Existing Challenges and Possible Pathways for Case Success in Climate Litigation with Human Rights Claims

Daniel Ziebarth

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ARTICLE

EXISTING CHALLENGES AND POSSIBLE PATHWAYS FOR CASE SUCCESS IN CLIMATE LITIGATION WITH HUMAN RIGHTS CLAIMS

DANIEL ZIEBARTH*

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I. INTRODUCTION

Novel research in recent years has synthesized a significant body of existing work on climate litigation which suggests there are several challenges concerning human rights claims within this sphere of litigation.1 These include the causality challenge, cross-temporal challenge, and extraterritorial challenge.2 Causality challenges refer to the difficulty climate challenges can face when arguing that specific actions by actors have directly caused the violations in question.3 Previous research in the field of international environmental law also suggests that causality challenges are particularly difficult obstacles to successful climate litigation.4

Cross-temporal challenges concern the differences in the time between the impact of human rights violations, which are typically immediate events, and the impact of climate-related issues, which generally occur over a longer period of time.5 Finally, extraterritorial challenges address the difficulty of holding certain actions accountable in climate litigation with human rights violations because the actors exist at different levels, such as individuals, companies, and governments, as well as across different jurisdictions and states.6 Despite these challenges, there is some evidence


2. A fourth possible challenge has also been noted – the potential backlash challenge. This challenge will not be discussed in detail in this Article, as it is unable to be tested based upon the data collected. This is because in addition to collecting information on all cases in the dataset, information would also need to be collected on subsequent political decisions resulting in possible reaction to case outcomes. Future work should, however, aim to systematically assess potential backlash of governments against climate litigation with human rights claims. For more on the challenge of potential backlash see id. (highlighting the various challenges rights-based climate litigation faces).

3. See id. (noting the difficulties concerning rights-based climate claims).


5. Setzer & Vanhala, supra note 1, at 10.

6. Id.
suggesting the possibility of success within climate litigation, as demonstrated by a limited number of high-profile cases such as Urgenda Foundation v. State of the Netherlands.7

Additionally, a limited body of existing doctrinal scholarship provides specific examples of possible pathways that effectuate the admissibility of prospective claims.8 For example, within the European Union (EU), it is arguable that the European Court of Fundamental Rights may allow climate-related cases to overcome the obstacles of Article 263 of the Treaty of the Functioning of the European Union (TFEU) by suggesting that EU acts are of direct concern; thus, individuals can file claims challenging legislation regarding climate change and environmental protection.9 Although awareness of both obstacles and pathways to success for climate litigation with human rights claims exist in the current literature, the present state of such literature does not provide a comprehensive explanation concerning why cases succeed or fail. Despite legal scholars suggesting there are both pathways and obstacles to success for climate litigation with human rights claims, there is little scholarship on whether this type of litigation is more likely to succeed or more likely to fail.

This Article begins with discussion of three prominent challenges to successful climate litigation raised by existing literature. These challenges include the causality challenge, cross-temporal challenge, and extraterritoriality challenge. The causality challenge refers to the difficulty in linking the specific actions and contributions to climate change of one party to the harm of another party resulting from the attributable climate change. The cross-temporality challenge is the difficulty of establishing a successful claim due to the temporal, or time-related, space between a claim of right being violated and the actual harm or impact on a given party relating to climate change. The extraterritoriality challenge refers to the reality that the challenges posed by climate change are not confined by borders, and the harmful actions resulting in climate change rights

9. See id. at 25–26 (suggesting climate-related cases could overcome difficulties imposed by Article 263 of the TFEU).
violations may originate in one territory or jurisdiction while causing harm in another.

These challenges were each raised in a 2016 report from the United Nations.\textsuperscript{10} Scholars subsequently noted these studies in their own research regarding issues at the intersection of climate change and human rights.\textsuperscript{11} While previous works note these obstacles may exist and how they are possibly applicable to a single case,\textsuperscript{12} no previous scholarship systematically tests whether courts deny claims based on an inability to establish causality; inability to support claims on the basis of temporal space between current conditions and future temporal considerations; or inability to support claims against an alleged perpetrator on the basis of extraterritorial legal barriers. In Part II, I fill this gap in the existing literature by using a large dataset of collected cases to test hypotheses relating to these suggested challenges.

Part III presents the possible pathways that climate litigation is likely to be more successful. Specifically, I focus upon youth-based claims, Indigenous-based claims, claims based upon current wellbeing concerns, and claims based upon future wellbeing concerns. Youth-based claims involve applicants who reference the violation of rights specific to the category of young people or youth in their claims. Indigenous-based claims concern applicants who include a reference to the violation of rights specific to the category of being members of, or representing, Indigenous Peoples.

Current wellbeing-based claims concern a case filing which includes one or more statements that connect the impact of climate change on the current wellbeing of the relevant party, or parties, to the acts or omissions of the defendant. Future wellbeing-based claims also refer to one or more statements connecting the impact of climate change on the future wellbeing of the relevant party, or parties, to the acts or omissions of the


\textsuperscript{11} See Setzer & Vanhala, supra note 1, at 10 (noting how climate change affects human rights challenges); see generally Agnieszka Szpak, Arctic Athabaskan Council's Petition to the Inter-American Commission on Human Rights and Climate Change—Business as Usual or a Breakthrough?, 162 CLIMATIC CHANGE 1575 (2020) (highlighting the challenges arising from climate change litigation).

\textsuperscript{12} See e.g., Setzer & Vanhala, supra note 1, at 10–11 (addressing the challenges associated with rights-based climate actions).
defendant. Like current wellbeing-based claims, a pertinent human rights statute is also applied to a future wellbeing-based claim. These possible pathways for successful claims regarding human rights violations in climate litigation stem from examining existing cases as well as case analysis in the existing literature.

To assess the extent to which these challenges and pathways are associated with successful climate litigation regarding human rights claims, I collected pertinent litigation data from different global regions and court levels. The dataset includes 100 cases with court decisions and coding across multiple dimensions for each case through processing official court documents and decisions. For each potential pathway and obstacle, I outline a hypothesis for the likelihood that these will lead to successful claims. I then test these hypotheses using statistics from the case dataset. In addition to presenting overall results, I analyze outcomes for each potential pathway and obstacle by global region and court level.

After testing these hypotheses, I found that concerns of causality, cross-temporality, and extraterritoriality are all challenges for climate litigation for human rights claims. Additionally, regarding prospective pathways I found that Indigenous-based claims are a fruitful pathway for case success. However, based on the results, youth-based claims and claims based upon current wellbeing and future wellbeing are not particularly conducive to case success.

In assessing the differences by region and court level, many notable variations are observable. In certain regions and court levels, claims are shown to go against the prevailing overall outcome. This suggests that while each of the obstacles cause difficulty for successful human rights claims in climate litigation, in addition to the unsuccessful nature of many pathways, these outcomes are not monolithic when considering the different global regions and court levels.

These findings advance the literature on climate litigation with human rights claims by providing an approach to assessing case outcomes based on the type of claim. Moreover, Parts IV and V take a distinct approach by further assessing differences by region and court level. As more global cases of climate litigation with human rights claims arise, taking into consideration a comparative transnational perspective is expected to be pertinent for scholars to understand the content and outcome in these cases, as well as the content of determinations made by courts.

Finally, this Article concludes with a discussion of the findings in existing literature, contributions made in this Article, and possible future
pathways for research. I suggest that future work should not only consider cases of climate litigation with human rights claims in a comparative transnational perspective, but also consider government responses to case outcomes. Scholarship increasingly notes that backlash effects regarding climate law can occur and that such outcomes may overlap with human rights considerations. This work relies largely upon experimental evidence, meaning that future assessments of government responses to climate laws, particularly those with human rights claims, are necessary. Additionally, further consideration of denying claims on procedural grounds or based on a lack of standing regarding an inability to establish exclusive group membership is also necessary. Overall, these considerations will help build upon existing work and the findings put forth in this Article.

II. CHALLENGES

There has been a recent rise in the number of scholarly articles giving attention to climate litigation. While the specific drivers of this phenomenon remain uncertain, the scholarship proffers a number of suggestions. Three prominent, possible challenges include: (1) the causality challenge; (2) cross-temporal challenge; and (3) extraterritoriality challenge. These challenges presented in previous work discuss different roadblocks which occur when parties attempt to bring claims concerning harm caused by climate change.

Concurrent with the rise of scholarly discourse is a growing consideration of pathways for climate litigation success and obstacles hindering the success of such litigation. In addition, the rising number of climate litigation cases with human rights claims implies that such considerations are becoming significant in understanding the comparative and transnational aspects of climate and human rights law. This section

14. See generally Setzer & Vanhala, supra note 1, at 10 (acknowledging a rise in rights-based climate litigation); Ludwig Krämer, supra note 8 (identifying a rise in climate litigation).
of the Article outlines the arguments behind these three prominent challenges and their application to climate litigation with human rights claims. The Article then presents three hypotheses based upon each one of these challenges.

A. Causality Challenge

One of the most prominent contentions raised regarding obstacles for the success of climate litigation is sufficiently establishing a causal link between the actions of the alleged party violating climate law and the petitioner claiming the alleged party violated their rights. Causality in climate litigation requires the establishment of a link between the specific actions of one party regarding their contributions to changes in climate conditions and the harm of another party resulting from that climate change. For human rights claims in climate litigation, it is generally necessary for the plaintiffs to show that the actions of one party have contributed to climate change, and these specific actions are directly attributable to the alleged party and violate fundamental rights.

For example, a party may attempt to file a petition to stop petroleum production licenses from being granted by arguing that the contribution of the future production of fossil fuels will exacerbate climate change—violating the party’s rights, as was done in Greenpeace Nordic Ass’n v. Ministry of Petroleum and Energy. For a party filing such a petition to be successful,
a court must determine that the granting of these production licenses not only contributed to climate change but that the climate change was significant enough to violate existing laws, such as emissions reductions targets.

Not only would this violation need to be determined to have occurred or have a meaningful likelihood of occurring, but a violation infringing upon human rights protections would have to be demonstrated by the petitioner. Even then, this may not be sufficient for claims to be successful. As Ganguly, Setzer, and Heyvaert suggest, early cases of climate litigation where plaintiffs sued major corporations—that were and remain significant emitters of greenhouse gas—reveal that plaintiffs were unsuccessful because they were unable to link climate harm to defendants’ actions.21

Further complicating the establishment of causal links, government actions and inactions possibly affect how climate change impacts individuals. To understand human rights violations in connection with climate change, the establishment of a causal relationship can be connected to either negative or positive rights.22 This may differ when linking the actions of governmental entities to climate-based human rights violations as opposed to private entities because governmental entities hold different legal and political powers. These considerations reflect that causality is not only necessary in cases of climate litigation with human rights claims but that attempting to establish direct causal links between a perpetrator’s actions and the violations of a single entity’s—whether individual or group-based—human rights are a possible challenge for successful litigation.

This leads to my first hypothesis:

infringe their right to a healthy environment, the Norwegian Court of Appeal and Supreme Court dismissed the petitioners’ arguments. See generally Borgarting lagmannsrett [Borgarting Court of Appeal] Jan. 23, 2020, No. 18-060499ASD-BORG/03 (Nor.); Norges Høyesterett [Supreme Court of Norway] Dec. 22, 2020, No. 20-051052SIV-HRET (Nor.).

21. Ganguly et al., supra note 4, at 867.

22. See Le Clercq, Juan Antonio, Las consecuencias del cambio climático, la responsabilidad del daño y la protección de los Derechos Humanos, una relación problemática, en: La reforma humanista: Derechos humanos y cambio constitucional en México, México: Porrúa, 2011, pp. 389, 403 (describing the negative impacts caused by an increase in temperature and biofuel production); Ottavio Quirico, Climate Change and State Responsibility for Human Rights Violations: Causation and Imputation, 65 NETH. INT’L L. REV. 185, 191 (2018) (identifying the difficulty with “adducing] evidence of an indirect causal link between the injury suffered and State positive or negative conduct causing it”).
Hypothesis 1
In most climate cases with human rights claims in which causality is questioned by courts, the relevant claim, or claims, will be unsuccessful.

B. Cross-temporal Challenge
A further challenge previously suggested by legal scholars regarding climate law relates to cross-temporal dynamics. Cross-temporal challenges involve a time-related issue between the violation of rights claim and the actual harm or rights violation impact on a given party. Since climate change is a long-term process that contains future effects, cross-temporal challenges are considerable obstacles for parties claiming rights violations related to climate law.

As Yoshida and Setzer note, it may be difficult to legally establish the human rights impact of climate change immediately because the manifestation of cognizable environmental impacts from climate change generally occur after a significant amount of time. These temporal gaps potentially serve as challenges to successful litigation, as the directness and severity of harm determined at the time is either reduced or absent. This interpretation by the courts suggests that the chances of a favorable ruling for those claiming a human rights violation are diminished.

The reality is that the climatic system is complex. Temporal and spatial scales, as well as the interactions between human and environmental systems, mean that legal determinations are difficult to resolve based solely on clear and close temporal proximity. Consider, for example, that climate change and several human-driven factors greatly influence marine systems.

Existing research has uncovered complex biological responses among marine species, yet clear consequences in the future remain uncertain. At

26. See Christopher D. G. Harley et al., The Impacts of Climate Change in Coastal Marine Systems, 9 ECOLOGY LETTERS 228, 228 (2006) (“[C]oastal marine environments are a major focus of concern regarding the potential impacts of anthropogenic climate change.”).
27. See id. at 234–35 (detailing composition and structural changes in marine species due to climate change); Dana D. Miller et al., Adaptation Strategies to Climate Change in Marine Systems,
the same time, changing sea levels, pollution of waterways, drought, and extreme flooding all have significant consequences for humanity. However, directly attributing such events to climate change is not always straightforward. The attribution of extreme weather events concerning climate change refers to averages, which are harder to pinpoint to a single event in certain cases, and slow onset occurrences, such as sea level rise, which may be viewed as problematic for the future—as argued by the majority in the case of Teitiota v. New Zealand. Therefore, it is possible that a relationship exists between difficulties of causality and cross-temporality.

This challenge could also relate to intergenerational concerns. In the development of work at the intersection of climate law and human rights, scholars increasingly suggest that considerations of intergenerational rights are essential to effectively protect human rights. Intergenerational rights considerations can serve as one aspect of climate justice. Intergenerational rights considerations within climate justice attach legal responsibilities to those who fail to mitigate climate change through the perspective that fairness between generations is a fundamental and universal human right.

Simultaneously, multiple petitions have been filed in different jurisdictions alleging intergenerational claims to human rights protections because of existing violations. In these cases, courts must assess the

24 GLOB. CHANGE BIOLOGY e1, e10 (2018) (“Climate change and ocean acidification may reduce the reliability of [research] information in predicting future performance as environmental conditions change.”).

28. DANIEL G. HUBER & JAY GULLEDGE, EXTREME WEATHER & CLIMATE CHANGE: UNDERSTANDING THE LINK AND MANAGING THE RISK 2 (2011) (“Climate change is defined by . . . the average of hundreds or thousands [of] events over the span of decades.”).


30. See Émilie Gaillard, L’entrée dans l’ère du droit des générations futures, 3 LES CAHIERS DE LA JUST. 441, 448 (2019) (“[A]ll human rights are threatened if their ecological and transgenerational application is not recognized.”); Elizabeth D. Gibbons, Climate Change, Children’s Rights, and the Pursuit of Intergenerational Climate Justice, 16 HEALTH & HUM. RTS. J. 19, 27 (2014) (“This discrimination against children demands intergenerational climate justice . . . .”); Andrea Schapper, Climate Justice and Human Rights, 32 INT’L REL. 275, 281 (2018) (“The idea behind such considerations is to . . . adopt policies that take the interests of future generations into account fostering ways of indirect (and intergenerational) democratic representation.”).

31. See MARY ROBINSON FOUND., CLIMATE JUSTICE: AN INTERGENERATIONAL APPROACH 1–2 (2013) (discussing intergenerational equity and the importance of taking future generations into consideration regarding the climate crisis).

32. See generally Case T-330/18, Carvalho v. Parliament, ECLI:EU:T:2019:324 (May 8, 2019); La Rose v. Her Majesty the Queen, 2020 FC 1008 (Can.); Corte Suprema de Justicia [C.S.J.] [Supreme
temporal space between current acts or omissions relating to climate change mitigation. Whether courts have broadly accepted or interpreted existing laws to protect intergenerational rights concerns, however, remains unclear.

This leads to my second hypothesis:

**Hypothesis 2**

In most climate cases with human rights claims, in which cross-temporality is questioned by courts, the relevant claim, or claims, will be unsuccessful.

C. *Extraterritoriality Challenge*

Climate change is an issue that is not confined to a single country, region, or continent. The effects of climate change are a global phenomenon.33 While these effects are not distributed evenly across regions or countries, the challenges posed by climate change are not confined by borders. Despite this assessment, legal principles of jurisdiction and territoriality may serve as obstacles to successful claims of human rights violations relating to climate change.

The territorial principle, which allows international states to exercise exclusive jurisdiction over legal persons within its territorial borders, is an important aspect of public international law.34 In transnational cases, jurisdiction can have multiple meanings: (1) jurisdiction to prescribe; (2) jurisdiction to adjudicate; and (3) jurisdiction to enforce.35 Jurisdiction to prescribe refers to the ability of international states to make laws applicable to entities, such as persons or organizations.36 Jurisdiction to adjudicate refers to the ability of international states to be subject to the judicial process, undertaken, for example, by courts or administrative
Jurisdiction to enforce refers to the ability of international states to compel entities to comply with the outcomes of judicial processes. As suggested by Nico Krisch, there has been a historic presumption of territoriality regarding jurisdiction in international law. This presumption arguably derives from the outgrowth of the rights and powers of states; however, this position is questionable considering changes in understanding international law regarding the duty and obligations of international states, recognition that jurisdictional duties may be owed to private parties, and party autonomy—where private parties may confer jurisdiction on national courts. Thus, suggesting that the traditional state-centric model of territorial jurisdiction poses a challenge to climate litigation with human rights claims, as these claims regularly involve a complex network of transnational effects and actors.

Regarding territoriality and climate change, Eric Posner has previously noted the possible inability for domestic courts to properly deal with issues of climate change. Posner argued because climate change concerns a global public good and domestic courts hold limited control of foreign corporations within their jurisdiction, it is unlikely that domestic courts can provide remedies for international human rights violations relating to climate change. However, existing literature illustrates individuals potentially seek remedies through an international climate-related claim when there is an international body that governs human rights violations. For example, Sheila Watt-Cloutier, an Inuk woman, and the Inuit Circumpolar Conference petitioned the Inter-American Commission on Human Rights (IACHR) to seek relief for human rights violations caused by the United States’ failure to limit greenhouse gas (GHG) emissions.

37. Id.
38. Id.
40. See Alex Mills, Rethinking Jurisdiction in International Law, 84 BRIT. Y.B. INT’L. L. 187, 210 (2013) (acknowledging the jurisdictional duties among states).
43. See 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 at 1–
Some legal scholars have called for a transnational approach that focuses on grassroots resistance to human rights injustice from transborder social-economic disparities such as climate change. Others propose embracing international cooperation to overcome jurisdictional issues where there is a common concern for humanity. It is unclear whether courts, or even the general public, have adopted such an approach. As such, this Article should further add to the literature on the relationship between issues regarding extraterritoriality and case success among climate litigation with human rights claims.

This leads to my third hypothesis:

**Hypothesis 3**
In most climate cases with human rights claims in which extraterritoriality is questioned by courts, the relevant claim, or claims, will be unsuccessful.

### III. POSSIBLE PATHWAYS

Despite the challenges in climate litigation, the successful human rights claims suggest that there must be pathways to success. In this section, the Article presents and explains four possible pathways through which future cases are likely to succeed. These pathways include: (1) youth-based claims; (2) Indigenous Peoples-based claims; (3) current wellbeing-based claims; and (4) future wellbeing-based claims. The Article then suggests four more hypotheses corresponding with each pathway.

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5, 111–15, No. P-1413-05 (Dec. 7, 2005) [hereinafter IACHR Petition] (arguing the United States violated the Inuit’s fundamental human rights through its greenhouse gas emissions in connection with the obligations under its membership in the American Declaration of the Rights and Duties of Man and participation in other international instruments).

44. See Wouter Vandenhole, Transnational Human Rights Obligations as Vehicles for Global Justice, in BEYOND LAW AND DEVELOPMENT: RESISTANCE, EMPLOYMENT AND SOCIAL INJUSTICE 141, 146–48, 153 (Sam Adelman & Abdul Paliwala eds., 2022) (proposing human rights obligations should apply despite territorial borders to promote global justice).

A. Youth

One way climate litigation with human rights claims is more likely to succeed concerns the inclusion of rights-violation claims predicated on the age of the petitioners. Specifically, claims may be more successful when petitioners are classified as youths. One estimate suggests that as of 2021, approximately one in four rights-based climate cases involved youths. These cases tend to argue that climate change—driven by older generations—will have a greater impact on younger generations. In Sacchi v. Argentina, sixteen youths brought suit before the Committee on the Rights of the Child against Argentina, Brazil, France, Germany, and Turkey (all of which are parties to the Convention on the Rights of the Child). The youth petitioners argued these countries violated their rights as a result of acts and omissions regarding the countries’ contributions to climate change. Specifically, they alleged the countries’ failure to sufficiently reduce emissions caused and perpetuated climate change, contributing to health concerns, physical concerns, and endangering Indigenous practices of young people in their countries.

Similarly, in Duarte Agostinho v. Portugal, six youth plaintiffs from Portugal brought suit against Portugal and thirty-three other international states, including all European Union member states along with Norway, Russia, Switzerland, Turkey, Ukraine, and the United Kingdom, in the European Court of Human Rights (ECHR). The plaintiffs alleged the defendant states violated their human rights under Articles 2, 8, and 14 of the European Convention on Human Rights, which protect the right to life, right to respect for family and private life, and the prohibition of discrimination, respectively. Specifically, they argued young people

48. See id. ¶ 1.1 (identifying the youths’ rights-based climate case against Argentina and other countries).
49. See id. ¶ 3.5 (establishing the basis for the claim).
50. See id. ¶ 3.6 (outlining the harmful effects of climate change).
52. See id. app. II (listing the defendant countries subject to the claim).
53. See id. at 2 (outlining the substantive basis for the applicants’ claims); see also Convention for the Protection of Human Rights and Fundamental Freedoms art. 2, 8, 14, Nov. 4, 1950, 213 U.N.T.S. 221 (reaffirming the fundamental freedoms codified by the Council of Europe).
disproportionately suffer from the effects of climate change and experience physical and mental threats from climate-related events. The defendant states’ failure to mitigate and prevent their contributions to climate change directly caused these effects and violated the petitioners’ protected rights.

It is important to note however, that there is no concrete age range defining “youth” or “young people” in climate litigation with human rights claims. In *Sacchi*, the youth petitioners’ ages ranged from eight to seventeen, while in *Duarte Agostinho*, the petitioners included four children and two young adults. Further, in *Environnement Jeunesse v. Attorney General of Canada*, petitioners asserted persons younger than thirty-six years old should represent young people with violated rights.

One reason these claims may potentially lead to success is that they provide a unique platform for arguments regarding intergenerational climate justice. Anthropogenic climate change involves a long-term process, and there is broad scientific consensus that the current state of changing climatic conditions has accelerated due to industrialization and increased fossil fuel consumption beginning approximately a century ago. These deleterious actions began generations before today’s youth were alive, and the effects of climate change are expected to disproportionately affect young people now and in the future. Therefore, young people are disproportionately impacted, both physically and mentally, by the effects of climate change.

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54. See *Duarte Agostinho*, App. No. 39371/20, at 1–3 (discussing the applicants’ grievances, ranging from allergies to catastrophic weather events).

55. Id. at 3.

56. See *Comm. on the Rts. of the Child, Decision by the Comm. on Its Eighty-Eighth Session*, U.N. Doc. CRC/C/88/D/104/2019, ¶ 1.1 (Sept. 22, 2021) (“At the time of the submission of the complaint the authors were all under the age of 18 years.”).

57. See *Duarte Agostinho*, App. No. 39371/20, at 1 (“The applicants are Portuguese citizens aged 21, 17, 8, 20, 15 and 12 years respectively . . . .”).


59. See id. ¶¶ 115–16 (requesting to institute a class action for persons “aged 35 and under as of November 26, 2018”).


Courts are more likely to find that youth petitioners have incurred damages from the acts and omissions of state or non-state actors regarding their contributions to climate change. This finding may also encompass stronger person-environment connections within human rights law. Further, these implications suggest that human rights-based litigation brought by young people may pioneer an approach to establishing legal protections relating to climate change.

Litigation brought by youths serves as an opportunity to expand the participatory rights of young people in human rights law relating to climate change, as well as provides them with greater autonomy within the transnational legal system. Courts could view human rights claims made by youth petitioners or with youth-based arguments in climate law as more akin to protections designed to safeguard inextinguishable rights.

This leads to my fourth hypothesis:

**Hypothesis 4**

In most climate cases with human rights claims in which youth-based claims are questioned by courts, the relevant claim, or claims, will be successful.

### B. Indigenous

Multiple cases in which petitioners argued that their human rights were violated with specific reference to their Indigenous identity or on behalf of Indigenous communities were brought before courts. In *Arayara Ass'n of Education and Culture v. FUNAI*, Arayara Association of Education and

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62. See Aoife Daly, *Climate Competence: Youth Climate Activism and Its Impact on International Human Rights Law*, 22 HUM. RTS. L. REV. 1, 1, 2–3, 16 (2022) (explaining how youths are driving the shift towards encompassing human rights in claims pertaining to environmental issues).

63. Giulia Gasparri et al., *Children, Adolescents, and Youth Pioneering a Human Rights-Based Approach to Climate Change*, 23 HEALTH & HUM. RTS. J. 95, 105 (2021) ("[Y]oung people are pioneers in ensuring that an HRBA to climate change is translated into policies and practice.").

64. See generally 3 Aoife Daly, *Children, Autonomy and the Courts: Beyond the Right to Be Heard* (Pernilla Leviner ed., 2018) (providing background regarding children’s autonomy and legal status in legal proceedings and decisions).

65. See TRF-4, Ação Civil Pública No. 5069057-47.2019.4.04.7100/RS, 8.2.2022, para. 42 (Braz.) (arguing the human rights of Indigenous Peoples were violated by a proposed mining site); IACHR Petition, supra note 43, at 1, 76 (arguing Indigenous Inuit human rights were violated by the United States’ contribution to climate change).

66. TRF-4, Ação Civil Pública No. 5069057-47.2019.4.04.7100/RS, 8.2.2022 (Braz.).
Culture and the Poty Guarani Indigenous Association filed a public civil action, with a request for a preliminary injunction, in October 2019 against a proposed open-pit coal mining project near Guaíba, Brazil. The Arayara Association of Education and Culture and the Poty Guarani Indigenous Association argued that the environmental licensing process for the Guaíba Mine did not involve notification or consultation with Indigenous Peoples living near the proposed mining site and that the development of the mine would create significant environmental and social impacts for nearby communities—both in the short- and long-term by increasing atmospheric emissions of greenhouse gases and contaminating local lands.

Another significant case of climate litigation with human rights claims is Sheila Watt-Cloutier’s petition to the Inter-American Commission on Human Rights (IACHR) against the United States. Watt-Cloutier, Chair of the Inuit Circumpolar Conference (CICC) and a Canadian Inuk activist, filed a petition supported by sixty-two Inuit from Alaska and Northern Canada. The petitioner claimed that acts and omissions of the United States contributing to climate change negatively impacted Indigenous Inuit communities, thus violating their human rights. The petition requested that the United States adopt mandatory greenhouse gas mitigation measures and plans to protect Indigenous Inuit communities from climate change effects and inactions on reducing emissions—making it more difficult for Inuit communities to survive under the current trajectory of changing climate conditions.

In a research article focusing on the Arctic Athabaskan Council’s petition to the Inter-American Commission on Human Rights and climate change case, Agniezka Szpak, an associate professor at the Faculty of Political Science and Security Studies of the Nicolaus Copernicus University, argues that the lives and cultures of Indigenous Peoples serve as a meaningful basis for recent climate litigation with human rights claims, and that claims of rights violations from Indigenous populations can be a

67. Id. para. 1.
68. See id. para. 40 (contending Indigenous human rights were violated when the proposed mining site failed to consider the environmental impact on Indigenous communities).
69. IACHR Petition, supra note 43, at 1.
70. Id.
71. Id. at 5.
72. Id. at 7–8.
distinct pathway through which climatic concerns are related to the full enjoyment of human rights.  

Beyond these cases, we can look at the development of international legal protections for Indigenous Peoples. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted on September 13, 2007. Efforts to establish international legal protections for Indigenous Peoples formally began in 1982 with the development of the Working Group on Indigenous Populations (WGIP). The WGIP was established as a subsidiary body of the Sub-Commission on the Promotion and Protection of Human Rights to provide an opportunity through which Indigenous Peoples would be able to raise distinct concerns of oppression and exploitation against Indigenous communities and advocate for the protection of Indigenous Peoples’ rights internationally. The UNDRIP consists of forty-six articles that outline the rights guaranteed to Indigenous Peoples. This provides a universal framework for minimum standards of treatment to Indigenous groups. These rights are recognized and affirmed by 182 international states.

In addition to these broad concerns of historical oppression and exploitation, Indigenous communities are particularly vulnerable to the effects of climate change. For example, in 2015, the Office of the High Commissioner for Human Rights (OHCHR) expected the rights of Indigenous Peoples to be particularly at risk as a result of climate change and identified that this could apply to the rights to equality, non-discrimination, self-determination, and development. These emerging developments in human rights law designed to protect the rights of Indigenous Peoples serve as a significant pathway through which courts

73. Szpak, supra note 11, at 1588–89.
75. See United Nations Declaration on the Rights of Indigenous Peoples, U.N. DEPT OF ECON. & SOC. AFF., supra note 74 (describing the history and establishment of the WGIP).
76. Id.
77. See generally G.A. Res. 61/295, supra note 74 (stating the forty-six articles of the UNDRIP).
79. Id.
may uphold claims of such human rights violations relating to climate change.

This leads to my fifth hypothesis:

**Hypothesis 5**
In most climate cases with human rights claims in which Indigenous-based claims are questioned by courts, the relevant claim, or claims, will be successful.

C. **Current Wellbeing**

In addition to more identity-based claims raised above in the youth and Indigenous pathways, it is also possible that specific claims regarding harm to wellbeing could be a source of success in climate litigation with human rights claims. Considerations of basic health and wellbeing are central to human rights protections, and “climate change threatens human health and wellbeing.”

Climate effects, ranging from rising sea levels affecting small island nations and coastal areas, ecosystem loss in polar regions, and changing weather patterns intensifying flooding, storms, and drought, can diminish human standards of living and threaten basic rights. Thus, the effects of climate change can pose serious risks to fundamental human rights, including access to food, personal health and security, and livelihood.

In court, plaintiffs may claim actors violated their human rights through acts and omissions contributing to climate change that negatively affect their personal or community’s wellbeing. This assertion may, for example, relate to how greenhouse gas emissions create unsafe or worsening conditions. Concerns regarding emissions may also raise claims that pollution, in combination with the global effects of air pollutants, directly harms human health by affecting air quality and local conditions.

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81. See Barry S. Levy & Victor W. Sidel, Collective Violence Caused by Climate Change and How It Threatens Health and Human Rights, 16 HEALTH & HUM. RTS. J. 32, 33 (2014) (discussing the threat collective violence poses to human rights as a result of climate change).

82. See Riyanti Djalante, Key Assessments from the IPCC Special Report on Global Warming of 1.5°C and the Implications for the Sendai Framework for Disaster Risk Reduction, 1 PROGRESS DISASTER SCI. 1, 1 (2019) (describing climate change’s negative global impact).
In *Marangopoulos Foundation for Human Rights v. Greece*, the claimants argued that Greece failed to properly protect human rights under national, European, and international law by overseeing and holding partial ownership in lignite coal mines and coal-fired power plants. The European Committee of Social Rights (ECSR) heard the case, and the claimants further contended Greece violated Article 2, Section 4; Article 3, Sections 1–2; and Article 11 of the European Social Charter (ESC) of 1961. Article 2, Section 4 protects “the right to just conditions of work,” Article 3, Sections 1–2 protect “the right to safe and healthy working conditions,” and Article 11 protects “the right to protection of health.”

The claimants cited the United Nations Framework Convention on Climate Change of May 9, 1992 (UNFCCC) and the Kyoto Protocol to the United Nations Framework Convention on Climate Change of December 11, 1997 (Kyoto Protocol), noting Greece is obliged under the UNFCCC “to adopt and implement national and regional measures to mitigate climate change and . . . promote the application of processes [to] control anthropogenic emissions.” Additionally, the claimants asserted that the Kyoto Protocol requires Greece to demonstrate a commitment to reduce greenhouse gas emissions of the six main greenhouse gases, which include “carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆).”

Further, MFHR presented information showing that total suspended particle pollution levels have consistently risen above the European Union and World Health Organization’s established limits from the mines and power plants. The organization argued that “Greece ha[d] failed to comply with its obligation to protect public health against air pollution, in accordance with Article 11 § 1 of the [ESC].” The ECSR ruled in favor.

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84. Id. ¶ 1.
87. *See id.* ¶¶ 114–15 (identifying the international standards for air pollution).
88. Id. ¶ 115.
89. Id. ¶ 14.
90. Id. ¶ 11.
of MFHR, finding Greece violated Articles 2, 3, and 11 of the ESC due to insufficient emissions levels reductions, pollution control measures, environmental impact assessments, and enforcement of health and safety regulations.91

Plaintiffs may also allege a violation of their human rights when private or public actors’ acts or omissions affect climate change that threatens the wellbeing of the plaintiffs’ home country. This may relate to legal issues regarding climate migration. In AD (Tuvalu),92 the appellant and his family were citizens of Tuvalu seeking residence visas under a humanitarian appeal to avoid deportation.93 The appellant and his wife (appellants) arrived in New Zealand in 2007 and had two children born in New Zealand; one child born in 2008 and the other in 2011.94 Between 2008 and 2011, the appellant attempted to receive a work permit, a residence permit under the Pacific Access Category system, and a three-month visitor permit—all were ultimately unsuccessful.95 In 2012, the appellants lodged refugee and protected person status claims with the Refugee Status Branch.96 However, the Refugee Status Branch dismissed these claims in 2013.97 After submitting a humanitarian appeal and an appeal to the earlier refugee and protected persons status decision, the New Zealand Immigration and Protection Tribunal (Tribunal) issued separate but contemporaneous decisions in 2014.98

Before the Tribunal, the appellants argued they would be at risk of suffering from the effects of climate change if they were sent back to Tuvalu.99 Appellants presented geographic considerations noting that Tuvalu is a low-lying tropical island in the Pacific, with rising sea levels,
coastal erosion, seawater flooding and inundation, rising salinity of fresh groundwater, destruction of main sources of subsistence, and destruction of personal and community property due to, or exacerbated by, the effects of climate change. Further, the appellants argued that returning to Tuvalu would put an undue burden on their children, who are “inherently more vulnerable to natural disasters and the adverse impact of climate change.” When considering a child’s removal from the country, the Tribunal must assess the best interests of the child as a primary consideration, as required under Article 3 of the 1989 United Nations Convention on the Rights of the Child and ratified by New Zealand in 1993.

In both circumstances, courts were required to consider a plaintiff’s current wellbeing. Building upon these considerations, the effects of climate change currently diminishing a plaintiff’s wellbeing may serve as a basis to strengthen human rights claims in climate litigation.

This leads to my sixth hypothesis:

**Hypothesis 6**

In most climate cases with human rights claims in which the courts are considering current wellbeing-based claims, the relevant claim, or claims, will be successful.

**D. Future Wellbeing**

In addition to current wellbeing claims serving as a potential pathway for success in climate litigation with human rights claims, considerations of future wellbeing may also lead to case success. Climate litigation presents a pathway through which claims of future wellbeing concerns serve as a meaningful basis for case success in protecting human rights. One underlying reason for this is that climate change is a consequential process with present and future effects on living conditions, such as health, wellbeing, and living standards of people across the globe.

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100. *See id. ¶ 29* (considering appellants’ evidence of the known effects of climate change in Tuvalu and the future risks, such as “decreasing agricultural yields,” “increase in dengue fever risks and water borne diseases,” and “increase in human stress” (quoting AC *(Tuvalu)* [2014] NZIPT 800517-520, ¶ 16 (N.Z))).

101. *Id. ¶ 25*.

102. *See id. ¶ 23* (evaluating the best interests of the children in the case and concluding they should remain with their parents living in New Zealand).
In public information published by the National Aeronautics and Space Administration (NASA), entitled The Effects of Climate Change, the independent agency states that “[s]cientists predict global temperature increases from human-made greenhouse gases will continue. Severe weather damage will also increase and intensify.”103 This increase and intensification of severe weather is expected to include concerns of drought, flooding, rising temperatures, sea level rise, freshwater salinization and shortages, and ice loss.104 These changes are also expected to place a significant burden on human populations, threatening the safety and security of people across the globe.

Inclusion of violations to human rights resulting from public and private actors’ actions or omissions that contribute to climate change is expected to affect future wellbeing. By compelling both public and private actors to take actions designed to protect human rights by reducing contributions to climate change or mitigating the effects of climate change, claims of harm to future wellbeing may also be particularly successful.

1. Public Actors and Future Wellbeing

Complainants possess the ability to hold public actors, such as national and sub-national governments, accountable for acts and omissions relating to climate change contributions. As an example, four non-profit organizations sent a letter to the French government on December 17, 2018, referred to as a letter of formal notice under French law, regarding the French government’s inaction towards climate change.105 On February 15, 2019, representatives for the French government responded to the letter of formal notice and denied their request for damages suffered from France’s failure to mitigate climate change effects and to enjoin France from perpetuating its deficient responses to climate change.106 The

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104. Id.
105. See Notre Affaire à Tous et al., Demande Préalable Indemnitair, at 1 (Dec. 17, 2018), https://cdn.greenpeace.fr/site/uploads/2018/12/2018-12-17-Demande-pr%C3%A9alable.pdf [https://perma.cc/9QKH-Z7U9], translated in LETTER OF FORMAL NOTICE TO OFFICIALS 1 (Filippo P. Fantozzi trans., 2019) (asserting France violated its duty to act by failing to implement efficient legal measures to address known climate change related environmental and health risks).
non-profit organizations then submitted a legal request to the Administrative Court of Paris on March 14, 2019, arguing that France possesses legal duties to take all necessary and proper measures to ensure that greenhouse gas emissions are immediately reduced to meet expected contributions to 1.5 degrees Celsius threshold levels—compared with pre-industrial levels—and adapt national policies to protect citizens’ wellbeing against climate change.\(^{107}\)

The non-profit organizations argued that under Articles 2 and 8 of the European Convention on Human Rights (ECHR), which protect the right to life and the right to respect private and family life, as well as the Paris Agreement, French Environmental Code, and French Environmental Charter, France’s duty of care to its citizens requires it to adopt and implement effective measures to mitigate and protect against the risks posed to wellbeing by climate change.\(^{108}\)

On February 3, 2021, the Administrative Court of Paris determined that inaction on the part of the French government contributed to ecological damage relating to climate change and ordered the government to investigate its current measures and disclose the current concrete steps taken to meet national climate targets within two months.\(^{109}\) On October 14, 2021, the Administrative Court of Paris then ordered France to take all of the useful measures to repair ecological damage and prevent greenhouse gas emissions above established targets under the first carbon budget by December 31, 2022, or sooner—requiring compensatory damages if unable to reach the targets within the specified timeframe.\(^{110}\)

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\(^{107}\) See id. (claiming France has a duty to take certain measures, such as reducing GHG emissions, to contain the average temperature of the planet and protect the health and welfare of its citizens).

\(^{108}\) See id. at 10 (alleging France’s acts and omissions produce the climate-related problems affecting its citizens).

\(^{109}\) See Tribunal Administratif [TA] [Administrative Court of First Instance] Paris, Feb. 3, 2021, 1904967, 1904968, 1904972, and 1904976/4-1, at 37 (Fr.) (requiring France pay the non-profit organizations a nominal sum for each of their moral damages, and take immediate action to reduce GHG emissions and investigate their current measures).

\(^{110}\) See Tribunal Administratif [TA] [Administrative Court of First Instance] Paris, Oct. 14, 2021, 1904967, 1904968, 1904972, and 1904976/4-1, at 31 (Fr.) (evaluating the evidence presented by France and concluding France must take all mitigating steps necessary to reduce GHG emissions for the safety and welfare of its citizens).
Comparably, in *Shrestha v. Office of the Prime Minister*, Padam Bahadur Shrestha, a lawyer and Nepalese citizen, filed an application on August 23, 2017, to compel the government of Nepal to enact a new law relating to climate change that would address the threats to wellbeing. In the application, the “petitioners . . . alleged violations of Articles 16, 30, 35, and 36 of the [c]onstitution, provisions of the Environmental Protection Act 1997 and international treaties and conventions to which Nepal is a party.” Further, the petitioner contended that Nepal faced serious threats to wellbeing as a result of climate change—noting present and future risks of floods, avalanches, rising temperatures, and deforestation.

On December 25, 2018, the Supreme Court of Nepal handed down a decision siding with the petitioner. The court determined that the Nepalese government must implement policies that would ensure adaptation to and mitigation of climate change; thus, promoting citizen alignment with the principles of sustainable development and climate justice.

The primary piece of existing environmental legislation in Nepal at this time was the Environmental Protection Act of 1997. The Supreme Court of Nepal deemed the Environment Protection Act of 1997 insufficient to adequately meet national commitments under the Paris Agreement and the Constitution of Nepal because it did not encompass climate adaptation and mitigation. As a result, the Nepalese government passed two pieces of legislation designed to establish standards of providing adaptation and mitigation protections for citizens regarding climate change: the Environment Protection Act of 2019 and the Forests Act of 2019.

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112. *Id.* at 3 (recognizing climate changes affecting petitioner are what prompted petitioner to propose climate laws for Nepal).
113. *Id.*
114. *Id.* at 4.
115. *See id.* at 14 (ordering a writ of mandamus favoring the petitioners’ position of strict adherence to the climate policies).
116. *Id.* at 6.
117. *See generally* Environment Protection Act, 2053 (1997) (Act No. 24/2053) (Nepal) (creating provisions to preserve the environment and minimize “adverse impacts likely to be caused from environmental degradation”).
118. *See Shrestha* (2018) 3 NKP 61, No. 10210, at 5–6 (suggesting the need for new legislation to address the issues concerning climate change).
2. Private Actors and Future Wellbeing

As a result of contributions to climate change or inaction to mitigate the effects of climate change, complainants may compel private actors to change their actions. Although public actors are more likely to be defendants in climate litigation with human rights claims, private actors have also been defendants in these cases. Complainants may be more inclined to bring cases against public actors who either exacerbate climate change through their conduct or omit actions that can protect against fighting climate change. However, private actors can also serve as individuals who make decisions that run counter to efforts designed to protect human rights against the consequences of climate change. Moreover, private actors can be incentivized to act unfavorably toward the public regarding climate adaptation and mitigation.

Considering Milieudefensie v. Royal Dutch Shell PLC, Milieudefensie, on behalf of itself, six NGOs, and over 17,000 Dutch citizens, filed a class action suit against Royal Dutch Shell, a multinational petrochemicals corporation headquartered in the Netherlands that oversees the production and distribution of oil and gas. The plaintiffs contended that Royal Dutch Shell owed current and future Netherland citizens a duty of care. Further, the plaintiffs argued that the corporate policy of Royal Dutch Shell was hazardous and disastrous to the wellbeing of people and “in no way . . . consistent with the global climate target to prevent a
dangerous climate change for the protection of mankind, the human environment and nature."\(^{125}\)

Despite limiting representation to citizens of the Netherlands and Wadden Sea region, and barring ActionAid’s claim, the District Court of the Hague ruled in favor of the plaintiffs.\(^{126}\) The court found that based upon the standard of care pursuant to Book 6, Section 162 of the Dutch Civil Code, the policy intentions of Royal Dutch Shell were incompatible with the unwritten standard of care they owed in relation to human rights.\(^{127}\) The court also required Royal Dutch Shell to reduce its aggregate CO\(_2\) emissions, resulting from business operations, by at least forty-five percent by the end of 2030 relative to 2019 levels.\(^{128}\)

This case illustrates how arguments regarding the future effects of climate change may influence case success when claims are made against a private actor. Thus, in addition to the current effects of climate change on wellbeing, the future effects of climate change may also serve as a basis for successful climate litigation with human rights claims.

This leads to my seventh hypothesis:

**Hypothesis 7**

In most climate cases with human rights claims in which future wellbeing-based claims are questioned by courts, the relevant claim, or claims, will be successful.

IV. CASES AND CODING

This section of the Article assesses the extent to which questions of causality, cross-temporality, and extraterritoriality affect the success or failure of case outcomes in climate litigation with human rights claims. In addition to assessing these commonly raised possibilities of obstacles suggested within the literature, I also propose and test possible pathways through which success in case outcomes is achievable. The pathways I

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\(^{125}\) Id.
\(^{126}\) See id. ¶ 4.6.2 (claiming RDS as the unsuccessful party in litigation).
\(^{127}\) Id. ¶ 4.4.1 ("[F]rom the unwritten standard of care laid down in Book 6 Section 162 Dutch Civil Code, . . . RDS must observe the due care exercised in society.").
\(^{128}\) See id. ¶ 4.1.4 ("The assessment culminates in the conclusion that RDS is obliged to reduce the CO\(_2\) emissions of the Shell group’s activities by net 45% at end 2030 relative to 2019 . . . ").
focus on are youth-based claims, Indigenous-based claims, current wellbeing claims, and future wellbeing claims.

To test the seven hypotheses outlined previously, I collected climate litigation cases, which specifically include at least one claim in which human rights violations have allegedly occurred. Cases were collected from all possible global regions, countries, jurisdictions, and international courts. The case research relied primarily on the Climate Change Laws of the World database (operated by the Grantham Research Institute on Climate Change and the Environment, housed at the London School of Economics and Political Science) and the Climate Change Litigation Databases (maintained by the Sabin Center for Climate Change Law, housed at Columbia Law School). This research led to the collection of 100 case observations with decisions. Sixty-five additional cases were collected and are part of the dataset, but rulings are currently pending.

Each case was read and coded on numerous dimensions relating to the specific case and the variables associated with the hypotheses presented. The country, court, and global region for each case was coded. The country of the case is the international state in which the case was heard, unless the case was heard in an international court. In this case, the country was listed as international. The court is the name of the court which heard the case. Regions were divided into Africa, Asia, Europe, International, Latin America, North America, and the Pacific.

The year of filing and year of decision were coded for each case. The year of filing refers to the year the case was officially filed in the given court. The year of decision refers to the year in which a given court made its final decision on a case.

The court level for each case was coded. The court level was divided into three categories: national (non-highest), national (highest), and international. Cases were coded as national (non-highest) if the case was heard before a court that was not the highest court which could be reached given a country’s applicable court system. Cases were coded as national (highest) if the case was heard before a federal supreme court or other applicable court which is the highest appellate court within a given country. Cases were coded as international if they were heard between a court that had jurisdiction spanning more than one country.

Case success was coded for each case. All cases included in the dataset involved at least one claim concerning human rights violations related to climate change. A case was coded as successful if a court determined that at least one claim made in a case involving human rights violations related
to climate change was violated based upon the facts of the case and applicable laws. Cases where multiple claims of human rights violations related to climate change were violated were coded the same as cases in which only one claim was found to have been violated. If this criterion was not met, then a case was coded as unsuccessful.

Whether the court questioned causality and whether the causality challenge was overcome were coded according to the first hypothesis. Causality was coded as being questioned if the court made a statement in their decision referring to whether the human rights violation claim, or claims, relating to climate change in the case was, or was not, causally related to the violation claim. While causality tends to be necessary for a legal claim to be successful, there are circumstances in which courts may rule on a case without making an explicit determination regarding the applicability of a causal relationship to reach a determination in a given case.

For example, in certain cases, claims were denied on procedural grounds. Courts may determine that a claimant or claimants do not have standing, meaning that they do not have the capacity to bring suit before the court. As such, in these circumstances, courts may be inclined to make no determination on the merits of whether there is a causal relationship between the acts or omissions of the alleged party having violated the human rights of the claimant or claimants.

Certain cases were also denied on the grounds that the claimants were required to prove that they belonged to an exclusive group and that this exclusive group held certain rights under the law. Once again, courts may determine that a claimant or claimants cannot establish that an exclusive group holds certain rights under the applicable law or laws, or that the claimant or claimants do not belong to a given group. In these circumstances, it is possible that a case is adjudicated without consideration of a causal relationship between the alleged acts or omissions of a given party and violation of the human rights of another party—as determinations are instead focused on whether claimants can prove that they belong to an exclusive group and that this group has specific group-related rights under the applicable law or laws. To overcome a causality challenge, the court must have noted in the decision that case success was grounded on the causal relationship between the violation of rights of the claimant and the acts or omissions of the defendant.

Whether cross-temporality was questioned by the court and whether the cross-temporality challenge was overcome were coded based on the second
hypothesis. Cross temporality was coded as being questioned if the court made a statement in their decision referring to whether a temporal space between the existence and culpability of acts or omissions relating to climate change served as an influence in the success, or lack thereof, of the claim or claims of human rights violations relating to climate change. Importantly, the court must mention temporal space as either hindering the establishment or support of claims concerning human rights violations relating to climate change. For the cross-temporality challenge in a case to be overcome, the court must note that the time between the action of the defendant and the violation, or violations, raised by the claimants did not interfere with the success of a case.

Whether the court questioned extraterritoriality and whether the extraterritoriality challenge was overcome were coded in accordance with the third hypothesis. The court questioned extraterritoriality if the court made a statement in their decision referring to whether claims of human rights violations relating to climate change involved considerations of actions or omissions in which there was cross-border activity pertinent to determinations of the final ruling.

While climate change as a process and acts and omissions relating to climate change are not restricted by territorial borders, applicable laws based on claims brought before a court may be restricted to specific national or subnational borders. As a result of this, courts do not consider extraterritorial considerations in many cases. In others, however, courts may consider whether acts or omissions on the part of a certain party, or parties, violated human rights across national boundaries. In these cases, courts will formulate determinations based, at least in part, on whether defendants may be liable for acts or omissions relating to climate change in situations outside of the boundaries of a single country.

To overcome extraterritoriality, the court must address whether considerations across national borders were relevant to the disposition of the case and whether a claim of human rights violation was, or claims of human rights violations were, successful, at least in part, on the basis of holding a defendant liable for acts or omissions relating to climate change across these borders.

Whether a youth-based claim was included in the case filing and whether the youth-based claim was successful were coded as a result of the fourth hypothesis. A case was coded as having a youth-based claim if applicants specifically included a violation of rights specific to a distinct category of young people or youth. While this categorization is necessarily based upon
age, cases were coded as having a youth-based claim regardless of the age specified by the claimants in a given case.

To be coded as youth-based, it was not necessary that only youth complainants were included in the case. In certain cases, complainants may all be youths, but in others, complainants may or may not be youths themselves, and instead, may simply include in one or more of their claims of human rights violations a narrow focus on violations specific to a youth population. All of these circumstances would be coded as youth-based under the operationalization presented in this Article.

Further, while it was necessary for a claimant, or claimants, to specifically refer to a youth population based on one or more claims included in their case filing, the claims did not need to be made with reference only to a child-based law. This could be the case, for example, if claimants referred to the United Nations Convention on the Rights of the Child (UNCRC), but in other cases, claimants may make claims that youth rights have specifically been violated under a law that is not explicitly stated to protect youth or children’s rights. For a youth-based claim to be successful, the court must have noted that a claim, or claims, regarding human rights violations relating to climate change was successful, at least in part, because the claimants included youth-based arguments in their filing and arguments before the court.

Whether an Indigenous-based claim was included in the case filing and whether the Indigenous-based claim was successful were coded based on the fifth hypothesis. A case was coded as having an Indigenous-based claim if applicants included in one or more of their claims reference to the violation of rights specific to the distinct group category of being members of or representing Indigenous Peoples. Indigenous Peoples are typically defined as people who are “inheritors and practitioners of unique cultures . . . . [R]etain[ing] social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live.”

Due to the broad nature of this definition, specific laws may differ based upon the jurisdiction where an Indigenous claim is made. All cases where Indigenous group references applied to one or more human rights claims were coded as Indigenous-based claims. For an Indigenous-based

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claim to be successful, the court must have noted that a claim, or claims, regarding human rights violations relating to climate change was successful, at least in part, as a result of the claimants including Indigenous-based arguments in their filing and arguments before the court.

Cases concerning claims of violations to *current wellbeing* and dispositions recognizing that the *current wellbeing claim was successful* were coded in adherence to the sixth hypothesis. A case was coded as a current wellbeing claim if (1) the case filing included one or more statements connecting the impact of climate change on the current wellbeing of the relevant party, or parties, to the acts or omissions of the defendant and if (2) such claim, or claims, applied to a relevant human rights law. For a current wellbeing claim to be successful, the court must have noted that a claim, or claims, regarding human rights violations relating to climate change was successful, at least in part, because the claimants included current wellbeing arguments in their filing and arguments before the court.

Cases concerning claims of violations to *future wellbeing* and holdings establishing that the *future wellbeing claim was successful* were coded in accordance with the seventh hypothesis. A case was coded as a future wellbeing claim if (1) the case filing included one or more statements connecting the impact of climate change on the future wellbeing of the relevant party, or parties, to the acts or omissions of the defendant and if (2) such claim, or claims, applied to a relevant human rights law. For a future wellbeing claim to be successful, the court must acknowledge that a claim, or claims, regarding human rights violations relating to climate change was successful, at least in part, due to the claimants including future wellbeing arguments in their filing and arguments before the court.

For each of my seven hypotheses, I present empirical evidence using descriptive data from the dataset of climate litigation with human rights claims constructed for this project. In the following section, which uses the collected and coded case data, the Article heuristically assesses the cases and presents the interpretative findings.

V. EMPIRICAL ASSESSMENT OF THE CASES

For each of the seven hypotheses, the results are shown in three figures (totaling twenty-one figures). The first figure for each hypothesis shows all cases in which the given challenge or pathway is raised and categorized as successful or unsuccessful. The second figure focuses on divisions by global region. The individual hypotheses are comprised of the same set of
cases, but the number of successful and unsuccessful cases is divided by the global regions coded and discussed earlier. The third figure analyzes court level, and similar to the second figure, the number of successful and unsuccessful cases is based on court level as discussed earlier. In this section, the Article presents the results displayed in these figures for each hypothesis, expands upon the outcomes, and discusses whether these outcomes align with the expectations based upon the possible obstacles and pathways outlined for the hypotheses.

Figure 1: Causality Challenge

Hypothesis 1
The first hypothesis is that in most climate cases with human rights claims in which causality is questioned by courts, the relevant claim, or claims, will be unsuccessful. Figure 1 shows the number of cases in which causality challenges succeeded and the number in which they did not succeed. There were 74 cases in which causality was raised by the court. Of these 74 cases, causality challenges succeeded in 34 cases and were unsuccessful in 40 cases. This means that in most cases in which courts raise causality challenges, the claim was unsuccessful. This supports the first hypothesis because it theorized that establishing causality is more likely to serve as an obstacle for case success.
In Figure 2, however, there is a significant variation in whether causality challenges succeed when separating cases by region. For example, in Europe and the Pacific, cases were significantly less likely to overcome questions of causality, with 21 unsuccessful cases and only 12 successful cases in Europe, and 6 unsuccessful cases to 1 successful case in the Pacific. In Latin America, however, cases were significantly more likely to overcome questions of causality. In regions with fewer observations, it is also notable that all cases in Africa (in which causality was questioned by the court) were successful, while all cases from North America were unsuccessful.
Figure 3 shows that when different court levels raised questions of causality, there was a relatively small amount of variation. Most notably, cases at the national level, which have not reached the highest level within the national court system, were less likely to succeed than cases that reach the highest level. At the international level, cases were less likely to succeed when causality was questioned.

Figure 4: Cross Temporal Challenge
Hypothesis 2
The second hypothesis is that in most climate cases with human rights claims in which courts question cross-temporality, the relevant claim, or claims, will be unsuccessful. Figure 4 presents results suggesting that cases are more likely to be unsuccessful when courts question cross-temporality, similar to when courts assess causality. Of the 78 cases in which courts question cross-temporality, 44 cases ultimately failed while 34 cases succeeded. This supports the second hypothesis that cross-temporality serves as a challenge to success in climate litigation with human rights claims.

Figure 5: Cross Temporal Challenge by Region
Figure 5 displays results of courts questioning cross-temporality and success of claims by region. Similar to the results observed from the first hypothesis, issues of cross-temporality were significantly more unlikely to be overcome when courts question cross-temporality in the European and Pacific regions. This is also apparent in North America, where although there were significantly fewer overall observations, there were no observed instances of cross-temporality challenges succeeding. In Latin America, however, courts were significantly more likely to support cross-temporality challenges. This was also true in Africa, although there were far fewer case observations in this region, similar to North America.

Figure 6: Cross Temporal Challenge by Court Level
Figure 6 indicates that cases were less likely to be successful in overcoming questions of cross-temporality when brought before both international and national courts which are not the highest court that a party could reach. Of the 8 cases in which international courts questioned cross-temporality, there were 5 instances in which claims were unsuccessful and only 3 instances of claim success. Of the 59 cases in national courts on the lower levels of the court system, 34 cases were unsuccessful and 25 cases were successful.

By contrast, there was a greater likelihood of claims succeeding when courts, at the highest national level, assessed cross-temporality. This likelihood, however, was only by a slight margin. In the 11 cases before national courts at the highest level where cross-temporality was questioned, 6 case considerations of cross-temporality were successful, while 5 cases were unsuccessful.

Figure 7: Extraterritorial Challenge
Hypothesis 3

The third hypothesis is that in most climate cases with human rights claims in which courts question extraterritoriality, the relevant claim, or claims, will be unsuccessful. Similar to the results from the first and second hypotheses, Figure 7 implies that when courts question considerations of extraterritoriality in climate cases with human rights claims, the claim is more likely to fail than succeed. Of the 24 cases in which courts raised questions of extraterritoriality, 13 of the asserted claims failed and 11 claims succeeded. Further, there were notably fewer cases in which courts question extraterritoriality in comparison to causality and cross-temporality. This likely arises from the fact that nearly all causality and temporality cases are central considerations of climate litigation with human rights claims, while extraterritorial considerations are less common—as many violations claimed in these cases are rooted in domestic laws.

Figure 8: Extraterritorial Challenge by Region
Figure 8 separates instances where courts raised questions of extraterritoriality by region. Most notably, the Pacific region was the only region in which questions of extraterritoriality were more likely to fail than succeed. Here, all 5 cases in the Pacific region failed when courts questioned extraterritoriality. In Asia, Europe, and Latin America, the likelihood of failure and success were equal when courts raised a question concerning extraterritoriality. Finally, in international courts, claims in which courts questioned extraterritoriality were more likely to succeed, with 2 instances of success and only 1 instance of failure. In Africa, both cases in which courts questioned extraterritoriality resulted in claim success.
Figure 9: Extraterritorial Challenge by Court Level

Figure 9 displays the data concerning questions of extraterritoriality divided by court level. Interestingly, it is notable that cases were significantly less likely to succeed when national courts not at the highest level of the national court system raised questions of extraterritoriality. Of the 15 cases in which courts raised questions involving extraterritoriality, 10 claims failed, while 5 claims succeeded. Following questions of extraterritoriality in international courts, claims were slightly more likely to succeed with 4 of the 7 claims succeeding and 3 claims failing. Finally, we see that in both cases before national courts at the highest level of the court system, the claims succeeded when courts raised questions of extraterritoriality.
**Figure 10: Youth Pathway**

![Youth Pathway Diagram]

**Hypothesis 4**

The fourth hypothesis is that in most climate cases with human rights claims in which courts question youth-based claims, the relevant claim, or claims, will succeed. Figure 10 shows all cases involving youth claims, separated by claim success. In cases with youth-based claims, courts were more likely to find claims unsuccessful than successful by a large margin. Of the 17 cases with youth-based claims, 11 claims failed, while 6 claims succeeded. This outcome does not support the fourth hypothesis.
Figure 11 shows youth-based claims and claim success divided by region. Notably, there was no global region where youth-based claims were more likely to succeed. In international courts and Latin America, youth-based claims were equally likely to succeed and fail. Of the 8 youth-based cases observed in Latin America, 4 had successful claims while 4 had unsuccessful claims. Of the 2 youth-based cases in international courts, 1 had a successful claim and 1 had an unsuccessful claim. In Europe, 2 of the 3 youth-based claims failed while 1 succeeded. Finally, all 3 cases in North America and 1 case in Asia with youth-based claims resulted in failure.
Figure 12: Youth Pathway by Court Level

Figure 12 presents youth-based claims brought before courts separated by court level. Notably, cases not at the highest level of the national court system were more likely to fail in comparison to cases decided by courts at the highest relevant level of the national and international court systems. In national courts at the highest relevant level of the national court system, youth-based claims were slightly less likely to fail than succeed, with 3 of the 5 claims resulting in failure, while 2 of the 5 claims resulted in success. At the international level, there was only 1 case observation of youth-based claims which succeeded—presenting possible initial evidence that the international level may be a more conducive pathway for youth-based claim success.
Hypothesis 5

The fifth hypothesis is that in most climate cases with human rights claims in which courts question Indigenous-based claims, the relevant claim, or claims, will succeed. Figure 13 shows Indigenous-based claims and claim success. Based on these results, we observe that Indigenous-based claims, overall, were significantly more likely to succeed than fail. Of the 16 cases of climate litigation with human rights claims involving Indigenous-based claims, 11 of these claims succeeded, while only 5 failed. These results support the fifth hypothesis that Indigenous-based claims may be a meaningful pathway for case success in climate litigation with human rights claims.
Figure 14: Indigenous Pathway by Region

Figure 14 displays Indigenous-based claims and claim success divided by region. Although Indigenous-based claims were much more likely to succeed overall, there was a relatively large amount of variation by region. In Africa and Asia, there were only 2 and 1 case observations, respectively, and within all of these cases, Indigenous-based claims succeeded. In Latin America, of the 9 overall cases with Indigenous-based claims, 7 claims succeeded and only 2 claims failed. In international courts, 1 claim succeeded and 1 claim failed. Further, in North America, both Indigenous-based claims were unsuccessful.
In Figure 15 there is a degree of variation when looking at Indigenous-based claim success by court level. Notably, at almost every court level, Indigenous-based claims were more likely to succeed than fail. In national courts not at the highest level of the relevant court system, 8 out of the 11 Indigenous-based claims succeeded and 3 claims failed. While a national court at the highest level only decided 1 case with an Indigenous-based claim, this claim succeeded. In international courts, 2 Indigenous-based claims succeeded while 2 claims failed.
Hypothesis 6

The sixth hypothesis is that in most climate cases with human rights claims in which courts question current wellbeing-based claims, the relevant claim, or claims, will succeed. Figure 16 presents claim success when cases involve current wellbeing-based claims. Of the 69 cases with current wellbeing-based claims, 38 of these claims failed, while 31 claims succeeded. This implies that when current wellbeing-based claims are made, these claims are more likely to be unsuccessful than successful. This outcome does not support the sixth hypothesis.
In Figure 17, we see current wellbeing-based claim success presented by global regions. Overall, current wellbeing-based claims were more likely to be unsuccessful in most regions. In North America, all 4 cases involving current wellbeing-based claims were unsuccessful, while in the Pacific region, only 1 case involving current wellbeing-based claims succeeded compared to 7 which were unsuccessful. In Asia, Europe, and international courts, the difference in likelihood between success and failure is less stark, but in these regions, it is still more likely that claims do not succeed. In Asia, 5 out of the 9 cases with current wellbeing-based claims failed; in Europe, 15 out of 26 cases with such claims were unsuccessful; and in international courts, 2 out of 3 cases did not succeed. We do observe that in a couple of regions, current wellbeing claims are more likely to lead to success. In Latin America, 13 of the 18 overall cases with current wellbeing-based claims in the region succeeded, while in Africa, only 1 case was successful.
Figure 18 presents current wellbeing-based claim outcomes by court level. We observe that in national courts which are not at the highest level of the relevant national court system, current wellbeing-based claims were more likely to fail than succeed. At this court level, 29 of the 51 observed cases with current wellbeing-based claims at this court level did not succeed. By a smaller margin, current wellbeing-based claims were also more likely to be unsuccessful in international courts, with 5 of the 9 cases at this court level resulting in failure. Finally, in national courts at the highest level of the relevant national court system, current wellbeing-based claims are more likely to succeed than fail, with 5 of the 9 cases resulting in success.
Hypothesis 7

The seventh hypothesis is that in most climate cases with human rights claims in which courts question future wellbeing-based claims, the relevant claim, or claims, will succeed. Figure 19 presents results displaying that, overall, future wellbeing-based claims were more likely to fail than succeed. With a total number of 84 case observations with future wellbeing-based claims, we see that claims were successful in only 35 cases, while 49 case claims failed. These results do not support the seventh hypothesis.
Figure 20 shows future wellbeing-based claim success divided by region. As with current wellbeing-based claims, we observe a rather large degree of variation in claim success when separated by region. In North America, all 4 cases with future wellbeing-based claims failed. In Europe and the Pacific, future wellbeing-based claims were also highly unlikely to succeed, with 24 unsuccessful claims out of 35 observations in Europe, and 7 unsuccessful claims out of 8 observations in the Pacific.

Future wellbeing-based claims were also unlikely to succeed in Asia and international courts. In Asia, 5 of the 9 cases with future wellbeing-based claims failed, and 2 of the 3 claims in international courts failed. In Latin America and Africa, however, cases involving future wellbeing-based claims are more likely to succeed than fail. Out of the 21 total cases with future wellbeing-based claims in Latin America, 14 claims succeeded and only 7 failed, while both cases with future wellbeing-based claims in Africa succeeded.
In Figure 21, future wellbeing-based claim success was separated by court level. Similar to the results from current wellbeing-based claim success, in national courts not at the highest level of the relevant national court system, future wellbeing-based claims were the least likely to succeed with 39 unsuccessful claims compared to 25 successful future wellbeing-based claims. In international courts, future wellbeing-based claims were also more likely to fail than succeed by a smaller margin, with 5 future wellbeing-based claims succeeding and 6 failing. Lastly, we observe that future wellbeing-based claims were more likely to succeed than fail in national courts at the highest level of the relevant national court system, with 6 out of 11 cases succeeding.

VI. DISCUSSION

Having presented the hypotheses and empirical results, in this section of the Article, I expand on the results in relation to the theoretical
expectations for the hypotheses and explain how the findings relate to the existing literature, expected obstacles, and pathways to case success in climate litigation with human rights claims. First, the empirical evidence suggests there is support for the first three hypotheses relating to challenges to case success in climate litigation with human rights claims. Each of these hypotheses matched the expectation that concerns of causality, cross-temporality, and extraterritoriality would serve as obstacles to case success.

Regarding climate law, previous work notes that for scientists and lawyers alike, establishing “a causal link between a particular source or group of sources of GHG emissions and specific climate-related harms” can be challenging and difficult. While establishing attribution can increase the likelihood of case success, attribution typically involves multiple causal factors that can be difficult to apply or disaggregate regarding specific legal claims. Existing studies have not provided the same extensive empirical analysis and insights into whether these challenges extend—and to what degree they may extend—to climate cases with human rights claims.

We observe that the results from this study further support the expectation that establishing causality can be difficult in cases of climate litigation with human rights claims. Cases involving causality claims were more likely to be unsuccessful. Regionally, however, there is evidence of variation with two of the seven regions observed, Africa and Latin America respectively, presenting results in which courts were more likely to reach decisions supporting the establishment of causality in claims. When looking at different court levels, we observe there is also variation with cases heard before national courts at the highest level of the relevant national legal system, with evidence suggesting favorability concerning claims seeking to establish causality.

Previous work, which implies that concerns of cross-temporality serve as further obstacles for claims, notes that difficulties may arise in establishing legal claims against a party for acts or omissions regarding contributions to climate change. The literature addresses that the

130. Setzer & Vanhala, supra note 1, at 9.
131. See Charles Beauregard et al., Climate Justice and Rights-Based Litigation in a Post-Paris World, 21 CLIMATE POLY 652, 660–61 (2021) (“[A]ttribution . . . [is] complex in regard to anthropogenic climate change because of its multitude of potential actors and ambiguous timeline.”).
132. See id. at 656 (discussing the difficulty with addressing climate issues in litigation due to evidentiary concerns regarding causation); Hyo Yoon Kang, What If All We Can See Are the Parts, and
distance between future climate conditions may be temporally too far removed to connect to present climate conditions within a filed claim. Existing research focusing on temporal considerations in climate law also notes that the current temporal focus can present a clear discrepancy between the concerns of litigants in cases involving states.

Specifically, applicants present a sense of urgency regarding the effect of climate change and its governance, while states more commonly present narratives in which climate change is both less challenging and costly based upon expectations of technological and economic development. Such divergence in the narrative increases the likelihood of temporality serving as an obstacle for applicants seeking to establish claims of human rights violations in climate litigation cases because considerations of possible future technological and economic development could bolster opposing arguments.

Results from this study suggest that cross-temporal concerns, in climate law cases with human rights claims, are more likely to serve as an obstacle. In cases where courts raised cross-temporality questions, 44 of 78 cases were unsuccessful. As with concerns of causality, we observe, however, similar variations by region and court levels as they relate to concerns of cross-temporality. Comparable to the findings relating to causality, in both Africa and Latin America, we observe that courts were more likely to arrive at decisions supporting a temporal connection between the acts or omissions of a defendant and the rights of applicants. Further, in cases heard before national courts at the highest level of the relevant national legal system, we also observe that these courts are more likely to reach such decisions resulting in successful claims regarding the human rights claims made by applicants and the alleged acts or omissions of defendants.

Previous works suggesting that extraterritoriality serves as an obstacle typically note that the concern may apply to both private and public actors. While the contours of corporate obligations regarding due diligence serve as grounds for human rights claims in climate law, establishing when and

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133. See Beauregard et al., supra note 131, at 658 (recognizing the slow onset of climate events is why it is hard to prove causation in climate litigation); Kang, supra note 132, at 148 (stating climate causal relationships may never become legally cognizable if climate justice is not scaled down).

how human rights obligations and remedies can be used in relation to the impacts of climate change for corporate obligations remain less clear.\textsuperscript{135} Furthermore, the extensive reach of transnational corporations (TNCs) across international borders may require drafting new legislation to address human rights concerns relating to climate change.\textsuperscript{136} For public actors, state duties to uphold rights to a healthy environment and protect against the harms of climate change may not be addressed by gaps that remain in international human rights and climate law.\textsuperscript{137}

From the results presented in this study, extraterritorial considerations as a challenge are relatively similar in total proportion to both causality and cross-temporality, but the distribution is also relatively distinct for overcoming the extraterritoriality challenge in comparison to causality and cross-temporality when we observe the data by region and court level. Specifically, the results show that in three regions, Asia, Europe, and Latin America, claims regarding extraterritoriality were equally as likely to be successful as unsuccessful. In Africa, as well as in international courts, we also see that questions of extraterritoriality are more likely to produce successful claims. This differs from the similarities found in questions of causality and cross-temporality.

Additionally, a notable result in the Pacific region is that all claims were unsuccessful in cases where questions of extraterritoriality were raised. While the results for both causality and cross-temporality did indicate that cases are less likely to be successful in the Pacific region, extraterritoriality claims did not produce success nor create a large number of cases concerning this pathway in the Pacific region.

At the court level, we see that in both international and national courts at the highest level of the relevant national court system, claims were more

\textsuperscript{135} See Annalisa Savaresi, Human Rights and the Impacts of Climate Change: Revisiting the Assumptions, 11 ONATI SOCIO-LEGAL SERIES 231, 245 (2021) ("[T]he Carbon Majors inquiry well exemplifies human rights bodies' limited powers to alter the behavior of transnational corporate actors.").

\textsuperscript{136} Tetsuya Morimoto, Growing Industrialization and Our Damaged Planet: The Extraterritorial Application of Developed Countries' Domestic Environmental Laws to Transnational Corporations Abroad, 1 UTRICH L. REV. 134, 158–59 (2005) (explaining the “extraterritorial application of TNCs’ developed home countries’ environmental regulations would be the only available means to force TNCs to . . . minimize environmental harm”).

\textsuperscript{137} See Christopher Campbell-Durufle & Sumudu Anopama Atapattu, The Inter-American Court’s Environment and Human Rights Advisory Opinion: Implications for International Climate Law, 8 CLIMATE L. 321, 324 (2018) (acknowledging the Inter-American Court’s “focus on extraterritorial and preventive duties . . . identifying obligations incumbent on states under international human rights and climate law”).
likely to be successful than unsuccessful regarding extraterritoriality. While the number of observations is smaller for questions of extraterritoriality compared to causality and cross-temporality, we see that both cases in which questions of extraterritoriality were raised before national courts—at the highest level of the relevant national court system—resulted in claim success. Similar to questions of causality and cross-temporality, we observe that questions regarding extraterritoriality heard before national courts not at the highest level of the relevant national court system were more likely to be unsuccessful as opposed to successful.

Taking these expected obstacles into summation, it is important to understand that the overall findings suggest that these concerns continue to serve as roadblocks in litigating successful human rights violation claims. Previous findings regarding causality, cross-temporality, and extraterritoriality as possible obstacles to case success in climate litigation are generally supported by the results presented in this Article. However, this study also shows how regions and court levels are important to consider when we seek to study the dimensions of case success in climate litigation with human rights claims.

In certain regions and at certain court levels, the findings within this study suggest there are regular instances in which claims are more likely to overcome the obstacles created by causality, cross-temporality, and extraterritoriality. These findings underscore important differences in case success in different areas of the world and at different court levels and imply that analysis concerning climate litigation should be further explored by scholars. As a result, it appears that these obstacles are important in understanding historical and existing challenges in cases of climate litigation with human rights claims, but such outcomes do not appear to occur as a monolith when we break case results down by region and court level.

Moving to the possible pathways to claim success, which were presented in the fourth, fifth, sixth, and seventh hypotheses, we observe that only the fifth hypothesis regarding Indigenous-based claims may serve as a pathway for case success. The fourth hypothesis regarding youth-based claims (stating that in most climate cases with human rights claims in which youth-based claims are questioned by courts, the relevant claim, or claims, will be successful), the sixth hypothesis regarding current wellbeing-based claims (stating that in most climate cases with human rights claims in which current wellbeing-based claims are questioned by courts, the relevant claim, or claims, will be successful), and and the
seventh hypothesis regarding future wellbeing-based claims (stating that in most climate cases with human rights claims in which future wellbeing-based claims are questioned by courts, the relevant claim, or claims, will be successful) are not supported by the findings.

These results are meaningful because they suggest that many of the possible pathways considered for case success in climate litigation with human rights claims may not necessarily be conducive to case success. As we see, overall youth-based claims, current wellbeing-based claims, and future wellbeing-based claims are less likely to be successful in court decisions. This further underscores the reality that, thus far, it appears cases of climate litigation with human rights claims continue to face obstacles regarding most aspects of the claims made.

Alongside this, however, Indigenous-based claims are shown to serve as a useful pathway, and a particularly strong one at that. This is meaningful both for what it shows, as well as what it may suggest. First, this shows that Indigenous-based claims serve as a basis for a significant number of successful climate law cases aimed at protecting the rights of Indigenous Peoples as Indigenous-based rights are protected in most climate law cases. Courts and established laws may be particularly conducive to upholding Indigenous rights against acts or omissions contributing to the harmful effects of climate change. Second, this finding suggests that Indigenous-based claims regarding climate change may present a pathway for other Indigenous groups presented with particularly precarious situations and rising threats as a result of climate change to bring their own claims against actors who are contributing to these threats.

Further, when we look by region, we observe that there is no region where youth-based claims are more likely to succeed. We see that in both international courts and in Latin America there is an equal rate of success and failure for youth-based claims; however, in Europe, youth-based claims were less likely to result in success. In Asia and North America, no youth-based claims were successful. As for current wellbeing-based and future wellbeing-based claims, there is greater regional variation in claim success. In Africa and Latin America, cases are more likely to be successful. In Africa, Asia, international courts, North America, and the Pacific, current wellbeing-based and future wellbeing-based claims were more likely to be unsuccessful—with all cases in North America concerning current wellbeing-based and future wellbeing-based claims resulting in lack of success. Thus, across most regions it is shown that most youth-based, current wellbeing-based, and future wellbeing-based
claims are all more likely to be unsuccessful. However, we do observe regional variation in the results.

Indigenous-based claims contrast these general findings, as these claims are shown to be more successful. Yet it is also notable that even for Indigenous-based claims, we observe that both cases involving such claims were unsuccessful in North America. In international courts, we see one successful and one unsuccessful case with Indigenous-based claims, further indicating how regional variation occurs among the differences in case success globally.

Additionally, observing court level differences suggests variation in case success outcomes based on different claim types. For example, while youth-based claims were less likely to be successful in national courts not at the highest level of the relevant national court system and in international courts, we observe that youth-based claims are more likely to succeed in national courts at the highest level of the relevant national court system. This same pattern appears for current and future wellbeing-based claims, with outcomes more likely to result in failure within national courts not at the highest level of the relevant national court system and international courts. Despite this, claims are more likely to be successful in national courts at the highest level of the relevant national court system.

These patterns may suggest that while many claims based upon youth-based, current wellbeing-based, and future wellbeing-based principles are unsuccessful in lower courts, appealing decisions to the highest level of national courts can result in a greater likelihood of success. However, it should be understood that appealing decisions requires additional time, funding, and labor. Applicants may have varied access to these resources and deal with different national court systems.

For Indigenous-based claims, national courts—both at the highest level of the relevant national court system and not at the highest level of the relevant national court system—such claims are more likely to succeed. Yet, in international courts, there is an equal likelihood of Indigenous-based claims being unsuccessful as successful. Thus, once again, I note that outcomes regarding various claim types are not uniform when observed through subcategories such as court level.

VII. CONCLUDING REMARKS

Previous studies suggest that concerns regarding causality (the ability to establish a relationship between acts or omissions on the part of one party contributing to anthropogenic climate change and the legal rights of
another party), cross-temporality (predicting future effects of acts or omissions relating to anthropogenic climate change on the part of one party to the rights of another party at the time of legal proceedings), and extraterritoriality (the occurrence of harmful actions alleged to have taken place in a jurisdiction other than one where the harmful actions may result) serve as legal challenges to overcome in climate litigation.138

In this Article, I present results which generally support these earlier findings when applied to climate litigation with human rights claims. Additionally, there is observable variation in the findings based on region and court level. This variation is notable because it has been an understudied part of the literature on climate litigation with human rights claims. Scholars should further explore the underlying roots of regional variation and variation by court level as a source of differentiation in determinations regarding climate law cases with human rights claims.

I also advance four possible pathways through which it was expected that specific types of human rights-based claims within climate litigation could lead to case success. These pathways include youth-based (when claims involve applicants specifically including in one or more of their claims reference to the violation of rights specific to the distinct group category of young people or youth), Indigenous-based (when claims involve applicants included in one or more of their claims reference to the violation of rights specific to the distinct group category of being members of or representing Indigenous Peoples), current wellbeing-based (when claims involve one or more statements connecting the impact of climate change on the current wellbeing of the relevant party, or parties, to the acts or omissions of the defendant, and this claim, or these claims, were applied to a relevant human rights law), and future wellbeing-based (when claims involve one or more statements connecting the impact of climate change on the future wellbeing of the relevant party, or parties, to the acts or omissions of the defendant, and this claim, or these claims, were applied to a relevant human rights law).

Furthermore, for expected pathways, results show that youth-based claims and claims focusing on violation of current wellbeing and future wellbeing do not necessarily serve as vehicles for case success, as these claims generally fail. However, there is also notable variation by region

138. See Szpak, supra note 11, at 1579 (highlighting “complications and challenges that claimants in rights-based climate litigation face”); Knox, supra note 10, ¶¶ 35–36, 41 (identifying the difficulty of causality and suggesting how extraterritoriality can serve as a global approach to mitigating climate change).
and court level, which shows that although such claims may not serve as pathways, there are meaningful differences when we observe subcategories of claims based on the region and court level within which the claims are made. The findings demonstrate that Indigenous-based claims are more likely to succeed. These findings are expected to serve as a fruitful source for future research, as it displays a unique aspect of Indigenous-based claims in climate litigation and the corresponding likelihood of case success when such claims are made—distinct from other types of human rights claims in climate litigation cases.

Further, while existing research discusses evolving aspects of climate litigation with human rights claims, such as those brought involving youth petitioners, Indigenous Peoples, and discussion concerning human wellbeing, in this Article, I specifically assess the relationship between these types of claims and the decisions of courts regarding these claims. This assessment has been done by using a new dataset of collected cases that further extends the literature by not only compiling an extensive set of climate law cases involving human rights claims but coding multiple dimensions of each case.

Moreover, in this Article, I focus not only on comparing overall case outcomes across different types of claims but also assess differences by global region and by court level. The approach is unique because it provides distinct insights into the transnational nature of human rights claims within climate litigation from a global perspective. This approach builds upon the extant literature which previously limited analysis to single regions or court levels. This study allows for greater comparative

139. See Daly, supra note 62, at 16 (assessing cases to suggest “international human rights is becoming more participatory for groups such as youth applicants”).
140. See Szpak, supra note 11, at 1577 (claiming “[t]here is rich literature in the field of indigenous peoples and their role in the fight against climate change”).
142. See Juan Auz, Human Rights-Based Climate Litigation: A Latin American Cartography, 13 J. HUM. RTS. & ENV’T 114, 117 (2022) (“[T]he scholarship on human rights-based litigation has mainly considered the access of marginalized groups to courts in specific jurisdictions . . . .”); see generally Jonathan Verschuuren, Contribution of the Case Law of the European Court of Human Rights to Sustainable Development in Europe, in REGIONAL ENVIRONMENTAL LAW: TRANSREGIONAL COMPARATIVE LESSONS IN PURSUIT OF SUSTAINABLE DEVELOPMENT 363 (Werner Scholtz & Jonathan Verschuuren eds., 2015).
143. See Maria L. Banda & Scott Fulton, Litigating Climate Change in National Courts: Recent Trends and Developments in Global Climate Law, 47 ENV’T L. REP. 10121, 10121 (2017) (assessing the
insights while simultaneously assessing regional and court level variation regarding general trends.

In addition to the findings, contributions, and future suggestions made, I recommend that future work further explore the possibility of potential backlash, in which governments implement policies designed to hamper restrictions resulting from court decisions favorable to applicants who won cases because of advancing climate law protections, in a systematic manner. This research would require information to be collected on claims, court determinations, and case outcomes as presented in this Article, as well as additional information regarding government documentation and policy responses.

Additionally, scholars should focus more on researching procedural challenges and denials on the grounds of non-exclusive group membership. While not discussed at length in this Article, of the one hundred cases assessed, twenty-nine involved denials, at least in part, on procedural grounds, and thirteen involved denials, at least in part, on the grounds that applicants were not found to be members of an exclusive group required under the relevant law or laws corresponding to the claim or claims made. Future scholarship should place even greater emphasis on exploring the extent to which procedural rules and group rights play a role in shaping the success of human rights claims in climate litigation. While professional and academic progress has been made, further research is necessary to understand the dynamics of human rights claims in climate litigation and associated comparative analysis of court decisions regarding transnational law.

“role that different national judiciaries have played” in climate change litigation; see also Philippe Sands, Climate Change and the Rule of Law: Adjudicating the Future in International Law, 28 J. ENV’T L. 19, 23–26 (2016) (discussing the various jurisdictions within the international court setting).