



**Environmental  
Pillar**  
Working for a sustainable future

**Submission to:**

**The Citizens Assembly**

**Responding to the question: How the State can make  
Ireland a leader in tackling climate change?**

**11<sup>th</sup> August 2017**

## 1. Introduction

The Environmental Pillar is an advocacy coalition of 26 national environmental non-government organisations. Together we promote protection of the environment and environmental sustainability.

We very much welcome the opportunity to make this submission to the Citizens Assembly, and we thank you for your hard work on this and the other knotty problems that you have been asked to respond to.

Climate change is estimated by the UN to have killed some 200,000 children, women and men in 2015. By 2030, this figure is likely to increase to 600,000. In Ireland 1,400 people die every year from air pollution with many thousands more suffering serious illness, and much of this results from the burning of fossil fuels. By our lack of action we are complicit in these deaths.

Whilst the Environmental Pillar and its individual members along with many others in civil society have campaigned for many years for government to take real action on climate change, in fact what we see are often only superficial statements of intent, but little or no delivery on them. At this moment in time we are not leaders but laggards when it comes to climate action.

Due to the short-term nature of our electoral system very few politicians are willing to support the necessary binding long term strategies that hold fast through changes of government. But that is exactly what is needed if we are to halt climate change.

Giving the people the constitutionally protected right to live in a healthy environment would enable and encourage politicians to take real long-term actions. It would also ensure that those actions are not diluted or done away with except to improve on them. Such an amendment to the constitution would give the people the right to bring governments, and public authorities to court, when they fail to act to protect the public from the impacts of climate change.

Our laws that are intended to protect the environment are bureaucratic, layered and confusing. They don't acknowledge the relationship between the individual and their environment or their personal right to live in a healthy environment. At present, unlike in so many successful countries, a member of the public cannot go to court to force a public authority to take steps to reduce carbon emissions.

For Ireland to be a leader in tackling climate change, our Constitution should recognize the fundamental right of all to live in a healthy environment. Ireland is one of only six EU member states with no constitutional provisions on the environment.

An individual right to live in a healthy environment would create a personal cause of action to secure that right when it has been violated. It would address the shortcomings inherent in the current system and provide a solution when the government fails to safeguard that right, for whatever reason. An express constitutional amendment would elevate the right in the mind of the public and set an example internationally of the esteem in which Ireland holds its natural environment.

Below we outline the challenge and the lack of action to date by Irish governments, and the detailed reasons why a constitutional amendment is the only way to ensure that Ireland moves from being a laggard to a leader in its actions on climate change.

This is a unique moment for the people of Ireland to decide the constitutional basis for a framework that reflects the significance of climate change and its impacts, as well as our commitment to safeguarding an environment that supports our wellbeing both for now and for future generations.

We are asking you to propose a change to the constitution to protect a fundamental right. We don't do this lightly, and we hope that when you have read the remainder of this submission you will realise the absolute necessity for it.

*This submission was developed through the Environmental Pillar processes but is not necessarily the policy of each member group in the Pillar.*

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## 2. The Challenge of Climate Change and the Irish Response

Every Irish government since 1990 has endorsed the scientific findings of the United Nations Intergovernmental Panel on Climate Change regarding the seriousness of the problem now confronting humanity. Indeed the recently retired UN Secretary General Ban Ki-moon has said that humanity has never faced a greater challenge than climate change. Yet, despite this, for many people, climate change is an abstract concept, something for their children to worry about, something that the Paris Agreement was supposed to fix, something that should not get in the way of carrying on with present activities in a 'business as usual' manner. This may give short term comfort, but it is seriously misinterpreting the scale of the challenge posed by climate change both for Ireland and the planet as a whole.

### 2.1 What is the current global state of play?

On average the world is over 1 degree centigrade warmer than it was at the end of the 19<sup>th</sup> century and about half a degree warmer than it was at the end of the 20<sup>th</sup> century. This may seem a small amount, but it is sufficiently large and sufficiently rapid to initiate a series of adverse impacts which will only become more threatening to the well-being of present and future generations, both here in Ireland and abroad, if the trend continues. A small change in a basic parameter like global temperature produces large changes in other regional and local parameters such as rainfall and storminess and thus far a number of disturbing trends have become evident:

- Heatwaves have increased in frequency. Each of the last three decades has been warmer than all preceding decades since 1850. Deadly heatwaves now occur in places not previously prone. Recent work in Maynooth has revealed that annual heat stress will extend to mid latitude cities such as New York and Tokyo should climate continue to change along current lines, making them similar in exposure to Karachi or Delhi today. Heat is a killer. Even in Europe the hot summer of 2003 produced up to 70,000 premature deaths. Mortality increases have been detected in Ireland during hot summer conditions and these are likely to increase further.
- The period 1981-2010 was the warmest 30-year period of the last 800 years. 2016 was the warmest year since thermometers became reliable and sufficiently widespread around 150 years ago. Prior to this 2015 and 2014 held the record, confirming a recent upward trend in global temperatures.
- In the middle and high latitudes of the northern hemisphere, an increasing rainfall trend is apparent with more intense rainfall event increasing in frequency. The consequences for flood problems are obvious.
- Particularly in parts of the tropics where rainfall is often insufficient to sustain agriculture, rainfall has become less reliable and sporadic. Hardship and famine, though they have occurred through history in some areas, are accentuated and civil and political unrest often follows.

- Sea level rise has accelerated and is likely to approach 1 metre within the lifetime of today's children. Already, evacuation of some low lying islands in the Pacific is occurring. These are people who have contributed little to greenhouse gas loading of the atmosphere and are victims of what the developed countries, including Ireland, have primary responsibility for.

These are all fairly well-known symptoms of where we are at the present time. The primary cause of global climate change is now known with a high degree of certainty. 195 governments have endorsed the IPCC statement that "it is at least 95% likely that human activities - chiefly the burning of fossil fuels - are the main cause of warming since the 1950s". This is a higher degree of certainty than the link between cigarette smoking and lung cancer. What is important is whether we can limit the growth in global temperature to less than 2 degrees centigrade. This is important because above this level a number of unknowns and potentially catastrophic events may occur.

- The irreversible melt out of ice sheets such as Greenland and large parts of the Antarctic may get underway, with long term consequences for sea level rises of several metres, flooding many of the world's largest cities and coastal areas.
- Radical reductions of food yields for staple crops such as wheat and rice, especially in parts of the world where people are highly dependent on agriculture.
- Possible changes in oceanic circulation, including the Gulf Stream, with severe consequences for many parts of Europe.
- Acute water shortages affecting 1-3 Billion people in both mid latitude and semi-arid tropical areas.
- Risks of extinctions of 20-30% of species on the planet
- Increases in climate-related hazards such as storms, floods and droughts.

This is the legacy inaction on climate change threatens we will leave to our children and grandchildren.

## 2.2 What is the current state of play in Ireland?

As a mid-latitude country Ireland can expect ultimately to exhibit the same temperature change as the global average, although our oceanic location may delay this for a few decades. But everywhere in Ireland is already 0.5degrees warmer than 30 years ago and this trend is likely to continue. Temperature change will not be the main concern in Ireland. Rather the associated changes in rainfall and storminess are our main causes for concern. Among the impacts that can be expected are:

- Increased flooding. Recent years have demonstrated how vulnerable our communities are to flooding. Winter 2014/15 was the wettest ever recorded over half of Ireland. We now have to adapt to the fact that flood frequencies will increase,

peak flood levels will increase above previous record levels, and areas that have no history of flooding will become vulnerable.

- Adapting to higher winter water tables will require stringent controls on septic tanks and planning restrictions in vulnerable areas.
- Coastal communities face increased coastal flooding from a combination of higher sea levels and changing storm intensities. Insurance against these will become, as they are becoming with riverine floods, difficult if not impossible to achieve. The cost of a single 2-3 metre flood event across Ireland has been estimated as approximately €1-2B. This risk will inevitably be passed on to all policy holders.
- Though agriculture will suffer less than in many other countries, Irish agriculture will face challenges in dry summers with grass growth slowing and crops such as potatoes which require summer rainfall particularly vulnerable. Farmers will increasingly have to compete with urban dwellers for water supplies for irrigation as water becomes an expensive resource in dry summers.
- As habitats change, many of the plants and animals we take for granted will disappear. Birds such as the curlew will probably not be heard by your children. Cold water loving fish in our high mountain lakes will not thrive in warmer conditions. Even salmon may ultimately be unable to cope with warmer sea and river temperatures. Instead invasive plant species will find the new Irish climate to their liking. Pests such as pine weevils, the horse chestnut leaf miner and the pine processionary moth will attack forest trees more readily.
- Tourism will benefit from a longer 'shoulder' season and winter cold mortality will decrease. But these are not adequate recompense for the additional costs the next generation may be saddled with in coping with the adverse impacts identified above.

### 2.3 Why should Ireland act?

Ireland has a proud record of acting as a globally responsible country. Its reputation in the developing world is one frequently praised. But as Ban Ki-moon said on his visit to Dublin: *"Today one cannot be a leader on hunger without also being a leader in climate change."* Every country and every sector has to pull its weight in tackling this problem. To make excuses such as 'Ireland is a small country with small emissions compared with China/India/USA etc.' is to miss the point of global citizenship. It also is highly detrimental to the international reputation of a country dependent on international investment for its economic well-being. Future climate shocks will occur in Ireland and we cannot expect sympathy (and assistance) from other countries who are delivering on emission reductions. We should bear a fair share of the burden and have not been doing this for many years. One of the most serious considerations of the last IPCC report was based on how much more greenhouse gases we can emit before exceeding the 2°C threshold becomes inevitable. It was concluded that there are approximately two decades left to achieve the

large scale decarbonisation necessary to avoid dangerous climate change. In a recent open letter, six prominent scientists and diplomats, including former UN climate chief Christiana Figueres and physicist Stefan Rahmstorf, wrote that the world has approximately three years before the worst effects of climate change take hold. Published June 28, the letter urged governments, businesses, scientists, and citizens to address the world's greenhouse-gas emissions now. The urgency is clear. Without making a serious start on this today, the window of opportunity for those that come after us will have closed. We are the last generation that can stop dangerous climate change taking place. Ireland can either opt in or opt out – which are we doing at present?

## 2.4 Ireland – Climate Leader or Climate Laggard?

Ireland emits more greenhouse gases than the 400M poorest people in the world combined. As part of an EU-wide cost-effective roadmap to reduce greenhouse gas emissions by 80-95% by mid-century Irish negotiators agreed binding emission reductions of 20% on our 2005 figures for the non-industrial sectors of agriculture, housing and transport by 2020. These were agreed in 2008 by the Taoiseach of the day, the government, the European Parliament and the European Commission. The blame game so widely used by new administrations simply has no credibility in this case.

Effective measures to implement these obligations have not been forthcoming. The can has continually been kicked down the road. Among the highlights are:

- Time-consuming reports which have delayed action and failed to address the kernel of the problem
- Aspirational statements by Irish politicians at the UN, and other places, which are largely for international consumption and often contradicted in national statements later when action is required
- A 'plan' for reducing emissions without any sectoral targets or legal implementing mechanism
- A Climate Bill without any sanctions or medium term targets
- A Climate Change Advisory Council whose recommendations have not been implemented.

Meanwhile, negotiators have been sent to Brussels to look for maximum concessions for the next round to 2030. Please, we don't want to count emissions from degraded bog-lands. We want to continue burning peat to make electricity and spend €100M of tax-payers money per year subsidising this. We would like to count wood products as 'offsets' for our future emissions. We would like to start counting our base year for compliance from now rather than 2005 to avoid fines. We know we are among the richest countries in Europe for the GDP criteria used to allocate the emissions share out, but really we want other poorer countries to shoulder a bigger burden than us.

While we have been stalling since 2008, other countries have delivered. Scotland has reduced its emissions by 45% since 1990, Sweden by 22%, Denmark (with a similar 20% commitment to Ireland), by 14%. The EU overall will achieve its 2020 target, though Ireland will not. Our emissions are now increasing as the economy booms and increased 3.7% in 2015.

In addition, Ireland with Kenya, was one of the two countries that chaired the process leading to the signing of the 17 UN 2030 Sustainable Development Goals on September 25th 2015. Almost every country adopted this set of goals designed to **end poverty, protect the planet, and ensure prosperity for all** as part of a new sustainable development agenda. Goal 13, focuses entirely on Climate Action, but all of the goals require a stable climate for them to be achieved. Is Ireland going to help end world hunger and end poverty? Definitely not with its current behaviour on climate change, by which it is adding to the burden of the poor and hungry.

## 2.5 Why is Ireland not pulling its weight?

Climate change is clearly not a priority for government. This is because actions necessary to address it would compromise short term profitability for key interests in agriculture and transport.

The national priority of increasing the dairy herd by 300,000 cows by 2020 and increasing agricultural exports under Foodwise 2025 by 85% conflict with climate change policy. Selling of powdered milk to Chinese middle class mothers is an objective that trumps emission reductions. To avoid any doubt on the matter – Irish climate change policy is determined by the primacy of agricultural short term interests. Urban dwellers pay a carbon tax for their household and car emissions. The polluter pays principle does not extend to agriculture which accounts for 33% of all Irish greenhouse gas emissions. Irish agriculture is, according to the EU, the least climate efficient in Europe. In the event of fines for breaching our EU obligations, which may run into several hundred million Euros, the general taxpayer will foot the bill.

## 2.6 The Way Ahead

Climate change will provide a number of challenges to Ireland. These will range from the adverse impacts described as well as ongoing reputational damage. But most importantly they will reduce national competitiveness and options for the coming generation of young Irish people to live and work happily in an Ireland with a decent quality of life.



The Citizen's Assembly is a unique opportunity to wrest back control of the future from vested interests. It is now clear that governance failings will continue to neglect medium and long term considerations in favour of short term responses to those that shout loudest and are most influential. For this reason, it is essential that the Citizen's Assembly exercise their right to put citizens back in control of Ireland and ensure that all the nation's children are treated equally. A constitutional amendment is an opportunity to achieve this.

### **3. Ireland should specify a right to environmental protection in its constitution**

For Ireland to be a leader in tackling climate change it should recognize in its Constitution a fundamental right for its people to live in a healthy environment.

Ireland is reportedly one of only six EU member states that has no provision whatsoever addressing the environmental rights of the individual in its constitution. This represents a missed opportunity in terms of voicing a commitment to assuring our unique natural environment and biodiversity, and recognising the dependence of the individual's wellbeing on the health of the environment.

In 1996, the Constitutional Review Group was in favour of including a 'duty on the State and public authorities as far as practicable to protect the environment, to follow sustainable development policies, and to preserve special aspects of our heritage'. To date this suggestion has not been considered.

Ireland's Constitution (Bunreacht na hÉireann) was adopted in 1937 at a time before the concept of universal human rights was developed. Nevertheless the 1937 Constitution explicitly guarantees certain fundamental rights including equality before the law, the right to life, inviolability of the dwelling, property rights, freedom of expression, freedom of assembly, freedom of association, the family, education and religion.

In that respect, the 1937 Constitution was a visionary document.

Despite this there were and continue to be rights which are now universally accepted but which are not specifically recognized in the Constitution. A right to a healthy environment is one such right.

Beginning in the 1960s these gaps were filled by the Courts which identified so-called unspecified rights in article 40.3.1 – where the State guarantees in its laws to respect and as far as practicable by its laws to defend and vindicate the personal rights of the citizen.

Since the landmark case of *Gladys Ryan v. Attorney General* where the Court identified a right to bodily integrity the Irish Courts have identified as many as twenty unspecified personal rights which are protected by article 40.3.1.

As recently observed by Mr Justice O’Donnell in the Supreme Court, the unspecified rights were discovered “almost on the basis of propositions with which no one could disagree”. Indeed, today it seems obvious that there should be such fundamental rights as the right to earn a livelihood, the right to privacy and the right to found a family.

In our view it is obvious that there should be a right to a healthy environment.

### **3.1 What has the Constitution ever done for us?**

So why do we need a specified Constitutional right to a healthy environment? Can’t we simply rely on the State to make laws to tackle climate change and protect the environment? Won’t the Courts step in if that doesn’t work?

We say that while this may work, it does not guarantee that the State will vindicate the right to a healthy environment.

The reason a fundamental right is important is that the right may only be prejudiced if justified by the need to vindicate other fundamental rights and only if such prejudice is necessary and proportionate.

The classic example is the balance between freedom of expression and the right of privacy. In certain circumstances, the public’s right to receive and impart information (often through the media or on the internet) is more important than an individual’s right to privacy.

In environmental matters, there is a fundamental conflict between perceived rights to use private property for any purpose or to earn a livelihood by any means with the environmental harm that results from the exercise of those rights.

While the European Union through its laws has sought to balance those conflicting rights, our domestic laws do not and in many situations the explicit private property rights in the Constitution are asserted as defining an almost absolute right to use private property in any way and for any purpose giving rise to a presumption in favour of all development.

### **3.2 The Climate Action and Low Carbon Development Act 2015 is a chocolate teapot**

The States reaction to climate change is not encouraging. As we have already outlined in this submission the State is lobbying hard to water down the emission reductions that it will have to make under EU and international agreements and is blindly boosting agricultural output regardless of the consequences.

The major legislative measure – the *Climate Action and Low Carbon Development Act 2015* is unenforceable and does not apply at all to major actors such as Bord na Móna, ESB, Coillte, public transport, and port and airport authorities.

A member of the public cannot go to court and force a public body to take steps consistent with the national mitigation plan, the national transition objective or the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.

This is because the Climate Action Act merely obliges certain public bodies to “have regard” to adaptation and mitigation objectives.

This obligation to “have regard to” has been interpreted by the courts to mean that a public body is not bound to comply with the matters it must have regard to. The courts have held that if the Oireachtas had intended the objectives to be binding it would have explicitly imposed such an obligation in legislation.

Similarly, the State has explicitly exempted certain agencies from any responsibility under the Climate Action and Low Carbon Development Act. These agencies include major state players in power generation, fossil fuels, aviation, public transport etc. They are seemingly exempt because they are commercial semi state organisations and the state thinks that it would be economically harmful for these agencies to have to take climate change into account.

You would think that in crafting one of the most important pieces of environmental legislation of our generation the State would have made them enforceable and applicable to all state agencies and functions.

So, Ireland’s domestic legislative response to climate change is completely unenforceable and doesn’t apply to state agencies with key roles to play in combatting climate change.

If there was a specified right to a healthy environment recognized in the Constitution then these laws could be challenged on the grounds that they were unconstitutional, the actions or emanations of the state which were engaged in environmentally harmful activities could be challenged and, crucially, if the state failed to act, the courts could intervene to force the state to vindicate right to a healthy environment.

Unless the right to a healthy environment is expressly recognized in the Constitution there is no guarantee that the State will vindicate this right.

### **Unspecified rights – An Irish solution to an Irish Problem**

In some ways, the concept of unspecified rights is an Irish solution to an Irish problem where judicial activism had to step into a gap created by political difficulties with developing legal protections for fundamental rights.

Since the 1990s the Courts have expressed this unease and are naturally concerned about encroaching on the separation of powers and making decisions based on individual cases which should really be taken by the legislature.

There must be a genuine democratic process to underpin the recognition of fundamental rights, defining their limits and establishing the relationship with other fundamental rights. In our view while the courts offer a safety net of last resort, they are not the democratic institution which is tasked with establishing new rights.

This is a task for the legislature and ultimately the people via Constitutional amendment.

Nevertheless, there is a suggestion that a right to a healthy environment is implicit in the Constitution.

Mr Justice Richard Humphreys made the following comment in a recent decision concerning the obligation on a local authority to remove waste from the largest illegal dump in the State.

*“The EU Charter-level commitment to a high level of environmental protection, and the implied constitutional commitment to intergenerational solidarity (reflected e.g., in Article 42A.1, 45.4.1° and 2°) militates against such a lax and forgiving approach to fundamental issues of stewardship of the environment in trust for future generations. Vigilant and effective protection of the environment is an implied constitutional obligation, to be laid at the door of private parties as well as the State. It is also an express obligation under International, EU and national legal provisions.” (Brownfield Restoration Ireland Ltd. V. Wicklow County Council & anor; Wicklow County Council v. O'Reilly & ors No.3) (emphasis added).*

Even if the judge’s observation were to be established there are still many unanswered questions that can only be established by having a public debate about the substance and extent of a right to a healthy environment.

The relationship with property rights and the right to earn a livelihood must be considered. In addition, guiding principles need to be established such as the idea of sustainable development, the precautionary principle and the polluter pays principle.

In our view, these ancillary concepts are unlikely to be identified in an unspecified right to a healthy environment.

The fundamental right to a healthy environment is too important to be left to the courts to establish and should be specifically identified in the constitution together with the guiding principles under which the right is protected.

**As a consequence we ask you, the members of the Citizens Assembly, to recommend that the Government take action as soon as possible and give the people the chance to ensure their right to a healthy environment by calling a referendum on the matter as soon as possible.**