
6th SURANA & SURANA AND UNIVERSITY INSTITUTE OF LEGAL STUDIES

NATIONAL ENVIRONMENT LAW MOOT COURT COMPETITION, 2023

Before

BIFFIN WATER DISPUTES TRIBUNAL

IN THE MATTER OF

DEMOCRATIC REPUBLIC OF DHALL.....APPELLANT

v.

REPUBLIC OF KARTINA.....RESPONDENT

MEMORIAL ON BEHALF OF THE APPELLANT

DRAFTED AND FILED BY THE COUNSELS FOR THE APPELLANT

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STATEMENT OF JURISDICTION

THE COUNSEL ON BEHALF OF THE APPELLANT HUMBLY SUBMITS TO THE JURISDICTION OF THE BIFFIN WATER DISPUTES TRIBUNAL UNDER THE VIRTUE OF SECTION 3 READ WITH SECTION 4 OF THE INTERSTATE RIVER WATER DISPUTES ACT, 1956

- **SECTION 3 (COMPLAINTS BY STATE GOVERNMENTS AS TO WATER DISPUTES)—**

If it appears to the Government of any State that a water dispute with the Government of another State has arisen or is likely to arise by reason of the fact that the interests of the State, or of any of the inhabitants thereof, in the waters of an inter-State River or river valley have been, or are likely to be, affected prejudicially by—

(a) any executive action or legislation taken or passed, or proposed to be taken or passed, by the other State...

- **SECTION 4 (CONSTITUTION OF TRIBUNAL)—**

(1) When any request under section 3 is received from any State Government in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, the Central Government shall, within a period not exceeding one year from the date of receipt of such request, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute...

STATEMENT OF FACTS

In the context of the Republic of Kartina and the Democratic Republic of Dhall: Kartina is a developing ex-colony with flat topography and a strong agricultural sector, exporting tea as a primary product. The river Biffin originates from the Acton mountains and flows through Kartina, serving as a vital irrigation source for agriculture. It continues through Dhall, a neighbouring nation, which relies on it for fisheries and agriculture. A bilateral treaty from 1979 between Kartina and Dhall dictates that neither country nor private entities can alter the flow or course of the River Biffin. The treaty is valid for 50 years. Despite Kartina's development, a high population growth has led to a standard of living crisis, marked by a lack of essential resources for its people. President Mr. Mubble of Kartina announces a plan to construct the Great Kartina Run-of-River hydroelectric plant on the river Biffin, aiming to generate significant electricity for both countries by 2036. While Mr. Mubble assures that the dam won't affect water flow before 2030 and offers subsidized electricity to Dhall, Prime Minister Ms. Nancy Lu expresses concerns about the environmental and economic consequences. Ms. Lu presents a report detailing the potential damages to Dhall's ecosystem and its professions due to the dam. In response, Mr. Mubble emphasizes the importance of technological progress for national development and urges acceptance of the electricity offer despite environmental concerns. Dhall seeks resolution through Kartina's domestic court, citing the applicability of Kartinian statutes. An ad hoc tribunal is established by Kartina's central government under the Inter-State Water Dispute Act, 1956. In essence, the scenario revolves around the proposed hydroelectric plant, the bilateral treaty, environmental considerations, and the legal mechanisms used to address the dispute between the two countries.

STATEMENT OF ISSUES

ISSUE-1

WHETHER THE REPUBLIC OF KARTINA SHOULD BE GIVEN THE POWER TO DICTATE THE
DISTRIBUTION OF NATURAL RESOURCES?

ISSUE-2

WHETHER THE REPUBLIC OF KARTINA IS IN CONTRAVENTION OF THE PRINCIPLES OF
INTERNATIONAL ENVIRONMENT LAW AND INTERNATIONAL TREATY LAW?

Issue-3

WHETHER REPUBLIC OF KARTINA'S CLAIM OF NON-APPLICABILITY OF THE FUNDAMENTAL
RIGHTS, ENshrined IN THE KARTINIAN CONSTITUTION, ON THE PEOPLE OF DHALL IS
VALID?

SUMMARY OF ARGUMENTS

CONTENTION 1: THAT THE REPUBLIC OF KARTINA SHOULD NOT BE GIVEN THE POWER TO DICTATE THE DISTRIBUTION OF NATURAL RESOURCES.

It is humbly submitted before this Hon'ble Tribunal that the republic of Kartina should not be given the power to dictate the distribution of the natural resources for the reasons mentioned herewith. Firstly, the Appellant contends that such dictation of power to distribute the natural resources would be in contravention to the guidelines set forth. It is most humbly submitted that the *Berlin Rules on Water Resources*, which expressly govern the international law applicable to the management of the waters of international drainage basins and applicable to all waters, as appropriate. Furthermore, the access to such power will be in contravention to the Doctrine of Equitable Apportionments, which provides that every riparian state is entitled to a fair share of the waters of an interstate river because the river is for the common benefit of the whole community.

CONTENTION 2: THAT THE REPUBLIC OF KARTINA IS IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENT LAW AND INTERNATIONAL TREATY LAW.

It is humbly submitted before this Hon'ble Tribunal that the Republic of Kartina is in contravention of various Principles of international environment law as established under multiple conventions such as inter alia *Stockholm Declaration*, *Rio Declaration*, and *Berlin Rules*. It has also not undertaken its obligation to conduct a holistic environmental impact assessment. It has also violated Principles of international treaty law by breaching its legal obligations towards the Democratic Republic of Dhall and causing an adverse impact on the environment by way of such breach.

**CONTENTION 3: THAT REPUBLIC OF KARTINA'S CLAIM OF NON-
APPLICABILITY OF THE FUNDAMENTAL RIGHTS, ENSHRINED IN THE
CONSTITUTION OF KARTINA, ON THE PEOPLE OF DHALL IS INVALID.**

It is most humbly submitted before this Hon'ble Tribunal that the Republic of Kartina's claim of non-applicability of the fundamental rights, enshrined in the Kartinian constitution, on the people of Dhall is invalid. It is contended that the fundamental rights in the constitution are in consonance with international human rights and thus are available to all. It is further submitted that right to a pollution free environment and right to livelihood are fundamental rights, and that the construction of the dam would infringe on these rights of the citizens of Dhall.

ARGUMENTS ADVANCED

CONTENTION 1: THAT THE REPUBLIC OF KARTINA SHOULD NOT BE GIVEN THE POWER TO DICTATE THE DISTRIBUTION OF NATURAL RESOURCES.

1. It is most humbly submitted that the Republic of Kartina should not be given the power to dictate the distribution of natural resources, as such dictation would not only be unethical but would also be in violation of the *Berlin Rules on Water Resources, 2004*¹. Such dictation would translate to an infringement of the rights of the citizens of Democratic Republic of Dhall, establishing an ineffective Kartinian control over the indispensable natural resources.

1.1 THAT SUCH DICTATION SHALL BE IN VIOLATION OF THE BERLIN RULES ON WATER RESOURCES.

2. It is humbly submitted that when water quality deteriorates, several challenges emerge over the allocation and protection of water resources. The dam, scheduled to be constructed by the Republic of Kartina on river Biffin would not only alter its course² but also inevitably lead to the deterioration of water quality and subsequently affect marine life and biodiversity throughout the course of the construction, as has also been highlighted in the report presented by the Democratic Republic of Dhall.³

3. The *Berlin Rules on Water Resources, 2004*⁴ play a vital role in establishing the rule of equitable and reasonable utilization as the basic grundnorm of international law for transboundary use and development of waters. These Rules address the obligations of States

¹ Berlin Rules on Water Resources, Aug. 21, 2004 I.L.A., Report of the Seventy-First Conference (2004), 334.

² Moot Proposition ¶ 6

³ Moot Proposition ¶ 8

⁴ Berlin Rules on Water Resources, Aug. 21, 2004, I.L.A., Report of the Seventy-First Conference (2004), 334.

under international law, governing the management of waters within a State, and transboundary waters; without displacing special obligations created by treaties or existing as per special customs.

4. As per Art 4⁵ of the **Berlin Rules**, “*States shall take steps to assure that persons likely to be affected are able to participate in the processes whereby decisions are made concerning the management of waters.*”, it is a duty of the State to ensure participation of persons, likely to be affected by any of its decisions or policies in relation to management of waters, during their formulation. Further, Art 10⁶ of the **Berlin Rules**, states, “*Basin States have the right to participate in the management of waters of an international drainage basin in an equitable, reasonable, and sustainable manner...*”. Furthermore, States have a right to participate in cooperative multinational management regimes in accordance with the principle of ‘equitable participation’. It is humbly submitted that the Democratic Republic of Dhall was not duly informed about the construction; thus, its citizens were denied the right to participate in decision making regarding the dam.

5. It is further submitted that Art 11⁷ of the **Berlin Rules** states, “*Basin States shall cooperate in good faith in the management of waters of an international drainage basin for the mutual benefit of the participating States.*”, it can be inferred from this that a duty to cooperate arises, owing to the shared nature of water as a natural resource. Thus, granting Kartina the power of dictating the distribution of natural resources would put an end to any avenues for inter-State cooperation, making it impossible for the Democratic Republic of Dhall to fulfil

⁵ Berlin Rules on Water Resources, 2004, Art . 4

⁶ Berlin Rules on water Resources, 2004, Art . 10

⁷ Berlin Rules on Water Resources, 2004, Art . 11

its obligations under the River Biffin Treaty, achieve its sustainable development goals, and protect its ecological integrity.

6. It is most humbly submitted that Art 12⁸ and Art 16⁹ of the *Berlin Rules* emphasise on the Principle of equitable utilization and avoidance of transboundary harm. These Principles entail that Basin States shall have the right to manage resources within their territories in an equitable and reasonable manner provided they maintain due regard for their obligation to not cause any significant harm to, and to not violate the rights of, other Basin States. These Principles are also stated in the *Helsinki Rules*¹⁰, the *Stockholm Declaration*,¹¹ and the *Rio Declaration*.¹²

1.2 THAT SUCH DICTATION SHALL LEAD TO THE NON-OBSERVANCE OF THE DOCTRINE OF EQUITABLE APPORTIONMENTS.

7. It is submitted before the Tribunal that '*equitable apportionment*' is a water law doctrine that governs the allocation of interstate waters among States. It can be traced back to various judgements of the United States Supreme Court. This doctrine states that every riparian state is entitled to a fair share of the waters of an interstate river because the river is for the common benefit of the whole community. In the *River Oder*¹³ case, the Permanent Court of International Justice established the rights of lower riparian States over international basins.

⁸ Berlin Rules on Water Resources, 2004, Art . 12

⁹ Berlin Rules on Water Resources, 2004, Art . 16

¹⁰ The Rules on the Uses of the Waters of International Rivers (I.L.A., Report of the Fifty-Second Conference, 1966, 477ff.)

¹¹ Declaration of the United Nations Conference on the Human Environment, Jun 16, 1972. UN Doc. A/RES/2994(XXVII)

¹² Rio Declaration, Jun 14, 1992, 31 ILM 874 (1992)

¹³ United Kingdom v. Poland, Permanent Court of International Justice, PCIJ Series A no 23

It was also implicitly followed in the *Lac Lanoux*¹⁴ arbitration, where the tribunal recognized that in carrying out diversion works entirely within its own territory, France nevertheless had an obligation to consult Spain, the other riparian State, and to safeguard her rights in the watercourse. This indicates that sovereignty of a State over rivers within its borders is qualified by a recognition of the equal and correlative rights of the other States.

8. It is further submitted that this doctrine has found its place in various inter-state river water dispute resolutions in India. *The Indus Commission, 1943*¹⁵, stated that disputes shall be settled by agreements and each party shall get a fair unit of water of the common river, therein applying the rules of equitable apportionment. The *Narmada Water Disputes Tribunal*¹⁶, observed that doctrine of equitable apportionment can be interpreted on a case-to-case basis, putting it in a straitjacket formula constrains its application. It was also noted that decisions could be made concerning the social and economic needs of the State, in the absence of judicial precedents.

9. It is most humbly submitted that the biggest means of livelihood of the citizens of Dhall are, fishery and agriculture. Fish is the largest export of the country, and the farmers heavily rely on river Biffin for irrigation. Dhall, being a lower riparian State would be adversely impacted by the construction of the dam. This was also presented in Dhall's report on the dam, the volume of water would reduce drastically, especially during drier months.¹⁷ Furthermore, whatever water would be received would not be suitable for irrigation as the water quality would substantially degrade.

¹⁴ France v. Spain, Arbitral Tribunal, R.I.A.A. 281

¹⁵ Indus Commission (1943) (Report, pages 5-75)

¹⁶ The Narmada Water Disputes Tribunal [Report, 1978, Vol. 1, pages 109-113]

¹⁷ Supra note 8

CONTENTION 2: THAT THE REPUBLIC OF KARTINA IS IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENT LAW AND INTERNATIONAL TREATY LAW

10. It is submitted before the tribunal that the Republic of Kartina is in contravention of various Principles of international environment and treaty laws. The construction of the Dam would have adverse environmental impacts and would prove to be detrimental to Dhall's economy. Such conduct highlights Kartina's violations of not only River Biffin Water Treaty but also of internationally accepted Principles of environment law such as inter alia, the principle of holistic development, the precautionary Principle, Principle of good neighbourliness and international cooperation.

2.1 THAT REPUBLIC OF KARTINA IS IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENT LAW.

11. It is humbly submitted before this Hon'ble Tribunal that the construction of the dam undertaken by the Republic of Kartina violates Principles of international environment law, it disregards the River Biffin Water Treaty and fails to take into consideration the rights of citizens of Dhall. Firstly, it contravenes the Principles of the *United Nations Conference on Environment and Development*¹⁸, 1992, and other conventions dealing with environment protection, and, secondly, it has failed to undertake a holistic environmental impact assessment.

2.1.1. Violation of the Principles of international environment law.

12. It is humbly submitted that in Principle 2¹⁹ of the *Rio Declaration, 1992*, it was stated that States have the sovereign right to exploit their own resources, however, they also shoulder

¹⁸ UN General Assembly, *UN Conference on Environment and Development: resolution / adopted by the General Assembly*, 22 December 1989, A/RES/44/228

¹⁹ Principle 2, *Rio Declaration, 1992*, Jun 14, 1992, 31 ILM 874 (1992)

the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States. Further, it is submitted that the principle of absolute territorial integrity provides that an upstream State may not undertake an activity that would affect the natural flow of water to the downstream State.²⁰ The construction of the dam would be an obstruction to the natural flow of the river and in turn severely affect the water supply to Dhall. The Republic of Kartina also violates Principle 2²¹ and Principle 21²² of the *Stockholm Declaration, 1972*, as its construction activities are negatively impacting the environment and in turn causing harm to the citizens of Dhall. It is also submitted in the *Corfu Channel Case*²³, the court held that States are not entitled to use their territories in ways that will ultimately harm another State.

13. It is further submitted that Principle 15²⁴ of the *Rio Declaration on Environment and Development, 1992*, states, ‘In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities...’. In *Vellore Citizen’s Welfare Forum v. Union of India*²⁵, the court expressed the view that “the precautionary

²⁰ Jerome Lipper, Equitable Utilization, in THE LAW OF INTERNATIONAL DRAINAGE BASINS 15, 23 (Garretson et al. eds., 1967)

²¹ Principle 2 Declaration of the United Nations Conference on the Human Environment, Jun 16, 1972. UN Doc. A/RES/2994(XXVII)

²² Principle 21 Declaration of the United Nations Conference on the Human Environment, Jun 16, 1972. UN Doc. A/RES/2994(XXVII)

²³ *Corfu Channel Case (United Kingdom v. Albania); Assessment of Compensation*, 15 XII 49, International Court of Justice (ICJ), 15 December 1949

²⁴ Principle 15, Rio Declaration, 1992, Jun 14, 1992, 31 ILM 874 (1992)

²⁵ *Vellore Citizens’ Welfare Forum and State of Tamil Nadu (joining) v Union of India and ors*, 1996 5 SCC 647

Principle and the polluter pays Principle” are essential features of sustainable development and that they have been accepted as part of the law of the land. A three-judge Bench of the SC also observed that burden of proof in environmental matters is placed on the developer who is proposing to alter the status quo. The construction of the dam would have significant environmental repercussions and thus, does not align with the principles of sustainable, holistic development and precaution.

2.1.2. Failure to provide holistic environmental impact assessment.

14. It is humbly submitted that the need to give explicit consideration to environmental factors at an early stage in the decision-making process by way of an environmental impact assessment, is a necessary tool to enhance the quality of information presented to the decision makers so that environmentally sound decisions can be made paying careful attention to minimising any negative impact on the environment. It is further submitted that Principle 17²⁶ of the *Rio Declaration, 1992* states ‘*Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment*’. This was also established by the Supreme Court in the case of *Keystone Realtors (P) Ltd. v. Anil V. Tharthare*²⁷, where it was observed that an EIA is an operationalization of the precautionary Principle, which forms a part of the environment law in India.

15. It is submitted that as per the general provisions of the *Convention of Environmental Impact Assessment in a Transboundary Context, 1991*²⁸, state that the party shall, either

²⁶ Principle 17, Rio Declaration, 1992, Jun 14, 1992, 31 ILM 874 (1992)

²⁷ *Keystone Realtors Pvt. Ltd. v. Anil V. Tharthare* (2020) 2 SCC 66

²⁸ *Convention of Environmental Impact Assessment in a Transboundary Context*, Feb 25, 1991, 30 ILM 800 (1991)

individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities, and to the extent appropriate, the parties shall endeavour to apply the Principle of EIA to policies, plans, and programmes. It is most humbly submitted that when read with Paragraph 5 of the factual matrix, which indicates no prior announcement of the construction was made and the Democratic Republic of Dhall undertook the task to present a report on the dam on an independent basis, it can be inferred that the Republic of Kartina is also in violation of Art V (3) of the *River Biffin Treaty, 1979*.

2.2 THAT THE REPUBLIC OF KARTINA IS IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL TREATY LAW.

16. It is most humbly submitted before the Hon'ble Tribunal that the Republic of Kartina in in contravention of the Principles of international treaty law. It has violated the rules of *River Biffin Treaty, 1979*, by breaching its legal obligations towards Dhall, interpreted in accordance with international law. It is further submitted that the construction of the dam would have adverse impacts on the environment and ecosystem of Dhall and in turn affect its citizens.

2.2.1 That the Republic of Kartina has breached its legal obligations owed to the Democratic Republic of Dhall under the River Biffin Treaty.

17. It is humbly submitted that the construction of a dam by the Republic of Kartina on river Biffin in violation of the *River Biffin Water Treaty, 1979* such violations have led to a breach of its legal duties towards Dhall. It is submitted that the Republic of Dhall is in violation of Art II (1) and II (2), along with Art IV (3), and Art V (3). Further, breach of an agreement of a contractual character between States or organizations of States, that create legal rights and duties, is an infringement of the Principle of sanctity of the contracts. In its advisory opinion in 1992 on the *Designation of Workers Delegation in the International*

Labour Conference, the Permanent Court of International Justice emphasised that the contractual obligation was not merely ‘moral obligation’ but was ‘an obligation by which, in law, the parties are bound to another.’

18. It is most humbly submitted that a treaty creates a binding obligation on the States who are parties to it, and omission of such duty is a violation of the basic binding Principle of international treaty law, *Pacta Sunt Servanda*, which means that agreements must be kept. It is further submitted that any act or omission by the Republic of Kartina not in accordance with the *River Biffin Treaty, 1979*, is a violation of the Principles of international treaty law.

2.2.2 That the breach of the legal obligations of the Republic of Kartina shall have an adverse impact on the environment and the citizens of the Democratic Republic of Dhall.

19. It is humbly submitted that the concept of state responsibility or international liability is a Principle by which States may be held accountable in inter-State claims under international law. The foundation of such responsibility lies in the breach of obligations undertaken by States or as imposed on them by international law. Responsibility in environmental law arises because of breach of one or more customary obligations or breach of a treaty. In *Union of India v. Agricas LLP*²⁹, it was held “Contracting states are under an obligation to act in conformity with the rules of international law and bear responsibility for breaches...” It is further submitted that while the Republic of Kartina contends that the course of river Biffin shall not change until 2030, by which time the treaty will have lapsed, it is to be taken into consideration that mere lapse of a treaty does not absolve a State of its responsibilities. In other words, once responsibility has accrued as a result of an internationally wrongful act,

²⁹ Union of India v. Agricas LLP39, (2021) 14 SCC 341: 2020 SCC OnLine SC 675

it is not affected by the subsequent termination of that obligation, the *International Court of Justice* observed in the *North Cameroons Case*:³⁰

“If during the life of the Trusteeship the Trustee was responsible for some act in violation of the terms of the Trusteeship Agreement which resulted in damage to another Member of the United Nations or to one of its nationals, a claim for reparation would not be liquidated by the termination of the Trust.”³¹

20. It is most humbly submitted that the breach of the treaty leads to the exclusion of Kartina’s responsibility towards the environment, the ecosystem around river Biffin, and the citizens of Dhall. It is contended that the construction of the run of river plant shall cause material change and obstruction to the natural channel of river Biffin, this would have serious impacts on the agriculture industry.

³⁰ Northern Cameroons, Preliminary Objections, Judgment, I.C.J.Reports 1963, p. 15

³¹ Ibid at p. 35.

CONTENTION 3: THAT REPUBLIC OF KARTINA'S CLAIM OF NON-APPLICABILITY OF THE FUNDAMENTAL RIGHTS, ENSHRINED IN THE CONSTITUTION OF KARTINA, ON THE PEOPLE OF DHALL IS INVALID

21. It is humbly submitted before this Hon'ble Tribunal references of right to a decent, or healthy or viable environment have appeared in several global and regional human rights treaties, in declarations or resolutions of some international organizations and effort has also been made by human right institutions to derive environmental rights from other internationally protected rights, such as right to life, right to property. It is also submitted that there exists a growing tendency to give environmental protection a constitutional status in many national legal systems, either explicitly, or by judicial interpretation of other constitutional guarantees.

3.1 THAT THE FUNDAMENTAL RIGHTS ENSHRINED IN THE KARTINIAN CONSTITUTION ARE IN CONSONANCE WITH INTERNATIONAL HUMAN RIGHTS.

22. It is humbly submitted that international human rights treaties generally require a state party to secure the relevant rights and freedoms for everyone within its own territory or subject to its jurisdiction. This suggests that a State cannot be held responsible for violating the rights of persons in other countries, but the European Court of Human Rights has in several cases held States responsible for extra-territorial effects. In the case of *Cyprus v. Turkey*³², the Court reaffirmed that the 'responsibility of contracting States can be involved by acts or omissions of their authorities which produce effects outside their own territory. It was also observed that States may be held responsible for their failure to control transboundary pollution and environmental harm caused by activities within their own territory.

³² *Cyprus v. Turkey*, Council of Europe: European Court of Human Rights, 10 May 2001, 25781/94

23. It is further submitted that equality of access to transboundary remedies and procedure is based on the Principle of non-discrimination: where domestic remedies are readily available to deal with international pollution or environmental, international or regional law can be used to ensure that the benefit of these remedies and procedures is extended to transboundary claimants. As defined by OECD³³, equal access and non-discrimination should ensure that any person who has suffered transboundary environmental damage or who is exposed to a significant risk of such damage obtains at least equivalent treatment to that afforded to individuals in the country of origin. It is submitted that Art 30 of the *Berlin Rules*, states ‘*A person who suffers or is under a serious threat of suffering damage from programs, projects, or activities relating to the waters in another State shall be entitled in the other State to the same extent and on the same conditions as a person in that State to participate in an environmental impact assessment procedure*’. As per this, the Republic of Kartina has violated the right of the citizens of Dhall to duly participate in the decision-making process of the dam, this has deprived them of an opportunity to advocate for themselves.

24. It is further submitted that the Supreme Court in the case of *Chairman Railway Board and Ors. v. Chandrima Das and Ors*³⁴, reiterated that the fundamental rights were in consonance with international human rights.

³³ OECD, Council Recommendation for the Implementation of a Regime of Equal Right of Access and Non-Discrimination in Relation to Trans-frontier Pollution, OECD Doc. C(77)28 Final (1977), reprinted in 16 I.L.M. 977 (1977)

³⁴ The Chairman Railway Board & Ors v. Mrs. Chandrima Das & Ors, (2000) 2 SCC 465

The fundamental rights are available to all the citizens of a country but a few of them are also available to persons.... The fundamental rights under the constitution are almost in consonance with the rights contained in Universal Declaration of Human Rights as also the Declaration of Human Rights as also the Declaration and the Covenants of Economic, Social and Cultural Rights, to which India is a party having ratified them. That being so... it has to have same meaning and interpretation as has been placed on that word by the Supreme Court in its various decisions relating to Art 21 of the Constitution of India. According to the tenor of the language used in Art 21, it will available not only to every citizen of this country, but also to a person who may not be a citizen”

25. It is most humbly submitted that the fundamental rights enshrined in the Kartinian constitution will extend to the citizens of Dhall due to international human rights Principles and submission of the pertinent dispute to the domestic courts of the Republic of Kartina.

3.2 THAT RIGHT TO A POLLUTION FREE ENVIRONMENT AND RIGHT TO LIVELIHOOD ARE FUNDAMENTAL RIGHTS.

26. It is humbly submitted that right to life as under Art 21³⁵ of the Constitution includes the right of enjoyment of a pollution free atmosphere. This view was established by the Supreme Court in the case of *Subhash Kumar v. State of Bihar*³⁶, it was observed that right of enjoyment of a pollution free environment falls under the ambit of Art 21. This view has been further strengthened in cases such as *Ratlam Municipality v. Vardhichand*,³⁷ and *M.C. Mehta v. Union of India*³⁸. It is submitted that the construction of the run-of-river plant by

³⁵ INDIA CONST. Art . 21

³⁶ Subhash Kumar v. State of Bihar 1991 AIR 420

³⁷ Ratlam Municipality v. Vardhichand A.I.R. 1980 S.C. 1622

³⁸ M.C. Mehta v. Union of India (1992) 3 S.C.C. 256: A.I.R. 1992 S.C. 382

the Republic of Kartina would pose significant threat to the environmental integrity of River Biffin. Dams have major environmental consequences, the dam wall blocks fish migrants, leading to the extinction of many fish and other aquatic species. They often also lead to greenhouse gas emissions, causing further harm to the environment.³⁹

27. It is further submitted that right to livelihood is also a part of right to life, as provided under Art 21. As per the factual matrix majority of Dhall's population is engaged in fishery and agriculture⁴⁰ as their main source of livelihood, it is contended that the construction of the dam would change the course of the river Biffin and deprive the people of irrigation facilities; the building of the damn would also negatively impact the marine life by creating ecosystem fragmentation, causing sediment displacement and subsequently have a detrimental effect on the fishermen of the country. In the case of *Olga Tellis v. Bombay Municipal Corporation*⁴¹, the Supreme Court held that the word 'life' in Art 21 includes the right to livelihood, it was observed that an integral facet of right to life is the right to livelihood and that if the right to livelihood is not treated as a part of the constitutional right to life, it would be the easiest way to deprive a person of his right to life.

³⁹ INTERNATIONAL RIVERS.ORG, *Environmental Impacts of Dams* (last visited, Aug. 18, 2023).

⁴⁰ Moot Proposition ¶ 2

⁴¹ *Olga Tellis v. Bombay Municipal Corporation*, 1986 AIR 180

PRAYER FOR RELIEF

In light of the facts of the case, issues raised, arguments advanced and authorities cited, the Counsels on behalf of the Appellant humbly pray before the Biffin Water Disputes Tribunal to kindly adjudge and declare that:-

- i. That the Republic of Kartina should not be given the power to dictate the distribution of natural resources.*
- ii. The Republic of Kartina is in contravention of the principles of international environment law and international treaty law.*
- iii. That Republic of Kartina's claim of non-applicability of the fundamental rights, enshrined in the constitution of Kartina, on the people of Dhall is invalid.*

AND/OR

Pass any other order which the bench deems fit in the best interest of Justice, Equity and Good Conscience, and for this act of kindness the Counsels on behalf of the Appellant as in duty bound shall forever pray.

All of which is respectfully submitted

Sd/-

Counsels for the Appellant