

Book Review

LITIGATING CLIMATE CHANGE IN THE GLOBAL SOUTH¹

by Jolene Lin & Jacqueline Peel

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1 In June 2024, the Grantham Research Institute on Climate Change and the Environment, in collaboration with the Sabin Center for Climate Change Law, released a report that assessed trends and themes of climate litigation worldwide.³ Out of 2,666 cases, the US leads with 1,745 cases, followed by Australia with 132.⁴ Notably, 8% of the total cases (*ie*, more than 200) are from the Global South.⁵ While climate change litigation has gained prominence globally, much of the discussion by academics and practitioners has centred on a small number of high-profile cases in North America, Europe and Australia.⁶ The experiences, efforts and contributions of the Global South have received far less attention in the

1 Oxford University Press, 2024.

2 The author is grateful to Assoc Prof Rebecca Nelson of Melbourne Law School and Dr Lauren Nishimura, McKenzie postdoctoral Fellow at Melbourne Law School, for their useful comments on an earlier draft of this review.

3 Joana Setzer & Catherine Higham, “Global Trends in Climate Change Litigation: 2024 Snapshot” (Grantham Research Institute on Climate Change and the Environment, 2024) at p 2 <<https://eprints.lse.ac.uk/124306/1/Global-trends-in-climate-change-litigation-2024-snapshot.pdf>> (accessed 1 April 2025).

4 Joana Setzer & Catherine Higham, “Global Trends in Climate Change Litigation: 2024 Snapshot” (Grantham Research Institute on Climate Change and the Environment, 2024) at p 2 <<https://eprints.lse.ac.uk/124306/1/Global-trends-in-climate-change-litigation-2024-snapshot.pdf>> (accessed 1 April 2025).

5 According to the Grantham Research Institute on Climate Change and the Environment, the distinction between the “Global South” and “Global North” reflects economic disparities. However, the “Global South” is not a uniform group, as legal development and capacity differ across countries. The Institute identifies Global South countries based on the G77 + China membership. See Joana Setzer & Catherine Higham, “Global Trends in Climate Change Litigation: 2024 Snapshot” (Grantham Research Institute on Climate Change and the Environment, 2024) at pp 2 and 8 <<https://eprints.lse.ac.uk/124306/1/Global-trends-in-climate-change-litigation-2024-snapshot.pdf>> (accessed 1 April 2025).

6 Jacqueline Peel & Jolene Lin, “Transnational Climate Litigation: The Contribution of the Global South” (2019) 113 *American Journal of International Law* 679 at 681.

literature.⁷ Professors Lin and Peel seek to fill this critical gap through *Litigating Climate Change in the Global South*.

2 The book provides a clear and concise analysis of the emergence, potential, pitfalls, and prospects of climate change litigation in the Global South. In about 250 pages and six chapters, the book covers five core themes – the scope, trends, underlying factors, key actors and consequences of climate litigation in these regions. Each substantive chapter is detailed with analysis and extensive references that enable the reader to gain a proper understanding of the issues discussed. This work is groundbreaking as it sheds light on the climate lawsuits of the Global South, where language barriers, inaccessible legal documents and limited research have obscured them for a long time.⁸ Apart from that, the book offers rich food for thought for those who are interested in understanding how authors from developed countries interpret and engage with the complexities of climate litigation in middle-income countries.

3 The book sets the stage by explaining the importance of climate litigation for climate governance, highlighting the unique context of the Global South, and outlining the methodology adopted by the authors. Lin and Peel begin their main narrative with two key aspects of climate litigation – definition and classification – and acknowledge that the various narrow and broad definitions complicate the study of climate litigation. Rather than attempting to harmonise these differences, the authors instead explore some of the diverging and dominant definitions, revealing the inherent limitations. The authors then adopt a broad definition to include cases in which the issue of climate change is central (core) or marginal (peripheral).⁹ This broad strategy is warranted since it seeks to highlight Global South litigation within the global discourse.

4 After the debate on definition, the authors turn to a nuanced discussion of types of litigation, which they classify as “strategic” and “non-strategic” litigation.¹⁰ Strategic litigation is characterised by its use as a tool for legal, policy or social change, often pushing for more ambitious

7 A 2022 report by Prof Jacqueline Peel, Dr Alice Palmer and Rebekkah Markey Towler underscored the absence of comprehensive studies on climate litigation in the Global South. See Jacqueline Peel, Alice Palmer & Rebekkah Markey-Towler, “Review of Literature in Impacts of Climate Litigation” (Children’s Investment Fund Foundation, 27 May 2022) at p 28.

8 Jacqueline Peel & Hari M Osofsky, “Climate Change Litigation” (2020) 16 *Annual Review of Law and Social Science* 21 at 28.

9 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at pp 17–30.

10 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at pp 31–35.

climate laws and emission reduction targets. Conversely, non-strategic cases typically centre on issues concerning the individuals involved, eg, disagreements over planning approvals in locations vulnerable to flooding. While many climate cases from the Global South are classified as non-strategic, the authors note that the Global South is seeing an increase in strategic climate litigation, which is similar to trends seen in impact and human rights litigation.¹¹

5 Strategic litigation inevitably brings the historic Paris Agreement into the spotlight.¹² By eroding divisions between the North and South, the Agreement has allowed countries from the Global South to utilise their legal systems and international law avenues to address climate change risk in a way that serves their needs and interests. Historically marginalised in global climate negotiations, countries from the Global South now can also assert their rights and interests through litigation based or international legal pathways.

6 However, the absence of a binding international enforcement mechanism creates a significant accountability vacuum in the Paris Agreement. In this book, Lin and Peel illustrate how domestic climate litigation and associated grassroots movements fill this void,¹³ with three pathways (*ie*, top-down, bottom-up and cross-cutting) contributing to the global effort against climate change. The top-down approach highlights the evolving role of domestic courts, showing that they are not passive recipients but active interpreters of international norms. Even though the principles of the Paris Agreement are not directly enforceable, courts are weaving them into national legal systems. The bottom-up approach depicts courts as key enforcers of national climate policies, directly linking them with the global climate agenda. The cross-cutting pathway arises when climate litigation in one country contributes to climate action in other countries, which has been described as “the ripple effect” of climate change litigation.¹⁴

7 The authors then dive into the ever-expanding Global South docket to understand the nuanced trends and features of climate litigation in the region. Building on the broader discussion of Global South climate litigation, the authors proceed to a focused examination of

11 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at p 37.

12 Paris Agreement (entered into force 4 November 2016).

13 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at pp 39–49.

14 Brian J Preston, “The Influence of the Paris Agreement on Climate Litigation: Causation, Corporate Governance and Catalyst (Part II)” (2021) 33 *Journal of Environmental Law* 227 at 247.

climate litigation in three “frontrunner” jurisdictions – Brazil, India and South Africa. A notable strength of the book is that it offers a succinct, yet compelling overview of population trends, political climates, economic and environmental conditions, and energy security challenges in the countries discussed. The authors explore how these factors shape the emergence of climate litigation. For instance, it is suggested that Brazil’s situation makes it particularly ripe for climate litigation because several critical conditions converge there: the Amazon rainforest’s central role in global climate stability creates a strong factual foundation; Brazil’s existing environmental and constitutional laws provide legal grounds to bring cases; and an active, although threatened, civil society and public prosecution service provide the institutional actors willing to pursue litigation.¹⁵

Additionally, the authors carefully select case studies from these countries that may provide instructive material for other jurisdictions. For instance, the book discusses how the National Green Tribunal in India has broadened its jurisdiction to include climate-related issues through liberal interpretation of constitutional and relevant legal provisions, and how its policy of maintaining low court fees has improved public access to justice.¹⁶ The National Green Tribunal’s liberal interpretation of legal provisions and its accessible court fees provide a model for other jurisdictions, demonstrating how flexible legal frameworks and cost-effective procedures can enhance public participation and access to justice in environmental and climate-related cases.

The authors also offer five key factors for the emergence of climate change litigation in the Global South; these include: (a) access to justice; (b) the presence of a climate-conscious Judiciary; (c) progressive environmental laws; (d) constitutional protections for the environment; and (e) an active civil society.¹⁷ This framework offers a useful starting point for further research, inviting scholars to explore new variables and conditions that might influence climate litigation beyond what the existing case law reveals.

8 The roles of key actors which enable climate litigation in the Global South are analysed. Such actors include local non-governmental organisations (“NGOs”), community groups, public interest law firms, regulatory agencies, Indigenous communities, climate activists and

15 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at pp 117–122.

16 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at pp 100–105.

17 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at pp 130–145.

environmental cause lawyers. This broad range of actors highlights the complex and multi-layered nature of climate change issues and governance.¹⁸ The contributions of these actors often cut across geographical boundaries contributing to global environmental jurisprudence. For some actors, their work merely concerns climate activism but for others, their work equates to their survival.

9 Among the key actors, indigenous communities stand out as their role is infused with an urgency that transcends mere activism. For indigenous peoples, litigation is not just a tool for advocacy; it is a battle for their survival. This book contains a short tale of the indomitable spirit of indigenous peoples striving to protect their very existence (eg, their cultural identity, ancestral lands and future) through litigation, respecting the rule of law despite the threat of intrusion and destruction.¹⁹ For instance, an indigenous community in Indonesia – whose ancestral lands were imperilled by palm oil plantations – challenged flawed processes because they were not properly consulted as owners of the land.²⁰ Similarly, in Mexico, indigenous communities faced off against a powerful multinational corporation, asserting that free, prior and informed consent had not been given before construction of a wind farm began on their land.²¹

10 Transnational environmental cases involving indigenous communities are also discussed, illustrating how such cases bridge the gap between the Global North and South. For instance, *Envol Vert v Casino*²² highlights how legal systems in wealthier jurisdictions can be instrumentalised by marginalised groups in the Global South to address global environmental harms. These cases transcend the Global North-South divide, pointing to broader themes of self-determination, cultural preservation and environmental stewardship that are central to the struggles of indigenous peoples worldwide. The inclusion of indigenous peoples' litigation in the Global North – such as *Smith v Fonterra Co-operative Group* (“*Smith v Fonterra*”) originating from New Zealand²³ – seems to align with the thematic framework of the

18 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at p 147.

19 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at pp 190–195.

20 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at p 60.

21 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at p 88.

22 (2021) (Saint-Étienne Judicial Court, France). This case indigenous organisations from the Global South litigating in French courts.

23 [2024] NZSC 5. The case was initiated by Michael Smith, a Māori elder, who alleged New Zealand's top climate polluters were liable under three tort claims.
(cont'd on the next page)

book, as the case raises critical questions about climate accountability and indigenous stewardship of the land. Even though *Smith v Fonterra* falls largely outside the book's focus on the Global South, its implicit acknowledgement of the challenges faced by indigenous peoples in both hemispheres is significant.

11 In the concluding chapter, the authors consider the early impacts arising from Global South climate litigation. Although assessing the impact of climate litigation is inherently difficult, especially given the complex contexts in the Global South, Lin and Peel provide a sound framework for assessing the complex impacts of climate change litigation. "Impact" in this context refers to whether the outcomes of climate cases help address climate change in a meaningful way. The impact can occur through "direct" effects, where legal, behavioural, or policy changes result from litigation, or through "indirect" effects, which involve shifts in the attitudes of key actors such as governments, corporations, civil society and the public. Impacts can be "material," leading to tangible changes in behaviour, or "symbolic," resulting in changes in ideas and perceptions related to the subject matter of the case.²⁴ The investigation of the impact of climate litigation first appeared *Climate Change Litigation: Regulatory Pathways to Cleaner Energy*, where the authors examined how litigation influenced regulatory and behavioural responses to climate change in the US and Australia.²⁵

12 Overall, this book does more than chronicle a series of legal wins and setbacks. The tacit purpose of this book is to reshape climate governance, influence societal understanding and push for the implementation of international treaties like the Paris Agreement. The in-depth analysis of cases originating from the Global South should be understood not only as a contribution to the literature on climate change litigation, but also act as a guide for other regions including the Global North. Remaining cognizant of jurisdictional differences and the fact that each country may take unique approaches to the evolution of climate change litigation, the authors aim to contribute to the existing literature by exploring how the development and features of Global South climate

He sought declarations and emissions reductions, not damages. Although initially struck out by the lower courts, New Zealand's Supreme Court reinstated all claims, setting up the first full climate tort trial in a common law jurisdiction. The court recognised cumulative causation issues similar to past public nuisances, affirming the need for evidence and policy analysis at trial. See "Smith v Fonterra" <<https://climatecasechart.com/non-us-case/smith-v-fonterra/>> (accessed 1 April 2025).

24 Jolene Lin & Jacqueline Peel, *Litigating Climate Change in the Global South* (Oxford University Press, 2024) at pp 207–210.

25 Jacqueline Peel & Hari M Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2015).

litigation can provide valuable insights for other countries, particularly in countries where similar challenges exist.

13 In addition to the foregoing, the unique challenges faced by Global South countries in climate litigation could be explored in future editions. Courts in the Global South countries may not always be well-suited to address complex climate issues, particularly given the lack of binding climate legislation, financial constraints and the doctrine of separation of powers, which leaves limited scope for the respective judiciaries to engage directly with climate change-related disputes.²⁶ The other relevant work by Peel and Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy*,²⁷ offers relevant insights, highlighting financial and institutional barriers in the US and Australia. Applying a similar comparative perspective could reveal whether the Global South faces similar obstacles, providing a fuller understanding of the challenges and possibilities for climate litigation in these contexts.

14 Nevertheless, the book remains a vital contribution to the discourse on climate justice. As the book closes, we are left with a sense of awe at the bravery and resilience of the affected parties, whose legal struggles have not only shaped the landscape of climate litigation but have also illuminated a path toward a more just and sustainable future, redefining what it means to live in harmony with the Earth. This book is a treasure trove of knowledge for its target audience, which includes academics, judges, litigators, climate activists, policymakers and curious observers on climate change.

26 Joana Setzer & Lisa Benjamin, "Climate Litigation in the Global South: Constraints and Innovations" (2020) 9 *Transnational Environmental Law* 77 at 85 and 95.

27 Jacqueline Peel & Hari M Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press, 2015).