

## Remaining within 1.5°C: urgency in the face of inequality.

### Community Law and Mediation's Centre for Environmental Justice.

Community Law and Mediation (CLM, formerly Coolock/Northside Community Law Centre) was established in 1975 in direct response to the need in the community for free legal information services and has been a pioneering organisation in the provision of community based legal and mediation services. With the establishment of a second law centre in Limerick in 2012, the community CLM serves has grown to include anyone across Ireland who, because of economic, social, or other disadvantage, is unable to access the services CLM provides.

In our community law centres in Dublin and Limerick, we observed how climate change interacts with the issues experienced by the communities we work with, including energy poverty, housing, employment, and health. In response to this, CLM's Centre for Environmental Justice was opened in February 2021. We work with communities experiencing disadvantage or discrimination, who are likely to be negatively impacted by climate change, who are least able to cope with these impacts, and who have contributed the least to climate change.

### Current Context

By signing up to the United Nations 'Paris Agreement,' Ireland committed to *"[holding] the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels."* The difference between 1.5°C and 2°C has been established by IPCC scientific review and documented in the Special Report on Global Warming of 1.5°C, known as "SR1.5." There are compelling reasons to pursue 1.5°C in terms of reduced risk of harm to vulnerable populations, food security, water supply, and loss of unique and valuable ecosystems. However, [1.5°C is not a "safe" level of global warming](#). With 1.5°C of warming, five hundred million people will be exposed and vulnerable to water stress, 36 million people could see lower crop yields, and up to 4.5 billion people could be exposed to heat waves. There is no "safe" level of global warming and the impacts of the climate crisis at just over 1°C have already been devastating, particularly within countries and communities that have contributed least to the problem.

It was welcome that the Taoiseach reiterated Ireland's commitment to the Paris Agreement at COP26 in November 2021, and specifically to remaining within 1.5°C. *"To achieve our Paris goals, immediate, large-scale reductions in greenhouse gas emissions are essential. Unless we act now, we will not keep the possibility of limiting warming to 1.5 degrees alive. The scientists are playing their part, in helping us to understand the dynamics of climate change and in developing the technologies and responses we need to limit its effect. As political leaders, it is our responsibility to put the necessary policies in place. Ireland is ready to play its part."* [Emphasis added].

### CLM's View of the Proposed Carbon Budgets

It is CLM’s contention that the State must apply a human rights-based approach when acting to address climate change,<sup>1,2</sup> particularly in the adoption of carbon budgets. While the inclusion of legally-binding carbon budgets in Ireland’s amended climate legislation represents welcome progress, the appropriate barometer for assessing the adequacy of carbon budgets must be (1) science and (2) climate justice – that is, consistency with Ireland’s fair share contribution to remaining within 1.5°C. In other words, the proposed carbon budgets must be measured against their likelihood of protecting the fundamental rights of all.

**Summary of recommendations:**

**CLM considers that the carbon budgets proposed by the Climate Change Advisory Council should be substantially reduced to provide:**

- **Consistency with Ireland’s Climate Act:** ensure the principles of Equity and Common but Differentiated Responsibilities and Respective Capacities are explicitly accounted for in determining Ireland’s fair share of the global carbon budget for 1.5°C in accordance with s.6A(9)(a) of Ireland’s 2021 Climate Action and Low-Carbon Development (Amendment) Act.
- **Consistency with the Programme for Government:** ensure the carbon budgets are not reliant on future, unproven “negative emissions” from technological or nature-based sources.
- **Consistency with forthcoming EU law:** adopt an earlier baseline date for Ireland’s 2030 target to ensure compliance with forthcoming EU law.
- **Consistency with the Paris Agreement:** ensure the carbon budgets are informed by a “reasonable” chance of remaining within 1.5°C and Ireland’s historical responsibility.
- **Consistency with the principles of a Just Transition:** ensure that deep and sustained reductions in emissions are implemented *now*, consistent with a 1.5°C threshold, to enable planning and consultation with most affected communities.

**1. THE PROPOSED CARBON BUDGETS ARE INCONSISTENT WITH IRELAND’S 2021 CLIMATE ACT.**

As noted by Dr. Andrew Jackson,<sup>3</sup> s.6A(9)(a) of Ireland’s Climate Action and Low Carbon Development (Amendment) Act – (the Climate Act) requires the Climate Change Advisory Council (CCAC) to prepare the carbon budgets in a manner consistent with:

- (a) The ultimate objective specified in Article 2 of the United Nations Framework Convention for Climate Change (UNFCCC) - i.e., the “stabilization of greenhouse gas concentrations in the

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<sup>1</sup> The preamble in the Paris Agreement highlights the need, when responding to climate change, to “respect, promote and consider [the state’s] respective obligations on human rights” and makes specific reference to the rights of those disproportionately affected by climate change, such as women, children, migrants, indigenous peoples and people with disabilities.

<sup>2</sup> Section 3(1) of the European Convention on Human Rights Act 2003 requires every organ of the State to perform its functions in a manner compatible with the State’s obligations under the ECHR.

<sup>3</sup>

[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_environment\\_and\\_climate\\_action/submissions/2022/2022-01-12\\_opening-statement-dr-andrew-jackson-ucd-sutherland-school-of-law\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_environment_and_climate_action/submissions/2022/2022-01-12_opening-statement-dr-andrew-jackson-ucd-sutherland-school-of-law_en.pdf)

atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”

- (b) Articles 2 and 4(1) of the Paris Agreement - i.e., maintaining global temperature increase “well below 2°C” above pre-industrial levels and making efforts to limit heating to 1.5°C, reflecting “equity and the principle of common but differentiated responsibilities and respective capabilities.”

In considering Ireland’s appropriate contribution to remaining within a 1.5°C threshold, the CCAC in its [technical report](#) note that:

*“Any such determination has implicit or explicit implications around climate justice, historical responsibility, equity and equality. It is not the job of the Council or the Carbon Budget Committee to make such value judgements.”*

This approach is incompatible with s.6A(9)(a) of Ireland’s Climate Act, which requires that the CCAC prepare carbon budgets in a manner consistent with *all* of Articles 2 and 4(1) of the Paris Agreement, including the principle of Common but Differentiated Responsibilities and Respective Capacities.

- **Recommendation: Ensure the principles of Equity and Common but Differentiated Responsibilities and Respective Capacities are explicitly accounted for in determining Ireland’s fair share of the global carbon budget for 1.5°C in accordance with s.6A(9)(a) of Ireland’s 2021 Climate Action and Low-Carbon Development (Amendment) Act.**

## 2. THE PROPOSED CARBON BUDGETS ARE INCONSISTENT WITH THE PROGRAM FOR GOVERNMENT.

- The Programme for Government (PfG) explicitly committed to delivering annual emissions reductions of 7% between 2021-2030, to provide an overall reduction of 51% over the decade. This would allow a cumulative 10-year total carbon budget of 468 MtCO<sub>2</sub>eq.
- The carbon budgets proposed by the Climate Change Advisory Council (CCAC) amount to 295MtCO<sub>2</sub> for the first period (2021-2025), and 200 MtCO<sub>2</sub> for the second period (2026-2030), which would allow a cumulative 10-year total carbon budget of 495 MtCO<sub>2</sub>eq. This cumulative budget represents annual reductions of less than 6% per year over the decade.
- Moreover, the PfG commitment is unlikely to be achieved if the proposed carbon budgets are adopted. As noted by Professor John Sweeney, any delay in meeting the proposed reductions within the first carbon budget would impose even higher reductions on the subsequent carbon budget, which is likely, given that the proposed carbon budgets will not be legally adopted until Q4 of 2022 – by which time, 40% of the current carbon budget will have elapsed.<sup>4</sup>

It is important to note that the PfG commitment to reduce emissions 7% per year does not represent Ireland’s fair share of remaining within 1.5°C. It is based on the United Nations Environmental Program’s (UNEP) [2019 Emissions Gap Report](#), which estimated that, on a *global* average, emissions should fall 7.6% per year from 2020-2030 to remain within 1.5°C. UNEP’s

calculations rely extensively on “negative emissions.” Negative emissions reflect an attempt to bridge the growing gap between climate policy and science by developing the ability to remove billions of tonnes of CO<sub>2</sub> from the atmosphere to store it on land or in the oceans. UNEP estimates that if emissions are reduced by 7.6% per year globally, >200 Gt of CO<sub>2</sub> will need to be removed from the atmosphere by the end of this century. As noted by Dr. Andrew Jackson, how Ireland should achieve its share of the removal of >200 Gt of CO<sub>2</sub> from the atmosphere is unclear. The IPCC notes that reliance on negative emissions is a “major risk” in seeking to limit heating to 1.5°C.

Although both natural and technological measures can (in theory) allow emissions to be balanced or removed from the atmosphere, there are considerable ecological<sup>2</sup> and moral restraints. As Professor Anderson has noted, *“These technologies exist, at best, as small pilot schemes, and often only in the imagination and computers of professors and entrepreneurs. So, in reality we are passing the buck on to our children to invent and deploy technologies to suck the CO<sub>2</sub> out of the air that we choose to continue to emit today... Already the tentative potential of NETs is being used to undermine the requirement for immediate and widespread decarbonisation, passing further unacceptable burdens and risks onto the next generation.”*<sup>3</sup> [Emphasis added.] While research into negative emissions is critical, such measures remain underdeveloped and do not exist at scale. It is not prudent, or in accordance with the Precautionary Principle (Article 191 of the Treaty on the Functioning of the European Union), to depend upon unproven technologies or unsustainable nature-based solutions when developing present mitigation policies.

For instance, in the context of natural measures (often referred to as ‘carbon sinks’ - i.e., a reservoir which captures more carbon than it releases) it is important to note that forestry in Ireland has in recent years become a source of emissions, rather than a sink.<sup>4</sup> Furthermore, there are considerable legal barriers to negative emissions. “Bioenergy with Carbon Capture and Storage” (BECCS) is frequently cited in Intergovernmental Panel for Climate Change reports as a means of removing emissions from the atmosphere. However, in 2019, West Offaly Peat and Biomass station was refused planning permission on the grounds that Ireland does not have indigenous sources of biomass and importing biomass would be unsustainable and a breach of EU and national policy.<sup>5</sup>

Furthermore, reliance on negative emissions goes against the spirit of the Supreme Court’s judgment in ‘Climate Case Ireland’ which was clear that future technological developments cannot supplant present efforts to achieve the National Transition Objective (NTO):

*“The level of specificity for the latter years may legitimately be less but there must be, nonetheless, a policy identified which does specify in some reasonable detail the kind of measures that will be required up to 2050. The fact that some of those measures may come to be adjusted over time because of developments in knowledge, data or technology does not alter the fact that a best current estimate as to how the NTO is going to be achieved needs to be made and not left to sometime in the future.”*

*“But the public are entitled to know what current thinking is and, indeed, form a judgment both on whether the Plan is realistic and whether the types of technology considered in the Plan are appropriate and likely to be effective. In my view, a reasonable and interested observer would not really have a sufficient view of just how it is currently hoped that such measures might contribute towards achieving the NTO to form a considered judgement.”* [Emphasis added].

- **Recommendation: ensure the carbon budgets are not reliant on future, unproven “negative emissions” from technological or nature-based sources.**

### **3. THE PROPOSED CARBON BUDGETS ARE INCONSISTENT WITH THE PARIS AGREEMENT.**

At present emissions levels, Ireland is projected to consume its fair share of the global carbon budget for 1.5°C in three years – within the lifetime of this government.

The Dutch Supreme Court in *Urgenda* held that every country must do its part to comply with its obligations under the Paris Agreement and the European Convention on Human Rights to remain within 1.5°C. There are two issues regarding the compliance of the proposed carbon budgets with the Paris Agreement.

Firstly, as noted by Professor Barry McMullin, the CCAC’s proposed carbon budgets provide for only a 50% chance of remaining within 1.5°C, “no better than a coin toss.”<sup>5</sup> Professor Kevin Anderson has estimated that for a 67% chance of remaining within 1.5°C, Ireland’s remaining carbon budget is **120MtCO<sub>2</sub>** (for energy-only emissions, including international aviation and shipping). It follows then that if Ireland were to begin emissions reductions in 2022, consistent with a 67% chance of remaining within a 1.5°C threshold, **annual emissions reductions of 30% between 2022-2029 would be required.**

Secondly, the CCAC proposed carbon budgets based on the assumptions that: “every country in the world, 1) had the same starting point as Ireland and 2) reduced emissions in the same speed and amount.” This approach neatly excludes “previous actions,” or rather, inaction, i.e., Ireland’s historical responsibility. The Paris Agreement principles of ‘Equity’ and ‘Common but Differentiated Responsibilities and Respective Capacities’ acknowledges that developed countries like Ireland agreed to act first and fastest to address the climate crisis. To date, Ireland has failed to act in accordance with these principles.

- Ireland is one of only five EU countries that failed to reduce its emissions between 1990-2020, and instead experienced the second largest growth in emissions across the EU.
- Despite the Irish Government’s repeated acceptance that Ireland’s emissions should decrease 25-40% between 1990-2020, our emissions increased 10% during that period, placing Ireland among the top emitters in Europe.
- Ireland has much greater capacity than many countries to transition, particularly emerging economies. Professor Kevin Anderson has noted that Ireland is “disproportionately well-served” to adapt to a transition to a completely decarbonised economy and society.<sup>6</sup>

#### **Change in greenhouse gas emissions in the European Union from 1990 to 2019, by country**

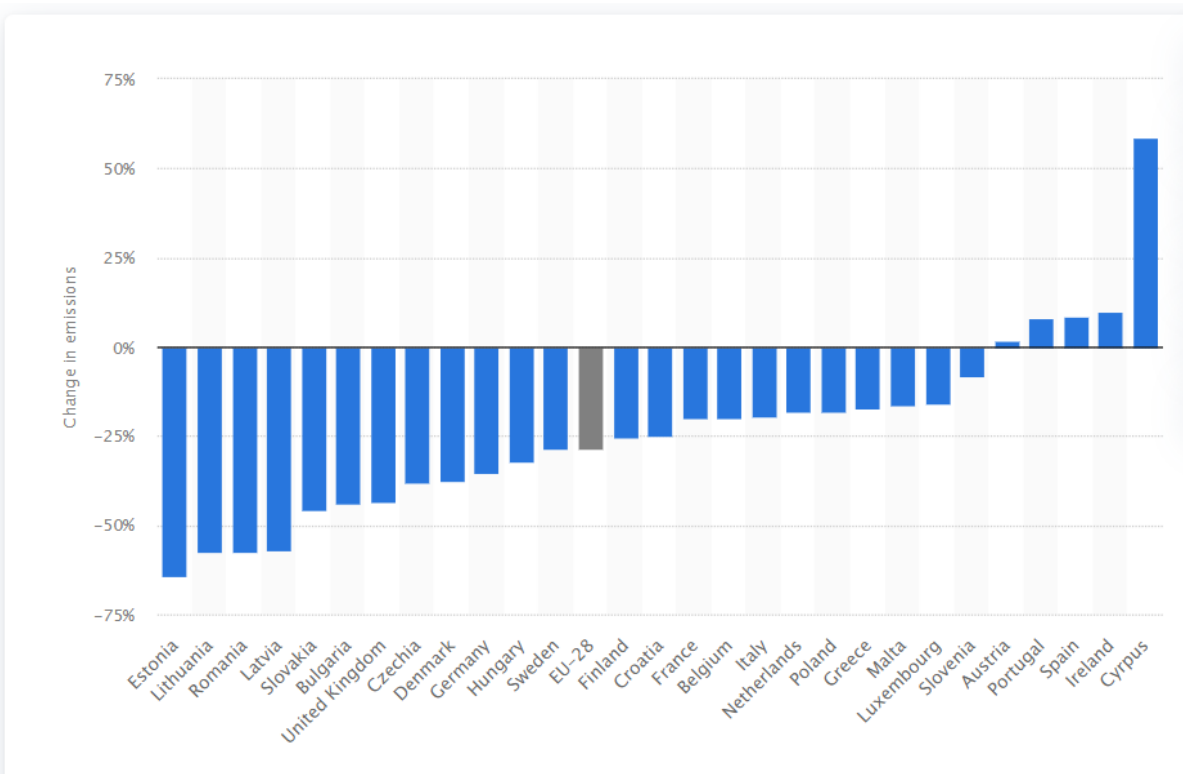
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[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_environment\\_and\\_climate\\_action/submissions/2022/2022-01-12\\_opening-statement-kevin-anderson-professor-university-of-manchester\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_environment_and_climate_action/submissions/2022/2022-01-12_opening-statement-kevin-anderson-professor-university-of-manchester_en.pdf)



- **Recommendation: ensure the carbon budgets are informed by a “reasonable” chance of remaining within 1.5°C and Ireland’s historical responsibility in accordance with the Paris Agreement.**

#### 4. THE PROPOSED CARBON BUDGETS DO NOT MATCH AMBITION OF FORTHCOMING EU LAW.

This is primarily an issue of shifting baselines. It is unclear why 2018 is used as a baseline for Ireland’s 2030 emissions target. 1990 is consistently used under international emissions reporting in accordance with the UNFCCC and the Kyoto Protocol. Given that Ireland’s emissions were substantially higher in 2018 than 1990, a reduction target of 51% by 2030 relative to 2018 becomes significantly less onerous - 44.5% relative to 1990 instead of 51%.

As noted by the CCAC in its technical report, the European Commission has proposed an EU-wide 2030 reduction target of *at least* 55%, relative to 1990, which is likely to be adopted by 2024 (at the latest). Ireland has endorsed this target at the EU-level, while committing to delivering 44.5% on a domestic level.

The below baselines are more appropriate in calculating Ireland’s carbon budget to 2030:

- 1990: the year that the first "Intergovernmental Panel for Climate Change" (IPCC) report was published. These reports are widely considered the most comprehensive and authoritative source of assessing the science related to climate change, as the IPCC is a United Nations body composed of the world's leading climate science experts, as well as government

representatives. Each IPCC report is accompanied by a "Summary for Policymakers" document, which summarizes the long report, and is agreed upon, *line by line*, by government representatives. Therefore, since 1990, governments have fully understood and accepted climate science.

- b) 1992: the year that governments came together to create an international environmental treaty, known as the United Nations Framework Convention for Climate Change (UNFCCC) with the goal of stabilizing greenhouse gas emissions in the atmosphere and preventing dangerous levels of climate change.
- c) 2015: Professor McMullin has suggested that 2015 (the year that the Paris Agreement was adopted) should be regarded as the "latest defensible reference year."

It is notable that a [recent ground-breaking climate case](#) brought by youth climate activists against the German Government before the German Supreme Court found that the country's 2030 emission reduction target of 55% relative to 1990 was inadequate. This target was not considered sufficient to protect citizens' fundamental rights, particularly those of youth and future generations. As the Court put it, *"one generation must not be allowed to consume large portions of the CO2 budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom."* Germany has consequently revised its 2030 target to 65% reductions in emissions, relative to 1990 levels.

- **Recommendation: adopt an earlier baseline date for Ireland's 2030 target to ensure compliance with forthcoming EU law.**

##### **5. THE PROPOSED CARBON BUDGETS ARE INCONSISTENT WITH THE PRINCIPLES OF A JUST TRANSITION (THE LONGER THE DELAY, THE MORE DIFFICULT A JUST TRANSITION WILL BE).**

The impacts of climate change within countries will not be distributed equally. It is irrefutable that the climate crisis will intersect with [the existing inequality crisis in Ireland](#). Research has clearly demonstrated that inequality within countries (including "developed" countries like Ireland) increases the exposure of disadvantaged groups to climate change, and diminishes their capacity to respond.<sup>7</sup> For instance, evidence from the US suggests that it is likely that climate change will result in adverse health impacts for those on low-incomes, such as heart and lung disease, heat stroke, and bacterial infections.<sup>8</sup> Furthermore, increased flooding as a result of climate change is likely to impact low-income households disproportionately. Evidence from Germany demonstrates that welfare losses after floods disproportionately harm low-income households and increase inequality by 0.14%. Households with children and households with a head at retirement age face particular risk.<sup>9</sup>

It is furthermore clear that low-income households in Ireland are least responsible for the climate crisis. This is of course intuitive, but data now supports this assertion: research carried out by Oxfam in 2020

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<sup>7</sup> Islam, N., Winkel, J. 2017. Climate Change and Social Inequality. DESA Working Paper No. 152 ST/ESA/2017/DWP/152 [https://www.un.org/esa/desa/papers/2017/wp152\\_2017.pdf](https://www.un.org/esa/desa/papers/2017/wp152_2017.pdf)

<sup>8</sup> <https://nca2018.globalchange.gov/>

<sup>9</sup> Tovar Reaños, Miguel A., 2021. "[Floods, flood policies and changes in welfare and inequality: Evidence from Germany](#)," [Ecological Economics](#), Elsevier, vol. 180(C).

demonstrated that the top 10% of the Irish population emit nearly as much as the bottom 50%, although the bottom 50% has five times more people in it (about 475,000 people compared to 2,375,000 people).<sup>10</sup>

As CLM has consistently pointed out, a Just Transition is *essential* to successful climate action, however, it is critical that calls for a Just Transition are not used to delay efforts to remaining within 1.5°C. There is a serious risk of significant societal disruption if further delays on emissions reductions are facilitated. Firstly, the impacts of climate change will become increasingly severe, and many impacts will be irreversible.<sup>11</sup> Secondly, as the impacts of climate change worsen, and as the window to remain within 1.5°C (or even 2°C) narrows, it is likely that the policy response will be abrupt, forceful, and disorderly. It is critical therefore that deep and sustained reductions in emissions are implemented *now*, consistent with a 1.5°C threshold, to enable planning and consultation with most affected communities. We must ensure that everyone in Ireland can live a decent life within a fully decarbonised society.

**Recommendation: deep and sustained reductions in emissions must be implemented *now*, consistent with a 1.5°C threshold, to enable planning and consultation with most affected communities.**

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<sup>10</sup> Oxfam. 2020. 'Confronting Carbon Equality in Ireland.'

[https://www.oxfamireland.org/sites/default/files/oxfam\\_ireland\\_media\\_brief\\_confronting\\_carbon\\_inequality\\_in\\_ireland\\_embargoed\\_21\\_september\\_2020\\_1.pdf](https://www.oxfamireland.org/sites/default/files/oxfam_ireland_media_brief_confronting_carbon_inequality_in_ireland_embargoed_21_september_2020_1.pdf)

<sup>11</sup> Lenton, T.M., Rockström, J., Gaffney, O., Rahmstorf, S., Richardson, K., Steffen, W., Schellnhuber, H.J. 2019.

'Climate tipping points — too risky to bet against.' *Nature* 575, 592-595

doi: <https://doi.org/10.1038/d41586-019-03595-0>