CHAPTER 31

Minimum Standards of Access to Energy Services: Underpinning Energy Justice and Legal Action

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Abstract The just energy transition is not simply about moving from fossil fuels to renewable energy. Justice in energy systems is about establishing a framework that identifies when and where injustices occur and how best law and policy can respond. This chapter proposes that access to energy services should have irreducible minimum standards in transitioning energy systems for fairer and sustainable global development. It surmises that these minimum standards should help define what the UN Sustainable Development Goal 7 on 'access to affordable, reliable, sustainable and modern energy for all' look like in practical terms. And that this

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ought not to be a mere aspirational target, but a legal norm. On a global scale, using energy justice as a core principle of international energy law to achieve this, it suggests that the five tenets of the energy justice framework (distributive, procedural, recognition, cosmopolitan, and restorative justice) are interdependent and could remedy global disparities in the just energy transition. It concludes that two tenets (restorative and recognition justice) are pivotal in establishing a minimum acceptable standard of universal energy access.

Keywords Just energy transition · UN SDG 7 · Energy law · Universal energy access · Irreducible minimum standards

31.1 Introduction

This chapter highlights that energy justice is sometimes unfurled like the 'Swiss Army knife'[1] for energy equity. Though useful in highlighting the importance of energy justice, a broad-brush approach to energy justice may render its principles meaningless in addressing specific problems in the global energy sector. Here, 'energy justice' is understood as the framework that identifies when and where injustices occur in energy systems and how best law and policy can respond.[2] Conceptualised as having three principal tenets: distributional justice (procedural justice and recognition justice),[3] it deals with both macro-justice (on societal impacts of energy and fair and just their institutional decisions are) as well as micro-justice (how individuals are impacted by systemic outcomes).[4]

So, what should energy justice inspire energy law and policy to do? First, it should help in identifying where there are disparities. Second, it should form the ethos that guide decision-making to right those

[1] A panacea, the ultimate solution, or a tool of such versatile utility that it is applicable to more or less any scenario at hand.

[2] Raphael J Heffron, Darren McCauley, and Benjamin K Sovacool, 'Resolving Society's Energy Trilemma Through the Energy Justice Metric', 87 (2015) *Energy Policy*, 168.

[3] Benjamin K Sovacool and Michael H Dworkin, *Global Energy Justice: Problems, Principles, and Practices* (Cambridge University Press 2014), 20.

[4] Darren McCauley et al., 'Advancing Energy Justice: The Triumvirate of Tenets', 32 (3) (2013) *International Energy Law Review*, 107–116, 109, 110.

inequities[5] and, third, it should inspire the enhanced integration of renewable energy into global energy systems as they offer the best chance for 'supporting human development over the long term in all of its social, economic, and environmental dimensions'.[6]

Global energy poverty is rife, which raises questions about developing basic minimum standards for what 'access to affordable, reliable, sustainable and modern energy for all' means. Although no universal definition of energy access exists, the International Energy Agency names four elements that are crucial to energy access, namely *Household access to a minimum level of electricity; Household access to safer and more sustainable cooking and heating fuels and stoves; Access to modern energy that enables productive economic activity, e.g. mechanical power for agriculture, textile and other industries; and Access to modern energy for public services.*[7] These collectively constitute the 'quality of energy supply'.[8] But are these contemplated by the UN Sustainable Development Goal of ensuring access to affordable, reliable, sustainable and modern energy for all?

31.2 Challenges to Achieving a Minimum Acceptable Standard of Universal Energy Access

There are disparate legal systems around the world. So, where should the legal reform start? Can any system be the exemplar? This seems unlikely and that is why these minimum standards should be inculcated as a major contribution of energy justice, which is a widely acknowledged principle

[5] Tedd Moya Mose and Mohammad Hazrati, 'Is Energy Justice in the Fossil Fuel Industry a Paradox?' in Geoffrey Wood and Keith Baker (eds), *The Long Goodbye? Managing the Decline of Fossil Fuels* (Palgrave Macmillan 2019), 529–550.

[6] 'World Energy Assessment: World Energy Assessment and the Challenge of Sustainability (2000)', in Richard Ottinger, Nicholas Robinson, and Victor Tafur (eds), *Compendium of Sustainable Energy Laws* (Cambridge University Press 2005), 2.

[7] IEA, 'Defining Energy Access: 2020 Methodology' (IEA 15 October 2020). <https://www.iea.org/articles/defining-energy-access-2020-methodology> accessed 1 May 2023.

[8] Ibid., quality refers to, 'technical availability, adequacy, reliability, convenience, safety and affordability'.

of international energy law. The legal architecture for energy systems ought to be based on identifiable, shared and universal tenets. What is needed is not a model law but, model principles (with energy justice as a key element).[9]

A major issue with global energy market design is the focus on large-scale deployment yet access to energy services seems measurable at local level. This excludes decentralised or smaller-scale energy measures. The Equator Principles are an example[10] and they only apply to projects whose total capital costs exceed 8.5 million Euro.[11] More briefly, further key points can be advanced:

1. Energy poverty is deemed to be a private problem. Largely confined to the home and difficult to observe from a public policy standpoint; manifesting differently in various geographical settings; and seen as a matter of individual perceptions and preferences.[12]
2. The lack of definitive legal standards for energy access leads to perverse outcomes. And, in some instances, even broaden the disparities in global energy access and consumption. It is also difficult to measure energy poverty using a cohesive framework.[13]

[9] See, Tedd Moya Mose, 'The Evolution of a Global Perspective in International Energy Law' (Unpublished PhD thesis, Queen Mary University of London 2020); Raphael J Heffron et al., 'A Treatise for Energy Law', 11 (1) (2018) *The Journal of World Energy Law & Business*, 34–48, <https://doi.org/10.1093/jwelb/jwx039> accessed in 29 May 2023.

[10] The Equator Principles Association, 'The Equator Principles' (The Equator Principles Association *n.d.*), <https://equator-principles.com> accessed in 28 April 2023. These establish a credit risk management framework adopted by financial institutions around the world for ethical investment.

[11] See, The Equator Principles Association, 'The Equator Principles 4' (The Equator Principles Association 1 October 2020), <https://equator-principles.com/wp-content/uploads/2021/02/The-Equator-Principles-July-2020.pdf> accessed in 12 May 2023 (US$ 10 million equivalent).

[12] Vlatka Kos Grabar Robina, Bruno Židov, and Robert Fabek, *Measuring and Monitoring Energy Poverty in the EU—Examples of Good Practices* (Odyssee Mure April 2022) <https://www.odyssee-mure.eu/publications/policy-brief/measuring-energy-poverty.pdf> accessed 17 May 2023.

[13] European Commission Directorate-General for Energy, *Energy Poverty National Indicators: Insights for a More Effective Measuring*, <https://energy-poverty.ec.europa.eu/discover/publications/publications/energy-poverty-national-indicators-insights-more-effective-measuring_en> accessed 17 May 2023.

3. Objective standards may be applied in spite of—rather than because of—legal systems. Energy law may stipulate standards (using an energy justice framework) to level disparities in accessing modern and clean energy services; akin to human rights and banking law.[14]
4. Energy access discourse has a heavy focus on what constitutes energy poverty but not on the legal measures/thresholds that would alleviate it. Some scholars even argue that what is lacking is a clear 'justice-neutral' energy source.[15]

31.3 Conclusion—How Resolving the Energy Justice Issue Can Contribute to the Overall Societal Move to a Just Transition to a Low-Carbon Economy?

Generally, energy justice can contribute to the overall societal move to a just transition to a low-carbon economy because its key features are: (i) people should be treated fairly and inclusively in energy systems; (ii) natural resource benefits should be shared equitably; and (iii) the burdens of climate change should be distributed justly. Furthermore, human rights should be upheld, and diverse actors involved in the development, implementation, and enforcement of environmental laws, regulations, and policies. Legal frameworks that govern energy systems should be underpinned by these principles in order to transition to a low-carbon economy.

Specifically, energy justice in enterprise and finance are needed now more than ever[16] because implementing irreducible minimum standards

[14] Tedd Moya Mose, 'The Law of Gravitas: Renewable Energy Law & Ethics', in Malik R Dahlan and Rosa Maria Lastra (eds), *Research Handbook on Energy Law and Ethics* (Edward Elgar 2022), 256–265.

[15] Paul Munro, Greg van der Horst, and Stephen Healy, 'Energy Justice for All? Rethinking Sustainable Development Goal 7 Through Struggles Over Traditional Energy Practices in Sierra Leone', 105 (2017) *Energy Policy*, 640.

[16] Michael J O'Fallon and Kenneth D Butterfield, 'A Review of the Empirical Ethical Decision-Making Literature: 1996–2003', 59 (4) (2005) *Journal of Business Ethics*, 375–413.

of modern energy services will require a huge financial investment. Although the five tenets of the energy justice framework (distributive, procedural, recognition, cosmopolitan and restorative justice)[17] are interdependent and could be jointly applied in remedying global disparities in the just energy transition, two are pivotal in establishing a minimum acceptable standard of universal energy access: (a) recognition justice (post-distributional, or recognition-based justice that must include a deep reflection upon where injustice emerges with regard to the impact on parts of society) and (b) Restorative Justice (where responses recognise and are responsive to context-specific cultural and social norms, knowledge systems, values, imbalances social structures and power).[18] These tenets need to be embedded in energy law to inform policy. The upshot is that energy services will benefit from law, policy and regulatory measures that require a floor of energy services. Any service level that falls short of those standards should be seen as a failure to meet, not just an aspirational target, but a legal norm. The legal framing of energy poverty needs to set parameters of the fundamental services that form an objective global index of what constitutes energy access. This is not to say that it should be a prescriptive laundry list of the type of energy source, resource, system or kilowatt hours. Rather, that there should be specificity in the essential services that are markers of access to modern energy services.

[17] Mohammad Hazrati and Raphael J Heffron, 'Conceptualising Restorative Justice in the Energy Transition: Changing the Perspectives of Fossil Fuels', 78 (2021) *Energy Research & Social Science*, 102115, <https://doi.org/10.1016/j.erss.2021.102115> accessed 29 May 2023.

[18] David Ciplet 'From Energy Privilege to Energy Justice: A Framework for Embedded Sustainable Development', 75 (2021) *Energy Research & Social Science*, 101996, <https://doi.org/10.1016/j.erss.2021.102115> accessed 29 May 2023.