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Dr David Boyd,

UN Special Rapporteur on human rights and the environment

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

Dear David,

Thank you for this opportunity to submit responses to your consultation process relating to human rights obligations with respect to biodiversity and ecosystems, it is a privilege to be able to participate in this way.

My responses to your questions are detailed below:

**Questionnaire**

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

1. Please provide examples of ways in which declining biodiversity and degraded ecosystems are already having adverse impacts on human rights. Adversely affected rights could include, among others, the rights to life, health, water, food, culture, non-discrimination, a safe, clean, healthy and sustainable environment, and Indigenous rights.

The loss of coral reefs and mangroves provide a good example of biodiversity and ecosystems, the loss of which can impact human rights. The understanding of the value of coral reefs and mangroves has developed through research related to ecosystem services. As such it is understood that coral reefs and mangroves not only provide ecosystems within which fish flourish and therefore in many instances provide a source of food, however they also have the effect of buffering waves, which is particularly important during storms and hurricanes. It is estimated that 70 to 90 per cent of the wind energy generated in sorms and hurricanes is absorbed through coral reefs and mangroves.[[1]](#footnote-1) Therefore poor governance or the mismanagement of coral reefs and mangroves can impact upon numerous rights including the right to live, the right to health and the right to an adequate standard of living.

2. To protect a wide range of human rights, what are the specific obligations of States and responsibilities of businesses in terms of addressing the main direct drivers of harm to biodiversity and ecosystems (e.g. land conversion, loss and degradation of habitat, climate change, overexploitation, pollution, invasive species) and the indirect drivers (unsustainable production and consumption, rapid human population growth, trade, conflict and inequality)?

In relation to States:

This is a difficult question to answer as there are numerous obligations that span across different sectors of government. However I would suggest that at the national level obligations include the following:

Planning law and policy – EIAs and SEAs

Trade law and policy – Laws and policy governing trade in products, the production of which negatively impacts biodiversity and ecosystems.

Certification schemes - such as the Forest Stewardship Council scheme that will certify specific products as having been produced ecologically sustainably.

Laws requiring businesses to engage in non-financial reporting to provide transparency relating to the sources of the raw materials and products that they procure.

Law and policy restricting the use of subsidies for industries that negatively affect biodiversity and ecosystem services.

Conservation law and policy that protects habitats and species

Property / Agricultural law and policy that requires land owners to proactively protect the biodiversity and ecosystems on their land.

An adequate system of consultation and benefit sharing is in place where businesses are engaged in the exploitation and extraction of natural resources.

(There are of course those obligations that exist under international treaties too, many of which correspond with the above).

In relation to Businesses:

Businesses have the obligation to comply with the law within the jurisdiction within which they operate.

In certain jurisdictions this now includes the responsibility of directors to take into account impacts upon the environment in their decision-making. For example, s. 172 of the UK’s Companies Act.

Also France has introduced the Loi PACTE in 2019 i.e Loi 2019-486, the Plan d’Action pour la Croissance et la Transformation des Enterprises. This requires under art. 1833 that companies are managed in such a way that they take into consideration the social and environmental interests that are linked to their activities.

3. Please provide specific examples of constitutional provisions, legislation, regulations, policies, programs or other measures that employ a rights-based approach to prevent, reduce, or eliminate harm to biodiversity and ecosystems or to restore and rehabilitate biodiversity and ecosystems.

Art 5(3) of the Constitution of Bhutan states as follows:

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.

4. If your State is one of the 156 UN Member States that recognizes the right to a safe, clean, healthy and sustainable environment,[[2]](#footnote-2) has this right contributed to protecting, conserving and restoring biodiversity and healthy ecosystems? If so, how? If not, why not?

The UK does not have a written constitution and as such has not formally recognized the right to a safe, clean, healthy and sustainable environment within its constitutional framework. It is however a party to the Aarhus Convention which recognizes the right to a healthy environment.

The UK developed a system of ecological protection during the 20th century that was based to a large degree on the use of protected areas such as national parks and nature reserves. In more recent decades, legislation that includes the Wildlife and Countryside Act 1981 and the Countryside and Rights of Way Act 2000 have introduced measures that enable government authorities to place responsibilities on landowners in instances where issues of environmental protection and conservation are at stake.

As a member of the EU, the UK has had obligations under the Wild Birds Directive (Council Directive 79/409/EEC on the conservation of wild birds) and the Habitats Directive (Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora).

Under these directives, a network of protected areas within the EU was created called Natura 2000.

5. Please provide specific examples of good practices in preventing, reducing, or eliminating harm to biodiversity and ecosystems, or restoring and rehabilitating biodiversity and ecosystems. These examples may occur at the international, national, sub-national, or local level. Where possible, please provide evidence related to the implementation, enforcement, and effectiveness of the good practices (e.g. measurable outcomes such as increases in terrestrial and marine protected areas, increases in Indigenous and Community Conserved Areas, declining rates of deforestation and poaching, or progress in the recovery of species that were previously threatened or endangered).

Bhutan provides examples of good practice as follows:

1. A State policy that emphasizes the value of the environment which is manifested through its principle of Gross National Happiness (GNH). This has been adopted as alternative basis upon which to measure the success of the country’s economy. In other words, it is an alternative to the use of Gross Domestic Product (GDP) as the measure of economic success. GNH is comprised of four pillars: good governance, sustainable socio-economic development, cultural preservation and environmental conservation. The importance of environmental protection in Bhutan has its roots in Buddhism, in particular Mahayana Buddhism that values all forms of life.
2. As noted above Art. 5(3) of Bhutan’s Constitution requires the government to ensure that 60 per cent of the country’s land mass is covered by forest for all time.
3. Bhutan has thus far resisted the temptation to commercialize its forests. Forestry activities are strictly governed by the state.

6. Please identify specific gaps, challenges and barriers that your government, business, or organization has faced in attempting to employ a rights-based approach to preventing, reducing, or eliminating harm to biodiversity and ecosystems.

7. Please specify ways in which additional protection is provided (or should be provided) for populations who may be particularly vulnerable to declining biodiversity and degraded ecosystems (e.g. women, children, persons living in poverty, members of Indigenous peoples and local communities, older persons, persons with disabilities, ethnic, racial or other minorities and displaced persons). How can these populations be empowered to protect and restore declining biodiversity and degraded ecosystems?

A combination of government intervention in land / resource use is required combined with the further development of economic models that recognise the value of biodiversity and ecosystem services. In this way communities can be employed through payments for ecosystem services schemes to secure, protect and manage biodiversity and ecosystems.

See the response to Q. 9 which provides a suggested commercial / economic framework.

8. How do you safeguard the rights of individuals and communities working on biodiversity issues (potentially identified as environmental human rights defenders or land defenders)? What efforts has your Government made to create a safe environment for them to freely exercise their rights without fear of violence, intimidation, or reprisal?

9. There is substantial evidence that consumption in high-income States is adversely affecting biodiversity and ecosystems in low and middle-income States. What are ways in which high-income States should assist low-income States in responding to biodiversity loss and ecosystem degradation, while simultaneously contributing to sustainable development in those low-income States?

It has been argued that an international system of registration of corporations should be established for those companies that ‘operate internationally’.[[3]](#footnote-3) Under this system, all such businesses would be expected to operate on the basis of ‘no net harm’ to the environment (a responsibility to include, but not be limited to pollution, waste generation, greenhouse gas emissions and impacts on biodiversity). It would require all such corporations to purchase insurance that would cover the cost of any potential harm (whether direct or indirect) caused to the environment by their activities.[[4]](#footnote-4) Insurance premiums under this system would be invested into projects run by ‘registered suppliers’ that would protect, restore or conserve the environment internationally. Any claims against a company for environmental damage, or any environmental damage evident through corporate non-financial disclosure requirements, would result in an equivalent off-set being provided by a ‘registered supplier’ of environmental off-sets at the expense of the insurance company.[[5]](#footnote-5)

The international system of ‘registered suppliers’ of environmental off-sets could ultimately facilitate a flow of funds on a sustainable basis to projects in low and middle income States (including those to address biodiversity loss and ecosystem degradation).

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

N/A

Kind Regards

Stephen

Dr Stephen Turner

1. UNEP/WCMC ‘In the Front Line: Shoreline Protection and other Ecosystem Services from Mangroves and Coral Reefs’ (2008) p. 5. [↑](#footnote-ref-1)
2. See, A/HRC/43/53, Annex II. [↑](#footnote-ref-2)
3. Stephen J. Turner, ‘A Global Environmental Right’ (Earthscan by Routledge, 2013) 79-89 [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)