

# SDG 7: AFFORDABLE AND CLEAN ENERGY



# A LEGAL GUIDE

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This Legal Guide to the Sustainable Development Goals (SDGs) was first published by Advocates for International Development (A4ID).

## **Disclaimer**

The information contained within this guide is correct at the date of publication.

## **Acknowledgements**

We would like to thank DLA Piper and Chandni Brown for their contributions in the development of this Guide.

## **Publishing information**

February 2024

London, United Kingdom

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## **About A4ID**

Advocates for International Development (A4ID) was founded in 2006 to see the law and lawyers play their full part in the global eradication of poverty. Today, A4ID is the leading international charity that channels legal expertise globally toward the achievement of the UN Sustainable Development Goals. Through A4ID, the world's top lawyers are able to offer high-quality, free legal support to NGOs, social enterprises, community-based organisations, and developing country governments that are working to advance human dignity, equality, and justice. A4ID also operates as a knowledge and resource hub, exploring how the law can be better used to help achieve the SDGs through a range of courses, publications, and events.



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## Foreword

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### The SDG Legal Initiative

There are now less than six years left to realise the achievement of the UN Sustainable Development Goals (SDGs). Aware of the challenge, Advocates for International Development (A4ID) has been continuing its innovative work towards meeting these targets by harnessing the power of the law and the work of lawyers. A4ID's SDG Legal Initiative has been developed because it is now more important than ever that the global legal community comes together to use their skills to advance positive global change.

The SDG Legal Initiative is a call to action to the global legal profession to work towards the achievement of the SDG Agenda and we have until 2030 to do so. By sharing knowledge and providing opportunities to take practical action to end poverty, protect the planet, and ensure that all people enjoy peace and prosperity, A4ID will continue its work with the legal sector to enhance this impact. The SDG Legal Initiative aims to create communities of practice, and to amplify the role of the legal sector in achieving the SDGs.

### Legal Guide to the SDGs

As part of its SDG Legal Initiative, A4ID has developed the world's first Legal Guide to the SDGs. The Legal Guide has been developed as a unique resource, providing a foundational analysis of the role that law can and should play in the achievement of the SDGs. Developed in collaboration with lawyers, academics, and development practitioners, the Guide is made up of 17 distinct chapters, each focussed on one of the 17 goals. Each chapter provides an overview of the relevant regional, national, and international legal frameworks, highlighting how the law can be applied to promote the implementation of the SDGs. The Guide also offers key insights into the legal challenges and opportunities that lawyers may encounter, presenting clear examples of the actions that lawyers can take to help achieve each goal.

### Role of law in securing affordable and clean energy

For many years the link between energy and poverty was seldom mentioned in the development agenda. There is no mention, for example, of any energy-related issues in the Millennium Development Goals. However, there has been a profound focus on energy in the past few years, as energy prices soared following COVID-19 and the Russian invasion of Ukraine. As a result, the relationship between energy supply and other global commodity chains such as food, has been felt across the globe.

Indeed, access to energy is directly connected with poverty eradication and many other SDG targets. Energy enables the pumping of water for human consumption and irrigation, while health facilities cannot properly function

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without electricity. Women, who are often primarily responsible for searching for firewood for cooking, are the first beneficiaries of energy access, and energy is integral to the development of industry and services that can provide increased employment. In a burgeoning digital world, energy infrastructure is also a gateway to facilitating modern public services, new forms of mobility and communication, and creating equitable and inclusive communities for millions of people.

While energy remains vital to growth and development, traditional energy sources have proven harmful to the health of the environment, contributing to climate change and environmental degradation. As a result, a keen focus on ensuring energy is 'clean' has arisen, with more than 70 countries setting ambitious targets to achieve net-zero in the coming years.<sup>1</sup> Examples of this include investments in renewable energies, energy efficiency, and decoupling economic growth from resource use. As the energy sector contributes to three-quarters of global greenhouse gas (GHG) emissions, it is clear that solutions such as these shall be key to preserving an inhabitable planet for future generations.

## **Yasmin Batliwala MBE**

### **Chief Executive**

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**“Ensuring a just transition, placing the needs and rights of people at the heart of the energy transition, will be paramount to make sure no one is left behind.” - United Nations**

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A final challenge is the need to secure affordable clean energy for all. As economies transition away from reliance on fossil fuels, the concept of 'just transition' is paramount for this to occur in a fair and equitable manner. This includes ensuring that the adverse impacts of clean energy transitions are adequately addressed and that decisions made involve those most affected by the transition, for example, low-income communities. Herein, SDG 7's objectives of securing environmental protection through clean energy are balanced with the socio-economic considerations tied into these changes.





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## Contents

<b>2</b>	The Sustainable Development Goals	<b>23</b>	Examples of relevant national legislation
<b>3</b>	Key terms	<b>30</b>	Insights for the legal profession
<b>4</b>	Overview of the targets	<b>30</b>	a) Examples of relevant case- studies
<b>9</b>	Key actions lawyers can take	<b>35</b>	b) Legal context and challenges
<b>10</b>	Elements of the international legal framework	<b>36</b>	c) So, what can lawyers do?
<b>17</b>	Regional legal and policy frameworks	<b>40</b>	Endnotes

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# The Sustainable Development Goals

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The UN Sustainable Development Goals (SDGs) are a universal call to action to end poverty, protect the planet, and ensure that all people can enjoy peace and prosperity.

Also known as the Agenda 2030, the SDGs were agreed in 2015 by the UN General Assembly (Resolution 70/1). They were adopted by all UN Member States, and 2030 was set as the deadline for achieving them.

Compared to the Millennium Development Goals (MDGs),

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which they succeed, the SDGs cover more ground, with wider ambitions to address inequalities, climate change, economic growth, decent jobs, cities, industrialization, oceans, ecosystems, energy, sustainable consumption and production, peace, and justice. The SDGs are also universal, applying to all countries, whereas the MDGs had only been intended for action in developing countries.

The 17 interdependent goals are broken down into 169 targets. At the global level, progress is monitored and reviewed using a set of 232 indicators. The Addis Ababa Action Agenda provides concrete policies and actions to further support the implementation of the 2030 Agenda. Each year, the UN Secretary General also publishes a report documenting progress towards the targets. In addition, the annual meetings of the High-level Political Forum on Sustainable Development (HLPF) continues to play a central role in reviewing global progress towards the SDGs.

At the national level, even though the SDGs are not legally binding, governments are expected to implement country-led sustainable development strategies, including resource mobilisation and financing strategies, and to develop their own national indicators to assist in monitoring progress made on the goals and targets.

SDG 17 stresses the importance of multi-stakeholder partnerships to achieve the goals. The mobilisation of governments, local authorities, civil society, and the private sector is needed to achieve this aim. Today, progress is being made in many places, but, overall, action to meet the SDGs is not yet advancing at the speed or scale required. This decade must therefore deliver rapid and ambitious action to meet the SDGs by 2030.

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## Key terms

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### SDG 7: Ensure access to affordable, reliable, sustainable and modern energy for all

In the context of SDG 7, the following terms mean:

**'Affordable':** for energy to be affordable, its cost to end users must be compatible with their income levels and no higher than the cost of traditional fuels. It has also been identified that in many cases, temporary subsidies should be provided to reach affordability in the shorter run before economic development has occurred.<sup>2</sup>

**'Clean':** clean energy is determined based on the level of pollutants emitted from energy use linking closely to greenhouse gas emissions, decarbonisation efforts and air quality. As defined in the joint 2022 Energy Progress Report on Tracking SDG 7, 'clean' refers to "the emission rate targets from specific fuels and technologies" and is often categorised in terms of renewable energy forms.<sup>3</sup>

**'Reliable':** reliable energy refers to the consistency and security of energy access, including the ability for energy supply systems to withstand uncontrolled events in both the production and storage of energy. This allows for the provision of dependable lighting, heating, and transport, for example, which is essential for economic growth and human development. Critically, energy reliability is also central to a country's overall resilience; for example, COVID-19 and extreme weather conditions due to climate change have posed concerns on access to reliable energy for many regions around the world.<sup>4</sup>

**'Sustainable':** the Report of the World Commission on Environment and Development, 'Our Common Future',

provides a useful definition of sustainable development from which a suitable definition of sustainable energy can be derived: *"Humanity has the ability to make energy sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs. The concept of sustainable energy does imply limits - not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities.between species, and of ecosystems."*<sup>5</sup>





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## Overview of the targets

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Contrary to the Millennium Development Goals that did not mention energy, the Sustainable Development Goals highlight the strong connection between energy and poverty by devoting SDG 7 as a specific goal on access to energy services. Not only does energy underpin the provision of basic needs such as cooked food, piped water, heating and cooling systems, modern healthcare and transportation, but it fuels productive activities, from agriculture to digital integration, education services to interconnectivity. Access to energy thus provides the power and potential to drive economic growth, poverty reduction, and individual empowerment.

However, as energy dependence and consumption grow, so too do concerns over impacts on the environment and the people in it – the strain placed on rapidly diminishing natural resources, harmful effects on local environments and communities, and the contribution to climate change of energy sourced from fossil fuels. These levels of consumption have also prompted a reconsideration of how we consume

energy through energy-intensive lifestyles, particularly in the Global North. These concerns have been magnified in the wake of geopolitical conflicts over the last year, with global oil and gas markets impeded, leading to a worldwide energy crisis, food supply shortages and increased inflation. This has spurred political will to develop new policies focused on clean energy alternatives, the need for greater energy security and a diversification of energy supply chains.

These inherent tensions have all led to what is known as the energy 'trilemma' - the difficulties faced by governments to achieve an equilibrium between the following three competing interests when designing sustainable energy policies. These are:

- i. Reliability - security of supply;
- ii. Affordability - access to equitable distribution; and
- iii. Sustainability - decarbonisation and renewable alternatives.

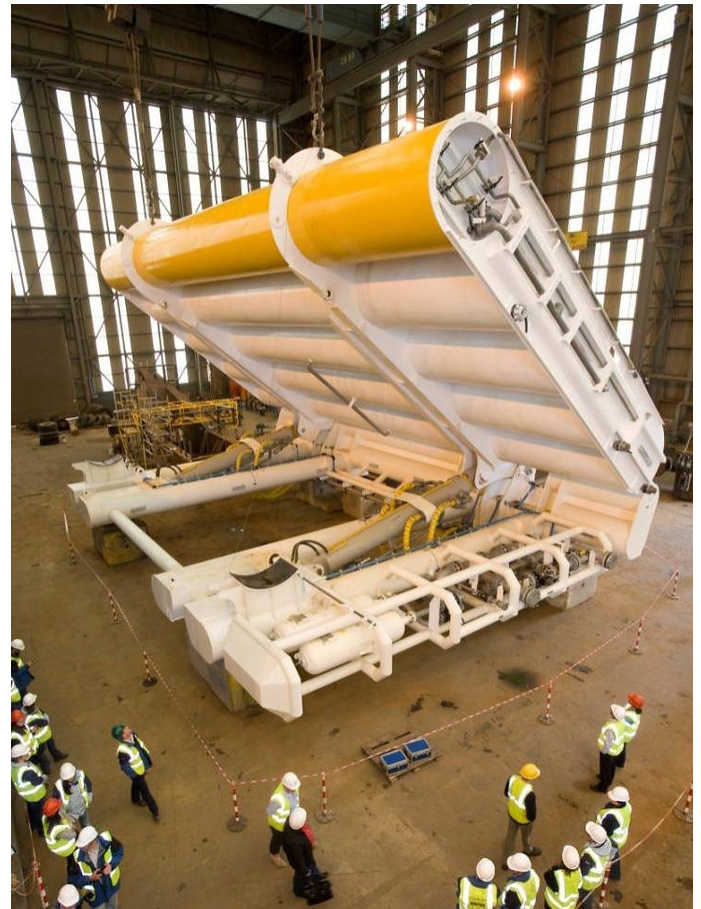
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Attempting to find a balance between these three critical priorities has proved to be no easy feat. Realising SDG 7 by 2030 will no doubt necessitate a diverse set of innovative legal and policy solutions to achieve a just transition away from traditional fossil fuels towards green economies. Undertaking this transition will also require careful planning to maximise benefits. For example, ensuring that economic opportunities for new renewable energy projects are capitalised, and that capacity building efforts take place to equip countries for a transformed energy system less reliant on traditional fossil fuels.

In this regard, SDG 7 does not look to favour any particular energy source over others. Rather it recognises the need for clean energy in any variety of forms, be it electricity, cleaner fossil-fuel technology, renewables or hybrid systems. However, the emphasis on 'clean' is critical to overcoming issues of pollution and the health-related impacts of burning polluting fuels such as coal, charcoal, wood, animal dung, crop residues and kerosene, linking closely to other SDGs in the 2030 Agenda such as SDG 3 (Good Health and Wellbeing).<sup>6</sup> Similarly, a keen focus on improving energy efficiency and decreasing wider environmental footprints is central to making clean energy more sustainable – drawing on the distinction between 'clean' and 'sustainable'. While the former looks to reduce greenhouse gas emissions, contaminants and pollution (linking to net-zero), the latter contends with additional concerns of long-term supply, resource depletion and environmental impact. For example, renewable energy sources such as large-scale hydropower provide 'clean' forms of energy but are also noted for their impacts on biodiversity and flooding, warranting further research into how they can be made more sustainable long term.<sup>7</sup>

Set against this landscape, SDG 7 looks to support clean, sustainable, renewable and modern forms of energy for all, while recognising the inherent trade-offs that exist in doing so. With the same level of legislative backing and incentivisation

required for each of SDG 7's three main targets, the following breakdown provides an insight into the current global situation on access to energy, renewable energy and energy efficiency. It also reveals the pressures and issues relevant to the achievement of each target. Most notable, is the need for international cooperation, harmonised regional regulations and policy coherence to avoid confusion and promote diversification within global energy markets on a wholesale basis.



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TARGET 7.1



## By 2030, ensure universal access to affordable, reliable and modern energy services

Energy access problems exist on a global level, with 679 million people still lacking access to electricity (indicator 7.1.1), and a further 2.4 billion without access to clean cooking fuels or technologies (indicator 7.1.2).<sup>8</sup> While access to electricity has improved significantly over the last decade, rising from 83% of the global population in 2010 to 91% in 2020, the pace of progress has slowed since COVID-19. Of note are the economic repercussions of the pandemic, which have left 90 million people across Africa and Asia unable to afford electricity despite being connected to electrical supply.<sup>9</sup> Here it is noted that there are major regional disparities surrounding access to electricity. The top 20 least-electrified countries, for example, are all located in Sub-Saharan Africa including Nigeria (underserved population of 92 million), the Democratic Republic of Congo (72 million) and Ethiopia (56 million).<sup>10</sup>

Similarly with respect to clean cooking fuels and technologies, progress made since 2010 has largely taken place in five countries: Brazil, China, India, Indonesia, and Pakistan, with

little to no change in access rates for other regions across the world.<sup>11</sup> Instead, regions in Sub-Saharan Africa are expected to see access rates fall by almost 20 million people a year.<sup>12</sup> On a global scale, an overall reduction in coal-burning and kerosene has been welcome. However, the large proportion of unprocessed biomass (wood, crop residue, animal dung) being used as cooking fuels still needs to be addressed.<sup>13</sup>

Strong regional cooperation will therefore be critical for increasing energy access to for all. Barriers to the affordability of energy have been felt by all countries across the global north and south in recent years as geopolitical conflicts, such as the Russian invasion of Ukraine, saw the price of oil and gas commodities increase significantly in 2021.<sup>14</sup> This inherent nature of energy as a commodity demands international cooperation on a number of levels including between net exporting and net importing countries; countries with differing energy mixes; and between developed and emerging markets. Similarly, the role of the private sector in developing disruptive technologies, providing innovative financing, and driving scalable solutions, should be maximised in helping connect people to clean, reliable and modern energy supplies.

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**“For the 759 million people in the world who lack access to electricity, the introduction of clean energy solutions can bring vital services such as improved healthcare, better education and affordable broadband, creating new jobs, livelihoods and sustainable economic value to reduce poverty.” - United Nations, Theme Report on Energy Access 2021**

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TARGET 7-2



### By 2030, increase substantially the share of renewable energy in the global energy mix

It is widely recognised that greater deployment of renewable energy technology will contribute significantly to increased energy access, particularly in parts of the world heavily reliant upon fossil fuel imports. However, in the absence of a specified target rate against which SDG 7.2 should be measured, it will be difficult to assess whether progress made is sufficient to support global energy transitions from now until 2030. Nevertheless, with total renewable energy consumption increasing by

only a quarter between 2010 and 2019,<sup>15</sup> it is clear from most custodian agencies that faster uptake of renewables will still be needed.<sup>16</sup>

Renewable energy in the electricity sector has shown fastest progress, representing a 26.2% share in 2019.<sup>17</sup> However, electricity made up only 20% of total final energy consumption in the same year, with heat accounting for 50% and transport accounting for the rest. Herein, progress has been negligible for renewable energy in the heat sector,<sup>18</sup> and despite the transport sector being the fastest growing in energy consumption, it continues to have the lowest overall use of renewable energy.<sup>19</sup>

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TARGET 7-3



### By 2030, double the global rate of improvement in energy efficiency

From 2010 to 2019, energy intensity – the ratio of energy used per unit of GDP – improved by an average of 1.9% a year. However, at this current rate of progress, the targets set by SDG 7.3 will not be met by 2030 and an annual improvement rate of 3.2% is now needed to catch up.<sup>20</sup>

efficiency improvements made globally since 2010.<sup>22</sup>

In addition, the potential of digitalisation to optimise energy access and usage is noted. For example, pay-as-you-go solar home electricity systems provided access to 5 million people across Africa in 2018.<sup>23</sup> Similarly, improvements within energy supply chains are integral to improving efficiency, reducing the volume of waste and energy loss created through the storage and distribution of energy sources.

While more than a hundred countries have sought to improve energy efficiency through mandatory performance standards, limitations in policy coverage and a lack of international cooperation have seen energy efficiency frequently given low priority and lacklustre funding in many cases.<sup>21</sup> An example of this is the lack of legislation or policies expressly concerned with energy efficiency.

Synergies between renewable energy technology (SDG 7.2) and energy efficiency (SDG 7.3) have been identified, with most renewable sources considered to be 100% efficient and an increase in renewable consumption attributed to energy

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**“2020 [was] the worst year for energy intensity improvement since the global financial crisis, with worldwide energy intensity declining to 4.63 megajoules (MJ) per 2017 US dollar.” - International Energy Agency, The Energy Progress Report 2023**

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TARGET 7·A



**By 2030, enhance international cooperation to facilitate access to clean energy research and technology, including renewable energy, energy efficiency and advanced and cleaner fossil-fuel technology, and promote investment in energy infrastructure**

**and clean energy technology**

In building national capacities for affordable and clean energy, SDG 7.a looks to enhanced international cooperation through public financing to developing countries. This is in recognition of financial and technical barriers, real or perceived, that prevent energy access, hinder the uptake of renewable energies, and limit progress towards sustainable energy transitions. The target also emerges in light of regional disparities in clean energy consumption, as noted before.

TARGET 7·B



**By 2030, expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all in developing countries, in particular least developed countries, small island developing States, and**

**land-locked developing countries, in accordance with their respective programmes of support**

There has been a significant increase in the installation of renewable energy-generating capacity in developing countries from 2010 to 2020: the target indicator used to measure progress against SDG 7.b. However, while countries across Eastern and South-Eastern Asia as well as Latin America and the Caribbean saw rapid growth over this period (now producing 460 and 425 watts per capita respectively), other regions of the world including Oceania and Sub-Saharan Africa continue to produce only low levels of renewable energy (at 74

Since before the pandemic, international financial flows for the purposes of SDG 7.a were already decreasing. They peaked in 2017 at USD 24.7 billion and fell to USD 10.9 billion in 2019.<sup>24</sup> Since then, the economic pressures of COVID-19 recovery have posed additional challenges to the level of contributions available. Commitments made in 2021 during COP 26 for a further USD 100 billion in climate financing for developing countries, coupled with the launch of Energy Compacts pledging over USD 600 billion for action on SDG 7,<sup>25</sup> demonstrate the urgency of additional financing. However, the Global Expert Group Meeting held in May 2023 in Support of the Mid-Point Review of SDG 7 noted an ongoing need for yet more financial assistance particularly to Least Developed Countries (LDCs) and Small Island Developing States (SIDS).<sup>26</sup> Significant gaps persist between the level of funds committed and those required to achieve SDG 7 ambitions.<sup>27</sup>

and 38 watts per capita respectively).<sup>28</sup>

Over the ten-year period, LDCs have seen only a 5.2% increase in renewables-powered capacity. Meanwhile SIDS have seen an 8.3% increase and land-locked developing countries have seen only a 2.4% increase. This contrasts with the 9.5% increase that developing countries have witnessed, notwithstanding already having a greater baseline capacity for generating renewable energy.<sup>29</sup>



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## Key actions lawyers can take

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The final section of this chapter provides more details on how the international legal community can engage in efforts to achieve SDG 7. However, the following short

summary describes some of the key actions lawyers can take to contribute to the Sustainable Development Agenda in securing affordable and clean energy.

### Learn and educate

There are inherent tensions within SDG 7's ambitions for affordable (economic), reliable (social) and clean energy (environmental), necessitating context specific approaches. Legal professionals with a strong understanding of this landscape, can build upon their natural skillset in

navigating competing interests and identifying practical solutions towards net-zero, decarbonisation and energy transitions. In doing so, they may be better able to respond to the changing needs of their clients, and assist in their own energy transitions.

### Integrate

Given the need for international cooperation, public-private partnerships and international financial flows to support clean energy transitions across the world, there is a growing need for professionals who can facilitate complex agreements, structure new business relationships and act as interlocuters in delivering on the targets of SDG 7.

For individuals and communities affected by these changes, understanding how access to clean energy intersects with other basic human rights and where challenges of inequality and injustice emerge, will also enable legal professionals to advise on, and even litigate on, the human rights aspects of energy transitions.

### Act

By aligning their work with the SDGs, lawyers can be confident they are taking practical steps towards realising the ambitions and commitments of numerous stakeholders across the globe to achieve net-zero.

One way that any law firm can act to support energy transitions, is through the development of a pro bono

strategy with clearly identified goals on energy and climate matters. This may include working on social aspects of energy access and affordability or environmental aspects such as renewable energy transitions. By working with government and public bodies, lawyers can further support in the development of legal, policy and regulatory frameworks, shaping the future of global energy systems.

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## Elements of the international legal framework

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The governance of energy tends to be a national matter with limited international cooperation. As a result, there are few specific international legal treaties related to energy. However, energy is regulated at the international level indirectly, for instance through environmental obligations, human rights

treaties, and trade and investment treaties. At the same time, soft-law declarations, such as the UN General Assembly Resolution 67/215 which calls for the promotion of new and renewable sources of energy,<sup>30</sup> have also come to the fore driving wholesale changes across the energy sector.

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### Human Rights Treaties

There is no international treaty that explicitly refers to access to energy as a human right. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) alone explicitly recognises the interconnection between energy and socio-economic rights in providing that state parties shall ensure the right of women living in rural areas to enjoy adequate living conditions ‘particularly in relation to (...) electricity supply’ (Article 14.2).

The Universal Declaration on Human Rights and the

International Covenant on Economic, Social and Cultural Rights both enshrine the right to an adequate standard of living (respectively in Article 25 and Article 11). Some authors argue that access to modern energy services is implicit in this obligation.<sup>31</sup> However, the right to energy does not receive the same broad international recognition as some other economic, social, and cultural rights. The right to water, for example, has been the subject of several General Assembly Resolutions and General Comment No.15 by the UN Committee on Economic, Social and Cultural Rights.

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### The United Nations Framework Convention on Climate Change (UNFCCC)

**Adopted by the UN General Assembly:** 9 May 1992

**Entered into force:** 21 March 1994

**Status of ratification (as of June 2023):** 198 Parties

The United Nations Framework Convention on Climate Change (UNFCCC) has a primary objective towards the *“stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”*<sup>32</sup> While it doesn’t consider energy as a

standalone issue, the treaty recognises the need for greater energy efficiency in relation to its impact on GHG emissions. The limits on emissions are non-binding and the Convention itself does not contain enforcement mechanisms as such. The framework instead outlines how specific international treaties (called ‘protocols’ or ‘agreements’) may be negotiated by state parties to designate further measures in fulfilling the goals of the UNFCCC.

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## The Energy Charter Treaty

**Adopted by the UN General Assembly:** 17 December 1994

**Entered into force:** 18 April 1998

**Status of ratification (as of June 2023):** 54 Parties

Conceived as a project to boost energy cooperation between Western Europe and the former Soviet Union nations, the Energy Charter Treaty (ECT) is a legally binding intergovernmental agreement covering all energy sources, products and activities. Its fundamental aim is to strengthen the rule of law on energy issues by promoting long-term cooperation based on mutual benefits for State Parties and their investors, thereby mitigating risks associated with energy-related investment and trade. Its focus is on trade, transit flows, energy efficiency and secure investments.

The Charter Treaty is complemented by a Protocol on Energy Efficiency and Related Environmental Aspects, which is one of the few instruments that relates to energy efficiency, although in a soft law form. The objectives of this Protocol are to promote energy efficiency policies in line with sustainable development, to create framework conditions that prompt producers and consumers to use energy 'as economically, efficiently and environmentally soundly as possible', and to cultivate collaboration around energy efficiency (Article 1).

Articles 26 and 27 of the ECT establish procedures for dispute resolution between contracting states and their investors.

Since 2010, the ECT has undergone a wholesale modernisation process intended to better reflect and regulate recent changes to the energy industry and the increasing importance of global energy security. However, it has since faced severe criticism for falling short of modernisation, failing to address a number of key outdated provisions such as the protection offered

to investors in traditional fossil fuel projects and the ability for foreign companies to claim compensation for changes to energy policies where profitability is affected.<sup>33</sup> These shortcomings have resulted in several European countries including France, Germany, the Netherlands, Poland and Spain announcing, at the beginning of 2023, their plans to leave the ECT with the EU likely to follow suit in due course.<sup>34</sup>



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## Convention on Nuclear Safety 1996

**Adopted by the UN General Assembly:** 17 June 1994

**Entered into force:** 24 October 1996

**Status of ratification (as of June 2023):** 78 Parties

The Convention on Nuclear Safety is an International Atomic Energy Agency Treaty that governs the rules of nuclear power plants. It is an incentive-based instrument, committing States that host nuclear power plants to establish and maintain regulatory frameworks.

The Convention places obligations on state parties to implement certain rules and standards relating to nuclear power plants, including site selection, operation, and

construction, as well as safety and emergency procedures. As a renewable energy, the Convention recognises the importance of protecting nuclear energy through the development and safety of the plants set up to harness it, as well ensuring that the plants maintain sufficient safety standards to prevent damage and energy wastage.

Based on the parties' common interest to achieve higher levels of safety, signatories submit reports on the implementation of their obligations, as an innovative and dynamic element of the convention.<sup>35</sup> It is crucial that the safety of existing nuclear facilities, specifically civilian nuclear power plants, are reviewed as soon as possible after entry into the Convention.<sup>36</sup>

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## The Kyoto Protocol

**Adopted by the UN General Assembly:** 11 December 1997

**Entered into force:** 16 February 2005

**Status of ratification (as of June 2023):** 192 Parties

The Kyoto Protocol committed its parties to binding GHG emission reduction targets during the period between 2008 and 2012. The Protocol suffered from a number of limitations however: the United States, one of the major GHG emitters, signed but never ratified the Protocol; BRICS countries (Brazil, Russia, India, China and South-Africa) were not bound by specific reduction targets due to their status as developing countries, despite becoming major contributors of GHG emissions; Canada's withdrawal from the Protocol to avoid being recognised for failing to achieve its targets, severely undermined the Protocol's binding power; and Parties were reluctant to commit to a second commitment period (established by the Doha Amendment that extended the Kyoto obligations to 2020).

Furthermore, with regard to SDG 7, no provisions covered access to energy services for all, and those relating to energy efficiency and renewable energy resources, were strictly non-binding. Under Article 2, each party only undertook to elaborate and/or implement policies *"to promote sustainable development"*, including through the enhancement of energy efficiency and research on, promotion, development and increased use of renewable energy sources.

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**“The Kyoto Protocol was a massive stake in the ground, a forcing agent that made governments, businesses, civil society and citizens take a position on the ultimate collective action challenge of our time.” - Jonathan Phillips, James E. Rogers Energy Access Project**

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## The Paris Agreement

**Adopted by the UN General Assembly:** 12 December 2015

**Entered into force:** 4 November 2016

**Status of ratification (as of June 2023):** 195 Parties

In December 2015, parties to the UNFCCC reached a landmark agreement in Paris in the form of a legally binding agreement that would replace the Kyoto Protocol after 2020. The Paris Agreement has three objectives:

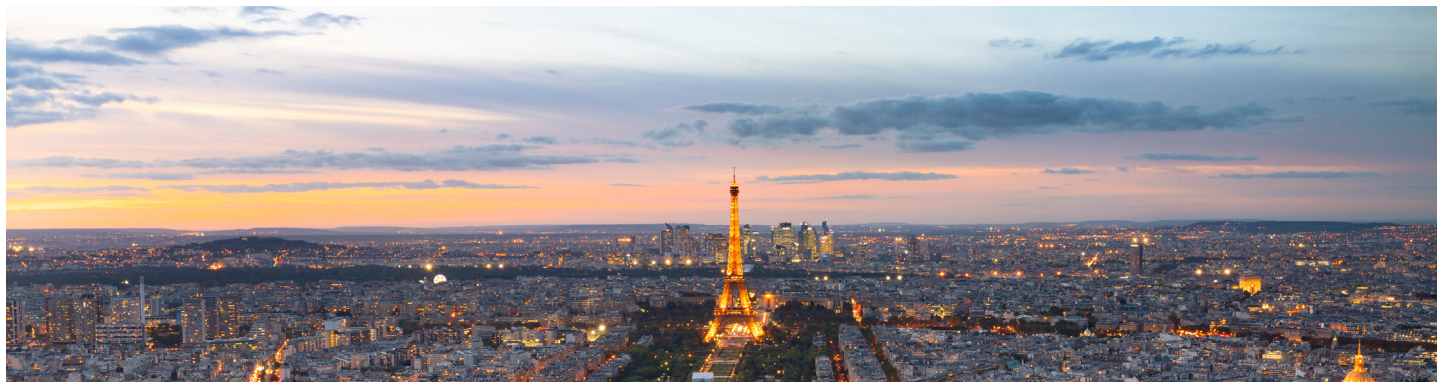
- i. To limit global warming to less than two degrees Celsius above pre-industrial levels and pursue efforts to limit the rise to 1.5 degrees Celsius
- ii. To improve the ability to adapt to climate change and foster climate resilience
- iii. To make finance flows consistent with the above objectives

Each party decides, on a legally binding basis, its Nationally Determined Contribution (NDC) to the overarching aim and submits a report every five years to the UNFCCC Secretariat. The obligation relative to NDCs is an obligation of conduct,

rather than of result, as there is no enforcement mechanism to ensure that a state will set a meaningful target or will attain this target. However, 2023 will mark the conclusion of the first 'global stocktake' conducted to measure progress against the Paris Agreement goals. Initiated at COP 26 in 2021, the stocktake will allow any gaps for further action to be identified and place pressure on countries to do more by way of climate action.

As the first COP to explicitly target fossil fuels, particularly coal, COP 26 further saw the launch of Just Transition Partnerships to facilitate fossil fuel-reliant countries to finance their transitions towards decarbonisation. A new Energy Transition Council was created to build the capacities of developing countries towards just transition.

Finally, linking closely with SDG 7, is the Sustainable Development Mechanism under the Paris Agreement, which encourages cooperative approaches towards decarbonisation by allowing countries to credit emissions reductions from activities in one country towards another country's NDCs.



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## Soft law and declarations

### UN General Assembly Resolution 67/215 on Promotion of new and renewable sources of energy (2012)

The Resolution recognises a lack of access to energy services as an important contingent of poverty and the need to improve access to *“reliable, affordable, economically viable, socially acceptable and environmentally sound”* energy services.<sup>37</sup> While

it falls short of recognising access to energy as a human right in and of itself, this recognition by the UN General Assembly was a key step in giving appropriate consideration to energy issues within the UN 2030 Sustainable Development Agenda.

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### The International Energy Charter (2015)

In May 2015, the International Energy Charter (IEC) was adopted by 75 countries and three international organisations. Contrary to the ECT, the IEC is a political declaration that does

not create any binding obligations or financial commitments but promotes the importance of energy cooperation for the sake of greater energy security and sustainability.

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**“The International Energy Charter promotes mutually beneficial energy cooperation among nations for the sake of energy security and sustainability. [It] is a declaration of political intention aiming at strengthening energy cooperation between the signatory states and which does not bear any legally binding obligation or financial commitment.” - International Energy Charter 2015**

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### System of Environmental Economic Accounting – Energy (SEEA-Energy)

With the aim of informing policy making and research, this multi-purpose framework organises energy-related statistical information relating to 92 countries, including physical energy, monetary transactions, energy stocks, and other economic transactions related to energy.<sup>38</sup> The Framework provides a comprehensive description of the flows of energy and energy statistics.

Using data from the Environmental Investigation Agency, Eurostat and the United Nations Statistics Division, the national assessment centralises available data and determines policy priorities in terms of energy. Energy statistics are often used to address policy questions and issues, and SEEA-Energy allows all energy-related statistics across all sectors to be contained in one consistent framework.<sup>39</sup>



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## International Renewable Energy Conferences

International Renewable Energy Conferences are a high-level political conference series, providing a platform for government, private sectors and civil society to jointly address how to drive renewable energy introduction. The overarching aim of the conferences is to advance renewables on an international, national and sub-national scale.<sup>40</sup>

Inspired by the Bonn Convention, each Conference involves

representatives in all sectors – including science – to participate in discussions and debates, with the sole objective of advancing the global energy transition to renewables. Held biennially, the conferences review the successes and failures of the previous two years and create an opportunity for innovation and cooperation between multiple stakeholders.

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## Agenda 21

Agenda 21 is a comprehensive, international programme of action for achieving sustainable development during the 21st Century. The Agenda sets out a plan of action to be taken globally, nationally and locally, addressing energy use, as well as multiple other environmental concerns. It promotes sustainable energy and transport systems in human settlements while considering energy development and consumption.<sup>41</sup>

Although there is no dedicated chapter on energy, Agenda 21 considers energy supply and demand in various chapters, arguing for the transition to sustainable energy through management techniques. Chapter 4 addresses changing consumption patterns, while reducing the use of energy and materials. Chapter 6 addresses the protection and promotion of human health, relating to energy production and use in industry and transportation. Chapter 7 promotes sustainable human settlement, saving energy and promoting renewable energy techniques. Chapter 9 focuses on the protection of the atmosphere, asking for cooperation in identifying and developing economically viable energy sources to promote the availability of increased energy supplies. And Chapter 14

highlights the promotion of sustainable agriculture and rural development.<sup>42</sup>



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## Rio Declaration

Adopted at the United Nations Conference on Environment and Development in Rio de Janeiro in June 1992, the Rio Declaration is considered the cornerstone of global environmental governance. Alongside the adoption of Agenda 21, the Rio Declaration built on concerns surrounding international action on environmental and development issues, which would guide international cooperation and development policy in the 21st Century.<sup>43</sup>

The Declaration consists of 27 principles that act as a

blueprint for recognising economic and social development while safeguarding a shared environment. These include: the exploitation of resources; the eradication of poverty; the implementation of national environment laws; liability surrounding pollution and environmental damage; and knowledge sharing and transfer specifically through scientific understanding and new technologies. Governments were encouraged to adopt national sustainable land-use plans to help reduce the demand for fuelwood and fossil fuels through energy efficiency and alternative energy programmes.





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## Regional legal and policy frameworks

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### European Union

#### Renewable Energy Directive (2018) – As revised from 2009

The Renewable Energy Directive establishes policies for producing and promoting renewable energy sources in the European Union (EU). The Directive binds member states at an EU level to a renewable energy target of 32% by 2030. To do so, the Directive includes rules on issues including common principles for renewable support schemes; renewable uptake in the transport sector; renewable uptake in the heating and cooling sector; sustainability criteria for biomass, and measures to incentivise investment in renewable energy technologies.

On 30th March 2023, a provisional agreement was reached to raise the binding target from 32% to 42.5% with an aspirational target of 45%.<sup>44</sup> The change comes in the wake of parallel initiatives such as the European Green Deal and a heightened priority of the EU to move away from fossil fuels following the Russian invasion of Ukraine. The change is expected to recognise renewable energy as an overriding public interest with easier and faster permitting procedures introduced.

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#### European Union 2030 Climate and Energy Framework (2014)

The 2030 Climate and Energy Framework includes EU-wide targets and policy objectives for the period 2021-2030. Under the Regulation on the Governance of the Energy Union and Climate Action, the EU has adopted integrated rules to ensure planning, monitoring and reporting of progress towards its 2030 climate and energy targets, and its commitments under the Paris Agreement.<sup>45</sup> The Framework aims to help the EU reduce GHG emissions as well as address high energy prices, an overdependence on energy imports, and considers the need to replace and upgrade energy infrastructure. The targets make the EU's economy and energy system more competitive, secure and sustainable, proposing governance systems and performance indicators.<sup>46</sup>

This framework for emissions reduction was the EU's Intended Nationally Determined Contribution prior to the adoption of the Paris Agreement and was formally approved by the EU Environment Council in 2015.<sup>47</sup>

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**“The agreement on the 2030 framework, specifically the EU domestic greenhouse gas reduction target of at least 40%, formed the basis of the EU’s contribution to the new global climate change agreement.” - European Council**

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## European Green Deal (2020)

The European Green Deal is a roadmap to establish the EU as a modern, resource efficient and competitive economy. Comprised of a whole suite of policy initiatives, the Green Deal seeks to make the EU climate neutral by 2050, decoupling economic growth from resource use and building a more sustainable and equitable EU market.

Notable strategies, policies, and laws under the European Green Deal include:

- **The Circular Economy Action Plan (2020):** providing initiatives along the entire product life cycle to encourage circular economic processes, promote sustainable consumption and reduce waste. The action plan has developed a monitoring framework (last revised in 2023), inspired revisions to EU rules and directives (including on packaging, industrial emissions and waste pollutants), and launched the Global Alliance on Circular Economy and Resource Efficiency for international cooperation.
- **The European Industrial Strategy (2020):** establishing a dual transition towards climate neutrality and digital leadership. The strategy consists of an Intellectual Property Action Plan, a strategy for small and medium-sized enterprises and measures to decarbonise energy-intensive industries.
- **Farm to Fork Strategy (2020):** promoting sustainable consumption through food value chains by addressing matters such as chemical pesticide use, agricultural diversity, organic farming and partnership working along food supply chains. The strategy sets out both regulatory and non-regulatory policies and is expected to adopt a new legislative framework for sustainable food systems by the end of 2023.

- **The European Climate Law (2021):** entrenching climate neutrality by 2050 into EU law as a legally binding commitment. The law establishes an intermediate target to reduce greenhouse gas emissions by at least 55% by 2030 and introduces measures to track progress and establish future intermediate targets (i.e.: in 2040).
- **REPowerEU Plan (2022):** helping to save energy, produce clean energy and diversify energy supplies in the face of the global energy crisis caused by Russia's invasion of Ukraine.

In addition, the European Climate Pact has been established to support implementation of the many European Green Deal initiatives, creating a movement for individuals, communities and organisations to showcase their contributions towards common goals and work collaboratively to maximise impact.

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**“The European Green Deal is our new growth strategy – for a growth that gives back more than it takes away. It shows how to transform our way of living and working, of producing and consuming so that we live healthier and make our businesses innovative. We can all be involved in the transition and we can all benefit from the opportunities.”**  
- **President Ursula von der Leyen, European Commission**

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## Africa

### Economic Community of West Africa States Renewable Energy Policy (2012)

Presently, Africa is facing complex challenges relating to poverty, energy security and climate change mitigation. In 2012, 15 member states of West African Countries (ECOWAS)<sup>48</sup> expressed the need to mainstream renewable energy and energy efficiency into their national policies. Through the Renewable Energy Policy, they agreed on stronger regional cooperation and integration to help solve these challenges.

The policy's aim is to secure the shared distribution of member states' energy supplies and services, enabling universal access to electricity by 2030, and a more sustainable and safe provision of domestic energy services. The Policy establishes three sets of targets: grid-connected renewable energy application; off-grid and stand-alone applications; and domestic renewable energy applications.

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### Agenda 2063: The Africa We Want (2019)

Agenda 2063 is a blueprint for transforming Africa into a "global powerhouse".<sup>49</sup> The Framework aims to deliver on its goal for inclusive and sustainable development, and is a manifestation of the pan-African drive for unity, self-determination, and progress.

A long-term 50-year trajectory was envisioned to allow Africa to revise and adapt its development agenda and to review all sustainability-related goals, including that of energy and affordable use. The Agenda sets out a series of 'Infrastructure and Energy Initiatives' that focus on the need to increase Africa's energy production, due to its rapid population increase – estimated to double by 2050.<sup>50</sup> Member states see modernised infrastructure and sustainable energy solutions as the key to transforming the continent, and Agenda 2063 aims to accelerate this. It addresses transport, manufacturing energy, industrialisation, aviation, telecommunications, solar energy and hydro and geothermal power.



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## The Africa Clean Energy Corridor (ACEC)

ACEC is a regional initiative to accelerate the development of renewable energy potential and cross-border trade of renewable power within the Eastern African Power Pool (EAPP) and Southern African Power Pool (SAPP). Endorsed by the International Renewable Energy Agency (IRENA) in 2014, the Initiative has since expanded, with additional engagement of more than 30 governmental, regional

organisations and development partners.<sup>51</sup>

The Initiative focuses on five pillars: zoning and resource assessments; long-term energy planning support; enabling frameworks for investment; capacity building; and public information and awareness.

## Asia Pacific

### ASEAN Plan of Action for Energy Cooperation (APAEC) 2016-2025

APAEC is a series of guiding policy documents that aims to promote multilateral energy cooperation and integration amongst the ASEAN economic community (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam). APAEC 2016-2025 is the current APAEC policy which spans a decade with a two-phase implementation (Phase I: 2016-2020; Phase II: 2021-2025). APAEC Phase II, which was endorsed in November 2020, continues to promote strategies previously established under Phase I with higher aspirational targets and new initiatives to enhance energy transition and resilience towards a sustainable energy future. Some of the key strategies are as follows:<sup>52</sup>

- ASEAN Power Grid: to expand regional multilateral electricity trading, strengthen grid resilience and modernisation, and promote clean and renewable energy integration.
- Coal and Clean Coal Technology: to optimise the role of clean coal technology in facilitating the transition towards sustainable and lower emission development.

- Energy Efficiency and Conservation: to reduce energy intensity by 32% in 2025 based on 2005 levels and encourage further energy efficiency and conservation efforts, especially in transport and industry sectors.
- Renewable Energy: to achieve aspirational targets for increasing the component of renewable energy in the ASEAN energy mix to 23% by 2025, including through increasing the share of renewable energy in installed power capacity to 35% by 2025.

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**“Energy is a key component in advancing the ASEAN Economic Community’s pursuit for an inclusive and dynamic regional economic integration towards 2025 and beyond.”**  
**- ASEAN Centre for Energy, 2020**

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## Central Asia Regional Economic Cooperation (CAREC) Energy Strategy 2030 (2019)

CAREC Energy Strategy 2030<sup>53</sup> is an initiative under the CAREC Program, a partnership of 11 countries (China, Afghanistan, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Mongolia, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan). The CAREC Energy Strategy 2030 provides a new long-term strategic framework for the energy sector of the CAREC region. It contains clear working plans for several strategic pillars and crosscutting themes, such as

enhancing sustainability by greening the regional energy system and attracting private sector investments across the energy value chain. It also sets out specific performance indicators for tracking progress and proposes a new working group structure for achieving the deliverables set out in the strategy itself, with the ultimate aim of achieving a reliable, sustainable, resilient, and reformed energy market by 2030.

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## Asia-Pacific Economic Cooperation (APEC) Energy Working Group (2019)

APEC's Energy Working Group (EWG) seeks to maximize the energy sector's contribution to the economic and social well-being of the people in the APEC region, while mitigating the environmental effects of energy supply and use. APEC currently has 21 members including China, Hong Kong, Australia, Singapore, Thailand, and Malaysia.

The current work of the EWG is guided by a Strategic Plan for 2019 – 2023,<sup>54</sup> with the mission to build the capacity of APEC members to strengthen domestic and regional energy security, as well as lower the carbon intensity of energy supply.

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## Central America

### Asia-Pacific Economic Cooperation (APEC) Energy Working Group (2019)

The CECCA Strategy Document was developed and formally endorsed in 2015 by the regions' energy ministers. The initiative promotes the accelerated deployment and cross-border trade of renewable power.

CECCA focuses on power system operations; country and regional power system planning with renewables; zoning and renewable resource assessment; and capacity building and information dissemination.<sup>55</sup> Following the 2018 CECCA

Regional meeting, IRENA (the International Renewable Energy Agency) presented the outcomes of the technical and regulatory components of the framework and set out plans to extend the initiative beyond the pilot-country phase.



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## Other Inter-Regional Partnerships

### Spain and Korea Green and Digital Partnership 2017

In 2017, Spain and the Republic of Korea signed an agreement to strengthen technological collaboration in the field of energy. Valid until 2025, the objective of the agreement is to improve the competitiveness of companies in both countries, through industrial research and technology within the field of energy.<sup>56</sup>

Within the scientific field, both Spain and the Republic of Korea have extensive experience and interest, with both

states wanting to increase strategic technology within the energy sector and across transport, biotechnology, and health. Through the partnership, the Spanish renewable energy firm Ocean Winds announced its plan to invest \$100 million to build a 1.2 GW offshore wind farm in Incheon. The renewable energy firm EDPR also intends to invest \$100 million in the construction of a 200MW solar power plant in Goheung.<sup>57</sup>

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### United States and China Joint Glasgow Declaration on Enhancing Climate Action in 2020s

At COP 26, the US and China issued a joint declaration committing to cooperate on a variety of climate change initiatives designed to encourage decarbonisation and electrification. Initiatives include developing regulatory frameworks and environmental standards to reduce GHG emissions.<sup>58</sup>

The declaration focuses on methane emissions and the impact they have on climate change, with both countries agreeing to reduce methane emissions in the 2020s. Both parties agreed to enhance their measurement of methane emissions, exchange information on policies and foster joint research into reduction strategies. They also agreed on the development of additional measures to enhance methane emission control. China agreed to develop a comprehensive National Action Plan on methane.



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## Examples of relevant national legislation

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### China

#### 14th Five-Year Plan (2021)

The 14th Five Year Plan establishes a pathway for China's development between 2021-2025. Commitments made related to climate and the environment include an emphasis on green modes of production; a binding target reduction rate of 13.5% energy consumption and 18% carbon dioxide emissions per unit of GDP; the introduction of 'reasonable controls' on coal power plants; and a target increase in forest coverage to 24.1% by 2025.

Aspirations to increase the share of non-fossil energy in primary energy consumption to 20% by 2025 (from 15.8% in 2020) are also raised, although the target is no longer binding as was the case in the 13th Five-Year Plan.

In addition to establishing new overall targets, the Plans highlight the following key implementation actions:

- i. Increase solar and wind power generation in China's renewable-abundant West Coast and distributed generation for local consumption along the East Coast;
- ii. Expand offshore wind;
- iii. Develop energy storage of big hydro systems;
- iv. Optimise renewable layout in different regions, and establish new technologies and business models; and
- v. Integrate renewable centres and micro grids in rural areas for poverty alleviation and rural revitalisation.<sup>59</sup>

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#### Renewable Energy Law (2005, amended 2009)

The Renewable Energy Law is a framework policy which lays out the general conditions for renewable energy to become a more important energy source in China. It covers all modern forms of renewable energy, i.e. wind, solar, water, biomass, geothermal, and ocean energy. A 2009 amendment was introduced to support the country's emerging renewable energy sector. This included establishing a taskforce to determine the proportion of renewable energy power generation in relation to the overall generating capacity during a planned period of time, and implementing measures for the purchase of the full amount of electricity generated

from renewable energies by electricity grid enterprises.<sup>60</sup>

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**“Although the scale of China’s success might be unique, the mechanisms behind reaching the Chinese renewable energy goals, which were outlined above, can be replicated in other countries.” - UNESCAP**

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## Hong Kong

### Climate Action Plan 2050 (2021)

Under the Climate Action Plan 2050 promulgated by the Hong Kong government in October 2021, the government aims to increase the use of renewable energy in electricity generation from 7.5% to 10% by 2035, and further increase it to 15% before 2050. The plan hopes to achieve these aims by facilitating local renewable energy projects and promoting regional cooperation and joint ventures. Some of the upcoming renewal energy projects announced by the Hong Kong government include:<sup>61</sup>

- Installation of large-scale floating solar energy generation

systems each with a generation capacity of about 5-10 MW at suitable locations in reservoirs;

- Launch of a pilot scheme on solar energy generation of about 1MW at restored landfills; and
- Adopting waste-to-energy facilities including the construction of a food waste treatment facility which uses advanced technologies to convert 300 tonnes of food waste per day into biogas and fertilisers and is expected to produce 24 million kWh of surplus electricity.

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## Ghana

### The Ghanaian Renewable Energy Act (2011)

The Ghanaian Renewable Energy Act 2011 establishes the legal basis for the creation of renewable energy support programmes. The Act enables the Ghanaian Energy Commission to:

- Facilitate collaboration between the government and the private sector for the promotion of renewable energy;
- Recommend exemptions from customs duties; and
- Recommend financial incentives for renewable energy, which has led to the implementation of a Feed-in Tariff (FIT).

The Feed-in Tariff is a payment made to households or businesses when they generate their own electricity by using methods that do not accelerate the depletion of natural resources; the amount payable is proportional to the amount of power generated.

The Ghanaian public utilities regulator is also mandated by the Act to set rates and charges for renewable energy resources and develop quotas for the purchase of renewable power by electricity distribution companies.



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## India

### National Green Hydrogen Mission (2023)

The National Green Hydrogen Mission sets out comprehensive plans for renewable hydrogen, in line with India's aspirations to become energy independent by 2047 and net-zero by 2070. The Mission seeks to transition the Indian energy sector from a 40% import market to one that

is better able to utilise domestically abundant renewable energy sources. Changes introduced by the Mission include a USD \$2.3 billion subsidy programme for renewable hydrogen in industry and transport sectors.

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## Kenya

### National Energy Policy (2018)

The 2018 National Energy Policy looks to ensure affordable, competitive, sustainable, and reliable supply of energy. The policy establishes a new inter-ministerial Renewable Energy Advisory Committee to support the management of water towers; develop multi-use projects for energy generation; license renewable energy resource areas; and establish criteria for the allocation of energy resource areas to investors. In addition, the policy commits to the creation of a National Electrification Strategy and promotes collaboration with private sector organisations for improved energy efficiency and conservation.

The National Energy Policy gave way to The Energy Act (2019) consolidating laws relating to energy in Kenya and establishing more robust governance structures for regulation of the energy sector. This includes provisions for the promotion of renewable energy, regulations around petroleum and coal activity and a new requirement on the Cabinet Secretary in the Ministry of Energy to review and publish an Integrated National Energy Plan.



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## The Bahamas

### Climate Change and Carbon Markets Initiatives Act (2022)

The Climate Change and Carbon Markets Initiatives Act entrenches Paris Agreement commitments in national legislation, providing greater scope for the government to incentivise reductions in greenhouse gas emissions

consistent with Nationally Determined Contributions. In addition, the Act seeks to establish a carbon market in The Bahamas.

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## Uganda

### Uganda Vision 2040

The Uganda Vision 2040 aims to develop the use of renewable energy resources in Uganda.<sup>62</sup> Since 2013, a FiT tariff has been operated for all wind, geothermal, landfill gas, biomass, and bagasse projects, regardless of capacity. The scheme has led to an increase in the financial support base for renewable

energy generation and encourages fast and sustainable development of renewable energy technologies in Uganda. Nonetheless, obstacles on aspects including information, economy, institution, society, and technology still hinder the development of renewable energy projects.<sup>63</sup>

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## United States of America

### Inflation Reduction Act (2022)

The Inflation Reduction Act allocates USD \$370 billion in subsidies, tax credits, loans, and grants to encourage investments within domestic energy production in the US for cleaner energy solutions.

As the largest federal legislation to address climate change, the Act builds on ambitions for the US to be net-zero by 2050 and to have achieved 100% carbon pollution-free electricity by 2035, improving access to affordable, reliable, and clean electricity through upgraded infrastructure.

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## France

### Framework Law on Energy 2005

The Framework defines the objectives and direction of France's energy policy as they relate to energy security, maintaining a competitive energy market, fighting climate change, managing demand, diversifying sources of supply, and developing new technology.<sup>64</sup> The Act states that tackling climate change is a priority of France's energy policy and contains objectives to increase the share of renewable

electricity in the national energy mix.

The Law on Energy also creates a High Council on Energy to manage the energy sector, which has the power to implement incentivisation mechanisms such as tax exemptions and programmes to encourage energy efficiency.

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## New Zealand

### Energy Strategy 2024

The New Zealand Energy Strategy aims to transition the country to a net-zero carbon economy by 2050. The strategy focuses on energy affordability, security, and supporting economic development,<sup>65</sup> and aims to achieve its goal by moving away from fossil fuels and increasing renewable energy and low-emission alternatives.

The Government's 2050 vision is to have a highly renewable, sustainable, and efficient energy system. To do this it has committed to net-zero and set a target that 50% of total energy consumption will come from renewable sources by 2035 (with an aspirational target of 100% renewables by 2030).<sup>66</sup>

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## Chile

### Inclusive Recovery Plan - Electricity Subsidies 2022

Through the Recovery Plan, the Government of Chile introduced a tariff to temporarily stabilise electricity prices for customers (subject to price regulation) to aid affordable energy. The mechanism froze electricity prices as of July 2022 for the rest of the year for households consuming less than

350 kWh and for SMEs. Increases for households registered between 350 kWh and 500 kWh were capped at 5%, and those greater than 500 kWh were capped at a maximum of 15%.<sup>67</sup>

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## Poland

### National Recovery Plan 2021 (KPO)

The recovery plan, informed by public consultation,<sup>68</sup> sets out the measures for rebuilding Poland's socio-economic resilience after the crisis caused by the COVID-19 Pandemic. The plan focuses on investing in clean energy, the reduction of energy intensity (the measure of inefficiency to the economy) and digital transformation, as well as driving competitiveness in the industry.<sup>69</sup>

The Plan is a comprehensive document, with a focus on

reconstruction and creation of socio-economic resilience. As part of the plan, the KPO are investing 28.6 billion Polish Zloty in green energy and the reduction of energy invention; 27.4 billion on green and intelligent mobility; and a further 13.7 billion on digital transformation. The aim is to produce multiple projects which advance the goals of the National Recovery Plan.

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## Cambodia

### National Policy, Strategy and Action Plan on Energy Efficiency 2013

The Action Plan outlines the current energy situation and energy related policies in Cambodia and assesses its national energy efficiency potential. Topics addressed include the use of biofuels, climate change, energy usage, government services, and development and funding for electricity.<sup>70</sup>

The plan aims to decrease the country's dependency

on imported fuels, protect the natural environment, and increase the competitiveness of the government. It enshrines the commitment of the Cambodian government to mitigate the effects of energy consumption on the environment and society, by implementing energy projects while simultaneously safeguarding economic efficiency and environmental sustainability.<sup>71</sup>

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**“Energy must be considered as a valuable resource for economic progress as well as for social development and should therefore be used in the most efficient way to improve industrial productivity and by consequence the competitiveness of Cambodian enterprises as well as the living and working conditions in particular of the rural poor by providing them adequate energy services at affordable prices.”**

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## Argentina

### Renewable Energy Law 2015

Law 27.191 on Renewable Energy updates Argentina's regime on electric energy, extending it from 2018 to 2025. It sets out various national renewable energy targets and defines minimum renewable requirements for large consumers.

The legislation set a target that by 2023 a minimum of 18% of total electricity consumed in the country should be derived from renewable sources (increasing by 1% each subsequent year).<sup>72</sup>

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## Insights for the Legal Profession

### a) Examples of Relevant Cases and Legal Proceedings

#### Canada

#### Renewable Energy; World Trade Organisation Dispute Settlement Body Dispute DS412 (2014)

In this dispute, Japan claimed that Canada's adoption of Feed-in Tariffs was in violation of its obligations under the General Agreement on Tariffs and Trade (GATT). The scheme, with the aim of promoting renewable energy in the province of Ontario, offered above-market prices for electricity supplied by renewable sources but only paid premiums to companies who bought most of their equipment locally. The European Union, as well as the United States, later requested to join the proceedings.

The Appellate Body report upheld the Panel's ruling in favour of the EU and Japan on the grounds that Ontario's programme discriminated against foreign firms.

The dispute raises issues that may potentially arise when the promotion of renewable energy conflicts with international trade rules.

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**“Ontario is not unique in taking aggressive measures to deploy renewable energy. Governments around the world have implemented various incentive-based mechanisms to accelerate renewable energy deployment.” - World Trade Review**

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#### Democratic Republic of Congo

#### Free Legal Assistance Group and Others v. Zaïre, Comm. No.25/89, 47/90, 56/91, 100/93

Article 16 of the African Charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health, and that State Parties should take the necessary measures to protect the health of their people. In this 1995 case, the African Commission found that the failure of the Government of Zaïre (now Democratic Republic of Congo) to provide 'basic services such as safe drinking water and electricity' constituted a violation of Article 16.<sup>73</sup>



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## South Africa

### Joseph v. the City of Johannesburg 2010 (4) SA 55 (CC)

This case concerns tenants of a block of flats in Johannesburg who paid for their electricity directly to the landlord of the property. Despite regular payments being made, the landlord allowed substantial arrears to run up on the account, and the municipal electricity provider, City Power, disconnected the property with notice given to the landlord but not to the tenants. The tenants claimed that the act of disconnection without notice violated their constitutional right to access to adequate housing (implying a right to electricity) and human dignity (under Sections 26 and 10 of the South African

Constitution, respectively).

The Constitutional Court found that receiving electricity constituted a human right and thus that provision to electricity was an important basic municipal service. Accordingly, the applicants were entitled to procedural fairness in the exercise of the right, and the Court found that this included adequate notice of at least 14 days before disconnection.

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## Spain

### International Arbitration Against Spain

In the 2000s, Spain provided for a Feed-in Tariff regime for the photovoltaic sector enabling investors to recover costs incurred installing solar power infrastructure. However, the economic crisis of 2008 forced Spain to cut down on its subsidies, severely impacting renewable energy investors through a series of laws and decrees.

The decision sparked abundant litigation in the Spanish courts and international arbitration fora by large international investors. Today, there are still dozens of pending international arbitration cases against Spain.

A first award was rendered in January 2016, Charanne B.V. & Construction Investments S.A.R.L v The Kingdom of Spain, under Stockholm Chamber of Commerce rules. Here it was considered that regulatory measures modifying the Feed-in Tariff regime would not amount to an indirect expropriation

and thereby had not violated investors' legitimate expectations. A further judgment, in June 2016, by the Spanish Constitutional Court ruled that the 2014 decree that cut subsidies did not violate the Spanish Constitution or EU legislation.

However, since the award given in Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain (2017), Spain has lost a number of arbitration awards with compensation payable to the investors involved.

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## USA

### Rikki Held, et al. v. State of Montana, et al. (2023)

In March 2020, 16 youths filed a complaint for Declaratory and Injunctive Relief against the state of Montana, its Governor, and multiple Montana Environmental Departments, challenging the constitutionality of the State's fossil-fuel based energy system. The claimants (all aged between 5 and 22) alleged that the system caused and contributes to climate change in violation of their constitutional rights to a "clean and healthful environment".

The complaint challenged the constitutionality of fossil fuel-based provisions of Montana's State Energy Policy Act (which forbids the State from considering the impacts of GHG emissions or climate change when authorising new energy projects) and the aggregate acts the State has taken to

implement and perpetuate a fossil fuel-based energy system.

On 14 August 2023, the Court ruled in favour of the plaintiffs and found that they have experienced "past and ongoing injuries resulting from the State's failure to consider GHG and climate change, including injuries to their physical and mental health, homes and property, recreational, spiritual and aesthetic interests, tribal and cultural traditions, economic security and happiness".

The decision is the first of its kind. It is the first youth-led constitutional climate change case to go to court and has been hailed as a landmark decision which is likely to be sent to the Supreme Court of Montana.

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## Austria

### Austria v European Commission (2022)

In this case, Austria brought action against the European Commission petitioning the General Court to annul a delegated Regulation that qualifies investments in fossil fuels and nuclear energy as "environmentally sustainable". Under the Regulation, investments are considered environmentally sustainable if they involve one or several economic activities that qualify as such under the criteria set out.

Austria argued that the Regulation violates primary and secondary EU law, relying on 16 pleas in law relating to nuclear energy and fossil fuels. Austria additionally claimed a breach of procedural rules, due to the Commission not

complying with the principles and procedural rules enshrined within the Regulation and asserted that the commission was not competent to enact the Regulation in the first place.

Austria asserted that the Regulation's potential to aggravate climate change violates the "do no significant harm-principle"<sup>74</sup> in relation to nuclear energy and fossil fuels. The case is currently pending.



## France

### Eolise v. France (2023)

In 2022, Eolise, an energy consultancy firm, submitted to the French government ten legislative and regulatory proposals concerning renewable energies, after assessing that France was not going to meet its climate change objectives. The government refused to consider the proposal and in 2023, Eolise brought an action against the French government to the Council of State (France's highest administrative court).

Eolise argued that the “renewable energy acceleration law” doesn't address the ‘indispensable’ objectives the government created to accelerate the transition to renewable energies, as well as asking the court to annul the government's refusal to consider its ten proposals. Eolise asked the Council to order the French state to take all measures in favour of the development of renewable energies, with a financial penalty

for every six months of delay. The case is currently pending.



## Mexico

### Greenpeace Mexico v. Ministry of Energy and Others (2020)

In 2020, Greenpeace Mexico filed a lawsuit against the Mexican government contesting the constitutionality of 2 electricity sector policies that arguably limit renewables. Greenpeace Mexico asked the administrative court to declare the policies unconstitutional for violating the rights to a healthy environment and sustainable development, and for obstructing the country's compliance with its international commitments to tackle climate change. The two policies challenged were the National Centre of Energy Control Agreement and the Ministry of Energy Policy that seek to increase the “reliability, security, continuity and quality in the National Electrical System”.

The district court issued a preliminary injunction to suspend the effects of the contested policies and issued a judgment that the policies were unlawfully modifying the rules of the energy market and violating the people of Mexico's right to a healthy environment.

The government appealed. However, the court decided that contested policies were unconstitutional and violate the human right to a healthy environment. It also held that the policies breach the UNFCCC, the Kyoto Protocol and the Paris Agreement by displacing renewable energies and preventing Mexico from meeting GHG emission reduction targets.

## **Vince et al. v. Secretary of State for Business, Energy and Industrial Strategy et al. (2020)**

Three plaintiffs sought judicial review of 6 of the British government's 2011 national policy statements related to energy infrastructure, on the grounds that these statements must be re-evaluated in light of new British and global climate commitments.

The claimants argued that under the Planning Act 2008, the policy statements should be considered in light of the following provisions: an amendment to the Climate Change Act 2008 that requires the UK to achieve carbon neutrality by 2050; the Paris Agreement; the IPCC special report on 1.5 degrees warning; the UK parliament's declaration of a climate emergency; and the UK's exit of the EU.

The claimants believe that these events constitute a significant change in circumstances, requiring a review of the statements and are seeking a declaration to that effect, or alternatively, would like a declaration that the policy statements are unlawful. This case is currently pending.



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## b) Legal context and challenges

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In recent years many scholars have advocated for the creation of a legal right to access energy services, recognising energy as a basic commodity essential to human interests at an individual level and not just nationwide.<sup>75</sup> To date, however, the right to access energy services does not enjoy the international consensus that, for example, the right to food or water have. While international recognition would not, itself, ensure universal access to electricity and clean fuels, it has been argued that rights-based approaches could allow for stronger enforcement mechanisms and expectations upon States to fulfil their responsibilities and provide at least basic energy services to citizens.

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**“The conclusion that access to energy services is integral to overcoming poverty is nowadays widely accepted in the international community. However, to date this recognition has not assumed a legal dimension at the international level.” - Professor A Bradbrook, University of Adelaide**

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How, and if, this should be achieved through the development of new laws, litigation and/or legal precedence is still undecided. For example, should energy be considered a universal human right or a derived human right, or does it simply require strengthened contractual enforcement to secure access? In any case, commitments made by UN member states to secure affordable and clean energy in

support of wider undertakings to net-zero has already seen swathes of new laws, policies and regulations shaping the sector.

Indeed SDG 7 still requires long-term strategic planning, including investments and infrastructure building, in an area where path dependency is strong. Financial requirements to implement SDG 7 shall necessitate investment from both the public and private sectors. Considering financial and technological challenges in developing countries will also warrant cross-border partnerships to drive affordable and clean energy for all. New laws and policies since COP 26 have opened up opportunities for public finance incentives to support in private research, development and digitalisation of clean energy solutions, and paved the way for international cooperation between nation states. However, navigating public-private partnerships and cross-border initiatives in a sector as sensitive as energy will require robust and transparent agreements, effective corporate governance and an understanding of the context, including the relevant laws and policies at play.

For example, in energy developing countries it is unlikely current technology in sustainable and renewable energy will be able to compete with existing energy sources without State subsidies or a guaranteed price (feed-in tariff). In this regard, frameworks that reward the early installation of renewables and protection of their income stream will be necessary. A legal challenge here will be to create a fair market that ensures the investor has security of return on investment, whilst also ensuring that the consumer enjoys energy security and affordability.

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## c) So, what can lawyers do?

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### Learn and Educate

Lawyers can enhance their understanding of the issues related to universal access to energy services along with the policy and programmatic efforts to promote it. This includes the developments taking place at local, national, regional and international levels. Important sources include international development agencies such as the UN Development Programme's Sustainable Energy Hub<sup>76</sup>, intergovernmental organisations such as the International Energy Agency<sup>77</sup> and multistakeholder initiatives such as Energy Compacts.<sup>78</sup>

The adoption of the UN Sustainable Development Agenda provides impetus for law firms, corporate legal departments, and other law-related organisations to examine and re-align their own policies and practices. In the case of SDG 7, lawyers

specialising in the energy, environment and climate change sectors can improve their client advisory services with a stronger understanding of energy-related issues, working with clients to maximise on the opportunities available in the clean energy space, reducing negative impact and advising on regulatory and policy landscapes as they continue to rapidly evolve. Specifically, lawyers will need to be thinking strategically about the long-term benefits and risks for a range of clients regarding decarbonisation and the flow on effects this might have for a wide range of clients including upstream suppliers, distributors, and transmitters to energy consumers.

By developing a good understanding of the role of GHG





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emissions as a driver of climate change and the mechanisms for reducing these gases, lawyers (including those not specialising in energy) can broaden their understanding of energy-related policies and legislation. Emissions generated through the consumption of fossil fuels for energy, are a major contributor to atmospheric concentration of GHG. However, a significant amount of the global population relies on fossil fuels for powering their homes, cooking and other day to day tasks. A base knowledge on energy and related issues will allow lawyers to design innovative solutions for their clients.

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**Commitment to achieving SDG 7 shouldn't be the responsibility of managing and senior partners alone. All employees of law firms should be empowered to contribute to a more sustainable way of working.**

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Law firms with expertise in energy projects, disputes and regulation could organise seminars and workshops on international energy practices, norms and obligations, taking into account key sectors which are likely to be impacted by changes to energy policy. This would raise awareness of the existing body of law relevant to renewable and affordable energy.

At a firm level, managing and senior partners should review and familiarise themselves with the SDG 7 targets and identify potential negative or unintended impacts that their organisation could have on the target and ways to mitigate these risks. Comprehensive sustainability policies should be

in place to give guidance, and strong reporting mechanisms created to ensure that data is utilised to measure progress and impact. Choices regarding decarbonisation and the use of clean energy should be taken at a senior level and extensive training should be implemented at all levels to encourage awareness.

Commitment to achieving SDG 7 shouldn't be the responsibility of managing and senior partners alone. All employees of law firms should be empowered to contribute to a more sustainable way of working. On a practical level this could involve reducing in person meetings and encouraging remote working to reduce energy demand, to finding greener ways to travel to work.

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## Integrate

The adoption of the 2030 UN Sustainability Development Agenda is a good reason for law firms, corporate legal departments and other law-related organisations to examine and realign their own policies and practices. Law firms are invited to analyse the SDG 7 targets, to identify opportunities of positive contributions, but also potential negative or unintended impacts of their activities.

Lawyers advising clients on project finance or project-related loans necessary for the construction of energy infrastructures should take into consideration existing guidelines on environmental and social risks. In particular, the Equator Principles, currently adopted by 138 financial institutions, aim at providing a minimum standard of due diligence regarding, inter alia, indigenous peoples' rights, labour rights, and consultation with affected communities<sup>29</sup> – once again emphasising the tensions that exist within SDG 7's ambitions

and the need for specialist and context-specific advice to support.

Even for those legal professionals who are not directly working with the energy sector, the multitude of businesses transitioning to net zero, the societal importance attributed to 'green' solutions, and rapidly developing new energy markets, has meant that there is increasingly a role to play in supporting ESG portfolios, in streamlining contracts to enhance efficiency and in advising on investment decisions.

Working with central and local governments, clients, and local communities (likely to be impacted), lawyers can help to facilitate the provision of renewable infrastructure through seeking planning and building approvals, coordinating complex funding arrangements, and facilitating the building and operation of renewable infrastructure.



## Act

Given the size of the energy transition still needed, SDG 7 presents a compelling opportunity for law firms, corporate legal departments and other lawyers to expand their pro bono legal activities domestically and abroad. For example:

- The legal industry can assist developing countries' governments or legislatures in creating a legal framework that encourages the expansion of renewable clean energies. They may support ministries, parliamentarians, regulators and civil society organisations to contribute to positive change in the energy sector.
- When large investments in infrastructure, such as hydroelectric dams, are envisioned, lawyers can advise NGOs or civil society organisations to make sure the interests and rights of local communities are taken into account. In addition, lawyers can provide strategic advice to clients on the short-term and long-term benefits of investments in an increasingly decarbonising world. For example, the risks of stranded assets, caps on profits, and litigation in the case of investments made in traditional fossil-fuels.
- Law firms and lawyers can help the design of public-private partnerships on clean energy and energy transitions, ensuring a fair risk allocation and a proper balance between the interests of both parties.
- From a human rights perspective, the legal profession can support the emerging right to access energy services, helping to build recognition of its importance, either through academic research or litigation.

The SDGs provide a call for law firms to deliver their pro

bono activities in partnership with the corporate sector, civil society, NGOs, governments and international organisations. Working in partnership to deliver pro bono legal support is crucial to ensure that the intervention is adapted to the local context, and responsive to actual community needs and understanding. Pro bono development is therefore at the forefront of action which law firms can incorporate to increase sustainability on a drastic level.





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