

Towards Equitable Energy Transition in Africa: Examining the Role of Appropriate Dispute Resolution

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Abstract

This paper critically discusses how Appropriate Dispute Resolution (ADR) can fast-track energy transition in Africa. The paper examines the need for energy transition in Africa. It argues that achieving energy transition in Africa is crucial in fostering Sustainable Development and the goals and aspirations of Agenda 2063. The paper notes that there has been progress towards promoting energy transition in the continent. However, it argues that the progress towards energy transition in Africa is being undermined by disputes in the energy sector including those involving renewable energy projects. The paper notes that such disputes are untenable since they impact the quest towards achieving energy transition in Africa. In light of this challenge, the paper discusses how Africa can harness ADR towards equitable energy transition for Sustainable Development.

1.0 Introduction

Energy is a vital resource in unlocking Sustainable Development. It has been identified as a key enabler for development¹. It has been correctly noted that energy is crucial for achieving almost all of the Sustainable Development Goals (SDGs) from its role in eradicating poverty to advancements in health, education, water supply, industrialization and climate action². Access to clean and sustainable sources of energy is necessary for Sustainable Development by reducing greenhouse gas emissions, improving energy access and security, creating jobs, and stimulating socio-economic

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¹ Energy and the Sustainable Development Goals., Available at https://energypedia.info/wiki/Energy_and_the_Sustainable_Development_Goals (Accessed on 27/04/2025)

² Ibid

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development across education, healthcare, transport and infrastructure, water and sanitation among other vital areas³.

Despite its immense potential in unlocking Sustainable Development, the global energy sector is dominated by fossil fuels including oil, gas, and coal which have devastating environmental and human health impacts⁴. For instance, fossil fuels are by far the largest contributor to global climate change, accounting for over 75 percent of global greenhouse gas emissions and nearly 90 percent of all carbon dioxide emissions⁵. In addition to fueling climate change, the burning of fossil fuels also contributes to air pollution with devastating impacts on human health and the environment⁶. According to the United Nations, fossil fuels are a source of air pollutants that are harmful to human health⁷. For example, air pollutants from coal-fired power plants and diesel-fuelled vehicles can lead to respiratory and cardiovascular diseases, lung cancer, diabetes, neurological disorders, and adverse pregnancy outcomes⁸. Further, fossil fuels are non-renewable and can be depleted and thus placing too much reliance on them can affect global energy supply and security⁹.

Due to their adverse environmental and human health impacts, it has become imperative for the global community to phase out fossil fuels by embracing energy transition. The

³ The role of renewable energy technologies in sustainable development., Available at <https://timesofindia.indiatimes.com/blogs/voices/the-role-of-renewable-energy-technologies-in-sustainable-development/> (Accessed on 27/04/2025)

⁴ United Nations Development Programme., 'Energy Transition' Available at <https://www.undp.org/energy/our-work-areas/energy-transition#:~:text=Annual%20energy%2Drelated%20CO2%20emissions,90%25%20of%20the%20necessar y%20reduction> (Accessed on 27/04/2025)

⁵ United Nations., 'Renewable Energy - Powering a Safer Future' Available at <https://www.un.org/en/climatechange/raising-ambition/renewable-energy> (Accessed on 27/04/2025)

⁶ Solomon. B., & Krishna. K., 'The Coming Sustainable Energy Transition: History, Strategies, and Outlook.' *Energy Policy* 39 (2011) 7422-7431

⁷ United Nations., 'Taking action for the health of people and the planet' Available at <https://www.un.org/en/climatechange/science/climate-issues/health> (Accessed on 27/04/2025)

⁸ Ibid

⁹ Solomon. B., & Krishna. K., 'The Coming Sustainable Energy Transition: History, Strategies, and Outlook.' Op Cit

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ideal of energy transition involves shifting the global energy sector from fossil fuel- based systems of energy production and consumption including oil, natural gas and coal to renewable energy sources like wind and solar¹⁰. It entails the shift from an energy mix based on fossil fuels to one that produces very limited, if not zero, carbon emissions, based on green and clean sources of energy such as renewable energy sources¹¹. The global quest for energy transition is envisioned under the United Nations 2030 *agenda for Sustainable Development*¹². SDG 7 seeks to ensure access to affordable, reliable, sustainable and modern energy for all including through substantially increasing the share of renewable energy in the global energy mix¹³. It has been correctly noted that achieving energy transition presents a unique opportunity to address key global challenges including climate change, energy access disparities, poverty, inequality, and health impacts of the energy sector therefore laying the foundation for a sustainable, inclusive and more resilient future¹⁴.

The global quest towards achieving energy transition is being undermined by a high incidence of disputes especially those concerning renewable energy projects¹⁵. It has been correctly noted that energy disputes are undesirable since they can adversely impact the viability and success of energy projects therefore undermining energy transition¹⁶.

¹⁰ S & P Global., 'What is Energy Transition?' Available at <https://www.spglobal.com/en/researchinsights/articles/what-is-energy-transition> (Accessed on 27/04/2025)

¹¹ The energy transition., Available at <https://www.enelgreenpower.com/learning-hub/energy-transition> (Accessed on 27/04/2025)

¹² United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 27/04/2025)

¹³ *ibid*

¹⁴ United Nations Development Programme., 'What is the sustainable energy transition and why is it key to tackling climate change?' Available at <https://climatepromise.undp.org/news-and-stories/what-sustainable-energy-transition-and-why-it-key-tackling-climate-change> (Accessed on 27/04/2025)

¹⁵ Burges-Salmon., 'Energy Disputes Guide: Managing Risk and Avoiding Disputes in your Energy Project.' Available at <https://www.burges-salmon.com/energy-disputes-guide-managing-risk-and-avoiding-disputes-in-your-energy-project> (Accessed on 27/04/2025)

¹⁶ *Ibid*

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Effective management of energy disputes is thus necessary to achieve energy transition for Sustainable Development.

This paper critically discusses how Appropriate Dispute Resolution (ADR) can fast-track energy transition in Africa. The paper examines the need for energy transition in Africa. It argues that achieving energy transition in Africa is crucial in fostering Sustainable Development and the goals and aspirations of Agenda 2063. The paper notes that there has been progress towards promoting energy transition in the continent. However, it argues that the progress towards energy transition in Africa is being undermined by disputes in the energy sector including those involving renewable energy projects. The paper notes that such disputes are untenable since they impact the quest towards achieving energy transition in Africa. In light of this challenge, the paper discusses how Africa can harness ADR towards equitable energy transition for Sustainable Development.

2.0 The Need for Energy Transition in Africa

Energy transition is crucial goal for Africa. It is estimated that nearly 600 million Africans still lack reliable access to electricity, which is approximately half the continent's population and more than 80 per cent of the global electricity access gap¹⁷. Millions of

17 United Nations Sustainable Development Group., ‘Decoding Africa’s Energy Journey: Three Key Numbers’ Available at https://unsdg.un.org/latest/stories/decoding-africa%E2%80%99s-energy-journey-three-key-numbers?afd_azwaf_tok=eyJhbGciOiJSUzI1NiJ9.eyJhdWQiOiJ1bnNkZy51bi5vcinciLCJleHAiOiE3NDU3NTk5NzEsImhldCI6MTc0NTc1OTk2MSwiaXNzIjoiaXNzdWVkiwiicmVmIjoiMjAyNTA0MjdUMTMxOTIxWi0xNjk3ZDg1Nzc1ZmhzcHg0aEMxSk5CeTNxODAwMDAwMDBjZDAwMDAwMDAwMDBocGgiLCJljiOicXhJWkJ6a0MwUl dpZlIiYQtdseF9xNWY2a3cxQ0MtTG5YMk9vTkd4eENVdyIsImgiOiJHYlg3MmpPdC1DXy1RWGFxWkVuMTFsLXBICU13TGVIN2hvMS1ubEZS09nIn19.FtjIdBHiyHZiZVFng_8mAa2cvJU2I80YZqxAjUANaZHf8FdGmJPnymZiJwnAqrqoqmp_uIgVypVhZZYkDrOz_I7VP-jTLKn5mGe46uNNqlORVjtGKz5EbkmTZt6jKCj8ov2UDhTKil7PGNuVfvoOtO202h2PFUmKcM4YSu34k5d_WkLS46XpvxYnY7nXJDQvUCLVcDaL4gzsoR_t01uWuiheHiwhNVpz582Ag3J26ydk30vIBYzhFrgLYWEOKkw-I2p4XNtQRZISKinS5Zg0Sw2VmZ81xov2q6c9eAsnxbUqaKnQT6_PLXyV9fP_0HmbN_3gvc5rr7ipHdxduPQ.WF3obl2IDtgqvMFRqVdYkD5s (Accessed on 27/04/2025)

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people in Africa therefore lack access to energy¹⁸. It has been observed that Eastern and Southern Africa accounts for more than half of the world's unelectrified population and nearly a quarter of the global population without access to clean sources of cooking¹⁹. According to the International Energy Agency (IEA), enhancing access to energy is a crucial goal for Africa, where nearly 600 million people live without electricity and roughly 1 billion people lack access to clean cooking sources²⁰. It has been argued that accelerating energy access in Africa is essential not only in unlocking development in the continent but also to help the world achieve SDG7 (and other SDGs) and address global challenges including climate change²¹.

Challenges in energy access are fueling the demand for energy transition in Africa. It has been argued that Africa is rich in energy resources, but very poor in energy supply especially the Sub-Saharan region²². Making reliable and affordable energy widely available in Africa is therefore critical for the development of the region²³. Africa has immense potential for renewable energy with wind, solar, hydro, bioenergy, ocean tidal waves, geothermal among other renewables being abundant throughout the continent²⁴. Africa is rich in renewable energy resources, including abundant sunlight, strong winds, and geothermal energy²⁵. However, the continent faces several challenges hindering the

¹⁸ World Bank Group., 'Energy Access in Eastern and Southern Africa' Available at <https://www.worldbank.org/en/region/afr/brief/afe-energy> (Accessed on 27/04/2025)

¹⁹ Ibid

²⁰ International Energy Agency., 'World Energy Investments 2024: Africa' Available at <https://www.iea.org/reports/world-energy-investment-2024/africa> (Accessed on 27/04/2025)

²¹ World Bank Group., 'Energy Access in Eastern and Southern Africa' Op Cit

²² Africa Energy Outlook., Available at <https://comssa.org/en/site-resources/africa-energy-outlook> (Accessed on 27/04/2025)

²³ Ibid

²⁴ Africa Union., 'Agenda 2063: The Africa we Want.' Available at Available at https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (Accessed on 27/04/2025)

²⁵ AUDA-NEPAD., 'Empowering Africa: Enhancing Access To Electricity Through Renewable Energy' Available at <https://www.nepad.org/blog/empowering-africa-enhancing-access-electricity-through-renewable-energy> (Accessed on 27/04/2025)

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widespread adoption of clean energy sources including infrastructure gaps, high initial costs, technological challenges, and legal, policy, and institutional barriers²⁶.

It has been argued that in order to address energy access and climate change concerns in Africa, energy transition is an essential and transformative process aimed at reducing the continent's carbon footprint and fostering socio-economic development²⁷. Africa is poised to continue playing a significant role in the global energy transition while addressing its own Sustainable Development needs²⁸. African Union's *Agenda 2063*²⁹ sets out the need for energy transition in Africa. Agenda 2063 portrays the vision of a Continent where renewable energy including wind, solar, hydro, bioenergy, ocean tidal waves, geothermal and other renewables claim more than half of the energy consumption for households, businesses and organizations³⁰.

In order to realise the ideal of energy transition in Africa, there has been an increase in investments and adoption of renewable energy. It has been observed that the production of renewable energy is growing in Africa with hydro, solar, wind, biofuels and biomass accounting for a significant percentage of the total primary energy produced on the continent³¹. According to the United Nations, renewable energy investments are beginning to bear fruit in several African countries with wind and solar power

²⁶ Ibid

²⁷ Boucetta. M., 'Towards a Just Energy Transition for Africa' Available at <https://www.policycenter.ma/publications/towards-just-energy-transition-africa#:~:text=To%20address%20climate%20change%2C%20the,demand%20by%20altering%20consumption%20patterns>. (Accessed on 27/04/2025)

²⁸ Ibid

²⁹ Africa Union., 'Agenda 2063: The Africa we Want.' Op Cit

³⁰ Ibid

³¹ United Nations Conference on Trade and Development., 'Commodities at a Glance: Special Issue on Access to Energy in Sub-Saharan Africa.' Available at Available at <https://unctad.org/publication/commodities-glance-special-issue-access-energy-sub-saharan-africa#:~:text=Access%20to%20energy%20is%20defined,be%20scaled%20up%20over%20time> (Accessed on 27/04/2025)

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dominating non-hydro renewable energy generation and installed capacity³². Despite, this promise, it has been observed that financing needs for energy access initiatives in Africa fall well short of the annual \$25 billion that is required to achieve the objectives of the 2030 Agenda on Sustainable Development on full access to affordable, reliable, sustainable and modern energy for all³³. Scaling up investments in renewable energy is therefore vital towards achieving energy transition in Africa.

With the world shifting towards a more sustainable future through energy transition, Africa has the capacity to emerge as a key player in the global renewable energy mix³⁴. The continent can leverage on its vast renewable energy potential to diversify its energy mix, reduce reliance on fossil fuels, promote energy justice and combat climate change. Renewable energy projects are therefore expected to continue increasing all over Africa in order to achieve energy transition.

Despite the potential of renewable energy to drive energy transition in Africa, disputes in the sector are a common phenomenon. Disputes in the energy sector generally include joint venture/contractual disputes, claims arising from weather conditions in renewable energy projects, construction related disputes, technology related disputes, investor/state disputes, geopolitical disputes and regulatory disputes³⁵. It has been pointed out that renewable energy sources have resulted in an increase in energy projects in Africa and, with that, the potential for a growing number of disputes coming from the

³² United Nations., 'Advancing SDG 7 in Africa.' Available at <https://sdgs.un.org/sites/default/files/2023-06/2023%20Advancing%20SDG7%20in%20the%20Africa-062923.pdf> (Accessed on 27/04/2025)

³³ International Energy Agency., 'World Energy Investments 2024: Africa' Op Cit

³⁴ Ebatamehi. S., 'Top 10 African Countries Leading in Renewable Energy and Green Innovation in 2025' Available at <https://www.africanexponent.com/top-10-african-countries-leading-in-renewable-energy-and-green-innovation-in-2025/> (Accessed on 28/04/2025)

³⁵ McMahon. M., Shah. P., 'The Rise of Renewable Energy Disputes and Arbitration.' Available at <https://www.stewartslaw.com/news/rise-of-renewable-energy-disputes/> (Accessed on 28/04/2025)

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energy sector in the continent³⁶. Given the heavy presence of foreign investors in the African renewable energy sector, disputes are likely to arise under both contractual instruments and investment treaties³⁷.

It has been argued that unpredictable regulatory environments, the pace of development required to achieve energy transition, the variety and number of stakeholders involved, supply chain complexity and the deployment of new technologies are some of the factors driving renewable energy disputes in Africa³⁸. In addition, large-scale renewable projects in the continent contribute to local and regional tensions and conflicts, as competition for resources, environmental degradation, and socio-economic disparities associated with such projects ignite long-standing grievances³⁹. It has been argued that wind and solar farms, hydroelectric dams, and geothermal plants needed to adopt renewable energy all require significant land and water resources, often leading to disputes over land rights and environmental impact⁴⁰. In addition, such projects are often implemented while overlooking the rights of local communities and indigenous peoples who bear the brunt of the environmental and social impacts. For example Lake Turkana Wind Power Project, one of the largest renewable energy projects in Africa has faced opposition from the indigenous Turkana community, who allege that they were not adequately consulted and that their right to Free, Prior, and Informed Consent (FPIC) for

³⁶ Global Arbitration Review., 'Energy Arbitration in Africa.' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2022/article/energy-arbitration-in-africa> (Accessed on 28/04/2025)

³⁷ Resolving Energy Disputes in Africa through Arbitration and Alternative Dispute Resolution ('ADR')., Available at <https://content.cleargottlieb.com/regions/africa-outlook/resolving-energy-disputes-in-africa-through-arbitration-and-alternative-dispute-resolution/index.html> (Accessed on 28/04/2025)

³⁸ Hameau. P., Bentley. J., & Robert. M., 'Energy arbitration in Africa: potential sources of energy and natural resources disputes' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2024/article/energy-arbitration-in-africa-potential-sources-of-energy-and-natural-resources-disputes> (Accessed on 28/04/2025)

³⁹ The Role of Fossil Fuel and Renewable Energy Projects in Conflict Across Africa., Available at <https://www.accord.org.za/analysis/the-role-of-fossil-fuel-and-renewable-energy-projects-in-conflict-across-africa/> (Accessed on 28/04/2025)

⁴⁰ Ibid

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the use of their ancestral lands was violated⁴¹. This has fueled disputes over land rights and sharing of benefits from the project⁴².

Renewable energy disputes are therefore common in Africa. It is estimated that Africa will see the largest growth in renewable energy-related disputes, driven by an increase in investment activities in many countries across the continent⁴³. Renewable energy conflicts and disputes in Africa are undesirable. These disputes can hinder the successful completion of renewable energy projects therefore undermining the quest towards energy transition in Africa⁴⁴. In addition, they can fuel violence and insecurity especially when local communities and indigenous peoples have not been adequately consulted and their land rights upheld⁴⁵. It is therefore imperative to effectively manage renewable energy disputes in Africa towards equitable energy transition.

3.0 The Role of Appropriate Dispute Resolution in Energy Transition

The concept of 'Appropriate Dispute Resolution' (ADR) refers to the suitability of processes such as negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) in managing conflicts and disputes⁴⁶. These processes are considered appropriate due to their potential to manage conflicts and disputes in a non-confrontational manner⁴⁷. ADR techniques provide numerous advantages in the

⁴¹ Ibid

⁴² Ibid

⁴³ Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR').
Op Cit

⁴⁴ The World Bank Group., 'Renegotiation, Government Step-in rights, Termination, and Dispute Resolution' Available at <https://ppp.worldbank.org/public-private-partnership/renegotiation-government-step-rights-termination-and-dispute-resolution#:~:text=The%20accelerating%20availability%20of%20disruptive,in%20the%a20energy%20sector%20globally> (Accessed on 28/04/2025)

⁴⁵ The Role of Fossil Fuel and Renewable Energy Projects in Conflict Across Africa., Op Cit

⁴⁶ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

⁴⁷ United Nations., 'Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building' Available at

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administration of justice including a system with procedural flexibility, a broad range of remedial options, and a focus on individualized justice⁴⁸. Further, ADR allows for more creative and collaborative solutions than those available in traditional litigation⁴⁹. It has been argued that with the exception of binding arbitration, the goal of ADR is to provide a forum for disputing parties to work towards a voluntary, consensual agreement, as opposed to having a judge or other authority impose a determination upon them⁵⁰.

ADR processes are vital in the quest towards energy transition in Africa. It has been argued that in order to achieve energy transition in Africa, energy disputes need to be dealt with swiftly and amicably since access to energy and adequate infrastructures are necessary for Africa to sustain its growth⁵¹. Further, it has been argued that for quick and efficient resolution of disputes in strategic and vital sectors such as energy, it is important to always look for the most appropriate mechanism⁵². Effective management of renewable energy disputes is desirable towards fast-tracking energy transition in Africa by facilitating investments in clean energy projects, mitigating risks for investors and stakeholders in the energy sector, and ensuring a win-win scenario for both environmental protection and economic development in the continent⁵³.

https://www.un.org/waterforlifedecade/water_cooperation_2013/pdf/adr_background_paper.pdf

(Accessed on 28/04/2025)

⁴⁸ Main. T., 'ADR: The New Equity.' Available at https://www.researchgate.net/profile/ThomasMain/publication/228182886_ADR_The_new_equity/links/53d00e470cf2fd75bc5c57a5/ADR-The-newequity.pdf (Accessed on 28/04/2025)

⁴⁹ JAMS ADR., 'What is ADR' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 28/04/2025)

⁵⁰ Alternative Dispute Resolution., Available at <https://www.dol.gov/general/topic/labor-relations/adr#:~:text=Types%20of%20ADR%20include%20arbitration,%2C%20neutral%20factfinding%2C%20and%20minitrals.> (Accessed on 28/04/2025)

⁵¹ Kebe. M., 'Resolving infrastructure and energy disputes in sub-Saharan Africa' Available at <https://www.dlapiperafrica.com/en/senegal/insights/2024/resolving-infrastructure-and-energy-disputes-> (Accessed on 28/04/2025)

⁵² Ibid

⁵³ Owa. I., 'The Role of Arbitration in the Energy Transition in Africa' Available at <https://arbitrationblog.kluwerarbitration.com/2024/04/16/2024-lcia-west-africa-roadshow-the-role-of-arbitration-in-the-energy-transition-in-africa/> (Accessed on 28/04/2025)

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ADR processes are appropriate towards effective management of renewable energy disputes and conflicts towards equitable energy transition. It has been pointed out that ADR provides a flexible, cost-effective, and efficient means of resolving disputes within the complex landscape of renewable energy projects, encompassing policy-making, regulatory litigation, and transactional disputes⁵⁴. By embracing ADR, stakeholders in the renewable energy sectors including governments and investors can effectively address community concerns, foster collaborative relationships, and streamline project implementation towards achieving energy transition⁵⁵.

Utilising ADR techniques such as negotiation, mediation, and arbitration can foster effective management of renewable energy disputes towards achieving energy transition. For instance, it has been correctly observed that commercial relationships in the renewable energy sector are often long term and frequently operate across projects, borders and cultures⁵⁶. This creates incentives for players in the renewable energy sector including investors and energy companies to look at alternatives to more formal dispute resolution mechanisms such as litigation or arbitration⁵⁷. Mediation and negotiation are suitable in preserving relationships, addressing the root causes of conflicts and enhancing collaboration among parties and are therefore ideal in managing disputes in the renewable energy sector⁵⁸. Further, mediation provides parties with the opportunity to manage and resolve disputes before they escalate, which can not only save time and costs but can also preserve critical business relationships and ensure the long-term sustainability and viability of renewable energy projects⁵⁹.

⁵⁴ Graham. M., 'Sunny Days Ahead: Using ADR to Fuel the Future of Green Energy' *Journal of Dispute Resolution*, Volume 2024, Issue 1

⁵⁵ Ibid

⁵⁶ Ashurst., 'Managing and Resolving Cross-Border Disputes in the Energy Sector.' Available at <https://www.ashurst.com/en/insights/managing-and-resolving-cross-border-disputes-in-the-energy-sector/> (Accessed on 28/04/2025)

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Managing and Resolving Cross-Border Disputes in the Energy Sector.' Available at Available at <https://www.ashurst.com/en/insights/managing-and-resolving-cross-border-disputes-in-the-energy-sector/> (Accessed on 28/04/2025)

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Mediation is also suitable in managing disputes between investors and local communities ensuring inclusivity in decision making processes and fostering the right of local communities and indigenous peoples to FPIC⁶⁰. It has been argued that utilising mediation to resolve conflicts and disputes is vital in engaging with local communities to reach shared agreements and allowing people to have a meaningful voice in deliberative decision-making processes related to their own development⁶¹. Harnessing mediation is therefore crucial in achieving energy transition.

Further, arbitration is an appropriate tool for effective management of renewable energy disputes towards energy transition. It has been observed that arbitration has emerged as a key mechanism for dispute resolution in Africa's growing renewable energy industry⁶². There has been an increase in arbitration provisions in energy contracts including those governing renewable energy projects⁶³. This is due to the fact that arbitration is an appropriate process towards fair, timely, efficient, and effective dispute resolution in the energy sector⁶⁴. The features of arbitration including flexibility, the ability to provide confidentiality, the ability to enlist specialist, commercial-minded arbitrators to determine the dispute, and its ability to provide for a neutral forum in complex energy disputes involving international parties, particularly when compared to litigation before domestic courts makes it an appropriate process towards managing energy disputes both globally and in Africa⁶⁵. Its transnational applicability and ability to guarantee

⁶⁰ Buxton. A., & Wilson. E., 'FPIC and the Extractive Industries: A Guide to Applying the Spirit of Free, Prior and Informed Consent in Industrial Projects' Available at <https://www.iiied.org/16530iiied> (Accessed on 28/04/2025)

⁶¹ Ibid

⁶² Nalule. V., & Olawuyi. D., 'Introduction to International Energy Arbitration Disputes in Africa' Available at https://www.researchgate.net/publication/368643432_Introduction_to_International_Energy_Arbitration_Disputes_in_Africa (Accessed on 28/04/2025)

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR'), Available at Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR').' Available at <https://content.clearygottlieb.com/regions/africa-outlook/resolving-energy->

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enforcement of awards also makes arbitration a preferable processes in managing energy disputes⁶⁶. Consequently, it has been argued that arbitration is vital in energy transition in Africa providing a timely and effective avenue for managing renewable energy disputes towards a just and smooth transition to cleaner energy sources⁶⁷.

ADR is therefore an appropriate forum for managing renewable energy disputes in Africa in the quest towards energy transition. Through ADR, parties can select a mediator, arbitrator or expert who possesses legal and technical knowledge relevant to the particular energy sector, intellectual property and dispute resolution issues in question⁶⁸. ADR processes also provide flexible, collaborative and cost-effective means of resolving disputes related to renewable energy projects therefore preserving commercial relationships⁶⁹.

Despite the appropriateness of ADR in fostering energy transition through effective management of renewable energy projects, processes such as negotiation and mediation are often underutilised in managing energy among other natural resource-based disputes⁷⁰. Further, Africa is yet to fully develop its legal, institutional, policy and human capacity to fully harness ADR processes such as arbitration for effective management of renewable energy disputes⁷¹. Consequently, most energy arbitrations are conducted

[disputes-in-africa-through-arbitration-and-alternative-dispute-resolution/index.html](https://www.acerislaw.com/resolving-energy-disputes-through-arbitration/) (Accessed on 28/04/2025)

⁶⁶ Resolving Energy Disputes Through Arbitration., Available at <https://www.acerislaw.com/resolving-energy-disputes-through-arbitration/> (Accessed on 28/04/2025)

⁶⁷ Owa. I., 'The Role of Arbitration in the Energy Transition in Africa' Op Cit

⁶⁸ Graham. M., 'Sunny Days Ahead: Using ADR to Fuel the Future of Green Energy' Op Cit

⁶⁹ Ibid

⁷⁰ United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation_UNDPAUNEP2015_0.pdf (Accessed on 28/04/2025)

⁷¹ Li. R., 'Energy arbitration inequities affect Africa deeply' Available at <https://www.africanlawbusiness.com/news/20762-energy-arbitration-inequities-affect-africa-deeply/> (Accessed on 28/04/2025)

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outside Africa⁷². In light of these challenges, it is vital to effectively harness ADR in order to actualise energy transition in Africa.

4.0 Conclusion

ADR processes have a vital role to play in energy transition in Africa providing an appropriate forum for effective management of renewable energy disputes. Appropriate dispute resolution mechanisms have a key role to play in ensuring a just and smooth transition to cleaner sources of energy in Africa⁷³. As Africa navigates the complex process of energy transition, tailored approaches to dispute resolution are crucial in addressing the unique challenges and opportunities it presents⁷⁴. It is thus imperative to strengthen the legal, policy, institutional and human capacity on ADR in order to effectively harness these processes to accelerate energy transition in Africa⁷⁵. Further, there is need to integrate sustainability into ADR in order to ensure that renewable energy projects comply with the tenets of Sustainable Development including environmental conservation and human rights especially the right of local communities and indigenous peoples to FPIC⁷⁶. Through the foregoing, it is possible to effectively harness Appropriate Dispute Resolution towards equitable energy transition in Africa.

⁷² Ibid

⁷³ Owa. I., 'The Role of Arbitration in the Energy Transition in Africa' Op Cit

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Muigua. K., 'Managing Energy Disputes in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2023/12/Managing-Energy-Disputes-in-Africa.pdf> (Accessed on 28/04/2025)

Towards Equitable Energy Transition in Africa: Examining the Role of Appropriate Dispute Resolution

References

Africa Energy Outlook., Available at <https://comssa.org/en/site-resources/africa-energy-outlook>

Africa Union., 'Agenda 2063: The Africa we Want.' Available at https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf

Alternative Dispute Resolution., Available at <https://www.dol.gov/general/topic/labor-relations/adr#:~:text=Types%20of%20ADR%20include%20arbitration,%2C%20neutral%20factfinding%2C%20and%20minitrials>

Ashurst., 'Managing and Resolving Cross-Border Disputes in the Energy Sector.' Available at <https://www.ashurst.com/en/insights/managing-and-resolving-cross-border-disputes-in-the-energy-sector/>

AUDA-NEPAD., 'Empowering Africa: Enhancing Access To Electricity Through Renewable Energy' Available at <https://www.nepad.org/blog/empowering-africa-enhancing-access-electricity-through-renewable-energy>

Boucetta. M., 'Towards a Just Energy Transition for Africa' Available at <https://www.policycenter.ma/publications/towards-just-energy-transition-africa#:~:text=To%20address%20climate%20change%2C%20the,demand%20by%20altering%20consumption%20patterns>

Burges-Salmon., 'Energy Disputes Guide: Managing Risk and Avoiding Disputes in your Energy Project.' Available at <https://www.burges-salmon.com/energy-disputes-guide-managing-risk-and-avoiding-disputes-in-your-energy-project>

Buxton. A., & Wilson. E., 'FPIC and the Extractive Industries: A Guide to Applying the Spirit of Free, Prior and Informed Consent in Industrial Projects' Available at <https://www.iiied.org/16530iiied>

Ebatamehi. S., 'Top 10 African Countries Leading in Renewable Energy and Green Innovation in 2025' Available at <https://www.africanexponent.com/top-10-african-countries-leading-in-renewable-energy-and-green-innovation-in-2025/>

Energy and the Sustainable Development Goals., Available at https://energypedia.info/wiki/Energy_and_the_Sustainable_Development_Goals

Global Arbitration Review., 'Energy Arbitration in Africa.' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2022/article/energy-arbitration-in-africa>

Towards Equitable Energy Transition in Africa: Examining the Role of Appropriate Dispute Resolution

Graham. M., 'Sunny Days Ahead: Using ADR to Fuel the Future of Green Energy' *Journal of Dispute Resolution.*, Volume 2024, Issue 1

Hameau. P., Bentley. J., & Robert. M., 'Energy arbitration in Africa: potential sources of energy and natural resources disputes' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2024/article/energy-arbitration-in-africa-potential-sources-of-energy-and-natural-resources-disputes>

International Energy Agency., 'World Energy Investments 2024: Africa' Available at <https://www.iea.org/reports/world-energy-investment-2024/africa>

JAMS ADR., 'What is ADR' Available at <https://www.jamsadr.com/adr-spectrum/>

Kebe. M., 'Resolving infrastructure and energy disputes in sub-Saharan Africa' Available at <https://www.dlapiperafrica.com/en/senegal/insights/2024/resolving-infrastructure-and-energy-disputes->

Li. R., 'Energy arbitration inequities affect Africa deeply' Available at <https://www.africanlawbusiness.com/news/20762-energy-arbitration-inequities-affect-africa-deeply/>

Main. T., 'ADR: The New Equity.' Available at https://www.researchgate.net/profile/ThomasMain/publication/228182886_ADR_The_new_equity/links/53d00e470cf2fd75bc5c57a5/ADR-The-newequity.pdf

Managing and Resolving Cross-Border Disputes in the Energy Sector.' Available at <https://www.ashurst.com/en/insights/managing-and-resolving-cross-border-disputes-in-the-energy-sector/>

McMahon. M., Shah. P., 'The Rise of Renewable Energy Disputes and Arbitration.' Available at <https://www.stewartslaw.com/news/rise-of-renewable-energy-disputes/>

Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

Muigua. K., 'Managing Energy Disputes in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2023/12/Managing-Energy-Disputes-in-Africa.pdf>

Nalule. V., & Olawuyi. D., 'Introduction to International Energy Arbitration Disputes in Africa' Available at https://www.researchgate.net/publication/368643432_Introduction_to_International_Energy_Arbitration_Disputes_in_Africa

Towards Equitable Energy Transition in Africa: Examining the Role of Appropriate Dispute Resolution

Owa. I., 'The Role of Arbitration in the Energy Transition in Africa' Available at <https://arbitrationblog.kluwerarbitration.com/2024/04/16/2024-lcia-west-africa-roadshow-the-role-of-arbitration-in-the-energy-transition-in-africa/>

Resolving Energy Disputes in Africa through Arbitration and Alternative Dispute Resolution ('ADR')., Available at <https://content.cleargottlieb.com/regions/africa-outlook/resolving-energy-disputes-in-africa-through-arbitration-and-alternative-dispute-resolution/index.html>

Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR'), Available at Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR').' Available at <https://content.cleargottlieb.com/regions/africa-outlook/resolving-energy-disputes-in-africa-through-arbitration-and-alternative-dispute-resolution/index.html>

Resolving Energy Disputes Through Arbitration., Available at <https://www.acerislaw.com/resolving-energy-disputes-through-arbitration/>

S & P Global., 'What is Energy Transition?' Available at <https://www.spglobal.com/en/researchinsights/articles/what-is-energy-transition>

Solomon. B., & Krishna. K., 'The Coming Sustainable Energy Transition: History, Strategies, and Outlook.' Energy Policy 39 (2011) 7422-7431

The energy transition., Available at <https://www.enelgreenpower.com/learning-hub/energy-transition>

The Role of Fossil Fuel and Renewable Energy Projects in Conflict Across Africa., Available at <https://www.accord.org.za/analysis/the-role-of-fossil-fuel-and-renewable-energy-projects-in-conflict-across-africa/>

The role of renewable energy technologies in sustainable development., Available at <https://timesofindia.indiatimes.com/blogs/voices/the-role-of-renewable-energy-technologies-in-sustainable-development/>

The World Bank Group., 'Renegotiation, Government Step-in rights, Termination, and Dispute Resolution' Available at <https://ppp.worldbank.org/public-private-partnership/renegotiation-government-step-rights-termination-and-dispute-resolution#:~:text=The%20accelerating%20availability%20of%20disruptive,in%20the%20energy%20sector%20globally>

United Nations Conference on Trade and Development., 'Commodities at a Glance: Special Issue on Access to Energy in Sub-Saharan Africa.' Available at <https://unctad.org/publication/commodities-glance-special-issue-access-energy-sub-saharan->

Towards Equitable Energy Transition in Africa: Examining the Role of Appropriate Dispute Resolution

[africa#:~:text=Access%20to%20energy%20is%20defined,be%20scaled%20up%20over%20time](#)

United Nations Development Programme., 'Energy Transition' Available at <https://www.undp.org/energy/our-work-areas/energy-transition#:~:text=Annual%20energy%2Drelated%20CO2%20emissions,90%25%20of%20the%20necessary%20reduction>

United Nations Development Programme., 'What is the sustainable energy transition and why is it key to tackling climate change?' Available at <https://climatepromise.undp.org/news-and-stories/what-sustainable-energy-transition-and-why-it-key-tackling-climate-change>

United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation_UNDPAU_NEP2015_0.pdf

United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

United Nations Sustainable Development Group., 'Decoding Africa's Energy Journey: Three Key Numbers' Available at https://unsdg.un.org/latest/stories/decoding-africa%E2%80%99s-energy-journey-three-key-numbers?afd_azwaf_tok=eyJhbGciOiJSUzI1NiJ9.eyJhdWQiOiJ1bnNkZy51bi5vcmcjLCJleHAiOiJlE3NDU3NTk5NzEsImhhdCI6MTc0NTc1OTk2MSwiaXNzIjoidGllcjEtNjk3ZDg1Nzc1Zi1oc3B4NCIsInN1YiI6IjEwNS4xNjMuMTU4Ljk2IiwiaWF0Ij0eXBlIjoiaXNzdWVkiIiwicmVmljoiMjAyNTA0MjdUMTMxOTIxWi0xNjk3ZDg1Nzc1ZmhzcHg0aEMxSk5CeTNxODAwMDAwMDBjZDAwMDAwMDAwMDBocGgiLCJiljoicXhJWk16a0MwUldpZ1IyQTdseF9xNWY2a3cxQ0MtTG5YMk9vTk4eENVdyIsImgiOiJlHYlg3MmpFdC1DXy1RWGFXWkVuMTFsLXBicU13TGVIN2hvMS1ubEZsS09nIn19.FtjIDbHiyHZiZVFng_8mAa2cvJU2I80YZqxAjUANaZHf8FdGmJPnymZiJwtnAqrqoqmp_uIgVypVhZZYkDrOz_J7VP-jTLKn5mGe46uNNqlORVJtGKz5EbkMTzt6jKCj8ov2UDhTKlI7PGNuvFvoOtO202h2PFUmKcM4YSu34k5d_WkLS46XpvxYnY7nXJDQvUCLVcDaL4gzsoR_t01uWuiheHiwhNVpz582Ag3J26ydk30v1BYzhFrgLYWEOKKw-I2p4XNtQRZISKinS5Zg0Sw2VmZ81xov2q6c9eAsnxbUqaKnQT6_PLXyV9fP_0HmbN_3gvc5rr7ipHdxduPQ.WF3obl2IDtqgvMFRqVdYkD5s

United Nations., 'Advancing SDG 7 in Africa.' Available at <https://sdgs.un.org/sites/default/files/2023-06/2023%20Advancing%20SDG7%20in%20the%20Africa-062923.pdf>

Towards Equitable Energy Transition in Africa: Examining the Role of Appropriate Dispute Resolution

United Nations., 'Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building' Available at

https://www.un.org/waterforlifedecade/water_cooperation_2013/pdf/adr_background_paper.pdf

United Nations., 'Renewable Energy - Powering a Safer Future' Available at <https://www.un.org/en/climatechange/raising-ambition/renewable-energy>

United Nations., 'Taking action for the health of people and the planet' Available at <https://www.un.org/en/climatechange/science/climate-issues/health>

World Bank Group., 'Energy Access in Eastern and Southern Africa' Available at <https://www.worldbank.org/en/region/afr/brief/afe-energy>