

CLIMATE RIGHTS AS A HUMAN RIGHT

By

Chief Justice Sir Gibuma Gibbs Salika, GCL, KBE, CSM, OBE

Delivered at the Commonwealth Law Conference, Nassau, Bahamas

September 2021

Climate Change and its effects on people in Papua New Guinea (PNG) and the wider Pacific Islands is well documented. PNG is one of 43 nations on the Climate Vulnerable Forum. PNG ratified the Paris Climate Change Agreement in August 2016.

The Population of PNG is almost 9 million people. We have 3 official languages (English, Tok Pisin and Motu). Further, we have 840 languages spoken among our 1000 plus tribes making us one of the most diverse indigenous cultures in the world. However, climate change is real and we have seen its impact.

PNG lies in the “Ring of Fire”, an area in the basin of the Pacific Ocean, which is vulnerable to frequent earthquakes and volcanic eruptions. While we do not get tropical cyclones or Hurricanes as is it is called here in the Caribbean, we have experienced increasing rainstorms and our Pacific Island neighbours have seen more cyclones in recent years. As an Island nation, PNG has coastal areas and islands which has seen rising sea levels impacting our peoples’ rights to enjoyment of their property through the disappearance of coastal land overrun by water.

Human rights including the right to life as indicated in the Papua New Guinea Constitution in section 35 are adversely affected by climate change. We see the evidence of this, for instance, with each new extreme weather event and the devastation that ensues such as death and the destruction of crops and property. On 26 February 2018, a 7.5 magnitude earthquake struck (PNG), in the Hela Province triggering landslides, killing and burying people and houses, affecting water sources and destroying crops. There were 544,000 people affected with 270,000 requiring immediate assistance and 18,200 displaced.

For many of our farmers who rely on a steady supply of rainwater for their crops, drought has severely impacted some island nations in the Pacific such as Samoa and

in fact they are one of our Pacific Island neighbours who consistently pleads for global action to tackle climate change.

The economic impact of climate change is such that with devastation comes depleted economic activity and potentially severe effect on quality of life. When people are unable to grow crops to feed their families or sustain businesses, they are placed in a dire situation. The courts have to contend with climate related litigation. While there are many cases globally in countries such as the UK, Australia, European Union, India and New Zealand on climate change, Papua New Guinea has not seen specific instances of this litigation. The Climate Change (Management) Act, 2015 which was passed in the Papua New Guinea Parliament provides the regulatory framework for promoting and managing climate compatible development through climate change mitigation and adaptation activities.

This law refers to its constitutional compliance to the extent any qualified rights in the Papua New Guinea Constitution such as right to liberty (section 42), right to freedom from arbitrary search and entry (section 44), right to peacefully assemble and associate (section 47), right to freedom of employment (section 48), right to freedom of information (section 51), and the right to protection from unjust deprivation of property (section) are restricted, the law Climate Change (Management) Act, 2015 was made for public purpose, public interest and public welfare. Hence, the state of Papua New Guinea has put in place some legislation to support the protection of the right to life through promoting climate rights.

The Carteret Islands are Papua New Guinea islands located 86 km north-east of Bougainville in the South Pacific. Forty years ago, the 3,000 residents of Carteret Islands depended on their own agricultural production to source the community's food needs. However, rising sea levels and increased floods routinely destroyed the islands' food gardens. Today, those islanders rely on the Government to supply their food. Schools there have closed as there is little to no access to safe water and food. These atolls sit roughly 1.5 metres (4 feet) above sea level, and storm surges and resulting land erosion and saltwater intrusion upset the basic security central to the islanders' way of life. Beginning in the 1980s, the Papua New Guinean Government began migrating families to the neighbouring island of Bougainville. There are few remaining Carteret Islanders on land bearing the brunt of climate change.

Another climate change impact has been the increased volcanic activity in PNG. Manam islanders were displaced from the island of Manam, off the north coast of

Madang Province in Papua New Guinea, early in 2005 after extensive volcanic activity. About 9,000 people were evacuated, eventually to three principal “care centres”, former plantations, extending over 100 km along the north coast of Madang Province. Most of the displaced islanders have remained in these care centres for a decade. No emergency preparedness plans were in place for evacuation or resettlement. That has posed economic and social problems for them and created tensions with local landowners. Relocation on narrow strips of coastal land created conflicts with local people over the use of such resources as land for gardens, water, materials to build houses and access to marine resources, circumstances that challenged attempts to maintain food security. Access to land posed immediate problems for Manam islanders and has delayed attempts to achieve a durable solution. Past solutions to evacuation, through extended regional social ties and exchange relations, have become less feasible. As populations in the care centres have grown, the quality of life there, where most islanders still reside, has deteriorated.

Over time, resettlement has become a difficult and complex political issue. The Madang Provincial Government has developed a plan for a new permanent resettlement site for the islanders at Andarum, some 30 km inland, but that will not be accessible for several years, and finance for its development is being finalised. A number of islanders have returned to Manam, especially to the northern village of Baliau, partly because of a residential preference but also because of tensions and violence with mainlanders. An effective largely subsistence lifestyle has been restored but Manam is still regarded as unsafe today.

The Human Rights related Instruments which are relevant in the context of climate change that have been ratified by the PNG Government include:

- International Covenant on Economic, Social and Cultural Rights,
- International Covenant on Civil and Political Rights,
- Convention on the Elimination of All Forms of Discrimination against Women,
- Convention on the Rights of the Child,
- International Convention on the Elimination of All Forms of Racial Discrimination, and
- Convention on the rights of persons with disabilities.

In terms of the PNG Judiciary, we have been proactive in facilitating judicial education and training for our Judges on Human Rights inclusive of the above contextual issues primarily because while we have not seen significant climate litigation issues before our courts, we anticipate that with a fairly robust dispute resolution environment it is simply a matter of time.

Alternative Dispute Resolution (ADR) inclusive of Mediation is a mechanism that could also be engaged with climate litigation in the future as a means helping parties to reach their own agreement or make a decision based on the principle of self-determination and includes blended processes and customary forms of mediation. In accordance with the National Court Act (Chapter No. 38) and the ADR Rules, all court-annexed mediations are conducted by mediators who have been accredited under the ADR Rules. These mediators include Judges, Lawyers and other experts that have undergone specialized mediation training and gained experience in court-annexed mediation processes.

The PNG Judiciary is prepared to handle climate related litigation. We are fully aware of the reality that climate rights are a part of human rights and the courts have an obligation to ensure that effective remedies and means of adaptation to enjoy lives of human dignity occur for those in vulnerable situations in their pursuit of access to justice.