



**British Institute of
International and
Comparative Law**

Climate Change Litigation: Comparative and International Perspectives

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Overview

The British Institute of International and Comparative Law held the event 'Climate Change Litigation: Comparative and International Perspectives' on 16 January 2020, as part of the Arthur Watts Seminar Series in Public International Law funded by Volterra Fietta.

The event discussed legal developments in the field of climate change from a comparative and international perspective. It was comprised of two panels, the first on 'Climate Change Litigation before Domestic Courts', and the second on 'Climate Change Litigation at the International Level'. The panellists included academics and legal practitioners, many of whom were, or are currently, involved in strategic climate change lawsuits, in a range of jurisdictions. The event was opened by Lord Carnwath of the United Kingdom Supreme Court.

This report provides an overview of the discussions and synthesises some of the conclusions. It is divided into two parts according to the panel topics, and its content is presented thematically, with each sub-heading incorporating relevant comments that were made throughout the event.

BIICL wishes to thank the speakers and chairs for their participation and for making the event a resounding success, and an incredibly well-attended event. Special thanks to the logistical support staff at BIICL, for their help in ensuring the smooth running of the event. The authors wish to thank Jean-Pierre Gauci, Christine Bakker and the speakers for their support in the drafting of this report.

Introduction

'The moment of crisis has come' in efforts to tackle climate change, according to Sir David Attenborough.¹ Today, nobody can seriously deny the effects of climate change and its anthropogenic nature, as is demonstrated by the latest reports of the Intergovernmental Panel on Climate Change (IPCC), representing the international scientific consensus:

Anthropogenic greenhouse gas emissions have increased since the pre-industrial era, driven largely by economic and population growth, and are now higher than ever. (...) Their effects, together with those of other anthropogenic drivers, have been detected throughout the climate system and are *extremely likely* to have been the dominant cause of the observed warming since the mid-20th century.²

Climate change is considered an always more evident 'super-wicked problem': time is running out, there is no central authority to tackle it and those seeking to end the problem are also causing it.³ Notwithstanding the elaborate international climate regime, including the 1992 United Nations Framework Convention on Climate Change, the 1997 Kyoto Protocol and the 2015 Paris Agreement, States are running out of time and lagging behind in comparison with the rapidity of climate change. The failure by national and international policymakers has required citizens and non-governmental organisations (NGOs) to react in order to tackle climate change. The 'judicial arena' is taking the lead in the process of tackling climate change, thanks to suits in which citizens and NGOs challenge local authorities and national governments' actions or inactions. In this way, climate change litigation can be considered as 'an important component of the governance framework that has emerged to regulate how states respond to climate change at the global, regional and local levels',⁴ exerting pressure 'on the executive and legislative branches of government to act on the climate change issues.'⁵ At the same time, climate change-related cases⁶ have also been filed against private actors, mostly fossil fuel and cement companies, also called 'Carbon Majors',⁷ which are major greenhouse gas emitters.

If climate change litigation is "a fairly new phenomenon",⁸ the scope of its concept is quite broad. Markell and Ruhl define climate change litigation 'as any piece of federal, state, tribal, or local administrative or judicial litigation in which the party filings or tribunal decisions directly and expressly raise an issue of

¹ Conrad Duncan, "'The moment of crisis has come": Sir David Attenborough issues urgent warning on climate change' (*Independent*, 16 January 2020) <<https://www.independent.co.uk/environment/david-attenborough-climate-change-crisis-bbc-global-warming-a9286036.html>> accessed 5 March 2020.

² 'Climate Change 2014 Synthesis Report. Summary for Policymakers' (*Intergovernmental Panel on Climate Change*, 2014) <https://www.ipcc.ch/site/assets/uploads/2018/02/AR5_SYR_FINAL_SPM.pdf> accessed 5 March 2020, 4.

³ Kelly Levin and others, 'Playing it forward: Path dependency, progressive incrementalism, and the "super wicked" problem of global climate change' (International Studies Association Convention, Chicago, 28 February – 3 March 2007) <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.464.5287&rep=rep1&type=pdf>> accessed 5 March 2020.

⁴ Jolene Lin, 'Climate Change and the Courts' (2012) 32(1) *Legal Stud.* 35, 36.

⁵ *ibid.*

⁶ More than 1300 climate change litigation cases, according to the two databases: 'Climate Change Litigation Databases' (*Sabin Center for Climate Change Law*) <<http://climatecasechart.com/>> accessed 5 March 2020; 'Climate Change Laws of the World' (*Grantham Research Institute on Climate Change and the Environment, LSE*) <<https://climate-laws.org/cclow>> accessed 5 March 2020.

⁷ 'Carbon Majors' (*Climate Accountability Institute*, 8 October 2019) <<https://climateaccountability.org/carbonmajors.html>> accessed 5 March 2020.

⁸ 'The first significant American court decision relating to climate change dates from 1990': *City of Los Angeles v. National Highway Traffic Safety Administration*, 912 F. 2d 478 (DC Cir, 1990). See Brian J. Preston, 'Climate Change Litigation' (2011) 5(1) *CCLR* 3, 3-14.

fact or law regarding the substance or policy of climate change causes and impacts.⁹ This definition identifies the boundaries of the cases, discussed at the event and in this report.¹⁰

Strategic climate change litigation cases are critical in clarifying the legal obligations of States in both their domestic legal landscape and under international law. While the legislation itself is clearly lagging behind the urgent need to tackle climate change, the *practice* of law can move things forward and initiate much needed legal developments.¹¹ Indeed, Lord Carnwath in his introductory remarks, emphasised the urgency of the work of all those involved in climate change litigation on the way towards this next international meeting of the supreme decision-making body of the climate regime (COP26 taking place in Glasgow in November this year).¹² 2020 is an opportunity to critically review the steps taken in national and international law, through legislation and the courts, in advancing the objectives of the Paris Agreement.¹³

Notwithstanding “[a] comprehensive and action-forcing international treaty, ratified [and implemented] by all the major contributors to global warming, is regarded as the preferable choice to address the global warming phenomenon”,¹⁴ in reality climate change litigation constitutes an “attractive path”¹⁵ to confront the institutional slowness of international climate governance and to tackle the causes and effects of climate change. The 2018 IPCC report notes that, the next decade is critical to change our collective route and to avoid the most catastrophic and irreversible consequences of climate change.¹⁶ This awareness paves the way for the introduction (and the importance) of the different experiences of climate change litigation, in comparative and international perspectives.

The first panel discussed on climate change litigation at the domestic level focusing in particular on significant cases in the United Kingdom, United States, India, Pakistan, the Netherlands, France, and Brazil. The second panel examined the challenges and opportunities of climate change litigation at the regional and international level with a focus on developments in the European, American and African regions, the interaction between international human rights law and climate change, and the relationship between climate change litigation and other forms of climate change advocacy.

⁹ David Markell and J.B. Ruhl, ‘An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?’ (2012) 64(1) *Fla. L. Rev.* 15, 27.

¹⁰ Meredith Wilensky, ‘Climate Change in the Courts: An Assessment of Non-US Climate Litigations’ (2015) 26 *Duke Envtl. L. & Pol’y F.* 131, 134: ‘It is sufficient that climate change impacts constituted one factor considered by the court in making a determination. For example, if a court found that an agency must consider climate change impacts in conducting an environmental impact assessment, or if a court found that climate change impacts justified the denial of a planning permit, then the case would qualify as climate change litigation.’

¹¹ **Christine Bakker, Visiting Fellow at BIICL.**

¹² See ‘The UK to host crucial climate change conference’ (*UN Climate Change Conference UK 2020*) <<https://www.ukcop26.org/>> accessed 5 March 2020.

¹³ Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) TIAS No 16-1104.

¹⁴ Preston (n 8) 3.

¹⁵ *ibid.*

¹⁶ ‘This report gives policymakers and practitioners the information they need to make decisions that tackle climate change while considering local context and people’s needs. The next few years are probably the most important in our history’ according to Debra Roberts, Co-Chair of IPCC Working Group II, dealing with impacts, adaptation and vulnerability. See ‘Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments’ (*Intergovernmental Panel on Climate Change*, Press Release, 8 October 2018) 2018/24/PR, <<https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>> accessed 5 March 2020.

Climate Change Litigation before Domestic Courts¹⁷

Climate change litigation is taking place across the world within international and national legal frameworks. The Paris Agreement is the main treaty containing climate change obligations, and there are over 1500 laws and policies in 199 countries that address climate change.¹⁸ As Nigel Pleming QC highlights in his remarks, COP26 could be an ideal place to follow up with new developments and discussions for an urgent action at speed of concern for climate change. This could be the opportunity for exchange in order to consolidate new experiences in the field. The last few years have seen significant evolution of the domestic climate change law panorama, as well as the climate change litigation landscape: in 2014, the International Bar Association noted that ‘where political action has not been forthcoming, a number of groups have sought to effectuate climate change adaptation and mitigation through litigation’.¹⁹ ‘With notable exceptions, governments are almost always the defendants in climate change cases. Government defendants have been called upon to justify decisions large and small.’²⁰

The advent of global climate protests has shone a spotlight on the inadequacy of government action and required lawyers to think about how they can use the law to push for change. The notion of ‘flooding the courts’ with legal cases is not a call limited to the legal community, but is being sought by high ranking members of other professional communities.²¹ The United States remains the leader with the highest number of cases (1,023) followed by Australia and the United Kingdom.²² However, the majority of climate change litigation cases are not the landmark cases that receive wide media and academic attention, but rather ‘routine’ cases that focus on more mundane aspects or results of climate change. Litigation, particularly in the United States, can be categorized as ‘pro’ or ‘anti’ regulation of climate change matters. In the United States, pro-regulation lawsuits outweighed anti-regulation cases in 2017-2018.²³ This contrasts with the reality between 1990 and 2016.²⁴

Strategic climate change litigation is brought either against national governments or corporations, often those that emit large amounts of greenhouse gases. Climate change litigation against governments began in the early 2000s, when it was almost entirely concentrated within the United States, covering both pro-regulation and anti-regulation cases. Since 2015, the scale and diversity of climate change

¹⁷ Panel chaired by **Nigel Pleming QC, 39 Essex Chambers**.

¹⁸ ‘Climate Change Laws of the World’ (*Grantham Research Institute on Climate Change and the Environment, LSE*) <<https://climate-laws.org/cclow>> accessed 5 March 2020. We thank **Joana Setzer, Research Fellow at the Grantham Institute**, who accepted both to introduce the Brazilian perspectives (see *infra*) on climate litigation and to sum up the global trends in the field.

¹⁹ International Bar Association, *Climate Change Justice and Human Rights Task Force Report: Achieving Justice and Human Right in an Era of Climate Disruption* (July 2014) <<https://www.ibanet.org/PresidentialTaskForceClimateChangeJustice2014Report.aspx>> accessed 5 March 2020, 76.

²⁰ United Nations Environment Programme and Sabin Center for Climate Change Law, *The Status of Climate Change Litigation: A Global Review* (May 2017) <<https://wedocs.unep.org/handle/20.500.11822/20767>> 14.

²¹ Professor Jeffrey D Sachs, ‘A Proposal for Climate Justice’ (*London School of Economics*, 2017) <<http://www.lse.ac.uk/Events/2017/10/20171003t1830vOT/a-proposal-for-climate-justice>> accessed 5 March 2020; Jonathan Watts, ‘“We should be on the offensive” – James Hansen calls for wave of climate lawsuits’ (*The Guardian UK*, 17 November 2017) <<https://www.theguardian.com/environment/2017/nov/17/we-should-be-on-the-offensive-james-hansen-calls-for-wave-of-climate-lawsuits>> accessed 5 March 2020.

²² Joana Setzer and Rebecca Byrnes, ‘Global trends in climate change litigation: 2019 snapshot’ (*Grantham Research Institute on Climate Change and the Environment*, Policy report, 4 July 2019) <<http://www.lse.ac.uk/GranthamInstitute/publication/global-trends-in-climate-change-litigation-2019-snapshot/>> accessed 5 March 2020.

²³ Dena P Adler, ‘U.S. Climate Change Litigation in the Age of Trump: Year One’ (2018) *Columbia Public Law Research Paper* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3364597> accessed 5 March 2020.

²⁴ Sabrina McCormick and others, ‘Strategies in and outcomes of climate change litigation in the United States’ (2018) 8(9) *Nature Climate Change* 829 <https://www.researchgate.net/publication/327119040_Strategies_in_and_outcomes_of_climate_change_litigation_in_the_United_States> accessed 5 March 2020.

cases has grown, becoming more international and covering a range of legal subjects, including human rights and adaptation measures. Cases against corporations were also focused on the United States since the early 2000s, and were all unsuccessful. Since 2015, claimants have been finding unique ways to use science to attribute climate change impacts to major corporations and engaging different strategies, such as engaging shareholders in disputes.²⁵

The vast majority of literature and discussions within the climate change litigation space focus on the Global North. However, there have been a number of landmark cases in the Global South, such as *Ashgar Leghari v Federation of Pakistan*,²⁶ *Future Generations v Ministry of the Environment and Others*,²⁷ and *EarthLife Africa Johannesburg v Minister of Environmental Affairs & Others*.²⁸ The common characteristics of these cases and others in the South are that they are in relation to the poor enforcement of existing legislation, rights-based, and linked with other environmental problems. Climate change litigation in the Global South faces an additional challenge of the high number of killings of environmental activists, as bringing a lawsuit on climate change often constitutes a real threat to individual's lives.²⁹ The unique opportunities in these regions include access to strong human rights protections, and the existence of bold judges who are willing to enforce large government changes to mitigate climate change, as occurred in the *Leghari* case.³⁰

United Kingdom³¹

The climate change law landscape in the United Kingdom is underpinned by the Climate Change Act 2008, which provides the overall framework for government policy on climate change. Section 1 creates a 'duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline',³² amended from original 80% in 2019.³³ While an important target, it remains unclear as to how it will be reached.³⁴ The Act also establishes an independent Committee on Climate Change,³⁵ which advises the government on how best to achieve the 100% reduction target,³⁶ and delivers annual reports to Parliament.³⁷ Recently, the [Withdrawn] Environmental Bill 2019 did not extend to enforcing climate change policy but established a new office on environmental

²⁵ *ClientEarth v Enea* (2018, Regional Court in Poznań, Poland). See 'ClientEarth v Enea' (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/142/litigation_cases/7322> accessed 5 March 2020.

²⁶ *Ashgar Leghari v Federation of Pakistan* (2015, Lahore High Court Green Bench, Pakistan). See 'Ashgar Leghari v Federation of Pakistan' (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/134/litigation_cases/7161> accessed 5 March 2020.

²⁷ *Future Generations v Ministry of the Environment and Others* (2018, Supreme Court of Colombia, Colombia). See 'Future Generations v Ministry of the Environment and Others' (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/37/litigation_cases/7304> accessed 5 March 2020.

²⁸ *EarthLife Africa Johannesburg v Minister of Environmental Affairs & Others* (2016, South Africa High Court, South Africa). See 'EarthLife Africa Johannesburg v Minister of Environmental Affairs & Others' (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/165/litigation_cases/7277> accessed 5 March 2020.

²⁹ Joana Setzer and Lisa Benjamin, 'Climate Litigation in the Global South: Constraints and Innovations' (2019), *Transnational Environmental Law*, <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/C2FE951D203AC61414E72C9244125258/S2047102519000268a.pdf/climate_litigation_in_the_global_south_constraints_and_innovations.pdf> accessed 5 March 2020.

³⁰ *Ashgar Leghari v Federation of Pakistan* (n 26).

³¹ We thank **Nigel Fleming QC** for accepting both to chair the first panel and to illustrate the United Kingdom experience regarding climate change litigation.

³² Climate Change Act 2008, s 1.

³³ Climate Change Act 2008 (2050 Target Amendment) Order 2019.

³⁴ The steps required to reach the UK's 2050 target and the possibility of a Climate Emergency Bill will be discussed at another BIICL event on 2nd April 2020 <<https://www.biicl.org/events/11368/ideas-and-perspectives-for-a-climate-emergency-bill-developing-a-toolkit-for-legislators-to-tackle-climate-change>> accessed 5 March 2020.

³⁵ Climate Change Act 2008, s 32.

³⁶ *ibid*, s 33.

³⁷ *ibid*, s 36.

protection and failed to pass through Parliament prior to the election. The bill was reintroduced to parliament following a general election on 30 January 2020.³⁸

The United Kingdom has seen a rise in climate change-related litigation, as a tool to pressure government action on tackling climate change. A critical case was *R v Secretary of State for Transport*,³⁹ which concerned the building of a third runway at Heathrow Airport. The claimants included five London borough authorities, the Mayor of London, Greenpeace, Friends of the Earth, Plan B, and Mr Spurrier, with the climate change case advanced by Friends of the Earth and Plan B. The court held that the illegality of the third runway at Heathrow was not due to any climate change challenge. It also found against the applicant's claim that the Paris Agreement had a direct impact as government policy on climate change, as required by the Planning Act 2008 (UK).⁴⁰ The court found that the Secretary did not have any obligations to consider the Paris Agreement, the underlying science of climate change, or a more stringent potential future target necessary for meeting the climate change targets. The Committee on Climate Change issued a letter in September 2019, which could not be used in the original litigation, and has led to an appeal by Plan B. The appeal took place on 21 October 2019, which resulted in an historic judgment on 27 February 2020 ruling that '[t]he Paris Agreement ought to have been taken into account by the Secretary of State'.⁴¹ Therefore, it may rightly be considered 'the first major ruling in the world to be based on the Paris climate agreement'.⁴²

There are also a number of cases that deal with planning law and its interaction with climate change. For example, *Stephenson v Secretary of State for Housing, Communities and Local Government*,⁴³ was a successful challenge on the promotion of fracking in legislation as failing to undertake a proper public consultation or account for evidence of the impact fracking has on climate change. This resulted in the quashing of paragraph 209 of the National Planning Policy Framework 2018.⁴⁴ The court in *HJ Banks & Co Ltd v Secretary of State for Housing, Communities and Local Government*,⁴⁵ held that the Secretary had erred in refusing planning permission for a coal mining project, because of the very considerable weight he gave to the adverse effects of the emission of greenhouse gases. According to the court, the Secretary of State failed to adequately balance the costs and benefits of tourism and biodiversity, and provided insufficient reasoning as to why emissions would be reduced, as there was no adequate explanation of how power generation would be replaced with a fossil fuel alternative.

Finally, the activities of organisations such as Greenpeace and Extinction Rebellion have led to criminal law cases where climate change activism has been used as a defence for criminal activity.⁴⁶

³⁸ Environment Bill 2020. See UK Government, 'Environmental Bill 2020' (Policy Paper, 30 January 2020) <<https://www.gov.uk/government/publications/environment-bill-2020>> accessed 5 March 2020.

³⁹ *R v Secretary of State for Transport* [2019] EWHC 1070 (Admin). See 'Plan B v Heathrow Expansion' (*Plan B*) <<https://planb.earth/plan-b-v-heathrow-expansion/>> accessed 5 March 2020.

⁴⁰ Planning Act 2008, s 5.

⁴¹ *R v Secretary of State for Transport* [2020] EWCA Civ 214, available at <<https://www.judiciary.uk/wp-content/uploads/2020/02/Heathrow-judgment-on-planning-issues-27-February-2020.pdf>> accessed 27 February 2020.

⁴² Damian Carrington, 'Heathrow third runway ruled illegal over climate change' (*The Guardian UK*, 27 February 2020) <<https://www.theguardian.com/environment/2020/feb/27/heathrow-third-runway-ruled-illegal-over-climate-change>> accessed 27 February 2020.

⁴³ *Stephenson v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 519 (Admin).

⁴⁴ See 'Court order quashes fracking policy' (*Friends of the Earth*) <<https://policy.friendsoftheearth.uk/insight/court-order-quashes-fracking-policy>> accessed 5 March 2020.

⁴⁵ *HJ Banks & Co Ltd v Secretary of State for Housing, Communities and Local Government* [2018] EWHC 3141 (Admin).

⁴⁶ *The Kingsnorth Six Trial* (Maidstone Crown Court, October 2007); *R v Basto & Others* (West London Magistrates Court, February 2016); *R (on the application of Jones, and others) v Commissioner of Police for the Metropolis* [2019] EWHC 2957 (Admin).

United States of America⁴⁷

As noted above, the United States has the highest number of climate change-related legal cases in the world, with 1176 cases out of the 1501 as of March 2020 identified on the Sabin Center Climate Change Litigation Database.⁴⁸ The United States also has a large number of environmental policy and impact laws, with many lawsuits using such legislation to challenge projects that give inadequate consideration to climate change.

The most important climate change litigation case in the United States is *Massachusetts v. Environmental Protection Agency*,⁴⁹ in which the Supreme Court held that it was unlawful for the Environmental Protection Agency to refuse to regulate carbon dioxide and other greenhouse gases as air pollutants, at least without a full explanation. This decision led to a whole cascade of greenhouse gas regulations, drafted by federal agencies rather than law-makers. More recently, the Trump Administration has attempted an extensive repeal of environmental protection regulations brought in by President Obama. Most of these attempts have been challenged in the courts.⁵⁰

The United States has also seen lawsuits on non-statutory issues, such as *Juliana v. United States*,⁵¹ in which 21 young people sought declaration in the Federal Court that the government had a legal obligation to fight climate change under the 'public trust' doctrine and the U.S. Constitution,⁵² and therefore had to develop a plan to mitigate and tackle climate change. Several other lawsuits have been attempted in the United States on the basis of this doctrine, but most have been dismissed on the grounds that the doctrine does not apply, that the plaintiffs lack standing to sue, or that judicial action would interfere with legislative and executive powers. However, its application was initially allowed in the Juliana case, which was the object of several appeals by the Trump Administration. The case has subsequently been dismissed on 17 January 2020.⁵³

Another set of cases brought in the US are common law cases based on nuisance such as *American Electric Power v. Connecticut*⁵⁴ and *Native Village of Kivalina v. ExxonMobil Corp.*⁵⁵ These have been dismissed by the Supreme Court, finding that the Federal legislation displaced the federal common law with respect to greenhouse gas emissions. However, the court failed to make a determination on the displacement of common law at the State level, leading to fourteen lawsuits fought under state common law, with cities and counties alleging a variety of environmental harms, such as sea level rise, hydrologic cycle issues, and public health at the hands of large fossil fuel companies such as Exxon, Chevron, BP and Shell.⁵⁶ The cases cover public nuisance, trespass, negligence and failure to warn. However, there is

⁴⁷ Michael B. Gerrard, Andrew Sabin Professor of Professional Practice, Director of the Sabin Center for Climate Change Law, Columbia Law School.

⁴⁸ 'Climate Change Litigation Databases' (Sabin Center for Climate Change Law) <<http://climatecasechart.com/>> accessed 5 March 2020.

⁴⁹ *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007).

⁵⁰ See Dena P Adler, 'U.S. Climate Change Litigation in the Age of Trump: Year One' (2018) *Columbia Public Law Research Paper* <<https://blogs.ei.columbia.edu/2018/02/15/climate-change-litigation-trump-year-one/>> accessed 5 March 2020; Dena P Adler, 'U.S. Climate Change Litigation in the Age of Trump: Year Two' (2019) *Columbia Public Law Research Paper* <<https://blogs.ei.columbia.edu/2019/06/10/trump-climate-deregulation-tracker-2019/>> accessed 5 March 2020.

⁵¹ *Juliana v. United States*, 339 F.Supp.3d 1062 (2018).

⁵² 'The public trust doctrine is a widely recognized common law duty on the sovereign of a given jurisdiction to act as trustee for present and future generations by maintaining the integrity of the public trust resources in that jurisdiction.' United Nations Environment Programme and Sabin Center for Climate Change Law (n 23) 23.

⁵³ United States Court of Appeal for the Ninth Circuit, 17 January 2020 <<https://cdn.ca9.uscourts.gov/datastore/opinions/2020/01/17/18-36082.pdf>>, accessed 5 March 2020. See John Schwartz, 'Court Quashes Youth Climate Change Case Against Government' (*New York Times*, 17 January 2020) <<https://www.nytimes.com/2020/01/17/climate/juliana-climate-case.html>> accessed 5 March 2020.

⁵⁴ *American Electric Power v. Connecticut*, 564 U.S. 410 (2011).

⁵⁵ *Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012). See 'Native Village of Kivalina v. ExxonMobil Corp.' (Sabin Center for Climate Change Law) <<http://climatecasechart.com/case/native-village-of-kivalina-v-exxonmobil-corp/>> accessed 5 March 2020.

⁵⁶ E.g., *City of Oakland v. BP P.L.C.*, 325 F. Supp.3d 1017 (N.D. Cal. 2018); *City of New York v. BP P.L.C.*, 325 F.Supp.3d 466 (S.D.N.Y. 2018).

an ongoing issue in suing large fossil fuel companies for private nuisance, as state courts only allow lawsuits where there is 'unreasonable' interference,⁵⁷ and companies are often able to argue that it is reasonable to use fossil fuels. Additionally, it has not yet been determined at what level on the supply chain of fossil fuels liability for environmental damage is created. These cases are all still being litigated; there is no final resolution of any of them.

There is an emerging area of litigation alleging that companies acted unlawfully in failing to adapt to climate change, as opposed to establishing a direct causal link. Cases such as *Conservation Law Foundation v. ExxonMobil*,⁵⁸ seek a court ruling that the company violated environmental laws by failing to prepare an oil tank farm alongside a river for the effects of climate change. While this case is in its early stages, more litigation should be expected in this area.

Finally, there has been litigation against US government departments in relation to their actions during natural disasters, such as Hurricane Harvey in Houston, 2018. In *re Upstream Addicks and Barker (Texas) Flood-Control Reservoirs*,⁵⁹ the Federal Court held that the US government was liable for the actions of the Army Corps of Engineers during Hurricane Harvey that protected one area of Houston but caused increased flooding in another area.

India and Pakistan⁶⁰

India and Pakistan have a long history of public interest litigation⁶¹ which has included landmark climate change litigation cases. These jurisdictions have more relaxed standing rules (when compared to jurisdictions in the Global North) and the judiciary is a dynamic, interventionist actor which can grant itself a continuing mandate to monitor the implementation of their decisions. The courts have thus far been willing to make expansionist and progressive judgments in the area of climate change.

This was clearly seen in the case of *Ashgar Leghari v Federation of Pakistan*,⁶² a case that has received widespread attention. The government of Pakistan was sued by a farmer for failure to implement its 2012 National Climate Policy and Framework. The judge found against the government, and established a climate change commission to oversee the proper implementation of the policy. However, even before the case had been decided, climate change legislation was enacted in Pakistan, showing the influence of the litigation on legislators.

A high profile case in India was *Pandey v India*,⁶³ where a nine year old girl petitioned the National Green Tribunal arguing that the public trust doctrine, India's commitments under the Paris Agreement, and the state's existing environmental laws and climate policies required increased action to tackle climate change. The claimant sought the right to a healthy environment to be read in conjunction with intergenerational equity, as recognised previously by the courts. The remedies sought included requiring consideration of climate change in environmental impact assessments, the creation of a national

⁵⁷ Restatements (Second) of Torts, § 821B(1) (1965).

⁵⁸ *Conservation Law Foundation v. ExxonMobil* (D. MA 2019) (Wolf. J).

⁵⁹ *In re Upstream Addicks and Barker (Texas) Flood-Control Reservoirs*, 138 Fed.Cl. 658 (2018).

⁶⁰ **Birsha Ohdedar, Lecturer, School of Law & Human Rights Centre, University of Essex.**

⁶¹ 'Public interest litigation (PIL) is a kind of legal action that is well established in the legal systems of India and Pakistan. PIL is designed to serve a broader public interest, for example in cases where those affected by a wrong cannot afford to bring legal action themselves or for who for other reasons do not have access to the legal system. PIL is unique in that these legal actions can be brought by third parties, including NGOs, on behalf of a large group of affected persons or on behalf of the general public.' 'Glossary – Public Interest Litigation' (*European Center for Constitutional and Human Rights*) <<https://www.ecchr.eu/en/glossary/public-interest-litigation/>> accessed 5 March 2020. See also Jona Razzaque, *Public Interest Environmental Litigation in India, Pakistan and Bangladesh* (Kluwer Law International, Netherlands, 2004).

⁶² *Ashgar Leghari v Federation of Pakistan* (n 26).

⁶³ *Pandey v India* (2017, National Green Tribunal, India). See 'Pandey v India' (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/78/litigation_cases/7307> accessed 5 March 2020.

greenhouse gas emissions inventory and a national carbon budget. A similar case has been brought in Pakistan.⁶⁴

It is worth emphasising that there are many cases which concern a matter of the 'everyday policy issues' of climate change, but do not mention climate change itself. This is a quite common trend in the Global South, where well-developed legal frameworks in areas of environmental law are used to respond to the impacts of climate change, without explicitly using the language of climate change. For example, there are a number of cases in India that concern government conduct in respect of droughts. In *Swaraj Abhiyan v Union of India*,⁶⁵ an NGO brought a case against the State and Union government for failure of States to declare a drought, despite the existence of all the requisite conditions. Such failure allowed them to avoid complying with various legal obligations. The court considered the conduct as a breach of article 21 of the Constitution of India, the right to life, and other human rights. The court ordered the government to set up a national disaster response fund, which should have been created over a decade earlier, revise drought manuals, and compensate those affected. The case was left open in order for the court to continue to review the implementation of its orders. This case shows the interaction between human rights, environmental law, and development, but without explicit mention of climate change. It also shows that in India, like in Pakistan, important aspects of climate change law can be progressed by the actions of the judiciary.

The legal landscape for climate change litigation in India and Pakistan demonstrates unique challenges and opportunities in comparison to states in the Global North. The court's intervention into government policy and action has allowed landmark cases to cause major changes, but can be critiqued as *ad-hoc* and overly-interventionist. The relationship between human rights, climate change, and development has been seen in many cases, but often not through the language of 'climate change'. Finally, it is important to keep in mind that judgments can be impactful beyond the finding of the individual case, in changing government policy or initiating climate change legislation, as has been noted regarding the *Leghari* case.

The Netherlands⁶⁶

Urgenda Foundation v State of Netherlands is a landmark decision by the Dutch Supreme Court in which it ordered the national government to reduce its greenhouse gas emissions by a set amount. This is the first time that this has occurred in any jurisdiction.⁶⁷

The case was initiated in 2013 by the *Urgenda* (contraction of 'urgent' and 'agenda') *Foundation*, a Dutch environmental non-governmental organisation representing 886 citizens, claiming that the trajectory of the Netherlands' greenhouse gas emissions was inconsistent with its domestic legal obligations, including the rights protected under articles 2 and 8 of the European Convention on Human Rights. Moreover, it endangered Dutch citizens in violation of the Dutch Civil Code. The remedy sought was an order to the government to reduce greenhouse gas emissions by at least 25% by the end of 2020 (compared to 1990 levels). After the District Court found in favour of the plaintiffs in 2015, the Dutch government appealed the case first to the Appeals Court, which confirmed the decision of the District

⁶⁴ *Ali v Federation of Pakistan* (2016, Supreme Court of Pakistan, Pakistan). See 'Ali v Federation of Pakistan' (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/134/litigation_cases/7160> accessed 5 March 2020.

⁶⁵ *Swaraj Abhiyan v Union of India* (2016, Supreme Court of India, India). See Vineet Kumar, 'Supreme Court judgment on drought a paradigm shift' (*DownToEarth*, 13 May 2016) <<https://www.downtoearth.org.in/blog/climate-change/supreme-court-judgment-on-drought-a-paradigm-shift-53950>> accessed 5 March 2020.

⁶⁶ Tessa Khan, Co-Director of Climate Litigation Network, Urgenda Foundation.

⁶⁷ *Urgenda Foundation v State of the Netherlands* (2019, Supreme Court of the Netherlands, Netherlands). See 'Urgenda Foundation v State of the Netherlands' (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/126/litigation_cases/7177> accessed 5 March 2020.

Court in 2018, and then again to the Supreme Court, the highest court in the Netherlands. Prior to the decision of the Supreme Court, the Dutch Advocate General and Proctor General (positions that are influential to the decisions of the Supreme Court) issued detailed opinions affirming the reasoning of the Court of Appeal in favour of *Urgenda*.

On 20 December 2019, the Supreme Court agreed that the Dutch government had violated the European Convention on Human Rights and upheld the set reduction in greenhouse gas emissions by the end of 2020.⁶⁸ The reasoning of the Supreme Court focussed on a violation of articles 2 and 8 of the European Convention of Human Rights, characterising climate change as posing an immediate and real risk to the right to life (article 2) and family and private life (article 8). The court held that the requirement for an 'immediate' risk could be characterised in terms of directness, and the risk was inherent in climate change despite the long term effect that impacts large groups and the population as a whole. The decision took inspiration from the precautionary principle in international law and principles in the UN Framework Convention on Climate Change, which support a finding that all states have common but differentiated responsibilities to combat climate change.

The argument that the comparatively small amount of greenhouse gases emitted from the Netherlands would mean that reduction in emissions would not make a meaningful difference was thus emphatically rejected. The Dutch government's multiple commitments, including under the UN Framework Convention on Climate Change, were cited as examples of its inability to avoid responsibility for its greenhouse gas emissions. In reaching the 25% reduction as the defined fair contribution, the Supreme Court drew on the 'common ground' method used by the European Court of Human Rights, relying on international standards and principles found including the IPCC, as endorsed by the Dutch government, and multiple COP decisions.

The *Urgenda* case has had a major impact globally, coming at a time where the population is becoming increasingly aware of the dire consequences of political inaction on climate change. This case allows some room to hope that courts can bridge the gap created by political action, where national governments are failing. The impact of the case within the Netherlands was evident, even prior to the Supreme Court decision. The case garnered broad public support, with the Dutch Parliament agreeing from 2015 onwards to phase out coal, to adopt climate change legislation and ambitious emissions reduction targets, as well as motioning for the government to implement the court's decision and publish its measures. This may be due to the strategic approach taken by the Urgenda Foundation to the process of implementation of the court findings. The Urgenda Foundation worked with over 800 Dutch organisations and businesses to prepare and publish measures to meet the emissions reduction requirement that could be taken on by the government. Climate change litigation cases focus not only on the legal outcome, but on influencing actual change on the ground.

The importance of the *Urgenda* case rests in part on the impact it may have across Europe and on government net-zero targets. The fact that the finding is based on the European Convention on Human Rights means that it has important implications for states party to the convention. It marks a turning point in the application of human rights law to climate change, demonstrating how human rights obligations themselves can give rise to individual state duties to reduce greenhouse gas emissions. Considering the importance of taking immediate action to combat climate change and focussing on cumulative emissions rather than long term reductions means that this case is particularly relevant to debates around the sufficiency of net zero targets for 2050. It is expected that this case will inspire subsequent challenges to state greenhouse gas emissions reductions across the world, and puts national governments on notice.

⁶⁸ The English translation of the case *Urgenda Foundation v State of the Netherlands* is available on the Dutch Supreme Court website <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2007>> accessed 5 March 2020.

France⁶⁹

Since 2018 several events built the social and political context that triggered an increase in climate change lawsuits in France, including the resignation of Nicolas Hulot, the former Minister for the Ecological and Inclusive Transition, due to government inaction on climate change and environmental issues; youth protests in September 2018 and the ‘yellow vests’ protests in response to the government’s fuel tax. The legal context involves the European Court of Justice decision on France’s excessive air pollution levels since 2010,⁷⁰ the reaffirmation of justiciability of climate change cases in *Urgenda*,⁷¹ and the influence of the ‘rights of nature’ (posed recently in *Future Generations* case in Colombia)⁷² on the French legal concept of ‘pure ecological damage’⁷³. Additionally, there has been a push by the Greens Party to include a reference to climate change in article 1 of the French Constitution,⁷⁴ and a declaration by the French Parliament of a climate emergency.

The first major climate change cases in France were submitted in 2019 and covered issues such as climate change adaptation plans,⁷⁵ climate change impact assessments,⁷⁶ and human rights due diligence.⁷⁷ Introduced in the same period, ‘L’Affaire du Siècle’⁷⁸ (‘the case of the century’) inspired by *Juliana v. United States*⁷⁹ is expected to introduce several important contributions to climate change law in France. The case, a legal initiative launched by four NGOs (*Notre Affaire à Tous*, *la Fondation pour la Nature et l’Homme*, Greenpeace France and Oxfam France) before the Administrative Court of Paris, requests the French government to remedy its inaction on climate change (‘*carence fautive*’). The plaintiffs argue for the recognition of a new general principle of law relating to the right to live in a sustainable climate system, also based on the concept of pure ecological damage, asking the court to issue an injunction for the government to take all necessary steps to contain global warming below 1.5°C.

⁶⁹ Marta Torre-Schaub – Senior Researcher at CNRS, Professor, Sorbonne Law School, Director of the Climate Change and Law Research Network CLIMALEX.

⁷⁰ Case C-636/18 *European Commission v France* [2019] OJ C 445. See ‘France has systematically and persistently exceeded the annual limit value for nitrogen dioxide since 1 January 2010’ (Press Release No 132/19, *Court of Justice of the European Union*) <<https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-10/cp190132en.pdf>> accessed 5 March 2020; see also *Conseil d’État*, 12 juill. 2017, *Les amis de la Terre c/ Min. de la Transition écologique*, n°394254, *Dir.* 2008/50 du 21 mai 2008 JO L 152/1.

⁷¹ *Urgenda Foundation v State of the Netherlands* (n 67).

⁷² *Future Generations v. Ministry of the Environment and Others* (2018, Supreme Court, Colombia). See ‘Future Generations v. Ministry of the Environment and Others’ (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/37/litigation_cases/7304> accessed 5 March 2020.

⁷³ ‘Recently, with the adoption of the 2016-1087 law of 8 August 2016 on the conquest of biodiversity, nature and landscapes, the concept of “ecological damage” (“*préjudice écologique*”) became formally recognized in the French Civil Code. Thus, article 1247 consecrated a “non-negligible damage to the elements or the ecosystem functions or the collective benefits obtained by man from the environment,” whose remedy is supported by “anyone liable for ecological damage” (article 1246). (...) The recognition of “pure” ecological damage, suffered exclusively by nature, allows for expansion of the system of civil liability for environmental damage, which was traditionally based on indirect damage suffered by the environment (damage to property, economic loss, personal injury), focusing on the media rather than the “victim”.’ See Ivano Alogna, ‘Environmental Law of France’, in Nicholas Robinson and others (eds), *Comparative Environmental Law and Regulation* (Thomson Reuters, New York, 2018) ch 21 para 38.

⁷⁴ French Constitution of 1958, art 1. See the English translation on the French Constitutional Council website: <https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf>, accessed 5 March 2020.

⁷⁵ The first of all was the ‘Grand-Synthe’ case, introduced before the *Conseil d’Etat* (the highest administrative court in France) on the ground of abuse of authority (‘*excès de pouvoir*’). *Commune de Grande-Synthe v. France* (2019, *Conseil d’Etat*, France). See ‘Commune de Grande-Synthe v. France’ (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/62/litigation_cases/7321> accessed 5 March 2020.

⁷⁶ *Guyane* (October 2018); *Europacity* (March 2018).

⁷⁷ *Les Amis de la Terre v. Total* (2019-2020). See ‘Friends of the Earth et al. v. Total’ (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/62/litigation_cases/7362> accessed 5 March 2020. See also the French Duty of Vigilance Law (Law No. 2017-399 of 27 March 2017), <<https://www.legifrance.gouv.fr/eli/loi/2017/3/27/2017-399/jo/texte>> accessed 5 March 2020.

⁷⁸ *Notre Affaire à Tous and Others v France* (2018, France). See ‘Notres Affaire a Tous and Others v. France’ (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/62/litigation_cases/7316> accessed 5 March 2020.

⁷⁹ *Juliana v United States* (n 51).

The status of climate change litigation in France requires consideration of the national judge as becoming an 'effective' adjudicator of international law obligations, in order to enforce this body of law against the domestic government. Additionally, the application of the uniquely French concept of 'pure ecological damage' to the climate change field is an important legal development and a new avenue for challenging government and corporate acts that are detrimental to mitigating climate change. There is much discussion in France on expanding the right to a healthy environment to necessitate certain duties with respect to climate change, and the recognition of a general climatic obligation based on general principles of law.

Brazil⁸⁰

Brazil is the sixth largest emitter of greenhouse gases in the world. More than half of its emissions come from deforestation, much of which is illegal. Therefore, in theory, it is much easier for Brazil to drastically reduce its emissions by simply enforcing pre-existing legislation. This is strengthened by the fact that Brazil has environmental protections within its constitution, a law on climate change and a strong body of litigation on environmental protection. However, the potential for Brazil to be a world leader in reducing its greenhouse gas emissions has not been realized, with deforestation levels in the Amazon increasing by 85% in 2019 compared to the previous year.⁸¹

Despite the potential for Brazilian law to be used to force government action on climate change, in reality there is no active push for climate change litigation, especially lawsuits that explicitly mention the term 'climate change'. Unlike many jurisdictions in the Global North, the people of Brazil do not currently appear to be overly concerned with the effects of climate change. The population is focused on more immediate issues, such as waste management, water and corruption. Additionally, due to the political situation, people lack information and an awareness of the reality of climate change, as it gets lost within the dominant populist, nationalist discourse. To bring a legal challenge relating to climate change requires broad public support and the ability to pay the high legal costs that come with pursuing such litigation. This leaves civil society organizations in a difficult situation, with no legal avenues to utilise in seeking climate justice. While public prosecutors take most environmental law cases to court, they often fail to mention climate change as to not confuse or distract the judges from the key points of the case.

⁸⁰ Joana Setzer, Research Fellow, Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science.

⁸¹ Eduardo Simões, 'Brazil Amazon deforestation jumped 85% in 2019 vs 2018: government data' (*Reuters*, 14 January 2020) <https://uk.reuters.com/article/us-brazil-deforestation/brazil-amazon-deforestation-jumped-85-in-2019-vs-2018-government-data-idUKKBN1ZD2W0> accessed 5 March 2020.

Climate Change Litigation at the International Level⁸²

Litigation before international and regional courts and tribunals is often necessary to complement the international climate change regime, which is fundamentally limited by political compromise and the weaknesses (or lack) of mechanism to review the adequacy of state compliance. The lack of political consensus on the creation of an appropriate mechanism means that international courts and tribunals must be relied upon to ensure the effectiveness of national government's efforts to combat climate change.

Opportunities and Constraints⁸³

International climate change litigation presents a number of opportunities to improve the global fight to mitigate the effects of climate change. Litigation in international courts and tribunals can successfully raise awareness about climate change and its effects, as well as enhancing visibility for affected communities. It can put pressure on states to do more to fight climate change and result in legislative or policy change. International climate change litigation scenarios can be reactive, initiated to oppose particular change in relation to climate change, or proactive, initiated to challenge states' failure to mitigate or address the impacts of climate change. Proactive litigation at the international level can involve cases between non-state actors and states, such as those through human rights bodies or cases between states, such as cases brought before the International Court of Justice and the International Tribunal for the Law of the Sea.

However, international climate change litigation is also subject to serious constraints and challenges. Firstly, technical and procedural issues often prohibit climate change complaints from being considered by international courts and tribunals. For example, issues of jurisdiction can limit plaintiff's ability to have their cases heard, and often international courts and arbitral tribunals are constrained by the consensual basis of their jurisdiction and struggle to achieve a sense of legitimacy.⁸⁴ This leads to an inevitable 'inherently conservative approach to judicial decision-making'.⁸⁵ Additionally, international adjudication is subject to substantial limits, which means that such courts may not be the right place to seek more radical action on climate change. These courts and tribunals come at the end of the law-making process, not the beginning, so once measures have been agreed to by states, it is difficult to make a strong argument that general international law requires greater action or obligations.⁸⁶

Despite these constraints, and the fact that litigation is unlikely to lead to a change in state legislation or result in damages for those that suffer the effects of climate change, the threat of litigation may have an important impact on negotiations and state practice on reducing greenhouse gas emissions.⁸⁷ While it may not be the solution, international litigation can be instrumental in bringing about a change in attitude

⁸² Panel chaired by **Lavanya Rajamani**, Professor of International Environmental Law, Faculty of Law, University of Oxford, Yamani Fellow in Public International Law, St Peter's College, Oxford.

⁸³ **Annalisa Savaresi**, Senior Lecturer in Environmental Law, University of Stirling, Director for Europe of the Global Network on Human Rights and the Environment.

⁸⁴ Alan Boyle, 'Progressive Development of International Environment Law: Legislate or Litigate?' (Forthcoming 2020) *GYIL*.

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ Michael G. Faure and Andrew Nollkaemper (2007) 'International Liability as an Instrument to Prevent and Compensate for Climate Change' 26A(1) *Stanford JIL* 123.

by national courts and lawmakers, and human rights remedies can be effectively used to ‘name and shame’, and put pressure on states and corporates to better tackle climate change.

Inter-American System of Human Rights⁸⁸

The key question of climate change litigation within the Inter-American System of Human Rights and similar international and regional human rights bodies is whether climate change is an issue of human rights. Environmental law and human rights law has traditionally been treated as separate entities, but recent years and climate change developments have caused an openness to applying environmental law in a human rights context.

In 2005, the Inter-American Commission on Human Rights considered *Sheila Watt-Cloutier et al v United States*,⁸⁹ a petition which provided a full analysis of the possible violations of the Inuit people’s human rights, if the United States failed to adapt their policy to the mitigation of climate change. The case was dismissed before even consideration of admissibility, on the grounds that the claimants had failed to identify concrete acts or omissions of the United States government that constituted a violation of rights. This was a missed opportunity for the Inter-American system to consider the link between climate change and human rights many years prior to climate change litigation being a well-known strategic legal tool.

The Inter-American Court of Human Rights delivered an Advisory Opinion on the environment and human rights in 2017.⁹⁰ The Advisory Opinion emphasised the inherent relationship between the protection of the environment and the realisation of other human rights and recognised the right to a healthy environment, as provided in article 11 of the San Salvador Protocol.⁹¹ A positive perspective may be noted on the power and value of advisory opinions, as they overcome the fact that cases often take up to ten years to be decided, a major barrier in the Inter-American System of Human Rights. The Advisory Opinion can be applied directly in all jurisdictions within the Inter-American system, showing its usefulness as a potentially influential legal tool.

European Courts⁹²

The fact that we are in the midst of a climate emergency has been recognised by the European Parliament,⁹³ the European Commission,⁹⁴ and the United Kingdom Parliament.⁹⁵ Governments across Europe and the world are, at least outwardly, indicating that they understand the threat posed by climate

⁸⁸ **Monica Feria Tinta, Barrister, Twenty Essex.**

⁸⁹ Inter-American Commission on Human Rights, Petition Seeking Relief from Violations resulting from Global Warming caused by Acts and Omissions of the United States (7 December 2005). See ‘Petition Seeking Relief from Violations resulting from Global Warming caused by Acts and Omissions of the United States’ (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/9/litigation_cases/7052> accessed 5 March 2020.

⁹⁰ Inter-American Court of Human Rights, *Advisory Opinion – Environment and Human Rights*, OC-23/17 (Requested by the Republic of Colombia, 15 November 2017). See ‘Inter-American Court of Human Rights – Advisory Opinion (OC-23/17)’ (*ELAW*) <https://www.elaw.org/IACHR_CO2317> accessed 5 March 2020.

⁹¹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (entered into force 16 November 1999) OAS Treaty Series No 69 (1988); *Advisory Opinion – Environment and Human Rights* (n 90) para 47.

⁹² **Marc Willers QC – Garden Court Chambers.**

⁹³ European Parliament resolution of 28 November 2019 on the climate and environment emergency (2019/2930(RSP)) <http://www.europarl.europa.eu/doceo/document/TA-9-2019-0078_EN.html> accessed 5 March 2020.

⁹⁴ Commission, ‘The European Green Deal’ (Communication) COM (2019) 640 final.

⁹⁵ Climate Change Act 2008. See ‘UK Parliament declares climate change emergency’ (*BBC News*, 1 May 2019) <<https://www.bbc.co.uk/news/uk-politics-48126677>> accessed 5 March 2020.

change. This reality, and its impact on human rights, has been noted by the UN High Commissioner for Human Rights,⁹⁶ and the UN Special Rapporteur on extreme poverty and human rights.⁹⁷

A number of climate change cases have been brought before the Court of Justice and the General Court of the European Union, the majority of which have been ‘workhorse’ cases. However, ‘The People’s Climate Case’, *Armando Carvalho and Others v The EU Parliament and Council*⁹⁸ was more ambitious. Ten families from across the EU and other states brought a claim in May 2018, arguing that the EU’s climate target of reducing domestic greenhouse gas emissions by at least 40% compared to 1990 levels by 2030 was not sufficient to avoid dangerous effects of climate change and threatened the plaintiffs’ fundamental rights to life, health, occupation and property. The case was dismissed at first instance, with the General Court finding that the families lacked ‘standing’ for failure to show ‘direct and individual concern’. The case was appealed in July 2019, and has divided academics on its likelihood of success, particularly due to the difficult task of seeking a review of Court of Justice rules on ‘standing’.

The link between human rights and climate change means that the European Court of Human Rights, could be an important legal tribunal for climate change litigation. Despite this, the Court is yet to give a judgment on a climate change-related case. However, it is very likely that the court will soon be required to face the issue of climate change and its impact on the right to life,⁹⁹ the right to private life and home,¹⁰⁰ the right to peaceful enjoyment of one’s possessions,¹⁰¹ and the right to not suffer discrimination in the enjoyment of other rights.¹⁰² For example, currently a case is being prepared that will be brought before the ECtHR by a number of Portuguese children and young people against the majority of member states of the Council of Europe, arguing that the states are failing in their obligation to comply with the Paris Agreement and their shared responsibility for the adverse effects of climate change on the rights protected under the Convention.¹⁰³ The plaintiffs will need to persuade the Court that they have exhausted their domestic remedies and are within the jurisdiction of all respondent states, which will involve novel arguments on the inability to obtain relief against other countries in domestic courts and the fact that they are within the extra-territorial jurisdiction of the respondent member states, due to the fact that all emissions generated in each state contribute to climate change effects felt in Portugal.

It should be emphasised that there is still room for optimism and that there is a need to flood the courts with climate change-related cases. We are fortunate that lawyers and NGOs that have been working on successful climate change litigation cases, such as the Urgenda Foundation and ClientEarth, are willing to give their time and expertise to provide assistance to other lawyers working on pending cases.

African System of Human Rights¹⁰⁴

There have been very few examples of climate change litigation in Africa, despite the unique vulnerability of the continent to climatic harms. This is despite the fact that the African Charter on Human and Peoples’

⁹⁶ UNHCR ‘Global update at the 42nd session of the Human Rights Council Opening statement by UN High Commissioner for Human Rights Michelle Bachelet Office of the High Commissioner for Human Rights’ (9 September 2019): <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24956&LangID=E>> accessed 5 March 2020.

⁹⁷ Human Rights Council, ‘Climate change and poverty: Report of the Special Rapporteur on extreme poverty and human rights’ (17 July 2019) A/HRC/41/39, para 87.

⁹⁸ Case T-330/18 *Armando Carvalho and Others v The EU Parliament and Council* (8 May 2019).

⁹⁹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended), art 2.

¹⁰⁰ *ibid*, art 8.

¹⁰¹ Protocol No.1 European Convention on Human Rights, art 1.

¹⁰² European Convention on Human Rights (n 99) art 14.

¹⁰³ ‘Crowdfunding campaign for climate change legal action launched.’ (*Global Legal Action Network*, 24 September 2017) <<https://www.glanlaw.org/single-post/2017/09/24/Crowdfunding-campaign-for-climate-change-legal-action-launched>> accessed 5 March 2020.

¹⁰⁴ Sam Adelman, Associate Professor, School of Law, University of Warwick.

Rights includes a right to 'a general satisfactory environment favourable to their development',¹⁰⁵ and environmental protections exist within most states' domestic legislation.

The African Charter on Human and Peoples' Rights has influenced the drafting of state constitutions throughout the continent, and the inclusion of environmental rights under article 24 means that it is an ideal avenue for climate change-related complaints. In this way, it differs from the challenges of bringing climate change litigation under the European Convention on Human Rights, which does not include an explicit right to a healthy environment. The African Court of Human Rights has a contentious and advisory jurisdiction, but no advisory opinion has been sought. The only significant action in relation to climate change was brought in 2001, by the Social and Economic Rights Action Center bringing an *actio popularis* against the Nigerian government and Shell for their role in widespread environmental degradation.¹⁰⁶

Despite the international law protection in the African Charter on Human and Peoples' Rights, the vast majority of climate change-related cases are in reference to domestic legislation. Once again, the distinction between litigation based on environmental law and climate change specifically is blurred, as most cases are procedural and relate to administrative law and environmental impact assessments.

For example, *Thabametisi/Earthlife* is a case heard in South Africa,¹⁰⁷ a jurisdiction with the most developed legal system and environmental protections under the constitution on the continent. The case involved an NGO successfully appealing against government authorisation of a coal-fired power plant. In the decision, the court recognised the obligations on the government to expand environmental impact assessments to include elements related to climate change, under South Africa's international obligations such as the Paris Agreement. This litigation inspired two further challenges of government authorised coal-fired power plants by the environmental NGO, groundWork.¹⁰⁸

Jonah Gbemre v Nigeria and Shell was the first African case where the plaintiff challenged the government's failure to properly implement legislatively mandated environmental impact assessments, which resulted in continuing gas flaring.¹⁰⁹ The case concerned overlapping areas of law, considering the domestic legislation alongside the African Charter on Human and Political Rights and the rights to life and dignity in the Nigerian Constitution.¹¹⁰

There has also been a climate change case, *Mbabazi and Others v The Attorney General and National environmental Management Authority*,¹¹¹ brought by a group of young people, alleging that the

¹⁰⁵ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58, art 24.

¹⁰⁶ Social and Economic Rights Action Center & the Center for Economic and Social rights v. Nigeria (African Commission on Human and Peoples' Rights, Communication No. 155/96). See Dinah Shelton, 'Decision Regarding Communication 155/96 (Social and Economic Rights Action Center/Center for Economic and Social Rights v. Nigeria)' 96(4) AJIL 937.

¹⁰⁷ *EarthLife Africa Johannesburg v Minister of Environmental Affairs & others* (2017, High Court, South Africa). See 'EarthLife Africa Johannesburg v. Minister of Environmental Affairs & others' (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/165/litigation_cases/7277> accessed 5 March 2020.

¹⁰⁸ *Trustees for the Time Being of the GroundWork Trust v Minister of Environmental Affairs & others* (2017, High Court, South Africa). See 'Trustees for the Time Being of the GroundWork Trust v Minister of Environmental Affairs & others' (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/165/litigation_cases/7299> accessed 5 March 2020; *GroundWork v Minister of Environmental Affairs & others* (2017, High Court, South Africa). See 'GroundWork v Minister of Environmental Affairs & others' (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/165/litigation_cases/7298> accessed 5 March 2020.

¹⁰⁹ *Gbemre v Shell Petroleum Development Company of Nigeria Ltd & others* (2005, Federal Court, Nigeria). See 'Gbemre v Shell Petroleum Development Company of Nigeria Ltd & others' (*Grantham Research Institute on Climate Change and the Environment*) <https://climate-laws.org/cclow/geographies/130/litigation_cases/7158> accessed 5 March 2020.

¹¹⁰ *Constitution of the Federal Republic of Nigeria*, ss 33, 34.

¹¹¹ *Mbabazi and Others v The Attorney General and National Environmental Management Authority* (2012, High Court, Uganda). See 'Mbabazi and Others v The Attorney General and National Environmental Management Authority' (*Sabin Center for Climate Change Law*) <<https://climatecasechart.com/non-us-case/mbabazi-et-al-v-attorney-general-et-al/>> accessed 5 March 2020.

government has breached its duty as a public trustee in failing to uphold the right to a clean and healthy environment. This is analogous to cases seen in other jurisdictions.¹¹²

Despite these few landmark cases, which often were unsuccessful, African states' do not lack relevant rights under their legislation, constitutions, and the African Charter. The state of climate change litigation on the African continent is limited by a lack of momentum and cases being brought before the courts. It has been emphasised that there needs to be collaboration and cross-pollination across jurisdictions and Global South and North to determine the best strategy to approach legal challenges relating to climate change. What emerges through an analysis of Africa, as with other areas of the Global South as mentioned in relation to Brazil, India and Pakistan, is that there is no clear line between what is considered environmental law and climate change law. The immediate issues are often conventionally regarded as environmental, such as deforestation and access to water, and not explicitly framed through the lens of climate change. There is a large scope for more climate change litigation to occur in Africa, and the potential for continued involvement of NGOs and young people, and global cooperation means that it should be acted upon, given the fact that time is running out.

UN Human Rights Committee¹¹³

There has been an increase in complaints made to the UN Human Rights Committee on the issue of climate change, and some positive developments can be identified.

A world-first case on climate change is being brought before the Human Rights Committee in *Torres Strait Islanders v Australia*, with a group of Torres Strait Islanders bringing a complaint against Australia over its inaction on climate change.¹¹⁴ The islands, their home, are low-lying islands seriously affected by sea-level rise – their way of life and culture (aboriginal Australians with ancestral ties to the land and territorial sea in these islands) is seriously threatened by the prospect of becoming displaced. The case argues that there are no remedies that can be exhausted in Australia, as they should be put in place by the domestic government. The claimants seek mitigation and adaptation measures by Australia as a remedy, as opposed to compensation.

A second important complaint was that of the *Kiribati climate change refugees case*.¹¹⁵ This case had a disappointing result, with the court finding that the plaintiffs were not in any 'imminent' danger of harm, as the danger caused by climate change would not be felt for another ten to fifteen years. Additionally, there was no requisite individual harm, as climate change affects everyone across the globe. In reality, the Committee explicitly left the door open for future climate related complaints by recognising that the right to life could indeed be violated if states did not take appropriate measures to protect the population from the harmful effects of climate change. Furthermore, this may lead to application of the principle of *non-refoulement* in relation to climate displacement.

¹¹² See *Juliana v. United States* (n 51); *Pandey v India* (n 63).

¹¹³ We thank **Monica Feria Tinta** who accepted to introduce the climate litigations before both the Inter-American System of Human Rights and the UN Human Rights Committee.

¹¹⁴ 'Climate threatened Torres Strait Islanders bring human rights claim against Australia' (*ClientEarth*, 12 May 2019) <<https://www.clientearth.org/press/climate-threatened-torres-strait-islanders-bring-human-rights-claim-against-australia/>> accessed 5 March 2020.

¹¹⁵ Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016' (7 January 2020) CCPR/C/127/D/2728/2016 (Advanced unedited version) See 'UN Human Rights Committee Views Adopted on Teitiota Communication' (*Sabin Center for Climate Change Law*) <<http://climatecasechart.com/non-us-case/un-human-rights-committee-views-adopted-on-teitiota-communication/>> accessed 5 March 2020.

UN Committee on the Rights of the Child¹¹⁶

Hausfeld and the NGO Earthjustice filed, on behalf of 16 children, the first petition on children and climate change to a treaty body: the Communication to the Committee on the Rights of the Child.¹¹⁷ The Convention on the Rights of the Child is the most widely ratified human rights convention in the world,¹¹⁸ but only 46 states have ratified the Optional Protocol to the Convention on the Rights of the Child on a communication procedure that allows a petition to the Committee.¹¹⁹ The petition was filed to coincide with the NYC Climate Summit in September 2019 and the 30th Anniversary of the Convention on the Rights of the Child.

As noted by the former Special Rapporteur on human rights and the environment, John Knox, there is 'in sheer numbers no group, more vulnerable to environmental harm, as a whole, than children ... [s]o no doubt states have heightened obligations towards children in this respect'.¹²⁰ Additionally, a week prior to the submission of the petition, five UN treaty bodies adopted a Joint Statement concerning their concern of the insufficiency of states commitments under, and compliance with, the Paris Agreement, and the significant threats to human rights this poses.¹²¹

The petition was brought by 16 children from across the world against Argentina, Brazil, France, Germany and Turkey. It was expected that the petition would be initially rejected on the basis of administrative grounds, such as failure to establish appropriate jurisdiction or seek adequate remedies. However, given the strident recommendations from the Committee on the Rights of the Child and many other UN treaty bodies, the functioning of these bodies would seem to be redundant if they failed to take up a petition related to children's rights and climate change. The petition was accepted and delivered to the respondent states, with replies on admissibility and merits expected to be delivered this year. The relief sought are findings that climate change is a children's rights crisis, the respondent states are recklessly perpetuating this crisis, and in doing so are violating children's rights to life, health and prioritisation of the child's best interests, as well as the right of indigenous children to their culture. Additionally, the petitioners seek the Committee to recommend that the respondents review and amend their national laws to accelerate mitigation and adaptation to climate change, initiate cooperative international action, and ensure the child's right to be heard by allowing participation of children in these processes.

By attempting to reframe the climate change emergency as a children's rights crisis, the purpose of this petition and utilising the Committee on the Rights of the Child is to create a different sense of consciousness of states' climate change obligations. While the law is a blunt instrument that is limited by its slow pace through the courts and related bodies, it has been emphasised that lawyers must accept that they may not be able to present perfect, watertight cases, but need to work with the avenues at their

¹¹⁶ Ingrid Gubbay, Counsel, Head of Human Rights and Environmental Law Litigation, Hausfeld & Co LLP.

¹¹⁷ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

¹¹⁸ '25th Anniversary of the Convention on the Rights of the Child' (*Human Rights Watch*, 17 November 2014) <<https://www.hrw.org/news/2014/11/17/25th-anniversary-convention-rights-child>> accessed 5 March 2020.

¹¹⁹ Optional Protocol to the Convention on the Rights of the Child on a communication procedure (adopted 19 December 2011, entered into force 14 April 2014) A/Res/66/138. See 'Optional Protocol to the Convention on the Rights of the Child on a communication procedure' (*United Nations Treaty Collection*) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&clang=en> accessed 5 March 2020.

¹²⁰ OHCHR, 'Panel discussion on climate change and the rights of the child at 34th session of the Human Rights Council' (2 March 2017) <<https://www.ohchr.org/Documents/Issues/ClimateChange/RightsChild/Update14.3/SandbergpresentationHRCclimatechangefinal2.pdf>> accessed 5 March 2020.

¹²¹ OHCHR, 'Joint Statement on "Human Rights and Climate Change"' (16 September 2019) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>> accessed 5 March 2020.

disposal and be bold in presenting climate change legal challenges. This applies not just to the legal field or litigators, but across all sectors and including the judiciary, courts and political institutions.

More broadly, the Convention on the Rights of the Child has more explicit reference to the environment than many other conventions, so it is more amenable to being used as a legal avenue for bringing challenges based on human rights and climate change. However, there needs to be more explicit guidance on applying the convention. This is likely to occur as it has been demonstrated that actions seeking to protect the environment will uphold children's rights and will benefit from these kinds of arguments. Additionally, there is a growing body of empowered young people who want to be involved in climate change litigation at the international level.

Climate Change Litigation and Other Forms of Climate Change Advocacy¹²²

Last but not least, it is necessary to consider a social science approach to the study of climate change litigation to understand who undertakes this kind of litigation and why, and critically analyse the impact legal cases can have. Answering the question of what difference such litigation actually makes requires looking beyond the court's judgment and provision of remedies, or lack thereof.

A first question is why some groups turn to the courts to advocate actions against climate change, while others don't. This relates to questions of the effectiveness of climate change and environmental laws, looking to why some laws are enforced in some jurisdictions and not others, and considering why some voices are heard and others excluded. Lawyers tend to have a selection bias in this discussions on climate change litigation, focusing on landmark, successful cases and ignoring cases that may be settled out of court or fail to result in ground-breaking legal outcomes. From the perspective of NGOs, climate change litigation is thought about in terms of whether it is a good use of their resources.

A number of theoretical explanations can be used to determine why the law is utilised by some, and not others, in the fight against climate change. Firstly, the existence of 'political opportunity structures' can influence the availability of bringing legal remedies. There were arguments made, and it was seen in practice ten years ago, that litigation was used to try and force governments to regulate in regards to climate change where such regulation and legislation did not exist. Today, instead it has been noted how an increase in climate change activity within one sphere of political and social life, such as legislation, results more activity in other spheres, like litigation. This can be seen with the rise in litigation activity and events coinciding with increased activity of grassroots movements, such as Extinction Rebellion.

Secondly, the 'legal opportunity structures' that exist within a state constitute incentives and constraints built into legal systems that impact the ability for climate change litigation cases to be brought. For example, a jurisdiction's standing rules can heavily influence the availability and success of climate change cases, as was seen in the People's Climate Case at the EU level,¹²³ and many early cases in the United States. Particular specialised courts or activist judges may encourage civil society to bring climate change cases, while prohibitive legal costs or threats to the lives of environmental defenders, as is seen in various countries, may limit the possibilities of litigation.

The availability and understanding of climate science, at the judicial level and amongst populations, may also impact the likelihood of groups bringing climate change cases to courts. Finally, the 'mobilisation of resources' concerns the funding of climate change litigation and what expertise is available to plaintiffs. The existence of strategy entrepreneurs or in-house legal counsel may impact a NGOs decision to take

¹²² Lisa Vanhala, Professor of Political Science, Department of Political Science, University College London.

¹²³ *Armando Carvalho and Others v The EU Parliament and Council* (n 94).

concerns to court. Climate science also acts as a resource, as a way to transform a populations' understanding of climate change and how it can interact with the law. Scientists can be active participants in climate change cases, and the growing research in the area of climate change attribution science may have a large impact on litigation in the future.¹²⁴

The second question concerns how the success of climate change litigation is conceptualised. Some interesting findings can be found in Helen Duffy's book, 'Strategic Human Rights Litigation: Understanding and Maximising Impact'.¹²⁵ She outlines several types of impact of human rights litigation, therefore showing how impact analysis might influence the development of more effective litigation strategies in the future. Some of the dimensions of impact described in her work might also be usefully applied to climate change litigation. For example, first, a case can have a legal impact, by triggering the enforcement of a law, developing a set legal standard, forcing a change of legislation, and shaping remedies available and legal procedures. Second, policy and practice can be impacted, with a case pressuring specific policy change or the behaviour of bureaucrats, influencing the on-the-ground actions of decision makers. Third, institutional impact can include strengthening the legitimacy of institutions, which might include the judiciary. The landmark US case of *Massachusetts v EPA* saw an enhancement in the strength of the Environmental Protection Agency as an institution. Fourth, a case may produce a social or cultural impact, by influencing attitudes of the general population or reframing an issue, for example shaping climate change as a child's rights issue. Fifth, litigation can impact the mobilisation and empowerment of communities, but can also disempower certain groups and alienate grassroots movements. Sixth, case law can have a strong impact on individuals involved. While this is clearly evident in the human rights context, it can be applied to climate change with cases seeking judicial recognition of individual experiences and the necessity of adaptation and reparations. This may occur in the *Torres Strait Islander* case, and other cases brought on behalf or by vulnerable communities bearing the brunt of the effects of climate change.

¹²⁴ See Michael Burger and others, 'The Law and Science of Climate Change Attribution' (2020) 45(1) *Columbia J. Environ. Law* 57.

¹²⁵ Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact* (Hart Publishing, 2018).

Conclusion

Climate change litigation is increasingly being used as a tool to pressure governments to adopt (and implement) more ambitious climate policies that better align with their national and international obligations, and to hold major greenhouse gas emitting corporations accountable for their role in exacerbating climate change. The majority of climate change-related cases have been brought in the United States, but recent years has seen the rapid increase in such cases also throughout Europe and other regions. Significant cases have been brought before domestic courts in, *inter alia*, France, Brazil, India, and South Africa, with several positive outcomes, including the *Leghari* Case before the Lahore High Court Green Bench in Pakistan and, most recently, the final decision of the Supreme Court of the Netherlands in the *Urgenda* Case. The success of such climate litigations has inspired citizens and NGOs in other countries to try this way of environmental and climate activism, also stimulating the improvement of their climate change laws and regulations.

There has also been an increase in complaints launched before United Nations human rights treaty bodies and regional courts, which are becoming interesting laboratories of judicial experimentation, as a trigger for a more aware States' consciousness in relation to climate change issues. A consciousness of the necessary interdependence among States is triggering the need for the dialogue, cooperation and necessary collective response, from a legal point of view, in order to tackle climate change in an effective manner. From Europe to Africa, through America and Oceania, climate change litigation at the international level is constantly evolving and will be a key area of development of international law. A few prospects are already emerging, in relation to vulnerable communities and individuals, such in the *Torres Strait Islander* Case or in the *Kiribati climate change refugees* case, even though some legal constraints and institutional difficulties still decelerate the movement toward the recognition of effective climate justice.

These and further prospects will be analysed thoroughly in a forthcoming edited volume on 'Climate Change Litigation: Global Perspectives', which will extend the research perimeters to key countries such as Australia, China, New Zealand, Russia and South Africa, as well as to additional international jurisdictions: the International Court of Justice, the International Tribunal for the Law of the Sea, the WTO Dispute Settlement Mechanism and others. This will be one of various initiatives being undertaken by BIICL as part of the new Climate Change programme which is being developed.



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Climate Change Litigation: Comparative and International Perspectives

Thursday 16 January 2020

British Institute of International and Comparative Law
Charles Clore House, 17 Russell Square, London WC1B 5JP

14:30-15:00 Registration and Coffee

15:00-15:30 Welcome and Greetings by

Christine Bakker, Visiting Fellow, British Institute of International and Comparative Law

Introductory remarks by

Lord Robert Carnwath CVO

Justice of The Supreme Court of the United Kingdom

15:30-17:15 Panel 1: Climate Change Litigation before Domestic Courts

Chair:

Nigel Fleming QC, 39 Essex Chambers

- Climate Change Litigation in the United Kingdom

Speakers:

- **Michael B. Gerrard**, Andrew Sabin Professor of Professional Practice, Director of the Sabin Center for Climate Change Law, Columbia Law School
- *Climate Change Litigation in the United States (via video conference)*
- **Birsha Ohdedar**, Lecturer, School of Law & Human Rights Centre, University of Essex
- *Climate Change Litigation in Pakistan and India*
- **Tessa Khan**, Co-Director at Climate Litigation Network, Urgenda Foundation
- *The Urgenda Case in the Netherlands*
- **Marta Torre-Schaub**, Senior Researcher at CNRS, Professor, Sorbonne Law School, Director of the Climate Change and Law Research Network CLIMALEX
- *Climate Change Litigation in France*
- **Joana Setzer**, Research Fellow, Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science
- *Global Trends in Climate Change Litigation and Cases in Brazil*

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17:15-17:30 Coffee break

17:30-19:30 Panel 2: Climate Change Litigation at the International Level

Chair:

Lavanya Rajamani, Professor of International Environmental Law, Faculty of Law, University of Oxford, Yamani Fellow in Public International Law, St Peter's College, Oxford

Speakers:

- **Annalisa Savaresi**, Senior Lecturer in Environmental Law, University of Stirling, Director for Europe of the Global Network on Human Rights and the Environment
 - *Climate Change Litigation at the International Level: Opportunities and Constraints*
- **Marc Willers QC**, Garden Court Chambers
 - *Climate Change-related Cases before European Courts*
- **Monica Feria Tinta**, Barrister, Twenty Essex
 - *Prospects for Climate Change-related Cases in the Inter-American System of Human Rights and before the UN Human Rights Committee*
- **Sam Adelman**, Associate Professor, School of Law, University of Warwick
 - *Prospects for Climate Change-related Cases in the African System of Human Rights*
- **Ingrid Gubbay**, Counsel, Head of Human Rights and Environmental Law Litigation, Hausfeld & Co LLP
 - *Communication to the UN Committee on the Rights of the Child*
- **Lisa Vanhala**, Professor of Political Science, Department of Political Science, University College London
 - *The Relationship between Climate Change Litigation and Other Forms of Climate Change Advocacy*

19:30-20:30 Reception and Informal Discussion

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