

**BEFORE THE UNITED NATIONS COMMITTEE
ON THE RIGHTS OF THE CHILD**

C.S. et al.

v.

ARGENTINA, BRAZIL, FRANCE, GERMANY and TURKEY

**AMICI CURIAE BRIEF OF SPECIAL RAPPORTEURS ON HUMAN RIGHTS
AND THE ENVIRONMENT IN SUPPORT OF ADMISSIBILITY**

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human rights obligations relating to the enjoyment of a
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I. Statement of Interest

1. We submit this brief pursuant to Rule 10(2) of the Rules of Procedure of the Optional Protocol on a communications procedure (“OPIC”), in our capacities as the present and former UN Special Rapporteurs on issues relating to the enjoyment of a safe, clean, healthy and sustainable environment.¹

II. The Climate Crisis and Children’s Rights

2. The world faces a climate crisis. Rising levels of greenhouse gases in the atmosphere, driven by the combustion of fossil fuels, industrial agriculture and deforestation, have caused global average temperatures to increase 1.1°C over pre-industrial levels.² The current level of warming is unprecedented in the last ten thousand years, an interglacial period with a stable climate that coincided with the rise of human civilization all over the world. Today’s levels of carbon dioxide in the atmosphere last occurred three million years ago, during the Pliocene epoch before *homo sapiens* evolved. Our species is in uncharted, dangerous waters.

3. The climate crisis already causes severe effects on human lives and well-being, and therefore human rights. As the Intergovernmental Panel on Climate Change (IPCC) has described, the effects of the changing climate already include increased precipitation and flooding in some areas, and heat waves, drought and wildfires in others.³ Sea levels are rising, endangering low-lying coastal communities. Climate change undermines production of major crops, such as wheat and maize,⁴ and is one of the chief drivers of loss of biological diversity and natural ecosystems.⁵ Most dramatic is the increase in the severity of extreme weather events such as hurricanes, typhoons and monsoons, which have killed thousands of people and displaced millions more.

4. Unless States take urgent actions to reduce emissions, the future impacts of climate change will be even worse. Even a seemingly modest increase, to 1.5°C over pre-industrial levels, will enormously increase the number of people subjected to poverty, disasters, food insecurity, illness and death.⁶ These harms will be felt most by those who are already disadvantaged and vulnerable, including children, women, persons with disabilities, those living in or near poverty,⁷ and Indigenous peoples and local communities that depend on agriculture, forests or coastal ecosystems.⁸ At 1.5°C, small island States will start to reach the limits of possible adaptation,⁹ forcing them to face the loss of their lands and cultures.¹⁰ An increase of 2.0°C over pre-industrial levels exacerbates all of these outcomes, as the IPCC has explained in detail.¹¹

5. Despite 27 years of commitments dating back to the United Nations Framework Convention on Climate Change, the world is neither addressing the crisis at an adequate pace nor headed in the right direction. The share of the world’s total energy supply provided by fossil fuels has remained unchanged at 81 per cent.¹² Coal use is up 68 per cent, oil use 36 per cent and natural gas use 82 per cent. Global greenhouse gas emissions have increased 60 per cent since 1990.

¹ Professor Knox was the mandate-holder from 2012 to 2018; Professor Boyd has been the Special Rapporteur since 2018. We thank Nicole Barrett, Jina Jeong and Sophie Toor from the International Justice and Human Rights Clinic at the University of British Columbia and Amy Houchin and Kyle Stocks at the Environmental Law and Policy Clinic at Wake Forest University for their assistance.

² IPCC, *Global Warming of 1.5°C. An IPCC Special Report* (2018), p. 51.

³ *Id.* p. 53.

⁴ *Id.* p. 236; FAO et al., *The State of Food Security and Nutrition in the World 2018*, p. 39.

⁵ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), *Global Assessment Report on Biodiversity and Ecosystem Services: Summary for Policymakers* (2018), p. 5.

⁶ See generally IPCC, *Global Warming of 1.5°C*, pp. 240-41.

⁷ Report of the Special Rapporteur on extreme poverty and human rights, A/HRC/41/39 (25 June 2019).

⁸ IPCC, *Global Warming of 1.5°C*, pp. 244-45.

⁹ IPCC, *Global Warming of 1.5°C*, pp. 234-35.

¹⁰ See *Teitiota v New Zealand*, CCPR/C/127/D/2728/2016 (7 January 2020), para. 9.12.

¹¹ IPCC, *Global Warming of 1.5°C: Summary for Policymakers*, pp. 7-10.

¹² International Energy Agency, *World Energy Balances* (2018).

6. The Paris Agreement aims to hold the increase in global average temperatures to well below 2°C, while striving to limit the increase to 1.5°C. Parties filed Nationally Determined Contributions (NDCs) indicating the climate actions they plan to implement by 2030. Unfortunately, even if fully implemented, the current NDCs would lead to a rise of 3°C,¹³ causing immense human suffering and massive human rights violations.

7. In our work as Special Rapporteurs, we have heard first-hand from those who are already experiencing the effects of climate change, including children in Fiji fearful of the changing oceans, Indigenous people in Fiji forced to relocate because of rising sea levels and saltwater contamination of their food and water, Indigenous people in Norway whose livelihoods and culture based on reindeer herding are jeopardized by shifting weather patterns, and villagers in Madagascar who have lost their crops due to drought.¹⁴ We have published reports on the impacts of climate change on human rights, including children’s rights, and the associated State obligations.¹⁵ In describing how climate change interferes with human rights, and in detailing States’ obligations to protect against climate harms, we have joined with the consensus views of the international human rights community, including the Human Rights Council and, of course, this Committee.

8. In September 2019, the Committee issued a compelling Joint Statement with four other human rights treaty bodies, which stated that the adverse impacts of climate change “threaten, among others, the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights,” and that “the risk of harm is particularly high for those segments of the population already marginalized or in vulnerable situations or that, due to discrimination and pre-existing inequalities, have limited access to decision-making or resources.”¹⁶ The Committee and the other treaty bodies noted that “such adverse impacts on human rights are already occurring at 1°C of warming and every additional increase in temperatures will further undermine the realization of rights.”¹⁷

9. Children are particularly at risk from the climate crisis for several reasons. First, children are more vulnerable than adults to environmental harms of all kinds,¹⁸ which interfere with a vast range of their rights protected by the Convention on the Rights of the Child (the Convention), including their rights to life, health and development, food, housing, water and sanitation, and play and recreation.¹⁹ They are particularly vulnerable to health problems exacerbated by climate change, including malnutrition, acute respiratory infections, diarrhoea and other water-borne illnesses.²⁰ In addition, “climate change heightens existing social and economic inequalities, intensifies poverty and reverses progress towards improvement in children’s well-being”.²¹ For example, climate change-induced food insecurity is already increasing the number of marriages of girl children, who are pressured to marry to reduce burdens on their families of origin.²²

10. Second, climate disruption will worsen throughout their lives, so that today’s actions or omissions will have far greater consequences for them than for adults. The World Health Organization estimates that by 2030, the effects of climate change on nutrition will result in an additional 7.5 million children who are moderately or severely stunted, as well as approximately 100,000 additional deaths.²³ By 2040, almost 600 million children will live in regions with extremely limited water resources.²⁴ Extreme weather events pose unique threats to the health and well-being of young bodies and minds. Globally,

¹³ UNEP, *Emissions Gap Report* (2019).

¹⁴ See A/HRC/43/53/Add.1 (Fiji); A/HRC/43/53/Add.2 (Norway); A/HRC/34/49/Add.1 (Madagascar).

¹⁵ See *A Safe Climate*, A/74/161 (2019) (Boyd); A/HRC/31/52 (2016) (Knox). See generally Framework Principles on Human Rights and the Environment, A/HRC/37/59, summarizing obligations of States to protect against environmental harm to human rights.

¹⁶ Joint Statement on Human Rights and Climate Change (Sept. 2019), para. 3.

¹⁷ *Id.* para. 5.

¹⁸ Joint Statement, para. 3; see also A/HRC/37/58, paras. 15-30.

¹⁹ *Id.* paras. 31-37.

²⁰ See A/HRC/35/13 (4 May 2017).

²¹ A/HRC/35/13, para. 50.

²² “Why climate change is creating a new generation of child brides”, *The Guardian* (26 November 2017); Human Rights Watch, “*Marry before your house is swept away: child marriage in Bangladesh*” (2015).

²³ WHO, *Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s* (2014), pp. 80 and 89.

²⁴ UNICEF, *Thirsting for a Future: Water and Children in a Changing Climate* (2017).

over 500 million children live in extremely high-risk flood zones; 160 million live in high or extremely high drought severity zones; and 115 million are at high risk from tropical cyclones.²⁵

11. Finally, even though children are the most affected by the climate crisis, their voices are usually ignored. Despite the requirement in art. 12 of the Convention that children have the right to express their views freely in all matters affecting them, they are typically denied information, excluded from decision-making procedures, and lack access to effective remedies.²⁶ All of these vulnerabilities intersect with others, such as poverty and membership in marginalized populations. The United Nations Children’s Fund warns that “climate change will harm the poorest and most vulnerable children first, hardest and longest”.²⁷

12. In the Joint Statement, the five treaty bodies stated that “the IPCC report makes it clear that to avoid the risk of irreversible and large-scale systemic impacts, urgent and decisive climate action is required.” At the same time, they noted “with great concern that States’ current commitments under the Paris Agreement are insufficient to limit global warming to 1.5°C and that many States are not on track to meet their commitments. Consequently, States are exposing their populations and future generations to the significant threats to human rights associated with greater temperature increases.”²⁸

13. The Committee, together with the other treaty bodies, stated that “Failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.” To comply with those obligations, States “must adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development.”²⁹

14. The Committee and its counterparts emphasized that “human rights mechanisms have an important role to play in ensuring that States avoid taking measures that could accelerate climate change, and that they dedicate the maximum available resources to the adoption of measures aimed at mitigating climate change.”³⁰ The Joint Statement concludes by promising that the Committees will continue “to keep under review the impacts of climate change and climate induced disasters on the rights holders protected under their respective treaties and provide guidance to States on how they can meet their obligations under these instruments, in relation to mitigation and adaptation to climate change.”³¹

15. The Communication to the Committee from C.S. and fifteen other children and youth responds to that invitation. It provides the first opportunity under the communications procedure for the Committee to address in more detail the obligations of States to work together, on an urgent basis, to reduce climate change by mitigating their greenhouse gas emissions, and to help the people of the world to adapt to the effects that are not avoided.

16. This is one of the most important communications ever received by this Committee. The Committee’s decision could provide vital and timely guidance to other human rights bodies, international and domestic tribunals, States, international organizations, communities, and individuals all over the world. In this brief, we respond only to the objections to admissibility raised by the respondent States. For the reasons set out below, the communication is clearly admissible. We urge the Committee to reach this conclusion as expeditiously as possible, so that it can quickly turn to the merits. The authors, and the world, are rapidly running out of time.

²⁵ UNICEF, *Unless we act now: the impact of climate change on children* (2015).

²⁶ See A/HRC/37/58, paras. 42-54. As the Committee has said, “children must be at the centre of the discourse on climate change and their opinion should be listened to and taken into account.” *UN child rights committee voices support for children campaigning on climate change* (27 September 2019).

²⁷ UNICEF, *Unless we act now*, p. 8.

²⁸ Joint Statement, paras. 5, 9.

²⁹ *Id.* para. 11.

³⁰ *Id.* para. 7.

³¹ *Id.* para. 18.

III. The Communication Is Admissible

17. Brazil, France and Germany, the three respondent States that replied to the communication, present three specific objections to admissibility: (a) the Committee lacks jurisdiction over the communication; (b) the communication is manifestly ill-founded or not sufficiently substantiated; and (c) the authors failed to exhaust local remedies. The following sections explain why each of these objections is without merit.

A. The Committee Has Jurisdiction over the Communication

18. Article 5 of OPIC provides that “communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights” set forth in the Convention. France argues that to be within its jurisdiction, the authors must show that they are within its territory or, exceptionally, within its “effective control.” It states that none of the authors resides in French territory, and that the only author who is of French nationality, I.D., resides in the United States.

19. This Committee and other human rights bodies have often stated, including in the Joint Statement, that States do have extraterritorial obligations.³² These obligations extend beyond the situations of effective control described by France, to include obligations to protect those whose rights are affected by a State’s activities in “a direct and reasonably foreseeable manner.”³³

20. Transboundary environmental harm can have such effects, giving rise to extraterritorial obligations on the part of the State with control over the sources of the harm. As the Inter-American Court of Human Rights has stated:

States have the obligation to avoid transboundary environmental damage that can affect the human rights of individuals outside their territory. For the purposes of the American Convention, when transboundary damage occurs that affects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin, if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory.³⁴

21. The Committee has already applied these principles to climate change in its review of country reports. For example, in its concluding observations on Norway, it recommended that in light of Norway’s continuing exploitation of fossil fuels, “it increase its focus on alternative energy and establish safeguards to protect children, *both in the State party as well as abroad*, from the negative impacts of fossil fuels.”³⁵ Similarly, the Committee on Economic, Social and Cultural Rights expressed concerns about the extraterritorial effects of respondent State Argentina’s plan to engage in hydraulic fracking.³⁶

22. Germany acknowledges that the “direct and reasonably foreseeable” standard articulated by the Human Rights Committee is the relevant standard, and it agrees that “the emission of greenhouse gases in one state certainly contributes to the worsening of climate change,” but it concludes, without explanation, that such emission “does not directly and foreseeably impair the rights of people in other states.” This argument might have seemed plausible a decade ago, but it is impossible to accept now. The ways that climate change adversely affects human lives and well-being have been described in detail by the IPCC and many other observers. The consequences of those effects on the enjoyment of human rights have, in turn, been described in detail by human rights experts, including special

³² Id. para. 10.

³³ Human Rights Committee, General Comment No. 36 (on the right to life), CCPR/C/GC/36 (30 October 2018), para. 63. See also African Commission on Human and Peoples’ Rights, General Comment No. 3 (Nov. 2015), para. 14 (defining extraterritorial jurisdiction as whether a State’s activities could “reasonably be foreseen to result in an unlawful deprivation of life”); European Court of Human Rights, *Andreou v. Turkey*, no. 45653/99 (2009) (applying a “direct and immediate cause” standard).

³⁴ Advisory Opinion on the Environment and Human Rights, OC-23/17 (15 November 2017), para. 101.

³⁵ CRC/C/NOR/CO/5-6 (4 July 2018), para. 27 (emphasis added).

³⁶ E/C.12/ARG/CO/4 (1 November 2018), para. 13.

rapporteurs and treaty bodies.³⁷ The Committee itself has stated that climate change “is one of the biggest threats to children’s health and exacerbates health disparities.”³⁸

23. In fact, the effects of climate change on the rights of the authors are exactly the type of impact encompassed by the “direct and reasonably foreseeable” standard. It is not only reasonably foreseeable but inevitable that emitting greenhouse gases will have a direct impact on the human rights of the authors and children around the world. The communication describes, in extensive detail, how emissions of greenhouse gases in the respondent States and other States lead directly to the infringement of the authors’ rights, including through impeding their access to water (C.L., A.M., R.J., and R.P.), increasing the likelihood of deadly fires (R.J. and A.V.), causing dangerous air pollution (D.A and A.V.), and increasing the incidence of malaria, dengue fever, and other diseases (R.A., D.A. III, D.A.), among numerous others.

24. France argues that because climate change is a “global phenomenon” (para. 53), France cannot be the direct source of the alleged violations. But this confuses the issue of *directness* with the issue of *attribution of responsibility*, which we address below. No one suggests that the respondent States are solely responsible for the harms to the authors. But they indisputably contribute directly to those foreseeable harms by emitting (and allowing the emission of) greenhouse gases. As Germany admits, greenhouse gases emitted anywhere contribute to climate change everywhere. They therefore directly and foreseeably contribute to the *effects* of climate change everywhere, which in turn cause foreseeable violations of human rights.³⁹

B. The Communication Is Not Manifestly Ill-Founded or Insufficiently Substantiated

25. Under article 7(f) of OPIC, a communication is inadmissible if it is “manifestly ill-founded or not sufficiently substantiated.” To meet this standard, a communication must: (1) allege individual harm to the authors, and not merely challenge a law or practice in the abstract as a kind of *actio popularis*; (2) be admissible *ratione materiae*, by alleging a cognizable violation of a protected right whose corresponding obligations are clear enough to permit review of the claim; and (3) sufficiently substantiate the allegations, by presenting the facts and arguments in enough detail for the Committee to review them.⁴⁰ As the following sections explain, the authors clearly and unequivocally meet each of these requirements.

26. This is not a highly demanding standard. At the admissibility stage, the question is whether the authors have made a *prima facie* case, not whether they will ultimately prevail on the merits.

1. The Communication Alleges Individual Harm to the Authors

27. The authors are not bringing an *actio popularis*. They describe in detail the harms that they are personally suffering now, and that they are foreseeably likely to suffer in the future, as a result of climate change caused in part by the respondent States. They also explain how those harms interfere with their rights protected by the Convention, including their rights to life (article 6), health (article 24), culture (article 30), and to have their best interests treated as a “primary consideration” in all actions concerning them (article 3).⁴¹

³⁷ See, e.g., A/74/161, paras. 26-51, and sources cited therein.

³⁸ General Comment No. 15 on the right to health (2013), paras. 5 and 50.

³⁹ Whether those effects can be attributed to climate change clearly enough to give rise to a claim that rights have been violated is a separate issue, which does not implicate jurisdiction, but rather whether the communication is manifestly ill-founded or insufficiently substantiated. That question is considered in the next section.

⁴⁰ See OHCHR, *Human Rights Treaty Bodies – Individual Communications: Procedure for complaints by individuals under the human rights treaties*.

⁴¹ Communication, paras. 260-308.

28. The fact that many other children and youth are suffering similar or even identical harms from climate change does not bar their claim or make it an *actio popularis*. That the same actions are violating the rights of a large number of people does not prevent them from joining together to bring a claim.⁴² The authors need not be uniquely situated or harmed to a greater degree than others for their claims to be admissible.

29. That some of the harms have not yet occurred, and may not occur, does not prevent the authors from bringing claims based on the likelihood of those harms. As the Human Rights Committee has stated, “If the law or practice has not already been concretely applied to the detriment of that individual, it must be applicable in such a way that the alleged victim’s risk of being affected is more than a theoretical possibility.”⁴³ In this case, the harms threatened by climate change are far more than a theoretical possibility; they are virtually certain to occur if the international community, including the respondent States, do not take action. Therefore, it is incumbent upon States to take preventive action to avoid foreseeable risks to human rights.⁴⁴

2. The Communication Alleges Cognizable Violations of the Convention

30. Although the respondent States raise a number of objections to admissibility, their core concern seems to be that it is unfair for the Committee to consider claims against them, because all States have contributed to the climate crisis and some have contributed far more than they.⁴⁵ They argue that the authors must trace a causal chain from the specific actions of the respondent States to the specific harms suffered by the authors.⁴⁶

31. We agree that averting climate catastrophe will require the efforts of the entire global community, especially those States that have contributed most through their historical emissions of greenhouse gases. The five respondent States are not the largest emitters either historically or today. It is understandable, therefore, that they wish to excuse themselves from closer scrutiny. At the same time, the contributions of the respondent States are not insignificant. Each is in the top 40 of all emitters, based on historical emissions since 1850, and together, they currently contribute seven per cent of global emissions. They are leaders regionally and internationally and their actions, or failures to act, have repercussions far beyond their own borders. It is not unfair or inappropriate that the authors have brought this case against them.

32. More generally, the fact that this is a global problem cannot be a valid objection to admissibility of the communication. The particular human rights obligations of these States – and every State – must be considered in light of the global nature of the challenge. At the same time, the global nature of the challenge cannot excuse any State from its specific obligations under the Convention. Nor can it bar the Committee from examining what those obligations are and whether they have been violated.

33. The Committee will never receive a communication against the entire world; nor is it likely that it will ever receive one involving only the largest emitters, as none of today’s top five emitters (China, the United States, India, Russia and Japan) has ratified the OPIC. Instead, climate related rights violations will be presented to the Committee and other treaty bodies case by case, in country reports and communications like this one. In recent years, the Committee has addressed the obligations of individual

⁴² Human Rights Committee, *E.W. v. Netherlands*, No. 429/1990 (8 April 1993), para. 6.4.

⁴³ *G. v. Australia*, CCPR/C/119/D/2172/2012 (28 June 2017), para. 6.4. See also European Court of Human Rights, Grand Chamber, *Decision as to the Admissibility of Senator Lines*, no. 56672/00 (2004).

⁴⁴ European Court of Human Rights, *Öneryildiz v. Turkey*, no. 48939/99 (2004), *Budayeva v. Russia*, no. 15339/02 (2008); Inter-American Court of Human Rights, *Lhaka Honhat v Argentina* (2020).

⁴⁵ See Reply of Brazil, para. 56 (“the attempt to attribute responsibility for the overall consequences of such a complex phenomenon to five isolated States is clearly unfounded”); Reply of France, paras. 53-54 (“climate change is the result of a global phenomenon . . . [it] cannot therefore be considered a localized ‘pollution’ directly attributable to a given country”); Reply of Germany, p. 5 (“Climate change is a consequence of the worldwide emission of greenhouse gases. The emission of greenhouse gases in one state . . . does not directly and foreseeably impair the rights of people in other states”).

⁴⁶ E.g., Reply of Brazil, paras. 55-59; Reply of France, paras. 78-79; Reply of Germany, pp. 5-6.

States to address climate change in considering their country reports, including their obligations to reduce their emissions in accordance with their commitments.⁴⁷

34. For example, the Committee urged Austria to “ensure that its climate mitigation policies, in particular those concerning the reduction of greenhouse gas emissions in line with the State party’s international commitments, are compatible with the principles of the Convention”,⁴⁸ expressed its concern that Australia “has made insufficient progress on the goals and targets set out in the Paris Agreement and about its continuing investment in extractive industries, in particular coal”,⁴⁹ and recommended that Japan “ensure that climate mitigation policies are compatible with the Convention, including by reducing its emissions of greenhouse gas emissions in line with its international commitments to avoid a level of climate change threatening the enjoyment of children’s rights.”⁵⁰ In 2018, the Committee on Economic, Social and Cultural Rights regretted that respondent Germany was not on course to meet its reduction targets for 2020, and recommended that “it comply with its obligations under article 4(16) of the Paris Agreement by submitting its 2030 target as its nationally determined contribution.”⁵¹ In the past year, that Committee also criticized Belgium and Switzerland for not being on track to meet reduction targets consistent with international standards, and urged them to “raise the target for 2030 so that it is consistent with the commitment to limit temperature rise to 1.5°C.”⁵²

35. There is no reason why authors cannot raise the failure of States to comply with their obligations under the Convention relating to climate change in a communication, when this Committee and other treaty bodies are already outlining these obligations in their concluding observations on States’ periodic reports. The importance of this case is that it provides an opportunity for the Committee to set a precedent for how it will address the obligations of specific States in more detail, in the context of specific alleged violations.

36. A full analysis of the human rights obligations relevant to climate change is beyond the scope of the inquiry into admissibility, but there is no doubt that those obligations are clear and detailed enough to support an assessment by the Committee of the authors’ claims. The Committee itself has already acknowledged and contributed to the law of human rights and climate change in its Joint Statement with other treaty bodies, as well as through its concluding observations.

37. An undisputed element of international law is that States have an obligation to protect against reasonably foreseeable harms to human rights, including from environmental degradation.⁵³ In respect of environmental threats to the right to life, the Human Rights Committee has stated that obligations of States under international environmental law should inform their human rights obligations, and that States should take “pay due regard to the precautionary approach.”⁵⁴ The precautionary principle is particularly important in relation to climate change, given the IPCC warning that “pathways that overshoot 1.5°C run a greater risk of passing through ‘tipping points’, thresholds beyond which certain impacts can no longer be avoided even if temperatures are brought back down later.”⁵⁵

38. This case asks the Committee to apply the obligation to protect rights from environmental harm to the respondent States even though they are not the only causes of the harm. While doing so raises

⁴⁷ See Center for International Environmental Law and the Global Initiative for Economic, Social and Cultural Rights, *States’ Human Rights Obligations in the Context of Climate Change: 2020 Update* (describing the Committee’s concluding observations that refer to climate change: Australia, Belgium, Guinea, Japan, Malta (all 2019); Niger, Spain (2018); Norway (2017); Haiti, United Kingdom (2016)).

⁴⁸ CRC/C/AUT/CO/5-6 (6 March 2020), para. 35(a).

⁴⁹ CRC/C/AUS/CO/5-6* (1 November 2019), para. 40.

⁵⁰ CRC/C/JPN/CO/4-5 (5 March 2019), para. 37(d).

⁵¹ E/C.12/DEU/CO/6 (27 November 2018), para. 19.

⁵² E/C.12/BEL/CO/5 (26 March 2020), para. 10; E/C.12/CHE/CO/4 (18 November 2019), para. 19.

⁵³ See, e.g., Human Rights Committee, General Comment No. 36, para. 18; European Court of Human Rights, *Öneryildiz v. Turkey*, no. 48939/99 (2004), *Budayeva v. Russia*, no. 15339/02 (2008).

⁵⁴ General Comment No. 36, para. 62. See Inter-American Court, *Advisory Opinion on Human Rights and the Environment*, para. 180 (“States must act in keeping with the precautionary principle . . . to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty.”).

⁵⁵ IPCC, *Global Warming of 1.5°C*, p. 283.

difficult questions, they are not beyond the capacity of the Committee to answer. In particular, it is clear that the answer cannot be that when multiple States contribute to a global harm, none of them bears any responsibility for its effects. Under the customary international law of state responsibility, when several States have contributed to the same damage by separate wrongful conduct, “the responsibility of each participating State is determined individually, on the basis of its own conduct and by reference to its own international obligations.”⁵⁶

39. Although determining an individual State’s share of the global responsibility to mitigate climate change may appear daunting, the States themselves have agreed, through the UN Framework Convention on Climate Change and the Paris Agreement, on the key first steps towards clarifying that responsibility. In particular, States committed in the Paris Agreement to “Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”⁵⁷ On that basis, States made individual commitments through Nationally Determined Contributions to take specific steps towards that goal. Moreover, each State agreed that its NDC would “reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”⁵⁸

40. These commitments by the States themselves inform their human rights obligations, including their obligations to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights” in the Convention, and, with regard to economic, social and cultural rights, to “undertake such measures to the maximum extent of their available resources.”⁵⁹ Human rights bodies have a critical role to play in ensuring that (a) at a minimum, each State is doing its best to fulfil its own commitment to adopt and implement an NDC reflecting “its highest possible ambition”; and (b) its commitments constitute no less than its fair share, in light of the total reductions necessary to protect against reasonably foreseeable harm to human rights. In this respect, we note that not one of the respondent States even mentioned children in its Intended Nationally Determined Contribution, let alone placed children’s rights at the center of these strategies, as the Committee has recommended.⁶⁰ We reiterate that the climate crisis demands urgent, effective and rights-based action, because the failure to act now ensures that children will suffer greater harms in the future.

41. While it may be difficult to trace a precise causal path between the actions of any one of the respondent States and the harms suffered by the authors, it is definitely possible to determine the responsibility of each of the States in relation to the harms to which it contributes. In that respect, its total current emissions may be only one factor; other factors, such as its level of economic development and its historical contributions, may also be relevant.

42. To date, the most detailed examination of such responsibility is the 2019 decision of the Supreme Court of the Netherlands in the *Urgenda* case. Drawing on the jurisprudence of the European Court of Human Rights construing the rights to life and to family and private life, the Court held that a State is obliged to take preventive measures against the foreseeable risks of climate change, even if it is not certain that they will materialize, and that courts can investigate whether the measures the State takes are “reasonable and appropriate.”⁶¹

43. The Court held that “the Netherlands is obliged to do ‘its part’ in order to prevent dangerous climate change, even if it is a global problem.”⁶² It rejected the arguments that a State does not have to take any responsibility if other States do not comply with theirs, and that because its own share of emissions is very small, reducing emissions would make little difference on a global scale.⁶³ The Court stated that in

⁵⁶ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), p. 125 (commentary to art. 47). The Commission gives as an example multiple States separately contributing to the pollution of the same river.

⁵⁷ Paris Agreement, art. 2(1).

⁵⁸ Id. art. 4(3).

⁵⁹ Convention, art. 4.

⁶⁰ CRC/C/MLT/CO/3-6 (26 June 2019), para. 37(a); CRC/C/GBR/CO/5 (12 July 2016), para. 69(b).

⁶¹ *Netherlands v Urgenda*, paras. 5.3.2, 5.3.3.

⁶² Id. para. 5.7.1.

⁶³ Id. para. 5.7.7.

principle, the share is to be determined by the government, but “the courts can assess whether the measures taken by the State are too little in view of what is clearly the lower limit of its share.”⁶⁴ Because of the consensus in the international community and climate science that at least a 25% reduction by developed countries by 2020 is required, the Court concluded that it could be taken into account in determining the obligations of the State to protect human rights.⁶⁵ *Urgenda* is not, of course, binding on this Committee, and it is not the only possible approach. However, it shows that it is possible to assign responsibility to an individual State for its contribution to the effects of climate disruption on human rights and to clarify the State’s human rights obligations to protect against such effects.

3. The Communication is Sufficiently Substantiated

44. The authors of the communication have provided well-supported descriptions of the facts on which their claim is based, covering everything from the science of climate change to the specific harms they are experiencing. In particular, they detail specific, individual and tangible harm in relation to each alleged violation. Throughout the extensive appendices to the Communication, the authors describe violations of rights guaranteed by articles 3, 6, 24, and 30 due to climate change, including climate-induced health problems (both physical and mental), disruption of economic and educational activity, destruction of property, inaccessibility of medical supplies, forced displacement, and food insecurity.

45. Authors rely on many sources to substantiate their claims, including testimonials, local news, international reports and scientific journals. This evidence is more than sufficient to substantiate their claims, especially giving consideration to the obstacles children may face in collecting and utilizing evidence. Furthermore, each harm is linked to actions by the respondent States and also to specific rights in the Convention. We do not know what more the authors could reasonably be expected to do to substantiate their allegations.

46. The causal link between increased greenhouse gases in the atmosphere and climate change is beyond dispute, and while the links between climate change and the authors’ individual harms may not be established with the same level of certainty, it is now possible to attribute particular types of harm to climate change with much more certainty than ever before.⁶⁶ More fundamentally, the obligations of the respondent States with respect to protection against environmental harm do not depend on proving causal chains with absolute certainty; rather, as explained above, they have obligations to act in order to prevent foreseeable risks of harm to human rights. As the authors make clear, they are already suffering from the eminently foreseeable effects of climate change, and those effects are certain to worsen in the future without urgent and effective action by States, including the respondent States.

C. The Pursuit of Domestic Remedies Would Be Futile

47. Pursuant to OPIC Article 7(e), the Committee shall consider a communication inadmissible when plaintiffs have not exhausted available domestic remedies, unless application of remedies is unduly prolonged or unlikely to bring effective relief.⁶⁷ The authors fall squarely within these exceptions. In the exceptional circumstances of this communication, the pursuit of domestic remedies would be unduly prolonged and unlikely to result in effective relief.

48. There are substantial backlogs in many domestic courts, worsened by court closures in response to the COVID-19 pandemic. The ensuing delays are exacerbated in climate litigation asserting human rights violations because of the novelty and complexity of these cases. The *Urgenda* case in the Netherlands took seven years to conclude.⁶⁸ The *Juliana* case in the United States was dismissed on standing grounds after five years of litigation. Cases brought by children and youth are hindered by

⁶⁴ Id. para. 6.3.

⁶⁵ Id. para. 7.5.1.

⁶⁶ See M. Burger et al., “The Law and Science of Climate Change Attribution,” *Columbia Journal of Environmental Law* (forthcoming 2020), https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3051178.

⁶⁷ *R.K. v Spain*, CRC/C/82/D/27/2017, para. 8.3; *N.B.F. v Spain*, CRC/C/79/D/11/2017, para. 11.3.

⁶⁸ See <https://www.urgenda.nl/en/themas/climate-case/climate-case-explained/>.

financial barriers and the difficulties of understanding complicated legal processes. To make matters worse, in some States there are chronic delays in the implementation of domestic court orders.

49. It is the nature of climate change that the longer that effective actions to reduce emissions are deferred, the larger the adverse impacts will become. Continued and worsening rights violations will result from delays in responding to the climate crisis. For example, authors from small island States face increasingly grave risks of permanently losing their homes within a time frame that the Human Rights Committee recently stated could be as short as 10 to 15 years.⁶⁹ Climate justice delayed is climate justice denied.

50. Remedies from individual domestic courts will not be effective in isolation, highlighting the critical importance of international cooperation. A single domestic court clearly lacks the jurisdiction to impose obligations on other States to cooperate internationally to resolve the climate crisis. This Committee, in contrast, has the ability to provide effective remedies against multiple State parties. The Committee has the expertise and the mandate to address matters that may not be within the competence of domestic courts, including the obligations of each State under human rights law to address a global challenge to the human rights of all children.

51. International human rights jurisprudence provides that the gravity of the alleged harm and the number of victims involved are factors to consider regarding the application of an exception to the domestic remedies rule.⁷⁰ Most of the respondent State parties have recognized the global climate emergency. The consequential rights violations are urgent, global in scale and increasingly severe. The authors are particularly vulnerable, as the Committee has emphasized that physiological and psychological harms arising from climate change disproportionately and permanently affect children.

IV. Issues to be covered in a subsequent amicus brief on the merits

52. Assuming admissibility of the communication is confirmed, we request permission to submit a second amicus brief addressing climate change impacts on children's rights to life, health, culture, participation, access to justice and to have their best interests considered. We would also address the obligations of the five respondent States regarding procedural obligations, substantive obligations related to mitigation, adaptation, and climate finance, obligations related to international cooperation, and heightened obligations owed to vulnerable and marginalized populations, as informed by international human rights law and international environmental law.

V. Conclusion

53. This communication represents the Committee's first opportunity, in a specific case, to build on the constructive work it has carried out on climate change through its concluding observations and public statements. The eyes of the world, and most importantly the eyes of millions of children, will be on it. In the context of the global climate crisis, clarifying the impacts of climate disruption on the 16 authors' rights and the obligations of the five respondent States will benefit all children and all States. Conversely, rejecting this communication at the admissibility stage and not even considering the merits would send a terrible message, contradicting everything the Committee has said about the importance of listening to children's voices, empowering children and placing children's rights and the best interests of the child at the center of climate action. Fortunately, the objections to admissibility raised by the respondent States are without merit. The Committee clearly has jurisdiction, the communication is sufficiently substantiated, and in the unique circumstances of the climate crisis, the pursuit of domestic remedies would be futile.

54. The time for action to address the climate crisis and prevent catastrophic impacts on children's rights is rapidly running out. As the IPCC has stated, "Every bit of warming matters, every year matters, every choice matters."⁷¹ To which we would only add, every child matters.

⁶⁹ *Teitiota v New Zealand*, para. 9.12.

⁷⁰ Human Rights Committee, *Nyaya v. Nepal*, CCPR/C/125/D/2556/2015 (11 June 2019).

⁷¹ IPCC, *Global Warming of 1.5°C*, Foreword at (vi).