

Submission to the Special Rapporteur on Extreme Poverty and Human Rights

June 10th 2020

**The Relevance of Human Rights Law to
Just Transitions**

*A legal perspective on Ireland's climate-driven 'just
transition' process*

By Clare Profous



“Just Transition—the idea that justice and equity must form an integral part of the transition towards a low-carbon world—is increasingly being mobilised both to counter the idea that protecting the environment and protecting jobs are incompatible, and to broaden the debate to justice-related issues such as the kinds of jobs and societies we envision for the future”.

Just Transition Research Collaborative¹

¹ Dunja Krause, ‘Why Human Rights-Based Social Protection is Needed in Climate Change Responses: A Just Transition’ (*Social Protection Human Rights*, 21 March 2019) <<https://socialprotection-humanrights.org/expertcom/why-human-rights-based-social-protection-is-needed-in-climate-change-responses-a-just-transition/>> Accessed 14 March 2020.

Introduction

The threat of climate change attributed to human activities has become a topic of debate over recent decades. Calls to moderate high carbon dioxide (CO₂) and other greenhouse gas (GHG) emitting practices have become highly publicised, with public opinion influencing changes to industry. These may not have been carried out swiftly when taking into consideration how long scientists have spread awareness of climate change, but they were for those whose livelihoods were eliminated with fast paced changes to policy.

The Republic of Ireland is one of 195 states to have signed the 2015 Paris Agreement.² Under this legal instrument, Ireland has committed to work towards limiting “the global temperature increase to 1.5°C above pre-industrial levels”³ via “economy-wide absolute emission reduction targets”.⁴ In compliance with the Paris Agreement, Ireland is obligated to “take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases...”⁵ Such sinks include peatlands, or bogs,⁶ which are prominent in Ireland, accounting for over “20.6% (1,466,469 hectares) of the national land area and contain more than 75% of the total soil organic carbon in Ireland...”⁷ In an effort to meet UN targets and to avoid the monetary and reputational penalties, peat production is expected to halt in Ireland.

Case Study: Ireland and the Peat Industry

The Situation – The Significance of the Departure from Peat

The Midlands region of the Republic of Ireland, encompassing counties Laois, Longford, Offaly and Westmeath, has a population of nearly 500,000.⁸ Despite being referred to as the ‘heart of Ireland’, the average income is only 60% of the national average; according to the Central Statistics Office (CSO) the average 2015 disposable income in the Midlands was €17,846 per person, while the national average was €20,334.⁹ Foreign direct investment (FDI) to the Midlands region is the lowest in the country,¹⁰ as was the IDA’s (Ireland’s inward investment promotion agency) support for job growth

² United Nations, ‘What is the United Nations Framework Convention on Climate Change?’ (UNFCCC, 2020) <<https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change>> accessed 17 March 2020.

³ Services Industrial Professional and Technical Union, ‘There are No Jobs on a Dead Planet: What a Just Transition Means for Workers’ (SIPTU, 2017).

⁴ Paris Agreement 2015, art 4.

⁵ Paris Agreement 2015, art 5 (1); Irish Congress of Trade Unions’ Energy & Natural Resources Sectoral Group, ‘Building a Just Transition: The Case of Bord na Móna’ (ICTU, 2019).

⁶ These may be referred to as: Peatlands, bogs, fens, mires

⁷ John Connolly and Nicholas Holden, ‘Mapping peat soils in Ireland: updating the Derived Irish Peat Map’ (2009) 42(3) Irish Geography 343–352.; Antaisce, ‘Ireland’s Peatlands’ (Antaisce, 2018) <<http://www.antaisce.org/issues/irelands-peatlands>> Accessed 02 March 2020.

⁸ IDA Ireland, ‘Doing Business in Ireland’ (IDA Ireland, 2019) <<https://www.idaireland.com/doing-business-here/locations/midlands>> Accessed 20 April 2020.

⁹ Central Statistics Office, ‘County Incomes and Regional GDP’ (CSO, 2018) <<https://www.cso.ie/en/releasesandpublications/er/cirgdp/countyincomesandregionalgdp2015/>> Accessed 10 June 2020.

¹⁰ IDA Ireland, ‘Doing Business in Ireland’ (IDA Ireland, 2019) <<https://www.idaireland.com/doing-business-here/locations/midlands>> Accessed 20 April 2020.

in 2016-2017,¹¹ despite IDA Ireland’s description of the Midlands as a ‘thriving vibrant region’.¹² As a result of these disparities, job loss is felt especially strongly in the region.

Peat extraction has long been a source of employment in the Midlands, largely via the semi-State run company, Bord na Móna. The Department of Communications, Climate Action and Environment (DCCA) is Bord na Móna’s partner government department, and while the government holds the majority of the company’s shares (95% are owned by the Irish government, and 5% are owned by current Bord na Móna employees) it would appear that DCCA officials have little say in daily operations of the company.¹³ Bord na Móna’s shares are non-transferable, and cannot be sold to individuals outside of the company.¹⁴

In August 2018, Bord na Móna announced that it would stop extracting peat “for energy production by 2030”.¹⁵ By December 2018 the exit date had moved up by two years – meaning that the new target date for the cessation of peat extraction is 2028.¹⁶ In reality, however, changes in the peat industry have already affected workers, with redundancies in place as of 2019.¹⁷

Key Concerns raised by Workers – the Need for New Employment

The fast-tracked closures in the peat industry raise questions regarding the future of the workers and communities, and what alternative employment opportunities exist for those in the peat industry and for workers whose companies are reliant on business from Bord na Móna or ESB (Electricity Supply Board). Alternatives proposed to date have included aquaculture, retrofitting, bog rehabilitation, biofuel, wind farm and solar panel maintenance and resource recovery - the use of refuse to create energy via heat combustion.¹⁸ While ideas for re-training and up-skilling have been proposed by Bord na Móna and labour unions, it appears that no comprehensive study has been conducted determining the plausibility of the suggestions and the preferences of the workers.¹⁹ Some of the proposed employment alternatives (i.e. forestry, aquaculture and retraining at locations that would require workers to use private transport) may raise concerns regarding further ecological and structural damage to the bogs and increased release of GHG.

Trade unions including SIPTU have published their recommendations for the just transition process, including the abovementioned alternative areas of employment and worked to “protect the conditions and jobs of [...] workers who currently work in the company and to ensure that those who

¹¹ Irish Congress of Trade Unions’ Energy & Natural Resources Sectoral Group, ‘Building a Just Transition: The Case of Bord na Mona’ (ICTU, 2019).

¹² IDA Ireland, ‘Doing Business in Ireland’ (IDA Ireland, 2019) <<https://www.idaireland.com/doing-business-here/locations/midlands>> Accessed 20 April 2020.

¹³ Clare Profous, ‘Ensuring a Just Transition for Workers in the Irish Peatlands’ (TCD, 2019).

¹⁴ According to a conversation that the author has had with someone within the peat industry.

¹⁵ Bord na Móna, ‘Bord na Móna Reports Robust Performance, Significant progress on Decarbonisation’ (Bord na Mona, 2018) <<https://www.bordnamona.ie/company/news/articles/bord-na-mona-reports-robust-performance-significant-progress-on-decarbonisation/>> Accessed 28 February 2020; Bord na Móna, ‘Continuing the change for a sustainable future. Annual Report 2018’ (Bord na Móna, 2018) <<https://www.bordnamona.ie/wp-content/uploads/2018/07/BNM-Annual-Report-2018.pdf>> Accessed 28 February 2020.

¹⁶ Bord na Móna, ‘Bord na Móna accelerates Decarbonisation’ (Bord na Móna, 2018) <<https://www.bordnamona.ie/company/news/articles/bord-na-mona-accelerates-decarbonisation/>> Accessed 28 February 2020.

¹⁷ According to a conversation that the author has had with someone within the peat industry.

¹⁸ Bord na Móna, ‘Resource Recovery’ (Bord na Móna, 2020) <<https://www.bordnamona.ie/company/our-businesses/waste-and-recovery/>> Accessed 01 May 2020.

¹⁹ According to a conversation that the author has had with someone within the peat industry.

wish to voluntarily leave can do so with dignity and respect”.²⁰ However, SIPTU also highlighted the age demographic and lack of employment opportunities in the region as a challenge to re-training and upskilling.²¹

In 2019, personalised tables were provided to the author by the CSO regarding those individuals engaged in “the extraction of peat” in the Midlands.²² Some possible concerns that arise from the CSO data includes the location of the workers and a lack of public transport within the region, meaning that retraining facilities and employment opportunities may be inaccessible without private transport – thus hindering GHG cutting initiatives. The lack of public transport in the region has also been flagged as a concern by recently appointed Just Transition Commissioner, Kieran Mulvey.²³

The age profile presented in the CSO data could be something to consider with regards to upskilling and re-training, and has been brought up by some Bord na Móna employees: “There’s a lot of rhetoric about retrofitting and training workers [...], but it’s just not a reality in the midlands. [The workers’] age profile alone won’t be enough to make it a reality...”²⁴ The mean age of workers engaged in peat extraction is 46.8 years of age, with 581 between the ages of 50-64 (49% of peat workers nationally). This bracket is followed by 35-49 year-olds (339 workers).²⁵

Government Actions and Policy Gaps

Just transitions have been incorporated as a “key part of the Climate Action plan” in Ireland, with the long awaited creation of a Just Transition Fund and the appointment of a Just Transition Commissioner at the end of 2019.²⁶ On October 8th, 2019, approximately one year after Bord na Móna’s initial announcement regarding the end of peat extraction, the Irish government announced that they would allocate funds to the just transitions cause in the Midlands as part of its 2020 National Budget. To this end, “a portion of the carbon tax revenues” in 2020 will be used “to fund a package targeted at the Midlands [including] twenty million euro[s for the] creation of a new energy efficiency scheme targeted, initially, at the social housing stock in the region.”²⁷ An additional 5 million euros has been specifically allocated for ‘peatland rehabilitation’, and 6 million euros has been allocated into the ‘Just Transition Fund’.²⁸

The government has stated that to determine the best use of the just transition funds, “relevant stakeholders” will be engaged with by the newly appointed Commissioner, National

²⁰ Jack Quann, ‘All Bord na Móna Jobs Now Under Threat, Trade Union Claims’ (*NewsTalk*, 2019)

<<https://www.newstalk.com/news/bord-na-mona-jobs-now-threat-trade-union-claims-909109>> Accessed 10 June 2020.

²¹ Services Industrial Professional and Technical Union, ‘There are No Jobs on a Dead Planet: What a Just Transition Means for Workers’ (*SIPTU*, 2017).

²² See Appendix: CSO Midlands ‘the extraction of peat’, 2016

²³ Kieran Mulvey, ‘Just Transition Progress Report’ (*DCCAE*, 2020)

<https://www.dccae.gov.ie/documents/Just_Transition_Progress_Report.pdf> Accessed 05 June 2020.

²⁴ Orla Dwyer, ‘I do feel let down’: Midlands Bord na Móna workers in documentary on peat transition’ (*thejournal.ie*, 2020) < <https://www.thejournal.ie/bord-na-mona-workers-offaly-4991919-Feb2020/> > Accessed 10 June 2020.

²⁵ Based on 2016 CSO census.

²⁶ Houses of Oireachtas, ‘Climate Action Committee to Meet Recently Appointed Just Transition Commissioner’ (*Houses of Oireachtas*, 17 December 2019) <<https://www.oireachtas.ie/en/press-centre/press-releases/20191217-climate-action-committee-to-meet-recently-appointed-just-transition-commissioner/>> Accessed 19 March 2020.

²⁷ Houses of Oireachtas, ‘Just Transition Fund’ (*Houses of Oireachtas*, 16 October 2019)

<https://www.oireachtas.ie/en/debates/question/2019-10-16/72/#pq-answers-61_69_72> Accessed 19 March 2020.

²⁸ Houses of Oireachtas, ‘Just Transition Fund’ (*Houses of Oireachtas*, 16 October 2019)

<https://www.oireachtas.ie/en/debates/question/2019-10-16/72/#pq-answers-61_69_72> Accessed 19 March 2020.

Economic and Social Council (NESC), and the local taskforce.²⁹ This engagement includes direct reference to “Bord na Móna and the relevant unions” but no direct reference to the individual workers and communities. Budget 2020 goes on to state that “investment of this scale in energy efficiency will support over 400 environmentally sustainable jobs, with up to 100 more jobs through expanded peatlands rehabilitation,”³⁰ but there is little information regarding the nature of these jobs and the amount of up-skilling or re-training required. According to the government, the allocation of funds to retrofit social housing is in line with the aim of a just transition while also meeting carbon saving goals, and it is true that a number of unemployed peat workers are taking part in retrofit trainings.³¹ However, this is a relatively small percentage of the overall number of peat workers, and retrofitting is only one of the many employment alternatives proposed by various organisations to date.³²

The peat industry provides a source of income for other businesses in its proximity. Since the new Just Transitions Fund is not earmarked for retraining or upskilling, it is possible that the fund may primarily benefit community development (investment in businesses, start-ups, etc.) rather than individual workers.³³ The focus on community development appears to be an attempt to avoid the mistakes made in other countries’ transitions, such as those made in the wake of the coal mine closures in Ruhr, Germany, when miners were compensated and retrained, but unemployment in other sectors in the region was not addressed.³⁴ Therefore, while there is a Just Transition Team present in the Midlands region, to the author’s knowledge they do not provide support directly to displaced workers. Instead, it appears to the author that their primary role is to liaise with the newly appointed Just Transition Commissioner Kieran Mulvey and act as a go between for appointed officials such as himself, Bord na Móna and the local community.³⁵ Affected workers are being told to seek support in the State employment services, under the Department of Employment Affairs and Social Protection (DEASP), as the role of the Commissioner is not to replace or compliment such services.³⁶

Mr. Mulvey’s Just Transition Progress Report was published by the DCCAE on May 22nd, 2020. The only mention in the report of employees being able to recuperate their previously held pension plans is in reference to the proposed alternative employment in bog rehabilitation:

“It will provide a pathway for some employees, who have worked in Bord Na Móna all their lives, to pension age and retirement, similar to that planned under the Bord Na Móna proposal to cease peat harvesting by 2028. It will also provide critical training to younger employees who may choose to remain in Bord Na Móna and become part of the peatlands services team, which provides similar services in the open market [...] LOETB

²⁹ Houses of Oireachtas, ‘Just Transition Fund’ (*Houses of Oireachtas*, 16 October 2019)

<https://www.oireachtas.ie/en/debates/question/2019-10-16/72/#pq-answers-61_69_72> Accessed 19 March 2020.

³⁰ Paschal Donohoe, ‘Statement of the Minister for Finance and Public Expenditure and Reform’ (08 October 2019)

<<http://budget.gov.ie/Budgets/2020/Documents/Budget/Financial%20Statement.pdf>> Accessed 06 February 2020.

³¹ Kieran Mulvey, ‘Just Transition Progress Report’ (DCCAE, 2020)

<https://www.dccae.gov.ie/documents/Just_Transition_Progress_Report.pdf> Accessed 05 June 2020.

³² Services Industrial Professional and Technical Union, ‘There are No Jobs on a Dead Planet: What a Just Transition Means for Workers’ (*SIPTU*, 2017).

³³ According to a conversation that the author has had with someone within the peat industry.

³⁴ Dunja Krause, ‘Why Human Rights-Based Social Protection is Needed in Climate Change Responses: A Just Transition’ (*Social Protection Human Rights*, 21 March 2019) <<https://socialprotection-humanrights.org/expertcom/why-human-rights-based-social-protection-is-needed-in-climate-change-responses-a-just-transition/>> accessed 14 March 2020.

³⁵ According to a conversation that the author has had with someone within the peat industry.

³⁶ According to a conversation that the author has had with someone within the peat industry.

has developed a programme in Bog Rehabilitation for Bord na Móna workers to ensure they have the necessary skill base.”³⁷

According to Mr. Mulvey, bog rehabilitation could provide alternative employment to 307 affected employees. However, he notes earlier that 400 jobs in peat harvesting have been lost to date, with hundreds more expected between now and 2029. Furthermore, the funding for this project is not yet secured, nor is it clear as to whether worker preferences have been considered. Details regarding the Laois & Offaly Education and Training Board’s (LOETB) proposed programme to retrain workers in bog rehabilitation also does not appear to have been made public.³⁸

With regards to income, Mr. Mulvey recommends that “a suitable emergency arrangement [...] be agreed to alleviate the rate losses [for Offaly and Longford County Councils] over the period of 2021-2026”.³⁹ There is no recommendation of similar measures to address the loss of income of impacted workers. To the author’s understanding, unemployed workers may be eligible for either Jobseekers Allowance or Jobseekers Benefit (for the self-employed). As Bord na Móna is the qualifying employer, it can be assumed that Jobseekers Allowance is relevant for redundant workers – with a maximum personal rate of €203 per week⁴⁰ - less than the €350 provided under the COVID-19 Pandemic Unemployment Payment.⁴¹ Only once they are in receipt of a Jobseekers Allowance/Benefit may they apply for either the Back to Work Enterprise Allowance (BTWEA) or the Short-Term Enterprise Allowance – referred to in the Progress Report as ‘Employment Supports and Investments’. The BTWEA and Short-Term Enterprise Allowance only apply for those who wish to establish their own business, and both require that approval first be granted by a Case Officer and Local Development Company.⁴²

While re-training and up-skilling is said by SIPTU to be the best practice for displaced workers, it should be carried out in a participatory manner.⁴³ In the Irish case, however, there does not appear to be a structure in place to ensure that workers are provided with appropriate alternatives with equal compensation to the jobs lost, although some efforts are ongoing to retrain affected employees. To the authors understanding, it is unlikely that voluntary redundancy packages and unemployment benefits are sufficiently high to match what workers would have received by working until retirement.⁴⁴ This should therefore be examined formally by labour unions and the State.

Just Transition Commissioner Mulvey has stated that industrial relations fall outside his remit, when referring to meeting with labour unions and whether or not he would address pay issues. This

³⁷ Kieran Mulvey, ‘Just Transition Progress Report’ (DCCAE, 2020)
<https://www.dccae.gov.ie/documents/Just_Transition_Progress_Report.pdf> Accessed 05 June 2020.

³⁸ Kieran Mulvey, ‘Just Transition Progress Report’ (DCCAE, 2020)
<https://www.dccae.gov.ie/documents/Just_Transition_Progress_Report.pdf> Accessed 05 June 2020.

³⁹ Kieran Mulvey, ‘Just Transition Progress Report’ (DCCAE, 2020)
<https://www.dccae.gov.ie/documents/Just_Transition_Progress_Report.pdf> Accessed 05 June 2020.

⁴⁰ Citizens Information, ‘Jobseeker’s Allowance’ (Citizens Information, 2020)
<https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/unemployed_people/jobseekers_allowance.html> Accessed 10 June 2020.

⁴¹ Citizens Information, ‘COVID-19 Pandemic Unemployment Payment’ (Citizens Information, 2020)
<https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/unemployed_people/covid19_pandemic_unemployment_payment.html> Accessed 10 June 2020.

⁴² Citizens Information, ‘Back to Work Enterprise Allowance’ (Citizens Information, 2020)
<https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/social_welfare_payments_and_work/ba ck_to_work_enterprise_allowance.html> Accessed 10 June 2020.

⁴³ Services Industrial Professional and Technical Union, ‘There are No Jobs on a Dead Planet: What a Just Transition Means for Workers’ (SIPTU, 2017).

⁴⁴ According to a conversation that the author has had with someone within the peat industry.

stance is criticised by labour union SIPTU and the Irish Congress of Trade Unions.⁴⁵ Mr. Mulvey has acknowledged that re-employment relies on the introduction of new industries into the region, and that there are currently challenges in attracting new businesses to the region. According to Mr. Mulvey, unless incentives are provided to attract new businesses, workers may not find employment in their current regions.⁴⁶

Encouraging the State to Implement a Responsible Just Transition: The Role of Human Right Law

As some jobs and industries morph or disappear altogether as a result of Ireland's efforts to meet its Paris Agreement obligations, it is important to consider what protection the law might provide to workers and communities – in other words, how law might contribute to ensuring a 'just transition' where workers and communities are not left to shoulder the burden of the State's changed policies alone. Human rights law may prove to be a useful tool in encouraging the State to address gaps in its current approach and in order to implement the just transition properly. By doing so, it may serve to build public trust in the State's ability and willingness to protect its residents from financial hardship, thus building compliance with future carbon reducing policies in other sectors. It was the State that relied for many years on peat harvesting to produce electricity, encouraging workers to relocate or remain in the Midlands to work in the industry (i.e. ESB or semi-State owned Bord na Móna). The speed at which the closures took place (years earlier than expected) and the failure for ESB to receive planning permission – shows a departure from past policy and therefore illustrates the government's role in failing to prevent legal employment in un-environmental practice.⁴⁷

Law and Just Transitions

Position of Government, Civil Society and Academics

Academic Dr. David Doorey of York University, has proposed the creation of a new field of law that would act to merge labour law and environmental law in a manner that the proposed field of climate change law fails to do. Labour law, which emerged in the first half of the 1900's, has largely been missing from discussions regarding climate change and environmental justice. It would seem that it has been especially absent from the discussion on climate change and changes in environmental policy. Environmental law, on the other hand, is a newer subset of law created in the 1970's. According to Doorey, while both seek to create and preserve employment, they lack the specialties required to address the just transition process as a whole.⁴⁸

While it may be seen as unnecessary by some to further categorise law disciplines, Doorey argues that legal categorisation facilitates analysis thus communication of legal ideas. Just transition

⁴⁵ Caroline O'Doherty, 'Alarm at lack of action over midlands rescue fund' (*independent.ie*, 2019) <<https://www.independent.ie/irish-news/alarm-at-lack-of-actionover-midlands-rescue-fund-38815127.html>> Accessed 01 April 2020.

⁴⁶ Caroline O'Doherty, 'Alarm at lack of action over midlands rescue fund' (*independent.ie*, 2019) <<https://www.independent.ie/irish-news/alarm-at-lack-of-actionover-midlands-rescue-fund-38815127.html>> Accessed 01 April 2020.

⁴⁷ European Court of Human Rights 'Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence' (*ECTHR*, 31 August 2019) <https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf> Accessed 04 April 2020.

⁴⁸ David Doorey, 'A Law of Just Transitions?: Putting Labor Law to Work on Climate Change' (*Osgoode Legal Studies Research Paper Series*, 2016) <<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1166&context=olsrps>> Accessed 02 April 2020.

law (JTL) would therefore encompass a number of areas: traditional labour law; environmental law; pension law (which may need alteration so as to not punish transitioning workers for time that they are unemployed/transitioning “or to permit workers nearing retirement age to bridge their pensions”);⁴⁹ concepts from climate change law (emission control laws, market based legal models to discourage GHG – i.e. cap and trade law); corporate and security laws; migration law (to address workers or populations displaced by climate change or policy changes – as in the case of the Irish Midlands); as well as tax and budget laws (incentives and disincentives). Doorey states:

“A challenge for the development of JTL is that the subject draws from so many diverse legal fields. [...] Labour lawyers know a lot about labour laws and policy that pursue decent jobs, but next to nothing about cap and trade rules or environmental assessment laws. Environmental lawyers may know something about property and ambient air emissions controls and reporting laws, but few can explain whether unemployment insurance laws fund retraining for workers who lose their jobs as a result of their coal-mining employer being phased out. Environmental justice scholars can explain how land use planning laws produce inequitable environmental outcomes, but not whether occupational health and safety laws do a good job of ensuring windmill factories are safe. A legal field organised around the idea of just transitions would require lawyers, legal scholars, and policy-makers to expand their areas of expertise, and for experts from different legal fields to converge around a new narrative.”

The goals of JTL include job creation, job protection and the promotion of participation by civil society and collective voice, although collective bargaining is one approach out of many. In addition, it calls for increased attention to unemployment insurance (where pertinent for transitioning and redundancy) and the need for the economic burden to be spread across society, not falling only on the workers.⁵⁰

How Human Rights is Implicated in JTL

Until such time that a JTL discipline is introduced, perhaps a consortium of lawyers from the relevant fields could act to bridge the legal gap. More importantly, relevant laws and treaties must be identified that can be employed by such lawyers and their clients to make sure that just transition principles are met. The following are some such tools that may be pertinent, but require more research into case law and jurisprudence.

The need for states to embrace responsible just transition practices is supported by the United Nations. According to the Special Rapporteur on Human Rights and the Environment, “States that have substantial fossil fuel industries should incorporate strategies for a just transition, including social and economic impact assessments as well as policies and programmes for skills development, retraining and adult education.”⁵¹

⁴⁹ David Doorey, ‘A Law of Just Transitions?: Putting Labor Law to Work on Climate Change’ (*Osgoode Legal Studies Research Paper Series*, 2016) <<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1166&context=olsrps>> Accessed 02 April 2020.

⁵⁰ David Doorey, ‘A Law of Just Transitions?: Putting Labor Law to Work on Climate Change’ (*Osgoode Legal Studies Research Paper Series*, 2016) <<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1166&context=olsrps>> Accessed 02 April 2020.

⁵¹ United Nations Human Rights Special Procedures, ‘Safe Climate: A Report of the Special Rapporteur on Human Rights and the Environment’ (*UN*, 2019) <<https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/Report.pdf>> Accessed 06 May 2020.

Introduction – Human Rights Law

The European Convention on Human Rights (ECHR), aimed at protecting human rights within Council of Europe member states, was ratified by the Republic of Ireland in 1953.⁵² The traditional ECHR route can only be pursued in instances where all national avenues for remedy have been exhausted. This is often a very lengthy process, and there is no way for the ECHR to force compliance with its ruling apart from forcing the State to pay a fine. However, with the 2003 ECHR Act, all public bodies in the Republic of Ireland are obligated to act in accordance with the articles of the ECHR – in most cases removing the need to follow the lengthy ECHR submission process.⁵³ Furthermore, Ireland’s Public Sector Duty obliges public bodies to proactively implement human rights measures by considering the impact of their activities on human rights and equality at planning, policy making and implementation phases.⁵⁴ Furthermore, “In assisting public bodies to perform their functions [...] the Commission may give guidance to and encourage public bodies in developing policies of, and exercising, good practice and operational standards in relation to, human rights and equality.”⁵⁵ To the author’s understanding, the IHREC is currently working on a study that will inform its approach on just transitions and the Midlands case.⁵⁶

The European Convention on Human Rights

Although no case law specific to just transitions has been found, there could possibly be issues raised under Article 8, which protects the right to respect for private and family life, under the argument that there could be forced displacement due to loss of employment – resulting in the loss of home or private/family life. Article 8 is primarily in place “to protect against arbitrary interferences with private and family life, home, and correspondence by a public authority”,⁵⁷ implying a strong negative obligation (the State is being stopped from said interference). However, the European Court of Human Rights’ (ECtHR) jurisprudence establishes that Art. 8 also places positive obligations on the State (i.e. the State should pursue policies that protect Art. 8 rights). Arguably, the sphere of private life covers environmental issues and professional or business activities, both relevant to just transitions.⁵⁸ The right to ‘home’ and ‘family’ may be considered regarding the need to relocate in search of jobs, caused by the national policy caused layoffs in the Midlands and lack of a safety net.

Notably, “restrictions imposed on access to a profession” have been found to affect “private life”. The ECtHR has found Art. 8 to be relevant to cases where one’s occupation is eliminated altogether (i.e. “Sidabras and Džiautas v. Lithuania, § 47; Bigaeva v. Greece, §§ 22-25; see also Jankauskas v. Lithuania (no. 2), § 56 and Lekavičienė v. Lithuania § 36”).⁵⁹

⁵² European Court of Human Rights ‘Ireland’ (*ECtHR*, 2020) <https://www.echr.coe.int/Documents/CP_Ireland_ENG.pdf> Accessed 06 April 2020.

⁵³ European Convention On Human Rights Act 2003

⁵⁴ IHREC Act 2014, section 42.

⁵⁵ IHREC Act 2014, section 42 (3).

⁵⁶ According to a conversation that the author has had with someone within the peat industry

⁵⁷ European Court of Human Rights ‘Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence’ (*ECtHR*, 31 August 2019) <https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf> Accessed 04 April 2020.

⁵⁸ European Court of Human Rights ‘Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence’ (*ECtHR*, 31 August 2019) <https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf> Accessed 04 April 2020.

⁵⁹ European Court of Human Rights ‘Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence’ (*ECtHR*, 31 August 2019) <https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf> Accessed 04 April 2020.

While interference in the right to respect one's home has not been overtly employment-related to date, some aspects of other cases (i.e. immigration and residency laws) may be relevant. For instance: the "loss of one's home on account of a deportation order (Slivenko v. Latvia [GC], § 96); impossibility for a couple, under the immigration rules, to set up home together and live together in a family unit (Hode and Abdi v. the United Kingdom, § 43); [...] the inability of displaced persons, in the context of a conflict, to return to their homes amounted to an "interference" with the exercise of their rights under Article 8 (Chiragov and Others v. Armenia [GC], § 207; Sargsyan v. Azerbaijan [GC], § 260)."⁶⁰ Cases have also been decided favorably for applicants citing environmental issues as threatening their ability to enjoy their right to a 'home' (i.e. López Ostra v. Spain, § 51; Giacomelli v. Italy, §§ 97-98; Fadeyeva v. Russia, §§ 133-134). While these cases found violations of Article 8 based on the presence of pollution and toxic waste, what is not to say that a violation could not be found in the absence of industry that the government had a role in closing? While the State is obligated under the Paris agreement to cut carbon emissions, it may be that article 8 of the ECHR places a positive obligation on the State to ensure that in doing so, workers are enabled to find employment that does not force them to move from their community.

It should be noted that as States are allowed to interfere with Article 8, the key question is whether such interference was carried out in a proportionate and necessary manner in pursuit of a legitimate public interest objective.

The United Nations International Covenant on Economic, Social and Cultural Rights – 1966

The Republic of Ireland ratified the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1989. The UN Covenant embodies "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right." Worker participation in just transition dialogues is therefore vital for ensuring the existence of acceptable alternatives. This is codified in article 21 of the European Social Charter, "the right to information and consultation for workers", which is noteworthy considering the Charter's collective complaints mechanism.⁶¹ The State's responsibility to provide training is outlined Article 6: "The steps to be taken [...] include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."⁶² Article 7 highlights the worker's right to "fair wages and equal remuneration for work of equal value without distinction". While this is especially focused on equal pay regardless of gender, employment following forced or voluntary redundancy could fall within this category.⁶³

On the one hand, governments are responsible for meeting their obligations on climate policy and environmental protection, although there may be difficulties with regards to enforcement. There

⁶⁰ European Court of Human Rights 'Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence' (ECtHR, 31 August 2019)
<https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf> Accessed 04 April 2020.

⁶¹ Irish Human Rights and Equality Commission, 'Ireland and the International Covenant on Economic, Social and Cultural Rights' (IHREC, 2015)
<https://www.ihrec.ie/download/pdf/ihrec_report_ireland_and_the_international_covenant_on_economic_social_and_cultural_rights.pdf> Accessed 10 May 2020.

⁶² International Covenant on Economic, Social and Cultural Rights 1966, art 6.

⁶³ International Covenant on Economic, Social and Cultural Rights 1966, art 7.

is no international or regional enforcing mechanism beyond fines, damage to national reputation and in extreme cases, sanctions. On the other hand, in meeting these goals, governments must protect their constituents by:

“recognis[ing] their responsibilities as primary duty bearers and develop policies that guarantee everyone the enjoyment of the human rights to social protection, decent work and an adequate standard of living as recognised by the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966). Additionally, the Committee on Economic, Social and Cultural Rights has pointed out “State [parties’] ... obligation to mitigate the effects of climate change in order to safeguard the enjoyment of rights protected by the ICESCR”.”⁶⁴

Irish Employment Law

Irish employment law may be relevant in this context: specifically laws related to redundancy, dismissal (Unfair Dismissals Acts 1977–2015) and whistle-blowers. Regarding the latter, the 2014 Protected Disclosures Act protects workers who “disclose relevant information in a particular way [that they] reasonably believe [...] tends to show wrongdoing [such as] failure to comply with legal obligations.”⁶⁵

Under the Minimum Notice and Terms of Employment Act, 1973, workers have the rights to be informed a number of weeks prior to being laid off depending on their length of employment. It would be worth examining whether this was abided by in the case of peat workers in the Irish Midlands. For instance, a continuous employee is entitled to eight weeks’ notice having worked for an employer for 15 years or more. Any failures to do so can be brought to the Tribunal established under the Act of 1967 for arbitration, which can decide on employee compensation.⁶⁶

Most relevant to this case is redundancy law, namely the Redundancy Payments Acts 1967–2014 and the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007. The former:

“...provide[s] for a minimum entitlement to a redundancy payment for employees who have a set period of service with the employer when made redundant. Not all employees are entitled to the statutory redundancy payment, even where a redundancy situation exists.”

The latter “establishes a redundancy panel to consider certain proposed collective redundancies. The Act also removes the upper age limit for entitlement to redundancy payments”. According to the Workplace Relations Commission (WRC), the “statutory redundancy payment is two week’s gross pay per year of service up to a ceiling of €600 per week plus one week’s pay, which is also subject to the ceiling of €600. This payment is tax-free.”⁶⁷

⁶⁴ Dunja Krause, ‘Why Human Rights-Based Social Protection is Needed in Climate Change Responses: A Just Transition’ (*Social Protection Human Rights*, 21 March 2019) <<https://socialprotection-humanrights.org/expertcom/why-human-rights-based-social-protection-is-needed-in-climate-change-responses-a-just-transition/>> accessed 14 March 2020.

⁶⁵ Citizens Information, ‘Protection for Whistleblowers’ (Citizens Information, 2020) <https://www.citizensinformation.ie/en/employment/enforcement_and_redress/protection_for_whistleblowers.html#13ea3f> Accessed 04 May 2020.

⁶⁶ Minimum Notice and Terms of Employment Act, 1973.

⁶⁷ Workplace Relations Commission, ‘Redundancy’ (WRC, 2020) <https://www.workplacerelations.ie/en/what_you_should_know/ending%20the%20employment%20relationship/redundancy/> Accessed 01 May 2020.

Conclusion

To ensure that the departure from peat is fair and just for all of Ireland's society, increased efforts should be taken to make contact with workers to determine their needs on an individual basis. The skills audit conducted by the Department of Employment Affairs and Social Protection of a subset of workers is a good start, but to the author's understanding there has been no study that provides a comprehensive indication of worker opinion and preference while allowing for direct participation by the workers in the just transition process.⁶⁸ The goal of such a study would be to determine: how much income is presently being lost by each worker (specifically 1. How much was earned under regular employment 2. How much would have been earned under retirement 3. How this compares to each redundancy package and subsequent un-employment benefits); and as voluntary and involuntary redundancy is inevitable for many workers: what are individual feelings towards a career change. Most research to date appears to be on the policy side – or via engagement between the newly appointed Just Transition Commissioner Kieran Mulvey and the Midlands Just Transition Team.

Recent protests by Spanish coal miners, following the Spanish government's attempt to close coal mining sites ahead of schedule while backtracking on previous promises, prove as a reminder of the importance of worker and community engagement. The coal miners ultimately won their lawsuit in 2018 for 250 million euros,⁶⁹ in a case which may be a valuable guide for other countries looking to close existing sectors.⁷⁰ Failure to address the loss of livelihoods could result in the public's rejection of such initiatives.

It is not sufficient to assume that workers are either a) close to retirement age and thus already own their living accommodation and have no children to support or b) are young enough to relocate away from the Midlands in search of work.⁷¹ Failure to carry out a fair and just transition could possibly undermine public support for future environmentally driven policy changes and cause a loss of trust in the State by individuals in industries affected in the future.⁷²

Recommendations

To the author's knowledge, there has been no comprehensive attempt to conduct interviews with workers to determine which of the suggestions for alternative employment are acceptable.⁷³ A comprehensive study with qualitative and descriptive quantitative research elements is therefore required. An initial study should be conducted to determine the viability of the suggested employment alternatives. A survey should then be distributed to a representative group of the parties affected by layoffs, who will rate the relevant options, and will have the opportunity to cite alternatives not

⁶⁸ Kieran Mulvey, 'Just Transition Progress Report' (DCCA, 2020)

<https://www.dcca.gov.ie/documents/Just_Transition_Progress_Report.pdf> Accessed 05 June 2020.

⁶⁹ Arthur Neslen, 'Spain to close most coalmines in €250m transition deal' (*the Guardian*, 2018) <

<https://www.theguardian.com/environment/2018/oct/26/spain-to-close-most-coal-mines-after-striking-250m-deal>> Accessed 07 April 2020.

⁷⁰ Irish Congress of Trade Unions' Energy & Natural Resources Sectoral Group, *Building a Just Transition: The Case of Bord na Móna* (ICTU – 2019).

⁷¹ According to a conversation that the author has had with someone within the peat industry.

⁷² According to a conversation that the author has had with someone within the peat industry.

⁷³ Apart from the information sessions provided by the DEASP and LOETB; DCCA, 'Initial Response to Just Transition Progress Report' (DCCA, 2020)

<https://www.dcca.gov.ie/documents/Initial_Government_Response_to_the_Just_Transition_Progress_Report.pdf> Accessed 09 June 2020.

initially mentioned. In response to the Just Transition Progress Report, the DEASP and LOETB reported conducting information sessions and one-on-one meetings with affected workers.⁷⁴ The survey should therefore also ask for worker feedback regarding support received via these meetings. Concurrently, a questionnaire should be distributed to determine the loss of income of each worker, encompassing what they would have been entitled to had they qualified for Bord na Móna or ESB retirement schemes.

This study could be made public in order to ensure transparency and follow up by the relevant government agency. If done well, the just transition for the peat sector will demonstrate the government's commitment to ensuring that no worker or community carries an unfair socio-economic burden as a result of Ireland's climate commitments; thus eliminating public pushback for future reforms that attempt to reduce GHG emission.

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⁷⁴ DCCAIE, 'Initial Response to Just Transition Progress Report' (DCCAIE, 2020)
<https://www.dccae.gov.ie/documents/Initial_Government_Response_to_the_Just_Transition_Progress_Report.pdf>
Accessed 09 June 2020.

Appendix

CSO Midlands 'the extraction of peat', 2016.⁷⁵

All Ages	15 - 19 years	20 - 24 years	25 - 29 years	30 - 34 years	35 - 49 years	50 - 64 years	55 years and over
656	<6	21	62	72	168	323	<10

No formal education	Primary	Lower secondary	Upper secondary	Technical/vocational	Advanced certificate/completed apprenticeship	Higher certificate	Ordinary bachelor degree/professional qualification or both	Honours bachelor degree/professional qualification or both	Postgraduate diploma or degree
11	60	171	125	42	88	26	29	45	25
On foot	Bicycle	Bus, minibus or coach	Train, DART or Luas	Motor cycle or scooter	Driving a car	Passenger in a car	Van	Other, including lorry	Work mainly at or from home
7	8	0	<6	<6	483	13	117	10	<6

JTL Components – David Doorey (2016) See Appendix A

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Labour Law - Employment Standards - Collective Bargaining Laws - Unemployment Insurance - Training and Apprenticeships - Occupational health and safety - Workers' compensation

Environmental Law

Tax, Subsidies, and Budget Laws

Land Use / Zoning

Immigration / Mobility Law

Corporate and Securities Laws

⁷⁵ See Appendix: CSO Midlands 'the extraction of peat', 2016

⁷⁶ David Doorey, 'A Law of Just Transitions?: Putting Labor Law to Work on Climate Change' (*Osgoode Legal Studies Research Paper Series*, 2016)

<<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1166&context=olsrps>> Accessed 02 April 2020.