American Journal of International Law (July 2019)
• (Domestic) Litigation is an instrument for holding states accountable for fulfilling their Paris Agreement NDCs

• A broader understanding of what counts as climate litigation is important where our purpose is to understand the role of litigation as an instrument of transnational climate law

• Centrality of climate-focused arguments in dominant definitions and conceptualizations

• Cases where climate change is at the periphery may be overlooked

• Most GS cases “fly below the radar” and seemingly “universal” definitions fail to adequately capture the experience of the GS
IS CLIMATE LITIGATION TRANSNATIONAL?

- **Seen as part of a global effort by those who undertake it**
  - Global campaigns
  - Emphasize indirect effects

- **Multiscalar role of climate litigation**
  - Litigation allows fluid “contestation across scales”

- **Transnational environmental law**
  - Multi-actor, multi-level, more pluralistic conceptions of law and law-making
Core: where climate change is a central issue in the litigation

Periphery: where climate change is subsidiary to other arguments, or one of a number of arguments and/or issues raised, or a case that is motivated by climate change considerations
Global South docket (Appendix, Table 1)

- 32 cases (20 in databases)
- Asia (18 cases)
- Africa (5 cases)
- Latin America (9 cases)

Also noted Global North cases including G.S. plaintiffs (Table 2)
METHODOLOGY

- Identification of cases
  - Sabin Center and LSE Climate Change Laws of the World (20 cases)
  - Other resources: newspaper reports, social media, conferences and own networks
  - Included cases decided, pending or emerging

- Analysis of cases
  - Coding for:
    1. identity of the plaintiffs and the defendants
    2. core/periphery
    3. legal avenue pursued in the claim
    4. mention or reliance on Paris Agreement
    5. whether local and/or foreign NGOs were involved
DIVERSE CASE LAW

- Pandey v India
- Carbon Majors Petition
- Columbian Youths case
- Earthlife South Africa/Bali Power Plant case
KEY FINDINGS
<table>
<thead>
<tr>
<th>Region</th>
<th>Number of cases</th>
<th>Number of cases with climate change “at the periphery”</th>
<th>Percentage of “peripheral” cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asia</td>
<td>18</td>
<td>11</td>
<td>61%</td>
</tr>
<tr>
<td>Africa</td>
<td>5</td>
<td>1</td>
<td>20%</td>
</tr>
<tr>
<td>Latin America</td>
<td>9</td>
<td>6</td>
<td>67%</td>
</tr>
<tr>
<td>Pacific Islands</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>32</strong></td>
<td><strong>18</strong></td>
<td><strong>56%</strong></td>
</tr>
</tbody>
</table>

**Cases where CC is at the periphery**

**Advancing Right-based Arguments**
KEY FEATURES OF GLOBAL SOUTH CASES

- Prevalence of rights-based claims
- Prevalence for enforcement of existing commitments and environmental laws
  - Higher rates of success
- Stealthy or indirect climate litigation
  - Less politically potent
  - Tailoring of cases to most pressing policy issue
- Expected to find more adaptation/climate damage focus but most cases are mitigation cases
- Don’t expect features to be present in all G.S. cases – not a monolithic group
POTENTIAL GROWTH AREAS

Cases using EIA avenues (currently only 5/32)
- Could develop further to mirror US/Australian cases

Rights-based litigation in Latin America (currently 2/9 cases)
- Constitutional rights protections and potential S-S cooperation

Paris Agreement/NDC reference (3/32)
- Potential growth as countries implement PA

Public trust doctrine (5/32)
- Role of Our Children’s Trust
- Receptive context in some G.S. jurisdictions
CONTRIBUTION OF GLOBAL SOUTH CLIMATE LITIGATION TO TRANSNATIONAL GOVERNANCE

• Justice versus science-based framing
• Mainstreaming climate change: Global South cases tend to consider mitigation and adaptation issues within broader environmental and sustainable development context / climate change embedded in wider disputes concerning planning and land use, natural resource management etc
• Openness to shaping emerging Global South climate case law as part of transnational dialogue