**Consultation Responses – Dr Stephen J Turner**

 **In response to Dr David Boyd – UN Special Rapporteur on Human Rights and the Environment (Climate Change Consultation – 18th June 2019)**

The Special Rapporteur invites and welcomes your answers to the following questions:

1. Please provide examples of ways in which climate change is already having adverse impacts on the human rights of people within your State. Adversely affected rights could include, among others, the rights to life, health, water, adequate sanitation, food, culture, housing, property, self-determination, non-discrimination, a healthy and sustainable environment, and Indigenous rights.

**United Kingdom**

**Through the greater frequency of extreme weather events there are increased incidences of flooding and heat waves which have their own direct negative impacts but which in turn can affect water quality. These occurrences can be particularly difficult or even fatal for those who are less mobile including the elderly and those with disabilities. Prolonged rainfall, led to significant floods in the winter of 2013-14 and again in the winter of 2015-16. England experienced heatwave conditions in the summer of 2018 (the joint hottest on record).[[1]](#footnote-1)**

1. Given that “[urgent, effective and ambitious action](https://www.ohchr.org/EN/NewsEvents/Pages/BurningDowntheHouse.aspx)” to ensure a safe climate is essential to protecting a wide range of human rights, what are the specific obligations of States and businesses in terms of addressing the main drivers of climate change (e.g. greenhouse gas emissions, deforestation, industrial agriculture)?

**States have the obligation of cooperating internationally to address those aspects of the existing international economic system that are pre-disposed towards outcomes which lead to greenhouse gas emissions and environmental degradation. The legal framework of the international economic system is comprised of a number of component parts that include corporate law, international trade law and international investment law. Addressing the negative aspects of the way that the international community goes about business and trade through this system is crucial if the main drivers of climate change are to be adequately addressed.**

**For example corporate law as we know it now, evolved in the 19th century. However, it contains elements that are common in all jurisdictions, such as the nature of ‘directors’ duties’ that pre-dispose corporate decision-makers to adopt strategies that can potentially be harmful to the environment. This is because the law was designed at a time prior to existing global challenges.**

**Similarly international trade law evolved after World War II as a response to specific challenges of that time. It was not designed to respond to the challenges that the global community now face. It too should be re-designed accordingly.**

**States have an obligation to cooperate to consider the ways that the international economic system can be updated in a manner which continues to facilitate business and trade, but which simultaneously pre-disposes businesses to achieve net neutral greenhouse gas emissions and net neutral impacts upon the environment.[[2]](#footnote-2)**

3. Please provide examples of good practices in preventing, reducing, or eliminating the adverse impacts of climate change on human rights. Specific examples could include legislation, regulations, standards, policies, investments, and programmes in relation to climate change mitigation and/or adaptation. These examples may occur at the international, national, sub-national, or local level. Examples could involve:

-research and monitoring;

-guaranteeing procedural rights (e.g. access to climate change information, public participation in decision-making about climate change, access to justice and remedies);

-eliminating subsidies for fossil fuel production and use; climate change legislation, regulations, standards, and policies;

-initiatives to reduce greenhouse gas emissions from specific sectors (e.g. electricity generation, industry, government, transportation, agriculture, waste management);

-laws, policies and programs to protect vulnerable populations from climate change;

-laws, policies, or programs to concurrently address climate change and air pollution (e.g. programs promoting clean fuels and stoves for cooking and heating); and

-effective enforcement of rules governing greenhouse gas emissions, deforestation, and industrial agriculture.

**Firm National Commitments**

**States can make firm national commitments relating to their GHG emission targets.**

**Bhutan**

**Bhutan made a commitment in 2009 at COP 15 to remain carbon neutral for all time. It is currently carbon negative. It emits 1.5 tonnes of carbon a year and its forests absorb 6 tonnes of carbon per year.[[3]](#footnote-3)**

**National Constitutions**

**States can amend their constitutions to include provisions relating to climate change mitigation and adaptation. This has already occurred in a number of national constitutions which include:**

**Constitution of Ecuador (28 September 2008) art 414.**

**The State shall adopt adequate and cross-cutting measures for the mitigation of climate change, by limiting greenhouse gas emissions, deforestation, and air pollution; it shall take measures for the conservation of the forests and vegetation; and it shall protect the population at risk. [[4]](#footnote-4)**

**Constitution of Tunisia (26 January 2014) art 45**

**The state guarantees the right to a healthy and balanced environment and the right to participate in the protection of the climate.**

**The state shall provide the necessary means to eradicate pollution of the environment. [[5]](#footnote-5)**

 **Constitution of the Dominican Republic (13 June 2015) art 194**

**The formulation and execution, through law, of a plan of territorial ordering that ensures the efficient and sustainable use of the natural resources of the Nation, in accordance with the necessity of adaptation to climate change, is a priority of the State.[[6]](#footnote-6)**

**Additionally, States can amend their national constitutions to include provisions that restrict governments in the actions that they are able to take relating to greenhouse gas emissions, the maintenance and development of carbon sinks and other related aspects of mitigation and adaptation. Examples include:**

**Constitution of Bhutan (Art. 5(3))**

**‘The Government shall ensure that, in order to conserve the country’s natural resources and to prevent degradation of the ecosystem, a minimum of sixty percent of Bhutan’s total land shall be maintained under forest cover for all time.’[[7]](#footnote-7)**

**Constitution of Kenya (Art. 69(1)(b))**

1. **The State Shall:…**

**(b) work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya.[[8]](#footnote-8)**

**National Binding Greenhouse Gas Emission Reduction Legislation**

**UK Government**

**The UK Government set out in the Climate Change Act 2008 a legally binding obligation that it would reduce its carbon emissions compared to 1990 baseline by at least 80% by 2050.[[9]](#footnote-9)**

**(The UK Government is currently considering an amendment of the Climate Change Act 2008 to require the government to have reached net zero carbon emissions by 2050.) [[10]](#footnote-10)**

1. If your State has set a deadline for eliminating coal-fired electricity generation and/or ending the sale of motor vehicles with internal combustion engines, please provide details. If your State imposes a price on carbon emissions, please provide details.

**The UK Plans to phase out its Coal Powered Electricity Generators by 2025.[[11]](#footnote-11)**

**(It is reported that UK plans to end the sale of petrol and diesel cars by 2040.)[[12]](#footnote-12)**

**The UK introduced a ‘carbon price floor’ has put a minimum price on emissions from the power sector. [[13]](#footnote-13)**

5.Please provide evidence related to the implementation, enforcement, and effectiveness of the measures identified in your responses to Questions #3 and 4. This could include information related to budgets (e.g. investments in renewable energy or revenues generated by carbon taxes), human resources (size of agencies responsible for environmental monitoring and enforcement), and measurable outcomes such as reductions in greenhouse gas emissions, declining rates of deforestation, or increases in the area reforested/numbers of trees planted.

**Royal Government of Bhutan**

**To maintain its high level of forest cover (currently 68%) the Royal Government of Bhutan (RGOB) has adopted certain approaches to the way that it manages its forest stock. These can be summarised as follows:**

1. **Significant state intervention.[[14]](#footnote-14)**
2. **Strict policies that limit any loss of forest (even where commercial returns from doing so would be highly significant).[[15]](#footnote-15)**
3. **The adoption an approach that is consistent with the national policy of using Gross National Happiness (GNH) rather Gross Domestic Product (GDP) as a method of measuring the success of economic and governmental activity.[[16]](#footnote-16)**
4. **The adoption of five year plans to achieve its policy objectives.[[17]](#footnote-17)**
5. **A ban on the export of raw timber.[[18]](#footnote-18)**

**UK Government.**

**To achieve the ambitious goals that it has set itself, it has set up the Climate Change Committee,[[19]](#footnote-19) as a body that reviews the government’s performance and sets targets for the government to achieve over five year periods.**

**It approaches this target setting process in a sectoral manner which considers each of the following sectors independently of each other.**

**Power**

**Buildings**

**Transport**

**Agriculture**

**Industry**

**Bioenergy**

**Detailed examples of the way that the CCC operates is illustrated through the actions and recommendations that it has made (See Appendix 1).[[20]](#footnote-20)**

6.What are ways in which high-income States should assist low-income States in responding to climate change, while simultaneously contributing to sustainable development in those low-income States?

**There are many approaches, each has to be judged on its merits. One approach that could potentially be harnessed more successfully, is the further development of public / private partnerships. For example Nissan are developing a project in conjunction with the Bhutanese government to assist Bhutan to move towards zero carbon emissions.[[21]](#footnote-21)**

7. What are the main challenges or barriers that your government, business, or organization has faced in attempting to address the impacts of climate change on human rights?

**Many of the human rights issues that climate change is creating are either future risks or risks that currently affect poor communities in developing countries more acutely. Appreciating the true scale and range of the human rights issues related to climate change is a challenge that requires better communication. This relates especially to the responsibility that States have to mitigate the effects of climate change.**

8. What are ways in which additional protection is provided (or should be provided) for populations who may find themselves in circumstances in which they are particularly vulnerable to climate change (e.g. women, children, persons living in poverty, Indigenous peoples and members of traditional communities, older persons, persons with disabilities, ethnic, racial or other minorities and displaced persons)? What are ways in which these populations can be empowered to act as agents of change in addressing climate change? To adequately respond to these challenges new approaches need to be sought that are

**There will need to be both short-term and long-term solutions developed to assist those who are particularly vulnerable.**

**In the short term, adequate and rapid emergency responses are required to assist communities (and especially the most vulnerable) that face disasters resulting from extreme weather events.**

**In the long term, consistent progress with the SDGs can assist in bringing people out of poverty and alleviate the challenges that are faced by the most vulnerable populations.**

9. How do you ensure that the rights of individuals working on climate change (environmental human rights defenders) are protected? What efforts has your Government or business made to create a safe and enabling environment for them to freely exercise their rights without fear of violence, intimidation, harassment or reprisal?

**Past experience shows that publicity and advocacy can in certain instances assist those who are under threat.**

**Rapid response advocates should be able to attend and report on these issues at short notice to raise international awareness and to make representations to governmental authorities relating to the need to function effectively in protecting those individuals.**

10. For businesses, what policies or practices are in place to ensure that your activities, products, and services (extraction/sourcing, manufacturing, distribution, sale, and end-of life management) minimize climate change impacts and meet human rights standards, especially those articulated in the Guiding Principles on Business and Human Rights?

**Submission of responses**

We strongly encourage you to please send your responses to the questionnaire in Word format **by email** to srenvironment@ohchr.org.

Submissions will also be accepted via regular mail at the following address:

UN Special Rapporteur on human rights and the environment

Thematic Engagement, Special Procedures and Right to Development DivisionUNOG-OHCHRCH-1211 Geneva 10, Switzerland

We kindly request that your submission be concise and limited to a maximum of 5 pages (or 2,500 words), not including appendices or attachments. Due to a limited capacity for translation, we also request that your inputs be submitted in English, French, or Spanish.

To avoid unnecessary duplication: if you have recently replied to other questionnaires from UN human rights mechanisms (or other international bodies) with information that would be relevant to this request as well, we welcome your directing us to those replies.

**The deadline for submission is 8 June, 2019.**

Unless otherwise requested, all submissions will be made publicly availableand posted on the Special Rapporteur’s homepage at the OHCHR website.

**Appendix 1**

**The Sectoral Approach of the UK’s Climate Change Committee (CCC) in Setting Objectives /Targets. (Extract from the CCC website)**

**Power**

**In 2008 the Committee called for a focus on reducing emissions from the power sector as one of the top priorities in decarbonising the economy. This has been a major success area, with emissions down 55% from 2008 to 2016.**

* **Fundamental reform of the electricity market has taken place since the Climate Change Act was passed, in line with the CCC’s recommendations. This includes the introduction of long-term contracts for the generation of low-carbon electricity and a shift to competitive approaches when allocating contracts, these have supported dramatic reductions in the cost of renewable power (for example, costs of contracted new-build offshore wind power has fallen by over 50% from 2015 to 2017. The proportion of electricity generated from renewables has also increased from 12% in 2012 to 30% in 2017. Long-term contracts have allowed construction to begin on the first new nuclear power plant in a generation.**
* **The introduction of a UK ‘carbon price floor’ has put a minimum price on emissions from the power sector. This has helped to drive the transition away from coal to lower-carbon sources of energy – in April 2018 the UK was powered for a three-day period without burning coal.**
* **No new coal-fired power stations have been built since the Climate Change Act was passed, in line with the CCC’s recommendation that new coal plants should only be built if they include technology to capture carbon dioxide emissions, known as Carbon Capture and Storage.**
* **The Government has supported the conversion of existing coal plants to use biomass (burning wood, plants, food waste and other biological matter), instead of investments in new dedicated biomass plants, in line with CCC advice in 2011. The Government has also tightened the sustainability limits for use of biomass in line with the Committee’s advice to 200gCO2/kWh in 2020, moving towards 180gCO2/kWh in 2025, ensuring that bioenergy will become an increasingly clean source of fuel.**
* **Funding of the ‘Levy Control Framework’, which sets a cap on Government subsidies to support renewable energy generation, was set in line with the CCC’s advice at £7.9 bn in 2020/21. Funding for offshore wind and other emerging technologies has been extended to the mid-2020s helping to support investors in developing projects and cutting costs.**
* **The Committee identified offshore wind as a strategic priority for the UK in its 2011 Renewable Energy Review with potential for significant cost reduction and to provide a major contribution to the UK’s low-carbon future. Offshore wind is on track to provide over 10% of UK generation by 2020 with the UK having the largest installed capacity in a growing global market. Offshore wind costs for contracted new-build projects have plummeted close to the costs of new gas-fired generation.**

**Buildings**

* **The Government has set out a high level of ambition on energy efficiency and is seeking to ensure as many UK homes as possible are rated EPC band C by 2035. This is consistent with the Committee’s scenarios, providing that appropriate measures to achieve the Government’s desired ambition are vigorously pursued.**
* **The Government’s strategy to reduce emissions from heating UK buildings is increasingly focussed on heat pumps and low-carbon heat networks, in line with the Committee’s advice. This includes a commitment to phase out the installation of fossil fuel heating in homes off the gas grid during the 2020s.**
* **Research is underway to consider the potential for hydrogen (instead of natural gas) to heat the UK’s buildings. The Government has accepted the Committee’s recommendation to prepare for a set of decisions in the first half of the next decade on the future of the gas grid and how we heat our homes by undertaking an extensive programme of research on hydrogen and electrification of heat as part of a heat strategy update.**
* **The Committee has consistently highlighted the case for making sure that we do not build homes now which required retrofitting in 15 years’ time. In its 2017 Clean Growth Strategy, the Government committed to future-proofing new homes for low-carbon heat as part of a broader review of building standards.**

**Transport**

* **The Committee identified electric vehicles (EVs) as a key part of the low-carbon economy in 2008. Since 2010, when EVs made up less than 0.01% of car sales, the Committee’s central scenario has included EVs accounting for 60% of new car sales by 2030, leaving open the possibility of achieving 100% of new car sales by around 2035. At the end of 2017, sales were over 2% and rising rapidly. The Government has announced that sales of new conventional cars will be phased out by 2040, and policy has followed CCC recommendations with upfront subsidies reducing the costs of purchasing electric vehicles and support for roll-out of improved vehicle charging infrastructure.**
* **CCC analysis of logistics options to reduce emissions from HGVs has been reflected in the Government’s Freight Carbon Review. The Committee drew attention to the gap between reported and real world emissions in a report in 2015. The issue subsequently became a topic of worldwide concern.**

**Agriculture**

* **The Committee commissioned one of the first assessments of the opportunities to reduce emissions from the agriculture sector, laying the foundations for a voluntary industry Action Plan aiming to reduce emissions from agriculture.**

**Industry**

* **The Committee developed a detailed and robust evidence base with buy-in from industrial stakeholders which demonstrates a credible pathway to significant decarbonisation of UK industry. This evidence was accepted by Government with the fourth and fifth carbon budgets being set at levels which imply clear ambition for industrial decarbonisation.**
* **The Committee recommended that the Government should undertake a set of decarbonisation roadmaps, working with the energy-intensive sectors. In 2013, the Government established a £1m research programme on these lines, the Industrial Decarbonisation and Energy Efficiency Roadmaps to 2050. The Committee subsequently recommended that these should be turned into detailed action plans – which was taken forward by Government in the Industrial decarbonisation and energy efficiency action plans.**
* **The Committee has shown that low-carbon policies have not had a major impact to date on the cost of UK manufacturing. If the costs on industrial bills were passed on to consumers in full, they would add 3p to a £10 basket of goods in 2016, and 6p by 2030. The Committee’s analysis of competiveness has shown that current compensation to avoid carbon leakage is broadly appropriate and the compensation needed should decline over time as carbon policies increase in other countries. This has helped support a continued policy focus on reducing industrial emissions.**
* **Building on this, the Government, in its 2017 Clean Growth Strategy, has set out its ambition to deliver a 20% improvement in energy efficiency.**

**Bioenergy**

* **The Government is planning to meet around 10% of the UK’s energy needs with bioenergy in 2050, and has tightened the sustainability limits for use of to 200gCO2/kWh in 2020, moving towards 180gCO2/kWh in 2025, in line with the Committee’s advice. This means that bioenergy (produced by burning wood, plants, food waste and other biological matter) will become an increasingly clean source of fuel.**
* **The Committee’s 2011 Bioenergy Review set out a hierarchy of best use for bioenergy feedstocks, which showed that using wood in construction to displace cement and steel is the best use, followed by BECCS and use in hard to abate sectors such as aviation. This hierarchy of best use has been reflected in Government policy, with an increased use of wood in construction now a policy commitment in the Government’s 2017 Clean Growth Strategy.**
* **The Government has committed to working at the European level to implement tighter sustainability standards on liquid biofuels in line with CCC recommendations.[[22]](#footnote-22)**
1. Environment Agency ‘Climate Change Impacts and Adaptation’ (2018) 6. Available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/758983/Climate_change_impacts_and_adaptation.pdf> (accessed 18th June 2019). [↑](#footnote-ref-1)
2. Stephen J. Turner, ‘A Global Environmental Right’ (Earthscan by Routledge, 2014). [↑](#footnote-ref-2)
3. UNDP, ‘Bhutan Steps up Efforts to Remain Carbon Neutral in the Transport Sector’ (Sept. 2018) Available at: <http://www.bt.undp.org/content/bhutan/en/home/presscenter/pressreleases/2019/bhutan-steps-up-efforts-to-remain-carbon-neutral-in-the-transport-sector.html> (Accessed 18th June 2019) [↑](#footnote-ref-3)
4. Constitution of Ecuador (2008) with amendments (2015). Available at: (Accessed 18th June 2019) <https://www.constituteproject.org/constitution/Ecuador_2015.pdf?lang=en> . [↑](#footnote-ref-4)
5. Constitution of Tunisia Available at: <https://www.constituteproject.org/constitution/Tunisia_2014.pdf> (Accessed 17th June 2019) [↑](#footnote-ref-5)
6. Constitution of the Dominican Republic (2015) Available at: <https://www.constituteproject.org/constitution/Dominican_Republic_2015.pdf?lang=en> . (Accessed 17th June 2019). [↑](#footnote-ref-6)
7. Constitution of the Kingdom of Bhutan (2008) <https://www.nationalcouncil.bt/assets/uploads/files/Constitution%20%20of%20Bhutan%20English.pdf> (Accessed 17th June 2019). [↑](#footnote-ref-7)
8. Constitution of Kenya (2010) <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010> [↑](#footnote-ref-8)
9. s. 1 CCA (2008) (Accessed 17th June 2019) [↑](#footnote-ref-9)
10. UK Government Environment Agency Press release 12th June 2019. Available at: <https://www.gov.uk/government/news/government-announcement-to-end-uks-contribution-to-climate-change> (Accessed 18th June 2019). [↑](#footnote-ref-10)
11. UK Government, Dept of Business, Energy and Industrial Strategy, ‘Implementing the End of Unabated Coal by 2025’ (January 2018) Available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672137/Government_Response_to_unabated_coal_consultation_and_statement_of_policy.pdf> (Accessed 18th June 2019). [↑](#footnote-ref-11)
12. Reuters. Available at: <https://uk.reuters.com/article/uk-britain-emissions/uk-still-plans-to-end-sale-of-new-diesel-and-petrol-cars-by-2040-source-idUKKBN1JF1Q2> (Accessed 18th June 2019) [↑](#footnote-ref-12)
13. UK Government. Available at: <https://www.gov.uk/government/publications/carbon-price-floor-reform> [↑](#footnote-ref-13)
14. Stephen J. Turner, ‘The Constitution of Bhutan: A Quantitative Environmental Standard’ in Turner, Shelton, Razzaque, McIntyre and May (Eds) *Environmental Rights – The Development of Standards* (Cambridge University Press, 2019) 336. [↑](#footnote-ref-14)
15. Ibid [↑](#footnote-ref-15)
16. Ibid at 325. [↑](#footnote-ref-16)
17. Ibid at 335. [↑](#footnote-ref-17)
18. Ibid at 336 [↑](#footnote-ref-18)
19. Climate Change Committee. Available at: <https://www.theccc.org.uk/our-impact/reducing-the-uks-emissions/> [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Nissan ‘Nissan Partners with Bhutan on National EV Strategy’ (2014). Available at: <https://reports.nissan-global.com/EN/?p=14596> (Accessed 18th June 2019). [↑](#footnote-ref-21)
22. Climate Change Committee. Available at: <https://www.theccc.org.uk/our-impact/reducing-the-uks-emissions/> (Accessed 17th June 2019). [↑](#footnote-ref-22)