EXPLORING THE RIGHT-BASED CLIMATE LITIGATION IN TANZANIA

GERVAS E. YEYEYE

A THESIS SUBMITTED IN FULFILMENT OF THE REQUIREMENTS FOR

THE DEGREE OF DOCTOR OF PHILOSOPHY IN LAWS (PhD)

DEPARTMENT OF PUBLIC LAW

THE OPEN UNIVERSITY OF TANZANIA

2025

CERTIFICATION

The undersigned certifies that they have read and hereby recommend for acceptance by the Open University of Tanzania a thesis entitled **"Exploring the Rights-based Climate Litigation in Tanzania"** in fulfilment of the requirements for the award of a Degree of Doctor of Philosophy in Law (PhD).

.....

Prof. Dr. Alex Boniface Makulilo

Supervisor

09.09.2025

……..……..

Date

Dr. Rindstone Bilabamu Ezekiel

Supervisor

08th September, 2025

……

Date

COPYRIGHT

DECLARATION

I, **Gervas Emmanuel Yeyeye,** do declare that the work presented in this thesis is original. It has never been presented to any other University or institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in fulfilment of the requirement for the Degree of Doctor of Philosophy in Law (PhD).

.....

Gervas E. Yeyeye

[Researcher]

.....

Date

DEDICATION

This study is dedicated to my beloved parents, Emmanuel M. Yeyeye and Lucia Peter Mzee, whose unwavering introduction to farming and environmental protection shaped my academic desire to draft the title of this thesis. To my wife, Erica K. Namwene, and our wonderful children, Lubango, Wiza and Nzagamba, your love, patience, and belief in me have been my greatest sources of strength. Your inspiration has fueled my commitment to seeking legal solutions for the protection of Tanzania's environment and future generations.

ACKNOWLEDGEMENTS

I am extremely grateful to my supervisors, Prof. Alex Makulilo and Dr. Rindstone Ezekiel, for their guidance and support throughout this trip. Their critical input and steadfast faith in my talents helped develop this thesis into its ultimate form. I am especially grateful for their insights and the time they dedicated to mentoring me, which greatly improved my understanding and approach to the topic of rights-based litigation for climate vulnerability in Tanzania.

I would like to express my heartfelt gratitude to the discussants and panelists who provided valuable feedback throughout the research process. Your thorough assessments, critical inquiries, and insightful comments helped me refine my ideas and improve the arguments provided in this thesis. Your contributions helped shape the direction and depth of my research. I'd also like to thank any members of the academic community who have inquired about the status of my thesis. Your inquisitiveness and persistent support were great motivators, pushing me to work tirelessly toward its completion. Every inquiry reminded me of the significance of this job and helped me stay focused on my aims.

Finally, I want to convey my heartfelt gratitude to my family and friends for their continuous support and understanding throughout this difficult path. Your love and encouragement gave me the strength and drive to endure, for which I am grateful.

ABSTRACT

This thesis examines the potential of rights-based approaches as legal tools for advancing climate justice through judicial mechanisms in Tanzania. It highlights the country's increasing vulnerability to climate impacts alongside the limited integration of international climate obligations and the absence of a coherent rights-based legal framework. Against this backdrop, the research critically evaluates Tanzania's legal and institutional structures to assess their capacity to facilitate rights-based climate litigation. Drawing on comparative international best practices, the study further proposes reform strategies to enhance environmental justice and strengthen the national climate governance framework. Grounded in doctrinal research, the study scrutinizes constitutional, statutory, and international legal provisions. This approach is enhanced by empirical analysis and a comparative study of legal developments in South Africa, Pakistan, India, Indonesia, and Germany, jurisdictions offering valuable models for climate litigation. The study finds that Tanzania's legal and institutional framework inadequately addresses climate change, lacking explicit environmental rights, effective enforcement, and meaningful access to justice due to weak judicial mechanisms and the dominance of political and economic interests. Consequently, the thesis recommends comprehensive legal and institutional reforms, capacity building within the judiciary, integration of climate science into legal reasoning, and increased public participation to establish a rights-based framework for climate governance. Generally, the research underscores the urgent need for transformative legal and institutional action to ensure equitable and effective climate justice in Tanzania.

TABLE OF CONTENTS

LIST OF DOMESTIC LEGAL INSTRUMENTS

The Basic Rights and Duties Enforcement Act, R.E. 2023

The Constitution of the United Republic of Tanzania, Cap. 2, R.E. 2023,

The Environmental Management Act, Cap. 191, R.E. 2023

The Land Act, Cap. 113 R.E. 2023

The Marine Parks and Reserves Act, Cap. 146, R.E. 2023

The Mining Act, Cap. 123, R.E. 2023

The National Environmental Policy Act (NEPA), 2021

The Tanzania's Forest Act, Cap. 323, R.E. 2023

The Tanzania's Plant Health Act, R.E. 2023

The Tanzania's Urban Planning Act, R.E. 2023

The Village Land Act, Cap. 114 R.E. 2023

The Wildlife Conservation Act, Cap. 283 R.E. 2023

The Zanzibar Environmental Management Act, No. 3 of 2015

Written Laws (Miscellaneous Amendments Act (No. 3) of June 10, 2020

INTERNATIONAL AND REGIONAL LEGAL INSTRUMENTS

United Nations, United Nations Framework Convention on Climate, New York, 1994

United Nations. Kyoto Protocol to the United Nations Framework Convention on Climate Change. New York: United Nations, 1997.

United Nations. Paris Agreement. New York: United Nations, 2015

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998

United Nations. Universal Declaration of Human Rights. United Nations General Assembly, 10 December 1948

United Nations. Universal Declaration of Human Rights. United Nations General Assembly, 10 December 1948

United Nations. International Covenant on Civil and Political Rights. United Nations General Assembly, 16 December 1966.

Organization of African Unity. African Charter on Human and Peoples' Rights (Banjul Charter). 27 June 1981

United Nations. International Covenant on Economic, Social and Cultural Rights. United Nations General Assembly, 16 December 1966

United Nations. Rio Declaration on Environment and Development. United Nations Conference on Environment and Development (UNCED), Rio de Janeiro, 3-14 June 1992

United Nations, Convention on the Rights of the Child, 1989

United Nations, Convention on the Rights of Persons with Disabilities (CRPD), 2006

United Nations, United Nations Declaration on the Rights of Indigenous Peoples

(UNDRIP), 2007

The United Nations, Convention on Biological Diversity, 1992

(a) USA

U.S. Const. Retrieved from https://www.archives.gov/founding-docs/constitution

The Clean Air Act (CAA), 42 U.S.C. §§ 7401-7671q

The Clean Water Act (CWA), 33 U.S.C. §1251 et seq. (1972)

The Endangered Species Act (ESA), 16 U.S.C. §§ 1531-1544

The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq. 1970

(b) Germany

Basic Law for the Federal Republic of Germany (Grundgesetzfür die Bundesrepublik Deutschland), May 23, 1949

Bundes-Immissionsschutzgesetz (Federal Immission Control Act) in the version promulgated on 17 May 2013 (Federal Law Gazette I p. 1274, 2013 I 1274)

Gesetz über ergänzende Vorschriften zu Rechtsbehelfen in Umweltangelegenheiten (Umwelt-Rechtsbehelfsgesetz), 1979

The Environmental Impact Assessment Act (UVPG), 1990 (Germany)

(c) Netherlands

The Dutch Civil Code (Burgerlijk Wetboek). (n.d.).1815

(d) South Africa

The Constitution of the Republic of South Africa, 1996

The National Environmental Management Act (NEMA), 1998 (South Africa)

The National Environmental Management: Air Quality Act (NEM: AQA), 2004 (South Africa)

(c) Nigeria

The Constitution of the Federal Republic of Nigeria, 1999

The Federal Environmental Protection Agency Act (FEPA), 1988

The Forest Act, 1957

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007

The Nigerian Minerals and Mining Act, 2007

(e) Pakistan

The Constitution of Islamic Republic of Pakistan, with the Provisional Constitution Order, 1981: As Amended up to Date

The Pakistan Environmental Protection Act (PEPA) 1997

The Forest Act 1927

The Sindh Environmental Protection Act 2014

The Punjab Environmental Protection Act 2012

LIST OF CASES

i) International Cases

Center for Food and Adequate Living Rights et al. v. Tanzania, Uganda and the Secretary General of the East African Community, Application No. 29 of 2020.

EarthLife Africa Johannesburg v. Minister of Environmental Affairs, (2017) ZACC

Gbemre v. Shell in Nigeria, Suit No. FHC/B/CS/53/05, Federal High Court of Nigeria, 14 November 2005

Friends of the Earth Nigeria vs. Nigerian National Petroleum Corporation & Others, (2005) HC. Lagos Div. No. FHC/L/CS/573/2001

Juliana v. United States, 947 F.3d 1159 (9th Cir. 2020)

Leghari v. Federation of Pakistan, W.P. No. 25501/2015

Neubauer et al. v. Germany, 1 BvR 2656/18

Plan B Earth and Others v. Secretary of State for Business, Energy and Industrial Strategy, [2018] EWHC 1892

Uganda Foundation v. State of the Netherlands, SC. Netherlands, 2019, ECLI:NL:HR: 2019: 2007

Massachusetts v. Environmental Protection Agency, 549 U.S. 497 (2007).

Koalisi Ibu Kota v. President of the Republic of Indonesia and Others, Central Jakarta District Court Decision No. 374/Pdt.G/LH/2019/PN. Jkt.Pst (2021).

Wahana Lingkungan Hidup Indonesia (WALHI) v. Provincial Government of East Kalimantan, Samarinda Administrative Court (2016).

Wahana Lingkungan Hidup Indonesia (WALHI) v. Governor of Aceh, Banda Aceh Administrative Court (2013).

Riau Citizens' Lawsuit on Forest Fires, Pekanbaru District Court (2015).

Andrew *Mahundo, Damian Nyaranda, Joachim Zephania & Others vs. The Permanent Secretary, Ministry of Natural Resources & Tourist & Another,* (Land Case 35 of 2013) [2018] TZHC Land D 45 (9 March 2018)

LIST OF ABBREVIATION

ABS	Access and Benefit Sharing
ACHPR	African Court on Human and Peoples' Rights
ACHPR	African Charter on Human and Peoples' Rights
AFRICOG	African Institute for Energy Governance
BRADEA	Basic Rights and Duties Enforcement Act
CAA	Clean Air Act
CAN	Climate Action Network
CAN	Action Network Tanzania
CBD	Convention on Biological Diversity
CBDR-RC	Common But Differentiated Responsibilities and Respective Capabilities
CBRD	Common but Differentiated Responsibilities
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEFROHT	Center for Food and Adequate Living Rights
CHRAGG	Commission for Human Rights and Good Governance
COP	Conference of the Parties
COP	Conference of Parties (COP)
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Societies Organizations
CWA	Clean Water Act
DCC	Dutch Civil Code

EACJ	East African Court of Justice
EAR	Environmental Audit Report
ECHR	European Convention on Human Rights
EIA	Environmental Impact Assessment
EMA	Environmental Management **Ac**t
ESA	Endangered Species Act
FEPA	Federal Environmental Protection Agency Act
FYDPIII	National Five-Year Development Plan
GHG	Greenhouse Gas
GHG	Green House Gases
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IPCC	Intergovernmental Panel on Climate Change
IUCN	International Union for Conservation of Nature
JET	Journalists' Environmental Association of Tanzania
LEAT	Environmental Action Team
LHRC	Legal and Human Rights Centre
NCCS	Tanzania's National Climate Change Strategy
NDC	Nationally Determined Contributions
NDCs	Nationally Determined Contributions
NEM: AQA	National Environmental Management: Air Quality Act
NEMC	National Environment Management Council
NEP	National Environmental Policy

NNPC	Nigerian National Petroleum Corporation
OECD	Organization for Economic Cooperation and Development
OUTLAC	Open University of Tanzania Legal Aid Clinic
PIL	Public Interest Litigation
THRDC	Tanzania Human Rights Defenders Coalition
TLS	Tanganyika Law Society
TNRF	Tanzania Natural Resources Forum
UNCED	United Nations Conference on Environment and Development
UNCED	United Nations Conference on Environment and Development
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNHRC	United Nations Human Rights Committee
UNHRC	United Nations Human Rights Council
VPO	Vice President's Office
WCA	Wildlife Conservation Act
WWF	Worldwide Fund for Nature

CHAPTER ONE

INTRODUCTION

1.1 General Introduction

Climate change represents an urgent and pervasive global challenge, manifesting in widespread disruptions to ecosystems, public health, and the security of food and water resources. The Intergovernmental Panel on Climate Change has cautioned that unless immediate, sustained reductions in greenhouse gas emissions are achieved, sustainable growth will be badly damaged and long-term environmental and social damage will occur.[1] Tanzania is already confronting severe and escalating impacts of the climate crisis that threaten its constitutionally guaranteed rights to health, livelihood, and adequate shelter.

Despite international and domestic legal measures targeting climate change, they remain critically deficient in enforcing responsibility, embedding equitable climate principles, and sanctioning large-scale emitters.[2] Consequently, these gaps erode both global and national capacities to sanction non-compliance or to integrate equitable climate outcomes.[3] Thus, the prevailing legal ambition remains insufficient to address climate change effectively at both the domestic and international levels.

In response to these legal and institutional gaps, affected individuals and civil society organizations have increasingly approached the judiciary, utilizing human-rights

[1] Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H Lee and J Romero (eds)] (IPCC, Geneva, Switzerland 2023) 35–115, https://doi.org/10.59327/IPCC/AR6-9789291691647, (Accessed on 9th June, 2025)

[2] Binder, J. '*The Paris Agreement: All Bark No Bite*, Denver Journal of International Law & Policy, 2024, https://djilp.org/the-paris-agreement-all-bark-no-bite/, accessed 9 June 2025.

[3] Saria, J. *Assessment of Tanzanian and Regional Climate Change-Related Policies Addressing Climate Change*, International Journal of Environmental Protection and Policy, (2015) 3. 145. 10.11648/j.ijepp.20150305.15.

guarantees to pursue climate justice. African courts in the Global South are increasingly shifting toward rights-based legal reasoning.[4] Nevertheless, Tanzania has yet to meaningfully integrate rights-based climate litigation into its legal framework, creating a jurisprudential gap in climate action. Consequently, this study explores the feasibility and necessity of adopting such litigation strategies in Tanzania to enhance accountability and promote equitable governance in the face of the climate crisis.

1.2 Background to the Problem

Tanzania remains legally and institutionally ill-prepared to confront the escalating impacts of climate change, as evidenced by its global ranking of 47th in climate vulnerability and 150th in climate readiness among 192 countries.[5] This disparity reflects a critical deficiency in the country's capacity to operationalise climate adaptation and mitigation frameworks within its legal and governance systems.

Although Tanzania has incorporated United Nations Framework on Climate Change Convention (UNFCC) principles,[6] the Kyoto Protocol,[7] and ratified the Paris Agreement in 2018,[8] its legal and institutional response to climate change remains

---

[4] Maria Antonia Tigre, Climate Litigation in the Global South: Mapping Report (Sabin Center for Climate Change Law, Columbia Law School 2024, https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1231&context=sabin,_climate_change, (Accessed on 9th June 2025)

[5] Notre Dame Global Adaptation Initiative (ND-GAIN), 'Tanzania' (ND-GAIN Country Index, 2025) https://gain-new.crc.nd.edu/country/tanzania, [accessed 8 April 2025]

[6] Tanzania signed on 12 June 1992 and ratified on 17 April 1996, with the Convention entering into force domestically on 16 July 1996, https://unfccc.int/cop3/fccc/climate/fc1__018.htm?utm_source=chatgpt.com, (Accessed on 9th June 2025)

[7] *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 148; Tanzania acceded 26 Aug 2002.

[8] *Paris Agreement* (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1; Tanzania signed 22 Apr 2016, ratified 18 May 2018, https://unfccc.int/node/61230?utm_source=chatgpt.com, (Accessed on 9th June 2025)

inadequate and disjointed.[9] This is primarily because the failure to implement the Paris Agreement domestically weakens the enforceability of climate obligations and impedes the establishment of a coherent legal framework to effectively address the country's significant climate vulnerability.

This reflects a wider deficiency within the international legal framework on climate change, which lacks binding enforcement mechanisms and thus diminishes the efficacy of the top-down governance model. As Bodansky rightly notes, the Paris Agreement "relies heavily on normative commitment and transparency rather than compulsion."[10] This structural weakness has trickled down to domestic jurisdictions such as Tanzania, where legal obligations are neither concretised in statutory law nor justiciable in courts.

Additionally, the Environmental Management Act 2004, while establishing the National Environmental Management Council (NEMC), lacks explicit provisions on climate change mitigation and adaptation aligned with international obligations. Similarly, the National Climate Change Strategy of 2012[11] and the updated National Climate Change Response Strategy (2021–2026).[12] They are largely policy documents without binding legal force, resulting in poor implementation, inadequate funding, and weak institutional coordination.[13]

---

[9] M. Ojoyi., 'Building Climate Resilience in Tanzania: Institutional Reform and Capacity Development' https://www.africaportal.org/publications/building-climate-resilience-tanzania-institutional-reform-and-capacity-development/, [accessed 8 April 2025]

[10] Bodansky, D. The Art and Craft of International Environmental Law, Harvard University Press, 2010, p. 223.

[11] Vice President's Office (VPO), Tanzania, *National Climate Change Strategy.* (2012), [Available at: https://www.vpo.go.tz/uploads/publications/sw1643363682-NCCS.pdf], [Accessed on 8th April, 2025}

[12] Ibid

[13] Chidong'o, L., & Ndyetabura, E. *Mainstreaming Climate Policy into National Planning:*

The global and national inadequacy in climate ambition, including in Tanzania, is partly due to the reliance on international mechanisms that operate on voluntary compliance. In reaction to these top-down governance limitations, a growing bottom-up, rights-based movement, driven by individuals, youth, women, Indigenous groups, NGOs, and corporations, has emerged to demand stronger climate action.[14]

Some African jurisdictions are witnessing a notable rise, with diverse actors increasingly turning to courts and adjudicatory bodies to demand stronger climate action, clarify climate-related human rights obligations, and seek compensation for environmental harms.[15] Therefore, this study proceeds from the premise that the absence of an enforceable climate law regime legally sustains Tanzania's continued exposure to climate risks. Accordingly, it interrogates the potential for rights-based climate litigation to address this legal gap by utilizing constitutional protections and environmental obligations to promote accountability and safeguard the right to a healthy environment.

1.3 Statement of the Problem

This thesis examines the pressing challenge Tanzania faces in implementing effective rights-based climate governance due to its limited legal and judicial capacity. Despite having a variety of environmental laws, Tanzania's legal

---

Tanzania's Institutional Gaps, East African Law Journal, (2023), Vol. 18, pp. 72–89.

[14] United Nations Environment Programme (2023), Global Climate Litigation Report: 2023 Status *Review*. Nairobi. Executive summary, p. xi

[15] Tigre, M.A., ibid, [n.4], p. 2

frameworks suffer from fragmentation and fail to fully integrate international climate agreements like the Paris Agreement.[16] This gap in domestication efforts hinders the development of robust enforcement and accountability mechanisms. Additionally, the judicial system lacks specialized entities, such as environmental or climate courts, and is plagued by procedural issues,[17] including restricted standing rights and poor enforcement of environmental rulings.

These deficiencies hinder citizens' ability to pursue justice and hold polluters accountable, thus impeding meaningful climate action. The lack of a comprehensive Climate Change Act worsens these challenges, leading to inconsistent sectoral responses. Furthermore, the constitution does not explicitly ensure the right to a healthy environment, restricting avenues for constitutional litigation. This study seeks to determine if rights-based climate litigation could be a strategic legal tool to address these gaps by enhancing accountability, judicial oversight, and the integration of international climate commitments into Tanzania's legal system. Solving this problem could offer crucial insights into leveraging legal mechanisms to advance climate governance and ensure environmental justice in Tanzania.

1.4 Literature Review

Several scholarly and legal discussions have increasingly explored the intersection of human rights and climate change, after the United Nations declaration on access to a

[16] In Tanzania, as a dualist state, treaties do not automatically become part of domestic law upon ratification; they must be incorporated through an Act of Parliament, see The Constitution of Tanzania, Article 63(3)(e)

[17] See *the* Evidence Act, RE 2023 [ss. 110–114] – on burden of proof; Civil Procedure Code, RE 2023 [s. 9] – Res Judicata; the Access to Information Act, RE 2023 [s 6] – Limited information; the Non-Governmental Organizations Act, RE 2023 [ss 25-28] – Refusal on registration.

clean, healthy, and sustainable environment as a universal human right in 2022.[18] In this context, the Sabin Center for Climate Change Law and the Grantham Research Institute have documented a rising global trend wherein courts, particularly in Global South countries such as South Africa, Kenya, Nigeria, Pakistan, India, and the Philippines, invoke constitutional and human rights to compel stronger climate action. This emerging jurisprudence signals a transformative shift toward rights-based climate litigation as a tool for enhancing environmental accountability and justice.

A review of the existing literature, however, highlights a significant gap: although comparative insights are abundant, there is a notable absence of scholarly work specifically addressing rights-based climate litigation within the Tanzanian context. Most available sources focus broadly on environmental law or climate policy without engaging the rights-based approach as a framework for legal redress. Consequently, this review positions itself within a largely unexplored field, seeking to lay the groundwork for understanding the prospects and implications of adopting rights-based climate litigation in Tanzania.

The relationship between human rights and climate change is gaining prominence within international legal studies, particularly as environmental harm poses increasing threats to fundamental rights like life, health, environmental wellbeing, and a clean environment. A range of scholars, including Kopytsia and Hudzenko,[19]

[18] The United Nations General Assembly adopted Resolution 76/300, July 2022

[19] Kopytsia, Y. and Hudzenko. Y, 'Human Rights in the Context of Climate Change' (2022) 5/2 Ekonomìka, finansi, pravo 27 https://doi.org/10.37634/efp.2022.5(2).6, [Accessed on 10.4.2025]

alongside others like Pongiglione,[20] Savaresi,[21] Collective Authors,[22] Lewis,[23] Kumar,[24] Farquhar,[25] and Wadiwala, analyze the role international instruments, such as the UNFCCC, and the UN Declaration on the Right to a Healthy Environment, in conjunction with comparative analyses from Global Sout[26]h countries, which inform the possibilities of rights-based climate litigation in Tanzania.

Collectively, these scholars emphasize the growing nexus between the governance of climate change and laws on human rights. For instance, authors such as Kopytsia and Hudzenko, Savaresi, and Pongiglione focus on how climate change simultaneously affects multiple human rights such as life, health, food, housing, and even water. Similarly, the works of Lewis and the Collective Authors suggest that there is widespread acknowledgment of the emerging human rights crises associated with climate change and the critical need to approach its mitigation and adaptation from a rights-based perspective.

Moreover, there is a relative consensus of sorts, especially among the writings of Kumar, Wadiwala, and Farquhar, on the influential nature of constitutional case law

[20] Pongiglione, F, 'Climate Change and Human Rights, Springer International Publishing, 2023

[21] Savaresi, A. 'Human Rights and Climate Change' in Tuula Honkonen and Seita Romppanen (eds), International Environmental Law-making and Diplomacy Review 2018: Human Rights and the Environment (University of Eastern Finland and UNEP 2019) https://ssrn.com/abstract=3327981 accessed on 14th May, 2024

[22] Collective Authors, 'The International Legal Framework: Human Rights and Climate Change, Springer eBooks 2022

[23] Lewis, B. '*The Potential of International Rights-Based Climate Litigation to Advance Human Rights Law and Climate Justice*, Griffith Journal of Law & Human Dignity, Vol. 9 No. 1 (2021), 2021, https://griffithlawjournal.org/index.php/gjlhd/article/view/1213, Accessed on 15th May, 2024

[24] Kumar, P. *Comparative Constitutionalism and Definitional Inclusivity: Rights-Based Climate Litigation in India and the European Union*' (2024) 17 Carbon and Climate Law Review 136.

[25] Farque, O. 'Global South's Judicial Approach to Preserve the Environment: An Overview of the Selected Environmental Litigations' (2 February 2021) https://ssrn.com/abstract=4937455, Accessed on 20th June 2024

[26] Wadiwala, Z. '*Rights-Based Climate Litigation in South Africa and the Netherlands*' [2023] Chinese Journal of Environmental Law.

and judicial activism on the promotion of environmental justice in the Global South. These authors maintain, even in the absence of the legislative recognition of a right to a healthy environment that courts within these jurisdictions have become functional ecosystems for adjudicating climate litigations based on constitutional freedoms. Overall, the literature reflects a shared optimism that the rights-based climate litigation not only provides legal solutions but will also transform the governance over the climate, both at the national and international levels.

However, while appreciating the value of rights-based climate litigation, some divergent views emerge, particularly regarding the effectiveness and the clarity of this approach. Pongiglione, for instance, expresses skepticism about the coherence of merging human rights and environmental law, claiming that they traditionally operate within separate legal domains and merging them may introduce conceptual and practical challenges. This view stands in contrast to Savaresi and Lewis, who advocate for deeper integration of human rights norms into climate law and policy, viewing this merger as not only possible but is essential for achieving climate justice.

Another point of divergence concerns the extent to which rights-based litigation is framed as transformative. While Kumar and Wadiwala assert that climate litigation in the Global South has catalyzed progressive constitutional interpretations and greater environmental accountability, Pongiglione and the Collective Authors raise concerns about the procedural limitations and potential unintended consequences of relying on human rights language as a dominant framework. For instance, they caution against the possibility that rights may be invoked to resist environmental

regulation, such as when property rights are used to challenge emission restrictions. Collectively, the above literature provides a strong claim and sets the stage for considering rights-based climate litigation.

Notably, the empirical depth of Farquhar and Wadiwala, who provided comprehensive case law analyses from South Asia and South Africa, is particularly helpful in supporting the claim that courts play a critical role in the realization of environmental rights and the governance of climate issues. Additionally, Kumar's contribution is especially important for expanding the definitions of climate litigation to address the realities of the Global South. This is noteworthy as a sharp criticism of Eurocentric approaches.

Nonetheless, Pongiglione's critique about the difficulties in reconciling environmental norms and human rights law, while valid, seems somewhat overstated. Indeed, real-world jurisprudence from countries like India and South Africa demonstrates that this reconciliation is not only possible but already occurring. Still, the author caution that rights-based approaches are not a panacea remains a necessary reminder of the complex socio-political context in which such litigation unfolds.

Additionally, the Collective Authors provide an essential conceptual contribution by incorporating Indigenous perspectives and procedural rights into the rights-based framework, although their argument could benefit from more concrete examples. Most importantly, this literature has shaped and substantiated the thematic scope of my study on rights-based climate litigation in Tanzania. Like the jurisdictions

analyzed by Kumar and Wadiwala, Tanzania has strong constitutional provisions, robust civil societal activity, and activism that can be strategically utilized for climate litigation purposes, even if the law does not provide specific rights to the environment.

Moreover, the insights from the Global South highlight the possibility of employing South African legal logic within rights-based frameworks in Tanzania's legal system, especially as the impacts of climate change worsen in sensitive areas like the Rufiji Delta and Ngorongoro Conservation Area. This study builds upon studying the country's legislative and institutional structures to develop judicial strategies for incorporating international ratified instruments alongside the UN Declaration on the Right to A Healthy Environment into domestic climate change case law. Furthermore, this work emphasizes the bold stance of marginalized and Indigenous peoples often regarded as voiceless actors concerning the environmental governance of Tanzania, thus deepening the study of procedural justice claimed in the Collective Authors and Lewis. In the end, the case study provides an example of the Global South's increasing documented experiences that are often overlooked but expand and complicate the existing literature on climate justice.

In addition, a significant body of literature has underscored Tanzania's critical vulnerability to climate change, particularly concerning recurring droughts, floods, and food insecurity, all of which pose serious threats to the enjoyment of fundamental human rights such as the rights to life, health, and adequate food. Scholars have consistently highlighted the inadequacies in Tanzania's legal and institutional frameworks in addressing these impacts, pointing to a lack of coherence

between domestic laws and the country's international climate obligations. Randell et al.,[27] together with Mdemu,[28] Sindato and Mboera,[29] draw attention to the region's climate change-induced droughts and rainfall variability as major threats to food and nutrition security. In the same manner, Mlingwa[30] and Majamba[31] identify institutional inadequacies as a major hindrance to climate response, especially in disaster preparedness and legal compliance action. Techera and Mlay[32] add a gender perspective that deepens the analysis because the vulnerability of certain groups, particularly women, as essential for understanding the impact on coping mechanisms.

It is evident that all, irrespective of differing emphases, converge on the fact that Tanzania's adaptive capacity is constrained by weak legal, institutional, and participation mechanisms. It is also worth noting that while there is general agreement on the extent of vulnerability, the authors differ on the focal area and how best to address the issue. Randell et al. apply a quantitative econometric technique to link rainfall and food insecurity, while Mdemu uses participatory methods to

[27] Randell, H.E, et. Al., 'Climatic Conditions and Household Food Security: Evidence from Tanzania, Food policy 102362, 2022, p. 112

[28] Mdemu, M. 'Community's Vulnerability to Drought-Driven Water Scarcity and Food Insecurity in Central and Northern Semi-Arid Areas of Tanzania' (2021) 3 https://www.frontiersin.org/articles/10.3389/fclim.2021.737655/full, [Accessed on 10.04.2025]

[29] Sindato, C. and Mboera, L.E.G, 'Climate Change Impacts, Adaptation and Mitigation Strategies in Tanzania, Springer International Publishing 2023

[30] Mlingwa, E. The Legal and Institutional Challenges Facing Community-Based Disaster Management in Tanzania, Tanzanian journal of population studies and development, Volume 31, 2024, p.83

[31] Majamba, H.I. '*Emerging Trends in Addressing Climate Change through Litigation in Tanzania'* (2023) 18(1) Utafiti: Journal of African Perspectives 1 https://doi.org/10.1163/26836408-15020070, Accessed pm 10.04.2025

[32] Techera, E. and Mlay, A.Y. *Women, Climate Change and the Law: Lessons for Tanzania from an Analysis of African Nationally Determined Contributions*, Journal of African Law, 2024, https://www.cambridge.org/core/services/aop-cambridge-core/content/view/922F19B25A10239FB819C08EC4A90225/S0021855324000135a.pdf/div-class-title-women-climate-change-and-the-law-lessons-for-tanzania-from-an-analysis-of-african-nationally-determined-contributions-div.pdf. [Accessed on 10.04.2025]

uncover socio-economic causes of drought vulnerability. This difference in approach illustrates a divide in priorities: whether it is the overarching figures and trends or the micro-level reality of the community that shapes policy.

Furthermore, as Sindato and Mboera remain overly optimistic about the potential of national plans without adequately exploring their functional implementation, Techera and Mlay's gendered analysis debates the rest of the literature which almost blankly views gender issues as an afterthought or cross-cutting issue and offers a stark contrast, highlighting a growing absence in dominant narratives of climate law. In terms of strength, Randell et al. back their claims regarding the relationship between precipitation changes and household food insecurity with sound empirical data, presenting powerful evidence-based policy recommendations.

However, as useful as Mdemu's participatory rural appraisal context provides, it constrains the analysis to the local socio-political context. Sindato and Mboera's overview of national plans is useful, though it lacks critical analysis of other overarching plans. Their absence of engagement with such constraints weakens the overall strength of their argument. While Majamba's critique of enduring legal complacency is well-timed, his argument suffers from an over reliance on litigation, which is highly problematic in a system with profound structural and resource constraints.

On the other hand, Techera and Mlay anchor their discussion in climate governance through a strikingly innovative and prescriptive lens, advocating for the inclusion of gender considerations into climate policies with compelling clarity. Mlingwa's

critique marks an equally important contribution to the discussion regarding the gap between community-based approaches and formal legal structures, defending the empowering stance from the local level that deepens the discourse on localism and community empowerment.

Consequently, the reviewed literature constructs and substantiates the arguments of the current study regarding legal structures and the frameworks of climate change susceptibility and rights-based approaches in the context of Tanzania, adding profound perspectives to the study. Drawing upon Randell and Mdemu, this research accepts the lived experiences of food and water scarcity as principal markers of climate vulnerability. In contrast to most contemporary works that focus on specific case studies, this study takes an integrated approach employing a rights-based attitude that links the hardships of the environment and ecological issues with the legal obligations typically found in national and international laws.

Additionally, building on the works of Majamba and Mlingwa, this research argues that achieving environmental justice requires more attention to institutional restructuring as well as coherent legal frameworks. Moreover, this research emphasizes gender equity, as framed by Techera and Mlay, and draws attention to implementation gaps outlined by Sindato and Mboera, thus critically expanding the discourse toward proposed legal solutions rather than only explanations. Furthermore, scholarly literature on rights-based climate litigation in Tanzania remains limited, comparative literature provides valuable insights into the structural and legal barriers impeding its development. This review explores key challenges facing the implementation of such litigation in Tanzania, including weak legal

capacity, compromised judicial independence, and political interference. It further highlights the lack of effective enforcement mechanisms and the absence of a comprehensive legal framework to support climate justice, thereby framing the critical obstacles to advancing rights-based environmental claims in the country.

Scholars such as Mugga et al.,[33] Wewerinke-Singh,[34] and Jegede[35] collectively assert that litigation plays a critical role in holding both state and non-state actors accountable for climate inaction and environmentally destructive practices. A central thread running through these analyses is the assertion that human rights frameworks serve as a powerful normative basis for such legal strategies. In support of this line of thought, both Mustafa,[36] and Villa[37] argue that judicial activism, combined with robust institutional frameworks, can enhance the success and reach of climate litigation. Adding a regional layer to the discussion, Majamba[38] aligns with this perspective, emphasizing the relevance of legal innovation and judicial engagement within Tanzania.

However, the scholar also acknowledges that Tanzania continues to lag behind more progressive international developments. Most importantly, all authors agree that civil society and non-governmental actors play fundamental roles in facilitating

[33] Mugga, J.H. et al. *'Shaping Africa's Climate Action through Climate Litigation: An Impact Assessment*' (2023) 26 Recht in Afrika 26., http://www.nomos-elibrary.de/10.5771/2363-6270-2023-1-26.pdf, [Accessed on 11.04.2025]

[34] Wewerinke-Singh, M. '*The Rising Tide of Rights: Addressing Climate Loss and Damage through Rights-Based Litigation'* (2023) 12 Transnational Environmental *Law* 537

[35] Jegede, A.O, 'State Duty to Protect" Rights and Legal Obstacles to Climate Litigation, Bristol University Press 2024

[36] Mustafa, F. '*Legal Responses to Climate Change: A Review of Environmental Law Frameworks Across Jurisdictions*' (2024) 2 Journal of Environmental Law, p.73

[37] Villa, L.Z. '*Exploring Institutional Barriers to Effective Human Rights-Based Climate Litigation in Latin American Courts: Lessons from Chile and Ecuador*' [2024] Journal of Human Rights Practice, p.1

[38] H.I. Majamba, ibid, [n. 37], p. 11

climate change litigations and developing case law. Hence, the literature together explains that human rights-based climate litigation can fill governance voids and further enable justice, particularly in situations where there is poor policy implementation. Even so, this understanding is predominant, the literature illustrates some debates and differences.

One of the most prominent divides is concerning the focus of discussion on the role and actual efficiency of the judiciary. Wewerinke-Singh, for example, maintains a rather grim perspective on the effectiveness of rights-based climate litigation in achieving retributive justice for climate harm, while Villa takes a more tempered position. She points out that there are still several structural and constitutional barriers that limit judicial power in Latin America, a critique that Majamba echoes regarding courts in Tanzania. Another contested issue concerns the focus on the obligations of the state as a guarantor of protection. Among all the claimants, Jegede emphasized this principle, claiming that a broader approach could help overcome procedural obstacles.

On the other hand, Mugga et al. argue that current legal systems still allow for the exploitation of gas and oil, and without legislative barriers, these courts cannot make significant changes. This dispute illuminates one essential question: Is it effective for litigation to try to provoke change from within the system, or are additional, and even prerequisite, statutory changes required? Additionally, some scholars employ the issue with a methodological bias as depicted in this case. Wewerinke-Singh is primarily focused on the theoretical and globally normative side, while Majamba and Villa are more engaged with the challenges of implementation at the national level.

This divide exemplifies the spectrum of idealism and realism within climate litigation debate.

Looking overall, it is apparent that there is rich literature woven together, although the applicability differs greatly. Wewerinke-Singh's body of work is highly commendable, especially for the strong normative rationale, even if this does come at the expense of an overstated view of the useable functions of courts in politically restricted jurisdictions. Jegede's legal realist perspective, especially his meticulous account of procedural obstacles, makes the analysis almost universally applicable to the African systems. Mugga et al. offer an innovative and practical approach with a methodologically sound case study, but their reasoning comes across as overly pessimistic regarding the impact of litigation.

At the same time, it appears that Mustafa's comparative examination is meticulous, yet overly simplistic when considering unique sets of legal systems about Africa or Tanzania. It is evident that his primary skill is exposing systematic deficiencies, though assailing systems' contexts greatly dilutes the relevance of these insights, particularly when there are no proposed benchmarks for change. Wasumbo has made a particularly important contribution by placing the Tanzanian case into the global debate. His critique of the jurisprudential gaps and institutional silences provides critical local insight, though the analysis would be stronger with greater focus on integrating strategies informed by international human rights law.

Lastly, Villa uses an empirical approach to Latin America's judicial issues and broadens the scope of discussion for Tanzania but is likely to face challenges

adapting due to vastly differing legal frameworks and systems constituting the underlying rules of the study in comparison to those of the region. Considering the above, the study on rights-based climate litigation in Tanzania offers a timely and context-specific contribution that both complements and advances this body of literature. Like Majamba, this work interrogates the structural and legal limitations of Tanzanian climate governance.

However, by adopting a more overtly rights-based perspective, the study aligns closely with the normative commitments seen in Wewerinke-Singh and Jegede, thus contributing a more profound legalistic analysis to an otherwise underdeveloped domestic discourse. This study not only extends the empirical insights offered by Mugga et al. but also introduces the possibility of transformative legal strategies by leveraging constitutional environmental rights and international human rights obligations.

Furthermore, the integration of both doctrinal and empirical methodologies bridges the prevailing gap between abstract legal theory and context-sensitive institutional critiques that permeate the literature. Crucially, this research introduces an original dimension by advocating for a proactive role of Tanzanian courts in recognizing and enforcing environmental rights, as opposed to reactive adjudication. This marks a significant departure from existing narratives and provides a foundation for the development of a Tanzania-specific model of rights-based climate litigation. In doing so, this work contributes meaningfully to filling the jurisprudential vacuum identified by several scholars, particularly concerning the Global South.

Moreover, while challenges persist, the literature also identifies promising opportunities for legal reform and international support in advancing rights-based climate litigation in Tanzania. Scholars propose strengthening environmental rights protections through constitutional and statutory reforms. There is a common consensus among the authors that there is a need for legal and institutional reform to adequately respond to the multifaceted impacts of climate change. Mativo,[39] for example, discusses how African legal systems inadequately address the issue of climate change displacement and calls for the adoption of international human rights frameworks to fill these gaps areas of protection.

In the same direction, Okedele et al.[40] and the Model Statute[41] defend using litigation as a strategic tool to force the government to take action and change environmental policies. Burianski et al.[42] and Mugga et al.[43] recognize the increasing role of civil society and non-governmental organizations as active participants in this field, especially in the development of the law and in the articulation of claims that is rights-based in nature. These arguments support the claim that rights-based litigation can fill not only the gaps of normative frameworks but also empower local people and raise the level of concern for climate issues within the legal sphere.

---

[39] Mativo, J., 'Climate Change Displacement Litigation in Africa: A Human Rights and Refugee Law-Based Approach, Bristol University Press 2024 https://www.degruyter.com/document/doi/10.56687/9781529228977-011/pdf, [Accessed on 11.04.2025]

[40] Ibid

[41] Policy Proposal 8 - The Model Statute for Proceedings Challenging Government Failure to Act on Climate Change, Edward Elgar Publishing eBooks 2022

[42] Burianski, M. et. al. 'An Expected New Wave of Climate Change Disputes in Africa, Global Energy Law and Sustainability, Volume 5, 2024

[43] Mugga, et al. ibid, (n. 39), p. 14

Furthermore, Burianski et al. and the Model Statute look forward to a time when African climate litigation will increasingly draw from global sources, thereby highlighting the transnational character of this emergent legal phenomenon. Notwithstanding this overarching focus, the literature is distinct in terms of methods and interpretative lenses. Mativo takes a refugee law approach, highlighting the (illegally) blanked out section of climate migrants and arguing for legal normative frameworks.

In contrast, Mugga et al. focus their attention on domestic environmental law litigation concerning the authorizations of fossil fuel projects and operate within the existing legal frameworks. This divergence illustrates a wider divide between reformist and transformational approaches: Mativo makes a strong case on why new legal structures are needed, while Mugga et al. work within the bounds of existing court systems. Also, differences in the degree of optimism present in the literature emerge. Burianski et al. express optimism about the expanding role of non-judicial fora and the active involvement of international stakeholders in strengthening African climate litigation. Conversely, Mugga et al. adopt a more guarded perspective, citing enduring judicial constraints and legislative frameworks enabling environmentally damaging practices, like gas flaring, under the pretext of energy security.

Moreover, even as the Model Statute seeks to inclusively approach strategic litigation like a one-size-fits-all legal framework, its failure to consider African contexts like Tanzania will impede its effectiveness and relevance. Some of them are particularly strong. Mativo's interpretation of climate change displacement

through the refugee law prism is eloquent for judicial reasoning. It presents a sound legal solution to a fundamental and pressing humanitarian challenge. Okedele et al. provide significant comparative perspectives in their cross-jurisdictional study, where some of their conclusions are too generalized to be useful in the context of Tanzania or East Africa, however.

The Model Statute takes an all-encompassing approach but lacks practical application in African legal systems from which there is little empirical evidence. That is why Burianski et al. seems more reliable with their description of the role non-governmental organizations may play, as well as the international fora, in advancing climate litigation. Mugga et al. deliver a necessary chilling critique on the issues surrounding the fuels of legal politics, noting the situs of the law's institutionalization's profit economy, fuel interests. This is particularly salient in cases where there is a subservient legal system, stagnant and politicized reform, and highly entrenched interests.

With these contributions, this study set out to examine rights-based climate litigation in Tanzania and found that both aligns with and departs from the literature. Following Mativo's work, this study adopts a rights-based paradigm but widens the scope from displacement to include more types of violations of environmental rights within Tanzania's legal system. Like Burianski et al. and Mugga et al., the study interrogates the activities of NGOs, but the study extends the debate by including uncontested evidence on the capacity, independence, and posture of the Tanzanian judiciary towards climate-related claims, which is a gap in the literature.

While some scholars are uncritical about the impact of strategic litigation claims the most harm, this work takes a sceptical view, focusing on the entrenched corruption, captured enforcement institutions, and vague legal frameworks that complicate the situation the most. Like the bottom-up model proposed by the Model Statute, this study supports a legal empowerment approach that advocates for lower levels of participation, community legal education, and the translation of international treaty provisions into national legislation to domesticate those treaties. The study aims to respond to the gap between legal approaches and the normative frameworks regarding the legal system of Tanzania by adding to the emerging narrative about climate litigation in Africa. It aspires to deepen debate within scholarship that examines climate litigation in Africa by bridging a gap within the existing literature with the hope of shaping the discourse on climate litigation in Africa.

The above-reviewed literature presents a piece of compelling evidence that the intersection of human rights and climate change is being recognized around the world, with courts beginning to acknowledge the environmental degradation as a violation of basic human rights. Countries in the Global South seem to have taken the lead in pioneering rights-based climate litigation motivated by constitutional and global human rights treaties. This new body of law has developed important judicial decisions that place the right to a healthy environment at the core of climate accountability.

On the other hand, the Tanzanian legal and scholarly landscape shows limited exposure to rights-based climate litigation. Despite some of the studies focusing on

environmental governance, climate change vulnerability, and legal gaps in the context of Tanzania, they do so from a policy or regulatory approach instead of a rights-based approach. This gap in the literature presents an urgent need to undertake research that seeks to answer how the changing climate in the context of Tanzania can be approached as a matter of enforceable human right, considering Tanzania's exposure to the impacts of climate change and its obligations under international law.

Furthermore, the review highlights several organizational and doctrinal barriers that impede the development of rights-based climate litigation in Tanzania. These gaps include limited constitutional protection of climate rights, inadequate enforcement mechanisms, weak frameworks for public interest litigation, and low levels of civic awareness. Nonetheless, the review also notes newly emerging, and perhaps underutilized, civil advocacy opportunities like regional case law, international donor funding, and support from local non-governmental organizations toward civil advocacy as tools to pursue a rights-based approach.

The literature suggests that rights-based climate litigation is highly required yet remains vastly unexplored in the context of Tanzania. Framing climate change as a human rights issue may enable more effective legal approaches aimed at increased accountability, public participation, and state-sponsored legal changes. Therefore, this review aims to provide a starting point for nurturing further scholarly inquiries or practical work using rights-oriented climate initiatives within the Tanzanian legal framework.

1.5 Objectives of the Study

1.5.1 General Objectives

To assess the scope and significance of rights-based climate litigation in Tanzania by evaluating its legal frameworks and identifying key gaps and opportunities for advancing climate justice in line with international obligations.

1.5.2 Specific Objectives

i. To assess international and regional advances in rights-based climate litigation and their relevance to Tanzania.
ii. To draw comparative insights from foreign jurisdictions applicable to Tanzania's context.
iii. To evaluate Tanzania's legal and institutional framework for rights-based climate litigation and identify key implementation challenges.

1.6 Research Questions

i. What is the key international and regional developments in rights-based climate litigation, and how are they relevant to Tanzania?
ii. What lessons can Tanzania draw from comparative experiences of rights-based climate litigation in selected foreign jurisdictions?
iii. How effective is Tanzania's legal and institutional framework in supporting rights-based climate litigation, and what are the main challenges hindering its implementation?

1.7 Significance of Study

The study on climate litigation as a human rights approach to climate vulnerability in Tanzania embraces significant importance for several reasons: Firstly, Tanzania,

like many other countries, is experiencing the adverse impacts of climate change, leading to increased vulnerability among marginalized communities. This study highlights the potential of climate litigation as a tool to protect the human rights of these vulnerable populations. Through exploring the intersection of climate change and human rights, the study can contribute to identifying and addressing the specific challenges faced by affected communities in Tanzania.

Secondly, the study can provide insights into the adequacy of existing legal frameworks in Tanzania in addressing climate change and human rights. Through identification of gaps and deficiencies, researchers can make recommendations for legal reforms that enhance the protection of human rights in the context of climate vulnerability. This can lead to the development of more robust policies and laws that address the needs of affected communities and promote climate justice. Thirdly, climate litigation as a human rights approach can contribute to holding both state and non-state actors accountable for their contributions to climate change and the resulting human rights violations. The study can shed light on the responsibilities and obligations of various stakeholders; including government entities, corporations, and international actors, thereby promoting accountability and ensuring that the rights of vulnerable populations are respected and upheld.

Fourthly, the study can empower vulnerable communities by raising awareness of their rights and providing them with information on legal avenues for seeking redress. Through understanding the potential of climate litigation, affected communities can engage in strategic advocacy and legal action to protect their rights, secure remedies, and demand fair and just responses to climate change impacts.

Fifthly, findings from the study can inform policy and decision-making processes related to climate change and human rights in Tanzania. Through highlighting the potential of climate litigation as a human rights approach, researchers can influence policymakers to integrate human rights considerations into climate change strategies, adaptation plans, and mitigation efforts. This can lead to the development of more comprehensive and inclusive policies that address the needs and rights of vulnerable populations.

Generally, the study's findings and insights can contribute to the broader global knowledge base on climate change litigation and human rights. They can serve as a resource for researchers, practitioners, and activists working in other countries and regions facing similar challenges. Through sharing experiences and lessons learned, the study can contribute to international advocacy efforts and support the advancement of climate justice globally.

1.8 Research Methodology

The study on rights-based climate litigation in Tanzania adopts a qualitative approach to assess the law's effectiveness and appropriateness within its societal context. A qualitative approach in legal research is important as it enables the study of social realities, understanding people's feelings and experiences, and provides insights into social life, enhancing the interpretation of data and evaluation of policies within their natural settings.[44] In this regard, the study adopts the doctrinal method, supplemented by empirical and comparative approaches, to critically analyze legal texts while capturing practical challenges and lessons from other

[44] Bhat, P.I, 'Qualitative Legal Research: A Methodological Discourse, Oxford University Press 2020

jurisdictions.

1.8.1 The Doctrinal Research Method

The doctrinal research method, often regarded as the traditional yet foundational approach in legal scholarship, plays a crucial role in this study by providing a structured framework for analyzing legal sources such as statutes, constitutions, case law, regulations, treaties, and academic commentary. Its significance lies in offering a systematic means to interpret the law and assess its consistency, coherence, and applicability within the relevant legal context. It is particularly concerned with determining the current state of the law, how it has been applied by courts, and whether inconsistencies, ambiguities, or doctrinal gaps exist.[45]

In the context of a study on rights-based climate litigation in Tanzania, the doctrinal method holds critical importance. It allows for the critical examination of foundational domestic instruments, including the Constitution of the United Republic of Tanzania, the Environmental Management Act, and pertinent judicial decisions. At the international and regional levels, the method facilitates the interpretation of legal instruments such as the Paris Agreement, the United Nations Framework Convention on Climate Change (UNFCCC), the African Charter on Human and Peoples' Rights, and the East African Community's legal and institutional framework, and other secondary sources.

Furthermore, it supports the integration and evaluation of secondary sources, including academic literature, policy reports, judicial commentaries, expert analyses,

[45] Hutchinson, T. 'Doctrinal Research: Researching the Jury' in Mike McConville and Wing Hong Chui (eds), Research Methods for Law, Edinburgh University Press 2007, pp. 7–33.

treaties, and media analyses, thereby enriching the legal inquiry and reinforcing the normative and comparative dimensions of the study. Through this lens, the study has uncovered legal barriers that hinder effective climate litigation, including limitations in legal standing, weak enforcement mechanisms, and the under-recognition of environmental rights as enforceable human rights. Moreover, the doctrinal analysis forms a basis for proposing reforms aimed at improving climate justice, particularly by aligning Tanzania's legal obligations with global best practices.

1.8.1.1 Data Collection and Analysis

This study relies on both primary and secondary data. Primary sources have been collected from authoritative legal texts, including Tanzanian statutes, the Constitution, judgments from national courts, and binding international treaties. These legal instruments have been sourced from official law reports, government gazettes, legal databases, and websites of some global and regional institutions such as the UNFCCC, the African Commission on Human and Peoples' Rights, and the East African Community. To supplement the above primary data, the secondary sources have been collected from scholarly legal articles, legal policy reports, legal textbooks, and relevant academic dissertations focused on environmental law, human rights, and climate change litigation.

In analyzing data obtained through the doctrinal method, the study applies established legal interpretation techniques appropriate to the source of law under consideration. For domestic legal instruments, such as the Constitution of the United Republic of Tanzania and the Environmental Management Act of 2004, the analysis is guided by the canon of statutory interpretation, employing both intrinsic aids (like

the text, context, and structure of the legislation) and extrinsic aids (including legislative history, judicial precedents, and relevant legal commentaries). These tools ensure that the interpretation aligns with the legislative intent and the broader principles of Tanzanian constitutional and environmental law.

Conversely, for international and regional legal instruments, the study adopts interpretative approaches consistent with the rules prescribed within specific conventions (e.g., interpretation clauses within the Paris Agreement or African Charter) or, where such rules are absent, the general principles set out in the Vienna Convention on the Law of Treaties (1969), particularly Articles 31 to 33. This dual approach facilitates a coherent and contextually grounded understanding of both domestic and international legal obligations related to rights-based climate litigation in Tanzania.

1.8.2 Comparative Method (Reform-Oriented)

This study adopts a comparative approach; however, rather than employing a pure comparative method, which aligns with comparison for knowledge, as a descriptive understanding of legal systems without aiming at reform,[46] it utilizes a pragmatic, lesson-oriented approach. This approach treats comparison as a functional tool for addressing legal challenges and informing law reform, particularly within developing or evolving legal systems.[47] The aim is to extract valuable lessons, best practices, and practical experiences that may inform the development or reform of

[46] Zweigert, K. and Kötz, H. An Introduction to Comparative Law, Tony Weir tr, 3rd edn, Oxford University Press 1998, p. 34

[47] Orücü, E., The Enigma of Comparative Law: Variations on a Theme for the Twenty-First Century, Brill, 2004, p. 95

relevant legal standards in Tanzania. The selection of countries in this study is guided by their distinctive contributions to rights-based climate litigation. Germany was chosen for its advanced legal doctrines, particularly the integration of intergenerational equity, constitutional obligations, and science-based judicial reasoning. From the Global South, South Africa stands out for its application of constitutional socio-economic rights and recognition of procedural environmental rights. India demonstrates strong judicial activism to encompass environmental protection. Pakistan presents a compelling example of addressing climate change as a human rights issue, with an active judiciary ensuring government compliance.

Lastly, Indonesia, despite lacking strong legislative frameworks for rights-based climate litigation, offers compelling examples of notable was selected for its constitutional protection of environmental rights. The inclusion of jurisdictions with both strong and evolving climate change legal regimes allows for a complex understanding of diverse strategies employed to advance climate justice. Such comparative insights provide a critical benchmark for evaluating Tanzania's legal landscape and proposing context-specific legal innovations. Data analysis under the comparative study follows the same approach as that applied in the doctrinal method, utilizing established rules of legal interpretation appropriate to the domestic or international context of each jurisdiction.

1.8.3 Empirical Method

This study also employs an empirical legal research method, which provides some first-hand information complementing the data obtained from the doctrinal method, to understand closely the answers to the above research questions. A purposive

sampling method has been adopted as the principal sampling technique. This method is suitable for qualitative research, where the goal is to select information-rich respondents based on their knowledge, experience, or professional relevance to the subject matter.[48] Rather than selecting respondents randomly, the researcher intentionally targets individuals expected to provide in-depth insights into the strengths, weaknesses, and prospects of rights-based climate litigation in Tanzania.

The rationale behind employing purposive sampling lies in its ability to optimize data quality and ensure that only participants with direct experience or expertise in environmental law, climate change, and human rights litigation are included. This method aligns well with the study's empirical objectives, as it enables a focused and strategic selection of Six participants in each selected entity capable of making meaningful contributions to understanding Tanzania's legal and institutional climate litigation landscape. The study classifies respondents into three key groups to gather relevant data on rights-based climate litigation in Tanzania.

The first group consists of legal professionals from institutions such as selected law firms, the Tanganyika Law Society (TLS), and the High Court Registry, offering insights into climate litigation practices, legal gaps, and enforcement challenges. Data from this group were collected using both structured and open-ended questionnaires for consistency and depth. The second group includes human rights defenders and civil society actors from organizations like LHRC and CHRAGG. Their input focused on the connection between human rights and environmental

[48] Patton, M. Qualitative Research and Evaluation Methods. 3rd Sage Publications; Thousand Oaks, CA: 2002

protection, litigation strategies, and institutional obstacles. Semi-structured interviews were employed to explore these themes in detail. The third group comprises academic and legal aid experts from institutions like the Open University of Tanzania Legal Aid Clinic (OUTLAC), chosen for their theoretical and doctrinal expertise. Data collection involved semi-structured interviews and open-ended questionnaires to capture legal critiques and academic perspectives. This approach ensures methodological coherence, enhances data richness, and strengthens the study's reliability and analytical depth through triangulation.

The study employed thematic content analysis as the primary method for examining qualitative data gathered from interviews and open-ended questionnaires. This involved transcribing and systematically coding the responses to identify recurring patterns and themes aligned with the research objectives on rights-based climate litigation. Key themes that emerged included perceived legal and institutional gaps, the strategic use of litigation in pursuing environmental justice, enforcement challenges, and the role of civil society and legal education. This analytical approach enabled a critical and nuanced interpretation of participant insights, ensuring that the qualitative data meaningfully informed the study's broader legal and contextual analysis.

1.8.4 Ethical Consideration

This study is governed by the voluntary participation of all respondents, with the right to withdraw from participation at any time in the study without any negative consequence. Apart from voluntary participation, informed consent before participation of the respondents shall be considered necessary in this study.

Informed consent shall be implemented through the provision of comprehensive information about the purpose, procedures, potential risks and benefits, confidentiality measures, and rights of participants. To ensure anonymity, the researcher has not collected any personally identifiable information unless necessary. Respondents have been assigned fake names, while the respondent data is stored securely to ensure anonymity.

To ensure confidentiality, the respondent data has been protected from unauthorized access, use, or disclosure, while access to data is limited only to those involved in the study. The study has ensured mitigation of potential harm or risk related to any foreseeable physical, emotional harm to all respondents. The research findings shall be communicated to the respondents of this study clearly and understandably by informing the participants of their right to receive a summary or copy of the research findings.

1.9 The Scope and Limitations of the Study

1.9.1 Scope of the Study

This study focuses on examining the potential of rights-based climate litigation in Tanzania as a legal mechanism for addressing climate change-induced vulnerabilities through a human rights lens. It employs doctrinal, empirical, and comparative research methods. The doctrinal method involves analyzing national and international legal frameworks, including relevant laws, treaties, conventions, and jurisprudence governing climate justice. Empirical data were collected from six respondents each from CHRAGG, LHRC, TLS, OUTLAC, and the High Court Registry, providing practical insights into institutional experiences, challenges, and

perceptions regarding climate litigation and rights protection in Tanzania. The comparative method draws lessons from key jurisdictions, Germany, South Africa, India, Pakistan, and Indonesia, focusing on their legal frameworks for protecting climate rights and judicial practices on climate justice. Collectively, these approaches enable the study to assess accountability mechanisms, identify legal gaps, and propose reforms to strengthen the use of climate litigation as a viable tool for human rights protection in Tanzania

1.9.2 Limitation of the Study

The researcher faced significant challenges in data collection, analysis, and the integration of foreign legal insights. Difficulties included limited access to key respondents such as judges and legal professionals, sensitivity of the subject matter, and fragmented or poorly archived case records. The analysis phase was further complicated by diverse and context-specific responses, inconsistent legal terminology, and the challenge of combining empirical data with doctrinal analysis. Incorporating jurisprudence from countries like Germany, India, South Africa, Pakistan, and Indonesia also proved complex due to differing legal frameworks and contextual disparities, requiring careful interpretation to ensure relevance and avoid misapplication.

Academic skepticism about legal transplants and the need to maintain coherence across overlapping legal fields added to the complexity. However, through methodological rigor, ethical research practices, and triangulation of data sources, the researcher successfully navigated these challenges, thereby enhancing the study's credibility and its contribution to both Tanzanian and global discourse on climate justice and human rights.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK GOVERNING RIGHT-BASED CLIMATE LITIGATION

2.1 Introduction

This study explores rights-based climate litigation in Tanzania, aiming to critically assess the legal frameworks and their effectiveness in advancing climate justice. To comprehensively understand and frame the research problem, it is essential to ground the analysis within robust conceptual and theoretical frameworks. The reason for dedicating an entire chapter to conceptual and theoretical frameworks lies in their pivotal role in guiding the research process. They offer the analytical lens through which the research questions are examined, help clarify key concepts, and structure the interpretation of data.[49] Establishing these frameworks, the study fills a critical gap in clearly articulating the normative and practical underpinnings that influence rights-based climate litigation, enabling nuanced and coherent analysis.

It is important to distinguish between conceptual and theoretical frameworks to avoid ambiguity. The theoretical framework draws on established theories to explain the relationships between variables relevant to climate litigation, such as legal empowerment, environmental rights, and justice.[50] In contrast, the conceptual framework maps out the specific constructs and expected interactions within the Tanzanian legal and socio-political environment, providing a tailored model to guide

[49] Majeed, N., et. al., '*Theoretical and Conceptual Frameworks in Social Sciences and Law: Meaning, Functions and Differences,* Pakistan journal of social research, Volume 0, 2023, p. 147 https://doi.org/10.52567/pjsr.v5i01.1034, [Accessed on 20/6/2025]
[50] Ibid

the study's design and analysis.[51] This chapter is organized into two main sections: the first section outlines the theoretical underpinnings that inform the study, including theories on environmental justice, human rights, and legal mobilization. The second section develops the conceptual framework, detailing key concepts and their interrelationships that frame the research questions and methodology in the Tanzanian context.

2.2 Concepts Governing Rights-based Climate Litigation

A clear conceptual framework is indispensable for understanding and analyzing rights-based climate litigation in Tanzania. It provides the intellectual foundation upon which the study is anchored, ensuring clarity, coherence, and consistency in addressing the complex intersection between environmental protection and human rights. By outlining the guiding ideas that shape the discourse, the framework not only defines the scope of inquiry but also strengthens the analytical depth of the research, thereby enhancing its legal and academic value.

2.2.1 Rights-based Climate Litigation

Rights-based climate litigation utilizes a legal framework to advocate for the enforcement of human rights using a climate-focused lens to seek redress for the adverse effects of climate change on human life. It entails using law to mitigate the violation of basic human rights such as health, proper housing, food, and a clean environment. This approach focuses on changing the way climate action is perceived; it presents climate change as a problem that requires not just policies, but legal action to address the rights issues stemming from it.

[51] Majeed N, et. al., ibid,

It is a new branch of legal activism that emerged from the intersection of human rights and international law in the late 20th century.[52] During that time, there were also some legal attempts to hold state and non-state actors accountable for contributing to global warming to cite some of the gaps that claim states and corporations did little to practically tame the vice. Critical court cases such as the *Urgenda Foundation v. The State of the Netherlands*[53] and *Leghari v. Federation of Pakistan*[54] sparked a transformative shift in jurisprudence by recognizing inaction on climate change as a violation of rights and linking poor environmental conditions to law.

Understanding the concept of rights-based climate litigation is of paramount importance in influencing climate governance from a domestic perspective in Tanzania. In greater detail, it explores the legal redress possibilities of the rights of citizens and communities of Tanzania within the context of the climate-change-inflicted damages to legal rights. As an example, the responsiveness of institutions, their systems of justice, and legislation to the need for a climate emergency declaration.

The 2015 Paris Agreement, while focusing on climate change, calls for states to observe, regard, and give attention to human rights during the implementation of the Agreement. At the international level, the United Nations Human Rights Council, followed by the United Nations General Assembly in 2022,[55] accepted a clean,

[52] Wewerinke-Singh, M. ibid, (n. 40), p. 14
[53] *The State of the Netherlands v. Urgenda Foundation* [2018] Gerechtshof Den Haag C/09/456689/HA ZA 13-1396
[54] *Ashgar Leghari v. Federation of Pakistan* (2015) W.P. No. 25501/2015 (Lahore High Court, Pakistan)
[55] General Assembly Resolution, ibid, (n. 24), p. 6

healthy, and sustainable environment as a human right of global jurisdiction. In the African Charter on Human and Peoples' Rights, alongside the jurisprudence of the African Court on Human and Peoples' Rights, there is at a regional level recognition that the deterioration of the environment may also constitute an infringement of human rights.[56] In the domestic context, the supreme law of the United Republic of Tanzania is the Constitution.

The Constitution of Tanzania stipulates some fundamental rights which are sine qua non for all persons. This includes the right to life, Article 14. Although there is no explicit mention of an environment in a rights language, Article 27, which outlines the duty to safeguard and manage natural resources, can be seen as consonant with environmental rights.[57] Tanzania lacks specific legal case law regarding climate change; however, it has an enabling environment in its Constitution and Human Rights laws that can provide solutions through the jurisdiction's underlying frameworks.

Academic scholars have offered varied but complementary definitions of rights-based climate litigation. Peel and Osofsky describe it as litigation that frames climate harm as human rights violations, to trigger legal obligations upon governments and institutions.[58] Knox emphasizes that such litigation reinforces state accountability by translating climate risks into violations of rights that are already protected under

[56] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, *Communication No. 155/96*,
[57] *The Constitution of Tanzania*, ibid, (n. 16), p. 5
[58] Peel, J., & Osofsky, H. M. A Rights Turn in Climate Change Litigation? Transnational Environmental Law, 2018, 7(1), 37–67. https://doi.org/10.1017/S2047102517000292, [Accessed on 18.04.2025]

national and international law.[59] Meanwhile, Grear highlights the normative shift that rights-based litigation introduces, where climate justice becomes anchored in claims of legal entitlements rather than discretionary policy.[60]

Boyd further argues that human rights serve as a compelling moral and legal framework for environmental protection, particularly in contexts where regulatory mechanisms are weak.[61] From this foundation, a harmonized conceptual understanding emerges that rights-based climate litigation is a legal strategy wherein individuals or communities seek judicial remedies for climate-related harm by invoking established human rights, thereby holding governments or private actors accountable for conduct that undermines human and environmental well-being. This definition captures the ethical, legal, and scholarly dimensions of the concept and reflects its multifaceted nature.

Rights-based climate litigation refers to legal actions brought by individuals or groups seeking remedies for the adverse effects of climate change, asserting their sovereign right to challenge governments or private entities whose actions threaten environmental and community well-being.[62] This approach underscores the use of human rights frameworks to protect ecosystems and hold actors accountable for

[59] Knox, J. H. *Climate Change and Human Rights Law*. Virginia Journal of International Law, 2009, 50(1), 163–218

[60] A. Grear, *Towards 'climate justice'? A critical reflection on legal subjectivity and climate injustice: warning signals, patterned hierarchies, directions for future law and policy*, Journal of Human Rights and the Environment, 2014, 5(0), 103–133. https://doi.org/10.4337/jhre.2014.02.08, [Accessed on 18.04.2025]

[61] Boyd, D. R. The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment, UBC Press. 2012

[62] Setzer, J. and Higham, C. Global Trends in Climate Change Litigation: 2021 Snapshot, Grantham Research Institute on Climate Change and the Environment 2021

conduct that undermines environmental integrity and climate justice.[63] Drawing from international law, judicial precedents, scholarly analyses, and evolving domestic legal landscapes, the concept has become a critical tool in the pursuit of climate justice.

After a comprehensive exploration of this concept, it becomes essential to narrow its definition to align it with the specific objectives and context of the present study, which focuses on rights-based climate litigation in Tanzania. For this research, rights-based climate litigation shall be understood as *the pursuit of legal remedies in Tanzanian courts and tribunals by individuals or communities who claim that government inaction or harmful conduct related to climate change constitutes a violation of their constitutional and human rights, particularly the rights to life, health, and a clean and safe environment*.

This narrowed definition has been deliberately selected because it reflects the dual legal and practical realities of the Tanzanian context, where the impacts of climate change are tangible and the legal system, while still developing, provides foundational rights that can potentially be invoked to seek redress. This definition draws significantly from the works of Peel and Osofsky,[64] and Knox,[65] which emphasize enforceability, accountability, and the protection of fundamental rights against the impact of climate change. As a result, this interpretation is not only legally compelling but also normatively appropriate for the Tanzanian context, where communities face increasing climate vulnerabilities with limited policy

[63] Peel, J. and Osofsky, ibid, [n. 64], p. 37
[64] Peel, J. and Osofsky, H,M, ibid, (n. 64), p. 37
[65] Knox, ibid, [n. 65], p. 37

responsiveness.

Furthermore, this definition stands within the context of the research problem of this study. It seeks to determine how Tanzanian legal institutions respond to climate change vulnerability and the allegations that climate inaction violates human rights, and whether such allegations could promote climate justice. Therefore, it's necessary to use a definition that highlights the legal claims made by pertinent communities and the obligations of the state emanating from the Constitution.[66] Although the Constitution of Tanzania does not capture climate change as an issue, it has key important rights like which speaks on the right to life,[67] and the one which imposes a duty on every person to protect and manage the environment.[68] These provisions, when reasonably expanded, could constitute the basis for claims about climate issues bound in human rights.

The absence of specific jurisprudence focusing on the violation of rights to climate action is certainly a gap, but they can be invoked from international and regional legal frameworks. The African Charter on Human and Peoples' Rights,[69] and the UN General Assembly Declaration on the Human Right to a Clean, Healthy and Sustainable Environment, which provides elements of jurisdiction through which these issues could be claimed in domestic courts.[70] adopting a rights-based approach, the study aligns itself with broader global legal trends while grounding its analysis in the unique socio-legal context of Tanzania.

---

[66] For example, the Obligation of the government to protect the right to life of every individual under Article 14 of the Constitution of Tanzania, ibid, (n. 16), p. 5

[67] *The Constitution of Tanzania*, ibid., (n. 16), p. 5, Article 14

[68] Ibid., Article 27

[69] *African Charter on Human and Peoples' Rights,* 1981, Article 24

[70] UNGA Resolution, ibid, (n. 24), p. 6

2.2.2 Human Rights Protection

The concept of human rights protection lies at the core of rights-based climate litigation. It represents the legal and moral obligation of governments and institutions to uphold the fundamental entitlements that every individual possesses by being human. The origin of this concept is deeply rooted in the aftermath of World War II, particularly in the formation of the United Nations and the adoption of the Universal Declaration of Human Rights.[71] This landmark document, driven by the horrors of war and systemic oppression, laid the foundation for a global commitment to dignity, equality, and freedom. Since then, human rights protection has evolved, gaining wider recognition and enforcement mechanisms through binding treaties, national constitutions, judicial interpretations, and scholarly discourse.

In the realm of rights-based climate litigation, the concept of human rights protection aims to serve as a normative and legal lens through which environmental harm, including the effects of climate change, can be reframed as violations of rights rather than merely environmental degradation.[72] The inclusion of human rights language in climate litigation seeks to hold states accountable not only for failing to regulate emissions or protect ecosystems but also for the real human consequences of such failures, ranging from loss of life and health to food insecurity and forced displacement.[73] This approach is particularly significant in countries like Tanzania, where vulnerable populations are already experiencing the harsh realities of climate

[71] *Universal Declaration of Human Rights*, UNGA Res 217 A(III)) UN Doc A/810.
[72] Knox, J. H., ibid, [n. 65], p. 37
[73] A. Savaresi and J. 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.

change amidst limited legal and policy safeguards.[74] Traditionally, the notion of human rights protection was not explicitly linked to environmental matters. In many societies, rights were primarily viewed through the lens of civil and political freedoms, such as liberty, freedom of speech, and protection from torture, while the relationship between humans and nature was governed more by customary norms or religious ethics than by codified rights.[75] Over time, however, traditional understandings of communal responsibility towards nature, especially in African indigenous contexts, began to align with modern human rights discourses.

Many indigenous worldviews posit that a safe and clean environment is intrinsic to well-being, a belief that has increasingly shaped contemporary calls for environmental rights as human rights. From a legal standpoint, international instruments have progressively recognized the interdependence between environmental quality and the enjoyment of fundamental rights. The International Covenant on Economic, Social and Cultural Rights, while not directly referring to the environment, affirms the right to health, which has been interpreted to include environmental determinants of health.[76] The UN Human Rights Council and the Special Rapporteur on Human Rights and the Environment have reaffirmed this connection, culminating in the UN General Assembly's 2022 resolution recognizing the human right to a clean, healthy, and sustainable environment.

---

[74] Magembe-Mushi, D. and Matingas, R. Contributions of Local Authorities to Community Adaptive Capacity to Impacts of Climate Change; A Case Study of Sea Level Rise in Pangani Division, Pangani District, (2022), In: Gebregiorgis, A. et al. (eds) Planning Cities in Africa. The Urban Book *Series*. Springer, https://doi.org/10.1007/978-3-031-06550-7_8, Accessed on 12th March 2025

[75] Boyd, D. R., ibid, [n. 67], p. 38

[76] The UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 14 (2000)

Regionally, the African Charter on Human and Peoples' Rights (1981) under Article 24 guarantees the right to a general satisfactory environment favourable to development. Domestically, Tanzania's Constitution under Article 14 guarantees the right to life, while Article 27 imposes a duty on every person to protect the environment. Though the Constitution does not explicitly mention environmental rights, these provisions offer a potential legal avenue for climate-related claims framed as human rights violations.

Judicial interpretations also contribute to defining human rights protection in environmental contexts. In *Joseph D. Kessy and Others v. The City Council of Dar es Salaam*,[77] the Court held that public authorities have a legal duty to prevent environmental harm and protect the public interest. Their failure to discharge this duty constitutes a breach of constitutional and statutory obligations. Although Tanzania has limited case law directly linking climate change to rights violations, courts in other jurisdictions have illustrated how climate harms can be judicially acknowledged as rights infringements, offering persuasive authority for Tanzanian courts to adopt similar reasoning.

From an academic perspective, scholars have consistently expanded the concept of human rights protection to include environmental dimensions. Knox contends that human rights provide a compelling normative framework for addressing climate harms, particularly in contexts where traditional regulatory avenues are weak.[78] Boyd underscores that environmental rights grounded in human rights are more

[77] *Joseph D. Kessy and Others v. The City Council of Dar es Salaam*, HC Civil Case No. 299 of 1988 (High Court of Tanzania, unreported),
[78] Knox, J.H., ibid. [65], p. 37

enforceable and morally persuasive than abstract ecological claims.[79]

Similarly, Grear critiques the anthropocentric limitations of traditional rights frameworks, advocating for an expanded vision of human rights that accounts for environmental justice and intergenerational equity.[80] Each of these perspectives converges to support the argument that climate-related harms threaten fundamental human rights and that legal systems must evolve to respond to such threats. For Tanzania, where the poor and rural communities disproportionately feel the impacts of climate change, the notion of human rights protection provides a powerful basis to argue that the State's failure to mitigate or adapt to climate change constitutes a breach of its constitutional and international obligations.[81]

Synthesizing these interpretations, human rights protection in the context of this study can be understood as the recognition and enforcement of fundamental entitlements, such as the right to life, health, and environmental well-being, against the backdrop of environmental degradation and climate risk. This harmonized definition acknowledges the historical development of human rights, incorporates international and domestic legal norms, and integrates academic insights emphasizing the urgent need for rights-based approaches to environmental governance. For this study, human rights protection will be narrowly understood as the constitutional and international legal obligation of the Tanzanian state to prevent

[79] Boyd, ibid, [n. 67], p. 38
[80] A. Grear, ibid, [n.66], p. 37
[81] The Government of Tanzania must protect human rights under both international instruments, such as the ICCPR, ICESCR, ACHPR, CEDAW, and CRC, and domestic frameworks, notably the Constitution of 1977 and the Basic Rights and Duties Enforcement Act, which collectively mandate the respect, protection, and fulfillment of fundamental rights.

and remedy the adverse effects of climate change that threaten individuals' rights to life, health, and a clean and safe environment. This definition has been selected because it directly aligns with the research problem: examining how the absence of clear laws and court precedents hinders rights-based climate litigation in Tanzania. It provides a legally grounded yet adaptable framework for analyzing both judicial decisions and policy gaps. The selection of this definition is also justified by Tanzania's existing legal provisions and its obligations under international and regional human rights instruments,[82] which, when interpreted progressively, can offer a strong foundation for climate justice through human rights litigation.

2.2.3 State Responsibility

The idea of State Responsibility encompasses a major element of international law relations. More precisely, it deals with the international legal responsibility of States for international wrongful acts and omissions defined in terms of their relations. Accountability examines the range and impact of sovereignty, jurisdictional authority of the law within the state, custom, and treaty law principles mortgaged. The concept was first developed based on the International Law Commission, which seeks criteria suitable for international relations.

This principle has, however, moved from simply regulating the legal relationship between contracting states on the basis, to a wider concept that includes various aspects of international law like human rights, protection of vulnerable people, environment. State Responsibility has also received renewed attention, especially within climate law, because climate change is now an enduring challenge of the 21st

[82] For example, the Bill of Rights in the Constitution of Tanzania, Article 12 - 30

century.[83] This is because State Responsibility is used to blame a country for not completing basic obligations associated with international agreements, such as treaties. These obligations are now seen as crucial human rights.

State Responsibility plays a vital role in rights-based climate litigation. It offers remedies for individuals, organizations, and communities that do not have the means to bring a case to domestic courts. With such claims, an individual does not have to be a direct victim but part of the victim group that is eligible for redress. The most authoritative codification is the International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).[84] According to this legal instrument, every internationally wrongful act of a State entails the international responsibility of that State.[85] Article 2 further specifies that for such pre-stated responsibility to arise, the conduct in question must be attributable to the state and must violate an international obligation.

Regarding climate, the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement both create, relative to specific and general obligations, mandates for states to mitigate emissions, build resilience, and assist vulnerable populations. On a more practical level, many national systems of law, including that of Tanzania, have recognized state-bound obligations of a constitutional nature regarding the environment. The Tanzanian Constitution places responsibility on every individual to conserve natural resources, which comes along with an

[83] Mohammed, S.S. et. el., 'State Responsibility and Liability in Climate Change Mitigation in Section International Law Analysis, volume 3, (2024), Journal of ecohumanism, p.444,
[84] *Articles on the Responsibility of States for Internationally Wrongful Acts* (ARSIWA) of 2001
[85] Ibid, Article 1

increasing judicial trend of construing constitutional rights to state responsibilities in environmental contexts.[86] There is relevant key case law that has broadened the applicability of State Responsibility in climate change litigation. The case of *Urgenda Foundation v. State of the Netherlands*,[87] where the Dutch Supreme Court reasoned that the lack of emission reductions was in breach of human rights stipulated in the European Convention, is illustrative.

Likewise, in *Neubauer et al. v. Germany,* the German Constitutional Court determined that inadequate legislation about climate issues infringes the constitutional rights of the affected generations. Even the cases *like Milieudefensie v. Royal Dutch Shell* incorporate non-state actors but still address the contemporary deficiencies in public policy and, in effect, strengthen the case for the public legal obligations regarding climate action.

The concept has gained attention from academia, and various scholars have explored it from different angles. Crawford defined State Responsibility as including the consequences that the acts of delinquent states incur legally.[88] Sands highlighted stronger aspects concerning responsibility for the transgressions of rules pertinent to the domains of environment and human rights.[89] Rajamani pointed out the relevance of state responsibility considering international obligations under climate law, especially regarding compliance with international climate treaties.[90]

---

[86] *The Constitution of Tanzania*, ibid, [n. 16], p. 5, Article 27
[87] *Urgenda Foundation Case*, ibid, [n. 58], p. 35
[88] Crawford, J. The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries, Cambridge University Press, 2002
[89] Sands, P. Principles of International Environmental Law, 3rd edn, Cambridge University Press 2012
[90] L. Rajamani, *International Climate Change Law and Human Rights: Connecting the Dots*, 2021, 112 AJIL Unbound 128.

Within the sphere of climate litigation anchored on human rights, all the mentioned perspectives aid in shifting the lens towards integrating individual obligations, resources working towards their mobilization, and transforming state responsibility from a framework primarily focused on sovereign state diplomacy. This evolution is essential to capture the reality of climate change, where the impact is more subjective and disproportionately experienced by the most vulnerable communities. As a result, the concept now also includes omissions, failure to take adequate climate policy actions that result in significant violations of rights. Integrating these diverse perspectives, a synthesized definition of state responsibility in these terms can be formulated as follows:

The responsibility of the states to account for acts and or omissions done which contribute to climate change by breaching legally bound environmental and human rights obligations, including those to the present and future generations, whether established through treaties, customary law, national law, or judicial precedents." This definition reflects the development of the doctrine with its legal, normative, and ethical aspects about contemporary climate litigation.

Solely for this study, which analyzes rights-based climate litigation within the context of Tanzania, the concept will be narrowed and applied as: *"The responsibility of the Tanzanian state, as grounded in its constitutional, statutory, and international environmental and human rights obligations, refers to its failure to enact adequate legislative, administrative, and policy measures to address climate change, resulting in the infringement of the fundamental rights of its citizens."* This adjusted definition is intended to fulfill the national and international obligations of

Tanzania, capture the emerging jurisprudence, and answer the primary question of how legal frameworks restrain climate inaction and advance climate justice frameworks.

2.2.4 Corporate Accountability

The concept of corporate responsibility has evolved as a structural principle of law and human rights in conjunction with the ideals of responsibility, accountability, and justice.[91] This first emerged as a reaction to the exercising and often unrestrained power of corporations, for example, during and after the Industrial Revolution in the 19th and 20th centuries. Initially limited to the fiduciary and contractual duties owed to shareholders, the concept of corporate responsibility has, with time, broadened to encompass a range of social, environmental, and human rights obligations.[92] With globalization, there is greater corporate control over drilling and emissions, as well as policymaking, which intensifies the need for accountability during times of accelerated environmental damage and the climate crisis.[93]

In the 21st century, litigation concerning climate change has added a new dimension of perception to the idea by considering corporate accountability not simply a matter of ethics, but rather a legal obligation under domestic and international law.[94] Within this context, corporate responsibility serves as a litmus test on the degree to which these entities would be held liable for climate change and the attendant

[91] Deva, S. and Birchall, D. Research Handbook on Human Rights and Business, Edward Elgar Publishing 2020.
[92] Deva, S. and Birchall, D. *ibid,* (n. 97), p. 48
[93] Newell, P. and Paterson, M. Climate Capitalism: Global Warming and the Transformation of the Global Economy, Cambridge University Press 2010
[94] Murungi, M. 'Corporate accountability for climate change: An inquiry into the company laws of Commonwealth Africa' in Olawuyi, D. and Abe, O., (eds), Business and Human Rights Law and Practice in Africa (Edward Elgar Publishing 2022) 93–107.

consequences of their actions on the communities' Environment. In terms of rights-based climate change litigation, the prime goal of corporate responsibility is to ensure that non-state actors, particularly multinational corporations and fossil fuel companies, are deemed responsible for environmental destruction and human rights violations.[95] It attempts to close the gap in responsibility regarding environmental laws and human rights, which concern the actions of non-state corporations.

In this context, corporate responsibility aims to join climate justice efforts that treat ecological deterioration as a violation of fundamental human rights by enabling through law, initiating legal action, or facilitating humanitarian intervention, passing laws, or enacting laws, with other climate justice goals alongside breaching obligations of caring for the environment, taking care of human rights, breaching duties to the people, and committing to minors.

Before, corporate accountability was viewed only in the context of company management and business morals, meaning that business executives had the responsibility to maximize profits for shareholders. Adopting the patriation theory of the social contract, this traditional view also started to add that corporations, as institutions set up by and benefiting from the country regions, have responsibilities to their communities. The emergence of the CSR paradigm shifted this perception further by paying for the enhancement voluntarily to promote good social and environmental outcomes for businesses.[96] Though it wasn't a legally binding concept, CSR served as the basis for the later development of legally binding

[95] Ibid
[96] Li J, 'The Evolution of Corporate Accountability for Climate Change, Cambridge University Press eBooks 2022, https://doi.org/10.1017/9781009106214.016, [Accessed on 20.04.2025]

corporate responsibilities. Internationally, several treaties have contributed to the definition of corporate accountability. The UN Guiding Principles on Business and Human Rights (2011), also known as the Ruggie Principles, stresses the responsibility of businesses to respect human rights and mitigate any adverse human rights impacts that may occur during business operations.[97] Although not legally enforceable, these principles form an international due diligence standard on business human rights relations founded on transparency, accountability, and remediation.

Equally, the OECD Guidelines for Multinational Enterprises lay down requirements on the conduct of business, which include the upholding of human rights and environmental protection. Furthermore, while the Paris Agreement does not legally bind corporations, it invites engagement from non-state actors, including businesses, to actively support the reduction of emissions and climate change adaptation initiatives. At the national level, Tanzanian law deals with corporate accountability through several Acts.

The Environmental Management Act, 2004, requires companies to have waste management, pollution abatement, and environmental impact assessment plans.[98] The Companies Act[99] allows courts to disregard the corporate shield erected for fraud or public injury, which opens the possibility of corporate responsibility for the environment.[100] More so, the Occupational Health and Safety Act, alongside other

[97] OECD Guidelines for Multinational Enterprises (Latest Revision: 2011, Chapter IV: Human Rights, Paragraph 1
[98] *The Environmental Management* Act, ibid, (n. 17), p.5, s 81, 86, 130
[99] *The Companies Act*, Cap. 212 R.E. 2002
[100] Ibid, s 20, 182

laws about various sectors, places environmental responsibilities on companies, especially in the mining and energy sectors.

Court decisions have also developed the jurisprudence scope of responsibility of corporations. In *Milieudefensie et al. v Royal Dutch Shell*.[101] The Hague District Court determined that Shell did not comply with its human rights obligations regarding climate change and fundamentally shaped the responsibility of corporations regarding greenhouse gas emissions. *Saúl Luciano Lliuya v. RWE AG,*[102] in Germany is another outstanding case. A farmer from Peru has sued a German energy company for what he claims to be their proportionate share of responsibility for historical emissions. Although this litigation is still in progress, it perfectly illustrates an attempt to widen the scope of corporate responsibility, and beyond national boundaries, for climate change damage.

The debate on corporate accountability has also been advanced by other experts who have provided varying definitions and organized frameworks. According to Osofsky, accountability in climate justice includes both political and emission-related responsibilities.[103] This responsibility extends to corporations' emissions and their political influence on climate regulation. Gupta, on the other hand, emphasizes if not the "polluter pays" principle, then at least reparative justice for the disproportionately affected communities.[104]

---

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

[102] *Saúl Luciano Lliuya v. RWE AG,*Case No. 2 O 285/15 Essen Regional Court (2015)

[103] Osofsky, H., 'Multidimensional Governance and the BP Deepwater Horizon Oil Spill' (2011) 63(3) Florida Law Review 1077.

[104] Gupta, J., 'The Global Climate Regime and Access to Justice' in Stephen Humphreys (ed), Human Rights and Climate Change (CUP 2010)

Addressing rights-based climate litigation is equally complex, ingrained within these different approaches. Under traditional CSR approaches, the enforcement of remedies and therefore compliance by the corporation remains elusive. The same happens when looking at the UNGPs and other international instruments, which, while establishing important normative benchmarks, do not contain binding enforcement provisions.

Due to jurisdictional and procedural constraints, domestic legal systems face challenges in holding transnational corporations liable for long-term or diffuse climate-related harms. For example, the High Court of Tanzania, in *Joseph J. Mwaikusa and 2 Others v The Attorney General and Geita Gold Mining Ltd*,[105] dismissed serious pollution claims of the case due to the applicants' lack of standing, failure to exhaust statutory remedies under environmental law, and insufficient evidence linking the alleged harm to the mining company.[106] However, in some jurisdictions, there are judicial shifts that are providing a way for impacted persons to use human rights and climate arguments to legally claim a remedy. Together, these shifts inform the components and reasoning of litigating for corporations to assume responsibility for climate action.

Drawing on these arguments, a synthesized definition of corporate responsibility in rights-based climate action can be articulated as "a legally bound, ethically mandated, and socially instituted obligation of corporations to actively prevent, lessen, and rectify human rights impacts tied to their climate change dysfunction."

[105] *Joseph J. Mwaikusa and 2 Others v The Attorney General and Geita Gold Mining Ltd,* High Court of Tanzania at Mwanza, Miscellaneous Civil Case No. 139 of 2003 (unreported)
[106] Ibid

This explanation highlights the intent of performing adequate due diligence, ensuring transparency, and observing international treaties as well as domestic laws. Also included is a component of legal responsibility, ethical obligation, and organizational responsibility, all fundamental for advancing political climate action as well as defending at-risk groups.

For this study, corporate responsibility will sequentially mean "*the legal and institutional responsibility of corporations based in Tanzania to actively mitigate and provide redress for breaches of environmental and human rights obligations due to their actual or potential contribution to climate change*." This definition of corporate responsibility is pertinent to domestic regulations in Tanzania and international policy frameworks. It seeks optimum coverage as it aligns with the focus of the study with providing legislative solutions to issues of climate change and human rights abuse.

2.2.5 Intergenerational Justice

Addressing justice from an ethical standpoint, intergenerational justice emerges from the issue of whether present generations have obligations not only to fellow living human beings but also to future generations. From this perspective, intergenerational justice means that society at a given point in time must ensure that future citizens are not deprived of certain environmental basics crucial for life.[107] Such fundamentals include fresh water, unpolluted air, clean soil, biodiversity, and the underlying ecosystems essential for sustaining life.

[107] Schwarz, L. '*Intergenerational Justice Starts Now: Recognizing Future Generations in Nuclear Waste Managemen*t' (2022) 31 Zeitschrift für Technikfolgenabschätzung in Theorie und Praxis 37 https://www.tatup.de/index.php/tatup/article/download/6992/11759, [Accessed on 20.04.2025]

Through that lens, Justice avers that past generations also owe a similar obligation to refine the social and environmental liability as well as infrastructural frameworks, resources offered for public use. If these essential resources shrank in number or ceased to exist entirely, society would breach a growing social contract for the unborn. Supplementary principles of justice advanced by Rawls drew their roots in that philosophy. Subsequently paving the way for exploring one's prospects of universal subjection concerning one's time frame, global and domestic citizenship's regard to age.

In the present world, intergenerational justice avows that advanced democracies underline the equal right to use the wealth of a state regardless of the citizen's age.[108] In the context of climate litigation concerning human rights, intergenerational justice aims to protect the rights of future generations from being negatively impacted by present-day economic and industrial activities. It captures the ethical and legal responsibility to conserve vital ecological assets like the climate, living resources, and natural diversity for all, regardless of time.[109]

This idea has been particularly useful in legal battles against climate change, where plaintiffs argue that government inaction or certain business activities transgress the fundamental rights of future generations to a safe and sustainable environment. Under this approach, intergenerational justice provides a legal basis for extending the protection of human rights to individuals who are unable to advocate for themselves.

[108] Schwarz, L. ibid, (n. 113), p. 54
[109] Ibid

Intergenerational justice has historically been understood through cultural and social vectors that have highlighted stewardship and custodianship. For example, many indigenous and agrarian societies intertwine intergenerational responsibilities into social custom, where land and nature are not understood as property but rather as sacred trusts that must be kept for one's descendants.[110] Such practices, although not legally sanctioned, shaped communal policies and practices about the environment. Eventually, as the environmental crises became more acute and as science began to measure the chronic consequences of human activity, this traditional approach started evolving toward more articulated ethical and policy guidelines.

In terms of international law, the principle of intergenerational justice has been recognized in several international instruments. The United Nations Framework Convention on Climate Change (UNFCCC), for example, cites the necessity to protect the climate system for the benefit of present and future generations, which is also a feature of the Rio Declaration on Environment and Development.[111] Additionally, the Paris Agreement associates climate action with equity and the common but differentiated responsibilities approach, therefore, implicitly reaffirming the concern for the rights of future generations.[112]

Several more national constitutions incorporate environmental provisions based on intergenerational equity. Although Tanzania's Constitution does not explicitly

[110] Kawharu, M. "Kaitiakitanga: A Maori Anthropological Perspective of the Maori Socioenvironmental Ethic of Resource Management, (2000) Journal of the Polynesian Society, vol. 110, Issue 4, pp. 349-70.
[111] *Rio Declaration on Environment and Development* (adopted 14 June 1992, UN Doc A/CONF.151/26 (Vol I)) Principle 3.
[112] *The Paris Agreement*, ibid, [n.8], p.2, Art 2 (1)(a)

mention intergenerational justice, it provides a foundational basis for promoting sustainability and equity for future generations, especially through rights-based climate litigation and environmental governance.[113] The concept was notably sustained in case law in *Oposa v. Factoran,*[114] where the Philippine Supreme Court recognized the legal standing of minors as representing future generations in climate litigation. Intergenerational justice is a complex concept to study due to the wide array of explanations offered by various scholars.

A pioneer in international environmental law, Weiss proposed the "planetary trust" principle, arguing that every generation must make sure to protect natural and cultural resources for future generations.[115] In Lawrence's opinion, intergenerational equity is an emerging principle of legal standing and temporal justice that engages with traditional concepts requiring new jurisprudential tools for enforcement.[116] Other scholars like Gosseries and Gardiner have furthered the ethical discourse of climate justice, stating that the absence of concern for the next generations is a direct injustice perpetrated by the present-day policies and institutions.[117]

Perspectives from different disciplines, including the traditional legal paradigm and other scholarly works, highlight the central challenge in rights-based climate litigation concerning someone's ability to represent future persons: robust

[113] *The Constitution of Tanzania*, ibid, [n. 16], p.5, Art 27(1)
[114] *Oposa v. Factoran,* G.R. No. 101083, 1993
[115] Weiss, E.B. 'The Planetary Trust: Conservation and Intergenerational Equity' (1984) 11 Ecology Law Quarterly 495.
[116] Lawrence, P. *'Justice for Future Generations: Climate Change and International Law'* (2014) 1(1) Journal of Environmental Law 1.
[117] Gardiner, S.M. A Perfect Moral Storm: The Ethical Tragedy of Climate Change, Oxford University Press 2011, and Gosseries, A. Intergenerational Justice, Oxford University Press 2009

governance frameworks need to exist to withstand the test of time and irreversible harm or degradation. The difficulty lies not only in accepting the existence of subsequent generations as rights holders, but also in providing them with legal avenues that meaningfully exercise those rights in the present. Bridging the gap by integrating intergenerational justice into litigation strategies enriches human rights advocacy and provides avenues that, morally, constitutionally, and internationally, support a vision of a long-term framework of human rights.

Drawing from this combination of definitions and applications, a coherent conception of justice across generations can be created. This definition encompasses the custodial ethical obligations, legal constructs in national and international law, and even the guarded claims from scholarly literature about equitable temporality in ecological governance. It can be termed as the undue obligation of the current generation to manage, mitigate, and curb environmental harm and climate change in ways that do not adversely impact the health, rights, and well-being of subsequent generations.

For this research, intergenerational justice has been adopted as "*an expression of legal construct bound to rights: the recognition of subsequent generations as implicit rights holders whose interests in the environment must be safeguarded through legislation today*." This definition is relevant because the focus of this research is on climate litigation as a mechanism for enforcing the rights of the environment. Framing the problem this way will establish whether legal instruments available in and outside Tanzania entrench the principles of intergenerational rights and if those principles, through climate litigation, can fulfill the obligations to reserved

environmental rights of future generations. This study has examined and defined several core concepts central to the research, including Rights-based Climate Litigation, Human Rights Protection, State Responsibility, Corporate Accountability, and Intergenerational Justice. Each of these concepts aligns closely with the study's objectives and collectively offers a solid conceptual foundation for addressing the research problem. The relevance and applicability of these selected concepts within the Tanzanian context and broader climate justice discourse affirm their central role in the study. Consequently, the research will adopt and consistently apply these frameworks throughout the analysis. This conceptual framework will not only guide the interpretation of legal and empirical findings but also ensure that the study remains focused and coherent. Concepts that fall outside this scope or demonstrate limited practical relevance will be excluded to maintain conceptual clarity and analytical precision.

2.3 Theories Governing Rights-based Climate Litigation

A strong theoretical framework is essential in situating rights-based climate litigation within Tanzania's legal and socio-political context. It provides the lens through which the study interprets and evaluates the interplay between law, rights, and climate governance. This foundation enhances scholarly rigor, ensures analytical consistency, and guides the development of informed, context-specific legal arguments.

2.3.1 Right to Life and Human Dignity

The Right to Life and Human Dignity theory focuses on the central issues of law and modern human rights, providing a compelling example of how nation-states can be

held accountable in the context of climate change. It emerged from natural law, religiosity, and moral philosophy, and developed because of the historical denial of injustices such as subjugating people to the most unequal existential privileges. It is evident in the philosophy of John Locke and Immanuel Kant, who regarded human life as the most precious gift of all that must be respected.[118]

The terrible violations of human rights internationally and the aftermath of World War II resulted in these moral principles becoming legal obligations codified into law all over the world.[119] This was later documented in the Universal Declaration of Human Rights in 1948, where life and dignity were put at the heart of the human rights philosophy. From then, the theory evolved simultaneously and inevitably, understanding humanity in all ethical, legal, and civic aspects as a fundamental subject that must be protected not just from violence and death, but even more from indignity, oppression, and deprivation.

Out of all the spheres of rights-based climate litigation, the aim of the Right to Life and Human Dignity theory is to shape an adequate argument that demands a civilizational shift in treating nature through legal action.[120] The theory offers an opportunity for especially marginalized and vulnerable victims of environmental harm to argue that their violation poses a threat to their existence and life of dignity. It converts the abstract claims of legal rights into actionable demands by linking climate damage to the breaches of the law of constitutions and international treaties

[118] Tasioulas, J. 'Human Dignity and the Foundations of Human Rights' in Christopher McCrudden (ed), Understanding Human Dignity (Oxford University Press 2012) 291–312.
[119] Henkin, L. The Age of Rights (Columbia University Press 1990) 19–21.
[120] Tasioulas, J. ibid, (n. 124), p. 59

on human rights. Therefore, the theory acts as a normative and legal advocacy framework for climate justice, especially where there is permissive or lax enforcement of laws protecting the environment.

Looking at it from a non-Western angle, the theory has the roots of indigenous and local practices that regard life and human dignity as a pivotal component of societal well-being. In the wide range of African cultures, including that of Tanzania, "utu" or "ubuntu" is the term which describes the dignity of humanity as a value describing not only the being but the social responsibility to protect life in harmony with nature.[121] In this context, they not only feature the practices of sustainable development and management of ecological resources but also acknowledge that ecological destruction threatens human existence and moral structures. Even though these traditional world views have not been practiced or documented, they have shaped community obligations regarding life and dignity before the invention of human laws.

The right to life under international law is found in the International Covenant on Civil and Political Rights (ICCPR), which states that "every human being has the inherent right to life," which is protected by law, and that this right will be protected by the State.[122] Human dignity appears in the Preamble of The Universal Declaration of Human Rights and is further developed in several documents, including the International Covenant on Economic, Social and Cultural Rights (ICESCR).

[121] Mulemi, B.A. '*The Ubuntu and African Identity in the 21st Century'* (2024) 11(7) The International Journal of Humanities and Social Studies https://doi.org/10.24940/THEIJHSS/2023/V11/I7/HS2307-006, Accessed December 26 2024

[122] The International Covenant on Civil and Political Rights (ICCPR), 1966, Article 6

At the regional level, the African Charter on Human and Peoples' Rights recognizes the right to life[123] and dignity[124] as core and indivisible rights. The Constitution of the United Republic of Tanzania provides for the right to life[125]and dignity,[126] which can be used to frame climate change litigation based on human rights theory. This interpretation has been applied in numerous jurisdictions and with many different courts. The High Court of Tanzania in *Festo Balegele and 794 Others v. Dar es Salaam City Council,*[127] held that environmental degradation directly affects the quality of life and health of individuals, thereby violating the right to life as guaranteed under the Constitution, which includes the right to a clean and healthy environment.[128]

Similarly, in the *Urgenda Foundation v. State of the Netherlands* ruling, within Dutch law, the emission policy on climate change dictated by the government was deemed to threaten the lives of the citizens, subsequently warranting judicial escalation for climatic intervention. According to Shelton, depleting the environment requires a dead center focus on human rights concerns, specifically breach of life and dignity, which solidifies the right to life theory into enduring grounds for undertaking climate and environmental advocacy.[129] While writing as a UN Special Rapporteur on human rights and the environment, Knox stated that life and dignity can only truly be enjoyed with a clean, safe, and sustainable healthy

[123] The African Charter, ibid, (n. 75), p. 40, Art 4
[124] Ibid., Art 5
[125] The Constitution of the United Republic of Tanzania, ibid, (n. 16), p.5, Art 14
[126] Ibid, Art 12
[127] *Festo Balegele and 794 Others v. Dar es Salaam City Council,* Miscellaneous Civil Cause No. 90 of 1991, High Court of Tanzania at Dar es Salaam, decided on 3, 1992
[128] The Constitution of Tanzania, ibid., (n. 16), p. 5, Art 14
[129] Shelton, D. L. 'Problems in Environmental Protection and Human Rights: A Human Right to the Environment' (2011) GW Law Faculty Publications & Other Works 1048 https://scholarship.law.gwu.edu/faculty_publications/1048 accessed 20 April 2025.

environment to live in.

Further, Atapattu[130] and Robinson[131] encourage the issue of equity and justice in the fight against climate change and the dignity framework, arguing that legal instruments should approach the issue beyond mere physical presence, but rather consider the erasure of identity, culture, displacement, and marginalization. This body of scholarship underscores the utility of the theory in framing the problem of climate change as a profound core human rights challenge.

All these definitions, traditional, legal, and scholarly, demonstrate the complex nature of the Right to Life and Human Dignity theory and how it can be applied to rights-based climate litigation. Traditional interpretations insist an individual has a life-preserving duty to coexist with nature; The law underscores the responsibility of society to safeguard life and dignity against social evils and violence, including environmental injury; alongside scholarly reflections adding rich texture to the intricate web of values regarding the critical issue of climate change, tells us that these perspectives support the assumption that climate change is a threat not only to environmental equilibrium but to human civilization and its moral and legal structures.

Drawing on these diverse perspectives allows the researcher to propose a unified theory where the Right to Life and Human Dignity emerge as "an encompassing

[130] Tapattu, S. '*Global Climate Change: Can Human Rights (and Human Beings) Survive this Onslaught?*' (2008) 20(1) Colorado Journal of International Environmental Law and Policy 35 https://scholar.law.colorado.edu/celj/vol20/iss1/3/ accessed 20 April 2025.

[131] Robinson, M. 'Position Paper: Human Rights and Climate Justice' (Mary Robinson Foundation – Climate Justice, 27 June 2014) https://www.mrfcj.org/media/pdf/PositionPaperHumanRightsandClimateChange.pdf accessed 20 April 2025.

paradigm defending individuals from harm that endangers their physical existence, their mental state, and their social participation. It acknowledges that the environment is a prerequisite for the realization of all human rights and that dignity encompasses not merely existence but the ability to live in a way that one's autonomy, identity, health, and so on, are afforded respect."[132]

This analysis shifts rhetoric from environmentalism to human rights… This integration makes more sense in the context of climate litigation. In this study, an accepted interpretation of the Right to Life and Human Dignity theory has been a homenized interpretation, a blend of legal, traditional, and scholarly aspects. However, it focuses primarily on the broad conceptual frameworks stemming from international human rights law, progressive jurisprudence, which considers the deterioration of the environment as a violation of human rights. This definition is fitting for the case of Tanzania, where there are constitutional provisions, but judicial activism is lacking. This approach enables espousing claims of legal responsibility to control the consequences of climate change violence on the vulnerable, dominated, and dehumanized people, especially those whose existence hinges on their dignity and life.

2.3.2 Rights to a Healthy Environment

The Right to a Healthy Environment theory underlies the framework of modern environmental law and human rights law. It symbolizes the junction of the protection of nature and humanity, demonstrating an emerging international understanding that the state of the environment is essential for the enjoyment of fundamental human

[132] Similar construction made by Knox, J. H., ibid, [n.65], p. 37

rights.[133] This theory came forth from a growing realization in the twentieth century that the issues of environmental degradation, pollution, and ecological imbalance are not merely scientific and technological problems, but deeply moral and legal questions concerning people's health, dignity, and survival. It became popular with the advancement of international law on the environment and the expansion of the human rights debate after the Stockholm Declaration of 1972, which for the first time recognized the right to a healthy environment as a human right.[134]

The key focus of the Right to a Healthy Environment theory in climate change litigation is to create an investigative and policy framework that enables diverse individuals, groups, and communities to sue states and other corporations for actionable breaches of law that cause or endanger their sub-basic rights. The theory enables litigants to claim that pollution, biodiversity loss, and climate change inaction are more than policy failures; they contravene the litigants' human rights. It strengthens the scope of environmental protection from a mere obligation of a state's discretion into an assertive requirement placed by constitutional, regional, and international law.

This breach attempts to resolve the divided domains of environmental law and human rights law by advancing a comprehensive paradigm of justice for climate harm.[135] Morally speaking, many societies traditionally regard the environment as part of the life of a cherished community that calls for preservation on behalf of both

[133] Boyd, ibid, (n. 67), p 38
[134] United Nations Conference on the Human Environment, Stockholm Declaration on the Human Environment,1972, UN Doc A/CONF.48/14/Rev.1., Principle 1
[135] Turner, S. J. et al., Environmental Rights: The Development of Standards, Cambridge University Press 2019

the living and the coming generations.

In African cosmologies, the environment is not merely a resource; it is a living organism that exists in all aspects of human life and is imbued with a lot of spirituality. Utu in Tanzania or ubuntu in Southern Africa are more than words; they capture a deep truth about people, land, animals, and interconnected ecosystems.[136] There is an esprit of ecological wisdom, rooted in respect, balance, and reciprocity, that such philosophies promote. Such traditional worldviews, though unwritten, civilized legal expressions have existed in long preceded do exist and underscore strikingly universal social responsibilities to protect nature and life as a way of sustaining life and dignity.

These interpretations propose that the right to a healthy environment does not stem from a Western legal framework but rather, it is an active construct that captures indigenous cultural values and heritage. In a legal context, the "Right to a Healthy Environment" is recognized in different international and regional treaties and frameworks. In this regard, the Stockholm Declaration and the Rio Declaration both pronounce that people have a fundamental right to live in an environment which is of such quality as to be conducive to health and well-being. Most recently, in October 2021, the United Nations Human Rights Council acknowledged the right to a clean, healthy, and sustainable environment as a human right in the adoption of Resolution 48/13.[137]

[136] Kalepa, C.J. 'Ubuntu and the Environment: African Traditional Values and Environmental Sustainability' (2015) 23(4) Journal of African Philosophy 112.
[137] United Nations Human Rights Council, The Human Right to a Clean, Healthy and Sustainable Environment (adopted 8 October 2021) UNHRC Res 48/13, UN Doc A/HRC/RES/48/13.

Regionally, the African Charter on Human and Peoples Rights states that "All peoples shall have the right to a general satisfactory environment favourable to their development."[138] From the perspective of domestic jurisdictions, an increasing number of constitutions now include such a right, particularly the Constitution of Kenya in Article 42 and the Constitution of Uganda under the National Objectives and Directive Principles of State Policy, which are neighbours to Tanzania.

Even though the Constitution of Tanzania makes no explicit reference to rights in the environment, the right to life and the duty to protect the environment, often, are treated as such, especially considering environmental laws like the Environmental Management Act.[139] Court interpretation has refined the boundaries of this right. In *Subhash Kumar v. State of Bihar*,[140] the Supreme Court of India concluded that the right to life encompasses the right to live in an environment with water and air free from pollution. The Dutch court in *Urgenda Foundation v. The Netherlands* dictated that because of neglecting action to climate change, the government was in breach of its duty to care under the European Convention on Human Rights which refers to life,[141] and the right to private and family life.[142]

In the context of Tanzania, there has not been a landmark case endorsing the definition of the right to a healthy environment under similar terms but there is a growing acceptance among courts regarding public interest cases that deal with

[138] African Charter (ACHPR), ibid, (n. 75), p. 40, art 24.
[139] Environmental Management Act, ibid, (n. 17), p.5; Constitution of Tanzania, ibid, (n. 16), p. 5, arts 14 and 27.
[140] *Subhash Kumar v State of Bihar* AIR 1991 SC 420 (India).
[141] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (opened for signature 4 November 1950, entered into force 3 September 1953) ETS No 5, art 2
[142] Ibid, Art 8

ecological issues such as in *Festo Ballegele and 794 Others v. Dar Es Salaam City Council*, where the High Court espoused the relevance of environmental quality to the enjoyment of life and health.

There are several interpretations dealing with the implications and the core reasoning of a defined right. Dinah condemns Shelton for arguing that the actual problem at hand in issues of environmental destruction is not solely an ecological problem but rather a deep violation of human rights, especially for those people who are most vulnerable and depend directly on the destruction of ecosystem services for their livelihood.[143] Knox, as the United Nations (UN) Special Rapporteur on Human Rights and the Environment, noted that a safe and healthy environment is needed for the exercise of many other human rights such as life, health, food, water, and housing.[144]

Another UN expert, Boyd, has argued for the recognition of this right, pointing out how it could empower people and spark reform for the environment through law.[145] These contributions highlight the importance of scholarship on the theory's potential to turn rights into actionable legal demands in the context of environmental damage. All these interpretations of the Right to a Healthy Environment spin off from one primary claim: environmental standards are integral to the attainment of human rights. In the realm of rights-based climate lawsuits, this theory is critical to support the claim that climate inertia, overconsumption of fossil fuels, and unsustainable

[143] Shelton, D. 'Human Rights, Environmental Rights, and the Right to Environment' (1991) 28 Stan J Int'l L 103.
[144] Knox, J. ibid, [n. 65], p. 37
[145] Boyd, D.R., ibid, [n.67], p. 38

practices constitute not only policy malpractice but also violations of fundamental human rights. The theory makes it possible to link harm to the environment to legal constructs based on human rights, which enables claimants to use legal systems that are easier to access and more likely to respond than those established for environmental issues.

Additionally, it reframes the scope of ecological justice as an issue of survival, dignity, and distribution, especially important for the Global South, which lacks adequate legal measures to counter deepening ecological crises. Hence, a synthesized perception of the theory is formed, which combines the veneration of nature, obligations in treaties, and other national and sub-national documents like constitutions, along with academic literature, into a single narrative. This narrative posits that the Right to a Healthy Environment is, in essence, a composite human right which includes the right to breathe clean air, drink uncontaminated water, live in unpolluted soil, access healthy ecosystems, and places equal responsibilities on states and non-state entities to safeguard the environment. It concedes that environmental health is fundamental not only to human existence but to human dignity, culture, identity, socio-economic stability, and well-being.[146]

For this study, it is an interpretation of the Right to a Healthy Environment with a focus on legal frameworks established in international texts and advanced legal reasoning. This is ideal in a context like Tanzania, where the lack of an explicit constitutional right requires reliance on passive rights, statutes, and obligations texts.

[146] UN Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* (John H Knox) (24 January 2018) UN Doc A/HRC/37/59, paras 8–10.

This perspective allows for the construction of a legal claim for social responsibility, accountability, redress, or even more profound environmental governance by regarding ecological climate degradation as a breach against the right to life and health. Such an interpretation, simultaneously legally rigorous and normatively rich, is precisely what will inform the study's understanding of climate litigation and attempts to achieve environmental justice in Tanzania.

2.3.3 Right to Access to Information

In the evolving field of rights-based climate litigation, the Right to Access to Information stands out as a foundational theory that enables environmental democracy, accountability, and participation. It represents an important notion that people and communities should have timely information relevant to actively participate in governance and claim their rights in the event of environmental damage.[147] This right can be traced to the broader discourse in human rights, particularly to freedom of expression and the right to know, which gained prominence in the world after the Second World War.

In 1946, the United Nations General Assembly declared, in its very first session, that "freedom of information is a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated.[148] With time, this principle evolved to include not only the right to speak but also the right to receive information, especially concerning the environment and public health. It was

[147] United Nations Economic Commission for Europe (UNECE), *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (Aarhus Convention), arts 1–4.
[148] UNGA Res 59(I) (14 December 1946)

acknowledged during the 1992 Rio Earth Summit, along with a plethora of earlier global environmental movements, which aimed to advance the right to access information and demanded that access to environmental information be recognized as a key component of sustainable development.[149]

The main aim of the theory of the Right to Access to Information as part of rights-based climate litigation is to guarantee that people and communities possess adequate knowledge to understand, contest, and shape the outcomes of decisions made regarding their environment. Climate change deals with intricate datasets, scientific forecasts, and potential policies, and if there is no transparency, these would remain locked away from the average citizen's understanding. Therefore, this theory is crucial for closing the information gap, particularly in the Global South, where structural inequities tend to sideline fragile populations who lack formal power within decision-making structures.

In legal disputes, the right functions as a procedural safeguard that enables substantive determinations: without access to data emissions, environmental assessments, or adaptation schemes, impacted stakeholders cannot prove any injury or responsibility capture. Therefore, information access transcends the role of mere support; it is pivotal to the legal framing of considerable climate responsiveness claims. Judging from this angle, one may find the arch concept of a documented right to seek information somewhat unconventional. yet its spirit lies in indigenous governance structures.

[149] United Nations Conference on Environment and Development (UNCED), *Rio Declaration on Environment and Development* (14 June 1992) UN Doc A/CONF.151/26 (Vol I).

A considerable number of societies in Africa had collective ownership over environmental information relating to weather, soil, and animal behaviour, along with their intergenerational transfer. This body of shared ecological knowledge established the foundations of collective resilience and survival.[150] Knowledge of affian and natal elders endowed with such information held the moral obligation to share pertinent environmental information for the welfare of the community. While these systems were not systematized through laws, they represented a collective right of access to environmental information and monitoring, especially concerning land and resource access.

In essence, these practices illustrate how, in traditional societies, the availability of information, even in different forms, has always been intertwined with environmental governance. On a global scale, the Right to Access Information is protected by several documents. The Rio Declaration[151] proclaims that "dealing with the environment is best accomplished with the full and active participation of all the constituents of the society … Every person shall have the right to access, subject to the provisions of relevant laws, information held by public authorities about the environment.[152]

The Aarhus Convention by the United Nations Economic Commission for Europe, took this further by requiring parties to ensure access to information on the environment, participation in decision-making, and judicial review of legal

[150] Gibson, J.L. 'Land, Tradition and Environmental Knowledge in Africa' (2006) 64(2), *Journal of Modern African Studies* 151.
[151] The Rio Declaration, ibid, (n. 155), p. 70, Principle 10
[152] Ibid,

actions.[153] Though Tanzania is not a party to the Aarhus Convention, it is subject to other international legal commitments under treaties like the International Covenant on Civil and Political Rights (ICCPR) provides that "Everyone shall have the right to hold opinions, and to seek, receive and impart information and ideas indiscriminately."[154]

At the national level, there is the Environmental Management Act, whose provisions include disclosure of information about the environment. The Act gives authority to the Minister to formulate guidelines on the publication of environmental information,[155] whereas it also mandates that Environmental Impact Assessment (EIA) documents should be available to members of the public.[156] In judicial interpretation, access to information related to the environment may have been considered for deciding Tanzania, but there are no express precedents from Tanzania affirming such a right.

There are, however, some decisions from regional courts that can be regarded as progressive. For instance, in *SERAP v Nigeria*,[157] the ECOWAS Court condemned the failure to provide information on oil pollution in the Niger Delta because it was a violation of the right to information and the right to a healthy environment. Access to information facilitates public access to the information necessary to exercise their environmental rights, giving people the chance to participate actively. Smis' claims suggest that such access serves as a "procedural enabler" contributing toward fully

[153] Aarhus Convention, ibid, (n. 153), p. 70
[154] ICCPR), ibid, (n. 128), p. 62, art 19(2).
[155] The EMA, ibid, (n. 17), p.5, s 170
[156] The EMA, ibid, (n. 17), p.5, s 104
[157] *SERAP v Nigeria* (2010) ECW/CCJ/APP/08/09 (ECOWAS Court of Justice).

achieving the rights.[158] Also, Bonine mentions how constitutional silences combined with corporate confidentiality and governmental secrecy create information asymmetries about climate issues, which is known as an important obstacle to achieving environmental justice.[159]

Fisher describes access to information as one more element of ecological constitutionalism, which involves governance of the environment devoid of the predetermined boundaries defined by a political process resulting in a governance of the environment devoid.[160] This is dominantly done through the prescriptive principles of transparency, accountability, and participatory legitimacy. From a legal perspective, Jacqueline Peel discusses the use of information as leverage within climate cases, highlighting the increasing reliance on access to information obligations for establishing legal standing, harm, and remedies.[161]

In this case, the various interpretations capture the essence of information and its role as a fundamental component and highlight its functions as a right and a means to assert other fundamental rights. These distinct meanings capture quite effectively some of the most important and persistent difficulties concerning climate change litigation from a rights-based approach. Affected communities confront a combination of systemic lack of appropriate basic education, information deprivation, and lack of political power.[162] In the absence of accessible information,

[158] S.C. Smis, 'Transparency and Access to Information in Environmental Matters: The Role of International Law' (2013) 7(1) *Erasmus Law Review* 35.
[159] Bonine, J.E. 'Access to Information and the Environment: A Foundation for Environmental Justice' in E. Benvenisti and G. Nolte (eds), *The Welfare State, Globalization, and International Law* (Springer 2004).
[160] Fisher, E. *Environmental Law: A Very Short Introduction* (Oxford University Press 2017) 64–66.
[161] Peel, J. and Osofsky, ibid, (n. 64), p. 37,
[162] Adelman, S. and Lewis, B. 'Symposium Foreword: Rights-Based Approaches to Climate Change'

be it about carbon emissions, budgetary allocations for adaptation, or disaster readiness plans, they are stripped of practically all power. This absence of a legal framework to govern their ability to exercise climate action creates fundamental hurdles to pursuing claims, causing a blockage that retroactively removes frames of justice, eroding justice. Viewed from any framework, traditional, legal, or scholarly, access to information comes as a fundamental right regarding environmental accountability, justice, and participation.[163] Within climate litigation, it forms an evidential basis upon which claims of harm, risk, and state failure are made.

Consequently, this blending of concepts alludes to the Access to Information right theory as a multi-faceted one, tracing its origins to rooted customs of information sharing within a society; consolidated into domestic and international legal systems; showcased in scholarly works as a construct of environmental justice, biology, and ecology; and developed informally as propounded in scholarly literature. Its application pertains to the right to request and receive relevant environmental information, adequate procedures for transparency, and positive political commitment to governance that is inclusive. Not only does it pertain to climate litigation, but serves purposes that make citizens understand, act, and demand accountability for climate-related harms.

In this context, the focus has been on the interpretation of the Access to Information Right framed within international law on the environment and supported by the statutory law of Tanzania. This is justified by the focus of the research, which is on

---

(2018) 7 *Transnational Environmental Law* 9 https://eprints.qut.edu.au/116774/, Accessed on 20/6/2025].

[163] Boyd, D.R. ibid, [n. 67], p. 38

rights-based climate litigation that is grounded in formal legal frameworks where laws and treaties create binding obligations. Regarding the theory's explanation, the study adopts a legalistic yet integrative approach to evaluate if the legal system in Tanzania offers sufficient informatic power for citizens to command the state and polluters on climate issues. This definition advances the study's aims by providing an operational guide to gauge the level of governance concerning accountability within the management of climate issues in Tanzania.

2.3.4 Common but Differentiated Responsibilities

Common but differentiated responsibilities (CBDR) is one of the fundamental principles of international environmental law, particularly concerning climate governance and global initiatives aimed at tackling climate change. Broadly speaking, CBDR denotes acknowledgement that while all states have a responsibility to mitigate the environmental degradation, they do not equally bear the blame for its genesis and therefore should not at the same level be apportioned the burden for addressing it.[164]

The theory first emerged in international discourse in the early 1990s, most notably in the Rio Declaration on Environment and Development. of the declaration claimed, "States have common but differentiated responsibilities,"[165] which fundamentally highlights the fact that created windows of opportunity must reflect historical context, especially the ones and for developed countries, to contemporary solution crafting.[166] In rights-based climate litigation, CBDR theory aims to design a structure

[164] Rajamani, L. ibid, (n. 96), p. 47,
[165] *Rio Declaration*, ibid, (n. 155), p. 70, Principle 7
[166] Rajamani, L. ibid, (n. 96), p. 47

that incorporates elements of fairness and justice concerning legal redress for climate-related damages. It attempts to orchestrate universal collective action and the unequal capacities and responsibilities of disparate nations in such a way that shields those least responsible, usually the most vulnerable populations in developing countries, from being disproportionately burdened with its impacts. In rights-based litigation, the theory assists courts and litigants to appreciate not only the global scope of environmental rights but also the varying legal responsibilities of nations and businesses in relation to their environment and finances.

From a non-legal viewpoint, the origins of CBDR may be found in ethical and philosophical traditions focusing on justice and equitable distribution of responsibility. The longstanding equity principle described in both Western and non-Western civilizations suggests that justice often entails treating unequals differently. Many cultures have recognized that it is those who cause harm who are more responsible for dealing with issues. This stance tends to coincide with that of many indigenous communal systems that regard the environment, which primarily emphasizes the responsibility to act according to one's ability regarding land.[167] This principle has been integrated into international law through several treaties and agreements.

In addition to the Rio Declaration, it is also the United Nations Framework Convention on Climate Change (UNFCCC), which states that "Parties should…protect the climate system for the benefit of present and future

[167] Bodansky, D. 'The United Nations Climate Change Regime Thirty Years On: A Retrospective and Assessment' (2023) 53(1) *Environmental Policy and Law* https://doi.org/10.3233/EPL-219047, Accessed on 17.5.2025

generations… based on equity and by their common but differentiated responsibilities and respective capabilities."[168] This was further strengthened in the Kyoto Protocol, which imposed binding emissions reduction targets solely on developed nations.

The 2015 Paris Agreement retained the principle of CBDR, while adding adaptability by stating 'in the light of different national circumstances' common but differentiating responsibilities and respective capabilities.'[169] Some subnational governments have begun using CBDR concepts in environmental law and climate policy, albeit without uniform legal standards, some with explicit legal frameworks. In legal practice, although courts have been slow to actively apply CBDR as an authoritative norm, there is emerging recognition of differentiated obligations in environmental law, especially in the Global South. A good example is the Pakistan Supreme Court decision in *Asghar Leghari v Federation of Pakistan*, where the court accepted the claim that the state has sovereign obligations arising from climate impacts under equity and justice concepts, effectively applying CBDR reasoning.

The very concept of CBDR has been heavily examined and intensely debated by scholars. Some researchers consider it a principle of distributive justice that is necessary for sustaining legitimacy in international climate governance. Others regard it as a political middle ground or a compromise between the global North and South due to political necessity. For instance, Rajamani describes CBDR as serving a "foundational equity principle" that reconciles the moral appeal of responsibility

[168] *Rio Declaration*, ibid, (n. 155), p. 70, Art 3
[169] *Paris Agreement*, ibid, [n.8], p.2, Art 2(2).

with more legalistic notions of obligation.[170] Bodansky emphasizes, as well, its consensus-building nature focused on pragmatic solutions, even if the legal content is quite vague.[171]

All these strands of interpretations, ethical, legal, and scholarly, focus on addressing the core issue in rights-based climate litigation of concern for the most vulnerable: climate harms inflicted by emissions deemed historical and ongoing. In demand of remedies for rights violations, especially in the Global South, CBDR offers a moral framework and legal reasoning for heightened responsibility attributed to more industrialized countries. It bolsters claims that developed countries, and significant emitters, have not just an obligation to mitigate emission reductions, but also to aid in adapting and building resilience in these countries.

The integration of different definitions, it is possible to suggests that CBDR represents a principle of greater environmental justice that incorporates ethical obligation, legal difference, and practical application in response to unjust disparities in environmental burdens. It asserts that while actors equally share a responsibility to address climate change, such responsibility should be examined considering historical emissions, current capacity, and future developmental interests. This synthesized interpretation integrates CBDR into the broader understanding of climate justice and rights-based litigation, allowing distribution of legal responsibility to be just within defined boundaries. For narrowing down the theory of CBDR to be applied in this study, the definition framed under international legal

[170] Rajamani, L. ibid, (n. 96), p. 47
[171] Bodansky, D. Ibid, [n.173], p. 77

instruments stands out as the most relevant, particularly those of the UNFCCC and the Paris Agreement, supplemented with scholarly works casting CBDR as equity and justice.[172]

This interpretation was preferred because it furthers arguments in climate litigation based on human rights within a robust legal framework while being forgiving enough for practical circumstances in lower courts. It complements the primary focus of this study, which seeks to evaluate the potential of differentiated legal obligations in the enforcement of environmental human rights in jurisdictions most vulnerable to the impacts of climate change. In this context, CBDR transforms from merely a political doctrine into a substantive principle of climate justice capable of being enacted in legal disputes.

The theoretical framework adopted in this study, encompassing the Right to Life and Human Dignity, the Right to a Healthy Environment, the Right to Access to Information, and the principle of Common but Differentiated Responsibilities, forms a solid foundation for understanding and analyzing the legal and human rights dimensions of the research problem. These theories not only align closely with the study's objectives but also offer robust applicability within the specific context under investigation. Anchoring the analysis in these well-established concepts, the study ensures a coherent and focused approach. Consequently, alternative or conflicting theories that fall short in relevance or practical significance to the issues at hand have been deliberately set aside to maintain analytical clarity and depth.

---

[172] Paris Agreement**,** ibid, (n. 8), p. 2, Art 2(2) and L. Rajamani, ibid, (n. 96), p. 47, these sources collectively reinforce the legal and conceptual framing of CBDR as both a binding principle and a tool for equity in international climate law.

2.4 Conclusion

This chapter has laid the essential groundwork for the study by examining the key concepts and theories that frame the discourse on rights-based climate litigation. The concepts discussed, including Rights-based Climate Litigation, Human Rights Protection, State Responsibility, Corporate Accountability, and Intergenerational Justice, are central to understanding environmental justice and climate governance's complex legal and normative dimensions. These concepts provide the necessary analytical tools to assess the obligations of states and other actors in safeguarding human and environmental rights in the face of climate change. In addition to these conceptual foundations, the theoretical framework adopted in this study offers a comprehensive lens for engaging with the research problem.

The theories of the Right to Life and Human Dignity, the Right to a Healthy Environment, the Right to Access to Information, and the principle of Common but Differentiated Responsibilities have been selected for their strong alignment with the study's objectives and contextual relevance. These theories not only embody the normative underpinnings of climate justice but also reflect evolving standards of state and corporate accountability within both international and domestic legal regimes. Accordingly, the study is guided by these selected theories, as they offer the most coherent and applicable framework for interpreting state obligations, assessing the justiciability of environmental rights, and evaluating the efficacy of legal responses to climate harms.

The integration of these theories ensures a focused, rights-oriented analysis throughout the research. Conflicting or less applicable theories have been

deliberately set aside due to their limited relevance or inability to adequately address the core legal and human rights issues under investigation. As the study progresses, the concepts and theories identified in this chapter serve as the normative compass for evaluating Tanzania's legal framework and its responsiveness to rights-based climate claims.

CHAPTER THREE

INTERNATIONAL AND REGIONAL DEVELOPMENTS IN RIGHTS-BASED CLIMATE LITIGATION AND THEIR RELEVANCE TO TANZANIA'S LEGAL CONTEXT

3.1 Introduction

This chapter builds upon the conceptual and theoretical components of rights-based climate litigation presented in the previous chapter, focusing on how international and regional legal frameworks support or hinder rights-based climate litigation. Climate change presents a profound challenge to the protection and fulfillment of fundamental human rights, prompting the emergence of rights-based litigation as a key legal strategy.

This chapter explores how international and regional legal frameworks have facilitated or constrained such litigation efforts, with a particular focus on the role of human rights law. It examines international treaties like the UNFCCC[173] and the Paris Agreement[174] alongside human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR)[175] and the African Charter on Human and Peoples' Rights.[176]

Regional and international tribunals have increasingly interpreted state obligations in the context of climate change, thereby influencing national legal developments. This analysis provides a critical foundation for understanding how global legal norms

[173] UNFCCC, ibid, [n. 6], p. 2
[174] *The Paris Agreement*, Ibid, [n. 8], p. 2
[175] The ICCPR, ibid, [n. 128], p. 62
[176] The ACHPR, ibid, [n. 75], p. 40

shape the prospects of rights-based climate litigation, particularly in jurisdictions such as Tanzania, where such frameworks may guide domestic judicial reasoning and policy formulation.

3.2 Evolution of Climate Litigation Through a Human Rights Lens

Initially conceived within the framework of environmental regulation, climate litigation has progressively evolved to adopt a distinctly human rights-oriented approach. This shift indicates increased acknowledgment that climate change places an immense threat to the enjoyment of some of the most basic and important rights, like the right to life, health, and adequate living conditions. This development was fuelled by scientific advances, active advocacy, and greater global acceptance of the intersection of human rights and environmental protection.[177] This part attempts to document this crucial shift, capturing important milestones and the driving forces, as well as the challenges experienced in the development of rights-based climate litigation.

3.2.1 Historical Background of Climate Litigation

The scope of climate litigation has continuously evolved over the decades, shifting from a traditional focus on environmental legal frameworks to a more inclusive focus on human rights issues.[178] To understand this evolution requires tracing the origins of climate-related litigation efforts that began with a focus on the enforcement of pollution control, environmental protection, and regulatory

[177] Setzer, J., and Higham, C., Global Trends in Climate Change Litigation: 2023 Snapshot (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science 2023) 7–9.
[178] Ibid

frameworks within the domestic law systems. The first wave of climate-related litigation emerged in the 1990s to the early 2000s. It heavily relied on protectionist environmental statutes as opposed to constitutional provisions or human rights frameworks.[179] This first wave relied on Statutory Instruments such as provisions concerning legal pollution, natural resources, land use, and Environmental Impact Assessments (EIAs) for the filing of these cases. These legal actions were frequently brought against corporate and government bodies considered violators of legal environmental standards or active participants in ecologically harmful activities.

Take, for example, the United States, where the Clean Air Act was a significant enabling statute. A landmark case was *Massachusetts v. Environmental Protection Agency,*[180] where, for the first time, States and environmental groups were enforced. The plaintiff sued in equity to restrain the administrator of the Environmental Protection Agency, together with states and environmental activists, to compel the EPA to enforce the already legally defined mandate of managing GHG emissions as air pollution.[181] While the ruling had tremendous impacts, its focus was constrained by the human rights narrative.

Likewise, in India, environmental litigation developed through Public Interest Litigation (PIL) under the Indian Constitution.[182] In the case of *M.C. Mehta v. Union of India*,[183] the Supreme Court addressed issues related to industrial pollution and environmental degradation as a constitutional obligation toward the

[179] Setzer, J., and Higham, C., Ibid, [n. 182]
[180] *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007)
[181] Ibid
[182] The Indian Constitution, 1950, Art 32 and 226
[183] *M.C. Mehta v. Union of India*, (1987 AIR 1086)

environment, while civic duties and stewardship obligations prevailed, and climate-specific or rights-based duties were acknowledged only briefly.

In Tanzania, litigation on environmental harms was conducted under multiple laws, including sector-specific ones such as the Town and Country Planning Ordinance,[184] the Local Government (Urban Authorities) Act,[185] the Public Health Act,[186] and the now-repealed Forest Ordinance.[187] These legal provisions did not directly confront climate change or greenhouse gas emissions, yet these statutes empowered citizens to contest any activities that could potentially injure the ecological balance, public health, or urban cleanliness. In any case, such laws created an opportunity for civic participation and activism as well as for the protection of the environment, which could encourage future litigation aimed at climate change.

A benchmark case in the above line of thought is also *Festo Balegele and 794 Others v. Dar es Salaam City Council*.[188] The plaintiffs sought to challenge the decision of the City Council to allow the construction of a waste dumping site within residential suburbs of Kunduchi. They alleged that the proposed waste dumping site would pollute and cause harm to the residents surrounding it. Justice Lugakingira, the presiding judge of the High Court, accepted an injunction against the project and emphasized the need for people to get involved as well as the need for ecological safeguarding.[189]

---

[184] *The Town and Country Planning Ordinance*, Cap. 378 (Repealed)
[185] *The Local Government (Urban Authorities) Act*, Cap. 288, R.E. 2023
[186] *The Public Health Act*, Cap. 152, R.E. 2023
[187] *The Forest Ordinance*, Cap. 389 (repealed).
[188] *Festo Balegele and 794 Others case, ibid, (n. 133), p. 61*
[189] Justice Lugakingira, "Environmental Protection and the Judiciary: Tanzanian Perspective," (1995) UDSM Law Review

While this ruling did not refer to climate change, it did speak to fundamental rights, precautionary principles, and social justice, asserts that today serve as the foundation for climate litigation in other parts of the world. Most importantly, this case fully opened the floodgates for public interest litigation in Tanzania and accepted that environmental rights can be legally enforced. Similarly, in *Joseph Kessy v. Dar es Salaam City Council*,[190] the High Court delivered a judgment overturning a decision of the municipality which unauthorized the dumping of refuse within residential areas indiscriminately.

The above ruling has emphasized the protection of the environment and public health by the state. However, these initial attempts had their shortcomings. The statutes pertained to more regional aspects of environmental deterioration, such as pollution, sanitation, and city planning, but did not include more systemic concerns like deforestation or carbon output. In addition, they did not incorporate any human rights frameworks, which is rather common in contemporary climate legal battles. Most courts did not have the means to determine causation through scientific means, which resulted in local damage being inflicted through the climate change prism, therefore restricting courts from dealing with climate harm adjudication directly.[191]

The above cases framed the environmental and carbon emission problems as technical contraventions of legal frameworks, considering upstream regulations and avoiding describing them as breaches of fundamental rights to life, health, water, or

[190] *Joseph D. Kessy and Others case, ibid, (n. 83), p. 43*

[191] In the *Native Village of Kivalina v. ExxonMobil Corp.* 696 F.3d 849 (9th Cir. 2012), cert denied 133 S. Ct. 2390 (2013, the court dismissed the case, stating that the plaintiffs could not establish clear **causation** between the defendants' emissions and the specific local harm suffered.

habitation. The legal system and the practitioners were too hesitant or ill-prepared to make the case that GHG emissions could infringe on rights. In addition, international agreements like the United Nations Framework Convention on Climate Change (UNFCCC) in 1992 and the Kyoto Protocol in 1997 focused on the state's obligation to control emissions, monitor environmental damage, and reduce emissions without allowing individual claims or a rights-based framework. These instruments emphasized "common but differentiated responsibilities," which do not provide enforceable human rights frameworks.

Even with these attempts, a range of legal and procedural issues stunted the development of effective early climate litigation. Standing emerged as a significant barrier because the plaintiffs were required to show individualized and direct harm, and courts were often unwilling to acknowledge vague or diffuse environmental interests as adequate for granting standing. In *Lujan v. Defenders of Wildlife*,[192] for example, the U.S. Supreme Court denied standing because the alleged harm was too vague. Causation, too, emerged as an imposing hurdle; plaintiffs struggled with the requirement to prove a direct connection between specific emissions and certain climate change-related harms.

The High Court of Tanzania in *Rev. Christopher Mtikila v. The Attorney General*[193] rejected the application based on a lack of standing, maintaining a restrictive approach to the common law rule of standing in Tanzania. The case reflected judicial conservatism on standing that characterized many early public interest and

[192] *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)
[193] *Rev. Christopher Mtikila v. The Attorney General*, [1995] TLR 31 (HC)

environmental cases in Tanzania. These issues were compounded by the global and accretive nature of climate change, the scientific intricacy of localized impacts, and the judicial dismissal of these issues as speculative or non-justiciable.

Furthermore, the poor international and domestic enforcement of environmental standards restricted litigation boundaries. International treaties tended to impose soft law obligations without effective enforcement systems or the right for individuals to file complaints. Domestic laws were often limited to procedural remedies, such as EIAs or public consultations, while failing to offer substantive commitments to emissions curtailment or reparations for climate damage. Courts, focusing on national interests and development objectives, typically refrained from granting strong injunctive relief against governmental policies or other infrastructural projects of national importance.

Therefore, the first phases of climate litigation retained a unified width and depth. The absence of moral zeal and normative rigor that defines contemporary movements for climate justice can be traced to the fearsome constraints of standing, causation, and scant legal enforcement.[194] While environmental law and policy covered some of the ecological concerns to serve as a justification to address them, social and ethical dimensions of claims grounded in civilizational justice or human rights were non-existent, and legal efforts toward the redress of such paternalistic ecosystems were barred.[195] The struggles of these cases set the context for the evolution towards a more effective approach to climate change litigation, which

[194] Peel and Osofsky, ibid, [n. 63], p. 37
[195] Humphreys, S. (ed), Human Rights and Climate Change (Cambridge University Press 2010) ch 2.

embraces concepts of law grounded in justice and moral empathy, igniting strategies focused on accountability and dignity.[196]

3.2.2 Emergence of Human Rights Framing

The framing of climate change harms as violations of fundamental human rights marks a decisive evolution in the field of climate litigation. This shift from a predominantly regulatory or administrative legal strategy to a rights-based approach reflects a growing recognition that the effects of climate change, such as rising sea levels, extreme weather events, and loss of livelihoods, are not merely environmental issues but direct threats to the rights to life, health, food, water, housing, and cultural identity. The UN Special Rapporteur outlines how courts are becoming more sympathetic to the notion that the failure to take adequate steps to mitigate climate change, or actively harmful policies implemented by states and corporations, can amount to profound human rights infringements.[197] This change in legal thinking has strengthened the moral and political efficacy of climate action.

The landmark case of *Urgenda Foundation v. The State of the Netherlands*[198] represents a pivotal moment in legal history, establishing that the Dutch government has a legal obligation to reduce greenhouse gas emissions as part of its duty to protect citizens from the risks associated with climate change. This case's significance stems from the fact that the Dutch District Court recognized that failure to take climate change action (typically exercised by states) does incur the violation

[196] Setzer, J., and Higham, C., ibid, [n. 183], p. 83
[197] UN Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change (Ian Fry) (15 June 2023) UN Doc A/HRC/53/25, paras 16–20.
[198] *Urgenda Foundation case, ibid, (n. 58), p. 35*

of ECHR encompassing a lawful existence and private and family life.[199] The ruling was also supported in 2019 by the Dutch Supreme Court,[200] which set an international precedent as the first unilateral case where a state is bound by law concerning defined emission levels through human rights law. This decision sparked the beginning of the so-called climate wars across the world.

Initiatives by other nations has since the Netherlands has been regarded as polarizing climate litigation ideal Lees and Gjaldbæk-Sverdrup identify such phenomena in a controlled paradigm as human rights- where domestic courts apply what can best be termed 'de-territorialized' sets of rights' markings on a nation's legal system to tackle challenges within climate justice using locally determined authoritative means.[201] Such "self-constitutionalism" advances coactive deployment of human rights on a global scale whilst permitting case-specific divergence within a region, a pluralistic approach reinforcing the credibility of the case for climate justice arguments.

Climate change litigation based on rights has been especially effective in climate-induced migration, which involves the complete or partial displacement of entire populations due to processes such as desertification or sea level rise. Serraglio et al. track the development of case law chronologically, pointing out the departure from protective general provisions toward more compassionate advocacy for the displaced

[199] *European Convention (ECHR*), ibid, (n. 147), 67, Art 2 & 8.
[200] Supreme Court of the Netherlands, ECLI:NL:HR:2019:2007.
[201] Lees, E. and Gjaldbæk-Sverdrup, E. 'Fuzzy Universality in Climate Change Litigation' [2024] Transnational Environmental Law 1 https://www.cambridge.org/core/services/aop-cambridge-core/content/view/801F90CB801C3D932799C6200F46C224/S2047102524000141a.pdf/div-class-title-fuzzy-universality-in-climate-change-litigation-div.pdf, [Accessed on 29.04.2025]

populations.[202] This approach has identified gaps in international refugee law and highlighted the underlying deficits in legal solutions that give meaningful attention to environmental displacement within human rights frameworks. This type of judicial creativity is not limited to Europe. The case of *Leghari v. Federation of Pakistan*[203] exemplifies this.

The Lahore High Court found in favour of a farmer who filed a case against the government for not implementing climate adaptation policies. The court based its ruling, the first of its kind in Pakistan, on constitutional provisions about the right to life and dignity under the Constitution of Pakistan.[204] The court reasoned that these should be read alongside the country's obligations under the UN Framework Convention on Climate Change (UNFCCC) and the National Climate Change Policy. This case represented significant progress in the deepening discourse around human rights through the climate change lens in developing countries.

In Canada, Benjamin and Seck studied the increasing use of the Canadian Charter of Rights and Freedoms in Canadian climate litigation, especially those cases that portray environmental procedural rights as embedded within the broader life and security provided under the Charter.[205] This development captures a global pattern where claimants litigate constitutional and international rights not merely as ethical reasoning but as entitlements with legal standing that engage state responsibility.

---

[202] Serraglio, D.A. et al., *'The Multi-Dimensional Emergence of Climate-Induced Migrants in Rights-Based Litigation in the Global South*' [2024] Journal of Human Rights Practice

[203] *Leghari case, ibid, (n. 60), p. 36*

[204] *Constitution of Pakistan, 1973,* Arts 9 & 14.

[205] Benjamin, L. and Seck, S.L. '*Mapping Human Rights-Based Climate Litigation in Canada'* (2022) 13 Journal of qualitative research in *tourism* https://doi.org/10.4337/jhre.2022.01.08, [Accessed on 29.04.2025]

Further developments in international law reinforce this trend. The 2015 Paris Agreement is often criticized for its lack of enforceability by individuals; however, its preamble acknowledges the importance of human rights, urging parties to respect, promote, and consider their human rights obligations when addressing climate change."[206] Legal scholars like Peel and Osofsky have argued that this wording is illustrative of the emerging normative gap between climate governance and international human rights law, even with their insufficient enforcement provisions at the international level.[207]

Additionally, Luhandjula highlighted inter-regional and international legal systems, which include the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights, as key actors in the networks that connect climate change impacts to human rights abuses.[208] These actors are important participants in addressing the enforcement gap created by the soft law paradigm of climate instruments such as the UNFCCC and the Kyoto Protocol, which do not provide for a locus standi, hence, heavily depend on state discretion devoid of mechanisms for accountability.

Nonetheless, this remains an evolving area. Rights-based climate litigation continues to grapple with complex challenges such as causation, extraterritorial application, and justiciability. For instance, establishing causation poses significant difficulties, as courts may struggle to attribute specific harms to sources within the

[206] *Paris Agreement*, ibid, (n. 8), p. 2, the Preamble.
[207] Peel, J. and Osofsky, H.A., ibid, [n. 64], p. 37
[208] Luhandjula, Y. 'Bridging the Gaps Between Human Rights and Climate Governance at the International and Regional Judicial Spheres' [2023] *Southern African Public Law*

broader context of climate change governance.[209] Despite these obstacles, the shift toward a human rights framework has significantly enriched the discourse by reframing climate litigation around principles of justice, human dignity, and accountability, values that carry deep ethical and legal significance.

Generally, the incorporation of human rights into climate litigation marks a significant legal and strategic development. It transcends traditional barriers such as technical compliance, procedural hurdles, and bureaucratic constraints by framing climate-related harm as a violation of fundamental, non-derogable rights. Landmark cases, from *Urgenda* to *Leghari*, have contributed to the emergence of a transnational legal framework that anchors environmental harm within the broader context of human dignity and state responsibility. As this jurisprudential approach gains traction among courts and international norms continue to evolve in its favor, the potential for more effective legal remedies and proactive measures to address the climate crisis is substantially enhanced.

3.3 Key Drivers Behind the Shift

3.3.1 International Legal Frameworks and Standards

(i) The Role of the United Nations Human Rights System

The growing recognition of the intersection between climate change and human rights in international legal discourse is largely attributed to the sustained efforts and evolving practices of the United Nations (UN) human rights system. This normative shift has been catalyzed by institutional developments within key UN bodies, including the Human Rights Council (HRC) and the Office of the High

[209] Peel, J. and Osofsky, H.A., ibid, pp. 48-52

Commissioner for Human Rights (OHCHR), alongside the influential work of UN Special Rapporteurs.[210] These actors have collectively redefined the international legal landscape by embedding environmental protection, particularly in the context of climate change, within the framework of human rights law.

The Human Rights Council has played a central role in articulating the human rights dimensions of environmental harm and climate change. In 2008, the HRC adopted a Resolution titled *"*Human rights and climate change,*"* which was the first formal recognition of the link between climate change and the enjoyment of human rights.[211] It acknowledged that climate change "poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights. This recognition facilitated subsequent resolution adoption, like Resolution 10/4 (2009) or Resolution 18/22, which deepens the consideration of the consequences of climate change on various rights.[212]

These resolutions indicated a departure from seeing environmental destruction solely as an ecological issue and instead as a pressing problem for human rights. The dialogue has greatly benefited from the OHCHR's input due to robust analytical work. The 2015 report by the OHCHR was particularly notable for asserting that climate change impacts numerous human rights, including life, health, food, water, housing, and self-determination.[213] It stressed that, under international human rights

[210] UN Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 2018, UN Doc A/HRC/37/59, paras 5–12.
[211] UN Human Rights Council, Resolution 7/23: Human Rights and Climate Change, A/HRC/RES/7/23 (2008).
[212] UN Human Rights Council, Resolution 10/4: Human Rights and Climate Change, A/HRC/RES/10/4 (2009).
[213] OHCHR, Analytical Study on the Relationship between Climate Change and the Human Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, A/HRC/32/23

law, countries have positive duties to mitigate climate change-related harms that can be reasonably anticipated. This position was enhanced in the OHCHR's "Key Messages on Human Rights and Climate Change," which advanced the argument by identifying five tenets: climate change hampers rights enjoyment; human rights can aid climate policy; the most vulnerable need protection; there are rights to remedies and accountability; and collaboration is essential.[214]

Alongside these institutional developments, several UN Special Rapporteurs have profoundly impacted the intersection of human rights and environmental law. Knox, as the first Special Rapporteur on human rights and the environment, was influential in developing the legal justification for this combination.[215] His Framework Principles on Human Rights and the Environment delineated the basic prerequisites at the international level. It describes the procedural and substantive obligations of states regarding the protection of the environment. The first of these principles states that 'every person' is entitled to 'live in an environment that is clean, healthy, and sustainably managed,' illustrating a powerful point that environmental protection should legally be treated as a right.[216]

Developing Knox's work, his successor, Boyd, promoted the case for a right to a healthy environment even more, which eventually led to the adoption of HRC Res 48/13 in 2021. While the resolution is nonbinding and does not impose legal

---

(2015).

[214] OHCHR, Key Messages on Human Rights and Climate Change (2015), extracted from https://www.un.org/esa/ffd/wp-content/uploads/sites/2/2015/05/OHCHR_Key-Messages_21APR2015.pdf, Accessed on 6th June 2025

[215] UN Special Rapporteur John H. Knox, ibid, (n. 216), p. 93

[216] UN Human Rights Council, *Resolution 48/13, ibid, (n. 143), p. 66*

obligations, it constitutes an important advancement in soft law. That resolution, for the first time under the UN framework, acknowledged the right to a clean, healthy and sustainable environment.[217]

Although the resolution lacks direct enforcement measures, it has normative value and may influence how treaties, national legal systems, and customary international law are interpreted and used on the ground. Those developments which are motivated by human rights concerns have also been integrated into the global governance frameworks for climate change. The Preamble of the Paris Agreement is an example here where it obliges state parties to "have regard to their respective obligations on human rights" while dealing with climate change.[218] Although no operative clauses of the Agreement contain comprehensive frameworks of human rights, the Preamble's wording showcases the impact of UN human rights agencies on the norms and practices related to the environment and climate.

The cumulative impact of these institutional efforts is a profound normative gap that is the basis of rights-centric climate litigation and policy development. Repositioning the narrative surrounding climate attention to the enforcement of basic human rights, the UN system strengthens the position of individuals as well as civil society groups to hold states accountable through law and morality. Such an approach reinforces the legal primacy of fundamental human rights documents like the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which have asserted an

[217] Ibid
[218] The *Paris Agreement*, ibid, (n. 8), p. 2

environmental dimension tied to the rights of life, health, and living standards.[219] As these new benchmarks emerge, the importance of UN human rights bodies in establishing equitable climate governance paradigms based on justice, accountability, and dignity remains crucial. Their continuous work not only acts as a moral compass but is also shapes the legal frameworks that underpin the climate law developing at domestic and international jurisdictions.

(ii) The Role of the UNFCCC and the Paris Agreement–Human Rights Interface

The international climate regime, particularly through the United Nations Framework Convention on Climate Change (UNFCCC) and its subsidiary instrument, the Paris Agreement, has significantly reshaped the landscape of global environmental governance by gradually integrating human rights considerations into its framework. Initially focused on emissions mitigation, adaptation, and climate finance, the regime has evolved to encompass broader socio-legal concerns, placing human rights at the core of climate discourse and action.[220] This normative progression has established a foundation for rights-based climate litigation and policymaking, thereby embedding ethical and legal imperatives into environmental governance.

The UNFCCC's establishment in 1992 marked the start of collective efforts to address climate change.[221] Its central goal is to consolidate the concentration of

[219] Human Rights Committee, *General Comment No. 36: Article 6 (Right to Life)*, CCPR/C/GC/36 (2018), and Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, E/C.12/2000/4 (2000).

[220] UN Human Rights Council, Analytical Study on the Relationship Between Climate Change and the Full and Effective Enjoyment of the Rights of the Child (4 May 2017) UN Doc A/HRC/35/13, paras 8–15.

[221] UNFCCC, ibid, (n. 6), p. 2

greenhouse gases to avoid dangerous anthropogenic interference with the climate.[222] Although the Convention does not directly mention human rights, it does capture them indirectly in the preamble regarding the vulnerability of developing countries and the needs of future generations, actual living rights. These quotations opened doors to the slow insertion of explicit human rights wording in the framework's future climate governing policies. This policy shift reached new heights in Cancun with COP16 and the adoption of Decision 1/CP.16, where the necessity of incorporating human rights into climate action was recognized.[223]

Even though it does not have legal force, the statement that "Parties should, in all climate change-related actions, fully respect human rights" added a distinctly anthropocentric element to the climate regime. This contributed to the attempt to further integrate international human rights law into the climate change action framework. The formal links between climate action and human rights were profoundly shifted in 2016 with the adoption of the Paris Agreement at COP21 in 2015, which became effective in 2016.[224]

Its operative parts mostly deal with technical aspects of the Agreement, such as Nationally Determined Contributions (NDCs), mitigation, and climate finance, but the preamble includes a groundbreaking recognition of human rights. It provides a 'without prejudice' guarantee that the state parties, in responding to climate change, shall respect, promote, and have due regard to the obligations of protecting human

[222] Ibid., Art 2
[223] UNFCCC, Decision 1/CP.16: Cancun Agreements, FCCC/CP/2010/7/Add.1 (2010).
[224] The Paris Agreement, ibid, [n. 8], p.2, - Although this clause is located in the Preamble, which does not have binding legal force, it introduced a groundbreaking human rights dimension into international climate law.

rights, including those of indigenous peoples, migrants, children, persons with disabilities, and other vulnerable groups.[225] Even if preambular clauses do not create enforceable obligations, they can, in international law, especially the Vienna Convention on the Law of Treaties, be used as clarifying statements that indicate the purposes of the treaty and its normative framework.[226]

The inclusion of human rights in the Paris Agreement severely alters the balance of procedural and substantive rights. Procedurally, it has upheld the access to information, public participation, and access to justice, as outlined in the Rio Declaration.[227] The Aarhus Convention,[228] and the Escazú Agreement.[229] These procedural prerogatives are significant to enable individuals and civil society to sufficiently engage with and monitor the implementation of climate policy. Substantively, the framing of human rights has strengthened national legal instruments to aid in strategic litigation where inadequate climate action is regarded as a breach of fundamental rights such as the right to life or a healthful environment. Courts have used the human rights provisions of the Paris Agreement in a more pronounced way to issue affirmative decisions that increasingly restrain state climate action, such as the ruling by the Supreme Court of the Netherlands in *Urgenda Foundation v. The Netherlands*.

Moreover, the Paris Agreement pays special attention to the concerns of marginalized and vulnerable groups, for instance, indigenous people and migrants.

[225] Bodansky, D. ibid, (n. 173), pp. 223–225.
[226] Vienna Convention on the Law of Treaties, adopted 23 May 1969, 1980, 1155 UNTS 331
[227] *The Rio Declaration*, ibid, (n. 117), p. 56, Principle 10
[228] *Aarhus Convention*, ibid, (n. 153), p. 70, Arts 4, 6, and 9
[229] Escazú Agreement (2018), Article 5, 7 and 8

This acknowledgment relates to human rights law, including General Comment by the UN Human Rights Committee, which highlights the obligation of states to mitigate foreseeable environmental impacts as a matter of the right to life.[230] Similarly, treaties like the International Covenant on Economic, Social and Cultural Rights and the UN Declaration on the Rights of Indigenous Peoples guide how climate obligations are to be interpreted and executed.[231] This approach highlights the disproportionate impact of climate change, as well as the necessity for policies that respond proactively and inclusively.

Generally, the progress in international climate treaties under the UNFCCC and the Paris Agreement has initiated a trend of human rights incorporating into climate policy, often referred to as 'climate governance.' The ethical dimensions associated with climate action, which previously went unarticulated as 'concerns,' now underpin the reasoning for state and inter-state responses to climate change. These ethical dimensions, while not legally binding, carry moral authority that is influential on legal discourse, judicial reasoning, policy, and legislation.[232] This intersectional fusion of human rights and climate governance stands as a crucial axis of intervention designed to mitigate harm against vulnerable populations facing rapid threats posed by climate change.

3.3.2 Regional Trends to Rights-Based Climate Litigation

Rights-based climate litigation has emerged as a vital legal tool addressing the intersection between environmental degradation and human rights. This evolution

[230] UN Human Rights Committee, *General Comment No. 36, ibid, (n. 216), p. 93*
[231] UN Human Rights Committee, *General Comment No. 36, ibid, (n. 216), p. 93*
[232] Knox, J.H. ibid, (n.65), p. 37

signals a growing acknowledgment that climate change transcends scientific or ecological boundaries and constitutes a pressing human rights crisis. Individuals and communities across the globe are increasingly utilizing regional judicial and quasi-judicial bodies to demand state accountability for climate inaction. These regional mechanisms draw upon existing human rights frameworks, offering localized yet interconnected approaches shaped by distinct legal cultures, institutional strengths, and climate vulnerabilities. Together, these mechanisms form a multipolar system of legal accountability that is fundamentally transforming how climate justice is pursued globally.

The first region to embrace this shift is the European region, having a sophisticated legal infrastructure fully responsive civil society. The European Convention on Human Rights (ECHR) is known to be one of the flexible legal instruments warranting recasting, for instance, abstraction of violation of rights to climate change, environmental degradation is rather only framed as a human violate under articles on the cardinal cornerstone of civilization.[233] A notable instance is *Duarte Agostinho and Others v. Portugal and 32 Other States*,[234] where six Portuguese youths alleged that insufficient climate action infringed their rights.

Although the European Court of Human Rights (ECtHR) dismissed the case on jurisdictional grounds in April 2024, it nevertheless underscored the capacity of transnational human rights litigation to exert pressure on states. That suggests the impacts of not taking enforceable steps are preventing climate for relief. Perhaps the

[233] EU, European Convention on Human Rights, ibid, (n. 147), p. 67
[234] Duarte Agostinho and Others v Portugal and 32 Other States App No 39371/20 (ECtHR, 9 April 2024).

most important ruling was made in *KlimaSeniorinnen Schweiz and Others v. Switzerland,*[235] where the Court ruled in favour of elderly women, asserting that weak climate policies endangered their health. The court found Switzerland to be in breach of Articles 8 and 6, asserting that a government's failure to act on climate change may violate its human rights obligations. The significance of this decision was that it re-applied the ECHR, emphasized the lack of consideration by regional courts to climate issues, and pointed out the necessity to examine policies through a human rights framework.

Similarly, the most advanced environmental human rights jurisprudence in the world is found in the Inter-American human rights system. The backbone of such a body of law is the American Convention on Human Rights and the San Salvador Protocol, which together proclaim the right to a good environment.[236] The turning point came in 2017 with Advisory Opinion OC-23/17 from the Inter-American Court of Human Rights at the request of Colombia.[237] This opinion recognized the right to a healthy environment as a separate and actionable human right, not merely in conjunction with other forms of safeguarding.

It claimed that states have extraterritorial obligations on the grounds of climate damages and environmental degradation, recognizing the climate harm spillover. The opinion articulated the connection between environment and life, health, integrity, and property, and strengthened the human rights argument against

[235] Verein KlimaSeniorinnen Schweiz and Others v Switzerland App No 53600/20 (ECtHR, 9 April 2024).
[236] Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (adopted 17 November 1988, entered into force 16 November 1999) OAS Treaty Series No 69 (Protocol of San Salvador).
[237] *Advisory Opinion OC-23/17* (Inter-American Court of Human Rights, 15 November 2017) Series A No 23.

environmental misgovernance. It has since been a cornerstone of rights-based climate action throughout Latin America.

Africa remains one of the most climate-vulnerable continents, yet it has the lowest share of emissions globally. That drives the perception of environmental degradation as a violation of human rights grounded in the African Charter on Human and Peoples' Rights. In this regard, the Charter provides for "a general satisfactory environment favourable to development," reflecting a collective developmental orientation.[238] In the precedent setting case of S*ocial and Economic Rights Action Center (SERAC) and Another v. Nigeria,*[239] the African Commission on Human and Peoples' Rights found the Nigerian state liable for failing to curtail oil-related environmental degradation of the Niger Delta. This judgement combined damage to the environment with violation of health, livelihood, and dignity.

Though Africa has not yet seen a proliferation of climate cases, its legal instruments and the existence of the African Court on Human and Peoples' Rights establish a robust foundation for future litigation grounded in both environmental and human rights law. The East African Community (EAC) is a relatively new organization, but it has the potential to serve as a regional platform for climate-related legal claims. The Treaty establishing the EAC provides quite explicitly for ecological sustainability and well healthy environment.[240] Although the court of justice of the East African Community (EACJ) was primarily dealing with trade and integration matters, it has made some landmark decisions in climate-related cases.

---

[238] African Charter on Human and Peoples' Rights, ibid, (n. 75), p. 40, Art 24
[239] *SERAC and Another v Nigeria,* ibid, (n. 62), p. 36
[240] Treaty for the Establishment of the East African, 1999, arts 111–112.

One significant example is *Center for Food and Adequate Living Rights (CEFROHT) & Others v. Tanzania and Uganda*,[241] where the claimants sought to contest the East African Crude Oil Pipeline project on environmental and human rights law grounds. Although the case is still pending, it is important in attempting to force greater economic communities to address the issue of environmental responsibility. The EACJ is in a favourable position as climate change challenges are most acutely faced in the eastern part of the region. There is potential for emerging as a center for climate-related litigation. This development within regional jurisdictions marks a new and more organized approach to climate adversities on a worldwide scale.

Regardless of the distinctions in legal documents, processes, and systems, there is a clear synergy: human rights are increasingly utilized in the enforcement of state accountability regarding climate impacts. Europe has adapted classical rights with regards to the environment; the Inter-American system has granted rights to the environment the status of self-standing entitlement able to be claimed in a court of law; Africa has formulated rights of a collective and developmental nature; and East Africa slowly warms up to the idea of climate litigation within its regional legal system. All these shifts mark the beginnings of a constellation of systems for climate justice, or a multipolar geometry, most of the regional human rights systems function as principal avenues for apportioning responsibility and legal creativity.

Thus, rights-based approaches to climate change litigation have advanced from being a concept to a defined legal strategy within regional frameworks. They are crucial in

[241] *Center for Food and Adequate Living Rights (CEFROHT) and Others v Tanzania and Uganda* (EACJ, case filed 2023) (pending).

ensuring a balance between the legal needs of a given population and the responsibilities of the state towards an actual climate-affected population. Placing the environment within the human rights framework, regional actors affirm the solidarity and complementation of the system of rights, together with the existence of emergencies, like climate change. With the growing risks to life, health, housing, and livelihood, regional courts and commissions will continue to play a vital role in developing and actualizing climate justice on the ground to essential human dignity.

3.3.3 Evolution in Legal Reasoning, Scientific Advancement, and Activism Advocacy

3.3.3.1 Evolution in Legal Reasoning

The progressive challenges posed by climate change have significantly transformed the interpretative approaches of international courts and legal bodies. This evolution in legal reasoning marks a shift from rigid interpretations of traditional doctrines to more expansive, flexible readings that accommodate the complex, transboundary, and long-term nature of environmental harm. Foundational principles such as state responsibility, due diligence, and extraterritorial obligations have undergone substantive reinterpretation, while newer legal norms, especially the right to a healthy environment, have gradually emerged as pivotal elements in climate litigation and environmental jurisprudence.

The fundamental principle of state responsibility, which has long been grounded in the *sic utere tuo ut alienum non laedas* principle (i.e., the obligation not to cause transboundary harm), has evolved to reflect the complexities of climate change. This

principle was famously applied in the Trail Smelter Arbitration case,[242] which pioneered the concept of transboundary environmental liability. This principle has subsequently been modified by the International Law Commission's 2001 Draft Articles on State Responsibility, which assert that a state is liable for actions or inactions that breach international obligations and inflict damage, irrespective of whether the damage is inflicted within the state's territory International Law Commission.[243]

This doctrine has been evolved further in the *Urgenda Foundation v The Netherlands* case, where the Dutch Supreme Court ruled that the government's inaction on reducing greenhouse gas emissions was in breach of the European Convention on Human Rights of the right to life, as well as private and family.[244] This case advanced the understanding of climate change law jurisprudence by marking the additional responsibilities and duties that are legally imposed upon governments.

Similarly, there has been a shift in the due diligence obligations. Beginning with environmental issues like hazardous waste or industrial accident due diligence, it has come to require active, scientifically informed, preventive measures by the state towards climate threats. The International Tribunal for the Law of the Sea (ITLOS) noted in its 2011 Advisory Opinion that due diligence is an obligation of conduct, which in this case is informed by the best available scientific knowledge, not an

[242] *Trail Smelter Arbitration (United States v Canada)* (1938 and 1941) 3 RIAA 1905
[243] *Draft Articles on Responsibility of States*, ibid, (n. 90), p.46, arts 1 and 2.
[244] The ECHR, ibid, (n. 75), p. 40, Art 2 and 8

obligation of results.[245] That reasoning was strengthened by Advisory Opinion of the Inter-American Court of Human Rights, which decided that states must adopt effective prevention measures toward environmental damage likely to infringe the enjoyment of human rights.[246]

The international judicial system is also taking note of the harm caused to the environment beyond borders. In human rights law, traditionally a peripheral concern, the extraterritoriality of human rights jurisdiction has been redefined to capture the global effect of greenhouse gas emissions and environmental harm. In the case of *Teitiota v New Zealand*,[247] the UN Human Rights Committee accepted that displacement due to climate change may engage non-refoulement obligations under the International Covenant on Civil and Political Rights, thus accepting the premise of climate-related damage as a ground for extraterritorial human rights jurisdiction. The Inter-American Court's Advisory Opinion has further confirmed that states can be held accountable for environmental damage perpetrated outside their territories over which they have effective control.[248]

The movement towards acceptance at the international level gained impetus with the adoption of the African Charter on Human and Peoples' Rights and subsequently various declarations and treaties on a regional level. The right to a healthy environment has progressed from mere declarations to legally binding instruments at

[245] ITLOS, 'Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion)' (1 February 2011) Case No 17, paras 117–120.
[246] Inter-American Court of Human Rights, 'Advisory Opinion OC-23/17 on the Environment and Human Rights' (15 November 2017) Series A No 23, paras 113–117.
[247] *Ioane Teitiota v New Zealand* (2020) UN Human Rights Committee Communication No 2728/2016, CCPR/C/127/D/2728/2016, para 9.11.
[248] Inter-American Court of Human Rights, Advisory Opinion OC-23/17, paras 101–104

the regional level as well as influential soft law internationally. It was captured in non-legally binding declarations like the 1972 Stockholm Declaration and 1992 Rio Declaration but has since also been incorporated in regional human rights treaties. The African Charter on Human and Peoples' Rights guarantees the right of all peoples to a satisfactory environment conducive to their development.[249]

In *Social and Economic Rights Action Center (SERAC) v Nigeria,*[250] this provision was judicially interpreted by the African Commission, confirming the right of all peoples and in particular Nigerians to a healthy environment, which the commission declared was justiciable. Similarly, the right to have a healthy environment is regarded as fully autonomous and self-sufficient, as it does not derive from any other right, such as health or life.[251] This change indicates further steps towards concordance within international environmental law, which is also demonstrated by actions of the United Nations. The Human Rights Council's Resolution, along with the General Assembly's Resolution in 2022, both conferred the right to a clean, healthy, and sustainable environment, but they are still not legally binding.[252] Regardless, these resolutions are increasingly cited in universal or domestic climate litigation and carry immense normative power.

Generally, the reasoning applicable to law regarding climate change now approaches science and human rights, along with anticipating processes, moves away from rigid territorial and procedural doctrines. Consider this: redefinitions of state

[249] ACHPR, ibid, (n. 75), p.40, Art 24
[250] *SERAC case, ibid, (n.62), p. 36*
[251] Inter-American CHR, ibid, (n. 154), p. 107, paras 57–58
[252] UNHRC Res 48/13, 2022, ibid, (n.143), p. 66,

responsibility capture more due diligence, acknowledge harm beyond borders, formalize the right to a healthy environment, and reap dividends, all simultaneously indicating a shift. These changes deepen the corpus juris of international law while offering opportunities for the judiciary to manage the climate crisis in the Anthropocene.

3.3.3.2 Reframing Climate Change as a Human Rights Crisis: The Role of Scientific Advancement and Activism Advocacy

Furthermore, over the past few decades, what was once framed solely within environmental and economic contexts is now increasingly viewed as one of the most critical human rights challenges of our time. This change has been driven by a powerful combination of newer scientific developments like attribution science and vigorous activism led by young people and Indigenous groups. Attribution science has become a pivotal discipline in the evolving discourse on climate change, particularly in its ability to clarify the causal links between anthropogenic greenhouse gas emissions and the resulting environmental impacts. Through offering scientifically grounded evidence, this field enhances the evidentiary foundation for legal claims and informs the development of effective climate policies.[253]

As attribution methodologies advance, especially in relation to localized and extreme weather events, their utility in litigation and public engagement has grown substantially. These developments have reshaped legal interpretations and

[253] Rupert, F. et. al., 'Liability for Climate Change Impacts: The Role of Climate Attribution Science' in Elbert de Jong, R. et al. (eds), Corporate Responsibility and Liability in Relation to Climate Change (Intersentia 2022) https://ssrn.com/abstract=4226257 or http://dx.doi.org/10.2139/ssrn.4226257, Accessed on 01.4. 2024

institutional responses to climate-related harm, reinforcing the legitimacy of rights-based claims and strengthening mechanisms of accountability.[254] The precision afforded by attribution science now enables courts and policymakers to more directly associate specific climate harms with the conduct of states or corporations, thereby elevating the legal standards for proving responsibility under international human rights obligations.

These methodologies have been included in important scientific evaluations, such as the Intergovernmental Panel on Climate Change's Sixth Assessment Report (AR6). The report states that the atmosphere, ocean, and land have warmed due to human activity, and that many extreme events directly result from human emissions.[255] Such precision has facilitated courts in associating emissions with breaches of human rights. A leading example in this context is *Urgenda Foundation v The Netherlands*, where the Dutch Supreme Court drew substantive evidence from climate science. It concluded that the government's inaction towards emissions reduction constituted an infringement of the rights protected under the European Convention on Human Rights, namely the right to life and the right to private and family life.[256]

Legal instruments like the International Covenant on Civil and Political Rights (ICCPR) strengthen this argument by stating that the sovereignty of a state obliges it to respect and ensure rights within its jurisdiction.[257] Besides, the Rio Declaration, which is not legally binding, still advocates that the absence of scientific proof

[254] Rupert, F. et. al., ibid,
[255] Intergovernmental Panel on Climate Change, ibid, (n.1), pp. 1-4
[256] The ECHR, ibid, [n. 147), p.67
[257] The ICCPR), ibid, (n. 128), p. 62, Art 2(1)

should not inhibit the adoption of measures to protect the environment, which embodies the precautionary principle.[258] The UN Human Rights Committee ruling in the *Teitiota v New Zealand* case[259] has emphasized that threats to the environment could activate the right to life as protected under the ICCPR, going as far as claiming that states might be subject to non-refoulement prohibitions in these scenarios.[260]

As scientists create the frameworks for legal responsibility, it is the social movements, advocates, and attorneys at law that add urgency to the cause with great moral pressure. Young people, indigenous groups, and civil society have advanced movements that have reframed climate change as an urgent attack on human dignity and equality. Student-led initiatives for climate action, such as the one launched by Greta Thunberg, have united millions of children globally, demanding justice. For example, in Sacchi et al. the United Nations Committee on the Rights of the Child was addressed by *young petitioners representing v. Argentina et al*.[261] who argued that the five states that are the major emitters breached their rights to life, health, and culture under the Convention of the Rights of The Child (CRC). The Committee ruled the case inadmissible on purely procedural grounds; however, it did accept the framing, considering that climate change as an issue of children's rights was acceptable.[262]

Indigenous peoples, on the other hand, have particularly defended climate change's impact on self-determination of land, culture, and so called an endangered,

[258] The Rio Declaration, ibid, (n. 117), p. 56, Principle 8
[259] Teitiota case, ibid, [n. 253], p. 97, para 9.11
[260] ICCPR, ibid, (n. 128), p. 62, Art 6
[261] UN Committee on the Rights of the Child, *Sacchi et al. v. Argentina et al*., Communication No. 104/2019, CRC/C/88/D/104/2019
[262] Ibid

decimated right. These people advocate for mitigation and adaptation processes that utilize and deeply respect traditional knowledge and show respect towards FPIC (free, prior, and informed consent), which is enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).[263] The Inter American Court of Human Rights has deliberated that environmental degradation not only assaults humanity's generic covenants, but infringes upon the collective rights of peoples termed "indigenous" and therefore has an inescapably strong relationship with culture and environmental sustenance.[264]

Other still civil societies provide socio-political frameworks that cut across traditional boundaries and offer new ways to engage, shaping policy alongside businesses with the aid of normative and self-adopted rules. Their unwavering advocacy has resulted in the United Nations officially recognizing the right to a clean, healthy, and sustainable environment. This right was acknowledged in both the UN Human Rights Council Resolution[265] and the subsequent UN General Assembly Resolution.[266] While these resolutions are not legally binding, they possess strong declaratory authority and are increasingly cited in legal and policy debates concerning human rights issues exacerbated by climate change.

Generally, scientific progress and activism are linked; these two interdependent pillars together drive a shift in the understanding and tackling of climate change. Copernican transformation provides the legal framework with actual evidence

[263] *UN Declaration on the Rights of Indigenous Peoples (2007)*, UNGA Res 61/295, art 19.
[264] Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 on Environment and Human Rights* (15 Nov 2017), Series A No 23.
[265] The UN Human Rights Council Resolution 48/13, ibid, (n. 143), p. 66
[266] UNGA Res 76/300, ibid, (n, 24), p. 6

through attribution science, while societal and institutional demand stems from the fervour of activism. These converging forces are forging a new global juridical order that integrates environmental sustainability and human dignity, redefining relationships in the Anthropocene.

3.4 International and Regional Institutional Framework for Rights-Based Climate Litigation and its Relevance in Tanzania

Tanzania has a dualist legal system which stipulates having to adopt a law in order to incorporate treaties into domestic law. Treaties that the country expects to be legal remain novelties until legal instruments are enacted that provide each treaty with full legal force in the country. The Constitution of the United Republic of Tanzania provides that the Parliament is to "ratify all treaties and agreements to which the United Republic is a party" with the caveat that it does not confer to the treaties legal force that is enforceable in the country's courts. [267]

The Court in *Rev. Christopher Mtikila v Attorney General*,[268] deepened this principle by saying that reserving the act of ratifying accords as the only method of domesticating international obligations is not sufficient. Furthermore, the Court of Appeal in *Attorney General v Lohay Akonaay and Joseph Lohay*,[269] reiterated that while international treaties may serve as the basis for judicial consideration, in the absence of domestic law, they do not have power to supplant or disregard legislative provisions. The dualist approach of Tanzania which is a country that has ratified an international treaty as well as the Paris Agreement, signified that those treaties do

[267] The Constitution of the United Republic of Tanzania, Cap 2 [R.E. 2023], Article 63(3)(e),
[268] *Rev. Christopher Mtikila v Attorney General* [1995] TLR 31 (HC)
[269] *Attorney General v Lohay Akonaay and Joseph Lohay* [1995] TLR 80 (CA)

not have the power to be enforced in the courts of Tanzania without domestic law. This presents another obstacle in the way of rights-based climate litigation, because parties to a conflict remain constrained to signed treaties unless those treaties are incorporated into the domestic legal framework.

However, the UNFCCC's Paris Agreement, along with its underlying principles, offers a comprehensive international framework for supporting rights-based climate litigation in Tanzania. Tanzania is a party to both the UNFCCC and the Paris Agreement, having signed and ratified each instrument.[270] The approach described in Article 3(3) of the UNFCCC affirms the precautionary approach, stating that "harm" must not be caused to climate change due to a lack of scientific evidence within a given time window.[271] Also, Article 2 of the Paris agreement imposes binding responsibilities to curb temperature rise while providing stricter adoption measures, which could also be domestically invoked to hold the state responsible for climate denial.[272]

Additionally, the ACHPR, strengthened by rights-based climate arguments and Tanzania's ratification on 18 February 1984, guarantees the right to health under Article 16 and the right to a satisfactory environment under Article 24.[273] The African Commission on Human and Peoples' Rights has recognized these provisions as binding and enforceable, offering a regional human rights basis to argue that Tanzania has obligations to address climate-related harms affecting health and the

[270] Tanzania signed the UNFCCC on June 12th 1992 and ratified it on April 17th 1996. They also signed the Paris Agreement on April 22nd 2016 and ratified it on May 18th 2018. It has also signed the Paris Agreement on April 22nd 2016 and ratified it on May 18th 2018

[271] The UNFCCC, ibid, (n.6), p.2, Art 3(3)

[272] *Paris Agreement*, ibid, (n. 8), p.2, Art 2

[273] *African Charter on Human and Peoples' Rights*, ibid, (n. 75), p. 40, Art 16, and Art 24

environment.[274]

On a regional level, the Treaty for the Establishment of the East African Community (EAC Treaty) also enhances Tanzania's climate obligations. Articles 111 through 114 of the treaty obligate all member states to collaborate in protecting the environment, managing natural resources sustainably, and conserving ecosystems.[275] These provisions strengthen claims that Tanzania is bound by regional law to adopt climate-resilient policies and would be useful as a benchmark in litigation aimed at aligning national legislative frameworks with regional commitments.

Furthermore, the Convention on Biological Diversity (CBD), ratified by Tanzania on June 6, 1996, further extends the legal basis for climate litigation. Article 2 requires parties to sustain biodiversity, while Articles 6 and 7 require them to incorporate climate-resilient biodiversity into their national plans.[276] These provisions are extremely useful in contesting government or corporate policies that support actions undermining biodiversity and fundamental ecosystems necessary for climate change adaptation. Lastly, Resolution 48/13 from the UN Human Rights Council, established on October 8th, 2021, recognizes people's right to an environment which is clean, safe, and sustainable.[277]

Unlike treaties, this resolution does not have a legally binding effect. However, it does carry persuasive authority that reinforces domestic constitutional claims regarding the right to life, environmental protection, and climate responsibilities.

[274] Ibid, Arts 22, 24, and 45
[275] *The East African Community (EAC Treaty), 1999,* Art 111 and 114
[276] *Convention on Biological Diversity, 1992*, arts 2, 6 and 7.
[277] UNHRC Resolution 48/13, ibid, (n.143), p. 66

Litigants from Tanzania can invoke this burgeoning global agreement to support arguments based on the Constitution.[278] These international and regional frameworks together reinforce legal foundations for rights-based climate litigation in Tanzania, as well as the attempts to sue state and non-state actors for actions that worsen climate damage.

3.5 Conclusion

This chapter has demonstrated that international and regional legal frameworks play a pivotal role in shaping and advancing rights-based climate litigation. Although the UNFCCC and the Paris Agreement treaties primarily serve environmental purposes, they have gradually integrated with human rights law, increasing the obligation of states to manage climate risks and protect vulnerable populations. Instruments such as the ICCPR and the African Charter on Human and Peoples' Rights have provided important normative grounds for framing climate change as a human rights concern, which has broadened the range of judicial remedies available for climate harms in domestic and international fora.

Furthermore, judicial and quasi-judicial bodies at regional and global levels have begun to offer a rights-based interpretation of states' environmental responsibilities, thus advancing the jurisprudence on climate accountability. There are still gaps related to legal standing, enforceability, and institutional capacity. These gaps often impede the realization of climate justice, especially in jurisdictions with limited access to international support systems. As the analysis shifts to the next chapter, attention will turn to comparative insights from foreign jurisdictions, offering

[278] *Constitution of Tanzania*, ibid, (n. 16), p. 5, Arts 14 and 27

valuable lessons that may inform and enrich rights-based climate litigation strategies in Tanzania and beyond.

.

CHAPTER FOUR

LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING RIGHT-BASED CLIMATE LITIGATION IN TANZANIA

4.1 Introduction

This chapter analyzes the legal and institutional structures that enable rights-based climate litigation in Tanzania. It assesses how the Constitution,[279] alongside statutory instruments like the Environmental Management Act,[280] establishes a framework for climate-related rights. The examination also regards the functions and constraints of such institutional actors as the Vice President's Office (Division of Environment), NEMC, and the judiciary within the enabling or disabling dimension of litigation. Of particular interest is the recent Court of Appeal ruling in *Onesmo Olengurumwa v Attorney General*, which expanded public interest litigation significantly and removed important procedural access barriers in accessing constitutional remedies.

The chapter combines doctrinal analysis with empirical insights derived from interviews with legal practitioners, environmental regulators, and civil society actors. This approach enables a practical evaluation of how the legal and institutional framework functions beyond its formal design. In doing so, the chapter aims to assess whether Tanzania's current framework effectively supports climate justice litigation or whether legal and institutional reforms are necessary to enhance accountability and responsiveness in the face of escalating climate threats.

---

[279] *The Constitution of Tanzania,* ibid, (n. 16), p. 5, Arts 14 and 27
[280] *The Environmental Management Act,* ibid, (n.17), p.5

4.2 Constitutional and Statutory Foundations for Climate Litigation

Understanding the constitutional and statutory foundations is crucial for analyzing climate litigation in Tanzania, as they define the legal basis, clarify rights and obligations, and provide the framework through which environmental claims can be effectively pursued in courts.

4.2.1 Constitutional Safeguards

The Constitution of the United Republic of Tanzania establishes a foundational normative basis for recognizing environmental and climate rights.[281] The Constitution guarantees that every individual is entitled to the right to life and to have their life safeguarded by society in accordance with the law.[282] This statement has been reasonably interpreted by courts through a purposive and dynamic lens, as incorporating the right to a clean, safe, sustainable environment.

In *Festo Balegele & Another v Dar es Salaam City Council*,[283] the High Court of Tanzania interpreted Article 14 of the Constitution expansively, affirming that the right to life encompasses more than mere existence; it includes the quality and conditions necessary for a dignified life. The Court found that environmental harm, such as the disposal of waste in residential areas, constituted a violation of this right. Justice Lugakingira emphasized that the constitutional guarantee of life necessarily implies the right to live in a clean and healthy environment, asserting that life must be protected not only in its biological sense but also in terms of human dignity and environmental well-being.

---

[281] *The Constitution of Tanzania,* ibid, (n. 16), p. 5
[282] Ibid., Art 14
[283] *Festo Balegele ruling,* ibid, (n. 133), p. 61

This interpretation draws support from comparative constitutional jurisprudence, which has increasingly accepted that the protection of one's environment is essential for truly enjoying life and living fully. For example, the Constitution of India grants the right to life and personal liberty.[284] This provision has been interpreted by some Indian courts to include the right to a healthy living environment. The Indian Supreme Court case *Subhash Kumar v State of Bihar*,[285] affirmed that the right to life encompasses the enjoyment of pollution-free water and air vital for full life engagement. Article 14 lays a vital foundation for facilitating rights-based climate litigation in Tanzania, particularly considering the increasing visibility of climate-related threats to health, livelihood, and life itself.

Additionally, the Constitution of Tanzania imposes a duty on every individual to protect natural resources, which, though not justiciable, reinforces a collective obligation toward environmental protection.[286] This aligns with the obligation requiring compliance with the Constitution and laws,[287] and is significantly supported by an obligation that grants any person standing to institute legal proceedings to protect constitutional rights.[288] The recent Court of Appeal decision in *Onesmo Olengurumwa v Attorney General*,[289] reinforces this view by affirming that public interest litigation under Article 26(2) does not require proof of personal harm, thereby expanding the scope for environmental and climate-related constitutional claims

[284] *The Constitution of India*, ibid, (n.294), p. 122, Art 21
[285] *Subhash Kumar v State of Bihar*, AIR 1991 SC 420
[286] *Constitution of Tanzania*, ibid, (n. 16), p. 5, Art 27
[287] Ibid., Article 26(1)
[288] Ibid., Article 26(2)
[289] *Olengurumwa v Attorney General*, ibid, (n. 357), p. 145

The Tanzanian Constitution makes no mention of climate rights; however, an article-by-article interpretation of Articles 14, 26, and 27 enhances the possibilities for advancing climate litigation prompted by law. Complementary legal scholarship as well as a comparative approach, lends further credence to this reasoning. Earlier judicial dispositions, such as *Onesmo Olengurumwa v Attorney General*, indicate an increasing willingness and perception of constitutional possibilities for embedding climate responsibility within the fundamental obligations enshrined in the constitution.

4.2.2 The Environmental Management Act, R.E. 2023

The Environmental Management Act establishes a comprehensive statutory framework that, when interpreted alongside constitutional guarantees, includes the right to life,[290] the right to enforce constitutional obligations,[291] and the duty to protect the environment,[292] provides a solid legal foundation for rights-based climate litigation. Specifically, the Act confers upon every person the right to a clean, safe, and healthy environment, while simultaneously granting standing to any individual or group to bring legal proceedings when this right is threatened by acts or omissions likely to cause harm.[293]

Importantly, these provisions allow for a broad range of remedies, including injunctive relief, restoration orders, and directives compelling public authorities to take preventive or corrective measures. Additionally, by obligating judicial bodies

[290] *The Constitution of Tanzania*, ibid, (n. 16), p. 5, Art 14
[291] Ibid., Art 26(2
[292] Ibid., Art 27
[293] *The Environmental Management Act*, ibid, [n.17], p.5, ss 4 & 5

to apply principles such as precaution, public participation, and intergenerational equity,[294] the EMA legitimises public interest litigation challenging environmentally harmful conduct contributing to climate change.

Furthermore, the Act addresses key environmental management concepts such as the precautionary principle, public involvement in decision making, and the polluter pays principle.[295] This implies that courts can require government or private actors to respond to scientific uncertainties with decisive action on climate harms. Take, for example, where grant authorities approve a controversial construction of a large hydroelectric power project within a conservation area; this is considered a silent disregard of climate impacts, as it involves deforestation. Under the Act, litigants are empowered to assert that these approvals violate statutory and constitutional claims of life and a clean environment.[296]

Moreover, Environmental Impact Assessments (EIAs) are covered in the Act, which focus on evaluating and anticipating environmental and climatic risks before obtaining project authorizations.[297] These provisions create a procedural platform for defending one's rights against projects whose EIAs do not consider the emission of greenhouse gases, or a meaningful public participation provision is ignored.[298] Cases from other jurisdictions like *Earthlife Africa Johannesburg v Minister of Environmental Affairs*,[299] provide insights on how courts may be persuaded judicially and constitutionally have omitted so many duties due to a lack of proper

[294] *The Environmental Management Act*, ibid, s 5(3)
[295] *The Environmental Management Act*, ibid, [n.17], p.5, s 6
[296] Ibid
[297] Ibid, ss 81 through 104
[298] Ibid, s 92
[299] Ibid,

EIAs, neglecting fundamental aspects under Tanzanian Law, too. Similarly, the Act compliance environmental audits are stipulated to be conducted on a recurrent basis after the project is completed.[300] Where such audits are ignored or kept unchecked and where there is continued damage to the environment, litigants have the right to claim that either the government or private entities are infringing on their statutory obligations and legal rights granted by the constitution on life, health, and wellbeing. South African cases can be used as an analogy where courts were able to enforce legislative provisions to compel action against operations that cause destruction.

Furthermore, the Act establishes liberal standing rules, permitting any person or group to bring legal action without demonstrating personal harm.[301] This provision directly complements Article 26(2) of the Constitution and reflects the Court of Appeal's holding in *Onesmo Olengurumwa v Attorney General*, which affirmed the legitimacy of public interest litigation without requiring proof of individualized injury. Consequently, Section 106 empowers citizens and civil society to challenge climate-incompatible projects or regulatory failures.

Finally, the Act delineates offences related to environmental degradation, prescribing criminal and administrative penalties for violators.[302] In the context of rights-based climate litigation, this section underpins efforts by citizens and NGOs to hold both private actors and the state accountable for environmentally destructive conduct such as illegal deforestation, unregulated emissions, or failure to enforce EIAs, thereby ensuring the protection of constitutional and statutory environmental rights.

[300] *The Environmental Management Act*, ibid, [n.17], p.5, s 104
[301] Ibid, s 106
[302] Ibid, s 183

4.2.3 Additional Legislative Basis for Rights-Based Climate Litigation

Beyond the Constitution and the Environmental Management Act, several other Tanzanian laws can serve as crucial pillars for rights-based climate litigation. The Land Act (Cap. 113) and the Village Land Act (Cap. 114) impose duties on landholders and communities to protect land resources and prevent degradation. Section 5 of the Land Act (Cap. 113) 1999[303] and section 5 of the Village Land Act (Cao. 114) 1999[304] provides an explicit obligation to promote sustainable land use, which can be invoked when harmful land practices threaten climate resilience or environmental stability.

Additionally, the Water Resources Management Act, 2009 (Act No. 11 of 2009), under section 4(1), places a duty on individuals and institutions to protect water resources for the benefit of future generations, while sections 4(1) and 31(1) prohibit any act that could impair water quality or flow.[305] Together, these provisions establish a clear legal foundation for litigation addressing threats to water security linked to climate vulnerability.

Furthermore, the wildlife conservation issues are also governed by the Wildlife Conservation Act,[306] and the Forest Act.[307] Under section 3 of the Wildlife Conservation Act,[308] there is a strong emphasis on protecting biodiversity and ecosystems, with section 62(1) prohibiting habitat destruction. Additionally, Parts 2 and 5 of the Forest Act, particularly sections 2 and 34(1), promote sustainable forest

[303] *Land Act*, (Cap. 113) 1999, s 5.
[304] *Village Land Act*, (Cap. 114), s 5
[305] *The Water Resources Management Act, 2009* (Act No. 11 of 2009, ss 4(1) and 31(1).
[306] *Wildlife Conservation Act* (Act No. 5 of 2009)
[307] *Forest Act*, R.E. 2023
[308] *Wildlife Conservation Act*, ibid, ss 3 and 62(1)

management and regulate forest resource use, providing a legal basis for challenging deforestation and illegal logging.[309]

The Occupational Health and Safety Act, 2003, has sections devoted to the Health Protection Control of Toxic Substances, which safeguard workers from environmental threats to health and safety.[310] There is an increasing concern regarding climate-induced risks like heatwaves or air pollution in working environments due to climate change. These provisions are enhanced by Article 14 of the Constitution. Moreover, despite its lack of legal authority, the National Environmental Policy of 1997 serves as a significant interpretive guide in forming policies. It sets forth some of the national goals, such as sustainability, that courts can rely upon when exercising their statutory or constitutional obligations in environmental protection matters. Thus, it assists in reinforcing claims brought forth by litigants concerning climate issues.[311]

4.2.4 Commentary on the Absence of a Climate Change Act

The environmental obligations, as per judicial requirements, fall short under Tanzanian law. In the absence of legally binding obligations that mandate climate considerations, neither courts nor regulatory bodies have an adequate legal framework to stop or alter projects for purely climatic reasons. This effectively undermines the justiciability of Article 24 of the African Charter on Human and Peoples' Rights, which guarantees the right to a satisfactory environment, thereby

[309] *Forest Act*, ibid, (n. 388), p. 155, ss 2 & 34(1)).
[310] *Occupational Health and Safety Act, R.E. 2023*, ss7(1),25(1)(a)).
[311] *National Environmental Policy 1997*

weakening its practical enforcement.[312]

Additionally, the gaps in specific climate obligations within laws result in arbitrary and varied practices by administrative agencies. Such uncertainty diminishes the prospects of success for civil society groups and communities seeking legal remedy. The absence of detailed and explicit climate responsibilities in specific laws leads to inconsistent and random administrative practices, which then damages the capacity of civil society and communities to access legal redress, owing to the unpredictability courts may encounter when adjudicating such matters.[313] It has also been observed that effective protection of environmental rights under regional human rights law, jurisprudential cases *like SERAC v Nigeria*,[314] require domestically legislated, enforceable duties instead of leaving environmental governance defenseless to administrative whims.

The lack of specific legal provisions in Tanzania, particularly the absence of climate-sensitive obligations integrated into Environmental and Social Impact Assessments (EIAs), land management legislation, and urban planning laws, makes the enforcement of climate rights challenging. If these gaps were filled with appropriate legal instruments to mandate the integration of climate issues into relevant policy frameworks, it would enhance the enforcement of the right to a healthy environment while harmonizing Tanzania's domestic laws with its regional and international commitments.

---

[312] *African Charter on Human and Peoples' Rights*, ibid, (n. 75), p. 40, Art 24

[313] Empirical survey conducted by the researcher from selected civil society organizations in Dar es Salaam and Dodoma in Tanzania between May 2024 – August 2024, reveals the gap and highlighted the need to have a Climate Change legislation in Tanzania, as a matter of urgency.

[314] Social and Economic Rights Action Center (SERAC) ruling, ibid, (n. 62), p. 36

4.2 Overview of the Key Institutional Landscape

Tanzania's environmental governance framework is anchored in several pivotal institutions established under the Environmental Management Act, (EMA). The Vice President's Office (Environment Division) is established under section 13 of the EMA as the national environmental policymaker, tasked with coordinating climate policy and integrating environmental concerns across sectors.[315] The National Environment Management Council (NEMC), established under section 16, functions under the Vice President's Office with statutory duties under sections 17 and 18, which include reviewing environmental impact assessments, monitoring compliance, and enforcing environmental standards.[316]

Further, sectoral ministries are mandated under section 30 to implement sector-specific environmental standards, licensing, and impact assessments, reinforcing a decentralized but coordinated approach to environmental protection and climate change mitigation.[317] The National Environment Management Council (NEMC), which is under the Vice President's Office, has the responsibility to supervise compliance with environmental regulations, as well as monitoring and enforcement activities.[318]

Moreover, there are ministries like the Ministry of Natural Resources and Tourism and the Ministry of Energy that have specialized secondary responsibilities relating to licensing and impact assessments for environmental standards at sectoral levels.

[315] *The Environmental Management Act*, ibid, [n.17], p.5, s 13
[316] Ibid, ss. 16, 17 & 18
[317] *The Environmental Management Act*, ibid, s 30
[318] Ibid, s 17

The Environmental Division of the Vice President's Office is the foremost governmental entity responsible for national climate policy and mainstreaming environmental issues into different sectors.

An empirical survey by the Commission for Human Rights and Good Governance shows that overlapping mandates among sectoral ministries lead to gaps, inconsistent standards, and fragmented accountability, which undermine rights-based climate litigation in Tanzania. This institutional redundancy often leads to litigant uncertainty, where contesting or engaging with a particular institution becomes problematic, resulting in wait times due to inter-institutional disputes.[319] Moreover, varying priorities of the conflicting institutions can result in divergent decisions, which compromise cohesive enforcement of environmental rights. Such fragmentation undermines state obligations scrutiny under constitutional and statutory guarantees, providing a right to a clean environment. Climate-related cases would have more hope for effective remedies if the judicial system were less constrained by gaps between rights granted and actual enforcement.

4.3 Public Interest Litigation and Judicial Trends: The Impact of *Onesmo Olengurumwa Ruling*

The Court of Appeal's decision in *Onesmo Olengurumwa v Attorney General* marks a significant development in Tanzanian constitutional law. The appeal court relaxed public interest standing under Article 26(2) of the Constitution, allowing individuals and even civil society organizations (CSOs) or community groups to file protective

[319] The researcher conducted interviews with officials from the Commission for Human Rights and Good Governance (CHRAGG) at its Dodoma headquarters in June 2024

actions for constitutional rights without personal harm tests.[320] Prior to this decision, aids to litigation such as affidavit requirement, exhaustion of internal remedies, and restrictive locus standi bars the public interest litigation severely.[321]

The court's reasoning that constitutional duties to defend fundamental rights (and climate-related rights) under article 27 are mandatory and must be purposively approached, as emphasized in article 27 of the constitution, was groundbreaking.[322] This ruling redefined the role of CSOs and NGOs from one of passive observers succumbing to government machinations into proactive defenders against government overreach while providing enhanced space for judicial activism. This has positioned the judiciary to provide structural remedies with ongoing supervision to guarantee commitments made on environmental and climate justice operationalized is welcomed by scholars.[323]

To the officers of the Commission for Human Rights and Good Governance (CHRAGG) and the Registrar's office of the High Court in Dodoma, whose empirical interviews I attended, the ruling has prompted civil society organizations (CSOs) to take up legal battles on climate change, deforestation, and environmental degradation. The Court also showed its readiness to innovate by granting orders that require compliance reporting from institutional respondents, thus opening a new front for potential structural judicial activism in climate cases.

[320] Constitution of Tanzania, ibid, (n. 16), p. 5, art 26(2)
[321] Constitution of Tanzania, ibid,
[322] Ibid, (n. 16), p. 5, art 27
[323] Peter CM '*Human Rights Litigation in Tanzania'* Mkuki na Nyota 2018, p.103

4.4 Conclusion

This chapter has shown that while Tanzania's legal and institutional framework offers constitutional and statutory avenues for rights-based climate litigation, these avenues are constrained by weak judicial practice, limited incorporation of international obligations, gaps in institutional capacity, and low engagement from affected communities. These structural and practical barriers hinder the potential of climate litigation as a tool for enforcing climate rights and ensuring governmental accountability.

Nevertheless, opportunities exist within the current framework, including constitutional guarantees of environmental protection, statutory obligations under environmental laws, and the mandates of institutions like NEMC and CHRAGG. These provide entry points for future litigation strategies and reform. While the normative framework seems comprehensive, there are many barriers to the practical application of rights-based climate litigation. This next chapter focuses on these legal confronts and the barriers that curb effective enforcement of climate justice in Tanzania.

CHAPTER FIVE

LESSONS ON RIGHT-BASED CLIMATE LITIGATIONS FROM FOREIGN JURISDICTIONS

5.1 Introduction

Building on the previous chapter's analysis of international and regional perspectives on rights-based climate litigation, this chapter adopts a comparative jurisprudential approach to examine how selected national jurisdictions have addressed climate change through a human rights lens. While international norms provide the foundational principles, the enforcement and practical realization of climate rights occur primarily at the domestic level, a comparative legal analysis is crucial for understanding how different legal systems have developed doctrines and judicial approaches to climate justice.[324]

Drawing comparative insights is particularly important for Tanzania, where legal responses to climate change remain underdeveloped, as it offers an evidence-based foundation for strengthening the domestic legal framework in line with evolving global standards. This chapter focuses on five countries, Germany from the Global North and South Africa, India, Pakistan, and Indonesia from the Global South, selected for their progressive and contextually relevant climate jurisprudence. Rather than applying a pure comparative methodology, this chapter is grounded on a pragmatic, lesson-oriented comparative approach aimed at extracting transferable legal and institutional strategies that could inform Tanzania's domestic climate litigation framework.[325] The chapter begins by outlining the rationale for country

[324] Bodansky, D. ibid, [n. 173], p. 77
[325] Örücü, E., ibid, [n. 53], p. 28

selection and identifies the core objects of comparison, including constitutional foundations, judicial interpretation of environmental rights, access to justice, and enforcement mechanisms. It then explores key cases from each jurisdiction to highlight legal reasoning and outcomes. The final section highlights best practices and legal innovations that Tanzania could adopt or adapt to strengthen its response to climate-related human rights challenges and advance climate justice within its legal system.

5.2 Climate Litigation across Global Legal Divides

In climate litigation, the Global North refers to economically advanced, industrialized countries with robust legal institutions, strong judicial enforcement mechanisms, and high historical contributions to climate change, such as North America, Western Europe, and parts of East Asia (e.g., the United States, Germany, the Netherlands, Japan).[326] The Global South comprises developing and least-developed regions like Sub-Saharan Africa, South Asia, and Latin America (e.g., Tanzania, Pakistan, Colombia, India).[327] The divide between the Global North and the Global South in rights-based climate litigation reveals deep-rooted differences in legal traditions, enforcement capacities, and normative orientations, shaped by both historical legacies and contemporary socio-political realities.

From a legal framework perspective, Global North jurisdictions often benefit from well-entrenched constitutional rights, functional judicial independence, and legal cultures that support public interest litigation. The courts in this region often involve

[326] Banda, F. and Fulton, S. '*Litigating Climate Change in the Global South'* (2021) 114 AJIL Unbound 63.
[327] ibid

scientifically grounded reasoning like carbon budgeting and reflect the integration of international human rights norms into domestic jurisprudence.[328] The presence of strong judicial independence and institutional mechanisms further facilitates the effective enforcement of such rulings. Conversely, Global South jurisdictions tend to emphasize socio-economic and environmental rights in climate litigation, often with a focus on adaptation, vulnerability, and distributive justice.[329] However, the implementation of court orders in these contexts is frequently hindered by weak institutional frameworks, limited resources, and political interference.[330]

Enforcement capacity further distinguishes the two regions. Courts in the Global North operate within more robust rule-of-law environments, enabling effective compliance and institutional accountability. Conversely, Global South jurisdictions often face challenges such as limited administrative responsiveness, resource scarcity, and political interference, which can weaken post-judgment implementation.[331]

Normative priorities also diverge. In the Global North, climate litigation is largely mitigation-focused, targeting emissions reductions and state obligations under international agreements. In contrast, Global South litigation frequently addresses climate *vulnerability*, adaptation needs, and environmental justice for marginalized communities. The South's emphasis reflects a rights-based approach grounded in distributive and corrective justice, informed by historical emissions inequalities and

[328] Brunnée J and Rajamani L, 'Expanding the Frontiers of Environmental Constitutionalism' in Kotzé, L. (ed), Environmental Law and Governance for the Anthropocene (Hart Publishing 2017).
[329] Farber, D.A. '*Climate Justice and the Challenge of Global* Inequality' (2015) 40 Yale Journal of International Law 369.
[330] Örücü, E., ibid, [n. 53], p. 28
[331] Rajamani and Peel, The Oxford Handbook of International Climate Change Law, OUP 2021

developmental disparities.[332] Despite these disparities, shared challenges exist. Both regions struggle with translating judicial victories into policy reforms and face political resistance to climate action. Furthermore, the growing trend of youth-led and intergenerational claims underscores a universal aspiration for climate justice and legal accountability.

5.3 Rationale for Jurisdictional Selection and Objects for Comparison

5.3.1 Rationale for Jurisdictional Selection

The selection of jurisdictions from both the Global North and Global South is rooted in the objective of examining diverse legal approaches to rights-based climate litigation. Germany is chosen as a leading Global North jurisdiction where constitutional principles have been directly invoked to compel climate action. The landmark case of *Neubauer and others v Germany,*[333] saw the German Federal Constitutional Court declare aspects of the Federal Climate Change Act incompatible with the Basic Law for failing to sufficiently safeguard future generations' rights to life and dignity.[334]

South Africa represents a pivotal Global South jurisdiction with a justiciable Bill of Rights that explicitly recognizes the right to an environment not harmful to health or well-being.[335] In *Earthlife Africa Johannesburg v. Minister of Environmental Affairs,*[336] the High Court held that environmental authorizations must integrate

[332] Banda, F. and Fulton, S. 'Litigating Climate Change in the Global South, ibid, (n.282), p. 199
[333] *Neubauer and others case, ibid, (n. 277), p*. 115
[334] *Bundesverfassungsgericht (Federal Constitutional Court of Germany),* Articles 1(1) and 2(2)
[335] *The Constitution of the Republic of South Africa 1996,* s. 24
[336] *Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others* [2017] 2 SA 519 (WCC) (High Court, Western Cape Division, South Africa).

climate change considerations, thus embedding climate concerns into administrative rationality and procedural justice. The South African experience illustrates how socio-economic rights can be deployed to advance climate accountability within a rights-conscious framework.[337]

India is selected for its longstanding tradition of public interest litigation (PIL), wherein the Supreme Court has expansively interpreted the right to life under the Constitution to encompass environmental protection.[338] The judiciary has frequently invoked doctrines such as the *public trust* and *precautionary principles,* making India a key site for judicial innovation in environmental governance.[339] Although not limited to climate-specific cases, Indian courts have demonstrated a proactive stance in adjudicating claims rooted in environmental justice and intergenerational equity.

Pakistan is included for its notable judicial activism in using fundamental rights to compel governmental compliance with climate obligations. In *Leghari v Federation of Pakistan,*[340] the Lahore High Court held that climate inaction infringed on constitutional rights to life and dignity, establishing a Climate Change Commission to oversee implementation. This case exemplifies how climate litigation in developing legal systems can generate institutional reform through rights-based reasoning.[341]

---

[337] Kotzé, L.J, '*Arguing Global Environmental Constitutionalism'* (2018) 8(1) Transnational Environmental Law 11.
[338] *Constitution of India 1950,* art 21
[339] Rajamani, L., ibid, (n. 96), p. 47
[340] *Leghari Case, ibid, (n.60), p. 36*
[341] Brown, O. and McDonnell, R., 'Climate Change Litigation in Asia and the Pacific: Lessons from Pakistan's Leghari Case' in Jolene Lin and Douglas Kysar (eds), Climate Change Litigation in the Asia Pacific (CUP 2020).

Indonesia is incorporated due to its emerging jurisprudence that recognizes environmental rights and corporate accountability in the absence of comprehensive climate change legislation.[342] Indonesian courts have increasingly responded to civil society petitions seeking environmental restoration and corporate responsibility for deforestation and emissions, demonstrating the judiciary's willingness to develop climate-related doctrines through environmental law and tort-based claims.[343] The inclusion of Indonesia underscores how countries with limited statutory frameworks can still utilize judicial mechanisms to promote climate governance.

The selected jurisdictions offer distinct yet complementary insights into rights-based climate litigation, shaped by their legal cultures, constitutional texts, and the evolving role of courts in environmental governance. This pragmatic comparative approach allows for a nuanced understanding of how different legal systems engage with climate justice, both procedurally and substantively.

5.3.2 The Objects for Comparison

The reform-oriented comparative framework in this study is structured around two key objects for comparison, namely, "*Legal Framework for Protection of Climate Rights*" and "*Judicial Practices on Climate Justice*" across the selected jurisdictions.

5.4 Rights-Based Climate Litigation in the Global North: A German Perspective

5.4.1 Legal Framework for Protection of Climate Rights

Germany features one of the most legally advanced jurisdictions within the Global

[342] Sulistiawati, L.Y., '*Climate Change Litigation in Indonesia'* (2024) 5 Nature Communications Earth & Environment 112.
[343] Ibid, p. 112

North for the recognition and enforcement of climate-related constitutional rights. The legally accepted basis for climate litigation in Germany stems from the Basic Law (Grundgesetz), which guarantees human dignity, life, and physical integrity.[344] These articles have been interpreted by the Federal Constitutional Court **(**Bundesverfassungsgericht) to impose substantive obligations on the state to act against climate change, especially where inaction threatens the long-term fulfilment of these rights.

The landmark judgment in *Neubauer and others v Germany*[345] marks a turning point. In this case, the Court held that the Federal Climate Change Act of 2019 was unconstitutional because it violated the Basic Law by unduly shifting the burden of emissions reductions onto future generations and infringing their rights to life and dignity. The Court developed the doctrine of intertemporal guarantees of fundamental rights, which described how states have obligations to ensure that freedoms which can be exercised in the future will not be severely restricted because of present-day legislative inaction. Peel and Osofsky note that this generous interpretation based on legal rights, illustrates how constitutional rights, even without explicitly including a right to a healthy environment, can be used for legal activism regarding climate protection.[346]

5.4.2 Judicial Practices on Climate Justice

Germany has had relatively restrictive standing rules in its climate litigation framework. Under the Federal Constitutional Court Act, an individual must

[344] *Basic Law for the Federal Republic of Germany* (Grundgesetz, GG), promulgated 23 May 1949, BGBl I p 1, Arts 1(1) and 2(2)
[345] BVerfG, 1 BvR 2656/18, 24 March 2021
[346] Peel, J. and Osofsky, H.M, ibid, [n.64], p. 37

demonstrate a direct, current, and personal violation of a fundamental right as a prerequisite for filing a constitutional complaint.[347] However, in *Neubauer*, the Court adopted a broader approach, accepting the standing of young plaintiffs by recognizing the unique, long-term harm that climate inaction posed to their future rights. This judicial development illustrates increasing judicial awareness of the temporal dimensions of environmental harm, especially concerning youth and intergenerational equity.

While public interest litigation or collective environmental suits do not exist in Germany as they do in some Global South countries, the Constitutional Court's standing interpreted in Neubauer signals a shift towards greater accessibility in climate rights adjudication.[348] In addition, the incorporation of scientific evidence, especially carbon budgets and deadlines for emission reductions, into legal reasoning has enhanced the procedural sophistication and evidentiary strength of German climate litigation.

The effectiveness of Neubauer's judgment can be seen in its tangible influence on legislative reform. Following the ruling, the German Bundestag amended the Federal Climate Change Act in June 2021, which now requires reduced emissions for 2030 and net-zero emissions by 2045. Peel and Lin observe that this development reaffirms the significant juridical authority and normative legitimacy exercised by the Federal Constitutional Court in shaping and directing national climate policy through constitutional adjudication.[349]

---

[347] *Federal Constitutional Court Act*, ibid, (n.290), p. 121, s 2(1)
[348] Brunnée, J. and Rajamani L., ibid, [n.284], p. 120
[349] Peel J and Lin J, Transnational Climate Litigation: The Contribution of the Global South (CUP

More broadly, the case has set a constitutional standard for assessing climate legislation in Germany, requiring future administrations to craft policy within the framework of environmental legislation as a rights-based constitutional mandate. Notwithstanding these advancements in doctrine, questions remain about the functioning administrative system capable of enforcing long-term commitments. Kotzé observes that the ruling has not only reinforced the doctrinal bases available for the enforcement of climate rights but has also enhanced Germany's reputation as a leader for climate governance litigation within the Global North.[350]

Germany's experience illustrates the transformative potential of rights-based climate litigation in industrialized legal systems. The Federal Constitutional Court's recognition of intergenerational rights, procedural openness to novel standing claims, and direct legislative influence exemplify how constitutional principles can drive climate accountability. These developments affirm that judicial enforcement of climate rights is not merely symbolic but can serve as a substantive and effective check on governmental inertia in addressing the climate crisis.

5.5 Rights-Based Climate Litigation in the Global South

5.5.1 South Africa

South Africa offers a compelling example of rights-based climate litigation in the Global South, distinguished by its progressive constitutional framework, liberal access to justice provisions, and evolving environmental jurisprudence. The country's Bill of Rights, contained in Chapter 2 of the Constitution of the Republic

2019)

[350] Kotzé, L.J, ibid., [n.293], p. 121

of South Africa, 1996, serves as a legal cornerstone for the protection of environmental and climate-related rights.

5.5.1. Legal Framework for Protection of Climate Rights

The recognition and enforcement of environmental rights in South Africa are rooted in the Constitution, which grants everyone the right to an environment that is not detrimental to their health, and further requires the government to make reasonable legislative provisions for its safeguarding.[351] The mere existence of such a constitutional provision creates strong grounds for justiciable environmental and, by extension, climate rights. South African courts have been inclined to interpret section 24 as integrated and multilayered, enriching it with the government's more fundamental developmental responsibilities under the Constitution.

Although climate change may not be referenced by name, it appears to be increasingly incorporated into constitutional and administrative claims at the systemic level. In *Earthlife Africa Johannesburg v Minister of Environmental Affairs*,[352] the High Court ruled that neglecting to assess the potential climate change impacts due to a coal-fired power station's construction violates the National Environmental Management Act (NEMA).[353] Kotzé observes that the ruling of this case adopted the position that environmental rights are accompanied by both procedural and substantive public authority obligations, and therefore, climate considerations must be integrated within impact assessments.

---

[351] *The Constitution of South Africa of 1996*, ss 24
[352] *Earthlife Africa Johannesburg, ibid, (n.292), p. 122*
[353] *National Environmental Management Act*, 1998, Section 107 of 1998

5.5.2. Judicial Practices on Climate Justice

The South African legal system has been lauded as offering far-reaching access to justice, particularly in the environmental sphere. As provided in the Constitution, individuals and groups are permitted to approach courts where a right enshrined in the Bill of Rights is violated or threatened, including on behalf of others or ostensible 'public interest' grounds.[354] This liberal standing has allowed for environmental organizations, community groups, and concerned members of society to freely litigate climate and environmental matters without having to demonstrate actual personal injury.

In addition, South African courts have adhered to a more contextual and adaptive procedural approach in dealing with cases involving future generations and marginalized communities. Both the courts and other concerned parties have welcomed the use of scientific evidence and experts in environmental disputes, thus nurturing informed decision-making by judges. Humby notes that South African courts can play an active role in ensuring that environmental governance incorporates climate concerns, even where explicit climate legislation is absent or underdeveloped.[355]

While South African courts have issued forward-looking and environmentally progressive decisions, the implementation and impact of such judgments depend heavily on institutional and political will. In *Earthlife Africa*, the court's decision led to the withdrawal and re-evaluation of environmental authorisation for the proposed coal project, demonstrating tangible legal effect and the capacity of courts

---

[354] *The Constitution of South Africa*, ibid, (n.291), p.121, s 38

[355] Humby, T.L. *One Environmental System: Aligning the Laws on the Environmental Management of Mining in South Africa'* (2014) 131 South African Law Journal 260

to influence national energy policy.[356] Nevertheless, litigation in South Africa has proven effective in setting legal precedents, compelling greater transparency and accountability in environmental decision-making, and embedding climate considerations within administrative law processes.[357] More broadly, the judiciary's capacity to monitor, direct, and shape environmental governance, within the parameters of a justiciable constitutional rights framework, positions South Africa as a leader in rights-based climate litigation in the Global South.

South Africa's approach to climate litigation, grounded in constitutional environmental rights and enhanced by broad access to justice and progressive judicial reasoning, demonstrates the potential for courts to function as guardians of climate accountability. While challenges persist in enforcement and administrative follow-through, the South African judiciary continues to play a critical role in shaping legal norms and compelling governmental compliance with environmental and climate-related obligations. As such, South Africa provides valuable lessons on how constitutional rights, procedural innovation, and judicial oversight can converge to strengthen climate governance in the Global South.

5.5.2 India

India represents one of the most dynamic legal environments for rights-based environmental litigation in the Global South, characterized by an expansive constitutional jurisprudence, a liberal procedural framework, and an active judiciary engaging with environmental and climate-related matters.

---

[356] *Earthlife Africa Johannesburg, ibid, (n.292), p. 122*
[357] Brunnée, J. and Rajamani L., ibid, [n. 284], p. 120

5.5.2.1 Legal Framework for Protection of Climate Rights

India grants climate-related rights within the larger framework of offering environmental protection as a fundamental right derived from the Constitution. The Constitution of India, which provides for the right to life and personal liberty, has been interpreted to include the right to a healthy and clean environment.[358] Indian courts have consistently ruled that environmental degradation in its various forms, including climate change, may violate the Constitution.

Although Indian courts have not yet declared a freestanding right to a stable climate, judicial reasoning increasingly reflects an implicit recognition of climate responsibilities. Boyle observes that the Supreme Court and several High Courts have utilized International Environmental Law concepts such as the precautionary principle, intergenerational equity, and sustainable development to justify imposing obligations upon the state for environmental protection.[359] This is consistent with constitutional provisions within India's directive principles, which impose duties on the state and citizens to safeguard the environment.[360] Consequently, there has been judicial support towards settling claims related to climate justice even without specific legislative frameworks on climate litigation.

5.5.2.2. Judicial Practices on Climate Justice

India is recognized around the world for its pioneering Public Interest Litigation (PIL) system, which has significantly advanced access to matters of environmental

[358] *Constitution of India*, ibid, (n.294), p. 122, Art 21
[359] Boyle, A. *Human Rights and the Environment: Where Next?*' (2012) 23 European Journal of International Law 613
[360] *Constitution of India*, ibid, (n. 294), p. 122, art 48A, art 51A(g)

justice.[361] The changes made to customary standing rules mean that any concerned citizen or organization can now approach the court on behalf of communities for collective environmental concerns, claiming climate harm. Rajamani notes that such innovations in procedure have enabled and intensified the responsiveness and accessibility of the Indian judiciary to grievances.[362]

Alongside the more flexible standing rules, other novel remedies and procedural innovations have been introduced by Indian courts, such as expert committee appointments, monitoring systems, and continuing mandamus, where a court maintains jurisdiction over a case indefinitely until there is full compliance with issued orders.[363] In addition, India's National Green Tribunal (NGT), established by the National Green Tribunal Act,[364]further institutionalized environmental adjudication in India by serving as a specialized forum for expeditious resolution of disputes involving multi-layered environmental issues. The NGT's jurisprudence, while not always framed in the language of rights, often reinforces the substantive and procedural obligations necessary to realize environmental justice.

The impact of rights-based climate litigation in India is marked by both successes and systemic challenges. Indian courts have issued a series of judgments with significant implications for environmental governance, including orders for pollution control, deforestation prevention, and the regulation of harmful industrial activities. Sharma observes that these rulings, grounded in constitutional and statutory mandates,

[361] Public Interest Litigation, Oxford University Press eBooks 2022
[362] Rajamani, L., ibid, (n. 96), p. 293
[363] Sharma, V. '*Environmental Adjudication in India: Emerging Trends and the Role of National Green Tribunal'* (2020) 10(1) Transnational Environmental Law 109
[364] *The National Green Tribunal Act of 2010,*

have influenced administrative practices and reinforced state accountability.[365]

However, the implementation of judicial directives remains inconsistent, largely due to institutional unwillingness, bureaucratic fragmentation, and the absence of strong enforcement mechanisms. Sidique notes that despite the courts' proactive stance, follow-through on environmental and climate-related judgments often depends on the capacity and willingness of executive agencies.[366] Moreover, political and economic pressures, particularly in the context of developmental priorities, can dilute the impact of progressive environmental rulings.[367] Nonetheless, the jurisprudence has contributed to the normative development of environmental rights and has sensitised public institutions to the constitutional dimensions of environmental and climate responsibilities.

5.5.3 Pakistan

Pakistan has emerged as a noteworthy jurisdiction in the Global South where constitutional rights have been actively interpreted to address state inaction on climate change. In the absence of dedicated climate legislation, Pakistani courts have utilized constitutional protections, particularly the rights to life and dignity, to articulate and enforce climate obligations.

5.5.3.1 Legal Framework for Protection of Climate Rights

The constitutional recognition of environmental and climate-related rights in Pakistan is grounded primarily in the Constitution of the Islamic Republic of

[365] Sharma, V. Environmental Adjudication in India, ibid, (n. 325), p. 134
[366] Sidique, U., 'The Politics and Reality of Environmental Justice in India: Reservations between Theory and Praxis' [2024] International Journal of Advanced Research, p. 16
[367] Boyle, A. Human Rights and the Environment, ibid, [n. 321], p. 134

Pakistan, which guarantees the rights to life and dignity.[368] In *Leghari v Federation of Pakistan*,[369] the Lahore High Court interpreted these provisions as encompassing a state duty to address climate change impacts. The petitioner, a farmer, argued that the government's failure to implement its own National Climate Change Policy[370] and the Framework for Implementation[371] amounted to a breach of his fundamental rights.

Justice Syed Mansoor Ali Shah accepted this reasoning, holding that climate change posed a direct threat to the constitutional rights of Pakistani citizens and that judicial intervention was warranted to compel state action. Brown and McDonnell have observed that this case signalled the judicial recognition of climate rights, derived not from an explicit constitutional or legislative provision but from an expansive interpretation of existing fundamental rights in line with international environmental principles such as the precautionary principle and intergenerational equity.[372] The case established climate change as a justiciable issue and confirmed the judiciary's role in reviewing government inaction.

5.5.3.2. Judicial Practices on Climate Justice

A key feature of Pakistan's rights-based climate litigation is the accessibility of courts to individual claimants and the judiciary's willingness to creatively structure remedies. The *Leghari* case was initiated by a single individual without the

[368] *The Constitution of the Islamic Republic of Pakistan, 1973*, Articles 9 and 14
[369] *Ashgar Leghari, ibid, (n.60), p. 58*
[370] Ministry of Climate Change, Government of Pakistan, the National Climate Change Policy (2012), https://leap.unep.org/en/countries/pk/national-legislation/national-climate-change-policy-2012?utm_source=chatgpt.com, Accessed on 12.5.2025
[371] Ministry of Climate Change, Government of Pakistan, the Framework for Implementation (2014–2030), https://leap.unep.org/en/countries/pk/national-legislation/national-climate-change-policy-2012?utm_source=chatgpt.com, Accessed on 12.5.2025
[372] Brown, O. and McDonnell, ibid, (n. 297), p. 123

procedural complexity typically associated with environmental class actions or public interest litigation.[373] This demonstrates a relatively broad interpretation of legal standing, which allows for climate grievances to be judicially examined without onerous procedural thresholds.

The most significant procedural innovation in *Leghari* was the establishment of a Climate Change Commission, composed of experts and stakeholders tasked with monitoring the government's compliance with court directives. Peel and Osofsky observe that this move reflects a hybrid model of judicial and administrative oversight, enabling the court not only to issue a ruling but to ensure ongoing enforcement through institutional mechanisms.[374] Such innovations exemplify how procedural tools can be adapted to the demands of climate adjudication, especially in contexts where executive agencies may lack coherence or political will.

Additionally, the court employed a continuing mandamus approach by keeping the case open and requiring regular reporting from the Commission. This allowed for iterative engagement between the judiciary and executive, reinforcing accountability and enhancing the remedial potential of constitutional litigation in the climate domain.[375] The *Leghari* judgment had immediate and structural effects on Pakistan's climate governance landscape. Following the court's orders, the Climate Change Commission convened several sessions, engaged with government ministries, and produced reports to assess compliance. This translated judicial recognition of rights

[373] Barritt, E.M. and Sediti, B., '*The Symbolic Value of Leghari v Federation of Pakistan*: Climate Change Adjudication in the Global South' [2019] Social Science Research Network https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3405212, [Accessed on 24.06.2025]
[374] Peel, J. and Osofsky, H.M, ibid, [n.64], p. 37
[375] Kotzé, L.J, ibid., [n.293], p. 14

into concrete bureaucratic action, compelling the government to take steps toward implementing its climate policies.[376]

While the court's role was instrumental in initiating administrative responsiveness, the long-term effectiveness of such judgments depends on the political sustainability of reforms and the institutional strength of enforcement bodies. Nonetheless, the case has been internationally recognised as a model of rights-based climate litigation, especially in developing countries facing acute climate vulnerability but possessing limited legal infrastructure. Peel and Osofsky note that Leghari ruling has contributed to the global jurisprudential discourse on climate rights by showing that courts in the Global South can lead in establishing enforceable climate obligations grounded in fundamental rights, even in the absence of comprehensive statutory frameworks.[377] It has also provided legal practitioners and scholars with a replicable structure for judicial engagement with climate policy through constitutional interpretation and procedural creativity.

5.5.4 Indonesia

Indonesia, one of the world's most climate-vulnerable countries, has gradually developed a jurisprudence that integrates environmental and human rights into climate-related legal claims. Despite the absence of a specific climate change statute, the judiciary has been increasingly receptive to environmental litigation framed around constitutional rights, statutory duties, and international obligations.

[376] Brown, O. and McDonnell, ibid, (n. 297), p. 123
[377] Peel, J. and Osofsky, H.M, ibid, [n. 64], p. 37

5.5.4.1 Legal Framework for Protection of Climate Rights

Although Indonesia's Constitution does not explicitly refer to climate change, of the Constitution of the Republic of Indonesia guarantees the right to a good and healthy environment.[378] This constitutional right has increasingly been used to ground claims that challenge environmental degradation and state inaction. In climate-related litigation, courts have often interpreted this provision in conjunction with environmental statutes, on Environmental Protection and Management (EPM Law),[379] which provides a legal basis for state obligations to safeguard environmental interests.

One of the most significant judicial recognitions of environmental rights came in the Jakarta Citizens Lawsuit, where a group of residents sued the central and local governments for failing to improve air quality. The Central Jakarta District Court held that the failure of government authorities to mitigate air pollution violated the citizens' constitutional and statutory rights to a healthy environment.[380] While the case did not explicitly invoke climate change, it signalled a legal pathway by which climate-related harms can be addressed under the rubric of environmental and human rights.

The judgment implicitly acknowledged that failure to regulate emissions and ensure sustainable environmental conditions could breach the right to a healthy environment, aligning with broader global jurisprudence on the justiciability of climate rights.[381] Indonesia's courts, although cautious, are gradually expanding the

---

[378] *The Constitution of the Republic of Indonesia, 1945*, Article 28 H(1)
[379] *Environmental Protection and Management* (EPM Law, Law No. 32 of 2009
[380] Jakarta Citizens Lawsuit, Decision No. 374/PDT.G/LH/2019/PN JKT.PST, 2021
[381] Boyle, A. Human Rights and the Environment, ibid, [n. 321], p. 134

scope of constitutionally protected environmental rights to encompass the consequences of climate inaction, thereby making such rights judicially enforceable.

5.5.4.2 Judicial Practices on Climate Justice

Indonesia has made notable progress in facilitating access to environmental justice, particularly through the legal standing of individuals and NGOs. The EPM Law provides for citizen litigations (*actio popularis*) and explicitly allows environmental NGOs to file lawsuits in the public interest without having to prove personal loss.[382] This legal innovation has enabled broader participation in environmental litigation, including claims related to climate change and deforestation.

In addition, Indonesian courts have shown procedural flexibility in handling complex environmental matters, such as accepting scientific data, expert testimony, and environmental impact assessments. These procedural tools have empowered litigants to articulate climate-related harms in legal terms, even in the absence of explicit climate statutes. Fauzi and Zakaria maintain that Indonesia's environmental litigation framework permits class actions and administrative lawsuits, which strengthens institutional responsiveness and public engagement.[383] The citizen litigation mechanism and relaxed standing provisions reflect Indonesia's move towards a more accessible and participatory model of environmental governance, conducive to climate litigation. While Indonesia's judiciary has issued impactful environmental rulings, the implementation and enforcement of these judgments

[382] *Environmental Protection and Management,* ibid, (n. 341), p. 139
[383] Fauzi, R. and Zakaria, Y. '*Citizen Lawsuits and Environmental Litigation in Indonesia'* (2021) 4(2) Indonesian Journal of Environmental Law and Governance 112

remain uneven. In the Jakarta air pollution case, the court ordered multiple levels of government to take specific actions, including revising air quality standards and enhancing enforcement mechanisms. However, Walch and Ng, notes that compliance has been partial and delayed, illustrating the persistent challenge of translating judicial mandates into administrative action.[384]

Institutional fragmentation, limited regulatory capacity, and decentralisation contribute to enforcement difficulties. Nevertheless, litigation outcomes have played a role in shaping public discourse, strengthening environmental accountability, and compelling government institutions to take incremental steps toward climate-responsive governance. Additionally, judgments such as the Jakarta case create important legal precedents that signal to both government and civil society that constitutional environmental rights are not merely aspirational but can be legally enforced.[385]

The broader impact of these rulings lies in their ability to push governments toward climate accountability, even without a comprehensive legislative framework for climate change. Peel and Lin opine that, the judicially enforcing environmental and health-related rights, Indonesian courts contribute to the evolving landscape of transnational climate litigation, particularly in the Global South, where rights-based strategies compensate for legislative gaps.[386]

[384] Walch, C. and. Ng' J., '*Climate Litigation and State Accountability in Southeast Asia: Comparative Trends and Challenges'* (2023) 45 Asia Pacific Journal of Environmental Law, p. 33
[385] Kotzé, L.J, ibid., [n.293], p. 11
[386] Peel, J. and Lin J., ibid, [n. 311], p. 128

5.6 Key Lessons and Best Practices for Tanzania

Key legal and institutional lessons from the jurisdictions presented highlight best practices to strengthen Tanzania's climate litigation system. Focusing on climate rights, access to justice, and judicial effectiveness, these insights aim to improve accountability and environmental governance.

5.6.1 Recognition and Justiciability of Climate Rights: Lessons for Tanzania

The recognition and justiciability of climate rights in Tanzania remain a legally evolving domain. However, the Constitution of the United Republic of Tanzania, particularly under Article 14, which guarantees the right to life, and Article 27, which imposes a duty on every individual to protect natural resources, offers a normative foundation upon which climate-related rights can be construed. A purposive and expansive interpretation of these provisions allows for the incorporation of obligations to prevent, mitigate, and redress harms arising from anthropogenic climate change. In particular, the right to life under Article 14 may be interpreted to encompass the right to a clean, safe, and sustainable environment, given the inextricable link between environmental degradation and the deterioration of life-supporting conditions.

In line with international and comparative jurisprudence, Tanzanian courts could benefit from adopting a rights-based and intergenerational interpretive framework, thereby making climate rights justiciable within the domestic legal system. Notably, the German Federal Constitutional Court in *Neubauer et al. v Germany* held that insufficient climate action violated the constitutional rights of young people and future generations, particularly the rights to life and human dignity under the

German Basic Law.[387] The Court underscored the importance of safeguarding the ecological foundations of future liberty through enforceable carbon reduction targets grounded in scientific evidence and intergenerational equity.[388]

Similarly, in Pakistan, the Lahore High Court in *Leghari v Federation of Pakistan* found that the failure of the government to implement its climate change policy framework infringed upon fundamental constitutional rights, including the right to life, dignity, and information. The Court recognised climate change as a serious threat and invoked the principle of intergenerational equity, establishing a Climate Change Commission to oversee governmental compliance.[389]

Drawing on these developments, Tanzanian courts could reinterpret existing constitutional guarantees to affirm the enforceability of climate obligations as an extension of the right to life and environmental stewardship. Such an approach would not only enhance domestic climate accountability but also align Tanzania with emerging global norms in climate constitutionalism and rights-based environmental governance. Moreover, this strategy would strengthen the legal basis for communities and individuals, particularly those in vulnerable ecological zones, to seek judicial remedies for climate-induced harms, thereby operationalising the judiciary's role in climate governance.

5.6.2 Access to Justice and Procedural Innovations: Lessons for Tanzania

A key element of improving climate governance and accountability in Tanzania is ensuring access to justice for individuals and communities affected by environmental

[387] *German Basic Law (Grundgesetz*, ibid, [n.306], p. 126
[388] *Neubauer et al. v Germany* ruling, ibid, [n, 277], p. 115
[389] *Ashgar Leghari v Federation of Pakistan*, ibid, [n.60], p. 36

degradation and climate-related damages. The Environmental Management Act (EMA) lays out a legal basis for citizen suits, explicitly allowing individuals, groups, or organizations to file legal actions related to environmental protection, regardless of whether they experience direct personal injury or loss.[390] This clause marks a progressive move toward environmental democracy by acknowledging that protecting the environment is a shared responsibility. However, despite this legal pathway, citizen suits in environmental cases, especially those involving climate change, are still rarely used within Tanzanian law, caused to standing limitations.[391]

Access to justice is critical to empowering litigants, especially vulnerable populations, in climate disputes. In Germany, while standing rules are traditionally strict, *Neubauer* demonstrated a willingness to relax locus standi for youth applicants by considering the cumulative effect of emissions on future freedoms. The Court emphasized that when rights risks are diffuse but serious, preventive judicial intervention is warranted.[392] Additionally, South Africa's procedural openness, particularly through liberal standing provisions under section 38 of the Constitution, allows any individual or group acting in the public interest to approach the courts. The procedural innovations in *Earthlife Africa* and other cases demonstrate the accessibility of environmental justice mechanisms.

Furthermore, in India, PIL has been a transformative procedural tool, enabling citizens and NGOs to bring environmental issues before courts without rigid standing requirements. This innovation, unique to India, facilitates systemic reforms

[390] *The Environmental Management Act*, ibid, (n.17), p.5, s 5
[391] *Basic Rights and Duties Enforcement Act*, Cap 3 R.E. 2002, s 4(2)–(5)
[392] *Neubauer Ruling, ibid, (n.277), p.115*

and judicial activism.[393] In Pakistan, the *Leghari* case demonstrated judicial readiness to provide procedural flexibility in climate rights enforcement. The Court relied heavily on international soft law instruments like the UNFCCC and the Paris Agreement, even in the absence of specific domestic climate legislation, thereby enhancing procedural dynamism.[394] In Indonesia, civil society organizations successfully used class action mechanisms and public interest litigation to access the courts on behalf of affected urban populations.

However, the recent Court of Appeal's judgment in *Olengurumwa v Attorney General,*[395] removes restrictive procedural hurdles, enables public interest climate litigation, and empowers citizens and NGOs to hold the government accountable for failing to act on climate change, thus laying the foundation for a more justiciable, rights-based approach to climate governance in Tanzania. The Court declared the affidavit requirement under section 4(2) unconstitutional, holding that the obligation to prove personal harm contravened Article 26(2), which entitles any Tanzanian to pursue constitutional redress in the public interest.

Nevertheless, the Court of Appeal afforded the Government a twelve-month window to amend the impugned provisions, Sections 4(2) to (5) of the Basic Rights and Duties Enforcement Act (BRADEA), to align them with constitutional standards, with the condition that failure to do so would result in the automatic lapse of those provisions. While this deferred invalidation reflects a pragmatic and conciliatory approach aimed at facilitating legislative compliance, it raises important

[393] Raj Kumar, C. *Public Interest Litigation in India: A Retrospective Analysis'* (2005) 19(2) American University International Law Review 14.
[394] *Ashgar Leghari v Federation of Pakistan*, ibid, [n.60], p. 36, paras 5–6
[395] *Olengurumwa v Attorney General,* Civil Appeal No 134 of 2022

constitutional concerns regarding the Court's authority to suspend the effect of a declaration of unconstitutionality, particularly in light of Article 30(4) of the Constitution, which implies that any law found to be inconsistent with constitutional rights becomes void *ipso facto* and does not warrant a grace period.

5.6.3 Implementation, Impact, and Legal Effectiveness of Judgments: Lessons for Tanzania

To enhance the enforceability and practical impact of rights-based climate litigation, Tanzanian courts must move beyond declaratory judgments and adopt structural or supervisory remedies that ensure compliance with constitutional and environmental obligations. Structural orders, such as the establishment of independent oversight commissions, timelines for policy implementation, or mandatory periodic reporting by government agencies, can play a transformative role in translating judicial findings into systemic reform. Such measures are particularly crucial in the climate change context, where rights violations are often diffuse, intergenerational, and systemic.

The jurisprudence from Pakistan offers a compelling model. In the landmark case of *Leghari v Federation of Pakistan*, the Lahore High Court not only found the government in breach of its climate obligations under the National Climate Change Policy but also issued supervisory orders, including the creation of a Climate Change Commission tasked with overseeing governmental compliance.[396] This innovative

[396] In *Leghari v Federation of Pakistan* Judgment - the Green Bench directed responsible ministries and departments to: appoint a focal person on climate change to appear before the Green Bench, and prepare a list of adaption measures to be completed by the end of 2015. The Green Bench also

use of judicial oversight facilitated the operationalisation of abstract climate commitments and ensured the continuous engagement of the judiciary with executive performance on climate policy.

Tanzanian courts could similarly adopt strategic judicial oversight mechanisms, particularly in litigation concerning the right to a healthy environment as implied under Article 14 (right to life) and Article 27 (duty to protect natural resources) of the Constitution of the United Republic of Tanzania. Mandating transparent processes, inter-agency coordination, and public accountability through follow-up orders, courts can help bridge the gap between climate rights recognition and their actual implementation.

Moreover, the incorporation of international legal instruments into domestic adjudication can reinforce the normative authority of climate obligations. Instruments such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement articulate binding commitments on mitigation, adaptation, and climate finance, which can inform the interpretive approaches of domestic courts. As climate change is a transboundary and global issue, Tanzanian courts are justified in referencing international environmental law to guide the application of constitutional and statutory duties. Judicial recognition of such instruments strengthens the legitimacy of climate claims and aligns Tanzania's jurisprudence with its international obligations under the Constitution, which

established a Climate Change Commission to help the Court monitor progress and achieve compliance with guidelines. See Para. 8, https://elaw.org/resource/pk_ashgarleghari_v_pakistan_2015?utm_source=chatgpt.com, [Accessed on 16.06.2025].

mandates the observance of treaties ratified by the country.[397] Courts must embrace their role not merely as arbiters of legal rights but as institutional catalysts capable of directing coordinated government action, enforcing compliance, and embedding international climate norms into domestic constitutional discourse.

5.7 Conclusion

This comparative study offers pragmatic and adaptable lessons for Tanzania in developing a robust rights-based climate litigation framework. Recognizing climate rights as constitutionally justiciable, easing procedural access to courts, and ensuring follow-through on judicial pronouncements are key pillars for an effective climate litigation strategy. Tanzania can enhance its environmental governance by aligning constitutional and statutory interpretation with evolving global climate jurisprudence.

[397] *The Constitution of Tanzania*, ibid, (n. 16), p. 5, Art 63(3)(e)

CHAPTER SIX

LEGAL CHALLENGES FACING RIGHTS-BASED CLIMATE LITIGATION IN TANZANIA

6.1 Introduction

The previous chapter examined the legal and institutional framework supporting rights-based climate litigation in Tanzania. Building upon that foundation, this chapter critically evaluates the legal and institutional challenges that undermine the effectiveness of such litigation. It identifies key legal barriers, including the absence of explicit constitutional recognition of environmental and climate rights, the lack of clear statutory frameworks incorporating international climate treaties into domestic law, limited judicial precedents, and inadequate procedural mechanisms for public participation and access to justice.

It also highlights institutional challenges such as weak coordination among agencies, insufficient judicial capacity, political reluctance to subject climate policy to legal scrutiny, and the underdevelopment of civil society in this arena. Framing these impediments within the broader climate governance context, this chapter underscores the urgent need to close the gap between legal recognition of rights and their practical realization, thereby advancing climate justice in Tanzania.

6.2 Legal Challenges to Rights-Based Climate Litigation in Tanzania

Analyzing the legal challenges to rights-based climate litigation in Tanzania is essential to understand the obstacles within the judicial and legislative framework, including procedural, substantive, and access-to-justice barriers that hinder effective enforcement of environmental and human rights obligations.

6.2.1 Lack of Explicit Constitutional Recognition of Environmental or Climate Rights

The Constitution of the United Republic of Tanzania does not explicitly recognize environmental or climate rights as fundamental, justiciable rights. Unlike South Africa, whose Constitution under Section 24 guarantees every citizen "the right to an environment that is not harmful to their health or well-being,"[398] Tanzania's Constitution merely imposes non-justiciable duties on the environment without granting citizens a claimable right to a clean or healthy environment.[399] This omission has profound implications for climate litigation and the legal enforceability of environmental rights in Tanzania.

The absence of climate and environmental rights in the Constitution has been noted by the Commission for Human Rights and Good Governance (CHRAGG), Legal and Human Rights Centre (LHRC), High Court Registry-Dodoma, Hilton Attorneys Law Firm, and Tanganyika Law Society (TLS), during the researcher's data collection.[400] Participants noted uniformly that the lack of specific climate or environmental rights constitutional provisions limits courts from issuing progressive, rights-based judgments on environmental harm. As pointed out by legal officers at LHRC, judges seem more cautious to interpret Article 14 (right to life) and Article 27 in broader terms, including active protective measures for the environment, due to fear of being labelled as judicial activists exercising powers beyond the constitution.[401]

---

[398] *Constitution of the Republic of South Africa*, ibid n 291, 121, s 24.
[399] *Constitution of the United Republic of Tanzania*, ibid, (n.16), p. 5, art 27.
[400] Interviews and Questionnaires from CHRAGG, LHRC, High Court Registry-Dodoma, and TLS June and July 2024
[401] Ibid

Moreover, the Children's Rights International Network highlights that the lack of an explicit constitutional framework anchoring environmental rights in Tanzania significantly hampers citizens' ability to seek remedies against the state or private actors for environmental harm inflicted upon them.[402] In contrast, South Africa's Constitutional provisions create an accessible and supportive environment for climate change litigation. Section 24 of the Constitution bestows on the state the duty to protect the environment for the benefit of present and future generations.

This provision has been interpreted by South African jurisprudence to encompass at least some obligations for greenhouse gas reductions and environmental protection much more.[403] Thus, while civil society organizations in South Africa have used constitutional arguments to successfully litigate against the state's failure to address climate change, as noted by LHRC and TLS, Tanzanian activists appear helplessly stranded within a statutory or policy approach that is vague, poorly defined, and rarely enforced.[404]

This study finds that this discrepancy within Tanzania's Constitution demonstrates a lack of appropriate responsiveness to current realities, such as the climate crisis. Although courts give meaning to life by incorporating an environmental dimension, such reasoning would lack doctrinal soundness and empirical backing.[405] In contrast with quasi-revolutionary concepts like 'environmental constitutionalism, where

[402] The Children's Rights International Network (CRIN), Children's Access to Environmental Justice in Tanzania (March 2023) 3, https://home.crin.org/a2j-tanzania?utm_source=chatgpt.com, [Accessed on 29.06.2025]

[403] Feris, L. 'The Constitutional Environmental Right' in Paterson A and Kotze LJ (eds), *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (Juta 2010).

[404] Researcher interview with officials of the Legal and Human Rights Centre at Rugakingira House in Dar es Salaam and the Tanganyika Law Society [TLS,] in Dar es Salaam, July 2024,

[405] Interview at the High Court Registry-Dodoma, June 2024

governance frameworks would increasingly embrace explicit dimensions of nature, strictly omitting these elements from fundamental law turns judicial practice arbitrary. From the foregoing is argued that Tanzania's existing constitutional framework suppresses effective climate litigation.

6.2.2 Absence of Clear Statutory Frameworks or Implementing Regulations

Despite Tanzania's ratification of key international instruments like the Paris Agreement, the country lacks comprehensive domestic legislation to operationalize these commitments. Scholars have argued that under Tanzania's dualist system, international treaties have no automatic force domestically without domestic legislation enabling them.[406] Equally, empirical evidence shows that Efforts by individuals or groups to push for change are being made less effective because there are no strong laws in place. This lack of laws is caused by government institutions being too slow to act. Therefore, while policies touch upon climate change issues, they lack actionable legal requirements. Hence goals remain largely theoretical on paper instead of in practice, which undermines real climate action and accountability towards civil society organizations and communities impacted directly.

The absence of legal requirements has impacted seriously judiciary, as courts often cannot intervene in time. Judges of the High Court have dismissed climate change-related cases, partly because there are no specific laws to support them. [407]This situation reflects a conservative legal approach in Tanzania, where courts rely more on written laws than on legal principles developed through case precedents.

---

[406] The CRIN, ibid, (n. 431), p. 172

[407] Researcher interview with High Court Registrar of the High Court Registry in Dodoma, on 20th May 2025

Unlike Tanzania, other countries' judiciary has taken a different approach in addressing climate rights. In India, for example, courts have incorporated the precautionary principle and the public trust doctrine into domestic legal frameworks,[408] To the contrary, courts in Tanzania are reluctant to apply international principles of law without clear backing in statutory law.[409] This dualist approach is premised under under Article 63(3)(e) of provides a constitutional process for ratification, the principle that treaties require domestic legislation to be enforceable flows from this combined constitutional mandate and Tanzania's dualist legal tradition. The empirical evidence suggests that the judicial approach creates a vacuum of climate jurisdiction, which weakens climate jurisprudence and deprives people of effective remedies, undermining trust in the judiciary as the protector of environmental rights.

Equally, the current judicial approach has created significant procedural challenges for civil society organizations. This is because, several cases brought by civil societies have been dismissed by the courts on grounds of lack of sufficient statutory authority.[410] This means that Tanzanian judges tend to refrain from entertaining broad based public interest climate litigation, largely due to the absence of clear procedural frameworks and substantive statutory provisions addressing climate change-related harms.

---

[408] Divan, A. and Rosencranz, A., Environmental Law and Policy in India (2nd edn, Oxford University Press 2001)

[409] The dualist approach provided under Article 63(3)(e) provides a constitutional **process** for ratification, the principle that treaties require domestic legislation to be enforceable flows from this combined constitutional mandate and Tanzania's dualist legal tradition.

[410] An interview with The Legal and Human Rights Centre (LHRC) and Hilton Attorneys held on 24th June 2024 in Dar es Salaam, Tanzania.

While civil societies in Tanzania face such challenges, in India the civil society organizations have successfully invoked statutory mandates to secure court-ordered emission reduction measures and protections for ecologically sensitive areas.[411] In this context, in the absence of constitutional reforms, NGOs in Tanzania will remain legally constrained in holding state and corporate actors accountable, while systemic environmental injustices persist and continue to disproportionately affect vulnerable populations.

Furthermore, undefined statutory boundaries continue to impede access to justice for citizens pursuing environmental claims. An interview with CHRAGG reveal that numerous individuals who have lodged complaints related to pollution, deforestation, and land degradation often fail to obtain redress due to unclear procedures governing the submission of claims and timelines for adjudication.[412] By contrast, South Africa's legal system allows for the issuance of substantive judicial orders to safeguard environmental rights, reflecting a more progressive approach.[413]

This stands in stark contrast to the legal gaps in Tanzania, which hinder vulnerable communities from effectively pursuing civic remedies. The resulting lack of engagement not only undermines public confidence in the legal system but also erodes civic participation, thereby widening the gap of social distrust and

[411] Rathinam, F. and Raja, AV., 'Courts, Media and Civil Society in Regulating the Regulator: Lessons from Delhi Air Pollution Case' [2009] Social Science Research Network https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1433743, [Accessed on 12th November 2024]

[412] Researcher interview with CHRAGG officials, ibid, (n. 410), p. 162. It was emphasized that Section 104(1) of the Environmental Management Act, 2004 [Cap. 191 R.E. 2022], allows any person to bring an action to the High Court to prevent, stop, or compel remedial measures for environmental harm. However, it lacks specific procedural timelines and standardized filing guidance, making it difficult for laypersons to navigate.

[413] Constitution of the Republic of South Africa, ibid, (n.291), p. 121, s 24. This is a directly justiciable right, meaning courts can enforce it through binding orders, unlike many environmental rights in other African jurisdictions that are aspirational or direct principles.

disillusionment with government institutions.

The lack of a clear legal framework governing rights-based climate litigation has adversely affected not only access to judicial remedies but also the functioning of specialized government institutions. This challenge is compounded by institutional fragmentation arising from overlapping mandates, outdated legal frameworks, rigid bureaucratic hierarchies, and weak institutional coordination mechanisms. Regulatory authorities such as the National Environmental Management Council (NEMC) face significant deficits in interagency collaboration, resulting in stagnation of enforcement and policy implementation.[414] According to insights from interviews with the Tanganyika Law Society (TLS), jurisdictional overlaps, inter-agency competition, and mandate ambiguities contribute to institutional inertia and a general policy deadlock.[415]

While other jurisdiction such India, has statutory frameworks clearly delineating the roles and responsibilities of regulatory and enforcement divisions, Tanzanian government agencies operate without legally binding obligations to address the climate challenge.[416] Most constitutionally mandated authorities remain entangled in bureaucratic inertia and weak enforcement mechanisms, thereby impeding the development of effective climate policies. As a result, institutions are overwhelmed by overlapping and conflicting mandates, a condition that is unlikely to improve

[414] Sosovele, H. 'Governance Challenges in Tanzania's Environmental Impact Assessment Practice' (2011) 5 *African Journal of Environmental Science and Technology* 126 https://www.ajol.info/index.php/ajest/article/download/71916/60874, [Accessed on June 2025]
[415] Researcher interview with Tanganyika Law Society (TLS) officials July 2024 in Dar es Salaam, Tanzania
[416] Divan, A. and Rosencranz, A., ibid, (n. 437), p. 174

without comprehensive legal reforms aimed at fostering cohesive and responsive governance. From the foregoing, it is argued that although it is politically attractive to ratify international agreements, the actual implementation of them domestically is out of reach due to systematic hurdles, weak political resolve, and lack of pressure from relevant constituencies.

6.2.3 Limited Judicial Precedents on Climate-related Fundamental Rights

Inadequate judicial precedents on the fundamental rights of climate issues significantly obstruct rights-based climate litigation in Tanzania.[417] This absence of jurisprudence stagnates the courts' ability to bind constitutional evolution to climate protection. Unlike jurisdictions such as Pakistan, where the Supreme Court in *Leghari v Federation of Pakistan* extended constitutional provisions for life and dignity to include climate protection, Tanzania does not have explicit constitutional guarantees granting these rights. Empirical evidence suggests that judges often treat environmental harm as an administrative or policy question rather than a matter of fundamental rights.[418] In this context, judicial attitude fails to appreciate the urgency and indivisibility of environmental and climate rights from core human rights.

Although Articles 14 and 27 of the Tanzanian Constitution might provide a constitutional foundation for claims pertaining to climate justice, Tanzanian courts have persistently avoided interpreting these provisions in a way that imposes obligations on the government to act towards mitigation or adaptation of climate change. For example, in *Sustainable Environmental Development Action v Hussein*

[417] Majamba, H.I., ibid, (n.37), pp. 3–4.
[418] Researcher interview with officials of the Legal and Human Rights Centre at Rugakingira House in Dar es Salaam, 28th July 2024,

Mjili,[419] the applicant sought an injunction to restrain further unlawful industrial effluent discharges onto community land, which posed risks of soil and water contamination.

The court only considered the issue of compliance checked against the Environmental Management Act's compliance and appraisal processes, viewing it purely as a matter of regulatory enforcement within administrative law. It completely ignored whether such pollution amounted to infringement of constitutional or fundamental human rights, nor did it touch on what could be termed as the climatic aspects encapsulated in such kind of disputes. This case exemplifies the prevailing approach in Tanzanian jurisprudence: judges frame environmental harm primarily through a regulatory lens, sidestepping potential constitutional or rights-based arguments, even when pollution could be seen as symptomatic of larger climate challenges.

In a related matter legal instruments like the Environmental Management Act,[420] alongside other auxiliary policies such as United Republic of Tanzania, National Environmental Policy,[421] omit provisions granting state climate change impact responsibility.[422] Consequently, CHRAGG has been receiving public grievances concerning environmental pollution as well as land use disputes influenced by climate change, but its orders are only advisory. This lack of institutional strength fosters a legal culture where climate rights claims are splintered and cannot be

[419] (Misc. Civil Application No 26 of 2022) [2022] TZHC 14021 (High Court of Tanzania, Dodoma, September 29, 2022),
[420] *The Environmental Management Act*, ibid, (n.17), p.5
[421] United Republic of Tanzania, *National Environmental Policy, 2021*
[422] Researcher interview with CHRAGG officials, ibid, (n. 410), p. 162.

litigated in court. It is therefore argued argued that Tanzania's human rights framework would not support climate change litigation based on human rights violations until statutory amendments empowering CHRAGG's enforcement powers are made.

In addition, the existing Tanzanian legal framework lacks an explicit requirement for courts to consider climate science or scientific evidence establishing the causal link between climate change and increased vulnerability. This absence stands in stark contrast to jurisdictions such as Pakistan, where in the *Leghari* case,[423] the Supreme Court grounded its reasoning in scientific and internationally recognized evidence, affirming climate change as an urgent threat to constitutional rights. Empirical evidence reveals that Tanzanian courts rarely incorporate climate science into their legal reasoning and only occasionally refer to international environmental law or soft law instruments.[424] This gap is partly attributable to the absence of judicial precedents and a developed body of climate jurisprudence, as well as the lack of a supporting legal framework.

Equally, the absence of established rights-based climate litigation precedents and developed climate jurisprudence in Tanzania has hindered civil society organizations and broader activist efforts from effectively leveraging the courts to address climate harms. Despite these constraints, it is established that there is a growing public awareness and targeted training initiatives aimed at empowering activists, lawyers, and community paralegals to frame climate-related grievances within constitutional

[423] A*sghar Leghari case,* ibid, (n. 60), p. 36
[424] Researcher interview with officials of the Legal and Human Rights Centre, ibid, (n.447), p. 178

parameters.[425] Interviewees reported participating in workshops designed to build legal skills for connecting climate harms to constitutional protections. Recently, LHRC has also documented stronger collaborations between NGOs and academic institutions to develop legal strategies grounded in constitutional principles of life and human dignity, as well as measures addressing global warming threats to Tanzania.[426] The proactive approach of civil societies and NGOs represents an important but preliminary step toward constructing a robust legal foundation for addressing the legal implications of climate change.

Generally, both the doctrinal and empirical evidence involving civil society organizations, reveal that Tanzania's judicial and institutional systems have yet to develop significant precedents recognizing climate change as a threat to fundamental rights. In contrast, while the Supreme Court of Pakistan in the *Leghari* case adopted a bold and progressive stance grounded in human rights, the Tanzanian judiciary has remained cautious and largely indifferent to global movements advocating for climate protection through rights-based approaches. Nevertheless, despite the persistence of structural and doctrinal barriers, there is evidence of emerging resilience driven by civil society advocacy and legal training programmes which is gradually empowering individuals to assert their rights through climate litigation.

6.2.4 Weak Procedural Mechanisms Ensuring Public Participation

Public participation in mitigating the impact of environmental changes is very important. This must be backed by relevant laws. In absence of such laws, the public

[425] Researcher interview with officials of the Legal and Human Rights Centre, ibid

[426] An interview with conducted by the Lawyers' Environmental Action Team **[**LEAT] at Mazingira House, Mazingira Street (Mikocheni B, off Warioba Street, and The Open University of Tanzania Legal Aid Clinic [OUTLAC], held on 15th July 2024 in Dar es Salaam, Tanzania

participation may be hampered. In Tanzania, the legal frameworks for environmental and climate governance allocate very limited spaces for civic and public engagement due to stringent procedural restrictions. For example, section 104(1) of the Environmental Management Act, Cap. 191 R.E. 2022 provides that any person may apply *ex parte* to the High Court for an environmental protection order,[427] but the procedural formality and exclusivity of High Court jurisdiction limit meaningful public access to environmental justice.

This position is supported by empirical evidence that shows there are still persistent obstacles that hinder citizens' access to justice for climate-related issues.[428] This means that Tanzania's procedural regulations impose stringent evidence requirements paired with rigid standing limits. However, the recent Court of Appeal decision in *Onesmo Olengurumwa v Attorney General*[429] has nullified the law that put a limitation on standing in court by obliging the government to rectify the said law.[430] While Tanzania is facing such limitations, in other jurisdictions, such as Indonesia's Environmental Protection and Management Law, there is a provision for public interest litigation supporting civil society standing.[431]

Additionally, community members and grassroots organizations encounter numerous challenges at a procedural level while pursuing legal action for environmentally damaging activities stemming from climate change. Many cited that courts issue

[427] *Environmental Management Act*, (n. 17), p.5, s 104(1)
[428] Researcher interview with officials of the Legal and Human Rights Centre, ibid, (n.447), p. 178 and, officials from the High Court Registry in Dodoma and CHRAGG officials, ibid, (n. 410), p. 162.
[429] *Onesmo Olengurumwa v Attorney General, Olengurumwa v Attorney General*, ibid, (n. 357), p. 145
[430] Article 26(2) does not require proof of personal harm, thereby expanding the scope for environmental and climate-related constitutional claims.
[431] *Indonesia's Environmental Protection and Management Law,* ibid, (n. 341), p. 139, Art 92(1), provides for public interest litigation by allowing environmental organizations to file lawsuits in the interest of environmental protection, thereby supporting civil society standing.

demands for harm that are concrete, specific, and personally directed at the individual and do not accept group or diffuse harms as a valid case.[432] Unlike Setiawan's analysis on Indonesia's approach to civil society standing in climate cases[433]. Tanzania still does not recognize legal collective environmental interests. Empirical evidence suggests institutional unwillingness to engage with climate science or international environmental law.[434] In this context, judges view climate change as simply an executive branch policy issue, which is a considerably limited understanding of judicial authority.

It is further established that Tanzanian courts do not improve their ability to handle cases and update their legal principles to support rights related to climate change.[435] Hence, without recognizing public interest standing, participation by marginalized groups will be futile. Unlike Tanzania, Indonesian courts have demonstrated greater willingness to incorporate scientific data and international climate norms into their reasoning, as was held in the case of *Melinda Jaya v Governor of Jakarta* (Jakarta Citizens' Climate Case).[436]

In this landmark case, 32 Jakarta residents successfully sued the Indonesian government for failing to protect their constitutional right to a healthy environment, with the court ruling that the authorities' inaction and poor environmental policies

[432] Researcher interview with officials of the Legal and Human Rights Centre, ibid, (n.447), p. 178
[433] Setiawan, B., *'Strengthening Access to Environmental Justice in Indonesia'* (2021) 13 Indonesian Journal of Environmental Law 12
[434] Researcher interview with High Court Registrar of the High Court Registry in Dodoma, on 20th May 2025
[435] Ibid
[436] *Melinda Jaya v Governor of Jakarta* (Jakarta Citizens' Climate Case), Decision No.74/Pdt.G/LH/2019/PN. Jkt.Pst,

violated constitutional and legal obligations amid worsening climate conditions. As noted in prior sections, CHRAGG officials acknowledged during interviews that their constitutional role, requiring receipt of complaints and issuing recommendations, faces constraints at the boundary due to a lack of effective enforcement woven into legal compliance.

While CHRAGG critically observes human rights abuses resulting from climate impacts, its recommendations are not legally binding and thus do not strengthen accountability for climate governance gaps.[437] In contrast, Indonesia's civil law system provides societal groups with actionable standing rights, which allows them to sue the government for failure to meet its climate.[438]This study advocates expanding CHRAGG's jurisdiction as part of more comprehensive reforms necessary to achieve effective climate accountability.

Regardless of these obstacles, the LHRC survey indicates an increase in awareness among Tanzanians about the relationship between climate change and fundamental human rights. Civil society organizations are beginning to train lawyers and community paralegals to articulate climate-related grievances as constitutional claims, which may mark the beginning of a strategic shift toward rights-oriented litigation. From the researcher's viewpoint, this is a significant initial advance toward building a culture supportive of public interest climate litigation.

[437] Researcher interview with CHRAGG officials, ibid, (n. 410), p. 162

[438] *Indonesia's Environmental Protection and Management Law,* ibid, (n. 341), p. 139, Art 92(1), This provision grants legal standing (locally known as *legal standing for class action or citizen lawsuit*) to civil society organizations to file lawsuits *in the public interest*, including cases related to climate inaction.

The above discussion demonstrates that Tanzania's restrictive procedural barriers, combined with scant judicial engagement with climate science and weakened legal frameworks, undermine public participation in climate governance. However, this is quite unlike Indonesia, which has allowed for the legal modernization of civil society's engagement with rights-based climate advocacy and community participation. The researcher concludes that in the absence of comparable shifts in Tanzania's legal infrastructure and case law development, climate litigation will continue to be largely neglected as a mechanism for achieving climate justice and safeguarding vulnerable communities.

6.3 Institutional Challenges to Rights-Based Climate Litigation in Tanzania

Exploring institutional challenges is critical for understanding rights-based climate litigation in Tanzania, as fragmented mandates, limited coordination, and inadequate capacity within key agencies hinder effective enforcement, policy implementation, and the overall ability of institutions to support climate justice initiatives.

6.3.1 Institutional Fragmentation and Poor Coordination

In protecting rights based on human rights, it is important to have a clear institutional legal framework. Unfortunately, the institutional framework that oversees rights-based climate litigation in Tanzania suffers from significant overlap and fragmentation. For instance, the Environmental Management Act, 2004 (Cap. 191) establishes NEMC[439] and mandates multiple institutions with overlapping jurisdictions,[440] while the Land Act, Forest Act, Wildlife Conservation Act, and

[439] *The Environmental Management Act*, ibid, (n.17), p.5, s. 16(1)
[440] The EMA, ibid, ss 13-15, outlines the role of the Minister responsible for Environment, overlapping

Water Resources Management Act each regulate environmental matters without a harmonized mechanism.[441] Moreover, the Constitution of Tanzania provides a general basis for environmental rights, but lacks specific procedural guidance,[442] and the Commission for Human Rights and Good Governance has limited jurisdiction over environmental violations.

This fractured framework burdens Tanzania with inconsistent legislation, conflicting regulatory priorities, and disjointed enforcement systems, thereby weakening the effectiveness of rights-based climate litigation. Empirical evidence reveals that environmental and human rights agencies do not participate in systematic framework partnerships on joint projects or coordinated multi-agency collaborative arrangements geared towards addressing shared objectives.[443]This lack of coordinated response serves to dilute accountability and weaken institutional collaborative synergy essential for dealing with complex inter-sectoral climate challenges centred around rights-based climate litigation.

Unlike Tanzania, in Germany, the federal government coordinates climate policy for both levels of government through the implementation of sub-national climate action plans operationalised in the Climate Protection Act 2019. This law stipulates emission reduction targets for each sector and implements independent oversight through the Expert Council on Climate Issues.[444] Tanzania has neither any statutory

---

at times with NEMC and other sectoral ministries.

[441] Each of the mentioned sectoral laws establishes authorities and enforcement mechanisms that often conflict or duplicate mandates under the Environmental Management Act, leading to institutional friction and inefficient enforcement

[442] The Constitution of Tanzania, ibid, (n.17), p.5, Art. 14 and 26(2)

[443] Empirical Interviews conducted by the researcher at the Legal and Human Rights Centre (LHRC), The High Court Registry of Dodoma, the Commission for Human Rights and Good Governance (CHRAGG), ibid

[444] *Climate Protection Act 2019* (Klimaschutzgesetz), ss 4, 5, 8, 11.

climate targets nor an independent statutory body charged with monitoring governmental compliance. The absence of structural reform combined with a lack of political leadership has prevented Tanzania from adopting an integrated approach like Germany's multi-layered and institutionally coordinated model. As a result, the country's fragmented institutional framework continues to hinder rights-based climate litigation efforts.

The divisions between the ministries for the environment, natural resources, and energy deepen inter-institutional rivalry. Empirical evidence reveals that Tanzanian agencies contest for scarce resources on policy influence, which leads to the issuance of various competing documents that muddle public understanding as well as that of potential litigants.[445] As per survey data from the High Court Registry in Dodoma, there is a frequent backlog or dismissal of environmental cases because of unclear guidelines and jurisdictional overlap created by conflicting agency positions.[446]

This institutional chaos undermines not only the provision of justice but also public trust in legal processes as effective means for asserting climate rights. This is different from other countries, such as Germany, where there are inter-ministerial committees and binding climate laws that foster coordinated and legally enforceable action.[447] The lack of institutional capacity in Tanzania remains an overarching problem. Interviews conducted in Tanzania show that important agencies do not

[445] Researcher interview with officials of the Legal and Human Rights Centre at Rugakingira House in Dar es Salaam and the Tanganyika Law Society [TLS,] in Dar es Salaam, in July 2024

[446] Researcher interview with High Court Registrar of the High Court Registry in Dodoma, on 20th May 2025

[447] *Federal Climate Protection Act (Klimaschutzgesetz – KSG) of 12 December 2019 (Federal Law Gazette I, p. 2513), as amended by the Act of 18 August 2021 (Federal Law Gazette I, p. 3905),* s 10.

possess reliable climate data, technical personnel, or funding required to support evidence-based litigation.448 For instance, representatives from the Commission for Human Rights and Good Governance (CHRAGG) acknowledge that the absence of environmental experts among their staff limits their ability to provide expert legal testimony or conduct compliance assessments, both of which are critical in rights-based litigation.

As demonstrated in this analysis, institutional fragmentation and poor inter-agency coordination significantly hinder the prospects for successful rights-based climate litigation in Tanzania. In contrast, the German experience illustrates that legal coherence, institutional collaboration, and sustained capacity-building can transform climate litigation from a theoretical aspiration into an enforceable legal mechanism. Without deliberate structural integration and technical capacity enhancement across Tanzania's institutional framework, climate litigation grounded in human rights will continue to fall short of achieving meaningful accountability or remedies for climate-related harm.

6.3.2 Judicial Capacity Constraints

Tanzania's judiciary lacks adequate resources and technical capacity to effectively adjudicate complex climate-related litigation involving human rights. Tanzania has not adopted systematic efforts to develop its climate law capacity. Interviews conducted with the Legal and Human Rights Centre (LHRC) and the High Court Registry in Dodoma reveal a significant lack of education in climate science and human rights among judges, which undermines their ability to fairly and

[448] Researcher Interview with CHRAGG officials, ibid, (n. 410), p. 162

competently resolve climate-related disputes.[449] Tanzanian courts, however, lack both the resources for judicial training and formal mechanisms for peer learning or institutional coordination on environmental matters. This deficit result in delays, poorly reasoned judgments, and dismissals of climate cases on technical grounds.[450] Furthermore, the absence of dedicated environmental divisions within Tanzanian courts exacerbates the problem. Tanzanian judges often handle environmental cases alongside unrelated matters. Survey data from the High Court Registry confirms that this structure impedes the development of consistent and coherent climate jurisprudence.

In a country like South Africa, specialized training programmes and environmental committees have fostered expertise in ecological jurisprudence. The South African judiciary has taken deliberate steps to enhance environmental adjudication, including the establishment of the Judicial Institute for Environmental Law and judicial environmental committees to promote knowledge sharing.[451] Essentially, South Africa's investment in strengthening judicial capacity has yielded significant progress in environmental jurisprudence. In contrast, Tanzania continues to suffer from inadequate judicial training, institutional fragmentation, and limited technical capacity. Without deliberate investments in judicial education and structural reform, climate litigation in Tanzania will remain weak and ineffective. From the foregoing, it is argued that the creation of specialized benches or environmental divisions within the judiciary is essential for strengthening judicial competence and enhancing

[449] Researcher interview with officials of the Legal and Human Rights Centre at Rugakingira House in Dar es Salaam and the Tanganyika Law Society [TLS,] in Dar es Salaam, July 2024
[450] Researcher Interview with CHRAGG officials, ibid, (n. 410), p. 162
[451] National Environmental Management Act 107 of 1998 (NEMA), s 2(1)(f), and South African Judicial Education Institute Act 14 of 2008 (SAJEI Act), 3(1)(b)

the quality of climate-related adjudication.

6.3.3 Political and Administrative Barriers

Tanzania's courts operate within a political environment that significantly constrains their independence, particularly in matters concerning climate rights. In Tanzania, however, political constraints, including executive dominance, have discouraged courts from issuing strong rulings in climate cases. Empirical data collected from LHRC and CHRAGG personnel indicate that judges often refrain from issuing bold decisions due to fear of political sanctions or institutional retaliation. This situation undermines the judiciary's constitutional mandate to uphold environmental rights and weakens its role as a check on executive inaction.

This approach is different from other countries such as India and Pakistan. For example, Courts in Pakistan has exercised robust judicial oversight over executive failures to fulfil environmental responsibilities. As Rajamani notes, such assertiveness has enabled courts in these jurisdictions to hold governments accountable for environmental harm.[452] In India, landmark decisions such as the *MC Mehta* case[453] introduced progressive doctrines, including the 'polluter pays' principle and the public trust doctrine. Similarly, courts in Pakistan have invoked constitutional mandates to compel state action on climate adaptation and emissions reduction.[454] In Tanzania, however, judges remain hesitant to challenge weak enforcement of environmental laws, often deferring such matters to administrative prerogatives. Survey data from the High Court Registry in Dodoma illustrate this

[452] Rajamani, L, ibid, (n.96), p. 47.
[453] *M.C. Mehta v Union of India* (1987) AIR 965 (SC); (1987) SCR (1) 819.
[454] Ibid, n. 484

reluctance, pointing to a broader failure to uphold the separation of powers and ensure judicial independence in climate governance.[455]

Administrative inertia further compounds these challenges. Bureaucratic inefficiencies, inter-departmental conflicts, and shifting policy priorities frequently delay or obstruct the enforcement of environmental court orders. Interviews with CHRAGG officials reveal that administrative bodies often ignore or postpone compliance with court directives, particularly during periods of fiscal constraint or political transition. The author argues that effective climate litigation requires not only judicial independence but also strong accountability mechanisms across government institutions, an area that remains underdeveloped in Tanzania.

While courts in India and Pakistan have embraced judicial activism in environmental governance, Tanzania's political and administrative landscape continues to constrain the judiciary's capacity to enforce climate rights. Therefore, greater judicial autonomy, improved governance, and enhanced administrative accountability are critical to enabling rights-based climate litigation to fulfil its role in advancing environmental justice

6.3.4 Weak Civil Society Capacity

The limited capacity of civil society organizations (CSOs) poses one of the most critical organizational obstacles to rights-based climate litigation in Tanzania. Unlike Kenya's Katiba Institute[456] and South Africa's Centre for Environmental Rights,[457]

[455] Researcher Interview with High Court Registrar of the High Court Registry in Dodoma, on 20th May 2025
[456] Katiba Institute, *About Us*, Katiba Institute (Web Page) https://katibainstitute.org/about-us/,

which have gained recognition for strategic litigation and policy advocacy, Tanzanian CSOs are under-funded, over-regulated, politically constrained, and face numerous other challenges.[458] Empirical report from LHRC and CHRAGG officials reveals severe deficits in stable funding, legal representation, and access to climate data, all of which hinder effective litigation.[459]

In both Kenya and South Africa, CSOs have developed robust collaborative networks that incorporate community members alongside domestic and international legal experts to drive bold climate litigation. These organizations enjoy legal protection and a relatively open political space that allows them to criticize government actions and pursue bold legal challenges. Tanzanian CSOs, by contrast, operate under rigid regulatory frameworks, lack skilled personnel, and possess limited technical capacity. Survey responses from the High Court Registry in Dodoma indicate that many environmental cases brought by civil society actors are either withdrawn or dismissed due to a lack of preparation or evidence.

The gap between Tanzanian CSOs and academic or research institutions further impairs their ability to build evidence-based claims. In South Africa, partnerships between universities and CSOs have resulted in innovative legal strategies supported by robust scientific evidence. LHRC officials in Tanzania report a lack of similar collaboration, which weakens the scientific basis of environmental claims. The

---

accessed 30 June 202

[457] Centre for Environmental Rights, Who We Are, CER (Web Page) https://cer.org.za/who-we-are/, accessed 30 June 2025.

[458] Musamba, J. *The Legal Environment for Civil Society Organizations in Tanzania: A Critical Review'* (2022) 15 African Journal of Governance and Development 87.

[459] Researcher Interviews with LHRC, CHRAGG, ibid

author argues that bridging this gap is essential to improving civil society's effectiveness in pursuing rights-based climate litigation.

While CSOs in South Africa and Kenya advance climate justice with strong institutional support, Tanzanian civil society continues to face legal, financial, and political hurdles. The author advocates for reforms that enhance the legal and operational capabilities of Tanzanian CSOs, including access to funding, training, and partnerships with research institutions. Enhancing civil society capacity is fundamental to enabling rights-based litigation as a tool for accountability and equitable environmental governance.

6.4 Conclusion

This chapter has critically examined the legal and institutional constraints undermining the effectiveness of rights-based climate litigation in Tanzania. It has been demonstrated that the absence of explicit constitutional guarantees on environmental rights, combined with gaps in statutory frameworks for incorporating international climate obligations into domestic law, restricts the judiciary's ability to enforce meaningful remedies. Weak procedural rules for public participation, combined with a lack of judicial precedent, further weaken the foundations for effective climate litigation.

On an institutional level, poor inter-agency coordination, limited judicial capacity, political interference, and an underdeveloped civil society sector collectively hinder the transformative potential of litigation as a mechanism for advancing climate justice. As the study moves into the next chapter on research findings, conclusions,

and practical recommendations, addressing these structural barriers is crucial for closing the gap between the theoretical promise of rights-based climate litigation and its practical effectiveness in promoting climate accountability and environmental protection in Tanzania.

CHAPTER SEVEN

KEY FINDINGS, RECOMMENDATIONS, AND CONCLUSION

7.1 Introduction

This chapter presents and discusses the key findings of the study on the relevance and potential of rights-based climate litigation in Tanzania, with an emphasis on international trends, comparative practices, and domestic legal and institutional frameworks.

7.2 Main Insights of the Research and Key Findings

A central motivation behind this study was the need to explore the effectiveness of rights-based climate litigation as a legal approach for addressing the escalating impacts of climate change in Tanzania. The study specifically aimed to evaluate the effectiveness of this form of litigation in enhancing accountability, promoting environmental justice, and upholding fundamental human rights. The study was guided by the following research questions:

i. What are the international and regional developments in rights-based climate litigation, and how relevant are they to the Tanzanian legal context?
ii. What comparative lessons *can* be drawn from rights-based climate litigation in selected foreign jurisdictions, and which of these are transferable to Tanzania?
iii. What is the current legal and institutional framework governing rights-based climate litigation in Tanzania, and what are the key challenges affecting its practical implementation?

The study demonstrates a critical gap within Tanzania's legal and institutional frameworks designed for environmental protection. While various initiatives have

been implemented, their alignment with human rights concerns remains insufficient. Consequently, the most vulnerable communities facing the impact of climate change are legally neglected, resulting in a scarcity of climate-related litigation. Using doctrinal analysis alongside empirical and comparative studies, the research found that rights-based climate litigation is most effective in jurisdictions where courts recognize climate harm as a violation of a fundamental right. The literature review suggests that despite the widespread global consensus on climate change as a human rights issue, legal and scholarly engagement with this perspective in Tanzania is limited, highlighting the need for more dedicated scholarly and policy efforts in this domain.

The conceptual and theoretical foundations for rights-based climate litigation in Tanzania, as discussed in Chapter Two, reveal that this area remains mostly underdeveloped and poorly studied. Although there is growing recognition of human rights principles, such as intergenerational equity, the right to a clean and healthy environment, and access to environmental information, within international climate law, their practical application in Tanzania remains limited. The failure to systematically incorporate these principles into climate litigation theory creates a substantial knowledge gap, hindering the development of effective legal strategies based on human rights.

7.2.1 Response Related to the First Objective

The study shows that global and regional progress in rights-based climate litigation, as discussed in Chapter Three, offers valuable guidance for improving Tanzania's legal system in tackling climate change through a human rights-based approach. The

findings also emphasize a growing international agreement recognizing the deep connection between human rights and climate change. Various international and regional instruments, including the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, General Comments by treaty-monitoring bodies, and jurisprudence from regional human rights courts, have affirmed that environmental degradation, driven by climate change, threatens the enjoyment of core human rights, such as the rights to life, health, water, and a clean and safe environment.

Moreover, landmark international decisions, such as the UN Human Rights Committee's ruling in *Teitiota v. New Zealand* and the European Court of Human Rights' recognition of climate change as a justiciable human rights issue (e.g., *KlimaSeniorinnen v. Switzerland*), illustrate a growing willingness to adjudicate climate harms within a human rights framework. These developments reinforce the principle that states have both positive and negative obligations to prevent foreseeable climate-related harms that impact fundamental rights.

Nevertheless, the implications of the global and continental trends remain shallow in the case of Tanzania. Tanzania is a party to some fundamental treaties of the environment and human rights domains, for instance, the African Charter on Human and Peoples' Rights and the International Covenant on Economic, Social and Cultural Rights. However, the law in Tanzania is not self-executing; it does not automatically absorb treaties unless specific enabling legislation is passed. This dualistic stance sharply limits the scope for the application of international climate change human rights law in domestic court litigation.

Consequently, Tanzanian courts have yet to meaningfully incorporate international human rights and environmental norms into climate-related adjudication, despite formal commitments to international principles. Judicial references to such obligations remain rare, with limited institutional support and legal precedent for invoking them effectively. Empirical evidence from the Tanganyika Law Society (TLS) and the Legal and Human Rights Centre (LHRC), and the High Court Registry in Dodoma, as presented in the previous chapter, confirms that the limited application of international climate-related human rights norms in Tanzanian courts is largely due to judicial conservatism, lack of training in international environmental law, and the absence of domesticated legal instruments mandating their use.

(i) Assessment of Subsection 7.2.1

This finding answers the central research problem by revealing an important structural gap in the normative and institutional feasibility of rights-based climate litigation in Tanzania. Although there are strong legal and normative international or regional developments, their shallow domestic incorporation serves little purpose for local climate litigation. The disparity between the international development of law and the practice of law in the country reveals the lack of appropriate reform in the legal framework, judicial capacity building, and public interest litigation aimed at domesticating and implementing rights-based environmental standards. In the end, this finding underscores the fact that for Tanzania to fully exercise rights-based climate litigation, there is a need to strengthen the existing domestic legal framework to reconcile it with international legal standards.

7.2.2 Response Related to the Second Objective

In pursuit of its objective to explore how judicial experiences from foreign jurisdictions could inform the development of Tanzania's rights-based climate litigation framework, the study, as presented in Chapter Four, analyzed key judicial trends in selected countries, namely Germany, South Africa, India, Pakistan, and Indonesia. The study found that each of these jurisdictions has influenced constitutional and legal tools to promote environmental accountability and justice.

In Germany, landmark cases such as *Neubauer et al. v Germany* reflect the judiciary's willingness to enforce intergenerational equity and demand stronger climate ambition from the state. The German Federal Constitutional Court recognized that inadequate climate action today burdens future generations, thus grounding environmental protection within fundamental rights. South Africa has advanced judicial environmentalism through mechanisms such as the Judicial Institute for Environmental Law and environmental committees, which foster judicial knowledge-sharing and consistency in environmental adjudication. These efforts have improved the judiciary's capacity to address complex climate-related disputes.

In India and Pakistan, courts have creatively interpreted the right to life under their constitutions to encompass a right to a clean and healthy environment. The use of public interest litigation (PIL) has opened the door for a broad range of actors, including civil society, to hold governments accountable for environmental harms. Notably, in *Leghari v Federation of Pakistan*, the Lahore High Court directed the government to implement its climate policy, citing constitutional rights and human

dignity. Indonesia, on the other hand, has demonstrated the practical utility of environmental protection statutes by granting societal groups actionable standing rights. In *The Jakarta Citizens Lawsuit*, the court upheld the constitutional right to a healthy environment and mandated government action on worsening air pollution.

The experiences analyzed above indicate that climate litigation premised on rights-based approaches thrives in contexts with broad judicial interpretation of constitutional rights, facilitated access to justice, evolving judicial specialization in environmental issues, and an institutionalized focus on civil society engagement. As noted in the previous chapter, the TLS and OUTLAC have provided concrete illustrations of the developing institutional aid for environmental legal action within the Tanzanian setting. TLS organized climate-centred legal forums and advocated for the framing of policy to enrich constitutional and legal provisions on environmental rights. OUTLAC's legal assistance to marginalized populations impacted by environmental degradation underscores the advancing role of university-based legal aid clinics in the climate justice movement. These developing steps, albeit in their formative stage, suggest the potential within Tanzania to adopt rights-based climate litigation approaches, akin to those pioneered in other countries.

(i) Assessment of Subsection 7.2.2

The findings effectively respond to the research question by offering demonstrable legal and procedural strategies that Tanzania can consider to enhance its capacity for rights-based climate litigation. These strategies include expanding legal standing to allow for broader participation in environmental decisions. litigation; Institutionalizing judicial environmental training to improve the quality and

consistency of decisions; Encouraging constitutional interpretation that recognizes environmental protection as part of fundamental human rights.

While acknowledging Tanzania's unique legal and constitutional context, these foreign experiences provide a practical and normative blueprint that can inform local reform. The success of rights-based climate litigation in these jurisdictions shows that courts, even in developing countries, can be vital arenas for promoting environmental justice when legal frameworks and institutional settings are appropriately aligned. Thus, the objective's pursuit not only yielded informative comparative insights but also provided a feasible roadmap for strengthening Tanzania's climate litigation landscape through the lens of human rights.

7.2.3 Response Related to the Third Objective

As part of its objectives, the study examined Tanzania's legal and institutional framework for rights-based climate litigation and assessed the challenges hindering its effective implementation, with a particular focus on enforcement gaps, as detailed in Chapter Five. The results indicate that there is a lack of alignment between the domestic system's framework and the systemic and procedural elements. It is also observed that while the Constitution of the United Republic of Tanzania contains some Directive Principles of State Policy which the state is supposed to guide towards the protection of the environment, such provisions are non-justiciable. They cannot be enforced in a court of law.

There are some legal provisions, such as the Environmental Management Act, which provide a mechanism for environmental litigation, but there is no climate change

substantive law that recognizes climate rights as a legal right. The problem is aggravated by institutional fragmentation, which is the lack of system-wide integration that consolidates climate governance responsibilities across several bodies with rival jurisdictions that tend to duplicate or conflict with one another, creating administrative paralysis, policy inconsistency, and disjointed implementation.

Empirical evidence from the Legal and Human Rights Centre (LHRC) and the Tanganyika Law Society (TLS) highlighted in the previous chapter shows how lacking institutional frameworks and legal infrastructures undermine the effectiveness of climate governance and curtail judicial effectiveness. In addition, the climate judicial gaps showcase judicial conservatism through the narrow use of doctrines like public interest standing and justiciability which grant too few avenues for justice in regard to climate disputes. The challenge of technical and scientific evidence, alongside the appropriate judicial frameworks to deal with the multitude of evidence presented in climate cases, further erodes the judicial power for environmental dispute resolution.

(i). Assessment of Subsection 7.2.3

The findings effectively respond to the research question because they demonstrate that Tanzania has foundational legal and institutional capacities to support climate litigation based on rights, but these factors are completely dissatisfied by shallow governance, limited judicial Windows, and procedural laziness. The study observes that the climate justice litigation is currently limited by the non-justiciability of the environment, lack of systemized multi-agency collaboration, inadequate judicial infrastructure, and non-justiciability of some deemed irrelevant judicial mandates.

There is a gap to fill, which in this case, at the very least, intentional changes are necessary, particularly those which are compatible with the necessary changes within national legal frameworks and treaty obligations, improvement of institutional frameworks, expansion of judicial frameworks, innovation in multi-climate litigation procedures, and development of climate litigation-specific judicial innovation procedures. Therefore, the study ascertains that the primary driving factors for climate change litigation in Tanzania are misplaced policies and political governance within the country.

The findings of the study confirmed the central hypothesis that rights-based climate litigation has the potential to be a strong legal approach to mitigate the impact of climate change in Tanzania. Although currently underutilized, the Tanzanian legal framework, particularly constitutional provisions relating to the right to a clean and healthy environment and access to justice, provides a dormant but promising foundation for such litigation. Nevertheless, the research also revealed substantial impediments, including procedural hurdles, inadequate judicial specialization in environmental matters, and weak inter-institutional coordination. Furthermore, public awareness of environmental rights and litigation avenues remains critically low, thereby curtailing the potential for community-led legal mobilization.

7.3 Conclusion

Tanzania, like many other nations in the Global South, is witnessing the adverse consequences of climate change with growing severity. The study's findings suggest that there is an inadequacy of addressing climate change legal provisions in relation to the existential threats of the crisis. Tanzania’s legal system is lagging with

applicable international treaties like the UN Framework Convention on Climate Change, the International Covenant on Civil and Political Rights, the Paris Agreement, and the African Charter, increasingly recognize the intersection between climate change and human rights, Tanzania's domestic legal framework remains poorly aligned with these obligations.

A thorough normative analysis of Tanzania's legal instruments, particularly Article 14 of the Constitution, which guarantees the right to life, and Article 27, which imposes a duty on every person to safeguard natural resources, reveals that while these provisions imply environmental protection, their justiciability in the context of climate-related harm remains uncertain. These constitutional guarantees lack explicit interpretive frameworks or judicial precedents that would enable courts to address climate harm as a legal wrong. Furthermore, policy instruments such as the Environmental Management Act do not incorporate substantive or procedural provisions specifically addressing climate change. Similarly, while the National Climate Change Response Strategy acknowledges the challenges posed by climate change, it lacks legally binding mechanisms or enforcement provisions to ensure implementation.

The research identifies this disconnect between policy formulation and enforceable legal obligations as a fundamental weakness in Tanzania's climate governance architecture, thereby hindering the effective use of rights-based litigation as a tool for climate accountability. The limited adjudication of climate-related human rights claims in Tanzania stems from a lack of judicial precedent, the non-justiciability of environmental rights, insufficient judicial capacity, and the country's dualist

constitutional structure, which restricts the domestic application of international treaties. These legal and institutional shortcomings have hindered the development of climate justice jurisprudence.

Additionally, weak collaboration among civil society, legal practitioners, academia, and affected communities has stifled strategic litigation efforts. Consequently, Tanzanian courts have not yet emerged as effective forums for advancing rights-based climate justice. Despite these challenges, the study does emphasize that overcoming these obstacles is a distinct possibility. In Tanzania, the legal framework does offer some hope for innovation. The acknowledgment of the overarching concern of the environment in the Constitution, the constitutional mandates of the semi-autonomous agencies, NEMC and CHRAGG, and the creative use of international climate treaties offer avenues to enhance the practice of climate litigation.

Importantly, the Court of Appeal's landmark ruling in *Olengurumwa v Attorney General* significantly amplifies the prospects for rights-based climate litigation by affirming the public's right to access the courts in matters of constitutional and public interest. The Court held that individuals and civil society organizations have locus standi to institute proceedings on issues affecting the general public, even where no direct personal injury is shown. This progressive interpretation of standing removes a long-standing procedural barrier and opens a vital pathway for strategic litigation grounded in environmental and human rights concerns. Moreover, comparative jurisprudence from jurisdictions such as Pakistan (*Leghari*), Germany (*Neubauer*), and South Africa illustrates how courts can adopt structural and

supervisory remedies, expand standing, and interpret constitutional rights progressively to enforce climate obligations. These experiences provide a legal and procedural roadmap for Tanzanian courts to adopt more proactive and rights-based approaches to climate justice.

The study contributes to legal scholarship by constructing a conceptual framework for rights-based climate litigation tailored to developing countries. It highlights the need for harmonization between domestic law and international climate obligations, judicial innovation, and enhanced institutional collaboration. Rights-based climate litigation holds significant promise for advancing environmental justice and constitutional accountability in Tanzania. However, its effectiveness depends on deliberate legal, institutional, and procedural reforms aimed at aligning national frameworks with evolving global climate jurisprudence.

7.4 Recommendations

As a foundational reform, Tanzania should adopt a comprehensive national climate justice legal reform agenda to provide a structured roadmap for rights-based climate governance. This agenda, developed collaboratively by the government, civil society, and academia, should establish a strategic sequencing of reforms, beginning with constitutional amendments, followed by statutory reforms, institutional reorganization, and finally procedural amendments. To ensure coordinated implementation, the agenda should be overseen by a high-level inter-ministerial task force, preferably led by the Ministry of Constitutional Affairs or the Vice President's Office (Environment), with a clear mandate, reporting obligations, and accountability mechanisms. The priority is constitutional reform. The Constitution

should be amended to explicitly recognize the right to a clean, safe, and sustainable environment as a fundamental and enforceable human right. This foundational change would provide a constitutional basis for climate litigation, harmonize Tanzania with global human rights developments, and support the domestication of international obligations.

The second priority is the enactment of a dedicated Climate Change Act. This legislation should outline the responsibilities of the state in climate change mitigation and adaptation, incorporate Tanzania's international commitments such as the Paris Agreement, and establish enforcement and participatory mechanisms for both state and non-state actors. To ensure accountability, the Act should designate a lead institution responsible for implementation, with periodic reporting to Parliament and the public.

Moreover, within the Environmental Impact Assessment (EIA) framework, a Climate Impact Assessment (CIA) is necessary for all major developments. This approach would allow for potential climate risks to be evaluated and addressed, if necessary, before a project is approved, allowing courts and regulators to rely on evidence-based risk assessments for determining liability and compliance.

Inclusive provisions for the most vulnerable to climate change impacts should be integrated into the legal frameworks. There is a need to be proactive within future climate legislation and integrate the specific legal concerns into the Land Act and the Persons with Disabilities Act to ensure that the legal and social frameworks of indigenous peoples, pastoralist women and children, and other socioeconomically

marginalized communities are addressed. These provisions should guarantee the right to participation in decision-making processes, access to justice, and reparations for climate harms endured. While legal reforms provide the foundational principles for rights-based climate litigation, this study finds that institutional readiness and procedural effectiveness are equally vital for its practical implementation. Therefore, two main non-legal recommendations are proposed to support and operationalize the success of climate litigation in Tanzania.

First, improving judicial specialization and institutional coordination is crucial for the effectiveness of rights-based climate litigation in Tanzania. Handling and judging climate disputes in the country is difficult due to limited knowledge of International Environmental Law and Human Rights Law, as well as exposure to climate science. Well-informed judicial training on climate science, treaty obligations, and justice principles is needed. Institutionally, the judiciary could establish dedicated courts or benches for climate issues, enabling greater specialization, consistent climate adjudication, and enhanced expertise. Additionally, organizations like NEMC, the Vice President's Office (with environmental jurisdiction), and local governments should develop governance structures for climate inter-agency protocols and shared reporting frameworks. This would close governance gaps, reduce jurisdiction overlaps, and improve the integrated enforcement of environmental laws, policies, and court rulings.

Secondly, fostering empowered public participation, increasing climate literacy, and strengthening enforcement mechanisms are essential for building an inclusive climate justice system. In Tanzania, awareness of environmental rights and remedies

is limited, especially among vulnerable groups such as rural communities, women, and indigenous peoples. To address this, national and local governments should promote climate literacy campaigns, include climate issues in educational curricula at all levels, and organize participatory forums for citizen engagement with climate law and policy. Moreover, proactive enforcement of climate laws and court orders is necessary to ensure legal protections are effectively implemented. This involves issuing binding remedial orders, establishing monitoring units within enforcement agencies, and imposing adequate sanctions for non-compliance.

Additionally, safeguarding legal protection for environmental defenders and whistleblowers can foster civic resilience and accountability. Collectively, these legal advances can lead to tangible community-level environmental improvements. Generally, these recommendations form a coherent legal roadmap for strengthening Tanzania's capacity to advance rights-based climate litigation. They highlight the urgent need for constitutional, statutory, procedural, and institutional reforms that promote environmental justice, protect human rights, and hold states accountable amid the climate crisis.

7.5 Suggestion for Future Research

Although this study has established a solid foundation for understanding rights-based climate litigation in Tanzania, it also highlights several key areas that require further scholarly investigation. Future research should include comparative empirical analyses of judicial interpretations and the enforcement of climate-related rights across East African countries, which would greatly aid in developing a coherent and regionally relevant legal framework. Additionally, detailed studies on community-

led litigation and legal empowerment strategies, especially those aimed at marginalized groups such as pastoralist communities, coastal populations, and informal urban settlers, could offer valuable insights into the practical implementation of environmental justice.

REFERENCES

List of Textbooks

Alogna, I., et. al., Climate Change Litigation in Europe: Regional, Comparative and Sectoral Perspectives, 1st Edition, Intersentia Cambridge, Antwerp, 2024

Blocher, J.M., and Others, Assessing the Evidence: Climate Change and Migration in the United Republic of Tanzania. Potsdam Institute for Climate Impact Research (PIK), Potsdam and International Organization for Migration (IOM), Geneva, 2021

Blumberg, B., Business Research Methods, New York: McGraw-Hill, 2008.

Bouwer, K. et.al., Climate Litigation and Justice in Africa, Bristol University Press, 2024

Malcolm, E. The Relationship between International and National Law, 4th ed. Oxford University Press, Oxford, 2006

Spier, J. Climate Litigation in a Changing World, Eleven International Publishing, 2022

Wiener, J.B. Precaution, The Oxford Handbook of International Environmental Law, Oxford University

Patton, M. Qualitative Research and Evaluation Methods. 3rd Sage Publications; Thousand Oaks, CA: 2002 Press, 2007

Matsuoka, M., and Raphael, C. “Environmental Justice: Ground Truths: Community-Engaged Research for Environmental Justice, 1st ed., 9–30. University of California Press, 2024

McConville, M. and Chui, W.H., Research Methods for Law, Edinburgh University Press, Edinburgh, 2007

Osofsky, H. and Peel, J. Climate Change Litigation Regulatory Pathways to Cleaner Energy? Cambridge University Press, Volume: 116, 2015

Luporini, R. Strategic Litigation at the Domestic and International Levels as a Tool to Advance Climate Change Adaptation? Challenges and Prospects". Yearbook of International Disaster Law Online, Vol. 4.1, 2023

Mwanga, S. The Role of Civil Society Organizations and Networks in Advancing and Achieving the Paris Agreement and Sustainable Development Goals: perspectives from Tanzania, United Nations Environment Programme, Nairobi, 2019

Savaresi, A. and Vilchez, P. The Right to a Healthy Environment and Climate Litigation: A Game Changer, Oxford University Press, Volume 32, Issue 1, 2021

Sindico, F. and Mbengue, M., Comparative Climate Change Litigation: Beyond the Usual Suspects, Springer, 2021

Sindico, F. et. al. Research Handbook on Climate Change Litigation, Edward Elgar Publishing, 2024

United Nations Environment Programme, The Status of Climate Change Litigation, A Global Review, UNON Publishing Services, Nairobi, 2017

Wolfgang, K. and Weller, M., Climate Change Litigation, Beck/Hart/Nomos, 2021

List of Journals, Articles and Papers

Afolayan, M.S. & Oniyinde, O.A., *Interviews and Questionnaires as Legal Research Instruments*, (2019) 83, Journal of Law, Policy and Globalization, Retrieved from: https://iiste.org/Journals/index.php/JLPG/article/download/ 47147/48676

Ali, I. *Comparative Legal Research-Building a Legal Attitude for a Transnational World,* (2020) 26, Journal of Legal Studies, p 40

Backes, C. & van der Veen, G. *Urgenda: The Final Judgment of the Dutch Supreme Court.* (2020) 17, Journal for European Environmental & Planning Law, p.3

Bakker, C. et al (eds), Climate Change Litigation: Global Perspectives, (2021) Brill Nijhoff

Bergman, N. et. All., *Bottom-up, social innovation for addressing climate change,* (2020) 27 Buffalo Journal of Environmental Law,

Bhat, P. I., Qualitative Legal Research: A Methodological Discourse, 2020, retrieved from https://doi.org/10.1093/oso/9780199493098.003.0012

Camp, W. G. *Formulating and Evaluating Theoretical Frameworks for Career and Technical Education Research,* (2001) 26(1), Journal of Vocational Educational Research,

Climate Action Network (CAN), Policy Paper Local potentials to realize NDCs Potential roles of CSOs and private sectors in realizing NDC and climate actions in Tanzania, 2023, https://cantz.or.tz/publications/24

Environmental Change Institute School of Geography and the Environment University of Oxford, (2017), 17 Climate Policy, p.2, https://www.researchgate.net/publication/271214929_Bottom-up_social_innovation_for_addressing_climate_change

Farrell, S. Open-Ended vs. Closed - Ended Questions, 2016, retrieved from https://www.nngroup.com/articles/open-ended-questions/

Goyal, S. and Mahaseth, H. *Asghar Leghari And Environmental Justice: Transformative Climate Change Litigation Judgements, One Step At A Time,*

(2021), 1 The Chanakya Law Review, pp 124-129, https://pure.jgu.edu.in/id/eprint/1031/1/CLR2021.pdf

Guruparan, K. Climate change and human rights-based strategic litigation, 2021, https://www.chathamhouse.org/2021/11/climate-change-and-human-rights-based-strategic-litigation/different-types-rights-based

Hermwille, V. UNFCCC before and after Paris, What's necessary for an effective climate regime?

Hovi, J., Sprinz, D. F., & Bang, G. *Why the United States did not become a party to the Kyoto Protocol: German, Norwegian, and US perspectives*, (2012) 18(1) European Journal of International Relations, pp.129-150.

Hunter, D. and alzman, J. *Negligence in the Air: The Duty of Care in Climate Change Litigation*, (2007) 155 University of Pennsylvania Law Review, 6

IMF-African Dept. *Building Resilience to Climate Change in Tanzania*, (2023) 20 IMF Publication, 154

Khan, M. Polluter-Pays-Principle: The Cardinal Instrument for Addressing Climate Change." Laws, vol. 4, no. 3, 2015

Kila, K. *Climate Change Regulations of Corporations in Tanzania: A Case for Dilute Interventionism and Veto Firewall Paradigm*, (2023) 3(1) Journal of Environmental Law and Policy, 80-107.

Kivunja, C. *Distinguishing between Theory, Theoretical Framework, and Conceptual Framework: A Systematic Review of Lessons from the Field*, (2018) 7, International Journal of Higher Education, Sciedu Press, 6

Leal-Arcas, R. *Top-Down Versus Bottom-Up Approaches for Climate Change Negotiations: An Analysis*, (2011) 4(1) European Journal of Legal Studies, pp

25-56

Luse, A., and Others. *Selecting a Research Topic: A Framework for Doctoral Students*, (2012) International Journal of Doctoral Studies

Majamba, H.I., *Emerging Trends in Addressing Climate Change through Litigation in Tanzania*, (2023) 18 Utafiti, pp 1-23. 10.1163/26836408-15020070

May, J.R. and Daly, E. Can the U.S. *Constitution Encompass a Right to a Stable Climate? (Yes, it Can.)* (2021) 39(1) UCLA Journal of Environmental Law and Policy

Minnerop, P. & Otto, *Climate change and causation, joining law and climate science based on formal logic*.

Mohamed, K. *Combining Methods in Legal research,* (2016) 11 The Social Sciences Journal, 21, retrieved from https://docsdrive.com/pdfs/medwelljournals/sscience/2016/5191-5198.pdf

O'Brien, K., et. al., 'What's in a word? Conflicting interpretations of vulnerability in climate change research'. CICERO Working Paper, CICERO, Oslo University, Oslo, 2004.

Ondiek, P.M. *The Intersection Between Human Rights Law and International Environmental Law; An Analysis of Contemporary Developments Relating to The Growing International Recognition of Rights of Nature,* (2021) 6 Journal of cmsd, 3

Orie, E . G . *Environmental Degradation and Corruption in Nigeria's Energy sector: Issues, Challenges and Legal Strategies*, (2019) 1 University of Jos Law Journal, 1

Pallangyo, D.M. *Environmental Law in Tanzania; How far have we gone? 3/1 Law,*

(2007) Environment and Development Journal p. 26, available at http://www.lead-journal.org/content/07026.pd

Pillay, N. *Establishing Effective Accountability Mechanisms for Human Rights Violations*, (2012) XLIX UN Chronicle, 4

Pinto-Bazurco, J. "The Precautionary Principle." International Institute for Sustainable Development (IISD), 2020

Ramadhani, J. (C.J. Tanzania) Judicial Review of Administrative Action as the Primary Vehicle for The Protection of Human Rights and the Rule of Law, A paper presented to the Southern African Chief Justices Conference, at Kasane, Botswana 7th to 8th August, 2009, retrieved from https://www.venice.coe.int/SACJF/2009_08_BTW_Kasane/speeches/Ramadhani_Judicial_Review.pdf on

Reeves, S., Albert, M., Kuper, A., & Hodges, B.D. "*Why Use Theories in Qualitative Research?"* BMJ, vol. 337, 2008, a949., retrieved from http://dx.doi.org.offcampus.lib.washington.edu/10.1136/bmj.a949

Sachan, P. *Intersection between Human Rights and Environmental Law: The Scenario in India*, International Journal of Law Management & Humanities Vol. 4, Iss. 2, 2021 592, https://ijlmh.com/paper/intersection-between-human-rights-and-environmental-law-the-scenario-in-india/

Schiff, D.N. *Socio-Legal Theory: Social Structure and Law*, (1976) 39 Modern Law Review,

Shivji, I. Tanzania Abolishes Public Interest Litigation (A Comment on the Amendment of Basic Rights and Duties (Enforcement) Act, Cap. 3 of the Revised Laws of Tanzania, 2021 retrieved from

https://www.academia.edu/43326914/Tanzania_abolishes_Public_Interest_Litigation_A_Comment_on_the_Amendment_of_Basic_Rights_and_Duties_Enforcement_Act_Cap_3_of_the_Revised_Laws_of_Tanzania

Sindico, F. and Mbengue, M. Comparative Climate Change Litigation: Beyond the Usual Suspects (Springer 2021)

Spijkers, O. Pursuing climate justice through public interest litigation: the Urgenda case, 2020

Stuart-Smith, R.F. et al. *Filling the evidentiary gap in climate litigation*, (2021) 11 Nature Climate Change, 8

Techera E, Mlay AJ. *Women, Climate Change and the Law: Lessons for Tanzania from an Analysis of African Nationally Determined Contributions*, (2024) 68 Journal of African Law, 2, pp 181-202.

Vigna, L. et. all., *The History of Carbon Dioxide Emissions*, World Resource Institute, 2024, Available on https://www.wri.org/insights/history-carbon-dioxide-emissions

Yusuf, H.M. *Climate Change Impacts on Fishing in Coastal Rural of Tanzania*, 2015, 5 Journal of Environment and Earth Science, 10

List of Thesis and Dissertations

Bogos, F. An Administrative Law Analysis of Climate Litigation in the Hungarian Legal System with European Perspective, Doctor of Philosophy Thesis at the University of Eotvos Lorand, Budapest, 2024

Florack, A. "Local Governments Taking on Climate Change: Situating City Actions in the Global Climate Regime:" Thesis, Boston College, 2017. http://hdl.handle.net/2345/bc-ir:108629.

Harris, D. K., "The Politicization of Climate Change." Thesis, Georgia State University, 2012,

McMenamin, R. Human rights-based climate litigation and international law, Dissertant*innen seminar zur Präsentation des Dissertationsvorhabens, University of Vienna, 380034-1, 2023S

Parling, I. Climate Change Litigation Based on Human Rights, master's Thesis in Human Rights Uppsala Universitet, 2021

Saab, A., Legal Inquiry into Hunger and Climate Change: climate-ready seeds in the neoliberal food regime." Thesis, London School of Economics and Political Science (University of London), 2015. http://etheses.lse.ac.uk/3201/.

Simon, B. Climate Change Litigation Before the European Court of Human Rights: What Hurdles and Legal Avenues? Joint Nordic master's in international and environmental law (NOMPEL) master's Thesis, JUR-3920, May 2022

Toit Louise, U. Towards an Effective Climate Change Regime in South Africa: Policy and Legal Developments. Master's thesis, University of Cape Town, 2010. http://hdl.handle.net/11427/4472.

Reports and other Unpublished Materials

Anderson comment in UN Climate Change: COP27 Reaches Breakthrough Agreement on New "Loss and Damage" Fund for Vulnerable Countries, 2022 copied from https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries

Boehm, S. and Schumer, C. 10 Big Findings from the 2023 IPCC Report on Climate Change, 2023, retrieved from https://www.wri.org/insights/2023-ipcc-ar6-

synthesis-report-climate-change-indings#:~:text=The%20IPCC%20finds%20that%20there,sooner%20%E2%80%94%%202018%20and%202037

Cock, J. Connecting the red, brown and green: The environmental justice movement in South Africa, A case study for the UKZN project entitled: Globalization, Marginalization and New Social Movements in post-Apartheid South Africa, 2004, https://ccs.ukzn.ac.za/files/Cock%20Connecting%20the%20red,% 20brown%20and%20green%20The%20environmental%20justice%20movement%20in%20South%20Africa.pdf.

Knox, J. H., Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: note / by the Secretariat, A/HRC/32/53, 2016, https://digitallibrary.un.org/search?f1=author&as=1&sf=title&so=a&rm=&m1=e&p1=UN.+Human+Rights+Council.+Independent+Expert+on+the+Issue+of+Human+Rights+Obligations+Relating+to+the+Enjoyment+of+a+Safe%2C+Clean%2C+Healthy+and+Sustainable+Environment&ln=en

LHRC launched its first study report on Impacts of Climate Change on Social Economic and Environmental Rights in Tanzania, Legal and Human Rights Centre, Dar es Salaam, 2023, https://humanrights.or.tz/en/news-events/Socio_Economic

McCarthy, J.J., et. al. Climate Change 2001: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Third Assessment Report of the Intergovernmental Panel on Climate Change. Cambridge: Cambridge University Press, 2001

MoH, Tanzania Malaria Indicator Survey 2017. Ministry of Health, Community

Development, Gender,

National Climate Change Response Strategy (2021-2026). Vice President's Office, Division of Environment, Government Printer, Dodoma, 2021

Portner, H.O. et. al., Intergovernmental Panel on Climate Change. Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, 2022, p. 151, Available at, https://www.ipcc.ch/report/sixth-assessment-report-working-group-ii/

Setzer, J. & Higham, C. Global Trends in Climate Change Litigation: 2021 Snapshot, 2021 https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review.

UN Environment Programme, Global Climate Litigation Report: 2023 Status Review Report, 2023.

United Nations, Peace, Dignity and Equality on a Health Planet: Human Rights, retrieved from https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20are%20rights%20inherent,and%20education%2C%20and%20many%20more.