

Transitional and Climate Justice: New Opportunities for Justice in Transition

Jasmina Brankovic^{id}*

In the face of worsening ecological crises, transitional justice scholars and practitioners are increasingly exploring the potential of applying lessons learned from our field to addressing environmental harms. In fact, this journal's previous issue includes a special section on 'transitional justice and nature,' considering the marginal role of the more-than-human in transitional justice to date and the potential for measures with an ecological focus.¹ In the special section, editors Lieselotte Viaene, Peter Doran and Jonathan Liljeblad emphasize the role of dominant power structures, the global liberal project and Euro-Atlantic ontologies and epistemologies in constraining both understandings of justice in transition and locally driven struggles to address 'root' causes of violence and injustice, with environmental concerns as a core and intersectional dimension rather than a separate factor.²

One key aspect of the shift towards the environmental in transitional justice has been engagement with climate change – particularly by applying transitional justice ideas and practices within the sphere of climate negotiations and action.³ Like Viaene and colleagues, this still-small pool of literature demonstrates that efforts to address a crisis of this scale are unlikely to succeed without dealing with the power structures and historical inequalities that helped create it. In this, it shows the theoretical and practice links between transitional justice and climate justice, an area of climate action that seeks to address, internationally and locally, the imbalance between those most responsible for climate harms and those most affected by them.

In this editorial, I draw on my scholarly work on transitional justice and climate change as well as my practitioner experiences with the 'unfinished business' of South Africa's political transition

* Senior Research Specialist, Centre for the Study of Violence and Reconciliation, South Africa.
Email: jasminabrank@gmail.com.

¹ Lieselotte Viaene, Peter Doran and Jonathan Liljeblad, eds., 'Transitional Justice and Nature: A Curious Silence,' special section of *International Journal of Transitional Justice* 17(1) (2023): 1–12.

² 'Editorial,' *ibid*.

³ Another thread of research is emerging on how transitional justice mechanisms can deal with climate change impacts as a driver of human rights violations. See Janine Natalya Clark, 'Are There "Greener" Ways of Doing Transitional Justice? Some Reflections on Srebrenica, Nature and Memorialization,' *International Journal of Human Rights* 20(8) (2015): 1199–1218; Rachel Killean and Lauren Dempster, "'Greening" Transitional Justice?' in *Beyond Transitional Justice: Transformative Justice and the State of the Field (or Non-field)*, ed. Matthew Evans (London: Routledge, 2022); Karen L. Hulme, 'Using a Framework of Human Rights and Transitional Justice for Post-Conflict Environmental Protection and Remediation,' in *Environmental Protection and Transitions from Conflict to Peace Clarifying Norms, Principles, and Practices*, ed. Carsten Stahn, Jens Iverson and Jennifer S. Easterday (Oxford: Oxford University Press, 2017). The transitional justice process in Colombia has presented opportunities for exploring this in practice. See Luisa Gómez-Betancur, 'The Rights of Nature in the Colombian Amazon: Examining Challenges and Opportunities in a Transitional Justice Setting,' *UCLA Journal of International Law and Foreign Affairs* 25(1) (2020): 41–83; Hannah Meszaros Martin and Oscar Pedraza, 'Extinction in Transition: Coca, Coal, and the Production of Enmity in Colombia's Post-Peace Accords Environment,' *Journal of Political Ecology* 28(1) (2021): 721–740.

to propose that the intersection between transitional justice and climate justice – particularly the transformative turn in both – presents new opportunities for imagining and enacting justice in transition, while potentially bridging anthropocentric and ecocentric approaches.

As Sonja Klinsky and I note elsewhere,⁴ the climate crisis is not the first time people have had to navigate complex tensions about responsibility for past and future actions. With its interconnecting aims of dealing with past harms, strengthening solidarity in the present and laying the groundwork for a future with fewer harms, transitional justice offers over 35 years of practical experience, contestation and normative evolution to help us think creatively about climate solutions, which have been hamstrung by ‘techno-managerial’ approaches to mitigation, adaptation and loss and damage.⁵ The challenges and critiques of various approaches to transitional justice make the field hard to embrace unilaterally, but it undoubtedly has lessons to offer the transitional space of climate action.

Much of the literature specifically on transitional justice and climate change has used the widely accepted and anthropocentric core mechanisms of mainstream practice – prosecutions, truth commissions, reparations and institutional reforms – to cross disciplinary boundaries and make transitional justice palatable to actors in the climate sphere who might otherwise be sceptical.⁶ Discussions of legal accountability have centred on using attribution studies to underpin individual prosecutions for environmental crimes that exacerbate climate change, climate litigation against states and corporations, strengthening of human rights instruments relating to climate harms, restorative justice processes among those affected and responsible, and de facto amnesties in return for acknowledgement of responsibility.⁷ Local, national, regional or international truth commissions, run by civil society, states or multilateral institutions, have been suggested as platforms for truth-seeking regarding historical and ongoing responsibility for climate harms and truth-telling by individuals and communities affected by those harms.⁸

A well-developed research area is reparations for historical emissions and localized climate harms, with proposals for international reparations bodies and funding mechanisms that provide compensation and other forms of material redress, largely based not on establishing legal liability but on voluntary efforts to redress harms by those responsible for them, including damages relating to climate change policies themselves.⁹ Discussions of institutional reforms focus on improving existing international and regional climate-related bodies and instruments, and relevant national institutions, to better curb future harms and respond to the needs and demands of affected individuals and communities.¹⁰

This body of literature highlights that climate negotiations – the primary focus of climate action for many – have been stalling because they are premised on a reformist approach,

⁴ Sonja Klinsky and Jasmina Brankovic, *The Global Climate Regime and Transitional Justice* (London: Routledge, 2018).

⁵ Jasmina Brankovic, Augustine Njamnshi and Christoph Schwarte, ‘Climate Focused Transitional Justice,’ Policy Brief (2021); Farhana Sultana, ‘Critical Climate Justice,’ *Geographical Journal* 188(1) (2022): 118–124.

⁶ Sonja Klinsky, ‘An Initial Scoping of Transitional Justice for Global Climate Governance,’ *Climate Policy* 18(6) (2018): 752–765.

⁷ Sonja Klinsky, ‘Managing Legal Liability: Prosecutions and Amnesties,’ Climate Strategies Brief (2016); ‘Local Prosecution in the Era of Climate Change,’ *Harvard Law Review* 135(6) (2022), <https://harvardlawreview.org/print/vol-135/local-prosecution-in-the-era-of-climate-change> (accessed 14 April 2023); Stacy-Ann Robinson and D’Arcy Carlson, ‘A Just Alternative to Litigation: Applying Restorative Justice to Climate-Related Loss and Damage,’ *Third World Quarterly* 42(6) (2022): 1384–1395.

⁸ Sonja Klinsky, ‘Truth Commissions in the Climate Context,’ Climate Strategies Brief (2016); Werner Scholtz and Gerrit Ferreira, ‘Climate Change Negotiations and Transitional Justice: The Advent of a Carbon Truth and Reconciliation Commission?’ *Comparative and International Law Journal of Southern Africa* 48(1) (2015): 42–58.

⁹ Sonja Klinsky, ‘Reparations: Lessons for the Climate Debate,’ Climate Strategies Brief (2016); Maxine Burkett, ‘Rehabilitation: A Proposal for a Climate Compensation Mechanism for Small Island States,’ *Santa Clara Journal of International Law* 13(81) (2015): 81–124; Audrey R. Chapman and A. Karim Ahmad, ‘Climate Justice, Human Rights, and the Case for Reparations,’ *Health and Human Rights Journal* 23(2) (2021): 81–95; Rebecca Buxton, ‘Reparative Justice for Climate Refugees,’ *Philosophy* 94(2) (2019): 193–219; Kirk Lougheed, ‘Forward-Looking Transitional Climate Justice,’ in *Global Climate Justice: Theory and Practice*, ed. Fausto Corvino and Tiziana Andina (E-International Relations, 2023).

¹⁰ Klinsky and Brankovic, ‘Institutional Reform for Future-Oriented Climate Action,’ supra n 4; John G. Ikubaje and Usani Odum, *Envisioning a Transitional Justice-Based Approach to Climate-Induced Conflicts in Africa* (Uppsala: Life and Peace Institute, 2023).

not ‘rocking the boat’ in terms of international and national power dynamics and resource distribution, while focusing on technicist and market-driven solutions and adopting minimal alternatives to appease critics. They sidestep the compounded injustices of climate change, where those least responsible for carbon emissions are the most vulnerable to climate impacts, while being disadvantaged by responses to climate change that may worsen socioeconomic inequalities rooted in historical oppressions.¹¹ Women, youth, indigenous peoples and other marginalized groups are disproportionately affected by these injustices.

For this reason, Klinsky and I have advocated not only for applying the core transitional justice mechanisms to address the climate crisis in new ways, but also for learning from critiques of transitional justice to consider a broader, more transformative approach. Still focusing on practical strategies such as participatory low-carbon development pathways, justice-based climate policy development and collaborative North-South capacity building, this argument marries insights from transitional justice and climate justice. We call for inclusive, intersectional processes that deal with historical inequalities while helping identify synergies among a range of different stakeholders, which may allow new and unforeseen solutions to emerge.¹²

Climate justice aims to address the compounded injustices of climate change. Influenced by indigenous environmental ethics and mobilization, it promotes transparent decision-making processes, fair resource distribution that takes intersectional and intergenerational climate harms into account, and recognition of the value of diverse ontologies and epistemologies as well as local resources in solution-finding.¹³ Climate justice activism spurred the UN Framework Convention on Climate Change’s adoption of the principles of ‘polluter pays’ and ‘common but differentiated responsibilities and respective capabilities’ and the establishment of the Warsaw International Mechanism for Loss and Damage to somewhat balance out its focus on mitigation and adaptation.

While climate justice in the ‘global North’ has often centred on the international climate regime and state-centric interventions informed by human rights, climate justice more broadly has been characterized by inclusive, participatory, bottom-up and contextualized actions, usually led by individuals and groups affected by climate harms in the ‘global South.’¹⁴ This transformative current eschews top-down, one-size-fits-all solutions, but still seeks synergies and cooperation between stakeholders beyond the state, ranging from the local to the global level, with the aim of addressing and redressing the systems of oppression and exploitation that climate change reveals.¹⁵

Transitional justice scholars and practitioners will see the overlaps with transformative approaches in our field. Informed by experiences of victims/survivors in the ‘global South’ and critiquing Euro-Atlantic universalism, state-centrism, narrow human rights discourse and the prevalence of technicist legal-institutional solutions, transformative transitional justice emphasizes local context, agency and resources while prioritizing bottom-up participation and pluralism of ideas and actors.¹⁶ It challenges dominant power structures to acknowledge continuities between past and present injustices and the need to address socioeconomic inequalities,

¹¹ Dunja Krause, ‘Transformative Approaches to Address Climate Change and Achieve Climate Justice,’ in *Routledge Handbook of Climate Justice*, ed. Tahseen Jafray (London: Routledge, 2018).

¹² Klinsky and Brankovic, ‘Transformative Approaches to Climate Justice,’ supra n 4.

¹³ Peter Newell, Shilpi Srivastava, Lars Otto Naess, Gerardo A. Torres Contreras and Roz Price, ‘Towards Transformative Climate Justice: An Emerging Research Agenda,’ *WIREs Climate Change* 12(6) (2021): 1–21.

¹⁴ Krause, supra n 11; Andrea Schapper, Linda Wallbott and Katharina Glaab, ‘The Climate Justice Community: Theoretical Radicals and Practical Pragmatists?’ *Global Society* 37(3): 397–419.

¹⁵ This work often draws on feminist theory. See Sultana, supra n 5; Cathi Albertyn, Meghan Campbell, Helena Alviar Garcia, Sandra Fredman and Marta Rodriguez de Assis Machado, eds., *Feminist Frontiers in Climate Justice: Gender Equality, Climate Change and Rights* (Cheltenham: Edward Elgar, 2023).

¹⁶ See Moses Chrispus Okello, Chris Dolan, Undine Whande, Nokukhanya Mncwabe, Levis Onegi and Stephen Oola, eds., *Where Law Meets Reality: Forging African Transitional Justice* (Cape Town: Pambazuka Press, 2012); Clara Sandoval, ‘Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition,’ in *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies*, ed. Roger Duthie and Paul Seils (New York: International Center

while encouraging cross-pollination of ideas and practices across diverse stakeholders at the local, national, regional and global levels.¹⁷

The overlaps between transformative transitional justice and climate justice present new avenues of research and practice.¹⁸ For example, climate justice pushes transitional justice to take the more-than-human into account and address transboundary harms.¹⁹ Transitional justice, meanwhile, demonstrates the extent of norm change possible in backward- and forward-facing processes, given the increasing acceptance of transformative approaches within policy circles, which has implications for climate justice research and advocacy strategies.²⁰

Pushing against the charge that transformative approaches are largely theoretical and normative,²¹ transformative transitional justice also demonstrates that looking beyond international and especially state mechanisms allows other and emergent practices to be understood as transitional justice measures. These practices are largely community-based and often survivor-driven, while embracing pluralism in terms of participants and engagements with stakeholders in other sectors, locally and internationally.²² My collaboration on participatory action research with members of Khulumani Support Group, the South African apartheid survivors' movement, shows that the group's intergenerational educational activities, income-generation projects and multi-level advocacy over the past two decades are a form of 'people-driven' transformative transitional justice, which have hardly featured in a literature that focuses on official mechanisms.²³

At the intersection of transitional justice and climate justice lie similar practices that could open new directions in the climate sphere. At the Centre for the Study of Violence and Reconciliation, we are exploring partnerships with individuals and communities affected by climate harms in diverse contexts to co-design transitional justice measures informed by principles of transformative practice. Developed using participatory methods, the measures are intended to reflect the ontologies of those most affected, build on their existing resources and practices and bring into conversation people with different understandings of transborder action and the relationship between the human and the more-than-human, stretching the contours of transitional justice.

As these might be the first transitional justice measures for climate harms, they would provide a precedent and set of experiences on which to build. While these measures will undoubtedly bring their own challenges and critiques, this is a new frontier in the field – one that will become ever more pressing as we experience increasing impacts and harms from the climate crisis globally.

for Transitional Justice, 2017); Matthew Evans, ed., *Transitional and Transformative Justice: Critical and International Perspectives* (London: Routledge, 2019).

¹⁷ These works are also informed by feminist theory. See Paul Gready and Simon Robins, eds., *From Transitional to Transformative Justice* (Cambridge: Cambridge University Press, 2019); Emily Jones, 'Gender and Reparations: Seeking Transformative Justice,' in *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*, ed. Carla Ferstman and Mariana Goetz (Leiden: Brill, 2020).

¹⁸ Rachel Killean and Lauren Dempster, 'Mass Violence, Environmental Harm, and the Limits of Transitional Justice,' *Genocide Studies and Prevention* 16(1) (2022): 11–39.

¹⁹ Janine Natalya Clark, 'Harm, Relationality and More-than-Human Worlds: Developing the Field of Transitional Justice in New Posthumanist Directions,' *International Journal of Transitional Justice* 17(1) (2022): 15–31.

²⁰ See the references to transformation in the African Union Transitional Justice Policy (2019) and the German Interministerial Strategy to Support 'Dealing with the Past and Reconciliation (Transitional Justice)' in the Context of Preventing Crises, Resolving Conflicts and Building Peace (2019).

²¹ Newell et al., supra n 13; Padraig McAuliffe, *Transformative Transitional Justice and the Malleability of Post-Conflict States* (Cheltenham: Edward Elgar, 2017).

²² Marina Sitrin, 'HIJOS: Breaking Social Silence with Another Kind of Justice,' in Gready and Robins, supra n 17; Daniela Lai and Caterina Bonora, 'The Transformative Potential of Post-War Justice Initiatives in Bosnia and Herzegovina,' in Evans, supra n 16.

²³ Jasmina Brankovic, Brian Mphahlele, Sindiswa Nunu, Agnes Ngxukuma, Nompumelelo Njana and Yanelisa Sishuba, *Violence, Inequality and Transformation: Apartheid Survivors on South Africa's Ongoing Transition* (Johannesburg: DSI-NRF Centre of Excellence in Human Development, 2021).

CHALLENGING DOMINANT ONTO-EPISTEMOLOGIES IN TRANSITIONAL JUSTICE

In this issue, multiple authors engage transitional justice processes from the perspective of ‘victims,’ focusing on victim participation while expanding our understanding not only of who is a ‘victim’ but also of how they engage with both traditional rituals and local, national and international legal resources as they and their supporters seek to redress contemporary and historical harms in the wake of gross violations of human rights and genocidal violence. Additionally, the eight articles, one Note from the Field and the Review Essay draw on multiple methodological resources to explore these terrains while also challenging transitional justice to think beyond the dominant onto-epistemologies that continue to undergird and sustain its work.

In their article ‘Between Impunity and Justice? Exploring Stakeholders’ Perceptions of Colombia’s Special Sanctions (Sanciones Propias) for International Crimes,’ Beatriz Mayans-Hermida, Barbora Holá and Catrien Bijleveld examine the Special Jurisdiction for Peace (SJP) and perceptions of the institution’s restorative justice approach through qualitative interviews with victims and offenders – going beyond the predominant focus on scholarly, political and civil society groups’ perceptions in the literature to date. They argue that the SJP’s special sanctions are an example of ‘(re)constructive sanctions,’ a concept developed by the first two authors in earlier work. Alongside ordinary prison sanctions and reduced prison sanctions, the SJP has the option to impose non-custodial special sanctions requiring offenders to undertake reparative-restorative activities in a delimited geographical area, such as educational projects or demining. The authors argue that respondents see potential in special sanctions to enable restorative justice, providing that offenders fulfil certain preconditions, victims participate actively and the sanctions are implemented correctly, among other factors.

Helga Malmin Binningsbø, Bård Drange and Cyanne E. Loyle draw on an historical perspective to extend our thinking about how transitional justice might more likely succeed in taking roots in countries such as Colombia in their article ‘Justice Now and Later: How Measures Taken to Address Wrongdoings During Armed Conflict Affect Postconflict Justice.’ They argue that the adoption of judicial policies during conflict increases the likelihood of transitional justice after conflict by providing a policy precedent, shaping public expectations around accountability and enhancing institutional resources for addressing human rights violations. The authors support these claims through an analysis of Colombia since 2000, as well as global trends since 1946 using a mixed methods approach.

Briony Jones, Lisa Ott, Mina Rauschenbach and Camilo Sanchez focus their exploratory study of searching for the forcibly disappeared in El Salvador and Colombia on the work of surviving family members and other actors who support them. They centre victims as ‘key justice stakeholders’ and take a multi-disciplinary approach – using insights from procedural justice and drawing on qualitative interviews – to enhance and expand scholarship on victim participation in the context of enforced disappearances. Their work examines processes that the families engage as they affirm their right to truth, and the obstacles they encounter amid the ‘ambiguous losses’ experienced in their loved ones’ forced disappearances, which persist in their search for recovery and redress.

In her article ‘Male and Gender-Diverse Victims of Sexual Violence in the Rohingya Genocide: The Selective Narrative of International Courts,’ Victoria Hospodaryk alerts us to victims who are persistently ignored in transitional justice processes: male and gender-diverse victims of sexual violence. She compares public filings and decisions of the International Criminal Court and the International Court of Justice with reports from UN bodies and nongovernmental organizations and findings from in-depth interviews with lawyers working with the Rohingya to expose gaps in meaning-making vis-à-vis Rohingya victimization. Hospodaryk concludes her analysis by clarifying reasons for these gaps and by identifying some of the challenges

for transitional justice efforts to render justice for male and gender-diverse victims of sexual violence.

In their articles, Andrea Hepworth and Kristin Bergtora Sandvik both explore transitional justice processes within ‘established democracies,’ examining contributions of political parties and processes to redressing historical and contemporary human rights violations. Hepworth looks at the impact of memory laws on long-delayed transitional justice efforts in Spain in the context of the rise of the radical right. Her article ‘Memory Activism as Advocacy for Transitional Justice: Memory Laws, Mass Graves and Impunity in Spain’ examines the ongoing effects of the 1977 Amnesty Law and more recent memory laws in Andalusia in 2017 and at the state level in 2022 on top-down and bottom-up transitional justice processes. Hepworth explores the relative contributions of these laws and memory activists within the changing local and national political dynamics of Spain.

Drawing on a qualitative case study of diverse responses to the 22 July 2011 right-wing terror attack in Norway, Bergtora Sandvik explores litigation as a practice of memorialization within another established democracy. Applying a transitional justice lens to a liberal democracy facing the social and political impacts of domestic terrorism, she discusses the place of rescuers, helpers and bystanders in victim hierarchies. In her analysis, residents of Utøya island who have cited the risk of re-traumatization in their legal challenges to state memorialization efforts in the area are identified as ‘complex political victims,’ or victims who are not perceived as adequately innocent. Through ongoing struggles over how 22 July should be remembered, the author points to the inability of the law to handle questions about trauma and futurity and the implications of this for democratic citizenship.

Undertaking a qualitative comparative analysis using data from 19 countries that experienced civil war between 1990 and 2010, Charlotte Fiedler and Karina Mross examine the issue of social trust and whether transitional justice can build it to enable positive peace. Based on their findings, Fiedler and Mross question the policy focus on ensuring ‘comprehensive’ transitional justice, covering truth finding, justice, victim restitution, amnesties and bridging activities, instead arguing that a combination of only two measures can be just as effective. They indicate that measures targeting both victims and offenders build significant social trust, particularly a combination of victim restitution with amnesties, as do measures targeting society more broadly, such as bridging activities. The authors also find that measures established with financial and technical assistance from international funders improve social trust even in the absence of state-run measures, highlighting the importance of donors in the field.

Kiran Grewal locates the multiple failures of transitional justice in Sri Lanka as evidence of a wider challenge in transitional justice, that is, ‘epistemic violence.’ In her article ‘The Epistemic Violence of Transitional Justice: A View from Sri Lanka,’ she argues that previous analyses of these multiple failures have attributed them to the lack of political will within the country. In contrast, she exposes underlying onto-epistemological problems that include an over-reliance on universalist liberal democratic theory beyond Sri Lanka, that is, conceptually within transitional justice itself. Drawing on a case study of Sri Lanka, she also documents how transitional justice’s failure is often deeply rooted within the historical, cultural and socio-political contexts in which it unfolds. Transitional justice thus discounts colonial legacies while often discursively reproducing colonial categories. Her work expands that of others calling for transitional justice to address root causes of violent conflicts and centres local resources that she argues are persistently engaged by survivors towards reconciliation, reparation and redress.

Philipp Schulz in his note from the field, ‘How Locally Owned and Sustainable Are Victims’ Groups in Postconflict and Transitional Settings? Reflections from Northern Uganda,’ critically reflects on the factors that constrain genuine local ownership of victims’ groups on a sustainable

basis. Drawing on his own experience in working with a victims' group in Uganda, Schulz discusses how the ending of donor support and COVID-19 impacted on the ability of the group to continue its work. Transitional justice prioritizes victims' groups, but Schulz's note underscores obstacles to the ability of such groups to work over time in a sustainable manner.

Finally, in their review essay 'Becoming More Informed About Informers,' Mark Drumbl and Barbora Holá discuss the threads connecting books by Jacob Dlamini and Ron Dudai and an exhibition at the Jersey War Tunnels Museum. These works unpack collaborative informing to three repressive forces, the apartheid regime in South Africa, the British Army in Northern Ireland and Nazi authorities in the UK, respectively. Drumbl and Holá highlight the emotional complexity in the motivating factors behind informing and the unequal power dynamic in relationships between informers and their handlers, as well as the rancour and political manipulation that informers face in the aftermath of a repressive regime. The authors point out the dearth of literature on informers and highlight the importance of further research on informing as a social practice and a political issue, particularly for transitional justice.