

Situating Just Transition as a distinct legal concept

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Introduction

Just Transition has attracted considerable attention as a policy objective in the EU, Scotland, Canada and beyond in recent years and has influenced policymakers and businesses in their respective approaches to net zero transition and sustainability more generally. However, it is unclear how the elements of Just Transition as a concept are linked with broader sustainability objectives and techniques that are often embedded in national and international legal instruments developed with expert scientific

input, expressed through such initiatives as UN Sustainable Development Goals, EU Green Finance taxonomy, or carbon accounting and related net zero initiatives at the national level. Beyond general commitments to net zero, there is currently no clear sense in the national, regional and international policy spaces about how sustainability frameworks link to the concept of Just Transition and its planning frameworks. Just Transition and sustainability are sometimes treated as overlapping values with synonymous meaning, whereas others argue that Just Transition could have more far-reaching implications, with the potential of capturing and combining more ambitious social and ecological values. Crucially, Just Transition can be perceived to be at odds with net zero initiatives in a bid to protect jobs in high-emitting sectors or property rights of existing landowners. Beyond the initial definition by the ILO,¹ often regarded as the starting point of Just Transition, there is no definitive source adopted at international or regional levels that currently determines the content of Just Transition, including what it might mean in practice. The additional challenge lies in the multi-scalar nature of the concept of Just Transition with international or even national law and policy not always suitable to capturing the place-based priorities and a wide range of interventions required in specific areas or regions.²

The problematic juxtaposition of Just Transition and sustainability can be considered from several perspectives. In this paper, we focus on the three normative dimensions of the concept of Just Transition: timeframes, equity, and the process of formulating transitional measures towards net-zero economy, and we also assess the need to strengthen the legal force of the concept, reflected in a cross-cutting dimension of legality. Currently, none of these dimensions feature prominently in the relevant legal and policy frameworks. *Timeframes* for transition to green economy are mainly set by legal instruments that either ignore Just Transition or leave it undeveloped as a concept. Therefore, the question remains as to what Just Transition brings to the timeframe that is distinctive. Ensuring *equity* in the distribution and impacts of the transition to net zero is a central plank of Just Transition but there is also a tendency for it to be employed in a looser and more aspirational sense. While much of Just Transition literature focuses on process, and many transitional measures that reference Just Transition emphasise social dialogue and inclusion of social groups most affected (e.g. workers in the coal sector), the specific nature of the *process* that would qualify transitional policies as ‘just’ remain underdeveloped in legal and policy terms. Finally, while Just Transition as a concept appears to have moral and political traction, its potential to positively guide transition towards net zero is limited by the

¹ According to ILO, a Just Transition means greening the economy in a way that is as fair and inclusive as possible to everyone concerned, creating decent work opportunities, and leaving no one behind. See: ILO, ‘Frequently Asked Questions on Just Transition’ <https://www.ilo.org/global/topics/green-jobs/WCMS_824102/lang-en/index.htm#:~:text=A%20Just%20Transition%20means%20greening,and%20leaving%20no%20one%20behind> accessed 29 February 2024.

² Sally Weller, Andrew Beer, Jessica Porter, ‘Place-based Just Transition: Domains, Components and Costs’ (2024) *Contemporary Social Science* 1-20.

existing legal systems and rules, which, if in tension, are likely to have higher legal authority than this emerging principle. However, rather than being a failing or a gap, the lightweight legal character of Just Transition may be just what is required to foster the flexibility and adaptation to context that is required to drive forward change.

The concept of Just Transition, its meaning and policy relevance has been extensively discussed in the literature, in particular in law over the last few years.³ There is broad agreement that there is a need for the operationalisation of Just Transition and its governance across jurisdictions and political systems.⁴ To this end, scholars have examined the role of Just Transition in different areas of law and governance, such as human rights⁵ and climate law;⁶ as well as its institutional and political set-up across countries and regions.⁷

This paper aims to build on this emerging scholarship field and contribute to the debate in this area, by distinguishing Just Transition from sustainability more clearly, and by discussing how and to what extent the ideas of Just Transition that originated in the labour movements and evolved under the policy paradigm of sustainable development, have been carried over, adjusted, accommodated or reinvented in different legal sub-disciplines. The paper focuses initially on the evolution of the concept Just Transition at the international level, and then on legal domains where the international framework is less obvious, such as in areas of private or corporate law, on how it features in national laws in Scotland and the UK. The aim is to provide examples from diverse areas of law on the value of Just Transition as a distinct legal concept, rather than to ensure a comprehensive mapping of how the principle has spread and evolved across different legal domains and jurisdictions.

We adopt a genealogical approach focusing on the evolution of the concept of Just Transition from its early roots in the labour movement and its conceptual entanglement with ideas of sustainability and sustainable development. Part 1 identifies the key elements of that early phase of evolution in the concept. Part 2 examines the subsequent adoption and development of the concept across the legal domains of international law, including international labour law, international climate law, international human rights law, financial law, corporate governance and property law; and Part 3 evaluates how the concept has evolved and been transformed as a result of its migration across legal areas and across scales of governance along the three aspects of Just Transition (equity, timeframe, process), and in

³ See, for example, K.E.H. Jenkins, B.K. Sovacool, A. Błachowicz and A. Lauer, 'Politicising the Just Transition: Linking Global Climate Policy, Nationally Determined Contributions and Targeted Research Agendas' (2020) 115 *Geoforum* 138–142; A. Stark, F. Gale and H. Murphy-Gregory, 'Just Transitions' Meanings: A Systematic Review' (2023) 36 *Soc. Nat. Resour.* 1277–1297; X. Wang and K. Lo, 'Just Transition: A Conceptual Review' (2021) 82 *Energy Res. Soc. Sci.* 102291.

⁴ Jenkins *et al* (no. 3); Wang, *et al* (no. 3).

⁵ H. Müllerová, E. Balounová, C.O. Ruppel and L.J.H. Houston 'Building the Concept of Just Transition in Law: Reflections on its Conceptual Framing, Structure and Content' (2023) 53(4) *Environmental Policy and Law* 275–288.

⁶ V Johansson, 'Just Transition as an Evolving Concept in International Climate Law' (2023) 35(2) *Journal of Environmental Law* 229–249.

⁷ Raphael J Heffron, *Achieving a Just Transition to a Low-Carbon Economy* (2021).

terms of its legal force and authority. We conclude by providing some general reflections on the value of Just Transition as a distinct legal concept and how it could be better integrated in the existing legal systems.

Part 1 – The origins of Just Transition as a distinct concept

Concepts such as equity, environmental justice, and sustainable development have existed in international environmental legal documents as early as the 1970s.⁸ Just Transition as a distinct concept finds its initial roots in the labour movement before its increased mainstreaming across the regimes governing the environment, economy and society.⁹ The concept of Just Transition emerged through North American trade union struggles over job safety and community health in the 1970s and 80s. During this period, environmental movements increasingly challenged the distributional impacts of industry, with wealth accumulation and burdens of industrial pollution falling mainly on vulnerable communities. At the same time, unions were emerging from periods of decline following the post-war ‘Golden Age’ of steady growth and job security.¹⁰ Wilgosh *et al* outline the rise of the ‘environment vs. jobs’ dilemma during this time, with the perceived conflict of interest between environmentalists, who lobbied for closures of polluting plants, and unions, who objected the disregard for their jobs and risks of environmental policy in spurring ‘chronic’ underemployment.¹¹

The next stage in the evolution of Just Transition was its co-evolution with, and its subsequent entanglement with, the concept of ‘sustainable development’, which was coined from the Brundtland Report published in 1987 by the World Commission on the Environment and Development (WECD).¹² The report defines sustainable development as ‘meeting the needs of the present without compromising the ability of future generations to meet their own needs,’ recognising the prioritisation of the world’s poor’s essential needs, alongside the limitations imposed ‘by the state of technology and social organisation’ on the environment’s ability to meet present and future needs.¹³ As a result, the concept of sustainable development is usually conceptualised across (at times, contentious) the relationship between economy, environment, and society, including human health. Sands and Peel highlight the general principle of sustainable development in international environmental law has been directly or indirectly supported in many treaties, international courts, and decisions of international courts, with

⁸ See for example the concept of intergenerational equity established in Principle 1 of the Stockholm Declaration 1972.

⁹ B. Wilgosh, A.H. Sorman and I. Barcena, ‘When Two Movements Collide: Learning from Labour and Environmental Struggles for Future Just Transitions’ (2022) 137 *Futures* 102903, 2-3.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² See WECD, ‘Report of the World Commission on Environment and Development: Our Common Future’ (1987) available at <<https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>> (last accessed 18/06/2024).

¹³ *Ibid.* at XV, 35, 347

four ‘reoccurring’ elements comprising elements of ‘sustainable development’ as reflected in international agreements, namely:

- (1) the need to preserve natural resources for the benefit of future generations;
- (2) the aim of exploiting natural resources in a manner which is ‘sustainable’, ‘prudent’, ‘rational’, ‘wise’ or ‘appropriate’;
- (3) the ‘equitable’ use of natural resources, which implies that use by one state must take account of the needs of other states;
- (4) the need to ensure that environmental considerations are integrated into economic and other development plans, programmes and projects, and that development needs are taken into account in applying environmental objectives.¹⁴

The far-reaching influence of the sustainable development paradigm has expanded but also diluted the conceptual and policy focus of Just Transition and since this point, the concept of a Just Transition has increasingly entered climate change, energy transition, and labour discourse, with different conceptualisations emerging and converging around different framings of the ‘environment v jobs’ issue. The ‘uncomfortable knowledge’ that the climate crisis demands fundamental reorientation of multiple industrial sectors has the power to disrupt current business-as-usual practice within these regimes.¹⁵ Nevertheless, even if that insight can now be regarded as conventional wisdom it does not resolve the balancing of interests that is required in addressing the key issues of timeframes, equity and process that we argue are necessary in ensuring Just Transition. In that respect, the concept of Just Transition has a potential to provide more granularity and stronger normative pull than the closely related concept of sustainability, since it has room for the procedural, substantive and timeframe dimensions that could be mobilised to enhance climate ambition and accountability. Delving further into the concept of a Just Transition from this perspective has the potential to prevent unproductive, or ‘stalemate’ tensions between different conceptualisations of the principle.

Part 2 – Just Transition in specific legal domains

1. Labour Law

The operationalisation of the concept of sustainable development has long been critiqued within labour law scholarship. The main criticism is that there have been no meaningful attempts to incorporate social concerns into sustainable development practice. While social aims have always been an integral part of the concept of sustainability, in practice, social aims have been merely subsumed into economic ones

¹⁴ P. Sands and J. Peel, *Principles of International Environmental Law* (2018) at 207.

¹⁵ S Rayner, ‘Uncomfortable knowledge: the social construction of ignorance in science and environmental policy discourses’ (2012) 41(1) *Economy and Society* at 107-125.

due to the prevalent ideology being that economic development is the answer to environmental and social problems.¹⁶

The growth in the popularity and acceptance of the Just Transition notion in policy discussions at international, regional, national and local levels has been welcomed in the labour law community as a new opportunity to reconsider the environment/work nexus in ways that are more attuned to the concerns of workers and vulnerable groups more broadly. In its original understanding Just Transition had a rather narrow content; it was used to frame the claims of organised labour to compensation and other relief measures in the process of de-industrialisation, primarily in the USA. Today the notion captures the much broader aim of ensuring that ‘no one is left behind’ not only in the process of decarbonisation but in the transition to environmentally sustainable economies more broadly.¹⁷

The closest we have to a normative framework for the Just Transition in the 21st century are the 2015 International Labour Organisation (ILO) Guidelines.¹⁸ The Guidelines acknowledge that Just Transition requires attention to the specificities of each context and tailored plans,¹⁹ while also setting a number of guiding principles that should be followed in all contexts. These guiding principles are procedural and output oriented. In terms of process, Just Transition must be a well-managed with meaningful social dialogue at all levels. Meaningful social dialogue requires adequate information and consultation, while also being oriented towards reaching consensus. It also requires re-thinking and expanding where necessary the conceptual boundaries of labour law – who is covered and who is excluded from the personal scope of protective and enabling labour law norms – so that all those affected by transition should be able to exercise voice. The operationalisation of these principles at the national or local level has significant implications for national labour law systems. A meaningful social dialogue that extends beyond information and consultation processes requires, for instance, guaranteeing a right to collective bargaining for workers and their representatives especially at the sectoral level, coupled with a broad right to strike for when collective negotiations fail.

As for the outcome, the ILO envisions that Just Transition should contribute to ‘decent work for all in an inclusive society and the eradication of poverty’. The notion of decent work was developed by the ILO in the late 1990s. Decent work includes goals and indicators in four interconnected pillars that concern the world of work: employment – broadly understood to encompass formal and informal work – social protection, fundamental rights at work, and social dialogue.²⁰ Decent work is now an integral

¹⁶ T. Novitz ‘Social sustainability and trade: forging connections’ in M. Pieraccini and T. Novitz (eds.) *Legal Perspectives on Sustainability* (2020) at 159-186.

¹⁷ B. Galgóczi ‘From a ‘just transition for us’ to a ‘just transition for all’ (2022) 28(3) *Transfer: European Review of Labour and Research* at 349-366.

¹⁸ ILO, *Guidelines for a Just Transition towards environmentally sustainable economies and societies for all* (International Labour Office, 2015).

¹⁹ This is a rejection a ‘one size fits all’ approach.

²⁰ G. Dharam (2003) ‘Decent work: concept and indicators’ (2003) 142(2) *International Labour Review* at 113-145.

part of the ILO's vision for Just Transition in addition to the interconnected goal of eradicating poverty, which conceptually links ILO's understanding of Just Transition with the UN Sustainable Development agenda. According to this view, Just Transition is therefore not only concerned with sharing the costs and profits of ongoing and future changes but also with remedying past inequalities. From this perspective, it is in the intended outcomes of Just Transition where we can see a vision of equity reflected. While equity is not mentioned explicitly in the Just Transition frameworks that emanate from labour law, there are elements such as fair distributive consequences of green transition, or the need for fair treatment of workers, that echo the demands associated with various dimensions of equity. On the other hand, the issue of timeframe is not particularly prominent.

These are very ambitious and at the same time very broad goals. Some have therefore critiqued the notion of Just Transition put forward by the ILO as a too open-ended and flexible term without a predetermined scope.²¹ Here indeterminacy is not seen as an advantage but rather a limitation which means that the notion of Just Transition runs the risk of being co-opted in the pursuit of profit in the same way that sustainability has.²² Others point out that the ILO's vision seems to ignore the historical experience of past transitions that have invariably generated new inequalities.²³ Labour law norms and institutions are important but not sufficient in preventing the generation of new inequalities, not least because many forms of paid and unpaid work are excluded from labour law frameworks.²⁴ The welfare state has a key and multifaceted role to play in ensuring a just transition for all by providing adequate unemployment benefits, active labour market policy measures, upskilling policies, and stimuli for job creation with a green profile.²⁵

2. International Climate Law

The concept of Just Transition relating to climate change arguably emerged with the labour movement before its explicit recognition in international climate law²⁶ – perhaps contributing to its lack of discussion in climate law literature. In earlier understandings, the labour force may have been viewed as a limiting factor for the environmental movement – with the protection of ‘brown jobs’ being pitted directly against the environment and the possibility of future ‘green jobs’ in some campaigns.²⁷

²¹ P. García-García *et al* ‘Just energy transitions to low carbon economies: A review of the concept and its effects on labour and income’ (2020) 70 *Energy Research and Social Science* 101664.

²² F. Flanagan, ‘Just Cessation: How Might the Climate Imperative to Phase Out Fossil Fuel Extraction Reshape the Concept of Just Transition?’ (2023) 39(3/4) *International Journal of Comparative Labour Law and Industrial Relations* at 393-418.

²³ B. Galgóczi, ‘Inequality in the green transition’ in A. Kalina *et al* (eds.) *Transformative Ideas – ensuring a just share of progress for all* (European Trade Union Institute, 2023) at 39-56.

²⁴ S. Fredman ‘Greening the Workforce: A Feminist Perspective’ (2023) 39(3/4) *International Journal of Comparative Labour Law and Industrial Relations* at 337-358.

²⁵ B. Galgóczi and P. Pochet, ‘Just transition and welfare states: a largely unexplored relation’ (2023) 165 *Sociologia del lavoro* at 46-67.

²⁶ B. Wilgosh *et al* (no.9).

²⁷ D. McCauley and R. Heffron, ‘Just Transition: Integrating Climate, Energy and Environmental Justice’ (2018) 119(1) *Energy Policy* at 3.

Likewise, power imbalances in the global political economy between extractive industries and those most vulnerable to the impacts of climate change are recognised as underpinning the tensions surrounding a Just Transition.²⁸ Increasingly, however, international climate law has shifted to include the concept of Just Transition in its legal documents, with an increased turn to recognise the intrastate and distributional justice components of a Just Transition.

The initial United Nations Framework Convention in Climate Change and its successor - the Kyoto Protocol - made no mention of Just Transition. Following the efforts of the International Trade Union Confederation's (ITUC) and other partner organisations, like the International Labour Organisation (ILO), trade unions gained constituency status within the UNFCCC in 2008.²⁹ This enabled greater engagement from the ITUC as an observer in international climate negotiations, with the first substantive discussion of Just Transition in negotiations occurring in 2010 at COP16 in Cancun.³⁰ The concept was included for the first time in the Cancun Agreements, where it is stated that 'Just Transition *of the workforce* [which] creates decent work and quality jobs' was a necessary feature of the "paradigm shift towards building a low-carbon society" (emphasis added).³¹ Johansson has highlighted the multiple instances that Just Transition was included in the UNFCCC's work path and forums following COP16, eventually leading to the concept's 'broad endorsement' and inclusion in the preamble of the Paris Agreement 2015.³²

The preamble of the Paris Agreement includes an individual recital which takes 'into account the imperatives of a Just Transition *of the workforce* and the creation of decent work and quality jobs in accordance with nationally defined development priorities (emphasis added).'³³ Preambular recitals in the Paris Agreement are not binding on its parties, though authors suggest that they form part of the text of the treaty and are a part of the context of treaty interpretation (as per the Vienna Convention).³⁴ In particular, Johansson notes the object of Just Transition is explicitly stated as 'the workforce' (rather than broader global society) in these initial references in the COP decisions, documents and the Paris Agreement itself.³⁵

Johansson also noted that the preambular Just Transition reference is framed as 'something to do be done in accordance with states' internal priorities' on the national, due to the qualifier that a Just Transition should be realised 'in accordance with nationally defined development priorities'.³⁶ This is

²⁸ B. Wilgosh *et al* (no.9).

²⁹ V. Johansson (no.6) at 231.

³⁰ *Ibid.*

³¹ *Ibid.* at 233.

³² Paris Agreement (adopted 12.12.2015, in force 4.11.2016) 3156 UNTS, preamble recital 10.

³³ For more on the legal significance on different aspects of the Paris Agreement, see L. Rajamani, 'The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations' (2016) 28 *Journal of Environmental Law* at 22.

³⁴ The concept has further been introduced into EU law, and at the (sub)national level, Just Transition is found in at least eight different framework laws on climate change, featuring, *inter alia*, Just Transition principles and obligations relating to Just Transition plans. See Johansson (no.6) at 230.

³⁵ *Ibid.* at 235.

³⁶ *Ibid.*

highlighted as significant, as it indirectly excludes cross-border distributional climate justice impacts from consideration of Just Transition measures – stepping away from interstate conceptions of climate justice (that are otherwise inherent to climate law principles of equity and common but differentiated responsibilities (CBDR))³⁷ and instead introducing an intrastate conception of justice.³⁸ The national, internal focus of the original conception of Just Transition within UNFCCC documents has been recognised in broader work in the UNFCCC forum on the impact of response measures. Nevertheless, developing countries have consistently argued for greater consideration of the cross-border effects of Just Transition measures and work and the broader role developed countries must play in supporting developing countries' respective Just Transitions – though with no support from developed country parties.³⁹

Johansson argued that at COP 26 and 27, the intrastate and workforce focus of the concept of Just Transition evolved, to 'clarify' and 'extend the content' of Just Transition beyond its reference in the Paris Agreement.⁴⁰ Johansson highlights Paragraph 20 of the Glasgow Climate Pact that calls upon the Parties to 'transition towards low-emission energy systems [...] while providing targeted support to the poorest and most vulnerable in line with national circumstances and recognising the need for support towards a Just Transition', and was later reiterated in the Sharm-el-Sheikh Implementation Plan.⁴¹ Here she notes the significance of the reference to Just Transition without the concurrent reference to the workforce – instead highlighting how the transition is 'connected with supporting the poorest and most vulnerable in line with national circumstances', 'extending' the scope of Just Transition to 'generally vulnerable groups'. This commitment to distributional justice⁴² within a Just Transition is further echoed in the Sharm El Sheikh Implementation Plan, where it is emphasised that 'just and equitable transition encompasses pathways that include energy, socioeconomic, workforce and other dimensions, all of which must be based on nationally defined development priorities and include social protection so as to mitigate potential impacts associated with the transition'. As a result of this distributional shift in conceptualisation, it is suggested that beyond a consensus of the centrality of social protections, the concept of Just Transition is consequently explicitly linked to the notion of equity – with procedural concerns, such as social dialogue and participation, deemed as 'crucial' for the transition.⁴³

Consequently, the concept of Just Transition in international climate law has undergone an evolution from one being solely workforce-focused, to one that embraces broader ideals of equity and global

³⁷ See more in P. Sands, J. Peel, A. Fabra and R. MacKenzie, *Principles of International Environmental Law* (2018) at 226.

³⁸ For more on the development of the CBDR principle, see Lavanya Rajamani, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics' (2016) 65 *International and Comparative Law Quarterly* at 493.

³⁹ Johansson (no.6) at 236.

⁴⁰ *Ibid.* at 240.

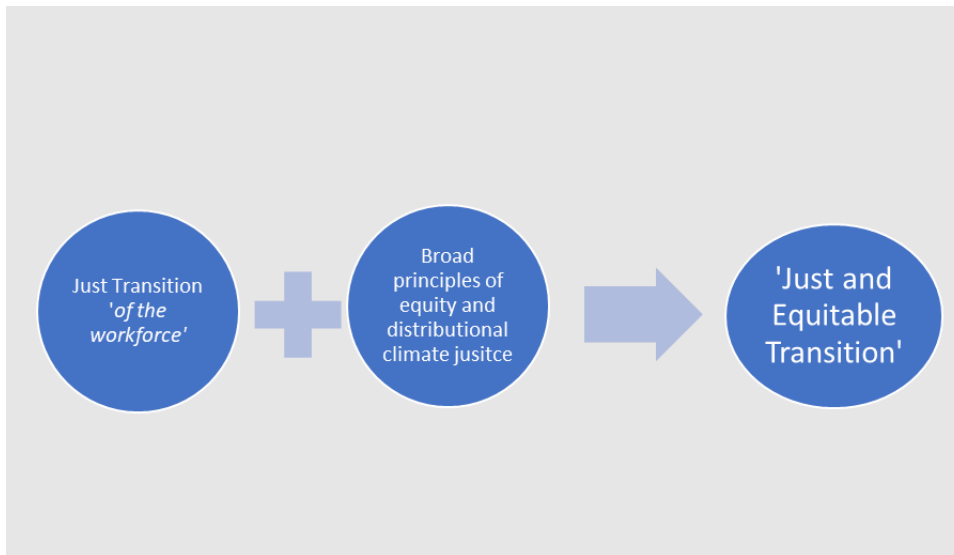
⁴¹ *Ibid.*

⁴² Carmen Gonzalez, 'Environmental Justice, Human Rights, and the Global South' (2015) 13 *Santa Clara Journal of International Law* at 151.

⁴³ Johansson (no.6) at 241.

distributional concerns in relation general climate justice in international climate law. Through this, the concept of Just Transition can be seen as a vehicle to address global climate vulnerability and inequality, rather than an intrastate tool for labour force protection.

Figure: The Evolution of Just Transition in International Climate Law



3. International Law beyond climate and labour regimes

A concept of Just Transition is increasingly visible not only in climate and labour regimes, but also across the broader international institutional terrain. However, for now, in these other international legal domains, it does not seem to have crystallised into a principle with a clear normative content. Beyond international cooperation platforms that focuses on climate and labour, Just Transition is a term that is now used by a variety of international institutions, from the UN to the World Bank, WTO, IMO and others. These, and many other institutions, have either some policy statement, initiative or a taskforce dedicated to Just Transition. Nonetheless, beyond a broad commitment to ‘fair treatment of workforce’ in achieving net zero economy, and beyond some reference to a policy process that distributes benefits and burdens of climate action equitably, there is little in common among different conceptions of Just Transition that are being used. This is, for instance, demonstrated by the Organisation for Economic Co-operation and Development (OECD) in one of a few attempts to identify a ‘common core’ of Just Transition concept at the international level.⁴⁴ In this Policy Insight, OECD identifies no timeframe, equity or process-specific dimensions of Just Transition, beyond a general reference to a need for public engagement. It does, however, highlight the importance of a systematic analysis of risks from climate

⁴⁴ See OECD, ‘Unpacking public and private efforts on just transition’ (2023) available at <<https://www.oecd.org/publications/unpacking-public-and-private-efforts-on-just-transition-cbd31b13-en.htm>> last accessed 17/06/2024.

change perspective for businesses and people, with an extensive emphasis being placed on the positive role that businesses and investors can play in this area. In this briefing, and in many similar light-touch policy reflections, the notion of ‘Just Transition’ is completely removed from the ‘environment v jobs’ dilemma of sustainable development, or the emphasis on the decent work that gave the original impetus for the idea of Just Transition in the fields of labour law, or in international climate regimes.

For the UN, for the time being, *sustainable development* remains the core concept, with the Sustainable Development Goals (SDGs) being the core agenda to which Just Transition policies should contribute, thus merging the two concepts (sustainability and Just Transition) together under the same policy umbrella.⁴⁵ By and large, SDGs, Rio Declaration, Agenda 21 and other sustainable development frameworks appear to have primacy, whereas Just Transition is viewed as something that leads to, or possibly transforms those frameworks of sustainable development towards an ambiguously more ‘just’ approach. For instance, in terms of normative potential (as emphasising the overarching goal of leaving no one behind’ in the SDGs) the need to plan implementation of SDGs systemically, and the importance of justice considerations for sustainable development. The emphasis within such frameworks – although in relatively vague terms – is on the procedural dimension of Just Transition, with some emphasis on a ‘thin’ conception of equity (of ‘leaving no one behind’) that highlights the need to safeguard the most vulnerable and marginalised sectors of society from climate-related harm. Nonetheless, the original tension between economic security and the environment that labour movements advocated in their early deployment of the idea of Just Transition (including the distributive consequences of environmental policies) is not visible in this conceptualisation. Similarly, the World Trade Organisation in its policy briefs on trade and climate change refer with increasing frequency to ‘Just Transition’, but more as enabling concept that justifies the need for more trade, rather than something that could curtail certain unequal trade practices.⁴⁶

Generally, in terms of policy content of Just Transition, different actors in the development sector seem to have slightly different emphases: OECD, for instance, has a fairly ambitious interpretation of the term, by emphasising the need to avoid inequalities.⁴⁷ Other development actors, particularly financial institutions (IFIs) such as the World Bank or European Bank for Reconstruction and Development (EBRD), tend to have a more narrow and less ambitious (in policy terms) understanding of Just Transition, by mostly focusing on specific sectors, such as transitions from coal to more renewable energy sources, and how that can be achieved. Both the World Bank and the EBRD have

⁴⁵ For instance, see the UN Committee for Development Policy report on Just Transition, available at <<https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/CDP-excerpt-2023-1.pdf>> (last accessed 17/06/2024).

⁴⁶ See, for example, WTO, ‘Overview of trade policies adopted to address climate change’ available at <https://www.wto.org/english/news_e/news21_e/clim_03nov21-1_e.pdf> (last accessed 17/06/2024).

⁴⁷ See, for example, OECD, ‘Unpacking public and private efforts on just transition’ available at <<https://www.oecd-ilibrary.org/docserver/cbd31b13-en.pdf?expires=1718624806&id=id&accname=guest&checksum=8C06B49855CBBD332C62F77D478CC674>> (last accessed 17/06/2024).

their respective ‘Just Energy Transition Initiatives’ that are conceptualised along these lines.⁴⁸ IFIs are among the few institutions on an international plane that put a specific emphasis on the *timeframe* of green transition, explicitly designing programmes to transition away from coal in a shorter timeframe than would be feasible under the ‘normal’ financial system and relying on market transactions. The Asian Development Bank’s ‘Energy Transition Mechanism’⁴⁹ for instance, aims to pool resources in order to buy up the assets of existing coal-fuelled power plants, in order to retire them under a shorter timeframe than they would be closed down otherwise. While this particular mechanism does not consider the shortened timeframe of coal energy under the ambit of ‘Just’ transition (but of an energy transition more generally), it does however pay attention to the need for a speedy transition from fossil fuels, which many other institutions appear to be silent about.

More generally, the questions or timeframes are also directly relevant to the discussion about investors’ protection under international law, given that private investors currently hold many fossil-fuel intensive assets, the closure of which can be costly for the states that want to pursue an ambitious climate agenda. There is a growing discussion in international legal terrain about the just energy transition, and how that should look like beyond the focus on national or regional energy security. Nonetheless, it is currently difficult to distil a conceptual framework of ‘Just Transition’ that has been adopted officially, or that has become a dominant one in the debate in this area.

Finally, it is notable that Just Transition as a concept has been interrogated in the context of international shipping and maritime law. There is the Just Transition taskforce involving IMO and other international organisations that aims to identify ‘Just Transition’ pathways in this area.⁵⁰ They have recently issued a report, which does not say much about the specific content of Just Transition concept, but which puts most emphasis on the reskilling of the workforce in the process of decarbonisation.⁵¹ Similarly in the climate regime, the concept of Just Transition here is focused mostly on the fairness of transitional measures on a maritime workforce, which it is arguably most closely aligned with the concept of Just Transition that was originally deployed and popularised by the labour movements, and is less focused on the concept of sustainable development as in case of other agencies in the UN.

4. Human Rights Law

The present section investigates the relationship between Just Transition, sustainable development, equity in the UN practice respecting the core international human rights treaties. Resolutions of the UN

⁴⁸ See EBRD Just Transition Initiative, available at <<https://www.ebrd.com/what-we-do/just-transition-initiative>> (last accessed 17/06/2024).

⁴⁹ See <<https://www.adb.org/what-we-do/energy-transition-mechanism-etm>> (last accessed 17/06/2024).

⁵⁰ See <<https://unglobalcompact.org/take-action/think-labs/just-transition/about>> (last accessed 17/06/2024).

⁵¹ United Nations Global Compact, ‘Mapping a Maritime Just Transition for Seafarers’ (2022) available at <<https://unglobalcompact.org/library/6100>> (last accessed 17/06/2024).

Human Rights Council,⁵² general comments,⁵³ reports produced by the High Commissioner for Human Rights,⁵⁴ by Special procedures among other instruments⁵⁵ have increasingly mentioned or addressed Just Transition.

These instruments often rely on work of the ILO on Just Transition.⁵⁶ Fundamental in this context is the ILO affirmation that respect to human rights and fundamental principles and rights at work should guide a just transition to a sustainable economy for all.⁵⁷ Also important, the OHCHR and the ILO have issued key messages on human rights obligations for the achievement of a Just Transition (summarised in the table below).⁵⁸

UNOHCHR and ILO Key Messages	
1	Ensure equity and justice
2	Mobilize resources for sustainable, rights-based development
3	Guarantee access to information, participation, and access to justice
4	Ensure the right to work and promote capacity-building and skills development
5	Ensure the protection and representation of informal workers
6	Guarantee access to adequate social security
7	Ensure Gender Equality and women’s rights
8	Require business enterprises to respect human rights
9	Respect, protect and fulfil the rights of vulnerable individuals, groups and Peoples
10	Protect environmental human rights defenders

⁵² UN Human Rights Council, ‘Human Rights and Climate Change. A/HRC/RES/53/6’; UN Human Rights Council, ‘Human Rights and Indigenous Peoples. A/HRC/RES/54/12’; UN Human Rights Council, ‘Right to Work. A/HRC/RES/55/9’; UN Human Rights Council, ‘The Right to Development. A/HRC/RES/54/18’.

⁵³ UN Committee on the Rights of the Child, ‘General Comment No. 26 (2023) on Children’s Rights and the Environment, with a Special Focus on Climate Change: Committee on the Rights of the Child. CRC/C/GC/26’.

⁵⁴ UN High Commissioner for Human Rights, ‘Analytical Study on the Promotion and Protection of the Rights of Older Persons in the Context of Climate Change. A/HRC/47/46’ (UN 2021); UN High Commissioner for Human Rights, ‘Analytical Study on the Promotion and Protection of the Rights of Persons with Disabilities in the Context of Climate Change. A/HRC/44/30’ (UN 2020); UN High Commissioner for Human Rights, ‘Measures for Minimizing the Adverse Impact of Climate Change on the Full Realization of the Right to Food. A/HRC/55/37’ (UN 2024).

⁵⁵ Special Rapporteur on extreme poverty and human rights, ‘Extreme Poverty and Human Rights. A/75/181/Rev.1’ (UN 2020); Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, ‘Business, Planetary Boundaries, and the Right to a Clean, Healthy and Sustainable Environment. A/HRC/55/43’ (UN 2024); Special Rapporteur on the right to development, ‘Role of Business in Realizing the Right to Development. A/78/160’ (UN 2023); UN Report of the Special Rapporteur on extreme poverty and human rights, ‘The Employment Guarantee as a Tool in the Fight against Poverty. A/HRC/53/33’ (UN 2023); UN Special Rapporteur on the promotion and protection of human rights in the context of climate change, ‘Scene-Setting Report. A/HRC/56/46’ (UN 2024); UN Working Group on the issue of human rights and transnational corporations and other business enterprises, ‘Extractive Sector, Just Transition and Human Rights. A/78/155’ (UN 2023).

⁵⁶ For example, International Labour Organization, ‘Persons with Disabilities in a Just Transition to a Low-Carbon Economy’; International Labour Organization, ‘ILO Urges Global Collaboration for a Just Transition amid Climate Change Challenges’.

⁵⁷ International Labour Organization (n 5) para 16.

⁵⁸ UN High Commissioner for Human Rights and International Labour Organization, ‘Human Rights and a Just Transition’.

The UN practice shows concern with human rights of different stakeholders – e.g. workers, people of disability, the elderly, children, indigenous peoples, vulnerable communities. A recent report notes the intersectionality of the topic,⁵⁹ and, indeed, the reviewed documents discuss different rights, such as right to health, to a clean, healthy and sustainable environment, to food, to work, and to development. Throughout the documents, sustainable development and sustainability emerge in different ways: sustainable food systems, sustainable agriculture practices, sustainable livelihoods (including women’s livelihoods), sustainable energy, sustainable consumption. References to inclusive, equitable and sustainable development are also present in several documents. Instead of attempting to distinguish between these terms, the UN practice seems to use them to reinforce each other.

We can further observe the importance of human rights in Just Transition litigation. Only recently have climate change litigation scholars defined just transition litigation as particular subclass of cases.⁶⁰ The main project dedicated to cataloguing climate cases has identified eleven just transition cases.⁶¹ Although pertaining to domestic litigation, international human rights law is often invoked for different reasons. These cases address the impact on human rights caused by specific energy projects,⁶² by energy regulations,⁶³ and by lack of compliance with climate change laws,⁶⁴ among others. Many of these cases are pending, but it is possible to see that in submissions, “just transition”, “sustainable development” and “sustainability” are not clearly distinguished but rather are brought to reinforce each other.

Plaintiffs raise violations of a wide array of rights, including the right to health and healthy environment, food, housing, culture, work, among others. Because of its scope, the right to a healthy environment might eventually develop to play a crucial role in Just Transition litigation. Recent climate cases decided by the Inter-American Court of Human Rights and European Court of Human Rights have either enforced this right⁶⁵ or affirmed it as “part of the international law context” in which the decision is proffered.⁶⁶

⁵⁹ Source: the authors based on OCHR and ILO.UN Special Rapporteur on the promotion and protection of human rights in the context of climate change (n 4).

⁶⁰ E. A. Aba, ‘A Fast and Fair Energy Transition: How Community Legal Action and New Legislation Are Shaping the Global Shift to Renewable Energy’ (2023) 8 *Business and Human Rights Journal* 252; Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2021 Snapshot Policy Report* (2021).

⁶¹ Sabin Centre for Climate Change Law, ‘Just Transition Archives’ (*Climate Change Litigation Databases*, 2024) <<https://climatecasechart.com/non-us-case-category/just-transition/>> accessed 1 May 2024.

⁶² *ADI 7095* (Supremo Tribunal Federal do Brasil).

⁶³ *Idheas Litigio Estratégico v Centro Nacional de Control de Energía (CENACE) and Secretaría de Energía (SENER)* (First Circuit Collegiate Tribunal, Mexico).

⁶⁴ *Office of the Inspector General and Others v Ministry of Environment and Sustainable Development and Others* (Council of State, Colombia).

⁶⁵ *Caso Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) Vs Argentina Fondo, Reparaciones y Costas* (2020) Serie C No 400 CIDH (Corte Interamericana de Derechos Humanos).

⁶⁶ *Verein Klimasenioren Schweiz and Others v Switzerland* [2024] ECtHR [GC] 53600/20 [448].

5. Financial Law

Just Transition is attracting increasing attention in finance, although it is still relatively underdeveloped as a concept and practice. While the role of private finance generally in the green transition intensified following the Paris Agreement in 2015, Just Transition did not really have much traction until later, with COP 26 in particular providing some impetus with the founding of the key private sector coalition Glasgow Financial Alliance for Net Zero (GFANZ).⁶⁷ Since then, Just Transition has attracted more attention in corporate transition plans and as a framework for financial activities such as investment, banking and insurance. In terms of the key focal points within Just Transition of equity, timelines and process, the focus has been mostly on timelines, especially those linked to net zero plans.

Just Transition is a late entrant into a global financial system that had already established a distinct approach to the characterisation of sustainability risks. The framing of those risks by reference to the acronym ESG (environmental, social and governance characteristics) was driven by the perspective that sustainability risks were relevant in the sense that they posed risks to financial returns and that appropriate ESG responses by financial firms could mitigate those risks.⁶⁸ The emergence of ESG in this form was predicated on the dominant role of shareholders in companies by reference to other stakeholders (employees, customers etc) and the tendency of financial reporting standards to focus on financial materiality rather than the impact of corporate activities on the social and natural environments in which they operate.⁶⁹

The recent rise of so called non-financial reporting, focusing on issues such as GHG emissions and human rights, along with demands from underlying investors (the general public) for a more responsible financial system has changed the emphasis somewhat, but some key challenges remain. In particular, the distributional justice and equity considerations implicit in the concept of Just Transition pose a challenge to mapping the concept onto the risk-based model of ESG that now underpins much financial sector activity and the metrics that it relies on. It differs from Net Zero in the sense that the risks associated with the climate transition often pose direct and material financial risks for financial firms and so investment in activities such as climate mitigation and clean energy serve the dual purposes of sustainability and financial return. In the case of Just Transition the risks are less direct and more systemic, but a credible case can nevertheless be made for financial firms to address systemic risks such as Just Transition in their practices, as otherwise social resistance may limit the benefits to be derived from net zero.⁷⁰ Precisely how far such an approach could be taken does however remain open to some

⁶⁷ See <<https://www.gfanzero.com/>> (last accessed 17/06/2024).

⁶⁸ See generally I. MacNeil and I. Esser, 'From a Financial to an Entity Model of ESG' (2022) 23(1) European Business Organization Law Review 10.

⁶⁹ So called double-materiality, which underpins the EU's sustainability policy, focuses both on the financial materiality and impact materiality of corporate actions.

⁷⁰ See LSE, Grantham Research Institute on Climate Change and the Environment, 'Making transition plans just: how to embed Just Transition into financial sector net zero plans' (2022), available at <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/10/Making-Transition-Plans-Just-2.pdf>> (last accessed 17/06/2024).

doubt, particularly in the case of fiduciary investors (such as pension funds) who are obliged to act generally in the best financial interests of their beneficiaries.⁷¹ Nevertheless, while some forms of impact investing (which targets real world change while sacrificing financial return) are likely beyond the legal powers of fiduciary investors, many Just Transition initiatives would be possible and that is reflected in the emergence of Just Transition implementation frameworks.

The development of Just Transition frameworks in finance has been evident in both the public and private sectors. In 2021 at COP26, the Glasgow Climate Pact agreed on the need ‘to ensure Just Transitions that promote sustainable development and eradication of poverty, decent work and quality jobs, through making financial flows consistent with a pathway toward low greenhouse gas emission and climate-resilient development.’⁷² This was accompanied by Just Transition Declaration from 14 OECD governments, a set of high-level principles from multilateral development banks and a Just Energy Transition Partnership (JETP) with South Africa. Financing from the public and private sectors is targeted toward ratcheting up national climate ambitions, including through the early retirement of coal-fired power plants, scaled deployment of renewable energy, and enabling technologies like grid and battery energy storage. In the EU Just Transition Mechanism provides targeted support to help mobilise around €55 billion over the period 2021-2027 in the regions most affected by the transition to net zero, to alleviate the socio-economic impact of the transition.⁷³

The Impact Taskforce, backed by the UK presidency of the G7 in 2021, brought together 170 global stakeholders to mobilise capital towards a Just Transition. The Taskforce identified three Just Transition Elements to provide a common frame of reference for financial market actors seeking to advance a Just Transition:

- Climate and environmental action (especially net zero)
- Improve socio-economic distribution and equity
- Increase community voice

The Elements are applicable across geographies and can be used to determine local Just Transition priorities. The three Elements are interlinked and equally important. They must all be present to ensure alignment with a Just Transition.

⁷¹ See further T. Gosling and I. MacNeil, ‘Can Investors Save the Planet? NZAMI and Fiduciary Duty’ (2023) 18(2) Capital Markets Law Journal at 172-193.

⁷² See the Glasgow Climate Pact (esp. paras 19 and 85) at <https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf> (last accessed 17/06/2024).

⁷³ See generally the European Commission webpage on ‘The Just Transition: making sure no one is left behind’ available at <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/finance-and-green-deal/just-transition-mechanism_en> (last accessed 17/06/2024).

In the private sector, several frameworks have emerged to provide guidance to financial firms on integrating Just Transition into net zero plans and planning for effective implementation. These frameworks have emerged in the UK but their approach is applicable to financial sector firms globally. The ‘Making Transition Plans Just’ report from the Grantham Research Institute report ‘...is designed to provide guidance to financial institutions on how they can incorporate consideration of the social dimension of climate action – in other words a Just Transition – within their net zero transition plans.’⁷⁴ Key elements of the recommendations are engagement with corporate clients to ensure cascading of Just Transition factors into their net zero plans and engagement with policymakers to advocate for a policy and regulatory framework that supports a Just Transition, notably to scale up necessary investment. In that sense it is envisaged that financial firms can use their influence to drive change in the financial system as well as in their own practices. The recommendations also include a set of disclosure examples related to Just Transition (including metrics), for inclusion in net zero plans. This reflects the general lack of specific attention to Just Transition in non-financial reporting and investor stewardship to date.

GFANZ has been a key mover in mobilising the Just Transition concept in the private finance sector. Its Recommendations and Guidance on Net Zero Transition Plans⁷⁵ set out a globally applicable, pan-sector, voluntary framework. The guidance encourages financial institutions to show how they are delivering net zero through a Just Transition in the opening ‘objectives and priorities’ component of their plans. The GFANZ approach implicitly endorses the distributional justice and equity dimensions of Just Transition⁷⁶ albeit that all GFANZ activity is subject to the caveat that members act in accordance with their fiduciary duty.⁷⁷ It also endorses the Grantham Institute recommendations and emphasises the role of public-private initiatives in scaling up and de-risking transition finance.⁷⁸

The Impact Investing Institute’s Just Transition Criteria⁷⁹ are specifically designed for asset managers and are grounded in existing frameworks such as UNPRI and SDGs. In that sense they are

⁷⁴ LSE, Grantham Research Institute on Climate Change and the Environment, ‘Making transition plans just: how to embed Just Transition into financial sector net zero plans’ (2022), available at <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/10/Making-Transition-Plans-Just-2.pdf>> (last accessed 17/06/2024). The report was written in consultation with more than 50 financial institutions and other stakeholders.

⁷⁵ See <<https://www.gfanzero.com/our-work/financial-institution-net-zero-transition-plans/>> (last accessed 17/06/2024).

⁷⁶ See GFANZ, ‘Financial Institution Net Zero Transition Plans (Supplemental Information)’ (2022) available at <<https://www.gfanzero.com/our-work/financial-institution-net-zero-transition-plans/>> at 136: ‘Financial institutions have a role to play in a transition that is just for all people and communities by developing transition plans that pursue economy-wide decarbonization in an equitable way by sharing benefits and minimizing risks.’

⁷⁷ Gosling and MacNeil (no.71).

⁷⁸ Techniques for de-risking finance include enhanced covenants in loans (possibly linked to international standards such as those of the World Bank); enhanced reporting obligations (such as those in the Equator Principles); and reserved discretions for funders to control key decisions.

⁷⁹ See Impact Investing Institute ‘Just Transition Criteria’ available at <https://www.impactinvest.org.uk/resources/publications/just-transition-criteria/?_gl=1*qh1rze*_up*MQ..*_ga*MTgxOTQ4ODY0Ny4xNzA1MDYwMzAy*_ga_SGZH7ZJGJZ*MTcwNTA2MDI5OS4xLjEuMTcwNTA2MDk1Mi4wLjAuMA> (last accessed 17/06/2024).

framed so as to align practice with existing standards rather than creating new requirements. Their purpose is stated to be to catalyse market momentum and competition to direct more capital towards a Just Transition. They also propose a Just Transition financing label that would potentially enhance the attraction of aligned products for investors and mitigate ‘greenwashing’, in line with emerging practice in the UK and EU where forms of labelling for investment funds have been introduced.

6. Corporate Governance

Just Transition has not been a material part of evolving regulation or scholarship in corporate governance so far. In comparison, sustainability is a key and well-developed concept in corporate law. It is a broad term, but one of its key overarching themes is a focus on how corporate governance and financial regulation might contribute to resolving or mitigating externalities. Sustainability can be seen as the overarching concept, with Corporate Social Responsibility (CSR) and Environment, Social and Governance (ESG) as sub-sets. CSR is more focused on ethical dimension of corporate behaviour and operational decision-making within a company, while ESG factors are associated with portfolio investment and are focused on financial risk and return.⁸⁰

One might argue that from a corporate governance perspective, Just Transition principles are part of the discussion on sustainability and sustainable companies. However, arguably, sustainability and Just Transition address different aspects of a company’s approach to social and environmental responsibility. The former is a broader concept – encompassing environmental, social, and economic considerations whereas the latter focuses on net zero, the ‘just’ aspect of transition and the impact it will have on various stakeholders. Also, Just Transition goes beyond the conventional understanding of ESG as a financial standard and practice by extending the ‘social’ and process dimension to encompass outcomes that respond to local needs and community participation.

Various aspects of sustainability are regulated under UK law, but there is no explicit reference to Just Transition in the legislation. Nevertheless, in terms of substance these provisions are relevant in the context of Just Transition considerations.

Apart from a director’s duty to promote the success of the company (s 172 Companies Act 2006) – which encourages the board to consider also non-shareholder interests during the decision-making processes, related non-financial and sustainability reporting requirements should be underlined:

- ss 414A-D CA 2006 – a duty to prepare a strategic report (including the information about environmental matters, the company’s employees, social, community and human rights issues);

⁸⁰ I. MacNeil and I. Esser, ‘From a Financial to an Entity Model of ESG’ (2022) 23(1) European Business Organization Law Review at 10-11.

- s 414 CZA CA 2006 – large companies to issue a s 172(1) statement as part of the strategic report, i.e. a statement describing how the directors have had regard to the matters set out in section 172(1)(a) to (f) when performing their duty under section 172;
- ss 414CA and CB CA 2006 – non-financial and sustainability information statement (information relating to, as a minimum: environmental matters, the company’s employees, social matters, respect for human rights and anti-corruption and anti-bribery matters) must be issued by certain companies;
- In the UK the recent trend has been to emphasise the TCFD (Task Force on Climate related Financial Reporting) element of non-financial reporting – since April 2022 certain large businesses in the UK are required to include within this statement the information about climate risks (the first mandatory TCFD-aligned reporting requirements);
- Moreover, Provision 5 of the 2018 UK Corporate Governance Code (which works on a ‘comply or explain’ basis) introduced for the first-time stakeholder engagement with a particular focus on the workforce engagement tools. Provision 5 provides that one or a combination of the following methods should exist in a listed company: (i) a director appointed from the workforce; (ii) a formal workforce advisory panel; and (iii) a designated NED. If the board has not chosen one or more of these methods, it should explain what alternative arrangements are in place and why it considers that they are effective. Provision 5 is a clear example of efforts to enhance participation of stakeholders and especially workforce in board decision-making. Arguably, workers’ engagement and participation in corporate decision-making is a critical missing element of the UK’ s corporate governance system. Well-functioning Provision 5 workforce engagement mechanisms – despite their voluntary (or soft law) character – can provide an effective model for the development of the social dimension of sustainability⁸¹ or even open the door to the procedural dimensions of Just Transition.

As stated above, in the context of corporate governance, Just Transition is not regulated but arguably it is gaining importance when it comes to policy making. From a corporate perspective the Transition Plan Taskforce (TPT) should be mentioned. TPT was launched in 2022 to provide companies with guidance on a “gold standard” for private sector climate transition plans. The TPT has a two-year mandate and will be responsible for informing the implementation of the UK’s Sustainability Disclosure Requirements.⁸² Further, a recent Grantham Research Institute’s report provides some useful guidance

⁸¹ For an in-depth evaluation of Provision 5 engagement tools see e.g. K. Chalaczkiewicz-Ladna, I. Esser and I. MacNeil, ‘The Workforce Engagement Mechanisms in the UK: A Way Towards More Sustainable Companies? (Part 2)’ (2022) available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4296944> (last accessed 5 June 2024).

⁸² See <<https://transitiontaskforce.net/>> (last accessed 11/01/2024).

to financial institutions – hence, only indirectly relevant for corporate governance – on how they can incorporate considerations of the social dimension of climate action (which they call ‘a Just Transition’) within their net zero transition plans.⁸³

Increasingly, investors have become interested in Just Transitions, which might help in moving Just Transition into the mainstream of corporate governance discourse. For example, the Impact Investing Institute – an independent, non-profit organisation – works to help investors and their advisors deploy capital to address social and environmental challenges, alongside generating a financial return. As they state on their website, ‘our two flagship projects focus on mobilising more capital for a fair and inclusive transition to a net zero economy – a Just Transition – in underinvested places and communities across the UK and globally.’⁸⁴

Also, we observe that Just Transition is slowly gaining recognition in corporate practice as companies start adopting Just Transition plans on a voluntary basis. Scottish Power is a notable example here. Scottish Power’s Just Transition Strategy was launched in 2021 during COP26. The strategy outlines the importance of collaboration between government, industry, and local communities to truly succeed in delivering a Just Transition to net zero. The strategy also outlines how the energy company’s approach puts into practice its support for national, industry and global standards of conduct, not only in its own business operations but in supporting its supply chains to achieve high standards as well.⁸⁵

However, we are clearly only at the beginning of the development of the corporate Just Transition plans as shown by the 2021 report produced by the World Benchmarking Alliance (WBA). WBA assessed the decarbonisation performance of 180 companies in the oil and gas, electric utilities, and automotive manufacturing sectors and piloted ‘Just Transition assessments.’ The findings show that overall, only a minority of companies are engaged with a ‘just’ transition, if they are undertaking a low-carbon transition at all. The assessments have revealed a systemic lack of disclosure on how companies identify, prepare for and mitigate the social impacts of their low-carbon transition strategies. Also, the report uncovered a current absence of a holistic approach to decarbonisation planning, where emissions reduction is considered hand in hand with respect for human and labour rights to ensure a just and equitable low carbon transition.⁸⁶ However, since that report preceded the GFANZ focus on Just Transition that followed on from COP 26 (in 2021), including the principle that financial firms could

⁸³ LSE, Grantham Research Institute on Climate Change and the Environment, ‘Making transition plans just: how to embed Just Transition into financial sector net zero plans’ (2022), available at <<https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/10/Making-Transition-Plans-Just-2.pdf>> (last accessed 17/06/2024).

⁸⁴ See <<https://www.impactinvest.org.uk/our-work/putting-people-and-the-planet-at-the-heart-of-investing/>> (last accessed 10/01/2024).

⁸⁵ See <https://www.scottishpower.com/news/pages/scottishpower_launches_just_transition_strategy.aspx> (last accessed 10/01/2024).

⁸⁶ World Benchmarking Alliance, ‘Just Transition Assessment 2021: Are high-emitting companies putting people at the heart of decarbonisation?’ (2021) at 8, available at <https://assets.worldbenchmarkingalliance.org/app/uploads/2021/11/2021_JustTransitionAssessment.pdf> (last accessed 17/06/2024).

use their influence to ‘cascade’ Just Transition principles and practices into the corporate sector, a more positive assessment of the status of corporate Just Transition plans and their implementation might be possible in the near future.

Just Transition in the corporate governance context seems to be mainly a socio-economic process now though, which concentrates on policy making or grassroots, bottom-up approaches, and voluntary initiatives whereas legal aspects are currently not that prominent. Moreover, a coherent approach to Just Transition and/or a standardised framework thereof are lacking.

7. Property Law

Private law regulates relationships between individuals. Therefore, when considering the question of Just Transition, property law may not appear at first to be an obvious area of consideration. However, this link becomes clearer when considering the importance of land use, and land use change, in terms of both Just Transition and in wider concerns regarding environmental sustainability and climate change. Land use decisions can have profound and long-lasting socio-environmental consequences.⁸⁷ Ownership of land is at the heart of any land use decision, and property law is the primary regulator of ownership. Of course, other areas of law, including planning and environmental law, exert regulatory constraints on the right of ownership, but ownership is fundamentally bound up with property law. Further, consideration of national legal systems is an important step in understanding how Just Transition can be operationalised at a national level.

Although principles of sustainability, particularly in the form of sustainable development, have been adopted in international environmental law, those same principles have not yet found their way into mainstream property theory. As Robbie states, ‘this should not be surprising. Realisation of the scale and extent of the global challenges facing the Earth’s resources has occurred only relatively recently whereas, at least in Europe, the tradition of property law reaches back to Antiquity.’⁸⁸ In a Scottish context, there is very little discussion of property theory, let alone how property law might be reformed to reach sustainability goals in Scotland.

Therefore, few links have been made in Scots property law literature with Just Transition. Perhaps the clearest example is found in the property protection clause of the European Convention on Human Rights, specifically Article 1 of the First Protocol (A1P1), to which Scotland, as part of the UK, is a signatory through the Human Rights Act 1998. A1P1 limits state action which would constitute an unjustifiable interference with an individual’s right to peaceful enjoyment of their property. That is, unless that action is justifiable in the general interest. Therefore if, for example, the Scottish Government legislated for some form of land use change which impacted on an individual’s A1P1

⁸⁷ See N. Graham, *Landscape: Property, Environmental, Law* (2011).

⁸⁸ J. Robbie, ‘Moving Beyond Boundaries in the Pursuit of Sustainable Property Law’ in B Akkermans and G van Dijk, *Private Law and Sustainability* (2019).

rights and could not be justified in the general interest then it could be successfully challenged. A recent example in a Just Transition context centred on the implementation of the Glasgow Low Emission Zone (GLEZ). The GLEZ is enmeshed with Just Transition; a scheme which seeks to reduce emissions whilst improving public health especially for those most economically challenged.⁸⁹ A car repair garage within the geographical area of the GLEZ argued that it had lost, and would continue to lose, business as a result of the GLEZ, thereby constituting an undue interference with their property right under A1P1. The challenge was struck down because the court deemed that the interference was justified in the general interest.⁹⁰ However, it nevertheless presents an insight into the difficulties of regulating for Just Transition in an area as politically fraught as property, and the possibility of many further legal challenges of land use change measures aimed at Just Transition in Scotland.

Beyond property issues based on human rights claims, changes to land use being undertaken through Scottish Government policy and regulation point towards land use change as an implicit vehicle for Just Transition. However, quite how the Scottish Government is defining Just Transition in relation to land use remains to be seen. Land use is increasingly referenced as a key element of Just Transition in Scottish Government policies. For example, the Climate Change Plan states that ‘Scotland’s land and the natural capital it supports will play a fundamental role...in our response to the climate crisis...Land use change at the required scale will provide green economic and employment opportunities...help to address rural depopulation and provide social benefits to communities across Scotland. This will in turn help secure a Just Transition to our economic and environmentally sustainable future.’⁹¹ Just Transition is also an important part of Scotland’s Land Use Strategy: landscape-scale changes are inevitable to reach net zero and this will have significant social consequences.⁹² The Strategy outlines examples including afforestation, peatland restoration and the production of food in an efficient and environmentally friendly way (suggesting perhaps that it is currently not produced in such a way).⁹³ The key point that the Strategy makes in this regard is that Just Transition, in relation to land, is a balancing exercise: land in Scotland is a stressed resource with many competing claims and demands, which will require increasing ‘negotiation and compromise from all.’⁹⁴

⁸⁹ See <https://www.glasgow.gov.uk/article/3981/Overview-of-Glasgow-s-LEZ>

⁹⁰ John Paton & Sons Ltd v Glasgow City Council and The Scottish Ministers [2023] CSOH 74

⁹¹ Scottish Government, ‘Update to the Climate Change Plan 2018 – 2032’ available at <<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/12/securing-green-recovery-path-net-zero-update-climate-change-plan-20182032/documents/update-climate-change-plan-2018-2032-securing-green-recovery-path-net-zero/update-climate-change-plan-2018-2032-securing-green-recovery-path-net-zero/govscot%3Adocument/update-climate-change-plan-2018-2032-securing-green-recovery-path-net-zero.pdf>> (last accessed 17/06/2024).

⁹² Scottish Government, ‘Scotland’s Third Land Use Strategy: 2021 – 2026’ (2021) at p6 (available at <<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2021/03/scotlands-third-land-use-strategy-2021-2026-getting-best-land/documents/scotlands-third-land-use-strategy-2021-2026-getting-best-land/scotlands-third-land-use-strategy-2021-2026-getting-best-land/govscot%3Adocument/scotlands-third-land-use-strategy-2021-2026-getting-best-land.pdf>> (last accessed 17/06/2024).

⁹³ Ibid.

⁹⁴ Ibid.

Beyond piecemeal approaches to land use change, the Scottish Land Commission (SLC) - the non-departmental government body tasked with taking forward land reform recommendations for Scotland – is taking the lead on linking land use change with Just Transition. Most of its output relates to a more diffuse group than what may be expected in discussions of Just Transition. For example, traditionally, discussions on Just Transition might focus on issues of labour law. However, the SLC has cast its net wider, focusing on the effects of land use change on local communities. Much of this work can be seen as procedurally-driven. By changing the processes of land use decision-making by land owners, the aim is that this creates enough fundamental change over time to meet the needs of local communities. For example, SLC has created a suite of ‘good practice’ protocols to promote and support change in land use in both urban and rural areas.⁹⁵ These include a protocol on diversification of ownership and tenure and negotiating transfer of land to communities.⁹⁶ These documents set out suggested timelines and procedures for land use change to occur, voluntarily, at the behest of the land owner, and are largely aimed at addressing the social justice concerns of local communities in relation to land access and use.

The SLC has also taken an agenda-setting role in certain Just Transition aspects relating to land use change. For example, most of the explicit discussion from SLC on Just Transition has taken place in the context of the rising ‘natural capital’ markets in Scotland.⁹⁷ The SLC has issued two papers outlining recommendations relating to managing these markets in the context of a Just Transition in Scotland.⁹⁸ Just Transition concerns relating to these markets are twofold: first, social justice concerns and, second, ecological concerns. With regard to social justice, the concerns are set against the background of pre-existing concentrated land ownership patterns: communities who have been frozen out of land use decisions at scale have very little say in decisions which can change landscapes for hundreds of years, with very little ability to gain those decision-making powers. Speculation on the market is also driving

⁹⁵ See Scottish Land Commission’s webpage on good practice, available at <<https://www.landcommission.gov.scot/our-work/good-practice>> (last accessed 17/06/2024).

⁹⁶ See Scottish Land Commission Protocol on Diversification of Ownership and Tenure, available at <<https://www.landcommission.gov.scot/our-work/good-practice/diversification-of-ownership-and-tenure-negotiating-transfer-of-land-to-communities>> (last accessed 17/06/2024). See also Scottish Land Commission Policy Guidance on Diversification of tenure, available at <https://www.landcommission.gov.scot/downloads/665745c26131f_SLC_Diversification_Policy_Guidance.pdf> (last accessed 17/06/2024) which provides further procedural advice on diversification of tenure.

⁹⁷ These markets relate mainly to the creation and trading of carbon ‘credits’ which arise from the creation of woodland or the restoration of peatland. For a fuller explanation of the market mechanisms see J Robbie and G Jokubauskaite ‘Carbon Markets, Public Interest and Landownership in Scotland’ (2022) available at <https://www.landcommission.gov.scot/downloads/628dea082d087_Land%20Lines%20Nat%20Cap-Carbon%20Markets,%20Public%20Interest%20and%20Landownership%20in%20Scotland.pdf> (last accessed 17/06/2024).

⁹⁸ Scottish Land Commission, ‘Natural Capital and Land: Recommendations for a Just Transition’ (2022) available at <https://www.landcommission.gov.scot/downloads/62baa9e7e982e_Natural%20Capital%20and%20Land%20Recommendations%20Report.pdf> (last accessed 17/06/2024) and Scottish Land Commission, ‘Natural Capital and Land Reform: Next Steps for a Just Transition’ (2023) available at <https://www.landcommission.gov.scot/downloads/648b037d8923a_Natural%20Capital%20and%20Land%20Reform%20Next%20Steps%20Advice.pdf> (last accessed 17/06/2024).

land values up dramatically, eliminating the possibility of community-led purchases of land.⁹⁹ Ecologically, doubts have been raised regarding the actual effectiveness of a market-based approach to afforestation and peatland restoration, arguing that it green lights a business-as-usual approach to emissions action.¹⁰⁰ The SLC has recommended stronger market regulation and increasing community empowerment, but stops short of recommending a ban on these markets. The SLC cites its earlier report on ‘Legislative proposals to address the impact of Scotland’s concentration of land ownership’¹⁰¹ as having the potential to address some root causes of the social justice issues of natural capital markets. These recommendations target the right of ownership itself, which draws private property law directly into the fore when considering Just Transition measures.

However, while Just Transition is increasingly an integral part of land reform policy in Scotland, it remains ill-defined and, arguably, simply a substitute term for sustainable development. In their reports, the SLC refers to Just Transition as a transition ‘which will meet the needs and ambitions of Scotland’s people and put the economy in a stronger, more resilient position.’ Quite how this differs from well-trodden definitions of sustainable development, based on the Brundtland Report, is not clear. Sustainable development is already a key element of land reform in Scotland.¹⁰² However, it appears to have been replaced with Just Transition as a guiding principle, without any explanation as to why, or indeed the differences between how the Scottish Government sees the two principles in relation to land use and land reform. This conflation threatens an effective Just Transition, particularly in rural Scotland where many of these issues are at their most pointed. Neither does there appear to be any set timeline for Just Transition in relation to land use change in Scotland. Policy and regulation aimed at regulating land use and redistributing ownership are arguably more backwards looking (for example in addressing the historic effects of a concentrated ownership pattern in rural areas) than forwards looking.

⁹⁹ See Scottish Land Commission, ‘Rural Land Market Report: Analysis of land sales data 2020-2022’ (2023) available at <https://www.landcommission.gov.scot/downloads/65644f2d6ed20_Rural%20Land%20Market%20Report.pdf> (last accessed 17/06/2024).

¹⁰⁰ See A Wightman ‘Why Scotland Should Stop Selling Carbon’ (2023) available at <<https://andywightman.scot/2023/11/why-scotland-should-stop-selling-carbon/>> (last accessed 17/06/2024).

¹⁰¹ Available at <https://www.landcommission.gov.scot/downloads/601acfc4ea58a_Legislative%20proposals%20to%20address%20the%20impact%20of%20Scotland%E2%80%99s%20concentration%20of%20land%20ownership%20-%20Discussion%20Paper%20Feb%202021.pdf>

¹⁰² For example, it plays an important part in the Land Reform (Scotland) Acts 2003 and 2016, particularly for the statutory community rights to buy land: any community body which seeks to buy land must show that it will further the achievement of sustainable development (LR(S)A 2003 s34(4) and LR(S)A 2016 s49(7)). Indeed, the LR(S)A 2016 created a new community right to buy land specifically for the purposes of sustainable development (LR(S)A 2016 Part 5) and the statutory Land Rights and Responsibilities Statement – an important policy document which guides land use decisions in Scotland – is based on sustainable development (LR(S)A 2016 s1(3)(g)).

Part 3 – Dimensions of Just Transition: Equity, Timeline, Process and Legality

In this part we evaluate the extent to which Just Transition has emerged as a distinct concept from sustainable development, drawing on the observations above regarding the adaptation of the concept as it migrated from its original focus on labour and environment to other legal domains that are implicated in the transition. As part of that evaluation, we consider the extent to which the concept has experienced variations in its articulation and implementation linked to the context in which it is applied. Both strands contribute to an understanding of whether Just Transition is a distinct and unitary concept across its field of application or whether it is better characterised as a policy focus that adopts a variety of strategies across different legal domains to address equity related issues linked to the transition to a sustainable economy and society. We follow the perspective of the key elements of Just Transition that we identified in the introduction (timeframes, equity and process). We also reflect on the value of enhancing the legal authority of Just Transition and its value as a legal, rather than political concept.

Equity

Equity is a significant priority for a Just Transition and is alluded to in varying degrees across the legal domains covered in this paper. Equity is either referenced explicitly (such as the international climate regime) or equity considerations are evident in implementation measures such as legal instruments, standards and policies. However, beyond these initial observations, some limitations on the framing of equity in the context of Just Transition are present.

One is that the characterisation of Just Transition as primarily a national rather than an international concern means that notions of inter-state responsibility are largely absent from the concept of Just Transition.¹⁰³ In recent COP negotiations, the meaning of Just Transition in international climate law has expanded to explicitly consider inter-state equity. However, generally the tensions between inter and intra-state conceptions of equity are seen in the conceptualisation of Just Transition across the assessed legal domains.

Another aspect, relevant in particular for the interface of Just Transition with domestic law, is that equity as a concept is already embedded in many branches of law and so there is a degree of path dependence that may constrain the capacity of a domestic legal system to adopt a different notion of equity that has evolved in the international setting. This is evident, for example, in corporate governance and financial law, where the role of capital and shareholders pose inherent limitations for the mobilisation of equity as a driver for change in a manner outlined by other regimes, such as the international climate regime. A number of major global industry actors are required to undertake

¹⁰³ An example of inter-state responsibility can be seen in the concept of ‘common but differentiated responsibilities’ articulated first in the United Nations Framework Convention on Climate Change (1992) Article 3 Paragraph 1, and restated in Article 2 Paragraph 2 of the Paris Agreement.

ambitious action to realise an interstate Just and Equitable Transition – differing notions of equity may constrain this in reality and cause evasion of interstate responsibility for climate change mitigation.

Timeframes

A need for a clear timeframe is inherent in Just Transition as a concept that is concerned with social, political and economic change. Not being able to achieve a necessary change in a timely manner can lead to the highest possible injustice, affecting the most vulnerable communities across the globe. Nonetheless, there are currently limited legal or policy frameworks that explicitly deal with the timeframes for Just Transition. The Paris Agreement famously sets out a global long-term goal for slowing down the global temperature rise (Art.2.1.a), without specifying when exactly this goal should be achieved, but rather encouraging climate ambition in the nationally determined contributions (NDCs) (Art. 3). In practice, the most concrete timeframes for climate action are set out in the national climate laws and policies that mostly aim to achieve net zero by 2050, often through the adoption of national ‘carbon budgets’, although the legal and political authority of such climate commitments varies from country to country. Other areas of law discussed in this paper that include timeframes for transitional measures (e.g., corporate or financial sector net zero plans) are linked directly to these measures. While various instances of rights-based climate change litigation suggest that national climate policy is directly linked with states’ commitments under human rights law,¹⁰⁴ it is questionable whether the timeframes attached to the climate ambition are in fact sufficient and adequate as timeframes for Just Transition.

On the one hand, it could be argued that meaningful timeframes for Just Transition could not and should not be set in other legal domains, beyond climate law. Indeed, in the jurisdictions and areas of policy-making where Just Transition has had traction thus far, such as in the EU, Scotland, or company-specific financial and corporate governance, the relevant timeframes tend to be embedded in the planning frameworks for Just Transition, be it at the regional, national, local or company level, as is the case with the Scotland’s Draft Energy Strategy and Just Transition Plan, or the corporate Just Transition plan by Scottish Power, among many others that are emerging under the ‘Just Transition’ banner. As programmatic documents, these planning processes make it possible to set the timeframes for transitional measures that are context-specific and tailored to specific circumstances of a sector, territory or company concerned. Indeed, it would be difficult to incorporate specific Just Transition timeframes for each sector and territory in the general laws, which tend to provide more open-ended, general rules for democratic decision-making. Accordingly, up to a point, it makes sense that a lot of the transitional timeframes are in fact reflected at the planning and management level, rather than at the

¹⁰⁴ See Urgenda, Verein Klima, Seniorinnen Schweiz and Others v. Switzerland (ECHR, 2024); S Humphreys, ‘A Swiss human rights budget?’ (2024), EjiL: Talk! available at <<https://www.ejiltalk.org/a-swiss-human-rights-budget/>> (last accessed 17/06/2024).

level of the law, and that the only legal framework that mandates specific transitional timeframes is the one concerning climate ambition.

Nonetheless, the issue with this status quo where all other areas of law largely remain silent on the topic of timeframes – thus leaving the question solely as a focus of climate policy transition, implemented by strategies of corporate and public management – is that rules in these other areas of law can get in the way of effective and just transitional measures. Litigation that aims to mobilise the right to property under the ECHR A1P1, or the international investment cases that challenge legitimacy of public measures prohibiting expansion of fossil fuel extraction, are the obvious examples of such possible legal challenges, among others. Climate law and policy being one area of law, albeit not the most authoritative one in terms of its legal and political hierarchy, although able to provide a level of political agreement internationally and guidelines for national or local climate mobilisation, is arguably insufficiently authoritative in legal terms, and not detailed enough in areas beyond climate, to spell out how transitional measures and strategies ought to be reflected in other legal domains. Climate law being the only one that ‘anchors’ transitional measures in legal terms is also extremely vulnerable to changes in political power and priorities, as in the case of Scotland rolling back on its 2040 net zero commitment, or the ongoing fear of the US possibly decreasing its climate ambition in light of its presidential elections.

Finally, the more fundamental issue with Just Transition timeframes being derived from international climate regime and being tied solely to national climate ambition policies is that a lot of the net zero debate takes the a-historical perspective to climate change, which as discussed earlier, is a problematic approach in the context of Just Transition. Given that the overall GHG emissions to the atmosphere still points towards the historical responsibility of the western states, including the wealth that they continue to take advantage of from past colonial exploitation and current international financial subordination, a discussion about transitional timeframes that starts from the present is unlikely to be sufficient as a timeframe for Just Transition processes going forward. Such an approach would ignore the inter-state equity and fairness considerations, discussed above, and it would also risk legitimising an assumption that the current distribution of resources and opportunities is an acceptable starting point for a climate transition going forward.

Process

Just Transition can be understood as a transition towards a fairer, greener future for all and the process that must be undertaken in partnership with those impacted by the transition to net zero. Hence, as it was explained in the Introduction, by process we understand an emphasis on social dialogue and an inclusion of social groups most affected (for example, workers in the coal sector) by the transitions.

Participation is a key element of Just Transition as a process, especially in the light of variations in the meaning of ‘just’ in Just Transition discourse and policy. The specific nature of the process that

would qualify transitional policies as ‘just’ remain underdeveloped in legal and policy terms and the ‘just’ element of the transition remains highly contested. Further, too much focus on process might slow down the pace of the transition, which is becoming an increasingly more important consideration in the climate emergency.

The characterisation of Just Transition as a process is evident particularly in labour law through social dialogue and collective bargaining more generally, but also in corporate governance,¹⁰⁵ finance,¹⁰⁶ property law,¹⁰⁷ and environmental law.¹⁰⁸ It is also a notable feature of the Scottish Government’s Just Transition policy, which references participation and co-design as key features.¹⁰⁹

With regard to the key element of participation within wider procedural aspects of Just Transition, labour law can offer general guidance as to how employee consultation and participation could look like. As underlined above, the 2015 ILO Guidelines emphasise meaningful social dialogue at all levels which requires adequate information and consultation, but also exceeds them by requiring consensus. Other areas of law are less clear when it comes to how process or stakeholder participation is understood, although process and participation remain oft-cited buzzwords in such areas. Finally, the reliance on policy-based measures, soft law, guidelines when addressing process and participation can be linked to the challenges of addressing embedded aspects of distributional justice in substantive law across the various legal domains, as changes to governance and decision-making processes may be more amenable to change than substantive law.

Legality

A common theme across the analysis of different regime’s conceptions of Just Transition was a lack of ‘hard’ law references to Just Transition.¹¹⁰ More frequently, hard law references to sustainability or sustainable development, rather than Just Transition, are seen in legal texts, for example, in corporate governance or international law more generally. Even in the labour law sphere where the concept originated, the closest to a framework for Just Transition that exists is in the form of non-binding ILO Guidelines. International climate law perhaps offers the closest to creating specific legal obligations

¹⁰⁵ For example, stakeholder and workforce participation within the UK Corporate Governance Code, available at <https://media.frc.org.uk/documents/UK_Corporate_Governance_Code_2024_kRCm5ss.pdf> (last accessed 17/06/2024).

¹⁰⁶ For example, the UK Stewardship Code, available at <https://media.frc.org.uk/documents/The_UK_Stewardship_Code_2020.pdf> (last accessed 17/06/2024).

¹⁰⁷ For example, in the ongoing land reform process in Scotland as discussed in section 6: Property Law in Part 2 of this paper, particularly with regard to the emphasis on collaboration between landowners and communities and consultation in land use changes.

¹⁰⁸ The multilateral negotiation process under UNFCCC framework provides an example of the procedural aspects of Just Transition in international environmental law.

¹⁰⁹ See Scottish Government, ‘Just transition for the transport sector: A discussion paper’ (2023) at 7, available at <<https://www.gov.scot/publications/transition-transport-sector-discussion-paper/>> (last accessed 04/06/2024).

¹¹⁰ K. W. Abbott and D. Snidal, ‘Hard and Soft Law in International Governance’ (2000) 54 International Organization at 421.

relating to Just Transition. An intrastate conceptualisation of the notion of Just Transition was included in to 2010 Cancun Agreements, leading to its endorsement and inclusion in the preamble of the Paris Agreement 2015. The Glasgow Climate Pact and the Sharm El Sheikh Implementation Plan again explicitly included Just Transition in its legal text, including an expansion towards a more interstate conceptualisation of Just Transition.

Generally, concerns are raised about the lack of ‘legality’ in the emergence of the concept of Just Transition across different legal governance regimes. Without legal basis, the concept of Just Transition may experience a number of shortcomings – such as a lack of legal clarity or enforceability when trying to challenge Just Transition related policies. Even under international climate law where references *are* made in legal texts, the lack of enforceability mechanisms in the international climate regime can still render the concept weak in legal terms.

A lack of ‘hard’ law references to a legal concept is not always deemed detrimental. For example, Cottrell and Trubek suggest that the assumption that greater degrees of obligation, precision, and delegation in legal rules will lead to more compliance and greater cooperative gains is not always true.¹¹¹ Moreover, they state ‘precision [in legal rules] may actually reduce compliance as precise rules may create resistance in situations where open-ended standards, allowing for diversity, would not.’¹¹² In that sense the long-standing debate over the respective role of principles vs rules in standard setting has found its way into Just Transition discourse. However, against a backdrop of historic climate inaction,¹¹³ arguably more legal enforceability (particularly at the national level) could strengthen the concept of Just Transition and avoid the risk of it becoming the *buzzword de jour* with little rigour in achieving actual climate and societal benefits.

Provisional conclusion: Integration of Just Transition?

We note the relatively slow and limited integration of Just Transition into legal instruments at the international and national levels. More progress has been achieved at the international level but even in that context formal legal recognition (e.g. in the Paris Agreement) is relatively weak. In the EU, the focus of Just Transition framework has been largely on financial support for workers, companies and member states involved in carbon intensive activities. In Scotland, an ambitious agenda has been articulated by the government but there is no mention in the policy statements of substantive legal changes associated with the initiative. In that sense our earlier characterisation of Just Transition as a ‘lightweight’ legal principle seems to be appropriate.

¹¹¹ M.P Cottrell and D. Trubek, ‘Law as Problem Solving: Standards, Networks, Experimentation and Deliberation in Global Space’ (2012) 21 *Transnational Law and Contemporary Problems* at 364.

¹¹² *Ibid.* at 365.

¹¹³ UN Environment, ‘Emissions Gap Report 2023’ (2023) available at <<http://www.unep.org/resources/emissions-gap-report-2023>> (last accessed 04/06/2024).

It is less clear whether, as we speculated in the introduction, the lightweight legal character of Just Transition will allow it to perform a facilitative function in driving legal change across the sustainability spectrum. Its potential to do that would be linked to its role in strengthening the role of social equity as a normative principle linked to sustainability at both international and domestic levels. And it might well be that such an approach could be more effective in the long run to implement Just Transition than a more instrumental approach focused on specific legal reforms that might not carry system-wide effects or could turn out to be misaligned with the actual trajectory of the transition and its impacts.