

***Between Mr. Jonah Gbemre and Shell Petroleum Development  
Company Nigeria Ltd, Nigerian National Petroleum Corporation,  
Attorney General of the Federation***

FEDERAL HIGH COURT OF NIGERIA BENIN JUDICIAL DIVISION

Suit No: fhc/b/cs/53/05 (Judgment of 14 November, 2005)  
<<http://www.climatelaw.org/cases/case-documents/nigeria/ni-pleadings.doc>>

**Author's Note:** Citations to portions of various constitutional and legislative provisions are omitted.

***Court's Opinion:***

THE COURT HAVING FOUND AND HELD AS FOLLOWS:

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 bonafide 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 persons as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999.

...

4. The actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in continuing to flare gas in the course of their oil exploration and production activities in the Applicant's Community is a gross violation of their fundamental right to life (including healthy environment) and dignity of human person as enshrined in the Constitution.

...

IT IS HEREBY DECLARED AS FOLLOWS:

1. DECLARATION that the Constitutionally guaranteed fundamental rights to life and dignity of human person provided in the Constitution ... and reinforced by the African Charter on Human Procedure Rules (Procedure and Enforcement) Act, Laws of the Federation of Nigeria, 2004 inevitably includes the right to clean poison-free, pollution-free and healthy environment.

2. DECLARATION that the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in continuing to flare gas in the course of their oil exploration and production activities in the Applicant's Community is a violation of their fundamental rights to life (including healthy environment) and dignity of human person guaranteed by the Constitution of Federal Republic of Nigeria, 1999 and reinforced by the African Charter on Human [Rights] Procedure Rules (Ratification and Enforcement) Act.

3. DECLARATION that the failure of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to carry out [an] environment[al] impact assessment in the Applicant's Community concerning the effects of their gas flaring activities is a violation of the Environment Impact Assessment Act, and contributed to the violation of the Applicant's said fundamental rights to life and dignity of human person.

4. DECLARATION that the *provisions of the Associated Gas Re-injection Act and the Associated Gas Re-injection (continued flaring of gas) Regulations* Section 1.43 of 1984, under which the continued flaring of gas in Nigeria may be allowed *are inconsistent* with the Applicant's Right to life and/or dignity of human person enshrined in the *Constitution* of Federal Republic of Nigeria and the African Charter on Human and Peoples Right (Ratification and Enforcement) Act and are therefore unconstitutional, null and void by virtue of the same Constitution [italics added].

5. I HEREBY ORDER that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are accordingly restrained whether by themselves, their servants or workers or otherwise from further flaring of gas in Applicant's Community and are to take immediate steps to stop the further flaring of gas in the Applicant's Community.

6. The Honourable Attorney-General of the Federation and Ministry of Justice, 3<sup>rd</sup> Respondent in these proceedings *who regrettably did not put up any appearance*, and/or defend these proceedings is HEREBY ORDERED immediately set into motion, after due consultation with the Federal Executive Council, necessary processes for the Enactment of a Bill for an Act of the National Assembly for the speedy amendment of the relevant Sections of the Associated Gas Regulation Act and the Regulations made there under to quickly bring them in line with the provisions of Chapter 4 of the Constitution, especially in view of the fact that the Associated Gas Regulation Act even by itself also *makes the said continuous gas flaring a crime* having prescribed penalties.... [italics added].

7. This is the final Judgment of the Court and I make no award of Damages, costs or compensation whatsoever.

ISSUED AT BENIN CITY, Under the seal of the Court and the Hand of the Presiding Judge this 14<sup>th</sup> day of November, 2005.

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**Questions:**

1. Note the paragraph 7 award. Does it suggest that the court's various declarations are more a matter of false bravado than adequate compensation? Does the lack of an appearance by the Nigerian Attorney General suggest that the government's executive branch did not care to honor the court's proceedings by its presence? That the case for liability was so clear, that there was no need for the government to appear?

2. Is it likely that Nigerian criminal law will ultimately be applied? Ignored?

3. If the Nigerian Constitution and its legislative provisions so blatantly violated the human rights of the affected plaintiffs, was it fair for the court not to award the costs of suit to them?

4. Nigeria is one of the world's largest oil producers. Would most of these questions thus seem to be only rhetorical?