

**6th SURANA & SURANA AND UNIVERSITY INSTITUTE OF LEGAL STUDIES
NATIONAL ENVIRONMENTAL LAW MOOT COURT COMPETITION, 2023**

BEFORE
THE HON'BLE BIFFIN WATER DISPUTES TRIBUNAL

ON SUBMISSION TO THE INTER-STATE WATER DISPUTES TRIBUNAL
UNDER SECTION 5(1) OF THE INTER-STATE RIVER WATER DISPUTES ACT,
1956

IN THE MATTER OF
DEMOCRATIC REPUBLIC OF DHALL
(APPLICANT)

v.

REPUBLIC OF KARTINA
(RESPONDENT)

MEMORANDUM ON BEHALF *of* THE APPLICANT

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59. Washington v. Oregon 297 U.S. 517 (1936).

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2. Stockholm Declaration, 1972.

3. United Nations Charter of Economic Rights and Duties of States, 1972.

4. Helsinki Rules on the uses of the Waters of International Rivers, 1966.

5. United Nations Declaration on Rights to Development, 1986.

6. Convention on the Law of Non-Navigational uses of International Watercourses, 1997.

7. Vienna Convention on the Law of Treaties, 1969.

8. United Nations Declaration on Human Rights, 1948.

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STATUTES

1. The Inter-State River Water Disputes Act, 1956.

2. The Constitution of India, 1950.

STATEMENT OF JURISDICTION

The Applicant has approached this Hon'ble Tribunal under Section 5(1)¹ of the Inter-State River Water Disputes Act, 1956.

This Hon'ble Tribunal is constituted under Section 4² of the Inter-State River Water Disputes Act, 1956.

The present memorandum set forth the facts, contentions, and arguments in the present case.

¹ Adjudication of water disputes (1) When a Tribunal has been constituted under section 4, the Central Government shall, subject to the prohibition contained in section 8, refer the water disputes and any matter appearing to be connected with, or relevant to, the water dispute to the Tribunal for adjudication.

² Constitution of Tribunal.— 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

1. The republic of Kartina is a developing country situated in the continent of Tymayus. The country is a home to rich and fertile soil, due to which the large portion of its people are engaged in agriculture. To a large extent the water used to irrigate crops was taken from river Biffin which flows from Kartina to Dhall. The Republic of Dhall shared its eastern border with Kartina. The major occupation of this country is fishing and farming which is carried out through the river Biffin.
2. In the year 1979, both the countries signed a bilateral treaty which would be in force for 50 years post which the delegates would have to renew it. As per the treaty none of the parties could take any action that could change the flow rate or course of the river Biffin. On June 22, 2022, the president of Kartina announced the construction of The Great Kartina Dam on the river Biffin which would be fully constructed by 2036. Prior to this announcement no information was given to Dhall.
3. Kartina offered Dhall the hydroelectricity generated by this Dam at subsidized rates. Ms. Nancy Lu, the Prime Minister of Dhall expressed her displeasure with the Dam and said that although the subsidized electricity would be beneficial, it could not outweigh the downfalls that would be caused. On 28th September 2022, she presented a report detailing the adverse consequences that the construction would result into.
4. Mr. Mubble responded to the report stating that the way to propel a nation into the future is to rely on technological advancements rather than worry about environmental preservation. The Democratic Republic of Dhall approached the domestic courts at the Republic of Kartina to resolve the dispute. As per the Inter-State Water Disputes Act, the central government of Kartina formed an ad-hoc tribunal to resolve this issue.

STATEMENT OF ISSUES

~I~

KARTINA CLAIMS THAT THE QUESTION OF PROPORTIONALITY OF RESOURCES SHOULD BE SOLVED ON THE BASIS OF THE POPULATION AND THE LENGTH OF FLOW WITHIN EACH COUNTRY. WHETHER ON THE BASIS OF PROPORTIONALITY AND THE GENERALLY ACCEPTED PRINCIPLES OF ENVIRONMENTAL LAW, KARTINA SHOULD BE GIVEN THE POWER TO DICTATE HOW NATURAL RESOURCES ARE DISTRIBUTED?

~II~

KARTINA CLAIMS THAT WHILE THE TREATY IS IN FORCE, THE FLOW OF THE RIVER IS NOT AFFECTED. DHALL IS OF THE VIEW THAT EVEN IF THE WATER OF THE RIVER IS NOT AFFECTED UNTIL 2030, THE DREDGING AND CONSTRUCTION AROUND THE RIVER IS BOUND TO HAVE LONG-TERM EFFECTS. IS KARTINA IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENT LAW AND INTERNATIONAL TREATY LAW?

~III~

KARTINA CLAIMS THAT THE FUNDAMENTAL RIGHTS OF THE CONSTITUTION OF KARTINA WILL NOT APPLY TO THE PEOPLE OF DHALL. IS THIS A VALID CLAIM, IN THE CONTEXT OF CONSTITUTIONAL LAW AND THE TREATY?

SUMMARY OF ARGUMENTS

~I~

KARTINA CLAIMS THAT THE QUESTION OF PROPORTIONALITY OF RESOURCES SHOULD BE SOLVED ON THE BASIS OF THE POPULATION AND THE LENGTH OF FLOW WITHIN EACH COUNTRY. WHETHER ON THE BASIS OF PROPORTIONALITY AND THE GENERALLY ACCEPTED PRINCIPLES OF ENVIRONMENTAL LAW, KARTINA SHOULD BE GIVEN THE POWER TO DICTATE HOW NATURAL RESOURCES ARE DISTRIBUTED?

It is humbly submitted before this Hon'ble tribunal that Kartina should not be given the power to dictate how natural resources should be distributed. Kartina has failed to comply with the obligations that a state must follow to exercise its sovereign powers without causing harm to other states, thereby violating the principle of good neighbourliness. Kartina has also contravened many principles of international laws such as not considering the interests of the co-riparian state, and not providing timely and prior information to another state in good faith on activities that may have detrimental effects on them.

~II~

KARTINA CLAIMS THAT WHILE THE TREATY IS IN FORCE, THE FLOW OF THE RIVER IS NOT AFFECTED. DHALL IS OF THE VIEW THAT EVEN IF THE WATER OF THE RIVER IS NOT AFFECTED UNTIL 2030, THE DREDGING AND CONSTRUCTION AROUND THE RIVER IS BOUND TO HAVE LONG-TERM EFFECTS. IS KARTINA IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENT LAW AND INTERNATIONAL TREATY LAW?

It is humbly submitted before this Hon'ble tribunal that Kartina has displayed its non-compliance with the obligations of not only the River Biffin Water Treaty but has also failed to consider the principles of the International Treaty Law and the International Environment Law.

Kartina has unilaterally broken the River Biffin Water Treaty by building a dam over the shared water resource which would eventually affect the flow of water reaching the republic of Dhall. Kartina has disregarded the provisions of the Vienna Convention on the Law of treaties and has in bad faith tried to disobey with the treaty signed between Dhall and Kartina.

~III~

KARTINA CLAIMS THAT THE FUNDAMENTAL RIGHTS OF THE CONSTITUTION OF KARTINA WILL NOT APPLY TO THE PEOPLE OF DHALL. IS THIS A VALID CLAIM, IN THE CONTEXT OF CONSTITUTIONAL LAW AND THE TREATY?

It is humbly submitted before this Hon'ble tribunal that, the Constitution of Kartina will apply to the people of Dhall as per Article VII of the River Biffin Water Treaty which was mutually agreed between Kartina and Dhall. Kartina has violated the right to life of the people of Dhall by denying them the access to the only source of water that is river Biffin. Kartina through its actions has violated their fundamental right of right to life as enshrined in the Constitution of Kartina.

ARGUMENTS ADVANCED

~I~

KARTINA CLAIMS THAT THE QUESTION OF PROPORTIONALITY OF RESOURCES SHOULD BE SOLVED ON THE BASIS OF THE POPULATION AND THE LENGTH OF FLOW WITHIN EACH COUNTRY. WHETHER ON THE BASIS OF PROPORTIONALITY AND THE GENERALLY ACCEPTED PRINCIPLES OF ENVIRONMENTAL LAW, KARTINA SHOULD BE GIVEN THE POWER TO DICTATE HOW NATURAL RESOURCES ARE DISTRIBUTED?

1. It is humbly submitted before this Hon'ble tribunal that Kartina should not be given the power to dictate how natural resources should be distributed, Kartina has violated the principle of good neighbourliness and Kartina has also contravened several general principles of international law.

A. KARTINA DOES NOT HAVE THE POWER TO DICTATE HOW NATURAL RESOURCES SHOULD BE DISTRIBUTED

2. Kartina does not have the right to dictate how natural resources should be distributed without consulting Dhall as it is also enshrined under **Article 3 of the United Nations Charter of Economic Rights and Duties of States** which prescribes that, "In the exploitation of natural resources shared by two or more countries, each State must cooperate on the basis of a system of information and prior consultations in order to achieve optimum use of such resources without causing damage to the legitimate interest of others."
3. In **Territorial Jurisdiction of Int'l Comm'n of River Oder (U.K. v. Pol.)**³, it was held by the Permanent Court of International Justice that "*This community of interest in a*

³ Territorial Jurisdiction of the International Commission of the River Oder, United Kingdom v. Poland, ICGJ 263 (PCIJ 1929).

navigable river becomes the basis of a common legal right, the essential features of which are the perfect equality of all riparian states in the use of the whole course of the river and exclusion of any preferential privilege of any one riparian state in relation to others.” In the present case, Dhall is entitled to a right to equality in the use of water of River Biffin, which is being violated by Kartina.

4. In the present case, despite Kartina having a larger population, the fact that the entire population of Dhall depends upon the water of river Biffin for its livelihood cannot be ignored. After the construction of The Great Kartina Dam, the lives of farmers and fishermen of Dhall would be drastically affected. The report by Dhall’s leading environmental scientist clearly states that “Dams disrupt, reduce, and alter the flow of water. In drier months especially, the volume of water is reduced drastically.”
5. In the case of **Wyoming v. Colorado**⁴, it was held by the Hon’ble Supreme Court that, “*each State has full jurisdiction over the lands within its borders*” and further held that “when a water resource is shared between several States, each one *has an interest which should be respected by the other.*” And, in this case, the Bench denied the argument that a State may exercise exclusive ownership or control of interstate “waters flowing within her boundaries.”
6. In the **Krishna Water Disputes Tribunal Report**, it was held by the hon’ble tribunal that “*The imbalances have to be mitigated and it is to be ensured that any State, generally the upper riparian State, may not have any unfair advantage over the lower riparian States which are situated in a comparatively disadvantageous position. Again, no State may suffer only since its drainage contribution to the total yield of the river is less than that of the other States, may proportionately be allocated lesser share in the flows of the river.*” In the

⁴ Wyoming v. Colorado, 259 U.S. 419 (1922).

present case, the republic of Kartina is using the unfair advantage of being an upper riparian state which is placing Dhall in a very disadvantageous position.

B. THE PRINCIPLE OF GOOD NEIGHBOURLINESS

7. Kartina, in the present case, has also violated the principle of good neighbourliness⁵, a principle supported by ICJ through various judgements. In the **Corfu Channel Case**⁶, the ICJ stated the obligation as “*State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.*” Furthermore, in the **Gabcikovo-Nagymaros Case**⁷, the International Court of Justice regarding the good neighbourliness principle held that “*modern development of international law has strengthened this principle for the non-navigational uses of international watercourses as well.*”
8. Kartina, in the present case, is constructing the Great Kartina Dam to improve the lives of the people of the Republic of Kartina, but since a large population of Dhall is engaged in farming and fishing, which would be drastically affected after the construction of this dam, Dhall has a right to have reasonable use of the water, which is also enshrined in the **Helsinki Rules on the Uses of the Waters of International Rivers**. Article VII of the aforesaid rules states that “A basin State may not be denied the present reasonable use of the waters of an international drainage basin to reserve for a co-basin State a future use of such waters.”
9. In the case of Wyoming v. Colorado, it was concluded by the hon’ble court that, “*avoiding harm to an existing economy is a weighty factor in comparing harms and benefits.*” The economy of the Republic of Dhall is heavily dependent on the waters of River Biffin, and

⁵ Argentina v. Uruguay, (2010) I.C.J. Rep. 2010; *see also*: France v. Turkey, PCIJ Series A No 10; Netherlands v. USA, I.C.G.J. 392 PCA 1928; United Kingdom of Great Britain & Northern Ireland v. Albania, 1949 I.C.J. 9; United Kingdom v. Iceland, (1974) I.C.J. Rep. 1974.

⁶ Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania), ICGJ 201 (ICJ 1949).

⁷ Gabčíkovo-Nagymaros Project, Hungary v. Slovakia, [1997] ICJ Rep 7.

the construction of the dam would cause irreversible harm like degradation of the quality of water, deficiency in sediment load, and coastal erosion as mentioned in the report. And with the construction of the Dam, Kartina is clearly causing harm to an existing economy.

10. Also, the principle of '*sic utere tuo ut alienum non laedas*' in international law prohibits states from conducting or permitting activities within their territory that harm other states. In the case of **USA v. Canada**⁸, also known as the **Trail Smelter case**, the arbitral tribunal proposed the definition of the *sic utere* principle as "*No State has the right to use or permit the use of its territory in such a manner as to cause injury to the territory of another or the properties or persons therein*". This definition was also affirmed in the **Lake Lanoux arbitration award case**⁹ between France and Spain. In the present case, the Republic of Kartina is violating the principle of '*sic utere tuo ut alienum non laedas*', by causing harm to the Republic of Dhall.

11. In the case of **Colorado v. New Mexico**¹⁰, the hon'ble United States Supreme Court held that "*The doctrine of equitable apportionment is invoked for allocation of a shared water resource between two or more States.*" But in the case of **Florida v. Georgia**¹¹, it was held by the hon'ble court regarding the good neighbourliness principle that "*It stands alone as the federal common-law principle for disputes over interstate water. The doctrine's 'guiding principle' is that States 'have an equal right to make a reasonable use' of a shared water resource.*"

⁸ USA v. Canada, (1938 and 1941) 3 R.I.A.A. 1905; *see also*: Reid v. Linnell, 354 U.S. 1 (1956); Costa Rica v. Nicaragua, [2018] ICJ Rep 15

⁹ Lake Lanoux Arbitration (France v. Spain), (1957) 12 R.I.A.A. 281.

¹⁰ Colorado v. New Mexico, 467 U.S. 310 (1984); *see also*: Washington v. Oregon, 297 U.S. 517 (1936).

¹¹ Florida v. Georgia, 58 U.S. 478 (1854).

C. GENERAL PRINCIPLES OF INTERNATIONAL LAW.

12. The hydroelectric project will bring development to the Republic of Kartina, but it does not outweigh the detriments that Dhall will have to face post-construction of the Dam. It is enshrined in **Article 3(2) of the UN Declaration on Right to Development**¹² that “The realization of the right to development requires full respect for the principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations.”
13. Similarly, **Article 5 of The Convention on the Law of Non-Navigational Uses of International Watercourses**, prescribes that “Watercourse states shall in their respective territories utilise an international watercourse in an equitable and reasonable manner. An international watercourse shall be used and developed by watercourse states with a view to attaining optimal and sustainable utilisation thereof and benefits therefrom taking into account the interests of the watercourse states concerned, consistent with adequate protection of the watercourse.”
14. Kartina has also not acted in good faith, and prior to the announcement of the construction of The Great Kartina Dam, no information was given to Dhall. **Principle 19 of the Rio Declaration** stipulates that “states shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.”

Hence, it is humbly submitted before this Hon’ble tribunal that, Kartina should not be given the power to take control over the distribution of natural resources since both the countries have an equal right over the shared water resource.

¹² Article 3(2), UN Declaration on the Right to Development, 1986.

~II~

KARTINA CLAIMS THAT WHILE THE TREATY IS IN FORCE, THE FLOW OF THE RIVER IS NOT AFFECTED. DHALL IS OF THE VIEW THAT EVEN IF THE WATER OF THE RIVER IS NOT AFFECTED UNTIL 2030, THE DREDGING AND CONSTRUCTION AROUND THE RIVER IS BOUND TO HAVE LONG-TERM EFFECTS. IS KARTINA IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENT LAW AND INTERNATIONAL TREATY LAW?

1. It is humbly submitted before this Hon'ble tribunal that, Kartina through its acts has not only failed to comply with the obligations of the River Biffin Water Treaty but has also failed to act in accordance with the principles of international law of treaties. The Republic of Kartina has also contravened many principles of international environment law and has acted in bad faith.
 - A. KARTINA HAS CONTRAVENED THE PRINCIPLES OF INTERNATIONAL TREATY LAW**
2. As per **Article 18 of the Vienna Convention on the Law of Treaties, 1969**¹³, “A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:
(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.” Also, **Article 26** of the convention states that, “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”
3. In the present case, Kartina's actions reflect a breach of its commitment under the internationally recognized law of treaties. Instead of upholding the spirit of the treaty, it has

¹³ VIENNA CONVENTION ON THE LAW OF TREATIES, <https://treaties.un.org>, (last visited on Aug. 22, 2023).

engaged in a deliberate attempt to undermine it and hence act in bad faith. This is evident in Kartina's decision to construct a hydroelectric power plant on the river Biffin, which directly contradicts the principles outlined in the treaty. In this case, Kartina's actions stand in stark contrast to the principle of acting in good faith as required by the treaty.

4. As per **Article 8 of the Convention on the Law of the Non-navigational used of International Watercourses**¹⁴, “Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.”
5. In the present case, by prioritizing its own interests unilaterally, Kartina's actions raise concerns about fairness and justice. Kartina has obstructed the only source of water available to Dhall for the purpose of its own unjust benefit. This has also been stated in the theory of Unjust Enrichment which states that, “No one should be unjustly enriched at the expense of another.”

B. VIOLATION OF PRINCIPLES OF ENVIRONMENTAL LAW

6. In the case of **France v. Spain**, known as **Lake Lanoux Arbitration**¹⁵, it was held by the hon’ble tribunal that “*according to the rules of good faith, the upstream State is under the obligation to take into consideration the various interests involved, to seek to give them every satisfaction compatible with the pursuit of its own interests, and to show that in this regard it is genuinely concerned to reconcile the interests of the other riparian State with its own.*” “*The correlative duty not to injure the interests of a neighbouring state.*” was also upheld by this Hon’ble Court.

¹⁴ CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES, <https://legal.un.org>, (last visited on Aug. 24, 2023).

¹⁵ Lake Lanoux Arbitration, *supra* note 9, at 18.

7. In the present case, Kartina's plan to construct a run-of-river hydroelectric plant on the river Biffin is driven by the goal of benefiting its own citizens. However, this plan overlooks the potential consequences for its neighbouring nation, Dhall. The entirety of Dhall's economy is dependent on the waters of the river Biffin, supporting the livelihoods of its predominantly agricultural and fishing-based population. Despite this, the president of Dhall has expressed a clear emphasis on technological progress, seemingly disregarding the potential environmental impacts.
8. **Article 7 of the International Law Commission**¹⁶, specifies that States shall utilize an international watercourse in a manner that does not cause appreciable harm to other watercourse States. To be an appreciable harm, there must be a "real impairment of use, i.e., a detrimental impact of some consequence" upon the public health, industry, property, agriculture, or the environment of another State. Also, The No-Harm rule is a widely recognised principle of customary international law whereby a State is duty-bound to prevent, reduce and control the risk of environmental harm to other states.
9. **The principle 21 of the Stockholm Declaration**¹⁷ states that, states have the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.
10. As per the **Natural Flow Doctrine**, Riparian owners may be entitled to the "natural flow" of a watercourse. Under the natural flow doctrine, riparian owners have a right to enjoy the natural condition of a watercourse, undiminished in quantity or quality by other riparian

¹⁶ DRAFT ARTICLES ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES, <http://legal.un.org>, (last visited Aug. 24, 2023).

¹⁷ DECLARATION OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT, STOCKHOLM, <http://legal.un.org>, (last visited Aug. 22, 2023).

owners. Every riparian owner enjoys this right to the same extent and degree, and each such owner maintains a qualified right to use the water for domestic purposes, such as drinking and bathing.

11. In the present case, constructing a run-of-river plant by Kartina on the river Biffin could disturb the river's natural flow, resulting in a substantial decrease in water reaching Dhall. This disruption would have cascading effects on aquatic life and the river's surrounding ecosystems. The consequential risk to Dhall's primary economic pursuits, particularly its fishing industry dependent on the river's ecosystem, would be significant. Additionally, the diminished water flow would impede irrigation practices, further deteriorating the economic impact on Dhall.

C. TREATY UNILATERALLY BROKEN BY KARTINA WITHOUT MUTUAL AGREEMENT

12. The **Principle of Community of interests**¹⁸ treats the entire river as one hydrological unit that should be managed as an integrated whole. Each State within the basin has a right of action against any other basin State, such that no State may affect the resource without the cooperation and permission of its neighbours. In the present case, Kartina was bound by the obligation of **Article V (3) of The River Biffin Water Treaty**¹⁹ which states that “if either Party plans to construct any engineering work which would cause interference with the water of the River and which, in its opinion, would affect the other Party materially, it shall notify the other Party of its plans and shall supply such data relating to the work as

¹⁸ Belgium v. Spain, 1970 I.C.J. Rep. 3.; *see also*: Democratic Republic of Congo v. Belgium, (2002) I.C.J. Rep. 3; Ecuador v. Peru, Luna, F.D. (1996); Kansas v. Colorado, 206 U.S. 46 (1907); Nebraska v. Wyoming, 325 U.S. 589 (1945); Nicaragua v. United States of America, (1984) I.C.J. Rep. 187.

¹⁹ Article V (3) River Biffin Water Treaty, Page 8 Moot Preposition.

may be available and as would enable the other Party to inform itself of the nature, magnitude and effect of the work.”

13. Kartina's actions have raised concerns regarding the River Biffin Water Treaty. The proposed construction of a dam could potentially impede the water flow to Dhall on a significant scale. There has been a lack of communication on the part of Kartina with Dhall regarding these plans, which would subsequently benefit the republic of Kartina in all aspects, but it has failed to take into account the detrimental effects that the construction would have on not only on the environment but also on the economy of Dhall.

14. **Article 11 of the Draft Articles on the law of the non-navigational uses of international watercourses** by International Law Commission, obliges watercourse States to "exchange information and consult with each other on the possible effects of planned measures on the condition of an international watercourse."

Hence, it is humbly submitted before this Hon'ble tribunal that, Kartina has not only violated the International Treaty principles but has also contravened with the River Biffin Water Treaty.

~III~

KARTINA CLAIMS THAT THE FUNDAMENTAL RIGHTS OF THE CONSTITUTION OF KARTINA WILL NOT APPLY TO THE PEOPLE OF DHALL. IS THIS A VALID CLAIM, IN THE CONTEXT OF CONSTITUTIONAL LAW AND THE TREATY?

1. It is humbly submitted before this Hon'ble Tribunal that the constitution of Kartina will apply on the people of Dhall with respect to the mutually agreed treaty between Dhall and Kartina. The people of Dhall are not only entitled to basic human rights but also have the right to claim remedy under the constitution of Kartina.

A. VIOLATION OF FUNDAMENTAL RIGHTS BY KARTINA

2. **Article 21 of the Constitution of Kartina** states that, “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”²⁰ The word ‘person’ in the statute signifies that this right is not only available for the citizens, but the non-citizens can also avail remedy under this provision if their rights are infringed. This was also rightly pointed out in the case of **Nandita Haksar v. State of Manipur & Ors.**²¹
3. In the present case, as per **Article VII (2) of the River Biffin Water Treaty** which states that, “*As soon as a dispute to be settled in accordance with the paragraphs of this Article has arisen, the Parties are free to approach either the Kartinian or Dhallian domestic courts for the adjudication of the matter. The respective Constitution will apply.*” Therefore, since the case is currently under the court of Kartina, the constitution of Kartina will apply on Dhall.
4. In the case of **Narmada Bachao Andolan v. Union of India**²² the Hon’ble Supreme Court held that, “*Water is the basic need for the survival of human beings and is part of the right*

²⁰ Consumer Education and Research Forum v. Union of India, AIR 1995 SC 922; *see also*: Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180; Shantistar Builders v. Narayan, AIR 1990 SC 630; Kumar v. State of Bihar, AIR 1991 SC 420; T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267; Murli S. Deora v. Union of India, (2001) 8 SCC 765; Essar Oil Ltd. v. Halar Utkarsh Samiti, AIR 2004 SC 1834; State Of Punjab & Ors v. Mohinder Singh Chawla , AIR 1997 SC 1225; M.C. Mehta v. Union of India 1986 (2) SCC 176; Free Legal Aid Cell Shri Sujan Chand Aggrawal alias Bhagatji v. Govt. of NCT of Delhi, AIR 2001 Delhi 455; Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nandkarni, AIR 1983 SC 109; Air India Statutory Corporation v. United Labour Union & Ors., (1992) 94 BOMLR 238; Durga Dutt & Ors. v. State of Himachal Pradesh, L.I.C. Of India & Anr. v. Consumer Education & Research, (1995) 5 SCC 482; Senior Divisional Commercial v. S.C.R Caterers, AIR 2016 SC 668; Maneka Gandhi v. Union of India, AIR 1978 SC 597; Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295; Sunil Batra v. Delhi Administration & Ors., 1980 SCR (2) 557; Rajesh Yadav v. The State Of Uttar Pradesh, Criminal Appeal No. 339-340 OF 2014.

²¹ Nandita Haksar v. State of Manipur & Ors., Writ Petition (Crl.) No. 6 of 2021; *see also*: Louis De Remy v. Union of India, 1991 SCR (3) 149; National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742; Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta & Ors., AIR 1955 SC 367.

²² Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664; *see also*: M.C. Mehta v. Union of India, (1986) 2 SCC 176; Madan Lal v. State of Himachal Pradesh, AIR 2003 SC 3642; Susetha v. State of Tamil Nadu, Appeal (civil) 3418 of 2006; Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647.

to life and human rights as enshrined in Article 21 of the Constitution of India.” Also, in the case of **State of Karnataka v. State of Andhra Pradesh**²³ the court rightly pointed out that, *“the right to water is a right to life, and thus a fundamental right.”*

5. In the case of **Delhi Water Supply & Sewage v. State of Haryana**²⁴, the Supreme Court said that *“Water is a gift of nature. The primary use to which the water is put being drinking, it would be mocking the nature to force the people who live on the bank of a river to remain thirsty, whereas others incidentally placed in an advantageous position are allowed to use the water for non-drinking purposes. A river has to flow through some territory; and it would be travesty of justice if the upper-riparian States were to use its water for purposes like irrigation, denying the lower riparian States the benefit of using the water even for quenching the thirst of its residents.”*
6. In the present case, the only source of water in Dhall is river Biffin, because of which its entire population depends upon the water of the river to not only carry out their domestic chores but also for carrying out their economic activities that is majorly fishing and farming. The actions of Kartina would result in obstructing the flow of water of river Biffin and hence would deprive the citizens of Dhall from their basic human right of Water.
7. In the case of **Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers**²⁵ the Hon’ble court held that, *“right to know falls under the scope of Article 21 of the Indian Constitution as an essential ingredient of participatory democracy.”* In the

²³ State of Karnataka v. State of Andhra Pradesh (2000) 9 SCC 572, *also refer*; Chameli Singh v. State of Uttar Pradesh, (1996) 2 SCC 549.

²⁴ Delhi Water Supply & Sewage v. State of Haryana, (1996) 2 SCC 572; *see also*: Ambica Quarry Works v. State of Gujarat & Ors., AIR 1987 SC 1073; Andhra Pradesh Pollution Control Board v. M.V. Nayudu, (1999) 2 SCC 718; Research Foundation for Science Technology and Natural Resources Policy v. Union of India, (2005) 10 SCC 510.

²⁵ Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, AIR 1989 SC 190.

present case, no information regarding the construction of dam over river Biffin was given to Dhall by Kartina prior to its announcement.

B. INFRINGEMENT OF BASIC HUMAN RIGHTS

8. Kartina through its acts have violated the basic human rights of the people of Dhall. United Nations²⁶ while defining Human Rights stated that, “Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.”
9. The Hon’ble Supreme Court in the case of **State Of Andhra Pradesh v. State of Karnataka & Ors.**²⁷ held that, “*The disputes relating to water management, its development and its distribution are to be considered not from rigid technical or legal angle but from the pre-eminently important humanitarian point of view as water wealth admittedly forms a focal point and basis for the biological essence and assistance of socio-economic progress and well-being of human folk of all the countries.. There is no dispute that under the constitutional scheme in our country right to water is a right to life and thus a fundamental right.*”
10. In the present case, Kartina's actions are disrupting the natural course of River Biffin, which initially passes through Kartina before reaching Dhall. In Dhall, the water from the river serves as a crucial resource for both domestic needs and vital economic activities, particularly agriculture and fishing, which form the backbone of the majority of the population's livelihoods. As a result, Dhall's reliance on the water from River Biffin is

²⁶ UNITED NATIONS, <https://www.un.org>, (last visited Aug. 24, 2023).

²⁷ State of Andhra Pradesh v. State of Karnataka & Ors., (2000) 9 SCC 572.

substantial. Kartina's decision to obstruct the flow of the river has major consequences for the people of Dhall, as it infringes upon their fundamental right to life.

11. In the case of **People's Union for Civil Liberties v. State of Maharashtra**²⁸ it was held by the Hon'ble court that, "Right to live with human dignity is available to every person and even the State has no authority to violate that right except according to procedure established by law.". Also, as per **Article 7 of the Universal Declaration of Human Rights**²⁹, All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

12. Therefore, the republic of Kartina has violated the basic human rights of the people of Dhall. In doing so, Kartina has not only disregarded established legal principles but has also contravened the international conventions such as Universal Declaration of Human Rights.

C. FUNDAMENTAL RIGHTS ARE DERIEVED FROM INTERNATIONAL COVENANTS

13. It is humbly contented before this Hon'ble tribunal that the fundamental rights enshrined in the Constitution of Kartina are derived from international covenants which are applicable to all the countries including Kartina and Dhall. The apex court in the case of **Chairman Railway Board and Ors. v. Chandrima Das**³⁰ held that, "*since the word 'life' has been*

²⁸ People's Union for Civil Liberties v. State of Maharashtra; *see also*: Chandra Raja Kumari v. Police Commissioner Hyderabad, 1998 (1) ALD 810; Francis Coralie Mullin v. Union Territory of Delhi, AIR 1981 SC 746; People's Union for Civil Liberties v. State of Maharashtra, 1999 (4) BomCR 608.

²⁹ UNIVERSAL DECLARATION OF HUMAN RIGHTS, <https://www.un.org> (last visited Aug. 24, 2023).

³⁰ Chairman Railway Board and Ors. v. Chandrima Das, (2002) 2 SCC 465.

used by article 21 of the constitution as a basic human right in the same sense as understood in the Universal Declaration of Human Rights of 1948.”

14. Also, in the case of **Kesavananda Bharti v. State of Kerala**³¹, the Supreme Court held that, *“the Universal Declaration of Human Rights may not be a legal binding instrument, but it shows how India understood the nature of the human rights at the time the constitution was adopted”*. **Article 21 of the Constitution of Kartina** gives the Right to life and personal liberty to every person, which is similar to a maximum extent as that to **Article 3**³² of the **United Nations Declaration of Human Rights** and Article 6(1)³³ and 9(1)³⁴ of the International Covenant on Economic, Social and Cultural Rights.
15. In the present case, the citizens of Dhall cannot be denied their basic human rights, as they are guaranteed by global agreements and treaties. These international conventions are designed to guarantee the availability of fundamental human rights to individuals across all nations.

Hence, it is humbly contented before this Hon’ble tribunal that the Constitution of Kartina will apply to the people of Dhall because Kartina has not only violated the obligation of the treaty through its acts but has also violated the basic human rights of the people of Dhall.

³¹ Kesavananda Bharti v. State of Kerala, (1973) 4 SCC 225.

³² Article 3, The United Nations Declaration of Human Rights- Everyone has the right to life, liberty and security of person.

³³ Article 6(1), International Covenant on Economic, Social and Cultural Rights- The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right.

³⁴ Article 9(1), International Covenant on Economic, Social and Cultural Rights- Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

PRAYER FOR RELIEFS

Wherefore in the light of the issues raised, arguments advanced and authorities cited, submissions made hereto above and those to be urged at the time of hearing.

The Applicant humbly prays that this Hon'ble Tribunal may be pleased to admit the present application and declare that:

1. Kartina should not be given the power to dictate how natural resources are distributed.
2. Kartina has contravened the principles of International Environment Law and International Treaty Law.
3. The Fundamental Rights enshrined in the Constitution of Kartina are applicable on the people of Dhall.

AND/OR

Pass any other order, direction or relief that may deem fit best in the interest of justice, fairness, equity and good conscience for which the Applicant may be duty bound forever pray.

FOR THIS ACT OF KINDNESS THE APPLICANT SHALL BE DUTY BOUND

FOREVER

S/D _____

ON BEHALF OF THE APPLICANT