



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. 105/2019*, **

<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>	Brazil
<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; 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>	3, 6 (1-2), 24 and 30
<i>Articles of the Optional Protocol:</i>	5 (1), 7 (e), (f) and (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 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

* 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.



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 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

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.

confronting them will increase throughout their lives as the world heats up to 1.5°C and beyond.

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 20 January 2020, the State party submitted its observations on the admissibility of the complaint. It submits that the communication should be found to be inadmissible for lack of jurisdiction, failure to substantiate the claims for purposes of admissibility, and failure to exhaust domestic remedies.

4.2 The State party provides information on its domestic legislation. It notes that under article 3 of the 'Child and Adolescent Statute' children shall enjoy all the fundamental rights inherent to every person, and shall have every opportunity needed to guarantee their physical, mental, moral, spiritual and social development in conditions of freedom and dignity. The Statute enshrines fundamental rights such as the right to life, health, education and culture. Article 141 of the Statute guarantees access of every child to the Public Defender's Office, the Public Prosecution and the Judiciary Branch, through any of its bodies. Civil actions aiming at the protection and promotion of children's collective rights can be filed under article 210 of the Statute by the Public Prosecution, the Union, the federal states, the Federal District, the municipalities and by associations. The State party argues that as such, there are suitable mechanisms in place within its jurisdictional system to guarantee justice and redress for children. The Constitution also provides for procedural measures that can be taken to defend the right to a healthy environment, among other collective rights. Under article 5 of the Constitution any citizen may file a legal action with a view to nullify an act injurious to the environment. The plaintiff acts in his or her name in defence of a collective good and shall, unless demonstrably acting in bad faith, be exempt from judicial costs. Additionally, public civil suits can be initiated under Law No. 7.347/85 for the protection of the environment. In this case certain legal entities have the right to file suit, such as the Public Defender's Office, the Public Prosecution, the Union, the federal states, the Federal District, the municipalities and by associations. The State party argues that, in the present case, the authors should have contacted one of these entities, who could have filed a public suit in the defence of their interests. It submits that the communication should therefore be found to be inadmissible for failure to exhaust domestic remedies. It notes the authors' claims that the domestic judicial system would be unlikely to bring effective relief and that the procedures would be unreasonably prolonged. The State party argues that as the authors have not attempted to initiate any judicial proceedings in Brazil, this is a hypothetical argument that has not been substantiated.

4.3 The State party argues that the authors have failed to demonstrate the responsibility of Brazil for an internationally wrongful act. It notes that the UN International Law Commission has adopted draft articles on the 'Responsibility of States for Internationally Wrongful Acts'. These articles focus on the general conditions under international law for the State to be considered responsible for wrongful acts or omissions, and the legal consequences which flow therefrom. In order to hold a State responsible for international wrongful acts conducted connected with the alleged violation must be ascribed to the State, i.e. damage must be demonstrated to be attributable to the State. The State party argues that in the present case the authors have not demonstrated the extent to which the alleged violations could be attributable to Brazil. It argues that Brazil cannot be held responsible for acts or omissions that may have been committed by other States. It also argues that the authors have not specified the alleged harm they have suffered or connected this harm to acts or omission by the State party. This is particularly relevant given that the effect of climate change cannot be attributed solely to the five countries against which the authors have filed their complaint. It argues that the attempt to attribute responsibility for the overall consequences of such a complex issue as climate change to these five states is clearly unfounded. This is particularly true in the case of Brazil which is not amongst the main carbon dioxide emitters, presently or historically. It submits that the communications should therefore be found inadmissible for failure to substantiate the claims for purpose of admissibility as the authors have failed to demonstrate the nexus between the alleged

damages described in their complaint and act and omissions by the State party. The State party further submits that it has been complying with its international obligations, and that even if its environmental commitments could be challenged, the Committee does not have competence to monitor international instruments related to climate change.

4.4 On 27 March 2020, the State party provided further observations on available domestic remedies in the State party. It notes that according to article 15 of the Statute of the Child and Adolescent - the law that enforces the provisions of the Convention domestically - the child is a rights holder. Article 4 of the Statute assigns a duty to the family, the community, society in general and to the public authority to ensure, with absolute priority, effective implementation of the fundamental rights of children and adolescents. The system of rights of children established by the Statute is structured along three main axes: the promotion of rights; the defence of rights; and social accountability.

4.5 The Child and Adolescent Statute includes a chapter that deals specifically with the issue of access to justice. Article 141 guarantees the access of children and adolescents to the Public Defender's Office, the Public Prosecution and the Judiciary Branch. The same article provides that legal assistance will be free of charge to those who need it, either through a public defender or a designated lawyer. In addition, article 145 establishes that specialized single-judge courts can be created in order to address cases related to children and youth justice, and that corresponding lawsuits will be exempt from costs and fees.

4.6 The collective interests of the child are also given special judicial protection. Thus, civil actions aiming at the protection and promotion of children's collective rights can be filed, for instance, by the Public Prosecution Service, the Union, the federated states, the Federal District and the municipalities, as well as by associations legally constituted for at least one year that have, among their institutional purposes, the defence of the rights protected by the Statute. The State party notes that its legal system offers the following legal remedies that can be used for safeguarding, among other things, the rights and interests of children and adolescents: (i) Public civil suits: this action, which is regulated by Law no 7.347/1985, is provided for in article 201, V of the Child and Adolescent Statute. This kind of suit can be initiated by a Public Prosecutor or other legitimate authorities, as determined by Law no 7.347/85; (ii) Habeas corpus: it shall be granted whenever a person suffers or is in danger of suffering violence or coercion against his freedom of movement, on account of illegal actions or abuse of power; (iii) Writ of injunction: it shall be granted whenever the absence of a regulatory provision is deemed to harm the exercise of constitutional rights and liberties, as well as the prerogatives inherent to nationality, sovereignty and citizenship (article 5°, LXXI, of the Federal Constitution); (iv) Writ of mandamus: it shall be issued to protect a right, not covered by habeas corpus or habeas data, whenever the party responsible for the illegal actions or abuse of power is a public official or an agent of a corporate legal entity exercising duties of the Government (article 5°, LXIX, of the Federal Constitution).

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.

5.2 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 their 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.³ Article 47 of the International Law Commission's Draft Articles on State Responsibility provides that where "several States are responsible for the same

³ 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).

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 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 States 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. Claims against France, Germany, Argentina and Turkey would be barred in Brazil, because they relate to the sovereign acts of the four other states.⁴ Brazilian courts have long recognized the immunity of foreign states with respect to sovereign acts (*acta jure imperii*), which would include the climate policies of foreign states. 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. 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 remedies referred to by the State party the authors argue that they would have no standing to file suit because children lack standing under Brazilian law to seek the remedies referred to by the State party. The “People’s Legal Action” is limited to Brazilian citizens over the age of 16, so not even Catarina Lorenzo (age 13) would have standing. A public civil suit cannot be brought by individuals, only by specific entities. Although the Public Prosecutor’s Office or Public Defender’s Office could agree, at their discretion, to pursue such a case, neither office would act as the authors’ legal representatives but as a party to the case. A children’s rights association could file a public civil suit, but only on subject matters within its registered mission. Again, the authors would not be parties, and the association would act in its own discretion.

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. Excessive delay is a notorious problem in the Brazilian judicial system, a fact recognized by a survey of Brazilian judges,⁵ by the UN Human Rights

⁴ The authors refer to Appendix C to their comments, Expert Report of Dr. Helena de Souza Rocha and Dr. Melina Girardi Fachin.

⁵ National Council of Justice. Court Survey Series. Propositional Analytical Report: Fundamental Rights and Guarantees - Collective Actions in Brazil: themes, actors and challenges of collective protection, at 142, available at www.cnj.gov.br.

Committee⁶ and by the UN Special Rapporteur on the Independence of Judges and Lawyers.⁷ This delay would be exacerbated in this case, which would raise novel climate-policy issues. No climate change case of a comparable scale and global scope has been litigated in Brazil.

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.⁸

State party's observations on the third-party intervention

7.1 On 29 July 2020, the State party provided its observations on the intervention. It reiterates its argument that the communication is inadmissible as: (i) domestic remedies have not been exhausted; (ii) the communication is manifestly ill-founded; and, in addition (iii) the facts occurred prior to the entry into force of the Optional Protocol.

7.2 The State party reiterates its argument that the authors have failed to substantiate their claims for purposes of admissibility by failing to identify the actual harm suffered by them and linking said harm to identifiable actions of the five respondent States parties. It further argues that the effects of climate change on the world cannot be attributed to five countries randomly selected by the petitioners. It also argues that taking into account common but differentiated responsibilities, it has been complying with its commitments to reduce greenhouse gas emission within the United Nations Framework Convention on Climate Change, its Kyoto Protocol and its Paris Agreement.

7.3 The State party notes that according to the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts (hereinafter Draft Articles), “there is an internationally wrongful act of a State when conduct consisting of an action or omission is attributable to the State under international law and constitutes a breach of an international obligation of the State”. The State party notes that in its Advisory Opinion n. 23/17, the Inter-American Court of Human Rights concluded that, even in relation to transboundary environmental harm, there needs to be a causal link that allows the attribution of the harm to a conduct of the State.⁹ The State party submits that without a minimum basis for the attribution of the harm to a conduct of the State, the international responsibility of States cannot be analyzed. Absent the indispensable demonstration of a minimum causal link that could support a legitimate attribution of responsibility for the global issue of climate change, the communication is inadmissible.

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 27 May 2021 via videoconference, answered questions from Committee members on their submission and provided further clarifications.

Oral comments by the authors

⁶ Human Rights Committee, Concluding Observations, Brazil, CCPR/C/BRA/CO/2, para. 17, 1 December 2005.

⁷ Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy, Mission to Brazil, HRC E/CN.4/2005/60/Add.3, para. 2, 22 February 2005.

⁸ For further information, see *Sacchi et al v. Germany* (CRC/C/88/DR/107/2019), paras. 6.1-6.5.

⁹ Inter-American Court of Human Rights. Advisory Opinion OC-23/17 of November 15, 2017: The Environment and Human Rights, paragraph 104 (g-h) in which the Court noted that: “States are obliged to take all necessary measures to avoid activities implemented in their territory or under their control affecting the rights of persons within or outside their territory. When transboundary harm or damage occurs, a person is under the jurisdiction of the State of origin if there is a causal link between the action that occurred within its territory and the negative impact on 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 the consequent human rights violation.”

8.2 The authors reiterate their claim that the State party has failed to take all necessary and appropriate measures to keep global warming below 1.5°C, 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 IPCC predicted that global warming of just 1 degree Celsius 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 harms to which they have been exposed and the respondent States parties' emissions, arguing that there is no dispute that the harms suffered by them are 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. As an example the authors refer to the Belo Monte dam litigation case, noting that while the case was pending in court for 19 years, the dam was built in the heart of the Amazonas. The authors argue that as their complaint concerns a complex global environmental problem it would face the same, if not worse, delay than the Belo Monte case. The authors further reiterate their argument that it is unlikely that the courts would even agree to take up their case as foreign sovereign immunity precludes any domestic remedies from being enforced against Germany, France, Argentina and Turkey. With respect to the authors' claims related to international cooperation, the highest federal court has held that it is legally impossible for domestic courts to review actions of the President. The authors further argue that children cannot file a civil action or a public civil suit on their own in the State party. Only the Public Prosecutor's Office, the Public Defender's Office, the government itself, or associations can file them, and these entities have no obligation to do so. They argue that remedies that rely on another's discretion and do not allow the authors to complain directly to the court¹⁰ are not effective remedies. In addition, the authors argue that the three remedies involving writs referred to by the State party would fail because they are ill-suited to the types of claims and remedies at issue in the present complaint. First, the writ of habeas corpus is only applicable if the victim has suffered violence or coercion against his freedom of locomotion, which is irrelevant in the authors' case. Second, the writ of mandamus is a discreet and abridged action that can only be used to compel a public authority to take specific action as required by a specific provision in law or in the constitution. For example, this writ can be used to require a public authority to undertake an environmental impact assessment for a potentially polluting project. There is no specific requirement in Brazilian law to take climate mitigation action. Third, a writ of injunction must be based on a constitutional provision that explicitly requires issuance of implementing legislation, and the court will not address the content of such legislation. There is no constitutional provision that the authors could rely on to support their climate mitigation claims. The authors argue that as none of the remedies identified by the State party would be effective, they had no obligation to exhaust them before submitting their complaint before the Committee.

Oral observations by the State party

8.4 The State party reiterates its argument that the communication should be found inadmissible for lack of jurisdiction. It argues that as it is not possible to conclude that the State party's polluting activities would be directly and foreseeably impacting the rights of children within or outside its territory, none of the authors are under the State party's effective control for the purposes of jurisdiction. It further reiterates its argument that there is no causal link between the alleged acts or omissions of the respondent States parties of the Convention and the alleged harm suffered by the authors. It notes that the Inter-American Court of Human Rights has found that the exercise of jurisdiction takes place when "the State of origin exercises effective control over the activities that caused the harm and consequent violation

¹⁰ European Court of Human Rights, *Tănase v. Moldova*, Application No. 7/08, Judgment of 27 April 2010, para. 112.

of human rights”.¹¹ The State party argues that more precisely, “a link must be established between an act or an omission of a State, environmental degradation, and serious and direct harm to an individual”.¹² When it comes to extraterritorial human rights obligations, there needs to be “a sufficient connection, or a connecting factor, between the acts or omissions of a State and environment related harm suffered by individuals located abroad”.¹³ The State party argues that these specific requirements have not been established in the authors’ case as it is not possible to, for example, conclude that the water shortages some of the authors are facing in their hometown derives from a conduct attributable to the State party.

8.5 The State party insists that there are available effective remedies in the State party that the authors have not attempted to pursue. It argues that the authors of the communication have presented no proof that domestic remedies would be ineffective or unduly prolonged. Unfoundedly claiming that an eventual domestic ruling in the State party would not bring immediate relief or that the procedure would be unreasonably prolonged, without even initiating internal judicial measures, constitutes a hypothetical argument that does not fit the exception provided for in Article 7 (e) of the Optional Protocol.

8.6 The State party argues that the domestic remedy of a public civil suit regulated by Law 7.347/1985 would have been available to the authors. Through public civil suits, it is possible to access the judiciary in order to hold a person or a private or a public legal entity liable for both pecuniary and non-pecuniary environmental damages. According to article 3 of the Statute, public civil suits might result not only in the imposition of monetary compensation but also in the ordering of specific actions or abstentions by the liable parties. A public civil suit can be filed by the Public Prosecution Service, the Public Defender’s Office, Federal States, Federal District and Municipalities’ governments, public companies, foundations and other governmental entities, and associations. Article 129 (III) of the Constitution stipulates that the role of the Prosecution Service includes to “initiate and carry on public civil inquiries or public civil suits for the protection of public and social property, the environment, and other collective and diffuse interests”. Pursuant to article 6 of Law 7.347/1985, any person can, and public servants shall communicate information to the Prosecution Service on facts that may give rise to a public civil suit. The filing of a public civil suit does not require anticipation of judicial costs or any other expense. Associations filing a public civil suit are exempt from expenses, unless in case of proven bad faith. Hundreds of public civil suits are presented every year by these entities with the objective of promoting the defence of social interests and rights enumerated by Law 7.347/1985, including the environment. As an example the State party refers to a suit filed by the Federal Prosecution Service in 2019 to guarantee the protection and cleaning of the Brazilian coast following an oil spill the same year.¹⁴ Provisional measures were granted by the Federal Justice, in October 2019, ordering the federal government and the Institute of the Environment and Renewable Natural Resources to adopt all necessary measures to contain and clean the pollutant in order to protect the ecosystems of Pernambuco. The Judicial order was combined with daily fines of BRL 50.000 to guarantee enforcement. In another public civil suit filed in 2019, provisional measures were also granted ordering the federal government and the Institute of the Environment and Renewable Natural Resources to implement protection barriers and adopt all necessary measures to clean the pollution of mangrove and sea turtles’ spawn areas in Alagoas.¹⁵ In May 2020, as part of the third phase of *Projeto Amazônia Protege*, the Federal Prosecution Service filed 1,023 public civil suits against 2,262 defendants in the context of illegal deforestation of the Amazon. Overall, the institution is requesting over BRL 3,7 billion in damages and the reforestation of 231.456 hectares of forest. The authors of the communication should therefore have contacted domestic legitimate entities and associations and especially the Prosecution Service in order to properly have exhausted available domestic remedies before initiating international proceedings. The State party notes that any person, citizen or non-national, can communicate information to the Prosecution Services on facts that may give rise to a public civil suit. It

¹¹ IACtHR Advisory Opinion OC 23-2017, 15 November 2017, para 102.

¹² Viñuales, Jorge E. *A Human Rights Approach to Extraterritorial Environmental Protection?* p. 192.

¹³ Ibid.

¹⁴ Public Civil Suit No. 0820173-98.2019.4.05.8300.

¹⁵ Public Civil Suit No. 0808516-89.2019.4.05.8000.

emphasizes that public civil suits are possible domestic remedies for challenging public policies.

8.7 The State party further notes that under article 5, item LXXIII, of the Constitution, any citizen is a legitimate party to file a citizen suit aiming at nullifying an act injurious to the environment. Plaintiffs can file such suits in their own name, although in defence of a collective or diffuse interest. According to article 6 of Law 4.417/1965, such suits may be brought against public or private entities, authorities, administrators, public servants, or employees that have authorized, participated, benefited of or whose omission an act injurious to a protected public interests have originated. A child can file such a suit through a legal representative. The State party notes that a citizen suit was recently filed by six Brazilian nationals demanding the nullification of the plan for climate action, the ‘Nationally Determined Contributions (NDCs)’, submitted by Brazil in December 2020 under the Paris Agreement. The plaintiffs requested that the Judiciary order the federal government to elaborate an NDC that, in their view, would better comply with the international commitment of progression over time. The Federal Justice declared, on 27 May 2021, that it can exercise jurisdiction over the matter, pursuant to article 109, item III, of the Constitution, and requested that the federal government present its defence before the Court.

8.8 The State party further reiterated its argument that the authors could have filed: (a) a writ of mandamus, which is a remedy against illegality or abuse of power by public officials or agents of a legal entity exercising governmental powers. A child, national or non-national, even if located outside Brazil, can file such a suit through representatives, provided he or she is represented by legal counsel qualified to petition before the Brazilian Judicial branch; (b) a general civil suit which is a domestic remedy of broad scope that allows access to justice whenever a constitutional and legal right is threatened or violated. Threats and violations of environmental rights can be the object of general civil suits either in pursuit of a declaration of their violation, of damages or even direct judicial orders to act or abstain from acting in protection of the environment. General civil suits might contain preliminary requests for the judge to grant a measure with the practical effects of the remedy pursued, provided there is a *prima facie* probability of existence and of risk of damage of the alleged rights or for the maintenance of the useful effect (*effet utile*) of the remedy. Judicial orders to act in protection of the rights at risk or to cease harmful actions may be combined with daily fines to guarantee enforcement. To file a general civil suit it will be necessary to hire private counsel or qualify for legal aid. A child, national or non-national, even if located outside Brazil, can file such a suit through representatives, provided she is represented by legal counsel qualified to petition before the Brazilian Judicial branch.

8.9 The State party notes that legal aid is available in Brazil and the Constitution establishes that legal aid shall be provided by the State for those who lack the financial resources as a constitutional guarantee. According to article 134 of the Constitution, the Public Defender’s Office shall provide free legal representation to those that cannot afford to hire counsel, in the defence of both individual and collective rights, in judicial and non-judicial proceedings. The Public Defender’s Office is accessible to non-resident foreigners, provided conditions are met and the proper proceedings for international cooperation followed.

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 authors have failed to demonstrate the responsibility of the State party for an internationally wrongful act and its argument that in order to hold a State responsible for international wrongful acts conduct connected with the alleged violation must be ascribed to the State and damage must be demonstrated to be attributable to the State. It notes the State party's argument that it cannot be held responsible for acts or omissions that may have been committed by other States and that the communication should be found inadmissible as the authors have failed to demonstrate the nexus between the alleged damages described in their complaint and acts or omissions by the State party. 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 notes 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 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. The exercise of jurisdiction arises when the

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.

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 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 recalls 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.

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.

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.

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 Convention²⁴, 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 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

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.

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.

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 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 article 141 of the Child and Adolescent Statute guarantees children access to the Public Defender's Office, the Public Prosecution and the Judiciary Branch. It notes the State party's information that public civil suits can be initiated under Law No. 7.347/85 for the protection of the environment following information received from a complainant, including children who are not nationals of the State party, and that such suits can be filed by entities such as the Public Defender's Office, the Public Prosecution Services, the Union, the Federal States, the Federal District, the municipalities and by associations legally constituted for at least one year that have, among their institutional purposes, the defence of the rights protected by the Statute. It further notes the State party's information that other domestic remedies are also available, such as a general civil suit which allows access to justice whenever a constitutional and legal right is threatened or violated, including alleged violations of environmental rights. It notes the State party's information that remedies that can be sought in general civil suits may include a declaration of a violation, of damages or judicial orders to act or abstain from acting in protection of the environment. It notes the State party's information that a child, national and non-national, even if not residing in Brazil, can file such a general suit through representatives, provided he or she is represented by legal counsel qualified to petition before the judicial branch. The Committee finally notes the State party's information that legal aid is available in Brazil and, under certain conditions, also for non-nationals not residing in Brazil.

10.16 The Committee notes the authors' arguments that although entities such as the Public Prosecutor's Office, the Public Defender's Office or a children's rights association could agree, at their discretion, to pursue their case, neither entity would act as the authors' legal representatives but as a party to the case. The Committee notes the authors' argument that remedies that do not allow the authors to complain directly to the court are not effective remedies. The Committee finally notes the authors' claims that excessive delay is a notorious problem in the State party judicial system.

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 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

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.

about the success or effectiveness of remedies do not absolve the authors from exhausting them.³⁰

10.18 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 argument that legal avenues were available to the authors, either under Law No. 7.347/85 for the protection of the environment and that it would have been open to the authors to engage the assistance of entities such as the Public Prosecution Service, the Union, the federated states, the Federal District, municipalities or associations in filing a public civil suit aimed at the protection and promotion of children's collective rights, including environmental rights. It notes that the authors did not make any attempt to engage these entities in filing a suit on their behalf, nor did they attempt to pursue any other remedy in the State party such as filing a general suit through a legal representative. It notes the authors' argument that public civil suits would be filed at the discretion of the authorized entities in question and that the authors would not have direct standing as parties before the domestic courts in such proceedings. The Committee nevertheless considers that this 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. The Committee further notes the authors' argument that their claims regarding the remedy of international cooperation would not be admissible in the State party. It however notes the State party's information that a public civil suit can be filed in the interest of the protection of public and social property, the environment, and other collective and diffuse interests. In the absence of further reasoning 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 The Committee notes that the alleged State party's failure to engage in international cooperation is raised in connection to the remedy that they are seeking. 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 have aimed 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 pertaining to 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 further notes the authors' argument that pursuing remedies in the State party would be unreasonably prolonged. It notes that the authors cite cases adopted by other States, which took several years to decide, and one case initiated in the State party that took 19 years to resolve, but it considers that they have failed, to establish the connection with remedies available within the State party to their specific claims or to otherwise indicate how the deciding periods would be unreasonable prolonged or unlikely to bring relief within the meaning of article 7 (e) of the Optional Protocol. The Committee concludes that, in the absence of any specific information by 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.

³⁰ (CRC/C/83/D/60/2018), para. 6.5.

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 communicated to the State party and to the authors.
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