



EXAMINING CLIMATE CHANGE LITIGATION APPROACHES IN NIGERIA

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Abstract:

Climate change litigation is an important legal tool of climate change governance. Across several jurisdictions, the increasing use of litigation to address critical elements of climate change is redefining the obligation of states and corporate entities. However, the successes of these cases have been largely influenced by the legal approaches adopted by litigants in their filings and arguments in courts. The application of these approaches by litigants and courts have provided basis for the increasing use of litigation as a tool for seeking redress against the adverse impacts of climate change. In the same manner, litigants in Nigeria are applying these legal approaches to institute climate-related suits in courts. In this paper, we examine these approaches and the extent to which they have been invoked by litigants and courts. To achieve this, the paper adopts a doctrinal research approach for content analysis of primary and secondary sources. The paper argues that constitutional and human rights legal approaches have stronger potentials to promote access to justice in climate litigation in Nigeria for two reasons: first, they impose legal obligations on government and corporate entities. Second, they provide legal basis for potential victims to seek redress in courts.

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1. INTRODUCTION

Climate change litigation has been recognised as an important legal tool of climate change governance.¹ Across several jurisdictions, the increasing use of litigation to address critical elements of climate change is redefining the obligation of states and corporate entities.² However, the successes of these cases have been largely influenced by the approaches invoked by litigants in their filings and arguments in courts. To this extent, an examination of the climate related cases reveal that litigants are employing different approaches in filing climate change cases in courts across several jurisdictions. These approaches are themselves founded on several principles, such as environmental justice, human rights, constitutional law, common law and public trust doctrines.³

The application of these principles by litigants and courts have provided basis for the increasing use of litigation as a tool for seeking redress against the adverse impacts of climate change. They serve as the foundations and basis upon which litigants usually build their cases in courts and craft arguments in support.⁴ For instance, climate change cases alleging violations of fundamental rights as a result of severe impacts of climate change often rely on human rights principles to establish connection between the impacts of climate change and violations of human rights.⁵

¹ NK Dubash et al, 'National and sub-national policies and institutions' in PR Shukla et al (eds), *Climate Change 2022: Mitigation of Climate Change, Working Group III contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) 1358.

² L Burger, 'Should Judges Make Climate Law?' (2020) 9 *Transnational Environmental law* 75; CP Carlarne, 'The Essential Role of Climate Litigation and the Courts in Averting Climate Crisis' in BZA Mayer (eds) *Debating Climate Law* (Cambridge University Press, 2021).

³ Z Hui and MDR Karim, 'Pursuing Climate Justice Through Public Interest Litigation: Theories, Practices, Prospects' (2025) 8 (2) *IJIRSS* 4496 – 4510; ML Banda and F Scott, 'Litigating Climate Change in National Courts: Trends and Development in Global Climate Law' (2017) 47 (10) *ELR* 121-134.

⁴ United Nations Environmental Programme, 2020 Global Climate Change Litigation Status Report, (UNEP, Kenya 2020) 40.

⁵ *Urgenda Foundation v. Netherlands*. Case No. 200.178.245/01. Judgment available at <https://climatecasechart.com/wp-content/uploads/non-us-case->

Also, common law principles such as negligence,⁶ nuisance and public trust⁷ have been used as causes of action to hold governments and corporate entities liable for climate change.⁸ In other cases, a hybrid approach, encompassing two or more approaches have been adopted.

In Nigeria, despite the emerging state of climate litigation, an examination of the existing climate change and environmental related cases shows that litigants are adopting several approaches in seeking redress in courts. These include human rights, common law, constitutional law, among others. In some instances, litigants adopt a hybrid approach, combining two or more approaches depending on the circumstance of each case. For instance, majority of the foundational environmental cases in Nigeria have adopted common law principles of nuisance, negligence and strict liability, as cause of action to hold defendants liable. However, recent developments show that other approaches like human rights and constitutional law are being increasingly relied on by litigants and courts in climate change related matters.

In this paper, we examine these legal approaches to climate change litigation, and the extent to which they have been invoked by litigants and courts. The paper argues that constitutional and human rights legal approaches can help promote access to justice in climate litigation in Nigeria for two reasons: first, they impose legal obligations on government to address the cause and impact of climate change. Second, they provide legal basis for victims and potential victims to seek redress in courts. Therefore, apart from section 1 which introduces the article, section 2 examines the principles and approaches to climate change

documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf accessed on 15 January 2026.

⁶ *Comer v. Murphy Oil USA*. Available at 607 F.3d 1049 (5th Cir 2010). Available at https://climatecasechart.com/wp-content/uploads/case-documents/2013/20130514_docket-12-60291_opinion.pdf accessed on 15 January 2026.

⁷ *Mbabazi and Others v. The Attorney General and National Environmental Management Authority* Civil Suit No. 283 of 2012. Available at <https://climatecasechart.com/non-us-case/mbabazi-et-al-v-attorney-general-et-al/> accessed on 15 January 2026.

⁸ G Ganguly et al, 'If at First You Don't Succeed: Suing Corporations for Climate Change' (2018) 38 (4) *Oxford Journal of Legal Studies* 841–868; TN Alatise, 'Common Law Approach to Environmental Litigation in Nigeria: Prospects and Challenges' (2024) 11 (3) *NAUJCPL* 89 – 96. <https://journals.unizik.edu.ng/jcpl/article/view/3901> accessed on 15 January 2026.

litigation, arguing that these principles have provided basis for climate litigation around the world. Section 3 examines the role of courts in the fight against climate change, acknowledging their critical role in the climate change governance. Section 4 highlights how these legal approaches have been applied in the context of climate litigation in Nigeria, emphasising their prospects and challenges. Section 5 is the conclusion.

2. PRINCIPLES AND APPROACHES TO CLIMATE CHANGE LITIGATION

As climate litigation continues to grow, litigants have and continue to engage with several legal principles/theories as basis for seeking redress in courts.⁹ Legal principles that impose obligation on states are being deployed by litigants as causes of action in bringing climate change related claims. In the same manner, courts have relied on these legal theories as basis for holding states and corporate entities liable.¹⁰ In this section, the paper highlights these legal principles and the extent of their application in climate change cases.

i. Environmental Justice Principle

The principle of environmental justice emerged in response to the disproportionate way in which environmental hazards, such pollution and toxic wastes, adversely affected certain vulnerable and marginalised communities.¹¹ The theory essentially recognises the fair treatment and meaningful involvement of all people, regardless of status, ethnicity, race, colour, national origin, or income in the development, implementation, and enforcement of environmental laws, regulations, and policies.¹² It emphasises the equitable distribution of environmental risks and benefits

⁹ UNEP 2020 Global Climate Change Litigation Status Report. (note 4 above).

¹⁰ *Ibid.*

¹¹ RD Bullard, 'Confronting Environmental Racism: Voices from the Grassroots' (South End Press, Boston 1993); J Hamilton, 'Testing for Environmental Racism: Prejudice, Profits, Political Power?' (1995) 14 *Journal of Policy Analysis and Management* 107 – 132.

¹² United States Environmental Protection Agency. Available at <https://www.epa.gov/sites/default/files/2015-02/documents/team-ej-lexicon.pdf> accessed on 15 January 2026; U Baxi, 'Towards a Climate Change Justice Theory?' (2016) 7 *Journal off Human Rights and the Environment* 7- 31.

(distributive); fair and meaningful involvement in environmental decision-making (procedural); recognition of community way of life (recognition), local knowledge and cultural difference; and the capability of communities and individuals and individuals to function and flourish in society.¹³ The theory was developed as part of the wider advocacy of environmental activists and scholars such as Robert Bullard, Paul Mohai, Robin Saha, among others in the 1980s.¹⁴ These activists called for the fair allocation of environmental benefits and burdens such that no section of the community or people is unfairly impacted by environmental harm.¹⁵

The environmental justice theory has gained traction in the recent times with the increasing intensity of climate change and its disproportionate impacts on vulnerable and marginalised communities, leading to the emergence of ‘climate justice.’¹⁶ Therefore, climate justice recognises the disproportionate impact of climate change on vulnerable populations and the need for equitable solutions.

There is a consensus that climate change contributes to injustice because those who will be first hit and suffer more from its impacts are those who have least contributed to the problem. It is for this reason, scholars and activists have described impact of climate change as ‘asymmetrical’ because of the unequal allocation of burdens and benefits on the poor and vulnerable people and countries. For instance, Small Island nations like the Island of Kiribati, Torres Straits Island;¹⁷ and coastal communities in

¹³ DS Olawuyi, *The Principles of Nigerian Environmental Law* (Afe Babalola University, Ado Ekiti, 2015) 271 – 272.

¹⁴ RD Bullard, P Mohai, R Saha and B Wright, ‘Toxic Wastes and Race at Twenty: Why Race still Matters after all these Years’ (2008) 38 *Environmental Law* 371.

¹⁵ RD Bullard, ‘Dismantling Environmental Racism in the USA,’ (1999) 4 *Local Environment* 5 – 19; RD Bullard and GS Johnson, ‘Environmentalism and Public Policy: Environmental Justice: Grassroots Activism and its Impact on Public Policy Decision Making’ (2000) 56 (3) *Journal of Social Issues* 555 – 578.

¹⁶ U Baxi (note 12); CL Rudra, ‘Concept of Climate Justice: Is it the Right Way to Address Issues Relating to Climate Change. <https://ssrn.com/abstract=3686721> or <http://dx.doi.org/10.2139/ssrn.3686721> accessed on 15 January 2026; B Tokar, ‘On the Evolution and Continuing Development of the Climate Justice Movement’ in T Jafry (eds) *Routledge Handbook of Climate Justice* (Routledge, 2019) 1- 13.

¹⁷ CL Rudra (note 16).

Nigeria (Lagos and Ondo states)¹⁸ are constantly faced with the challenge of sea-level rise which threatens the livelihood of the people in those places, even though they may not significantly contribute to the cause of climate change.

It is this unfair and unequal allocation of burdens and benefits of climate change that birthed the principle of climate justice to amplify the voice of the people who have done the least to contribute to climate crisis but are more severely affected by it.¹⁹ Consequently, victims of climate change, scholars and activists have relied on the theory of climate justice to advocate for justice in courts.²⁰ For instance, in *Daniel Billy and Ors. v. Australia*,²¹ the applicants argued that as people living in the Island communities of Australia, they are vulnerable to the impacts of climate change such as sea-level rise, which is threatening to submerge their land. This theory has been applied in many other cases where vulnerable nations and communities have sought to hold other countries and entities who have contributed significantly to the problem of climate change. Therefore, climate justice has provided a basis for poor and marginalised communities to seek redress in courts for the unfair and disproportionate impacts of climate change on them.²²

ii. Human Rights Principles

The state of the law as confirmed by domestic, regional and international courts and institutions is that right to life with dignity, and right to privacy and family life necessarily include right to live in a safe and healthy environment.²³ This implies that a compromised environment and climate system can undermine the enjoyment of basic human rights, such as right to life, right to dignity of human persons and right to privacy and home

¹⁸ 'Gone, Gone, Ayetoro.' <https://cappafrica.org/2024/07/06/gone-gone-ayetoro/> accessed on 17 December, 2025.

¹⁹ Z Hui and MDR Karim (note 3).

²⁰ *Ibid.* at 4499.

²¹ CCPR/135/D/3624/2019 https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20220923_CCPRC135D36242019_decision.docx accessed on 17 December, 2025.

²² B Tokar (note 16).

²³ Z Hui and MDR Karim (note 3).

and family life. Over the years, there have been debates among scholars on the connection between climate change and human rights.²⁴ However, these debates have coalesced into a consensus that recognises that adverse impacts of climate change can lead to human rights violations, especially on the vulnerable people and communities. For instance, in its 2025 Advisory Opinion on the obligations of States in relation to climate change, the International Court of Justice (ICJ) states that a clean, healthy and sustainable environment is a precondition for the enjoyment of some basic human rights like right to life, right to human dignity, and right to privacy, family and home.²⁵ Before that, a recent resolution of the United Nations General Assembly has recognised the right to safe, healthy and sustainable environment.²⁶ Therefore, adverse effects of climate change, such as sea-level rise, drought and desertification may significantly affect the enjoyment of these basic human rights.

Consequently, human rights theory has provided a foundation for a rights-based litigation for victims of climate change to seek justice in courts. Emphasising this point, Lewis observed that ‘Human rights such as the rights to health, food, water, housing, self-determination and even the right to life are threatened by climate change’.²⁷ The body of literature has shown that scholars and courts have recognised the direct connection between human rights and climate change.²⁸ As a result of the consensus

²⁴ C Rodriguez-Garavito, ‘Human Rights: The Global South’s Route to Climate Litigation’ *AJIL Unbound* [2020] (114) 40; J Peel and HM Osofsky, ‘A rights turn in Climate Change Litigation?’ (2018) 7 *Transnational Environmental Law* 37-67; K Pouikli, ‘Editorial: A Short History of Climate Change Litigation Boom across Europe’ (2022) *ERA Forum* 22:569-586.

²⁵ ICJ Advisory Opinion on the Obligations of States in respect of Climate Change. No. 187. Delivered on the 23rd July 2025. Available at: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>

²⁶ U.N. General Assembly. 2022. Resolution adopted by the General Assembly on the Rights to Healthy and Safe Environment. A/RES/76/300.

²⁷ L Bridget, *Environmental Human Rights and Climate Change, Current Status and Future Prospects, Introduction to Environmental Human Rights and Climate Change* (Springer Nature Singapore 2018) 1-14.

²⁸ See for example, Inter-American Court on Human Rights Advisory Opinion, *The Environment and Human Rights* (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights) Advisory Opinion OC-23/17 of November 15, 2017, Series A, No. 23; UNEP and

on climate change and human rights, many countries have recognised rights to healthy environment in their constitutions,²⁹ as such litigants can argue that the actions of governments or other actors violate their human rights. However, in countries where there is no express recognition for rights to healthy environment, litigants have argued that climate change has a direct impact on the enjoyment of other human rights, such as right to life, private and family life.³⁰ For instance, in *Gbemre v. Shell*, the Nigerian Federal High Court ruled that gas flaring, which contributes to climate change and pollution, was a violation of the right to life of the applicant and his community.³¹ Highlighting the significance of this case, Morocco-Clarke observes that the suit is the first time in which a Nigerian court had relied on other constitutionally recognised human rights provisions to hold government and private entities liable for

Sabin Center for Climate Change Law (Columbia Law School), 'Climate Change And Human Rights' (United Nations Environment Programme 2015) https://web.law.columbia.edu/sites/default/files/microsites/climate-change/climate_change_and_human_rights.pdf 14 December, 2025; J Knox, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (2018) UN Doc A/HRC/37/59; Advisory Opinion OC-23/17 of November 15, 2017, Series A, No. 23; International Council on Human Rights Policy 'Climate Change and Human Rights: A Rough Guide' (Geneva 2008) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1551201 accessed 22 December 2026; OHCHR, 'Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights' (Geneva 2009); JH. Knox 'Climate Change and Human Rights Law' (2009) 50:1 *Virginia Journal of International Law* 164; S McInerney-Lankford, M Darrow and L Rajamani, 'Human Rights and Climate Change: A Review of the International Legal Dimensions' (17 March 2011) World Bank <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/903741468339577637/humanrights-and-climate-change-a-review-of-the-international-legal-dimensions> accessed on 14 December, 2025.

²⁹ United Nations Environmental Programme, *Global Climate Change Litigation Status Report*, (UNEP, Kenya 2020) 42; D Boyd, 'The Constitutional Right to a Healthy Environment' (2012) *Env't Sci. & Pol'y for Sustainable Dev.*

³⁰ ML Banda and F Scott (note 3); Peel J. and Osofsky H. M, (note 24).

³¹ Unreported Suit No. FHC/B/CS/53/05 delivered on 14th November, 2005. Available at <https://climatecasechart.com/non-us-case/gbemre-v-shell-petroleum-development-company-of-nigeria-ltd-et-al/> 14 December, 2025.

environmental abuse.³² It should be noted that the Nigerian Constitution does not recognise an express or explicit right to healthy environment. Also, in *Future Generations v. Ministry of the Environment*,³³ some youth plaintiffs filed a climate suit against the government of Colombia and many other entities. The plaintiffs argued that the failure of the government to stop deforestation constitutes a violation of their fundamental human rights. The Colombian Supreme Court ruled that the constitutional rights of life, health, minimum subsistence, freedom, and human dignity were linked to the environment and the ecosystem. The Supreme Court then issued an order that the government should formulate and implement action plans to address deforestation in the Amazon region. In *Leghari v. Federation of Pakistan*, the court ruled that the failure of the government to implement its climate change policies offend the fundamental rights of its citizens which need to be safeguarded.

Similarly, a recent report shows that as of 2023 more than 160 countries of the 193 UN member states have recognised a right to a healthy environment at regional, national or subnational levels.³⁴ Specifically, the UN Special Rapporteur on human rights obligations of states relating to safe, clean, health and sustainable environment has reported that more than 100 countries have recognised a right to healthy environment either explicitly or implicitly in their national constitutions.³⁵ This trend indicates growing national recognitions for environmental protection and the need to legally empower victims of environmental abuse in seeking redress.

However, scholars have observed that even where the right to healthy environment is not recognised in some national constitutions, courts are

³² A Morocco-Clarke, ‘The case of Gbemre v. Shell as a catalyst for change in environmental pollution litigation?’ (2021) 12 (2) Nnamdi Azikiwe University Journal of International Law and Jurisprudence 36.

³³ Corte Suprema de Justicia [C.S.J.] [Supreme Court], abril 5, 2018, M.P: L. Villabona, Expediente : 11001-22-03-000-2018-00319-01 (Colomb.).

³⁴ United Nations Environment Programme (2023), Environmental Rule of Law: Tracking Progress and Charting Future Directions. Nairobi. Available at <https://doi.org/10.59117/20.500.11822/43943> 14 December 2025

³⁵ United Nations Special Rapporteur on Human Rights Obligations relating to the Enjoyment of Safe, Clean and Health and Sustainable Environment. (A/ HRC/43/53 2019).

employing pragmatic approaches in protecting the victims and the environment. Emphasising this point, Ekhatior argues that even though environmental rights are not justiciable in India, courts in India have historically relied on civil and political rights, such as right to life and personal liberty, in ensuring that socio-economic rights such as right to healthy environment are enforceable.³⁶ Also, scholars have argued that socio-economic rights, even though are generally not justiciable, can be employed as basis for climate litigation in Nigeria. Along this line, Ekhatior and Okumagba argue that ‘Enforceable human rights provisions in national constitutions can be ‘greened’ to enhance climate justice in countries.’³⁷

Also, courts are referencing international human rights laws, declarations and other soft laws to hold governments and other actors liable.³⁸ For instance, in *Urgenda v. Netherlands*,³⁹ the Supreme Court of Netherlands ruled that the Dutch government has an obligation under Article 2 and 8 of the European Convention on Human Rights to protect the right to life, private and family life of its citizens from the real threat of climate change.

³⁶ EO Ekhatior, ‘Environmental Justice in the Global South: An Evaluation of Legal and Contemporary Developments’ in RC Brears and J Lindley, *The Palgrave Handbook on Environmental Policy and Law* (Springer 2025) 13. https://link.springer.com/rwe/10.1007/978-3-031-30231-2_30-1#DOI; R Ako, ‘Mainstreaming environmental justice in developing countries: Thinking beyond constitutional environmental rights’ in C Eboe-Osuji and E Emeseh (eds), *Nigerian yearbook of international law* (Springer 2017) 269–289; R Ako, N Stewart and EO Ekhatior, ‘Overcoming the (non) justiciable conundrum: The doctrine of harmonious construction and the interpretation of the right to a healthy environment in Nigeria’ in A Diver and J Miller (eds), *Justiciability of human rights law in domestic jurisdictions* (Springer 2016) 123–141.

³⁷ EO Ekhatior and E Okumagba, ‘Climate Change, and Multinationals in Nigeria: A Case for Climate Justice’ in K Bouwer, U Etemire, T Field and AO Jegede (eds) *Climate Litigation and Justice in Africa* (Bristol University Press, 2024) 265; EP Amechi, and A Ihua-Maduenyi, ‘Greening the Judiciary in Nigeria: Centre For Oil Pollution Watch v. NNPC in Perspectives’ (2022) 1(2) African Journal of Law and Justice System 39–60; MC Anozie and EO Wingate, ‘NGO Standing in Petroleum Pollution Litigation in Nigeria – Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation’ (2020) 13(5–6) The Journal of World Energy Law & Business 490–7.

³⁸ United Nations Environmental Programme, Global Climate Change Litigation Status Report, (UNEP, Kenya 2020) 42.

³⁹ Case No. 200.178.245/01. Judgment available at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf 14 December, 2025

For instance, in *Daniel Billy and others v. Australia (Torres Strait Islanders petition)*,⁴⁰ the United Nations Human Rights Committee (UNHRC) upheld the claim of the applicants that the failure of the Australian government to sufficiently protect them from the negative impacts of climate change was a violation of their fundamental rights to the enjoyment of culture, freedom from interference with their private life, family and home under the International Covenant on Civil and Political Rights (ICCPR). Many scholars have rightly described this decision as ground-breaking because it is the first time a United Nations body will make a finding that a nation has contravened the provisions of international human rights law owing to its insufficient climate mitigation and adaptation strategies.

It is important to note that even though governments have the primary duty to respect and protect human rights of their citizens from the dangers of climate change, this interpretation has now been extended to private or corporate entities. For instance, in *Milieudefensie v. RDC*,⁴¹ a court in The Hague ordered the defendant to reduce its GHG emissions in line with the Paris Agreement and respect for human rights obligations. This case is significant in the sense that it is the first time a private company will be held liable for insufficient climate mitigation strategy. The implication of this is that climate cases premised on human rights claims are becoming popular in many jurisdictions and international dispute settlement fora.

iii. Constitutional Law

Constitutional Law is playing significant role in the emergence and development of climate change litigation across the world by providing a framework for understanding the relationship between governments, citizens, and the environment.⁴² As a branch of constitutional law,

⁴⁰ CCPR/135/D/3624/2019 Available at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20220923_CCPRC135D36242019_decision.docx 14 December, 2025

⁴¹ C/09/571932/HA ZA 19-379 (2021). Available at <https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/> 14 December, 2025.

⁴² J Jahn, 'A New Type of Constitutional Pathway Review for Climate Change Mitigation: The Case of German Climate Litigation since 2021' (2025) 15 (1-2) Climate Law 171 – 205; M Juhn, 'Taking a Stand: Climate Change Litigants and the Viability of Constitutional

constitutionalism in the context of climate litigation refers to the use of constitutional law and principles to address the challenges posed by climate change.⁴³ The relationship between constitutional law and climate litigation has led to the emergence of the concept of ‘climate constitutionalism,’ which emphasises the incorporation of climate change considerations into national constitutions, either through specific constitutional provisions or other environmental statutes.⁴⁴

The concept of climate constitutionalism builds upon the more established concept of environmental constitutionalism, which integrates environmental rights and obligations into the constitution.⁴⁵ Constitutional law has played significant role in the development of climate change litigation in several ways. First, it helps to determine the positive obligations of states to protect citizens from the severe impacts of climate change. This includes the duty to act on mitigation and adaptation of climate change and provide remedies for victims of climate-related harm.⁴⁶ Second, constitutional law principles can help courts determine the appropriate rules of statutory interpretation that strengthen the protection of the climate system when interpreting constitutional and statutory provisions on environment and climate change. Third, constitutional law principles also play crucial role in determining the extent of the application of justiciability issue in the context of climate change litigation, that is whether courts are the appropriate for a to entertain climate change related disputes.⁴⁷

Consequently, constitutional law principles have provided legal basis for climate change litigation. To that extent, constitutional law has been used

Claims’ (2021) 89 (6) *Fordham Law Review* 2731 – 2772; United Nations Environmental Programme, *Global Climate Change Litigation Status Report*, (UNEP, Kenya 2020); ML Banda and F Scott (note 3) 51.

⁴³ L. Burger (note 2) 75; J Jahn (note 42).

⁴⁴ NS Ghaleigh et al, ‘The Complexities of Comparative Climate Constitutionalism’ (2022) 34 (2) *Journal of Environmental Law* 517 – 528; JR May and E Daly ‘Global Climate Constitutionalism and Justice in the Courts’ in J Jaria-Monzano and S Borrás (eds) *Research Handbook on Global Climate Constitutionalism* (Elgaronline, 2019) 235 – 245.

⁴⁵ NS Ghaleigh et al. (note 44).

⁴⁶ *Ibid.*

⁴⁷ J Mina (note 42).

as source of legal rights and cause of action by litigants in bringing suits against governments for failure or insufficient action on climate change. As a result, many countries have either incorporated climate change provisions into their constitutions or integrate climate change concerns into their broader environmental legislations. As we have noted above, more than 100 countries have recognised a right to healthy environment in their national constitutions, indicating a growing trend in climate constitutionalism.⁴⁸ These laws and policies usually imposed climate obligations on governments and corporate entities relating to critical issues of mitigation and adaptation to climate change.⁴⁹ Failure to fulfil these legal obligations usually provide basis for bringing suits against governments and other actors. According to a recent report, as of 30 June 2025, a total of 3,099 climate cases have been filed in 55 countries.⁵⁰ Majority of these cases (1,936) have been filed in the United States.⁵¹ In the United States alone, 259 cases have relied on constitutional law claims.⁵² Where there are statutory provisions or policies imposing obligations on governments on mitigation and adaptation, these laws provide legal basis for citizens and NGOs to bring actions against governments to compel the authorities to act in accordance with the laws.

In *Leghari v Federation of Pakistan*,⁵³ the plaintiff founded his case on the lack of implementation of the Pakistan's National Climate Framework.

⁴⁸ United Nations Environment Programme (2023), *Environmental Rule of Law: Tracking Progress and Charting Future Directions*. Nairobi. <https://doi.org/10.59117/20.500.11822/43943> 17 December, 2025.

⁴⁹ LJ Kotze and D Plessis, 'Putting Africa on the Stand: A Bird's Eye View of Climate Change on the Continent', <https://core.ac.uk/download/pdf/227471221.pdf>> accessed on 17 December, 2025; J Setzer and C Higan, 'Global Trends in Climate Change Litigation: 2022 Snapshot', Graham Research Institute on Climate Change and the Environment.

⁵⁰ United Nations Environment Programme (2025), *Climate change in the courtroom: Trends, impacts and emerging lessons*. Nairobi. <https://wedocs.unep.org/20.500.11822/48518> 17 December 2025,

⁵¹ *Ibid*.

⁵² Sabin Center for Climate Change Law Database. <https://www.climatecasechart.com/search?cpl=category%2FConstitutional+Claims> 17 December, 2025.

⁵³ W.P. No. 25501/2015. Judgment available at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2015/20150404_2015-W.P.-No.-25501201_decision.pdf 17 December, 2025.

The court ruled that the failure of government to implement the Framework violated the rights of the citizens. In the case, the lack of implementation of Pakistan's climate policy served as the basis for the plaintiff's suit against the government. Also, in *Massachusetts v. Environmental Protection Agency*,⁵⁴ the plaintiffs relied on the provisions of the Clean Air Act to argue that the EPA was authorised to regulate greenhouse gases as air pollutants. The U.S. Supreme Court issued its landmark ruling holding that greenhouse gases are "air pollutants" and as such the EPA is authorised to regulate it under Section 202 of the Clean Air Act.⁵⁵ Finally, in *Friends of the Irish Environment CLG v. Government of Ireland*,⁵⁶ the plaintiffs successfully challenged Ireland's approval of a National Mitigation Plan on the grounds that the plan violated the Climate Action and Low Carbon Development Act of Ireland.

As many countries continue to enact climate legislation and policy, litigation premised on constitutional/statutory and policy cause of action would continue to grow.⁵⁷

iv. Common Law Doctrine

The common law theory has historically been used as basis for holding individuals and corporate entities liable for environmental wrongs.⁵⁸ Common law principles such as tort of nuisance, negligence and public trust have been employed by litigants to seek injunction and damages against those who tortious related environmental wrongs. With the rise in the impacts of climate change, common law doctrines have been used as

⁵⁴ 549 U.S. 497, 37 ELR 20075 (2007). Judgment available at https://climatecasechart.com/wp-content/uploads/case-documents/2007/20070402_docket-05-1120_opinion.pdf 17 December, 2025.

⁵⁵ *Ibid.*

⁵⁶ *Friends of The Irish Environment CLG v. Ireland*, [2020] IESC 49.

⁵⁷ T Murombo, 'Strengthening locus standi in public interest environmental litigation: Has leadership moved from the United States to South Africa?' (2010) 6(2) *Law, Environment and Development Journal* 163.

⁵⁸ Z Hui and MDR Karim (note 3); MP Newitt and RV Perciva, 'Could Official Climate Denial Revive the Common Law as a Regulatory Backstop?' (2018) 96(3) *Washington University Law Review* 441–494.

basis to seek redress in courts.⁵⁹ In fact, the common law approach has been closely connected with the history of climate change litigation. The common law approach to climate change litigation allows plaintiffs to bring common law claims usually by arguing that a government or private actor that contributes to climate change is committing a tort, such as causing nuisance or behaving negligently, and therefore the plaintiff, who has suffered injury as a result, should be entitled to some form of remedies for the damages caused.⁶⁰

It is important to note that most of the early climate cases instituted in the United States were founded on common law tort of nuisance and negligence against private companies whose economic activities were causing greenhouse gas emissions, such as oil and gas, agricultural and manufacturing sectors.⁶¹ Notable among them are *Comer v. Murphy Oil USA*; *Connecticut v. American Electric Power*; *People of the State of California v. General Motors*; and *Kivalina v. ExxonMobil*. Ganguly and *et al*⁶² refer to this period as the ‘first wave’ of corporate climate suits.

However, as we have noted above, most of these cases were dismissed by the courts. Scholars have identified two crucial reasons for this: first is the doctrine of displacement, where a law is enacted by parliament to specifically address a particular climate issue, and as such removing it from the purview of common law claim.⁶³ The implication of this is that both a litigant and the court cannot determine the case on common law cause of action when there is a clear provision of statutes addressing the claim. In *American Electric Power v. Connecticut*,⁶⁴ the U.S. Supreme Court ruled that any existing federal common law cause of action had been displaced by the Clean Air Act, which authorises the Environmental Protection Agency to regulate GHG emissions from power and other sources. Based on this, the case was dismissed.

⁵⁹ G Ganguly (note 8).

⁶⁰ *Ibid.*; Pouikli K (note 24) 586.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ CP Carlarne (note 2).

⁶⁴ 564 US 410. https://climatecasechart.com/wp-content/uploads/case-documents/2011/20110620_docket-10%E2%80%9393174_opinion.pdf

Secondly, cases founded on common law claims face additional challenge of establishing causation. The trend of cases indicates that whether at the stage of satisfying standing requirements or during hearing on the merit, litigants face the difficulty of establishing the causal connection between the alleged defendant's action and the injury to the plaintiff.⁶⁵ In *Comer v. Murphy Oil USA*,⁶⁶ the plaintiffs instituted a case under the common law tort of nuisance and negligence, alleging that the greenhouse gas emissions by some chemical and electricity companies were contributing to climate change, which in turn intensified the harmful effects of hurricane Katrina on the environment and public and private property. The court rejected their claims on the ground that the plaintiffs failed to establish that their injuries were traceable to the companies' GHG emissions. As a result of these barriers, common law cases suffered setback, and plaintiffs began to exploit other alternative strategies to premise their cases.

However, in the recent time, there appears to be a resurgence of climate cases based on common law cause of action, as litigants are now using common law claims to strategically hold governments and private actors accountable. In this strategy, litigants are asking the courts to determine whether a government or other actors have satisfied the duty of care towards its citizens when it comes to mitigating climate change.⁶⁷ The most prominent climate case in this category is *Urgenda v. Netherlands*,⁶⁸ where a Dutch court ruled that the government of Netherlands owed a duty of care to its citizens to protect them from the dangerous impacts of climate, and therefore ordered the government to reduce its greenhouse gas emissions.

⁶⁵ J Peel, 'Issues and Challenges of Climate Change Litigation' (2011) CCLR 1.

⁶⁶ 607 F.3d 1049 (5th Cir 2010). https://climatecasechart.com/wp-content/uploads/case-documents/2013/20130514_docket-12-60291_opinion.pdf

⁶⁷ Pouikli K (note 24) 586.

⁶⁸ Case No. 200.178.245/01. Judgment available at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf

Furthermore, this common law strategy is now being applied to climate cases against private companies. For instance, in *Milieudefensie v. RDC*,⁶⁹ the court, in a ground-breaking verdict, ruled that the defendant owed a duty of care towards the people of Netherlands to mitigate climate change by reducing its carbon emissions from its global operations to at least 45% by 2030, compared to 2019 level. This was later followed by the decision of a French court in *Notre Affaire a Tous v. Total*⁷⁰. Although this case was eventually dismissed on procedural grounds in June 2023, it reinforces the increasing influence of common law doctrine of duty of care in climate litigation.⁷¹

3. CLIMATE CHANGE LITIGATION AND THE COURTS

One critical area in which the judiciary is contributing to the efforts to address the climate crisis is through climate change litigation. A recent report has recognised climate litigation as one of the powerful tools for climate justice and governance.⁷² Historically, litigants have been resorting to courts to seek redress for environmental degradation and abuse due largely to insufficient actions by governments and multinational corporations.⁷³ However, with the rising impacts of climate change and the perceived insufficient actions of States and private entities, there have been an exponential increase in the number of climate change suits filed across many jurisdictions by private individuals, non-governmental organisations and indeed victims of climate change.⁷⁴ As part of their constitutional duties to protect the rule of law and human rights, courts

⁶⁹ C/09/571932/HA ZA 19-379 (2021). Available at <https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>

⁷⁰ See the database of Sabin Center for Climate Change Law at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2023/20230706_NA_order-2.pdf

⁷¹ Pouikli K (note 24) 586.

⁷² NK Dubash et al, (note 1) 1358.

⁷³ LJ Kotze and D Plessis (note 49).

⁷⁴ United Nations Environment Programme (2020): Global Climate Change Litigation Report: 2020 Status Review.

are strategically positioned to uphold the rule of law and provide remedies for climate change induced constitutional and human rights violations.⁷⁵

The role of the courts in the fight against climate change has been debated over the years. At the core of this debate is the doctrine of justiciability founded on the principle of separation of powers.⁷⁶ Typically, the theory of separation of powers dictates that one arm of government cannot exceed the power granted to by law and intrude on the authority of another arm of government. In the context of climate litigation, there are divergence of opinions amongst scholars and courts regarding the legitimacy courts' interventions. Many defendants have argued that regulation and policy on climate change are the exclusive obligation of policy makers, and courts should not intrude in the guise of performing their constitutional duties.⁷⁷ For instance, in *Family Farmers and Greenpeace Germany v. Germany*,⁷⁸ the plaintiffs instituted an action to compel the German government to meet its stated goal of reducing its GHG emissions by 40 percent of 1990 levels by 2020. The court refused to compel the government to make specific changes to the national Climate Protection Program on the grounds that the government had a wide discretion in selecting what measures to use to achieve emissions goals.⁷⁹

⁷⁵ MD Wilson, 'Climate Change: The Role of Judges.' <https://www.eufje.org/images/docConf/ox2017/wilson.pdf> accessed on 24 January 2026; CM Nwankwo, B Mukoro, 'Climate Change Litigation and the Accountability Function of Judge-made Law in Contemporary Nigeria' (2025) 13 Rivers State University Journal of Public Law 52.

⁷⁶ I Fernando, 'Litigating Climate Change – Of Politics and Political Questions: A Comparative Analysis of Justiciability of Climate Change in the United States and Canada' (2018) 49 VUWLR 315-340; United Nations Environmental Programme, Global Climate Change Litigation Status Report (UNEP, Kenya 2020) 40.

⁷⁷ *ibid.*

⁷⁸ 00271/17/R /SP. Available at <https://climatecasechart.com/non-us-case/family-farmers-and-greenpeace-germany-v-german-government/#:~:text=Germany,-Filing%20Date%3A%202018&text=Summary%3A,National%20Climate%20Protection%20Programme%202020>.

⁷⁹ See full judgment here https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20211031_0027117R-SP_judgment-1.pdf

However, in *Urgenda v. Netherlands*,⁸⁰ the plaintiffs asked the court to order the government of Netherlands to limit its GHG emissions to a certain threshold. However, the defendant claimed that the remedy sought by the plaintiffs would violate the separation of powers principle, and it would amount to the court taking a decision that ought to have been left for the democratically elected executive and legislative organs. The court disagreed with the defendant and ruled that Dutch law empowers the court to evaluate the actions of other organs of government, especially when the rights of the citizens are affected, even if the issues touch on political question.⁸¹

Since the first climate case was decided in the United States, the number of climate suits across jurisdictions and courts have increased exponentially.⁸² The trend of climate cases decided by courts in many jurisdictions such as U.S, Netherlands, Australia, India, Pakistan, Kenya, South Africa and Nigeria, have shown that courts are not shying away from holding states and corporate entities accountable for lack of, or insufficient actions on climate change.⁸³ Even where those climate change cases were not successful, they helped to galvanise public attention on climate change and serve as catalyst for subsequent government actions.⁸⁴ This is the major reason why climate litigation has been considered as part of the climate governance framework.⁸⁵

As states are falling behind in addressing the climate crisis,⁸⁶ courts have emerged as the battleground for individuals, civil society and governments

⁸⁰ Case No. 200.178.245/01. Judgment available at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf

⁸¹ *Ibid.* para. 4.94-4.107.

⁸² Pouikli K (note 24) 586.

⁸³ ML Banda and F Scott (note 3).

⁸⁴ U Etimere, 'The Future of Climate Change Litigation in Nigeria: COPW v. NNPC in the Spotlight' (2021) 2 CCLR 158-170.

⁸⁵ J Setzer, 'Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance' (2019) Willey Interdisciplinary Reviews 4.

⁸⁶ United Nations Environment Programme (2024), Emissions Gap Report 2024: No More Hot Air... Please!. <https://www.unep.org/resources/emissions-gap-report-2024>; United Nations Environment Programme (2024). Adaptation Gap Report 2024: Come Hell and

to challenge inadequate action on climate change by both public institutions and private entities.⁸⁷ Over the years, courts and tribunals have received claims from litigants regarding issues of climate change mitigation and adaptation. The claims before courts have been varied, reflecting the multiple ways in which climate change is impacting communities, countries and regions. Some of the cases have sought to compel governments to increase the urgency in implementing GHG emissions targets;⁸⁸ establish that a country's emission reduction targets are insufficient;⁸⁹ demand for adaptation action or seek damages resulting from failure to adapt⁹⁰ etc.

It is important to state that courts have historically adopted pragmatic approach in determining environmental related claims before them, especially in countries without express recognition for environmental rights.⁹¹ For instance, despite the fact that environmental right is expressly unenforceable under the Indian Constitution, the Indian Supreme Court has recognised that the right to healthy environment is an integral part of the right to life under Article 21 in the case of *Subhas Kumar v. State of Bihar*.⁹² This trend has continued with the emergence of climate change litigation. In *M.K. Ranjitsinh and Others v. Union of India and Others*,⁹³ the Supreme Court of India held that there is a constitutional 'right to be free from the adverse effects of climate change' by drawing upon Article

High Water — As Fires and Floods Hit the Poor Hardest, It Is Time for the World to Step Up Adaptation Actions. Executive summary. <https://doi.org/10.59117/20.500.11822/4649>

⁸⁷ United Nations Environment Programme (2025), Climate change in the courtroom: Trends, impacts and emerging lessons. Nairobi. <https://wedocs.unep.org/20.500.11822/48518>

⁸⁸ *Urgenda Foundation v. Netherlands* Case No. 200.178.245/01. Judgment available at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf

⁸⁹ *Friends of the Irish Environment CLG v. Government of Ireland* [2020] IESC 49; Leghari v. Pakistan, (2015) W.P. No. 25501/2015.

⁹⁰ *Ralph Lauren 57 v. Byron Shire Council*, [2016] NSWSC 169; *Harris County v. Arkema*, No. 201776961 (Harris Co. Dist. Ct. Nov. 16, 2017).

⁹¹ EO Ekhatior and E Okumagba (note 37).

⁹² (AIR 1991 SC 420).

⁹³ Civil Appeal No.: 3570 of 2022. Available at https://www.climatecasechart.com/document/mk-ranjitsinh-et-al-v-union-of-india-et-al_91a4?q=india&r=south-asia

21 (the fundamental right to life and personal liberty) and Article 14 (the fundamental right to equality) of the Indian Constitution. Also, Nigerian courts have often referenced the Indian environmental jurisprudence as persuasive authorities when faced with critical issues of environmental justice.⁹⁴ For instance, in *Centre for Oil Pollution Watch v. NNPC*, the Nigerian Supreme Court referred to the Indian environmental related cases in liberalising the rule of *locus standi* and expanding access to justice in climate change litigation.

However, while climate litigation has continued to grow in many jurisdictions, research indicates that litigants continue to face legal barriers in their quest for justice.⁹⁵ As a result, many climate-related cases have been dismissed on account of these barriers. Based on the current literature, there is consensus among scholars that these barriers manifest in both substantive and procedural forms, and they continue to remain clog in the wheel of climate justice. While many of these issues vary from jurisdiction to another, some are peculiar to climate litigation.⁹⁶ For instance, despite the prospects of the Nigerian Climate Change Act, 2021 in promoting access to justice, the law has not sufficiently address existing barriers in climate change litigation. Scholars have identified both substantive and procedural challenges of climate change litigation in Nigeria.⁹⁷ Our analysis of the existing literature reveals that victims of

⁹⁴ EH Nyekwere and U Nnawulezi, SE Adiyatma, K Balarabe, and MA Rouf, 'Constitutional and judicial interpretation of environmental laws in Nigeria, India and Canada' (2023) 7(2) *Lex Scientia Law Review* 905–958; EO Ekhator, 'Environmental Justice in the Global South: An Evaluation of Legal and Contemporary Developments' in RC. Brears, & J. Lindley (Eds.), *The Palgrave Handbook on Environmental Policy and Law* (Springer 2025) 13; Ako, T. R. (2010). The judicial recognition and enforcement of the right to environment: Differing perspectives from Nigeria and India. *NUJS Law Review*, 3, 423–445.

⁹⁵ J Peel, 'Issues and Challenges of Climate Change Litigation' (2011) *CCLR* 1.

⁹⁶ United Nations Environmental Programme, *Global Climate Change Litigation Status Report*, (UNEP, Kenya 2020) 42.

⁹⁷ PK Oniemola, 'A Proposal for Transnational Litigation against Climate Change Violations in Africa' (2020) 38 *Wis. Int'l LJ*, 301; U Etimere (note 84) 167; EO Ekhator and BE Umukoro, 'Climate Change, human rights and the Nigerian Child' (2025) 1 *African Journal of Climate Law & Justice (AJCLJ)* 192– 221; P Duruike, '*Climate Change Litigation and Corporate Accountability in Nigeria: The Pathway to Climate Justice?*' (Thesis submitted to the Faculty of Graduate and Postdoctoral Studies, University of British Columbia, 2018);

climate change and other environmental harms, NGOs, and agencies of government, face critical challenges in their quest for redress in courts. These barriers can be categorised into legal and non-legal challenges, and they include jurisdictional and justiciability issues, *locus standi*, problem of proof/causation, delay in the judicial process, insufficient and weak environmental laws, challenge of funding and technical support, inadequate government support, among others. The consensus amongst scholars these challenges are undermining the capacity of victims of climate change and affected communities to seek redress in courts.⁹⁸

4. APPROACHES TO CLIMATE CHANGE LITIGATION IN NIGERIA

As we have discussed above, litigants employ different strategies and approaches in bringing climate change-related suits in courts across jurisdictions. These approaches are often premised on several theoretical foundations, and in some cases, multiple theories are asserted as basis for seeking redress in courts, such as environmental justice, human rights, constitutional, common-law doctrines. In Nigeria, an examination of climate change and environmental related cases also shows that litigants are adopting several approaches in seeking redress in courts. These include human rights, common law, constitutional, among others. In some instances, litigants adopt a hybrid approach, combining two or more approaches depending on the circumstance of each case.

HM Osofsky 'Climate Change and Environmental Justice: Reflections on Litigation over oil extraction and rights violation in Nigeria' (2010) 1 (2) *Journal of Human Rights and the Environment* 195; D Bertram, 'Transnational Experts Wanted: Nigerian Oil Spills before the Dutch Courts' (2021) 33 *Journal of Environmental Law* 427; E Okonkwo, 'Assessing the Role of the Courts in Enhancing Access to Justice in Oil Pollution Matters in Nigeria' (2020) 28 (2) *African Journal of International and Comparative Law* 201; J Nwazi, 'Access to Environmental Justice in Nigeria' (2008) 1 *Lead City University Law Journal* 16; TN Alatisè, 'Jurisdictional Problem in Environmental Litigation in Nigeria: Lessons from New South Wales' (2022) 30 (1) *IIUMLJ* 86; Y Suedi and M Fall, 'Climate Litigation before the African Human Rights System: Prospects and Pitfalls' (2023) *Journal of Human Rights Practice* 146-159; TN Alatisè, 'The Future of 'Standing to Sue' in Environment and Climate Change Litigations in Nigeria' (2022) 13 *NAUJILJ* 28-39.

⁹⁸ See footnote 97 above.

a. Human Rights

In addition, to the constitutionally guaranteed human rights, Nigeria has ratified several international human rights instruments. These laws have now form part of the corpus of the Nigerian human rights laws. There are two benefits of these laws: first, they impose both positive and negative obligations on the Nigerian government to protect its citizens from acts that threaten the enjoyment of their human rights. Second, they provide basis for victims and potential victims legal basis to hold government liable for the violations of their rights.⁹⁹ In the context of human rights violations in connection with climate change, these laws impose obligations on Nigerian government to protect its people from the dangers of climate change, and they also empower the people to bring rights-based litigations in courts.¹⁰⁰

To that extent, victims of climate change and other environmental hazards have adopted a human rights approach in seeking redress against government and corporate entities in Nigeria. For instance, the case of *Gbemre* is the first climate related suit in Nigeria in which both the applicant and court adopted rights-based approach in filing and determining the case. In *Gbemre v. Shell*,¹⁰¹ the applicant adopted a combination of constitutional and human rights approaches in seeking to enforce his fundamental right to life and human dignity, which were being threatened by gas flaring. The court also upheld these strategies by holding that the applicant's constitutionally guaranteed fundamental right to life

⁹⁹ MT Ladan and NC Maduekwe, 'A human rights approach to environmental protection (HRAEP) as a tool for fostering climate resilience for the Nigerian woman' in MA Tigre, MJ Murcott, and SA Samuel (eds.) *Climate Litigation and Vulnerabilities: Global South Perspectives* (Routledge 2025) 239-271. https://www.researchgate.net/publication/392429617_A_human_rights_approach_to_environmental_protection_HRAEP_as_a_tool_for_fostering_climate_resilience_for_the_Nigerian_woman

¹⁰⁰ MT Ladan 'A Review of the Nigeria's 2021 Climate Change Act: Potential for Increased Climate Litigation.' Available at <https://iucn.org/news/commission-environmental-economic-and-social-policy/202203/a-review-nigerias-2021-climate-change-act-potential-increased-climate-litigation>

¹⁰¹ Unreported Suit No. FHC/B/CS/53/05 delivered on 14th November 2005. Available at <https://climatecasechart.com/non-us-case/gbemre-v-shell-petroleum-development-company-of-nigeria-ltd-et-al/>

and human dignity necessarily include the rights to a clean, poison and pollution free environment. Also, in *Centre for Oil Pollution Watch v. NNPC and Anor*,¹⁰² even though the plaintiff adopted a common law approach (negligence) to institute the matter, the case became notable and unprecedented because of the constitutional and human rights approach adopted by the Supreme Court to hold that the plaintiff had a *locus standi* to sue. Consequently, Ladan observed that the decision of the Supreme Court in *Centre for Oil Pollution Watch v. NNPC* aligns with a constitutional human rights approach to environmental and climate protection, and that the case also provides additional human rights and constitutional tool for potential climate litigation in Nigeria.¹⁰³ On the basis of this, human rights approach remains an effective pathway to climate justice in Nigeria.

b. Common Law Approach

Within the context of environmental litigation in Nigeria, the common law approach has been widely employed by litigants to seek redress against defendants in courts.¹⁰⁴ Majority of these cases arise from oil pollution activities of the multinational oil companies in the Niger Delta region of Nigeria. Victims of these environmental pollutions usually adopt common

¹⁰² (2019) 5 NWLR (Pt. 1666) 518. The facts of this case were adapted from the database of Sabin Center for Climate Change Law. Available at <https://climatecasechart.com/non-us-jurisdiction/nigeria/>

¹⁰³ Sabin Center for Climate Change Law Database. <https://climatecasechart.com/non-us-case/centre-for-oil-pollution-watch-copw-vs-nnpc-2018-supreme-court-of-nigeria/>

¹⁰⁴ U Etemire, 'Climate Change Litigation in Nigeria: Challenges and Opportunities' (2021) *Comparative Climate Change Litigation: Beyond the Usual Suspects* 409-426; E O Okumagba, 'Examining global court practices in reducing climate change impacts through litigation: lessons for Nigeria' In *Implementing the Sustainable Development Goals in Nigeria* (Routledge 2021) 98-118; AO Salau, 'The future of climate change litigation in pursuit of environmental sustainability in Africa: A review of Nigeria's 2021 Climate Change Act' (2023) *Domestic and Regional Environmental Laws and Policies in Africa* 405-421.

law principles, such as tort of negligence,¹⁰⁵ nuisance¹⁰⁶ and strict liability,¹⁰⁷ as causes of action to hold violators liable and claim damages, remediation and restoration of the damaged environment. However, one major limit of the common law approach to climate litigation is that it is primarily suitable to redress individual injuries against the violators, and not for the overall protection of the environment. To that extent, Latham argues that the common law approach is not sufficient to protect the environment because the primary objective of common law causes of action is the restoration of the human victim to the original, pre-injury state, irrespective of how the environment was adversely impacted.¹⁰⁸

Similarly, it has been observed that the remedies arising from a tortious action is mainly for the benefit of the victims of the environmental abuse; it is not concerned with improving environmental condition of the damaged land.¹⁰⁹ Furthermore, cases founded on common law claims face additional challenge of establishing causation or proof problem.¹¹⁰ The nature of proof required to establish common law claims is so herculean that it has put off genuine case of environmental abuse, and this explains why the use of the tort of nuisance and negligence as causes of action in environmental litigation arising out of petroleum operations in Nigeria has

¹⁰⁵ *S.P.D.C.N. Ltd. v. Okeh* (2018) 17 NWLR (Pt. 1649) 420; *S.P.D.C.N. v. Anaro* (2015) 12 NWLR (Pt. 1472) 122 at 179; *Shell Petroleum Development of Nigeria Ltd. v Otoko* (1990) 6 NWLR (Part 159) 693; *Shell Petroleum Development Co. Ltd. v Amachree* (2002) FWLR (Pt. 130) 1654; *Royal Ade Nig. Ltd. v National Oil and Chemical Company Plc.* (2004) ALL FWLR (Pt. 213) 1760; *Jumbo v Shell Petroleum Co. Nig. Ltd. v. (1999) 13 NWLR (Pt. 633) 57.*

¹⁰⁶ *Amos v Shell BP (Nigeria) Ltd* 1975) LLJR-SC; *Seismograph Services Ltd. v Akepuovo* (1974) LCN/1910; and *Dumez Nigeria Ltd. v Ogboli* (1972) LCN/1471; *Seismograph Service (Nigeria) Ltd. v. Robinson Kwavbe Ogbeni* (1976) All NLR 163.

¹⁰⁷ *S.P.D.C.N. Ltd. v. Okeh* (2018) 17 NWLR (Pt. 1649) 420; *S.P.D.C.N. v. Anaro* (2015) 12 NWLR (Pt. 1472) 122; *Umudje v Shell BP Nig. Limited* (1975) 9-11 S.C. 115.

¹⁰⁸ ME Latham et al, 'The Intersection of Tort and Environmental Law: Where the Twains Should Meet and Depart' (2011) 80 (2) Fordham Law Review 754.

¹⁰⁹ AJ Maidin and BA Abdulkadir, 'Issues and Challenges in Environmental Justice Delivery System in Malaysia and Nigeria: The need for Liberalising the Strict Rule of Locus Standi' (2012) 1 LNS(A) 25.

¹¹⁰ G Ganguly (note 8).

attracted some setbacks, leading to dismissal of some of the cases founded on common law approach.¹¹¹

Therefore, it is generally believed that common law approach cannot be used on an efficient basis for the public regulation of the environment.

c. Constitutional/Statutory Approach

In addition to the constitutional provisions on the protection of the environment,¹¹² Nigeria has enacted several environmental and climate change related statutes, including Environmental Impact Assessment Act, Climate Change Act, 2021, NESREA Act, NOSDRA Act, Harmful Waste Act, Petroleum Industry Act, etc.¹¹³ These laws are enacted pursuant to the legislative powers granted by the Constitution, as such they form part of Constitutional law. The laws impose obligations on government and provide basis for bringing climate change and environmental cases when there are violations of the laws.¹¹⁴ For example, section 27 and 28 of National Environmental Standards and Regulations enforcement Agency Act (NESREA), 2007 empowers aggrieved persons to bring action for breach of statutory duties as result of discharge of hazardous substances into air, land and water.¹¹⁵

Also, section 34 (2) of the Climate Change Act, 2021, empowers the court to grant appropriate remedies in climate change or environmental matters. Based on this, scholars have argued that the Climate Change Act, 2021 has the potential to promote access to justice in climate related suits and improve the climate litigation profile of Nigeria.¹¹⁶

¹¹¹ TN Alatisé 'Common Law Approach to Environmental Litigation in Nigeria: Prospects and Challenges' 11 (3) NAUJCPL 89 – 96.

¹¹² Section 20 of the 1999 Constitution (as amended) imposes obligations on the Nigerian government to protect the environment.

¹¹³ ME Latham (n. 108).

¹¹⁴ MT Ladan (note 100).

¹¹⁵ See all section 20 of Harmful Waste Act; section 7 and 8 of NESREA also allows interest persons to bring an action to NESREA to request for EIA of any project that did not follow laid down procedures.

¹¹⁶ P Okoli and E Abraham, 'In search of a sustainable future: A comparative assessment of climate change regimes in Nigeria and Kenya' (2024) 33 (2) Review of European, Comparative & International Environmental Law 276-290; MT Ladan, 'Nigeria's Climate

There are climate related cases in Nigeria where constitutional approach has been adopted, including *Oronto Douglas v. Shell Petroleum Development Company Ltd. & Ors*,¹¹⁷ *HEDA Resource Centre v. Shell Petroleum Development Company Ltd. & Ors*,¹¹⁸ *HEDA Resource Centre v. Nigerian Government*, among others. For instance, in *HEDA Resource Centre v. Nigerian Government*,¹¹⁹ the Federal High Court in Lagos ordered the Nigerian Government to release detailed records of gas flaring in Nigeria to the applicant, who had filed a suit challenging the failure of the agencies of government to release the information on gas flaring under the Freedom Information Act, 2011. Also, in *Gbemre v. Shell*, a hybrid approach involving constitutional and human rights was adopted was adopted in holding Shell liable for violations of the applicant's right to healthy environment.¹²⁰

Again, given the limitations associated with the common law approach, scholars have argued that a statutory approach to climate change has greater chance of success in Nigeria. In this regard, litigants can rely on environmental legislations made pursuant to the constitution as basis to hold government and corporate entities liable for failure to implement or enforce climate change measures. To that extent, Ladan identifies two crucial benefits of a constitutional/statutory approach to environmental protection: first, such approach imposes a strict liability on environmental violators in contrast to a fault-base principles of common law, and at the same time environmental violators are made to pay fines and

Change Act and Policy 2021 and the Future of Climate Litigation', SSRN, 2022, <https://ssrn.com/abstract=4019698>; Ekhaton and Okumagba (note 37).

¹¹⁷ *Oronto Douglas v. Shell Petroleum Development Company Ltd. & Ors*. Available at: <https://climatecasechart.com/non-us-case/oronto-douglas-v-shell-petroleum-development-company-ltd-ors/>

¹¹⁸ *HEDA Resource Centre v. Shell Petroleum Development Company Ltd. & Ors*. Available at: <https://climatecasechart.com/non-us-case/heda-resource-centre-v-shell-petroleum-development-company-renaissance-african-energy-company-and-the-nigerian-government/>

¹¹⁹ *HEDA Resource Centre v. Nigerian Government*. Available at: https://www.climatecasechart.com/document/heda-resource-centre-v-nigerian-government-gas-flaring_773b

¹²⁰ The Court relied on the constitutional provisions of right to life (section 33), Human rights instrument under African Charter on Human and Peoples Rights (article 24), and the Environmental Impact Assessment Act.

compensation, as against damages that is, in most cases, difficult to prove.¹²¹

5. CONCLUSION

Every climate case has a unique fact that differentiates it from other cases. This is why deciding on which approach is best suited for bringing climate related claims in court is a crucial procedural decision for litigants. In this article, we have highlighted the approaches to climate change litigation, and the principles/theories underlining their application. We argued that in the Nigerian context, and given the limitations of the common law approaches, other approaches including the constitutional law and human rights approaches can help promote access to justice to victims and potential victims.

¹²¹ M. T. Ladan, 'Access to Environmental Justice in Oil pollution and Gas Flaring Cases as a Human Right Issue in Nigeria' (paper present at a Training Workshop for Federal Ministry of Justice Lawyers by the Institute for Oil and Gas law, Abuja 2011) 20.