



Empowering Those in Harm's Way: A Restorative Justice Approach

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Abstract As countries edge towards low-carbon economies, the challenges posed by energy infrastructure sited in “energy sacrificial zones” highlight the vulnerability of individuals and communities in those areas that cause environmental degradation, limited economic prosperity and impaired well-being. To address this issue, using examples, the usefulness of energy justice through the lens of its restorative justice tenet to articulate responses for a ‘just’ energy system is explored. Anchored on the framing of restorative justice that is a theoretical integration of three concepts—respect, responsibility and remediation, the mitigation approach to addressing injustices is more favoured. Restorative justice in this frame has implications for an enhanced social contract. This encourages early change in behaviour and averts conflict to ensure a just transition. From practice, unbalanced power allocation and unfair regulatory actions are challenges for restorative justice. However, by respecting

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and empowering these communities for co-created agreeable remedial decisions, the decision-making process can deliver on energy justice.

Keywords Energy justice · Restorative justice · Just transition · Respect · Responsibility

32.1 INTRODUCTION

Energy infrastructure plays a key role within an energy system to support production and delivery of energy including accelerating energy security and economic development. However, the challenges posed by energy infrastructure sited in “energy sacrificial zones” highlight the vulnerability of individuals and communities in close proximity.¹ These challenges include environmental degradation and limited economic prosperity that have profound implications for development, climate change and human well-being. This brings about conflict, trampled rights and injustices.

While it is very difficult for decision-makers to site energy infrastructure elsewhere due to technical, economic, environmental and even political constraints, it is possible to mitigate the impacts with the aid of processes that address injustices. This is where energy justice, particularly from a restorative justice frame, becomes key for such decision-making processes. Therefore, the specific focus of this chapter is to illuminate the usefulness of energy justice through the lens of its restorative justice tenet to articulate responses for a ‘just’ energy system.

32.2 THEORIZING ENERGY JUSTICE FROM A RESTORATIVE JUSTICE PERSPECTIVE

Energy justice seeks to assess the impact of energy-related decisions through the application of justice principles—recognition justice, procedural justice, distributive justice and restorative justice.² Restorative

¹ Hernández, D. (2015). Sacrifice Along the Energy Continuum: A Call for Energy Justice. *Environmental Justice*, 8(4), pp. 151–156.

² Heffron, R. J., & McCauley, D. (2017). The Concept of Energy Justice Across the Disciplines. *Energy Policy*, 105, pp. 658–667.

justice is the operative element of energy justice as it forces decision-makers to engage with justice concerns.³ Here *recognition justice* considers who is affected and how they are affected. Influenced by *procedural justice*, it allows for an engaging participatory decision-making process that facilitates fair allocation of benefits—*distributive justice* with agreeable remediation actions.

Therefore, restorative justice is a duty to rectify injustices for a fair energy decision. Decision-makers should ideally define the impacts that energy infrastructure may have on a community and think about how to respond to the injustices. This view shapes the framing of energy justice from restorative justice lens, allowing it a vital role in energy decision-making. The framing, illustrated in Fig. 32.1, is anchored on the theoretical integration of three concepts—respect, responsibility and remediation which are further highlighted below:

1. Respect

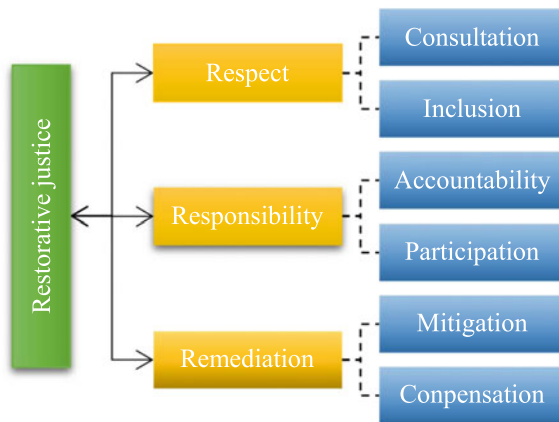


Fig. 32.1 Abstract framing of restorative justice concept from an energy justice perspective (*Source* Created by Ibrahim, A. [2023])

³ Hazrati, M., & Heffron, R. J. (2021). Conceptualising Restorative Justice in the Energy Transition: Changing the Perspectives of Fossil Fuels. *Energy Research & Social Science*, 78, p. 102115.

Respect is a foundational principle of ethical conduct that is largely connected to recognition justice. It directs attention to social differences on needs and perspectives to grant equality.⁴ The UN declaration on the rights of indigenous peoples acknowledges that sustainable development is enhanced by respecting knowledge, culture, and practices. An example is the Norwegian Court ruling in 2021 that declared operating licences of wind farms in Fosen peninsula invalid.⁵ It ruled that the reindeer herding culture of the Sami people was disregarded. Indeed, respect attaches a moral charge for decision-makers to acknowledge rights and restore relationships by providing an opportunity to all stakeholders to participate in the decision-making. This has implications for how decision-makers treat the community and resource allocation.

2. Responsibility

Similarly, responsibility is an ethical concept that revolves around morally or legally acceptable decisions with emphasis on accountability through duties and obligations.⁶ Linked to procedural justice, it facilitates energy decision-making and associated obligations because it forces them to consider the full range of issues and needed actions to mitigate impacts. Environmental Impact Assessment (EIA) that is of particular importance in energy siting decision is largely shaped by participation of stakeholders⁷—who supply information and feedback.⁸ The Lamu coal plant case in Kenya, where the ruling favoured public participation is an example of how meaningful engagement can empower communities and enhance

⁴ McBride, C. (2009). Demanding Recognition: Equality, Respect, and Esteem. *European Journal of Political Theory*, 8(1), pp. 96–108.

⁵ Ravna, Ø. (2022). The Fosen Case and the Protection of Sámi Culture in Norway Pursuant to Article 27 ICCPR. *International Journal on Minority and Group Rights*, 30(1), pp. 156–175.

⁶ Sovacool, B. K. et al. (2016). Energy Decisions Reframed as Justice and Ethical Concerns. *Nature Energy*, 1, p. 160.

⁷ Hazrati, M., & Heffron, R. J. (2021). Conceptualising Restorative Justice in the Energy Transition: Changing the Perspectives of Fossil Fuels. *Energy Research & Social Science*, 78, p. 102115.

⁸ Portman, M. (2009). Involving the Public in the Impact Assessment of Offshore Renewable Energy Facilities. *Marine Policy*, 33(2), pp. 332–338.

sustainability of energy infrastructure.⁹ EIA is an accountability tool to mitigate vulnerability as it contributes to the transparency of the decision-making process. Here, decision-makers have a duty to contribute to the well-being of communities by taking action to mitigate harm.

3. Remediation

For decision-makers, allocation of benefits to all stakeholders should be an important consideration. Remediation captures the idea of repairing or mitigating a harmful situation to a more desirable state. It involves correcting and improving harmful outcomes via inherently agreeable action. For instance, to mitigate the impacts of the Sizewell C nuclear power plant in Leiston in Suffolk, UK, the Wild Aldhurst was created to provide a new habitat for birds and rare plants at Aldhurst Farm.¹⁰ This extends environmental improvement benefits to the community and ensures sustainability of the Suffolk wildlife habitat. Hence, the value of remediation allows decision-makers to understand the needs of communities, while seeking re-integration that is essential to fostering an equitable and just restorative decision.¹¹

32.3 THE RESTORATIVE JUSTICE CHALLENGE

While restorative justice has been advanced in literature as having a two-pronged approach of repair and mitigation. The mitigation approach is more favoured as it encourages early change in behaviour and averts

⁹ UNEP. (2019). *Lamu Coal Plant Case Reveals Tips for Other Community-Led Campaigns*. Environmental Rights and Governance. <https://www.unep.org/news-and-stories/story/lamu-coal-plant-case-reveals-tips-other-community-led-campaign>.

¹⁰ EDF. (2020). *How Sizewell C Is Protecting the Environment*. <https://www.edfenergy.com/energy/nuclear-new-build-projects/sizewell-c/news-views/how-sizewell-c-protecting-environment>.

¹¹ Leonard, P. B. (2011). An Introduction to Restorative Justice. In E. Beck, N. P. Kropt, & P. B. Leonard (Eds.), *Social Work and Restorative Justice: Skills for Dialogue, Peacemaking and Reconciliation*. Oxford University Press.

conflict.¹² Through attention to respect and accountability, decision-makers can extend social ease and participatory rights that allow energy infrastructure siting decisions to be considered proper and just. However, any dereliction ignores the objective of energy justice and exacerbates injustices. This is often enabled by unbalanced power allocation and unfair regulatory actions. The Lamu case mentioned above is an example of how these unfair factors undermined the effective conduct of an EIA, a restorative justice measure including withheld participatory rights from the people of Lamu community. Nevertheless, to ensure energy justice in the decision-making process, the community sought restorative redress from the courts. This legal approach can be used as a wielding stick to hold energy decision-makers to account and demand rights.¹³

As countries edge towards low-carbon economies, how decision-makers treat communities, particularly those that would host required energy infrastructure would have implications for achieving a just transition. In the earlier example of the wind farms in the Fosen peninsula in Norway, the Sami people opposed the siting of renewable energy project in their community despite the nation's need to cut carbon emissions. The community's perception of violated rights puts the wind farm projects in jeopardy and poses a huge challenge for the Norwegian government's transition goal. However, by respecting these communities, decision-makers can effectively capture their vulnerabilities for remediation to give a compensatory effect. Additionally, this action that averts conflict will ensure sustainability and protect the huge investments of low-carbon infrastructure to foster a just transition.

The conceiving of energy justice from its restorative justice tenet through notions of respect, responsibility and remediation frames energy justice as an emancipatory tool. Consequently, restorative justice in this frame has implications for an enhanced social contract.¹⁴ This is fostered by its proactive integrative principle and reflective approach that

¹² Hazrati, M., & Heffron, R. J. (2021). Conceptualising Restorative Justice in the Energy Transition: Changing the Perspectives of Fossil Fuels. *Energy Research & Social Science*, 78, p. 102115.

¹³ Heffron, R. J. (2021). *The Challenge for Energy Justice: Correcting Human Rights Abuses*. Palgrave Macmillan.

¹⁴ Heffron, R. J., & De Fontenelle, L. (2023). Implementing Energy Justice Through a New Social Contract. *Journal of Energy & Natural Resources Law*, 41(2), pp. 141–155.

encourages plurality in decision-making through empowering the host communities of energy infrastructure in a bid to mitigate impacts. It allows for co-created agreeable decisions to deliver on energy justice.

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