



Why Explore “Transitional Justice” in the Climate Context?



Climate
Strategies

Author and Project Lead: Sonja Klinsky
Published by Climate Strategies, November 2016

Climate Strategies convenes networks of senior climate policy researchers to produce innovative, cross cutting and policy relevant analysis, aimed at opening new perspectives.

Contact: Andrzej Błachowicz, Managing Director
Climate Strategies
40 Bermondsey Street, London SE1 3UD UK
T: +44 2031021526
E: info@climatestrategies.org
W: www.climatestrategies.org
T: [@climatestrat](https://twitter.com/climatestrat)

The Paris Agreement was a remarkable achievement. However, the rapid emission reductions needed remain an immense challenge, while climate impacts are already posing increasing demands on vulnerable communities and countries.

Justice disputes have always been central to the climate context and profound disagreements remain about how responsibility for accumulated emissions should factor into future obligations. The Paris Agreement did not solve these justice tensions - it bypassed them. However, these tensions have the potential to intensify as the full scope of the mitigation and climate impact challenges becomes apparent. Can the depth of collective action and solidarity needed to achieve the objective of the Convention be realised if these justice tensions are left unaddressed? History suggests that if fundamental justice issues remain unresolved, the existing “settlement” can potentially unravel over time.

Climate change negotiations are unique in many ways. But this is not the first time humans have had to navigate complex historically rooted tensions about the ideal relationship between responsibility for past and future action. The Climate Strategies project on “Evaluating peace and reconciliation to address historical responsibility within international climate negotiations” explored what the climate context could learn from other attempts to manage backwards oriented justice debates in the context of building solidarity.

“Transitional justice” refers to theory and practice aimed at enabling purposeful transitions from periods of injustice and into more peaceful regimes. One recent estimate counts over 1500 individual transitional justice mechanisms used in over 60 countries (Olsen, Payne, and Reiter 2010). However, this vast experience has never systematically been examined to see what, if any, lessons could be applied to the climate context.

This project identified five primary similarities between the international climate and traditional transitional justice contexts:

- 1 Simultaneous backwards and forward oriented claims:** A central tension in both climate and transitional justice contexts is the need to both acknowledge historically rooted injustice, while also laying the ground-work for a future-oriented regime. Achieving a forward-oriented mutually beneficial arrangement may require meaningful engagement with the past.
- 2 Unavoidable interdependences:** Many transitional peace processes emerge when interdependent parties – usually because of shared geography – decide that the costs of continued conflict are too high. Interdependencies within the climate context are not bound within country boundaries but extend across them. Failed climate policy will result in losses for all countries, although distributional differences will continue. No country can address climate change alone. And sufficient emission reduction efforts will necessarily involve efforts from more actors than ever, including developing countries.
- 3 Limited judicial capabilities:** While efforts to use domestic and international legal systems continue, these institutions do not perfectly fit the contours of either the climate or transitional justice challenge. “Victims” and “perpetrators” are not always easy to identify and are connected through complex causal and systemic structures.
- 4 Managing economic and profound loss:** Climate impacts and possible limits to development stemming from previously consumed atmospheric space engender both economic and profound losses such as loss of life, place, and culture. Transitional justice processes have similarly had to recognise a range of harms, including systemic economic disadvantage, human rights abuses, and loss of life, culture and identity.
- 5 Power imbalances and political processes:** Both the climate and transitional justice processes are embedded in contentious politics often characterised by power imbalances. A benefit of using transitional justice experiences as a source of insight is that it is politically attuned to the realities of negotiating justice claims in an uneven playing field.

Key Lessons:

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

- Efforts to **acknowledge responsibility** emerge as essential in order to allow societies to rebuild trust in the underlying system and move forward. Addressing responsibility is about creating legitimacy and buy-in for a future-oriented regime as well as looking backwards.
- Actors with historical responsibility are unlikely to cooperate without some **protection from retribution**. Simultaneously, if justice concerns are entirely excluded to the benefit of powerful actors, agreements can disintegrate over time. Successful resolutions have balanced backwards- and forwards-oriented measures.

- There is **no standard transitional justice approach**. Practitioners must tailor the strategy to each particular context. This has resulted in a wealth of different experiences to draw on.
- Multiple **mechanisms are needed from the transitional justice “tool-box”**. Combining mechanisms can help generate movement across negotiating Parties locked into stalemates and address the range of concerns and fears involved in difficult transitions.

Movement from conflict to solidarity does not happen automatically or by ignoring past justice claims. The international climate regime cannot afford to ignore lessons about how to build solidarity, repair damaged relationships, and build trust and cooperation. Focussing on either only the past or only the future is unlikely to be a winning strategy. Of the mechanisms examined through the project those considered most immediately relevant in the climate context included discussions of liability and amnesty; reparations and truth commissions. These are discussed in the accompanying briefs.

The Climate Strategies project “Evaluating peace and reconciliation to address historical responsibility within international climate negotiations” took place in 2015-16. It was led by Climate Strategies member Sonja Klinsky, an Assistant Professor at the School of Sustainability of Arizona State University.

As part of the project, Climate Strategies held three international expert workshops to explore how transitional justice experiences could inform efforts to navigate the political territory between complex, historically rooted justice claims and a future that demands solidarity and collective action. The briefs in this series provide an overview of key outcomes from this project.

Core funding was provided by KR foundation, with additional support by The Hague Institute for Global Justice, Konrad-Adenauer-Stiftung and the Centre for Development Research, University of Bonn. More information at: <http://climatestrategies.org/projects/evaluating-peace-and-reconciliation-in-international-climate-negotiations/>