

LANDMARK CLIMATE JUSTICE CASES

Nigeria 2005

Federal High Court of Nigeria in the Benin Judicial Division, suit FHC/B/CS/53/05, 14 November 2005: Gbemre v. Shell Petroleum Development Company Nigeria Limited.

The court sounded a claim by farmers to address natural gas flaring and climate change in a constitutional right to dignity. It held that the petroleum developers' flaring of 'waste' natural gas in the Niger Delta without the preparation of an environmental impact statement abridged the community plaintiffs' constitutionally guaranteed right to dignity.

In observing that flaring activities contributes to climate change, the court held:

"1. That the applicants were properly granted leave to institute these proceedings in a representative capacity for himself and for each and every member of the Iweherekan Community in Delta State of Nigeria.

"2. That this Court has the inherent jurisdiction to grant leave to the applicants who are bona fide citizens and residents of the Federal Republic of Nigeria, to apply for the enforcement of their fundamental rights to life and dignity of the human person as guaranteed by sections 33 and 34 of the Constitution of the Federal Republic of Nigeria, 1999.

"3. That these constitutionally guaranteed rights inevitably include the right to clean, poison-free, pollution-free healthy environment.

"4. The actions of the 1st and 2nd respondents in continuing to flare gas in the course of their oil exploration and production activities in the applicants' community is a gross violation of their fundamental right to life (including healthy environment) and dignity of human person as enshrined in the Constitution."

Pakistan 2015-2018

Ashgar Leghari v. Federation of Pakistan, Lahore High Court Green Bench (W.P. No. 25501/2015) (September 4, 2015)

has established pursuant to a ruling in 2015 to implement climate change mitigation and adaptation plans to fulfill constitutional rights to life and dignity.

Ashgar Leghari v. Federation of Pakistan (January 25, 2018), the Lahore High Court

The court invoked continuing mandamus jurisdiction to assess the work of the Climate Change Commission (CCC).

The Court reviewed at some length the threats of climate change in Pakistan, considering its effects on water resources as well as forestry and agriculture, among other things; but found that the CCC had been the driving force in sensitizing the governments and other stakeholders regarding the gravity and importance of climate change, and had accomplished

66 percent of the goals assigned to it. The Court then dissolved the CCC and established a Standing Committee to act, on an ongoing basis, as a link between the Court and the Executive and to render assistance to the government to further implementation: “The climate change commission after rendering a remarkable public and pro bono service, is hereby dissolved, the order states adding the constitution and working of the commission resulted in developing a valuable resource on climate change which can be useful for the government in the years to come.”

Netherlands 2015

Rechtbank Haag June 24, 2015, C/09/456689, Urgenda Foundation/Kingdom of the Netherlands (Neth.),

A trial court ordered the federal government to reduce greenhouse gas emissions and to mitigate the effects of climate change as a means of fulfilling constitutionally recognized rights to health and welfare

See also (Supreme Court of the Netherlands holding that the obligation imposed on the State by article 5 of the Nitrates Directive to establish antipollution programs to prevent harm to the climate is not enforceable: HR March 21, 2003, NJ 2003, 691 m.nt T. Koopmans (Netherlands Stichting Waterpakt/Netherlands) (LJN: AE8462) (Neth.)

Ireland 2017

Merriman & ors v. Fingal County Council & ors; and Friends of the Irish Environment Clg v. Fingal County Council & ors Neutral Citation: [2017] IEHC 695 at 292, citing Constitution of Ireland (Bunreacht Na Héireann).

In November 2017, the Irish High Court recognised the existence of a personal constitutional right to an environment that is consistent with the human dignity and well-being of citizens at large.

The judgment arose from a decision regarding an application for judicial review by two applicants seeking to challenge an administrative decision of the Fingal County Council. In an exercise of statutory power, the Council had granted an extension of time to a planning permission for the Dublin Airport Authority, with the intended effect of allowing the Authority further time to construct a new runway at Dublin Airport. The plaintiffs argued that the permit violated statutory and regulatory requirements, as well as Ireland’s obligations relating to climate change.

The Irish High Court, finding no standing, nonetheless found that :

“an unenumerated personal constitutional right to an environment that is consistent with the human dignity and well-being of citizens at large” exists in the Irish Constitution, whose Art. 40.3.1: “guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.”

Corte Suprema de Justicia (Civil cassation court), STC 4360-2018, April 5, 2018, Colombian Amazon

In that case, 25 plaintiffs between the ages of seven and 26 sought individualized constitutional protection against the government's failure to protect against deforestation in the Colombian Amazon (an area roughly the size of Germany and the U.K. combined), which increased at the alarming rate of 44 percent between 2015 and 2016.

The nation's most senior judge (Luis Armando Tolosa Villabona), following the Atrato River case (from Const. court, 2016, which had recognized the juridical personality of the river), reasoned that because the Amazonian ecosystem is vital for the future of the globe, the Colombian Amazon also enjoys legal rights to protection, conservation, maintenance and restoration from the State:

Para. 11.3: It is up to the authorities to respond effectively to the issues raised by the problems identified, including the urgent need to adopt corrective and mitigating measures for

- i) the excessive expansion of illicit agriculture and illegal mining that are irrationally destroying the Amazon forest;
- ii) to fill the void left by FARC and paramilitary groups when they had an active presence in the State in favor of the conservation of the Amazon territories which, in the context of the armed conflict, were controlled by insurgent groups, merciless predators, irrational colonizers and in general persons and organizations at the margins of the law;
- iii) impede and mitigate the increasing fires, deforestation, and the irrational expansion of the agricultural frontier,
- iv) the failure of prevention of the inherent consequences of the building of roads, and issuance of property rights and mineral concessions;
- v) the expansion of large scale agro-industrial cultivation;
- vi) the preservation of this ecosystem for its importance in regulating the global climate;
- vii) the absence of scientific studies and the liberal increase in the release of tons of carbon burned and loss of biomass from vegetation; and
- viii) to confront climate change, given the destruction of the amazon forest in the national territory

para. 12: This interpretation finds full justification in the superior interest of the environment, which has been widely developed by constitutional jurisprudence and which is made up of numerous constitutional clauses that constitute what has been called the "Ecological Constitution" or "Green Constitution".

para 14: Therefore, in order to protect this vital ecosystem for the global future, as the Constitutional Court declared the Atrato River, the Colombian Amazon is recognized as an entity, "subject of rights", entitled to protection, conservation, maintenance and restoration by the State and the territorial entities that comprise it.