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What can we learn from litigations for a just transition to net zero?

Pursuing a just transition to net zero may require unpicking multiple legal dimensions. Tiffanie Chan and Juliana Vélez Echeverri write that there's a need now for a framework that addresses justice across national and international levels and other dimensions to help address the unjust socioeconomic structures and practices that caused the climate crisis in the first place.



The concept of justice is complex and subject to multiple interpretations. As an agenda at the international climate negotiations, “just transition” is often subject to politically contested moral judgements.

The growing global trend of **just transition litigation** offers a window into how differently this concept is operationalised across countries. Understanding these differences provides valuable insights for building international consensus. These cases also show how domestic policymakers can better design and implement climate policies that address the needs and rights of affected communities and individuals.

Views from developed vs developing countries

Multiple UN documents have referred to “just transition” as a policy term, but the rapid proliferation of its use has not centred on a single common definition. Under the **Paris Agreement**, “just transition” focused on the workforce and the “creation of decent work and quality jobs...” The

primary focus was *distributive* justice, as it concerns the allocation of benefits and burdens among workers.

However, in subsequent global climate summits, the **interpretation** has arguably moved beyond a labour-focused concept towards the principle of sustainable development in the context of the climate transition.

COP26, in Glasgow, emphasised “the need to ensure just transitions that *promote sustainable development and eradication of poverty*, and the creation of decent work and quality jobs”. The discussions included making financial flows contribute towards low greenhouse gas emission and “*climate-resilient development*”, as well as “*deployment and transfer of technology and provision of support to developing country parties*” [emphasis added]. This language expands just transition into the domains of **climate justice**, and paints it as both a cross-border and a domestic issue.

Outside of agreed COP decisions, the interpretation of justice in just transition is diverse and often contested. Developed countries’ **negotiating stance** is generally in favour of the just transition work programme being limited to workforce and employment impacts.

However, developing countries are pushing for a broader scope that considers impacts to society as a whole, with the need to include the people often excluded in today’s global economy, such as youth and women. For them, just transition at the multilateral negotiations quickly becomes intertwined with contentious discussions on climate finance.

These fundamental differences on how justice is applied and perceived and the lack of detailed implementation strategies agreed upon have resulted in the just transition work programme being called a “**talk shop**”.

On the ground, in domestic courtrooms and through grassroots advocacy movements, just (or unjust) transitions are materialising in people’s daily lives. Courts are grappling with just transition as a domestic and community-level issue. We turn to these cases below and explore how they interact with, and could influence, the international discussions.

Place-based and transboundary injustices

Poorly designed domestic policies and the failure to reach consensus about just transition on the global stage could create **harmful localised impacts** for those who have contributed the least to climate change. Arguments used in litigation in this area resonate with discussions around which **legal principles** should be included in international frameworks. For instance, there is increasing discussion over whether, in light of the climate crisis, the imperatives of wellbeing should be prioritised over economic growth in law and policymaking.

Integrating principles of justice in international climate negotiations and domestic policy requires an understanding of the claims of those affected by climate action. The term “just transition

litigation” has been mentioned in **climate litigation studies**, but its theoretical understanding is yet to be developed.

Using the first **conceptualisation of just transition litigation**, we analysed 21 cases and examined their geographical spread and nature. This exercise revealed place-based injustices emerging from the implementation of just transition at the local and national levels. More than half of the cases (13) allege harmful impacts from projects aiming to deliver climate action at the local level.

Recognition and procedural claims

Recognition justice claims relate to the failure to recognise the interests and experiences of specific groups in the implementation of climate projects. **Procedural justice claims** focus on exclusion in decision-making processes. This takes the form of failure to consult certain groups or the inadequate application of environmental permission procedures. All local cases analysed build on either recognition or procedural justice claims.

Seven cases challenge domestic climate policies or laws mainly using distributive justice arguments, in which marginalised communities and workers allege grievances about the existential threats that the burdens of climate action entail.

The distributive, procedural and recognition dimensions are not new forms of **injustice**: they are commonly articulated and are used to assess harm and justice claims in the current fossil-fuel-dependent economy. The challenge lies in adapting these principles to ensure a just transition in a way that respects these multiple layers of justice.

What needs to be done differently?

A **geography approach** or “place-based” approach to just transition can reveal how impacts and harm resulting from climate action are located. Learning from past and emerging just transition litigation that focuses on place-based issues can help prevent further harm. This approach shows how climate action interacts with socio-cultural and political spaces. It also sheds light on how solutions on multiple scales might address existing structural drivers of injustice.

However, this place-based analysis must be linked to international discussions on legal principles for a just transition. When articulated well, these principles can be **interpreted** coherently by governments, courts and other decision-makers globally. The law has the **potential to transform** the existing structural drivers of injustice. The framework for processes to transition are possible and established in this area. Activities harmful to the climate are all created, regulated and limited in some form by law. Using **climate justice as a framework** to change laws and their interpretation could help address structural inequalities to promote more inclusive and fair transition.

Just transition litigation demonstrates that a transformative form of thinking is needed – one that is not limited to shifting from a “dirty” to a “clean” energy source. Instead, a framework is needed that addresses justice across different places, levels and dimensions, to inform the design of policies and social transformations that dismantle the unjust socioeconomic structures and practices that caused the climate crisis in the first place.

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