

REPORT OF FINDINGS

TO: The Crown

CRN 17004010395-407

Titles of publications: Kashmir - Indian Army execute Kashmiri civilian
VaDal PoChE (Dot)
Myanmar Muslim Massacre
DOAM on Twitter
Burmese Muslims
Ahmet Maranki's photo
Kurdish Libral
Young Syrian Beaten
5pillars

Other known title(s): Not stated

OFLC ref: 1700694.000
1700694.001
1700694.002
1700694.003
1700694.004
1700694.005
1700694.006
1700694.007
1700694.008

Medium: Computer image files/Computer video files

Director/Producer: Not stated

Classification:	Objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years.
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Descriptive Note: None

Display conditions: None

REASONS FOR THE DECISION

The Office of Film and Literature Classification (Classification Office) examined the publications and recorded the contents in an examination transcript. A written consideration of the legal criteria was undertaken. This document provides the reasons for the decision.

The publications have been examined and considered separately. Because of similarities in content, they are discussed together in this decision.

Submission procedure:

The Crown referred these publication to the Classification Office under s29(1) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act). They were received on 24 November 2017.

The Classification Office informed Counsel for the Defendant and Counsel for the Crown of their right to make written submissions on the classification of the publications on 30 November 2017. The original due date for submissions was 20 December 2017; on that date an extension was granted to both the Crown and the Defence. The final due date for submissions was 11 January 2018. Submissions were received on 11 January 2018 from both the Crown and the Defence. Synopses of these submissions are attached as an Appendix.

Section 29(1) of the FVPC Act requires that the Classification Office make a decision on the question put to it by the Court as to whether each publication referred is objectionable or not, or if it is objectionable except in particular circumstances.

Section 23(3) permits the Classification Office to restrict publications that would otherwise be classified as objectionable so that they can be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Description of the publications:

Kashmir – Indian Army execute Kashmiri civilian (OFLC Ref 1700694.000) is a video file with a duration of 1 minute and 30 seconds. It is of low quality. The URL for Liveleak is watermarked to a large extent on the top left of the file. It follows a group of soldiers in an urban area. A man can be heard moaning from under a pile of bricks. As the soldiers approach the rubble some movement can be seen. While it is obvious that the movement is a person it is extremely difficult to visually see a recognisable part of a human being. The soldiers talk more. Suddenly, one steps forward, pointing a gun down at the bricks. Gunshots can be heard. Dust is unsettled by the shots. The moaning stops. It is strongly implied that one of the soldiers has shot the person in the rubble.

VaDal PoChE (Dot) (OFLC Ref 1700694.001) is a video file with a duration of 2 minutes and 27 seconds. A music track is overlaid throughout. It depicts a man in the middle of a crowd. He holds a long blade. He flagellates himself with the sword. It slices his skin open in a large, red gash. He does it again. The wound opens more. Another man holds him as the first man seems to go into shock and is carried off, into a truck. After each slash, the video pauses and zooms in on the gashes.

Another man then begins to flagellate himself using two sickled blades. They do not inflict too much damage, but one visibly sticks into his back. Small trails of blood can also be seen. The video then cuts to the first man, who is having his extreme wound stitched back together with surgical equipment in the back of the truck.

Myanmar Muslim Massacre (OFLC Ref 1700694.002) is a series of still colour images that have been uploaded together and submitted as one publication. Most of the photos do not appear to be related to each other. The initial image shows the images described below, as well as an image of what appears to be a thumbnail of a man's body covered in blood:

- A man lies in the ground on top of dried grass. He is topless. Wounds, like giant claw-marks, cover the left side of his body and his face. The wounds are deep and expose bone and tissue. His shirt is pulled up above his head, along with one of his arms. It can be assumed that the man is dead.
- A young female (likely a girl) lies dead on a woven mat. There is an immense amount of blood on the floor as well as on her body. She is wearing a yellow top. Her head is turned to the side. It appears that her throat has been cut and an edged weapon can be seen at the top-left of the image.
- An infant child lies apparently dead on a table, wearing a yellow top. A wooden stake has been driven through the infant's stomach. Intestines spill out of the puncture wound in the child's body.
- A young woman lies on a green blanket. She looks as though she is topless but the picture only shows her face and shoulders. She has some light wounds and bleeding on her arm and collarbone area. Her eyes are closed.
- A young boy lies dead on a checked blue mat. He is partially nude, wearing only a bloodstained shirt. A large wound can be seen on his neck. It appears as though someone has tried to decapitate him. Many people are taking pictures of him on their phones.

DOAM on Twitter (OFLC Ref 1700964.003) is a video file with a duration of 1 minute and 18 seconds. It is of fairly low quality. It shows a group of men in military uniform in the desert. They shout around a man who has been tied up before dragging him along the ground. The man is dragged in front of a tank and placed at its treads. The uniformed men continue to shout around the bound man. Suddenly, gunshots occur. Plumes of dust obscure the bound man. The tank drives forward over the bound man, crushing him. The uniformed men cheer. The camera moves towards the corpse and focusses on it, before the video abruptly ends.

Burmese Muslims (OFLC Ref 1700964.004) is a series of still colour images that have been uploaded together and submitted as one publication. Most of the photos do not appear to be related to each other. The initial image shows the images described below, as well as what appears to be a thumbnail of a man's decapitated head:

- An infant child lies dead on a dirt floor. It has been decapitated. Blood spills from its neck stump. Embedded in the image is a smaller image of the child's head. It is partially nude, wearing only a top.
- A man stands in front of a gate. He stands above a corpse who has been decapitated. He holds a weapon down against the mat. The corpse lies on a green mat; its head is placed to the other side of the weapon.
- The image of the infant child from the first image, which has been placed against an image of a person, who is wearing the robes of a Buddhist monk, holding a cleaver to the camera.
- A young woman lies dead on the floor. She wears a blue-dyed top and a pattern blue skirt. There is an immense amount of blood on her face, clothes and the floor. A large wound can be seen on her neck. It appears that someone has attempted to decapitate her.

- Same young woman as above. She has been decapitated and her head has been lifted off her body. Her neck stump is clearly visible. Her arm is also streaked with blood.
- Two people, possibly adult males, are placed in a fire. Their bodies are placed facing each other. The fire is localised to a circular area around the bodies, and their legs protrude from the area. A group of people stand around in the background.
- What looks like a charred corpse lies on the ground. An arm, head and torso makes this identifiable as human remains. A group of cows and trees are in the background.
- A man is strung up in the middle of a crowd with rope by his arms. He appears to be nude, as his genitals have been whited out. His head rolls backwards in an unnatural way, suggesting the possibility that he may be dead.

Ahmet Maranki's photo (OFLC Ref 1700694.005) is a still colour image. In it, a man lies on the ground in a desert area. He wears some blue socks and a blue pair of shorts. His feet have been bound by some rope. He has been set on fire. The strong inference is that the man is dead, although it is possible that he is unconscious and is being killed by fire. A man in a camouflage outfit poses, looking at the camera while warming his hands by the burning body.

Kurdish Libral (OFLC Ref 1700694.006) is a video file with a duration of 1 minute and 48 seconds. It shows a group of men using lengths of rope or belts to beat other men, who have been bound, and are lying on the floor. The bound men have their heads covered with sacks. They can be heard groaning and moaning. Other men look on as the beating occurs; some people move around and leave the room. The video has been taken from outside the room that the beating is occurring in, through a window.

Young Syrian Beaten (OFLC Ref 1700694.007) is a video file with a duration of 44 seconds. In it, a group of men physically torment a young man by kicking him and jumping on his body. The young man lies on the ground, and cries out for the entirety of the video. The man holding the camera asks another man to take the camera, and joins in on the assault.

5pillars (OFLC Ref 1700694.008) is a video file with a duration of 3 minutes and 17 seconds. It is a professionally edited video in the style of a journalistic exposé. The video stops and highlights different parts of the video, and text provides commentary. There is an unclear and unidentified orange logo in the bottom-right of the frame, and watermarked onto the whole video. The video documents members of some kind of military as they lead a man who is blindfolded to a wall. Corpses can be seen on the ground along the way to the wall. The armed men then take off the unarmed man's blindfold, and shoot him. He slumps to the ground. The executioner then shoots again multiple times. Blood splatters onto the wall. A still image of the killing is embedded into the video; it is closer but very little detail is visible.

The armed men then drag another blindfolded man by the hair to a tree. They make him kneel, take off his blindfold, and shoot him multiple times. Plumes of dust obscure the injury. Facebook posts showing still images of the bodies are shown at points during the video, ostensibly from the official Facebook page of the military spokesperson of the Egyptian Armed Forces. The video then cuts to a YouTube video from the Egyptian Ministry of Defence called *The Process is the Martyr's Right*, describing how the army is "uprooting the roots of terrorism".

All of these publications present as and are likely to be documents of real events.

Consideration of the accompanying commentary

The Classification Office notes that commentary was submitted by the Defence as evidence relevant to the objectionability or otherwise of the publications.

In this regard, the Crown has submitted that:

The Crown is aware that counsel for [D] takes the view that this 'extraneous' commentary is relevant to the classification process. The implication being that the context in which any given publication is offered is a determinant of objectionability/character (as such, the Crown has enclosed with these submissions a copy of each 'post' by [D] together with its translation where necessary to ensure the CO has all available information prior to classifying the publications).

The Crown considers such a proposition would defeat the purpose of the legislation and enable the dissemination of objectionable material injurious to the public good. To take an obvious example, a video which not only depicts but promotes and supports child sexual abuse and has been posted to a Facebook account cannot be rendered unobjectionable by reference to accompanying commentary condemning what is depicted. Further, to subscribe to such an approach would necessitate an enquiry beyond the CO's jurisdiction into the circumstances in which the publication was possessed and/or distributed i.e., the remit of the criminal courts.

For these reasons the Crown considers that an otherwise objectionable publication cannot, and should not, be rendered unobjectionable by reference to extraneous material (distinguishable of course from any editorialising within the publication itself). Such material is irrelevant to the classification process and has not, therefore, been addressed in the following submissions.

Section 4(2) of the FVPC Act requires that where evidence as to, or proof of, any such matters or particulars is available to the Classification Office, the Classification Office shall take that evidence or proof into consideration. It is therefore appropriate for us to consider the relevance of the commentary.

The Crown makes an interesting comparison with a hypothetical publication that promotes and supports the exploitation of children for sexual purposes which is posted on Facebook with accompanying condemnatory commentary. This presupposes that an inherently promotional and supportive element has already been established for the publication.

A relevant hypothetical circumstance was noted by the Court of Appeal in *Moonen v Film and Literature Board of Review (Moonen No 2)*, observing that:

Clearly there are some instances where description and depiction do not promote or support an activity: a pamphlet depicting such activity in efforts to ban child pornography would be such an example.¹

As such, where there is no inherently promotional or supportive element to a publication, an approach consistent with the Court of Appeal's decision in *Moonen No 2* would permit commentary associated with a publication to be taken into account as evidence to be weighed up in assessing the nature of the publications themselves, and in determining whether they can fairly be said to promote or support, or tend to promote or support, the activities they depict. The commentary is will also be a relevant consideration when it comes to s 3(4) considerations later in this decision.

New Zealand Bill of Rights Act 1990:

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBORA) states that everyone has "the right to freedom of expression, including the freedom to seek, receive, and impart information

¹ *Moonen v Film and Literature Board of Review* [2002] NZCA 69, [2002] 2 NZLR 754 [*Moonen No 2*] at [17].

and opinions of any kind in any form". Under s5 of the NZBORA, this freedom is subject "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Section 6 of the NZBORA states that "Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning".

The meaning of "objectionable":

Section 3(1) of the FVPC Act sets out the meaning of the word "objectionable". The section states that a publication is objectionable if it:

describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

The Court of Appeal's interpretation of the words "matters such as sex, horror, crime, cruelty or violence" in s3(1), as set out in *Living Word Distributors v Human Rights Action Group (Wellington)*, must also be taken into account in the classification of any publication:

[27] The words "matters such as" in context are both expanding and limiting. They expand the qualifying content beyond a bare focus on one of the five categories specified. But the expression "such as" is narrower than "includes", which was the term used in defining "indecent" in the repealed Indecent Publications Act 1963. Given the similarity of the content description in the successive statutes, "such as" was a deliberate departure from the unrestricting "includes".

[28] The words used in s3 limit the qualifying publications to those that can fairly be described as dealing with matters of the kinds listed. In that regard, too, the collocation of words "sex, horror, crime, cruelty or violence", as the matters dealt with, tends to point to activity rather than to the expression of opinion or attitude.

[29] That, in our view, is the scope of the subject matter gateway.²

The content of the publications must bring them within the "subject matter gateway". In classifying the publications therefore, the main question is whether or not they deal with any s3(1) matters in such a manner that the availability of the publications is likely to be injurious to the public good.

Matters such as horror, crime, cruelty, and violence

All of the publications deal with the horror of extreme violence and cruelty. The events depicted involve the most extreme violations of human rights and invoke the horror of extreme violation of human bodies (such as decapitation, and running over a person with a tank). *5pillars* also potentially deals with extrajudicial killings which have been performed by state forces. The impact of the publications is made stronger as these atrocities are likely to have been committed in real-life, against actual human beings. This will be discussed throughout.

Certain publications are "deemed to be objectionable":

Under s3(2) of the FVPC Act, a publication is deemed to be objectionable if it promotes or supports, or tends to promote or support, certain activities listed in that subsection.

² *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at [27]-[29].

In *Moonen v Film and Literature Board of Review (Moonen No 1)*, the Court of Appeal stated that the words "promotes or supports" must be given "such available meaning as impinges as little as possible on the freedom of expression"³ in order to be consistent with the Bill of Rights. The Court then set out how a publication may come within a definition of "promotes or supports" in s3(2) that impinges as little as possible on the freedom of expression:

Description and depiction ... of a prohibited activity do not of themselves necessarily amount to promotion of or support for that activity. There must be something about the way the prohibited activity is described, depicted or otherwise dealt with, which can fairly be said to have the effect of promoting or supporting that activity.⁴

Mere depiction or description of any of the s3(2) matters will generally not be enough to deem a publication to be objectionable under s3(2). When used in conjunction with an activity, the Classification Office defines "promote" to mean the advancement or encouragement of that activity. The Classification Office interprets the word "support" to mean the upholding and strengthening of something so that it is more likely to endure. A publication must therefore advance, encourage, uphold or strengthen, rather than merely depict, describe or deal with, one of the matters listed in s3(2) for it to be deemed to be objectionable under that provision.

The Classification Office has considered all of the matters in s3(2). The relevant matter is:

s3(2)(f) *Acts of torture or the infliction of extreme violence or extreme cruelty.*

All of the publications document extreme violence, cruelty, and/or torture against actual human beings. They are undoubtedly shocking. However the mere depiction of these matters does not constitute tending to promote or support them. In the converse it does not take particularly high quality or gruesome images to tend to promote and support torture, extreme violence, or cruelty, given the real-life nature of the actions these publications contain. Any impact these publications have, including any promotional or supportive aspects, are by their nature stronger than for fictional depictions.

It is noted that the Crown has not submitted that *Kashmir – Indian Army execute Kashmiri civilian* (OFLC Ref 1700694.000), *Myanmar Muslim Massacre* (OFLC Ref 1700694.002), *Burmese Muslims* (OFLC Ref 1700694.004), *Kurdish Libral* (OFLC Ref 1700694.006), *Young Syrian Beaten* (OFLC Ref 1700694.007), or *5Pillars* (OFLC Ref 1700694.008) promote or support, or tend to promote or support, acts of torture, or extreme violence or cruelty.

Kashmir – Indian Army execute Kashmiri civilian documents the likely killing of a person. The violence or injury is clearly not the focus of the publication; it is barely even shown on screen, with dust obscuring the moments of injury or death. However, given the real-life nature of the actions the video contains, the impact of this violence is still strong. As the video focusses on the activity leading up to and around the shooting (and likely killing), the overall effect of the video is observational.

The images in *Myanmar Muslim Massacre* and *Burmese Muslims* show victims in the aftermath of extreme violence. The victims and their horrific injuries are the sole focus of many of the images, but who they are, why they have been killed, and even why they have been documented is left entirely unstated. Without wider context the images simply present as records of actual events.

³ *Moonen v Film and Literature Board of Review* [1999] NZCA 329, [2000] 2 NZLR 9 [*Moonen No 1*] at [27].

⁴ At [29].

One of the images in *Burmese Muslims* depicts a man holding a sword between the head and body of a decapitated person, which has been laid out on a green mat. The image is ceremonial in tone. There is an element of promoting and supporting the violence but, when taken in the context of the rest of the images in the publication as well as the very distant viewpoint, the image has a more observational effect than a promotional one.

The primary focus of *Kurdish Liberal* is on the perpetrators of the violence, rather than on the victims. As such, while the suffering of the victims is audibly in the foreground, the level of injury shown is very low. The video is shot from some distance (from outside the room in which the torture is occurring); as such it cannot definitively be said that the videographer is complicit in the crimes, even if it is likely. The effect is more observational than participatory.

Neither Defence nor Crown submissions comment on the participatory element to *Young Syrian Beaten*, as the initial videographer calls one of the perpetrators over to him, passes them his phone, and then joins in in the physical torment of the young man. While this makes it clear that the men in the video endorse the violence they are inflicting, the video itself remains in a static, detached position and the general focus of the video is on the perpetrators rather than on the injuries inflicted on the victim. Given the lack of detail around the injury and distance away from the acts, the overall effect of the video is observational.

5pillars presents violence in an exposé format, using red circles, embedded images, and text to contextualise acts of violence. Even without a full understanding of the embedded text, the dominant effect is of a highly mediated video which guides the viewers through the acts of violence. As such, the video goes further than being observational, actively denouncing the violence that it depicts.

Given the observational (and in the case of *5pillars*, denunciatory) effect of the publications, none of them can fairly be said to promote or support, or tend to promote or support, the infliction of extreme violence or extreme cruelty.

The Crown has submitted that *VaDal PoCbE (Dot)* (OFLC Ref 1700694.001), *DOAM on Twitter* (OFLC Ref 1700694.003), and *Ahmet Maranki's photo* (OFLC Ref 1700694.005) at least tend to promote or support these matters.

VaDal PoCbE (Dot) depicts, in gruesome detail, extreme self-inflicted violence. It also shows the consequences of those actions. The man who slices his back open with a sword looks as though he goes into shock, falling into another man's arms, and is carried away into a small van where he undergoes minor surgery. The video makes clear the consequences that this level of self-flagellation entails, and, given that the victim and the perpetrator are the same person, the depiction of the level of injury is therefore likely to actually deter people from doing the same to themselves.

The Classification Office has taken into account the lyrics of the religious soundtrack that accompanies the images:

Who for anyone else sheds his own blood; [may it] stay intact, the love for Hussain. The colour of faith demonstrates it [...] Our self-flogging swings between beating the chest and the water stall. Firstly, to mourning the etiquette is taught by the love for Hussain.

Banners in the background of the video state “No profit other than [Hussain]”.

The contextualisation of the violence as part of Ashura adds a promotional and supportive element to the video, specifically for Shia Muslims. However, Shia Muslims are likely to already be aware of religious self-flagellation and be able to contextualise the video within wider Shia discourse around whether it is appropriate, or whether it would be better to donate blood.⁵ Furthermore, the video does not inherently encourage its viewers to engage in self-flagellation to the same extent – particularly given the level of injury the first subject of the video sustains and medical attention he requires. In addition, religious expression and manifestation is highly protected, covered by both sections 14 and 15 of the NZBORA. The ability to produce videos recording religious expression, even if it involves self-inflicted harm, is an integral part of manifesting their belief. As such, the video does not even tend to promote and support extreme violence or cruelty.

Ahmet Maranki's photo is particularly notable as it shows a man looking at the camera while warming his hands using an unidentifiable person's burning corpse. The body has not yet been completely charred, so it is likely that the burning started briefly before the image was taken. When viewed alongside the binding on the victim's ankles, it is very likely that both the subject and the photographer of the image, are complicit in the cruelty.

DOAM on Twitter does not just depict the aftermath of horrific violence but also the acts of extreme interpersonal violence which precede it. Despite the horrific nature of that violence, the level of injury visible is very slight. Plumes of dust obscure the shooting of the victim. The camera is held at a distance from the victim for the most part. When the tank finally drives over the victim, the men in the video cheer; the videographer moves back to the body of the victim, as if to inspect it, before the video suddenly freezes and ends, leaving what appears to be a corpse blurry but at the centre of the image.

It is clear that the men in the video promote and support this extreme and fatal violence (justifying it as the killing of an ISIS member). The videographer appears to be complicit in the atrocity, or at least certainly does not intercede. The video is particularly disturbing and cruel, given that we have no way of assessing whether the victim was killed by the gunshots – it is entirely possible that they were crushed by the tank while they were alive. This is compounded by the celebration that occurs when the tank crushes the victim.

Regarding the relevance of commentary for these publications as discussed above (in the submissions section), there is no clear promotional or supporting element inherent to these publications – certainly not in the same way that child sexual abuse material manifestly promotes such abuse and is produced and circulated for use by paedophiles. These publications present as records of actual events, which may have been created by people complicit in those acts. As such the Classification Office is able to take into consideration commentary around the publications to observe how they have been used.

It is noted that *VaDaL PoChE (Dot)* was posted with the comment “Shia Kafirs”, while *DOAM on Twitter* was originally posted with the comment:

Video: #Iraq – 13-year-old Sunni in #Mosul brutally tortured by Iraqi army. You won't see this in mainstream media! [...] This is how you combat ISIS? By making a tank run over a kid and then shoot them to death?!

and *Ahmet Maranki's photo* was originally posted with the comment:

⁵ Bethan McKernan “Ashura 2017: When is it? Everything you need to know about the Muslim festival of mourning” (2 October 2017) The Independent <<https://www.independent.co.uk/news/world/middle-east/ashura-2017-muslim-festival-of-mourning-when-is-it-why-holy-celebration-shia-islam-nasrallah-lebanon-a7978216.html>>

Both those who stay silent on this, and those who support it, and those who say they haven't seen, heard, or known about this savagery....! "He who causes it is the same as he who commits it."

The accompanying pieces of commentary are clear denunciations of the violence and cruelty depicted. However, in another context it is just as possible that commentary could be made that is promotional; as an example, a mirror of *Kashmir – Indian Army execute Kashmiri civilian* found on YouTube had comments attached to the video which praised the act of violence.⁶ As such the conclusion must be that while some viewers may endorse the extreme violence and cruelty in these publications, many will be horrified and repulsed.

The Court of Appeal in *Moonen (No 1)* stated that "in applying the concepts of promotion and support [...] s 5 of the Bill of Rights requires that such application favour freedom of expression over objectionability if the case is marginal."⁷ In *Society for the Promotion of Community Standards Inc v Film and Literature Board of Review*, the Court of Appeal held that to meet the threshold of even tending to promote and support an activity under s 3(2), a publication must carry with it a "real and substantial risk" of promoting or supporting the specified activity; it is not enough that there is "some possibility" that it might promote or support such activity.⁸

Given this approach of the Court, the Classification Office has concluded that these publications do not meet the threshold of tending to promote and support this violence. While some may point to *DOAM on Twitter* and argue that it includes similar content to publications that have been created by terrorist organisations as propaganda, it is of note that *DOAM on Twitter* (like the rest of the publications being discussed here) does not bear any signifiers of being attached to any terrorist group. In a New Zealand context these publications' most likely reading is neither a promotional nor a supportive one.

Matters to be given particular weight:

Section 3(3) of the FVPC Act deals with the matters which the Classification Office must give particular weight to in determining whether or not any publication (other than a publication to which subsection (2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable.

The Classification Office has considered all the matters in s3(3). The relevant matters are:

s3(3)(a)(i) *The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with acts of torture, the infliction of serious physical harm, or acts of significant cruelty;*

s3(3)(c) *The extent and degree to which, and the manner in which, the publication degrades, dehumanises or demeans any person;*

and

s3(3)(d) *The extent and degree to which, and the manner in which, the publication promotes or encourages criminal acts or acts of terrorism.*

⁶ "Shocking Video: Indian Army Killed Kashmiri Civilian" (17 July 2016) YouTube <<https://www.youtube.com/watch?v=4RigoPr5Q2U>>

⁷ Above n 3, at [28].

⁸ *Society for the Promotion of Community Standards Inc v Film and Literature Board of Review* [2005] NZCA 176; [2005] 3 NZLR 403 (30 June 2005) at [104] and [105].

Kashmir – Indian Army execute Kashmiri civilian documents someone likely being killed, but it does not clearly show the moment of injury or death. There is no blood or injury visible. The quality of the video is so poor that it is difficult to see what is going on (that is, we do not know for certain if an individual has even been killed). Dust is unsettled by the firing of the bullets, which would likely have obscured the injury even if the quality had been better. As such the degree and manner in which the publication depicts (implicitly extreme) violence is low. Nevertheless, as the video depicts real-life violence and a degree of obvious callousness, the impact of the violence is still high.

VaDal PoChE (Dot) shows a person inflicting grievous bodily harm on themselves, to the point that they look as though they have gone into shock. This is a very intense depiction. The surgical intervention necessary makes clear just how harmful the activity is. The wounds are focussed on, with the camera pausing and then zooming in on the wounds. As such, the impact of the violence is extremely high.

DOAM on Twitter documents a group of men intentionally inflicting fatal interpersonal violence. They display a complete disregard for human dignity and autonomy. There is an extreme level of cruelty and violence – the victim is bound, dragged and placed in front of a tank, before being shot and crushed. The video is of low quality, and appears to be actual footage. The victim is treated in a way that is strongly degrading and dehumanising, with the video presenting a final image of his crushed and ruined body having been run over by a tank.

Myanmar Muslim Massacre and *Burmese Muslims* show victims of extreme, intentional, real-world violence. They are mostly high quality images that have been taken in close proximity to the victims, who are, in most cases, very recently deceased. They are shown in a candid manner. Deep wounds have been inflicted on the victims, showing flesh, sinew, and bone in many cases; others show people who have been set alight. A significant amount of blood is shown in many of the pictures. Decapitation, or attempted decapitations, make up the majority of instances. Violence is at an extreme level, which is further amplified by their presentation as likely real depictions of bodies and atrocities.

Many of the images in *Myanmar Muslim Massacre* and *Burmese Muslims* can be regarded as exploitative and voyeuristic. Not only do the victims in these images appear to have been brutalised and murdered in inhumane ways, they are also clearly identifiable and their bodies displayed in a way that can be seen as degrading and dehumanising. The sole focus in almost all of these images are the victims' violently mutilated corpses. Perhaps the most egregious example is in *Burmese Muslims*, in which two separate images show a sequence of an unidentified person handling the head of a recently decapitated young woman, moving the head off the body so it is more clear that she has been decapitated (as opposed to just having a large gash on her neck, and being covered in blood). Another is an image of a young murdered child with a large wound on his neck; many hands can be seen taking pictures of the child with their cell-phones. Another image embeds the decapitated head of an infant into a picture of the infant's body. This level of detail – neck stumps, innards spilling out of wounds, claw-like marks ravaging the side of a person – adds to the degradation of the people depicted. For many viewers, these images present as exploitative by turning the victims' violent deaths into morbid spectacle.

Ahmet Maranki's photo clearly shows an extreme degree of cruelty and callousness. It shows a man in military fatigues disrespecting a dead or injured body by turning it into the butt of a joke and an object for derision. While it is impossible to identify the body (unlike the images in *Myanmar Muslim Massacre* and *Burmese Muslims*), this presents as a degrading and dehumanising image.

Kurdish Libral shows a group of men committing strong violence and torture against men who have been bound. While the subject matter of the video is unequivocally the torture that is being committed, the camera is placed as an observer and focusses far more on the perpetrators of the abuse than on the victims. There is no detailed depiction of injury, just of violence.

Young Syrian Beaten is similarly strong in its depiction of violence and torture. While the detached viewpoint of the camera and lack of visible injury to some extent mediates the impact of the violence, the high level of cruelty associated with the very visible torture means that the violence is still of a high impact.

5pillars is an exposé video. The impact of the violence is limited by the slick production and the lack of visible injury to the victims, as well as the relatively far distance from the executions the camera is placed. There is little focus on the injuries, aside from some still images (some of which have been censored with black boxes), which have been taken from the official Facebook page of the military spokesperson of the Egyptian Armed Forces. The focus of the images is on the spokesperson's commentary, rather than on the victims and their injuries. The impact of these images is further limited by their fleeting nature.

Many people in New Zealand will be familiar with the exposé style of mediated depiction. The sudden stops, starts, and the inclusion of red circles distance the viewer to some degree from the violence that is committed.

However, the fact remains that the video depicts a real-life situation in which at least two people (and most likely a third) have been blindfolded and executed. The real-life nature of these executions means that any impact these publications have will be stronger than for fictional depictions. As such, even though it is clearly contextualised, the level of cruelty depicted in the video remains high.

The soldiers in the video appear to demean and dehumanise their victims by brutalising, killing, and then misrepresenting the circumstances of their deaths, but the video as a whole denounces this misrepresentation and the killings.

Even though these publications do not reach the threshold laid out in s 3(2), all of them are deeply affecting. Their impacts are increased because these images and videos likely document real-life events in which actual humans have been grievously injured, and will be interpreted as such. Many people in New Zealand will not have been exposed to genuine depictions of brutality to this degree, although we are aware that images of this kind of readily available on the internet and increasingly people will be encountering them, either through curiosity or by accident.

There is nothing in these videos and images that in our assessment promotes or encourages criminal acts or terrorism to a level that would render them objectionable under s 3(3)(d). This Office has experience of dealing with material that is used by terrorist organisations to gather support and recruit followers. None of these publications have the hallmarks of such material (such as recognisable terrorist brands, flags, and music).

Additional matters to be considered:

Under s3(4), the Classification Office must also consider the following matters:

s3(4)(a) The dominant effect of the publication as a whole;

The dominant effect of each of these publications as discussed above will typically be shock and revulsion at the depictions of extreme violence and degradation. Many viewers will be moved to strongly empathise with the victims, and feel anger against the perpetrator of these acts.

s3(4)(b) The impact of the medium in which the publication is presented;

As these publications are in a digital file format they may easily be stored, shared, and copied. It is clear from submissions that these publications were posted on the Defendant's Facebook page. The Facebook page itself has not been submitted as a publication; as such, we must in accordance with the submission assess each publication as individual digital files.

The issue of what is the 'publication' at issue, and what is the 'medium' appears to be the subject of some confusion on the part of both Crown and Defence submissions. We note this is understandable given that the terminology of the operative sections was drafted in a pre-internet era; however, this Office has extensive experience in applying these concepts to modern technologies and platforms. We comment on this further, below.

s3(4)(c) The character of the publication, including any merit, value or importance it has in relation to literary, artistic, social, cultural, educational, scientific or other matters;

This is an area in which the potential value of these publications as likely records of real events must be carefully weighed. Records of real events can have value in multiple ways, ranging from evidential value in pursuing justice for criminals, social value in raising awareness of and condemnation of atrocities, or personal value in terms of final records of individuals once known, and loved.

We are also very conscious that powerful, disturbing and horrifying images such as these can be misappropriated by those seeking to revel in, and uphold inhumane and dehumanising acts.

In coming to an assessment of what, if any, possible value these publications may have, we need to take into account all relevant evidence that is available to this Office that provides context for what it is that we are evaluating.

There is a suggestion that the violence in *Myanmar Muslim Massacre* and *Burmese Muslims* might be committed by agents of the Burmese state, who are targeting Rohingya Muslims. This is possible. We have found nothing in the images themselves, nor in the evidence submitted that definitively establishes this to be the case, nor can we rule out the possibility that these images have potential value in identifying and potentially denouncing extrajudicial killings in this state.

It is important here to consider what value the Defendant's commentary may or may not have in this context. As mentioned earlier in this decision, the Classification Office considers that the commentary is a relevant consideration. While in this case the commentary does not itself form part of the publications being assessed, it is useful evidence of possible audiences for and uses of the publications.

Sections 3(4)(b), 3(4)(d), 3(4)(e), and particularly 3(4)(f) clearly give the Classification Office mandate to consider this evidence in order to properly assess the publications. This mandate was important even when drafted in a pre-internet era, and is even more important now when this Office considers digital file records of likely real events. Given the minimal context that the

publications as digital files themselves provide, this kind of context can be very helpful in coming to some idea of their interpretation.

In the present case, the commentary by the Defendant provides some evidence that in at least some cases the publications under consideration may be used by individuals to denounce and express anger about the killings and crimes they depict. From the commentary submitted to us, denunciation appears to be the likely reason for the Defendant publishing these images on his Facebook page. Some comments, such as “Syrian Regime Shia Kaffir Animals burning Civilians”, also evidence clear frustration and anger. Such denunciation and anger is consistent with how we might anticipate some people might seek to use material of this kind.

s3(4)(d) The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available;

s3(4)(e) The purpose for which the publication is intended to be used; and

s3(4)(f) Any other relevant circumstances relating to the intended or likely use of the publication.

The intended audience and purpose of these digital files are impossible to determine. As noted above, digital depictions of real deaths and killings may be produced for a number of reasons, including political, military, promotional or evidential purposes. As digital files they are then easily republished or distributed for additional reasons, which may be different to or even diametrically opposed to the purpose for which they were originally intended. We note the re-publication of these images on a Facebook page. Facebook has a nominal age restriction of 13, however we are aware of evidence that many children below this age access Facebook. We have not been provided with any evidence of the accessibility of, or visitors to the Facebook page on which these publications were posted.

Conclusion:

These nine publications are all classified as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years.

There is a range of material under consideration here, from the almost implicit violence shown in *Kashmir – Indian Army execute Kashmiri civilian*, to *Myanmar Muslim Massacre* and *Burmese Muslims*, which are some of the strongest images of this type that have been submitted to the Classification Office for classification. There is little doubt that all of the publications (barring *VaDal PoChE (Dot)*) depict brutality, cruelty, war crimes, human rights abuses and atrocities. These acts themselves are abhorrent. *VaDal PoChE (Dot)* depicts an extreme level of self-inflicted violence.

However, the Classification Office does not consider that these particular images and videos depicting those acts are objectionable outright. We find that injury to the public good from the availability of these publications can be mitigated by a restriction to adult audiences.

With the unprecedented access to information that the internet has allowed society, it has become easier than ever for people to access this kind of material. Many New Zealanders will have been exposed, whether intentionally or not, to material of this sort of impact, or even higher. We note that videos and images depicting real atrocities, of a similar extreme impact to those under consideration here, are readily available online via mainstream news media outlets.

However, due to their extreme content, the unrestricted availability of the publications is likely to harm children and teens. These publications provoke a strong emotional response in the viewer, as they are extreme depictions of intentional, real-life cruelty and violence against actual human beings. Children and teens would likely find them disturbing and upsetting to an extent that it would have a negative impact on their mental health and wellbeing. For young people who are still developing cognitively, socially and emotionally this poses real risk of long-term adverse effects.

These publications are likely to have a similar disturbing effect on adults. We have already noted the high level of detail of the still images, and the uniquely cruel treatment of a human being followed by the subsequent celebration of their suffering in *DOAM on Twitter*. The high level of degradation that these actual victims of violent acts suffer through their completely identifiable, mutilated corpses being exploited and put on clear display dramatically increases the impact these publications are likely to have. However, we find that in these cases, these disturbing elements alone cannot justify an objectionable classification. Adults are likely to possess the maturity and life experience required to place these into an appropriate context, and there is less risk of injury to the public good if they are available only to adults.

Balanced against the impact and potential harm that these publications will have is their potential value. Representations of real-life events can have value in political, social personal or judicial contexts. Classifying such publications as objectionable means that even the creation of this kind of content would be illegal, potentially limiting the ability for victims of such human rights abuses to verify their claims.

We find that images and video clips of the type under consideration here to be quite distinguishable from the type of publication that on its face seeks to use real-life killings and torture to promote and endorse such atrocities, such as the ISIL and al-Qaeda promotional publications we have seen that clearly and deliberately use branding, flags, and promotional text to influence the viewer. The publications under consideration do not contain such elements.

An R18 classification limits the right to freedom of expression but it is a reasonable limitation and one that is justified by the risk of injury to the public good. On the other hand, for the reasons detailed throughout this decision, an objectionable classification would not be demonstrably justifiable.

Date: 10 April 2018

For the Classification Office (signed):

Note:

You may apply to have these publications reviewed under s47 of the FVPC Act if you are dissatisfied with the Classification Office's decision.

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APPENDIX: SYNOPSIS OF WRITTEN SUBMISSIONS RECEIVED

Submissions were received on 11 January 2018 from the Crown and on behalf of the Defendant (referred to from hereon as D). Submissions for the different publications will be summarised separately. The Defence and Crown submissions on each publication begin with a description of the publication. These descriptions are not summarised here. Our synopsis here focuses on the main points relating to the relevant criteria of the FVPC Act.

Kashmir – Indian Army execute Kashmiri civilian (OFLC Ref 1700694.000)

The Crown's main points in relation to this publication include:

- [The publication] depicts the infliction of serious physical harm. The exact context is difficult to discern but involves a significant number of armed military personnel. There is no suggestion the video records anything other than real events and no deliberate attempt has been made to obscure any part of the footage.
- The victim is trapped in a collapsed building and is therefore defenceless. The decision to shoot is motivated, it would appear, by the fact the victim is identified as "that same bearded fellow." The most that can be seen of the victim at any one time is his arm protruding from the rubble immediately prior to shots being fired. When the shots are fired the person recording retreats before returning again to focus on the area where the victim had been prior to the shooting. The results of the shooting cannot be seen and the video is, on the whole, of poor quality. Those present appear generally indifferent to what has occurred.

The Defence's main points include:

- Although the viewer can surmise what is occurring, the victim cannot be clearly seen and his ultimate fate, or any injuries he may have suffered, are not captured in the video.
- The video only suggests the viewer that a man was likely shot and killed, in the same way that television news footage from war zones often depicts similar events.
- The video contains raw footage with no editing to show support or condemnation for the actions of the soldiers.
- There is no evidence to rule out the reasonable possibility that the footage has been shared as an effort at "whistle blowing", rather than encouraging the practises of the Indian Army. This submission is supported by the accompanying comment on the Facebook posting which is neutral in tone and simply describes what can be observed in the video.
- [D's] sharing of the post offers the DOAM [Documenting Oppression Against Muslims] critique and the purpose of the sharing the publication [sic] is clearly to draw attention to the abuse of state power, rather than to offer any support for the actions of the soldiers.

VaDal PoChE (Dot) (OFLC Ref 1700694.001)

The Crown's main points in relation to this publication include:

- [The video] is clearly designed to, and does, celebrate the behaviour of both men.
- In respect of both males, the video is edited so as to include repeated footage and still 'close ups' of the moment of impact and the injuries caused. The effect of which is to force a repeated viewing of the most graphic parts of the footage.
- The dominant effect [...] is likely to be one producing shock at its explicit and harrowing nature. Its purpose and intended use is the celebration of the violence depicted. There is clearly a cultural/religious

context and the intended audience is presumably those of a shared faith. Irrespective, the violence depicted is extreme and the likelihood of injury to the public good from the availability of the publication high.

- Further, the Crown considers the behaviour exhibited should not only be deterred, but would, if replicated in New Zealand, constitute a criminal offence(s), consistent with a classification of its graphic depiction as objectionable.

The Defence's main points include:

- The Sunni practice on Ashura is to fast, not to self-flagellate. This is a genuine religious difference and it submitted that the Office ought to be slow to restrict access to footage which concerns this debate.
- It is submitted that there is educational value in the publication and criticism of this practice as such expressions tend to prompt sober reflection on the merits of the practice, and militate against the commission of such harm.
- It is further submitted that footage of a long-practised religious ceremony where the alleged victims appear to be under no particular pressure to participate and who are then escorted off for medical treatment is not the type of publication designed to be captured by s 3(3) and 3(4) of the Act.

Myanmar Muslim Massacre (OFLC Ref 1700694.002)

The Crown's main points in relation to this publication include:

- Each of the photos are graphic and their effect disturbing.
- The photographs depict the aftermath of the infliction of serious physical harm and [...] of deliberate and significant cruelty if not torture. The focus of each is the victim. They are graphic in nature and there has been no attempt made to obscure any of the images.

The Defence's main points include:

- [W]hile the *actions* that have led to these casualties may degrade, dehumanise and/or demean the victims the publication of the injuries themselves does not necessarily achieve the same outcome. The publication also generates real sympathy for the victims and encourages action against such violence.
- The images themselves contain no superimposed commentary to rule out the possibility that these images were solely intended to be used in a "whistle blowing" exercise.
- [D] shared the images, adding words which translate to "O nation [or community] when will you wake up?", clearly demonstrating his disapproval for the acts that have cause the injuries depicted and attempting to promote awareness of the victims' suffering.
- [P]ublications such as the images shared by [D] assist agencies in rebutting government denials of the human rights violations.

DOAM on Twitter (OFLC Ref 1700694.003)

The Crown's main points in relation to this publication include:

- Clearly what is being recorded is not only the acts themselves, but their celebration (the cheering of those present being one of the dominant features of the recording distinguishing it from, for example, a still image).
- [I]n the absence of any mitigating feature(s) to counteract the promotional and encouraging effect of the publication, the Crown submits *DOAM on Twitter* promotes and supports the infliction of extreme violence and cruelty.

- The purpose and consequent focus of the video is to record and celebrate the killing of the detainee and subsequent degradation and dehumanisation of their remains. The videographer seeks to capture as much detail as is possible and the only factor reducing the graphic nature of the footage is its poor quality.
- The dominant effect of the publication is likely a sense of revulsion at its graphic depiction of the cruelty being exercised upon the victim who is not only killed but then degraded in the most violent way.

The Defence’s main points include:

- While the resolution of the video is poor, it is accepted that the violence inflicted onto the boy may cross the threshold anticipated by s 3(2)(f).
- It is not clear who filmed the video, or what their intentions in filming the video were. There is little indicia of support or criticism from the persons within the footage – it merely presents as a record of events.
- The low resolution of the footage also mitigates the distress any viewers might experience.

***Burmese Muslims* (OFLC Ref 1700694.004)**

The Crown’s main points in relation to this publication include:

- Other than Photograph 2, the Crown does not contend that the photographs in *Burmese Muslims* promote or support [acts of torture or the infliction of extreme violence or extreme cruelty, s 3(2)(f)].
- Photograph 2, however, appears to be, for want of a better term, a ‘trophy’ shot posed almost triumphantly following the decapitation. [...] The image ... at least implicitly if not explicitly, encourages and celebrates the conduct and in the absence of any features which might mitigate this effect, tends to promote and support the infliction of extreme violence and/or extreme cruelty.
- Nevertheless, the influence of Photograph 2 is not sufficient, in the Crown’s view, to alter the overriding character of the montage which does not engage s 3(2).

With regard to s 3(3) matters, the Crown states:

- The photographs in *Burmese Muslims* depict the aftermath of the infliction of serious physical harm and/or acts of significant cruelty and the degradation of human remains. The focus on each is the victim. They are graphic in nature and, other than Photograph 8, there has been no attempt made to obscure any of the images.
- The effect [of the images] is disturbing.

The Defence’s main points include:

- [I]t is highly relevant that the images were shared by [D] as a link containing the following commentary: “Keep the Burma Muslim Nation in your prayer”.
- Counsel submit the publication is not likely to be injurious to the public good on the basis of the following points:
 - a. It is accepted that the images may concern the viewer, but it will also promote real sympathy for those who are often faceless victims of conflicts outside of New Zealand.
 - b. The medium of the publication makes it easily accessible by persons who are interested in its content; however, its presence on a niche page dedicated to similar subject matter gives the viewer a clear sense of what to expect and militates against any shock that might be suffered by the general public.
 - c. For reasons above, it is submitted that the publication is of a high educational and informative value for its ability to draw attention to and legitimise claims of extrajudicial killings that are not well covered by prominent western media organisation [sic], but the subject of many human rights reports.

The Defence submission also discusses D's use of the word 'kaffir' as meaning 'non-believers' rather than 'infidels'.

***Ahmet Maranki's photo* (OFLC Ref 1700694.005)**

The Crown's main points in relation to this publication include:

- The photograph is graphic and disturbing. It records what appears to be the aftermath of the severe physical abuse of an adult male who is then set alight while unconscious or dead. The man warming his hands on the flames appears relaxed even indifferent to what is occurring. [...] The posed scene is clearly designed to make light of and celebrate the violence depicted, and has been recorded by someone complicit in what is taking place. In the absence of any features which might mitigate its effect, the publication tends to promote and support the infliction of extreme violence and extreme cruelty.
- Far from being a neutral depiction, the photograph celebrates the cruelty inflicted and must have been taken by someone complicit in the behaviour exhibited.

The Defence's main points include:

- Even if the soldier's approval for the burning is somehow taken to show some support for an action that falls within s 3(2)(f), the entirety of the Publication shared by [D] condemns the disrespectful actions of the soldiers and unjustified death of the civilian. Indeed, it was shared with the following commentary that endorses patience rather than retaliation:

“We may Burn in the mortal world, but you will burn in the hereafter. Allah willing, amen... Both you and those who hold your reins! Both those who stay silent on this, and those who support it, and those who say they haven't seen, heard, or known about this savagery....! 'He who causes it is the same as he who commits it.' Let us be benevolent, let us be helpful to those in need....! Announced to whom it may concern.. May Allah grant us all the honour to be subject to Allah, ummah* to His beloved, and human beings, amen...”

- [D] also added his own comment which sought to identify the perpetrator's motive and to criticise his actions.
- It is submitted that criticising the discriminatory practices of state agents can only tend to humanise and dignify the lives of victims of human rights violations. Such Publications confirm the inherent value of their lives.
- It is further submitted that such publications are of heightened importance when dealing with complex foreign conflicts such as the Syrian Civil War. It is all too easy for the international community to become de-sensitised to the individual tragedies of warfare, which are otherwise powerful tools for mobilising peaceful efforts to mitigate the suffering of vulnerable groups.

The comment added by D that the submission refers to is: “Syrian Regime Shia Kaffir Animals burning Civilians”.

***Kurdish Libral* (OFLC Ref 1700694.006)**

The Crown's main points in relation to this publication include:

- The Crown accepts that *Kurdish Libral* simply depicts the event(s) at issue and does not contend it promotes or supports the featured activity.
- The dominant effect of *Kurdish Libral* is likely to shock and disturb. [...] There is no additional merit to the publication other than as a record of the event(s) depicted, nor is its purpose, intended use or audeicne clear. Although it is worth noting that given the proximity of the videographer their presence has almost certainly been consented to by the perpetrators.

The Defence's main points include:

- There is no detailed depiction of any injuries suffered. Despite the presence of weapons, the level of violence being inflicted is difficult to discern from the perspective of the cameraman. It is not known who filmed the footage or what their intentions were.
- In the circumstances, the viewer cannot be sure they are witnessing acts of torture.
- [W]hen the entirety of [D's] publication is assessed, the viewer will be left with a clear feeling of sympathy for the victims and a [sic] that the action the soldiers have been denounced.
- It is submitted that any distress caused by the publication is significantly outweighed by the ability of videos such as these to legitimise claims of state abuse and to encourage peaceful interventions in order to support the victims.

***Young Syrian Beaten* (OFLC Ref 1700694.007)**

The Crown's main points in relation to this publication include:

- The Crown accepts that *Young Syrian Beaten* simply depicts the event(s) at issue and does not contend it promotes or supports the featured activity.
- The beating is the sole focus of the video and there is no suggestion the video depicts anything other than real events. No effort has been made to obscure what is happening, nor the identities of the perpetrators.
- There is clear and cruel intent to inflict serious injury and at one point one of those present jumps repeatedly with both feet onto the victim. The power imbalance is stark and the repeated cries of the detainee affecting.
- The dominant effect of the publication is to shock the viewer at the callous and cruel behaviour depicted.

The Defence's main points include:

- [The] footage of the beating is uncomfortable but not detailed. It is difficult to assess the extent of the harm suffered and the views of the people at the scene – including the person responsible for filming the actions.
- The video itself presents as an accurate version of events with no inherent tendency to promote or support the actions of the soldiers.
- It is accepted that there may be some degree of physical harm and/or significant cruelty such that the s 3(3) test is engaged. However, notwithstanding the victim's vulnerability, the harm is only present to a moderate degree in this context.

***5pillars* (OFLC Ref 1700694.008)**

The Crown's main points in relation to this publication include:

- The Crown accepts the mitigating effect of the embedded text in *5pillars* is sufficient to negate any otherwise promotional or supportive features of the footage.
- It is clear from the footage that at the time they are killed, the detainees posed no active threat to the perpetrators and that the killings were carried out, as the embedded text suggest, in 'cold blood'.
- The distance of the videographer from events prevents the viewer from seeing the injuries caused, but as mentioned above, at one point blood can clearly be seen spraying from the head of one of the victims when shot at close [sic] using a high powered rifle. Furthermore, both executions involve numerous gunshots.

- The dominant effect of the publication, despite the tone of the (translated) embedded text, is to shock the viewer.
- In its edited form *5pillars* is clearly intended and designed to expose and condemn the depicted executions.
- However, footage of multiple real life executions is uncommon in the New Zealand context and the availability of *5pillars* highly likely to be injurious to the public good. Furthermore, given the embedded text is in Turkish, its mitigating effect is limited.
- [T]he Crown contends that *5pillars*, and publications of a like nature, should be classified as objectionable so as to prevent their dissemination and consequent normalisation”.

The Defence’s main points include:

- [The video] simply presents as an accurate record of events and lays a foundation for the commentary to criticise the efforts of the Egyptian forces in carrying out these atrocities.
- [T]he real educational and political value in this footage lays in its ability to challenge the assertions of a Government that has been working to suppression [sic] human rights violations. It had a real impact on the credibility of the allegations regarding the Sinai region.
- [T]he purposes of the footage and the most likely effects of the Publication are to generate sympathy and concern for those in Sinai, and criticism of the aggressors. The value of those functions far outweighs the importance of avoiding the sensitives [sic] of the public on such an important issue.