

Transitional Justice Insights for International Climate Policy

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Introduction

The Paris Agreement has provided momentum for global action. However, the depth of action needed will require more cooperation than ever before. Disputes about justice have always been present within the climate negotiations. They have not gone away, and could well impede attempts to build sufficient solidarity to achieve very demanding global targets for action, especially in the face of the irreversible economic and other losses for many countries expected to intensify in coming years. History suggests that if fundamental justice issues remain alive within a settlement, there is a danger that it will unravel over time. As the implementation of Paris begins, now is the ideal time to develop strategies for managing justice in this arena.

Climate change is not the only time humans have been faced with historically rooted, future-oriented collective action challenges involving justice disputes. Transitional justice is one set of tools that has been widely applied to conflicts at the interface of historical responsibility and imperatives for new collective futures. ‘Transitional justice’ refers to theory and practice aimed at enabling purposeful transitions from periods of deep injustices into more peaceful regimes. These processes may be part of changing regimes, or can be used to legitimize or consolidate new relationships within existing regimes.

By reflecting on experiences with transitional justice, the Climate Strategies project, “Evaluating peace and reconciliation to address historical responsibility within international climate negotiations”, has been exploring the question: **How does the Paris Agreement stand up in the light of lessons from transitional justice, and how might tools developed through such processes contribute to its implementation?**

Why Might Transitional Justice Experience be Relevant to Climate?

Despite differences in context, international climate policy dilemmas share five similarities with conflicts in which transitional justice processes have been useful. These elements include:

- unavoidable interdependence and potential costs for all Parties of not finding an agreement;
- deep disagreements about how the past should relate to the future in a transition period requiring solidarity;
- the presence of profound loss;
- inadequacy of existing judicial processes for addressing the scope and type of injustices and harms involved;
- a context of political conflicts involving interests and identity claims over time.

Transitional justice experiences could provide insights for navigating the difficult political territory between recognizing complex, historically rooted justice claims and a future that demands solidarity and collective action.

Overarching Lessons

Several overarching principles for facilitating forward movement within mutually interdependent but conflict-ridden situations have emerged through this project:

- 1) Efforts to acknowledge responsibility are repeatedly seen as essential in order to allow societies to rebuild trust in the underlying system and move forward. Addressing responsibility is as much about creating legitimacy and buy-in for a future-oriented regime as it is about looking backwards.

- 2) Actors with historical responsibility will be unlikely to pro-actively cooperate without some protection from retribution. Successful regimes have balanced backwards- and forwards-oriented measures.
- 3) There is no standard transitional justice approach. Practitioners must tailor the overarching strategy to each particular context. But insights from transitional justice suggest that long-term legitimacy and action will require recognition of and support for those who have been most impacted and forward-oriented arrangements that promote just collective action.
- 4) Multiple mechanisms are needed from the transitional justice “tool-box”. Combining mechanisms can help generate movement across Parties locked into stalemates and address the range of concerns and fears involved in difficult transitions.

Using Transitional Justice in Climate Change Negotiations

While Paris provides a framework for action, a negotiated agreement alone does not guarantee legitimacy, solidarity or durable buy-in. The general lessons about the need to balance acknowledgement of responsibility with forward-oriented supports and reparations in order to build solidarity, trust and long-term legitimacy seem directly applicable to the challenges facing the Paris Agreement. At an abstract level transitional justice lessons highlight the importance of balancing backwards and forwards oriented mechanisms. In addition, the project has identified two levels of specificity at which the main tools from transitional justice, listed below, could be used in the climate context:

- 1) **Climate-Specific Interpretations of Transitional Justice Mechanisms:** Many of the mechanisms and tools examined in this project do not fit the climate context perfectly if merely copied from existing mechanisms. However, lessons from transitional justice experiences could be used to inform the analysis and design of components within the climate context. Further information about all tools is available on the project website <http://climatestrategies.org/projects/evaluating-peace-and-reconciliation-in-international-climate-negotiations/>
 - a) **Human rights amnesties** are not an immediately applicable tool, but

understanding the logic of amnesties – including their political dangers – is useful for the climate context, especially in light of recently agreed boundaries to liability for loss and damage.

- b) **Prosecution** is not likely within the climate regime, but legal efforts outside the UNFCCC could serve a similar role as it has played in other regimes: to push political will for compromise.
 - c) **Lustration** is also unlikely directly, but could happen outside the UNFCCC as companies and countries respond to changes in public opinion on responsibility.
 - d) **Truth commissions** are unlikely in a direct form, but a range of ‘soft accountability’ mechanisms could be imagined, including non-binding acknowledgement of historical responsibilities such as common data required from Parties for NDCs and broader communications showing national climate responsibilities as well as actions and impacts.
- 2) **Direct application of transitional justice mechanisms:** Several mechanisms could have relatively direct applicability in the climate context:
 - a) **Reparations** at the collective level aimed at providing immediate support to those most negatively impacted could be designed through national loss and damage scoping studies and support mechanisms. These studies could identify the particular systems that would be of most use to those negatively impacted in each context and then tie concrete material support to these.
 - b) **Long-term support** for low-carbon development in countries facing ongoing development challenges, particularly targeted at those most marginalized. This type of support would be a form of institutional change design to avoid recurrence or intensification of climate impacts, and to minimize additional harms to those already impacted or vulnerable.
 - c) **Cultural efforts** including non-legally binding apologies, sensitive wording and phrases used in formal texts, recognition that acknowledgement is in the long term less harmful than excessive caution driven by fears of legal liability, and commitments to education and awareness domestically.

All these could be built into country actions and reporting.

Questions for Discussion

While the Paris Agreement provides a framework, it remains vulnerable to deeply held justice disputes that could undermine its efforts towards collective action and solidarity. Transitional justice is an unusual place to look for inspiration in the climate context but forces interrogation of key themes in the ongoing efforts to operationalize the Paris Agreement. A number of questions remain as to how these experiences and insights could be best applied to the climate context.

- 1) If there is merit in using transitional justice as a general framework, what specific elements currently being negotiated within the climate regime would be most likely to benefit from these insights?
- 2) A challenge of this analogy is that transitional justice processes typically work within relatively

closely bounded societies and have one or more easily identifiable government bodies legitimately leading the regime change. In the climate context this is not the case. How could the international community pursue a transitional justice approach? Which kinds of actors should or could be included and in what kinds of venues or processes?

- 3) Long-term institutional change is arguably one of the most important parts of transitional justice processes. In the climate context there could be many different kinds of institutional changes. Which ones would most powerfully indicate a change in opportunities for those most impacted in the long-run? Which bodies have greatest leverage in creating these sorts of changes?

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