

CLIMATE LITIGATION – KEY CASES BEYOND NORTH AMERICA

2015-2017

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First National Conference of Lawyers Committed to
Addressing the Climate Emergency
Washington, DC
April 28, 2017



Judicial review and statutory claims

- Judicial review of pollution regulation and environmental impact assessment
- Claims to enforce climate change legislation
- Claims to access or evaluate climate change related information
- Claims to enforce the public trust doctrine
- Claims under consumer protection, product liability and trade practices legislation

Tort, delict and property claims

- Negligence claims for failure to mitigate or adapt to climate change
- Public and private nuisance claims
- Claims of conspiracy; misrepresentation and fraud
- Strict liability claims for emissions of greenhouse gases

Constitutional and Human Rights Claims

- Claims based on a constitutional right to a healthy environment
- Non-constitutional claims based on human rights visitations before domestic courts
- Claims before regional and international human rights bodies



- **Constitutionalization of environmental rights linked with citizen court enforcement**
 - 92% of countries recognize the right to a healthy environment through their constitutions, laws, court decisions or international treaties and declarations (Boyd, 2012)
 - There are numerous examples where courts have acted on these provisions to provide environmental remedies
 - Ensuring all countries have such rights could help protect the human right to a healthy environment and, specifically, climate

CLIMATE LITIGATION - KEY DECIDED CASES ABROAD

2016-2016

1. **HOLLAND - "Urgenda"** – Court of the Hague
Orders Netherlands to make 25% Reduction in
Carbon Emissions by 2020
2. **PAKISTAN - "Leghari"** - High Court
Finds Pakistan government has constitutional duty
to protect citizens from climate impacts; orders
government to take concrete measures





Urgenda v Holland

- **Citizens comprehensively challenged Dutch Government's failures to live up to its **GHG** reduction obligations under **UNFCCC** and international law**
- **Judges applied and expanded Dutch tort of "hazardous negligence" as a basis for finding a duty on Government to protect its citizens from harm (informed by constitutional, **ECHR**, and **EU** human rights considerations)**
- **Acceptance of **IPCC** science reports as authoritative**
- **Rejection of justiciability and "de minimus" arguments**
- **Court ordered **GHG** reductions that the Dutch government was ordered to meet**



Leghari v Pakistan

- **The (now) Chief Justice of the Lahore High Court, Green Bench found federal and state governments had failed to carry out steps governments had acknowledged were necessary to protect citizens from climate harm**
- **Climate change impacts found to impinge on multiple constitutional rights, including right to life**
- **Court exercised extensive supervisory jurisdiction to compel Pakistan federal and state governments to take greater actions to implement required climate adaptation protection measures**

CLIMATE LITIGATION - KEY *DECIDED* CASES ABROAD 2017

AUSTRIA –“Vienna Airport Expansion”

This may be the first case to stop a project because of climate impacts

- **Federal Administrative Court blocks construction of 3rd runway**
- **Court found it would do more harm to public interest than good, primarily as it would contravene national and international obligations to mitigate climate change**
- **Court referenced the 2011 Climate Protection law included in the Austrian constitution which requires emissions reduction targets to be achieved for various sectors. By 2020, the transportation sector is required to reduce its share of Austria's total emissions by 2.25 per cent. But the project would have increased carbon dioxide emissions by up to 2%.**



CLIMATE LITIGATION - KEY *DECIDED* CASES ABROAD 2017

SOUTH AFRICA - *Earthlife Africa Johannesburg*

South Africa High Court sent approval for a new coal-fired power station back to the Minister of Environmental Affairs on the basis that its climate change impacts had not properly been considered (no EA). Court found:

- **Interpretation of national environmental laws must be consistent with international law and in particular the UNFCCC**
- **A requirement to carry out an Environmental Impact Assessment based on UNFCCC Article 4(1)(f) that “imposes an obligation on all State parties to take climate change considerations into account in their relevant environmental policies and actions, and to employ appropriate methods to minimise adverse effects on public health and on the environment.”**



CLIMATE LITIGATION - KEY *PENDING* CASES ABROAD

1. **PHILIPPINES** - Citizens Petition Human Rights Commission to Investigate responsibility of foreign based "Carbon Majors" for climate induced human rights violations
2. **SWITZERLAND** – Constitutional Claim
3. **NORWAY** – Constitutional Claim
4. **SWEDEN** – Constitutional, EU Human Rights and Fundamental Freedoms Convention
5. **GERMANY** – Tort claim by Peruvian against German emitter in German Court
6. **INDIA** – Constitutional and Public Trust claims





National Public Inquiry by the Philippines Commission on Human Rights

14 civil society organizations, including Greenpeace Southeast Asia - Philippines filed a Petition with the Philippines' Commission on Human Rights (CHR). They are joined by 18 Filipino individuals living on the frontlines of climate change. In December 2016, the CHR announced that public hearings will start September, 2017, despite the objections of fossil fuels companies.



Investor-owned companies

Claim: The 49 investor-owned Carbon Major companies contributed 21.6% of estimated global industrial emissions through 2013. The companies global operations and activities are resulting in human rights harms in the Philippines.

Legal Basis (Greenpeace)

- Carbon Majors have contributed 21.6% of estimated global industrial emissions through 2013, fuelling the climate change impacts being experienced today and well into the future.
- The adverse impacts of climate change and ocean acidification have harmed or threaten to harm people and communities, on top of, or in addition to, damage resulting from natural disasters.
- These harms resulting from the impacts of climate change and ocean acidification affect the exercise and enjoyment of Filipinos' human rights, including **the rights to life, to food; to water; to sanitation; to adequate housing; to healthful and balanced ecology**, etc.

Legal Basis Claimed

The companies have responsibility to:

- (a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and
 - (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.
- The Carbon Majors are not fulfilling their responsibility to respect human rights through the extraction, production, and sale of products that, when used as directed, result in significant amounts of climate change-causing greenhouse gas emissions.
 - The companies are also failing to act with due diligence in light of the known risks posed climate change.

Prayers for Relief

- Conduct an investigation and issue a finding
- Monitor people and communities
- Recommend that policymakers and legislators develop and adopt clear and implementable objective standards for corporate reporting of human rights issues in relation to the environment, with special regard for current and future climate change impacts and GHGs associated with fossil fuel products;
- Recommend that policymakers and legislators develop and adopt effective accountability mechanisms that victims can easily access in instances of violations or threats of violations in the context of climate change;
- Notify the investor-owned Carbon Majors and request the submission of plans on how such violations or threats of violation resulting from the impacts of climate change will be eliminated, remedied, or prevented in the future; and
- Recommend that governments explore new ways to fulfil the international duty of cooperation to ensure the Carbon Majors take steps to address the human rights implications of climate change.

Some responses by Companies

ExxonMobil Petroleum & Chemical Holdings, Inc. statements to the Petition:

“...while the Petitioners identify certain international treaties that the Philippines has signed and/or has ratified...none of said international treaties identifies climate change impacts as a human right as a matter of international law, and the Petition does not contend otherwise.”

Exxon Mobil Corporation: Statements on human rights by Exxon Mobil Corporation in their Corporate Citizenship Report 2015 Highlights:

“ExxonMobil is committed to respecting human rights. Our approach to human rights is consistent with the United Nations (UN) Guiding Principles on Business and Human Rights, which outline the distinct, yet complementary, roles of government and business with regard to human rights: the government’s duty to protect human rights, and business’ responsibility to respect them.”



Senior Ladies Climate Case - ‘KlimaSeniorinnen’, Switzerland

More than 600 women aged 65 and over are challenging the government’s climate policies, highlighting shortfalls that are putting their lives and future generations at risk. The case will proceed to court if the government fails to comply with their demands.

Slide 18

- 1 Now they are more than 600 senior women. They sent the complaint together with 4 single complaintants, all of them having serious health problems due to heatwaves.
Georg Klingler, 2/27/2017

Legal Basis

- the State's omissions violate the sustainability principle (Art. 73 BV), the precautionary principle (Art. 74 Par. 2 BV), and their right to life (Art. 10 BV), and also their rights under the ECHR, notably the right to life, to health, and to physical integrity, protected in Art. 2 and Art. 8 of the ECHR.
- Constitutional rights and human rights are linked to positive state duties to protect, which in this instance, owing to numerous omissions, have and continue to be insufficiently carried out.
- They are formally expressing their disapproval of the insufficient current domestic emissions reduction *target* of 20% below 1990 levels by 2020, as well as the insufficient domestic emissions *target* of 30% by 2030 currently under discussion in the preliminary legislative procedures, as unconstitutional and in violation of their human rights.
- They criticize the insufficient mitigation *measures*—not only in view of the current target for 2020, but even more strongly with regard to the elevated, as well as Constitutional- and ECHR-compliant targets for 2020 and 2030.

Slide 19

- 2 Most important here (in my opinion): They know that they cannot challenge the lawmaker / Parliament. SO they go for the executive and the administration arguing that they are a) not allowed to present insufficient law proposals and b) that they need to do everything within their competencies to stop the current wrongful omissions.

Georg Klingler, 2/27/2017

Remedy

- Implement mitigation measures, in their competence, required to achieve the current greenhouse gas reduction target of 20% by 2020, thus ending the wrongful omissions.
- Mitigation measures include
 - issuing state-of-the-art building standards for new and existing buildings:
 - tougher vehicle fuel efficiency and transportation policies: and
 - an increase in the carbon price.

- 3 Are you sure you want to go into those details (esp. the cantonal ones)? Most important for me: a) Authorities need to stop releasing law proposals that are insufficient
- b) Authorities need to use their room for manoeuvre to close the gap between the current politics and the politics that are respecting human rights. First they need to ensure that the insufficient goal of 20% till 2020 is reached. Second they need to use all competencies to reach higher: a) regulate agriculture and air-traffic (both field are unregulated), b) improve regulations for transport sector (wrong declarations of emissions, e-mobility...), for building sector (which in Switzerland is mainly the task of the cantons) and for industry.
- c) Taking note of the unlawful situation authorities need to proactively start new legislations process for higher goals and new measurements

Georg Klingler, 2/27/2017

CLIMATE LITIGATION- KEY *pending* CASES abroad

2017

NORWAY

The Norwegian constitution states that (§112):

- “Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well. The authorities of the state shall take measures for the implementation of these principles.”



Oslo, Norway, 15 February 2017

Oslo District Court has announced the hearing dates for the climate case filed against the Norwegian government for granting new oil drilling licenses in the Arctic ocean. The hearing will start on 13 November and continue for two weeks. The plaintiffs, Nature and Youth and Greenpeace Nordic, argue that the Norwegian government contravenes the Paris Agreement and violates the Norwegian constitutional right to a healthy and safe environment for current and future generations.

CLIMATE LITIGATION- KEY *pending* CASES abroad
2017
GERMANY

Lliua v. RWE

Peruvian Farmer Claims in German Court to Have Major German Emitter pay pro-rata cost to implement measures in Peru to prevent climate change loss and damage to plaintiff

Claim initially rejected Dec., 2016;
under appeal

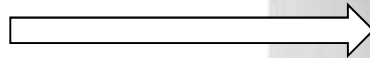


The Case

Peru

A county threatened
and dependent on
glaciers

Huaraz



La Laguna Palcacocha:

Acute risk of a glacial outburst



Legal Basis and Remedy:

➔ Nuisance to property caused by global climate change

§ 1004 German Civil Code (BGB):

(1) If property is interfered with by means other than removal or retention of possession, the owner may require the disturber to remove the interference. If further interferences are to be feared, the owner may seek an injunction.

(2) The claim is excluded if the owner is obliged to tolerate the interference.

➔ Motion: „to determine that the defendant is liable, proportionate to its level of contribution (share of global greenhouse gas emissions) to bear the expenses for appropriate safety precautions in favour of the claimant's property from a glacial lake outburst flood from Lake Palcacocha”.

➔ Alternatively “... to take appropriate safety measures”

CLIMATE LITIGATION- KEY *pending* CASES Abroad

2016-2017

SWEDEN

- **SWEDISH NGO PUSH Sverige and hundreds of individuals sue Sweden to challenge sale by state-owned utility of German lignite operations**
- **Suit claims the sale will result in an immediate risk that carbon emissions from the sold operation will increase significantly; company should be kept under Swedish government emission restrictions**
- **Challenge invokes a duty of care by Government for its citizens based on Swedish Constitution, the EU Convention on Human Rights and international conventions such as the UNFCCC and the Paris Agreement**



CLIMATE LITIGATION - KEY *PENDING* CASES ABROAD

2017

Nine-year-old Ridhima Pandey filed a petition against the government of India in the National Green Tribunal

Petition asserts that the Indian government has failed to fulfill its duties to her and the Indian people to mitigate climate change.

The case includes allegations based on India's Constitution, the Public Trust Doctrine, Intergenerational Equity, but also alleges the non-implementation of four environmental laws dating as far back as 1980, has contributed to the adverse impacts of climate change across India.



Key Themes to Assist in Future Litigation

- ***Predominance of Constitutional and linked Human Rights Approaches (particularly rights to life, liberty, and security of the person)***
- ***Rejection of justiciability concerns***
- ***Rejection of de minimus arguments***
- ***Domestic Judges willing to engage in novel remedial approaches and be part of the solution, not another obstacle***
- ***Emergence of intergenerational equity arguments***
- ***New comprehensive nature of claims***

Acknowledgements

I wish to acknowledge with thanks

- the adaption/use of some power point slides originally prepared by Dustin Klaudt, Fellow, Osgoode Hall Law School Environmental Justice and Sustainability Clinic
- the use of other power point slides prepared
 - by Greenpeace Canada and South East Asia-Philippines
 - by German Attorney Roda Verheyen verheyen@rae-guenther.de