
COMMITTEE ON THE RIGHTS OF THE CHILD

Communications n°105/2019 (Brazil), n°106/2019
(France), n°107/2019 (Germany)

SACCHI, *et al.*,


v.

ARGENTINA, BRAZIL, FRANCE, GERMANY & TURKEY

**Petitioners' Reply to the Admissibility Objections of
Brazil, France, and Germany**

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I. Introduction: The Communication is admissible.

1. Climate change is a common concern of humanity and a shared responsibility of all nations. This case concerns five States that are contributing to the climate crisis and sixteen children whose rights are being impaired by those contributions.
2. Petitioners from around the globe have joined to file this Communication because the climate crisis is causing them extraterritorial, transboundary, and intergenerational harms in violation of their rights. These issues can only be addressed by the Committee on the Rights of the Child (the “Committee”): no domestic jurisdiction can encompass the international scope of these violations.
3. Each Petitioner is personally suffering harms now and will suffer harm in the foreseeable future due to climate change caused, in substantial part, by Respondents. Their Communication details violations of rights under articles 3, 6, 24, and 30 caused by climate degradation, including physical and mental health problems, disruption of their educational and economic development, forced displacement, food and water insecurity, and the threatened extinction of subsistence cultures of indigenous peoples in Alaska, Sweden, and the Marshall Islands.
4. These harms are the direct and foreseeable impacts of the greenhouse gases emitted by Respondents and other States. Each Respondent is failing to reduce greenhouse gas emissions in line with the global reductions necessary to limit global warming to 1.5°C or well below 2°C. Respondents are not the only States contributing to climate change, but they are responsible nonetheless for their own contributions. Each Respondent ranks among the world’s highest historical and current emitters of greenhouse gases, and their failures have repercussions far beyond their borders on the lives, health, and culture of Petitioners.
5. The Convention on the Rights of the Child (the “Convention”) holds that every State party is obligated to protect against reasonably foreseeable harms to human rights, including those that arise out of environmental causes.
6. The question in this case is whether Respondents are fulfilling their positive obligations to prevent foreseeable harms to Petitioners caused by climate change.
7. Petitioners allege that each Respondent has breached these obligations by:
 - failing to reduce their emissions in line with their international obligations to limit global warming to 1.5°C;

- taking affirmative measures, such as implementing fossil fuel subsidies, that accelerate climate change rather than reverse it;
 - failing to use all available means of international cooperation and coordination, such as dispute resolution, in the fight against climate change; and
 - failing to prioritize the best interests of the child in deciding to delay decarbonization and forcing Petitioners and other youth to experience risks associated with irreversible climate degradation.
8. Although this Reply addresses admissibility, not the merits, two critical facts should not be ignored. First, the actual emissions of each Respondent grossly exceed the reductions needed to limit global temperature rise to 1.5°C or even 2°C under any evidence- based metric.¹
 9. *Second*, Respondents’ delay has irreversible costs: “Failure to reduce carbon dioxide (CO₂) and other greenhouse gas emissions in the next years and decade (2020-2030) . . . creates an imminent risk that it will be impossible to ‘make up’ for lost mitigation opportunities and will undermine the sustainable and safe livelihood of future generations.”² In other words, Respondents must curtail their emissions immediately to prevent foreseeable climate harm.
 10. To remedy these breaches, Petitioners request three forms of relief that are central to human rights law: declaration of a breach, cessation of that breach, and guarantees of non-repetition to prevent similar violations. They ask the Committee to declare that their rights have been violated by Respondents’ documented failures; recommend that Respondents take all reasonable precautionary measures to reduce their share of emissions; and act to the maximum of their ability to prevent further violations of Petitioners’ rights caused by climate change.
 11. Brazil, France, and Germany object to the admissibility of these claims on three grounds: (1) the Committee lacks jurisdiction, (2) the Communication is manifestly ill-founded or unsubstantiated, and (3) domestic remedies have not been exhausted.³
 12. While they differ in some details, Respondents’ objections fundamentally make the same false claims: The climate crisis is so global that no State bears

¹ See Expert Report of Dr. Joeri Rogelj, A shortfall in compliance of Brazil, France and Germany in greenhouse gas emission targets under the Paris Agreement in light of international and intergenerational equity. April 2020, Table 3 (hereinafter “Rogelj Rep. (April 2020)”).

² *Id.* at 4.

³ France also contends that it has taken an effective reservation to article 30 of the Convention and hence has no obligations to respect the cultural rights of Petitioners from indigenous communities. Section V of this Reply shows that France’s reservation has no effect on this case because it defeats the object and purpose of the Convention and, regardless, is limited to French citizens.

any responsibility; so universally dangerous that no child has standing to complain; and so complex that its resolution must be left to the discretion of each State within its own borders.

13. Respondents' objections lack merit. *First*, the Committee has jurisdiction over the Communication. Each Respondent owes obligations toward Petitioners, who are directly and foreseeably injured by greenhouse gas emissions originating in Respondents' territory. The fact that *other* States also contribute to these injuries does not absolve Respondents from responsibility *for their own* contributions.
14. *Second*, the claims are manifestly well-founded. Petitioners are suffering direct and personal harms now and will suffer in the foreseeable future. Climate science confirms Petitioners face certain risks of irreparable harm if global warming exceeds 1.5°C, and even limiting warming to 1.5°C may not be enough. These harms violate multiple rights under the Convention. Climate science, moreover, establishes a causal chain that links each harm to climate change. The same chain links climate change to emissions resulting, in substantial part, from Respondents' climate policies and their failure to protect children from the emissions of other States and private industries. Petitioners seek remedies squarely within the competence of the Committee: declaring a breach and urging its cessation and non-repetition.
15. *Finally*, the pursuit of domestic remedies would be futile. Respondents all concede that foreign state immunity would bar domestic claims against the other Respondents. They contend instead that Petitioners should file 80 claims in 5 jurisdictions, against each Respondent in isolation. But this globe-spanning litigation would last years, while time is already running out. And these disparate cases in each jurisdiction would have no real prospect of success: Standing, the separation of powers, and other legal and logistical obstacles would make Petitioners' claims highly unlikely to secure any effective relief in the courts of Brazil, France, and Germany.
16. The admissibility of this case will have far-reaching ramifications. In objecting to admissibility, Respondents are claiming there is no justiciable link between their emissions and the ultimate violation of children's rights to which those emissions contribute. To deny this link is to deny that State parties have any duty under the Convention to protect children from climate-change related harms by mitigating their emissions.
17. The world's most universally ratified treaty can and must confront the world's most universal threat to children. The Communication is admissible.

II. The Committee has jurisdiction.

18. Article 5 of the OPIC provides that “communications may be submitted by or on behalf of an individual” who is “within the jurisdiction of a State party.” This Committee and other human rights bodies have confirmed that State parties have extraterritorial obligations to protect those whose rights are impaired “in a direct and reasonably foreseeable manner” by activities under the control of a State.⁴
19. These extraterritorial obligations extend to children foreseeably harmed by a State’s contributions to climate change. As the Committee observed in its September 2019 Joint Statement, “State parties have obligations, *including extraterritorial obligations*, to respect, protect and fulfil all human rights of all peoples.”⁵ These obligations include taking “measures to prevent foreseeable human rights harms caused by climate change” and “to regulate activities that contribute to such harm.”⁶
20. All Respondents have extraterritorial obligations toward Petitioners under this standard. Brazil does not dispute this. Germany and France, however, try to divorce their contributions to climate change from their direct and foreseeable impact on Petitioners’ rights.

A. Respondents’ contributions to climate change directly and foreseeably harm Petitioners.

21. Germany acknowledges that the “direct and reasonably foreseeable” standard determines its extraterritorial obligations. It admits that “emission of greenhouse gases in one state certainly contributes to the worsening of climate change...” But, it claims, in conclusory and circular reasoning, such emission “. . . does not directly and foreseeably impair the rights of people in other states.”⁷
22. Germany’s position defies logic. Worsening climate change means worsening the harmful effects of climate change. And Germany fails to explain why its

⁴ UNHRC General Comment No. 36 (on the right to life), UN Doc. CCPR/C/GC/36, ¶63 (Oct. 30, 2018), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/36&Lang=en. See also African Commission on Human and Peoples’ Rights, General Comment No. 3, ¶14 (Nov. 2015), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>. para. 14 (in relation to the right to life, defining extraterritorial jurisdiction as whether a State’s activities could “reasonably be foreseen to result in an unlawful deprivation of life”).

⁵ Joint Statement on “Human Rights and Climate Change” (Sept. 16, 2019), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>.

⁶ *Id.*

⁷ Response of Germany at 5.

emissions directly and foreseeably impair children’s rights on one side of its border, but not on the other. In reality, all of the Respondents’ emissions directly and foreseeably contribute to the impairment of Petitioners’ rights. Germany cannot plausibly claim that the emissions of the world’s 6th largest emitter play no role in the climate impacts directly harming and threatening Petitioners.⁸ Nor can France plausibly claim that a country that has contributed the 8th greatest share of historical emissions has not contributed directly and foreseeably to the inescapable *effects* of climate change on Petitioners’ rights.⁹

23. These violations of Petitioners’ rights are entirely foreseeable. For decades, climate scientists have warned each Respondent that their unchecked emissions will have a direct effect on children around the world. In 1990, the IPCC’s first report warned the international community that without sufficient emission-reductions, global warming would cause the very same adverse climate impacts that now injure and threaten Petitioners, from the spread of malaria and deadly wildfires to rising seas engulfing atolls.¹⁰
24. The fact that the climate crisis is, as France argues, a “global phenomenon” does not relieve Respondents of their obligations. France claims that the emissions driving climate change are not “a localized ‘*pollution*’ directly attributable to a given country.”¹¹ But, even if emissions are local in their origins, they are global in their impacts. To name one example, it is certainly possible to localize gases emitted from car tailpipes on the Paris *périphérique*. But once France has permitted their release into the atmosphere, their harmful impacts are not bounded by national borders, geographic or political. Only France can prevent them. Thus, emissions can be attributed to Respondents, and their mitigation shortfalls can be determined from available data, as Dr. Joeri Rogelj explains.¹² The physics of climate change does not absolve Respondents of their duty to take available measures to prevent foreseeable extraterritorial harm to Petitioners.

B. Respondents exercise effective control over emissions originating in their territory.

25. France urges the Committee to abandon the foreseeability standard for extraterritorial jurisdiction announced in the Joint Statement on Climate Change and Human Rights. Instead, it asks the Committee to adopt a narrow reading of the European Court of Human Right’s “effective control” test. But

⁸ Rogelj Rep. Table 1 (2020).

⁹ *See id.*

¹⁰ IPCC, Policymaker Summary of Working Group II (Potential Impacts of Climate Change) at 88, 102–03, 107–08 (1990).

¹¹ Response of France at ¶¶ 53–54.

¹² Rogelj Rep. at 4 (2020).

France disregards that the “effective control” test, as applied by the European and Inter-American courts, encompasses the foreseeable transboundary violations in this case.¹³

26. A State’s extraterritorial obligations are not confined to the narrow circumstances of territorial or personal control cited by France.¹⁴ Extraterritorial obligations also arise when a State controls activities in its territory that cause direct and foreseeable transboundary harm, be it through environmental damage,¹⁵ cross-border shootings,¹⁶ or pushbacks of asylum-seekers.¹⁷
27. France does not cite a single case where a State was found to lack jurisdiction in a transboundary context. The one case France relies upon, *Bankovic v. Belgium*, does not even involve transboundary harm: *Bankovic* addressed the bombing of a Belgrade television station from Serbian airspace.¹⁸
28. The cases that *do* address transboundary harm uniformly recognize that the State of origin has jurisdiction when it controls the domestic acts that produce extraterritorial harm. The paradigmatic cases are *Andreou v. Turkey* (ECtHR) and *Bastidas Meneses v. Ecuador* (Inter-American Commission), where the State parties were found to have exercised jurisdiction over foreign victims of cross-border shootings by State actors.¹⁹ As the ECtHR observed in *Andreou*, acts “which produce effects outside [a State’s] territory . . . may amount to the exercise by them of jurisdiction.”²⁰ The IACtHR extended this principle to transboundary environmental damage in its Advisory Opinion on the Environment and Human Rights: “The exercise of jurisdiction arises when the

¹³ Response of France at ¶¶ 29–37.

¹⁴ See Communication to the Committee on the Rights of the Child at ¶¶ 243–253 (hereinafter “Communication”).

¹⁵ The Environment & Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Arts. 4(1) and 5(1) in Relation to Arts. 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/17 Inter-Am. Ct. H.R. (ser A) no. 3, at ¶¶103-04, 136 (Nov. 15, 2017), (hereinafter “Advisory Opinion on the Environment and Human Rights”) https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf.

¹⁶ See, e.g., *Andreou v. Turkey*, Application No. 45653/99, Eur. Ct. H.R. (June 3, 2008), <http://hudoc.echr.coe.int/eng-press?i=001-88068> (admissibility decision); *Bastidas Meneses v. Ecuador*, Petition 189-03, Report No. 153/11, ¶ 18, Inter-Am. Comm’n H.R. (2011), <http://www.oas.org/en/iachr/decisions/admissibilities.asp>.

¹⁷ See, e.g., *D.D. v. Spain*, CRC/C/80/D/4/2016, ¶ 14.6 (Feb. 1, 2019), <https://www.refworld.org/cases,CRC,5c73f8b64.html>.

¹⁸ *Bankovic et al v. Belgium*, Application No. 52207/99 [GC] Eur. Ct. H.R. at 4(Dec. 12, 2001), <http://hudoc.echr.coe.int/eng?i=001-22099>.

¹⁹ *Andreou v. Turkey*, Application No. 45653/99; *Bastidas Meneses v. Ecuador*, Petition 189-03, Report No. 153/11, ¶ 18, Inter-Am. Comm’n H.R., (2011).

²⁰ *Id.* at 10–11.

State of origin exercises effective control over the activities that caused the damage and the consequent human rights violation.”²¹ These opinions all support the “direct and foreseeable” standard recognized by this Committee and others.

29. The common denominator in all these cases is the State party’s control over the harmful activity within its territory. Here, by extension, France and the other Respondents all have effective regulatory control over emissions originating in their territory. France exercises *exclusive* control over the economic activities in French territory that emit roughly 395 million metric tons of greenhouse gases into the atmosphere each year.²² Only France can reduce those emissions, through its sovereign power to regulate, license, fine, and tax. The same is true for Germany. It alone can regulate and reduce the 735 million metric tons of greenhouse gases emitted from Germany under current policies.²³ Because Respondents exclusively control these sources of harm, the foreseeable victims of their downstream effects, including Petitioners, are within their jurisdiction.
30. Thus, even under an “effective control” test, there is article 2 jurisdiction because each Respondent controls activities in its territory that produce transboundary harm to Petitioners.

C. “Others do it too” is no defense.

31. France and Germany’s remaining defense to jurisdiction is that they are not the only States contributing to the climate crisis. France, for example, argues it cannot be singled out for blame because “climate change is a global phenomenon” to which all States have contributed, some more than France.²⁴ In essence, Respondents claim that shared responsibility means no responsibility. But as any child learns, two wrongs don’t make a right.
32. Customary international law recognizes that when two or more States contribute to a harmful outcome, each State is responsible for its own acts, notwithstanding the participation of other States.²⁵ This point is underscored in Article 47 of the International Law Commission’s (“ILC”) *Draft Articles on State Responsibility*, which provides that where “several States are responsible

²¹ Advisory Opinion on the Environment and Human Rights, ¶ 104(h). Contrary to France’s claim, the Advisory Opinion was not limited to the impact of the construction of new infrastructure in some Member States on the marine environment in the Greater Caribbean region.

²² Communication, Appendix B, Rogelj Rep., Table 1 at 7/11 (2019).

²³ *Id.*

²⁴ Response of France at ¶ 53.

²⁵ See generally Ande Nollkaemper & Dov Jacobs, *Shared Responsibility in International Law: A Conceptual Framework*, 34 Mich. J. Int’l L. 359, 379–81 (2013).

for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.”²⁶

33. The Draft Articles apply this principle to the specific scenario in this case: each State is individually responsible “where several States by separate internationally wrongful conduct have contributed to causing the same damage” such as “polluting a river by the separate discharge of pollutants.”²⁷ Here, each Respondent’s separate discharge of emissions should be examined just as the ILC prescribed: “In such cases, the responsibility of each participating State is determined individually, on the basis of its own conduct and by reference to its own international obligations.”²⁸
34. The “*others do it too*” defense was rejected by the International Court of Justice (ICJ) as a basis for inadmissibility. Just as Respondents are contributing to climate degradation, multiple States contributed to environmental degradation in *Certain Phosphate Lands in Nauru (Nauru v. Australia)*. There, Nauru sued Australia for environmental degradation that occurred during the joint trust administration of Australia, New Zealand, and the UK. The ICJ rejected Australia’s argument that the claim was inadmissible, since it was brought against only one of the responsible States: “The Court does not consider that any reason has been shown why a claim brought against only one of the three States should be declared inadmissible *in limine litis* merely because that claim raises questions of the administration of the Territory, which was shared with the other two States.”²⁹
35. The “common but differentiated responsibilities” invoked by France do not equate to no responsibilities under human rights law. Rather, each State is responsible for mitigating its own contributions to climate change within the general framework of shared responsibility. Just as climate change is caused by a multitude of emissions, it can only be mitigated by a multitude of reductions. Respondents therefore owe extraterritorial obligations to

²⁶ Int’l Law Comm’n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, art. 47 at 124–25 (2001), https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

²⁷ *Id.* at cmt. 8 at 125.

²⁸ *Id.*

²⁹ *Case Concerning Certain Phosphate Lands in Nauru (Nauru v. Austl.)*, 1992 I.C.J. 240, 258-59, 262 (June 26), <https://www.icj-cij.org/files/case-related/80/080-19920626-JUD-01-00-EN.pdf>. In fact, the ICJ has consistently recognized the admissibility of cases brought against only one State out of a plurality that contributed to the same damage. For example, in *Corfu Channel*, the ICJ examined Albania’s failure to warn British ships of mines that had apparently been set by Yugoslavia. The ICJ found Albania responsible and did not find that “Albania’s responsibility for failure to warn was reduced, let alone precluded, by reason of the concurrent responsibility of a third state.” ILC Draft Articles, cmt. 8 (citing *Corfu Channel Case*, Judgment (Merits), 1949 I.C.J. Reports 22–23 (April 9), <https://www.icj-cij.org/files/case-related/1/001-19490409-JUD-01-00-EN.pdf>).

Petitioners, who are harmed by the foreseeable and direct impacts of each Respondents' failure to mitigate its emissions.

36. Ultimately, the Committee's decision on jurisdiction will have far-reaching ramifications. Denying that States have extraterritorial obligations to mitigate climate change related harms would dramatically curtail the scope of the Convention. And it would carve out a "human rights exception" to the principle of State responsibility for transboundary environmental damage. This would eviscerate a core purpose of the Convention: to make children's rights universal and obligatory.
37. Petitioners respectfully request that the Committee recognize its jurisdiction under article 5 of the OPIC.

III. The Communication is manifestly well-founded.

A. Petitioners have been individually harmed.

38. The Communication clearly establishes that each Petitioner has been injured and exposed to a risk of further irreparable harm as a result of climate change caused in substantial part by Respondents' failure to reduce emissions. The harms they are suffering now, and will likely suffer in the future, impair their rights to life (article 6), health (article 24), indigenous culture (article 30), and expose Respondents failure to prioritize the best interests of children (article 3).
39. Brazil, France, and Germany mischaracterize and minimize these violations on similar grounds. They object that Petitioners fail to identify the direct and specific harms they suffered—disregarding Petitioners who have already been sickened by vector-borne diseases and respiratory illnesses linked to climate change and Petitioners impacted by emotional distress. Respondents claim Petitioners only allege generalized impacts of climate change on the regions where they reside—ignoring how those impacts affect Petitioners' lives.³⁰
40. Respondents fail to acknowledge what those regional climate impacts signify: foreseeable risks that impair multiple rights under the Convention—most fundamentally the right to life.
41. Contrary to Respondents' objections, Petitioners have substantiated, with tangible proof, the harms that each is suffering and is foreseeably likely to suffer. These harms are itemized for the Committee's convenience in

³⁰ See Response of France at ¶¶ 78, 86; Response of Germany at 6; Response of Brazil at ¶ 55. France also doubts the truthfulness of the statements by Greta Thunberg and the other Petitioners: ("the communication does not permit one to establish the veracity of the statements of the author's") (« la communication ne permet d'établir la véracité des déclarations de ses auteurs. » Response of France at ¶ 79. If Petitioners' credibility is at issue, they would welcome the opportunity to testify directly before the Committee in a hearing.

Appendix F to this Reply. Their attribution to climate change, caused in substantial part by Respondents, is presented in Appendix G.

1. Respondents are foreseeably exposing all Petitioners to substantial risks to life, health, and culture.

42. In addition to ignoring the harms some Petitioners are already suffering, Respondents appear to disregard the foreseeable risks of harm to Petitioners that result in substantial part from their emissions. Exposing a child to a risk of irreparable harm is a cognizable violation, even if that risk has not yet fully materialized. States violate the right to life by exposing people to “reasonably foreseeable threats and life-threatening situations.”³¹ Indeed, the Human Rights Committee has recognized that environmental degradation, climate change, and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.³²
43. Protection against environmental risks is also enshrined in article 24 of the Convention, which requires State parties to take all appropriate measures to combat “disease and malnutrition” by “taking into consideration the *dangers and risks of environmental pollution*.”³³ The obligation to prevent foreseeable risks of harm dovetails with the precautionary principle, which requires that when there “are plausible indications that an activity could result in severe and irreversible damage to the environment ... [s]tates must act with due caution to prevent possible damage.”³⁴ As the Inter-American Court has noted, because “frequently, it is not possible to restore the situation that existed before the environmental damage has occurred, prevention should be the main policy as regards environmental protection.”³⁵
44. Failing to take preventive measures is a violation ripe for review in an individual communication. The Human Rights Committee observed that a victim may bring a claim to prevent future harm when the “alleged victim’s risk of being affected is more than a theoretical possibility.”³⁶ Here, Petitioners’ risks are virtually certain without imminent prevention. The IPCC has warned that “pathways that overshoot 1.5°C run a greater risk of passing

³¹ See Communication at ¶¶ 78–80; UNHRC, General Comment No. 36, CCPR/C/GC/36, ¶ 7.

³² *Id.* at ¶ 62.

³³ CRC, art. 24(2)(c) (emphasis added).

³⁴ Advisory Opinion on the Environment and Human Rights, ¶ 180.

³⁵ *Id.* at ¶ 130

³⁶ *G. v. Australia*, Communication No. 2172/2012 (CCPR/C/119/D/2172/2012) HRC, ¶ 6.4 (June 15, 2017), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/CCPR_C_119_D_2172_2012_25976_E.pdf. See also *Decision as to the Admissibility of Senator Lines GmbH*, Application No. 56672/00, Eur. Ct. H.R., Grand Chamber (2004), <http://hudoc.echr.coe.int/fre?i=001-23765>.

through tipping points beyond which certain impacts can no longer be avoided even if temperatures are brought back down.”³⁷

45. The evidence makes clear that Respondents’ excess emissions have exposed and will continue to expose Petitioners to risks of foreseeable harm, as documented by a consensus of scientific findings presented in the Communication and its Appendix and updated in this Reply.³⁸
46. Respondents are increasing the likelihood of deadly fires and heatwaves—hospitalizing Alexandria in California and New York, impacting Raslen in Tunisia; Carl in Alaska; Chiara in Argentina; Iris in France and California; Raina in Germany; and Catarina in Brazil.³⁹ They are exacerbating water insecurity—impacting Ridhima in India; Ayakha in South Africa; Raslen in Tunisia; Catarina in Brazil; Carlos in Palau; and David, Ranton, and Litokne in the Marshall Islands, where a sea level rise of just 0.4 meters will render groundwater no longer potable.⁴⁰
47. Respondents’ emissions are contributing to rising sea levels—posing an existential threat to David, Ranton, and Litokne’s homeland, the Marshall Islands.⁴¹ They are causing dangerous air pollution to worsen—already hospitalizing Debby in Lagos and Alexandria in New York.⁴² They are increasing the incidence of malaria, dengue, and other vector-borne diseases—already infecting Debby with malaria, Ranton with dengue, and David with

³⁷ IPCC Special Report, Ch. 3, Global Warming of 1.5° at 283, <https://www.ipcc.ch/sr15/chapter/chapter-3/>.

³⁸ Reply Appendix A, Rogelj Rep. at 14, Tables 1–3 (April 2020); Reply Appendix B(1), Climate Analytics Brazil Rep. 1–6 (April 2020); Reply Appendix B(2) Climate Analytics France Rep. 1–3 (April 2020); Reply Appendix B(3) Climate Analytics Germany Rep. 2–4 (April 2020).

³⁹ Alexandria: Communication at ¶ 103, Communication Appendix A.16 at 2; Raslen: Communication at ¶ 102, Communication Appendix A.14 at 1; Carl: Communication at ¶ 100, Communication Appendix A.15 at 2–3; Chiara: Communication at ¶ 98, Communication Appendix A.1 at 1; Iris: Communication at ¶ 97, Communication Appendix A.3 at 1; Raina: Communication Appendix A.4 at 1; Catarina: Communication Appendix A.2 at 1; *see also* Reply Appendix F.

⁴⁰ Ridhima: Communication at ¶ 110, Communication Appendix A.5 at 1–2; Ayakha: Communication at ¶ 107, Communication Appendix A.11 at 1–2; Raslen: Communication at ¶ 108, Communication Appendix A.14 at 2; Catarina: Communication at ¶ 109, Communication Appendix A.2 at 1–2; Carlos: Communication Appendix A.10 at 1; David: Communication Appendix A.6 at 2; Ranton: Communication Appendix A.7 at 3; Litokne: Communication Appendix A.8 at 1–2; *see also* Reply Appendix F.

⁴¹ Communication at ¶¶ 121, 155–157; David: Communication Appendix A.6 at 2; Ranton: Communication Appendix A.7 at 2–3; Litokne: Communication Appendix A.8 at 2–3; *see also* Reply Appendix F.

⁴² Debby: Communication at ¶¶ 132, 269, Communication Appendix A.9 at 2; Alexandria: Communication at ¶¶ 105, 279, Communication Appendix A.16 at 2; *see also* Reply Appendix F.

chikungunya.⁴³ They are causing more frequent, severe storms and flooding— affecting Carlos in Palau; David, Ranton, and Litokne in the Marshall Islands; Debby in Lagos; Raslen in Tunisia; Catarina in Brazil; Chiara in Argentina; Raina in Hamburg; and Iris in Bordeaux.⁴⁴

48. The impacts of Respondents' emissions are disrupting schooling through closures, floods, blocked access, and power-outages—impacting the education of Raslen in Tunisia; Debby in Nigeria; and Chiara in Argentina.⁴⁵ And they are extinguishing millennia-old cultural and subsistence practices of indigenous peoples—threatening Carl's hunting and gathering traditions as a Yupiaq in Alaska; and David, Ranton, and Litokne's fishing and cultural traditions as Marshallese.⁴⁶
49. If Respondents fail to take drastic and urgent action to mitigate emissions, Petitioners will suffer physical, emotional and cultural harms as a result of climate change in the coming years. Exposing Petitioners to these risks is a violation of their rights to life, health, and culture, and a failure to prioritize their best interests as children.

2. Climate change has already physically harmed some Petitioners.

50. Petitioners Debby Adegbile and Alexandria Villaseñor have experienced physical injuries that have resulted in violation of their rights to life and health, and the best interests of the child. Unprecedented wildfires fueled by a hotter climate forced Alexandria to flee her home after the deadly air quality quickly exacerbated her asthma.⁴⁷ Because intensified rainfall and flooding has created an influx of disease-carrying mosquitoes, Debby gets malaria two to three

⁴³ Debby: Communication at ¶¶ 132, 280, Communication Appendix A.9 at 2; Ranton: Communication at ¶ 130, Communication Appendix A.7 at 2; David: Communication at ¶ 131; Communication Appendix A.6 at 3; *see also* Reply Appendix F.

⁴⁴ Carlos: Communication at ¶ 122, Communication Appendix A.10 at 1; David: Communication at ¶ 115; Communication Appendix A.6 at 3; Ranton: Communication at ¶ 115, Communication Appendix A.7 at 2; Litokne: Communication at ¶¶ 115–16, Communication Appendix A.8 at 2–3; Debby: Communication at ¶¶ 117–18, Communication Appendix A.9 at 1–2; Raslen: Communication at ¶ 119, Communication Appendix A.14 at 1–2; Catarina: Communication Appendix A.2 at 2; Raina: Communication Appendix A.4 at 1–2; and Iris: Communication Appendix A.3 at 1–2; *see also* Reply Appendix F.

⁴⁵ Raslen: Communication at ¶ 119, Communication Appendix A.14 at 1–2; Debby: Communication at ¶¶ 112, 117–18, Communication Appendix A.9 at 1–2; and Chiara: Communication at ¶ 98, Communication Appendix A.1 at 1; *see also* Reply Appendix F.

⁴⁶ Communication at ¶¶ 134–158; *see generally* Carl: Communication Appendix A.15; David: Communication Appendix A.6; Ranton: Communication Appendix A.7; Litokne: Communication Appendix A.8 at 2–3; *see also* Reply Appendix F.

⁴⁷ Communication at ¶ 103, Communication Appendix A.16 at 2; *see also* Reply Appendix F.

times a year.⁴⁸ Worsening deadly air caused by excessive heat has also intensified Debby's asthma, requiring her to often be hospitalized.⁴⁹

51. Alexandria and Debby's worsened health issues constitute injuries to physical well-being⁵⁰ and bodily integrity,⁵¹ which violate their rights to life and health, and their best interests.

3. Climate change has already impaired indigenous Petitioners' access to cultural traditions.

52. Indigenous Petitioner Carl Smith has experienced firsthand the substantial impact of rising temperatures in the Arctic region on their thousand-year-old cultural practices. Rising seas, a warming and acidifying ocean, increased drought, and more severe storms make it difficult for the Marshallese Petitioners to practice their millennia-old subsistence culture.⁵²
53. The climate change-related harms to the "traditional lifestyle[s]" and traditional lands of the indigenous and Marshallese Petitioners constitute a violation to their rights to culture.⁵³

4. Climate change has caused all Petitioners emotional distress.

54. Acts and omissions causing injuries to people's "physical, mental and social well-being" violates the right to health.⁵⁴ A deprivation of the right to life "goes beyond injury to bodily or mental integrity or threat thereto."⁵⁵ Petitioners have suffered substantial emotional and mental harm directly resulting from their experience of climate change events, violating their rights to life and health, and best interests of the child. The Communication and Appendix F to this Reply catalogue the harms to Petitioners' mental and emotional well-being from experiencing climate change, including heightened and constant anxiety about the future, nightmares, feelings of helplessness, fear of having children, and other harms.

⁴⁸ See Appendix A.9 at 2.

⁴⁹ See *id.*

⁵⁰ CRC, General Comment No. 15 CRC/C/GC/15, ¶ 4 (2013).

⁵¹ UNHRC, General Comment No. 36, CCPR/C/GC/36, ¶ 7.

⁵² See, e.g., Appendix A.8 at 1–3.

⁵³ CRC, General Comment No. 11, CRC/C/GC/11, ¶ 35 (2009).

⁵⁴ CRC, General Comment No. 15, CRC/C/GC/15, ¶ 4

⁵⁵ UNHRC, General Comment No. 36, CCPR/C/GC/36, ¶ 7.

55. The emotional and mental health harms that Petitioners have experienced are consistent with what experts have observed in children confronting the climate crisis.⁵⁶
56. The emotional and mental distress that Petitioners have experienced due to climate change constitute injuries to their “mental integrity”⁵⁷ and “social well-being,”⁵⁸ in violation of their rights to life and health. Respondents’ failure to mitigate climate change despite Petitioners’ emotional and mental distress are inconsistent with the best interests of the child.

5. Petitioners’ claims are not an *actio popularis*.

57. The fact that other children face similar harms does not prevent Petitioners from vindicating their own rights.
58. In *E.W. et al. v. Netherlands*, the Human Rights Committee admitted the claims of 6,588 citizens who alleged their rights had been violated because the Netherlands Government agreed to the deployment of cruise missiles fitted with nuclear warheads on Netherlands territory.⁵⁹ The HRC in *E.W.* noted that “the mere fact of large numbers of petitioners does not render their communication an *actio popularis*.”⁶⁰ In *Nell Toussaint v. Canada*, the Human Rights Committee found that the author was a victim where she was able to show that Canada’s healthcare policy, under which she was denied coverage based on immigration status, “applied to her as an individual and . . . personally and directly affected her.”⁶¹ The HRC admitted the author’s claim that Canada violated her right to life, even though the healthcare policy

⁵⁶ Mental health professionals have identified a range of conditions and symptoms related to experiencing extreme weather events including depression, anxiety, Post-Traumatic Stress Disorder, increased drug and alcohol abuse, domestic violence, and child abuse. Susie E. L. Burke et al., “The Psychological Effects of Climate Change on Children,” *Current Psychiatry Reports* 20: 35 (April 11, 2019), 2 (“[C]hildren exposed to EWE disasters and the ensuing family stress [19], disruptions to social support networks, and displacement are at risk of developing PTSD and other mental health problems like depression, anxiety, phobias and panic, sleep disorders, attachment disorders, and substance abuse. . . Sustained and repeated stressful early-life events, likely in the context of climate change, can also create a predisposition to adverse mental health outcomes later in life.”); see also American Psychological Association, *Mental Health and our Changing Climate: Impacts, Implications, and Guidance*, at 22–23, 25–27 (Mar. 2017), <https://www.apa.org/news/press/releases/2017/03/mental-health-climate.pdf> (discussing acute impacts) (hereinafter “*Mental Health and Our Changing Climate*”); see also Expert Report of Lise Van Susteren, M.D. in *Juliana v. U.S.* (Case No.: 6:15-cv-01517-TC) at 18–23, http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180628_docket-615-cv-1517_exhibit-7.pdf.

⁵⁷ General Comment No. 36 CCPR/C/GC/36, ¶ 7.

⁵⁸ CRC, General Comment 15 CRC/C/GC/15, ¶ 4.

⁵⁹ *E.W. v. Netherlands*, Human Rights Committee, No. 429/1990, CCPR/C/47/D/429/1990, HRC, ¶ 6.4 (April 8, 1993). <http://hrlibrary.umn.edu/undocs/html/dec429.htm>.

⁶⁰ *Id.* at ¶ 6.3.

⁶¹ *Nell Toussaint v. Canada*, No. 2348/2014, CCPR/C/123/D/2348/2014, ¶ 10.4., HRC (Aug. 30, 2018) <https://undocs.org/pdf?symbol=en/CCPR/C/123/D/2348/2014>.

potentially harmed all immigrants who do not belong in any of the four immigrant categories eligible for coverage.⁶²

59. Here, as described above, the consequences of Respondents' acts and omissions in relation to combating climate change directly and personally harm Petitioners and expose them to foreseeable risks. Petitioners' assertions of harms from climate change do not constitute an *actio popularis*, even if children around the world may share their experiences or be exposed to similar risks.
60. In summary, Petitioners have clearly made a *prima facie* case that they have been individually harmed, resulting in cognizable violations under the Convention, in breach of Respondents' obligations to prevent foreseeable harms, including the "dangers and risks of environmental pollution."⁶³ The Communication is admissible and the case should proceed on its merits

B. Respondents are committing cognizable violations of the Convention.

61. The Communication alleges cognizable violations of the Convention and presents substantial evidence that each Respondent is:
 - failing to reduce their emissions in line with their international obligations to limit global warming to 1.5°C;
 - taking affirmative measures, such as implementing fossil fuel subsidies, that accelerate climate change rather than reverse it;
 - failing to use all available means of international cooperation, such as dispute resolution, in the fight against climate change; and
 - failing to prioritize the best interests of the child in deciding to delay decarbonization and forcing Petitioners and other youth to risk irreversible climate degradation.

1. Respondents are falling short of 1.5° C targeted emission reductions.

⁶² See *id.* at ¶ 2.7 (identifying the categories of immigrants eligible for IFHPB coverage), ¶ 10.3 (noting Canada's objection that the author sought to ensure health coverage for all individuals with irregular immigration or citizen status through an *actio popularis*, an argument the Human Rights Committee ultimately rejected). See, also, *Open Door and Dublin Well Woman v. Ireland*, 64/1991/316/387-388, ¶¶ 9, 44, Eur. Ct. H.R., (Sept. 23, 1992), <https://www.refworld.org/cases,ECHR,3ae6b7020.html>.

⁶² *Id.* at ¶ 44 (emphasis added) (The Court recognized two of the applicants as victims under the European Convention on Human Rights because they belonged to "a class of women of child-bearing age" who "may be adversely affected" by Ireland's restrictions on abortion counselling. The Court explained that the applicants "[were] not seeking to challenge in abstracto the compatibility of Irish law with the Convention since they run a risk of being directly prejudiced by the measure complained of.").

⁶³ CRC art. 24.

62. The Committee has made clear that each State party must “[e]nsure that climate mitigation policies are compatible with the Convention, including by reducing its emissions of greenhouse gases in line with its international commitments to avoid a level of climate change threatening the enjoyment of children’s rights.”⁶⁴ Similarly, the CESCR has urged State parties to “raise the target” for emission reductions “so that it is consistent with the commitment to limit temperature rise to 1.5°C.”⁶⁵
63. A consensus of scientific knowledge and data published by the IPCC establishes the remaining carbon budget and emission-reduction pathways consistent with limiting warming to the Paris Agreement targets. Under any metric, Brazil, France, and Germany are failing to reduce emissions in line with these pathways and their obligations under the Convention. Not one Respondent points to an objective, evidence-based, and scientifically accepted metric that shows its reductions are in line with holding warming below 1.5°C or even 2°C.
64. As explained in the report of Dr. Joeri Rogelj, a leading climate expert, Respondents each fall short of the Paris Agreement targets under a full range of *seven* widely accepted models.⁶⁶ Under the most lenient model, Brazil’s current emission-reductions fall 59 percentage points short of the 1.5°C target and 38 percentage points short of 2°C. Under the most stringent model, it is 119 percentage points short of 1.5°C and 79 percentage points short of 2°C.⁶⁷ This gap is widening even further due to Brazil’s recent measures to weaken the enforcement of environmental and climate regulations.⁶⁸

⁶⁴ CRC Concluding Observations on the combined fourth and fifth periodic reports of Japan CRC/C/JPN/CO/4-5, ¶ 37(d) (Mar. 5, 2019), https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/JPN/CO/4-5&Lang=En; see also CRC Concluding Observations on the combined fifth and sixth periodic reports of Austria, ¶ 35(a) (Mar. 6, 2020), <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/ATIndex.aspx> (recommending Austria “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.”).

⁶⁵ CESCR Concluding Observations on the fifth periodic report of Belgium, E/C.12/BEL/CO/5, ¶ 10 (Mar. 26, 2020), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBEL%2fCO%2f5&Lang=en; see also CESCR Consideration of reports submitted by States parties under arts. 16 and 17 of the Covenant, E/C.12/CHE/CO/4, ¶ 19 (Nov. 18, 2019).

⁶⁶ Petitioners have provided the Committee series of expert reports that specifically document and explain from a quantitative and qualitative perspective the shortfall of greenhouse gas emissions of each Respondent, and the policies and practices of each State that have caused the shortfalls. See Reply Appendix A, Rogelj Rep. at 1–4, Tables 1–3 (April 2020); Reply Appendix B(1), Climate Analytics Brazil Rep. 1–6 (April 2020); Reply Appendix B(2) Climate Analytics France Rep. 1–3 (April 2020); Reply Appendix B(3) Climate Analytics Germany Rep. 2–4 (April 2020).

⁶⁷ Rogelj Rep. at 6 (2020).

⁶⁸ Reply Appendix B(1), Climate Analytics Brazil Rep., at 1–5 (April 2020).

65. France’s current reductions fall, under the most lenient and most stringent models respectively, 43 to 121 percentage points short of the 1.5°C limit and 16 to 88 percentage points short of 2°C. ⁶⁹France’s own High Council for the Climate has found that “France is not on a greenhouse gas emissions trajectory which is compatible with its international commitments.”⁷⁰
66. Germany’s current reductions fall, under the most lenient and most stringent models respectively, 38 to 107 percentage points short of 1.5°C and 22 to 71 percentage points short of 2°C.⁷¹ Germany’s most recent climate legislation is not realistically expected to bring Germany in line with its international obligations. The main additional measures will not begin until 2026, so “it is clear that the law will not be sufficient to ensure Germany’s emissions trajectory is in line with limiting warming to 1.5° C.”⁷² These shortfalls are incompatible with the Convention and constitute cognizable violations.

2. Respondents are implementing subsidies and other policies promoting global warming.

67. The Committee has also made clear that affirmatively promoting global warming, through fossil fuel subsidies or other policies, is a cognizable violation of the Convention. For example, in the past year, it urged Austria to “eliminate any subsidies contributing to the promotion of modes of transport that undermine” children’s right to health.⁷³ Here, Respondents have presented clear evidence that each Respondent is adopting fossil fuel subsidies or other climate-destructive policies that violate the Convention. These policies are summarized in Table 1 of Dr. Rogelj’s report and reproduced below.

⁶⁹ Rogelj Rep. at 5 (2020).

⁷⁰ Reply Appendix B(2), Climate Analytics France Report at 1–2 (April 2020).

⁷¹ Rogelj Rep. at 5 (2020).

⁷² Reply Appendix B(3), Climate Analytics Germany Report at 1–4 (April 2020).

⁷³ CRC Concluding Observations to Austria, ¶35(b) (2020).

Country	Annual CO ₂ emissions (2016)	Global Rank (2016)	Cumulative Rank (1850-2016)	Measures Accelerating Climate Change	Failure of Paris Targets
Brazil	487 MtCO ₂ /yr	12 th	19 th <small>(excluding deforestation emissions)</small>	<ul style="list-style-type: none"> • \$16.2 billion USD in fossil fuel subsidies⁷⁴ • 66% of public energy investments in fossil fuels⁷⁴ • Cutting 95% of Ministry of Environment's climate change budget⁷⁴ • Transferring indigenous land certification to Ministry of Agriculture (prioritizing deforestation for agriculture over preservation)⁷⁴ • Relaxing environmental fines⁷⁴ • Promoting climate denialism and disinformation (31) • Tolerating record loss of 1.3 million hectares of tropical rainforest⁷⁴ • Originally fully state-owned and now majority state-owned oil company Petrobras responsible for 8.68 billion tons of CO₂e over the 1965-2017 period (ranking 20th of world oil producers) (32, 33) • No use of inter-state dispute resolution to address impact of emissions from top four emitters (US, China, India, EU)⁷⁴ 	<ul style="list-style-type: none"> • Paris NDC in line with 2-3°C • Actual policies in line with 2-3°C
France	352 MtCO ₂ /yr	18 th	8 th <small>(excluding deforestation emissions)</small>	<ul style="list-style-type: none"> • Exceeded carbon budget for 2015-2018 by 72 million tons of CO₂e⁷⁵ • Delayed investments in climate mitigation have created a gap of 40 to 90 billion in public investments needed for renewable energy, clean transport, and energy-efficient construction⁷⁵ (34) • French investor-owned oil producer Total is responsible for 12.35 billion tons of CO₂e over the 1965-2017 period (ranking 17th of world oil producers) (32, 33). The French government has so far not brought any legal action to protect children from Total's emissions or to hold the company legally accountable for its climate impacts. • No use of inter-state dispute resolution to address impact of emissions from top four emitters (US, China, India, EU)⁷⁵ 	<ul style="list-style-type: none"> • Paris NDC in line with 3-4°C • Actual policies in line with 3-4°C
Germany	763 MtCO ₂ /yr	6 th	4 th <small>(excluding deforestation emissions)</small>	<ul style="list-style-type: none"> • Exceeded carbon budget for 2020 by 100 million tons of CO₂e⁷⁶ (35) • Adopted a delayed phase-out of coal-fired power plants (2038)⁷⁶ (36) • 8 billion euros in tax relief on diesel⁷⁶ • 3 billion euros in tax exemptions for company cars⁷⁶ • Investor-owned RWE is responsible for 4,201 billion tons of CO₂e over the 1988-2015 period. German government has so far not brought any legal action to protect children from RWE's emissions or to hold the company legally accountable for its climate impacts. (37) • No use of inter-state dispute resolution to address impact of emissions from top four emitters (US, China, India, EU)⁷⁶ 	<ul style="list-style-type: none"> • Paris NDC in line with 2-3°C • Actual policies in line with 3-4°C

3. Respondents are failing to use available means of international cooperation to mitigate climate change.

68. The Communication establishes that each Respondent has failed to use available means of international cooperation that they, as G20 members and as regional leaders, could use to protect children from the unchecked emissions of third-party States and private industries. Not one Respondent has used, much less exhausted available means of international cooperation to protect Petitioners' from the emissions of third-party States and private industries. No Respondent has resorted to international dispute resolution to confront

⁷⁴ Communication at ¶¶ 61–62, 67–68; Appendix C4.2 at 183–190.

⁷⁵ *Id.* at ¶¶ 62–63, 67–68; Appendix C4.3 at 192–199.

⁷⁶ *Id.* at ¶¶ 63–65; Appendix C4.4 at 202–209.

transboundary climate damage. Although Respondents point out that other States emit more than they do, not one has initiated a contentious proceeding against these major emitting States to address the transboundary environmental damage they are causing. Not one Respondent has even sought an advisory opinion on this issue from a competent international body. Nor have Respondents prosecuted civilly or criminally any of the “carbon major” fossil fuel companies for their role in climate degradation.

4. Respondents are failing to consider the best interests of the child in climate mitigation policies.

69. It is clear from the pattern of conduct alleged in the Communication that *no* Respondent has placed children at the center of their climate mitigation policies.⁷⁷ No Respondent even mentions children in their Intended Nationally Determined Contributions under the Paris Agreement. And yet Petitioners and other youth are disparately impacted by the consequences of Respondents’ decision to delay reducing emissions and risk surpassing irreversible tipping points.
70. No State acting in the best interest of children would do what Respondents have done in imposing the unfair and discriminatory burdens of their climate policies onto children and future generations. Petitioners have documented with hard numbers and an evaluation of each Respondent’s policies and practices, that each have *de facto* policies of delaying and postponing decarbonization.⁷⁸ While Respondents claim to be aware of the impacts of climate change and cite their ambitions to do better,⁷⁹ they must be judged by this Committee based on the evidence of their *conduct*. And that conduct unquestionably has a discriminatory impact on Petitioners and their generation by placing older generations’ short-term economic interests over the long-term survival and well-being of youth. Respondents’ *de facto* policies of delay condemn Petitioners and other youth to suffer the irreversible impacts of climate change and squander the brief window of time we still have to alter the destructive course we are on.⁸⁰
71. Despite this evidence, Brazil claims the Communication does not allege any “unlawful facts . . . connected to either an act or omission by Brazil.”⁸¹ This is

⁷⁷ See CRC Concluding Observations on the fifth periodic report of the United Kingdom, CRC/C/GBR/CO/5 (July 17, 2016); CRC Concluding Observations on the combined third to sixth periodic reports of Malta (June 26, 2019).

⁷⁸ Reply Appendix A, Rogelj Rep. at 1–4, Tables 1–3 (April 2020); Reply Appendix B(1), Climate Analytics Brazil Rep. 1–6 (April 2020); Reply Appendix B(2) Climate Analytics France Rep. 1–3 (April 2020); Reply Appendix B(3) Climate Analytics Germany Rep. 2–4 (April 2020).

⁷⁹ Response of Brazil at ¶¶ 64, 65; Response of France at ¶¶ 7, 15; Response of Germany at 5, 8.

⁸⁰ Rogelj Rep. at 4 (April 2020).

⁸¹ Response of Brazil at ¶ 36.

a brazen claim in a year of global outcry at Brazil’s destruction of the Amazon rainforest—an indispensable carbon sink. Although Brazil asserts it is reducing its destruction of the Amazon, and otherwise upholding its Paris obligations, the available scientific evidence shows otherwise: “between 2012 and 2018, deforestation in the Amazon increased by 73%; estimates for 2019 indicate an increase of 113% over 2012.”⁸² The 2019 dry season saw a substantial increase in the number of forest fires, which have been largely linked to deforested areas.”⁸³

72. Brazil’s denial of wrongdoing is an extension of its current government’s denial of climate change.⁸⁴ This defiance is so flagrant that Brazil was banned from speaking at the UN Climate Summit in September 2019 because it refused to even submit a plan for increased climate ambitions.⁸⁵
73. Germany and France, on the other hand, do not dispute that they have failed to meet their own climate targets and are not in compliance with the Paris Agreement goals.⁸⁶ These facts are thoroughly documented.⁸⁷ Nor do they dispute that each State’s emissions matter. France admits that “[e]very tenth of a degree counts, and everyone, on all levels, will have to make considerable, radical efforts to limit the negative impacts of Man on Nature.”⁸⁸ And Germany similarly acknowledges that “[t]he emissions of greenhouse gases in one state certainly contribute to the worsening of climate change...”⁸⁹
74. Unable to escape these facts, Germany and France instead resort to conclusory and circular reasoning to avoid responsibility for their actions. Germany takes the extreme position that the Committee has no authority to examine a State party’s failure to reduce emissions, full stop. “The UN CRC as well as the OP serve the purpose of securing and ensuring children’s rights,” it argues. “They do not serve the purpose of an abstract identification of deficits.”⁹⁰ But what Germany mischaracterizes as ‘abstract deficits’ in its Response to Petitioners,

⁸² Climate Analytics, Brazil Rep. at 2 (April 2020).

⁸³ Reply Appendix B(1), Climate Analytics, Brazil Rep. at 1–5 (April 2020).

⁸⁴ A. Boadle, Brazil foreign minister says “there is no climate change catastrophe.” Reuters (Sept. 11, 2019), (available at <https://www.reuters.com/article/us-brazil-environment-araujo/brazil-foreign-minister-says-there-is-no-climate-change-catastrophe-idUSKCN1VW2S2>).

⁸⁵ United Nations ban Brazil’s speech on climate change, Merco Press (Sept. 19, 2019), <https://en.mercopress.com/2019/09/19/united-nations-ban-brazil-s-speech-on-climate-change>.

⁸⁶ Response of Germany at 5, 8; Response of France at ¶ 7, 15.

⁸⁷ Reply Appendix A, Rogelj Rep. at 1–4, Tables 1–3 (April 2020); Reply Appendix B(1), Climate Analytics Brazil Rep. at 1–6 (April 2020); Reply Appendix B(2) Climate Analytics France Rep. at 1–3 (April 2020); Reply Appendix B(3) Climate Analytics Germany Rep. at 2–4 (April 2020).

⁸⁸ Response of France at ¶ 7.

⁸⁹ Response of Germany at 5.

⁹⁰ Response of Germany at 3.

are concrete—and preventable—emissions that Germany and the other Respondents have pledged to reduce in the Paris Agreement and on the international stage for the obvious reason that they contribute to direct and foreseeable harms.

75. France’s position is no less extreme. It claims that despite its “historical responsibility for greenhouse gas emissions,” the harms caused by climate change, even within France, cannot be legally challenged because they are not the “exclusive responsibility” of France.⁹¹ But nothing in the Convention or OPIC requires victims to show that a State is exclusively responsible for their injury, and France cites no legal basis for this claim.
76. Brazil, moreover, claims the Committee has no jurisdiction to review a breach of the Paris Agreement: “the monitoring of the international instruments related to climate change is not within the mandate of the Committee.”⁹² But that is not at issue here: This case asks whether the Convention is breached, not the Paris Agreement. As the Committee’s country reports make clear, the Paris Agreement only plays a role as a standard of conduct to determine whether a State party’s “climate mitigation policies are compatible with the Convention.”⁹³
77. In short, the Communication presents unrefuted evidence that each Respondent is failing to reduce emissions in line with its international obligations, affirmatively promoting excessive emissions, and failing to use available means of international cooperation to mitigate climate change. These acts and omissions directly and foreseeably harm Petitioners and violate their rights to life (article 6), health (article 24), and indigenous culture (article 30) under the Convention. They also create systemic intergenerational discrimination and fail to prioritize the best interests of the child, in violation of article 3.

C. The requested remedies are well-within the competence of the Committee.

78. To remedy these violations, Petitioners seek three forms of relief that are well-established under human rights law and within the competence of the Committee under articles 10 and 11 of the OPIC: declaration of a breach, cessation of a breach, and guarantees of non-repetition.⁹⁴

⁹¹ Response of France at ¶ 55.

⁹² Response of Brazil at ¶ 65.

⁹³ CRC Concluding Observations on Japan CRC/C/JPN/CO/4-5, ¶ 37(d) (Mar. 5, 2019).

⁹⁴ See generally Dinah Shelton, *Remedies in International Human Rights Law* (3d ed. 2015), Ch. 9 (declaratory judgments); Ch. 12 (non-monetary remedies).

79. The power to grant these remedies is inherent in any international body that has competence to hear and decide individual complaints: *ubi jus, ibi remedium*.⁹⁵ As the ICJ observed in *La Grand (Germany v. U.S.A.)*: “Where jurisdiction exists over a dispute on a particular matter, no separate basis for jurisdiction is required by the Court to consider the remedies a party has requested for the breach of the obligation.”⁹⁶ Thus, despite Respondents’ objections, the requested remedies are all admissible.

1. The Committee can declare a breach.

80. Petitioners ask the Committee to find facts of wrongdoing and declare there has been a violation of rights. They seek a declaration that the climate crisis is a children’s rights crisis precisely because Respondents refuse to treat it as such. Brazil’s foreign minister specifically announced, “there is no climate change catastrophe.”⁹⁷ Petitioners seek a declaration that their individual rights have been violated because Respondents refuse to even recognize their injuries.

81. Declaring a violation is the core function of the Committee under the OPIC. The declarations sought by Petitioners are no different than the Committee’s declarations in previous individual communications. In *D.D. v. Spain*, for example, the Committee found that Spain had exposed a migrant child to a risk of irreparable harm through a border pushback, and declared a violation.⁹⁸ Here, as in *D.D.*, the Committee can find that Respondents’ emissions expose Petitioners to risks of irreparable harms”—the remedy sought in paragraph 327 of the Communication. And it can find that Respondents are violating Petitioners’ rights under articles 3, 6, 24, and 30—the remedy sought in paragraph 328.

2. The Committee can recommend cessation of Respondents’ conduct.

82. The Committee can also recommend that Respondents cease exposing Petitioners to a risk of present and foreseeable harm. In *K.Y.M. v. Denmark*, for example, the Committee held that the “State party is under an obligation to refrain from returning the author and her daughter to the Puntland State of Somalia,” where the daughter risks female genital mutilation.⁹⁹ Here, the

⁹⁵ *Id.* at 377 (where there is a right, there is a remedy).

⁹⁶ *LaGrand Case (Germany v. United States)*, 2001 I.C.J. 485, at ¶ 48 (June 27).

⁹⁷ A. Boadle, *Brazil foreign minister says “there is no climate change catastrophe.”* Reuters (Sept. 11, 2019), <https://www.reuters.com/article/us-brazil-environment-araujo/brazil-foreign-minister-says-there-is-no-climate-change-catastrophe-idUSKCN1VW2S2>.

⁹⁸ *D.D. v. Spain*, CRC/C/80/D/4/2016, ¶ 14.6.

⁹⁹ The Committee exercised this power in *I.A.M. (on behalf of K.Y.M.) v. Denmark*, Communication No. 3/2016, CRC/C/77/D/3/2016, CRC, at ¶ 12 (Jan. 25, 2018), <https://www.refworld.org/cases,CRC,5a7dd3284.html> (holding the “State party is under an obligation

Committee can recommend that Respondents mitigate the risk of harm by reducing emissions at a greater rate and scale—as requested in paragraph 329 of the Communication.

3. The Committee can require guarantees of non-repetition.

83. Finally, the Committee can find that Respondents have an “obligation to prevent similar violations in the future.”¹⁰⁰ The Committee can recommend structural reform and advise a State party to revise its policies to prevent similar violations. For example, in *D.D. v. Spain*, the Committee recommended that Spain revise specific provisions of its organic law to protect unaccompanied minors from automatic deportations. That structural reform was not limited to the victim at issue: The fact that other children would also benefit from a requested remedy does not, as Respondents claim, make it somehow inadmissible.¹⁰¹
84. Accordingly, the Committee can recommend that Respondents take measures to “prevent further harm to Petitioners,” including through international cooperation and coordination binding under the Convention—the remedy sought in paragraph 330 of the Communication.¹⁰² And just as the Committee recommended structural reform in *D.D. v. Spain*, it can recommend that Respondents “allocate the costs and burdens of climate change mitigation and adaptation” in a manner that prioritizes the best interests of Petitioners—paragraph 329.¹⁰³ It can also recommend that Respondents ensure that Petitioners’ voices are heard in these efforts—paragraph 331.¹⁰⁴
85. Respondents may contest the merits of these claims, but all are admissible under articles 10 and 11 of the OPIC. And as demonstrated below, none are available in the domestic courts of Brazil, France, or Germany.

IV. Exhaustion of domestic remedies would be futile.

86. The Communication is admissible under the futility exception to the exhaustion-of-remedies rule. Article 7(e) of the OPIC does not require a child-victim to exhaust domestic remedies that would be “unreasonably prolonged

to refrain from returning the author and her daughter to the Puntland State of Somalia,” where the daughter risks female genital mutilation).

¹⁰⁰ *Id.*

¹⁰¹ See Human Rights Committee, *E.W. v. Netherlands*, No. 429/1990 ¶ 6.3 (8 April 1993), <http://hrlibrary.umn.edu/undocs/html/dec429.htm>.

¹⁰² Communication at ¶ 330.

¹⁰³ *Id.* at ¶ 329.

¹⁰⁴ *Id.* at ¶ 331.

or unlikely to bring effective relief.” Contrary to Respondents’ assertions,¹⁰⁵ Petitioners can invoke this exception without having to first pursue these remedies, as other treaty bodies and human rights courts have long held.¹⁰⁶ A contrary rule would defeat the purpose of the exception.

87. Respondents, moreover, have the burden to establish that domestic remedies are accessible and effective.¹⁰⁷ This includes demonstrating that “the remedy was accessible, capable of providing redress in respect of the applicant’s complaints and offered reasonable prospects of success.”¹⁰⁸ The “development and availability of a remedy ... must be clearly set out and confirmed or complemented by practice or case law, even ... with a written constitution providing an implicit right” that is in theory justiciable.¹⁰⁹
88. Respondents fail to meet this burden. Legal experts from Brazil, France, and Germany demonstrate, through detailed discussion of case law and legislation, that domestic remedies for Petitioners’ claims are unlikely to bring effective relief. These reports are included in Appendix C (Brazil), D (France), and E (Germany). In all three countries, Petitioners’ claims would have no real prospect of success: they would, among other reasons, meet nearly insurmountable obstacles under separation of powers, standing, and other grounds. Respondents do not dispute that their national courts cannot adjudicate Petitioners’ claims implicating their obligation of international cooperation. Respondents’ domestic courts simply cannot review whether Respondents have failed to use legal, economic, and diplomatic means to confront emissions from other G20 member-States and fossil-fuel industries.

¹⁰⁵ According to Brazil, invoking the exceptions to exhaustion “without even initiating judicial measures to defend the interests at hand [] is to present a hypothetical argument without any evidence whatsoever to support it.” Response of Brazil at ¶ 49. France and Germany likewise claim that Petitioners’ decision not to first pursue domestic remedies renders the Communication inadmissible. Response of France at ¶ 60; Response of Germany at 6.

¹⁰⁶ In *D.R. v. Australia*, for example, CERD found that the Petitioner had exhausted all effective remedies even though he had not sought relief through the Australian court and administrative justice system because Australia’s Racial Discrimination Act does not recognize a person’s citizenship as a ground for discrimination, precluding the very basis for the Petitioner’s complaint. *D.R. v. Australia*, Comm. No. 42/2008, Opinion, CERD/C/75/D/42/2008, ¶ 6.5 (Aug. 14, 2009). The ECtHR similarly does not require the filing of domestic proceedings before the futility exception can be invoked. See e.g., *Open Door and Dublin Well Woman v. Ireland*, 64/1991/316/387-388, ¶ 48 Eur. Ct. H.R. (Sept. 23, 1992), (claimants did not have to initiate any proceedings in Irish domestic courts because their claims would have no prospect of success).

¹⁰⁷ See, e.g., *Case of Tănase v. Moldova*, Application No. 7/08, Judgement (Merits and Just Satisfaction), ¶ 112 (April 27, 2010), <https://www.refworld.org/cases,ECHR,4bf65a2e2.html>.

¹⁰⁸ *Case of Vincic and Others v. Serbia*, Application Nos. 44698/06, et seq., Judgment (Merits and Just Satisfaction), ¶48 (Feb. 3, 2010), <http://hudoc.echr.coe.int/eng/?i=001-112706>.

¹⁰⁹ *Case of McFarlane v. Ireland*, (Application No. 31333/06) Judgment (Merits and Just Satisfaction), ¶ 120 (Sept. 10, 2010), <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-100413&filename=001-100413.pdf>.

The Committee, in contrast, has the ability to provide effective remedies against multiple State parties.

89. Only the Committee could secure preventive measures from Respondents within the limited time left to avoid the irreversible tipping points of global warming. For these reasons, Petitioners need not exhaust the unavailable and ineffective remedies proffered by Respondents.

A. Foreign state immunity would bar multi-State claims.

90. Respondents admit that their courts cannot assess the responsibility of the other Respondent States for contributing to Petitioners' injuries. France concedes it lacks jurisdiction over the other Respondents "in accordance with international law, France recognizes the existence of immunities for foreign states."¹¹⁰ Acknowledging foreign state immunity, Germany proposes the existence of a domestic remedy limited to the actions of the German State.¹¹¹ Similarly, Brazil concedes that the "Brazilian Justice System can only issue decisions pertaining to Brazil's own jurisdiction" out of respect for the "internationally recognized principle of sovereignty."¹¹²
91. As a result, none of the Respondents can provide a domestic forum for the actual claims raised and remedies Petitioners seek, which involve transboundary human rights violations caused by multiple States across multiple borders. For each Respondent, state immunity vitiates any possible remedy for transboundary harm caused by other States.

1. Brazil.

92. As Brazilian legal experts Drs. Helena de Souza Rocha and Melina Girardi Fachin explain in Appendix C, claims against France, Germany, Argentina, and Turkey would be barred in Brazil, because they relate to the sovereign acts of the four other Respondent States.¹¹³ Brazilian courts have long recognized the immunity of foreign states with respect to sovereign acts (*acta jure imperii*), which would include the climate policies of foreign states. Indeed, the Superior Court of Justice (STJ), the highest federal court in Brazil, has

¹¹⁰ Response of France at ¶ 63. The quote above is Petitioners' English translation. The original states: « la France reconnaît conformément au droit international l'existence d'immunités au profit d'Etats étrangers ».

¹¹¹ Response of Germany at 7.

¹¹² Response of Brazil at ¶ 48.

¹¹³ Appendix C, Expert Report of Dr. Helena de Souza Rocha and Dr. Melina Girardi Fachin at 5–7 (hereinafter "Rocha and Fachin Rep."). Dr. Helena de Souza Rocha is Associate Professor of the Undergraduate Program of the Law School at University Tuiuti in Paraná (UTP). She is a former senior lawyer in the Brazilian office of the Centre for Justice and International Law (CEJIL) and consultant for the Inter-American Court and Commission on Human Rights. Dr. Melina Girardi Fachin is Associate Professor of the Undergraduate and Graduate Courses of the Law School of the Federal University of Paraná (UFPR).

dismissed dozens of cases against foreign states relating to *acta jure imperii* such as acts of war that led to the death of civilians; denial of visa by a consulate; or extradition, deportation or impediment of entry into the country.¹¹⁴ Given this precedent, it would be impossible for Petitioners to reach the merits of this case, in its international dimensions, in Brazil.¹¹⁵

2. France.

93. France’s admission that its courts lack jurisdiction over the other Respondents is confirmed by its case law. The *Cour de cassation* has consistently held that foreign states are entitled to jurisdictional immunity in cases involving human rights violations. This principle is affirmed in a series of cases involving claims against Germany for forcible deportations from occupied French territory during the Second World War.¹¹⁶

3. Germany.

94. As German legal expert Sönke Hilbrans explains in Appendix E, the German Constitution incorporates customary international law, including the jurisdictional immunities of foreign states.¹¹⁷ Germany has itself asserted immunity from other States’ jurisdictions with respect to human rights violations—an immunity upheld by the International Court of Justice in *Germany v. Italy*.¹¹⁸ German courts, therefore, do not exercise jurisdiction over the acts of other states.

95. In short, state immunity bars Petitioners from pursuing the full transboundary and multi-state dimensions of their claims in Brazilian, French, or German courts. And as demonstrated below, even separate cases against each national jurisdiction would be unlikely to bring timely, effective relief.

¹¹⁴ See Rocha and Fachin Rep. at 5–6 (citing authorities).

¹¹⁵ Petitioners reserve the right to inform the Committee of any change in the Brazilian law of state immunities. See *id.* at 6 (noting an anticipated decision on immunities expected to issue in summer 2020).

¹¹⁶ *L’affaire Bucheron*, No.02–45961, 16 December 2003. Bull. Civ., 2004, I, No. 158, at 206; *L’affaire X*, No. 03–41851, 2 June 2004, Bull. Civ., 2004, I, No. 158, at 132; *L’affaire Grosz*, No. 04–47504 (Jan. 3, 2006).

¹¹⁷ Appendix E, Expert Report of Sönke Hilbrans at 5 (hereinafter “Hilbrans Rep.”). Mr. Hilbrans is a judge appointed to the Constitutional Court of the State of Berlin and practicing lawyer, focusing on administrative and criminal law and its intersection with international and European Union law.

¹¹⁸ *Jurisdictional Immunities of the State (Germany v. Italy : Greece intervening)*, Judgment, 2012 I.C.J. Reports, at 99 (Feb. 3, 2012), <https://www.icj-cij.org/files/case-related/143/143-20120203-JUD-01-00-EN.pdf>.

B. Justiciability obstacles would make domestic remedies ineffective, if not impossible.

94. The Committee has made clear that in order for a putative remedy to be “considered effective,” the State party must demonstrate that granting the remedy would “suspend the execution” of the act or violation being challenged.¹¹⁹ Brazil, France, and Germany have not demonstrated this, for the same basic reason: the remedies Petitioners seek are non-justiciable or very unlikely to be granted by courts.
95. As Petitioners’ experts explain, courts in Brazil, France, and Germany would be unlikely or unable to order the legislative and executive branches to comply with their international climate obligations by reducing their emissions. Moreover, courts in these states are likely to provide wide discretion to the legislative and executive branches to determine what constitutes an appropriate climate policy. The remedies here also implicate political decisions in international relations. No court sitting in Brazil, France, or Germany could enjoin its government to cooperate internationally in the fight against climate change. In summary, no court would impel the government to take effective precautionary measures to prevent further harm to Petitioners.

1. Brazil.

98. As Drs. Helena de Souza Rocha and Melina Girardi Fachin explain in Appendix C, the separation of powers would likely foreclose Petitioners’ claims in Brazil because they concern Brazil’s failure to reduce emissions in line with the international cooperative effort to limit warming to 1.5°C. Petitioners’ claims are not limited to Brazil’s compliance with its own domestic legislation. As a result, they necessarily touch on the federal government’s international obligations and relations. The Federal Supreme Court (STF) has declared that the Brazilian Constitution prevents the Judicial Branch from “adopting political decisions in the international sphere” and that it is “legally impossible to submit the presidential act [of foreign policy] for the consideration of the STF.”¹²⁰ Hence, it would be “legally impossible” for a court to review whether Brazil is fulfilling its international obligations to mitigate climate change.
99. Even if it were possible, Petitioners would have no standing to file suit because children lack standing under Brazilian law to seek the remedies mentioned by Brazil. The “People’s Legal Action” is limited to Brazilian citizens over the

¹¹⁹ *M.T. v. Spain*, Communication No. 017/2017, CRC/C/82/D/17/2017, ¶ 12.4 (Nov. 5, 2019), <https://juris.ohchr.org/Search/Details/2597>.

¹²⁰ STF. Rcl 11.243, Rapp. for the Judgment, Justice Luiz Fux, j. (June 8, 2011), <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1495257>. at 7 (emphasis in the original).

age of 16, so not even Catarina Lorenzo (age 13) would have standing.¹²¹ A “Public Civil Suit,” cannot be brought by individuals, only by specific entities. Although the Public Prosecutor’s Office or Public Defender’s Office agreed in their discretion to pursue such a case, neither office would act as Petitioners’ legal representatives and both would act in their own discretion.¹²² A children’s rights association could file a Public Civil Suit, but only on subject matters within its registered mission. Again, Petitioners would not be parties, and the association would act in its own discretion.¹²³ Moreover, Brazil does not identify an existing association registered to defend the environment and children’s rights. The three associations cited by Brazil are dedicated to violence against children and child education: none would have standing to file suit in this case.¹²⁴

100. In short, a case in which Petitioners cannot even be parties is clearly not an effective remedy. As the European Court of Human Rights has observed, a remedy that depends on another’s discretion is not “an effective remedy” when it is “not open to the applicant to complain directly to the court.”¹²⁵

2. France.

101. As French legal expert Dr. Julien Bétaille explains in Appendix D, Petitioners’ claims would also be non-justiciable in France. French administrative courts will not enforce the rights to life and health under the Convention because it does not have direct effect in the French legal system—meaning courts are not bound to recognize and enforce it.¹²⁶ The French Constitution does not protect the right to life.¹²⁷ And even if Petitioners asserted rights under the European Convention on Human Rights (ECHR), no French court has *ever* recognized the rights to life or health in the context of environmental protection.¹²⁸ If

¹²¹ See Rocha and Fachin Rep. at 15–18.

¹²² See *id.* at 10–14.

¹²³ *Id.* at 14–15.

¹²⁴ See Brazil’s Additional Observations at ¶ 37; Rocha and Fachin Rep. at 15.

¹²⁵ *Case of Tănase v. Moldova*, Application No. 7/08, Judgment (Merits and Just Satisfaction), ¶ 112 (April 27, 2010).

¹²⁶ See Appendix D, Expert Report of Julien Bétaille (hereinafter “Bétaille Rep.”). Dr. Bétaille is a professor of administrative and environmental law at Université Toulouse 1 Capitole. Bétaille Rep. at 8. The Conseil d’Etat ruled that the child’s article 6 right to life cannot be invoked before a judge in the case Conseil d’Etat, 29 décembre 1997, M. et Mme SOBA, n° 170098, 173011, 173012. The article 24 right to health was likewise ruled non-justiciable in the case Conseil d’Etat, 14 janvier 1998, GISTI, n° 174219, 174220, 176805.

¹²⁷ *Id.* at 4 (“the right to life is not recognized in the internal French legal system”) (« le droit à la vie n’est pas reconnu dans l’ordre juridique interne français »).

¹²⁸ *Id.* at 5 (« ... if the right to life is recognized by the European Convention on Human Right is directly enforceable by an administrative judge, the former have never applied it in environmental matters, despite the favorable jurisprudence of the European Court of Human Rights ») (« si le droit à la vie

Petitioners cannot enforce these positive obligations against France, they have no viable claims.

102. There are many other obstacles to effective remedies in French courts. France applies a strong separation of powers, which prohibits the judicial branch from exercising a “general power of discretion and decision” as that given to Parliament and requires “judicial deference” to the political branches.¹²⁹ Courts also afford the State wide discretion to undertake positive obligations stemming from international conventions, including human rights treaties.¹³⁰ In addition, French administrative courts cannot review the Parliament’s failure to introduce or enact legislation.¹³¹ And courts have only held the executive branch responsible in the environmental context when the “administration had a specific legal obligation to act,” which is not the case with respect to climate change.¹³²
103. If Petitioners managed to clear all these hurdles, they still would have little prospect of success on the merits because French administrative courts apply a heightened causation standard in environmental cases. The French government could only be held responsible for violating Petitioners’ rights if France’s inadequate climate policies were the “preponderant cause” of Petitioners’ injuries.¹³³ It is unlikely that any climate-change litigant could prevail against the French government under this standard, because multiple States contribute to climate change and neither France, nor any other State, is alone the preponderant cause.
104. Thus, contrary to France’s objection, the fact that French public interest groups have filed “The Case of the Century,” a climate-change case limited to

reconnu par la convention européenne des droits de l’homme est directement invocable devant le juge administratif, ce dernier ne l’a jamais appliqué en matière d’environnement, malgré la jurisprudence favorable de la Cour européenne des droits de l’homme. »).

¹²⁹ *Id.* at 15.

¹³⁰ *See id.* at 4, 12.

¹³¹ *Id.* at 6.

¹³² *Id.* (“It has previously occurred that a French administrative judge has invoked the responsibility of the State regarding its inertia in environmental matters. However, an examination of the jurisprudence reveals that each time this has been the case, the administration had, under law, a specific legal obligation to act, which appears not to be the case regarding the climate.”) (« Il est déjà arrivé que le juge administratif français engage la responsabilité de l’Etat en raison de son inertie en matière d’environnement. Néanmoins, l’examen de la jurisprudence révèle qu’à chaque fois que cela a été le cas, l’administration avait légalement une obligation juridique précise d’agir, ce qui ne semble pas être le cas en matière de climat. »).

¹³³ *Id.* at 6–7.

domestic impacts and untested constitutional claims, does not establish that Petitioners' claims have a real prospect of success.¹³⁴

3. Germany.

105. As Sönke Hilbrans notes in Appendix E, contrary to its statements to this Committee, Germany has argued in German court that its emissions-reduction policies cannot be challenged in German courts.
106. German courts would most likely dismiss Petitioners claims due to a lack of standing and the separation of powers. The German climate legislation (Climate Protection Act, *Klimaschutzgesetz*) explicitly specifies that it does not create individual rights or grant individuals legal standing to seek judicial review of climate policies.¹³⁵ Thus, governmental acts on the basis of the Climate Protection Act are not justiciable.
107. Even if Petitioners were to invoke rights under the ECHR or the Convention, German jurisprudence acknowledges a broad executive and legislative discretion with respect protecting fundamental rights.¹³⁶ This wide latitude to the executive and legislative branches is only limited by extreme incapacity, *e.g.*, if protective measures have either not been taken at all, if the regulations and measures taken are obviously unsuitable or completely inadequate or if they are based on unjustifiable assessments.¹³⁷ Hilbrans concludes that, because of this wide latitude, the separation-of-powers doctrine makes it practically impossible for domestic courts to declare Germany's emission-reduction targets insufficient to protect Petitioners' rights.¹³⁸
108. As Hilbrans states:

Thus, no domestic court would find that the executive or the legislative branches should achieve certain goals.....No domestic court would declare Germany's emission-reduction targets insufficient to protect the petitioners' fundamental rights and order the government to effectively reduce emissions at a rate and scale consistent with limiting global warming to 1.5 degrees C by 2100 No court could even

¹³⁴ See Response of France at ¶ 66. As the ECtHR has explained, an allegedly available remedy "must be clearly set out and confirmed or complemented by practice or case law" *Case of McFarlane v. Ireland*, (Application No. 31333/06) Judgment (Merits and Just Satisfaction), ¶ 120. A remedy that is "available in theory,"¹³⁴ cannot be considered effective until a court has "heard applications and delivered and published judgments on their merits." *Id.* ¶117 (holding that a constitutional right to a speedy trial is not an effective remedy, partly because the "proposed remedy has ... been available in theory for almost 25 years but has never been invoked.").

¹³⁵ Hilbrans at ¶ 2.

¹³⁶ *Id.* at ¶ 3.

¹³⁷ *Id.*

¹³⁸ *Id.*

order the executive to consider certain facts or scientific models . . . or deny others. Furthermore, under the same doctrine, the governmental latitude to choose adequate measures related to climate change is protected from judicial interference. Therefore, German courts will not interfere with executive discretion when it comes to the execution of given mechanisms in fiscal policy, soft law mechanisms or the European Union emissions trading system ('EU ETS') laid down in Directive 2003/87/EC of the European Union. Furthermore, based on the separation of powers, neither an administrative court, nor the Federal Constitutional Court could or would order German legislators to take the legislative action sought, *mutatis mutandis*, by the petitioners. Such a claim would be inadmissible.¹³⁹

109. Consequently, the first domestic case brought in Germany regarding emissions reductions was dismissed as inadmissible.¹⁴⁰ In *Family Farmers and Greenpeace Germany v. Germany*, the Administrative Court of Berlin dismissed a case alleging that the federal government's 2020 emissions reductions target was insufficient and violated its constitutional obligations.¹⁴¹ The court denied the claim, finding that the government has wide discretion when fulfilling its constitutional obligations, as long as its actions are not entirely unsuitable or completely inadequate.¹⁴²
110. In sum, justiciability obstacles, such as restrictive standing and the separation of powers, would make it highly unlikely that Petitioners could obtain effective relief in the courts of Brazil, France, or Germany.

C. Exhausting 80 claims in 5 jurisdictions would be unreasonably prolonged.

111. The exception under article 7(e) applies for an additional reason: the unique circumstances of this case would make domestic proceedings unreasonably delayed. This Committee and other treaty bodies have noted that, in urgent situations, excessively prolonged remedies may be ineffective.¹⁴³ In light of the need to take immediate action to reduce emissions within the remaining

¹³⁹ *Id.* at ¶ 4.

¹⁴⁰ Judgment of 31 October 2019 – VG 10 K 412.18 –Administrative Court of Berlin (Verwaltungsgericht Berlin).

¹⁴¹ VG Berlin, Judgement of 31 Oct. 2019 – VG 10 K 412.18 – juris.

¹⁴² *Id.*

¹⁴³ *R.K. v. Spain*, Communication No. 27/2017, CRC/C/82/D/27/2017, ¶ 8.3 (Nov. 5, 2019), <https://juris.ohchr.org/Search/Details/2598>; *see, also, N.B.F. v. Spain*, Communication No. 11/2017, CRC/C/79/D/11/2017, ¶ 11.3 (Feb. 18, 2019), <https://juris.ohchr.org/Search/Details/2506>.

carbon budget, the risk of long domestic court proceedings would cause unreasonable delay and would prejudice Petitioners. Every month of delay makes it more difficult to limit global warming before time runs out.

112. Respondents, however, would have Petitioners pursue five separate cases, each of which would take years, before proving futile as demonstrated above.
113. Excessive delay is a notorious problem in the Brazilian judicial system—a fact recognized by a survey of Brazilian judges,¹⁴⁴ by the UN Human Rights Committee,¹⁴⁵ and by the UN Special Rapporteur on the Independence of Judges and Lawyers.¹⁴⁶ This delay would be exacerbated in this case, which would raise novel climate-policy issues. No climate change case of a comparable scale and global scope has been litigated in Brazil. The most comparable case concerns the Belo Monte Hydroelectric Complex, a dam in the Brazilian Amazon. First filed in 2001, the case has involved “more than 19 years of litigation, dozens of lawsuits, and the mobilization of enormous financial and institutional resources (including by State institutions) [and] did not achieve any positive result.”¹⁴⁷
114. While the lifetime of a case would no doubt be shorter in France and Germany, neither State can ensure that a remedy could be obtained within the necessary timeframe, since any delay in reducing emissions depletes the remaining carbon budget and places the 1.5°C limit on warming further out of reach. For example, the average case in France takes 25 months to reach a judgment by the Conseil d’Etat.¹⁴⁸ But Petitioners’ case is not the average case. In Hilbran’s opinion, this case would take at least 6 years to make its way through the court system in Germany.¹⁴⁹
115. Climate change cases in other domestic jurisdictions have lasted years with virtually no record of success. For example, *Juliana v. United States*, a case challenging the constitutionality of the United States’ inaction on climate-change mitigation, was filed in August 2015, made multiple trips to the U.S. Supreme Court on interlocutory issues, and was dismissed by the federal Court

¹⁴⁴ Brazil. National Council of Justice. Court Survey Series. Propositional Analytical Report: Fundamental Rights and Guarantees - Collective Actions in Brazil: themes, actors and challenges of collective protection, at 142, available at www.cnj.gov.br.

¹⁴⁵ Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, HRC Concluding Observations, Brazil, CCPR/C/BRA/CO/2, ¶17 (Dec. 1, 2005), <https://www.ohchr.org/EN/Countries/LACRegion/Pages/BRIndex.aspx>.

¹⁴⁶ Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy. Mission to Brazil, HRC E/CN.4/2005/60/Add.3, at 2 (Feb. 22, 2005).

¹⁴⁷ Rocha and Fachin Rep. at 20.

¹⁴⁸ Bétaille Rep. at 7.

¹⁴⁹ Hilbrans Rep. at 4.

of Appeals on January 17, 2020.¹⁵⁰ On March 20, 2020, lawyers for the plaintiffs filed a petition for a rehearing. It is unlikely that the Court will decide on the merits in the near future.

116. The landmark *Urgenda* case in the Netherlands—the only climate-change mitigation case to succeed—lasted approximately *seven years* before the Supreme Court issued a final decision.¹⁵¹ Even then, the claims in *Urgenda* were of a different nature, much narrower in scope than those in this Communication, and did not address standards and remedies related to shared responsibility among States. *Urgenda* challenged a single government’s 2011 decision to reduce its emission-reduction target from 30% of 1990 levels to a substantially lower target of 20%. Unlike this case, *Urgenda* did not and could not address the more stringent 1.5°C limit on temperature rise.
117. In short, the domestic remedies proposed by Respondents have no prospect of success, because foreign state immunity would bar multi-State claims, non-justiciability doctrines would make relief unavailable or ineffective, and because pursuing five simultaneous cases would be unreasonably prolonged, given the exigent circumstances. For these reasons, attempting to exhaust these remedies would be futile and the Communication is admissible under article 7(e).

V. France’s reservation to Article 30 does not render cultural rights claims inadmissible.

118. France argues that its reservation to Article 30 of the Convention prevents the Committee from reviewing any claims against it alleging a violation of the rights to culture.
119. The reservation provides that, “in view of Article 2 of the Constitution of the French Republic, (...) Article 30 does not apply with regard to the Republic.”¹⁵² France explains that “the French constitutional principles of indivisibility of the Republic, equality of citizens and the unicity of the French people preclude the recognition of a people other than the French people and the recognition of collective rights to any group, defined by a community of origin, culture, language or belief, and distinct from the indivisible national

¹⁵⁰ See Our Children’s Trust, Details of Proceedings, <https://www.ourchildrenstrust.org/federal-proceedings>.

¹⁵¹ Dutch Urgenda Foundation, Climate Case Explained, <https://www.urgenda.nl/en/themas/climate-case/climate-case-explained/>.

¹⁵² Response of France at ¶19. The quotation above is based on Petitioners’ translation. The original quote is « compte tenu de l’article 2 de la Constitution de la République française, (...) l’article 30 n’a pas lieu de s’appliquer en ce qui concerne la République. »

body.”¹⁵³ Underlying this conception is “the premise that rights are attached to the individual and not to a group and that there can be no rights specific to certain communities other than universal rights that apply to everyone without distinction.”¹⁵⁴

120. As addressed below, France’s reservation to Article 30 is incompatible with the object and purpose of the Convention and, if it applies at all, would only apply to French citizens.

A. Reservations incompatible with the object and purpose of the Convention are null and void.

121. Article 51 of the Convention expressly states that “[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted.”
122. Under the International Law Commission (ILC) guidelines on treaty reservations, “[a] reservation is incompatible with the object and purpose of the treaty if it affects an essential element of the treaty that is necessary to its general thrust, in such a way that the reservation impairs the *raison d’être* of the treaty.”¹⁵⁵ More specifically, such an “essential element” “may be a norm, a right or an obligation which, interpreted in context, is essential to the general thrust of the treaty and whose exclusion or amendment would compromise its *raison d’être*.”¹⁵⁶
123. The “object and purpose” of a treaty should be “determined in good faith, taking account of the terms of the treaty in their context.”¹⁵⁷ This interpretation requires analyzing the treaty “as a whole, in good faith, in its entirety, in accordance with the ordinary meaning to be given to the terms of the treaty in their context, including the preamble, taking into account practice and, when appropriate, the preparatory work of the treaty and the ‘circumstances of its conclusion.’”¹⁵⁸

¹⁵³ *Id.* at ¶ 20. The quotation above is based on Petitioners’ translation. The original quote is « les principes constitutionnels français d’indivisibilité de la République, d’égalité des citoyens et d’unicité du peuple français s’opposent à la reconnaissance d’un peuple autre que le peuple français et à ce que soient reconnus des droits collectifs à quelque groupe que ce soit, défini par une communauté d’origine, de culture, de langue ou de croyance, et distinct du corps national indivisible. »

¹⁵⁴ *Id.* The quotation above is based on Petitioners’ translation. The original quote is « le postulat que les droits sont attachés à l’individu et non à un groupe et qu’il ne peut exister de droits propres à certaines communautés autres que les droits universels s’appliquant à tout un chacun sans distinction. »

¹⁵⁵ Report of the International Law Commission on the work of its 59th session, 2007 Y.B. Int’l Law. Comm’n , vol. II, U.N. Doc. A/CN.4/SER.A/2007/Add.1 (Part 2) at 33 (2007), https://legal.un.org/docs/?path=../ilc/publications/yearbooks/english/ilc_2007_v2_p2.pdf&lang=EFSA AC (hereinafter “ILC Guidelines”).

¹⁵⁶ *Id.* at 37.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 38.

124. The validity of a reservation made to “safeguard the application of [a State’s] domestic law”¹⁵⁹ depends on its compatibility with the “object and purpose” of the treaty at issue:¹⁶⁰

A reservation by which a State or an international organization purports to exclude or to modify the legal effect of certain provisions of a treaty or of the treaty as a whole in order to preserve the integrity of specific norms of the internal law of that State or rules of that organization may be formulated only insofar as it is compatible with the object and purpose of the treaty.¹⁶¹

125. A State may not “use its domestic law as a cover for not actually accepting any new international obligation, even though a treaty’s aim is to change the practice of States parties to the treaty.”¹⁶² This Committee has stated that it “is deeply concerned that some States have made reservations which plainly breach article 51 (2) by suggesting, for example, that respect for the Convention is limited by the State’s existing Constitution or legislation”¹⁶³

B. Cultural rights are central to the object and purpose of the Convention.

126. The Convention’s preamble clarifies that a central objective of the Convention is providing for “full and harmonious development” of the child. In ensuring such development, States Parties take “due account of the importance of the traditions and cultural values of each people.”
127. Article 4 requires States Parties to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention,” which would include the right to

¹⁵⁹ Special Rapporteur, Mr. Alain-Pellet, *Tenth report on reservations to treaties*, A/CN.4/558/Add.1, ¶ 103 (June 30, 2005), https://legal.un.org/ilc/documentation/english/a_cn4_558.pdf.

¹⁶⁰ *ILC Guidelines* at 32.

¹⁶¹ *Id.* (emphasis added).

¹⁶² *Id.* at 51.

¹⁶³ CRC, General Comment No. 5 General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), U.N.Doc. CRC/GC/2003/5, ¶ 15 (Nov. 27, 2003), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en. Other treaty bodies have urged states to withdraw reservations that seek to prevent the application of key treaty rights to the extent they are not recognized under domestic law. For example, the Human Rights Committee opined that the United States’ reservation to Article 7 of the ICCPR on “Cruel, Inhuman or Degrading Treatment or Punishment” was “incompatible with the object and purpose of the Covenant” where the U.S. claimed to be bound only to the extent such treatment or punishment was prohibited under its Constitution. UNHRC, Comments, *Consideration of the Reports Submitted by States Parties under Article 40 of the Covenant*, CCPR/C/79/Add.50, ¶¶ 8, 14 (April 7, 1995).

culture. Specifically, “[w]ith regard to economic, social *and cultural rights*, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

128. In General Comment No. 11, the Committee notes that “[t]he specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights.”¹⁶⁴ The Committee acknowledged that “indigenous children are among those children who require positive measures in order to eliminate conditions that cause discrimination and to ensure their enjoyment of the rights of the Convention on equal level with other children.”¹⁶⁵ The right to culture under Article 30 “is conceived as being both individual and collective and is an important recognition of the collective traditions and values in indigenous cultures.”¹⁶⁶
129. Analyzing the Convention “as a whole, in good faith, in its entirety,”¹⁶⁷ it is evident from preamble to general comments that a child’s right to culture is an “essential element of the treaty.”¹⁶⁸

C. France’s reservation is incompatible with the object and purpose of the Convention, is narrow in scope, and has no effect in this case.

130. Given that the right to culture is an “essential element” of the treaty, France’s reservation to Article 30 precluding recognition of this right is incompatible with the object and purpose of the Convention. This Committee should therefore deem admissible all allegations against France concerning Article 30.
131. This Committee has made several recommendations to France to withdraw its reservation to Article 30. As early as 1994, the Committee encouraged France “to consider reviewing its reservation to article 30 of the Convention with a view to withdrawing it,”¹⁶⁹ reiterating that the Convention “seeks to protect and guarantee the individual rights of children, including the rights

¹⁶⁴ CRC, General Comment No. 11 (2009) Indigenous children and their rights under the Convention, U.N.Doc. CRC/C/GC/11, ¶ 5 (Feb. 12, 2019), <https://www.refworld.org/docid/49f6bd922.html>.

¹⁶⁵ *Id.* at ¶ 25.

¹⁶⁶ *Id.* at ¶ 16.

¹⁶⁷ ILC Guidelines at 38.

¹⁶⁸ *Id.* at 33.

¹⁶⁹ CRC, Concluding Observations of the Committee on the Rights of the Child: France, 6th Sess., CRC/C/15/Add.20, ¶ 17 (April 25, 1994), <https://www.refworld.org/pdfid/3ae6aefd10.pdf>.

of children belonging to minorities.”¹⁷⁰ In 2009, the Committee again urged France to withdraw its reservation,¹⁷¹ identifying specific concerns about the rights of minority groups within the French Republic:

The Committee ... reiterates its concern that equality before the law may not be sufficient to ensure equal enjoyment of rights of minority groups and indigenous peoples of Overseas Departments and Territories, who may face de facto discrimination. It further expresses concern over the lack of validation of cultural knowledge transmitted to children belonging to minority groups, in particular [T]ravellers and Roma children and the discrimination they face, in particular with regard to economic, social and cultural rights, including right to adequate housing and standard of living, education and health.¹⁷²

132. Petitioners agree with this Committee. France’s rejection of the notion that any group has “collective rights” that may set them apart from “the indivisible national body”¹⁷³ is completely at odds with the Committee’s recognition that “traditions and cultural values of each people” are important to the “harmonious development” of the child.¹⁷⁴ It is also inconsistent with the requirements of Article 4 to “undertake all appropriate legislative, administrative, and other measures for the implementation” of all rights recognized in the Convention.¹⁷⁵ France’s position likewise directly conflicts with the Committee’s explicit call for “special measures”¹⁷⁶ to protect the rights of indigenous children, beyond what is necessary to protect the rights of children in general.
133. Even if the Committee were to recognize France’s reservation, it must limit its application to its own citizens in France and its territories. France’s reservation should not abdicate its obligation under the Convention to respect and ensure the right to culture of indigenous and other peoples outside of its territory over which it may have jurisdiction, as is the case here.

¹⁷⁰ *Id.* at ¶ 11.

¹⁷¹ CRC, Concluding Observations of the Committee on the Rights of the Child: France, 51st Sess., CRC/C/FRA/CO/4, ¶ 9 (June 22, 2009), <https://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-FRA-CO-4.pdf>.

¹⁷² *Id.* at ¶ 101.

¹⁷³ Response of France at ¶ 20.

¹⁷⁴ CRC Preamble.

¹⁷⁵ CRC art. 4.

¹⁷⁶ General Comment No. 11 at ¶ 5.

134. France either ignores or fails to appreciate this distinction in its response. In support of its argument that the reservation prohibits the Committee from ruling on violations of the right to culture under the Convention, France relies on a series of cases involving France’s similarly worded reservation to Article 27 of the ICCPR.¹⁷⁷ The Human Rights Committee determined in those cases that it lacked jurisdiction to review allegations of Article 27 violations.¹⁷⁸ Notably, every single case involved claims brought by a French citizen against the French government. Here, indigenous Petitioners from countries with no historical or cultural connection with France have alleged violations of their rights. The Human Rights Committee’s narrow holding that the reservation to Article 27 applies to disputes between French citizens and their government has no bearing on this case.
135. By invoking its Article 30 reservation here, France is using its domestic law as an excuse to abdicate its obligations to protect the rights of children beyond its borders over which it has jurisdiction.
136. This abdication has dire consequences for the indigenous Petitioners. France’s lack of accountability deprives them of “full and harmonious development” shaped by their communities’ “traditions and cultural values.” If sea level rise consumes Ebeye and Majuro, Ranton, Litokne, and David will no longer live surrounded by community members who share an intimate connection and long history with the ocean. If the Arctic region continues to warm dramatically, Carl’s generation may be the last to learn the Yupiaq’s long-standing subsistence culture.
137. France’s reservation has no effect because it undermines “an essential element of the treaty”—the need to protect the right to culture as crucial to a child’s development. As such, this Committee has jurisdiction over Petitioners’ Article 30 claims.

VI. Conclusion.

138. Petitioners have clearly established that the Communication is admissible. The indisputable evidence demonstrates a failure by the Respondents to adequately protect the rights of Petitioners and prevent foreseeable risks to them. Indeed, Respondents have allowed activities and implemented measures within their jurisdictions which directly and foreseeably violate Petitioners’ rights.
139. Respondents should be judged not by their words, but by their conduct. They cannot absolve themselves from their share of responsibility simply because

¹⁷⁷ See *id.* at ¶¶ 21 n.5, 22.

¹⁷⁸ *Id.* at ¶¶ 21, 22.

they are not the *only* States contributing to the harm or that the harm is caused outside their territory. Greenhouse emissions are not bounded by national borders, political or geographical. Neither are the harms that they cause.

140. The Committee is being asked to do what it has the responsibility and competence to do: declare that the Respondents are violating their duty to the Petitioners to prevent the irreversible, substantial, and foreseeable harm arising out of their failure to meaningfully and adequately reduce their greenhouse gas emissions consistent with the scientifically established 1.5°C global temperature limit.
141. As such, Petitioners are within the jurisdiction of Respondents as defined by the Convention, the Communication is manifestly well-founded, and the domestic remedies in Brazil, France, and Germany are likely to be futile. The Communication for the foregoing reasons should be admitted.