

Annex 627

“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. 104/2019”, CRC/C/88/D/104/2019, *UN Committee on the Rights of the Child*, 11 November 2021



Convention on the Rights of the Child

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Committee on the Rights of the Child

Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 107/2019^{*}, ^{**}

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

1.1 The authors of the communication are Chiara Sacchi, a national of Argentina; Catarina Lorenzo, a national of Brazil; Iris Duquesne, a national of France; Raina Ivanova, a national of Germany; Ridhima Pandey, a national of India; David Ackley III, Ranton Anjain and Litokne Kabua, nationals of the Marshall Islands; Deborah Adegbile, a national of Nigeria; Carlos Manuel, a national of Palau; Ayakha Melithafa, a national of South Africa; Greta Thunberg and Ellen-Anne, nationals of Sweden; Raslen Jbeili, a national of Tunisia; and Carl Smith and Alexandria Villaseñor, nationals of the United States of America. At the time of the submission of the complaint, the authors were all under the age of 18 years. They claim

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

** The following members of the Committee participated in the examination of the communication: Suzanne Aho, Hynd Ayoubi Idrissi, Rinchen Chopel, Bragi Gudbrandsson, Sopio Kiladze, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Clarence Nelson, Otani Mikiko, Luis Ernesto Pedernera Reyna, Zara Ratou, José Ángel Rodríguez Reyes, Aïssatou Alassane Sidikou, Ann Marie Skelton, Velina Todorova and Benoit Van Keirsbilck. Pursuant to rule 8 (1) (a) of the Committee's rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Philip Jaffé did not participate in the examination of the communication.



that, by failing to prevent and mitigate the consequences of climate change, the State party has violated their rights under articles 6, 24 and 30, read in conjunction with article 3 of the Convention.¹ The Optional Protocol entered into force for the State party on 14 April 2014.

1.2 On 20 November 2019, pursuant to article 8 of the Optional Protocol and rule 18 (4) of the Committee's rules of procedure under the Optional Protocol, the working group on communications, acting on behalf of the Committee, requested the State party to submit its observations on the admissibility of the communication separately from its observations on the merits.

Facts as submitted by the authors

2.1 The authors note that the Earth is 1.1°C hotter than before the industrial revolution, and it is approaching a tipping point of foreseeable and irreversible catastrophic effects. If the Earth becomes 2°C hotter, the exacerbated air pollution alone is forecast to cause 150 million deaths. If the Earth becomes 3–4°C hotter by 2100, which is the current trajectory if States do not make drastic emissions reductions, the impacts of climate change will threaten the lives and welfare of over 2 billion children.

2.2 Hotter temperatures foster the spread of infectious diseases and exacerbate health hazards. In Lagos, Nigeria, one of the authors, Deborah Adegbile, has been repeatedly hospitalized for asthma as hotter temperatures worsen the air quality. Mosquito-borne diseases have spread to new regions. In the Marshall Islands in 2019, another author, Ranton Anjain, contracted dengue, which has now become prevalent in the islands. Author David Ackley III contracted chikungunya, a disease new to the Marshall Islands since 2015. Wildfires are becoming increasingly frequent and intense because of hotter and drier conditions. In Tabarka, Tunisia, author Raslen Jbeili heard screams one night and saw a wildfire approaching his home; he was spared, but his neighbours were not. In the United States of America, author Alexandria Villaseñor suffered smoke inhalation from the wildfire in Paradise, California, and was bedridden for three weeks. Heatwaves and drought are threatening children's lives and creating water scarcity. In Cape Town, South Africa, drought has forced author Ayakha Melithafa's family and 3.7 million other residents to prepare for the day municipal water supplies run dry. In Bordeaux, France, the first summer of author Iris Duquesne's life was the hottest in Europe since 1540 and tens of thousands of people died in the heatwave of 2003. Extreme storms, which were once rare, are now regular events. On Ebeye in the Marshall Islands, a violent storm forced author Litokne Kabua and his family to evacuate to a United States army base. In Haedo, Argentina, an unprecedented windstorm devastated author Chiara Sacchi's neighbourhood. In Hamburg, Germany, author Raina Ivanova waded through knee-deep water on her school grounds during storm Herwart in 2017. South Atlantic storms occur more often in Bahia, Brazil; one damaged the home of author Catarina Lorenzo. Floods and rising sea levels are transforming children's relationships with the land. The Marshall Islands could become uninhabitable within decades. In Palau, author Carlos Manuel sees waves increasingly breach the sea walls and crash into homes as the level of the Pacific Ocean rises. In Haridwar, India, author Ridhima Pandey has seen downpours flood infrastructure and cause sewage to overflow into the sacred Ganges River, increasing the risk of infectious diseases. The subsistence way of life of many indigenous communities is at stake. In northern Sweden, author Ellen-Anne is learning the reindeer herding traditions of the Sami people, passed down over millennia, but climate change is destroying the reindeers' food sources. In Akiak, Alaska, in the United States, author Carl Smith learned to hunt and fish from the elders of the Yupiaq tribe, but the salmon population on which they rely has been dying from heat stress in record numbers, and the rising temperatures have prevented his tribe from accessing traditional hunting grounds. Climate change has affected children's mental health around the world. As the American Psychological Association has observed, psychologists now grapple with new, twenty-first century disorders, including climate anxiety and solastalgia – mourning the destruction of a cherished place.² In Sweden,

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

² The authors refer to Susan Clayton and others, *Mental Health and our Changing Climate: Impacts, Implications, and Guidance* (Washington, D.C., American Psychological Association, 2017), pp. 22–23 and 25–27.

Greta Thunberg states that she was so disturbed by the climate crisis that she fell into depression and stopped eating.

2.3 The authors claim that the State party has known about the harmful effects of its internal and cross-border contributions to climate change for decades. In 1992, it signed the United Nations Framework Convention on Climate Change and undertook to protect children from the foreseeable threats of climate change. It was clear then that every metric ton of carbon dioxide that it emitted or permitted was adding to a crisis that transcends all national boundaries and threatens the rights of all children everywhere. It was even clearer that the emissions were endangering children's lives in 2016, when the State party signed the Paris Agreement, pledging to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels. The State party has not kept or met that pledge, which in itself is inadequate to prevent human rights violations on a massive scale. The State party has failed to prevent foreseeable human rights harms caused by climate change by failing to reduce its emissions to a level that reflects its "highest possible ambition", pursuant to article 4 (3) of the Paris Agreement. It is delaying the steep cuts in carbon emissions needed to protect the lives and welfare of children at home and abroad. It is not on an emissions pathway that is consistent with keeping global warming under 3°C, much less under 1.5°C. In the 20 years that followed the signing in 1997 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, the world produced more emissions than in the 20 years before. Every nation has contributed to climate change. For decades, the excuse that no harm can be traced to any particular emission or country, and thus that no State bears responsibility, has led to inaction. Nevertheless, under human rights law, States are individually responsible for, and should be held accountable for, their sovereign actions and inactions that cause and contribute to climate change, and thereby breach their fundamental human rights obligations. As a major historical emitter and influential member of the Group of 20, a forum of the world's 20 leading economies, the State party must lead by example, reducing emissions at the greatest possible rate and at a scale that is scientifically established to protect life. Moreover, emissions from other Group of 20 members, in particular the four major emitters, must also be curbed to ensure respect for children's rights. Therefore, the State party must also use all available legal, diplomatic and economic tools to ensure that the major emitters are also decarbonizing at a rate and scale necessary to achieve the collective goals.³

2.4 The authors note that the Committee, in the joint statement on human rights and climate change that it issued with four other treaty bodies, recognized that "States parties have obligations, including extraterritorial obligations, to respect, protect and fulfil all human rights of all peoples". These obligations include a duty "to prevent foreseeable harm to human rights caused by climate change" and "to regulate activities contributing to such harm". In that joint statement, the Committees clarified the fact that: "In order for States to comply with their human rights obligations and to realize the objectives of the Paris Agreement, they must adopt and implement policies aimed at reducing emissions. These policies must reflect the highest possible ambition, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development."⁴ The authors also note that the Committee recognized these principles in its general comment No. 16 (2013), observing that "if children are identified as victims of environmental pollution, immediate steps should be taken by all relevant parties to prevent further damage to the health and development of children and repair any damage done" (para. 31).

³ The authors argue that the States party's ability to influence international cooperation makes its impact on climate change greater than its actual share of emissions. They argue that the State party can influence other States through trade, aid and diplomacy and that it has a duty to use its influence to protect children from environmental threats caused by the world's other major emitters, especially the top four States or regions, which account for 58 per cent of all emissions: China (26.3 per cent), the United States (13.5 per cent), the European Union (9.4 per cent) and India (7.3 per cent). The authors note that the State party ranks in the top 50 historical emitters between 1850 and 2002, based on fossil fuel emissions. The authors refer to Kevin A. Baumert, Timothy Herzog and Jonathan Pershing, *Navigating the Numbers: Greenhouse Gas Data and International Climate Policy* (Washington D.C., World Resources Institute, 2005), p. 32.

⁴ [HRI/2019/1](#), paras. 10–11.

2.5 The authors argue 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. They argue they are all victims of the foreseeable consequences of the carbon pollution knowingly emitted, permitted or promoted by the State party from within its territory. They note that a State's jurisdiction extends beyond its territorial boundaries to territories and persons within its power or over which it has control.⁵ A State also has jurisdiction in situations over which its acts or omissions bring about foreseeable effects, whether within or outside its territory.⁶ International human rights jurisprudence has now established that control over the individual is sufficient to establish the requisite jurisdictional link, and a sufficient degree of control may be found in the conduct constituting the violation itself, be it environmental damage, cross-border shootings or pushbacks of asylum seekers on land or at sea. The authors note that, in its general comment No. 16 (2013), the Committee indicated that "States also have obligations ... to respect, protect and fulfil children's rights in the context of businesses' extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned" (para. 43). The authors argue that the Committee should recognize that, in the context of human rights violations caused by climate change, a child is within the jurisdiction of a State party when: (a) that State's acts or omissions contribute to a polluting activity originating in its territory; and (b) that polluting activity directly and foreseeably impacts the rights of children within or outside that State's territory. The authors claim that the State party is causing and perpetuating climate change through its historic and current carbon pollution. It does so despite its decades-old knowledge that by contributing to climate change, it risks the lives and welfare of children within and outside its territory. The authors are the foreseeable victims of that pollution; their present injuries and exposure to risks are precisely the life-threatening harm that the State party knew would occur if it failed to use all available means to reduce emissions and cooperate internationally to prevent global warming. As a result, the authors are within the jurisdiction of the State party.

2.6 The authors argue that they would face unique obstacles in exhausting domestic remedies because of the global scope and nature of the harm caused to 16 children worldwide and the breaches of the State party through its individual and collective actions. Exhausting domestic remedies in each State party would be unduly burdensome for the authors and unreasonably prolonged. The authors further argue that their complaint involves legal questions of justiciability of diplomatic relations and foreign sovereign immunity with respect to other States in the domestic courts. The authors allege that the State party has failed to use legal, economic and diplomatic means to persuade other Group of 20 member States and fossil fuel industries to reduce their emissions. This claim implicates a State's obligations of international cooperation and its duty to protect children's rights under the Convention. However, the authors are not aware of any domestic legal avenue in the State party permitting judicial review of its diplomatic relations. The authors recognize that important climate cases are proceeding in Belgium, France, Germany, India, the Netherlands and other countries, which focus on climate policies in the respective countries.⁷ Nevertheless, they argue that, for the reasons of immunity and justiciability stated above, those cases do not and could not address the climate policies of foreign States or States' failure to cooperate internationally.

⁵ Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation on States parties to the Covenant, para. 10.

⁶ The authors refer to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, principle 9 (b).

⁷ The authors refer to District Court of The Hague, *Urgenda Foundation v. Kingdom of the Netherlands*, Case No. C/09/456689 / HA ZA 13-1396, Judgment of 24 June 2015; Administrative Court of Paris, *Greenpeace France and Others v. France*, Case Nos. 1904967, 1904968, 1904972 and 1904976/4-1, Decision of 14 October 2021; Administrative Court of Berlin, *Family Farmers and Greenpeace Germany v. Germany*, Case No. VG 10 K 412.18, Judgment of 31 October 2019; General Court of the European Union, *Armando Ferrão Carvalho and Others v. The European Parliament and the Council*, Case No. T-330/18, Judgment of 8 May 2019; United States District Court for the District of Oregon Eugene Division, *Juliana v. United States*, Case No. 339 F. Supp. 3d 1062 (D. Or. 2018), Judgment of 15 October 2018; Court of First Instance, Brussels, *VZW Klimaatzaak v. The Kingdom of Belgium, et al.*, Case No. 2015/4585/A, Judgment of 17 June 2021.

Complaint

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

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

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

Article 6

3.4 The authors claim that the State party’s acts and omissions perpetuating the climate crisis have already exposed them throughout their childhoods to the foreseeable, life-threatening risks of climate change caused by humans, be they in the forms of heat, floods, storms, droughts, disease or polluted air. A scientific consensus shows that the life-threatening risks confronting them will increase throughout their lives as the world heats up by 1.5°C above the pre-industrial era and beyond.

Article 24

3.5 The authors claim that the State party’s acts and omissions perpetuating the climate crisis have already harmed their mental and physical health, with the effects ranging from asthma to emotional trauma. The harm violates their right to health under article 24 of the Convention and will become worse as the world continues to warm up.

Article 30

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

Article 3

3.7 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 has failed to act in accordance with the principle of intergenerational equity. The authors note that, while their complaint documents the violation of their rights under the Convention, the scope of the climate crisis should not be reduced to the harm suffered by a small number of children. Ultimately at stake are the rights of every child, everywhere. If the State party, acting alone and in concert with other States, does not immediately take the measures

available to stop the climate crisis, the devastating effects of climate change will nullify the ability of the Convention to protect the rights of any child, anywhere. No State acting rationally in the best interests of the child would ever impose this burden on any child by choosing to delay taking such measures. The only cost-benefit analysis that would justify any of the respondents' policies is one that discounts children's lives and prioritizes short-term economic interests over the rights of the child. Placing a lesser value on the best interests of the authors and other children in the climate actions of the State party is in direct violation of article 3 of the Convention.

3.8 The authors request that the Committee find: (a) that climate change is a children's rights crisis; (b) that the State party, along with other States, has caused and is perpetuating the climate crisis by knowingly acting in disregard of the available scientific evidence regarding the measures needed to prevent and mitigate climate change; and (c) that by perpetuating life-threatening climate change, the State party is violating the authors' rights to life, health and the prioritization of the best interests of the child, as well as the cultural rights of the authors from indigenous communities.

3.9 The authors further request that the Committee recommend: (a) that the State party review and, where necessary, amend its laws and policies to ensure that mitigation and adaptation efforts are being accelerated to the maximum extent of available resources and on the basis of the best available scientific evidence to protect the authors' rights and make the best interests of the child a primary consideration, particularly in allocating the costs and burdens of climate change mitigation and adaptation; (b) that the State party initiate cooperative international action – and increase its efforts with respect to existing cooperative initiatives – to establish binding and enforceable measures to mitigate the climate crisis, prevent further harm to the authors and other children, and secure their inalienable rights; and (c) that pursuant to article 12 of the Convention, the State party ensure the child's right to be heard and to express his or her views freely, in all international, national and subnational efforts to mitigate or adapt to the climate crisis and in all efforts taken in response to the authors' communication.

State party's observations on admissibility

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

4.2 The State party submits that the communication is inadmissible for lack of jurisdiction with regard to all the authors except for the one author of German nationality. It notes that under article 2 (1) of the Convention, States parties ensure the rights set forth in the Convention "to each child within their jurisdiction". It argues that the authors who do not reside in Germany are not within its jurisdiction and that a prerequisite for the extraterritorial application of children's rights is that national actions have a direct and foreseeable impact on the rights of the alleged victims in other countries. It notes that in its Advisory Opinion OC-23/17 on the environment and human rights, the Inter-American Court of Human Rights expressly highlighted the fact that "situations in which the extraterritorial conduct of a State constitutes the exercise of its jurisdiction are exceptional and, as such, should be interpreted restrictively".⁸ Furthermore, according to the interpretation of the Human Rights Committee, in order to establish jurisdiction, actions need to have a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, while the European Court of Human Rights has held that there needs to be a direct and immediate cause for extraterritorial jurisdiction to be established. There is no such direct or immediate and foreseeable impact on the rights of the authors by way of action or non-action by the State party in the present case. The authors claim that their rights are impaired due to ongoing climate change. Climate change is a consequence of the worldwide emission of greenhouse gases. The emission of greenhouse gases in one State certainly contributes to the worsening of climate change, but it does not directly and foreseeably impair the rights of people in other States. Consequently,

⁸ Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, requested by the Republic of Colombia, on the environment and human rights, para. 81.

jurisdiction under the Convention over individuals affected by climate change worldwide cannot be established. In addition, the State party argues that the authors have not established victim status as, pursuant to article 5 (1) of the Optional Protocol, an individual communication is admissible only if a specific infringement of a right included in the Convention is presented. It notes that the German author has stated that she is concerned because of flooding that occurred in her area, which was very upsetting for her. Although the concern for her own future in view of current environmental changes is understandable, it does not constitute an impairment of any right established under the Convention.

4.3 The State party also submits that the communication is manifestly ill-founded and thus inadmissible under article 7 (f) of the Optional Protocol as the claims raised by the authors do not fall under the Convention or the Optional Protocol. It notes that the authors argue that climate change should be defined as a children's rights crisis and it notes their claims that the State party, along with other States, has caused and is perpetuating climate change by knowingly acting in disregard of the available scientific evidence regarding the measures needed to prevent and mitigate climate change. The State party argues that, notwithstanding the actual effects of climate change on the rights of children worldwide, the declaration that climate change is a "children's rights crisis" is not admissible, as neither the Convention nor the Optional Protocol contain the term "children's rights crisis", nor are there criteria within the Convention which determine when an impairment of children's rights might lead to such a crisis. It further argues that the Convention and the Optional Protocol serve the purpose of securing and ensuring children's rights. They do not serve the purpose of an abstract identification of deficits.

4.4 Lastly, the State party submits that the communication is inadmissible for failure to exhaust available domestic remedies under article 7 (e) of the Optional Protocol. In the State party's system of legal protection, this means using available administrative and legal options for legal protection, for example by lodging a communication of unconstitutionality. The authors have not taken any legal action in Germany in order to achieve relief of the impairment of rights as claimed by them. The authors are free to initiate administrative law proceedings pursuant to section 40 of the Code of Administrative Court Procedure. They can make applications for a declaratory finding or "declaratory action" ("Feststellungsklage") under section 43 of the Code or file a "general suit for satisfaction" ("allgemeine Leistungsklage"). The authors could also raise their claims before domestic courts. According to article 59 (2) of the Basic Law of Germany, the Convention has the status of a federal law and therefore has to be considered by the courts *ex officio*. It would be possible for the authors to bring the alleged wrongdoing of domestic public sector bodies before national courts. In general, any State action which might infringe the rights of individuals can be reviewed by the courts under article 19 (4) of the Basic Law. The assumption that the costs of legal proceedings might be high does not exempt the authors from exhausting all legal remedies. In general, the costs of administrative court proceedings in the State party are not high. In addition, legal aid is available to individuals who, due to their financial situation, are not in a position to cover such costs.

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

5.1 In their comments of 4 May 2020, the authors maintain that the communication is admissible and insist that the Committee has jurisdiction to examine the complaint, that the complaint is sufficiently substantiated and that the pursuit of domestic remedies would be futile.

5.2 Regarding the issue of jurisdiction, the authors argue that the State party has effective regulatory control over emissions originating in its territory. Only the State party can reduce those emissions, through its sovereign power to regulate, license, fine and tax. Given that the State party exclusively controls these sources of harm, the foreseeable victims of their downstream effects, including the authors, are within its jurisdiction. Concerning 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.⁹ In article 47 of the articles on responsibility of States for internationally wrongful acts, the International Law Commission provided that: “Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.” In such cases, the responsibility of each participating State is determined individually, on the basis of its own conduct and by reference to its own international obligations.

5.3 The authors reiterate 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 harm from climate change do not constitute an *actio popularis*, even if children around the world may share their experiences or be exposed to similar risks.

5.4 The authors further reiterate 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 persuade other Group of 20 member States and fossil fuel industries to reduce their emissions. The State party 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. State immunity vitiates any possible remedy for transboundary harm caused by other States. The authors argue that the remedies they seek are non-justiciable or very unlikely to be granted by courts. Domestic courts would be unlikely or unable to order the legislative and executive branches to comply with their international climate obligations by reducing their emissions. Moreover, domestic courts are likely to provide wide discretion to the legislative and executive branches to determine what constitutes an appropriate climate policy. The remedies here also implicate political decisions in international relations. Domestic courts could not enjoin the Government to cooperate internationally in the fight against climate change. In summary, no court would impel the Government to take effective precautionary measures to prevent further harm to the authors.

5.5 Regarding the domestic remedies available to the authors referred to by the State party, the authors argue that, contrary to its statements, the State party has previously argued that its emissions-reduction policies cannot be challenged in domestic courts. The authors further argue that domestic courts would be most likely to dismiss their claims due to a lack of standing and the separation of powers. The German Climate Protection Act explicitly specifies that it does not create individual rights or grant individuals legal standing to seek judicial review of climate policies. Thus, government action based on the Climate Protection Act is not justiciable. Even if the authors were to invoke rights under the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) or the Convention on the Rights of the Child, State party jurisprudence acknowledges broad executive and legislative discretion with respect to protecting fundamental rights. This wide latitude to the executive and legislative branches is only limited by extreme incapacity, for example if protective measures have not been taken, if the regulations and measures taken are obviously unsuitable or completely inadequate or if they are based on unjustifiable assessments. The first domestic case brought in the State party regarding emissions reductions was dismissed as inadmissible. In *Family Farmers and Greenpeace Germany v. Germany*, the Administrative Court of Berlin dismissed a case in which the plaintiffs alleged that the 2020 emissions reductions target of the federal Government was insufficient and violated its constitutional obligations.¹⁰ The court denied the claim, finding that the Government has wide discretion when fulfilling its constitutional obligations, provided that its actions are not entirely unsuitable or completely inadequate.

⁹ The authors refer to Andre Nollkaemper and Dov Jacobs, “Shared responsibility in international law: a conceptual framework”, *Michigan Journal of International Law*, vol. 34, No. 2 (Winter 2013), pp. 379–381.

¹⁰ Administrative Court of Berlin, *Family Farmers and Greenpeace Germany v. Germany*, Case No. VG 10 K 412.18, Judgment of 31 October 2019.

5.6 The authors further argue that the unique circumstances of their case would make domestic proceedings unreasonably prolonged 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 time frame, since any delay in reducing emissions depletes the remaining carbon budget and places the 1.5°C limit on warming further out of reach.

Third-party intervention

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

6.2 The interveners note that the climate crisis is already having severe effects on human lives and well-being, and therefore human rights. Children are particularly at risk from the climate crisis for several reasons. First, children are more vulnerable than adults to environmental harms of all kinds, which interfere with a vast range of their rights protected by the Convention, including their rights to life, health and development, food, housing, water and sanitation, and play and recreation. They are particularly vulnerable to health problems exacerbated by climate change, including malnutrition, acute respiratory infections, diarrhoea and other water-borne illnesses. In addition, climate change heightens existing social and economic inequalities, intensifies poverty and reverses progress towards improvement in children's well-being.

6.3 Concerning the admissibility of the communication, the interveners note that State obligations extend beyond the situations of effective control to include obligations to protect those whose rights are affected by a State's activities in "a direct and reasonably foreseeable manner".¹¹ They state that the effects of climate change on the rights of the authors are exactly the type of impact encompassed by the "direct and reasonably foreseeable" standard. It is not only reasonably foreseeable but inevitable that emitting greenhouse gases will have a direct impact on the human rights of the authors and children around the world.

6.4 The five States parties in question are not the largest emitters either historically or currently. Nevertheless, their contributions are not insignificant. Each is in the top 40 of all emitters, based on historical emissions since 1850, and together, they currently contribute 7 per cent of global emissions. The fact that this is a global problem cannot be a valid objection to the admissibility of the communication and the answer cannot be that when multiple States contribute to a global harm, none of them bears any responsibility for its effects. Under the customary international law of State responsibility, when several States have contributed to the same damage by separate wrongful conduct, "the responsibility of each participating State is determined individually, on the basis of its own conduct and by reference to its own international obligations".¹² While it may be difficult to trace a precise causal path between the actions of any one of the States parties in question and the harms suffered by the authors, it is definitely possible to determine the responsibility of each of the States in relation to the harms to which it contributes. In that respect, its total current emissions may be only one factor; other factors, such as its level of economic development and its historical contributions, may also be relevant.

6.5 The interveners state that the pursuit of domestic remedies in the present case would be unduly prolonged and unlikely to result in effective relief as there are substantial backlogs in many domestic courts, which have been worsened by court closures in response to the coronavirus disease (COVID-19) pandemic. The ensuing delays are exacerbated in climate litigation asserting human rights violations because of the novelty and complexity of these

¹¹ Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 63. See also African Commission on Human and Peoples' Rights, general comment No. 3 (2015), para. 14; and European Court of Human Rights, *Andreou v. Turkey*, Application No. 45653/99, Judgment of 27 October 2009.

¹² [A/56/10](#), [A/56/10/Corr.1](#) and [A/56/10/Corr.2](#), chap. IV.E.2, commentary on draft article 47 of the draft articles on the responsibility of States for internationally wrongful acts.

cases. The Urgenda case in the Netherlands took seven years to conclude.¹³ The Juliana case in the United States was dismissed on grounds of standing after five years of litigation.¹⁴ Remedies from individual domestic courts will not be effective in isolation, as a single domestic court clearly lacks the jurisdiction to impose obligations on other States to cooperate internationally to resolve the climate crisis. The Committee, in contrast, has the ability to provide effective remedies against multiple States parties. The Committee has the expertise and the mandate to address matters that may not be within the competence of domestic courts, including the obligations of each State under human rights law to address a global challenge to the human rights of all children.

Oral hearing

7.1 Following an invitation by the Committee and pursuant to rule 19 of its rules of procedure under the Optional Protocol, legal representatives of both parties appeared before the Committee on 25 May 2021 by way of videoconference, answered questions from Committee members on their submission and provided further clarifications.

Authors' oral comments

7.2 The authors reiterate their claim that the State party has failed to take all necessary and appropriate measures to keep global temperatures from warming by 1.5°C above the pre-industrial era, thereby contributing to climate change, in violation of their rights. They state that the harms the authors have experienced, and will continue to experience, were foreseeable in 1990, when the Intergovernmental Panel on Climate Change predicted that global warming of just 1°C could cause the water shortages, vector-borne diseases and sea level rise the authors now face. They argue that if States do not take immediate action to vastly reduce their greenhouse gas emissions, the authors will continue to suffer greatly in their lifetimes. The authors insist that there is a direct and foreseeable causal link between the harm to which they have been exposed and the State party's emissions, as the harm suffered by them is attributable to climate change and the State party's ongoing emissions contribute to worsening climate change.

7.3 Regarding the issue of exhaustion of domestic remedies, the authors refer to the recent Constitutional Court judgment in *Neubauer, et al. v. Germany*, in which a group of children from Bangladesh, Germany and Nepal filed a rights-based constitutional challenge to the Climate Protection Act.¹⁵ The authors argue that the judgment demonstrates why a constitutional complaint would not provide them with effective relief. Namely, they would still not be able to enforce their claims against Argentina, Brazil, France and Turkey in German courts because of foreign sovereign immunity; their claims requiring Germany to use all available means of international cooperation to influence climate action would likewise fail; the rights of the authors who are not German citizens would not be sufficiently protected as, in its decision, the Constitutional Court found that the obligations of Germany to foreign claimants were limited and less protective than its obligations to the German claimants. This is because the court noted that, although the legislature must endeavour to limit the temperature increase to 1.5°C, a lower mitigation target of 2°C may be acceptable if adaptation measures could protect the German people. Nevertheless, the authors argue that the 1.5°C target is the absolute minimum necessary to limit dangerous climate change and the most protective standard for all the authors' human rights.

State party's oral observations

7.4 The State party notes that, while it sympathizes with the goals of the communication and shares both the concerns about climate change and the sense of urgency in fighting global warming, it does not accept the communication as the proper way of pursuing these goals.

¹³ Supreme Court of the Netherlands, *Kingdom of the Netherlands v. Urgenda Foundation*, Case No. 19/00135, Judgment of 20 December 2019.

¹⁴ United States District Court for the District of Oregon Eugene Division, *Juliana v. United States*, Case No. 339 F. Supp. 3d 1062 (D. Or. 2018), Judgment of 15 October 2018.

¹⁵ Constitutional Court of Germany, *Neubauer, et al. v. Germany*, Case Nos. 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20 and 1 BvR 288/20, Judgment of 24 March 2021.

The Committee is not the right forum for a debate about the advantages and disadvantages of national approaches to the fight against climate change. The State party reiterates that the authors who do not reside in Germany cannot be considered to be within the effective control of the State party for the purposes of establishing jurisdiction. In view of the limits of sovereignty under international law, it is not possible in practice for the State party to take measures outside its territory to protect people living abroad. There is indeed a duty to cooperate internationally and to use all available legal, diplomatic and economic means to persuade other States to adopt sufficient emission reduction pathways. Nevertheless, this serves to illustrate that respect for the sovereignty of each State still lies at the heart of international law. The fact that emissions from one State have a general impact on the global climate cannot establish specific jurisdiction with regard to the territory of any other State. In the present case, no causal link between the alleged acts or omissions of the State party and the alleged harm suffered by the authors has been established. The greenhouse gases emitted in Germany are not directly and immediately causing heatwaves, forest fires or storms thousands of kilometres away. Any emissions from Germany, as from anywhere else, will have an impact on the global climate situation, which may lead to an impact on the authors' living conditions. Yet, a 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.

7.5 Regarding the issue of exhaustion of domestic remedies, the State party also refers to the Constitutional Court judgment in *Neubauer, et al. v. Germany*. It notes that the court rendered a decision on constitutional complaints brought by several young activists, including some living in Bangladesh and Nepal, against the State party's climate protection policy, specifically the Federal Climate Protection Act of December 2019. Similarly to the submissions of the authors in the present case, the complainants alleged that the efforts of the State party were insufficient in the fight against climate change and constituted, inter alia, a violation of their rights to life, physical integrity and property. The Federal Constitutional Court found the complaints admissible and concluded that the Climate Change Act was insufficient to ensure that the necessary transition to climate neutrality was achieved in time. It therefore required the State party to amend the Act accordingly. Nevertheless, the Court rejected the claim that the State party's climate policy currently constituted a violation of the complainants' rights to life, physical integrity and property. The State party argues that the decision is relevant for the authors' communication in several respects. The decision establishes that: a constitutional complaint against the State party's climate protection policy is admissible and will be heard within a very reasonable time frame;¹⁶ non-nationals who are minors will, as demonstrated by the decisions, have standing before the court; and the State party has the obligation to seek international solutions for the climate crisis. The State party argues that the decision of the Constitutional Court clearly establishes that an application with the same goals as the authors' communication could have been brought by the authors before the Federal Constitutional Court. Such a complaint would also have been free of charge and legal aid would have been available.

7.6 Lastly, the State party reiterates that authors who are directly concerned by certain activities, in addition to bringing a constitutional complaint, could have initiated administrative proceedings in the State party in accordance with general requirements seeking either specific action on the part of the Government (e.g. orders to close coal-based facilities, bans on certain activities, etc.) or a declaratory finding (e.g. to the effect that a particular government policy violates a specific right of the applicant under the Convention).

Oral hearing with the authors

8. Following an invitation by the Committee and pursuant to rule 19 of its rules of procedure under the Optional Protocol, 11 of the authors appeared before the Committee on 28 May 2021 by way of videoconference in a closed meeting, without the presence of State party representatives. They explained to the Committee how climate change has affected their

¹⁶ The State party notes that, in the *Neubauer* case, the initial complaints were submitted in 2018 and at the beginning of 2020. The authors of the first complaint changed the substance of their submissions in June 2020 after the Federal Climate Protection Act had entered into force in December 2019. The court's decision was rendered on 24 March 2021.

daily lives and expressed their views about what the respondent States parties should do about climate change, and why the Committee should consider their complaints.

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

Jurisdiction

9.2 The Committee notes the State party's submission that the communication is inadmissible for lack of jurisdiction and lack of victim status. The Committee also notes the authors' argument that they are within the State party's jurisdiction as victims of the foreseeable consequences of the State party's domestic and cross-border contributions to climate change and the carbon pollution knowingly emitted, permitted or promoted by the State party from within its territory. The Committee further notes the authors' claims that the State party's acts and omissions perpetuating the climate crisis have already exposed them throughout their childhoods to the foreseeable, life-threatening risks of climate change caused by humans.

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 may receive and consider communications submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in the Convention. The Committee observes that, while neither the Convention nor the Optional Protocol makes any reference to the term "territory" in its application of jurisdiction, extraterritorial jurisdiction should be interpreted restrictively.¹⁷

9.4 The Committee notes the relevant jurisprudence of the Human Rights Committee and the European Court of Human Rights referring to extraterritorial jurisdiction.¹⁸ Nevertheless, that jurisprudence was developed and applied to factual situations that are very different to the facts and circumstance of the present case. The authors' communication raises novel jurisdictional issues of transboundary harm related to climate change.

9.5 The Committee also notes Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights on the environment and human rights, which is of particular relevance to the issue of jurisdiction in the present case as it clarified the scope of extraterritorial jurisdiction in relation to environmental protection. In that opinion, the Court noted that, when transboundary damage occurs that affects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory (para. 101). The exercise of jurisdiction arises when the State of origin exercises effective control over the activities that caused the damage and consequent human rights violation (para. 104 (h)). In cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing

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

¹⁸ See, inter alia, Human Rights Committee, general comments No. 31 (2004), para. 10, and No. 36 (2018), para. 63, *Munaf v. Romania* (CCPR/C/96/D/1539/2006), para. 14.2, *A.S. et al. v. Malta* (CCPR/C/128/D/3043/2017), paras. 6.3–6.5, and *A.S. et al. v. Italy* (CCPR/C/130/D/3042/2017), paras. 7.3–7.5; European Court of Human Rights, *Andreou v. Turkey*, para. 25, and *Georgia v. Russia (II)*, Application No. 38263/08, Judgment of 21 January 2021, para. 81. See also Committee on the Rights of the Child, general comment No. 16 (2013), para. 39, and CRC/C/NOR/CO/5-6, para. 27.

transboundary harm that impacts the enjoyment of human rights of persons outside its territory. The potential victims of the negative consequences of such activities are under the jurisdiction of the State of origin for the purposes of the possible responsibility of that State for failing to comply with its obligation to prevent transboundary damage (para. 102). The Court further noted that accordingly, it can be concluded that the obligation to prevent transboundary environmental damage or harm is an obligation recognized by international environmental law, under which States may be held responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority (para. 103).

9.6 The Committee recalls that, in the joint statement on human rights and climate change that it issued with four other treaty bodies,¹⁹ it noted that the Intergovernmental Panel on Climate Change had confirmed in a report released in 2018 that climate change poses significant risks to the enjoyment of the human rights protected by the Convention such as the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights (para. 3). Failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations (para. 10).

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 considers that, while the required elements to establish the responsibility of the State are a matter of merits, the alleged harm suffered by the victims needs to have been reasonably foreseeable to the State party at the time of its acts or omissions even for the purpose of establishing jurisdiction.²⁰

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

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 on the enjoyment of rights by individuals both within and beyond the territory of the State party. The Committee considers that, given its ability to regulate activities that are the source of these emissions and to enforce such regulations, the State party has effective control over the emissions.

9.10 In accordance with the principle of common but differentiated responsibilities, as reflected in the Paris Agreement, the Committee finds that the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location.²¹

¹⁹ [HRI/2019/1](#).

²⁰ Inter-American Court of Human Rights, Advisory Opinion OC-23/17, para. 136. See also paras. 175–180 on the precautionary principle. It is worth noting the textual similarity between article 1 of the Inter-American Convention on Human Rights and article 2 of the Convention on the Rights of the Child, in respect of jurisdiction.

²¹ See the preamble to the Convention, article 3 of the United Nations Framework Convention on Climate Change, and the preamble and articles 2 and 4 of the Paris Agreement. See also [A/56/10](#), [A/56/10/Corr.1](#) and [A/56/10/Corr.2](#), chap. IV.E.2, commentary on draft article 47 of the draft articles on the responsibility of States for internationally wrongful acts.

9.11 Regarding the issue of foreseeability, the Committee notes the authors' uncontested argument that the State party has known about the harmful effects of its contributions to climate change for decades and that it signed both the United Nations Framework Convention on Climate Change in 1992 and the Paris Agreement in 2016. In the light of existing scientific evidence showing the impact of the cumulative effect of carbon emissions on the enjoyment of human rights, including rights under the Convention,²² 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 causing reasonably foreseeable harm to children outside its territory, the Committee must now determine whether there is a sufficient causal link between the harm alleged by the authors and the State party's actions or omissions for the purposes of establishing jurisdiction. In this regard, the Committee observes, in line with the position of the Inter-American Court of Human Rights, that not every negative impact in cases of transboundary damage gives rise to the responsibility of the State in whose territory the activities causing transboundary harm took place, that the possible grounds for jurisdiction must be justified based on the particular circumstances of the specific case, and that the harm needs to be "significant".²³ In this regard, the Committee notes that the Inter-American Court of Human Rights observed that, in the articles on prevention of transboundary harm from hazardous activities, the International Law Commission referred only to those activities that may involve significant transboundary harm and that "significant" harm should be understood as something more than "detectable" but need not be at the level of "serious" or "substantial". The Court further noted that 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.²⁴

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 up. It notes the authors' claims: that smoke from wildfires and heat-related pollution has caused some of the authors' asthma to worsen, requiring hospitalizations; that the spread and intensification of vector-borne diseases has affected the authors, resulting in some of them contracting malaria multiple times a year or contracting dengue or chikungunya; that the authors have been exposed to extreme heatwaves, causing a serious threat to the health of many of them; that drought is threatening water security for some of the authors; that some of the authors have been exposed to extreme storms and flooding; that life at a subsistence level is at risk for the indigenous authors; that, due to the rising sea level, the Marshall Islands and Palau are at risk of becoming uninhabitable within decades; and that climate change has affected the mental health of the authors, some of whom claim to suffer from climate anxiety. The Committee considers that, as children, the authors are particularly affected by climate change, both in terms of the manner in which they experience its effects and the potential of climate change to have an impact on them throughout their lifetimes, particularly if immediate action is not taken. Due to the particular impact on children, and the recognition by States parties to the Convention

²² Intergovernmental Panel on Climate Change, *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge, United Kingdom, Cambridge University Press, 2013) and "Global warming of 1.5°C: summary for policymakers", formally approved at the First Joint Session of Working Groups I, II and III of the Intergovernmental Panel on Climate Change and accepted by the Panel at its forty-eighth session, held in Incheon, Republic of Korea, on 6 October 2018.

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

²⁴ Ibid., para. 136, and [A/56/10](#), [A/56/10/Corr.1](#) and [A/56/10/Corr.2](#), chap. V.E.2, commentary on draft article 2 of the draft articles on the prevention of transboundary harm from hazardous activities.

that children are entitled to special safeguards, including appropriate legal protection, States have heightened obligations to protect children from foreseeable harm.²⁵

9.14 Taking the above-mentioned factors into account, the Committee concludes that the authors have sufficiently justified, for the purposes of establishing jurisdiction, that the impairment of their Convention rights as a result of the State party's acts or omissions regarding the carbon emissions originating within its territory was reasonably foreseeable. It also concludes that the authors have established *prima facie* that they have personally experienced real and significant harm in order to justify their victim status. Consequently, the Committee finds that it is not precluded by article 5 (1) of the Optional Protocol from considering the authors' communication.

Exhaustion of domestic remedies

9.15 The Committee notes the State party's argument that the communication should be found inadmissible for failure to exhaust domestic remedies. It also notes the State party's argument that domestic remedies were available to the authors, including by lodging a complaint before the Constitutional Court. It further notes the State party's argument that the authors could have initiated administrative law proceedings pursuant to section 40 of the Code of Administrative Court Procedure and that they could also have raised the claims presented in the communication before the domestic courts under article 19 (4) of Basic Law of Germany.

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, objectively, they have no prospect of success, for example in cases where under applicable domestic laws the claim would inevitably be dismissed or where established jurisprudence of the highest domestic tribunals would preclude a positive result. Nevertheless, the Committee notes that mere doubts or assumptions about the success or effectiveness of remedies do not absolve the authors from exhausting them.²⁶

9.17 In the present case, the Committee notes that the authors have not initiated any domestic proceedings in the State party. The Committee also notes the authors' argument that they would face unique obstacles in exhausting domestic remedies as it would be unduly burdensome for them, unreasonably prolonged and unlikely to bring effective relief. It further notes their argument that domestic courts would most likely dismiss their claims, which implicate the State's obligations to engage in international cooperation, because of the non-justiciability of foreign policy and foreign sovereign immunity. Nevertheless, the Committee considers that the State party's alleged failure to engage in international cooperation is raised in connection with the specific form of remedy that the authors are seeking, and that they have not sufficiently established that such a remedy is necessary to bring effective relief. The authors have also argued, in particular, that government action based on the Climate Protection Act is not justiciable in the State party's domestic courts. In this regard, however, the Committee notes the State party's argument that legal avenues were available to the authors, either a constitutional complaint, administrative proceedings initiated under the Code of Administrative Court Procedure or a review of their claims presented in the communication under the Basic Law of Germany before the domestic courts. It also notes that the authors did not make any attempt to initiate their claims under any of these procedures. The Committee further notes the decision of the Constitutional Court in *Neubauer, et al. v. Germany*, in which the court admitted claims against the Federal Climate Protection Act submitted by children who were neither nationals of or residents in the State party. It notes that the court, in its decision, also specifically emphasized that the State was compelled to engage in internationally oriented activities to tackle climate change at the global level and

²⁵ Preamble to the Convention on the Rights of the Child; [A/HRC/31/52](#), para. 81, and Committee on the Rights of the Child, "Report of the 2016 day of general discussion: children's rights and the environment", p. 23. Available from <https://www.ohchr.org/en/hrbodies/crc/pages/discussion2016.aspx>.

²⁶ *D.C. v. Germany* ([CRC/C/83/D/60/2018](#)), para. 6.5.

was required to promote climate action within the international framework.²⁷ 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 concerning 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 notes the authors' argument that pursuing remedies in the State party would be unreasonably prolonged. It also notes that, while the authors cite cases in other States in which the courts took several years to reach a decision, they have failed to establish the connection with the remedies available within the State party or to otherwise indicate how the time the courts would take to reach a decision in the State party would be unreasonably prolonged, particularly in light of the timely decision in the Neubauer case. The Committee concludes that, in the absence of any specific information from the authors that would justify that domestic remedies would be ineffective or unavailable, and in the absence of any attempt by them to initiate domestic proceedings in the State party, the authors have failed to exhaust domestic remedies.

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

²⁷ Ibid., and *Neubauer, et al. v. Germany* (official English translation), para. 2 (c).