



Truth Commissions in the Climate Context



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

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Traditionally truth commissions are undertaken by new governments to establish their legitimacy by formally breaking with the past and to create an opportunity for reconciliation or unification. Truth commissions can avoid some of the limitations and political difficulties of pursuing legal punishments for past actions. However, by acknowledging the past they can also reduce the risks associated with amnesties. This project identified several possible truth commission-inspired pathways in the climate context which would create a politically pragmatic middle path between ignoring harms stemming from past action and pursuing legal liability.

Truth commissions investigate, document and raise awareness of past harms as a form of acknowledgement, and recommend strategies for addressing these harms, avoiding future recurrence, and supporting particular victims. Compared to prosecutions, truth commissions can more easily engage with systemic bases for harm. Usually set up by governments, several have been established by international actors and civil society groups. Ideally, the commissioners are high-profile individuals widely recognised for being fair, objective, and non-political.

These mechanisms aim to be as inclusive about harms and those responsible as possible, investigating the role played by all actors, including those considered to be the most affected by harms. Perceived legitimacy is a crucial element of success, especially as the findings are usually non-binding.

This project identified several ways to use insights from truth commissions to inform global climate negotiations. In the climate context a truth commission-inspired approach would include high-profile and neutral commissioners, consideration of all actors' actions and responsibility, documentation of lived harms, and development of forward-oriented recommendations.

The table below summarises the primary options for developing a truth commission approach as suggested by participants in the Climate Strategies workshops for this project. They are divided into three large categories: processes that would reside within the UNFCCC; those that would be explicitly linked to the UNFCCC; and those that would sit entirely outside the UNFCCC.

Relationship to UNFCCC	Truth-Seeking Options	Key Considerations
<p>Internal to UNFCCC</p> <p><i>These processes would be housed within UNFCCC mechanisms or bodies.</i></p>	<p>UNFCCC could include an explicit process of receiving and deliberating on evidence for past emissions, attribution for impacts, and identifying harm.</p> <p>An alternative strategy could be a UNFCCC request for an external body to conduct the process (see options below).</p> <p>Parties could be encouraged or required to include statements about historical responsibility in their NDCs as a form of voluntary accountability. This would include few truth-telling elements but would support a 'soft' accountability mechanism.</p>	<p>Due to political experience to date, this option seems unlikely and could intensify existing tensions without providing additional value. In addition, it would require substantial scientific expertise (especially around attribution), resulting in a stretch of existing mechanisms, unless it were designed as an extended expert dialogue.</p> <p>This approach has been contentious in the past, but with increased pressure (including legal) it could become feasible. Some Parties, such as Switzerland, already use this approach. If it remained entirely voluntary it would be less contentious, but would also be less likely to be widely used, as is the case now.</p>
<p>External but linked to UNFCCC</p> <p><i>These processes are explicitly created for truth-telling and are not housed within the UNFCCC although they could be requested or noted by the COP</i></p>	<p>A high-profile panel of past COP presidents or other senior individuals are asked to preside over an international process that elicits perspectives on historical responsibility and attribution, and documents experiences of climate impacts. It could provide reflections on accountability in addition to non-binding forward-oriented recommendations.</p> <p>Existing civil society efforts to do 'equity assessments' could be expanded and formalised through the use of a high-profile mechanism to investigate and document claims of harm and contributions.</p>	<p>This option would be symbolic only but could be useful for easing tensions and providing opportunities for formal acknowledgment of climate-induced harm in a legally non-threatening forum. Utmost attention to representation would be needed to generate legitimacy and buy-in.</p> <p>Long-term utility would depend on the ability and interest of various actors to use or follow up on the materials produced.</p>

<p>External to UNFCCC</p> <p><i>These processes are entirely separate from the UNFCCC</i></p>	<p>The International Court of Justice (ICJ) could be asked to provide a (non-binding) settlement.</p> <p>This type of process could be requested or noted by the UNFCCC as a non-binding input.</p>	<p>Palau in addition to some civil society actors are already exploring strategies for engaging the ICJ in navigating historical responsibility claims. Although the ICJ is a legal entity, a settlement would likely not raise concerns about legal liability as it is outside the UNFCCC. It could however, be used to generate political pressure to formally acknowledge past responsibility.</p>
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While any of these pathways could be pursued, efforts to change the internal processes of the UNFCCC seem least likely, especially due to the multiple demands already facing the regime post-Paris. In addition, using the ICJ could have some benefits but settlements emerging from this body are likely to be more backwards than forwards oriented, and would be structured strongly by the existing rules of the ICJ which may not fit the contours of the climate context well.

Accordingly, based on this project’s workshop discussions, the middle pathway in which a high-profile commission is created appeared to be more contextually appropriate and politically feasible. This commission’s primary source of influence would be its soft-power legitimacy so it would be essential that these individuals are perceived as neutral, informed and respected. Such a commission could be set up by an NGO or coalition of NGOs and Parties, and could be granted greater leverage through efforts by Parties to utilize the outcomes in submissions, or possibly to have them recognised by the COP. Suggestions that such a commission be pursued emerged repeatedly from project participants.

By being able to include diverse voices, from those bearing witness to the realities of living with climate impacts to those articulating the challenges of implementing climate policies, a truth commission-like approach could be a powerful mechanism for trust-building and for identifying potentially productive forms of future-oriented supports. However, without concrete action to accompany it, even the most well-intentioned effort risks alienating its supporters over time. As with the other transitional justice mechanisms, a truth commission process alone is unlikely to meet the challenges of the post-Paris regime.

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.

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