

1. The Republic of Bemidia is a land-locked country and former British colony, with approximately 30 million inhabitants. Its economy has so far been mostly agricultural, but Bemidia has experienced rapid economic growth in the last decade, fueled by significant oil and mineral resources.

2. Two major ethnic groups make up the vast majority of Bemidians. The Diryen, who comprise about 70 percent of the population, live predominantly in the north, where the capital of Bemidia, Arctoun, is located. The Mondahi, about 25 percent of the population, live mainly in the south, particularly in the city of Victoria, Bemidia's largest city and its emerging commercial center.

3. Bemidia has a parliamentary form of government. There are two major political parties, the Nationalist Party and the Federalist Party, which split largely along ethnic lines, Diryen and Mondahi, respectively. As a result, the Nationalist Party has always been in control of the government. The current and long-time Prime Minister is Vislio Luscon, whom Bemidians of Diryen ethnicity hold in very high regard, almost as a monarch. Vislio and his wife Carla have two daughters, Talia and Daria, ages 10 and 8. The activities of the entire Luscon family attract significant attention among the national, and sometimes even international, press.

4. Bemidians who are ethnically Mondahi, while privately grumbling about their lack of political power, have focused primarily on economic development. The result has been the creation of a merchant class among the Mondahi, one that has grown increasingly sophisticated, wealthy, and interested in greater interactions with developed countries. The Diryen, meanwhile, have languished economically and grown envious of the south, which they see as unfairly hoarding natural resources for the benefit of the south only.

5. Two years ago, the government passed an overhaul of the tax system in Bemidia and centralized more government spending. The net result was a substantial transfer of resources from the wealthier (and Mondahi) south to the more populous (and Diryen) north. Protest from Mondahi members of Parliament fell on deaf ears. Grumbings in the south became more public and more vocal, with prominent Mondahi politicians openly discussing whether to seek independence for the south.

6. A small militant group of Mondahis, calling themselves the Mondahi Liberation Movement (MLM), has begun to do more than talk. In the last few months, the MLM has carried out a series of bombings in and around Arctoun, targeting Nationalist Party offices, as well as public markets known to be frequented almost exclusively by Diryens. Dozens have been killed, including a Nationalist member of Parliament. The MLM has been publicly condemned both by the government and by leading Mondahi politicians. Federalist party officials and other mainstream Mondahis have fervently denied any connection to the MLM and any ability to influence its activities, a claim that has been met with skepticism on the part of the government.

7. The government response has included the mobilization of military forces to try to increase public security and deter or prevent the attacks. Bemidia's military, however, is relatively small and inexperienced at responding to such guerilla tactics, and the bombings have continued. Ethnic tension throughout the country, already a significant concern before the advent of the MLM, has grown much worse. In recent weeks, there have been reports of armed militias kidnapping, torturing, and/or killing ethnic Mondahis living in the north. The government has denied any connection to such militias. There have also been reports of the mistreatment of

Mondahis brought in by the military for interrogation. The government has also denied any improprieties in the selection or treatment of those being interrogated.

8. In the midst of this unrest, a group of Mondahis recently started a website called OpenBemidia, which is hosted in Bemidia. Built on the Ushahidi platform, OpenBemidia allows any registered user to start a "Tracker" forum. Each such forum is designed to collect posts on a specific topic. Posts can be made via SMS, email, or the web, and can include pictures and text.

9. Each post on OpenBemidia is tagged with a geographic location, which attempts to pinpoint the location from which the post was made. On GPS-enabled mobile phones, GPS is used for this purpose. With or without GPS, mobile phone tower information is also used for geolocation. The density of mobile phone towers in Bemidia, which varies widely between urban and rural areas, is comparable to that of major countries around the world. Other technologies are available for geolocating laptops and other computers. To the extent such techniques depend on the structure of the domestic network or of Internet access, again, the potential accuracy of geolocation in Bemidia is comparable to that in other major countries. Most posts are made from mobile phones. About half of the mobile phones in Bemidia have GPS capabilities. Forum posts can be viewed in the usual reverse chronological order or plotted on a map.

10. OpenBemidia requires anyone wishing to post to the site to register for an account. While various identifying information, including name and address, is requested, only an email address is required to sign up for an OpenBemidia account. The username of the poster, but not other identifying information, is displayed with each post. Users can choose to “follow” particular forums, and thus be notified of new posts there. Users can also choose to “follow” other users, and thus be notified whenever that user posts. Moreover, users can choose whether to make their posts public or only visible to their followers. Such “private” posts are entirely invisible to other users, so that, for example, someone who follows the forum in which a private post is made, but not the user who made the post, will not receive any notification about the post and will not see it in the forum.

11. Among the OpenBemidia Tracker forums is one called Military Tracker, started by someone with the username FreeBemidia, who is also a frequent contributor to the forum. The Military Tracker forum is extremely active and has been used for a variety of purposes. Some posts document instances in which the military has been observed questioning or detaining someone. Others simply note a military presence in a particular location. Several posts accuse the military of improprieties, ranging from physical abuse of Mondahi detainees to rude behavior in encounters in public.

12. The government has become quite concerned about the use of Military Tracker. The site now provides very good information, in almost real time, about where the military has deployed security forces in public places. In two separate instances, government attempts to prevent bombing attacks failed, even though the government was acting on solid information about the likely next target. In both instances, bombs went off instead at locations from which security forces had just exited. Although the government has no direct proof of a causal connection, it suspects that the MLM is using Military Tracker to find targets and evade detection.

13. Bemidia has long had a law that generally prohibits the publication or dissemination of “military secrets.” This law was recently amended to clarify that the term “military secrets” includes “any information about the location of any military personnel acting in an official capacity.”

14. The government has also enacted a new law, the Internet Responsibility Act, that regulates, inter alia, entities that operate websites as follows:

a. First, the law requires that any entity that operates a website must collect and verify the name and contact information of a “user” of the website, before allowing that person to “use” the website. The “use” of a website is defined to include “registering for an account; posting content to the website, or otherwise making content available to one or more persons other than the website itself; or accessing information that is not generally available to the public.”

b. Furthermore, the law requires regulated entities to disclose to the government, upon request: “the name and contact information of any user of the website, any information about the physical location, past or present, of a user of the website, and any other information about a user of the website, except the contents of a private communication of such a user.”

c. Finally, the law permits the government to require that the existence and fulfillment of any request made under this law be kept secret for up to 180 days.

d. There are criminal sanctions for a knowing violation of any provision of this law.

15. Under the authority of the Internet Responsibility Act, the government has demanded that OpenBemidia obtain and disclose the identity of FreeBemidia, as well as the identities of the users on a specific watch list, compiled by the government, of other regular participants on the Military Tracker forum. The government is also demanding complete information about which OpenBemidia users follow the Military Tracker forum, which users follow each of the users on its watch list, and which users are followed by each of the users on the watch list.

16. The government has also noticed the existence of a forum called MLM, which appears to be empty. The government suspects that members of the MLM are using this forum, but have set their posts to be private. The government has demanded that OpenBemidia disclose the complete list of users of this forum, as well as the date, time, and location of each post made by each such user. The government has also ordered OpenBemidia to immediately report the location of any post made in the future by any user of the forum. Finally, the government has required OpenBemidia to keep all requests with respect to the MLM forum secret for the time being.

17. Among the other Tracker forums are Vislio Tracker, Carla Tracker, Talia Tracker, and Daria Tracker. These forums pinpoint and document virtually every public activity undertaken by the Prime Minister and the other members of his immediate family. Many of the posts in these forums contain photographs of the Prime Minister and his family. The photographs and other information on these forums appear to all have been obtained in public places.

18. For example, on one recent day, the Talia Tracker forum contained posts entitled, "Talia Going to School," "Talia Leaving School Early," "Talia at Doctor's Office," "Talia at Dinner with Family," and "Talia Has Fish, But No Dessert!" Each of the posts was associated with an accurate geolocation tag. Each contained a low-resolution photograph that appeared to have been taken using a mobile phone. Most of the photographs appeared to have been taken from a public street; a few appeared to have been taken from the inside of the restaurant at which the family was dining. Each of the posts was made from a different account.

19. On a different day, the Carla Tracker forum contained posts entitled, "Carla Has Lunch with Mondahi Member of Parliament," "Carla Meets With Mondahi Businessman," "Carla Back at Home Now," and "Carla Has Dinner with Mondahi Friend - Coincidence?" Again, each post was made from a different account, and each contained an accurate photograph and geolocation tag.

20. Citing security concerns, the government has enacted a new law, the First Family Privacy Act, prohibiting the publication of "private information" about the Prime Minister's family (but not about the Prime Minister himself), without the individual's (or guardian's) prior written consent. The law defines "private information" to include "any photograph of the person, wherever taken," and "any information about the location of the person." The law specifically excludes "location information whose accuracy permits only a determination of the city or other larger geographic region in which the person is located." The law also specifically excludes "location information that is more than 90 days old at the time it was published."

21. Under the authority of the First Family Privacy Act, the government has demanded that OpenBemidia delete every post in the Carla Tracker, Talia Tracker, and Daria Tracker forums, because each post contains either a prohibited photograph or prohibited location information, or both.

22. OpenBemidia, on its own behalf and on behalf of its users, has challenged all of the following under European Convention for the Protection of Human Rights and Fundamental Freedoms:

- a. the requirement to collect and verify name and contact information before allowing a user to register for an account and post to a forum;
- b. the requirement to disclose to the government identity information, “following” information, and historical location information about its users;
- c. the requirement to report location information about users of the MLM forum in real time;
- d. the requirement to delete the contents of the Carla Tracker, Talia Tracker, and Daria Tracker forums.

23. No law, domestic or international, restricts OpenBemidia’s standing to bring these challenges. OpenBemidia’s claims have been rejected on the merits in the domestic courts of Bemidia, and all appeals or other legal remedies within the Bemidian court system have been exhausted.