

Rights of Nature Case Study

Turag River

In January 2019, the High Court Division of the Supreme Court of Bangladesh recognised the legal personhood of the Turag River, and extended this status to all rivers across Bangladesh, in response to public interest litigation challenging earth-filling, encroachment and construction along the riverbanks.

Location	Bangladesh
Date	January 2019
Source	Court judgment (Supreme Court of Bangladesh) – <i>Human Rights and Peace for Bangladesh and others v Secretary of the Ministry of Shipping and others</i> , Writ Petition No. 13989 of 2016
Jurisdiction level	National
Context	<p>The Turag River originates from the Bangshi River and in turn becomes the upper tributary of the Buriganga River. It is a major river in Bangladesh and one of an extensive river system across the country, numbering about 700 rivers. It flows for approximately 65 km, passing through the north-western part of the country’s capital city, Dhaka.</p> <p>On 7 November 2016, the Bangladeshi NGO, Human Rights and Peace for Bangladesh (HRPB) filed Writ Petition No. 13989 of 2016 at the High Court Division of the Supreme Court of Bangladesh. This public interest litigation, under article 102 of the Constitution of Bangladesh, sought to challenge the legality of earth-filling, encroachment and construction of structures along the banks of the Turag River. The case was brought against the national government, as represented by the Secretary of the Ministry of Shipping, the Chairman of the Bangladesh Inland Water Transport Authority, the Director General of the Department of Environment, the Deputy Commission of Gazipur, and others.</p> <p>The writ petition built upon a longer-term litigation and investigative process that included an earlier case filed by HRPB concerning the Turag River (Writ Petition No. 3503 of 2009), an extensive Daily Star newspaper report regarding the state of the river from 2013 to 2016, and a subsequent High Court order for compliance with earlier directions given.</p> <p>The subject of the litigation was also connected to broader public dialogue concerning the health and status of the rivers in Bangladesh. This included the 4th International Water Conference – entitled ‘River: A Living Being’ – organised by ActionAid Bangladesh, held in late January 2019. The main</p>

	<p>objective of the conference was to advocate for the recognition of rivers as living beings, while also seeking to widen space for sharing multidisciplinary ideas, knowledge and insights relating to water commons, from local to a global level, and advancing transnational advocacy and activism on water commons from a rights perspective.</p> <p>Following the filing of the 2016 petition, various interim steps were taken under Court direction, including ascertaining the river boundaries, illegal encroachments, names of encroachers and extent of evictions to date. However, without adequate resolution of the matter, the Court issued its judgment in early 2019.</p>
<p>Rights of Nature recognition</p>	<p>In a judgment delivered on 30 January and 3 February 2019, the Court declared the Turag River to be a legal person, legal entity and living entity. It made this decision on the basis of the public trust doctrine, being the legal principle that the government holds in trust for public use certain natural resources, regardless of private property ownership. Further, it extended this legal status and protection to all rivers in Bangladesh and issued 17 specific directions to the state and other respondents. Explaining the reasoning for the living entity status, the Court noted that the rivers are shrinking every day because of illegal construction on the riverbanks. It referenced key international environmental principles, including the precautionary principle and the polluter pays principle, and noted similar developments around the world in which natural entities had been recognised as having legal personhood.</p> <p>The Court appointed the National River Conservation Commission (NRCC) as the legal guardian (<i>person in loco parentis</i>), with legal responsibility to protect and conserve the rivers, saving them from pollution and encroachment. In setting the terms of the guardianship mechanism, the Court ordered that all relevant authorities must communicate with the NRCC prior to going forward with any new project concerning any rivers, canals and water bodies, and obtain a ‘no objection’ certification for such projects. Further, the Court ordered the state to amend the National River Conservation Commission Act 2013 to strengthen the NRCC’s powers of investigation and enforcement, including through new criminal offences, and to immediately take necessary steps to ensure it is an effective and independent institution.</p> <p>Other directions focused on immediate steps necessary to redress existing damage and encroachment of the Turag River, including removal of illegal structures within 30 days, as well as consequences for those involved in encroachment or pollution, including public naming, disqualification from future bank loans or standing for election.</p> <p>The Court issued detailed directions to bolster public awareness and education regarding the rivers and the environment, including directing relevant authorities to determine the geographical location of all rivers,</p>

	<p>canals, beels and water bodies in the country, collect biodiversity information and share this information publicly, as well as through educational institutions, with factory workers, through local governments and communities, and via television programming.</p>
<p>Significance</p>	<p>This is a landmark ruling, with the highest court in Bangladesh affirming that all rivers – which number in the hundreds, across one of the world’s most extensive river systems – are legal persons within the law.</p> <p>In addition to issuing orders for immediate, specific action regarding the human activity impacting adversely on the Turag River, the Court set out a clear framework for an ongoing guardianship arrangement and broader public engagement in connection with the entirety of the Bangladeshi river system. Significantly, it outlined precise directions for mapping of the country’s water systems and public education regarding rivers and their role within ecological systems and biodiversity. For example, it required: regular awareness programs in every class and department within all government and private educational facilities at different levels on the necessity, benefits, protection, pollution and preservation of rivers; the arrangement of regular visits by students to their local rivers; the arrangement by local governments of rallies, art exhibitions, competitions and seminars relating to rivers; the inclusion of river preservation and pollution as topics in the curriculum of schools, colleges and universities; and the weekly television broadcast of national and international documentaries on rivers, nature and the environment. While some of these directions were later modified by the Court, they offer illustrations of possible avenues for transforming judicial decisions into ongoing public discourse and how collective understandings of ecosystems might be strengthened in a variety of formal, creative and participatory ways.</p> <p>It is instructive to note that, in response to continued inadequate state inaction, the Court was willing to escalate its orders and willingness to find innovative solutions to long-term problems, including the recognition of rights of nature.</p> <p>A further important issue raised in the context of the case and subsequent implementation efforts is that of <u>transboundary cooperation</u>. With extensive river flow emanating from outside Bangladesh’s borders, notably from India, successful implementation efforts will require meaningful transboundary cooperation and joint river basin governance through appropriate treaties and other avenues.</p>
<p>Implementation</p>	<p>On 17 February 2020, the Appellate Division of the Supreme Court of Bangladesh upheld the judgment, rejecting a civil petition for leave to appeal by one of the respondents. However, the Court did reframe several of its earlier directions as opinions or suggestions in the public interest and with the aim of protecting the biodiversity, ecological balance and environment of Bangladesh. Specifically, in recognising the domain of the legislative branch and the absence of existing laws, it altered the order regarding relevant</p>

	<p>restrictions on bank loans or standing for election, and also relaxed its earlier specificity regarding educational activities.</p> <p>In accordance with the Court’s directions, the state was required to submit an affidavit of compliance within six months as to the implementation of the Court’s directions regarding the amendment of the National River Conservation Commission Act 2013. Specific reporting to the Court on the compliance with bank loan bans and election restrictions for offenders was also required within six months, although presumably this was negated by the Court’s modification of its orders during the subsequent appeal.</p> <p>The impact has been significant, given that Bangladesh's river transport authority has <u>reportedly</u> already started a massive eviction drive along the banks of the rivers around the capital Dhaka, demolishing over 4,000 illegal establishments and recovering some 190 acres of land since the judgment was issued.</p> <p>Relating to the guardianship role, NRCC Chairman Muzibur Rahman Howlader <u>affirmed</u> that the NRCC was framing policies that would take local communities into account, noting that “[p]rotecting the rivers also means protecting the entire eco-system, which includes fishermen and farmers who live on the banks. Their rights will also be protected.”</p>
<p>Key documents and links</p>	<ul style="list-style-type: none"> ☀ <u>Judgment on Civil Petition for Leave to Appeal No. 3039 of 2019</u> (Supreme Court of Bangladesh Appellate Division) (17 February 2020) ☀ <u>17 Directions issued in Writ Petition No. 13989 of 2016</u> (Supreme Court of Bangladesh High Court Division) (February 2019) ☀ <u>Judgment on Writ Petition No. 13989 of 2016</u> (Supreme Court of Bangladesh High Court Division) (31 January 2019) (<i>in Bengali</i>) ☀ Writ Petition No. 13989 of 2016 [not available] ☀ <u>Human Rights and Peace for Bangladesh</u> (HRPB) ☀ <u>National River Protection Commission</u> (NRPC) <p>See also:</p> <ul style="list-style-type: none"> ☀ <u>4th International Water Conference Report</u> (2019)

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