

Lawyers Are Responsible - Statement in support of the Whole Truth Five and other environmental defenders

9 August 2024

Lawyers are Responsible [1] is a group of lawyers committed to holding the legal profession to account for its role in enabling the fossil fuel industry. We also support people peacefully exercising their democratic right to protest, especially those seeking to raise awareness of the climate and ecological emergency.

With alarm we have noted the 'exemplary' prison sentences of 4 and 5 years handed down to Just Stop Oil activists Daniel Shaw, Lucia Whittaker De Abreu, Louise Lancaster, Cressida Gethin and Roger Hallam, in the case of R v Hallam and Others - known as the 'Whole Truth Five'. They were convicted of 'conspiracy to cause a public nuisance' relating to their participation in a Zoom call and the M25 motorway disruption in November 2022. **We call on the government to repeal part 3 of the Police, Crime, Sentencing and Courts Act 2022 and the Public Order Act 2023.**

Climate crisis agreed facts

In the Whole Truth Five case, there were 'agreed facts' between the prosecution and defendants as to the climate crisis, which were presented to the jury. These were: 'i) that the climate crisis is an 'existential threat to humanity'; ii) that breaching the 1.5°C global temperature limit risks catastrophic and irreversible harm; iii) that that limit is predicted to be breached permanently by 2030; iv) that as at the time of the action, the Government kept issuing new oil and gas licences. [3] We observe that the 13th month of consistent 1.5°C of warming has passed.

Penalisation of defenders for refusing to renounce commitment to climate action

What we see in the Whole Truth Five case is a judge penalising defendants for not renouncing their commitment to acting on the climate and ecological emergency. Judge Hehir did not find any mitigation in their actions, but rather listed only aggravating features: the level of disruption, theoretical harms which did not materialise such as road traffic accidents, and the defendants' previous protest convictions. The sentences were intended to deter others from provocative climate protests. Drawing on the Court of Appeal decision in *Trowland and Decker*, where Just Stop Oil defendants were given 3 years and 2 years 8 months imprisonment respectively, Judge Hehir found that the actions of the Whole Truth Five were disproportionate and did not merit any leniency. Yet protest necessarily causes disruption and the accepted facts were that the climate is in genuine crisis. Assertions that the public have a right to protest as long as they do not disrupt are essentially a request for citizens to confine their protest to ineffective actions and acquiesce in the destruction of our world. Decades of conventional campaigning on the issue of climate has not worked.

We do not believe, as Judge Hehir found, that the Whole Truth Five acted as ‘sole arbiters about what should be done about climate change, bound neither by the principles of democracy or rule of law.’ This conclusion assumes that the social order is functionally stable and fundamentally just. This is not the case. Climate and ecological breakdown means that we now live in a world that is unstable, unpredictable and where the status quo is unjust, already evidenced in the Global South - it is bringing about catastrophic consequences. As to democracy - we are in a climate and ecological crisis *because* of a failure of democracy. Political leaders have not acted on the science, and fossil fuel companies have far greater influence with political leaders than civil society. The rule of law is slow to recognise the threat but in our view is now starting to set out the obligations upon States and its public arms to prevent the severest impacts of climate breakdown. [4] But left to ignore the facts and the science, and without moral imperative, the rule of law will become meaningless in a realistic future of a severely degraded world where there are large scale conflicts and where basic infrastructure, access to drinking water, food and adequate energy may be unreliable. Efforts taken to prevent this reality should provide the strongest of mitigation. **The judicial and penal system must not function as a weapon in maintaining the status quo and social control over those who are committed to maintaining a liveable planet.**

Anti-democratic silencing of defenders in court

Aside from the agreed facts, the Whole Truth Five were, during their trial, restricted in what evidence they could present and what they could say to the jury. Defendants were not allowed to explain their reasons for taking action to the jury and the judge refused a defence request to present evidence by Professor Bill McGuire, a world leading expert on climate change. The judge later directed the jury that the agreed facts were irrelevant. The defendants had taken an oath to tell the whole truth. Denying them the ability to speak the whole truth in court is, in our view, a breach of their right to an effective defence and a fair trial.

Derision of environmental defenders

The judicial system has already been brought into disrepute, not just by Judge Hehir’s sentencing but by the pattern of prosecutions and sentences handed down to peaceful activists over recent years. Michel Forst, UN Special Rapporteur on Environmental Defenders, has cautioned about the multiple threats facing environmental defenders in the UK, including derision by the media and political figures (and now it seems, judges too): “*By deriding environmental defenders, the media and political figures put them at risk of threats, abuse and even physical attacks from unscrupulous persons who rely on the toxic discourse to justify their own aggression. The toxic discourse may also be used by the State as justification for adopting increasingly severe and draconian measures against environmental defenders.*” [5] Judge Hehir’s sentencing remark that the defendants were ‘fanatics’ who decided “*that your fellow citizens must suffer disruption and harm... simply so that you may parade your views*” suggests that Forst was correct in his concern. The ‘othering’ of environmental defenders supports climate denial and further targeting of environmental defenders. This stymies political action on the climate and ecological crisis.

Bringing the judicial system into disrepute

Forst has further commented that conditions in the UK for environmental defenders are the worst in all the countries he has visited, and reiterated that protest is essential to a healthy democracy. [6] Specifically in relation to the sentencing in this case, Forst has stated: “*How a sentence of this magnitude can either be reasonable, proportional or serve a legitimate public purpose is beyond comprehension... It should also put all of us on high alert on the state of civic rights and freedoms in the United Kingdom*”. [7] Forst has previously written to the UK government raising concerns that this prosecution may breach Article 3(8) of the Aarhus Convention, ensuring citizens do not suffer ‘penalisation, prosecution or harassment’ for seeking to protect the environment. [8] Professor Bill McGuire stated of the Whole Truth Five case: “*The trial and verdict were a farce. They mark a low point in British justice and they were an assault on free speech.*” [9] We are deeply concerned that decisions in UK courts are receiving such criticism. For judicial processes to be seen as legitimate - they need to be just and fair. If the system lacks justice people will simply not respect its outcomes.

Our support for environmental defenders

Whilst the sentencing of the Whole Truth Five marks a new low in our democratic process, we are aware that there are currently 26 environmental defenders incarcerated in the UK (including protestors on remand awaiting trial), and that countless other environmental defenders have received convictions, prison sentences, dismissal from their jobs, and/or disciplinary procedures, faced stigma in their communities worsened by the toxic discourse around environmental defenders from certain sections of the right wing press, suffered financial hardship, endured onerous bail conditions and lengthy periods on remand, and suffered health impacts as a result of their activism. People have been arrested and charged for simply holding signs reminding jurors of their right to acquit a defendant according to their conscience. These are not terrorists or fanatics. These are ordinary people scared for our future but acting with hope of preventing the worst effects of climate breakdown. **We applaud the courage and integrity of citizens who take peaceful action in pursuit of the public good and to mitigate the greatest crisis humanity has ever faced.**

1. <https://www.lar.earth/>
2. <https://www.judiciary.uk/wp-content/uploads/2024/07/R-v-Hallam-and-others.pdf>
3. <https://juststopoil.org/2024/07/10/jury-out-in-historic-just-stop-oil-conspiracy-case/>
4. See for example, the European Court of Human Rights case of *KlimaSeniorinnen v Switzerland* <https://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/> and the International Tribunal on the Law of the Sea interpreting the climate obligations of treaty members https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_350_EN.pdf
5. https://unece.org/sites/default/files/2024-01/Aarhus_SR_Env_Defenders_statement_following_visit_to_UK_10-12_Jan_2024.pdf
6. <https://www.lar.earth/wp-content/uploads/2024/04/Michel-Forst-statement.pdf>

7. https://unece.org/sites/default/files/2024-07/ACSR_C_2024_26_UK_SR_EnvDefenders_public_statement_18.07.2024.pdf
8. https://unece.org/sites/default/files/2024-06/ACSR_C_2024_26_UK_SR_EnvDefenders_public_statement_24.06.2024.pdf
9. <https://juststopoil.org/2024/07/18/whole-truth-five-sentenced-to-4-5-years-at-southwark-crown-court/>