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Aled Dilwyn Fisher. Human Rights in the Transition to a “Green Economy” – Critical Human Rights-Based Approaches to Climate Change in Norway

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Human rights in the transition to a “green economy” – critical human rights-based approaches to climate change in Norway

**Abstract:** Norwegian climate policy has stalled; it is fundamentally isolated from broader energy and economic policies, particularly the country’s petroleum industry. Human rights can reinvigorate climate politics by recognising direct threats to global rights from climate change, and indirect threats from existing climate policy to workers and communities dependent on carbon-intensive development and jobs. A critical, structure-orientated human rights approach can overcome ‘problem-solving’, legalistic approaches and hegemonic “green economy” narratives, offering an analytical framework that highlights the (largely North-South) “climate justice” claims behind the climate crisis, and a basis for action for social movements to demand rapid transitions that address these justice issues while securing human rights. This article develops a framework for Norway’s human rights obligations based on recognition of the right to equal ecological space for the fulfillment of all human rights (and consequent “ecological debt”) and the insights of institutional human rights theories, before outlining a human rights-based approach, based on human rights-based approaches to development (HRBAs) and illustrated through the right to work, that fulfils these duties. After analysing Norwegian climate discourses in light of this framework, the article tentatively outlines how this approach can provide a basis for action for social movements in Norway.

**Keywords:** climate change, human rights, climate justice, critical theory, green economy, Norway

## 1. Introduction<sup>1</sup>

Norwegian climate policy has stalled. Preliminary 2013 figures show greenhouse gas (GHG) emissions at 52.8 megatonnes (Mt) CO<sub>2</sub> equivalent; barring a dip during the early 1990s, emissions have been over 50Mt since 1990.<sup>2</sup> Meanwhile, Norway’s ‘overseas carbon

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<sup>1</sup> Author information deleted.

<sup>2</sup> Statistisk sentralbyrå (SSB), ‘Utslipp av klimagasser, 2013, foreløpige tall’ (SSB 2014) <<http://www.ssb.no/klimagassn>> accessed 5 June 2014

footprint' from ever-increasing imports has, by some estimates, eclipsed domestic emissions during the same period.<sup>3</sup>

Recent climate initiatives do not look likely to buck these trends. 2012's governmental white paper (*klimamelding*) and its attendant parliamentary agreement largely extended existing initiatives, such as heightening energy efficiency requirements in (new) buildings, raising the carbon tax, continuing support to carbon capture and storage (CCS), and increasing (often conditioned on other states following Norway's lead) development support to energy and forestry projects. The most notable original proposal was a new fund (*klimafond*), set to reach NOK 50bn (USD 8.3bn) by 2016, to assist industrial transitions through technological development, renewables and energy restructuring, financed through investment returns and sales of "electrical certificates" (*elsertifikater*), a scheme with Sweden to generate 26.4 terawatt hours (TWh) of new renewable production across the countries by 2020<sup>4</sup> (a 10 percent increase in Norwegian electricity production).<sup>5</sup> Even so, much of *klimamelding* has already unraveled, most spectacularly CCS – following years of increasing costs and delays, the flagship CCS Mongstad test centre, described by former Prime Minister Stoltenberg as Norway's 'moon-landing', has been abandoned.<sup>6</sup> *Klimameldingen's* implementation (for example, regarding energy efficiency targets)<sup>7</sup> has also been criticised.

*Klimameldingen* joined existing emissions reductions goals targeting 30 percent emissions reductions on 1990 levels by 2020, increasing to 40 percent 'if it can contribute to... an ambitious climate agreement' where 'major' emitters accept 'concrete' obligations; 'carbon neutrality' by 2030 (ensuring 'emissions reductions corresponding to Norwegian emissions in 2030', thus anticipating reductions overseas)<sup>8</sup> if multilateral agreement is reached where 'other industrialised states' accept 'significant reductions'; and carbon neutrality by 2050 regardless of multilateral agreements. Two-thirds of the 2020 reductions are said to be intended domestically. However, this "two-thirds" commitment (cutting 15-17Mt CO<sub>2</sub>) was calculated using a business-as-usual scenario (59Mt) in 2020, *not* 1990 levels

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<sup>3</sup> John Hille, *Framtiden i våre hendes klimamelding: Hvordan redusere utslippene i Norge med 30 til 40 prosent innen 2020* (Framtiden i våre hender 2012), 59

<sup>4</sup> Miljøverndepartementet, *Meld. St. 21 (2011–2012): Norsk klimapolitik (klimamelding)* (Fagbokforlaget 2012), 11-15

<sup>5</sup> Kari Elisabeth Kaski; Tale Severina Halsør; Frikk Hugo Bø Nesje; and Marius Gjerset, *En Grønn Industri Er Norges Fremtid: Virkemidler For Klimatiltak i Industrien* (Zero 2011), 51

<sup>6</sup> Bellona, 'Mongstad CCS demonstration plant wrecked by incompetence and big oil shenanigans' (*Bellona* 2013) <[http://www.bellona.org/articles/articles\\_2013/Mongstad\\_fails](http://www.bellona.org/articles/articles_2013/Mongstad_fails)> accessed 19 September 2013

<sup>7</sup> Magnus Borgen, 'Regjeringen med utpekulert brudd på klimaforliket' (*Bellona* 2013) <<http://www.bellona.no/nyheter/Nyheter%202013/Regjeringen%20med%20utspekulert%20brudd%20pa%20klimaforliket>> accessed 19 September 2013

<sup>8</sup> Miljøverndepartementet (n 4 above) 9

(50Mt) as the goal itself. Cutting 15-17Mt from 59Mt gives 42-44Mt (12-16 percent cuts on 1990 levels), meaning the rest of the 30 percent cut can occur elsewhere.<sup>9</sup>

Fundamentally, Norwegian climate policy is isolated from broader questions of energy and economic policy. A 2011 petroleum white paper charted a long-term plan for reserve growth of 800 million standard cubic meters (sm<sup>3</sup>) oil equivalent by 2015 alone.<sup>10</sup> Petroleum spending dwarfs climate spending, evening when accounting for part-state owned enterprises like Statkraft (Europe's largest renewable energy producer, mainly hydropower)<sup>11</sup> and Enova (which has invested NOK 9bn delivering 16.6TWh in renewables or energy efficiency between 2002 and 2011).<sup>12</sup> The 2013 budget included NOK 28.32bn for state direct petroleum concerns alone,<sup>13</sup> while over NOK 1.3 trillion is invested in petroleum through (largely state-owned) Statoil.<sup>14</sup> The conspiracy of silence around the country's petroleum industry and its contribution to climate change extends to the government elected in 2013, which, while protecting the sensitive areas of Lofoten, Vesterålen and Senja from oil exploration during the next parliament, has committed to a 'predictable and high tempo' of allocating new areas for petroleum activity<sup>15</sup> – despite an unprecedented alliance of over 100 organisations, *Klimavalg 2013*, putting climate change and petroleum on the electoral agenda. The new government was said to be in a 'climate policy no man's land' on the eve of the 2014 budget;<sup>16</sup> and, despite opposition parties appearing to force the minority coalition to supply new oil installations at Utsira with (non-fossil fuel) electricity from land,<sup>17</sup> the government shows no sign of slowing the general extraction tempo, allowing Statoil to plough ahead with controversial boring on the Arctic periphery.<sup>18</sup> According to *Framtiden i våre hender* (Fivh),

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<sup>9</sup> Naturvernforbundet, 'Alt om klimameldingen og klimaforliket' (Naturvernforbundet 2013) <[http://naturvernforbundet.no/klima/norsk\\_klimapolitikk/alt-om-klimameldingen-og-klimaforliket-article26633-131.html](http://naturvernforbundet.no/klima/norsk_klimapolitikk/alt-om-klimameldingen-og-klimaforliket-article26633-131.html)> accessed 19 September 2013

<sup>10</sup> Olje- og energidepartementet (OED), *Facts 2012: the Norwegian Petroleum Sector* (OED 2012), 38

<sup>11</sup> Pöyry Management Consulting (Pöyry). *Grønn Økonomi i Norge: Hva Er Det og Hvordan Få Det Til?* Oslo (WWF-Norge and Yrkesorganisasjonenes Sentralforbund, YS), 2012, 7

<sup>12</sup> Enova, 'Resultatrapport 201'2 (*Enova* 2012) <<http://www.enova.no/innsikt/rapporter/resultatrapport-2012/resultatrapport-2012/561/1319/>> accessed 19 September 2013

<sup>13</sup> Finansdepartementet, *Statsbudsjettet*, (Fagbokforlaget 2013), 48

<sup>14</sup> Marius Holm, *Det bør helst gå til helvete* (e24.no 2013) <<http://e24.no/kommentarer/spaltister/det-boer-helst-gaa-til-helvete/20348445>> accessed 19 September 2013

<sup>15</sup> Høyre and Fremskrittspartiet, 'Politisk plattform for en regjering utgått av Høyre og Fremskrittspartiet' (Høyre, 2013) <<http://www.hoyre.no/filestore/Filer/Politikkdokumenter/plattform.pdf>> accessed 13 November 2013, 63

<sup>16</sup> Kari Elisabeth Kaski, *Klimapolitisk ingenmannsland*, NRK, March 12 2014

<sup>17</sup> Dagens Næringsliv (DN), *Enige om elektrifisering av Utsira* (DN, 2014) <<http://www.dn.no/nyheter/energi/2014/06/04/Utsirahyden/enige-om-elektrifisering-av-utsira>> accessed 5 June 2014

<sup>18</sup> Greenpeace Norway, 'Skuffet over at ministeren ofrer Bjørnøya, fortsetter protestene' (Greenpeace 2014) <<http://www.greenpeace.org/norway/no/Skuffet-over-at-ministeren-ofrer-Bjornoya-fortsetter-protestene>> accessed 5 June 2014

burning remaining reserves would release emissions 331 times current annual domestic emissions,<sup>19</sup>.

The direct global effects of this business-as-usual thinking on the entire catalogue of human rights, especially basic subsistence rights of the already marginalised and vulnerable, particularly in the South, are becoming ever clearer.<sup>20</sup> Simultaneously, climate change has indirect human rights consequences through our reactions to the crisis. Fears of these effects on welfare, jobs and livelihoods can be an ‘obstacle to structural change’ towards sustainable societies – particularly in Northern states that have enriched themselves through carbon-intensive development that is closely linked to rights enjoyment, where marginalised groups, workers and communities, often excluded from political processes, are understandably wary.<sup>21</sup> This is seen in Norwegian climate discourses, where unilateral climate policy is seen to cause job losses through ‘carbon leakage’ (discussed later) and new petroleum projects are still directly linked to significant job creation. Indeed, this overlooks the fact that the right to work link to fossil fuel jobs, and the human rights that depend on this employment, is insecure long-term, *regardless of climate change*, given resource depletion. An explicit human rights approach that addresses these issues can breathe new life into Norwegian and international climate policy, where UN Framework Convention on Climate Change (UNFCCC) negotiations have equally halted, and must do so in order to retain human rights’ assumed status ‘as the dominant language of justice’.<sup>22</sup> Nevertheless, human rights remain marginal in climate discourses, especially those addressing broader economic facets of the climate crisis, including debates around transitions to “green economies” and “sustainable development”. Likewise, critical economic approaches, like environmental justice perspectives, are peripheral, with neoliberal conceptions dominating. Meanwhile, concepts raised in counter-hegemonic discourses, like “climate justice” and “just transition”, are clearly rights-relevant, often using rights language (with a particular focus on the right to work),<sup>23</sup> but the features

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<sup>19</sup> John Hille, ‘Klimabombe under havbunnen’ (Framtiden i våre hender 2011) <[http://www.framtiden.no/images/stories/tema/klima/A201104\\_Klimabombe\\_under\\_havbunnen.pdf](http://www.framtiden.no/images/stories/tema/klima/A201104_Klimabombe_under_havbunnen.pdf)> accessed 19 September 2013, 1

<sup>20</sup> Intergovernmental Panel on Climate Change (IPCC), ‘Climate Change 2014: Impacts, Adaptation, and Vulnerability’ (IPCC 2014) <<http://www.ipcc.ch/report/ar5/wg2/>> accessed 5 June 2014

<sup>21</sup> Martin Jänicke, ‘Industrial Transformation Between Ecological Modernisation and Structural Change’ in Martin Jänicke et al (eds), *Governance for Industrial Transformation*. Berlin (Environmental Policy Research Centre 2004), 201-207

<sup>22</sup> Stephen Humphreys, ‘Competing Claims: Human Rights and Climate Harms’ in Stephen Humphreys (ed), *Human Rights and Climate Change* (Cambridge University Press 2010), 45

<sup>23</sup> Public Health and Labor Institutes, ‘A Just Transition for Jobs and the Environment’ (*Public Health and Labor Institutes* 2000) <[http://www.niehs.nih.gov/health/assets/docs\\_a\\_e/a\\_just\\_transition\\_for\\_jobs\\_and\\_the\\_environment.pdf](http://www.niehs.nih.gov/health/assets/docs_a_e/a_just_transition_for_jobs_and_the_environment.pdf)> accessed 13 May 2013

they share with human rights are rarely examined. Ultimately, whether human rights can remain relevant in assisting transitions to low-carbon societies is in question.

This article seeks to illustrate a human rights based approach to climate change in Norway based on neo-Gramscian critical theory, which offers two main insights. Firstly, it distinguishes between ‘problem-solving’ and ‘critical’ theory’. Problem-solving theory ‘takes the world’ – its social relations and institutions – ‘as it finds it’, addressing issues within existing disciplinary boundaries. As Cox suggests, such positivism is not ‘value-free’ as these parameters are themselves ‘value-bound’; thus, often unconsciously, we accept historical, normative assumptions built into existing ideas and institutions that acquire hegemonic ‘commonsense status’. Issues become ‘sources of trouble’ to be resolved using paradigmatic disciplinary assumptions aimed at making existing systems ‘work smoothly’. Contrastingly, critical theory ‘stands apart from the prevailing order’, asking ‘how that order came about’. Importantly, ‘because it deals with a changing reality’, critical theory ‘continually adjust[s]’ to shifting social relations, rather than projecting itself as ahistorical. Secondly, and following on from these distinctions, given critical theory recognises all theory is normative (explicitly or implicitly), it deliberately highlights counter-hegemonic discourses challenging the ‘prevailing order by seeking out, analysing, and ... assisting social processes’ for ‘emancipatory change’ through examining interactions between social forces, ideas and institutions.<sup>24</sup> Crucially, as critical theory acknowledges that even critical ideas can become problem-solving when fixed into ‘static’, ‘ahistorical’ systems,<sup>25</sup> concepts like human rights, green economy and climate justice themselves require an ‘immanent critique ... to expose contradictions and tensions between ideas and practices’ providing opportunities for social change.<sup>26</sup> Thus, critical theory is concerned with how social actors and movements promote, or oppose, emancipatory change.

Just as Norwegian climate discourses can be described as problem-solving – as both policy and civil society often focus on compartmentalised issues without considering the fundamental, underlying social relations and institutions upholding the country’s petroleum dependency and carbon-intensive economy – so have some human rights approaches, particularly legalistic approaches, fallen into the same trap. While legal strategies may assist in highlighting serious violations, tackling climate change’s systemic economic drivers

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<sup>24</sup> Robert W. Cox, ‘Social Forces, States and World Orders: Beyond International Relations’ (1981) 10 *Millennium Journal of International Studies* 126, 128-130

<sup>25</sup> *Ibid.* 133

<sup>26</sup> Chamsy el-Ojeili and Patrick Hayden, *Critical Theories of Globalization* (Palgrave Macmillan 2006), 7

through the international human rights system has been difficult. Legalistic approaches are hampered by international relations' statecentricism, failing to capture transnational capital's powerful social forces or offer relief, given states most affected are those with least responsibility, or capacity, to respond.<sup>27</sup> 'Actor-orientated' (as opposed to 'structure-orientated')<sup>28</sup> judicial strictures make attribution difficult (because it is 'virtually impossible to disentangle ... complex causal relationships' linking *specific* emissions to *specific* events),<sup>29</sup> usually only grant relief *after* violations, and overlook structural violence and power relations governing access to legal arenas. Furthermore, given the secondary status of economic, social and cultural rights (ESCRs) in the evolution of the human rights system, their resulting sparse jurisprudence, and the difficulty of capturing socioeconomic processes in actor-orientated mechanisms, legal approaches provide inadequate redress for the most directly climate-related rights.<sup>30</sup>

The problem-solving 'legal reflex'<sup>31</sup> *within* human rights creates *external perceptions* of human rights as purely legal instruments, restricting human rights' role in climate politics. This reflex encourages formalism – a 'depoliticisation' where rights are fixed in static systems, becoming 'ends in themselves', not 'means towards ... substantive justice'. Once 'subaltern' rights to sovereignty over natural resources and development have thus become justifications for conceiving of carbon reserves as 'sovereign property', rather than commons.<sup>32</sup> Furthermore, in treating climate change as a "problem" for human rights *as a system or discipline*, such approaches open to its "resolution" through *ruling it out as a human rights issue altogether* in order to ensure the continued smooth maintenance of the system and disciplines, rather than forcing a rethink of their fundamental assumptions. For example, defining climate change as an "emergency" (echoing arguments that human rights are a 'brake on ... the greater good' of avoiding climate catastrophe) opens for use of treaties' derogation clauses to suspend certain rights.<sup>33</sup>

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<sup>27</sup> Humphreys (n 21 above) 53-55

<sup>28</sup> Johan Galtung, *Human Rights in Another Key* (Polity Press 1994), 49

<sup>29</sup> Office of the UN High Commissioner for Human Rights (OHCHR). 'Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights' (2009) UN Doc A/HRC/10/61, 23

<sup>30</sup> Stephen Humphreys, 'Introduction: Human Rights and Climate Change' in Stephen Humphreys (ed), *Human Rights and Climate Change* (Cambridge University Press 2010), 4-5

<sup>31</sup> Paul Gready and Jonathan Ensor, 'Introduction' in Paul Gready and Jonathan Ensor (eds), *Reinventing Development? Translating Rights-Based Approaches from Theory into Practice* (Zed Books 2005), 9-10

<sup>32</sup> S. Adelman, 'Rethinking human rights: the impact of climate change on the dominant discourse' in Stephen Humphreys (ed), *Human Rights and Climate Change* (Cambridge University Press 2010), 177-179

<sup>33</sup> Humphreys (n 21 above) 44-45

As problem-solving approaches do not question frameworks within which they operate, they assume the continuation of basic tenets of the existing socioeconomic order – the system *driving climate change* – while overlooking social forces that must spark transitions. Therefore, more critical human rights approaches are required. While various such approaches have been mooted, these are yet to be combined; similarly, existing approaches, including human rights-based approaches to development (HRBADs), are yet to be applied systematically to the climate crisis. Generally, human rights approaches are said to offer both an ‘analytical framework’ and a ‘basis for action’<sup>34</sup> to political processes, and they can do the same vis-à-vis climate change. This article will outline such an analytical framework for Norway’s climate-related human rights obligations, before suggesting a human rights approach that fulfils these duties. After analysing Norwegian climate discourses in light of this, I will tentatively outline how this approach can provide a basis for action for social movements in Norway.

## 2. A framework for Norway’s climate-related human rights obligations

More critical, structural approaches are often inspired by Universal Declaration of Human Rights Article 28 (‘everyone is entitled to a social and international order in which the rights and freedoms ... in this Declaration can be fully realized’).<sup>35</sup> They recognise human rights are not exclusively legal but a ‘global practice ... both discursive and political’.<sup>36</sup> Conceptualising rights within socio-political processes recognises their ‘generative’ status, constantly being constructed and re-constructed through collective struggle. Rights have a ‘social change function’, and continuously demand new duties and duty-bearers.<sup>37</sup>

Critical approaches reveal the normative issues behind the impasse in international climate politics. Human rights recognise the climate crisis as a *societal* crisis, highlighting various justice claims and offering *social frames* to those seeking to address them, taking climate change out of the problem-solving constraints of “climate policy”, and tackling the ecological crisis’s socioeconomic drivers more holistically. This is vital as the environmental movements’ traditional frames, including the very term “environment”, suggest ecological

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<sup>34</sup> Simon Nicholson and Daniel Chong, ‘Jumping on the Human Rights Bandwagon: How Rights-based Linkages Can Refocus Climate Politics’ (2011) 11 *Global Environmental Politics* 121, 123

<sup>35</sup> Universal Declaration of Human Rights. Paris. 10 December 1948

<sup>36</sup> Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press 2009), 8

<sup>37</sup> Gready and Ensor (n 29 above) 10-12



issues exist outside of the social realm,<sup>38</sup> which is based on the self-destructive ‘metabolic rift’ between society and nature described as capitalism’s ‘second contradiction’, through which capitalism ultimately undermines its own (natural) conditions of production.<sup>39</sup> Critical human rights analysis thus draws attention to the discriminatory and iniquitous dimensions of the ecological crisis. This essentially projects the conclusion of environmental justice advocates, who have documented national ‘environmental discrimination’ against minority groups, onto a global scale; the ecological crisis is fundamentally about the expropriation of resources from one group (the South) by another (the North), the exploitation of these resources and the groups from which they are taken, and the exposure of these groups to the ecological damages (“externalities”), especially climatic changes, that result from this exploitation.<sup>40</sup> Social and environmental injustices are inextricably linked in capitalism’s ‘treadmill of production’. Given the ecological crisis’s scale today, this treadmill threatens *all* classes, not just the lowest, necessitating ‘industries of denial’ to obscure these justice issues and protect those currently benefitting, at least short-term.<sup>41</sup> This denialism, coupled with the use of environmental frames, means climate policy is often experienced an *attack from the outside*. The sacrifice narrative this creates perpetuates the idea that prosperity cannot be achieved or sustained under environmental policy; that environmental policies are “job-killers” that threaten to take us back to pre-modern societies.

A human rights-based analysis of the discriminatory nature of the climate crisis can give a clearer outline of the components of climate justice. Humphreys outlines four justice issues. Firstly, systems and groups responsible for climate change, largely from the North, damage the rights of a larger, more vulnerable group, largely in the South (‘corrective justice’); simultaneously, those responsible have based their human rights enjoyment on carbon-intensive development that is no longer possible for the most vulnerable group (‘substantive justice’); given distributive effects, matters of participation arise (‘procedural justice’); and there are considerations towards those responsible, who built their prosperity without knowing of climate change (‘formal justice’).<sup>42</sup> While the latter is often used in

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<sup>38</sup> V. Johnson, A. Simms, P. Walker and J. Ryan-Collins, *Bridging the gap between climate change, resource scarcity and social justice: The future role of civil society associations* (New Economics Foundation and Carnegie UK Trust 2010), 29

<sup>39</sup> Joel Kovel, *The Enemy of Nature* (Zed Books 2007), 199-232

<sup>40</sup> Wolfgang Sachs, *Environment and Human Rights* (Wuppertal Paper No. 137., 2003)

<[http://www.wupperinst.org/globalisierung/pdf\\_global/human\\_rights.pdf](http://www.wupperinst.org/globalisierung/pdf_global/human_rights.pdf)> accessed 30 December 2013  
2013 8-9

<sup>41</sup> David Naguib Pellow and Robert J. Brulle, ‘Introduction’ in David Naguib Pellow and Robert J. Brulle (eds), *Power, Justice, and the Environment: Toward Critical Environmental Justice Studies* (MIT Press 2005), 4-5

<sup>42</sup> Humphreys (n 21 above) 40-42

formal legal argumentation around property rights, an analysis based on the non-discrimination principle and the procedural justice perspective focuses attention more towards marginal groups, workers and local communities in Northern societies dependent on carbon-intensive industries, for whom distributional impacts are likeliest to be ignored in climate policy responses. Climate approaches that ignore these justice claims are likely to worsen them, and consequently climate change.

Several ways to address these theoretical insights have been suggested. Various “enabling rights” (umbrella rights that precede and underpin all others) have been proposed to set overarching equitable conditions and limits for human rights enjoyment in light of environmental concerns. These often come in the form of a right to the environment, or climate-specific rights, such as rights to “subsistence emissions”. However, I prefer Hayward’s right to equal ‘ecological space’ in which all other rights must be achieved, as it avoids fixation on climate change to the detriment of other aspects of the ecological crisis (as ‘it is the benefits [of emissions], not the emissions’ that matter), and directly addresses the ecology-society rift. Under this, no one can take more than their sustainable share of global ecological capacity without incurring ‘ecological debt’ (as the North has done historically), which obliges a rapid transition to realign with ecological limits, and reparations in the form of wealth and technology transfers. Ecological space thus recognises the links between *all* natural resources and human flourishing<sup>43</sup> by setting ecological limits (encompassing limits on GHG emissions) to human rights. This effectively offers *a human rights-based definition of sustainable development*, or a *green economy* – a socioeconomic system in which one enjoys their human rights within an amount of ecological space that, if generalised, could be enjoyed by all without compromising future generations’ rights. This disaggregated, ecological definition subverts hegemonic neo-liberal green economy formulations, eschewing aggregate measures of development such as economic growth. Growth is, ultimately, only a (flawed) proxy for human rights enjoyment (indeed, after certain levels of material wealth, many human rights proxies have no correlation with wealth), and is incompatible with ecological limits (given ‘immaterial growth’ is empirically and theoretically dubious).<sup>44</sup> Human rights *standards*, *not* aggregate proxies, should therefore measure social progress. Furthermore, commoditising “ecological services” is equally methodologically and

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<sup>43</sup> Tim Hayward, ‘Human Rights versus Emissions Rights: Climate Justice and the Equitable Distribution of Ecological Space’ (2011) 21 *Ethics and International Affairs* 431, 442-443

<sup>44</sup> Thomas Coutrot and Jean Gadrey, “‘Green growth’ is called into question’ (2012) 3 *European Trade Union Institute (ETUI) Policy Brief*, 2-4

normatively dubious given their necessity to survival, wrongly assumes ‘substitutability’ of ecosystems through trading and effectively integrates ecology into markets, removing participatory influences on environmental decision-making and strengthening hegemonic social forces.<sup>45</sup> By linking ecological processes and human survival, this human rights-based definition also rejects the commoditisation of nature and the inequities that result in allowing one’s position in market relations to dictate access to resources necessary to survival.

After this recognition of the basic ecological envelope in which rights must be achieved, specific climate-related human rights duties can be developed using variants of Pogge’s ‘institutional’ cosmopolitanism. This sees human rights as ‘primarily ... claims on coercive social institutions and secondarily ... claims against those who uphold such institutions’. Since human rights are moral claims on societal organisation, societies must be ‘(re)organized’ so *all* members enjoy ‘secure access’ to rights. ‘Members’ include those in other societies affected by seemingly-domestic social structures (like those in the South pulled into the North’s production treadmill), and future generations inevitably influenced by present considerations.<sup>46</sup> For Pogge, the overriding duty is not to directly supply the object of a right, but ‘not to cooperate in upholding’, and work to reform, systems that hinder others from fulfilling their *own* rights.<sup>47</sup> Pogge’s approach parallels Shue’s definition of human rights as ‘rationally justified demand[s] for social guarantees against standard threats’, necessitating a universal duty ‘to make and keep effective arrangements’ enabling people’s access to rights.<sup>48</sup>

Vis-à-vis climate change, carbon-intensive development consists of numerous “coercive institutions” and the actors upholding these. Crucially, conceptualising *secure access* to rights opens to recognising that human rights in carbon-intensive societies, though stable short-term, are insecure longer-term given climate change *and* non-renewable resource depletion. Bell has developed the institutional approach into an overarching climate-related obligation to promote effective institutions for protecting basic human rights *against climate threats*; climate change violates rights given ‘collective failure to fulfil’ this. This obligation implies a ‘general duty’ to ‘promote and maintain effective institutions that ... “specify and allocate” the more specific duties needed to’ protect basic human rights on the basis of climate justice principles. However, to prevent actors arguing that they fulfil this simply

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<sup>45</sup> Joanna Boehnert, *Re-Imaging the Commons as ‘The Green Economy’* (EcoLabs and the Cooperative Institute for Research in Environmental Sciences, CIRES, 2013) <[http://www.academia.edu/3294072/Re-Imaging\\_the\\_Commons\\_as\\_The\\_Green\\_Economy](http://www.academia.edu/3294072/Re-Imaging_the_Commons_as_The_Green_Economy)> accessed 13 May 2013, 8-13

<sup>46</sup> Thomas Pogge, *World Poverty and Human Rights* (Polity Press 2002), 37-38

<sup>47</sup> *Ibid.* 72-75

<sup>48</sup> Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton University Press 1996), 16-17

through negotiations, the general duty also encompasses a ‘duty of rectification’ where ‘previous non-compliers ... accept more burdensome duties’ than ‘if they had always complied with the general duty’, as well as a duty ‘not to accept benefits ... from the failure of other[s] ... to comply with the general duty’, for example through stalling negotiations. Thus, previous non-compliers (namely, the North) must reduce emissions *immediately* and follow emissions targets when the general duty is fulfilled.<sup>49</sup> This means existing human rights insist on climate action, *regardless of other climate agreements*.

Norway contributes to carbon-intensive development globally as one of the world’s largest net oil and gas exporters<sup>50</sup> and through carbon-intensive domestic development.<sup>51</sup> The former is excluded from national greenhouse gas (GHG) inventories because emissions occur in other countries – an accounting practice incompatible with the institutional approach. Furthermore, much of the latter is overlooked given the aforementioned ‘overseas carbon footprint’ from import-based consumerism.<sup>52</sup>

Norwegian human rights are thus currently premised on carbon-intensive development (and, generally, a growing ecological footprint, implying ecological debt).<sup>53</sup> Eight percent of Norwegians work directly or indirectly in petroleum jobs, with the industry comprising around a quarter of GNP and state revenues, thereby funding one of the world’s largest sovereign wealth funds (*oljefondet*).<sup>54</sup> The sector and its supporting structures are maintained by powerful interests exercising an ‘ideological influence’ on society.<sup>55</sup> However, petroleum’s role in supporting Norwegian human rights is insecure long-term. Physically, around 44 percent of total reserves have already been sold.<sup>56</sup> Economically, Norway increasingly appears to suffer “Dutch disease” as petroleum increases costs for, and drains labour and skills from, other sectors,<sup>57</sup> while warnings of the financial risks of investing in increasingly expensive and unusable carbon stocks grow.<sup>58</sup>

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<sup>49</sup> Bell, Derek. ‘Does Anthropogenic Climate Change Violate Human Rights?’ (2011) 14 Critical Review of International Social and Political Philosophy 99, 112-115

<sup>50</sup> OED (n 10 above) 20 (in 2011, Norway was the world’s seventh largest net exporter of oil and second largest net exporter of gas)

<sup>51</sup> Pöyry (n 11 above) 20-22

<sup>52</sup> Hille (n 3 above)

<sup>53</sup> Pöyry (n 11 above) 18

<sup>54</sup> OED (n 10 above) 20

<sup>55</sup> Helge Ryggvik, ‘Norsk olje og klimaet: Skisse til en nedkjøling’ (*Klimavalg 2013* 2013)

<<http://klimavalg2013.no/wp-content/uploads/2013/04/gr-arb-3.pdf>> accessed 19 September 2013, 2

<sup>56</sup> OED (n 10 above) 26

<sup>57</sup> Pöyry (n 11 above) 18-19

<sup>58</sup> Damian Carrington, ‘Carbon bubble will plunge the world into another financial crisis – report’ (*The Guardian* 2013) <<http://www.theguardian.com/environment/2013/apr/19/carbon-bubble-financial-crash-crisis>> accessed 12 June 2014

Regarding Bell's obligations, Norway has actively promoted institutions specifying and allocating duties through international negotiations. However, while this partly recognises duties of rectification, the country has *increased* its contribution to climate change since joining the UNFCCC, especially expanding petroleum production,<sup>59</sup> while negotiating a one percent emissions *increase* under the Kyoto Protocol, negating immediate emissions-reducing obligations. Duties of rectification are therefore more pressing in future climate policy.

### **3. A human rights-based approach to climate change and existing Norwegian policy**

Meeting these duties, while simultaneously securing human rights long-term within equal ecological space, requires a human rights-based approach. HRBADs offer one structure-orientated approach for this. While originally for "developing" states, HRBADs' principles apply for economic development generally. While HRBADs also come in both problem-solving and critical guises (a discussion for which there is insufficient space here), more structure-orientated HRBADs share critiques of hegemonic needs-based and neo-liberal development theories,<sup>60</sup> using human rights *standards* (from the content of rights given in conventions, General Comments, ensuing jurisprudence and other politico-legal developments) to guide *outcomes*, and human rights *principles* (found in the aforementioned sources and underlying the implementation of all rights) to guide *processes*.

#### **Human rights standards**

Human rights standards as enunciated in the plethora of international covenants give development, an abstract term simply expressing 'a normative conception of desired change', a 'legal and normative foundation... with broad-based international support'<sup>61</sup> for 'a political transformation', challenging existing power relations.<sup>62</sup> HRBADs begin by analysing

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<sup>59</sup> Ryggvik (n 53 above) 4

<sup>60</sup> Gready and Ensor (n 29 above) 20-21

<sup>61</sup> Bård Anders Andreassen, 'Development, Capabilities, Rights: What is New About the Right to Development and a Rights Approach to Development?' in Bergsmo, Morten (ed), *Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjørn Eide* (Martinus Nijhoff Publishers 2003), 227-230

<sup>62</sup> Gready and Ensor (n 29 above) 22-23

structures and actors that hinder secure rights access (as undertaken above), before identifying relevant international human rights standards.<sup>63</sup>

Given climate justice narratives have stressed the importance of work and “green jobs”, not least because existing carbon-intensive jobs (especially in fossil fuels) will inevitably decline as a result of resource depletion, one relevant example of implementing a human rights standard while addressing climate change is the right to work, declared in the International Covenant of Economic, Social and Cultural Rights (ICESCR) Article 6, and an essential right that supports the realisation of many others (both ESCRs and CPRs). Under ICESCR, states must ‘take steps’, using ‘maximum ... available resources’, towards ‘achieving progressively ... full realization’ of ESCRs;<sup>64</sup> ICESCR’s expert committee’s General Comments, and International Labour Organisation (ILO) conventions, highlight what full realisation entails.

The right to work is not a right ‘to a job;’<sup>65</sup> ICESCR ‘recognize[s],’ rather than *guarantees*, the right; however, clear emphasis on protection against unemployment and a ‘right not to be prevented from working’<sup>66</sup> makes *work-related security* a core aspect.<sup>67</sup> General Comment 18 specifies duties to respect the right involve not ‘denying equal access to decent work for all.’ Stephenson suggests this obliges ‘a comprehensive approach to social and economic policies that ... include[s] employment opportunity and security.’ ‘Protect duties’ mean states must safeguard against third-party violations. ‘Fulfil duties’ require ‘a national policy’ for economic development that overcomes ‘unemployment and underemployment, in order to achieve full employment’; such a policy does not guarantee everyone work but aims ‘at ensuring work for all who are available and seeking’ it. Overall, states ‘must take a comprehensive approach towards employment policy by taking into account all the necessary measures to ensure the right to work, including work-related security’.<sup>68</sup> This comprehensive approach is often neglected in climate-related programmes.

Stephenson stresses that, in formal legal analysis, states might argue they comply with these duties if they implement a comprehensive green jobs policy that provides ‘work for all

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<sup>63</sup> Office of the UN High Commissioner for Human Rights (OHCHR), *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies* (OHCHR 2006), 4

<sup>64</sup> International Covenant on Economic, Social and Cultural Rights. New York. 16 December 1966

<sup>65</sup> Jeremy Sarkin and Mark Koenig, ‘Developing the Right to Work: Intersecting and Dialoguing Human Rights and Economic Policy’ (2011) 33 *Human Rights Quarterly* 1, 5-6

<sup>66</sup> *Ibid.* 24-26

<sup>67</sup> Sean Stephenson, ‘Jobs, Justice, Climate: Conflicting State Obligations in the International Human Rights and Climate Change Regimes’ (2011) 42 *Ottawa Law Review* 155, 168-169

<sup>68</sup> Sean Stephenson, *Making Jobs Work: the Right to Work, Jobs and Green Structural Change* (International Development Law Organization and the Centre for International Sustainable Development Law 2010), 4-5

people available ... and willing' because (referencing the existing research on the topic) 'an equal or greater number of jobs will be created in the new green economies'. However, Stephenson's critical approach recognises new jobs will be *different* from those lost, possibly located elsewhere or requiring new skills, and therefore could make some 'unemployable in a... green economy'. This creation of insecurity 'violates the right'. Thus, states must 'facilitate a vulnerable worker's transition between jobs by providing employment services'.<sup>69</sup> ILO standards specifically apply for such a transition, including ILO Recommendation No.122 Article 8(b), stressing 'selective measures directly connected with the employment of individual workers or categories of workers' during transitions; Article 13(1), emphasising planning 'to prevent the emergence and growth of unemployment or underemployment'; Article 13(3)(b), under which states must 'protect from financial or other hardship groups and individuals... affected by structural changes'; and Recommendation No.169 Article 10(a), requiring states 'facilitate adjustment to structural change at the global, sectoral and enterprise levels' and 're-employment of workers who have lost their jobs as a result'. Therefore, during 'green structural change', ILO standards require 'supplementary' and 'specific work-related security measures'.<sup>70</sup> Furthermore, green jobs must be 'decent' as defined by the ILO's Decent Work Agenda.<sup>71</sup> Obligations for the right to work, within the overarching right to ecological space and general climate-related duties, thus provide a normative framework against which to judge climate policies' workers' protection and green jobs programmes.

Applying these considerations to Norway, it is readily apparent that human rights standards are absent in climate policy; there is a 'long-term goal' of a global 'right to emit'<sup>72</sup> without elaborating on the form this would take. As noted previously, beyond its contribution to domestic emissions, the petroleum industry is separated from climate, and even general energy, policy. While there is a detailed, long-term petroleum plan, there are no coordinated clean energy strategies despite targets set for energy efficiency,<sup>73</sup> offshore renewables and onshore wind<sup>74</sup>. Under the approach of the previous and new government, rather than tackling systematic, structural and industrial obstacles to a transition and supporting green industry directly, carbon-intensive industries are compensated for CO<sub>2</sub> taxes.<sup>75</sup> This delays the inevitable decline of oil and gas given their non-renewable status (even if one ignores climate

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<sup>69</sup> Stephenson (n 64 above) 168-169

<sup>70</sup> Ibid. 173

<sup>71</sup> Stephenson (n 65 above) 6-7

<sup>72</sup> Miljøverndepartementet (n 4 above) 9

<sup>73</sup> Borgen (n 7 above)

<sup>74</sup> Kaja Norby, *Vindkraft i Nord-Norge* (Zero 2010), *passim*

<sup>75</sup> Høyre and Fremskrittspartiet (n 15 above) 27

change altogether) and, by failing to address how the country's petroleum dependence, puts Norwegian human rights at risk.

Regarding the right to work, there are no targeted workers' protection schemes for petroleum's inevitable decline, and no unified programme for green, decent jobs to replace it. Without a comprehensive policy for fulfilling the right to work alongside climate obligations, Norway risks violating the right under formal analysis (let alone Stephenson's work-related security approach) – especially as the country has pushed for tougher *global* climate action that effectively accelerates petroleum's decline. The new government's economic policy does not mention green industry at all, arguably making this an even lower priority than under the previous government who mentioned 'green workplaces within energy production and environmental technology' as 'a new growth industry in Norway' in their governmental platform.<sup>76</sup> Even this previous rhetorical support for green industry does not fulfil Norwegian climate-related human rights obligations or the right to work; it suggests that green jobs will grow *alongside* carbon-intensive industries, rather than a *transition*, necessary given resource depletion and climate change, from one to another.

## Human rights principles

### *Principles guiding the application of human rights standards*

Various principles guide the application of human rights standards.

Caney notes human rights 'specify minimum moral *thresholds*' for climate policy that people cannot fall under either directly *or* indirectly (through policy responses). This rejects consequentialism's countenance of partial suffering to avoid higher costs for the majority as it does not allow temperature stabilisation goals that evidence shows will be destructive for anyone's human rights. This means that the oft-proposed "two-degree limit" is indefensible given it implies widespread damages, including existential threats to small-island states. Minimum thresholds therefore provide a normative definition for 'dangerous anthropogenic interference' under the UNFCCC, namely interference that 'systematically undermines ... widespread' rights enjoyment.<sup>77</sup> Given interference well below two degrees systematically undermines human rights, HRBADs thereby support the fastest possible emissions reductions.

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<sup>76</sup> Pöyry (n 11 above) 7

<sup>77</sup> Simon Caney, 'Climate Change, Human Rights and Moral Thresholds' in Stephen Humphreys (ed), *Human Rights and Climate Change* (Cambridge University Press 2010), 89-90



This conforms to the precautionary principle, and evidence of how climate feedbacks and ‘runaway climate change’ limit the window for emissions cuts.<sup>78</sup> Long-term reduction goals are nonetheless useful if accompanied by successive shorter-term targets that hold actors accountable in the meantime, like the UK Climate Change Act.<sup>79</sup> Significantly, given emissions anywhere matter, thresholds insist states cut domestic emissions *and* the emissions they contribute to abroad. Ultimately, thresholds enhance institutional approaches’ insistence on immediate climate action using clear human rights standards.

The concepts of thresholds can be further fleshed out to demonstrate the difference between aggregated approaches and HRBADs. Thresholds are to be prioritised in clashes between rights, for example where the Northern rights to development promote the continuation of carbon-intensive industries that threatens rights thresholds elsewhere. For ESCRs, ‘minimum core obligations’ have been defined, giving direct content to thresholds and insisting initiatives should be directed to those below thresholds first.<sup>80</sup> Thresholds and the *non-discrimination principle* therefore justify prioritisation in economic policy based on historical neglect and marginalisation; these are relevant even in the North, given that there are citizens in those societies that are yet to have their minimum obligations fulfilled and that rights enjoyment must be improved even above these levels. Simultaneously, human rights’ *indivisibility* means the right to a safe environment ‘cannot be bought at the expense of’ other rights.’<sup>81</sup> This relates to the *non-retrogression principle*, which, together with the *principle of progressive realisation*, insists mitigation programmes improve, not limit or impair, human rights. This approach also recognises rights’ *interdependency*, meaning certain crucial rights necessary for the enjoyment of others (such as the right to work) can be prioritised, and expanding development beyond economics and ESCRs to cover the totality of human experience (including CPRs).<sup>82</sup> Together, these principles militate against traditional development trade-offs, such as allowing inequality or sacrificing CPRs in return for growth.<sup>83</sup> They also suggest that leaving climate initiatives to the whims of the market, as in hegemonic neoliberal green economy ideas, is incompatible with a human rights-based

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<sup>78</sup> James Hansen *et al*, ‘Target Atmospheric CO<sub>2</sub>: Where Should Humanity Aim?’ (2008) 2 *Open Atmospheric Science Journal* 217, 225-229

<sup>79</sup> Anders Bjartnes, *Den britiske klimaloven* (WWF-Norge 2011), *passim*

<sup>80</sup> UN Development Programme (UNDP). *Human Rights and the Millennium Development Goals: Making the Link* (UNDP Oslo Governance Office 2007), 22

<sup>81</sup> Nicholson and Chong (n 32 above) 132

<sup>82</sup> OHCHR (n 60 above) 6

<sup>83</sup> Urban Jonsson, ‘A Human Rights-Based Approach to Programming’ in Paul Gready and Jonathan Ensor (eds), *Reinventing Development? Translating Rights-Based Approaches from Theory into Practice* (Zed Books 2005), 60

approach. Markets have winners and losers, but allowing someone to lose from the climate crisis contradicts these standard-setting principles, which together form the basis of what has been described as a new ‘green social contract’<sup>84</sup>. Indeed, the scale of the transition necessary to avoid catastrophic climate demands a level of intervention that research suggests markets simply cannot deliver alone given their inability to tackle structural constraints on capital, resources and labour.<sup>85</sup>

In Norway, without a human rights-based approach stressing clear standard-setting principles, short-termist cost-benefit analyses dominate. Norwegian climate policy’s central tenet, repeated in *klimameldingen*, is that ‘in areas... subject to general measures, like the emissions trading system, further regulation will, as a general rule, be avoided’.<sup>86</sup> Reliance on the EU Emissions Trading System (ETS) limits more ambitious approaches, and is fundamentally failing. For *The Economist*, ETS has ‘long been a mess’. Its future is unclear after failure to arrest falling prices in 2013.<sup>87</sup> A report from 40 international organisations finds emissions reductions in the second period were caused by the economic crisis, while significant investment has not been spurred and ETS has enriched private interests at public expense, including encouraging fraud.<sup>88</sup> Fundamentally, focusing on carbon pricing and market mechanisms overlooks the transition’s structural and human rights implications, especially thresholds. Paradoxically, given inadequate attention to structural issues, and duplicated spending on carbon-intensive *and* carbon-reducing activities, the short-termist cost-benefit approach is *costlier long-term*.

Regarding target-setting, Norway lacks requirements for successive carbon budgeting (as in the UK Climate Change Act), meaning action on longer-term targets could be delayed. More fundamentally, differentiations between domestic and overseas reductions are incompatible with human rights approaches, as well as the Kyoto Protocol’s flexibility mechanisms, which must be ‘supplemental’ to domestic reductions.<sup>89</sup> Financing overseas reductions has effectively been used to ‘purchase... the right to continue... emissions’

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<sup>84</sup> Marc Lee and Amanda Card, *A Green Industrial Revolution: Climate Justice, Green Jobs and Sustainable Production in Canada* (Canadian Center for Policy Alternatives 2012) 19

<sup>85</sup> K., Mallon, M. Hughes and S. Kidney, *Climate Solutions 2: Low-Carbon Re-Industrialisation (Climate Risk for WWF 2009)*

<sup>86</sup> Miljøverndepartementet (n 4 above) 11

<sup>87</sup> *The Economist*, ‘ETS RIP?’ (*The Economist* 2013) <<http://www.economist.com/news/finance-and-economics/21576388-failure-reform-europes-carbon-market-will-reverberate-round-world-ets>> accessed 19 September 2013

<sup>88</sup> FERN *et al*, *EU ETS myth busting: Why it can’t be reformed and shouldn’t be replicated* (FERN 2013), 5

<sup>89</sup> Kyoto Protocol. Kyoto. 11 December 1997. Art.6(1)(d)

domestically,<sup>90</sup> abnegating ecological debt and duties of compensation. Making emission targets contingent on international agreements also ignores *existing* human rights responsibilities. Ultimately, targeting reductions overseas works from the (correct) observation that global, not national, emissions matter. However, while Norway is willing to consider global emissions when avoiding domestic cuts, it refuses to even to discuss petroleum exports' global contribution.

No central evaluation of climate-related socioeconomic threats *or* opportunities has been undertaken. The *Klimakur* report outlined measures to meet 2020 climate targets, but excluded petroleum extraction<sup>91</sup> and employment-related consequences, emphasising aggregated, cost-benefit approaches.<sup>92</sup> Failure to confront transition costs means they are often passed to consumers and workers, blunting positive visions of the transition.

One example of insufficient disaggregated analysis are the aforementioned *elsertifikater*, which involve energy producers receiving “certificates” for producing renewables, thereafter selling them on a market as extra income. Certain suppliers must buy certificates, ensuring demand. Certificate costs are paid through increasing energy prices.<sup>93</sup> The scheme has been criticised for including hydropower projects feasible without subsidies. Hydropower will likely receive more support than wind. Pricing is not differentiated between renewable energy forms. Furthermore, consumers must pay but industry has certain exemptions.<sup>94</sup> Sector actors doubt it will meet targets, while producing an energy surplus without planning how to use it.<sup>95</sup>

Given aggregated policy approaches, prioritisation towards marginal groups is discounted. Regarding *non-retrogression* and *progressive realisation* in particular, assumptions that climate initiatives will protect or enhance human rights are particularly dubious given lacking analysis of policies' social effects and unwillingness to confront petroleum's decline. The aforementioned *klimafond* could contribute to promoting the rights of those involved in such industries long-term by supporting industrial transformations,

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<sup>90</sup> Davidsen *et al* (n 69 above) Do you mean footnote 99 above?

<sup>91</sup> Framtiden i våre hender (Fivh), *Innspill til Klimameldingen fra Framtiden i våre hender* (Fivh 2011), 8

<sup>92</sup> Landsorganisasjon i Norge (LO), 'Klimakur 2020' (LO 2010) <<http://www.lo.no/s/Klima/Generelt/Klimakur-2020/?c=8178&t=119>> accessed 19 September 2013

<sup>93</sup> Norges vassdrags- og energidirektorat (NVE), *Hva er elsertifikater?* (NVE, 2012)

<<http://www.nve.no/no/Kraftmarked/Elsertifikater/Hva-er-elsertifikater/>> accessed 19 September 2013

<sup>94</sup> Tormod Haugstad, *Grønn bløff eller klimatiltak?* (Teknisk Ukeblad 2012)

<<http://www.tu.no/meninger/tumener/2012/08/31/gronn-bloff-eller-klimatiltak>> accessed 19 September 2013

<sup>95</sup> Øyvind Lie, 'Elsertifikatene gir høyere strømprøgning' (Teknisk Ukeblad 2012)

<<http://www.tu.no/energi/2012/08/23/-elsertifikatene-gir-hoyere-stromregning>> accessed 19 September 2013

especially as it will support ‘full-scale production lines’,<sup>96</sup> but the Zero Emission Resource Organisation stresses its effectiveness depends on its structure and concrete goals,<sup>97</sup> while the amount given to the fund is inefficient to tackle the scale of the transition required. More detail is still needed to ensure *klimafond* does not simply subsidise industry without addressing structural concerns.

This has been the case regarding CCS. Fundamentally, CCS only operates at large emissions sources, while much global fossil fuel use occurs in transport, homes and businesses.<sup>98</sup> Beyond incurring high costs for modest mitigation, CCS entrenches carbon-intensive path dependency without developing alternatives, perpetuating deleterious human rights effects globally, while ignoring petroleum’s inevitable decline domestically.

### *Principles guiding the conduct of climate-related processes*

HRBADs also give principles for conducting climate-related processes. *Human rights-based participation* insists on participation at all stages of socio-political processes *as a right*, making participation not just a desirable part of development, but ‘non-negotiable’.<sup>99</sup> People must be given ownership of climate initiatives through decentralisation, giving initiatives legitimacy and sustainability. This principle provides a focal point for social movement mobilisation<sup>100</sup> that is necessary for social change. Such participation is not simply instrumental, but normative; human rights-based participation has been described as ‘the organised effort to increase control over resources and regulative institutions ... by those hitherto excluded’.<sup>101</sup> In relation to a specifically human rights-based climate approach, this normative dimension requires that such participation is not undertaken for its own sake and does not lead to the degradation of human rights; rather, the different structural human rights approaches outlined above ensure that participation in a human rights-based climate policy is based on clear parameters defined by ecological limits and seeks to empower people to realise their rights through climate initiatives. Human rights, as focal points for mobilisation, can in particular provide a *common language* for labour and environmental groups with different

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<sup>96</sup> Miljøverndepartementet (n 4 above) 12

<sup>97</sup> Kaski *et al* (n 5 above) 45

<sup>98</sup> Hille (n 3 above) 18

<sup>99</sup> UNDP (n 77 above) 22

<sup>100</sup> Andreassen (n 58 above) 227-230

<sup>101</sup> Alex Stevens, Anne-Marie Bur and Lucy Young, ‘People, jobs, rights and power: The roles of participation in combating social exclusion in Europe’ (2003) 38 *Community Development Journal* 84, 85

foundational traditions – a positive vision, rather than ‘sacrifice’<sup>102</sup> narratives of ending carbon-intensive societies.

In relation to Norway, workers and communities have few avenues for influencing priorities through exercising participatory rights, despite high public climate-related concern;<sup>103</sup> most initiatives are top-down, while domination by market initiatives limits participatory involvement. For the government and the leading trade union confederation, social dialogue on the issue of climate change has been promoted without clear parameters. Participation beyond centralised consultation processes, especially parliamentary *høring*, is limited. Some decentralisation occurs given local municipalities have leeway regarding local initiatives, but major climate initiatives remain centralised.

*Human rights-based accountability* is also a key principle, making use of formal, informal, legal and political methods. Identifying rights and duty-holders is ‘not a neutral act’; it focuses on ‘deep-rooted inequalities’ for which ‘abuses are conceived as symptoms and structural causes of conflict’.<sup>104</sup> Regarding climate change, HRBADs make duty-holders directly accountable for reducing people’s vulnerability, and make human rights standards the measure of progress. Human rights also extend accountability *internationally*. International assistance becomes obligatory (unlike in aid politics), drawing on ICESCR Article 2, while global accountability mechanisms (such as UN human rights organs) exist, and states must respect human rights in international negotiations.<sup>105</sup> Climate-related human rights remedies must be available, but provision of compensation is not ‘permission to engage in ... violations’ assuming one can make amends for these later;<sup>106</sup> rather, remedies are owed to communities *as a right*.<sup>107</sup> By linking the local with the global, human rights’ internationalism also protects against the special pleading sometimes witnessed in climate discourses. This is relevant regarding “carbon leakage”, occurring when climate policy in one country causes carbon-intensive industries to relocate to another (usually Southern) state with lower environmental standards, increasing global emissions and causing job losses in the first state. Given leakage, several actors, including Norwegian trade unions, argue for multilateral

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<sup>102</sup> Jan Davidsen; Hans O. Felix; John Leirvaag and Roy Pedersen, ‘The Climate Struggle – a Struggle for Social Power’ (*For Velferdsstaten*, 2012) <[http://www.velferdsstaten.no/english/?article\\_id=96528](http://www.velferdsstaten.no/english/?article_id=96528)> accessed 19 September 2013

<sup>103</sup> Andreas Ytterstad, *100 000 klimajobber og grønne arbeidsplasser nå!: for en klimaløsning nedenfra* (Gyldendal Akademisk 2013), 24

<sup>104</sup> UNDP (n 77 above) 24

<sup>105</sup> OHCHR (n 60 above) 8-9; 20-21

<sup>106</sup> Caney (n 74 above) 86-89

<sup>107</sup> Oxfam, *Climate Wrongs and Human Rights: Putting people at the heart of climate-change policy (Executive Summary)* (Oxfam International 2008), 11-12

agreements *before* transitions are unilaterally undertaken in any state.<sup>108</sup> Given affected industries are ‘politically powerful’ (including where alliances between labour and capital exist), climate policy often includes anti-leakage compensation and exemptions for carbon-intensive industries,<sup>109</sup> hampering policy effectiveness. However, empirical studies suggest leakage has been minimal for several climate policies. Furthermore, the OECD suggests *environmental* factors ‘pale in comparison’ to *economic* factors in industrial relocation.<sup>110</sup> Thus, carbon leakage occurs, but due to competitiveness drivers, *not* climate policy. As Tømte notes, actors such as trade unions fixated on carbon leakage’s job-related effects would not drop demands for good wages and working conditions, which more directly trigger relocation; clinging to carbon leakage suggests some would rather ‘go to the bottom’ with carbon-intensive industries than tackle climate change head-on.<sup>111</sup> This exemplifies how problem-solving approaches *delay* climate action and inevitable transitions in non-renewable industries, failing to secure rights enjoyment long-term. Critical human rights approaches provide an impetus for overcoming leakage altogether by recognising its link with globalisation’s ‘race to the bottom’. Human rights-based climate initiatives should therefore work for a ‘floor of social protection’ internationally<sup>112</sup> to avoid carbon-intensive industries exploiting international differences to the detriment of climate (not to mention social) goals. At the same time, social movement alliances should be sought across borders to agitate for more ambitious approaches to climate change.

Lacking legislation making climate targets an ‘absolute requirement’ in decision-making,<sup>113</sup> responsibility for Norway’s target-related duties is unclear, making it difficult to hold successive governments accountable for distant targets. Departments that ‘do not have climate targets as their primary mandate’ often reject sustainable choices if these contradict ‘sector targets’.<sup>114</sup> Regarding international accountability, Norway maintains a high-profile in climate negotiations, pushing for binding agreements.<sup>115</sup> Development policy promotes

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<sup>108</sup> Even Tømte, ‘LO i uheldig klimaallianse’ (frifagbevegelse.no, 2012)

<<http://www.frifagbevegelse.no/meninger/article5938477.ece>> accessed 19 September 2013

<sup>109</sup> A. de Serres; J. Llewellyn and P. Llewellyn. ‘The Political Economy of Climate Change Mitigation Policies: How to Build a Constituency to Address Global Warming?’ (2011) 887 OECD Economics Department Working Papers, 24-26

<sup>110</sup> Organisation for Economic Co-operation and Development (OECD), *Towards Green Growth* (OECD Publishing 2011), 98-99

<sup>111</sup> Tømte (n 105 above)

<sup>112</sup> Katherine H. Regan, ‘The Case for Enhancing Climate Change Negotiations with a Labor Rights Perspective’ (2010) 35 *Columbia Journal of Law* 249, 268-270

<sup>113</sup> Pöyry (n 11 above) 42-43

<sup>114</sup> *Ibid.* 37-39

<sup>115</sup> UNFCCC, ‘Negotiations updates’ (UNFCCC 2012)

<[http://unfccc.int/meetings/doha\\_nov\\_2012/items/7304.php](http://unfccc.int/meetings/doha_nov_2012/items/7304.php)> accessed 19 September 2013

climate initiatives, while *klimamelding* considered increasing climate-related forestry funding in the South if other countries reciprocated.<sup>116</sup> There have, however, been difficulties using these funds,<sup>117</sup> while *oljefondet* has undermined this by investing in logging,<sup>118</sup> not to mention part-state owned Statoil's foreign tar sands investments.<sup>119</sup> Ultimately, Norway's position in international negotiations is increasingly undermined by petroleum commitments. Elsewhere, an ultimately self-defeating conception of carbon leakage dominates, defending short-term interests rather than confronting long-term threats. Regardless, leakage is not relevant to petroleum; leaving one state's fossil fuel resources alone ensures a share of global carbon reserves remains untouched.

#### **4. Conclusion: towards a human rights-based approach to climate change in Norway**

A human rights-based approach depends on the strength of social movements and participatory processes in giving people ownership over the transition to a green economy. Specific outcomes of these iterative processes, which must take into account local conceptions of human rights, cannot be outlined in detail in advance. However, certain parameters can be set for the way forward.

Enshrining a human rights-based approach in law could underpin social movement demands. Suggestions have been already made about enacting a general climate law, like the UK Climate Change Act, which is 'independent of economic analysis' and 'set with... prioritised societal aims in mind'.<sup>120</sup> The British law has provided a reference for social movements in defeating airport expansion.<sup>121</sup> However, the Act overlooks human rights; its carbon budgeting does not mandate evaluating social impacts. Instead, movements can demand a human rights-based climate law that explicitly establishes the link between

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<sup>116</sup> Miljøverndepartementet (n 4 above) 16

<sup>117</sup> Geir Salvesen and Gedde-Dahl, Siri, 'Norsk klimaprojekt i hardt vær' (*Aftenposten* 2012) <[http://www.aftenposten.no/nyheter/iriks/Norsk-klimaprojekt-i-hardt-vr-6730543.html#.UZEn\\_8r4KSp](http://www.aftenposten.no/nyheter/iriks/Norsk-klimaprojekt-i-hardt-vr-6730543.html#.UZEn_8r4KSp)> accessed 19 September 2013

<sup>118</sup> Jonathan Watts, 'Norway accused of hypocrisy over Indonesia deforestation funding' (*The Guardian* 2011) <<http://www.guardian.co.uk/environment/2011/dec/01/norway-accused-hypocrisy-deforestation-funding>> accessed 19 September 2013

<sup>119</sup> Anne Lindeberg, 'Frykter skjulte kostnader i oljesand' (*Dn.no* 2013) <<http://www.dn.no/energi/article2569402.ece>> accessed 19 September 2013

<sup>120</sup> Pöyry Management Consulting (Pöyry), *Hvordan Møte Overgangen til Et Lavutslippssamfunn?* (Econ Pöyry 2010), 35

<sup>121</sup> WWF, 'Judge knocks back Heathrow expansion on basis of climate impacts' (WWF 2012) <<http://www.wwf.panda.org/?191864/Heathrow-airport-expansion-in-tartters-as-judge-slams-3rd-runway-plans>> accessed 19 September 2013

ecological space and limits with human rights; outlines clear climate-related duties; and ensures that the aforementioned human rights standards and principles apply to all areas of politics.

The law would require at least 85 percent *domestic* emissions reductions from 1990 levels by 2050 through successive carbon budgets, with ecological debt requiring further *supplementary* mitigation elsewhere. This has certain implications. As is routinely mooted,<sup>122</sup> Norway has the potential to become an exporter of renewable energy. However, as Fivh suggest, Norway should not be credited for overseas emissions reductions from renewables export,<sup>123</sup> especially given ecological debt. Furthermore, the question is whether such export would be possible within sustainable ecological space (given the large infrastructure required over land and sea), and whether it precludes local production and green jobs elsewhere. A holistic approach must be taken of any potential developments and their *global* effects on interconnected ecosystems and socioeconomic processes. In principle, exporting renewables should *assist* others' transitions, prioritising countries incapable of self-sufficiency. Hydropower can also balance fluctuating supply in wind-generating states.<sup>124</sup>

Similarly, Norway must address overseas emissions from consumption. A problem-solving approach is putting an amount equal to the cost of Norway's overseas carbon footprint into a fund for climate development initiatives to be invested in the South.<sup>125</sup> However, from a more critical perspective, reconsideration of a world-system based on trading goods that can be produced locally is required. Fundamental consumption changes are necessary to reduce ecological footprints. However, rather than simply reducing consumers' purchasing power (as Fivh propose),<sup>126</sup> human rights-based climate approaches should seek *positive alternatives* to mass consumption. Localisation is key, stressing production for need based on local priorities of long-lasting goods with full life-cycle considerations. Social movements can play a role in protecting commons and building local projects, from energy cooperatives to local food networks. This 'prefigurative politics'<sup>127</sup> provides direct participatory experience of sustainable lifestyles, cultivates counter-hegemonic constituencies of support, directly fulfils human rights, and demonstrates the often-abstract vision of a low-carbon future.

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<sup>122</sup> Pöyry (n 119 above) 6

<sup>123</sup> Hille (n 3 above) 13

<sup>124</sup> Pöyry (n 11 above) 4

<sup>125</sup> Rasmus Reinvang and Peters, Glen, *Norwegian Consumption, Chinese pollution: An example of how OECD imports generate CO2 emissions in developing countries* (WWF-Norge 2008), 3-5

<sup>126</sup> Hille (n 3 above) 60

<sup>127</sup> el-Ojeili and Hayden (n 24 above) 208



A human rights-based climate law would require a transition from petroleum to green industries, securing the right to work while realigning society with sustainable ecological space. This is the “most important individual measure Norway can take.”<sup>128</sup> Fivh suggest a transition through stopping exploration and new developments in existing fields by redeeming extraction permits where developments are yet to begin (returning Statoil to full state ownership and waiving its permits would assist this); closing existing fields by buying-out private interests; and limiting production to long-term gas contracts.<sup>129</sup> Gas production would remain over 80bn sm<sup>3</sup> oil equivalent in 2020 (compared to 100bn today)<sup>130</sup> given around 80 percent is tied to 10-20 year contracts; thus, gas production would not cease until 2030. Oil is not so contractually-constrained.<sup>131</sup> As state enterprise Petero and Statoil (70 percent state-owned) control around 70 percent of the continental shelf, and assuming share prices from March 2012, Fivh estimated costs of buying-up Statoil at NOK 147bn, with other companies’ property on the shelf valuing NOK 300-400bn (which could be bought out by exchanging holdings on the continental shelf with Statoil’s international holdings). Thus, a maximum NOK 400-500bn (around one tenth of *oljefondet*) would be needed; indeed, many contracts will end regardless before 2020 (and many more before 2030).<sup>132</sup> Furthermore, as sole owner, the state would receive all gas-related income (NOK 1.7 trillion by 2020 even after production decreases).<sup>133</sup> This plan would mean around 16 percent of potential emissions from burning remaining reserves would still be released – over 50 times current domestic emissions. Going further requires breaking contracts.<sup>134</sup> Fivh suggests the government assists importers to *replace* gas with Norwegian renewables; *oljefondet* could also invest in renewables in those countries. Reducing oil exports will also likely reduce emissions significantly elsewhere by increasing oil prices.<sup>135</sup>

Anticipating this transition’s employment effects is crucial. In order to fulfil the right to work, workers require targeted protection programmes, with retraining, income support while finding new jobs, and relocation assistance. However, there are good reasons for assuming costs will be kept to a minimum. Norway is said to have ‘world class’ technical and

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<sup>128</sup> Hille (n 19 above) 8

<sup>129</sup> Ibid.

<sup>130</sup> Hille (n 3 above) 72-73

<sup>131</sup> Ibid. 26

<sup>132</sup> Ibid. 21

<sup>133</sup> Ibid. 66

<sup>134</sup> Hille (n 19 above) 4-6

<sup>135</sup> Hille (n 3 above) 61-62

research competencies in offshore technologies relevant to renewables.<sup>136</sup> Sintef<sup>137</sup> suggest 100,000 offshore petroleum jobs can be directly transferred to offshore wind. Furthermore, likelihood of relocation is low as there is significant potential for renewable energy in petroleum-dependent regions off the south-west coast where 68 per cent of those directly-employed in petroleum are based.<sup>138</sup> Developing a quarter of the potential outlined in a 2007 offshore wind study would create up to 60,000 jobs, largely in the areas currently dominated by petroleum,<sup>139</sup> while 50,000 sustainable transport jobs (in public transport, shifting goods transport from road to rail, and replacing fossil fuel-powered vehicles) could also be created over the next 20 years.<sup>140</sup> Meanwhile, energy efficiency potential is high, and efficiency measures are highly labour-intensive,<sup>141</sup> while freeing capacity for energy-intensive industries. Ultimately, a human rights-based just transition aims to *avoid* having to resort to reactive protection programmes by creating green jobs and anticipating skills-gaps *in advance*.

Petroleum's industrial development is instructive for green industries. Norway's petroleum industry is described as 'the classic example' of building-up specialist knowledge<sup>142</sup> as required for green technologies. The strategic role of the state in controlling petroleum concessions, mandating that foreign companies work in partnership with Norwegian suppliers and research communities, and generating revenue through windfall taxes<sup>143</sup> has delivered spill-over effects that ensure Norway has managed petroleum to promote national welfare. Similar approaches could apply to green industries. One state-owned enterprise could, like Statoil for petroleum, drive green industrial development. Statoil could do this again, especially if returned to state control, which would also facilitate

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<sup>136</sup> Pöyry Management Consulting (Pöyry), *Norge 2050: Et Paradigmefremsyn – Lille Land, Hva Nå?* (Econ Pöyry and Norsk Klimastiftelse 2011), 29

<sup>137</sup> Pöyry (n 11 above) 45

<sup>138</sup> Ole Sandvik and Johannessen, Jørgen Holck, *Sysselsatte i petroleumsnæringene og relaterte næringer 2011* (Statistikk sentralbyrå 2013), 25-26

<sup>139</sup> Gunnar Steinsholdt, 'Klimajobber i vinden' (*Klimavalg* 2013) <<http://klimavalg2013.no/wp-content/uploads/2013/04/gr-arb-2.pdf>> accessed 19 September 2013, 3

<sup>140</sup> Ytterstad (n 100 above) 40-42

<sup>141</sup> European Commission (EC), *Communication from the Commission to the Council and the European Parliament: 7 Measures for 2 Million New EU Jobs: A Low Carbon Eco Efficient and Cleaner Economy for European Citizens* (EC 2009), 2-3

<sup>142</sup> UN Industrial Development Organization (UNIDO), *Industrial Development Report 2009 Breaking In and Moving Up: New Industrial Challenges for the Bottom Billion and the Middle-Income Countries* (UNIDO 2009), 84

<sup>143</sup> Ole Gunnar Austvik, 'The Norwegian Petroleum Experience' (*Presentation to Exploration and exploitation of hydrocarbons in the gulf of St. Lawrence: Coastal Communities' Concerns Forum. Magdalen Islands, Quebec, Canada* 2011) <[http://www.muniles.ca/images/Upload/5\\_forum\\_sur\\_les\\_hydrocarbures/forum\\_contenu\\_conferences/anglais/5-ole\\_gunnar\\_-\\_norway-experience-english.pdf](http://www.muniles.ca/images/Upload/5_forum_sur_les_hydrocarbures/forum_contenu_conferences/anglais/5-ole_gunnar_-_norway-experience-english.pdf)> accessed 19 September 2013, 8

workers' transitions. Crucially, green industries will not start entirely from scratch. Pöyry estimated 'classic' green industries represented 4 percent of GNP in 2008, employing 89,000 (mostly in sustainable transport).<sup>144</sup> The solar industry is already 'a global player' thanks to knowledge from the process industry for new petroleum fields and 'the same national R&D institutes' that helped develop aluminium.<sup>145</sup> Petroleum developed as it did because state, capital and labour pulled in the same direction; the crucial process is entangling these social relations and pointing them in a new one. Critically, duties of rectification and ecological debt insist Norway use part of the wealth it has accrued through not respecting others' human rights to redress these wrongs (largely in the South). *Oljefondet* – a near-literal manifestation of ecological debt – was designed to ensure future generations share in petroleum wealth. There is no better way to do this, or repay ecological debt, than by using *oljefondet* to reorganise society and support green industries, ensuring sustainable human rights enjoyment.

Ultimately, a human rights-based approach will be won in struggle by social movements. Social movement progression often involves small, successive gains, rather than full-scale agenda implementation – in Gramscian terms, more a “war of position” (a “cultural and informational modality of social transformation”) than “war of manoeuvre”.<sup>146</sup> The challenge is ensuring different actors maintain common goals without being side-tracked into narrower campaigns. First steps could see climate justice proponents unite formally and prioritise mobilising those affected by the transitions, especially petroleum-dependent workers and communities. This has already happened through *Klimavalg 2013* – featuring several unions, environmental organisations and the Norwegian church – which is continuing after its initial focus on the election. It has been argued here that, together, structural human rights approaches pull climate discourses in a more critical direction that provides a framework for analysis and basis for action by these social movements for ensuring a human rights-based transition to a green economy that is both just and effective. Climate justice narratives have highlighted the necessity of social and industrial change for tackling the climate crisis, and the role of work, workers and social movements. Structure-orientated human rights approaches give these discourses a clearer, broader human rights-based definition of justice and a green economy, in addition to international standards and

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<sup>144</sup> Pöyry (n 11 above) 23

<sup>145</sup> Bjørnar Sæther, Isaksen, Arne; and Karlsen, Asbjørn, 'Innovation by co-evolution in natural resource industries: The Norwegian experience' (2011) 40 *Geoforum* 373, 379-380

<sup>146</sup> el-Ojeili and Hayden (n 24 above) 181

principles. Through this, human rights can become catalysts for stuttering climate policy, and reassert their claim to be the principal language of justice.