

Legal challenges at the end of the fossil fuel era: Shaping energy futures through legal intervention

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PANEL 2. Legal challenges of a clean and just energy transition

Theorizing a human rights-based approach to energy transition and its justiciability in international and domestic jurisprudence

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The international community has acknowledged the need to promote energy transition, recognizing that decarbonizing our energy system is crucial to pursue the goals set by the Paris Agreement. The 2021 United Nations Climate Change Conference of the Parties and the European Green Deal are significant examples. Nevertheless, some criticism has been expressed in relation to the effectiveness of the strategies defined at the international level. Moreover, the 2021 Report “The production gap” has stressed that “Governments’ planned fossil fuel production remains dangerously out of sync with Paris Agreement limits”. However, climate change litigation has been achieving interesting results. Indeed, domestic courts have used human rights (as the right to life and the right to a healthy environment) as a standard for assessing the adequacy of national frameworks, often emphasizing sustainable development, and have promoted environmental justice and the protection of future generations. Such decisions as those adopted in the cases of Urgenda, Neubauer, Climate Case Ireland, Juliana, Shrestha, Leghari are paradigmatic examples. Furthermore, climate change litigation is growing before international human rights bodies, shining a spotlight on such fundamental issues as intergenerational equity and the extraterritoriality of States’ obligations in the field of climate change and emissions reduction. The cases of Portuguese Youth, Greenpeace Nordic and Others - both still pending before the European Court of Human Rights – and Sacchi et Al. v. Argentina et Al. are paradigmatic examples. The purpose of the present study is to explore the most significant domestic and international case law, providing a critical analysis of its strengths and weaknesses. From this perspective, this study assesses the current and the potential role of climate change litigation to pave the way to the justiciability of energy transition, and theorizes a human rights-based approach to energy transition, carbon neutrality and environmental justice, from a multi-level viewpoint.