

prescriptive duties to restore damaged ecosystems face difficult compliance challenges, providing all the more reason for significant community buy-in to restoration programmes. The authors' earlier recommendation for a global, soft law 'Restoration Code' (p. 218) also correctly recognizes that future governance cannot rest solely on traditional regulatory instruments such as licences.

Every serious scholar of environmental law should acquire a copy of *Ecological Restoration in International Environmental Law*. Within the crowded literature of environmental law, which increasingly forces busy scholars to limit their reading to their narrow sub-specialties such as climate change law or biodiversity law, only a limited number of books can stand out. Telesetsky, Cliquet and Akhtar-Khavari have authored such a book. With their broad, multi-jurisdictional and interdisciplinary vista, they have made a seminal contribution to understanding the conceptual and doctrinal foundations of eco-restoration law in its global and national domains. Their book should also be read in conjunction with useful literature by non-legal scholars that highlights the valuable contribution of non-state actors to eco-restoration projects and governance.⁸ Recent calls by George Monbiot and others for planetary rewilding are also relevant ideas with which lawyers must engage.⁹ Hopefully, this book will lead to an entourage of scholars taking up the issues that seem likely to endure in a world in which the pace of ecological damage continues to exceed its repair. I highly recommend *Ecological Restoration in International Environmental Law*.

Benjamin J. Richardson
University of Tasmania, Hobart (Australia)

Transnational Environmental Law, 6:3 (2017), pp. 557–560 © 2017 Cambridge University Press
doi:10.1017/S2047102517000334

Environmental Justice in India: The National Green Tribunal, by Gitanjali Nain Gill
Routledge, 2017, 238 pp, £110 hb, ISBN 9781138921108

Environmental justice is a multifaceted concept. It can be broadly understood as 'the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies'.¹ It can also mean, more specifically, the adjudication of disputes in light of existing environmental laws. Gill delves into this narrower conceptualization of environmental justice. *Environmental Justice in India*

⁸ E.g., C. Fraser, *Rewilding the World: Dispatches from the Conservation Revolution* (Picador, 2010); M. Hall (ed.), *Restoration and History: The Search for a Usable Environmental Past* (Routledge, 2010).

⁹ G. Monbiot, *Feral: Searching for Enchantment on the Frontiers of Rewilding* (Penguin, 2013); M. Bekoff, *Rewilding Our Hearts: Building Pathways of Compassion and Coexistence* (New World Library, 2014).

¹ United States (US) Environmental Protection Agency, 'Environmental Justice', available at: <https://www.epa.gov/environmentaljustice>.

offers an authoritative account of how judicial decisions strive to protect the environment by requiring participation in environmental decision making, demanding accountability to individuals from state bodies such as legislators, prosecutors and judges, and redressing imbalances in access to justice affecting the poor. More specifically, the book shows how the National Green Tribunal (NGT) has resolved some of India's environmental controversies that were subject to multiple pressures and constraints such as population, geography, poverty, corruption, growth, and inflation.² Throughout the book, Gill illustrates how the NGT has embodied the idea of correcting a disproportionate burden of environmental detriments, particularly upon the poor. She underscores the NGT's role 'as the primary guardian of the environment for the benefit of present and future generations' (p. 4).

Chapter 2 begins by offering an historical account of the genesis and establishment of the NGT. Scholars, practitioners and judicial networks involved in environmental law across the globe recognize India as a source of lateral thinking on the subject. The main driving force has been the Supreme Court of India, which has developed over the years a topical jurisprudence based on constitutional provisions on human rights – particularly the right to life – extended to environmental matters. Furthermore, public interest litigation has broadened the scope of environmental adjudication by India's courts. Gill highlights that the establishment of the NGT in 2010 was paved by the highest court's jurisprudential work since the 1970s.

Chapter 3 concerns the interpretation and application of the National Green Tribunal Act, 2010.³ Gill suggests that the NGT 'has given liberal content and meaning to the statute [to] promote environmental justice' (p. 72). She provides copious examples, backed by the NGT's decisions, which include the expansive interpretation of *locus standi* and participatory parity. Of particular interest is the NGT discernment of its original and quite open-ended jurisdiction,⁴ as illustrated in the decision in *Vardhman Kaushik v. Union of India*.⁵ The Principal Bench of the NGT was asked to look into air pollution in the National Capital Territory of Delhi in order to pinpoint offending sources and take measures to curb them. The case evolved into wide-ranging instructions given by the NGT to restore fundamental rights to enjoy clean air, which materialized into an action plan imposed on the Delhi and central governments. Examples of the measures considered include the banning of vehicles that are 15 or more years old and restricting parking. Such measures usually form part of public policies promoted by governments to control the source of pollution. This approach, of enforcing public rights when the executive branch is unable to protect them, is similar to the approach seen in cases from other jurisdictions, such as the *Mendoza* case in Argentina,⁶ the *Río Bogotá*

² See also G.N. Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' (2016) 5(1) *Transnational Environmental Law*, pp. 175–205.

³ National Green Tribunal Act, 2010, Act No. 19 of 2010, Parliament of India (NGT Act).

⁴ NGT Act, s. 2(m): 'substantial question relating to environment'.

⁵ Original Application No. 21 of 2014, Various Orders, National Green Tribunal, Principal Bench, available at: <http://www.greentribunal.gov.in>.

⁶ *Mendoza, Beatriz Silvia y otros v. Estado Nacional y otros s/ daños y perjuicios*, Judgment, 8 July 2008, Supreme Court of Justice of the Nation of Argentina, M.1569.XL, available at: <https://goo.gl/ff1uQT> (in Spanish).

case in Colombia,⁷ the *Urgenda* case in the Netherlands,⁸ and the *Leghari* case in Pakistan.⁹

In Chapter 4, the book provides an important account of the discussion before the NGT regarding the application of several principles of environmental law and its development. Here, the author furnishes a sample of the richness of such debate, which is of particular value for any country facing the same trade-off between economic growth and protecting the environment.

Chapter 5 asserts that the involvement of technical experts in the adjudication process promotes better environmental results. Gill goes beyond a simple legal analysis to introduce a theoretical framework to analyze the role of epistemic communities and knowledge use in a judicial setting. Her conclusion in this regard is favourable to the contribution of science-trained judges. Based on my professional experience as a member of a bench where one of the judges must be a science-trained (non-lawyer) member, I would agree with her assessment. In my opinion, the involvement of a judge with experience in environmental matters is conducive to reaching decisions that embrace problems beyond the law in adjudicating environmental disputes.

The increasing importance of the NGT in India is captured by the data gathered in the author's fieldwork, which appears in Chapter 6. Indeed, its case workload has increased significantly since its creation. The relaxed *locus standi* approach of the Supreme Court and the NGT have fostered public interest litigation in India. Bearing in mind the open-ended jurisdiction of the Court, India faces a significant number of disputes regarding pollution and environmental protection, which might be an expression of the development path followed by the country. Not surprisingly, non-governmental organizations (NGOs), social activists and public-spirited citizens are the most active litigants in the country. Gill's misgivings regarding the implementation of environmental law in India are corroborated by the fact that the Ministry of Environment, Forest and Climate Change is the principal defendant.

The book's conclusions in Chapter 7 address the challenges of the NGT and provide an interesting assessment exercise, on the basis of which the author declares the tribunal to be a success story. Indeed, using the organization theoretical framework developed by Suddaby and Viale,¹⁰ she shows that the material presented throughout the book qualifies to be considered as evidence of the success of the NGT.

⁷ *Gustavo Moya Ángel y Otros v. Empresa de Energía de Bogotá y Otros*, Judgment, 28 Mar. 2014, State Council of Colombia, AP-25000-23-27-000-2001-90479-01, available at: <https://goo.gl/EFGKTo> (in Spanish).

⁸ *Urgenda Foundation v. Government of the Netherlands (Ministry of Infrastructure and Environment)*, Judgment, 25 June 2015, The Hague District Court, Chamber for Commercial Affairs, ECLI:NL:RBDHA:2015:7196, C/09/456689/HAZA131396, available at: <https://elaw.org/nl/urgenda.15>. See also J. van Zeben, 'Establishing a Governmental Duty of Care for Climate Change Mitigation: Will Urgenda Turn the Tide?' (2015) 4(2) *Transnational Environmental Law*, pp. 339–57; and J. Peel & H.M. Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) *Transnational Environmental Law* (forthcoming).

⁹ *Ashgar Leghari v. The Federation of Pakistan*, Climate Change Orders of 4 and 14 Sept. 2015, Lahore High Court Green Bench, W.P. No. 25501/2015, available at: https://elaw.org/pk_Leghari. See also J. Peel & H.M. Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) *Transnational Environmental Law* (forthcoming).

¹⁰ R. Suddaby & T. Viale, 'Professionals and Field-Level Change: Institutional Work and the Professional Project' (2011) 59(4) *Current Sociology*, pp. 423–42.

Gill's account of the NGT's efforts to overcome the indifference or negligence on the part of Indian environmental authorities tells a convincing story of a courageous role played by the specialized court. Her managerial assessment of the NGT throws light on its success. As a new player in the Indian judicial panorama, the NGT was strongly led by knowledgeable and courageous judges, who were able to respond to the people's demands for justice. Although the NGT could build on a large body of jurisprudence on important aspects of environmental law, the book shines a light on the intellectual effort and creativity of the NGT in dealing with new legal questions. Its decisions will undoubtedly inspire and motivate its colleagues outside India. According to Gill, this legal creativity in some cases is arguably stretched to the limit, as for example in the *suo motu* proceedings – NGT self-generated procedures – and in the self-conferment of powers of judicial review.

Despite the boldness and legal acumen of the NGT, the author suggests there is a gap between the statutory and judicial recognition of the right to a healthy environment and the assurance of its implementation. Such misgivings are derived from the current environmental conditions in India, as evidenced by the air pollution in Delhi. Furthermore, although Gill's review of environmental justice in India portrays it as a success story, the implementation of NGT decisions by the national administration is open to critique, particularly in *Vardhman Kaushik v. Union of India*. Moreover, notwithstanding its ambition, in some NGT decisions economic development still trumps environmental concerns (such as the *Commonwealth Games Village* case¹¹).

Moreover, notwithstanding its promising start, the NGT may soon face judicial collapse. The sheer magnitude of the growing population and the environmental problems of the country contrast with the small scale of the NGT. As cases multiply, the NGT will not be able to deliver justice efficiently without expansion of the infrastructure and the provision of personnel and judges in the short term. Indeed, docket delay is an obstacle to sustainability and, more generally, to access to justice.¹²

Environmental Justice in India provides a thorough review of its subject. The breadth of the analysis is impressive, taking into account the copious amount of case law arising out of inexhaustible environmental controversies. The book is of significant value for scholars, practitioners, and judges interested in the application of environmental law in complex contexts, with particular emphasis on disputes in less advantaged countries. Applying environmental law under constraints such as a political emphasis on economic growth, in a context of poverty, corruption, and social and cultural divides, is a practical challenge, which is well researched and explained in the book.

Michael Hantke-Domas

Chief Justice, Third Environment Court, Valdivia (Chile)

¹¹ *DDA v. Rajendra Singh*, AIR 2010 SC 2516. This involved a dispute regarding the construction of the Commonwealth Games Village in 2010 on a legally protected floodplain of the Yamuna River.

¹² G. Pring & C. Pring, *Environmental Courts and Tribunals: A Guide for Policy Makers* (United Nations Environment Programme, 2016), pp. 10, 50.