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**6<sup>th</sup> SURANA & SURANA AND UNIVERSITY INSTITUTE OF LEGAL STUDIES**

**NATIONAL ENVIRONMENT LAW MOOT COURT COMPETITION, 2023**

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*Before*

**BIFFIN WATER DISPUTES TRIBUNAL**

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**IN THE MATTER OF**

**DEMOCRATIC REPUBLIC OF DHALL.....APPELLANT**

**v.**

**REPUBLIC OF KARTINA.....RESPONDENT**

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**MEMORIAL ON BEHALF OF THE RESPONDENT**

**DRAFTED AND FILED BY THE COUNSELS FOR THE RESPONDENT**

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## STATEMENT OF JURISDICTION

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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

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- **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...

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## STATEMENT OF FACTS

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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.

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## STATEMENT OF ISSUES

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### 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?



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## **SUMMARY OF ARGUMENTS**

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### **CONTENTION 1: THAT THE REPUBLIC OF KARTINA SHOULD BE GIVEN THE POWER TO DICTATE THE DISTRIBUTION OF NATURAL RESOURCES.**

It is submitted before this Hon'ble Tribunal that Kartina should be given the power to dictate the distribution of natural resources on the basis of the Doctrine of Permanent Sovereignty over the natural resources and the Principle of Equitable Utilisation of the natural resource, with reference to the population of Kartina and the length of river that flows through the territory of the Kartina.

### **CONTENTION 2: THAT THE REPUBLIC OF KARTINA IS NOT IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENT LAW AND INTERNATIONAL TREATY LAW.**

It is submitted before this Hon'ble Tribunal that the dredging and construction that will be undertaken by the Kartina for the construction of Run-of-River hydroelectric power plant is not in contravention with the principle of international environmental law and principle of international treaty law as firstly, the such constructional work is within the a periphery of the principles of international environmental law and secondly, such constructional activity is permitted by the River Biffin Water Treaty.

### **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 VALID.**

It is submitted before this Hon'ble Tribunal that the fundamental rights, provided in the constitution of Kartina will not apply on the people of Dhall because the people of Dhall do not come under the compulsory jurisdiction of the constitutional law. Moreover, being the signatory of international human rights form, does not bind the applicability of local laws on

people of the states and lastly, there is a lack of appropriate form to try international cases within the domestic territory of the Kartina.

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## ARGUMENTS ADVANCED

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### CONTENTION 1: THAT THE REPUBLIC OF KARTINA SHOULD BE GIVEN THE POWER TO DICTATE THE DISTRIBUTION OF NATURAL RESOURCES.

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1. It is humbly submitted before this Hon'ble Tribunal that the Republic of Kartina should be given the power to dictate the distribution of natural resources, both the water and the hydroelectric power generated using the water on the basis of the population and the length of flow of the river within each country. Since, the Republic of Kartina has a bigger population and the river Biffin flows its source in the north to the south of the country's landmass, the country of Kartina should have a say in determining the distribution of these resources. Moreover, the country of Kartina has permanent sovereignty over its natural resources and further, has the access to the equitable utilisation of natural resources.

#### 1.1 THAT KARTINA HAS PERMANENT SOVEREIGNTY OVER ITS NATURAL RESOURCES.

2. The right to self-determination, as a newly emerged peremptory norm<sup>1</sup>, includes the inherent element of free disposal of States over their natural wealth and resources connected with their territory, to be exercised in the interest of the well-being of their population<sup>2</sup>. It is submitted that the *UN General Assembly Resolution, 1803* proclaims "the right of peoples

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<sup>1</sup> FROWEIN, JUS COGEN; DIXON, TEXTBOOK OF INTERNATIONAL LAW (2007), 164; SHAW, INTERNATIONAL LAW (2008), 40, 255, 808, Fn.198.

<sup>2</sup> Texaco Case, 30; UNGA - Res. 1803 (XVII); Chowdhury, Permanent Sovereignty over Natural Resources in International Law, 59, 61, 64-65; Perrez, the relationship between "permanent sovereignty" and the obligation not to cause trans-boundary environmental damage, 1193; Cassese, Self-determination of Peoples (1995), 55-56; Nowak, Commentary on the UN Covenant on Civil and Political Rights (2005), 8, para. 3 and 14, para. 14; Schrijver, Sovereignty over Natural Resources - Balancing Rights and Duties (1997), 11-19

and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned” and the preamble recommended that “the sovereign right of every state to dispose of its natural wealth and resources should be respected...in accordance with their national interest”<sup>3</sup>

3. Therefore, with reference to the *UNGA Resolution, 1803*, the Republic of Kartina has a Permanent Sovereign Rights over its natural resources (including both water and hydroelectric power) and wealth, and has power to dictate the distribution of such resources in the best interest of the national development and the people of Kartina. In the case of *Reliance Natural Resource Ltd v. Reliance Industries Ltd*<sup>4</sup>, the court held that the government holds natural resources as a trust for the people of the country...it is the duty of the government to provide complete protection to the natural resources as a trustee of the people at large.
4. Further, as per the international Covenant on Economic, Social and Political Rights, it is contended that the state of Kartina has the right to freely dispose of their natural resources<sup>5</sup>. Hence, Kartina has a legitimate right to use its natural resources in a way, that they tackle the problems of substantial increase in the population, poverty, lack of consistent electricity and other as mentioned<sup>6</sup>, in the most effective and efficient manner. Furthermore, the covenant concluded that without any harm to the principle of mutual benefit and the

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<sup>3</sup> UNGA Res 1803 (XVII) (14 December 1962) Art. 1

<sup>4</sup> Reliance Natural Resource Ltd v. Reliance Industries Ltd (2010) 7 SCC 1: 2010 SCC ONLINE SC 128

<sup>5</sup> International Covenant on Civil and Political Rights, Art 1(1)

<sup>6</sup> Moot Proposition ¶ 4

obligations arising out of the international economic cooperation and international law it was set forth that in no case may a people be deprived of its own means of subsistence.<sup>7</sup>

5. Therefore, the country of Kartina while exercising its rights to use the natural resources in the best interest of its people and their survival, reap the benefit from such resources in line to the needs and rights of the affected population.

## **1.2 THAT REPUBLIC OF KARTINA HAS A RIGHT OF EQUITABLE UTILISATION OF WATER**

6. It is asserted that, the most widely endorsed theory that treats international watercourse as shared resources, subject to equitable utilisation by riparian states.<sup>8</sup> Also, equitable utilisation rests on the foundation of equality of rights, or share sovereignty and is not to be confused with equal division<sup>9</sup>. Instead, it will generally entail a balanced of interest which accommodates the needs, and uses of each state. Hence, it is generally regarded as the primary rule of customary law governing the use and allocation of international watercourse.
7. As per Article 5 of the *1997 UN Watercourse Convention*, “Watercourse states shall in their respective territories utilize an international watercourse in an equitable and reasonable manner”. Further, Article 6 of the same convention identifies the factors relevant to determining what is equitable and reasonable utilisation.<sup>10</sup> These includes:

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<sup>7</sup> Ibid. Art 1(2), International Covenant on Economic, Social and Political Rights

<sup>8</sup> McCaffrey, II YbILC (1986) Pt. 1, 110-13; Lipper, in Garretson, et.al.; The law of International Drainage Basins, 41ff.;

<sup>9</sup> Lipper, in Garretson, et.al.; The law of International Drainage Basins, 41ff.;

<sup>10</sup> ILA Helsinki Rules (1966), Article V and Rept. Of the African-Asian Legal Consultative Committee, Submmaried in II YbILC (1982)

- a. Geographic, hydrographic, hydrological, climatic, ecological, and other factors of a natural character;
  - b. The social and economic needs of the watercourse state concerned;
  - c. The population dependent on the watercourse in each state;
  - d. The effect of the use or uses of the watercourse in state on the other;
  - e. Existing and potential uses of the international watercourse;
  - f. Conservation, protection, development, and economy of use of the water resources of the watercourse...;
  - g. The availability of alternatives, of corresponding value, to a particular planned or existing use..
8. Therefore, in view of the Principle of Equitable Utilisation and the relevant factors to determine the same it is asserted that since the Republic of Kartina is a developing ex-colony<sup>11</sup> and the people are facing the living crisis, therefore power to dictate the distribution of natural resources on the basis of Equitable utilisation should be given to Kartina. As, the climate of the Kartina is unpredictable and due to increase in population and poverty, there arises the social and economic need to use the water of river Biffin and the hydropower generated from the water in the reasonable way as to protect the human life. Further, the important factors that needed to be taken in consideration is the percentage of population dependent on the watercourse and the availability of the alternative resources, as per the Para 4 of the proposition, ‘...there is a substantial increase in the population of Kartina’. Therefore, the people dependent on the watercourse are more in Kartina, when compared to

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<sup>11</sup>Moot Proposition ¶ 1

the country of Dhall. Moreover, the large portion of the people of Dhall are fisherman and fish are the largest export of Dhall. Therefore, the sea at the south of Dhall's landmass, functions as the best alternative source available to Dhall.

9. Moreover, the UNEP's principles concerning other shared resources follow that same view.

In the Icelandic Fisheries cases, the ICJ also referred to the need for an equitable allocation of common property of fishing stocks.<sup>12</sup>

10. Therefore, as the Republic of Kartina has relatively more need of the Natural resources than the Dhall. As, the Kartina has a high population, as a result more resources will be needed to satisfy the increasing wants; the people are surviving in living crisis with the abject lack of the basic necessities such as the nutrient food, clean drinking water, and the constant electricity; the country of Kartina the right of development and economic use of the water in the best interest of the nation; and mainly, the water from the river Biffin is the only source to aid such developments. Hence, it is asserted that, the Kartina should be given a say in a way the natural resources are to be distribute.

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<sup>12</sup> Icelandic Fisheries Case (Germany v. Iceland), ICJ Rep. (1974)

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**CONTENTION 2: THAT THE REPUBLIC OF KARTINA IS NOT IN  
CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL ENVIRONMENT  
LAW AND INTERNATIONAL TREATY LAW**

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11. It is humbly submitted before the Hon'ble Tribunal that the dredging and construction around the river, as an initial procedure for the construction of dam, is absolutely justifiable and legal as the Republic of Kartina is putting forth the plan of such construction in accordance with the sacrosanct principle of the international environment laws and conventions. Moreover, the River Biffin water treaty itself, provides the right to the Kartina for the of construction of Run of-River plant on the river. Therefore, the Republic of Kartina is neither in the contravention of the principle of international environment law, nor the principles of international treaty law

**2.1 THAT REPUBLIC OF KARTINA IS IN NOT CONTRAVENTION OF THE  
PRINCIPLES OF INTERNATIONAL ENVIRONMENT LAW.**

12. In the long and tortuous evolution of the human race on this plant, a stage has been reached when, though the rapid acceleration of science and technology man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment the natural and the man made, are essential to his wellbeing and to enjoyment of the basic human rights- even the right to life itself.<sup>13</sup>

13. The main argument in this contention submits that principles of international law concerning the aspects of development and the protection of the environment do exist and can be identified. Therefore, the dredging and construction activities around the river would be taken with the perspective and knowledge of the human rights and sustainable development. At Stockholm in 1972 the UN Conference on the Human Environment

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<sup>13</sup> Paramjit Jaiwals, Environment law, Ed. 2023. Pg 607.



declared that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”<sup>14</sup>. Therefore, when referred to condition of the people of Kartina in Para 4 of the moot proposition, it become evidently clear that there is an immediate need to provide the people with adequate and basic necessities of life. Therefore, in order to protect and improve the human and economic environment, the Republic of Kartina has right to development, in accordance with the Stockholm Declaration, Principle 21 proclaims that: ‘State have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies...’”

14. Furthermore, Principle 2 and 3<sup>15</sup> proclaim that the earth’s natural resources “must be safeguarded for the benefit of present and future generation’, and ‘that its capacity to produce vital renewable resources must be maintained and, if practical, restored and improved. Therefore, water is a renewable resource, only when properly managed and used responsibly. A study for the Stockholm water conference in August 2001 showed that severe water shortage could have effect well beyond existing arid one-third of the global population by 2025.

15. Also, Principle 8 and 9 of the Declaration of the UN conference in the human environment of 1972, provides that ‘economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life ‘and ‘environmental deficiencies generated by the under-development and natural disaster pose grave problem and can best

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<sup>14</sup> Principle 1 of the Stockholm Declaration, 1972

<sup>15</sup> The Stockholm Declaration, 1972

be remedied by accelerated development through transfer of technology and financial assistance...” Therefore, with increase in population in the country, the need has risen to accelerate the development of the under-developed natural resources by using science and technology<sup>16</sup>, here in particular through the means of constructing a renewable generation of power plant.

16. In addition, there exists a concept of Permanent sovereignty over natural resources and the right to development under the international law. As early as 1962, the UNGA had adopted, as an economic aspect of self-determination, a resolution on Permanent sovereignty over natural resources. Permanent sovereignty was proclaimed as a right of peoples and nations which “must be exercised in the interest of their national development and of the wellbeing of the people concerned.” Moreover, the UNGA has also been careful to formulate the ‘right to development’ with respect to the principle of international law concerning friendly relation and co-operation, as well as sustainable development.<sup>17</sup> In the case of *Powell and Rayner v. UK*, the court noted that the need of economic development may in appropriate cases outweigh the individual interest.

## **2.2 THAT THE REPUBLIC OF KARTINA IS NOT IN CONTRAVENTION OF THE PRINCIPLES OF INTERNATIONAL TREATY LAW.**

17. It is contented that, the republic of Kartina is not in contravention with the principles of the international treaty law, because it did not violate the *River Biffin Water treaty* of 1979. The core principle of the international treaty law is the principle of the *Pacta Sunt Servanda*. According to which, the parties must keep the agreement they were entered into. And in

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<sup>16</sup> Principle 18 of the Stockholm Declaration, 1972

<sup>17</sup> 1992 Rio Declaration, Principle 3; UNGA Res. 41/128 (1986)

present case, the Kartina's complies with the treaty can be established through following statements:

According to Art. II (2) of the treaty, Kartina is under the obligation to let flow all the water of the river Biffin, and shall not permit any interference with these waters, except for the following uses:

- a. domestic use
- b. non-consumptive use
- c. Agricultural use
- d. Generation of hydro-electric power

Hence, the treaty give right to the Kartina to establish a hydroelectric power plant on the river Biffin. Therefore, the counsel argued that it is expressly permitted by Article II to generate hydroelectric power and that this right is limited only with respect to the manner in which it can be exercised by Article under the treaty.

18. Further Art. II (3) contained enabling provisions granting the right to construct Run-of-River Plants (These are hydro-electric plants that develop power without Live Storage, for the purpose of generation of hydro-electric power) involving inter-tributary transfers subject to the then existing natural channel, flow rate and water quality of river Biffin not being adversely affected.

19. In the, *Indus Water Treaty case, 1960*, the Court of Arbitration unanimously decided that the Kishanganga Hydro-Electric Project (KHEP) constitutes a Run-of-River Plant under the Treaty, and India may accordingly divert water from the Kishanganga/Neelum River for power generation by the KHEP in the manner envisaged. However, when operating the

KHEP, India is under an obligation to maintain a minimum flow of water in the Kishanganga/Neelum River, at a rate to be determined by the Court. Finally, the Court found that the KHEP's inter-tributary transfer is “necessary, “as required by the Treaty, for the generation of hydroelectric power.

20. Apart from these specifications, both Parties are entitled to construct on their allocated Rivers so long as natural channels are maintained to the extent that there is no material damage to the other Party as reflected under art. IV (3) of the treaty: “Each Party will use its best endeavours to maintain the natural channels of the rivers in such condition as will to avoid, as far as practicable, any obstruction to the flow in these channels likely to cause material damage to the other Party.”

21. In order to decipher what this provision means, it is important to interpret it in light of current international standards. ‘Best endeavours’ is not defined, but is obligatory, and according to the Permanent Court of Arbitration (‘PCA’) “expresses a stronger commitment” as opposed to merely being “aspirational in nature”. Waters Kishenganga Arbitration (Pakistan v. India), This can be interpreted to being akin to the requirement that the Parties act with ‘due diligence’ and the duty of vigilance and prevention will apply. As for the obligation “to maintain the natural channels”, the it is important to distinguished the “maintenance of the physical condition of the channels of the rivers [from] maintenance of the volume and timing of the flow of water in these channels” as the term “channel” was taken to “denote the bed of the river, which may or may not be filled with water.”

22. Also, While the term ‘material damage’ is not defined, according to Gulhati, “what might be material under one set of circumstances might not be so in a different set of conditions” and is therefore open to interpretation in individual circumstances on a case-by case basis.

In other words, the above-stated provision mandates preservation of the natural paths of the rivers in an effort to conserve the rivers' capacity to carry water. The Treaty provides that if either Party plans to construct any engineering works which would cause interference with the waters of any of the Rivers, but would not, in the opinion of the Party planning it, affect the other Party materially, then the Treaty provides that the Party planning the work is under an obligation to supply the other Party, only if requested by it, such data regarding the nature, magnitude and effect, if any, of the work as may be available.

23. Although notice to the other Party has to provide details about “the nature, magnitude and effect” of any of the planned projects, the Treaty does not expressly require that an environmental impact assessment (EIA) report, even if one is available, be shared with the other Party’. Therefore, resting on the principle of *pacta sunt Servanda*, the republic of Katina is in accordance with the principles of international treaty law.

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**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 VALID**

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21. It is humbly submitted before this Hon'ble Tribunal that the claim of Kartina that Fundamental rights enshrined in its Constitution are not available and applicable to the people of Dhall, is a valid claim. The rationale behind the same is that that Article 21<sup>18</sup> present in the Constitution of Kartina is not applicable on the people residing outside the territory of Kartina. Furthermore, being a signatory of the Universal Declaration of Human Rights does not make the Constitution of Kartina applicable on people of Dhall. In addition to it, this Hon'ble tribunal is not the appropriate forum to discuss and enforce the fundamental rights of the people of Dhall.

**3.1. THAT Article 21 of the Constitution of Kartina is not applicable on the people of Dhall**

Article 21<sup>19</sup> of the Constitution of Kartina guarantees the fundamental right to life and personal liberty to all persons within the territory of Kartina, regardless of their nationality. However, there is a reasonable restriction placed upon the applicability of Article 21 upon citizens of Kartina and its application to foreigners. The foreigners here include non-citizens such as foreign tourists, residents, refugees, asylum seekers, and even undocumented migrants but do not specifically mention its applicability upon people present outside the territory of Kartina i.e., People of Dhall.

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<sup>18</sup> INDIA CONSTITUTION 1950, ARTICLE 21: "no person shall be deprived of his life or personal liberty except according to the procedure established by law."

<sup>19</sup> Id. at 1

It is further contended that the same was held in the case of *Issac Isanga Musumba v. State of Maharashtra*<sup>20</sup>, it was held that:

*“The word person in Article 21 is wide enough to cover not only citizens of this country but also foreigners who come to this country. The state has an obligation to protect the liberty of such foreigners, who come to this country and ensure that their liberty is not deprived except in accordance with the procedure established by the law.”*

In addition to this if the Constitution of Kartina will be applied upon the people of Dhall it would lead Kartina’s laws to actions upon individuals outside its borders and would further lead to conflicts of jurisdiction and potentially infringe on the sovereignty of Dhall, which claims to be a democratic country. To avoid such conflicts, the Doctrine of Territorial Nexus<sup>21</sup> ensures that the Constitution of Kartina is primarily concerned with regulating activities within its own territory.

### **3.2 That the Constitution of Kartina is not applicable on people on Dhall under the Universal Declaration of Human Rights**

Being a signatory of the Universal Declaration of Human Rights (UDHR)<sup>22</sup> does not make the Constitution of Kartina applicable to the people of Dhall. The Universal Declaration of Human Rights<sup>23</sup> is a non-binding international declaration adopted by the United Nations General Assembly in 1948. It outlines fundamental human rights and freedoms that all member states

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<sup>20</sup> *Issac Isanga Musumba v. State of Maharashtra*, 2013 SCC OnLine SC 1251

<sup>21</sup> DOCTRINE OF TERRITORIAL NEXUS: CRITICAL ANALYSIS,  
<https://www.bsklegal.org/blogs/territorial-nexus/> , (last visited Aug. 25, 2023)

<sup>22</sup> United Nations Human Rights, Universal Declaration of Human Rights (1948). Available at:

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>23</sup> *Id.* at 5

of the United Nations should strive to uphold, but it does not automatically impose the legal obligations of a specific country's constitution on other nations.

Each country's constitution is a domestic legal document that outlines the fundamental principles, rights, and laws that govern that specific country. While some countries might draw inspiration from the Universal Declaration of Human Rights<sup>24</sup> when crafting their constitutions, the application and legal authority of a particular constitution are limited to the borders of that country unless explicitly stated otherwise in international agreements or treaties.

The Constitution of Kartina applies only to Kartina and its citizens, and its principles are not automatically extended to other countries solely based on their endorsement of the Universal Declaration of Human Rights. However, the Universal Declaration of Human Rights and other international human rights treaties can serve as a basis for dialogue, cooperation, and the development of common standards among nations in the realm of human rights. Thus, the republic of Kartina is not violating the fundamental rights of people of Dhall by building the great Kartina dam.

### **3.3 That this Hon'ble Tribunal has no power to enforce the fundamental rights of people of Dhall**

This Hon'ble tribunal has the discretionary power to dismiss the present case on the ground that a foreign forum is a more appropriate venue for the trial. Thus, even if it can be established that a national court does have jurisdiction, it does not follow that it will necessarily exercise it. The principle of *forum non conveniens* allows the court to look at relevant factors in order to decide which legal system is better placed to decide the case.

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<sup>24</sup> United Nations Human Rights, Universal Declaration of Human Rights (1948). Available at:

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>



In the *Bhopal Litigation*<sup>25</sup>, the United States courts declined to hear the Indian claims against Union Carbide because, in their view, were a more appropriate forum. The plaintiffs were Indian, most of evidence was in India, the applicable law was Indian, and India had a stronger interest in setting appropriate standards of care. It was not, the court held, a matter of determining the most favourable forum for the plaintiff, but of balancing the public and private interests. The United States courts had no public interest in trying cases of this kind. In effect, the judgement ensured that the plaintiff's claims would never before in other country, and left Union Carbide free to negotiate a very favourable settlement with the Indian government.

This ad- hoc tribunal constituted as per the Inter- State Water Disputes Act, by the central government of Kartina to solve this issue, is not the appropriate forum to settle the claim of people of Dhall over violation of their fundamental rights. Thus, the claim of Kartina that the Fundamental Rights of the Constitution of will not apply to the people of Dhall, is a valid claim.

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<sup>25</sup> Union Carbide Corpn. v. Union of India, (1989) 3 SCC 38

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**PRAYER FOR RELIEF**

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

- i. *That the Republic of Kartina should be given the power to dictate the distribution of natural resources.*
- ii. *The Republic of Kartina is in not 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 valid.*

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 Respondent as in duty bound shall forever pray.

All of which is respectfully submitted

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Sd/-

Counsels for the Respondent