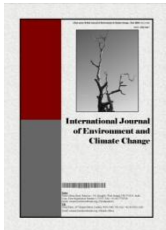

International Journal of Environment and Climate Change

12(11): 3436-3448, 2022; Article no.IJECC.92866
ISSN: 2581-8627
(Past name: British Journal of Environment & Climate Change, Past ISSN: 2231–4784)

Emerging Issue of the Viability of Legal Mechanisms Available to Caribbean Countries to Force Action on Climate Change and Its Existential Consequences

Rajendra Ramlogan [aɷ*]

[a] *Department of Management Studies, Faculty of Social Sciences, University of the West Indies, St. Augustine, Trinidad and Tobago.*

Author's contribution

The sole author designed, analysed, interpreted and prepared the manuscript.

Article Information

DOI: 10.9734/IJECC/2022/v12i111393

Open Peer Review History:
This journal follows the Advanced Open Peer Review policy. Identity of the Reviewers, Editor(s) and additional Reviewers, peer review comments, different versions of the manuscript, comments of the editors, etc are available here: https://www.sdiarticle5.com/review-history/92866

Review Article

Received 17 August 2022
Accepted 21 October 2022
Published 28 October 2022

ABSTRACT

As we navigate through the third decade of the 21st century confronted by a barrage of natural disasters with fingers pointed at climate change, what is clear is that the poor and vulnerable are the greatest victims of the ravages caused by changing weather conditions. According to Dr Fahad Saeed in response to the 2022 monsoon apocalyptic impact on many Pakistanis, "*People with the smallest carbon footprints are suffering the most...The victims are living in mud homes with hardly any resources - they have contributed virtually nothing to climate change*s." Yusuf Baluch, a 17-year-old climate activist from Balochistan, says that inequality in the country is making the problem worse. He remembers his own family home being washed away by flooding when he was six years old. "*People living in cities and from more privileged backgrounds are least affected by the flooding," he explains***"** [1]. The Caribbean has not been spared from the savagery inflicted on humanity by forces associated with climate change. This paper examines the prospects of litigating climate justice in the Caribbean.

Keywords: Legal mechanisms; weather; climate change; warming climate.

ɷ Dr Rajendra Ramlogan is Professor of Commercial and Environmental Law at the University of the West Indies. He graduated with a doctorate in International Environmental Law from the University of Cambridge and New York University School of Law with a Master of Laws in International Legal Studies. He also obtained a Bachelor of Arts in English Literature and a Bachelor of Laws from the University of the West Indies.
**Corresponding author: E-mail: Rajendra.Ramlogan@sta.uwi.edu;*

1. INTRODUCTION

Knowledge of the burning of fossil fuels and deforestation contributing to the “greenhouse effect” has been known since the 19th century [2]. The physical impacts of these actions on climate change have continued to expand scientific knowledge of its effects [3]. The Caribbean has already been placed on the frontline in the struggle against the consequences of climate change. It is projected that storms will increase in intensity and regularity as oceans warm up. British Broadcasting Corporation stated, “*Scientists cannot say whether climate change is increasing the number of hurricanes, but the ones that do happen are likely to be more powerful and more destructive because of our warming climate*” [4]. Data compiled by Weather Underground in 2017 shows that in only twelve hours, Hurricane Maria strengthened from a Category 2 hurricane to a Category 5. “*When the storm made landfall in Dominica, on Monday, it unleashed a-hundred-and-seventy-five-mile-per-hour winds on the island of seventy thousand people.*” [5]. The words of the Prime Minister of Dominica in an address to the United Nations General Assembly (UNGA) in the aftermath of Hurricane Maria, expresses the deep anguish of the people. “*To deny climate change is to procrastinate while the earth sinks; it is to deny a truth we have just lived. It is to mock thousands of my compatriots who in a few hours without a roof over their heads will watch the night descend on Dominica, in fear of sudden mudslides . . . and what the next hurricane may bring…..My fellow-leaders, there is no more time for conversation. There is little time left for action. While the big countries talk, the small island nations suffer. We need action and we need it now”*.[1]

Two years later, it was the turn of the Bahamas to provide a quick echo of the plight of Dominica in the form of Hurricane Dorian. Dorian hit the Abaco Islands of the Bahamas as a Category 5 storm with 185 mph winds, tying it for the strongest landfall of any storm on record. Indeed, Dorian is tied for being the second-strongest hurricane (in terms of wind speed) ever recorded in the Atlantic. What distinguished Dorian was how it stalled over the Bahamas and refused to leave until all had been destroyed in its path. An increase in sea surface temperatures strengthens the wind speeds within storms and raises the amount of precipitation a hurricane will dump. Two years later, the Prime Minister of Bahamas at United Nations General Assembly spoke in a similar manner to Skerrit. “*Small island countries … around the world, are on the frontlines of being swallowed into an abyss, created initially by human activity and increasingly by inaction*” [6] (Hubert Minnis, Prime Minister, Bahamas).

In 2015, the Paris Climate Accords, negotiated by representatives of 196 parties (195 nations and the European Union), committed countries, upon ratification, to actions that would seek to restrict average global warming to “well below” 2°C above “pre-industrial” levels and to “pursue efforts” to limit the rise to 1.5°C [3]. Yet despite this agreement, average temperatures have continued to rise globally from industrial and human activities [7], continuing to threaten small island developing states with devastating consequences caused by hurricanes (for example Hurricanes Dorian and Maria) and sea level changes. The emerging issue is what legal mechanisms are available to the citizens of Caribbean countries to force action on climate change and its existential consequences.

2. CLIMATE JUSTICE: LEGAL APPROACHES

Climate change litigation has two broad categories: public law actions against governments and public authorities, raising human rights, constitutional and administrative law arguments, and private law actions based primarily on tort law.

2.1 Internal Approach

The internal approach involves initiating legal action in public and private law by entities resident within a state. The internal public law approach involves challenging the state. The intention is to compel action to commit to reducing greenhouse gas emissions, the main anthropogenic factor in climate change. “This type of action was seen in ***Urgenda Foundation v The State of the Netherlands (Ministry of Infrastructure and the Environment) (2015)”*** [8]. **“**The Urgenda case has also served as the impetus for other cases. For instance, in 2017, Friends of the Irish Environment brought an action against the Irish

[1] *Meade, N. (September 24, 2017) New Yorker Eden Is Broken”: A Caribbean Leader Calls for Action on Climate Change, https://www.newyorker.com/news/news-desk/eden-is-broken-a-caribbean-leader-calls-for-action-on-climate-change*

government (***Friends of the Irish Environment v The Government of Ireland 2017***[2]) in a bid to hold the government accountable for its role in contributing to climate change". "Similarly, in ***Juliana v The United States of America (2015[3]),*** the United States government was sued by twenty-one (21) young plaintiffs on the grounds that it had failed to protect the right to life, liberty and property of young people by promoting and subsidising the use of fossil fuels despite knowing of its dire effects". Courts have also been approached to adjudicate private law actions involving private corporations. "In ***Kivalina v ExxonMobil Corp. (2012)*** [9], individuals from an Alaskan island facing extreme erosion and weather events claimed damages from energy companies, claiming the weather patterns were due to climate change, which had been caused by the defendant's actions". Kirchhofer [10] notes that "civil society organisations, advocacy groups and private citizens have increasingly used courts to hold governments accountable for their climate inaction". "The United Nations Environment Programme (UNEP) [4] reports in their recently published Global Climate Litigation Report (2020), depict that within the period 2017 - 2020, the number of cases brought to courts globally have nearly doubled, reaching 1550 cases filed in 38 different countries by July 2020". In this way, climate action litigation is notably increasing amid growing environmental concerns.

2.2 External Approach

Climate justice litigation may also have an outward approach that sees the action initiated by external entities. "In the ***People's Climate Case (2019)*** [11], the action was commenced by ten families from Portugal, Germany, France, Italy, Romania, Kenya, Fiji, and the Saami Youth Association Sáminuorra against the European Parliament and the European Council as EU legislators, argues that the EU's 2030 climate target of reducing domestic greenhouse gas emissions by at least 40% by 2030 compared to 1990 levels is not sufficient to protect lives, livelihoods and fundamental rights from the impacts of climate change".

Similarly, in 2018, the French non-profit Notre Affaire à Tous and other plaintiffs [5] filed suit against the French government under the ***French Charter for the Environment and the European Convention for the Protection of Human Rights and Fundamental Freedoms***. The parties were externally motivated by a desire to force compliance with the goals of the ***Paris Agreement*** as well as ensure nationwide adaptation to climate change. In their filing, the plaintiffs petitioned the Paris Administrative Court seeking orders requiring the government to take necessary actions to reduce greenhouse gas emissions and to keep global temperature increase under 1.5 degrees Celsius; reduce emissions to meet France's objectives as declared under several laws; adapt to the changing climate and protect citizens' lives and health from the risks of climate change.

In the 2021 ***Neubauer et al. v Germany*** [6] litigation, the Federal Constitutional Court of Germany, in response to a suit brought by German youth under the Basic Law (the country's constitution), found Germany's Federal Climate Protection Act inadequate to protect human rights. The Court ordered the government to pursue measures consistent with the goals of the Paris Agreement. It held that "*one generation must not be allowed to consume large parts of the CO2 budget under a comparatively mild reduction burden if this would at the same time leave future generations with a radical reduction burden . . . and expose their lives to serious losses of freedom*". "The Court ordered the German legislature to also correct and significantly tighten existing climate law provisions, increase the ambition of these provisions, and strengthen future mitigation pathways" [12]. The driving motivation for this action lay squarely on the goals of the Paris Agreement and the inadequacy of existing legislation in Germany to ensure the climate was protected for future generations.

Although initiated by Greenpeace Norway, the ***Greenpeace Norway v Government of Norway*** [13], was largely externally motivated.

[2] *Friends of the Irish Environment v The Government of Ireland (2017) [2020] IESC 49, https://ie.vlex.com/vid/friends-of-the-irish-847734616#:~:text=Facts%3A%20The%20appellants%2C%20Friends%20of,and%20the%20European%20Convention%20on*

[3] *Juliana v. United States of America (2015) 6:15-cv-01517, http://climatecasechart.com/case/juliana-v-united-states/*

[4] *United Nations Environment Programme (2021) Global Climate Litigation Report: 2020 Status Review, https://www.unep.org/resources/report/global-climate-litigation-report-2020-status-review*

[5] *Notre Affaire à Tous and Others v. France (2018) http://climatecasechart.com/non-us-case/notre-affaire-a-tous-and-others-v-france/*

[6] *Neubauer et al. v. Germany (2021) http://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/*

Greenpeace Norway filed for the review of the Norwegian Ministry of Petroleum and Energy's decision ("the decision") to grant production licenses for deep-sea extraction of oil and gas in the Barents Sea. The plaintiffs argued that the licenses would allow extraction from undeveloped fossil fuel deposits, which would be inconsistent with climate change mitigation and temperature targets agreed upon in the Kyoto Protocol and Paris Agreement. The plaintiffs have filed an appeal before the Norwegian Supreme Court on the grounds of, inter alia, incorrect application of the law and assessment of the evidence.

A private law external approach can be seen in the action of ***Saúl Luciano Lliuya v RWE (2015)*** [14]. Luciano, a Peruvian farmer, brought a general nuisance claim in the Essen Court, based on article 1004 German Civil Law code, against energy company, RWE alleging that RWE's carbon-emitting activities have contributed to climate change and that RWE, therefore, bears responsibility proportionally to its historical carbon dioxide emissions for the melting of mountain glaciers near Huaraz, the plaintiff's home town in Peru. He claimed that his house was at imminent risk of being destroyed or damaged due to an outburst flood. Therefore, the central argument was that the flood hazard interfered with his property.

3. PROSPECTS OF LITIGATION IN THE CARIBBEAN

The Caribbean, comprising low to middle-income countries, has generally seen environmental litigation pursued within the context of constitutional and public law principles. Although no climate justice litigation has yet been initiated in the Caribbean, environmental law principles can be used in such litigation.

4. RIGHT TO A HEALTHY ENVIRONMENT

A clean, healthy, and sustainable environment is regarded as a necessary precondition for enjoying well-established and universally recognised human rights [15]. Climate change affecting human rights has been well documented in legal cases [16]. A key action brought by the Inter-American Commission of Human Rights (IACHR), on behalf of the Inuit populations of the American and Canadian Arctic (Inuit Petition), [7] filed a petition in 2005 and argued that climate change was violating several human rights of the domestic Inuit populations and that the United States was responsible for at least a portion of those violations, representing a concrete first attempt to apply human rights law to climate change litigation [17].

The right to a healthy environment is already being articulated in pursuit of environmental justice in the Caribbean. This was raised in Trinidad and Tobago in ***Fishermen and Friends of the Sea v The Environmental Management Authority and Atlantic LNG Company of Trinidad and Tobago (Interested Party)*** [18]. The Court was asked to imply a right to a healthy environment from existing constitutional rights to life, protection of the law, respect for family and private life and the right not to be subjected to cruel and unusual punishment. Justice Stollmeyer took a conservative view of expanding constitutional rights to incorporate a right to a healthy environment. "*While I accept the existence of certain common law environmental rights (to which I have already referred), I am reluctant to elevate them or categorise them together with those rights entrenched in the Constitution, despite also accepting that the latter is a living document which should be interpreted generously*." However, the matter is not settled as this is only a judgment of the lowest court.

Internationally, on October 8th 2021, the United Nations Human Rights Council passed a resolution on the human right to a clean, healthy, and sustainable environment [19]. The resolution rooted in the ***1972 Stockholm Declaration*** recognises "*the right to a clean, healthy, and sustainable environment as a human right that is important for the enjoyment of human rights*". This explicit recognition that the environment is inextricably linked to human rights signals the importance of the resolution to all nations (Tang and Spijkers, 2022) and, as a result, should be protected.

5. PRECAUTIONARY PRINCIPLE

"The ***Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America***

[7] *S Watt-Cloutier, 'Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States' (7 December 2005), http://climatecasechart.com/non-us-case/petition-to-the-inter-american-commission-on-human-rights-seeking-relief-from-violations-resulting-from-global-warming-caused-by-acts-and-omissions-of-the-united-states/*

and the Caribbean was formally adopted at Escazú, Costa Rica, on 4 March 2018" [20]. The article's objective is "*to guarantee the full and effective implementation in the region of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development*" (article 1) with each Party to the Agreement being guided, inter alia, by precautionary principles (article 3) (Anderson et al., 2018). The precautionary principle is part of the legislative environmental framework of Trinidad and Tobago through the ***National Environmental Policy 2018 (NEP 2018)***. It is stated in Section 1.05: *The finite nature of the earth's systems and processes dictate that there are limits to the amount of human activity tolerable before there is a risk of abrupt and irreversible environmental changes. The GoRTT will adhere to the principle that if there are threats of serious irreversible damage to humans or the environment, lack of full scientific certainty will not be used as a reason for postponing social and environmental safeguards"*. Three decisions of the Trinidad and Tobago courts have endorsed the entrenchment of the precautionary principle in Trinidad and Tobago [21,22]. Climate justice litigation can proceed on the basis that there is a duty of the government to take steps to implement mitigation and abatement measures to deal with the threat of climate change based on the precautionary principle.

Similarly, in the case of ***People United Respecting the Environment (PURE) et al. v. Environmental Management Authority et al. (2009)*** [23] in Trinidad and Tobago, the organisations applied for judicial review of the decision of the Environmental Management Authority (EMA) to grant a certificate of environmental clearance (CEC) for the construction of an Aluminium Smelter plant at Union Village, La Brea. Among the main grounds of the application identified the breach of the precautionary principle, flawed public consultation and omissions in the Environmental Impact Assessment rendering the decision illegal or irrational and deferral of omitted matters to be dealt with via conditions imposed in the CEC and failure to consider cumulative effects. The Court decided that the defendant's decision was procedurally irregular, irrational and made without regard to a relevant consideration of the cumulative impact of the three related projects (the Power Plant, the Aluminium Complex and the Port Facility). The decision was quashed and remitted for the consideration of the defendant, where the EMA had to redo the entire process.

In Jamaica, the case of ***Delapenha Funeral Home Limited v. The Minister of Local Government and Environment (2008)*** [24], a funerary services company, presented an application for judicial review of the decision of the Minister of Local Government and Environment ordering the cessation of the company's development of a cemetery until a full Environmental Impact Assessment (EIA) had been conducted. The case highlights the breach of the precautionary principle, where the Court notes, "*It is clear to my mind that in this case both the N.R.C.A. and the Minister acted in good faith and had the interests of the citizenry at heart, in particular their health and safety. They had in mind protection of the environment, of the water resources in the area. Both purported to act with the precautionary principle in mind but, regrettably, the result was that the Minister responsible for the Environment acted unlawfully. This case suggests to me that one way to implement and exercise the preventive and precautionary principles may be to categorise projects such as, the instant one, projects to do with cemeteries, (because of their natural size and location) as requiring compulsory Environmental Impact Assessment before permits are granted*"[8]. The Court's decision found that the authority acted outside of its statutory powers as the Natural Resources Conservation Authority Act, which authorized stop orders in limited circumstances, none of which applied to the facts and that the Minister had thus acted irrationally and unreasonably.

Notably, the precautionary principle was accepted as a settled norm of customary international law. However, there is further buttress for the acceptance of the precautionary principle as The Judicial Committee of the Privy Council, the highest appellate court of Trinidad and Tobago, in striking down water pollution regulations for violating the Polluter Pays Principle, accepted that the ***NEP 2018)*** Policy was equivalent to statutory law (***Fishermen and Friends of the Sea v The Minister of Planning,***

[8] *Delapenha Funeral Home Limited v. The Minister of Local Government and Environment (2008) 2007 HCV 01554, https://supremecourt.gov.jm/content/delapenha-funeral-home-limited-v-minister-local-government-and-environment*

Housing and the Environment.) [25]. The Privy Council endorsed the view that the ***NEP 2018*** possessed statutory strength as a result of ***Section 31 of the Environmental Management Act*** [26]. "*The Authority and all other governmental entities shall conduct their operations and programs in accordance with the National Environmental Policy established under section 18.*" Therefore, the possibility exists of climate justice litigation being instituted against the state for not taking robust action in its regulatory affairs in violation of the precautionary principle.

6. FUTURE GENERATIONS EQUITY

Under continued global warming, extreme events such as natural disasters will continue to rise in frequency, intensity, duration, and spatial extent over the next decades [27]. Younger generations are therefore expected to face more such natural events over their lifetimes as compared with that of older generations. Intergenerational equity is a value concept that focuses on future generations' rights. The present generation is regarded as a custodian of the planet for future generations, extending the scope of justice into the future. As Thiery et al. [27] posit, there is "*a severe threat to the safety of young generations*" and calls for "*drastic emission reductions to safeguard their future*." The threat to the climate has fuelled a surge of protests led by young people in recent years that underpin issues of intergenerational equity raised in recent climate litigation [27]. At the recent Stockholm+50 Youth Assembly (2022) [9], young people called on leaders to mainstream youth engagement in environmental and multilateral processes ahead of the UN Climate Change Conference in Egypt. At the youth assembly, United Nations Youth Envoy Jayathma Wickramanayake commented that "*change is coming, we will continue to fight for our [youth] voices to be heard at the decision-making table*" [28]. The principle of intergenerational equity is entrenched in the environmental legal regime of Trinidad and Tobago through the ***NEP 2018***. Section 1.05 – "*In addition, future generations are entitled to enjoy a fair level of the common patrimony. Thus, each generation has the duty of ensuring that pursuit of development does not impede the ability of each citizen, or successive generations of citizens, from meeting their needs. In addition, the GoRTT assumes responsibility for fairly allocating and regulating scarce resources to ensure that all benefits and burdens are equally shared amongst all society members*. This accurately reflects the preamble of the ***Environmental Management Act*** concerning intergenerational equity. "*Whereas, the Government of the Republic of Trinidad and Tobago (hereinafter called "the Government") is committed to developing a national strategy for sustainable development, being the balance of economic growth with environmentally sound practices, in order to enhance the quality of life and meet the needs of…future generations….*".

Climate justice-related litigation has already sought to invoke the rights of future generations. In ***Future Generations v President, the Ministry of the Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development to act in coordination with the National Environmental Agency (2018)*** [29], twenty-five children who argued that the rapid deforestation of the Amazonian basin, which comprises 35% of Colombia's territory, is contributing to global warming and affecting their rights, as well as those of future generations.

7. COMMON CONCERNS OF HUMANKIND

Small island developing states (SIDS) have long been recognised as being particularly at risk to climate change [30], given the vulnerable nature of island communities to the forces of nature. Human coastal communities are particularly exposed to hazards associated with climate change, and these are projected to continue to intensify as global temperatures increase [30]. These hazards represent a real and common concern globally, especially for Caribbean nations. The ***NEP 2018*** introduced into the jurisprudence of Trinidad and Tobago the ethical responsibility in international environmental law that dealt with common concerns of humankind. ***NEP 2018 Section 1.05***-"*The GoRTT recognizes that the management of the climate system and biodiversity of the Earth are common concerns for humankind…The GoRTT, sub-national actors, and transnational organisations within its boundaries shall share responsibility for addressing common concerns, minimising harm to issues of common concern…*". It is clear that climate change is a common concern of humanity, especially for vulnerable SIDS. Therefore the ***NEP 2018*** creates a legal obligation on behalf of the state to take steps to address such concern.

[9] *Stockholm+50 Youth Assembly (2022) https://www.stockholm50.global/*

8. POLICY COMMITMENT

There are expressed commitments on the part of the government of Trinidad and Tobago to deal with climate change in the ***NEP 2018***. "*The GoRTT acknowledges that projected global climate change will have adverse impact on physical, biophysical and socio-economic sectors in Trinidad and Tobago. Accordingly, and in accordance with SDG 13, the GoRTT will: w) Mobilise resources, and seek global partnerships to secure resources, for the implementation of the adaptation measures contained in the National Climate Change Policy and other national policies related to climate change adaptation and resilience building; 38 National Environmental Policy x) Conduct assessments of the climate risk and/or vulnerability of communities and/or sectors to the impacts of climate change, including the development of GIS-based climate risk maps; y) Establish early warning systems for climate risks in vulnerable sectors; z) Revise existing legislation, or develop new legislation, standards, codes and policies, as appropriate, to ensure that climate change vulnerability and adaptation are integrated into national and sectoral development planning to enhance and maintain climate resilience; aa) Maintain and enhance, as appropriate, ecosystems that provide climate resilience services that minimize the adverse impacts of climate change and/or which minimise climate risk; bb) Strengthen institutional arrangements within and among public, private and nongovernmental sectors for conducting systematic observations, vulnerability assessments, research and climate modelling; cc) Support community-based adaptation and resilience building efforts led by governmental entities, private sector and/or non-governmental organisations; and dd) Encourage the use of infrastructure designs and land use plans that include elements to adapt to the effects of climate change such as enhanced storm water conveyance and detention capacity*." Unfortunately, there is little sign of any of the commitments contained in the ***NEP 2018*** with respect to climate change being implemented and enforced within Trinidad and Tobago.

9. NON-LEGAL CHALLENGES FOR CLIMATE JUSTICE IN TRINIDAD AND TOBAGO

The pursuit of climate change litigation in the Caribbean seen through the prism of Trinidad and Tobago, will go beyond the viability of legal principles upon which such litigation will possibly be based. Environmental litigation in Trinidad and Tobago is pursued mainly by Non-Governmental Organisations (NGOs). Thus, the greatest challenge is the availability of funding to oppose decisions both through the public education and mobilisation process and in the Courts. Most environmental NGOs struggle financially, creating a significant barrier to some civil societies launching public interest environmental litigation.

Additionally, effective public interest environmental litigation often hinges substantially on the ability of civil society to present its legal position from a sound scientific and technical standpoint. One promising development in the drive to obtain scientific and technical assistance has been the work of Environmental Law Alliance Worldwide, operating out of the United States. This group has started to provide scientific and technical assistance to aid the challenges of civil society through public interest litigation to question approvals granted by the EMA. In the case of ***Trinidad and Tobago Civil Rights Association v Environmental Management Authority, Alutrint Limited (Interested Party) and the Attorney General of Trinidad and Tobago*** [31], Staff Scientist of Environmental Law Alliance Worldwide submitted a written expert affidavit on behalf of the claimants in this matter. Another major impediment to environmental challenges is the cost of litigation and access to expert attorneys. Very often, the governmental agencies being challenged have access to state funding that allows for legal representation at the highest level. In ***People United Respecting the Environment and Rights Action Group v Environmental Management Authority, Alutrint Limited (Interested Party) and the Attorney General of Trinidad and Tobago*** [32], the state entities had a full team of senior and junior legal officers while two junior attorneys represented PURE.

Further, intimidation is a factor as engaging in public interest environmental litigation can be dangerous in the Caribbean as Trinidad and Tobago has acquired a strong reputation for violence. Dr Peter Vine, a scientist involved in ***People United Respecting the Environment and Rights Action Group v Environmental Management Authority, Alutrint Limited (Interested Party) and the Attorney General of Trinidad and Tobago*** [33], was reportedly physically manhandled in front of the media. The editor of a national daily newspaper expressed

strong sentiments as to the lack of action by the police authority on the matter. "Vine, who is known for dramatising his protests, had a fishing vessel take him close to a barge being used by the surveyors. He jumped off the pirogue, swam to the barge, and was actually helped aboard by one employee (video footage would show this). Once on-deck, he appeared to be pleading with the eight-or-so men on board, to abandon their work… Suddenly, one goon grabbed Vine in a most vicious manner. Clearly a bigger man than the activist, he shoved, pushed, and finally threw Vine overboard the tug…. That goon did assault Vine, not only with battery (as the law would say) but with anger that oozed from his quivering frame. To date, although the brutal assault was captured on video, no action has been taken by the police against the perpetrator".

Finally, there is the risk of costs and bankruptcy. In the case of ***Fishermen and Friends of the Sea v Environmental Management Authority and BP Trinidad and Tobago LLC (Interested Party)*** [34], the EMA sought to drive a dagger into public interest litigation in Trinidad and Tobago by recovering costs from the unsuccessful litigation launched by FFOS. To recover costs, the EMA filed an application for the directors of FFOS to be personally liable for paying the costs. Fortunately, the court rejected this position in its refusal to lift the corporate veil and hold the directors of FFOS personally liable.

10. RECENT LEGAL CHALLENGES FOR CLIMATE JUSTICE IN NEARBY LATIN AMERICA

Climate change litigation is also seen in Latin American cases. For instance, in 2021, ***Thomas & De Freitas v. Guyana*** [35], two Guyanese citizens filed a suit alleging that Guyana violated their constitutional rights by approving oil exploration licenses to an ExxonMobil-led group. Plaintiffs allege that the constitutional rights to a healthy environment, sustainable development, and the rights of future generations require the government to stop issuing licenses to activities that will exacerbate climate change. The plaintiffs pointed to evidence that the licenses could lead to billions of tonnes of CO2 emissions, which would imperil Guyana. On September 27, 2021, the Court also added Esso Exploration and Production Guyana Ltd. (ExxonMobil's local subsidiary) as a Respondent. The matter has been adjourned until June 2022, and the Court updated the timelines for all parties' document filings and required further steps.

In Latin America, the organisation Equística Defensa del Medio Ambiente (Equistic Defense of the Environment Civil Association) in 2020 filed an action for collective environmental protection against the Municipality of Rosario, the Province of Santa Fe, the Municipality of Victoria, the Province of Entre Ríos in Argentina, and the National State, due to the irregular fires that they had been producing in the chain of islands located off the coast of the city of Rosario, which had implications for the health of the inhabitants of the city [36]. In the lawsuit, it was requested to adopt a precautionary measure that would order the defendants to effectively and immediately cease all sources of fire that took place on the islands above. The precautionary measure contained in the amparo was resolved by the Supreme Court of Justice of the Nation, which unanimously determined that the Paraná Delta is indeed a vulnerable ecosystem that needed protection and that the fires, although they constitute an ancient practice, have acquired a dimension that affected the entire ecosystem and the health of the local population.

In 2020, the organisations of Socio-Environmental Institute, Greenpeace Brazil and the Brazilian Association of Members of the Public Ministry of the Environment (ABRAMPA) in Brazil filed a Public Civil Action in which they demanded the nullity of Order No.7036900/2020 GABIN issued by the president, Eduardo Bim, of the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA) [37]. This demand was made because withdrew the export authorisation requirement at the request of the logging companies and concluded that the ***Declaration of Forest Origin (DOF)*** would be enough to export native wood. The plaintiffs argued that the Order above allowed for the export of native wood without inspection and did not guarantee that the wood produced was legal. Further, since the DOF is a document that only authorises the transport of goods to the port, it does not indicate whether all legal provisions for export have been complied with. Instead, the withdrawn Export Authorization document would have included, as requirements, a series of inspections and verification controls, so this document meant fulfilling the mission for which the very existence of IBAMA is destined: protecting and monitoring the environment. In this sense, the organisations stated that the Order issued by IBAMA would have negatively impacted the Amazon, Brazil's national heritage and biomass, and therefore the community's right to an ecologically balanced environment.

The Order would have circumvented the process for proper verification. It would have allowed for wood to be exported without the appropriate inspection and verification, alluding to further uninhibited destruction of the Amazon if allowed to continue.

A case in 2018 where twenty-five (25) young people from seventeen (17) cities and municipalities in Colombia, with the support of the Center for the Study of Law, Justice and Society (Dejusticia), filed a tutela action against the Presidency of the Republic of Colombia; the Ministry of Environment and Sustainable Development; the Ministry of Agriculture and Rural Development; the three Regional Autonomous Corporations that have jurisdiction in the Amazon, and 14 municipalities in the Amazon [38], that together concentrate the highest percentage of deforestation in the region, for their omissions in fulfilling their duty of environmental protection that has led to an increase in the rate of deforestation, the leading cause of greenhouse gas emissions, which in turn can cause climate change. The case was heard by a court of the first instance, which dismissed the claim. The plaintiffs then appealed this resolution before the Supreme Court of Justice, which reversed the decision and recognised the Colombian Amazon as an entity subject to rights. Likewise, the Court ordered the creation of an Action Plan to reduce deforestation and an Intergenerational Pact for the life of the Colombian Amazon (PIVAC).

In 2017, Environment and Natural Resources Foundation (FARN) filed an amparo lawsuit against the Government of the Province of Mendoza and an oil company El Trébol SA in Argentina [39]. Resolutions numbered 789/17 and 813/17, issued by the Environmental Protection Directorate (DPA), through which it authorised the oil company El Trébol (PETSA) to explore and exploit for oil using the fracking method in four (4) four wells located near Laguna Llancanelo. The lawsuit argued that one of the biggest concerns related to fracking is the "*risk of increased greenhouse gas emissions (including fugitive methane emissions), aggravating climate change from anthropogenic sources*". FARN filed the writ of amparo to invalidate the authorisations granted for the exploitation of four fracking wells in Mendoza and asserted that the environmental authority granted the permits in a record time of six days without requiring an Environmental Impact Assessment. Additionally, the region is home to the Mapuche people. According to international law, indigenous peoples like the Mapuche must give their free, prior and informed consent to any activity affecting their territory. The right of the Mapuche people was not respected in this case. The amparo action fell before the 9th Civil Court of the city of Mendoza, which admitted the lawsuit but rejected the requested precautionary measure to suspend the illegally initiated fracking by the oil company El Trébol.

Taken together, these cases represent a shift towards the pursuit of climate change litigation across Latin American region, with parties and NGOs taking action to protect the environment. This is amid a groundswell in climate litigation across the world, with cases promoting climate action increasingly winning. While a number of these lawsuits are in the US, Australia and Europe, there is a steadily growing movement in Latin America, which has its distinct character [40]. The cases highlighted depict that, unlike their Western counterparts, such litigation often frames climate change as a violation of fundamental rights and an infringement on the environment that does not serve the public interest. As Kaminski [40] argued, climate change litigation shows the crucial role of "environmental constitutionalism", that is, invoking constitutional law to protect the environment. Recent and emerging cases are said to be "*often grounded on the right to a healthy environment as the primary legal basis*", for in the absence of local climate policies and laws, cases recognise international agreements as binding in law to govern their unique circumstances [40].

11. CONCLUSION

It is clear, therefore, that in the Caribbean, climate justice litigation will meet a range of challenges, not limited to those that are predicated purely on legal principles. Climate change litigation, as discussed above, operates as public law actions against governments and public authorities, raising human rights, constitutional and administrative law arguments, and in the realm of private law based on tort law. This internal and external approach has led to numerous litigation cases globally. In the Caribbean, the arguments in favour of climate change cases can be grounded in legal concepts such as the right to a healthy environment, the precautionary principle and future generations' equity. These legal principles have already led to judicial decisions benefitting the environment.

Latin American jurisprudence has already proven that individuals, NGOs and organisations are slowly making progress in the journey for climate justice. Unfortunately, the Caribbean is lagging behind.

COMPETING INTERESTS

Author has declared that no competing interests exist.

REFERENCES

1. Rannard, Georgina. How Pakistan floods are linked to climate change; September 02, 2022.
   Available:https://www.bbc.com/news/science-environment-62758811?xtor=AL-72-%5Bpartner%5D-%5Bbbc.news.twitter%5D-%5Bheadline%5D-%5Bnews%5D-%5Bbizdev%5D-%5Bisapi%5D&at_custom2=twitter&at_medium=custom7&at_campaign=64&at_custom3=%40BBCWorld&at_custom4=8A6B2FA2-2B6E-11ED-B776-1584FC756850&at_custom1=%5Bpost+type%5D
2. Weart SR. The Discovery of Global Warming. Harvard University Press; Cambridge, MA, USA; 2008.
   ISBN 9780674031890
3. Butler CD. Climate change, health and existential risks to civilization: A comprehensive review (1989-2013). International Journal of Environmental Research and Public Health. 2018;15(10):2266.
   DOI: https://doi.org/10.3390/ijerph15102266
4. BBC News. Hurricane Dorian: Scale of Dorian Devastation Emerges. September 2019.
   Available:https://www.bbc.com/news/world-latin-america-49574900
5. Meade, Natalie. New Yorker Eden Is Broken": A Caribbean Leader Calls for Action on Climate Change; September 24, 2017.
   Available:https://www.newyorker.com/news/news-desk/eden-is-broken-a-caribbean-leader-calls-for-action-on-climate-change
6. United Nations, General Assembly. General Debate of the 74th Session of the United Nations General Assembly; September 2019.
   Available:https://gadebate.un.org/generaldebate74-archive/en/
7. Santos RM, Bakhshoodeh R. Climate change/global warming/climate emergency versus general climate research: Comparative bibliometric trends of publications. Heliyon. 2021;7(11):e08219.
   DOI: 10.1016/j.heliyon.2021.e08219
   ISSN 2405-8440,
8. Urgenda Foundation v. State of the Netherlands HAZA C/09/00456689 (June 24, 2015); aff'd (Oct. 9, 2018). (2015).
   Available:http://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/
9. Native Village of Kivalina v. ExxonMobil Corp, 696 F.3d 849 (9th Cir. 2012). (2019).
   Available:http://climatecasechart.com/case/native-village-of-kivalina-v-exxonmobil-corp/
10. Kirchhofer X. Taking governments to court over climate change, World Bank Blogs; 2021.
    Available:https://blogs.worldbank.org/governance/taking-governments-court-over-climate-change
    Retrieved online on October 16, 2022
11. People's Climate Case ECLI:EU:T:(2019:324). 2019.
    Available:https://peoplesclimatecase.caneurope.org/
12. Kotzé Louis J. Neubauer et al. versus Germany: Planetary Climate Litigation for the Anthropocene? Cambridge University Press, German Law Journal. December 2021;22(8):1423–1444.
    Available:https://doi.org/10.1017/glj.2021.87
13. Greenpeace Norway vs. Government of Norway 16-166674TVI-OTIR/06. January 2018.
    Available:http://www.lse.ac.uk/GranthamInstitute/litigation/greenpeace-norway-v-governmen…
14. Luciano Lliuya v. RWE AG, District Court Essen, Case No. 2 O 285/15 Essen Regional Court. 24th November 2015.

Available:http://climatecasechart.com/non-us-case/lliuya-v-rwe-ag/

15. Tang K, Spijkers O. The human right to a clean, healthy and sustainable environment. Chinese Journal of Environmental Law. 2022;6(1):87-107. Available:https://doi.org/10.1163/24686042-12340078
16. Rajamani L. Human Rights in the Climate Change Regime, in JH Knox and R Pejan (eds), The Human Right to a Healthy Environment, Cambridge University Press. 2018;236.
17. Cima E. The right to a healthy environment: Reconceptualizing human rights in the face of climate change. RECIEL. 2022;31(1):38- 49. DOI: 10.1111/reel.12430
18. Fishermen and Friends of the Sea (Appellant) v Environmental Management Authority and others (Respondents) (Trinidad and Tobago) HCA CV 2148 of 2003. 2003. Available:https://tt.vlex.com/vid/fishermen-and-friends-of-793978573
19. Steiner A. On the occasion of the human rights council adopting the right to a clean, Healthy and sustainable environment (Human Rights Council, The Human Right to A Clean, Healthy, and Sustainable Environment, Resolution 48/13, adopted 8 October 2021, UN Doc A/HRC/RES/48/13); 2021. Available:https://www.undp.org/speeches/occasion-human-rights-council-adopting-right-clean-healthy-and-sustainable-environment?utm_source=EN&utm_medium=GSR&utm_content=US_UNDP_PaidSearch_Brand_English&utm_campaign=CENTRAL&c_src=CENTRAL&c_src2=GSR&gclid=EAIaIQobChMI557d_bnl-gIVJYZaBR3EugIvEAAYASAAEgJHEPD_BwE Retrieved online on October 16, 2022
20. Anderson W, Lamarche David B, Carter A, Miguel C. de, Torres V, Samaniego J. Ensuring environmental access rights in the Caribbean Analysis of selected case law. United Nations publication LC/TS.2018/31/Rev.1 Distribution: L Original: English Copyright United Nations, Caribbean Court of Justice, Printed at United Nations, Santiago S.18-00510; 2018.
21. Fishermen and Friends of the Sea v The Environmental Management Authority and Atlantic LNG Company of Trinidad and Tobago (Interested Party), H.C.A. Cv. 2148 of 2003. 2003. Available:https://tt.vlex.com/vid/fishermen-and-friends-of-793978573;
22. Bhadase Sooknanan and Fishermen and Friends of the Sea v Environmental Management Authority and the Ministry of Energy, CV 2014-00813. 2014. Available:https://tt.vlex.com/vid/sooknanan-and-fishermen-and-793699529.
23. People United Respecting the Environment (PURE) et al v. Environmental Management Authority et al. TT 2009 HC 134 (CV 2263 of 2007). 2009. Available:https://tt.vlex.com/vid/people-united-respecting-the-793597693
24. Delapenha Funeral Home Limited v. The Minister of Local Government and Environment HCV 01554. 2008. Available:https://supremecourt.gov.jm/content/delapenha-funeral-home-limited-v-minister-local-government-and-environment
25. Fishermen and Friends of the Sea v The Minister of Planning, Housing and the Environment P.C.A No. 0028 of 2016. 2016. Available:https://vlex.co.uk/vid/fishermen-and-friends-of-805758309
26. Environmental Management Act Chapter 35:05. Act 3 of 2000. December 2016. Available:https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/35.05.pdf
27. Thiery W, Lange S, Rogelj J, Schleussner C-F, et al. Intergenerational inequities in exposure to climate extremes. Journal of Science. 2021;374:158-160. DOI: 10.1126/science.abi7339
28. United Nations Environment Programme (August 2022). Story on Climate Action - Young people call for intergenerational solidarity on the climate crisis. Available:https://www.unep.org/news-and-stories/story/young-people-call-intergenerational-solidarity-climate-crisis

29. Future Generations v. President, the Ministry of the Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development to act in coordination with the National Environmental Agency Radicación n.°11001-22-03-000-2018-00319-01; STC4360-2018; 2018.
Available:https://www.informea.org/en/court-decision/future-generations-vs-ministry-environment-and-others
30. Thomas A, Baptiste A, Martyr-Koller R, Pringle P, Rhiney K. Climate change and small island developing states. Journal of Annual Review of Environment and Resources. 2020;45:1-27.
Available:https://doi.org/10.1146/annurev-environ-012320-083355
31. Trinidad and Tobago Civil Rights Association v Environmental Management Authority, Alutrint Limited (Interested Party) and the Attorney General of Trinidad and Tobago HCA No. S1070 of 2005. 2005.
Available:https://www.elaw.org/content/trinidad-tobago-%E2%80%93-trinidad-and-tobago-civil-rights-association-v-environmental-management-au
32. People United Respecting the Environment and Rights Action Group v Environmental Management Authority, Alutrint Limited (Interested Party) and the Attorney General of Trinidad and Tobago, CV 2007-02263, 2007.
Available:https://tt.vlex.com/vid/people-united-respecting-the-793597693
33. People United Respecting the Environment and Rights Action Group v Environmental Management Authority, Alutrint Limited (Interested Party) and the Attorney General of Trinidad and Tobago CV 2007–02263. 2007.
Available:https://tt.vlex.com/vid/people-united-respecting-the-793597693
34. Fishermen and Friends of the Sea v Environmental Management Authority and BP Trinidad and Tobago LLC (Interested Party) HCA No. 1715 of 2002. 2002.
Available:https://tt.vlex.com/vid/fishermen-and-friends-of-793978573
35. Thomas & De Freitas v. Guyana; 2021.
Available:http://climatecasechart.com/non-us-case/thomas-de-freitas-v-guyana/
36. Climate Litigation Platform for Latin America and the Caribbean. NGO vs. government for irregular fires in the Paraná Delta; 2020.
Available:https://litigioclimatico-com.translate.goog/es/ficha/ong-vs-gobierno-por-incendios-irregulares-en-el-delta-del-parana-n12?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc
Retrieved online on October 16, 2022
37. Climate Litigation Platform for Latin America and the Caribbean. Organizations vs. State for the illegal export of native wood in Brazil; 2020.
Available:https://litigioclimatico-com.translate.goog/es/ficha/organizaciones-vs-estado-por-la-exportacion-ilegal-de-madera-nativa-en-brasil-n55?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc
Retrieved online on October 16, 2022
38. Climate Litigation Platform for Latin America and the Caribbean. Young people vs. Colombia for deforestation in the Amazon; 2018.
Available:https://litigioclimatico-com.translate.goog/es/ficha/jovenes-vs-colombia-por-deforestacion-en-la-amazonia-n16?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc
39. Climate Litigation Platform for Latin America and the Caribbean. NGO vs. government and company for authorization of fracking wells in Mendoza; 2017.
Available:https://litigioclimatico-com.translate.goog/es/ 3447 iche/ong-vs-gobierno-y-empresa-por-autorizacion-de-pozos-de-fracking-en-mendoza-n3?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc
Retrieved online on October 16, 2022.

40. Kaminski I. Is Latin America leading a ‘quiet revolution’ in climate litigation? Dialogo Chino; 2022. Available:https://dialogochino.net/en/climate-energy/55646-latin-america-climate-litigation-quiet-revolution/ Retrieved online on October 16, 2022

© 2022 Ramlogan; This is an Open Access article distributed under the terms of the Creative Commons Attribution License (http://creativecommons.org/licenses/by/4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Peer-review history:
The peer review history for this paper can be accessed here:
https://www.sdiarticle5.com/review-history/92866