

Energy Governance, Environmental Justice and Legal Pluralism in the Global South

Dr. Bestman Collins Nwobi Samuel*

Dip Law, LLB, LLB, LLM, LLM, PhD; Centre for Law, Justice and Society, De Montfort University, Leicester, United Kingdom.

*Corresponding Author

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ABSTRACT

Energy governance in the Global South is shaped by the interaction of multiple legal, social, and normative orders such as customary and informal governance systems, creating complex challenges for the pursuit of sustainable development and environmental justice (Sovacool 2016; Heffron and McCauley 2017). While contemporary energy and environmental regimes increasingly emphasise equity, participation, and sustainability, regulatory outcomes in many resource dependent economies continue to reproduce environmental harm and social inequality (Newell and Mulvaney 2013; Knox 2018). This article examines the relationship between energy law, environmental justice, and legal pluralism, arguing that formal regulatory frameworks alone are insufficient to address entrenched distributive, procedural and recognitional injustices (Schlosberg 2007; Griffiths 1986).

Drawing on environmental justice theory and legal pluralism, the article conceptualises energy governance as a socially embedded legal process rather than a purely technocratic or state centred exercise (Schlosberg 2007; Griffiths 1986; Tamanaha 2008). Using a qualitative doctrinal and socio-legal methodology, it analyses international legal instruments, domestic energy and environmental legislation, judicial decisions, and policy frameworks alongside socio-legal scholarship (Sands et al. 2018; Banakar and Travers 2005). The analysis demonstrates how plural normative orders, including customary land tenure systems, community governance practices, and informal dispute resolution mechanisms, profoundly shape the interpretation, legitimacy, and implementation of energy law in practice (Merry 1988; Tamanaha 2008; Benda Beckmann and Turner 2018).

Through focused illustrative examples drawn from resource dependent regions in the Global South, the article shows how failure to engage legal plurality contributes to distributive, procedural, and recognitional injustices in energy development (Ebeku 2006; Walker 2012). It concludes that recognising and constructively engaging legal pluralism is essential for designing energy governance frameworks capable of supporting equitable, legitimate, and sustainable energy transitions (Heffron and McCauley 2017; UNDP 2020).

Keywords: Energy law; Environmental justice; Legal pluralism; Sustainable development; Global South

INTRODUCTION

Energy development occupies a central position in contemporary debates on economic growth, environmental protection, and social justice (Bradbrook 2010; Sovacool and Dworkin 2015). In many Global South jurisdictions, particularly in post-colonial and resource dependent states, large-scale energy projects are promoted as engines of development, industrialisation, and poverty reduction, frequently supported by international development institutions, foreign investors, and multinational corporations (World Bank 2017; IEA 2021). These projects are often framed as necessary responses to energy poverty and economic underdevelopment (UNDP 2020).

Despite this developmental framing, energy projects routinely generate environmental degradation, social displacement, and unequal distributions of costs and benefits (Bullard 1990; Walker 2012). Communities in resource rich regions often bear the environmental and social burdens of extraction and infrastructure development while receiving limited economic, social, or political benefits. For example, in Nigeria's Niger Delta region, decades of oil extraction have resulted in severe environmental pollution and socio-economic marginalisation of host communities, despite extensive statutory regulation of the petroleum sector (Ebeku 2006;

Ocheje 2007). Similar tensions are evident in renewable energy transitions, where land acquisition for solar and wind projects in parts of India has generated conflict with local communities whose customary land-use practices are weakly protected by formal law (Baker 2016; Levien 2018; Yenneti, Day and Golubchikov 2016). These patterns raise persistent concerns about fairness, participation, and accountability in energy governance (Schlosberg 2007).

Although international environmental law and domestic regulatory frameworks increasingly incorporate principles of sustainability, participation, and human rights, governance outcomes in many Global South contexts fall short of these commitments (Boyle and Shelton 2012; Knox 2018). Environmental impact assessments, consultation mechanisms, and compensation schemes often operate as procedural formalities rather than meaningful tools of accountability, particularly where they fail to engage with customary land tenure systems and local governance structures (World Bank 2017). This gap between formal legal commitments and lived experience raises fundamental questions about regulatory effectiveness in plural legal environments.

One explanation for this disconnect lies in the plural legal contexts within which energy governance operates. In many post-colonial states, state law coexists with customary, religious, and informal normative orders that continue to regulate land tenure, resource access, and dispute resolution (Griffiths 1986; Santos 2002). Energy law therefore operates within socially embedded normative landscapes that shape compliance, legitimacy, and enforcement in practice in ways that formal legal analysis alone cannot fully capture (Tamanaha 2008). Understanding these dynamics is essential for explaining why formally progressive energy laws often fail to deliver just and sustainable outcomes.

By integrating environmental justice theory with legal pluralism, this article develops a framework for understanding energy governance as a contested and socially situated legal process. In doing so, it offers a more nuanced account of why energy regulation frequently fails to deliver equitable outcomes and how governance frameworks might be reimaged to support just and sustainable energy transitions in the Global South. Rather than offering empirical case studies, the article employs analytically illustrative examples to demonstrate how legal pluralism operates across different energy sectors and regional contexts.

LITERATURE REVIEW

Environmental justice scholarship emerged as a response to the unequal distribution of environmental harms and benefits, initially focusing on racial and socio-economic inequalities in the United States (Bullard 1990; Samuel 2025). Over time, the concept expanded to encompass procedural justice and recognition, emphasising participation, voice, and respect for affected communities (Schlosberg 2007; Fraser 2009). Walker (2012) further highlights the spatial and political dimensions of environmental inequality.

Environmental justice has since been extended to global environmental governance and climate change, drawing attention to North South inequalities, historical responsibility, and uneven vulnerability (Newell and Mulvaney 2013; Knox 2018). Within this literature, energy justice has emerged as a framework addressing fairness across energy systems, including production, distribution, and consumption (Sovacool and Dworkin 2015; Heffron and McCauley 2017). Sovacool (2016) identifies justice concerns relating to access, affordability, sustainability, and due process.

Despite these contributions, critics argue that energy justice scholarship often assumes the primacy of formal regulatory systems and underestimates plural legal and social realities (McHarg and Mitchell 2016). Legal pluralism scholarship challenges this assumption by demonstrating that state law is only one normative order among many (Griffiths 1986). Customary law, community norms, and informal governance structures continue to shape natural resource governance across post-colonial societies, particularly in rural and extractive contexts (Merry 1988; Tamanaha 2008).

Although environmental justice and legal pluralism are conceptually compatible, relatively little scholarship integrates environmental justice and legal pluralism in analyses of energy governance (Benda Beckmann and Turner 2018). Where legal pluralism is acknowledged, it is often treated as a governance problem rather than a constitutive feature of regulatory practice without examining its implications for justice outcomes. This article addresses that gap by bringing environmental justice and legal pluralism into direct analytical conversation that explains how plural normative orders influence distributive, procedural, and recognitional dimensions of energy governance.

METHODOLOGY

This study adopts a qualitative doctrinal and socio-legal methodology designed to examine how energy governance operates within plural legal contexts (Banakar and Travers, 2005; McCrudden 2006; Cotterrell, 2018). The doctrinal component analyses international legal instruments, regional frameworks, domestic energy and environmental legislation, and selected judicial decisions relevant to sustainable energy governance and environmental protection (Sands et al., 2018). Sources were selected based on their normative significance to energy development, environmental protection, community participation, recurrent citation in policy and scholarly debates, human rights in resource dependent and relevance to Global South governance challenges.

The socio-legal component situates these formal legal norms within broader political, economic, social and institutional contexts, drawing on academic literature, policy reports, and empirical socio-legal studies (Cotterrell 2018; UNEP 2019; OECD 2017). Attention is paid to jurisdictions characterised by plural land tenure systems and overlapping regulatory authority. Thus, case illustrations from India and Sub-Saharan Africa (Nigeria's Niger Delta region) are employed not as empirical case studies but as analytically illustrative examples, enabling examination of how legal pluralism shapes distributive, procedural, and recognitional justice outcomes across different energy sectors. This approach allows for comparative insight while maintaining the article's conceptual and theoretical focus.

The integration of doctrinal and socio-legal analysis enables a critical assessment of both the formal content of energy law and its operation in practice, allowing the study to evaluate regulatory effectiveness in plural legal settings rather than assuming legal compliance based on formal enactment alone (Sovacool 2016).

ENERGY, ENVIRONMENTAL JUSTICE AND LEGAL PLURALISM

Energy governance in plural legal settings is characterised by the interaction of state law with customary land tenure systems, community-based decision-making processes, and informal dispute resolution mechanisms (Griffiths 1986; Tamanaha 2008). In many Global South jurisdictions, particularly in resource dependent regions, access to land and natural resources is governed as much by customary authority and social norms as by statutory law (Santos 2002; Ebeku 2006). Energy projects introduced through formal licensing regimes therefore operate within complex normative environments that significantly shape local perceptions of legitimacy, compliance, and resistance.

From an environmental justice perspective, these plural contexts often exacerbate distributive injustices. Environmental harms associated with energy extraction and infrastructure development are disproportionately borne by communities with limited political influence and restricted access to formal legal remedies (Bullard 1990; Walker 2012). In Sub-Saharan Africa, particularly in oil producing regions such as the Niger Delta in Nigeria, statutory petroleum laws vest ownership and control of subsurface resources in the state, while customary institutions continue to govern land tenure, community consent, and dispute resolution at the local level (Ebeku, 2006; Ocheje, 2007). Here, statutory compensation frameworks have repeatedly failed to recognise customary land rights and non-economic losses linked to cultural identity and subsistence livelihoods, and social cohesion (World Bank 2017; Knox 2018), contributing to long standing grievances and conflict (Ebeku 2006; Ocheje 2007; UNEP 2019). Energy governance thus operates through overlapping legal orders, where formal regulatory compliance may coexist with deep social contestation and resistance.

Procedural injustices are also evident where consultation processes are conducted in ways that privilege formal legal compliance over meaningful participation. Public hearings and stakeholder engagements may satisfy statutory requirements while marginalising customary decision-making structures or excluding vulnerable groups such as women and indigenous groups, and other vulnerable populations (Schlosberg 2007; Fraser 2009). Comparable patterns are evident in renewable energy projects in parts of East Africa, where land acquisition has proceeded through formal regulatory approval processes while bypassing customary authorities, thereby undermining local legitimacy despite regulatory compliance with statutory procedures (Sovacool 2016; Knox 2018). Similar dynamics have been observed in renewable energy transitions in India (South Asia), where largescale solar and wind projects have increasingly been sited on land governed by customary and communal use practices. Although formally classified as state-owned or "wasteland" under statutory regimes, such land often supports grazing, seasonal cultivation, and culturally significant activities regulated through local norms and informal institutions (Baka, 2017; Levien, 2018). The resulting conflicts reveal how legal pluralism operates in practice: formal energy laws authorising land acquisition coexist with, but fail to recognise, customary land-use systems, producing procedural exclusion and distributive injustice for affected communities.

These cases demonstrate that legal pluralism is not confined to a single regional context but constitutes a structural feature of energy governance across diverse Global South settings, albeit shaped by distinct historical and institutional trajectories.

Recognition injustices arise when community identities, cultural practices, and informal governance systems are dismissed as legally irrelevant or incompatible with modern regulatory frameworks (Merry 1988). Legal pluralism provides a critical lens for understanding these dynamics by recognising that multiple normative orders coexist and influence behaviour (Tamanaha 2008). Rather than viewing customary and informal norms as obstacles to development, a pluralist approach highlights their role in shaping legitimacy, compliance, and conflict resolution. Empirical socio-legal research demonstrates that energy governance frameworks that fail to engage with these normative orders are more likely to generate resistance, delay, and social conflict (BendaBeckmann and Turner 2018).

DISCUSSION AND POLICY IMPLICATIONS

The analysis underscores the limitations of regulatory approaches that rely exclusively on formal legal reform to achieve environmental justice objectives. While statutory protections, international standards, and human rights norms are essential components of energy governance, they are insufficient in contexts where state institutions lack social legitimacy or effective enforcement capacity (Boyle and Shelton 2012; Newell and Mulvaney 2013). In such settings, legal compliance cannot be assumed simply because regulatory frameworks exist.

A critical pluralist perspective suggests that effective energy governance requires engagement with informal norms and customary institutions while subjecting them to scrutiny against human rights and environmental standards (Tamanaha 2008; Knox 2018). This approach avoids romanticising customary practices while recognising their social authority and practical relevance. It also aligns with broader trends in adaptive and participatory governance that emphasise dialogue, negotiation, and contextual responsiveness (UNDP 2020).

Integrating environmental justice into plural legal governance highlights the importance of procedural inclusion and recognition alongside distributive outcomes. For policymakers, regulators, courts, and development actors, meaningful participation requires consultation, compensation, and dispute resolution mechanisms that reflect culturally embedded decision-making structures and address power asymmetries between communities, corporations, and the state (Schlosberg 2007; Walker 2012). Without such engagement, energy transitions risk reproducing existing inequalities under the language of sustainability.

CONTRIBUTION TO KNOWLEDGE

This article makes an original contribution to interdisciplinary scholarship on energy governance in three significant ways. First, it advances environmental justice scholarship by situating justice claims within plural legal environments, demonstrating how distributive, procedural, and recognition injustices are shaped by the interaction of formal and informal normative orders, including customary land tenure systems and community governance structures (Schlosberg 2007; Fraser 2009). This moves beyond analyses that treat law as a unified and hierarchically ordered system.

Second, the article enriches legal pluralism scholarship by applying it systematically to contemporary energy governance challenges, an area where pluralist analysis remains underdeveloped (Griffiths 1986; Benda Beckmann and Turner 2018). By examining how plural norms influence regulatory effectiveness, legitimacy, and conflict, the study highlights the practical relevance of socio-legal insights for energy law and policy and explains why formal compliance with energy and environmental law may coexist with persistent injustice and social contestation.

Finally, the article provides policy-relevant insight by showing that effective and legitimate energy transitions require governance strategies that engage plural normative orders while subjecting them to human rights and environmental standards. It therefore offers an original conceptual framework for assessing energy transitions that integrates legal compliance, environmental protection, and social equity within plural legal contexts. This framework has practical relevance for policymakers, regulators, courts, and development institutions seeking to design energy strategies that are not only economically viable but also socially legitimate and legally robust in Global South contexts (Sovacool and Dworkin 2015; Heffron and McCauley 2017).

CONCLUSION

Energy governance in the Global South operates within complex legal and social landscapes that challenge conventional regulatory approaches. This article has argued that integrating environmental justice and legal pluralism provides a more comprehensive framework for understanding why formal energy laws often fail to deliver equitable and sustainable outcomes.

Recognising normative plurality reveals how energy regulation is shaped by social practices, power relations, and institutional constraints beyond the formal legal system. The analysis demonstrates that sustainable energy transitions require more than technical solutions or legal transplantation. They demand governance strategies that engage affected communities meaningfully, respect culturally embedded normative orders, and address structural inequalities in decision-making and benefit distribution (Heffron and McCauley 2017; UNDP 2020). Future research should extend this framework through comparative empirical studies across different jurisdictions and energy sectors, further exploring how plural legal governance can support just and sustainable development.

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