Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10
Switzerland

4th August 2020

Dear Ms Marshall,

Re: PRE/ACCC/C/2017/156: *R (on the application of Christopher Packham) v (1) Secretary of State for Transport (2) The Prime Minister & High Speed Two (HS2) Limited (Interested Party)*

We write to update the Compliance Committee on the above judgment of the Court of Appeal.

We would not normally draw the Committee's attention to a single judgment, but this case concerns a major infrastructure project of great significance and relates directly to a point raised in our original Communication about the importance of an increased scrutiny of review in larger developments.

The case concerns the cabinet's decision to proceed with Phase 1 of the HS2 project between London and Birmingham on 11th February 2020 on the basis of a report (the Oakervee Report) published by an appointed independent panel of experts led by Douglas Oakervee. The £80.7bn project (but now thought to be nearer to £106bn) will directly affect 32 ancient woods and a further 29 will suffer secondary effects such as disturbance, noise and pollution. Emissions from construction of the full HS2 network are estimated to be between 8m and 14m tonnes of CO2e (carbon dioxide equivalent) over the construction period, such that the project will not become carbon neutral for at least 120 years.

A challenge to the Cabinet decision to go ahead with Phase 1 was brought by the Naturalist and campaigner Mr Christopher Packham CBE. Following a refusal of permission for Judicial Review in the High Court in April 2020, a "rolled-up" hearing took place in the Court of Appeal on 8th July 2020. The attached judgment was handed down on 31st July 2020.

The Committee will note that there is some discussion on the appropriate intensity of review to be applied in this case in paragraphs 47-52 of the judgment. In particular, we draw the Committee's attention to paragraph 51, which states: " In our view, however, this is unquestionably the kind of case in which the court should refrain from anything beyond a "light touch" approach, applying the traditional test of "irrationality".

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We contend that this is exactly the type of project that the courts should exert a more intense standard of review (see page 17 of our Communication). It seems perverse that a Local Planning Authority decision to build a garage with no environmental impact will be closely scrutinised by the courts. But when the Government decides to go ahead with one of the biggest ever construction projects - which is admitted will have huge environmental impacts - the court stands back. This does not feel like equality before the law, or public access to environmental justice.

Yours sincerely,

Carol Day (on behalf of the Communicants)