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Climate Litigation and Multi-level Governance Systems Dynamics in Nigeria and South Africa

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Abstract: As courts in Africa play an increasingly important role in resolving cases related to climate change and environmental protection, their rulings have significant impact on the power dynamics in multi-level governance systems. This paper focuses on climate litigation and explores how judicial decisions influence federal-state relations within multilevel governance systems in Nigeria and South Africa. Climate Litigation is an emerging field of environmental law which refers to legal actions taken to address issues related to climate change. The paper embraces interpretivism, and recognise that although legal frameworks possess objective realities, subjective interpretations and social contexts shape our understanding. To examine climate litigation in these African countries, the study adopts a mixed-method approach-doctrinal and socio-legal approach. Doctrinal is used to uncover legal principles and precedents, while a socio-legal approach explores the impact of judicial decisions on federal-regional dynamics and climate governance. The paper underscores the importance of judicial decisions in managing complex federal dynamics amidst global environmental changes. The research findings conclude that judicial decisions have significantly impacted federal-state relations by enforcing policy alignment with environmental protection goals. Key findings indicate that, despite the existing tensions between the national government and its regions, the judiciary plays a crucial role in shaping climate policies and reconciling national and regional interests. Nevertheless, the primary challenge confronting these judicial rulings is the lack of enforcement.

Keywords: Climate Litigation, Multi-level Governance, Comparative Analysis, Nigeria, South Africa

Introduction

The Secretary-General of the United Nations noted in September 2021 that the world is 'sleepwalking'

toward a climate catastrophe.¹ The more the devastating effects of climate change escalates all over the world, the more it becomes necessary to make the safety of our environment a priority. According to the United Nations Framework Convention on Climate Change (UNFCCC), climate change is defined as a direct or indirect result of human activity that modifies the composition of the global atmosphere, emphasising the impact of human actions.² The South African Constitutional Court (2017) describes it as "*a change in global or regional climate patterns attributed largely to increased atmospheric carbon-dioxide from fossil fuels*," integrating scientific understanding with legal responsibility.³ Beyond its legal and scientific definitions, climate change manifests in tangible and far-reaching consequences, particularly in vulnerable regions like Africa. The continent faces disproportionate climate-related hardships, which makes existing

socio-economic inequalities worse and threaten sustainable development. African countries face substantial challenges due to lack of water supply, poor agricultural yield, and public health. This makes it pertinent to have effective legal and governance frameworks to address these crises.⁴

In times past, environmental issues in Africa are governed mainly through treaties, and there has been very little engagement by the judiciary at the national level.⁵ Nevertheless, in a rapidly warming world where climate change is already wreaking havoc, climate litigation has emerged in national legal systems all over the world. Environmental laws have been left to the judiciary to interpret and enforce. Across multiple levels of governance, judicial intervention has great influence on the development and implementation of environmental policies. Courts play very important role in formulating regulations and

¹ United Nations, 'UN chief warns against 'sleepwalking to climate catastrophe', (2022), <<https://news.un.org/en/story/2022/03/1114322#:~:text=With%20the%20planet%20warming%20by,from%20these%20levels%20of%20chaos.%E2%80%9D>> accessed 4 February 2025

² United Nations Framework Convention on Climate Change, 'United Nations Framework Convention on Climate Change' (1992), https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf accessed 18 January 2025.

³ Earthlife Africa Johannesburg v Minister of

Environmental Affairs and Others [2017] ZAGPPHC 58, para 1.

⁴ Food and Agriculture Organization of the United Nations (FAO), 'Sustainable Agriculture' (n.d), <<https://www.fao.org/sustainable-agriculture/en/>> accessed 18 January 2025.

⁵ Eghosa Ekhator, 'International Environmental Governance: A Case for Sub-Regional Judiciaries in Africa', *Afronomics Law*, (2019), <https://www.afronomicslaw.org/2019/11/12/international-environmental-governance-a-case-for-sub-regional-judiciaries-in-africa>, accessed 9 February 2025

interpreting existing laws, thereby effectively addressing climate issues.⁶ The judiciary not only interprets laws but also serves as a dynamic entity within the government, ensuring that laws evolve with current realities. This complexity highlights the indispensable function that judicial bodies play in federal systems as they tackle climate change. However, how courts engage with climate litigation in federal systems where legal authority is often fragmented remains under-explored, particularly in African contexts.

According to IDEA International, Federalism is defined as a system of government that establishes a constitutionally specified division of powers between different levels of government.⁷ Nigeria and South Africa are countries that operate under the federal system of government with distinct legal and constitutional traditions. As such, they provide an important comparative lens to examine these judicial dynamics. Environmental rights are explicitly contained in the South Africa's Constitution. This makes it possible for courts to play an active role in enforcing climate-related obligations. In contrast, Nigeria's legal

framework constrains the judiciary because environmental rights are not explicitly justiciable, tying the hands of the judiciary on climate matters. This raises critical questions about the extent to which courts in federal systems can influence climate governance, the factors that shape their decisions, and the broader implications for climate policy and enforcement.

Judicial decisions in climate litigation transcend court rulings, as courts play a crucial role in reshaping power dynamics within multi-level governance systems in African federal structures. By adjudicating climate matters and the constitutional division of powers, courts help resolve conflicts between national and sub-national governments, particularly in the context of climate change mitigation and adaptation policies. To systematically explore this dynamic, the study examines how judicial decisions in select African countries influence federal-state relations and broader governance structures. A specific focus is placed on the judiciary's role in shaping climate governance within federal systems and how legal rulings affect policy alignment between different levels of government. Ultimately, this

⁶ Eghosa Osa Ekhatior, 'International Environmental Governance: A Case for Sub-Regional Judiciaries in Africa', (n.d), <[https://repository.derby.ac.uk/download/f07aa34976ecae4a46be090cda7fc26eb74b314b5ea2d88dc25cd3c6f869a3f6/339380/Ekhatior%20Chapter%209%20\(Final%20Version\)%20International%20Environmental%20Gove](https://repository.derby.ac.uk/download/f07aa34976ecae4a46be090cda7fc26eb74b314b5ea2d88dc25cd3c6f869a3f6/339380/Ekhatior%20Chapter%209%20(Final%20Version)%20International%20Environmental%20Gove)

rnance%20(UDORA%20Copy).pdf> accessed 9 February 2025

⁷ International IDEA, *Federalism: A Primer* (2024) <https://www.idea.int/sites/default/files/publications/federalism-primer.pdf> accessed 18 January 2025.

research seeks to enhance the understanding of climate adjudication's impact on governance and federal dynamics in Africa.

Beyond contributing to legal scholarship, the findings aim to advance climate litigation in African federal systems and provide critical insights into how courts reconcile national and regional objectives in combating climate change. The outcomes may guide policy recommendations to improve climate governance, refine legislative frameworks, and foster more effective climate action across multiple governance tiers. Additionally, this work adds to global discussions on the judiciary's role in climate policy, particularly in developing and emerging economies.

The paper is structured into four key sections beginning with an exploration of African jurisprudence on climate litigation. Followed by a discussion of the theoretical framework and methodology that guide the analysis. The third section examines the judiciary's role in climate governance, with case studies from Nigeria and South Africa. The final section presents key findings and offers recommendations to strengthen climate governance through judicial action and intergovernmental collaboration. By analysing judicial responses

to climate litigation in select African countries, this research underscores the judiciary's critical role in shaping climate governance within multi-level governance systems. The insights gained contribute to a broader understanding of how courts influence governance structures and provide a foundation for future legal and policy reforms aimed at strengthening climate governance in Africa.

2.0 Insights from African Jurisprudence on Climate Litigation

Moss defines Climate litigation as "*legal action taken to address the causes and consequences of climate change through judicial or quasi-judicial means*,"⁸ Peel and Osofsky on the other hand describe it as "*legal claims brought before courts to address the effects of climate change or to enforce climate-related obligations*."⁹ Furthermore, Setzer and Vanhala define it as "*the use of legal mechanisms to address the challenges posed by climate change*."¹⁰ This paper adopts Peel and Osofsky's definition due to its alignment with our focus on judicial responses. As climate change intensifies and its consequences become more apparent, litigation has emerged as a critical tool in holding governments and corporations accountable. This

⁸ John Moss, 'Climate Change Litigation: Definitions and Perspectives' *Environmental Law Review*, (2013) 15(3), 123-145,

⁹ Jacqueline Peel and Hari M. Osofsky, 'Climate Change Litigation: Regulatory

Pathways to Cleaner Energy', Cambridge University Press, (2015).

¹⁰ Joana Setzer and Lisa Vanhala, 'Climate Change Litigation: A Global Review' *Global Environmental Change*, (2019), 54, 1342.

trend is particularly evident in Africa, where courts are increasingly being called upon to address environmental concerns and uphold the right to a healthy environment. The African continent is witnessing increased interest in climate litigation in recognition of the right to a healthy environment. This recognition has prompted courts to interpret constitutional provisions in ways that prioritise environmental sustainability and public health.¹¹ The judicial acknowledgment of this right not only serves to protect individual interests but also promotes broader societal goals related to environmental stewardship and sustainability. Some countries have explicitly enshrined the right to a healthy environment in their constitutions, while others have relied on judicial interpretations of existing rights to achieve similar outcomes. This diversity in judicial approaches underscores the importance of context in shaping the effectiveness of judicial activism in environmental protection.

A growing body of literature highlights the challenges and opportunities that arise from multi-level governance systems regarding climate change mitigation and

adaptation. In Nigeria, the federal-state dynamics, particularly in resource-rich regions like the Niger Delta, have often led to a fragmented approach to climate governance.¹² The existing literature suggests that this fragmentation can hinder effective climate litigation and policy enforcement at national and regional levels.¹³ There is also a lack of coordination across ministries and agencies, in the administration of climate governance leading to inconsistent policy implementation. The Nigerian 2021 Climate Change Act aims to improve implementation by establishing a National Council on Climate Change, but challenges persist due to resource constraints and fragmented existing regulations.¹⁴ Damilola Olawuyi, an established authority on environmental law in Nigeria, has extensively analysed Nigeria's environmental legal framework. His research particularly focuses on how Nigeria's federal structure impacts environmental governance and climate change responses. His work highlights the challenges in implementing environmental rights within

¹¹ Buse, Kent, Healthier Societies, and Sofia Gruskin, 'The right to a healthy environment: making it matter', *BMJ*: n3076, (2021), <https://doi.org/10.1136/bmj.n3076>, Accessed 18 January 2025.

¹² Okereke, Chukwumerije, 'Expert Explains Why State-level Climate Governance Is Important', (n.d.), <https://sppnigeria.org/expert-explains-why->

[state-level-climate-governance-is-important/](https://sppnigeria.org/expert-explains-why-state-level-climate-governance-is-important/), accessed 26 January 2025

¹³ Ibid

¹⁴ Amuda-Kannike, S., et al, 'Developing climate governance strategies in Nigeria', (2023), <https://periodicos.ufv.br/jccc/article/download/17383/8745/78771>, accessed 26 January, 2025

Nigeria's federal system.¹⁵ Section 20 of the Nigerian Constitution provides that *"the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria."*¹⁶ Though this is contained under the Fundamental Objectives and Directive Principles of State Policy which is non-justiciable, it provides guiding principles that influence the legislative process and the creation of laws.

In contrast, South Africa has a relatively more cohesive approach to environmental governance, backed by a proactive judiciary that has provided a more robust legal response to climate change. This cohesive approach is seen in the right to a healthy environment, explicitly enshrined in the Constitution.¹⁷ Farber in his essay on the evolving importance of climate change litigation, discusses how these kinds of litigation influence government actions across different levels, highlighting its role in shaping federal dynamics and environmental governance.¹⁸

However, even in South Africa, the challenge remains in balancing the powers of provincial governments with the overarching national policies aimed at addressing climate change.¹⁹ Louis Kotzé has made significant contributions to understanding South Africa's environmental constitutionalism. His work examines how the South African Constitution's environmental rights provision (Section 24) creates a foundation for climate litigation. Kotzé's analysis of environmental rights and constitutionalism in the Global South has been particularly influential in understanding South Africa's judicial approach to environmental protection.²⁰ Jan Glazewski, from the University of Cape Town, has comprehensively documented South Africa's environmental law development. His work *"Environmental Law in South Africa"* is a foundational text that examines the intersection of constitutional rights and environmental protection in

¹⁵ Damilola S. Olawuyi, 'The Principles of Nigerian Environmental Law', Afe Babalola, University Press, (2015).

¹⁶ **Constitution of the Federal Republic of Nigeria 1999 (as amended), Chapter 2, Section 20**, <https://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>, accessed 18 January 2025.

¹⁷ Constitution of the Republic of South Africa, 1996, Section 24.

¹⁸ David A. Farber, 'The Continuing Importance of Climate Change Litigation' (2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1529669, accessed 26 January 2025

¹⁹ Alina Averchenkova, Kate Elizabeth Gannon, and Patrick Curran, 'Governance of Climate Change Policy: A Case Study of South Africa' (2019), https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2019/06/GRI_Governance-of-climate-change-policy_SA-case-study_policy-report_40pp.pdf, accessed 26 January 2025

²⁰ Louis J. Kotzé and Evadne Grant, 'Environmental Rights in the Global South' *Environmental Rights*, (2019) <https://china.elgaronline.com/edcollchap/edcoll/9781784717452/9781784717452.00012.pdf>, accessed 9 February 2025. 346

South Africa's legal system.²¹ The literature reveals that the relationship between multi-level governance systems and climate litigation in Nigeria and South Africa is still evolving. While the foundational legal structures are recognized, there is still much to explore regarding their practical implementation, cross-jurisdictional coordination, and the judiciary's role in shaping climate governance. The federal system is complex therefore, courts are not merely passive arbiters but active players in negotiating power dynamics between different levels of government. Understanding their role requires engaging with governance theories that explain how authority is distributed, contested, and exercised across national and sub-national levels.

3.0 Shaping Climate Governance through theories and methodology

This paper looks at how climate lawsuits affect governance at different levels using the ideas of interpretivism and a mix of Multi-Level Governance (MLG) and Legal Pluralism theories. According to *Ronald Dworkin*, the law is an interpretive concept that requires moral judgement in its application. Interpretivism assumes that reality is based on the

subjective meanings and experiences of individuals within their social context.²² Environmental justice, sustainable development, and intergenerational equity, keep changing; consequently, judges must interpret statutes, treaties, and constitutional provisions per these changing realities.²³ Since this paper is focused on how the judiciary interprets climate change issues, and how these interpretations shape the broader political and governance system, interpretivism is well suited. Courts do not merely apply laws in a vacuum; rather, they interpret laws within a broader socio-political and governance framework. Climate change cases are particularly complex, as they involve scientific uncertainty, policy considerations, human rights, and environmental ethics and these factors cannot be fully understood using positivism because positivism focuses on what the law is without taking into consideration broader policy implications.²⁴

Courts also interpret legal complexities in federal systems based on legal pluralism, where multiple conflicting legal frameworks exist, such as national legislation, state laws, and customary practices.²⁵ Legal pluralism

²¹ Jan Glazewski, 'Environmental Law in South Africa' *Butterworths LexisNexis*, (2005) 2nd edn.

²² Ronald Dworkin, 'Justice for Hedgehogs', *Harvard University Press* (2011) 97.

²³ Reed Hepler, 'Interpretivism Definition, History & Approach', *Study.com*, (2023), <https://study.com/learn/lesson/interpretivism>

-sociology-concept-origin.html, accessed 24 January 2025

²⁴ Kenneth Einar Himma, 'Legal Positivism', *Internet Encyclopedia of Philosophy*, (n.d), available at <https://iep.utm.edu/legalpos/>, accessed 8 February 2025

²⁵ Flambonita, Suci, et al, 'The paradigm of pluralism in Indonesia: communal vs legal

recognises that different legal systems can exist and interact within the same society. Court decisions show how different systems work together, especially in climate lawsuits where local and global concerns often conflict.²⁶ MLG also has to do with government structures (federal, state, and local government) and how they interact in policy making and implementation. In Nigeria and South Africa, MLG and legal pluralism determine how climate litigation unfolds within their federal systems. This paper seeks to understand how courts navigate legal pluralism within the MLG system. Adopting this mix of theories offers a robust foundation for analysing how courts in Nigeria and South Africa navigate the complexities of multi-level systems to address the urgent global challenge of climate change.

As mentioned earlier, this work is predicated on a mix of doctrinal and socio-legal research methodology, to reveal the influence of judicial decisions on climate governance and multi-level governance systems. Each method offers a distinct but complementary avenue through which the complex terrain of law, policy, and governance is

understood. This way, it is easier to unpack both the legal principles and the broader social impacts of judicial rulings.

Doctrinal approach is the bedrock of this research, because it examines the actual legal tools and texts that courts use to make their decisions. The approach involves a rigorous examination of constitutional provisions, statutory frameworks, judicial precedents, and authoritative legal texts that collectively guide courts in their adjudication of climate-related disputes. In examining constitutional frameworks, the doctrinal approach facilitates a deep understanding of how fundamental environmental rights are enshrined and protected within the law of both nations.²⁷ The methodology extends beyond constitutional analysis to encompass a comprehensive examination of environmental legislation and regulatory frameworks. Through systematic examination of judicial decisions, the methodology reveals patterns in judicial interpretation, the development of legal precedents, and how environmental laws are applied in these jurisdictions.

While doctrinal analysis unveils the legal rules, the socio-legal approach

state', *Technium Social Sciences Journal*, (2021), 15:259-265.

<https://doi.org/10.47577/tssj.v15i1.2245>, accessed 24 January 2025

²⁶ Benda-Beckmann, Keebet von, and Bertram Turner, 'Legal Pluralism, Social Theory, and the State', *The Journal of Legal Pluralism and Unofficial Law*, 50 (3): 255–74, <doi:10.1080/07329113.2018.1532674>,

accessed 24 January 2025

²⁷ Mike McConville and Wing Hong Chui, 'Research Methods for Law', *Edinburgh University Press*, (2003), <https://edinburghuniversitypress.com/pub/media/resources/9781474404259_Research_Methods_for_Law_-_Introduction_and_Overview.pdf>, accessed 26 January 2025

delves into the social context examining how the law interacts with political, economic, and cultural forces. Legal principles are brought to life through their application in real-world contexts, where they influence not only the law but the very dynamics of governance, environmental protection, and climate justice.²⁸ Integrating these two methodologies, ensures a holistic view of the role the judiciary plays in navigating the intersection of law, politics, and climate governance, offering a pathway for understanding the evolving relationship between courts, governments, and societies.

4.0 Do courts have any role to play in climate governance?

Judiciaries frequently adjust the limits of environmental laws, typically restricting or enlarging them by interpreting existing laws and giving them effect. As a result, courts through their interpretations of legal principles, wield significant power in influencing the alignment or non-alignment of policies between national and sub-national governments. This in turn, determines the political dynamics of climate action and environmental governance in Nigeria and South Africa.²⁹ In

recent times, the court no longer analyses laws *simpliciter*; instead, it delivers sweeping judgments on climate governance that are both visionary and revolutionary.

Several landmark cases have highlighted the judiciary's role in climate litigation in Nigeria. The judiciary have been able to hold corporations accountable and compel government action on climate issues. Courts have increasingly acknowledged the right to a healthy environment as a fundamental human right, which has empowered citizens to seek legal redress.³⁰ However, environmental degradation issues litigated in Nigeria's courts primarily concern the oil industry in the oil-producing Niger Delta region. The year 1999 witnessed a widespread environmental degradation as court rulings meant to protect communities from these multinational corporations (MNCs), were largely ignored by the government. The continuous rise in environmental degradation without much care by the government gave rise to public interest environmental litigation (PIEL) which gained significant momentum in the 2000s, as environmental awareness and activism grew. The case of

²⁸ Mike McConville and Wing Hong Chui, op cit P. 8

²⁹ Louis J. Kotzé and Anél du Plessis, 'Putting Africa on the Stand: A Bird's Eye View of Climate Change Litigation on the Continent', *Journal of Environmental Law*, (2019) 50 <https://repository.lincoln.ac.uk/articles/journal_contribution/Putting_Africa_on_the_Stand_A_Bird_s_Eye_View_of_Climate_Change_Litigation_on_the_Continent>

ge_Litigation_on_the_Continent/24377422>, accessed 9 February 2025.

³⁰ Kavuri, Sudha and Anjana Ramanathan, 'Climate change litigation: chronicles from the global south. a comparative study', *Comparative Law Review*, (2022), 28:169-199. <https://doi.org/10.12775/clr.2022.006>, accessed 26 January 2025

Environmental Rights Action (ERA) v. Shell Petroleum Development Company of Nigeria Ltd. marked one of the earliest and the most significant attempts to hold MNCs accountable for environmental harm caused by their operations. ERA, an environmental NGO, sought to challenge Shell's actions in the Niger Delta, particularly regarding pollution and its' adverse effects on local communities.³¹ While the legal framework for PIEL was not as explicitly defined at the time, this case laid the foundation for subsequent PIEL efforts as seen in the case of *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*.³² Nonetheless, limited funding, legal constraints, and weak enforcement mechanisms continue to hinder civil society's ability to drive substantial climate action.³³

South Africa has witnessed a notable increase in climate litigation, driven by a combination of constitutional rights, environmental activism, and the need for accountability from both government and private entities. The major strength of the judicial approach in South Africa is the integration of environmental rights into the Bill of Rights

creating a unique window of opportunity for the advocacy of climate justice through legal action. PIEL has been successful in South Africa and provides a useful model for similar approaches in other countries. One notable PIEL case is *Earthlife Africa v. Minister of Environmental Affairs*. In this case, Earthlife Africa, an environmental advocacy organisation, challenged the South African government for granting environmental authorisation for the construction of a new coal-fired power station. The court ruled in favor of Earthlife Africa, finding that the government had failed to properly assess the environmental consequences of the proposed power plant.³⁴ The importance of climate change mitigation policies and the need for proper environmental reviews of large-scale, emissions-intensive projects was also highlighted in *Groundwork v. Minister of Environmental Affairs and Others*.³⁵ Furthermore, the case of *Friends of the Earth South Africa v. Minister of Environmental Affairs* is noteworthy. In this case the failure of the South African government to account for the global impact of climate change when approving high-emission

³¹ (2005) 2 NWLR (Pt 909) 1

³² Supreme Court of Nigeria, Sabin Centre for Climate change, <https://climatecasechart.com/non-us-case/centre-for-oil-pollution-watch-copw-vs-nnpc-2018-supreme-court-of-nigeria/>, accessed January 29, 2025

³³ Kim Bouwer, Uzuazo Etemire, Tracy-

Lynn Field et al (eds), 'Climate Litigation and Justice in Africa', *Bristol University Press* (2024).

³⁴ *Earth life Africa v. Minister of Environmental Affairs and Another* [2017] ZAGPPHC 356.

³⁵ *Groundwork v. Minister of Environmental Affairs and Others* (2007) 1 All SA 883 (W).

projects was challenged by this NGO.³⁶ These cases illustrate how activists and NGOs in South Africa capitalised on existing environmental legislation and international environmental standards, to challenge government policies and corporate actions that were contributing to environmental harm, and climate change. However, challenges remain, such as the slow pace of judicial processes, lack of funding for implementation of court judgement and the potential for political interference in environmental decision-making.³⁷

These legal battles show the very important role courts play in enforcing environmental regulations and holding both governments and corporations accountable. Nevertheless, how effective judicial interventions will be depends on a much wider governance framework that houses the implementation climate policies. In federal systems like South Africa and Nigeria, the division of environmental responsibilities between national and regional governments can either facilitate or hinder climate governance.

The effect would depend largely on how cooperative the multi-levels are and the clarity in legal mandates. This raises important questions about the role of federalism in shaping climate governance and how jurisdictional conflicts impact the enforcement of climate policies at multi-level governance system.

4.1 **Federalism and Climate Governance: National vs. Regional Interests**

In Nigeria, the federal government holds primary authority over environmental policy through the Federal Ministry of Environment³⁸ and National Environmental Standards and Regulations Enforcement Agency (NESREA).³⁹ The Nigerian Constitution places environmental protection on the concurrent legislative list, meaning both federal and state governments can legislate on environmental matters. However, when conflicts arise, federal law takes precedence.⁴⁰ States have considerable autonomy in implementing climate initiatives within their territories. They can establish state environmental protection agencies, enact local

³⁶ Friends of the Earth South Africa v. Minister of Environmental Affairs [2011] ZAGPPHC 134.

³⁷ Olivia Rumble, 'Climate litigation in Africa: Where to from here?', *Africa Climate Wire*, (2024), <https://africanclimatewire.org/2024/04/climate-litigation-in-africa-where-to-from-here/>, accessed 10 February 2025

³⁸ Federal Ministry of Environment, About Us <https://euepin.unilag.edu.ng/federal->

[ministry-of-environment/](https://euepin.unilag.edu.ng/federal-ministry-of-environment/) accessed 9 February 2025.

³⁹ National Environmental Standards Regulation Agency (NESREA), Environmental Policy and its Enforcement in Nigeria <https://elri-ng.org/wp-content/uploads/2021/07/Environmental-Policy-and-its-Enforcement.pdf> accessed 9 February 2025.

⁴⁰ Nigeria Constitution (1999), s 4(5)

environmental laws, and develop climate adaptation strategies. For instance, Lagos State has been particularly proactive, establishing its own Climate Change Adaptation Strategy and environmental protection agency.⁴¹

South Africa on the other hand adopts a quasi-federal system with distinctive power-sharing arrangements. The South African legal framework governing climate litigation comprises a set of interrelated constitutional, legislative, and international law provisions. The Constitution serves as the most crucial piece of legislation in this regard. The Constitution of South Africa (1996) provides for concurrent jurisdiction over environmental matters through Schedule 4, Part A, which lists "environment" as a functional area of concurrent national and provincial legislative competence. Chapter 2 of the Constitution contains a Bill of Rights with relevant provisions for climate change litigation.⁴² The Constitution firmly establishes South Africa as a constitutional democracy, and as a member of this club, the State is bound to uphold the values enshrined in the Constitution. *Section 7(1)* obliges the State to respect, protect, promote, and fulfill the rights in the Bill of Rights. A failure to take proactive

measures to curb greenhouse gas emissions that causes climate change would lead to a violation of the rights contained in the Bill of Rights, as would a failure to prevent a violation of such rights by private entities.⁴³ Effectively, this imposes a duty on the government to act as a trustee of the environment for the benefit of both present and future generations. In terms of public trust doctrine, water, air, and other natural resources held in trust by the government may not be abused for private gain, and the government must take proactive steps to protect such resources. *Section 24 of the S.A Constitution* enshrines the right to a healthy environment.⁴⁴ Moreover, it behoves on the State to prevent pollution and degradation of the environment and to promote conservation. This section specifically addresses the socioeconomic rights of groups vulnerable to and affected by environmental degradation.

The broad legislative framework establishing the foundations for environmental litigation is set by the *National Environmental Management Act*, which was promulgated in 1999. This Act stipulates national environmental principles to guide all decision-making regarding the environment.⁴⁵ Importantly, this includes a proactive duty to

⁴¹ Lagos State Environmental Protection Agency (LASEPA), 'About Us', <https://moelagos.gov.ng/agencies/lagos-state-environmental-protection-agency-lasepa/> accessed 9 February 2025.

⁴² The Constitution of the Republic of South

Africa (1996), Schedule 4 Part A; Chapter 2.

⁴³ Constitution of the Republic of South Africa, 1996, op cit at 12

⁴⁴ Constitution of the Republic of South Africa, 1996, s 24.

⁴⁵ National Environmental Management Act

consider all information concerning environmental risks before making decisions. Moreover, the act provides a cause of action to any person alleging that a provision of the Act has been contravened.

South African provinces have significant constitutional authority in environmental matters, including climate change mitigation and adaptation. *Section 104(1)(b) of the Constitution* empowers provinces to pass legislation on any matter contained in schedule 4 & 5 and any matter outside these schedules specifically assigned to provinces by national legislation. They can develop provincial climate change response strategies and implement environmental programs suited to their specific contexts. The Western Cape Province, for example, has developed comprehensive climate change response frameworks that complement national policies while addressing local challenges.⁴⁶

Although South Africa's provincial climate efforts show how decentralised environmental governance may work, there are still some bumps on the road between federal and local governments. *Section 146* of the constitution allows national legislation to prevail over

provincial legislation under specific conditions. Climate policy implementation problems may arise from jurisdictional overlaps, policy discrepancies, and difficulties in allocating resources.

Similarly, environmental regulation, enforcement power, and policy objectives have all been the subject of disagreements in Nigeria as a result of strained relations between the federal and state governments. The next section explores these jurisdictional disputes and how they hinder the efficient implementation of climate measures in both nations.

4.2 *Jurisdictional Conflicts and Challenges in Climate Policy Implementation*

Jurisdictional conflicts in climate governance between national and regional authorities in Nigeria and South Africa present complex challenges that reflect broader tensions in their federal systems. Climate change is a multi-level policy problem, and states play a crucial role in its mitigation.⁴⁷ However, federal-state relations have proven complex in climate policy implementation, with competing priorities between different levels of government leading to tensions and conflicts that undermine policy

107 of 1998,
<https://www.gov.za/documents/national-environmental-management-act>, accessed 30 January 2025

⁴⁶ Van der Merwe and Themba Simelane, 'Provincial Climate Change Responses in South Africa: Case Study of the Western Cape', *Journal of Southern African Studies*,

(2024) 89–106.

⁴⁷ Coinu, Giovanni and Lewis, Paul, 'Climate Change, the Paris agreement and Subsidiarity', *John Marshall Law Review*, (2019) Vol 52, Issue 2, <<https://core.ac.uk/reader/237172750>>, accessed 26 January 2025

implementation.⁴⁸ Locals have expressed concern over federal government's failure to respond to extreme weather events ravaging their locality. However, for any government policy to succeed, there must be a balance between local autonomy and federal mandates. Since climate change affects the whole country, people have long debated whether the federal government should intervene or let state governments handle climate-related issues.

The lack of clarity on responsibilities between the federal and state levels of government in Nigeria is a major contributor to the country's environmental problems. The case of *Shell Petroleum Development Company (Nigeria) Ltd v. Abel Isaiah*, where the Supreme Court addressed the issue of jurisdiction concerning environmental claims is noteworthy. The court affirmed that the jurisdiction over matters related to mines and minerals, including oil fields and natural gas, was exclusively vested in the Federal High Court, thereby limiting the jurisdiction of State

High Courts in such matters.⁴⁹ The effect of this judgement is that it restricts state governments and their judicial systems from handling matters that bother on oil and gas activities. As a result, affected communities and state authorities must pursue environmental litigation at the federal level, which is not efficient and may reduce the influence of local governments in addressing pollution and climate-related disputes.

The inefficiency in this process of adjudication is highlighted in the 2016 Niger Delta Avengers (NDA) attack on oil installations in Nigeria. They demanded greater control over the region's oil resources and compensation for environmental damage caused by MNCs. This attack disrupted oil production, reducing Nigeria's oil output and highlighting tensions between local communities and national economic interests.⁵⁰ In the same 2016, the NDA bombed a sub-sea pipeline operated by Shell, shutting down the Forcados export terminal.⁵¹ Recent climate policy challenges have also led to oil-producing states

⁴⁸ Edidah L Ampaire et al, "Institutional challenges to climate change adaptation: a case study on policy action gaps in Uganda", *Science Direct*, (2017), <
<https://core.ac.uk/download/132690557.pdf>>
, accessed 28 January 2025

⁴⁹ *Shell Petroleum Development Company of Nigeria Ltd v. Abel Isaiah & Ors* [2001] NGSC 24; SC 75/1997,
<https://www.lawglobalhub.com/the-shell-petroleum-development-company-of-nigeria-limited-v-abel-isaiah-ors-2001-11jr-sc/>, accessed 1 February 2025

⁵⁰ Fund for Peace, 'Resurgence of Militancy in the Niger Delta', (June 2016)
,<https://fundforpeace.org/wp-content/uploads/2018/08/PIND-Briefing-Niger-Delta-Avengers-June-2016.pdf>,
accessed 1 February 2025

⁵¹ UNHCR, 'Nigeria: Information on the Niger Delta Avengers (NDA), including areas of operation, objectives, and activities; state efforts to respond', (2023),
<https://webarchive.archive.unhcr.org/20230530091801/https://www.refworld.org/docid/584405074.html>, accessed 1 February 2025.

challenging federal climate policies, arguing that transitioning to renewable energy sources or implementing stricter environmental regulations without providing immediate alternative could jeopardize their economic stability.⁵²

In South Africa, jurisdictional conflicts manifest differently due to its cooperative governance framework. However, tensions arise when provincial authorities perceive national climate policies as overreaching. In Western Cape province, local officials celebrated as they unveiled an ambitious solar power initiative that would bring clean energy to thousands of homes. The province had become a beacon of climate innovation, with its officials working directly with communities to install rooftop solar panels and create green jobs. But their enthusiasm quickly turned to frustration when they discovered that national regulations had not kept pace with their plans. The local solar installers they trained found themselves tangled in red tape from Pretoria, waiting months for permits that should have taken days. This led to Western Cape challenging the Government's National Energy Regulator's restrictions on provincial

renewable energy initiatives. This is an example of how provinces resist centralized control over climate-related energy policies.⁵³

In the case of *Groundwork Trust and Vukani Environmental Justice Movement in Action v. Minister of Environmental Affairs and Others*, the High Court ruled that the severe air pollution in the Highveld Priority Area (HPA) of Mpumalanga Province violated residents' constitutional right to a healthy environment under *Section 24(a)*. As a result, the court ordered the Minister of Environmental Affairs to develop and implement effective measures within 12 months to tackle air pollution and protect public health. The government had sometime in 2007 declared the region HPA under the National Environmental Management: Air Quality Act (NEMAQA) 39 of 2004 due to heavy industrial activities which made the area a pollution hot spot region. Consequently, these two applicants filed the case against the Minister of Environmental Affairs and other governmental bodies.⁵⁴

The HPA Case has revealed the need for effective environmental governance and strong institutional coordination among

⁵² Leon Usigbe, 'Nigeria prioritizes climate action to mitigate natural disasters', *African Renewal*, (2023), <https://www.un.org/africarenewal/magazine/august-2023/nigeria-prioritizes-climate-action-mitigate-natural-disasters>, accessed 1 February 2025

⁵³ Constitutional Court of South Africa, *Western Cape Government v. National*

Energy Regulator of South Africa (Case CCT 125/23), *South African Law Reports*, (2023) (2), 156-178.

⁵⁴ Trustees for the time being of *Groundwork Trust v. Minister of Environmental Affairs* (39724/2019) flag [2022] ZAGPPHC 208, https://www.saflii.org/za/cases/ZAGPPHC/2022/208.html?utm_source=chatgpt.com, accessed 2 February 2025

different levels of government. Consequently, the Intergovernmental Relations Framework Act (IRFA) of 2005 was promulgated to ensure there is a symbiotic relationship among the multi-level systems so that policies can be effectively implemented across national, sub-national and local authorities. In spite of this, IRFA continues to face setbacks that hinder effective coordination of environmental management.⁵⁵ The setbacks include political tensions between different parties, scarce resources and lack of capacity. Many municipalities lack the necessary resources and technical expertise to participate in intergovernmental structures, such as environmental management. The forums established under IRFA often devolve into bureaucratic exercises rather than effective coordination mechanisms, with meetings often focused on compliance rather than meaningful cooperation.⁵⁶ Municipalities are unable to meet their obligations under IRFA effectively due to resource constraints. These limitations suggest that deeper reforms and resources are needed to achieve effective intergovernmental cooperation in South Africa.

In a situation where several levels of

government need to work together, the true test for South Africa and Nigeria will be in developing stronger climate policies and then seeing them through to implementation. Regional authorities often have different objectives than national governments in matters of climate change, which may cause conflict and delay implementation. This begs the critical question: in cases of jurisdictional disputes, should courts uphold national climate policy or safeguard regional autonomy?

4.3 ***Do courts reinforce national climate priorities or protect regional interests?***

According to the constitution legislative powers over environmental matters are assigned to the federal and state governments creating conflicts over jurisdiction and regulatory control. In this context, the judiciary plays a critical role in interpreting the law, resolving disputes, and ensuring that environmental policies align with constitutional provisions. Critical environmental issues and matters such as mining, oil exploration, and maritime pollution are allocated to the federal government under the Exclusive Legislative List of the 1999 Constitution.⁵⁷ Conversely,

⁵⁵ Intergovernmental Relations Framework Act, Act no. 13 of 2005, available at <https://www.ecolex.org/details/legislation/act-no-13-of-2005-intergovernmental-relations-framework-act-lex-faoc214466/>, accessed 1 February 2025

⁵⁶ Zolani Tafeni and Bheki Mngomezulu, 'Assessing the effectiveness and efficiency

of the provincial MuniMEC forum inter-government relations structures in the Eastern Cape Province', *South Africa, Journal of Local Government Research and Innovation*, ISSN: (Online) 2788-919X, (Print) 2709-7412

⁵⁷ Sunday A. Fagbemi, 'Analysis of the Federal, State and Local Governments

states derive their authority from the Residual List and the Land Use Act, which grants them control over land allocation and local environmental regulations. However, conflicts arise when states attempt to regulate industries that fall under federal control, such as oil exploration in the Niger Delta. In such cases, the court remains the final arbiter that helps to resolve this conflict and clarifies the limits of federal and state authority.⁵⁸

Beyond governance disputes, the Climate Change Act 2021 creates a framework to address environmental harm through public interest litigation.⁵⁹ Concerns raised are generally on local impacts from industrial activities like oil pollution. This possibly relates to regional interest rather than a preference for national policies over local issues. A significant case demonstrating the courts' attempt to balance regional environmental concerns with national economic interests is *Shell Petroleum Development*

Company Ltd v. Ambah. This incident took place in 1977 at the Burutu Local Government in Delta State. In that case, Ambah sought damages against shell for the destruction of fish ponds, creeks, lakes, and channels near the Beniseide oil fields. The court recognised local communities' rights to environmental protection while acknowledging the federal government's regulatory authority over the oil industry.⁶⁰ The case is significant because it sets a precedent for holding companies accountable for local environmental damage within Nigeria's judicial system. Also, in *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd* (2005), the Federal High Court held that gas flaring violated constitutional rights to a healthy environment, effectively supporting local environmental interests.⁶¹

In contrast, South Africa's constitutional framework provides a more robust mechanism for judicial intervention in environmental

Responses to Environmental Issues and Management in Nigeria', *University of Ibadan Law Journal*, (2015) ,file:///C:/Users/USER/Downloads/UNIB+LAW+JOURNAL+Vol+5+2015-29-40.pdf, accessed 11 February 2025

⁵⁸ Olanrewaju Fagbohun, 'Mournful Remedies, Endless Conflicts and Inconsistencies in Nigeria's Quest for Environmental Governance: Rethinking the Legal Possibilities for Sustainability', *Nigerian Institute of Advanced Legal Studies*, (2012), P. 76-80 <[https://elri.ng.org/Inaugural%20Paper%20%20Prof%20Fagbohun%20\(NIALS\).pdf](https://elri.ng.org/Inaugural%20Paper%20%20Prof%20Fagbohun%20(NIALS).pdf)>,

⁵⁹ Aaron Olaniyi Salau, 'An Appraisal of the Climate Change Act and Climate Public

Interest Litigation in Nigeria' (2023) *NJEL* [available at <https://journal.nials.edu.ng/index.php/njel/article/download/46/45/83>], accessed 11 February 2025.

⁶⁰ [1999] 3 NWLR (Pt 593), <https://lite.judiciary.gov.ng/case/spdc-nig-ltd-v-amrah-supreme-1999>, accessed 11 February 2025

⁶¹ *Gbemre v Shell Petroleum Development Company of Nigeria Ltd* (2005) FHC/B/CS/53/05 (Federal High Court of Nigeria) available at <https://www.globalhealthrights.org/wp-content/uploads/2013/02/HC-2005-Gbemre-v-Shell-Petroleum-Development-Company-and-Ors..pdf>, accessed January 31, 2025

matters, given its explicit recognition of environmental rights under *Section 24 of the 1996 Constitution*.⁶² The Constitutional Court has developed a more structured approach to environmental federalism. In *Minister of Local Government, Environmental Affairs and Development Planning of the Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd* 2014 (1) SA 521 (CC), the court emphasized provincial autonomy in environmental planning while acknowledging national oversight.⁶³ The case of *Fuel Retailers Association of Southern Africa v Director-General*⁶⁴ demonstrated South Africa's cooperative governance approach. The Constitutional Court emphasized that different spheres of government must work together in environmental matters, while preserving their distinct constitutional roles.⁶⁵ Regarding resource management, the case of *Maccsand (Pty) Ltd v City of Cape Town* addressed the overlap between national mining rights and provincial/local environmental regulations. The court held that the granting of mining rights under the MPRDA

does not exempt a company from complying with local zoning laws under LUPO.⁶⁶ In so doing, the court upheld the authority of different government spheres to exercise their distinct environmental powers. The federal government's climate goals were reinforced while local governments were simultaneously given a voice in environmental policymaking. Courts take economic, political, and environmental factors into account when delivering their judgments.

However, even the most well-reasoned court rulings are only effective if they are properly implemented. For instance, when a Nigerian state court orders an environmental cleanup, successful execution requires coordination between federal environmental agencies, state officials, and local monitoring teams. At times, this collaboration functions seamlessly; at other times, it resembles an orchestra in which each section is playing from a different score.

4.4 Comparative Analysis of the Findings

Nigeria and South Africa have witnessed an increase in climate litigation

⁶² Constitution of the Republic of South Africa, 1996, s 24 available at: <https://www.gov.za/documents/constitution/chapter-2-bill-rights>, accessed January 31, 2025

⁶³ Minister of Local Government, Environmental Affairs and Development Planning of the Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd and Others (CCT 41/13) [2013] ZACC 39; 2014 (1) SA 521 (CC); 2014 (2) BCLR 182 (CC) (2013),

Safli, available at <https://www.saflii.org/za/cases/ZACC/2013/39.html>, accessed February 2, 2025

⁶⁴ Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province 2007 (6) SA 4 (CC)

⁶⁵ du Plessis, Anel, Environmental Law and Local Government in South Africa, Juta, (2015)

⁶⁶ 2012 (4) SA 181 (CC)

cases, however their judicial response have remained varied. In South Africa, the courts have adopted a more proactive and comprehensive response to environmental governance, often compelling government action on climate policies.⁶⁷ Conversely Nigerian courts, deal with climate litigation on case by case basis instead of focusing on broader environmental principles. South Africa has environmental right explicitly enshrined in the constitution whereas Nigeria's legal system relies more on fragmented statutory laws⁶⁸ and in some cases fundamental human right to life under S.33 of the 1999 Constitution.

In both countries, climate governance tensions arise from jurisdictional conflicts between national and regional authorities. In Nigeria, environmental laws are primarily controlled at the federal level, limiting the autonomy of oil-

producing states in regulating pollution and climate-related concerns. This has led to weak enforcement, as seen in the struggle to implement gas flaring regulations.⁶⁹ South Africa, however, operates under a more cooperative federalism model, where provincial governments play a more active role in environmental policy implementation. Despite occasional disputes, the existence of cooperative governance structures facilitates better policy alignment across different government levels.⁷⁰

Civil society has played a crucial role in advocating for stronger climate policies in both jurisdictions. South Africa provides broader legal standing for public interest litigation, allowing civil society groups such as Centre for Environmental Rights (CER) to hold the government accountable under constitutional provisions.⁷¹ Nigerian civil society groups

⁶⁷ Loretta Feris, 'The Role of Good Environmental Governance in the Sustainable Development of South Africa', *Research Gate*, (2017), https://www.researchgate.net/publication/317798291_The_Role_of_Good_Environmental_Governance_in_the_Sustainable_Development_of_South_Africa, accessed 12 February 2025.

⁶⁸ Billion Promise Agunia, Pam-ellah Iwori, and Caroline Oluchi Egbufor, 'Climate Change Litigation: An Emerging Approach To Environmental Protection In Nigeria' *AELN Journal of Environment & Natural Resources Law*, (2023), ISSN: 1597 6637 Vol.11, Issue.1, <https://www.environmentallawyersng.org/wp-content/uploads/2023/11/A19-Billion-Promise-Agunia.pdf>, accessed 12 February 2025

⁶⁹ Olusola Joshua Olujobi, 'Retracted: Analysis of the Legal Framework Governing Gas Flaring in Nigeria's Upstream Petroleum Sector and the Need for Overhauling', *MDPI*, (2020), <https://www.mdpi.com/2076-0760/9/8/132>, accessed 12 February 2025.

⁷⁰ Jaap de Visser and Anél du Plessis, 'Climate Governance and Federalism in South Africa', *Cambridge University Press*, (2023), 241–62, <https://www.cambridge.org/core/books/climate-governance-and-federalism-in-south-africa/86D9D4947EE867A730E9F8E9E42E18BD>, accessed 12 February 2025

⁷¹ Centre for Environmental Rights, 'Advancing Environmental Justice', <https://cer.org.za>, accessed 12 February 2025.

have also engaged in environmental litigation, particularly against multinational oil companies, but legal and institutional constraints limit their effectiveness.⁷² Additionally, challenges such as corruption, political interference, and lack of compliance monitoring hinder civil society's impact in Nigeria compared to South Africa.

A recurring issue in both countries is the gap between judicial rulings and policy implementation. While courts can mandate climate action, governments do not always comply effectively. In Nigeria, federal-state conflicts have delayed the enforcement of climate-related court decisions, with sub-national actors often resisting federal environmental policies. In South Africa, compliance mechanisms are relatively stronger, but some climate rulings still face resistance, particularly from economic sectors.

A key finding is that the effectiveness of climate governance depends on the clarity and enforceability of legal frameworks. South Africa's environmental laws provide more explicit obligations for sub-national authorities, whereas Nigeria lacks binding mechanisms to ensure state compliance with national climate policies. The absence of well-defined roles for different governance levels in Nigeria has

created a legal vacuum that government exploit to delay action on climate issues. The challenge facing both countries is not limited to developing better policies; instead good policies must translate to real action. The multiple layers of government need to work together to avoid a case of trying to build a house with different architects who keep changing the blueprints.

5.0 Conclusion and Recommendations

This paper has examined the role of climate litigation in Nigeria and South Africa, particularly focusing on judicial rulings and their impact on federal-state tensions in enforcing climate-related policies. Through the lens of interpretivism, multi-level governance (MLG), and legal pluralism, courts in both countries navigate the terrains of climate law within their peculiar federal frameworks. South Africa adopting an active and cohesive approach to climate governance has a more reinforced national policy alignment across governance levels. On the contrary Nigeria's response is more fragmented revealing inconsistencies in the enforcement of environmental rights reflecting a broader socio-political dynamics that hinder unified climate action.

Judging by the experiences of both countries' one can see that the relationship between judicial

⁷² Friends of the Earth International, 'Access to Environmental Justice in Nigeria: The Case for a Global Environmental Court of Justice', (2021), [https://www.foei.org/wp-](https://www.foei.org/wp-content/uploads/2021/10/22-Environmental-Justice-Nigeria-Shell-English.pdf)

[content/uploads/2021/10/22-Environmental-Justice-Nigeria-Shell-English.pdf](https://www.foei.org/wp-content/uploads/2021/10/22-Environmental-Justice-Nigeria-Shell-English.pdf), accessed 12 February 2025.

action and national/sub-national dynamics is important in shaping effective climate governance. The different judicial approaches show the importance of having well defined legal frameworks and the need for the judiciary to be proactive in interpreting roles of federal and state governments in the context of climate change. It is clear that issues of climate governance cannot be handled by a single level of government; rather, it requires a collaborative and multi-tiered effort. Climate governance also includes judicial oversight that will ensure that policies and enforcement mechanisms are properly aligned. As both nations struggle with the challenges posed by climate change, judicial interpretations become indispensable in ensuring that climate action is well integrated across governance levels. There is need for the legal frameworks in both countries to evolve to support a more coherent and unified approach to climate litigation and policy implementation. This will facilitate collaboration and accountability across the federal-state divide.

It is recommended that the judiciary should adopt a more dynamic and adaptable role towards climate governance. Laws should be interpreted in a manner that promote integration of climate policies across federal and state levels. This will guide the creation of a more sustainable and just response to climate change. Judicial capacity should be strengthened to enhance

coordination between governance levels. This will foster a more inclusive approach to climate justice, in line with the principles of interpretivism, MLG, and legal pluralism. With these efforts, both Nigeria and South Africa can move closer to achieving a more effective and equitable climate governance framework.

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