



Nigeria National Report

Global Perspectives on Corporate Climate Legal Tactics

Executive Summary

Context

Nigeria, the largest economy and most populous nation in Africa, relies heavily on its oil and gas industry, which accounts for more than 90% of its export revenue. However, this sector is also the major source of Nigeria’s greenhouse gas (GHG) emissions, primarily due to gas flaring. Gas flaring significantly contributes to climate change and global warming. Despite reductions since 2002, Nigeria remains one of the top nine gas-flaring countries, responsible for 74% of global gas flare volumes and 45% of global oil production.

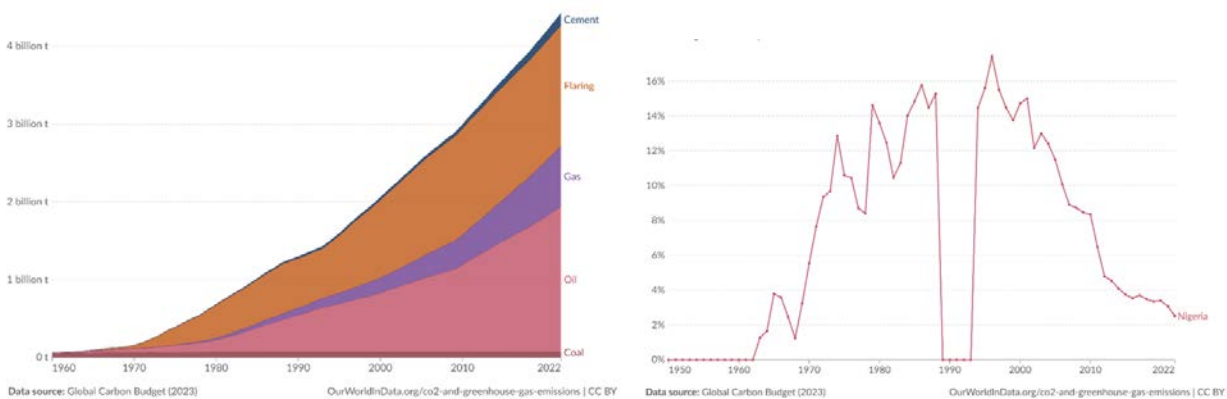


Figure 1. Nigeria’s cumulative emissions of carbon dioxide (CO₂) by source (including flaring), measured in tons.¹

Figure 2. Nigeria’s share of global CO₂ emissions from flaring is measured as a percentage of CO₂ from flaring in the same year.²

Consequently, although Nigeria made a relatively small contribution to global emissions in 2019, it was the world’s 25th biggest emitter of GHGs, second in Africa after South Africa. Nigeria increasingly experiences substantial loss and damage from human-induced climate change, including frequent floods, droughts, storms, deforestation, loss of biodiversity, acid precipitation, and significant rises in sea level, all of which negatively impact the nation’s socioeconomic well-being. Against this backdrop, the national report explores corporate climate litigation as an emerging mechanism to reduce Nigeria’s GHG emissions and mitigate climate change. The report is structured around three primary themes: Causes of Action, Procedures and Evidence, and Remedies.

¹ Global Carbon Budget (2023) – with major processing by Our World in Data. “Cumulative CO₂ emissions by source, Nigeria – GCB” [dataset]. Global Carbon Project, “Global Carbon Budget” [original data]. Retrieved May 23, 2024, from <https://ourworldindata.org/grapher/cumulative-co2-fuel?time=1960..latest&facet=entity&country=~NGA>.

² Global Carbon Budget (2023) – with major processing by Our World in Data. “Share of global CO₂ emissions from flaring – GCB” [dataset]. Global Carbon Project, “Global Carbon Budget” [original data]. Retrieved May 23, 2024, from <https://ourworldindata.org/grapher/share-global-co2-flaring>.

Scope

In this report, corporate climate litigation is broadly defined as any litigation involving corporations that helps mitigate the causes and adapt to the effects of climate change. The analysis is not limited to disputes where climate change is the direct subject matter. In Nigeria, most corporate climate litigation cases involve pollution by the oil and gas industry, which significantly impacts local communities and the environment. These cases are considered corporate climate litigation because their outcomes can influence efforts to combat climate change. The report discusses current cases and explores future possibilities for corporate climate litigation in Nigeria.

Causes of Action

The report identifies several legal frameworks and court cases that form the basis for corporate climate litigation in Nigeria:

1. **Human Rights Law:** The case of *Gbemre v Shell* is pivotal, where the Federal High Court of Nigeria in the Benin Judicial Division ordered the defendant corporations to stop gas flaring as it violated the rights of the claimant and his community to life and dignity under Sections 33(1) and 34(1) of the [Nigerian Constitution](#), as well as Articles 4 (on the right to life), 16 (on the right to health), and 24 (on the right to a healthy environment) of the [African Charter Act](#). This case sets a precedent for using human rights law in environmental protection.
2. **Tax Law:** In *FIRS v Mobil Producing Nigeria Unltd*, the Federal High Court held that payments made to the government as fees for gas flaring could not be treated as tax-deductible expenses without written evidence of permission from the Petroleum Minister to carry out the activity in the form of a gas flaring certificate. This judgment discourages oil and gas companies from skipping the hurdle of obtaining ministerial approval for their gas flaring activities as required under the (now repealed) [Associated Gas Reinjection Act \(AGRA\)](#). Dismissing Mobil's appeal, the Court of Appeal held that the relevant requirements in AGRA are not cosmetic but vital for discouraging or arresting the mischief of gas flaring and its 'climate change' consequence.
3. **Recent Legislative Developments:** The [2020 Companies and Allied Matters Act](#) and the [2021 Climate Change Act](#) introduce provisions that could support successful climate litigation against erring corporations. The Climate Change Act, for instance, imposes climate obligations on public entities and private entities with a significant workforce, mandating measures to reduce carbon emissions and ensure climate adaptation. It also stipulates penalties for actions detrimental to climate efforts. The Companies and Allied Matters Act includes provisions requiring directors to consider the impact of the company's operations on the environment.
4. **Challenges in Tort Law:** Tort law mechanisms, particularly negligence, pose significant challenges for litigants. In *Chinda v Shell*, the claimants brought a negligence claim to attempt to stop the defendant's gas flaring activities, alleging that negligent management and control of the gas flaring infrastructure had resulted in heat, noise, vibration, and damage to properties. However, the court dismissed the case because the claimants were unable to prove negligent management of the gas flaring equipment. Proving negligence in gas flaring cases is difficult due to the technical nature of oil operations and the superior technical knowledge held by oil companies.
5. **Environmental Statutory Provisions:** The [Environmental Impact Assessment \(EIA\) Act](#) and various national environmental regulations provide legal grounds for corporate climate litigation. These regulations impose obligations on corporations to minimise pollution and its environmental impacts. The EIA Act, for example, requires environmental impact assessments for projects likely to have significant environmental effects, offering a legal basis to challenge projects that fail to comply with these requirements.

Procedures and Evidence

The report outlines advancements and remaining challenges in procedural and evidentiary aspects of climate litigation in Nigeria:

1. **Representative Actions:** Allowing collective lawsuits helps mitigate the high cost of litigation, enabling communities and affected individuals to pool resources. This approach is beneficial for climate claimants who might otherwise be unable to afford the expenses associated with legal action.
2. **Public Interest Litigation:** The Supreme Court's decision in *COPW v NNPC* modernised Nigeria's restrictive standing rules, allowing NGOs and individuals to sue in environmental and climate matters. This decision is a significant step toward promoting public interest litigation and enabling broader access to justice in climate-related cases.
3. **Challenges:** Several procedural challenges remain, including unfavourable rules on limitation periods. The time allowed to bring tort claims can expire before the claimant is even aware of the pollution and its immediate effects. Additionally, the costs awarded to successful claimants are usually inadequate to cover their litigation expenses, posing a financial barrier to accessing justice.
4. **Evidence and Proof of Causation:** The report discusses the sources of evidence and the challenges associated with proving causation in climate litigation. In Nigeria, scientific evidence and expert testimony are crucial in establishing the link between corporate activities and environmental harm. However, gathering and presenting such evidence can be technically demanding and costly.

Remedies

The report examines the remedies available in corporate climate litigation in Nigeria, highlighting both pecuniary and non-pecuniary options:

1. **Pecuniary Remedies:** Nigerian courts are generally willing to award damages to claimants for the direct harm caused by corporate activities. Damages can provide financial compensation for losses and incentivise corporations to adopt more sustainable practices.
2. **Non-Pecuniary Remedies:** Injunctive and declaratory reliefs are also available, although courts are often reluctant to grant injunctions against economically significant polluting corporations, especially those in the oil and gas industry. Injunctions can be crucial in stopping harmful activities and preventing further environmental damage. Declaratory reliefs, on the other hand, can affirm the rights of affected parties and set legal precedents for future cases.

The landmark case *Gbemre v Shell* exemplifies the potential for non-pecuniary remedies. The Federal High Court ordered the defendant to stop gas flaring, declaring such activities contrary to constitutional rights. However, this decision has been appealed, and the final outcome is awaited, as it holds significant implications for environmental and climate protection in Nigeria.

Leading Cases

1. *Chinda & Ors v Shell Petroleum Development Co. Ltd (1974)*: This case illustrates the difficulty of bringing claims based on the tort of negligence in relation to gas flaring, particularly in light of the technical nature of oil operations. The claimants were unable to establish the defendant's negligent management and control of gas flaring infrastructure.
2. *Gbemre v Shell Petroleum Development Company Nigeria Ltd and Ors (2005)*: The first Nigerian case where the court adopted a constitutional human rights approach to environmental protection regarding activities in the oil and gas sector. The court ordered the cessation of gas flaring, citing violations of the rights to life and dignity.

3. ***FIRS v Mobil Producing Nigeria Unltd (2018)***: The court held that fees paid to the government for gas flaring were not legitimate tax-deductible expenses without express written permission from the Petroleum Minister in the form of a gas flaring certificate. This decision discourages unauthorized gas flaring.
4. ***Centre for Oil Pollution Watch (COPW) v Nigerian National Petroleum Corporation (NNPC) (2019)***: The Nigerian Supreme Court recognised the enforceability of Article 24 of the African Charter Act and held that the right to life in the Nigerian Constitution implicitly includes the right to a clean and healthy environment. The court allowed NGOs to bring public interest litigation in environmental and climate cases, thus opening the door to more proactive legal action against corporate polluters.

**LEADING CORPORATE CLIMATE LITIGATION CASES
NIGERIA**

CASE	YEAR DECIDED	COURT	CAUSE OF ACTION	PROCEDURE AND EVIDENCE	REMEDIES AND RULING
<i>Gbemre v Shell</i>	2005 (pending appeal)	Federal High Court	Constitutional right to life and dignity	-simplified constitutional procedure for enforcing human rights -plaintiff sued for himself and on behalf of members of his community	-declared that gas flaring violated rights to life and human dignity -granted injunction restraining gas flaring -no award of damages
<i>FIRS v Mobil Producing Nigeria Unltd</i>	2018 2021 (appeal)	Federal High Court Court of Appeal	Taxation	Action brought by companies looking to avoid the onerous effect of regulator's decisions	Denied deduction of gas flare fees from petroleum profit tax absent gas flaring certificate from the Minister of Environment
<i>COPW v NNPC</i>	2019	Supreme Court	Constitutional right to life State's Constitutional duty to protect environment	-allowed public interest litigation by an NGO -court relied on submissions of some amicus curiae	Declared that the right to life in the Nigerian Constitution implicitly includes a fundamental right to a clean and healthy environment
<i>Chinda v Shell-BP</i>	1974	Rivers State High Court	Tort of negligence	Claimant unable to meet unduly high standard of proof	Declined to grant injunction restraining Shell-BP from flaring gas within 5 miles of the plaintiff's village but granted compensation for damage

Table 1. Summary of Leading Corporate Climate Litigation Cases in Nigeria

Relevant Literature

The report draws on various scholarly works that provide insights into the challenges and opportunities in corporate climate litigation in Nigeria:

1. **JG Frynas**, 'Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria' (1999) 43 *Journal of African Law* 121, discusses the difficulties in proving negligence in gas flaring cases due to the technical nature of oil operations.
2. **E Onyeabor, H Agu, and NJ Nwanta** in "Litigating Loss and Damage as a Panacea for Abatement of Climate Change" (2016) 7(2) *Journal of Economics and Sustainable Development* 144, emphasise the importance of litigation as an emerging mechanism to encourage mitigation and adaptation efforts.
3. **EO Ekhtor and EO Okumagba**, 'Climate Change, Multinationals and Human Rights in Nigeria: A Case for Climate Justice', in K Bouwer, U Etemire, T Field and J Ademola, *Climate Litigation and Justice in Africa* (Bristol University Press, 2024) 274, highlight the potential for increased climate litigation following the enactment of the 2021 Climate Change Act.
4. **MT Ladan**, 'A Review of Nigeria's 2021 Climate Change Act: Potential for Increased Climate Litigation', *IUCN*, 28th March 2022 <<https://www.iucn.org/news/commission-environmental-economic-and-social-policy/202203/a-review-nigerias-2021-climate-change-act-potential-increased-climate-litigation>> reviews the regulatory frameworks aimed at combating gas flaring and their potential for supporting corporate climate litigation.
5. **P Obani and E Eghosa**, 'Transnational Litigation and Climate Change in Nigeria', *AfronomicsLaw*, 4 December, 2021 <<https://www.afronomicslaw.org/category/analysis/transnational-litigation-and-climate-change-nigeria>> explore the evolution of human rights approaches to climate litigation in Nigeria, focusing on significant cases and their implications for environmental justice.