

**Before the National Contact Point for Responsible Business Conduct Norway**

Civil Society Coalition on Natural Resources, Global Idé, Liech Victims Voices, Norwegian Church Aid, Norwegian People's Aid, PAX, South Sudan Council of Churches, and Swedwatch (complainants) against Aker BP ASA and Aker ASA (respondents)

**Expert note in response to legal opinion by Mr. Jan Södergren dated 18 November 2024**

Professor Marius Emberland

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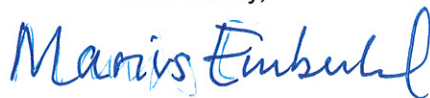
1. I have been asked by Aker BP ASA and Aker ASA to briefly comment on the international human rights law aspects of the legal opinion by Mr. Jan Södergren dated 18 November 2024, submitted to the NCP by the complainants.
2. It is not entirely clear what Mr. Södergren's legal opinion is. He builds on assumptions of domestic Swedish law that *prima facie* appear underdeveloped and incomplete, and he presents a view of what the right to an effective remedy in the context of the European Convention on Human Rights entails that I disagree with.
3. The relevance of Mr. Södergren's opinion is seriously undermined by the fact that he fails to address Swedish procedural law and how the Swedish legal system, including Swedish courts, would consider a claim for compensation based on allegations of extremely serious violations of the most fundamental rights protected by international human rights law. The seriousness of the allegations, and other aspects of the very nature of the case, such as the high number of individuals involved and the fact that acts were performed abroad a long time ago, will without doubt weigh in on any assessment whether formally available remedies provided by the Swedish legal system also can be practical and effective. Such matters of reality are the cornerstone or any interpretation and application of the right to an effective remedy in Article 13 of the European Convention on Human Rights, and it would likewise be so regarding Article 2(3) of the International Covenant on Civil and

Political Rights. The strict standard suggested by Mr. Södergren makes no sense in the context of the present case, and I fundamentally disagree with his interpretation of the European Convention on Human Rights.

4. I have also read Stockholm City Court's decision of 22 November 2023 in the matter B 11304-14. The decision in fact confirms the viability of effective remedies with respect to claims for compensation; it does not negate it. The decision relies on Swedish law of procedure that reflects the need for the courts to be able to effectively and conscientiously handle and decide various claims, both criminal and civil, and the need for the courts to be able to decide claims for compensation based on a satisfactory exploration of facts and law. The decision not to consider the claims for compensation jointly with the criminal case further reflects procedural shortcomings in the claims for compensation filed, not that the claims cannot be handled by Swedish courts: the decision *inter alia* refers to the fact that the claimants – who benefit from the legal advice of their legal representatives – sought to enjoin the civil claims extremely late in the criminal proceedings, that some of the claims lacked requisite authorization for the legal representatives to act on the claimants' behalf, and that claims failed to meet even a minimum threshold of substantiation. The complexity and enormity of the civil claims would also hamper the effectiveness of the legal proceedings already underway. Those were the reasons why the City Court decided not to include the civil claims in the ongoing criminal proceedings. There is nothing in the decision to suggest that their claims cannot be brought before Swedish courts in a separate case.
5. The Stockholm City Court decision illustrates an essential aspect of the right to an effective remedy as understood in international human rights law, notably that even victims of human rights violations must, to the best of their abilities, make use of remedies in principle made available to them. I therefore do not agree with Mr. Södergren that the decision suggests that the relevant remedies are “theoretical and illusory”.
6. I add that Mr. Södergren makes the argument that “a claim for damages and reparation in a Swedish court against other private individuals (in the sphere of individuals themselves), based on the European Court [sic] of Human Rights is not allowed in Sweden” (para. 4). The right to an effective remedy does not, however, require claims for compensation to be based directly on the European Convention on Human Rights or any other human rights convention. What matters is whether the victim has made use of any relevant means of redress. To my knowledge Swedish law – as is the case with the law of most states – clearly provides for the possibility of submitting claims of compensation based on other grounds, such as negligence under domestic compensation law rules, and such claims are universally not limited to the negligence of public authorities.

7. To conclude, nothing in Mr. Södergren's legal opinion is conducive of altering any part of my legal opinions as they have been submitted to the NCP.

Yours truly,

A handwritten signature in blue ink, reading "Marius Emberland". The signature is written in a cursive, flowing style.

Marius Emberland