

The Role of Law in Enabling a Just Transition

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Prepared by: Daria Shapovalova and Eddy Wifa (Aberdeen University Centre for Energy Law) on behalf of the IUCN WCEL Climate Change Law Specialist Group

Key Messages

- Just Transition aims to **distribute the burdens and benefits of decarbonisation** more equally.
- It is gaining **increased prominence** in international, regional, and national policy, as well as in academic literature.
- **Climate change policy and legislation should incorporate just transition principles** at the national, regional, and international levels.
- Regional and local **contexts matter** for producing tailored Just Transition legislation and policy.
- **Managed phase-out of fossil fuels would help make progress towards a Just Transition** through setting expectations for the workers, communities, industry, local and national governments.
- A Just Transition will **require positive action, policy and legislation reform across many sectors** (e.g., labour, energy, climate, public participation, planning) as well as building **public-private partnerships**.

Overview

This brief focuses on the international, regional, and national legal and policy developments on “Just Transition”, and particularly the importance of optimising the relevant legal instruments for accelerated and equitable climate action in the context of fossil fuels phase-out.

What is Just Transition?

While there is no unified definition of “Just Transition”,^[i] it broadly refers to a fair distribution of burdens and benefits of the transition to a low-carbon economy (see Table 1 below). The origin of the just transition concept dates back to the 1970s when it was born out of labour and environmental movements as an attempt to reconcile emerging environmental imperatives with achieving justice for workers.^[ii] Over time, a wider approach emerged, particularly in academia, bringing together all elements of society in transition, and encompassing energy justice, climate justice, and environmental justice.^[iii]

Why is a managed phase-out of fossil fuels important for a Just Transition?

At the local level, communities dependent on fossil fuel development are at risk of being left behind in the low-carbon energy transition. The phasing out of coal, oil and gas development presents challenges for local economies, the workforce, and the wider population.^[iv] The coal mine closures present some lessons to be learned,^[v] and the legal and policy frameworks for Just Transition at the local level should consider these past experiences. The decline in the oil and gas production in some regions already gives rise to policy planning on Just Transition.^[vi]

From the legal perspective, Just Transition principles or objectives can be developed into standalone legislation and policy. These principles or objectives can also be expressly or implicitly incorporated into legislation on climate change, fossil fuels licensing, labour market, planning and authorisation, and more.

There is an emerging framework for just energy transition with strengthened provisions of public participation, rigorous planning for local development, and compensation.^[viii]

However, even in countries leading on integrating Just Transition principles into climate change legislation, the role of law in ensuring the wellbeing of communities as well as stability for the industry is not well-defined.^[ix] The alignment of fossil fuels phase-out with climate goals is key to the success of Just Transition to ensure transparency and allow for longer-term planning.

Establishing clear timelines for fossil fuel phase-out would be beneficial for the States and communities dependent of fossil fuel rent. As it is already clear that not all fossil fuel resources can be developed,^[x] a managed reduction in supply can help achieve a Just Transition for States and their citizens.^[xi] In petroleum and coal-producing countries, the fossil fuel industry normally plays a central role in revenue generation and employment. Despite full knowledge of the boom-and-bust cycle that characterises most extractive industry projects, the impact of a sudden petroleum-industry crash on communities could be economically devastating.^[xii] A managed decline in fossil-fuel production, as opposed to unexpected downturns caused by an oil price crash or a global pandemic, would help diversify economies and decrease the social costs of the transition process.^[xiii]

At the same time, some low-carbon energy developments raise Just Transition concerns as they go ahead against the opposition of local communities. For example, two years ago, the Supreme Court of Norway ruled that Europe’s largest onshore windfarm in Fosen violated article 27 of the International Covenant on Civil and Political Rights, as the “wind power development will have a substantive negative effect on the reindeer herders’ possibility to enjoy their own culture on Fosen”.^[xiv] Despite this landmark decision, the turbines are still operating and there has been no effective remedy.

Table 1: Definitions of Just Transition [vii]

Source	Definition of Just Transition	Type of Body
EBRD Just Transition Initiative	"A just transition seeks to ensure that the substantial benefits of a green economy transition are shared widely, while also supporting those who stand to lose economically – be they countries, regions, industries, communities, workers or consumers."	International finance body
International Labour Organization	"A Just Transition means greening the economy in a way that is as fair and inclusive as possible to everyone concerned, creating decent work opportunities and leaving no one behind."	International organisation
Climate Justice Alliance	"A vision-led, unifying and place-based set of principles, processes and practices that build economic and political power to shift from an extractive economy to a regenerative economy ... the transition itself must be just and equitable, readdressing past harms and creating new relationships of power."	NGO
McCauley and Heffron	"...a fair and equitable process of moving towards a post-carbon society."	Academic
Glasgow Climate Pact COP26	"Just transitions that promote sustainable development and eradication of poverty, and the creation of decent work and quality jobs, including through making financial flows consistent with a pathway towards low greenhouse gas emission and climate-resilient development, including through deployment and transfer of technology, and provision of support to developing country Parties."	International instrument

Just Transition in Law and Policy

International

At the international level, Just Transition featured in climate negotiations since COP15 in Copenhagen in 2009, spearheaded by the International Trade Union Confederation.[xv] The Paris Agreement in its preamble takes into account "the imperatives of a just transition of a workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities". During the UNFCCC COP26 in Glasgow, the meaning of Just Transition in the international climate change regime was fleshed out (see Table 1 above) and connected to financial and technology transfer.

Outside the umbrella of the UNFCCC, the International Labour Organization adopted guidelines in 2015 providing guidance and recommendations to governments on policy action for Just Transition.[xvi]

In response to the international development as well as more specific local challenges with energy transition, the following section of the brief considers some examples in legal and policy developments on Just Transition regionally – in the European Union (EU) and Africa, and nationally – in Scotland.

Just Transition in the EU

The EU has established in law ambitious targets for decarbonisation and renewable energy provision, which creates particular challenges to some regions historically and presently engaged in coal, peat, and shale oil extraction.[xvii] After the adoption of the European Green Deal in 2019, the EU established a Just Transition Mechanism consisting of three pillars: i) a Fund to support regions in the transition towards climate neutrality by 2050 (7.5 billion EUR for 2021 to 2027); [xviii] ii) a dedicated scheme under the InvestEU programme;[xix] iii) a public sector loan facility hosted by the European Climate, Infrastructure and Environment Executive Agency to mobilise additional investments in the regions concerned.[xx]

Just Transition in Africa

Just Transition in an African context is particularly challenging due to the exacerbated impacts of climate change, energy access needs, and high reliance on fossil fuels. While there is a clear energy transition agenda amongst African countries, the Just Transition principles are yet to be holistically integrated.

In July 2022, the African Union Executive Council adopted the "African Common Position on Energy Access and Just Energy Transition", emphasising the need for mobilisation of adequate financing, accelerating regional integration to create large markets for energy development, harmonisation of policies and regulatory frameworks and encouraging technology transfer and capacity building [xxi]

In South Africa, the Presidential Climate Commission has designed a Just Transition Framework.[xxii] Further, the Congress of South African Trade Unions has designed the Just Transition for Workers Blueprint. [xxiii] While advocating for the protection and support of workers whose jobs could be lost by the transition to clean energy, it equally acknowledges that the "a transition to a low-carbon economy will potentially create more jobs than it will lose while addressing many of the gender imbalances in employment and skills". The African Development Bank's Just Transition Initiative to Address Climate Change in the African Context, recognises the need for a multilevel Just Transition regime that recognises the need for climate justice reparations and a commitment to the principles of common but differentiated responsibilities.[xxiv]

The transition to clean energy is complex, particularly for developing African countries with energy poverty, hindered development, and climate change vulnerabilities. For a Just Transition in Africa, particular attention should be paid to the role of funding, technology, and collective action.

Just Transition in Scotland

Scotland led on the inclusion of Just Transition in law and establishing a dedicated governmental commission. Just Transition principles are incorporated in the Climate Change (Scotland) Act 2009, which requires that the Scottish Ministers have due regard to the Just Transition principles when preparing Climate Change Plans, and that Plans explain how they take Just Transition principles into account.[xxv] To support the Scottish Government in the application of the Just Transition principles, the Just Transition Commission was established in 2019 to support and provide advice to the Government on just transition planning, “in a way that is co-designed and co-delivered by communities, businesses, unions and workers, and all society”.[xxvi] The Government further established a Just Transition Fund for North East and Moray pledging GBP 500 million over ten years to support the industry and the public sector in achieving a transition to net zero. References to Scotland’s approach to Just Transition governance are positive, it is seen as ‘best practice’ internationally.[xxvii]

The views expressed in this publication do not necessarily reflect those of IUCN or other participating organisations.

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