

**DECISION OF FILM AND LITERATURE REVIEW  
BOARD**

**UNDER** the Films, Videos and Publications Classifications Act 1993  
**IN THE MATTER** of an application under section 47 by the Crown for a review  
of the publication(s) entitled:

*Kashmir – Indian Army execute Kashmiri civilian*

*VaDal PoChE (Dot)*

*Myanmar Muslim Massacre*

*DOAM on Twitter*

*Burmese Muslims*

*Abmet Maranki's photo*

*Kurdish Libral*

*Young Syrian Beaten*

*5pillars*

## **Introduction**

1. The following members of the Board met in Wellington on 1 June 2018 to consider this application for review:

R Schmidt-McCleave (President)

N Dunlop (Vice-President)

Dr T Brown

M Waitoki

S Gill

2. The Classification Office decision arose from a section 29(1) referral from the High Court in the context of criminal proceedings against Mr Samsudeen.
3. Under section 47(2)(c), where a publication has been referred to the Classification Office by a court, any party to the proceeding in respect of which the referral was made may seek a review. In this case, the prosecuting Crown has sought the review.

## **The principles of review and the legal principles applicable**

### *The Films, Videos and Publications Classification Act 1993*

4. As required by section 52(2) of the Act, the Board must conduct its review by way of re-examination of the publications at issue without regard to the decision of the Classification Office.
5. The Board must examine every publication referred to it, in order to determine the classification of each (as required by section 52(3) of the Act).
6. In determining the classification of any publication referred to it, the Board is required by section 52(4) to take into account the matters referred to in sections 3 to 3D of the Act.
7. The relevant parts of sections 3 to 3D of the Act are set out below.

8. Section 3 of the Act sets out the meaning of “*objectionable*” for the purposes of the Act. Section 3(1) provides 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.
9. Section 3(2) *deems* a publication to be objectionable for the purposes of the Act if it *promotes or supports, or tends to promote or support*, certain behaviours, including (at section 3(2)(f)), “*acts of torture or the infliction of extreme violence or extreme cruelty*”. The Court of Appeal has held there to be a high threshold to be overcome before the deeming provision renders a publication objectionable.<sup>1</sup>
10. Section 3(3) is relevant if the publication is not *deemed* objectionable. That provision states that in determining whether or not a publication (other than a publication which has been *deemed* objectionable under section 3(2)) is objectionable, particular weight must be given to the extent and degree to which, and the manner in which, the publication does certain things, including:
  - a. Describes, depicts, or otherwise deals with, *inter alia*, acts of torture, the infliction of serious physical harm or acts of significant cruelty (section 3(3)(a)(i)).
  - b. Degrades or dehumanises or demeans any person (section 3(3)(c)).
  - c. Promotes or encourages criminal acts or acts of terrorism (section 3(3)(d)).
11. Finally, for those publications not *deemed* objectionable, section 3(4) requires that, in determining whether or not a publication (other than a publication which has been deemed objectionable under section 3(2)) is objectionable, the Board must consider the following matters:
  - a. The dominant effect of the publication as a whole.
  - b. The impact of the medium in which the publication is presented.

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<sup>1</sup> *Moonen v the Film and Literature Board of Review* [2000] 2 NZLR 9.

- c. The character of the publication, including any merit, value, or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters.
  - 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.
  - e. The purpose for which the publication is intended to be used.
  - f. Any other relevant circumstances relating to the intended or likely use of the publication.
12. Section 4(1) provides that the question whether a publication is objectionable is a matter for the expert judgment of the person or body authorised or required to determine it, and evidence as to, or proof of, any of the matters or particulars that the person or body is required to consider in determining that question is not essential to its determination. Without limiting subsection (1), where evidence as to, or proof of, any such matter or particulars is available, it is required to be taken into consideration (section 4(2)).

### *Restriction*

13. Under section 3A, a publication may be age-restricted if it contains highly offensive language likely to cause serious harm.
14. Further, under section 3B, a publication may be classified as restricted if it contains material specified in section 3B(3) to such an extent or degree that the availability of the publication would, if not restricted to persons who have attained a specified age, be likely to be injurious to the public good for any or all of the reasons specified in section 3B(4).
15. The material in section 3B(3) is material that:
- a. Describes, depicts, expresses or otherwise deals with (i) harm to a person's body whether it involves infliction of pain or not (for example, self-mutilation or similarly harmful body modification) or self-inflicted death; or (ii) conduct that,

if imitated, would pose a real risk of serious harm to self or others or both; or  
(iii) physical conduct of a degrading or dehumanising or demeaning nature  
(section 3B(3)(a)).

b. Is or includes 1 or more visual images (i) of a person's body and (ii) that, alone,  
or together with any other contents of the publication, are of a degrading,  
dehumanising or demeaning nature (section 3B(3)(b)).

16. The reasons set out in section 3B(4) are that the general levels of emotional and  
intellectual development and maturity of persons under the specified age mean that the  
availability of the publication to those persons would be likely to –

a. Cause them to be greatly disturbed or shocked (section 3B(4)(a)).

b. Increase significantly the risk of them killing, or causing serious harm to,  
themselves, others, or both (section 3B(4)(b)).

c. Encourage them to treat or regard themselves, others, or both as degraded,  
dehumanised, or demeaned (section 3B(4)(c)).

#### *Case law*

17. There is certain higher case law pertaining to the Board's review, particularly the two  
decisions of the Court of Appeal in *Moonen v Film and Literature Board of Review* [2002] 2  
NZLR 754 and *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3  
NZLR 570.

18. In *Moonen*, the Court of Appeal espoused the importance of the New Zealand Bill of  
Rights Act 1990 (**BORA**). The Board must be mindful that, in applying the Act, it must  
act consistently with BORA. Section 14 of BORA states that everyone has “*the right to  
freedom of expression, including the freedom to seek, receive, and impart information and opinions of  
any kind in any form.*” Under section 5 of BORA, this freedom is subject “*only to such  
reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*”  
Further, section 6 of BORA provides that “[*wherever*] *an enactment can be given a meaning*

*that is consistent with the rights and freedoms contained [in BORA], that meaning shall be preferred to any other meaning.”*

19. In *Living Word Distributors*, the Court of Appeal described section 3(1) of the Act as a “*subject matter gateway*” to being found to be objectionable, in that if a publication does not describe, depict, express, or otherwise deal with matters such as sex, horror, crime, cruelty, or violence, it cannot be classified as objectionable. Once a publication makes it through the subject matter gateway, the Board must then consider whether the subject matter is dealt with in such a manner that the availability of the publication is likely to be injurious to the public good. The remaining subsections of section 3 of the Act may assist the Board in that analysis.

### **Submissions received**

20. The Board received submissions from the Crown, the Classifications Office and counsel on behalf of Mr Samsudeen. These are discussed, where necessary, in the Board’s analysis of each of the publications.

### **Nature of Facebook and Twitter posts: what constitutes the “publication” the Board has been asked to review?**

21. A preliminary question that the Board considered it needed to resolve was whether the “*publication*” whose classification the Board is being asked to review constitutes just the videos and photographs (with any embedded commentary that form part of the Facebook or Twitter posting) or whether it includes the entire Facebook or Twitter posting which may include what the Board decided to refer to as “*remarks*” added after the posting occurred.
22. To help with this question, the Board found it necessary to understand for itself how a video or photograph shared or posted to Facebook or Twitter by an individual like Mr Samsudeen could be so shared or posted. In this case, what Mr Samsudeen was sharing to his individual Facebook or Twitter accounts, were videos and/or photographs originally posted on social media by other individuals or entities. In the form in which they were originally posted on social media by those other individuals or entities, they might contain:

- a. Commentary electronically embedded in the video or photograph before it was posted by the original Facebook or Twitter individual or group who shared the video or photograph (the first category of post); and/or
  - b. Commentary added to a post by the original Facebook or Twitter individual or group who shared the video or photograph which was not electronically embedded in the video or photograph (the second category of post).
23. Further, when he then shared the posts to his Facebook or Twitter page, sometimes Mr Samsudeen would share them without making any additional remarks on the posts; other times he would share them adding some additional remarks of his own. The latter creates a third category of post.
24. The Board also notes that, signified by the little globe icon next to his Facebook posts, all Mr Samsudeen's postings, on that forum at least and presumably on Twitter also, were shared publicly and without restriction to just certain "*friends*" only.
25. In addition, and of relevance, Facebook has an automatic translation option available if, for example, an English-speaking reader of Facebook encounters a post containing a foreign language. If the reader clicks on the "*translate*" button beneath the post, he or she is provided with a pidgin type translation, akin to the "Google translate" type of translation. These translations were not always completely accurate when compared with the formal Police-obtained translations which the Board has seen, but were close enough in pidgin form for the reader clicking on the button to obtain a sense of what was being said.
26. In terms of any legal principles pertaining to this question, the Board notes that the Act defines "*publication*" in section 2 as:

- (a) *any film, book, sound recording, picture, newspaper, photograph, photographic negative, photographic plate, or photographic slide;*
- (b) *any print or writing;*
- (c) *a paper or other thing that has printed or impressed upon it, or otherwise shown upon it, 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words;*

(d) *a thing (including, but not limited to, a disc, or an electronic or computer file) on which is recorded or stored information that, by the use of a computer or other electronic device, is capable of being reproduced or shown as 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words”*

27. Section 24, applying to an examination of a film by the Classification Office under section 23, states:

*“Where a film is intended to be viewed with an accompanying soundtrack (whether or not the soundtrack is an integral part of the film), an examination of the film under section 23 shall also take into account the content of the soundtrack and its relationship to the film.”*

28. The Crown explained in its submissions that each of the publications under consideration by the Board were posted/shared on ‘open-source’ Facebook accounts operated by Mr Samsudeen and that, in doing so, Mr Samsudeen would occasionally provide his own commentary relating to the matters depicted in the publications. The Crown also noted that several of the publications were already accompanied by written commentary, extraneous to the publication itself, at the time the publications/posed on Mr Samsudeen’s Facebook account.

29. The Crown went on to submit that such extraneous commentary is not relevant to the classification process. The Crown submitted (emphasis in original):

*“In the Crown’s submission 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 depicting child sexual abuse which has been posted to a Facebook account cannot, in the Crown’s submission, be rendered unobjectionable by accompanying but extraneous commentary condemning what is depicted.”*

30. The Crown referred to, and distinguished, the Court of Appeal decision in *Moonen v Film and Literature Board of Review* [2002] NZCA 69; [2002] 2 NZLR 754 (**Moonen No 2**) on the basis that the publication referred to in the example used by the court in that case was the whole pamphlet including any condemnatory content. The Crown said that where a video has been edited and includes condemnatory embedded text (such as in the 5pillars video at issue in this review discussed below), the commentary “*forms part of the publication [so that] it is logically relevant to the publication’s classification*”. The Crown went on to state:



*“However, to extend the enquiry beyond the confines of the publication itself would necessitate an enquiry beyond the Board’s jurisdiction into the circumstances in which the publication was possessed and/or distributed – matters which fall within the remit of the criminal courts. To find that the circumstances in which a publication is held or distributed might affect whether the publication is objectionable [sic] would corrupt the scheme, and thwart the purpose, of the Act.*

*For these reasons the Crown submits 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....”*

31. In response, the Classification Office submissions considered the comments posted with some of the videos on social media, stating that the *“commentary has been considered as evidence to assist in interpreting the likely effect of the [video]/ [photo].”*

32. The Classification Office submitted:

*“In their submissions to the Classification Office and to the Board, the Crown contend that the commentary accompanying some of the publications should not form part of the classification decision. This contention is contrary to the specific provisions of the Act. S 4(2) of the FVPC Act requires the Classification Office and the Board to consider the evidence placed before them. Further, for those publications that are not deemed objectionable under section 3(2) the full range of factors outlined in 3(4) **must** be considered. The commentary is relevant for this purpose also.*

*The intended or likely audience of the publications (s 3(4)(d)) and the intended purpose of the publications (s 3(4)(e)) are very difficult to determine. As mentioned earlier, 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. However, the specific presentation in the case before the Board, clearly indicates that these publications were shared for condemnatory purposes.”*

33. Mr Samsudeen’s counsel submitted on this point on his behalf that the footage, the commentary and the remarks of each post are part of *“the publication”* at issue because they are all part of the post which Mr Samsudeen created. Facebook is then the *“medium”* for the post under section 3(4)(b) of the Act. In the alternative, Mr Samsudeen submitted that, at the very least, the publication consists of the footage and the commentary, which is what Mr Samsudeen shared as a link on his Facebook page.

34. In support of this position, Mr Samsudeen submitted that the section 2 definition of publication is *“intentionally very broad and includes any video or photographic image and any print*

*or writing*’ and that further assistance as to what constitutes a publication can be gained from an assessment of how section 3 functions. Mr Samsudeen submitted that reducing the publication to the image or footage alone would make it extremely difficult to assess the purpose of the publication. Mr Samsudeen pointed out that “s 4(2) of the Act requires the expert to consider all material made available in assessing whether a publication is likely to be injurious to the public good.”

35. Mr Samsudeen contended the Crown’s submissions on this point were flawed because they were not in accordance with the broad considerations set out in the Act when assessing whether a publication is objectionable and they failed to acknowledge that the commentary was part of the link that Mr Samsudeen elected to post and share on his Facebook page and which was therefore “*intrinsically part of the ‘publication’ at issue*”. In this regard, Mr Samsudeen pointed out that he never possessed the footage or images without the associated commentary because both are part of the respective links he shared on his Facebook page. He shared the link by bringing both the footage and the commentary onto his Facebook post before adding his remarks and publishing it.

*Approach taken by the Board*

36. The approach applied by the Board to this question, taking into account all of the above submissions as well as the way in which social media accounts like Facebook and Twitter function, is set out below.
37. The Board cannot confuse “*publications*” under the Act, with the *process* of publication. There is, and must be, a distinction between the publication itself and the medium by which publication is achieved. In that regard, publications are essentially “*things*” and the Board’s role is to determine whether the publication as a “*thing*” is objectionable, and not the process or medium by which it is published. The latter are contextual matters.
38. That being so, any embedded commentary that forms part of what the Board is considering forms part of the publication, but accompanying remarks do not. The remarks form part of the process, medium and context of publication. In terms of the three categories of post the Board identified at paragraphs 22 and 23 above, the Board considered that the “*publication*” itself included the commentary in the first category of post, but not the second or third categories of post identified.

39. Therefore, if section 3(2) applies to any of the publications (each of which of course must be considered separately), then it follows that those publications are objectionable, and no account can be taken of the section 3(3) or section 3(4) considerations.
40. If, however, any of the publications are not *deemed* objectionable under section 3(2), then the considerations in section 3(3) and section 3(4) become relevant (and, in the case of section 3(4), mandatory).
41. In that regard, the Board considers that the considerations set out at sub-paragraphs (a) – (c) of section 3(4) relate to the intrinsic nature and content of the publications themselves, whereas the factors in sub-paragraphs (d) – (f) of section 3(4) mandate the consideration of matters extrinsic to the publications. In the Board’s view, additional commentary “remarks” added to a social media posting must be considered pursuant to those extrinsic factors (i.e. the second and third categories of post identified by the Board).
42. In summary, then, the Board is of the view that the publication includes any electronically embedded commentary but not any accompanying remarks or commentary. The Board has not considered the non-embedded commentary or remarks accompanying each of the postings in its consideration of whether or not each publication is to be *deemed* objectionable, but it has considered those remarks or non-embedded commentary if a publication has not been *deemed* objectionable and the Board has gone on to take into account the section 3(3) and section 3(4) factors.
43. For completeness, the Board notes that while it agrees with the Crown’s conclusion in relation to the example of a video depicting child sexual abuse that the Crown refers to in its submissions on this question, it does not accept the Crown’s reasoning. The Board agrees that such a video would, in the majority if not all of cases, be *deemed* objectionable because it would be almost impossible not to conclude that a video depicting child sexual abuse promoted or supported the exploitation of children. The Crown correctly points out that, in making that determination, the subsection 3 and 4 considerations would not be permitted to be taken into account. It is implicit in the Crown submissions that no one would video child sexual abuse other than to promote or support it. No one who wished to condemn child sexual abuse, which usually occurs in a private setting, would ever film it on their own volition, and would always intervene if it was

about to occur. But the Board apprehends that a videographer of terrorism, or battlefield violence, in a public setting is in quite a different position. There, the videographer is, in all likelihood, unable to intervene successfully if they wished to, given the volatile, public and militarised environment in which the person is filming. The videographer cannot usually prevent the violence being filmed from taking place. Thus, while the motives of a videographer of child sexual abuse are, possibly without exception, evil, the motives of a videographer of terrorism or battlefield violence may be good or bad.

### **Can the Board take into account the “availability” of the material?**

44. A further preliminary question raised by the Crown is whether the Board could take into account how “available” the material contained in each publication was.
45. The Crown noted that with the advent of the internet and the unprecedented access to information it affords, similar material can be accessed by anyone (as it can for child sexual abuse material and other such material). However, the Crown submitted that is of no relevance to the Board’s consideration:

*“[the] availability or otherwise of a particular publication, or publications of a similar nature, should not inform the classification of that publication. Instead, as the legislation intends, the focus should be on whether or not the availability of the publication is likely to be injurious to the public good. It is no answer to an otherwise objectionable publication to say it is available and many people may have been exposed to it, or to material of a similar nature (whether intentionally or otherwise).”*

46. In response, the Classification Office noted the commonality of the images and videos due to the internet, but nevertheless noted the dominant effect of the publications, thus necessitating an R18 classification but not an objectionable classification because of the balancing needed with freedom of expression rights.
47. In turn, Mr Samsudeen’s counsel took no issue with the proposition that the availability of a particular publication should have any relevance to the determination of objectionability but urged the Board to disregard the Crown’s submission as to perpetrators of terrorism commonly possessing such publications. For completeness, the Board notes that it did ignore this submission by the Crown, as it had no evidence before it to enable such a submission to be a relevant consideration.

48. In terms of the point itself, the Board applied the same analysis as set out above to consideration of extraneous remarks. In other words, at the first stage of its inquiry (as to whether a publication ought to be *deemed* objectionable), the Board took no regard of the availability or otherwise of the publication. At the second stage of its inquiry (if needed), however, section 3(4) did require the Board to consider matters potentially pertaining to availability, namely:

- a. The impact of the medium in which the publication is presented (s 3(4)(b)).
- b. The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available (s 3(4)(d)).
- c. The purpose for which the publication is intended to be used (s 3(4)(e)).
- d. Any other relevant circumstances relating to the intended or likely use of the publication (s 3(4)(f)).

## **REVIEW OF THE PUBLICATIONS**

49. The Board has reviewed six short videos and three photographs, and/or montages of photographs, which constitute the nine publications at issue. These are separately discussed below.

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

50. *Kashmir – Indian Army execute Kashmiri civilian* is a relatively brief (1 minute, 30 second) video clip of poor quality which shows a number of soldiers approaching a pile of rubble in an unidentified city. In the soundtrack of the video, a man can be heard groaning from within the pile of rubble. The soldiers approach him as if to assist him, but then one soldier points his gun at the rubble where the noise is coming from and where an arm can just be perceived emerging from the rubble. Gunshots are then heard and there is no more groaning heard from the rubble, leaving the viewer to ascertain that the man within has been killed.

51. The post which Mr Samsudeen shared, was a Facebook post of a group named DOAM (Documenting Oppression Against Muslims). The video was originally posted by DOAM as a YouTube video with the YouTube caption “18+ Kashmir – Indian army execute civilian requesting for help after finding out he is a Muslim.” DOAM’s post included the words above, “#Kashmir – Video: Indian army execute Kashmiri civilian after finding out he is a Muslim. Notice how they try to help him at first”.

*The parties’ submissions*

52. The Crown submitted of this video (in summary):

- a. Insofar as it depicts the shooting of a defenceless person, the video clearly “deals” with horror, crime, cruelty and violence such that it becomes within the section 3(1) subject matter gateway.
- b. The video simply depicts the events at issue and, without more, cannot be said to promote or support the featured activity, so cannot be deemed objectionable.
- c. The video should be classified as objectionable because:
  - i. It shows the infliction of serious physical harm.
  - ii. The victim is trapped in a collapsed building and is therefore defenceless and the person recording returns to the area where the victim had been after the shots are heard.
  - iii. Those present appear generally indifferent to what has occurred.
  - iv. The dominant effect of the video is “*likely revulsion at the shooting and almost certainly killing by military personnel of a defenceless and unarmed man*”.
  - v. The video is in digital format and can therefore be easily stored, shared or copied.
  - vi. There is no additional merit to the publication other than as a record of the event(s) depicted.
  - vii. The video’s purpose, intended use or audience is not clear.

53. In response, the Classification Office submitted that:

- a. The video passes through the section 3(1) gateway as it deals with matters of violence.
- b. While the video documents the likely killing of a person, the violence and injury is not the focus and is hardly seen on screen, despite the impact of the violence. As the video focussed on the activity leading up to and around the shooting the overall effect is observational and it therefore ought not to be deemed objectionable.
- c. The main section 3(3) consideration is the extent and degree to which, and the manner in which, the publication deals with the infliction of serious physical harm (section 3(3)(a)(i)) and, in that regard, the video does not clearly show the moment of injury or death and there is no blood or injury visible.
- d. Nevertheless, as the video depicts real-life violence and a degree of obvious callousness, the impact of the violence is still high.

54. The Classification Office submissions on the section 3(4) factors were made across all the publications reviewed and are summarised here:

- a. Videos and photos such as these are increasingly common on the internet and these clips are captured and distributed for a wide variety of purposes. In addition to promoting extremist violence, the distribution of violent imagery can also serve to document and raise awareness of human rights abuses, cruelty and oppression.
- b. Nevertheless, the dominant effect of each of the submitted publications on the viewer is likely to 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 perpetrators.
- c. The digital format means such publications can easily be stored, copied and shared online and offline, particularly on social media.

- d. This is an area in which the potential value of such publications as records of real events<sup>2</sup> must be weighed against the risk that such publications may be misappropriated by those seeking to uphold such inhuman acts.
- e. The commentary relating to some of the publications is useful evidence of possible audiences for and use of the publications and indicates that at least in some cases the publications may be used by individuals to denounce and express anger about the killings and crimes they depict.
- f. In summary, the Classification Office submitted that all the publications, while abhorrent, and likely to greatly shock and disturb most adults, the risk of adults being disturbed by the material (in the absence of clear promotion of the atrocities depicted) is not sufficient to justify an objectionable classification. The potential value of the publications must be balanced against the impact and potential harm they have.
- g. Due to their extreme content, the unrestricted availability of the publications is, however, likely to harm children and teens and have a negative impact on their mental health and wellbeing. An R18 classification of the publications will limit the right to freedom of expression, but that is a reasonable limit that can be demonstrably justified in the interest of preventing injury to the public good. An objectionable classification cannot be demonstrably justified.

55. Finally, it was submitted on behalf of Mr Samsudeen that the video ought not to be deemed objectionable. In addition:

- a. The video shared is via a YouTube link which makes clear that the video is 18+.
- b. Versions of the video remain on YouTube, including with a watermark from the Daily Mail indicating it has been shared by a western journalistic agency.

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<sup>2</sup> The Classification Office noted that such records of real events may have value in pursuing justice for criminals, raising awareness of atrocities, recording the final fate of individuals, refugees gaining knowledge of current events in their homelands, and the possible identification of extrajudicial killings in the Burmese state.



- c. Mr Samsudeen's sharing of the post offers the DOAM critique of the soldier's discrimination and ends with a message of solidarity, and his purpose in sharing the post is clearly to draw attention to the abuse of state power, rather than to offer any support for the actions of the soldiers.

*The Board's decision*

56. The Board agrees with the parties that the video clearly comes within the section 3(1) subject matter gateway, dealing as it does with horror, crime, cruelty and violence. It is readily apparent from the gunshots, and from the cessation in the sound of the man moaning, that he has been shot and probably killed (although his corpse is never seen).
57. The Board further considers that the video merely documents what has occurred and, on its face, in no way can be said to promote or support the infliction of extreme violence or extreme cruelty so that it cannot be deemed objectionable under section 3(2).
58. This leads the Board to consider the factors in section 3(3) and section 3(4). First, applying section 3(3), the Board has given particular weight to the extent and degree to which, and the manner in which, the video:
  - a. Describes, depicts, or otherwise deals with an act of infliction of serious physical harm or an act of significant cruelty (section 3(3)(a)(i)). The Board is satisfied the video depicts such an act. It is obvious, from the gunshots heard and the man buried in the rubble no longer being able to be heard groaning, that he has been shot and probably killed, and that the soldier doing this (and his comrades observing this) have shot him coolly and with callousness.
  - b. Degrades or dehumanises or demeans any person (section 3(3)(c)). In one sense, the act depicted does not degrade, dehumanise or demean the man himself as very little of him is viewed and it is an inference that he has been killed which ensues. The video could be said to degrade humanity, in the sense of reflecting man's inhumanity to man. In another sense, however, when the translated remarks ("*it's a bearded guy*") are considered, there is a sense of dehumanisation

and degradation portrayed, in that being Muslim, the man does not deserve to be assisted.

- c. Promotes or encourages criminal acts or terrorism (section 3(3)(d)). There is no suggestion that the video, on its own, does this. While it may ultimately be used for that end by some, it has not been shared in this manner by either DOAM in the original post or Mr Samsudeen in his post. On the contrary, the sense in which it has been shared is condemnation.
- d. Represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public for a characteristic that is a section 21(1) Human Rights Act 1993 prohibited ground of discrimination. The video does this by the inference that a Muslim man does not deserve to be rescued from the rubble but, rather, should be executed. However, the sharing of the video by Mr Samsudeen in no way supports this interpretation; in fact, quite the opposite.

59. In terms of the section 3(4) factors, the Board considers that:

- a. The dominant effect of the video as a whole is to convey extreme cruelty to a man suffering by killing him rather than rescuing him and is therefore likely to upset and revolt most viewers. It is impossible to watch the video without being appalled by what initially appears to be a merciful approach turning to callous and sadistic cruelty.
- b. The impact of the digital medium of the video is that it can be shared and stored easily and reproduced for a number of purposes, both good and bad.
- c. The video has potential merit in terms of documenting actual events taking place in Kashmir and, in that regard, used for good ends can serve as a part of an historical record.
- d. Because of the public nature of the video's sharing, it is likely to be made available to anybody, irrespective of any intention for it only to be available to those interested in knowing about such events.

- e. The purpose for which the publication was intended was to condemn such actions. This is shown by the extraneous remarks and commentary accompanying both the original DOAM post, and Mr Samsudeen’s sharing of it on Facebook.
  - f. The video is likely to cause harm to a child or young person viewing it in terms of their mental health and wellbeing. The video, in showing the moment leading up and including the shooting and probable killing of a man, contains material describing, depicting, expressing or otherwise dealing with harm to a person’s body (section 3B(3)(a)(i)). The general levels of emotional and intellectual development and maturity of persons under age 18 mean that the availability of the video to those persons would be likely to cause them to be greatly disturbed or shocked (section 3B(4)(a)).
60. The Board therefore classifies *Kashmir – Indian Army execute Kashmiri civilian* under section 23(2)(c)(i) of the Act as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years.

**VaDal PoChe (Dot) (OFLC Ref: 1700694.001)**

61. *VaDal PoChe (Dot)* is a disturbing video of 2 minutes 27 second duration, depicting (in sequence) two men self-flagellate in a religious ceremony with a machete or sword type instrument, surrounded by people watching and chanting and accompanied by religious music. The first man ends up slicing his back open badly and vividly, with great gashes in flesh being shown close up, and he is eventually shown swooning and receiving medical treatment (graphic stitching of the huge gashes in his back) after being carried away. The second man, who uses two blades, ends up with one of the blades embedded in his back. The camera focuses in on the wounds in graphic and disturbing detail.
62. The post which Mr Samsudeen shared, was a Facebook post of a group named VaDal PoChE (Dot). Mr Samsudeen’s post was shared with the remarks “*Shia Kafirs*” which the Crown’s translation states means “*Shia Infidels*” and Mr Samsudeen’s counsel submits means “*Shia non-believers*”.

*The parties’ submissions*

63. The Crown submitted of this video (in summary):

- a. The context for the video appears to be the traditional practice observed by some Shia Muslim of blood letting, or Tatbir, in mourning for the younger grandson of the prophet Muhammad, Husayn ibn Ali.
- b. The video is graphic and disturbing and clearly deals with horror and violence so that the section 3(1) gateway threshold is met.
- c. The video should be deemed objectionable because, irrespective of the context in which it occurs, the publication depicts extreme violence and is clearly designed to, and does, celebrate the behaviour of both men.
- d. The publication deals with the infliction of serious physical harm (section 3(3)(a)(i)) and its purpose is to celebrate the violence depicted. The effect of the editing and close ups is to force a repeated viewing of the most graphic parts of the footage. There is also explicit footage of the medical attention provided to the first male.
- e. The dominant effect of the video is to produce shock at its explicit and harrowing nature.
- f. There is clearly a religious context and the intended audience is presumably those of a shared faith, but the violence depicted is extreme and the likelihood of injury to the public good from the availability of the publication high.
- g. The video is in digital format and can be easily stored, shared, or copied.
- h. The behaviour depicted should not only be deterred but would, if replicated in New Zealand, constitute a criminal offence consistent with a classification of objectionable.

64. In response, the Classification Office submitted that:

- a. The video passes through the section 3(1) gateway as it deals with matters of extreme self-inflicted violence.

- b. While the video documents the self-inflicted violence in gruesome detail, it also shows the consequences of the actions. The video makes clear the consequences that this level of self-flagellation entails. The contextualisation of the violence as part of the Muslim festival Ashura adds a promotional and supportive element to the video, specifically for Shia Muslims. However, the video does not inherently encourage its viewers to engage in self-flagellation to the same extent depicted and it therefore ought not to be deemed objectionable.
- c. The main section 3(3) consideration is the extent and degree to which, and the manner in which, the publication deals with the infliction of serious physical harm (section 3(3)(a)(i)) and, in that regard, the video shows a very intense depiction of a person inflicting grievous bodily harm on themselves such that the impact of the violence is very high.

65. The Classification Office submissions on the section 3(4) factors were made across all the publications reviewed and are summarised in paragraph 54 above.

66. Finally, it was submitted on behalf of Mr Samsudeen that:

- a. The video shows members of the Shia religion engaging in events on Ashura, a date of religious significance for both Sunni and Shia.
- b. The harm depicted is deeply confronting but the individuals are self-administering the harm as part of a religious ceremony and receive medical treatment straightaway. The video ought not, therefore, to be deemed objectionable.
- c. The footage contains commentary which refers to the suffering of Mohammed's grandson as the basis for the practice.
- d. Mr Samsudeen's posting criticises the practice, albeit with somewhat inelegant wording.

- e. The Sunni practice on Ashura is to fast, not to self-flagellate, and there is educational value in the publication contributing to the debate as to religious differences.
- f. Footage of a long-practised religious ceremony where the participants are under no particular pressure to participate and who are escorted off for medical treatment is not the type of publication designed to be captured by section 3(3) and section 3(4) of the Act.

*The Board's decision*

67. The Board considers that the video clearly comes within the section 3(1) subject matter gateway, dealing as it does with cruelty and violence. It is a deeply disturbing video of the religious practice of self-flagellation with sickening close-ups of the wounds being administered and then being treated.
68. The Board is aware that this video is of a different nature than the others considered in this review, depicting as it does graphic self-inflicted injuries as part of a fevered religious ceremony. The Board considered there to be a strong argument that this video *does* promote or support the infliction of extreme violence or extreme cruelty so that it could potentially be deemed objectionable under section 3(2). However, all the video does on its face (without Mr Samsudeen's accompanying remarks, which the Board cannot consider in its section 3(2) analysis) is depict the religious fervour leading to the injuries, albeit in an intensely explicit manner. There is nothing in the imagery shown to say the video actively promotes or supports the extreme violence shown. Ultimately, the Board cannot ascertain (from the video alone) the reasons why the video was made, whether to condone or condemn or otherwise what was being portrayed and, therefore, the Board cannot find that the video ought to be *deemed* objectionable.
69. This, again, leads the Board to consider the factors in section 3(3) and section 3(4). First, applying section 3(3), the Board has given particular weight to the extent and degree to which, and the manner in which, the video:
- a. Describes, depicts, or otherwise deals with an act of infliction of serious physical harm or an act of significant cruelty (section 3(3)(a)(i)). The Board is satisfied

the video depicts such an act. The self-flagellation shown results in serious physical injuries to the two men.

- b. Degrades or dehumanises or demeans any person (section 3(3)(c)). Although the video is extremely difficult to watch, the Board is unable to conclude it results in any degradation and so forth to the men involved. Again, the Board cannot conclude the purpose of filming the acts depicted. Further, the men involved are inflicting the acts upon themselves and are not having the acts done to them.
- c. Promotes or encourages criminal acts or terrorism (section 3(3)(d)). Again, here is no suggestion that the video, on its own, does this. While it may ultimately be used for that end by some, it has not been shared in this manner by either VaDal PoChe (DOT) in the original post or Mr Samsudeen in his post. On the contrary, the sense in which it has been shared is condemnation of the Shia practices.
- d. Represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public for a characteristic that is a section 21(1) Human Rights Act 1993 prohibited ground of discrimination. There is a strong suggestion in the sharing of the video accompanied by his remarks (whatever translation is used) that Mr Samsudeen condemns the Shia practice as barbaric but there is no suggestion that he is implying that those practising the self-flagellation are inferior.

70. In terms of the section 3(4) factors, the Board considers that:

- a. The dominant effect of the video as a whole is to convey the Shia self-flagellation practice in an extremely confronting manner.
- b. The impact of the digital medium of the video is that it can be shared and stored easily and reproduced for a number of purposes, be they good or bad.
- c. The video has potential merit in terms of documenting actual religious practices, in the same way a video may document equally abhorrent practices in other religions.

- d. Because of the public nature of the video's sharing, it is likely to be made available to anybody, irrespective of any intention for it only to be available to those interested in knowing about such events.
- e. The purpose for which the publication was originally intended is unknown. It may have been to celebrate the practice depicted or it may have been to denounce it. Certainly, in Mr Samsudeen's post, it was the latter shown by his accompanying remark, "*Shia Kafirs.*"
- f. The video is likely to cause harm to a child or young person viewing it in terms of their mental health and wellbeing. The video, in showing such graphic self-flagellation, contains material describing, depicting, expressing or otherwise dealing with harm to a person's body (section 3B(3)(a)(i)). The general levels of emotional and intellectual development and maturity of persons under age 18 mean that the availability of the video to those persons would be likely to cause them to be greatly disturbed or shocked (section 3B(4)(a)).

71. The Board therefore classifies *VaDal PoChe (Dot)* under section 23(2)(c)(i) of the Act as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years (i.e. an R18 classification).

**Myanmar Muslim Massacre (OFLC Ref: 1700694.002)**

72. *Myanmar Muslim Massacre* is a montage of five graphic photos uploaded together in one Facebook post and showing (without any redaction):

- a. A man lying on the ground, presumably dead, without his top clothing and with deep cuts visible on his torso.
- b. A young woman lying dead on a mat surrounded by pools of blood. Her neck is cut, and her head turned to one side.
- c. A baby lying presumably dead on a table, being held by several hands, with a stake driven through his or her stomach, resulting in the intestines spilling out of the wound and around the stake.



- d. A young woman lying on a blanket with visible wounds and bleeding on her arm and shoulder.
- e. A young boy lying dead on a mat, with a deep wound on his neck suggestive of attempted decapitation. He is naked from the waist down and is surrounded by people taking pictures on their phones.

73. The montage was posted on a page with Tamil text which translates as (in the Crown translation, although the same general sense is given by the Facebook automatic translation):

*“NEWS TODAY*

*Burmese genocide quietly carried out.....! Countries worldwide remaining silent...!*

*Rape, evictions, Burmese Muslims are in tears....!*

*While Myanmar’s [sic] continues the assassinations, rape, robbery, evictions and setting on fire of Rohingya Muslims, international community is turning its head away.*

*Two days ago, a Muslim mother and daughter were raped in front of each other by Myanmar’s forces. The day before yesterday, a three-month pregnant Muslim woman from Mang Dau had been gang raped by the Burmese soldiers.*

*During last week alone, ten Muslim women were raped. Current information on the number of women raped and murdered is still unknown.*

*Due to the atrocities, approximately 15,000 Muslims have been evacuated from affected areas. Mosques have been torched. Copies of the Holy Quran have been torn and urinated on. It is reported that the situation there is worsening day by day.*

*According to information received from the region, thousands of Muslims are suffering without food and water. The Burmese army and Buddhist religious fanatics are responsible for this genocide....The Burmese government is not preventing this but maintaining silence.”*

74. Mr Samsudeen then shared the post (encapsulating the montage and the above text) on his Facebook page with the remarks *“Myanmar Muslims getting Massacred by burma buddhist Criminals O Ummab<sup>3</sup> When will you Wakeup!!!”*

75. On the Board’s approach as articulated above, it can only consider Mr Samsudeen’s accompanying remarks if it does not deem the publication objectionable.

*The parties’ submissions*

76. The Crown submitted of this montage (in summary):

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<sup>3</sup> The Board understands this means “Nation”.

- a. Each of the photos are graphic and disturbing, recording the aftermath of real and extreme violence, and clearly deal with horror and violence so that the section 3(1) gateway threshold is reached.
- b. Without more, mere depiction of the aftermath of such violence cannot ordinarily be said to promote or support such activity, so the montage ought not to be deemed objectionable.
- c. Section 3(3)(a)(i) is to be given particular weight. The focus of each graphic image is the victim, and there has been no attempt to obscure any of the images.
- d. There is no suggestion the photos are anything but authentic and their effect is disturbing.
- e. Under section 3(4), the dominant effect of the montage is shock and revulsion. The images are in digital form and can therefore be easily stored, shared or copied. There is no additional merit to the montage other than as a record of the event, and the purpose, use or audience is unclear.
- f. Classification as objectionable is warranted.

77. In response, the Classification Office submitted that:

- a. The montage passes through the section 3(1) gateway as it deals with matters of horror, violence and cruelty.
- b. While the victims and their horrific injuries are the sole focus, who they are, why they have been killed and even why they have been documented is left entirely unstated. Without wider context the images are simply records of actual events and therefore ought not to be deemed objectionable.
- c. The main section 3(3) considerations are the extent and degree to which, and the manner in which, the publication deals with the infliction of serious physical harm (section 3(3)(a)(i)) and/or degrades, dehumanises or demeans any person (section 3(3)(c)). In those regards, the images show victims of extreme, intentional, real-world violence and cruelty. The victims and their wounds are

shown in a candid manner. Many of the images can be regarded as exploitative and voyeuristic. The victims have been brutalised and murdered in inhumane ways and they are also clearly identifiable with their bodies displayed in a way that can be seen as degrading and dehumanising.

78. The Classification Office submissions on the section 3(4) factors were made across all the publications reviewed and are summarised in paragraph 52 above.

79. Finally, it was submitted on behalf of Mr Samsudeen that:

- a. The images do depict extreme violence.
- b. While the montage was shared by Mr Samsudeen in October 2016, the commission of human rights violations in Burma has since gained international attention.
- c. While the *actions* that have led to these casualties may degrade, dehumanise and/or demean the victims the publication of the injuries does not necessarily achieve the same outcome. The publication also generates real sympathy for the victims and encourages action against such violence.
- d. The images carry significant educational and political value.

*The Board's decision*

80. The Board considers that the montage of images comes within the section 3(1) subject matter gateway, dealing as it does with horror, cruelty and violence. Each of the images is graphic, horrific and sickening.

81. There is nothing on the face of the montage that promotes or supports the infliction of such extreme violence and cruelty. It cannot therefore be deemed objectionable.

82. This, again, leads the Board to consider the factors in section 3(3) and section 3(4). First, applying section 3(3), the Board has given particular weight to the extent and degree to which, and the manner in which, the montage:

- a. Describes, depicts, or otherwise deals with an act of infliction of serious physical harm or an act of significant cruelty (section 3(3)(a)(i)). The Board is satisfied the montage depicts the aftermath of such acts.
- b. Degrades or dehumanises or demeans any person (section 3(3)(c)). While the actions themselves clearly degrade, dehumanise and demean the victims, the publication itself is not intended to have this effect. Indeed, the accompanying text condemns the actions.
- c. Promotes or encourages criminal acts or terrorism (section 3(3)(d)). Again, there is no suggestion that the montage, on its own, does this. While it may ultimately be used for that end by some, it has not been shared in this manner by either News Today in the original post or Mr Samsudeen in his post. On the contrary, the postings implore action to be taken to condemn and stop such murderous actions.

83. In terms of the section 3(4) factors, the Board considers that:

- a. The dominant effect of the montage as a whole, with its accompanying text, is a cathartic expression of horror.
- b. The impact of the digital medium of the montage is that it can be shared and stored easily and reproduced for a number of purposes, be they good and bad.
- c. The montage has potential merit in terms of documenting actual events in Burma, possibly at the hands of agents of the state.
- d. Because of the public nature of the video's sharing, it is likely to be made available to anybody, irrespective of any intention for it only to be available to those interested in knowing about such events.
- e. The purpose for which the publication was originally intended is unknown. In the form the images were used by News Today, and then by Mr Samsudeen, the purpose is to condemn the atrocities, and not to incite violence.

- f. The montage is likely to cause harm to a child or young person viewing it in terms of their mental health and wellbeing. The images clearly contain material describing, depicting, expressing or otherwise dealing with harm to a person's body (section 3B(3)(a)(i)). The general levels of emotional and intellectual development and maturity of persons under age 18 mean that the availability of the images in the montage to those persons would be likely to cause them to be greatly disturbed or shocked (section 3B(4)(a)).

84. The Board therefore classifies *Myanmar Muslim Massacre* under section 23(2)(c)(i) of the Act as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years (i.e. an R18 classification).

### **DOAM on Twitter (OFLC Ref: 1700694.003)**

85. *DOAM on Twitter* is a brief (1 minute, 18 second) video which films a group of men in military attire, shouting at another man tied up, before dragging him along the ground and placing him in front of a tank. Gunshots are heard, dust obscures the man and the tank drives over the man to the cheers of the military-attired men. There is a quick focus on the crushed body of the man before the clip ends.

86. The clip was posted on Twitter by DOAM with the caption “#Iraq – 13-year-old Sunni in #Mosul brutally tortured by Iraqi army. You won't see this in mainstream media!” It was then also shared by DOAM on its Facebook page with the remark, “*This is how you combat ISIS? By making a tank run over a kid and then shoot them to death?!*”

87. Mr Samsudeen shared the post publicly on his Facebook page.

### *The parties' submissions*

88. The Crown submitted of this video clip (in summary):

- a. Given its content, there can be no question the section 3(1) gateway threshold is reached with the video clip.
- b. What is being recorded is not only the acts themselves, but the celebration of them. Further, given the proximity of the cheering men to the events and the

focus on the body afterwards, the inescapable conclusion is that the videographer is complicit in what is taking place. In the absence of any mitigating feature(s) to counteract the promotional and encouraging effect of the publication, the video promotes and supports the infliction of extreme violence and cruelty and should be deemed objectionable.

- c. The section 3(3)(a)(i) and section 3(3)(c) are matters to be given particular weight. The video depicts the infliction of serious physical harm and acts of significant cruelty. The purpose and focus of the video is to record and celebrate the killing of the detainee and subsequent degradation and dehumanisation of the remains.
- d. Under section 3(4), the dominant effect of the video is revulsion at the killing and then the degradation. The video is likely made by and for those complicit in the acts shown and has no independent merit, value or importance. It is also in digital format and can therefore be easily stored, shared or copied.
- e. Classification as objectionable is appropriate.

89. In response, the Classification Office submitted that:

- a. The video passes through the section 3(1) gateway as it deals with matters of violence and cruelty.
- b. It is clear that the men in the video promote and support this extreme and fatal violence and the videographer appears to be complicit and does not intercede. The posting with the commentary is a clear denunciation; however, the video may conceivably be posted elsewhere in a promotional manner. The effect on some will be celebration but others it will be horrify and repulse and therefore ought not to be deemed objectionable.
- c. The main section 3(3) considerations are the extent and degree to which, and the manner in which, the publication deals with the infliction of serious physical harm (section 3(3)(a)(i)) and/or degrades, dehumanises or demeans any person (section 3(3)(c)). The video displays a complete disregard for human dignity and

autonomy with an extreme level of violence. The victim is treated in a way that is strongly degrading.

90. The Classification Office submissions on the section 3(4) factors were made across all the publications reviewed and are summarised in paragraph 52 above.

91. Finally, it was submitted on behalf of Mr Samsudeen that:

- a. There is little indicia of support or criticism from the persons within the footage, it merely presents as a record of events.
- b. The surrounding commentary and context is of vital importance.
- c. Regardless of the identity and intent of the person who filmed the video, it has been used by people to raise awareness of human rights violations.
- d. The descriptions provided make it easy for potential viewers to avoid watching.
- e. The publication is of a high political value in drawing attention to the issue of extrajudicial killings.

*The Board's decision*

92. The Board considers that the clip clearly comes within the section 3(1) subject matter gateway, dealing as it does with cruelty and violence. The video depicts a horrifying scenario and then further demeans the victim of the cruelty by zooming in on his remains.

93. It is true that the men in the video itself promote and support the infliction of the cruelty by their cheering, and the inaction of the photographer in stopping the atrocity. However, the clip itself may be used in a promotional manner or, as here, in a way that denounces the actions within. The Board does not therefore consider it can be deemed objectionable.

94. The Board is then led to consider the factors in section 3(3) and section 3(4). First, applying section 3(3), the Board has given particular weight to the extent and degree to which, and the manner in which, the video:

- a. Describes, depicts, or otherwise deals with an act of infliction of serious physical harm or an act of significant cruelty (section 3(3)(a)(i)). The Board is satisfied the video does this in a horrific manner.
- b. Degrades or dehumanises or demeans any person (section 3(3)(c)). The focus on the victim's crushed remains at the end of the clip dehumanises and demeans him to an appalling degree.
- c. Promotes or encourages criminal acts or terrorism (section 3(3)(d)). While, conceivably, the video could be used by some groups to encourage terrorism or more violent criminal acts, when read with the accompanying remarks posted by first DOAM, and then Mr Samsudeen, the Board does not consider the clip promotes or encourages criminal acts or terrorism.

95. In terms of the section 3(4) factors, the Board considers that:

- a. The dominant effect of the clip is revulsion, given more impact by the young age of the victim and the religious fervour of the men watching and shouting "Allah, Allah, Allah".
- b. The impact of the digital medium of the video is that it can be shared and stored easily and reproduced for a number of purposes, be they good or bad.
- c. The video has potential merit in terms of documenting actual events taking place in the Middle East, possibly at the hands of agents of the state.
- d. Because of the public nature of the video's sharing, it is likely to be made available to anybody, irrespective of any intention for it only to be available to those interested in knowing about such events.



- e. The purpose for which the publication was originally intended is unknown. In the form the video used by DOAM and then by Mr Samsudeen, the purpose is to condemn the atrocity depicted, and not to incite violence.
  - f. The video is likely to cause harm to a child or young person viewing it in terms of their mental health and wellbeing. The video clearly contains material describing, depicting, expressing or otherwise dealing with harm to a person's body (section 3B(3)(a)(i)). The general levels of emotional and intellectual development and maturity of persons under age 18 mean that the availability of the video to those persons would be likely to cause them to be greatly disturbed or shocked (section 3B(4)(a)).
96. The Board therefore classifies *DOAM on Twitter* under section 23(2)(c)(i) of the Act as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years (i.e. an R18 classification).

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

97. *Burmese Muslims* is a set of nine images uploaded together and depicting:

- a. The headless body of a baby, with a smaller image inserted into the picture and containing the severed head of a baby (suggesting the two images are of the same child).
- b. A man standing above a decapitated corpse, with his weapon next to the severed head.
- c. The infant from the first picture, together with a picture of a man dressed as a Buddhist monk, holding an axe.
- d. A young woman lying dead with a grim neck wound, which suggests an attempt to decapitate her.
- e. The same young woman as above, with her head removed and her neck stump apparent.

- f. The bodies of two adults in a fire, with their legs visible coming out from the fire and a group of people standing nearby.
  - g. A burnt corpse lying on the ground.
  - h. A man hanging in the middle of a crowd with his head lolling backwards, suggesting he is dead. He is naked although his genitals have been redacted.
98. The clip was posted on Facebook publicly by a group called “*Striving Muslimah*” with words which are translated in the Crown translation as “*Keep the Burma muslim nation in your prayer. The infidels are out to eradicate Islam but little did they know that Islam is the right religion.*”<sup>4</sup>
99. Mr Samsudeen shared the post publicly on his Facebook page with the remark “*burmese muslims*”.

*The parties’ submissions*

100. The Crown submitted of this montage (in summary):
- a. Like the *Myanmar Muslim Massacre*, the section 3(1) gateway is met.
  - b. Other than the second photograph, the Crown does not contend that the photographs promote or support extreme violence or cruelty. The second photograph is a ‘trophy’ shot and therefore such conduct is implicitly if not explicitly encouraged. Nonetheless, none of the photos ought to be deemed objectionable.
  - c. The section 3(3)(a)(i) and section 3(3)(c) are matters to be given particular weight. The focus of each graphic image is the victim, and there has been no attempt to obscure any of the images.
  - d. There is no suggestion the photos are anything but authentic and their effect is disturbing.

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<sup>4</sup> The automatic Facebook translation, while pidgin, conveys the same general sense, although Mr Samsudeen submits that the word “*Kaffir*” translates as non-believer rather than infidel.

- e. Under section 3(4), the dominant effect of the montage is shock and revulsion. The images are in digital form and can therefore be easily stored, shared or copied. There is no additional merit to the montage other than as a record of the event, and the purpose, use or audience is unclear.
- f. Classification as objectionable is warranted.

101. In response, the Classification Office submitted that:

- a. The montage passes through the section 3(1) gateway as it deals with matters of horror, violence and cruelty.
- b. While the victims and their horrific injuries are the sole focus, who they are, why they have been killed and even why they have been documented is left entirely unstated. Without wider context the images are simply records of actual events and therefore ought not to be deemed objectionable.
- c. The main section 3(3) considerations are the extent and degree to which, and the manner in which, the publication deals with the infliction of serious physical harm (section 3(3)(a)(i)) and/or degrades, dehumanises or demeans any person (section 3(3)(c)). In those regards, the images show victims of extreme, intentional, real-world violence and cruelty. The victims and their wounds are shown in a candid manner. Many of the images can be regarded as exploitative and voyeuristic, turning the violent deaths into morbid spectacle. The victims have been brutalised and murdered in inhumane ways and they are also clearly identifiable with their bodies displayed in a way that can be seen as degrading and dehumanising.

102. The Classification Office submissions on the section 3(4) factors were made across all the publications reviewed and are summarised in paragraph 52 above.

103. Finally, it was submitted on behalf of Mr Samsudeen that:

- a. The images do depict extreme violence.

- b. The images are raw and unprofessional and there is no way to exclude the possibility that they were taken by a civilian and published with the intent of raising compassionate awareness of the human rights violations occurring.
- c. The images may concern the viewer but will also promote real sympathy for those who are often faceless victims of conflicts outside of New Zealand. They are therefore of educational and informative value.
- d. Although the medium is easily accessible, it is on a niche page dedicated to similar subject matter.

*The Board's decision*

104. The Board considers that the montage of images comes within the section 3(1) subject matter gateway, dealing as it does with horror, cruelty and violence. Each of the images is graphic, horrific and sickening.
105. There is nothing on the face of the montage that promotes or supports the infliction of such extreme violence and cruelty. It cannot therefore be deemed objectionable.
106. This, again, leads the Board to consider the factors in section 3(3) and section 3(4). First, applying section 3(3), the Board has given particular weight to the extent and degree to which, and the manner in which, the montage:
- a. Describes, depicts, or otherwise deals with an act of infliction of serious physical harm or an act of significant cruelty (section 3(3)(a)(i)). The Board is satisfied the montage depict the aftermath of such acts.
  - b. Degrades or dehumanises or demeans any person (section 3(3)(c)). While the actions themselves clearly degrade, dehumanise and demean the victims, the publication itself is not intended to have this effect. Indeed, the accompanying text condemns the actions.
  - c. Promotes or encourages criminal acts or terrorism (section 3(3)(d)). Again, here is no suggestion that the montage, on its own, does this. While it may ultimately be used for that end by some, it has not been shared in this manner by either

Striving Muslimah in the original post or Mr Samsudeen in his post. On the contrary, the postings implore action to be taken to pray for the victims and condemn and stop such murderous actions.

107. In terms of the section 3(4) factors, the Board considers that:
- a. The dominant effect of the montage as a whole, with its accompanying text, is a cathartic expression of horror.
  - b. The impact of the digital medium of the montage is that it can be shared and stored easily and reproduced for a number of purposes, be they good and bad.
  - c. The montage has potential merit in terms of documenting actual events in Burma, possibly at the hands of agents of the state.
  - d. Because of the public nature of the video's sharing, it is likely to be made available to anybody, irrespective of any intention for it only to be available to those interested in knowing about such events.
  - e. The purpose for which the publication was originally intended is unknown. In the form the images were used by Striving Muslimah, and then by Mr Samsudeen, the purpose is to incite prayer for the victims, condemn the atrocities, and not to incite violence.
  - f. The montage is likely to cause harm to a child or young person viewing it in terms of their mental health and wellbeing. The images clearly contain material describing, depicting, expressing or otherwise dealing with harm to a person's body (section 3B(3)(a)(i)). The general levels of emotional and intellectual development and maturity of persons under age 18 mean that the availability of the images in the montage to those persons would be likely to cause them to be greatly disturbed or shocked (section 3B(4)(a)).
108. The Board therefore classifies *Burmese Muslims* under section 23(2)(c)(i) of the Act as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years (i.e. an R18 classification).

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

109. *Ahmet Maranki's photos* is a still image, in colour, of a bound man lying on the ground, presumably dead or dying, and on fire. Another man in military attire looks up at the camera, while crouched by the burning body purporting to warm his hands.
110. Underneath the image, posted by Ahmet Maranki on his page, are Turkish words, translated by the Crown into English as “*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...*”
111. Again, the automatic Facebook translation, while pidgin, in essence conveys the same meaning as above.
112. Mr Samsudeen shared the post publicly on his Facebook page with the remark “*Syrian Regime Shia Kafir Animals burning Civilians*”.

*The parties' submissions*

113. The Crown submitted of this image (in summary):
- a. The section 3(1) gateway is clearly met.
  - b. In the absence of any features which might mitigate the effect of the image, the publication tends to promote and support the infliction of extreme violence and extreme cruelty and therefore it should be deemed objectionable.
  - c. The section 3(3)(a)(i) and section 3(3)(c) are matters to be given particular weight. There has been no attempt to obscure what is happening. There is no suggestion the image is anything but authentic and it must have been taken by someone complicit.

- d. Under section 3(4), the dominant effect of the montage is shock at the callousness and cruelty displayed. The purpose of the photo is to celebrate the behaviour depicted and dehumanise the victim. It has no independent or artistic merit and in electronic form is easily distributed.

114. In response, the Classification Office submitted that:

- a. The photo passes through the section 3(1) gateway as it deals with matters of horror, violence and cruelty.
- b. The commentary has been considered as evidence to assist in interpreting the likely effect of the photo. While the effect on some viewers may be promotional, the effect on others will be to horrify and repulse. It cannot fairly be concluded that the photo ought to be deemed objectionable.
- c. The main section 3(3) considerations are the extent and degree to which, and the manner in which, the publication deals with the infliction of serious physical harm (section 3(3)(a)(i)) and/or degrades, dehumanises or demeans any person (section 3(3)(c)). The photo clearly shows an extreme degree of cruelty and callousness and disrespect and degradation to the victim.

115. The Classification Office submissions on the section 3(4) factors were made across all the publications reviewed and are summarised above.

116. Finally, it was submitted on behalf of Mr Samsudeen that:

- a. The image could constitute extreme cruelty.
- b. Even if the soldier's approval for the burning shows support for the action, the entirety of the publication shared by Mr Samsudeen condemns the disrespectful actions of the soldiers and the unjustified death of the civilian.
- c. Such publications are of heightened importance when dealing with complex foreign conflicts such as the Syrian civil war when the international community may easily become desensitised to the individual tragedies of warfare. The

educational and political value of the photo is therefore significant and the distress that some members of the public might feel in seeing the image does not justify a complete bar on accessing it.

*The Board's decision*

117. The Board considers that the image comes within the section 3(1) subject matter gateway, dealing as it does with horror, cruelty and violence. The photo is sickening in its stark callousness, indifference and cruelty.

118. However, the words embedded with the photograph demonstrate that it is not promoting or supporting the barbaric act depicted but rather imploring prayer and an end to such actions. It cannot therefore be deemed objectionable in the Board's view, despite the fact that the photograph may be celebrated in other quarters.

119. This, again, leads the Board to consider the factors in section 3(3) and section 3(4). First, applying section 3(3), the Board has given particular weight to the extent and degree to which, and the manner in which, the photo:

- a. Describes, depicts, or otherwise deals with an act of infliction of serious physical harm or an act of significant cruelty (section 3(3)(a)(i)). The Board is satisfied the photo depicts an act of significant cruelty.
- b. Degrades or dehumanises or demeans any person (section 3(3)(c)). While the actions of the living man in the photograph clearly degrade, dehumanise and demean his victim, the publication itself is not intended to have this effect. Indeed, the accompanying embedded text with the image condemns the actions.
- c. Promotes or encourages criminal acts or terrorism (section 3(3)(d)). Again, here is no suggestion that the photograph, on its own, does this. While it may ultimately be used for that end by some, it has not been shared in this manner by either Ahmet Maranki in the original post or Mr Samsudeen in his post. On the contrary, the postings denounce the activity and implore those who stay silent in the face of such atrocities to take action.

120. In terms of the section 3(4) factors, the Board considers that:



- a. The dominant effect of the photo is shock and revulsion.
- b. The impact of the digital medium of the photo is that it can be shared and stored easily and reproduced for a number of purposes, be they good and bad.
- c. The photo has potential merit in terms of documenting actual events in the Middle East.
- d. Because of the public nature of the photo's sharing, it is likely to be made available to anybody, irrespective of any intention for it only to be available to those interested in knowing about such events.
- e. The purpose for which the publication was originally intended is unknown. In the form the image was used by Ahmet Maranki, and then by Mr Samsudeen, the purpose is to condemn the atrocity and those who stay silent in the face of it.
- f. The photo is likely to cause harm to a child or young person viewing it in terms of their mental health and wellbeing. The image clearly contains material describing, depicting, expressing or otherwise dealing with harm to a person's body (section 3B(3)(a)(i)). The general levels of emotional and intellectual development and maturity of persons under age 18 mean that the availability of the image to those persons would be likely to cause them to be greatly disturbed or shocked (section 3B(4)(a)).

121. The Board therefore classifies *Ahmet Maranki's photo* under section 23(2)(c)(i) of the Act as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years (i.e. an R18 classification).

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

122. *Kurdish Libral* is a 1 minute, 48 seconds video which films a group of men beating another group of groaning men with ropes and belts while others look on. The violence is gratuitous and carries on with no reprieve, making the video sickening viewing.

123. The clip was posted on publicly posted on Facebook with Tamil text, translated by the Crown as “*Please watch this while controlling your emotions...atrocities against our Muslim brethren by Shias...chests cut open to take livers out and bitten while they are still alive.*” The Board has assumed this graphic text to be metaphorical, as such atrocities do not appear to actually take place in the video.

124. Mr Samsudeen shared the post publicly on his Facebook page with the accompanying remark, “*Alawite Shia Kafirs regime soldiers torturing and killing sunni civilians*’.

*The parties’ submissions*

125. The Crown submitted of this video clip (in summary):

- a. Given it depicts the graphic beating of defenceless detainees, there can be no question the section 3(1) gateway threshold is reached with the video clip.
- b. The video simply depicts the event(s) at issue and does not promote or support the featured activity so the video ought not to be deemed objectionable.
- c. The section 3(3)(a)(i) and section 3(3)(c) are matters to be given particular weight. The video depicts acts of torture cruelly designed to inflict serious physical harm and there has been no effort made to obscure what is happening. The force used is extreme, targeted at the heads and eyes, and there is no mercy or remorse shown.
- d. Under section 3(4), the dominant effect of the video is likely to shock and disturb. The video is in digital format and can be easily stored, shared, or copied. There is no additional merit other than as a record of the events and its purpose, intended use or audience is unclear.
- e. Classification as objectionable is appropriate.

126. In response, the Classification Office submitted that:

- a. The video passes through the section 3(1) gateway as it deals with matters of violence and cruelty.

- b. The primary focus of the video is on the perpetrators of the violence, rather than the victims. The level of injury shown is low and the effect is more observational than participatory. It ought not to be deemed objectionable.
  - c. The main section 3(3) consideration is the extent and degree to which, and the manner in which, the publication deals with the infliction of serious physical harm (section 3(3)(a)(i)). 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 than the victims.
127. The Classification Office submissions on the section 3(4) factors were made across all the publications reviewed and are summarised in paragraph 52 above.
128. Finally, it was submitted on behalf of Mr Samsudeen that:
- a. The video depicts extreme violence.
  - b. There is no detailed depiction of any injuries suffered. It is not known who filmed the footage or why.
  - c. When the entirety of the comments is assessed, the viewer is left with a clear feeling of sympathy for the victims and denunciation of the soldiers' actions.
  - d. Any distress caused is outweighed by the ability of videos such as these to legitimise claims of state abuse and to encourage peaceful interventions.

*The Board's decision*

129. The Board found this clip extremely challenging to review. It clearly comes within the section 3(1) subject matter gateway, dealing as it does with the infliction of cruelty and violence.
130. At times, the clip feels gratuitous in its extended coverage of the prolonged beating, leading the Board to question whether it did promote or support the infliction of extreme violence. However, the Board equally considered that it is impossible to ascertain whether it promotes or supports such extreme violence on its face. It is the

use to which it is ultimately put which may do that. On its face, the video merely depicts a prolonged beating as a record of what is occurring and, as such, the Board is unable to conclude it ought to be deemed objectionable.

131. The Board is then led to consider the factors in section 3(3) and section 3(4). First, applying section 3(3), the Board has given particular weight to the extent and degree to which, and the manner in which, the video:

- a. Describes, depicts, or otherwise deals with an act of infliction of serious physical harm or an act of significant cruelty (section 3(3)(a)(i)). The Board is satisfied the video does this in an almost gratuitous fashion.
- b. Degrades or dehumanises or demeans any person (section 3(3)(c)). The video does not focus on the victims as such, but their cries can be heard while the beatings continue relentlessly. As such, they are degraded and demeaned.
- c. Promotes or encourages criminal acts or terrorism (section 3(3)(d)). While, conceivably, the video could be used by some groups to encourage terrorism or more violent criminal acts, when read with the accompanying commentary, the Board does not consider the clip promotes or encourages criminal acts or terrorism.

132. In terms of the section 3(4) factors, the Board considers that:

- a. The dominant effect of the clip is shock and revulsion.
- b. The impact of the digital medium of the video is that it can be shared and stored easily and reproduced for a number of purposes, be they good or bad.
- c. The video potentially has less merit in terms of documenting actual events than some of the others viewed, due to its unrelenting length. On the other hand, it serves to possibly record events which are part of the same narrative and may in that regard retain educational and informative merit (especially when viewed with the accompanying commentary which shows the visceral language employed in the Sunni/Shia divide).

- d. Because of the public nature of the video's sharing, it is likely to be made available to anybody, irrespective of any intention for it only to be available to those interested in knowing about such events.
- e. The purpose for which the publication was originally intended is unknown.
- f. The video is likely to cause harm to a child or young person viewing it in terms of their mental health and wellbeing. The video clearly contains material describing, depicting, expressing or otherwise dealing with harm to a person's body (section 3B(3)(a)(i)). The general levels of emotional and intellectual development and maturity of persons under age 18 mean that the availability of the video to those persons would be likely to cause them to be greatly disturbed or shocked (section 3B(4)(a)).

The Board therefore classifies *Kurdish Libral* under section 23(2)(c)(i) of the Act as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years (i.e. an R18 classification).

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

133. *Young Syrian Beaten* is a very short (44 second) video showing a young man being kicked and jumped on by a group of men as he lies out on the ground, groaning. At one point, the camera man asks another man to take over filming, and the first man joins in the assault.

134. The clip was posted publicly on Facebook by Mohammed Mohammed Tofiq, with the Arabic words translated by the Crown as "*A young Syrian has been beaten on the Turkish-Syrian border. God damn those who have failed us.*"

135. Mr Samsudeen shared the post publicly on his Facebook page with the accompanying remarks "*Young Syrian boy beaten on the Syrian-Turkish border, by Turkish murtad soldiers what those people did to Deserve this Humiliation!!!*"

#### *The parties' submissions*

136. The Crown submitted of this video clip (in summary):

- a. Given its content, there can be no question the section 3(1) gateway threshold is reached with the video clip.
- b. The video simply depicts the event and should not therefore be deemed objectionable.
- c. The section 3(3)(a)(i) matter is to be given particular weight. The video depicts the infliction of serious physical harm and acts of significant cruelty. The exact context is difficult to discern but involves a number of armed military personnel on active duty. 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 the event or the identities of the perpetrators. There is a stark power imbalance and the videographer appears complicit in the abuse.
- d. Under section 3(4), the dominant effect of the video is shock at the callousness and cruelty. The video is in digital format and can therefore be easily stored, shared or copied. There is no additional merit to the video other than as a record of the event, nor is its purpose, intended use or audience clear.
- e. Classification as objectionable is appropriate.

137. In response, the Classification Office submitted that:

- a. The video passes through the section 3(1) gateway as it deals with matters of violence and cruelty.
- b. While the men in the video endorse the violence, the video itself remains static and detached. It is therefore observational therefore ought not to be deemed objectionable.
- c. The main section 3(3) consideration is the extent and degree to which, and the manner in which, the publication deals with the infliction of serious physical harm (section 3(3)(a)(i)). While the detached viewpoint of the camera and lack of visible injury to some extent mediate the impact of the violence, it is still of a high impact.

138. The Classification Office submissions on the section 3(4) factors were made across all the publications reviewed and are summarised at paragraph 52 above.

139. Finally, it was submitted on behalf of Mr Samsudeen that:

- a. The footage is uncomfortable but not detailed and it is difficult to assess the extent of the harm suffered and the views of the people at the scene.
- b. The video is an accurate version of events with no tendency to promote or support.
- c. When combined with the commentary, the flavour of the publication is to condemn.

*The Board's decision*

140. The Board considers that the clip clearly comes within the section 3(1) subject matter gateway, dealing as it does with violence. The video is cruel and callous.

141. However, as before, the clip itself may be used in a promotional manner or, as here, in a way that denounces the actions within. The Board does not therefore consider it can be deemed objectionable.

142. The Board is then led to consider the factors in section 3(3) and section 3(4). First, applying section 3(3), the Board has given particular weight to the extent and degree to which, and the manner in which, the video:

- a. Describes, depicts, or otherwise deals with an act of infliction of serious physical harm or an act of significant cruelty (section 3(3)(a)(i)). The Board is satisfied the video does this.
- b. Promotes or encourages criminal acts or terrorism (section 3(3)(d)). While, conceivably, the video could be used by some groups to encourage terrorism or more violent criminal acts, when read with the accompanying remarks posted,

the Board does not consider the clip promotes or encourages criminal acts or terrorism.

143. In terms of the section 3(4) factors, the Board considers that:
- a. The dominant effect of the clip is shock at the callousness and cruelty.
  - b. The impact of the digital medium of the video is that it can be shared and stored easily and reproduced for a number of purposes, be they good and bad.
  - c. The video has potential merit in terms of documenting actual events taking place in the Middle East.
  - d. Because of the public nature of the video's sharing, it is likely to be made available to anybody, irrespective of any intention for it only to be available to those interested in knowing about such events.
  - e. The purpose for which the publication was originally intended is unknown.
  - f. The video is likely to cause harm to a child or young person viewing it in terms of their mental health and wellbeing. The video clearly contains material describing, depicting, expressing or otherwise dealing with harm to a person's body (section 3B(3)(a)(i)). The general levels of emotional and intellectual development and maturity of persons under age 18 mean that the availability of the video to those persons would be likely to cause them to be greatly disturbed or shocked (section 3B(4)(a)).
144. The Board therefore classifies *Young Syrian Beaten* under section 23(2)(c)(i) of the Act as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years (i.e. an R18 classification).

#### **5pillars (OFLC Ref: 1700694.001)**

145. *5pillars* is a professional type video clip, 3 minutes and 17 seconds long, showing an horrific series of events in which men dressed as military execute a man by gunshot after leading him to wall and removing his blindfold. Blood is seen splattering the wall



and corpses litter the ground nearby. The video is interspersed with written text explaining what is happening (including a boy being questioned about where he came from before being led away, presumably to be executed, as a result of his answer).

146. The video was posted publicly on Facebook by the group 5pillars UK with the words “*Leaked video footage was aired on opposition news channel of Egyptian soldiers shooting civilians dead in the Sinai region.*”

147. Mr Samsudeen shared the post publicly on his Facebook page with the remark “*Murtads who Fighting for Taghut*”.

*The parties’ submissions*

148. The Crown submitted of this video clip (in summary):

- a. Given its content, the section 3(1) gateway threshold is reached with the video clip.
- b. The mitigating effect of the embedded text is sufficient to negate any otherwise promotional or supportive features of the footage such that it ought not to be deemed objectionable.
- c. The section 3(3)(a)(i) matter is to be given particular weight. The focus of the video is the last moments of the lives of the detainees. The killings appear to be carried out in cold blood.
- d. Under section 3(4), the dominant effect of the video despite the embedded text is shock. The video is in digital format and can therefore be easily stored, shared or copied. In its edited form *5pillars* is intended to expose and condemn the executions. However, such footage is uncommon in New Zealand and its availability is likely to be injurious to the public good (especially since the embedded text is in Turkish).
- e. Classification as objectionable is appropriate.

149. In response, the Classification Office submitted that:

- a. The video passes through the section 3(1) gateway as it deals with matters of violence and cruelty.
  - b. The video's dominant effect is of a highly mediated video which guides the viewers through the acts of violence and therefore ought not to be deemed objectionable.
  - c. The main section 3(3) considerations are the extent and degree to which, and the manner in which, the publication deals with the infliction of serious physical harm (section 3(3)(a)(i)) and/or degrades, dehumanises or demeans any person (section 3(3)(c)). The impact of the violence is limited by the slick production and lack of visible injury as well as the relatively far distance from the executions the camera is placed. Many people in New Zealand will be familiar with this exposé style of mediated depiction. However, the real-life nature of these executions means any impact will be stronger than for fictional depictions. The level of cruelty remains high. The soldiers demean their victims, but the video as a whole denounces the killings.
150. The Classification Office submissions on the section 3(4) factors were made across all the publications reviewed and are summarised above.
151. Finally, it was submitted on behalf of Mr Samsudeen that:
- a. There is insufficient evidential foundation to conclude the video promotes or supports any of the acts going on.
  - b. The video simply presents as an accurate record of events and lays a foundation for the commentary to criticise the events.
  - c. There is educational and political value in the footage in challenging the assertions of a Government that has been working to suppress human rights violations.

*The Board's decision*

152. The Board considers that the clip clearly comes within the section 3(1) subject matter gateway, dealing as it does with cruelty and violence. The video, while more professionally edited than the others reviewed, nonetheless documents atrocities.

153. With the embedded text leading the viewer through what is happening (and being critical of the events) the Board does not therefore consider it can be deemed objectionable.

154. The Board is then led to consider the factors in section 3(3) and section 3(4). First, applying section 3(3), the Board has given particular weight to the extent and degree to which, and the manner in which, the video:

- a. Describes, depicts, or otherwise deals with an act of infliction of serious physical harm or an act of significant cruelty (section 3(3)(a)(i)). The Board is satisfied the video does this in letting the viewer be witness to the last moments of life of the victims.
- b. Degrades or dehumanises or demeans any person (section 3(3)(c)). The soldiers within the video certainly degrade and demean the victims by the very executions themselves, but the video with its embedded denunciation of the actions does not.
- c. Promotes or encourages criminal acts or terrorism (section 3(3)(d)). Due to the accompanying embedded commentary, the Board does not consider the clip promotes or encourages criminal acts or terrorism.

155. In terms of the section 3(4) factors, the Board considers that:

- a. The dominant effect of the clip is shock and revulsion at witnessing the last moments of life of the victims (and the possibility that the boy's ending may have been different had he given a different answer as to where he came from).
- b. The impact of the digital medium of the video is that it can be shared and stored easily and reproduced for a number of purposes, be they good or bad.

- c. The video has merit in terms of documenting actual events taking place in the Middle East, possibly at the hands of agents of the state, and especially so with the presence of the explanatory commentary.
- d. Because of the public nature of the video's sharing, it is likely to be made available to anybody, irrespective of any intention for it only to be available to those interested in knowing about such events.
- e. The purpose for which the publication was originally intended is shown by the commentary to be to denounce the callous and cruel actions of the military men carrying out the executions.
- f. The video is likely to cause harm to a child or young person viewing it in terms of their mental health and wellbeing. The video clearly contains material describing, depicting, expressing or otherwise dealing with harm to a person's body (section 3B(3)(a)(i)). The general levels of emotional and intellectual development and maturity of persons under age 18 mean that the availability of the video to those persons would be likely to cause them to be greatly disturbed or shocked (section 3B(4)(a)).

156. The Board therefore classifies *5pillars* under section 23(2)(c)(i) of the Act as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years (i.e. an R18 classification).

### **Conclusion**

157. In conclusion, the Board's decisions on each of the publications is that each are classified as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years (i.e. an R18 classification).

158. The Board hereby directs the Classification Office pursuant to section 55(1)(e) of the Act to enter the Board's decision in the Register.

**Dated** at Wellington this 26<sup>th</sup> day of June 2018

*R. Schmidt-McCleave*

Rachael Schmidt-McCleave  
President