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Human rights and the environment: recent international developments and their relevance for Brexit debates

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2018 Framework Principles on HRs and the environment ([A/HRC/37/59](#))



- the recognition of a human right to a healthy environment “does not change the **legal content of existing human rights obligations to protect against environmental harm:**
 - “procedural obligations (duties to provide information, facilitate participation and provide access to remedies),
 - substantive obligations (including to regulate private actors) and heightened obligations to those in particularly vulnerable situations”
- “at a bare minimum” States should consider the Framework Principles “as **best practices** that they should move to adopt as **expeditiously** as possible”



2017 report on human rights and biodiversity ([A/HRC/34/49](#))



- Full enjoyment of human rights (life, health, food, water) depends on ecosystem services
- Biodiversity loss or degradation has human rights implications
 - **human well-being (general HR obligations)**
 - **non-discrimination (heightened HR obligations)**
- Ensuring biodiversity conservation & sustainable use is also a matter of international human rights law
- «reasonable» balance between biodiversity protection & other legitimate societal goals (**no unjustified, foreseeable infringements of human rights**)
 - Non-regression
- **International cooperation** (biodiversity financing & capacity building) has HR implications



2018 report on the environment & the rights of the child ([A/HRC/37/58](#))



- children are the **most vulnerable** group to environmental harm
 - because they are developing physically and are less resistant to many types of environmental harm
- **Inter-generational equity**
 - Public participation: need to consider children's views “on long-term environmental challenges, such as biodiversity loss, that will shape the world in which they will spend their lives”
- “in all actions concerning children, the **best interests of the child** must be a primary consideration”



Human Rights Council & the SDGs

([A/HRC/RES/37/24](#) & [A/HRC/RES/37/25](#))



- 2030 Agenda is **grounded** in the Universal Declaration of Human Rights and international human rights treaties
- The implementation of Agenda 2030 must be **consistent** with States' obligations under international human rights law
- 2030 Agenda **seeks to realize** human rights and fundamental freedoms **for all**
 - the Declaration on the Right to Development, recognizing that States have the right and the duty to formulate appropriate national development policies that are aimed at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom

Why does it matter to existing international environmental law?

- **Human wellbeing** is an international human rights matter
- **Inter-generational equity** is a matter of children's rights
- human rights standards can help delimit **States' discretion** in the choice of means of implementation under the CBD by
 - identifying the minimum content of State obligations
 - clarifying necessary procedural guarantees (need for national law & access to remedies)
- int'l biodiversity law provides **concrete guidelines on how to put human rights standards in practice** in complex environmental governance landscape
 - more than a "safeguard"?
 - Moving beyond pre-determined set of development options?

Looking afresh at «sustainable use» of natural resources



- **Sustainable use must not lead to unjustified, foreseeable HR infringements**
- **Assessing impacts** of proposed use on biodiversity ecosystem services upon which human rights of **everyone** to life, health, food and water depend + **disaggregated data on vulnerable groups**
 - Effective regulation & monitoring of the private sector
 - Heightened levels of protection
- «maintaining biodiversity's potential to meet the needs and aspirations of present and future generations» in light of **human rights of children**
 - Primary consideration: children's best interests
- Public engagement vs **procedural rights** in determining what is sustainable use (social dimension of the ecosystem approach + due regard to human rights-holders)
- Private sector engagement vs **business responsibility to respect human rights**

Why recognizing a human right to the environment in Scotland?



It “has proved to have **real advantages**”:

- it “raises **awareness** that human rights norms require protection of the environment and highlights that environmental protection is on the **same level of importance as other human interests** that are fundamental to human dignity, equality and freedom”;
- it “has raised the **profile** and importance of environmental protection and provided a basis for the enactment of stronger environmental laws”;
- “When applied by the judiciary, it has helped to provide a safety net to **protect against gaps** in statutory laws and created opportunities for **better access to justice.**”



- Everyone, without discrimination, has a right to the protection of the environment as a necessary precondition for the respect, protection and fulfilment of human rights.
- Equally the State must respect, protect and fulfil human rights in protecting the environment and pursuing sustainable development, including in the context of international cooperation (Framework Principles 1-3, 16 and 13);
- The State must ensure:
 - affordable, effective and timely public access to information on the environment;
 - public participation in environmental decision-making and take public views, including children's views, into account;
 - access to effective remedies for violations of human rights and environmental laws by private and public actors;
 - and a safe and enabling environment to exercise these rights (Framework Principles 7-10, 12 and 4-5);

- The State must establish and maintain substantive, non-discriminatory and non-retrogressive environmental standards, including additional measures to protect the human rights of the most vulnerable, including children, and of communities that have a close relationship with lands and resources from which they depend for their material needs and cultural life (Framework Principles 11 and 14-15);
- The State must require prior assessments of possible environmental impacts of proposed projects and policies (Framework Principle 8), to avoid any unjustified, foreseeable infringements of human rights (A/HRC/34/49) and give primary consideration to the best interests of the child (A/HRC/37/58).
- “right to a healthy, safe, clean and sustainable environment” ?

Strategic linkages

- Heightening the urgent need to protect biodiversity
- Policy coherence (SDG synergies)
- Legitimacy ([A/HRC/34/49](#))
- New alliances?
- More broadly shared priority for the environment?





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Blog posts 'A reflection on benefit-sharing as a Framework Principle on Human Rights and the Environment (Parts I-II) at
<https://tinyurl.com/y8rabjea> and
<https://tinyurl.com/y9d9bo8p>



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The BeneLex Project

Benefit-sharing for an equitable transition to the green economy

About the project

The BeneLex project aims to investigate the conceptual and practical dimensions of benefit-sharing. To assign in equity the advantages from the conservation and sustainable use of natural resources among different stakeholders. [Click here for more information.](#)

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The BeneLex project aims to investigate the conceptual and practical dimensions of fair and equitable benefit-sharing, including its role and limitations in ensuring fairness and equity in the identification and allocation among different stakeholders of the advantages arising from environmental protection, the sustainable use of natural resources, and the production of knowledge.

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