Müllner vs Austria (Application no. 18859/21)
European Court of Human Rights, Fourth Section

Amicus Curiae Brief submitted by the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ms. Elisa Morgera, and the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Ms. Astrid Puentes Riaño (the Special Rapporteurs)

The Special Rapporteurs respectfully provide the following written observations, as third-party interveners in *Müllner vs Austria* (Application no. 18859/21), as granted by the Vice-President of Section Fourth, as per communication ECHR-LE14.8PE, and under Rule 44 § 3 of the rules of the work.

The Special Rapporteurs are part of "[t]he system of Special Procedures" that "is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social."[1] They serve as an independent human rights expert selected for my "(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity."[2] They "undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith" and "not receive financial remuneration."[3]

In the performance of their mandates, the Special Rapporteurs are considered as experts on mission for the United Nations, within the meaning of Articles VI and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations. General Assembly on 13 February 1946. In accordance with Article VI, Section 22, as experts on mission for the United Nations, the Special Rapporteurs enjoy such privileges and immunities as are necessary for the independent exercise of their functions, including in respect of words spoken or written and acts done by them in the course of the performance of their missions, immunity from legal process of every kind.

This application is submitted voluntarily 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.

Authorization for the position and views expressed by the Special Rapporteurs, in full accordance with the independence afforded to their mandates, was neither sought nor given by the United Nations, the United Nations Human Rights Council, the Office of the United Nations High Commissioner for Human Rights, or any of the officials associated with those bodies.

Our observations are in relation to:

1) State due diligence under Article 8 ECHR in the light of evolving norms of international law
2) Threshold test in the case law of the European Court of Human Rights (the Court)
3) Access to justice and effective remedy in the light of evolving norms of international law

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[1] Office of the High Commissioner for Human Rights ("OHCHR"), *Special Procedures of the Human Rights Council*, https://www.ohchr.org/en/hrbodies/sp/pages/introduction.aspx

[2] Human Rights Council, Institution-building of the United Nations Human Rights Council, A/HRC/RES/5/1 (June 18, 2007), https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1

[3] OHCHR, *Special Procedures of the Human Rights Council.*

4) The relevance of extraterritorial obligations

1) State due diligence requirement under Article 8 ECHR in the light of evolving norms of international law

The *Müllner vs Austria* case is crucial in terms of urgently protecting human rights from increasingly severe climate change impacts in Europe. This is made clear by the latest UN estimates indicating that current and planned climate action until 2030 and beyond is grossly inadequate to ensure a safe climate for humanity. A safe climate is an essential component of everyone's human right to a healthy environment and a pre-condition for the protection of individuals, communities and States that have already borne the brunt of the negative human rights impacts of climate change, as underscored by ten UN Special Procedures in November 2024.[4] Collective current plans to mitigate climate change only amount to a 2-4 percent emissions reduction by 2030 compared to 2019, whereas a 43 percent cut is needed to avoid climate chaos (i.e. to be aligned to the 1.5°C maximum temperature limit).[5] Meanwhile, global greenhouse gas (GHG) emissions set a new record of emissions in 2023, a 1.3 per cent increase from 2022 levels;[6] and new records are expected to be confirmed in 2024, with catastrophic climate events occurring in Europe, as evidenced by the Isolated Depression at High-Level in Valencia and other parts of Spain in October 2024, causing hundreds of deaths and thousands of displaced people.

Against this background, a number of UN human rights treaty bodies and Special Procedures already confirmed that States must take all necessary measures to mitigate climate change, notably to phase out fossil fuels extraction and use, as a matter of international human rights law obligations,[7] to prevent further foreseeable climate change impacts on human rights.

The Klimaseniorinnen decision's alignment with and contribution to international human rights law on tackling climate change. In this regard, the UN Special Rapporteurs have welcomed the *Klimaseniorinnen* decision in their respective 2024 thematic reports[8] for the European Court's interpretation of the European Convention on Human Rights that aligns with the UN treaty bodies and Special Procedures' evolving understanding of the applicability of human rights to acts or omissions of a State in relation to climate change. Amongst other things, the European Court's reliance on States' fair share of the global effort to mitigate climate change aligns with the interpretation of the Committee on the Rights of the Child, in its General Comment No. 26 (2023), indicating that mitigation measures should reflect such fair share, in the light of the total reductions necessary to protect against continuing and worsening violations of children's rights.

In addition, despite the lack of express recognition of a human right to a clean, healthy and sustainable environment within the European Convention, we recognize that the *Klimaseniorinnen* decision contributes to the protection of that right, based on the interconnectedness and indivisibility of human rights. In accordance with Resolution 76/3000 (2022) of the UN General Assembly,[9] which was supported by 45 out of 46 members of the Council of Europe, including Austria, we underscore that ensuring a safe climate, as a substantive element of the right to a clean,

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[4] https://www.ohchr.org/en/press-releases/2024/11/cop29-states-must-prioritise-effective-climate-action-and-sufficient-finance (2024).
[5] 2024 UNEP Emissions Gap Report: https://www.unep.org/resources/emissions-gap-report-2024;
UNFCCC, Synthesis Report of National Determined Contributions under the Paris Agreement (2024): https://unfccc.int/documents/632334.
[6] 2024 UNEP Emissions Gap Report (n 5).
[7] E/C.12/GC/26, para. 56; Committee on the Rights of the Child, General comment No. 26 (2023).
https://www.ohchr.org/en/press-releases/2023/11/fossils-fuels-heart-planetary-environmental-crisis-un-experts; A/74/161, para. 77 (a)
[8] A/HRC/56/46 para.15; and A/79/270 para. 26.
[9] A/RES/73/3000.

healthy and sustainable environment, requires all States, especially those with higher greenhouse gas (GHG) emissions and greater capabilities, to diligently adopt and implement adequate measures to protect human rights from the adverse effects of climate change. These measures must be conducive to ensuring a safe climate system, to the benefit of present and future generations. This requires, among other measures, that States adopt measures consistent at least with the Paris Agreement's 1.5°C temperature guardrail, including a rapid and deep reduction of their GHG emissions, which must be based on the best available science and be proportional to their fair share of the global effort to mitigate climate change.

Two further international human rights law developments should be taken into account in terms of State due diligence under Article 8 ECHR: the Advisory Opinion No. 31 (2024) of the International Tribunal for the Law of the Sea (ITLOS); and UN human rights treaty bodies' and Special Procedures' interpretative clarifications on intersectionality.

The relevance of the ITLOS Advisory Opinion No. 31 (2024) for human rights has been underscored by both UN Special Rapporteurs, who have clarified that the ITLOS Advisory Opinion supports the protection of human rights in the context of climate, and should be interpreted in the light of applicable international human rights standards.[10] Notably, the Advisory Opinion clarifies that effective climate change mitigation should be understood as a **stringent due diligence obligation** under international human rights law, including in as far as human rights are dependent on the respect of international obligations under international biodiversity law and the law of the sea, **in addition to specific obligations contained in the Paris Agreement**. Such State strict due diligence entails obligations to take all necessary measures to prevent future climate change, and to reduce and control the impacts of greenhouse gas emissions from any source both through individual action and participation in global efforts to address climate change.[11] In addition, stringent due diligence entails obligations to establish national and international legal frameworks, as well as administrative procedures and enforcement mechanisms, and to exercise adequate monitoring, control and vigilance to ensure that such mechanisms function efficiently. Therefore, such mechanisms must be done with a view to preventing, reducing and controlling climate change, according to a State's capabilities and available resources. Based on the principle of common but differentiated responsibilities and the equity principle that both the European Court and ITLOS have referred to, the due diligence obligation is stricter for States with greater capabilities and resources, such as industrialized States.

Furthermore, **UN human rights treaty bodies and Special Procedures have provided interpretative clarifications on the differentiated impacts of climate change on human rights and on intersectionality**. As synthesized by the UN Special Rapporteur on Climate Change in 2024, a number of UN human rights treaty bodies and special procedures have documented over the last five years distinctively disproportionate human rights impacts of climate change on individuals, groups and States in vulnerable situations, and clarified specific international human rights law obligations in this connection.[12] Notably persons with disabilities are among the ones already identified in more vulnerable situations and suffering from differentiated impacts of climate change. In that connection, we welcome the recognition, in the *Klimaseniorinnen* decision, that the damaging effects of climate change impact most heavily on various vulnerable groups in society, who need special care and protection from the authorities.[13] On that basis, we respectfully recommend that the European Court fully explores the legal implications of these foreseeable and preventable differentiated impacts under Article 8 ECHR in the *Müllner vs Austria* case.

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[10] https://www.ohchr.org/en/press-releases/2024/05/law-sea-tribunals-judgment-marine-environment-and-climate-change-underscores

[11] A/HRC/56/46 para 13.

[12] A/HRC/56/46.

[13] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (judgment of 9 April 2024) para 410.

According to five UN treaty bodies, including the UN Committee on the Rights of Persons with Disabilities, as part of their obligations to mitigate and adapt to climate change and to protect human rights, States must: address all forms of discrimination and inequality; select actions and approaches that do not hinder the enjoyment of human rights of persons in vulnerable situations; and pay attention to those most vulnerable to climate harm.[14] To prevent further foreseeable and increasingly severe, disproportionate negative human rights impacts, strict due diligence entails the obligation of States to establish and implement appropriate levels of environmental protection that ensure non-discrimination [15] and to subject to an environmental and socioeconomic impact assessment any planned activity that may contribute to climate change, in accordance with the precautionary and ecosystem approaches.[16] As clarified by the UN Special Rapporteur on Climate Change and Human Rights, this entails assessing foreseeable negative impacts on human rights, including the human right to health, taking into account differentiated impacts on persons with disabilities among other disproportionately affected human rights holders [17] on the basis of disaggregated data.[18]

Based on the growing evidence of the distinctively disproportionate impacts of climate change on persons with disabilities in particular,[19] States have an obligation to take climate change mitigation actions in accordance with their fair share of the global effort to mitigate climate change and prevent further foreseeably disproportionate negative human rights impacts on persons with disabilities. This is particularly important considering also that they may face multiple grounds of discrimination and marginalization, based on whether they are also children, women, older persons, Indigenous Peoples, peasants, or those in situations of climate-induced mobility, among others.

We, therefore, respectfully recommend that the European Court recognize the full extent of the obligation of non-discrimination and the paramount relevance of the recommendations of UN treaty bodies and Special Procedures on intersectionality[20] in relation to State due diligence in relation to climate change with a view to protecting the human rights under Article 8 ECHR.

Finally, the negative impacts of climate change on mental health should be fully considered under Article 8 ECHR. We respectfully recommend that the European Court fully take into account the growing scientific evidence on the negative impacts of climate change on mental health and well-being[21] in relation to the "right for individuals to effective protection by the State authorities from the serious adverse effects of climate change on their lives, health, well-being and quality of life" under Article 8 ECHR,[22] and in particular the human rights of persons with disabilities. Increased temperatures and temperature variability have been associated with increased rates of depression, chronic traumatic stress,[23] as well as both suicide and suicidal behaviour.[24] Moreover, climate impacts, including rising temperatures,

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[15] A/HRC/37/59, Framework Principle 11.
[15] A/HRC/37/59, Framework Principle 11.
[16] ITLOS Advisory Opinion No. 31 (2024) para 367 as discussed in A/HRC/56/46 para. 17.
[17] A/HRC/56/46.
[18] A/HRC/31/30; A/79/176.
[19] A/HRC/56/46.
[20] As synthesized in A/HRC/56/46.
[21] IPCC, 2022: *Climate Change 2022: Impacts, Adaptation, and Vulnerability.* Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change. doi:10.1017/9781009325844.
[22] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* paras 519 and 544.
[23] Imperial Grantham Institute on Climate Change. The impact of climate change on mental health and emotional wellbeing: current evidence and implications for policy and practice. May 2021: https://www.imperial.ac.uk/grantham/publications/all-publications/the-impact-of-climate-change-on-mental-health-and-emotional-wellbeing-current-evidence-and-implications-for-policy-and-practice.php
[24] Monsour et al. The impact of climate change on the prevalence of mental illness symptoms. *Journal of Affective Disorders*. 2022; 300:430-440, doi:10.1016/j.jad.2021.12.124; World Health Organization, 2022. Mental Health and Climate Change: Policy Brief, https://www.who.int/publications/i/item/9789240045125.

can interfere with mood, cognitive function, and performance;[25] and the disruption of social relations due to increased temperatures and temperature variability also have additional distinctive, negative impacts on health and wellbeing,[26] particularly for individuals in situations of vulnerability. All these impacts on human health are, in turn, additional to climate- or eco-anxiety – the condition whereby climate change exacerbates mental distress about one's future.[27] In sum, research at the intersection of climate change and mental health already provides clear indications of foreseeable negative impacts that can and must be prevented as part of State due diligence under Article 8 ECHR.

2. Threshold test in light of evolving ECtHR case law

It is evident that the threshold established by the European Court in the *Klimaseniorinnen* case for claiming victim status in the context of complaints regarding harm or risk of harm arising from alleged State failures to combat climate change is met in the case of Mr. Müllner, given the compelling evidence he has submitted to support his claim. In *Klimaseniorinnen,* the European Court reasoned that the following circumstances need to be met: (a) the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and (b) there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm.[28]

The European Court further indicated that it would have due regard to circumstances such as the prevailing local conditions and **individual specificities and vulnerabilities**. The Court's assessment including considerations relating to: the nature and scope of the applicant's Convention complaint, the actuality/remoteness and/or probability of the adverse effects of climate change in time, the specific impact on the applicant's life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk (localised or general), and the nature of the applicant's vulnerability.[29] Mr. Müllner faces a real and serious risk to his physical, psychological, and moral integrity, personal dignity, and overall quality of private and family life. Moreover, his suffering is likely to worsen in the absence of effective climate measures by the State to prevent the crossing of critical tipping points.

We emphasize that **this very high threshold to victimhood established by the European Court in the *Klimaseniorinnen* case should be reconsidered** on the occasion of the *Müllner* case. As the Court itself has acknowledged, in the context of climate change, questions of individual victim status or the specific scope of State obligations cannot be resolved through a rigid *conditio sine qua non* requirement.[30] Instead, the essence of the State's duties relates to the reduction of the harm or the risks of them, for individuals and that failures in the performance of those duties entail an aggravation of the risks involved.[31] This stance suggests that climate change may directly affect the rights of an indefinite number of people, with several individuals and groups facing disproportionate impacts, possibly on multiple grounds of vulnerability and discrimination.[32] The

[25] Liu et al. Is there an association between hot weather and poor mental health outcomes? A systematic review and meta-analysis. *Environment International*. 2021;153:106533. doi:10.1016/j.envint.2021.106533
[26] Turner JB, Turner RJ. Social Relations, Social Integration, and Social Support. In: Aneshensel CS, Phelan JC, Bierman A, eds. *Handbook of the Sociology of Mental Health*. Springer Netherlands; 2013:341-356. doi:10.1007/978-94-007-4276-5_17.
[27] Imperial Grantham Institute on Climate Change (n 23); Coffey et al. Understanding Eco-anxiety: A Systematic Scoping Review of Current Literature and Identified Knowledge Gaps. *The Journal of Climate Change and Health*. 2021; 3:100047. doi:10.1016/j.joclim.2021.100047
[28] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, para 487, as discussed in A/HRC/56/46, para 17.
[29] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, para 488.
[30] Ibid, para 439.
[31] Ibid, para 439.
[32] A/HRC/56/46.

fact that the number of potential victims is large does not mean that the European Court should disregard these distinct grievances—quite the opposite.[33]

We respectfully recommend that the European Court **apply its earlier case law involving widespread, several environmental pollution to climate change,** recognizing that: 1) systemic environmental harm involves a large number of applications experiencing similar conditions and being victims of systemic failures to either implement or properly enforce environmental standards;[34] 2) a legislative act may directly impact millions, or even the entire population of a State Party, and still constitute a violation of the European Convention; [35] and 3) severe environmental pollution—such as excessive noise levels generated by an airport, fumes, smells, and contamination from a waste treatment plant, or toxic emissions from a factory—can interfere with a person's peaceful enjoyment of their home, constituting a violation of Article 8, even in cases where the pollution has not demonstrably affected the applicants' health.[36] Such broader victimhood requirements are essential to protect the human rights of right holders who are especially vulnerable to the impacts of climate change, including because of a combination of grounds of vulnerability and/or discrimination (gender, disability, among others).[37] This includes children, who lack meaningful political representation in legislative and policy-making processes,[38] and are more affected by climate change due to their unique physiological and developmental characteristics.[39]

3. Access to justice and effective remedy in the light of evolving norms of international law

With regard to access to justice and effective remedy, international human rights law indicates that: access to justice must be ensured for foreseeable and disproportionate human rights impacts; effective remedy should include effective mitigation (as outlined under 1), but also action on adaptation, and other reparations; and that such actions should be designed, implemented and monitored with the meaningful participation of affected right holders, including persons with disabilities.[40]

In terms of **access to justice**, States must ensure that individuals have access to justice for claims of imminent and foreseeable, as well as past and current violations, against government authorities for failures to establish, maintain and enforce substantive environmental standards that are effective to protect human rights, including in preventing indirect discrimination against human rights holders in situations of vulnerability, such as persons with disabilities.[41] The ECHR guarantees that individuals and civil society organisations have the ability to initiate judicial or administrative proceedings to protect their rights.[42] The right of access to a court must be 'practical and effective,'

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[33] Letsas, The European Court's Legitimacy After Klimaseniorinnen, *European Convention on Human Rights Law Review* (2024), 6; Savaresi, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*: Breaking New Ground, *RECIEL* (2025 forthcoming).
[34] *Ledyayeva and Others v. Russia* (judgment of 26 October 2006), which reiterated the grievances raised in *Fadeyeva v. Russia* (judgment of 9 June 2005).
[35] *Klass and Others v. Germany* (judgment of 6 September 1978) *Modinos v. Cyprus* (judgment of 22 April 1993)
[36] *Fadeyeva v. Russia* (judgment of 9 June 2005), para 87; Taşkın and Others v. Turkey, judgment of 10 November 2004, para 113; Ioan Marchiş and Others v. Romania, (judgment of 28 June 2011) para 28.
[37] Letsas (n 33); and Savaresi (n 33).
[38] See A. Nolan, Children's Socio-economic Rights, Democracy and the Courts (Oxford Hart, 2011), Chapters 2 and 3. For more on this point in the context of the Klimasenioninnen decision see A. Nolan, Inter-generational Equity, Future Generations and Democracy in the European Court of Human Rights' Klimaseniorinnen Decision, EJIL Talk, 15 April 2024,
[39] Informal summary report of the expert dialogue on children and climate change (4th June 2024): https://unfccc.int/documents/640922.
[39] Informal summary report of the expert dialogue on children and climate change (4th June 2024): https://unfccc.int/documents/640922.
[40] A/HRC/55/56; A/HRC/56/46.
[41] A/HRC/37/59, Framework Principles 10-12.
[42] ECHR, art 6.

not merely 'theoretical or illusory'.[43] In this context, the European Court in *Klimaseniorinnen* observed that the domestic courts had failed to engage seriously—or at all—with the complaint brought by the applicants. As a result, the Court concluded that the applicant association's right of access to a court had been restricted to such an extent that the very essence of this right was impaired.[44] In this context, the Court specifically emphasised the crucial role that domestic courts have played—and will continue to play—in climate change litigation, underscoring the importance of ensuring access to justice in this field.[45] We recommend that the Court recognise Mr Müllner's status as an individual victim of a violation of Article 6.[46] Furthermore, we respectfully urge the Court to **allow Mr Müllner to contest not only the respondent State's formal compliance with the law, but also the adequacy of the law itself**.[47]

In terms of **remedies**, the Rapporteurs respectfully recommend that the European Court **expands the remedies beyond the mitigation measures** outlined in the *Klimaseniorinnen* case, **to include also adaptation as a matter of human right to effective remedy**. In that connection, the Rapporteurs welcome the European Court's recognition of adaptation measures as part of effective protection under Article 8 in the *Klimaseniorinnen* case, to alleviate the most severe or imminent consequences of climate change, taking into account any relevant particular needs for protection.[48] We recall that the Human Rights Committee clarified that any lack, delay or inadequacy in this regard is a violation of human rights when the ability of human rights-holders to cope is compromised and negative impacts on their human rights are foreseeable, serious and attributable to State authorities.[49] States thus should: implement national adaptation plans that address both extreme weather disasters and slow-onset events by building or upgrading climate-resilient infrastructure; develop disaster risk reduction and management strategies, early warning systems and emergency response plans; provide social protection mechanisms to reduce vulnerability to climate-related disasters and stresses, enabling people to become more resilient; and ensure that adaptation actions do not reduce the vulnerability of one group at the expense of others, future generations or the environment.[50]

OHCHR clarified that States' obligations in relation to adaptation include: targeting adaptation measures aimed at reducing both the short-term and the long-term impacts of climate change; ensuring that emergency information, education, infrastructures and services are inclusive and accessible to persons with disabilities; adopting or reforming national emergency response plans and protocols to make them inclusive of, and accessible to, persons with disabilities; mainstreaming disability considerations into humanitarian aid policies; enhancing the knowledge of aid workers regarding the requirements and capacities of persons with disabilities, with particular attention to the early response phases of emergencies in relation to rehabilitation and assistive products; rebuilding housing and infrastructure in an inclusive manner, following the principles of universal design; and ensuring the disability-inclusive design and implementation of humanitarian, migration and disaster risk reduction plans and policies.[51] The Committee on the Rights of the Child clarified that States should avoid discrimination in the design and implementation of adaptation measures against groups of children at heightened risk, such as children with disabilities.[52] The UN Special

[43] *Bellet v. France*, (judgment of 4 December 1995).
[44] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, para 638.
[45] Ibid, para 639.
[46] Ibid, Partly Concurring Partly Dissenting Opinion of Judge Eicke, paras 57–58.
[47] Which seemed to be precluded by the European Court's dismissal of the complaint concerning access to justice to challenge the adequacy of the state's legislative and regulatory actions in *Verein KlimaSeniorinnen* para 594. See Savaresi (n 33).
[48] [48] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, para 552.
[49] CCPR/C/135/D/3624/2019.
[50] A/74/161.
[51] A/HRC/44/30.
[52] CRC/C/GC/26, para. 102.

Rapporteur on the right to adequate housing indicated that States must continuously work, in consultation with affected people, to improve the climate resilience of housing and climate-disaster preparedness, through regional or local strategies to map, identify, prepare for and mitigate climate risks and to engage in participatory neighbourhood planning exercises, with representation from vulnerable groups.[53]

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health called for greater attention to the right to mental health in adaptation strategies by providing timely access to high-quality, rights-based support that is responsive to the particular needs of persons affected by severe weather events and integrated into existing primary, general health and social care services.[54] In addition, in the light of recent scientific studies on climate change negative impacts on mental health, the Rapporteurs recommend that effective programmatic adaptation should also include targeted outreach to at-risk groups and specific support to access mental healthcare, which in turn is considered an effective form of climate adaptation.[55] This requires integrating mental health support components, including information sharing, support for distress, initial provision of basic psychological support, and access to specialist services[56] in adaption actions, national strategies on disaster risk reduction, and emergency preparedness.[57] It also requires conducting needs and risk assessments on climate change and mental health,[58] and expanding access to climate education and training for care providers (non-specialist health workers, paraprofessionals, and first responders), including relevant information about psychological first aid.[59]

Finally, it is essential to ensure meaningful remedies that the **Court requires the respondent State to carry out a participatory process with meaningful representation of the human rights holders who are disproportionately affected by climate change, notably persons with disabilities.** The Special Rapporteur on the human rights of persons with disabilities and the Committee on the Rights of Persons with Disabilities[60] underscored State obligations to ensure inclusion and meaningful participation of persons with disabilities in the design, implementation and monitoring of mitigation and adaptation measures.[61] For instance, scientific literature on the impacts of climate change on mental health suggests establishing surveillance systems that integrate mental health outcomes and climate and weather information, and develop and testing early detection and warning systems in collaboration with people with mental health conditions.[62]

More broadly, the Special Rapporteur on Climate Change and Human Rights underscored that it is critical, for the effectiveness of all climate action, to recognize – on the same level as technical expertise – and to respectfully and genuinely integrate the lived experiences and distinctive

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[53] A/HRC/52/28.
[54] A/HRC/44/48.
[55] IPCC, 2022: *Climate Change 2022: Impacts, Adaptation, and Vulnerability.* Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, doi:10.1017/9781009325844.
[56] IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings, 2007: https://interagencystandingcommittee.org/iasc-task-force-mental-health-and-psychosocial-support-emergency-settings/iasc-guidelines-mental-health-and-psychosocial-support-emergency-settings-2007
[57] World Health Organization, 2022. Mental Health and Climate Change: Policy Brief. Accessed October 3, 2024. https://www.who.int/publications/i/item/9789240045125
[58] American Public Health Association, 2019. Addressing the Impacts of Climate Change on Mental Health and Well-Being. Accessed October 3, 2024.
[59] Ibid; Hayes et al, Climate change and mental health: risks, impacts and priority actions. *International Journal of Mental Health Systems*. 2018;12(1):28. doi:10.1186/s13033-018-0210-6; Xue et al. Mental health and psychosocial interventions in the context of climate change: a scoping review. NPJ Mental Health Research: https://www.nature.com/articles/s44184-024-00054-1
[60] CRPD/C/SYC/CO/1 and CRPD/C/BOL/CO/1.
[61] A/HRC/55/56.
[62] World Health Organization, 2022. Mental Health and Climate Change: Policy Brief. Accessed October 3, 2024. https://www.who.int/publications/i/item/9789240045125

knowledge of the human rights holders in situations of vulnerability as agents of change.[63] We thus respectfully recommend that **Court require the respondent State to carry out a participatory process on the identification of remedies with representatives of human rights holders who are disproportionately affected by climate change and marginalized from contemporary democratic decision-making on climate change, such as children**.[64]

To support such participatory process, we respectfully recommend that the Court further require **the respondent State to gather, publish and ensure accessibility of all relevant information on human rights and climate change, based on disaggregated data according to gender, age and disabilities**,[65] to allow informed participation by human rights holders in situations of heightened vulnerability.

4) The relevance of extraterritorial obligations

Although the *Müllner vs Austria* case is focused on impacts within the territory of Austria, we respectfully recommend that the European Court **considers the extraterritorial dimensions of State due diligence in protecting human rights from the impacts of climate change, including – but not limited – for the protection of human rights under the full geographical scope of the Convention**. In that connection, the Court already considered "embedded emissions" relevant for assessing whether States have effectively protected the "right for individuals to effective protection by the State authorities from the serious adverse effects of climate change on their lives, health, well-being and quality of life" under Article 8 ECHR in the *KlimaSeniorinnen* case.[66] We note that the High Commissioner also indicated that States should consider ways to account for and mitigate "embedded emissions" in trade, including the food trade.[67]

More broadly, in relation to State's obligation to prevent further foreseeable human rights impacts of climate change, we respectfully recommend that the European Court clarify that **when such impacts cause transboundary harm, extraterritorial obligations apply**. In this regard, the UN Committee on Economic, Social and Cultural Rights stressed in the context of its mandate, the International Covenant on Economic, Social and Cultural Rights, that "the extraterritorial obligation to respect requires States Parties to refrain from directly or indirectly interfering with the enjoyment of the rights enshrined in the Covenant by individuals located outside their territory".[68] In addition, in 2018, the Human Rights Committee's General Comment on the right to life clarified that the State bears responsibilities to ensure the right to life of individuals outside its territory, whose right to life is nonetheless impacted by its activities in "a direct and reasonably foreseeable manner." This duty includes activities taken by corporate entities based in the State's territory or subject to its jurisdiction.[41] In 2019, five UN human rights treaty bodies, including the Committee on the Rights of Persons with Disabilities, confirmed that States have extraterritorial obligations.[69] In particular, the UN Committee on the Rights of the Child indicated that "when transboundary harm occurs, children are under the jurisdiction of the State from whose territory the emissions originated […] when there is a causal link between the actions or omissions of the State in question and the negative impact on the rights of children located outside its territory, as

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[63] A/HRC/56/46, para 76.
[64] Nolan, Inter-generational Equity (n 38).
[65] A/79/176.
[66] *KlimaSeniorinnen Schweiz and Others v. Switzerland*, para 287; discussed in A/HRC/56/46, para.18.
[67] A/HRC/55/37.
[68] E/C.12/GC/24, para. 29
[69] *Joint Statement on Climate Change and Human Rights*, September 2019, https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and

long as the State of origin exercises effective control over the sources of the emissions in question,[70] citing jurisprudence from the Inter-American Court on Human Rights.[71]

The European Court has already stated that "it would be neither adequate nor appropriate to follow an approach consisting in directly transposing the existing environmental case-law to the context of climate change."[72] Accordingly, we respectfully invite the Court to revisit its stance on the extraterritorial reach of Conventional obligations in the context of climate change in a way that is aligned with existing principles of international environmental and human rights law. To do otherwise would be to negate access to justice to the majority of victims of human rights violations arising from climate change.

Conclusion

There is growing evidence of severe and increasingly widespread negative impacts of climate change on human rights, with distinctly disproportionate impacts on persons with disabilities, women and girls, children, youth, older persons, persons in poverty, Indigenous Peoples, peasant and rural workers, and internally displaced persons and migrants.[73] These negative impacts are foreseeable and can amount to a violation of human rights within and beyond a State's boundaries, according to the significant body of evidence and authoritative interpretations elaborated by UN treaty bodies and special procedures. States must prevent further and increasingly more severe human rights violations through effective climate change mitigation action, with extraterritorial obligations applying to transboundary harm. To the extent to which it is not yet possible to prevent these foreseeable negative impacts, they must be remedied through adaption and other effective measures that must be identified through a participatory process. States must meaningfully involve in such participatory process representatives of the human rights holders who are disproportionately affected by climate change, including persons with disabilities, and those that are marginalized from democratic decision-making processes such as children. Such participatory process must be accompanied by accurate, comprehensive and accessible information on climate change and human rights, based on disaggregated data according to gender, age and disabilities.

Respectfully, Submitted on 5 December 2024

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[70] CRC/C/88/D/104/2019, para. 10.7.
[71] IACtHR, Advisory Opinion 23, 2017.
[72] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, para 422.
[73] A/HRC/56/46.