

history of colonialization and through an education system that continues to tell us that we are going to struggle to solve the problem of global warming. It is sometimes the examples of the lives that people live that illuminate an issue.

I have been following the issue of the Sundarbans for a long time, but it is only really since I started getting into the experiences of the people there through the project, through the surveys that we have done in the Sundarbans and in Kolkata on the people from the Sundarbans, that I have realized the real extent of the problem. We are only beginning to understand the full extent of what the problems are.

I think one thing that we have to realize is that we as lawyers sometimes have a certain arrogance where we think the law can solve these problems and what we realize very quickly is that actually in something as huge as global warming, that is not the case at all. You have to create a momentum of understanding, a momentum of resistance and resilience in order to try and mitigate global warming. We must gain a greater understanding of the types of lives that a large number of people are living in parts of the world that are being aggravated by global warming—which is being aggravated by the unsustainable consumer culture that many of us live in. We would hope that once we have that better understanding, people will think about what is required from them or a society to try and address those problems.

One of the things that we are trying to do in the Sundarbans example is look for these nuggets of information or experience that can link up to people's popular imagination in some way and maybe a motivational factor because we want people to understand climate change and the effects from climate change that are already happening. I think too much in the political discourse puts it as something in the future. It is not. It is something that has been happening and is continuing to happening today to large parts of the world. We must relate the current effects of global warming to people's normal comprehensions.

The very idea that people who are displaced by cyclones go back to their home every single year and rebuild is a beautiful example of what exactly it is that we need to do to combat global warming. It is a resilient, non-defeatist philosophy that says that we have something so important in this broken island of ours that we want to protect and we will struggle for it, and we will struggle for it by going back every year and rebuilding our homes and eking our existence from our land, despite the fact that we know the next year it will probably be the same. That, to me, is the core of what we need in order to survive, to stop climate change, to mitigate climate change.

DANIEL BODANSKY

Unfortunately, Krishnendu cannot be here so we cannot thank him in person for that very interesting testimonial. It is a very rich discussion, and he raises a lot of issues that we are going to try to come back to during the discussion. But one thing I just wanted to highlight, which I think leads into Gabriela's testimonial, is the importance of human rights as a vehicle that international law offers for individuals in the Sundarbans and other regions around the world—a vehicle they can use to try to get recognition of their rights.

I am going to turn it over now to Gabriela to describe the case with which she was involved in Colombia.

REMARKS BY GABRIELA ESLAVA BEJARANO

doi:10.1017/amp.2023.29

Thanks, Dan. First, I want to start by thanking the organizers and all of you for being here and being interested in this subject. Before I start, I must say that I wear two hats in this case. I was one

of the plaintiffs in the case, but I was also one of the lawyers who worked on structuring the case. I will be going back and forth with these two roles.

The timeline of this case was relevant. We started doing the research back in 2016, and we filed the case in 2018. I am saying this because 2016 was a big year for Colombia. The Colombian government signed a peace agreement with the FARC guerrilla, and what this means for the twenty-five young plaintiffs of the case is that we had a common characteristic. Basically, we said that we were going to be the first generation of Colombians to live in peace, and at the same time, we were the last generation—or some people have said that—that can take action against climate change.

The lawsuit was born from this reflection: What is Colombia going to look like for future generations? We started our research on climate change by asking what were the main causes of greenhouse gases, and to our surprise, most greenhouse gases did not come from the industry or transport sectors in our crowded Latin American cities. Most greenhouse gases came from the most biodiverse region of the world—the Amazon rainforest. Those dots that you see there are the agricultural frontier that divides the Andes Mountains and the Savannah from the forest.

What we found is that in 2016—that was the latest data we had—deforestation increased by 44 percent, meaning that an area of forest that is equivalent to the area of Long Island was cut down in just one year. One of the reasons behind this trend is that some areas that were previously difficult to access, in part, because of the armed conflict, are now beginning to be colonized.

On its own, deforestation contributes to 36 percent of the country's total greenhouse gases, and according to the official information that the Ministry of Environment provides to the NDC for the Paris Agreement. Twenty years from now, Colombia is expected to be 1.5 degrees Celsius warmer. It is highly probable that we are going to be alive in that first climate change scenario.

The problem with cutting down the rainforest is that not only does it contribute to climate change-related impacts, such as the melting of glaciers, the increase in temperature, or the spread of vector-borne diseases, it also affects the water cycle. We had the chance to use the research from a Colombian scientist who is part of the Intergovernmental Panel on Climate Change, and he has dedicated his life to explore the relationship between the Amazon rainforest and the Andes region. What he basically explained, and what we provided as evidence to the Supreme Court, is that the rain that is produced in the forest is condensed in clouds, and with the help of the wind that comes from the south of the continent, those clouds find the Andes mountains. And that becomes the water that 70 percent of the Colombian population drinks every day. I am from the capital of Colombia, so that affects me as well.

Basically, this is a problem in itself, and we try to present how each of the twenty-five plaintiffs would be affected by climate change. You can see that we are all from different parts of the country, and we had a challenge in showing legal standing: How is it possible that someone who does not live in the Amazon rainforest is going to be affected by climate change caused by deforestation? Our main purpose was to demonstrate that climate change is a human rights problem, and regarding this problem, we said that the Colombian government had at least four different commitments that it was not fulfilling. Two of them were on the international side and two of them on the national side.

On the international side, in 2017, the Colombian Congress was in the process of ratifying the Paris Agreement. We said that the Paris Agreement includes a commitment to reduce greenhouse gases, and its preamble talks about intergenerational equity. Also, on the international side, there is a joint statement between Colombia, Norway, and Germany to reach zero-net deforestation in the Colombian Amazon.

On the national side, our national constitution establishes the right to a healthy environment, and we also have a national development plan that states that the maximum deforestation rate must be lower than 90,000 hectares.

The plaintiffs of these legal actions are these twenty-five children, teenagers, and young adults. We were between the ages of seven and twenty-five when we filed the case, and according to the National Department of Statistics of Colombia, the average life expectancy is 78 years in Colombia. We told the judge that it is highly probable that we are going to be alive in 2040 when the first climate change scenario with the increase in temperature is going to happen.

What we chose for the case was to file a *tutela* action. A *tutela* is a special mechanism provided by the Colombian constitution that you can use whenever your fundamental rights are being violated or under threat, and the judge will have ten days to solve your case. In this case, we said that deforestation of the Amazon is violating our right to enjoy a healthy environment, and that that is putting four different rights under threat, the right of access to water, food, health, and quality of life.

We knew that this was not a traditional environmental damage case, especially for the Supreme Court of Colombia. So we asked the judge to read our case with a special lens given by both international and national law. There were five principles that we developed in the text of the lawsuit: the solidarity principle; the precautionary principle; the participation in environmental matters; intergenerational equity; and the best interests of children. Especially, in the case of the principle of solidarity, we asked the Court to understand this in three dimensions: solidarity with other people with whom we share the planet in this time and space; solidarity with future generations, taking into account all the explanation I did on how we are expected to be alive in the first climate change scenario; and solidarity with other sentient beings with whom we inhabit this planet.

The Supreme Court of Colombia took the principle of solidarity and intergenerational equity from the recent Paris Agreement to solve our case, and the court did not only declare that future generations have a right to a healthy environment, but it also stated that the Amazon rainforest as an ecosystem is a legal entity. And, as a legal entity, it has at least three rights: the rights to be preserved, maintained, and restored.

Coming back to the beginning, after fifty years of armed conflict, what does it mean that an ecosystem has the right to be restored? How can one implement that? There are many reflections on the implementation of the case and how what started as a climate change and future generations case ended up being a rights of nature case. I will stop here. Thank you.

DANIEL BODANSKY

Thanks so much for that testimonial. I remember many years ago when I was in law school reading Christopher Stone's article, "Should Trees Have Standing?" and it is too bad that he is not here with us still today to see that his idea, which seemed so radical at the time, now has been actually acknowledged in cases like the one that Gabriela was just describing.

We are going to move now to discussion. I am going to start, Gabriela, though, with you. Since the theme of our panel is how international law is perceived by local communities, I want to ask you to what degree has the international climate change regime mattered in your work? In particular, as a climate change activist, what would you like to see the international negotiations do more than they are already doing to try to assist the kind of work that you have been describing?

GABRIELA ESLAVA BEJARANO

Thanks for that question, Dan. When we started, we had no idea how climate change worked in real life. We were a group of human rights lawyers, and we dealt with participation of communities in environmental cases. There was no specific framework in our national law about climate change. In Colombia, at that moment, we did not have a climate change law, and we knew that the government was in the process of ratifying the Paris Agreement. But that was all we had, and we used the

text to present the arguments to the Supreme Court. Without the Paris Agreement, we would not have had a case, because, as I mentioned, we did not have a law, and our national constitution only includes sustainable development and the right to a healthy environment. International law gave us all the arguments, and although the Paris Agreement was not ratified at the moment, we said to the court that there was a clear intention of the government to ratify the agreement. Any omissions in fulfilling its duties were against that commitment.

As an activist and also as an environmental lawyer, I agree with some of the things that Krishnendu shared at the beginning. I feel like we as lawyers need to start talking to other professionals, to scientists, and to think more about the implementation of the cases we are participating in. It is not enough to have the best legal arguments if we do not think about the implementation and the possible consequences of the cases.

DANIEL BODANSKY

Thanks. Lisa, I want to turn to you. We are looking at it from both perspectives, what international law means to local communities and local action but then, conversely, how local action feeds into the international negotiations. Krishnendu mentioned that the experience of people living in the Sundarbans can link people's imagination and can be a motivational factor in the negotiating process. I want to ask you, to what extent do you think the kinds of local experiences that he describes actually do inform the climate negotiations? Are they, in fact, a motivational factor? Could anything be done that might increase their influence in the negotiating process?

REMARKS BY LISA BENJAMIN

doi:10.1017/amp.2023.30

Hi, Dan. Hi, Gabriela. I also wanted to thank the organizers for facilitating a hybrid format so I could be here with you today. I think in terms of that question, Dan, you and I have both been at negotiations where the plenary starts with all the countries there and a minute of silence for some victims of some typhoon in one of the countries that is there, or victims of a hurricane of a country that is there, and then the minute of silence ends. Then we swiftly move on to the business of negotiating. I think that it is not as much of a motivational factor in the outcomes of the negotiations. I think it does motivate some of the countries that are there, and of course, they are the more vulnerable countries, and they are the ones that have less influence in terms of crafting the outcomes of the negotiations.

I will say that I have only been attending since 2010, and, Dan, you may have much more experience, and so you may have seen this as well. I have seen more and more protestors, both around the Conference of Parties (COP) in the negotiations, outside the COP meetings, and also the Secretariat of the UNFCCC has authorized, I think, more and more protests inside the negotiations. What happens is you will have thousands of negotiators get up, leave a room, move to another room, and walk by protests both inside and then, of course, going into the negotiations. Those protests are important in terms of media coverage of the COP negotiations. They are also really important in terms of trying to influence at least some of the more powerful actors in the negotiations, and so we have seen, in the past few years, the presence of Greta Thunberg, who now goes to G7 meetings and talks, and not only at the negotiations. I would also like to highlight some activists from the Global South, like Vanessa Nakate from Uganda. There has been a rise of the presence of young protestors, basically trying to put pressure on negotiators.

Ultimately, though, negotiators take instructions from their capitals. That kind of rights-based activism is very influential at the domestic level for countries who are large emitters and are