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To cite this article: Godswill A. Agbaitoro (18 Jul 2024): Implementing energy justice through corporate social responsibility of multinational corporations in energy and extractive industries: old body in new robes, Journal of Energy & Natural Resources Law, DOI: [10.1080/02646811.2024.2359307](https://doi.org/10.1080/02646811.2024.2359307)

To link to this article: <https://doi.org/10.1080/02646811.2024.2359307>



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Published online: 18 Jul 2024.



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Implementing energy justice through corporate social responsibility of multinational corporations in energy and extractive industries: old body in new robes

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(Received 30 January 2024; final version received 30 May 2024)

This article proposes a new implementation framework based on Corporate Social Responsibility (CSR) to facilitate energy justice. To accomplish this, it analyses how CSR constructs linked to Multinational Corporations (MNCs) operating within the energy and extractive industry could be used to realise energy justice. This conception is premised on the observation that MNCs possess significant economic influence, which enables them to spur socio-economic transformation. The article advances the conversation on energy justice, shifting the focus from conceptual examination of the concept to ways to enable its practical implementation via the lens of CSR. This proposal represents an active step towards bridging a void in the energy justice literature, as it offers practical solutions for addressing implementation gaps and ensuring the effective implementation of energy justice. The article develops a framework with four dimensions of energy justice – (1) distributive, (2) procedural, (3) recognition, and (4) restorative via CSR constructs of MNCs. It concludes that CSR is crucial for achieving energy justice and creating energy and extractive industries that are just and equitable for all stakeholders.

Keywords: energy justice; corporate social responsibility; energy and extractive industries; multinational corporations; sustainable development

1. Introduction

Over the years, the activities of multinational corporations (MNCs) in energy and extractive industries have largely been seen as harmful to the environment, even when they are known to contribute to global economic growth.¹ This has led to various attempts by MNCs to change some of the reputational damages associated with them by engaging in various socio-economic programmes in places where they operate. Among these programmes are constructing roads and religious and community centres, providing educational scholarships and social infrastructures, signing memorandums of understanding to provide other basic social amenities, setting up host community trust funds, etc. In practice, these actions are part of their Corporate

¹ The energy sector today is seen as vital to the functioning of the national and global economy, and almost all human activities rely on energy for sustenance. See Raphael J. Heffron, *The Challenge for Energy Justice: Correcting Human Rights Abuses* (Palgrave Macmillan 2021) 2; Ifeanyi Onwua-zombe, 'Human Rights Abuse and Violations in Nigeria: A Case Study of the Oil-Producing Communities in the Niger Delta Region' (2017) 22 (1) *Annual Survey of International and Comparative Law* 115-160.

Social Responsibility (CSR) policies and, in some cases, mere promises from MNCs used to obtain a social licence to operate in host communities.²

A critical look at global practice in the industry shows that promises are sometimes not fulfilled, and even when they are, they are used as a ploy to allow operations to commence without disruption.³ Regrettably, this attitude often leads to resentment from members of host communities against MNCs and national governments, who are, in most cases, joint partners in developing energy resources while still damaging the environment. Consequently, this may fuel the establishment of militant groups, creation of civil unrest, destruction of energy infrastructures, crude oil theft, kidnapping of foreign workers and constant protest – all of which cause human distress and significant disruptions of energy production, as well as serious human rights abuses.⁴

The energy justice concept has been around for nearly a decade in research.⁵ It proposes a metric for energy systems to justly distribute the benefits and burdens of energy services and contribute to a more representative and inclusive energy decision-making process.⁶ Scholars in this field have argued that MNCs are valuable agents of energy justice because they are well-placed to advance the framework's objectives.⁷ This implies that MNCs are in a position where they could reframe their CSR measures to include core aspects of energy justice objectives by going beyond what they traditionally do as part of their CSR. In reality, doing this will give credence to the social contract and further help to address problems associated with climate change, environmental impacts and economic issues.

The proposed argument for using CSR to effectuate energy justice situates this article's particular contribution because it reorients the framework towards its implementation. In doing this, it examines the role of MNCs in advancing energy justice goals through unconventional CSR programmes. Part of the analysis will show how MNCs have historically been part of the problem in different contexts, creating energy injustices in the first place. These injustices caused by MNCs exist in various forms, ranging from environmental degradation and human rights

² Jędrzej Górski, 'Social Licence to operate (SLO) in the Extractive and Energy Sectors – Introduction' (2020) 1 OGEL, www.ogel.org; see John Morrison, *The Social License: How to Keep Your Organisation Legitimate* (Springer 2014) 12. The author described social license as a way of considering how different activities may acquire or lose legitimacy in the eyes of society.

³ *ibid*

⁴ Onwuazombe (n 1)

⁵ Raphael Heffron and Darren McCauley, 'The Concept of Energy Justice Across the Disciplines' (2017) 105 Energy Policy 658

⁶ Benjamin K Sovacool and others 'New Frontiers and Conceptual Frameworks for Energy Justice' (2017) 105 Energy Policy 677; Raphael J. Heffron and Louis De Fontenelle, 'Implementing Energy Justice through a New Social Contract' (2023) 41(2) Journal of Energy & Natural Resources Law 142

⁷ Aileen McHarg, 'Energy Justice: Understanding the 'Ethical Turn' in Energy Law and Policy' in Inigo del Guayo and others (eds), *Energy Justice and Energy Law* (Oxford University Press 2020) 26. The energy justice framework, among other things, has been described as the idea of ensuring access to energy that is clean, just, sustainable and equitable for all people. This is gleaned from the United Nations Sustainable Development Goal 7. Scholars have also described the energy justice framework as the application of human rights to whole energy system operations, including from the stage of production to consumption. The idea implies energy systems reflecting fairness, equity, equality, and inclusiveness for all people as a way to protect human rights. See Raphael J. Heffron (n 1) at 2

violations,⁸ transparency and accountability issues in their operations, and exclusion and non-participatory energy decisions that impact people's lives.⁹ Based on their position in creating these energy injustices, they can reform their operations to find whether they could use strategic approaches drawn from CSR constructs to integrate energy justice goals into their spheres of operation to address negative externalities and ensure just outcomes. However, the challenge is that CSR in many countries has not always enjoyed the benefits of a legal framework. This is because the foundation of CSR has been traced to moral and ethical obligations without recourse to any binding code or regulation.¹⁰ Regrettably, the same arguments could be made for energy justice as no associated and binding framework exists. Despite these caveats, the features of CSR can be leveraged to reform law and policy systems to reflect justice principles in energy systems. To achieve this, lessons could be drawn from other parallel concepts introduced through soft law initiatives and transitioning into becoming part of binding obligations. For example, looking at human rights due diligence for corporations under the United Nations Guiding Principles on Business and Human Rights (UNGPs), which now has legislative backing under the Council of the European Union's approval of the Corporate Sustainability Due Diligence Directive.¹¹

A critical question that this article examines is the extent to which CSR activities of MNCs could be deployed as a strategic tool to achieve justice in extractive and energy industries. The purpose is to embed an energy justice framework into CSR policies to ensure that MNCs can enable this type of impact on society. This is achieved by situating their CSR initiatives within four selected dimensions of the energy justice framework, namely: (1) distributive, (2) recognition, (3) procedural and (4) restorative justice, as a viable implementation approach.

The analysis advances the, so far, predominantly theoretical debates by offering a practical angle to operationalize the goal of energy justice. This conception offers scholars other practical ways to translate the normative concept of energy justice into an operational one. This idea will contribute to the scarce literature on implementing the energy justice framework.¹² The findings of this article can be of use to governments, policymakers, energy decision-makers, corporations and businesses, non-governmental organisations (NGOs), individuals, and academics to operationalise

8 Paul Samuel Tamuno, 'Corporate Social Responsibility in the Niger Delta: Past, Present and Future Challenges' (2022) 66(3) 391-417

9 Thoko Kaime and Godswill Agbaitoro, 'An Energy Justice Approach to Resolving the Conflict between the Development of Energy Access Projects and Human Rights Risks and Violations in Africa: Can a Balance be Struck?' (2022) 3(1) *Global Energy Law and Sustainability* 63

10 Mallika Tamvada, 'Corporate Social Responsibility and Accountability: A New Theoretical Foundation for Regulating CSR' (2020) 5(2) *International Journal of Corporate Social Responsibility* 1-14 <<https://doi.org/10.1186/s40991-019-0045-8>> accessed 15 April 2024

11 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 <https://www.erm.com/globalassets/insights/documents/erm-policy-alert-csddd_april-2024_v9.pdf> accessed 13 May 2024

12 Recently, energy justice scholars have started to think along the lines of implementing the concept through various channels. For example, Heffron and Fontenelle, in their recent paper entitled 'Implementing Energy Justice through a New Social Contract' argued for implementation through a new social contract to achieve transformative societal change, protecting rights and ensuring well-being for all and delivering a just transition to a low-carbon economy. See Heffron and Fontenelle, 'Implementing Energy Justice' (n 6).

the energy justice framework. This could be achieved by using CSR measures of MNCs in energy and extractive industries as a viable tool to achieve various objectives of energy justice, such as the provision of universal energy access, decentralisation of energy options and sources, renewable energy development, environmental protection and sustainability; transparency and accountability and sustainable development.

To make this argument, section 2 sets out conceptual framings of energy justice. Section 3 explores the intersections between energy justice and CSR and shows how the two concepts could be combined to facilitate meaningful and positive transformations in society. Section 4 examines the role of MNCs in energy and extractive industries as an agent of energy justice. It discusses how MNCs could use their CSR programmes to achieve four dimensions of justice with reference to strategic approaches towards energy justice. Section 5 considers some challenges that could prevent MNCs' effective use of CSR to achieve energy justice and identifies opportunities to overcome the obstacles. Section 6 is the conclusion.

2. Energy justice: conceptual analysis

The concept of energy justice is relatively new in energy systems operations.¹³ It is not linked to any particular legal framework, thus making it challenging to turn it into a reality. Although it draws attributes from environmental justice scholarship,¹⁴ there are critical distinctions, with the latter addressing environmental wrongs and the former focusing on energy access challenges.¹⁵ Despite the fact that the concept has been discussed in the literature for around a decade, there is no uniform accepted definition,¹⁶ instead, studies refer to the concept of energy justice more in an abstract way.¹⁷ Although some arguments present a few stand-alone definitions,¹⁸ however, the focus is to present the concept more usefully by showing how it is context-sensitive, with some aspects of the concept being salient depending on the situation it applies to. This implies understanding the concept from the perspective of varied energy injustices requires us to look at it from multiple situated contexts.¹⁹

The absence of a universal definition has contributed to why implementation strategies may differ across countries. This is because it would first require understanding the dynamics of energy challenges before ways can be proposed to address them through the energy justice framework. For example, what would constitute energy injustice for countries such as the United Kingdom and the United States is primarily

13 Sara Fuller and Stefan Bouzarovski, 'Introduction to the Handbook on Energy Justice' in Stefan Bouzarovski, Sara Fuller and Tony G. Reames (eds) *Handbook on Energy Justice* (Edward Elgar 2023) 2

14 *ibid*

15 Iñigo del Guayo and others 'Introduction' in Energy Law and Policy' in Iñigo del Guayo and others (eds), *Energy Justice and Energy Law* (Oxford University Press 2020) at 8

16 Aladdine Joroff, 'Energy Justice: What it Means and How to Integrate it into State Regulation of Electricity Markets' (2017) 47 *Environmental Law Reporter* 10927

17 Editorial, 'Energy Justice: A Policy Approach' (2017) 105 *Energy Policy* 631-634 at 632

18 Joroff (n 14) For example, energy justice has been defined as applying human rights across whole energy systems. See Heffron (n 1) 2.

19 Vanesa Castán Broto and others, 'Energy Justice and Sustainability Transitions in Mozambique' (2018) 228 *Applied Energy* 6345-655

linked to the unaffordability of energy.²⁰ This is at variance with energy injustice in countries in the Global South, such as Nigeria, Angola, and Ethiopia, which have vast energy resources yet face significant energy access challenges.²¹ The energy injustice in the Global South manifests mainly in the lack of access to energy rather than its pricing.²² The cause of energy injustices is attributed to the nature of laws, policies and regulatory approaches applicable to energy systems in the Global South. For example, energy decisions attributed to laws and policies in the region have not been particularly framed to reflect the diversification of energy sources to boost energy security. This injustice manifests in the failure to harness other unconventional sources of energy in order to address access challenges. In practice, the consequence is the excessive demand for energy from conventional sources, which causes significant human and environmental harm to host communities.

Sovacool and Dworkin describe the energy justice concept as fairly disseminating the benefits and costs of energy services to all people and striving to achieve representative and impartial energy decision-making.²³ Heffron and colleagues described it as applying human rights across the energy life cycle to protect rights as various energy activities are conducted.²⁴ This definition aptly describes how the concept could protect human rights in energy systems' operations. Embedding it in energy systems' operations would, among other things, mean ensuring access to energy as an equitable form of human rights.²⁵

In the context of making decisions, energy justice could play a vital role, particularly relating to decisions that would have a lasting impact on a population segment.²⁶ The concept could refocus energy decisions and policies on energy resources, technology, or prices and allow decisions on other key issues within the industry, such as diversities and the relationship with energy in society.²⁷ It is important to note that there are arguments about the concept's energy decision-making aspect. For example, energy scholars have argued that energy justice could also be used to advance energy transition goals, which are centred on transitioning to low-carbon energy sources in terms of production and consumption.²⁸ This shows that the energy justice concept has become a tool that provides diverse ways to resolve energy challenges in developed and developing countries.

²⁰ Benjamin Sovacool, *Energy and Ethics: Justice and the Global Energy Challenge* (Palgrave Macmillan 2013) 43 This relates specifically to consumption and is explained in the context of the notion of energy poverty which captures issues of justice in relation to energy deprivation. For the global north, what remains an energy injustice is beyond access and is now framed along the lines of not only affordability but also justice when undertaking energy transition.

²¹ Godswill Agbaitoro, 'Resolving Energy Challenges: Implementing and Evaluating an Energy Justice Framework for Nigeria' (PhD thesis, University of Essex 2023)

²² *ibid*

²³ Benjamin K. Sovacool and Michael H. Dworkin, 'Energy Justice: Conceptual Insight and Practical Applications' (2015) 142 *Applied Energy* 435-444.

²⁴ Heffron (n 1) at 4

²⁵ Benjamin K. Sovacool and Michael Dworkin, *Global Energy Justice: Problems, Principles and Practices* (Cambridge University Press 2014) 13

²⁶ *ibid* 5

²⁷ Benjamin K. Sovacool, 'What Are We Doing Here? Analyzing Fifteen Years of Energy Scholarship and Proposing a Social Science Research Agenda' (2014) 1 *Energy Research & Social Science* 1

²⁸ Raphael J Heffron, Darren McCauley and Benjamin K Sovacool, 'Resolving Society's Energy Trilemma through the Energy Justice Metric' (2015) 87 *Energy Policy* 168



Figure 1. Four dimensions of the energy justice framework that multinational corporations (MNCs) could leverage to achieve energy justice. Source: Author's elaboration

Within the body of energy justice literature, a vital aspect of the framework is based on justice dimensions, as presented in Figure 1. The perspective drawn from the justice dimensions is the most frequent framing of the concept and includes discussions on distributive, procedural, recognition, restorative, and cosmopolitan energy justice.²⁹ Jenkins and colleagues articulated three of the justice dimensions in an evaluative-normative axis.³⁰ First, regarding distributive justice, they argued that an evaluative approach to this justice dimension entails asking questions such as where the energy injustices are or occur in the system and how they can be addressed.³¹ Second, on the recognition dimension, this entails an evaluative approach that asks whose

29 Darren McCauley and others, 'Advancing Energy Justice: the Triumvirate of Tenets' (2013) 32 *International Energy Law Review* 107-120

30 Kirsten Jenkins and others, 'Energy Justice: A Conceptual Review' (2016) 11 *Energy Research and Social Science* 174

31 *ibid*

views or interests are ignored or not recognised when making energy decisions and focuses on taking active steps to identify those views.³² Third, the procedural dimension raises questions about procedural fairness in the energy process and the possibility of designing and delivering alternative methods to enhance energy decision-making.³³

Besides the three dimensions which have been extensively examined from different perspectives, including through the lens of justice implication in energy transition discourse,³⁴ Heffron and McCauley added fourth and fifth dimensions, namely – restorative and cosmopolitan justice. They describe these as a duty to rectify injustices arising from energy decision-making (restorative)³⁵ and to consider the cross-border and regional effects of energy activities, bearing in mind that in the energy sector, we all are seen as citizens of the same world (cosmopolitan).³⁶ This article focuses on the first four dimensions because they tend to be more practical and realistic for analysing energy decisions from the standpoint of corporations. The exclusion of the cosmopolitan justice dimension from the analysis is due to its broad nature, particularly its focus on global justice that is not constrained or limited by state or national boundaries. Cosmopolitan justice emphasises the idea of global justice, which rests on the foundation that all individuals have moral values and worth equally shared by all members of humanity.³⁷ The analysis of the other dimensions in this article is limited to specific community-based actions that MNCs in energy and extractive industries need to undertake in areas where they conduct their operations. The dimensions are engaged to show how the implementation of energy justice could be achieved, using MNCs as a vehicle for its realisation.

The dimensions are now widely accepted in energy justice scholarship and continue to guide conceptual insights into the connections between energy and justice.³⁸ For example, they have been analysed in the context of achieving justice in energy transitions—ie, identifying potential injustices manifesting through the dimensions when energy proponents undertake transitions to low-carbon energy.³⁹ In practice, this conception is discussed in the context of energy transitions involving stakeholders such as energy corporations, who could use the energy justice theory as a framework to drive corporate actions in their operations, either intentionally or

³² *ibid*

³³ *ibid*

³⁴ Kaisa Huhta, ‘Conceptualising Energy Justice in the Context of Human Rights Law’ (2023) *Nordic Journal of Human Rights* 378-392

³⁵ Heffron and McCauley (n 5) 660; Darren McCauley and Raphael Heffron, ‘Just Transition: Integrating Climate, Energy and Environmental Justice’ (2018) 119 *Energy Policy* 1

³⁶ Raphael J. Heffron, ‘Commentary: Energy Justice – the Triumvirate of Tenets Revisited and Revised’ (2023) *Journal of Energy & Natural Resources Law* 1-7 <<https://doi.org/10.1080/02646811.2023.2256593>> accessed 5 April 2024; See also Will Kymlicka and Kathryn Walker, *Rooted Cosmopolitan: Canada and the World* (UBC Press 2012) where they posit that the idea embedded in cosmopolitan justice is built on the foundation of achieving global justice with an emphasis that our political and moral existence should be reflected on a world stage that recognises that all human beings belong to a community that transcends the local affiliation.

³⁷ Tracey Skillington, ‘Cosmopolitan Theories of Justice’ in Johanna Ohlsson and Stephen Przybylinski (eds) *Theorising Justice: A Primer for Social Scientists* (Bristol University Press 2024)

³⁸ Fuller and Bouzarovski (n 13) 3

³⁹ Godswill Agbaitoro and Eghosa Ekhaton, *Just Energy Transition in Africa: Towards Social and Environmental Rights-Based Imperatives* (2025) *Business and Human Rights Journal* (Forthcoming)

unintentionally.⁴⁰ While the dimensions have been discussed in the context of transitions, they have not been applied in the context of CSR, particularly demonstrating how MNCs can engage with them in energy and extractive industries. The following section examines the intersections between energy justice and CSR.

3. Intersections between energy justice and CSR

There are existing similarities between CSR and energy justice discourses that are remarkable. The similarities ultimately make them complementary, especially in transforming societies if engaged by relevant stakeholders. However, some aspects of their similarities work negatively regarding what could affect their impact on society. First, forming directly binding legal obligations is challenging in effectuating both concepts. The challenge of lacking binding legal obligations can be traced to aspirational goals and other practices that guide stakeholders' actions and behaviours towards energy justice and CSR. For instance, implementing CSR raises vital questions, such as whether the law can be used to design and propose a suitable regulatory and enforcement mechanism for CSR.⁴¹ This is due to its foundational principle, built on the voluntary approach linked to a moral obligation.⁴² Consequently, we often find that CSR's voluntary approach may have contributed to its inability to situate CSR effectively within an acceptable and transparent legal and regulatory framework.⁴³ At best, current legal frameworks on CSR are suggestive and appear to encourage businesses and corporations to undertake it so long as directors approve it.

While it has been established that CSR standards are non-binding, aspirational, with generally no direct focus on business responsibilities for human rights and environmental impacts,⁴⁴ its soft law nature, however, provides avenues for introducing or transiting to binding obligations or laws as seen in other initiatives such as the UNGPs on Business and Human Rights partially implemented through the EU Corporate Sustainability Due Diligence Directive.⁴⁵ The same argument could be made for energy justice, especially in the implementation area, which lacks a legal and regulatory nature to drive effective implementation in energy systems. Like CSR, energy justice is pursued through informal means such as soft laws, policies and guidelines, which may not be enforced formally but expect stakeholders to engage with them or leave some feeling obliged to comply.⁴⁶

40 Maciej M Sokolowski and Madeline Taylor, 'Just Energy Business Needed! How to Achieve A Just Energy Transition by Engaging Energy Companies in Reaching Climate Neutrality: (Re)conceptualising Energy Law for Energy Corporations' (2023) 41(2) *Journal of Energy & Natural Resources Law* 157-174 at 161

41 Nojeem A. Amodu, *Corporate Social Responsibility and Law in Africa: Theories, Issues and Practices* (Routledge 2020) 87

42 Tamvada (n 10)

43 Amodu (n 41) 131

44 Anta Ramasastry, *Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability* (2015) 14(2) *Journal of Human Rights* 237

45 EU Corporate Sustainability Due Diligence Directive (n 11); See also Nicolas Bueno, Anil Yilmaz Vastardis and Isidore Ngueuleu Djeuga, 'Investor Human Rights and Environmental Obligations: The Need to Redesign Corporate Social Responsibility Clauses' (2023) *Journal of World Investment and Trade* 1-38

46 For example, Goal 7 of the UN's Sustainable Development Goals is considered an expression of the idea of energy justice because it emphasises the purpose of providing all people with a public good in

The setback of non-legal obligations and the lack of a clear legal and regulatory framework associated with CSR are attributed to the challenge of viewing CSR as purely voluntary or within the bounds of moral obligation. Regrettably, this has not made meaningful contributions to the problem of corporate environmental and human rights abuses so far.⁴⁷ The lack of a legally binding framework for energy justice has primarily made the concept purely academic or policy-focused.⁴⁸ Despite this substantial adversity, CSR programmes are still carried out by MNCs. With that window of opportunity, this article suggests ways to embed energy justice objectives within those programmes.

Notwithstanding the challenge of the lack of binding legal obligations that affect both concepts, specific actions can be undertaken to show other positive intersections between CSR and energy justice. This implies that these concepts could be used together to impact society positively. Relevant stakeholders have often used CSR to drive sustainable development and other positive impacts on communities. Energy justice also presents opportunities for relevant stakeholders, for example, energy proponents and governments in energy and extractive industries, to advance sustainable development through energy access. Two key areas where the intersections between energy justice and CSR are evident are discussed below.

3.1. *Delivering economic goods*

As mentioned, energy justice and CSR share significant similarities in that both concepts aim to impact society positively. This implies that intersections exist with clear opportunities to engage with both notions to provide public good to all people. For example, the idea of undertaking CSR measures means that corporations have a moral responsibility to give back to society because of their use of environmental resources.⁴⁹ This conception is significantly linked to the moral obligations of communal existence to a corporate personality.⁵⁰ In other words, it is based on corporations' social and ethical responsibilities towards society, particularly in places where they operate. Energy justice also embodies the principle of providing a public good to society. It emphasises the need to ensure that all individuals across all areas have affordable, reliable, sustainable, and modern energy and services.⁵¹ In practice, MNCs in different sectors, particularly the energy and extractive sector, undertake CSR programmes traditionally centred around providing goods and services to

the form of safe, affordable and sustainable energy for all. See Hanri Mostert and Heleen van Niekerk, 'Disadvantage, Fairness, and Power Crises in Africa: A Focused Look at Energy Justice' in Yinka Omorogbe and Ada Okoye Ordor (eds), *Ending Africa's Energy Deficit and the Law* (Oxford University Press 2018) 50

47 Engobo Emeseh and Ondotimi Songi, 'CSR, Human Rights Abuse and Sustainability Report Accountability' (2014) 56(2) *International Journal of Law and Management* 136-151

48 Huhta (n 34) 378; Tamvada (n 10) 3

49 Anupama Goel and Himangshu Rathee, 'CSR Policies in Different Countries: A Comparative Analysis' in Muddassar Sarfraz ed, *Corporate Social Responsibility in the 21st Century* (Intech Open 2022)

50 Abdulkadir Bolaji Abdulkadir, 'Corporate Social Responsibility and Environmental Protection in the Nigerian Energy Sector: Reflection on Issues and Legal Reform' (2021) *Journal of Sustainable Development Law and Policy* 332-367 at 336

51 Jenkins Kirsten and others, 'Energy Justice: A Whole Systems Approach' (2014) 2 *Queens Political Review* 77

impact all people in society through local sustainable development.⁵² For example, MNCs play a fundamental role in advancing the implementation of the United Nations Sustainable Development Goals, such as providing public goods and enabling communities to reach large-scale solutions to development challenges.⁵³

The provision of public good through CSR or energy justice remains a viable point where the two concepts may be used to complement each other. For instance, MNCs could use CSR as a practical tool in delivering public goods to realise or implement the objectives of energy justice. Whilst it is acknowledged that specific actions, would be required to see this happen, it is not a question of doubt that the two concepts complement each other. To achieve this, CSR initiatives carried out by MNCs in the specific industry would need to be transformed to embrace the objectives of energy justice. Such action could take the form of developing small-scale clean energy projects in communities where they conduct operations. Whilst the delivery of energy justice could be seen as the delivery of economic goods to all people through the provision of universal access to energy, the same could be argued for CSR programmes but with the involvement of MNCs in energy and extractive industries.

3.2. *Advancing the right to development*

Another point of intersection between the two concepts is their capacity to advance the right to development. According to the United Nations Declaration on the Right to Development, this is an inalienable human right that every human being is expected to rely upon to enjoy economic, social, cultural, and political development.⁵⁴ The right to development enhances personal experiences and should, therefore, be enjoyed by people as part of communities.⁵⁵ The similarities between the two concepts can be seen in the opportunity they present to policymakers and the national government through relevant agencies to engage with them to effectuate people's right to development. For instance, access to energy remains a precondition for realising the right to development.⁵⁶ This right includes ensuring people have access to clean water, modern healthcare, contemporary agriculture, transportation, and adequate housing, which depends on energy access for fulfilment.⁵⁷ This conception implies that realising the right to development largely depends on people ensuring their right to access energy because development is limited without energy.⁵⁸ Therefore, pursuing energy justice —i.e., promoting energy access and services is another way

52 Jeffery D Sachs, 'From Millennium Development Goals to Sustainable Development Goals' (2012) 379 (9832) *The Lancet* 2206

53 Monida Eang, Amelia Clarke and Eduardo Ordonez-Ponce, 'The Role of Multinational Enterprises in Implementing the United Nations Sustainable Development Goals at the Local Level' (2022) 26(1) *Business Research Quarterly* 79

54 United Nations Declaration on the Right to Development, UNGA Res 41/128 (4 December 2008) UN Doc A/Res/41/128 (1986); See Arjun Sengupta, 'On the Theory and Practice of the Right to Development' (2002) 24 *Human Rights Quarterly* 837

55 Nsongurua Udombana, 'Much Ado About Something: Re-thinking the Right to Development' (2023) 45(3) *Human Rights Quarterly* 431-486 at 433

56 Kaime and Agbaitoro (n 9) 48

57 Margaretha Wewerinke-Singh, 'A Human Rights Approach to Energy: Realizing the Rights of Billions within Ecological Limits' (2022) 31 *Review of European, Comparative and International Environmental Law* 16

58 *ibid*

to guarantee the right to development. Thus, there is a chance that reformed CSR-led activities or programmes from MNCs focusing on increasing energy access can enhance the realisation of the right to development.

In sum, through these intersections, relevant stakeholders can engage with the two concepts simultaneously to impact communities that host energy and extractive operations. This implies that national governments, policymakers, relevant agencies and MNCs can use both concepts as guiding principles to assess the energy sector and gain insight into achieving social justice. Further, the intersections show that CSR remains a valuable tool for MNCs to use in accomplishing the objectives of energy justice in energy and extractive industries. The following section examines the role of MNCs as agents of energy justice.

4. MNCs as agent of energy justice

MNCs in energy and extractive industries evidently have the power to influence energy decisions on various issues associated with the sector, thus placing them in a position to achieve energy justice goals. For example, matters such as climate change, environmental impacts, economics, and governance are societal problems that MNCs must deal with during their operations.⁵⁹ This implies that MNCs can sometimes make critical decisions for the industry, thus making them major players and stakeholders in the decision-making process. As shown in [Figure 2](#), MNCs can influence energy decisions, including those relating to CSR-led activities that can lead to the introduction of unconventional measures to realise energy justice.

Understandably, people who make or contribute to energy decisions come from various sources, including national governments, policymakers, individuals, NGOs, and those running or working in energy-related businesses.⁶⁰ More so, different state institutions are responsible for various energy sector roles and strategic decisions – some geared toward optimal sector delivery. These actors are known as agents of energy justice—that is, they are the potential drivers who will effectuate the objectives of energy justice or change things to continue to perpetrate or resolve injustices.⁶¹ As mentioned, MNCs have historically perpetrated injustices in energy and extractive industries. In particular, some of the injustices manifest in the form of energy decisions with huge negative impacts on communities where they carry out their operations, affecting their rights to subsistence and other economic imbalances in host communities.

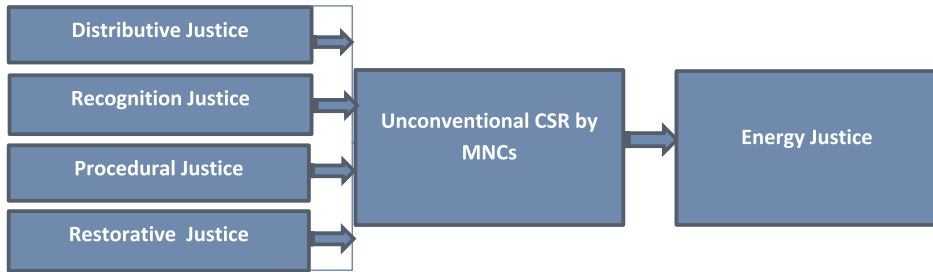
As agents of energy justice, MNCs can use their economic powers directly or indirectly to reverse their negative impact on energy activities, thereby driving the goals of energy justice. For example, they could push for justice-focused choices regarding how and where to invest in energy infrastructure, deal with vulnerable customers, provide a safe and healthy workplace, protect human health and the environment, and promote sustainable development.⁶² This section's analysis flows from the

⁵⁹ Heffron and De Fontenelle (n 6) 143

⁶⁰ Benjamin K. Sovacool and others, 'Energy Decisions Reframed as Justice and Ethical Concerns' (2016) 1 *Nature Energy*, 1

⁶¹ McHarg (n 7) 26

⁶² Sovacool and Dworkin, *Global Energy Justice* (n 23) 1-3; See United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy'



The figure demonstrates how MNCs in energy and extractive industries can use CSR constructs to achieve justice via four dimensions of the energy justice framework. Source: Author's elaboration

submission that MNCs' CSR initiatives could be integrated into the energy justice dimensions to achieve justice in energy and extractive industries. The following sub-sections discuss the potential for MNCs to use CSR as a means to achieve energy justice.

4.1. MNCs and distributive justice

4.1.1. DIVERSIFICATION OF ENERGY SOURCES

Achieving distributive justice entails a fair and equal distribution of energy benefits and costs among society's members.⁶³ MNCs are well placed to use CSR initiatives to advance distributive energy justice through fair and equal distribution of energy services. In a broad sense, an essential aspect of the energy justice concept is the achievement of justice tied to establishing energy systems that fairly and equally disseminate both the benefits and the costs of energy services.⁶⁴ This idea could be achieved through deliberate actions by MNCs to improve just energy outcomes in their operations and in places where they do business. For example, distributive justice could take actions that significantly drive the diversification of energy sources and supply mix. This process involves devolving energy-related responsibility, culminating in a functional approach to energy sources.⁶⁵ True distributive energy justice should reflect the practical diversification of energy sources, allowing everyone to benefit from energy systems and services.

MNCs could use energy source diversification to address issues connected to the lack of distribution of energy benefits. This implies looking beyond harnessing energy from only one source – ie, looking at renewable options in addition to fossil fuels. Diversification of energy sources is a simple investment strategy that should be undertaken from the onset.⁶⁶ Adopting such a strategy will contribute to a holistic

Framework <https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciples_BusinessHR_EN.pdf> accessed 8 March 2024

⁶³ Sovacool and others, 'Energy Decisions Reframed as Justice and Ethical Concerns' (n 59) 4; See Sokolowski and Taylor (n 40) 162

⁶⁴ Benjamin Sovacool and Michael Dworkin, 'Energy Justice: Conceptual Insights and Practical Applications' (2015) 142 *Applied Energy* 435-444 at 436

⁶⁵ Yemi Oke, 'Beyond Power Sector Reforms: The Need for Decentralized Energy Options (DEOPs) for Electricity Governance in Nigeria' (2012) 18(1) *Nigerian Journal of Contemporary Law* 68

approach to sustainable energy policies by combining diverse forms of energy to address injustices associated with access challenges.⁶⁷ Using CSR initiatives, MNCs could adopt a strategy that allows them to diversify energy sources. This means that they could shift from undertaking CSR centred around fossil fuels to developing small-scale clean energy projects in communities where they operate. This sort of CSR from MNCs in energy and extractive industries will culminate in the multiplication of production and availability of safe, affordable and sustainable energy sources for host communities. In other words, they could transform their CSR programmes into a tool for achieving distributive justice, particularly by developing clean energy sources to serve underserved host communities. Such actions will put MNCs in a position where they are seen to be distributing energy benefits, including providing access to modern energy systems and services.

4.1.2. COMMUNITY ECONOMIC DEVELOPMENT

The pursuit of distributive justice would allow MNCs, through their CSR initiatives, to drive community economic development. This could be achieved through fair distribution of revenues from energy resources to host communities in energy and extractive industries. Revenue distribution could be achieved by investing in clean energy projects as part of their CSR programmes. This idea aligns with the dynamic nature of CSR, which is based mainly on impacting society. More so, it aligns with energy justice goals, in particular addressing injustices attributed to access and environmental challenges. The fair distribution of revenues through investments in critical areas will, directly and indirectly, drive job creation from smaller economic investment projects in host communities.

4.2. *MNCs and recognition justice*

4.2.1. UNIVERSAL ENERGY ACCESS

The recognition justice dimension requires acknowledging and respecting the various needs, rights and experiences of those affected by energy decisions.⁶⁸ This means identifying certain social groups in society – including answering questions such as who is recognised, affected, impacted, or responsible for impacts on vulnerable groups in energy operations.⁶⁹ Recognition justice means the broad inclusion of different stakeholders in the energy industry.⁷⁰ This approach would identify various groups of people, particularly those impacted by actions or inactions emerging from the industry. For example, actions that result in the siting of energy infrastructures in vulnerable communities without following due process, including ensuring that their actions respect all human rights of the communities in which they are embedded, including

⁶⁶ Heffron and Fontenelle (n 6) 145

⁶⁷ Yemi Oke, *Beyond Power Sector Reforms* (n 65)

⁶⁸ Ross Gillard and others, 'Advancing an Energy Justice Perspective of Fuel Poverty: Household Vulnerability and Domestic Retrofit Policy in the UK' (2017) 29 *Energy Research and Social Science* 53-61

⁶⁹ Nynke Van Uffelen, 'Revisiting Recognition in Energy Justice' (2022) 92 *Energy & Social Science* 102764 at 2

⁷⁰ Sokolowski and Taylor (n 40) 163

those relevant to considerations of energy justice. It would also recognise indigenous people hosting energy infrastructures.⁷¹ For emphasis, this dimension requires MNCs' actions to reflect polite treatment, together with a process that insists on fair and equitable procedures that engage with and treat all stakeholders as equal subjects in a non-discriminatory way.⁷²

Universal access to energy and services for all lies at the heart of energy justice.⁷³ This means that when we achieve universal access to energy and services, we fulfil a vital aspect of the energy justice framework.⁷⁴ This conception is symbolic and rooted in ideas showing how energy practices (ie, production and consumption) could systematically disadvantage some groups of people.⁷⁵ Through this dimension, MNCs could use CSR to provide universal energy access, prioritising vulnerable and disadvantaged members of society. This could be achieved by reforming CSR initiatives in the industry to drive energy access and boost socio-economic equality in host communities. For example, oil-host communities in the Niger Delta region of Nigeria suffer from massive economic gaps and inequalities due to recklessness and the violation of human and environmental rights in the development of energy resources.⁷⁶

The energy resources activities from MNCs in collaboration with the central government have damaged the region's environment. Consequently, MNCs have increased their CSR activities in the area, partly in conformity with the growing international business culture of corporate responsibility and partly as a means of pacifying host communities.⁷⁷ However, their CSR activities focus on four areas: the environment, social and community development, employment and labour, and human rights.⁷⁸ The activities are usually anchored in establishing host community funds mainly used to address injustices associated with environmental concerns.

In the context of MNCs realising recognition of justice, MNCs' CSR-led activities should be channelled beyond setting up host community funds, as we currently see in some African countries.⁷⁹ Instead, they could commit to funding universal access to

71 Maciej M Sokołowski and Raphael J Heffron, 'Defining and Conceptualising Energy Policy Failure: The When, Where, Why, and How' (2022) 161 *Energy Policy* 112745

72 Kirsten Jenkins and others, 'Energy Justice: A Whole Systems Approach' (n 51) 78

73 Yinka Omorogbe, 'Legal Dimensions of Access to Modern Energy Services in Africa: Lessons from Nigeria, Ghana, and Rwanda' in Inigo del Guayo and others (eds), *Energy Justice and Energy Law* (Oxford University Press 2020) 330

74 See Goal 7 of the United Nations Sustainable Development Goals, which urges states to ensure access to affordable, reliable, sustainable, and modern energy (<https://sdgs.un.org/goals>, accessed 18 April 2024); see Kirsten Jenkins and others, 'Energy Justice: A Whole Systems Approach' (2014) 2 *Queens Political Review* 77

75 Gordon Walker and Rosie Day, 'Fuel Poverty as Injustice: Integrating Distribution, Recognition and Procedure in the Struggle for Affordable Warmth' (2012) 49 *Energy Policy* 71

76 Tamuno (n 8) 399

77 *ibid.*, 392

78 Thomas Kimeli Cheruiyot and Patrick Osando 'Corporate Social Responsibility in Africa: Context, Paradoxes, Stakeholder Orientations, Contestation and Reflections' in Agata Stachowicz-Stanusch (ed) *Corporate Social Performance in the Age of Irresponsibility: Cross National Perspective* (2016, Information Age Publishers) 89; Renitha Rampersad and Chris Skinner, 'Examining the practice of Corporate Social Responsibility (CSR) in sub-Saharan Africa' (2014) 12 (1) *Corporate Ownership & Control* 723

79 See section 234 of the Nigerian Petroleum Industry Act 2021, which introduces the Host Community Development Trust. This trust undertaking in the form of CSR sets out to aid in the development of the economic and social infrastructure of communities in petroleum-producing areas, including fostering

meet the basic energy needs of host communities and, for example, committing financial resources to increase local access to and energy availability to host communities. This not only will mean change from conventional CSR activities of MNCs but also will align with achieving recognition of justice designed to address the concerns of vulnerable groups and communities. This conception could potentially drive fair and equitable distribution of the benefits of energy through the recognition of host communities. The point is that MNCs could use CSR-led actions to provide more energy access to address social inequalities attributed to unfair energy decisions that cause injustices to marginalised and vulnerable communities in energy and extractive industries.⁸⁰

4.2.2. RENEWABLE ENERGY DEVELOPMENT

Closely following the provision of universal energy access, there is a need to increase the development of renewable energy sources to ensure energy security. Since carbon-based energy sources contribute significantly to climate change, this has necessitated the call for the development of cleaner energy. In this regard, MNCs have a role in climate change mitigation, particularly in oil-host communities where they operate. The argument is that this role can be undertaken through deliberate action in developing renewable energy as a mitigation strategy and as a way to increase energy access and security for vulnerable groups and communities affected by their operations.

Increasing energy access through clean energy development is crucial to realising energy justice.⁸¹ This is necessary to support integration, promote the connection of rural communities to the grid, or implement programmes supporting mini-grid and off-grid solutions to provide clean energy for vulnerable communities not connected to the grid.⁸² For instance, through CSR-led activities, MNCs could invest in small-scale clean energy projects in the communities where they operate. Such action would broadly address some of the externalities associated with the development of carbon-based energy affecting host communities. More so, such CSR-led action will align with principles embedded in the recognition justice dimension—some of which require recognising certain interest groups that are either vulnerable or marginalised.⁸³ The argument is that CSR remains a vital tool for MNCs to combat energy exclusion and poverty and enhance the position of the weakest players in the energy market.⁸⁴

sustainable prosperity, providing direct social and economic benefits from petroleum operations to host communities and creating a framework to support the development of host communities.

⁸⁰ It is important to acknowledge that the proposed approach is considered to be one piece of the puzzle in terms of getting MNCs to address injustices and should not be seen as a proposal that is aimed to absolve states from their duties to achieve energy justice.

⁸¹ Godswill Agbaitoro and Kester Oyibo, 'Realizing the United Nations Sustainable Development Goals 7 and 13 in sub-Saharan Africa by 2030: Synergizing Energy and Climate Justice Perspectives' (2022) 15(3) *Journal of World Energy Law and Business* 223-235

⁸² *ibid*, 232

⁸³ Gordon Walker and Rosie Day, 'Fuel Poverty as Injustice: Integrating Distribution, Recognition and Procedures in the Struggle for Affordable Warmth' (2012) 49 *Energy Policy*, 69 at 75

⁸⁴ Sokolowski and Taylor (n 40) 162

4.3. *MNCs and procedural justice*

4.3.1. TRANSPARENCY AND ACCOUNTABILITY

Another strategic approach towards achieving justice is for MNCs to ensure transparency and accountability in their operations. This conception is linked to corporations' ethical responsibility and is vital in recognising communities' rights to consultation and participation in energy decision-making.⁸⁵ According to Walker and Day, ideas embedded in procedural justice are linked to the Aarhus Convention.⁸⁶ This emphasises access to information, meaningful participation, and access to legal procedures for obtaining redress or challenging decision-making processes.⁸⁷ Further, this dimension is also linked to the Escazú Agreement,⁸⁸ on public access to environmental information with a focus on issues about procedures in decision-making (including on energy resource development matters) that affect individuals or groups.⁸⁹

Procedural justice would be achieved in the context of energy and extractive industries where the quality of the treatment of host communities by MNCs is positive, with complete respect for their rights. In practice, this is driven through transparency and accountability – that is, using it as a mechanism to drive public access to information and ensure timely and reliable information is accessible.⁹⁰ True transparency and accountability in the industry allow host communities to hold MNCs and governments accountable when distributive justice in the form of benefit sharing is not provided to them. Additionally, transparency and accountability have the capacity to empower communities and establish processes that embody participatory mechanisms that are meaningful in practice to people. This is because making communities part of the MNCs' decision-making process would reduce communities' allegations of complicity in crimes against them.⁹¹

Transparency and accountability remain a tool for the CSR-led activities of MNCs in the energy and extractive industry. For instance, their CSR-led activities could be anchored on actions that promote full disclosure of information on their activities and dealings with the government. This could address issues associated with whether the public is fully aware of what subsidies different energy sources in the energy sector receive. This conception presents a valuable opportunity for MNCs to make a difference through reformed CSR programmes, mainly to ensure that information disclosure is readily accessible via relevant channels. Additionally, their

⁸⁵ Tamuno (n 8) 391-417

⁸⁶ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 2161 UNTS 450, 1998. This European convention on procedural environmental matters applies to European countries alone. It focuses on procedural matters related to environmental protection and particular procedures to be adopted to ensure stronger environmental protection.

⁸⁷ Walker and Day (n 83) 72

⁸⁸ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (4 March 2018). This convention applies to Latin American and Caribbean countries and focuses on procedural matters like the European Convention.

⁸⁹ Uzuazo Etemire, 'The Escazú Agreement: Public Access to Environmental Information and the Goal of a Sustainable Future' (2022) 41(1) *Journal of Energy & Natural Resources Law* 71-91; Mostert and Van Niekerk (n 46) 62

⁹⁰ E.M Alba, 'An Integrated Approach for Improved Governance and Transparency in Oil, Gas and Mining Sector' (2008) *Documento mimeografiado. Washington DC: Banco Mundial*

⁹¹ Tamuno (n 8) 391-417

CSR-led actions could be pursued through practical transparency and accountability in the disclosure of environmental information in communities where they operate and allowing access to it and full participation of host communities in decision-making process.

4.3.2. ENVIRONMENTAL PROTECTION

Another critical aspect of energy justice is ensuring environmental protection and sustainability in the energy and extractive industry. MNCs are duty-bound to manage the adverse impacts of their operations on the local environment.⁹² This requires some level of environmental corporate responsibility, which connotes the obligations owed by MNCs to protect the land, air, water, and climate, among other things, with which they interact in their operations.⁹³ MNCs have a responsibility towards the environment, mainly to operate sustainably.⁹⁴ This responsibility is tied to their sustainability plan's economic aspect, which considers their operations' direct and indirect economic impacts on surrounding communities and the environment. MNCs are responsible for the high greenhouse gas emissions contributing to climate change.⁹⁵ Historical environmental injustices such as pollution from their operations, for example, coal, oil and gas and other mineral resources in lands occupied by indigenous communities, are also linked to MNCs.⁹⁶ For instance, in Nigeria's Niger Delta region, MNCs have been responsible for a great deal of environmental damage, which causes several problems for local communities – leading to the loss of land for many farming communities.⁹⁷

To achieve procedural energy justice, they must be deliberate in their CSR-led activities when dealing with communities where they conduct their operations. For example, MNCs could leverage the idea of providing periodic environmental information that allows communities to participate significantly in decision-making that affects their environment. This would create an opportunity to boost equitable participation in energy-related decisions that affect the environment.⁹⁸ Thus, where MNCs provide environmental information, perhaps through their CSR-led activities, this would help to stabilise local communities and prevent disruptive conflicts. Through

⁹² Piotr Mazurkiewicz, 'Corporate Environmental Responsibility: Is a Common CSR Framework Possible?' (World Bank 2004) 2 <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/577051468339093024/corporate-environmental-responsibility-is-a-common-csr-framework-possible>> accessed 2 December 2023

⁹³ Yetunde O. Omotuyi, 'A Critical Assessment of the Regulatory Framework for Oil and Gas Decommissioning in Nigeria' (2023) *Journal of Sustainable Development Law and Policy* 14 (1) 140-163

⁹⁴ Abdulkadir Bolaji Abdulkadir, 'Corporate Social Responsibility and Environmental Protection in the Nigerian Energy Sector: Reflection on Issues and Legal Reform' (2021) *Journal of Sustainable Development Law and Policy* 332-367

⁹⁵ Working Group II Contribution to the Sixth Assessment Report: Intergovernmental Panel on Climate Change Report 2022 Impacts, Adaptation and Vulnerability < https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf> accessed 10 September 2023; See also Heffron and Fontenelle (n 6) 144

⁹⁶ Ifeanyi Onwuazombe, 'Human Rights Abuse and Violations in Nigeria: A Case Study of the Oil-Producing Communities in the Niger Delta Region' (2017) 22(1) *Annual Survey of International and Comparative Law* 115-160

⁹⁷ Elise Aiken, 'Energy Justice: Achieving Stability in Oil-Producing African Nations' (2011) 22(2) *Colorado Journal of International Law and Policy* 302

⁹⁸ Jenkins and others, 'Energy Justice: A Conceptual Review' (n 30) 178-79

CSR focused on environmental information, MNCs can increase transparency, which will, in turn, help them regain the trust of host communities. Ecological protection and sustainability pursued through access to environmental information in extractive and energy industries remain a viable approach to achieving energy justice.⁹⁹

4.3.3. SUSTAINABLE DEVELOPMENT

Sustainable development is premised on developing environmentally friendly energy resources to satisfy the present and future people.¹⁰⁰ This principle is often associated with development, but it is an elastic term encompassing political, economic, environmental, and social sustainability.¹⁰¹ Further, it involves the harnessing of energy resources for human use in a manner that supports lasting economic development.¹⁰² The principles of sustainable development are anchored on fostering and improving human quality of life and well-being by integrating economic growth and environmental protection sustainably in the development of financial resources.¹⁰³

The concept of sustainable development is understood to be an essential aspect of MNCs' operations in energy and extractive industries. This is because it is a catch-all term MNCs use to encompass a range of actions relating to the environment, profitability, and CSR.¹⁰⁴ This is why MNCs must approach energy resource development with sustainability principles to prevent risks and avoid adverse environmental challenges. CSR presents an excellent avenue to do this because it is linked to sustainable development, mainly promoting good company practices that complement public efforts toward sustainability.¹⁰⁵ Therefore, MNCs could work towards achieving energy justice by leveraging CSR to contribute to sustainable development in communities where they conduct operations.¹⁰⁶ For example, MNCs could reform their conventional CSR to drive sustainable development impact on host communities, including deliberate engagement with communities. This should be done using their CSR-led activities to realise different aspects of the United Nations sustainable development goals, such as driving growth that eradicates energy poverty, promotes inclusivity, and expands environmental resources.¹⁰⁷

⁹⁹ Kaime and Agbaitoro (n 9) 39-71

¹⁰⁰ See the Report of the World Commission on Environment and Development: Our Common Future <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> accessed 15 February 2024

¹⁰¹ General Assembly Resolution Transforming Our World: The 2030 Agenda for Sustainable Development, G.A. Res. 70/1, 2 (Oct. 21, 2015)

¹⁰² Brynhildur Davidsdottir, 'Sustainable Energy Development: The Role of Geothermal Power' (2012) 7 *Comprehensive Renewable Energy* 273-297

¹⁰³ John C. Dernbach and Donald A. Brown, 'The Ethical Responsibility to Reduce Consumption' (2009) 37 *Hofstra Law Review* 992

¹⁰⁴ Andrew Keay and Taskin Iqbal 'Sustainability in Large UK Listed Retail Companies: A Sectoral Analysis' (2018) 23 *Deakin Law Review* 209 at 213

¹⁰⁵ Communication from the Commission concerning corporate social responsibility: A business contribution to sustainable development (2002, EC) COM at 3

¹⁰⁶ Dongyong Zhang, Stephen Morse and Uma Kambhampati, *Sustainable Development and Corporate Social Responsibility* (Routledge 2018)

¹⁰⁷ Oyewole Simon Oginni and Adewale Daniel Omojowo, 'Sustainable Development and Corporate Social Responsibility in Sub-Saharan Africa: Evidence from Industries in Cameroon' (2016) 4(2) *Economies* 10

4.4. *MNCs and restorative justice*

4.4.1. REPARATION

Restorative justice emphasises identifying and redressing injustices attributed to energy resource development operations.¹⁰⁸ In practice, it means identifying, recognising, and addressing the wrongs that energy proponents have caused to host communities. Justice in this context involves the victim, offender, and community searching for solutions that promote repair, reconciliation, and reassurance.¹⁰⁹ Applying restorative justice in the decision-making process enables policymakers and other stakeholders to consider diverse concerns about justice and rectify any injustice arising from energy activities.¹¹⁰ This dimension aims to ensure that communities impacted by MNCs in energy and extractive industries are compensated for damages as they arise. This is to prevent lengthy and expensive legal battles with communities that do not have the wealth of energy companies to engage in legal disputes.

Applying restorative justice means taking collective action to address industry-related environmental challenges and prevent their reoccurrence. These actions could be undertaken through CSR, focusing on setting up environmental protection funds for host communities for remediation and compensation. For example, MNCs' CSR activities could be reformed to include remediation funds for environmental redress and direct compensation to those impacted by their activities. The goal is to ensure that there is an obligation to make things right for those affected by energy resource development activities.¹¹¹

4.4.2. DECOMMISSIONING

MNCs in energy and extractive industries are positioned to drive restorative justice by decommissioning energy infrastructures after their use. We often find that decommissioning is increasingly a risky and cost-effective venture for energy companies, which sometimes makes them choose the options of either divestment or living in place. Decommissioning in the industry has caused a stain on MNCs due to their actions around poor decommissioning and waste management.¹¹² It has a significant bearing on the right to a healthy environment, as seen in many cases that address the high, continuous and cumulative impact of the lack of decommissioning and waste management in countries worldwide.¹¹³

Restorative justice championed through CSR can be an effective measure for MNCs to mitigate the likelihood of facing multiple lawsuits in the present and

¹⁰⁸ Adam Mayer, Maria Claudia Lopez and Emilio F Moran, 'Uncompensated Losses and Damaged Livelihoods: Restorative and Distributional Injustices in Brazilian Hydropower' (2022) 167 *Energy Policy* 113048

¹⁰⁹ Richard J. Wallsgrove, 'Restorative Energy Justice' (2022) 40(2) *UCLA Journal of Environmental Law and Policy* 143

¹¹⁰ Agbaitoro and Oyibo (n 81) 229

¹¹¹ Wallsgrove (n 109) 143

¹¹² Raphael J. Heffron, 'Applying Energy Justice into the Energy Transition' (2022) 156 *Renewable and Sustainable Energy Reviews* 111936

¹¹³ Mohammad Hazarati and Raphael Heffron, 'Conceptualising Restorative Justice in the Energy Transition: Changing the Perspective of Fossil Fuels' (2021) 78 *Energy Research and Social Science* 102115

future, particularly regarding their operations that significantly impact health and the environment.¹¹⁴ For example, MNCs could use their CSR to reassure communities that energy projects and infrastructures will not impact or harm them by ensuring security from operating companies. This creates high risks of energy injustices for local communities. Such security requirements ensure that the environment and the public will be protected during the lifetime of the infrastructure and that the producing area will be restored for other uses after the activity ceases.¹¹⁵

5. Challenges and opportunities for implementing energy justice

This section highlights some challenges that may affect the realisation of energy justice through CSR constructs in energy and extractive industries. It also looks beyond the challenges and identifies opportunities to move forward. These are discussed below.

5.1 *Energy justice-washing*

Although using the CSR framework to promote justice is a valid concept, it may encounter the issue of justice-washing. In this scenario, MNCs within the energy and extraction sectors may use the language of energy justice as a mere facade while continuing to engage in unjust practices.¹¹⁶ This type of challenge is not novel in the industry, particularly in developing countries within the CSR realm. MNCs are often quick to publicise their CSR endeavours, but there remains uncertainty regarding how their CSR initiatives promote sustainability.¹¹⁷ This is because they undertake them to secure the social licence to operate.¹¹⁸ This attitude is seen in businesses that claim to anchor their corporate governance approach on stakeholder's interests when, in reality, it is based on shareholders. For instance, CSR practices in African countries are often criticised as nothing more than lip service paid by businesses to the issue.¹¹⁹ Many companies and corporations operating in Africa are ideally concerned about the impact of their operations on the environment. To address this concern, they adopt government guidelines designed to promote environmental sustainability.¹²⁰ By doing so, these businesses can demonstrate their

¹¹⁴ *ibid*

¹¹⁵ Michael LeVine, Andrew Hartsig, Louie Porta, Chris Debicki, and Amanda Joynt, Oil Spill Response in the North American Arctic: Canada, the United States, and Greenland, in Günther Handl and Kristoffer Svendsen (eds), *Managing the Risk of Offshore Oil and Gas Accidents*, (Edward Elgar, 2019) 183

¹¹⁶ Benjamin Savocool and others (n 60)

¹¹⁷ Jędrzej George Frynas, 'The False Developmental Promise of Corporate Social Responsibility: Evidence of from Multinational Oil Companies' (2005) 81(3) *International Affairs* 581-598

¹¹⁸ Uwafiokun Idemudia and Nedo Osayande, 'Assessing the Effect of Corporate Social Responsibility on Community Development in the Niger Delta: A Corporate Perspective' (2018) 53 (1) *Community Development Journal* 155-172; See also Osamuyimen Egbon, Uchechukwu Nwoke and Godswill Agbaitoro, 'Corporate Social Responsibility Practices in the Nigerian Oil Industry: New Legal Direction and the Implication for Reporting' in Samuel O. Idowu, Uzoechi Nwagbara and Yahaya Alhassan (eds), *Corporate Social Responsibility Disclosure in Developing and Emerging Economies* (Springer 2024)

¹¹⁹ Amodu (n 41) 160

¹²⁰ Tamuno (n 8) 391-417

commitment to preserving the environment and minimising their ecological footprint. These efforts aim to meet regulatory requirements, enhance their standing, and build stronger customer and stakeholder relationships. Unfortunately, these activities carried out by businesses under the guise of CSR are calculated to divert attention from their unsustainable and reckless actions.¹²¹ MNCs in energy and extractive industries may follow a similar path in pursuing energy justice goals. This means that they may be tempted to leverage the pursuit of energy justice as a tactic to shape public opinion, a practice already commonplace in the conventional CSR strategies of the industry.¹²²

5.2 *Lack of legal framework*

There is a need for an appropriate legal framework for implementing energy justice objectives generally and specifically through CSR constructs. As mentioned, the concept of energy justice is not linked to any legal framework, making it difficult to implement effectively. The challenge of lack of a legal framework manifests in both concepts – that is, much of the problem of the absence of a clear legal framework affects both CSR and energy justice. As stated, CSR initiatives are underpinned by voluntary actions to give back to society. At best, CSR guides, supports and pressures companies to ensure that operations consider societal values and interests. The same argument is evident in the energy justice scholarship and compounded by the fact that tools to engage key players in the industry, for example, to reach net zero emissions (i.e., energy justice), have been mainly confined to financial risk disclosure and voluntary regulation.¹²³

By taking cues from the principles of environmental justice, which have been established through legal and policy frameworks, a similar strategy could be employed to achieve energy justice through CSR initiatives in the energy and extractive industries. While not mandatory, the energy justice framework could offer valuable direction for MNCs seeking to implement their CSR efforts by establishing strong legal and regulatory structures, thereby offering a viable pathway toward achieving energy justice. This approach to mandate MNCs through CSR to promote the principles incorporated in energy justice is a necessary measure. It would ensure that MNCs take responsibility for their actions and work towards better outcomes for communities affected by their operations. A robust legal and regulatory energy justice framework can help establish a fair and just system that holds MNCs accountable for their societal impact.

5.3 *Enforcement gaps*

Regrettably, when we think of CSR, the first thing that comes to mind is that it tends to fall within a purely voluntary spectrum. Notwithstanding, existing debates associated with CSR support the argument that it could fall within legal obligation.¹²⁴ For

¹²¹ David Fig, 'Manufacturing Amnesia: Corporate Social Responsibility in South Africa (2005) 81 *International Affairs* 608

¹²² Ciara Hackett, 'The Challenge of MNCs and Development: Oil Extraction, CSR Nigeria and Corruption' (2016) 2 (2) *Journal of Human Rights in the Commonwealth* 8

¹²³ Sokolowski and Taylor (n 40)

example, there have been debates around the contentious issue of regulating CSR, with questions such as whether it should be a legal or ethical norm or whether it should be controlled through state regulation, a code of conduct, or self-regulation.¹²⁵ The voluntarist approach to CSR presents some difficulties regarding enforcement, particularly involving influential stakeholders such as MNCs. This challenge is partly due to obstacles to CSR existing within the boundaries of law.¹²⁶ It is exacerbated by a weak and sometimes non-existent regulatory framework for CSR.¹²⁷ However, scholars have conclusively argued that the CSR journey can be effectively advanced using legal and regulatory tools as intermediaries.¹²⁸

Regrettably, the challenge above also impacts the energy justice framework. The issue lies in the fact that there are multiple definitions of energy justice, with no clear guidelines on how it should be put into action. This has resulted in gaps in enforcement approaches, leading to various challenges. For instance, despite the importance of sustainability, MNCs still only engage in sustainable development practices voluntarily due to the lack of laws making this mandatory at both the international and domestic levels. However, recent understandings of CSR have altered the discourse and broadened the range of CSR from solely a discretionary domain to a compulsory legal obligation with obligatory actions. For instance, India provides a case where companies must allocate some of their earnings to societal projects as part of their CSR endeavours.¹²⁹ These societal projects can serve as a tool to achieve the goals of energy justice. Nevertheless, this proposition remains a political statement rather than a concrete and enforceable legal regulation.

It's worth highlighting that ample opportunities exist to enforce CSR standards. One such instance is the US economy, which has historically been characterised by a relatively low level of CSR regulation. This has resulted in the labour and capital markets operating predominantly on free market forces.¹³⁰ This implies that no complex law requires corporations to spend specific amounts on CSR activities or comply with regulatory requirements.¹³¹ The driving force behind US corporations' adoption of CSR is the people's expectation.¹³² Various policies and instruments have been implemented to encourage businesses and large corporations to integrate and disclose their CSR activities. These include formal accreditation systems and

¹²⁴ Tamuno (n 8) 395

¹²⁵ Patricia Rinwigati Waagstein, 'The Mandatory Corporate Social Responsibility in Indonesia: Problems and Implications' 2011 98(3) *Journal of Business Ethics* 455-466; See also Onyeka K. Osuji, Franklin N. Ngwu and Gary Lynch-Wood 'Introduction: The Centrality of Regulation in Corporate Responsibility in Onyeka K. Osuji, Franklin N. Ngwu and Gary Lynch-Wood, *Corporate Social Responsibility Across the Globe: Innovative Resolution of Regulatory and Governance Challenges* (Cambridge University Press 2023) 2

¹²⁶ Osuji, Ngwu and Lynch-Wood (n 125), 2

¹²⁷ Nojeem A. Amodu, 'Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria' (2017) 61(1) *Journal of African Law* 105

¹²⁸ Onyeka Osuji, 'Corporate Social Responsibility, Juridification and Globalization: Inventive Interventionism for a Paradox' (2015) 11 *International Journal of Law in Context* 265-298

¹²⁹ Priyanka Chhaparia and Munmun Jha, 'Corporate Social Responsibility in India: the Legal Evolution of CSR Policy' (2018) 13(1) *Amity Global Business Review* 79-84

¹³⁰ Mark Anthony Camilleri, 'Corporate Social Responsibility Policy in the United States of America' in Samuel Idowu, Stephen Vertigans, and Adriana Schiopoiu Burlea (eds) *Corporate Social Responsibility in Times of Crisis. CSR, Sustainability, Ethics & Governance*. (Springer, Cham. 2017)

¹³¹ *ibid*

¹³² *ibid*

soft laws, which incentivise organisations to prioritise and report on their CSR-related initiatives.¹³³ These approaches present varied opportunities to enforce energy justice goals through CSR by incorporating them into soft legal instruments. Further, this could be achieved through a process where energy justice is covered by legislation with a binding character, such as a law passed in a formal parliamentary procedure.¹³⁴

5.4 *Implementation gaps*

CSR obligations are generally presented as soft laws or guidelines that lack enforcement power. As a result, achieving energy justice through CSR initiatives can be difficult. Furthermore, the soft law approach has hindered the practical implementation of energy justice in the discourse. Similar to the United Nations Human Rights-Based approach,¹³⁵ utilising a soft law approach to achieve energy justice presents challenges.¹³⁶ Implementing the energy justice framework through CSR may prove difficult as it remains a strategic tool for corporations without imposing mandatory obligations.

One of the most complex challenges in MNCs implementing the framework is ensuring that they positively impact society beyond conventional CSR initiatives. This can be a difficult task, as MNCs often hold significant economic and political power that can be used to influence governments indirectly. It may be unreasonable to expect MNCs in energy and extractive industries to consistently undertake socio-economic and development programs that are typically the responsibility of governments. For instance, the CSR programmes include building small-scale renewable power facilities for host communities, prioritising environmental protection over economic resource development, etc. The reality is that implementing energy justice through CSR initiatives can be challenging due to potential opposition, such as arguments that put MNCs in a position to carry out government responsibilities. A counter-argument from MNCs could be for the government to use an established host community trust fund to address socio-economic issues.

5.5 *Lack of political will*

One obstacle to achieving energy justice through CSR is the limited political motivation of national governments. This is especially true in developing nations, where implementing laws and policies in the energy and extractive industries seems inadequate. This poses a significant challenge to realising energy justice, as government willpower is critical for successful implementation.¹³⁷ The lack of solid

¹³³ *ibid*

¹³⁴ Maciej M. Sokołowski, 'Enforcing Energy Justice Through the Legal System: A Cascade of Four Conditions' in Raphael J. Heffron and Louis de Fontenelle (eds) *The Power of Energy Justice and the Social Contract* (Palgrave Macmillan 2022) 51

¹³⁵ The United Nations Human Rights-Based Approach Framework emerged in the early 2000s. It gained rapid recognition in scholarly works as a normative framework for integrating human rights obligations into the design, approval, finance and implementation of energy projects to avoid human rights challenges and issues. See Lavanya Rajamani, 'The Increasing Currency and Relevance of Rights-Based Perspectives in the International Negotiations on Climate Change' (2010) 22 *Journal of Environmental Law* 391; Kaime and Agbaitoro (n 9)

¹³⁶ Kaime and Agbaitoro (n 9) 68

government resolve may also impede the utilisation of CSR constructs to promote justice within the industry. Many national governments in developed and developing countries are usually not enthusiastic about changing the conventional approach to CSR through a clear legal framework. For instance, the Bhopal disaster in India reminds us of how difficult it is to implement laws in developing countries, especially when MNCs are involved with the host governments lacking the political will or capacity to pursue accountability through statutes.¹³⁸ The reluctance to embrace robust regulatory mechanisms for CSR can be traced back to its association with philanthropic endeavours that companies undertake in places where they operate with little or no government intervention or guidance. It is crucial to acknowledge that the government possesses the power to regulate CSR, ensuring it aligns with the pursuit of achieving energy justice. These prospects can only be harnessed by demonstrating proactive regulatory measures within the industry, driven by a strong government political will that will help deliver on energy justice goals.

6. Conclusion

This article set out to argue for a new framework for implementing energy justice through CSR initiatives of MNCs in the energy and extractive industries. The proposed approach suggests a CSR interpretative framework that strategically positions MNCs as agents of energy justice. The article achieved this by first exploring the concept of energy justice by referencing its dimensions with a view to establishing the interconnections with CSR. This is important as CSR and energy justice share significant similarities, focusing on delivering socio-economic development and addressing societal development challenges. The analytical focus on how relevant stakeholders, including MNCs within the energy and extractive industry, could together leverage energy justice and CSR to impact communities where they carry out their operations. The idea is to realise energy justice through reformed CSR-led programmes undertaken by stakeholders.

The article unpacks how the energy justice dimensions can be channelled and achieved through MNCs within the CSR framework. As discussed throughout this article, the energy justice dimensions offer an industry-specific approach where unconventional CSR-led actions can be situated within the distributive, recognition, procedural and restorative justice dimensions. This means providing opportunities for MNCs to reform their CSR programmes to address various injustices perpetrated in the energy and extractive industry. To achieve this goal, the article proposed that MNCs move beyond their conventional CSR programmes and prioritise initiatives that explicitly address energy injustices related to their operations while considering the socio-economic challenges that the affected communities face.

While the article acknowledges the difficulties that may be encountered in the pursuit of energy justice through CSR-led activities or programmes from MNCs, such as sustainable development and the provision of universal energy access, it equally recognises opportunities that lie within, most importantly to use CSR as a

¹³⁷ *ibid*

¹³⁸ Surya Deva, 'Bhopa: The Saga Continues 31 Years on' in Dorothee Baumann-Pauly and Justine Nolan (eds), *Business and Human Rights From Principles to Practice* (Routledge 2016) 24

policy tool to effectuate the concept. As argued, this approach could be strengthened through inspiration from the EU and the UNGPs on Business and Human Rights, which has led to the adoption of the EU Corporate Sustainability Due Diligence Directive. This encompasses novel strategies that, if used, will underlie the effective implementation of energy justice in a specific industry. The proposed implementation metrics based on CSR may open a new way to enable just energy systems. In so doing, this article expects to provide an innovative lens through which scholars can approach energy justice and a feasible alternative for its implementation.

Acknowledgements

This article has benefited from the helpful comments and insights of others. My sincere thanks to Dr Marina Lostal, Dr Margaretha Wewerinke-Singh, and Professor Karen Hulme. Thanks are also due to my wife, Daupriye Timi and daughter, Ejiro, for their patience and support while I was away from home completing this research.

Disclosure statement

No potential conflict of interest was reported by the author