

BOOK REVIEW

Climate Justice: Case Studies in Global and Regional Governance Challenges (Environmental Law Institute Washington DC 2016) ISBN 978-1-58576-181-4

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Abstract

Climate Justice: Case Studies in Global and Regional Governance Challenges edited by Randall S Abate, addresses a diverse set of topics related to climate justice, explores the meaning and challenges of this critical issue, and provides factual and legal arguments to explain why fairness should guide the creation of international and national climate-related policy and responses.

Keywords

Climate justice; climate change; mitigation and adaptation; climate justice litigation

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Review

Climate change is one of the most complex and challenging issues facing the world today. As a global issue it affects everyone, everywhere. However, the impacts of climate change disproportionately affect the poorest, most marginalised and most vulnerable people, who are also the least responsible for causing the problem and the least able to adapt to it. For them, climate change is simply a question of justice.

There is an urgency to the need to promote climate justice in order to¹

[address] the disproportionate burden of climate change impacts on poor and marginalized communities and [...] to promote more equitable allocation of the burdens of these impacts at the local, national and global levels through proactive regulatory initiatives and reactive judicial remedies that draw on international human rights and domestic environmental justice theories.

After all, "effective long-term solutions to climate change will not be found or implemented if they are not ethical and just".²

As the critical issue of climate justice has been gaining momentum and relevance as an important concern of the global climate lobby,³ the challenge is now to turn rhetoric into action. Achieving "climate justice" requires effective action on an interdisciplinary and global [regional and local] scale"⁴ and, therefore, the development of strategies and solutions to achieve it constitutes an urgent need for the benefit of all (human and non-human beings). *Climate Justice: Case Studies in Global and Regional Governance Challenges*, edited by Randall S Abate, provides important theoretical insights into the emerging field of climate justice and explores a range of international, regional and national innovative legal and policy responses in seeking to promote it for the most vulnerable populations.

Presented in a case study format, the book addresses a diverse set of topics related to climate justice, explores the meaning and challenges of this critical issue, and intends to provide factual and legal arguments to explain

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¹ Abate *Climate Justice* xxxiii.

² Harris "Ethics and Justice in Climate Change" xv

³ See the Preamble of the *Paris Agreement* (2015).

⁴ International Bar Association *Achieving Justice and Human Rights* 36.

why fairness should guide the creation of international and national climate-related policy and responses.

As climate justice "involves multiple legal parameters and regulatory strategies",⁵ the book's twenty-four chapters, which are divided into six parts, reference different models of how to address the issue. Thus, while some of the chapters focus on the substantive and procedural dimensions of climate justice, others illustrate how climate justice can be achieved through mitigation and adaptation policies, programmes and measures at a global scale or locally.

Following an introduction, the first part of the book focuses on global governance challenges and viewpoints of climate justice. In Chapter 1, Olawuyi stresses the potential on a global scale of a substantive rights-based approach to address climate injustices and human rights violations when fighting against climate change. Similarly, in Chapter 6, Burns expresses the opinion that the human rights-based approach is an important safeguard to address systematic and structural injustices that would arise during the implementation of emerging potential mitigation responses, such as Bioenergy with Carbon Capture and Storage (BECCS), a climate geoengineering option that, despite its potential to mitigate climate change by removing carbon dioxide from the atmosphere, has potential human rights implications when implemented on a large scale. Burns' claim is especially relevant in the new era of global climate action under the *Paris Agreement* which, as Ferreira notes in Chapter 2, includes a new, pragmatic and softer differentiation model that has departed from the strong focus on justice to one on climate action, but without creating different levels of legally binding mitigation obligations. In any case, achieving the goal of the *Paris Agreement* to keep global warming below 2 degrees Celsius and to pursue efforts to limit it to 1.5 degrees Celsius requires a key facilitator: finance. Ferrey in Chapter 3 and Azad and Azad in Chapter 4 show how financial and technological support from developed countries to developing countries to enhance climate-responsible energy practices and adaptation policies, programmes and measures is part of a combined effort to achieve climate justice, especially for the most vulnerable populations. Azad and Azad also emphasise the importance of the allocation and administration of climate funds in order to benefit the most affected and vulnerable people and have a substantial impact on climate justice. In addition, Balzac explains how aligning finance with the *Paris Agreement* in order to promote climate justice also requires moving investment out of sectors and activities that drive

⁵ Abate *Climate Justice* xxxiv.

climate change. Thus, she examines the case of the Fossil Fuel Divestment Global Movement, which "has quickly become the fastest growing divestment corporate campaign in history".⁶

From the aforementioned international perspective, the book moves forward and analyses legal responses to achieve climate justice in several regions of the world.

The second part then focusses on North American perspectives. In Chapters 7 and 10, Rizzardi and Kornfeld showcase how climate justice requires urgent climate action. According to Rizzardi, despite the continuing denial and delay of climate change considerations, communities of coastal cities and south Florida, in particular, need urgent projects and laws that will help to confront and mitigate the risk of a rise in the sea level. After all, as the author notes, "inaction [...] is injustice by default".⁷ Kornfeld, for his part, describes the threats that American and Canadian indigenous people face as a consequence of climate change, especially with reference to their water resources, and argues that human rights legal instruments and policy action are needed in order to help secure justice for them. The procedural dimension of climate justice is highlighted in Chapters 8 and 9. While Roche examines how communities in the Gulf of Mexico region are victims of a history of climate injustice due to the economic disparities that prevail in the region, the disproportional allocation of burdens and benefits from resource extraction in the region, and the lack of coastal resilience (which increases their vulnerability), Jefferies places a focus on the situation of indigenous people in Alberta (Canada) whose rights are impacted by both climate change and the governmental decision to develop oil sands extraction. Both authors argue that the promotion of a democratic approach that fosters the participation in development and climate decision-making is needed in order to enhance climate justice for vulnerable communities in both countries.

The third part of the book is dedicated to illustrating the need for a climate justice framework in addressing climate change in the Pacific Island Nations. Atapattu and Mulalap, in Chapters 11 and 12 respectively, describe how climate change is affecting the natural environment, territories and culture of many people in small island nations, especially indigenous people whose practices, customs and traditions are at risk of not being transmitted to their future generations. While Atapattu highlights the importance and urgency of international cooperation to facilitate the implementation of

⁶ Balzac "Corporate Responsibility" 129.

⁷ Rizzardi "Flee the Rising Sea?" 203.

adaptation strategies in these nations, Mulalap maintains that communities can use international law instruments and institutions to hold the international community accountable for its contributions to climate change – especially those of major contributors – and press for action on climate change in order to reduce the greenhouse gas emissions and achieve climate justice for the present and future generations. From another point of view, Souther and Giménez-Candela, in Chapter 13, claim that as the "protection of nonhuman island inhabitants has been largely overlooked"⁸ in climate action, there is also a need for an animal-related climate justice agenda, especially for adaptation actions, in order to enhance animal islanders' resilience, reduce their vulnerability to the impacts of climate change and, ultimately, achieve climate justice for them.

In Parts Four and Five the book presents five case studies in countries of Africa, the Middle East and South Asia, where economic, political, social and ideological factors perpetuate climate injustices and the call to foster climate justice is then echoed. In Chapter 14, Kibugi explains how the new climate change legislation in Kenya adopts a mainstreaming approach as a legal concept to guide climate action and responses into various sectors of public policy, while promoting sustainable development. Within this framework he notes that the implementation of sustainable spatial planning and development control tools can enhance adaptation strategies to reduce vulnerability to the adverse impacts of climate change. In Chapter 15, Das warns that while climate change impacts can exacerbate the fragility of countries or regions, such as Syria or South Sudan, and contribute to the conflict, the lack of the capacity to adapt to climate change can also create climate-conflict situations. As fragile states have difficulties in accessing some of the available adaptation funds due to existing limitations and gaps, she notes that the applicability of climate justice considerations to climate change-related armed conflict could reduce vulnerability and enhance resilience to climate change. The incorporation of gender considerations in climate justice is also relevant in countries like Bangladesh where, according to Hossain and Punam, traditional sociocultural and religious structures limit the protection and promotion of women's rights and contribute to increase their vulnerability to climate change. In Chapter 16, Ahuja examines how ecosystems and communities from the Indian Himalayan Regions (IHR) bear disproportionate burdens of climate change. As policy incoherence and a lack of the capacity to address the cross-cutting issue of climate change in this region are "a major source of climate injustice

⁸ Souther and Giménez-Candela "Climate Justice" 386.

that mountain communities encounter",⁹ the author asserts that an integrated law and policy adaptation governance framework that considers traditional knowledge is needed to address threats from climate change in the IHR. In Chapter 17, Ahmad and Bilal also highlight the importance of climate adaptation measures that include environmental planning, improved water management and energy infrastructures and the promotion of renewable energy, in order to reduce the social and environmental cost of large dams, meet the water and energy needs of poor and marginalised people, and enhance climate justice in Pakistan.

The final part of the book deals with a critical part of the climate justice debate: climate litigation. As Prof Abate notes, "much of the focus of recent climate justice has been in response to dissatisfaction with the adequacy of proactive responses or, in some instances, the failure to implement any form of proactive responses".¹⁰ Thus, the sixth part of the book offers a contribution to the literature on climate change litigation by exploring some of the most prominent lawsuits that have arisen in different countries. In Chapter 19, Nwapi explains how the lack of international consensus to address climate change and the frustration of countries and people about governmental inaction gave way to the new "age of climate litigation". While in Chapter 20, Abate looks at the evolution of the Atmospheric Trust Litigation, based on the public trust doctrine, as a tool to ensure climate change regulation and promote climate justice in United States and abroad, Huang and Tigre in Chapter 21, analyse the emblematic victory of a non-governmental organisation and almost 900 Dutch citizens who won a lawsuit in 2015 – the first in the world in which human rights were used as a legal basis to sustain its arguments – against the Dutch government and forced it to adopt more stringent climate policies to protect citizens against climate change: *the Urgenda case*. For her part, in Chapter 22, Boom examines the first climate change case to consider the relationship between federal approvals of fossil fuel developments in Australia and the country's obligations under the World Heritage Convention (WHC). This case arose from a complaint lodged against the Australian government for approving a coal mine project without considering its contribution to climate change and the consequent impacts on the Great Barrier Reef World Heritage Site. Despite the fact that the case was dismissed, Boom argues that the WHC "provides an important tool in Australia [and other jurisdictions] for efforts to promote climate justice for future generations".¹¹ In the last two chapters of

⁹ Ahuja "Taking Climate Justice to the Himalayan Heights" 437.

¹⁰ Abate *Climate Justice* xxxv.

¹¹ Boom "Climate Justice for Future Generations" 621.

this section, de la Rosa Jaimes and Péloffy highlight the use of regional and national human rights instruments and bodies to support arguments in climate litigation that seek to promote climate action and, therefore, to protect the rights of indigenous people who are at the front line of climate change due to their extreme vulnerability. The creative litigation strategies explored in the abovementioned chapters show how individuals and civil society in different parts of the world are organising and joining efforts to use climate justice litigation as a mechanism to advance or compel climate action.

In conclusion, the edited volume is an important and timely contribution to the growing literature in the field of climate justice and constitutes a valuable tool for those who intend to teach, research, study or advocate climate justice issues. While exploring the topic from an innovative perspective and capturing some of the most contentious issues in the climate justice debate, the book is a lively and thoroughly good read that attracts the attention of the reader through arguments that have important practical implications and could be replicated elsewhere. While it needs to be praised for its ambition to bring together a multidisciplinary and highly qualified group of scholars and practitioners from developed and developing countries, who address different topics and provide solid and significant arguments about the urgent need to achieve climate justice in many regions, it can be questioned on the lack of attention it pays to perspectives of legal and policy responses to promote climate justice in Africa and Latin America, where climate injustice is most severe. Nevertheless, the wide range of the case studies addressed in the book provides a foundation for future research in other contexts.

Bibliography

Literature

Abate Climate Justice

Abate RS (ed) *Climate Justice: Case Studies in Global and Regional Governance Challenges* (Environmental Law Institute Washington DC 2016)

Ahuja "Taking Climate Justice to the Himalayan Heights"

Ahuja N "Taking Climate Justice to the Himalayan Heights: A Proposed Adaptive Mountain Governance Framework to Address Climate Change Impacts in the Indian Himalayan Region" in Abate RS (ed) *Climate Justice: Case Studies in Global and Regional Governance Challenges* (Environmental Law Institute Washington DC 2016) 435-470

Balzac "Corporate Responsibility"

Balzac JM "Corporate Responsibility: Promoting Climate Justice through the Divestment of Fossil Fuels and Socially Responsible Investment" in Abate RS (ed) *Climate Justice: Case Studies in Global and Regional Governance Challenges* (Environmental Law Institute Washington DC 2016) 125-148

Boom "Climate Justice for Future Generations"

Boom K "Climate Justice for Future Generations: A Case Study in the Great Barrier Reef World Heritage Site of Australia" in Abate RS (ed) *Climate Justice: Case Studies in Global and Regional Governance Challenges* (Environmental Law Institute Washington DC 2016) 597-622

Harris "Ethics and Justice in Climate Change"

Harris PG "Ethics and Justice in Climate Change: An introduction" in Harris PG (ed) *Ethics, Environmental Justice and Climate Change* (Edward Elgar Cheltenham 2016) xiii-xxvi

International Bar Association *Achieving Justice and Human Rights*

International Bar Association *Achieving Justice and Human Rights in an Era of Climate Disruption* (International Bar Association London 2014)

Rizzardi "Flee the Rising Sea?"

Rizzardi KW "Flee the Rising Sea? South Florida's Choice of Leadership or Litigation" in Abate RS (ed) *Climate Justice: Case Studies in Global and Regional Governance Challenges* (Environmental Law Institute Washington DC 2016) 173-204

Souther and Giménez-Candela "Climate Justice"

Souther CE and Giménez-Candela T "Climate Justice for Human and Nonhuman Islanders: Domestic Duties, Regional Responsibilities, and International Interventions" in Abate RS (ed) *Climate Justice: Case Studies in Global and Regional Governance Challenges* (Environmental Law Institute Washington DC 2016) 355-388

International instruments

Paris Agreement (2015)