

## **Ancient Woodlands: The Link between Biodiversity and Cultural Rights<sup>1</sup>**

Scotland is renowned for its ancient woodlands, which cover around 1% of its land area. These sites occupy a unique position within Scotland's natural environment, their complex biodiversity having accumulated over centuries. Many of the species that thrive in ancient woodlands are distinctive of their locality and slow to colonise new areas. These characteristics serve to render ancient woodlands a rare cultural heritage resource, which links the natural with the human and the present with the past. **It is, thus, no exaggeration to say that the value of ancient woodlands is irreplaceable.**

Unless properly assessed and managed, human activities can disrupt the equilibrium of these special, fragile ecosystems, disturbing and displacing native wildlife. To the extent that it encroaches upon people's ability to enjoy access to sites of national and universal ecological and cultural significance, such interference may constitute a human rights violation. **Specifically, the failure to preserve the integrity of Scotland's ancient woodlands could be taken as a violation of the environmental and cultural rights of present and future generations.**

The **1992 UN Convention on Biological Diversity (CBD)**, to which the UK is a signatory, identifies cultural importance as one among several reasons for protecting biodiversity.<sup>2</sup> Its drafters were 'conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components' (Preamble). This statement is meant to guide Parties in the discharge of their obligations under the Convention. Among these is the obligation to establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity (Art 8). Prime candidates for inclusion in this system are 'ecosystems and habitats containing high diversity, large numbers of endemic or threatened species, or wilderness; required by migratory species; of social, economic, cultural or scientific importance; or, which are representative, unique or associated with key evolutionary or other biological processes' (Art 7(a) and Annex I). Ancient woodland ticks a lot of these boxes. It is hardly surprising, then, that CBD Parties have noted 'the exceptional importance of primary forest for biodiversity conservation' and 'the urgent necessity to avoid major fragmentation, damage and loss of primary forests of the planet'.<sup>3</sup>

Failure to protect ancient woodland may constitute a violation of these provisions and, by extension, an infringement upon cultural rights related to the natural environment. Relevant in this regard is **Resolution A/HRC/RES/37/17 on 'Cultural Rights and the Protection of Cultural Heritage'**. Adopted in 2018 by the UN Human Rights Council, the Resolution 'calls upon all States to respect, promote and protect the right of everyone to take part in

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<sup>1</sup> This brief was drafted by Patricia Berlouis, Catherine Hall, and Iona McEntee.

<sup>2</sup> <https://www.cbd.int/doc/legal/cbd-en.pdf>

<sup>3</sup> <https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-30-en.pdf>

cultural life, including the ability to access and enjoy cultural heritage' (Paragraph 1).<sup>4</sup> It further states that the violation or abuse of this right 'may threaten stability, social cohesion and cultural identity' (Preamble). In response, it 'invites States to adopt effective strategies to prevent the destruction of cultural heritage' (Paragraph 11).

An important element of the Resolution is the emphasis it places on the universality of cultural rights and the consideration due to future generations. The Resolution's penultimate paragraph calls for the development of appropriate tools for the dissemination of an approach to the protection, restoration, and preservation of cultural heritage which promotes 'universal respect for cultural rights by all' (Paragraph 14). Elsewhere in the Resolution it is stated that 'damage to cultural heritage, both tangible and intangible, of any people constitutes damage to the cultural heritage of humanity as a whole' (Preamble). A parallel can be drawn between these provisions and the CBD's assertion that 'the conservation of biological diversity is a common concern of humankind' (Preamble). The notion of 'common concern' is used within international environmental law to convey that an obligation is owed to the international community as a whole. Reading the Resolution through the prism of the CBD, one can find in it **an implicit recognition of the universal value of biodiversity as a component of cultural heritage**. Crucially, **the rights and duties stemming from this recognition concern not only present, but also future generations**. According to the CBD, it is to the benefit of both that biological diversity must be conserved and sustainably used (Preamble). The Resolution adds that the 'duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of cultural heritage belongs primarily to the State on whose territory it is situated' (Preamble).

**Taken together, these provisions amount to a clear assertion of Scotland's responsibility to protect its ancient woodland as a cultural heritage resource. This responsibility is owed to both present and future generations.**

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<sup>4</sup> <https://undocs.org/en/A/HRC/RES/37/17>