

# Book Review

*Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action*, edited by César Rodríguez-Garavito  
Cambridge University Press, 2022  
304 pp, €101 (hardcover), open access (online)

Riccardo Luporini\*

Right from the beginning, the title establishes a clear objective: exploring how litigation, particularly human rights-based litigation, can prompt states and private actors to strengthen climate action. Although the book takes a definitive stance on the importance of such litigation, it does not compromise academic rigor. By focusing on the perspective of applicants and their legal teams, the book offers a comprehensive and nuanced examination of the field, acknowledging both its successes and limitations.

Rodríguez-Garavito thoroughly introduces the subject matter in his own contribution, providing figures and a typology of human rights-based climate litigation.<sup>1</sup> Part IV offers concrete examples of how human rights arguments are being used in climate cases across a diverse range of jurisdictions, such as Ireland, Brazil, India, Pakistan, as well as in Africa. The book frankly discusses some limitations and drawbacks of human rights-based climate litigation throughout the chapters. These limitations include not only technical legal constraints, but also questions of impact (chapters by Setzer and Mir),<sup>2</sup> relations with democratic processes (chapter by Vanhala),<sup>3</sup> and the quest for global climate justice (chapter by Auz).<sup>4</sup>

Despite some limitations, the value of using human rights as a tool to bolster climate action remains significant. Though not a panacea, in recent years the strategic use of human rights in litigation has expanded rapidly to challenge the insufficient responses that the legislative and executive branches of governments are giving to the climate emergency at the national and international levels. In this respect, the book fully achieves its aim to reflect on lessons learned (for instance, the chapter by Batros and Khan)<sup>5</sup> and different ways to further refine this tool (for instance, the chapter by Goldston).<sup>6</sup>

Vanhala's introductory chapter exemplifies the book's interdisciplinary approach, and Part III builds

on this, extending 'beyond the law' to address science, corporate accountability, ICT, visuals, and narratives. A comprehensive and diverse approach is crucial to fully grasping the *raison d'être* and potential of human rights-based climate litigation. The editor's efforts in bringing together academics and practitioners from various fields to contribute to the book are commendable and fruitful.

The book effectively achieves its goals within the specific scope of analysis it sets out, leaving no significant gaps or deficiencies. However, there are three areas where this book, or future writings, could expand to offer a more comprehensive perspective. It's important to note that these observations are subjective, reflecting the author's current research interests.

First, although it acknowledges some of the blind spots of human rights-based climate litigation, the book sometimes replicates this narrow focus. For ex-

---

DOI: 10.21552/cclr/2024/2/8

\* Postdoctoral research fellow in International Law, Sant'Anna School of Advanced Studies, Pisa <riccardo1.luporini@santanapisa.it>. This contribution was made possible by funding from the Jean Monnet Chair "European and International Human Rights Standards in Conflicts and Disasters" (GA 101127519), co-funded by the European Union (EU). Views and opinions expressed are however those of the author only and do not necessarily reflect those of the EU or EACEA. Neither the EU nor the granting authority can be held responsible for them.

- 1 César Rodríguez-Garavito, 'Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action' in César Rodríguez-Garavito (ed), *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press 2022) 9-83. A similar and partially overlapping study was carried out in: Annalisa Savaresi and Joana Setzer, 'Rights-based litigation in the climate emergency: mapping the landscape and new knowledge frontiers' (2022) 13 *Journal of Human Rights and the Environment* 7-34.
- 2 Joana Setzer, 'The Impacts of High-Profile Litigation Against Major Fossil Fuel Companies' in Rodríguez-Garavito (n 1) 206-220; Waqqas Ahmad Mir, 'A Good Story That Can Go Awry If Shortcomings Remain Unacknowledged' in Rodríguez-Garavito (n 1) 387-395.
- 3 Lisa Vanhala, 'The Social and Political Life of Climate Change Litigation: Mobilizing the Law to Address the Climate Crisis' in Rodríguez-Garavito (n 1) 84-94.
- 4 Juan Auz, 'Two Reputed Allies: Reconciling Climate Justice and Litigation in the Global South' in Rodríguez-Garavito (n 1) 145-156.
- 5 Ben Batros and Tessa Khan, 'Thinking Strategically about Climate Litigation' in Rodríguez-Garavito (n 1) 97-116.
- 6 James A. Goldston, 'Climate Litigation through an Equality Lens' in Rodríguez-Garavito (n 1) 132-144.

ample, while Rodríguez-Garavito acknowledges the striking dearth of cases devoted to climate change adaptation – '[b]y focusing on mitigation, HRCC litigation has overlooked half of the problem, one with urgent repercussions for most of the world's population'<sup>7</sup> – the book does not address the need for and potential of future strategic litigation on adaptation.<sup>8</sup> On the whole, well-known, high-profile cases received far more attention from most contributors, despite valuable exceptions, such as the chapter by Vallejo Piedrahíta and Gloppen.<sup>9</sup> While this focus is reasonable, it also signals that the task of going beyond what is currently under the spotlight has not been fully accomplished.

Second, the role of international judicial and quasi-judicial bodies in climate litigation is not sufficiently addressed in the book. Part IV offers only one contribution devoted to 'international tribunals', which, however, deals specifically with the European Court of Human Rights, and from the perspective of one single case (*Duarte Agostinho and Others v Portugal and Others*).<sup>10</sup> There seems to be scant specific discussion dedicated to cases before United Nations human rights treaty monitoring bodies or potential cases before other regional systems.<sup>11</sup> Overall, a broader treatment of international adjudicative bodies would have served the book well. Among other things, the three upcoming advisory opinions by international courts or tribunals prove that this is a continuing burgeoning area of the law, which is likely to shape the future of climate litigation.<sup>12</sup>

Third, while climate action is crucial to protect human rights against increasing adverse effects, tensions can arise between climate response measures and human rights. The transition to a carbon-neutral and more resilient society must respect the rights of workers in the fossil fuel industry, as well as those of Indigenous and other traditional communities affected by the conservation of carbon sinks, extraction of minerals critical to the renewable energy sector, and other mitigation and adaptation projects. Litigation can play a crucial role in addressing these tensions. 'Just transition litigation' has been conceived as a new category of lawsuits that question the justice and fairness of laws, projects or policies that respond to climate change.<sup>13</sup> This book focuses on lawsuits that aim to 'bolster climate action'. The term 'bolster' could have been interpreted more extensively, including to ensure that climate action does not impinge on the rights of vulnerable individuals and communities. More such cases are expected in the future.

In conclusion, the book achieves its mission while leaving room for further research. Topics addressed such as legal mobilization, impact, and science in climate litigation still offer room for future studies. Areas less addressed, like adaptation cases, litigation before international judicial bodies, and the potential tensions between climate action and human rights protection, will also require future attention. Overall, the book is expected to guide and stimulate further research, keeping human rights-based climate litigation under the spotlight for years to come.<sup>14</sup>

7 Rodríguez-Garavito (n 1) 35

8 Noting in the same vein is the review by Marcelo Lozada Gomez, 'Review of César Rodríguez-Garavito, *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action*' (2024) *International Journal of Constitutional Law* 1–7. On litigation on climate change adaptation see, among others: Jacqueline Peel and Hari M. Osofsky, 'Sue to Adapt?' (2015) 99 *Minnesota Law Review* 2177; Alastair Marke and Marco Zolla, 'Establishing Legal Liability for Climate Change Adaptation Failures: An Assessment of the Litigation Trend' (2020) 14 *Carbon & Climate Law Review* 187; Riccardo Luporini, 'Strategic Litigation at the Domestic and International Levels as a Tool to Advance Climate Change Adaptation?' (2023) 4 *Yearbook of International Disaster Law* 202.

9 Catalina Vallejo, Piedrahíta and Siri Gloppen, 'The Quest for Butterfly Climate Adjudication' in Rodríguez-Garavito (n 1) 117–131.

10 The case is however explained brilliantly by a great expert, see Gerry Liston and Paul Kingsley Clark, 'Climate Litigation before International Tribunals: The Six Portuguese Youth v. 33 Govern-

ments of Europe Case Before the European Court of Human Rights' in Rodríguez-Garavito (n 1) 335–348.

11 Sophie Marjanac and Sam Hunter Jones discuss *Daniel Billy et al v Australia*, a case before the UN Human Rights Committee, in their chapter, 'Staying within Atmospheric and Judicial Limits: Core Principles for Assessing Whether State Action on Climate Change Complies With Human Rights' in Rodríguez-Garavito (n 1) 158–166.

12 On international climate litigation, among others, see Benoit Mayer and Harro van Asselt, 'The rise of international climate litigation' (2023) 32 *Review of European, Comparative & International Environmental Law* 175.

13 See Annalisa Savaresi and Joana Setzer (n 2); Maria Antonia Tigre et al, 'Just Transition Litigation in Latin America: An Initial Categorization of Climate Litigation Cases Amid the Energy Transition' (Sabin Center for Climate Change Law 2023) <[https://scholarship.law.columbia.edu/sabin\\_climate\\_change/197/](https://scholarship.law.columbia.edu/sabin_climate_change/197/)> accessed 6 June 2024.

14 While this review does not provide a summary of content and structure for the book, for an additional perspective that more closely follows that approach, see the recent review by Lozada Gomez (n 8).