

BEFORE THE FIFTH SECTION
EUROPEAN COURT ON HUMAN RIGHTS

Greenpeace Nordic and Others v. Norway

Application no. 34068/21

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERNATIONAL COMMISSION
OF JURISTS (ICJ) AND THE NORWEGIAN SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS (ICJ-Norge)

INTERVENERS

***pursuant to the Registrar's notifications dated 8 April 2021 that the
Court had granted permission under Rule 44 § 3 of the Rules of the
European Court of Human Rights***

4 May 2022

INTRODUCTION

This joint third-party intervention is submitted by the International Commission of Jurists (ICJ) and the Norwegian Section of the International Commission of Jurists (ICJ-Norge) (“the interveners”) pursuant to leave granted by the President of the Fifth Section of the European Court of Human Rights in the letter dated 8 April 2022 and in accordance with Rule 44(1) of the Rules of the Court.

This case raises significant questions regarding the extent to which Convention rights protect people from harm caused by climate change.

In this intervention, the proposed interveners will provide the Court with observations concerning:

- *Locus standi* in cases of violations of human rights linked to environmental harm;
- The relevance and applicability of the Paris Agreement and the 1.5 and 2 degree targets in the interpretation of article 2 and 8 ECHR;
- The difference between the discontinuation, the continuation at present levels and the expansion of the Norwegian petroleum industry in relation to the enjoyment of Convention rights under articles 2 and 8 ECHR.

I. *Locus standi* in cases of violations of human rights linked to environmental harm

In determining the question of whether applicants have standing, it is necessary that they demonstrate that they are “directly concerned by the situations and have a legitimate personal interest in seeing it brought to an end”.¹ When it comes to environmental damage, including that engendered by climate change, applicants are at a particular disadvantage to prove the satisfaction of this requirement, *because it is difficult to distinguish their interests from those of the general public*. While many environmental interests will engage the wider public, members of which will benefit from a timely and adequate response to environmental harm, this does not mean that a given case is an *actio popularis*, nor does it imply that the rights engaged are *collective*, rather than *individual*. Congruence between public and individual interests is inherent to most environmental human rights claims, the category to which climate change cases belong.²

In the past, the Court has allowed claims from applicants who were rendered more vulnerable to negative health impacts due to pollution, despite noting that environmental degradation *as such* does not raise an issue under the Convention.³ Thus, in *Cordella v. Italy*, the Court found that the pollution in question endangered

¹ *Vallianatos and Others v. Greece*, Application nos. 29381/09, 32684/09, Judgment [GC] of 7 November, Reports 2013 (extracts), para. 49. See, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, Application no. 47848/08, Judgment [GC] of 17 July 2014, Reports 2014, para. 101, citing among others *Monnat v. Switzerland*, Application no. 73604/01 paras. 31-32. On potential victimhood, see *Klass and Others v. Germany*, Application no. 5029/71, Judgment of 6 September 1978, Series A No. 28; *Soering v. the United Kingdom*, Application no. 14038/88, Judgment of 7 July 1989, Series A No. 161; *Dudgeon v. the United Kingdom*, Application no. 7525/76, Judgment of 22 October 1981, Series A, No. 45; *Roman Zakharov v. Russia*, no. 47143/06, Judgment [GC] of 4 December 2015, Reports 2015, paras. 173-178.

² As implied by *Tătar v. Romania*, Application no. 67021/01, Judgment of 27 January 2009, para. 124, and *Di Sarno et Autres c. Italie*, Application no. 30765/08, Judgment of 10 January 2012 (French version, paragraph omitted from the English version of judgment), para. 81.

³ *Cordella and Others v. Italy*, Application nos. 54414/13 and 54264/15, Judgment of 24 January 2019, paras. 100-109. See also *Fadeyeva v. Russia*, Application no. 55723/00, Judgment of 9 June 2005, ECHR 2005-IV, para. 88.

not only the health of the 180 applicants, but also that of the entire population living in the affected area, and it accepted that the applicants had victim status despite the broader effects of the pollution in question.⁴ This approach is necessary if individual rights are to be practical and effective in the context of climate change.⁵ If threats against the many cannot be brought before the Court by some of the affected, because many more could stand in their stead, it would severely hamper the Convention's effectiveness against the gravest threats to the rights it protects.

The interveners note that the Court has used slightly different interpretative approaches to interpret when a situation had an adverse impact on the applicants, depending on the specific ways the activity affected the alleged victim. In *Cordella* and in the earlier *Di Sarno and Others v. Italy* case,⁶ the Court did not require the applicants to demonstrate that they had suffered harm that could be proven to have been exclusively caused by environmental pollution. In *Caron and Others v. France*,⁷ however, the Court required applicants to prove a more direct effect detrimental to applicants, specifically the proximity of GMO crops. It is natural that the approach is different depending on how the relevant threat affects people, whether it is directly or in more diffuse ways. For example, environmental law conventions on the Ozone layer address the harm to *all* people and not a specific group of directly affected persons.⁸ This is a reflection of the customary law principle of prevention.⁹

In light of the Court's reasoning in *Di Sarno*, and given the nature of the threat posed by climate change, the interveners respectfully submit that, in climate-related cases, which address issues that the Paris Agreement considers "a common concern of humankind,"¹⁰ the question of whether the applicants are sufficiently affected by policy failures regarding the mitigation of climate change should involve an assessment of the documented risks and of the scientific evidence regarding the interests at stake.

II. The relevance and applicability of the Paris Agreement and its targets in the interpretation of article 2 and 8 ECHR.

It is the settled jurisprudence of the Court that damage to the environment by either State or non-State actors may engage Convention rights,¹¹ including under Articles 2 and 8 ECHR,¹² where it is foreseeable that it will cause harm to the life, health, or enjoyment of private or family life or of the home of people within the State's jurisdiction.¹³

The interveners submit that the scale, intensity, and imminence of the environmental damages resulting from human-induced climate change are such as to engage rights under Articles 2 and 8 ECHR, in the same way as other more

⁴ *Ibid.*, para. 172.

⁵ *Öneryıldız v. Turkey*, Application no. 48939/99, Judgment [GC] of 30 November 2004, Reports 2004-XII, para. 69.

⁶ *Di Sarno and Others v. Italy*, Application no. 30765/08, Judgment of 10 January 2012.

⁷ *Caron and Others v. France*, Application no. 48629/08, Decision of 29 June 2010, para. 1.

⁸ Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer

⁹ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), pp. 241-242, para. 29.

¹⁰ Paris Agreement, Preamble.

¹¹ *Tatar and Tatar v Romania*, Application no. 67021/01, Judgment of 5 July 2007, para. 87.

¹² It is also established that other Convention rights may be engaged by environmental harm, including under Art. 3 and Art. 1 of Protocol 1.

¹³ On Art. 2, see for example, *Oneryıldız v Turkey*, *supra* n.8, *LCB v UK*, Application No.14/1997/798/1001, Judgment of 9 June 1998; on Art. 8, see for example *Hatton v UK*, [GC] Application No.36022/97, Judgment of 8 July 2003; *Lopez Ostra v Spain*, Application No.16798/90, Judgment of 9 December 1994., *Guerra v Italy*, Application No.14967/89, Judgment of 19 February 1998.

localised forms of environmental harm. First, the extent of the actual and potential harm has been authoritatively established. The sixth assessment report by the International Panel on Climate Change (IPCC) explains how man-made climate change already leads to heatwaves, heavy precipitation, and droughts¹⁴ with effects that are irreversible at least for centuries.¹⁵ It projected that, with every increase in global warming, every region will experience further changes in climatic impact-drivers and extreme weather events.¹⁶ The UN General Assembly has noted that, based on data provided by the secretariat of the UNFCCC, the “nationally determined contributions presented thus far by the parties to the Paris Agreement are not sufficient and that action is needed to hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels.”¹⁷

Second, climate change poses severe risks to lives, health and wellbeing on a global scale. Numerous international human rights bodies have attested to the severity of the actual and potential impacts of climate change on the enjoyment of human rights.¹⁸ Specifically, it is clear that heatwaves, wildfires, flooding, storms and other extreme weather events, as well as indirect impacts on the environment caused by climate change, pose a threat to lives, health and wellbeing of people in all jurisdictions.¹⁹ The Office of the High Commissioner for Human Rights has found six effects on health, including on the right to life: heat-related deaths, air pollution, extreme weather events and natural disasters, expanding disease vectors, nutrition and mental health.²⁰ The World Health Organization has estimated that, globally, 250,000 additional deaths are likely to take place each year between 2030-2050 due to climate change.²¹ The UN Human Rights Committee, the supervisory body for the International Covenant on Civil and Political Rights to which all ECHR Contracting Parties are also Parties, recognized, in *Ioane Teitiota v New Zealand*,²² 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.”²³ It found that the effects of climate change may expose individuals to violations of their right to life as well as their freedom from cruel, inhuman or degrading treatment.²⁴ There is also ample

¹⁴ IPCC, Climate Change 2021, *The Physical Science Basis, Summary for Policymakers*, supra n.2, paras.B.2.1 – B.2.2.

¹⁵ *Ibid.*, para.B.5.1 – B.5.4.

¹⁶ *Ibid.*, para.C.2.1 – c.2.7

¹⁷ GA RES A/RES/76/205, para. 6.

¹⁸ See for example, UN Human Rights Council, Resolution 47/19, July 2021. Preamble: “Recognizing that climate change poses an existential threat for some countries, and recognizing also that it has already had an adverse impact on the full and effective enjoyment of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments.”

¹⁹ see. E.g. OHCHR, Joint Statement on Human Rights and Climate Change, 16 September 2019: para.1; OHCHR, *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, 6 May 2016, paras.15-17

²⁰ In addition to these six areas, “As a threat multiplier, climate change has more impacts on health than can be addressed in the present report. It has, for example, been linked to displacement, forced migration, insecurity and violent conflict, all of which pose substantial health risks. Declining biodiversity as a result of climate change also has an impact on the development of new medicines and access to medicines. Ecosystem damage has far-ranging implications for health, infrastructure, ecosystem services and traditional livelihoods. Climate change and associated natural disasters further increase burdens on Governments struggling to allocate limited resources to fulfil human rights obligations ».

²¹ World Health Organisation (WHO) Climate Change and Health: Key Facts, 1 February 2018, <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>

²² UN Doc. CCPR/C/127/D/2738/2016, 7 January 2020.

²³ *Ibid.*, para.9.4.

²⁴ *Ibid.*, para.9.11 (in the context of non-refoulement).

expert opinion to attest to the unequal impact of this risk to life and health, with particular impacts on the elderly,²⁵ those living in poverty, and women.²⁶

Third, the causal link between these impacts and human action is clear, as is the capacity for action by State authorities to prevent further damage.²⁷ The responsibility of all States, including Member States of the Council of Europe, has been established in international instruments, and targets and frameworks for national action have been established under international environmental law.²⁸ Both the causes of climate change, rooted in human activities, and the consequences, risks and increasing imminence of these threats are clearly documented and well known to all States and public authorities, including through mechanisms established under international environmental law.²⁹ It is submitted that this foreseeable impact has clear consequences for States' positive obligations under the Convention, including under Articles 2 and 8 ECHR.

Finally, the global nature of climate change does not detract from the fact that its impacts in any jurisdiction can only be prevented and mitigated by effective national action in multiple jurisdictions. The nature of climate change means that failures in prevention in one State contribute to damage the global climate, which in turn leads, *inter alia*, to impacts on human rights within that State's jurisdiction. Protecting the Convention rights of those within the jurisdiction of states requires national contributions to global efforts irrespective of questions of States' extra-territorial obligations on climate change under the Convention or other international legal instruments.

a. Under Article 2 ECHR

Positive obligations to protect the right to life as guaranteed by Article 2 ECHR apply,³⁰ *inter alia*, in the context of activities harmful to the environment, where the harm is sufficiently severe to endanger life and is foreseeable.³¹ In such circumstances, the State is required to do all that could reasonably be required of it to prevent life being avoidably put at risk,³² including through legislation, administrative regulation and practical enforcement measures.³³ In a series of cases applying Article 2 to environmental harm, the Court has held that dangerous activities - such as processes creating toxic emissions, or giving rise to risks of flooding or nuclear tests - engage the responsibility of the State to take preventative action to avert threats to life.³⁴

²⁵ e.g. UN HRC Res 44/7, 2020, A/HRC/RES/44/7, para.4 called on states to "support the resilience and adaptive capacities of older persons ... to respond to the adverse impact of climate change".

²⁶ CEDAW, *General Recommendation no. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc. CEDAW/C/GC/37, 7 February 2018. See also, rights of women and climate change, especially women facing multiple discrimination, including older women, in CEDAW, Concluding Observations to the Philippines, UN Doc. CEDAW/C/PHL/CO/7-8 2016, paras. 47-48; Concluding Observations to Jamaica, UN Doc. CEDAW/C/JAM/CO/6-7 2012, paras. 31-32.

²⁷ IPCC *Climate Change 2021, the Physical Science Basis: summary for policymakers*, supra.n.2, para A.1.1 to A.1.8 and para.D.1. 1.- D.1.8

²⁸ *United Nations Framework Convention on Climate Change* (UNFCCC) (1992); Paris Agreement (2015)

²⁹ See, among others, the IPCC.

³⁰ This obligation is also reflected in respect of Art. 5 ICCPR, on which the Human Rights Committee has indicated that 'States also have obligations under international law not to aid or assist activities undertaken by other States and non-State actors that violate the right to life.' See UNHRC, General Comment No.36 on the Right to Life, 30 October 2018, CCPR/C/GC/36 para 63.

³¹ *LBC v UK op. cit.*, para.36; *Oneriyildiz v Turkey, op. cit.*, para.71. See, UN Human Rights Council, Resolution 47/19.

³² *LCB v UK, op cit.*, para.36.

³³ *Oneriyildiz v Turkey, op. cit.* paras.70, 89-91; *Kolyadenko v Russia, Application No.17423/05, Judgment of 28 February 2012* para.157-160

³⁴ *LCB v UK, op cit.*, para.36; *Kolyadenko v Russia, op. cit.*, para.164, *Oneriyildiz v Turkey op cit.* para.71 "The Court considers that this obligation must be construed as applying in the context of any activity, whether public or not, in which

The existence of such obligations under Article 2 ECHR reflects equivalent obligations under Article 6 of the ICCPR as affirmed by the UN Human Rights Committee's General Comment No.36 on the right to life (2018), which specifically recognised the existence of positive obligations to protect life from the threats posed by climate change.³⁵

The interveners submit that activities which can be foreseen, in light of current scientific knowledge, to contribute significantly to climate change and, therefore, to the risk to life of persons within the jurisdiction of the State, constitute such dangerous activities. They therefore entail the State's positive obligation to take steps to prevent and redress this harm, including through legislation, administrative regulation and enforcement aimed at reducing activities within the jurisdiction of the State that contribute to climate change; countering and redressing the impact of such activities, as well as through international co-operative efforts to prevent climate change and mitigate its impact.

b. Under Article 8 ECHR

Similar positive obligations of prevention, established in respect of the right to respect for private and family life, the home and correspondence under Article 8 ECHR, are also applicable to harm caused by climate change. Where it is foreseeable that environmentally hazardous activities are likely to adversely affect an individual's health, well-being or enjoyment of their homes,³⁶ there is an obligation to take "reasonable and adequate steps" to protect Article 8 rights, including through legislation, administrative frameworks and practical enforcement.³⁷ In *Di Sarno v Italy* for example, in the context of collection, treatment and disposal of waste, this Court held that "the State was under a positive obligation to take reasonable and adequate steps to protect the right of the people concerned to respect for their homes and their private life and, more generally, to live in a safe and healthy environment."³⁸

In the context of dangerous activities affecting the environment, positive measures to be taken include regulations adapted to address the special features of the activity in question, with regard to the level of potential risk involved. Such regulations must require those concerned to take practical measures to ensure effective protection of Article 8 rights.³⁹ These obligations should, it is submitted, apply *mutatis mutandis* in respect of the State's responsibility to minimise, regulate and mitigate activities contributing to climate change, that impacts on the health, wellbeing and enjoyment of private and family life, and the home, of persons within the jurisdiction of the State.

the right to life may be at stake, and a fortiori in the case of industrial activities, which by their very nature are dangerous, such as the operation of waste-collection sites ..." This caselaw draws on international environmental law regarding "dangerous activities, including the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS no. 150 – Lugano, 21 June 1993) and the Convention on the Protection of the Environment through Criminal Law (ETS no. 172 – Strasbourg, 4 November 1998)

³⁵ UN Human Rights Committee, General Comment No.36 on the right to life (2018), CCPR/C/GC/36, 30 October 2018, para. 62. the UN Human Rights Council has recognized in its resolution 48/13 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 human rights, including the right to life.", UN HRC Resolution 48/13, Preamble.

³⁶ *Lopez-Ostra v Spain*, *op. cit.*, para. 51; *Hatton v UK*, *op. cit.* para.96; *Guerra v Italy*, *op. cit.* para.57; *Di Sarno v Italy op. cit.*, para.108.

³⁷ *Di Sarno v Italy*, *op. cit.* para.110 ; *Brincat v Malta*, Application. No.60908/11, paras.101-2, 116; *Tatar v Romania*, *op. cit.*, para.107

³⁸ *Di Sarno v Italy*, *op. cit.*, para.110

³⁹ *Di Sarno v Italy*, *op. cit.*, para.106

c. Positive obligations and international environmental law

This Court has previously relied on international environmental law in the interpretation of Convention obligations.⁴⁰ Under the Paris Agreement states have identified a common goal of holding global average temperature rise to well below two degrees above pre-industrial levels and pursuing efforts to keep it below 1.5 degrees. (Art. 2.1.a). These goals are politically agreed upon and do not truly represent safe levels of global warming. The IPCC makes it clear that a 1.5 global temperature rise is not safe, “for most nations, communities, ecosystems and sectors and poses significant risks to natural and human systems as compared to the current warming of 1°C.”⁴¹ A global warming of 2 degrees is increasingly seen as posing real danger to human welfare.⁴² At the Conference of the Parties to the UNFCCC held in Glasgow, all States recognized “that the impacts of climate change will be much lower at the temperature increase of 1.5 °C compared with 2 °C and **resolve[d]** to pursue efforts to limit the temperature increase to 1.5 °C.”⁴³

While the Paris Agreement’s temperature targets should not be conflated with safety, a realistic plan to honour the Paris Agreement and work towards a maximum of 1.5 degrees warming, represents States’ globally accepted target to counter the very worst effects of climate change. The interveners respectfully submit that the minimum obligations of States to prevent violations of the Convention rights due to climate change should be considered in light of the Paris Agreement, by which States have agreed to aim to reach global peaking of greenhouse gas emissions as soon as possible, and to undertake rapid reductions thereafter (Art. 4.1). This objective is to be achieved through States parties preparing five-yearly nationally determined contributions (NDCs) (Art. 4.3) which shall reflect each state party’s “highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.” Furthermore, the Paris agreement and other climate change accords affirm that developed, industrialised countries have heightened responsibilities to take action to reduce emissions.⁴⁴

III. The difference between the discontinuation, the continuation at present levels, and the expansion of the Norwegian petroleum industry in Norway

The Norwegian Petroleum Directorates include five categories of petroleum production and reserves in their annual reports:

1. Petroleum sold and delivered,
2. Reserves,
3. Contingent resources in fields,
4. Contingent resources in discoveries, and
5. Undiscovered resources.⁴⁵

⁴¹ Technical Summary, in Global Warming of 1.5°C, at p. 44 (2018)

⁴² Global Warming of 1.5°C (2018)

⁴³ *Glasgow Climate Pact*, Decision 1/CP.26, Doc. No. FCCC/CP/2021/12/Add.1, para. 16 (emphasis added).

⁴⁴ *Paris Agreement*, Art. 4.4, *United Nations Framework Convention on Climate Change* (UNFCCC) (1992) Art. 3.1; *Kyoto Protocol to the UNFCCC* (1998)

⁴⁵ Norwegian Petroleum Directorate – The Norwegian Petroleum Directorate’s resource classification system 2016, <https://www.npd.no/globalassets/1-mpd/regelverk/forskrifter/en/classification-of-petroleum-resources.pdf>

The first category is the petroleum already sold and delivered. If no more petroleum than that identified here were to be extracted, it would mean the *discontinuation* of the Norwegian petroleum industry. Norway has as of now extracted about 500 billion barrels of oil.⁴⁶ This translates to around 17 gigatons of CO₂-equivalents in oil and gas.⁴⁷ The industry has also created the foundation for the Norwegian sovereign wealth fund which, as of writing, stands at NOK 11 456 926 099 095.⁴⁸

The second category is the petroleum in production, approved for production and decided for production.⁴⁹ There are currently 94 fields with the status “in production” in Norway.⁵⁰ These are the resources that one can, with a degree of certainty, say *will* be extracted, sold, and burned, if the industry is to *continue at present levels*. The burning of these reserves will produce around 7 billion tons of CO₂.⁵¹ If we are to operate with a number where the world has a 67 percent chance of staying below the 1.5-degree target, the remaining overall carbon budget of the globe is 305 billion tons of CO₂.⁵² Emissions from Norwegian petroleum would constitute about 2.3 percent of this budget.

Expansion of the petroleum industry would be moving into category 3 and 4 and – eventually – 5. Adding together the estimated petroleum in these categories as of 2022, burning them would mean adding approximately 21 billion tons of CO₂ into the atmosphere. This is about 6.8 percent of the remaining global carbon budget.

In 2016, when this climate lawsuit was first lodged at national level, it came at the heel of the “opening up” of the area known as *Barents Sea Southeast* by the Parliament in 2013. This area was projected, in a low estimate scenario, to produce at least 30 billion standard cubic meters of gas and 15 million cubic meters of oil before 2020. For the high end scenario, the estimate was 120 billion standard cubic meters of gas and 45 million standard cubic meters of oil.⁵³

At the offering of the 40 blocks included in the 23rd licensing round, 33 were in the *Barents Sea Southeast*. These were described by the Norwegian Oil and Energy Minister Tord Lien as a “new chapter for the Norwegian petroleum industry, for the first time in over 20 years we shall explore brand new search areas”.⁵⁴

This shows the intention by the state to *expand* the petroleum industry, to move into category 3,4 and 5. The fact that none of the licenses awarded under the 23rd

⁴⁶ Norwegian Petroleum Directorate, *Sokkelåret 2021*, 2021, p 13. <https://www.npd.no/globalassets/1-mpd/publikasjoner/sokkelaret/sokkelaret-2021/sokkelaret-2021.pdf>, Andrew, Robert «Norway's emissions exports» updated 01.09.2021 https://folk.universitetetioslo.no/roberan/t/export_emissions.shtml

⁴⁷ *ibid*

⁴⁸ Norges bank - € 1 191 520 314 305,88, 24 April 2022, <https://www.nbim.no/no>

⁴⁹ Norwegian Petroleum Directorate, *The Norwegian Petroleum Directorate's resource classification system*, 2016. p. 5, <https://www.npd.no/globalassets/1-mpd/regelverk/forskrifter/en/classification-of-petroleum-resources.pdf>

⁵⁰ The Norwegian Petroleum Directorate, *Resource Accounts for the Norwegian continental shelf 2021*, p. 16.

<https://www.npd.no/globalassets/1-mpd/publikasjoner/rapporter/ressursregnskap/2021/resource-accounts-2021.pdf>

⁵¹ The number is an estimate based on the Resource Accounts of petroleum in development, oil equivalents, recalculated for emissions using a conversion factor of 0,42t CO₂/bbl.

⁵² Original carbon budget of 400 billion tons: IPCC, *Climate Change 2021, The Physical Science Basis, Summary for Policymakers*, Table SPM.2.

https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM_final.pdf#page=33

⁵³ The Norwegian Oil and Energy Department, *Impact assessment for the opening for petroleum industry in the Barents Sea Southeast*, 2013, p. 19

https://www.regjeringen.no/globalassets/upload/oed/pdf_filer/brosjyrer/y-0121bhele_links.pdf

⁵⁴ Norwegian Petroleum Directorate, *Sokkelåret 2021*, 2021. p. 8 <https://www.npd.no/globalassets/1-mpd/publikasjoner/sokkelaret/sokkelaret-2021/sokkelaret-2021.pdf>

licensing round turned out to be commercially viable, does not serve to disavow these intentions.⁵⁵ It remains the expressed intention of the state to expand the petroleum industry, initially by nine percent by 2024.⁵⁶ In March of this year, Equinor announced a new, significant oil discovery,⁵⁷ moving new petroleum from category 5, towards 1 and thus additional emissions.

In 2016 it was already known that such expansion would be incompatible with the 1.5 target under the recently signed Paris Agreement.⁵⁸ In the time that has passed since the Agreement, this conclusion has been reinforced again and again; no new oil or gas field can be approved if we are to stay below this target.⁵⁹ On the 24th of April 2022, the oil- and energy minister stated that the government will not automatically reject petroleum projects known to be in conflict with the 1.5-degree target.⁶⁰

Copius scientific research has consistently shown that reducing supply of oil will reduce overall consumption.⁶¹ For the State to disregard these findings would be to ignore the precautionary principle, a core principle of international environmental law. It also contradicts the *IPCC sixth assessment report – mitigation of climate change* which has been expanded with a new chapter 5, regarding the *demand, services and social aspects of mitigation*. Here the IPCC underlines the fact that energy consumption is not primarily demand driven. According to the IPCC, there is a popular demand for services not “primary energy and physical resources”.⁶² According to the IPCC, improving services for “well-being is possible, often at huge margin, at a given (relatively low) level of energy use”.⁶³ Demand-side strategies can, according to the IPCC, help reduce emissions between 40-70 percent across all sectors by 2050.⁶⁴

The flip side to energy consumption not being primarily demand driven, is that it places an extra layer of responsibility upon the supply side, of which Norway is a major actor, being the world’s seventh largest exporter of carbon.⁶⁵

On the basis of these observations with regard to Norway’s petroleum industry and its regulation, it is submitted that any case related to human rights protection and

⁵⁵ McGlade, C og P. Ekins. «The geographical distribution of fossil fuels unused when limiting global warming to 2 °C» Nature nr. 517 (2015) s. 187–190.

⁵⁶ Norwegian Petroleum Directorate, *Sokkelåret 2021*, 2021. p. 8 <https://www.npd.no/globalassets/1-mpd/publikasjoner/sokkelaret/sokkelaret-2021/sokkelaret-2021.pdf>

⁵⁷ Equinor, *Significant oil discovery close to the Fram field in the North Sea*, 24 March 2022. <https://www.equinor.com/news/archive/20210324-significant-discovery-near-fram>

⁵⁸ McGlade, C og P. Ekins. «The geographical distribution of fossil fuels unused when limiting global warming to 2 °C» Nature nr. 517 (2015) s. 187–190.

⁵⁹ Welsby, D., J. Price, S. Pye, and others, “Unextractable fossil fuels in a 1.5 °C world.” Nature no. 597 (2021) s. 230–234., IEA “Net Zero by 2050” <https://www.iea.org/reports/net-zero-by-2050>

⁶⁰ Sigrid Gausen and Kjetil Magne Sørenes, Regjeringen vil ikke automatisk avvise oljeprosjekter som bryter med 1,5-gradersmålet, 24 April 2022, <https://www.aftenposten.no/norge/politikk/i/28xgvq/regjeringen-vil-ikke-automatisk-avvise-oljeprosjekter-som-bryter-med-1>

⁶¹ Fæhn, Taran, Cathrine Hagem, Lars Lindholt and Knut Einar Rosendahl. «Climate policies in a fossil fuel producing country – demand versus supply side policies» The Energy Journal vol. 38 no. 1 (2017) s. 77-102, Erickson, Peter, Michael Lazarus and Georgia Piggot. «Limiting fossil fuel production as the next big step in climate policy». Nature climate change no. 8 (2018) s. 1037-1043

⁶² IPCC, Sixth assessment report – mitigation of climate change, Chapter 5 p. 3. https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_Chapter05.pdf

⁶³ *ibid* p. 25

⁶⁴ *ibid* p. 3

⁶⁵ OilChange International, *The Sky’s Limit*, 2017. greenpeace.org/static/planet4-norwaystateless/2019/04/fbb634f4-fbb634f4-oci-the-skys-limit-norway-report-lavopploeselig.pdf

the environment in relation to it ought to take the distinctions between discontinuation, continuation and expansion into consideration, and interpret them in light of international human rights law and international environmental law obligations of Norway.

The interveners submit that there is a marked difference between cases challenging the entirety of a country's petroleum policy or the specific expansion of its activities in particular if such decision on expansion was reached *after* the signing of the Paris Agreement, and *after* the publication of the *IPCC fifth assessment report* reinforced scientific certainty surrounding global warming.⁶⁶ In the latter situation, the case would be therefore distinctly future-oriented in nature and should be considered in light of the positive obligation to prevent violations of the Convention rights under articles 2 and 8 ECHR.

The Norwegian climate lawsuit was directed against the clear intention by the state, to expand the petroleum industry.⁶⁷ Expansion of the petroleum industry is distinct from its discontinuation and from continuation at its present levels. And while the latter is in no way safe, expansion stands out as particularly reckless and therefore has particular significance for the application of positive obligations of prevention under the Convention, in particular Articles 2 and 8, in light of international environmental law and the Paris Agreement. Expansion entails divesting money to further drive the supply of petroleum in the face of absolute scientific knowledge that more than enough petroleum is already in production for the world to exceed the 1.5 and 2-degree targets.

IV. Conclusions

The ICJ and the ICJ-Norge submit that the risk posed by climate change to rights under Articles 2 and 8 ECHR is severe, imminent and foreseeable. It therefore in principle engages States' positive obligations of prevention under these provisions. This is the case in respect of all those within the jurisdiction.

Any suggested margin of appreciation in this field should be constrained by States' international environmental law undertakings, requiring them to prepare and implement ambitious and effective Nationally Determined Contributions (NDCs) and long-term strategies for reducing emissions, under the UNFCCC and the Paris Agreement. Furthermore, the Convention positive obligations to protect Articles 2 and 8 ECHR rights from foreseeable harm should be interpreted and applied in light of the goals established by the Paris Agreement in order to ensure that they constitute reasonable steps within the capacity of the State.

Specifically in relation to oil exploration and production, ICJ and ICJ-Norge submit that any expansion of such exploration and production that leads or is demonstrably likely to lead to exceeding the Paris Agreement targets would run counter to these positive obligations under Articles 2 and 8 ECHR.

⁶⁶ Summons served 18th of October 2016 p. 14-19, Direct appeal to the Supreme Court 5th of February 2018, p. 8 and 9.

⁶⁷ Summons served 18th October 2016 p. 16 <https://www.greenpeace.org/static/planet4-norway-stateless/2019/04/427627be-427627be-18.10.16-stevning.pdf>

The ICJ and ICJ-Norge further submit that the Court should adapt its jurisprudence on victim status to the challenges of climate change. This involves clarifying its standards concerning potential, indirect and direct victims, tailoring them to the particular challenges of environmental and climate change threats to Convention rights.