N.104/2019, N.105/2019, N.106/2019, N.107/2019, and N.108/2019

**BEFORE THE UNITED NATIONS COMMITTEE**

 **ON THE RIGHTS OF THE CHILD**

***C.S. et al.***

***v.***

***ARGENTINA, BRAZIL, FRANCE, GERMANY and TURKEY***

**AMICI CURIAE BRIEF OF SPECIAL RAPPORTEURS ON HUMAN RIGHTS AND THE ENVIRONMENT**

**ON THE MERITS**

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 I. Statement of Interest

1. We submit this brief in our capacities as the present and former UN Special Rapporteurs on issues relating to the enjoyment of a safe, clean, healthy and sustainable environment.[[1]](#footnote-1) We filed an earlier brief addressing the admissibility of these Communications and herein address the merits.

 II. The Climate Emergency and Children’s Rights

2. The world faces a climate emergency. Rising levels of greenhouse gases in the atmosphere, driven by the combustion of fossil fuels, industrial agriculture and deforestation, have caused global average temperatures to increase 1°C over pre-industrial levels.[[2]](#footnote-2)The current level of warming is unprecedented in the last ten thousand years, an interglacial period with a stable climate that coincided with the rise of human civilization. Our species is in uncharted, dangerous waters.

3. The climate crisis already causes severe effects on human lives and well-being, and therefore human rights. The Intergovernmental Panel on Climate Change (IPCC) has produced three unprecedented special reports in the past two years summarizing the severity and urgency of the problem.[[3]](#footnote-3) The IPCC described increased intensity of precipitation, storms and flooding in some areas, and heat waves, drought and wildfires in others.[[4]](#footnote-4) Sea levels are rising, endangering low-lying coastal communities. Climate change undermines production of major crops,[[5]](#footnote-5) and is one of the chief drivers of loss of biological diversity.[[6]](#footnote-6) Most dramatic is the increase in the severity of extreme weather events such as fires, hurricanes, typhoons, and floods, which have killed thousands of people and displaced millions more.

4. In our work as Special Rapporteurs, we have heard first-hand from those who are already experiencing the devastating effects of climate change, including children in Fiji fearful of the changing oceans, Indigenous people in Fiji forced to relocate because of rising sea levels and saltwater contamination of their food and water, Indigenous people in Norway whose livelihoods and culture based on reindeer herding are jeopardized by shifting weather patterns**,** and villagers in Madagascar who have lost their crops due to drought.[[7]](#footnote-7) We have published reports on the impacts of climate change on human rights, including children’s rights, and the associated State obligations.[[8]](#footnote-8)

5. Unless States take urgent actions to reduce emissions, the future impacts of climate change will be even worse. The Paris Agreement aims to hold the increase in global average temperatures to well below 2°C, while striving to limit the increase to 1.5°C. Even a seemingly modest increase, to 1.5°C, will substantially increase the number of people subjected to poverty, disasters, food insecurity, illness and death.[[9]](#footnote-9) These harms will be felt most by those who are already disadvantaged and vulnerable, including children, women, persons with disabilities, those living in or near poverty,[[10]](#footnote-10) and Indigenous peoples and local communities that depend on agriculture, forests or coastal ecosystems.[[11]](#footnote-11) At 1.5°C, small island States will start to reach the limits of possible adaptation,[[12]](#footnote-12) forcing them to face the loss of their lands and cultures.[[13]](#footnote-13) An increase of 2.0°C over pre-industrial levels would exacerbates all of these outcomes, as the IPCC has explained in detail.[[14]](#footnote-14)

6.Despite 28 years of commitments dating back to the United Nations Framework Convention on Climate Change, the world is failing to adequately address the crisis. The share of the world’s total energy supply provided by fossil fuels has remained unchanged since 1992, at 81 per cent.[[15]](#footnote-15) Global greenhouse gas emissions have increased 60 per cent since 1990.

7. Parties to the Paris Agreement filed Nationally Determined Contributions (NDCs) indicating the climate measures they plan to implement by 2030. Unfortunately, even in the unlikely case that they are fully implemented, the current NDCs would lead to a rise of 3-4°C,[[16]](#footnote-16) causing immense human suffering and massive human rights violations.

8. The IPCC has specified that Parties must reduce greenhouse gas emissions 45 percent below 2010 levels by 2030 and achieve net zero emissions by 2050, in order to have a reasonable likelihood of limiting warming to 1.5°C. Achieving these goals and preventing catastrophic climate disruption will require rapid, systemic and transformative changes in the decades ahead, beginning immediately.

9. In September 2019, the Committee issued a compelling Joint Statement with four other human rights treaty bodies, which stated that the adverse impacts of climate change “threaten, among others, 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,” and that “the risk of harm is particularly high for those segments of the population already marginalized or in vulnerable situations or that, due to discrimination and pre-existing inequalities, have limited access to decision-making or resources.”[[17]](#footnote-17) The Committee and the other treaty bodies noted that “such adverse impacts on human rights are already occurring at 1°C of warming and every additional increase in temperatures will further undermine the realization of rights.”[[18]](#footnote-18)

10. 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,[[19]](#footnote-19) which interfere with a vast range of their rights protected by the Convention on the Rights of the Child (the Convention), including their rights to life, health and development, food, housing, water and sanitation, and play and recreation.[[20]](#footnote-20) They are particularly vulnerable to health problems exacerbated by climate change, including malnutrition, acute respiratory infections, diarrhoea and other water-borne illnesses.[[21]](#footnote-21) In addition, “climate change heightens existing social and economic inequalities, intensifies poverty and reverses progress towards improvement in children’s well-being”.[[22]](#footnote-22) For example, climate change-induced food insecurity is already increasing the number of marriages of girl children, who are pressured to marry to reduce burdens on their families of origin.[[23]](#footnote-23)

* Physical and psychological sequelae of weather disasters (e.g. hurricanes, flooding, wildfires)
* Increased heat stress
* Decreased air quality
* Altered vector-borne disease patterns
* Food, water, and nutrient insecurity
* First, environmental changes associated with anthropogenic greenhouse gases can lead to respiratory diseases, sunburn, melanoma, and immunosuppression. Second, climate change may directly cause heat stroke, drowning, gastrointestinal diseases, and psychosocial maldevelopment. Third, ecologic alterations triggered by climate change can increase rates of malnutrition, allergies and exposure to mycotoxins, vector-borne diseases (malaria, dengue, encephalitides, Lyme disease), and emerging infectious diseases.

11. Second, climate disruption will worsen throughout their lives, so that today’s actions or omissions will have far greater consequences for them than for adults. The World Health Organization estimates that by 2030, the effects of climate change on nutrition will result in an additional 7.5 million children who are moderately or severely stunted, as well as approximately 100,000 additional deaths.[[24]](#footnote-24) By 2040, almost 600 million children will live in regions with extremely limited water resources.[[25]](#footnote-25) Extreme weather events pose unique threats to the health and well-being of young bodies and minds. Globally, over 500 million children live in extremely high-risk flood zones; 160 million live in high or extremely high drought severity zones; and 115 million are at high risk from tropical cyclones.[[26]](#footnote-26)

12. Finally, even though children are the most affected by the climate crisis, their voices are usually ignored. Despite the requirement in art. 12 of the Convention that children have the right to express their views freely in all matters affecting them, they are typically denied information, excluded from decision-making procedures, and lack access to effective remedies.[[27]](#footnote-27) All of these vulnerabilities intersect with others, such as poverty and membership in marginalized populations. The United Nations Children’s Fund warns that “climate change will harm the poorest and most vulnerable children first, hardest and longest”.[[28]](#footnote-28)

13. In the Joint Statement, the five treaty bodies stated that “the IPCC report makes it clear that to avoid the risk of irreversible and large-scale systemic impacts, urgent and decisive climate action is required.” At the same time, they noted “with great concern that States’ current commitments under the Paris Agreement are insufficient to limit global warming to 1.5°C and that many States are not on track to meet their commitments. Consequently, States are exposing their populations and future generations to the significant threats to human rights associated with greater temperature increases.”[[29]](#footnote-29)

14. The Committee, together with the other treaty bodies, stated that “Failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.” The Committee and its counterparts emphasized that “human rights mechanisms have an important role to play in ensuring that States avoid taking measures that could accelerate climate change, and that they dedicate the maximum available resources to the adoption of measures aimed at mitigating climate change.”[[30]](#footnote-30) The Joint Statement concludes by promising that the Committees will continue “to keep under review the impacts of climate change and climate induced disasters on the rights holders protected under their respective treaties and provide guidance to States on how they can meet their obligations under these instruments, in relation to mitigation and adaptation to climate change.”[[31]](#footnote-31)

15. The Communication to the Committee from C.S. and fifteen other children and youth responds to that invitation. It provides the first opportunity under the communications procedure for the Committee to address in more detail the obligations of States to work together, on an urgent basis, to reduce climate change by mitigating their greenhouse gas emissions, and to help the people of the world to adapt to the effects that are not avoided.

16. This is one of the most important communications ever received by this Committee. The Committee’s decision could provide vital and timely guidance to other human rights bodies, international and domestic tribunals, States, international organizations, communities, and individuals all over the world.

 III. The Climate Record of the Respondent States

Argentina

Argentina declared a climate emergency in 2019. However, the independent Climate Action Tracker “rates Argentina’s target under the Paris Agreement “Critically insufficient”, as it is not stringent enough to limit warming to 2°C, let alone 1.5 ̊C.” Argentina has not submitted a long-term decarbonization plan to the UNFCCC Secretariat.

Brazil

**The** Climate Action Tracker **rates the existing Brazil target under the Paris Agreement as “Insufficient”, because it is not stringent enough to limit warming to 2°C, let alone 1.5˚C. Brazil is not on track to deliver on its NDC, given the upwards trend in deforestation and the associated emissions.**

Brazil has not submitted a long-term decarbonization plan to the UNFCCC Secretariat.

Turkey

Turkey remains the only G20 country that has not ratified the Paris Agreement. Between 1990-2018, Turkey’s emissions rose 137.47 percent.[[32]](#footnote-32) Turkey’s Submission to the Committee outlines in detail the measures it is taking and plans to take to address climate change. Independent analysis makes it clear that these measures are inadequate. Climate Action Tracker rates Turkey’s INDC target as “Critically Insufficient” because if other countries followed Turkey’s approach, global warming would exceed 3–4 °C.

 III. The Merits

 The

The Authors clearly describe violations of their rights to life, health, culture (for the Indigenous authors), and prioritization of their interests. Authors have suffered physical and psychological impacts as a result of being been: hospitalized for asthma; stricken by tropical diseases whose range has expanded because of climate change (e.g. dengue fever and chikunguya); terrified by wildfires; bedridden due to smoke inhalation from wildfires; evacuated from their home because of an intense tropical storm; and forced to endure droughts, heat waves, rising sea levels and floods. Indigenous Authors have witnessed the decline of species that are at the heart of their culture including reindeer and salmon, making it difficult if not impossible to carry on traditional activities. All of the foregoing impacts are consistent with the impacts of climate change set forth in IPCC reports. The Authors have established a prima facie case that the Respondent States have not rebutted.

The Taskin decision from the European Court of Human Rights is instructive. Turkey was held responsible for the risk of possible damage to health as a result of pollution from a gold mine, where the risk would only materialize with residents in the area in 20-50 years.[[33]](#footnote-33) Turkey stated that the risk was too "hypothetical" to be considered "serious and imminent", but the European Court determined that a “sufficiently close link” had been established. If such a risk were not covered, the positive obligation under the ECHR to safeguard the complainants' rights from serious and foreseeable risks would "be set at naught".[[34]](#footnote-34)

? Article 47 (1) provides:

"Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act."

Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001.

Positive obligation to prevent risks is limited in that States need not shoulder an “impossible or disproportionate burden” budayeva et al v Russia, para 134.

As of 15 October, 38 states (including the European Union) have submitted long term decarbonization plans to the UNFCCC including France and Germany. The other three respondents—Argentina, Brazil and Turkey—have not done so. Germany’s Climate Action Plan 2050 makes zero references to human rights and mentions children and youth only in passing. France’s National Low Carbon Strategy makes zero references to human rights and zero references to children or youth.

Excluding LULUCF emissions, the target in the INDC is equivalent to a 90% increase from 2018 levels (the latest historical year included in our analysis).

. Turkey’s commitment is not in line with interpretations of a “fair” approach in line with holding warming below 2 °C, let alone with the [Paris Agreement’s stronger 1.5°C limit](http://climateactiontracker.org/methodology/263/CAT-rating-system-update.html). This means that if most other countries followed Turkey’s approach, global warming would exceed 3–4 °C.

France

-17.99% https://di.unfccc.int/time\_series

Germany

**The German government’s Climate Action Programme 2030, adopted in December 2019, does not contain enough policy measures to meet its own 2020 or 2030 emissions reduction targets, which themselves are outdated and insufficient. The targets might be met only with the impact of COVID-19 under a worst-case scenario. The CAT rates Germany’s 55% emissions reduction target for 2030 (agreed in 2010) as “Highly Insufficient”, it needs to be strengthened to be compatible with the Paris Agreement.**

The new climate law includes the “commitment to pursue greenhouse gas neutrality by 2050 as a long-term goal” (German Government, 2020a).

-31.3% https://di.unfccc.int/time\_series

1 state obligations, pursuant to ihrlaw eg CRC

2 informed by iel—UNFCCC and PA, plus principles of prevention, precaution

Case law (see Norwegian HRI)

17.

States have a positive obligation to protect human rights against current and reasonably foreseeable harms, including from environmental degradation.[[35]](#footnote-35) This imposes the duty on national authorities to adopt reasonable and adequatemeasures to effectively protect rights and to provide deterrence against threats, including proportionate measures against risks that may materialize in the longer term, such as some climate change impacts. In respect of environmental threats to the right to life, the Human Rights Committee has stated that obligations of States under international environmental law should inform their human rights obligations, and that States should take “pay due regard to the precautionary approach.”[[36]](#footnote-36) The precautionary principle is particularly important in relation to climate change, given the IPCC warning that “pathways that overshoot 1.5°C run a greater risk of passing through ‘tipping points’, thresholds beyond which certain impacts can no longer be avoided even if temperatures are brought back down later.”[[37]](#footnote-37)

In the UN Framework Convention on Climate Change (1992), States committed to …In the Paris Agreement States committed to “Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”[[38]](#footnote-38) each State agreed that its NDC would “reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”[[39]](#footnote-39)

40. These commitments by the States themselves inform their human rights obligations, including their obligations to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights” in the Convention, and, with regard to economic, social and cultural rights, to “undertake such measures to the maximum extent of their available resources.”[[40]](#footnote-40)

Each Party has committed to that its nationally determined contribution will reflect its “highest possible ambition” (Art. 4.3). This is a due diligenceobligation according to which all Parties need to take all effective measures, using the “maximum available resources” to achieve the temperature goals of the Agreement. In light of the gravity of the risk to human rights, the clear science and the urgency of the climate emergency, this implies taking all possible measures that are do not jeopardize other human rights with the objective of reducing global GHG emissions at least 45 percent below 2010 levels by 2030 and to net zero around 2050, as specified by the IPCC.[[41]](#footnote-41) Given the massive human rights violations that would ensue from an increase of 3C or more in average global temperature, the high degree of scientific consensus, and the availability of known solutions, there is no longer any debate about the required level of ambition. States retain discretion regarding the *choice of measures* to be implemented but not the ambition or time frame that is required.

The consequences are clear. States must establish new NDCs (as required by the Paris Agreement) that have the requisite level of ambition (at least 45 percent below 2010 levels by 2030) and set forth the specific measures to be implemented to achieve the required reductions in emissions. States must also create long-term decarbonization plans that achieve net zero emissions by around 2050. Moreover, high income States, with their greater responsibility and capacity, must reduce their emissions to net zero before 2050, in order to give low and middle-income States more time to reach that goal.

As Professor Christina Voigt has written, “Put simply, complying with human rights obligations requires *dramatically accelerated* climate action. By *NOT* reducing emissions at that level of ambition, states fail to prevent foreseeable human rights harms caused by climate change – and thereby violate their obligations.”[[42]](#footnote-42) This is consistent with the Joint Statement from five UN treaty bodies, including this Committee, 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, which 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.”

This Committee need not prescribe the measures that States should take to address the climate emergency. However, this Committee can and must determine whether the five Respondent States are taking and/or planning effective actions, with adequate urgency, to achieve the ambitious emission reductions required to prevent foreseeable and catastrophic climate change and this fulfil their human rights obligations. There are two simple questions:

1. Does the NDC of each Respondent State include effective actions for achieving a reduction in GHG emissions of at least 45 percent below 2010 levels by 2030?

2. Does each Respondent State have a comprehensive long-term decarbonization plan to achieve net zero emissions by 2050?

If the answer to either or both of these questions is no, then that Respondent State is violating its human rights obligations under the Convention.

As set forth earlier, …

Argentina, Brazil and Turkey lack long-term decarbonization plans, a de facto violation of their obligations. long-term decarbonization plans of France and Germany are laudable. However, Germany’s Climate Action Plan 2050 makes zero references to human rights and mentions children and youth only in passing. France’s long-term National Low Carbon Strategy makes zero references to human rights and zero references to children or youth.

Due diligence obligations require States to take all appropriate and necessary measures to address private behaviour, including adopting necessary regulatory measures, monitoring performance, and enforcing the rules.[[43]](#footnote-43) The due diligence standard also requires governments to act in proportion to the risk at stake and with appropriate foresight.[[44]](#footnote-44) The International Court of Justice has stated “that the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State’.[[45]](#footnote-45) the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea acknowledged that due diligence may impose more rigorous requirements for activities that create higher risks.[[46]](#footnote-46)

Human rights bodies have a critical role to play in ensuring that (a) at a minimum, each State is doing its best to fulfil its own commitment to adopt and implement an NDC reflecting “its highest possible ambition”; and (b) its commitments constitute no less than its fair share, in light of the total reductions necessary to protect against reasonably foreseeable harm to human rights. In this respect, we note that not one of the respondent States even mentioned children in its Intended Nationally Determined Contribution, let alone placed children’s rights at the center of these strategies, as the Committee has recommended.[[47]](#footnote-47) We reiterate that the climate crisis demands urgent, effective and rights-based action, because the failure to act now ensures that children will suffer greater harms in the future.

The current trajectory of the world is for more than three degrees of warming, which scientists agree is beyond a safe level of warming, and substantially beyond what States committed to achieve in the UNFCCC (avoiding dangerous interference with the climate system) and the Paris Agreement of the Agreement (holding temperature increases to well below 2oC, and pursuing efforts to limit increases to 1.5oC).

. State actions to date and actions proposed in existing NDCs are therefore clearly inadequate, establishing a prima facie case that States are violating their human rights obligations

None of the five Respondent States is taking sufficiently ambitious action to fulfill their commitments pursuant to either the UNFCCC or the Paris Agreement

The IPCC has clearly stated that to have a reasonable probability of holding temperature increases to well below 2oC, global GHG emissions must decline 45 percent below 2010 levels by 2030 and must reach net zero around 2050.

**Right to life**

34. States have a clear obligation under international law to protect the right to life against current and foreseeable threats, including environmental degradation. This obligation applies to both public and private activities that endanger the right to life. The obligation of prevention arises when there is a risk of “significant damage.”[[48]](#footnote-48) If the government knows that there is a present, imminent or foreseeable environmental threat, the State must take precautionary measures to prevent infringement as far as possible. As this Committee recently stated, “environmental degradation can compromise effective enjoyment of the right to life”, and “severe environmental degradation can adversely affect an individual’s well-being and lead to a violation of the right to life.”[[49]](#footnote-49) The Committee applied these principles in *Portillo* *Cáceres et al. v. Paraguay.*[[50]](#footnote-50)

In Cordella et al. v. Italy and Tãtar v. Romania, Article 8 of the ECHR was violated because the authorities allowed pollution that exposed not only the complainants to health hazards, but the entire population in affected areas.[[51]](#footnote-51)

35. Similarly, the European Court of Human Rights has held that governments must effectively deter foreseeable threats to the right to life from pollution, environmentally hazardous human activities and natural disasters.[[52]](#footnote-52) In *Oneryildiz*, at least 26 people died in an explosion at a municipal landfill site, with evidence that the Turkish government knew for years about the danger of such an event.[[53]](#footnote-53) The Court held the government liable because it failed to take adequate action to protect the right to life from a foreseeable danger. In *Budayeva*, mudslides killed several inhabitants of the town of Tyrnauz. While the Government of Russia did not cause the mudslides, the European Court held that it had failed to fulfil its obligation to take appropriate steps to safeguard the lives of those within its jurisdiction.[[54]](#footnote-54)

36. With respect to environmental threats to the right to life, including climate change, this Committee has noted that States should take “pay due regard to the precautionary approach.”[[55]](#footnote-55) Article 3 of the UNFCCC provides that “The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.”[[56]](#footnote-56) The Inter-American Court of Human Rights confirmed that:

States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty. Consequently, States must act with due caution to prevent possible damage.[[57]](#footnote-57)

37. The precautionary principle is particularly important in relation to climate change, given the IPCC’s warning that “pathways that overshoot 1.5°C run a greater risk of passing through ‘tipping points’, thresholds beyond which certain impacts can no longer be avoided even if temperatures are brought back down later.”[[58]](#footnote-58)

38. The Authors have clearly established that climate change is both a present and future threat to their right to life.

The five Respondents have failed to take adequate steps to protect the right to life of the Authors, by failing to do their fair share to reduce greenhouse gas emissions and by failing to take effective action to enable the Authors to adapt to the impacts of climate change. Their insufficient ambition and inadequate action contradict the preventive and precautionary approach required by human rights law, as informed by international environmental law.

**Right to Culture**

39. Climate change interferes with the full enjoyment of the right to culture for individuals and communities around the world, but the risks are particularly acute for Indigenous peoples such as the Torres Strait Islanders.[[59]](#footnote-59) As noted in the UN Framework Principles on Human Rights and the Environment, States have specific responsibilities to recognize, respect and protect the rights of Indigenous peoples to the lands, territories, and resources that they own, occupy, or use.[[60]](#footnote-60)

40. A leading case is *Poma Poma v Peru*, wherethe draining of wetlands inhabited by the indigenous Aymara people degraded the lands on which they traditionally raised llamas. This Committee considered, “with regard to the exercise of the cultural rights protected under article 27, that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples.”[[61]](#footnote-61) The Committee observed that “the author has been unable to continue benefiting from her traditional economic activity owing to the drying out of the land and loss of her livestock.”[[62]](#footnote-62) The Committee concluded, therefore, “that the State’s action has substantively compromised the way of life and culture of the author, as a member of her community” and found Peru in violation of article 27.[[63]](#footnote-63)

41. Similarly, the Inter-American Court has reasoned that,

“The close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.”[[64]](#footnote-64)

42. It is clear from the facts established by the Authors that climate disruption is a dire threat to their right to culture, both today and in the future. The five Respondents have an obligation not only to protect their right to culture through effective mitigation and adaptation actions, but also to respect the right of children and youth to participate fully in decisions that have implications for their culture.

**The *Urgenda* case in the Netherlands**

43. The leading decision on human rights and climate change from a national court is the decision of the Supreme Court of the Netherlands in the *Urgenda* case.[[65]](#footnote-65) The Supreme Court ruled that the Netherlands had violated Articles 2 (right to life) and 8 (right to family and private life) of the European Convention on Human Rights.

44. After surveying the science on climate change, including the danger of tipping points that may change the climate abruptly and irreversibly, the Court noted that “The need to reduce greenhouse gas emissions is becoming ever more urgent. Every emission of greenhouse gases leads to an increase in the concentration of greenhouse gases in the atmosphere, and thus contributes to reaching the critical limits of 450 ppm [to keep at 2*°*C] and 430 ppm [to keep at 1.5*°*C].”[[66]](#footnote-66)

45. The Supreme Court concluded that the Netherlands had an obligation “to do ‘its part’ in order to prevent dangerous climate change, even if it is a global problem.”[[67]](#footnote-67) The Court rejected the government’s arguments, similar to those made by some Respondents in the present case, that a State does not have to take any responsibility if other States do not comply with their responsibilities or if its contribution to emissions is very small on a global scale.[[68]](#footnote-68) The Court stated that while initially the fair share of the State is to be determined by the government in light of its international obligations, “the courts can assess whether the measures taken by the State are too little in view of what is clearly the lower limit of its share.”[[69]](#footnote-69)

46. The Supreme Court relied on fundamental principles of international environmental law in reaching its decision, including the precautionary principle, prevention and common but differentiated responsibilities. The Court held that a State is obliged to take preventive measures against the foreseeable risks of climate change, even if it is not certain that they will materialize, and that courts can investigate whether the measures the State takes are “reasonable and appropriate.”[[70]](#footnote-70) States with greater capabilities, like the five Respondents, are required to do more to reduce emissions and facilitate adaptation to climate impacts.[[71]](#footnote-71)

47. The application of these principles resulted in the Supreme Court’s conclusion that the Netherlands was obligated to reduce emissions more deeply and quickly in order to protect the rights to life and to family and private life. The Supreme Court determined that by planning to reduce emissions 20% by 2020 from 1990 levels, the Netherlands was not doing its part, and ordered a reduction of 25% by 2020.

48. *Urgenda* is not binding on this Committee and it is not the only possible approach. However, it shows that it is possible to assign responsibility to an individual State for its contribution to the effects of climate disruption on human rights and to clarify the State’s human rights obligations to protect against such effects. Based on the facts of this case as set out by the Authors, the five Respondents’ weak NDCs, their unsatisfactory progress to meet even those modest targets, and the inadequate adaptation measures taken to date, the five Respondents are clearly doing “too little” to protect the rights of the Authors.

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.”[[72]](#footnote-72) States cannot excuse their non-compliance by pointing to the difficulty of the challenge or the need for efforts by others. As the International Court of Justice held in the Bosnian Genocide case,

“it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide. As well as being generally difficult to prove, this is irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result […] which the efforts of only one State were insufficient to produce.”[[73]](#footnote-73)

41. While it may be difficult to trace a precise causal path between the actions of any one of the respondent States 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.

**VI. Conclusion**

As the Authors state, humanity faces a global climate emergency that is already inflicting grievous impacts on human rights, disproportionately affecting children and youth. Rapid, systematic and transformative changes are required to prevent catastrophic climate disruption and the tsunami of human rights violations that would ensue. Most States, including the five Respondents, are not taking sufficiently ambitious climate action, as demonstrated unequivocally by UNEP projections that even if current NDCs are all fulfilled (currently an unlikely scenario), the world is facing warming of at least 3C. UNEP reports that States must increase their NDC ambitions threefold to achieve the well below 2°C goal and fivefold to achieve the within 1.5°C goal.[[74]](#footnote-74) Most States ignore human rights, including the rights of children, completely in their NDCs.

This case provides the Committee with a timely and historic opportunity to provide the Respondent States (and by extension all States) with rights-based guidance in fulfilling their obligations to the children and youth of the world pursuant to the Convention. Every day, millions of tonnes of greenhouse gases are produced by human activities. Every day that passes without progress towards transformative change makes the mountain that must be climbed a little bit steeper, increasing the risks of catastrophic climate disruption.

We reiterate the conclusion of our brief on admissibility: The time for action to address the climate crisis and prevent catastrophic impacts on children’s rights is rapidly running out. As the IPCC has stated, “Every bit of warming matters, every year matters, every choice matters.”[[75]](#footnote-75) To which we would only add, every child matters.

1. Professor Knox was the mandate-holder from 2012 to 2018; Professor Boyd has been the Special Rapporteur since 2018. [↑](#footnote-ref-1)
2. IPCC, *Global Warming of 1.5°C. An IPCC Special Report* (2018), p. 51. [↑](#footnote-ref-2)
3. IPCC, *Global Warming of 1.5°C. An IPCC Special Report* (2018), p. 51. IPCC, 2019a, Summary for Policymakers, *Special Report on climate change, deserti­fication, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems*; IPCC, 2019b, Summary for Policymakers*, Special Report on the Ocean and Cryosphere* *in a Changing Climate.* [↑](#footnote-ref-3)
4. Id. p. 53. [↑](#footnote-ref-4)
5. Id. p. 236; FAO et al., *The State of Food Security and Nutrition in the World 2018*, p. 39. [↑](#footnote-ref-5)
6. Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), *Global Assessment Report on Biodiversity and Ecosystem Services: Summary for Policymakers* (2018), p. 5. [↑](#footnote-ref-6)
7. See A/HRC/43/53/Add.1 (Fiji); A/HRC/43/53/Add.2 (Norway); A/HRC/34/49/Add.1 (Madagascar). [↑](#footnote-ref-7)
8. See *A Safe Climate*, A/74/161 (2019) (Boyd); A/HRC/31/52 (2016) (Knox). See generally Framework Principles on Human Rights and the Environment, A/HRC/37/59, summarizing obligations of States to protect against environmental harm to human rights. [↑](#footnote-ref-8)
9. See generally IPCC, *Global Warming of 1.5°C*, pp. 240-41. [↑](#footnote-ref-9)
10. Report of the Special Rapporteur on extreme poverty and human rights, A/HRC/41/39 (25 June 2019). [↑](#footnote-ref-10)
11. IPCC, *Global Warming of 1.5°C*, pp. 244-45. [↑](#footnote-ref-11)
12. IPCC, *Global Warming of 1.5°C*, pp. 234-35. [↑](#footnote-ref-12)
13. See *Teitiota v New Zealand*, CCPR/C/127/D/2728/2016 (7 January 2020), para. 9.12. [↑](#footnote-ref-13)
14. IPCC, *Global Warming of 1.5°C: Summary for Policymakers,* pp. 7-10. [↑](#footnote-ref-14)
15. International Energy Agency, *World Energy Balances* (2018). [↑](#footnote-ref-15)
16. UNEP, *Emissions Gap Report* (2019). [↑](#footnote-ref-16)
17. Joint Statement on Human Rights and Climate Change (Sept. 2019), para. 3. [↑](#footnote-ref-17)
18. Id. para. 5. [↑](#footnote-ref-18)
19. Joint Statement, para. 3; see also A/HRC/37/58, paras. 15-30. [↑](#footnote-ref-19)
20. Id. paras. 31-37. [↑](#footnote-ref-20)
21. See A/HRC/35/13 (4 May 2017). [↑](#footnote-ref-21)
22. A/HRC/35/13, para. 50. [↑](#footnote-ref-22)
23. “Why climate change is creating a new generation of child brides”, *The Guardian* (26 November 2017); Human Rights Watch*, “Marry before your house is swept away: child marriage in Bangladesh”* (2015). [↑](#footnote-ref-23)
24. WHO*, Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s* (2014), pp. 80 and 89. [↑](#footnote-ref-24)
25. UNICEF, *Thirsting for a Future: Water and Children in a Changing Climate* (2017). [↑](#footnote-ref-25)
26. UNICEF, *Unless we act now: the impact of climate change on children* (2015). [↑](#footnote-ref-26)
27. See A/HRC/37/58, paras. 42-54. As the Committee has said, “children must be at the centre of the discourse on climate change and their opinion should be listened to and taken into account.” *UN child rights committee voices support for children campaigning on climate change* (27 September 2019). [↑](#footnote-ref-27)
28. UNICEF, *Unless we act now*, p. 8. [↑](#footnote-ref-28)
29. Joint Statement, paras. 5, 9. [↑](#footnote-ref-29)
30. Id. para. 7. [↑](#footnote-ref-30)
31. Id. para. 18. [↑](#footnote-ref-31)
32. See <https://di.unfccc.int/time_series> [↑](#footnote-ref-32)
33. Taşkın et al. v. Turkey, paras. 107-113. [↑](#footnote-ref-33)
34. Taşkın et al. v. Turkey para. 113. [↑](#footnote-ref-34)
35. See, e.g., Human Rights Committee, General Comment No. 36, para. 18; European Court of Human Rights, *Öneryildiz v. Turkey*, no. 48939/99 (2004), *Budayeva v. Russia,* no. 15339/02 (2008). [↑](#footnote-ref-35)
36. General Comment No. 36, para. 62. See Inter-American Court, *Advisory Opinion on Human Rights and the Environment,* para. 180 (“States must act in keeping with the precautionary principle . . . to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty.”). [↑](#footnote-ref-36)
37. IPCC, *Global Warming of 1.5°C*, p. 283. [↑](#footnote-ref-37)
38. Paris Agreement, art. 2(1). [↑](#footnote-ref-38)
39. Id. art. 4(3). [↑](#footnote-ref-39)
40. Convention, art. 4. [↑](#footnote-ref-40)
41. IPCC, *Global Warming of 1.5°C*, C.1 at p. 12. [↑](#footnote-ref-41)
42. C. Voigt, “The climate dimension of human rights obligations,” speech given at the conference Human Rights and the Planet, European Court of Human Rights and Council of Europe, 5 October 2020. See also C. Voigt and F. Ferreira, (2016) “Dynamic Differentiation”: The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement”, *Transnational Environmental Law* 5(2): 285-303. [↑](#footnote-ref-42)
43. *Pulp Mills on the River Uruguay* (Argentina v Uruguay), [2010] ICJ Rep 14, para. 187. *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Seabed Dispute Chamber of the International Tribunal of the Law of the Sea, Case No 17, 1 February 2011). [↑](#footnote-ref-43)
44. Prevention Articles, article 3. [↑](#footnote-ref-44)
45. *Pulp Mills,* para. 101. [↑](#footnote-ref-45)
46. *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Seabed Dispute Chamber of the International Tribunal of the Law of the Sea, Case No 17, 1 February 2011). [↑](#footnote-ref-46)
47. CRC/C/MLT/CO/3-6 (26 June 2019), para. 37(a); CRC/C/GBR/CO/5 (12 July 2016), para. 69(b). [↑](#footnote-ref-47)
48. International Court of Justice, *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay).* Judgment of April 20, 2010, para. 101; *Certain Activities and Construction of a Road* (Costa Rica v. Nicaragua), I.C.J Rep. 2015, para. 104. [↑](#footnote-ref-48)
49. CCPR//C/127/D/2728/2016, para 9.4. [↑](#footnote-ref-49)
50. CCPR/C/126/D/2751/2016), para. 7.4 [↑](#footnote-ref-50)
51. Cordella et al. v. Italia para. 172: Tătar v. Romania, mparas 122, 124. [↑](#footnote-ref-51)
52. *Guerra et al. v. Italia* [GC] (116/1996/735/932) §§ 60–62; *Öneryildiz v. Turkey* §§ 69–74; B*udayeva et al. V. Russia* § 146; *M. Ôzel et al. v. Turkey* (14350/05) §§ 170–172; *Kolyadenko et al. v. Russia* (17423/05, 20534/05, 20678/05, 23263/05 and 35673/05); *Brincat et al. v. Malta* (60908/11, 62110/11, 62129/11, 62312/11 and 62338/11). [↑](#footnote-ref-52)
53. *Öneryildiz/Turkey* (ECtHR 30 November 2004, no. 48939/99). [↑](#footnote-ref-53)
54. *Budayeva and others v. Russia*, no. 15339/02 (2008). [↑](#footnote-ref-54)
55. General Comment No. 36, para. 62. [↑](#footnote-ref-55)
56. UNFCCC Article 3.3. [↑](#footnote-ref-56)
57. Advisory Opinion 23/17, para. 180. [↑](#footnote-ref-57)
58. IPCC, *Global Warming of 1.5°C*, p. 283. [↑](#footnote-ref-58)
59. Special Rapporteur in the field of cultural rights, Report on climate change and culture, A/75/298. [↑](#footnote-ref-59)
60. A/HRC/37/59, Principle 15. [↑](#footnote-ref-60)
61. Communication No. 1457/2006, Views of 27 March 2009, CCPR/C/95/D/1457/2006, para. 7.2. [↑](#footnote-ref-61)
62. Id., at para 7.7. [↑](#footnote-ref-62)
63. Id. [↑](#footnote-ref-63)
64. Para. 149. [↑](#footnote-ref-64)
65. *Netherlands v Urgenda*, no. 19/00135, Supreme Court of the Netherlands, (2019) (hereinafter *Urgenda*). [↑](#footnote-ref-65)
66. *Urgenda*, para. 4.6. [↑](#footnote-ref-66)
67. *Urgenda*, para. 5.7.1. [↑](#footnote-ref-67)
68. *Urgenda,* para. 5.7.7. [↑](#footnote-ref-68)
69. *Urgenda*, para. 6.3. [↑](#footnote-ref-69)
70. *Urgenda*, paras. 5.3.2, 5.3.3. [↑](#footnote-ref-70)
71. UNFCCC Article 3. [↑](#footnote-ref-71)
72. International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), p. 125 (commentary to art. 47). The Commission gives as an example multiple States separately contributing to the pollution of the same river. [↑](#footnote-ref-72)
73. Application of the Convention on the Prevention and Punishment of the Crime of Genocide

(*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, ICJ Reports [2007] 43, paras 5.7.1-5.8. [↑](#footnote-ref-73)
74. UNEP, *Emissions Gap Report 2019*, p. xvi. [↑](#footnote-ref-74)
75. IPCC, *Global Warming of 1.5°C*, Foreword at (vi).  [↑](#footnote-ref-75)