 2020) [86]; *Laguna Guzman v Spain* App no 41462/17 (ECtHR, 6 October 2020) [34].

⁶³ Facts [17] – [18].

⁶⁴ *ibid* [18] – [19].

demonstrators blocked the hospital's only entrance for patients.⁶⁵ When Ized's security forces arrived, some demonstrators resisted arrest.⁶⁶

[19] Due to such defiant violent tendencies, the Union's protest was *not* a 'peaceful assembly' protected under Article 21 of the ICCPR.⁶⁷

2. Alternatively, Ized's interference with the freedom of assembly of Xana and the Union was permissible

[20] Assuming *arguendo* that the protest was peaceful, any interference with Xana's and the Union's rights of peaceful assembly was validly restricted under Article 21 of the ICCPR following the three-part test of (a) legality; (b) necessity; and (c) proportionality.⁶⁸

a. *Ized's interference was provided by law*

[21] The test of legality requires restrictions to be grounded on legislation sufficiently precise to enable the public to regulate their conduct,⁶⁹ and may not confer unfettered

⁶⁵ Facts [19]; Clarifications [19].

⁶⁶ *ibid* [20].

⁶⁷ *Sergey Kuznetsov v Russia* App no 10877/04 (ECtHR, 23 October 2008) ("*Kuznetsov*") [45]; *Alekseyev v Russia* App nos 4916/07, 25924/08 and 14599/09 (ECtHR, 21 October 2010) [80]; *Taranenko v Russia* App no 19554/05 (ECtHR, 15 March 2014) [66]; *Kudrevičius* (n 4) [91] – [92]; *Lashmankin* (n 18) [402] – [403]; *Annenkov* (n 57) [122].

⁶⁸ General Comment No. 34 (n 1) [22]; General Comment No. 37 (n 2) [36]; Siracusa Principles (n 24) Principle 10, 15, 51; *Chebotareva v Russian Federation* Communication no. 1866/2009, CCPR/C/104/D/1866/2009 (HRC, 26 March 2012) [9.3]; *Dzhumanbaev v Kazakhstan* Communication no. 2308/2013, CCPR/C/125/D/2308/2013 (HRC, 29 March 2019) ("*Dzhumanbaev*") [9.3], [9.6]; *Ukteshbaev v Kazakhstan* Communication no. 2420/2014, CCPR/C/126/D/2420/2014 (HRC, 17 July 2019) [9.3] – [9.4]; *Timoshenko et al. v Belarus* Communication no. 2461/2014, CCPR/C/129/D/2461/2014 (HRC, 23 July 2020) [7.3], [7.5]; *Sadykov v Kazakhstan* Communication no. 2456/2014, CCPR/C/129/D/2456/2014 (HRC, 23 July 2020) ("*Sadykov*") [7.3] – [7.4].

⁶⁹ General Comment No. 34 (n 1) [25]; *Nepomnyashchiy v Russian Federation* Communication no. 2318/2013, CCPR/C/123/D/2318/2013 (HRC, 17 July 2018) [7.7]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) ("*Kafkaris*") [140]; *Magyar Kétfarkú Kutya Párt v Hungary* App no 201/17 (ECtHR, 20 January 2020) [93]; *Dubrovina and Others v Russia* App no 31333/07 (ECtHR, 25 February 2020) [43]; *Kudrevičius* (n 4) [109].

discretion on authorities charged with their enforcement.⁷⁰

[22] *First*, the phrase ‘*public emergency that threatens the life of the nation*’ in Section 22(1) of the NSA is identical to Article 4 of the ICCPR.⁷¹ Section 22(2) comprehensively defines the term ‘*public site*’ and provides non-exhaustive examples.

[23] *Second*, both freedom of expression and assembly are guaranteed under Ized’s Constitution.⁷² Their exceptions mirror Article 19 and 21 of the ICCPR, and domestic legislations (*e.g.*, Canada,⁷³ Germany,⁷⁴ India,⁷⁵ Japan,⁷⁶ and South Korea⁷⁷).

[24] *Third*, laws cannot be excessively rigid lest they become unadaptable to changing circumstances.⁷⁸ The level of specificity turns upon the subject matter.⁷⁹ Being a

⁷⁰ General Comment No. 37 (n 2) [39]; *Koktish v Belarus* Communication no. 1985/2010, CCPR/C/111/D/1985/2010 (HRC, 24 July 2014) [8.5]; *Reyes et al. v Chile* Communication no. 2627/2015, CCPR/C/121/D/2627/2015 (HRC, 7 November 2017) [7.5]; *Hasan and Chaush v Bulgaria* App no 30985/96 (ECtHR, 26 October 2000) (“*Hasan and Chaush*”) [84]; *Vyerentsov v Ukraine* App no 20372/11 (ECtHR, 11 April 2013) (“*Vyerentsov*”) [52]; *Chumak v Ukraine* App no 44529/09 (ECtHR, 6 March 2018) [39]; *Lashmankin* (n 18) [411].

⁷¹ ICCPR (n 7), art. 4(1).

⁷² Facts [29].

⁷³ Canadian Charter of Rights and Freedoms (Canada), s 2(b) – (c); Criminal Code (Canada), ss 318 – 319(1), (2).

⁷⁴ Basic Law for the Federal Republic of Germany, arts 5(1), (2), 8(1), (2); Criminal Code (Germany), ss 130 – 131; Federal Act on Assemblies and Processions 1953 (Germany), ss 14 – 16.

⁷⁵ Constitution of India, art. 19(1) – (3); Indian Penal Code (India), ss 124A, 141 – 143, 499 – 500.

⁷⁶ Constitution of Japan, arts. 12, 21; Penal Code (Japan), arts. 222, 230 – 231.

⁷⁷ Constitution of the Republic of Korea, art. 21; Assembly and Demonstration Act 2016 (South Korea), arts. 10 – 12.

⁷⁸ *Müller and Others v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Gorzelik and Others v Poland* App no 44158/98 (ECtHR, 17 February 2004) (“*Gorzelik*”) [64]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02 and 36448/02 (ECtHR, 22 October 2007) (“*Lindon*”) [41].

⁷⁹ *Vogt v Germany* App no 17851/91 (ECtHR, 26 September 1995) [48]; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) (“*Delfi*”) [122]; *Karácsony v Hungary* App nos 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) [143].

general legislation on public emergencies, the NSA could not realistically go into granular details.

[25] Hence, Ized’s designation of the Park as a ‘*public site*’ was precise and foreseeable.

b. *Ized’s interference was necessary to protect public health*

[26] Next, such designation was *necessary* to protect public health⁸⁰ – and *not* merely reasonable, useful, or expedient.⁸¹ NIDV constituted a pressing social need justifying such measure.⁸²

[27] States must adhere to the precautionary principle when faced with ‘*irreversible*’ and ‘*life-threatening*’ risks clouded by ‘*scientific uncertainties*’.⁸³ Precaution require States to take preventive action without waiting for the adverse effects of risks to human health to become fully apparent⁸⁴ based on preliminary scientific evaluation.⁸⁵

⁸⁰ ICCPR (n 7) art. 19(3)(b), 21.

⁸¹ General Comment No. 37 (n 2) [40]; *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, Inter-American Court of Human Rights Series A No. 5 (13 November 1985) (“Advisory Opinion OC-5/85”) [46]; *Herrera Ulloa v Costa Rica*, Inter-American Court of Human Rights Series C No. 107 (22 July 2004) (“*Herrera-Ulloa*”) [122].

⁸² *Pastörs v Germany* App no 55225/14 (ECtHR, 3 October 2019) [48]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) (“*Perinçek*”) [196]; *Animal Defenders International v The United Kingdom* App no 48876/08 (ECtHR, 22 April 2013) (“*Animal Defenders International*”) [100]; *Balsytė-Lideikienė v Lithuania* App no 72596/01 (ECtHR, 4 November 2008) [76].

⁸³ WTO, *European Communities – Measures Concerning Meat and Meat Products (Hormones) – Report of the Appellate Body* (16 January 1998) WT/DS26/AB/R [124]; WTO, *Australia – Measures Affecting the Importation of Apples from New Zealand - Appellate Body Report* (29 November 2010) WT/DS367/R [236],[242]; *European Communities – Measures Affecting the Approval and Marketing of Biotech Products – Report of the Panel* (29 September 2006) WT/DS291/R [7.3065].

⁸⁴ Case T/13/99 *Pfizer Animal Health SA v Asociación nacional de productores de ganado porcino (Anprogapor) & Ors* [2002] ECLI:EU:T:2002:209 [444]; Case C-157/96 *The Queen v Minister of Agriculture* [1998] ECLI:EU:C:1998:191 [63]; Case C-180/96 *United Kingdom v Commission* [1998] ECLI:EU:C:1998:192 [99]; Case T-70/00 *Alpharma Inc v Council of the European Union* [2002] ECLI:EU:T:2002:210 [355].

⁸⁵ Case C-157/96 *National Farmers’ Union and Ors* [1998] ECLI:EU:C:1998:191, [63]; Case C-77/09 *Gowan International Trade and Services v Ministry of Health* [2010] ECLI:EU:C:2010:803, [73]; *International Federation for Human Rights (FIDH) v Greece*, Collective Complaint No. 72/2011 (ECSR, 23 January 2013)

[28] Ized's tropical climate attracts diurnal and nocturnal mosquitos.⁸⁶ The deadly Zika virus is transmitted via *Aedes* mosquitos,⁸⁷ sexual contact,⁸⁸, pregnancy,⁸⁹ and blood transfusion.⁹⁰ It is entirely possible for NIDV to share the same peculiarities.

[29] Hence, despite scientific uncertainties surrounding NIDV,⁹¹ restricting public assemblies to protect people from mosquito bites was necessary to err on the side of caution.

[150]; European Committee of Social Rights, 'Statement of Interpretation on the Right to Protection of Human Health in Times of Pandemic', 21 April 2020, 3.

⁸⁶ Facts [1], [10].

⁸⁷ WHO, 'Vector control operations framework for Zika virus', 29 May 2016 <<https://www.who.int/publications/i/item/vector-control-operations-framework-for-zika-virus>> accessed 19 January 2021; Chouin-Carneiro, T. and others, 'Zika virus transmission by Brazilian *Aedes aegypti* and *Aedes albopictus* is virus dose and temperature-dependent' (2020) 14(9) PLoS Negl Trop Dis <<https://doi.org/10.1371/journal.pntd.0008527>> accessed 20 January 2021; Gregory., C.J. and others, 'Modes of Transmission of Zika Virus', (2017) 216(10) The Journal of Infectious Diseases <<https://doi.org/10.1093/infdis/jix396>> accessed 20 January 2021.

⁸⁸ WHO, 'WHO Guidelines for the prevention of sexual transmission of Zika virus', 15 June 2020 <<https://www.who.int/publications/i/item/prevention-of-sexual-transmission-of-zika-virus>> accessed 19 January 2021; CDC, 'Zika Can Be Passed Through Sex', 21 May 2019 <<https://www.cdc.gov/zika/prevention/sexual-transmission-prevention.html>> accessed 20 January 2021; Paul S Mead, Susan L Hills and John T Brooks, 'Zika virus as a sexual transmitted pathogen', (2018) 31(1) Curr Opin Infect Dis <<https://pubmed.ncbi.nlm.nih.gov/29176348/>> accessed 20 January 2021.

⁸⁹ WHO, 'Pregnancy management in the context of Zika virus infection', 19 December 2019 <<https://www.who.int/publications/i/item/pregnancy-management-in-the-context-of-zika-virus-infection>> accessed 20 January 2021; Burke., R.M. and others, 'Zika virus infection during pregnancy: what, where and why?', (2016) 66(644) Br J Gen Pract <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4758474/>> accessed 20 January 2021.

⁹⁰ WHO, 'Zika: Safe Blood Supply', 19 February 2016 <<https://www.who.int/news-room/q-a-detail/zika-safe-blood-supply>> accessed 20 January 2021; Magnus, M.M. and others, 'Risk of Zika virus transmission by blood donations in Brazil', (2018) 40(3) Hematol Transfus Cell Ther <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6098187/>> accessed 20 January 2021; Liu, R. and others, 'Prevalence of Zika virus in blood donations: a systematic review and meta-analysis', (2019) 19 (590) BMC Infect Dis <<https://doi.org/10.1186/s12879-019-4226-6>> accessed 20 January 2021.

⁹¹ Facts [10].

c. *Ized's interference was proportionate*

[30] Lastly, Ized's measure was the least intrusive measure to protect public health.⁹²

[31] *First*, the Park's designation lasted only for *three months*.⁹³ When COVID-19 peaked, many States imposed strict lockdowns banning social gatherings outdoors (e.g., Australia,⁹⁴ Canada,⁹⁵ New Zealand,⁹⁶ and UK⁹⁷).

[32] *Second*, whilst such temporary restriction curtailed the Applicants' right to choose the location of their assembly,⁹⁸ Ized provided the Park with '*all necessary support*'.⁹⁹ Due to its prime location within Ized's capital attracting many visitors,¹⁰⁰ the Park was a

⁹² *Poliakov v Belarus* Communication no. 2103/2011, CCPR/C/111/D/2103/2011 (HRC, 17 July 2014) [10.3]; *Sviridov v Kazakhstan* Communication no. 2158/2012, CCPR/C/120/D/2158/2012 (HRC, 13 July 2017) [10.3]; *Saidov v Tajikistan* Communication no. 2680/2015, CCPR/C/122/D/2680/2015 (HRC, 4 April 2018) [9.8]; *Kim* (n 58) [13.3].

⁹³ Facts [16].

⁹⁴ Stay Safe Directions (No. 8) (Victoria) (Australia), cl 7(3); Movement and Gathering Direction (No. 7) (Queensland) (Australia), [10], [15].

⁹⁵ Reopening Ontario (A Flexible Response to COVID-19) Act 2020, S.O. 2020, Chapter 17 (Canada), s 2; O. Reg. 82/20: Rules for Areas in Stage 1 (Ontario) (Canada), sch 4 s 1; O. Reg. 263/20: Rules for Areas in Stage 2 (Ontario) (Canada), sch 3 s 1; O. Reg. 364/20: Rules for Areas in Stage 3 (Ontario) (Canada).

⁹⁶ COVID-19 Public Health Response (Alert Level Requirements) Order 2020 (New Zealand), cls 21 – 22.

⁹⁷ The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (United Kingdom), sch 1 [1] – [2]; The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (United Kingdom) ("The Health Protection (Restrictions and Requirements)"), sch 1 [7]; The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (United Kingdom) ("The Health Protection (Wales)"), sch 1 [2].

⁹⁸ *Telibekov v Kazakhstan* Communication no. 2687/2015, CCPR/C/128/D/2687/2015 (HRC, 14 March 2020) ("*Telibekov*") [9.6]; *Adilkhanov v Kazakhstan* Communication no. 2686/2015, CCPR/C/128/D/2015 (HRC, 12 March 2020) [9.7]; *Abildayeva v Kazakhstan* Communication no. 2309/2013, CCPR/C/125/D/2309/2013 (HRC, 29 March 2019) [8.5]; *Suleymenova v Kazakhstan* Communication no. 2416/2014, CCPR/C/126/D/2416/2014 (HRC, 17 July 2019) [9.4]; *Lopasov v Belarus* Communication no. 2269/2013, CCPR/C/126/2269/2013 (HRC, 25 July 2019) [8.5].

⁹⁹ Facts [18].

¹⁰⁰ *ibid* [16].

reasonable alternative¹⁰¹ still within ‘*sight and sound*’ of their target audience.¹⁰²

[33] *Third*, despite being declared unlawful, the protest was accorded a certain degree of tolerance.¹⁰³ Ized’s security forces only intervened after Xana was finishing her speech, and the protestors became unruly.¹⁰⁴ Hence, the dispersal was well-timed to balance their right to manifest their views, and public health.¹⁰⁵

II. IZED’S CONVICTION OF XANA UNDER SECTION 22 OF THE NSA DID NOT VIOLATE ARTICLE 19 AND ARTICLE 21 OF THE ICCPR

[34] The second issue concerns Ized’s conviction of Xana under Section 22 of the NSA¹⁰⁶ resulting to a suspended sentence of three-month imprisonment¹⁰⁷ for ‘*conducting a gathering at a public site that was not designated*’ by the MINDEF.¹⁰⁸

¹⁰¹ 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 (“Kiai 2013 Report”) [60]; OSCE Guidelines (n 5) [78], [82].

¹⁰² General Comment No. 37 (n 2) [22], [53]; *Insenova v Kazakhstan* Communication nos. 2542/2015 and 2543/2015, CCPR/C/126/D/2542/2015 and CCPR/C/126/2543/2015 (HRC, 26 July 2019) (“*Insenova*”) [9.5]; *Turchenyak* (n 2) [7.4]; *Strizhak* (n 1) [6.5]; *Toregozhina* (n 2) [8.4]; *Popova* (n 2) [7.3]; *Severinets* (n 2) [8.5]; *Amelkovich* (n 1) [6.5]; *Telibekov* (n 98) [9.6]; *Sadykov* (n 68) [7.5]; *Dzhumanbaev* (n 68) [9.6]; OSCE Guidelines (n 5) [22], [82].

¹⁰³ *Bukta and Others v Hungary* App no 25691/04 (ECtHR, 17 July 2007) (“*Bukta*”) [37]; *Eva Molnár v Hungary* App no 10346/05 (ECtHR, 7 October 2008) (“*Eva Molnár*”) [36]; *Berladir and Others v Russia* App no 34202/06 (ECtHR, 10 July 2012) [38]; *Elvira Dmitriyeva v Russia* App nos 60921/17 and 7202/18 (ECtHR, 9 September 2019) (“*Dmitriyeva*”) [86]; *Kudrevičius* (n 4) [150]; *Navalnyy* (n 4) [143].

¹⁰⁴ Facts [19] – [20].

¹⁰⁵ *Çiloglu and Others v Turkey* App no 73333/01 (ECtHR, 6 March 2007) [51]; *Kandzhov v Bulgaria* App no 68294/01 (ECtHR, 6 November 2008) [73]; *Samut Karabulut v Turkey* App no 16999/04 (ECtHR, 27 January 2009) (“*Karabulut*”) [37]; *Akgol and Gol v Turkey* App nos 28495/06 and 28516/06 (ECtHR, 17 May 2011) [44]; *Nosov and Others v Russia* App nos 9117/04 and 10441/04 (ECtHR, 20 February 2014) [58]; *Navalnyy and Yashin v Russia* App no 76204/11 (ECtHR, 4 December 2014) [64], [69]; *Lütfiye Zengin and Others v Turkey* App no 36443/06 (ECtHR, 14 April 2015) [55]; *Novikova and Others v Russia* App nos 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13 (ECtHR, 26 April 2016) [183]; *Lashmankin* (n 18) [461].

¹⁰⁶ Facts [14].

¹⁰⁷ *ibid* [22].

¹⁰⁸ *ibid* [23]; Clarifications [22].

[35] Imposition of *ex post* punitive measures on participants of unlawful assemblies fall within the scope of freedom of assembly¹⁰⁹ (*i.e.* detention,¹¹⁰ conviction,¹¹¹ and disciplinary sanction on professionals¹¹²). Concomitantly, Article 21 as *lex specialis* takes precedence over Article 19 on freedom of expression.¹¹³ Any finding of non-violation under Article 19 of the ICCPR *ipso facto* entails a non-violation of Article 21.¹¹⁴

[36] The legitimacy of Ized’s conviction of Xana involves a two-stage analysis: (1) existence of interference; and (2) legitimacy of restrictions.¹¹⁵

A. Xana’s Protest Neither Peaceful nor Protected Under Article 21 of the ICCPR

[37] Only participants whose conduct are ‘*peaceful*’ are protected by Article 21 of the ICCPR.¹¹⁶ As adumbrated above, Xana’s protest evince ‘*violent*’ intentions and elements.¹¹⁷ Hence, Ized’s conviction of Xana did not constitute an interference.

¹⁰⁹ *Kudrevičius* (n 4) [100]; *Schwabe* (n 20) [99].

¹¹⁰ *Galstyan* (n 20) [95]; *Schwabe* (n 20) [101].

¹¹¹ *Barraco v France* App no 31684/05 (ECtHR, 5 March 2009) (“*Barraco*”) [26]; *Osmani and Others v the former Yugoslav Republic of Macedonia* App no 50841/99 (ECtHR, 11 October 2001), 14.

¹¹² *Ismail Sezer v Turkey* App no 36807/07 (ECtHR, 24 March 2015) (“*Ismail*”) [53]; *Ezelin* (n 21) [35].

¹¹³ *Kudrevičius* (n 4) [100]; *Schwabe* (n 20) [99]; *Galstyan* (n 20) [95].

¹¹⁴ *Rekvényi v Hungary* App no 25390/94 (ECtHR, 20 May 1999) (“*Rekvényi*”) [61] – [62].

¹¹⁵ General Comment No. 37 (n 2) [11].

¹¹⁶ General Comment No. 37 (n 2) [16]; *Frumkin v Russia* App no 74568/12 (ECtHR, 5 January 2016) [97].

¹¹⁷ See Arguments I(B)(1) at [17] – [19].

B. Ized’s Conviction Of Xana Was Permissible Under Article 21 Of The ICCPR

[38] Alternatively, even if Ized interfered with Xana’s freedom of assembly, such interference fulfilled the test of legality, necessity, and proportionality (as adopted by the HRC,¹¹⁸ and ECtHR,¹¹⁹ IACtHR,¹²⁰ and ACtHPR/ACommHPR¹²¹).

1. Ized’s conviction of Xana was provided by law

[39] The principle of legality requires restrictions to be ‘*provided by law*’.¹²² Such laws must be formulated with sufficient precision to enable individuals to regulate their conduct

¹¹⁸ *Korol v Belarus* Communication no. CCPR/C/117/D/2089/2011 (HRC, 14 July 2016) [7.3], [7.5]; *Androsenko v Belarus* Communication no. 2092/2011, CCPR/C/116/D/2092/2011 (HRC, 30 March 2016) [7.3] – [7.4]; *Poplavny v Belarus* Communication no. 2190/2012, CCPR/C/122/D/2190/2012 (HRC, 5 November 2015) [8.4] – [8.6]; *Praded v Belarus* Communication no. 2029/2011, CCPR/C/112/D/2029/2011 (HRC, 10 October 2014) [7.8] – [7.9]; *Zhagiparov* (n 1) [13.3]; *Strizhak* (n 1) [6.3], [6.5]; *Gimenez* (n 2) [8.3]; *Insenova* (n 102) [9.3], [9.5]; *Zhukovsky* (n 1) [7.3] – [7.4]; *Amelkovich* (n 1) [6.3], [6.5].

¹¹⁹ *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) (“*Handyside*”) [44] – [45], [49]; *The Sunday Times v The United Kingdom (No.1)* App no 6538/74 (ECtHR, 26 April 1979) (“*The Sunday Times*”) [45], [49], [62]; *Eğitim Ve Bilim Emekçileri Sendikası v Turkey* App no 20641/05 (ECtHR, 25 September 2012) [44], [50]; *Jhangiryanyan v Armenia* App no 44841/08 (ECtHR, 8 October 2020) [127] – [128]; *Mătăsaru v The Republic Of Moldova* App nos 69714/16 and 71685/16 (ECtHR, 15 January 2019) [33]; *Zhdanov and Others v Russia* App no 12200/08, 35949/11 and 58282/12 (ECtHR, 16 July 2019) [178]; *Gunduz v Turkey* App no 35071/97 (ECtHR, 4 December 2003) [38].

¹²⁰ *Palamara-Iribarne v Chile*, Inter-American Court of Human Rights Series C No. 135 (Merits, Reparations and Costs) (22 November 2005) [79], [85]; *Herrera-Ulloa* (n 81) [121] – [123]; *Baena-Ricardo v Panama*, Inter-American Court of Human Rights Series C No. 72 (Merits, Reparations and Costs) (2 February 2001) [148], [172]; *Canese v Paraguay*, Inter-American Court of Human Rights Series C No. 111 (Merits, Reparations and Costs) (31 August 2004) [104]; *Gomes Lund v Brazil*, Inter-American Court of Human Rights Series C No. 219 (Preliminary Objections, Merits, Reparations, and Costs) (24 November 2010) [178]; *Cepeda Vargas v Colombia*, Inter-American Court of Human Rights Series C No. 213 (Preliminary Objections, Merits, Reparations and Costs) (26 May 2010) [172].

¹²¹ *Konaté v Burkina Faso* App no 004/2013 (ACtHPR, 5 December 2014) [125]; *Umuhoza v Rwanda* App no 003/2014 (ACtHPR, 24 November 2017) [132] – [133]; *Media Rights Agenda And Constitutional Rights Project v Nigeria* App nos 105/93, 128/94, 130/94 and 152/96 (ACmHPR, 1998) [66], [68] – [69]; *Interights v Mauritania* App no 242/2001 (ACmHPR, 2004) [78] – [79]; *Lawyers for Human Rights v Swaziland* App no 251/2002 (ACmHPR, 2005) [60] – [61]; *Zimbabwe Lawyers for Human Rights v Zimbabwe* App no 294/2004 (ACtHPR, 3 April 2009) [74] – [75].

¹²² General Comment No. 37 (n 2) [39].

accordingly,¹²³ and reasonably foresee the consequences which their actions may entail.¹²⁴ Precision and foreseeability are especially critical for criminal statutes,¹²⁵ in accordance with the fundamental maxim ‘*nullum crimen sine lege*’.¹²⁶

[40] Section 22(1) of the NSA prohibits persons from conducting ‘*any gathering at a public site*’ not designated by Ized’s MINDEF.¹²⁷ Section 22(2) defines ‘*public site*’ as ‘*any location or space that is used by members of the public and is visible to members of the public*’.¹²⁸ Section 22(3) prescribes the maximum penalty of one-year imprisonment and fine not exceeding USD 500.¹²⁹

[41] A day before the protest, upon the Union urging its supporters to protest outside the hospital, Ized’s MINDEF immediately declared that such protest contravened Section 22 and any attendees would be arrested.¹³⁰

[42] Hence, Xana could reasonably foresee that criminal sanctions may entail from her persistence to conduct the protest. This is in stark contrast to vagaries arising from the

¹²³ General Comment No. 34 (n 1) [25]; *de Groot v The Netherlands* Communication no. 578/1994, CCPR/C/54/D/578/1994 (HRC, 14 July 1995) [4.2] – [4.3]; *Hashman and Harrup v The United Kingdom* App no 25594/94 (ECtHR, 25 November 1999) [31]; *Rekvényi* (n 114) [34]; *Hasan and Chaush* (n 70) [84].

¹²⁴ *Mkrtchyan v Armenia* App no 6562/03 (ECtHR, 11 January 2007) (“*Mkrtchyan*”) [39]; *Maestri* (n 25) [30]; *Rotaru* (n 25) [52]; *Vyerentsov* (n 70) [52].

¹²⁵ *Kimel v Argentina*, Inter-American Court of Human Rights Series C No. 177 (Merits, Reparations and Costs) (2 May 2008) [63]; *Uson Ramirez v Venezuela*, Inter-American Court of Human Rights Series C No. 207 (Preliminary Objections, Merits, Reparations, and Costs) (20 November 2009) [55].

¹²⁶ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), art. 22(1); *Larissis and Others v Greece* App nos 23372/94 and 26378/94 (ECtHR, 24 February 1998) [40] – [41]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [52].

¹²⁷ Facts [14].

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ *ibid* [18].

applicability of archaic criminal laws.¹³¹

2. Ized's conviction of Xana was necessary to protect public health

[43] Both freedom of assembly and expression can be restricted on grounds of: (a) protection of national security or of public order, or of public health or morals; or (b) respect the rights of others or reputation of others.¹³² To invoke such grounds, Ized must demonstrate a direct and immediate connection between the expression and threat¹³³ established by convincing and compelling evidence.¹³⁴

[44] *First*, public health considerations may arise during an outbreak, or whenever a gathering threatens the health of the participants or public¹³⁵ (*e.g.*, deteriorating sanitary conditions of protestors on hunger-strike).¹³⁶ Large public gatherings exacerbate the risk of NIDV infection through mosquito bites.¹³⁷ The Union announced the hospital as the venue of the protest *one day before* the protest itself.¹³⁸ This left precious little time for Ized's authorities to take precautionary measures, such as fumigating the surrounding perimeter. Hence, Xana's insistence to protest outside the hospital instead

¹³¹ *Mkrtchyan* (n 124) [42] – [43]; *Vyerentsov* (n 70) [54] – [55].

¹³² ICCPR (n 7), arts. 19(3)(a) – (b), 21.

¹³³ General Comment No. 34 (n 1) [35]; *Shin v Republic of Korea* Communication no. 926/2000, CCPR/C/80/D/926/2000 (HRC, 16 March 2004) [7.2]; *Jong-Kyu Sohn v Republic of Korea* Communication no. 518/1992, CCPR/C/54/D/518/1992 (HRC, 19 July 1995) [6.2]; *Adimayo M. Aduayom v Togo* Communications no. 422/1990, 423/1990 and 424/1990, CCPR/C/55/D/422-424/1990 (HRC, 12 July 1996) [7.4].

¹³⁴ *Nemtsov v Russia* App no 1774/11 (ECtHR, 31 July 2014) (“*Nemtsov*”) [72]; *Makhmudov v Russia* App no 35082/04 (ECtHR, 26 July 2007) [64]; *Ouranio Toxo v Greece* App no 74989/01 (ECtHR, 20 October 2005) [36]; *Adali* (n 59) [267].

¹³⁵ General Comment No. 37 (n 2) [45].

¹³⁶ *Cisse v France* App no 51346/99 (ECtHR, 9 April 2002) [48].

¹³⁷ Facts [10].

¹³⁸ *ibid* [18].

of the well-fumigated Park¹³⁹ endangered the health of her trusting followers.

[45] *Second*, the right to health is enshrined in numerous international instruments (*i.e.*, UDHR,¹⁴⁰ ICESCR,¹⁴¹ ICERD,¹⁴² and CEDAW¹⁴³) and has attained customary status.¹⁴⁴ Such right encompasses the ‘*prevention, treatment and control of epidemic*’ and provision of ‘*medical service and medical attention in the event of sickness*’.¹⁴⁵ By instructing protestors to block the hospital’s only entry and prevent anyone from entering and exiting the building,¹⁴⁶ Xana hindered people from obtaining essential and timely medical treatment.¹⁴⁷

[46] Due to the direct threat posed by Xana’s reckless conduct to human health,¹⁴⁸ Ized was justified in resorting to punitive sanction.

¹³⁹ Facts [16].

¹⁴⁰ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), art. 25.

¹⁴¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNGA Res 2200A (XXI) (ICESCR), art. 12.

¹⁴² International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) UNGA Res 2106 (XX) (ICERD), art. 5.

¹⁴³ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNGA Res 34/180 (CEDAW), art. 12.

¹⁴⁴ ED Kinney, ‘The International Human Right to Health: What Does this Mean for Our Nation and World?’ (2001) 34(4) *Indiana Law Review* <<https://mckinneylaw.iu.edu/ilr/pdf/vol34p1457.pdf>> accessed 11 January 2021.

¹⁴⁵ ICESCR (n 141), art. 12(2)(c) – (d).

¹⁴⁶ Facts [19]; Clarifications [19].

¹⁴⁷ UNHRC, ‘CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), (“General Comment No. 14”) [16] – [17].

¹⁴⁸ *Alekseev v Russian Federation* Communication no. 1873/2009, CCPR/C/109/D/1873/2009 (HRC, 25 October 2013) (“*Alekseev*”) [9.5]; *Balçik and Others v Turkey* App no 25/02 (ECtHR, 29 November 2007) (“*Balçik*”) [51].

3. Ized's suspended sentence of Xana was proportionate

[47] The principle of proportionality dictates that restrictions to freedom of assembly and expression must be the least intrusive measure to achieve its protective function.¹⁴⁹ Whilst criminal sanction is typically reserved as the measure of last resort,¹⁵⁰ a suspended sentence of imprisonment befits the gravity of Xana's crime.

a. *The protest was significantly disruptive*

[48] It is natural for assemblies to cause a certain level of disruption,¹⁵¹ and encounter hostility.¹⁵² However, the margin of tolerance¹⁵³ is crossed when the protestors turn to violence,¹⁵⁴ endanger the public,¹⁵⁵ or obstruct public areas for prolonged periods.¹⁵⁶

[49] The protestors obstructed patients from entering the hospital,¹⁵⁷ and resisted arrest until placated by water cannons and tear gas.¹⁵⁸ Their conduct had morphed from civil

¹⁴⁹ General Comment No. 34 (n 1) [34]; General Comment No. 37 (n 2) [37]; *Marques v Angola* Communication no. 1128/2002, CCPR/C/83/D/1128/2002 (HRC, 29 March 2005) [3.9]; *Coleman* (n 54) [4.3].

¹⁵⁰ General Comment No. 34 (n 1) [47]; *Malcolm Ross v Canada* Communication no. 736/1997, CCPR/C/70/D/736/1997 (HRC, 18 October 2000) [11.6]; Siracusa Principles, Principle 11.

¹⁵¹ *Oya Ataman v Turkey* App no 74552/01 (ECtHR, 5 December 2006) ("*Oya Ataman*") [38]; *Ashughyan* (n 21) [90].

¹⁵² *Karabulut* (n 105) [35]; *Balçık* (n 148) [49]; *Oya Ataman* (n 151) [38].

¹⁵³ *Eva Molnár* (n 11) [36]; *Bukta* (n 103) [37]; *Dmitriyeva* (n 103) [86]; *Kudrevičius* (n 4) [150]; *Navalnyy* (n 4) [143].

¹⁵⁴ *Nurettin Aldemir and Others v Turkey* App nos 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02 (ECtHR, 18 December 2007) [46]; *Karabulut* (n 105) [37].

¹⁵⁵ *Balçık* (n 148) [51]; *Oya Ataman* (n 151) [41]; *Barraco* (n 111) [46] – [48].

¹⁵⁶ *Navalnyy* (n 4) [94], [164]; *Kudrevičius* (n 4) [80], [174]; Police Act 1959 (Cyprus), s 22(1).

¹⁵⁷ Facts [19].

¹⁵⁸ *ibid* [20].

disobedience into criminal obstruction.¹⁵⁹ The protest was not merely a social nuisance, but a health hazard.

b. Xana was directly responsible for reprehensible acts

[50] No participant of an assembly should be criminally sanctioned – even at the lower end of the scale of penalties – unless guilty of committing reprehensible acts.¹⁶⁰ Due to their responsibilities, organisers will be liable for actively encouraging the unlawful conduct or refraining from intervention by giving ‘*warnings or injunctions to stop*’.¹⁶¹

[51] Xana did not personally block the hospital’s entrance, nor resist arrest.¹⁶² Nevertheless, being the Union’s mastermind, she orchestrated the entire protest.¹⁶³ The protestors merely followed her lead. Despite the MINDEF’s warning and arrival of security officers, she did *not* call for the protestors to stand down at any time.¹⁶⁴

[52] Hence, Ized’s decision to convict Xana (and not the other protestors) conforms with the principle of individual liability over collective responsibility.¹⁶⁵

¹⁵⁹ OSCE Guidelines (n 5) [11]; *R v Jones* [2006] UKHL 16 [89]; Peter Quint, *Civil Disobedience and the German Courts: The Pershing Missile Protests in Comparative Perspective* (Oxford: Routledge-Cavendish, 2008) 13 – 14.

¹⁶⁰ *Gasparyan v Armenia (No. 1)* App no 35944/03 (ECtHR, 13 January 2009) [43]; *Gün and v Turkey* App no 8029/07 (ECtHR, 18 June 2013) [83]; *Ezelin* (n 21) [53]; *Ashughyan* (n 21) [90], [93]; *Galstyan* (n 20) [117].

¹⁶¹ *Mesut Yildiz v Turkey* App no 8157/10 (ECtHR, 18 July 2017) (“*Yildiz*”) [34]; *Kemal Çetin v Turkey* App no 3704/13 (ECtHR, 26 May 2020) [47].

¹⁶² Clarifications [21].

¹⁶³ Facts [18] – [19].

¹⁶⁴ *ibid* [18] – [20].

¹⁶⁵ UNHRC, ‘Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies’ (4 February 2016) UN Doc A/HRC/31/66 (“2016 Joint Report”) [26]; OSCE Guidelines (n 5) [224].

c. *Leniency breeds delinquency during health emergencies*

[53] There should be little room of prosecutorial discretion during health emergencies. To suppress COVID-19, many States enacted stringent laws mandating social-distancing and restricting the size of public gatherings backed with criminal sanctions (*i.e.*, UK,¹⁶⁶ Scotland,¹⁶⁷ Wales,¹⁶⁸ Northern Ireland,¹⁶⁹ Canada,¹⁷⁰ Italy,¹⁷¹ Switzerland,¹⁷² and Singapore¹⁷³).

[54] Moreover, as the leader of a trade union with loose political ties to DSP with over 1,000 members,¹⁷⁴ Xana stands as a public figure whose words and actions are keenly watched by others.¹⁷⁵ For instance, the breach of COVID-19 lockdown rules by politicians generated tremendous public outcry for their resignation.¹⁷⁶

[55] To let Xana off the hook lightly – especially given her spurious denial of NIDV and

¹⁶⁶ The Health Protection (Coronavirus, Restrictions) (All Tiers) Regulations 2020 (UK), s 9 – 13.

¹⁶⁷ The Health Protection (Restrictions and Requirements) (n 97), s 4 – 7.

¹⁶⁸ The Health Protection (Wales), s 37 – 54.

¹⁶⁹ The Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020 (United Kingdom), s 8 – 9.

¹⁷⁰ Reopening Ontario (A Flexible Response to COVID-19) Act 2020 (Canada), s 10, 10.1.

¹⁷¹ Law Decree No. 6 of 23 February 2020 (Italy); Law Decree No. 19 of 25 March 2020 (Italy).

¹⁷² Ordinance on Measures to Combat the Coronavirus (COVID-19) (Switzerland), Chapter 6; Recommendations Covid-19 from December 4th 2020 (Switzerland), The Swiss Conference of Prosecutors, <https://www.ssk-cps.ch/sites/default/files/20201204_empfehlungen_covid_19_ssk-cps.pdf> accessed 16 January 2021.

¹⁷³ Infectious Diseases Act (Act 21 of 1976) (Singapore), s 65.

¹⁷⁴ Facts [18] – [19].

¹⁷⁵ *Ismail* (n 112) [54] – [55]; *Nemtsov* (n 134) [78].

¹⁷⁶ Dominic Cummings, “Did He Break Lockdown Rules” (*BBC News*, 28 May 2020) <<https://www.bbc.com/news/uk-politics-52784290> accessed 11 January 2021; Kevin Connolly, “How a Lockdown ‘Sex Party’ Doomed a Hungarian Euro MP” (*BBC News*, 6 December 2020) <<https://www.bbc.com/news/world-europe-55174210>> accessed 11 January 2021.

stubborn defiance against Ized’s emergency regulations¹⁷⁷ – would greatly diminish public confidence and support for its countermeasures against NIDV. Hence, convicting Xana serves as a strong deterrent effect for future delinquencies.

d. Xana’s conviction casts minimal chilling effect

[56] Criminal sanctions, however mild, may cast a chilling effect on free speech.¹⁷⁸ Nevertheless, the effect is largely mitigated by the suspension of Xana’s sentence¹⁷⁹ which merely dissuades her from organising assemblies at non-designated public sites during the three-month emergency period. This is to be a starkly contrasted with a five-year suspension and surveillance period.¹⁸⁰

[57] Despite her conviction, many other activists have protested at the Park unhindered.¹⁸¹ Hence, any fears of political suppression of dissenting voices¹⁸² are unfounded.

III. IZED’S DECLARATION PROHIBITING UNAUTHORISED GATHERINGS ON SOCIAL MEDIA DID NOT VIOLATE THE UNION’S RIGHTS UNDER ARTICLES 19 AND 21 OF THE ICCPR

[58] On 15 February 2020, WHO Director-General Dr Tedros declared: ‘*But we’re not just*

¹⁷⁷ Facts [19].

¹⁷⁸ *Kiai* 2013 Report (n 101) [77] – [78]; *Tatár And Fáber v Hungary* App no 26005/08 (ECtHR, 12 June 2012) [41]; *Nikula v Finland* App no 31611/96 (ECtHR, 21 March 2002) [54] – [55]; *Cumpănă and Mazăre v Romania* App no 33348/96 (ECtHR, 17 December 2004) [114]; *Özbent and Others v Turkey* App nos 56395/08 and 58241/08 (ECtHR, 9 September 2015) [48].

¹⁷⁹ Clarifications [22].

¹⁸⁰ *Yildiz* (n 161) [36] – [37].

¹⁸¹ Facts [23].

¹⁸² *Lewandowska-Malec v Poland* App no 39660/07 (ECtHR, 18 September 2012) [70].

fighting an epidemic, we're fighting an infodemic'.¹⁸³ Such clarion call was echoed by leaders of international organisations worldwide (e.g., EU,¹⁸⁴ UNICEF,¹⁸⁵ UNESCO¹⁸⁶ and OECD¹⁸⁷) as humanity battled against the COVID-19 scourge.

[59] Likewise, faced with an infodemic within its borders, Ized's MINDEF issued a declaration that Section 22 of the NSA would be enforced on '*unauthorised gatherings on social media platforms*'.¹⁸⁸ Such declaration (A) did not interfere with the Union's rights; or (B) alternatively, constituted a permissible interference under Articles 19 and 21 of the ICCPR.

A. Ized's Declaration Did Not Interfere with the Union's Rights Under Articles 19 And 21 of the ICCPR

[60] There was no interference with Articles 19 and 21 of the ICCPR because (1) freedom of assembly does not protect *non-physical* gatherings; and (2) the shutdown of Net-Assemblies was not attributable to Ized.

1. Freedom of assembly does not protect non-physical gatherings

¹⁸³ Dr Tedros Adhanom Ghebreyesus, 'Keynote Address' (*Munich Security Conference*, Munich, 15 February 2020) <<https://www.who.int/director-general/speeches/detail/munich-security-conference>> accessed 19 November 2020 ("WHO Director-General Keynote Address").

¹⁸⁴ Věra Jourová, 'Keynote Address' (*European Commission*, Brussels, 4 June 2020) <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1000> accessed 19 November 2020.

¹⁸⁵ WHO, UN, UNICEF, UNDP, UNESCO, UNAIDS, ITU, UN Global Pulse, IFRC, 'Managing the COVID-19 infodemic: Promoting healthy behaviours and mitigating the harm from misinformation and disinformation' (*World Health Organisation*, 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 23 January 2021.

¹⁸⁶ Julie Posetti and Kalina Bontcheva, 'DISINFODEMIC: Deciphering COVID-19 Disinformation' (*UNESCO*, 2020), <https://en.unesco.org/sites/default/files/disinfodemic_deciphering_covid19_disinformation.pdf> accessed 23 January 2021 ("*Posetti and Bontcheva*"), 2.

¹⁸⁷ OECD, 'Combating COVID-19 Disinformation on Online Platforms, OECD Policy Responses to Coronavirus (COVID-19)' (3 July 2020) ("*OECD Policy Responses*"), 2.

¹⁸⁸ Facts [27].

[61] Today, the Internet has become a ‘*public forum*’.¹⁸⁹ There is also growing recognition of universal access to the Internet being a human right¹⁹⁰ to bridge the ‘*digital divide*’.¹⁹¹ The Human Rights Council¹⁹² and Special Rapporteurs¹⁹³ constantly exhort States to protect freedom of assembly and expression, offline and online.

[62] Nevertheless, the scope of ‘*assembly*’ in Article 21 of the ICCPR is generally understood to refer to ‘*physical gathering of persons*’.¹⁹⁴

[63] Article 21 protects online activities that *facilitate* the conduct of *offline* physical gatherings: dissemination of information,¹⁹⁵ mobilisation of members,¹⁹⁶ uninterrupted Internet connectivity during assemblies,¹⁹⁷ and anonymity from surveillance.¹⁹⁸

¹⁸⁹ *International Society of Krishna Consciousness v Lee* 505 U.S. 672, 679 1992; *Packingham v North Carolina* 137 S. Ct. 1730 2017 (United States) 1735; *Knight First Amendment Institute at Columbia University and Others v Donald J. Trump and others* 17 Civ. 5205, 2019 (United States) 61– 62; *Ms. K v Germany*, Judgement of the First Senate 1 BvR 699/06 (German Federal Constitutional Court, 22 February 2011) [70].

¹⁹⁰ Kiai 2013 Report (n 101) [71]; UNHRC, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue’ (16 May 2011) UN Doc A/HRC/17/27 [66].

¹⁹¹ *Kalda v Estonia* App no 17429/10 (ECtHR, 19 January 2016) [52]; *Jankovskis v Lithuania* App no 21575/08 (ECtHR, 17 January 2017) [62].

¹⁹² UNHRC, ‘Promotion and Protection of Human Rights and Fundamental Freedoms, Including the Rights to Peaceful Assembly and Freedom of Association’ (adopted 17 December 2018) UNGA Res A/RES/73/173 [4]; UNHRC, ‘The Promotion, Protection and Enjoyment of Human Rights on the Internet’ (adopted 26 June 2014) UNGA Res A/HRC/RES/26/13 [1]; UNHRC, ‘The Rights to Freedom of Peaceful Assembly and of Association’ (adopted 26 September 2013) UNGA Res A/HRC/RES/24/5 [2]; UNHRC, ‘The Rights to Freedom of Peaceful Assembly and of Association’ (adopted 27 September 2012) UNGA Res A/HRC/RES/21/16 [1]; UNHRC, ‘The Promotion, Protection and Enjoyment of Human Rights on the Internet’ (adopted 5 July 2012) UNGA Res A/HRC/RES/20/8 [1].

¹⁹³ UNHRC, ‘Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Clément Voule’ (17 May 2019) UN Doc A/HRC/41/41 (“Voule 2019 Report”) [10]; 2016 Joint Report (n 165) [10].

¹⁹⁴ General Comment No. 37 (n 2) [13].

¹⁹⁵ General Comment No. 37 (n 2) [33]; *Tulzhenkova v Belarus* Communication no. 1838/2008, CCPR/C/103/D/1838/2008 (HRC, 26 October 2011) [9.3].

¹⁹⁶ Voule 2019 Report (n 193) [21] – [22].

¹⁹⁷ General Comment No. 37 (n 2) [34].

¹⁹⁸ General Comment No. 37 (n 2) [60] – [61]; Voule 2019 Report (n 193) [24].

[64] ‘Net-Assemblies’ is a webpage that publishes and records posts by Netizens¹⁹⁹ – a user – generated repository no different from a forum (*e.g.*, Reddit) or public group (*e.g.*, Facebook Groups). Unlike physical sites, they are not constrained by *time* and *space* – the basic characteristics of an ‘assembly’ underpinning States’ duty to facilitate its safe conduct.²⁰⁰ To treat them as ‘*analogous interactions*’ to assemblies²⁰¹ is a leap of logic.

[65] In short, Article 21 merely protects online activities *associated* with physical gatherings,²⁰² and *not* online gatherings *per se*.²⁰³ Hence, the Union’s grievance of ‘*denial of online space*’²⁰⁴ falls outside its protective sphere.

2. Ized was not responsible for the suspension of Net-Assemblies

[66] The Union is aggrieved that National Network suspended Net-Assemblies a day after Ized’s declaration.²⁰⁵ Even assuming *arguendo* that online gatherings are protected under Article 21, such suspension is not attributable to Ized.²⁰⁶

[67] Being a privately-owned company,²⁰⁷ National Network is *not* a State organ of Ized²⁰⁸

¹⁹⁹ Facts [6].

²⁰⁰ General Comment No. 37 (n 2) [24], [53] – [59]; *Turchenyak* (n 2) [7.4]; *Toregozhina* (n 2) [7.5]; *Severinets* (n 2) [8.5]; *Popova* (n 2) [7.3]; *Kuznetsov* (n 67) [42]; 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 [27].

²⁰¹ UNHRC, ‘The Promotion and Protection of Human Rights in the Context of Peaceful Protest’ (adopted 6 July 2018) UNGA Res A/HRC/RES/38/11, 2; Voule 2019 Report (n 193) [11].

²⁰² General Comment No. 37 (n 2) [33] – [34].

²⁰³ Clarifications [13].

²⁰⁴ Facts [30].

²⁰⁵ *ibid* [28].

²⁰⁶ ILC, ‘Articles of Responsibility of States for Internationally Wrongful Acts 2001’ A/RES/62/61 (“ARSIWA”), art. 2.

²⁰⁷ Facts [3].

²⁰⁸ ARSIWA (n 206), art. 4.

nor empowered by domestic law to exercise governmental authority.²⁰⁹ Since its Board resolutions are passed by way of majority,²¹⁰ the mere presence of a single government-affiliated Board member²¹¹ is insufficient to enable Ized to exert effective²¹² or overall²¹³ control over National Network.

[68] In a press statement, National Network explained that the suspension was due to the ‘*serious spread of disinformation*’ and ‘*irresponsible use... by political forces*’.²¹⁴ Hence, any interference of the Union’s rights flows from private actors, and not Ized.

B. Alternatively, Ized’s Interference Was Lawful, Necessary and Proportionate

[69] Alternatively, Ized’s interference fulfilled the test of legality, necessity, and proportionality under Articles 19 and 21 of the ICCPR.²¹⁵

1. Ized’s declaration was provided by law

[70] As adumbrated above, any restriction carrying criminal sanction must be sufficiently precise, foreseeable, and clearly define the elements of crime.²¹⁶

[71] *First*, Section 22(2) of the NSA defines ‘*public site*’ as ‘*any location or space that is*

²⁰⁹ ARSIWA (n 206), art. 5; *Maffezini v Spain* (Award) Case No. Arb/97/7 (ICSID, 25 January 2000) [78].

²¹⁰ Clarifications [2].

²¹¹ Facts [4].

²¹² *Military and Paramilitary in and Against Nicaragua (Nicaragua v USA)* (Merits) [1986] ICJ Rep 14 [115]; *Application of the Convention on the Prevention and Punishment of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* [2007] ICJ Rep 43 [400].

²¹³ *Prosecutor v Dusko Tadić* (Appeal Judgement) ICTY-94-1-A 16 (15 July 1999) [131]; *Loizidou v Turkey* App no 15318/89 (ECtHR, 18 December 1996) [56]; *Ilaşcu v Moldova and Russia* App no 48787/99 (ECtHR, 8 July 2004) [314] – [316].

²¹⁴ Facts [28].

²¹⁵ See Arguments II(B) at [38].

²¹⁶ See Arguments II(B)(1) at [39].

used by members of the public and is visible to members of the public, and shall include, but not be limited to public parks, public squares, public thoroughfares, and means of public transportation'.²¹⁷ Such generic terms and non-exhaustive examples are intended to avoid excessive rigidity due to wide coverage over all individuals in Ized.²¹⁸

[72] *Second*, Ized is not alone in suppressing disinformation that causes social unrest. Other States worldwide have enacted similar criminal codes (*i.e.*, Kazakhstan,²¹⁹ Cambodia,²²⁰ and Singapore²²¹). Even the UK is on the verge of passing a new statute to combat online harms including '*fake news*'.²²²

[73] Hence, Ized's declaration possess both '*basis in law*' and '*quality of law*'.²²³

2. Ized's declaration was necessary to protect public health and public order

[74] Ized justified its prohibition of online gatherings '*due to the spread of disinformation that posed grave risks to public health and public order*'.²²⁴ Both such grounds are

²¹⁷ Facts [14].

²¹⁸ *Centro Europa 7 S.r.l. and Di Stefano v Italy* App no 38433/09 (ECtHR, 7 June 2012) [141] – [142]; *Lindon* (n 78) [41]; *Delfi* (n 79) [121] – [122].

²¹⁹ Penal Code of the Republic of Kazakhstan, 2014, arts. 174, 274, 400; Code No. 235-V of 5 July 2014 on Administrative Offences, 2014 (Kazakhstan), art. 388; *The Case of Max Kebenuly Bokaev and Talgat Tulepkalievich Ayanov* App no 1-501/2016, November 28, 2016 (Kazakhstan).

²²⁰ Inter-Ministerial Prakas On Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia, 2018 (Cambodia) cl 2,5,6,8.

²²¹ Protection from Online Falsehoods and Manipulation (Act 18 of 2019) (Singapore), arts. 7, 9, 15.

²²² Department for Digital, Culture, Media & Sport and the Home Office, Online Harms Full Government Response (White Paper, CP 354, 2020) para 7.3.

²²³ *VgT Verein Gegen Tierfabriken v Switzerland* App no 24699/94 (ECtHR, 28 June 2001) [52]; *Sindicatul "Păstorul cel Bun" v Romania* App no 2330/09 (ECtHR, 9 July 2013) [153]; *Rotaru* (n 25) [52]; *Gorzelik* (n 78) [64] – [65]; *Maestri* (n 25) [30]; *Vyerentsov* (n 70) [52]; *Kudrevičius* (n 4) [108].

²²⁴ Facts [27].

permissible under Articles 19 and 21 of the ICCPR.²²⁵ As adumbrated above, the element of ‘*necessity*’ requires a causal link between such gatherings and perceived harms.²²⁶

[75] ‘*Disinformation*’ refers to ‘*verifiably false or misleading information*’ which is ‘*created, presented and disseminated for economic gain or to intentionally deceive the public*’ and ‘*may cause harm*’.²²⁷ An ‘*infodemic*’ can cost precious lives – by eroding public trust in the State’s emergency measures, discouraging observance to essential guidelines, and resulting to disuse of medical goods (*e.g.*, diagnostic tests, and vaccines).²²⁸

[76] Since its 4 February protest, the Union persistently peddled conspiracy theories that the NIDV crisis was ‘*fake news*’ and ‘*manufactured*’ by Ized’s government.²²⁹ The Union’s Net Tags (#FiredForFakeVirus and #Care4Healthcare) attracted widespread endorsements from over 40,000 Netizens²³⁰ and sparked calls to boycott healthcare services (including by a Netizen with 25,000 followers).²³¹

[77] Hence, to break the chain of the NIDV infodemic, Ized needed to target the root cause of its virality – gatherings on social media.²³²

²²⁵ ICCPR (n 7), arts. 19(3)(b), 21.

²²⁶ See Arguments II(B)(2) at [43].

²²⁷ EU Code of Practice on Disinformation (2018), preamble.

²²⁸ Managing the COVID-19 infodemic (n 185).

²²⁹ Facts [17], [19].

²³⁰ *ibid* [24].

²³¹ *ibid* [25].

²³² *ibid* [27].

3. Ized's declaration was proportionate

[78] Lastly, Ized's prohibition of online gatherings was a less intrusive measure relative to the more draconian alternatives that was not resorted to.²³³

a. The prohibition was content neutral

[79] Restrictions on assemblies must be content neutral.²³⁴ States cannot restrict gatherings of associations due to their political ideology or cause.²³⁵

[80] Here, Ized prohibited *all* online gatherings, and did not specifically target the content of the Union nor their Net Tags (which remained functional).²³⁶

b. The prohibition was non-discriminatory

[81] Restrictions on assemblies targeting specific organisers are discriminatory.²³⁷ States must refrain from abusing their dominant position to suppress the voices of minorities.²³⁸

[82] Here, Ized's prohibition threatens criminal sanction against individual perpetrators,²³⁹ and will not entail collective punishment upon the Union (*e.g.*, de-registration of trade

²³³ General Comment No. 37 (n 2) [37]; OSCE Guidelines (n 5) [132].

²³⁴ General Comment No. 37 (n 2) [22]; *Alekseev* (n 148) [9.6]; *Amelkovich* (n 1) [6.6].

²³⁵ *Vajnai v Hungary* App no 33629/06 (ECtHR, 8 July 2008) [56].

²³⁶ Clarifications [4].

²³⁷ ICCPR (n 7), art. 26; OSCE Guidelines (n 5) [101] – [102].

²³⁸ *Hyde Park v Moldova* App no 33482/06 (ECtHR, 31 March 2009) [28]; *Christian Democratic People's Party v Moldova (No. 2)* App no 25196/04 (ECtHR, 2 February 2010) [64]; *Chassagnou and Others v France* App nos 25088/94, 28331/95 and 28443/95 (ECtHR, 29 April 1999) [112]; *Bączkowski and Others v Poland* App no 1543/06 (ECtHR, 3 May 2007) [63]; *Identoba and Others v Georgia* App no 33482/06 (ECtHR, 12 May 2015) [93].

²³⁹ See Arguments II(B)(3)(b) at [50].

union).²⁴⁰

c. *The prohibition targeted amplification of disinformation*

[83] The Internet allows information to disseminate rapidly and widely, and persistently remain online.²⁴¹ An *infodemic* is most dangerous when content is algorithmically amplified within ‘*echo chambers*’ on social media.²⁴²

[84] Here, Ized’s prohibition specifically targeted online gatherings, and did *not* operate as a prior restraint blocking access to the Internet²⁴³ nor social media platforms²⁴⁴ in entirety.

d. *The prohibition ensured the political neutrality of healthcare workers*

[85] Political speech and public interest matters deserve heightened protection from censorship.²⁴⁵ Nevertheless, civil servants must remain politically neutral on matters

²⁴⁰ *Stankov* (n 61) [100] – [103].

²⁴¹ *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) (“*Yıldırım*”) [48]; *Times Newspapers Ltd (Nos. 1 And 2) v The United Kingdom* App nos 3002/03 and 23676/03 (ECtHR, 10 March 2009) [27].

²⁴² ‘Working Group On Infodemics: Policy Framework’ (Forum on Information and Democracy, November 2020) <https://informationdemocracy.org/wp-content/uploads/2020/11/ForumID_Report-on-infodemics_101120.pdf> accessed 24 January 2021 [121]; Petter Törnberg, ‘Echo Chambers and Viral Misinformation: Modelling Fake News As Complex Contagion’ (2018) 13(9) *PloS one*, 2 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6147442/pdf/pone.0203958.pdf>> accessed 20 January 2021; Yan Su, ‘It Doesn’t Take a Village to Fall for Misinformation: Social media use, discussion heterogeneity preference, worry of the virus, faith in scientists, and COVID-19-related misinformation beliefs (2020) Telematics and Informatics, 4-5<doi: <https://doi.org/10.1016/j.tele.2020.101547>> accessed 20 January 2021; The Conversation, ‘Coronavirus: why we should keep our eyes and ears open as well as our hands clean’ (13 March 2020) <<https://theconversation.com/coronavirus-why-we-should-keep-our-eyes-and-ears-open-as-well-as-our-hands-clean-133549>> accessed 20 January 2021.

²⁴³ *Yıldırım* (n 241) [51], [64].

²⁴⁴ *Kablis v Russia* App nos 48310/16 and 59663/17 (ECtHR, 30 April 2019) (“*Kablis*”) [94].

²⁴⁵ *Bédat v Switzerland* App no 56925/08 (ECtHR, 29 March 2016) [49]; *Sürek v Turkey (No. 1)* App no 26682/95 (ECtHR, 8 July 1999) [61]; *Axel Springer AG v Germany* App no 39954/08 (ECtHR, 7 February 2012) [90]; *Perinçek* (n 82) [230]; *Feldek v Slovakia* App no 29032/95 (ECtHR, 12 July 2001) [83]; *Kuznetsov* (n 67) [47]; *Lindon* (n 78) [46].

directly affecting the effective operation of their functions (e.g., police officers).²⁴⁶

[86] Ized was deeply concerned of state healthcare workers being swayed by the Union's dangerous political propaganda.²⁴⁷ Downplaying an epidemic and boycotting hospitals go against the very basic oath that medical personnel are sworn to uphold – '*do no harm*'.²⁴⁸

IV. IZED'S GUIDELINES UNDER SECTION 23 OF THE NSA DID NOT VIOLATE THE UNION'S RIGHTS UNDER ARTICLE 19 OF THE ICCPR

[87] In his 15 February speech, the WHO Director-General Dr Tedros added: '*Fake news spreads faster and more easily than this virus, and is just as dangerous*'.²⁴⁹ Such warning echoes the age-old mantra that '*a lie can run halfway around the world before the truth has got its boots on*'.²⁵⁰

[88] Ized's decision to '*centralise*' all communications on NIDV was aimed at stemming the '*rapid increase of disinformation*'.²⁵¹ Concomitantly, (A) freedom of expression does *not* protect disinformation; or alternatively, (B) any interference was permissible to protect public health under Article 19 of the ICCPR.

²⁴⁶ *Yıldırım* (n 241) [62] – [63]; *Rekvényi* (n 114) [41].

²⁴⁷ Facts [19], [24].

²⁴⁸ Robert Shmerling, 'First, do no harm' (*Harvard Health Blog*, 13 October 2015) <<https://www.health.harvard.edu/blog/first-do-no-harm-201510138421>> accessed 20 January 2021.

²⁴⁹ WHO Director-General Keynote Address (n 183).

²⁵⁰ Niraj Chokshi, 'That Wasn't Mark Twain: How A Misquotation Was Born' (*The New York Times*, 26 April 2017) <<https://www.nytimes.com/2017/04/26/books/famous-misquotations.html>> accessed on 22 November 2020.

²⁵¹ Facts [27].

A. Freedom of Expression Does Not Protect Falsehood

[89] The principle that free speech does *not* protect falsehood is well-entrenched in liberal democracies (*i.e.* US,²⁵² UK²⁵³ and Singapore²⁵⁴). Many eminent judges share such sentiment:

(a) Justice Brennan: ‘*[T]he knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection*’;²⁵⁵

(b) Lord Hobhouse: ‘*There is no human right to disseminate information that is not true. No public interest is served by publishing or communicating misinformation*’.²⁵⁶

[90] Similarly, statements of ‘*value judgment*’ made without sufficient factual basis are excessive and equally undeserving of protection.²⁵⁷

[91] During health emergencies, States have a positive duty to disseminate reliable

²⁵² *Illinois v Telemarketing Associates* 538 US 600 (2003), 612; *BE&K Construction Co v NLRB* 536 US 516 (2002), 531; *Hustler Magazine v Falwell* 485 US 46 (1988), 52; *Keeton v Hustler Magazine* 465 US 770 (1984), 776; *Bill Johnson’s Restaurants v NLRB* 461 US 731 (1983), 743; *Brown v Hartlage* 456 US 45 (1982), 60; *Herbert v Lando* 441 US 153 (1979), 171; *Virginia State Board of Pharmacy v Virginia Citizens Consumer Council* 425 US 748 (1976), 771; *Gertz v Robert Welch* 418 US 323 (1974), 340; *Time v Hill* 385 US 374 (1967), 389.

²⁵³ *Reynolds v Times Newspaper* [2001] 2 AC 127 (“*Reynolds*”) 238-39 (Lord Hobhouse); *Perera v Peiris* [1949] AC 1, 6; *Jameel (Mohammed) and Another v Wall Street Journal Europe Sprl* [2007] 1 AC 359, 368; *Flood v Times Newspaper Ltd* [2012] IP&T 867, 876; *McCartan Turkington Breen v Times Newspaper Ltd* [2001] 2 LRC 308, 330; *Louchansky v Times Newspaper Ltd* [2002] QB 321, 330 – 331.

²⁵⁴ *Review Publishing Co Ltd and Another v Lee Hsien Loong and Another* [2009] SGCA 46 (Singapore) [282] – [283].

²⁵⁵ *Garrison v Louisiana* 379 US 64 (1964), 75.

²⁵⁶ *Reynolds* (n 253) 238 – 239 (Lord Hobhouse).

²⁵⁷ *Pedersen and Baadsgaard v Denmark* App no 49017/99 (ECtHR, 17 December 2004) [76]; *Jerusalem v Austria* App no 26958/95 (ECtHR, 27 February 2001) [43]; *De Haes and Gijssels v Belgium* App no 19983/92 (ECtHR, 24 February 1997) [47]; *Oberschlick v Austria (no. 2)* App no 20834/92 (ECtHR, 1 July 1997) [33].

information, and prevent the dissemination of disinformation by third parties.²⁵⁸

Granting public access to information enables individuals to make informed health choices.²⁵⁹ After all, a society that is not well-informed cannot be regarded as truly free.²⁶⁰

[92] Here, Ized’s guidelines to control the flow of communications on NIDV to suppress falsehood is well-aligned with the values of free speech. Further, since there is no actual incidence of the Union’s publication being censored,²⁶¹ any complaint of interference with Article 19 of the ICCPR is purely abstract and academic.²⁶²

B. Alternatively, Ized’s guidelines were permissible to protect public health under Article 19 of the ICCPR

[93] Freedom of expression carries along special duties and responsibilities.²⁶³ Hence, such freedom may be subjected to restrictions that are provided by law, pursue a legitimate

²⁵⁸ UNHRC, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression, David Kaye’ (23 April 2020) UN Doc A/HRC/44/49 (“Kaye 2020 Report”) [44]; United Nations Special Rapporteur on Freedom of Opinion and Expression, *Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda* (Office of the United Nations High Commissioner for Human Rights 2017) <<https://www.osce.org/files/f/documents/6/8/302796.pdf>> accessed 23 January 2021 (“Joint Declaration 2017”), principle 2(c) – (d).

²⁵⁹ General Comment No. 14 (n 147) [37]; Kaye 2020 Report (n 258) [19] – [20], [59].

²⁶⁰ *Palomo Sanchez and Others v Spain* App nos 28955/06, 28957/06, 28959/06 and 28964/06 (12 September 2011) [26]; Advisory Opinion OC-5/85 (n 81) [70].

²⁶¹ Facts [30].

²⁶² *Faurisson v France* Communication no. 550/1993, CCPR/C/58/D/550/1993 (HRC, 8 November 1996) [9.3].

²⁶³ *Tae-Hoon Park v Republic of Korea* Communication no. 628/1995, CCPR/C/64/D/628/1995 (HRC, 3 November 1998) [10.3]; *Benhadj v Algeria* Communication no. 1173/2003, CCPR/C/90/D/1173/2003 (HRC, 20 July 2007) [8.10]; *Perna v Italy* App no 48898/99 (ECtHR, 6 May 2003) [39]; *Hachette Filipacchi Associes v France* App no 71111/01 (ECtHR, 14 June 2007) [40]; *Mouvement Ralien Suisse v Switzerland* App no 16354/06 (ECtHR, 13 July 2012) [48]; *Animal Defenders International* (n 82) [100]; *Stephen Peter Gough v United Kingdom* App no 49327/11 (ECtHR, 28 October 2014) [164] – [165].

aim, and proportionate to achieve such aim.²⁶⁴

1. Ized's guidelines were provided by law

[94] As adumbrated above, the principle of legality requires precision and foreseeability.²⁶⁵ Substance prevails over form.²⁶⁶ The content of 'law' includes not only statutes,²⁶⁷ but also administrative decrees.²⁶⁸ Since Ized's guidelines (administrative decree) were issued under Section 23 of the NSA (statute), both instruments should be examined in tandem.

[95] Section 23(1) of the NSA empowers Ized's MINDEF to '*issue guidelines on the publication of any news, opinion, or other form of expression*' during public emergencies.²⁶⁹ Such legislative ambit is wide enough to cover '*publication of any opinion of any medical expert or other person, with respect to NIDV*'.²⁷⁰ Further, the guidelines stipulate instructions on obtaining the MOH's authorisation on opinions concerning NIDV.²⁷¹ Any publication of unauthorized opinions may entail criminal sanctions under Section 23(2).²⁷²

²⁶⁴ General Comment No. 34 (n 1) [21] – [22]; *Velichkin v Belarus* Communication no. 1022/2001, CCPR/C/85/D/1022/2001 (HRC, 20 October 2005) [7.3]; *Nepomnyashchiy* (n 69) [7.8]; *The Sunday Times* (n 119) [62]; *Handyside* (n 119) [49].

²⁶⁵ See Arguments II(B)(1) at [39].

²⁶⁶ *Kafkaris* (n 69) [139]; *Leyla Şahin v Turkey* App no 44774/98 (ECtHR, 10 November 2005) [88].

²⁶⁷ *The Sunday Times* (n 119) [47]; *Barthold v Germany* App no 8734/79 (ECtHR, 25 March 1985) ("*Barthold*") [45].

²⁶⁸ *De Wilde, Ooms and Versyp v Belgium* App nos 2832/66, 2835/66 and 2899/66 (ECtHR, 18 June 1971) [93]; *Barthold* (n 267) [46].

²⁶⁹ Facts [15].

²⁷⁰ *ibid* [27].

²⁷¹ Clarifications [9].

²⁷² Facts [15].

[96] During the COVID-19 pandemic, many States enacted similar laws criminalising dissemination of disinformation (e.g., Russia,²⁷³ Hungary,²⁷⁴ Azerbaijan,²⁷⁵ Romania,²⁷⁶ Bosnia and Herzegovina,²⁷⁷ and Armenia²⁷⁸).

[97] Any concern that Ized's guidelines is vague,²⁷⁹ arbitrary,²⁸⁰ and susceptible to abuse²⁸¹ is mitigated by its object to suppress disinformation.²⁸² As adumbrated above,²⁸³ the term 'disinformation' carries a specific legal meaning (deliberate intent to deceive)²⁸⁴ plainly distinguishable from lesser forms of falsehood, such as 'misinformation' (innocent belief of truth)²⁸⁵ and 'propaganda' (reckless disregard of truth).²⁸⁶

²⁷³ Federal Law of 01.04.2020 No. 100-FZ "On Amendments to the Criminal Code of the Russian Federation and Articles 31 and 151 of the Criminal Procedure Code of the Russian Federation" (Russia), art. 1.

²⁷⁴ Criminal Code of the Republic of Hungary 2012 (Republic of Hungary), s 337.

²⁷⁵ Law on Information, Informatization, and Protection of Information 1998 (Azerbaijan), art. 13-2.

²⁷⁶ Decree signed by the President of Romania, Mr. Klaus Iohannis, Regarding the Establishment of the State of Emergency on the Romanian Territory 2020 (Romania), art. 2.

²⁷⁷ Decree on Spreading of Panic and False News in a State of Emergency (19 March 2020) (Bosnia and Herzegovina); Decision on Prohibiting Spreading of Panic and Disorder (7 April 2020) (Bosnia and Herzegovina).

²⁷⁸ Decree on the State of Emergency (24 March 2020) (Armenia).

²⁷⁹ Joint Declaration 2017 (n 258), Principle 2(a); Kaye 2020 Report (n 258) [49].

²⁸⁰ *Editorial Board of Pravoye Delo and Shtetel v Ukraine* App no 33014/05 (ECtHR, 5 May 2011) [52]; *Kafkaris* (n 69) [140]; *Kablis* (n 244) [92], [97]; *Nepomnyashchiy* (n 69) [7.7].

²⁸¹ Kaye 2020 Report (n 258) [40], [42]; David Kaye, Harlem Désir and Edison Lanza, 'COVID-19: Governments Must Promote and Protect Access to and Free Flow of Information During Pandemic – International experts' (*United Nations Human Rights Office of the High Commissioner, Geneva, Washington & Vienna*, 19 March 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25729&LangID=E>> accessed 22 January 2021; Joint Declaration 2017 (n 258), principle 2(b).

²⁸² Facts [27].

²⁸³ See Arguments III(B)(2) at [75].

²⁸⁴ OECD Policy Responses (n 187), 2.

²⁸⁵ Posetti and Bontcheva (n 186), 2.

²⁸⁶ Joint Declaration 2017 (n 258), principle 2(c); UNESCO 'COVID-19: The Role of Judicial Operators in the Protection and Promotion of the Right to Freedom of Expression' (2020) Guidelines CI-2020/FEJ/ME-1, 10.

[98] Hence, Ized’s guidelines have a narrow well-defined target – prohibition of deliberate and malicious falsehood concerning NIDV.

2. Ized’s guidelines were necessary to protect public health

[99] The principle of necessity requires a direct causal nexus²⁸⁷ between Ized’s centralisation of communications on NIDV and the threat posed by disinformation to public health.²⁸⁸

[100] *First*, consider the **extent of harm**. An infodemic – if left unchecked – can mislead the public with inaccurate health advice (*i.e.*, prevention, treatment and cures),²⁸⁹ cause mass panic and social unrest,²⁹⁰ and ultimately, cost lives.²⁹¹ In 2020, the Indian Supreme Court²⁹² upheld governmental measures to control mass migration during its COVID-19 lockdown by coordinating health advisories with the media, and enforcing criminal laws against persons ‘*who makes or circulates a false alarm*’ on disasters ‘*leading to panic*’.²⁹³

[101] *Second*, consider the **extent of dissemination**. As Facebook CEO Mark Zuckerberg candidly admits, ‘*people will engage disproportionately with more sensationalist and provocative content*’ on social media.²⁹⁴ Empirical studies show that COVID-19

²⁸⁷ See Arguments II(B)(2) at [43].

²⁸⁸ Facts [27].

²⁸⁹ Posetti and Bontcheva (n 186), 2.

²⁹⁰ ‘Press Freedom Must Not Be Undermined by Measures to Counter Disinformation about COVID-19’ (*Council of Europe Portal*, 3 April 2020) <<https://www.coe.int/en/web/commissioner/-/press-freedom-must-not-be-undermined-by-measures-to-counter-disinformation-about-covid-19>> accessed 22 January 2021.

²⁹¹ WHO Director-General Keynote Address (n 183).

²⁹² *Shri Alakh Alok Srivastava v Union of India*, Writ Petition (Civil) No. 468/2020, 1 April 2020 (India), 5 – 8.

²⁹³ Disaster Management Act 2005 (India), s 54.

²⁹⁴ Mark Zuckerberg, ‘A Blueprint for Content Governance and Enforcement’ (*Facebook*, 16 November 2018) <<https://www.facebook.com/notes/mark-zuckerberg/a-blueprint-for-content-governance-and->

disinformation spread significantly more widely than information from authoritative sources (*e.g.*, WHO and US CDC).²⁹⁵ This has resulted to people ingesting fatal home cures, violate social-distancing and lockdown rules, and undermine containment strategies.²⁹⁶

[102] *Third*, consider the ***motivations of actors***. Disinformation is driven by those seeking economic gain (*e.g.*, scams and ads) and furthering political agendas (*e.g.*, sow discord and distrust against authorities).²⁹⁷ Organised campaigns deploy bots and trolls for artificial amplification.²⁹⁸

[103] Since the size and speed of disinformation renders any reactionary measure as an unending ‘*whack-a-mole*’,²⁹⁹ there is a pressing social need for Ized to adopt a proactive and preventive strategy to combat the NIDV infodemic.³⁰⁰

3. Ized’s guidelines were proportionate

[104] Due to extenuating circumstances, Ized’s centralisation of communications on NIDV

enforcement/10156443129621634/?comment_id=497672730720619> accessed 25 November 2020 (“Zuckerberg”).

²⁹⁵ John Gregory, ‘The Coronavirus ‘infodemic’ Is Real. We Rated the Website Responsible for It.’ (*Stat*, 28 February 2020) <<https://www.statnews.com/2020/02/28/websites-spreading-coronavirus-misinformation-infodemic/>> accessed 25 November 2020.

²⁹⁶ OECD Policy Responses (n 187) (3 July 2020), 3.

²⁹⁷ Kaye 2020 Report (n 258) [45] – [46].

²⁹⁸ Posetti and Bontcheva (n 186), 5.

²⁹⁹ Harris Zainul, Farlina Said, ‘The COVID-19 Infodemic in Malaysia’ (*Institute of Strategic and International Studies*, August 2020) <https://www.isis.org.my/wp-content/uploads/2020/08/FAKE-NEWS_REV.pdf> accessed 23 January 2021, 32.

³⁰⁰ *Trade Union of the Police v Slovakia* App no 11828/08 (ECtHR, 25 September 2012) [66]; *Otegi Mondragon v Spain* App no 2034/07 (ECtHR, 15 September 2011) [49]; *Yazar and Others v Turkey* App nos 22723/93, 22724/93 and 22725/93 (ECtHR, 9 April 2002) [51]; *Mamere v France* App no 12697/03 (ECtHR, 7 November 2006) [19]; *Fuentes Bobo v Spain* App no 39293/98 (ECtHR, 29 February 2000) [43].

was the least intrusive alternative measure.³⁰¹

a. Technical counter-measures against disinformation are ineffective

[105] Even the most advanced intermediaries struggle to monitor and remove unlawful content through the combined usage of AI-driven algorithms and human reviewers.³⁰²

The level of difficulty varies across different types of content – as evinced by Facebook’s vastly divergent success rates in automatic flagging (nudity: 96%, hate speech: 52%).³⁰³

[106] Disinformation, by its very nature, is highly subjective.³⁰⁴ Major intermediaries still do *not* have clear standards for removing disinformation (as opposed to hate speech and incitement to violence).³⁰⁵ To combat COVID-19 disinformation, Twitter³⁰⁶ and Facebook³⁰⁷ rely heavily on labels and links to authoritative sources (with the

³⁰¹ General Comment No. 34 (n 1) [34]; *Adelaida Kim v Uzbekistan* Communication No. 2175/2012, CCPR/C/122/D/2175/2012 (HRC, 4 April 2018) [13.3].

³⁰² Majid Yar, ‘A Failure to Regulate? The Demands and Dilemmas of Tackling Illegal Content and Behaviour on Social Media’ *International Journal of Cybersecurity Intelligence and Cybercrime* (2018) 1(1), 13; Robinson Meyer, ‘The Grim Conclusions of the Largest-Ever Study of Fake News’ (*The Atlantic*, 9 March 2018) <<https://www.theatlantic.com/technology/archive/2018/03/largest-study-ever-fake-news-mit-twitter/555104/>> accessed 23 January 2021.

³⁰³ Zuckerberg (n 294).

³⁰⁴ Kaye 2020 Report (n 258) [42]; Dylan de Beer, Machdel Mathee ‘Approaches to Identify Fake News: A Systematic Literature Review’ *Integrated Science in Digital Age 2020* (2020) 136 <10.1007/978-3-030-49264-9_2> accessed 23 January 2021; Veronica Perez-Rosas et.al, ‘Automatic Detection of Fake News’ (*International Conference on Computational Linguistics*, August 2018), 3391.

³⁰⁵ ‘Hard Questions: What’s Facebook’s Strategy for Stopping False News?’ (*Facebook*, 23 May 2018) <<https://about.fb.com/news/2018/05/hard-questions-false-news/>> accessed 23 January 2021.

³⁰⁶ Yoel Roth and Nick Pickles, ‘Updating our approach to misleading information’ (*Twitter Blog*, 11 May 2020) <https://blog.twitter.com/en_us/topics/product/2020/updating-our-approach-to-misleading-information.html> accessed 15 December 2020.

³⁰⁷ Adam Mosseri, ‘Working to Stop Misinformation and False News’ (*Facebook*, 6 April 2017), <<https://www.facebook.com/formedia/blog/working-to-stop-misinformation-and-false-news>> accessed 15 December 2020.

assistance of independent third-party fact-checkers³⁰⁸).

[107] Hence, the efficacy of infodemic countermeasures is far more reliant on human resource, rather than technology.

b. Centralisation enhances communication of risks

[108] According to the WHO, emergency response to outbreaks involves a dynamic ‘*two-way communication*’ including facts (head) and responses to public concerns (heart).³⁰⁹

In short, governments must both talk and *listen*.³¹⁰

[109] Moreover, it is dangerous to leave intermediaries to their own devices. Automated moderation regularly removes information from trustworthy sources by mistake.³¹¹ The risk of intermediary liability results to over-zealous ‘*collateral censorship*’.³¹²

[110] Another spill-over effect of epidemics is operational disruption. One prime example is YouTube warning that ‘*users and creators may see increased video removals, including some videos that may not violate policies*’ due to COVID-19.³¹³ Similarly, the suspension of Net-Assemblies³¹⁴ by National Network (Ized’s largest media

³⁰⁸ OECD Policy Responses (n 187), 4, 6; Joint Declaration 2017 (n 258), principle 4(e).

³⁰⁹ WHO, ‘Managing epidemics: Key facts about major deadly diseases’ (WHO, 2018) <<https://www.who.int/emergencies/diseases/managing-epidemics-interactive.pdf>> accessed 24 January 2021, 34 – 35.

³¹⁰ *ibid*, 35.

³¹¹ Chris Stolkel Walker, ‘As humans go home, Facebook and YouTube face a coronavirus crisis’ (Wired, 20 March 2020) <<https://www.wired.co.uk/article/coronavirus-facts-moderators-facebook-youtube>> accessed 23 January 2021.

³¹² *Delfi* (n 79) (Joint Dissenting Opinion of Judges Sajó and Tsotsoria) [2]; Jack Balkin, ‘Old-School/New-School Speech Regulation’ (2014) 127 Harvard Law Review 2296, 2309.

³¹³ The YouTube Team, ‘Protecting our extended workforce and the community’ (YouTube Official Blog, 16 March 2020) <<https://blog.youtube/news-and-events/protecting-our-extended-workforce-and>> accessed 23 January 2021.

³¹⁴ Facts [28].

company³¹⁵) epitomises the constraints faced by intermediaries during emergencies.

[111] Hence, a robust communication strategy to combat NIDV disinformation calls for closer coordination between health authorities, intermediaries, and independent fact-checkers.³¹⁶ An authorisation regime ensures consistency in decision-making and avoid duplication of work (especially over identical content appearing in multiple platforms, online and offline).³¹⁷

[112] Ultimately, Ized has dutifully answered the WHO's call for greater cooperation '*to keep the infodemic from spreading*' because '*now more than ever, the truth matters*'.³¹⁸ Centralisation of communications was necessary to prevent malicious lies on NIDV from running amok throughout Ized before the truth is set free.

³¹⁵ Facts [2] – [3].

³¹⁶ OECD Policy Responses (n 187), 6; Joint Declaration 2017 (n 258), principle 4(e).

³¹⁷ OECD, 'Principles for the Governance of Regulators' (21 June 2013) [144] – [146].

³¹⁸ Managing the COVID-19 infodemic (n 185).

PRAYER

Based on the foregoing reasons, the Respondent respectfully request this Honourable Court to adjudge and declare:

- I. Ized's designation of the Central Public Park as a public site for public gatherings complied with Articles 19 and 21 of the ICCPR.
- II. Ized's suspended sentencing of Xana complied with Articles 19 and 21 of the ICCPR.
- III. Ized's restriction of unauthorised gatherings on social media platforms complied with Articles 19 and 21 of the ICCPR.
- IV. Ized's centralisation of communications on NIDV complied with Article 19 of the ICCPR.

Respectfully submitted,

806R,

Counsel for the Respondent.