

THE GROWTH AND REGULATORY IMPACT OF CLIMATE CHANGE LITIGATION

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*By Hari Osofsky**

Hari Osofsky began by making a statement of support for Black Lives Matter. Her presentation then focused on the evolution and regulatory impact of climate change litigation around the world, examining its role within the broader context of multi-level climate change governance and as a form of strategic litigation.

Hari Osofsky provided an overview of climate change cases around the world, highlighting the massive growth in litigation, key trends, and their direct and indirect impacts. She explained that while most litigation has involved—and continues to involve—statutory pathways, especially in the United States, there are emerging human rights, constitutional, corporate, and financial law pathways. While mitigation has been the primary focus, adaptation cases also have begun to emerge, particularly in Australia. There is also increasing interest in suits against corporate actors. Finally, although much of the litigation is pro-regulatory, anti-regulatory suits have been brought in reaction to government action addressing climate change.

After describing recent developments in a number of jurisdictions, Hari Osofsky concluded by providing some key lessons learned from her collaborative work with Jacqueline Peel. She highlighted that, although corporate and rights-based cases are often very high profile, most climate litigation remains statutory. She explained high-profile individual cases and lower-profile cumulative cases together have potential to produce transformative change, and that indirect effects are often even more powerful than direct effects, although drawing causal links is complex. Finally, litigation functions best as part of a broader effort.

THE EMERGENCE OF CLIMATE LITIGATION IN THE GLOBAL SOUTH

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*By Jolene Lin***

Climate litigation in the Global South tends to be couched in rights-based claims including the right to life and a clean and healthy environment. Jolene Lin explained that this is in part due to the fact that many jurisdictions in the Global South have embedded environmental rights in their constitutions and, in some cases, courts have interpreted the right to life to include the right to a clean and healthy environment.¹

In addition to the human rights dimension, Jolene Lin clarified another trend when it comes to climate litigation in the Global South. Plaintiffs try to address what they perceive to be the most fundamental drivers of climate change, not necessarily by pushing for new climate laws or policy, but rather by focusing on enforcement of existing environmental laws and relying on tried and tested legal precedents to ground their pleadings. This increases the chances of favorable outcomes, which is of particular importance to litigators who are working with fewer resources.

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¹ Jacqueline Peel & Jolene Lin, *Transnational Climate Litigation: The Contribution of the Global South*, 113 AJIL 679 (2019).

This “stealthy nature,” as Jolene Lin puts it, of attaching climate change issues to claims of existing environmental enforcement allows litigators to advance climate change policy in a more quiet and cautious manner without pushing the limits of judicial restraint.

Overall, cases continue to emerge in the Global South, but there is wide underreporting of these cases due to factors such as language barriers and challenges accessing legal materials in some jurisdictions. The growing understanding of the climate litigation landscape in the Global South will contribute to a richer and more developed picture of climate litigation and its impacts on global climate governance.

FROM THE INUIT PETITION TO THE *TEITIOTA* CASE: HUMAN RIGHTS AND SUCCESS IN CLIMATE LITIGATION

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*By Daniel Magraw**

Daniel Magraw emphasized the human rights turn in climate litigation.¹ There is a well-established relationship between human rights and the environment, and it is now generally acknowledged that a healthy environment is necessary for the enjoyment of a vast array of human rights. Importantly, environmental harm—including climate change—interferes with human rights.

Human rights can be a potent component of climate change claims at both the domestic and the international level and will continue to develop. An early example of human rights claims being brought in the context of climate change was the 2005 Inuit Petition brought to the Inter-American Commission on Human Rights. More recent international cases include the Committee on Human Rights *Teitiota*² case and the pending *Torres Strait Islanders* case.

Daniel Magraw reminded us of the wide impact of litigation, even when it would appear, if considered superficially, as unsuccessful. In 2005, the Inter-American Commission on Human Rights declined to consider the Inuit Petition without explanation, which some might consider a failure of the case. However, the Commission ultimately held a hearing on the connection between human rights and climate change impacts. Considering the subsequent actions by states, NGOs, and international organizations to solidify this now well-acknowledged link, the Petition thus was successful in putting a human face on climate change. In this context, Daniel Magraw pointed out that strategic litigation can be effective if it is part of a broader campaign for change.

Another case that has not technically “succeeded” is the well-publicized *Juliana*³ (or *Our Children’s Trust*) case in the United States, which was dismissed for lack of standing by an appellate court, but had the indirect effect of raising awareness of climate change impacts on the rights of children and future generations.

A key point stemming from Daniel Magraw’s presentation was that the impacts of litigation are not only what was originally intended by the plaintiff but can include indirect impacts such as an influence on social and government behaviors.

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¹ Jacqueline Peel & Hari M Osofsky, *A Rights Turn in Climate Change Litigation?*, 7 *TRANSNAT’L ENVTL. L.* 37 (2018); Annalisa Savaresi & Juan Auz, *Climate Change Litigation and Human Rights: Pushing the Boundaries*, 9 *CLIMATE L.* 244 (2019).

² *Ioane Teitiota v. New Zealand*, Human Rights Committee, UN International Covenant on Civil and Political Rights, CCPR/C/127/D/2728/2016 (Jan. 7, 2020).

³ *Juliana v. United States of America*, D.C. No. 6:15-cv-01517-AA (9th Cir. 2020).