

Special Rapporteur on human rights defenders

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## WRITTEN STATEMENT

# Human rights defenders working on climate change and a just transition in Norway

## 1. Introduction

We refer to the information posted on the webpage of the UN Special Rapporteur on human rights defenders (HRDs) calling for written submissions for the next thematic report, in relation to the 80th session of the UN General Assembly in October 2025. We are grateful for the opportunity to provide feedback on the situation of HRDs in Norway and welcome the initiative to draw attention to this important issue.

The Norwegian Human Rights Institution (NIM) is an independent public body established by law by the Norwegian Parliament in 2015 to strengthen the implementation of human rights in Norway. NIM has a mandate to promote and protect human rights nationally and to participate in international cooperation to realize this objective.

In general terms, the situation for HRDs working with climate change in Norway is good. The level of sentencing for civil disobedience is generally low, and the procedural law provides access to remedies through the court system. Still, we would like to point out that the cost of taking cases to court is prohibitively high and can have a chilling effect on enforcements of rights.

## 2. Positive trends

### 2.1 Access to remedies

A positive trend that we have observed is access to remedies through the court system. The Norwegian Dispute Act allows for a relatively wide access to initiate legal action both for individuals and organisations.<sup>1</sup> In particular, organisations have wide access to court regarding issues within their purpose and area of activity, and this has been recognised for organisations acting as environmental defenders in

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<sup>1</sup> See the Dispute Act, Section 1-3 and 1-4

several cases regarding the climate and environment.<sup>2</sup> This is important because organisations are often the ones required to play an active role in defending the public interest in environmental cases.<sup>3</sup>

NIM would like to note that the wide access to court is an important measure to ensure that the legal framework protecting these interests is subject to judicial review.

## 2.2 The role of HRDs

The civil society in Norway is quite strong, with a wide range of organisations. Some of the organizations have a very broad mandate, working on policy matters relating to all issues dealing with the environment and climate. Other organizations are more specifically focused on chosen themes that relate to climate change and/or consequences of these.<sup>4</sup>

Such organizations play a crucial role in highlighting the consequences of the government's actions and inactions for the environment and climate, including by ensuring public attention and transparency to these challenges. In recent years, so-called *strategic litigation* has also been a key feature of their work, seeking to ensure that human rights and environmental rules are actually implemented in practice.

We would like to specifically mention the *Fosen*<sup>5</sup> case, which concerned violations of indigenous rights by the granting of license and expropriation for the purpose of building wind turbines.<sup>6</sup> The Norwegian Supreme Court ruled that these turbines interfered with the Sami populations' right to practice reindeer herding as part of their culture. The case was brought to court by the reindeer owners themselves as well as organizations working on Sami rights.

Another example of HRDs involvement, is the lawsuit regarding licenses to allow petroleum extraction, where *Greenpeace Nordic* and *Nature and Youth* argued that

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<sup>2</sup> See inter alia HR-2020-2472-P (Klima) and HR-2021-662-A (Ulvfelling I). See also the more extended access to court in HR-2021-417-P (Acer), where the Court allowed a semi *action popularis* case because it deemed it the most effective way of allowing that legal question to be tried in court.

<sup>3</sup> This is clearly recognised in the *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention), 2161 UNTS 447, see in particular Article 2(5) and recital 8 and 18. For this Convention, the CJEU recognised in *Societatea Civilă Profesională de Avocați Ploeanu & Ionescu*, C-252/22, EU:C:2024:13, para 74, that «[...] members of the public and associations are naturally required to play an active role in defending the environment». AG Kokott stated in her Opinion in *Edwards and Pallikaropoulos*, C-260/11, EU:C:2012:645, para 41 that: «the environment cannot defend itself before a court, but needs to be represented, for example by active citizens or non-governmental organisations».

<sup>4</sup> A majority of the organizations are members of The Norwegian Forum for Development and Environment (ForUM), see attached link for an overview of these; <https://forumfor.no/medlemmer>.

<sup>5</sup> HR-2021-1975-S.

<sup>6</sup> A summary of the judgment is available in English, see NIM, *About the wind farms on Fosen and the Supreme Court judgment*, Available here: <https://www.nhri.no/en/2023/about-the-wind-farms-on-fosen-and-the-supreme-court-judgment/>.

the opening of a new area for petroleum exploration was contrary to Section 112 of the Norwegian Constitution.<sup>7</sup> These cases illustrate the important role of HRDs in a legal context creating important legal precedence. The latter case is currently subject to review by the European Court of Human Rights.

Currently, a case dealing with the approval of production and development of three oil fields is pending before the Court of Appeal, awaiting an advisory opinion from the EFTA Court.<sup>8</sup> This is yet another example of a lawsuit driven by HRDs, mainly being key stakeholders such as *Greenpeace Nordic* and *Nature and Youth*.

### 3. Risks

#### 3.1 Level of sentencing

In relation to civil disobedience, the level of sentencing is generally low. According to our overview, activists are commonly charged with disturbance of peace or privacy, unauthorized entry, vandalism or failure to comply with police orders, all of which have a relatively low penalty range. In these cases, the common sentence is fines varying between 4000 NOK to 36 000 NOK, on some occasions a suspended sentence will also be imposed often in the range of 14 to 29 days. In our experience the sentencing is relatively consistent, which creates a predictable legal situation for people who want to carry out acts of civil disobedience.<sup>9</sup>

NIM also observes that the court strikes a fair balance between the need to impose sanctions for breaches of law, and the rights of freedom of speech and freedom of association, which require sanctions to be *proportional*.<sup>10</sup>

However, there are some exceptions to this. In the *Monolith* case, the activists who threw paint on a famous statue were sentenced to 100 days in prison, for damage to cultural heritage.<sup>11</sup> This decision was appealed and is awaiting further proceedings, but both NIM<sup>12</sup> and the Special Rapporteur on Environmental Defenders<sup>13</sup> have expressed concern about the punishment imposed.

#### 3.2 Level of legal cost

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<sup>7</sup> HR-2020-2472-P.

<sup>8</sup> LB-2024-36810-3. The EFTA Court case number is E-18/24 *The Norwegian State v Greenpeace Nordic, Nature and Youth Norway*.

<sup>9</sup> We are currently in the process of finalising our report to the Aarhus committee which provides an overview of the relevant case law and sentencing.

<sup>10</sup> See e.g. HR-2022-981-A (XR-1), para 22; HR-2023-604-A (XR-2), para 29.

<sup>11</sup> TOSL-2023-193760

<sup>12</sup> See (in Norwegian), *Innspill til Norges rapportering om gjennomføringen av århuskonvensjonen*, <https://www.nhri.no/2024/innspill-til-norges-rapportering-om-gjennomforing-av-arhuskonvensjonen/>.

<sup>13</sup> See the letter from Special Rapporteur Michel Forst, 19 April 2024, ref. ACSR/C/2024/38, available at <https://unece.org/env/pp/aarhus-convention/special-rapporteur>.

A challenge that we have sought to emphasize is the level of legal costs. Filing a lawsuit will represent a high economic risk for the organizations. According to our analysis of a few selected cases regarding environmental issues, the range of legal costs were between € 1216 and up to € 124 700, with a median of € 20 264.<sup>14</sup> This illustrates that the legal costs potentially are quite high, keeping in mind that the party's own legal fees are not included in this estimation.<sup>15</sup>

The cost constitutes a *de facto* limitation on access to court in these cases and we have addressed these concerns in detail in our upcoming report to the Aarhus Convention Compliance Committee. In discussions with the civil community, the organisations confirm that the expenses have a chilling effect on the ability and aspiration to take legal action through the court system. This is an issue of concern, given that the legal system is the most important instrument to effectively seek remedies.

The general rule is that the losing party should cover all the legal costs of the case.<sup>16</sup> If a case goes all the way to Supreme Court, the costs are significant. This creates a large financial risk because organisations cannot know or plan for the costs of the other party, or intervening parties. However, it is important to mention that the judges can decide to reduce or waive all legal cost even if the case is not won.<sup>17</sup> That said, such judicial discretion does not contribute to foreseeability, and the rules in general create a prohibitively uncertain situation with regard to financial risks for the HRDs. In our opinion the level and framework for legal costs represents the biggest hurdle in Norway for environmental organisations access to court.

### **3.3 Right to environmental information**

The Norwegian Constitution states that the public has a right to information about the environment, and it is the governments' responsibility to secure this, see Section 112 of the Constitution. NIM has stressed that the right to information also implies an obligation to *collect* information, including by a thorough examination of the potential consequences of any measure that may interfere negatively with the climate or environment.

Nevertheless, the government's obligation to evaluate and consider these consequences is frequently not adhered to. The result being that protection of climate and environmental interests are not fully implemented.

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<sup>14</sup> See (in Norwegian), NIM-B-2024-009, *Sakskostnader og reell tilgang til domstolene i miljø saker*, annex. Available here: <https://www.nhri.no/2024/sakskostnader-og-reell-tilgang-til-domstolene-i-miljosaker/>.

<sup>15</sup> We would like to point out that these organizations often rely on partial pro bono services from law firms.

<sup>16</sup> Cf. The Norwegian Dispute Act § 20-2 (1).

<sup>17</sup> Cf. The Norwegian Dispute Act § 20-2 (3).

In our experience civil society organizations also observe that access to information is a challenge in certain cases. In relation to this, NIM has raised the issue of lack of information on several occasions regarding public inquiries. We have argued that the information is important for both decision makers and the general public's ability to hold the government responsible for their actions or lack thereof, specifically regarding the obligations under the Paris agreement.

#### **4. Recommendations on actions that would improve the environment for HRDs**

Based on what has been stated above, we would like to draw attention to these recommendations for improving the environment for HRDs working on climate change.

- **Reduce legal costs:** The cost of going to court with questions of climate change should be reduced. Given that protection of the environment is a matter of public interest it is important to ensure that HRDs, which are the most important actors in seeking legal action, may do so. Moreover, these costs need to be foreseeable prior to legal proceedings.
- **Right to environmental information:** Ensuring enforcement of the constitutional right to environmental information in all areas of politics that touch upon environmental or climate challenges. This will contribute to the information flow and enable the organizations to assess further legal actions.
- **Administrative tribunal for environmental and climate cases:** One of our recommendations in order to ensure that cases regarding climate or environmental interests are subject to public scrutiny, is to establish an administrative tribunal for environmental and climate cases. Considering that HRDs are key actors in safeguarding environmental and climate interests, it is crucial that the regulative framework ensures a thorough treatment where HRDs views are heard and taken into account.

Best regards

for the Norwegian National Human Rights Institution

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