

## CLIMATE CHANGE LITIGATION IN THE ASIA PACIFIC

This is the first scholarly examination of climate change litigation in the Asia Pacific region. Bringing legal academics and lawyers from the Global South and Global North together, this book provides rich insights into how litigation can galvanize climate action in countries including Pakistan, Indonesia, Malaysia and China. Written in clear and accessible language, the fourteen chapters in this book shed light on the important question of how litigation may unfold as a potential regulatory pathway towards decarbonization in the world's most populous region.

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LITIGATION IN THE ASIA  
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## CONTENTS

<i>List of Figures</i>	page vii
<i>List of Tables</i>	viii
<i>List of Contributors</i>	ix
<i>Foreword by the Honourable Justice Syed Mansoor Ali Shah</i>	xi
<i>List of Abbreviations</i>	xiv
Introduction	1
DANIEL HORNUNG, DOUGLAS A. KYSAR AND JOLENE LIN	
<b>PART I Theoretical Underpinnings and Implications of Climate Change Litigation</b>	
1 Uncommon Law: Judging in the Anthropocene	15
JOSHUA ULAN GALPERIN AND DOUGLAS A. KYSAR	
2 Networked Public Interest Litigation: A Novel Framework for Climate Claims?	38
KETAN JHA	
<b>PART II International Law and International Adjudication</b>	
3 Using Human Rights Law to Address the Impacts of Climate Change: Early Reflections on the Carbon Majors Inquiry	73
ANNALISA SAVARESI AND JACQUES HARTMANN	
4 Litigating Human Rights Violations Related to the Adverse Effects of Climate Change in the Pacific Islands	94
MARGARETHA WEWERINKE-SINGH	

- 5 The Potential for UNCLOS Climate Change Litigation to Achieve Effective Mitigation Outcomes 120  
 MILLICENT MCCREATH
- 6 Investor-State Dispute Settlement in Renewable Energy: Friend or Foe to Climate Change? 144  
 HUI PANG
- PART III Domestic Law and Domestic Adjudication**
- 7 ‘Next Generation’ Climate Change Litigation in Australia 175  
 JACQUELINE PEEL, HARI M. OSOFSKY AND ANITA FOERSTER
- 8 Climate Change Litigation: A Possibility for Malaysia? 207  
 MAIZATUN MUSTAFA
- 9 Climate Change Litigation in Indonesia 234  
 ANDRI G. WIBISANA AND CONRADO M. CORNELIUS
- 10 From Shehla Zia to Asghar Leghari: Pronouncing Unwritten Rights Is More Complex than a Celebratory Tale 261  
 WAQQAS AHMAD MIR
- 11 Climate Change Adaptation Litigation: A View from Southeast Asia 294  
 JACQUELINE PEEL AND JOLENE LIN
- PART IV China, Courts and Climate Change**
- 12 Climate Change Litigation: A Promising Pathway to Climate Justice in China? 331  
 JIANGFENG LI
- 13 The Subordinate and Passive Position of Chinese Courts in Environmental Governance 365  
 ZHU YAN
- 14 Tort-Based Public Interest Litigation on Air Pollution in China: A Promising Pathway for Chinese Climate Change Litigation? 394  
 YUE ZHAO, WEI LIU AND SHUANG LYU
- Index* 416

## FIGURES

4.1 Overview of human rights litigation avenues for Pacific Islanders (with thanks to Jacqueline Peel)	<i>page</i> 118
13.1 Number of administrative environmental cases and petitions	377
13.2 Environmental litigation statistics	378
14.1 Tort-based air pollution PIL cases (September 2015–May 2018)	406

## TABLES

8.1	GHG emissions by sector in Malaysia	<i>page</i> 209
8.2	Comparison of the carbon dioxide emissions intensity of GDP in 2016	210
8.3	Environmental courts' caseload, 2016, for offences under Wildlife Conservation Act 2010 and International Trade in Endangered Species Act 2008	223
8.4	Environmental courts' decisions for offences under the Environmental Quality Act 1974 and its subsidiary legislations (January–March 2018)	224
13.1	Number of environmental cases on annual basis	369
13.2	Enforcement actions by environmental protection bureaus	376
14.1	Tort-based air pollution PIL as a pathway for CCL	414



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## FOREWORD

The impacts of climate change will intensify over the course of the twenty-first century. There remains a substantial gap between what governments have promised to do and the actions they have undertaken to date. The Climate Action Tracker predicts a 1.5°C warming by 2035, a 2°C warming by 2053 and a 3.2°C warming by 2100. Climate change is a critical existential issue that threatens all life forms on this planet. It is, therefore, larger than human rights and will require all hands on deck across all sectors.

Courts are sworn to impartiality, justice, protection of human rights and upholding the rule of law. As governments fail to meet their climate targets, people increasingly are turning to courts to referee the adequacy of governments' responses to and inaction regarding climate change. In recent cases, courts have played a significant role by holding governments accountable for their inadequate climate action; mitigating carbon emissions; helping evolve adaptation solutions, including compensation; promoting sustainable development goals; influencing climate policy-makers; safeguarding human rights and ensuring sustainable development and climate justice. Judges and courts are no longer bystanders and are being hailed for their judicial stewardship in some countries.

In *Climate Change Litigation in the Asia Pacific*, Jolene Lin and Douglas A. Kysar have initiated a conversation that is long overdue. It is a collection of scholarship that carefully examines the purpose, trends, impact and future of climate change litigation in the Asia Pacific, raising the question of what role litigation and judicial action can play in the world of climate change. This book brings together diverse judicial approaches and ideas from different countries to explore the common judicial theme of climate change litigation across the Asia Pacific, while being aware of their political, social, economic and cultural diversity. The book tries to find a more holistic and sustainable definition for climate change litigation in order to build collegiality of judicial thought across these countries to promote and advance climate change efforts. The

various chapters chronicle that judicial approaches in different countries vary according to the constitutional and legal frameworks, responsiveness of the courts and robustness of the civil society. Some countries, therefore, play a more significant role in climate change litigation compared to others. The authors share evolving ideas, approaches and techniques applied in climate change litigation across the Asia Pacific, which is a treasure trove for judges, litigators, climate activists and policy-makers. The conversation that *Climate Change Litigation in the Asia Pacific* starts will help cross-fertilize ideas and approaches in various jurisdictions, leading to awareness, dialogue and the possibility of a powerful coalition.

Setting the stage for the current state of climate change litigation, some countries<sup>1</sup> in the Asia Pacific have had a strong historical tradition of dealing with public interest environmental litigation based on their democratic and fundamental rights-based constitutional schemes. These courts have a rich jurisprudence of safeguarding nature, ecosystems, biodiversity and the quality of life of their citizens. These judges have intelligently carved international environmental principles of sustainable development, precautionary principles, environmental impact assessments, public trust doctrines and so forth into their constitutional values of political, economic and social justice, along with fundamental constitutional rights like right to life and dignity. Environmental public interest litigation has not been adversarial but more inquisitorial, informed by a good understanding of environmental science and other life sciences.

In environmental litigation, it is often the case that the polluter largely falls in the local jurisdiction – the courts hold the polluter accountable and impose penalties. The issues are limited to air, water or land pollution. However, climate change brings a totally new set of challenges to litigation in the Global South. Countries that contribute insignificantly toward greenhouse gas (GHG) emissions but suffer at the hands of climate change need to learn to adapt. Adaptation climate change litigation is a new paradigm and very different from mitigation climate change litigation. For instance, countries faced with extreme weather, floods, droughts, erratic monsoon rains, melting of glaciers, siltation of dams, low agricultural productivity, reduction in forest cover, natural migration of adversely affected plant species, damage to coastal areas, natural

<sup>1</sup> South Asian countries like Pakistan, India, Bangladesh and Sri Lanka, and the Philippines in Southeast Asia.

disasters and reduction of freshwater reserves need to deal with issues regarding water, food and energy security. This climatic imbalance strikes hard at the most vulnerable in the society – that is, children, women and the poor. These countries generally have inadequate infrastructure and weak resilience in the face of natural disasters. For this, pro-adaptation climate change litigation primarily focuses on strengthening institutions, in almost all sectors, to increase their resilience and capacity to adapt to climate change. In the *Leghari* case,<sup>2</sup> this was made possible through the collaborative and participatory tool of a commission<sup>3</sup> comprising the main stakeholders, including the government, working together to collaborate and find solutions. The court monitored and regulated the commission. State policies (e.g., agriculture, irrigation, water or energy or infrastructure development) are being challenged before the courts to ensure that they are climate resilient.

*Climate Change Litigation in the Asia Pacific* can spark an impetus for change, as it starts a dialogue and questions the importance of and need for climate change litigation in the Asia Pacific. This scholarly work regarding climate change litigation can help convert judges into climate judges with a common goal. The book will connect countries on a singular platform of human rights, rule of law and climate justice, overcoming the political, geographical and cultural divide. To enhance climate change litigation, judges need to come together and exchange ideas via helpful forums such as the Asian Judges Network (AJNE) and the Roundtable of Judges on Environment/Climate, regularly organized by the Asian Development Bank (ADB). Social mobilization, public awareness, understanding of climate science and better judicial coordination can go a long way to promote climate change litigation. This book makes a step in the right direction. It is a new beginning and one full of hope.

Syed Mansoor Ali Shah

Judge

Supreme Court of Pakistan  
Islamabad  
25 October 2019

<sup>2</sup> *Asghar Leghari v. Federation of Pakistan and Others* (PLD 2018 Lahore 364).

<sup>3</sup> Dr. Parvez Hassan, *Resolving Environmental Disputes in Pakistan: The Role of Judicial Commissions* (1st ed., Pakistan Law House 2018).

## ABBREVIATIONS

IMDB	Malaysia Development Berhad
ACCC	Australian Competition and Consumer Commission
ACF	Australian Conservation Foundation
ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BBC	British Broadcasting Corporation
CCC	Committee on Climate Change
CCL	climate change litigation
CCP/CPC	Chinese Communist Party
CCSBT	Convention on the Conservation of Southern Bluefin Tuna
CDM	Clean Development Mechanism
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CER	certified emission reduction
CETA	Canada-EU Trade Agreement
CIEL	Center for International Environmental Law
CJ	chief justice
CJEU	Court of Justice of the European Union
CLS	critical legal studies
CNOOC	China National Offshore Oil Corporation
CO <sub>2</sub>	carbon dioxide
CPL	civil procedure law
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DENR-EMB	Department of Energy and Natural Resources' Environmental Management Bureau
DOE	Department of Environment
ECT	Energy Charter Treaty
ECtHR	European Court of Human Rights
EDO	Environmental Defender Office
EE	energy efficiency
EIA	environmental impact assessment

## LIST OF ABBREVIATIONS

XV

EIS	environmental impact statement
ENGO	environmental non-governmental organization
EPA	Environmental Protection Agency
EPB	Environmental Protection Bureau
EPI	environmental public interest
EPIL	environmental public interest litigation
EPL	Environmental Protection Law
EPMA	Environmental Protection and Management Act
EQA	Environmental Quality Act 1974
ERF	Emissions Reduction Fund
ESD	ecologically sustainable development
EU	European Union
FYP	Five-Year Plan
GDP	gross domestic product
GHG	greenhouse gas
GLAN	Global Legal Action Network
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IDR	Indonesian rupiah
IEA	International Energy Agency
IIA	international investment agreement
IMCC	Inter-ministerial Committee on Climate Change
IPCC	Intergovernmental Panel on Climate Change
ISDS	investor-state dispute settlement
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union of Conservation of Natural Resources
LBT	'Lahore Bachao Tehrik' (Save Lahore Movement)
LDA	Lahore Development Authority
LGBTQ	lesbian, gay, bisexual, transgender and queer or questioning
LHC	Lahore High Court
MEE	Ministry of Ecology and Environment
MEP	Ministry of Environmental Protection
MoEF	Ministry of Environment and Forestry
NAACP	National Association for the Advancement of Colored People
NAFTA	North American Free Trade Agreement
NDC	nationally determined contribution
NDRC	National Development and Reform Commission
NEPA	National Environmental Policy Act

NGO	non-governmental organization
NHRI	National Human Rights Institution
NPC	National People's Congress
NSW	New South Wales
NSWLEC	New South Wales Land and Environment Court
NUS	National University of Singapore
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner of Human Rights
PCC	Punjab Coal Company
PCIJ	Permanent Court of International Justice
PCS	Pollution Control Study
PEPA	Pakistan Environmental Protection Act 1997
PIL	public interest litigation
PRC	People's Republic of China
RE	renewable energy
RMB	Chinese renminbi
SEC	Securities and Exchange Commission
SIDS	Small Island Developing States
SITA	Suppression of Immoral Traffic Act
SME	small- and medium-sized enterprise
SPC	Supreme People's Court
TAN	transnational advocacy network
TCFD	Task Force on Climate-Related Financial Disclosures
UN	United Nations
UNCLOS	United Nations Convention on Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNFCCC	United Nations Framework Convention on Climate Change
UPR	Universal Period Review
USD	US dollars
VCAT	Victorian Civil Administrative Tribunal
WAPDA	Water and Power Development Authority
WTO	World Trade Organization
XR	Extinction Rebellion
YLS	Yale Law School