

**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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human rights obligations relating to the enjoyment of a
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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 We filed an earlier brief addressing the admissibility of these Communications. In this brief, we address the merits.

II. The Climate Emergency and Children's Rights

2. As our previous brief described, the world faces a climate crisis, which is already causing severe effects on human rights. Reports by the Intergovernmental Panel on Climate Change (IPCC) explain how climate change is increasing the severity of extreme weather events such as fires, droughts, hurricanes and floods, undermining production of major crops, melting permafrost in the Arctic, and inundating low-lying islands and coastal areas.

3. Unless States take urgent actions to reduce emissions, the future impacts of climate change will be even worse. Yet 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.² Those who are already disadvantaged and vulnerable will be hit the hardest, including children, women, persons with disabilities, those living in or near poverty,³ and Indigenous peoples and local communities that depend on agriculture, forests or coastal ecosystems.⁴ At 1.5°C, small island States will start to reach the limits of possible adaptation,⁵ forcing them to face the loss of their lands and cultures.⁶ An increase of 2.0°C or more would exacerbate all of these outcomes.⁷

4. The IPCC has indicated 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.

5. Children are particularly vulnerable to the effects of climate crisis. The health problems exacerbated by climate change include malnutrition, acute respiratory infections, diarrhoea and other water-borne illnesses.⁸ Because climate disruption will worsen throughout their lives, today's actions or omissions will have far greater consequences for them than for adults. And 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 on the Rights of the Child 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.⁹ All of these vulnerabilities intersect with others, such as poverty and membership in marginalized populations, to amplify the adverse impacts of the crisis upon children.

6. As we said in our previous brief, this is one of the most important communications ever received by this Committee. We hope that the Committee's decision provides vital and timely guidance to States, human rights bodies, international and domestic tribunals, international organizations and communities all over the world.

¹ Professor Knox was the mandate-holder from 2012 to 2018; Professor Boyd has been the Special Rapporteur since 2018.

² See generally IPCC, *Global Warming of 1.5°C*, pp. 240-41.

³ Report of the Special Rapporteur on extreme poverty and human rights, A/HRC/41/39 (25 June 2019).

⁴ IPCC, *Global Warming of 1.5°C*, pp. 244-45.

⁵ IPCC, *Global Warming of 1.5°C*, pp. 234-35.

⁶ See *Teitiota v New Zealand*, CCPR/C/127/D/2728/2016 (7 January 2020), para. 9.12.

⁷ IPCC, *Global Warming of 1.5°C: Summary for Policymakers*, pp. 7-10.

⁸ See A/HRC/35/13 (4 May 2017).

⁹ 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).

III. The Respondents Are Failing to Comply with Their Human Rights Obligations

7. The Respondents are failing to comply with their obligations under the Convention on the Rights of the Child in relation to climate change, as the following sections explain.

A. The Respondents have obligations to protect the Convention rights from interference, including as a result of environmental harm.

B. Climate change is causing such interference and will continue to do so in the future, as this Committee has already recognized, and as the Authors describe in detail in their submission.

C. The responsibility of every State to protect against harm to human rights does not vanish when many States contribute to a global harm. No State is solely responsible for remedying the harm caused by carbon pollution, but each State is responsible for doing its fair share to mitigate the harm.

D. Each of the Respondents is failing to meet its responsibility to mitigate the effects of climate change on human rights. They are not on track to fulfill the commitments that they have recognized are necessary to combat climate change. This failure is causing adverse effects on the Authors now, and will foreseeably and inevitably do so in the future unless the Respondents take urgent action to change course.

E. None of the Respondents incorporate the best interests of the child in their Nationally Determined Contributions.

A. The Respondent States have obligations to protect rights from environmental harm

8. The Convention on the Rights of the Child requires its Parties to “respect and ensure” all of the rights that it recognizes.¹⁰ It is well-established that this obligation requires States not only to respect human rights, but also to protect human rights against infringements by others. As the Human Rights Committee has stated in relation to equivalent language in the International Covenant on Civil and Political Rights (ICCPR), “the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.”¹¹ Other human rights bodies have reached the same result in construing other human rights instruments.¹²

9. Like the Human Rights Committee and other human rights bodies, the Committee on the Rights of the Child has stated that the duty to protect requires States “to protect against infringements of rights guaranteed under the Convention and the Optional Protocols thereto by third parties.”¹³ In particular, “States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children’s rights.”¹⁴

10. The Convention on the Rights of the Child, in describing the right to health, explicitly requires that States act in the best interests of the child and consider “the dangers and risks of environmental pollution”.¹⁵ Even without such specific references, international human rights bodies have recognized that environmental harm can and often

¹⁰ Art. 2(1) (“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction”).

¹¹ Human Rights Committee, General Comment No. 31, ¶ 8 (2004).

¹² See, e.g., Committee on Economic, Social and Cultural Rights, General Comment 12, para. 15 (1999) (right to food); General Comment 14, para. 33 (2000) (right to health); African Commission on Human and Peoples’ Rights, *Commission Nationale de Droits de l’Homme et des Libertés v. Chad*, Comm. No. 74/92 (1995); Inter-American Court of Human Rights, *Velasquez Rodriguez Case*, Judgment of July 29, 1988, ¶ 172.

¹³ Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, para. 28.

¹⁴ *Ibid.*

¹⁵ Art. 24(2)(c).

does interfere with the full enjoyment of human rights, and therefore triggers the duty of States to protect against such harm. The Human Rights Committee has stated, “Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”.¹⁶ The UN Human Rights Council has recognized that environmental damage can have negative implications, both direct and indirect, “for the effective enjoyment of *all* human rights”.¹⁷ In our reports to the Human Rights Council, we have described ways that environmental harm interferes with the rights to life, health, food, water, a healthy environment, culture, and many others. We have highlighted the effects of environmental harm on vulnerable and marginalized people, including children, which implicate their particular rights, including rights of non-discrimination.¹⁸

11. As our reports explain, human rights bodies have uniformly agreed that States have obligations to protect the enjoyment of human rights from current and foreseeable environmental harm. While this obligation does not require States to shoulder an impossible or disproportionate burden, it does require them to adopt reasonable and adequate measures to effectively protect rights and to provide deterrence against threats, including proportionate measures against risks that may materialize in the longer term.¹⁹ The Human Rights Committee stated in its 2018 General Comment on the right to life that “The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include . . . degradation of the environment”.²⁰ The Human Rights Council has called upon States “To respect, protect and fulfil human rights, including in all actions undertaken to address environmental challenges”.²¹

12. Regional human rights tribunals have helped to clarify the application of human rights norms to environmental threats. For example, the European Court of Human Rights has held that governments must effectively deter foreseeable threats to the right to life from dangerous human activities and natural disasters. In *Oneryildiz v. Turkey*, the Court held that the State had violated its obligation to protect the right to life by not taking steps to safeguard against the foreseeable harm posed by a municipal landfill.²² Similarly, in *Budayeva v. Russia*, the Court held that the State violated its obligation to protect the right to life by failing to protect against the foreseeable risk that mudslides would devastate the town of Tyrnauz.²³

13. The *Framework Principles on Human Rights and the Environment*, presented to the Council by the Special Rapporteur in 2018, summarize the human rights obligations of States in relation to the environment, as they have been elaborated by treaty bodies, regional tribunals, and other international human rights bodies.²⁴ The *Framework Principles* describe States’ procedural and substantive obligations under international human rights law in relation to environmental protection, including the obligations that States owe to those who are most at risk from environmental harm. The *Framework Principles* make clear that “States must establish, maintain and enforce effective legal and institutional frameworks for the enjoyment of a safe, clean, healthy and sustainable environment,” and that environmental standards should, among other things, “take into account the best available science”.²⁵

14. To meet their human rights obligations, States should ensure that their environmental standards take into account and, to the extent possible, are consistent with, all relevant international environmental, health and safety standards.²⁶ As the Human Rights Committee has stated, obligations of States under international environmental law

¹⁶ Human Rights Committee, General Comment No. 36 (2018) on the right to life, para. 62.

¹⁷ Human Rights Council res. 34/20 (6 April 2017) (emphasis added).

¹⁸ For a report on children’s rights and the environment, in particular, see UN Doc. A/HRC/37/58 (24 January 2018).

¹⁹ See, e.g., *Budayeva and others v. Russia*, no. 15339/02 (2008), para. 134.

²⁰ Human Rights Committee, General Comment No. 36 (2018) on the right to life, para. 26.

²¹ Human Rights Council res. 34/20 (6 April 2017) (emphasis added).

²² *Oneryildiz and others v. Turkey*, no. 48939/99 (2004).

²³ *Budayeva and others v. Russia*, no. 15339/02 (2008).

²⁴ UN Doc. A/HRC/37/59 (24 January 2018).

²⁵ *Ibid.* Principle 11, para. 31.

²⁶ *Ibid.*

should inform the relevant provisions of human rights law in this respect (just as obligations of States to respect and ensure human rights should inform their relevant obligations under international environmental law).²⁷

15. One of the most important and widely accepted elements of international environmental law in this context is the precautionary principle, recognized in the 1992 Rio Declaration on Environment and Development and in many other international environmental instruments.²⁸ According to this principle, the lack of full scientific certainty should not be used to justify postponing effective measures to prevent environmental harm, especially when there are threats of serious or irreversible damage, and States should take precautionary measures to protect against such harm.²⁹

16. In 2018, the Human Rights Committee stated that States should pay “due regard” to the precautionary approach in protecting the right to life from environmental harm.³⁰ Similarly, the Inter-American Court, in a 2017 advisory opinion on human rights and the environment, stated that “in the context of the protection of the rights to life and to personal integrity, . . . States must act in keeping with the precautionary principle. Therefore, even in the absence of scientific certainty, they must take ‘effective’ measures to prevent severe or irreversible damage.”³¹ 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.”³²

B. The duty to protect human rights from environmental harm encompasses the harm that climate change is causing and will continue to cause to the Authors

17. Climate change is already interfering with, and will increasingly jeopardize, the full enjoyment of a vast range of human rights. As this Committee recognized in September 2019, in its Joint Statement with four other human rights treaty bodies, 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 “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.” This 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. In two of their reports, the present and former Special Rapporteur have described how climate change is already having disastrous consequences for human rights.³³ The most recent report, submitted by the Special Rapporteur to the UN General Assembly in 2019, summarizes some of the effects on the rights to life, health, food, water, sanitation and a healthy environment, and emphasizes that children are particularly vulnerable to climate-related health problems.³⁴ The United Nations Children’s Fund has warned that “climate change will harm the poorest and most vulnerable children first, hardest and longest”.³⁵

19. Because climate change threatens the enjoyment of a wide range of human rights, States have obligations to take appropriate and effective measures to protect human rights from its harmful effects, just as they do with respect to other environmental harms. This Committee has already recognized that the obligations to respect, protect and

²⁷ Human Rights Committee, General Comment No. 36 (2018) on the right to life, para. 62.

²⁸ Principle 15 of the Rio Declaration states: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

²⁹ *Framework Principles*, Principle 11, para. 33.

³⁰ General Comment No. 36, para. 62.

³¹ Inter-American Court of Human Rights, *Advisory Opinion on the Environment and Human Rights*, No. OC-23/17 (15 November 2017), para. 180.

³² IPCC, *Global Warming of 1.5°C*, p. 283.

³³ UN Doc. A/HRC/31/52 (1 February 2016); A/74/161 (15 July 2019).

³⁴ A/74/161 (15 July 2019), paras. 40-42.

³⁵ UNICEF, *Unless we act now: The impact of climate change on children* (UNICEF, 2015).

fulfil human rights encompass threats posed by climate change. As long ago as 2013, in its General Comment on the right to health, the Committee recognized that climate change “is one of the biggest threats to children’s health and exacerbates health disparities”.³⁶

20. In its September 2019 Joint Statement with other UN human rights treaty bodies, the Committee emphasized that under the Convention (as well as other human rights treaties), “State parties have obligations, including extra-territorial obligations, to respect, protect and fulfil all human rights of all peoples”, and 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”.

21. In the Joint Statement, the Committees concluded by stating that they would “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.”

22. The submission by the Authors responds to this assurance by the Committees. In the submission, the Authors describe violations of their rights to life, health, culture (for the Indigenous Authors), and prioritization of their interests. The Authors have suffered physical and psychological impacts as a result of having been: hospitalized for asthma; stricken by tropical diseases whose range has expanded because of climate change (e.g. dengue fever and chikungunya); 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. The 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 of violations of their rights that the Respondent States have not rebutted.

C. Each of the Respondent States has identifiable duties to take effective actions to protect human rights from climate change

23. Because the climate crisis is already interfering with the Authors’ full enjoyment of a wide range of human rights, and because it is foreseeable – even certain – to cause even greater disruption to their rights in the near future, the Respondent States have positive obligations to take measures to protect the enjoyment of the Authors’ rights. In the September 2019 Joint Statement, this Committee and others outlined the content of those obligations.

24. Specifically, the Joint Statement said 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”, “States parties should effectively contribute to phasing out fossil fuels, promoting renewable energy and addressing emissions from the land sector, including by combating deforestation”, and “States must regulate private actors, including by holding them accountable for harm they generate both domestically and extraterritorially”. The Joint Statement underlined that “When reducing emissions and adapting to climate impacts, States must seek to address all forms of discrimination and inequality, including advancing substantive gender equality, protecting the rights of indigenous peoples and of persons with disabilities, and taking into consideration the best interests of the child.”

25. That carbon pollution comes from many sources in every State, and causes a wide variety of harms, does not excuse any individual State from its obligation to protect against the effects of climate change on human rights. The science of climate attribution has greatly evolved in recent years, so that it is now possible to attribute particular types of harm to climate change with much more certainty than ever before.³⁷ More fundamentally, the Respondent States’ obligations with respect to protection against environmental harm do not depend on proving causal chains

³⁶ General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), para. 50.

³⁷ See M. Burger et al., 2020, “The Law and Science of Climate Change Attribution,” *Columbia Journal of Environmental Law*, https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3051178.

with absolute certainty; rather they have obligations to act in order to prevent foreseeable risks of harm to human rights.

26. It is irrelevant that the five Respondent States are not solely responsible for the harms to the Authors. The duty of each State Party to protect human rights recognized in the Convention is not limited to threats that are exclusively caused by or attributable to the State itself. States must exercise due diligence to protect the human rights of individuals against interference and deprivations caused by business enterprises or other entities, including when such harm is caused by multiple actors.

27. That the harms caused by climate change are the responsibility of many States does not excuse any of the Respondent States from its own responsibility. As Article 47 (1) of the Articles on Responsibility of States for Internationally Wrongful Acts makes clear: “Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.”³⁸ Each of the Respondent States contributes directly to past, current, and foreseeable future interference with the enjoyment of the Convention’s rights by emitting and allowing the emission of greenhouse gases. While all States bear some degree of responsibility, the Authors’ claims against the Respondents are based strictly on *their* specific failures to meet *their* obligations.

28. Nor can States 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.”³⁹

29. Moreover, States must not wait until the full effects of the climate crisis are being felt. The point of the duty to protect is to *protect* against harm, not just respond after the harm has been experienced. To comply with the duty, then, States must take effective measures to avoid harm as soon as it is reasonably foreseeable, not wait until it is too late.

30. Determining an individual State’s share of the global responsibility to mitigate climate change may initially appear difficult, but the States themselves have agreed, through the UN Framework Convention on Climate Change and the Paris Agreement, on benchmarks identifying the level of climate action required. 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” (art. 2(1)). On that basis, States made individual commitments through Nationally Determined Contributions to take specific steps towards that goal. Moreover, 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.”⁴⁰

31. 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” under article 4 of the Convention, and, with regard to economic, social and cultural rights, to “undertake such measures to the maximum extent of their available resources.”

32. 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)

³⁸ Annex to General Assembly resolution 56/83, 12 December 2001.

³⁹ 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.

⁴⁰ Paris Agreement, art. 4(3).

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.

33. While it may be difficult to trace a precise causal path between the actions of any one of the Respondent States and the specific 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, total current emissions may be only one factor; other factors related to the concept of common but differentiated responsibilities, such as its level of economic development and its historical contributions, may also be relevant.

34. To date, the most detailed examination of such responsibility is the 2019 decision of the Supreme Court of the Netherlands in the *Urgenda* case. Drawing on the environmental jurisprudence of the European Court of Human Rights, 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.”⁴¹ It concluded 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 by not taking sufficient actions to reduce greenhouse gas emissions.

35. After surveying the science on climate change, including the danger of tipping points that may change the climate abruptly and irreversibly, the Court stated 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].”⁴² The Court held that “the Netherlands is obliged to do ‘its part’ in order to prevent dangerous climate change, even if it is a global problem.”⁴³ It rejected the arguments that a State does not have to take any responsibility if other States do not comply with theirs or if its contribution to emissions is very small on a global scale.⁴⁴ The Court took into account the statements by the Dutch government itself, together with others, as to the steps necessary to combat climate change; the Court stated that in principle, the share of the State is to be determined by the government, but “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.”⁴⁵

36. The Court found a “high degree of international consensus” on the urgent need for developed countries to reduce greenhouse gas emissions by at least 25-40% by 2020 from 1990 levels in order to achieve at least the two-degree target, “which is the maximum target to be deemed responsible.”⁴⁶ It found no reason why this target should not apply to the Netherlands in particular, especially in light of its relatively high per capita emissions.⁴⁷ In the context of the positive obligations of the State to protect the rights to life and to family and private life by taking “appropriate measures to prevent dangerous climate change,” the target of 25-40% reduction “can therefore be regarded as an absolute minimum.”⁴⁸ The Court found that the Netherlands was not on track to meet this target, and held that to comply with human rights law, the State had to reduce its emissions by at least 25% by the end of 2020. The government thereafter took measures to comply with the judgment.⁴⁹

37. *Urgenda* shows that it is possible to assess whether a State has adequately applied a due diligence approach, 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, and evaluate whether or not a State has lived up to its own commitments and done its fair share.

⁴¹ *Netherlands v Urgenda*, no. 19/00135 (2019), paras. 5.3.2, 5.3.3.

⁴² *Ibid.* para. 4.6.

⁴³ *Ibid.* para. 5.7.1.

⁴⁴ *Ibid.* para. 5.7.7.

⁴⁵ *Ibid.* para. 6.3.

⁴⁶ *Ibid.* para. 7.2.11.

⁴⁷ *Ibid.* paras. 7.3.4, 7.3.6.

⁴⁸ *Ibid.* para. 7.5.1.

⁴⁹ See Watts, “Dutch officials reveal measures to cut emissions after court ruling”, *The Guardian* (24 April 2020).

D. The Respondent States are not fulfilling their duties to protect human rights from climate change

38. All Respondent States are Parties to the UN Framework Convention on Climate Change and all except Turkey have ratified the Paris Agreement. Pursuant to the Paris Agreement, each State committed that its nationally determined contribution will reflect its “highest possible ambition” (art. 4.3). This is a due diligence obligation according to which all Parties need to take effective measures, using the “maximum available resources”, to achieve the 1.5°C and 2.0°C temperature goals of the Agreement.

39. The current trajectory of the world is for more than 3°C of warming, which scientists agree is beyond a safe level, and substantially beyond what States committed to achieve in the UNFCCC (avoiding dangerous interference with the climate system) and the Paris Agreement (holding temperature increases to well below 2°C, and pursuing efforts to limit increases to 1.5°C).⁵⁰ As noted earlier, 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.

40. This Committee can and should determine whether the Respondent States are: (a) on track to fulfill the commitments made in their Nationally Determined Contributions; and (b) pursuing the highest possible ambition, considering their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. If the Respondent States are not fulfilling both of these commitments, this is prima facie evidence that they are not doing their “fair share”, have failed to act with due diligence, and have failed to fulfill their human rights obligations. Based on the facts of this case as set out by the Authors, the five Respondent States’ weak and unambitious NDCs, their unsatisfactory progress towards meeting even those modest targets, and the inadequate adaptation measures taken to date, the Respondent States are clearly doing too little to protect the rights of the Authors.

41. The following paragraphs rely on data from the UNFCCC secretariat and analysis from the Climate Action Tracker, an initiative operated by a consortium of academic institutions and civil society organizations. The Climate Action Tracker evaluates the adequacy of existing NDCs compared to the Paris commitments and assesses whether States are on track to meet their NDC targets for 2030.

Argentina

42. Argentina declared a climate emergency in 2019. However, Argentina’s unconditional NDC target is a 128 percent increase above 1990 emission levels by 2030, while its conditional NDC is an 85 percent increase by 2030.⁵¹ The Climate Action Tracker rated Argentina’s target under the Paris Agreement as “critically insufficient”, because if all States adopted this level of ambition, warming would likely exceed 4°C.⁵² Despite a warning from the Committee on Economic, Social and Cultural Rights, Argentina continues to support a massive oil and gas fracking project in the Vaca Muerta region, with the potential to cause millions of tonnes of greenhouse gas emissions.⁵³

Brazil

43. Brazil’s NDC sets a target for emissions of 58 percent above 1990 levels by 2030 (excluding Land Use, Land Use Change, and Forestry). 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.⁵⁴ Brazil is not on track to deliver on its NDC, with a projected increase of 83-85 percent above 1990 levels. Making matters worse is the upwards trend in deforestation and the associated emissions. Recent reports indicate huge increases in fires and deforestation in the Amazon rainforest, associated with the weakening of environmental policies, reversing a decade of hard-fought success in reducing deforestation.⁵⁵

⁵⁰ UNEP, 2020, *Emissions Gap Report 2020*.

⁵¹ A conditional NDC is contingent on the provision of international financial assistance, the transfer of technology, or the extent of commitments made by other States.

⁵² Climate Action Tracker, 2020, <https://climateactiontracker.org/countries/argentina/>

⁵³ E/C.12/ARG/CO/4 (1 November 2018), para. 13.

⁵⁴ Climate Action Tracker, 2020, <https://climateactiontracker.org/countries/brazil/pledges-and-targets/>

⁵⁵ J.C. Pereira and E. Viola, 2020, Close to a Tipping Point? The Amazon and the Challenge of Sustainable Development under Growing Climate Pressures”, *J. of Lat. Amer. Studies*, 52(3): 467-94.

France

44. France has a target to reduce emissions 40 percent below 1990 levels by 2030. Between 1990 and 2018, France reduced its greenhouse gas emissions by 17.99 percent, which indicates that it is not on track to meet its 2030 target.⁵⁶ The European Commission recently assessed French progress and concluded France will miss the 2030 target by a wide margin.⁵⁷ The transport sector produces the largest share of France's greenhouse gas emissions, approximately 30 percent.⁵⁸ Yet the latest data from France show that nine out of ten new vehicles sold in 2020 still depend on gasoline or diesel, while only one in ten is a zero emissions vehicle.⁵⁹

Germany

45. The Climate Action Tracker rates Germany's 55% emissions reduction target for 2030 as "highly insufficient", because if all States adopted this level of ambition, warming would reach 3-4°C.⁶⁰ According to the Climate Action Tracker, the German government's Climate Action Programme 2030, adopted in 2019, does not contain strong enough policy measures to meet its 2030 emissions reduction targets. Between 1990 and 2018, Germany reduced its greenhouse gas emissions by 31.3 percent.⁶¹ Germany does not plan to phase out coal until 2038, well after other wealthy industrialized States including the United Kingdom, Canada, Sweden and Finland, all of whom plan to eliminate coal burning for electricity by 2030 at the latest.⁶²

Turkey

46. Turkey is the only G20 country that has not ratified the Paris Agreement. Turkey's Submission to the Committee outlines in detail the measures it is taking and plans to take to address climate change. However, Turkey's 2030 target in its INDC is a 356 percent increase in GHG emissions above 1990 levels by 2030. The Climate Action Tracker rates Turkey's target as "critically insufficient" because if other countries followed Turkey's approach, global warming would exceed 4°C.⁶³ Between 1990-2018, Turkey's emissions rose 137.47 percent.⁶⁴

Summary

47. The actions to date and actions proposed in the existing NDCs of the five Respondents are clearly inadequate. None of the five Respondent States is taking sufficiently ambitious action to fulfill their obligations to ensure respect and protection of the rights of children, in their jurisdictions and beyond, who will be foreseeably, dramatically and negatively affected by climate change.

E. None of the Respondent States incorporate the best interests of the child in their Nationally Determined Contributions.

48. The Convention on the Rights of the Child states that in all actions concerning children, "the best interests of the child shall be a primary consideration" (art 3(1)). The Committee has clarified that the right of a child to have his or her best interests taken as a primary consideration has three elements: a) a substantive right that creates an intrinsic obligation for States that can be invoked before a court; b) a fundamental legal principle that requires, when a legal provision is open to interpretation, the interpretation that most effectively serves the child's best interest be chosen; and c) a rule of procedure that when a policy or decision is to be made that will affect children, a process must be followed that evaluates possible impacts on the rights of the child.⁶⁵

⁵⁶ See https://di.unfccc.int/time_series

⁵⁷ European Commission, 2020, *Assessment of the final national energy and climate plan of France*.

⁵⁸ See https://unfccc.int/files/ghg_emissions_data/application/pdf/fra_ghg_profile.pdf

⁵⁹ See <https://cleantechnica.com/2020/10/03/france-sees-10-6-ev-market-share-in-september-4x-growth-year-on-year/>

⁶⁰ Climate Action Tracker, <https://climateactiontracker.org/countries/germany/>

⁶¹ See https://di.unfccc.int/time_series

⁶² See <https://www.cleanenergywire.org/factsheets/spelling-out-coal-phase-out-germanys-exit-law-draft>

⁶³ Climate Action Tracker, 2020, <https://climateactiontracker.org/countries/turkey/>

⁶⁴ See https://di.unfccc.int/time_series

⁶⁵ General Comment No. 14 on the right of a child to have his or her best interests taken as a primary consideration (art. 3, para. 1).

49. In 2013, this Committee said that States should “put children’s health concerns at the centre of their climate change adaptation and mitigation strategies”.⁶⁶ In its consideration of Parties’ reports, the Committee has regularly urged States to consider the best interests of the child as a matter of primary consideration when designing, implementing and monitoring laws and policies related to climate change.⁶⁷

50. It is therefore a damning indictment of the Respondents’ failure to fulfill their human rights obligations to observe that not one of these States even mentioned children in its Nationally Determined Contribution, let alone placed children’s rights and the best interests of the child at the center of these strategies, as the Committee has recommended. There is no evidence that any of the Respondent States carried out a child rights impact assessment in formulating their NDCs.

IV. Conclusion

51. Humanity faces a global climate emergency that is already inflicting grievous impacts on human rights, disproportionately affecting children and youth. The climate emergency demands urgent, effective and rights-based action from all States, because the failure to act now ensures that children will suffer greater harms in the future. 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 Respondents, are not taking sufficiently ambitious climate action, as demonstrated unequivocally by UNEP projections that even if all current NDCs are fulfilled (currently an unlikely scenario), the world is facing warming of at least 3°C. 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.⁶⁸

52. 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. The stakes could not be higher. Every day, millions of tonnes of greenhouse gases are produced by human activities, exacerbating the climate emergency. Every day that passes without progress towards rapid emissions reductions makes the mountain that must be climbed a little bit taller and a little bit steeper, increasing the risks of catastrophic climate disruption.

53. The time for action to address the climate emergency and prevent catastrophic impacts on children’s rights is rapidly running out. Climate justice delayed is climate justice denied. In the words of Swedish teenager Greta Thunberg, one of the sixteen Authors, “I want you to act as if our house is on fire. Because it is.”

⁶⁶ General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), para. 50.

⁶⁷ CRC/C/MLT/CO/3-6 (26 June 2019), para. 37(a); CRC/C/GBR/CO/5 (12 July 2016), para. 69(b).

⁶⁸ UNEP, *Emissions Gap Report 2019*, p. xvi.