



Human Rights Law Clinic Paper 2020

Children Human Rights Defenders' Petition on Climate Change to the United Nations Committee on the Rights of the Child

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i. List of Abbreviations

CAT: Committee Against Torture

CEDAW: Convention on the Elimination of all Forms of Discrimination Against Women

CRC Committee: United Nations Committee on the Rights of the Child

ECHR: European Convention on Human Rights

ECtHR: European Court of Human Rights

EU: European Union

HCC: High Council for Climate

HDI: Human Development Index

HRC: Human Rights Committee

IAC: Inter-American Court

ICCPR: International Covenant on Civil and Political Rights

IPCC: Intergovernmental Panel on Climate Change

IPPC: International Plant Protection Convention

NGO: Non-Governmental Organization

OPIC: Optional Protocol to the Convention on the Rights of the Child on a Communications
Procedure

UN: United Nations

UNCRC: United Nations Convention on the Rights of the Child

UNICEF: United Nations International Children's Emergency Fund

WHO: World Health Organization

ii. Table of Legal Instruments

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

Convention on the Rights of the Child, (adopted 20 November 1989 UNGA Res 44/25).

European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950 Council on Europe, *as amended by Protocols Nos. 11 and 14*).

European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950 Council on Europe, *as amended by Protocols Nos. 11 and 14*).

Optional Protocol to Convention of the Rights of the Child on a Communication Procedure, (adopted 14 April 2014 UNGA Res 66/138) (OPIC).

UN Convention on the Rights of the Child, Informe de la Investigación relacionada en Chile en virtud del artículo 13 del Protocolo facultativo de la Convención sobre los Derechos del Niño relativo a un procedimiento de comunicaciones, CRC/C/CHL/INQ/1 2018.

UNCEDAW 'Inquiry concerning Kyrgyzstan under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' (2019) CEDAW/C/OP.8/KGZ/3.

UNCEDAW 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Form of Discrimination against Women' (2019) CEDAW/C/OP.8/GBR/3.

UNCRC 'Informe de la Investigación relacionada en Chile en virtud del artículo 13 del Protocolo facultativo de la Convención sobre los Derechos del Niño relativo a un procedimiento de comunicaciones' (2018) CRC/C/CHL/INQ/1.

UNCRC, 'Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure' (8 April 2013) CRC/C/62.

UNGA Framework Convention on Climate Change (adopted 12 December 2015) FCCC/Informal/8.

iii. Table of Cases

Court of Justice of the European Union

Commission v Federal Republic of Germany (Case 543/16) [2018].

Commission v France (Case 636/18) [2019] OJ C 455.

Domestic Cases

Mapuche Confederation of Neuquén v YPF et al. [2019] Public Prosecutor.

European Court of Human Rights Cases

Al-Skeini et al v United Kingdom App no 55721/07 (ECtHR 7 July 2011).

Bankovic and others v Belgium and others App no 52207/99 (ECtHR 12 December 2001).

Case of ONUR v. The United Kingdom App no 27319/07 (ECtHR, 17 February 2009).

UN Treaty Body Communications

Petitioners, 'Communication to the Committee on the Rights of the Child: Petitioners v Argentina, Brazil, France, Germany & Turkey' [2019] <childrenvsclimatecrisis.org/wp-content/uploads/2019/09/2019.09.23-CRC-communication-Sacchi-et-al-v.-Argentina-et-al-2.pdf> accessed 24 January 2020.

1. Introduction and Background

On 23 September 2019, a landmark Communication was filed to the United Nations Committee on the Rights of the Child (CRC Committee).¹ The Communication alleges that five States - Argentina, Brazil, France, Germany and Turkey - are violating the rights of sixteen child petitioners by failing to address the global climate crisis.²

The Communication was filed by the petitioners under the Optional Protocol to the Convention on the Rights of the Child (OPIC). It is the first Communication to be submitted to the CRC Committee by a group of children, advancing the economic, social and cultural rights of children. The petitioners narrate the impact that the global climate crisis has had on their personal lives, specifically focusing on violations of Article 6,³ Article 24,⁴ and Article 30,⁵ of the Convention on the Rights of the Child (UNCRC). The purpose of the Communication is to urge the CRC Committee to advise Member States of the UNCRC to take all reasonable measures to protect children globally from the devastating impacts of climate change.⁶

The importance of the Communication is heightened by the increasing worsening climate crisis. The Intergovernmental Panel on Climate Change (IPCC) affirmed that the global population is less than eleven years away from being able to correct the irreversible damage caused by irresponsible climate inaction.⁷ The climate crisis is warming the planet, creating weather unpredictability and impacting people's health, sanitation, productivity,⁸ and mental health.⁹ Scientists highlight how the impacts of climate change will continue to exacerbate global inequalities,¹⁰ and Amnesty International states that future generations will undoubtedly experience the worsening effects to a much higher degree than any other generation.¹¹

¹ Petitioners, 'Communication to the Committee on the Rights of the Child: Petitioners v Argentina, Brazil, France, Germany & Turkey' [2019] <childrensvclimatecrisis.org/wp-content/uploads/2019/09/2019.09.23-CRC-communication-Sacchi-et-al-v.-Argentina-et-al-2.pdf> accessed 24 January 2020.

² Ibid.

³ Convention on the Rights of the Child, (adopted 20 November 1989 UNGA Res 44/25), art. 6.

⁴ Convention on the Rights of the Child, art. 24.

⁵ Convention on the Rights of the Child, art. 30.

⁶ Petitioners (n1) 6.

⁷ Valérie Masson-Delmotte, 'An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global responses to the threat of climate change, sustainable development, and efforts to eradicate poverty', (IPCC, 2019) <www.ipcc.ch/sr15/> accessed 17 March 2020.

⁸ NASA, 'The Effects of Climate Change' (NASA, 2020) <<https://climate.nasa.gov/effects/>> accessed 6 March 2020.

⁹ Gaia Vince, 'How scientists are coping with 'ecological grief'' (*The Guardian*, 12 January 2020) <www.theguardian.com/science/2020/jan/12/how-scientists-are-coping-with-environmental-grief> accessed 6 March 2020.

¹⁰ Amnesty International, 'Climate Change' (*Amnesty International*, 2019) <www.amnesty.org/en/what-we-do/climate-change/> accessed 12 March 2020.

¹¹ Ibid.

Child Rights Connect has requested that this Memorandum address two concerns. Firstly, this Memorandum will address whether the Communication is admissible. Using the CRC Committee and OPIC's admissibility criteria, we will present the arguments in favour and against admissibility. Additionally, we will present which States the petitioners are permitted to bring the Communication against. Secondly, this Memorandum will address whether the petitioners can pursue an alternative approach through an Inquiry. Using the most important criteria that we have identified; we will make suggestions of what State would be the most strategic and emblematic to bring an Inquiry against.

This memorandum will utilise a doctrinal approach, drawing on the text of the CRC and OPIC are the legal instruments, relevant case law, Advisory Opinions, General Comments, pertinent Conventions and reports from Treaty Bodies. As this Communication is the first of its kind, it is difficult to predict how the CRC Committee will approach the admissibility, as well as how a potential Inquiry will materialise. Therefore, the findings of this memorandum draw on the approaches taken by other Treaty Bodies in previous Communications in order to infer the likely approach of the CRC Committee to this specific Communication.

2. Admissibility Criteria

A Communication submitted to the CRC Committee can only be found admissible if it meets a list of criteria set out by both the UNCRC and OPIC. For ease of reference, all relevant criteria have been presented in tables in an annex. There are however certain criterion that must be fulfilled before a Treaty Body is able to review an individual Communication; the Geneva Academy have condensed this list to include the competence of the Committee, the exhaustion of domestic remedies, *ratione personae*, *ratione temporis*, time limits, *ratione materiae* and *lis pendens* rule.¹² Based on this list of criteria, coupled with several issues identified in the Communication, we have determined the most pertinent criteria pertaining to this specific Communication as: the exhaustion of domestic remedies; extraterritorial jurisdiction; and suitability of the selected States.¹³ These have been identified as the most important criteria to be met, as they are specific areas of concern for one or more of the selected States in the Communication.

We will analyse whether the Communication provides sufficient evidence to show the petitioners have sufficiently exhausted domestic remedies, as required by the admissibility criteria.¹⁴ Additionally, we will address the questions concerning whether the petitioners fall within the jurisdiction of the five selected States, specifically in regard to extraterritorial jurisdiction.¹⁵ Finally, we will analyse the incorporation of Turkey in the Communication, as the petitioners failed to provide evidence of consent or justification from an individual(s) from Turkey that is required to submit a Communication.

2.1. Exhaustion of Domestic Remedies

Article 7(e) of OPIC states that a Communication is deemed inadmissible when: 'all available domestic remedies have not been exhausted. This shall not be the rule where the application of remedies is unreasonably prolonged or unlikely to bring effective relief'.¹⁶ Petitioners from each State must provide evidence that proves they have utilised all domestic remedies, including pursuing the claim through the local court system or national authorities. If petitioners

¹² Claire Callejon, Kamelia Kemileva, Felix Kirchmeier, 'Treaty Bodies' Individual Communication Procedures: Providing Redress and Reparation to Victims of Human Rights Violations' (*Geneva Academy*, 2019) <www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Treaty%20Bodies%20Individual%20Communications.pdf> accessed 4 May 2020.

¹³ Optional Protocol to Convention of the Rights of the Child on a Communication Procedure, (adopted 14 April 2014 UNGA Res 66/138) (OPIC), art. 7.

¹⁴ Optional Protocol to the Convention of the Rights of the Child on a Communication Procedure, art. 7(e).

¹⁵ Optional Protocol to the Convention of the Rights of the Child on a Communication Procedure, art. 2.

¹⁶ Optional Protocol to the Convention of the Rights of the Child on a Communication Procedure, art. 7(e).

are unable to provide this evidence, they must demonstrate that using domestic remedies within their State will be unlikely to bring effective relief or be unreasonably prolonged.¹⁷ It should be highlighted that the use of “or” within Article 7(e) indicates that the evidence does not have to be both ‘unreasonably prolonged’ and ‘unlikely to bring effective relief’.¹⁸

The ambiguous wording in the UNCRC makes it difficult for the CRC Committee to determine what constitutes ‘unreasonably prolonged’. However, the European Court of Human Rights (ECtHR) has never considered more than five years to be reasonable except in circumstances where the complainant was responsible for the delays,¹⁹ and the ECtHR has never considered more than eight years to be reasonable under any circumstances.²⁰ The African Commission has in certain cases factored in other circumstances when deciding whether a case has been ‘unreasonably prolonged’,²¹ including a ‘state of emergency’ or whether the complainant is a minor.²² In situations where the complainant has been a minor, the Commission considers whether the complainant would no longer be a child by the time a decision would be reached by a national court.²³ Taking this into consideration, the oldest petitioners included in the Communication are seventeen years old.²⁴ If the CRC Committee were to use the interpretation adopted by the African Commission, the Communication would become ‘unreasonably prolonged’ if it did not progress within twelve months of submission.

The co-petitioners have stated that they have not personally brought any cases to their domestic courts. They have justified this, claiming that if they were to do so, inadequate relief would result.²⁵ However, cases have been submitted by other complainants to the domestic courts, with regards to climate change. To demonstrate how cases regarding the climate crisis are dealt with at the domestic level, we will analyse cases to identify whether domestic remedies have effectively addressed the climate crisis and consequential violations of human rights. As the petitioners have submitted the Communication against five States, we will be analysing the exhaustion of domestic remedies in all five States.

¹⁷ Optional Protocol to the Convention of the Rights of the Child on a Communication Procedure, 7(e).

¹⁸ Optional Protocol to the Convention of the Rights of the Child on a Communication Procedure, 7(e).

¹⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950 Council on Europe, *as amended by Protocols Nos. 11 and 14*).

²⁰ *Case of ONUR v. The United Kingdom* App no 27319/07 (ECtHR, 17 February 2009).

²¹ African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

²² African Commission on Human and Peoples’ Rights, ‘Principle and Guidelines on the Right to a Fair Trial and Legal Assistance in African’ (*African Commission on Human and Peoples’ Rights* 2003) <www.achpr.org/instruments/principles-guidelines-right-fair-trial/> accessed 4 March 2020.

²³ *Ibid.*

²⁴ Petitioners (n1) *Chiara Sacchi (Argentina); Ranton Arjain (Marshall Islands); Carlos Manuel (Palau); Ayakha Melithafa (South Africa); Raslen Jbeli (Tunisia); Carl Smith (United States of America)*.

²⁵ *Ibid.*

2.1.1. Argentina

The individual petitioner from Argentina, Chiara Sacchi, has not personally submitted a case to the domestic courts in Argentina, or utilised alternative legal avenues. However, a number of cases have been submitted to the domestic courts in Argentina pertaining to the climate crisis, and subsequent human rights violations.

The most recent case was filed by an indigenous group in 2018. The suit was against several multinational oil companies and the local authorities over the alleged dumping of toxic waste in Patagonia.²⁶ The complainants claimed that the mishandling of toxic waste, and the increase in dump sites, has resulted in contamination that threatens not only the environment, but public health. An expert at the *Observatorio Petrolero Sur Charity* stated that the situation is 'affecting the inhabitants of popular neighbourhoods because the waste treatment plants are too close'.²⁷

Despite the case being submitted in 2018, there has yet to be a hearing at the domestic courts. Moreover, there is no suggestion as to when this case is expected to be heard at the domestic courts. This suggests the lack of urgency from the domestic courts to investigate and resolve climate related violations.

2.1.2. Brazil

The individual petitioner from Brazil, Catarina Lorenzo, has not personally submitted a case to the domestic courts in Brazil, or utilised alternative legal avenues. Yet, there have been a number of different cases submitted by other complainants to the domestic courts, pertaining to the climate crisis.

To date, at least four cases have been filed to Brazil's domestic courts pertaining to the climate crisis, however, it has not been possible to access the case documents. As a result, it has not been possible to establish whether the domestic remedies have provided relief or whether legal avenues have been exhausted.²⁸

2.1.3. France

France has committed itself to tackle climate change through international cooperation and

²⁶ Mapuche Confederation of Neuquén v YPF et al. [2019] Public Prosecutor.

²⁷ Uki Goni, 'Indigenous Mapuche pay high price for Argentina's fracking dream', (*The Guardian*, 14 October 2019) <www.theguardian.com/environment/2019/oct/14/indigenous-mapuche-argentina-fracking-communities> accessed 10 March 2020.

²⁸ Climate Change Litigation Databases, 'Brazil', (*Climate Case Chart*, 2020) <climatecasechart.com/non-us-jurisdiction/brazil/> accessed 10 March 2020.

domestic policies, under the Paris Agreement and its National Constitution. Yet, climate experts confirm that France is falling behind on tackling the climate emergency.²⁹ Since 2007, nine cases have been submitted to the domestic courts and currently there are three cases pending and awaiting decisions from domestic courts.³⁰

In 2018, a letter of formal notice,³¹ was submitted to the Prime Minister Edouard Philippe and twelve members of the French government, by four non-profit organisations.³² This letter claimed that the French government's failure to take adequate steps to address the climate crisis and to implement international, European and national climate objectives constituted a breach of international law. The purpose of the letter was to urge the French government to align France's climate laws and policies with the Paris Agreement, take proper measures to reduce greenhouse gas emissions and take the necessary measures to protect citizens' lives and health from the risks of climate change.³³

However, the French government rejected the complainants' requests and on 14 March 2019, the co-plaintiffs formally filed the letter to the Administrative Court of Paris. Despite being formally lodged with the Court, the NGOs are expecting that 'there will be a delay of approximately two years before the case is heard by a judge, who will decide on its admissibility'.³⁴ Although this case does not exceed the 'unreasonably prolonged' requirement identified by the ECtHR, climate experts and the General Assembly President highlight that States need to respond the climate crisis imminently, in less time than the court allows. Consequently, given the urgency of the situation it can be argued that this delay is 'unreasonably prolonged'.

2.1.4. Germany

The individual petitioner from Germany, Raina Ivanova, has not submitted a case to the domestic courts in Germany, or utilised alternative legal avenues. However, a number of

²⁹ Angelique Chrisafis, 'France failing to tackle climate emergency, report says' (*The Guardian*, 25 June 2019) <www.theguardian.com/world/2019/jun/25/france-failing-on-climate-emergency-report> accessed 11 March 2020.

³⁰ Climate Change Litigation Databases, 'France', (*Climate Case Chart*, 2020) <climatecasechart.com/non-us-jurisdiction/brazil/> accessed 27 April 2020.

³¹ According to Article 1344 of the French Civil Code, a formal notice is an "official act by which a creditor asks his debtor to fulfil his obligations".

³² Manuela Lorand, Magali Rubino, Noëlie Coudurier and Marie Pochon, 'L'Affaire Du Siecle: Breif Juridique sur la Requette Deposee au Tribunal Adminstrative de Paris le 14 Mars 2019' (*Columbia Law*, 14 March 2019) <blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190314_NA_complaint.pdf> accessed 4 March 2020.

³³ Ibid.

³⁴ Greenpeace, Notre Affaire à Tous, Fondation pour la Nature et l'homme and Oxfam France, 'Press Release: Inaction over Climate Change Let's Fight for Justice' (*Columbia Law*, 2 April 2019) <blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2018/20181218_NA_press-release.pdf> accessed 4 March 2020.

cases have been submitted to the domestic courts in Germany pertaining to the climate crisis, and subsequent human rights violations.

In 2018, three families and Greenpeace Germany filed a lawsuit in the Administrative Court of Berlin, seeking to compel the German Government to adhere to the 40 percent reduction of gas emissions goals, previously declared by the government in 2014.³⁵ A year after the lawsuit was filed, the Berlin Administrative Court dismissed the lawsuit on the basis that the fundamental rights of the three families had not yet been compromised.³⁶ The court decided that there was no evidence to show that meeting the 2020 climate targets was 'absolutely necessary' at this point.³⁷

The decision in this case suggests that the courts respond once a violation has occurred, rather than acting as a preventative measure to ensure that States do not violate their human rights commitments and therefore, the courts do not provide adequate relief for complainants.

2.1.5. Turkey

We have been unable to identify any cases brought against Turkey at a domestic level.

The exhaustion of domestic remedies has proven to be vastly different in each State. Collecting and collating data from other cases to prove the ineffectiveness of domestic courts, or their inability to bring effective relief has not been sufficiently possible. However, it remains that if the CRC Committee were to adopt the African Commission's stance regarding whether the child will still be considered a minor by the time a decision is made, it could be argued that domestic remedies in all five States are 'unreasonably prolonged'. Additionally, as stressed by climate scientists, States must act now in order to prevent the climate crisis exacerbating and continuing to impeach on children's' human rights.

2.2. Extraterritorial Jurisdiction

Article 2 of the UNCRC outlines, the 'Convention calls on all States to respect and ensure rights set forth in the present Convention to each child within their jurisdiction'.³⁸ Since this

³⁵ Greenpeace International, 'Berlin court agrees climate lawsuits are admissible in principle' (*Greenpeace*, 31 October 2019) <www.greenpeace.org/international/press-release/25667/berlin-court-agrees-climate-lawsuits-are-admissible-in-principle/> accessed 10 March 2020.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Convention on the Rights of the Child, art. 2.

Communication involves petitioners from outside the geographical territory of the five States, it must be determined whether all petitioners are within the jurisdiction of the States in question.

The petitioners from Argentina, Brazil, France and Germany are geographically within those States' jurisdiction. However, the other twelve petitioners are from a variety of different States and not a single petitioner is from Turkey. Therefore, the issue of whether the CRC Committee has jurisdiction becomes a matter of extraterritorial jurisdiction. The CRC Committee will have to determine whether the cross-border impacts of the five States' emissions are sufficient to establish liability to derive responsibility for the environmental harms endured by the petitioners.

Since extraterritorial jurisdiction is typically dealt with in matters of armed conflict and surveillance,³⁹ the CRC Committee has never had to consider its relevance. Although, the CRC Committee has recognised in a Joint Statement that 'State parties have obligations, including extraterritorial obligations, to respect, protect and fulfil all human rights of all peoples'.⁴⁰ However, the CRC Committee has never been tasked with applying the concept in practice.

Article 2 of the UNCRC affirms that States have a responsibility to uphold the rights of all children within their jurisdiction. General Comment 16 further specifies, 'State obligations under the UNCRC and the Optional Protocols thereto apply to each child within a State's territory and to all the children subject to a State's jurisdiction'.⁴¹ This General Comment clarifies that the petitioners can be in the jurisdiction, whether that be within or beyond the State's established borders.⁴² Although the Communication examines the concern of jurisdiction between the petitioners and the five States, it fails to incorporate the concept of extraterritorial jurisdiction, which is crucial when examining cross-border impacts. Since the CRC Committee has not applied the concept of extraterritorial jurisdiction in practice, it is useful to consider how other treaty bodies have applied it in practice.

The Human Rights Committee (HRC) has clarified the circumstances in which jurisdiction can be established across borders in General Comment 31:

³⁹ Dominik Steiger, '(Not) Investigating Kunduz and (Not) Judging in Strasbourg? Extraterritoriality, Attribution and the Duty to Investigate' (EJIL: Talk!, 25 February 2020) <www.ejiltalk.org/not-investigating-kunduz-and-not-judging-in-strasbourg-extraterritoriality-attribution-and-the-duty-to-investigate/> accessed 3 March 2020.

⁴⁰ CEDAW, CESCR, CMW, CCRC, CRPD (Joint Statement) 2019 'Human Rights and Climate Change'.

⁴¹ UN Committee on the Rights of the Child 'General Comment 16' on 'State Obligations Regarding the Impact of the Business Sector on Children's Rights' (2013) UN Doc CRC/C/GC/16.

⁴² Ibid.

State Parties are required...to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction... a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party...This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory.⁴³

This means that a State is responsible for ensuring the rights under the International Covenant on Civil and Political Rights (ICCPR) to anyone within the 'power or effective control' of the State, including outside of the geographical territory of the State.⁴⁴

Similarly, the Committee Against Torture has recognized that the phrase 'any territory' in Article 2(1) of the Convention Against Torture (CAT) involves, 'all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control...and in such places as embassies, military bases, detention facilities'.⁴⁵ This further clarifies the specific conditions in which extraterritorial jurisdiction could apply. Therefore, the petitioners would of have to have been in a very specific area, such as inside a military base or an embassy where each of the five States had control, in order fulfil extraterritorial jurisdiction to apply.

The Communication also highlights General Comment 36 provided by the HRC, which addresses 'jurisdiction' in Article 2(1) of the ICCPR. It affirms that States are under an obligation take appropriate measures to 'protect individuals against deprivation of life by other States, international organizations and foreign corporations...[and must] take appropriate...measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction'.⁴⁶ The Communication argues that the CRC Committee has jurisdiction to consider the Communication on the basis of the foreseeable consequences and cross-border contributions to climate change.⁴⁷ However, the Communication does not specifically address the application of extraterritorial jurisdiction, specifically in relation to environmental damage.

⁴³ HRC, 'General Comment 31' on 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (2004) CCPR/c/21/Rev.1/Add.13 para 10.

⁴⁴ Ibid.

⁴⁵ CAT 'General Comment 2' on 'Implementation on article 2 by States Parties' (2008) CAT/C/GC/2 para 16.

⁴⁶ HRC 'General Comment 36' on 'Article 6 of the International Covenant on Civil and Political Rights, on the right to life' (2018) CCPR/C/GC/36 para 22.

⁴⁷ Petitioners (n1) 72.

Additionally, Steiger has interpreted the case law of the ECtHR to require that, 'States exercise jurisdiction when a state agent exerts authority or control over individuals by holding a person and thus effectively controls that person [or] jurisdiction will be exercised in case of effective control over a territory'.⁴⁸ This suggests the State must either have effective control over an area (spatial model of jurisdiction) or authority or control over an individual (personal model of jurisdiction).⁴⁹ The ECtHR 'has taken a restrictive approach and accepted that only in exceptional cases can acts of States parties that are performed abroad, or that produce effects abroad, establish a jurisdictional link within the meaning of Article 1 of the ECHR'.⁵⁰ Therefore, 'acts of the Contracting States performed, or producing effect, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 *'only in exceptional cases'*.⁵¹ While the Communication is the first of its kind in many ways, it arguably does not qualify as an exceptional case, however, there are two leading cases that have produced legal guidance on the circumstances on which extraterritorial jurisdiction can be applied.

The case of *Banković and Others v Belgium* found that 'individuals killed outside an area under effective control of a state by missiles or bombs fired from an aircraft were not within the state's jurisdiction'.⁵² This case also established that '[effective] control generally requires troops on the ground; control over airspace and a "mere power to kill were insufficient to create a jurisdictional link"'.⁵³ If this is applied to the Communication, the petitioners must provide evidence that all five States were in the immediate area and had control over the regions where the environmental harms occurred. Additionally, the *Al-Skeini and others v the United Kingdom* case provides a perspective of human rights accountability for extraterritorial conduct and also considers both the spatial and personal model of jurisdiction. This case determined that, 'while the ability to kill is "authority and control" over the individual if the state has public powers, killing is not authority and control if the state is merely firing missiles from an aircraft'.⁵⁴ This finding reaffirms that causing the death of individuals abroad does not fulfil the standard of effective control. If the State held public power over the individuals affected, effective control can be fulfilled. However, the Communication fails to evidence this because the necessary link between the individual petitioners and the effective control of the five States over those individuals was not established.

⁴⁸ Steiger (n39).

⁴⁹ Marko Milanovic, 'Al-Skeini and Al-Jedda in Strasbourg' (2012) 23 EJIL 121, 122.

⁵⁰ Alex Conte, 'Human Rights Beyond Borders: A New Era in Human Rights Accountability for Transnational Counter-Terrorism Operations?' (2013) 18 JCSL 242.

⁵¹ *Banković and others v Belgium and others* App no. 52207/99 (ECtHR 12 December 2001).

⁵² *Ibid* 153.

⁵³ *Ibid*.

⁵⁴ *Al-Skeini et al v United Kingdom* App no 55721/07 (ECtHR 7 July 2011) 130.

Utilising this logic, the petitioners would have to prove that the spatial model, the personal model or a hybrid of both models of jurisdiction applies to their circumstances. Since the petitioners have argued that their rights have been infringed as a result of the States' inaction in combating climate change, they were not under the authority or control of another State; the five States did not have control over the sixteen petitioners at the time of the environmental harms, therefore the individual model of jurisdiction does not apply. Further, even if an embassy or military base exists in any of the States that the petitioners are from, the five identified States did not have 'effective control' over the territory in which these petitioners were affected by climate change. Meeting the threshold of effective control as set out in the leading cases is not possible when discussing the effects of climate change, despite the emission rates of the selected States. When considering the ECtHR's interpretation of extraterritorial jurisdiction, the Communication fails to provide sufficient evidence to establish effective control, therefore, extraterritorial jurisdiction cannot be established.

The Communication highlights State responsibility for transboundary environmental threats to human rights via the Inter-American Court of Human Rights' (IAC) Advisory Opinion on Environment and Human Rights, which reads, '[a]s regards transboundary harms, a person is subject to the jurisdiction of State origin if there is a causal relationship between the incident that took place on its territory and the violation of the human rights of persons outside its territory'.⁵⁵ The IAC established that by relying on the obligation to prevent transboundary damage, the exceptional conditions for extraterritorial application are considered inconsequential in practice.⁵⁶ The IAC also clarified, '[t]he potential victims of the negative consequences of these activities should be deemed to be within the jurisdiction of the state of origin for the purposes of any potential state responsibilities for failure to prevent transboundary damage'.⁵⁷ This less restrictive approach to extraterritorial jurisdiction allows for the causal relationship between environmental damage and the violations in question to be considered without the narrow application of effective control.⁵⁸ Therefore, if the CRC Committee were to adopt the IAC's findings in the Advisory Opinion, it is likely that the petitioners would be considered to be within the jurisdiction of the five States.

⁵⁵ *Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia: The Environment and Human Rights*, Inter-American Court of Human Rights (IACrHR), 15 November 2017 www.corteidh.or.cr/docs/opiniones/resumen_seriea_23_eng.pdf> accessed 27 February 2020, para 238.

⁵⁶ *Ibid.*

⁵⁷ Giovanni Vega-Barbosa, Lorraine Aboagye, 'Human Rights and the Protection of the Environment: The Advisory Opinion of the Inter-American Court of Human Rights' (EJIL: Talk! 26 February 2018) www.ejiltalk.org/human-rights-and-the-protection-of-the-environment-the-advisory-opinion-of-the-inter-american-court-of-human-rights/> accessed 2 April 2020.

⁵⁸ *Ibid.*

In conclusion, if the CRC Committee were to implement the ECtHR's interpretation, extraterritorial jurisdiction would not be established due to the restrictive conditions attached to the threshold of effective control. However, if the CRC Committee were to adopt the position of the IAC in their Advisory Opinion, it is possible that the CRC Committee could find the petitioners to be within the jurisdiction of the five States. According to the IAC, the obligation to prevent transboundary damage that effects the human rights of individuals outside a State's territory can establish jurisdiction.⁵⁹ It is possible for the CRC Committee to find the petitioners within jurisdiction of the five States, but this is dependent on the interpretation the CRC Committee adopts.

2.3. Suitability of Selected Victims

Article 5 of OPIC states: 'Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State Party'.⁶⁰ Additionally, this Article states that 'where a communication is submitted on behalf of an individual group or individuals, this shall be with their consent unless the author can justify on their behalf without such consent'.⁶¹ Therefore, a petitioner bringing a Communication against a State must be from that State's jurisdiction. If they do not fall within the jurisdiction, there must be evidence that they have received consent from an individual(s) who falls within that State's jurisdiction. Without such consent, justification must be provided as to why the petitioners have brought a Communication against that State.

In the case of Argentina, Brazil, France and Germany, one of the petitioners falls within these States' jurisdiction. Therefore, the Communication against these States would be found admissible under the suitability of selected States criteria. However, no petitioner falls within the jurisdiction of Turkey. Ultimately the Communication does not identify a petitioner from the jurisdiction of Turkey, does not provide proof of consent from an individual(s) from Turkey, and fails to provide a justification for the lack of consent. Therefore, the Communication against Turkey is likely to be found to be inadmissible.

⁵⁹ Ibid.

⁶⁰ Optional Protocol to the Convention of the Rights of the Child on a Communication Procedure, art. 5.

⁶¹ Optional Protocol to the Convention of the Rights of the Child on a Communication Procedure, art. 5.

3. Inquiry Procedure

Article 13 of OPIC outlines that an Inquiry procedure is an opt-out mechanism by which the CRC Committee can initiate an Inquiry, if it receives reliable information of ‘grave or systematic’ violations committed by a UNCRC State party.⁶² In order for an Inquiry to be brought against a State party, the State must have ratified OPIC and recognize the competence of the Committee to undertake an Inquiry.⁶³ If these criteria are met, the CRC Committee will proceed to evaluate the validity of the information submitted to determine whether the violations are ‘grave or systematic’.⁶⁴

It should be noted that an Inquiry, in comparison to a Communication, requires different criteria to be met; it does not require the identification and consent of the victims⁶⁵; and it does not require evidence that domestic remedies have been exhausted. However, in terms of an Inquiry, the mandatory singular criterion for admissibility, ‘grave or systematic’, is more restrictive than the comprehensive list of criteria for a Communication. Recommendations provided following an Inquiry are usually adopted much quicker than those following a Communication.⁶⁶ This hasty implementation comes as a result of the severity of the violations.⁶⁷ However, it should be noted that the length of time to implement changes is dependent on each State and situation at hand.

3.1. Most Strategic State

If the petitioners opted to choose to progress with an Inquiry, the process could be a more strategic route to attaining justice compared to that of a Communication. In deciding which State would be the most strategic and emblematic to bring an Inquiry against, we will strictly consider the five States identified in the Communication. These five States have been selected as they are amongst the highest carbon emitters globally and all five have ratified the UNCRC; and in order for an Inquiry to proceed, it is mandatory that the State has ratified OPIC. It should also be noted that none of the five States have made a declaration opting out of the Inquiry procedure when they ratified the OPIC. Additionally, the evidence that has been included in

⁶² Optional Protocol to the Convention of the Rights of the Child on a Communication Procedure, art. 13.

⁶³ Optional Protocol to the Convention of the Rights of the Child on a Communication Procedure, art. 13.7.

⁶⁴ Optional Protocol to the Convention of the Rights of the Child on a Communication Procedure, art. 13.

⁶⁵ Peter Newell, ‘Collective Communications: an essential element in the new Optional Protocol for the Convention on the Rights of the Child’ (2010)

www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/HRCouncil/WGCR/Session2/BriefingCollectiveCommunications_en.doc&action=default&DefaultItemOpen=1 accessed 18 March 2020 3.

⁶⁶ UNCRC, Informe de la Investigación relacionada en Chile en virtud del artículo 13 del Protocolo facultativo de la Convención sobre los Derechos del Niño relativo a un procedimiento de comunicaciones, (2018) UN Doc CRC/C/CHL/INQ/1 17, 18.

⁶⁷ Ibid para 117.

the Communication pertaining to human rights and climate violations committed by these States serves as a foundation for the conclusions drawn here.

To select the most strategic and emblematic State, we have identified two selection criteria: likelihood of State cooperation and the Human Development Index (HDI). These two criteria were identified as most relevant for selecting the most strategic and emblematic State; as a successful Inquiry requires State cooperation with the CRC Committee and to be emblematic the State involved must be in a position to influence other powerful States. After using these criteria to narrow down the five States, to France and Germany, the threshold of 'grave or systematic' will be considered in relation to potential violations being committed by these States; this will help to ascertain whether bringing an Inquiry against these States will be successful.

3.1.1. State Cooperation

The first criterion analyses the likelihood of the State cooperating throughout an Inquiry procedure. The success of an Inquiry is dependent on a State's cooperation, such as willingness to provide information to the CRC Committee and willingness to implement recommendations following an Inquiry.

Our findings suggest that Brazil would not be the most strategic or emblematic State to bring an Inquiry against, as the Brazilian government has publicly denied the devastating impacts that the climate crisis is having globally.⁶⁸ Brazil's foreign minister has stated that 'there is no climate change catastrophe';⁶⁹ he also opposes any foreign interference with Brazil's sovereignty and views climate changes as a fabricated crisis that is used as a pretext to impose foreign control.⁷⁰ Additionally, the foreign minister has threatened to withdraw Brazil from the Paris Agreement, arguing that Brazil's sovereignty is impeded.⁷¹ Therefore, this suggests that the government of Brazil would not be willingly to engage with the CRC in an Inquiry concerning climate change policies and children's rights in Brazil's jurisdiction.

⁶⁸ BBC, 'Amazon rainforest belongs to Brazil, says Jair Bolsonaro' (*BBC*, 24 September 2019) <bbc.co.uk/news/world-latin-america-49815731> accessed 18 March 2020.

⁶⁹ Anthony Boadle, 'Brazil foreign minister says there is no climate catastrophe' (*Reuters*, 11 September 2019) <www.reuters.com/article/us-brazil-environment-araujo/brazil-foreign-minister-says-there-is-no-climate-change-catastrophe-idUSKCN1VW2S2> accessed 28 March 2020.

⁷⁰ Dom Phillips, 'Brazil environment minister to meet US climate denier group before UN summit' (*The guardian*, 13 September 2019) <www.theguardian.com/world/2019/sep/13/brazil-environment-minister-climate-denier-group-ricardo-salles> accessed 18 March 2019.

⁷¹ Climate Home News, 'Bolsonaro says Brazil will stay in the PARIS Agreement' (*Climate Home News*, 26 January 2018) <www.climatechangenews.com/2018/10/26/bolsonaro-says-brazil-will-stay-paris-agreement/> accessed 18 March 2020.

Similarly, the Communication revealed that the Argentinian government has deliberately failed to implement policy changes that could achieve targeted emission goals.⁷² The government continues to subsidise fossil fuels and invest in oil, gas and coal projects instead of advancing renewable energy projects.⁷³ Furthermore, the Argentinian government has continued to 'bend' rules under the Paris Agreement in order to advance economic prosperity rather than promote policies to counteract high emissions.⁷⁴ Fundamentally, these findings suggest that the Argentinian government would not be cooperative and as a result Argentina would not be the most strategic and emblematic State for an Inquiry.

In comparison, the French government has on numerous occasions campaigned for improved climate policies.⁷⁵ In May 2019, the High Council for Climate was founded as an independent body designed to provide recommendations and opinions on the implementation of France's commitments set out in the Paris Agreement.⁷⁶ Alongside the recent adoption of new climate laws, these actions demonstrate the willingness for France to comply with international standards, commitments and targets related to the protection of human rights.

Similarly, the German government has recently enacted a new climate protection policy that outlines numerous measures which the government intends to incorporate in order to reduce emissions by 2050.⁷⁷ This protection policy also established a new monitoring mechanism that encourages the government to make yearly adjustments based on whether the original targets have been met.⁷⁸ These policy changes highlight how the German government is taking some effective steps aimed at improving climate policies and therefore suggests that the German government would be willing to cooperate with an Inquiry.

Turkey's President, Recep Tayyip Erdoğan, has also proclaimed the importance of international cooperation when tackling climate change and environmental issues.⁷⁹ Turkey's government has taken steps to reduce emissions by creating goals aimed at reducing traffic

⁷² Petitioners (n1) 61.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ministère de l'Europe et des Affaires étrangères, 'Beijing Call for Biodiversity Conservation and Climate Change (*France diplomacy*, 6 November 2019) <www.diplomatie.gouv.fr/en/french-foreign-policy/climate-and-environment/news/article/beijing-call-for-biodiversity-conservation-and-climate-change-06-nov-19> accessed 25 March 2020.

⁷⁶ Haut Conseil pour le Climat, 'Notre Rôle' (*HCC*, 2019) <www.hautconseilclimat.fr/a-propos/#role> accessed 28 March 2020.

⁷⁷ Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, 'Climate Action Plan 2050', (*BMU*, 9 June 2015) <www.bmu.de/fileadmin/Daten_BMU/Download_PDF/Klimaschutz/klimaschutzplan_2050_impulspapier_en_bf.pdf> accessed 28 March 2020.

⁷⁸ Ibid.

⁷⁹ Daily Sabah, 'International cooperation crucial to deal with climate change, Erdogan says', (*Daily Sabah*, 23 September 2019) <www.dailysabah.com/politics/2019/09/23/international-cooperation-crucial-to-deal-with-climate-change-erdogan-says> accessed 29 March 2020.

congestion and implementing a Zero Waste Project, which focuses on increasing recycling in the country.⁸⁰ These actions demonstrate the Turkish government's willingness to diminish the effects of climate change and suggest they would be cooperative during an Inquiry.

Whether or not States treat the climate crisis as a serious threat indicates the level of cooperation, they are likely to provide and the likelihood of implementing climate-based policies following an Inquiry. Based on Argentina and Brazil's government's viewpoint on climate change, it can be determined that they would not willingly incorporate an international body's recommendations on climate change policies. Therefore, the States most likely to cooperate throughout an Inquiry are France, Germany and Turkey.

3.1.2. Human Development Index (HDI)

The HDI was created by the United Nations Development Program to assess the development of a country, focusing on a State's population and their capabilities, based on a long and healthy life, being knowledgeable and having a decent standard of living.⁸¹ The HDI is a summary measure of average achievement in key dimensions of human development. The higher the HDI score, the more developed the country.⁸²

Although the World Bank classifies Turkey as an upper-middle income country, as its GDP ranking is 19th globally,⁸³ Turkey's HDI score is 59th globally, with an HDI score of 0.806. This suggests that although Turkey is rapidly advancing economically, its development standards are not advancing at the same rate. The life expectancy in Turkey is six years below the average life expectancy in both France and Germany.⁸⁴ Additionally, Turkey is ranked 130th out of 134 countries globally in the gender equality index whereas France is 15th, and Germany is ranked 10th.⁸⁵

A State with a lower HDI score, and therefore a less developed State, may have less institutional capacity to prioritise climate focused arrangements as these may have a short-term negative impact on the State's economic development. Less developed countries are more inclined to channel their resources into infrastructure to stimulate increased economic

⁸⁰ Ibid.

⁸¹ Gustva Ranis, Frances Stewards, Emma Samman, 'Human Development: Beyond the Human Development Index' (2011) 7 *Journal of Human Development* 323.

⁸² Ibid.

⁸³ The World Bank, 'Upper Middle Income', (*The World Bank*, 2020) <data.worldbank.org/income-level/upper-middle-income> accessed 28 April 2020.

⁸⁴ World Health Rankings, 'Turkey: Life Expectancy' (*World Health Rankings*, 24 April 2020) <www.worldlifeexpectancy.com/turkey-life-expectancy> accessed 28 April 2020.

⁸⁵ World Economic Forum, 'Global Gender Gap Report 2020', (*World Economic Forum*, 17 December 2019) <www3.weforum.org/docs/WEF_GGGR_2020.pdf> accessed 25 April 2020.

development with less regard for climate impact.⁸⁶ This would restrict the amount of money and time the State could then focus on climate related actions, policy alterations and fundamental changes in infrastructure. Based on this, Turkey's HDI ranking would suggest that the State does not currently have the political and institutional capability to make short-or-long-term commitments to reducing their carbon footprint, as this may damage their productivity and economic growth.

In comparison, France ranks 26th globally with an HDI score of 0.891,⁸⁷ and Germany ranks 4th globally, with an HDI score of 0.939.⁸⁸ Their higher scores suggest that they have greater capacity and capability to improve their infrastructures in order to lower emission rates, and limit malpractices that contribute to the worsening climate crisis. France and Germany would also have a higher capacity to implement more effective climate policies within their political and legal frameworks.

Therefore, based on HDI rankings, Turkey does not appear be the most strategic or emblematic State to bring an Inquiry against. In order to distinguish between the two remaining States, France and Germany, we must evaluate each State's alleged violations in the petition and determine whether they meet the threshold of 'grave or systematic'.

⁸⁶ United Nations Development Programme, 'Human Development Report 2019: Reader's Guide' (*United Nations Development Programme*, 2020) <hdr.undp.org/en/content/human-development-report-2019-readers-guide> accessed 4 April 2020, 17.

⁸⁷ United Nations Development Programme, 'France: Human Development Indicators', (*United Nations Development Programme*, 2020) <hdr.undp.org/en/countries/profiles/FRA> accessed 10 April 2020.

⁸⁸ United Nations Development Programme, 'Germany: Human Development Indicators', (*United Nations Development Programme*, 2020) <hdr.undp.org/en/countries/profiles/DEU> accessed 10 April 2020.

3.2. Definition of 'Grave or Systematic' Violations

For the CRC Committee to consider an Inquiry, the only criterion required upon submission, is that the evidence of the State's violations meet the threshold of 'grave or systematic'.⁸⁹ To date, UN bodies have not produced a narrow or comprehensive definition of what 'grave or systematic' encompasses. As a result, the interpretation of whether the violations allegedly committed by the State meet this threshold is at the full discretion of the CRC Committee. It is, however, important to note the term 'or' in 'grave or systematic', means that a Committee considering an Inquiry only has to find the case to be either grave or systematic, rather than both.⁹⁰ For example, the CAT was tasked with determining whether 'torture [was] being systematically practised' in Egypt by a non-governmental group.⁹¹ As the CAT established that torture was in fact being systematically practised,⁹² it was able to determine that the violation met the threshold of 'grave or systematic', without considering whether the violation was grave.⁹³

The most recent Inquiry submitted to the CRC Committee, against Chile, provided an additional interpretation of 'grave or systematic'. The report determined that violations are 'grave' if it is probable that they produce substantial harm to the victims.⁹⁴ While the translation of the CRC Committee's interpretation from Spanish is not precise, it aligns with other Treaty Bodies' interpretations, particularly the version constructed by the Committee on the Elimination of all Forms of Discrimination Against Women.⁹⁵ In determining the gravity of the situation, the CRC Committee also takes into account the scale, prevalence, nature and impact of the violations found.

In terms of the interpretation of 'systematic', the CRC Committee refers to the organised nature of the acts leading to repeated violations and the improbability of their random occurrence.⁹⁶ This understanding of 'systematic' is similar to the interpretation of the CAT, which clarified that 'torture is practised systematically in a State party when it is apparent that the torture

⁸⁹ Newell (n65) 3.

⁹⁰ UNCRC, Informe de la Investigación relacionada en Chile en virtud del artículo 13 del Protocolo facultativo de la Convención sobre los Derechos del Niño relativo a un procedimiento de comunicaciones, (2018) UN Doc CRC/C/CHL/INQ/1 16-17.

⁹¹ UNCAT, 'Report of the Committee Against Torture' (18 April 2017) UN Doc A/72/44, 2017 para 67.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ UNCRC Chile Report (n90) para 112.

⁹⁵ UNCEDAW, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Form of Discrimination against Women (2019) UN Doc CEDAW/C/OP.8/GBR/3.

⁹⁶ UNCRC Chile Report (n90) para 113.

cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate'.⁹⁷

The CEDAW Committee implemented this interpretation of 'systematic' in an Inquiry against Northern Ireland.⁹⁸ Their findings concluded that, 'the systematic nature of the violations stem from the deliberate retention of criminal laws and state policy disproportionately restricting access to sexual and reproductive rights, in general, and highly restrictive provision, in particular'.⁹⁹ The CEDAW Committee added to this reasoning in the Inquiry against the Philippines, as they concluded that 'systematic' can also mean,

the violation is not an isolated case, but rather a prevalent pattern in a specific situation; one that has occurred... either deliberately... or as a result of customs and traditions, or even as the result of discriminatory laws or policies, with or without such purpose.¹⁰⁰

Therefore, 'systematic' encompasses acts leading to the violations that are practised habitually and deliberately as well as part of a repetitive pattern; these acts can include specific policies or laws that directly restrict the achievement of human rights.

Finally, the basis for claims under the Inquiry procedures must address violations of the Convention that occurred after the Optional Protocol came into force; it does not apply retroactively.¹⁰¹ The CRC Committee has historically taken a comprehensive approach which allows for the Committee to consider the root causes of current violations, the poor quality of the investigations as well and the long-term impacts.¹⁰²

3.3. Potential Rights Violations by France and Germany

This section will firstly evaluate the violations committed by France and Germany and subsequently determine whether these violations meet the criterion of 'grave or systematic'. The most significant potential violations of UNCRC identified in relation to both France and Germany are of: Article 3 the best interests of the child; Article 4 States' general obligations

⁹⁷ Manfred Nowak, Moritz Birk, Giuliana Monina, 'The United Nations Convention Against Torture and Its Optional Protocol' (2019) 2 OUP 540, 553.

⁹⁸ UNCEDAW (n95) para 80.

⁹⁹ Ibid para 82.

¹⁰⁰ UNCEDAW, 'Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' (2015) UN Doc CEDAW/C/OP.8/PHL/1.

¹⁰¹ Ibid.

¹⁰² Meghan Campbell, 'Beyond the Courtroom: Accountability for Grave and Systematic Human Rights Violations' (2019) 1 UOHRHJ 55, 73-75.

of implementation; Article 6 the right to life; and Article 24 the right to health.¹⁰³ Significantly, the UN Special Rapporteur on Human Rights and the Environment has stressed that '[a] safe, clean, healthy and sustainable environment is integral to the full enjoyment of...the right to life [and the right to] health'.¹⁰⁴ Therefore, the existence of a healthy environment will also be considered when evaluating the violations to the right to life and right to health.

It is important to note at the outset that '[i]naction or failure to take action and omissions are also "actions"'.¹⁰⁵ Therefore, a State's failure to act is equal to a direct infringement of a right, as a result of direct action. Additionally, Article 4 of the UNCRC is directly relevant to the right to health and states: '[w]ith regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation'.¹⁰⁶ Therefore, this memorandum will consider what States should have done to prevent the violation of children's rights.

In analysing the severity of violations, it will be determined which State better fulfils the criteria of 'grave or systematic'. A successful Inquiry requires that the criterion of 'grave or systematic' be fully fulfilled; this in turn requires that the violations are severe in nature. Therefore, it is useful for most strategic and emblematic State to have a historical pattern of serious rights violations in order to ensure the Inquiry is successful.

3.3.1. Right to Life and Right to Health

Article 6 of the UNCRC states, 'every child has the inherent right to life'.¹⁰⁷ This means that governments must ensure that children's lives are protected.¹⁰⁸ Additionally, Article 6 affirms that 'States must ensure to the maximum extent possible the survival and development of the child'.¹⁰⁹ States also have an obligation to provide children with 'the highest attainable standard of health',¹¹⁰ under Article 24 of the UNCRC. General Comment 15 clarifies that State Parties to the UNCRC have three types of obligations under the 'right to health': 'to respect freedoms and entitlements, to protect both freedoms and entitlements from third parties or from social or environmental threats, and to fulfil the entitlements through facilitation or direct

¹⁰³ Convention on the Rights of the Child, art.3, art. 6, art.24.

¹⁰⁴ UNGA 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (2018) UN Doc A/HRC/37/59 para 2.

¹⁰⁵ UNCRC, 'General Comment 14' on 'the right of the child to have his or her best interests taken as a primary consideration' CRC/C/GC/14, para 18.

¹⁰⁶ Convention on the Rights of the Child, art. 4.

¹⁰⁷ Convention on the Rights of the Child, art. 6.

¹⁰⁸ Convention on the Rights of the Child, art. 6.

¹⁰⁹ Convention on the Rights of the Child, art. 6.

¹¹⁰ Convention on the Rights of the Child, art 24.

provision'.¹¹¹

This climate crisis has witnessed harmful actions committed by both France and Germany that consequently are in direct breach of these human rights commitments, under the UNCRC.

In France, climate change has resulted in an increase in national temperatures.¹¹² In 2003, temperatures in France reached 40°C, which resulted in the deaths of 15,000 French citizens.¹¹³ Amongst these, the worst affected were the most vulnerable demographics, specifically the elderly and children.¹¹⁴ In 2019, temperatures in France reached 45.9°C, and the fourth warmest consecutive January was recorded in 2020.¹¹⁵ Scientists predict that these temperatures will only continue to rise if the current climate policies in France do not change, which will continue to threaten the quality of life and highest attainable standard of health of future generations.¹¹⁶

The quality of air and water in France has also become a threat to children's survival and development.¹¹⁷ In France, over 16,000 people die every year as a direct result of air pollution; the World Health Organisation (WHO) has confirmed air pollution affects children to a worse degree than adults.¹¹⁸ Additionally, nearly three million people drink polluted tap water in France.¹¹⁹ According to a study conducted in 2018, scientists state that toxic pollutants in drinking water are particularly hazardous to children compared to adults, as children drink more water per pound of body weight, resulting in greater exposure and therefore greater risk.¹²⁰ The failure to address air and water pollution violates the child's right to life, identified

¹¹¹ UNCRC, 'General Comment 15' on 'the Right of the child to the enjoyment of the highest attainable standard of health' (2013) CRC/C/GC/15, para 71.

¹¹² Assemblée Nationale 'Rapport N°1455' tome 1 (2004) <www.assemblee-nationale.fr/12/rap-enq/r1455-t1.asp> accessed 25 March 2020.

¹¹³ Ibid.

¹¹⁴ Zhiwei Xu, Perry E. Sheffield, Hong Su, Xiaoyu Wang, Yan Bi, Shilou Tong, 'The impact of heat waves on children's health: A systematic review' (*International Journal of Biometereology*, 2013) <www.researchgate.net/publication/236077780_The_impact_of_heat_waves_on_children's_health_A_systematic_review> accessed 20 April 2020 4-7.

¹¹⁵ NOAA National Centre for Environmental Information, 'State of the Climate: Global Climate Report for January 2020' (2020) <www.ncdc.noaa.gov/sotc/global/202001> accessed 20 April 2020.

¹¹⁶ Sonya Lunder, 'Drinking Water and Children's Health' (*EWG*, 26 July 2017) <www.ewg.org/research/drinking-water-and-children-s-health> accessed 20 April 2020.

¹¹⁷ WHO, 'Burden of disease SGD 3.9.2 – Mortality rate attributed to unsafe water, unsafe sanitation and lack of hygiene (exposure to unsafe Water, Sanitation and Hygiene for ALL (WASH))' <apps.who.int/gho/data/node.main.INADEQUATEWSH?lang=en> accessed 20 April 2020.

¹¹⁸ Climate Transparency, 'Brown to green: The G20 transition towards a net-zero emission economy France' (2019) <www.climate-transparency.org/wp-content/uploads/2019/11/B2G_2019_France.pdf> accessed 20 April 2020.

¹¹⁹ UFC-Que Choisir, 'Ou peut-on boire de l'eau du robinet en France et comment préserver cette ressource ? Etude de la qualité de l'eau potable en France au regard des 50 critères définis par la réglementation' (26 January 2017) <www.quechoisir.org/action-ufc-que-choisir-carte-interactive-ufc-que-choisir-sur-l-eau-du-robinet-en-france-mieux-preserver-la-ressource-pour-une-cons-eau-sans-moderation-n24025/> accessed 20 April 2020.

¹²⁰ Lunder (n116).

by General Comment 15, '[s]afe and clean drinking water and sanitation are essential for the full enjoyment of life and all other human rights'.¹²¹ Therefore, the French government's inability to ensure clean water, and sanitation to all French citizens is in direct breach of their human rights commitments under the UNCRC. Environmental activists argue that these life-threatening violations have come as a direct result of deliberate policy choices made by the French government that fail to tackle climate change and protect the child's rights, and ultimately their lives and quality of health.

Children's right to life under Article 6 of the UNCRC, and right to health under Article 14 of the UNCRC is also threatened in Germany. The three significant threats that have been identified are: rising temperatures, air and water pollution.¹²² In 2019, a report found that over 37,000 people die each year from illnesses such as chronic respiratory disease, heart disease and strokes in Germany, directly related to severe air pollution.¹²³ A study led by the Institute of Global Health of Barcelona concluded that 'up to eleven percent of new childhood asthma cases could be prevented each year if European countries complied with the WHO... air quality guidelines'.¹²⁴ Moreover, Germany has been reported to the European Commission as a result of the State's air pollution exceeding the limits set out in the European Regulations.¹²⁵ The Special Rapporteur on Human Rights and the Environment has stated, '[a] safe, clean, healthy and sustainable environment is integral to the full enjoyment of...the right to life [and the right to] health'.¹²⁶ Additionally, water pollution has been identified as a severe threat to children's right to life and right to health.¹²⁷ In 2018 the Court of Justice of the EU found that Germany was failing to take appropriate measures to diminish water pollution caused by nitrates;¹²⁸ approximately ninety two percent of surface water in Germany has been contaminated, causing considerable health issues in pregnant women and babies.¹²⁹ Additionally, the extreme heat waves have caused an extreme threat to food security, which

¹²¹ UNCRC General Comment 15 (n111) 12.

¹²² Climate Transparency, 'Brown to green: The G20 Transition to a Low-Carbon Economy, Germany' (2018) <www.climate-transparency.org/wp-content/uploads/2019/01/BROWN-TO-GREEN_2018_Germany_FINAL.pdf > accessed 20 April 2020.

¹²³ Ibid.

¹²⁴ IS Global, 'Nearly Half of All Childhood Asthma Cases in Barcelona Are Attributable to Air Pollution in Barcelona' (2 February 2020).

<www.isglobal.org/documents/10179/7721717/Asma+infantil+y+contaminacion+del+aire+BCN+eng.pdf/328e3e08-c884-41db-a605-36fc2bfd72c7?version=1.0 > accessed 20 April 2020.

¹²⁵ Case C-543/16 *European Commission v Federal Republic of Germany* (21 June 2018) paras 172 -177.

¹²⁶ UNGA (n104) paras 2, 52-53.

¹²⁷ Lunder (n116).

¹²⁸ European Commission, 'Water: Commission refers Germany to the Court of Justice of the EU over water pollution caused by nitrates', (*European Commission*, April 2018)

<ec.europa.eu/commission/presscorner/detail/EN/IP_16_1453 > accessed 13 April 2020.

¹²⁹ Ibid.

threatens the most vulnerable, such as children.¹³⁰ This directly breaches the State's obligations under Article 6 and Article 24 of the UNCRC.¹³¹

In General Comment 15 the CRC Committee has also expanded on the obligations of States to specifically fulfil the right to health:

States are...required to undertake targeted measures to move as expeditiously and effectively as possible towards the full realization of children's right to health. States have an obligation not to take retrogressive steps that could hamper the enjoyment of children's' right to health',¹³² this also includes '[r]eviewing the national and subnational legal and policy environment and, where necessary, amending laws and policies.¹³³

Additionally, the CRC Committee have previously stated, '[e]nvironmental interventions should, inter alia, address climate change, as this is one of the biggest threats to children's health and exacerbates health disparities. States should, therefore, put children's health concerns at the centre of their climate change adaptation and mitigation strategies'.¹³⁴

However, the statistics above highlight that both France and Germany have breached their obligations under Article 6 and Article 24 as a result of inaction, as they have historically failed to implement appropriate climate policy choices that protect and promote children's right to life. As aforementioned, failure to take action also constitutes as a violation to full enjoyment of right to life and right to health. Neither France nor Germany acted expeditiously in implementing climate laws that fulfil the States' obligations under the UNCRC.

3.3.2. *Best Interests of the Child*

Article 3(1) of the UNCRC establishes States' duty to ensure the best interest of a child are the primary consideration in matters that concern him or her, in both the private and public sphere.¹³⁵ In line with this, the CRC Committee and the United Nations International Children's Emergency Fund (UNICEF) have affirmed that climate change is a child rights issue and children's best interest must be prioritised in all actions and decisions related to combating the

¹³⁰ Joy Guillemot, Jazmin Burgess, 'Child Rights at Risk: The case for joint action on climate change' (*UNICEF*) <www.unicef-irc.org/article/928-child-rights-at-risk-the-case-for-joint-action-with-climate-change.html> accessed 28 March 2020.

¹³¹ Convention on the Rights of the Child, art. 6, art 24.

¹³² UNCRC General Comment 15 (n111) 16.

¹³³ Ibid 5.

¹³⁴ Ibid 12.

¹³⁵ Convention on the Rights of the Child, art 3(1).

threat of climate change.¹³⁶ Due to this, the actions taken by State governments should place significant priority on the best interests of children, both in the short and long term.¹³⁷

Article 4 of the UNCRC establishes that States are obligated to use ‘the maximum extent of its available resources’ in order to ensure the widest enjoyment of rights.¹³⁸ The Committee on Economic, Social and Cultural Rights affirmed that a State must be able to demonstrate that every effort has been taken to utilise all available resources in order to fulfil the right to life and right to health.¹³⁹

Despite these legal commitments, France is currently not set to meet its 2030 or 2050 targets, continuing to contribute to the climate crisis.¹⁴⁰ Three of France’s major sectors: transport, buildings, and industry are exceeding set targets.¹⁴¹ Additionally, the European Commission has reported that France has breached the air and water quality standards set out in the European regulations.¹⁴² This specifically highlights how the French government has failed to recognise the best interests of children as a primary consideration when attempting to implement measures to combat climate change. Similarly, the German government has reaffirmed that they will only be able to cut emissions by thirty-two percent of 1990s level, by 2020, rather than the targeted goal of forty percent.¹⁴³ Scientists highlight that the State’s historical inaction to respond to crucial targets will continue to have a devastating impact on the global climate, consequently impairing the quality of life and health for children.¹⁴⁴ It is clear that neither State has previously not prioritised the best interest of the child.

3.3.3. Fulfilling the Criterion of ‘Grave or Systematic’

Although both States have historically failed to implement effective climate-based measures, both France and Germany have recently adopted legal policies aimed to combat climate change. As of 18 December 2019 Germany has adopted a Climate Action Law that is part of a larger, more comprehensive Climate Action Programme aimed to reach 2030 climate

¹³⁶ Guillemot et al (n130) para 3.

¹³⁷ Ibid.

¹³⁸ Convention on the Rights of the Child, art 4.

¹³⁹ CESCR, ‘General Comment No. 3’ on the Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant) UN Doc E/199/23 para 10.

¹⁴⁰ Arnelle Sandrin-Deforge, Karim Tarantino, ‘French Parliament Adopts Ambitious Energy-Climate Law’ (Jones Day, 04 November 2019) <www.mondaq.com/france/Environment/860224/French-Parliament-Adopts-Ambitious-Energy-Climate-Law> accessed 24 April 2020.

¹⁴¹ Haut Conseil pour le Climat (n76).

¹⁴² Case C-636/18 *Commission v France* [2019] OJ C 45 paras 93-94.

¹⁴³ Sören Amelang, ‘Germany on track to widely miss 2020 climate target – government’ (*Clean Energy Wire*, 13 June 2018).

¹⁴⁴ United Nations Children’s Fund (UNICEF), ‘The impact of climate change on children’ (*UNICEF*, November 2015) <www.unicef.org/environment> accessed 20 March 2020.

targets.¹⁴⁵ The long-term package addresses climate concerns such as transport, agriculture, waste and energy sectors.¹⁴⁶ If the sixty billion dollar climate package fails to meet future emissions targets, it includes a backup plan in which the State would purchase emission allocations from other States.¹⁴⁷ Similarly, on 26 September 2019 the French Parliament adopted an Energy Climate Law aimed to address the ‘ecological and climate emergency’.¹⁴⁸ This law focuses on shifting dependence from fossil fuels and implementing renewable energies, with an aim of fulfilling France’s goal of carbon-neutrality by 2050.¹⁴⁹ France also established an independent advisory body on climate change, the High Council on Climate, in 2019, adding to measures aimed to combat climate change.¹⁵⁰ Although these measures are a step in the right direction, the historical inaction of both States should still be addressed. If an Inquiry were to commence against France or Germany, the focus would have to remain on the historical wrongs of the State in failing to effectively combat climate change. It is possible that the Committee could also consider whether France and Germany utilized all available resources to guarantee the rights under the UNCRC. Although the recommendations following an Inquiry might advise the State to adopt similar measures to what each State has just implemented, the CRC Committee could still be useful in identifying possible gaps.

Nevertheless, the historical failure of both Germany and France to meet international, regional and national obligations has threatened the rights of children in both States. It is estimated that France will miss the 2020 renewable energy target,¹⁵¹ and Germany will overshoot the greenhouse gas emission target by eight percent.¹⁵² Additionally, several NGOs and local authorities launched a lawsuit against a French oil firm, claiming that the company was failing to curb its emissions.¹⁵³ This suit came after France adopted the new Energy Climate Law.¹⁵⁴ Similarly, despite the new climate package, the German government continues to struggle to phase out lignite coal and reduce transport emissions.¹⁵⁵ It is clear that if both State had acted sooner, they could have achieved the 2020 climate goals in the Paris Agreement. The violations outlined above can still be considered a breach of both governments’ obligations under the UNCRC, as historical inaction has violated fundamental human rights of children.

¹⁴⁵ Kerstine Appunn, Julian Wettengel, ‘Germany’s Climate Action Law’ (*Clean Energy Wire*, 2019) <www.cleanenergywire.org/factsheets/germanys-climate-action-law-begins-take-shape> accessed 23 April 2020.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ Sandrin-Deforge et al (n140).

¹⁴⁹ *Ibid.*

¹⁵⁰ Haut Conseil pour le Climat (n76).

¹⁵¹ Climate Transparency (n118) 3.

¹⁵² Climate Transparency (n122) 1.

¹⁵³ Paul Davies, Michael Green, ‘Climate Litigation Targets the French Government’ (Latham & Watkins LLP, 2019) <www.globalelr.com/2019/01/climate-litigation-targets-the-french-government/> accessed 24 April 2020.

¹⁵⁴ *Ibid.*

¹⁵⁵ Appunn (n145).

Since the Committee has the ability to consider violations resulting from historical actions, it is possible for the CRC Committee to initiate an Inquiry into France or Germany's previous inaction towards combating climate change.

In accordance with Article 13 and Article 30 of OPIIC,¹⁵⁶ as well as Rule 34 of the Rules of Procedure,¹⁵⁷ violations in both France and Germany have to fulfil the criteria of 'grave or systematic'.¹⁵⁸ To reiterate, the CRC Committee has interpreted 'grave' violations to produce substantial harm to the victims; they also take into consideration the scale, nature, prevalence and impacts of the violations in question.¹⁵⁹ 'Systematic' has been interpreted to encompass the organised nature and improbability of the random occurrence of the acts leading to the violations.¹⁶⁰

As previously evidenced, France has historically produced substantial harm to children. To be specific, the health effects caused by air pollution have been deemed by the WHO to be preventable.¹⁶¹ Additionally, thousands of people in France are consuming contaminated water, which threatens the life and health of children. This constitutes substantial harm and therefore amounts to 'grave' violations of the right to life, right to health and the best interests of the child.¹⁶² Furthermore, the French government has continuously and regularly failed to meet emission goals under the Paris Agreement, demonstrating a pattern of failures to uphold climate goals. These violations are not a random occurrence, rather a product of inaction, and thus constitutes 'systematic' violations.

Similarly, the German government's failure to combat climate change has produced substantial harm to children, and therefore fulfils the criteria of 'grave' criteria, as thousands of children in Germany consume contaminated water and even more die as a result of air pollution.¹⁶³ Additionally, Germany's breach of obligations under the UNCRC also fulfil the criteria of 'systematic', as the historical pattern of inaction demonstrates the organized nature leading to the violations. It could be argued that this was an economic strategy, as phasing out the use of coal in Germany requires structural changes.¹⁶⁴ Therefore, both France and Germany's historical violations meets the criteria of both 'grave' and 'systematic'.

¹⁵⁶ Optional Protocol to the Convention of the Rights of the Child on a Communication Procedure, art 13, art. 30.

¹⁵⁷ UNCRC, 'Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure' (8 April 2013) UN Doc CRC/C/62 Rule 34.

¹⁵⁸ Newell (n65).

¹⁵⁹ Ibid para 111.

¹⁶⁰ Ibid para 121.

¹⁶¹ IS Global (n124).

¹⁶² UNCRC Chile Report (n66) paras 114, 116.

¹⁶³ Ibid para 114.

¹⁶⁴ Appunn et al (n145).

Although the identified violations of the right to life, right to health and best interests of the child would allow an Inquiry to be initiated against France and Germany, the recent legal measures adopted by both States suggest that an Inquiry against either State may not be the most suitable option available. This is based on the evidence that both States have begun the process of implementing effective measures to combat the climate crisis. These new policy changes would likely mirror the recommendations suggested by the CRC Committee following an Inquiry. Although an Inquiry into France and Germany's historical violations is possible, it would be more effective to identify a State that has not taken any action, as they would be more inclined to implement the recommendations from the CRC Committee.

4. Conclusion

This memorandum has found that the Communication against Turkey is likely to be found inadmissible as it does not fulfil the criteria outlined in OPIC, requiring consent or justification of a petitioner from Turkey. However, the admissibility of the Communication against Argentina, Brazil, France and Germany is dependent on the discretion of the CRC Committee, and their interpretations of domestic remedies and extraterritorial jurisdiction. Whether or not the petitioners are adjudged to fall within the jurisdiction of the four States will depend solely on the interpretation the CRC Committee chooses to adopt.

If an Inquiry were brought against one of the five States named in the original Communication, France and Germany have been identified as the most strategic and emblematic States. Yet despite the historical violations committed by both States, the new climate laws, introduced at the end 2019, indicate both governments' recent willingness to combat climate change. This no longer constitutes 'inaction'. Consequently, it may be more beneficial for the CRC Committee to identify a more strategic and emblematic State outside of the five States included in the initial Communication.

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Annex

Admissibility Criteria for a Communication under CRC

	Argentina	Brazil	France	Germany	Turkey
Ratified to the Convention on the Rights of the Child	Signature: 26 January 1990 Ratification: 24 September 1990	Signature: 29 June 1990 Ratification: 4 December 1990	Signature: 26 January 1990 Ratification: 7 August 1990	Signature: 26 January 1990 Ratification: 6 March 1992	Signature: 14 September 1990 Ratification: 4 April 1995
Ratified to OPIC	Signature: 28 February 2012 Ratification: 29 September 2017	Signature: 25 July 2012 Ratification: 14 April 2015	Signature: 20 November 2014 Ratification: 7 January 2016	Signature: 28 February 2012 Ratification: 28 February 2013	Signature: 24 September 2013 Ratification: 26 December 2017
If the complainant acts on behalf of another person, has he/she obtained sufficient authorisation or has he/otherwise justified the reasons in doing so?	Chiara Sacchi is from Argentina	Catarina Lorenzo is from Brazil	Iris Duquesne is from France	Raina Ivanova is from Germany	No petitioner is from Turkey; there is no statement with the communication that the other petitioners have consent from someone from Turkey; there is no justification within the communication as to why the petitioners are bringing a case against Turkey.
Is the complainant (or the person in whose behalf the complaint is brought) a victim of the alleged violation? <i>It has to be shown that the alleged victim is personally and directly affected by the law, policy, practice, act or omission of the State party which constitute the object of the complaint. It is not</i>	Extreme heat: Chiara explains that the extreme heat has significantly increased the use of air conditioning units, placing pressure on the electricity grid. This creates frequent power outages. For example, Chiara cannot complete her homework during	Drought: The rainfall is less; this brings numerous problems. There are water shortages; there are times when the city lacks water for days, and they are cut off from the water supply. The water shortages come without warning from the local	Extreme heat: Iris was three months old when the deadly heat wave of 2003 swept France. In Bordeaux, temperatures reached a record-breaking 40.7 C – it was one of the worst weather events in the Continent’s history. In July 2019, two months after Iris’s 16 th	Extreme heat: Raina has been exposed to frequent heatwaves in Germany that have killed tens and thousands of people across Europe Extreme Storms: Raina waded through knee-deep water on her school’s grounds during	N/A

<p><i>sufficient simply to challenge a law or State policy or practice in the abstract without demonstrating how the alleged victim is individually affected</i></p>	<p>power outages because the school system uses web-based platforms. In the extreme heat of summer, power outages quickly ruin food.</p> <p><u>Emotional distress linked to Present and Future Impacts:</u> Chiara Sacchi is scared of the future world with climate change: "it's hard to imagine a future with all these events. I think we are all quite desperate... It feels like we are alone, like no one knows what to do, and when you know what to do, nobody takes action."</p>	<p>government, therefore Catrina and her family are forced to store water in a tank in preparation for the next water shortage. The droughts are threatening the water security of people and children within Brazil</p> <p><u>Emotional distress linked to Present and Future Impacts:</u> The extreme temperatures and changing weather patterns in Salvador, Brazil also worry Catarina: "I feel that I don't know exactly what will happen in the future. If we don't act to stop the climate crisis, it will be the kids who pay the consequences".</p>	<p>birthday, Bordeaux broke a new record at a scorching 41.2 C. The more frequent, extreme heat caused by climate change have already harmed many of the petitioners. For example, Iris Duquesne has been exposed to frequent heatwaves in France that have killed tens and thousands of people across Europe.</p> <p><u>Emotional distress linked to Present and Future Impacts:</u> Iris thinks about climate change every day and often feels powerless. "The world is going to be sad. There will be climate refugees everywhere in Europe and the US. There will be tensions and pollution and the geography will be completely changed. There are islands that are going to disappear and countries like the Netherlands that will disappear. I don't want to have kids if they're going to live in a world like that".</p>	<p>the "Hervert" storm in 2017</p> <p><u>Emotional distress linked to present and future impacts:</u> Raina states that climate change disrupts her daily life, thoughts and dreams. Her younger sisters have begun to ask her about rising temperatures. She tries to soothe their worries, although she is also concerned.</p>	
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<p>Is the complaint compatible with the provisions of the treaty invoked? The alleged violation must relate to a right actually protected by the treaty.</p>	<p>Communication argues that the State is violating: Article 6 – Right to Life; Article 24 – Right to Health; Article 30 – Right to Culture.</p> <p>Additionally, under the Convention, States must “limit ongoing and future damage” to these rights, including those caused by environmental threats.</p>	<p>Communication argues that the State is violating: Article 6 – Right to Life; Article 24 – Right to Health; Article 30 – Right to Culture.</p> <p>Additionally, under the Convention, States must “limit ongoing and future damage” to these rights, including those caused by environmental threats.</p>	<p>Communication argues that the State is violating: Article 6 – Right to Life; Article 24 – Right to Health; Article 30 – Right to Culture.</p> <p>Additionally, under the Convention, States must “limit ongoing and future damage” to these rights, including those caused by environmental threats.</p>	<p>Communication argues that the State is violating: Article 6 – Right to Life; Article 24 – Right to Health; Article 30 – Right to Culture.</p> <p>Additionally, under the Convention, States must “limit ongoing and future damage” to these rights, including those caused by environmental threats.</p>	<p>N/A</p>
<p>Is the Committee in question required to review the facts and evidence in a case already decided by national courts? The Committees are competent to consider possible violations of the rights guaranteed by the treaties concerned but are not competent to act as an appellate instance with respect to national courts and tribunals. Thus, the Committee cannot in principle examine the determination of administrative, civil or criminal liability of individuals, nor can they review the question of innocence or guilt</p>	<p>The violations raised by the petitioner(s) relate to international violations. The violations are also monitored by the CRC Committee.</p>	<p>The violations raised by the petitioner(s) relate to international violations. The violations are also monitored by the CRC Committee.</p>	<p>The violations raised by the petitioner(s) relate to international violations. The violations are also monitored by the CRC Committee.</p>	<p>The violations raised by the petitioner(s) relate to international violations. The violations are also monitored by the CRC Committee.</p>	<p>The violations raised by the petitioner(s) relate to international violations. The violations are also monitored by the CRC Committee.</p>
<p>Is the complaint sufficiently substantiated? If the relevant Committee considers, in the light of the information before it, that the complaint has not</p>	<p>The petitioner has submitted high detailed evidence that they consider violations to their rights under the</p>	<p>The petitioner has submitted high detailed evidence that they consider violations to their rights under the</p>	<p>The petitioner has submitted high detailed evidence that they consider violations to their rights under the</p>	<p>The petitioner has submitted high detailed evidence that they consider violations to their rights under the</p>	<p>N/A</p>

sufficiently presented/ described the facts and arguments for a violation of the Covenant, it may reject the case as insufficiently substantiated, and thus inadmissible	CRC, perpetrated by this State. All evidence submitted is in direct relation to a right under the CRC.	CRC, perpetrated by this State. All evidence submitted is in direct relation to a right under the CRC.	CRC, perpetrated by this State. All evidence submitted is in direct relation to a right under the CRC.	CRC, perpetrated by this State. All evidence submitted is in direct relation to a right under the CRC.	
Does the complaint relate to events occurred after the entry into force of the complaint mechanism for the State party concerned? As a rule, a Committee does not examine complaints where the facts occurred prior to this date. If this is the case, the complaint would be regarded as inadmissible <i>ratione temporis</i> .	The details within the Communication refer to events that occurred after the entry force of the Committee mechanism	The details within the Communication refer to events that occurred after the entry force of the Committee mechanism	The details within the Communication refer to events that occurred after the entry force of the Committee mechanism	The details within the Communication refer to events that occurred after the entry force of the Committee mechanism	The details within the Communication refer to events that occurred after the entry force of the Committee mechanism
Has the same matter been submitted to another international body? If it has been submitted to another treaty body or to a regional mechanism, the committee cannot examine the complaint. <i>The aim of this rule is to avoid unnecessary duplication at the international level.</i>	No – the Communication states: this is the first Communication to advance the economic, social and cultural rights of children globally.	No – the Communication states: this is the first Communication to advance the economic, social and cultural rights of children globally.	No - the Communication states: this is the first Communication to advance the economic, social and cultural rights of children globally.	No - the Communication states: this is the first Communication to advance the economic, social and cultural rights of children globally.	No - the Communication states: this is the first Communication to advance the economic, social and cultural rights of children globally.
Have all domestic remedies been exhausted? This included pursuing the claim through the local court system. The mere doubts about the effectiveness of a remedy do not dispense the obligation to exhaust it. However, there are	The individual petitioner has not exhausted domestic remedies. They have claimed within the Communication that if they were to do so, there would be ineffective, inadequate relief.	The individual petitioner has not exhausted domestic remedies. They have claimed within the Communication that if they were to do so, there would be ineffective, inadequate relief.	The individual petitioner has not exhausted domestic remedies. They have claimed within the Communication that if they were to do so, there would be ineffective, inadequate relief.	The individual petitioner has not exhausted domestic remedies. They have claimed within the Communication that if they were to do so, there would be ineffective, inadequate relief.	N/A

<p>exceptions to this rule, when proceedings at the national level have been unreasonably prolonged, or the remedies are unavailable or would plainly be ineffective.</p>	<p>However, other complainants have utilised domestic courts, which highlight what currently domestic avenues provide ineffective relief.</p>	<p>However, other complainants have utilised domestic courts, which highlight what currently domestic avenues provide ineffective relief.</p>	<p>However, other complainants have utilised domestic courts, which highlight what currently domestic avenues provide ineffective relief.</p>	<p>However, other complainants have utilised domestic courts, which highlight what currently domestic avenues provide ineffective relief.</p>	
<p>Is the complaint precluded by a reservation made by the State to the treaty in question? Reservations are formal statements by which States limit the obligations that they accept under a particular provision of a treaty. A State may have been entered a substantive reservation to the treaty or a procedural reservation to the complaint mechanism limiting the Committee's competence to examine certain complaints.</p>	<p>Argentina has one reservation under the CRC. This reservation pertains to Article 21 of the CRC, regarding adoption and foster care. This Communication therefore does not have any relevance to this reservation.</p>	<p>Brazil has no reservations under the CRC</p>	<p>France has a reservation under Article 6 of the CRC: "The Government of the French Republic declares that this Convention, particularly Article 6, cannot be interpreted as constituting any obstacle to the implementation of the provisions of French legislation relating to the voluntary interruption of pregnancy".</p> <p>The second reservation that France has under the CRC, is that Article 30 of the CRC (children and young people who belong to a minority group have the right to share their culture, language and religion with other people in that group), is not applicable in line with the French constitution Article 2 (the language of the Republic shall be French).</p> <p>This reservation relates directly to the violations</p>	<p>Germany has no reservations under the CRC</p>	<p>Turkey reserves the right to interpret and apply the provisions of Article 17, 29 and 30 of the CRC, according to the letter and spirit of Turkey's Constitution.</p> <p>The reservation to Article 30 relates directly to the violations submitted under this Communication. The UNCRC could be faced with extreme difficulty when examining these complaints, as Turkey made the reservations prior to the submission of the Communication.</p>

			submitted under this Communication. The UNCRC could be faced with extreme difficulty when examining these complaints, as France made the reservations prior to the submission of the Communication.		
Is the complaint an abuse of the procedure? In some cases, the Committees may consider the claims to be frivolous, vexatious or otherwise inappropriate use of the complaint procedure and reject them as inadmissible, for example if the same individual brings repeated claims to the Committee on the same issue when the previous identical ones have already been dismissed	No – this is the first Communication that this petitioner has submitted against this State, pertaining to the topic, under the CRC and OPIC.	No – this is the first Communication that this petitioner has submitted against this State, pertaining to the topic, under the CRC and OPIC.	No – this is the first Communication that this petitioner has submitted against this State, pertaining to the topic, under the CRC and OPIC.	No – this is the first Communication that this petitioner has submitted against this State, pertaining to the topic, under the CRC and OPIC.	No – this is the first Communication that this petitioner has submitted against this State, pertaining to the topic, under the CRC and OPIC.

Admissibility Criteria for a Communication under OPIC

	Argentina	Brazil	France	Germany	Turkey
The Communication is not anonymous	Chiara Sacchi	Catarina Lorenzo	Iris Duquesne	Raina Ivanova	N/A

<p>The Communication is in writing</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>
<p>The Communication does not constitute an abuse of the right of submission or is incompatible with the provisions of the Convention or OPIC</p>	<p>Petitioner argues that the State is violating <u>Article 6</u>: Right to Life <u>Article 24</u>: Right to Health <u>Article 30</u>: Right to Culture</p> <p>Evidence <u>Extreme heat</u>: Chiara explains that the extreme heat has significantly increased the use of air conditioning units, placing pressure on the electricity grid. This creates frequent power outages. For example, Chiara cannot complete her homework during power outages because the school system uses web-based platforms. In the extreme heat of summer, power outages quickly ruin food.</p> <p><u>Emotional distress linked to Present and Future Impacts</u>: Chiara Sacchi is scared of the future world with climate change: “it’s hard to imagine a future with all these events. I think we are all quite desperate... It</p>	<p>Petitioner argues that the State is violating <u>Article 6</u>: Right to Life <u>Article 24</u>: Right to Health <u>Article 30</u>: Right to Culture</p> <p>Evidence <u>Drought</u>: The rainfall is less; this brings numerous problems. There are water shortages; there are times when the city lacks water for days, and they are cut off from the water supply. The water shortages come without warning from the local government, therefore Catrina and her family are forced to store water in a tank in preparation for the next water shortage. The droughts are threatening the water security of people and children within Brazil.</p> <p><u>Emotional distress linked to Present and Future Impacts</u>: The extreme temperatures and changing weather patterns in Salvador,</p>	<p>Petitioner argues that the State is violating <u>Article 6</u>: Right to Life <u>Article 24</u>: Right to Health <u>Article 30</u>: Right to Culture</p> <p>Evidence <u>Extreme heat</u>: Iris was three months old when the deadly heat wave of 2003 swept France. In Bordeaux, temperatures reached a record-breaking 40.7 C – it was one of the worst weather events in the Continent’s history. In July 2019, two months after Iris’s 16th birthday, Bordeaux broke a new record at a scorching 41.2 C. The more frequent, extreme heat caused by climate change have already harmed many of the petitioners. For example, Iris Duquesne has been exposed to frequent heatwaves in France that have killed tens and thousands of people across Europe.</p>	<p>Petitioner argues that the State is violating <u>Article 6</u>: Right to Life <u>Article 24</u>: Right to Health <u>Article 30</u>: Right to Culture</p> <p>Evidence <u>Extreme heat</u>: Raina has been exposed to frequent heatwaves in Germany that have killed tens and thousands of people across Europe</p> <p><u>Extreme Storms</u>: Raina waded through knee-deep water on her school’s grounds during the “Hervert” storm in 2017</p> <p><u>Emotional distress linked to Present and Future Impacts</u>: Raina states that climate change disrupts her daily life, thoughts and dreams. Her younger sisters have begun to ask her about rising temperatures. She tries to soothe their worries, although she is also concerned.</p>	<p>Petitioner argues that the State is violating <u>Article 6</u>: Right to Life <u>Article 24</u>: Right to Health <u>Article 30</u>: Right to Culture</p> <p>Evidence N/A</p> <p>There are no petitioners from Turkey, and therefore there is no evidence within the Communication that highlights whether the violations committed by the State are incompatible or compatible with the Articles with the CRC and OPIC.</p>

	<p>feels like we are alone, like no one knows what to do, and when you know what to do, nobody takes action.”</p> <p>The evidence provided by the petitioners in this State are compatible with the Articles in the CRC and OPIC.</p>	<p>Brazil also worry Catarina: “I feel that I don’t know exactly what will happen in the future. If we don’t act to stop the climate crisis, it will be the kids who pay the consequences”.</p> <p>The evidence provided by the petitioners in this State are compatible with the Articles in the CRC and OPIC.</p>	<p><u>Emotional distress linked to Present and Future Impacts:</u> Iris thinks about climate change every day and often feels powerless. “The world is going to be sad. There will be climate refugees everywhere in Europe and the US. There will be tensions and pollution and the geography will be completely changed. There are islands that are going to disappear and countries like the Netherlands that will disappear. I don’t want to have kids if they’re going to live in a world like that”.</p> <p>The evidence provided by the petitioners in this State are compatible with the Articles in the CRC and OPIC.</p>	<p>The evidence provided by the petitioners in this State are compatible with the Articles in the CRC and OPIC.</p>	
<p>The issues have not already been examined by the Committee or is not currently under any other procedure of international investigation</p>	<p>The CRC Committee has not already examined this issue.</p> <p>This Communication is not currently being investigated by any other international committee.</p>	<p>The CRC Committee has not already examined this issue.</p> <p>This Communication is not currently being investigated by any other international committee.</p>	<p>The CRC Committee has not already examined this issue.</p> <p>This Communication is not currently being investigated by any other international committee.</p>	<p>The CRC Committee has not already examined this issue.</p> <p>This Communication is not currently being investigated by any other international committee.</p>	<p>The CRC Committee has not already examined this issue.</p> <p>This Communication is not currently being investigated by any other international committee.</p>

<p>All available domestic remedies have been exhausted unless considered unreasonably prolonged or unlikely to bring effective relief</p>	<p>Petitioner(s) within this State have not personally utilised domestic remedies. However, other complainants have utilised domestic courts, which highlight that currently domestic avenues provide ineffective relief.</p>	<p>Petitioner(s) within this State have not personally utilised domestic remedies. However, other complainants have utilised domestic courts, which highlight that currently domestic avenues provide ineffective relief.</p>	<p>Petitioner(s) within this State have not personally utilised domestic remedies. However, other complainants have utilised domestic courts, which highlight that currently domestic avenues provide ineffective relief.</p>	<p>Petitioner(s) within this State have not personally utilised domestic remedies. However, other complainants have utilised domestic courts, which highlight that currently domestic avenues provide ineffective relief.</p>	<p>No cases have been brought to the domestic courts in Turkey regarding the climate crisis.</p>
<p>The Communication is not ill-founded or insufficiently substantiated</p>	<p>Petitioners have provided evidence of how the violations committed by the States are an infringement of the CRC's Articles.</p>	<p>Petitioners have provided evidence of how the violations committed by the States are an infringement of the CRC's Articles.</p>	<p>Petitioners have provided evidence of how the violations committed by the States are an infringement of the CRC's Articles.</p>	<p>Petitioners have provided evidence of how the violations committed by the States are an infringement of the CRC's Articles.</p>	<p>Petitioners have provided evidence of how the violations committed by the States are an infringement of the CRC's Articles.</p>
<p>The facts that are the subject of the Communication did not occur prior to the entry into force of the present Protocol for the State concerned</p>	<p>The facts relate to situations in this State that occurred after the CRC and OPIC entered into force.</p>	<p>The facts relate to situations in this State that occurred after the CRC and OPIC entered into force.</p>	<p>The facts relate to situations in this State that occurred after the CRC and OPIC entered into force.</p>	<p>The facts relate to situations in this State that occurred after the CRC and OPIC entered into force.</p>	<p>N/A</p>
<p>The Communication is submitted within one year after the exhaustion of domestic remedies</p>	<p>As the individual petitioners have not brought a case to the domestic courts in this State, the date of which this Communication has been submitted with regards to the exhaustion of domestic remedies does not apply.</p> <p>However, the most recent case that has been submitted to the domestic courts in Argentina with regards to the climate crisis was submitted in</p>	<p>As the individual petitioners have not brought a case to the domestic courts in this State, the date of which this Communication has been submitted with regards to the exhaustion of domestic remedies does not apply.</p> <p>However, the most recent case that has been submitted to the Brazilian courts with regards to the climate crisis was submitted in 2015.</p>	<p>As the individual petitioners have not brought a case to the domestic courts in this State, the date of which this Communication has been submitted with regards to the exhaustion of domestic remedies does not apply.</p> <p>However, the most recent case that has been submitted to the French courts with regards to the climate crisis was submitted in 2020. Before</p>	<p>As the individual petitioners have not brought a case to the domestic courts in this State, the date of which this Communication has been submitted with regards to the exhaustion of domestic remedies does not apply.</p> <p>However, the most recent case that has been submitted to the German courts with regards to the climate crisis was submitted in 2018.</p>	<p>N/A</p>

	<p>2018. Therefore, it has not been a year since (other) complainants tried to utilise the domestic courts.</p> <p>Therefore, this criterion has not been met for admissibility.</p>	<p>Therefore, it has been over a year since (other) complainants tried to utilise domestic courts.</p> <p>Therefore, this criterion has been met for admissibility.</p>	<p>this submission, another case was filed at the domestic courts in 2019. Therefore, it has not been a year since (other) complainants tried to utilise the domestic courts.</p> <p>Therefore, this criterion has not been met for admissibility.</p>	<p>Therefore, it has not been a year since (other) complainants tried to utilise the domestic courts.</p> <p>Therefore, this criterion has not been met for admissibility.</p>	
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