

**THE 2016-2017 MONROE E. PRICE
INTERNATIONAL MEDIA LAW MOOT COURT COMPETITION**

Ballaya and SeeSey,

Applicants,

v.

Amostra,

Respondent.

MEMORIAL FOR RESPONDENT

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LIST OF ABBREVIATIONS

CJEU	Court of Justice of the European Union
ECD	Electronic Commerce Directive
ECtHR	European Court of Human Rights
ESA	Election Safety Act of 2016
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
NEA	National Election Authority
SIA	Stability and Integrity Act
UDHR	Universal Declaration of Human Rights

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STATEMENT OF RELEVANT FACTS

Amostra's Political Tension and the Government's Response

Amostra is a small country facing extreme sociopolitical tension and social unrest.¹ The country's population largely follows one of two major religious groups: 30% Yona and 70% Zasa.² Members of the Yona religious minority believe that the primarily Zasa-led government subjects them to political and economic discrimination.³

Over the past five years, friction between the two sides has generated increased tension and frustration.⁴ Amostra's government has dealt with frequent demonstrations as a result.⁵ While some protests remained peaceful, others produced violent clashes between the Yona protestors and the Zasa counter-protestors and resulted in multiple arrests of primarily Yona protestors.⁶

In 2014, a protest outside of Parliament led to significant destruction of government property and a series of death threats directed at leading government officials, including the Prime Minister.⁷ In response, Amostra's government enacted the Stability and Integrity Act

¹ Compromis, ¶ 1.

² *ibid.*

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

⁶ *ibid.*

⁷ Compromis, ¶ 10.

(‘SIA’).⁸ The SIA prohibits ‘a person’ from making extremist or anti-patriotic statements and from ‘hosting’ those illegal statements.⁹

Section A defines extremist or anti-patriotic statements as those made by ‘a person’ who calls for illegal action, engages in conduct or speech that incites people to rebel against government authorities, engages in or promotes sedition, or publicly incites hatred against religious groups, among other actions.¹⁰ Section B imposes fines and prison sentences on any ‘person’ guilty of an offence under Section A.¹¹ Section C allows for a civil court order, or ‘take down order’, to compel ‘any “person” . . . hosting’ illegal content to be required to remove the content and post an apology.¹² Section D requires that the illegal content be published in Amostra or be addressed to Amostra residents in order for any person to be convicted of an offence or subject to a civil order under the act.¹³

Further, the SIA requires all media organizations that provide content to Amostran citizens to register with the Ministry of Defence.¹⁴ Media organizations must also ‘consult with the Ministry on a quarterly basis to discuss the type of content they have recently published and

⁸ Compromis, ¶ 10.

⁹ Compromis, ¶¶ 10(a), (c).

¹⁰ Compromis, ¶ 10(a).

¹¹ Compromis, ¶ 10(b).

¹² Compromis, ¶ 10(c).

¹³ Compromis, ¶ 10(d).

¹⁴ Compromis, ¶ 11.

that they intend to publish'.¹⁵ Media organizations that fail to register and consult with the Ministry will have their operating license withdrawn.¹⁶

Amostra's Recent Efforts to Protect Public Order

Recently, on February 15, 2016, violence erupted during a protest outside Parliament. Protestors threw bottles and rocks, and police were forced to respond with tear gas and physical force.¹⁷ During the clash, a Yona protestor was struck on the head and killed, possibly by Zasa counter-protestors or the police.¹⁸

The protestor's death exacerbated the already-palpable tension in Amostra.¹⁹ The event caught the attention of the international community, who began to exert political pressure on Amostra to take action.²⁰ To that end, on June 6, 2016, the Prime Minister announced that Amostra would hold general elections in sixty days, on August 5.²¹ The international community reacted positively, and a period of relative calm ensued in Amostra.²²

With the announcement of general elections in 2016, Amostra's NEA, a group of government-appointed regulators responsible for managing Amostra's elections, enacted the

¹⁵ Compromis, ¶ 11.

¹⁶ *ibid.*

¹⁷ Compromis, ¶ 1.

¹⁸ *ibid.*

¹⁹ Compromis, ¶ 2.

²⁰ *ibid.*

²¹ *ibid.*

²² *ibid.*

Election Safety Act of 2016 (ESA).²³ The ESA imposed lawful restrictions on elections-related speech, which were considered necessary to prevent public disorder.²⁴

The ESA proscribes political demonstrations of more than ten people on the public streets of Amostra within 30 days of a general election where the participants spread an extremist or seditious message, seek to incite hatred or violence, or seek to disrupt the democratic process.²⁵ Additionally, the ESA imposes a punishment of up to a \$500,000 fine or two years' imprisonment for inciting such a demonstration.²⁶

Internet and SeeSey in Amostra

Amostran citizens have access to the Internet, and social media use is extremely popular.²⁷ Although the Amostran government has the ability to block its citizens' access to specific internet services, the government lacks the ability to block specific posts from a social media service.²⁸ The government's only method of blocking access to specific content, therefore, is to block the entire service.²⁹ Still, the government has never blocked Amostra-based internet users' access to internet services.³⁰

²³ Compromis, ¶ 3.

²⁴ *ibid.*

²⁵ Compromis, ¶ 4.

²⁶ *ibid.*

²⁷ Compromis, ¶ 5.

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ *ibid.*

SeeSey is a prominent social media platform.³¹ SeeSey accounts are free and users have the ability to either post content or comment on posts—both are publicly visible to anyone logged into a SeeSey account.³² Additionally, SeeSey is accessible worldwide, including in Amostra.³³ SeeSey displays the most recent and most popular content to users based on their self-selected ‘Home Location’.³⁴ It also displays content to users based on accounts the user added to his or her ‘SeeMore’ list.³⁵

SeeSey’s CEO has publicly stated that SeeSey is ‘the planet’s best news source’ and ‘the best way to promote the causes most important to you’.³⁶ Although Amostran users only comprise a small portion of the platform’s worldwide users, there are many SeeSey users in Amostra.³⁷ Amostran citizens utilize SeeSey as a source of news when local news distribution services are disrupted due to violence or threats.³⁸ SeeSey ranks as the most popular news source and platform for political discussion among 18-35 year-olds, ‘and users regularly share and comment on media content on the platform’.³⁹

³¹ Compromis, ¶ 8.

³² Compromis, ¶ 6.

³³ *ibid.*

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ Compromis, ¶ 14.

³⁷ Compromis, ¶ 6.

³⁸ Compromis, ¶ 12.

³⁹ *ibid.*

Unlike Amostra’s government, SeeSey possesses the technical ability to block individual posts.⁴⁰ SeeSey can block individual posts in individual countries while allowing those posts to remain visible throughout the rest of the world.⁴¹ It can also block the ‘SeeMore’ option in specific countries.⁴² To date, SeeSey has never blocked any posts or accounts in Amostra.⁴³ However, SeeSey’s Operating Policies, which are publicly available, provide that SeeSey may remove posts ‘where required by law or necessary for a person’s safety’, but will never edit or change users’ content.⁴⁴ Contrary to the SIA, SeeSey does not maintain an operating license, but the Ministry of Defence has not yet asked SeeSey to do so.⁴⁵

SeeSey is headquartered and hosts all worldwide data on servers in Sarranto, a nearby country to Amostra.⁴⁶ Sarranto has a large immigrant population, including immigrants from Amostra.⁴⁷ SeeSALES is a SeeSey subsidiary and maintains its headquarters and only office in Amostra.⁴⁸ Although SeeSALES is independently operated and does not retain access to the data stored on SeeSey servers, its ten employees all work to promote Amostran businesses’ use of

⁴⁰ Compromis, ¶ 7.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ Compromis, ¶ 14.

⁴⁵ Compromis, ¶ 13.

⁴⁶ Compromis, ¶ 8.

⁴⁷ *ibid.*

⁴⁸ Compromis, ¶ 9.

SeeSey, including the purchase of paid advertisements.⁴⁹ In 2015, SeeSALES earned five million USD in revenue and paid taxes to the Amostra Bureau of Taxation.⁵⁰

Blenna Ballaya’s Column and The Day of Resistance

Blenna Ballaya (‘Ballaya’) is a famous blogger who frequently writes about political issues.⁵¹ Her writings on political developments in Amostra are widely regarded as insightful and bold.⁵² She is also well-known for being the first to post the latest political rumors and caricatures.⁵³ Ballaya is a citizen of Amostra, but resides in Sarranto.⁵⁴ She is widely unpopular amongst the Zasa sect, as they feel her writing and caricatures are sympathetic toward the Yona sect.⁵⁵

On July 7, 2016, after the general election announcement, Ballaya wrote an opinion column for The Ex-Amostra Times (‘The Times’), a popular Sarranto-based newspaper that maintains an online presence.⁵⁶ Ballaya titled the column ‘An Open Letter to the Oppressors’, and discussed the political situation in Amostra. Her column openly accused the Prime Minister of Amostra and other members of the Zasa sect of corruption and human rights violations against the Yona people.⁵⁷ The column also proclaimed that the August election was a sham, merely

⁴⁹ Compromis, ¶ 9.

⁵⁰ *ibid.*

⁵¹ Compromis, ¶ 15.

⁵² *ibid.*

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ Compromis, ¶ 18.

⁵⁷ *ibid.*

orchestrated for Zasa political gain.⁵⁸ Lastly, the column unequivocally called for a Day of Resistance on August 1 and included a famous Yona unity song with the lyrics ‘we are not afraid to fight, not afraid to die’.⁵⁹

Many citizens in Amostra read Ballaya’s column.⁶⁰ Amostran citizens on SeeSey quickly shared the column among other users, and as a result, thousands of people in Amostra read the column and its call for a Day of Resistance.⁶¹ Further, the majority of citizens in Sarranto also read the column on SeeSey, despite having access to The Times website and The Times in print.⁶²

Many members of the Yona sect read the column on SeeSey and posted comments on the social media platform.⁶³ Some of the Yona people discussed plans to bring knives and other available weapons to the Day of Resistance and that they were prepared to defend themselves.⁶⁴

On the called-for Day of Resistance, a group of Yona protestors wreaked havoc.⁶⁵ The protestors chanted hardline political messages, set fire to a Zasa religious building frequented by leading government officials, and attacked law enforcement who attempted to bring order and prevent the arson attack.⁶⁶ While the Yona protesters attacked, they chanted the words of the

⁵⁸ Compromis, ¶ 18.

⁵⁹ *ibid.*

⁶⁰ Compromis, ¶ 19.

⁶¹ *ibid.*

⁶² *ibid.*

⁶³ Compromis, ¶ 20.

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ Compromis, ¶ 21.

famous Yona unity song that Ballaya used in her column: ‘We trust that our faith will carry us home ... We are not afraid to fight, not afraid to die’.⁶⁷

Prosecution of Ballaya and Civil Order Against SeeSey

After the riots and violence, Ballaya was recognized as the organizer of the protest and promptly arrested.⁶⁸ The Amostran government charged her with violations of Sections A and B of the SIA and Section 3 of the ESA.⁶⁹ The Amostran Court found her guilty on all charges and sentenced her to three years imprisonment under the SIA and issued \$300,000 fine under the ESA.⁷⁰

To restore order, Amostra applied for a civil order requiring SeeSey to remove the content worldwide and post an apology.⁷¹ An Amostran Court subsequently issued an order against SeeSey.⁷² The order required SeeSey to remove content relating to Bellaya’s column, including SeeSey users’ comments, to ensure that the content was no longer accessible on SeeSey from any location, including Amostra and Sarranto.⁷³ The Amostran Supreme Court upheld Ballaya’s conviction and the order against SeeSey.⁷⁴

⁶⁷ Compromis, ¶ 21.

⁶⁸ Compromis, ¶ 22.

⁶⁹ Compromis, ¶ 23.

⁷⁰ *ibid.*

⁷¹ Compromis, ¶ 24.

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ Compromis, ¶ 25.

STATEMENT OF JURISDICTION

Ballaya and SeeSey, the Applicants, appeal to this Honourable Court, the Universal Freedom of Expression Court. Their claims relate to the freedom of expression codified in Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights and the freedom of assembly codified in Article 20 of the Universal Declaration of Human Rights and Article 21 of the International Covenant on Civil and Political Rights. This Honourable Court has jurisdiction as the final arbiter over all regional courts where the complainants have exhausted all domestic remedies. Ballaya's conviction and Amostra's civil order against SeeSey were both upheld on appeal to Amostra's Supreme Court, exhausting their domestic remedies. This Court, therefore, has jurisdiction over the aforementioned issues.

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

QUESTIONS PRESENTED

The questions presented, as certified by this Honourable Court, are as follows:

- I. Does Ballaya's prosecution under the SIA violate international principles, including Article 19 of the UDHR and Article 19 of the ICCPR?
- II. Does Ballaya's prosecution under the ESA violate international principles, including Articles 19 and 21 of the ICCPR?
- III. Does the Amostran Court violate international principles of jurisdiction when it obtains and enforces a civil order against SeeSey in Amostra and Sarranto?
- IV. Does the Amostran Court's civil order violate international principles, including Article 19 of the ICCPR?

SUMMARY OF ARGUMENTS

I. Amostra properly prosecuted Ballaya under the SIA. The SIA proscribes the intentional publishing of extremist or anti-patriotic statements in Amostra. The SIA is prescribed by law as it was formally enacted by Parliament and precisely defines the type of expression that constitutes an offence. Ballaya could reasonably foresee that her conduct would constitute an offence, as the SIA explicitly forbids conduct or speech that incites people to rebel against the government and conduct or speech that insults government authorities. Ballaya's column openly insulted government officials and promoted sedition by calling for a Day of Resistance during a time of heightened tension. Ballaya's prosecution pursued the legitimate aims of protecting national security and the public order, since the SIA was enacted in response to a highly destructive protest and amidst a violent sociopolitical climate.

Ballaya's prosecution was necessary to protect national security and public order. Amostra had a pressing social need as significant sociopolitical tension led to destruction of government property, death threats against the Prime Minister and leading government officials, and multiple skirmishes that resulted in arrests. Moreover, Ballaya's column was published on social media, which exacerbated the threat of violence and disorder. Ballaya's punishment was proportionate to her crime because she mass-communicated her inflammatory message and undermined Amostra's efforts to instill democratic principles. A deterrent penalty was, therefore, warranted.

II. Amostra properly prosecuted Ballaya under the ESA. The ESA was prescribed by law as the Amostran government announced the law together with the announcement of general elections. Further, the ESA is sufficiently precise as it defines in detail the types of

demonstrations and the circumstances required for an assembly to constitute an offense. The ESA pursued the legitimate aims of protecting the rights of others and public order. Rising sociopolitical tension in Amostra led to violent demonstrations, destruction of government property, and death threats against officials. To that end, Amostra passed the ESA in an effort to safeguard citizens' right to vote. Protection of the right to vote plays into public order, as the guarantee of fair elections is crucial to maintaining public order. Ballaya's prosecution was necessary because her column stirred up hatred and provided Yona citizens with an outlet for violence and disruption. Further, the fact that her column was published on SeeSey and included the lyrics to a famous Yona unity song increased the likelihood of violence. Ballaya's prosecution did not infringe on her right to peaceful assembly, since violence became imminent as a result of her actions. Ballaya's punishment was proportionate since her particular form of expression carried significant risk of violence and disorder, and states have a corresponding duty to deter such conduct in order to maintain the rule of law.

- III. Amostra did not violate international principles of jurisdiction when it obtained and enforced a civil order against SeeSey in Amostra and Sarranto. The Amostran Court has adjudicative jurisdiction over SeeSey on two grounds: there is a close connection between Amostra and SeeSey's violation of the SIA pursuant to the ICCPR, and exercising jurisdiction would facilitate the administration of justice. There is a close connection between Amostra and SeeSey's violation because the column, which was directed at Amostran citizens, was accessed in Amostra where the resultant harm occurred. Additionally, SeeSey is connected to Amostra through its subsidiary, SeeSALES, which is headquartered in Amostra and sells advertising space to Amostran

businesses. Amostra also has jurisdiction over SeeSey because it would facilitate the administration of justice by allowing Amostra to fulfill its affirmative obligation of prohibiting incitement to violence under Article 20 of the ICCPR.

The Amostran Court can also enforce the civil order in both Amostra and Sarranto. The court can enforce the civil order in Amostra because the civil order itself is a lawful remedy, and it can enforce the order in Sarranto because it is an Act of State, pursuant to the principle of comity.

- IV. The Amostran Court's civil order does not violate international principles, including Article 19 of the ICCPR and the ECD. The civil order is prescribed by the SIA, and SeeSey should have foreseen a restriction under it because SeeSey is a 'person' within the meaning of the Act and hosted Ballaya's column, which was addressed to Amostra. The civil order requiring SeeSey to remove the column and related content is in pursuit of the protection of national security and public order as the column incited violence and contributed to Amostra's sociopolitical strife. Furthermore, the civil order is necessary because there is a corresponding social need for it given Amostra's volatile sociopolitical environment. Additionally, the civil order is proportionate to the legitimate aims pursued because it is the least restrictive means pursued. Finally, the civil order is also in accordance with the ECD because under the ECD, there is a possibility that injunctions such as court orders may be imposed that require the removal of illegal content.

ARGUMENTS

I. AMOSTRA PROPERLY PROSECUTED BALLAYA UNDER THE SIA.

Amostra properly prosecuted Ballaya under the SIA. Freedom of expression constitutes ‘one of the essential foundations of a democratic society’.⁷⁵ The freedom applies ‘not only to ‘information’ or ‘ideas’ that are favorably received . . . but also those that offend, shock or disturb’.⁷⁶ Freedom of expression, however, is not absolute.⁷⁷ It is subject to exceptions, which must be ‘construed strictly’ and ‘established convincingly’.⁷⁸ It is incumbent upon the state to protect ‘rights that may be affected due to an abuse of freedom of expression’ by heeding the guidance of international principles.⁷⁹ The state can take measures to restrict the freedom of expression when such restriction is prescribed by law, pursues a legitimate aim, and is necessary and proportionate to the aim pursued.⁸⁰ Here, Ballaya’s prosecution was consistent with international law and thus a permissible restriction on the freedom of expression.

⁷⁵ *Handyside v the United Kingdom*, App no 5493/72 (ECtHR, 7 December 1976).

⁷⁶ *Zana v Turkey*, App no 18954/91 (ECtHR, 25 November 1997); *Öztürk v Turkey*, App no 22479/93 (ECtHR, 28 September 1999), para 64.

⁷⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3); *Rios et al v Venezuela* IACtHR (2009) Series C No 194, para 346.

⁷⁸ *Handyside v the United Kingdom*, App no 5493/72 (ECtHR, 7 December 1976); *Lingens v Austria*, App no 9815/82 (ECtHR, 8 July 1986); *Jersild v Denmark*, App no 15890/89 (ECtHR, 1994); *Zana v Turkey*, App no 18954/91 (ECtHR, 25 November 1997).

⁷⁹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); *Fontev ecchia and D’Amico v Argentina* IACtHR (2011) Series C No 238.

⁸⁰ *Handyside v the United Kingdom*, App no 5493/72 (ECtHR, 7 December 1976); *Lingens v Austria*, App no 9815/82 (ECtHR, 8 July 1986); *Jersild v Denmark*, App no 15890/89 (ECtHR, 1994); *Zana v Turkey*, App no 18954/91 (ECtHR, 25 November 1997).

A. The SIA is Prescribed by Law.

Restrictions of the freedom of expression must be prescribed by law.⁸¹ A restriction is prescribed by law if it has a basis in domestic law and is ‘adequately accessible’ to the persons concerned.⁸² A norm cannot be regarded as law ‘unless it is formulated with sufficient precision to enable the citizen . . . to foresee, to a degree that is reasonable . . . the consequences which a given action may entail’.⁸³ A law may confer discretion, ‘provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity’.⁸⁴ Indeed, consequences ‘need not be foreseeable with absolute certainty’.⁸⁵ The need to avoid ‘excessive rigidity and to keep pace with changing circumstances’ means that laws will necessarily be ‘couched in terms which . . . are vague’.⁸⁶ Lastly, it is ‘primarily for the national authorities, notably the courts, to interpret and apply domestic law’.⁸⁷

The SIA meets these standards as Parliament enacted it in response to a destructive protest and death threats against government officials.⁸⁸ The law is thus accessible as the government formally enacted it. The SIA is also sufficiently precise, as it provides an exact

⁸¹ *The Sunday Times v United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979).

⁸² *The Sunday Times v United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979); *Margareta and Roger Andersson v Sweden*, App no 12963/87 (ECtHR, 25 February 1992), para 75.

⁸³ *The Sunday Times v United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979); *Malone v UK*, App no 8691/79 (ECtHR, 2 August 1984); *Miller v Switzerland*, App no 10737/84 (ECtHR, 24 March 1988).

⁸⁴ *Margareta and Roger Andersson v Sweden*, App no 12963/87 (ECtHR, 25 February 1992), para 75; *Moiseyev v Russia*, App no 62936/00 (ECtHR, 9 October 2008), para 266.

⁸⁵ *The Sunday Times v United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979).

⁸⁶ *Müller and Others v Switzerland*, App no 10737/84 (ECtHR, 24 March 1988).

⁸⁷ *Margareta and Roger Andersson v Sweden*, App no 12963/87 (ECtHR, 25 February 1992), para 82; *Olsson v Sweden (No 2)*, App no 13441/87 (ECtHR, 27 November 1992), para 79; *Case of Steel and Others v The United Kingdom*, App no 1058/67 (ECtHR, 23 September 1997), para 56.

⁸⁸ *Compromis*, ¶ 10.

definition of extremist or anti-patriotic statements proscribed.⁸⁹ Section A defines extremist or anti-patriotic statements as speech ‘inciting people to rebel against, or . . . insulting of, government authorities or law enforcement officials’.⁹⁰ Furthermore, bolstering its precision and foreseeability, the SIA requires that a person act with intent⁹¹ and that the statement be distributed to Amostran residents.⁹² Therefore, the restriction is prescribed by law.

Ballaya’s prosecution under the SIA was prescribed by law. Ballaya could reasonably foresee that her conduct would constitute an offence. As described, the SIA prohibits ‘defaming’, ‘calling for illegal action’, and ‘conduct or speech inciting people to rebel against, or conduct or speech insulting of, government authorities’.⁹³ Further, the SIA prohibits statements ‘engaging in or promoting sedition’.⁹⁴ Yet, Ballaya’s column openly insulted the Prime Minister and other members of the Zasa sect, accusing them of corruption and human rights violations. Moreover, Ballaya tacitly promoted sedition by referring to government officials as ‘Oppressors’ and calling for a Day of Resistance during a time of heightened political tension.⁹⁵ Ballaya’s inflammatory insults directed at government authorities and her implicit call for ‘illegal action’ was a foreseeable offence under the SIA, and thus prescribed by law.

⁸⁹ Compromis, ¶ 10.

⁹⁰ *ibid.*

⁹¹ Compromis, ¶ 10(b).

⁹² Compromis, ¶ 10(d).

⁹³ Compromis, ¶ 10.

⁹⁴ *ibid.*

⁹⁵ Compromis, ¶ 18.

B. The SIA Pursues Legitimate Aims.

The Amostran government passed the SIA pursuant to the protection of national security and public order—aims explicitly prescribed by the ICCPR.⁹⁶ In *Zana v Turkey*, the ECtHR upheld the limitation of a former mayor’s freedom of expression to protect national security and public order.⁹⁷ Turkey’s law proscribed expression that was likely to exacerbate an already-violent and unstable sociopolitical situation.⁹⁸ Similarly, Amostra has a volatile political history, including two religious sects with a tumultuous past. Increased social unrest has manifested in skirmishes, arrests, and even the death of a Yona protester.⁹⁹ Amostra enacted the SIA after a protest that led to severe destruction of state property.¹⁰⁰ Inflammatory expression—particularly ‘from a political figure well known in the region’¹⁰¹ such as Ballaya—during such an unstable time would likely exacerbate an already-violent situation. Therefore, Amostra reasonably enacted the SIA to protect legitimate aims.

C. The SIA and Ballaya’s Prosecution Thereunder Were Necessary and Proportionate.

An interference with freedom of expression must be necessary in a democratic society.¹⁰² Necessity ‘implies the existence of a pressing social need’,¹⁰³ and the measures must be

⁹⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966) UNGA Res 2200A (XXI) (ICCPR) art 19(3).

⁹⁷ *Zana v Turkey*, App no 18954/91 (ECtHR, 25 November 1997).

⁹⁸ *ibid.*

⁹⁹ *Compromis*, ¶ 1.

¹⁰⁰ *Compromis*, ¶ 10.

¹⁰¹ *Zana v Turkey*, App no 18954/91 (ECtHR, 25 November 1997).

¹⁰² *Handyside v the United Kingdom*, App no 5493/72 (ECtHR, 7 December 1976).

¹⁰³ *Zana v Turkey*, App no 18954/91 (ECtHR, 25 November 1997), para 51.

proportionate to the legitimate aims pursued.¹⁰⁴ Relevant to a court's inquiry is the 'content of the remarks' and the 'context in which' the speaker made them.¹⁰⁵ Further, states are afforded a margin of appreciation when determining whether a law is necessary.¹⁰⁶ Courts look at the restriction in light of the 'case as a whole' to determine whether it is 'proportionate to the legitimate aim pursued', and whether the reasons adduced by the national authorities in justification are 'relevant and sufficient'.¹⁰⁷ Additionally, where such remarks 'incite to violence against an individual, a public official or a sector of the population . . . ' the state enjoys a wider margin of appreciation.¹⁰⁸

In *Sürek v Turkey*, the ECtHR upheld Turkey's interference under an anti-separatist propaganda law aimed at protecting national security and public order amidst a tense sociopolitical climate.¹⁰⁹ The court considered both the tense security situation in south-east Turkey and the fact that the applicant's language could be interpreted as encouraging further violence.¹¹⁰ Similarly, the SIA is necessary because of the sociopolitical tension in Amostrá.¹¹¹ A protest destroyed state property and produced death threats against the Prime Minister and other officials.¹¹² Demonstrations turned violent, and police were forced to make arrests after multiple

¹⁰⁴ UNHRC 'General Comment No 34' (2011) UN Doc CCPR/C/GC/34 para 33; *Öztürk v Turkey*, App no 22479/93 (ECtHR, 28 September 1999), para. 64.

¹⁰⁵ *Zana v Turkey*, App no 18954/91 (ECtHR, 25 November 1997).

¹⁰⁶ *ibid.*

¹⁰⁷ *Case of Ahmed and Others v The United Kingdom*, App no 65/1997 (2 September 1998).

¹⁰⁸ *Cylan v Turkey*, App no 23556/94 (ECtHR, 8 July 1999), para 34.

¹⁰⁹ *Sürek v Turkey*, App no 26682/95 (ECtHR, 8 July 1999), para 52.

¹¹⁰ *Sürek v Turkey*, App no 26682/95 (ECtHR, 8 July 1999), para 57.

¹¹¹ *Compromis*, ¶ 10.

¹¹² *ibid.*

skirmishes broke out.¹¹³ Accordingly, there was a pressing social need to take action, and ‘considerable latitude’ should be ‘left to the state in assessing the need for interference with a person’s freedom of expression’.¹¹⁴

Accordingly, Ballaya’s prosecution under the SIA was necessary. In *Leroy v France*, the ECtHR upheld an interference where the applicant published a cartoon in a politically sensitive region and provoked a public reaction that the state deemed ‘capable of stirring up violence’.¹¹⁵ Here, Ballaya wrote her column during a politically polarized time in which the government experienced disruption and death threats.¹¹⁶ Furthermore, the medium of expression is an important factor to consider in assessing a threat, as some forms of media tend to have a more ‘invasive and powerful impact’.¹¹⁷ Ballaya’s column was shared on SeeSey—the most popular source of news and political discussion for Amostrans 18 to 35 years old.¹¹⁸ Further, the column reached thousands¹¹⁹ during a time of tension. Among SeeSey’s key features is that users are able to comment underneath articles and communicate with one another.¹²⁰ This occurred extensively under Ballaya’s column—Yona citizens shared plans to use weapons in their

¹¹³ Compromis, ¶ 1.

¹¹⁴ *Le Pen v France*, App no 18788/09 (ECtHR, 7 May 2010).

¹¹⁵ *Leroy v France*, App no 36109/03 (ECtHR, 2 October 2008).

¹¹⁶ Compromis, ¶1.

¹¹⁷ *Murphy v Ireland*, App no 44179/98 (ECtHR, 10 July 2003) para 74.

¹¹⁸ Compromis, ¶ 12.

¹¹⁹ Compromis, ¶ 19.

¹²⁰ Compromis, ¶ 6.

resistance against law enforcement.¹²¹ Without Ballaya’s prosecution, these kinds of comments would continue to have a powerful impact, stirring up violence.

Further, Ballaya’s punishment was proportionate. In assessing penalties for such offences, courts consider whether the message was committed by means of mass communication, and that deterrent penalties in domestic law may be necessary where conduct reaches a level such that it negates the principles of a pluralist democracy.¹²² Further, ‘it remains open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature . . . ’ to deter offences.¹²³ Here, Ballaya wrote her column for a newspaper that maintained a popular social media presence. Ballaya’s column openly accused the government of corruption—an accusation that flies in the face of legitimate efforts to implement democratic elections given the overall paucity of evidence of government corruption. Ballaya’s expression directly undermined the principles of a democratic society and incited violence. The criminal sanction against Ballaya, an identifiable organizer of the violent protest, was thus necessary to address the pressing social need and act as a deterrent penalty.¹²⁴

II. AMOSTRA PROPERLY PROSECUTED BALLAYA UNDER THE ESA.

As stated above,¹²⁵ freedom of expression is an ‘essential foundation of a democratic society’¹²⁶ that States may limit under certain circumstances.¹²⁷ Freedom of expression forms a

¹²¹ *Compromis*, ¶ 20.

¹²² ECtHR Factsheet on Hate Speech, June 2016.

¹²³ *Öztiirk v Turkey*, App no 22479/93 (ECtHR, 28 September 1999), para 66.

¹²⁴ *Incal v Turkey*, App no 22678/93 (ECtHR, 9 June 1998) para 54.

¹²⁵ See Section I.

¹²⁶ *Handyside v the United Kingdom*, App no 5493/72 (ECtHR, 7 December 1976).

¹²⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19(3); *Rios et al v Venezuela* IACtHR (2009) Series C No 194, para 346.

‘basis for the full enjoyment of a wide range of other human rights’, including freedom of assembly.¹²⁸ Article 21 of the ICCPR and Article 20 of the UDHR protect the right to peaceful assembly.¹²⁹ However, freedom of assembly only extends to peaceful assembly, and thus does not protect demonstrations whose ‘organizers and participants intend to use violence’.¹³⁰ Any interference with freedom of assembly must be prescribed by law, in pursuit of a legitimate aim, and necessary and proportionate to the aim pursued.¹³¹ Here, the ESA and Ballaya’s prosecution thereunder were consistent with international law and thus a permissible restriction of her freedom of expression and freedom of assembly.

A. The ESA is Prescribed by Law.

As stated above,¹³² a restriction is prescribed by law if it is ‘adequately accessible’, and sufficiently precise.¹³³ Here, the ESA is both accessible and precise. The government’s NEA announced the ESA nearly two months prior to the general election.¹³⁴ Moreover, the ESA’s enactment coincided with the announcement that elections would take place on August 5.¹³⁵ By announcing the two together, the Amostran government put citizens on notice that public demonstrations spreading extremist or seditious sentiments would not be tolerated. Additionally,

¹²⁸ UNHRC ‘General Comment No 34’ (2011) UN Doc CCPR/C/GC/34 para 4.

¹²⁹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 20(1); International Covenant on Civil and Political Rights (adopted 16 December 1966) UNGA Res 2200A (XXI) (ICCPR) art 21.

¹³⁰ *Cisse v France*, App no 51346/99 (ECtHR, 9 April 2002), para 37.

¹³¹ International Covenant on Civil and Political Rights (adopted 16 December 1966) UNGA Res 2200A (XXI) (ICCPR) art 21.

¹³² See n 79-84.

¹³³ *The Sunday Times v United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979).

¹³⁴ *Compromis*, ¶ 3.

¹³⁵ *Compromis*, ¶ 2.

the ESA is sufficiently precise, as it specifies the number of people required to constitute an offense, limits the effect of the law to thirty days within a general election, and includes the requirement that the demonstration must seek to incite hatred, violence, or disrupt the democratic process.¹³⁶

The ESA was readily accessible to Ballaya because she wrote her column directly responding to the announcement of general elections.¹³⁷ The coinciding announcements of the ESA and of the elections were essentially the same political development. As she was well aware of the elections, Ballaya was in a position to be aware of the restrictions imposed by the ESA. Further, Ballaya could reasonably foresee that her conduct would constitute an offence. The ESA explicitly prohibits demonstrations that ‘spread an extremist or seditious message’, seek to ‘incite hatred’ or violence, or ‘disrupt the democratic process’.¹³⁸ Yet, Ballaya openly called for a Day of Resistance four days prior to an election in a public op-ed—a medium meant to be seen by many—after accusing the government of corruption and human rights violations.¹³⁹ Her call for resistance impliedly sought to incite hatred and violence through a wide-scale demonstration and, thus, her prosecution was prescribed by law.

B. The ESA Pursues Legitimate Aims.

Amostra enacted the ESA pursuant to the legitimate aims of protecting the rights of others and ensuring public order.¹⁴⁰ The ECtHR recognized ‘the need for the authorities to be

¹³⁶ Compromis, ¶ 4.

¹³⁷ Compromis, ¶¶ 3, 18.

¹³⁸ Compromis, ¶ 4.

¹³⁹ Compromis, ¶ 18.

¹⁴⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966) UNGA Res 2200A (XXI) (ICCPR) art 19(3).

alert to acts capable of fueling additional violence’ when enacting domestic law.¹⁴¹ Over the past five years, Amostra has seen a rise in sociopolitical tension¹⁴² that has led to violent protests and threats against government officials.¹⁴³ Amostra enacted the ESA in an effort to quell such rampant instability.

Additionally, the Amostran government implemented the ESA to protect citizens’ right to vote. Article 25 of the ICCPR protects citizens’ right to vote and take part in public affairs.¹⁴⁴ The ECtHR upheld this principle in *Vogt v Germany*, noting that an interference with the freedom of expression ‘on account of the need to protect the rights of others to effective political democracy’ was a legitimate aim.¹⁴⁵ Thus, the ESA serves to protect public order, as the ‘guarantee of fair elections is an integral part of public order in a democratic society’.¹⁴⁶ Protests or demonstrations that seek to disrupt the democratic process during or close to an election day can impinge citizens’ rights, thereby disrupting public order. The goal of providing ‘the electorate with a limited period of reflection [when] they are insulated from considerations extraneous to the issues under contest in the elections’ is a worthwhile endeavor.¹⁴⁷ Here, Ballaya organized the Day of Resistance within five days of Amostra’s general elections.¹⁴⁸ The

¹⁴¹ *Sürek v Turkey*, App no 26682/95 (ECtHR, 8 July 1999), para 52.

¹⁴² Compromis, ¶ 1.

¹⁴³ *ibid.*

¹⁴⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966) UNGA Res 2200A (XXI) (ICCPR) art 25.

¹⁴⁵ *Vogt v Germany*, App no 17851/91 (ECtHR, 26 September 1995); *Case of Ahmed and Others v The United Kingdom*, App no 65/1997 (ECtHR, 2 September 1998).

¹⁴⁶ *Kim Jong Cheol v Republic of Korea*, Communication No 968/2001 (UNHRC 2005), 29th July 2005.

¹⁴⁷ *ibid.*

¹⁴⁸ Compromis, ¶ 18.

demonstration—particularly during a time of heightened sociopolitical tension—could impinge citizens’ rights and lead to public disorder. Therefore, the ESA and Ballaya’s prosecution pursued legitimate aims.

C. The ESA and Ballaya’s Prosecution Thereunder Were Necessary and Proportionate.

As stated above,¹⁴⁹ a restriction is necessary if there is a pressing social need and the measures are narrowly tailored to the aims.¹⁵⁰ Here, the increased sociopolitical tension and pattern of disruption in Amostra created a pressing social need.¹⁵¹ Over the past five years, social unrest has led to the destruction of government property, death threats, and the death of a citizen.¹⁵² Accordingly, Amostra needed to take measures to protect public order during what would be the country’s most important political event in recent history.¹⁵³ Indeed, as the ‘guarantee of fair elections is an integral part of public order in a democratic society’,¹⁵⁴ Amostra’s enactment of the ESA to ensure safety in public spaces was a necessary response.

Additionally, Ballaya’s prosecution was necessary, as violence was imminent on the Day of Resistance. Ballaya organized the event to galvanize a frustrated part of the population and provide them with an outlet for their anger. In *Sürek v Turkey*, the ECtHR upheld an interference where the applicant published a weekly review that identified certain key officials’ names, ‘stir[ing] up hatred for them and expos[ing] them to the possible risk of physical violence’.¹⁵⁵

¹⁴⁹ See Section 1(C).

¹⁵⁰ UNHRC ‘General Comment No 34’ (2011) UN Doc CCPR/C/GC/34 para 33; *Sürek v Turkey (No. 4)*, App no 24762/94 (ECtHR, 8 July 1999) para 33.

¹⁵¹ Compromis, ¶ 1.

¹⁵² *ibid.*

¹⁵³ Compromis, ¶¶ 1, 2.

¹⁵⁴ *Kim Jong Cheol v Republic of Korea*, Communication No 968/2001 (UNHRC 2005), 29th July 2005.

¹⁵⁵ *Sürek v Turkey*, App no 26682/95 (ECtHR, 8 July 1999).

Similarly, Ballaya’s column named the Prime Minister and key members of the Zasa sect, calling them ‘Oppressors’.¹⁵⁶ Her call for a Day of Resistance coupled with the incendiary accusations in the column provided Yona citizens with ‘an outlet for stirring up violence and hatred’.¹⁵⁷ Unlike *Taranenko v Russia*, in which the ECtHR overturned an interference with freedom of assembly because the protesters ‘were not armed and did not resort to any violence or force, except for pushing aside the guard who attempted to stop them’,¹⁵⁸ Ballaya stirred up anger and organized a demonstration to which protesters showed up armed and initiated violence unprovoked by the government.¹⁵⁹

The fact that Ballaya’s column was published on SeeSey increased the likelihood of disruption and violence, as evidenced by the comments under her column planning the use of weapons to resist the government.¹⁶⁰ Ballaya further exacerbated the threat by including the lyrics to a famous Yona unity song,¹⁶¹ as evidenced by Yona protesters chanting these lyrics while setting fire to a Zasa religious building and attacking law enforcement.¹⁶² As the ICC noted in *Prosecutor v Bikindi*, if the lyrics ‘were as innocent as portrayed . . . they could not have been used in the manner they were’.¹⁶³ Indeed, proper interpretation of the lyrics must consider ‘the

¹⁵⁶ Compromis, ¶ 18.

¹⁵⁷ *Sürek v Turkey*, App no 26682/95 (ECtHR, 8 July 1999), para 63.

¹⁵⁸ *Taranenko v Russia*, App. No 19554/05 (ECtHR, 15 May 2014), para 91.

¹⁵⁹ Compromis, ¶ 21.

¹⁶⁰ Compromis, ¶ 12.

¹⁶¹ Compromis, ¶ 21.

¹⁶² *ibid.*

¹⁶³ *Prosecutor v Bikindi (Simon)*, Judgment, Case no ICTR-01-72-T, ICL 709 (ICTR, 2 December, 2008), para 250.

cultural, historical, and political context in which they were...disseminated'.¹⁶⁴ Here, the lyrics were used 'against a backdrop of highly politicized propaganda'¹⁶⁵ and relationships already 'fragile and precarious' due to their history.¹⁶⁶ Without Ballaya's prosecution, angry protesters would continue to use the lyrics to inflict violence and disorder.

Ballaya's prosecution under the ESA was also proportionate. In administering penalties, the State must 'have regard to the dangers inherent in the applicant's particular form of protest activity', as well as the 'risk of disorder arising' from such conduct.¹⁶⁷ Moreover, while a \$300,000 fine is not insubstantial, Ballaya incited a protest that 'created a danger of serious physical injury' to others and 'risked culminating in disorder and violence'.¹⁶⁸ Given the 'dangers inherent in her chosen form of protest and the public interest in deterring such conduct',¹⁶⁹ as well as the 'importance in a democratic society of maintaining the rule of law',¹⁷⁰ a deterrent penalty was warranted.

III. AMOSTRA HAS JURISDICTION TO OBTAIN AND ENFORCE THE CIVIL ORDER AGAINST SEESEY IN AMOSTRA AND SARRANTO.

Amostra has jurisdiction to obtain and enforce the civil order against SeeSey. A court has jurisdiction to obtain a civil order against a defendant when the court has adjudicative or

¹⁶⁴ *Prosecutor v Bikindi (Simon)*, Judgment, Case no ICTR-01-72-T, ICL 709 (ICTR, 2 December, 2008), para 247.

¹⁶⁵ *Prosecutor v Bikindi (Simon)*, Judgment, Case no ICTR-01-72-T, ICL 709 (ICTR, 2 December, 2008), para 248.

¹⁶⁶ *ibid.*

¹⁶⁷ *Case of Steel and Others v The United Kingdom*, App no 1058/67 (ECtHR, 23 September 1997), para 103.

¹⁶⁸ *Case of Steel and Others v The United Kingdom*, App no 1058/67 (ECtHR, 23 September 1997), para 105.

¹⁶⁹ *Case of Steel and Others v The United Kingdom*, App no 1058/67 (ECtHR, 23 September 1997), para 106.

¹⁷⁰ *Case of Steel and Others v The United Kingdom*, App no 1058/67 (ECtHR, 23 September 1997), para 107.

personal jurisdiction over the defendant.¹⁷¹ A court has enforcement jurisdiction when the order constitutes a lawful remedy.¹⁷² The Amostran Court has jurisdiction to obtain and enforce the civil order in both Amostra and Sarranto because it has adjudicative jurisdiction over SeeSey, and the order is an appropriate remedy.

A. Amostra Has Adjudicative Jurisdiction Over SeeSey.

Amostra has jurisdiction to obtain the civil order against SeeSey. To obtain a civil order against a defendant, a court must have adjudicative jurisdiction over the defendant.¹⁷³ Adjudicative jurisdiction refers to a state's power to assert personal jurisdiction over a defendant to render a judgment with legal effect.¹⁷⁴ The Recast Brussels I Regulation, applicable to all European Union member states, contains international principles on jurisdiction, including rules that 'apply regardless of the defendant's domicile'.¹⁷⁵ Under this Regulation, although 'jurisdiction is generally based on the defendant's domicile',¹⁷⁶ it can be based on two alternative

¹⁷¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L351/3, recital 13; Andrew L. Strauss, 'Beyond National Law: Neglected Role of the International Law of Personal Jurisdiction in Domestic Courts' [1995] 36(2) Harvard International Law Journal 392.

¹⁷² Amit M. Sachdeva, 'International Jurisdiction in Cyberspace: A Comparative Perspective' [2007] (8) CTLR 247.

¹⁷³ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L351/3, recital 13; Andrew L. Strauss, 'Beyond National Law: Neglected Role of the International Law of Personal Jurisdiction in Domestic Courts' [1995] 36(2) Harvard International Law Journal 392.

¹⁷⁴ Andrew L. Strauss, 'Beyond National Law: Neglected Role of the International Law of Personal Jurisdiction in Domestic Courts' [1995] 36(2) Harvard International Law Journal 392.

¹⁷⁵ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L351/3, recital 13.

¹⁷⁶ Regulation (EU) No 1215/2012 (n 175), recital 15.

grounds: ‘a close connection between the court and the action’¹⁷⁷ and the court’s facilitation of ‘the sound administration of justice’.¹⁷⁸

Jurisdiction in a case related to Internet content ‘should be restricted’ to the state with which the case has a ‘real and substantial connection’.¹⁷⁹ A connection may be recognized where the author is established,¹⁸⁰ where the content is uploaded,¹⁸¹ where the content is specifically directed,¹⁸² or where the content is accessible and causes harm.¹⁸³ Further, the close connection ‘should ensure legal certainty’—the defendant should be able to foresee being sued in the court claiming jurisdiction.¹⁸⁴ In cases involving a parent-subsidiary relationship, a parent can foresee

¹⁷⁷ Regulation (EU) No 1215/2012 (n 175), recital 15..

¹⁷⁸ Regulation (EU) No 1215/2012 (n 175), recital 16.

¹⁷⁹ UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Freedom of Expression and the Internet [2011]; Article19.org, ‘Freedom of expression and ICTs: Overview of international standards’ (Article19.org, 2013) <<https://www.article19.org/data/files/medialibrary/37380/FoE-and-ICTs.pdf>> accessed 19 November 2016.

¹⁸⁰ *ibid.*

¹⁸¹ *ibid.*; *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AED) C-131/12 CJEU* (Grand Chamber) (13 May 2014); *LICRA & UEJF v Yahoo! Inc. & Yahoo France* [2000] Tribunal de Grande Instance de Paris; *Gutnick v Dow Jones & Co. Inc.* [2002] HCA 56; *Vidal-Hall & Ors v Google Inc.* [2014] EWHC 13 (QB).

¹⁸² UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Freedom of Expression and the Internet [2005]; Article19.org, ‘Freedom of expression and ICTs: Overview of international standards’ (Article19.org, 2013) <<https://www.article19.org/data/files/medialibrary/37380/FoE-and-ICTs.pdf>> accessed 19 November 2016.

¹⁸³ *ibid.*; *ibid.*; *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AED) C-131/12 CJEU* (Grand Chamber) (13 May 2014); *LICRA & UEJF v Yahoo! Inc. & Yahoo France* [2000] Tribunal de Grande Instance de Paris; *Gutnick v Dow Jones & Co. Inc.* [2002] HCA 56; *Vidal-Hall & Ors v Google Inc.* [2014] EWHC 13 (QB).

¹⁸⁴ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L351/3, recital 16.

being sued in the state in which its subsidiary is domiciled.¹⁸⁵ Pursuant to these international principles, Amostra has adjudicative jurisdiction over SeeSey because SeeSey has a close connection with Amostra, and jurisdiction would facilitate the sound administration of justice.

i. SeeSey Has a Close Connection to Amostra.

SeeSey is closely connected to Amostra because it hosted illegal content¹⁸⁶ that was directed at and accessed by Amostrans¹⁸⁷ in Amostra,¹⁸⁸ where the content ultimately caused harm.¹⁸⁹ This is factually analogous to *Dow Jones v Gutnick*, where the Australian High Court held that Australia had jurisdiction over a website uploaded in the United States by a United States publisher in an online defamation dispute when the applicant accessed the defamatory material in Australia, where the harm occurred.¹⁹⁰ Similarly, the Queens Bench, in *Vidal-Hall & Ors v Google Inc.*, focused on where the harm occurred when it exercised jurisdiction over Google, notwithstanding the fact that its headquarters were located in the United States.¹⁹¹ Here, although SeeSey's server is located in Sarranto,¹⁹² the column was accessed in Amostra,¹⁹³ where citizens experienced the resultant harm, particularly on the Day of Resistance.¹⁹⁴

¹⁸⁵ *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AED) C-131/12 CJEU (Grand Chamber) (13 May 2014).*

¹⁸⁶ Compromis, ¶ 18.

¹⁸⁷ Compromis, ¶ 19.

¹⁸⁸ *ibid.*

¹⁸⁹ Compromis, ¶¶ 20, 21.

¹⁹⁰ *Gutnick v Dow Jones & Co. Inc.* [2002] HCA 56.

¹⁹¹ *Vidal-Hall & Ors v Google Inc.* [2014] EWHC 13 (QB).

¹⁹² Compromis, ¶ 8.

¹⁹³ Compromis, ¶ 19.

¹⁹⁴ Compromis, ¶¶ 19, 21; See Section II(C).

Additionally, the column was directed at Amostran citizens as it made inflammatory accusations toward Amostra’s government officials and called for a Day of Resistance in Amostra.¹⁹⁵

SeeSey is further connected to Amostra through its subsidiary, SeeSALES. A similar connection was found in *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos*.¹⁹⁶ There, the CJEU held that jurisdiction over Google was proper because even though the activity occurred in the United States, Google had an ‘establishment’ in Spain through its subsidiary, which sold advertising in Spain.¹⁹⁷ Here, although SeeSey is headquartered in Sarranto,¹⁹⁸ SeeSey’s subsidiary, SeeSALES, is headquartered and has its sole office in Amostra.¹⁹⁹ SeeSALES’ employees work to encourage Amostran businesses to not only use SeeSey, but to purchase advertisements on it.²⁰⁰ Thus, SeeSALES’ operations are evidence that SeeSey was directing content at Amostra to attract Amostran advertising.²⁰¹ Furthermore, SeeSALES’ efforts earned SeeSALES’ five million USD in revenue in 2015—directly affecting SeeSey’s revenue—for which SeeSALES ‘paid all appropriate taxes to Amostra’s Bureau of Taxation’.²⁰² Thus, SeeSey avails itself of the benefits of doing business in Amostra through its

¹⁹⁵ Compromis, ¶ 18; See Section II(C).

¹⁹⁶ *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos* (AED) C-131/12 CJEU (Grand Chamber) (13 May 2014).

¹⁹⁷ *ibid.*

¹⁹⁸ Compromis, ¶ 8.

¹⁹⁹ Compromis, ¶ 9.

²⁰⁰ *ibid.*

²⁰¹ *ibid.*

²⁰² *ibid.*

parent-subsidiary relationship and should reasonably foresee being subject to suit in Amostra.²⁰³ Accordingly, SeeSey has a close connection to Amostra.

ii. It is in the Interest of Justice to Exercise Jurisdiction Over SeeSey.

Alternatively, Amostra has jurisdiction over SeeSey because it would facilitate the sound administration of justice.²⁰⁴ Amostra has an affirmative obligation to prohibit incitement to violence under Article 20 of the ICCPR.²⁰⁵ States must protect against human rights abuses by business enterprises within their jurisdiction, especially in conflict-affected areas.²⁰⁶ Furthermore, it is in the interest of justice for states to avoid trans-boundary harm.²⁰⁷ While internet intermediaries such as SeeSey provide a platform for news and ideas to be exchanged, they also provide a platform for rapidly spreading illegal content and causing harm across state borders.²⁰⁸ SeeSey displayed illegal content directed at Amostra²⁰⁹ that incited violence within Amostra's already-volatile sociopolitical climate.²¹⁰ Denying Amostra jurisdiction over SeeSey

²⁰³ *Equustek Solutions Inc. v Morgan Jack*, 2014 BCSC 1063 para 29; Compromis, ¶ 9.

²⁰⁴ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L351/3, recital 16.

²⁰⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR') art 20(2).

²⁰⁶ UNGA Res 32/38 (11 May 2016) UN Doc A/HRC/32/38 para 9-13; UNGA Res 17/4 (6 July 2011) UN Doc A/HRC/RES/17/4; OHCHR 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011) 3, 8.

²⁰⁷ UNGA Res 65/28 (10 January 2011) UN Doc A/RES/65/28; UNGA Res 62/68 (8 January 2008) UN Doc A/RES/62/68.

²⁰⁸ Global Commission on Internet Governance 'One Internet' 36 <https://www.ourinternet.org/sites/default/files/inline-files/GCIG_Final%20Report%20-%20USB.pdf> accessed 2 December 2016.

²⁰⁹ Compromis, ¶ 19.

²¹⁰ Compromis, ¶ 1.

would preclude Amostra from fulfilling its affirmative obligation to prohibit incitement to violence.²¹¹ Therefore, Amostra has adjudicative jurisdiction over SeeSey.

B. Amostra Can Enforce the Civil Order Against SeeSey in Amostra and Sarranto.

A court can enforce a civil order against a defendant within its territory²¹² when the order itself does not violate international law.²¹³ Generally, restrictions on the operations of websites should be content-specific and not based solely on the material being critical of the government or its ‘political social system’.²¹⁴ Furthermore, courts can enforce their judicial acts in foreign jurisdictions based on comity:²¹⁵ the recognition of another nation’s judicial, legislative, or executive acts within one nation’s territory.²¹⁶ Moreover, when an act is an ‘Act of State’, judges in other states cannot exercise ‘unfettered authority’ to critically judge the act’s validity, especially when the act embodies a foreign sovereign’s will ‘to protect its borders from what it deems as morally reprehensible speech’.²¹⁷

Amostra can enforce the civil order within its territory because it is a lawful, appropriate remedy.²¹⁸ Under Section C of the SIA, any ‘person . . . hosting’ material that is illegal under the

²¹¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (‘ICCPR’) art 20(2); UNGA Res 32/38 (11 May 2016) UN Doc A/HRC/32/38 para 9-13; UNGA Res 17/4 (6 July 2011) UN Doc A/HRC/RES/17/4; OHCHR ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (2011) 3, 8; Cedric Ryngaert, ‘The Concept of Jurisdiction in International Law’ (2015) 4.

²¹² Case of the SS ‘Lotus’ (*France v Turkey*) [1927] PCIJ Rep Series A No 10.

²¹³ Amit M. Sachdeva, ‘International Jurisdiction in Cyberspace: A Comparative Perspective’ [2007] (8) CTLR 247.

²¹⁴ UNHRC ‘General Comment No 34’ (2011) UN Doc CCPR/C/GC/34 para 43.

²¹⁵ *Equustek Solutions Inc. v Jack*, 2014 BCSC 1063.

²¹⁶ Julia Alpert Gladstone, ‘Determining Jurisdiction in Cyberspace: The “Zippo” Test or the “Effects” Test?’ [2003] *Informing Science* 154.

²¹⁷ *Yahoo! Inc v La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006).

²¹⁸ Amit M. Sachdeva, ‘International Jurisdiction in Cyberspace: A Comparative Perspective’ [2007] (8) CTLR 247.

act ‘can be compelled, by a civil court order . . . to remove the content and post an apology’.²¹⁹ The civil order is the exact remedy prescribed by the Act²²⁰ and is content-specific in that it calls for the removal of content related to Ballaya’s column.²²¹ Additionally, the basis for the restriction is not solely that the material is critical of the government or its ‘political social system’, but that it violates the SIA by inciting violence with its extremist language, thereby violating international principles.²²² When such language is used, the adoption of measures to block and filter the content is admissible.²²³ A notice and judicial takedown model is an appropriate mechanism to do so.²²⁴ Here, the civil order was obtained through the appropriate channel—an Amostran Court. Thus, the civil order was a lawful remedy.

Amostra can also enforce the civil order in Sarranto because it is an Act of State.²²⁵ Amostra’s civil order constituted an Act of State because it reflects the sentiments of the state itself and was not merely a private judgment. The SIA embodies international principles regarding extremist speech, and the civil order is a minimally invasive remedy in furtherance of these principles.²²⁶ The Amostran Court expressly recognized Amostra’s compelling interest to

²¹⁹ Compromis, ¶ 10(c); See Section IV(A).

²²⁰ See Section IV(C).

²²¹ UNHRC ‘General Comment No 34’ (2011) UN Doc CCPR/C/GC/34 para 43; Compromis, ¶ 24.

²²² UNHRC ‘General Comment No 34’ (2011) UN Doc CCPR/C/GC/34 para 43; Compromis, ¶ 18.

²²³ OAS ‘Annual Report of the Office of the Special Rapporteur for Freedom of Expression’ (2013) Volume 2, Chapt IV, para 85.

²²⁴ OAS Special Rapporteur para 108 (citing Biblioteca del Congreso nacional De Chile, Ley núm. 20.435); The Manila Principles on Intermediary Liability Background Paper (30 May 2015) 17 <https://www.eff.org/files/2015/07/08/manila_principles_background_paper.pdf> accessed 2 December 2016.

²²⁵ *Yahoo! Inc v La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1227 (9th Cir. 2006).

²²⁶ *ibid.*

rid its country of extremist speech in granting the civil order.²²⁷ Thus, the civil order reflects judicial enforcement of an Amostran state policy against extremist, anti-patriotic statements in light of the fragile sociopolitical climate prior to elections.²²⁸ Accordingly, the civil order can be enforced in Sarranto as an Act of State, pursuant to the principle of comity.

IV. THE CIVIL ORDER IS PROPER UNDER THE SIA AND INTERNATIONAL LAW.

Amostra's civil order imposes a permissible restriction on the freedom of expression as it is in accordance with the ICCPR.²²⁹ Under Article 19(3) of the ICCPR, restrictions on the freedom of expression must be prescribed by law, in pursuit of a legitimate aim, and necessary and proportionate to the aim pursued.²³⁰ Amostra's civil order is prescribed by the SIA, in pursuit of the protection of national security and public order, and is necessary and proportionate. Additionally, under the ECD, SeeSey may be subject to a court order requiring it to remove illegal content.²³¹ Therefore, the civil order is proper.

²²⁷ Compromis, ¶ 24.

²²⁸ *ibid.*

²²⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR') art 19(3).

²³⁰ UNHRC 'General Comment No 34' (2011) UN Doc CCPR/C/GC/34 para 22; UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, Joint declaration on universality and the right to freedom of expression [2014]; *The Sunday Times v United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979) para 45; See Section I.

²³¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ L178/13 recital 45.

A. The Civil Order is Prescribed by Law.

A restriction is prescribed by law if it is pursuant to formal law that is accessible,²³² foreseeable,²³³ and precise²³⁴ in its formulation.²³⁵ As discussed in Section I(A), the SIA is accessible, foreseeable, and precise.²³⁶ Therefore, the civil order is prescribed by law within the meaning of Article 19(3).

The Amostran government enacted the SIA, a formal piece of legislation, in 2014.²³⁷ SeeSee had access to the law and should have foreseen liability under Sections C and D for hosting a column containing extremist speech.²³⁸ SeeSee should have foreseen a restriction because as a corporation, SeeSee is a ‘person’ within the meaning of the term in Sections C and D of the SIA.²³⁹ A corporation may be considered a ‘subject’, which the ICJ defined as ‘an entity that international law treats as a person—that is, something that can affect and be affected by

²³² *The Sunday Times v United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979).

²³³ *L.M. de Groot v the Netherlands*, No 578/1994, UN Doc. CCPR/C/54/D/578/1994 (UNHRC 1995); Article19.org, ‘EU: European Commission’s Code of Conduct for Countering Illegal Hate Speech Online and the Framework Decision’ (Article19.org, 2016) <<https://www.article19.org/data/files/medialibrary/38430/EU-Code-of-conduct-analysis-FINAL.pdf> accessed> 19 November 2016.

²³⁴ *ibid.*

²³⁵ *Faurisson v France*, UN Doc CCPR/C/58/D/550/1993 (UNHRC 1996), 8th November 1996; *Zana v Turkey*, App no 18954/91 (ECtHR, 25 November 1997); *Ekin Association v France*, App no 39288/98 (ECtHR, 17 July 2001) para 46; *Leroy v France*, App no 36109/03 (ECtHR, 2 October 2008); See Section I(A).

²³⁶ See Section I(A).

²³⁷ *Compromis*, ¶ 10.

²³⁸ *Compromis*, ¶¶ 10, 10(c), 10(d), 18.

²³⁹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 17; Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] ICJ; *Citizens United v Fed. Election Comm ’m*, 558 U.S. 310, 466 (2010); *Burwell v Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2768 (2014); OECD ‘OECD Guidelines for Multinational Enterprises’ (2011) 34, OHCHR ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ 32; José E. Alvarez, ‘Are Corporations “Subjects” of International Law?’ [2011] (9)1 Santa Clara Journal of International Law 3; *Compromis*, ¶ 10(c).

international law'.²⁴⁰ Furthermore, SeeSey is a host within the meaning of Section C because it provides a service that consists of storing information 'provided [to it] by a recipient of [its] service'.²⁴¹ Additionally, SeeSey published the column in Amostra, as it was accessible in Amostra and 'addressed to Amostran residents' pursuant to Section D of the SIA.²⁴² The civil order is also precise because it unambiguously ordered the removal of the column and related content.²⁴³ Thus, the civil order is sufficiently prescribed by law.

B. The Civil Order Pursues Legitimate Aims.

The civil order under the SIA pursues legitimate governmental aims.²⁴⁴ The order compelling SeeSey to remove content furthers Amostra's legitimate purpose of protecting national security and public order.²⁴⁵ Within the past five years, Amostra has experienced 'increased social unrest' marked by protests and skirmishes between Yona protestors and Zasa counter-protestors.²⁴⁶ The column contributed to the sociopolitical strife by accusing Amostra's Prime Minister and other Zasans of 'corruption and human rights violations against Yona

²⁴⁰ Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] ICJ; José E. Alvarez, 'Are Corporations "Subjects" of International Law?' [2011] (9)1 Santa Clara Journal of International Law 3.

²⁴¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ L178/13 art 14.1.

²⁴² Compromis, ¶ 10(d); See Section I(A).

²⁴³ Compromis, ¶ 24.

²⁴⁴ UNHRC 'General Comment No 34' (2011) UN Doc CCPR/C/GC/34 para 28-32; See supra Part I.B.

²⁴⁵ *Faurisson v France*, UN Doc CCPR/C/58/D/550/1993 (UNHRC 1996), 8th November 1996; *Ross v Canada*, UN Doc CCPR/C/70/D/736/1997, (1997) 8 IHRR 322m IHRL 1681 (UNHRC 2000), 18th October 2000; *Zana v Turkey*, App no 18954/91 (ECtHR, 25 November 1997); *Leroy v France*, App no 36109/03 (ECtHR, 2 October 2008); See Section I(A).

²⁴⁶ Compromis, ¶ 1.

people’, and claiming that the August election was ‘a sham for Zasa political gain’.²⁴⁷ It also echoed other anti-government Amostrans’ calls to take action on the Day of Resistance.²⁴⁸ These statements incited imminent violence as evidenced by the violent attacks on the Day of Resistance.²⁴⁹ Therefore, the civil order requiring removal of content related to the column is in pursuit of protecting national security and public order.

C. The Civil Order is Necessary and Proportionate.

Amostra’s civil order is necessary in a democratic society. Restriction of the freedom of expression is necessary in a democratic society if there is a corresponding social need and it is proportionate to the legitimate aims pursued.²⁵⁰ Article 20 of the ICCPR further obliges states to prohibit ‘any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence’.²⁵¹ Thus, the right to the freedom of expression is not absolute.²⁵² Further, states are afforded a margin of appreciation to determine whether restrictions are necessary because national authorities are best suited to determine what constitutes a pressing social need and the corresponding restriction intended to meet the need.²⁵³

²⁴⁷ Compromis, ¶ 18.

²⁴⁸ *ibid.*

²⁴⁹ *ibid.*

²⁵⁰ UNHRC ‘General Comment No 34’ (2011) UN Doc CCPR/C/GC/34 para 33; *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976); *The Sunday Times v United Kingdom*, App no 6538/74, para 59, 62 (ECtHR, 26 April 1979); *Otto-Preminger-Institut v Austria*, App no 13470/87 (ECtHR, 20 September 1994); *Le Pen v France* App no 18788/09 (ECtHR, 7 May 2010); *Faurisson v France*, UN Doc CCPR/C/58/D/550/1993 (UNHRC 1996), 8th November 1996; *Ross v Canada*, UN Doc CCPR/C/70/D/736/1997, (1997) 8 IHRR 322m IHRL 1681 (UNHRC 2000), 18th October 2000, Human Rights Committee [UNHRC].

²⁵¹ International Covenant on Civil and Political Rights (adopted 16 December 1966) UNGA Res 2200A (XXI) (ICCPR) art 20; *Delfi v Estonia*, App no 64569/09 (2015) (citing The UN Human Rights Council’s Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report of 16 May 2011 to the Human Rights Council (A/HRC/17/27)).

²⁵² *Handyside v the United Kingdom*, App no 5493/72 (ECtHR, 7 December 1976), paras 47-49.

²⁵³ *ibid.*

There is a pressing social need in Amostra to restrict SeeSey’s hosting of illegal content, and the civil order is a proportionate restriction. Thus, the civil order is necessary.

Amostra needed to impose the civil order due to its volatile sociopolitical climate.²⁵⁴ Although there was ‘a period of relative calm in Amostra’ after the Prime Minister announced that general elections would be held,²⁵⁵ Amostra’s sociopolitical environment remained fragile—evidenced by the NEA enacting the ESA to restrict elections-related speech in order to protect the democratic process.²⁵⁶ Thus, there was an objective danger that any extremist or seditious messages could have led to more violent disruptions leading up to the election.

The column was available via Seesay to people in Amostra, Sarranto, and around the world for nearly a month before the Day of Resistance, thereby allowing extremist messages to spread and exacerbate anti-Zasa sentiments.²⁵⁷ In *Sürek*,²⁵⁸ the ECtHR upheld the conviction of an owner of a weekly review that published readers’ letters condemning military actions in Turkey because the letters constituted an appeal for bloody revenge and exposed people to violence.²⁵⁹ There was a ‘pressing social need’ to convict the owner especially in light of the conflict situation in the region.²⁶⁰ Similarly, there is a corresponding social need for SeeSey to remove the column because the column poses an objective danger as users can continue to

²⁵⁴ Compromis, ¶ 1.

²⁵⁵ *ibid.*

²⁵⁶ Compromis, ¶ 3; See Section I(B).

²⁵⁷ Compromis, ¶¶ 17-19.

²⁵⁸ See Section I(C).

²⁵⁹ *Sürek v Turkey*, App no 26682/95 (ECtHR, 8 July 1999).

²⁶⁰ *Sürek v Turkey*, App no 26682/95 (ECtHR, 8 July 1999), paras 62-64.

comment on it with threats of violence.²⁶¹ Therefore, the existence of this seditious column and the comments that support its anti-government, anti-Zasa message can lead to religious extremism and indoctrination.

The civil order and its call for the column's removal are also proportionate to the legitimate aims pursued.²⁶² The order furthers the legitimate aims of protecting national security and public order through the least restrictive means without imposing liability through a fine or harsh criminal remedy as in *Sürek*.²⁶³ Furthermore, compelling SeeSey to remove the column and comments is considerably less restrictive than completely blocking access to SeeSey in Amostra—a measure which the ECtHR has held violates the right to freedom of expression.²⁶⁴ The Amostran government has exercised restraint by not completely blocking SeeSey, notwithstanding its ability to do so.²⁶⁵ Although SeeSey can block individual posts in Amostra,²⁶⁶ leaving the seditious column available for people across the world would allow anti-Zasa sentiment to build and subsequently increase tensions within Amostra—in this Internet age and increasingly globalized world, people can become indoctrinated in other states and subsequently carry out attacks in Amostra.

²⁶¹ Compromis, ¶ 7.

²⁶² Compromis, ¶ 24; See Section III(B).

²⁶³ *Sürek v Turkey*, App no 26682/95 (ECtHR, 8 July 1999); See also *Özgül Gündem v Turkey*, App no 23144/93 (ECtHR, 16 March 2000); Compromis, ¶ 24.

²⁶⁴ *Yildirim v Turkey*, App no 3111/10 (ECtHR, 18 December 2012); UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Freedom of Expression and the Internet [2011]; Article19.org, 'Freedom of expression and ICTs: Overview of international standards' (Article19.org, 2013) <<https://www.article19.org/data/files/medialibrary/37380/FoE-and-ICTs.pdf>> accessed 19 November 2016.

²⁶⁵ Compromis, ¶ 5.

²⁶⁶ Compromis, ¶ 7.

Furthermore, SeeSey's publicly available Operating Policies forewarn its users of the required removal of content 'where required by law'.²⁶⁷ Thus, it provides adequate notice that content may be subject to removal by civil orders. The ECD regulates internet intermediaries and provides that intermediaries, such as SeeSey, may be subject to civil orders. Under the ECD, regardless of whether an internet intermediary is held liable for illegal content, there is a possibility that injunctions such as court orders may be imposed that require 'the termination or prevention of any infringement, including the removal of illegal information or the disabling of access to it'.²⁶⁸ Thus, the civil order pursuant to the SIA is proper because it was necessary in Amostra's volatile sociopolitical environment and proportionate to legitimate aims.

²⁶⁷ Compromis, ¶ 14.

²⁶⁸ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ L178/13 recital 45.

PRAYER FOR RELIEF

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

1. Ballaya's prosecution under the SIA was consistent with principles of international law, including Article 19 of the UDHR, Article 19 of the ICCPR, and the freedom of expression.
2. Ballaya's prosecution under the ESA was consistent with principles of international law, including Articles 19 and 20 of the UDHR, Articles 19 and 21 of the ICCPR, and the freedoms of expression and assembly.
3. The Amostran Court has jurisdiction to obtain and enforce the civil order against SeeSey in both Amostra and Sarranto.
4. The civil order against SeeSey does not violate international principles, including Article 19 of the UDHR, Article 19 of the ICCPR, and the freedom of expression.

On behalf of Amostra,

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Agents for the Respondent