

IN THE HIGH COURT OF SINDH, AT KARACHI
(Extraordinary Constitutional Jurisdiction)

CONSTITUTION PETITION No. D- OF 2010

Indus Development Organization,
Through its Executive Director,
Mr. Abdul Razaq alias Zain Daudpoto,
Son of Mr. Abdullah Daudpoto, Muslim, adult,
Having office at; F-1107, 11th Floor,
City View Shopping Mall, Saddar,
Karachi.

PETITIONER

V E R S U S

The Department of Forests & Wildlife,
Through its Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi.

RESPONDENT

Constitution Petition Under Article 199,
The Constitution Islamic Republic Of Pakistan, 1973

That, the Petitioner being a citizen of Pakistan and Executive Director of “Indus Development Organization”, committed to protect Forests and believes that the apex Courts are the most effective forum for the conservation of these natural resources, and submits most humbly as under:

B R I E F F A C T S

1. That, the Petitioner is deeply concerned for the hazardous effects of deforestation in general particularly the deforestation reverine forests of Khebrani, Raees Mureed, Miani, Matiari, Khanpota, Shah Bukhari, Khipro, Pai, Nawab Muhammad Khan, Kathri, Gundi, Mukhi, Aandal Dal, Madaiji and other Forests of the Sindh (Total forests land in Sindh 750,000 Acers) at, Districts Hyderabad, Matiari, Sanghar, Mirpur Khas, Sukkur, Shikarpur and located at other districts of the Sindh.
2. That, the Afforestation Division of the Respondent department signed an extendable Memorandum of Understanding for five years, commencing from July 2007 to June 2012 with the Petitioner for conservation activities and model reforestation in barren land of the Khebrani, Raees Mureed and Matiari reverine forests of Matiari District and protection of total forest cover of the said forests under ‘Forest Protection Project’ firstly introduced by the Petitioner through Forest Protection Committees of the local communities and shepherds. And for the reason the Afforestation Division of the Respondent department allocated the entirely barren Compartment Nos. 15, 16, 17 & 19 in Khebrani, Compartment

Nos. 1, 2, 3, 4 & 6 in Raees Mureed and Compartment Nos. 26 & 36 in Matiari reverine forests for rehabilitation of the forest through Petitioner. But it is being cleared before this Hon'ble Court that the possessions of the Compartments of Matiari Forests are not to be handed over to the Petitioner till date.

Moreover, the Petitioner safeguards the entire forest cover of Khebrani reverine forests other than allocated Compartments Nos. 13, 13-A, 13-C, 13-D, 14, 14-A, 14-B, 14-C, 14-D, 16-A, 16-B, 16-C, 16-D, 17-A, 17-B, 17-C, 17-D, 19-A, 19-B, 19-C, 19-D respectively with the help of local people, but instead of that Respondent department never allowed the Petitioner for the installation of Tube-wells for the watering to new plantation activity and already planted samples.

(The Photostat copies of the Resolution and Certificate of Registration of Society, MOU and Compartment's Allocation Letter are annexed hereto and marked as Annexure-A, B, B-1, C, D & D-1)

3. That, the **Khebrani Forest** alone is about 3000 acres with precious species of plants, animals and birds, located at National Highway, Khyber Town. And at the entrance of Khebrani Forest, 10 forest villages are situated from centuries and this forest is the only source of grazing of more than 50,000 cattles of the villagers. And these Forests are also produce Timber which supports the economy of the Country.

(The Photostat copy of the map of the Khebrani and Raees Mureed Forest is annexed hereto and marked as Annexure-E)

4. That, the Local people of these forest villages and people from other vicinity depends on livestock and used to grazing their cattles in these forests without harming the trees or plants and ecology, but deforestation by powerful influential persons, have not only evicted the poor local people from forest habitat by grazing their animals for livelihood which ultimately increase poverty and subsequently the crime and the productive land will left barren and we lose another natural resource which intimidate to the natural eco system and environment of Sindh.

That, for the development of the sense of belonging or performance in common people with their natural resources, the Petitioner and Afforestation Division of the Respondent department signed an Agreement dated April 20, 2010 for collection of revenue from Khebrani and Raees Mureed Forests entirely in respect of seed protection and improvement of Forest Trees and this investment in maintaining or improving the natural resource base would be encouraged.

(The Photostat copy of the Agreement vide No. G.II.(b)/-130/2010 Hyderabad dated April 20, 2010 is annexed hereto and marked as Annexure-F & F-1)

5. That, the Forest department issued Leases of Compartment Nos. 13, 13-A, 14 & 14-A of the Khebrani Forest for reforestation of already forested areas to some influential persons of the Sekhat Town namely Mr. Khalil Ahmed Samo, Mr. Nusrat Samo and Mr. Kazim Samo and others by overruling the conservation principle under so called Notification No.FT&WL(SOI)13(1)Agroforestry for **Sindh Agro-Forestry Policy, 2004**. And instead of conservation they sadistically uprooted Trees in Khebrani Forest from July 2007 for which Divisional Forest Officer of Afforestation Division of the Respondent department nominated the culprits to the District Police Officer Matiari but the status-quo never changed even the Chief Conservator of Forest of the Respondent department personally inspected the aforesaid Forest range and wrote an Inspection Note.

That, presently the position is still same and they've once again brutally started to uproot the Trees with heavy Cranes and Bulldozers for their vested interest particularly in the Compartment No. 13, by 13th of May 2010 even they chopped trees in other compartments which never leased to them and they continually extended threats to the Eco-guards of the Petitioner, which is evident from the day to day reporting of National Print and Electronic Media.

(The Photostat copies of the Notification No.FT&WL(SOI)13(1) Agroforestry; Letter No.B.1(d)/94 Hyderabad dated 17.07.200 address to DPO Matiari; Inspection Note No.G.II(b)/GB/-4535 Hyderabad dated 29.04.2010; news clippings of National papers are annexed hereto and marked as **Annexure-G, H, I & J-1 to J-62**)

6. That, a Summary has been moved to the Respondent for approval of the distribution of 55,000 Acres of Forest land of 'Hyderabad Afforestation Division' of the Respondent department to some political influential peoples of the area including the Khebrani, Raees Mureed and Matiari reverine Forests and the aforesaid persons are also trying for the allotment of the said forests in the fake names of some widows and helpless people and ultimately the possession remain with them.
7. That, these deforested areas comes in Indus eco-region which is one of the 40 priority eco-regions in the world identified by the Global 200. The Global 200 ranks the earth's most biologically outstanding terrestrial, freshwater and marine ecosystems into eco-regions and so for 238 eco-regions have been identified all over the world.

And that is already comes under wildlife sanctuary, which is unfortunately not managed properly and deforestation and illegal hunting of wildlife is destroying this natural heritage therefore it need to be protected on top priority, therefore this Petition has been moved for the conservation and protection of natural resources, grazing areas and forest resources in the fragile ecosystem of Sindh. And for the reason centuries old communities living in these Forests have

expressed their gesture of good will to rehabilitate the effected and deforested land to maintain the ecological balance of mother Earth; this sense of belonging or performance would be encouraged as an investment in maintaining or improving the natural resource base that eventually will be a win situation to eradicate poverty.

8. That, it is a matter of public interest and violation of the **Forest Act, 1927**, the **Land Preservation Act, 1900**, the **Sindh Wildlife Protection Ordinance, 1972**, as well as 'Fundamental Rights' guaranteed by the **Constitution of Pakistan, 1973**. The Petitioner has no other efficacious remedy then to invoke the Extraordinary Constitutional Jurisdiction of this Hon'ble Court on the principle of natural justice '**ubi jus ibi remedium**' inter alia for the following grounds among others:

GROUND S

A. VIOLATION OF CONSTITUTION "RIGHT TO LIFE" :

- i. That, the deforestation in general particularly the deforestation reverine forests of Khebrani, Raees Mureed, Miani, Matiari, Khanpota, Shah Bukhari, Khipro, Pai, Nawab Muhammad Khan, Kathri, Gundi, Mukhi, Aandal Dal, Madaiji and other Forests of the Sindh and cutting off age-old water course from Indus to the village forests; the only source of drinking water and forestation/cultivation is directly threatening the human lives, livelihood of the vicinity, grazing area of the number of millions cattles as well, bio-diversity and ecological balance of mother Earth, as the human being is a part of nature and life depends on the uninterrupted functioning of natural system.

The present state of deforestation in Sindh eventually amounts to desertification; which cause to be Climate Change and Global warming which adversely affects human life, liberty and inalienable right of livelihood; which is violative to the 'Article 9' read-with 'Article 4 (a)' read-with 'Article 5 (2)' of the "**Constitution of Pakistan, 1973**" as under:

Article 9 ... No person shall be deprived of Life or liberty save, in accordance with law.

Article 4(a) ... INALIENABLE RIGHT; No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with Law;

Article 5 (2) ... Obedience to the Constitution and law is the [inviolable] obligation of every citizen wherever he may be and of every other person for time being within Pakistan.

- ii. That, the desertification is to a considerable degree a phenomenon induced by human activities like deforestation of reverine forests of Khebrani, Raees Mureed, Miani, Matiari, Khanpota, Shah Bukhari, Khipro, Pai, Nawab Muhammad Khan, Kathri, Gundi, Mukhi, Aandal Dal, Madaiji and other Forests of the Sindh by an organized manner of the **Sindh Agro-Forestry Policy, 2004** under the nose of the Respondent against the norms '**Doctrine of Public Trust**', which not only effect the beautiful landscape of the region, but it increase poverty to its extreme level subsequently the crime which is contravenes to the 'Right to Life' guaranteed under the "**Constitution of Pakistan, 1973**"
- iii. That, we breath-in fresh air scientifically known as Oxygen and exhale poisonous gas Carbon Dioxide that plants would respire, and release Oxygen during the photosynthesis and maintain the composition of the Earth-atmosphere which is beneficial to the human existence. Therefore the act of deforestation under the nose of the Respondent is ab initio which violates such provisions of the Constitution and moreover is violative of the law of Nature.
- iv. That, if this thankless inhuman trend of deforestation is continues on a national/global scale, the concentration of the poisonous gases in the atmosphere will definitely change to worse and it is possible that this adverse change might eventually lead to a "Green House" warming of the earth and that will cause damage to the Ozone Layer.
- v. That, the un-scientific approach of the Respondent is a great threat to human life and existence and its co-existence; other living creatures, because the matter is not only the deforestation but it's rather a matter of the shelter of the number of millions habitants, because no organism can survive, if its habitants are destroyed. Science has proved that in natural ecosystems different organism have evolved to live with one and other. Therefore, the wrong and illegal act under the nose of the Respondent is required to be dealt with heavy hands because no one is above the law. And this unwarranted activity in the name of so called the **Sindh Agro-Forestry Policy** is not only void but it violates the "Fundamental Rights of the countrymen particularly the people of Sindh guaranteed by the "**Constitution of Pakistan, 1973**".
- vi. That, the deforestation eventually dis-balanced 'Biological Diversity' and the GREEN PEACE; the beauty of the mother Earth; image of the Divine is also reflected from the beauty of Nature. And the temperature of the area/region will fluctuate from extreme highs during the summer and the local weather patterns have been altered. And there is also concern that the deforestation might upsets the Global Carbon Dioxide balance, because a living Tree/Plant absorbs Carbon Dioxide at large and it also yearly absorbs '15' metric tons Carbon Monoxide, '84'

metric tons Sulphur Dioxide, '89' metric tons Nitrogen Dioxide, '191' metric tons Ozone and '212' metric tons Particulate Matters, but instead of all releases Oxygen, the basic source of life. Therefore, after the deforestation of productive reverine Forests, the land will left barren, and the life effecting poisonous gases concentration will increase relative to that in a natural system.

vii. That, the Environment – the physical and cultural conditions under which human live – is not limited to the air, land and water necessary for our survival. It includes bio-diversity, the wild range of plants and animals needed for a balanced and viable Environment, recreational facilities, natural resources, and historic artifacts. In this perspective the deforestation is violative to the 'Right to Life' being considered as a 'Fundamental Right' guaranteed by the "**Constitution of Pakistan, 1973**"

viii. That, this ab initio act of the deforestation under the nose of the Respondent which cause serious threat for continues risk to life as well as livelihood of vicinity people at large, which is a clear violation of the Constitution, because the such provisions protect the 'Right to Life' as Fundamental Right. The apex Courts observed ... *"It encompasses within its ambit, the protection and preservation of Environment, ecological balance free from pollution of air and water, and sanitation without which Life can hardly be enjoyed. And act of omission contrary thereto will be violative to the said Right to Life."* And for the reason apex Courts of the deferent countries entertain 'Environmental Litigations' on priority basis and constituted constitutional Green Banches.

ix. That, in a welfare state, it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to better life, livelihood maintenance and improvement of social well being and public health have a rank high as these are indispensable to the very physical existence of the community and on the betterment of there depends the building of the society which the Constitution makes envisaged.

B. VIOLATION OF FOREST FRIENDLY LAWS :

i. That, the deforestation in an organized manner at reverine forests of Khebrani, Raees Mureed, Miani, Matiari, Khanpota, Shah Bukhari, Khipro, Pai, Nawab Muhammad Khan, Kathri, Gundi, Mukhi, Aandal Dal, Madaiji and other Forests of the Sindh is proved that such contravention has been committed with the consent or connivance of, or is attributed to gross negligence on the part of the Respondent; the only controlling authority on this natural heritage, which is

violative to such provisions of the **Forest Act, 1927**, the **Sindh Wildlife Protection Ordinance, 1972** and the **Land Preservation Act, 1900** as under:

Section 26 Clearing land, felling trees, cultivation, grazing livestock, trespassing, mining, and collecting forest produce are prohibited in reserved forest along with hunting, shooting, fishing, setting traps or snares and poisoning the water.

Section 33-A The Courts may impose penalties for trespassing a protected forest and evict trespassers.

Section 33(1) Penalties are based on the value of timber or forest produce involved in the offence and may extend to two years' imprisonment and a fine of 30,000 rupees.

Section 33(3) Along with the confiscation of equipment and illegally taken produce.

Section 33(4) The Courts may grant a reward to persons providing information about offences or assisting in the apprehension of an offender.

Section 63 Penalties related to marking timber and interfering with forest boundaries have also been increased by the 1994 amendment, and extend to eight years' imprisonment or a fine of up to 40,000 rupees, along with compensation for damage caused to the forest, forest produce or timber.

Sindh Wildlife Protection Ordinance, 1972 (Section 14 (2)) The exploitation of forests within a wildlife sanctuary is prohibited, except for the purpose of reducing fire hazards [sic], epidemic or insect attack or other natural calamities.

Land Preservation Act, 1900 (Section 20) Offences committed with respect to forest produce under various sections of the Forest Act, 1927 are also deemed to be offences committed under of the Act.

- ii. That, we have in Pakistan '4.24' millions hectare forest area (AJK 0.36, Balochistan 0.27, Northern Areas 0.77, NWFP 1.41, Punjab 0.63 and Sindh 0.68) which is '4.8%' of total area (796096 Square Kilometers), and the International standard is '25%' for total area of each country, but unfortunately in Pakistan '0.037' hectare forest per person, which is far from the International Standard of '1 hector' forest per person. Consequently in the circumstances when Pakistan has low forest cover, A number of sources quote a national rate of deforestation of 7,000-9,000 hectares per annum, which equals a 0.2% annual decline in forest

cover. the freely lopping of the Trees/Plants and deforestation is a clear violation of the “**International Plants Protection Convention, 1951**” and the “**Plants Protection Agreement for the South East Asia & Pacific Region, 1956**”, under ‘Section-31’ Schedule to the “**Pakistan Environmental Protection Act, 1997**”.

- iii. That, Pakistan has ratified environmental treaties on biodiversity, natural heritage and climate change, and it has international obligation to protect its natural resources, not only for global interest but for ensuring livelihoods of local people.

In this perspective Pakistan is a party/signatory to the **Convention on Protection of World Cultural and Natural Heritage, 1972**; **Convention on the Protection of the Ozone Layer, 1985**; **UNCBD-United Nations Convention on Biological Diversity, 1992** and **UNFCCC-United Nations Framework Convention on Climate Change, 1992** under ‘Section 31’ *Schedule to the “**Pakistan Environmental Protection Act, 1997**”.

And in this connection the Country Case Study on Climate Change Impacts and Adaptation Assessment in Pakistan was also completed in 1998 which assessed the impact of Climate Change on four (4) major sectors of economy that is agriculture, forestry, water resources and metrology.

- iv. That, our life is very much dependent on these natural resources, which are relatively conceived with the common concern of human being, that according to the Preamble of the “**World Charter of Nature**” of the ‘Rio Declaration, 1992’, under Section-31 Schedule to the “**Pakistan Environmental Protection Act, 1997**”, that :

“Man kind is the part of the nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients”.

- v. That, “we must acknowledge that uncertainty is inherent in managing natural resources, recognize [that] it is usually easier to prevent Environmental damage than to repair it later, and shift the burden of proof away from those advancing protection towards those proposing an action that may be harmful”.

- vi. That, it can not be denied that due to our incorrect attitude towards nature we’re already suffered a great loss and at this stage, such attitude is not only needed to be condemn but to take immediate steps for the enforcement of environment related laws. Therefore it’s a proper time to maintain the ‘**Environmental Foot Prints**’ and to follow the world-wide judicially accepted

'Precautionary Principle' which means to ensure that unless an activity is proved to be presumed to be environmentally harmful for the present and future generations of human being. The **"World Charter of Nature"** of the 'Rio Declaration', 1992, Schedule to the "Pakistan Environmental Protection Act, 1997", under Section 31, drafted Environment concern at the priority as under: 'Public Trust Doctrine'

Principle-15 ... In order to protect the Environment, the Precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage; lack of full scientific certainty shall not be used as a reason for proposing cost effective measures to prevent Environment degradation.

P R A Y E R

In view of the above submission in the public interest at large, it is most respectfully prayed that this Hon'ble Court for Environmental Justice may be pleased:

- a. to issue notice to the Respondent,
- b. to ensure that the writ of law should be upheld as to restrain the Respondent from this Constitutional violations under the world-wide judicially accepted principle of **'Precautionary Principle'**,
- c. to issue directives to the Respondent by restraining for deforestation in general and particularly Compartment No. 13 and others of Khebrani Forest,
- d. to issue directives to the Respondent to secure the unique Model Forest Programme like Khebrani and Raees Mureed reverine Forests introduced by the Petitioner through local communities, and to issue further directives to the Respondent to allow the Petitioner for the installation of tube wells in blank areas of the allocated Compartments,
- e. to issue directives to the Respondent to handed over the possession of the Compartment Nos. 26 & 36 of Matiari Forests to the Petitioner according to the MOU,
- f. to declare all the Forests of the Sindh (Total forests land in Sindh 750,000 Acers) as National assets and protected zone to escalate the conservation status of the Forests and for the reason constitute vigilance committees in each district under the headship of learned District & Sessions Judges,
- g. to restrain the Respondent and publicly irresponsible persons from deforestation and to pass a comprehensive prohibitory order for the same,
- h. to restrain the Respondent from lease of the Forests to the private or local land lords or political influential persons of the vicinity , and in this respect cancelled

all leases issued under the Sindh Agro-Forestry Policy, 2004 and not to renew for further term; particularly pass an order for the cancellation of lease for the Compartment Nos. 13, 13-A, 14, 14-A, of Khebrani Forests,

- i. to declare the 'Sindh Agro-Forestry Policy, 2004' as void,
- j. to direct the Respondent to formulate a comprehensive Forest Friendly Policy with consultation to all stakeholders including local people of the vicinity and members of the civil society, till that all the activities should be stopped; like allotment/leases/schemes,
- k. to direct the Respondent for **GIS-Geographical Information System- Mapping** of total remaining forest cover of Sindh through satellite for conservation purpose and that would be declared through national media,
- l. to restrain the Respondent for not to introduce any scheme in Forests/Forest land whether it is forested or barren like; land utilization, housing schemes, land distribution, land reforms or any other schemes or policies which amounts to deforestation or land possession,
- m. to pass a prohibitory public order with imposition of an indiscriminate fine as prescribed by the **Forest Act, 1927** at least Rs.40,000 per person for deforestation in general and to direct the Respondent for its immediate compliance,
- n. any other just or equitable relief(s) held appropriate as being fit and proper by this Hon'ble Court.

S/d
(Mr. Abdul Razaq alias Zain Daudpota)
For and on behalf of the Petitioner

Karachi.
Dated May 29, 2010

S/d
(**Qazi Ali Athar**)
Advocate for Petitioner