

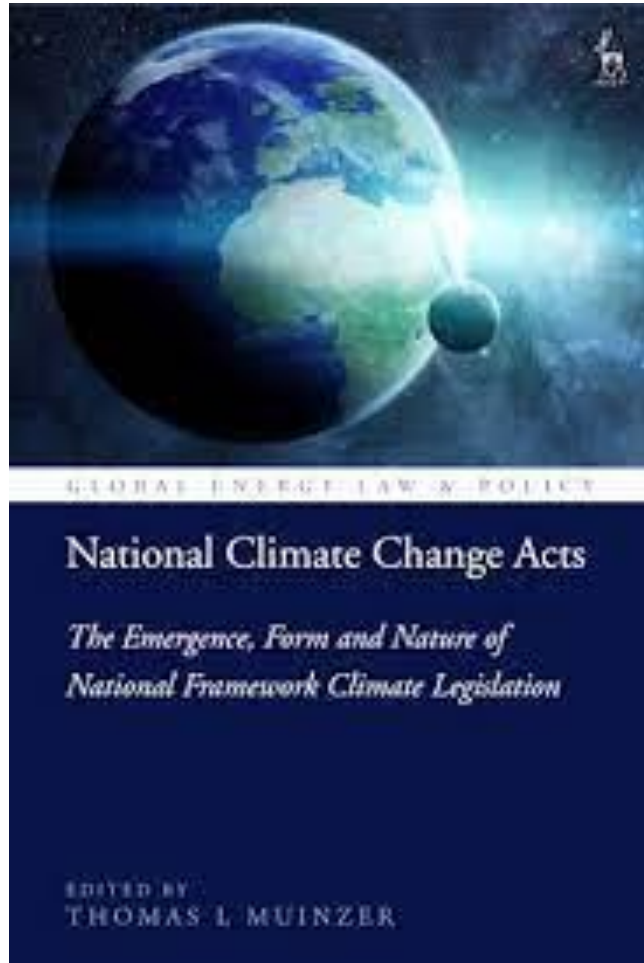
# A legal view of climate justice and just transition

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# Overview

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1. Climate change and the law: Climate change acts
2. Climate justice and just transition
3. Climate justice and just transition in the Climate Action and Low Carbon Development (Amendment) Act 2021
4. Reform



# 1. Climate change and the law: climate change acts

- Climate change acts are “national legislative framework that has been set in place by a state legislature as an Act of Parliament (or equivalent) for the purpose of redressing specific problems posed by climate change in an **overarching or otherwise broadly strategic manner** within that particular country” (Muinzer, 2020, emphasis added)
- Ireland enacted its first climate change act in 2015: the Climate Action and Low Carbon Development Act 2015 and enacted a second generation climate act amending the 2015 Act in 2021: the Climate Action and Low Carbon Development (Amendment) Act 2021.

## 2. Climate justice

- Climate justice is primarily concerned with exposing the uneven responsibility for climate change and contesting the unequal distribution of impacts and response measures, both geographically and socially (Chatterton et al, 2013)
- Grassroots climate justice principles articulated through the Bali, Klimaforum, and Cochabamba Declarations have called for:
  - leaving fossil fuels in the ground;
  - financial and technology transfers from the global north to the global south to recognise and discharge ecological debt;
  - food and land sovereignty for vulnerable communities;
  - rejecting purely market-based or technological solutions (like carbon markets or negative emissions technologies);
  - and a recognition of a set of legal rights for other species and ecosystems
- Enshrined in the Paris Agreement directly through a preambular reference and indirectly in the Paris Agreement and United Nations Framework Convention on Climate Change (UNFCCC) through guiding principles like equity, common but differentiated responsibility and respective capacities (CBDDRC) and developed country leadership.



## 2. Just transition

- Originates from the 1970s North American trade union movement.
- Narrow definition, highlights the need to provide **state supports to workers and communities** who will lose their livelihoods due to the phasing out of fossil fuels. Broader definition calls for justice not just for workers but for a much **wider constituency** and emphasises the **importance of not continuing to sacrifice the wellbeing of vulnerable groups for the sake of advantaging other privileged groups**, as has been common practice in our fossil fuel-based economies (Eisenberg, 2019)
- Just transition is often seen to refer to policies at the national level, whereas climate justice is seen to have more of an international focus (O'Neill et al, 2022)
- In 2015 the International Labour Organisation (ILO) Guidelines on Just Transition were adopted; preambular reference in Paris Agreement to “the imperatives of a just transition”; reiterated in the 2018 Silesia Declaration to which Ireland was a signatory.



### 3. How has climate justice been incorporated into the 2021 Climate Act?

- Like the 2015 Act, the climate justice is left undefined and incorporated into the 2021 Act through a weak “have regard to” obligation
- Requirement that in preparing and approving annual climate action plans & national long term climate action strategies, government/minister must “have regard to” climate justice (amongst a list of 17 other criteria).
- Similar obligation on the Climate Change Advisory Council to have “regard to climate justice” in the preparation of carbon budgets.
- In *FIE v Government of Ireland* [2020] IESC 49, the Government argued that regard was had to climate justice based on a single reference to CBDRRC in the National Mitigation Plan, even though emissions were set to rise under the Plan.



Image: Emily Robyn Archer

# 3. How has just transition been incorporated into the 2021 Climate Act?

- Unlike the 2015 Act, the 2021 Act does contains a reference to just transition.
- Obligation that in preparing and approving annual climate action plans & national long term climate action strategies, government/minister must “have regard to” the requirement for a just transition to a climate neutral economy (amongst a list of 17 other criteria).
- Just transition defined in weak terms: “which endeavours, in so far as is practicable, to (i) maximise employment opportunities, and (ii) support persons and communities that may be negatively affected by the transition”
- Definition ignores central tenets of the just transition such as the creation of *decent work* (as defined by the ILO) & the Act does not mention the importance of representative and participatory social dialogue.

The screenshot displays the Irish Statute Book (ISB) website interface. At the top, the ISB logo is visible alongside navigation links for 'Séanadh | Aiseolas | Deasc chabhrach | English' and 'Produced by the Office of the Attorney General Táirgthe ag Oifig an Ard-Aighne'. A main navigation bar includes 'Home', 'Legislation', 'Constitution', 'External Resources', and 'FAQ'. Below this, a search bar is present with a 'Search' button and a 'Cuardach' button. The search filters are set to 'TitleTeideal' and 'Year(s) or rangeBliain nó blianta nó raon' with 'i.e. 2015, 1990-1999' entered. The search results show 'Climate Action and Low Carbon Development (Amendment) Act 2021'. The page content includes a breadcrumb trail: 'HomeBaile > ActsAchtanna > 2021 > Climate Action and Low Carbon Development (Amendment) Act 2021'. The main heading is 'Climate Action and Low Carbon Development (Amendment) Act 2021'. Below the heading, there are buttons for 'View by SectionAmharc de réir Ailt', 'View Full ActAmharc ar an Acht Iomlán', 'Bill History Stair Bille', 'Open Pdf Oscail PDF', and 'Print Full ActPrintáil an tAcht Iomlán'. A small box indicates 'Commencement, Amendments, Sís made under the Act Tosach Feidhme, Leasuithe, IRI arna ndéanamh faoin Acht'. At the bottom, the page number 'Number 32 of 2021' and the full title 'CLIMATE ACTION AND LOW CARBON DEVELOPMENT (AMENDMENT) ACT 2021' are displayed.



# 4. Reform: how could climate justice and just transition be incorporated differently?

## *Stronger definitions*

- **Climate justice principles** mean “the importance of taking action to reduce global emissions of greenhouse gases and to adapt to the effects of climate change in ways which (a) **support the people who are most affected by climate change but who have done the least to cause it and are the least equipped to adapt to its effects**, and (b) help to **address inequality**.” (Scottish Climate Act 2019)
- **Just Transition** means “A transition that ensures the economic, environmental and social consequences of the ecological transformation of economies and societies are managed in ways that **maximise opportunities of decent work for all**, reduce inequalities, promote social justice, and support industries, workers and communities negatively affected, in accordance with nationally defined priorities, and based on **effective social dialogue**.” (JOCCA, 2020 based on submission from ILO)



# 4. Reform: how could climate justice and just transition be incorporated differently?

## *Accompanying obligations*

- In preparing and approving climate policies and carbon budgets, the minister/government shall act in a manner **consistent with** climate justice and just transition (JOCCA, 2020)
- A duty to **explain** how climate justice is advanced and just transition have been taken into account in setting climate policies, similar to the Scottish Climate Act 2019 (Jackson, 2020; TASC, 2020).

## *Other measures that could effectively operationalise climate justice and just transition in Ireland*

- A legally binding decarbonisation date based on equity (complete decarbonisation by ~2030)
- Stronger legislative 'keep it in the ground' measures.
- Committing to making a 'fair share' contribution to climate finance.
- Constitutionalising a right to a healthy environment and safe climate as well as constitutional stewardship duties towards future generations and non-humans.
- Establishment of an adequately resourced Just Transition Commission with a broad remit (TASC, 2020)
- Scaling up of community owned energy projects as a form of transformative just transition.

Thanks for listening!