
THE 2015–2016 MONROE E. PRICE
INTERNATIONAL MEDIA LAW MOOT COURT
COMPETITION

UMANI & CHATTER

Applicants

v

STATE OF OMERIA

Respondent

MEMORIAL FOR APPLICANTS

Word Count: 4,877

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LIST OF ABBREVIATIONS

Act	No Hate Act of 2011
ACHPR	African Court on Human and Peoples' Rights
ACHR	American Convention on Human Rights
African Charter	African Charter on Human and Peoples' Rights
Compromis	The 2015-2016 Price Media Law Moot Court Competition Case
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ICCPR	International Covenant on Civil and Political Rights
Law	Anti-Terrorism & Extremism Law of 2012
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Committee
UNTS	United Nations Treaty Service
US	United States

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STATEMENT OF RELEVANT FACTS

I. Statement of the Case

1. Omeria is a young nation-state of twenty-five million people.¹ It is a former province of the neighboring country Brinnah, and gained independence in 1952 after an internationally brokered armistice ended armed conflict between the two states.² After the war, many ethnic Omerians left Brinnah for the newly formed state, and many ethnic Brinnans left Omeria for Brinnah.³

2. Since 2010, Omerians have been active on social media, and are some of the heaviest users of the Internet per capita in the world.⁴ The most widely used social media platform is Chatter, a web and mobile short-messaging service.⁵ Chatter is used by journalists and private citizens to share news stories and information, and users can comment and respond to the ‘chats’ of other users.⁶ Chatter does not create or modify any content outside of its own official account.⁷

3. Large enclaves of ethnic Brinnans still reside in Omeria, close to the border of the two countries.⁸ Omerians also reside in large groups on the Brinnah side of the

¹ Compromis, para 1.

² *ibid.*

³ *ibid.* 2.

⁴ *ibid.* 5.

⁵ *ibid.* 6.

⁶ *ibid.* 8.

⁷ *ibid.* 7.

⁸ *ibid.* 3.

border.⁹ Ethnic tensions remain high, and violence between Brinnans and Omerians occurs sporadically.¹⁰ Violence is perpetrated by radical extremists attempting to remove the non-native ethnic group from their country,¹¹ which typically occurs around the 1 June Armistice Day anniversary.¹² No violence has occurred during the latest anniversary or in connection with any of Umani’s messages.¹³

4. Umani serves as Deputy Justice Minister of Omeria, and is an influential young leader.¹⁴ Umani uses his official Chatter account as a means of political advocacy, to reach out to supporters and to provide links to press releases.¹⁵ Umani’s official account has 262,744 Chatter followers.¹⁶

5. Umani also operates an anonymous account, @TheVigilanteInsider, which he uses to post satirical remarks regarding political and social issues in Omeria.¹⁷ Six of Umani’s anonymous posts have garnered controversy, including post #4 in which he referred to ‘brutes’ in Omeria and wished they would ‘magically’ disappear.¹⁸ Post #5

⁹ Compromis, para 3.

¹⁰ *ibid.*

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid* 18.

¹⁴ *ibid* 11.

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid* 12.

¹⁸ *ibid* 14.

called on fellow Omerians to ‘purify’ the country, but does not offer any further details.¹⁹ Chatter suspended Umani’s anonymous account for a brief period after post #2 garnered complaints from other Chatter users.²⁰ Some commentators considered Umani’s posts to be a reference to mistaken beliefs about violence between Omeria and Brinnah.²¹ Post #1 and #2 were posted to Chatter before 2011.²²

6. In 2011, Omeria enacted the No Hate Act (the ‘Act’), which sought to address shocking and offensive online speech.²³ The Act criminalizes those who create and disseminate statements that threaten, insult, or degrade a group of people based on race, color, sexual orientation, belief, and national or ethnic origin.²⁴ Breaching the Act can result in a maximum 10 year sentence and a monetary fine for actual authors of offending messages.²⁵ A violation can also result in a monetary fine for websites responsible for publishing the offending statements.²⁶ Artistic and journalistic material is exempt from the Act.²⁷

¹⁹ Compromis, para 14.

²⁰ *ibid* 13–15.

²¹ *ibid* 15.

²² *ibid* 14.

²³ *ibid* 9.

²⁴ *ibid* 10.

²⁵ *ibid*.

²⁶ *ibid* 10.

²⁷ *ibid*.

7. Attempting to suppress what it believes is dangerous and extremist speech, Omeria enacted the Anti-Terrorism & Extremism Law of 2012 (the ‘Law’).²⁸ This law criminalizes ‘the vocal or active opposition to fundamental Omerian values’ that is ‘likely to be understood by some or all’ to oppose ‘democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs’.²⁹ The Law bans ‘direct or indirect encouragement’ encouragement to prepare or commit terrorism and also makes ‘calls for the death of individuals’ illegal.³⁰

8. Umani’s posts prompted a government investigation.³¹ Omeria sought to discover the identity of the anonymous @TheVigilanteInsider account.³² Chatter refused to divulge the information, and Omeria imposed a fine of \$10,000 per day of non-compliance until Chatter disclosed the IP addresses of Umani’s smartphone, office computer, and the home computer of his sixteen-year-old daughter.³³ Omeria was able to identify Umani as the owner of the anonymous @TheVigilanteInsider account.³⁴ The identity of Umani as the owner of @TheVigilanteInsider was leaked to Omerian media outlets before charges were brought against him.³⁵

²⁸ Compromis, para 4.

²⁹ *ibid* 4(a), 4(c)(i).

³⁰ *ibid* 4(a).

³¹ *ibid* 16.

³² *ibid* 17.

³³ *ibid*.

³⁴ *ibid*.

³⁵ Clarifications, paras 9–10.

II. Procedural History

1. Omeria brought charges against Umani under the No Hate Act of 2011 and the Anti-Terrorism & Extremism Law of 2012.³⁶ Umani claims that his posts were artistic in nature and were not intended to encourage or induce the commission of violence.³⁷ However, Umani was convicted on all counts and sentenced to two years in prison.³⁸ Chatter was also charged under the No Hate Act for facilitating Umani's messages and under the Anti-Terrorism Law by acting recklessly by not monitoring and controlling Umani's messages.³⁹ Chatter was found liable for all but one post and assessed a US\$ 5 million dollar fine.⁴⁰
2. Umani and Chatter's convictions and sentences were upheld on appeal to the Omerian Supreme Court.⁴¹ Umani and Chatter filed a timely application and were granted certification in the Universal Court of Human Rights.⁴²

³⁶ Compromis, para 19.

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ *ibid* 20.

⁴⁰ *ibid.*

⁴¹ *ibid* 21.

⁴² *ibid* 22.

STATEMENT OF JURISDICTION

Umani and Chatter, the Applicants, hereby submit this dispute before this Honorable Court, the Universal Court of Free Expression, a Special Chamber of the Universal Court of Human Rights. This dispute concerns the rights of freedom of expression and speech in Articles 12 and 19 of the Universal Declaration of Human Rights and Articles 17 and 19 of the International Covenant on Civil and Political Rights. This Honorable Court has jurisdiction as final adjudicator in place of all regional courts once parties have exhausted all domestic remedies. Because Applicants' sentences were upheld on appeal to the Supreme Court of Omeria, all domestic remedies in Omeria have been exhausted and this Honorable Court has jurisdiction in the matter.

Umani and Chatter request this Honorable Court to issue a judgment in accordance with relevant international law, including the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, conventions, jurisprudence of relevant courts, and principles of international law.

QUESTIONS PRESENTED

- I. Under Articles 17 and 19 of the ICCPR and Articles 12 and 19 of the UDHR, did Omeria violate international principles by prosecuting Umani for Chatter posts #1-#3 under the No Hate Act?
- II. Under Articles 17 and 19 of the ICCPR and Articles 12 and 19 of the UDHR, did Omeria violate international principles by prosecuting Chatter's facilitation of Umani's posts #1-#3 under the No Hate Act?
- III. Under Articles 17 and 19 of the ICCPR and Articles 12 and 19 of the UDHR, did Omeria violate international principles by prosecuting Umani for Chatter post #4-#6 under the Anti-Terrorism & Extremism Law?
- IV. Under Articles 17 and 19 of the ICCPR and Articles 12 and 19 of the UDHR, did Omeria violate international principles by prosecuting Chatter for Umani's posts #4-#6 under the Anti-Terrorism & Extremism Law?

SUMMARY OF ARGUMENTS

I. Omeria's prosecution of Umani over his Chatter posts violated international principles because the posts were protected speech. The ICCPR and UDHR protect the freedom of expression, which includes the right to speak and receive unpopular opinions. Umani has the right of free expression, and democratic society relies on the free exchange of ideas and opinions to remain healthy; even shocking, offensive, or distasteful speech is protected. Free speech is a fundamental human right, and although Omeria has the duty to protect its citizens from harm, it does not have the right to intrude on an essential right in the process. Free speech may only be limited in specific circumstances.

Umani's speech did not threaten national security, public order, or the rights and reputation of others. International norms do not condone suppressing speech simply because it is ugly or offensive. Additionally, imprisonment is never the appropriate punishment for breaching a restriction of speech. Umani has the right to remain secure in his private life, and Omeria's coercive intrusion to gather the identity of @TheVigilanteInsider constituted a breach of Umani's privacy and security. Umani's Chatter posts and his right to remain anonymous are protected by his right to free speech, and Omeria's prosecution of Umani under the No Hate Act of 2011 was improper under international principles.

II. Chatter's prosecution under the No Hate Act of 2011 violates international principles because Chatter is a third party disseminator of speech. Chatter is an interactive platform used by many Omerians to share ideas and information. Chatter does not craft, solicit, or edit the messages that it disseminates, and therefore should be exempt from liability. Chatter facilitates the dissemination of its user's messages provided to it by

its users, and cannot be held liable for a message that was disseminated in its routine practice. Removing this protection would chill the free speech rights of all Chatter users, and would violate international principles.

III: Umani's prosecution under the Anti-Terrorism and Extremism Act of 2012 is improper under international principles because Article 19 of the UDHR only allows the government to restrict free speech if the speech is intended and likely to incite imminent violence and is directly and immediately connected to an incident of violence. Words alone are not enough to constitute a threat to national security or public order; there must be some action taken directly and immediately connected to the words. Umani's messages were not intended or likely to incite violence, and had no direct and immediate connection to violence. Umani's messages, while distasteful in tone and content, did not give rise to violence or even increase the likelihood of violence. Therefore, Omeria's prosecution of Umani under the Anti-Terrorism Law violated international principles.

IV: Omeria's prosecution of Chatter under the Anti-Terrorism and Extremism Law violated international principles because Chatter is providing an internet platform for the discussion of relevant social topics. Chatter is acting as a mere conduit for Umani's speech, just as it does for many Omerians every day. Chatter exists as a third party platform, and Chatter does not communicate outside of its own official account. Holding a website like Chatter liable for messages it did not select, craft, or solicit creates an environment hostile to free speech and weakens democratic society.

ARGUMENTS

The freedom of expression is perhaps the most significant and important fundamental human right. This right encompasses even unpopular and ugly speech.¹ It is protected by both the ICCPR and the UDHR, and can only be abridged in limited and particular circumstances.² A primary function of free speech is to promote and encourage debate in a democratic society, even when it creates a sense of unrest, anger, or resentment.³ Democratic society relies on the healthy and free exchange of ideas and news to ensure pluralism and tolerance.⁴ Social media platforms play an important role in the expression of speech; punishing a third party ‘for assisting in the dissemination of statements made by another person . . . would seriously hamper . . . [the] discussion of matters of public interest’.⁵

Umani has the right to freely express and disseminate his ideas and opinions, even if they shock or offend.⁶ Omeria cannot claim to foster a free and open democratic society while simultaneously silencing Umani and destroying his internationally recognized right to free expression. Chatter itself merely facilitates the exchange of ideas

¹ *Terminiello v Chicago* 337 US 1, 4 (1949); *Handyside v United Kingdom* (1976) 1 EHRR 737, para 49.

² *Njaru v Cameroon* (2007) AHRLR 21 (ACHPR 2007), para 6.4; *Handyside v United Kingdom* (1976) 1 EHRR 737, para 49. See also *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5, Inter-American Court of Human Rights Series A No 5 (13 November 1985).

³ *Terminiello v Chicago* 337 US 1, 4 (1949).

⁴ *Herrero-Ulloa v Costa Rica* IACtHR (2004) Series C No 107, para 113; *Perrin v the United Kingdom* ECHR 2005-XI 337, para 15.

⁵ *Jersild v Denmark* (1995) 19 EHRR 1, para 35.

⁶ *Müller v Switzerland* (1991) 13 EHRR 212, paras 32–35; *Sürek v Turkey* App no 26682/95 (ECtHR, 8 July 1999), para 62.

and opinions that are essential to Omeria's democratic society,⁷ and cannot be held liable for Umani's posts.⁸

While the government may enact laws to prohibit the incitement of violence and protect national security,⁹ words are not enough to constitute a threat to national security or public order.¹⁰ Omeria cannot punish Umani for his words alone. This is the antithesis of a democratic society. In the same manner, a third party forum cannot be held liable for the speech of its users when it is merely a platform for discussions that are essential to the health and development of a democratic society.¹¹ Social media websites such as Chatter provide platforms for sharing ideas, opinions, and information critical to the growth and vibrancy of a democratic society.¹² Umani's posts are not created or edited by Chatter,¹³

⁷ *Compromis*, para 5–8; *Valentin Evrezov v Belarus Communication* No. 1999/2010 UN Doc CCPR/C/112/D/1999/2010 (2014), para 8.3.

⁸ *Castells v Spain* (1992) 14 EHRR 445, para 43.

⁹ *The Law Society of Zimbabwe v The Minister of Transport and Communications and Another* (2004) AHRLR 292 (ZwSC 2004), para 18; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19 (3)(b).

¹⁰ *Tae-Hoon Park v. Republic of Korea*, No 628/1995 UN Doc CCPR/C/57/D/628/1995 (1998), para. 10.3; *Brandenburg v Ohio* 395 US 444, 447–49 (1969). See also *Media Rights Agenda v Nigeria* (2000) AHRLR 262 (ACHPR 2000), paras 69–71.

¹¹ *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015) JOINT CONCURRING OPINION OF JUDGES RAIMONDI, KARAKAS, DE GAETANO AND KJØLBRO, para 7.

¹² *ibid.*

¹³ *Compromis*, para 6.

and are the sole thoughts and ideas of Umani. The prosecutions of Umani and Chatter are improper under the ICCPR and UDHR.¹⁴

I. OMERIA'S PROSECUTION OF UMANI UNDER THE NO HATE ACT VIOLATES ARTICLES 12 AND 19 OF THE UDHR AND ARTICLES 17 AND 19 OF THE ICCPR BECAUSE IT DID NOT SERVE A LEGITIMATE PURPOSE, IS NOT PROPORTIONAL TO A DEMOCRATIC SOCIETY, AND INTERFERED WITH UMANI'S PRIVATE LIFE.

The freedom of expression is a fundamental human right recognized around the world.¹⁵ The Universal Declaration of Human Rights states that: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference'.¹⁶ Freedom of speech also includes the right to 'receive information and ideas'.¹⁷ The right to express opinions and positions that are unpopular, shocking, or offensive is particularly important because a 'function of free speech . . . is to invite

¹⁴ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) arts 12, 19; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), arts 12, 19.

¹⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights, as amended) (ECHR), art 10(1); American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948) reprinted in Basic Documents Pertaining to Human Rights in the International System OEA/Ser L V/11.82 Doc 6 Rev 1(American Convention) (1992) art 13; African Charter on Human and Peoples' Rights (adopted 27 July 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) art 9.

¹⁶ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), art 19.

¹⁷ *Stanley v Georgia* 394 US 557, 564 (1969). See also Julie E. Cohen, 'A Right to Read Anonymously: A Closer Look at "Copyright Management" In Cyberspace' (1996) 28 Conn L Rev 981, 1004. See also Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 19. See also International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19 (1).

dispute'.¹⁸ Free speech promotes and encourages debate about ongoing political and social issues and functions best 'when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger'.¹⁹ Freedom of expression can only be restricted in limited and legitimate circumstances,²⁰ and cannot substantiate arbitrary arrest or detention.²¹ A law restricting free expression may never be so broad 'that it incriminates a person in the enjoyment of one's right of expression of thought'.²² Criminal detention is never an appropriate or legitimate punishment for violating a free speech restriction.²³ Individuals have the right to a sphere of privacy, which is protected against government intrusion.²⁴

Umani, under international principles, has the right to freely express and disseminate ideas, opinions, and information that others may deem offensive or

¹⁸ *Terminiello v Chicago* 337 US 1, 4 (1949).

¹⁹ *ibid.*

²⁰ *Njaru v Cameroon* (2007) AHRLR 21 (ACHPR 2007), para 6.4. See also International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19 (3).

²¹ *Lohé Issa Konaté v Burkina Faso* (2014) Application No 004/2013 (ACHPR 2014), para 165.

²² *Mwenda and Another v Attorney-General* (2010) AHRLR 224 (ACHPR 2010), para 72.

²³ *Njaru v Cameroon* (2007) AHRLR 21 (ACHPR 2007), para 6.4. See also *Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000), paras 58–59. See also *Tristant Domoso v Panama* IACtHR (2009) Series C No 193, para 130.

²⁴ Lord Lester and D Pannick (eds), *Human Rights Law and Practice* (Butterworth 2004), para. 4.82; *Canepa v Canada* Communication No 558/1993 UN DocCCPR/C/59/D/558/1993 (1997), para 11.3. See also *Ituango Massacres v Colombia* IACtHR (2006) Series C No 148, paras 193–194. See also International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 17.

dangerous.²⁵ While Umani has responsibilities to his fellow citizens, Omeria cannot censor or punish him for expressing opinions that others may find objectionable.²⁶ Omeria has the duty to protect Umani's fundamental rights,²⁷ and to foster the continuity and development of Omeria's democratic society. Umani's prosecution under the Act is invalid because it was not prescribed by law, did not serve a legitimate purpose, and was not proportional to a democratic society. Regardless of the free speech restriction's validity, incarceration is not a proper penalty.²⁸ Omeria also violated Umani's right to privacy when it coercively obtained his identifying information from Chatter.

A. Umani's prosecution under the No Hate Act was invalid because posts #1 and #2 were not prescribed by law, the prosecution does not serve a legitimate purpose, and is not necessarily to a democratic society.

'The right to freedom of expression is of paramount importance in any democratic society'.²⁹ Limiting speech creates a 'barren marketplace' of ideas and opinions.³⁰ The UDHR protects the right to hold and disseminate opinions without interference 'through

²⁵ *Handyside v United Kingdom* (1976) 1 EHRR 737, para 49.

²⁶ *Willem v France* App no 10883/05 (ECtHR, 16 July 2009), para 33; *Texas v Johnson* 491 US 397, 414 (1989).

²⁷ Steven J. Heyman, 'The First Duty of Government: Protection, Liberty and the Fourteenth Amendment' (1991) 41 Duke L J 507, 515; John Locke, 'Third Letter on Toleration' in Peter Laslett (ed) *Two Treatises of Government* (CUP 1988). See also *Barrios Family v Venezuela* IACtHR (2011) Series C No 230, paras 46–47.

²⁸ *Njaru v Cameroon* (2007) AHRLR 21 (HRC 2007), para 6.4.

²⁹ *Tae-Hoon Park v Republic of Korea* Communication No 628/1995 UN Doc CCPR/C/57/D/628/1995 (1998), para 10.3.

³⁰ *Lamont v. Postmaster Gen* 381 US 301, 308 (1965) (Brandeis, J., concurring).

any media'.³¹ No government may suspend the right of free speech absent specific and unique circumstances.³² This right can be restricted in the interest of protecting the rights or reputation of others, national security, public order, or public health.³³ Restricting free speech is proper when the restriction has been prescribed by law, serves a legitimate purpose, and is necessary to achieve a set objective.³⁴ Here, Umani was improperly prosecuted for posts #1 and #2 under the Act because the restriction had not been prescribed by law at the time the messages were posted.³⁵ There is no legitimate purpose for restricting Umani's free speech because the Chatter messages did not threaten national security, public order, or the rights and reputation of others.³⁶ In order to protect fundamental human rights, limitations on government action must be strictly construed.³⁷

³¹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 19. See also *Handyside v United Kingdom* (1976) 1 EHRR 737, para 49.

³² *The Law Society of Zimbabwe v The Minister of Transport and Communications and Another* (2004) AHRLR 292 (ZwSC 2004), para 18; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19 (3)(b).

³³ *ibid.*

³⁴ *Sunday Times v United Kingdom* (1979–80) 2 EHRR 245, para 49; *Lingens v Austria* (1986) 8 EHRR 407, paras 39–40.

³⁵ *Compromis*, paras 9–10.

³⁶ *Sener v Turkey* App No 26680/95 (ECtHR, 18 July 2000), para 45; *Handyside v United Kingdom* (1976) 1 EHRR 737, para 48. See also International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19 (3).

³⁷ *Thorgeirson v Iceland* App No 13778/88 (ECtHR, 25 June 1992), para 63.

1. Umani’s prosecution for Chatter posts #1 and #2 under the No Hate Act was improper because the Act had not been enacted into law at the time of the violation.

A restriction on the freedom of speech must be ‘prescribed by law’ before the violation allegedly occurs.³⁸ This requirement is met when the law is accessible and ‘formulated with sufficient precision to enable the citizen to regulate his conduct’.³⁹ Here, Umani’s Chatter posts #1 and #2 were disseminated in 2009 and 2010, respectively.⁴⁰ Omeria enacted the Act in 2011.⁴¹ Umani could not have regulated his conduct to conform to a law that was not in effect. Therefore, Umani’s prosecution under the Act for posts #1 and #2 was improper because the violations had not been prescribed by law.

2. The No Hate Act does not serve a legitimate purpose as applied to Umani because Umani’s messages did not threaten national security, public order, or the rights and reputation of others.

The ICCPR only permits restrictions on free speech when national security, public order, or the rights or reputations of others is at risk.⁴² It is unreasonable to perceive

³⁸ *Incal v Turkey* (2000) 29 EHRR 449, para 40; *Sunday Times v United Kingdom* (1979–80) 2 EHRR 245, para 49.

³⁹ *Sunday Times v United Kingdom* (1979–80) 2 EHRR 245, para 49.

⁴⁰ *Compromis*, paras 14(a)–(b).

⁴¹ *ibid* 9.

⁴² *Alexandre Dergachev v Belarus* Communication No 921/2000 UN Doc CCPR/C/74/D/921/2000 (2002), para 8; *Mukong v Cameroon* Communication No 458/1991 UN Doc CCPR/C/51/D/458/1991 (1994), para 9.7; *Vladimir Petrovich Laptsevich v Belarus* Communication No 780/1997 UN Doc CCPR/C/68/D/780/1997 (2000), para 8.2. See also International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 19 (3).

Umani's posts as a true threat to other individuals. No violence ensued as a result of Umani's messages.⁴³ Further, Omeria only enacted the Act to intentionally suppress what could be considered 'bullying' speech.⁴⁴ Omeria's protection against unpleasant speech or ideas is not a legitimate purpose as defined by the ICCPR.⁴⁵

Limitations on speech must be based on legitimate public interests, strictly proportionate to that interest, and absolutely necessary.⁴⁶ While Umani's prosecution may have been based on a public interest of keeping the peace, this restriction was not strictly proportionate or absolutely necessary. Charging Umani was unnecessary because there is no evidence to show his Chatter messages were endangering public safety. The government cannot justify these charges as the '[f]ear of serious injury alone cannot justify suppression of free speech'.⁴⁷

Ideas and concepts should not be criminalized. Even if Umani supported the idea of violence against another group or individual, no violent incidents transpired as a result of his Chatter messages.⁴⁸ Speech, by itself, is not enough to constitute a threat to a

⁴³ Compromis, para 18.

⁴⁴ *ibid* 9.

⁴⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 19.

⁴⁶ *Thorgeirson v Iceland* App No 13778/88 (ECtHR, 25 June 1992), para 63; African Commission on Human and Peoples' Rights Communication Nos 1-5/93-128/94-152/96, paras 68-69.

⁴⁷ *Whitney v California* 274 US 357, 376 (1927) (Brandeis, J., concurring).

⁴⁸ Compromis, paras 16, 18.

government or country.⁴⁹ Action must be taken to give rise to a threat.⁵⁰ Umani's posts consisted of words, which are not enough to sustain a restriction of free speech.

Umani's words had no effect on the rights or reputation of others. While Umani's messages aroused the suspicion of government employees and prompted an investigation, there is no indication that the rights or reputation of any individuals were harmed.⁵¹ It is proper for Omeria to regulate slander and defamation laws,⁵² but it is not proper to restrict the freedom of Umani without the commission of slander or defamation.⁵³

3. Umani's prosecution is not necessary to a democratic society because democratic societies historically do not censor the freedom of expression when speech is merely insulting or degrading.

In a free and open society, the government may not intrude on free speech based exclusively on a speaker's 'political philosophy, beliefs, and attitudes on social and economic issues'.⁵⁴ '[T]he government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable'.⁵⁵ The fact that a portion, or even a majority, of society finds some speech reprehensible does not support the ban

⁴⁹ *Media Rights Agenda v Nigeria* (2000) AHRLR 262 (ACHPR 2000), paras 69–71.

⁵⁰ *ibid.*

⁵¹ *Compromis*, paras 17–18.

⁵² *Ouko v Kenya* (2000) AHRLR 135 (ACHPR 2000), para 28.

⁵³ *ibid.*

⁵⁴ *Schneider v Smith* 390 US 17, 24–25 (1968).

⁵⁵ *Texas v Johnson* 491 US 397, 414 (1989).

or censorship of that speech.⁵⁶ Freedom of expression ‘also covers “information” or “ideas” that offend, shock or disturb the State or any section of the population’.⁵⁷ Democratic society demands pluralism, tolerance, and broadmindedness to exist.⁵⁸ Criminalizing speech merely because it is offensive ‘incriminates a person in the enjoyment of one’s right of expression of thought’.⁵⁹

Further, there is little room for restrictions on freedom of expression in political speech or matters of public interest.⁶⁰ Historically, an individual is allowed to have a degree of exaggeration, or even provocation, when making statements in public debate.⁶¹ In an ongoing debate regarding issues critical to the national interest, a government must allow individuals to freely exchange and express ideas and information, regardless of its palatability.⁶² This is precisely the situation in the present case.

Umani’s posts are generally satirical in nature, and are criticisms regarding his country, its leadership, and its population. These topics are relevant to the social, political, and economic condition of Omeria. Umani, as a full member of a democratic

⁵⁶ *ibid.*

⁵⁷ *Handyside v United Kingdom* (1976) 1 EHRR 737, para 49.

⁵⁸ *ibid*; *Castells v Spain* (1992) 14 EHRR 445, para 43.

⁵⁹ *Mwenda and Another v Attorney-General* (2010) AHRLR 224 (ACHPR 2010), para 72.

⁶⁰ *Willem v France* App no 10883/05 (ECtHR, 16 July 2009), para 33. See also UNGA ‘Implementation of General Assembly Resolution 60/251 of March 2006 Entitled “Human Rights Council” Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo’ (2 January 2007) UN Doc A/HRC/4/27, para 28.

⁶¹ *Willem v France* App no 10883/05 (ECtHR, 16 July 2009), para 33.

⁶² *Le Pen v France* App no 18788/09 (ECtHR, 5 July 2010), para 1.

society, is permitted to make ugly, discriminatory, or even violent statements regarding matters of public discord.⁶³ All of the statements Umani made were in regards to current and pressing events occurring in Omeria.⁶⁴ Even though they may be offensive and shocking, Umani is allowed a degree of exaggeration, provocation, and immodesty,⁶⁵ in a democratic society. Without any evidence to suggest that Umani himself committed violence or otherwise restricted another individual's rights,⁶⁶ Omeria has no basis to censor or punish his speech.

B. Umani's incarceration was disproportionate to a democratic society because international principles do not sanction imprisonment for violating a restriction on free speech.

Even if speech can be restricted and censored, '[a]part from serious and very exceptional circumstances . . . the violations of laws on freedom of speech and the press cannot be sanctioned by custodial sentences'.⁶⁷ In a democratic society, criminal punishment is only appropriate 'to the extent that is strictly necessary in order to safeguard essential legally protected interests from . . . serious attacks' that infringe on the rights of others.⁶⁸ Only after carefully considering the 'extreme seriousness of the

⁶³ *Willem v France* App no 10883/05 (ECtHR, 16 July 2009), para 33.

⁶⁴ *Compromis*, para 14.

⁶⁵ *Willem v France* App no 10883/05 (ECtHR, 16 July 2009), para 33.

⁶⁶ *Compromis*, paras 14–18.

⁶⁷ *Lohé Issa Konaté v Burkina Faso* (2014) Application No 004/2013 (ACHPR 2014), para 165.

⁶⁸ *Tristant Domo v Panama* IACtHR (2009) Series C No. 193, para 130. See also *Gavrilovici v Moldavia* App no. 25464/05 (ECtHR, 20 April 2009), para 60.

conduct of the individual who expressed the opinion, his actual malice, the characteristics of the unfair damage caused, and other information which shows the absolute necessity to resort to criminal proceedings' should prosecution be undertaken.⁶⁹

Umani's Chatter messages displayed no actual malice, despite their tone and language. Further, no actual damage was inflicted and no harm occurred because of Umani's speech.⁷⁰ Umani only published his thoughts and ideas on Chatter. The publication and dissemination of free speech does not harm or inhibit the enjoyment of another's rights or freedoms. To punish Umani with imprisonment and criminal sanctions would criminalize the exercise of a fundamental right in a democratic society. This is neither prudent nor wise, has no support in international law, and degrades the vibrancy of a democratic society.

C. Umani has the right to remain anonymous and enjoy protection of his private life against government intrusion.

Closely related to the ability to speak is the ability to speak anonymously.⁷¹ In a democratic society, anonymity functions as a 'shield from the tyranny of the majority'.⁷² Courts must 'be vigilant' to 'guard against undue hindrances to political conversations and the exchange of ideas'.⁷³ Anonymity protects speakers from what could be violent

⁶⁹ *ibid.*

⁷⁰ *Compromis*, paras 14, 16, 18.

⁷¹ *McIntyre v Ohio Elections Comm'n* 514 US 334, 357 (1995).

⁷² *ibid.*

⁷³ *Buckley v American Constitutional Law Found* 525 US 182, 192 (1999).

‘retaliation . . . at the hand of an intolerant society’.⁷⁴ An ‘author’s decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech’.⁷⁵ While the ability to remain anonymous in print and other traditional mediums has long been established,⁷⁶ there is ‘no basis for qualifying the level of [free speech] protection that should be applied’ to the Internet.⁷⁷ Individuals communicating on the Internet have the same right to remain anonymous as individuals communicating in print, voice, or other media.⁷⁸ Internet forums are widely used to exchange ideas and opinions. Maintaining Internet anonymity is essential to prevent the ‘identification and fear of reprisal’ that ‘might deter perfectly peaceful discussions of public matters of importance’.⁷⁹

Article 12 of the UDHR ensures that ‘No one shall be subjected to arbitrary or unlawful interference with his privacy . . . or correspondence’.⁸⁰ Whenever the government demands the identification of an anonymous speaker, free speech rights are

⁷⁴ *McIntyre v Ohio Elections Comm’n* 514 US 334, 357 (1995).

⁷⁵ *ibid* 342.

⁷⁶ *ibid*.

⁷⁷ *Reno v ACLU* 521 US 844, 870 (1997). See also UNGA Res 68/167 (18 December 2013) UN Doc A/RES/68/167, paras 3–4.

⁷⁸ *ibid*.

⁷⁹ *Talley v California* 362 US 60, 65 (1960).

⁸⁰ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 12.

implicated.⁸¹ Individuals have a right to a ‘private sphere’ that the government cannot penetrate arbitrarily.⁸² The right to privacy under Article 17 of the UDHR and Article 19 of the ICCPR includes the right to access private information, the right to control personal data, and the right to privacy of online communication.⁸³ Interference, through the gathering of identifying metadata, is equivalent to the confiscation and surveillance of the contents of the communication.⁸⁴

When Omeria obtained Umani’s identifying information without good cause, Omeria violated Umani’s right to remain private in his affairs. This interference with Umani’s private life broke the sphere of privacy he enjoys under international law.⁸⁵ Omeria has a duty to be ‘precise’ and to follow ‘clear and detailed rules’ when reaching into the private life of an individual.⁸⁶ The collection of Umani’s identifying metadata represents a breach of his right to a private life.⁸⁷ Through coercive means, Omeria gathered private metadata attached to Umani’s Chatter messages to identify him and his

⁸¹ *Weber and Saravia v Germany* ECHR 2006-XI 78, para 78; *Sony Music Entertainment v Does* 326 F.Supp.2d 556, 562 (S.D.N.Y. 2004).

⁸² Lord Lester and D Pannick (eds), *Human Rights Law and Practice* (Butterworth 2004), para. 4.82; *Canepa v Canada* Communication No 558/1993 UN Doc CCPR/C/59/D/558/1993 (1997), para 11.3. See also *Ituango Massacres v Colombia* IACtHR (2006) Series C No 148, paras 193–194.

⁸³ Manfred Nowak, ‘United Nations CCPR Commentary’ (2007) 18 EJIL 378, p.388.

⁸⁴ *Copland v the United Kingdom* ECHR 2007-1 317, para 44.

⁸⁵ *Herrero-Ulloa v Costa Rica* IACtHR (2004) Series C No 107, para 113.

⁸⁶ *Escher et al v Brazil* IACtHR (2009) Series C No 208, para 131.

⁸⁷ *Copland v the United Kingdom* ECHR 2007-1 317, para 44; *Leander v Sweden* (1987) 9 EHRR 433, para 48.

location.⁸⁸ The metadata is a portion of Umani’s private life, under his control and only releasable with his permission.⁸⁹ Umani has the right to remain and speak anonymously, and Omeria’s public disclosure of his identity as @TheVigilanteInsider prior to his prosecution violated Umani’s rights as protected by the UDHR and ICCPR.

1B: OMERIA’S PROSECUTION OF CHATTER UNDER THE NO HATE ACT OF 2011 VIOLATES ARTICLES 12 AND 19 OF THE UDHR AND ARTICLES 17 AND 19 OF THE ICCPR BECAUSE THE NO HATE ACT HAS A CHILLING EFFECT ON FREE SPEECH.

Freedom of expression includes the ability to receive and disseminate ideas and information across society.⁹⁰ Democratic society relies on the healthy and free exchange of ideas and news to ensure pluralism and tolerance.⁹¹ The ‘mere existence’ of the government’s ability to access confidential information creates interference with the right to privacy.⁹² Social media exists to express speech, and Chatter facilitates the exchange of ideas and news.⁹³ When a facilitator of a disseminated message is clearly dissociated from the crafter of the message, liability does not attach.⁹⁴ A facilitator, like Chatter, is

⁸⁸ Compromis, para 17. See also *Copland v the United Kingdom* ECHR 2007-1 317, para 44.

⁸⁹ *ibid.*

⁹⁰ *Herrero-Ulloa v Costa Rica* IACtHR (2004) Series C No 107, para 113.

⁹¹ *ibid.*

⁹² *Weber and Saravia v Germany* ECHR 2006-XI 78, para 78.

⁹³ Compromis, paras 6, 8.

⁹⁴ *Jersild v Denmark* (1995) 19 EHRR 1, para 31–34.

fulfilling its function as a disseminator of all information provided to it, and cannot be held liable for a specific message in its routine practice.⁹⁵

Removing protections from organizations or groups, who are disseminating messages created by third parties, would chill the free speech rights of every individual who wished to use that service. Punishing a facilitator ‘for assisting in the dissemination of statements made by another person . . . would seriously hamper . . . discussion of matters of public interest’.⁹⁶ Governments must have a specific and important reason for infringing on free speech rights.⁹⁷

Here, Chatter is a disseminator of information and opinion via social media posts.⁹⁸ Chatter does not edit the content or timing of user’s messages, has its own internal guidelines and rules for the use of its service by users, and removes posts that it considers to be in bad taste or to have potential legal consequences.⁹⁹ Chatter suspended Umani’s account when his posts aroused anger from other Chatter users.¹⁰⁰ Chatter was clearly disassociated from Umani’s message. Although Umani is one user, there are

⁹⁵ *ibid.*

⁹⁶ *Thoma v Luxembourg* ECHR 2001-III 67, para 62.

⁹⁷ *Ibid*; HRC, ‘Concluding observations on the fourth periodic report of the United States of America’ (23 April 2014) UN Doc CCPR/C/USA/CO/4.

⁹⁸ *Compromis*, para 8.

⁹⁹ *ibid* 6–8.

¹⁰⁰ *ibid* 14.

hundreds of thousands of Chatter users in Omeria, and Chatter is simply facilitating social discussion.¹⁰¹

To subject a service like Chatter to liability for the message of its users would effectively chill the speech of Omerians and significantly hamper discussion of topics in the public interest.

2A: OMERIA'S PROSECUTION OF UMANI UNDER THE ANTI-TERRORISM & EXTREMISM LAW VIOLATES ARTICLES 12 AND 19 OF THE UDHR AND ARTICLES 17 AND 19 OF THE ICCPR BECAUSE UMANI'S POSTS WERE NOT INTENDED TO AND WERE UNLIKELY TO INCITE VIOLENCE, AND THERE IS NO DIRECT AND IMMEDIATE CONNECTION BETWEEN UMANI'S MESSAGES AND ANY POTENTIAL VIOLENCE.

Protecting the lives, property, and freedom of citizens is an essential function of government.¹⁰² However, the protection of national security, law, and order must not infringe on the ability of citizens to exercise their rights.¹⁰³ Article 19 of the UDHR allows the government to enact laws to protect public order and deter violence; however free speech may be restricted only if a government can demonstrate that the speech is intended to incite imminent violence and that the speech is likely to incite such

¹⁰¹ *ibid* 5–6, 8.

¹⁰² Steven J. Heyman, 'The First Duty of Government: Protection, Liberty and the Fourteenth Amendment' (1991) 41 *Duke L J* 507, 515; John Locke, 'Third Letter on Toleration' in Peter Laslett (ed) *Two Treatises of Government* (CUP 1988). See also *Barrios Family v Venezuela* IACtHR (2011) Series C No 230, paras 46–47.

¹⁰³ *Handyside v United Kingdom* (1976) 1 EHRR 737, para 49. See also International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19.

violence.¹⁰⁴ There must be a direct and immediate connection between the message and an act of violence; words alone are not enough to constitute a threat to national security or public order.¹⁰⁵

Here, Umani's prosecution under the Law is invalid under international principles because Umani's messages were not intended or likely to incite violence, and had no direct and immediate connection to violence. Umani's messages, while aggressive and distasteful in tone and content, did not give rise to violence¹⁰⁶ or even increase the likelihood that violence would occur. Therefore, Omeria had no legitimate authority to arrest and prosecute Umani under the Law.

A. Umani's Chatter messages were not intended or likely to incite violence, but were merely the expression of an opposing viewpoint in Omeria.

Ideas and opinions considered by many to be repugnant or disturbing are nevertheless protected as free speech.¹⁰⁷ Even opinions that seem motivated by violence and indicate a desire to harm others, without actually inciting violence, are protected.¹⁰⁸ The right to freedom of expression is fundamental to the function of a democratic society, and criminalizing repulsive viewpoints may only lead to further violence and turmoil.¹⁰⁹

¹⁰⁴ *Brandenburg v Ohio* 395 US 444, 447 (1969)

¹⁰⁵ *Media Rights Agenda v Nigeria* (2000) AHRLR 262 (ACHPR 2000), paras 69–71.

¹⁰⁶ *Compromis*, para 18.

¹⁰⁷ *Brandenburg v Ohio* 395 US 444, 447–49 (1969).

¹⁰⁸ *ibid.*

¹⁰⁹ *Tae-Hoon Park v Republic of Korea* Communication No 628/1995 UN Doc CCPR/C/57/D/628/1995 (1998), para 10.3.

Terrorist movements frequently seek to destroy freedoms and rights enjoyed by a democratic society; ‘respond[ing] to terrorism by restricting this right could facilitate certain terrorist objectives’ by the further ‘dismantling of human rights’.¹¹⁰ Therefore, it is vital, ‘however disagreeable’ the speech,¹¹¹ to ‘know what our fellow citizens think and to develop our own capacities for critical response. We cannot know what others think when the government silences them’.¹¹²

When deciding if speech rises to the level of actually inciting and encouraging violence, ‘[a]ttention is paid . . . to the express words used by the applicant and the general style of the publication’.¹¹³ It is ‘insufficient to consider that those declarations constitute an incitement to violence, armed resistance or an uprising . . . or incitement to terrorism’ if the words used are simply angry and aggressive in tone.¹¹⁴ ‘Even if the words used in a publication may be virulent in style or lend some vehemence to the discourse or a hostile tone to it, rather than limiting the discourse’ government should protect all speech that is promulgated in a democratic society.¹¹⁵ The public has a right to be informed of differing perspectives and opinions on ongoing situations, and these

¹¹⁰ UNGA ‘Implementation of General Assembly Resolution 60/251 of March 2006 Entitled “Human Rights Council” Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo’ (2 January 2007) UN Doc A/HRC/4/27, para 43.

¹¹¹ Eric Heinze, ‘Viewpoint Absolution and Hate Speech’ (2006) 69 MLR 543, 554.

¹¹² *ibid.*

¹¹³ *Gumus and Others v Turkey* App No 40303/98 (ECtHR, 15 June 2005), para 18.

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

viewpoints must be protected ‘irrespective of how unpalatable that perspective may be’ for those who disagree.¹¹⁶

Umani’s posts, while objectionable in content, were not intended or likely to incite violence. When taken as a whole, the Chatter messages do not represent an incitement to violence because of their context, distribution, and content. The anonymous nature, vague details, and overall context of the Chatter messages do not rise to the level of inviting violence in any form. Umani’s messages constituted only a small percentage of the messages posted on Chatter every day.¹¹⁷ While Umani identifies himself on @TheVigilanteInsider’s account as a political insider, he did not specifically identify his position or substantiate his claim as a government official.¹¹⁸ All of Umani’s Chatter posts are solely his opinions.¹¹⁹ None of the messages incite violence against others in a specific manner, time, or place.¹²⁰ Chatter post #4 details Umani’s sarcastically phrased desire to see unidentified ‘brutes’ ‘magically’ disappear from Omeria on the anniversary of the Armistice.¹²¹ Chatter post #5 calls on fellow Omerians to ‘purify’ the country, but makes no mention of how, why, or against what the purification should be.¹²² However, no violence was undertaken in support of this opinion, and no violence has occurred since

¹¹⁶ *Sener v Turkey* App No 26680/95 (ECtHR, 18 July 2000), para. 58.

¹¹⁷ *Compromis*, paras 5, 12–13.

¹¹⁸ *ibid* 13.

¹¹⁹ *ibid* 13–14.

¹²⁰ *ibid* 14.

¹²¹ *ibid* 14 (d).

¹²² *ibid* 14 (e).

Umani posted the message on Chatter.¹²³ Umani’s Chatter messages are words, and nothing more.

B. There is no direct and immediate connection between Umani’s Chatter messages and the likelihood or occurrence of violence.

While some speech may be restricted in the interest of protecting national security and public order, speech cannot be restricted on this basis unless there is also a direct and immediate connection between the speech and the likelihood that violence will occur.¹²⁴ Political hyperbole is not a true threat that can be suppressed.¹²⁵ The freedom of speech protects viewpoints unless the opinion is attempting to incite ‘imminent lawless action and is likely to incite or produce such action’.¹²⁶ When determining the likelihood that speech would lead to violence, courts examine the speech’s contribution to the exchange of ideas and opinions,¹²⁷ the circumstances surrounding the speech, including the immediacy of the messages,¹²⁸ and the public or private condition of the speech when it was disseminated.¹²⁹

¹²³ *ibid* 18.

¹²⁴ *Media Rights Agenda v Nigeria* (2000) AHRLR 262 (ACHPR 2000), paras 69–71; *Brandenburg v Ohio* 395 US 444, 447–49 (1969).

¹²⁵ *Watts v United States* 394 US 705, 708 (1969); *Virginia v Black* 538 US 343, 359 (2003).

¹²⁶ *Brandenburg v Ohio* 395 US 444, 447 (1969). See also *Watts v United States* 394 US 705, 707 (1969).

¹²⁷ *Karatas v Turkey* App No 63315/00 (ECtHR, 5 January 2010), para 49; *Alinak v Turkey* App No 40287/98 (ECtHR, 29 March 2005), para 42.

¹²⁸ *ibid*.

¹²⁹ *Karatas v Turkey* App No 63315/00 (ECtHR, 5 January 2010), para 52.

Here, Umani's Chatter posts had no immediate or direct likelihood of producing violence. Chatter is a mainstream platform for the dissemination of news and opinion, and Umani's posts are just a few of the posts that are submitted every day.¹³⁰ Umani's Chatter messages were 're-chatted' by his followers,¹³¹ and would have been received by the vast majority of Omerians as satirical. None of the posts mentioned any specific target, date, or manner of violence.¹³² The posts with the most violent tone, #4 and #6, did not call for immediate violence.¹³³ The most specific post, #4, was created in April and referenced Armistice Day, which took place six weeks later.¹³⁴ No acts of violence occurred against Brinnans on or around Armistice Day, and no acts of violence are attributable to Umani's messages.¹³⁵ Therefore, there was no direct connection between Umani's Chatter messages and incitement to violence, as no violence occurred. It is unlikely that the messages' content would have incited violence. Umani's Chatter messages did not give rise to an actual threat to national security. Umani's posts were merely speech, and speech without associated violence is harmless.

¹³⁰ Compromis, paras 5–6, 8.

¹³¹ *ibid* 14.

¹³² *ibid*.

¹³³ *ibid* 14.

¹³⁴ *ibid* 14 (d).

¹³⁵ *ibid* 18.

2B: OMERIA'S PROSECUTION OF CHATTER UNDER THE LAW IS NOT PROPER UNDER INTERNATIONAL PRINCIPLES BECAUSE CHATTER, AS AN INTERNET FORUM, IS A 'MERE CONDUIT' FOR UMANI'S FREE SPEECH.

A forum cannot be held liable for words it does not select, solicit, or modify.¹³⁶ The Anti-Terrorism & Extremism Law conflicts with international principles because a third party forum like Chatter cannot be held liable for the messages of its users. Even if this Court determines that the Law is valid, Chatter should be exempt because Chatter is a forum, not a publisher. Chatter does not publish third party statements;¹³⁷ instead, it provides a platform for third parties to discuss and debate relevant social topics.¹³⁸ Chatter posts are clearly distinguished as a third party user's statement, and Chatter does not create posts outside of its own official account.¹³⁹ This lack of editorial control makes Chatter a forum, rather than a publisher.¹⁴⁰ However, under the ICCPR and UDHR, even a publisher would be protected from liability connected to third party statements.¹⁴¹

¹³⁶ *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015) JOINT CONCURRING OPINION OF JUDGES RAIMONDI, KARAKAS, DE GAETANO AND KJØLBRO, para 7.

¹³⁷ *Compromis*, paras 6–7.

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ Council Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce") [2000] OJ L178/1, para 42.

¹⁴¹ *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015) JOINT CONCURRING OPINION OF JUDGES RAIMONDI, KARAKAS, DE GAETANO AND KJØLBRO, para 7.

Internet service providers are protected from liability when acting as a publisher or disseminator of user opinions.¹⁴² Holding an Internet platform liable as a publisher of third party postings would have a ‘chilling effect’ on free speech.¹⁴³ With the exponential amount of information communicated through the Internet, ‘[i]t would be impossible for service providers to screen each of their millions of postings for possible problems’.¹⁴⁴ If an interactive Internet platform faces liability for each message crafted by its users, such platforms ‘might choose to severely restrict the number and type of messages posted’.¹⁴⁵ Avoiding this potentially devastating effect on free speech is essential in a democratic society.¹⁴⁶

Interactive Internet platforms should be allowed to ‘self regulate the dissemination of offensive material over their services’.¹⁴⁷ Holding Internet platforms accountable for third party posts will deter Internet platforms from screening and blocking offensive material because it will cast the platform operator in the role of publisher.¹⁴⁸ If platform operators are protected from liability, the operator would be more willing to screen material, resulting in greater assistance to the government in guarding against terrorism.

¹⁴² *Zeran v America Online, Inc* 129 F.3d 327, 331 (4th Cir. 1997).

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*

¹⁴⁵ *ibid.*

¹⁴⁶ *Castells v Spain* (1992) 14 EHRR 445, para 43.

¹⁴⁷ *Zeran v America Online, Inc* 129 F.3d 327, 331 (4th Cir. 1997).

¹⁴⁸ *ibid.*

A platform operator can be exempt from liability if they are not involved with the information that is transmitted.¹⁴⁹ A platform is a ‘mere conduit’ and is exempt from liability associated with the communications of a third party when the operator does not initiate the transmission of the communication, does not select the receiver of the transmission, and does not select or modify the information within the transmission.¹⁵⁰

Chatter is acting as a ‘mere conduit’ as it serves only as a platform for transmissions, and does not initiate, select a receiver, or select the information in the posts on its page.¹⁵¹ Additionally, Chatter’s users do not expect Chatter to influence user posts.¹⁵² Chatter itself does not interact with its users before or after posts are created and disseminated.¹⁵³ Requiring a platform operator to regulate third party posts would seriously endanger the function of a democratic society.¹⁵⁴ Chatter operates as a forum for its users to share and debate relevant social topics in the form of opinions and information.¹⁵⁵ Chatter does not participate in creating any of the messages shared by its users,¹⁵⁶ and should not be held liable for disseminating a user’s message.

¹⁴⁹ *Thoma v Luxembourg* ECHR 2001-III 67, para 62.

¹⁵⁰ Council Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce") [2000] OJ L178/1, paras 42-43.

¹⁵¹ *ibid*; *Compromis*, paras 6–8.

¹⁵² *Compromis*, para 6.

¹⁵³ *ibid* 6–7.

¹⁵⁴ *Thoma v Luxembourg* ECHR 2001-III 67, para 62.

¹⁵⁵ *Compromis*, paras 5–8.

¹⁵⁶ *ibid* 6.

Chatter, as a forum, is not actively opposing Omerian values when it allows third parties to post opinions. The Law defines extremism as ‘the vocal or active opposition to fundamental Omerian values’, including ‘calls for the death of individuals living within Omeria’s borders’.¹⁵⁷ Umani is a third party that uses Chatter to disseminate opinions and information.¹⁵⁸ Chatter should not be responsible for third party statements, as such posts do not reflect Chatter’s beliefs or values.¹⁵⁹ Chatter speaks for itself only through its official Chatter account, @Chatter.¹⁶⁰ The Law criminalizes the publication of statements ‘likely to be understood by some or all of the members of the public’ as a ‘direct or indirect encouragement’ to commit or prepare acts of terrorism.¹⁶¹ The Law also bans extremist statements, ‘as defined under the Act’.¹⁶² Under this law, a platform operator’s free speech and ability to assist the government in guarding against terrorism will be chilled. It would be more beneficial for both the website and the government if the website operator is protected from liability.

Accordingly, the Law would force a platform operator to take additional precautions to protect itself from liability. Monitoring each post would require specific

¹⁵⁷ *ibid* 4.

¹⁵⁸ *ibid* 6–8.

¹⁵⁹ *ibid* 6.

¹⁶⁰ *ibid*.

¹⁶¹ *ibid* 10.

¹⁶² *ibid* 4 (c)(i)(2).

software to screen the large amount of information contributed to the forum.¹⁶³ However, forcing a platform to utilize software to monitor third party posts violates the platform's protection of privacy and freedom of expression.¹⁶⁴ Forcing a platform operator to install a system to filter electronic communication using its services is improper¹⁶⁵ because the high cost of a complicated computer system would seriously infringe on the freedom of the platform operator to conduct its business.¹⁶⁶ A website operator is protected in its right to privacy to determine how to run its own forum without government imposition.¹⁶⁷

This sentiment was held by the concurring justices of the ECHR in the case of *Delfi AS v. Estonia*: 'finding a news portal liable for not having "prevented" the publication of user-generated comments would in practice imply that the portal would have to pre-monitor each and every user-generated comment in order to avoid liability for any unlawful comments'.¹⁶⁸ Forcing an internet forum to monitor every post could 'lead to a disproportionate interference with the news portal's freedom of expression'.¹⁶⁹

¹⁶³ *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015) JOINT CONCURRING OPINION OF JUDGES RAIMONDI, KARAKAS, DE GAETANO AND KJØLBRO, para 7.

¹⁶⁴ *ibid.*

¹⁶⁵ Case C-70/10 *Scarlet Extended NV v SABAM* (2011) ECR I- 12006, para 5.

¹⁶⁶ *ibid.*

¹⁶⁷ *ibid.*

¹⁶⁸ App No 64569/09 (ECtHR, 16 June 2015) JOINT CONCURRING OPINION OF JUDGES RAIMONDI, KARAKAS, DE GAETANO AND KJØLBRO, para 7.

¹⁶⁹ *ibid.*

International principles draw a line between the speaker of offensive and repugnant speech and the conduit by which it is disseminated.¹⁷⁰ Chatter is acting as a conduit for Umani's speech, just as it does for many Omerians every day. If Chatter was held liable for every message created and shared by its users, it would find itself unable to continue offering an essential platform for the dissemination of ideas, opinions, and information. Chatter is merely a conduit for ideas,¹⁷¹ as it does not initiate the transmission of messages, does not select the author of the messages posted on its site, and does not modify, control, or select the content of the messages.¹⁷² Holding a website like Chatter liable for messages it did not select, craft, or solicit creates an environment hostile to free speech and weakens democratic society.

¹⁷⁰ *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015) JOINT CONCURRING OPINION OF JUDGES RAIMONDI, KARAKAS, DE GAETANO AND KJØLBRO, para 7; Council Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce") [2000] OJ L178/1, paras 42-43.

¹⁷¹ Council Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce") [2000] OJ L178/1, paras 42-43.

¹⁷² Compromis, paras 6–8.

PRAYER

For the foregoing reasons, Umani and Chatter respectfully request this Honorable Court to adjudge and declare the following:

1. Umani's conviction under the No Hate Act was invalid under Articles 17 and 19 of the ICCPR and Articles 12 and 19 of the UDHR because it was disproportionate to a democratic society and breached his right to a private life.
2. Chatter's fine under the No Hate Act was invalid under Articles 17 and 19 of the ICCPR and Articles 12 and 19 of the UDHR because it is a disseminator of opinion and holding Chatter liable for Umani's words would chill free speech.
3. Umani's conviction under the Anti-Terrorism and Extremism Law was invalid under Articles 17 and 19 of the ICCPR and Articles 12 and 19 of the UDHR because Umani's messages were the expression of opinion and had no connection to violence.
4. Chatter's fine under the Anti-Terrorism and Extremism Law was invalid under Articles 17 and 19 of the ICCPR and Articles 12 and 19 of the UDHR because Chatter is a mere conduit for free speech.

Respectfully submitted this twenty-third day of December,

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Counsel for Applicants