



**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.
108/2019*,****

<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>	Turkey
<i>Date of communication:</i>	23 September 2019
<i>Date of adoption of the decision:</i>	22 September 2021
<i>Subject matter:</i>	Failure to prevent and mitigate the consequences of climate change
<i>Procedural issues:</i>	Jurisdiction; victim status; failure to exhaust domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Right to life; right of the child to the enjoyment of the highest attainable standard of health; right of the child to enjoy his or her own culture; best interests of the child
<i>Articles of the Convention:</i>	3, 6 (1-2), 24 and 30
<i>Articles of the Optional Protocol:</i>	5 (1), 7 (e) and (f)

* 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.

1.1 The authors of the communication are Chiara Sacchi, a national of Argentina; Catarina Lorenzo; a national of Brazil; Iris Duquesne, a national of France; Raina Ivanova a national of Germany; Ridhima Pandey a national of India; David Ackley III, Ranton Anjain and Litokne Kabua, nationals of the Marshall Islands; Deborah Adegbile, a national of Nigeria; Carlos Manuel, a national of Palau; Ayakha Melithafa, a national of South Africa; Greta Thunberg and Ellen-Anne, nationals of Sweden; Raslen Jbeili, a national of Tunisia; and Carl Smith and Alexandra Villaseñor, nationals of the United States of America. At the time of the submission of the complaint the authors were all under the age of 18 years. They claim that by failing to prevent and mitigate the consequences of climate change, the State party has violated their rights under articles 6 (1-2), 24 and 30, read in conjunction with article 3 of the Convention.¹ The Optional Protocol entered into force for the State party on 26 March 2018.

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

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.

the precautionary principle to protect life in the face of uncertainty; and (iv) ensure intergenerational justice for children and posterity.

Article 6 (1-2)

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

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 (see para. 2.2).

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 May 2020, the State party submitted its observations on the admissibility and merits of the complaint.³ It submits that the communication should be found inadmissible for lack of jurisdiction, for failure to exhaust domestic remedies and for lack of substantiation of the claims for purposes of admissibility.

4.2 The State party notes the authors' argument that pursuing remedies at the respondent States parties' domestic levels would be too costly for the authors. The State party notes that the cost of domestic remedies is not listed in article 7(e) of the Optional Protocol among the grounds that justify the non-exhaustion of domestic remedies. It further notes that the Human Rights Committee has found that "financial considerations" regarding domestic remedies "do not absolve the author from exhausting them".⁴

4.3 The State party further notes the authors' claim that as domestic courts of any of the respondent States parties cannot provide remedy for the climate actions of other respondents, it would be unduly burdensome for the authors to try to exhaust each of the respondent States parties domestic remedies in a case concerning global climate action. The State party notes that this argument is not included either as a justification for non-exhaustion in article 7(e) of the Optional Protocol and it further submits that respondent States parties are not under an obligation to provide remedy for the climate actions of other respondents. It however notes that domestic remedies in each respondent State party may bring relief to the authors in respect of the state concerned. Therefore, exhausting domestic remedies in each respondent State party may provide remedy to injuries they claim to have incurred.

4.4 The State party argues that there are effective domestic remedies in the State party for children claiming that their fundamental rights have been violated. In accordance with article 90 of the Constitution, international agreements duly put into effect have the force of law. Therefore, persons can bring forward their rights safeguarded under the Convention before domestic courts. Furthermore, in accordance with article 148 of the Constitution, everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms guaranteed by the Constitution has been violated by public authorities. Article 56 of the Constitution recognizes everyone's right to live in a healthy and balanced environment and places a duty on the State to improve the natural environment, to protect the environmental health and to prevent environmental pollution. Therefore, it would have been open to the authors to effectively claim their rights safeguarded under the Convention as well as the within the Turkish legal system before the Constitutional Court.

4.5 The State party notes the authors' claims that exhausting domestic remedies would cause unreasonable delay. However, it argues that the authors have failed to put forward any evidence to support this allegation or to bring forward any substantial claim in relation to Turkey. The State party therefore submits that the authors' argument is unsubstantiated and should be dismissed.

4.6 The State party finally argues that the authors have failed to present any evidence that the material and moral injuries they claim to have incurred are caused by the direct or indirect actions of the State party and that it is therefore not possible to establish a causal link between alleged harm to the authors and the State party's actions or omissions.

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 that the Committee is competent to examine the communication as the State party has effective control over economic activities in its territory that emit greenhouse

³ For the purposes of the present decision, only the State party's observations on admissibility will be reflected.

⁴ *P.S. v. Denmark*, (CCPR/C/45/D/397/1990).

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 GHG 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. The authors argue as to the specific question of causation, i.e. whether climate change, to which the State party is contributing, has caused an actual or imminent violation of the rights of each author, is a merits issue. At the admissibility phase, they have presented substantiated allegations of the actual and imminent violations of their rights to life, health, and cultural rights caused by climate change. The authors finally argue that the violations of their rights are entirely foreseeable. For decades, climate scientists have warned that unchecked emissions will have a direct effect on children around the world. In 1990, the IPCC's first report warned the international community that without sufficient emission-reductions, global warming would cause the very same adverse climate impacts that now injure and threaten the authors, from the spread of malaria and deadly wildfires to rising seas engulfing atolls.⁵

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 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 Draft Article on Diplomatic Protection, 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.⁶ 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.

5.5 The authors argue that the domestic remedy identified by the State party would be ineffective.⁷ They argue that do not have the standing necessary to bring a case in Turkish administrative court of the Council of State because none of them were born, currently reside, or have assets in Turkey, which are required for individuals to demonstrate a legally recognized personal interest under Turkish administrative law. Similarly, they do not meet victim status needed for the Constitutional Court to exercise *ratione personae* jurisdiction because none of them physically reside or own property close to a location in Turkey that has suffered negative environmental impacts. They further argue that domestic remedies would be highly unlikely to result in effective relief because the Convention is not directly incorporated into domestic law, and no implementing legislation provides a basis for seeking the authors' specific remedies relating to the climate crisis. They also argue that domestic remedies would be ineffective as no domestic legislation in the State party implements

⁵ IPCC, Policymaker Summary of Working Group II (Potential Impacts of Climate Change) at 88, 102–03, 107–08 (1990).

⁶ Draft Articles on Diplomatic Protection with commentaries, Report of the International Law Commission on the work of its fifty-eighth session, (2006), article 15 (c) at 48–49.

⁷ The authors refer to Appendix D to their comments, Expert Report of Başak Çalı and Kerem Altıparmak.

articles 6, 24, and 3 with the aim of protecting children from the effects of the climate crisis. Although the Child Protection Law of 2005 implements some aspects of the Convention, its scope is limited to the protection of children in the context of child abuse or negligence and administration of justice.” They further argue that the Constitutional Court would not grant effective relief, given the wide margin of appreciation it affords public authorities in cases concerning the environment. They note that the Court has concluded that it has no “duty to determine how environmental disturbances could be ended or reduced”.⁸ Finally, they argue that given the State party’s reservation to article 30 of the Convention, the authors cannot raise their claims under article 30 before domestic administrative courts or the Constitutional Court.

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. They further argue that delays are a barrier in the Turkish judicial system. An administrative court case lasts at least two years, including appeal stages, while a Constitutional Court may take longer than five years to resolve.

5.7 The authors note that the State party has entered as reservation to article 30 of the Convention.⁹ They argue that the reservation is incompatible with the object and purpose of the Convention and, if it applies at all, would only apply to Turkish citizens.

5.8 The authors note that article 51 of the Convention expressly states that “[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted.” Under the International Law Commission (ILC) guidelines on treaty reservations, “[a] reservation is incompatible with the object and purpose of the treaty if it affects an essential element of the treaty that is necessary to its general thrust, in such a way that the reservation impairs the *raison d’être* of the treaty.”¹⁰ More specifically, such an “essential element” “may be a norm, a right or an obligation which, interpreted in context, is essential to the general thrust of the treaty and whose exclusion or amendment would compromise its *raison d’être*.”¹¹ The validity of a reservation made to “safeguard the application of [a state’s] domestic law”¹² depends on its compatibility with the “object and purpose” of the treaty at issue:¹³ A reservation by which a State or an international organization purports to exclude or to modify the legal effect of certain provisions of a treaty or of the treaty as a whole in order to preserve the integrity of specific norms of the internal law of that State or rules of that organization may be formulated only insofar as it is compatible with the object and purpose of the treaty.¹⁴ A State may not “use its domestic law as a cover for not actually accepting any new international obligation, even though a treaty’s aim is to change the practice of States parties to the treaty.”¹⁵ The authors argue that cultural rights are central to the object and purpose of the Convention. The preamble to the Convention clarifies that a central objective of it is providing for “full and harmonious development” of the child. In ensuring such development, States parties should take “due account of the importance of the traditions and cultural values of each people.” Article 4 requires States parties to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention,” which would include the right to culture. Specifically, “[w]ith regard to economic, social and cultural rights, States Parties shall

⁸ *Mehmet Kurt Application* [GC], No: 2013/2552, 25/2/2016, para. 78; *Ahmet İsmail Onat Application*, No: 2013/6714, 21 /4/2016, para. 87.

⁹ The reservations reads: “The Republic of Turkey reserves the right to interpret and apply the provisions of articles 17, 29 and 30 of the United Nations Convention on the Rights of the Child according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne of 24 July 1923.”

¹⁰ Report of the International Law Commission on the work of its 59th session, 2007 Y.B. Int’l Law. Comm’n , vol. II, U.N. Doc. A/CN.4/SER.A/2007/Add.1 (Part 2) at 33 (2007).

¹¹ *Ibid.*, at 37.

¹² Special Rapporteur, Mr. Alain-Pellet, *Tenth report on reservations to treaties*, A/CN.4/558/Add.1, para. 103 (June 30, 2005), https://legal.un.org/ilc/documentation/english/a_cn4_558.pdf.

¹³ *ILC Guidelines* at 32.

¹⁴ *Ibid.*

¹⁵ Report of the International Law Commission on the work of its 59th session, at 51.

undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.” In General Comment No. 11, the Committee notes that “[t]he specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights.”¹⁶ The authors argue that in analysing the Convention “as a whole, in good faith, in its entirety,”¹⁷ it is evident from preamble to general comments that a child’s right to culture is an essential element of the Convention. It notes that the Committee has made several recommendations to the State party to withdraw its reservation to article 30.¹⁸ Even if the Committee were to recognize the reservation, it must limit its application to the State party nationals in Turkey. The reservation should not abdicate its obligation under the Convention to respect and ensure the right to culture of indigenous and other peoples outside of the State party’s territory over which it may have jurisdiction.

Third-party intervention

6. On 1 May 2020, a third-party intervention was submitted before the Committee by David R. Boyd and John H. Knox, current and former UN Special Rapporteurs on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.¹⁹

Oral hearing

7.1 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 10 September 2021 via videoconference, answered questions from Committee members on their submission and provided further clarifications.

Oral comments by the authors

7.2 The authors reiterate their argument that filing an application to the Constitutional Court under article 148 of the Constitution would be unlikely to bring effective relief. They note that in order to file a petition before the Constitutional Court, they would first have to exhaust administrative court remedies and they claim that none of them would be able to demonstrate legal standing in an administrative procedure because they were not born in State party, and do not live or have assets there. They further argue that, assuming that they succeeded in having their case heard by the administrative court, they would have to satisfy a similarly restrictive standing requirement before the Constitutional Court. To have standing, an applicant must be “personally” and “directly” affected by the action at issue. The Constitutional Court has interpreted this requirement to mean being physically close to the source of environmental harm and it has found inadmissible petitions filed by applicants who do not have ownership of a property or a residence in close vicinity to a project affecting the environment.

7.3 The authors further argue that even if the authors were able to establish personal jurisdiction, the Constitutional Court would not consider certain central claims to their petition. They argue that their claims based on the right to culture would fall outside the subject matter jurisdiction of the Constitutional Court as the right to file an individual petition before the Constitutional Court only pertains to rights that are at the intersection of the provisions of the European Convention on Human Rights and the Turkish Constitution. Cultural rights are not, and they are thus excluded from the jurisdiction of the Constitutional Court. In addition, the State party only recognizes rights of individuals belonging to minorities if they are members of the Greek or Jewish minorities as stipulated in the Treaty of Lausanne of 1923. This extremely narrow interpretation of rights of individuals belonging to minorities, including children, does not protect the rights of children that are members of other minority groups residing within the State party’s own borders let alone those in the

¹⁶ CRC, General Comment No. 11 (2009) Indigenous children and their rights under the Convention, U.N.Doc. CRC/C/GC/11, para. 5.

¹⁷ ILC Guidelines at 38.

¹⁸ CRC, Concluding Observations of the Committee on the Rights of the Child: Turkey, 27th Sess., CRC/C/15/Add.152, ¶ 12 (July 9, 2001), CRC, Concluding Observations: Turkey, 60th Sess., CRC/C/TUR/CO/2-3, ¶ 9 (July 20, 2012).

¹⁹ For further information, see *Sacchi et al v. Germany* (CRC/C/88/DR/107/2019), paras. 6.1-6.5.

Marshall Islands and Alaska. Second, foreign state immunity would bar the authors' claims against France, Germany, Brazil, and Argentina before State party courts.

7.4 The authors finally argue that the procedure in the Constitutional Court would be unreasonably prolonged. They note in the case *Ertuğrul Barka and Others*, a case involving impacts of gold mining, the procedure before administrative courts and the Constitutional Court lasted for around 14 years. They argue that their case, if filed in the State party, would face similar if not worse delays and that climate action cannot wait that long.

Oral observations by the State party

7.5 The State party emphasizes that it shares the concerns of the authors regarding climate change and its global consequences but notes that an individual communication is not the right avenue to combat climate change and global warming.

7.6 The State party argues that, as none of the authors are residing in Turkey, they are not subject to the State party's jurisdiction. It argues that a State's jurisdiction within the meaning of the Convention and its Protocols is primarily territorial, with one of the main exceptions being cases where the State has assumed effective control outside its territory, as established by General Comment No. 31 of the Human Rights Committee. It argues that in the present case, the complaints raised by the authors do not fall within or even come close to any of the established exceptions to territorial jurisdiction and that the authors have no legal or factual relationship with the State party. Acceptance of such extra-territorial jurisdiction over the authors would mean acceptance of the respondent States' effective control on a global scale, over every State. Such broader view of jurisdiction on the global scale would cause an unacceptable uncertainty in respect of jurisdiction, risk the erosion of jurisdiction as a tenable concept and undermine the fundamental principle of State sovereignty. The State party further argues that the alleged acts or omissions of the State party do not have direct and reasonably foreseeable impact on the authors to establish a causal link and that greenhouse gasses emitted in the State party do not cause direct and foreseeable impact to individuals living thousands of kilometres away. It is impossible to determine that emissions from a specific country directly affect a specific place or region. It argues that a State's general contribution to the global phenomenon of climate change cannot in law be equated with a direct and specific impact on the authors' living conditions.

7.7 Regarding the issue of exhaustion of domestic remedies the State party reiterates that according to article 148 of the Constitution, everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. Exhaustion of ordinary legal remedies is a prerequisite for an application to the Constitutional Court. However, in many of its decisions involving situations where an "unavoidable harm" may occur, the Constitutional Court has stated that an individual application can be made by any person, including non-nationals, directly to the Court without exhausting ordinary domestic remedies. The Constitutional Court has found admissible and examined the merits of many applications regarding the consequences of environmental activities that were claimed to have adversely affected the right to life, the right to respect for private and family life, and the right to property. For example, in a judgment regarding individual application of Mehmet Kurt, the Constitutional Court examined complaints regarding the construction of a hydroelectric power plant and concluded that the public authorities did not fulfil their positive obligations and decided that the right of the applicant to protect and improve his corporeal and spiritual existence had been violated. In another example, the Constitutional Court, in the application of Binali Özkaradeniz and others, examined the complaint regarding the failure to collect sewage waste in accordance with the legislation and concluded that the public authorities had not fulfilled their obligations, and decided that the applicants' rights to respect for private and family life had been violated.

7.8 The State party further notes that article 56 of the Constitution states that everyone has the right to live in a healthy and balanced environment. With the term "everyone", the Constitution does not distinguish between nationals and non-nationals. Non-nationals have full standing before the Constitutional Court under the same conditions as nationals. Children may also apply to the Court, through their legal representatives. As for the other possible

avenues for remedy, those whose interests are violated due to actions and acts of administrative authorities can initiate administrative proceedings. The State party notes that the term “violation of interests”, has a much wider scope than “violation of rights” and the Council of State interprets the concept of “violation of interests” quite broadly. The Council of State has, for instance, in a case filed by the Turkish branch of Greenpeace regarding the environmental effects of a nuclear power plant project, concluded that the applicants’ personal interests were affected. In addition, pursuant to the Law on the Environment, anyone who is harmed or aware of an activity that pollutes or degrades the environment, may request the necessary measures to be taken or the cessation of the activity. The Environmental Law does not make any difference between the nationals and non-nationals in accessing the courts.

7.9 The State party informs that the application fee for an individual application before the Constitutional Court is 57 US dollars. There are no further legal costs to be paid apart from this fee. It further notes that it would cost approximately 70 US dollars to file an annulment suits before the Council of State and approximately 30 US dollars to file a suit before the administrative courts. Those who have difficulty in paying litigation costs can benefit from legal aid. Beneficiaries of legal aid are entitled to exemption from litigation costs and have the opportunity to be represented by a lawyer at no charge. The Constitutional Court does not distinguish between nationals and non-nationals in terms of legal aid. For instance, as of July 2021, 63 applications requesting legal aid have been lodged before the Constitutional Court by non-nationals and none of them has been declined. For administrative proceedings, legal aid for non-nationals is subject to reciprocity condition. This condition can be satisfied either *de facto* or through bilateral or multilateral agreements between States.

7.10 The State party notes that in 2020, applications were concluded in an average of eight months before the administrative courts, one year and six months before the Council of State and two and a half years before the Constitutional Court. Additionally, under the Administrative Jurisdiction Procedures Law, some types of litigation involving environmental issues are subject to a speedy procedure, where the proceedings are concluded faster than ordinary procedures without compromising its efficiency.

Oral hearing with the authors

8. 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

9.1 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

9.2 The Committee notes the State party’s submission that the complaint is inadmissible for lack of jurisdiction as none of the authors reside in the State party and as they have no legal or factual relationship with it. 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.

9.3 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.²⁰

9.4 The Committee notes the Human Rights Committee’s and the European Court of Human Rights’ relevant jurisprudence referring to extraterritorial jurisdiction.²¹ 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.

9.5 The Committee further recalls the Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights on the Environment and Human Rights, which has particular relevance to the issue of jurisdiction in the present case as it clarified the scope of extraterritorial jurisdiction in relation to environmental protection. The Court noted that when transboundary damage occurs that 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 State of origin exercises effective control over the activities that caused the damage and consequent human rights violation.²² 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.²³ 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.²⁴

9.6 The Committee further notes that in its Joint Statement on Human Rights and Climate Change²⁵ 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

²⁰ 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.

²¹ 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.

²² Advisory Opinion, para. 104 (h)

²³ 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.

²⁴ *Ibid.* para. 103.

²⁵ Joint Statement on ‘Human Rights and Climate Change’, CEDAW, CESC, CMW, CRC, CRPD, 16 September 2019.

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.

9.7 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.²⁶

9.8 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.

9.9 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.

9.10 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.²⁷

9.11 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 Convention²⁸, 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.

9.12 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' position²⁹ that not every negative impact in cases of

²⁶ 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.

²⁷ 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.

²⁸ 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.

²⁹ Advisory Opinion, para. 102.

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.”³⁰ 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.³¹

Victim status

9.13 In the specific circumstances of the present case, the Committee notes the authors’ claims that their rights under the Convention have been violated by the respondent States parties’ acts and omissions in contributing to climate change and their claims that said harm will worsen as the world continues to warm. It notes the authors’ claims to have been personally affected by: smoke from wildfires and heat-related pollution has caused some of the authors’ asthma to worsen, requiring hospitalizations; that the spread and intensification of vector-borne diseases has also impacted the authors, resulting in some of the authors contracting malaria multiple times a year or contracting dengue fever and chikungunya; that the authors have been exposed to extreme heat waves causing serious threat to the health of many of the authors; that drought is threatening the water security for some of the authors; that some of the authors have been exposed to extreme storms and flooding; that the subsistence level of life is at risk for the indigenous authors; that due to the rising sea level the Marshall Islands and Palau are at risk of becoming uninhabitable within decades; and that climate change has affected the mental health of the authors, some of whom claim to suffer from climate anxiety.³² 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.³³

9.14 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

9.15 The Committee further notes the State party’s argument that the communication should be found inadmissible for failure to exhaust domestic remedies. 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

³⁰ Advisory Opinion, paras. 81, 102.

³¹ 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.

³² See further para. 2.2.

³³ Preamble; A/HRC/31/52, para. 81, CRC Report of the 2016 day of general discussion ‘Rights and the Environment, p. 23.

their claims, which implicates a state's obligations of international cooperation, because of the non-justiciability of foreign policy and foreign sovereign immunity. In this regard, however, the Committee notes the State party's argument that domestic remedies were available to the authors, including by: filing an application before the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities; initiating administrative proceedings; or filing a suit under the Law on the Environment. It notes the State party's information that non-nationals, including children, have standing in said procedures and that legal aid is available. The Committee further notes the authors' arguments that domestic courts would most likely dismiss their claims due to a lack of standing.

9.16 The Committee recalls that authors must make use of all judicial or administrative avenues that may offer them a reasonable prospect of redress. The Committee considers that domestic remedies need not be exhausted if they objectively have no prospect of success, for example in cases where under applicable domestic laws, the claim would inevitably be dismissed or where established jurisprudence of the highest domestic tribunals would preclude a positive result. However, the Committee notes that mere doubts or assumptions about the success or effectiveness of remedies do not absolve the authors from exhausting them.³⁴

9.17 In the present case the Committee notes that the authors have not initiated 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, in the form of an individual application before the Constitutional Court, an administrative proceeding or a suit filed under the Law on the Environment before the domestic courts. 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.

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

9.19 The Committee further notes the authors' argument that pursuing remedies in the State party would be unreasonably prolonged and notes that the authors refer to one case in the State party which took 14 years to decide. However, the Committee considers that, the authors have failed to establish the connection of that case with the remedies that would be available within the State party to address their specific claims or to otherwise indicate how the deciding periods would be unreasonably prolonged or unlikely to bring relief within the meaning of article 7 (e) of the Optional Protocol, particularly in light of the information provided by the State party on the average time for concluding such procedures in question. 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

³⁴ (CRC/C/83/D/60/2018), para. 6.5.

of any attempt by them to initiate domestic proceedings in the State party, the authors have failed to exhaust domestic remedies.

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

10. 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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