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

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UMANI & CHATTER

*Applicants*

v

STATE OF OMERIA

*Respondent*

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MEMORIAL FOR RESPONDENT

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**TABLE OF CONTENTS**

	<i>Page</i>
LIST OF ABBREVIATIONS.....	iv
LIST OF AUTHORITIES .....	v
STATEMENT OF RELEVANT FACTS.....	xi
Statement of the Case .....	xi
Procedural Posture .....	xvi
STATEMENT OF JURISDICTION .....	xviii
QUESTIONS PRESENTED .....	xix
SUMMARY OF ARGUMENTS.....	xx
ARGUMENTS .....	1
I.    OMERIA PROPERLY PROSECUTED UMANI UNDER THE NO HATE ACT BECAUSE UMANI INCITED HATRED AGAINST THE BRINNAN COMMUNITY AND DEGRADED BRINNANS TO AN INFERIOR STATUS .....	1
A.    Umani’s freedom of expression was properly restricted to prevent the promotion of ethnic hatred.....	2
1.    The restriction of Umani’s expression was prescribed prior to his violations.....	3
2.    Prosecuting Umani met the legitimate purposes of safeguarding the rights of targeted individuals and maintaining public order .....	4
3.    Omeria’s prosecution of Umani was necessary to protect Brinnans from the promotion of ethnic hatred.....	6
B.    The government lawfully interfered with Umani’s privacy to prevent further provocation of hatred against Brinnans and to punish Umani for his crimes .....	8
II.    OMERIA PROPERLY PROSECUTED CHATTER UNDER THE ACT BECAUSE CHATTER IS LIABLE FOR THE HATE SPEECH IT PUBLISHED ON ITS SOCIAL MEDIA SITE .....	11

**TABLE OF CONTENTS *continued***

	<i>Page</i>
A. Chatter’s freedom of expression was properly restricted pursuant to its duty to monitor and remove derogatory speech from its site.....	11
1. The restriction of Chatter’s expression was appropriately prescribed by law.....	12
2. Prosecuting Chatter met the legitimate purposes of safeguarding public order and protecting the reputation and rights of Omerian citizens .....	13
3. Prosecuting Chatter was necessary to combat the significant risk that Chatter took by publishing hate speech .....	14
B. Omeria lawfully interfered with Chatter’s privacy to prevent crime and disorder .....	15
III. OMERIA’S PROSECUTION OF UMANI UNDER THE ANTI-TERRORISM LAW WAS PROPER BECAUSE UMANI’S POSTS INCITED ACTS OF TERROR AGAINST BRINNANS .....	17
A. Omeria properly restricted Umani’s freedom of expression to meet its duty of preventing violence against targeted social groups .....	17
1. The restriction of Umani’s expression was previously established by the Law .....	18
2. Prosecuting Umani met the legitimate purposes of safeguarding the rights of Omerian citizens and protecting national security .....	18
3. Omeria’s prosecution of Umani was necessary to protect citizens from the incitement of violence .....	20
B. Omeria lawfully interfered with Umani’s privacy in the interest of national security.....	22
IV. OMERIA PROPERLY PROSECUTED CHATTER UNDER THE LAW BECAUSE CHATTER PERMITTED ITS SITE TO BE USED AS AN OUTLET TO INCITE VIOLENCE AGAINST BRINNANS.....	24
A. Chatter’s freedom of expression was properly restricted to prevent the incitement of terror .....	24
1. The restriction of Chatter’s expression was previously established by the Law .....	25

**TABLE OF CONTENTS continued**

	<b>Page</b>
2. Prosecuting Chatter met the legitimate purposes of protecting national security and public order.....	25
3. Prosecuting Chatter was necessary to maintain order in Omeria .....	26
B. Omeria lawfully interfered with Chatter’s privacy under an authorized investigation.....	28
PRAYER.....	31

## LIST OF ABBREVIATIONS

Act	No Hate Act of 2011
ACHPR	African Court on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AHRLR	African Human Rights Law Reports
African Charter	African Charter on Human and Peoples' Rights
CHRT	Canadian Human Rights Tribunal
Compromis	The 2015-2016 Price Media Law Moot Court Competition Case
CUP	Cambridge University Press
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EHHR	European Human Rights Reports
European Convention	Convention for the Protection of Human Rights and Fundamental Freedoms
IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ICCPR	International Covenant on Civil and Political Rights
IP address	Internet Protocol Address
Law	Anti-Terrorism & Extremism Law of 2012
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Committee
US	United States

## LIST OF AUTHORITIES

	<i>Page(s)</i>
<b><u>African Court on Human and Peoples' Rights Cases</u></b>	
Amnesty International v Sudan (2000) AHRLR 297 (ACHPR 1999) .....	19
Attorney-General v Clarke (2008) AHRLR 259 (ZaSC 2008) .....	13
Kenneth Good v Republic of Botswana (2010) AHRLR 313/05 (ACHPR 2010) .....	17
Ouko v Kenya (2000) AHRLR 135 (ACHPR 2000) .....	17
Malawi African Association v Mauritania (2000) AHRLR 149 (ACPHR 2000) .....	20
The Law Society of Zimbabwe v The Minister of Transport and Communications and Another (2004) AHRLR 292 (ZwSC 2004) .....	3, 17, 25
Zegveld v Eritrea (2003) AHRLR 84 (ACHPR 2003) .....	2
Zimbabwe Human Rights NGO Forum v Zimbabwe (2006) AHRLR 128 (ACHPR 2006) .....	17, 20–21, 26
Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v Zimbabwe (2009) AHRLR 235 (ACHPR 2009) .....	7
<b><u>European Court of Human Rights Cases</u></b>	
Delfi AS v Estonia App no 64569/09 (ECtHR, 16 June 2015) .....	11, 12–16, 24, 26–27
Féret v Belgium App no 15615/07 (ECtHR, 16 July 2009) .....	5
Hasan and Chaush v Bulgaria (2002) 34 EHRR 55 .....	18
Incal v Turkey (2000) 29 EHRR 449 .....	8–9

**LIST OF AUTHORITIES *continued***

***Page(s)***

Kalac v Turkey (1979–80) 27 EHRR 552 .....	18
Klass v Federal Republic of Germany (1978) 2 EHRR 214 .....	9, 16, 23, 29
Leroy v France App no 36109/03 (ECtHR, 2 February 2008) .....	19
Medya FM Reha Radyo ve İletişim Hizmetleri A.Ş. v. Turkey App no 32842/02 (ECtHR, 14 November 2006) .....	15
Metropolitan Church of Bessarabia v Moldova (2002) 35 EHRR 306 .....	3, 18, 25
Moiseyev v Russia App no 62936/00 (ECtHR, 9 October 2008) .....	3
Pavel Ivanov v Russia App no 35222/04 (ECtHR, 20 February 2007) .....	5
Peck v The United Kingdom (2003) 36 EHRR 41 .....	10
Refah Partisi v Turkey (2003) 37 EHRR 1 .....	4
Silver v United Kingdom (1983) 63 EHRR 347 .....	7
Soulas v France App no 15948/03 (ECtHR, 10 July 2008) .....	21
Sürek v Turkey App no 26682/95 (ECtHR, 8 July 1999) .....	26–27
Sürek v Turkey ECHR 1999-IV 353 .....	6, 11–12, 20, 24
The Sunday Times v United Kingdom (1979) 2 EHRR 245 .....	3, 13, 17, 25

**LIST OF AUTHORITIES *continued***

***Page(s)***

Vejdeland v Sweden App no 1813/07 (ECtHR, 9 February 2012) .....	5
Zana v Turkey (1997) 27 EHRR 607 .....	6, 18, 22–23, 27
<b><u>Inter-American Court of Human Rights Cases</u></b>	
Atala Riffo and Daughters v Chile IACtHR (2012) Series C No 239 .....	9–10
Baldeón-García v Peru IACtHR (2006) Series C No 147 .....	29
Escher et al v Brazil IACtHR (2009) Series C No 208 .....	8, 10, 15, 22, 28–29
Expelled Dominicans and Haitians v Dominican Republic IACtHR (2014) Series C No 282 .....	8, 23, 29
Fontev ecchia and D’Amico v Argentina IACtHR (2011) Series C No 238 .....	1, 9–10, 23, 25
Herrera-Ulloa v Costa Rica IACtHR (2004) Series C No 107 .....	3, 17, 25
Kimel v Argentina IACtHR (2008) Series C No 177 .....	3, 21, 27
Plan de Sánchez Massacre v Guatemala IACtHR (2004) Series C No 116 .....	20, 26–27, 30
Ricardo Canese v Paraguay IACtHR (2004) Series C No 111 .....	3–4, 6, 18
Ríos et al v Venezuela IACtHR (2009) Series C No 194 .....	2–3
‘The Last Temptation of Christ’ (Olmedo-Bustos et al) v Chile IACtHR (2013) Series C No 73 .....	4
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Velásquez-Rodríguez v Honduras  
IACtHR (1988) Series C No 4.....20

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Ashcroft v American Civil Liberties Union  
535 US 564 (2002).....11, 13

Brandenburg v Ohio  
395 US 444 (1969).....19

Cantwell v Connecticut  
310 US 296 (1940).....7, 19

Chaplinsky v New Hampshire  
315 US 568 (1942).....5, 19

Florida v Jardines  
133 S Ct 1409 (2013).....8, 15

Ginsberg v New York  
390 US 629 (1968).....7

Gitlow v New York  
268 US 652 (1925).....20

Katz v United States  
389 US 347 (1967).....28

Smith v Maryland  
442 US 735 (1979).....8, 16, 22

United States v Hensley  
469 US 221 (1985).....9, 16, 17, 29

Virginia v Black  
538 US 343 (2003).....19

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Communication No 1233/2003 UN Doc CCPR/C/95/D/1233/2003 (2009).....13, 21

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***Page(s)***

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Faurisson v France Communication No 550/1993 UN Doc CCPR/C/58/D/550/1993 (1996) .....	7, 18
JRT and the WG Party v Canada Communication No 104/1981 UN Doc CCPR/C/OP/2 (1984) .....	24
Ross v Canada Communication No 736/1997 UN Doc CCPR/C/70/D/736/1997 (2000) .....	5–6
Yoon and Choi v Republic of Korea Communication Nos 1321/1322/2004 UN Doc CCPR/C/88/D/1321-1322/2004 (2006) .....	7

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United States v Christie 624 F3d 558 (3d Cir 2010) .....	28
United States v Perrine 518 F3d 1196 (10th Cir 2008) .....	8
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American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 (ACHR) .....	2–4
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) .....	2, 5, 9, 13, 18, 20, 26

**LIST OF AUTHORITIES *continued***

	<i>Page(s)</i>
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ECHR Registrar, ‘Information Note No 91 on the case-law of the Court’ (November 2006).....	15
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Steven J. Heyman, ‘The First Duty of Government: Protection, Liberty and the Fourteenth Amendment’ (1991) 41 Duke L J 507.....	1
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## STATEMENT OF RELEVANT FACTS

### I. Statement of the Case

1. Omeria is a country that is plagued with racial violence.<sup>1</sup> Omeria became an independent state in 1952 when the warring factions of ethnic Brinnans and Omerians entered into an armistice that partitioned the two groups into separate countries.<sup>2</sup>

2. After the armistice, many ethnic Omerians emigrated to Omeria to live with the ethnic group they ‘historically identified with’.<sup>3</sup> Similarly, many Brinnans migrated to Brinnah to live with the ethnic group they identified with.<sup>4</sup> Today, particularly along the borders, ethnic Brinnan communities remain in Omeria, and ethnic Omerian communities remain in Brinnah.<sup>5</sup> Omeria is plagued with outbreaks of violence between ethnic Brinnan and Omerian communities,<sup>6</sup> and tensions remain high due to the embedded prejudices.<sup>7</sup>

3. Racial violence, often perpetrated by radical militia, continues to plague Omeria.<sup>8</sup> The racial violence often occurs around the June 1 anniversary of the Armistice.<sup>9</sup> The Omerian militia, known as The Night Watch, ‘has been designated an extremist and terrorist group by’

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<sup>1</sup> Compromis, para 3.

<sup>2</sup> *ibid* 1.

<sup>3</sup> *ibid* 2.

<sup>4</sup> *ibid*.

<sup>5</sup> *ibid* 3.

<sup>6</sup> *ibid*.

<sup>7</sup> *ibid*.

<sup>8</sup> *ibid*.

<sup>9</sup> *ibid*.

Omeria and Brinnah.<sup>10</sup> Both governments struggle to control these radicalized citizens, who are intent on committing acts of racially motivated violence.<sup>11</sup>

4. In response to the violence and terrorist activity near its border, Omeria enacted the Anti-Terrorism & Extremism Law of 2012 ('Law').<sup>12</sup> The Law bans statements of extremism and terrorist activity.<sup>13</sup> Extremism is defined as 'vocal or active opposition' to fundamental Omerian values, including democracy, rule of law, 'tolerance of different faiths and beliefs', and calls for the death of individuals within Omeria's borders.<sup>14</sup> The Law further provides that any person who materially supports terrorism, intentionally or recklessly publishes, or causes another to publish, statements understood by the public as extremism or incitement to terrorist activity, shall be punished by civil or criminal penalty.<sup>15</sup> The Law directly applies to statements published through social media platforms.<sup>16</sup> Courts may issue emergency orders to provisionally remedy violations of the Law.<sup>17</sup>

5. Omeria is one of the 'heaviest users of internet bandwidth per capita in the world'.<sup>18</sup> Social media use is particularly popular,<sup>19</sup> and Chatter is the most popular social media

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<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid* 4.

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*

<sup>16</sup> *ibid* 4(d).

<sup>17</sup> *ibid* 4(f).

<sup>18</sup> *ibid* 5.

<sup>19</sup> *ibid.*

platform.<sup>20</sup> Chatter publishes its users' posts, and allows users to interact with each other by 'chatting' in response to one another.<sup>21</sup> Many media organizations use Chatter to publish news stories and editorial content.<sup>22</sup> Chatter's popularity has provided the opportunity for 'trolls' who intimidate other users through belligerent statements intended to distress the victims.<sup>23</sup> Several individuals, in highly publicized cases, have committed suicide due to targeted 'campaigns of online harassment and hateful speech'.<sup>24</sup>

6. In response to the growing problem of 'trolls' and the dissemination of hate speech through Chatter, Omeria enacted the No Hate Act of 2011 ('Act').<sup>25</sup> The Act criminalizes online communication that is widely disseminated and threatens, insults, or degrades persons on account of racial, ethnic, or national status with a maximum of ten years imprisonment.<sup>26</sup> The Act considers a statement of propaganda as an aggravating circumstance during sentencing.<sup>27</sup> The Act also applies to entities that facilitate hateful statements; such entities may be liable for monetary penalty.<sup>28</sup> The Act does not apply to posts intended as purely artistic or journalistic expression.<sup>29</sup>

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<sup>20</sup> *ibid* 6.

<sup>21</sup> *ibid* 7.

<sup>22</sup> *ibid* 8.

<sup>23</sup> *ibid* 9.

<sup>24</sup> *ibid*.

<sup>25</sup> *ibid*.

<sup>26</sup> *ibid* 10(a).

<sup>27</sup> *ibid* 10(b).

<sup>28</sup> *ibid* 10 (d).

<sup>29</sup> *ibid* 10(c).

7. Umani, a Deputy Justice Minister of Omeria,<sup>30</sup> is an influential young politician.<sup>31</sup> He published a series of diatribes against the Brinnan community through his Chatter account, @TheVigilanteInsider.<sup>32</sup> @TheVigilanteInsider is a ‘very popular anonymous’ account with 844,056 followers as of July 2015.<sup>33</sup> The account was suspected to be controlled by a high-level government official.<sup>34</sup>

8. In Umani’s first post, published 3 December 2009, Umani asserted that the Brinnan economy was on the verge of collapse due to ‘rampant godlessness’.<sup>35</sup> In his second post, published 21 May 2012, Umani stated, ‘we fried the Brinnans in the war of ’74, fly their shameful flag, we’ll burn you some more’.<sup>36</sup> Chatter suspended @TheVigilanteInsider’s account for one day due to complaints about the second post.<sup>37</sup> In a third post, published 5 November 2013, Umani referred to Brinnans as ‘childkillers’.<sup>38</sup> Many commentators believed the third post referred to a disproven yet widespread belief that Brinnan forces bombed an ethnic Omerian refugee camp.<sup>39</sup> In a fourth post, published 19 April 2014, Umani referred to the Armistice anniversary, stating it ‘would be a shame if those brutes within our borders magically

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<sup>30</sup> *ibid* 11.

<sup>31</sup> *ibid* 12.

<sup>32</sup> *ibid* 14.

<sup>33</sup> *ibid* 13.

<sup>34</sup> *ibid*.

<sup>35</sup> *ibid* 14(a).

<sup>36</sup> *ibid* 14(b).

<sup>37</sup> *ibid* 14(b)(i).

<sup>38</sup> *ibid* 14(c).

<sup>39</sup> *ibid* 15.

disappeared... kaboom'.<sup>40</sup> The post was re-chatted 3,500 times by other Chatter users.<sup>41</sup> In a fifth post, published 22 May 2014, Umani encouraged users to do their part to 'purify Omeria', stating, 'your country will thank and pardon you'.<sup>42</sup> A Chatter user named @Nightwatcher00 responded to Umani's fifth post, stating 'hearing you loud and clear'.<sup>43</sup> Umani responded to @Nightwatcher00, stating 'God willing'.<sup>44</sup> The Omerian militia responsible for terrorist activity is known as The Night Watch.<sup>45</sup> Despite the outcry, protests, and complaints over Umani's anonymous posts, no action was taken through Chatter's own initiative in response to Post #1 and Posts #3–6.<sup>46</sup> In response to Umani's posts, the leading Omeria newspaper questioned 'whether the anti-Brinnan stance of high-ranking officials in Omeria's government' was responsible for the slow response by the government to @TheVigilanteInsider's provocation, suggesting that the government and Chatter would have 'blood on their hands' if violence ensued.<sup>47</sup>

9. Although no violence occurred on the Armistice anniversary,<sup>48</sup> the Omerian government, in response to the public outcry against @TheVigilanteInsider's posts, obtained an emergency court order pursuant to the Anti-Terrorism Law to force Chatter to delete Posts #4–6 and disclose

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<sup>40</sup> *ibid* 14(d).

<sup>41</sup> *ibid* 14(d)(i).

<sup>42</sup> *ibid* 14(e).

<sup>43</sup> *ibid* 14(e)(i).

<sup>44</sup> *ibid* 14(e)(ii).

<sup>45</sup> *ibid* 3.

<sup>46</sup> *ibid* 14–17.

<sup>47</sup> *ibid* 16.

<sup>48</sup> *ibid* 18.



the identity of @TheVigilanteInsider.<sup>49</sup> Chatter deleted the posts but refused to disclose the identity of the user, resulting in a fine of US\$ 10,000 per day until it complied seven days later, on 30 May 2014.<sup>50</sup> Through the use of @TheVigilanteInsider's email address and IP addresses, the government quickly identified Umani as the user and informed the media of its discovery on 31 May 2014, the day prior to the Armistice anniversary.<sup>51</sup>

## **II. Procedural Posture**

10. The Omerian government brought charges against Umani and Chatter for violating the No Hate Act through Posts #1–3 and violating the Anti-Terrorism & Extremism Law through Posts #4–6.<sup>52</sup> Umani claimed that Posts #1–3 were artistic in nature, and that Posts #4–6 were not intended to induce terrorism.<sup>53</sup> 'Umani was convicted on all counts and sentenced to 2 years in prison'.<sup>54</sup> Chatter was held liable for all posts except #2, and was fined at the equivalent of US\$ 5 million.<sup>55</sup>

11. Umani and Chatter appealed to the Omerian Supreme Court, which upheld Umani's sentence and Chatter's fine.<sup>56</sup> The Supreme Court is Omeria's highest court; thus Umani and

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<sup>49</sup> *ibid* 17.

<sup>50</sup> *ibid*.

<sup>51</sup> *ibid*.

<sup>52</sup> *ibid* 19–20.

<sup>53</sup> *ibid* 19.

<sup>54</sup> *ibid*.

<sup>55</sup> *ibid* 20.

<sup>56</sup> *ibid* 21.

Chatter exhausted all domestic remedies.<sup>57</sup> Umani and Chatter challenged their verdicts in this Court, and this Court certified the appeals and allowed arguments.<sup>58</sup>

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<sup>57</sup> *ibid.*

<sup>58</sup> *ibid.* 22.

## **STATEMENT OF JURISDICTION**

Umani and Chatter, the Applicants, and the State of Omeria, the Respondent, submit this dispute before this Honourable Court, the Universal Court of Free Expression, a Special Chamber of the Universal Court of Human Rights. This dispute concerns the freedoms of expression and privacy 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 Honourable Court has jurisdiction as the final adjudicator in place of all regional courts once parties have exhausted all domestic remedies. Because Umani's sentence and Chatter's fine have been upheld on appeal to Omeria's Supreme Court, all domestic appeals have been exhausted and this Honourable Court has jurisdiction in this matter.

The State of Omeria requests this Honourable Court to issue a judgment in accordance with relevant international law, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, conventions, jurisprudence developed by relevant courts, and principles of international law.

## QUESTIONS PRESENTED

- I. Under Articles 12 and 19 of the UDHR, Articles 17 and 19 of the ICCPR, and international principles, did Omeria properly prosecute Umani under the No Hate Act for publishing Chatter Posts #1–3?
- II. Under Articles 12 and 19 of the UDHR, Articles 17 and 19 of the ICCPR, and international principles, did Omeria properly prosecute Chatter under the No Hate Act for publishing and disseminating Umani’s Chatter Posts #1–3?
- III. Under Articles 12 and 19 of the UDHR, Articles 17 and 19 of the ICCPR, and international principles, did Omeria properly prosecute Umani under the Anti-Terrorism & Extremism Act for publishing Chatter Posts #4–6?
- IV. Under Articles 12 and 19 of the UDHR, Articles 17 and 19 of the ICCPR, and international principles, did Omeria properly prosecute Chatter under the Anti-Terrorism & Extremism Act for publishing and disseminating Umani’s Chatter Posts #4–6?

## SUMMARY OF ARGUMENTS

I. Omeria properly prosecuted Umani for his violations of the No Hate Act of 2011 under his anonymous Chatter username, @TheVigilanteInsider. The Act criminalizes widely disseminated online hate speech that degrades persons on account of their race, color, national, or ethnic status. The Act was appropriately prescribed before the dissemination of Umani's third Chatter post and was not a means of prior censorship on Umani's expression because it penalized him through subsequent imposition of sanctions. His prosecution met the legitimate state interests of preventing disorder in society and protecting the reputation and rights of others. The Act was enacted in response to the growing problem of online bullies that intimidated individuals and cost the lives of several victims.

Omeria's prosecution of Umani was necessary to prevent further societal disorder. A restriction on freedom of expression is necessary when it implies the existence of a pressing social need, is proportionate to a legitimate state aim, and is narrowly tailored to meet the government's legitimate interest. Umani's hate propaganda eroded the dignity of the Brinnan community and degraded Brinnans to an inferior status. Umani's punishment was proportionate to the severity of his crime because his inflammatory speech posed a significant risk to the welfare of individual citizens and was necessary to prevent further attacks upon the community.

Omeria's investigation of Umani's anonymous online identity did not subject Umani to an arbitrary interference with his privacy. Umani had no reasonable expectation of privacy in the email and IP addresses that he voluntarily turned over to Chatter upon his creation of the @TheVigilanteInsider account. Further, the required disclosure of his identifying information was foreseeable, met the legitimate state purpose of preventing crimes committed by anonymous online bullies, and was the only means of ensuring his violations under the Act were penalized.

II. Omeria properly prosecuted Chatter under the No Hate Act for breaching its third-party publisher duties when it allowed its site to be used as a forum to abuse the rights of others. The Act established that liability would be imposed upon entities that facilitated the dissemination of unlawful hate speech. Chatter's liability assessment met the legitimate state aim of protecting the rights and reputation of the Brinnan community, as well as protecting the safety of the Brinnan community from the potentially devastating ramifications of incendiary speech. The penalty was necessary to prevent further harm from materializing as a result of Umani's posts—harmful effects that were multiplied by every re-chat of the posts.

Chatter was not subjected to an arbitrary interference with its privacy when it was required to disclose the identifying information of @TheVigilanteInsider. Chatter had no reasonable expectation of privacy in the identifying information of @TheVigilanteInsider because such information was voluntarily released by Umani, and the State was authorized to receive the information pursuant to a concurrent investigation of @TheVigilanteInsider. It was foreseeable that Chatter would be required to disclose @TheVigilanteInsider's information under a state investigation of the Act's violations. Omeria's prosecution of Umani was justified by its legitimate interest in preventing crime and was necessary to avoid further harm to the Brinnan community.

III. Omeria properly prosecuted Umani for his Chatter posts that were published and disseminated in violation of the Anti-Terrorism & Extremism Law of 2012. The Law forbids the publishing of statements of extremism or statements encouraging terrorism. The Law criminalized such statements prior to Umani's violations of the Law. Omeria's prosecution of Umani met the legitimate purpose of protecting national security, given the sensitive nature of Omeria's fight against terrorism within its borders. Umani's posts had the strong possibility of

exacerbating an already explosive situation, thus his prosecution was necessary to maintain peace and prevent further violence from manifesting.

Omeria lawfully interfered with Umani's privacy during an authorized investigation of @TheVigilanteInsider's identity. Omeria appropriated the @TheVigilanteInsider's information through a court-authorized emergency order obtained pursuant to the Anti-Terrorism Law. Further, Umani had no objectively reasonable expectation of privacy in subscriber information that he voluntarily turned over to Chatter. The interference with Umani's privacy was justified by Omeria's legitimate purpose of effectively countering terror threats, and was necessary to prevent any threats against the Brinnan community from arising.

IV. Omeria properly prosecuted Chatter for its violations of the Anti-Terrorism Law. Chatter recklessly published user statements that glorified violence and incited terror. Prior to Chatter's violations, the Law established that liability would be imposed on third parties that permitted the publishing of extremist or terrorist statements. As a media source, Chatter was responsible to ensure that the statements it published did not infringe upon the rights of others. Prosecuting Chatter met the legitimate purpose of protecting the nation from terror and violence. Imposing liability on Chatter was necessary to ensure that Chatter did not allow its social media platform to be used as an outlet to stir up violence and hate, particularly in an environment of already existing conflict.

Chatter was not subject to an arbitrary or unlawful interference with its privacy during Omeria's investigation. Omeria interfered with Chatter's privacy to uncover the identity of a criminal that Chatter was harboring through its noncompliance with Omeria's investigation. The Law permitted Omeria to subject Chatter to the specifications of an emergency order to remedy violations of the Act, which included uncovering the identity of individuals who published

unlawful statements. The interference was justified by the needs to protect national security and deter future violations.



## ARGUMENTS

The State's primary duty is to protect its citizens 'from injury and violence'<sup>59</sup> so that 'the rights and freedoms set forth' in a democratic society 'can be fully realized'.<sup>60</sup> Omeria enacted the No Hate Act to protect its citizens from ethnic discrimination and properly prosecuted Umani for provoking racial enmity against Brinnans. Omeria properly prosecuted Chatter under the Act for publishing Umani's messages in violation of its duties and responsibilities to monitor and remove its users' unlawful speech. Omeria enacted the Anti-Terrorism & Extremism Law to protect its citizens from violent acts of terror. Omeria properly prosecuted Umani under the Law for inciting violence against Brinnans. Omeria properly prosecuted Chatter under the Law for failing to ensure that its publication did not infringe on the liberties of others. All prosecution was consistent with the ICCPR and the UDHR.<sup>61</sup>

I. OMERIA PROPERLY PROSECUTED UMANI UNDER THE NO HATE ACT BECAUSE UMANI INCITED HATRED AGAINST THE BRINNAN COMMUNITY AND DEGRADED BRINNANS TO AN INFERIOR STATUS.

'[E]very fundamental right is to be exercised with regard for other fundamental rights'.<sup>62</sup> A state must protect 'rights that may be affected due to an abuse of freedom of expression' by observing the limits established by international principles.<sup>63</sup> The hateful nature of Umani's

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<sup>59</sup> John Locke, 'Third Letter on Toleration' in Peter Laslett (ed) *Two Treatises of Government* (CUP 1988); Steven J. Heyman, 'The First Duty of Government: Protection, Liberty and the Fourteenth Amendment' (1991) 41 Duke L J 507, 515.

<sup>60</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 28.

<sup>61</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) arts 12, 19, 28, 29(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) arts 17, 19.

<sup>62</sup> *Fontevicchia and D'Amico v Argentina* IACtHR (2011) Series C No 238, para 50.

<sup>63</sup> *ibid.*

Chatter posts resulted in the lawful restriction of his freedom of expression under the No Hate Act. Further, the interference with his privacy was justified by the State's legitimate interests in preventing crime and disorder.

**A. Umani's freedom of expression was properly restricted to prevent the promotion of ethnic hatred.**

While freedom of expression is a protected right,<sup>64</sup> it is not absolute<sup>65</sup> and cannot be used to abuse the rights of others.<sup>66</sup> The ICCPR permits restrictions on expression that protect the right to honor, reputation, and public order.<sup>67</sup> Similarly, the UDHR permits limitations that respect the rights of others for the just purposes 'of morality, public order and the general welfare in a democratic society'.<sup>68</sup>

The freedom of expression may be limited under specific circumstances.<sup>69</sup> The limitation must be previously established by law, pursue a legitimate state purpose, and be necessary in a

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<sup>64</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 19; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 (ACHR) art 13; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) art 9; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10.

<sup>65</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3); *Zegveld v Eritrea* (2003) AHRLR 84 (ACHPR 2003), para 59; *Tristán Donoso v Panamá* IACtHR (2009) Series C 193, para 110.

<sup>66</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3); *Tristán Donoso v Panamá* IACtHR (2009) Series C 193, para 110; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 14.

<sup>67</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19.

<sup>68</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2).

<sup>69</sup> *Ríos et al v Venezuela* IACtHR (2009) Series C No 194, para 346.

democratic society.<sup>70</sup> If all prongs are met, the restriction is valid.<sup>71</sup>

1. The restriction of Umani's expression was prescribed prior to his violations.

Restrictions on the freedom of expression must be prescribed by law prior to an alleged violation<sup>72</sup> and must not be a means of prior censorship.<sup>73</sup> The abuse of freedom of expression 'cannot be controlled through preventative measures but through subsequent imposition of sanctions'.<sup>74</sup> An established law 'must be sufficiently accessible and foreseeable as to its effects, that is formulated with sufficient precision to enable the individual—if need be with appropriate advice—to regulate his conduct'.<sup>75</sup> Lastly, the law must express 'with sufficient clarity the scope of any discretion conferred on the competent authorities and the manner of its exercise'.<sup>76</sup> The level of required precision is determined by the circumstances, depending on the content of the law and to whom it is directed.<sup>77</sup>

The Act is precise in criminalizing online communication that is widely disseminated and

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<sup>70</sup> *Herrera-Ulloa v Costa Rica* IACtHR (2004) Series C No 107, para 120; *The Sunday Times v United Kingdom* (1979) 2 EHHR 245, para 45; *The Law Society of Zimbabwe v The Minister of Transport and Communications and Another* (2004) AHRLR 292 (ZwSC 2004), para 18.

<sup>71</sup> *Rios et al v Venezuela* IACtHR (2009) Series C No 194, para 346.

<sup>72</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2); American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 (ACHR) art 12(3); *Kimel v Argentina* IACtHR (2008) Series C No 177, para 63.

<sup>73</sup> *Ricardo Canese v Paraguay* IACtHR (2004) Series C No 111, para 95.

<sup>74</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts 13 and 29 of the American Convention on Human Rights) Advisory Opinion OC-5/85, Inter-American Court of Human Rights Series A No 5 (13 November 1985), para 39.

<sup>75</sup> *Metropolitan Church of Bessarabia v Moldova* (2002) 35 EHRR 306, para 109.

<sup>76</sup> *Moiseyev v Russia* App no 62936/00 (ECtHR, 9 October 2008), para 266.

<sup>77</sup> *Metropolitan Church of Bessarabia v Moldova* (2002) 35 EHRR 306, para 109.

threatens, insults, or degrades persons on account of race, ethnicity, or nationality.<sup>78</sup> It provides sufficient clarity regarding the discretion afforded to authorities.<sup>79</sup> The criminal consequences—including a maximum ten-year sentence—are written in a plain manner.<sup>80</sup> The Act is not a means of prior censorship.<sup>81</sup> It imposes liability on individuals who have abused their freedom of expression by unlawfully harming others.<sup>82</sup>

Umani could not be prosecuted for Posts #1 and #2 because the posts were disseminated before the enactment of the Act.<sup>83</sup> However, Post #3 was published after the enactment of the Act,<sup>84</sup> and Umani was provided sufficient notice of liability.

2. Prosecuting Umani met the legitimate purposes of safeguarding the rights of targeted individuals and maintaining public order.

The Act's restriction on speech must promote a legitimate government interest.<sup>85</sup> The Act may restrict speech to protect the reputation or rights of others and to prevent disorder and crime.<sup>86</sup>

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<sup>78</sup> Compromis, para 10(a).

<sup>79</sup> *ibid* 10(a)–(b).

<sup>80</sup> *ibid*, para 10.

<sup>81</sup> American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 (ACHR) art 13; *'The Last Temptation of Christ' (Olmedo-Bustos et al) v Chile* IACtHR (2013) Series C No 73, para 63.

<sup>82</sup> *ibid*.

<sup>83</sup> Compromis, paras 9, 14(a)–(b).

<sup>84</sup> *ibid* 14(c).

<sup>85</sup> *Refah Partisi v Turkey* (2003) 37 EHRR 1, para 67; *Ricardo Canese v Paraguay* IACtHR (2004) Series C No 111, para 96.

<sup>86</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3).

Omeria has a legitimate interest in protecting the rights and reputation of the Brinnan community.<sup>87</sup> A state may restrict ethnically discriminatory speech that destroys the rights of others,<sup>88</sup> which includes the right to be free from degrading treatment. For instance, the ECHR in *Pavel Ivanov v Russia* held that an individual's portrayal of persons of the Jewish faith as a source of evil in Russia was an impermissible exercise of his freedom of expression, as it constituted incitement to racial hatred.<sup>89</sup> The 'general and vehement attack on one ethnic group' contradicted the 'Convention's underlying values, notably tolerance, social peace and non-discrimination'.<sup>90</sup> Through his posts, Umani attacked Brinnans by 'insulting, holding up to ridicule [and] slandering' them.<sup>91</sup> This irresponsible speech is not worthy of protection,<sup>92</sup> it 'is of such slight social value . . . that any benefit derived from [it is] clearly outweighed by the social interest in order and morality'.<sup>93</sup>

Omeria also has a legitimate interest in restricting incendiary hate speech to maintain order,<sup>94</sup> particularly considering the historical and ongoing violence between Omerian and

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<sup>87</sup> *Ross v Canada* Communication No 736/1997 UN Doc CCPR/C/70/D/736/1997 (2000), para 11.5; *Féret v Belgium* App no 15615/07 (ECtHR, 16 July 2009), para 55.

<sup>88</sup> *Vejdeland v Sweden* App no 1813/07 (ECtHR, 9 February 2012), para 49; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 17.

<sup>89</sup> *Pavel Ivanov v Russia* App no 35222/04 (ECtHR, 20 February 2007), paras 1, 3.

<sup>90</sup> *ibid* 1–2.

<sup>91</sup> *Vejdeland v Sweden* App no 1813/07 (ECtHR, 9 February 2012), para 55.

<sup>92</sup> *ibid*.

<sup>93</sup> *Chaplinsky v New Hampshire* 315 US 568, 572 (1942).

<sup>94</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3); *Féret v Belgium* App no 15615/07 (ECtHR, 16 July 2009), para 55.

Brinnan communities.<sup>95</sup> Umani's third post refers to a disproven yet widespread belief<sup>96</sup> that Brinnans are 'childkillers'.<sup>97</sup> The provocation of such belief had the potential of instigating further tension, bias, prejudice, and disorder in society.<sup>98</sup> Advocacy of racial hatred that 'constitutes incitement to discrimination' is expressly prohibited by the ICCPR.<sup>99</sup> Consequently, Omeria's duty to protect its citizens from ethnically discriminatory attacks required the State to prosecute Umani.<sup>100</sup>

3. Omeria's prosecution of Umani was necessary to protect Brinnans from the promotion of ethnic hatred.

A restriction on speech must be necessary in a democratic society.<sup>101</sup> Necessity 'implies the existence of a "pressing social need"'.<sup>102</sup> While the government must pursue its objective through narrowly tailored means<sup>103</sup> that are proportionate to legitimate aims,<sup>104</sup> states enjoy a 'margin of appreciation' when assessing the need for a restriction to protect the public interest.<sup>105</sup>

Individual and community rights cannot be fully realized in Omeria with the perpetuation

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<sup>95</sup> Compromis, paras 1–3.

<sup>96</sup> *ibid* 15.

<sup>97</sup> *ibid* 14(c).

<sup>98</sup> *Ross v Canada* Communication No 736/1997 UN Doc CCPR/C/70/D/736/1997 (2000), para 11.5.

<sup>99</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 20.

<sup>100</sup> *ibid*, art 19(3); Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2).

<sup>101</sup> *Tristán Donoso v. Panamá* IACtHR (2009) Series C 193, para 110.

<sup>102</sup> *Sürek v Turkey* ECHR 1999-IV 353, para 33.

<sup>103</sup> *Ricardo Canese v Paraguay* IACtHR (2004) Series C No 111, para 96.

<sup>104</sup> *Zana v Turkey* (1997) 27 EHRR 607, para 51.

<sup>105</sup> *ibid*.

of hate-filled statements.<sup>106</sup> The Act narrowly proscribes<sup>107</sup> the speech it restricts—hate speech that is electronically and widely disseminated.<sup>108</sup> Such proscription is necessary to combat racism<sup>109</sup> and protect the welfare of the community.<sup>110</sup>

Abusive speech is not protected, and ‘its punishment as a criminal act’ is subsequently justified.<sup>111</sup> A criminal punishment is proportionate ‘to the severity of the crime itself’<sup>112</sup> when ‘a fair balance has been struck between the protection of the rights’ of an individual and ‘the interests of the society as a whole’.<sup>113</sup> Here, there was no alternative method<sup>114</sup> to protect individuals targeted by hate speech.<sup>115</sup> Hate propaganda causes targeted groups to feel inferior, undermines their dignity, erodes tolerance and open-mindedness, and can lead to an increase in acts of hate and violence.<sup>116</sup> Umani’s malicious speech is antithetical to the aims of a civilized, democratic society. Consequently, Umani was lawfully and necessarily prosecuted for his unlawful attack upon the Brinnan community.

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<sup>106</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) arts 28–29.

<sup>107</sup> *Silver v United Kingdom* (1983) 63 EHRR 347, para 97.

<sup>108</sup> *Compromis*, para 10(a).

<sup>109</sup> *Faurisson v France* Communication No 550/1993 UN Doc CCPR/C/58/D/550/1993 (1996), paras 2.3, 9.7.

<sup>110</sup> *Ginsberg v New York* 390 US 629, 636 (1968); *Compromis*, para 9.

<sup>111</sup> *Cantwell v Connecticut* 310 US 296, 309–10 (1940).

<sup>112</sup> *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v Zimbabwe* (2009) AHRLR 235 (ACHPR 2009), para 176.

<sup>113</sup> *ibid.*

<sup>114</sup> *Yoon and Choi v Republic of Korea* Communication Nos 1321/1322/2004 UN Doc CCPR/C/88/D/1321-1322/2004 (2006), paras 6.4, 8.3.

<sup>115</sup> *Citron v Zündel* (2002) CanLII 23557 (CHRT), para 76.

<sup>116</sup> *ibid* 77.

**B. The government lawfully interfered with Umani’s privacy to prevent further provocation of hatred against Brinnans and to punish Umani for his crimes.**

Individuals are protected from arbitrary and unreasonable interferences with privacy.<sup>117</sup> However, the right to privacy is ‘not absolute and restrictions [a]re permitted in view of the need to protect other guarantees’.<sup>118</sup> An individual has no reasonable expectation of privacy in information that is voluntarily disclosed to third parties.<sup>119</sup> Umani had no reasonable expectation of privacy in his email and IP addresses because he voluntarily turned that information over to Chatter when he created his @TheVigilanteInsider account.<sup>120</sup>

Omeria’s concurrent investigation of Umani under the Anti-Terrorism & Extremism Law allowed Omeria to obtain a duly founded court order to acquire information regarding @TheVigilanteInsider’s identity.<sup>121</sup> It would be unreasonable<sup>122</sup> for Umani to expect his user identification to remain private when under authorized investigation. Additionally, an interference with privacy is reasonable when it is established by law, pursues a legitimate purpose, and is ‘necessary in a democratic society’.<sup>123</sup>

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<sup>117</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 12; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 17; *Escher et al v Brazil* IACtHR (2009) Series C No 208, para 122; *Florida v Jardines* 133 S Ct 1409, 1414 (2013). See also George E. Edwards, ‘International Human Rights Law Challenges to the New International Criminal Court: The Search and Seizure Right to Privacy’ (2001) 26 Yale J Intl L 323, 393.

<sup>118</sup> *Escher et al v Brazil* IACtHR (2009) Series C No 208, para 122.

<sup>119</sup> *Smith v Maryland* 442 US 735, 743–44 (1979).

<sup>120</sup> *ibid*; *United States v Perrine* 518 F3d 1196, 1204–05 (10th Cir 2008); *Compromis*, paras 13, 17.

<sup>121</sup> *Compromis*, paras 4(f), 17. See also *Expelled Dominicans and Haitians v Dominican Republic* IACtHR (2014) Series C No 282, para 427.

<sup>122</sup> *Expelled Dominicans and Haitians v Dominican Republic* IACtHR (2014) Series C No 282, para 427.

<sup>123</sup> *Incal v Turkey* (1998) 29 EHRR 449, para 40.



A state's interference with an individual's privacy must be regulated by law.<sup>124</sup> The Act states that offenders shall be liable for online dissemination of unprotected speech.<sup>125</sup> It is foreseeable that a violation of the Act will result in criminal responsibility and a lawful investigation.<sup>126</sup> Consequently, it was foreseeable that the State would investigate the identity of @TheVigilanteInsider by obtaining his subscriber information.

A state may interfere with privacy to prevent disorder,<sup>127</sup> deter crime,<sup>128</sup> and protect the rights of others.<sup>129</sup> The interference with Umani's privacy was justified by Omeria's investigative purpose; the ability to ascertain a person's identity 'promotes the strong government interest in solving crimes and bringing offenders to justice'.<sup>130</sup> Umani's posts likely incited further enmity between Brinnans and Omerians. The State had an interest in uncovering the identity of @TheVigilanteInsider to prevent the publishing of additional hateful posts.

Significantly, a high-level leader is 'subject to greater scrutiny' regarding aspects that 'could be linked to his private life' but reveal matters of public interest.<sup>131</sup> The government's disclosure of @TheVigilanteInsider's identity was relevant to its aim of deterring similar crime

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<sup>124</sup> *Atala Riffo and Daughters v Chile* IACtHR (2012) Series C No 239, para 164.

<sup>125</sup> *Compromis*, para 10(a).

<sup>126</sup> *ibid* 10.

<sup>127</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2); *Klass v Federal Republic of Germany* (1978) 2 EHRR 214, para 44.

<sup>128</sup> *Klass v Federal Republic of Germany* (1978) 2 EHRR 214, para 44.

<sup>129</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 8(2).

<sup>130</sup> *United States v Hensley* 469 US 221, 229 (1985).

<sup>131</sup> *Fontevicchia and D'Amico v Argentina* IACtHR (2011) Series C No 238, para 60. See also *Incal v Turkey* (1998) 29 EHRR 449, para 54.

among other high-level leaders. As Deputy Justice Minister,<sup>132</sup> Umani was charged with upholding justice for everyone in Omeria. Despite his position, Umani condoned hatred and contempt towards the Brinnan community.<sup>133</sup> Citizens already suspected that the person behind @TheVigilanteInsider's account was a high-level government leader.<sup>134</sup> Had the government not proceeded with such an investigation, society would have believed that the State itself condoned the views Umani perpetrated.<sup>135</sup> Society's interest<sup>136</sup> in being informed about circumstances that 'affect[ed] general rights' and 'entail[ed] major consequences'<sup>137</sup> outweighed any expectation of privacy in @TheVigilanteInsider's identity.

An interference with privacy must be necessary in a democratic society<sup>138</sup> and proportionate to achieve its legitimate purpose.<sup>139</sup> The acquisition of @TheVigilanteInsider's information was necessary to bring Umani to justice and maintain order in Omeria.<sup>140</sup> There were no expedient means of identifying and punishing an anonymous violator other than using subscriber information.

The interference with Umani's privacy was 'proportionate and necessary to achieve the

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<sup>132</sup> Compromis, para 11.

<sup>133</sup> *ibid* 14.

<sup>134</sup> *ibid*, para 13.

<sup>135</sup> *ibid* 13, 16.

<sup>136</sup> *Peck v The United Kingdom* (2003) 36 EHRR 41, para 78.

<sup>137</sup> *Fontevicchia and D'Amico v Argentina* IACtHR (2011) Series C No 238, para 61.

<sup>138</sup> *Escher et al v Brazil* IACtHR (2009) Series C No 208, para 116; *Atala Riffo and Daughters v Chile* IACtHR (2012) Series C No 239, para 164.

<sup>139</sup> *Antonius Cornelis Van Hulst v Netherlands* Communication No 903/1999 UN Doc CCPR/C/82/D/903/1999 (2004), para 7.10.

<sup>140</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2).

legitimate purpose of combating crime, and [was] therefore reasonable in the particular circumstances of the case'.<sup>141</sup> Accordingly, the prosecution of Umani entailed no violation of his expression or privacy rights.

## II. OMERIA PROPERLY PROSECUTED CHATTER UNDER THE ACT BECAUSE CHATTER IS LIABLE FOR THE HATE SPEECH IT PUBLISHED ON ITS SOCIAL MEDIA SITE.

'The Internet ... offer[s] a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity'.<sup>142</sup> However, the Internet cannot be used as a forum to abuse the rights of individuals or function as a means of disorder and crime in society.<sup>143</sup>

### A. Chatter's freedom of expression was properly restricted pursuant to its duty to monitor and remove derogatory speech from its site.

Third-party publishers fulfill the essential function of imparting 'information and ideas on all matters of public interest'.<sup>144</sup> Nonetheless, such parties must disseminate information in a manner that is consistent with their 'duties and responsibilities';<sup>145</sup> media sources are liable for failing to properly and expediently monitor unlawful speech.<sup>146</sup> Restrictions on the media are measured 'by reference to governmental objectives'.<sup>147</sup> Restrictions are permissible when they

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<sup>141</sup> *Antonius Cornelis Van Hulst v Netherlands* Communication No 903/1999 UN Doc CCPR/C/82/D/903/1999 (2004), para 7.10.

<sup>142</sup> *Ashcroft v American Civil Liberties Union* 535 US 564, 566 (2002).

<sup>143</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), paras 110, 149.

<sup>144</sup> *ibid* 132.

<sup>145</sup> *Sürek v Turkey* ECHR 1999-IV 353, para 36.

<sup>146</sup> *ibid* 94.

<sup>147</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts 13 and 29 of the American Convention on Human Rights) Advisory Opinion OC-5/85, Inter-American Court of Human

are prescribed by law, entail a legitimate purpose, and are necessary to a democratic society.<sup>148</sup>

1. The restriction of Chatter’s expression was appropriately prescribed by law.

A law must be established before liability is imposed on an entity.<sup>149</sup> Enacted in 2011,<sup>150</sup> the Act precisely states that an entity responsible for facilitating proscribed statements may be liable for monetary penalty,<sup>151</sup> and delineates aggravating circumstances.<sup>152</sup> The Act was enacted in response to the growing problem of ‘trolls’ on Chatter,<sup>153</sup> thus Chatter should have been aware of its provisions.

Chatter’s responsibility to monitor and expediently remove speech that violated the Act was foreseeable even if the Act did not state such duties. A law may satisfy the requirement of foreseeability even when a professional entity has to obtain legal advice to determine the risks and consequences of a given action.<sup>154</sup> The Act’s provisions make it clear that Chatter is ‘liable for any defamatory statements made in its media publication’.<sup>155</sup> The restrictions on Chatter’s

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Rights Series A No 5 (13 November 1985), para 46.

<sup>148</sup> *Sürek v Turkey* ECHR 1999-IV 353, para 24.

<sup>149</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3); *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts 13 and 29 of the American Convention on Human Rights) Advisory Opinion OC-5/85, Inter-American Court of Human Rights Series A No 5 (13 November 1985), para 39.

<sup>150</sup> *Compromis*, para 9.

<sup>151</sup> *ibid* 10(d).

<sup>152</sup> *ibid* 10(b).

<sup>153</sup> *ibid* 9.

<sup>154</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 129.

<sup>155</sup> *ibid* 62.

expression were sufficiently prescribed by law.

2. Prosecuting Chatter met the legitimate purposes of safeguarding public order and protecting the reputation and rights of Omerian citizens.

The Act must promote a legitimate interest in restricting the expression of third-party publishers.<sup>156</sup> Such expression may be restricted to protect public order,<sup>157</sup> as well as the reputation and rights of others.<sup>158</sup> It is a publisher's responsibility to monitor its portal's contents.<sup>159</sup>

The restriction on Chatter's expression entails the legitimate purpose of protecting the reputation and rights of others.<sup>160</sup> Speech must be in consonance with the cultural values and norms of a community,<sup>161</sup> consequently, third-party publishers cannot facilitate statements that are contrary to community norms. Inflammatory speech that demeans ethnic groups gives the illusion that targeted groups are inferior and can undermine public safety and order.<sup>162</sup> Here, Chatter facilitated Umani's hate speech by publishing his statements and is responsible for any

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<sup>156</sup> *The Sunday Times v United Kingdom* (1979) 2 EHHR 245, para 57.

<sup>157</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10(2).

<sup>158</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10(2); *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 130.

<sup>159</sup> *Ashcroft v American Civil Liberties Union* 535 US 564, 583 (2002); *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 158.

<sup>160</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 130.

<sup>161</sup> *Ashcroft v American Civil Liberties Union* 535 US 564, 583 (2002); *Attorney-General v Clarke* (2008) AHRLR 259 (ZaSC 2008), para 88.

<sup>162</sup> *Citron v Zündel* (2002) CanLII 23557 (CHRT), para 76; *AK and AR v Uzbekistan* Communication No 1233/2003 UN Doc CCPR/C/95/D/1233/2003 (2009), paras 4.1, 7.3.

damage incurred as a result of his statements.<sup>163</sup> Omeria has a legitimate interest in ensuring that Chatter adequately fulfills its duties and responsibilities to monitor and remove published statements that are harmful to others.

3. Prosecuting Chatter was necessary to combat the significant risk that Chatter took by publishing hate speech.

A restriction on expression must be necessary and proportionate to a legitimate state aim.<sup>164</sup> The proportionality of a restriction on media websites is determined by the context of published statements, the measures taken to prevent or remove harmful statements, the liability of the actual authors of the speech, and the consequences of liability.<sup>165</sup>

Omeria must hold Chatter liable for the dissemination of hate speech to meet its legitimate aims of public order, and the protection of the rights and reputation of others.<sup>166</sup> Incendiary hate speech poses a significant risk to Omerian citizens; the Act's restriction enables the State to protect its citizens.

Additionally, a media source must be aware of the content that it publishes; such awareness is a key element in the assessment of proportionality.<sup>167</sup> Though Chatter did not wholly neglect its duty to monitor and remove harmful speech, as it temporarily suspended @TheVigilanteInsider's account,<sup>168</sup> its procedure to detect and remove hateful posts was

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<sup>163</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), paras 110, 151.

<sup>164</sup> *Antonius Cornelis Van Hulst v Netherlands* Communication No 903/1999 UN Doc CCPR/C/82/D/903/1999 (2004), para 7.10.

<sup>165</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 142.

<sup>166</sup> *ibid* 130.

<sup>167</sup> *ibid* 153.

<sup>168</sup> *Compromis*, para 14(b)(i).

insufficient,<sup>169</sup> exemplified by Chatter’s unresponsiveness to @TheVigilanteInsider’s posts and thousands of re-chats of Umani’s third post in four minutes.<sup>170</sup> Chatter could have employed a mechanism of automatic deletion of posts based on certain words,<sup>171</sup> and should have exercised a greater degree of caution.

Lastly, Chatter’s liability assessment<sup>172</sup> was a proportionate penalty on Chatter’s reckless facilitation of Umani’s criminal statements. Chatter published statements of propaganda, which constituted aggravating circumstances during punishment.<sup>173</sup> A smaller penalty would be insufficient in dissuading Chatter from publishing hate speech, as Chatter was already cognizant of repercussions such speech had on society, which included highly publicized suicide cases.<sup>174</sup> Chatter took a significant risk in publishing speech capable of inciting racial discrimination,<sup>175</sup> thus it was necessary for Omeria to hold Chatter liable for its violations.

**B. Omeria lawfully interfered with Chatter’s privacy to prevent crime and disorder.**

Entities are protected from arbitrary and unlawful interferences with privacy.<sup>176</sup> An

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<sup>169</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 155.

<sup>170</sup> *Compromis*, paras 14, 17.

<sup>171</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 155.

<sup>172</sup> *Compromis*, para 20.

<sup>173</sup> *ibid* 10(b).

<sup>174</sup> *ibid* 9.

<sup>175</sup> *Medya FM Reha Radyo ve İletişim Hizmetleri A.Ş. v. Turkey* App no 32842/02 (ECtHR, 14 November 2006); ECHR Registrar, ‘Information Note No 91 on the case-law of the Court’ (November 2006), 28–29.

<sup>176</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 12; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 17; *Escher et al v Brazil* IACtHR (2009) Series C No 208, para 122; *Florida v Jardines* 133 S Ct 1409, 1414 (2013).

interference with privacy is not arbitrary if it is reasonable in a given context.<sup>177</sup> Chatter does not have a reasonable expectation of privacy in protecting the anonymity of the email and IP addresses of its users, particularly when such information is obtained pursuant to a substantiated court order under a concurrent investigation.<sup>178</sup> A privacy interference is also reasonable when it is prescribed by law, justified by a legitimate purpose of preventing disorder or crime, and necessary to fulfill the legitimate state aim.<sup>179</sup>

The No Hate Act sufficiently establishes the circumstances under which privacy interferences are foreseeable. The Act specifies that an entity is responsible for facilitating hate speech.<sup>180</sup> It is predictable and foreseeable that such entities may be required to disclose identifying information of anonymous users during authorized investigations. Further, as a professional entity with duties and responsibilities, the interference with Chatter's privacy was foreseeable even if Chatter had to seek legal advice to assess the risks of being a third-party publisher.<sup>181</sup>

The State interfered with Chatter's privacy pursuant to its legitimate purpose of preventing disorder and crime in its society.<sup>182</sup> State authorities may request and obtain information relating to an individual's public life when such information is essential to the

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<sup>177</sup> *Smith v Maryland* 442 US 735, 740 (1979).

<sup>178</sup> *United States v Hensley* 469 US 221, 229 (1985); *Compromis*, para 17.

<sup>179</sup> *Klass v Federal Republic of Germany* (1978) 2 EHRR 214, para 44.

<sup>180</sup> *Compromis*, paras 10(a), 10(d).

<sup>181</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 129.

<sup>182</sup> *Klass v Federal Republic of Germany* (1978) 2 EHRR 214, para 44.



interests of society<sup>183</sup> and fulfills an investigative function.<sup>184</sup>

Further, in order for Omeria to bring the user behind @TheVigilanteInsider to justice, it was necessary for Chatter to disclose the email and IP addresses that Umani used in connection with the account. The State had no alternative method to ascertain the identity of the user in a timely manner, which was necessary to avoid further publications of hateful speech and, potentially, further casualties. Therefore, Chatter was not subjected to an arbitrary interference with its privacy.

### III. OMERIA'S PROSECUTION OF UMANI UNDER THE ANTI-TERRORISM LAW WAS PROPER BECAUSE UMANI'S POSTS INCITED ACTS OF TERROR AGAINST BRINNANS.

The freedoms of expression and privacy 'must be exercised in a context of respect and safeguard of all other fundamental rights'.<sup>185</sup> When there is a conflict between the freedoms of expression and privacy and the risk of instigating violence in an already tense society, it is the government's duty to prevent harm and violence.<sup>186</sup>

#### **A. Omeria properly restricted Umani's freedom of expression to meet its duty of preventing violence against targeted social groups.**

The freedom of expression may be restricted when it is appropriately prescribed, pursues a legitimate state interest of preventing violence in society, and is necessary to prevent harm.<sup>187</sup>

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<sup>183</sup> UNHRC 'General Comment 16' in 'Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation' (1988) UN Doc CCPR/C/GC/16, para 7.

<sup>184</sup> *United States v Hensley* 469 US 221, 229 (1985).

<sup>185</sup> *Tristán Donoso v. Panamá* IACtHR (2009) Series C 193, para 112. See also Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 28; *Ouko v Kenya* (2000) AHRLR 135 (ACHPR 2000), para 28; *Kenneth Good v Republic of Botswana* (2010) AHRLR 313/05 (ACHPR 2010), para 189.

<sup>186</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006), para 143.

<sup>187</sup> *The Sunday Times v United Kingdom* (1979) 2 EHHR 245, para 45; *Herrera-Ulloa v Costa Rica* IACtHR (2004) Series C No 107, para 120; *The Law Society of Zimbabwe v The Minister of Transport and Communications and Another* (2004) AHRLR 292 (ZwSC 2004), para 18.

1. The restriction of Umani’s expression was previously established by the Law.

The law must expressly prescribe restrictions before imposing liability.<sup>188</sup> Omeria’s Anti-Terrorism & Extremism Law is a legitimate enactment by the Omerian government to counter the violent acts of terrorism that have been perpetrated near Omeria’s border.<sup>189</sup> The Law is precise in defining the offences it prohibits, statements encouraging terrorism or statements of extremism,<sup>190</sup> and states that criminal or civil penalties may apply.<sup>191</sup> The Law was enacted in 2012, prior to the dissemination of Posts #4–6.<sup>192</sup> Consequently, Umani was criminally prosecuted for a crime previously established by law.

2. Prosecuting Umani met the legitimate purposes of safeguarding the rights of Omerian citizens and protecting national security.

The Law must be enacted pursuant to a legitimate governmental interest.<sup>193</sup> It may restrict speech to protect the just demands of national security<sup>194</sup> and to prevent disorder or crime.<sup>195</sup> A

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<sup>188</sup> *Kalac v Turkey* (1979–80) 27 EHRR 552, paras 24, 29; *Metropolitan Church of Bessarabia v Moldova* (2002) 35 EHRR 306, para 109; *Hasan and Chaush v Bulgaria* (2002) 34 EHRR 55, para 84; *Ricardo Canese v Paraguay* IACtHR (2004) Series C No 111, para 95.

<sup>189</sup> *Compromis*, para 4; *Faurisson v France* Communication No 550/1993 UN Doc CCPR/C/58/D/550/1993 (1996), para 9.5.

<sup>190</sup> *Compromis*, paras 4(a)–(c).

<sup>191</sup> *ibid* 4(f).

<sup>192</sup> *ibid* 4, 14(d)–(e).

<sup>193</sup> *Zana v Turkey* (1997) 27 EHRR 607, para 48.

<sup>194</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3).

<sup>195</sup> *ibid*; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10.

state may ban true threats to ‘protect[] individuals from the fear of violence’ and ‘from the disruption that fear engenders’.<sup>196</sup>

A state has an ‘obvious interest in the preservation and protection of peace and good order within her borders’.<sup>197</sup> For instance, in *Leroy v France*, the ECHR upheld the conviction of a published drawing concerning the attacks of 11 September 2001, with the caption: ‘We have all dreamt of it... Hamas did it’.<sup>198</sup> Given the sensitive nature of the fight against terrorism, the maintenance of public safety and the prevention of disorder and crime were legitimate purposes.<sup>199</sup>

The Law protects against impending threats of domestic turmoil. Posts #4–6 were not simply political dissent<sup>200</sup> or artistic expression, as Umani asserts,<sup>201</sup> but were directed to ‘inciting or producing imminent lawless action’<sup>202</sup> and were likely to ‘incite an immediate breach of the peace’.<sup>203</sup> Omeria’s leading newspaper itself questioned the responsibility of high level government officials for the slow response to @TheVigilanteInsider’s provocation, suggesting that the government and Chatter would have ‘blood on their hands’ if violence ensued.<sup>204</sup>

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<sup>196</sup> *Virginia v Black* 538 US 343, 360 (2003).

<sup>197</sup> *Cantwell v Connecticut* 310 US 296, 307 (1940).

<sup>198</sup> *Leroy v France* App no 36109/03 (ECtHR, 2 February 2008); ECHR Press Release, ‘Chamber Judgment Leroy v France’ (October 20008) ECHR/Press 681.

<sup>199</sup> *ibid.*

<sup>200</sup> *Amnesty International v Sudan* (2000) AHRLR 297 (ACHPR 1999), paras 78, 80, 82.

<sup>201</sup> *Compromis*, para 19.

<sup>202</sup> *Brandenburg v Ohio* 395 US 444, 447 (1969).

<sup>203</sup> *Chaplinsky v New Hampshire* 315 US 568, 572 (1942).

<sup>204</sup> *Compromis*, para 16.

Freedom of speech does not protect incitement to violence,<sup>205</sup> disturbances to the public peace, or attempts to subvert the government.<sup>206</sup> Umani's extremist posts were in direct opposition to fundamental Omerian values of mutual respect, rule of law, and tolerance.<sup>207</sup> The State cannot allow statements of intimidation and discrimination to the detriment of others.<sup>208</sup>

3. Omeria's prosecution of Umani was necessary to protect citizens from the incitement of violence.

A State may restrict speech when it is necessary to fulfill its duty to protect its citizens from the harmful acts of others.<sup>209</sup> 'An act by a private individual . . . can generate responsibility of the state, not because of the act itself, but because of the lack of due diligence to prevent the violation'.<sup>210</sup> The State fails its duty when it allows private individuals to 'act freely and with impunity to the detriment' of the rights of others.<sup>211</sup> When speech incites violence against 'a sector of the population, the State authorities enjoy a wider margin of appreciation when examining the need' for a restriction on expression.<sup>212</sup>

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<sup>205</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 20(2); *Malawi African Association v Mauritania* (2000) AHRLR 149 (ACPHR 2000), para 102.

<sup>206</sup> *Gitlow v New York* 268 US 652, 667 (1925).

<sup>207</sup> *Compromis*, para 4(a).

<sup>208</sup> *Plan de Sánchez Massacre v Guatemala* IACtHR (2004) Series C No 116, para 50.

<sup>209</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10(2); *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006), para 143.

<sup>210</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006), para 143.

<sup>211</sup> *Velásquez-Rodríguez v Honduras* IACtHR (1988) Series C No 4, para 176.

<sup>212</sup> *Sürek v Turkey* ECHR 1999-IV 353, para 34.

Omeria's prosecution of Umani was necessary to ensure the legitimate interests of national security and the general welfare of society.<sup>213</sup> Posts #4–6 were intended to give rise to a viewer's 'feeling of rejection and antagonism, exacerbated by the use of military language'.<sup>214</sup> By writing 'those brutes' and 'kaboom' alongside 'purify Omeria', 'Armistice anniversary', and 'your country will thank and pardon you', Umani evidenced a clear intent to stigmatize Brinnans and directly encourage acts of terrorism.<sup>215</sup> Such provocative statements had the strong possibility of manifesting in violence, as evidenced by the concordant response of Chatter user @Nightwatcher00, whose username refers to the terroristic Omerian militia.<sup>216</sup> The State fulfilled its duty to protect its citizens<sup>217</sup> by taking measures to prevent human rights violations and to vindicate the victims of Umani's violent speech.<sup>218</sup>

Additionally, criminal proceedings are necessary to vindicate serious infringements of fundamental rights.<sup>219</sup> Umani's two year sentence<sup>220</sup> is necessary and proportionate to the seriousness of his evocative speech, which could have quickly manifested into physical injury and death. The penalty imposed answered a pressing social need to punish terrorist support and

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<sup>213</sup> *AK and AR v Uzbekistan* Communication No 1233/2003 UN Doc CCPR/C/95/D/1233/2003 (2009), para 7.2.

<sup>214</sup> *Soulas v France* App no 15948/03 (ECtHR, 10 July 2008); European Court of Human Rights Press Unit, 'Factsheet – Hate speech' (November 2015), 9.

<sup>215</sup> *Compromis*, para 14.

<sup>216</sup> *ibid* 3, 14(e)(i).

<sup>217</sup> *United States Diplomatic and Consular Staff in Tehran (United States v Iran) (Judgment)* [1980] ICJ Rep 3, para 91.

<sup>218</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006), para 157.

<sup>219</sup> *Kimel v Argentina IACtHR* (2008) Series C No 177, para 77.

<sup>220</sup> *Compromis*, para 19.

deter terrorist activity in the future.<sup>221</sup> Accordingly, the Law's restriction on Umani's speech and the sentence imposed for Umani's crimes were proportionate to the legitimate aims pursued.

**B. Omeria lawfully interfered with Umani's privacy in the interest of national security.**

Individuals are protected from arbitrary interferences with privacy.<sup>222</sup> Umani had no reasonable expectation of privacy in his IP addresses or the email address used to create @TheVigilanteInsider, as such information was voluntarily turned over to a third-party.<sup>223</sup> Further, an interference with privacy is not arbitrary if it is 'established by law, pursue[s] a legitimate purpose, and [is] necessary in a democratic society'.<sup>224</sup>

The authority to interfere with Umani's privacy was established by law. Pursuant to the Anti-Terrorism Law, Umani was subjected to an emergency order that permitted the government to obtain information it needed to determine the actual author of @TheVigilanteInsider's posts.<sup>225</sup> The government's authority to interfere with Umani's privacy interest was foreseeable and written with sufficient clarity.<sup>226</sup> The Law states that an emergency order would be issued to remedy violations of the Law;<sup>227</sup> Umani could foresee such an order being used to ascertain his online identity.

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<sup>221</sup> *Zana v Turkey* (1997) 27 EHRR 607, para 61.

<sup>222</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 12; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 17; *Escher et al v Brazil* IACtHR (2009) Series C No 208, para 113.

<sup>223</sup> *Smith v Maryland* 442 US 735, 743–44 (1979).

<sup>224</sup> *Escher et al v Brazil* IACtHR (2009) Series C No 208, para 116.

<sup>225</sup> Compromis, paras 4(f), 17.

<sup>226</sup> *ibid* 4(f).

<sup>227</sup> *ibid*.

The government's interference with Umani's privacy was related to the legitimate purposes of protecting national security and preventing crime.<sup>228</sup> Democratic societies must be able to effectively counter terror threats,<sup>229</sup> especially with the development of terrorism in recent years.<sup>230</sup> Taking into account the gravity of Umani's offense, the instigation of terrorism, and Omeria's history of domestic turbulence, domestic law permitted an emergency order for the State to investigate criminal activity and prevent further disorder inside Omeria's borders.<sup>231</sup>

At a time when serious disturbances were occurring near the border and the government was struggling to control radicalized citizens,<sup>232</sup> Omeria took the necessary measure of ascertaining @TheVigilanteInsider's identity to protect national security and public safety.<sup>233</sup> The government necessarily disclosed @TheVigilanteInsider's identity,<sup>234</sup> as the speaker behind the incendiary statements was a matter of significant public interest.<sup>235</sup> The information of a public official entails a different threshold of protection than that of a private individual.<sup>236</sup> In response to the widespread belief that @TheVigilanteInsider's user was a public official,<sup>237</sup> the

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<sup>228</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2).

<sup>229</sup> *Klass v Federal Republic of Germany* (1978) 2 EHRR 214, para 48.

<sup>230</sup> *ibid* 46, 48; *Compromis*, para 3.

<sup>231</sup> *Compromis*, paras 4(f), 17; *Expelled Dominicans and Haitians v Dominican Republic* IACtHR (2014) Series C No 282, para 427.

<sup>232</sup> *Compromis*, para 3.

<sup>233</sup> *Zana v Turkey* (1997) 27 EHRR 607, paras 48–50.

<sup>234</sup> *Compromis*, para 17.

<sup>235</sup> *Fontevicchia and D'Amico v Argentina* IACtHR (2011) Series C No 238, para 59.

<sup>236</sup> *ibid* 50, 60.

<sup>237</sup> *Compromis*, para 13.

government quashed fears that State officials condoned an uprising of terrorist activity. The user’s identity was disclosed the very day before the Armistice anniversary, and subsequently, no violent flare-ups ensued the following day.<sup>238</sup>

Umani’s prosecution was valid because his posts ‘constitute[d] the advocacy of racial [] hatred’, which Omeria has an obligation under Article 20(2) of the ICCPR to prohibit.<sup>239</sup>

#### IV. OMERIA PROPERLY PROSECUTED CHATTER UNDER THE LAW BECAUSE CHATTER PERMITTED ITS SITE TO BE USED AS AN OUTLET TO INCITE VIOLENCE AGAINST BRINNANS.

Chatter’s freedoms of expression and privacy did not protect its reckless publishing of statements that incited violence and terror.<sup>240</sup>

##### **A. Chatter’s freedom of expression was properly restricted to prevent the incitement of terror.**

Freedom of expression extends to third-party publishers.<sup>241</sup> However, media sources have ‘duties and responsibilities’ to ensure they do not publish speech that glorifies violence or infringes on the rights of others.<sup>242</sup> Restrictions are permissible when they are prescribed by law,

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<sup>238</sup> *ibid* 17–18.

<sup>239</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 20(2); *JRT and the WG Party v Canada* Communication No 104/1981 UN Doc CCPR/C/OP/2 (1984), para 8.

<sup>240</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 110.

<sup>241</sup> *ibid*.

<sup>242</sup> *Sürek v Turkey* ECHR 1999-IV 353, para 36; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 130.



entail a legitimate purpose, and are necessary to a democratic society.<sup>243</sup>

1. The restriction of Chatter’s expression was previously established by the Law.

The Anti-Terrorism Law was prescribed in 2012, before Chatter committed its violations.<sup>244</sup> The Law precisely imposes liability on third parties if they permit others to publish statements of extremism or statements encouraging terrorism.<sup>245</sup> The Law applies to statements published through social media platforms;<sup>246</sup> thus, Chatter is liable for offences committed under the Law. The State’s order for Chatter to delete Posts #4–6 was foreseeable, based on the Law’s enumerated offences.<sup>247</sup> Consequently, the law restricting Chatter’s freedom of expression was previously established.

2. Prosecuting Chatter met the legitimate purposes of protecting national security and public order.

The Law must promote or protect a legitimate interest in restricting the speech of the media.<sup>248</sup> Media sources are responsible in ensuring that published text does not infringe on the

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<sup>243</sup> *The Sunday Times v United Kingdom* (1979) 2 EHHR 245, para 45; *Herrera-Ulloa v Costa Rica* IACtHR (2004) Series C No 107, para 120; *The Law Society of Zimbabwe v The Minister of Transport and Communications and Another* (2004) AHRLR 292 (ZwSC 2004), para 18.

<sup>244</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts 13 and 29 of the American Convention on Human Rights) Advisory Opinion OC-5/85, Inter-American Court of Human Rights Series A No 5 (13 November 1985), para 39; *Metropolitan Church of Bessarabia v Moldova* (2002) 35 EHRR 306, para 109.

<sup>245</sup> *Compromis*, para 4(c).

<sup>246</sup> *ibid* 4(d).

<sup>247</sup> *ibid* 4, 17.

<sup>248</sup> *Fontevicchia and D’Amico v Argentina* IACtHR (2011) Series C No 238, para 51.

rights of others.<sup>249</sup>

In prohibiting speech that incites violence through online sources, Omeria has a legitimate interest in protecting national security<sup>250</sup> and preventing disorder and crime.<sup>251</sup> With free Internet access in Omeria and the heavy use of social media,<sup>252</sup> such access provides the dangerous possibility of ‘hate speech and speech inciting violence’ being ‘disseminated like never before, worldwide, in a matter of seconds, [] sometimes remain[ing] persistently available online’.<sup>253</sup> Chatter permitted unlawful comments, tantamount to incitement of terror and violence, to be published on its social media site. While Chatter may not have associated with Umani’s views, it provided an ‘outlet for stirring up violence and hatred’.<sup>254</sup> For that reason, Chatter is ‘vicariously subject to [] “duties and responsibilities”’ in its ‘dissemination of information to the public[,] which assume an even greater importance in situations of conflict and tension’.<sup>255</sup>

### 3. Prosecuting Chatter was necessary to maintain order in Omeria.

Omeria’s duty to protect its citizens<sup>256</sup> includes protection from the harmful use of

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<sup>249</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), paras 138–39.

<sup>250</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3).

<sup>251</sup> *ibid*; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 29(2); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 10.

<sup>252</sup> *Compromis*, para 5.

<sup>253</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 110.

<sup>254</sup> *Süreker v Turkey* App no 26682/95 (ECtHR, 8 July 1999), para 63.

<sup>255</sup> *ibid*.

<sup>256</sup> *Plan de Sánchez Massacre v Guatemala* IACtHR (2004) Series C No 116, para 112; *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006), para 143.

technology to incite violence.<sup>257</sup> A restriction is justified in terms of a relevant collective purpose that ‘clearly outweigh[s] the social need for’ enjoyment of expression and does not limit the right more than necessary.<sup>258</sup>

The restriction on Chatter’s publishing abilities was enacted in the midst of ‘extreme tension’ at a ‘material time’,<sup>259</sup> when Omeria was actively committed to maintaining peace within its borders.<sup>260</sup> Chatter is liable for extremist and terrorist propaganda published on its site even if Chatter does not associate with publications provoking enmity,<sup>261</sup> as its users’ posts have the potential to undermine democratic values and the legitimate state aim of protecting the public. Consequently, the restriction on Chatter’s freedom of expression is necessary because Chatter was the portal used to disseminate terrorizing speech.

The US\$ 5,000,000 assessment for Chatter’s failure to remove Umani’s posts<sup>262</sup> was proportionate to the potential damage from Chatter’s violations—the inestimable cost of lives and citizens living in fear of terrorist activity.<sup>263</sup> Further, the assessment will likely deter third-party publishers from publishing unlawful speech in the future. Therefore, the State necessarily prosecuted Chatter’s for publishing violence-inducing statements, pursuant to Omeria’s legitimate interest in national security.

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<sup>257</sup> *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015), para 110.

<sup>258</sup> *Kimel v Argentina* IACtHR (2008) Series C No 177, para 83.

<sup>259</sup> *Zana v Turkey* (1997) 27 EHRR 607, para 59.

<sup>260</sup> *Compromis*, para 3.

<sup>261</sup> *Sürek v Turkey* App no 26682/95 (ECtHR, 8 July 1999), para 63.

<sup>262</sup> *Compromis*, para 20.

<sup>263</sup> *Plan de Sánchez Massacre v Guatemala* IACtHR (2004) Series C No 116, para 42(1).

**B. Omeria lawfully interfered with Chatter’s privacy under an authorized investigation.**

An entity is protected from a state’s arbitrary and unlawful interference with its privacy.<sup>264</sup> An interference with privacy is not arbitrary if it is reasonable in a given context.<sup>265</sup>

Chatter’s expectation of keeping user information anonymous is unreasonable in the context of a criminal investigation.<sup>266</sup> Chatter harbored an individual who incited terror through social media, and the State only interfered with Chatter’s privacy to request @TheVigilanteInsider’s information pursuant to an authorized order.<sup>267</sup> Interference is reasonable when it is prescribed by law, rationally connected to a legitimate state purpose, and necessary to fulfill the legitimate state aim.<sup>268</sup>

The Law specifies the circumstances where interferences with privacy are permitted.<sup>269</sup> As an entity that permitted @TheVigilanteInsider to publish malevolent statements, Chatter was subject to an emergency order, as well as criminal or civil penalties for failure to comply with the order.<sup>270</sup> Any penalty for Chatter’s liability or noncompliance was foreseeable pursuant to the

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<sup>264</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 12; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 17; *Escher et al v Brazil* IACtHR (2009) Series C No 208, para 122.

<sup>265</sup> *Katz v United States* 389 US 347, 359 (1967).

<sup>266</sup> *United States v Christie* 624 F3d 558, 573 (3d Cir 2010).

<sup>267</sup> Compromis, paras 4(f), 17.

<sup>268</sup> *Escher et al v Brazil* IACtHR (2009) Series C No 208, para 116.

<sup>269</sup> UNHRC ‘General Comment 16’ in ‘Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation’ (1988) UN Doc CCPR/C/GC/16, para 8.

<sup>270</sup> Compromis, paras 4(f), 17.

plain language of the Law.<sup>271</sup>

The State must have a legitimate purpose when interfering with an entity's privacy.<sup>272</sup> In interfering with Chatter's privacy, the State had the legitimate purpose of protecting national security.<sup>273</sup> The order for @TheVigilanteInsider's identifying information fulfilled an investigative function,<sup>274</sup> without which the state would not have been able to identify and prosecute the user who was inciting terrorist activity. Uncovering the actual identity of @TheVigilanteInsider fulfilled the purpose of maintaining peace within Omeria's borders, and ensuring that no more followers were encouraged to participate in Umani's calls for terror.<sup>275</sup>

An interference with privacy must be necessary<sup>276</sup> and proportionate to a state's legitimate objective.<sup>277</sup> The State's interference with Chatter's privacy was necessary and proportionate to its purpose of preventing crime and disorder and protecting national security. The State's acquisition of @TheVigilanteInsider's information against Chatter's wishes was necessary to expediently hold Umani accountable and prevent harm to society.<sup>278</sup> Privacy must give way in the face of a well-substantiated court order.<sup>279</sup>

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<sup>271</sup> *ibid* 4.

<sup>272</sup> *Klass v Federal Republic of Germany* (1978) 2 EHRR 214, para 44.

<sup>273</sup> *ibid*.

<sup>274</sup> *United States v Hensley* 469 US 221, 229 (1985).

<sup>275</sup> *Compromis*, para 14(e).

<sup>276</sup> *Escher et al v Brazil* IACtHR (2009) Series C No 208, para 116.

<sup>277</sup> *Antonius Cornelis Van Hulst v Netherlands* Communication No 903/1999 UN Doc CCPR/C/82/D/903/1999 (2004), para 7.10.

<sup>278</sup> *Compromis*, para 17.

<sup>279</sup> *Baldeón-García v Peru* IACtHR (2006) Series C No 147, para 58; *Expelled Dominicans and Haitians v Dominican Republic* IACtHR (2014) Series C No 282, paras 425–27.

Chatter was properly fined \$10,000 per day for its unreasonable reaction in withholding information necessary to protect Omeria.<sup>280</sup> The penalty for noncompliance was proportionate to the potential cost of lives that could have resulted from Chatter's dissemination of volatile speech.<sup>281</sup> Although there were no outbreaks of violence on the anniversary of the armistice, the State detected a potential threat to its nation and responded accordingly.<sup>282</sup>

Requiring Chatter to delete Posts #4–6 and disclose @TheVigilanteInsider's identification<sup>283</sup> was duly founded, justified, followed the law, and was necessary to bring @TheVigilanteInsider to justice.

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<sup>280</sup> Compromis, para 17.

<sup>281</sup> *Plan de Sánchez Massacre v Guatemala* IACtHR (2004) Series C No 116, para 42(1).

<sup>282</sup> *ibid* 18.

<sup>283</sup> *ibid* 17.

## **PRAYER**

For the foregoing reasons, Omeria respectfully requests this Honourable Court to adjudge and declare the following:

1. The Omerian courts reasonably held that Umani violated the No Hate Act of 2011 by publishing statements that promoted ethnic hatred against the Brinnan community.
2. The Omerian courts reasonably held that Chatter violated the No Hate Act of 2011 by publishing user statements that promoted ethnic hatred against the Brinnan community.
3. The Omerian courts reasonably held that Umani violated the Anti-Terrorism & Extremism Law of 2012 by publishing statements that provoked violence against the Brinnan community.
4. The Omerian courts reasonably held that Chatter violated the Anti-Terrorism & Extremism Law of 2012 by publishing user statements that provoked violence against the Brinnan community.

Respectfully submitted this twenty-third day of December,

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Counsel for the Respondent