



A Synopsis of

A Human Rights Assessment of Hydraulic Fracturing and Other Unconventional Gas Development in the United Kingdom

Commissioned by the Bianca Jagger Human Rights Foundation
 Co-authored by the Global Network for the Study of Human Rights and the Environment, Environment and Human Rights Advisory, and the Human Rights Consortium at the University of London.

The Report is "a preliminary account of the human rights implications of fracking" in the UK and argues that, due to a range of potentially adverse and serious impacts on human health and the environment, "the UK Government has a clear and urgent duty to fully investigate the human rights implications of fracking before authorising any exploratory or extractive fracking operations." The report "strongly recommends a moratorium on the conduct of fracking operations until such a time as a full, industry-independent, publicly funded Human Rights Impact Assessment (HRIA) has been properly undertaken and placed in the public domain."

While noting that the current UK Government is actively promoting fracking despite the well documented health and environmental impacts experienced in the US and elsewhere, the report underscores the fact that, to date, "there has been virtually no consideration at the policy level of the human rights dimensions of fracking."

The Report offers a brief initial account of the human rights implications of fracking for shale gas and of the UK Government's legal and moral responsibilities in this regard. While the report specifically addresses fracking, many of the issues raised are directly relevant to unconventional gas production in general.

The Government's arguments in favour of fracking have focused on claims that greenhouse gas emissions from burning shale gas are lower than those of burning coal, that indigenous fracked gas would cost less than importing liquid natural gas and that relying on indigenous sources of natural gas would contribute to the UK's energy security goals and would lead to lower fuel bills for UK households.

Noting that the factual bases for these claims are questionable and that shale gas efforts may divert attention and investment away from renewable energy sources, the Report details many of the documented risks, harms and uncertainties of fracking, such as the risk of surface and ground water contamination, radiation risks, detrimental impacts on local air quality, triggering of seismic events and impacts on climate change due to CO₂

emissions, fugitive methane emissions and a continued reliance on fossil fuels, etc.

A report submitted to the UN Human Rights Council (HRC) in 2011 argues that the environmental damage caused by hydraulic fracturing for natural gas poses 'a new threat to human rights'. This report concurs and calls attention to the most directly applicable rights, both substantive and procedural, implicated by fracking operations, including the rights to life and security of person, to water and health, to respect for home and private life and to public participation in the decision making processes concerning environmental matters, as well as the human rights dimensions of climate change and the rights of future generations.

The main body of the Report focuses on the most direct sources of human rights liability for the current UK Government. Most fundamentally:

The UK is legally bound to respect and protect human rights, both under the auspices of its own Human Rights Act 1998 [HRA], and of the European Convention on Human Rights and Fundamental Freedoms 1950 (ECHR). The UK is also bound to respect international human rights law — which includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The HRA incorporates rights contained in the ECHR into UK law, enabling citizens to bring human rights claims directly before UK courts. HRA also requires, under section 2, that UK courts take into account any 'judgment, decision, declaration or advisory opinion of the European Court of Human Rights,' (ECtHR) a requirement leading to additional sources of human rights authority. The ECHR is independently significant for the UK Government with respect to ECHR rights violations. Even if the current UK Government were to repeal the HRA, it would still remain bound by ECHR norms. In addition, UK litigants, provided that they have exhausted all national remedies, retain an individual right of appeal to the Strasbourg Court.

Significantly, the ECtHR has taken an approach increasingly responsive to offences against the environment, emphasising that effective enjoyment of Convention rights depends on a healthy environment. For example, the right to life, articulated in ECHR Article 2 can be infringed by failure of the State to inform residents living near dangerous sites of environmental safety risks or by failure to take practical measures to avoid safety risks, an interpretation clearly relevant to fracking operations. The right to respect for private and family life (ECHR, Article 8) has been invoked by the ECtHR when addressing environmental harm, as has respect for the quality of family life and enjoyment of the home as living space (in *Lopez Ostra v Spain* and *Fadayeva v Russia*). Another case, *Taskin and Others v Turkey*, leading to a similar interpretation involved mining operations and may have quite direct human rights implications for residents living near fracking operations. A decisive Council of Europe Parliamentary Assembly Recommendation urged states to 'recognise a human right to a healthy, viable and decent environment, and to 'safeguard

the individual procedural rights to access to information, public participation in decision making and access to justice in environmental matters set out in the Aarhus Convention’.

These precedents are reinforced by ECtHR findings (in *Tatar v Romania*) that the precautionary principle has ‘moved from being a philosophical concept to being a juridical norm’.

The right to peacefully enjoy one's possessions is protected by ECHR Protocol 1, Article 1 (which the UK has ratified and also included in HRA Part II), and the ECtHR has held that protection of this right to property may also require the State to take positive measures to secure the right, a standard directly relevant to Government attempts to permit horizontal drilling below an individual's property without their consent.

In addition to substantive rights, procedural human rights, especially those expressed in ECHR (Article 6: the right to a fair hearing) and the 1998 UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the ‘Aarhus Convention’), also bear directly on fracking issues.

In order for the UK Government to avoid liabilities and meet its human rights obligations, this Report strongly recommends that a moratorium be put in place preventing exploratory and extractive fracking operations until such time as a full, publicly funded, industry-independent, evidence-led Human Rights Impact Assessment (HRIA) has been properly undertaken and provided for public discussion.

The HRIA would need to include, at a minimum, a full science-based examination of human rights-impacting activities associated with fracking; a full analysis of the legal duties borne by the UK Government and public authorities; a thorough analysis of the implications of fracking for climate change effects and the human rights implications of such climate impacts in the UK; and a thorough analysis of the potential human rights impacts of fracking on future generations.

The Report concludes that, given this explicitly *preliminary* assessment of UK and international human rights law and UK common and statutory law, "for the UK Government to proceed with fracking without adequate assessment of the human rights position would amount to a serious failure of responsibility."

Appendices include A) a selected bibliography; B) *A Compendium of Scientific, Medical and Media Findings Demonstrating Risks and Harms of Fracking*; and C) The 2013 Report of the UN Independent Expert on Human Rights and the Environment.