



Bonavero
Institute
of Human
Rights



PRICE MEDIA LAW MOOT COURT COMPETITION CASE

2020/2021 COMPETITION YEAR

**Official case of the 2021 International Rounds and the
2020/2021 Regional Rounds in South Asia, Asia Pacific,
South-East Europe, North-East Europe, Northern Europe, the
Americas, the Middle East, and Africa Regional Rounds**

Background

1. Ized is a land-locked tropical country with a population of 20 million people. It has two major political parties: the National United Alliance (NUA), and the Democratic Socialist Party (DSP). The NUA has generally promoted free market economic policies and tax breaks. It has also advocated for stronger laws on national security. The DSP has meanwhile promoted state-funded education and healthcare, higher taxes, and the relaxation of national security laws.
2. A number of private media institutions disseminate news and opinion to the public in Ized. The state media in Ized is virtually defunct, and the public accesses news and opinion almost exclusively via private media sources.
3. National Network is a privately-owned media organisation, and is by far the largest media service provider in Ized. It is estimated to have a virtual monopoly in the media sector. National Network has three television channels and two radio channels. It also hosts Ized's most popular social media platform, 'The Net', which has over 4 million users.
4. The DSP has often accused National Network of supporting the NUA. No formal ties exist between the NUA and this media organisation. However, the NUA's general secretary, Gus Dabyu, sits on the board of directors of National Network. In 2018, when Dabyu joined the board of National Network, he publicly announced that he would not be contesting any election while he serves on the board.

The Net

5. The Net features a simple user interface which permits users (referred to as 'Netizens') to post their opinions in 200 characters or less. Each Netizen can 'follow' and be followed by other Netizens. Netizens can share the posts of other Netizens by clicking on the 'share' icon.
6. The Net also permits Netizens to organise 'Net-Assemblies', where several users can gather to share their opinion and raise public issues. Any Netizen can organise a Net-Assembly by clicking on the option 'Organise a Net-Assembly' and then inviting their followers to join the Net-Assembly. A Net-Assembly functions as its own webpage featuring the opinion of all Netizens who have joined the Net-Assembly. Each Net-Assembly has a unique 'Net Tag' which is the main slogan the Net-Assembly is associated with. The Net Tag may be formulated by the creator of the Net-Assembly, and is depicted as a string of characters beginning with a hash ('#'). A user may choose to 'endorse' a Net Tag by hovering over the Net Tag and clicking on the icon 'endorse'. A Net Tag can be included in any post by any user. The Net-Assembly can therefore be found by any user who searches for the Net Tag or comes across it on a user post. Any user of The Net, including those who do not follow the creator of a Net-Assembly can join and share opinion on a Net-Assembly.
7. The Social Democratic Workers Union ('The Union') is a trade union with legal personality. It is loosely affiliated with the DSP. Among its members are healthcare workers employed in the state healthcare service. The Union publishes a weekly magazine called 'Unite' which sells on average around 4,000 copies a week. It also has over 1,000 members who are Netizens. They often organise Net-Assemblies to campaign on issues and raise public awareness.

Elections and New Policies

8. Until January 2020, the DSP held a parliamentary majority and functioned in government.

9. In early January 2020, fresh parliamentary elections were announced. In keeping with his initial public pledge, the NUA general secretary Dabyu did not put himself forward as a candidate at the election.
10. One of the main election issues concerned the spread of a new viral disease that affects the immune system of those infected. The disease, commonly referred to as NIDV ('Novel Immuno-Deficiency Virus') has been compared to HIV, but has been identified as distinct from HIV. Medical experts generally agree that it is not as deadly as HIV. Although the means through which it is transmitted is not fully understood, some experts believe the virus is sexually transmitted, whereas others have argued that it is a vector-borne disease and that it could be transmitted through mosquitoes. Incidentally, given its tropical climate, Ized is known to have diurnal and nocturnal mosquitoes. According to official statistics, nearly 30,000 cases of NIDV were recorded since September 2019, and 420 deaths were attributed to the virus.
11. On 15 January, two days prior to election day, the National Network released what it called 'leaked information' that the actual death toll from NIDV was close to 2,000 persons – nearly five times the death toll reported by the government. It claimed that the leak came from a 'senior state health sector official, who wished to remain unnamed'. All three television channels and radio channels owned by National Network disseminated information on this 'leak'. Such information rapidly spread on The Net as well, as many users posted about it, and shared the posts of others. The 'leak' was contested by members of the DSP-led government as 'fabricated' and an act of 'fear-mongering'.
12. On 16 January, the Institute of Medical Research, an independent research institute in Ized, issued a statement regarding the 'leak'. It stated that although it could not verify the actual number of deaths caused by the virus, it was possible that initial government estimates were not accurate. It also stated that tests with respect to the means through which the virus could be transmitted had been inconclusive thus far. The statement received wide media coverage on all of National Network's media channels.
13. Following the conclusion of the election, the NUA secured a clear majority in parliament, and established a new government. The new government introduced a series of reforms promised during the NUA campaign. These reforms included the privatisation of healthcare services. Several hospitals were listed for privatisation during the upcoming months. In its policy statement in parliament, the new government claimed that the state health sector was 'unprofessional' and that the lack of professionalism had led to the NIDV crisis. It claimed that the new reforms would introduce better technology and innovation, and ensure high quality service delivery at an affordable price. The government also claimed that the reform plan would ensure the retention of most of the current employees of the state health sector, but that the government would dismiss inefficient and unprofessional employees following a comprehensive vetting process.

National Security Act

14. The new government meanwhile enacted a new National Security Act (NSA) to regulate the use of 'public sites' and to authorise the state to designate specific 'public sites' that may be used to conduct 'gatherings'. Section 22 of the NSA provides:
 - (1) *In the event of a public emergency that threatens the life of the nation, and such emergency is declared by the Minister of Defence, no person shall conduct or facilitate the conducting of any gathering at a public site unless such site is designated by regulation issued under this Act by the Minister of Defence.*

(2) For the purpose of this section, 'public site' shall mean any location or space that is used by members of the public and is visible to members of the public, and shall include but not be limited to public parks, public squares, public thoroughfares, and means of public transportation.

(3) Any person found guilty of an offence under this section shall be liable to serve a term of imprisonment of no more than 1 year, or a fine of no more than USD 500, or both.

15. The NSA also contained a provision that authorised the government to regulate publications during a public emergency. Section 23 of the NSA provides:

(1) In the event of a public emergency is declared in terms of subsection 1 of section 22 of this Act, the Minister of Defence may, in the interests of public safety, order or health, issue guidelines on the publication of any news, opinion, or other form of expression.

(2) Failure to comply with a guideline issued by the Minister of Defence under this section shall be an offence punishable with a fine of no more than USD 2,000.

16. On 1 February, the Minister of Defence issued a regulation declaring a state of public emergency for a period of three months. The regulation designated Ized's Central Public Park as the site on which gatherings may be held during the emergency period. The Park is located in Ized's capital Vaai. It has four access points, and is regularly visited by members of the public. The Minister justified the decision on the basis that the Park has ample space for gatherings and could be 'regularly fumigated' to mitigate exposure to mosquitos. The measure was welcomed by hundreds of Netizens on The Net. Many posted comments praising the measure as a 'good balance' between the people's rights and the NIDV health crisis. Some Netizens who supported the NUA also endorsed the measure as an effective way to control 'protests by socialists'.

Demonstrations

17. On 4 February, the Union announced that it was organising a demonstration on 14 February to protest the privatisation of healthcare services in Ized. In its statement, the Union claimed that the reforms would result in the loss of employment to more than 12,000 healthcare workers. It also claimed that the cost of healthcare in the country would rise exponentially. The Union maintained that NIDV was a sexually transmitted disease and that a 'crisis' was created to justify privatisation of healthcare.

18. During the next few days, scores of Netizens who were also members of the Union published posts on The Net to raise awareness about the campaign and the planned demonstration. On 13 February, the Union issued another statement calling upon all supporters to gather outside the Vaai General Hospital, which was one of the first hospitals scheduled to be privatised. The Ministry of Defence immediately released a statement specifying that the planned demonstration was unlawful under section 22 of the NSA, and that any person attending the demonstration would be arrested. The statement also mentioned that the Central Public Park was available for any public gathering, and that the Ministry would provide 'all necessary support' to members of the public who wished to gather at the Park. The statement was carried on all National Network television and radio channels.

19. On 14 February, members of the Union, including its leader Jo Xana, made their way to the Vaai General Hospital to conduct a demonstration. Approximately 400 persons, including state health sector employees, joined the demonstration. The demonstrators displayed placards with slogans including, 'Tell us the truth about NIDV', 'Say no to greedy capitalism', '12,000 jobs lost', 'Fired for Fake Virus?', and 'Care for healthcare!'. During the

demonstration, Xana used a loudspeaker to address the gathering. She claimed that the new government came into power by spreading lies about NIDV, and that the death toll is nowhere near the figure that 'fake news outlets' reported. She also claimed that the 'manufactured' NIDV crisis, the privatisation of healthcare, and the new National Security Law were all part of a connected NUA plan to seize power and deprive people of their rights. She then encouraged the demonstrators to block the entrance of the hospital and prevent any person from entering or leaving the building. During Xana's speech, around 40 demonstrators blocked the entrance of the hospital and began turning people away from the hospital.

20. As Xana was finishing her speech, security sector vehicles sped to the demonstration site from multiple directions, and baton-wielding officers began arresting demonstrators. Xana was among the arrested. Some demonstrators resisted arrest, but were eventually subdued through the use of water cannons. The security officers also used tear gas and fired 'blanks' into the air to disperse the crowd. Several demonstrators sustained minor injuries during this episode.
21. The next day Xana was charged under section 22 of the NSA and released on bail. The government decided to release all other demonstrators without pressing charges.
22. On 3 March, Xana was convicted in the High Court of Ized under section 22 of the NSA. The Court found that the Vaai General Hospital was not a designated site under the Act, and found Xana guilty of conducting a gathering at a public site that was not designated. The Court sentenced her to three months imprisonment, but suspended the sentence for one year. Xana appealed her conviction before the Supreme Court – the highest court in Ized. However, the Court upheld her conviction and sentence.

Union Net-Assembly

23. Following Xana's conviction, the Union decided to discontinue any demonstrations at physical public sites. Its leadership made a decision not to hold public meetings at the Central Public Park, as it feared that the Park was under heavy surveillance by state security forces. Other demonstrations, however, took place at the Park, and the security forces did not take any action to suppress them. For example, on 1 March, a group of animal rights activists protesting the use of animals in medical testing staged a protest at the Park unhindered.
24. On 10 March 2020, the Union decided to launch what it called a 'digital demonstration' on The Net. Netizens who were Union members launched a series of Net-Assemblies to criticise the government's healthcare reforms and to protest the use of the NSA. The same slogans used at the 14 February demonstration at the General Hospital were used as Net Tags. The two Net-Assemblies that displayed the Net Tags #FiredForFakeVirus and #Care4Healthcare each attracted endorsements from over 40,000 Netizens – nearly forty times the number of Netizens who were formal members of the Union. In a statement released on 14 March, the Union declared: 'One month has passed since the brutal suppression of our peaceful demonstration at the Vaai General Hospital. But we cannot be silenced. The people support our cause. The truth will bring this corrupt government to its knees.'
25. Some posts supporting the Union campaign #FiredForFakeVirus and #Care4Healthcare also began to encourage users to boycott healthcare services until the government withdrew its proposals. One Netizen with over 25,000 followers posted: 'Do not go to hospital. The NIDV can only be sexually transmitted. The government is lying to you about how serious it is.'
26. On 15 March, several articles were published in the weekly magazine 'Unite' supporting the digital demonstrations and calling for more people to join in the campaign. One article

published under the *nom de plume* 'Joxx' claimed that several medical experts had confidentially confirmed to the author that NIDV could only be transmitted sexually, and that there was no evidence that it could be transmitted in any other way. The article further claimed that these experts worked for the state healthcare services and were unwilling to come forward and publish their findings because they were under pressure from the government to maintain that the virus could be transmitted through mosquitos. The article speculated that some of the experts feared that they would lose their employment during the government's healthcare sector reform process if they publicly disclosed their opinion.

27. On 16 March, the Ministry of Health issued a report that contained the latest statistics on NIDV. The report stated that, since the new government was installed, 'only 4,300 new cases of NIDV' and only '140 new deaths' were recorded. The report claimed that there was 'credible evidence' to suggest that the virus 'could be transmitted via vectors including mosquitos'. On the same day, the Minister of Defence issued a statement announcing that 'due to the spread of disinformation that posed grave risks to public health and public order, the Ministry will be taking strong action under section 22 of the NSA to arrest persons who organise unauthorised gatherings on social media platforms.' The statement did not specifically mention The Net or Net-Assemblies. The Minister of Defence also issued guidelines under section 23 of the NSA prohibiting the publication of any opinion of any medical expert or other person, with respect to NIDV, without obtaining prior authorisation from the Ministry of Health. The guidelines specified that all communication with regard to NIDV would be 'centralised' due to the rapid increase in disinformation, which posed a serious threat to public health.
28. The next day, the board of directors of National Network met to discuss the Ministry of Health report and the Ministry of Defence statement and guidelines. It unanimously decided that the Net-Assembly feature of The Net would be temporarily discontinued until further notice. Later that day, National Network released a statement on all its media channels explaining that the decision came 'in the wake of the serious spread of disinformation via The Net and the irresponsible use of this platform by political forces'.

Supreme Court Proceedings

29. On 20 March, both Xana and the Union decided to file petitions before Ized's Supreme Court complaining that their rights under articles 10 and 11 of the Constitution had been violated. The Supreme Court has jurisdiction to hear a petition from any legal person complaining that the action of the state violated their constitutional rights. The relevant articles of the Constitution read as follows:

Article 10:

- (1) *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information in any medium.*
- (2) *The exercise of the freedom of expression may be subject to such restrictions as are provided by law and are necessary in the interests of national security, public order, public health, or for the protection of the reputation or rights of others.*

Article 11:

- (1) *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests.*

(2) No restrictions shall be placed on the exercise of these rights other than those that are provided by law and are necessary in the interests of national security, public order, public health, or for the protection of the rights and freedoms of others.

(3) This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police, or of employees of the state.

30. Both Xana and the Union complained that the government's actions in enacting section 22 of the NSA and prohibiting peaceful assemblies other than on public sites designated by the Minister of Defence violated their rights under articles 10 and 11 of the Constitution. Xana further complained that her conviction under section 22 of the NSA violated her rights under articles 10 and 11 of the Constitution. The Union meanwhile complained that the government's statement of 16 March threatening action against those who 'organise unauthorised gatherings on social media platforms' resulted in the denial of online space to organise campaigns and raise awareness. It accordingly complained that such actions violated its rights under articles 10 and 11 of the Constitution. The Union further complained that its rights under article 10 were violated by the guidelines issued under section 23 of the NSA on 16 March, as they prohibited the publication of expert opinion on NIDV and effectively prohibited criticism of the government's healthcare policies.
31. After several days of hearings, the Supreme Court determined that neither Xana's nor the Union's rights under the Constitution had been violated. The Court found that the restrictions imposed on Xana's and the Union's rights were permitted under the Constitution, as they complied with the strict requirements of articles 10 and 11.

Universal Court of Human Rights

32. The Universal Court of Human Rights exercises exclusive jurisdiction to receive and consider applications from legal persons alleging the violation of rights recognised in the International Covenant on Civil and Political Rights (ICCPR). Ized ratified the ICCPR in 2013 without reservations.
33. Xana and the Union have exhausted all domestic remedies. They filed applications before the Universal Court of Human Rights alleging violations of article 19 and article 21 of the ICCPR.
34. The Court decided to hear the applications together, and certified the applications on four discrete issues:

Issue A: Whether Ized's decision to enact section 22 of the National Security Act, and to designate the Central Public Park as the sole public site to hold public gatherings, violated Xana's and the Social Democratic Workers Union's rights recognised by articles 19 and 21 of the ICCPR.

Issue B: Whether Ized's decision to convict Xana under section 22 of the National Security Act violated her rights recognised by articles 19 and 21 of the ICCPR.

Issue C: Whether Ized's decision to issue the statement of 16 March violated the Social Democratic Workers Union's rights recognised by articles 19 and 21 of the ICCPR.

Issue D: Whether Ized's decision to issue guidelines under section 23 of the National Security Act on 16 March violated the Social Democratic Workers Union's rights recognised by article 19 of the ICCPR.

35. Xana and the Social Democratic Workers Union have sought from the Universal Court of Human Rights: (1) declarations that their rights under the ICCPR have been violated, and (2) directions to Ized to take immediate measures to fulfil its obligations under the ICCPR.