

THE CLIMATE CHANGE GAP: INEQUALITIES, NARRATIVES, AND INTERNATIONAL LAW

This panel was convened at 10:30 a.m. on Thursday, April 7, 2022, by its moderator, Daniel Bodansky of Arizona State University College of Law, who introduced the panelists: Lisa Benjamin of Lewis & Clark Law School; Gabriela Eslava Bejarano, an environmental lawyer from Colombia; and Krishnendu Mukherjee of Doughty Street Chambers.

INTRODUCTORY REMARKS BY DANIEL BODANSKY

doi:10.1017/amp.2023.27

Welcome everyone, to this session on “The Climate Change Gap: Inequalities, Narratives, and International Law.” I am Dan Bodansky, and I am going to be moderating our panel today.

Climate change is a multiplier of inequalities. It increases poverty, hunger, and gender inequality and is a challenge for intergenerational justice. In line with this meeting’s focus on the role and experiences of individuals, our session today is going to be a little different from the typical ASIL panel. We are going to start with two testimonials, one from Barrister Krishnendu Mukherjee on his work in the Sundarbans Delta, between West Bengal in India and Bangladesh, and the other testimony from Gabriela Eslava, who led the first climate change and future generations lawsuit in Latin America that resulted in the recognition of the Amazon Rainforest as a subject of rights. The panel also includes Lisa Benjamin, who unfortunately cannot be here in person today and is joining us remotely. She will be discussing how these lawyers’ approaches and experiences relate to the UN Framework Convention on Climate Change and vice versa.

Climate change is often portrayed as a future problem, but the most recent Intergovernmental Panel on Climate Change (IPCC) report concluded that it is unequivocal that climate change has already disrupted human and natural ecosystems. It further concluded that the prospects for climate-resilient development are increasingly unlikely if we do not rapidly reduce greenhouse gas emissions. It is essentially now or never in terms of reducing emissions to try to prevent dangerous climate change.

Much of the focus of international lawyers has been on the UN negotiations on climate change, which have led to three international agreements and scores of important decisions, including most recently the decisions coming out of the Glasgow conference held last November. But, at the same time, there has been a huge amount of grassroots efforts, field work at the national and subnational level, working with local communities, and bringing lawsuits in national courts. The question for our panel is how these two processes relate to one another—how climate change is being experienced on the ground by individuals, how these experiences might help inform the international negotiating process, and how the international negotiating process in turn is relevant to the experience of individuals working at the local level.

First, we will hear a taped testimonial from Krishnendu Mukherjee. Krishnendu is an Indian advocate and barrister at Doughty Street Chambers in London. He participates in a project with a legal clinic of King’s College London, Jadavpur University, and West Bengal National University, which looks at the impact of climate change on traditional communities in the

Sundarbans Delta at the border between India and Bangladesh. He will be describing some of what he has learned from that project in his testimonial this morning.

Then we will be hearing a testimonial from Gabriela Eslava on the climate change case in Colombia that she helped litigate. Gabriela holds an MPA in Development Practice from Columbia University. She worked as a researcher at the Center for the Study of Law, Justice, and Society (*Dejusticia*) in Bogotá, where she led the first climate change and future generations lawsuit that I just mentioned. She is currently a sustainability consultant at a multilateral organization working on issues that lie at the intersection of climate change, biodiversity, and open data.

Following the two testimonials by Krishnendu and Gabriela, the panel will have a brief discussion on the issues that the testimonials raise. Unfortunately, Krishnendu cannot be with us for the discussion today. We are just going to be hearing from him on video, but we are fortunate to be joined by Lisa Benjamin, who is an assistant professor at Lewis & Clark Law School. Lisa received her PhD from the University of Leicester. She is a member of the Facilitative Branch of the Kyoto Protocol Compliance Committee and was a legal advisor to the Bahamas during the Paris Agreement negotiations.

I am double hatted today. I am moderating and also a panelist. I teach at the Sandra O'Connor College of Law at Arizona State University, and I have been involved in the climate change negotiations now for more than three decades and coauthored *International Climate Change Law* with Lavanya Rajamani and Jutta Brunnée.

With that, we are going to start with Krishnendu Mukherjee's remarks.

REMARKS BY KRISHNENDU MUKHERJEE

doi:10.1017/amp.2023.28

The Sundarbans is commonly known as the delta area which lies between West Bengal in India and Bangladesh, and it is not only famous for the deltas, which are there, but also for the largest mangrove forest in the world. Indeed, the word "Sundarbans" comes from the Sundar tree for conservation. It is a very interesting area in terms of biodiversity but also a very important carbon sink. I found out the other day that mangroves are, for instance, a much better sink than even rainforests.

The climate issue in the Sundarbans is a number of issues really. There has been this effect of islands that have been eroded and reformed over decades. It has been very well chronicled as a national phenomenon. Sea level rise caused by anthropogenic global warming has led to an acceleration of this effect of erosion of islands in that area. You have island erosion. You have flooding. You have saline water intrusion, which is destroying what was once a very fertile area into a much less fertile area, and of course, we are getting increasing cyclonic behavior.

What has happened over the past few decades is that because of saline intrusion, crops are failing. It is no longer easy to make a living. To sustain themselves, people are migrating not only to Kolkata, but also other parts of India. People are migrating from the Bangladesh side of the Sundarbans into the Indian side the Sundarbans. They are often working in exploitative jobs where they are not paid sufficiently and even into areas such as sex trafficking. Sex trafficking has increased in that area because, as we know, if you are not paid enough, you get into a cycle of debt, and if you get into a cycle of debt, then it ends up you fall victim to people who can exploit you. We have seen an increase in modern slavery—people working for poor wages in things like prawn farms—and we have also heard of the increase in things like child marriages. Again, these are a direct result of people getting into debt. What is very sad about their situation is they have absolutely no responsibility for global warming at all, and when I went there in 2008 for the first time, they did not even have electricity. Global warming is not just a question of carbon emissions.