

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

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**BEFORE  
THE HON'BLE BIFFIN WATER DISPUTES TRIBUNAL**

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

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**IN THE MATTER OF  
DEMOCRATIC REPUBLIC OF DHALL  
(APPLICANT)**

**v.**

**REPUBLIC OF KARTINA  
(RESPONDENT)**

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**MEMORANDUM ON BEHALF *of* THE RESPONDENT.**

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6. UN Declaration on the Right to Development, 1986.

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**STATUTES**

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

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2. The Constitution of India, 1950.

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**STATEMENT OF JURISDICTION**

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

This Hon'ble Tribunal is constituted under Section 4<sup>2</sup> of the Inter-State River Water Disputes Act, 1956.

The Respondent reserves the right to argue upon the applicability of the jurisdiction as invoked by the Applicant.

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

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<sup>1</sup> 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.

<sup>2</sup> 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. 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. The president clarified that the construction would not affect the flow of water until 2030, by which time the treaty would have lapsed.
3. Kartina in show of good faith, 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 28<sup>th</sup> 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, considering the question of proportionality and the generally accepted principles of environmental law, Kartina should be given the power to dictate how natural resources are distributed because the resources should be distributed on the basis of proportionality, the principle of equitable apportionment and also the generally accepted environmental principles which clearly favour Kartina.

~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 is not in contravention of the principles of International Environment Law and International Treaty Law. Kartina has an absolute sovereignty over its natural resources. It is empowered to utilise its resources in

whichever manner it wishes for the sake of its development. It has a right of development as enshrined by various conventions. Also, Kartina has obliged with the principles of River Biffin Water Treaty in complete good faith.

~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 Fundamental Rights enshrined in the Constitution of Kartina are not applicable on the people of Dhall. As these are rights which are guaranteed to either the citizens of India or the people within the territory of India, but in the present case the people of Dhall are neither the citizens of India nor do they lie within its territory.

**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 considering the question of proportionality and the generally accepted principles of environmental law, Kartina should be given the power to dictate how natural resources are distributed.

**A. DISTRIBUTION OF NATURAL RESOURCES SHOULD BE ON THE BASIS OF PROPORTIONALITY**

2. As per the report presented by the **Narmada Water Disputes Tribunal**, *"the matters to be considered in determining the just and reasonable shares of the interested states include: (i) economic and social needs of the interested states. (ii) the volume of the stream (iii) population which is dependent on the water supply and degree of their dependence (iv) state-wise drainage etc."*
3. Also, the report presented by the **Krishna Water Disputes Tribunal** stated that, *"So far as factors like drainage contribution by each State, the population within the basin, the extent of irrigated and unirrigated area and drought prone and scarcity areas etc. are concerned, these factors may not individually be decisive but certainly have a relevance collectively to assess the overall situation about the needs of the area and the extent to which such needs*

*can be catered to. The extent of availability of water is a factor which weighs most in allocation of share to each State.”*

4. In the present case, The Republic of Kartina has a large and an expanding population. However, the nation faces several challenges such as inconsistent electricity and lack of basic amenities. The hydroelectricity generated by this dam stands to bring comprehensive benefits to the entire country, most notably agriculture which is a significant contributor to the nation’s economy and a primary occupation for a substantial portion of its inhabitants.
5. The Supreme Court in **Nebraska v. Wyoming**<sup>3</sup> held that, *“all of the factors which create equities in favour of one state or the other must be weighed. Factors that the Court has considered include a comparison of harms and benefits, measures that could improve efficient water use and enhance supplies of water, protection of existing economies that use the water, the size of party states’ river basin drainage areas and their contributions to in-stream flows, and the availability of alternative water supplies.”*
6. In the present case, the positive outcomes resulting from the completion of the dam would exceed any harm it may give rise to. It would not only benefit the inhabitants of Kartina but would also offer substantial benefit to those of Dhall by providing electricity at a subsidised rate. Taking into context the larger picture, this initiative would foster economic growth and progress of both the countries.

## **B. FAIR ALLOCATION OF THE NATURAL RESOURCES**

7. The Doctrine of Equitable Apportionment is an exclusive judicial remedy for interstate water disputes which aims to produce a “fair allocation” of shared water resource between two or more states. This doctrine was first articulated by the Hon’ble Supreme Court of

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<sup>3</sup> Nebraska v. Wyoming, 295 U.S. 40 (1935).



United States in the case of **Kansas v. Colorado**<sup>4</sup> in 1907. In the case of **Florida v. Georgia**<sup>5</sup>, the US Supreme Court held that, “*The doctrine’s guiding principle is that States have an equal right to make a reasonable use of a shared water resource.*”

8. In the case of **State of Andhra Pradesh v. State of Karnataka & Ors.**<sup>6</sup> commonly known as the Krishna Water Disputes case, the Hon’ble Tribunal while making the decision referred to the Helsinki Rules of International Law where the meaning of the term ‘reasonable use’ was rightly pointed out. “*The ‘reasonable’ and ‘equitable’ use should be determined by several factors related to the geographic and hydrologic characteristics of the basin, the economic and social needs of the riparian states, the populations of the states, the existing and potential uses of the watercourse, the availability of alternatives to the watercourse.*”
9. Also, in the case of **State of Karnataka & Ors. v. State of Tamil Nadu & Ors.**<sup>7</sup> commonly known as the Cauvery Water Disputes case, the Chief Justice of India stated that, “*the principle of equality did not imply equal division of water, but equal consideration and economic opportunity for the co-basin states. To conceive that equality rests on equal sharing of water within an arithmetical formula would be fundamentally violative of the established conception of equitable apportionment because the said concept inheres multiple factors.*”

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<sup>4</sup> *Kansas v. Colorado* 206 U.S. 46 (1907); *see also*: *Arizona v. California*, 298 U.S. 558 (1936); *Connecticut v. Massachusetts*, 282 U.S. 660 (1931); *New Jersey v. New York*, 283 U.S. 336 (1931); *Washington v. Oregon*, 297 U.S. 517 (1936).

<sup>5</sup> *Florida v. Georgia* 134 S. Ct. 1509 (2014); *see also*: *Colorado v. New Mexico*, 459 U.S. 176 (1982); *South Carolina v. North Carolina*, 552 U.S. 256 (2010); *Wyoming v. Colorado*, 259 U.S. 46 (1922).

<sup>6</sup> *State of Andhra Pradesh v. State of Karnataka & Ors.*, (2000) 9 SCC 572.

<sup>7</sup> *The State of Karnataka & Ors. v. State of Tamil Nadu & Ors*, Civil Appeal Nos. 2453, 2454 and 2456 of 2007.

10. In the current situation, Kartina is experiencing major living crisis and significant population growth. The urgent economic and social requirements of Kartina demand immediate attention to provide a pathway out of the cycle of poverty. In such circumstances, the application of the principle of equality would not only result in unjust treatment towards the country, but it would also be deemed as illogical and irrational. Therefore, after considering every aspect of the situation, the allocation of resources must be done.

### C. GENERALLY ACCEPTED PRINCIPLES OF ENVIRONMENTAL LAW

11. The theory of **Absolute Territorial Sovereignty** (Harmon Doctrine) states that an upstream nation can freely utilize a river's flow within its boundaries without considering the effect on a downstream state. In the case of **The State of Karnataka & Ors. v. State of Tamil Nadu & Ors.**, the Hon'ble Supreme Court, while discussing the Harmon doctrine held that "*According to this doctrine every State is sovereign and has right to do whatever it likes with the waters within its territorial jurisdiction irrespective of injury that it might cause to the neighbouring State by such appropriation and diversion.*" Kartina is entitled to have a reasonable share in the beneficial uses of the water such as constructing a Run-of-River Plant in the present case.

12. The Run-of-River plant, announced by the Republic of Kartina, was essential to bring out the maximum efficiency in the use of water from river Biffin. The **National Water Policy of 2012** states that "Given the limits on enhancing the availability of utilizable water resources and increased variability in supplies due to climate change, meeting the future needs will depend more on demand management, and hence, this needs to be given priority, especially through (a) evolving an agricultural system which economizes on water use and

maximizes value from water, and (b) bringing in maximum efficiency in the use of water and avoiding wastages.”

13. The **Article 33 of Draft articles on State Responsibility by ILC** states that “A state of necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act of that State not in conformity with an international obligation of the State unless the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril.” In the current case, as the republic of Kartina has been facing a standard of living crisis since its independence, it was a state of necessity for Kartina to construct the Great Kartina Dam for safeguarding the essential interest of the State.

Therefore, it is humbly submitted that, considering the question of proportionality and the generally accepted principles of environment 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?**

1. It is humbly submitted before this Hon’ble Tribunal that Kartina’s actions were in exercise of its absolute sovereignty and for the best interest of its people so is not in contravention of the principles of International Environment Law and International Treaty Law.

**A. PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES**

2. In **Resolution No. 1803(XVII) of the United Nations General Assembly**<sup>8</sup>, it has been declared that “The right of peoples 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 same principle was affirmed by the International Court of Justice in its judgement of the case concerning **Armed Activities on the Territory of Congo**<sup>9</sup>.
3. Also, **United Nations General Assembly in its resolution no. 626 VII**<sup>10</sup> states that “Recommends all Member States, in the exercise of their right freely to use and exploit their natural wealth and resources wherever deemed desirable by them for their own progress and economic development, to have due regard, consistently with their sovereignty, to the need for maintaining the flow of capital in conditions of security, mutual confidence and economic co-operation among nations”.
4. In the present case, the steps taken by the republic of Kartina are in interest of the nation and its citizens with respect to the situation it is facing. The construction of the run-of-river plant over river Biffin is an urgent requirement of the nation which will help it to generate electricity so as to serve the basic needs of the growing population.

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<sup>8</sup> GENERAL ASSEMBLY RESOLUTION 1803 (XVII) OF 14 DECEMBER 1962, ‘PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES. <https://www.ohchr.org> (last visited on 26 Aug. 2023).

<sup>9</sup> Democratic Republic of the Congo v. Uganda; *also see*: New Zealand v. France, 1978 IC.J. 188; Schooner Exchange v. McFadden, 11 U.S. 116 (1812).

<sup>10</sup> SESS.: 1952-1953, U.G.A. (7TH (1953). RIGHT TO EXPLOIT FREELY NATURAL WEALTH AND RESOURCES. <https://digitallibrary.un.org>, (last visited on 25 August 2023).

5. **Article 2 of the Charter of Economic Rights and Duties of States**<sup>11</sup> says, "Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities". Also, in **Resolution No. 3201(S-VI) of UNGA**<sup>12</sup>, named Declaration on the Establishment of a New International Economic Order, the States are given "Full permanent sovereignty of every State over its natural resources and all economic activities".
6. Kartina as a nation and the people of Kartina have an exclusive right to exploit their natural resources which has also been declared in **Resolution No. 1803(XVII) of the United Nations General Assembly**<sup>13</sup>, which states that "Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace."

## **B. RIGHT TO DEVELOPMENT IS A BASIC HUMAN RIGHT**

7. In the case of **N.D Jayal & Anr. v. Union of India**<sup>14</sup>, the Hon'ble Supreme Court of India held that, "*right to development cannot be treated as a mere right to economic betterment*

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<sup>11</sup> UN GENERAL ASSEMBLY, CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES: RESOLUTION / ADOPTED BY THE GENERAL ASSEMBLY, 17 DECEMBER 1984, <https://legal.un.org> (last visited on 25 August 2023).

<sup>12</sup> UNITED NATIONS AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW DECLARATION ON THE ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER GENERAL ASSEMBLY RESOLUTION <https://legal.un.org>, (last visited on 26 August 2023).

<sup>13</sup> GENERAL ASSEMBLY RESOLUTION 1803 (XVII) OF 14 DECEMBER 1962, 'PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES'. <https://www.ohchr.org>, (last visited on 25 August 2023).

<sup>14</sup> N.D Jayal & Anr. v. Union of India, (2004) 9 S.C.C. 362; *see also*: Air India Statutory Corporation v. United Labour Union & Ors., 1997 LLR 305 (SC); Election Commission of India v. St. Marys School & Ors., Appeal (civil) 5659 of 2007; G.S.I.C. Karmachari Union & Ors. v. Gujarat Small Industries Corporation & Ors., Writ Petition(C)No. 986 of 1989; Jagan S/O Zipru Dhole v. State of Maharashtra & Ors., 2004 (3) MhLj 497; John Vallamattom & Anr. v. Union of India, 2003 6 SCC 611; Kapila Hingorani v. State of Bihar (2003) 6 SCC 1; Karnataka Industrial Areas Development Board v. Sri C. Kenchappa & Ors., Appeal (civil) 7405 of 2000; Mohammad Yunis v. Malooki Widow of Nabi Khan & Ors., AIR 2004 PH 115; Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde & Anr, (1995) Supp. 2 SCC 549; New Kattalai Canal v. Union of India, (2012) 1 MLJ 207; R. Chandevaram v. State of Karnataka & Ors., (1995) 6 SCC 309; Samatha v. State of A.P. and Ors., AIR

*or cannot be limited to as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.”* In the present case, the construction of the dam over river Biffin will be an important step towards the development of the nation which will eventually improve the lives and standard of living of the people of Kartina.

8. As per **Article 2(3) of UN Declaration on the Right to Development**<sup>15</sup>, “States have the right to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.” In the present case, Kartina has an absolute right to use its resources as a source of development for the welfare of its citizens.
9. The Right to Development has also been recognized by the **United Nations General Assembly in its resolution 34/46 of 23 November 1979**<sup>16</sup> under the title “Alternative approaches and ways and within the United Nations system for improvising the effective enjoyment of human rights and fundamental freedoms.” Also, **Article 2(1)**<sup>17</sup> of the

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1997 SC 3297; *Vikram Vir Vohra v. Shalini Bhalla*, (2010) 4 SCC 409; Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003.

<sup>15</sup> United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org> (last visited 24<sup>th</sup> August 2023).

<sup>16</sup> UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS TABLES, <https://www.research.un.org> (last visited on 24<sup>th</sup> August 2023).

<sup>17</sup> Article 2(1), ICESCR- Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

**International Covenant on Economic, Social and Cultural Rights**, along the lines envisaged in **Articles 55<sup>18</sup> and 56<sup>19</sup> of the Charter of the United Nations**, observed “development”, as an important means for the achievement of human rights. Hence, in the present case the generation of hydro-electric power by the Dam would be beneficial for the social and economic development of the people of Kartina.

**C. KARTINA HAS NOT CONTRAVENED THE PRINCIPLES OF INTERNATIONAL LAW AND TREATY**

**10. Article 8 of The Convention on the Law of Non-Navigational Uses of International**

**Watercourses** prescribes that “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.” In the present case, the act of providing electricity at very subsidised rates to Dhall clearly implies the good faith of Kartina.

11. The river Biffin first flows through the length of the Republic of Kartina before entering Dhall, and as Kartina is using the water to use first, the rights of Kartina are protected under the principle of prior appropriation. The principle of prior appropriation, as also held by the Hon’ble court in **Irwin v. Phillips, California<sup>20</sup>**, “*favours neither the upstream nor the*

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<sup>18</sup> NATIONS, U. (N.D.). CHAPTER IX: INTERNATIONAL ECONOMIC AND SOCIAL COOPERATION (ARTICLES 55-60). <https://www.un.org>, (last visited on 26<sup>th</sup> August 2023).

<sup>19</sup> Article 56, Charter of United Nations- All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

<sup>20</sup> *Irwin v. Phillips*, 5 Cal. 140; *see also*: *Broder v. Notoma W. & M. Co.* 11 Otto, 274; *Coffin v. Left Hand Ditch Co.*, 6 Colo. 443 (1882); *Hungary v. Slovakia*, [1997] ICJ Rep 3; *Ecuador v. Peru*, (1945). *Luna, F. D.* (1996); *Nebraska v. Wyoming*, 325 U.S. 589 (1945).

*downstream State but the one that puts the water to first use, thereby protecting the right to first use of water as in the past.”*

12. The theory of Good Neighbourliness<sup>21</sup> enshrined in **Article 74 of the UN Charter**, prescribes that “states may exercise sovereignty in the use of resources within their territory subject to prohibition against causing damage to the territory of co-riparian states and requires states to endure some degree of harmful consequences arising from the use of watercourses within the neighbouring territories providing that such harm must be within a limited threshold.”
13. In the present case, it was a state of necessity for Kartina to construct the Great Kartina Dam to safeguard the essential interest of the State as the republic of Kartina has been facing a standard of living crisis since its independence. It is deprived of basic necessities such as consistent electricity, nutritious food, clean drinking water etc.
14. **Article 26 of the Vienna Convention on the Law of Treaties**, “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”. In the present case, as per Article II( 2) of the River Biffin Water Treaty<sup>22</sup>, “Kartina shall be under an obligation to let flow all the waters of the River Biffin, and shall not permit any interference with these waters, except for the following uses given hereunder: (a) Domestic Use (b) Non-Consumptive Use (c) Agricultural Use (d) Generation of hydro-electric power, and clause 3<sup>23</sup> says that, “A new Run-of-River Plant can be constructed by Kartina provided

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<sup>21</sup> Preamble of the Charter of United Nations, 1945; *see also*: Argentina v. Uruguay, (2010) I.C.J. Rep. 2010; Netherlands v. USA, ICGJ 392 (PCA 1928); France v. Turkey, PCIJ Series A No. 10; United Kingdom v. Albania, 1949 I.C.J. 9; United Kingdom v. Iceland, (1974) ICJ Rep 1974; United States v. Canada, (1938 and 1941) 3 R.I.A.A. 1905; France v. Spain, 24 I.L.R. 101 (1957).

<sup>22</sup>Moot Proposition, Article II (2), Page 5.

<sup>23</sup> Moot Proposition, Article II (3), Page 6.



that it conforms to the condition that it does not cause material change to the natural channel, flow rate, and water quality of the river Biffin.”

15. In the present case, Kartina is fully committed to upholding the terms of the treaty established between Kartina and Dhall concerning the utilization of water from the river Biffin as it is clearly mentioned within the provisions of the treaty that Kartina can for the purpose of generation of hydro-electric power make a run-of river plant and use the water of the river Biffin for the purpose of same. The President also explicitly stated that there will be no change in the water flow until the year 2030, by which time the treaty shall have lapsed.

Hence, it is humbly submitted before this Hon’ble tribunal that, Kartina has not contravened 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?**

1. It is humbly submitted before this Hon’ble tribunal that, the Fundamental Rights enshrined in the Constitution of Kartina will not apply to the people of Dhall.

**A. APPLICABILITY OF FUNDAMENTAL RIGHTS**

2. It is humbly submitted before the Hon’ble Court that the fundamental rights enshrined in Part III of the Kartinian Constitution can only be availed in the territory of Kartina. **Article**

**1<sup>24</sup> of the Kartinian Constitution** defines the territory of Kartina as “The territory of Kartina shall comprise— (a) the territories of the States; (b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired.” In the present case, The Democratic Republic of Dhall is another nation that only shares its eastern border with the western border of Kartina, and thus Dhall does not constitute the territory of Kartina.

3. In the case of **N. Masthan Sahib v. Chief Commissioner, Pondicherry**<sup>25</sup>, it was held by the Hon’ble Supreme Court of India that “*The term 'territory of India' has been used in several Articles of the Constitution and we are clearly of the opinion that in every Article where this phraseology is employed, it means the territory of India for the time being as falls within Art. 1(3) and the phrase cannot mean different territories in different Articles.*”
4. The fundamental rights given under Part III of the constitution are the constitutional guarantees given for the people of Kartina. During the constituent assembly, Mr. Somnath Lahir regarding the fundamental rights stated that “will give our people a real feeling of freedom and from which our country will go on gathering strength.” And, it was also held in the case of **Ajay Hasia v. Khalid Mujib**<sup>26</sup>, it was held by the Hon’ble Supreme Court that “*It must be remembered that the Fundamental Rights are constitutional guarantees given to the people of India.*” Since the people of the Republic of Dhall do not constitute a part of Kartina, their fundamental rights cannot be availed against the Kartinian State.
5. The constitution also guarantees fundamental rights such as right to life, right to equality etc., even to foreigners who are present in the territory of the nation. In the case of The

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<sup>24</sup>(1) India, that is Bharat, shall be a Union of States.

(2) The States and the territories thereof shall be as specified in the First Schedule.

(3) The territory of India shall comprise—

(a) the territories of the States;

(b) the Union territories specified in the First Schedule; and

(c) such other territories as may be acquired.

<sup>25</sup> N. Masthan Sahib v. Chief Commissioner, Pondicherry, AIR 1962 SC 797.

<sup>26</sup> Ajay Hasia v. Khalid Mujib Sehravardi & Ors, (1981) 1 SCC 722.

**Chairman, Railway Board & Ors v. Mrs. Chandrima Das & Ors.**<sup>27</sup>, it was held by the Hon'ble Supreme Court that *“even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the Constitutional provisions. They also have a right to "Life" in this country. Thus, they also have the right to live, so long as they are here, with human dignity.”*

6. In the case of **Dwarka Das Srinivas of Bombay v. The Sholapur Spinning & Weaving Company Limited**<sup>28</sup>, the Hon'ble Court held that *“the provisions in the Constitution touching fundamental rights must be construed broadly and liberally in favour of those on whom the rights have been conferred.”* But, in the case of **Sk. Md. Soleman v. State of West Bengal and Ors.**<sup>29</sup>, while interpreting the judgement of Dwarka Das Srinivas of Bombay v. The Sholapur Spinning & Weaving Company Limited, the hon'ble court held that the applicability of fundamental right *“should be done in favour of those, on whom the rights have been conferred, namely, the citizens of India. A noncitizen cannot invoke the said principle to his aid.”*
7. In the case of **Hamdard Dawakhana and Ors. v. Union of India and Ors.**<sup>30</sup>, the court held that while applying the fundamental rights enshrined under the Constitution, *“The interpretation should be such as to subserve the protection of the fundamental rights of the citizen.”* This judgement was also reaffirmed by the Hon'ble Court in the case of **Sk. Md. Soleman v. State of West Bengal and Ors**<sup>31</sup>.

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<sup>27</sup> The Chairman, Railway Board & Ors v. Mrs. Chandrima Das & Ors, AIR 2000 SC 988.

<sup>28</sup> Dwarka Das Srinivas of Bombay v. The Sholapur Spinning & Weaving Company Limited, AIR 1954 SC 119.

<sup>29</sup> Sk. Md. Soleman v. State of West Bengal and Ors., AIR 1965 Cal 312.

<sup>30</sup> Hamdard Dawakhana and Ors. v. Union of India and Ors, AIR 1965 SC 1167.

<sup>31</sup> Sk. Md. Soleman, *supra* note 29, at 27.

8. In the present case, the people of Dhall are claiming the fundamental rights enshrined in the Kartinian constitution and neither are they citizens of Kartina nor the foreigners who are residing in the territory of the nation. Hence, the fundamental right under Part III of the Constitution of Kartina would not apply to the dispute as well as to the people of the Dhall.

#### **B. CONCEPT OF WELFARE STATE AND INTEREST OF THE NATION**

9. In the case of **Paschim Banga Khet Mazdoor Samity v. State of West Bengal**<sup>32</sup>, it was held by the Hon'ble Supreme Court that "*The Constitution envisages the establishment of a welfare state at the federal level as well as at the state level. In a welfare state, the primary duty of the Government is to secure the welfare of the people.*" In the present case, The Republic of Kartina is performing its primary duty envisaged in the Constitution only by constructing a dam which would improve the standard of lives of people as well as the economy of Kartina. Securing the welfare of people of its own nation, thus cannot be construed as an act of infringing the fundamental rights.
10. The Preamble<sup>33</sup> of the Indian Constitution declares that India is a sovereign nation and ensures all its citizens social, economic and political justice. In the present case, The Republic of Kartina is a sovereign nation and is entitled to have the decision-making power for its Nation. It is the responsibility of the Kartina to secure economic, social and political

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<sup>32</sup> *Paschim Banga khet Mazdoor Samity v. State of West Bengal*, AIR 1996 SC 2426; *also refer: The Executive Engineer, Karnataka v. K. Somasetty & Ors.*, (1997) 5 SCC 434; *Lala Ram by L.R. & Ors. v. Union of India & Anr.*, (2015) 5 SCC 813; *Kirloskar Brothers Ltd. v. Employees State Insurance Corp.*, (1996) 2 SCC 682; *State of Punjab & Ors. v. Ram Lubhaya Bagga*, (1998) 4 SCC 117; *Bidhan Kumar v. State of Bihar*, Civil Writ Jurisdiction Case No. 7857 of 2020; *Madhya Pradesh Industries Ltd. v. Union of India & Ors.*, AIR 1966 SC 671; *Manoj M. v. State of Kerala*, WP (C). No. 21897 of 2016; *Confederation of Ex-Servicemen Assns. v. Union of India*, (2006) 8 SCC 399; *Duliya Bai Yadav v. State of Chattisgarh*, 2016 (III) MPJR 87; *N. Nagendra Rao & Co. v. State of A.P.*, AIR 1994 SC 2663.

<sup>33</sup> WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

justice. So, the decision to construct the Great Kartina Dam was made by Kartina, in the exercise of performing their duty to assure rights and justice to its citizens.

11. In the case of **The Chairman Railway Board & Ors v. Mrs. Chandrima Das & Ors.**, the Hon'ble Supreme Court held that "*Interest of the Nation and security of the State is supreme. Since 1948 when the Universal Declaration was adopted till this day, there have been many changes - political, social and economic while terrorism has disturbed the global scenario. The primacy of the interest of Nation and the security of State will have to be read into the Universal Declaration as also in every Article dealing with Fundamental Rights, including Article 21 of the Indian Constitution.*"

12. In the present case, The Republic of Kartina since its independence, has been facing a standard of living crisis due to many factors like unpredictable weather, housing crisis, refugee crisis etc.<sup>34</sup>, and the undertaking of the Great Kartina Dam was so vital for the development of the Nation. The announcement of the construction of the dam was done purely in the interest of the Nation, though in good faith, Kartina offered the hydroelectricity generated by the Dam to Dhall at an immensely subsidized rate<sup>35</sup>, which clearly shows that Kartina is not infringing the rights of people of Dhall, instead, Kartina is protecting the rights of people of Dhall.

Hence, it is humbly submitted before this Hon'ble tribunal that the Fundamental Rights enshrined in the Constitution of Kartina are not applicable on the people of Dhall.

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<sup>34</sup> Moot Proposition ¶4.

<sup>35</sup> Moot Proposition ¶6.

**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 Respondent humbly prays that this Hon'ble Tribunal may be pleased to declare that:

1. Kartina should be given the power to dictate how natural resources are distributed.
2. Kartina has not contravened with any principle of International Environment Law and International Treaty Law.
3. The Fundamental Rights enshrined in the Constitution of Kartina are not 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 Respondent may be duty bound forever pray.

FOR THIS ACT OF KINDNESS THE RESPONDENT SHALL BE DUTY BOUND  
FOREVER

S/D \_\_\_\_\_

ON BEHALF OF THE RESPONDENT