

Present dt: 22/10/14

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
(CONSTITUTIONAL JURISDICTION)

Constitution Petition No. 5421 of 2014

1. World Wide Fund for Nature Pakistan (WWF)
A Society registered under the Societies Registration Act, 1860,
Through its Authorized Person,
Having their Registered Office at
Ali Institute of Education, Ferozpur Road,
Lahore – 54600
2. Pakistan Animal Welfare Society (PAWS)
A non-profit Organization,
registered as a company limited,
under the Companies Ordinance, 1984,
Through its Authorized Person,
Having their Registered Office at 5-3-1, Sector 15,
Korangi Industrial Area,
Karachi-74900.
3. Ms. Maheen Zia
D/o M. Ziaullah Khan,
Muslim, Adult,
Resident of 9A-2, 8th Central Street,
DHA, Phase 2, Karachi-75500
4. Ms. Mahera Omar
D/o Hamid Omar,
Muslim, Adult,
R/o 54/1, 4th Street,
Off Kh-Momin, DHA, Phase 5,
Karachi- 75500
5. Citizens for Better Environment (Shehri – CBE),
A Non-Governmental Organization
registered under the Societies Registration Act, 1860,
Through its Authorized Person,
Having their Registered Office at
88-R, Block -2, P.E.C.H.S.,
Karachi.....Petitioners

Versus

1. Federation of Pakistan,
Through the Secretary,
Ministry of Interior,
Pak. Secretariat, R Block,
Islamabad
2. Federation of Pakistan
Through the Secretary,
Climate Change Division,
Islamabad
3. Federal Board of Revenue,
Through the Chairman,
Constitution Avenue,
Islamabad

- 4. Chief Collector of Customs,
Pakistan Customs Drug Enforcement Cell,
Federal Board of Revenue,
Customs House,
Karachi
- 5. Province of Sindh
Through the Chief Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi
- 6. Province of Sindh,
Through the Secretary,
Home Department,
Government of Sindh,
Sindh Secretariat,
Karachi
- 7. Province of Sindh,
Through the Secretary,
Sindh Wildlife Department,
Sindh Centre Building,
Karachi
- 8. Sajid Faiz Cheema,
S/o Faiz Hussain Cheema,
Resident of House No. 1571,
Street No. 62, Gakkhar Mandi,
Tehsil Wazirabad,
Gujranwala.....Respondents

**CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

It is most respectfully and most humbly submitted on behalf of the abovenamed Petitioners as under:

- 1. That the subject-matter of this present Petition is in relation to a series of events contributing to illegal international trade of wildlife species including, inter-alia, turtles and tortoises from being illegally trafficked from Pakistan, their resultant extinction, and the actions and inactions of the Respondents in relation to proceedings initiated against the Respondent No.8.
- 2. That the Petitioners No. 1, 2 and 5 are known organisations, which have, through various measures on a voluntary basis, undertaken dedicated efforts towards preservation and protection of genetic species and ecosystem of diversity,

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protection and preservation of animal population, their integrity, welfare and well being, whilst ensuring that humans feel their responsibility towards environment and other species co-existing on earth. It is submitted that the Petitioners No. 1 and No. 2 also desire, and are working for inducing and assisting in the promulgation and implementation of national and provincial laws, policies, rules and regulations on environmental matters. It is further submitted that the Petitioner No. 3 and Petitioner No. 4 are activists, who have always been involved in various struggles to create, promote and preserve ecologically sustainable relationship between mankind and other species globally.

A copy of the Resolutions passed and Certificate of Registration of Petitioners No.1, 2 and 5 authorising the institution of this Petition is annexed and marked as Annex 'A' to 'A-5' respectively.

3. That turtles play a significant role in the aquatic ecosystem and being scavengers, they are responsible for cleaning the aquatic environment by feeding upon dead organic material and deceased fish. Tortoises, on the other hand, also play an important role in the ecosystem, inter-alia, converting dung on land into soil nutrients. It is important to mention here that turtles and tortoises have been recognized worldwide to be under serious threat of extinction, reportedly with a future of only 50 years if current level of trafficking continues unabated and therefore, many countries have resorted to taking appropriate steps in respect of conservation and preservation of turtles. It is submitted that there is a correlation between the impact on the control on water borne diseases and the extinction of turtles and tortoises.

A copy of the Reports and Articles specifying importance of Turtles and Tortoises is attached and marked as Annexure 'B' & 'B-1.'

4. That turtles and tortoises, being vulnerable, endangered and exotic are protected under the Pakistan Trade Control of Wild Flora and Fauna Act, 2012, Pakistan Fish Inspection and Quality Control Act, 1997, the Prevention of Cruelty to

Animals Act, 1890, and the Sindh Wildlife Protection Ordinance, 1972, and accordingly their export is restricted. The smuggling of turtles and tortoises is also violative of the Export Policy Order, 2013, promulgated under Section 3 of the Imports and Exports (Control) Act, 1950, and the Customs Act, 1969. It is further submitted that an International Treaty i.e. the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), ratified by Pakistan in the year, 1976, also prohibits any trade of protected animals/ animals listed in CITES appendices, including turtles. In view of the alarming decline of turtles and tortoises, turtles and tortoises have also been declared as vulnerable and endangered under the Red List of Wild Animals of International Union for Conservation of Nature (IUCN).

A copy of the abovementioned Laws, Constitution of CITES and Red List is attached and marked as Annexure 'C' to 'C-12.'

5. That the recent reports submitted by the Wildlife trade monitoring network i.e. TRAFFIC, a strategic alliance between IUCN and WWF has revealed that over 1960 turtles/were seized in 22 seizures between January, 2008, and March, 2014. Of the abovementioned figure, 95 % were confiscated in the last 15 months of that period. According to a paper by Chng, S.C.L. (2014) called *Escalating Black Spotted Turtle Geoclemys hamiltonii trade in Asia: A Study of Seizures*, [herein after referred to as the 'TRAFFIC Report'] the illegal trading of Black Spotted Turtle (*Geoclemys hamiltonii*) has escalated in the past two years. The main trade chain for these turtles appear to start in South Asia (Bangladesh, India and Pakistan), where animals are collected and subsequently sent for 'wholesale' in Thailand. It was further revealed in the abovementioned TRAFFIC Report that of the 22 cases of seizures mentioned above, two involved Pakistan i.e. in one case a Pakistani national who had flown from Lahore was arrested with 470 black spotted turtles at Bangkok Airport while in the other, 320 black spotted turtles were seized from a man at Islamabad Airport. The abovementioned incidents occurred in the year, 2013, whilst another incident happened on 15th June, 2014,

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when Black Pond Turtles were smuggled from Pakistan to China which were seized in Taxkorgan in June, 2014, and eventually repatriated in August, 2014. The Chinese CITES Management Authority/ Chinese media have reported that the price of one such turtle is 1780\$ with negligible market value domestically the profit margin is much more than drugs keeping in view the lax enforcement arrangements at ports of entry and exit

A copy of the abovementioned TRAFFIC Report and relevant news clippings are attached and marked as Annexure 'D' & 'E.'

6. That a recent incident took place in Karachi on 20th September, 2014 when 218 fresh water Black Spotted Turtles (*Geoclymus Hameltonii*) were confiscated from the International Departure Hall, at Jinnah International Airport, which were being smuggled by the Respondent No. 8 to Thailand. The Respondent No. 8 was immediately arrested by the Customs Drug Enforcement Cell of Pakistan Customs Services [i.e. Respondent No. 4] and his bag was confiscated, but without registering any case against the Respondent No. 8 under the Customs Act, 1968, the Respondent No. 8 was released on Personal Bond and his custody was handed over to Sindh Wildlife Department, Government of Sindh, Karachi. The Sindh Life Department lodged the First Offence Report under the provisions of Sindh Wildlife Ordinance, 1972, and a Criminal/Special Case No. 92 of 2014 [herein after referred to as 'Special Case'] was registered before the Learned Court of Judicial Magistrate No. II, Malir, at Karachi [herein after referred to as 'Learned Magistrate's Court']. On 22nd September, 2014, the Respondent No. 8 was released on bail. It is submitted that the Customs Authority has even acknowledged in their Reply dated: 27th September, 2014, filed before the Learned Magistrate's Court that they are required to retain the original travelling documents of Respondent No. 8 till finalization of the adjudication proceedings under the Customs Act, 1969, however, proceedings by the Respondent No. 3 and the Respondent No. 4 have not yet been initiated.

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A copy of the First Offence Report, Challan, Mushirnama, Seizure Report and Reply of Customs Authority is attached and marked as Annexure 'F' to 'F-4'

7. That the Special Case was fixed for hearing on 29th September, 2014. The Respondent No.8 submitted an Application for pleading guilty. The Counsel representing the Applicants [Respondent No. 7] in the Criminal Transfer Application [herein after referred to as the 'Applicants'] was engaged in the Special Case in the morning of 29th September, 2014. Therefore, the Counsel submitted his Vakalatnama before the Learned Magistrate's Court and requested for grant of time to make submissions before framing of Charge against Respondent No.8. That the following aspects of the hearing on 29th September, 2014 are important to observe:

- a. Firstly, the Learned Magistrate was reluctant to grant time to the Counsel of the Applicants for making any submission in respect of the Special Case, even though the Counsel on behalf of the Applicants submitted that being his first appearance before the Learned Magistrate's Court, time may be granted for reviewing the official documents and for making submissions.
- b. Secondly, the Learned Magistrate was adamant that the Charge be framed on 29th September, 2014, and that it cannot be delayed under any circumstance, despite numerous requests made on behalf of the Applicants. It is important to submit that the Learned Magistrate had clearly mentioned it in the Order dated: 29th September, 2014, that the Respondent No.8 is willing to plead guilty, even though the Charge was not officially framed.
- c. Thirdly, the Learned Magistrate expressed verbally that the framing of the Charge must be expedited in all circumstances for two reasons: i.e. firstly, that the Respondent No.8 has to go out of Pakistan before the expiry of the passport of the Respondent No.8, hence, it is important that the Special Case be disposed off at the earliest, and secondly, that the Respondent No.8 is ready to plead guilty, hence, it would be sufficient,

that the Charge is framed in view of Respondent No. 8's plea of guilt and a fine/compensation to compound the alleged offences is imposed accordingly.

A copy of the Application of Respondent No.8 with Order dated: 29-09-2014 are annexed and marked as Annex 'G' respectively.

8. That in view of the abovementioned, a Criminal Transfer Application has been filed before the Learned Court of District and Sessions Judge, Malir, at Karachi to have the abovementioned Criminal/Special Case No. 92 of 2014 transferred to another competent Court of Law.

A copy of the Criminal Transfer Application is attached and marked as Annex 'H.'

9. That in the abovementioned Criminal Transfer Application, it has been clearly stated that the Criminal Transfer Application has been filed without prejudice to the contention that the Respondent No.8 should be tried under the Customs Act, 1969, and appropriate legal proceedings in this regard will be initiated.
10. That it is most respectfully and most humbly submitted that being aggrieved by the abovementioned actions and inactions of the Respondents in respect of prevention of illegal smuggling of wildlife, including but not limited to Turtles and Tortoise leading to their extinction, as being unconstitutional, without jurisdiction and illegal, the Petitioners have no alternative or efficacious remedy except to invoke the Constitutional jurisdiction of this Court on the, inter alia, facts and grounds stated herein.

GROUNDS

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- A. That it is most respectfully and most humbly submitted that Turtles and Tortoise have been listed as endangered species by IUCN and CITES as their population is on the verge of decline. It is submitted that protection and conservation of the wildlife species, including but not limited to turtles and tortoises, is fundamental for the protection of the rights of the public at large guaranteed under Article 9 and Article 14, Constitution, 1973.
- B. That it is most respectfully and most humbly submitted that the continual inaction on the part of the Respondents who have not taken any concrete steps to protect the species of wildlife from illegal smuggling, thereby leading to their extinction, is in violation of, inter-alia, Article 4, Constitution, 1973.
- C. That it is most respectfully and most humbly submitted that although a legal framework is available for protection of wildlife as specified in Para 4, it is submitted that it is the responsibility of the Federation and Provinces to ensure enforcement of the laws, in letter and spirit, to protect the wildlife. It is now a well-settled notion in all countries that the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate. It is therefore, mandatory for the Respondents to ensure that the abovementioned responsibility is properly fulfilled in furtherance of the duty assigned by the abovementioned notion as well as Article 38(d), Constitution, 1973.
- D. That it is most respectfully and most humbly submitted that the Pakistan Customs Services have a dominating role in respect of prevention of illegal export. It is submitted that the inaction on the part of Respondent No.3 and Respondent No.4 as stated in Para 6 above, has led to a number of cases of illegal export of wildlife species specified in Para 5 and Para 6 above. It is

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submitted that there is a pressing need for the Respondent No.3 and the Respondent No.4 to take necessary steps in respect of the initiating proceedings against smugglers and illegal exporters under the Customs Act, 1969.

E. That it is most respectfully and most humbly submitted that the Respondent No.8 has committed grave offences by, inter alia, contributing to the extinction of the live turtles and by exporting prohibited and restricted species in clear violation of law. It is further submitted that for the reasons specified in the Para 7 above, the Petitioners apprehend and have reasonable suspicion that fair proceedings in the Special Case will not be conducted in the Learned Magistrate's Court against the Respondent No.8.

F. That it is most respectfully and most humbly submitted that in view of the facts mentioned in Para 7 above, the Petitioners apprehend that the Learned Magistrate has predetermined the outcome of the proceedings in the Special Case without hearing the submissions of the Applicant. It is also submitted that the Learned Magistrate Court was aware and has already stated in the Order dated: 29th September, 2014, that the Respondent No.8 will plead guilty even before the framing of the Charge, which is clearly indicative of the predisposition and favourable inclination of the Learned Magistrate towards the Respondent No.8. It is further submitted that the Learned Magistrate has already decided on compounding the offences alleged in the abovementioned First Offence Report, even before the framing of the Charge, even though compounding of offences is not the only option available to the Learned Magistrate Court, specifically in view of the fact that for grave offences committed by the Respondent No.8, a free and fair trial could have been initiated.

G. That it is most respectfully and most humbly submitted that unwarranted interference of the Learned Magistrate in the framing of the Charge in the Special Case No. 92 of 2014 referred to in Para 7 above and the Criminal Transfer Application attached as Annexure 'H', against the Respondent No.8 is violative

of the Petitioner's right to be dealt with in accordance with law, guaranteed under Article 4, Constitution, 1973, hence, it has become necessary that pending disposal of the present Petition and Criminal Transfer Application, the proceedings before the Learned Magistrate Court in the Special Case No. 92 of 2014 are stayed.

H. That it is most respectfully and most humbly submitted that Article 9, Constitution, 1973 mandates 'right to life' which includes the fundamental duty of every citizen to protect and improve the natural environment including forests and wildlife that is mandatory for a healthier life for humans. It is submitted that the Federation and Provinces should endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. It is further submitted that the preservation of ecology and environment based on the principle of sustainable development to reconcile the conflicting interest of development with the preservation of healthy environment should be recognized as a facet of 'right to life.' It is important to emphasize that ecology and environment are not objects of ownership but are nature's gift intended to be preserved in trust for the future generation. It is therefore, necessary that not only a proper legal framework should be in place, but scientific and logical devices must be developed by Respondents and used to ensure that problems related to wildlife extinction and smuggling are readily resolved.

I. That it is most respectfully and humbly submitted that the Petitioners seek the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this Petition.

PRAYER

It is, therefore, most respectfully and most humbly prayed that this Honourable Court may graciously pass judgment, and orders, in the following terms:

- (a) Declare that every citizen, including every person living in Pakistan, has a right to life under Article 9, Constitution, 1973, and such a right to life includes a constitutional right to clean environment with natural habitat and wildlife;
- (b) Declare that the Provincial as well as the Federal Governments have failed to perform their constitutional duty under Article 9, Constitution, 1973, by failing to prevent incidents relating to illegal export of wildlife species i.e. turtles and tortoises;
- (c) Direct the Federal Government of Pakistan as well as the Provincial Government to ensure enforcement of the laws specified in Para 4 above;
- (d) Declare that the failure of the Respondent No. 3 and Respondent No. 4 to take legal action [including criminal and civil proceedings] against private persons under the Customs Act, 1969, for illegal smuggling is a violation of Customs Laws and their constitutional obligations under Articles 4 & 9 of the Constitution, 1973;
- (e) Direct the Respondent No. 3 and Respondent No. 4 to take legal action [including criminal and civil proceedings] against the Respondent No.8 under the Customs Act, 1969 and other laws;
- (f) Direct the Federal and Provincial Government to conduct investigation into the incidents specified in Para 5 and Para 6 above and to assign the responsibility and criminal and civil liability of persons, including government officials, government departments as well as private individuals, for the ongoing illegal export of wildlife species and after assigning responsibility and civil and criminal liability, to initiate civil and criminal proceedings against them;

- (g) Direct Federal and Provincial Government to publish a detailed program of measures to be taken by them to prevent incidents of illegal export and smuggling of wildlife species and other incidents leading to extinction of wildlife, including but not limited to Turtles and Tortoise.

- (h) Direct the Federal and Provincial Government to take such measures and issue guidelines so as to develop and enforce such procedures and mechanisms to comply with the safety and protection of the wildlife species, including but not limited to Turtles and Tortoise.

- (i) Permanently stay proceedings before the Learned Judicial Magistrate No. II, District Malir, Karachi, in Special Case No. 92 of 2014;

- (j) Grant such further, additional or alternative relief, as this Honourable Court may deem fit and proper;

[Faint handwritten signatures and text, mostly illegible]

PETITIONER NO.1

PETITIONER NO.2

PETITIONER NO.3

PETITIONER NO.4

PETITIONER NO. 5