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Contacts:

Kelly Matheson, Deputy Director, Global, Our Children's Trust, kelly@ourchildrenstrust.org
Joanna Evans, Legal Advisor, JEvans@25bedfordrow.com
Karabo Ozah, Director, Centre for Child Law, University of Pretoria, karabo.ozah@up.ac.za
Helen Britto, Communications Manager, Our Children's Trust, helen@ourchildrenstrust.org

**The European Court of Human Rights Requires States to Use Best Available Evidence in
Addressing Climate Crisis and Emphasizes the Important Role of Domestic Courts in
Protecting Children's Rights**

Strasbourg, France—Yesterday, the European Court of Human Rights (Court or ECtHR) announced its ruling in three climate cases—the first climate cases considered by the Court—*KlimaSeniorinnen v. Switzerland*, *Duarte Agostinho v. Portugal and 32 Others*, and *Carême v. France*. Our Children's Trust said the Court's decisions opened the door for domestic courts to consider the best available science, which is critical to securing children's rights. Emphasizing that climate change currently poses a serious threat to the enjoyment of human rights—including the rights to life, health, well-being, and quality of life—the Court found that States must reduce their greenhouse gas emissions in line with “existing and constantly developing scientific evidence.” The Court also held that “immediate action needs to be taken” “to avoid disproportionate burden on future generations.”

Our Children's Trust served as a Third Party Intervener in all three cases, together with Oxfam and the Centre for Child Law at the University of Pretoria. The Centre for Climate Repair at Cambridge University joined the sections on climate science. The intervention asked the Court to ground its decisions in the best available science calling for a reduction of CO₂ concentrations in the atmosphere to 350 parts per million, rather than the politically negotiated temperature targets of 1.5°C - 2.0°C set forth in the Paris Agreement, when determining the legal obligations of Member States to address the climate crisis.

The Court instructed that to protect human rights there is a need “to take into account the existing and constantly developing scientific evidence on the necessity of combating climate

change and the urgency of addressing its adverse effects, including the grave risk of their inevitability and their irreversibility, as well as the scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of (various aspects of) human rights.” Despite the Court’s clear directive to states and domestic courts to consider the best available scientific evidence, the Court also pointed to the unscientific concepts currently being used of “net zero” or “net neutral” that allow greenhouse gas emissions to persist and will not stop the climate crisis.

The Court summarized the best science in discussing the intervention of Our Children’s Trust and Oxfam, including the scientific prescription to reduce carbon dioxide levels from where they are currently, 421 ppm, to below 350 ppm, but did not go so far as to measure Switzerland’s conduct by that scientific measure. Noting that factual evidence should be presented in state trial courts, the door is now open for Swiss citizens, and citizens of other European countries, to hold their governments accountable for reducing emissions at levels consistent with the best scientific evidence on protecting a safe climate system and basic human rights.

“This Court joins others around the world in affirming that the current level of heating already poses a serious threat to human rights, emphasizing the urgent need for government action to halt greenhouse gas emissions in accordance with best available science.” said Kelly Matheson, Deputy Director, Global Climate Litigation for Our Children’s Trust. “Crucially, by recognizing that the aims of the Paris Agreement, which include the temperatures targets of 1.5°C - 2.0°C, ‘cannot suffice’ as the criteria for the protection of human rights, the Court cleared the path for updated climate targets to be grounded in science and protective of our most basic rights. While the dismissal of the case by Portuguese youth was disappointing, it also opens the door for youth across Europe to hold their governments accountable in domestic courts, with the best science in hand. We are ready to help them do just that.”

“This is a landmark moment for human rights and climate change. By its judgment in *KlimaSeniorinnen v. Switzerland*, the Court has made clear that states have a duty to protect individuals from the impact of climate change on their lives, health and well-being. It is a legally binding ruling with implications not only for Switzerland (against whom the case was brought) but for all countries within the Council of Europe” shared Joanna Evans, an expert on the European Convention of Human Rights. “Although the case was brought by senior Swiss women, the result has the potential to provide protection at a much wider level for the benefit of current and future generations.”

The Court was also clear that the judicial branch had a major role to play in addressing the “urgent threat posed by climate change.” In its ruling, the Court affirmed the position taken by

Our Children’s Trust in its litigation around the world, holding that “this subject matter is no longer merely an issue of politics or policy but also a matter of law.” In direct contrast to previous rulings by some courts in the United States, the Court clarified that courts were competent adjudicators and “in the context of climate-change litigation cannot, as a matter of principle, be excluded.” The Court left no room for debate on this issue, stating “the question is no longer whether, but how, human rights courts should address the impacts of environmental harms on the enjoyment of human rights.” It went on to say, “democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law. The remit of domestic courts and the Court is therefore complementary to those democratic processes. The task of the judiciary is to ensure the necessary oversight of compliance with legal requirements.”

“The European Court of Human Rights, also affirmed today what the *Genesis v. EPA* and *Juliana v. U.S.* plaintiffs are arguing in the federal courts in the United States,” said Julia Olson, Chief Legal Counsel at Our Children’s Trust. “Nations can be held liable for infringing the fundamental human right to a safe climate of their citizens. And while every branch of government has an important role to play, the courts are an essential check on the political branches. That is where the facts of climate harm to children need to be found.”

Another forward step was the Court’s thorough rejection of the “drop in the ocean” argument by governments that would prefer to point the finger at one another than take responsibility for their own actions. The Court clarified that despite the global nature of the climate crisis, every amount of avoided climate pollution helps mitigate the harm to human rights. This mirrors a ruling in another children’s climate rights case by a Montana judge in *Held v. State of Montana*, which went to trial last summer and is now pending before the Montana Supreme Court.

Although the Court dismissed the case brought by six Portuguese youth on procedural grounds, in *Agosthino*, the Court told the young litigants to go back to their domestic courts and use the European Convention on Human Rights and their national constitutions to protect their rights to their personhood and a healthy environment, saying “States have ultimate control over public and private activities based on their territories that produce GHG emissions.” The European Court of Human Rights, a court of last resort, ruled that the youth had not exhausted their domestic remedies and could not sue all EU countries in the Human Rights Court in the first instance.

“European judges have ruled that a government’s failure to do enough to reduce national greenhouse gas emissions violates its population’s human rights. This is a positive step and allows people to require their governments to put in place effective climate regulations and carbon budgets,” said Evelien van Roemburg, Head of Oxfam’s European Union office. “But the

judges did not challenge Switzerland's decision to give itself almost three more decades to reach net zero emissions, even though people around the world are being harmed now by the climate crisis."

"The children who pursued the Agostinho case, and those in the Global South will be disappointed at the Court's failure to hold European States accountable for extraterritorial harms. Extraterritorial jurisdiction is already established in international law and has been acknowledged by the UN Committee on the Rights of the child in the *Saachi* case. Children in the Global South will suffer worse climate change harms due to increased local warming, mainly caused by emitters in the North," remarked Karabo Ozah, Director of the Centre for Child Law at the University of Pretoria. "Nonetheless, we hope that this judgement will encourage children and the lawyers who represent them to bring court applications to courts at domestic level so that we can build on the burgeoning local jurisprudence and enforce their rights to climate justice."

Background

In 2022, the European Court of Human Rights (ECtHR or Court) elevated three cases addressing States' obligations in the context of the climate crisis to its Grand Chamber, which is reserved for the most serious and novel cases. *KlimaSeniorinnen v. Switzerland* was brought by a non-profit association of senior women committed to reducing greenhouse gas emissions in Switzerland, and four of its members. *Carême v. France* was brought by the former mayor of a small coastal town in France, and *Duarte Agostinho v. Portugal and 32 Others* by six Portuguese youth. In 2023, all three cases were heard by the high Chamber's 17 judge panel and the Court issued three separate rulings today. Six other climate cases were placed on hold pending the Grand Chamber's decisions.

Although the details of the claims differ, the cases are related in that all three allege that national governments of Europe are not doing enough to cut emissions and tackle climate change resulting in the violation of fundamental human rights.

In *KlimaSeniorinnen v. Switzerland*, the applicants argued that Switzerland's failure to address climate change violated their rights to life, to a fair trial, to respect for private and family life, and to an effective remedy under Articles 2, 6, 8 and 13 of the European Convention on Human Rights. While the 17-judge panel dismissed the claims of the four individual applicant women, it upheld the association's claims and found that Switzerland had violated the right to respect for private and family life under Article 8 and the right to a fair trial under Article 6.

In *Duarte Agostinho v. Portugal and 32 Others*, the Court dismissed the case on procedural grounds centered on the youth's failure to exhaust domestic remedies—in other words, the young applicants should have first taken their claims to the national courts. If the national courts failed to address their claims, they could come back to the European Court of Human

Rights. The Court also declined to expand extra-territorial jurisdiction to allow their claims against 32 other European States—even though it recognized that climate is a “global phenomenon” with impacts across borders, and that “the problem of climate change is of a truly existential nature for humankind.”

The Court also dismissed *Carême v. France* on procedural grounds agreeing with the French government that Damien Carême, a former mayor of the northern municipality of Grande-Synthe, could not be considered a victim under the law.

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Our Children’s Trust was founded in 2010 on the idea that courts are vital to democracy and empowered to protect our children and the planet. Without a stable climate system, every natural resource we rely upon to exercise our basic human rights—life, liberty, home, happiness—is under threat. Our work will be achieved when there is universal recognition of children’s climate rights by courts around the world and children’s fundamental rights to life on this planet are protected. www.ourchildrenstrust.org