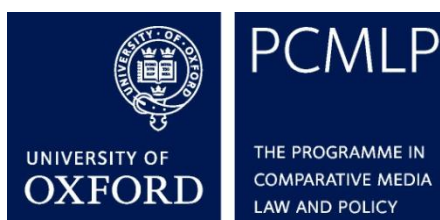


PRICE MEDIA LAW MOOT COURT COMPETITION

CLARIFICATIONS

2012/2013 COMPETITION YEAR



1. As mentioned in paragraph 5 of the case, can a G8-Way user have access to all profiles or to anybody's profile by sending a message to the G8-Way telephone number or does the other G8-Way user need prior access to the sender's profile?

A1: Profiles can be browsed by sending messages to the G8-Way telephone number. Prior authorization by the profile's owner is not required. Profiles do not list G8 memberships.

2. Does G8-Way perform any sort of moderation or filtering of messages sent by its users to their G8s?

A2: G8-Way does not ordinarily moderate or filter. Messages are delivered immediately to members of a G8.

3. Under paragraph 11 of the case, is the distributor of alleged defamatory material bound to take down the material when given a notice by the complainant himself or must the complainant protract an official notification from a court or other state machinery?

A3: The notice described in paragraph 11 can be given privately and does not require official notification.

4. What is the nature of emergency powers invoked by the Prime Minister? Is there any provision in the Malamban Constitution that permits derogation from freedom of speech in times of an Emergency? If so, on which grounds

can such an Emergency be proclaimed and what are the safeguards available in the legal system against abuse of power?

A4: Article 28 of the Malamban Constitution states, “The Prime Minister may declare a state of emergency in times of invasion, insurrection, or other grave danger to the public safety, and take such actions as are necessary to resolve the emergency.”

5. Under what law were the G8-Way users prosecuted for knowing membership in a terrorist organisation? What is the definition of terrorism under Malamban law?

A5: The G8-Way users were prosecuted under a statute stating, “Any person who knowingly joins or remains in a terrorist organization shall be punished as provided herein.” The statute does not define “terrorist organization.”

6. Under what authority was the turning over and disclosure of messages and member lists ordered by the Malamban government? Was it a merely executive act or was it backed by legislative authority? Are any procedural safeguards provided in the law and were they adhered to in the present case?

A6: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba’s Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense.

7. With reference to paragraph 16 of the case, is MalamTel the only service provider for mobile phone network in the State of Malamba, or are there other mobile phone service providers in the State?

A7: MalamTel is the only provider of mobile phone service in Malamba.

8. Was there any provision under the newly-passed law referred to in paragraph 17 for compensated victims (such as, for instance, mobile service providers) of spurious or irresponsible requests made by financial institutions to deactivate mobile towers?

A8: No provision of the law described in paragraph 17 requires the posting of a bond or compensation for deactivation requests. A person who knowingly makes a false statement in a signed request under the law would be subject to

prosecution for perjury.

9. With regard to the order referred to in paragraph 18, involving the forced discovery of G8-Way users, was the order made under any statutory authority/power and, if so, what are the specifics of the statutory provisions that set out the requirements or minimum threshold to warrant such an order?

A9: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba's Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense.

10. With regard to the second prosecution referred to in paragraph 18, what is the definition of the term "terrorist organisation" according to the law under which the eighty seven members were prosecuted?

A10: The G8-Way users were prosecuted under a statute stating, "Any person who knowingly joins or remains in a terrorist organization shall be punished as provided herein." The statute does not define "terrorist organization."

11. In paragraph 20, it is mentioned that Gateway has petitioned the Universal Court of Human Rights on its behalf and on behalf of its users. However, with regard to defamation, paragraph 19 states that the lawsuit filed by Kogar Derechem was only against G8-Way and Torsom Bega, and not individual users. Therefore, while arguing the defamation issue, are we required to argue on behalf of the users as well?

A11: The G8-Way users are not parties to the defamation lawsuit. It is not necessary to argue for or against their position with respect to defamation, except insofar as it is relevant to the other issues raised in the problem.

12. The legal position in some states is that "defamation" and "injurious falsehoods" are treated as separate torts. The fourth issue reads "defamation lawsuit [...] for transmission of injurious falsehoods about Derechem". Are defamation and injurious falsehoods to be treated as the same or different choices for action?

A12: "Injurious falsehood" is a synonym for the cause of action for defamation as described in paragraph 11 and throughout the problem. Under both Malamban and

Bregalian law, a statement must be both false and harmful to the subject's reputation to be actionable.

13. Paragraph 5 of the problem describes G8-Way as a "social networking website" which allows access from a mobile phone. The use of the word "website" suggests that G8-Way is internet enabled. However, the same paragraph further states that "since a majority of Malambans have SMS---capable phones which allow them to send unlimited numbers of messages for a flat rate, but comparably few Malambans have Internet---capable smartphones, G8---Way has become a popular way to communicate." This leads to an unequivocal inference that the popularity of G8-Way is due to it being accessible through SMS-capable phones. The fact of G8-Way being an SMS run system is further corroborated in paragraph 6, where it reads - "In order to limit the overall load on the phone system, G8---Way restricts each G8 to a maximum of 8 members..." , implying that G8-Way does not require internet for its usage. Please clarify whether G8-Way requires internet to operate or is merely an SMS-enabled system.

A13: All features of G8-Way may be accessed either via the web or via SMS message.

14. Paragraph 16 of the problem states that the "Chief of Police ordered MalamTel, the national mobile phone company, to deactivate completely all mobile phone towers within one kilometer of a Bank of Langar location". Paragraph 17 further empowers MalamTel to deactivate mobile phone tower subject to certain conditions under a newly enacted law. How can MalamTel, being a 'national mobile company', have the authority to deactivate all or any other mobile phone tower within a specified area? Does it perform functions similar to the Department of Telecommunications in the country?

A14: MalamTel is the only provider of mobile phone service in Malamba.

15. Paragraph 16 of the Moot Court Problem mentions that MalamTel was ordered to deactivate completely all mobile phone towers within a kilometer of a Bank of Langar location on January 18, 2012. In the following week, a new law authorizing such deactivations was enacted. Under what law or authority, if any, was the previous deactivation (of January 18, 2012) carried out by MalamTel, since a law in that regard was only made a week later?

A15: The deactivation order of January 18, 2012 was made pursuant to the emergency powers delegated to the Langar Chief of Police by the Prime Minister.

16. Are Malamba and Bregalia members of the United Nations?

A16: Malamba and Bregalia were members of the United Nations at all relevant times.

17. Have Malamba and Bregalia signed and/or ratified the ICCPR? Please clarify each country's ICCPR status.

A17: Malamba and Bregalia signed and ratified the ICCPR before the events described in the problem commenced, without reservations.

18. Are the defamation lawsuits against Bega and G8-Way filed by K. Derechem criminal lawsuits or civil lawsuits?

A18: The defamation lawsuits filed by Kogar Derechem are civil.

19. Is there any law in Malamba, based upon which the government ordered G8-Way to disclose the content of all messages sent on January 18 as well as the membership of all G8s? (Refer to paragraph 18, Moot Court Problem)

A19: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba's Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense.

20. Does the new Malamban law provide for any way of preventing arbitrary or frivolous requests for deactivation at the first instance itself, or will mobile phone towers necessarily be deactivated for 6 hours on receipt of a signed statement from an officer of a financial institution? (Refer to paragraph 17, Moot Court Problem)

A20: No provision of the law described in paragraph 17 requires the posting of a bond or compensation for deactivation requests. A person who knowingly makes a false statement in a signed request under the law would be subject to prosecution for perjury.

21. In previous years, the forum for the case was specified to be the fictional "Universal Freedom of Expression Court" of "Universal Court of Human Rights". Does the same instruction regarding the forum apply to this year's problem also? Or do we have to find the appropriate forum on our own.

A21: As described in §5.4 ("Legal Framework") of the Competition Rules, the

forum is the Universal Freedom of Expression Court.

22. In paragraph 7 it is stated that “Once a day, G8 Way selects five of the previous day’s most common messages (...)” and after that in the same paragraph it is stated that „ (...) and it does not simply select the most popular messages, but it rather attempts to select the messages that are likely to become popular in the next day.” Please clarify how the program choose messages and how the program knows which messages are likely to become popular in the next day, if it works without any human factor?

A22: Clarification will not be provided.

23. Is there any legal basis, any law or any other legal document on which is based measure from paragraph 18, where the Government asked G8 to turn over complete records from 18 January?

A23: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba’s Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense.

24. In paragraph 9 it is stated that the main source of Bega article is “(...)a person who is employed by the Bank of Langar and is familiar with the matter.” In paragraph 10 it is said that some statements for this article were given by the bank vice-president. Is the bank vice-president this source from paragraph 9?

A24: Neither Bega nor the Bregalian Times has disclosed the identity of the unnamed source mentioned in paragraph 9.

25. Does the Bregalian Times’s article written by Torsom Bega (Paragraph 9 of the Compromis) contain the author’s personal opinion of Kogar Derechem or does it consist entirely of quotations?

A25: Clarification will not be provided.

26. Paragraph 11 of the Compromis states that ‘such media are immune from liability unless the subject of such a communication gives actual notice of the communication that is alleged to be defamatory, and the medium fails to promptly disable further access to the communication’. What the exact content of an ‘actual notice’ under Malamban Law as stated in Paragraph 11, line 5 of the Compromis should be?

A26: The term “actual notice” is not defined in the Malamban law creating the exception described in paragraph 11.

27. Did Kogar Derechem claim civil liability or criminal responsibility (or both) in the defamation lawsuit that he filed against G8-Way and Torsom Bega in the courts of Malamba (Paragraph 19 of the Compromis)?

A27: The defamation lawsuits filed by Kogar Derechem are civil.

28. Do Torsom Bega and G8 Way in the role of applicants appear before the fictional Universal Court of Human Rights suing the country of Malamba?

A28: Clarification will not be provided.

29. Is the person, referred as "unnamed source" in paragraph 9. from the Case file, connected with professional or personal relations to the government of the Bregalian Republic?

A29: Neither Bega nor the Bregalian Times has disclosed the identity of the unnamed source mentioned in paragraph 9.

30. Does G8 Way have 'terms of use' that give basis for the usage of the social networking website?

A30: G8-Way has terms of use that prohibit use of the service to transmit “content that is obscene, abusive, harassing, an infringement of copyright, or otherwise contrary to law.”

31. Is the Bank of Langar private or national bank?

A31: The Bank of Langar is privately owned.

32. How many people gathered in front of Bank of Langar on January 18, and how many people gathered in front of other branches that day?

A32: Police estimates are that approximately 500 people gathered in front of the main branch, and that crowds at other branches ranged from 50 to 250 people.

33. Are Malamba and Bregalian Republic countries of common or continental law jurisdiction?

A33: Malamba and Bregalia are common-law jurisdictions.

34. What Malamban government body issued the order towards G8-Way to turn over its complete records of all messages sent on January 18, and the complete lists of the members in all G8s, conducted the investigation and persecuted the G8-Way users and on what legal basis?

A34: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba's Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense.

35. Are there any other media outlets, among others mobile operators present on Malamban territory?

A35: There are no other providers of mobile service in Malamba. There are multiple newspapers, magazines, and television and radio stations.

36. Is Kogar Derechem a Bregalian or Malambian citizen and where does he reside? (Para 8)

A36: Kogar Derechem is a citizen and resident of Malamba.

37. Was there legislation that allowed the government to order G8-Way to turn over its complete records of all messages sent on January 18th and the complete lists of the members in all G8s? (Para 18)

A37: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba's Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense.

38. How many persons were affected by the deactivation of mobile phone towers within 1 km of every branch of the Bank of Langar? (Para 16)

A38: Based on ordinary usage patterns on other days, MalamTel has estimated that 35,000 people would have been affected by the deactivations.

39. The pronunciation of all names (people and places) within the fact pattern?

A39: Mah-LAM-buh
Breh-GAYL-yuh

LAN-garr
KOE-garr DEH-reh-kehm
TORE-sohm BAY-guh

40. How Malamba defines a terrorist organization?

A40: The G8-Way users were prosecuted under a statute stating, "Any person who knowingly joins or remains in a terrorist organization shall be punished as provided herein." The statute does not define "terrorist organization."

41. Is MalamTel, the national mobile phone company of Malamba, a government entity?

A41: MalamTel is privately owned. It is the only provider of mobile phone service in Malamba and its operations are extensively regulated by the Malamban government.

42. Did Kogar Derechem inform the Malamban Prime Minister of the bank events?

A42: The information described in Paragraph 16 was provided to the Prime Minister by the Langar Chief of Police. Kogar Derechem did not communicate with either of them or any other Malamban official on January 17 or 18.

43. In paragraph #18, the text indicates "The Malamban government ordered G8-Way to turn over....". In this paragraph, are we to assume that the word "ordered" indicates a court order (or similar judicial process) or ordered via martial law?

A43: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba's Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense.

44. Torsom Bega has any relation with the social democratic party?

A44: Torsom Bega is not a member of any Malamban political party.

45. What rights were suspended during the state of emergency?

A45: The only actions taken during the state of emergency are fully described in Paragraph 16.

46. What was the content of the disclosure agreement for the G8 user?

A46: G8-Way has terms of use that prohibit use of the service to transmit “content that is obscene, abusive, harassing, an infringement of copyright, or otherwise contrary to law.” Its terms of use state that G8-Way will “keep users’ personal information confidential, except to provide the service, or to comply with any applicable law.”

47. Do all users G8-Way that were processed are Malamba nationality?

A47: All of the prosecuted users are citizens and residents of Malamba.

48. Does the Law in Malamba prohibits Government from having access to media companies' databases?

A48: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba’s Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense. No other provision of Malamban law regulates government access to databases.

49. Does the Government of Malamba has or had any economic or political participation in the Bank of Langar, such as the message "Take Back the Bank" suggests?

A49: The Bank of Langar is privately owned.

50. Are there other companies that are operated by MalanTel in Langar?

A50: MalanTel’s only line of business is as a provider of telecommunications services; it has no subsidiaries.

51. In what terms did the Malamban government use the information obtained by the requirement of disclosure of the G8-Way messages and the complete list of the members in all G8s? ¿Did the government use it as “confidential” information in order to safeguard its citizens right to privacy?

A51: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba’s Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been

committed and that the evidence sought will advance the investigation and prosecution of the offense. The government's use of the information is fully described in Paragraph 18.

52. Did G-8Way require its users to accept a "user agreement" of any kind? If so, can you please describe the details of the user agreement, especially with regard to consent for disclosure of information? Is it any different from the "user agreement" for Flood-G8s?

A52: G8-Way has terms of use that prohibit use of the service to transmit "content that is obscene, abusive, harassing, an infringement of copyright, or otherwise contrary to law." Its terms of use state that G8-Way will "keep users' personal information confidential, except to provide the service, or to comply with any applicable law."

53. Could you please clarify the term "reasonable basis"? (Fact 11, Line 9)

A53: The term "reasonable basis" is not further defined in Bregalian law.

54. How did the declaration of the state of emergency complied with the criteria set forth in Malamban law and international standards on the matter, in terms of suspended rights, specific powers granted to the police, duration, notification to international organizations and so forth?

A54: Article 28 of the Malamban Constitution states, "The Prime Minister may declare a state of emergency in times of invasion, insurrection, or other grave danger to the public safety, and take such actions as are necessary to resolve the emergency." The deactivation order of January 18, 2012 was made pursuant to the emergency powers delegated to the Langar Chief of Police by the Prime Minister.

55. How did G8-Way users on whose behalf the application was presented, exhausted domestic remedies?

A55: Clarification will not be provided.

56. According to the facts of the Case G8-Way presented the application on its behalf and on behalf of its users. Is G8-Way appearing before The Universal Court as a victim or only as a petitioner?

A56: Clarification will not be provided.

57. Was the bank vice-president recognized as a source in the article of the Bregalian Times?

A57: Neither Bega nor the Bregalian Times has disclosed the identity of the unnamed source mentioned in paragraph 9.

58. Is G8-Way suing on its behalf as a corporate personhood or as the people who own it?

A58: G8-Way is appearing in its capacity as a legal person; its owners are not parties to the suit.

59. May "social networking website" be considered as a blog?

A59: Clarification will not be provided.

60. Are we to assume that the emergency powers legislation empower either the Prime Minister or the Chief of Police to order a telecommunication provider to deactivate towers?

A60: Article 28 of the Malamban Constitution states, "The Prime Minister may declare a state of emergency in times of invasion, insurrection, or other grave danger to the public safety, and take such actions as are necessary to resolve the emergency." The deactivation order of January 18, 2012 was made pursuant to the emergency powers delegated to the Langar Chief of Police by the Prime Minister. No provision of Malamban law specifically discusses the deactivation of telecommunications infrastructure.

61. Whether any DSP members were among those prosecuted (either the 36 for incitement or 87 for membership in a terrorist organization)?

A61: 31 out of the 36 individuals prosecuted for incitement to riot were members of the Democratic Social Party; 49 out of the 87 individuals prosecuted for knowing membership in a terrorist organization were members of the Democratic Social Party.

62. Do members of G8's automatically receive via SMS messages, or do they have to affirmatively request via SMS their messages on the G8Way server?

A62: G8-Way users may choose to turn on SMS delivery of G8 messages and Flood-G8s. Once they do, they automatically receive all G8 messages and Flood-G8s via SMS until they turn off SMS delivery.

63. Was there a court order or warrant authorizing the disclosures?

A63: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba's Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense.

64. Can you provide any clarification as to whether there were any existing Malamba laws that prohibited "knowing membership in a terrorist organization" and "incitement to riot" and, if so, including the language of the Malamba statute related to the charges on knowing membership and incitement to riot?

A64: The Malamban statute on membership in a terrorist organization states, "Any person who knowingly joins or remains in a terrorist organization shall be punished as provided herein." The statute does not define "terrorist organization."

The Malamban statute on incitement to riot states, "Any person who induces, incites, compels, or advocates a public disturbance or riot that creates a grave danger of personal injury or death or damage to property through disorderly and violent conduct shall be punished as provided herein."

65. Is there any guidance we could have as whether each of the charges are criminal or civil, how severe the punishments are/were (fine/imprisonment), and whether the applicants have already been convicted (the problem only mentioned that they were being prosecuted)?

A65: The prosecutions for incitement to riot and knowing membership in a terrorist organization are criminal; all the defendants have been convicted. Kogar Derechem's defamation lawsuit is civil. Further clarification will not be provided.

66. Can you provide a complete list of applicants, i.e., is it the journalist Bega, G8-Way the company, all 87 G8-way users being prosecuted, or just Bega and G8-way?

A66: Clarification will not be provided.

67. In paragraph 7, page 3, it is stated that "it rather attempts to select the messages that are likely to become popular in the next day". What is the criterion for the system's intervention in this process?

A67: Some details on how the system works are given in paragraph 7; participants are free to discuss G8-Way's explanations, its refusal to reveal further details, and its justification for doing so. Further clarification will not be provided.

68. Paragraphs 19 and 20, pages 5 and 6, imply number of arguments that are to be raised in the memorials. Should the applicant and respondent stick to those arguments, or, they can bring up other arguments based on the facts of the case?

A68: The legal claims to be decided are limited to those presented in paragraph 20. Participants are free to present arguments of their choice on behalf of or in opposition to those claims, and to draw on the facts of the case and on the sources described in the competition rules.

69. What are the rules of criminal jurisdiction (active or negative personality, territoriality,, etc.)

A69: The case sets out a number of prosecutions; participants may argue that these prosecutions are or are not contrary to law as presented in the sources described in the competition rules. Further clarification will not be provided.

70. What are the spoken languages in each of both countries? And what is the language in which the article by Bega has been published?

A70: Bega's article was published in Tergonese, the national language of both Malamba and Bregalia.

71. Are there all the same, i.e., understood by both nations?

A71: The national language of both Malamba and Bregalia is Tergonese, which is spoken by 95% of the residents of each nation. Further clarification will not be provided.

72. What are the statutes of international conventions according to Malamban Constitution?

A72: Malamba and Bregalia were members of the United Nations at all relevant times. Malamba and Bregalia signed and ratified the ICCPR before the events described in the problem commenced, without reservations. Further clarification will not be provided.

73. Paragraph 7 of the Compromis states that G8-Way selects 5 of the previous day's most common messages to disseminate via Flood-G8s. When G8-Way messages are disseminated in this way, is the identity of the original sender also republished along with the message, such that they are identified as having authored the message?

A73: The original sender is not publicly identified.

74. Paragraph 16 of the Compromis states that a state of emergency was declared in Langar and the Chief of Police was conferred emergency powers. What are the elements of Malamban emergency law and what is the extent of the emergency powers conferred upon the Langar Chief of Police?

A74: Article 28 of the Malamban Constitution states, "The Prime Minister may declare a state of emergency in times of invasion, insurrection, or other grave danger to the public safety, and take such actions as are necessary to resolve the emergency." The deactivation order of January 18, 2012 was made pursuant to the emergency powers delegated to the Langar Chief of Police by the Prime Minister.

75. Paragraph 18 of the Compromis states that the G8-Way members were prosecuted for the crime of incitement to riot and knowing membership in a terrorist organisation. What are the elements of Malamban criminal law that concerns these prosecutions?

A75: The Malamban statute on membership in a terrorist organization states, “Any person who knowingly joins or remains in a terrorist organization shall be punished as provided herein.” The statute does not define “terrorist organization.”

The Malamban statute on incitement to riot states, “Any person who induces, incites, compels, or advocates a public disturbance or riot that creates a grave danger of personal injury or death or damage to property through disorderly and violent conduct shall be punished as provided herein.”

76. Do users have to get the approval of the group members to join them, are there any “administrators” in a group to deal with such request?

A76: Membership in each G8 is controlled by the user who created the group, called the “G8-keeper.” Only the G8-keeper for a G8 can add or remove other users.

77. What is the situation of wire telephone in the state, and is it convenient, and could people access to a wire telephone within a reasonable period if in emergency?

A77: In urban regions of Malamba, approximately one third of households have a wired telephone, and an additional one-third live in apartment buildings or multi-house clusters that have a shared telephone. Approximately half of businesses have wired telephones. In the Central District, the proportion is approximately 80%. There are about 200 coin-operated pay telephone booths in Langar, of which about 30 are located in the Central District.

78. What kind of confidential governmental documents did the Bregalian Times article draw on, were they national security matters, trade secrets, personal privacy files, financial institution materials or other kinds of confidential governmental documents?

A78: Neither Bega nor the Bregalian Times has disclosed the identity of the sources it drew on for the article beyond the information provided in paragraph 9.

79. Can we presume that Malamba and Bregalia are signatories to all UN treaties and that they all have been ratified and are in force?

A79: Malamba and Bregalia signed and ratified the ICCPR before the events described in the problem commenced, without reservations. Malamba and Bregalia were members of the United Nations at all relevant times.

80. Are Bregalia and Malamba signatories of any other Regional Area (e.g. European Union)

A80: Malamba and Bregalia are not members of any regional international organizations.

81. Under Malamba law what constitutes “actual notice” of the communication that is alleged to be defamatory?

A81: The term “actual notice” is not defined in the statute.

82. What international treaties has Malamba ratified?

A82: Malamba and Bregalia signed and ratified the ICCPR before the events described in the problem commenced, without reservations.

83. What does the domestic law of Malamba say concerning the requirements to be fulfilled for the declaration of a state of emergency?

A83: Article 28 of the Malamban Constitution states, “The Prime Minister may declare a state of emergency in times of invasion, insurrection, or other grave danger to the public safety, and take such actions as are necessary to resolve the emergency.” The deactivation order of January 18, 2012 was made pursuant to the emergency powers delegated to the Langar Chief of Police by the Prime Minister.

84. Is the Bank of Langar's Main Branch located in Langar's historic Central District, and is it the only banking group in Malamba? This is relevant to the validity of the state of emergency.

A84: The Main Branch of the Bank of Langar is located in the Central District. The Bank of Langar is the largest bank in Malamba; there are three other national banks with branches throughout the country, and about twenty single-branch local banks.

85. In paragraph 18 of the facts did the 36 members incited for prosecution to riot send both messages 'smash the bank' and 'join me at the bank now', or did each member just send one or the other? This is relevant to the validity of the incitement prosecution.

A85: 10 of the 36 members sent “smash the bank” only. 12 sent “join me at the bank now” only. 14 sent both messages.

86. In paragraph 5 g8way users have what is described as 'profiles' that can be accessed by other users. Are these profiles accessible by internet users generally, only users of the g8way system, or only of members of a g8? This is relevant to the expectations of privacy on the network.

A86: All features of G8-Way may be accessed either via the web or via SMS message. User profiles are public and may be accessed by any G8-Way user. Profiles do not list the messages that a user has sent or received.

87. When does the G8-Way choose and send the messages, which are going to be the most popular next day (the exact time)?

A87: The messages are chosen at 1:00 AM. They are sent at a time chosen by the user, which can range from 6:00 AM to 2:00 PM/

88. Was the deactivation of the mobile phone towers or similar actions governed by Malamban law?

A88: Article 28 of the Malamban Constitution states, “The Prime Minister may declare a state of emergency in times of invasion, insurrection, or other grave danger to the public safety, and take such actions as are necessary to resolve the emergency.” The deactivation order of January 18, 2012 was made pursuant to the emergency powers delegated to the Langar Chief of Police by the Prime Minister.

89. How is the procedure of disclosing of the messages sent by G8- Way users and the membership lists of the G8s governed by Malamban law?

A89: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba’s Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense.

90. Can a member of the group send message to only one specific member of the group without forwarding it to other members of the group? [Case Para. 6, sent. 2]

A90: G8-Way has a feature allowing users to send each other individual messages. It is not heavily used, because users who wish to communicate directly with each other typically send SMS messages to each others’ phones without using G8-Way.

91. Malambian government ordered G8-Way to turn over its complete records of all messages sent on January 18, and the complete lists of the members in all G8-s. [Case Para. 18, sent. 1]. What were the legal bases for that? (permission on the bases of Court judgment or bases on some decree, etc) What kind of information did the request of government include? (e.g. number from which message was sent, location, name and surname of person, etc).

A91: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba’s Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense.

The lists of messages consisted of the text of the message, the time at which it was sent, the ID number of the G8 it was sent to, and the phone number of the user who sent it.

The lists of members in the G8s consisted of the ID number of the G8s and the phone numbers of the users who belonged to the G8.

The government linked phone numbers to specific people by issuing similar orders to MalamTel to disclose the subscriber information (name and address) of users with specific phone numbers.

92. G8 Way stated that Derechem’s demand was unfeasible to comply with unless Derechem identifies the specific text of G8 Way messages to which he objected? [Case Para 12, last sentence].

A92: This is not a question.

93. Does the G8 Way consider program/application where the content of whole messages sent by G8 and Flood-G8 can be viewed or monitored by creators of G8-Way?

A93: G8-Way has access to all messages sent via G8. Employees of G8-Way do not ordinarily examine messages other than Flood-G8s.

94. Is there a clear regulation in the national law that reasonable criminal prosecution is not within the scope of the protection of privacy?

A94: The orders described in Paragraph 18 were issued pursuant to procedures described in Malamba’s Criminal Prosecutions Act. They require an officer of the government to deposit with the court in which the prosecution will be brought a signed statement affirming that there is probable cause to believe that an offense has been committed and that the evidence sought will advance the investigation and prosecution of the offense. The court then issues an order directing the person in possession of the evidence to provide it to the investigating authority.

No other provision of Malamban law explicitly describe the relationship between criminal prosecutions and privacy protections.

95. Is there a treaty between the users and G8-Way? Does the treaty include the details about the users’ privacy if there is one?

A95: G8-Way has terms of use that prohibit use of the service to transmit “content that is obscene, abusive, harassing, an infringement of copyright, or otherwise contrary to law.” Its terms of use state that G8-Way will “keep users’ personal information confidential, except to provide the service, or to comply with any applicable law.”

96. Does G8-Way carry out the Real-name Registration? And how does it accomplish ‘sending messages to other users and browsing other users profiles, can be accessed by sending SMS messages to a G8- Way telephone number’?

A96: G8-Way does not require users to provide any information about themselves other than their phone number. Some do when they create their profiles, but many do not. It enables its various functions by transmitting menus to users as SMS messages. E.g.

1: rply

2: fwd

3: next

4: prev

5: next G8

6: prev G8

7: main menu

A user then replies by sending an SMS back to G8-Way containing the number of the command the user wishes to issue. G8-Way also has advanced syntax for expert users that lets them string together multiple commands.

97. Which domestic remedies were exhausted by the Applicants with respect to Prosecutions of G8-Way users? Is there any procedure for initiation of prosecutions in Malamba, and if yes, is a decision to initiate prosecutions subject to review by any authority? Further with respect to Prosecutions for knowing membership to a terrorist organisation, are there any previous judicial decisions in Malamba's domestic jurisprudence on knowing membership to a terrorist organisation? When was the law on terrorism legislated in Malamba?

A97: The Malamban statute on membership in a terrorist organization states, "Any person who knowingly joins or remains in a terrorist organization shall be punished as provided herein." The statute does not define "terrorist organization." It was enacted in 1990. It has not been judicially considered prior to the prosecutions described in the problem.

Clarification on the exhaustion of remedies and the procedure of Malamban criminal prosecutions will not be provided.

98. On paragraph 18, it is mentioned that the government identified 15 G8s which were most influential in sending messages about the Bank of Langar on the 18th of January. These 15 G8s had eighty-seven members. However, only 36 of these 87 persons were prosecuted for incitement to riot for sending or forwarding the messages "SMASH THE BANK" and "Join me at the bank NOW". Did the rest of the 51 (87-36) G8 members send some other messages for which they were prosecuted for knowing membership to a terrorist organisation, or were they merely silent recipients of the messages sent by the identified 36 members?

A98: The other 51 members did not send either of these two specific messages. They may have sent other messages concerning the Bank or on other subjects, but the government decided to proceed with the prosecution only of the users who sent these two specific messages.

99. What was the relief given to Kogar Derechem by the domestic courts in Malamba? Was he granted an injunction or given compensation? What were the particulars of the relief?

A99: Derechem received an award of \$50,000 against Bega and \$50,000 against G8-Way for the individual messages of users, and \$200,000 against G8-Way for the Flood-G8s. He also received an injunction ordering both Bega and G8-Way to issue public apologies.

100. With reference to the Malamban Criminal Procedure Act and the provisions therein empowering investigating officials to make orders on the basis of their signed affirmations, was the determination of "probable cause" left solely to the investigating official, or is a judicial determination/approval of that affirmation absolutely required before the orders to disclose are issued? Furthermore, can spurious, irresponsible or bad-faith affirmations be punished with perjury or some similar charge?

A100: The court does not review the signed statement at the time it is provided. A defendant may later challenge the evidence supporting the statement as part of a defense against criminal charges. The defendants here raised such a challenge, which was rejected by the courts of Malamba. An official who knowingly provides a false signed statement to the court may be prosecuted for perjury.

101. If a G8 can hold a maximum of 8 members, 15 G8s would have held a maximum of 120 members. However, with regard to the two criminal prosecutions, only 87 members were prosecuted for one or both of the charges. Does this mean the totality of the G8s' membership amounted to 87 members, or was it the case that some members of the 15 G8s were not prosecuted for anything at all? Relatedly, what are the Malamban criminal provisions defining complicity and/or accessorial liability, and were they relied on for either of the two criminal prosecutions?

A101: Some G8s had fewer than 8 members, and some users were members of more than one G8.

The prosecutions did not rely on Malamba's general provisions for accessorial liability or criminal conspiracy.

102. What are the circumstances of Mr Bega's residence in Malamba? In that, was it permanent, sporadic or only for the purpose of researching the impugned article directly material to the case, and therefore temporary? Did he raise any objections to the assertion of personal jurisdiction over him in Malamban courts?

A102: Bega is a lawful resident of Malamba. He was admitted on a renewable two-year visa for professional employment. He has lived in Langar for the past five years. He did not challenge the Malamban courts' jurisdiction over him, but he did object to the application of Malamban defamation law in his case.