Introduction

CÉSAR RODRÍGUEZ-GARAVITO

As the climate crisis intensifies and becomes acutely visible, promising responses have been developed by scientists, advocates, and scholars around the world. Mobilizations such as #FridaysforFuture and Extinction Rebellion are converging with Indigenous peoples' movements and other social justice movements to convey the urgency and the scale needed for climate action. Reports by the Intergovernmental Panel on Climate Change, informed by developments in attribution science, establish more precise links between greenhouse gas emissions, extreme weather events, and human impacts.[1] In the meantime, collaborations between scientists and journalists have drawn the broader public's attention to detailed information about the magnitude of planet-warming emissions associated with the activities of major fossil fuel companies.[2]

In this edited volume, we explore a specific advocacy and regulatory tool that is gaining momentum around the world: human rights–based climate change (HRCC) litigation. Brought before national and international judicial and quasi-judicial bodies – from domestic courts to regional courts to UN human rights bodies – a growing wave of cases lays bare the profound impacts that a warming planet has on basic rights, such as the rights to life, health, and physical integrity of the victims of floods, fires, heat waves, and other extreme weather events; the right to housing and family life of the up to a billion human beings that may become climate refugees by 2050;[3] and the whole

[1] See "Climate Change 2022: Impacts, Adaptation, and Vulnerability" <https://www.ipcc.ch/report/ar6/wg2/>. See also "Special Report: Global Warming of 1.5°C" (2018) *IPCC*, <https://www.ipcc.ch/sr15/>.

[2] See Matthew Taylor and Jonathan Watts, 'Revealed: The 20 Firms Behind a Third of All Carbon Emissions', *The Guardian*, October 9, 2019.

[3] See Baher Kamal, "Climate Migrants Might Reach One Billion by 2050," Inter Press Service, August 21, 2017.

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range of rights of young people and future generations that may inherit an uninhabitable planet if carbon emissions are not urgently and drastically cut, in line with the recommendations of the IPCC and the goals of the Paris Climate Agreement.

The increasing use of human rights norms and litigation to advance climate action was not a foregone conclusion. Rather, it is a remarkable development, given the litany of failed efforts to create linkages between human rights and climate action in international law, starting with the omission of human rights in the landmark Rio Declaration of 1992. It took over two decades for human rights impacts to be recognized in a major international climate agreement (the 2015 Paris Agreement). The trend in climate litigation is striking also because human rights organizations were relatively slow to take on climate change. In fact, both in international law and domestic advocacy, it was environmental organizations that took the lead in bringing human rights frames and norms to bear on efforts against global warming.[4]

As I show in Chapter 1, prior to 2015, only a handful of rights-based climate cases had been filed anywhere in the world. Between 2015 and 2021, litigants brought 148 suits against states (and, to a much lesser extent, corporations) for human rights violations related to climate change in thirty national jurisdictions and in eight international judicial or quasi-judicial bodies.

In addition to well-known cases such as *Urgenda* v. *the Netherlands*, *Neubauer* v. *Germany*, and *Leghari* v. *Pakistan*, the growing body of lawsuits and court rulings include successful challenges to coal mining in Europe, South Africa, and Australia; legal challenges against the utterly insufficient pledges that governments in Europe, Brazil, South Korea, and the United Kingdom have made to cut carbon emissions; lawsuits brought on behalf of young plaintiffs and future generations in the Americas, Australia, Europe, India, and South Korea; a human rights investigation against major fossil fuel companies in the Philippines; and challenges to high-emission economic activities, from the construction of new airport runways in Vienna and London to oil exploration in the Norwegian Arctic to cattle ranching driving deforestation in the Amazon rainforest. At the international level, the UN Human Rights Committee examined a petition against New Zealand that affirmed states' duty to refrain from sending climate refugees to another state in which their life or physical integrity would be seriously endangered due to climate harms. Another petition, initiated by Greta Thunberg and other

[4] See César Rodríguez-Garavito, "International Human Rights and Climate Governance: Origins and Implications of the Rights-Based Climate Litigation," paper presented at the Litigating the Climate Emergency Conference, NYU School of Law (March 9–10, 2020).

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young activists, was presented to the UN Committee on the Rights of the Child, challenging top polluters among countries subject to the Committee's jurisdiction.

As this "rights turn" in climate litigation has taken hold, actors undertaking, supporting, or encouraging it have proliferated apace.[5] They include environmental and human rights organizations at the domestic and international levels, social and climate justice movements, UN special rapporteurs, Indigenous peoples' organizations, public prosecutors, and governmental and intergovernmental human rights bodies. Indeed, rights-based climate litigation is an idea whose time has come.

While there is abundant literature on climate litigation, studies on rights-based litigation are far less common. Moreover, the dominant modality in the literature on HRCC lawsuits are in-depth studies of a single or a few particularly successful cases, usually from Global North jurisdictions. This volume seeks to fill this scholarly and practical gap by offering a systematic overview of HRCC litigation and analyzing the opportunities and challenges it raises for climate action and human rights around the world. The book is the result of a conference held at New York University School of Law in early March 2020. Convened by NYU Law's Center for Human Rights and Global Justice, the conference brought together leading scholars, practitioners, scientists, and other actors that have contributed to HRCC litigation research and practice in different parts of the world.

At the conference and during the editorial process, we invited contributors to engage with a common set of questions: What analytical and strategic lessons can be extracted from the body of lawsuits and rulings for future research and advocacy? What ideas and experiences from other fields of research and practice (such as socioeconomic rights advocacy) can be usefully applied to understand and strategize future lawsuits and submissions before national and international courts and human rights bodies? Given the unique challenges that global warming poses, what types of litigation efforts may contribute to attaining the scale and urgency that, according to science, are needed for climate action to be timely and effective?

The chapters in this book offer evidence-based and thought-provoking answers to these questions.[6] They highlight the considerable usefulness and

[5] See Jacqueline Peel and Hari M. Osofsky, "A Rights Turn in Climate Litigation?" (2018) 7 *Transnational Environmental Law* 37.

[6] Preliminary versions of some of these answers can be found in a blog series that resulted from the aforementioned conference, from which this introduction is adapted. See "Up Close: Litigating the Climate Emergency," OpenGlobal Rights, <https://www.openglobalrights.org/up-close/climate-emergency-litigation/#up-close>.

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potential – but also the limitations and the blind spots – of existing human rights concepts and norms in dealing with the unique features of climate change, from its multicausality to its nonlinear temporality.

The volume is divided into four parts. Part I provides the empirical and analytical background for the rest of the volume. It includes an assessment of the trends, norms, contributions, and challenges of the universe of HRCC cases (Chapter 1) as well as a discussion of the contributions of the subsequent chapters to the broader literature on legal mobilization (Chapter 2).

Part II focuses on legal strategy. Contributors to this part of the book offer analyses and actionable ideas for some of the most complex strategic issues in HRCC cases, including choosing targets and remedies (Chapter 3); litigating less spectacular and visible cases that can nonetheless make a considerable aggregate contribution to climate action (Chapter 4); pursuing strategies that address inequalities in climate impacts (Chapter 5); reconciling climate litigation with global climate justice (Chapter 6); assessing whether states' action on climate change complies with human rights (Chapter 7); determining whether states' climate action meets their socioeconomic rights obligations (Chapter 8); understanding the different modalities of legal action that are available to litigants, especially in the Global South (Chapter 9); and the costs and impact of litigating against major fossil fuel companies (Chapter 10).

Part III shifts the analytical gaze from the law to fields of knowledge and expertise that have proved equally important in the practice of HRCC litigation. Based on research and court experience, contributors discuss lessons from attribution science to frame government mitigation and adaptation obligations (Chapter 11); the science of accounting for fossil fuel companies' emissions and its usefulness in litigation (Chapter 12); strategies for building robust evidence that can hold in court in HRCC cases (Chapter 13); and the uses of communications, narratives, and video as evidence and campaign tools in support of litigation (Chapters 14 and 15).

Going from the general to the particular, Part IV homes in on specific cases and the lessons they offer for the future of HRCC litigation. Drawing on a combination of scholarly research and participation in the cases, authors offer illuminating accounts of leading cases in Ireland (Chapter 16), Norway (Chapter 17), the European Court of Human Rights (Chapter 18), Brazil (Chapter 19), India (Chapter 20), South Africa (Chapter 21), and Pakistan (Chapter 22).

This book is the result of a collective effort undertaken under extraordinary circumstances. As readers may have already noticed, the date of the conference where contributors to this volume got together in New York City overlapped almost perfectly with the moment when the COVID-19 outbreak

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was declared a global pandemic and our lives were upended overnight. In fact, we had to shut the doors of one of NYU Law School's buildings behind us at the end of the conference, as the school announced that it would be closing indefinitely the day after. While we were discussing the climate crisis, the onset of another existential crisis was becoming palpable.

It is a testament to the contributors' commitment to climate research and action that we managed to complete the revisions of the chapters and the submission of the manuscript during a global pandemic. Aware that "one crisis doesn't stop because another one starts" and that the pandemic could be a "dress rehearsal" for the climate crisis that will ensue unless humanity urgently changes course,[7] we doubled down on our efforts and continued collaborating online.

In addition to this volume, the aforementioned conference resulted in the establishment of the Climate Litigation Accelerator (CLX). Hosted by the Earth Rights Advocacy Clinic and the Center for Human Rights and Global Justice at NYU School of Law, CLX is a global collaborative hub dedicated to advancing legal actions, advocacy, and research that build the speed and scale necessary to spur action on the climate emergency. As part of this work, CLX hosts a growing Global Community of Practice that currently includes over 200 organizations, litigators, and researchers from the Global North and the Global South. CLX also produces publications, litigation databases, monthly webinars, case studies, and online educational modules that examine key, strategic, and forward-looking issues and legal developments in the climate change and human rights space. [8]

Neither the book nor CLX would have been possible without the support and solidarity of colleagues at NYU Law. I'm especially grateful to Philip Alston, Meg Satterthwaite, and Gráinne de Búrca for welcoming me to the NYU community and believing in this project from the start with their usual generosity. Thanks also to Ben Batros, Melina de Bona, Carlos Andrés Baquero, Sukti Dhital, Elizabeth Donger, Ellie Happel, Kelly Matheson, Sienna Merope-Sing, Nikki Reich and Lauren Stackpoole for having played key roles in the conference. I'm also grateful to my CLX colleagues, especially Jacqueline Gallant, whose superb legal and research skills are matched only by her editorial talent and generosity in taking on the whole range of tasks involved in readying a manuscript for publication.

Outside of NYU, the support of the Open Society Foundations and the FILE Foundation were crucial for the completion of this project.

[7] Bill McKibben, "One Crisis Doesn't Stop Because Another Starts," *The New Yorker*, 14 May 2020.

[8] See <clxtoolkit.com>

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