

Appendix: Key Mechanisms Commonly Used in Transitional Justice Processes

Despite variation across contexts there is a sub-set of mechanisms commonly used as a basis for alteration and combination within each context. Over the course of two expert workshops, the project examined six mechanisms to see how their underlying logic could be used in the climate context.

Prosecution at domestic and international levels as well as hybrid tribunals and localized hearings has been used to address human rights abuses. Prosecution is usually paired with other mechanisms due to the mismatch between legal systems and the nature of the harms (especially systemic harms); financial and opportunity costs; and capacity of the legal system. Threats of prosecution have been used to mobilize political will for compromise.

Prosecution seems like an unlikely fit within the climate space due to the complexity and indirect nature of climate justice claims. However, efforts outside the UNFCCC, such as legal actions within country lines, those aimed at corporations, and attempts to use the International Court of Justice, could fuel political will to find meaningful non-legal means of managing responsibility. Such legal action is likely to continue as long as some feel that the current arrangements are unjust.

Lustration policies in which individuals are removed from positions of power have been used as an accountability measure in many transitional justice processes. Lustration can signal systematic changes without deconstructing entire institutions.

There is no obvious applicability of lustration to the international climate context. However, “natural lustration” could play a role if high-emitting companies found it in their own interests to signal a reversal of action towards a low-carbon economy. Domestic politics could take a similar turn if/when public constituencies push for climate action (as partially seen in Canada and Australia).

Amnesties are common in transitional justice processes due to: the political need to provide protection for actors who could otherwise ‘spoil’ a deal; the financial costs of prosecution; and the opportunity costs of prosecuting people with essential capabilities in a transition. Some have argued that identifying responsibility itself is a crucial component of a forward-oriented regime even without prosecution.

Interestingly, the international community has already started to use the *logic* of amnesties if not the actual form. This is most acutely visible in the loss and damage compromise enshrined in the Paris Agreement in which protection from legal liability is a condition for cooperation and support. Lessons from transitional justice would suggest the danger of this is that without sufficient contributions in exchange for this protection (see ‘reparations’

discussion), amnesties can undermine efforts towards solidarity and de-legitimize the regime.

Truth Commissions involve the collection statements and evidence from victims and those who participated in the systems that caused harm. The logic of truth commissions is that there is psychological and social value in creating a public record of past injustices, and of public acknowledgement of responsibility for harms. Truth commissions can be useful when harms are diffuse or systemic, or when the social, opportunity and financial costs of prosecution would be too great. In some situations threats of prosecution have been used to encourage engagement in truth commission, and reparations are often a recommendation of truth commissions.

Direct application of a truth commission seems unlikely in the climate context due to the complexity of considerations that have shaped historical emissions over time and the subsequent difficult of agreeing on a 'truth'. However, components of a truth commission-like approach could contribute to building mutual recognition by including victim statements and public acknowledgement of responsibility.

Acknowledgement of responsibility could include: explicit reporting of historical emissions by emitters in a public forum such as in INDCs; use of equity indicator bundles in which historical responsibility is included (a return to the earlier proposal by the Africa group); or the use of an external body capable of creating and maintaining a record of historical responsibility without a direct role in the UNFCCC. All of these possibilities would encourage non-legally binding acknowledgement of responsibility without posing large risks to those Parties with large historical emissions. Encouraging acknowledgement through the equity bundle approach for instance would resonate strongly with a truth and reconciliation approach by allowing all who have participated to acknowledge responsibility: there are never only two clear sides of 'perpetrators and victims', and the most effective transitional justice mechanisms have been those most broadly applied to all Parties. The other key component of a truth commission approach would be the ability for the voices of those most impacted to be given a prominent platform. This could be done through country-specific scoping studies for loss and damage (see reparations), and strengthened efforts to support adaptation.

Reparations in the form of supports designed to repair relationships by focusing on the needs of victims of injustice are a common recommendation, although not always achieved, with transitional processes. Despite political problems with the word 'reparations' in the climate context, there are important lessons to be learned from how regimes have attempted to support victims.

1. Without building reparations into the new regime, it is impossible to restore trust in the regime itself and create genuine acknowledgement of victims, both of which are essential for solidarity and long-term legitimacy.
2. Full financial compensation is usually impossible due to limited financial resources and to the nature of profound loss and harm. One suggestion has been to frame reparations as contributions to wellbeing for those negatively impacted, rather than as 'compensation' to avoid feeding into disappointments with a new or transitioning regime
3. Even if small and non-monetary, reparations need to be concrete, transparent and dependable. Without material reparations, other forms of acknowledgement such as apologies or statements in truth commissions can be rendered meaningless.
4. Fourth, individual reparations can signal respect for the humanity of those harmed by the previous regime. However, systemic injustices may require efforts to improve the wellbeing of entire groups of people. This being said, collective reparations have seen mixed successes, in part because collective efforts do not always guarantee that those worst impacted will benefit.

In addition to insights about the general importance of including and framing reparations as part of regime-building, the burgeoning loss and damage stream seems like the most likely place to apply these lessons. The focus on the wellbeing of victims, instead of abstract compensation suggests designing efforts to identify and then fund efforts that respond to particular needs of victims. This also suggest that the process of making decisions about reparations is likely to be extremely important: such supports must be transparent, predictable, and framed as acts of repair, not as exchanges for services or rewards for actions.

Institutional Changes are a common element of transitional justice as part of promises of non-recurrence and as a signal that the regime has fundamentally changed to become more just. The underlying logic is that many harms are systemic in nature and require reorganizing the basis structures that order social life. The challenge for any transitional justice process is identifying the root causes of the problem are, and which institutional changes will be most productive in legitimizing the new regime.

The issue of non-recurrence is probably the largest areas needing significant attention: without much more mitigation from all Parties those who are most vulnerable will be more severely impacted. Similarly, within traditional transitional justice practice there has been increased attention to socio-economic opportunities: those who have been most impacted by harm must have extra supports designed to enable wider socio-economic improvements. together, a focus on non-recurrence along with recognition that long-term wellbeing for those most impacted needs to be part of institutional change shifts the focus strongly to the question of which institutional arrangements are most conducive to rapid low-carbon development. In addition, this approach would also emphasize the need to

design support policies in ways that avoid imposing additional risks or harms to those already most impacted or most vulnerable to climate impacts. The pressing question to consider in the climate context then becomes: ‘where are the current institutional barriers and what kind of changes would be most effective at facilitating this kind of action’?

This project did not have the scope to explore the full range of possible forward-oriented institutional chances. Possible candidates that emerged through the project included: debt forgiveness; development of procedural justice mechanisms designed to link local-level implementation with the international scale; shifting support to focus on building technology capacity and innovation systems. Further thought is needed to think about what kinds of institutional arrangements would best support domestic capacity building across a range of sectors.

Cultural Efforts such as included memory projects, changes in school curricula, and public apologies are another common element of the symbolic and foundational change needed to legitimize and consolidate new regime.

There are several options for using cultural efforts in the climate context. For instance, apologies could be designed in ways that signalled acknowledgement for historical emissions without implying liability. Countries could engage more thoroughly with Article 6 of the UNFCCC and commit to education that included information about historical responsibility and global climate impacts. National reporting could include efforts to change domestic discourses about climate change.