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REFERENCE: HC/ECHHR/53600/20

21 September 2021

Honourable Judge Ravarani,

I refer to the letter of the Registrar of the Third Section of the European Court of Human Rights of 20 July 2021, whereby I was informed as to decision of the President of the Third Section to grant leave, under article 44 § 3 of the Rules of the Court, to make written submissions within proceedings in relation to the case *Verein KimaSeniorinnen Schweiz and Others v. Switzerland* (application no. 53600/20).

In accordance with the conditions specified in the above-mentioned letter, I have the honour to respectfully submit herewith my written brief, for the European Court of Human Rights' consideration.

This submission is made on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on mission, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.

If you require any further information, please do not hesitate to contact [REDACTED]

Yours sincerely,

Michelle Bachelet
High Commissioner for Human Rights

Mr. Georges Ravarani
Honorable Judge - President, Third Section
European Court of Human Rights
Council of Europe
Strasbourg, France

cc: Mr. Milan Blaško
Registrar of the Third Section,
European Court of Human Rights

EUROPEAN COURT OF HUMAN RIGHTS

Verein KlimaSeniorinnen and Others v. Switzerland
Application No. 53600/20

Intervener Brief
filed by the
United Nations High Commissioner for Human Rights¹

pursuant to leave granted by the Court on 20 July 2021

¹ This third party intervention is made on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied of the privileges and immunities of the United Nations, its officials and experts on mission, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.

I. Statement of Interest

1. The United Nations High Commissioner for Human Rights (the High Commissioner) intervenes as a third party in this case, by virtue of her mandate established in United Nations General Assembly Resolution 48/141, to, *inter alia*, protect and promote all human rights and to conduct necessary advocacy in that regard. The High Commissioner is the principal human rights official of the United Nations (U.N.). In recent years, the High Commissioner has submitted a number of reports to the Human Rights Council focused on the impact of climate change on the enjoyment of human rights.² At the 47th session of the Council, she presented a key report on the impacts of climate change on the human rights of older persons.³ That report found that climate change causes older persons to experience disproportionate impacts on the realization of a wide range of their human rights,⁴ and that these impacts are aggravated by widespread age discrimination, neglect, and marginalization.⁵ Given that climate change is already adversely affecting people's enjoyment of human rights around the world,⁶ the Court's judgment in this case is of particular interest to the High Commissioner and her Office.

II. Introduction

2. In September 2019, the High Commissioner warned that climate change was a threat to human rights beyond the scope of anything the world had seen before, of such a nature that no country, no institution, and no policy-maker could stand on the sidelines.⁷ This year alone has brought home that the negative effects of climate change to the realization of human rights, far from being speculative, are now not only all too real, but of accelerating impact. Just two hundred kilometers from the seat of the Court, rainfall of unprecedented intensity killed almost two hundred people in flash flooding across regions of Germany and Belgium.⁸ In Zhengzhou,

² Office of the United Nations High Commissioner for Human Rights (OHCHR), *Analytical study on the promotion and protection of the rights of older persons in the context of climate change*, A/HRC/47/46 (2021) [Report on climate change and older persons]; *Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change*, A/HRC/44/30 (2020); *Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women*, A/HRC/41/26 (2019); *Addressing human rights protection gaps in the context of migration and displacement of persons across international borders resulting from the adverse effects of climate change and supporting the adaptation and mitigation plans of developing countries to bridge the protection gaps*, A/HRC/38/21 (2018) [Report on climate change and migration]; *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, A/HRC/35/13 (2017) [Report on climate change and the rights of the child]; *Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/32/23 (2016) [Report on climate change and health]; *Report of on the relationship between climate change and human rights*, A/HRC/10/61 (2009).

³ OHCHR, *Report on climate change and older persons*, *supra* Note 2.

⁴ *Ibid.*, para. 4.

⁵ *Ibid.*, paras. 7-8.

⁶ Bachelet, M., *Global Update to the 42nd Session of the Human Rights Council* (9 September 2019).

⁷ See also OHCHR, *Panel discussion on promoting and protecting the rights of persons with disabilities in the context of climate change*, A/HRC/46/46 (2020), para. 36; Joint statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, HRI/2019/1 (2019); Special Rapporteurs on the rights of persons with disabilities; the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment; extreme poverty and human rights; the human right to safe drinking water and sanitation; and the Independent Expert on human rights and international solidarity, "The Effects of Climate Change on the Full Enjoyment of Human Rights," (2015); U.N. Environment Programme, *Climate Change and Human Rights*, (2015) <https://wedocs.unep.org/handle/20.500.11822/9934>; Amnesty International, *Stop Burning Our Rights* (2021).

⁸ See Dewan, A., *Germany's deadly floods were up to 9 times more likely because of climate change, study finds*, <https://edition.cnn.com/2021/08/23/europe/germany-floods-belgium-climate-change-intl/index.html>.

China, an *annual* quantity of rainfall fell in just one day, drowning inhabitants and causing vast property damage,⁹ and in the Pacific Northwest never before seen ‘heat domes’ shattered previous temperature records and sent excess mortality rates soaring, with particular impact on older persons.¹⁰ Fires of nigh-apocalyptic scale have raged this summer across the ancient forests of Siberia.¹¹ Elsewhere, sustained droughts have steadily crushed dwindling livelihoods,¹² while rising sea levels have eroded land and poisoned groundwater, ending traditional ways of life for those affected.¹³ Every country is now confronted with a future at extraordinary risk, and a concomitant extraordinary responsibility, across all branches of Government, including the judicial. The available scientific knowledge is clear: human action has led to the climate crisis, and human action is needed to prevent it from worsening.

3. Against this background of real and foreseeable risk of grave harms, States must take meaningful, adequate and sufficient steps and measures to prevent or mitigate climate change and its adverse effects on the enjoyment of human rights and to ensure access to justice and effective remedies when harms do occur. International environmental law, including particularly the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement to the UNFCCC (Paris Agreement), also offers interpretative assistance on the scope of States’ positive human rights obligations related to climate change including with respect to the precautionary principle, common but differentiated responsibility, and inter-generational equity. The Paris Agreement, for its part, also makes explicit that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”.

4. Despite States’ obligations under international law, including international human rights law, to date, State climate action generally has not been sufficiently ambitious.¹⁴ In 2019, in its concluding observations in relation to the periodic report of the respondent State in the present proceedings, the U.N. Committee on Economic, Social and Cultural Rights (CESCR) stated with concern that Switzerland was not undertaking the efforts needed to meet the greenhouse gas emissions reduction target for 2020 and that its emission reduction target of 50 per cent by 2030 compared to 1990 was not compatible with climate change mitigation objectives set by the international community.¹⁵ Accordingly, the Committee recommended that Switzerland intensify its efforts to meet its targets for 2020 and to raise its target for 2030 to be “consistent with the commitment to limit temperature rise to 1.5°C.”¹⁶

5. This brief draws the Court’s attention to important elements of international human rights law developed through the U.N. human rights mechanisms that are directly relevant to the questions presented in this case. First, the brief addresses the right to an effective remedy and the closely associated requirement of victim standing. It then turns to the right to life and the

⁹ See Cappucci, M., *Eight inches in one hour: how a deadly downpour flooded Zhengzhou, China*, <https://www.washingtonpost.com/weather/2021/07/21/zhengzhou-china-record-rain-flooding/>.

¹⁰ See McGrath, M., *Climate change: US-Canada heatwave ‘virtually impossible’ without warming*, <https://www.bbc.co.uk/news/science-environment-57751918>.

¹¹ See Gamillo, E., *More Than 40 Million Acres of Land Have Burned in Siberia*, <https://www.smithsonianmag.com/smart-news/siberian-wildfires-are-larger-globes-total-blazes-year-combined-180978433/>.

¹² See OHCHR and Platform for Disaster Displacement, *The slow onset effects of climate change and human rights protection for cross-border migrants*, A/HRC/37/CRP.4 (2018), para. 84.

¹³ See *ibid*, paras. 110, 115.

¹⁴ Secretariat of the U.N. Framework Convention on Climate Change, *Synthesis report on Nationally determined contributions under the Paris Agreement*, FCCC/PA/CMA/2021/8.

¹⁵ Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations on the Fourth Periodic Review of Switzerland*, E/C.12/CHE/CO/4 (2019), para. 18.

¹⁶ *Ibid*, para. 19.

right to private and family life and home. Finally, it considers the importance of wider principles of international law to the realization of human rights in context of climate change, and for the obligations of States as they undertake remedial action in response to the crisis.

III. Character of victim status and access to an effective remedy

6. The ability by a personally and directly affected victim to claim justice and access an effective remedy where rights have been violated is central to the very concept of human rights, and to the rule of law itself.¹⁷ It is axiomatic that States are required to establish appropriate judicial and administrative mechanisms for addressing plausible claims of rights violations.¹⁸ In the context of the human rights obligations triggered by the adverse impacts of climate change and States' legislative and/or executive omissions or insufficient actions in response to it, the remedial role of courts in giving meaning and effect to such legal obligations and safeguarding access to justice and to remedies notwithstanding novel circumstances is crucial.

7. Litigation related to climate change harms commonly raises questions on the character of applicant's victim standing to bring associated claims before national or international courts, in accordance with relevant applicable law. While the jurisprudence of the UN human rights treaty bodies has on occasion found lack of victim standing when an application abstractly challenged legal provisions or a practice (*actio popularis*),¹⁹ the U.N. Human Rights Committee has emphasized the fact-bound nature of such an assessment, noting that "[i]t is a matter of degree how concretely that requirement should be taken", and emphasizing that it must be demonstrated either that a State has already impaired the exercise of the applicant's right or that such impairment is imminent. It further stated that "If the law or practice has not already been concretely applied to the detriment of that individual, it must in any event be applicable in such a way that the alleged victim's risk of being affected is more than a theoretical possibility."²⁰

8. In *Bordes et al. v. France*, in which the complainants claimed violations of their rights to life and freedom from interference in their family life due to underground nuclear detonations in the South Pacific, the Committee did not find the application inadmissible on any point of general principle, but on limited, evidentiary grounds, noting that on the basis of the information presented, the applicants had not substantiated a justifiable claim to be victims of violations or real threat thereof.²¹ The Committee also noted that the complainants' allegations that nuclear test would further deteriorate the geological structure of the atolls were "highly controversial even in concerned scientific circles."²² In *E.H.P. v. Canada*, by contrast, in which the applicant claimed that a dumping of toxic waste threatened her, present and future generations' life, the Human Rights Committee accepted that the complainant had standing to submit the complaint on her own behalf and on the behalf of those she represented, also noting that it would "treat the author's reference to 'future generations' as an expression of concern purporting to put into due perspective the importance of the matter raised".²³ And in *Teitiota v. New Zealand*, in relation to individuals claiming violation of the right to life, the Committee recalled the need for an applicant to demonstrate that the State's actions resulted in a violation

¹⁷ See Universal Declaration of Human Rights, Arts. 8, 10; International Covenant on Civil and Political Rights, Art. 2(3), International Covenant on Economic, Social and Cultural Rights, Art. 2. See also CESCR, *I.D.G. v. Spain*, E/C.12/55/D/2/2014, para. 11.3; and *Ben Djazia and Bellili v. Spain*, E/C.12/61/D/5/2015, para. 13.4.

¹⁸ Human Rights Committee, *General Comment No. 31*, CCPR/C/21/Rev.1/Add.13 (2004), para. 15.

¹⁹ Human Rights Committee, communications No. 35/78, *Shirin Aumeeruddy-Cziffra et al. v. Mauritius*, para. 9.2; and CCPR/C/123/D/2348/2014, *Toussaint v. Canada*, para. 10.3.

²⁰ Human Rights Committee, *Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, para. 8.4.

²¹ Human Rights Committee, *Bordes and Temeharo v. France*, CCPR/C/57/D/645/1995, para. 5.5.

²² *Ibid.*, para. 5.6.

²³ Human Rights Committee, communication No. 67/80, *E.H.P. v. Canada*, para. 8(a).

of a right, specific to the individuals, “or presented an existing or imminent threat to their enjoyment of that right.”²⁴ Yet in that case, the Committee considered that the complainant had “sufficiently demonstrated, for the purpose of admissibility, that due to the impact of climate change and associated sea level rise on the habitability of Kiribati and on the security situation on the islands, [the applicant] faced a real risk of impairment to his right to life..... as a result of [New Zealand’s] decision to remove him to Kiribati.”²⁵

9. Likewise, considered judicial reflection, including by respected national courts of final jurisdiction, has increasingly concluded that, as a matter of law, human rights complaints by affected individuals arising from impacts of climate change can state justiciable claims. In a landmark case, the Supreme Court of the Netherlands held, in 2019, that the protections afforded by Arts. 2 and 8 of the European Convention on Human Rights (ECHR) are available “to society or the population as a whole” and protect the entire population of a region threatened by an environmental hazard.²⁶ The Court further elaborated that potential human rights risks to a large segment of the population “does not mean ... that Articles 2 and 8 ECHR offer no protection from this threat.”²⁷ Similarly, German’s Federal Constitutional Tribunal found admissible a recent case raising human rights claims related to climate change.²⁸ According to the Constitutional Tribunal: “The mere fact that very large numbers of people are affected does not exclude persons from being individually affected in their own fundamental rights.”²⁹ The Tribunal went on to find that the plaintiffs in that case, “are individually affected in their own freedom... The fact that the restrictions will affect virtually everyone then living in Germany does not exclude the complainants from being individually affected.”³⁰ In France, the *Conseil d’Etat* likewise recently accepted, in proceedings invoking the ECHR among other provisions, legal standing of the commune de Grande-Synthe, taking into account its level of exposure to risks arising from climate change and their direct and certain impact on the commune, notwithstanding that numerous other communes were also susceptible to those effects.³¹

10. The confluence of emerging jurisprudence of UN human rights treaty bodies and key national courts therefore recognises the flexibility and pragmatism with which the standing of victims asserting human rights claims in relation to climate change should be appropriately addressed, including circumstances in which large numbers of persons face comparable real and imminent risks. In particular, traditional requirements of imminent harm can and must be addressed holistically, taking into account the particular characteristics of slower-onset impacts such as those often posed by climate change, in which evolving risks and harms can become irreparable given the extended time-lines needed for effective remediation. As the *Conseil d’Etat* aptly put it in *Grande Synthe*, “Even if these concrete consequences of climate change will only be felt in full in the commune’s area by the horizon of 2030-2040, their inevitable character, absent effective, rapidly taken preventive action taking into account the timelines for impact of public policies, is such as to justify the need to act immediately to these ends.”³²

²⁴ *Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, para. 8.4.

²⁵ *Ibid*, para 8.6.

²⁶ *Urgenda v. The Netherlands* (2019), Supreme Court of the Netherlands, ECLI:NL:HR:2019:2007, para. 5.3.1.

²⁷ *Ibid*, para. 5.6.2.

²⁸ *Bundesverfassungsgerichtshof* (BVerfG), 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20, para. 110 (29 Apr. 2021).

²⁹ *Ibid*.

³⁰ *Ibid*, para. 131.

³¹ *Conseil d’Etat*, Judgment of 19 November 2020, N° 427301 (*Commune de Grande Synthe et autre*), para. 3. See also *VZW Klimaatzaak v. Kingdom of Belgium and Others* (2021), *Tribunal de Première Instance*, Brussels, Civil Section, 2015/4585/A, pp. 50-51 (in which the Court noted “the fact that other Belgian citizens may also suffer their own damage ... is not sufficient to reclassify the personal interest of each [plaintiff] as a general interest.”)

³² *Conseil d’Etat*, Judgment of 19 November 2020, para. 3 (intervenor’s informal translation into English).

Rather than constricted approaches to victim standing, the case-law instead demonstrates that the merits of such cases, and the crafting of appropriate remedies, can duly take into account wider public interests, conserve judicial resources and afford sufficient respect to the specificities of the judicial function *vis-à-vis* legislative and executive responsibilities.

11. These legal assessments must be driven by the best available science: the scientific community and the U.N. have reported extensively on the existing impacts and unprecedented threats posed by climate change, including the degree of direct impacts on individuals and groups. The best available scientific knowledge foresees, with high levels of certainty, the impacts of climate change, including imminent threats to the life and health of people, as well as the role that climate change plays in events that are already occurring.³³ Against this background, under international human rights law, individuals whose human rights are violated or potentially will be directly and personally violated by past and continuing State contributions to climate change and failures to sufficiently address them are entitled, as plausible victims, to have access to the courts and to an effective remedy.

IV. Climate change impacts on the human rights to life and private and family life and home, and corresponding State obligations

The right to life

12. As the climate changes, the deadly impact on the foundational right to life is no longer simply an argument of reasonable foreseeability, but of current, lived experience: individuals worldwide are drowning in climate change-induced flood waters, choking on more polluted and more dangerous air, starving in famines, and overheating in their own homes. In Switzerland alone, an estimated 804 additional people died during the unduly warm summer of 2015, 77 per cent of whom were over the age of 75.³⁴ Many of the deaths which can be properly attributed to climate change were both foreseeable and preventable. The law requires feasible steps to be taken to prevent such loss of life.

13. Reflected in the ECHR, Art. 6 of the International Covenant on Civil and Political Rights (ICCPR) guarantees every human being's inherent right to life." The U.N. Human Rights Committee, authoritatively interpreting the Covenant, has emphasized that the right to life should not be interpreted narrowly, and includes the entitlement of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death.³⁵ The Committee has made clear that "[t]he duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity," including environmental degradation.³⁶ It further elaborated that "environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life."³⁷ Because of this, States should ensure that their obligations in relation to the right to life inform their obligations under international environmental law, and should "develop and

³³ See, e.g., IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Masson-Delmotte, V., et al. (eds.)]. Cambridge University Press. In Press; IPCC, 2018: Global warming of 1.5°C. 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 response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., et al. (eds.)]. In Press.

³⁴ Vicedo-Cabrera, A., et al., *Excess mortality during the warm summer of 2015 in Switzerland*, Swiss Med. Weekly (4 December 2016).

³⁵ Human Rights Committee, *General comment No. 36*, CCPR/C/GC/36 (2019), para. 3 [HRC, GC 36].

³⁶ *Ibid.*, para. 26.

³⁷ *Ibid.*, para. 62.

implement substantive environmental standards.”³⁸ In addition, “the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life, even if such threats and situations do not result in loss of life.”³⁹

14. In its consideration of periodic reports of States parties to the Covenant, the Human Rights Committee has underlined that States should adopt a precautionary approach to protect people, including those most at risk, from the negative impacts of climate change and natural disasters.⁴⁰ It has called for consistent implementation of climate commitments⁴¹ and the provision of information on measures taken with regard to such commitments,⁴² and has highlighted the importance of meaningful and effective participation in climate action.⁴³

15. The Committee has further found, in the context of its individual communications procedure, that environmental harms can lead to violations of the right to life that give rise to corresponding obligations of State action. In *Portillo Cáceres et al. v. Paraguay*,⁴⁴ the Committee considered allegations of violations of the right to life arising from the State’s failure to adequately regulate the use of harmful pesticides. The Committee took note of decisions in other international tribunals recognizing the clear link between environmental protection and human rights and finding that severe environmental degradation can amount to a violation of the right to life.⁴⁵ It ruled that the environmental contamination at issue in the case constituted a reasonably foreseeable threat to the right to life, from which the State did not adequately protect the petitioners, and thus found a violation of Article 6.⁴⁶ The same legal approach lends itself directly to the context of climate change. In that regard, in *Teitiota v. New Zealand*, regarding the return of an asylum-seeking individual to a climate vulnerable State at risk of submersion by rising sea levels, the Committee stated, on the merits of the complaint, that “environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual’s well-being and lead to a violation of the right to life.”⁴⁷ The Committee found that, without robust national and international efforts, the effects of climate change may expose individuals to a violation of their rights under the ICCPR, adding that, given the risk faced by climate-vulnerable States, conditions in such countries may become incompatible with the right to life with dignity before the risk of submersion is realized.⁴⁸

16. In its recent report, OHCHR concluded that older persons’ right to life is disproportionately affected by the adverse impacts of climate change in a number of ways. For example, “[a]dults aged 65 and older are the most likely to die from heat exposure or during heatwaves, in extreme cold weather or winter storms, and in hurricanes and other natural hazards.”⁴⁹ In particular, older women “have higher rates of mortality and other health

³⁸ *Ibid.*

³⁹ *Ibid.*, para. 7.

⁴⁰ Human Rights Committee, *Concluding observations on the initial report of Cabo Verde*, CCPR/C/CPV/CO/1/Add.1 (2019), para. 18 [HRC, *Cabo Verde*].

⁴¹ Human Rights Committee, *Concluding observations on the fourth periodic report of Kenya*, CCPR/C/KEN/CO/4 (2021), para. 26.

⁴² HRC, *Cabo Verde*, *supra* Note 40, para. 17.

⁴³ HRC, *Kenya*, *supra* Note 41, para. 27; *Concluding observations in the absence of an initial report of Dominica*, CCPR/C/DMA/COAR/1 (2020), paras. 24-25.

⁴⁴ Human Rights Committee, *Portillo Cáceres et al. v. Paraguay*, CCPR/C/126/D/2751/2016.

⁴⁵ *Ibid.*, para. 7.4.

⁴⁶ *Ibid.*, para. 7.5.

⁴⁷ *Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, paras 9.5, 9.11 and 10.

⁴⁸ *Ibid.*, para 9.11.

⁴⁹ OHCHR, *Report on climate change and older persons*, *supra* Note 2, para. 9.

complications from extreme heat events than any other demographic group.”⁵⁰ Under these circumstances, States have an affirmative obligation to take precautionary measures to mitigate climate change⁵¹ in accordance with scientific consensus, and prevent foreseeable loss of life. Conversely, the failure to take appropriate and sufficient measures to mitigate climate change that results in a real, concrete and imminent or reasonably foreseeable threat to individuals’ life amounts to a violation of the right to life.

Right to respect for private and family life and home

17. Climate change has directly impacted the quality of life of individuals, affecting the enjoyment of rights of private and family life and home. Rising temperatures are intensifying the impact and damage of extreme weather events, weakening public and private infrastructure and homes, facilitating the spread of new diseases and noxious pests into previously-unaffected areas, affecting nutrition, and profoundly impacting on mental health.⁵² Specific personal contexts, including health conditions, further require certain individuals to stay indoors to diminish, to the extent possible, the impacts of spiking temperatures driven by climate change, likewise affecting the enjoyment of private and family life. And older persons face greater health risks from heat, air pollution, infectious disease, and disasters.⁵³ Collectively, these factors drive real and direct impacts on persons’ private and family lives and homes.

18. In international human rights law, article 17 of the ICCPR, reflected in article 8 of the ECHR, establishes that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. According to the CESCR, and reflecting the linkages set out above, the right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence also constitutes an important dimension in defining the right to adequate housing under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵⁴ As discussed in more detail below, enjoyment of health is also a key element of enjoying the right to private and family life. With regard to ICCPR article 17, the Human Rights Committee has determined that where the adverse consequences of environmental harm “are serious because of its intensity or duration and the physical or mental harm that it does, then the degradation of the environment may adversely affect the well-being of individuals and constitute violations of private and family life and the home.”⁵⁵ The CESCR has specified that the adequacy of housing under ICESCR Article 11 is determined in part by environmental and climatic factors,⁵⁶ and requires that housing be habitable, protecting residents “from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.”⁵⁷ This Committee has stated that “a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with obligations under the Covenant,”⁵⁸ and that it is important to ensure that policies including those relating to energy and the environment are in line with States’ Article 11 obligations.⁵⁹

19. Where climate change results in or would imminently result in an arbitrary or unlawful interference with the enjoyment of individual’s private and family life and home, States have

⁵⁰ *Ibid*, para. 35.

⁵¹ OHCHR, *Report on climate change and health*, *supra* Note 2, para. 54.

⁵² *Ibid*, paras. 12-20.

⁵³ OHCHR, *Report on climate change and older persons*, *supra* Note 2, paras. 10-11.

⁵⁴ CESCR, *General comment No. 4: The right to adequate housing*, para. 9 (1991) [CESCR, GC 4].

⁵⁵ HRC, *Portillo Cáceres et al. v Paraguay*, para. 7.7.

⁵⁶ CESCR, GC 4, *supra* Note 54, para. 8.

⁵⁷ *Ibid*, para. 8(d).

⁵⁸ *Ibid*, para. 11.

⁵⁹ *Ibid*, para. 12.

corresponding obligations under international human rights law to take action to cease such interference.

The right to health as an element of the rights to life and to private and family life

20. Article 12 of the ICESCR provides that all persons have the right “to the enjoyment of the highest attainable standard of physical and mental health.” The realization of this right is conducive to living a life in dignity⁶⁰ and is closely related to and dependent upon the realization of other human rights, including the rights to life and privacy.⁶¹ The right to health extends to the underlying determinants of health many of which, such as water and sanitation, food, housing, occupational and environmental conditions are directly affected by climate change.⁶² Thus, States must adopt measures against environmental hazards, including policies to reduce and eliminate pollution.⁶³

21. Scientific assessments are now aligned in predicting that the negative impacts of climate change will increase exponentially with every incremental increase in warming, seriously affecting individuals’ health, the ability to live with dignity, private homes and family lives. Therefore, in complying with their protective obligations, States should limit warming to the greatest extent possible and take further positive steps, consistent with their means, to prevent the adverse impacts of climate change on human health and welfare. At a minimum, this entails taking adequate action at national levels to achieve the target of limiting warming to 1.5°C above pre-industrial temperatures contained in the Paris Agreement.⁶⁴

V. Wider principles of international law relevant to interpretation of human rights obligations for climate action: precaution, intergenerational equity, and common but differentiated responsibility in view of the duty of international cooperation

22. The precautionary principle holds that “[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”⁶⁵ The Human Rights Committee has made clear that, due to the importance of environmental protection for the right to life, States have an obligation to “give due regard to the precautionary approach.”⁶⁶ European domestic courts have also pointed to the precautionary principle as giving further content to States’ human rights obligations with regard to the need for immediate and urgent climate action.⁶⁷

23. Intergenerational equity,⁶⁸ often referenced with respect to the rights of future generations, obliges States to address environmental harms that lead to intergenerational inequities, and protects against inequities between existing present generations.⁶⁹ Thus, the CESCR has asserted that States should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for both present and future

⁶⁰ CESCR, *General Comment 14*, E/C.12/2000/4, para. 1 (2000) [CESCR, *GC 14*].

⁶¹ *Ibid*, para. 3.

⁶² *Ibid*, para. 11.

⁶³ *Ibid*, para 36.

⁶⁴ OHCHR, *Report on climate change and health*, *supra* Note 2, para. 55. See, also CESCR, *Concluding Observations the periodic reports of Norway*, E/C.12/NOR/CO/6, para. 11 (2020); *Belgium*, E/C.12/BEL/CO/5, para. 10 (2020); *Ecuador*, E/C.12/EQU/CO/4, para. 11 (2019); *Germany*, E/C.12/DEU/CO/6, para. 19 (2019); *Argentina*, E/C.12/ARG/CO/4, paras. 13-14 (2018).

⁶⁵ *Rio Declaration on Environment and Development*, A/CONF.151/26 (Vol. I), p. 3 (1992) [*Rio Declaration*].

⁶⁶ HRC, *GC 36*, *supra* Note 35, para. 62. See also HRC, *Cabo Verde*, *supra* Note 40, para. 18.

⁶⁷ *Urgenda v. the Netherlands*, *supra* Note 26, paras. 5.3.2, 7.2.10; see also *BverfG*, *supra* Note 28, para. 142.

⁶⁸ *Rio Declaration*, *supra* Note 65, p. 2.

⁶⁹ See, e.g., World Health Organization, *Intergenerational Equity Briefing*, p. 4 (2015).

generations.⁷⁰ Intergenerational equity has been a matter of significant concern in domestic litigation raising human rights claims in the context of climate change. Notably, the German Federal Court assessed the timeline for action in Germany's climate change law in light of intergenerational equity concerns,⁷¹ noting that the law "concerns how environmental burdens are spread out between different generations."⁷² In important ways, the disproportionate climate burden borne by older persons also raises concerns of intergenerational equity.

24. Under international law, all States have a duty of international cooperation, particularly relevant in light of the transboundary nature of climate change and its negative human rights effects.⁷³ This duty is articulated in Article 2 of the ICESCR,⁷⁴ and it is affirmed with relation to environmental matters in the Preamble and Article 3 of the UNFCCC, Arts. 7, 9, 11, and 12 of the Paris Agreement, and other international instruments.⁷⁵ The U.N. Committee on the Elimination of Discrimination against Women has stated that States should take effective steps in cooperation with others to manage environmental risks that contribute to climate change.⁷⁶ The Human Rights Council's resolution 44/7 also emphasized that "the global nature of climate change calls for the widest possible cooperation by all countries".⁷⁷ This duty to cooperate should be informed by the principle of common but differentiated responsibilities, contained in the UNFCCC and the Paris Agreement. This principle also precludes States raising the necessity of action by other countries to diminish the urgency of taking their own meaningful climate action,⁷⁸ but rather insists that each State take the measures necessary to cooperate in order to collectively meet international climate commitments.

VI. Conclusion

25. The devastating impacts of climate change on the realization and enjoyment of a wide range of human rights, including the rights to life, health, private and family life and home, have become a major crisis both in Europe and worldwide. This case therefore provides a timely, and vital, opportunity for this Court to judicially consider the already-emerging consensus across diverse U.N. human rights mechanisms and national legal systems that, the stark impacts of climate change are – indeed must be – justiciable, legally implicating core human rights and States' obligations to protect them from actual and foreseeable threats. While the precise means for any State to discharge such obligations may vary according to capacities and context, the High Commissioner's own considered view is that, in accordance with international human rights law, States have a duty to take positive action necessary to limit warming to the greatest extent possible, consistent with the best available scientific knowledge. The Court's clarification of the Convention's scope of application in this case would be a central step towards assuring the enjoyment of both present and future generations of the full range of human rights through the extraordinary era of climate crisis now upon us. The High Commissioner respectfully invites the Court, in assessing these questions of profound gravity, to take into account the submissions set out in the present brief.

⁷⁰ CESCR, *General Comment No. 15*, E/C.12/2002/11, para. 28 (2002) (emphasis added).

⁷¹ See BVerfG, *supra* Note 28, paras. 192-93.

⁷² *Ibid.*, para. 193.

⁷³ CEDAW, *General recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change*, CEDAW/C/GC/37 (2018), paras. 65-66 [CEDAW, GR 37].

⁷⁴ See also CESCR, *General Comment No. 3 on the nature of States parties' obligations* (1990), para. 14.

⁷⁵ See, e.g., *Report of the United Nations Conference on the Human Environment*, A/CONF.48/14/Rev.1, p. 5 (1972); *Rio Declaration*, *supra* Note 65, pp. 2-3, 5.

⁷⁶ CEDAW, GR 37, *supra* Note 73, para. 46.

⁷⁷ Human Rights Council, *Human Rights and Climate Change*, A/HRC/RES/44/7, preamble (2020).

⁷⁸ See, e.g., *Urgenda v. Netherlands*, *supra* Note 26, para. 5.7.7.