

The CRC Decision in *Sacchi v. Argentina*

Introduction

Climate change poses significant threats to children's rights, challenging the existing international legal framework under the United Nations Convention on the Right of the Child (UNCRC). While the UNCRC does not explicitly recognize the right to a healthy environment, it requires states to ensure children's rights to health by considering the dangers and risks of environmental pollution.¹ In September 2019, 16 children and youth filed five [petitions](#) with the Committee on the Rights of the Child (CRC) alleging that Argentina, Brazil, France, Germany, and Turkey (respondent states) violated their rights under the UNCRC by failing to sufficiently address the climate crisis. In October 2021, the CRC rejected the petitions for failure to exhaust domestic remedies; however, the CRC's findings and legal reasoning make significant advances to international climate litigation. This *Insight* details the nature of the CRC litigation and highlights the Committee's main holdings.

The Petition and Procedural Developments

The 16 youths filed their complaints under the Convention's 2011 Optional Protocol (OPIC), which establishes an individual right of petition to the CRC. Their petitions alleged that the five states failed to respect their obligations under the UNCRC to: (i) prevent foreseeable domestic and extraterritorial human rights violations from climate change by reducing their emissions; (ii) cooperate internationally to combat the climate crisis; (iii) apply the precautionary principle to protect life in the face of uncertainty; and (iv) ensure intergenerational justice for children.²

The petitioners did not seek compensatory damages but asked the CRC to find that climate change is a children's rights crisis, and that the respondent states have caused

and are perpetuating the crisis by disregarding available scientific evidence on prevention and mitigation. By way of relief sought, the petitioners asked that the CRC recommend the states to amend their laws and policies to ensure concrete mitigation and adaptation efforts that make the best interests of the child a primary consideration, establish international binding and enforceable measures to mitigate the climate crisis, and ensure the child's right to be heard in all such efforts.³

In response, the respondent states, in individual observations submitted between January and July 2020, argued that the petitioners should have brought the case before domestic courts where they could have obtained remedies at the national level. They further argued that no state could be individually held responsible because of the collective contribution to the climate crisis. The petitioners had argued for the exception to the general rule of exhaustion of domestic remedies,⁴ claiming that their implementation would be unreasonably prolonged and unlikely to bring effective relief.⁵ The petitioners further asserted that each state would have used foreign state immunity to bar domestic claims against the others involved; thus, only the CRC could secure preventive measures from states "within the limited time left to avoid the irreversible tipping points of global warming."⁶

In an [amicus brief](#) supportive of the petitioners' claims, the current and former Special Rapporteur on Human Rights and the Environment, David Boyd and John Knox, recalled that while domestic courts lack the jurisdiction to impose obligations on other states to cooperate internationally, the CRC can provide effective remedies against multiple state parties.⁷ Specifically, the CRC has the mandate and the expertise to address matters such as the obligations of each state under international human rights law to address a global challenge to children's human rights.

The CRC's Decision

In October 2021, the CRC issued five nearly identical decisions, one for each respondent state. The Committee found that the petitioners failed to initiate available legal avenues at the national level and that, without any concrete explanation as to why the petitioners did not attempt to do so, they failed to exhaust domestic remedies that were reasonably effective and available to challenge the alleged violation of their rights under the UNCRC.⁸ "Mere doubts or assumptions" about the prospects of success or effectiveness of remedies did not exempt the petitioners from exhausting them.⁹ As to the petitioners' argument that foreign sovereign immunity would prevent them from exhausting domestic remedies in any state, the CRC found that the jurisdictional issue would only arise if the petitioners were to file a case against other states together with the state in its domestic

court, which they had not done.¹⁰ The CRC did not consider the burden of bringing a claim in each state and disagreed with the petitioners' claim that their cases were linked. It noted, however, that when children have no access to justice in a state that has ratified the OPIC, or if their complaints are not dealt with properly, the case can be brought to the CRC.

Notwithstanding the CRC's dismissal of the case for failure to exhaust domestic remedies, the decision provides valuable guidance on protecting children's rights in the context of climate change and opens the door to future child-centric climate-related cases. These advances are grounded on the CRC's specific findings with respect to jurisdiction and extraterritorial responsibility. With regard to extraterritorial jurisdiction, the CRC endorsed the Inter-American Court of Human Rights' (IACtHR) [Advisory Opinion OC-23/17](#), which clarified the scope of extraterritorial jurisdiction concerning environmental protection.¹¹ In that opinion, the IACtHR found that when transboundary damage occurs, the persons whose rights have been violated are under the jurisdiction of the state of origin if there is a causal link between the act that originated in its territory and the human rights infringement of persons outside its territory.¹²

To establish extraterritorial jurisdiction, the CRC had to therefore consider (i) the interpretation of "control," and (ii) the significance of directness and foreseeability.¹³ Under the effective control test, the state in whose territory or under whose jurisdiction the activities are carried out has effective control over them, as well as the ability to prevent transboundary harm. Potential victims of the adverse effects of a state's actions are under the jurisdiction of that state regarding its potential responsibility for failing to avoid transboundary damage.¹⁴ Further, under the causal nexus test, when a state's act or omission is sufficiently connected to the violation, the person suffering the violation is considered within the state's jurisdiction. Following the IACtHR's reasoning, then, the CRC found that every state must address climate harm outside its territory and is liable for the negative impact of its emissions on the rights of children located both within and outside its territory.

The CRC further found that the potential harm of the states' acts or omissions regarding their carbon emissions was reasonably foreseeable to the states.¹⁵ The Committee also affirmed that it is generally accepted and corroborated by scientific evidence that states' carbon emissions actively contribute to the harmful effects of climate change and that these are not limited within these states' boundaries.¹⁶ Finally, regarding the existence of a sufficient causal link between the harm alleged by the petitioners and the states' actions or omissions, the CRC concluded that to establish jurisdiction, the petitioners have (i) sufficiently justified that the violation of their rights under the UNCRC as a result of the

states' carbon emissions was reasonably foreseeable, and (ii) justified their victim status by establishing that they have personally experienced significant harm.¹⁷

Relevance for Future Cases: When an Unfavorable Decision Leads to Positive (Legal) Outcomes

The CRC decision sets a crucial precedent for future cases of transboundary harm. Children are now considered under the jurisdiction of the state where the emissions originated if the state exercises effective control over the sources of the emissions at issue and has knowledge of the risk of wrongful effects, and if there is a causal link between a state's acts or omissions and their harmful impact on children. The CRC further found that the collective nature of the causes of the climate crisis does not relieve states of their responsibility to mitigate emissions originating within their territory to avoid their adverse effects on children, wherever they might reside.¹⁸ While broader, this test might involve difficulties related to climate attribution.¹⁹ Yet the approach used by the Committee will be replicable in other rights-based cases because it draws on international jurisprudence, readily available scientific evidence, and petitioners' testimonies to establish causation and foreseeability.²⁰

The decision of whether to waive the requirement to exhaust domestic remedies was crucial and challenging. Had the CRC accepted the cases, it could have become a tribunal of ["first instance of preference"](#) for all children seeking to file a petition under the OPIC. Further, because the petition was brought while other, non-related but significant climate cases were in the process of being litigated before different national courts, had the CRC found that there were no efficient domestic remedies available, such a decision could have conceivably undermined those efforts to hold states accountable. Recent domestic court decisions, while lengthy, demonstrate courts' increasing willingness to undertake the task of adequacy review on states' obligations under the Paris Agreement and their "nationally determined contributions."²¹ Although exhausting local remedies can be lengthy, especially in the Global South, where access to justice is in many instances quite challenging, [future cases](#) will eventually be able to meet the standards set by the CRC as the jurisdictional and causation issues establish a basis for future claims. The CRC thus provided persuasive reasons to dismiss the case on procedural grounds, while leaving the door open for future complaints.

Because the CRC provided substantial guidance on states' jurisdiction and their climate duties for future cases, this decision will likely impact rights-based claims worldwide, reinforcing climate claims' intergenerational equity and providing a framework for national courts to use the CRC's approach and causal nexus test to protect children's rights. The

definition of jurisdiction and extraterritorial responsibility by the CRC is particularly noteworthy, considering the judicial cross-fertilization the decision exhibits and the role of the IACtHR's advisory opinion in the Committee's reasoning.

This decision is also part of an important trend of climate claims before the UN Human Rights Treaty Bodies, which are increasingly being asked to address the effects of the climate crisis on human rights.²² In 2020, the UN Human Rights Committee (HRC) decided on Ioane Teitiota's deportation to his home nation of the Republic of Kiribati.²³ Teitiota applied for refugee status in New Zealand based on sea-level rise associated with climate change. While the Committee ultimately dismissed the claims in [Teitiota](#)—as the CRC did in *Sacchi*—it offers a valuable starting point for future climate change-related asylum claims.²⁴ The HRC recognized that environmental degradation and climate change constitute severe threats to the ability of present and future generations to enjoy the right to life. It further indicated legal pathways to establishing refugee status for climate migrants.²⁵ A Torres Strait Islanders' petition against the Australian government to the HRC—grounded on the violation of fundamental human rights due to the government's failure to address climate change—is still pending.²⁶

Conclusion

While the decision does not provide an ultimate answer to the claims of the youth petitioners, it contributes to a broader toolbox of responses at local, national, regional, and international levels to the climate emergency. Overall, the CRC highlighted that climate change is indeed a child rights crisis and that states are responsible for their emissions. The broader significance of the explosion of climate litigation relies on the “small” achievements in expanding a legal framework for future claims. Children willing to sue states for failing to address climate change now have a direct legal framework to bring a case before the CRC if they exhaust local remedies.

As the first climate-related petition filed with the CRC, the petitioners have undeniably succeeded in raising awareness of the climate crisis as a far-reaching global political issue. Indeed, in June 2021, the CRC decided to draft a [General Comment](#) on children's rights and the environment with a particular focus on climate change, thus signaling the potential of human rights litigation to contribute to normative development beyond a specific case. The CRC invited the petitioners to share their views during the drafting process of this General Comment. The petitioners are likely to keep this debate alive as they have filed a [petition](#) to the UN secretary-general urging him to declare a “system-wide climate emergency.”

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¹ See UNCRC, art. 24 §c.

² Communication to the Committee on the Rights of the Child, in the case of *Sacchi v. Argentina* (Sept. 23, 2019) ¶¶ 20-31.

³ *Id.* ¶ 33.

⁴ See OPIC, art. 7 (e).

⁵ Communication, *supra* note 3, ¶¶ 309-310. It is worth noting that the states' responses are not (yet) publicly available; however, the CRC responded to the content of their replies in each decision.

⁶ Committee on the Rights of the Child, Communications Nos. 105/2019 (Brazil), 106/2019, (France), 107/2019 (Germany), *Saachi v. Argentina*, Petitioners' Reply to the Admissibility Objections of Brazil, France, and Germany (May 4, 2020), ¶¶ 15-16, 89.

⁷ Amici curiae brief of the Special Rapporteurs on Human Rights and the Environment in support of admissibility, ¶ 50, <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/CRC-Admissibility-brief.pdf>.

⁸ Although there are five distinct decisions, we will use the Argentina decision for reference. Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019, ¶ 10.18.

⁹ *Id.* ¶ 10.17.

¹⁰ *Id.* ¶ 10.19.

¹¹ See Maria Antonia Tigre & Natalia Urzola, *The 2017 Inter-American Court's Advisory Opinion: Changing the Paradigm for International Environmental Law in the Anthropocene*, 12 J. HUM. RTS. & ENV'T. 24 (2021).

¹² The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (Nov. 15, 2017), ¶ 101.

¹³ Ingrid Gubbay & Claus Wenzler, *Intergenerational Climate Change Litigation: The First Climate Communication to the UN Committee on the Rights of the Child*, in *Climate Change Litigation: Global Perspectives* (Ivano Alogna, et al. eds., 2021), pp. 357-360.

¹⁴ CRC decision, *supra* note 8, ¶ 10.5.

¹⁵ *Id.* ¶ 10.11.

¹⁶ *Id.* ¶ 10.9.

¹⁷ *Id.* ¶ 10.14.

¹⁸ *Id.* ¶ 10.10.

¹⁹ Gubbay & Wenzler, *supra* note 13, pp. 357-360.

²⁰ Margaretha Wewerinke-Singh, *Between Cross-Border Obligations and Domestic Remedies: The UN Committee on the Rights of the Child's decision on Sacchi v. Argentina*, <https://www.childrensrightsobservatory.nl/case-notes/casenote2021-10>.

²¹ Gubbay & Wenzler, *supra* note 13, pp. 350-351.

²² See <https://ohrh.law.ox.ac.uk/climate-claims-before-the-un-human-rights-treaty-bodies/>.

²³ Human Rights Comm., *Ioane Teitiota v. New Zealand*, Comm. No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016, P 2 (Oct. 24, 2019).

²⁴ The HRC ruled against Teitiota, reasoning that the risk of arbitrary deprivation of life must be personal rather than rooted in a country's general conditions. See <http://blogs.law.columbia.edu/climatechange/2020/01/21/landmark-u-n-decision-says-countries-may-not-turn-away-climate-migrants-in-the-future/>.

²⁵ Lucia Rose, *The World After Teitiota: What the HRC Decision Means for the Future of Climate Migration*, 12 SAN DIEGO J. CLIMATE ENERGY L., 41 (2021), <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1102&context=icel>.

²⁶ See case documents: <http://climatecasechart.com/climate-change-litigation/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/>.