

**13th World Human Rights Moot**

**Court Competition**

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**IN THE MATTER BETWEEN**

**PAPA TOMMY TOMATO & 43 OTHERS**

**AND**

**THE REPUBLIC OF RHAKATAH**

**MEMORIAL FOR THE APPLICANT**

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## LIST OF ABBREVIATIONS

AI	Artificial Intelligence
APFA	Rhakatah Political Finances Act
CK	Commission of Kanthhieyu
CSDP Act	Rhakatah Cyber Security and Data Protection Act
Cyber Court	Court for Cyber Security and Data Protection
DAF	Democratic Angels of Faith
DAF-Alliance	Democratic Angels of Faith Alliance
DAF-B	Democratic Angels of Faith Betina
ECHR	European Covenant of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
HR	Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHRL	International Human Rights Law
KCHR	Kanthyeyu Charter on Human Rights
KHRT	Kanthyeyu Human Rights Tribunal
Muto	<i>Mutowenyemba</i> vaccine
Papa	Papa Tommy Tomato
REA	Rhakatah Electoral Act
REC	Rhakatah Electoral Commission
RLF	Rhakatah Liberation Front

RNT	Rhakatah National Television
TFM	Tomato Faith Ministries
Twar	Twitter War
UN	United Nations
WRT	With regards to

## TABLE OF AUTHORITIES

### Treaties, Conventions, and Charters

Consolidated EU	Consolidated Version of the Treaty on European Union [2012] OJ C326.
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended).
EU CFR	Charter of Fundamental Rights of the European Union [2000] 2000/C 364/01
ICCPR	International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
ICESCR	International Covenant on Economic, Social and Cultural Rights [1976] 993 UNTS 3.
Protocol No. 1 ECHR	Protocol No. 1 to European Convention for the Protection of Human Rights and Fundamental Freedoms [1952] ETS 9.
Treaty on EU	Treaty on European Union (Maastricht Treaty).
UDHR	Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)).
UNCAC	United Nations Convention Against Corruption (14 December 2005).

### General Comments and Recommendations

CCPR-16	HRC, General Comment No. 16, UN Doc HRI/GEN/1/Rev.9 (Vol. I).
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CCPR-22	HRC, General Comment No. 22, UN Doc CCPR/C/21/Rev.1/Add.4.
CCPR-25	HRC, General Comment No. 25, UN Doc CCPR/C/21/Rev.1/Add.7.
CCPR-25	HRC, General Comment No. 25, UN Doc CCPR/C/21/Rev.1/Add.7.
CCPR-27	HRC, General Comment No. 27, UN Doc CCPR/C/21/Rev.1/Add.9.
CCPR-31	HRC, General Comment No. 31, UN Doc CCPR/C/21/Rev.1/Add.13.
CCPR-32	HRC, General Comment No. 32, UN Doc CPPR/C/GC/32.
CCPR-34	HRC, General Comment No. 34, UN Doc CPPR/C/GC/34.
CCPR-37	HRC, General Comment No. 37, UN Doc CCPR/C/GC/37.
CESCR-24	General Comment No. 24, UN Doc CESCR/C/GC/24.
Rules against corruption	Council Of Europe (Committee Of Ministers) 'Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns' (Adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies).

## **UN Authorities**

Arsiwa	ILC 'Articles on Responsibility of States for Internationally Wrongful Acts' [2001] Supplement No. 10 (A/56/10).
Basic principles of the use of force	United Nations, 'Basic Principles on the Use of Force and Firearms by Law Enforcement Officials' (adopted by Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba from 27 August to 7 September 1990.
Guidance on	UN. Secretary-General, 'Guidance Note of the Secretary-General on

Democracy	Democracy' (2009).
HRD	Declaration on Human Rights Defenders (adopted 1998 UNGA Res A/RES/53/144).
Res-2003	UNGA, <i>Resolution adopted by the General Assembly on 22 December 2003 [on the report of the Third Committee (A/58/508/Add.2)]</i> GA Res 58/169, UN Doc A/RES/58/169 (9 March 2004).
Res-2004	UNGA, <i>Resolution adopted by the General Assembly on 22 December 2003 [on the report of the Third Committee (A/58/508/Add.2)]</i> GA Res 58/169, UN Doc A/RES/58/169 (9 March 2004).
Siracusa	UNCHR, 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights' [1984] E/CN.4/1985/4.
Standard for Police	Office Of The United Nations High Commissioner For Human Rights 'Human Rights Standards and Practice for the Police' (2004).
UN Reparation Principles	UNGA 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (21 March 2006) UN Doc A/RES/60/147.

## **Regional Body Documents**



Case-Law	ECHR Research Division, 'Internet: case-law of the European Court of Human Rights' (June 2015).
Coopenhagen Document	Organization for Security and Co-operation in Europe (OSCE) 'Copenhagen Document on the Human Dimension of the CSCE' (29 June 1990).
ENCJ	ENCJ "strategic plan 2018-2021" (2017).
IACHR Reparations	Inter-American Commission On Human Rights "Reparations for the Violation of the Right to Freedom of Expression in the Inter-American System" (30 December 2011) OEA/Ser.L/V/II.
OAS	General Secretariat of the Organization of American States (GS/OAS) 'A Manual for OAS Electoral Observation Missions' (2007).

### **Report and expert opinions**

2 <sup>nd</sup> Venice Guidelines	European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) 'Guidelines on Political Party Regulation 2 <sup>nd</sup> Edition' (14 December 2020) CDL-AD(2020)032.
Electoral Law	European Commission for Democracy Through Law (Venice Commission) 'Electoral Law' (3 July 2013) CDL-EL(2013)006.
Municipal Elections	International Crisis Group (ICG), 'Municipal Elections in Bosnia and Herzegovina' , (10 September 1997).

Patients record	HPCSA, 'Guidelines on the Keeping of Patient Records booklet 9', (September 2016).
Report Jurists	Report & Conclusions Of The Conference Of Jurists On Right to Freedom of Movement (1968).
Report of good practice	European Commission for Democracy Through Law (Venice Commission) 'Explanatory Report to the Code of Good Practice in the Field of Political Parties' (28 January 2009) CDL-AD(2009)002.
Special Rapporteur	UNGA Sixty-fourth session 'Report of the Special Rapporteur on the Situation of Human Rights Defenders' (4 August 2009) UN Doc A/64/226.
Venice Guidelines	Venice Commission 'Guidelines and Explanatory Report on Legislation on Political Parties: Some Specific Issues, Adopted by the Venice Commission at its 58th Plenary Session' (Venice, 12-13 March 2004) CDL-AD(2004)007rev.

## **International Cases and Communications**

### **European Court of Human Rights**

Arslan	<i>Arslan v. Turkey</i> (App no. 23462/94) ECtHR 8 July 1999.
Burden	<i>Burden v. United Kingdom</i> , [GC] (App no 13378/05) ECtHR 29 April 2008.
Çelik	<i>Çelik v. The Netherlands</i> , (App no 12810/13) EtCHR 27 August 2013.
Cemiyeti	<i>Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan</i> (App no

37083/03) ECtHR 8 October 2009.

- E.B *E.B. v. Frane*, (App No. 43546/02) ECtHR 22 January 2008.
- Evans *Evans v. the United Kingdom*, (App No. 6339/05) ECtHR 10 April 2007.
- Fazliyski *Fazliyski v. Bulgaria* (App no .40908/05) ECtHR 16 April 2013.
- G.B *G.B. and R.B. v. Moldova* (App No. 16761/09) ECtHR 18 December 2012.
- Ghergina *Ghergina v. Romania*, (App no 42219/07) ECtHR 6 March 2012.
- Gorzelik *Gorzelik and Others v. Poland* (App no 44158/98) ECtHR 20.
- Grosaru *Grosaru V. Romania* (App no 78039/01) ECtHR 2 March 2010.
- H *H. v. Belgium* (App no 8950/80 ) ECtHR 30 Nov 1987.
- Hansen *Hansen v. Norway* (App no 48852/17) ECtHR 29 May 2018.
- Lambert *Lambert and others v. France*, [GC] (App no 46043/14) ECtHR 5 June 2015.
- Lykourazos *Lykourazos v. Greece* (App no 33554/03) ECtHR 15 June 2006.
- Markeš *Maravić Markeš V. Croatia* (App no 70923/11) ECtHR 9 January 2014.
- Miragall *Miragall Escolano and Others v. Spain* (App no 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98) ECtHR 25 April 2000.
- Morice *Morice v. France* [GC], (App no. 29369/10) ECtHR 23 April 2015.
- Párt *Magyar Kétfarkú Kutya Párt V. Hungary*, [GC] (App no 201/17) ECtHR 20 January 2020.

Pretty	<i>Pretty v. the United Kingdom</i> , (No. 2346/02) ECtHR 29 April 2002.
Republican	<i>Republican Party of Russia v. Russia</i> (app no. 12976/07) ECtHR 2007.
Ringeisen	<i>Ringeisen v. Austria</i> , (App no 2614/65) ECtHR 16 July 1971.
Sadak	<i>Selim Sadak and Others v. Turkey</i> (App no 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95) ECtHR 11 June 2002.
Schuman	<i>Schuman v. Poland</i> (App no. 52517/13) ECtHR 3 June 2014.
Sidropoulos	<i>Sidiropoulos and Others v. Greece</i> (App no 57/1997/841/1047) ECtHR 10 July 1998.
Sobaci	<i>Sobaci v. Turkey</i> (App no 26733/02) ECtHR 29 November 2007.
Sørensen	<i>Sørensen and Rasmussen v. Denmark</i> [GC] (App no 52562/99 and 52620/99) ECtHR 11 January 2006.
Springer	<i>Axel Springer AG v. Germany</i> [GC], (App no. 39954/08) ECtHR 2012.
STP	<i>Socialist Party of Turkey (STP) v. Turkey</i> (App No 26482/95) ECtHR 12 February 2004.
Tănase	<i>Tănase v. Moldova</i> , [GC] (App no 7/08) ECtHR 27 April 2010.
The Salvation Army	<i>Moscow Branch of the Salvation Army v. Russia</i> (App no 72881/01) ECtHR 24 June 2004.
UCP	<i>United Communist Party of Turkey and Others v. Turkey</i> (App No 133/1996/752/951) ECtHR 30 January 1998.
V.C	<i>V.C. v. Slovakia</i> , (No. 18968/07) ECtHR 16 June 2009.
Voggenreiter	<i>Voggenreiter v. Germany</i> , (App no 7538/02) ECtHR 28 November 2002.

Yildirim                    *Ahmet Yıldırım v. Turkey* (App No. 3111/10) ECtHR 18 December 2012.

### **Inter-American Court of Human Rights**

D'Amico                    *Case of Fontevecchia y D'Amico v. Argentina*, Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No.238 (29 November 2011).

Rodriguez                *Velásquez Rodríguez v. Honduras*, Reparations and Costs, Inter-American Court of Human Rights Series C No 7 (21 July 1989).

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Chorzów                *Case Concerning the Factory at Chorzów (Germany v Poland)* (Merits)  
Factory Case    PCIJ Rep Series A No 17.

### **National Law**

HRA                        Human Rights Act 1998 c. 42

### **Books and journals**

Badr                        Hamada S. Badr. et, 'Social Distancing is Effective at Mitigating COVID-19 Transmission in the United States', (May 11 2020).

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- Emojis as Evidence' (2018) SMLJ 49.
- Krebs David Krebs, 'Privacy by Design: Nice-to-have or a Necessary Principle of Data Protection Law?' (2013)
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- Neary Mary Ann Neary, Sherry Xin Chen, *Artificial Intelligence: Legal Research and Law Librarians* (Boston College Law School, 2017).
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- Shihata Ibrahim F. I. Shihata, *The Power of the International Court to Determine Its Own Jurisdiction: Compétence de la Compétence* (Springer, Dordrecht 1965).
- Sotala Kaj Sotala, *Advantages of Artificial Intelligences, Uploads, and Digital Minds. International Journal of Machine Consciousness* (2012).
- Staeet Harry Staeet, *Freedom, the Individual and Law* (CUP, Cambridge 1963).

## **SUMMARY OF FACTS**

1. The Republic of Rhakatah is a developing state, on the continent of Kanthiyeyu and is a member of the UK similar to EU. UK's human rights system consists of the KCHR, the CK and the KHRT. Rights provided for in KCHR are similar to the ICCPR and ICESCR. KHRT rules on legal standing and admissibility of claims are similar to the ECtHR.
2. Rhakatah's court system consists of Magistrates' Courts as the lowest court, High Courts and a Supreme Court as the highest court of appeal except for constitutional matters. The Constitutional Court is a court designated for HR-related matters, which can be approached directly in cases of exceptional importance or urgency and when referred to by other courts. The Cyber Court is a Magistrates or High Court designated for cyber security and protection of data of citizens.

### **Papa Tommy Tomato**

Papa is the founder of TFM and leader of DAF, an opposing political party to RLF. Papa is a charismatic leader with huge numbers of followers. He is also one of the richest person in Kanthiyeyu by being founder of Hello-Jah, one of the biggest telecommunication networks company on the Continent of Kanthiyeyu that is in the 5G race and other emerging AI technologies.

### **Sister Betina Hibiri**

Sister Betina Hibiri is a co-founder of DAF and a member of Tomato Sisters, who lives under life-time vows of chastity. She played a critical role in the drafting of the DAF Constitution which in Section 2 provides the "relay leadership clause". It specifies Papa

as DAF's presidential candidate for 2010 and 2015, as well as Sister Betina for 2020 and 2025. DAF presidents shall lead the party for two terms only.

### **President Bosha**

Bosha is the president of Rhakatah who won the 2015 and 2020 election as member of the RLF. RLF is the political party in power since 1979 and a rival of DAF who in the 2010 and 2015 elections, won parliamentary majority.

### **The Recalling of 43 Parliamentarians**

1. In March 2019, a huge political fall-out between Papa and Sister Betina happened because Papa insisted to hold a plebiscite, which decided in favor of him, to continue as DAF's presidential candidate for the 2020 elections regardless of the "relay leadership clause".
2. In October 2019, Sister Betina approached Rhakatah's High Court with a case where she asked for an order compelling Papa and DAF to recognize her as the leader of DAF as provided in the DAF Constitution. The High Court ruled in favor of her. DAF-Alliance then appealed to the Supreme Court, but was dismissed.
3. Sister Betina registered for the 2020 elections under DAF-B while Papa coalesced with other opposition parties and registered under DAF-Alliance. Both parties are recognized by REC as political parties for purposes of the 2020 elections. DAF-Alliance won 68% of parliamentary seats, Bosha won the presidential election, and DAF-B won less than 2% of total votes.
4. Based on Rhakatah's Judiciaries' decisions, Sister Betina was recognized as Leader of Opposition. She recalled 43 Parliamentarians elected under DAF-Alliance. Shortly after, REC announced Parliament Vacancies in *Rhakatah Gazette*.



## **Deletion of Papa's and @SiyalRhakatah's tweets and Papa's social media ban**

1. On 13 February 2020, Papa and Sister Betina were in a *twar*—“twitter war”, both shared their respective opinions about imposed Covid-19 lockdown measures. This became a lawfare when Sister Betina reported Papa's tweet to the Rhakatah's Ministry of Information under CSDP act, an act passed on 13 November 2019 that was aimed as a solution for the increase in challenge of cyber security and protection of citizens' data. Papa's tweet was neither flagged nor deleted by Rhakatah's AI that detects and deletes online hate speech.
2. The Cyber Court found Papa's tweets to be in violation of Section 13 of CSDP Act, ordered deletion of his tweets and imposed a one-year ban on him on Twitter, Instagram, and Facebook.
3. On 23 July 2020, Papa went to TFM to make a virtual address through @SiyalRhakatah's Twitter handle. During this, Rhakatah Police stopped the livestream and deleted all videos and press-statements of Papa on @SiyalRhakatah's timeline.

## **Enforcement of Lockdown Measures**

1. On 12 February 2020, Rhakatah recording its first case of Covid-19. The next day, lockdown measures imposed on 14 February 2020 were announced. It prohibits non-essential travel, gathering more than 20 people, all political gatherings and in-person political campaigns, opening of businesses and churches, family and social visits, and enforcement of social distancing and wearing of face masks.

2. Between 14 February 2020 and 29 April 2020, President Boshu and the First Lady were seen on various occasions distributing food packages to hundreds of people, including those in DAF strongholds, while encouraging them to vote for RLF.
3. On 15 July 2020, the second lockdown measure was imposed. It regulates installation of mass surveillance and facial recognition technology across Rhakatah to identify disobeying people, use of AI to monitor people's body temperature, medical condition and movements, compulsory mutoweyemba vaccination, prohibition of all political assemblies and deployment of Rhakatah Police in enforcing lockdown measures.
4. Both lockdown measures were announced by President Boshu.

#### **Police Actions on 23 July 2020**

On 23 July 2020, as Papa was making his virtual address, over 500 people streaked into TFM—the majority not wearing masks. Special squads of Rhakatah Police, armed with a search warrant were immediately dispatched to TFM where under article 7 of CSDP Act, they seized an iPad used as a livestream device. Further, police used AI Algorithms to track the movement of 834 people in order to identify those who were close to Tomato Faith Ministries. Papa approached the Constitutional Court arguing that aforementioned actions violated his right to administrative justice. The Constitutional Court ruled in favour of the State, championing public health. Two weeks after this incident, 4,420 new cases of Covid-19 were reported.

## **SUMMARY OF ARGUMENTS**

### **I.Claim I**

Sister Betina recalled 43 Parliamentarians elected under the ticket of DAF-Alliance. This nullified both results of DAF's plebiscite and Rhakatah's national elections which violates rights to democracy. Announcements of parliament vacancies violated rights to political association. Additionally, the dismissal of DAF-Alliance's appeal without clear reasoning violates rights to fair trial and later on Rhakatah also conducted illegitimate political financing.

### **II.Claim II**

Rhakatah's government's action to delete Papa's tweets without legitimate reasoning, transparency, and equality violated Papa's freedom of expression. This was followed by deletion of @SiyalInRhakatah's tweets as alibi to hide from criticisms. Moreover, Papa's ban on multiple social media platforms violates rights to publication.

### **III.Claim III**

Lockdown measures imposed by Rhakatah violate freedom of movement, rights to privacy, campaign and political assembly. Further, Rhakatah's act of suspending Hello-Jah's 5G license restricted Papa's right to business. Enforcement of lockdown measures was not carried out with principles of equality and used brutal police force instead, violating rights to administrative justice.

## ARGUMENTS ADVANCED

### PRELIMINARY ISSUES

#### **I. Jurisdiction**

Rhakatah is a member of the UN and the UK.<sup>1</sup> UK's similarity to the EU considers EU's accession to the ECHR.<sup>2</sup> This legally binds Rhakatah to respect KCHR's fundamental right.<sup>3</sup> In any event, this Honorable Court can determine questions to its jurisdictional competence and its own jurisdictional limits under the *compétence de la compétence* principle.<sup>4</sup> Therefore, Applicant submits that KHRT has jurisdiction to adjudicate over violations<sup>5</sup> of the KCHR and other HR treaties.

#### **II. Locus Standi**

KHRT rules on legal standing are similar to those of the ECtHR.<sup>6</sup> The ECHR gives individuals claiming to be victim of HR violations by states legal standing before the

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<sup>1</sup> Facts [1].

<sup>2</sup> Consolidated EU Art.6(2).

<sup>3</sup> Consolidated EU Art.6(3).

<sup>4</sup> Shihata.

<sup>5</sup> ICCPR, ICESCR, ECHR.

<sup>6</sup> Facts [1].

court.<sup>7</sup> Papa fulfills this victim status since he is “directly affected” by measures complained of,<sup>8</sup> thereby fulfilling legal standing requirements.

### **III. Admissibility**

Domestic remedies need to have been exhausted and for the case to be dealt with within a period of six months from the date which the final decision was taken.<sup>9</sup> However, this principle is not absolute.<sup>10</sup>

Wrt **Claim I**, following the judgement of the High Court,<sup>11</sup> DAF Alliance appealed to the Supreme Court which was dismissed<sup>12</sup> and failed to offer prospects of success.<sup>13</sup> With no higher court of appeal available,<sup>14</sup> all domestic remedies have been exhausted.

Wrt **Claim II**, the High Court sitting as the highest designated Cyber Court,<sup>15</sup> in its decision failed to provide prospects of success for Papa.<sup>16</sup> Hence, all domestic remedies have been exhausted.

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<sup>7</sup> ECHR Art. 34.

<sup>8</sup> Tănase [104]; Burden [33]; Lambert [89].

<sup>9</sup> ECHR art. 35.

<sup>10</sup> Ringeisen; Gherghina.

<sup>11</sup> Facts [20].

<sup>12</sup> Facts [24].

<sup>13</sup> Voggenreiter.

<sup>14</sup> Facts [2].

<sup>15</sup> Facts [2].

<sup>16</sup> Facts [15].

Wrt **Claim III**, claims regarding police brutality in lockdown measures had been raised to the Constitutional Court who failed to offer prospects of success.<sup>17</sup> With no higher court of appeal in regards of human rights matters,<sup>18</sup> all domestic remedies have been exhausted.

In any case, even if Papa did not suffer significant disadvantage, respect for HR could require this Court to examine the merits,<sup>19</sup> and no case may be rejected on this ground which has not been duly considered by a domestic tribunal.<sup>20</sup> Therefore, all jurisdiction, legal standing, and admissibility criteria are fulfilled.

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<sup>17</sup> Facts [32]; Párt v. Hungary [53], [56]-[57].

<sup>18</sup> Facts [2].

<sup>19</sup> Markeš [50-55].

<sup>20</sup> ECHR Art.35(3)(b); Çelik [40].

## MERITS

### **I. The recalling of DAF Alliance's Members of Parliament violates the Kanthiyeyu Charter on Human Rights and other relevant human rights treaties**

On 15 July 2020, Sister Betina recalled 43 Parliamentarians elected under DAF Alliance.<sup>21</sup> Following that was an announcement of Parliament vacancies by REC before any determination regarding the recalls is made by the High Court.<sup>22</sup> These actions violate **[A]** rights to democracy, **[B]** political association, **[C]** and effective remedy. Further, **[D]** Rhakatah conducted illegitimate political financing.

#### **A. Violation of rights to democracy**

By recalling parliamentarians, **[1]** Rhakatah interfered in DAF's internal democracy and **[2]** violated DAF Alliance's rights to be elected.

##### **1. Interference in DAF's internal democracy**

Rhakatah as a democratic country that enables participation of people in government based on their expressed will,<sup>23</sup> should ensure<sup>24</sup> rights to democracy.<sup>25</sup> Political parties as a vital part to the functioning of democracy<sup>26</sup> should reflect its

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<sup>21</sup> Facts [24].

<sup>22</sup> Facts [26].

<sup>23</sup> Guidance on Democracy, p.2.

<sup>24</sup> CCPR GC-25 [26].

<sup>25</sup> ICCPR Art.25(1); UDHR Art.21(1).

<sup>26</sup> UCP [25].

principles internally,<sup>27</sup> as done in Papa's plebiscite which involves direct votes of members.<sup>28</sup> This process of direct suffrage<sup>29</sup> in determining candidates<sup>30</sup> should not be interfered by government.<sup>31</sup> Thus, the judgment of the High Court of Rhakatah that annulled results of the plebiscite<sup>32</sup> constitute interference in DAF's internal democracy.

## **2. Violation of DAF Parliamentarians' rights to be elected**

Under IHRL, everyone has the right to be elected<sup>33</sup> through genuine elections<sup>34</sup> to directly participate in public affairs.<sup>35</sup>

The 43 Parliamentarians should be entitled to hold office<sup>36</sup> given that DAF-Alliance won 68% of parliamentary seats<sup>37</sup> and is recognized as a separate party from

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<sup>27</sup> Report of Good Practice [17].

<sup>28</sup> Facts [8].

<sup>29</sup> Report of Good Practice [137].

<sup>30</sup> 2<sup>nd</sup> Venice Guidelines [162]; Report of Good Practice [35]-[36].

<sup>31</sup> 2<sup>nd</sup> Venice Guidelines [161].

<sup>32</sup> Facts [20].

<sup>33</sup> ICCPR art. 25(2); Grosaru [42].

<sup>34</sup> UDHR Art.21(3); Protocol No.1 ECHR Art.3; ICCPR Art.25(2); Coopenhagen Document [6].

<sup>35</sup> ICCPR Art. 25(1); UDHR Art.21(1); CCPR- 25 [6].

<sup>36</sup> Coopenhagen Document [7.9]; *M*, p. 133; Sadak [33]; Sobaci [26].

<sup>37</sup> Facts [19].



DAF-B by REC for purposes of the 2020 national elections.<sup>38</sup> By recalling Parliamentarians, Rhakatah failed to implement results of genuine elections<sup>39</sup> where Parliamentarians' have legal ownership of their seats.<sup>40</sup> Therefore, this undemocratic<sup>41</sup> act violates Parliamentarians' rights to be elected.

## **B. Violation of right to political association**

Freedom of political<sup>42</sup> association, protected by IHRL,<sup>43</sup> holds important significance<sup>44</sup> in a democratic society that covers principles of personal<sup>45</sup> autonomy.

The DAF-Alliance Agreement was clear in reflecting this voluntary right<sup>46</sup> and the Parliamentarians decided to stay as part of DAF-Alliance,<sup>47</sup> a different status than ones set in Section 75(3) of Rhakatah Constitution.<sup>48</sup> Rhakatah's recalling and vacancy

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<sup>38</sup> Facts [9], [18].

<sup>39</sup> CCPR-25 [19]; Lykourezos [52].

<sup>40</sup> Electoral Law [190].

<sup>41</sup> Municipal Elections, p.4.

<sup>42</sup> Special Rapporteur.

<sup>43</sup> UDHR Art.20; ICCPR Art.22; ECHR Art.11; HRD Art.5.

<sup>44</sup> Gorzelik [88]; Salvation Army [61].

<sup>45</sup> Sørensen [54]; 2<sup>nd</sup> Venice Guidelines [141], [143].

<sup>46</sup> Facts [18].

<sup>47</sup> Facts [24].

<sup>48</sup> Facts [25].

announcement was without reasons to justify it as relevant<sup>49</sup> and had no legitimate aim,<sup>50</sup> making it an unreasonable<sup>51</sup> interference.<sup>52</sup> Therefore, Rhakatah violated rights to political association.

### **C. Violation of rights to a fair trial**

IHRL<sup>53</sup> guarantees rights to a fair trial as a fundamental right<sup>54</sup> that applies to all instances of judicial events,<sup>55</sup> including appeals. The Supreme Court's dismissal of DAF-Alliance's appeal had no clear reasoning<sup>56</sup> indicating Rhakatah's failure to fulfill its transparency obligation<sup>57</sup> to be accountable to society<sup>58</sup> and ensure their judicial legitimacy.<sup>59</sup> Therefore, Rhakatah's dismissal violate rights to fair trial.

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<sup>49</sup> Sidiropoulos [40].

<sup>50</sup> Sidiropoulos [38].

<sup>51</sup> ICCPR Art. 22(2); ECHR Art 11(2) & 18; Republican [78]; UCP [46]; STP [49].

<sup>52</sup> Cemiyeti [78].

<sup>53</sup> ICCPR Art. 14(1); ECHR Art. 6(1).

<sup>54</sup> CCPR-32 [6]; Venice Guidelines.

<sup>55</sup> CCPR-32 [7].

<sup>56</sup> Facts [24].

<sup>57</sup> H. [53]; Hansen [77]-[83].

<sup>58</sup> Miragall [37]; ENCJ p.2.

<sup>59</sup> Fazliyski [64].

#### **D. Rhakatah conducted illegitimate political financing**

Funding of political parties is an important factor<sup>60</sup> to ensure equal opportunity for candidates.<sup>61</sup> In this case, the financing of Sister Betina's party did not adhere to Section 4 of APFA<sup>62</sup> since she did not fulfill the minimum percentage of votes.<sup>63</sup> Rhakatah failed to ensure financial transparency<sup>64</sup> since there are no explanation of amounts Sister Betina received.<sup>65</sup> Therefore, Rhakatah's conduct should be prohibited.<sup>66</sup>

#### **II. The deletion of tweets from @papatommytomato and @SiyalRhakatah, and the ban of Papa Tommy Tomato from Twitter by the Rhakatah Government violate the Kanthiyeyu Charter on Human Rights and other relevant human rights treaties**

Rhakatah's Actions violate HR since **[A]** the deletion of Papa's tweet violates freedom of expression, **[B]** deletion of @SiyalRhakatah's tweets avoids criticism, and **[C]** the banning of Papa violates right to publication.

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<sup>60</sup> Report of good practice [107].

<sup>61</sup> 2<sup>nd</sup> Venice Guidelines [183].

<sup>62</sup> Facts [22].

<sup>63</sup> Facts [19].

<sup>64</sup>UNCAC, Art 7(3); Rules Against Corruption, Art 3.

<sup>65</sup> Facts [22].

<sup>66</sup> OAS p.13.

## **A. The deletion of Papa's tweets violates freedom of expression**

Applicant submits that the deletion of Papa's tweets is in violation of HR, as [1] there is no legitimate reason to delete the tweet and [2] there is inequality in Rhakatah's action.

### **1. There is no legitimate reason to delete the tweet**

Freedom of expression, guaranteed by IHRL,<sup>67</sup> is an indispensable right that is essential for society.<sup>68</sup> States have the obligation to respect this right<sup>69</sup> and restriction must be justified on grounds stated in ICCPR<sup>70</sup> or applied only for purposes they were prescribed for.<sup>71</sup>

Rhakatah failed to fulfill obligations to provide clear reasoning<sup>72</sup> to assume connections between the nature of Papa's tweets and why it is perceived as a threat.<sup>73</sup> The Cyber Court cannot imply that Papa's tweets are offending<sup>74</sup> since emojis are highly subjective<sup>75</sup> and prone to misunderstandings.<sup>76</sup> Moreover, Papa's tweets did not get

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<sup>67</sup> ICCPR Art. 19, UDHR Art. 19, ECHR Art. 10.

<sup>68</sup> CCPR-34 [2].

<sup>69</sup> CCPR-34 [7]; CCPR-31.

<sup>70</sup> ICCPR Art. 19(3).

<sup>71</sup> CCPR-22 [8].

<sup>72</sup> Facts [15].

<sup>73</sup> CCPR GC 34 [35].

<sup>74</sup> Facts [15]; Janssen p. 9.

<sup>75</sup> Goldman P 40, Matoon p.136.

<sup>76</sup> Goldman p.25.

flagged nor deleted by Rhakatah's AI that detects and deletes hate speech,<sup>77</sup> considering the objectivity of AI's<sup>78</sup> uses in fields of law.<sup>79</sup> Therefore, Rhakatah violated freedom of expression.

## **2. Rhakatah violates right to non-discrimination**

IHRL guarantees equality before the law regardless of political or other opinions.<sup>80</sup> Mr. Mick Bafana tweeted words that incite hatred, lower the reputation, and spread false information of Papa without any evidence<sup>81</sup> that violate Section 13 of CSDP Act.<sup>82</sup> The publication of false information on the internet is not protected,<sup>83</sup> but he still roams free without any punishment.<sup>84</sup> Therefore, Rhakatah's action is discriminative.

### **B. The deletion of @SiyalRhakatah's tweet is an alibi to hide from criticism**

Limitation on HR upon the reputation of others shall not prohibit publishing information or materials<sup>85</sup> to protect the state and its officials from public opinion or

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<sup>77</sup> Facts [14].

<sup>78</sup> Sotala p.275–291.

<sup>79</sup> Neary p. 18.

<sup>80</sup> ICCPR Art.26; UDHR Art.7.

<sup>81</sup> Facts [23].

<sup>82</sup> Facts [14].

<sup>83</sup> Schuman.

<sup>84</sup> Facts [23].

<sup>85</sup> CCPR-34 [43].

criticism.<sup>86</sup> @SiyalRhakatah criticized Rhakatah for its interference<sup>87</sup> and failure to respect<sup>88</sup> people's rights of privacy. In any case, Rhakatah should not take words considered as virulence in criticisms, as reasons to delete tweets since it is disproportionate and not necessary in a democratic society.<sup>89</sup> Therefore, the deletion of tweets violate freedom of expression.

### **C. The banning of Papa's accounts violate right of publication**

IHRL guarantees protection to rights of publication,<sup>90</sup> including online publications in internet use.<sup>91</sup> Papa's published comment includes general and political issues that have higher protection.<sup>92</sup> Further, Papa's role as a religious leader grants him non-derogable<sup>93</sup> rights to teach.<sup>94</sup> Therefore, Rhakatah violated freedom of publication.

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<sup>86</sup> Siracusa [37].

<sup>87</sup> ICCPR Art. 17(1).

<sup>88</sup> ECHR Art. 8.

<sup>89</sup> Arslan [45].

<sup>90</sup> Case-law p.17.

<sup>91</sup> Case-law ,p.19.

<sup>92</sup> Springer, Morice.

<sup>93</sup> ICCPR Art.4(2).

<sup>94</sup> ECHR Art.9.

### **III. The lockdown measures of 13 February 2020 and 15 July 2020 violate the Kanthiyeyu Charter on Human Rights and other relevant human rights treaties**

On 12 February 2020, Rhakatah recorded its first case of Covid-19.<sup>95</sup> To counter this, President Boshu announced lockdown measures on 13 February.<sup>96</sup> On 15 February, when a huge number of new cases emerged, additional lockdown regulations were announced.<sup>97</sup> These measures violate **[A]** freedom of movement, **[B]** rights to privacy, **[C]** campaign, **[D]** political assembly, **[E]** business, and **[F]** right to administrative justice.

#### **A. Violation of freedom of movement**

IHRL provides everyone the right to liberty of movement.<sup>98</sup> Any restriction of this right must be provided by law,<sup>99</sup> consistent with other HR,<sup>100</sup> necessary and proportional to protect citizens.<sup>101</sup>

Rhakatah's prohibition on all non-essential travel, family visits and social visits<sup>102</sup> are disproportional<sup>103</sup> since other less intrusive measures to protect citizens exist.<sup>104</sup>

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<sup>95</sup> Facts [10].

<sup>96</sup> Facts [10].

<sup>97</sup> Facts [27].

<sup>98</sup> ICCPR Art.12(1) ; UDHR Art.13.

<sup>99</sup> CCPR-27 [12]-[13].

<sup>100</sup> CCPR-27 [11]-[18].

<sup>101</sup> CCPR-27 [14].

<sup>102</sup> Facts [10].

The lack of clear definition for “non-essential”<sup>105</sup> can cause multiple interpretations considering the subjectivity of the word “essential”.<sup>106</sup> Further, additional measures on 15 February installed mass surveillance, facial recognition and movement tracking<sup>107</sup> which restricts Papa and citizens’ movements. Therefore, the lockdown measures of 13 February 2020 and 15 July 2020 violate freedom of movement.

## **B. Violation of right to privacy**

Under IHRL, all citizens have the right to privacy.<sup>108</sup> This covers privacy of bodies,<sup>109</sup> medical records,<sup>110</sup> and provision of personal autonomy<sup>111</sup> regarding medical treatments.<sup>112</sup> State needs to ensure the protection of this right.<sup>113</sup>

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<sup>103</sup> CCPR-27 [14].

<sup>104</sup> Badr p.1.

<sup>105</sup> Facts [10].

<sup>106</sup> Report Jurists, p. 11; Staeet, p.273.

<sup>107</sup> Facts [27].

<sup>108</sup> ICCPR Art.17(2) ; UDHR Art.12.

<sup>109</sup> Onn, p. 1–12.

<sup>110</sup> Patients record [12,1,5].

<sup>111</sup> V.C, p 138 ; Evans, p 71 ; E.B, p.43.

<sup>112</sup> Pretty, p 4.

<sup>113</sup> CCPR-16.



Papa and the Parliamentarians should be able to control the extent, manner, and timing of information they disclose<sup>114</sup> considering the personal nature<sup>115</sup> of medical records. Further, by making vaccinations compulsory,<sup>116</sup> Rhakatah has rendered medical care against their will<sup>117</sup> and stripped their autonomy<sup>118</sup> to choose what is put inside of their body. Rights to privacy needs to be protected even when refusal to receive it is fatal.<sup>119</sup> Therefore, Rhakatah's monitoring activity of medical conditions and compulsory vaccination<sup>120</sup> violate rights to privacy.

### **C. Violation of right to campaign**

IHRL<sup>121</sup> guarantees freedom to be elected and campaign for elections to engage in political activities.<sup>122</sup> In this case, any gathering of more than 20 people is prohibited, although in a peaceful manner.<sup>123</sup> Rhakatah failed to consider that 2020 is an election

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<sup>114</sup> Onn p. 1–12.

<sup>115</sup> Krebs [42].

<sup>116</sup> Facts [27].

<sup>117</sup> G.B. p.29 ; Re T, p.149.

<sup>118</sup> Re , p 1-2.

<sup>119</sup> V.C,p.105 ; *Pretty*, p 63-65.

<sup>120</sup> Facts [27].

<sup>121</sup> UDHR Art.21(3), ICCPR Art.25(2)

<sup>122</sup> CCPR-25.

<sup>123</sup> Facts [10].

year, when regular campaigns are not possible because of lockdown regulations.<sup>124</sup> Additionally, Papa's social media ban<sup>125</sup> further restricts this right considering the role of internet as a principal mean for participation in political issues.<sup>126</sup>

Meanwhile, President Bosha and the First Lady were seen distributing food packages to hundreds of people while encouraging them to vote for RLF,<sup>127</sup> indicating discriminatory<sup>128</sup> implementation of regulations he imposed himself.<sup>129</sup> Therefore, the lockdown measures violate the right to campaign.

#### **D. Violation of right to political assembly**

Every citizen have rights to assemble and associate.<sup>130</sup> This is important as it protects abilities of people to exercise individual autonomy in solidarity with others.<sup>131</sup>

Full protection of right to assembly can only be possible with simultaneous protection of freedom of expression, association and political participation.<sup>132</sup> Due to the

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<sup>124</sup> Facts [10]&[27].

<sup>125</sup> Facts [15].

<sup>126</sup> Yildirim [54].

<sup>127</sup> Facts [16].

<sup>128</sup> HRA Art 14.

<sup>129</sup> Facts [27].

<sup>130</sup> ICCPR Art.21&22.

<sup>131</sup> CCPR-25.

<sup>132</sup> CCPR-37.

prohibition on gathering,<sup>133</sup> citizens including Papa are stripped from the right to protest with no alternative platform as Papa's social medias are banned.<sup>134</sup> Therefore, Rhakatah violated right to political assembly.

### **E. Violation of right to business**

Everyone has the right to work<sup>135</sup> and conduct business.<sup>136</sup> States have the obligation to respect,<sup>137</sup> protect<sup>138</sup> and take necessary steps to ensure citizens' fulfillment<sup>139</sup> of this right.

Rhakatah's prohibition of opening businesses<sup>140</sup> can restrict Papa's conduct of business, especially when his company, Hello-Jah, had its 5G license suspended for an indefinite period of time.<sup>141</sup> But the meaning of "corona-related" itself is not clear which one refers to. Therefore, Rhakatah violated rights to business.

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<sup>133</sup> Facts [10].

<sup>134</sup> Facts [15].

<sup>135</sup> UDHR Art.23(1); ICESCR Art.6(1).

<sup>136</sup> EU CFR Art.16.

<sup>137</sup> CCPR-24 [12].

<sup>138</sup> CCPR-24 [14].

<sup>139</sup> CCPR-24 [23].

<sup>140</sup> Facts [10].

<sup>141</sup> Facts [4]&[27].

## **F. Violation of right to administrative justice**

In practicing administrative justice, states and law enforcement officials<sup>142</sup> have obligations to abide and protect HR.<sup>143</sup> Police actions on 23 July 2020 violated Papa's right to administrative justice<sup>144</sup> as they were immediately dispatched to TFM where, upon arrival, they confiscated the iPad device used for the live broadcast of Papa's event.<sup>145</sup> Whereas, the iPad belongs to Ambassador Siya-something and is thus protected by diplomatic privileges and immunity.<sup>146</sup> This violates obligation to use force when only strictly necessary.<sup>147</sup> Therefore, Rhakatah violated rights to administrative justice.

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<sup>142</sup> Standard for Police p.21.

<sup>143</sup> RES-2003.

<sup>144</sup> Facts [32].

<sup>145</sup> Facts [31].

<sup>146</sup> Facts [31].

<sup>147</sup> Standard for police p.23.

## REPARATIONS

General principles of international law<sup>148</sup> provides that states shall provide remedies<sup>149</sup> and reparations to victims for omissions attributed to the State.<sup>150</sup> Reparations provided should be proportional to the gravity of violation and harms suffered.<sup>151</sup>

Regarding **Claim I**, Rhakatah must reinstate DAF-Alliance Parliamentarians' initial position in parliament, as elected by the people, by *restitutio ad integrum*.<sup>152</sup>

Regarding **Claim II**, violation to freedom of expression needs to be redressed through restitution by lifting undue restrictions and unsuspending Papa's account.<sup>153</sup> Further, Rhakatah must restore Papa's good name through satisfaction.<sup>154</sup>

Regarding **Claim III**, Rhakatah must provide Papa with financial compensation<sup>155</sup> for indefinite losses of earnings<sup>156</sup> after his violation of rights to business. Further, lockdown

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<sup>148</sup> *Chorzów Factory Case* [68] ; Arsiwa Art.1.

<sup>149</sup> ICCPR Art. 2(3); UDHR Art.8.

<sup>150</sup> UN Reparation Principles [15].

<sup>151</sup> UN Reparation Principles [18].

<sup>152</sup> Rodriguez [26].

<sup>153</sup> IACHR Reparations [82].

<sup>154</sup> UN Reparation Principles [22][b]&[22][d].

<sup>155</sup> Arsiwa Art.36(2).

<sup>156</sup> UN Reparation Principles [20][c].

measures must uphold the subsidiarity<sup>157</sup> and proportionality<sup>158</sup> principles, thereby less restrictive measures should be considered.

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<sup>157</sup> Treaty on EU Art. 5(3) ; D'Amico [53].

<sup>158</sup> Treaty on EU Art. 5(4).

## PRAYERS

Applicant requests this Honorable Court to adjudge and declare that :

1. Applicant has the *locus standi* and admissibility on all claims to bring this present application;
2. The recalling of DAF's Members of Parliament violates HR;
3. The deletion of tweets from @papatommytomato and @SiyalRhakatah, and the ban of Papa from Twitter by the Rhakatah Government violate HR; and
4. The lockdown measures of 13 February 2020 and 15 July 2020 violate HR.

Respectfully submitted,

**Counsel for the Applicant**

Summary of Arguments—167 words

Arguments—2711 words