

# Exploring the Applicability of Transitional Justice Tools in the Climate Regime

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# Justice and Climate Change

- At least three core elements of concern for justice
  - Uneven historical responsibility for causation of climate change
  - Uneven distribution of climate impacts
  - Large disparities in wellbeing globally already with the potential for climate impacts (or poorly designed climate policy) to exacerbate development needs
- These elements interact, and are unavoidable in the context of international climate change negotiations and in the design of climate policy and development
- Ignoring justice concerns can make political processes more difficult, and could erode human wellbeing in many circumstances

# Potential for Increased Tension

- Despite Paris Outcome, equity tensions remain central to climate negotiations and could intensify for two reasons
  1. Increasing climate impacts
    - Unevenly distributed
    - Layer with existing disparities in global wellbeing and historical contributions
  2. Increased pressure on ALL Parties to pursue mitigation
    - NDCs remain insufficient, sufficient action would require significant change
    - Shifting patterns of emission production likely to lead to continued pressure for significant mitigation action in developing countries
    - Domestic policy shifts could also feed into ongoing justice issues

# Managing Justice Tensions

- Classic approach has been burden-sharing analyses
- ‘Benefits of climate action’ narrative can highlight benefits and aspirations using a motivational strategy
- Growing interest in using legal means domestically and internationally

Are there other ways of managing historical responsibility and the depth of socio-economic change required in the face of climate impacts, development and mitigation needs?

# Transitional Justice for Climate?

- Climate change is not the only time we have had to face profound historically rooted injustices combined with forward-oriented needs for solidarity and collective action
- Can we learn from transitional justice attempts to manage these?
  - These processes typically integrate multiple strategies and explicitly engage with both the concerns of justice and the impetus of political processes, including conflict and opposing interests

# Commonalities with Other Profound, Historically Rooted Conflicts

1. Interdependence and hurting stalemates
2. Limited ability of judiciary
3. Profound disagreement about ideal relationship between past and future in period of transition
4. Unclear how to address profound losses
5. Interest and identity conflicts within and among stakeholders

# Interdependence and Stalemate

- A country or community is bound to some shared future, and the conflict itself has reached a point of serious loss for both sides
- Within climate change
  - Deepening understanding of climate impacts and “loss and damage”
  - Developed countries cannot ‘solve’ this on their own from a mitigation perspective
  - So far have been unable to resolve ‘equity and CBDR-RC’ through legal, burden-sharing approaches
  - Equity and justice conversation within the climate context has not moved significantly in many years

# Limited Judiciary

- In many transitional justice contexts, the judiciary is limited either by capacity or by the nature of the claims
- Judicial reform or legal interventions may be part of resolution, but often cannot be the sole mechanism
- Challenge may be moral as well as/in contrast to legally defined harm
- Attempts to establish liability for climate damages and/or impacts of climate policy has been difficult
  - Causal linkages and attribution unclear
  - Deep political caution about acknowledging causality or accepting attribution
  - Imperfect fit between climate harms and *current* institutional legal structures

# Disagreement about ideal Past-Future Relationship

- How much does responsibility for past injustice carry over into a new regime?
- Are potential trade-offs between a 'justice' oriented approach, and 'facilitation of future' approach
- In climate context
  - Profound tensions about role of historical responsibility in shaping mitigation commitments AND loss and damage support
  - Open questions domestically about how to handle historical patterns of employment, incumbents

# Addressing Profound Loss

- Transitional justice has had to grapple with profound loss and human rights abuses that are not easily compensated for or addressed
- Losses can be both individual and collective, and typically extend (directly or indirectly) over generations
- In the climate context, profound losses could include
  - Loss of territory or lost use of territory
  - Erosion of basic social and economic human rights
  - Non-individual, collective losses, such as cultural and social loss (including reduced cohesion, mistrust etc)
  - Both historical and future oriented components, as effects can be multi-generational

# Interest and identity conflicts within and among stakeholders

- Contexts in which transitional justice processes have been applied have included both identity and interest-based conflicts
- Transitional justice processes have had to explicitly take political dynamics, fears and aspirations into account
- Transitional justice process have had to think about PROCESS
- There may be both identity concerns and interests at stake within the climate context
  - Domestically concerns about identity and losses from climate policy need to be addressed
  - Procedural justice concerns relevant both domestically and internationally, how include?

# Key Ideas from Past Experience

- Managing the overarching tension between past and future
- Guarantees of non-recurrence
- Structural and Institutional Change
- Forms of support for victims – individual and/or collective
- Approaches to responsibility (from amnesty to liability)
- Explicit attention to conflict and political process

# In This Workshop

- We decided to focus on two overarching aspects:
- Responsibility:
  - What are the key insights and ideas from transitional justice that give us some ideas about possible points of movement in the climate space?
  - What options for managing responsibility between ‘full liability’ and ‘full amnesty’ might be applicable?
- Forms of Support and Institutional Change:
  - What would “structural” or “systemic” change look like in the climate space that would fundamentally change the justice dimensions and facilitate climate action?

# Imperfect Analogies Open Possibilities

- Climate change and transitional justice are not perfect analogies
- This should not prevent us from seeking to gain insight from transitional justice, but we cannot expect to simply “apply” transitional justice tools to the climate space
- This is an invitation to all of us to be creative and see where this analogy can – and cannot – take us.