

Towards Energy Justice in Kenya

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TOWARDS ENERGY JUSTICE IN KENYA

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Abstract

Energy is increasingly being recognised as an essential human need. The importance of energy cannot be overemphasized. It is vital for economic development in any given country. This has seen massive investment being channelled in the energy sector across the globe and particularly in Kenya. However, despite the efforts made in the energy sector, injustices are still prevalent in areas such as access to energy, energy costs and energy governance. The paper discusses the concept of energy justice which is aimed at addressing such injustices. It begins by conceptualising energy justice and its components which are distributional justice, procedural justice and recognition justice. The paper then analyses the legal framework on energy in Kenya to determine whether it promotes energy justice in the country. The paper also discusses some of the energy justice concerns in Kenya and proposes reforms geared towards promoting energy justice in the country.

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1. INTRODUCTION

Access to energy is a fundamental human need and the driving force of human development.¹ Energy is critical to economic development and poverty eradication.² Indeed there is growing evidence linking access to energy with the attainment of socio-economic rights such as the right to education, right to food and the right to health.³ Reliable supply of electricity and adequate lighting can aid learners in their academic activities; further electricity can be utilised for farming activities such as irrigation. To this extent, it has been asserted that energy is “not just another commodity, but the precondition of all commodities, a basic factor equal with air and water.⁴ Access to clean energy has been equated to a ‘golden thread’ which has the ability to stimulate development by connecting the Sustainable Development Goals (SDGs) and unlocking sustainable economic growth.⁵ It has been pointed out that no country in the recent past has been able to substantially reduce poverty levels without an increase in energy services.⁶

The importance of energy has been given recognition at the global stage with Sustainable Development Goal number 7 being geared towards ensuring access to affordable, reliable, sustainable and modern energy.⁷ Energy is described as being

¹ Guruswamy. L, ‘Energy Justice and Sustainable Development’ Colorado Journal of International Environmental Law & Policy, Volume 21, No. 2.

² Muigua. K., ‘Access to Energy as a Constitutional Right in Kenya’, available at <http://kmco.co.ke/wp-content/uploads/2018/08/Access-to-Energy-as-a-Constitutional-Right-in-Kenya-NOVEMBER-2013.pdf> (Accessed on 02/01/2020).

³ The World Bank, ‘Sustainable Development Goal on Energy (SDG7) and the World Bank Group, available at <https://www.worldbank.org/en/topic/energy/brief/sustainable-development-goal-on-energy-sdg7-and-the-world-bank-group> (Accessed on 03/01/2020).

⁴ Goldthau. A & Sovacool. B., ‘The Uniqueness of the Energy Security, Justice and Governance Problem’ *Energy Policy*, 41 (2012) 232-240.

⁵ Ibid.

⁶ Yoshida. T., & Zusman. E., ‘Achieving the Multiple Benefits of a Sustainable Development Goal for Energy’ Available at https://iges.or.jp/en/publication_documents/pub/bookchapter/en/4934/08_Ch8_Achieving_the_SDG_s_.pdf (Accessed on 18/12/2019).

⁷ United Nations Development Programme, ‘Sustainable Development Goals’ available at <https://www.undp.org/content/undp/en/home/sustainable-development-goals.html> (Accessed on 23/01/2020).

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central to every major opportunity and challenge that the world faces today as it connects with the other Sustainable Development Goals.⁸

However, despite its importance, access to clean and affordable energy remains a challenge especially in Sub-Saharan Africa. Studies have shown that in these countries, nearly 83% of the population depends on traditional fuels while 74% lack access to electricity thus contributing to energy poverty.⁹ Energy poverty in such countries is caused by a number of factors including low levels of electrification due to economic constraints and insufficient institutions.¹⁰ In Kenya, despite attempts by the government to enhance electricity connectivity through measures such as subsidizing the costs, many households especially in rural areas cannot afford the initial connection charges thus have low access.¹¹ Further, the high costs of modern sources of energy such as Liquefied Petroleum Gas (LPG) also contribute to energy poverty.

⁸ United Nations Sustainable Development Goals, 'Goal No. 7: Ensure Access to Affordable, Reliable, Sustainable and Modern Energy' available at <https://www.undp.org/content/undp/en/home/sustainable-development-goals.html> (accessed on 23/01/2020).

⁹ Bildirici. M & Ozaksoy.F., 'Woody Biomass Energy Consumption and Economic Growth in Sub-Saharan Africa' *Procedia Economics and Finance* 38 (2016) 287 – 293.

¹⁰ Njiru. C.W & Letema. S.C., 'Energy Poverty and its Implication on Standard of Living in Kirinyaga, Kenya' *Journal of Energy*, 2018.

¹¹ Ibid.

2. ENERGY JUSTICE

The inequalities witnessed in the energy sector has led to emergence of the concept of energy justice. Energy justice has been defined as a global energy system that fairly disseminates both the benefits and costs of energy services, and one that has representative and impartial energy decision-making.¹² It seeks to apply basic principles of justice and fairness to the inequalities witnessed in the availability, affordability, sustainability and due process in the energy sector.¹³ Energy justice seeks to influence decision making in the energy sector by incorporating justice and ethical considerations in such decisions; for example, disconnecting electricity for citizens who fail to pay their bills on time could affect their day to day lives yet failing to do so could overburden other paying citizens.¹⁴

Energy justice thus poses a justice and ethical dilemma of allocating the benefits of scarce energy resources among citizens and between the present and future generations.¹⁵ To this extent, energy justice forms a crucial component of the sustainable development agenda and the principles of intra and inter- generational equity. These principles as enunciated in the Rio Declaration on Environment and Development are aimed at achieving development that equitably meets developmental and environmental needs of both the present and future generations.¹⁶ Through energy justice, affordability, sustainability and availability in the energy sector can be achieved thus promoting human and economic development.

¹² Benjamin K. Sovacool & Michael H.Dworkin, *Global Energy Justice: Problems, Principles and Practices* (Cambridge Univ. Press, 2014).

¹³ Heffron. J.R., & McCauley. D., 'The Concept of Energy Justice across the Disciplines' *Energy Policy* 105 (2017) 658-667.

¹⁴ Benjamin K. Sovacool & Michael H.Dworkin, *Global Energy Justice: Problems, Principles and Practices*, Op Cit.

¹⁵ Sovacool. B.K., 'Energy Decisions Reframed as Justice and Ethical Concerns' *Energy Justice 1*, available at <https://core.ac.uk/download/pdf/42579074.pdf> (Accessed on 28/01/2020).

¹⁶ The United Nations Conference on Environment and Development, 'Rio Declaration on Environment and Development' 1992, Principles 3 and 4.

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There are three core tenets of energy justice; *distributional justice, recognition justice and procedural justice* (emphasis added). Distributional justice is aimed at establishing existing injustices in the energy sector and means of resolving them.¹⁷ It assesses issues such as uneven distribution, production and consumption of energy. The location of energy production facilities such as wind power stations, dams and gas power stations could create inequalities in access to energy thus raising justice concerns. Recognition justice is aimed at determining the section of the population ignored or misrepresented in energy access in order to cure such ills.¹⁸ Procedural justice is aimed at streamlining the decision making processes in the energy sector that engages all stakeholder to ensure inclusivity non-discrimination.¹⁹ This can be achieved through measures such as public participation and Environmental Impact Assessment (EIA) in relation to energy projects. It has the ability to foster acceptance and ownership of such projects whilst promoting environmental conservation and sustainable development. The aim of energy justice is to apply these three tenets in the energy policy and systems so as to enhance availability, affordability, sustainability and due process in the energy sector.²⁰

The concept of energy justice is paramount to Kenya which is at critical stage in defining its energy future.²¹ The country faces a challenge to enable a 'just transition' to lower carbon economy that simultaneously delivers poverty reduction and climate change resilience.²²

¹⁷ Jenkins. K, et al, 'Energy Justice: A Conceptual Review' *Energy Research & Social Science* 11 (2016) 174-182.

¹⁸ Ibid.

¹⁹ Heffron. J.R., & McCauley. D., 'The Concept of Energy Justice across the Disciplines' Op Cit.

²⁰ Jenkins. K, et al, 'Energy Justice: A Conceptual Review' *Energy Research & Social Science* 11 (2016) 174-182, Op cit.

²¹ Newell. P., & Philips. J., 'Neoliberal Energy Transitions in the South: Kenyan Experience' *Geoforum*, 74 (2016) 39-48.

²² Ibid.

3. LEGAL FRAMEWORK ON ENERGY JUSTICE IN KENYA

3.1 Constitution of Kenya, 2010

The Constitution enshrines economic and social rights including a right to the highest attainable standard of health, right to food, right to clean and safe water and right to education.²³ Access to energy is crucial for the realisation of most of these rights.²⁴ Furthermore, the Constitution recognises energy as part of natural resources.²⁵ Consequently, the state has an obligation to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources including energy, and ensure the equitable sharing of the accruing benefits from such resources.²⁶ The Constitution further identifies sustainable development as one of the national values and principles that is to guide the development agenda in the country.²⁷ Sustainable exploitation and utilisation of energy as a natural resource will guarantee energy justice by achieving intra and inter-generational equity.

3.2 Energy Act, No. 1 of 2019

The Act mandates the government to facilitate the provision of affordable energy services to all persons in Kenya.²⁸ Part III of the Act establishes National Energy Entities which are the Energy and Petroleum Regulatory Authority, Energy and Petroleum Tribunal, Rural Electrification and Renewable Energy Corporation and Nuclear Power and Energy Agency. The Energy and Petroleum Regulatory Authority is mainly tasked with regulatory activities related to *inter alia* the generation, importation, exportation, distribution and supply of electric energy, petroleum and petroleum products, renewable energy and other forms of energy.²⁹ The Energy and Petroleum Tribunal is

²³ Constitution of Kenya, 2010, Article 43, Government Printer, Nairobi.

²⁴ Muigua. K., 'Access to Energy as a Constitutional Right in Kenya' Op Cit.

²⁵ Constitution of Kenya, 2010, Article 260; 'natural resources' means the physical non-human factors and components, whether renewable or non-renewable, including *inter alia* rocks, minerals, fossil fuels and other sources of energy'.

²⁶ Ibid, Article 69 (1) (a).

²⁷ Ibid, Article 10.

²⁸ Energy Act, No.1 of 2019, S 7(1), Government Printer, Nairobi.

²⁹ Ibid, S 10.

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established for purposes of hearing and determining disputes and appeals relating to the energy and petroleum sector in accordance with the Act.³⁰ The Rural Electrification and Renewable Energy Corporation is tasked with overseeing the implementation of the rural electrification programme and promoting the use of renewable energy and technologies among other functions.³¹ The Nuclear Power and Energy Agency is tasked with *inter alia* implementation of the nuclear energy programme and promoting the development of nuclear electricity generation in Kenya.³²

Implementation of the Act is important in enhancing energy justice in Kenya. The National Energy Entities established under the Act have the ability to promote attainment of the right to energy in Kenya. Further, the Energy and Petroleum Tribunal can contribute to enhancing energy justice in Kenya through its decisions and pronouncements.

3.3 National Energy Policy, 2018³³

The policy recognises energy as a critical component in the economy, standard of living and national security of a country.³⁴ It is geared towards achieving several objectives which include *inter alia* improving access to affordable, competitive and reliable energy services, promoting energy efficiency and conservation and promoting diversification of energy supply sources in Kenya to ensure security of supply.³⁵ It sets out several policies and strategies towards the use, development and conservation of energy sources in the country such as coal resources, renewable energy and electricity. The Policy also contains Energy efficiency and conservation measures aimed at reducing energy consumption without sacrificing productivity or increasing costs.³⁶

³⁰ Ibid, S 25.

³¹ Ibid, S 44 (1).

³² Ibid, S 56 (1).

³³ Ministry of Energy, National Energy Policy, 2018, Government Printer, Nairobi.

³⁴ Ibid, S 1.1.

³⁵ Ibid, S 1.2.

³⁶ Ibid, S 5.0.

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It is an ambitious policy document that is central to the attainment of the national development blueprint, Kenya Vision 2030 and the Government's Big Four Agenda.³⁷ Effective implementation of the Policy may promote energy security and justice in the country.

³⁷ Government of Kenya, 'Towards 2030' available at <https://vision2030.go.ke/towards-2030/> (Accessed on 28/01/2020)

4. ENERGY JUSTICE CONCERNS IN KENYA

4.1 Access to Energy

It has been reported that Kenya has witnessed one of the fastest growth in electrification within Sub-Saharan Africa with 75% of the population having access to electricity by the year 2018.³⁸ The National Electrification Strategy is geared towards achieving universal electricity access to all households and businesses by the year 2022. The country has also been hailed for making notable progress in deploying renewable sources of energy.³⁹ However, while the country has made great strides towards electrification, there exists a wide disparity in electrification between urban and rural areas with 84% of the population in rural areas not having electricity connection.⁴⁰ Further, it has been reported that a household in Nairobi is 36 times more likely to have electricity than a household in Turkana or Tana River Counties.⁴¹ Such disparity in access to energy creates energy justice concerns with the poor and rural areas being the most affected. With the essential importance of energy as human need, it is necessary to ensure equity and fairness in respect to energy access.

4.2 Energy Costs

Energy costs relate to the expenses of being connected and equipped with energy sources and the cost of the energy used. Energy affordability remains a challenge in most sub-Saharan African Countries due to the high cost of power relative to income.⁴² Consequently, reports have shown that electricity prices in Kenya are higher than the global average at the rate of 0.224 U.S Dollar per kWh for households and 0.192 U.S

³⁸ International Energy Agency, 'Africa Energy Outlook 2019' available at https://webstore.iea.org/download/direct/2892?fileName=Africa_Energy_Outlook_2019.pdf Accessed on (21/01/2020).

³⁹ Ibid.

⁴⁰ Moner-Girona. M et al, 'Decentralized Rural Electrification in Kenya: Speeding Up Universal Energy Access' Energy for Sustainable Development, Volume 52, October 2019, p 128-146.

⁴¹ World Health Organization, 'Opportunities for Transition to Clean Household Energy in Kenya: Application of the WHO Household Energy Assessment Rapid Tool (HEART)' available at <https://apps.who.int/iris/bitstream/handle/10665/311281/9789241514989-eng.pdf> (Accessed on 23/01/2020)

⁴² International Energy Agency, 'Africa Energy Outlook 2019' (Op Cit).

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Dollar for businesses against a global average of 0.15 U.S Dollar per kWh for households and 0.12 U.S Dollar for businesses.⁴³ Other sources of energy such as kerosene are affected by international prices thus unpredictable and unreliable especially among the poor.⁴⁴

4.3 Disclosure and Public Participation in Energy Matters

The Constitution of Kenya 2010 guarantees the right of access to information.⁴⁵ However, some of the energy providers do not readily provide information on such matters as tariffs, pollution, real costs and other cost and affordability-related issues.⁴⁶ This hinders effective decision making for most people on the available sources of energy. Further, while undertaking energy projects, some of the stakeholders have violated the constitutional principle of public participation. Public participation has been defined as the process by which public concerns, needs and values are incorporated into governmental and corporate decision-making with the overall goal of better decisions that are supported by the public.⁴⁷ It is an important constitutional safeguard that ensures that the views of those who are likely to be affected by development projects are taken into account before such projects are implemented.⁴⁸

⁴³ GlobalPetrolPrices.Com 'Kenya Electricity Prices' available at https://www.globalpetrolprices.com/Kenya/electricity_prices/ (Accessed on 23/01/2019).

⁴⁴ Morrissey, J., 'The Energy Challenge in Sub-Saharan Africa: A Guide for Advocates and Policy Makers' Oxfam, 2017, available at <https://www.oxfamamerica.org/static/media/files/oxfam-RAEL-energySSA-pt2.pdf> (Accessed on 28/01/2020).

⁴⁵ Constitution of Kenya, 2010, Article 35; See also the Access to Information Act, No. 31 of 2016.

⁴⁶ Muigua. K., 'Access to Energy as a Constitutional Right in Kenya' Op Cit.

⁴⁷ Muigua. K., Wamukoya. D., & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya' Glenwood Publishers Limited (2015).

⁴⁸ For purposes of public participation, the court in *Mada Holdings Ltd t/a Fig Tree Camp v County Council of Narok* defined the public as 'the individual who has sufficient interest in the issue over which the public body is exercising discretion, or where the exercise of that discretion is likely to adversely affect the interests of the individual or even where it is shown that the individual has a legitimate expectation to be consulted before the discretionary power is exercised. Courts have also insisted on meaningful public participation. In *Robert N. Gakuru & Others v Governor Kiambu County & 3 others*, the court decided that 'public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates.' The Public Participation, No. 2 Bill 2019 seeks to give effect to the constitutional principle of public participation. It defines public participation as the involvement and consultation of the public in the decision making processes of the relevant state organs and public offices. The bill sets out several guiding principles in conducting public participation including the need to provide timely access to relevant information. Further, it sets out several

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The importance of public participation was pronounced in the case of *Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others*⁴⁹, where the Constitutional Court observed that:

'Public participation is a national value that is an expression of the sovereignty of the people as articulated under Article 1 of the Constitution. Article 10 makes public participation a national value as a form of expression of that sovereignty. Hence, public participation is an established right in Kenya; a justiciable one – indeed one of the corner stones of our new democracy. Our jurisprudence has firmly established that Courts will firmly strike down any laws or public acts or projects that do not meet the public participation threshold.'

The principle of public participation has also been upheld by the Supreme Court in *The Matter of the National Lands Commission* where it was observed that:

*'The participation of the people is a constitutional safeguard, and a mechanism of accountability against State organs, the national and county governments, as well as commissions and independent offices. It is a device for promoting democracy, transparency, openness, integrity and effective service delivery.'*⁵⁰

Public participation in environmental governance is provided for under the Constitution which mandates the state to encourage public participation in the management, protection and conservation of the environment.⁵¹ It is an essential principle in natural resources management.⁵² Public participation in environmental governance is aimed at furthering environmental democracy which connotes the right of all whose daily lives are affected by the quality of the environment to participate in

obligations in conducting public participation including establishing structures to facilitate effective participation and ensuring fair and equal access to the public participation processes for all persons. If enacted into law, the Act will enhance public participation in environmental decision making in Kenya.

⁴⁹ Constitutional Petition No. 305 of 2012 (2015) eKLR.

⁵⁰ In the Matter of the National Land Commission, Supreme Court Advisory Reference No. 2 of 2014 (2015) eKLR.

⁵¹ Constitution of Kenya, 2010, Article 69 (1) (d).

⁵² Muigua. K., Wamukoya. D & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya' Op Cit.

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environmental decision-making.⁵³ Utilisation of the views of the public in decision-making on environmental issues results in better implementation of the goals of environmental protection and sustainable development.⁵⁴ In the context of energy justice, public participation fosters procedural justice by engaging with all stakeholders and promoting inclusivity and non-discrimination.⁵⁵

Further, with regard to environmental projects, the Environmental Management and Co-Ordination Act requires project proponents to undertake public participation in the process of preparing the Environmental Impact Assessment Study Report.⁵⁶ Lack of community engagement through public participation has often seen energy projects stall due to opposition by affected communities. This was vividly seen in the case of Kinangop Wind Park Limited which sought to erect a 60.8 Megawatt wind turbine farm to be in Kinangop, Nyandarua County. However, the project stalled due to community protests over lack of proper engagement, sensitization and compensation.⁵⁷

In *Save Lamu & 5 others v National Environmental Management Authority (NEMA) & Another*, the National Environment Tribunal revoked an Environmental Impact Assessment License issued to Amu Power Company Limited to set up an intended 1050 MW coal fired power plant in Lamu for lack of effective public participation among other grounds. In its decision, the Tribunal noted that 'human beings are justifiably concerned about the environmental impacts of projects to their location and especially where those projects are novel in nature....., being concerned about all these

⁵³ Muigua. K & Musyimi. P.N, 'Enhancing Environmental Democracy in Kenya' available at http://kmco.co.ke/wp-content/uploads/2018/08/072_Envtal_Dem_Kenya.pdf (Accessed on 29/01/2020); See also Muigua. K., 'Realising Environmental Democracy in Kenya' available at <http://kmco.co.ke/wp-content/uploads/2018/08/REALISING-ENVIRONMENTAL-DEMOCRACY-IN-KENYA-4th-May-2018-1-1.pdf> (Accessed on 29/01/2020).

⁵⁴ Ibid.

⁵⁵ Jenkins. K, et al, 'Energy Justice: A Conceptual Review' *Energy Research & Social Science* 11 (2016) 174-182, Op Cit.

⁵⁶ Environmental Management and Co-Ordination Act, No. 8 of 1999, S 59, Government Printer, Nairobi

⁵⁷ Business & Human Rights Resource Centre, 'Kinangop Wind Park's Suit Against Kenya Govt For Alleged Failure To Stop Local Community's Opposition To Project Dismissed' available at <https://www.business-humanrights.org/en/kinangop-wind-parks-suit-against-kenya-govt-for-alleged-failure-to-stop-local-communitys-opposition-to-project-dismissed> (Accessed on 29/01/2020).

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environmental effects of a project the people most affected by a project must therefore have a say on each and every aspect of the project and its impact.’⁵⁸

Public participation is thus an essential principle in projects, including energy-related ones, which needs to be upheld in order to enhance energy justice.

⁵⁸ Save Lamu & 5 others v National Environmental Management Authority (NEMA) & another, Tribunal Appeal No. NET 196 of 2016, (2019) eKLR

5. WAY FORWARD

5.1 Enhancing Access to Energy

Household energy needs entail two components: access to clean cooking facilities and access to electricity. While Kenya has made notable progress towards enhancing access to electricity through measures such as the rural electrification programme, progress remains slow in promoting clean cooking facilities. Bio-energy sources such as charcoal, wood fuel and dung remain the most common source of energy in Kenya especially among the rural population.⁵⁹ However use of these sources is associated with environmental challenges such as air and soil pollution and environmental degradation through deforestation. Further, it is estimated that almost 500, 000 premature deaths per year in Africa are related to household air pollution from the lack of access to clean cooking facilities, with women and children the worst affected.⁶⁰ There is thus an urgent need to enhance access to clean cooking facilities in Kenya. Liquefied Petroleum Gas (LPG) has been promoted as an alternative but its use is largely concentrated in urban areas due to its associated costs. Under the Energy Act, the government is mandated to facilitate provision of affordable energy services to all persons in Kenya.⁶¹ Measures can be put in place to enhance access to clean energy sources such reducing the costs of LPG to promote its affordability. Further, costs related to electricity such as connection charges and billing costs should be made affordable for the benefit of all Kenyans especially those in rural areas.

⁵⁹ Muchiri. L., 'Gender and Equity in Bioenergy Access and Delivery in Kenya' Practical Action East Africa, 2008, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiy2P29z6PnAhUEiFwKHQlyCLOQFjAAegQIBRAB&url=http%3A%2F%2Fwww.cas.ed.ac.uk%2F_data%2Fassets%2Fword_doc%2F0007%2F24793%2FGender_and_Equity_in_Bio_energy_Access_and_Delivery_in_Kenya_final.doc&usg=AOvVaw2AKp1mvTSC9tafkIKJ-36 (Accessed on 23/01/2020).

⁶⁰ Ibid.

⁶¹ Energy Act, No. 1 of 2019, S 7 (1).

5.2 Promoting Transparency and Accountability in Energy Governance

The country has in recent past witnesses several scandals in the energy sector that have threatened to derail progress towards energy efficiency and security in the country. Kenya Power, which owns and operates most of the electricity transmission and distribution system in the country, has been hit with fraud allegations through manipulation of power bills and electricity tokens that saw many Kenyans pay electricity bills up to five times than what they had consumed.⁶² Further, the botched Mwananchi Gas Project by the Ministry of Petroleum that was aimed at providing LPG cylinders to Kenyans at subsidized costs saw taxpayers lose more than Kenya Shillings 870 million due to shortcomings in its implementations.⁶³ Effective implementation of such a plan would have been crucial in enhancing access to clean cooking facilities in the country.

Such scandals have contributed to energy injustices in the country since they hinder the ability of citizens to access reliable and affordable energy services. There is need to strengthen accountability mechanisms in the energy sector and ensure that the perpetrators of such acts are held accountable for their misdeeds. Energy Service providers such as Kenya Power should also be transparent in their affairs and ensure that citizens are aware of their obligations and are billed according to the services they consume. The Energy Act mandates the Director of Public Prosecutions (DPP) to appoint a public prosecutor for purposes of prosecuting offences under the Energy Act.⁶⁴ This is an important step in ensuring prosecution of perpetrators of energy injustices in the country with a view of promoting energy justice.

⁶² Achuka. V., 'How Kenya Power Staff Stole Millions in Bills Scandal' *Daily Nation*, Tuesday, December 24, 2019.

⁶³ Mutai. E, 'Taxpayers Lose Sh870 Million in Botched Cooking Gas Subsidy Plan' *Business Daily*, Monday, July 8, 2019.

⁶⁴ Energy Act, No. 1 of 2019, S 220.

5.3 Facilitating Inclusivity and Public participation in the Energy Sector

The foregoing discussion has shown that stakeholder inclusivity through public participation is an important component of energy justice as it promotes procedural justice. Energy projects such as oil extraction and coal mining have potential environmental and human effects since they can result in environmental degradation and displacement of citizens. Community consultation through meaningful public participation is important to ensure that there is public acceptance and cooperation with such projects.⁶⁵ This is in line with Principle 10 of the Rio Declaration, 1992 which acknowledges that environmental issues are best handled with the participation of all concerned citizens, at the relevant level.⁶⁶ Public participation has also been enshrined as one of the national values and principles under the Constitution.⁶⁷

Through public participation, energy entities are able to put into consideration the views of those likely to be affected by energy projects in their implementation. The National Environment Management Authority (NEMA) should be satisfied that sufficient stakeholder engagement through public participation has been undertaken and reflected in the Environmental Impact Assessment (EIA) study reports before issuing an EIA Licence necessary for commencement of such projects.

5.4 Promoting Renewable Sources of Energy

The Energy Act defines renewable energy as 'non-fossil energy generated from natural non-depleting resources including but not limited to solar energy, wind energy, biomass energy, biological waste energy, hydro energy, geothermal energy and ocean and tidal energy.'⁶⁸ Renewable energy has been hailed for its advantages which include ensuring the security of energy supply.⁶⁹ Energy security is an essential component of

⁶⁵ Muigua. K., 'Access to Energy as a Constitutional Right in Kenya' Op Cit.

⁶⁶ The United Nations Conference on Environment and Development, 'Rio Declaration on Environment and Development' 1992.

⁶⁷ Constitution of Kenya, 2010, Article 10 (2) (a).

⁶⁸ Energy Act, No. 1 of 2019, S 2.

⁶⁹ Nizic. M.K., 'The Advantages and Disadvantages of Renewable Energy in the Tourist Destination' Conference Paper, available at https://www.researchgate.net/publication/320584990_The_Advantages_and_Disadvantages_of_Renewable_Energy_in_the_Tourist_Destination

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energy justice since it guarantees availability of energy necessary to fulfil basic human needs.⁷⁰ The Energy Act establishes the Rural Electrification and Renewable Energy Corporation whose functions include *inter alia* to develop, promote and manage in collaboration with other agencies, the use of renewable energy and technologies, including but not limited to biomass (biodiesel, bio-ethanol, charcoal, fuel-wood, biogas) municipal waste, solar, wind, tidal waves, small hydropower and co-generation but excluding geothermal.⁷¹ The Corporation needs to further its efforts in promoting renewable sources of energy apart from biomass which still remains the most common source of energy in Kenya. This will be vital in promoting energy security which is an important element of energy justice.

[able Energy in the Tourist Destination/link/59ef0c1c4585152de64db7cc/download](#) (Accessed on 24/01/2020).

⁷⁰ Azzuni. A., and Breyer. C., 'Definitions and Dimensions of Energy Security: A Literature Review' available at <https://onlinelibrary.wiley.com/doi/pdf/10.1002/wene.268> (Accessed on 24/01/2020).

⁷¹ Energy Act, No. 1 of 2019, S 44 (1) (j).

6. CONCLUSION

The importance of energy as a human need necessary for fostering human development is not in doubt. However, inequalities are still witnessed in the energy sector globally and Kenya in particular in aspects such as energy access, energy costs and energy decision making. Energy Justice has emerged as a global concept aimed at dealing with such inequalities witnessed in the energy sector. It is aimed at promoting distributional, recognition and procedural justice in the energy sector by ensuring equality, fairness, transparency, accountability, participation and energy security. For Kenya to attain its development agenda, energy justice is of utmost importance due to the clear link between energy and development. Energy Justice as an ideal is attainable. There must however be a concerted effort by all stakeholders to move forward together towards energy justice in Kenya for sustainable development.

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