



Convention on the Rights of the Child

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Committee on the Rights of the Child

Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 106/2019* **

<i>Submitted by:</i>	Chiara Sacchi et al; (represented by counsels Scott Gilmore et al (Hausfeld LLP) and Ramin Pejan et al (Earthjustice))
<i>Alleged victims:</i>	The authors
<i>State party:</i>	France
<i>Date of communication:</i>	23 September 2019
<i>Date of adoption of the decision:</i>	22 September 2021
<i>Subject matter:</i>	Failure to prevent and mitigate the consequences of climate change
<i>Procedural issues:</i>	Jurisdiction; victim status; failure to exhaust domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Right to life; right of the child to the enjoyment of the highest attainable standard of health; right of the child to enjoy his or her own culture; best interests of the child
<i>Articles of the Convention:</i>	3, 6 (1-2), 24 and 30
<i>Articles of the Optional Protocol:</i>	5 (1), 7 (e) and (f)

1.1 The authors of the communication are Chiara Sacchi, a national of Argentina; Catarina Lorenzo; a national of Brazil; Iris Duquesne a national of France; Raina Ivanova a national of Germany; Ridhima Pandey a national of India; David Ackley III, Ranton Anjain and Litokne Kabua, nationals of the Marshall Islands; Deborah Adegbile, a national of Nigeria; Carlos Manuel, a national of Palau; Ayakha Melithafa, a national of South Africa; Greta Thunberg and Ellen-Anne, nationals of Sweden; Raslen Jbeili, a national of Tunisia; and Carl Smith and Alexandra Villaseñor, nationals of the United States of America. At the time of the submission of the complaint the authors were all under the age of 18 years. They claim that by failing to prevent and mitigate the consequences of climate change, the State party has violated their rights under articles 6 (1-2), 24 and 30, read in conjunction with article 3

* Adopted by the Committee at its eighty-eight session (6-24 September 2021).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho, Aissatou Alassane Sidikou, Hynd Ayoubi Idrissi, Rinchen Chopel, Bragi Gudbrandsson, Philip Jaffe, Sopia Kiladze, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Clarence Nelson, Mikiko Otani, Luis Ernesto Pedernera Reyna, Zara Ratou, José Ángel Rodríguez Reyes, Ann Marie Skelton, Velina Todorova and Benoit Van Keirsbilck.



of the Convention.¹ The Optional Protocol entered into force for the State party on 29 December 2017.

1.2 Pursuant to article 8 of the Optional Protocol and rule 18 (4) of the Committee's Rules of Procedure, on 20 November 2019, the Working Group on Communications, acting on behalf of the Committee, requested the State party to submit its observations on the admissibility of the communication separately from its observations on the merits.

The facts as submitted by the authors

2. The authors claim that by causing and perpetuating climate change, the State party has failed to take necessary preventive and precautionary measures to respect, protect, and fulfil the authors' rights to life, health, and culture. They claim that the climate crisis is not an abstract future threat. The 1.1°C rise in global average temperature is presently causing devastating heat waves, fostering the spread of infectious diseases, forest fires, extreme weather patterns, floods, and sea level rise, infringing on the human rights of millions of people globally. Because children are among the most vulnerable to these life-threatening impacts, physiologically and mentally, they will bear the burden of these harms far more and far longer than adults.²

Complaint

3.1 The authors claim that by recklessly causing and perpetuating life-threatening climate change, the State party has failed to take necessary preventive and precautionary measures to respect, protect, and fulfil their rights to life, health, and culture. They claim that the climate crisis is not an abstract future threat. The 1.1°C rise in global average temperature is presently causing devastating heat waves, fostering the spread of infectious diseases, forest fires, extreme weather patterns, floods, and sea level rise. Because children are among the most vulnerable to these life-threatening impacts, physiologically and mentally, they will bear the burden of these harms far more and far longer than adults.

3.2 The authors argue that every day of delay depletes the remaining "carbon budget", the amount of carbon that can still be emitted before the climate reaches unstoppable and irreversible ecological and human health tipping points. They argue that the State party, among other states, is creating an imminent risk as it will be impossible to rectify lost mitigation opportunities and it will be impossible to ensure the sustainable and safe livelihood of future generations.

3.3 The authors contend that the climate crisis is a children's rights crisis. The States parties to the Convention are obliged to respect, protect and fulfill children's inalienable right to life, from which all other rights flow. Mitigating climate change is a human-rights imperative. In the context of the climate crisis, obligations under international human rights law are informed by the rules and principles of international environmental law. They argue that the State party has failed to uphold its obligations under the Convention to (i) prevent foreseeable domestic and extraterritorial human rights violations resulting from climate change; (ii) cooperate internationally in the face of the global climate emergency; (iii) apply the precautionary principle to protect life in the face of uncertainty; and (iv) ensure intergenerational justice for children and posterity.

Article 6 (1-2)

3.4 The authors claim that the State party's acts and omissions perpetuating the climate crisis have already exposed them throughout their childhood to the foreseeable, life-threatening risks of human-caused climate change, be it heat, floods, storms, droughts, disease, or polluted air. A scientific consensus shows that the life-threatening risks confronting them will increase throughout their lives as the world heats up to 1.5°C and beyond.

¹ The authors have submitted the same complaint against Argentina, Brazil, France, Germany and Turkey, the five complaints are registered as communication Nos. 104-108/2019.

² For further information on the facts as presented by the authors, see *Sacchi et al v. Germany* (CRC/C/88/DR/107/2019), paras. 2.1-2.6.

Article 24

3.5 The authors claim that the State party's acts and omissions perpetuating the climate crisis have already caused injuries to their mental and physical health, from asthma to emotional trauma. These injuries violate their right to health under article 24 of the Convention and the injuries will worsen as the world continues to warm. Smoke from the Paradise wildfires caused Alexandria Villasenor's asthma to dangerously flare up, sending her to the hospital. Heat-related pollution in Lagos has led to Debby Adegbile being hospitalized regularly due to asthma attacks. The spread and intensification of vector-borne diseases has also impacted the authors. In Lagos, Debby now catches malaria multiple times a year. On the Marshall Islands, Ranton Anjain contracted dengue fever in 2019; David Ackley III contracted chikungunya, a new disease in the islands as of 2015. Extreme heat waves that have increased in frequency because of climate change have been a serious threat to the health of many of the authors. High temperatures are not only deadly, they can cause a wide range of health impacts, including heat cramps, heatstroke, hyperthermia, and exhaustion, and quickly worsen existing health conditions. Drought is also threatening water security for many petitioners, like Catarina Lorenzo, Raslan Jbeili, and Ayakha Melithafa.

Article 30

3.6 The authors claim that the State party's contributions to the climate crisis have already jeopardized millennia-old subsistence practices of the indigenous authors from Alaska the Marshall Islands, and Sapmi, which are not just the main source of their livelihoods, but directly relate to a specific way of being, seeing, and acting in the world, that are essential to their cultural identity.

Article 3

3.7 By supporting climate policies that delay decarbonization, the State party is shifting the enormous burden and costs of climate change onto children and future generations. In doing so, it has breached its duty to ensure the enjoyment of children's rights for posterity, and failed to act in accordance with the principle of intergenerational equity. The authors note that their complaint documents the violation of their rights under the Convention, but the scope of the climate crisis should not be reduced to the harms of a small number of children. Ultimately, at stake are the rights of every child, everywhere. If the State party, acting alone and in concert with other states, does not immediately take available measures to stop the climate crisis, the devastating effects of climate change will nullify the ability of the Convention to protect the rights of any child, anywhere. No state acting rationally in the best interests of the child would ever impose this burden by choosing such delay. The only cost-benefit analysis that would justify any of the respondents' policies is one that discounts children's lives and prioritizes short-term economic interests over the rights of the child. Placing a lesser value on the best interests of the authors and other children in the climate actions of the State party is in direct violation of article 3 of the Convention.

3.8 The authors request that the Committee should find that: 1) climate change is a children's rights crisis; 2) that the State party, along with other states, has caused and is perpetuating the climate crisis by knowingly acting in disregard of the available scientific evidence regarding the measures needed to prevent and mitigate climate change; and 3) that by perpetuating life-threatening climate change, the State party is violating the authors' rights to life, health, and the prioritization of the child's best interests, as well as the cultural rights of the authors from indigenous communities. They further request that the Committee recommends that: 1) the State party reviews, and where necessary, amends its laws and policies to ensure that mitigation and adaptation efforts are being accelerated to the maximum extent of available resources and on the basis of the best available scientific evidence to (i) protect the authors' rights and (ii) make the best interests of the child a primary consideration, particularly in allocating the costs and burdens of climate change mitigation and adaptation; 2) that the State party initiate cooperative international action - and increase its efforts with respect to existing cooperative initiatives - to establish binding and enforceable measures to mitigate the climate crisis, prevent further harm to the authors and other children, and secure their inalienable rights; and 3) that pursuant to article 12, the State party shall ensure the child's right to be heard and to express their views freely, in all international, national, and

subnational efforts to mitigate or adapt to the climate crisis and in all efforts taken in response to this communication.

State party's observations on admissibility

4.1 On 23 January 2020, the State party submitted its observations on the admissibility of the complaint. First, it recalls its long-standing commitment to the fight against climate change, recognizing that the scientific conclusions are clear concerning the origin of global warming and the ongoing collapse of biodiversity. The State party also recalls that, on the occasion of the adoption of the Energy and Climate Law in November 2019, the French Parliament declared an "ecological and climate emergency". With regard to the mitigation of greenhouse gas emissions, the State party also specifies that this law and the bill on the fight against waste and on circular economy ("*projet de loi relatif à la lutte contre le gaspillage et sur l'économie circulaire*") aim to accelerate the reduction of greenhouse gas emissions and commit France to a carbon neutral trajectory by 2050. Regarding the adaptation to the harmful effects of climate change and resilience, the State party notes that, in December 2018, it adopted its second national plan for adaptation to climate change and is working to establish "heat wave plans" ("*plans canicules*") adapted to the expected warming in the coming decades. The State Party therefore welcomes the increased awareness of citizens on climate change and shares the authors' concern.

4.2 However, the State party maintains that the present communication is inadmissible: concerning the allegation of violation of article 30 of the Convention, the State party recalls that it has made a reservation to this article. As to the allegations based on articles 3, 6 and 24 of the Convention, the State party argues that they are inadmissible for lack of jurisdiction, lack of exhaustion of remedies, and for being manifestly ill-founded and insufficiently substantiated.

4.3 As regards inadmissibility for lack of jurisdiction, the State party does not dispute that the Convention may have, in certain specific cases, extraterritorial application. The European and Inter-American Human Rights Systems³ and the Committee⁴ defend that an extraterritorial application of the Convention exists but must be reserved for exceptional situations (when, for example, the person invoking a violation of its rights is in a territory over which the respondent State has effective control, through its agents or the control it exercises over a non-State entity). Nevertheless, it argues that regarding Iris Duquesne (a French national who indicates having experienced the 2003 heat wave in the early days of her life), the State party has no jurisdiction as, since 2019, she no longer resides in France but in the United States. As regards the other authors of the communication, they do not reside on French territory and do not come under the extraterritorial jurisdiction of France: the State Party does not exercise any effective control over these persons or over the States in which they are found, and extra-territorial jurisdiction is not applicable either as the concept developed in the Human Rights Committee' General Comment No. 36, according to which a State has the obligation to guarantee the right to life of all persons inclusive outside its territory if they are affected in a direct and reasonably foreseeable manner by its military or other activities. The State Party argues that the communication does not concern, for example, cases of impact of construction of infrastructure in other countries (transboundary damages). It argues that climate change is a complex phenomenon characterized by an entanglement of causes and a multiplicity of actors, the result of a global phenomenon the origin of which is human activity and involves greenhouse gases emitted since the beginning of the industrial era by several actors, state and non-state. Climate change cannot therefore be considered as localized "pollution" directly attributable to a given State, and, as the authors acknowledge, the respondent States parties are not the main emitters of greenhouse gases.

4.4 The State party further argues that the communication is inadmissible for lack of exhaustion of domestic remedies. The authors had the possibility to act before the

³ Cfr. ECHR, *Bankovic et others vs. Belgium*, par. 67; IACHR, *The environment and Human Rights*, Advisory Opinion OC-23/17 of 15 November 2017. N°. 23, par. 81.

⁴ Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration.

administrative court in order to engage the responsibility of the State party for its alleged inaction against climate change, but they decided not to do so. The mere assertion that a remedy has a low chance of success cannot exempt the authors from bringing their claims before the national courts. In particular, regarding atmospheric pollution, Administrative Courts such as the Administrative Court of Paris, the Administrative Court of Lyon and the Administrative Court of Lille, have already examine cases of State's responsibility and compensation for damage caused to individuals. Likewise, the Council of State ("*Conseil d'État*") has also noted the State party's failure to combat atmospheric pollution and urged the Prime Minister and the Minister of Ecology, Sustainable Development and Energy, to take all the necessary measures to implement air quality plans. Moreover, regarding climate change, the so-called "Century case" was at the time of the submission of the complaint before the Administrative Court of Paris, by which several associations were asking the court to recognize the environmental obligations of the State party, to note its deficiency in combating climate change and to put an end to it. In addition, the State Council is examining another complaint requesting that French authorities take any useful measure to reduce greenhouse gas emissions. The State Party also indicates that the concept of ecological damage has been recognized in national law since the adoption of Law No. 2016-1087 of 8 August 2016 for the recovery of biodiversity, nature and landscapes ("*Loi n°2016-1087 du 8 août 2016 pour la reconquête de la biodiversité, de la nature et des paysages*"). With regard to the allegedly excessive cost of proceedings before the administrative courts, the State party indicates that any person may, depending on their income, benefit from legal aid. Regarding the processing time, the average time for processing a case before administrative courts is, from first instance to cassation, 26 months and 25 days, which does not constitute an unreasonable delay.

4.5 Finally, the State party argues that the communication is insufficiently substantiated with regard to the alleged complaints, as it focuses on general current and future consequences of climate change but does not demonstrate, the damage directly suffered by the authors. Moreover, the communication is manifestly ill-founded and does not seek to establish violations of the authors' rights, but to induce the Committee to pronounce itself in general on the existence and consequences of climate change.

Authors' comments on the State party's observations on admissibility

5.1 On 4 May 2020, the authors provided their comments on the State party's observations on the admissibility of the communication. They maintain that the communication is admissible and reiterate their arguments that the Committee has jurisdiction to examine the complaint, that the complaint is sufficiently substantiated and that the pursuit of domestic remedies would be futile.

5.2 Regarding the issue of jurisdiction, the authors argue that the State party has effective regulatory control over emissions originating in their territory. Only the State party can reduce those emissions, through its sovereign power to regulate, license, fine, and tax. Because the State party exclusively control these sources of harm, the foreseeable victims of their downstream effects, including the authors, are within its jurisdiction. As concerns the State party's argument that climate change is a global issue for which it cannot be held responsible the authors argue that 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.⁵ Article 47 of the International Law Commission's Draft Articles on State Responsibility provides that where "several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act." 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.

5.3 The authors reiterate their claims that they have established that each of them has been injured and exposed to a risk of further irreparable harm as a result of climate change caused in substantial part by the State party's failure to reduce emissions. The consequences of the

⁵ The authors refer to Ande Nollkaemper & Dov Jacobs, Shared Responsibility in International Law: A Conceptual Framework, 34 Mich. J. Int'l L. 359, 379–81 (2013).

State party's acts and omissions in relation to combating climate change directly and personally harm the authors and expose them to foreseeable risks. Their 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.

5.4 The authors further reiterate their argument that pursuing domestic remedies would be futile as they would have no real prospect of success. They argue that domestic courts cannot adjudicate their claims implicating the obligation of international cooperation. And they cannot review whether the State party has failed to use legal, economic, and diplomatic means to confront emissions from other G20 member-States and fossil-fuel industries. The respondent State parties cannot provide a domestic forum for the claims raised in the communication and remedies sought, which involve transboundary human rights violations caused by multiple States across multiple borders. For each respondent State party, state immunity vitiates any possible remedy for transboundary harm caused by other States. The authors further argue that the remedies they seek are non-justiciable or very unlikely to be granted by courts. Domestic courts 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. Domestic courts could not 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 the authors.

5.5 Regarding the domestic remedies available to the authors referred to by the State party the authors argue that their claims would 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. The French Constitution does not protect the right to life, and even if the authors asserted rights under the European Convention on Human Rights, no French court has ever recognized the rights to life or health in the context of environmental protection. The authors argue that 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. Courts also afford the State wide discretion to undertake positive obligations stemming from international conventions, including human rights treaties. In addition, French administrative courts cannot review the Parliament's failure to introduce or enact legislation and courts have only held the executive branch responsible in the environmental context when the administration has been held to have a specific legal obligation to act, which is not the case with respect to climate change. If the authors 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 State party could only be held responsible for violating their rights if the State party's inadequate climate policies were the "preponderant cause" of their injuries. It is unlikely that any climate-change litigant could prevail against the State party under this standard, because multiple States contribute to climate change and neither France, nor any other State, is alone the preponderant cause.

5.6 The authors further argue that the unique circumstances of their case would make domestic proceedings unreasonably delayed as they would have to pursue five separate cases, in each respondent State party, each of which would take years. The State party could not ensure that a remedy would 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.

5.7 The authors note the State party's argument 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. 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."⁶ The

⁶ The reservation in French reads: "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."

authors argue that the reservation is incompatible with the object and purpose of the Convention and, if it applies at all, would only apply to French citizens.

5.8 The authors note that article 51 of the Convention expressly states that “[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted.” 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.”⁷ 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*.”⁸ 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.”⁹ The authors argue that cultural rights are central to the object and purpose of the Convention. The preamble to the Convention clarifies that a central objective of it is providing for “full and harmonious development” of the child. In ensuring such development, States parties should take “due account of the importance of the traditions and cultural values of each people.” 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 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.” 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.”¹⁰ The authors argue that in analysing the Convention “as a whole, in good faith, in its entirety,”¹¹ it is evident from preamble to general comments that a child’s right to culture is an essential element of the Convention. It notes that the Committee has made several recommendations to the State party to withdraw its reservation to article 30.¹² Even if the Committee were to recognize the reservation, it must limit its application to the State party nationals in France and its territories. The reservation should not abdicate its obligation under the Convention to respect and ensure the right to culture of indigenous and other peoples outside of the State party’s territory over which it may have jurisdiction.

Third-party intervention

6. On 1 May 2020, a third-party intervention was submitted before the Committee by David R. Boyd and John H. Knox, current and former UN Special Rapporteurs on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.¹³

State party’s observation on the third-party intervention

7.1 On 30 July 2020, the State party provided its observations on the intervention. It reiterates its argument that the communication is inadmissible. The State Party also expresses its disagreement with the principle developed by the Human Rights Committee in its General Comment No. 36, according to which a State has the obligation to guarantee the right to life of all persons including outside its territory if they are affected in a direct and reasonably foreseeable manner by its military or other activities.

⁷ 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).

⁸ Ibid, at 37.

⁹ Ibid, at 51.

¹⁰ CRC, General Comment No. 11 (2009) Indigenous children and their rights under the Convention, U.N.Doc. CRC/C/GC/11, para. 5.

¹¹ ILC Guidelines at 38.

¹² Concluding Observations of the Committee on the Rights of the Child: France, 6th Sess., CRC/C/15/Add.20, ¶ 17 (April 25, 1994); CRC, Concluding Observations of the Committee on the Rights of the Child: France, 51st Sess., CRC/C/FRA/CO/4, ¶ 9 (June 22, 2009).

¹³ For further information, see *Sacchi et al v. Germany* (CRC/C/88/DR/107/2019), paras. 6.1-6.5.

7.2 The State Party reiterates that French greenhouse gas emissions are not the direct cause of climate change, climate change being the result of multiple factors. Furthermore, the State Party maintains that while it is true that France has made commitments to combat climate change, in particular within the framework of the Paris Agreement, it does not fall within the competence of the Committee to verify compliance with these commitments.

Oral hearing

8.1 Following an invitation by the Committee and pursuant to rule 19 of its Rules of Procedure, legal representatives of both parties appeared before the Committee on 17 September 2021 via videoconference, answered questions from Committee members on their submission and provided further clarifications.

Oral comments by the authors

8.2 The authors reiterate their claim that they would not have access to an effective remedy in the State party. They argue that two landmark French cases have made it clear that the judiciary cannot require the Government to adopt emission reduction targets in line with a reduction to 1.5 degrees. All that a court can do is determine if the Government is meeting its own climate targets. First, in the *Case of the Century*,¹⁴ NGOs sued the Government seeking one of the central remedies sought by the authors in their communication before the Committee. The NGOs asked the Paris Administrative Court to order the Government to reduce emissions in line with the 1.5-degree limit. However, the court could only determine if the State party was meeting its own domestic targets and the targets set by the EU. The authors argue that State party courts cannot review the adequacy of those targets under human rights law because the State party does not give direct effect to the rights enshrined in the Convention on the Rights of the Child, including the best interests of the child principle. The authors note that in the *Grande-Synthe* case, a municipality sued the Government asserting that its failure to further reduce emissions violated the European Convention on Human Rights and other provisions of domestic and EU law. In its first decision in November 2020, the Conseil d'Etat held that it lacked competence to order the Government to enact more ambitious climate legislation and that it was only competent to determine if the Government was meeting its own climate targets under France's energy code and EU regulations. Later, in its merits decision of July 2021, the Conseil d'Etat found that the State party had fallen short of its own regulations and ordered the Government to take all necessary measures to comply with the 40% emission reduction target set forth in French and EU law.¹⁵ The authors argue that 40% reduction might sound significant, but in reality this target would lead to a devastating 3-4 degrees of global warming under fair share models. Even the EU's more ambitious targets announced in the 2020 revised NDC and the 2021 European Climate Law are on a pathway to 3 degrees of warming. Meeting domestic and EU climate targets would therefore not suspend the State party's excess emissions and would not halt its contribution to the authors' injuries.

Oral comments by the State party

8.3 The State party notes that it fully shares the concerns of the authors regarding the effect of global warming but it argues that the individual complaints procedure is not the appropriate legal framework for dealing with the consequences of global warming for children.

8.4 The State party reiterates its argument that the communication should be found to be inadmissible for lack of jurisdiction. It argues that jurisdiction is primarily territorial and that recognition of extraterritorial jurisdiction must remain exceptional. It notes that none of the authors of the communication reside in France and argue that the State party is not exercising effective control over any of the authors. It notes that the Human Rights Committee in its General Comment No. 36 has stated that a person could be placed under the jurisdiction of a State, even when he or she is outside any territory effectively controlled by the State but whose right to life is nevertheless directly and reasonably foreseeably affected by one of its

¹⁴ Tribunal administrative de Paris, 14 janvier 2021, *Association Oxfam France et autres*, N°1904967, 1904968, 1904972, 1904976/4-1.

¹⁵ Conseil d'Etat, 1 juillet 2021, *Commune de Grande-Synthe*, n° 427301.

activities. The State party recalls that it is strongly opposed this interpretation of jurisdiction as: the criteria used are vague, imprecise and therefore a source of legal uncertainty; such an interpretation would ensure a quasi-universal application of international conventions, going far beyond the commitment made by States; and it would lead to a massive flow of communications against States that have accepted to receive individual communications that would otherwise be the responsibility of States that have not accepted this jurisdiction. The State party further argues that the authors have not established a causal link between the acts and omissions of the State party and the alleged harm suffered by them that could be considered to be direct and foreseeable within the wording of General Comment No. 36.

8.5 The State party further reiterates its argument that the communication should be found inadmissible for failure to exhaust domestic remedies. It notes that several administrative suits have been successfully brought in the State party concerning global warming, demonstrating that there are effective domestic remedies that the authors of the communication should have used prior to referring the matter to the Committee. It refers to two cases initiated in 2019 which it argues demonstrates that effective domestic remedies are available in the State party. A decision of 3 February 2021 by the Paris Administrative Court in which it found the State liable for its partial failure to meet its greenhouse gas emission reduction targets for the period 2015-2018, and a decision of 1 July 2021 by the Conseil d'Etat in which it enjoined the Government to take additional measures by 31 March 2022 to ensure that Government meets its commitments for its greenhouse gas emission reduction targets. It notes that administrative procedures are examined within a reasonable time frame, on average 26 months and 25 days, including the appeal stages. The filing of such a suit is free of charge and representation by counsel is not compulsory in the absence of any claim for compensation or in the context of an application to annul an act taken by an administrative authority. Legal aid is also available. Children, while represented by their parents, can also file suit before the administrative courts. The State party contends that, while international relations per se cannot be subject to judicial control, the judiciary does control the implementation of international obligations undertaken by the State party, including the Convention, even if those obligations have not been transposed into national law provided that they have direct effect. It notes that the Conseil d'Etat, by establishing an obligation to interpret national law in light of the Paris Agreements, it gave a direct effect to such agreement. The State party reiterates its argument that its reservation to article 30 of the Convention cannot be considered to be against the object and purpose of the Convention.

Oral hearing with the authors

9. Following an invitation by the Committee and pursuant to rule 19 of its Rules of Procedure, 11 of the authors appeared before the Committee on 28 May 2021 via videoconference in a closed meeting without the presence of State party representatives. They explained to the Committee how climate change has affected their daily lives, they expressed their views about what the respondent States parties should do about climate change, and why the Committee should consider their communications.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure, whether or not the claim is admissible under the Optional Protocol.

Jurisdiction

10.2 The Committee notes the State party's submission that the complaint is inadmissible for lack of jurisdiction as the authors of the communication do not reside on French territory and do not come under jurisdiction of the State Party as it does not exercise effective control over them. It also notes the State party's argument that climate change cannot be considered as localized "pollution" directly attributable to a given State, and, as the authors acknowledge, the States party is not one of the main emitters of greenhouse gases. The Committee further notes that authors' argument that they are within the State party's jurisdiction as victims of the foreseeable consequences of the State party's domestic and cross-border contributions to climate change and the carbon pollution knowingly emitted, permitted, or promoted by the

State party from within its territory. The Committee further notes the authors' claims that the State party's acts and omissions perpetuating the climate crisis have already exposed them throughout their childhood to the foreseeable, life-threatening risks of human-caused climate change.

10.3 Under article 2 (1) of the Convention, States parties have the obligation to respect and ensure the rights of "each child within their jurisdiction". Under article 5 (1) of the Optional Protocol, the Committee has competency to receive and consider communications submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in the Convention. The Committee observes that, while neither the Convention nor the Optional Protocol make any reference to "territory" in its application of jurisdiction, extraterritorial jurisdiction should be interpreted restrictively.¹⁶

10.4 The Committee notes the Human Rights Committee's and the European Court of Human Rights' relevant jurisprudence referring to extraterritorial jurisdiction.¹⁷ That jurisprudence was, however, developed and applied to factual situations which are very different to the facts and circumstance of this case. The present communication raises novel jurisdictional issues of transboundary harm related to climate change.

10.5 The Committee further recalls the Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights on the Environment and Human Rights, which has particular relevance to the issue of jurisdiction in the present case as it clarified the scope of extraterritorial jurisdiction in relation to environmental protection. The Court noted that when transboundary damage occurs that effects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin, if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory. The exercise of jurisdiction arises when the State of origin exercises effective control over the activities that caused the damage and consequent human rights violation.¹⁸ In cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory. The potential victims of the negative consequences of such activities are under the jurisdiction of the State of origin for the purposes of the possible responsibility of that State for failing to comply with its obligation to prevent transboundary damage.¹⁹ The Court further noted that accordingly, it can be concluded that the obligation to prevent transboundary environmental damage or harm is an obligation recognized by international environmental law, under which States may be held

¹⁶ See inter alia Inter-American Court of Human Rights Advisory Opinion, para. 81 and European Court of Human Rights, *Catan and others v. the Republic of Moldova and Russia*, Application Nos. 43370/04, 8252/05 and 18454/06.

¹⁷ See inter alia: Human Rights Committee, General Comment No. 31 on the nature of the general legal obligation imposed on States Parties to the Covenant; Human Rights Committee, General Comment No. 36 on the right to life; Human Rights Committee, *Munaf v. Romania* (CCPR/C/96/D/1539/2006), para. 14.2; *A.S. and others v. Malta*, (CCPR/C/128/D/3043/2017); *A.S. and others v. Italy*, (CCPR/C/130/DR/3042/2017); European Court of Human Rights, *Andreou v. Turkey*, Application no. 45653/99, 27 October 2009, para. 25 and *Georgia v. Russia (II)*, Application no. 38263/08, 21 January 2021. See also General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, para. 39; Concluding Observations: Norway (CRC/C/NOR/CO/5-6) para. 27 and CRC/C/86/D/77/2019, CRC/C/85/D/79/2019-CRC/C/85/D/109/2019.

¹⁸ Advisory Opinion, para. 104 (h)

¹⁹ Inter-American Court of Human Rights Advisory Opinion OC-23/17 on the Environment and 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 articles 4(1) and 5(1) in relation to articles 1(1) and 2 of the American Convention on Human Rights), 15 November 2017, paras 101-102.

responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority.²⁰

10.6 The Committee further notes that in its Joint Statement on Human Rights and Climate Change²¹ it has expressed that climate change poses significant risks to the enjoyment of the human rights protected by the Convention such as the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights. Failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations.

10.7 Having considered the above, the Committee finds that the appropriate test for jurisdiction in the present case is that adopted by the Inter-American Court of Human Rights in its Advisory Opinion on the Environment and Human Rights. This implies that when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated for the purposes of article 5 (1) of the Optional Protocol if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question. The Committee further considers that while the required elements to establish the responsibility of the State are rather a matter of merits, the alleged harm suffered by the victims needs to have been reasonably foreseeable to the State party at the time of its acts or omissions even for the purpose of establishing jurisdiction.²²

10.8 The Committee notes the authors' claims that while climate change and the subsequent environmental damage and impact on human rights it causes is a global collective issue that requires a global response, States parties still carry individual responsibility for their own acts or omissions in relation to climate change and their contribution to it. The Committee further notes the authors' argument that the State party has effective control over the source of carbon emissions within its territory that have a transboundary effect.

10.9 The Committee considers that it is generally accepted and corroborated by scientific evidence that the carbon emissions originating in the State party contribute to the worsening of climate change, and that climate change has an adverse effect over the enjoyment of rights by individuals both within as well as beyond the territory of the State party. The Committee considers that, through its ability to regulate activities that are the source of these emissions and to enforce such regulations, the State party has effective control over the emissions.

10.10 In accordance with the principle of common but differentiated responsibility, as reflected in the Paris Agreement, the Committee finds that the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location.²³

10.11 Regarding the foreseeability element, the Committee notes the authors' uncontested argument that the State party has known about the harmful effects of its contributions to climate change for decades and that it signed the United Nations Framework Convention on Climate Change in 1992 as well as the Paris Agreement in 2016. In light of existing scientific evidence showing the impact of the cumulative effect of carbon emissions on the enjoyment of human rights, including rights under the Convention,²⁴ the Committee considers that the

²⁰ Ibid. para. 103.

²¹ Joint Statement on 'Human Rights and Climate Change', CEDAW, CESC, CMW, CRC, CRPD, 16 September 2019.

²² Inter-American Court of Human Rights Advisory Opinion, para. 136. See also paras 175 – 180 on the precautionary principle. It is also worth noting the textual similarity between article 1 of the Inter-American Convention on Human Rights and article 2 of the Convention in respect of jurisdiction.

²³ See preamble to the Convention, article 3 of the United Nations Framework Convention on Climate Change, as well as the Preamble and articles 2 and 4 of the Paris Agreement. See also Draft articles on Responsibility of States for Internationally Wrongful Acts, article 47, commentary, para. 8.

²⁴ IPCC (2013) *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* and IPC Special Report, 'Global Warming of 1.5°C: Summary for Policymakers', 2018.

potential harm of the State party's acts or omissions regarding the carbon emissions originating in its territory was reasonably foreseeable to the State party.

10.12 Having concluded that the State party has effective control over the sources of emissions that contribute to the causing of reasonably foreseeable harm to children outside its territory, the Committee must now determine whether there is a sufficient causal link between the harm alleged by the authors and the State party's actions or omissions for the purposes of establishing jurisdiction. In this regard, the Committee observes, in line with the Inter-American Court of Human Rights' position²⁵ that not every negative impact in cases of transboundary damage gives rise to the responsibility of the State in whose territory the activities causing transboundary harm took place, that the possible grounds for jurisdiction must be justified based on the particular circumstances of the specific case, and that the harm needs to be "significant."²⁶ In this regard the Committee notes the Inter-American Court of Human Rights' observations that the International Law Commission's draft articles on prevention of transboundary harm from hazardous activities only refer to those activities that may involve significant transboundary harm and its observation that 'significant' is something more than 'detectable' but need not be at the level of 'serious' or 'substantial.' The Court further noted that harm must lead to a real detrimental effect on matters such as, for example, human health, industry, property, environment or agriculture in other States and that such detrimental effects must be susceptible of being measured by factual and objective standards.²⁷

Victim status

10.13 In the specific circumstances of the present case, the Committee notes the authors' claims that their rights under the Convention have been violated by the respondent States parties' acts and omissions in contributing to climate change and their claims that said harm will worsen as the world continues to warm. It notes the authors' claims to have been personally affected by: smoke from wildfires and heat-related pollution has caused some of the authors' asthma to worsen, requiring hospitalizations; that the spread and intensification of vector-borne diseases has also impacted the authors, resulting in some of the authors contracting malaria multiple times a year or contracting dengue fever and chikungunya; that the authors have been exposed to extreme heat waves causing serious threat to the health of many of the authors; that drought is threatening the water security for some of the authors; that some of the authors have been exposed to extreme storms and flooding; that the subsistence level of life is at risk for the indigenous authors; that due to the rising sea level the Marshall Islands and Palau are at risk of becoming uninhabitable within decades; and that climate change has affected the mental health of the authors, some of whom claim to suffer from climate anxiety.²⁸ The Committee considers that, as children, the authors are particularly impacted by the effects of climate change, both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime, in particular if immediate action is not taken. Due to the particular impact on children, and the recognition by States parties to the Convention that children are entitled to special safeguards, including appropriate legal protection states have heightened obligations to protect children from foreseeable harm.²⁹

10.14 Taking the abovementioned factors into account, the Committee concludes that the authors have sufficiently justified, for the purposes of establishing jurisdiction, that the impairment of their Convention rights as a result of the State party's acts or omissions regarding the carbon emissions originating within its territory was reasonably foreseeable. It further concludes that the authors have prima facie established that they have personally

²⁵ Advisory Opinion, para. 102.

²⁶ Advisory Opinion, paras. 81, 102.

²⁷ International Law Commission (2001) Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, Article 2, International Law Commission, Commentaries on the draft articles on prevention of transboundary harm from hazardous activities, Yearbook of the International Law Commission 2001, vol. II, Part II (A/56/10), art. 2, para. 4, and Advisory Opinion, para. 136.

²⁸ See further para. 2.2.

²⁹ Preamble; A/HRC/31/52, para. 81, CRC Report of the 2016 day of general discussion 'Rights and the Environment, p. 23.

experienced a real and significant harm in order to justify their victim status. Consequently, the Committee finds that it is not precluded by article 5 (1) of the Optional Protocol from considering the present communication.

Exhaustion of domestic remedies

10.15 The Committee further notes the State party's argument that the communication should be found inadmissible for failure to exhaust domestic remedies. It notes the State party's argument that the authors could have initiated administrative proceedings in the State party and that environmental cases of State responsibility and compensation for damage caused to individuals have already been examined before its Administrative Courts, such as the Administrative Court of Paris, the Administrative Court of Lyon and the Administrative Court of Lille. It also notes the State party's argument that, the Council of State has also noted the State party's failure to combat atmospheric pollution, while the so-called "Century case" is currently pending before the Administrative Court of Paris, by which several associations are asking the administrative judge to recognize the obligations of the State party in combating climate change. The Committee further notes the State party's information that any person may, depending on their income, benefit from legal aid in the process of such domestic proceedings and its information that the average time for processing a case before administrative courts is, from first instance to cassation, 26 months and 25 days. It further notes their submission that their claims would be non-justiciable in France as French administrative courts will not enforce the rights to life and health under the Convention, as the Convention does not have direct effect in the French legal system. It notes their arguments that there would also be many other obstacles to effective remedies in French courts as: 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; the courts afford the State wide discretion to undertake positive obligations stemming from international conventions, including human rights treaties; and administrative courts cannot review the legislative branch's failure to introduce or enact legislation and courts have only held the executive branch responsible in the environmental context when the administration has been held to have a specific legal obligation to act, which is not the case with respect to climate change.

10.16 The Committee recalls that authors must make use of all judicial or administrative avenues that may offer them a reasonable prospect of redress. The Committee considers that domestic remedies need not be exhausted if they objectively have no prospect of success, for example in cases where under applicable domestic laws the claim would inevitably be dismissed or where established jurisprudence of the highest domestic tribunals would preclude a positive result. However, the Committee notes that mere doubts or assumptions about the success or effectiveness of remedies do not absolve the authors from exhausting them.³⁰

10.17 In the present case the Committee notes that the authors have not attempted to initiate any domestic proceedings in the State party. The Committee notes the authors' argument that they would face unique obstacles in exhausting domestic remedies as it would be unduly burdensome for them, unreasonably prolonged, and unlikely to bring effective relief. It further notes their argument that domestic courts would most likely dismiss their claims, which implicates a state's obligations of international cooperation, because of the non-justiciability of foreign policy and foreign sovereign immunity. The Committee however considers that the alleged State party's failure to engage in international cooperation is raised in connection with the specific form of remedy that they are seeking, and that they have not sufficiently established that such remedy is necessary to bring effective relief. Furthermore, the Committee notes the State party's uncontested argument that it would have been open to the authors to initiate such proceedings before the administrative courts of the State party. It further notes that in a ruling of 3 February 2021, the Paris Administrative Court recognised ecological damage linked to climate change and held the State party responsible for failing to fully meet its goals in reducing greenhouse gases in the so called "Case of the Century".³¹ Additionally, by a decision of 1 July 2021, the Conseil d'Etat enjoined the Government to

³⁰ (CRC/C/83/D/60/2018), para. 6.5.

³¹ Tribunal Administratif de Paris, N°1904967, 1904968, 1904972, 1904976/4-1, 3 February 2021.

take additional measures by 31 March 2022 to ensure that Government meets its commitments for its greenhouse gas emission reduction targets. In the absence of further reasoning from the authors as to why they did not attempt to pursue these remedies, other than generally expressing doubt about the prospects of success of any remedy, the Committee considers that the authors have failed to exhaust all domestic remedies that were effective and reasonably available to them to challenge the alleged violation of their rights under the Convention.

10.18 Regarding the authors' argument that foreign sovereign immunity would prevent them from exhausting domestic remedies in the State party, the Committee notes that the issue of foreign sovereign immunity may arise only in relation to the particular remedy that the authors would aim to achieve by filing a case against other respondent States parties together with the State party in its domestic court. In this case, the Committee considers that the authors have not sufficiently substantiated their arguments that the exception under article 7 (e) of the Optional Protocol that the application of the remedies is unlikely to bring effective relief.

10.19 The Committee further notes the authors' argument that pursuing remedies in the State party would be unreasonably prolonged. It however considers, that in the absence of any specific information by the authors in support of this claim, and taking into account the information provided by the State party on the length of domestic proceedings, as well as the absence of any attempt by the authors to initiate domestic proceedings in the State party, the authors have failed to justify that accessing available domestic remedies in the State party would be unreasonably prolonged within the meaning of article 7 (e) of the Optional Protocol.

10.20 Consequently, the Committee finds the communication inadmissible for failure to exhaust domestic remedies under article 7 (e) of the Optional Protocol.

11. The Committee therefore decides:

- (a) That the communication is inadmissible under article 7 (e) of the Optional Protocol;
- (b) That the present decision shall be communicated to the State party and to the authors.
