

A Reflection on the Experience of Climate Justice in Ireland

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Introduction

Over the past decade, climate breakdown has come to be recognised as the greatest threat to human rights.² Climate change threatens the right to life, health, food, water, property, education, work, culture, adequate standard of living, means of subsistence, adequate/secure housing, self-determination and a healthy environment.³ The UN Special Rapporteur on Human Rights and Extreme Poverty, Philip Alston, recently highlighted that climate breakdown also poses a growing threat to democracy and the rule of law because of the risk that States will respond to the worsening climate crisis by augmenting executive powers and restricting fundamental rights.⁴ The impact of climate breakdown and the threat it poses to fundamental rights are not evenly dispersed across or even within countries. As Alston further noted, “climate change is, among other things, an unconscionable assault on the poor”⁵ because “the poorest, who have contributed the least to emissions and have the least capacity to react, will be the most harmed.”⁶ He concluded with a warning that “climate change threatens to undo

¹ The author would particularly like to thank Bernard Daly for his input and guidance on this essay.

² See generally: Annalisa Savaresi and Juan Auz, ‘Climate Change Litigation and Human Rights: Pushing the Boundaries’ (2019) 9(3) *Climate Law* 244 which examines the evolution of and growing traction for a rights-based approach to climate breakdown over the past decade; see also: Michelle Bachelet, ‘Global update at the 42nd session of the Human Rights Council: Opening statement by UN High Commissioner for Human Rights Michelle Bachelet’ (Geneva, 9 September 2019) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24956&LangID=E>> accessed: 16 September 2019,

³ Andrea Schapper, “Climate justice and human rights” (2018) 32(2) *International Relations* 275, 279.

⁴ Philip Alston, *Report of the Special Rapporteur on extreme poverty and human rights: Climate change and poverty*’ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24735&LangID=E> [65] accessed: 10 September 2019. Fundamental rights here can be understood to include constitutionally protected rights as well as human rights protected under regional human rights treaties such as the European Convention on Human Rights.

⁵ Human Rights Council, *Report of the UN Special Rapporteur on Human Rights and Extreme Poverty on Climate Change and Poverty* at 21 21 https://www.ohchr.org/Documents/Issues/Poverty/A_HRC_41_39.pdf accessed 5 July 2019.

⁶ *Ibid* at 6.

the last fifty years of progress in development, global health, and poverty reduction.”⁷ Tackling climate breakdown therefore raises serious ethical issues relating to fairness, distributive justice and responsibility.

Climate change is understood not just as a scientific, technological or economic problem but also as an ethical issue. Climate justice can be broadly understood as a concept that “approaches climate change from the perspective of justice, human rights and the responsibility for climate change.”⁸ According to Mary Robinson and Tara Shine:

“Climate justice links human rights and development to achieve a human-centred approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly. It is informed by science and responds to science. As a result, climate justice strives to achieve the 1.5°C temperature goal and avoid dangerous climate change... [it] is underpinned by a desire to respect and protect the human rights of all people, particularly those living in vulnerable situations in the face of climate impacts and through climate actions.”⁹

To reflect on the Irish experience of climate justice, this essay will firstly elaborate on the broader concept of climate justice in theory and under international climate law. The proceeding section will then examine the specific experience of climate justice in Ireland through domestic legislation and just transition programmes.

The concept of climate justice

Climate justice connects a fair and equitable allocation of responsibility for climate change with a rights-based approach to tackling climate change. In terms of responsibility, philosopher Henry Shue observes that in most cases the three main principles for allocating responsibility - the polluter-pays principle; the ability-to-pay principle; and the beneficiary pays principle - all converge upon the same countries, namely, wealthy developed countries bearing the lion’s share of responsibility for tackling climate breakdown.¹⁰ With respect to the human rights dimension, climate justice seeks to safeguard the rights of *all* people, but particularly those

⁷ Ibid at 5.

⁸European Economic and Social Committee, 2017. *Climate Justice* (NAT/712-EESC, 2017) <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/climate-justice>

⁹ Robinson, M and Shine, T. 2018. ‘Achieving a climate justice pathway to 1.5°C’. *Nature*. <https://www.nature.com/articles/s41558-018-0189-7>

¹⁰ Henry Shue, 2015. ‘Historical Responsibility, Harm Prohibition, and Preservation Requirement: Core Practical Convergence on Climate Change’ 2(1) *Moral Philosophy and Politics* 7, 24.

most vulnerable to climate impacts and climate action.¹¹ The United Nations Human Rights Council has identified women, children, indigenous communities, older adults and persons with disabilities in developing countries as particularly vulnerable to the adverse impacts of climate change.¹² Similar trends can also be seen in more developed countries in the Global North where those already disadvantaged in terms of their socioeconomic status or their age¹³ are disproportionately impacted by climate change. Those most vulnerable to climate action itself are often workers from the fossil fuel industry and their communities.¹⁴ It follows that climate justice is particularly concerned with safeguarding the rights of social groups already in vulnerable positions as a result of gender, age, minority status, disability, poverty or work status in the fossil fuel industry.¹⁵ It is worth briefly noting that other variations on the concept of climate justice do exist,¹⁶ but for the purposes of this essay the focus will be on this dominant conception of climate justice outlined above.

Although the Paris Agreement enshrined the ambitious temperature goal of keeping “global temperature rise this century well below 2.0°C above pre-industrial levels and [pursuing] efforts to limit the temperature increase to 1.5°C,”¹⁷ it was not a triumph for rights-based approaches to climate breakdown or a fair allocation of responsibility. The Paris Agreement was the first international climate treaty to make explicit reference to the concept of climate justice, but did so in soft language in the non-binding preambular text.¹⁸ It acknowledged that

¹¹ European Economic and Social Committee, 2017. *Climate Justice* (NAT/712-EESC, 2017) <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/climate-justice> ; See also: Robinson, M. and Shine, T. 2018. ‘Achieving a climate justice pathway to 1.5°C’. *Nature*.

¹² Office of the High Commissioner for Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights* (2009) 15-18 See also: Andrea Schapper, ‘Climate Justice and Human Rights’ (2018) 32(2) *International Relations* 275, 280-281.

¹³ Office of the High Commissioner for Human Rights, 2009. *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights* 15-18 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>; See also: Andrea Schapper, 2018 ‘Climate Justice and Human Rights’ 32(2) *International Relations* 275, 280-281; Also see: European Environmental Agency, 2018. *Unequal exposure and unequal impacts: social vulnerability to air pollution, noise and extreme temperatures in Europe* 6-7. <https://www.eea.europa.eu/publications/unequal-exposure-and-unequal-impacts>

¹⁴ Robinson, M. and Shine, T. 2018. ‘Achieving a climate justice pathway to 1.5°C’. *Nature*. <https://www.nature.com/articles/s41558-018-0189-7>

¹⁵ Office of the High Commissioner for Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights* (2009) 15.

¹⁶ See for example: Lukas Meyer and Pranay Sanklecha, 'Individual Expectations and Climate Justice' (2011) 2 *Analyse & Kritik*, 449 where the authors argue that those living in highly industrialised countries and elsewhere have a legitimate and permissible expectation (subject to certain conditions) to be able to continue emit at an above just per capita level. They assert that such an expectation is morally permissible in circumstances where there is no moral alternative to above per capita emissions or else the alternative is extremely expensive such that we cannot demand people in highly industrialised countries to choose it. However, they heavily qualify this conclusion by emphasising that this permissibility is still limited to necessary emissions.

¹⁷ Article 2(1)(a) of the Paris Agreement, 2015 <https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>

¹⁸ *Ibid*, Recital 13 of the Preamble.

“developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets.”¹⁹ It also recognised that Parties “should, when taking action to address climate change respect, promote and consider their respective obligations on human rights”²⁰ and affirmed the “imperatives of a Just Transition of the workforce.”²¹ However, the Paris Agreement has not been successful in curbing global greenhouse gas (GHG) emissions or putting countries on a pathway to rapid GHG emission reductions. Global GHG emissions for 2019 were 4% higher than those in 2015, when the Paris Agreement was signed.²² References to climate justice, a fair allocation of responsibility, human rights and the Just Transition have not spurred on fair and ambitious climate action and seem, for the time being, to be just of symbolic value. Unfortunately, this experience is also being mirrored at the national level in Ireland: national emissions are predicted to remain above 1990 levels until approximately 2035, even with additional measures.²³ The responsibility dimension of climate breakdown and the human rights implications for already vulnerable groups of our unambitious approach to climate action has failed to gain much traction in legal and policy circles.

The reason climate laws have been difficult to implement, to use the words of philosopher Dale Jamieson, is that tackling the problem raises “fundamental questions of morality” about “how we ought to live, [and] what kinds of societies we want.”²⁴ The Intergovernmental Panel on Climate Change has warned that achieving the ambitious 1.5°C temperature goal of the Paris Agreement “would require rapid, far-reaching and unprecedented changes in all aspects of society.”²⁵ The weak enforcement mechanisms under the Paris Agreement²⁶ means support for ambitious climate action at the domestic level is key. Political support has not been

¹⁹ Ibid, Article 4(4).

²⁰ Ibid, Recital 11 of the Preamble.

²¹ Ibid, Recital 10 of the Preamble.

²² Fiona Harvey and Jennifer Rankin, 2019. ‘Paris climate deal: world not on track to meet goal amid continuous emissions’. *The Guardian*. <https://www.theguardian.com/environment/2019/dec/04/paris-climate-deal-world-not-on-track-to-meet-goal-amid-continuous-emissions>.

²³ EPA, 2018. *Ireland’s Provisional Greenhouse Gas Emissions 1990-2018* https://www.epa.ie/pubs/reports/air/airemissions/ghgprovemissions2018/Report_GHG%201990-2018%20Provisional%20Inventory%20October%202019.pdf, 10;

also see: EPA, 2019. *Ireland’s Greenhouse Gas Emissions Projections 2018-2040* https://www.epa.ie/pubs/reports/air/airemissions/ghgprojections2018-2040/Greenhouse_Gas_Projections.pdf, 18.

²⁴ Dale Jamieson, ‘Ethics, Public Policy and Global Warming’ in Stephen Gardiner, Simon Caney, Dale Jamieson and Henry Shue (eds) *Climate Ethics: Essential Readings* (Oxford University Press 2010) 82.

²⁵ Intergovernmental Panel on Climate Change, ‘Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments’ (*Intergovernmental Panel on Climate Change*, 8 October 2018) <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/> accessed: 10 September 2019; see also: Intergovernmental Panel on Climate Change, *Special Report on Global Warming of 1.5 °C: Summary for Policymakers* (2018) 15.

²⁶ Article 15 of the Paris Agreement.

forthcoming. The reason for a lack of political backing to date is that climate change poses an existential threat to States and institutions committed to capitalist economic systems.

Hickel and Kallis, analysing the viability of the concept of *green growth*, argue that there is “no empirical evidence that absolute decoupling from resource use can be achieved on a global scale against a background of continued economic growth, and absolute decoupling from carbon emissions is highly unlikely to be achieved at a rate rapid enough to prevent global warming over 1.5°C or 2°C, even under optimistic policy conditions.”²⁷ Political actors in capitalist economic systems do not have the tools to leverage meaningful change: business-as-usual, “green-growth” style solutions are proving incapable of tackling the climate crisis. Climate action in many capitalist economies has to date involved deeply unpopular sacrifices for ordinary people, which has made climate policies politically toxic. Yet, levels of concern about climate change are now at an all-time high amongst the public²⁸ making transformative policies necessitated by the ambitious 1.5°C temperature goal - particularly policies that improve peoples’ quality of life - more acceptable. Achieving the 1.5°C temperature goal requires radical climate policies underpinned by strong laws that are effectively implemented and broadly supported by the public: the absence of any of these elements, as we will shall see, undermines meaningful climate action.

The Irish experience of climate justice

Climate justice before the Irish courts and in domestic legislation

Under Irish climate law and policy, the concept of climate justice has not fared well. The centrepiece of Irish climate law is the Climate Action and Low Carbon Development Act 2015, which was enacted by the Fine Gael/Labour government. The 2015 Act sets Ireland a “national transition objective” of transitioning to an undefined “low carbon, climate resilient, and environmentally sustainable economy” by 2050.²⁹ With a view to achieving this national transition objection, the 2015 Act requires the government to approve a National Mitigation

²⁷ Jason Hickel & Giorgos Kallis, “Is Green Growth Possible?” (2018) *New Political Economy*.

²⁸ Adam Corner, “Public opinion on climate change is up but let’s not forget lessons from the past” (*Climate Change News*, 4 March 2020) <https://www.climatechangenews.com/2020/03/04/public-opinion-climate-change-lets-not-forget-lessons-past/>; see also: European Commission, “Citizen support for climate action” https://ec.europa.eu/clima/citizens/support_en

²⁹ Section 3(1) of the Climate Action and Low Carbon Development Act 2015.

<http://www.irishstatutebook.ie/eli/2015/act/46/enacted/en/pdf>

The National Policy position on Climate Change, which envisaged “an aggregate reduction in carbon dioxide emissions of at least 80% (compared to 1990 levels) by 2050 across the electricity generation, built environment and transport sectors; and in parallel, an approach to carbon neutrality in the agriculture and land-use sector, including forestry, which does not compromise capacity for sustainable food production,” provides an indication of what the government understood this “low carbon, climate resilient and environmentally sustainable economy” would entail. See: <https://www.dccae.gov.ie/en-ie/climate-action/publications/Pages/National-Policy-Position.aspx>

Plan (NMP) every 5 years³⁰ which must “have regard to” a range of criteria including the concept of climate justice.³¹ In 2017, the Fine Gael/Independent minority government approved an NMP, for the period 2017 to 2022, which paid no heed and made no reference to the concept of climate justice. The Plan itself has come in for criticism by the Climate Change Advisory Council, an independent statutory body,³² who have described Ireland’s current and projected emissions to 2035 as “disturbing”³³ and have repeatedly warned that: “[Ireland] is not on a pathway towards a low-carbon transition. The 2017 National Mitigation Plan contained insufficient measures to put Ireland on this pathway.”³⁴

Friends of the Irish Environment, an environmental non-governmental organisation, challenged the Irish government’s approval of this Plan on fundamental rights and administrative law grounds. The judicial review challenge, which has been dubbed “Climate Case Ireland,” was dismissed by the Irish High Court in September 2019.³⁵ The judgment was a disappointment for climate activists and human rights scholars alike. While the Court did make some significant findings in relation to standing (the entitlement to bring a case) and justiciability (the competence of the court to hear the case given its potential political ramifications), it stopped short of finding that approving a Plan, which does little or nothing to reduce emissions, was unlawful or in breach of fundamental rights.³⁶

The judgment was particularly disappointing insofar as it completely glossed over the climate justice point. Friends of the Irish Environment had argued that the Irish government did not have adequate regard to the concept of climate justice in approving the Plan. As previously stated, there is not one reference to the concept of climate justice in the Plan, nor does the Plan’s ambition (or lack thereof) reflect anything of the concept of climate justice.

Wealthy countries like Ireland have disproportionately contributed to the problem of climate change but also have the capacity to tackle the problem. A climate just approach would require Ireland not only to comply with its existing climate obligations but to take a lead on decarbonisation, while respecting and protecting fundamental rights of those subject to its jurisdiction. If other countries were to follow Ireland’s climate policies as they stand, the world would be on track for a cataclysmic 4°C of warming compared with pre-industrial levels by

³⁰ Section 3(1)(a) and section 4(1)(b) of the Climate Action and Low Carbon Development Act 2015.

³¹ For the full list of criteria see section 3(2) and section 4(7) of the Climate Action and Low Carbon Development Act 2015

³² Section 8 of the Climate Action and Low Carbon Development Act 2015.

³³ Climate Change Advisory Council, *Annual Review 2018*, iii.

³⁴ http://www.climatecouncil.ie/media/CCAC_AnnualReview2018.pdf

³⁵ *Ibid*, 40.

³⁶ *Friends of the Irish Environment v Government of Ireland* [2019] IEHC 727.

³⁷ *Ibid*.

2100.³⁷ It is therefore difficult to see how the Irish government had any regard whatsoever to the concept of climate justice in approving the Plan. The Irish High Court missed an important opportunity to censure the government for its flagrant disregard for the concept of climate justice here. Given that Ireland's equitable share of the remaining global CO₂ budget is projected to be exhausted by about 2024,³⁸ the High Court could, at the very least, have given an indication as to how this Plan accords with the fair allocation of responsibility dimension of climate justice. The judgment is currently under appeal to the Supreme Court and is due to be heard on 22-23 June, 2020.³⁹ It is hoped that the Supreme Court will seize that opportunity to elaborate on implications of the concept of climate justice for Irish climate law and policy.

There have been a number of legislative developments occurring alongside this judicial review. In April 2018, the Citizens Assembly report 'How the State Can Make Ireland A Leader in Tackling Climate Change' was published.⁴⁰ This report contained 13 recommendations on how Ireland should move forward with more ambitious climate actions. In March 2019, the Joint Oireachtas Committee on Climate Action, which was established to consider these recommendations, published its cross-party consensus report which recommended, among other things, overhauling the 2015 Climate Act.⁴¹ In June 2019, the Government published a Climate Action Plan, a comprehensive climate policy statement containing 183 concrete actions and their emissions reduction potential.⁴² This was followed, in December 2019, with the Draft General Scheme of the Climate Action (Amendment) Bill 2019, which contains the proposed amendments to the 2015 Act and is designed to put the Climate Action Plan into

³⁷ James Glynn, 2018 "The other budget: why it's time for an annual carbon budget". *RTE Brainstorm*. <https://www.rte.ie/brainstorm/2018/1001/999173-the-other-budget-why-its-time-for-an-annual-carbon-budget/>

³⁸ Barry McMullin, Pail Price, Michael B Jones, Alwynne H McGeever, 2019. Assessing negative carbon dioxide emissions from the perspective of a national "fair share" of the remaining global carbon budget. *Mitigation and Adaptation Strategies for Global Change* <https://tinyurl.com/y6tkw383>

³⁹ *Friends of the Irish Environment v Government of Ireland and the Attorney General* [2020] IESCDT 13. <https://www.friendsoftheirishenvironment.org/fie-work/17776-fie-challenge-to-national-development-plan-opens-in-the-high-court> This is now due to proceed by remote hearing subject to further instructions by the Chief State Solicitors Office, see: Mary Carolan, "Supreme Court judges concerned about physical sittings due to Covid-19 risk" (*Irish Times*, 20 April 2020) <https://www.irishtimes.com/news/crime-and-law/courts/supreme-court/supreme-court-judges-concerned-about-physical-sittings-due-to-covid-19-risk-1.4233213>

⁴⁰ Report of the Citizens' Assembly, *How the State can make Ireland a leader in tackling climate change*. 2018 <https://www.citizensassembly.ie/en/how-the-state-can-make-ireland-a-leader-in-tackling-climate-change/final-report-on-how-the-state-can-make-ireland-a-leader-in-tackling-climate-change/final-report-on-how-the-state-can-make-ireland-a-leader-in-tackling-climate-change.html>

⁴¹ Report of the Joint Committee on Climate Action Climate Change, *A Cross-Party Consensus for Action*. 2019 7-14. https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_climate_action/reports/2019/2019-03-28_report-climate-change-a-cross-party-consensus-for-action_en.pdf

⁴² Government of Ireland, 2019. *Climate Action Plan*. <https://www.dccae.gov.ie/documents/Climate%20Action%20Plan%202019.pdf>

law. This Bill would, by law, commit Ireland to net-zero emissions by 2050, it also gives legally binding five-year carbon budgets on greenhouse gas emissions.

While these legislative developments represent progression in Ireland on climate action, the Climate Action Plan has been criticised by Stop Climate Chaos (SCC), a coalition of civil society organisations⁴³, on its lack of ambition in terms of emissions reductions (2% per annum from 2021 to 2030). SCC argues that a much steeper decline of 7% per annum is required to achieve a minimum 80% emissions reduction by 2050, relative to 1990 levels.⁴⁴ While 2% reduction annually is enough to meet Ireland's emission reduction targets under European Union law,⁴⁵ it will fail to meet the reductions required to comply with the Paris Agreement.⁴⁶ According to Carbon Brief, limiting warming to below 1.5°C starting in 2019, without (as of yet under-developed) carbon capture technology, would require a 15% reduction each year through to 2040.⁴⁷ To stay within its equitable share of the carbon budget, Ireland would need to decarbonise well before 2050, which is simply not compatible with the Government's proposed 2% reduction.⁴⁸ This criticism of the Climate Action Plan is made stronger when considering the Amendment Bill (2019) because, if enacted, it could lock Ireland into underperforming rather than maximising the level of ambition.

The Amendment Bill also fails to strengthen Ireland's position on climate justice. It retains the requirement of the Climate Action and Low Carbon Development Act 2015 to "have regard to" criteria such as climate justice in considering whether to approve carbon budgets or climate action plans. However, if there is any lesson to be learned from Climate Case Ireland, it is that statutory language like "have regard to" is too weak to force the government to act in accordance with the fair allocation of responsibility dimension of climate justice. If the responsibility dimension of climate justice is to be taken seriously, this language will need to be strengthened before the Bill passes into law.

Climate Case Ireland and the legislative developments that have followed reveal Ireland's lack of commitment to the responsibility dimension of climate justice and to engaging with the

⁴³ <https://www.stopclimatechaos.ie/>

⁴⁴ Stop Climate Chaos, 2019. *The new Climate Action Plan: Will it lead to a revolution in how we live? Report from the Stop Climate Chaos Coalition and the Environmental Pillar on their analysis of the Climate Action Plan*, 8.

https://www.stopclimatechaos.ie/assets/files/pdf/will_the_new_climate_action_plan_deliver_the_revolution_the_minister_promised_report_july_2019.pdf

⁴⁵ These targets are set out in the 2030 Climate and Energy Framework and comprise at least 40% cuts in greenhouse gas emissions (from 1990 levels); at least 32% share for renewable energy; at least 32.5% improvement in energy efficiency.

⁴⁶ Stop Climate Chaos, 2019. *The new Climate Action Plan: Will it lead to a revolution in how we live? 9.*

⁴⁷ Zeke Hausfather, 2019. "UNEP: 1.5C climate target 'slipping out of reach'" *Carbon Brief*.

<https://www.carbonbrief.org/unep-1-5c-climate-target-slipping-out-of-reach>

⁴⁸ Stop Climate Chaos, 2019. *The new Climate Action Plan: Will it lead to a revolution in how we live? 9.*

human rights dimension of climate impacts. But how has the State responded to the rights implications of climate action itself?

Climate justice and Just Transition policy in the Midlands

With respect to a Just Transition, the ‘litmus test’ for Ireland’s commitment to respecting and protecting the rights of those most vulnerable to climate action will be the treatment of workers and communities in the Midlands affected by the wind-down of peat extraction activities by *Bord na Móna*.⁴⁹ According to the European Trade Union Confederation, a Just Transition comprises five key elements:

1. Social Dialogue encompassing all actors, including worker representatives, involved in industry changes.
2. A guarantee of good green jobs.
3. Access to retraining and education for all workers.
4. Respect for democratic rights to trade union and community representation.
5. A social safety net to support affected workers.⁵⁰

The exigences of transitioning to a zero carbon society have accelerated Bord na Mona’s shift away from peat production and has brought to the fore the need for “urgent, concerted and coherent” action to protect workers and communities with ties to the peat industry for generations.⁵¹ In 2018, Bord na Móna employed approximately 2,000 people directly and another 2,000 indirectly,⁵² but the wind-down of semi state company’s peat extraction activities has already seen hundreds of workers in the Midlands lose their jobs.⁵³

The approach, until now, to the transition reveals a “glaring absence” of any coherent Just Transition framework or national strategy to ensure workers and communities are not left behind.⁵⁴ To date, the measures have included a Just Transition fund of €6 million⁵⁵ for the Midlands to support retraining workers and to assist local communities to adjust to the

⁴⁹ Irish Congress of Trade Unions, 2019. *Building a Just Transition: The Case of Bord na Mona*. 2. https://www.ictu.ie/download/pdf/building_a_just_transition_report_feb_2019.pdf

⁵⁰ Paul Goldrick-Kelly, 2019. ‘Moving towards a Just Transition’. *Nevin Economic Research Institute*. <https://www.nerinstitute.net/blog/moving-towards-just-transition>.

⁵¹ Irish Congress of Trade Unions, 2019. *Building a Just Transition: The Case of Bord na Mona*. 5.

⁵² Kevin O’Sullivan, 2019. ‘ICTU criticises BNM for failing to help staff following peat job losses’ *The Irish Times*

⁵³ Cormac FitzGerald, 2019 ‘Bord na Móna announces plan to redeploy 200 workers’ *The Journal*.

⁵⁴ Irish Congress of Trade Unions, 2019. *Building a Just Transition: The Case of Bord na Mona*. 5.

⁵⁵ The ESB has pledged an additional €5 million and a further €5 million has been pledged by the government for bog restoration and rehabilitation of non-Bord na Móna bogs.

transition. Kieran Mulvey has also been appointed as the Just Transition Commissioner on a non-statutory basis to engage with relevant stakeholders, track developments and make recommendations to Government.⁵⁶ While on the face of it, these measures look good, the Just Transition fund pales in comparison to the 2018 Just Transition deal reached between the Spanish government, unions and employers that will see an orderly wind-down of the coal industry in Northern Spain and €250 million invested in affected communities over the coming years.⁵⁷ The Just Transition deal in Northern Spain has been hailed by the European Trade Union Confederation as a model of Just Transition.⁵⁸ There are similarities between the Spanish coal industry and Bord na Móna in terms of the age profile and size of the workforces,⁵⁹ Patricia King, the general secretary of the Irish Congress of Trade Unions (ICTU), has argued that it could provide a “useful template” for the Just Transition in the Midlands.⁶⁰

As for the Just Transition Commissioner, it is a two-year part-time role and the Commissioner has not yet been given a physical office with support staff.⁶¹ What is more, the terms of reference for the Just Transition Commissioner specify that he should have no role in industrial relations matters in Bord na Móna, who will continue to work with the Joint Industrial Relations Council.⁶² Appearing before the Oireachtas Committee on Climate Action, Patricia King emphasised that the Joint Industrial Relations Council is designed to solve day-to-day issues and would have neither “the wherewithal [nor] capacity” to deal with the issues relating to transition.⁶³ The ICTU have instead called for a Just Transition Forum to be chaired by the Workplace Relations Commission bringing together key stakeholders to reach an agreement on issues currently affecting Bord na Móna workers as well as future employment

⁵⁶ Department of Communication, Climate Action and the Environment, ‘Accelerated Exit from Peat will be accompanied by Just Transition for Workers and the Midlands – Minister Bruton’ (8 November 2019). <https://www.dccae.gov.ie/en-ie/news-and-media/press-releases/Pages/-Accelerated-Exit-from-Peat-will-be-accompanied-by-Just-Transition-for-Workers-and-the-Midlands-%E2%80%93-Minister-Bruton-Accelerat.aspx>

⁵⁷ Arthur Nelsen, 2018 ‘Spain to close most coalmines in €250m transition deal’. *The Guardian*. <https://www.theguardian.com/environment/2018/oct/26/spain-to-close-most-coal-mines-after-striking-250m-deal>

⁵⁸ European Trade Union Confederation, 2019. ‘Spain guarantees a Just Transition for miners’ <https://www.etuc.org/en/spain-guarantees-just-transition-miners?>

⁵⁹ Joint Committee on Climate Action Deb 20 November 2019. https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_climate_action/2019-11-20/debate/mul@/main.pdf

⁶⁰ Ibid.

⁶¹ Joint Committee on Climate Action Deb 18 December 2019. https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_climate_action/2019-12-18/debate/mul@/main.pdf

⁶² Department of Communication, Climate Action and the Environment, ‘Accelerated Exit from Peat will be accompanied by Just Transition for Workers and the Midlands – Minister Bruton’ (8 November 2019).

⁶³ Joint Committee on Climate Action Deb 20 November 2019.

opportunities.⁶⁴ Bord na Móna has not to date agreed to take part in such a forum.⁶⁵ While the exit from peat production has accelerated, successive governments and Bord na Móna have known for a long time this was coming. The paltry Just Transition fund, the under-resourcing and limited terms of reference of the Just Transition Commissioner and the absence of a stakeholder-backed forum are evidence that successive governments have not been preparing or taking the Just Transition and the rights of communities affected by climate action seriously.

As Paul Goldrick-Kelly of the Nevin Economic Research Institute highlighted “properly harnessed, this transition could do more than simply limit damage – it could develop regions and increase living standards.”⁶⁶ The ICTU has recommended that Bord na Móna increase its involvement in renewable energy generation which could create some 4,400 jobs in wind energy and 11,000 jobs in solar energy nationally. It also recommended that Bord na Móna could take a lead in a deep retrofit programme across the Midlands which could create some 18,750 jobs nationally. Many of these jobs could be located in the Midlands and taken up by existing Bord na Móna staff, following the provision of retraining⁶⁷

International experiences documented by Australia’s Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU)⁶⁸ illustrates that the outcome of any transition is not a forgone conclusion.⁶⁹ For example in the case of the coal mining Ruhr Region in Germany, advanced planning, consistent engagement, and dialogue between government, unions and employers over many years saw the region successfully manage the transition to a low carbon economy with decent work for the affected communities.⁷⁰ By contrast, the reactive *ad hoc* policy response to mine closures in Appalachia in the USA, the lack of federal government engagement, and the weakness or absence of unions has exacerbated socioeconomic devastation in the region.⁷¹ These examples show that successful, properly-managed transitions involve effective government engagement, advanced planning and consultation with workers, union involvement and the provision of decent, secure, unionised jobs for the affected workforce. As the ICTU have put it: “Appalachia’s communities were left to the whims

⁶⁴ Ibid. See also: Irish Congress of Trade Unions, 2019. *Building a Just Transition: The Case of Bord na Mona*. 3.

⁶⁵ Joint Committee on Climate Action Deb 20 November 2019.

⁶⁶ Paul Goldrick-Kelly, 2019. ‘Moving towards a Just Transition’ *Nevin Economic Research Institute*, <https://www.nerinstitute.net/blog/moving-towards-just-transition>.

⁶⁷ Irish Congress of Trade Unions, 2019. *Building a Just Transition: The Case of Bord na Mona*. 3.

⁶⁸ Peter Sheldon, Raja Junankar, Anthony De Rosa Pontello, 2018. *The Ruhr or Appalachia? Deciding the future of Australia’s coal power workers and communities IRRC Report for CFMMEU Mining and Energy* https://www.ituc-csi.org/IMG/pdf/ruhrorappalachia_report_final.pdf

⁶⁹ Irish Congress of Trade Unions, 2019 *Building a Just Transition: The Case of Bord na Mona*. 7.

⁷⁰ Peter Sheldon, Raja Junankar, Anthony De Rosa Pontello, 2018. 28-34.

⁷¹ Ibid at 44-46.

of the market and the outcome is proof that the ‘market’ is entirely incapable of delivering anything other than an Unjust Transition.”⁷²

Unfortunately, Bord na Móna’s transition away from peat extraction, to date, seems to be following the footsteps of America, rather than those of Germany or Spain. As Bernard Daly, Regional Officer in Unite the Union put it “the outgoing Government [has] maintained a hands-off approach to the growing crisis in Bord na Móna.”⁷³ This approach risks leaving behind a community who are already being asked to shoulder a disproportionate burden, sacrificing their livelihoods to ensure Ireland does its part to stave off dangerous climate breakdown. Such an approach is fundamentally at odds with the concept of climate justice.

As a semi-state company with a skilled and unionised workforce, the Bord na Móna transition already has many of the key ingredients for a Just Transition. Yet to date, the move away from peat extraction in the Midlands has not gotten any of the five key elements of a Just Transition correct. At a minimum the next government should adequately resource the Just Transition Commissioner, urgently raise the Just Transition fund, and provide a multi-stakeholder mediation service to discuss issues currently affecting Bord na Móna workers and future employment opportunities. This could be done by passing into law the Green Party’s Just Transition (Workers and Community Environmental Rights) Bill 2018 which is supported by the ICTU and would establish such a stakeholder forum similar to that proposed by the ICTU itself.⁷⁴ While Bord na Móna workers and their communities may be some of the first to suffer, they will not be the last group of workers whose livelihoods will be lost to the transition to a zero-carbon society. If the next government and Bord na Móna fail to deliver a Just Transition in the Midlands and abandon these communities, this will inevitably breed valid opposition to vital climate action in other sectors.⁷⁵ The sea-change in Irish politics brought about by the results of the recent General Elections and the coronavirus pandemic offers an opportunity for political leadership to help the Midlands flourish as it transitions away from peat.

Conclusion

Framing climate breakdown as a justice issue is vitally important to ensuring that responsibility for it is fairly allocated and those most vulnerable to climate impacts and climate action are not disproportionately affected. Climate justice language has been gradually making its way

⁷² Irish Congress of Trade Unions, 2019. *Building a Just Transition: The Case of Bord na Mona*. 7.

⁷³ Unite the Union, Ireland Region, 2020 ‘Bord na Móna: Dáil hopefuls to attend Shannonbridge rally on Saturday’. <https://unitetheunionireland.org/2020/01/30/bord-na-mona-dail-hopefuls-to-attend-shannonbridge-rally-on-saturday/>

⁷⁴ See: Just Transition (Worker and Community Environmental Rights) Bill 2018; see also: Irish Congress of Trade Unions, 2019. *Building a Just Transition: The Case of Bord na Mona*. 3.

⁷⁵ Irish Congress of Trade Unions, 2019. *Building a Just Transition: The Case of Bord na Mona*. 2.

into international climate treaties and Irish legislation, but the concept is not yet informing international or national climate action. The Irish experience of climate justice is borne out by weak reference to the concept in the Climate Action and Low Carbon Development Act 2015, the glossing over of climate justice issues in Climate Case Ireland, and the unambitious reform proposals. This demonstrates a lack of political will to commit to a rights-based/fair allocation of responsibility to climate change in favour of maintaining our current capitalist economic system. The reactive and *ad hoc* policy response to Bord na Móna's wind-down of peat extraction and limited engagement with stakeholders reveals the dearth of advanced planning to ensure that these communities, disproportionately impacted by climate action, are not left behind. The Climate Case Ireland appeal to the Supreme Court will give the judiciary an important opportunity to clarify, amongst other things, whether a Plan designed in advance to achieve sub-standard reductions in GHG emission meets the statutory obligation to have regard to climate justice. The political changes afoot could pave the way for more ambitious climate legislation that mandates respect for the concept of climate justice. These political changes could also correct the course of the transition away from peat in the Midlands to ensure those communities do not suffer undue hardship as a result of the State's need to decarbonise. It is imperative that these opportunities are not missed.