



## Gbemre v. Shell Petroleum Development Company and Others

Suit No. FHC/B/CS/53/05; (2005) AHRLR 151 (NgHC 2005)

**Country:** Nigeria

**Region:** Africa

**Year:** 2005

**Court:** High Court, Benin Division

**Health Topics:** Chronic and noncommunicable diseases, Environmental health, Health care and health services, Poverty, Water, sanitation and hygiene

**Human Rights:** Right to a clean environment, Right to life

### Facts

Applicants, residents of Iwherekan community in the Delta State of Nigeria, applied for an order enforcing their fundamental right to life and dignity of human person as provided by sections 22(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 (the "Constitution") and articles 4, 16, and 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 col 1, Laws of the Federation of Nigeria, 2004 (the "African Charter"). Respondents were oil and gas companies in Nigeria engaged in the exploration and production of crude oil and other petroleum products in Nigeria.

The applicants alleged that no environmental impact assessment had been carried out by the respondents concerning their gas flaring activities in the applicants' community, which resulted in the massive and continuous flaring of gas, that no valid ministerial gas flaring certificates had been obtained by the respondents to authorize such gas flaring, that such continuous gas flaring had polluted the air, caused respiratory diseases, gravely impaired health, contributed to adverse climate change, reduced crop production and impacted food security, caused acid rains which corroded the roofs of houses and acidified water sources and contributed to the premature deaths of various members of the applicants' community.

Specifically, applicants sought (1) a declaration that the relevant abovementioned articles included the right to a poison-free, pollution-free and healthy environment; (2) a declaration that the respondents' actions in continuing to flare gas was a violation of the fundamental right to life (including a healthy environment) and dignity of human person as guaranteed by the abovementioned articles; (3) a declaration that the respondents' failure to carry out an environmental impact assessment in the applicants' community concerning the effects of their gas flaring activities violated section 2(2) of the Environmental Impact Assessment Act and violated the applicants' fundamental rights to life and dignity; (4) a declaration that the relevant provisions of the Associated Gas Re-Injection Act and regulations which allow the continued flaring of gas in Nigeria, were inconsistent with the applicants' right to life and dignity and were therefore unconstitutional and void; and (5) an order restraining the respondents from further flaring of gas in the applicants' community.

### Decision and Reasoning

The Court held that the constitutionally guaranteed rights included the right to clean, poison-free, pollution-free, healthy environment, that respondents' actions in flaring gas constituted a gross violation of the applicants' fundamental right to life (including a healthy environment) and dignity of the human person, that the failure of the respondents to carry out an environmental impact assessment had contributed to a further violation of such rights, and that the relevant sections of the Associated Gas Re-Injection Act and corresponding regulations were inconsistent with the applicants' right to life and dignity of the human persons, as enshrined in the relevant articles of the Constitution and African Charter.

The Court ordered that the respondents take immediate steps to stop flaring of gas in the applicants' community and that the Attorney General take immediate steps to set into motion the necessary processes to amend the relevant sections of the Associated Gas Re-Injection Act and corresponding regulations to bring them in line with the Constitution.

### Decision Excerpts

