



GRIFFITH JOURNAL OF
LAW & HUMAN DIGNITY



GRIFFITH JOURNAL OF LAW & HUMAN DIGNITY

Editor-in-Chief
Stuart Brown

Executive Editors
Sofie Cripps
Jarryd Cox

Editors
Melissa Bansraj
Ami Goeree
Jordan Roles
Briahna Conolly
Nirmit Srivastava

Consulting Executive Editor
Dr Allan Ardill

Volume 9 Issue 1
2021

Published in September 2021, Gold Coast, Australia by the *Griffith Journal of Law & Human Dignity*
ISSN: 2203-311

CONTENTS

DR BRIDGET LEWIS	<i>THE POTENTIAL OF INTERNATIONAL RIGHTS-BASED CLIMATE LITIGATION TO ADVANCE HUMAN RIGHTS LAW AND CLIMATE JUSTICE</i>	1
LYDIA HAMER & KIERAN TRANTER	<i>PARENTS...NEXT: THE ONGOING NEOLIBERALISING OF AUSTRALIAN SOCIAL SECURITY</i>	28
DR ELAINE WEBSTER & PROFESSOR ELISA MORGERA	<i>TRANSFORMATIVE CAPACITY BUILDING AROUND A RIGHT TO A HEALTHY ENVIRONMENT: WHAT ROLE FOR 'DIGNITY' AS A HUMAN RIGHTS VALUE?</i>	55
DR TAUDEL HARPER	<i>DO WE CARE ABOUT WHAT WE SHARE? A PROPOSAL FOR DEALING WITH THE PROLIFERATION OF FALSE INFORMATION BY CREATING A PUBLIC PLATFORM</i>	87
RAUL MADDEN	<i>A NEW GIG FOR UNCONSCIONABILITY — EQUITY AND HUMAN DIGNITY IN UBER TECHNOLOGIES V. HELLER [2020]</i>	108

THE POTENTIAL OF INTERNATIONAL RIGHTS-BASED CLIMATE LITIGATION TO ADVANCE HUMAN RIGHTS LAW AND CLIMATE JUSTICE

DR BRIDGET LEWIS*

In recent years, climate litigation has increasingly incorporated arguments based on human rights law. More recently, this trend has shifted to international and regional human rights bodies such as the European Court of Human Rights and the UN Human Rights Committees. This article examines three contemporary complaints in which groups affected by climate change allege violations of their rights based on states' failures to enact adequate mitigation and adaptation policies. It argues that, while the cases have yet to be decided, they present a number of issues which are in need of clarification and therefore have the potential to advance the application of human rights law to climate change. These issues include questions relating to standing and admissibility, the nature of states' obligations in the context of climate change, and the apportionment of responsibility for cumulative and long-term climate harms. In particular, because the cases include children and Indigenous peoples, they offer an opportunity for judicial interpretation of states' obligations towards groups who have specific experiences of climate change. In this way, they have potential to advance the cause of climate justice, not only for the specific petitioners, but for marginalised groups everywhere.

* Bridget Lewis is a Senior Lecturer in the School of Law at Queensland University of Technology, Brisbane, Australia, where she researches various issues at the intersection of the environment and human rights, including climate change and intergenerational justice. Bridget's book *Environmental Human Rights and Climate Change: Current Status and Future Prospects* was published in 2018 and her work has appeared in journals including *Transnational Environmental Law*, the *Journal of Human Rights and the Environment* and the *Asia-Pacific Journal of Environmental Law*.

CONTENTS

I INTRODUCTION..... 2

II OVERVIEW OF CASES..... 4

A Sacchi et al v Argentina et al..... 5

B Agostinho and Others v Portugal and Others..... 7

C Torres Strait Islanders v Australia 8

III CONTRIBUTION TO HUMAN RIGHTS-BASED APPROACHES TO CLIMATE CHANGE 9

A Requirements for a Case to Proceed 9

 1. *Standing*..... 9

 2. *Exhaustion of Domestic Remedies*..... 11

 3. *Extraterritorial Obligations* 13

B Nature of States’ Obligations..... 14

C Reviewing Domestic Climate Policy 17

D Responsibility for Cumulative Harms..... 18

IV CONCLUSION 19

I INTRODUCTION

Climate change already affects people’s enjoyment of human rights and ability to live with freedom and dignity. Rising temperatures and sea levels, loss of arable land and water supplies, and increasingly frequent and severe weather events threaten lives and livelihoods, interfering with a range of recognised human rights. Climate change also impacts disproportionately on marginalised and vulnerable groups. In many countries, climate policy discussions and decision-making have excluded or overlooked the contributions of these cohorts, including children and young people, Indigenous communities, the elderly and people with disabilities. This compounds the intra and inter-generational injustice of climate change which results because the worst impacts of global

heating will be felt by those who have contributed least to the problem and have the least capacity to adapt, including developing countries and future generations.

The use of litigation to press governments for stronger climate action has grown steadily in recent years, and increasingly incorporates arguments based on human rights law. To date, most human rights-based climate litigation has been pursued within domestic jurisdictions, with landmark cases like *Urgenda v Netherlands* and *Leghari v Pakistan* showing the potential of human rights arguments.¹ More recently, claimants have started to bring cases within international and regional human rights mechanisms for climate change-related harms. For example, well-known climate activist Greta Thunberg is among 16 children who have brought a claim to the Committee on the Rights of the Child against five countries, arguing that their failure to reduce greenhouse gas (GHG) emissions constitutes a breach of obligations under the *Convention on the Rights of the Child* (CRC).² Six young people from Portugal are running a similar case in the European Court of Human Rights (ECtHR), this time against 33 European nations for alleged breaches of the *European Convention on Human Rights* (ECHR).³ In Australia, a group of Torres Strait Islanders have taken a complaint to the United Nations Human Rights Committee (HRC), claiming that Australia's failure to prevent climate harms constitutes a violation of their rights to life, culture, and freedom from interference with private and family life.⁴ While these cases are yet to be decided, analysing the strategy and arguments they adopt can enhance our understanding of human rights law and its applicability to climate change, as well as enabling an assessment of the likely success of these cases and those that will inevitably follow.

This analysis can also evaluate the potential of rights-based litigation to contribute to climate justice. Climate justice encompasses a range of considerations but is focused on achieving a fair distribution of the burdens of climate change, including both the harms

¹ *State of the Netherlands v Urgenda Foundation* (Supreme Court of The Netherlands, 19/00135 ECLI:NL:RBDHA:2015:7145, 20 December 2019); *Ashgar Leghari v Federation of Pakistan* (Lahore High Court, 25501/2015, 15 September 2015); Jacqueline Peel and Hari M Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7(1) *Transnational Environmental Law* 37.

² Chiara Sacchi et al, Communication to the Committee on the Rights of the Child in *Sacchi et al v Argentina et al*, 23 December 2019 ('*Sacchi et al (Petition)*').

³ *Cláudia Duarte Agostinho and others v Portugal and 32 other States (Application)* Eur Court of HR App No 39371/20 (2020) ('*Duarte Agostinho et al*').

⁴ Marian Faa, 'Torres Strait 8 Could Set "global Precedent" with United Nations Human Rights Fight Linked to Climate Change', *ABC News* (Web Page, 30 September 2020) <<https://www.abc.net.au/news/2020-09-30/torres-strait-islanders-fight-government-over-climate-change/12714644>>.

caused by a heating planet and the responsibility for addressing those harms.⁵ Climate justice is an appropriate concept to use when examining the outcomes of rights-based climate litigation because of the intrinsic links between human rights, equality and justice.

At the same time, it is acknowledged that human rights law is limited by its anthropocentric framing and, on its own, cannot address the true nature of environmental harm caused by climate change. For legal responses to climate change to be comprehensive and effective they need to include other, more ecocentric approaches which recognise the complexity of environmental systems, biodiversity, and planetary boundaries. Emerging fields such as Earth system law and the rights of nature are therefore important complements to human rights-based approaches.⁶ However, human rights law is increasingly engaging with climate change and this article aims to contribute to a better understanding of the potential of rights-based strategies.

This article provides a brief overview of three cases currently before international and regional human rights bodies. It identifies a number of issues which affect human rights law's ability to support stronger climate action and contribute to climate justice. These include issues relating to the nature of states' obligations, responsibility for anticipated or future harms, and the circumstances in which affected individuals and groups can seek to enforce their rights. The article argues that the cases have potential to clarify and develop key legal norms and to make a meaningful contribution to climate justice for vulnerable and marginalised groups.

II OVERVIEW OF CASES

Recent cases like *Urgenda* and *Leghari* have demonstrated the potential of human rights arguments in climate litigation, with national courts finding that governments must take stronger action on climate change in order to comply with their human rights obligations.⁷

⁵ See, Simon Caney, 'Climate Justice', *The Stanford Encyclopedia of Philosophy* (Web Page, 2020) <<https://plato.stanford.edu/archives/sum2020/entries/justice-climate/>>; Rowena Maguire and Bridget Lewis, 'The influence of justice theories on international climate policies and measures' (2012) 8(1) *Macquarie Journal of International and Comparative Environmental Law* 16-35.

⁶ See eg Louis J Kotzé and Rakhyun E Kim, 'Earth system law: The juridical dimensions of earth system governance' (2019) 1 *Earth System Governance* 1; David Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (ECW Press, 2017).

⁷ For analysis of the trend of human rights-based climate litigation, see Peel and Osofsky (n 1). A useful database of relevant jurisprudence can be found at the Sabin Center for Climate Change Law's *Climate Case Chart*, <<http://climatecasechart.com/climate-change-litigation/>>.

More recently, this trend of rights-based climate litigation has spread to international and regional human rights bodies such as the European Court of Human Rights (ECtHR) and the United Nations human rights committees. These cases are significant not only because they bring rights-based climate litigation to the international domain, but also because they advance the rights of two groups whose interests are often overlooked in climate policy despite their particular vulnerabilities to climate change, namely, Indigenous people and children. This section will provide a brief overview of three current cases, highlighting the significant characteristics which make them of interest for the future of human rights-based approaches to climate change.

A Sacchi et al v Argentina et al

In 2019, a group of 16 children brought communication to the Committee on the Rights of the Child against Argentina, Brazil, France, Germany, and Turkey.⁸ The communication is advanced under the *Third Optional Protocol to the Convention on the Rights of the Child*, which establishes a procedure for complaints to the Committee.⁹ Among the petitioners is Greta Thunberg, the young Swedish climate activist known for inspiring the 'Fridays for Future' school strikes and for her strong advocacy within international climate forums. Altogether, the petitioners come from 12 countries.¹⁰

The case is significant because the children are mostly seeking to enforce their rights against governments other than their own. They argue that the five states have continued to allow GHG emissions despite knowing that the consequences will be felt beyond their territories and into the future. The foreseeability of these future and transnational consequences, they argue, is sufficient basis to establish human rights obligations owed towards the children.¹¹

⁸ *Sacchi et al (Petition)*.

⁹ *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, opened for signature 19 December 2011, entered into force 14 April 2014 ('*Optional Protocol to CRC*').

¹⁰ Argentina, Brazil, France, Germany, India, Marshall Islands, Nigeria, Palau, South Africa, Sweden, Tunisia, and USA.

¹¹ *Sacchi et al (Petition)*, para 242, citing Committee on the Rights of the Child, *General Comment No 16: State Obligations Regarding the Impact of the Business Sector on Children's Rights*, UN Doc CRC/C/GC/16 (17 April 2013) ('*CRC GC16*'); Human Rights Committee, *General Comment No 36: Article 6 (the Right to Life)*, UN Doc CCPR/C/GC/36 (30 October 2018) ('*HRC GC36*'); Committee on the Elimination of Discrimination Against Women et al, 'Joint Statement on Human Rights and Climate Change' (16 September 2019) ('*UN Committees Joint Statement*'); *Andreou v Turkey* (2010) Eur Court HR App No 45653/99 (27 January 2010).

In their petition, the children argue that the respondent states have violated their rights to life, health, and culture by failing to take adequate action to prevent climate change.¹² A range of specific harms are alleged, reflecting the diversity among the children's own lives and living environments.¹³ For instance, petitioners Carl (from Alaska) and Ellen-Anne (from Sweden) argue that their rights to continue their traditional Indigenous cultural practices such as hunting, fishing, and reindeer herding have been violated.¹⁴ Petitioners David, Litokne, and Ranton from the Marshall Islands point to the impact of ocean warming on traditional fishing practices and the threats posed by rising sea levels and storm surges.¹⁵ Several other specific threats to life and health are also mentioned, including increased risk of disease linked to rising temperatures and poor air quality,¹⁶ threats to life associated with storms, floods and bushfires,¹⁷ and the emotional stress and anxiety that children are experiencing as a consequence of the climate emergency.¹⁸

In advancing these arguments, the petition relies on the fact that all respondent states are parties to the *Paris Agreement*, and have therefore already made some commitment to addressing climate change. The *Paris Agreement* sets out a collective ambition to keep global warming to 'well below 2°C', and ideally below 1.5°C.¹⁹ While this target is not strictly binding on individual states, they do submit Nationally Determined Contributions (NDC) which are intended to be implemented through appropriate domestic strategies.²⁰ The petition argues that states' failures to reduce GHG emissions in line with their NDC's can amount to a breach of human rights law where the resulting climate change impacts on the enjoyment of human rights.²¹

¹² *Convention on the Rights of the Child 1989*, opened for signature 20 November 1989, 3 UNTS 1577 (entered into force 2 September 1990), arts 6, 24 and 30 ('CRC').

¹³ *Sacchi et al (Petition)*, Appendices.

¹⁴ *Ibid*, paras 135–150; Stacey Lee, 'Sacchi v. Argentina: Fighting for Indigenous Children's Climate Rights', *UCLA Law Review* (Web Page, 27 March 2020) <<https://www.uclalawreview.org/sacchi-v-argentina-fighting-for-indigenous-childrens-climate-rights/>>.

¹⁵ *Sacchi et al (Petition)* 121–129.

¹⁶ *Ibid* paras 112–114, 130–133.

¹⁷ *Ibid* paras 102–120.

¹⁸ *Ibid* paras 159–166.

¹⁹ *Paris Agreement*, opened for signature 12 December 2015, entered into force 4 November 2016, art 2 (1)(a).

²⁰ *Ibid* art 4.

²¹ *Sacchi et al (Petition)* paras 15, 171–176.

B Duarte Agostinho and Others v Portugal and Others

At the same time that the *Sacchi* case is proceeding in the UN committee system, another group of young people are pursuing a case in the ECtHR.²² Claudia Duarte Agostinho is a young Portuguese woman who, along with five of her peers aged between 8 and 21 years, is bringing a case against 33 European nations.²³ The respondents are accused of breaching the young petitioners' human rights through their collective failure to take the necessary steps to prevent climate change.

In particular, the petition focuses on the devastating bushfires which occurred in Portugal in 2017 and the physical and emotional damage they caused to the young applicants. It is alleged that these impacts constitute a breach of the ECHR, specifically Article 2 (the right to life), Article 8 (respect for private and family life) and Article 14 (freedom from discrimination).²⁴ The petition also refers to the future effects of climate change, arguing that the states are obliged to do more to prevent these harms from materialising.

As in *Sacchi*, the applicants argue that states' obligations under the ECHR ought to be interpreted having regard to the *Paris Agreement*.²⁵ They also rely heavily on the precautionary principle, arguing that it should inform the Court's interpretation of the respondents' obligations.²⁶ The precautionary principle is commonly defined to require that, where there is a threat of serious and irreparable environmental harm, states cannot use the lack of scientific certainty as a reason not to take reasonable precautions.²⁷ Its status in international law is somewhat unsettled, but the core component of a precautionary approach in the face of environmental risk is well-accepted.²⁸

The case is the first climate change claim to come before the ECtHR and is also noteworthy for naming so many states as respondents. The Court's ruling is greatly anticipated as the

²² *Duarte Agostinho et al.*

²³ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom.

²⁴ *European Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, ETS No 005 (entered into force 3 September 1953) ('ECHR').

²⁵ *Duarte Agostinho et al.*, paras 20, 30–31.

²⁶ *Ibid.*, para 8 of Annex to Application.

²⁷ United Nations Environment Programme, *Rio Declaration on Environment and Development*, Rio de Janeiro, UN Doc A/Conf.151/26 (14 June 1992), Principle 15.

²⁸ Patricia Birnie et al, *International Law and the Environment* (3rd ed, Oxford University Press, 2009) 159-164.

first opportunity to clarify the application of the ECHR to climate change and to address the various issues discussed below.

C Torres Strait Islanders v Australia

The third case considered here is a complaint by a group of Torres Strait Islanders against Australia in the Human Rights Committee (HRC). The HRC oversees the *International Covenant on Civil and Political Rights* (ICCPR), and the petitioners argue that Australia has breached their rights to life (Article 6), culture (Article 27) and private and family life (Article 17). It is alleged that Australia has failed to protect these rights both by failing to make adequate cuts to emissions and by failing to take necessary adaptation measures, such as funding the installation of seawalls. Climate change is already affecting the Torres Strait, with sea-level rise and storm surges causing saltwater inundation of important cultural sites, while ocean warming causes acidification and other detrimental impacts on marine health.

In response, the Australian government has called for the case to be rejected because it relates to future impacts, not present harms. Lawyers representing the government have further stated that Australia is not legally responsible for any impact on Torres Strait Islanders' human rights because Australia is not the sole or main contributor to global GHG emissions.²⁹

The communication has attracted considerable attention as the first case before the HRC challenging a state's mitigation and adaptation action under the ICCPR. The current and former Special Rapporteurs for Human Rights and the Environment, David Boyd and John Knox, have submitted an amicus curiae brief supporting the Torres Strait Islanders' claim, underlining the international significance of the complaint. The case represents an important opportunity for the HRC to clarify the application of international human rights law to climate change and, if successful, could open the way for similar claims from other affected groups in the future.

²⁹ Katharine Murphy, 'Australia Asks UN to Dismiss Torres Strait Islanders' Claim Climate Change Affects Their Human Rights', *The Guardian* (online, 14 August 2020) <<http://www.theguardian.com/australia-news/2020/aug/14/australia-asks-un-to-dismiss-torres-strait-islanders-claim-climate-change-affects-their-human-rights>>; Darby Ingram, 'Torres Strait Eight Backed by UN Human Rights Experts', *National Indigenous Times* (18 December 2020) 8 <<https://nit.com.au/torres-strait-eight-backed-by-un-human-rights-experts/>>.

III CONTRIBUTION TO HUMAN RIGHTS-BASED APPROACHES TO CLIMATE CHANGE

While the cases are yet to be decided it is possible to analyse them in the context of other jurisprudence and scholarship to identify issues which the Court and committees will need to address. This indicates areas where the cases have potential to clarify and even advance the state of the law. It also enables an evaluation of the potential these cases have to address climate injustice facing marginalised and vulnerable groups. A number of issues and potential contributions are discussed below, ranging from legal technicalities of standing, admissibility and responsibility through to more substantive questions about the nature of states' obligations.

A Requirements for a Case to Proceed

The three cases raise fundamental questions concerning standing and admissibility of climate change claims within international and regional human rights frameworks. Three key threshold issues will need to be satisfied for the cases to proceed. These issues come into focus in these cases because of the global and long-term nature of climate change, which challenges the territorial and temporal constraints of the human rights frameworks. First, the applicants will need to have standing as 'victims' to bring their claims. Secondly, they will need to be able to show that they have exhausted their options for a domestic remedy or make a case for a waiver of that requirement. And thirdly, for the *Sacchi* and *Duarte Agostinho* cases specifically, the respondent states must owe obligations extending beyond their territorial limits to establish an enforceable relationship between the parties.

1 Standing

Within human rights frameworks, standing to bring a claim normally depends on the applicant having suffered an injury. In previous cases, the HRC has explained that for a person to bring a communication for an alleged violation of an ICCPR right, they 'must show either that an act or an omission of a State party has already adversely affected his or her enjoyment of such right, or that such effect is imminent'.³⁰ The ECtHR uses a similar

³⁰ Human Rights Committee, *Views: Communication No 429/1990*, 4th sess, UN Doc CCPR/C/47/D/429/1990 (8 April 1993) (*E.W. et al v The Netherlands*); see also Human Rights Committee, *Views: Communication No 1400/2005*, 85th sess, UN Doc CCPR/C/85/D/1400/2005 (31 October 2005) (*Beydon v. France*); Human Rights Committee, *Views: Communication No 1440/2005*, 87th sess, UN Doc CCPR/C/87/D/1440/2005 (12 July 2006) (*Aalbersberg et al v The Netherlands*).

test for admissibility, requiring that the applicant faces a ‘serious, specific and imminent danger’ which triggers a duty to prevent harm.³¹

The three cases all attempt to some degree to claim for anticipated harms caused by global heating and for states’ failures to take appropriate steps to prevent those harms. If their cases were limited to those future harms, then the applicants might find it challenging to establish that they have standing. However, in all three cases the applicants can present evidence of climate harms already occurring. The *Duarte Agostinho* case is perhaps the most powerful example, as it points to the physical and emotional harms caused by recent bushfires in Portugal and cites evidence that these were caused at least in part by global heating.³² The *Sacchi* petition details experiences that the young claimants have already had of melting sea-ice, floods, droughts and rising sea levels.³³ The Torres Strait petition is not publicly available at the time of writing, but in media interviews the claimants share their experience of saltwater inundation of their lands and important cultural sites, and the link between these impacts and climate change has been recognised in scientific studies (going against the Australian government’s claim that the case is purely related to future harms).³⁴ These claims show that climate change is no longer just a future problem, and legal claims can be firmly based on harms already experienced.

³¹ *Balmer-Schafroth and others v Switzerland* (1996) Eur Court HR App No 22110/93 (26 August 1996); See also *Fadeyeva v Russia* (2005) Eur Court HR App No 55723/00 (9 July 2005) *Kolyadenko and others v Russia* (2012) Eur Court HR App Nos 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05 (9 July 2012); Ole W Pedersen, ‘The European Court of Human Rights and International Environmental Law’ in John H Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press, 2018) 86; Ole W Pedersen, *European Court of Human Rights and Environmental Rights* (Edward Elgar Publishing Limited, 2019); Natalia Kobylarz, ‘The European Court of Human Rights: An Underrated Forum for Environmental Litigation’ in Helle Tegner Anker and Birgitte Egelund Olsen (eds) *Sustainable Management of Natural Resources: Legal Instruments and Approaches* (Intersentia, 2018) 99.

³² *Duarte Agostinho et al*, paras 16–22; Marco Turco et al, ‘Climate Drivers of the 2017 Devastating Fires in Portugal’ (2019) 9(1) *Scientific Reports* 13886.

³³ *Sacchi et al (Petition)*, paras 102–150.

³⁴ Natalie Ahmat and Yessie Mosby, ‘A Group of Torres Strait Islanders Have Wrapped up Their Landmark Fight against What They Say Is the Federal Government’s in Action on Climate Change’, *Informit* (Web Page, 2 October 2020) <<http://search.informit.org/doi/abs/10.3316/TVNEWS.TSM202010020010>>; Hannah Cross, ‘Scott Morrison Rejects Torres Strait Islanders’ Invitation to See Disastrous Effects of Climate Change’, *National Indigenous Times* (22 November 2019) <<https://nit.com.au/scott-morrison-rejects-torres-strait-islanders-invitation-to-see-disastrous-effects-of-climate-change/>>; Katharine Murphy, ‘Torres Strait Islanders Take Climate Change Complaint to the United Nations’, *The Guardian* (Web Page, 12 May 2019) <<http://www.theguardian.com/australia-news/2019/may/13/torres-strait-islanders-take-climate-change-complaint-to-the-united-nations>>. See also Reisinger, A and RL Kitchen, ‘Australasia’, in Christopher Field et al. (eds), *Climate Change 2014: Impacts, Adaptation and Vulnerability. Part B: Regional Aspects. Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC, 2014); Donna Green et al, ‘An Assessment of Climate

That being said, climate harms are expected to worsen into the future and the cases also encompass anticipated harms. Even if GHG's are rapidly reduced, global heating will continue on current trajectories for some time, due to the long-term effects of carbon already in the atmosphere.³⁵ This creates injustice for future generations, who will bear the brunt of our current policies, but obviously lack the ability to enforce their own rights or advocate for their own interests. While none of the current cases directly claim on behalf of future generations, this has been a feature of some previous climate litigation.³⁶ In these cases, specific rules of standing have enabled representative claims to proceed seeking protection of future generations' interests, even where the individuals affected and specific impacts are unknown. Given the seriousness of predicted climate change impacts, it is foreseeable that new cases might seek to include future human rights harms, but currently dedicated rules and processes to enable representative claims are lacking at the international level. The way that the Court and committees deal with standing, and in particular any comments made in relation to future harm, may give some indication of whether a claim on behalf of future generations might be possible. Failing this, the cases should at least help clarify when anticipated harms will be actionable.

2 Exhaustion of Domestic Remedies

Both the United Nations and European human rights systems require applicants to pursue domestic avenues before a claim will be admitted at the international level. Alternatively, they must obtain a waiver on the basis that a suitable domestic remedy is not available or would be unreasonably burdensome to pursue.³⁷ The young claimants in both *Sacchi* and *Duarte Agostinho* make similar arguments in seeking such a waiver. They argue that the principle of sovereign state immunity would prevent them from bringing a case against the respondent governments in the courts of another state, while the cost and

Change Impacts and Adaptation for the Torres Strait Islands, Australia' (2010) 102(3) *Climatic Change* 405.

³⁵ Thorsten Mauritsen and Robert Pincus, 'Committed Warming Inferred from Observations' (2017) 7(9) *Nature Climate Change* 652; Myles Allen et al, *Intergovernmental Panel on Climate Change Special Report on Global Warming of 1.5oC: Summary for Policymakers* (Intergovernmental Panel on Climate Change, 6 October 2018), A2.

³⁶ *Minors Oposa v Secretary of the Department of Environment and Natural Resources* (1994) 33 ILM 173; *Future Generations v Colombia* [2018] Supreme Court of Colombia, Case No 11001-22-03-000-2018-00319-01 (5 April 2018).

³⁷ *ECHR*, art 35(1); *Optional Protocol to CRC*, art 7(e); *First Optional Protocol to the International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), arts 2 and 5.

impracticalities of litigating in the multiple respondents' own jurisdictions would be prohibitive.³⁸ The Portuguese petitioners also point to the urgency of the climate crisis, arguing there is no time to pursue domestic cases if the worst impacts are to be avoided.³⁹ A positive disposition to these arguments might be inferred from the fact that in November 2020 the ECtHR accepted the applicants' request to have the case urgently heard and asked the respondents to respond to the claim by the end of February 2021.⁴⁰

The Torres Strait Islander petitioners face a similar hurdle in the HRC. No attempt has been made to resolve the matter through formal legal channels at the domestic level, which may prove a challenge to the admissibility of the case. More detail of the parties' arguments is not publicly available at the time of writing, but it is anticipated that the petitioners will argue that no suitable avenue for redress is available in Australia. As Cullen explains, climate action involves countless administrative and legislative actions under a broader governmental policy, so judicial and merits reviews of individual decisions may prove inadequate to address the problem.⁴¹ A complaint to the Australian Human Rights Commission could be attempted, but it lacks the ability to issue a binding remedy.⁴²

These cases have potential to provide useful insight into how strictly the Court and committees view the requirement to exhaust local remedies in the context of climate change. The complex nature of climate change and the urgent need to take action to avoid catastrophic impacts, coupled with the political realities of climate policy in many countries, may well lead to a finding that domestic avenues do not offer a reasonable prospect of a suitable remedy. How the Court and committees deal with this issue may

³⁸ *Sacchi et al (Petition)*, paras 312–318; *Duarte Agostinho*, paras 32 and 35–40 of Annex to Application; See comments of Annalisa Savaresi reported in Chloé Farand, 'Six Portuguese Youth File "unprecedented" Climate Lawsuit against 33 Countries', *Climate Home News* (3 September 2020) <<https://www.climatechangenews.com/2020/09/03/six-portuguese-youth-file-unprecedented-climate-lawsuit-33-countries/>>; Ole W Pedersen, 'The European Convention of Human Rights and Climate Change – Finally!', *EJIL: Talk!* (Web Page, 22 September 2020) <<https://www.ejiltalk.org/the-european-convention-of-human-rights-and-climate-change-finally/>>.

³⁹ *Duarte Agostinho et al*, para 32.

⁴⁰ *Claudia Duarte Agostinho and others v Portugal and 32 other States (Purpose of the Case and Questions)* Eur Court of HR App No 39371/20 (13 November 2020), 1. At the time of writing the response from the Respondents had not yet been made public.

⁴¹ Miriam Cullen, 'Climate Change and Human Rights: The Torres Strait Islanders' Claim to the UN Human Rights Committee', *Groningen Journal of International Law Blog* (Blog Post, 27 June 2019) <<https://grojil.org/2019/06/27/climate-change-and-human-rights-the-torres-strait-islanders-claim-to-the-un-human-rights-committee/>>.

⁴² *Australian Human Rights Commission Act 1986* (Cth).

also provide some clues as to how they view the relationship between international and domestic law, a question which will be explored in more detail below.

3 Extraterritorial Obligations

One aspect of the cases that has generated interest is the way the applicants in *Sacchi* and *Duarte Agostinho* tackle the issue of extraterritorial obligations, given that most of the applicants are not nationals of the respondent states. Under international human rights law, states must respect, protect, and fulfil the rights of people within their jurisdiction, usually interpreted to mean within their territory or under their control.⁴³ For their claims to be admissible, the applicants must establish that the respondent states owe extraterritorial obligations relating to climate change. To do this, they draw on emerging jurisprudence from other international and regional human rights bodies.

Sacchi in particular relies on a recent Advisory Opinion of the Inter-American Court of Human Rights which considered states' responsibility for human rights breaches flowing from transboundary environmental harm. The Court held that when a state exercises effective control over environmentally harmful activities, its jurisdiction extends to include any foreseeable consequences of those activities, even if they occur in another state's territory.⁴⁴ Applying this approach, the *Sacchi* petition argues that, because the children are impacted by the foreseeable consequences of the respondents' failure to cut emissions, they fall within their jurisdiction for the purposes of establishing human rights obligations.⁴⁵ They emphasise the fact that the respondents have control to stop GHG emissions but allow them to continue, despite knowing that they will directly affect people outside their territories.⁴⁶ Similarly, the European case argues that the respondent states, through their various climate policies, exercise significant control over the petitioners'

⁴³ ECHR, art 1; CRC, art 2; ICCPR, art 2.

⁴⁴ Inter-American Court of Human Rights, *Environment and Human Rights: Advisory Opinion Requested by the Republic of Colombia*, Case No OC-23/17 (15 November 2017) (Official summary issued by the Inter-American Court) <http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_23_eng.pdf>, paras 102, 104 ('IACtHR Ad Op'); *Sacchi et al (Petition)*, para 248. See also Christopher Campbell-Durufflé and Sumudu Anopama Atapattu, 'The Inter-American Court's Environment and Human Rights Advisory Opinion: Implications for International Climate Law' (2018) 8(3-4) *Climate Law* 321; Angeliki Papantoniou, 'Advisory Opinion on the Environment and Human Rights' (2018) 112(3) *American Society of International Law* 460. A similar approach to extraterritorial obligations was endorsed by the joint statement of UN Human Rights Committees on Human Rights and Climate Change (n 11).

⁴⁵ *Sacchi et al (Petition)* para 242-252.

⁴⁶ IACtHR Ad Op (n 44) paras 102, 104; *Sacchi et al (Petition)*, para 248.

interests in circumstances where their own state (Portugal) has a limited ability to protect them.⁴⁷

Establishing extraterritorial duties has long been thought to be a significant challenge for human rights-based climate litigation.⁴⁸ Should the ECtHR or the Committee on the Rights of the Child endorse the Inter-American approach, it would open up potential for a much wider range of claims within international frameworks, not just in relation to climate change but in any situation where states' transboundary activities affect human rights. For climate change particularly, it could significantly enhance the potential for human rights law to contribute to climate justice.

B Nature of States' Obligations

The three human rights-based climate cases could also advance the law by clarifying the substance and scope of states' obligations, thereby enhancing the contribution of human rights law to climate justice. For instance, the cases are likely to shed light on whether human rights law obliges states to take mitigation as well as adaptation action. As Peel and Osofsky have explained, climate litigation has tended to be more successful when it has targeted adaptation action, rather than mitigation, as it can be easier to demonstrate a state's failure to implement adaptation measures needed to prevent harm. This avoids the more complex task of analysing and evaluating domestic emissions reduction policies.⁴⁹ Adaptation is emphasised in the Torres Strait complaint which, as well as pointing to Australia's failure to cut emissions, alleges that Australia has failed to protect communities and cultural sites from rising sea levels. *Sacchi* and *Duarte Agostinho* focus on states' inadequate emissions policies, raising the question of whether states' obligation to protect human rights includes a duty to cut emissions, or just to safeguard against the impacts of those emissions. The cases therefore offer a useful opportunity for judicial

⁴⁷ *Duarte Agostinho et al*, paras 18-21, citing *Andreou v Turkey* and *Kovačić et al v Slovenia* (2008) Eur Court HR App Nos 44574/98, 45133/98 and 48316/99 (3 October 2008).

⁴⁸ Annalisa Savaresi and Juan Auz, 'Climate Change Litigation and Human Rights: Pushing the Boundaries' (2019) 9(3) *Climate Law* 244, 253–254; Meinhard Doelle, 'Climate Change and Human Rights: The Role of the International Human Rights in Motivating States to Take Climate Change Seriously' (2004) 1(2) *Macquarie Journal of International and Comparative Environmental Law* 179, 195; John Knox, 'Climate Change and Human Rights Law' (2009) 50 *Virginia Journal of International Law* 163, 200; Bridget Lewis, *Environmental Human Rights and Climate Change: Current Status and Future Prospects* (Springer, 2018) 180ff.

⁴⁹ Peel and Osofsky (n 1) 63–64.

interpretation of the duty to protect human rights in the context of both mitigation and adaptation.

As noted above, the cases also present a chance to clarify obligations to prevent imminent or future harm, particularly in relation to the right to life, which all three cases invoke. In 2018 the HRC explained in its General Comment 36 that states' duty to respect and ensure the right to life depends on the preservation of the environment, including addressing pollution and climate change.⁵⁰ In relation to future harms, the same General Comment explains that states have a duty to protect life from all 'reasonably foreseeable threats'.⁵¹ In 2019, the Committee handed down its opinion in the case of *Teitiota v New Zealand*, which considered the right to life in the context of rising sea levels in Kiribati. In its decision, the Committee confirmed states' obligations to protect against imminent risks to life, but held that an imminent risk 'must be, at least, likely to occur'.⁵² While it accepted that rising sea levels may present a threat to life in the future, the Committee determined that this threat was not sufficiently imminent to trigger a duty to protect, having regard to both the timeframe over which it will occur and the opportunities that exist for adaptation or amelioration of harm.⁵³ This leaves some ambiguity regarding the exact nature of states' obligations with respect to the right to life and when the Committee will decide it has been violated. The *Teitiota* decision suggests a violation will only occur where the threat is imminent, and not just reasonably foreseeable. Clarification and elaboration on this point, particularly from the HRC in the Torres Strait claim, would be most welcome.

The cases also offer a chance for more detail on the obligations owed to groups with particular vulnerabilities to climate change, most notably children and Indigenous people. Children are especially vulnerable to the effects of climate change, both because of their stage of development and their limited agency to change their circumstances.⁵⁴ They are

⁵⁰ HRC GC36 (n 11) para 62.

⁵¹ *Ibid* para 18.

⁵² Human Rights Committee, *Views: Communication No 2728/2016* UN Doc CCPR/C/127/D/2728/2016 (24 October 2019), para 9.5 (*Ioane Teitiota v. New Zealand*).

⁵³ *Ibid* paras 9.11-9.12.

⁵⁴ John Knox, *Report on the Relationship between Children's Rights and the Environment*. Report to the Human Rights Council, UN Doc A/HRC/37/58 (24 January 2018) 7-8 ('*Children's Rights Report*'); Human Rights Council, *Resolution 35/20 on Human Rights and Climate Change*, UN Doc A/HRC/RES/35/20 (22 June 2017) 4-7; 'Unless We Act Now: The Impact of Climate Change on Children', *UNICEF* (Web Page, 2015) <https://www.unicef.org/publications/index_86337.html>; Elizabeth D Gibbons, 'Climate Change, Children's Rights, and the Pursuit of Intergenerational Climate Justice' (2014) 16(1) *Health and Human*

also at increased risk of child labour and early marriage where climate change exacerbates existing tensions and socio-economic inequalities.⁵⁵ Despite these particular impacts, children are frequently absent from discussions and decisions about climate policy.⁵⁶ The *Sacchi* and *Duarte Agostinho* cases are a valuable chance for greater clarity regarding states' duties towards children and the need to include their voices in decisions which affect them.

Both *Sacchi* and the Torres Strait cases claim for violations of cultural rights of Indigenous people. These claims may have a strong chance of success, since the importance of protecting traditional lands and cultural practices has long been recognised as part of the right to culture within international human rights law.⁵⁷ The link between land and culture is also a fundamental principle within the *United Nations Declaration on the Rights of Indigenous Peoples* and has been upheld on a number of occasions by the Inter-American Court and Commission of Human Rights.⁵⁸ Success on these grounds would be an important step in reinforcing the need for states to take positive measures to protect Indigenous communities from the effects of climate change, not only through adaptation measures but also through cutting GHG emissions.

Finally, the cases could clarify the relationship between human rights and other bodies of law. Both the *Sacchi* and *Duarte Agostinho* cases argue that states' human rights obligations should be interpreted with regard to international environmental and climate law. In particular, they suggest that the relevant standards for performance of human rights duties should be informed by the precautionary principle and by the overarching obligation in the *Paris Agreement* to keep global temperature increases to 'well-below

Rights 19, 21; Karen Makuch, 'Environmental Rights of Children' in Michael Faure (ed), *Elgar Encyclopaedia of Environmental Rights* (Edward Elgar Publishing Limited, 2019) 386, 388, 390, 396.

⁵⁵ Office of the High Commissioner for Human Rights, *Analytical Study on the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child*. Report to the Human Rights Council, UN Doc A/HRC/35/15 (4 May 2017), 7; Knox, 'Children's Rights Report' (n 54), 7.

⁵⁶ Karin Arts, 'Children's Rights and Climate Change' in Claire Fenton-Glynn (ed), *Children's Rights and Sustainable Development* (Cambridge University Press, 1st ed, 2019) 216, 232; Gibbons (n 54) 23.

⁵⁷ See, eg, Human Rights Committee, *General Comment No 23: Article 27 (Rights of Minorities)* UN Doc CCPR/C/21/Rev.1/Add.5 (8 April 1994).

⁵⁸ *United Nations Declaration on the Rights of Indigenous Peoples*, adopted by General Assembly Resolution 61/295, 61st sess, UN Doc A/RES/61/295 (2 October 2007), art 26; *Yanomami Indians v Brazil*, Inter-American Court of Human Rights, Case No 7615, OEA/Ser.L/V/II.66 Doc 10 rev 1 (1985); *Mayagna (Sumo) Awas Tingni Community v Nicaragua (Merits, reparations and costs)* Inter-American Court of Human Rights (2001) (Ser C) No 79; *Maya Indigenous Community of the Toledo District v Belize* (Inter-American Commission of Human Rights) Case 12.053, Report 40/04, OEA/Ser.L/V/II.122 Doc 5 rev 1, 727 (2004); *Saramaka People v Suriname (Preliminary Objections, Merits, Reparations and Costs)* Inter-American Court of Human Rights (2007) Ser C No 172.

2°C'. The cases therefore represent an important opportunity for international bodies to comment on the integration of human rights and environmental principles and could lead to important advancements in norm-integration in the future.

C Reviewing Domestic Climate Policy

A number of domestic cases have found states' climate policies to be incompatible with human rights principles, but the three cases discussed here are among the first to ask an international or regional body to make such an assessment. In the past, these bodies have only been willing to pass judgment on states' domestic policies in limited circumstances and have typically extended a considerable degree of discretion to states in determining their own national priorities. They have recognised that states face a range of competing demands, including different human rights objectives, and have deferred to states' own judgment about how to balance these as long as the impact on human rights is not disproportionate.⁵⁹

This issue is likely to be most acute in the *Duarte Agostinho* case, given the ECtHR's well-known doctrine of the margin of appreciation. Under this approach, states are afforded a wide degree of discretion to devise their own policies and the Court will generally not find a violation of the ECHR unless domestic law has not been followed or the negative impact on human rights clearly cannot be justified by other legitimate aims.⁶⁰ Given the highly political nature of climate policies in many states, and the wide range of economic, social and legal factors at play, it is uncertain how far international committees and courts will be willing to delve into the specifics of these policies, especially in the children's cases which name multiple respondents. Nonetheless, climate change, perhaps more than any other issue, shows the serious global consequences that domestic policies can have on human rights. As the bodies with primary responsibility for promoting and enforcing human rights internationally, the Court and committees may seize this opportunity to

⁵⁹ Andrew Legg, *The Margin of Appreciation in International Human Rights Law* (Oxford University Press, 2012) 38-66; Hana Müllerová, 'Environment Playing Short-Handed: Margin of Appreciation in Environmental Jurisprudence of the European Court of Human Rights' (2015) 24(1) *Review of European, Comparative & International Environmental Law* 83.

⁶⁰ *Handyside v the United Kingdom* (1976) Eur Court HR App No. 5493/72 (7 December 1976); *Hatton and Others v the United Kingdom* (2003) Eur Court HR App No 36022/97 (8 July 2003); Müllerová (n 59); Dean Spielmann, 'Allowing the Right Margin: The European Court of Human Rights and The National Margin of Appreciation Doctrine: Waiver or Subsidiarity of European Review?' (2012) 14 *Cambridge Yearbook of European Legal Studies* 381.

take a more deliberate look behind the veil of state sovereignty and examine the impact of state climate policies.

D Responsibility for Cumulative Harms

A final area where the cases could advance both human rights law and climate justice is through clarifying the apportionment of responsibility for climate-related harms. In previous litigation, states have argued that their own emissions represented just a ‘drop in the ocean’ and, consequently, they could not be held responsible for the impacts of climate change. As noted above, this argument has been put forward by Australia’s lawyers in response to the Torres Strait complaint. In the early days of climate litigation, it was thought that the cumulative effects of GHG emissions, coupled with the timeframe over which climate harms materialise, would indeed create barriers for establishing state responsibility.⁶¹

Since that time, however, both our understanding of climate science and legal attitudes towards causation and responsibility have advanced considerably.⁶² In recent domestic cases, courts have rejected the ‘drop in the ocean’ argument, recognising instead that every contribution to global heating matters and cannot be excused simply because ‘other states do it too’.⁶³ Rejecting a ‘but for’ understanding of causation, the *Duarte Agostinho* application argues that states should be held responsible when they fail to do their fair share in tackling climate change, and rely on climate change data to identify what a ‘fair share’ ought to look like.⁶⁴

These cases are the first opportunity for international human rights bodies to confirm their view on responsibility for climate harms. An approach based on shared responsibility could be useful for future cases relating to climate change or other cumulative harms. The invitation to integrate climate science and concepts of a ‘fair share’

⁶¹ Office of the High Commissioner for Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights*, UN Doc A/HRC/10/61 (15 January 2009); Ole Pedersen, ‘Climate Change and Human Rights: Amicable or Arrested Development?’ (2010) 1(2) *Journal of Human Rights and the Environment* 236, 246; Doelle (n 48) 213–214.

⁶² *UN Committees Joint Statement* (n 11); Sophie Marjanac and Lindene Patton, ‘Extreme Weather Event Attribution Science and Climate Change Litigation: An Essential Step in the Causal Chain?’ (2018) 36(3) *Journal of Energy & Natural Resources Law* 265.

⁶³ *Urgenda (Supreme Court)*; *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7.

⁶⁴ *Duarte Agostinho et al*, paras 29-30 of Annex.

into the interpretation of both obligations and responsibility has potential to shape the future of rights-based climate litigation in both international and domestic forums.

IV CONCLUSION

The cases discussed above have already generated a great deal of interest owing to their potential to advance human rights-based approaches to climate change in a number of important ways. Our understanding of climate change has evolved quickly, and the opportunity now exists for international bodies to confirm the applicability of human rights obligations to states' climate policies. The cases raise issues in terms of the admissibility of claims, the nature of states' obligations, and the role of international bodies in evaluating local policies which contribute to a truly global problem. Even if the cases are unsuccessful, they provide an important opportunity to clarify these issues. More importantly, the cases raise the voices of some of the most marginalised groups in climate policy-making – specifically children and Indigenous communities – and make visible the very real and present impacts of climate change which they experience.

REFERENCE LIST

A Articles/Books/Reports

- Allen, Myles et al, *Intergovernmental Panel on Climate Change Special Report on Global Warming of 1.5oC: Summary for Policymakers* (Intergovernmental Panel on Climate Change, 6 October 2018) <http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf>
- Arts, Karin, 'Children's Rights and Climate Change' in Claire Fenton-Glynn (ed), *Children's Rights and Sustainable Development* (Cambridge University Press, 1st ed, 2019)
- Birnie, Patricia et al, *International Law and the Environment* (3rd ed, Oxford University Press, 2009)
- Boyd, David, *The Rights of Nature: A Legal Revolution That Could Save the World* (ECW Press, 2017)
- Campbell-Durufié, Christopher and Sumudu Anopama Atapattu, 'The Inter-American Court's Environment and Human Rights Advisory Opinion: Implications for International Climate Law' (2018) 8(3-4) *Climate Law* 321
- Cullen, Miriam, "'Eaten by the Sea": Human Rights Claims for the Impacts of Climate Change upon Remote Subnational Communities' (2018) 9(2) *Journal of Human Rights and the Environment* 171
- Doelle, Meinhard, 'Climate Change and Human Rights: The Role of the International Human Rights in Motivating States to Take Climate Change Seriously' (2004) 1(2) *Macquarie Journal of International and Comparative Environmental Law* 179
- Green, Donna et al, 'An Assessment of Climate Change Impacts and Adaptation for the Torres Strait Islands, Australia' (2010) 102(3) *Climatic Change* 405
- Knox, John, 'Climate Change and Human Rights Law' (2009) 50 *Virginia Journal of International Law* 163
- Knox, John, *Report on the Relationship between Children's Rights and the Environment*. Report to the Human Rights Council, UN Doc A/HRC/37/58 (24 January 2018)

Kobylarz, Natalia, 'The European Court of Human Rights: An Underrated Forum for Environmental Litigation' in Helle Tegner Anker and Birgitte Egelund Olsen (eds), *Sustainable Management of Natural Resources: Legal Instruments and Approaches* (Intersentia, 2018) 99

Kotzé, Louis J and Rakhyun E Kim, 'Earth system law: The juridical dimensions of earth system governance' (2019) 1 *Earth System Governance* 1

Legg, Andrew, *The Margin of Appreciation in International Human Rights Law* (Oxford University Press, 2012)

Lewis, Bridget, *Environmental Human Rights and Climate Change: Current Status and Future Prospects* (Springer, 2018)

Maguire, Rowena and Bridget Lewis 'The influence of justice theories on international climate policies and measures' (2012) 8 (1) *Macquarie Journal of International and Comparative Environmental Law* 16-35

Makuch, Karen E, 'Environmental Rights of Children' in Michael Faure (ed), *Elgar Encyclopaedia of Environmental Rights* (Edward Elgar Publishing Limited, 2019) 386

Marjanac, Sophie and Lindene Patton, 'Extreme Weather Event Attribution Science and Climate Change Litigation: An Essential Step in the Causal Chain?' (2018) 36(3) *Journal of Energy & Natural Resources Law* 265

Mauritsen, Thorsten and Robert Pincus, 'Committed Warming Inferred from Observations' (2017) 7(9) *Nature Climate Change* 652

Müllerová, Hana, 'Environment Playing Short-Handed: Margin of Appreciation in Environmental Jurisprudence of the European Court of Human Rights' (2015) 24(1) *Review of European, Comparative & International Environmental Law* 83

Office of the High Commissioner for Human Rights, *Analytical Study on the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child*. Report to the Human Rights Council, UN Doc A/HRC/35/15 (4 May 2017)

Office of the High Commissioner for Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights*, UN Doc A/HRC/10/61 (15 January 2009)

Papantoniou, Angeliki, 'Advisory Opinion on the Environment and Human Rights' (2018) 112(3) *American Society of International Law* 460

Pedersen, Ole W, 'Climate Change and Human Rights: Amicable or Arrested Development?' (2010) 1(2) *Journal of Human Rights and the Environment* 236

Pedersen, Ole W, 'The European Court of Human Rights and International Environmental Law' in John H Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press, 2018) 86

Pedersen, Ole W, *European Court of Human Rights and Environmental Rights* (Edward Elgar, 2019)

Peel, Jacqueline and Hari M Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7(1) *Transnational Environmental Law* 37

Reisinger, A and RL Kitchen, 'Australasia', in Christopher Field et al. (eds), *Climate Change 2014: Impacts, Adaptation and Vulnerability. Part B: Regional Aspects. Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC, 2014)

Savaresi, Annalisa and Juan Auz, 'Climate Change Litigation and Human Rights: Pushing the Boundaries' (2019) 9(3) *Climate Law* 244

Spielmann, Dean, 'Allowing the Right Margin: The European Court of Human Rights and The National Margin of Appreciation Doctrine: Waiver or Subsidiarity of European Review?' (2012) 14 *Cambridge Yearbook of European Legal Studies* 381

Turco, Marco et al, 'Climate Drivers of the 2017 Devastating Fires in Portugal' (2019) 9(1) *Scientific Reports* 13886

B Cases

Andreou v Turkey (2010) Eur Court HR App No 45653/99 (27 January 2010)

Ashgar Leghari v Federation of Pakistan (Lahore High Court, 25501/2015, 15 September 2015)

Balmer-Schafroth and others v Switzerland (1996) Eur Court HR App No 22110/93 (26 August 1996)

Chiara Sacchi et al, Communication to the Committee on the Rights of the Child in *Sacchi et al v Argentina et al* (23 December 2019)

Cláudia Duarte Agostinho and others v Portugal and 32 other States (Application) Eur Court of HR App No 39371/20 (2020)

Cláudia Duarte Agostinho and others v Portugal and 32 other States (Purpose of the Case and Questions) Eur Court of HR App No 39371/20 (13 November 2020)

Committee on the Elimination of Discrimination Against Women et al, 'Joint Statement on Human Rights and Climate Change' (16 September 2019)

Committee on the Rights of the Child, *General Comment No 16: State Obligations Regarding the Impact of the Business Sector on Children's Rights*, UN Doc CRC/C/GC/16 (17 April 2013)

Fadeyeva v Russia (2005) Eur Court HR App No 55723/00 (9 July 2005)

Future Generations v Colombia (2018) Colombian Supreme Court, Case No 11001-22-03-000-2018-00319-01 (5 April 2018)

Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7

Handyside v the United Kingdom (1976) Eur Court HR App No. 5493/72 (7 December 1976)

Hatton and Others v the United Kingdom (2003) Eur Court HR App No 36022/97 (8 July 2003)

Human Rights Committee, *General Comment No 23: Article 27 (Rights of Minorities)* UN Doc CCPR/C/21/Rev.1/Add.5 (8 April 1994)

Human Rights Committee, *General Comment No 36: Article 6 (the Right to Life)*, UN Doc CCPR/C/GC/36 (30 October 2018)

Human Rights Committee, *Views: Communication No 429/1990*, 4th sess, UN Doc CCPR/C/47/D/429/1990 (8 April 1993) (*E.W. et al v The Netherlands*)

Human Rights Committee, *Views: Communication No 1400/2005*, 85th sess, UN Doc CCPR/C/85/D/1400/2005 (31 October 2005) (*Beydon v. France*)

Human Rights Committee, *Views: Communication No 1440/2005*, 87th sess, UN Doc CCPR/C/87/D/1440/2005 (12 July 2006) (*Aalbersberg et al v The Netherlands*)

Human Rights Committee, *Views: Communication No 2728/2016* UN Doc CCPR/C/127/D/2728/2016 (24 October 2019), para 9.5 (*Ioane Teitiota v. New Zealand*)

Human Rights Council, *Resolution 35/20 on Human Rights and Climate Change*, UN Doc A/HRC/RES/35/20 (22 June 2017)

Inter-American Court of Human Rights, *Environment and Human Rights: Advisory Opinion Requested by the Republic of Colombia*, Case No OC-23/17 (15 November 2017) (Official summary issued by the Inter-American Court,)

<http://www.corteidh.or.cr/docs/opiniones/resumen_seriea_23_eng.pdf>

Inuit Circumpolar Conference v United States (Inter-American Commission of Human Rights, P-1413-05, 16 November 2006).

Kolyadenko and others v Russia (2012) Eur Court HR App Nos 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05 (9 July 2012)

Kovačić et al v Slovenia (2008) Eur Court HR App Nos 44574/98, 45133/98 and 48316/99 (3 October 2008)

Minors Oposa v Secretary of the Department of Environment and Natural Resources (1994) 33 ILM 173

Sheila Watt-Cloutier and Inuit Circumpolar Conference, *Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States* (7 December 2005).

State of the Netherlands v Urgenda Foundation (Supreme Court of The Netherlands, 19/00135 ECLI:NL:RBDHA:2015:7145, 20 December 2019)

United Nations Environment Programme, *Rio Declaration on Environment and Development*, Rio de Janeiro, UN Doc A/Conf.151/26 (14 June 1992)

C Legislation

Australian Human Rights Commission Act 1986 (Cth)

D Treaties

Convention on the Rights of the Child 1989, opened for signature 20 November 1989, 3 UNTS 1577 (entered into force 2 September 1990)

European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, ETS No 005 (entered into force 3 September 1953)

First Optional Protocol to the International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, opened for signature 19 December 2011, entered into force 14 April 2014

Paris Agreement, opened for signature 12 December 2015, entered into force 4 November 2016

E Other

Ahmat, Natalie and Yessie Mosby, 'A Group of Torres Strait Islanders Have Wrapped up Their Landmark Fight against What They Say Is the Federal Government's in Action on

Climate Change', *Informat* (Web Page, 2 October 2020)

<<http://search.informat.org/doi/abs/10.3316/TVNEWS.TSM202010020010>>

Caney, Simon, 'Climate Justice' in *The Stanford Encyclopedia of Philosophy* (Web Page, 2020) <<https://plato.stanford.edu/archives/sum2020/entries/justice-climate>>

ClientEarth, 'Torres Strait FAQ', *Sabin Center for Climate Change Law* (Web Page, 13 May 2019) <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190513_Not-Available_press-release.pdf>

Cross, Hannah, 'Scott Morrison Rejects Torres Strait Islanders' Invitation to See Disastrous Effects of Climate Change', *National Indigenous Times* (22 November 2019) <<https://nit.com.au/scott-morrison-rejects-torres-strait-islanders-invitation-to-see-disastrous-effects-of-climate-change/>>

Cullen, Miriam, 'Climate Change and Human Rights: The Torres Strait Islanders' Claim to the UN Human Rights Committee', *Groningen Journal of International Law Blog* (Blog Post, 27 June 2019) <<https://grojil.org/2019/06/27/climate-change-and-human-rights-the-torres-strait-islanders-claim-to-the-un-human-rights-committee/>>

Faa, Marian, 'Torres Strait 8 Could Set "global Precedent" with United Nations Human Rights Fight Linked to Climate Change', *ABC News* (Web Page, 30 September 2020) <<https://www.abc.net.au/news/2020-09-30/torres-strait-islanders-fight-government-over-climate-change/12714644>>

Ingram, Darby, 'Torres Strait Eight Backed by UN Human Rights Experts', *National Indigenous Times* (Web Page, 18 December 2020) <<https://nit.com.au/torres-strait-eight-backed-by-un-human-rights-experts/>>

Lee, Stacey, 'Sacchi v. Argentina: Fighting for Indigenous Children's Climate Rights', *UCLA Law Review* (Web Page, 27 March 2020) <<https://www.uclalawreview.org/sacchi-v-argentina-fighting-for-indigenous-childrens-climate-rights/>>

Murphy, Katharine, 'Torres Strait Islanders Take Climate Change Complaint to the United Nations', *The Guardian* (Web Page, 12 May 2019)

<<http://www.theguardian.com/australia-news/2019/may/13/torres-strait-islanders-take-climate-change-complaint-to-the-united-nations>>

Murphy, Katharine, 'Australia Asks UN to Dismiss Torres Strait Islanders' Claim Climate Change Affects Their Human Rights', *The Guardian* (Web Page, 14 August 2020)

<<http://www.theguardian.com/australia-news/2020/aug/14/australia-asks-un-to-dismiss-torres-strait-islanders-claim-climate-change-affects-their-human-rights>>

Sabin Center for Climate Change Law, *Climate Case Chart*,

<<http://climatecasechart.com/climate-change-litigation/>>

Pedersen, Ole, 'The European Convention of Human Rights and Climate Change – Finally!', *EJIL: Talk!* (Web Page, 22 September 2020) <<https://www.ejiltalk.org/the-european-convention-of-human-rights-and-climate-change-finally/>>

'Unless We Act Now: The Impact of Climate Change on Children', *UNICEF* (Web Page, 2015) <https://www.unicef.org/publications/index_86337.html>