

IS ENERGY JUSTICE AN AMBITIOUS PARADIGM FOR NIGERIA'S ENERGY SYSTEM? *

Abstract

Energy justice is an emerging justice paradigm that ought to weave through every decision-making and research framework for energy systems. This article in drawing an overview of energy justice, its core tenets, and complimentary principles, relates it to the Nigerian energy sector whilst revealing some of the burdens of injustices replete in the energy life cycle which begins from policymaking and legislation, production to consumption. This article whilst advocating for a more efficiently governed energy sector and appropriate remittances of equity and fairness, respect for human rights of consumers and elimination of energy poverty, calls for a more resilient intellectual campaign and research into the concept. This article, therefore, is of the position that energy justice is practicable, invaluable, and achievable and would be a contributory remedial factor for the distasteful state of Nigeria's energy sector. A multidisciplinary approach was adopted in this work owing to the versatility of energy alongside the doctrinal research methodology.

Keywords: Justice, Energy Justice, Energy System, Energy Poverty.

1. Introduction

In the Niger-Delta region of Nigeria, half a century of oil spills has left a 27,000 square-mile region of swamps, creeks, and mangrove forests has left her as one of the most polluted places on earth. Thick oil covers the ground in Ogoni where \$1 billion is an estimated cost for a clean-up in that area only. Dark soot from illegal micro refineries has found its way into the atmosphere, polluting the air, and causing inconveniencing stains. The region's marine ecology is heavily polluted thereby causing the rapidly reducing presence of aquatic species. Land and farms are left in ruins and then agitations and uprisings are evident, threatening the socio-economic and political fabrics of the region and the country at large. While both the Nigerian government and Shell made commitments to clean up the area but unfortunately, there is still no transparency and no accountability for the failed efforts, neither by the oil companies nor by the Nigerian government. To this end, there is an aggravated worry that as the world is on the path of decarbonization which goes to phasing out fossil fuel as a major source of energy and consequently affecting Nigeria's oil revenue, chances are that government will abandon them to their fate.¹

Nigeria has one of the highest energy poverty rates in the world with chronic power cuts. It has been reported that one in three people in Nigeria do not have access to power supply and the typical Nigerian firm experiences more than 32 power cuts leading to heavy reliance on backup generators across the country². The sector is in a mire of corruption, taxation issues, environmental damage, unfair pricing and galloping rise in tariffs, undocumented GHG emissions, finance issues, market competition distortions, influence of lobbyists and the powerful influence of local and multinational companies. These problems lump into the inequality that is replete in the energy sector and further supported by the fact that the energy sector is responsible for most CO₂ emissions³. Research also demonstrates that there is a link between the increase of CO₂ emissions and an increased level of inequality and other energy related injustices in the society⁴.

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¹D Mbachu, 'The Toxic Legacy of 60 years of Abundant Oil' (1 July 2020) <https://www.bloomberg.com/features/2020-niger-delta-oil-pollution/> Accessed on 16 January 2021.

²D Dunne, 'The Carbon Brief Profile: Nigeria', (21 August 2020) <https://www.carbonbrief.org/the-carbon-brief-profile-nigeria> Accessed on 16 January 2021.

³B Ekwurzel and Others, 'The rise in global atmospheric CO₂ surface temperature and sea levels from emissions traced to major carbon producers' [2017] *Clim Change*, Vol.144; 579-590

⁴RJ Heffron and D McCauley and GZ de Rubens, 'Balancing the energy trilemma through the energy justice metric' [2018] *Applied Energy*, Vol. 229; 1192.

Society is changing due to the effects of the energy sector and, as it does, there is a need to ensure that justice becomes part of decision-making in the sector⁵ propelling the emergence of the energy justice paradigm.

2. The Concept of Energy Justice

According to Rawls, the primary subject of justice is the basic structure of society, the way that major institutions such as the political system, the economic system, and the family interact to shape people's life prospects⁶. The principles of justice are intended to regulate the basic structure⁷. The basic structure has described to include, the political constitution, the legal system, the economy, the family, and so on⁸. Justice is elastic enough to accommodate all changing circumstances of life and phases of societal development. This it does by ensuring that there is a balance to contending interests, fairness in the distribution of societal resources, inclusiveness of all concerned in the processes leading to decision making, interpretation, and implementation, and so on. This therefore alludes to the ubiquity or even Rawls' primacy of justice⁹ in all spheres of life and society.

Energy justice has recently emerged as an agenda and a justice paradigm, which seeks to apply justice principles to energy policy¹⁰, energy production and systems¹¹, energy consumption¹², energy activism¹³, energy security, the energy trilemma, political economy of energy and climate change¹⁴.

In very simple terms, it attempts to apply principles and concepts from social justice to the global energy system. In its broadest sense, the concept of energy justice implies a global energy system that fairly disseminates both the benefits and costs of energy services, and one that has representative and impartial energy decision-making or how the hazards, costs and externalities of the energy system are disseminated throughout society; benefits, or how access to modern energy systems and services is distributed throughout society; procedures or ensuring that energy decision-making respects due process and representation; and recognition, that the marginalized or vulnerable have special consideration¹⁵. It is also posited that energy justice can be a conceptual tool that better integrates distributive, procedural, cosmopolitan, and recognition justice concerns (This justice concerns will be discussed subsequently). It can be an analytical tool for energy researchers striving to understand how values get built or marginalization induced into energy systems or to resolve common energy problems. It can lastly offer a decision-making tool that can assist energy planners and consumers in making more informed energy choices¹⁶. Energy justice is a policy tool which captures the injustices across the energy life cycle¹⁷. It creates a societal consciousness and responsibility that energy needs to be included within

⁵ *ibid*

⁶ R J Arneson, *Justice After Rawls* (The Oxford Handbook of Political Science, 2013) 114
<https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199604456.001.0001/oxfordhb-9780199604456-e-005?print=pdf> Accessed on 01 January 2021.

⁷ *ibid*

⁸ <https://plato.stanford.edu/entries/rawls/> Accessed on 01 January 2021.

⁹ J Rawls, *A Theory of Justice: Revised Edition* (The Belknap Press of Harvard University Press Cambridge, Massachusetts, 1999) 4.

¹⁰ D McCauley and Others, 'Advancing energy justice: the triumvirate of tenets' [2013] (32) (3) *Int. Energy Law Rev*; 107–110

¹¹ R J Heffron and D McCauley, 'Achieving sustainable supply chains through energy justice' [2014] (123) *Appl. Energy*; 435–437.

¹² S Hall, 'Energy justice and ethical consumption' [2013] (18) (4) *Local Environ*; 422–437; K Jenkins and Others, 'Energy justice, a whole systems approach' [2014] (2) (2) *Queen's Political Rev*; 74–87.

¹³ S Fuller and D McCauley, 'Framing energy justice: perspectives from activism and advocacy' [2016] (11) *Energy Res. Soc. Sci*; 1–8.

¹⁴ K Jenkins and Others, 'Energy justice: A conceptual review' [2016] *Energy Research & Social Science*, Vol.11; 174–182.

¹⁵ K E H Jenkins and Others (Eds), *The Political Economy of Energy Justice in Canada, the UK and Australia: A Nuclear Energy Perspective* (The Palgrave Handbook of the International Political Economy of Energy, Palgrave, 2016)

¹⁶ BK Sovacool, and MH Dworkin, 'Energy Justice: Conceptual Insights and Practical Applications' [2015] *Appl. Energy* Vol. 142; 435–444

¹⁷ R J Heffron and D McCauley and G Zarazua de Rubens, 'Balancing the Energy Trilemma through the Energy Justice Metric' [2018] *Applied Energy* Vol.229; 1191

the list of things we prize; how we distribute the benefits and burdens of energy systems is pre-eminently a concern for any society that aspires to be fair¹⁸.

3. Core Tenets of Energy Justice

In understanding and underscoring the significance of justice in the energy system from production to consumption, the core tenets of energy justice – distributional justice, procedural justice, and recognition justice - comes to fore and are discussed as follows:

Distributional Justice

The first tenet of energy justice is distributional justice. Energy justice is an inherently spatial concept that includes both the physically unequal allocation of environmental benefits and ills and the uneven distribution of their associated responsibilities, for example exposure to risk¹⁹. In this context, energy justice can raise questions about the desirability of technologies and how they become entangled with issues that relate to specific localities²⁰, necessitating the call for the distribution of benefits and burdens or ills across society regardless of income, race, etc. UK research demonstrates that it is often the poorer and less powerful social groups that are disproportionately impacted²¹. For instance, in the laying of pipelines for transportation of oil and gas (which is done mostly through rural communities with farmlands and fishing waters) the question that comes to mind for consideration should be the compensatory plan for victims of the ills of a pipeline explosion. Another question that arises when considered from the angle of electricity might be, in what ways will the Enugu State communities with coal deposits be treated, if coal power plants are sited, given severe health challenges²² it is likely to cause to occupants of such communities.

Procedural Justice

Procedural Justice is about the all-inclusivity engagement of all stakeholders in a non-discriminatory manner²³. It emphasizes that all classes of people in the society should be able to participate in decision making, and that their decisions should be given the utmost consideration it deserves. Hence, a participatory process as this gives appreciable space for participation, impartiality and transparency by government and industry²⁴ as well as felicitous, beneficent, and systematic engagement mechanisms²⁵. With the foregoing in mind, concerted attention should be paid more towards situating the range that a procedural justice is observable in energy policy and implementation. For example, it remains hazy as to the extent that the Nigerian government presents an all-inclusive participatory platform for the formulation or promulgation of energy policies to her citizens, whether in oil and gas or electricity²⁶ especially if assessed from the point of the tiered legislative system she operates²⁷. Nigerians have been subjected to sudden imposition of tariffs that most times shock the system into protests that would eventually present the Nigerian Labour Unions before the federal government for negotiations, of

¹⁸ BK Sovacool, 'What are we doing here? Analysing 15 years of energy scholarship and proposing a social science research agenda'[2014] *Energy Res. Soc. Sci.* Vol. 1; 1-29.

¹⁹D McCauley and Others 'Advancing energy justice: the triumvirate of tenets' [2013] I.E.L.R; 2
https://www.researchgate.net/publication/259459020_Advancing_Energy_Justice_The_triumvirate_of_tenets ; G Walker, 'Beyond distribution and proximity: Exploring the multiple spatialities of Environmental Justice' [2009] (41) (4) *Antipode*; 614-636

²⁰ S. Owens and L. Drifill, 'How to Change Attitudes and Behaviours in the Context of Energy' [2008] *Energy Policy*, 36; 4414

²¹ H Todd and C Zografos, 'Justice for the Environment: Developing a Set of Indicators of Environmental Justice for Scotland'[2005] (14)(4) *Environmental Values*; 483-501

²² Like respiratory disease, lung cancer, cardiovascular disease, etc. <https://surgery.duke.edu/news/despite-studies-health-effects-coal-burning-power-plants-remain-unknown> Accessed on 23 January 2021.

²³ G Walker *ibid*, at No. 20

²⁴ A Davies, 'Environmental justice as subtext or omission : Examining discourses of anti-incineration campaigning in Ireland' [2006] *Geoforum*, 37; 708-724.

²⁵ Todd *ibid* at No.22

²⁶ 'NERC begins consultation on new electricity tariff' (24 February 2020) <https://energycentral.com/news/nerc-begins-consultation-new-electricity-tariff> Accessed on 20 January, 2021.

²⁷ 1999 Constitution of the Federal Republic of Nigeria, Section 4 and Second Schedule Part I, items 39 and 41 and Second Schedule, Part II, items 13 and 14.

course as an after-thought²⁸. Such negotiations and discussions ought to take place before the arrival of decisions and should encompass a wide range of people and stakeholders²⁹. Again, the agitations and unrest in the oil-producing areas of Nigeria has been largely caused by exclusion and insufficient remittances of benefits to oil and gas producing communities and of course derivatives paid to state governments or other federal government development agencies³⁰ are frittered away by state and political elites³¹.

Recognition Justice

The third tenet of energy justice is recognition justice. Recognition justice requires acknowledgement of and respect for 'the various needs, rights and experiences'³² of those affected by energy decisions (for example, the greater amounts of energy required to satisfy the basic needs of particular social groups, areas such as the industrial areas, rural areas which ordinarily accommodates a huge amount of elderly people in Nigeria), and for attention to be paid to 'which parts of society are privileged or ignored'³³ (for example, the tendency to dismiss those opposed to biomass). Further, recognition justice (lack of recognition or mis-recognition) is manifested in two ways: 'through social structures and institutions that ignore, misrepresent or reinforce inequalities, and through social processes that limit possibilities for expression and ostracise minorities'³⁴. In other words, lack of recognition of the needs or interests of specific groups tends to lead to them being under-represented in debates and policy decisions, and hence to the perpetuation or exacerbation of the inequalities they face³⁵. This still begs the question, whether the Niger-Deltans are always well represented in matters of policymaking and legislation affecting energy in the Niger-Delta region or even Nigerians on the common issues of electricity supply and tariffs? The answer tilts more towards the negative. Recognition justice is more than tolerance, and states that individuals must be fairly represented, that they must be free from physical threats and that they must be offered complete and equal political rights³⁶. A lack of recognition can therefore occur as various forms of cultural and political domination, insults, degradation and devaluation. It may manifest itself not only as a failure to recognise, but also as misrecognising—a distortion of people's views that may appear demeaning or contemptible³⁷. Thus, it includes calls to recognise the divergent perspectives rooted in social, cultural, ethnic, racial and gender differences³⁸.

In addition to the above three tenets, a fourth tenet has been advanced by Heffron and McCauley³⁹ known as "Restorative Justice". Granted that restorative justice is primarily associated with criminal law, it has become useful at gauging the degree of harm or injustice inflicted on a victim, person or group of persons and the commensurate remedial response or repair exacted rather than solely

²⁸ 'Nigeria: Confusion about the latest electricity tariffs increase' (8 January 2021) <https://www.esi-africa.com/industry-sectors/transmission-and-distribution/nigeria-confusion-about-the-latest-electricity-tariffs-increase/> Accessed on 20 January 2021.

³⁰ Like the Niger-Delta Development Commission, the Ministry on Niger-Delta Affairs. E Reed, 'Nigerian militants threaten shipping, pipelines' (6 January 2021) <https://www.energyvoice.com/oilandgas/africa/289576/niger-delta-militants-nddc/> Accessed on 23 January 2021. A Reuben, 'NDDC and other Stories of Dysfunction and Impunity' (21 July 2020) <https://www.proshareng.com/news/Politics/NDDC-and-Other-Stories-of-Dysfunction-and-Impunity/52319> Accessed on 23 January 2021.

³¹ U Ukoha, 'Governance regimes of oil in Nigeria: Issues and challenges' (CRPD Working Paper No.69, 2018) 9. <https://soc.kuleuven.be/crpd/files/working-papers/crpd-no-69-ukiwo-full.pdf> Accessed on 20 January 2021.

³² R Gillard R, and Others 'Advancing an energy justice perspective of fuel poverty: Household Vulnerability and Domestic Retrofit policy in the UK' [2017] *Energy Research and Social Science*, 29; 53- 54

³³ D. McCauley, *Energy Justice: Rebalancing the Trilemma of Security, Poverty and Climate Change* (Palgrave Macmillan, 2018) 18

³⁴ R Gillard, et al, *ibid* at No.30 at 55

³⁵ *ibid* at 54

³⁶ D Schlosberg, 'The Justice of Environmental Justice: Reconciling Equity, Recognition, and Participation in a Political Movement' in A Light and A De-Shalit, *Moral and Political Reasoning in Environmental Practice* (London: MIT Press, 2003); 125–156.

³⁷ *ibid*

³⁸ *Ibid*; N Fraser, 'Social justice in the age of identity politics' In G Henderson, *Geographical Thought: A Praxis Perspective* (London: Taylor and Francis, 1999); 56–89.

³⁹ RJ Heffron and D McCauley, 'The concept of energy justice across the disciplines' [2017] *Energy Policy* Vol.105; 658-667.

emphasizing on punishing the offender. Further, restorative justice can assist to pinpoint where prevention needs to occur. Restorative justice makes society think about how to respond to injustices (harms) that have occurred and in defining what injustices society should give attention to in the first place⁴⁰. The application of restorative justice when applying energy justice decision-making compels decision-makers to engage with justice concerns and consider the full range of issues, as any injustice caused by an energy activity would have to be rectified. Hence, if restorative justice were applied to the energy sector it would ensure that decision-making was made considering the potential harm of that decision and consequently the true cost of that decision⁴¹.

4. Principles for Applicability of Energy Justice in Energy Decisions

There are Eight (8) core applied principles of energy justice, namely, availability, affordability due process, transparency and accountability, sustainability, intra-generational equity, inter-generational equity and responsibility. They are discussed as follows:

Availability

Availability is the most basic principle that involves the ability of an economy, market, or system to guarantee sufficient energy resources when needed. It therefore transcends concerns related to security of supply, sufficiency, and reliability, and it encompasses a range of different dimensions. It includes the physical resource endowment of a particular country or region, as well as the technological solutions that region utilizes to produce, transport, conserve, store, or distribute energy. It includes the amount of investment needed to keep the system functioning, essentially having a robust and diversified energy value chain, as well as promoting infrastructure that can withstand accidental and intentional disruption.⁴²

Affordability

A second core principle is the basic affordability of energy services, a term that means not just lower prices so that people can afford to run their homes with basic appliances like the cooling systems being that Nigeria is relatively a hot region and well-lit dwelling spaces, but also energy bills that do not overly burden consumers. Affordability thus encompasses stable prices (minimal volatility) as well as equitable prices that do not require lower-income households to expend disproportionately larger shares of their income on essential services. Implicit with this criterion is the idea that highly available energy fuels and services is meaningless unless households and other consumers can afford to access and utilize them⁴³.

Due Process

Due process seeks to ensure that the potential for stakeholder participation in the energy policymaking process at least roughly matches the importance (in aggregate and to each person affected) of the matter at stake and the irrevocability of any decisions that may be reached. It also necessitates effective recourse through judicial and administrative remedies and forms of redress. More specifically, the decision-making principle suggests that communities must be involved in deciding about projects that will affect them; they must be given fair and informed consent; environmental and social impact assessments must involve genuine community consultation; and neutral arbitration should be available to handle grievances⁴⁴.

Good Governance

This principle suggests that, to minimize corruption and improve accountability, all people should have access to high-quality information about energy and the environment. Information, accountability, and transparency have become a central element of promoting “good governance” throughout a variety of

⁴⁰ D Sullivan and L Tiftt, *Handbook of Restorative Justice: A Global Perspective* (Routledge, Oxford, UK, 2006)

⁴¹ RJ Heffron, *ibid* at No. 37.

⁴² J Elkind, ‘Energy security: call for a broader agenda’ In: C Pascual, J Elkind, (eds), *Energy security: economics, politics, strategies, and implications* (Washington, DC: Brookings Institution Press; 2010)119–48.

⁴³ BK Sovacool, MH Dworkin, ‘Energy Justice: conceptual insights and practical applications’[2015] *Applied Energy* Vol. 142; 439.

⁴⁴ *ibid*

sectors, a term that centers on democratic and transparent decision-making processes and financial accounting, as well as effective measures to reduce corruption and publish information about energy revenues and policies⁴⁵.

Sustainability

Sustainability refers to what the Brundtland Commission termed “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”⁴⁶. In an energy context it refers to the duty of states to ensure the sustainable use of natural resources. It means that countries have sovereign rights over their natural resources, that they have a duty not to deplete them too rapidly and that they do not cause undue damage to their environment or that of other states beyond their jurisdiction. Ecologist Paul Hawken eloquently summed up sustainability when he wrote that it involves achieving a state where “the demands placed upon the environment by people and commerce can be met without reducing the capacity of the environment to provide for future generations. It can also be expressed in the simple terms of an economic golden rule for the restorative economy: leave the world better than you found it, take no more than you need, try not to harm life or the environment, make amends if you do”⁴⁷.

Intragenerational Equity

Intragenerational equity entails that present people have a right to access energy services fairly—finds its roots in modern theories of distributive justice. Philosophers call it “distributive” justice because it deals intently with three aspects of distribution: 1. What goods, such as wealth, power, respect, food, or clothing, are to be distributed? 2. Between what entities are they to be distributed? 3. What is the proper mode of distribution—based on need, based on merit, based on property rights, or something else? Distributive justice argues that, if physical security is a basic right, then so are the conditions that create it, such as employment, food, shelter, and also unpolluted air, water, and other environmental goods. People are, therefore, entitled to a certain set of minimal energy services which enable them to enjoy a basic minimum of wellbeing⁴⁸.

Intergenerational Equity

Instead of emphasizing distributive justice between different communities in the present, intergenerational equity is about distributive justice between present and future generations. It holds that future people have a right to enjoy a good life just like us contemporaries, yet one undisturbed by the temporal damage our energy systems will inflict over time. Consequently, each of us has a moral responsibility to ensure that today's children and future generations inherit a global environment at least no worse than the one we received from our predecessors—and that responsibility extends to preventing climate change and making strategic investments in something known as “adaptation” to increase the needed resilience of communities⁴⁹.

Responsibility

The final principle – responsibility – holds that nations have a responsibility to protect the natural environment and minimize the production of negative externalities, or energy-related social and environmental costs. This principle of energy justice is perhaps the most controversial and complex, as it blends together four somewhat different notions of “responsibility”: a responsibility of governments to minimize environmental degradation, a responsibility of industrialized countries responsible for climate change to pay to fix the problem (the so-called “polluter pays principle”), a responsibility of current generations to protect future ones, and a responsibility of humans to recognize the intrinsic value of nonhuman species, adhering to a sort of “environmental ethic”⁵⁰.

⁴⁵ P Wolfowitz, *Good governance and development—a time for action* (World Bank Press Release; 2006)

⁴⁶ World Commission on Environment and Development (WCED), *Our common future* (Oxford: Oxford University Press; 1987) 43.

⁴⁷ P Hawken, *The ecology of commerce: a declaration of sustainability* (New York: Harper Collins; 1994) 112.

⁴⁸ Sovacool, *ibid* at No.41, 440.

⁴⁹ *ibid*

⁵⁰ *Ibid*

5. Conclusion and the Future

The challenge of energy justice is to apply the tripodal approach to energy policy across the whole energy system. It is advocated that a combination of the social science account of energy (policy) with its natural science counterpart (systems) will provide a more nuanced understanding of justice concerns through the exploration of distributional, procedural, and recognition-based justice issues. This will of course, be within the context of energy policies, production, and consumption, questioning where injustices lie⁵¹. The need for this stems from perceived and realized failures in energy systems governance⁵². Again, the observance of energy justice to Nigeria's energy system is not all together alien to established legislative frameworks considering chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which makes provision for a plethora of fundamental human rights. Further, international legal instruments⁵³ domesticated in Nigeria via section 12 of the 1999 Constitution (as amended) and the sapient decision of the Nigeria's Supreme Court in the *locus classicus* case of *Abacha v Fawehmi*⁵⁴ which lends spine to such domesticated international legal instruments have made provisions for social justice (which is in consonance with the intents and purposes of energy justice), safe and clean environment and such other human dignifying elements. Energy justice is pluralist; that is not restricted to a particular technology, application, location or point in time⁵⁵. As the world evolves and transits to a globe of clean energy use, Nigeria must genuinely activate a system that will gradually open her up to a 'greener' future or low-carbon economy that will nonetheless affect her economic prosperity in any negative way.⁵⁶ To this end, it is a clarion call for scholarly research and multidisciplinary synergy to boost and concretize energy justice in Nigeria and beyond.

⁵¹ R J Heffron, *ibid* at No. 11

⁵² L Gagnon, C Belanger, Y Uchiyama, 'Life-cycle assessment of electricity generation options: the status of research in 2001' [2002] *Energy Policy* 30; 1267-1278.

⁵³ The African Charter on Human and Peoples' Rights domesticated via The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, LFN 2004; Also, the Convention on Elimination of All Forms of Discrimination against Women expressly requires parties, in the context of rural development, to ensure that women have the right to adequate housing including electricity.

⁵⁴ (1997) SC 45

⁵⁵ S Stagl, 'Multi-criteria evaluation and public participation: The case of UK energy policy' [2006] *Land Use Policy*; 53-62.

⁵⁶ Ikenga K.E.Oraegbunam, MVC Ozioko & Chukwubuikem J. Azoro, 'A Critical Review of the Legal Regime for the Maintenance of Environmental Standards in Nigeria: Bio and Hydro Energy Sectors In Focus' *International Journal of Innovative Development and Policy Studies*, 7(3):105-116, July-Sept., 2019.