

Kluwer Arbitration Blog

2024 LCIA West-Africa Roadshow: The Role of Arbitration in the Energy Transition in Africa

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The global fight against climate change demands a swift transition to cleaner energy sources. Underscoring this urgency, the 28th Conference of the Parties of the United Nations Framework Convention on Climate Change (also known as the “Paris Agreement”) (“COP 28”), held in Dubai in November 2023, called for ambitious goals. At this conference, nearly 200 countries called for:

- tripling renewable energy capacity and doubling energy efficiency by 2030;
- accelerating efforts towards the phase-down of unabated coal power;
- phasing out inefficient fossil fuel subsidies, and other measures that drive the transition away from fossil fuels in energy systems, in a just, orderly, and equitable manner; and
- accelerating economy-wide emission reduction targets.

COP 28 also conducted the first global stocktake, revealing that despite commitments made in the Paris Agreement eight years ago, atmospheric CO₂ concentrations have continued to rise, and the global average surface temperature has reached a dangerous [1.1 Degrees Celsius](#).

As African nations move away from fossil fuels and embrace renewable energy, they face unique challenges and opportunities. Recognising this, Templars, a top-tier Nigerian law firm, hosted an event on 6 February 2024, titled “The Role of Arbitration in the Energy Transition in Africa”, as part of the 2024 LCIA West-Africa Roadshow. This event examined the critical role of dispute resolution in navigating this complex transformation.

This post explores key takeaways and discussions from the event, featuring insights from a distinguished panel moderated by [Orji Agwu Uka](#) (Senior Associate, Templars). Panellists included [Noella Lubano](#) (Partner, Oraro & Company Advocates), Enobong Ozor (Team Lead, Contracting, Commercial & Non-Environmental Litigation, Shell Petroleum Development Company, Nigeria), [Igonikon Adekunle](#) (Partner, Templars), and [Nathan Searle](#) (Partner, Hogan Lovells, London).

The discussion, initiated by Uka, highlighted the shift towards cleaner energy, the importance of upholding obligations under the [Paris Agreement](#), and the crucial role of effective dispute resolution mechanisms in ensuring a smooth transition for Africa.

Perspectives on Energy Transition

Lubano addressed the evolving landscape of energy disputes, contrasting traditional issues involving oil and gas with emerging issues surrounding geothermal plant licensing and wind power construction. While Africa, despite minimal responsibility, is most vulnerable to climate change, its abundant geothermal and wind resources position it well for the transition. Referring to the effects of climate change, such as landslides and constant flooding, Lubano noted that Africa is best positioned to deal with these emerging issues because of its geothermal spring, wind spring, and its proximity to the equator.

Ozor observed that energy transition is not entirely new; it has been around for centuries, evolving from one phase to another. She traced its evolution from wood and coal (e.g., coal mining in Enugu, Southeast region of Nigeria) to oil and gas, all of which were driven by industrialisation in the 20th century. Ozor noted that we are currently at the renewables stage. This shift was propelled by environmental factors and influenced by international agreements, such as the [1992 United Nations Framework Convention on Climate Change](#) (“UNFCCC”) and the [Paris Agreement](#).

Adekunle explained the impact of energy transition on companies and states. She discussed several issues that may arise as a result of energy transition. This includes cost implications of acquiring new technology, infrastructure challenges, and the need to review and renegotiate contracts to align with new legal changes. She also highlighted other issues that companies should consider, such as legal changes that may trigger stabilisation clauses or changes in law clauses, tax issues, and the potential for disputes arising from these issues.

Searle discussed oil majors’ increasing investments in renewables and renewables research and development. He noted that the main issue centers around the implications of decommissioning, and what oil majors will do with old infrastructure. Some oil majors have recently divested their onshore assets in Nigeria.

1. In [September 2023](#), Oando disclosed that it had signed a deal to acquire 100 per cent of Eni’s shares in Nigeria Agip Oil Company Limited.
2. In [January 2024](#), Shell Petroleum Development Company of Nigeria sold its onshore assets to a consortium of local oil companies.
3. In [February 2024](#), Total Energies announced its plan to sell its minority stake in a Nigerian joint venture.

Lubano addressed the perception in Africa that the energy transition is a Western-driven initiative imposed on the continent. She acknowledged the concern about fairness, considering Africa’s minimal contribution to historical greenhouse emissions causing climate change. However, she emphasised that many African countries are proactively taking steps to mitigate climate change and embrace renewable energy. Citing Kenya as an example, she explained that while Kenya has ambitious renewable energy goals and ongoing projects, the government also faces other pressing issues that might compete for attention. Lubano interestingly also pointed out that despite Kenya’s relatively new oil exploration endeavours, the government has made significant progress in exploring renewable energy sources. This is evident in the growing number of solar projects, wind farms and biomass [initiatives](#).

Furthermore, Lubano emphasised Kenya’s ambitious commitment to achieving a 100% reduction in [carbon emissions by 2030](#).

Dispute Resolution in the Energy Transition

Searle predicts a shift in energy disputes. He anticipates less disputes related to oil and gas but an increase in disputes concerning energy agreements such as:

- Offtake and Power Purchase Agreements: These are contracts outlining how energy will be bought and sold.
- Government Disputes: These could involve disagreements between energy companies and governments regarding agreements or policy changes.

He also highlighted the promising role of technology in the energy transition, particularly Green Hydrogen. Africa is uniquely positioned to become a major player in Green Hydrogen due to several factors, some of which are:

- Global Demand: There is a significant demand for green hydrogen in [Europe](#) and other regions, exceeding current production levels. This presents a significant export opportunity for African nations.
- Decarbonisation Solution: Green Hydrogen is considered the most credible solution for decarbonising heavy industry and transportation sectors, which are crucial areas for reducing emissions. By developing this technology, Africa can contribute significantly to the global fight against climate change.
- Alignment with Sustainability Goals: Developing green hydrogen aligns perfectly with both the United Nations Sustainable Development Goals and the Paris Agreement Objectives. It promotes clean energy within Africa while contributing to global sustainability efforts.

Adekunle advocated for arbitration as a preferred method for resolving renewable and climate change disputes, with the caveat that disputes of a public nature may be better suited for other avenues. Ozor noted that the suitability of arbitration depends on the nature of the dispute. Mergers and acquisitions, joint ventures, and contractual disputes arising from partnerships present opportunities for utilising arbitration. She also outlined specific needs for external counsel for navigating legal frameworks, assisting expert witnesses, and selecting arbitrators.

On challenges, Searle discussed issues that could arise with state off-takers, government dynamics, and evolving regulatory frameworks. He emphasised the need for capacity building by studying successful approaches in other jurisdictions.

Beyond Disputes

Lubano brought attention to an important but often overlooked concern regarding the energy transition: the risk of overlooking the human rights of local communities during this shift. She emphasised the importance of considering this issue in agreements and regulatory frameworks governing energy transition. This proactive approach can help ensure a just transition for all stakeholders. Lubano also highlighted a positive side to this challenge, which is the opportunity this emerging legal field surrounding the energy transition presents for young lawyers to specialise in this critical area.

Ozor cautioned against neglecting fossil fuels entirely during the transition phase, urging for responsible emission management.

In her contribution, [Jacomijn van Haersolte-van Hof](#), the Director General of the London Court of International Arbitration (“LCIA”) brought attention to emerging complexities in resolving disputes within the realm of renewable energy, highlighting issues that parties may not envisage but which are surfacing in Europe. Among these challenges is the allocation of cost associated with extending proceedings when a third party seeks to intervene in hearings. She emphasised the imperative of comprehensive involvement of all stakeholders and parties, underlining the importance for the arbitration community to adapt swiftly to tackle these evolving issues.

The event concluded with a call for political will to address these issues. Suggestions were put forward, including a recommendation for the LCIA to provide guidance notes and develop advisory guidelines on avoiding or mitigating disputes in energy transition.

Conclusion

The LCIA West-Africa Roadshow/Templars event highlighted the vital role of effective dispute resolution mechanisms in ensuring a just and smooth transition to cleaner energy sources in Africa. As the continent navigates this complex process, tailored approaches to dispute resolution will be crucial in addressing the unique challenges and opportunities it presents.

Looking ahead to COP 29 in November 2024, discussions on fostering a just energy transition in Africa are likely to be prominent. Effective dispute resolution mechanisms can play a key role in facilitating investments in clean energy projects, mitigating risks for stakeholders, and ensuring a win-win scenario for both environmental protection and economic development on the continent.

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