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IN THE ASIAN INTERNATIONAL ARBITRATION CENTRE

AT BANGALORE, INDIA

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THE 18<sup>TH</sup> LAWASIA INTERNATIONAL MOOT COMPETITION 2023

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**The Republic of Coltana**

(CLAIMANT)

V.

**The Majestic Kingdom of Radostan**

(RESPONDENT)

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**MEMORIAL FOR CLAIMANT**

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## **STATEMENT OF JURISDICTION**

The Republic of Coltana [‘Coltana’ or ‘Claimant’] and the Majestic Kingdom of Radostan [‘Radostan’ or ‘Respondent’] hereby submit the present dispute regarding Olaf’s eligibility to sit as arbitrator and the Respondent’s request for the stay of proceedings, as well as the Coltana-Radostan Counter Terrorism Agreement (“CCTA”) — the bilateral agreement between Coltana and Radostan. This is in conjunction with the AIAC Rules 2021, as well as Article 8 and 9 of CCTA as agreed by both parties, pursuant to the Statement of Agreed Facts including the Corrections and Clarifications.

The parties have accepted the jurisdiction of this Tribunal to hear the dispute in accordance with Article 8 of the CCTA and shall accept the decision made by this Tribunal as final and binding. On this basis, this Tribunal is requested to adjudge the dispute in accordance with the rules and principles of AIAC Rules 2021, Indian Law or any other international law that is applicable here as per agreed via CCTA by both parties.

## **QUESTIONS PRESENTED**

- I. Whether Olaf, an AI-powered intelligent lawyer can be removed as the arbitrator for lack of impartiality;
- II. Whether the Arbitral Tribunal should stay the present proceedings until the conclusion of Anuwat's trial at the International Criminal Court;
- III. Whether the CCTA is void; and
- IV. In the event, issue III is decided in the negative, whether the termination of the CCTA by Coltana is valid.



## **STATEMENT OF FACTS**

### **PARTIES**

The Republic of Coltana [‘Coltana’ or ‘Claimant’], is a small but prosperous nation renowned for its rich cultural heritage and intellectual prowess and history, being dubbed as a modern-day “pantheon”. Its plethora of natural landscape and historical remnants makes it a global leader in tourism with a GDP of USD 505 billion in 2022. As a former British colony, it adopts the common law.

The Majestic Kingdom of Radostan [‘Radostan’ or ‘Respondent’], on the other hand, is dubbed the “Wakanda” of Asia due to the abundance of buried technologically advanced ancient cities, thus firmly establishing itself in the technological and innovative sector. It is a constitutional monarchy practicing common law, a result of strong trade relations since 1888. Radostan's rapidly growing economy reached a GDP of USD 1.5 trillion in 2022.

### **THE COLTANA-RADOSTAN MEMORANDUM OF UNDERSTANDING (“CRMOU”) AND BIRTH OF OLAF**

After the war and conflict between Coltana and Radostan ended, both parties agreed to sign the Coltana-Radostan Memorandum of Understanding (CRMOU), encouraging important collaborations between the two, including research and development in technology and artificial intelligence.

The Prime Minister of Radostan, Kenchana Yodwicha eventually initiated Project Olaf in 2015, creating an AI lawyer and judge with Coltana's assistance. In July 2020, Olaf became a prominent legal service provider, dubbed as a ‘trustworthy robot’ by international media.

However, issues began to arise when Olaf's public insights and comments on social media raised questions about its neutrality. Radostan vehemently denied any allegations of partiality and dependence.

### **THE COLTANA-RADOSTAN COUNTER TERRORISM AGREEMENT (“CCTA”)**

After the Sapura Bay Bombing incident and cyber-attacks on Coltana, the respective delegations from Coltana and Respondent met. Anuwat Kittisak — CEO of Ini-Tech Inc, a Radostanian subsidiary under the control of its Ministry of Defense — introduced OnionRing, an anti-terrorism software capable of identifying and neutralizing threats. The software was said to operate covertly and erase its traces.

Thereafter, the Coltana-Radostan Counter Terrorism Agreement (CCTA) was signed, emphasizing bilateral cooperation against terrorism. Under the agreement, Ini-Tech will provide and maintain the OnionRing software for Coltana.

### **THE INTRODUCTION OF ONIONRING**

After signing the CCTA, Ini-Tech Inc installed and integrated the OnionRing software into Coltana's government systems. The installation process was supervised by Coltana's intelligence and security agents and began full operation on 14.10.2021, unveiled at a ceremony the next day. Anuwat highlighted its capabilities in detecting and preventing terrorist attacks and cyber-attacks, while President Lalan announced that it would access all government CCTVs to track suspected terrorists. Despite sparking privacy concerns, OnionRing had successfully detected and prevented criminal activities in Coltana, enhancing overall security.

## **THE CONTROVERSIES SURROUNDING ONIONRING**

### **(i) ALLEGATIONS OF DATA BREACH**

During the general elections, the current governing party DPP narrowly retained power but suffered significant losses compared to the previous years. According to Olaf, this was due to DPP's poor performance over the past couple years. At the same time, an ex-Ini-Tech employee alleged on Twitter that OnionRing accessed and used voter data to promote OBH. OBH denied involvement, and Ini-Tech refuted the allegations. President Lalan's administration initiated a full-scale investigation into OnionRing's actions and warned of potential legal action if Coltana's internal affairs were found to be interfered.

### **(ii) DISAPPEARANCE OF BITCOIN RESERVE**

On 2.2.2022, Coltana's Bitcoin reserves — valued at approximately USD 300 million and stored by the Coltana National Bank (CNB) — were allegedly stolen overnight by highly skilled hackers. President Lalan expressed confidence in finding alternative financing for OnionRing despite the loss. Negotiations then ensued after the initial agreed form of Bitcoin payment proved impossible.

### **(iii) THE ULAVU FILES INCIDENT AND ANUWAT'S ARREST**

The Department of Justice of the United States of Kola Lumpo (DOJ) had arrested Anuwat following the Ulavu Files which revealed that a software similar to OnionRing had been used for surveillance in Ulavu, potentially affecting Coltana's 2021 elections. The software allegedly targeted journalists, activists, and opposition parties. Anuwat was suspected of supporting the

cyber war crimes in Ulavu due to his role as the key programmer of OnionRing as well as his close relationship with Ulavu's Prime Minister Dua Lupa.

Before his arrest, Anuwat alleged a major corruption scandal involving senior DPP politicians, claiming that the hacking incident was in fact an inside job. Coltana countered that any allegations were false and that OnionRing data is confidential.

### **THE INITIATION OF THE AIAC PROCEEDINGS**

Shortly after, Coltana refused to continue payment of the CCTA and initiated arbitration proceedings as agreed upon under Article 8 of the CCTA. Hence, the commencement of the current arbitration proceedings.

## **SUMMARY OF PLEADINGS**

### **I**

Olaf should be removed as the arbitrator for lack of impartiality. As agreed upon by the parties as well as established in the AIAC Rules, an arbitrator must at all times remain impartial and independent. However, Olaf's publications and comments on social media regarding both Coltana and Radostan, as well as the nature of relationship between Olaf and Radostan raise justifiable doubts as to his impartiality, thus warranting his removal as arbitrator.

### **II**

This tribunal should deny the stay of proceedings requested by the Respondent. The unreasonable and indefinite delay, contingent on the conclusion of Anuwat's trial at the ICC, is impractical and prejudicial towards Coltana. There are no grounds to grant the stay as the outcome at the ICC has no effect on the present arbitration and there are other more feasible alternatives to allow Anuwat to provide his testimony, rather than an unreasonable stay of proceedings.

### **III**

The CCTA is void as the object itself is illegal, although for the purpose of combatting cyber and terrorist attacks. This is since to carry out this function, it breaches right to privacy of Coltana's citizens. For such infringement to be legally justified, CCTA must fulfil the test as laid down by Indian and International Laws. The standard of threshold includes legality, necessity, and proportionality. However, the CCTA fails to meet the test. The CCTA is then unenforceable by law, hence shall be void.

#### IV

Should the outcome of Issue 3 yield a negative result, the Tribunal shall determine whether the termination of the CCTA is valid. The Claimant submits that the answer is negative. OnionRing failed to prevent the hacking incident, causing Coltana's sole bitcoin reserve to disappear into thin air overnight. This unfortunate event caused the claimant to incur a substantial financial loss of USD 300 million. This thus amounts to a repudiatory breach of contract as the very root purpose of the CCTA is to combat cyber and terrorist attacks through OnionRing. However, it is crystal clear that OnionRing had breached its primary and only obligation within 4 months of its implementation, thereby breaching its contractual obligations.

## PLEADINGS

### I. OLAF SHOULD BE REMOVED AS THE ARBITRATOR FOR LACK OF IMPARTIALITY

The claimants contend that Olaf should be removed as the arbitrator as he neither fulfills the agreed upon requirements in the CCTA,<sup>1</sup> nor the AIAC Rules 2021 — which state that an arbitrator must at all times remain impartial and independent.<sup>2</sup> Olaf should not be allowed to sit as arbitrator in this proceeding because [A] justifiable doubts as to Olaf’s impartiality and [B] independence have arisen.

#### A. Justifiable doubts as to Olaf’s impartiality have been observed

As agreed upon by both Claimants and Respondents in Article 9 of the CCTA, the chosen arbitrator shall be impartial and independent. Any disputes may be resolved in accordance with the AIAC Rules 2021, in which Rule 11 stipulates that a party may challenge an arbitrator if there are circumstances that give rise to justifiable doubts as to the arbitrator’s impartiality or independence.<sup>3</sup>

The standard to ascertain whether justifiable doubts exist is through the appearance of bias test — to be applied objectively — as provided in Part 1(2)(c) of the International Bar Association Guidelines on Conflict of Interest.<sup>4</sup> Essentially, whether a reasonable third person with the relevant

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<sup>1</sup> Moot Problem, [25.4].

<sup>2</sup> AIAC Rules 2021, rule 10.

<sup>3</sup> AIAC Rules 2021, rule 11.

<sup>4</sup> International Bar Association Guidelines on Conflict of Interest, Part 12(c).

facts and knowledge of the circumstances would conclude that there is a likelihood of the arbitrator being influenced by factors other than the merits of the case.

**i. The comments published by Olaf show an appearance of bias**

There is a risk of prejudgment by Olaf as the comments show that Olaf have pre-determined views on issues relevant to the dispute, including election tampering and safety issues in Coltana.

As opined in *Perenco v Ecuador*:

*“Judge Brower’s comments suggest that he has prejudged the question of whether Ecuador’s actions constitute an expropriation. [F]rom a reasonable third person’s point of view, the comments do give rise to an appearance that Judge Brower has prejudged the issue.”*<sup>5</sup>

Olaf’s comments paint a negative view of Coltana. His criticism and disdain towards Coltana’s government is reflected through the comments on the failure of the government to invest properly in counter-terrorism measures and devices. Notably, the present arbitration dispute today is in relation to OnionRing — a counter-terrorism measure provided by Radostan.<sup>6</sup>

Olaf has prejudged the reason for DPP’s near loss, thus refuting allegations of election tampering by Radostan through OnionRing.<sup>7</sup> By taking the view that the result was due to DPP’s poor performance, Olaf has failed to consider other possible factors.

As in the previous case of *Perenco v Ecuador*:

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<sup>5</sup> *Perenco v Ecuador* [57].

<sup>6</sup> Moot Problem, [21].

<sup>7</sup> Moot Problem, [29].



*“While Judge Brower explains his belief that the sentences are unrelated and the Libya example is given as a general hypothesis only, a reasonable reader would nevertheless view the sentences, in response to the same question, as related.”*<sup>8</sup>

Thus, an inference may be drawn by a reasonable person between Olaf’s comments and the present dispute as Olaf having a negative pre-existing view of Coltana.

**ii. There is an indication of Olaf having taken a political stance**

Olaf has only shown support for Radostan and its allies’ policies and conducts, while only negative comments have been recorded regarding Coltana. Olaf regularly publishes his insights on various subjects, including politics.<sup>9</sup> This suggests Olaf forming political opinions, which raises justifiable doubts as he has shown a strong partiality toward Radostan.

**B. Justifiable doubts as to Olaf’s independence have been observed**

**i. The nature of relationship between Radostan and Olaf raises doubts as to whether he is truly dependent**

As opined in *Vivendi v Argentina*:

*“All the circumstances need to be considered in order to determine whether the relationship is significant enough to justify entertaining reasonable doubts as to the capacity of the arbitrator or member to render a decision freely and independently.”*<sup>10</sup>

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<sup>8</sup> *Perenco v Ecuador* [56].

<sup>9</sup> Moot Problem, [13].

<sup>10</sup> *Vivendi v Argentina*, [28].

It is thus pertinent to consider Olaf's history. Olaf was created as part of Prime minister Yodwicha's visionary plans for Radostan.<sup>11</sup> At all material times, Olaf was under the management and control of a Radostan-based private entity — in which Prime Minister Yodwicha sits as one of the members of the board of directors<sup>12</sup> — while Coltana's access to Olaf has always been limited and restricted.<sup>13</sup>

Olaf's overly supportive sentiments of Radostan raises justifiable doubts, which has led to debates around the world as to whether Olaf is in fact independent or under a certain degree of control and influence by Radostan.<sup>14</sup>

## **II. THIS ARBITRAL TRIBUNAL SHOULD NOT STAY THE PRESENT PROCEEDINGS UNTIL THE CONCLUSION OF ANUWAT'S TRIAL AT THE ICC**

The stay of proceedings should not be granted as it is highly prejudicial to the claimants and is a waste of time and resources. A granting of the stay would lead to indefinite delays as there is no certainty as to when Anuwat's trial at the International Criminal Court (ICC) will conclude, not to mention the sheer length of average ICC proceedings. The existence of other alternatives to allow for Anuwat's testimony renders the stay unnecessary.

### **A. This tribunal should not grant a stay of proceedings**

The Tribunal has the power to grant a stay with certain considerations. These considerations include: **(i)** whether the stay creates an imbalance between the parties, **(ii)** whether the stay deprives a party from the right to present its case, **(iii)** whether the stay delays the

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<sup>11</sup> Moot Problem, [11].

<sup>12</sup> Clarifications, [4].

<sup>13</sup> Moot Problem, [12].

<sup>14</sup> Moot Problem, [13].

proceedings unreasonably and (iv) when the stay is premised on the finalisation of other pending proceedings, whether the outcome of said pending proceeding is material to the outcome of the arbitration.<sup>15</sup>

The Claimant submits that a presumption exists against granting stays. In *S.D. Myers*, the Tribunal averred that a party to an arbitration is entitled to have arbitration proceedings continued at a normal pace.<sup>16</sup> As per the Tribunal, “*there are strong policy reasons for not placing the performance of its functions ‘on hold’*”.<sup>17</sup> Hence, it is the Respondent’s burden to show compelling reasons to grant a stay.

**i. The stay should not be premised on the finalization of the ICC proceedings as the ICC results will not affect the outcome of the arbitration proceedings**

In *Sofema v CMR Tunisie*, the ICC found that since there was no evidence of the criminal proceedings having any bearing on the dispute before the court, the stay was not justified.<sup>18</sup>

The ICC and the Arbitral Tribunal operate on different laws as the ICC relies on the Rome Statute while the tribunal operates on the contractual rules and Indian law.

The subject matter of both proceedings has no bearing on one another, as the ICC proceedings relate to alleged cyber war crimes in Ulavu<sup>19</sup> while the arbitral proceedings relate to

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<sup>15</sup> UNCITRAL Rules, art 17(1); *Cairn v. India* para 99-109; ILA Paper on Parallel Proceedings.

<sup>16</sup> *S.D. Myers v Canada*, [8].

<sup>17</sup> *S.D. Myers v Canada*, [16].

<sup>18</sup> *Sofema v CMR Tunisie*.

<sup>19</sup> Moot Problem, [38].

the contractual operation of the CCTA between Coltana and Radostan.<sup>20</sup> The very nature of both disputes has no common ground.

**ii. The stay would delay the proceedings unreasonably**

As in *Patel Engineering v Mozambique*, the uncertainty of the final date of investigations would have led to an unreasonable delay in the present proceedings, thus equivalent to a sine die suspension of proceedings.<sup>21</sup>

The sheer length of ICC proceedings renders the stay unreasonably long. The current ICC proceedings are only at the trial stage and may take years before the conclusion of the trial.

**B. Alternatively, the Respondents may proceed with allowing Anuwat to attend the proceeding and provide his testimony virtually**

**i. The respondents will not be deprived of their right to present its case should the stay be denied**

The current documents available in place of Anuwat's testimony are sufficient as the Respondents have had ample time to get all documents in order. Rule 27 of the AIAC Rules specifically provides that statements by witnesses may be presented in writing.<sup>22</sup>

This tribunal has jurisdiction to allow virtual hearings. Rule 28 of the AIAC Rules 2021 provides that the arbitral tribunal may direct that witnesses be examined through means of telecommunication that do not require their physical presence at the hearing.<sup>23</sup>

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<sup>20</sup> Moot Problem, [45].

<sup>21</sup> *Patel Engineering v Mozambique*.

<sup>22</sup> AIAC Rules 2021, rule 27.

<sup>23</sup> AIAC Rules 2021, rule 28.

The Claimants submit that videoconferencing methods may be utilized. As the tribunal in *Anil Goyal v Prakash Plastic* opined, videoconferencing mechanisms would be the most expedient method as they avoid delays and inconveniences to the parties as well as the witnesses.<sup>24</sup>

### **III. CCTA IS VOID FOR ILLEGALITY AS IT CONSTITUTES A FUNDAMENTAL BREACH OF HUMAN RIGHTS TO PRIVACY**

A contract that is unenforceable by law becomes void when it ceases to be enforceable.<sup>25</sup> The consideration or object of an agreement is lawful, unless the Court regards it as opposed to public policy. Every agreement whereby its object or consideration is unlawful, such agreement shall be declared to be void.<sup>26</sup> The fact that whether or not the knowledge of general obligation has been breached is immaterial.<sup>27</sup> This effect would only matter if this tribunal were to assess the quantum of damages,<sup>28</sup> which is during the following stage of proceedings. The Tribunal's current contention is merely on whether the CCTA is void.

The reason that CCTA is illegal because [A] right to privacy is a fundamental right; [B] CCTA directly encroaches Coltana's citizens' right to privacy; and [C] CCTA is not legitimate and proportionate.

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<sup>24</sup> *Anil Goyal v Prakash Plastic*.

<sup>25</sup> Indian Contracts Act 1872, s.2(j).

<sup>26</sup> Indian Contracts Act 1872, s.23.

<sup>27</sup> *Loop Telecom and Trading Limited v Union of India* 2022 SCC Online SC 260.; *Patel v Mirza* [2016] UKSC 42.

<sup>28</sup> *Ibid*.

**A. Right to privacy is a fundamental right protected by the Constitution of India and ICCPR, part of general obligation under CCTA that needs to abide by Coltana and Radostan**

Right to privacy is a fundamental facet of personal liberty of life which is provided for under Article 21 of the Constitution of India<sup>29</sup> as well as Article 17 of the ICCPR.<sup>30</sup> Indian Law and ICCPR are of relevance at this juncture as per Article 1 and Article 10 of the CCTA agreed by both parties.<sup>31</sup>

Dissect right to privacy (“RTP”) from the perspective of Indian Law which is the governing law of CCTA,<sup>32</sup> Article 21 of the Constitution of India stipulates that ‘*No person shall be deprived of his life or personal liberty except according to procedure established by law*’<sup>33</sup>. Although absent from explicit wordings, RTP is ruled to be intrinsic to life and liberty of a person.<sup>34</sup>

Whereas from the international perspective which serves as general obligation of CCTA,<sup>35</sup> Article 17 of International Covenant Civil and Political Rights (ICCPR) reads ‘*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*’<sup>36</sup> Moreover, “home” in Article 17 should be holistically construed to cover privacy protections for both personal online spaces and personal electronic devices used to access them. This is also affirmed by ECHR, in Halford v the United

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<sup>29</sup> The Constitution of India, art. 21.

<sup>30</sup> ICCPR, art. 17.

<sup>31</sup> Moot Problem, [25.1] [25.5].

<sup>32</sup> Moot Problem, [25.5].

<sup>33</sup> The Constitution of India, art. 21.

<sup>34</sup> *Justice K.S. Puttaswamy & Anr v Union of India & Ors* (2017) 10 SCC 1.

<sup>35</sup> Moot Problem. [25.1].

<sup>36</sup> ICCPR, art. 17.

Kingdom (1997). In other words, all individuals' rights offline shall also be protected online, including RTP.<sup>37</sup>

## **B. CCTA directly encroaches upon right to privacy of Coltana's citizens**

Right to privacy is inherent in individuals, which includes the right to be free from surveillance and left alone. Two obligations as per CCTA under this context had been breached:

### **i. Surveillance by access to CCTV for identification purpose**

OnionRing possesses access to all CCTV by the government across the nation.<sup>38</sup> This constitutes a form of indiscriminate surveillance, as OnionRing has the capacity to monitor citizens on a sweeping and untargeted basis.

### **ii. Online interception to extract intelligence from devices**

OnionRing has the ability to remotely and covertly extract intelligence from various devices.<sup>39</sup> It is crucial to dissect these terms further. The term "remotely" implies the action's execution without a physical presence,<sup>40</sup> while "covertly" denotes secrecy and concealment.<sup>41</sup> This approach of remote interception, as ruled by ECHR in *Liberty v UK*, is illegal, even in the absence of a physical presence.<sup>42</sup>

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<sup>37</sup> UNGA, UN Doc A/RES/68/167.

<sup>38</sup> Moot Problem, [27].

<sup>39</sup> Moot Problem, [23].

<sup>40</sup> Cambridge Dictionary, 2020.

<sup>41</sup> Cambridge Dictionary, 2020.

<sup>42</sup> *Case of Liberty and Others v The United Kingdom* (Application no. 58243/00).

**C. In the event right to privacy and freedom of expression is breached, CCTA fails to fulfil the tripartite-test**

Privacy may be infringed, only if it fulfills the tripartite test for it to be legally justify. The standard of threshold which consists of legality, necessity and proportionality are conjunctive. This test is recognized by Indian Courts<sup>43</sup> as well as ICCPR.<sup>44</sup>

Although Article 17 does not specifically state restrictions, the test of ‘unlawfulness’ and ‘arbitrariness’ is also subject to a three-part test, namely whether the interference: (i) is authorised by law – legality ; (ii) in accordance with the provisions, goals and objectives of the ICCPR – necessity ; and (iii) reasonable in the particular circumstances – proportionality.<sup>45</sup>

As the three fold test is conjunctive, the CLAIMANT shall only prove the two most pertinent issue whereby (i) CCTA is not legitimate and (ii) proportionate.

**i. CCTA is not legitimate**

Gobind v State of MP is a quintessential case to demonstrate that no interference of privacy can take place except in cases envisaged by law.<sup>46</sup> This is also affirmed in the case of Kharak Singh v State of UP<sup>47</sup> and UNHRC General Comment No. 16.<sup>48</sup> The moot problem is silent on whether implementation of Onionring is merely an executive order which does not fall under any law provided or vice versa.

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<sup>43</sup> *Justice K.S. Puttaswamy & Anr v Union of India & Ors* (2017) 10 SCC 1.

<sup>44</sup> UNHRC, *General Comment No. 16*, [3]-[4].; *G v Australia Communication* (2017) CCPR/C/119/D/2172/2012 [4.5]; UNGA, Special Rapporteur 2013, [28]-[29]

<sup>45</sup> *Ibid.*

<sup>46</sup> *Gobind v State of MP* (1975) AIR 1378

<sup>47</sup> *Kharak Singh v State of UP* (1963) SC 1295.

<sup>48</sup> UNHRC, *General Comment No.16*.



**a. If OnionRing is an executive order, such interference to privacy by OnionRing is unlawful**

Ini-Tech is in charge for designing, developing, delivering and maintaining OnionRing software,<sup>49</sup> OnionRing database shall be kept confidential and only be accessed by Coltana's government.<sup>50</sup> This is analogous with the ECHR decision in *Shimovolos v Russia*, whereby if creation, maintenance and operation of a surveillance database are governed by an administrative order, which is not accessible to the public, it does not satisfy the lawfulness test.<sup>51</sup>

**b. Assuming arguendo, OnionRing is conducted on the basis of law, such interference is arbitrary**

According to UNHRC General Comment Number 16, "arbitrary interference" can also include interference allowed by law as long as it is in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.<sup>52</sup> In conjunction with Report by Office of United Nations High Commissioner for Human Rights titled *The Right to Privacy in the Digital Age*, laws that allow for interception of communications must be very specific about the conditions under which such interference may be allowed.<sup>53</sup> This criterion is affirmed by HRC in *Van Hulst v Netherlands*.<sup>54</sup>

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<sup>49</sup> Moot Problem, [24].

<sup>50</sup> Moot Problem, [26].

<sup>51</sup> *Shimovolos v Russia* (Application No. 30194/09).

<sup>52</sup> UNHRC, *General Comment No. 16*.

<sup>53</sup> UNGA, A/RES/68/167.

<sup>54</sup> *Van Hulst v Netherlands*, UN Doc CCPR/C/82/D/903/1999.

As of current development of Indian Law, the two legislations available for interception is Telegraph Act 1885<sup>55</sup> while surveillance of electronic communication is governed by Information Technology Act 2000.<sup>56</sup>

For the Telegraph Act, it has been ruled by the Indian Supreme Court in the case of PUCL for lack of procedural safeguards.<sup>57</sup>

As for the Information Technology Act,<sup>58</sup> it is flawed due to two instances firstly, there exists a lacuna on the process i.e., how surveillance decisions are taken, and how legal standards are applied. Secondly, The whole decision-making process is bureaucratized i.e., the power to order surveillance is vested with the executive, with no parliamentary or judicial supervision.

## **ii. CCTA is not proportionate**

Although we acknowledge that the implementation of OnionRing is due to compelling public interest, the CCTA fails to fulfil specificity test which provides for targeted surveillance.<sup>59</sup>

RTP can only be infringed on suspicious individuals who pose a security threat or those with past criminal records.<sup>60</sup> For example, interception of telephonic conversation is allowed in *RM Malkani v State of Maharashtra*, as the breach is targeted at criminals.<sup>61</sup> Innocent citizens' RTP shall be protected against such unlawful or arbitrary interference by constant monitoring of OnionRing. The case at hand starkly contrasts this situation. OnionRing's sweeping surveillance

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<sup>55</sup> Telegraph Act 1885, s.5.

<sup>56</sup> Information Technology Act 2000, s.69.

<sup>57</sup> *PUCL v Union of India & Anor* [1997] SC 568

<sup>58</sup> Information Technology Act 2000, s.69.

<sup>59</sup> *PUCL v Union of India & Anor* [1997] SC 568; *RM Malkani v State of Maharashtra* [1973] AIR 157.

<sup>60</sup> *Gobind v State of MP* [1975] AIR 1378; *Kharak Singh v State of UP* (1963) SC 1295; *RM Malkani v State of Maharashtra* [1973] AIR 157.

<sup>61</sup> *RM Malkani v State of Maharashtra* [1973] AIR 157.

infringes privacy on a blanket scale, unlike the targeted nature as defined by the courts. In essence, the claimant maintains that OnionRing's widespread surveillance and interception, rather than targeted interception, constitutes a disproportionate breach of privacy.

#### **IV. IF ISSUE III IS DECIDED IN NEGATIVE, TERMINATION OF CCTA BY COLTANA IS VALID**

Should the outcome of Issue 3 yield a negative result, this Tribunal shall determine the termination of CCTA. The Claimant avers that such termination is valid.

The Respondent may raise that the termination of CCTA is initiated in mala fide due to Coltana's intention to continuously use and possess OnionRing.<sup>62</sup> This argument clearly does not hold water. This is due to Article 15 of Arms Trade Treaty, which is part of the general obligation agreed by both parties as per Article 1 of CCTA.<sup>63</sup> It is stated that parties involved shall provide the widest measure of assistance in investigations,<sup>64</sup> which is the main reason Coltana intends to retain OnionRing upon investigation.

The basis for this claim rests on two layers of argument, [A] what amounts to a repudiatory breach of contract; and [B] how OnionRing's inability rendered a repudiatory breach of CCTA.

##### **A. Hacking of bitcoin incident is a repudiatory breach of CCTA**

A repudiatory breach is a breach of condition that relates to the root of contract.<sup>65</sup> An aggrieved party may seek for the contract's complete termination as per s39 of ICA without having

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<sup>62</sup> Moot Problem, [44].

<sup>63</sup> Moot Problem, [25.1].

<sup>64</sup> Arms Trade Treaty 2013, art. 15

<sup>65</sup> *All India Tea and Trading Company v Loobah Company Limited* (2021) 11 CAL CK 0004.

regard to the particular clause in the contract in the event of a repudiatory breach.<sup>66</sup> Hence, whether or not there is an actual clause in the unrevealed part of CCTA is immaterial. A contract is said to be breached when there is an infringement or violation of the contractual obligation.<sup>67</sup>

With reference to Anuwat, Ini-Tech's CEO, presented OnionRing as an anti-terrorism software capable of identifying and neutralising cyber attacks and terrorist threats.<sup>68</sup>

The CLAIMANT avers that Anuwat's statement serves as a condition as it is so essential that it induces the claimant to enter into the contract with Radostan and a breach of this condition would render a repudiatory breach of contract.

### **B. OnionRing's inability rendered a repudiatory breach of CCTA**

We acknowledge that, OnionRing was initially regarded as Coltana's saviour, successfully detecting and preventing criminal attacks.<sup>69</sup> This initial confidence was reflected in CCTA was scheduled to expire in 2024.<sup>70</sup>

While initially confident in OnionRing's capabilities, we must underscore that within less than half a year, OnionRing breached its core objective of combating terrorism and cyber-attacks, resulting in a staggering USD 300 million loss for the claimant.<sup>71</sup> This abrupt financial blow, transpiring overnight, is untenable, especially considering our substantial investment of USD 50 million as of the hacking incident for OnionRing's services.<sup>72</sup>

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<sup>66</sup> Indian Contracts Act 1872, s.39.

<sup>67</sup> *Skandia Insurance Co Ltd v Kokilaben Chandravadan* [1987] AIR 1184.

<sup>68</sup> Moot Problem, [23].

<sup>69</sup> Moot Problem, [27].

<sup>70</sup> Clarifications, [8].

<sup>71</sup> Moot Problem, [32].

<sup>72</sup> Moot Problem, [25.2].

Our trust in OnionRing's reliability wavered with this colossal loss, and we are unwilling to risk continuing a contract until 2024 if OnionRing's efficacy remains in question. The CLAIMANT would also like to clarify our stance that the claimant is not placing an unreasonable burden on the Respondent, but considering the magnitude of this damage and loss, the most crucial time OnionRing is needed to perform well, it had failed.

## **PRAYERS OF RELIEF**

**The Claimant, the Republic of Coltana, humbly requests this Tribunal to adjudge and declare that:**

- I. Olaf be removed as the arbitrator for lack of impartiality;
- II. The stay of proceedings until the conclusion of Anuwat's trial at the ICC be denied;
- III. The CCTA is void for illegality as the fundamental right to privacy has been breached;
- IV. The termination of the CCTA is valid.

*Respectfully Submitted,*

*Counsels for Claimant*