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International human rights bodies and climate litigation: Don't look up?

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Abstract

This article systematically analyses complaints concerning climate change before international human rights bodies. Since 2005, these bodies have been increasingly asked to hear complaints related to climate change but have granted claims of climate applicants only on one occasion. This article therefore considers the inherent limitations of international human rights bodies for the pursuit of climate objectives, as well as avenues to overcome the hurdles facing climate applicants. Based on the evidence we examined, we conclude making some predictions on the role that international human rights bodies might play in future climate litigation.

1 | INTRODUCTION

Climate change is set to affect the enjoyment of virtually all human rights.[1] At the same time, climate change response measures—especially those constraining access to and use of natural resources—may themselves hinder the enjoyment of several human rights.[2] The preamble of the Paris Agreement recognizes this state of affairs, specifying that parties 'should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights'.[3]

International human rights treaty bodies and the mandate holders of special procedures created under the auspices of the United Nations (UN) have progressively articulated the implications of States' human rights obligations concerning climate change.[4] Most crucially for the present purposes, international human rights bodies have increasingly been asked to hear complaints concerning climate change and its impacts.[5] This phenomenon is part of a consolidated trend, whereby international human rights bodies have granted remedies to those suffering from human rights violations resulting from environmental harms,[6] based on the law of State responsibility.[7] So, although human rights treaties are not designed to protect the environment—and only some expressly guarantee a right to a safe, clean, healthy and sustainable environment—in practice, the unique supranational remedies they provide are commonly used as a means to bridge the compliance and accountability gaps in environmental governance.[8] Even when international human rights bodies do not have the power to award remedies, their practice has influenced domestic courts, contributing to setting

[1]See Office of the High Commissioner on Human Rights (OHCHR) 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' UN Doc A/HRC/31/52 (1 February 2016) (A/HRC/31/52); OHCHR 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' and (1 October 2019) A/74/161; and OHCHR 'Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change' UN Doc A/77/226 (26 July 2022) (A/77/226).

[2]A/HRC/31/52 (n 1) paras 50–68; A/77/226 (n 1) paras 16–25.

[3]Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 107 preamble.

[4]A compilation of activities undertaken by UN human rights bodies is available at <https://www.ohchr.org/en/climate-change/human-rights-mechanisms-addressing-climate-change>.

[5]See the review of practice in R Luporini and A Kodiveri, 'The Increasing Role of Human Rights Bodies in Climate Litigation' (British Academy 2021); Center for International Environmental Law (CIEL), 'States' Human Rights Obligations in the Context of Climate Change: Guidance Provided by the UN Human Rights Treaty Bodies' (CIEL 2022).

[6]See the review of practice in OHCHR 'Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' A/HRC/25/53 (29 December 2013). See also DK Anton and D Shelton, *Environmental Protection and Human Rights* (Cambridge University Press 2012); and J Gilbert, *Natural Resources and Human Rights: An Appraisal* (Oxford University Press 2018).

[7]D Shelton, *Remedies in International Human Rights Law* (Oxford University Press 2015) 2.

[8]See OHCHR (n 5) and the collection of practice in Inter-American Commission on Human Rights, 'Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System' (2010) 35 American Indian Law Review 263; Council of Europe, 'Manual on Human Rights and the Environment' (2022); United Nations Environment Programme (UNEP), 'Environmental Rule of Law: First Global Report' (UNEP 2019) Chapter 4.

the contours of States' obligations in this area.[9] In recent years, this trend has started to become apparent also with regard to climate change. Since 2005, international human rights bodies have increasingly heard complaints related to climate change. So far, however, claims of climate applicants have been granted only on one occasion. This is in spite of the fact that international climate litigation has largely—though not exclusively—taken place before international human rights bodies.

This article provides the first systematic scholarly analysis of complaints concerning climate change filed with international human rights bodies. The objective is to detect the specific role played by these bodies in climate litigation. Our investigation relies on analytical categories that are widely deployed in the literature on climate litigation to determine who has brought cases, against whom and where, when and with what outcomes.[10] Recent works have applied these analytical categories, with a view to understanding the role played by human rights law and remedies in climate litigation.[11] We therefore build and expand on this literature, with the aim to identify the specificities of complaints brought before international human rights bodies *vis-à-vis* other climate litigation.

Section 2 defines the scope of our investigation, identifying the data we analysed and the main trends in climate complaints before international human rights bodies. Section 3 considers the stumbling blocks that have hindered applicants' perspectives so far and how they may be overcome. Section 4 concludes, taking stock of and making some predictions on the role that international human rights bodies might play in future climate litigation.

2 | MAIN TRENDS IN CLIMATE COMPLAINTS BEFORE INTERNATIONAL HUMAN RIGHTS BODIES

We analysed the practice collected in the two most comprehensive databases of lawsuits raising questions of law or fact regarding climate change[12]—namely those curated by the Sabin Center for Climate Change Law at Colombia Law School[13] and by the Grantham Research Institute on Climate Change and the Environment at the London School of Economics (LSE).[14] Admittedly, the way these databases aggregate data is problematic, as both mix lawsuits where climate concerns are 'central'—that is that focus specifically on climate change law and policy—with lawsuits where climate change concerns are merely 'peripheral'—that is that mention climate change concerns but largely focus on other matters. Furthermore, these databases mix complaints before judicial, quasi-judicial bodies and non-judicial bodies. Despite these limitations, the data reported in these databases is an essential starting point to analyse the phenomenon of climate litigation in its various manifestations. This section considers: the type of complaints made before international human rights bodies, their geographical and chronological distribution, the type of actors and defendants, the type of climate action sought and the human rights obligations invoked by the applicants.

2.1 | The type of complaint

As of 30 September 2022, the Grantham Research Institute and Sabin Center databases reported 18 complaints before judicial, quasi-judicial and non-judicial international human rights bodies, in which climate change played a central role (see Appendix A). We excluded from the scope of our analysis the complaints where climate change was merely peripheral.[15]

Ten complaints listed in Appendix A were filed with a *judicial* body—namely the European Court of Human Rights (ECtHR)[16]; five were lodged with a *quasi-judicial* body—two with the UN Human Rights Committee (HRComm),[17] one with the Committee on the Rights of the Child (CRC)[18] and two with the Inter-American

[10]CJ Hilson, 'Climate Change Litigation: An Explanatory Approach (or Bringing Grievance Back In)' in F Fracchia and M Occhiena (eds), *Climate change: La risposta del diritto* (Editoriale Scientifica 2010) 421; NS Ghaleigh, '"Six Honest Serving-Men": Climate Change Litigation as Legal Mobilization and the Utility of Typologies' (2010) 1 Climate Law 31; D Markell and JB Ruhl, 'An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?' (2012) 64 Florida Law Review 15; J Setzer and M Bangalore, 'Regulating Climate Change in the Courts' in A Averchenkova, S Fankhauser and M Nachmany (eds), *Trends in Climate Change Legislation* (Edward Elgar 2017) 175.

[11]See, most saliently, J Peel and HM Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7 Transnational Environmental Law 37; A Savaresi and J Auz, 'Climate Change Litigation and Human Rights: Pushing the Boundaries' (2019) 9 Climate Law 244; A Savaresi and J Setzer, 'Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers' (2022) 13 Journal of Human Rights and the Environment 7; and C Rodríguez-Garavito (ed), *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press 2022).

[12]This definition builds on that of climate change litigation elaborated in Markell and Ruhl (n 10). This definition is commonly used in the literature on climate litigation; see, for example, J Setzer and C Higham, 'Global Trends in Climate Change Litigation: 2022 Snapshot' (Grantham Research Institute on Climate Change and the Environment, LSE 2022).

[13]See Sabin Center for Climate Change Law, 'Climate Change Litigation Databases' <http://climatecasechart.com/>.

[14]See Grantham Research Institute on Climate Change and the Environment, LSE, 'Climate Change Laws of the World' <http://www.climate-laws.org>.

[15]Peripheral climate complaints before international human rights bodies listed in the databases include: *Marangopoulos Foundation for Human Rights v Greece* Comm. No. 30/2005 (European Committee of Social Rights, 16 January 2008); IACtHR, *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, Advisory Opinion OC-23/17, Inter-American Court of Human Rights Series A No 23 (15 November 2017); *Petition Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti* (IACommHR, 4 February 2021) (Advisory Opinion OC-23/17); *Pavlov and others v Russia* App No 31612/09 (ECtHR, 11 October 2022).

[16]*Duarte Agostinho* et al *v Portugal* et al App No 39371/20 (ECtHR, relinquished in favour of the Grand Chamber 29 June 2022) (*Duarte Agostinho*); *Verein KlimaSeniorinnen Schweiz* et al *v Switzerland* App No 53600/20 (ECtHR, relinquished in favour of the Grand Chamber 26 April 2022) (*KlimaSeniorinnen*); *Müllner v Austria* (ECtHR, not communicated) (*Müllner*); *Greenpeace Nordic* et al *v Norway* App No 34068/21 (ECtHR, communicated 16 December 2021) (*Greenpeace Nordic*); *Carême v France* App No 7189/21 (ECtHR, relinquished in favour of the Grand Chamber 31 May 2022) (*Carême*); *Uricchio v Italy* et al App No 14165/21 (ECtHR, not communicated) (*Uricchio*); *De Conto v Italy* et al App No 14620/21 (ECtHR, not communicated) (*De Conto*); and *Soubeste and Others v Austria and 11 Other States* (ECtHR, not communicated) (*Soubeste*); *Plan B Earth and others v the United Kingdom*, (ECtHR, not communicated) (*Plan B*); *Humane Being v the United Kingdom* (ECtHR, not communicated) (*Humane Being*).

[17]*Teitiota v New Zealand*, Communication No 2728/2016 (*Teitiota*) and Human Rights Committee 'Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 3624/2019' UN Doc CCPR/C/127/D/2728/2016 (7 January 2020) (*Teitiota* decision); *Daniel Billy* et al *v Australia*, Communication No 3624/2019 (*Billy*) and Human Rights Committee 'Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 3624/2019' UN Doc CCPR/C/135/D/3624/2019 (22 September 2022) (*Billy* decision).

[18]*Sacchi* et al *v Argentina* et al, Communication No 105/2019 (*Sacchi*) and Committee on the Rights of the Child 'Decision Adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Concerning Communication No. 104/2019' UN Doc CRC/C/88/D/104/2019 (11 November 2021) (*Sacchi* decision).

Commission on Human Rights (IACommHR)[19]; and three were lodged with *non-judicial* bodies—namely various Special Procedures of the Human Rights Council (HRC).[20]

International human rights bodies have established three main procedures to consider complaints over human rights violations: individual communications, State-to-State complaints and inquiries.

Individual communications can be brought before judicial, quasi-judicial or non-judicial bodies alike. As we explain in greater detail in Section 3, individual communications procedures typically require applicants to demonstrate that they are 'victims' of a human rights violation. Most international human treaty bodies are quasi-judicial in nature and are endowed with limited enforcement powers. Individual communications may be made only against State parties that have made a declaration accepting the competence of a given international human rights body.[21] Instead, non-judicial bodies may prompt State authorities to take action but do not have any enforcement powers. Only three judicial human rights bodies exist globally: the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHR) and the African Court of Human Rights. As the names suggest, these bodies are international tribunals, which are endowed with the unique prerogative to receive complaints from individuals and groups—as opposed to States only. As international tribunals, these bodies enjoy some enforcement powers and operate according to procedures that are judicial in nature. The ECtHR is the only court that is automatically empowered to scrutinize compliance for all State parties.[22] Instead, access to the African and Inter-American courts requires the ratification of a separate protocol or the issuing of an ad hoc declaration and only some States have made these.[23] International human rights tribunals may also issue advisory opinions concerning the interpretation of the provisions of the related treaties. Only recently, a specific request for an advisory opinion concerning climate change was filed with the IACtHR.[24]

Complaints concerning human rights violations can also be brought by means of *State-to-State complaints*. These complaint procedures, too, may be judicial or quasi-judicial in nature but can only be implemented under some human rights treaties and only under specific conditions.[25] As we have explained in greater detail elsewhere,[26] inter-State complaints provide some advantages *vis-à-vis* individual communications, as an applicant State does not have to claim to be a 'victim' or justify a special interest in the subject matter of the complaint.[27] Instead, inter-State complaints may cover broad allegations, concerning for example an administrative practice or 'the mere existence of a law which introduces, directs or authorises measures incompatible with the rights and freedoms guaranteed'.[28] However, even when inter-State complaints are possible, States rarely make use of them. To date, no inter-State complaint on climate change has been made, but the possibility to instigate one has been the subject of some scholarly speculation.[29]

Finally, some human rights bodies may initiate *inquiries* on their own initiative if they receive reliable information containing well-founded indications of serious or systematic human rights violations.[30] Inquiries may only be conducted with respect to States that have recognized the competence of the relevant body. Given the confidential nature of inquiries, it is not possible to exclude that some concerning climate change may be underway at the time of writing.

[19] *Petition Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States*, Petition No P-1413-05 (IACommHR, 16 November 2006) (*Inuit*); *Petition Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused by Emissions of Black Carbon by Canada* (IACommHR, 23 April 2013) (*Athabaskan*).

[20] *Rights of Indigenous Peoples in Addressing Climate-Forced Displacement*, AL USA 16/20 (15 January 2020); *Violations of Human Rights by Federation of Bosnia Herzegovina (BiH) and China due to Coal Fired plants in BiH*, AL BIH 2/2021 and AL CHN 2/2021 (17 March 2021); *Environmental Justice Australia v Australia* (25 October 2021).

[21] This requirement is provided for the following bodies: UN HRComm; Committee for the Elimination of Racial Discrimination; Committee against Torture; Committee for the Elimination of Discrimination against Women; Committee on the Rights of Persons with Disabilities; Committee on Enforced Disappearances; Committee on Economic, Social and Cultural Rights; and CRC. Five regional bodies may, under certain conditions, receive and consider individual complaints or communications from individuals: the European Committee of Social Rights; the African Commission on Human and People's Rights; the IACommHR; the Aarhus Convention Compliance Committee; and the Committee to Support Implementation and Compliance of the Escazú Agreement.

[22] *Convention* for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 *UNTS* 222 (ECHR) art 34.

[23] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 10 June 1988, entered into force 25 January 2004) <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-establishment-african-court-human-and>, with declarations to be made under art 34(6); American Convention on Human Rights (adopted on 22 November 1969, entered into force on 18 July 1978) 1144 UNTS 123, with declarations to recognize the jurisdiction of the Court to be made under art 62.

[24] At the time of writing, the request remains unreported. On the potential of such an opinion, see in particular D Bodansky, 'The Role of the International Court of Justice in Addressing Climate Change: Some Preliminary Reflections' (2017) 49 Arizona State Law Journal 659; A Savaresi, H van Asselt and K Kulovesi, 'Beyond COP26: Time for an Advisory Opinion on Climate Change?' (EJIL:Talk!, 17 December 2021); M Wewerinke and M Antoniadis, 'Vessel for Drowning Persons?: The Standard-Setting Potential of International Human Rights Litigation in Addressing Climate Displacement' (2022) 3 Yearbook of International Disaster Law Online 238; B Mayer, 'International Advisory Proceedings on Climate Change' (2022 fc) Michigan Journal of International Law.

[25] See, for example Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 art 21; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 art 74; International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3 art 32; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, (adopted 10 December 2008, entered into force 5 May 2013) 2922 UNTS (ICESCR Optional Protocol) art 10; Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (adopted 19 December 2011, entered into force 14 April 2014) 2983 UNTS (CRC Optional Protocol) art 12; ECHR (n 22) art 33.

[26] A Savaresi, 'Inter-State Climate Change Litigation: "Neither a Chimera nor a Panacea"' in I Alogna, C Bakker and JP Gaucci (eds), *Climate Change Litigation: Global Perspectives* (Brill/Nijhoff 2021) 366.

[27] D Harris et al, *Harris, O'Boyle, and Warbrick: Law of the European Convention on Human Rights* (4th edn, Oxford University Press 2018) 48.

[28] *Ireland v United Kingdom* App No 5310/71 (ECtHR, 10 September 2018).

[29] See, for example S Maljean-Dubois, 'Climate Change Litigation' in A Peters and R Wolfrum (eds), *Max Planck Encyclopedia of International Law* (Oxford University Press 2018); M Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law* (Hart 2019); M Wewerinke-Singh, 'Remedies for Human Rights Violations Caused by Climate Change' (2019) 9 Climate Law 224; Wewerinke and Antoniadis (n 24).

[30] See, for example ICESCR Optional Protocol (n 25) art 11; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (n 25) art 21; International Convention for the Protection of All Persons from Enforced Disappearance (n 25) art 33; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 6 October 1999, entered into force 22 December 2000) 2131 UNTS 83 art 8; Optional Protocol to the Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2518 UNTS 283 art 6; CRC Optional Protocol (n 25) art 13.

2.2 | Geographical and chronological distribution

The complaints listed in Appendix A have predominantly been brought by applicants based in the Global North.[31] Seven complaints are 'transnational' in nature,[32] with some or all applicants residing outside of the territory of the State where the alleged human rights violations have taken place.[33] The first complaint listed in Appendix A was filed in 2005,[34] but the vast majority was lodged after 2015. This geographical and chronological distribution aligns with general trends in climate litigation, with the number of cases rising significantly following the adoption of the Paris Agreement in 2015.[35] Most of the complaints listed in Appendix A remain pending at the time of writing and only one decision favourable to climate applicants has been recorded to date.[36]

2.3 | Applicants and defendants

The complaints listed in Annex I have been brought exclusively against States. This is no surprise, given that States are the only possible defendants before international human rights bodies. The applicants are largely individuals and groups, with nongovernmental organizations (NGOs) acting as applicants alongside individuals in eight instances.[37]

With only one exception, all complaints in Appendix A have been brought by representatives of what various international human rights bodies have described as particularly 'vulnerable groups'—such as children,[38] indigenous peoples,[39] persons with disabilities,[40] older persons[41] and women.[42] All applicants based their complaints on their alleged special vulnerability to climate impacts. Eight complaints were brought by children and young adults[43]; five include representatives of indigenous peoples.[44] The remainder of the complaints was brought by a group of elderly women,[45] an asylum seeker[46] and an individual suffering from a rare disease.[47]

International human rights bodies enable multiple applicants from different countries to simultaneously complain about human rights violations carried out by multiple States. At least in theory, this unique feature of international human rights bodies is an advantage for climate applicants, and so far, seven climate complaints have been brought against States other than the one where the applicants reside.[48]

2.4 | The type of climate action

Most climate complaints listed in Appendix A may be described as 'systemic mitigation litigation'—that is lawsuits challenging the overall efforts of the respondent States to reduce greenhouse gas emissions, as opposed to individual projects or measures.[49] This litigation is relatively frequent before national courts, especially in the Global North.[50] A smaller number of complaints listed in Appendix A challenges specific projects and activities, such as oil and gas exploration, coal-fired power plants and factory farming.[51]

Adaptation is explicitly mentioned in six complaints but never as the only type of climate action sought.[52] For example, some applicants have demanded that defendant States implement adaptation plans alongside mitigation activities.[53] Others have asked that States be ordered to commit financial resources to emergency measures and long-term adaptation while, at the same time, reducing emissions.[54] Only in three complaints have applicants raised specific grievances concerning climate change-induced displacement.[55]

All complaints listed in Appendix A invariably request human rights bodies to declare a violation of State obligations. Most ask that States be ordered to adopt measures to reduce emissions and/or to adapt to climate change. Some, however, ask for remedies that are specific to the applicant personally or to a group. For example, in *Rights of Indigenous Peoples in Addressing Climate-Forced Displacement*, the applicants asked for the recognition of their rights to land and to be consulted in the related decision-making processes, as well as funding to undertake land restoration.[56]

[31] Savaresi and Setzer (n 11) 9; Setzer and Higham (n 12) 10.
[32] Namely: *Duarte Agostinho* (n 16); *De Conto* (n 16); *Uricchio* (n 16); *Soubeste* (n 16); *Inuit* (n 19); *Athabaskan* (n 19); and *Sacchi* (n 18).
[33] See J Peel and J Lin, 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113 American Journal of International Law 679.
[34] *Inuit* (n 19).
[35] Savaresi and Setzer (n 11) 9; Setzer and Higham (n 12) 10.
[36] *Billy* (n 17).
[37] *Klimaseniorinnen* (n 16); *Greenpeace Nordic* (n 16); *Humane Being* (n 16); *Plan B* (n 16); *Violations of Human Rights by Federation of Bosnia Herzegovina (BiH) and China due to Coal Fired plants in BiH* (n 20); *Environmental Justice Australia* (n 20); and *Rights of Indigenous Peoples in Addressing Climate-Forced Displacement* (n 20).
[38] Committee on the Rights of the Child 'General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health' UN Doc CRC/C/GC/16 (17 April 2013); and OHCHR 'The Impacts of Climate Change on the Human Rights of People in Vulnerable Situations' UN Doc A/HRC/50/57 (6 May 2022).
[39] 'Report of the Special Rapporteur on the Rights of Indigenous Peoples' UN Doc A/HRC/36/46 (1 November 2017); 'Report of the Special Rapporteur on the Rights of Indigenous Peoples' UN Doc A/73/176 (17 July 2018); more generally OHCHR (n 38).
[40] 'Report of the Special Rapporteur on the Rights of Persons with Disabilities' UN Doc A/71/314 (9 August 2016); and more generally OHCHR (n 38).
[41] 'Report of the Independent Expert on the Enjoyment of All Human Rights by Older Persons' UN Doc A/HRC/42/43 (4 July 2019); and more generally OHCHR (n 38).
[42] 'General Recommendation No. 37: Gender-Related Dimensions of Disaster-Risk Reduction in the Context of Climate Change' UN Doc CEDAW/C/GC/37 (13 March 2018); and more generally OHCHR (n 38).
[43] Namely *Duarte Agostinho* (n 16); *Greenpeace Nordic* (n 16); *Uricchio* (n 16); *De Conto* (n 16); *Soubeste* (n 16); *Plan B Earth* (n 16); *Sacchi* (n 18); and *Environmental Justice* (n 20). See L Parker et al, 'When the Kids Put Climate Change on Trial: Youth-Focused Rights-Based Climate Litigation around the World' (2022) 13 Journal of Human Rights and the Environment 64.
[44] Namely *Inuit* (n 19); *Athabaskan* (n 19); *Teitiota* (n 17); *Billy* (n 17); and *Sacchi* (n 18).
[45] *Klimaseniorinnen* (n 16).
[46] *Teitiota* (n 17).
[47] *Müllner* (n 16).
[48] Namely *Inuit* (n 19); *Athabaskan* (n 19); *Sacchi* (n 18); *Duarte Agostinho* (n 16); *De Conto* (n 16); *Uricchio* (n 16); and *Soubeste* (n 16).
[49] L Maxwell, S Mead and D van Berkel, 'Standards for Adjudicating the Next Generation of Urgenda-Style Climate Cases' (2022) 13 Journal of Human Rights and the Environment 35.
[50] ibid 36; Setzer and Higham (n 12) 10.
[51] *Greenpeace Nordic* (n 16); *Humane Being* (n 16); and *Violations of Human Rights by Federation of Bosnia Herzegovina (BiH) and China due to Coal Fired Plants* (n 20).
[52] *Inuit* (n 19); *Athabaskan* (n 19); *Billy* (n 17); *Plan B* (n 16); *Rights of Indigenous Peoples in Addressing Climate-Forced Displacement* (n 20).
[53] *Inuit* (n 19) para 118; *Athabaskan* (n 19) para 87.
[54] *Billy* (n 17) paras 214–216.
[55] *Teitiota* (n 17); *Billy* (n 7); and *Rights of Indigenous Peoples in Addressing Climate-Forced Displacement* (n 20).
[56] *Rights of Indigenous Peoples in Addressing Climate-Forced Displacement* (n 20) 10.

2.5 | Human rights arguments and States' obligations

Although most rights-based climate lawsuits combine human rights with other legal arguments,[57] the complaints listed in Annex I only rely on human rights. This is to be expected, given that human rights bodies can only scrutinize State parties' compliance with obligations enshrined in international human rights treaties.

Like other rights-based climate litigation,[58] the complaints listed in Appendix A broadly rely on States' human rights obligations concerning *substantive* rights—both civil and political and cultural, economic and social rights—and the related State duties to adopt preventative and/or remedial measures.

Virtually all complaints listed in Appendix A invoke the right to life, arguing that States must adopt measures to pre-empt the life-threatening impacts of climate change. Similarly, several complaints invoke the right to respect for private and family life, home and correspondence, arguing that States have a positive duty to prevent harms associated with climate change.[59] Two complaints rely on these same rights but point to States' negative duty to refrain from authorizing harmful activities.[60]

Other substantive rights—like those to health,[61] food and water,[62] or the right to a healthy environment[63]—are invoked only to a more limited extent. Complaints brought by indigenous peoples typically rely on the right to culture and to communal property.[64] Children and young applicants have instead invoked the right not to be discriminated *vis-à-vis* older generations, since they will be disproportionately burdened by the impacts of climate change.[65]

Six complaints listed in Appendix A invoke *procedural* obligations associated with the rights to a fair trial or to an effective remedy.[66] The invocation of these rights is typical of complaints that are initiated after the applicants have exhausted domestic remedies. In two instances, however, the applicants have relied on these rights without having exhausted domestic remedies.[67]

Like other rights-based climate litigation,[68] the complaints listed in Appendix A increasingly refer to international climate change law obligations alongside human rights obligations. Early complaints mentioned the UN Framework Convention on Climate Change.[69] More recent ones refer to the Paris Agreement and the temperature goal enshrined in it.[70] Some applicants have argued that international climate treaties and the reports of the Intergovernmental Panel on Climate Change provide the 'common ground' to adjudicate climate complaints.[71] In at least two complaints, reliance on international climate change law obligations is coupled with scrutiny of the defendant State's nationally determined contribution submitted under the Paris Agreement.[72]

2.6 | Comparing trends

As we noted from the outset, the number of complaints lodged with international human rights bodies to date is rather small and only allows for tentative conclusions on trends in this area of climate change litigation practice.

The analysis carried out in this section shows that, by and large, complaints before international human rights bodies are a recent phenomenon and only consist of individual communications before judicial, quasi-judicial or non-judicial bodies. Notwithstanding the potential for inter-State complaints, this avenue is yet to be explored, whereas the first request for an advisory opinion on climate change has just been lodged.

Like other rights-based litigation, the complaints listed in Appendix A largely originate from applicants in the Global North and broadly seek to prompt States to adopt more ambitious mitigation action.[73] Most complaints hinge on the State's positive duty to adopt climate change mitigation measures and, to a lesser extent, on the negative duty to refrain from authorizing harmful activities.[74] At least in principle, international human rights bodies potentially provide a unique avenue for individual applicants from different countries to simultaneously complain about human rights violations carried out by multiple States. This strategy has been pursued in a few complaints but is yet to deliver successful outcomes.

Although complaints listed in Appendix A rely only on obligations enshrined in international human rights treaties, references to international climate change law are increasingly frequent. It is going be interesting to monitor whether references to international climate change law will result in increased scrutiny of States' nationally determined contributions, long-term low greenhouse gas emission development strategies and national adaptation plans submitted under the Paris Agreement.

[57] Savaresi and Setzer (n 10) 14–15.
[58] ibid 21.
[59] The right is invoked in all the complaints before the ECtHR (listed in n 16) and in *Billy* (n 17).
[60] The right is invoked in *Greenpeace Nordic* (n 16); and *Violations of Human Rights by Federation of Bosnia Herzegovina (BiH) and China due to Coal Fired Plants* (n 20).
[61] The right to health is invoked in *Inuit* (n 19), *Athabaskan* (n 19), *Sacchi* (n 18), *Rights of Indigenous Peoples in Addressing Climate-Forced Displacement* (n 20) and *Violations of Human Rights by Federation of Bosnia Herzegovina (BiH) and China due to Coal Fired Plants* (n 20).
[62] The rights to food and water are invoked in *Rights of Indigenous Peoples in Addressing Climate-Forced Displacement* (n 20).
[63] This right is invoked in *Environmental Justice Australia* (n 20).
[64] The right is invoked in *Inuit* (n 19), *Athabaskan* (n 19), *Sacchi* (n 18), *Billy* (n 17) and *Rights of Indigenous Peoples in Addressing Climate-Forced Displacement* (n 20).
[65] The right is invoked in *Duarte Agostinho* (n 16), *Uricchio* (n 16), *De Conto* (n 16), *Soubeste* (n 16), *Greenpeace Nordic* (n 16) and *Plan B* (n 16).
[66] The right is invoked in *KlimaSeniorinnen* (n 16), *Greenpeace Nordic* (n 16), *Müllner* (n 16), *Plan B* (n 16), *Uricchio* (n 16) and *De Conto* (n 16).
[67] See *Uricchio* (n 16); and *De Conto* (n 16).
[68] As discussed in Savaresi and Setzer (n 11) 10 and in Maxwell et al (n 49) 36.
[69] *Inuit* (n 19) 97–99.
[70] *Duarte Agostinho* (n 16) para 28.
[71] *Greenpeace Nordic* (n 16) Annex, para 45.
[72] *Environmental Justice Australia* (n 20); and *Billy* (n 17) paras 111–121.
[73] Savaresi and Setzer (n 11) 10.
[74] ibid.

3 | CONSTRAINTS TO CLIMATE LITIGATION BEFORE INTERNATIONAL HUMAN RIGHTS BODIES

This section considers the specific constraints that have emerged in the four decisions of climate complaints delivered by international human rights bodies to date—namely *Inuit*, *Sacchi*, *Teitiota* and *Billy*.

In *Inuit*, indigenous peoples and one NGO filed a complaint with the IACommHR against the United States. They lamented that the defendant State had breached their rights to life, residence and movement, culture, property, health, physical integrity and security, as a result of the impacts of climate change. Their complaint was dismissed, but the Commission did not elaborate on the reasons for its decision. Instead, it merely stated that the information provided did not enable it to 'determine whether the alleged facts would tend to characterize a violation of rights protected by the American Declaration [of the Rights and Duties of Man]'.[75]

In *Sacchi*, a group of children from multiple countries filed a complaint before the CRC against multiple States. They claimed that the defendant States had breached their rights to life, health, culture and best interest of the child, as a result of failure to adopt adequate measures for climate change mitigation.[76] This complaint was dismissed on admissibility grounds.[77]

In *Teitiota*, one asylum seeker lodged a complaint with the UN HRComm against New Zealand. He alleged violations of his right to life, as a result of climate change-induced displacement due to New Zealand's refusal to grant him asylum. His complaint was rejected on the merits.[78]

Finally, in *Billy*, a group of indigenous peoples lodged a complaint with the UN HRComm against Australia. They alleged violations of the rights to culture, privacy, family and home, and life, as a result of Australia's failure to take adequate measures to mitigate and adapt to climate change. Their complaint was granted, making however specific reference only to the lack of 'timely adequate' action concerning climate change adaptation.[79]

These decisions provide crucial evidence of the factors that have hindered the perspectives of climate applicants. We identify three main constraints: the lack of exhaustion of domestic remedies, jurisdiction and victimhood. We examine each of these constraints in turn, providing examples of how they may be addressed in pending complaints.

3.1 | Exhaustion of domestic remedies

Before filing a complaint with an international human rights body, applicants generally must have exhausted the remedies available at the national level.[80] However, an exception may apply, when the available domestic remedies are unreasonably time-consuming or ineffective.[81] Nine climate complaints listed in Appendix A rely on this exception.[82] So far, the exemption from the exhaustion of domestic remedies was granted only in *Billy*.

In *Sacchi*, the applicants argued that exhausting domestic remedies in all respondents' States would be unreasonably burdensome and unlikely to bring effective relief.[83] They justified their position, pointing to States' immunity from foreign judicial proceedings, as well as the non-justiciability of some of the activities challenged in their complaint, such as diplomatic relations.[84] The CRC was unpersuaded by this line of argumentation. It noted that the applicants had not even attempted to initiate domestic proceedings in the respondent States, whereas the latter were able to show that remedies were at least in principle available.[85] The Committee found that applicants had failed to provide convincing reasons why they did not pursue domestic remedies, other than generally expressing doubts about their prospects of success.[86] The Committee therefore concluded that the complaint was inadmissible, due to failure to exhaust domestic remedies.[87]

The applicants in *Billy* had also not exhausted domestic remedies. However, they were able to show that Australian courts had previously ruled on the absence of a 'duty of care' by public authorities in environmental matters.[88] For its part, the respondent State failed to point to the domestic remedies available to the applicants.[89] The UN HRComm decided that, due to a lack of clarity on the remedies available to the applicants,[90] the question of the exhaustion of domestic remedies could not be dissociated from an examination of the merits of the complaint.

It remains to be seen whether this line of argumentation will succeed in pending cases. As noted above, in *Billy*, there were evident

[75] *Inuit* (n 19). See, for example J Harrington, 'Climate Change, Human Rights and the Right to Be Cold' (2007) 18 Fordham Environmental Law Review 513; S Jodoin, S Snow and A Corobow, 'Realizing the Right to Be Cold? Framing Processes and Outcomes Associated with the Inuit Petition on Human Rights and Global Warming' (2020) 54 Law & Society Review 168.

[76] *Sacchi* (n 18) paras 260–275.

[77] *Sacchi* decision (n 18). See the commentary in Parker et al (n 41).

[78] *Teitiota* decision (n 17). See the commentary in E Sommario, 'When Climate Change and Human Rights Meet: A Brief Comment on the UN Human Rights Committee's Teitiota Decision' (2021) 77 Questions of International Law 51; J De Coninck and A Soete, 'Non-Refoulement and Climate Change-Induced Displacement: Regional and International Cross-Fertilization?' (2022) 31 Review of European, Comparative and International Environmental Law 421.

[79] *Billy* decision (n 19). See the commentary in C Voigt, 'UNHRC is Turning up the Heat: Human Rights Violations Due to Inadequate Adaptation Action to Climate Change' (EJIL: Talk!, 26 September 2022); M Feria-Tinta, 'Torres Strait Islanders: United Nations Human Rights Committee Delivers Ground-Breaking Decision on Climate Change Impacts on Human Rights' (EJIL:Talk!, 27 September 2022).

[80] J Connors and S Shah, 'United Nations' in D Moeckli et al (eds), *International Human Rights Law* (2nd edn, Oxford University Press 2013) 385.

[81] See, for example Optional Protocol to the International Covenant on Civil and Political Rights, (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 5 (b); and *Patiño v Panama*, Communication No. 437/1990, UN Doc CCPR/C/52/D/437/1990 (21 October 1994) para 5.2. See also CRC Optional Protocol (n 25) art 7(e).

[82] Namely: *Inuit* (n 19); *Athabaskan* (n 19); *Sacchi* (n 18); *Billy* (n 17); *Duarte Agostinho* (n 16); *Uricchio* (n 16); *De Conto* (n 16); *Soubeste* (n 16); and *Humane Being* (n 16).

[83] *Sacchi* (n 18) para 311.

[84] ibid para 315.

[85] The CRC has adopted five decisions, one per each respondent State. The decisions include a detailed description of the remedies available in each respondent State.

[86] *Sacchi* decision (n 18) para 10.18.

[87] ibid para10.21.

[88] The cases are: *Graham Barclay Oysters Pty Ltd v Ryan* [2002] HCA 54; and *Sharma and others v Minister for the Environment* [2022] FCAFC 65.

[89] *Billy* decision (n 17) para 7.3.

[90] ibid.

flaws in the respondent State's line of defence. The complaint was also structurally different from other pending complaints, as it targeted only one respondent State, on whose territory the alleged human rights violation had been committed. Instead, the applicants in a few pending complaints target multiple States, claiming that they cannot seek remedies in each respondent State. These applicants typically argue that seeking domestic remedies in each respondent State would be unreasonable and that a decision by an international human rights body would be much more effective, in terms of time and reach.[91]

3.2 | Jurisdiction

Rules concerning individual communications typically specify that treaty monitoring bodies can receive complaints only from individuals 'within the jurisdiction of a state party'.[92] Jurisdiction is a serious obstacle to 'transnational' complaints, in which the applicant is not in the territory or under the control of the State where the alleged human rights violation has taken place.

For example, in *Sacchi*, applicants from 12 countries lodged a complaint against five States. This complaint may therefore be broken down into a 'bundle' of 56 individual transnational complaints.[93] Transnational complaints such as this need to establish whether the defendant States exercise some form of jurisdiction over the applicants. In recent years, international human rights bodies have progressively developed the extraterritorial reach of States' human rights obligations,[94] with a specific environmental dimension.[95] An advisory opinion by the IACtHR argues that, when transboundary environmental harm affects the enjoyment of human rights, the persons whose rights have been violated may be regarded as falling under the jurisdiction of a State 'if there is a causal link between the event that originated in its territory and the human rights of people outside its territory'.[96] According to the IACtHR, the conditions for establishing jurisdiction are that the State exercises effective control over the dangerous activities causing the harm and that the harm is foreseeable.[97]

The CRC applied the IACtHR's reasoning on jurisdiction in *Sacchi*. The respondent States had argued that the applicants had failed to meet the jurisdiction requirement. The Committee rejected this argument and established that the alleged human rights abuses fell within the jurisdiction of the respondent States. First, it noted that scientific evidence attests that greenhouse gas emissions originating in the respondent States contribute to climate change and that the adverse effects thereof have implications on the enjoyment of human rights by individuals 'both within as well as *beyond the territory of the state party*'.[98] Second, the Committee reasoned that, due to their ability to regulate emitting activities and enforce legislation, the respondent States had 'effective control' over the source of the harm.[99] Third, the Committee established that, under the principle of common but differentiated responsibilities and respective capabilities, every State is responsible for its own share of greenhouse gas emissions, as the collective nature of the problem does not impede the responsibility of individual States to arise 'from the harm that the emissions originating within its territory may cause to children, *whatever their location*'.[100] Finally, the Committee noted that the transboundary harm was foreseeable, due to the scientific evidence on climate change impacts and the fact that the respondent states had signed international treaties on climate change.[101] Although this line of reasoning aligns the Committee with similar views expressed in domestic court judgements delivered in strategic climate litigation,[102] *Sacchi* was dismissed as inadmissible, due to the lack of exhaustion of domestic remedies.

It remains to be seen how the matter of extraterritorial jurisdiction will be addressed in pending transnational complaints. In *Duarte Agostinho* the applicants claim that, by contributing to climate change, each of the respondent States exercises significant control over the applicants, whereas Portugal is not in a position to protect these alone.[103] According to the applicants, these circumstances generate an exceptional situation, which entails that they fall within the jurisdiction of all the 33 respondent States.[104] The applicants referred to the IACtHR's advisory opinion mentioned above, pursuant to which extraterritorial jurisdiction can be established when the State exercises effective control over the activities that caused the harm.[105] The ECtHR is yet to pronounce itself on this matter. In the past the court has held that States' jurisdiction is 'primarily territorial',[106] but it has recognized exceptions when a State had 'effective control' over foreign territory or the specific person in question.[107] Establishing

[91] See, for example *Duarte Agostinho* (n 16) para 32.
[92] See, for example International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 2(1); Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 2(1); and CRC Optional Protocol (n 25) art 5.
[93] L Gradoni and M Mantovani, 'No Kidding!: Mapping Youth-Led Climate Change Litigation across the North–South Divide' (Völkerrechtsblog, 23 March 2022).
[94] See, for example *Sergio Euben Lopez Burgos v Uruguay*, *Communication no R12/52*, UN Doc A/36/40 (29 July 1981) para 12.3; Advisory Opinion OC-23/17 (n 15).
[95] See, for example JE Viñuales, 'A Human Rights Approach to Extraterritorial Environmental Protection? An Assessment' in N Bhuta (ed), *The Frontiers of Human Rights Extraterritoriality and its Challenges* (Oxford University Press 2016) 177; S Besson, 'Due Diligence and Extraterritorial Human Rights Obligations – Mind the Gap!' (2020) 9 ESIL Reflections.
[96] Advisory Opinion OC-23/17 (n 15) 101.
[97] ibid.
[98] *Sacchi decision* (n 18) para 10.9 (emphasis added).
[99] ibid.
[100] ibid para 10.10 (emphasis added).
[101] ibid para10.11.
[102] See the review of case law in Maxwell et al (n 49) 39, where the authors single out the following cases as examples 'strategic climate litigation': *Urgenda Foundation v The State of the Netherlands* (2015) District Court ECLI:NL:RBDHA:2015:7196; *VZW Klimaatzaak v Kingdom of Belgium & Others* (2021) Court of First Instance of Brussels, No. 2015/4585/A; *Neubauer and Others v Germany* (2021) German Federal Constitutional Court 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20; *Notre Affaire à Tous and Others v France* (2021) Administrative Court of Paris N° 1,904,967, 1,904,968, 1,904,972 1,904,976/4–1; *Mathur* et al *v Her Majesty the Queen in Right of Ontario* (2020) Ontario Superior Court CV-19-00631627; *La Rose v Her Majesty the Queen* (2020) Federal Court of Ottawa 2020 FC 1008; *Backsen and Others (German Family Farmers) v Federal Republic of Germany* (2019) Administrative Court Berlin VG 10 K 412.18; *ENvironnement JEUnesse v Canada* (2019) Superior Court of Quebec No 500–06- 000955-183.
[103] *Duarte Agostinho* (n 16) Annex, para 21.
[104] ibid Annex, para 22.
[105] ibid Annex, para 24.
[106] *Bankovic and others v Belgium and others* App No 52207/99 (ECtHR, 12 December 2001) paras 59–61.
[107] See, for example *Cyprus v Turkey* App No 25781/94 (ECtHR, 10 May 2001); *Öcalan v Turkey* App No 59450/00 (ECtHR, 4 July 2006); *Al-Skeini and others v the United Kingdom* App No 55721/07, (ECtHR, 7 July 2011); *Hirsi Jamaa and others v Italy* App No 27765/09, (ECtHR, 23 February 2012); *Jaloud v the Netherlands* App No 47708/08 (ECtHR, 20 November 2014).

extraterritorial jurisdiction in *Duarte Agostinho* and similar climate complaints[108] would arguably require a 'subtle but important shift' in the jurisprudence of the Court.[109]

3.3 | Victimhood

Individual applicants before international human rights bodies must prove that they are victims of a violation of the rights enshrined in the relevant treaty. Thus, to satisfy the victim requirement, applicants must prove a direct link between the act or omission of the respondent State and the violation of their human rights. The violation must either be real, personal and significant or there must be a direct and immediate risk thereof. Although generally, this is a requirement for all individual communication procedures, the strictness with which it is enforced varies from one system to another. However, no *actio popularis* is admissible before international human rights bodies.[110] At the admissibility stage, the victimhood hurdle was prima facie cleared in *Teitiota*, *Sacchi* and *Billy*.

In *Teitiota*, the UN HRComm considered that the applicant's complaint did not concern 'a hypothetical future harm, but a real predicament' and that 'the risk of a violation of the right to life had been sufficiently substantiated'.[111] In *Sacchi*, the CRC considered that young people are 'particularly impacted by the effects of climate change, both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime'.[112] In *Billy*, the UN HRComm found that the applicants had provided sufficient information on the ways in which they had personally been affected by the impacts of climate change.[113]

However, human rights bodies typically need to ascertain whether the applicants have satisfied the victimhood requirement also at the merits stage. In *Teitiota*, the UN HRComm rejected the complaint because it was not satisfied that the applicant would have been personally affected by a serious individualized risk, should he be sent back to Kiribati.[114] The Committee reasoned that only in 'extreme cases' can it find a violation of the non-refoulement obligation stemming from the right to life based on a situation of 'a serious and generalized risk' in the country of origin. In the view of the Committee, the general situation in Kiribati did not qualify as an extreme case, as the country could, with the assistance of the international community, 'take affirmative measures to protect and, where necessary, relocate its population'.[115]

The Committee expressed a similar view in *Billy*. It found that Australia had failed to comply with its positive obligation to adopt 'timely adequate' adaptation measures to protect the applicants' home, private and family life and their collective ability to maintain a traditional way of life and to transmit their customs and culture to future generations.[116] However, the Committee did not find a violation of the right to life, as the applicants had not demonstrated a concrete and reasonably foreseeable risk to which their life would be exposed or shown the effects that climate change had already had on their health. As in *Teitiota*, the Committee emphasized that, in the 10–15-year period in which the islands would allegedly become uninhabitable, Australia could undertake preventative measures and, if necessary, relocate the applicants.[117] The Committee did not pronounce itself on the alleged human rights violations associated with the state's failure to mitigate climate change. Its refusal to engage with this subject matter has left open questions over the role of States' human rights obligations concerning climate change mitigation.[118]

It remains to be seen how the victimhood requirement will be interpreted in pending climate complaints. According to the ECtHR's consolidated jurisprudence, a 'sufficiently direct link' has to be established between the applicant and the alleged violation of one or more rights enshrined in the Convention.[119] The Court has considerably relaxed its stance on this matter over the years, especially in its so-called environmental case law.[120] Even so, victimhood is likely to remain a considerable hurdle and climate applicants before the ECtHR has gone to great lengths to emphasize their specific vulnerability to climate impacts. For example, in *Klimaseniorinnen*, some of the applicants alleged that they are directly and personally affected, because they suffer from serious illnesses that worsen as the temperature rises, such as asthma.[121] The applicants have furthermore argued that they should not be denied victim status merely because a general public interest aligns with their particular interests, as 'climate change measures can never benefit certain population groups exclusively'.[122]

4 | INTERNATIONAL HUMAN RIGHTS BODIES AND CLIMATE LITIGATION: WORTH LOOKING UP?

Climate litigation is on the rise globally, and this article has shown that climate change-related complaints before international human rights

[108] Namely, *Uricchio* (n 16) and *De Conto* (n 16).
[109] M Feria-Tinta, 'Climate Change Litigation in the European Court of Human Rights: Causation, Imminence and Other Key Underlying Notions' (Europe of Rights & Liberties 2021).
[110] Connors and Shah (n 80) 382.
[111] *Teitiota* decision (n 17) para 8.5.
[112] *Sacchi* decision (n 18) para 10.13.
[113] *Billy* decision (n 17) para 7.10.
[114] ibid para 9.9.
[115] ibid para 9.11.
[116] *Billy decision* (n 17) paras 8.9–8.14.
[117] ibid para 8.7.
[118] See, for example the discussion in B Mayer, 'Climate Change Mitigation as an Obligation Under Human Rights Treaties?' (2021) 115 American Journal of International Law 409; C Heri, 'Climate Change before the European Court of Human Rights: Capturing Risk, Ill-Treatment and Vulnerability' (2022) 33 European Journal of International Law 925; A Zahar, 'The Limits of Human Rights Law: A Reply to Corina Heri' (2022) 33 European Journal of International Law 953; R Luporini, 'Strategic Litigation as a Tool to Advance Climate Change Adaptation? Challenges and Prospects' (2023 fc) Yearbook of International Disaster Law.
[119] See, for example *Karner v Austria* App No 40016/98, (ECtHR, 24 July 2003); *Tauira and others v France* App No 28204/95 (European Commission of Human Rights, 4 December 1995).
[120] See N Kobylarz, 'Balancing Its Way Out of Strong Anthropocentrism: Integration of "Ecological Minimum Standards" in the European Court of Human Rights "Fair Balance" Review' (2022) 55; and R Pavoni, *Interesse pubblico e diritti individuali nella giurisprudenza ambientale della Corte europea dei diritti umani* (Editoriale Scientifica 2013).
[121] See *Klimaseniorinnen* (n 16) para 3.
[122] ibid para 39.

bodies are following this tendency. Our systematic analysis of the 18 complaints listed in Appendix A identified early trends and peculiarities in this growing body of practice. Through these complaints, individuals and groups from all over the world have formulated grievances over human rights violations associated with climate change. In principle, these complaints provide avenues to enforce States' international obligations and put pressure on States to make good on the pledges they made under international climate treaties. In practice, however, these complaints must overcome significant hurdles. Some have already been rejected on the basis of considerations related to lack of exhaustion of domestic remedies, jurisdiction or compliance with victimhood requirements.

Recently, *Billy* became the first decision of an international human rights body granting the claims of climate applicants, at least in part. The decision was narrowly construed on the basis of the rights to culture and home, private and family life and only recognized human rights violations resulting from the State's failure to undertake 'timely adequate' measures to ensure climate change adaptation. Human rights bodies have long argued that adaptation measures are a clear example of the action that states must take to comply with their human rights obligations.[123] The decision, however, has left unaddressed questions over States' human rights obligations concerning climate change mitigation, neither confirming nor disproving the reading of these obligations provided in some strategic domestic climate litigation.

This state of affairs makes it difficult to assess the role played by international human rights bodies in climate litigation. Other authors have pointed out that, even when they are dismissed, rejected or pending, complaints before international human rights bodies have already had some impact. Arguably, these complaints have put a 'human face on climate change'[124] and pioneered a combination of scientific evidence, legal argumentation and testimonies that has been replicated by climate litigants all over the world.[125] This judicial dialogue and cross-fertilization are evident in *Sacchi*, where, as noted above, the CRC applied the IACtHR's interpretation of extraterritorial jurisdiction. This trend has also become manifest in domestic adjudication. In 2021, the Italian Court of Cassation cited *Teitiota*, asserting that national judges should consider environmental or climate degradation that may put at risk the personal dignity of asylum seekers in the country of origin.[126]

The future impacts of complaints before international human rights bodies are equally difficult to predict. More complaints based on procedural obligations might be filed in the future, with international human rights bodies performing a more decisive role in the enforcement of extant climate laws and commitments, akin to that which they already perform in other areas of environmental governance.[127] In theory, at least, international human rights bodies may also be used for inter-State complaints. Although so far this possibility has been the subject of scholarly speculation alone, the ripening momentum for an advisory opinion on climate change discussed in this special issue may pave the way to inter-State complaints concerning climate change before international human rights bodies.

The former UN Special Rapporteur on Human Rights and the Environment, John Knox, cautioned about the dangers associated with 'treating climate change as a series of individual transboundary harms, rather than as a global threat to human rights'.[128] Indeed, one should not lose sight of the fact that, even with favourable outcomes, the remedies that international human rights bodies can provide to the manifold challenges of climate change are limited. Clearly, these bodies are ill-equipped to determine the climate policy of States or to order their proper enforcement. However imperfect, international human rights bodies provide a tool to scrutinize the implementation of States' nationally determined contributions, long-term low greenhouse gas emission development strategies and national adaptation plans submitted under the Paris Agreement. They can deliver—and have already issued some—guidance, which can be used in domestic judicial proceedings. In sum, the practice reviewed in this article confirms that international human rights bodies can help bridge the accountability gap plaguing global climate governance.[129] To break this impasse, it definitely seems worth it to keep looking up.

Although the article is the result of a joint research effort, Annalisa Savaresi was the lead author of Sections 1, 2.1, 2.5, 2.6 and 4, whereas Riccardo Luporini was the lead author of Sections 2.2, 2.3, 2.4, 3 and Appendix A.

DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available in the databases curated by the Sabin Centre for Climate Change Law at Colombia Law School <http://climatecasechart.com/> and by the Grantham Research Institute on Climate Change and the Environment at the London School of Economics <http://www.climate-laws.org>.

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[123]See, for example A/HRC/31/52 (n 1) paras 68–70; and A/74/161 (n 1) paras 84–86.

[124]D Magraw, 'From the Inuit Petition to the Teitiota Case: Human Rights and Success in Climate Litigation' (2020) 114 Proceedings of the ASIL Annual Meeting 86.

[125]Jodoin et al (n 75).

[126]See *I.L. v Italian Ministry of the Interior and Attorney General at the Court of Appeal of Ancona*, Corte di Cassazione (Sez. II Civile) No 5022, Judgement of 24 February 2021.

[127]See, for example Á Ryall, 'The Aarhus Convention: Standards for Access to Justice in Environmental Matters' in SJ Turner et al (eds), *Environmental Rights* (Cambridge University Press 2019) 116; H Schoukens, 'Access to Justice before EU Courts in Environmental Cases against the Backdrop of the Aarhus Convention: Balancing Pathological Stubbornness and Cognitive Dissonance?' in C Voigt (ed), *International Judicial Practice on the Environment: Questions of Legitimacy* (Cambridge University Press 2019) 74.

[128]JH Knox, 'Climate Change and Human Rights Law' (2009) 50 Virginia Journal of International Law 163, 211.

[129]Savaresi and Auz (n 10); Savaresi (n 13); Luporini and Kodiveri (n 6).

APPENDIX A

The table below includes complaints filed before judicial and quasi-judicial bodies listed in the databases curated by the Sabin Centre for Climate Change Law at Colombia Law School <http://climatecasechart.com/> and by the Grantham Research Institute on Climate Change and the Environment at the London School of Economics and Political Science <http://www.climate-laws.org>.

Name (year)	Human rights body	Exhaustion of domestic remedies	Type of applicant and defendant	Type of climate action	Human rights used as legal basis	Outcome
1. *Inuit* (2005)	IACommHR	No	**Applicant**: a group of indigenous peoples and one NGO **Defendant**: State other than the applicants' State of residence	Mitigation and adaptation	Rights to life, residence and movement, culture, property, health, physical integrity and security	Dismissed (admissibility)
2. *Athabaskan* (2013)	IACommHR	No	**Applicant**: a group of indigenous peoples and four individuals **Defendant**: State of the applicants but some applicants not resident in that State	Mitigation and adaptation	Rights to culture, property, means of subsistence, health	Pending
3. *Teitiota* (2015)	UN HRComm	Yes	**Applicant**: one individual **Defendant**: only the State of residence of the applicant	Climate change-induced displacement	Right to life	Dismissed (merits)
4. *Sacchi* (2019)	UN CRC	No	**Applicant**: 16 children from 12 States **Defendant**: State of the applicants as well as other States	Mitigation	Children's rights to life, health, culture and best interest of the child	Dismissed (admissibility)
5. *Billy* (2019)	UN HRComm	No	**Applicant**: a group of eight indigenous peoples **Defendant**: State of the applicants	Mitigation and adaptation	Rights to culture, privacy, family and home, life	Granted
6. *Duarte Agostinho* (2020)	ECtHR	No	**Applicant**: four children and two young adults **Defendant**: State of the applicants as well as other States	Mitigation	Rights to life, private and family life and prohibition of discrimination	Pending
7. *Rights of Indigenous People in Addressing Climate-Forced Displacement* (2020)	10 Special Procedures of the UN HRC	No	**Applicant**: one NGO **Defendant**: State of the applicant	Adaptation and loss and damage	Rights to life, self-determination, culture, food, water, adequate standard of living, health and not to be discriminated	Pending (Communication sent to the US; reply pending)
8. *Klima-seniorinnen* (2021)	ECtHR	Yes	**Applicant**: one NGO and four individuals **Defendant**: State of the applicants	Mitigation	Rights to life, private and family life, fair trial and effective remedy	Pending
9. *Müllner* (2021)	ECtHR	Yes	**Applicant**:1 individual **Defendant**: State of the applicant	Mitigation	Rights to private and family life, life, fair trial and effective remedy	Pending
10. *Greenpeace Nordic* (2021)	ECtHR	Yes	**Applicant**: two NGOs and six young individuals **Defendant**: State of the applicants	Mitigation (oil and gas licences)	Rights to life, private and family life, effective remedy and prohibition of discrimination	Pending

Name (year)	Human rights body	Exhaustion of domestic remedies	Type of applicant and defendant	Type of climate action	Human rights used as legal basis	Outcome
11. *Carême* (2021)	ECtHR	Yes	**Applicant**: one individual **Defendant**: State of the applicant	Mitigation	Rights to private and family life	Pending
12. *Uricchio* (2021)	ECtHR	No	**Applicant**: one young individual **Defendant**: State of the applicants as well as other States	Mitigation	Rights to life, private and family life, effective remedy and prohibition of discrimination	Pending
13. *De Conto* (2021)	ECtHR	No	**Applicant**: one young individual **Defendant**: State of the applicants as well as other States	Mitigation	Rights to life, private and family life, effective remedy and prohibition of discrimination	Pending
14. *Environ-mental Justice Australia* (2021)	UN HRC Special Procedures	No	**Applicant**: one NGO and five young individuals **Defendant**: State of the applicants	Mitigation	Children's rights, indigenous peoples' rights, right to a healthy environment	Pending (complaint filed; communication not sent yet)
15. *Violations of Human Rights by Federation of Bosnia Herzegovina (BiH) and China due to Coal Fired Plants* (2021)	UN HRC Special Procedures	No	**Applicant**: NGOs **Defendant**: the State where the alleged human rights violations occurred and the State that has control over the source of the alleged harm	Mitigation (emissions from specific coal-fired power plants)	Rights to life, liberty and security; right to adequate standard of living, right to health	Communication sent; China replied, BiH did not reply
16. *Soubeste* (2022)	ECtHR	No	**Applicant**: five young European citizens **Defendant**: State of the applicants as well as other States	Mitigation	Right to life, right to be free of inhuman or degrading treatment, right to respect for their private and family life and prohibition of discrimination	Pending
17. *Humane Being* (2022)	ECtHR	No	**Applicant:** NGO and individuals **Defendant**: State of the applicants	Mitigation (from factory farming)	Right to life, right to be free of inhuman or degrading treatment, right to respect for their private and family life	Pending
18. *Plan B* (2022)	ECtHR	Yes	**Applicant**: NGO and four individuals (three of which are young) **Defendant**: State of the applicants	Mitigation, adaptation, climate finance and loss and damage	Right to life, right to respect for their private and family life, right to be free of inhuman or degrading treatment and prohibition of discrimination, right to a fair trial, right to an effective remedy	Pending

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Annalisa Savaresi is Associate Professor of International Environmental Law at the Center for Climate Change, Energy and Environmental Law, University of Eastern Finland, where she serves as Director for the Joint Nordic Master Programme in Environmental Law. She furthermore holds a senior research fellowship at the University of Stirling, UK, and visiting professorships at the University of Bologna (Italy) and La Sabana (Colombia). Annalisa has 20 years' experience working with international and nongovernmental organizations. Her list of publications includes over 50 peer-reviewed articles and contributions to highly regarded collections. Her work has been cited widely, including by the Intergovernmental Panel on Climate Change. Annalisa currently is Director for Europe of the Global Network on Human Rights and the Environment, associate editor of the Review of European, Comparative and International Law and member of the IUCN World Commission on Environmental Law. She has given evidence to the UK, the EU and Scottish Parliaments.

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