Virtual Book Launch: Climate Change Litigation in the Asia Pacific
28 October 2020

First row from left: Douglas A. Kysar (Yale), Jolene Lin (APCEL) & Sejong Youn (SFOC)
Second row from left: Arpitha Kodiveri (European University Institute), Jacqueline Peel (Melbourne Law School) & Zhao Yue (Sichuan University)

High-profile cases such as *Urgenda* and the Irish Climate Case, the electrifying momentum of the School Strike for Climate movement, and Greta Thunberg's accompanying suit against five of the biggest carbon polluters in the world are some developments that have put climate litigation in the spotlight. Through strategic action against carbon majors and governments, litigants have sought to hold both firms and States to account to their climate commitments.

However, one could be forgiven for thinking this was an exclusively Western phenomenon – little media and academic attention has been paid to jurisdictions outside of the US, UK and Europe. *Climate Change Litigation in the Asia Pacific* addresses this gap. Borne out of a research workshop in 2018, this initial collaboration between the Asia Pacific Centre for Environmental Law (APCEL) and Yale Law School developed into an edited volume of 14 richly researched chapters. The book is the first scholarly examination of climate change litigation in the Asia Pacific region: an intellectual tour de force of more than 10 jurisdictions' approaches to climate change litigation and governance. On Thursday, Jolene Lin and Doug Kysar moderated a lively discussion that provided a status update on the state of climate litigation since the 2018 research workshop.

Professor Jacqueline Peel (Melbourne Law School) started the ball rolling with an examination of the trends in climate change litigation in Australia. Australia is considered a 'mature' jurisdiction: it has an established jurisprudence on climate litigation, with first cases on this point dating back to the 1990s. However, Australia hasn't had a 'landslide case' comparable to *Massachusetts v. EPA* or *Urgenda*, for the simple reason that cases are brought before specialised environmental courts that operate at a state level. Nevertheless, litigious activity has not been insubstantial, with the emergence of 'next generation' cases focusing more on governmental and corporate accountability. Plaintiffs are testing out different legal avenues such as corporate law, consumer law, and torts; they are seeking systemic impact (as opposed to halting discrete infrastructure projects), and their arguments feature intergenerational narratives, with youths bringing these suits. Professor Peel observes early signs of success: cases like *Abrahams v CBA* and *McVeigh v Retail Employees Superannuation Trust* demonstrate the potency of litigation to change corporate conduct.

We then turned to China, where Associate Professor Zhao Yue from Sichuan University shared her view. Whereas most accounts of climate change litigation feature administrative actions against the government and statutory or rights-based litigation, in China, the climate change element is more incidental: it arises in actions related to contractual disputes, and plaintiffs are motivated not by the climate impacts of their litigation, but to secure their contractual rights. However, there has been a distinct judicial tendency towards rulings that favour low-carbon policies. Courts see their role as the handmaidens of government, and in extension, to promote governmental policies of mitigation and adaptation. This bodes well for litigants, considering President Xi's momentous commitment to reaching carbon neutrality before 2060. Responding to a question from the audience, Dr. Yue predicts that the judiciary will play an increasingly central role as a forum for stakeholders to push for change: in addition to environmental non-governmental organisations (ENGOs), public prosecutors and local governments have begun bringing ecological damage claims against corporations.

Sejong Youn brought a valuable perspective as a practitioner in South Korean law. Mr. Youn shared his involvement in a first-of-its-kind lawsuit by Korean youths against the government, the Constitutional Complaint Case No. 2020HunMa389. His organization, Solutions for Our Climate (SFOC), is assisting nineteen Youth4Climate Action Activists bring a constitutional claim against National Assembly and the President of South Korea. They allege three claims – that the GHG reduction targets as defined by the Presidential Decree of the Green Growth Act was unconstitutional; that the Korean government's failure to meet its 2020 target was unconstitutional; that their Green Growth Act was unconstitutional – and seek a declaration of unconstitutionality, thereby obliging the executive and legislature to rectify their targets. Mr. Youn shared how their case hopes to build upon the international jurisprudence on climate change. For instance, SFOC will use scientific evidence from the IPCC, which the courts in *Urgenda* and the Irish Climate Case accepted as undisputable facts; they also hope to argue that a country cannot escape its fair share of responsibility by pointing the finger to other nations who fall short in their climate ambition, a point affirmed by the Dutch Supreme Court in *Urgenda.* While President Moon's formal commitment to net zero by 2050 has been recent cause for celebration, Mr. Youn emphasized that declarations may not translate into national policy and that continued pressure from litigation may be needed.

Finally, Arpitha Kodiveri from the European University Institute presented a nuanced view from the Indian courts, highlighting two internal tensions within climate litigation and governance. First, while Indian courts have been fertile spaces for progressive rights-based decisions to force governmental action, they are greatly hindered by a lack of proper enforcement of their judgments. Second, though the courts have enthusiastically applied international environmental law doctrines in its jurisprudence, international law has its own perils, and may end up marginalizing the very communities it was designed to protect. Ms. Kodiveri also noted that many environmental law cases in India deal with broader climate change concerns, but do not do so explicitly: the *Ridhima Pandey* case is a rare one where the litigants openly mention climate change. Responding to a question from Professor Lavanya Rajamani, Ms. Kodiveri expressed her hope that India's environmental law jurisprudence would take on a new urgency with the inclusion of climate change issues. However, the hollowing out of the National Green Tribunal, the proposed changes to India's Environmental Impact Assessment laws and India's narrowing spaces of dissent have cast a shadow over the environmental law arena.

Climate litigation is unfolding as a regulatory pathway for decarbonisation in the Asia Pacific. The dynamics of this vary by country – in mature jurisdictions like Australia, innovative legal claims are being trialled in courts; in places like South Korea where climate litigation is just

emerging, plaintiffs must carry the flag in pushing for their first win. Nevertheless, it is a space to keep watching: what the world's most populous region does by way of climate action will matter greatly for the globe.

Watch the Launch on APCEL's Youtube channel at https://youtu.be/X8N50R1VbAA . For more information about the book, visit Climate Change Litigation in the Asia Pacific at https://doi.org/10.1017/9781108777810.

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