



# Why Scotland needs a Human Right to a Healthy Environment

Emilia Hanna, December 2020

Environmental Rights Centre for Scotland [www.ercs.scot](http://www.ercs.scot)

# Overview

- Why we need a legal right
- International law
- Situation in Scotland
- Key features of a new right

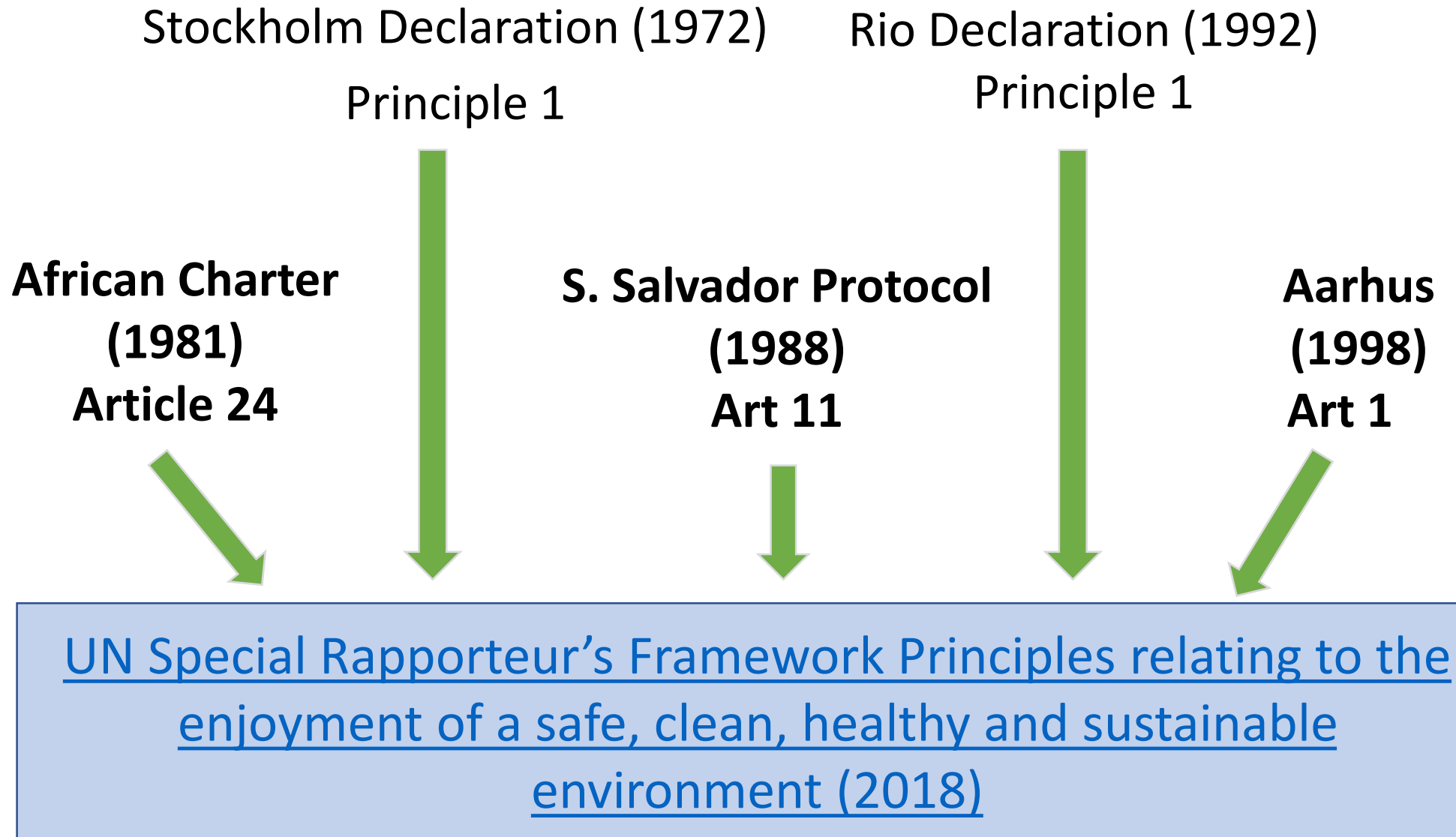


# Why a legal human right to a healthy environment?

- Human Rights laws emerged in response to world wars
- Civil and political rights were top of mind, not the environment
- NOW '**Tipping Point**' - future of humanity is in jeopardy because of environmental destruction



# 50 years of the human right to a healthy environment in international law

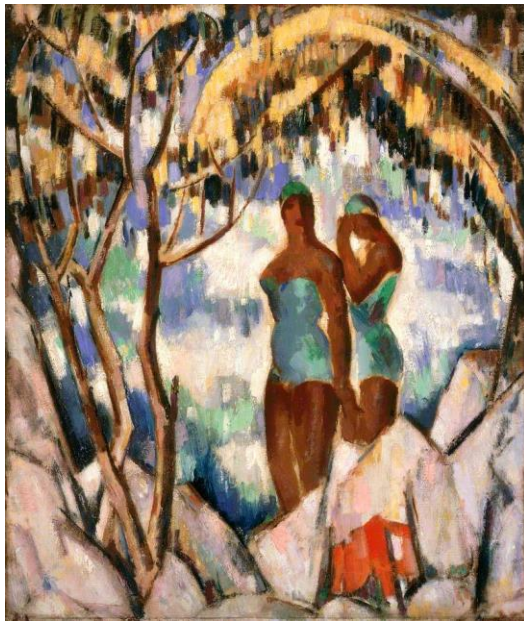




What about Scotland?

## Substantive right

= the human right to a healthy environment



## Procedural rights

= 'Aarhus rights'

Processes that allow us to influence environmental laws and decisions



1. Access to information
2. Right to participate
3. Access to Justice

The substantive right in Scotland:  
human rights law, environmental law...  
...but no human right to a healthy environment

**Human Rights law**

**Human Rights Act 1998**

No human right to a healthy environment

Want to know more? Read  
Prof Lambert [report](#) to  
Steering Committee  
for Human Rights  
2020

**Environmental law**

**EU Directives**

No human rights  
protections

Want to know more? Read  
ERCS [briefing](#) Nov 2020

# The procedural right in Scotland: enshrined via the Aarhus Convention...

Costs	
What Aarhus says	What Scotland does
Review procedures shall be ' <b>not prohibitively expensive.</b> ' (Art 9(4))	<ul style="list-style-type: none"><li>• Legal aid for environmental cases is extremely unlikely</li><li>• Protective Expenses Order Regime is unreliable</li><li>• Costs can run into hundreds of thousands of pounds</li></ul>

*'Access to environmental justice is not currently a basic human right enjoyed by all in Scotland; instead it is a luxury commodity available only to a privileged few'*

(Dr Christman, 2019)

... but Aarhus institutions have consistently found Scotland to  
be in breach



## Status quo

What is **substance** of my claim?

**Complaint under Human Rights Act?**

Only if I am suffering direct violation of other rights already protected



**JR invoking Air Quality Directive?**

Court won't review substance



Can I access review **proceedings**?

Only if I am willing and able to pay a big bill



Air pollution is breaking EU legal limits & a new motorway has been approved



## Human right to a healthy environment in a Human Rights (Scotland) Act

What is **substance** of my claim?

**Complaint under new Human Rights (Scotland) Act?**

My human right to a healthy environment means my right to clean air is not contingent on other rights



**JR invoking Air Quality Directive?**

Court more likely to review substance due to human rights status of env. protections



Can I access review **proceedings**?

Review procedure would be 'not prohibitively expensive'



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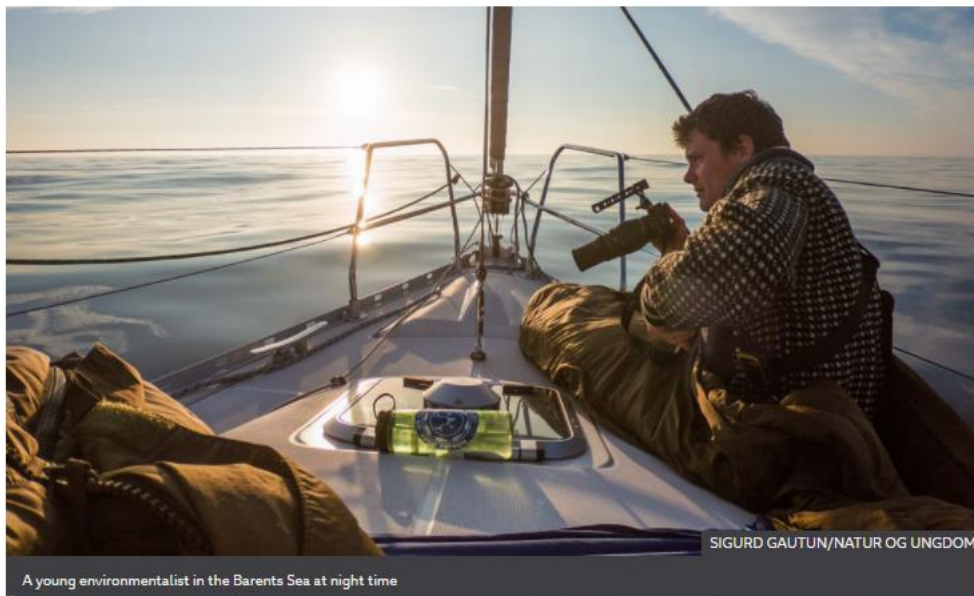
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## The young Norwegians taking their own country to court over oil

By Matilda Welin  
BBC Monitoring

4 November

Climate change



A young environmentalist in the Barents Sea at night time

Youth climate activists say that that by issuing new licences for oil exploration in the Arctic in May 2016, Norway breached its own constitutional obligation to ensure a clean environment for its citizens and future generations

*“[If we win] It will be a game changer... It will show that Nature and Youth were right all along. They would have to listen to us.” – Thor Due, youth campaigner*

# Key features of a human right to a healthy environment

## 1. Well defined

Drawing on the [United Nations Framework Principles](#):

- extend a procedural and a substantive right
- acknowledge that with rights come duties
- articulate principles around justice

## 2. Enforceable

- any person in Scotland can challenge an act or omission or law by a public authority on the grounds of being incompatible with their human right to a healthy environment
- a specialist environmental court should be created

## 3. Supported by capacity-building programme

- to inform public sector duty bearers of their obligation
- to inform citizens of their rights and access to justice in environmental matters

# Conclusion

1. A human right to a healthy environment must be included in a new Human Rights (Scotland) Act
2. It must be well defined, enforceable, and supported by capacity building
3. It can be based on existing international best practice