

**13th World Human Rights Moot**

**Court Competition**

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**Geneva, Switzerland**

**IN THE MATTER BETWEEN**

**PAPA TOMMY TOMATO & 43 OTHERS**

**AND**

**THE REPUBLIC OF RHAKATAH**

**MEMORIAL FOR THE RESPONDENT**

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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 on 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, Coventions and Charters

ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended).
ECHR Rules of Court	Rules Of Court (2020) (entered into force on 1 January 2020).
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.
UDHR	Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).

### General Comments and Recommendations

CCPR-12	HRC, General Comment No. 12, UN Doc CPPR/C/GC/12.
CCPR-16	HRC, General Comment No. 16, HRI/GEN/1/Rev.9 (Vol. I).
CCPR-19	HRC, General Comment No. 19, UN Doc CCPR/C/19.
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-34	HRC, General Comment No. 34, UN Doc CPPR/C/GC/34.

CESCR-3	General Comment No. 3, UN Doc E/1991/23.
CESCR-9	General Comment No. 9, UN Doc E/C.12/1998/24

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Arsiwa	ILC 'Articles on Responsibility of States for Internationally Wrongful Acts' [2001] Supplement No. 10 (A/56/10), chp.IV.E.1.
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Democracy and the rule of Law	UN HRC 'Human rights, democracy and the rule of law' (2017) A/HRC/RES/34/41.
UN Hate Speech Guide	UN Secretary-General, 'Strategy and Plan of Action on Hate Speech Detailed Guidance on Implementation for United Nations Field Presences' (September 2020).
ILC Reparation	ILC, 'Annex B : Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law' (2019) UN Doc A/74/10.
Police Standards	Office Of The United Nations High Commissioner For Human Rights (OHCHR) 'Human Rights Standards and Practice for the Police' (2004).
Res-217	Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).
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.

UN Hate Speech UN Secretary-General 'United Nations Strategy And Plan Of  
Action On Hate Speech' (May 2019).

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Greece-OECD Finance	Organization for Economic Co-operation and Development (OECD) 'Training Manual on Political Finance Regulation' Greece-OECD Project < <a href="https://www.oecd.org/governance/ethics/training-manual-political-finance-regulation-greece-en.pdf">https://www.oecd.org/governance/ethics/training-manual-political-finance-regulation-greece-en.pdf</a> > accessed 17 April 2021.
Note on Sexism	Council of Europe Gender Equality Unit 'Background Note On Sexist Hate Speech' (1 February 2016).

## Reports 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.
Covid-19 Report	WHO 'Coronavirus disease 2019 (COVID-19) Situation Report – 66 WHO' (26 March 2020).

Guidance Non-Essential	EUR-Lex 'Guidance On The Implementation Of The Temporary Restriction On Non-Essential Travel To The EU, On The Facilitation Of Transit Arrangements For The Repatriation Of EU Citizens, And On The Effects On Visa Policy' [2020] OJ 2020/C 102 I/02.
NDI	National Democratic Institute for International Affairs (NDI) 'A Guide to Political Party Development' (2001).
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.

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Ataykaya	<i>Ataykaya v. Turkey</i> (Application no. 50275/08) ECtHR 22 July 2014.
Belkacem	<i>Belkacem v Belgium</i> (App no No 34367/14) ECtHR 2017.
Bellet	<i>Bellet v. France</i> (App no. 23805/94) ECtHR 4 December 1995
Burdov	<i>Burdov v. Russia</i> (no. 2) (App no. 33509/04) ECtHR 15 January 2009.
Cisse	<i>Cisse v. France</i> (App No. 51346/99) ECtHR 9 April 2002.

De Tommaso *De Tommaso v. Italy* (App no. 43395/09) ECtHR 23 February 2017.

E.S *E.S V Austria* ((App no. 38450/12) ECtHR 18 March 2019.

Gautrin *Gautrin And Others v. France* (App 38/1997/822/1025–1028) ECtHR 20 May 1998.

Gorou *Gorou v. Greece* (No. 2) (App. no. 12686/03) ECtHR 2009.

Gorzelik *Gorzelik & Others v. Poland* (App no. 44158/98) ECtHR 20 December 2001.

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M.G.C *M.G.C. v. Romania*, (App no 61495/11) ECtHR 15 March 2016.

Matheus *Matheus v. France* (App no. 62740/00) 204 ECtHR 31 March 2005.

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- Otto *Otto v. Germany* (dec.) (App no. 27574/02) ECtHR 24 November 2005.
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- Saffi *Immobiliare Saffi v. Italy* (App No. 22774/93) ECtHR 6 March 1997.
- Schumann *Schuman v. Poland* (App no. 52517/13) ECtHR 3 June 2014.
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- Seurot *Seurot v. France* (App No 57383/00), decision on the admissibility ECtHR 18 May 2004.
- UCP *United Communist Party of Turkey and Others v. Turkey* (App No 133/1996/752/951) ECtHR 30 January 1998.
- The Welfare Party *Refah Partisi (The Welfare Party) and Others v. Turkey* (App no. 41340/98, 41342/98, 41343/98 and 41344/98) ECtHR 13 February 2003.

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- Henry *Henry v. Jamaica*, Communication No. 230/1987, U.N. Doc. CCPR/C/43/D/230/1987 (1991).

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## **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 Bosha 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 Bosha.

#### **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**

The recalling of parliamentarians is a justifiable action under Rhakatah's democratic society since Papa's plebiscite violate DAF Constitution and Rhakatah's interference was lawful. These democratic principles are then enforced through decisions of Rhakatah's judiciaries which fulfill rights of fair trial and effective remedy. This renders REC's announcement of parliament vacancies valid and not violating freedom of association. Further, the financing of DAF is legitimate compliance to courts' judgements.

### **II. Claim II**

Deletion of Papa's tweets are in conformity with limitations to the freedom of expression since it contained inappropriate emojis and hatred toward Sister Betina's belief. Deletion of @SiyalRhakatah's livestreams are justified as it instigated public health emergencies. Additionally, Papa's ban from social media platforms does not violate freedom of speech as it is according to law and in conformity with HR provisions.

### **III. Claim III**

The two lockdown measures imposed on by Rhakatah are lawful actions championing principles of public health, a fundamental HR. Limitations did not violate freedom of movement, rights to privacy, political assembly and campaign. The suspension on Hello-Jah's 5G license was legitimate as it was undergoing Covid-19 related investigations, thereby not violating right to business. Moreover, administrative measures taken were legitimate law enforcement actions.

## ARGUMENTS ADVANCED

### PRELIMINARY ISSUES

#### I. Jurisdiction

Respondent submits no contestation over the jurisdiction of this case.

#### II. *Locus Standi* of Applicant

Respondent does not contest the legal standing of Applicant.

#### III. Admissibility

Respondent pleads this case inadmissible<sup>1</sup> since Applicant failed to meet conditions of admissibility.<sup>2</sup> KHRT is not a court of appeal and may only intervene where domestic authorities fail in their obligations.<sup>3</sup>

Wrt **Claim I**, the Constitutional Court may be approached directly if applicants deem human rights cases as urgent or exceptionally important.<sup>4</sup> Papa never conducted such acts, failing to meet conditions of using all domestic remedies.<sup>5</sup> Hence, available domestic remedies were never exhausted.

Wrt **Claim II**, the Cyber Court's judgment on Papa's violation of Section 13 of CSDP Act was never appealed or complained to a higher judiciary.<sup>6</sup> Papa did not approach

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<sup>1</sup> ECHR Rules of Court [55].

<sup>2</sup> ECHR Art.35(3).

<sup>3</sup> Scordino [140].

<sup>4</sup> Facts [2] .

<sup>5</sup> ECHR Art. 35(1); Akdivar [65].

<sup>6</sup> Facts [15].

the Constitutional Court, available as available domestic remedy in relation to human rights matters.<sup>7</sup> Additionally, this case has also expired<sup>8</sup> based on the six-month time limit<sup>9</sup> of ECHR.

Wrt **Claim III**, KHRT's powers are limited to verifying Rhakatah's compliance with HR and may not assess why the Constitutional Court adopted its decision, otherwise it would disregard limits imposed on its actions.<sup>10</sup> Rhakatah pleads this claim as manifestly ill-founded since the domestic proceeding taken as a whole were fair.<sup>11</sup>

Therefore, KHRT has no jurisdiction over this case and all claims made by Applicant are inadmissible.

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<sup>7</sup> Facts [2].

<sup>8</sup> Otto [40].

<sup>9</sup> ECHR Art.35(1); Facts [14] [15].

<sup>10</sup> Ruiz [28]; De Tommaso [170].

<sup>11</sup> Ruiz [28]; De Tommaso [172].

## MERITS

### **I. The recalling of DAF Alliance's Members of Parliament did not violate the Kanthiyeyu Charter on Human Rights and other relevant human rights treaties**

On 15 July 2020, REC announced Parliament vacancies in terms of Section 44(5) of REA.<sup>12</sup> This was done based on the recalling by Sister Betina, the legitimate Leader of Opposition of Rhakatah Parliament.<sup>13</sup> Rhakatah does not violate HR as **[A]** the decision to announce the recall of DAF parliamentarians, **[B]** Rhakatah's judiciaries's actions, **[C]** announcement of parliament vacancies, and **[D]** the financing of DAF are lawful.

#### **A. The recalling of Parliamentarians is justifiable under a democratic society**

Rhakatah did not violate HR since **[1]** Papa's plebiscite is invalid and **[2]** Rhakatah's interference was lawful.

##### **1. Papa's plebiscite should be invalid**

Party constitutions define decision making procedures<sup>14</sup> like selection of electoral candidates<sup>15</sup> which must be respected to conform to internal democratic principles.<sup>16</sup> Constitutions can limit terms of office to ensure that one individual or special interest does not dominate a party,<sup>17</sup> considering clouds of networks and close

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<sup>12</sup> Facts [26].

<sup>13</sup> Facts [24].

<sup>14</sup> 2<sup>nd</sup> Venice Guidelines [158].

<sup>15</sup> 2<sup>nd</sup> Venice Guidelines [161].

<sup>16</sup> Report of Good Practice [101].

<sup>17</sup> NDI p.14.

entities<sup>18</sup> can influence results of democratic elections. Papa's insistence in holding a plebiscite<sup>19</sup> violates Section 2 of the DAF Constitution, a long standing<sup>20</sup> agreed rule, that clearly established the "relay leadership" and Sister Betina's position,<sup>21</sup> thereby rendering his plebiscite invalid.

## **2. Rhakatah's interference fulfills state obligations**

States should ensure that political parties, that hold vital roles in democracy,<sup>22</sup> respect democratic principles internally.<sup>23</sup> Rhakatah's High Court's decision is acceptable state interference to require parties' conduct of transparent decision making<sup>24</sup> and establish intolerance of interpretations that deprive principles of democracy<sup>25</sup> declared in party constitutions.<sup>26</sup> Further, this fulfill obligations to safeguard foundations of Rhakatah's democratic principles.<sup>27</sup> Therefore, Rhakatah violates no right to democracy for its lawful interference.

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<sup>18</sup> Code of good practice [13.6.1].

<sup>19</sup> Facts [8].

<sup>20</sup> Facts [3].

<sup>21</sup> Facts [5].

<sup>22</sup> UCP.

<sup>23</sup> CCPR-25 [26].

<sup>24</sup> UCP [79].

<sup>25</sup> The Welfare Party [103].

<sup>26</sup> Facts [5].

<sup>27</sup> Democracy case-laws p.1.

## **B. Rhakatah's judiciaries did not violate any HR**

Rhakatah did not violate any HR since [1] the dismissal of DAF-Alliance appeal is reasonable and [2] the High Court's judgment is an implementation of Rhakatah's obligation to provide effective remedy.

### **1. Supreme Court's dismissal of appeal is lawful**

Applying IHRL<sup>28</sup> principles of fair trial, States are not required to guarantee review by more than one tribunal.<sup>29</sup> DAF-Alliance cannot appeal in place of Papa in the case of *Sister Betina v. Papa & DAF*<sup>30</sup> since non-parties do not have clear reasoning to challenge violation of rights and are not entitled right of access to a court.<sup>31</sup> In any case, the provision of a fair trial in the High Court<sup>32</sup> was based on assessment of relevant facts of the case.<sup>33</sup> Rhakatah provided effective access to appeal<sup>34</sup> and dismissal in reasonable time.<sup>35</sup> Supreme Courts have no obligation to give detailed reasoning of dismissals for appeals having no prospects of success.<sup>36</sup> Therefore, there is no violation of HR.

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<sup>28</sup> ICCPR Art. 14(5); ECHR Art.6; UDHR Art.10.

<sup>29</sup> Rouse, [7.6].

<sup>30</sup> Facts [9].

<sup>31</sup> Bellet [38].

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

<sup>33</sup> Gorzelik, [95]-[96]; Nepeceristi [49]; Egyház [79]- [80].

<sup>34</sup> Henry [8.4].

<sup>35</sup> Rouse, [7.4]; Taright, [8.5].

<sup>36</sup> Gautrin, [41].

## **2. The judgement of the High Court ensures Sister Betina's right to effective remedy**

Individuals have the right to effective remedy for acts violating their fundamental rights,<sup>37</sup> including violation of right to democracy.<sup>38</sup> Sister Betina's legitimate<sup>39</sup> position as presidential candidate was misappropriated by Papa.<sup>40</sup> Hence, Rhakatah is obligated to take measures<sup>41</sup> to ensure her rights are made fully effective through judicial remedies,<sup>42</sup> especially since efforts to pursue internal settlement were ignored by Papa and have failed.<sup>43</sup> Therefore, the High Court's judgement is necessary to ensure right to effective remedy.

### **C. REC's announcement of parliament vacancies is legitimate**

Freedom of association may be legally restricted if necessary in a democratic society<sup>44</sup> and according to prescribed law.<sup>45</sup> Sister Betina's recognition as Leader of

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<sup>37</sup> UDHR Art. 8; ICCPR Art. 2; ECHR Art.13; ICERD Art.5.

<sup>38</sup> Democracy and the rule of Law.

<sup>39</sup> Facts [5].

<sup>40</sup> Facts [8].

<sup>41</sup> CESCR-3 [4].

<sup>42</sup> CECSR-9 [3].

<sup>43</sup> Facts [8]; 2<sup>nd</sup> Venice Guidelines [159].

<sup>44</sup> ICCPR Art.22(2); ECHR Art.11(2).

<sup>45</sup> N.F, [26].

Opposition<sup>46</sup> and REC's announcement of parliament vacancies<sup>47</sup> is an implementation<sup>48</sup> of the High Court's judgement that respects her position as Leader of DAF.<sup>49</sup> This is enforced immediately without delay,<sup>50</sup> pursuing legitimate aim<sup>51</sup> to protect her rights set in DAF Constitution<sup>52</sup> and is in line with Section 44(5) of REA.<sup>53</sup> Therefore, Rhakatah's actions are legitimate implementation of freedom of association.

#### **D. The financing of DAF is legitimate**

Regulations of political parties impose the least amount of burden in terms of reporting detail, as long as it achieve regulatory aims<sup>54</sup> of democratic principles. The financing of DAF-B is an administrative compliance<sup>55</sup> to the High Court's recognition of Sister Betina's position as DAF's leader.<sup>56</sup> This ensures exhaustive<sup>57</sup> and

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<sup>46</sup> Facts [24].

<sup>47</sup> Facts [26].

<sup>48</sup> O.S.A., [21].

<sup>49</sup> Facts [20].

<sup>50</sup> Burdov, [66].

<sup>51</sup> ECHR Guide on Art.11 [150].

<sup>52</sup> Facts [5].

<sup>53</sup> Facts [26].

<sup>54</sup> Greece-OECD, p.20.

<sup>55</sup> Hornsby [31]-[32].

<sup>56</sup> Facts [20].

<sup>57</sup> Matheus, [58]; Popescu, [68]-[76].

undelayed<sup>58</sup> implementation of judicial decisions to uphold democratic principles, regardless of APFA.<sup>59</sup> Therefore, the financing of DAF-B is legitimate.

**II. The deletion of tweets from @papatommytomato and @SiyahInRhakatah, and the ban of Papa Tommy Tomato from Twitter by the Rhakatah Government did not violate the Kanthiyeyu Charter on Human Rights and other relevant human rights treaties**

On 14 February 2020 Papa's tweets were deleted<sup>60</sup> and banned. This was followed by deletion of @SiyahInRhakatah's tweets on 23 July.<sup>61</sup> Rhakatah submits that the deletion of Papa's tweet did not violate HR, as **[A]** the tweets are in conformity with the restriction and limitation to the freedom of expression, **[B]** the tweets contain intolerance and hatred toward Sister Betina's belief, and **[C]** the banning of Papa from twitter is lawful.

**A. The deletion of tweets does not violate the freedom of speech.**

The deletion of Papa's tweet is not in violation of HR, as **[1]** the tweets are in conformity with the restriction and limitation to the freedom of expression, **[2]** the tweet contain intolerance and hatred toward Sister Betina.

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<sup>58</sup> Saffi [74].

<sup>59</sup> Facts [22].

<sup>60</sup> Facts [14].

<sup>61</sup> Facts [31].

## **1. The tweets are in conformity with the limitation to the freedom of expression**

Legal use of emojis highlight the meaning and intention behind it.<sup>62</sup> One of the emoji used by Papa is an eggplant emoji<sup>63</sup> often used to represent male genitalia,<sup>64</sup> non-directly mocking Sister Betina's choice of faith and chastity, with vehement attack that are incompatible with the values of tolerance, social peace and non-discrimination.<sup>65</sup> Acts that went beyond the limits of a critical denial, and were likely to incite religious intolerance can be proportionately restricted by States.<sup>66</sup> Therefore, Papa's freedom of expression can be limited.

## **2. The tweet contain intolerance and hatred toward Sister Betina's**

IHRL stated obligations, duties and responsibilities in exercising freedom of speech.<sup>67</sup> Papa's language constitute unlawful<sup>68</sup> hate speech.<sup>69</sup> This religiously intolerant and sexist act, shows contempt on Sister Betina's ability on political debate<sup>70</sup>

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<sup>62</sup> Browning.

<sup>63</sup> Facts [13].

<sup>64</sup> Seargeant p.80.

<sup>65</sup> Belkacem.

<sup>66</sup> E.S. p.2.

<sup>67</sup> ECHR Art.10(2); ICCPR Art.19; CCPR-34 [22].

<sup>68</sup> Art. 10 Guide [522].

<sup>69</sup> UN Hate Speech Guide p.2.

<sup>70</sup> Facts [13].

and cannot be protected<sup>71</sup>. The deletion is fulfilling state obligations to counter hate speech,<sup>72</sup> thereby rendering it lawful.

**B. @SiyalRhakatah's tweet can be limited as it brings public health emergencies**

IHRL gives limitation on freedom of speech for the protection of public health<sup>73</sup> and does not protect publication of false information.<sup>74</sup> Papa's tweet stated many false misleading comments underrating impacts of Covid-19 and encouraged people to go out in the middle of a pandemic.<sup>75</sup> As speech can have a huge impact on people's health,<sup>76</sup> Papa's speech instigated more than 500 people without mask to streak into TFM, creating public disorder.<sup>77</sup> As a result, a week after the incident on 23 July 2020, Rhakatah's Ministry of Health reported a shocking 4.420 new cases of Covid-19 infections.<sup>78</sup> Therefore, deletion of @SiyalRhakatah's tweets is lawful.

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<sup>71</sup> Note on Sexism p.3.

<sup>72</sup> UN Hate Speech Guide p.9.

<sup>73</sup> ICCPR Art.19(3).

<sup>74</sup> Schuman.

<sup>75</sup> Facts [30].

<sup>76</sup> Parmet p.888.

<sup>77</sup> Rausch.

<sup>78</sup> Facts [32].

### **C. The banning of Papa from twitter is lawful**

Restrictions on freedom of speech are permitted as long as it concerns interests of the community as a whole,<sup>79</sup> fulfills limitations provided by Siracusa Principle of being consistent with HR and is applied when its regulations are still in force.<sup>80</sup> The limitation is consistent with HR since the banning from Twitter, Facebook and Instagram are only temporary, and alternative platforms of expression such as his TikTok account is still available.<sup>81</sup> Further, limitation on 14 February 2020 is imposed after CSDP Act is in force on 13 November 2019.<sup>82</sup> Therefore, the banning of Papa which serves a legitimate purpose<sup>83</sup> to protect and take proportionate restrictive measures<sup>84</sup> is lawful.

### **III. The lockdown measures of 13 February 2020 and 15 July 2020 did not 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>85</sup> To counter this, President Boshia announced lockdown measures and policies on 13 February.<sup>86</sup> On 15 February, when a huge number of new cases emerged, he

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<sup>79</sup> CCPR-34 [28].

<sup>80</sup> Siracusa Art.15.

<sup>81</sup> Facts [15].

<sup>82</sup> Facts [15].

<sup>83</sup> Durkoff p.11.

<sup>84</sup> E.S p.2.

<sup>85</sup> Facts [10].

<sup>86</sup> Facts [10].

announced additional lockdown regulations.<sup>87</sup> These measures are in no violation of [A] freedom of movement, [B] rights to privacy, [C] rights to political assembly, [D] rights to campaign, [E] rights to business, and [F] right of administrative justice.

#### **A. Limitation of freedom of movement is allowed**

IHRL allows legal restrictions on freedom of movement in a public health emergency.<sup>88</sup> Rhakatah's restrictions comply with widely accepted definitions of "essential travel"<sup>89</sup> and is thereby legitimate. This fulfills state obligations to take measures to prevent and control a pandemic.<sup>90</sup> Rhakatah imposed a nationwide travel restriction,<sup>91</sup> implementing principles of equality and non-discrimination.<sup>92</sup> This restriction is also in conformity with principles of proportionality and necessity<sup>93</sup> since the spread of Covid-19 will worsen without it.<sup>94</sup> Therefore, limitation of freedom of movement is allowed.

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<sup>87</sup> Facts [27].

<sup>88</sup> ICCPR Art.12(3); Richards p.2.

<sup>89</sup> Guidance Non-Essential; Temporary Travel Notification p.4.

<sup>90</sup> ICESCR Art.12(2)(c).

<sup>91</sup> Facts [10].

<sup>92</sup> CCPR-12 [18].

<sup>93</sup> CCPR-27 [11]&[16].

<sup>94</sup> Covid and HR, p.6.

## **B. Limitation of right to privacy is allowed**

The pandemic has led states to greater control and surveillance of its citizens through the use of technology.<sup>95</sup> Rhakatah's use of AI algorithms to identify and track Covid-19 carriers<sup>96</sup> by collecting and storing personal information<sup>97</sup> is lawful since it is regulated by a statutory instrument.<sup>98</sup> Additionally, compulsory vaccinations is closely related to public health and may receive limitations.<sup>99</sup> Therefore, limitation of freedom of privacy is allowed.

## **C. Limitation of rights to political assembly is allowed**

Restrictions of rights to political assembly may be permitted for the protection of public health<sup>100</sup> in instances of a disease outbreak when gatherings are dangerous.<sup>101</sup> The majority of the 500 people that streaked to TFM were not wearing masks,<sup>102</sup> posing a major threat to public health considering person-to-person transmissions of Covid-19.<sup>103</sup> This is proved by the drastic increase of 4.420 cases,

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<sup>95</sup> Newlands p.4.

<sup>96</sup> Facts [27].

<sup>97</sup> CCPR-16 [10].

<sup>98</sup> Clarification of Facts [1].

<sup>99</sup> Siracusa [25].

<sup>100</sup> ICCPR Art.21.

<sup>101</sup> Cisse.

<sup>102</sup> Facts [31].

<sup>103</sup> Covid-19 Report.

two weeks after the incident.<sup>104</sup> Rhakatah's restrictions<sup>105</sup> are valid measures taken to prevent situations which threatens the life of a nation.<sup>106</sup> Therefore, Rhakatah does not violate right to political assembly.

#### **D. There is no violation of right to campaign**

Rights to campaign can be limited in the event of public health.<sup>107</sup> Rhakatah's restriction<sup>108</sup> is a form of state obligations to control a pandemic.<sup>109</sup> This is proportionate to the infectious nature of Covid-19<sup>110</sup> and online alternatives are available.<sup>111</sup> Papa's social media ban that limits his online alternative was due to his own fault<sup>112</sup> and is not attributable to Rhakatah.<sup>113</sup>

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<sup>104</sup> Facts [31]&[32].

<sup>105</sup> Facts [10]&[27].

<sup>106</sup> Siracusa Art.39(a).

<sup>107</sup> Siracusa Art.25.

<sup>108</sup> Facts [10].

<sup>109</sup> ICESCR Art.12(2)(c).

<sup>110</sup> Siracusa Art.51.

<sup>111</sup> Kalda [52]; Jankovskis [49].

<sup>112</sup> Facts [15].

<sup>113</sup> Arsiwa [2].

President Boshia distributed food during the hard time in pandemic as a humanitarian act<sup>114</sup> as everyone has rights to welfare.<sup>115</sup> Furthermore, the distribution was also done at DAF strongholds, proving this was a non-political act and did not cause crowds, due to separate events.<sup>116</sup> Therefore, Rhakatah does not violate campaigning rights.

#### **E. Limitation of right to business is allowed**

IHRL allows limitation to every service's right to business in event of an emergency or disaster that threatens the life or welfare of the community.<sup>117</sup> Hello-Jah's license suspension due to Covid-19 investigation is lawful<sup>118</sup> since it spread false information of Covid-19 against domestic law provided in Article 7 of CSDP Act.<sup>119</sup> Therefore, limitation of right to business is allowed.

#### **F. There is no violation of right to administrative justice**

Use of police force is permitted for legitimate law enforcement purposes.<sup>120</sup> Rhakatah's Police actions on 23 July 2020<sup>121</sup> constitute mass dispersal of the 500

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<sup>114</sup> Richards p.36.

<sup>115</sup> UDHR [25].

<sup>116</sup> Facts [16].

<sup>117</sup> ECHR Art.4(3)(c).

<sup>118</sup> US Municipal Sec. 6-1-80.

<sup>119</sup> Facts [31].

<sup>120</sup> Police Standards p.23.

<sup>121</sup> Facts [31].

people in TFM who violated health protocols.<sup>122</sup> This was aimed to protect the health and safety of citizens.<sup>123</sup> Further, the iPad confiscation was legitimate based on Article 7 of CDSP Act.<sup>124</sup> Therefore, no administrative judicial rights are violated.

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<sup>122</sup> Facts [10]&[27].

<sup>123</sup> Cisse Sec. 35.

<sup>124</sup> Facts [31].

## REPARATIONS

The right to reparations is a secondary right, available only when a primary rule in IHRL was breached.<sup>125</sup> Respondent submits that actions done was within conformity with IHRL and hence no reparation provision is required. In any case, to fulfill the objective of reparations, findings of wrongdoings and authoritative statements in the form of a judgement, recommendations, or friendly settlement are sufficient.<sup>126</sup>

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<sup>125</sup> ILC Reparation [17].

<sup>126</sup> ILC Reparation [7].

## **PRAYERS**

Respondent requests this Honorable Court to adjudge and declare that :

1. All of Applicant's claims are inadmissible;
2. The recalling of DAF's Members of Parliament did not violate any HR;
3. The deletion of tweets from @papatommytomato and @SiyalRhakatah, and the ban of Papa from Twitter by the Rhakatah Government did not violate HR;  
and
4. The lockdown measures of 13 February 2020 and 15 July 2020 did not violate any HR.

Respectfully submitted,

**Counsel for the Respondent**

Summary of Arguments—205 words

Arguments—2242 words