



Convention on the Rights of the Child

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Committee on the Rights of the Child

Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019*, **

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| <i>Communication submitted by:</i> | Chiara Sacchi et al. (represented by counsel Scott Gilmore et al., of Hausfeld LLP, and Ramin Pejan et al., of Earthjustice) |
| <i>Alleged victims:</i> | The authors |
| <i>State party:</i> | Argentina |
| <i>Date of communication:</i> | 23 September 2019 (initial submission) |
| <i>Date of adoption of 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; inadmissibility <i>ratione temporis</i> |
| <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> | 6, 24 and 30, read in conjunction with article 3 |
| <i>Articles of the Optional Protocol:</i> | 5 (1) and 7 (e)–(g) |

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 Alexandria 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

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

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



has violated their rights under articles 6, 24 and 30, read in conjunction with article 3, of the Convention.¹ The Optional Protocol entered into force for the State party on 14 July 2015.

1.2 On 20 November 2019, pursuant to article 8 of the Optional Protocol and rule 18 (4) of the Committee's rules of procedure under the Optional Protocol, 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.

Facts as submitted by the authors

2. The authors claim that, by causing and perpetuating climate change, the State party has failed to take the 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 currently causing devastating heatwaves, forest fires, extreme weather patterns, floods and sea level rise, and fostering the spread of infectious diseases, infringing on the human rights of millions of people globally. Given that children are among the most vulnerable, physiologically and mentally, to these life-threatening impacts, they will bear a far heavier burden and for far longer than adults.²

Complaint

3.1 The authors argue that every day of delay in taking the necessary measures 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 recover lost mitigation opportunities and it will be impossible to ensure the sustainable and safe livelihood of future generations.

3.2 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. The authors argue that the State party has failed to uphold its obligations under the Convention to: (a) prevent foreseeable domestic and extraterritorial human rights violations resulting from climate change; (b) cooperate internationally in the face of the global climate emergency; (c) apply the precautionary principle to protect life in the face of uncertainty; and (d) ensure intergenerational justice for children and posterity.

Article 6

3.3 The authors claim that the State party's acts and omissions perpetuating the climate crisis have already exposed them throughout their childhoods to the foreseeable, life-threatening risks of climate change caused by humans, be they in the forms of 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 by 1.5°C above the pre-industrial era and beyond.

Article 24

3.4 The authors claim that the State party's acts and omissions perpetuating the climate crisis have already harmed their mental and physical health, with effects ranging from asthma to emotional trauma. The harm violates their right to health under article 24 of the Convention and will become worse as the world continues to warm up. Smoke from the wildfires in Paradise, California, in the United States caused Alexandria Villaseñor's asthma to flare up

¹ The authors have submitted the same complaint against Argentina, Brazil, France, Germany and Turkey. The five complaints are registered as communications No. 104/2019 to No. 108/2019.

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

dangerously, sending her to hospital. Heat-related pollution in Lagos, Nigeria, has led to Deborah Adegbile being hospitalized regularly due to asthma attacks. The spread and intensification of vector-borne diseases has also affected the authors. In Lagos, Deborah now suffers from malaria multiple times a year. In the Marshall Islands, Ranton Anjain contracted dengue in 2019. David Ackley III contracted chikungunya, a disease new to the Marshall Islands since 2015. Extreme heatwaves, which 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 can also quickly worsen existing health conditions. Drought is also threatening water security for many petitioners, such as Raslen Jbeili, Catarina Lorenzo and Ayakha Melithafa.

Article 30

3.5 The authors claim that the State party's contributions to the climate crisis have already jeopardized the millenniums-old subsistence practices of the indigenous authors from Alaska in the United States, the Marshall Islands and the Sapmi areas of Sweden. Those subsistence practices 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 is essential to their cultural identity.

Article 3

3.6 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 has failed to act in accordance with the principle of intergenerational equity. The authors note that, while their complaint documents the violation of their rights under the Convention, the scope of the climate crisis should not be reduced to the harm suffered by 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 the measures available 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 on any child by choosing to delay taking such measures. 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.

3.7 The authors request that the Committee find: (a) that climate change is a children's rights crisis; (b) 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 (c) that, by perpetuating life-threatening climate change, the State party is violating the authors' rights to life, health and the prioritization of the best interests of the child, as well as the cultural rights of the authors from indigenous communities.

3.8 The authors further request that the Committee recommend: (a) that the State party review and, where necessary, amend its laws and policies to ensure that mitigation and adaptation efforts are accelerated to the maximum extent of available resources and on the basis of the best available scientific evidence to protect the authors' rights and make the best interests of the child a primary consideration, particularly in allocating the costs and burdens of climate change mitigation and adaptation; (b) 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 (c) that pursuant to article 12 of the Convention, the State party ensure the child's right to be heard and to express his or her 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 the authors' communication.

State party's observations on admissibility

4.1 On 21 July 2020, the State party submitted its observations on the admissibility of the communication. It notes that, while it shares the authors' concerns and one of its priorities is to address the effects of climate change, the communication generally questions the environmental policy of Argentina and therefore transcends the communications mechanism. For the State party, these are issues that could be addressed through other functions of the Committee, such as the State review procedure or the development of a general comment.

4.2 The State party argues that the communication is, in relation to Argentina, absolutely generic and legally indeterminate. The communication contains references to several events that allegedly occurred within the jurisdiction of the State party: (a) an alleged windstorm in the town of Haedo, Province of Buenos Aires, which allegedly devastated the neighbourhood of one of the authors, Chiara Sacchi; (b) the alleged extreme heat in Haedo, which has increased the use of air conditioners and therefore the pressure on the electrical system, causing power outages that are common in the author's daily life, affecting her schoolwork and ruining food stored in the refrigerator; (c) alleged recent storms, in which the author was hit by hailstones the size of golf balls. As a result, the author is very scared about the future due to climate change. Nevertheless, the communication does not provide any evidence to support these considerations, nor does it delimit the legal reproach against the State party.

4.3 The State party submits that the communication is inadmissible *ratione loci* in relation to the authors who are not nationals of the State party. Although the State party acknowledges the existence of international obligations of an extraterritorial nature and the possibility of transboundary environmental damage, it considers that this is not the case in the authors' communication. The State party recalls the jurisprudence of the Human Rights Committee, as well as that of the European and Inter-American human rights systems, according to which the term "jurisdiction" is not limited to territory but to the relationship of power, authority or effective control between an individual and a State;³ and "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", bearing in mind that "there must always be a causal link between the damage caused and the act or omission of the State of origin in relation to activities in its territory or under its jurisdiction or control".⁴ The State party argues that, in the authors' communication, the Committee is not competent to analyse, with respect to the State party, events that allegedly occurred outside its territory, over which it does not exercise any type of jurisdiction and which, furthermore, do not have any type of causal link that could be attributable to agents of the State party. Indeed, the authors do not provide evidence that children outside Argentina are subject to the power or control of Argentine agents. Beyond general statements about the contribution of States to climate change, the causal link between actions or omissions that could be attributable to the State party and the extreme heat in France, a fire in Tunisia or sea level rise in the Marshall Islands is not established.

4.4 The State party also submits that the communication is inadmissible *ratione temporis* as concerns events prior to 14 July 2015, when the Optional Protocol entered into force for the State party. It argues that the use of fossil fuels and the consequent carbon emissions are not ongoing violations.

4.5 The State party further submits that the communication is inadmissible for failure to exhaust domestic remedies. Although the communication expressly recognizes that Chiara Sacchi could challenge the State party's climate change policy in domestic courts, the authors acknowledge that they have chosen not to do so, coming directly before the Committee and ignoring the multiple domestic legal remedies available to them that would allow them to file claims for environmental issues. The State party recalls that article 41 of the Constitution

³ European Court of Human Rights, *Issa and others v. Turkey*, Application No. 31821/96, Judgment of 16 November 2004, para. 71; Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, requested by the Republic of Colombia, on the environment and human rights, para. 81.

⁴ Inter-American Court of Human Rights, Advisory Opinion OC-23/17, paras. 102–103.

expressly recognizes the right to a healthy environment, that article 43 recognizes the “acción de amparo ambiental” (environmental writ of *amparo*), and that the General Environment Act contains several provisions that enable actions in environmental matters (as the “acción de recomposición del daño ambiental colectivo” – writ of redress for collective environmental damage). It argues that the abundant favourable jurisprudence demonstrates the effectiveness of these domestic remedies, recalling in particular the environmental jurisprudence of the Supreme Court. Lastly, regarding the alleged difficulties that the authors would have in accessing the justice system due to their status as children, the State party argues that the Office of the Chief Public Defender and the Office of the Ombudsperson for the Rights of Children and Adolescents have the mandate to provide free legal aid and representation to children in environmental litigation. In conclusion, the State party claims that the authors’ conduct has prevented it from the possibility of providing a remedy to the issue at the domestic level, as provided by article 7 (e) of the Optional Protocol.

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

5.1 On 25 November 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 The authors note the State party’s argument that the communication should be found inadmissible for lack of jurisdiction. They argue that the Committee is competent to examine the communication as the State party has effective control over economic activities in its territory that result in the emission of greenhouse gases. Those emissions contribute to violations of the authors’ rights caused by climate change. The authors refer to their initial submission and reiterate their argument that a State’s extraterritorial obligations are not confined to the narrow circumstances of territorial or personal control cited by the State party. Extraterritorial obligations also arise when a State controls activities in its territory that cause direct and foreseeable transboundary harm. They argue that it is indisputable that the State party has the effective ability to regulate greenhouse gas emissions in its territory. The State party has failed to use its maximum available resources to curb emissions in line with the Paris Agreement target of controlling temperature rise at or below 1.5°C. The State party’s emissions are not the sole cause of climate change, but they are a contributing cause, which only the State party can mitigate. As to the specific question of causation, namely, whether climate change, to which the State party is contributing, has caused an actual or imminent violation of the rights of each author, the authors argue that this is a merits issue. At the admissibility phase, they have presented substantiated allegations of the actual and imminent violations of their rights to life and health and their cultural rights that are caused by climate change. The authors also argue that the violations of their rights are entirely foreseeable. For decades, climate scientists have been warning that unchecked emissions will have a direct effect on children around the world. In 1990, in its first report, the Intergovernmental Panel on Climate Change warned the international community that without sufficient emission reductions, global warming would cause the very same adverse climate impacts that now harm and threaten the authors, from the spread of malaria and deadly wildfires to rising seas engulfing atolls.⁵

5.3 Regarding the State party’s argument that the communication is inadmissible *ratione temporis*, the authors argue that the State party continues to permit and promote excess emissions that are contributing to dangerous climate change, and that it will continue doing so unless it reduces its emissions as soon as possible, in line with limiting global warming to 1.5°C. The effect of the State party’s pre-2015 greenhouse gas emissions will also continue to impair the authors’ rights for the rest of their childhoods and beyond, making these continuing violations within the meaning of article 7 (g) of the Optional Protocol.

⁵ Intergovernmental Panel on Climate Change, “Policymaker summary of Working Group II (potential impacts of climate change)” (1990), pp. 88, 102–103 and 107–08. Available at https://www.ipcc.ch/site/assets/uploads/2018/05/ipcc_90_92_assessments_far_wg_II_spm.pdf.

5.4 The authors reiterate their claims that they have established that each of them has been harmed 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 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 harm 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.

5.5 The authors also reiterate their argument that pursuing domestic remedies would be futile as they would have no real prospect of success. They argue that the State party has failed to demonstrate that requiring exhaustion of remedies would be fair to the authors residing outside its borders. State practice and *opinio juris*, as reflected in article 15 (c) of the articles on diplomatic protection, of the International Law Commission, show that domestic remedies need not be exhausted in cases of transboundary environmental damage, where the victim has not made a voluntary link with the State of origin, and did not assume the risk of being harmed by that State's pollution. They further argue that as the State party recognizes foreign State immunity, it cannot provide a domestic forum for the actual claims raised and remedies sought in the present case, which involve transboundary human rights violations caused by multiple States across multiple borders. State immunity vitiates any possible remedy for transboundary harm caused by other States.

5.6 The authors argue that none of the domestic remedies identified by the State party would be effective. The defence of *arraigo* under article 348 of the Code of Civil Procedure can be raised to bar a person domiciled abroad from pursuing any kind of litigation in Argentina when they are neither domiciled nor have real estate there. This defence would preclude the foreign authors from litigating their claims in Argentine courts. Even if they could somehow overcome the defence of *arraigo*, the domestic remedies the State party has identified are likely to be ineffective. They argue that the remedy of *amparo* is ill-suited to their technically complex case involving demands for policy changes and international cooperation because such proceedings do not allow for extensive debate or evidence, or a declaration that particular laws, decrees or ordinances are unconstitutional. For example, in the case of *Mujeres por la Vida – Asociación Civil sin Fines de Lucro – filial Córdoba – c/ E.N. – P.E.N. – Ministerio de Salud y Acción Social de la Nación s/ Amparo*, the court of first instance rejected a remedy of *amparo* seeking a declaration that the law and national policy on the National Programme for Sexual Health and Responsible Parenthood was inapplicable throughout Argentina because the study and debate of each of the medications denounced went beyond the court's mandate. An action for environmental remediation under article 30 of the General Environment Act (Act No. 25675) is broader and allows for debate and evidence, but it can address only past or existing and localized harms. As such, it is not a vehicle for transforming the State party's national and international policies with the aim of preventing future harm. In addition, the authors would not be able to bring claims against foreign States through an action for remediation because they present non-justiciable issues. Act No. 27520 on Minimum Climate Change Adaptation and Mitigation Budgets does not provide an effective remedy either. First, the law does not require the State party to align national objectives with its international climate change commitments or to cooperate with other countries. Second, this law does not impose sanctions or any consequences for non-compliance. Thus, the public cannot invoke a violation of this law as a basis for redress. Nor would an action under the Civil and Commercial Code provide an effective remedy, including claims based on the right to a healthy environment. As with any civil action, the defence of *arraigo* would bar the authors who are non-nationals of the State party from raising claims in an Argentine court because they do not live or own property in Argentina. The Argentine author's claims would also fail because the court is unlikely to instruct the executive branch on how to exercise its discretion in modifying the State party's foreign climate change policy. Moreover, the Office of the Chief Public Defender, the Office of the Ombudsperson for the Rights of Children and Adolescents, and the Office of the Ombudsperson of the Nation are discretionary remedies because each Ombudsperson can refuse to take up a petitioner's case. As such, that remedy cannot be considered effective.

5.7 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. They argue that the resolution

of complex environmental cases is often delayed in the State party, and that resolving the issue of their standing alone would take years of litigation. Adjudicating the merits is no different. For example, the Supreme Court has yet to rule on the merits in the case of *Fundación Ciudadanos Independientes c. San Juan, Provincia de, Estado Nacional y otros*, an environmental remediation lawsuit about a 1 million litre toxic spill more than eight years after the complaint was filed. In the *Papel Prensa S.A. c. Estado Nacional* case, the Supreme Court took eight years to issue a decision, only to set aside the precautionary principle of the General Environment Act. Even when a case results in a judgment favourable to environmental plaintiffs, proper execution of the judgment is not guaranteed. More than 12 years after judgment in the Mendoza-Riachuelo case to which the State party refers in its observations, there is still no significant progress in clean-up of the Matanza-Riachuelo river or improvement in the nearby inhabitants' quality of life.

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, the current and former holders of the mandate of Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.⁶

State party's observations on the third-party intervention

7. On 30 July 2020, the State party submitted its observations on the intervention. It notes that it shares the concern of the interveners regarding the phenomenon of climate change, and that it positively values it as a legitimate wake-up call for the international community to carry out concrete and effective actions against global warming. Nevertheless, the State party reiterates its arguments that the communication does not meet the admissibility criteria under the individual communications procedure, nor does it present convincing arguments on the merits of the communication.

Oral hearing

8.1 Following an invitation by the Committee and pursuant to rule 19 of its rules of procedure under the Optional Protocol, legal representatives of both parties appeared before the Committee on 3 June 2021 by way of videoconference, answered questions from Committee members on their submission and provided further clarifications.

Authors' oral comments

8.2 The authors reiterate their claim that the State party has failed to take all necessary and appropriate measures to keep global temperatures from warming by 1.5°C above the pre-industrial era, thereby contributing to climate change, in violation of their rights. They argue that if the Convention is to protect children from the climate emergency, then the concepts of harm, jurisdiction, causation and exhaustion must be adapted to a new reality. They reiterate their arguments that the harms the authors have experienced, and will continue to experience, were foreseeable in 1990, when the Intergovernmental Panel on Climate Change predicted that global warming of just 1°C could cause the water shortages, vector-borne diseases and sea level rise the authors now face. They argue that if the respondent States parties do not take immediate action to vastly reduce their greenhouse gas emissions, the authors will continue to suffer greatly in their lifetime. They insist that there is a direct and foreseeable causal link between the harm to which they have been exposed and the respondent States parties' emissions, arguing that there is no dispute that the harm they are suffering is attributable to climate change and that the respondent States parties' ongoing emissions contribute to worsening climate change.

8.3 Regarding the issue of exhaustion of domestic remedies, the authors reiterate their argument that the remedies indicated by the State party would not provide them with effective relief. They argue that the constitutional *amparo* remedy is ill-suited to complex cases like theirs. According to article 2 of the National Amparo Act, the remedy of *amparo* is not

⁶ For additional information, see *Sacchi et al. v. Germany* (CRC/C/88/D/107/2019), paras. 6.1–6.5.

admissible when the determination of the potential validity of the act requires extensive debate or evidence or the declaration of unconstitutionality of laws, decrees or ordinances. The authors note that they do not dispute the existence of a right to a healthy environment under article 41 of the Constitution. Rather, they argue that the remedy of *amparo* is not a suitable remedy to ensure its protection in the authors' case. They further reiterate their argument that the remedy provided under the General Environment Act is designed to deal with less complex cases and remediation of environmental harm. A remediation action is broader than a remedy of *amparo* and allows for debate and evidence, but it can address only past or existing and localized harm. It is not a vehicle for transforming the State party's national and international climate policies with the aim of preventing harm that would materialize in the future. In addition, the defence of *arraigo*, which requires litigants to be domiciled or have real estate in the State party, would preclude 15 out of the 16 authors from participating in an environmental remediation case.

8.4 The authors reiterate their argument that they would also face significant delays in State party courts, both in obtaining a decision and in implementation of the decision. They note that in the case of *Fundación Ciudadanos Independientes c. San Juan*, the plaintiff organization first filed an environmental remediation action in 2009 to prevent environmental harm from the Veladero gold mine. Several cyanide spills and more than a decade later, there is still no final judgment in the case. The authors further argue that even when plaintiffs obtain a favourable judgment, effective implementation of that judgment is not guaranteed. In 2006, the Supreme Court ordered the Government to submit a clean-up plan for the Matanza-Riachuelo river basin. Despite this court victory, the Matanza-Riachuelo river basin is still one of the most polluted waterways in Latin America, and little has improved for the communities along the river's shores. In addition, because of a strict separation of powers doctrine, domestic courts are unlikely to dictate what national policies on climate change should achieve or direct the federal Government to engage in international cooperation, given the wide discretion granted to the executive branch in the realms of public policies and diplomatic relations.

State party's oral comments

8.5 The State party provides additional comments on its commitment to environmental protection and addressing climate change, with regard to both domestic and foreign policy. It reiterates its arguments on the lack of jurisdiction over the authors and the lack of a causal link between the alleged generic damages and any act or omission that could be attributable to the State party or its agents.

8.6 With regard to exhaustion of domestic remedies, the State party explains that both constitutionally and statutorily, domestic law has recognized so-called collective rights or "derechos de incidencia colectiva" (rights with a collective impact), and has expanded the standing or *locus standi* of potential plaintiffs. Depending on the type of remedy sought, directly or indirectly injured parties, the ombudspersons, civil society organizations and national, provincial and municipal authorities are given extraordinary standing to bring claims for environmental damage, thus eliminating barriers to access to justice in environmental matters.⁷ The State party also highlights that the costs of initiating proceedings in these matters is not a restriction for the authors, since the court fees amount to the equivalent of less than 50 cents of a United States dollar. Parties need to bear only the corresponding legal fees of their own representation. Nevertheless, if needed, parties, particularly children,⁸ are entitled by law to free legal aid and have various other possibilities of representation through the Ombudsperson, civil society organizations or any of the legal

⁷ The State party refers to art. 30 of General Environment Act (No. 25675) and the Act on State Responsibility (No. 26944). The State party also mentions that "preventive action" is another available legal recourse, and is regulated under art. 1711 of the Civil and Commercial Code.

⁸ The State party refers to art. 27 (c) of Act No. 26061 on the Comprehensive Protection of the Rights of Children and Adolescents.

clinics at universities or pro bono lawyers at bar associations registered under the National Registry of Children's Lawyers.⁹

8.7 With regard to the duration of proceedings, the State party explains that, in line with international standards, the length of domestic proceedings cannot be measured in the abstract, but must be subject to a case-by-case analysis, contemplating the complexity of the matter, the procedural actions taken by the parties and the diligence of the courts involved.¹⁰ It explains that, for example, the delays in the *Fundación Ciudadanos Independientes c. San Juan* case are explained by the complexity of the process, which includes factual and evidentiary complexities (such as the occurrence of facts in Chile); the fact that the number of defendants has progressively increased, at the will of the plaintiff only; and that there is an significant amount of criminal jurisdictional activity involved. The State party explains that, with regard to the coronavirus disease (COVID-19) pandemic, the alleged delay in proceedings is unproven. In fact, not only have plaintiffs been able to continue to bring all kinds of complaints, but also these cases have been given impetus and expediency because of the pandemic. The State party cites a case before the Supreme Court initiated during the domestic quarantine, on 23 June 2020, in which, in less than two months, the Court considered that an inter-jurisdictional environmental or ecologic resource (the Paraná river delta) had been significantly affected, seriously compromised its functioning and sustainability.¹¹ The Court considered the conservation of the river delta a priority for both current and future generations (much akin to the authors' argument in their communication) and issued an injunction for the immediate creation of an environmental emergency committee at the federal level.

8.8 The State party explains that since the 1994 constitutional reform, the judiciary has been closely involved in reviewing the constitutionality of public policy, including matters related to the environment. For example, the judiciary decided to suspend a series of authorizations for the felling of trees, modifying the criteria for conducting separate environmental impact assessments and obliging the relevant authorities to conduct an aggregate, comprehensive environmental impact study.¹² It also issued injunctions to cease and redress environmental damage by obliging the relevant authorities to conduct dredging work in the Tarariras stream.¹³ The State party refers to several other cases in which the active intervention of the judiciary in public policy matters shows that the principle of the separation of powers is not an obstacle to judicial review when it comes to the protection of environmental rights. The State party therefore argues that there are no barriers in place for the authors to exhaust domestic remedies and give the State party the opportunity to address any alleged violations.

Oral hearing with the authors

9. Following an invitation by the Committee and pursuant to rule 19 of its rules of procedure under the Optional Protocol, 11 of the authors appeared before the Committee on 28 May 2021 by way of videoconference in a closed meeting, without the presence of State representatives. They explained to the Committee how climate change had affected their daily lives and expressed their views about what the respondent States parties should do about climate change and why the Committee should consider their complaints.

⁹ The State party highlights the fact that the domestic legal system recognizes the progressive capacity of children and adolescents, in line with their age and level of maturity, allowing them to exercise their rights on their own behalf, through legal aid and representation.

¹⁰ The State party cites Inter-American Court of Human Rights, *Furlan and Family v. Argentina (Preliminary Objections, Merits, Reparations and Costs)*, Judgment of 31 August 2012, para. 156.

¹¹ Supreme Court, *Equística Defensa del Medio Ambiente Asociación Civil c/ Santa Fe, Provincia de y otros s/ amparo ambiental*, Case No. 468/2020-00.

¹² Supreme Court, *Salas, Dino y otros c/ Salta, Provincia de y Estado Nacional s/ amparo*, Case No. S. 1144. XLIV, Judgment of 26 March 2009. The State party also refers to *Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros s/ daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza-Riachuelo)*, Case No. FA18000036, Judgment of 12 April 2018.

¹³ Supreme Court, *Nordi, Amneris Lelia c. Buenos Aires, Provincia de y otros s/ daño ambiental*, Case No. 180/2010, Judgment of 29 August 2019.

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 under the Optional Protocol, whether the claim is admissible under the Optional Protocol.

Jurisdiction

10.2 The Committee notes the State party's submission that the communication is inadmissible for lack of jurisdiction. The Committee also notes the 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 childhoods to the foreseeable, life-threatening risks of climate change caused by humans.

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 may 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 makes any reference to the term "territory" in its application of jurisdiction, extraterritorial jurisdiction should be interpreted restrictively.¹⁴

10.4 The Committee notes the relevant jurisprudence of the Human Rights Committee and the European Court of Human Rights referring to extraterritorial jurisdiction.¹⁵ Nevertheless, that jurisprudence was developed and applied to factual situations that are very different to the facts and circumstance of this case. The authors' communication raises novel jurisdictional issues of transboundary harm related to climate change.

10.5 The Committee also notes Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights on the environment and human rights, which is of particular relevance to the issue of jurisdiction in the present case as it clarified the scope of extraterritorial jurisdiction in relation to environmental protection. In that opinion, the Court noted that, when transboundary damage occurs that affects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory (para. 101). 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 (para. 104 (h)). 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 (para. 102). The

¹⁴ See, inter alia, Inter-American Court of Human Rights, Advisory Opinion OC-23/17, para. 81, and European Court of Human Rights, *Catan and others v. Moldova and Russia*, Applications Nos. 43370/04, 8252/05 and 18454/06, Judgment of 19 October 2012.

¹⁵ See, inter alia, Human Rights Committee, general comments No. 31 (2004), para. 10, and No. 36 (2018), para. 63, *Munaf v. Romania* (CCPR/C/96/D/1539/2006), para. 14.2, *A.S. et al. v. Malta* (CCPR/C/128/D/3043/2017), paras. 6.3–6.5, *A.S. et al. v. Italy* (CCPR/C/130/D/3042/2017), paras. 7.3–7.5; European Court of Human Rights, *Andreou v. Turkey*, Application No. 45653/99, Judgment of 27 October 2009, para. 25, and *Georgia v. Russia (II)*, Application No. 38263/08, Judgment of 21 January 2021, para. 81. See also Committee on the Rights of the Child, general comment No. 16 (2013), para. 39, and CRC/C/NOR/CO/5-6, para. 27.

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 responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority (para. 103).

10.6 The Committee recalls that, in the joint statement on human rights and climate change that it issued with four other treaty bodies,¹⁶ it noted that the Intergovernmental Panel on Climate Change had confirmed in a report released in 2018 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 (para. 3). Failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations (para. 10).

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 considers that, while the required elements to establish the responsibility of the State are 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.¹⁷

10.8 The Committee notes the authors' claims that, while climate change and the subsequent environmental damage and impact on human rights it causes are global collective issues that require 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 also notes the authors' argument that the State party has effective control over the source of carbon emissions within its territory, which 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 on the enjoyment of rights by individuals both within and beyond the territory of the State party. The Committee considers that, given 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 responsibilities, 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.¹⁸

10.11 Regarding the issue of foreseeability, 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 both the United Nations Framework Convention on Climate Change in 1992 and the Paris Agreement in 2016. In the light of existing scientific evidence showing the impact of the cumulative effect of carbon emissions on the enjoyment

¹⁶ [HRI/2019/1](#).

¹⁷ Inter-American Court of Human Rights, Advisory Opinion OC-23/17, 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 on the Rights of the Child, in respect of jurisdiction.

¹⁸ See the preamble to the Convention, article 3 of the United Nations Framework Convention on Climate Change, and the preamble and articles 2 and 4 of the Paris Agreement. See also [A/56/10](#), [A/56/10/Corr.1](#) and [A/56/10/Corr.2](#), chap. IV.E.2, commentary on draft article 47 of the draft articles on the responsibility of States for internationally wrongful acts.

of human rights, including rights under the Convention,¹⁹ the Committee considers that the 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 causing 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 position of the Inter-American Court of Human Rights, 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".²⁰ In this regard, the Committee notes that the Inter-American Court of Human Rights observed that, in the articles on prevention of transboundary harm from hazardous activities, the International Law Commission referred only to those activities that may involve significant transboundary harm and that "significant" harm should be understood as something more than "detectable" but need not be at the level of "serious" or "substantial". The Court further noted that the 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.²¹

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 up. It notes the authors' claims: that 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 affected the authors, resulting in some of them contracting malaria multiple times a year or contracting dengue or chikungunya; that the authors have been exposed to extreme heatwaves, causing serious threats to the health of many of them; that drought is threatening water security for some of the authors; that some of the authors have been exposed to extreme storms and flooding; that life at a subsistence level 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. The Committee considers that, as children, the authors are particularly affected by climate change, both in terms of the manner in which they experience its effects and the potential of climate change to have an impact on them throughout their lifetimes, particularly 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.²²

¹⁹ Intergovernmental Panel on Climate Change, *Climate Change 2013: The Physical Science Basis – Working Group I Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge, United Kingdom, Cambridge University Press, 2013), and "Global warming of 1.5°C: summary for policymakers", formally approved at the First Joint Session of Working Groups I, II and III of the Intergovernmental Panel on Climate Change and accepted by the Panel at its forty-eighth session, held in Incheon, Republic of Korea, on 6 October 2018.

²⁰ Inter-American Court of Human Rights, Advisory Opinion OC-23/17, paras. 81 and 102.

²¹ *Ibid.*, para. 136, and [A/56/10](#), [A/56/10/Corr.1](#) and [A/56/10/Corr.2](#), chap. V.E.2, commentary on draft article 2 of the draft articles on the prevention of transboundary harm from hazardous activities.

²² Preamble to the Convention on the Rights of the Child; [A/HRC/31/52](#), para. 81; and Committee on the Rights of the Child, "Report of the 2016 day of general discussion: children's rights and the environment", p. 23. Available from <https://www.ohchr.org/en/hrbodies/crc/pages/discussion2016.aspx>.

10.14 Taking the above-mentioned 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 also concludes that the authors have established *prima facie* that they have personally experienced 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 authors' communication.

Exhaustion of domestic remedies

10.15 The Committee notes the State party's argument that the communication should be found inadmissible for failure to exhaust domestic remedies. It also notes the State party's argument that article 41 of the Constitution expressly recognizes the right to a healthy environment, that article 43 recognizes the environmental writ of *amparo*, and that the General Environment Act contains several provisions that enable actions in environmental matters (writ of redress for collective environmental damage). It further notes the State party's argument that the Office of the Chief Public Defender and the Office of the Ombudsperson for the Rights of Children and Adolescents have the mandate to provide free legal aid and representation to children in environmental litigation. Furthermore, it notes the State party's argument that, under domestic law, collective rights or rights with a collective impact are recognized and that, depending on the type of remedy sought, directly or indirectly injured parties, the ombudspersons, civil society organizations and national, provincial and municipal authorities have standing to bring claims for environmental damage, thus eliminating barriers to access to justice in environmental matters.

10.16 The Committee notes the authors' claim that the defence of *arraigo* under article 348 of the Code of Civil Procedure would bar the authors domiciled abroad from pursuing any kind of litigation in the State party. It also notes their argument that the remedy of *amparo* is ill-suited to their technically complex case involving demands for policy changes and international cooperation as such proceedings do not allow for extensive debate or evidence, or a declaration that particular laws, decrees or ordinances are unconstitutional. It further notes the authors' argument that an action for environmental remediation under article 30 of the General Environment Act, while broader and allowing for debate and evidence, can address only past or existing and localized harms, and that it therefore is not a suitable vehicle for transforming the State party's national and international policies. Moreover, the Committee notes the authors' argument that the Office of the Chief Public Defender, the Office of the Ombudsperson for the Rights of Children and Adolescents, and the Office of the Ombudsperson are discretionary remedies and therefore unlikely to be effective.

10.17 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, objectively, they 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. Nevertheless, the Committee notes that mere doubts or assumptions about the success or effectiveness of remedies do not absolve the authors from exhausting them.²³

10.18 In the present case, the Committee notes that the authors have not attempted to initiate any domestic proceeding in the State party. The Committee also 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 implicate the State's obligation to engage in international cooperation, because of the non-justiciability of foreign policy and foreign sovereign immunity. Nevertheless, the Committee considers that the State party's alleged failure to engage in international cooperation is raised in connection with the specific form of remedy that the authors are seeking, and that they have not sufficiently established that such a remedy is necessary to bring effective relief.

²³ *D.C. v. Germany* (CRC/C/83/D/60/2018), para. 6.5.

Furthermore, the Committee notes the State party's argument that legal avenues were available to the authors in the form of an environmental writ of *amparo* under article 43 of the Constitution as well as in the form of a writ of redress for a collective environmental damage under the General Environment Act. It also notes the State party's argument that the authors could have approached the Office of the Chief Public Defender and the Office of the Ombudsperson for the Rights of Children and Adolescents in filing such environmental actions under the General Environment Act, and that legal aid would be available for such litigation. The Committee notes the authors' arguments that the defence of *arraigo* under article 348 of the Code of Civil Procedure would bar the authors domiciled abroad from pursuing any kind of litigation in the State party. Nevertheless, it notes that the State party has refuted that claim, and that the authors have not provided any examples of non-domiciled plaintiffs being barred from accessing the specific remedies referred to by the State party in filing proceedings similar to the remedies sought by the authors in their specific case. The Committee also notes the authors' argument that the Office of the Chief Public Defender and the Office of the Ombudsperson for the Rights of Children and Adolescents are discretionary remedies and therefore unlikely to be effective. Nevertheless, it notes that the authors did not make any attempt to engage these entities in filing a suit on their behalf, and it considers that the fact that the remedy may be discretionary in itself does not exempt the authors from attempting to engage these entities in pursuing a suit, especially in the absence of any information that would demonstrate that this remedy has no prospect of success and in light of existing suits filed on the issue of environmental degradation in the State party. In the absence of any further reasons from the authors as to why they did not attempt to pursue these remedies, other than generally expressing doubts about the prospects of success of any remedy, the Committee considers that the authors have failed to exhaust all domestic remedies that were reasonably effective and available to them to challenge the alleged violation of their rights under the Convention.

10.19 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 concerning the exception under article 7 (e) of the Optional Protocol that the application of the remedies is unlikely to bring effective relief.

10.20 The Committee notes the authors' argument that pursuing remedies in the State party would be unreasonably prolonged. It also notes that, while the authors cite some examples of environmental cases in which the State party's courts took several years to reach a decision, they do not provide any further specific information on the length of such proceedings in the State party. It also notes that the State party likewise provides examples of cases of environmental litigation in the State party which were resolved within a reasonable time frame. The Committee concludes that, in the absence of any specific information from the authors that would justify that domestic remedies would be ineffective or unavailable, and in the absence of any attempt by them to initiate domestic proceedings in the State party, the authors have failed to exhaust domestic remedies.

10.21 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 transmitted to the authors of the communication and, for information, to the State party.