

CLIMATE CHANGE LITIGATION: A RISING TREND IN ENVIRONMENTAL LAW

Anyachebelu, Chijioke Nnamdi

Institute of Maritime Studies, University of Nigeria, Nsukka
nnamdi.anyachebelu@unn.edu.ng/08100718970

Abstract

This study provides an overview of the environmental laws and climate change litigation as a rising trend in environmental law. It explains the term environment according to different international and local legal frameworks, as well as considers the meaning of environmental law. The research explores the conceptual analysis of climate change as an upshot of environmental law as well as climate change litigations as ways of promoting government and corporate accountability. It further considers landmark climate-related cases highlighting the role these cases have played in compelling states to adopt more ambitious greenhouse gas emission reduction targets, while emphasizing a right-based approach to climate change mitigation and adaptation measures. Furthermore, the research considers the legal grounds for climate change litigations which includes: green-washing and climate washing, polluter damages, fundamental human-rights-based claim, fossil-fuel, corporate accountability, increased climate disclosure, Environmental Social and Governance (ESG) backlash etc. as well as discussion of certain emerging global trends on issues relating to climate change litigation. The findings of the research are that climate change litigations are powerful tools for promoting government and corporate accountability, as well as a mechanism for ensuring the promotion of a healthier and safer environment.

Keywords: Climate Change, Environmental Laws, Climate Change Litigation, and Human Rights.

Introduction

Environmental law is that branch of law which deals largely with the protection of the natural and man-made surroundings which is termed the environment. It is that aspect of law which deals with the protection of the human environment to ensure public health safety and continuity. Environment on the other hand has been said to be where all humans live. The *National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (NESREA)*¹, defines environment to include:

Water, air, land, and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them.²

¹Federal Republic of Nigeria Official Gazette, Vol. 94, No 92 (31st July, 2007).

²Section 37, NESREA Act.

In the same vein, environment is defined under the Environmental Protection Act 1990³ as:

Consisting of any of the following media namely, land, air, water and the medium of air includes the air within buildings and the air within both natural or man-made structures above and below ground.

The environment is an integral part of the human life, because it guarantees continued human existence. Therefore, the birth of environmental laws to regulate the environment, emissions, radiations, and carbons which erode the impregnable force of the environment and expose those living in it to varying harms. Environmental laws on the other hand have no universal and generally acceptable definition. However, it can literally be said to mean the laws which deals with the protection of the natural surroundings of man which is the environment.

Environmental laws have been defined to mean a legal framework comprising principles, directives, policies, and regulations founded by different local, national or international units with the purpose of safeguarding and maintaining the environment, verifying its appropriateness for both present and future generation⁴. It has also been explained to be the collective term encompassing aspects of law that focus on protecting the natural environment, human health, and natural resources and it is designed to address environmental issues such as air and water quality, waste management and pollution control, with the purpose of protecting human health, preserving the environment for present and future generations and ensuring sustainable developments.⁵

Climate change has emerged as one of the most pressing global challenges as it poses a significant risk to virtually all aspects of human life. It is arguably the most pressing challenge of the time which is likely to define the generation. Climate refers to the long-term regional or global average of temperature, humidity and rainfall patterns over seasons, years or decades. Climate change, on the other hand, is the significant variation of average weather conditions becoming, for example, warmer or drier- over several decades or long.⁶ Human activity leads to change in the atmospheric composition either directly (via emissions of gases or particles) or indirectly (via atmospheric chemistry). Noteworthy is that the long-term sustainability of life on earth depends on the world's vegetation and a rich arable land. They are the sources of

³Act of the Parliament of the United Kingdom.

⁴Lloyd Law College, 'Environmental Law, Definition, History, Principles, Examples' (September 28, 2023) available at <<https://www.lloydlawcollege.edu.in/blog/environmental-law.html>> accessed on 3 December, 2024.

⁵American Public University, 'What is Environmental Law and Why Does it Matter' (June 1, 2023) available at <<https://www.apu.apus.edu/area-of-study/security-and-global-studies/resources/what-is-environmental-law/>> accessed on 3 December, 2024.

⁶Climate Change Knowledge Portal, 'What is Climate Change', available at <<https://climateknowledgeportal.worldbank.org/overview>> accessed on December 3rd, 2024.

primary biological production that sustains the human population and animal species, so when there is a change in climate it will affect these essential resources of human existence which guarantee sustainability.⁷ Human lives are directly linked to the climate, thus, change in climate has significant impact on the ecosystems. The term climate change has been explained to encompass different components, which includes the following:

Global warming: this is referred to as the increase in the average temperature of the earth's near surface and the oceans. Human activities are causing the warming trends which make the earth warmer than the required degree.

Greenhouse effect: it is the process by which radiative energy leaving the earth's surface is absorbed by some atmospheric gases called greenhouse gases, some examples of these greenhouse effects include Carbon dioxide, nitrous oxide, methane etc.⁸

Overview of Climate Change Impact in Nigeria

The Nigeria Government is not left out in the climate change issues. Climate change disaster has tripled in the country as the country has faced its worst flooding in over a decade, with millions of people displaced from the unprecedented climate related impacts. Research records that Nigeria is already being plagued with diverse ecological problems, which have been linked to the ongoing climate change. The country is experiencing adverse climatic conditions with negative impacts on the welfare of millions of Nigerians. The 2022 floods, caused by heavier rainfall have been linked to climate change and the release of excess water from the Lagdo Dam, which affected many coastal areas and serves as a key driver of forced movement and human mobility. Flood prone areas across the country have been particularly affected by climate change and examples include coastal cities like Lagos, Bayelsa, where over 700,000 people were displaced across 300 communities and villages as a result of flooding, and 526,215 people were also recorded in Anambra in the 2022 flooding to be displaced⁹.

The recent flooding in Maiduguri which happened on September 2024 damaged over half the city while about seventy-seven people lost their lives to the

⁷Dennis Amobi and Tony Onyishi, 'Governance and Climate Change in Nigeria: A Public Policy Perspective' 2015 9(2), *Journal of Policy and Development Studies*, 119-208.

⁸Ikumbur B, and Iornumbe S., 'The Impacts of Climate Change on Nigerian Ecosystems: A Review' 2019 3(2), *Nigerian Journal of Environmental Sciences and Technology*, 268-291.

⁹Rachel Stromsta, 'Climate Change, Disasters, Insecurity, and Displacement: The Impact of Flooding on Youth Marginalization and Human Mobility in Nigeria' (May 30, 2024), available at <<https://environmental;migration.iom.int/blogs/climate-change-disasters-insecurity-and-displacement-impact-flooding-youth-marginalization-and-human-mobility-nigeria>>accessed on December 3rd, 2024.

flood, more than 300,000 people were displaced and damaging property worth billions of Naira with residents at the risks of diseases due to the overflowing of latrines etc¹⁰. Desertification in the Northern part of the country and oil spill/pollution in the Niger Delta are very huge problems. The effects of environmental and climate change related disaster are only projected to worsen with millions of people at risk of losing their lives, properties, homes, forced migration etc. Children and youth are particularly at risk to the effects of those disasters; in addition, they face exclusion and marginalization on the basis of their ages¹¹.

Significance of Climate Change Litigation

The dangers of climate change cannot be overemphasized as cases relating to climate change have tripled in the last few years which lays bare the significance and importance of climate change litigation as a powerful for addressing this challenge internationally and locally. It is therefore imperative to consider the term climate change litigation and its impact in shaping climate change trends. Climate change litigation refers to legal issues brought by entities, individuals, groups or organizations against public sectors or private sector over failures to take adequate action on climate change. This is based on the premise that these entities have a responsibility to safeguard the environment and the public from the negative impacts of climate change.¹² They leverage environmental legislation, public trust principles and human rights framework to support their arguments or claims. The Grantham Research Institute on Climate Change and the Environment in the 2024 snapshot of the Global Trends in Climate Change Litigation¹³ explains climate change litigation to mean: "Consisting of cases brought before judicial and quasi-judicial bodies that involve material issues of climate change science, policy or law."

The main aim of climate change litigation is to hold accountable entities and organizations operating in the environment for their contributions to global warming through emissions of greenhouse gases, inadequate enforcement of environmental legislation or misleading the public about the impacts of climate change¹⁴. Litigation plays a significant role in advancing climate action and accountability and it serves as a tool to enforce and implement existing climate commitments, a means of challenging

¹⁰African Cities Research Consortium, 'Lessons in Urban Resilience from the Floods in Maiduguri', (October 8, 2024) available at <<https://www.african-cities.org/lessons-in-urban-resilience-from-the-floods-in-maiduguri-nigeria/#:~:text=On%20Tuesday%2010%20September%202024,the%20significant%20loss%20of%20lives>>accessed on 3 December, 2024.

¹¹Ibid.

¹²Ibid.

¹³Joana Setzer and Catherine Higham, 'Global Trends in Climate Change Litigation' (June, 2024) available at <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snapshot>>.accessed on 3 December, 2024.

¹⁴Ibid.

deceptive practices by corporations etc,¹⁵ as well as a tool for compelling government and corporations to prioritize climate actions in line with environmental regulations standards. Claimants in climate change litigation cases could either be individuals, NGOs or both and the grounds upon which a climate change lawsuit can be brought encompasses issues around environmental law, human right based claims, carbon capture, sequestration etc.¹⁶

Globally, the issue of climate change litigation has tripled since 2017, with cases related to climate impacts including extreme weather events from scorching heat waves to catastrophic floods, are on the rise with increased frequency and intensity, which lays bare the vulnerabilities of the society and ecosystem.¹⁷ The volume and complexity of climate change lawsuits have drastically increased from 2023. According to Pandey, there were over 183 new cases filed worldwide in 2023, with at least three new cases challenging climate inaction every week.¹⁸ Since 2017, the overall number of climate-related lawsuits have more doubled, indicating a growing trend among people, communities, and organizations to seek legal redress for alleged shortcomings by businesses and governments in addressing climate change.¹⁹ The key trends in the climate change litigation encompass issues surrounding human rights based claims, corporate accountability for their contributions to climate change, etc²⁰.

Climate Change and Environmental Law in Nigeria

The urgency of the need to address the issue of climate change has led nations all around the world into taking legal measures to address and mitigate the effects of climate change. The Nigerian government is not left out in the formulation of policies for climate change action in the country. The country has espoused different laws aimed at preventing dangerous human induced interference with the climate system in order to enable economic development without risking irreversible damage to the

¹⁵Delta Merner, 'What's New in Climate Lawsuit' (July 2, 2024) available at <<https://blog.ucsusa.org/delta-merner/whats-new-in-climate-lawsuits/>>accessed on 3 December, 2024.

¹⁶Ibid.

¹⁷ UNEP, 'Climate Litigation more than Doubled in Five Years, Now a Key Tool in Delivering Climate Justice' (2023) UNEP available at <<https://www.unep.org/news-and-stories/press-release/climate-litigation-more-doubles-five-years-now-key-tool-delivering>> accessed 3 December 2024.

¹⁸Kiran Pandey, 'In 2023, at Least 3 cases challenging climate inaction were filed every week: Reports' (2023) *Downtoearth* available at <<https://www.downtoearth.org.in/climate-change/in-2023-at-least-3-cases-challenging-climate-inaction-were-filed-every-week-reports-93638>> accessed on December 3rd, 2024.

¹⁹ Ibid.

²⁰Kara Anderson, 'Why Climate Lawsuits are on the Rise' (April 19, 2024) available at <<https://greenly.earth/en-us/blog/ecology-news/why-climate-lawsuits-are-on-the-rise/>>accessed on 3 December, 2024.

ecosystem and human health. These legislations include: the *1999 Constitution of the Federal Republic of Nigeria*, the *Climate Change Act*, the *Environmental Impact Assessment Act*, the *NESREA*, the *Oil Pipelines Act*, *Petroleum Industry Act* etc.

Constitution of the Federal Republic of Nigeria (as amended) 1999

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 is the supreme law of the land and its provisions have binding force on all persons and authorities in the Federal Republic of Nigeria.²¹ The CFRN lays a foundation for the protection of the components in the environment and in Chapter II it sets out the Fundamental Objectives and Directives Principles of State Policy which guides the law-making arm of the government in the formulation of policies. As part of the provisions of the Chapter II of the constitution, it provides for:

"Protecting and improving the environment and safeguarding the air, land, forest and wildlife."²²

These principles and objectives are not justiciable²³ unlike other provisions of the Constitution. Rather, they guide the law-making organ of the country in the formulation of policies. It must be noted that the case of *Centre for Oil Pollution Watch v NNPC*²⁴ however made comments regarding the justiciability of the Section 20 of the Constitution. The Supreme Court in this case held that Section 20 of the Constitution on duty to protect the environment by the State is justiciable. The Supreme Court as well recognized that Section 33 of the Constitution which guarantees right to life implicitly includes and constitutes a fundamental right to a clean and healthy environment for all.²⁵

Climate Change Act, 2021

The *Nigeria Climate Change Act* was passed into law by President Buhari in 2021. Prior to this time, Nigeria had no binding legal instrument specifically focusing on climate change.²⁶ The Act was enacted in order to provide the country with legal framework for the nation to achieve its climate goals, and social and economic sustainability and resilience.²⁷ This Act serves as a key piece of legislation supporting the country's attempt to address the intricate and extensive problems caused by climate change.

²¹Section 1(1) of the 1999 Constitution of the Federal Republic of Nigeria.

²²Section 20, Constitution of the Federal Republic of Nigeria, 1999.

²³Section 6(6)(c) of the Constitution of the Federal Republic of Nigeria, 1999.

²⁴[2019] 15 NWLR 1666.

²⁵Available at <<https://climatechartcase.com/non-us-case/center-for-oil-pollution-watch-copw-vs-nnpc-2018-supreme-court-of-nigeria/>>accessed on 3 December, 2024.

²⁶Ibid.

²⁷Grantham Research Institute, 'Nigeria's Climate Change Act' available at <https://climate-laws.org/documents/nigeria-s-climate-change-act_a2f0?> accessed on 3 December, 2024.

The Act lays the ground work for accomplishing goals centred on lowering greenhouse gas emissions (GHG), advancing green growth and fostering sustainable economic development, mainstreaming climate actions in accordance with national development priorities and attaining a net zero target for 2050-2070 in line with Nigeria's international commitment.²⁸ Overall, the Act is an attempt by the Nigerian government to align the nation with international efforts at achieving a sustainable climate.

Overall, the objectives of the Act include the following:

- a. Ensuring that Nigeria formulates programme for achieving its long-term goals on climate change mitigation and adaptation;
- b. Facilitating the coordination of climate change action needed to achieve long-term climate objectives;
- c. Mainstreaming climate change actions in line with national development priorities;
- d. Facilitating the mobilization of finance, and other resources necessary to ensure effective action on climate change;
- e. Ensuring that climate change policies and actions are integrated with other related policies for promoting socio-economic development and environmental integrity;
- f. Setting a target for year 2050-2070 for the attainment of a net-zero greenhouse gas emissions (GHG) emission, in line with Nigeria's international climate change obligations;
- g. Identifying risks and vulnerabilities, building resilience and strengthening existing adaptive capacities to the impacts of climate change;
- h. Implementing mitigation measures that promote low carbon economy and sustainable livelihood; and
- i. Ensuring that private and public entities comply with stated climate change Action Plan.²⁹

Environmental Impact Assessment Act (EIA)³⁰

The EIA was enacted to mainstream environmental related concerns into development decisions. The Act applies to a wide range of possible projects and activities that are potentially significant GHG emitters, including in the agricultural, industrial, mining, petroleum, transportation and other sub-sectors.³¹ The Act prohibits the public and private sectors from undertaking or embarking on projects that may significantly affect

²⁸ KPMG, 'The Climate Change Act 2021: Sectoral Imperative' (2022) KPMG available at <<https://kpmg.com/ng/en/home/insights/2022/04/the-climate-change-act-april-2022.html>> accessed 26 January 2025.

²⁹Section 1 of the Climate Change Act.

³⁰Cap E12, Laws of the Federation of Nigeria, 2004.

³¹Section 2, EIA.

the environment without prior consideration of their environmental effects at the early stages of the project.³²

National Environmental Standards and Regulations Enforcement Agency Act (NESREA)³³

The *NESREA* is Nigeria's principal legislation on environmental protection. The Act empowers the NESREA to cooperate with other government agencies to remove any pollutants discharged into the environment. The agency is charged with the role of protection and development of the environment, conservation and sustainable development of natural resources and the enforcement of environmental standards. It prohibits the discharge of hazardous substances into the air, land and water.³⁴

Nigeria's Commitment under International Agreements

In addition to different legislation regulating climate change in Nigeria, the Nigerian government is as well obligated under various international legal instruments addressing climate change action. Notable amongst these international laws are *the United Nations Framework Convention on Climate Change*, *the United Nations Sustainable Goals*, *the Paris Agreement of 2015*, *the African Charter on Human and Peoples Rights* etc. The protection of environment and its resources through climate action forms part of the blueprint of the United Nations to achieve a better and sustainable future for all.³⁵

United Nations Framework Convention on Climate Change³⁶

The goal of the *United Nations Framework Convention on Climate Change (UNFCCC)* is to prevent dangerous human induced interference with the climate system in order to enable economic development without the risk of irreversible damage to the ecosystem and human health.³⁷ It contains broad language that encourages a level of judgement and discretion based on evolving scientific, technical and economic factors.

³²Section 2(1-3).

³³Federal Republic of Nigeria Official Gazette, Vol. 94, No 92 (31st July, 2007).

³⁴Section 7.

³⁵Sunday Daudu and Stella Idehen, 'A Comparative Analysis of Climate Change Laws in Nigeria with Some Selected Jurisdictions' *Beijing Law Review*, available at <<https://doi.org/10.4236/blr.2024.153101>>, accessed on December 3rd, 2024.

³⁶United Nations Framework Convention on Climate Change, available at <<https://unfccc.int/resource/docs/2015/cop21/eng/I09r01.pdf>>. Accessed on December 3rd, 2024.

³⁷Christine Yan, 'Climate Change and Sustainability Disputes: The International Legal Framework', available at <<https://www.nortonrosefulbright.com/en/knowledge/publications/aec10a3b/climate-change-and-sustainability-disputes-the-international-legal-framework?>> accessed on December 3rd, 2024.

The convention was introduced to fill a gap by addressing all the GHG not addressed by the *Montreal Protocol*.³⁸ Nigeria is a signatory to the *United Nations Framework Convention on Climate Change* wherein it is obligated to take measures to mitigate climate change and ensure sustainable development.³⁹

The United Nations Sustainable Goals (SDGs)

This framework was adopted in 2015, it includes the 17 objectives to end poverty, safeguard the environment and guarantee prosperity for all by 2030.⁴⁰

Paris Agreement of 2015⁴¹

The Paris agreement of 2015 binds signatory States to limit global warming below 2°C above pre-industrial levels. It emphasizes the role of corporations in reducing carbon emissions and transitioning to renewable energy sources. This Agreement falls within the *UNFCCC* framework and was negotiated during the 21st Conference of the Parties (COP) in Paris with the objective to limit global warming.⁴² Nigeria is also a signatory to the *Paris Agreement* which aims to limit global warming to below 2°C and make efforts to keep it within 1.5°C.⁴³

African Charter on Human and Peoples Rights⁴⁴

The *African Charter on Human and Peoples Rights* is a regional legislation which Nigeria is a signatory to the Charter encompasses provisions which includes the protection of the environment and the fundamental human rights of citizens to clean and healthy environment. It provides that:

"Every individual shall have the right to enjoy the best attainable state of physical and mental health."⁴⁵

In furtherance of the right to enjoy best attainable state of physical and mental health, the article further obligates State parties to provide necessary measures to protect the health of their people, as it ensures that:

"States parties to the present charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick."⁴⁶

³⁸Ibid.

³⁹Ibid.

⁴⁰Ibid.

⁴¹Ibid.

⁴²Ibid.

⁴³Ibid.

⁴⁴Ibid.

⁴⁵Article 16, African Charter on Human and Peoples Right.

⁴⁶Ibid.

The Article further provides that:

"All people shall have the right to a general satisfactory environment favourable to their development."⁴⁷

Globally, governments, people and civil society organizations are working to mitigate the effects of climate change. Among these initiatives is the climate change litigation which includes proceedings pertaining to global warming or climate change mitigation. This offers a fresh way to influence the dynamics of the fight against climate change and broadly characterizes claims where climate change is a material issue in terms of science, law or fact. People are increasingly using the legal system to address the climate crisis.⁴⁸ The report of the United Nations Environment Programme (UNEP) 2023 Global Climate Litigation indicate a growing trend of individuals and groups using legal actions to address the climate crisis and reliefs are sought through:

- i. The implementation of climate legislation
- ii. The incorporation of climate action into current energy, environmental and natural resources laws
- iii. Directives to lawmakers, policymakers and corporate entities to more comprehensive approaches to climate change
- iv. The development of precise definitions of human rights and responsibilities impacted by climate change
- v. Restitution for climate change.⁴⁹

This shift towards climate litigation is seen as a way to hold governments and corporations accountable for their negative environmental impact and push for stronger climate policies.⁵⁰

The State of Climate Change Litigation in Nigeria

The *Intergovernmental Panel on Climate Change (IPCC)* has ranked Africa as one of the most vulnerable continents to climate change and its effects.⁵¹ As seen above, Nigeria is experiencing increasing incidence of side effects of climate change, with the country facing severe drought, flooding, deforestation, loss of biodiversity, forced human mobility and displacement etc. The Nigeria oil and gas industry is the major emitters of

⁴⁷Ibid, Section 24.

⁴⁸Agnes Rydberg, 'Climate Change Litigation: General Perspectives and Emerging Trends' 2024 (26), *International Community Law Review* 347-366.

⁴⁹Ibid.

⁵⁰United Nations Environment Programme (2023), Global Climate Litigation Report: 2023 Status Review.

⁵¹Intergovernmental Panel on Climate Change (IPCC), 'Global Warming of 1.5° (IPCC 2019), available at https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf accessed on 3 December, 2024.

greenhouse gas emission through gas flares. Statistically, Nigeria is ranked as one of the top seven gas flaring countries in the world.⁵²

In Nigeria, the state of climate change litigation is still emerging due to legal, institutional and socio-political barriers. Generally, climate change litigation is not yet grounded and popular in Nigeria, as it is in some developed countries. There are, however, some cases which establish principles that impact the species of climate change in Nigeria. One of such prominent cases is the *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*.⁵³ The case was initially brought to the Federal High Court, Lagos Division over oil spillage and was later appealed up to the Supreme Court. The claimant claimed that the defendants were negligent in the performance of their duties which resulted from the negligent handling of the latter's pipeline, which had corroded due to lack of maintenance, ruptured, fractured and spewed its entire content of hydrocarbon mineral oil into surrounding streams and rivers of occupants and contaminating the community streams that were the major sources of water supply to the community. The Supreme Court held that any person, including non-governmental organizations (NGOs), can bring an action against public and private entities seeking in the law court the due performance of statutory functions or enforcement of statutory provisions or public laws, especially laws designed to protect human lives, public health and the environment which expands the issue of *locus standi* in bringing a suit on environmental law.

In the same vein, the Nigerian case of *Gbemre v Shell Petroleum Development Company of Nigeria Ltd. and Others*⁵⁴ demonstrated the earliest forms climate change litigation in Nigeria and its potentials in the future. This case is often regarded as the landmark case in Nigeria that is related to climate change which addresses the constitutional human rights approach in addressing the issue of gas flaring. It lays bare the adverse impact of corporation operations in contributing to climate change. The Federal High Court held that constitutionally guaranteed rights inevitably include the rights to a clean, poison and pollution free environment. The court evoked the Articles 4, 16, and 24 of the *African Charter on Human and Peoples Rights* ratified and domesticated in Nigeria⁵⁵ and ruled that the actions of Shell in allowing and continuing to flare gas in the applicant's community amounts to a violation of their fundamental human rights to a clean and healthy environment. The judge further ruled that Shell's failure to carry out an Environmental Impact Assessment is a clear violation of the provisions of the *Environmental Impact Assessment Act*.⁵⁶ The issue of Environmental

⁵²World Bank, 'Global Flaring Tracker Report (April 2021)', available at <<https://thedocs.worldbank.org/en/doc/1f22154bf1b7c89b850dd85cb409b0-0400072021/original/WB-GGFR-Report-Design-05a.pdf>> accessed on 3 December 2024.

⁵³[2019] 15 NWLR 1666.

⁵⁴FHC/B/CS/53/05.

⁵⁵African Charter Act, Cap A9, Laws of the Federation of Nigeria, 2004.

⁵⁶Supra.

Impact Assessment was also considered in the case of *Oronto Douglas v Shell Petroleum Development Company Ltd & Ors.*⁵⁷

The Supreme Court's approach to the pro climate change case of *Center for Oil Pollution Watch v NNPC*⁵⁸ further lends support to climate change litigation in Nigeria. Climate change litigation is relatively a new approach in Nigeria to hold corporations accountable for the adverse impacts of climate change in the country and addressed government's inaction to the problems. Notwithstanding that the country has set up different policies in addressing climate change, the state of climate change litigation is still in its infantile stage. Some of these governmental policies at addressing climate change issues include:

- a. **The Nigeria Climate Change Policy Response and Strategy** which was developed in 2012 and aims at integrating climate change into national development planning and sectoral policies;
- b. **Vision 2020** that is a comprehensive socioeconomic development plan that considers climate change implications. It aims to make Nigeria one of the top 20 economies in the world providing environmental sustainability;
- c. **The National Climate Change Policy:** this policy aligns with the *Paris Agreement* and Nigeria's Nationally Determined Contributions. It defines a holistic framework which guides the country's response to the development of climate change and strategic elements for pursuing a climate resilient national sustainable development. It also sets target for reducing greenhouse gas emissions and enhancing adaptation.⁵⁹

Barriers to Climate Change Litigation in Nigeria

The importance of climate change litigation cannot be overemphasized. It has been explained in the course of this research as a way to hold governments and corporations accountable for their environmental impact and push for stronger climate policies. However, in Nigeria, there are several limitations and barriers which hinders effective climate change litigation, some of which include ineffective enforcement and implementation of existing legislation and policies, the provision of ouster clause in the constitution which limits seeking judicial redress on environmental related issue, lack of specialized environmental courts, judicial challenges and lack of trust in the judicial system, limited technical expertise in climate science within the judiciary, corporate influence from powerful corporations, resource and access constraints, high cost of litigation, the issue of *locus standi* etc. These and many more barriers hinder climate change litigations in Nigeria. It is therefore imperative that these challenges are

⁵⁷[1998]

⁵⁸*Ibid.*

⁵⁹Vahyala Adamu and Emmanuel Christopher, 'Challenges and Prospects of the Legal Framework for Combating Climate Change in Nigeria' 2024 4(1), *AKSU Journal of Administration and Corporate Governance*, 109-121.

addressed to mitigate the effects of climate change in the country. These challenges are briefly discussed under this section of the study.

Ineffective Enforcement and Implementation of Existing Legislation and Policies

The enforcement of climate change policies in Nigeria is relatively weak. The country possesses multitude of laws and policies that could be harnessed to address the pressing issue of climate change; however, there are significant lack of political will to effectively enforce these policies.⁶⁰ The enforcement of climate change related policies will suffer a great ordeal if there is inconsistent governmental commitment to environmental concerns. Addressing climate change issues in Nigeria necessitates a comprehensive approach which includes legal reforms and mechanisms to mitigate socioeconomic and political disparities within the country.

Lack of Specialized Environmental Courts

The lack of specialized environmental courts is a significant issue in climate change litigation in Nigeria. The jurisdiction of the court could be questioned in deciding complex environmental disputes which makes it more difficult to handle and respond to the many challenges that climate change present.⁶¹ The settlement of climate change-related issues is vulnerable to procedural and substantive errors in the absence of a specialized court with the jurisdiction to determine environment related issues. Thus, there is the need to effectively address the issue of jurisdictions of court in entertaining climate-related case for an effective enforcement of climate change litigation in Nigeria.⁶²

The Ouster Clause in the Constitution

The *1999 Constitution of the Federal Republic of Nigeria*, which is the *grundnorm* in the country provides for a right to healthy and clean environment. However, Section 6(6)(c) of the Constitution makes it unenforceable as it is not justiciable. This clause renders non-justiciable the duty of the Nigerian State in providing a clean and healthy environment for all citizens. It hinders the development of environmental and climate change litigation in Nigeria, as it also raises concerns as to the possibility of seeking judicial enforcement of environmental laws without encountering the obstacle presented by the section 6(6)(c) of the constitution. To fully address the challenges

⁶⁰Uzuazo Etemire, 'Climate Change Litigation in Nigeria: Challenges and Opportunities' (2021) 47 *Global Studies in Comparative Law*, 409.

⁶¹Vahyala Adamu and Emmanuel Christopher Diah, 'Challenges and Prospects of the Legal Frameworks for Combating Climate Change in Nigeria' (2024) 4(1) *AKSU Journal of Administration and Corporate Governance*, 110.

⁶²Promise Agunia, Pam-ellah Iwori and Caroline Egbufor, 'Climate Change Litigation: An Emerging Approach to Environmental Protection in Nigeria' 2023 11(1), *AELN Journal of Environmental and Natural Resources Law*, 255-263.

posed by climate change in Nigeria, it is important to reconsider the ouster clause and explore avenues for judicial redress in matters relating to climate change.

Establishing a Casual Link

The complex nature of climate change litigation can significantly pose risks for an otherwise successful lawsuit or can make it difficult for a court to attribute responsibility for climate change to a particular government or corporation under the human right-based claim. Causality is the need to establish a relationship between a country's or company's GHG emissions, a State's failure to implement adaptation policies, and the resulting impact, as well as the subsequent effect on human rights.⁶³ The issue of causation was raised in the *Urgenda*⁶⁴ case, and it highlighted how the concept of 'causation' poses a significant challenge to a suit on climate change, if the claimant fails to establish a link to the State or corporation to the action complained against.⁶⁵

Potentials for Climate Change Litigation in Nigeria

Climate change litigation in Nigeria holds several potentials for positive change in the treatment of our environment and natural ecosystem. Climate change litigation in Nigeria can be enhanced through various avenues which include:

a. Right Based Claims

Future legal action could center on right-based arguments. The use of human rights framework to enforce environment and climate related issues is a key step in advancing climate change litigation. This shift not only aligns with global trends but also empowers individuals and communities with a legal right to seek justice for environmental damage and climate-related issue, highlighting that a healthy environment is a fundamental human right.⁶⁶ This approach underscores the importance of environment protection as essential to human well-being.

The interaction between right based claims litigation and litigation under the 2021 *Climate Change Act* can be approached in several ways:

- i. *Challenging state inaction*: legal actions against the State for failing to implement the Act promptly could be seen as violating fundamental rights,

⁶³ Cleverline Brown, Bariyima Sylvester Kokpan, and Samuel Abinye Omubo-Pepple, 'Litigating Climate Change in Nigeria: Navigating Legal Avenues and Overcoming Challenges for Environmental Justice in a Developing Nation' (2023) 17(3) *Journal of Jurisprudence, International Law & Contemporary Legal Issues*, 133.

⁶⁴ Ibid.

⁶⁵ Harriet Moynihan, 'Climate Change and Human Rights- Based Strategic Litigation' (November 22, 2021) available at <https://www.chathamhouse.org/2021/11/climate-change-and-human-rights-based-strategic-litigation/challenges-facing-rights-based>?accessed on December 3rd, 2024.

⁶⁶ Craig Martin, 'Drops in the Ocean: The Hidden Power of Rights-Based Climate Change Litigation' (2024) 56(1) *Case Western Reserve Journal of International Law*, 152.

such as the right to life which includes the right to a clean and healthy environment as laid down by the court in *Centre for Oil Pollution Watch v NNPC*⁶⁷, and Article 24 of the *African Charter* and the fundamental human right to dignity.

- ii. *Constitutional obligation*: these fundamental human rights should be considered alongside the State's constitutional duty to protect the environment⁶⁸ and principles like equality before the law, judicial independence and integrity, access to justice etc. These provisions equip the judiciary to oversee the government's climate change action.⁶⁹

b. Raising Awareness among Communities Affected by Climate Change

Another potential for climate change litigation is the need to raise awareness among communities affected by climate change. By raising awareness about environmental rights and encouraging community driven initiatives, communities can be empowered to stand up for their interests and hold corporations accountable for the adverse or negative impacts of their operations. This approach not only fosters a sense of ownership but also strengthens the collective voice in demanding responsible corporate behaviour. For example, one of the major causes of the conflicts in Niger Delta is the lack of recognition and participation of the people of Niger Delta in the governance framework which is principally due to lack of awareness among the communities affected.⁷⁰ Thus, laws that encourage public awareness and participation should be enacted in Nigeria in curbing the adverse impacts of climate change and increasing climate change litigation.

c. The Judiciary

The judiciary also has a significant role to play in climate change litigation in Nigeria. The judiciary has over the years maintained the position that a person can institute an action under the fundamental human rights for any act of a public authority which affects the enjoyment of rights entrenched in the Constitution. The emergence of climate change cases lends credence to this position. It is constitutionally provided that every individual has a right to life and the judiciary has interpreted right to life in section 33 to include the fundamental right to a clean and healthy environment. To enhance climate change litigation in Nigeria, it is important that the judiciary expand

⁶⁷Ibid.

⁶⁸Section 20 of the 1999 constitution of the Federal Republic of Nigeria.

⁶⁹Muhammed Ladan, 'A Review of Nigeria's Climate Change 2021 Act: Potential for Increased Climate Change Litigation' (March 28, 2022) available at <<https://iucn.org/news/commission-environmental-economic-and-social-policy/202203/a-review-nigerias-climate-change-act-potential-increased-climate-change-litigation>> accessed on December 3rd, 2024.

⁷⁰Etemire *Ibid*.

its tentacles to climate change trends and international legal trends on climate change action.⁷¹

d. International Influence

This refers to the ability of a country or organization to affect the actions or policies of another country or organization.⁷² International influence can as well potentially increase climate change litigation in Nigeria. While Nigerian courts are not bound to follow these precedents; however, adopting approaches from international landmark climate-related cases can potentially help establish a robust body of case laws. An example of such international landmark cases includes the case of *Urgenda Foundation v The State of Netherlands*⁷³, which laid the precedent that States have a duty to protect their citizens. The *Urgenda Foundation* case is widely accepted to be fundamental in the development of climate change litigation. The suit was initiated by the Urgenda Foundation and 900 co-plaintiffs against the Dutch government which was aimed at enforcing stricter climate action to prevent dangerous climate change.⁷⁴ The plaintiffs claimed that the Dutch government has an obligation to take action to reduce greenhouse gas emissions and failure to take such action would violate their human rights under the *European Convention on Human Rights*, as enshrined under Article 2 and 8 of the Convention. The court upheld the decision of the lower court and ruled that the government had a legal duty to protect its citizens from climate change by reducing greenhouse gas emissions. This ruling sets a pivotal global precedent, inspiring a wave of similar lawsuits worldwide, as well as affirms the role of the judiciary in enforcing national climate policies.⁷⁵

In the same vein, the court acknowledged in the case of *Asghar Leghari v Federation of Pakistan*⁷⁶, that the Pakistani government's failure to achieve constitutional objectives protecting the life and rights of the Pakistan people and mandated the creation of a climate change commission which was tasked with ensuring that the government adhered to its climate goals. Similar decision was also reached in the case of *Neubauer v Germany*,⁷⁷ where the plaintiffs targeted the Federal Climate Change Act of Germany and argued that the government's measures under the Act were insufficient to meet its constitutional obligations to protect the future generations from impacts of climate targets up to 2030. The court agreed with the

⁷¹Atoyebi O.M., 'Climate Change Litigation in Nigeria: Holding Corporations Accountable' (2024) *Omaplex* available at <<https://omaplex.com.ng/climate-change-litigation-in-nigeria-holding-corporations-accountable/>> accessed on December 3rd, 2024.

⁷²*Ibid.*

⁷³[2019], 19/00135, Supreme Court of Netherlands.

⁷⁴*Ibid.*

⁷⁵*Ibid.*

⁷⁶[W.P. No. 25501/2015].

⁷⁷Case No: BvR 2656/18/1 [2021].

arguments of the plaintiff and mandated that the government create a clearer and more ambitious path for emissions reduction post-2030.⁷⁸

The court in the cases cited above emphasized on the State's responsibility to ensure a cleaner and safer environment for its inhabitants. It further laid emphasis that the State is responsible for the creation of comprehensive policies and laws that reduces GHG emissions as illustrated in the case of *Nebaeur v Germany*⁷⁹ and the case of *Asghar Leghari v Federation of Pakistan*.⁸⁰ Among other things, the court held that the government enforce regulations and implement strategies to adapt to the impacts of climate change, and they are obligated to protect fundamental human rights as it relates to climate change.

Cases for Future Climate Change Litigation

Climate change litigation has been explained as a crucial tool which has been consistently used over the years in addressing the issue of climate change internationally. Not only does climate change litigation help to foster government's accountability, it also helps in enhancing corporate responsibility. In the course of this research, we have exhaustively considered international and local case laws which have been filed against the state to enforce fundamental human rights and to ensure that State's policies and actions align with international best practices. It must be noted that corporations are not left out in the trend on climate change litigation. Statistically, research records that corporations and business organizations operations have contributed to climate change which have directly impact environment, economic and health of citizens.

Over the years, aggrieved individuals and entities have brought proceedings against corporations to enforce and promote corporate accountability on climate change trend. One of the most filed claims against corporations on the issue of climate change is the human right-based claim. It is important to note that human right based claims have been brought against States rather than corporations because it is the obligation of the state to protect human rights of their citizens. A perfect example of corporate accountability climate change litigation is the international case of *Milieudefense v Royal Dutch Shell*,⁸¹ where the claimants argued that Shell's contribution to climate change breached its duty of care under the Dutch law and its human rights obligations to take steps to reduce greenhouse gas emissions. The court found in favor of the plaintiff and agreed that corporations owe a duty to mitigate the impact of climate change. The court ordered Shell to reduce its CO₂ emissions by 45%

⁷⁸Kara Anderson, 'Why Climate Lawsuits are on the Rise' (April 19, 2024) available at <<https://greenly.earth/en-us/blog/ecology-news/why-climate-lawsuits-are-on-the-rise?>> accessed on December 3rd, 2024.

⁷⁹Ibid.

⁸⁰[W.P. No. 25501/2015].

⁸¹HADC 19-379-26052021. The Hague District Court.

in 2030 compared to 2019 levels. Although not binding, the court took into considerations and cited the *Paris Agreement* goals as well as the *UN Guiding Principles on Business and Human Rights*.⁸²

Several cases have been adjudicated on by the international courts on issues relating to climate change. These cases set a precedent which emphasizes the respect for fundamental human rights in climate change action. A good example of such cases includes the case of *Kilmaseniorinnen and Ors v Switzerland*.⁸³ The court found in this case that Article 8 of the *European Convention on Human Rights*⁸⁴ encompasses a right to effective protection by the State authorities from the negative effects of climate change on lives, health, well-being and quality of life. The court found that Switzerland failed to comply with its positive obligations under the Convention on climate change, with gaps in establishing a domestic regulatory framework, including through a carbon budget or national GHG emissions limitation.⁸⁵ This case set a precedent for national and international courts in interpreting the human rights obligations of States on climate action.⁸⁶

Another notable climate change litigation case at the international level includes the case of *Duarte Agostinho and Others v Portugal and 32 Other States*;⁸⁷ this case addressed the expectations of children and youth and the right of future generations to an environment that is not destroyed by climate change.⁸⁸ Similar decision was also reached in the case of *Daniel Billy and Others V. Australia*,⁸⁹ where the Torres Strait Islanders (claimant) claimed that changes in torrent weather have direct consequences on their culture and traditional way of life. The UN Human Rights Committee found in this case that Australia's failure to adequately protect indigenous Torres Islanders against the negative impacts of climate change violated their rights to enjoy their culture and be free from arbitrary interference with their private life, family and home.⁹⁰

⁸² Available at <<https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dtch-shell-plc>> accessed on December 3rd, 2024.

⁸³ 53600/20 [2020]

⁸⁴ Ibid.

⁸⁵ *Kilma Seniorinnen v Switzerland*, available at <<https://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/>> accessed on December 3rd, 2024.

⁸⁶ Ibid.

⁸⁷ 39371/20 [2020].

⁸⁸ *Duarte Agostinho and Others v Portugal and 32 Other States*, available at <<https://climatecasechart.com/non-us-case/youth-for-climate-justice-v-austria-et-al/>> accessed on December 3rd, 2024.

⁸⁹ CCPR/C/135/D/3624/2019.

⁹⁰ *Daniel Billy and Others v Australia* (Torres Islanders Petition), available at <<https://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united->

The international court has seen different climate change litigation, many of which borders on the violation of human rights by States, government accountability, corporate liability, climate washing cases, greenhouse gas emission, transition risk cases, etc.⁹¹ It must be noted that more litigants are framing their cases around human rights violations linked to climate change impacts. International courts are increasingly recognizing these claims which have consequently led to significant rulings that emphasize States' obligations to protect citizens from environmental harm.

Recommendations

Climate change litigation in Nigeria faces several challenges, however there are potential methods which can help the country to improve and facilitate effective climate change litigation. In facilitating climate change litigation in Nigeria, there are several approaches which should be adopted and they include:

- i. A constitutional amendment which makes the section 20 of the constitution justiciable to ensure environmental safety for human habitation.
- ii. A review of existing legislation and policies related to climate change, such as the environmental laws, energy laws etc. to ensure climate change strategies are up-to-date with the latest science and best practices.
- iii. Establishment of a specialized environmental court and expanding environmental laws to explicitly address climate justice.
- iv. Domestication of international climate change treaties which Nigeria is a signatory to. Nigeria has ratified several international instruments; however, due to the monist approach of the country, these treaties have yet to be incorporated and domesticated yet. The domestication of these instruments can potentially help the country in effective climate change litigation.
- v. Investment in renewable energy resources to reduce greenhouse gas emissions and radiations to foster sustainable developments.
- vi. Examination of global patterns and synchronizing its legal structure with developing international norms.
- vii. Liberalization of the rule of *locus standi*.
- viii. Encouraging public participation and awareness.

Conclusion

This research has provided an overview of the environmental laws and climate change litigation as a rising trend in environmental laws. It has also provided information on the current trends and developments in the global climate change litigation, the impact of climate change in Nigeria and the status of climate change litigation in the

[nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/](#)>accessed on December 3rd, 2024.

⁹¹Ibid.

country, the barriers to effective climate change litigation in Nigeria. It has further outlined strategies that can be adopted for an effective climate change litigation.

The common thread among the legal proceedings considered in the course of this study is that they provide a fresh method to change and have impact on the dynamics of the fight against climate change as climate change litigation has played significant role in shaping public policy. The legal issues revolving around climate change has inadvertently leveraged the judicial system to enforce environmental protection and influence change, and it has helped to redefine the public narrative on climate change and, in some cases resulting in significant shift in government and business policies.

The effects of climate change are pushing populations/individuals to their limit. Therefore, seeking legal actions through climate change litigation to mitigate the adverse effects of climate change is desirable. These ongoing climate change crises highlight the need to combat climate change. In the course of this research, we have adequately considered the different cases under climate change litigation which borders on GHG emission, human right based claims, the fossil fuel etc. These cases explain the intersection between human rights laws with environmental laws and the need for a robust legal framework, enforcement and implementation policies to ensure government accountability, corporate accountability and an environmental health, which do not pose harm or threat to citizens.

Climate change litigation is a rapidly developing field of law that significantly influences environmental policies both internationally and nationally. By utilizing legal frameworks which have been designed to regulate climate change action based on human rights and environmental protection, litigants are holding governments and corporations responsible for their contributions to climate change. As climate impact worsen, climate change litigation will become an essential tool for justice, accountability and policy enforcement in Nigeria and as the trend of climate change continues to expand, climate change litigation is expected to play a significant role in driving the systemic changes needed to meet global climate objectives and ensure justice for the most impacted by the environmental harm.

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