



AN APPRAISAL OF THE CLIMATE CHANGE ACT 2021 AS A NEW DAWN IN ENVIRONMENTAL RIGHTS ENFORCEMENT IN NIGERIA: LESSONS FROM *LEGHARI V. FEDERATION OF PAKISTAN*

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ABSTRACT

This article appraises the Nigerian Climate Change Act 2021 which is the first climate change legislation in Nigeria. The article also examines the human rights approach to climate change in view of the growing correlation between climate change and human rights globally. Climate change is the greatest environmental threat to lives and properties worldwide. As a result, human rights actions remain the greatest tools through which climate justice can be promoted. The decision of the Pakistan court in Leghari v. Federation of Pakistan, for instance, stands out as a precedent for human rights action based on state failure to enforce Climate Change Act. It is obligatory on the government to enforce the provisions of this Act. To this end, the article appraises this decision in relation to the Climate Change Act, 2021, and enjoins courts in Nigeria to borrow a leaf from the Pakistan courts in the determination of rights-based climate actions in Nigeria.

INTRODUCTION

One of the burning issues that are posing threats to the entire human race is climate change. Concerns about the inimical effects of climate change have grown over the last couple of decades. It threatens lives and properties and other guaranteed rights of man. Today, the global community has accepted climate change as the greatest threat to the whole universe in this 21st century. In fact, it requires urgent measures for its adaptation and mitigation¹ without which the problem continues to exacerbate. One of the generally accepted practical solutions to this threat is legislations with main focus on the regulation of emission of gases into the atmosphere. The use of climate change legislations has gained momentum in the recent past as the greatest tool through which the climate and the lives on earth can be safeguarded.² Climate protection is the responsibility of all and sundry, including the government, Non-Governmental Organizations (NGOs) and private individuals. In its response, the Nigerian government, following the patterns in other climes, put in place some laws and policies for climate change mitigations which include the Climate Change Act of 2021. Unlike many other environmental statutes which impacts are not much felt, the

Climate Change Act 2021 has the potential to facilitate the achievement of the country's much-desired reduction of greenhouse gas emissions in conformity with its climate change treaty obligations.

Similarly, several other countries such as United Kingdom,³ Uganda⁴ and Philippine⁵ have also enacted Climate Change laws primarily to address the threat of greenhouse gas emissions.⁶ In fact, almost all the countries that are signatories to the 2015 Paris agreement under the auspices of the **United Nations Framework Convention on Climate Change (UNFCCC)** have climate change laws and policies in their respective countries.⁷ Pakistan, for instance, enacted its Climate Change Act in 2017 to meet its international obligations of addressing the problems of climate change from its domestic front by reducing the greenhouse gas emissions in Pakistan. Although the government of Pakistan had, prior to this Act, formulated a profound climate change policy making it obligatory on the government to promptly enforce these policies to the letter and providing the citizens of Pakistan the avenue to seek legal remedies in the event of failure by the government to uphold its climate responsibilities. The citizens of Pakistan have cashed in

¹ N.E. Ebele and N.V. Emodi, "Climate Change and Its Impact in Nigerian Economy" in *Journal of Scientific Research and Reports*, Vol. 10, 2016, p. 2, referred to in O.E. Philip and E. O. Erhagbe, "The Impact of Climate Change on Economic and Social Rights Realization in Nigeria: International Cooperation and Assistance to the Rescue?" in *African Human Rights Law Journal*, Vol. 21, 2021, p. 1081.

² S. Varvastian, "The Advent of International Human Rights Law in Climate Change Litigation" in *Wisconsin International Law Journal*, Vol. 38, No. 2, 2021, p. 370.

³ See the United Kingdom Climate Change Act, 2008.

⁴ The National Climate Change Act, 2021.

⁵ Climate Change Act of 2009. See also Norwegian Climate Change Act 2018 and Sweden Climate Act 2017. Kenya enacted its own Climate Act in 2016 with similar objectives of imposing climate change obligations, reducing carbon emissions and enhancing climate change governance in Kenya. See Article 16, for instance.

⁶ Navroz K. Dubasha, et al, "Developments in National Climate Change Mitigation Legislation and Strategy" in *Climate Policy*, 2013, p. 652.

⁷ Robert O. Keohane and Michael Oppenheimer, "Paris: Beyond the Climate Dead End through Pledge and Review?" in *Politics and Governance*, Vol. 4, Issue 3, p. 142.



on these opportunities as we have seen in the case of **Asghar Leghari v. Federation of Pakistan**.⁸ The decision of the court in this case reechoed the correlation between human rights and climate change and thereby faults the government's inaction in the implementation of its climate change policies.

Today, Nigeria is one of the greatest victims of the impacts of climate change. Just like Pakistan, Nigeria is a signatory to the Paris agreement of 2015 and has enacted the Climate Change Act of 2021 in addition to other laws and policies geared towards climate change mitigation. In this respect, the decision in the *Leghari's case* can apply to Nigeria to ensure that both government and private citizens can enforce the provisions of the Climate Change Act 2021 and other climate change laws and policies in the country. That is why this article is calling on the citizens of Nigeria, especially the lawyers, judges and environmental litigants to take a cue from their counterparts in Pakistan.

CLIMATE CHANGE: A THORN IN THE FLESH

Climate change refers to the long-term change in the weather conditions caused mainly by the anthropogenic activities which emit greenhouse gases into the atmosphere.⁹ Such activities include gas flaring, deforestations, production of cement and lime, and other industrial activities. The aftereffect of the emissions is the destruction of the natural mechanisms meant to protect the earth and the entire human race from the ultraviolet radiations. The percentage that has direct access to the earth does not correspond with the percentage that radiates back to the atmosphere as it is trapped on earth by the artificial gases. They are blanket of gases as they wrap and suffocate the whole earth like a house without cross ventilation when the windows and doors are tightly closed.¹⁰

The resultant effect is increase in temperature, global warming, evaporation, high precipitation and floods against the order of nature.¹¹ The consequence is famine due to drought and the concomitant decrease in agricultural productivity and increased heat-related ailments. That is why it has been globally acknowledged as a torn in the flesh being the greatest threat not only to the global environment but also to the lives, health and properties of the people.¹² It is a global challenge with bad, painful and persistent impact. The impact of climate change is unprecedented in the history of humanity. It was described by the

scientific community as "a critical and escalating crisis that poses significant and often irreversible threats to natural ecosystems, biodiversity, and human societies".¹³

Nigeria is worst hit by climate change due to dissertation in the Northern part of the country and displacement of herdsmen who migrate to the South with their livestock in search of vegetation. This has led to serious conflicts between the herders and the farmers down South.¹⁴ The third world countries, such as Africa, suffer more harm from the climate change than the western countries due to limited access to technologies that enhance mitigation and adaptation to climate change impact. In Nigeria, for instance, all sectors of the Nigerian economy are vulnerable to climate change stressors. The lands, agriculture, water resources, forests and air are all affected by climate change. The devastating flood that often occurs and sweeps the flood-prone areas across the country is mainly linked to the impact of climate change by experts.¹⁵ Between 2012 and 2017, for instance, over two million, four hundred thousand Nigerians were severely affected by flood with over one thousand deaths recorded particularly in the Niger Delta region of the country where oil exploration activities and the concomitant gas flaring are apparent.¹⁶ In the words of Stromsta;

Recent years, especially 2022 and 2024, saw catastrophic floods linked to climate change-induced extreme weather, overwhelming infrastructure not built for such volumes of water. Nigeria has faced its worst flooding in over a decade, with over 2 million people displaced from the unprecedented climate related impacts.¹⁷

It is consequent upon this that the government of Nigeria aligns with all the global initiatives and efforts towards combating the devastating virus. It has also adopted a lot of climate-related policies and implemented other actions towards mitigating the impacts of climate change.

NIGERIA AND THE CLIMATE CHANGE TREATIES

The climate actions being adopted to achieve zero emission of greenhouse gas emissions into the atmosphere by the year 2030 are indicative of the readiness of the global community combat head-on the climate change impacts.¹⁸ Foremost among the initiatives are international treaties and protocols fostering global cooperation geared towards the accomplishment of this

⁸ (2015) W.P. No. 25501/201, 511.

⁹ M. O. Umenweke, "Man and the Atmosphere" in *Introduction to Natural Sciences for General Studies*, Nnamdi Azikiwe University Awka, 1994, p. 79.

¹⁰ S. C. Ogbodo, 'Climate Change and Natural Disasters' in *Journal of Business and Contemporary Legal Issues*, Vol. 1, No. 1, 2012, p. 183

¹¹ J. Nwazi, "Assessing the Problems of Climate Change: Using Law as an Instrument of Control in Nigeria" in *Journal of Public and Private Law*, Nnamdi Azikiwe University Awka, Vol. 4, 2011, p. 259.

¹² See United Nations Climate Action, *Causes and Effects of Climate Change*, available at <https://www.un.org/en/climatechange/science/causes> (accessed 9 December 2025).

¹³ Ibid.

¹⁴ Charles Ivuerah, 'Climate Change and Global Warming: The Nigerian Perspective' in *The Vanguard*, 5 June 2007, p. 24.

¹⁵ V. E. Lekwot & M. K. Balasom, "Climate change and its effect on national security in Nigeria" *International Journal of Interdisciplinary Research and Innovations*, 2 (4) (2014), p. 8.

¹⁶ Ibid, p. 10.

¹⁷ R. Stromsta, *Climate Change, Disasters, Insecurity, and Displacement: The Impact of Flooding on Youth Marginalization and Human Mobility in Nigeria*, *Environmental Migration Portal*, 30 May 2024, available at <https://environmentalmigration.iom.int/blogs/climate> (accessed 9 December 2025).

¹⁸ E. N. Oboh, 'Climate War and the Forestry Act of Nigeria: A Critique' in *The Nigerian Law Journal*, Vol. 25, No. 1, 2024, p. 75.



objective. Nigeria first became a party to the United Nations Framework Convention on Climate Change (UNFCCC) in 1992 and has since demonstrated its commitment to the global project by ratifying several of the climate treaties such as the Kyoto Protocol of 1997, the Durban Agreement of 2011, the Doha Agreement 2012¹⁹ and the Paris Agreement of 2015.²⁰ Nigeria's commitment to this climate mitigation project has resulted in the development of local laws and policies to facilitate the achievement of this goal.²¹ All these climate treaties are geared towards the reduction of the greenhouse gas emissions into the atmosphere.

Nigeria signed the Kyoto Protocol in 2004 to reduce its gas emissions and thereafter ratified the Paris Agreement in 2017 to curb its own gas emission by 45% in 2030 while aiming to achieve the net-zero emissions by 2060.²² Nigeria also participated in the Copenhagen Summit held between 7th and 18th December 2009 in Denmark.²³ Nigeria, along with other nations of the world, made a lot of commitments at the Summit to facilitate the accomplishment of the primary objectives of reducing gas emissions into the atmosphere.²⁴ Signing these agreements impose international climate change obligations on the member states. In response, many of these countries have domesticated these agreements as local laws to combat climate change. Nigeria, for instance, in meeting with its climate obligations to the UNFCCC enacted the Climate Change Act of 2021 as a flagship statute in combating climate change in the country.

CLIMATE CHANGE ACT 2021

The most recent of all the environmental legislations in Nigeria with main focus on the reduction of gas emissions into the atmosphere is the Climate Change Act of 2021. It is the first climate change legislation in the whole of West Africa geared towards achieving the national development plan of reducing carbon emissions to zero-level. This is also in compliance with the nation's commitment to the 26th Conference of the Parties (COP) held in Glasgow, UK, in 2021 with the ultimate purpose

of cutting greenhouse gas emissions²⁵ whether it emanates from the government, public or private entities.²⁶ This includes funding of research and other environmental related plans, actions and programs geared towards climate change mitigation and adaptations.²⁷ Section 1(f) of the Act, for instance, sets the years 2050-2070 as the target to achieve net-zero gas emissions in accordance with the nation's climate change obligations. The new Act also provides avenue for climate change litigations so that victims of environmental injustice brought about by anthropogenic GHG emissions can hold the perpetrators accountable and thereby increase compliance to climate change laws. This is more imperative where the public or private entities fail in their climate responsibilities under the Act. By section 34(2) of the Act, courts are empowered to entertain suits in respect of violation of the provisions of the Act or other activities inimical to the environment and shall accordingly grant orders stopping such contraventions or for the payment of compensation to those already affected by the anti-environmental conducts.²⁸

The provisions of this Act can be likened to the state's obligations to protect and safeguard the environment under section 20 of the 1999 Constitution (as amended)²⁹. Under the new Act, it is obligatory on the public officers in Nigeria to promptly intervene and prevent any act likely to cause harm to the environment.³⁰ An action can lie under this new Act to compel the public officers to enforce the provisions of the Act and safeguard the environment from harm.³¹ This is unlike the state obligations under section 20 of the Constitution which justiciability is uncertain and the impact is yet to be felt after over 25 years of the Constitution's existence. It is expected that the enforcement of the Climate Change Act 2021 to the letter will pave way for the country's achievement of the much-desired reduction of gas flaring in Nigeria. Similar attempts to combat climate change

¹⁹ UN Climate Change Conference of the Parties COP 18 held in Doha, Qatar, as an amendment to the Kyoto Protocol. Here, countries were committed to cutting their greenhouse gas emissions by at least 18% compared to the 1990 levels but to run from 2013 to 2020.

²⁰ I. Nsude & K. A. Nwafor, "Environmental Education: A Communication Impact Analysis" IDOSR Journal of Communication and English 1(1), 2016, pp. 24-44. See Society for Planet and Prosperity, Nigeria became the 144th country to ratify the Doha Amendment, <https://sppnigeria.org/nigeria-became-the-144th-country> (accessed 9 December 2025).

²¹ G. Obahor & G. Asibor, "Evaluation of International Environmental Laws Ratified by Nigeria and Implications for National Development" in International Journal of Sub-Saharan African Research, Vol. 3, Issue 1, pp. 562-578,

²² B. C. Anwadike, "Paris Agreement Implementation in Nigeria: Compliance Level, Constraints and Possible Ways Forward" in Current Journal of Applied Science and Technology, 2021, p. 45.

²³ 15th Conference of the Parties (COP 15) to the UNFCCC.

²⁴ J. Nwazi, "An Appraisal of the Copenhagen Accord" in Journal of Public Law and Constitutional Practice, University of Jos, Nigeria, Vol. 3, No. 2, 2010, p. 170.

²⁵ Z. Akintola, et al, "A Review of Nigeria's Climate Change Act 2021" in News and Events, January 2022, available at <https://www.aluko-oyebode.com/insights/a-review-of-nigeria-s-climate-change-act-2021> (accessed 30 August 2023).

²⁶ R. N. Stavins, "Policy Instruments for Climate Change: How Can National Governments Address a Global Problem?" in University of Chicago Legal Forum, 1997, p. 293.

²⁷ Section 20 of the Act.

²⁸ See section 34(2)(a-c) of the Act.

²⁹ This falls under the Fundamental Objectives and Directive Principles of State Policy which are in Chapter 2 of the Constitution that is, per se, not justiciable. One of the strategies for enforcing the provisions of this chapter is by enacting specific legislations on any of the subjects, like the Climate Change Act, 2021.

³⁰ Ibid, section 34(2)(c).

³¹ Ibid, paragraph (b).



through the reduction of gas flaring have yielded much results in other jurisdictions of the world.³²

However, an appraisal of the new Climate Change Act in Nigeria, throws up the possibility of challenges of enforcement like other environmental statutes preceding the Act. Having the President of Nigeria as the Chairman of the National Council on Climate Change under section 5(1)(a) of the Act may be counterproductive given the history of the unwillingness of the past administrations in Nigeria to enforce environmental statutes to the letter. The Act conferred exclusive power on the President not only to make policies and decisions, coordinate, approve and oversee the implementation of the Act but also to administer funds established under the Act for the purposes of climate change mitigation and adaptation.³³ Absolute power, they say, corrupts absolutely. Such humongous power on the President alone may not augur well with the effective enforcement of the Act to achieve the desired objectives considering the attitudes of Nigerian leaders towards environmental protection. It is one thing to make law and another thing to implement it. The most common approach adopted in virtually all other climes has been to establish an independent Committee or Body conferred with such climate change responsibilities. In the United Kingdom, for instance, the Climate Change Act of 2008 established an independent Committee on Climate Change conferred with similar powers.³⁴ The Committee can only give advice to the Secretary of State in respect of the issues covered under the Act.³⁵

CLIMATE CHANGE AND HUMAN RIGHTS LITIGATIONS

Several studies have confirmed that the negative impacts of climate change pose much threat to human rights in numerous ways.³⁶ Human rights are rights enjoyed by virtue of our human nature, such as right to decent environment, life, health, food, property, water, air and shelter. These rights can be violated by drought, famine, diseases, desertification, floods and exposure to the lethal ultraviolet radiation exacerbated by climate change.³⁷ The United Nations Human Rights Council in 2009 published an annual Report on the Intergovernmental Panel on Climate Change (IPCC) which enlisted the correlation between

human rights and climate change stressing that climate change poses much threats to sources of food, water, life, health, property, adequate housing and self-determination.³⁸ In the words of Savaresi;

Global warming could result in hundreds of millions of people suffering from hunger, malnutrition, water shortages, floods, droughts, heat stress, diseases triggered by extreme weather events, loss of livelihood and permanent displacement. Indeed, climate change poses a direct threat to a wide range of universally recognized fundamental rights, such as the rights to life, food, adequate housing, health, and water.³⁹

Human rights tribunals have reiterated that it is obligatory on the governments to protect these rights by regulating both public and private activities likely to violate them.⁴⁰ That is why many countries of the world today have taken it up as a responsibility to set national emission targets by regulating the activities of companies likely to escalate the environmental conditions of the people. Failure of the state to safeguard the environment and regulate the activities that affect the climate may result in the destruction of lives and properties, acute famine and other life deprivations. It is rights violations that open doors for litigations. Climate change litigation comes to play where climate change directly or indirectly poses threat to peoples' rights. The actions can be founded on international human rights instruments, treaties, climate change regulations, regional charters, national constitutions and other relevant laws. The essence is to seek climate justice based firmly on human rights. The litigants seek redress for human rights violations caused by the failure of the governments to implement climate laws and policies.

Many courts and tribunals all over the world have shown their commitments to ensuring climate justice for both present and future generations through national, international, regional and sub-regional adjudications. Climate change, no doubt, affects the entire human race as a burden but domestic actions and litigations have gone far to assist in cutting the greenhouse gas emissions. Roberts remarked that the domestic courts are the organs of the states which function as the custodians of international laws and promoters of climate justice, connecting

³²U. Afinotan, "How Serious is Nigeria about Climate Change Mitigation through Gas Flaring Regulation in the Niger Delta?" in *Environmental Law Review*, Vol. 24, Issue 4, 2022, p. 89.

³³ Sections 3 and 4 of the Act.

³⁴ Section 32 of the United Kingdom Climate Change Act 2008.

³⁵ *Ibid*.

³⁶ A. Savaresi, "Human Rights and the Impacts of Climate Change: Revisiting the Assumptions" in *Onati Socio-Legal Series*, Vol. 1, Issue 1, 2024, p. 241.

³⁷ J. Nwazi, "Assessing the Problems of Climate Change: Using Law as an Instrument of Control in Nigeria" in *Journal of Public and Private Law*, Nnamdi Azikiwe University Awka, Vol. 4, 2011, p. 260.

³⁸ See United Nations Human Rights Council, 10th Session, A/HRC/10/61, 15 January 2009. It has special effects on women,

children and indigenous peoples and can lead to displacement, conflicts and security risks and can affect both present and future generations if the pace of greenhouse emissions is not controlled. See also Carmen G. Gonzalez, "Climate Justice and Climate Displacement: Evaluating the Emerging Legal and Policy Responses" in *Wisconsin International Law Journal*, Vol. 36, No. 2, 2019, p. 373.

³⁹ Savaresi (n.36).

⁴⁰ The Paris Agreement 2015 adopted by 196 countries makes it obligatory on the state parties to adopt proactive measures to control anti-climate activities for the purpose of safeguarding the environment and human rights. See the UN Climate Change Conference (COP 21) in Paris, France, 12 December 2015.



domestic actions to global efforts in the context of climate change.⁴¹ Many environmentalists have hailed the courts and tribunals for sound decisions which favoured the litigants while holding governments responsible for the deficiencies in the implementation of the climate laws and policies.⁴² The number of rights-based climate-related litigations has increased tremendously in the recent past. According to the Sabin Centre and UN Environment Programme (UNEP) Released Global Climate Litigation Report 2023, climate litigation has become a vital instrument for delivering climate justice and the number has doubled globally since last 7 years.⁴³ The paper draws from the case of **Leghari v. Federation of Pakistan**⁴⁴ and other climate-related cases below;

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Climate change affects the entire human race as a burden but Pakistan has been specifically identified as one of the countries of the world that is heavily threatened by the climate crisis⁴⁵ resulting in massive loss of lives, damage to properties and displacement of persons. Pakistan is among the first ten countries of the world facing existential threat from the climate crisis with abysmal effects on citizens' access to food, water, energy and housing.⁴⁶ As a result, the country has put in place several laws and policies geared towards combating climate change which include the **National Climate Change Policy (NCCP) of 2012**. Unfortunately, the impacts of the laws and policies were never felt due to lack of enforcements with negative consequences on lives and properties.

The case of **Leghari v. Federation of Pakistan**⁴⁷ stands out as one of the judicial precedents for human rights action based on state failure to enforce Climate Change Act. It is a landmark case where a private citizen successfully instituted action against the government for the latter's failure in its national and international obligations which eventually violated the litigant's rights and that of the Pakistan citizens. The complainant, a citizen of Pakistan, was a law student as well as a farmer. His crops and those of his neighbours were seriously threatened by drought caused by climate change. He instituted action through Public Interest Litigation against the Federation of Pakistan and the State of Punjab for failure, delay and lack of seriousness in implementing the provisions of the Climate Change Act of 2012, other policies

and framework on climate change, local and international. The failure and delay purportedly led to heavy floods and droughts which threatened water, food and energy security and so a violation of his fundamental right to life as guaranteed under Article 9 of the 1973 Constitution of Pakistan. The court granted the plaintiff's claims and held that the constitutional rights to life and dignity of human person encompass the right to a pollution free environment. The court found that climate change could lead to water, food and energy crisis and thus added that the inaction of the government to address the issue of climate change amounted to a violation of not only the Climate Change Act of 2012 but also the provisions of the 1973 Constitution especially the ones guaranteeing fundamental rights of citizens. The court ordered for some administrative adjustments to enhance access to food, water and energy.

Apart from the rights to life and human dignity, the court added that Articles 19(A) and 23 on the rights to information and property respectively could also be invoked in the context of climate change litigations. The decision has set a good precedent, international, regional and national, where the citizens can resort to the courts not only to enforce their rights against the government but also to recognize and enforce state obligations. The decision also confirms the universality of human rights hinged on treaties and human rights instruments signaling that the victims of climate change can nevertheless seek redress for human rights violations even in jurisdictions that have no clear provisions for climate change laws and the concomitant litigations. The apparent boldness with which the court made the pronouncement against the government is indicative of an enviable judicial independence as an active watchdog against the excesses of the other organs of government – the Legislature and the Executive.

OTHER CLIMATE RELATED LITIGATIONS

Since the judgments in *Leghari's case*, the number of climate-related lawsuits has multiplied in volumes and frequency across the globe with the governments and corporations, in most cases, held accountable for human rights violations for failure to enforce or abide by the climate change regulations. One excellent example of such cases is **Asmania et al v. Holcim**.⁴⁸ This is an extraterritorial and tort-based climate litigation which sought

⁴¹ A. Roberts, "Comparative International Law? The Role of National Courts in Creating and Enforcing International Law" in *International and Comparative Law Quarterly*, Vol. 60, Issue 1, 2011, p. 57.

⁴² See B. Preston, "The Contribution of the Courts in Tackling Climate Change" in *Journal of Environmental Law*, Vol. 28, 2016, p. 11.

⁴³ See the *Global Climate Litigation Report: 2023 Status Review*, published by the Sabin Centre for Climate Change Law at Columbia University and the UN Environment Programme, 27 July 2023, available at <https://climate.law.columbia.edu> (accessed 16 September 2024). See also H. Lauterpacht, "Decisions of Municipal Courts as a Source of International Law" in *British Yearbook of International Law*, Vol. 10, 1929, p. 66; P. Carlarne, "The Essential Role of Climate Litigation and the Courts in Averting Climate Crisis" in B. Mayer and A. Zahar (eds.) *Debating Climate Law*, 2021, p. 113.

⁴⁴ (2015) W.P. No. 25501/201, 511.

⁴⁵ E. M. Barrit and B. Sediti, "The Symbolic Value of *Leghari v. Federation of Pakistan*: Climate Change Adjudication in the Global South" in *King's Law Journal*, Vol. 30, Issue 2, 2019, p. 208.

⁴⁶ See Malik H. Hayat, *Pakistan among Top 10 Countries Affected by Climate Change in the Last 20 Years*, 12 March 2022, available at <https://www.thenews.com.pk/print> (accessed 19 September 2024). The *Annual Report of the Global Climate Risk Index* published on 4 December 2019 also included Pakistan in the list of first 5 countries of the world seriously affected by the climate change. See Syed M. Abubakar, *Pakistan 5th Most Vulnerable Country to Climate Change*, available at <https://www.dawn.com/news/1520402> (accessed 19 September 2024).

⁴⁷ *Leghari* (n.27).

⁴⁸ Claim filed at the District Court of Zug, Central Switzerland, on 30th Jan. 2023, p. 18.



compensation from a multinational company for its excessive greenhouse gas emissions which contributed to global warming and threatened the lives and properties of the plaintiffs.

In this case, four Indonesia nationals resident in Pari, Indonesia, with the aid of three Non-Governmental Organizations (NGOs)⁴⁹ instituted action in the Cantonal Court of Zug, Switzerland, against a Switzerland based cement company, Holcim, for its greenhouse gas emissions which contributed to climate change and posed threat to their human rights to life and properties. They claimed that climate-induced flood has affected Indonesia abysmally posing much threat to the lives and properties of the population. It was Public Interest Litigation (PIL) governed by the Swiss law.⁵⁰ The plaintiffs sought for adequate compensation from the company for the climate-related damage and for reduction of emissions into the atmosphere to avoid further threats to the climate, their rights and the rights of the Indonesian populace subjected to climate-induced loss while contributing little or nothing to the climate impacts. The compensation sought was meant to encompass financial contributions to adaptation measures by the company for being responsible for the emissions into the atmosphere and the concomitant damage to the climate and the plaintiffs' rights as fishermen and tourists victims of rise in sea levels.⁵¹

The plaintiffs were successful in their action for negligence, a breach of duty of care by the company, despite the procedural impediments associated with actions in torts such as burden of proof.⁵² This indicates that outside the fundamental rights provisions of the Constitution, international human rights instruments and treaties, one can institute actions under the torts law for compensation arising from climate-induced damage. Another interesting aspect of the decision was the court's compassion on the poor plaintiffs that as even though they have a genuine claim, they lack financial means to pursue their litigation. Consequently, the court granted the plaintiffs' request for legal aid to facilitate their access to court even in the absence of financial means as against the influence and opposition from the big cement company, Holcim. Therefore, financially disadvantaged persons whose rights are violated should be granted the financial aids to access the courts for the ventilation of their grievances once they have genuine claims but lack the

means to pursue them. The company's submission that there were multiple emitters of greenhouse gas emissions into the atmosphere and so unjustifiable that the action be directed against Holcim alone was rejected by the court.⁵³ The court reiterated that plaintiffs in any circumstance have the discretion to choose whom they can institute actions against even when others, jointly or severally, contribute to the loss suffered by the plaintiffs.

In *State of the Netherlands v. Urgenda Foundation*,⁵⁴ a Dutch environmental group, the Urgenda Foundation and 900 Dutch citizens, instituted action against the Dutch government for failing in its duty of care to protect its citizens from the harmful effects of climate change by reducing its greenhouse gas emissions. Consequently, the citizens were exposed to the threats posed by climate change. The District court held that the Dutch government actually violated its duty of care as claimed by the plaintiffs by its failure to adopt sufficient measures capable of reducing the impact of climate change. In its decision, the court made reference to Article 21 of the 1983 Constitution of Netherlands which makes it obligatory on the government to safeguard its environment for the safety of its citizens. The court added that a contracting state is bound by the provisions of a treaty or convention and therefore the Dutch government was in breach of the EU emission reduction targets and the relevant human rights instruments, treaties and conventions on environmental protection and climate change, including the UN Framework Convention on Climate Change under which it has the mandate to reduce its greenhouse gas emissions for the safety of the lives and properties of the citizens.

On appeal, the Hague Court of Appeal upheld the decision of the District court thereby rejecting the defendant's argument that the District court judgment was sort of "an order to create legislation"⁵⁵ where none existed. The position of the Dutch government was that the responsibility of the judiciary was merely to interpret existing laws and not to make new rules in usurpation of the legislative functions arguing that no state alone can be held responsible for adverse effects of climate change considering the global nature of the greenhouse emissions. The court nevertheless held that the Dutch government was bound by its obligations under the European Convention on Human Rights which guarantees right to life,⁵⁶ family, private life, home and

⁴⁹ The NGOs are (i) Swiss Church Aid Heks/EPER (ii) the European Centre for Constitutional Human Rights (ECCHR) and (iii) the Indonesian Environmental Organization (IEO). The IEO is otherwise called Wahana Lingkungan Hidup Indonesia (WALHI) which forms part of the Friends of the Earth International (FOEI) network and focuses on environmental protection and justice. See Maiko Ichihara, "Information Availability and NGO Advocacy: Indonesian Environmental NGOs and Anti-Mining Campaigns" in Josef Korbel *Journal of Advanced International Studies*, 2010, p. 51.

⁵⁰ Article 28 of the Swiss Civil Code of 10 December 1907, amended by No I of the FA of 16 Dec. 1983, in force since 1 July 1985 (AS 1984 778; BBl 1982 II 636) provides that anyone whose right is violated should petition the court for the protection of the right against the violator.

⁵¹ See Margareth Wewerinke-Singh, "The Rising Tide of Rights: Addressing Climate Loss and Damage through Rights-Based Litigation"

in *Transnational Environmental Law*, Cambridge University Press, Vol. 12, Issue 3, 2023, p. 557. See also DA Kysar, "What Climate Change Can Do about Tort Law" in *Environmental Law*, Vol. 41, p. 1.

⁵² The greatest herculean task in torts actions is proof of duty of care, breach of the duty, damage and causation. It has frustrated a lot of litigants. See the case of *Seismograph Services (Nig.) Ltd. v. Ogbeni* (1976) 4 SC 85.

⁵³ See Laura A. D. Reyes and Nina Burri, "Transnational Corporate Liability in the Era of Loss and Damages: The Case of *Asmania et al v. Holcim*, European Centre for Constitutional and Human Rights (ECCHR), 2024", available at <https://www.ecchr.eu/fileadmin/Publikationen/Duartes> (accessed 25 September 2024).

⁵⁴ (20 December 2019) Case 19/00135.

⁵⁵ The Dutch Climate Act was passed in the same year, 2019.

⁵⁶ Article 2 ECHR.



correspondence.⁵⁷ On further appeal, the decisions of the lower courts were upheld by the Dutch Supreme Court which insisted that the Dutch government should reduce its greenhouse gas emissions to ensure that human rights are safeguarded from the adverse effects of climate change.⁵⁸ The decisions of the three courts in this case have been commended globally as groundbreaking precedents for climate related litigations by victims of human rights violations arising from government's failure to reduce adverse effects of climate change even in the absence of any extant local statute on climate change at the time of litigation.⁵⁹

LESSONS FOR NIGERIA

Nigeria is one of the countries of the world mostly hit by the adverse effects of climate change, ranging from extreme droughts, famine, desertification, floods, food crisis and diseases outbreak affecting the lives of millions of people in the country.⁶⁰ Nigeria contributes significantly to the greenhouse gas emissions due to oil exploration activities in the Niger Delta region of the country and the concomitant gas flaring exacerbated by lack of modern facilities to channel the flared gases into useful purposes.⁶¹ The government of Nigeria has put a lot of laws and policies in place to combat the effects of climate change. It has ratified global treaties on climate change, including the UN Framework Convention on Climate Change and the Minamata Convention on Mercury held in 2013 in Japan to address the problems of mercury pollution. Nigeria is one of the 196 countries of the world that adopted the Paris Agreement at the UN Climate

Change Conference of the Parties (COP) 21 in Paris, France in December 2015 while substantial part of the treaties has been domesticated.⁶²

Despite the climate change mitigation targets and measures, there is proliferation of greenhouse gas emissions in Nigeria today.⁶³ In fact, gas emissions are wreaking unimaginable environmental havoc in Nigeria today. Elusoji observed that state governments are apathetic to issues concerning climate change mitigation when their counterparts in other climes prioritize emission reduction as a way to show commitment to climate change obligations.⁶⁴ Nigeria must follow the patterns of other countries of the world. The courts' decisions examined so far have shown how nations are bound by international climate laws and human rights instruments in addition to their respective local laws and policies. Where the governments fail in their obligations, the citizens have uninhibited access to courts to ventilate their grievances and claim damages against the government when it is apt to do so. Where the climate change leads to displacement and the concomitant resettlement of indigent and vulnerable communities as in Nigeria,⁶⁵ the government also bears the cost of resettlement from the crisis-prone locations quite different from compensation or damages with pecuniary considerations.

Again, Nigerian domestic environmental laws should be enforced in conformity with the international principles of environmental laws, treaty obligations and human rights instruments. Where the Constitution does not make provision for environmental right as in Nigeria⁶⁶ and Pakistan, the government

⁵⁷ Ibid, Article 8. The court referred to the case of *O'neryildiz v. Turkey* App no 48939/99 ECtHR, of 30 November 2004 and added that the government is bound to take proactive measures to prevent further infringements on the aforementioned rights under Articles 2 and 8. See also *Ingrid Leijten, "Human Rights v. Insufficient Climate Action: The Urgenda Case"* in *Netherlands Quarterly of Human Rights*, Vol. 37, Issue 2, 2019, pp. 3 & 4.

⁵⁸ See *Urgenda Supreme Court Judgment*, paras. 5.7.7-5.8, and 6.1-6.6. See also J. Link, "The First Successful Climate Negligence Case: A Comment on *Urgenda Foundation v. the Netherlands*" in *Climate Law*, Vol. 5, 2015, p. 65.

⁵⁹ Otto Spijkers, "The Case between Urgenda and the State of the Netherlands" in *Hungarian Yearbook of International Law and European Law*, Vol. 8, Issue 1, 2020, p. 204.

⁶⁰ AO Olaniyi, "Review of Climate Change and Its Effects on Nigeria Ecosystem" in *International Journal of African and Asian Studies*, Vol. 1, 2013, p. 58.

⁶¹ See Generon, *What is Gas Flaring? – Why is it Done and Viable Alternatives?* 24 September 2019, available at <https://www.generon.com/what-is-gas-flaring> (accessed 26 September 2024). See also Dimeji Kayode, "Nigerian Government Ratifies Two Global Treaties on Climate Change – Official" in *The Premium Times*, 18 October 2017, p. 48.

⁶² See J.O. Ezeanokwasa, "Environmental Protection and the Imperative of Domesticating International Treaties in Nigeria" in *UNIZIK Law Journal*, Vol. 17, Issue 1, 2021, p. 55. See also Jiata Ekele, *The Paris Agreement: Where Nigeria Stands Five Years After*, available at <https://csdevnet.org/the-paris-agreement-where-nigeria-stands> (accessed 26 September 2024).

⁶³ Vivian Chime, *Net-Zero Target: Nigeria's Greenhouse Gas Emissions Increased by 46% in 18 Years*, 28 July 2022, available at <https://www.thecable.ng/net-zero-target-nigerias-greenhouse> (accessed 26 September 2024).

⁶⁴ S. Elusoji, *How Nigeria is Reeling from Extreme Heat Fuelled by Climate Change*, 2024, available at <https://www.carbonbrief.org/how-nigeria-is-reeling-from-extreme-heat> (accessed 26 September 2024).

⁶⁵ As noted above, extreme weather conditions in Nigeria occasioned by climate change has led to unprecedented floods, drought, desertification and consequent disruption of farming activities, loss of vegetation and grazing fields, and food crisis. See C. M. Ughaolu, "Contemporary Environmental Issues in Respect to Food Production in Nigeria" in *Journal of Environmental Management*, Vol. 41, No.2, 2017, p. 111. The unfortunate precarious situation has compelled people to abandon their ancestral homes to unknown destinations in search of greener pastures resulting in intertribal conflicts and insecurity. See K. J. Ani, et al, "The Impact of Climate Change on Food and Human Security in Nigeria" in *International Journal of Climate Change Strategies and Management*, Vol. 14, No. 2, 2022, p. 151. The desertification and drought in the Northern part of Nigeria have forced pastoralists down South in search of pastures resulting in frequent clashes between herders and farmers, insecurity, loss of lives and properties. Some of the pastoralists move within the country and far beyond. See S. I Odo, "Climate Change and Conflict in Nigeria: A Theoretical and Empirical Examination of the Worsening Incidence of Conflict between Fulani Herdsmen and Farmers in Northern Nigeria" in *Arabian Journal of Business and Management Review*, Vol. 2, No. 1, p. 118.

⁶⁶ Chapter 4 of the 1999 Constitution of Nigeria does not recognize environmental right as a fundamental right.



is bound to enforce the right as inalienable right of the citizens.⁶⁷ In case of any lacuna in the local statutes in respect of environmental matters and climate change, the courts can invoke the environmental treaties and climate change agreements relevant to the subject matter as held in ***State of the Netherlands v. Urgenda Foundation***. This is very imperative for Nigerian judiciary in respect of environment and climate related litigations. The apparent boldness with which the court made the pronouncement against the government in ***Leghari v. Federation of Pakistan*** is a testimony to an independent judiciary as a potential watchdog against the excesses of the other organs of government – the Legislature and the Executive. The court boldly challenged the reluctance of the government in addressing the problems of climate change that affected the rights of the Pakistan citizens, and thus gave three-fold directive to the government. That reflects the country's development style, including the environment. The court also dispensed with all the procedural impediments that could obstruct substantial justice. In contrast, Nigerian judiciary sacrifices justice at the altar of technicalities. Idowu, in his paper,⁶⁸ stated that courts in Nigeria;

Seem to have exhumed the corpse of age-long Blackstone and clung to the medieval practice of forms rather than the substance.... Regrettably, the imbroglio generated has cast doubts on the judiciary as the last hope of the common man and has questioned its stance on the interest of justice.

To be able to sustain its integrity as the last hope of the common man, an ideal judiciary should not be at the whims and caprices of the other arms of government. The Nigerian judiciary should be more pragmatic about enforcement of numerous environmental laws and policies through quality decisions despite whose ox is gored. This will help increase the hope of vast majority of Nigerians in the judiciary on environmental matters.

One of the greatest impediments to litigations in Nigeria is poverty and cost of litigations. Most of the victims of environmental degradation in Nigeria especially those displaced by climate related factors cannot afford the cost of litigations. Even to procure the services of lawyers or experts as the case may be is not within the reach of this class of litigants.⁶⁹ The decision in ***Asmania et al v. Holcim*** is a big relief as financially disadvantaged persons whose rights are violated should be granted the financial aids to access the courts for the ventilation of their grievances once they have genuine claims but lack the means to pursue them.

CONCLUSION

This paper extensively reviewed the Climate Change Act which came into force in 2021 in Nigeria and successfully highlighted some pertinent provisions that can assist in addressing the challenges of climate change in the country. The paper

compared the Act with other climate change regulations in other countries of the world such as Pakistan and the United Kingdom. Unlike its counterparts, the idea of the President being the Chairman of the National Council on Climate Change under section 5(1)(a) of the Act and other humongous powers under sections 3 and 4 of the Act may pose serious constraint to the effective enforcement of the Act. Notwithstanding all the imperfections of the Act as seen in the paper, it is hoped that the presence of a climate change law in Nigeria will make some difference. The country is therefore on the right track. All it requires is strict adherence to the provisions of the Statute and especially transparency from the judiciary in handling climate change litigations as we have seen in other jurisdictions. This entails not only bold judgments but also strict enforcement against the government or any corporations found liable for breach of climate change laws and policies. The Act is a significant legislative operationalization of the environmental ideal expressed in Chapter II of the Constitution⁷⁰ which requires a corresponding judicial activism for the spirit of the Constitution and the letters of the Statute to be actualized in sync with international best practices.

⁶⁷ It was held in ***Imrana Tiwana v. Province of Punjab*** (PLD 2015 Lahore 522) that right to a quality environment is inalienable right even more important than other rights because life on earth is not possible without the environment.

⁶⁸ O. I. Idowu, "The Supreme Court of Nigeria and the Stains of Justice by Technicalities: ***Why APC v. Machina*** is Wrong" in *Journal of*

Jurisprudence and International Law, Redeemer's University, Nigeria, Vol. 3(1), 2023, p. 182.

⁶⁹ See J. Nwazi, "Access to Environmental Justice in Nigeria" in *Lead City University Law Journal*, Vol. 1, Part 1, 2008, p. 23.

⁷⁰ S.20 of the Constitution.