

Submission to the United Nations Special Rapporteur on Human Rights and the Environment

**Environmental Human Rights Defenders and Healthy Ecosystems and Biodiversity**

29 May 2020

*The following submission concerns our research and campaign on fracking activists in the United Kingdom. Our research is ongoing and thus not published yet, but we are happy to provide further details if necessary. This document provides input for questions 1, 2, 6, 7, 8 and 9 of the questionnaire.*

The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) in their 2019 Global Assessment Report identified climate change and pollution as two of the main direct drivers of biodiversity loss and degradation of ecosystems.[[1]](#footnote-1) These direct drivers are derived from underlying causes such as production and consumption patterns and trade. Without transformative change, the impacts will only increase. This change includes transforming our harmful economic practices - the extraction of fossil fuels often associated with overexploitation, land use change and poor waste management.[[2]](#footnote-2) This is the change that environmental human rights defenders are trying to achieve, standing up for their land and livelihoods. Their efforts are indispensable for achieving the transformation needed to halt global warming and protect and preserve biodiversity and ecosystem integrity.

In the United Kingdom, controversial fracking projects over the past eight years have been met with increasing resistance from climate activists, communities and locals. They are expressing their concerns about the impacts of fracking on local natural environments, as well as the broader issue of the continuing reliance on fossil fuels further exacerbating the climate crisis. Numerous peer-reviewed scientific studies have acknowledged the harm and destruction fracking can cause to communities, individuals and the environment. Impacts include water scarcity[[3]](#footnote-3), water and soil contamination[[4]](#footnote-4), various health issues such cancer and nervous, immune and cardiovascular system problems[[5]](#footnote-5), as well as air pollution[[6]](#footnote-6) and damage to the natural environment.[[7]](#footnote-7) Moreover, the ineluctably linked emissions will further exacerbate climate change, and its identified human rights impacts.[[8]](#footnote-8)

In addition to the direct effects of fracking to the environment and human rights, environmental human rights defenders also experience many related impacts to their human rights. Our ongoing research, including a compilation of media and academic reports and 30 interviews with activists to date (reporting over 120 separate incidents), has exposed the detrimental climate in which these activists stand up for their rights and for the environment. By not effectively protecting the human rights of these environmental human rights defenders, they are not able to adequately address the direct drivers of biodiversity loss and degrading ecosystems.

The policing of fracking protests in the UK has been characterised as being particularly disproportionate, both in terms of scale and conduct. Violent acts committed by the police have created a climate of fear, reinforcing the chilling effect. A plethora of reports and interviews disclose numerous incidents during protests of disproportionate police force[[9]](#footnote-9), sexual violence[[10]](#footnote-10), inappropriate[[11]](#footnote-11) and disproportionate numbers of arrests[[12]](#footnote-12), unfair bail conditions[[13]](#footnote-13) and intimidation.[[14]](#footnote-14) This conduct is regularly aimed at those who are discriminated against, or perceived as vulnerable, such as people with disabilities and the elderly.[[15]](#footnote-15) These systematic and frequent acts are only part of the problem, as policies and conduct outside of the actual protests contribute to the chilling effect on environmental protests. Continuing surveillance[[16]](#footnote-16), sharing activists’ details with the social benefit system[[17]](#footnote-17), the persistent qualification of climate activists as terrorist threats[[18]](#footnote-18) and the distribution of fake news[[19]](#footnote-19) are part of a system that increases fear of participating in environmental action. Another tool used to obstruct those protests aimed specifically at the conservation of biodiversity and the natural environment of a particular area, is granting sweeping and unlawful injunctions on the land where these protests are occurring. These injunctions are found unlawful by the high court[[20]](#footnote-20), but not before wreaking havoc on the lives of activists who violate them when exercising their right to peaceful protest. This conduct is violating a range of human rights, including their right to peaceful protest[[21]](#footnote-21) and their right to be free of cruel, inhumane and degrading treatment.[[22]](#footnote-22)

The practices and impact of the policing conduct could result in psychological torture. The UN Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment in his 2020 report sets out the definition of psychological torture, identifying its various forms. Several of these forms and elements are also clearly retraceable to reports around fracking protests and the impacts as described by activists in our interviews. These include ubiquitous audio-visual surveillance, threats of being sectioned under the Mental Health Act (1983),[[23]](#footnote-23) threats of the use of force and sexual violence, social exclusion and deliberate instrumentalization of arbitrary detention.[[24]](#footnote-24) An example of this was the frequent drone presence at sites. More insidious was the continual daily surveillance: police would call sweepstakes on activists’ morning alarm times based on when they went to the toilet. Police would also openly comment on intimate details about activist's personal lives.[[25]](#footnote-25) The cumulative impact of this surveillance, intimidation, repeated suggestion that the activists are mentally unstable, and threats to their liberty is one of severe psychological suffering. The activists in many cases had no option to leave as this took place in the camps that were the activists’ homes; local residents who sometimes had police come to their houses also had no opportunity to exit the situation. Most of our interviewees reported anxiety, depression, flashbacks, around a third disclosed that they struggle to sleep and have nightmares and other symptoms months after activities at the fracking site were halted.

When faced with police brutality and other discriminate measures, the United Kingdom fails to effectively hold up activists’ procedural rights. On various occasions, public pressure was required to receive information on the grounds on which injunctions were granted. Next to this, access to justice has been impaired on several occasions. Cases not being taken seriously or followed up with[[26]](#footnote-26) have been combined with cases that fail to provide independent judges[[27]](#footnote-27), as well as a proven tendency to disproportionately sentence fracking activists in court.[[28]](#footnote-28) These failures of the justice system, combined with the general environment of suppression of fracking activists, has created a general feeling of injustice and caused individuals to not report violations to their rights to the judicial system.

**State and Business Obligations**

Related to the main drivers of biodiversity loss and ecosystem degradation, States must make the decision to redirect their financial flows away from businesses and projects which harm human rights and do not attain environmental standards, prohibiting fracking and phasing out fossil fuels. In addition, States must effectively regulate the business sector ensuring compliance with environmental and human rights standards. This is not only true for those activities taking place in their own territory, but also for those business operating abroad.

In relation to environmental human rights defenders, States and businesses have specific obligations to ensure their effective protection, their right to peaceful assembly, and should acknowledge their crucial role in addressing the main direct drivers of biodiversity loss and ecosystem degradation, reversing the trend of criminalization of environmental defenders. Examples from our research have shown that the UK diminishes the rights of activists living with disabilities from being involved as environmental protectors, furthermore sexual and gender based oppression undermines intersectional presence at the front lines. When adopting policies and adjusting practices, this should be done through an intersectional approach – by empowering the groups discriminated against, or perceived as more vulnerable instead of targeting them. One way in which this can be achieved is having specific police training aimed at respecting right and dialogue, and repeal current policy that allows the police to target people with vulnerable characteristics.

The United Kingdom must, as other high-income developed States do, lead by example. Their activities already have adverse extraterritorial effects on biodiversity and ecosystems. Based on the principle of common but differentiated responsibilities, the UK must not only halt fracking nationwide and stop polluting, but also set an example in relation to the effective protection of environmental defenders. They must reverse the enumerated trends and stop violating environmental defenders’ human rights, stop violence, reverse the chilling effect, not prosecute vulnerable groups and recognize defenders’ worth, contributions and value.

**Recommendations for the report:**

* **Respect the rights of all people to be a part of upholding biodiversity: halt the use of policy that allows vulnerable and intersectional characteristics of defenders to be exploited by law enforcement,**
* **Protect the human rights of environmental defenders by forbidding use of physical and psychological violence, surveillance and intelligence gathering. The use of anti-terrorism laws is not a legitimate means to bypass State’s obligations to fulfil the right to peaceful protest.**
* **Recognise equality and the right to protest as essential components to protect biodiversity and ecosystem integrity.**

1. Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), Global Assessment

   Report on Biodiversity and Ecosystem Services (2019), Summary for Policymakers under B. [↑](#footnote-ref-1)
2. *Ibid,* B.5. [↑](#footnote-ref-2)
3. http://fwap.org/shale-drilling-destroys-regional-water-resources/; http://www.wri.org/publication/global-shale-gas-development-wateravailability-business-risks; https://www.ceres.org/issues/water/shale-energy/investor-guide-to-fracking-water-risk/investor-guide-tohydraulic-fracturing-water-stress; http://www.foeeurope.org/fracking-frenzy-report-011214. [↑](#footnote-ref-3)
4. *See* Short, D., Elliot, J., Norder, K., Lloyd-Davies, E., & Morley, J. (2015). Extreme energy, ‘fracking’ and human rights: a new field for human rights impact assessments? The International Journal of Human Rights, 19(6), 697-736. [↑](#footnote-ref-4)
5. *See* NRDC, ‘Fracking Fumes: Air Pollution from Hydraulic Fracturing Threatens Public Health and Communities’ (2014), available at: <https://www.nrdc.org/sites/default/files/fracking-air-pollution-IB.pdf>. [↑](#footnote-ref-5)
6. *Ibid.* [↑](#footnote-ref-6)
7. *See* for example UNEP’s “Global Alert” as early as 2012, available at: http://sdg.iisd.org/news/unepglobal-

   environment-alert-raises-concerns-about-gas-fracking/. [↑](#footnote-ref-7)
8. As mentioned in your report A/HRC/74/161 States should prohibit further exploration for additional fossil fuels ‘[s]ince not all existing reserves can be burned while still meeting the commitments of the Paris Agreement’ and fracking is a particularly harmful method of fossil fuel extraction and should be prohibited to ensure a safe climate. [↑](#footnote-ref-8)
9. *See* for example, the assault of Vanda Gillett <https://www.manchestereveningnews.co.uk/news/fracking-protester-who-complained-gmp-6856852>. [↑](#footnote-ref-9)
10. *See* for example NETPOL, *Protesters’ experiences of policing at anti-fracking protests in England, 2016-2019* (2019), p. 33 about the targeted approach to (younger) women at the protests. [↑](#footnote-ref-10)
11. *See* Joanna Gilmore, Will Jackson, Helen Monk, *Keep Moving: Report on the Policing of the* *Barton Moss Community Protection Camp* (2016), p. 40 which is about a clearly unfounded arrest for driving under the influence. [↑](#footnote-ref-11)
12. *Ibid,* p. 36: at the Barton Moss protests, within 20 weeks, 231 individuals were arrested. [↑](#footnote-ref-12)
13. *Ibid,* p. 38. [↑](#footnote-ref-13)
14. *See* for example the kettling and subsequent removal of “tealady” Jackie Brooks: <https://www.thesun.co.uk/news/4653092/shocking-moment-tea-lady-79-is-forcibly-removed-by-12-cops-for-serving-refreshments-to-anti-fracking-protesters/>. More generally, anti-fracking protests are characterized as being over-policed, with around 150 police officers deployed for a small protest <https://www.bbc.com/news/uk-england-manchester-25196705>. [↑](#footnote-ref-14)
15. *See* NETPOL report *supra* note 10, p. 3 (elderly) and <https://civicspacewatch.eu/united-kingdom-police-forces-are-repeatedly-targeting-and-assaulting-disabled-people-involved-in-peaceful-anti-fracking-protests/> (disabled persons). [↑](#footnote-ref-15)
16. *See* for example on surveillance at the Balcombe protests: <https://www.theguardian.com/world/2019/jun/17/domestic-extremism-is-no-way-to-describe-peaceful-protest>. [↑](#footnote-ref-16)
17. *See* <https://www.disabilitynewsservice.com/police-force-admits-passing-footage-of-disabled-protesters-to-dwp/>. [↑](#footnote-ref-17)
18. *See* <http://spinwatch.org/index.php/issues/climate/item/6006-why-are-counter-terrorism-police-still-spying-on-the-anti-fracking-movement>. [↑](#footnote-ref-18)
19. *See* for example, on accusations that anti-fracking protestors groomed a 14-year old boy <https://www.theguardian.com/world/2018/jul/30/anti-fracking-activists-falsely-accused-grooming-boy-14> or the distribution of a police press release that an anti-fracking protestor poisoned a guard dog <https://www.opendemocracy.net/en/opendemocracyuk/curious-case-of-guard-dog-anti-fracking-protestors-and-north-yorkshire-police/>. [↑](#footnote-ref-19)
20. *See* NETPOL Report, *supra* note 10, p. 38. For example, a sweeping injunction in 2019 was qualified as unlawful by the High Court <https://www.theguardian.com/law/2019/apr/03/protesters-hail-legal-victory-over-fracking-firms-injunction>. [↑](#footnote-ref-20)
21. The European Court on Human Rights (EctHR) has specified this in relation to multiple of these incidents: *Nurettin Aldemir v Turkey* (police brutality, chilling effect); *Galstyan v Armenia* (inappropriate arrests), *Ezelin v France* (injunctions and bail restrictions) *Navalnyy v Russia* (disproportionate arrests). [↑](#footnote-ref-21)
22. *See* ECtHR, *Süleyman Çelebi v Turkey* (2016), where the Court argues that policing of protests can amount to cruel, inhumane and degrading treatment and even torture. [↑](#footnote-ref-22)
23. Unpublished interview by Justine Taylor and Fran Lambrick, Not1More, 18 March 2020, Preston New Road. [↑](#footnote-ref-23)
24. Report of the UN Special Rapporteur on Torture, Cruel, Inhumane and Degrading Treatment (2020), UN Doc. A/HRC/43/49. [↑](#footnote-ref-24)
25. Unpublished interview by Justine Taylor and Fran Lambrick, Not1More, 18 March 2020, Preston New Road. [↑](#footnote-ref-25)
26. *See* Keep Moving Report *supra* note 11, p. 22. In public statements, the polices said only 21 complaints were made. Upon pressuring the police, since numbers did not add up, it was made clear there had been between 57 and 77 complaints made and 108 ‘allegations’. [↑](#footnote-ref-26)
27. A judge that sentenced four fracking protestors to months of imprisonment was found to have ties to the fracking company concerned: <https://www.mirror.co.uk/news/politics/judge-criticised-jailing-fracking-protesters-13396324>. [↑](#footnote-ref-27)
28. As apparent from the court of appeal in the case of the “Preston Three” - the court deemed their sentences “excessive and extraordinary” and ordered their release: <https://www.theguardian.com/environment/2018/oct/17/court-quashes-excessive-sentences-of-fracking-protesters>. A fourth protestor did not appeal his 12 to 18 month sentence. [↑](#footnote-ref-28)