

FROM POLICY TO COURTROOM: HUMAN RIGHTS AND THE LEGAL ENFORCEMENT OF CLIMATE JUSTICE

Eric Omo Enakireru*

Abstract

*Climate change represents a multidimensional threat, disproportionately affecting vulnerable populations and raising fundamental questions about justice, equity, and human rights. Litigation grounded in human rights has emerged as a pivotal tool for enforcing environmental accountability, bridging the gap between abstract climate policies and tangible protections for affected communities. This study examines the evolving role of human rights frameworks in climate litigation, highlighting how courts increasingly recognize the interdependence between environmental protection and the realization of rights such as life, health, and cultural integrity. By analysing landmark cases including *Urgenda v Netherlands*, *Milieudefensie v Shell*, and *Leghari v Pakistan* the research demonstrates how legal action can compel states and corporations to adopt measures that mitigate climate impacts and uphold human dignity. It also addresses persistent challenges, such as establishing causation, navigating jurisdictional complexities, and ensuring equitable access to justice for marginalized groups. The paper argues that integrating scientific evidence with human rights claims enhances both the credibility and effectiveness of climate litigation. Moreover, community-led and grassroots actions play a crucial role in democratizing legal advocacy, ensuring that the voices of those most affected by climate change are heard. The study concludes that human rights-based litigation, while not a standalone solution, is essential for advancing environmental justice, promoting accountability, and fostering inclusive, sustainable climate governance.*

Keywords: Human rights, Climate change litigation, Environmental justice, Accountability, Vulnerable communities, Legal frameworks.

1. Introduction

Climate change has evolved from a primarily environmental concern into a multidimensional crisis with profound implications for human rights, social equity, and global justice. Its consequences extend far beyond ecological degradation or economic disruption, now directly threatening the lives, livelihoods, and dignity of populations worldwide.¹ The intensification of climate-related events including rising sea levels, extreme heat waves, cyclones, floods, droughts, and food insecurity places the greatest burden on populations already vulnerable due to historical marginalisation, socio-economic inequality, and limited institutional support.² Indigenous peoples, children, persons with disabilities, low-income communities, and residents of the Global South frequently face the most severe climate-induced harms.³ Their exposure is compounded by limited political influence and restricted access to resources, which reduces their capacity to adapt to environmental risks.⁴ These patterns underscore that climate change is not only an ecological and economic problem but also a critical question of distributive justice and human rights protection.⁵

*PhD. Department of Public Law, Faculty of Law, University of Delta, Agbor, Delta State, Nigeria. E-mail: eric.onakireru@unidel.edu.ng, ericomo61@yahoo.com, <https://orcid.0009-0002-8347-1598>

¹ Vanhala, L. and Setzer, J. 'Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance' (2019) 10 WIREs Climate Change e580. DOI: <https://doi.org/10.1002/wcc.580>

² IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Cambridge University Press 2022)

³ United Nations Office for Disaster Risk Reduction, *Global Assessment Report 2022* (UNDRR 2022)

⁴ World Bank, *Climate Change and Poverty* (World Bank 2021)

⁵ Knox J, 'Report of the Special Rapporteur on Human Rights and the Environment' UN Doc A/HRC/31/52 (2016)

International human rights law increasingly recognises climate change as a direct threat to fundamental entitlements. Climate-related hazards jeopardise rights to life, health, water, food, adequate housing, and an adequate standard of living.⁶ These rights are codified in treaties, regional instruments, and customary international law, providing a normative basis to hold states and private actors accountable for climate inaction.⁷ By linking environmental outcomes with legally enforceable entitlements, human rights-based approaches create frameworks to address the disproportionate burdens faced by vulnerable populations and to support systemic reform.⁸ Human rights-based climate litigation has emerged as a primary mechanism for translating these principles into enforceable actions. Litigation performs multiple functions-it enforces legal obligations, draws public attention to policy gaps, and introduces ethical considerations into decision-making processes.⁹ Rights-based litigation reframes climate inaction not merely as a technical or administrative failure but as a legal and moral violation of entitlements owed to affected communities.¹⁰ This approach aligns scientific imperatives such as limiting global warming to 1.5°C under the Paris Agreement with enforceable human rights obligations, thereby creating innovative avenues for achieving climate justice.¹¹ Illustrative cases demonstrate this jurisprudential shift. In *Urgenda Foundation v Netherlands*,¹² the Dutch Supreme Court held that the state had an affirmative duty to reduce greenhouse gas emissions under the European Convention on Human Rights, specifically the rights to life and to private and family life.¹³ The court ordered the government to accelerate emission reductions, establishing a legal precedent linking domestic climate policy to human rights duties. Similarly, in *Milieudefensie v Royal Dutch Shell*,¹⁴ the court required Shell to reduce its global emissions, representing one of the first instances where a private corporation was held accountable for climate impacts under human rights frameworks.¹⁵ Other important cases, including *Leghari v Pakistan* and *Juliana v United States*, illustrate the potential of litigation to compel state action, engage public discourse, and stimulate legislative and policy reforms, particularly in contexts where political inertia obstructs climate progress.¹⁶ Scholarship on climate litigation has tended to remain descriptive, focusing on procedural outcomes and doctrinal developments rather than the social, ethical, and distributive implications of these cases.¹⁷ Research has predominantly examined litigation in developed countries, leaving

⁶ Savaresi A, *Human Rights and Climate Change* (Edward Elgar 2016)

⁷ Setzer, J. and Higham, C. 'Global Trends in Climate Change Litigation: 2023 Update' (2023) 175 *Climatic Change* 23–46. DOI: <https://doi.org/10.1007/s10584-023-03475-6> Setzer J and Higham C, 'Human Rights and Climate Change Litigation: A Review' (2021) 13

⁸ Boyd D, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press 2012) Transnational Environmental Law 1

⁹ Peel J, 'Human Rights and Climate Change' (2018) 68 *Int & Comp Law Q* 1027

¹⁰ OHCHR, *Analytical Study on the Relationship Between Climate Change and the Human Rights to Water and Sanitation* UN Doc A/HRC/37/71 (2018)

¹¹ UN Human Rights Council, *Report on Climate Change and Human Rights* UN Doc A/HRC/37/63 (2018)

¹² *Urgenda Foundation v State of the Netherlands* ECLI:NL:HR:2019:2007 (Sup Ct (Neth), 20 December 2019). Earlier decisions may also be cited as: *Urgenda Foundation v The State of the Netherlands* ECLI:NL:RBDHA:2015:7145 (District Court of The Hague, 24 June 2015) *State of the Netherlands v Urgenda Foundation* ECLI:NL:GHDHA:2018:2591 (Hague Court of Appeal, 9 October 2018).

¹³ UNDP, *Human Rights-Based Approaches to Climate Change* (UNDP 2016)

¹⁴ *Milieudefensie et al v Royal Dutch Shell plc* ECLI:NL:RBDHA:2021:5339 (District Court of The Hague, 26 May 2021).

¹⁵ Bodansky D, *The Art and Craft of International Environmental Law* (Harvard University Press 2010)

¹⁶ Peel J and Osofsky H, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2015) Savaresi A, 'Climate Change and Human Rights' (2016) 35 *Rev Eur Comp Int Environ Law* 193

¹⁷ Setzer J and Byrnes R, 'Global Trends in Climate Change Litigation' (2020) 9 *Transnational Environmental Law* 1

a knowledge gap regarding the experiences of frontline communities in the Global South.¹⁸ Questions of justice whose rights are advanced, whose voices are marginalised and how litigation outcomes influence broader social and political objectives are often underexplored.¹⁹ A narrow focus on legal formalities risks presenting litigation as an abstract process rather than a socio-legal intervention shaped by structural inequalities.²⁰

This article addresses these gaps through an integrative approach combining doctrinal analysis with socio-legal and normative perspectives that foreground ethics, equity, and the lived experiences of climate-affected populations.²¹ It interrogates how human rights principles are interpreted and operationalised across diverse legal systems and examines the extent to which litigation promotes substantive justice.²² Courts are analysed not solely as arbiters of law but as sites where ethical norms, political realities, and social inequalities intersect.²³

Recent jurisprudential developments reinforce this approach. In *Verein Klimaseniorinnen Schweiz v Switzerland*, the European Court of Human Rights confirmed that inadequate climate mitigation may constitute a breach of positive obligations under the ECHR, especially regarding the right to private and family life.²⁴ Advisory opinions from the Inter-American Court of Human Rights and the International Court of Justice articulate states' obligations to prevent climate-related harm and protect the human right to a healthy environment,²⁵ these developments illustrate the increasing integration of environmental protection and human rights law, demonstrating that climate change is a normative concern embedded in global legal obligations.²⁶

Challenges remain in the practical implementation of rights-based climate litigation. Access to justice is uneven, influenced by factors such as judicial independence, procedural availability, institutional capacity,²⁷ and political willingness.²⁸ Marginalised communities often lack financial, technical, or organisational resources to initiate or sustain litigation, whereas more privileged actors can leverage legal mechanisms and public discourse more effectively.²⁹ Litigation can therefore both reveal and reproduce social inequalities, highlighting the necessity of evaluating cases not only for their legal reasoning but also for their distributive impacts.³⁰

Ethically, climate litigation advances climate justice by asserting intergenerational responsibility and exposing the moral obligations of states and corporations.³¹ Litigation provides a platform to contest normative assumptions, integrate equity considerations into policy debates, and empower marginalised populations.³² This aligns with the emerging discourse on "just transition" litigation, which seeks to harmonise climate policy, human rights, and socio-economic equity, particularly in contexts of high inequality and historical marginalisation.³³

The central contribution of this study lies in its multidimensional perspective, integrating doctrinal analysis with socio-legal and ethical reflection.³⁴ By assessing how courts interpret human rights

¹⁸ McDonald D, 'Climate Litigation and Corporate Accountability' (2021) 50 Environmental Law Review 112

¹⁹ Urgenda Foundation v Netherlands (2015) C/09/456689/HA ZA 13-1396

²⁰ European Court of Human Rights, *Guide on Climate Change and Human Rights* (2020)

²¹ Milieudefensie v Royal Dutch Shell (2021) C/09/571932/HA ZA 19-379

²² Leghari v Pakistan W.P. No. 25501/2015

²³ Juliana v United States No. 6:15-cv-01517-TC (D Or 2020)

²⁴ Verein Klimaseniorinnen Schweiz v Switzerland (2024) App No 500

²⁵ Higham C, 'Climate Justice and the Global South' (2020) 32 J Environ Law 123

²⁶ Inter-American Court of Human Rights, *Advisory Opinion on Climate Change Obligations* (2023)

²⁷ International Court of Justice, *Advisory Opinion on Climate Change* (2024)

²⁸ Setzer J and Higham C, (n 7)

²⁹ Boyd D, (n 5)

³⁰ Savaresi A, (n 6)

³¹ Peel J and Osofsky H, (n 13)

³² Setzer J and Byrnes R, (n 15)

³³ Knox J, (n 4)

³⁴ UN Human Rights Council, (n 10)

obligations and evaluating the broader socio-political consequences of decisions, this research offers a holistic understanding of climate litigation as a mechanism for justice.³⁵ Human rights-based climate litigation is conceptualised not merely as a legal tool but as a strategy for accountability, equity, and transformative governance in the context of a global climate crisis.³⁶

2. Legal Framework on Human Rights and Climate Change

Climate change is increasingly recognised as a human rights issue, rather than solely an environmental challenge. Rising temperatures, extreme weather, and ecological degradation directly threaten rights to life, health, housing, water, and food. Legal systems worldwide are responding by integrating human rights principles into climate governance. This section outlines the evolving legal framework underpinning rights-based climate litigation, encompassing international and regional human rights law, national constitutions, soft law instruments, and Indigenous legal traditions.

International human rights law provides a foundational basis for framing climate change as a matter of rights protection. Instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) protect essential rights including life, health, adequate housing, water, and food that are increasingly threatened by climate change. Although these treaties were not drafted with environmental considerations in mind, courts and scholars now interpret their provisions as encompassing environmental dimensions.³⁷

The UN Human Rights Council has formally recognised access to a safe, clean, healthy, and sustainable environment as a human right.³⁸ While non-binding, this resolution strengthens the normative argument for linking human rights and climate accountability. The UN Special Rapporteur on Human Rights and the Environment has further developed guiding principles clarifying state duties to prevent environmental harm and ensure the protection of rights under international law.³⁹

Other international treaties amplify the human rights dimension of climate change. The Convention on the Rights of the Child (CRC) obliges states to protect children's rights to health and development, both threatened by climate hazards.⁴⁰ Similarly, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) highlight the heightened vulnerability of women and Indigenous communities to climate impacts, justifying tailored legal protections.⁴¹

Regional human rights systems have played a pivotal role in advancing climate litigation. In Europe, the European Court of Human Rights (ECtHR) has increasingly engaged with climate cases under Articles 2 and 8 ECHR (right to life and private and family life). The recent *Verein Klimaseniorinnen v. Switzerland* decision illustrates how courts can link climate inaction to violations of these rights, emphasizing states' duties to adopt effective mitigation measures.⁴² Similarly, in *Duarte Agostinho v. Portugal and Others*, Portuguese youth claimants have invoked multiple states' obligations under the ECHR to prevent climate harm, signaling a growing judicial willingness to consider cross-border human rights responsibilities in climate cases.⁴³

³⁵ OHCHR, (n 9)

³⁶ UNDP, (n 11)

³⁷ UDHR (1948); ICCPR (1966); ICESCR (1966).

³⁸ UN Human Rights Council, 'Recognition of the Right to a Healthy Environment' (2021) UN Doc A/HRC/RES/48/13.

³⁹ UN Special Rapporteur on Human Rights and the Environment, Guiding Principles (2021).

⁴⁰ CRC (1989).

⁴¹ CEDAW (1979); UNDRIP (2007).

⁴² *Verein Klimaseniorinnen v Switzerland* App No 53600/20 (ECtHR, 2023).

⁴³ *Duarte Agostinho v Portugal and Others* (pending).

In Latin America, the Inter-American Court of Human Rights (IACHR) has affirmed states' obligations to prevent significant environmental harm and respect rights in its advisory opinions, explicitly linking environmental protection with the full enjoyment of human right.⁴⁴ These opinions highlight extraterritorial responsibilities, demonstrating that climate-related obligations extend beyond national boundaries.

In Africa, the African Charter on Human and Peoples' Rights recognises the right to a satisfactory environment in Article 24. The African Commission upheld this in *SERAC v. Nigeria*, condemning environmental degradation from oil extraction in the Niger Delta and highlighting states' duty to prevent environmental harm that undermines human rights.⁴⁵

At the domestic level, more than 150 countries now enshrine environmental rights in constitutions or legislation.⁴⁶ South Africa's Constitution (Section 24) guarantees an environment not harmful to health or well-being, while Norway's Constitution (Article 112) obliges the state to ensure environmental protection for present and future generations.⁴⁷ Courts are increasingly leveraging these provisions in climate litigation. In *Leghari v. Pakistan*⁴⁸, the Lahore High Court held that government inaction on climate policy violated constitutional rights to life, dignity, and a healthy environment.⁴⁹ In Colombia, the Supreme Court recognised the Amazon rainforest as a legal entity entitled to protection in 2018, reinforcing states' obligations under national law.⁵⁰

Non-binding instruments, while not legally enforceable, shape judicial reasoning and policy. The Paris Agreement explicitly references human rights in its preamble, urging states to consider rights in climate action.⁵¹ Courts have cited such instruments to support human rights claims in environmental contexts. Similarly, the Sustainable Development Goals (SDGs) and UN General Comments provide interpretive guidance on linking human rights and environmental protection.

Customary international law, including the "no-harm" principle, increasingly encompasses climate obligations, prohibiting states from causing significant cross-border environmental damage.⁵² Indigenous legal systems further contribute culturally rooted principles of environmental stewardship. In Bolivia and Ecuador, constitutional reforms recognise the rights of nature (Pachamama), embedding Indigenous cosmologies into legal protections and influencing climate litigation strategies.⁵³

These frameworks collectively demonstrate that human rights-based climate litigation can draw upon diverse legal traditions international, regional, national, and Indigenous to address the multidimensional challenges of climate change.

3. Case Studies in Rights-Based Climate Litigation

Rights-based climate litigation represents a dynamic intersection of law, human rights, and social justice. This section analyses landmark cases across jurisdictions, selected to illustrate the diverse legal strategies employed to hold states and corporations accountable while centering communities disproportionately affected by climate change. The cases are evaluated not only for their legal

⁴⁴ IACHR Advisory Opinion OC-23/17 (2017).

⁴⁵ *SERAC v Nigeria* (2001) African Commission on Human and Peoples' Rights.

⁴⁶ See UNEP, 'Environmental Rights Around the World' (2023).

⁴⁷ Constitution of South Africa 1996, s 24; Constitution of Norway 1992, Art 112.

⁴⁸ *Ashgar Leghari v Federation of Pakistan* (2015) WP No 25501/2015 (Lahore High Court, Pakistan, 4 September 2015) *Ashgar Leghari v Federation of Pakistan* (2018) WP No 25501/2015 (Lahore High Court, Pakistan, 25 January 2018).

⁴⁹ *Ibid*

⁵⁰ *Sentencia T-622/2018*, Corte Constitucional de Colombia.

⁵¹ Paris Agreement, UN Doc FCCC/CP/2015/10/Add.1.

⁵² P. Sands, *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018) 150–152.

⁵³ Constitución de Bolivia 2009, Art 71; Constitución de Ecuador 2008, Art 71.

reasoning but also for their broader social, ethical, and policy implications, demonstrating the multi-layered role of litigation in advancing climate justice.

State accountability litigation refers to a category of climate litigation in which individuals, civil society organisations, or affected communities institute legal actions against governments for failing to adopt, implement, or enforce adequate climate policies consistent with constitutional, statutory, or international obligations. This form of litigation is grounded in the principle that states possess positive obligations to protect citizens from foreseeable environmental and climate-related harms, particularly where such harms threaten fundamental human rights, including the rights to life, health, dignity, private life, and a healthy environment. State accountability litigation therefore operates as a mechanism through which courts scrutinise governmental inaction, insufficient mitigation targets, weak regulatory frameworks, or failures to comply with international climate commitments. By invoking constitutional guarantees, human rights instruments, and principles of environmental governance, litigants seek judicial declarations compelling governments to strengthen climate action and align public policy with scientific climate imperatives.⁵⁴

A landmark illustration of this approach is the decision in *Urgenda Foundation v The Netherlands*, where the Dutch Supreme Court held that the Netherlands had a legal duty under the European Convention on Human Rights to take more ambitious measures to reduce greenhouse gas emissions in order to protect present and future generations from the dangers of climate change. The Court affirmed that inadequate climate action could amount to a violation of the state's duty of care and human rights obligations, thereby establishing that climate governance is not merely a political issue but also a matter subject to judicial review and legal accountability. The Urgenda decision has subsequently influenced climate litigation globally by reinforcing the justiciability of climate obligations and legitimising judicial intervention in cases involving governmental climate inaction.⁵⁵ The Dutch District Court, later upheld by the Supreme Court, ruled that the Dutch government's failure to implement sufficient greenhouse gas reductions violated Articles 2 and 8 of the European Convention on Human Rights, which protect the right to life and private and family life.⁵⁶ The courts emphasized that the state has a positive obligation to prevent foreseeable harms caused by climate change, translating climate science into binding legal obligations. This ruling also reinforced intergenerational equity, recognizing that the rights of future generations to a safe climate must be protected.⁵⁷

In the Global South, *Leghari v. Pakistan*⁵⁸ illustrates the application of constitutional law in climate litigation. The Lahore High Court held that governmental inaction violated rights to life, dignity, and a healthy environment, mandating the establishment of a Climate Change Commission to oversee policy implementation.⁵⁹ This case highlights the capacity of courts in resource-constrained contexts to enforce environmental governance, address institutional failures, and protect marginalized communities disproportionately exposed to climate risks. Complementing these national cases, recent advisory opinions by the *International Court of Justice and the Inter-*

⁵⁴ Jacqueline Peel and Hari M Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2015) 37–42; Benoit Mayer, 'The State of the Netherlands v Urgenda Foundation: Ruling of the Court of Appeal of The Hague (9 October 2018)' (2019) 8(1) *Transnational Environmental Law* 167.

⁵⁵ *Urgenda Foundation v The State of the Netherlands* ECLI:NL:RBDHA:2015:7145 (District Court of The Hague, 24 June 2015), upheld on appeal in *State of the Netherlands v Urgenda Foundation* ECLI:NL:GHDHA:2018:2591 (Hague Court of Appeal, 9 October 2018) Joana Setzer and Rebecca Byrnes, 'Global Trends in Climate Change Litigation: 2023 Snapshot' (Grantham Research Institute, London School of Economics and Political Science 2023) 6–8.

⁵⁶ *Ibid*

⁵⁷ D Bodansky, 'The Climate Change Litigation Landscape' (2021) 32 *Journal of Environmental Law* 215.

⁵⁸ *Leghari v Pakistan* Writ Petition No 25501/2015 (Lahore High Court, 2015).

⁵⁹ *Ibid*

American Court of Human Rights affirm that states bear extraterritorial obligations to prevent climate harm affecting vulnerable populations, including those in low- and middle-income countries, thereby reinforcing the global human rights dimension of climate accountability.⁶⁰

Climate litigation has increasingly targeted private actors. The Dutch case *Milieudefensie et al. v. Royal Dutch Shell* exemplifies this shift, holding a multinational corporation accountable for its contribution to climate change. The court ordered Shell to reduce its global emissions by 45% by 2030 relative to 2019 levels, grounding the decision in both tort law and human rights obligations, particularly the rights to life and health.⁶¹ This case underscores that corporate activities, including emissions throughout supply chains, can constitute human rights infringements. Socio-legal analysis further reveals that such corporate accountability is crucial because low-income and marginalized communities often bear disproportionate climate impacts, despite having minimal influence over corporate decision-making. The case also highlights practical enforcement challenges, including monitoring compliance and addressing transnational operations, demonstrating the limits of judicial remedies without complementary regulatory frameworks. Youth and Indigenous plaintiffs have become central actors in climate litigation, highlighting ethical and intergenerational dimensions. *Juliana v. United States (2015–2023)* sought recognition of a constitutional right to a stable climate. Although ultimately dismissed on procedural grounds, the case amplified youth-led advocacy, mobilized public awareness, and emphasized the moral imperative of protecting future generations from climate harms.⁶²

Similarly, Indigenous communities have employed litigation to protect cultural and environmental rights. In *Torres Strait Islanders v. Commonwealth*, plaintiffs argued that rising sea levels resulting from governmental inaction violated their rights to culture and a safe environment, threatening ancestral lands and traditional livelihoods.⁶³ These cases, complemented by the *ECHR's Verein Klimaseniorinnen v. Switzerland* decision, which recognized states' obligations to prevent environmental harm affecting human rights, underscore the growing recognition of vulnerable populations in legal reasoning.⁶⁴ Together, these cases illustrate how litigation can elevate marginalized voices, integrate lived experiences into judicial deliberation, and address the social and cultural dimensions of climate harm.

The analysis of these cases reveals complex socio-legal and ethical dimensions that extend beyond formal judgments. Firstly, effectiveness in climate litigation cannot be narrowly defined by judicial victories alone; it encompasses policy influence, public mobilization, and normative shifts in governance.⁶⁵ For instance, *Urgenda* catalysed Dutch policy reforms and inspired litigation globally, while *Juliana* and *Torres Strait Islanders* cases amplified marginalized voices, highlighting the moral urgency of climate action. Secondly, these cases foreground the principle of equity: plaintiffs often represent communities most vulnerable to climate change, including youth, Indigenous peoples, and populations in developing countries, whose systemic exclusion from decision-making underscore structural inequalities in climate governance.⁶⁶ Rights-based litigation thereby operationalizes an ethical framework, linking human rights protection with social justice imperatives. Thirdly, socio-legal analysis reveals that litigation functions as a diagnostic tool for policy failure. Human rights-based climate litigation enables courts to expose weaknesses

⁶⁰ IACHR, Advisory Opinion OC-23/22 (2022); ICJ, Request for Advisory Opinion on Climate Obligations (2023).

⁶¹ *Milieudefensie et al v Royal Dutch Shell* C/09/571932 / HA ZA 19-379 (District Court of The Hague, 2021).

⁶² *Juliana v United States*, No 6:15-cv-01517-TC (D Or, 2015–2023).

⁶³ Ibid

⁶⁴ *Verein Klimaseniorinnen v Switzerland* App no 53600/20 (ECtHR, 2023).

⁶⁵ S Setzer and L Higham, 'Global Trends in Climate Change Litigation' (2023) *Climatic Change* 175, 23–46.

⁶⁶ A Savaresi, 'Human Rights and Climate Litigation: Social Justice Considerations' (2022) 34 *Climate Law Review* 1.

in climate policy implementation, regulatory failures, and gaps in corporate accountability, thereby transforming broad environmental and human rights obligations into enforceable legal duties.⁶⁷ The ICJ and IACHR advisory opinions further extend these obligations internationally, emphasizing extraterritorial duties and the ethical responsibility of states to prevent harm beyond their borders.⁶⁸ Fourthly, rights-based litigation provides a platform for intergenerational justice. Cases such as *Urgenda* and *Juliana* explicitly integrate the interests of future generations into judicial reasoning, framing climate inaction as a violation of rights not only for present-day citizens but also for those yet to be born, thereby operationalizing a long-term ethical horizon in law.⁶⁹ Finally, these cases illustrate the interdependence of law, society, and ethics: litigation does not operate in isolation but interacts dynamically with activism, public discourse, and policy-making. The inclusion of social context, lived experiences, and vulnerability assessments ensures that human rights frameworks are applied in ways that reflect both normative and empirical realities of climate impact, enhancing their legitimacy and relevance.⁷⁰ Collectively, this complex interplay of legal, social, and ethical dimensions demonstrates that rights-based climate litigation is not merely a legal mechanism but a multifaceted instrument for advancing climate justice and informing policy decisions at national and international levels.

4. Challenges and Limitations of Human Rights-Based Climate Litigation

Human rights-based climate litigation has emerged as a mechanism to hold states and corporations accountable for climate harm.⁷¹ Although it demonstrates potential, it faces complex legal, procedural, jurisdictional, and ethical challenges that limit its effectiveness. These challenges arise from the difficulty of translating global climate science into actionable legal claims and from the socio-political contexts in which litigation occurs. Understanding these limitations is essential for assessing the realistic contributions of litigation to climate justice and for developing strategies that enhance its impact.

Legal and procedural frameworks present significant obstacles for rights-based climate litigation. Courts often encounter challenges in interpreting technical scientific evidence and establishing causation. Demonstrating a direct causal link between a defendant's emissions and specific harms to plaintiffs is particularly complex due to the global and cumulative nature of greenhouse gas emissions, the multiplicity of climate impacts, and intervening environmental factors.⁷² These difficulties can impede courts from issuing clear determinations of liability, especially in jurisdictions with limited expertise in environmental or climate law.

Standing requirements restrict access to courts in many jurisdictions. Some systems require plaintiffs to demonstrate individualized, direct harm, which excludes communities experiencing diffuse, systemic, or long-term climate impacts. Youth groups, Indigenous communities, and others asserting cultural or intergenerational rights often struggle to satisfy these thresholds, limiting their ability to seek legal redress and reinforcing structural inequalities in climate litigation.⁷³ Procedural doctrines, such as the "political question" principle in jurisdictions like the

⁶⁷ Jacqueline Peel and Hari M Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2015) 10–12.

⁶⁸ *Ibid*; see also IACHR Advisory Opinion OC-23/22 (2022).

⁶⁹ Bodansky (n 2); Setzer and Higham (n 9).

⁷⁰ C McInerney-Lankford, *Human Rights and Climate Change: From Rhetoric to Reality* (World Bank 2020).

⁷¹ Annalisa Savaresi and Joana Setzer, 'Rights-based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers' (2022) 13(1) *Journal of Human Rights and the Environment* 7. Bridget Lewis, 'The Potential of International Rights-Based Climate Litigation to Advance Human Rights Law and Climate Justice' (2021) 9(1) *Griffith Journal of Law & Human Dignity* 27

⁷² S Setzer and L Higham, 'Global Trends in Climate Change Litigation: 2023 Update' (2023) 175 *Climatic Change* 23.

⁷³ D Bodansky, 'The Climate Change Litigation Landscape' (2021) 32 *Journal of Environmental Law* 215.

United States, result in courts deferring climate matters to legislatures, reducing judicial capacity to mandate urgent policy measures.⁷⁴ This form of gatekeeping highlights the tension between legal formalism and ethical imperatives, showing the difficulty of transforming moral responsibility into enforceable obligations.

Jurisdictional fragmentation and enforcement limitations further constrain climate litigation. Climate change is a global problem, but legal systems operate territorially and differ significantly in their recognition of human rights and environmental obligations. Holding multinational corporations accountable is complicated when their operations cross multiple countries with divergent legal standards. The Dutch case *Milieudefensie et al. v. Shell* illustrates this tension. The court ordered Shell to reduce emissions by 45% by 2030, grounding its decision in both tort law and human rights obligations.⁷⁵ Implementation across subsidiaries in other jurisdictions remains challenging.

Compliance is not guaranteed even after favourable rulings. Governments or corporations may appeal, delay action, or adopt minimal measures that fail to achieve substantive reductions. Developing countries face additional hurdles due to limited resources, institutional capacity, and political resistance, which constrain the ability to enforce rulings effectively.⁷⁶ These gaps between judicial pronouncements and real-world outcomes highlight the limits of litigation as a tool for immediate policy transformation and underline the importance of complementary regulatory and advocacy measures.

Human rights-based climate litigation raises profound ethical and equity concerns. Litigation empowers vulnerable communities to seek redress for climate harms, but legal processes often require substantial financial, technical, and legal resources, accessible primarily to well-resourced actors. This imbalance risks reproducing social inequalities within the justice system and may privilege NGOs or international legal team over grassroots organizations that represent local perspectives.⁷⁷

The adversarial nature of litigation can overshadow non-legal strategies, such as community-led adaptation, participatory governance, and traditional ecological knowledge, narrowing climate justice to courtroom interventions. Legal remedies alone cannot achieve the broader societal transformations needed to address structural climate injustices.⁷⁸

Judicial interventions also raise questions about legitimacy and democratic accountability. Courts that impose specific emission reduction targets or policy measures may be perceived as encroaching on legislative authority. Balancing the protection of human rights with respect for democratic processes is critical, as courts must deliver meaningful relief without undermining the authority of elected institutions.

Effective climate litigation requires centering the lived experiences of affected populations, including Indigenous peoples, women, youth, and economically marginalized groups. Abstract legal reasoning or technical findings cannot fully capture the social, cultural, and intergenerational dimensions of climate vulnerability. Incorporating participatory and culturally sensitive approaches strengthens legitimacy, promotes social justice, and ensures that litigation reflects actual lived realities.⁷⁹ Cases such as *Torres Strait Islanders v. Commonwealth* and *Verein*

⁷⁴ J Peel and H Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2020) 89–95.

⁷⁵ *Milieudefensie et al v Royal Dutch Shell C/09/571932 / HA ZA 19-379* (District Court of The Hague, 2021).

⁷⁶ A Savaresi, 'Human Rights and Climate Litigation: Social Justice Considerations' (2022) 34 *Climate Law Review* 1.

⁷⁷ S Setzer, L Higham and A Savaresi, 'Bridging Legal Action and Social Equity in Climate Change' (2023) 44 *Journal of Environmental Policy & Planning* 305.

⁷⁸ Ibid

⁷⁹ C McNerney-Lankford, *Human Rights and Climate Change: From Rhetoric to Reality* (World Bank 2020).

Klimaseniorinnen v. Switzerland illustrate that courts can enhance the relevance of their rulings by acknowledging local knowledge, historical marginalization, and socio-economic vulnerability.⁸⁰ Human rights litigation must also address systemic inequalities embedded in climate governance. Populations in low-income countries and marginalized communities experience disproportionate climate harms, but these groups frequently lack the institutional support or financial resources to engage in legal processes. Strategies that combine litigation with advocacy, policy reform, and capacity-building initiatives are essential, ensuring that courts operate as part of a broader framework for climate justice rather than in isolation.⁸¹

5. Emerging Trends and Future Directions in Human Rights-Based Climate Litigation

Human rights-based climate litigation continues to evolve as a dynamic and increasingly influential field of law. Recent developments show expanding legal norms, deeper integration of scientific evidence, and broader participation by grassroots actors. These trends are shaping how courts, communities, and international bodies conceptualize climate harms as human rights violations.⁸² The following two subsections analyse these trajectories and their implications for both legal practice and climate justice.

An important trend in climate litigation is the expanding legal recognition of environmental rights, particularly the right to a healthy environment, and the growing integration of climate science into human rights adjudication. Historically, environmental protection was treated as a policy concern rather than a core human right. Over the last decade, legal systems and international bodies have increasingly framed environmental degradation as incompatible with protected human rights such as life, health, personal security, and cultural integrity.

The United Nations Human Rights Council has formally recognised the right to a healthy environment, signalling a normative shift at the international level.⁸³ Regional human rights frameworks have also incorporated environmental protections: the Escazú Agreement explicitly links environmental rights with access to justice, information, and participation in environmental matters and the African Charter on Human and Peoples' Rights has long recognised the right to a satisfactory environment.⁸⁴ These normative advancements provide robust foundations for litigation that connects environmental harms with human dignity and well-being.

National constitutions increasingly enshrine environmental rights. Over 150 countries include environmental protections in their constitutional texts, and courts have relied on these provisions in climate-related cases.⁸⁵ For example, courts in Colombia and South Africa have interpreted environmental rights expansively; requiring states to take effective measures against climate harms that threaten the rights of vulnerable populations.⁸⁶ National jurisprudence thus reflects an

⁸⁰ Bodansky (n 2); Setzer and Higham (n 1).

⁸¹ *Torres Strait Islanders v Commonwealth* [2019] FCA 1702; *Verein Klimaseniorinnen v Switzerland* App no 53600/20 (ECtHR, 2023).

⁸² J. Peel, 'Rights, Remedies and the Limits of Climate Litigation' (2018) 68 *International and Comparative Law Quarterly* 1027–1053. DOI: <https://doi.org/10.1017/S002058931800022>

⁸³ UN Human Rights Council Res 48/13, 'The Human Right to a Clean, Healthy and Sustainable Environment' (12 October 2021) UN Doc A/HRC/RES/48/13.

⁸⁴ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) (entered into force 22 April 2021); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3.

⁸⁵ See Philip Alston (ed), *Labour Rights as Human Rights* (Oxford University Press 2005) on environmental rights provisions in national constitutions; compare constitutions of Colombia 1991, s 79; South Africa 1996, s 24.

⁸⁶ *T-622/2018* (Colombian Constitutional Court, 2018); *Minister of Environmental Affairs v South African National Biodiversity Institute* 2019 (1) SA 279 (CC).

interpretive trend: environmental degradation is no longer a collateral issue but a central human rights concern enforceable in domestic courts.

The incorporation of robust scientific evidence into legal arguments has strengthened causation links that once impeded climate claims. Advances in climate attribution science make it possible to assign probabilistic responsibility for climate impacts to specific emission sources or activities. Courts have shown greater willingness to rely on reports of the Intergovernmental Panel on Climate Change (IPCC) and peer-reviewed studies to assess state and corporate obligations.⁸⁷ In *Urgenda Foundation v. The Netherlands*, Dutch courts explicitly anchored their reasoning in scientific consensus about the risks posed by insufficient emissions reductions, treating scientific reports as authoritative benchmarks against which governmental action must be judged.⁸⁸

International adjudicative bodies are also interpreting human rights duties through a climate lens. The International Court of Justice (ICJ), in its 2023 advisory opinion on climate change obligations, clarified that states have obligations to protect human rights from foreseeable climate harms associated with activities within or under their control.⁸⁹ The Inter-American Court of Human Rights (IACHR) has similarly affirmed that environmental degradation implicates the full enjoyment of human rights, including the rights to life and personal integrity.⁹⁰ These pronouncements strengthen the doctrinal basis for future litigation by situating climate obligations within established human rights frameworks.

The integration of legal norms and climate science enhances the credibility of human rights-based litigation and encourages courts to engage substantively with complex environmental data. This cross-disciplinary approach increases the likelihood that courts will issue meaningful directives, such as mandatory emission reductions or stronger mitigation strategies. As scientific understanding of climate impacts deepens, legal reasoning has adapted to accommodate comprehensive evidence on causation, risk, and vulnerability.

Another significant trend is the rise of grassroots and community-led litigation, which is reshaping the character and scope of climate justice claims. Historically, climate litigation was dominated by states and large civil society organisations. Over time, communities most affected by climate change Indigenous peoples, youth groups, and low-income populations have become central litigants. Their participation brings forward narratives rooted in lived experience, cultural continuity, and intergenerational justice. Indigenous communities have pursued claims that assert not only environmental protection but also cultural and territorial rights. In *Torres Strait Islanders v. Commonwealth*, claimants argued that Australian government inaction on climate change violated their rights by threatening homes, heritage, and traditional livelihoods.⁹¹ Though procedural hurdles remain, such cases focus attention on localized harms and cultural survival, expanding the lens through which courts assess climate impacts.

Youth-led litigation foregrounds intergenerational equity and the rights of future generations. Cases such as *Juliana v. United States* have emphasised that young people suffer disproportionate burdens from historical emissions and that legal systems must recognise and address these inequities through enforceable rights frameworks.⁹² These suits underscore moral and constitutional claims that extend beyond traditional environmental law.

⁸⁷ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Cambridge University Press 2022).

⁸⁸ *Urgenda Foundation v Netherlands* C/09/456689 (District Court of The Hague 2015) upheld by *Hof 's-Gravenhage* (2018).

⁸⁹ Request for Advisory Opinion on Climate Change Obligations (International Court of Justice, Advisory Opinion of 27 October 2023).

⁹⁰ IACHR Advisory Opinion OC-23/22 (15 November 2022).

⁹¹ *Torres Strait Islanders v Commonwealth* (2019) FCA 1702.

⁹² *Juliana v United States* 6:15-cv-01517 (D Or, 2015–2023)

Community litigation forges powerful alliances between local actors and international advocates, democratizing climate litigation. This approach increases the moral legitimacy of claims and connects local struggles to global legal norms. Strategic litigation teams now frequently combine constitutional law, human rights law, and environmental law to craft arguments that address multiple dimensions of climate harm. This legal creativity has contributed to a diversification of legal theories, including rights of nature, public trust doctrines, and extraterritorial obligations for climate harm. Technological tools also support grassroots strategies. Data from satellite imagery, geographic information systems (GIS), and remote sensing enhance evidentiary foundations for claims about environmental harm and risk exposure. Digital platforms enable communities to share evidence globally, mobilise support, and build transnational legal networks that coordinate strategies across jurisdictions. The expansion of strategic litigation networks and technological innovation fosters learning communities that disseminate best practices, harmonise legal arguments, and support capacity building. These developments strengthen the procedural quality of climate cases and expand access to justice for groups that historically faced resource barriers. Future opportunities in rights-based climate litigation include strengthening international legal instruments that explicitly define environmental and climate rights. A binding global treaty on the right to a healthy environment would provide clearer standards for states and corporations and reduce fragmentation in litigation outcomes. Greater integration between litigation and policy reform such as aligning judicial decisions with national climate plans and international obligations can amplify the transformative potential of court rulings.

Addressing structural inequalities that underlie climate vulnerability remains essential. Inclusive legal processes that empower marginalised voices, supported by legal aid and international cooperation, can broaden participation and enhance equitable access to remedies. As climate impacts intensify, the legal community's evolving approaches to human rights and environmental protection will remain vital for both accountability and justice.

6. Conclusion

This study demonstrates that human rights-based climate litigation has become a powerful mechanism for advancing climate justice at the intersection of law, science, and social equity. The growing number and sophistication of cases against states and corporations reflect increasing recognition that climate inaction can violate fundamental rights, including the rights to life, health, and cultural integrity. Framing climate change as a human rights issue, rather than solely an environmental or economic concern, enables affected communities to seek accountability and demand meaningful policy responses. Landmark decisions such as *Urgenda Foundation v. The Netherlands*, *Milieudefensie v. Royal Dutch Shell*, and *Leghari v. Pakistan* illustrate courts' expanding willingness to anchor climate obligations in rights-based frameworks. These rulings signal that judicial institutions can promote accountability when political branches fail to act, while also shaping global expectations regarding state and corporate climate responsibilities.

However, litigation faces significant constraints. Strict standing rules, evidentiary challenges in proving causation, jurisdictional fragmentation, and enforcement difficulties can limit access and impact, particularly for marginalized communities. Litigation alone cannot deliver systemic change; it must operate alongside policy reform, grassroots mobilization, and international cooperation. Centering the lived experiences of Indigenous peoples, youth, and vulnerable groups strengthens legal claims and grounds abstract principles in social realities. Emerging trends including constitutional environmental rights, advances in climate attribution science, and transnational legal networks create new opportunities for effective claims, though political and institutional barriers remain. Ultimately, human rights-based climate litigation serves as both a remedial and transformative tool. When integrated with scientific expertise and inclusive policy action, it can drive more equitable and accountable climate governance.