

SUB-SAHARAN AFRICA (SSA) DISPUTE RESOLUTION TOOLKIT

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SSA Dispute Resolution Toolkit

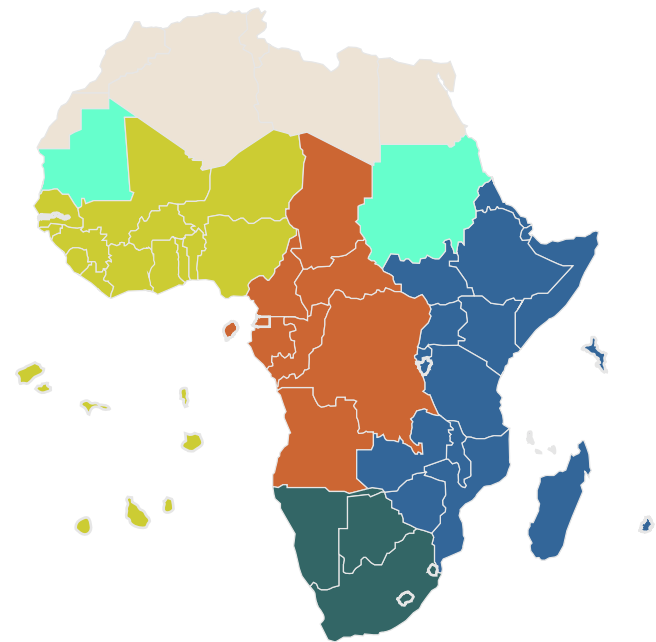
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1. Introduction to Dispute and Dispute Resolution

A dispute is a conflict or controversy, especially one that has given rise to a particular lawsuit.. The formal process through which the positions of parties to a dispute or matter are heard and a decision resolving the matter is issued, is known as dispute resolution. Disputes are inevitable in any sector of the economy and the power sector is not an exception. Disputes in the power sectors across Sub-Saharan Africa (SSA) have been prevalent, with most disputes involving high financial stakes and typically premised on national interests. The extent to which potential investors can satisfactorily resolve disputes that may arise during the lifespan of their investment informs the decision of where their investment should go because dispute resolution mechanisms serve as a check on the excesses of stakeholders in power sectors across SSA, considering that people affected by such excesses, in so far as there is access to these mechanisms, can always make use of dispute resolution mechanisms in expressing their grievances and getting remedy.

With an impoverished level of access to electricity, the power sectors in SSA is in dire need of investment. As such, it is has become essential to consider the topic of dispute resolution in the power sector in SSA as investors and stakeholders explore avenues to protect their investments in the respective investment destinations across SSA.



2. Dispute Resolution Mechanisms in SSA

Generally, there are two major mechanisms through which dispute can be resolved and these same mechanisms apply for disputes arising in the power sectors in SSA. These mechanisms are (A)Litigation and (B)Alternative Dispute Resolution (ADR) Mechanisms.

2.1 Litigation

Litigation is the default mode of resolving disputes between parties where no alternative dispute resolution method has been agreed between the parties to a dispute. Litigation refers to the process of contesting a matter before a court of law. Through litigation, the matter at hand is brought before a national or domestic court who adopts an adversarial or inquisitorial process depending on whether it is a common law or civil law jurisdiction. The advantages of the court litigation against other forms of litigation are that parties do not need to pay for the judge, the court staff or the premises and the parties can foretell the position that a court may take with established precedents. However, litigation processes are notorious for being lengthy, and the parties do not have control over the process. As a result of these coupled with its public nature, investors tend to gear towards ADR mechanisms.

2.2 Alternative Dispute Resolution (ADR) Mechanisms

ADR is an umbrella term that encompasses several methods of dealing with disputes outside of the traditional court litigation system. ADR mechanisms involves a third neutral party assisting the parties to reach a settlement which may be binding upon the parties. The common ADR mechanisms include Arbitration, Mediation, Conciliation, etc.

2.2.1 Arbitration

Arbitration is a consensual method of dispute resolution. Parties by agreement submit their dispute, to one or more arbitrators who make a binding decision on the issues in dispute. Here, parties have the liberty of choosing the arbitrator to sit over the dispute, the venue of dispute and the choice of law, all of which culminates in ADR being regarded as party centered. Arbitration adopts elements of litigation, in that the decision of the arbitral tribunal is final but proceedings are highly confidential.

2.2.2 Mediation

Mediation is a procedure whereby the parties discuss their disputes with the assistance of a trained third party who assists parties with arriving at a settlement. A mediation may take place informally or in a scheduled formal setting (also known as a settlement conference). Cases suitable for mediation include disputes in commercial transactions, personal injury, construction, workers compensation, labor or community relations, divorce, domestic relations, employment, or any other matters which do not involve complex procedural or evidentiary issues.

2.2.3 Conciliation

Conciliation is an informal process where both the parties to the dispute appoint an expert and independent conciliator to resolve their disputes. The conciliator will discuss the issues and try to help the parties reach an agreement, often providing their own opinion after assessing the situation and the different arguments. The opinion of the conciliator may help to form a settlement or achieve a conclusion to the dispute. It is important to note that the conciliation process is entirely voluntary; a successful outcome depends on mutual agreement and either party is free to walk away at any stage of the process.

3. Issues contributing to Disputes in the SSA Power Sector

In recent years, economic growth across SSA is occurring at an unprecedented rate. In addition, there have also been recorded increments in population size and foreign direct investment across these countries. Consequently, the prospect for disputes in the power sectors of countries that are recipients of such investments have also increased. Highlighted below are issues that may lead to the occurrence of disputes in the power sector which are often submitted before the local courts or resolved via ADR mechanisms:

3.1 Resource Nationalism/Politicization of the Power Sector

As a principle of state sovereignty, every natural resource situate within the jurisdiction of a state is owned by that state. This means that energy projects undertaken by private entities often require a license from the government before execution. Hence, the scope of control which SSA countries exert in executing energy projects is primarily tailored towards the protection of state interests, which in turn leads to a politicization of the power sector as described hereunder.

The politicization of the power sector has been a major occurrence in the make-up of transactions between the governments of these states and foreign investors. It has been estimated that achieving universal grid access in low-access countries by 2030 will require over 17 billion USD per year, including 12 billion USD per year of new transmission and distribution capacity. An additional 20 billion USD per year to address current supply inadequacies and expand generation capacity to meet growing demand. Given that 600 million of the 1.1 billion population without access to electricity reside in SSA, the larger chunk of this investment will invariably go to SSA. The contributions of states alone cannot be relied upon to provide such funds, thus, Domestic as well as Foreign Direct Investment (FDI) is expected play a crucial role in the scaling up electricity access in SSA,

This will invariably warrant state partnerships with investors (otherwise known as public-private partnerships) to facilitate necessary projects. Countries such as Nigeria, Ghana, Tanzania, Angola, and South Africa have embarked on such public-private partnership ventures to execute electricity projects. However, states desiring to maintain a powerful

<<https://blogs.worldbank.org/developmenttalk/rural-electrification-how-much-does-sub-saharan-africa-need-grid>> accessed 19th April 2022

political image and retain power would want to ensure the retention of control over its natural resources. This often leads to an overly interventionist approach taken in the execution of electricity projects within a PPP venture, which involves the governments requiring that equity participation in power projects be shared with local partners.

Such politicization has led to the emergence of disputes in the SSA power sector, particularly in situations where the joint ventures created by virtue of the requirement to share electricity projects with local partners, has an imbalance between the finance, resources, or expertise that each party can contribute to the project. Other grounds for disputes which arise due to these arrangements include issues concerning non-payment of invoices and royalty fees; delays, disruptions, and cancellations (including force majeure claims); shareholder and joint venture disputes; disputes regarding the scope and transfer of rights; and issues relating to price and price adjustment claims in long-term supply contracts, etc.

3.2 Local Content Regulations

It is noteworthy that many SSA countries have incorporated into their energy legislations, regulations and practices, local content requirements within the state in the execution of projects and businesses by foreign investors. Such local content requirements are contained in Local Content Regulations which are intended to ensure that a certain percentage of goods and services required as part of a project or business is locally supplied and ensure the prioritization of local employment. A good example of such legislation is the Nigerian Oil and Gas Industry Content Development Act 2010 which requires minimum thresholds for the use of local services and materials, preference for Nigerian companies, and promotes the transfer of skills to the Nigerian workforce.

These local content requirements often lead to increased operating costs for foreign investors and increased disputes with the host state or local companies regarding the capacity of such foreign investors to comply with the local content requirements.

3.3 Investor-State Disputes (ISDs)

ISDs are typically a product of bilateral or multilateral investment treaties or an agreement between an investor and a state premised on stabilization clauses. Bilateral and Multilateral agreements between two or more countries generally contain reciprocal investment protections guaranteeing the investor against expropriation, unfair treatments, guaranteeing a most-favoured nation treatment, etc. In the same vein, they contain provisions guaranteeing access to Ad hoc or institutional International Arbitration processes for redress where a breach has occurred. Given the long-term nature of electricity investments, risks such as regulatory risks, fiscal risks, expropriation, nationalization, discrimination of foreign investor, commercial risks, development risks, and policy risks are likely to exist. As per the United Nations Conference on Trade and Development (UNCTAD), electricity is the most common economic sector in terms of number of investor-state dispute cases (154) and share of PPPs giving rise to investor-state dispute claims.

Investor-State Disputes emanate from bilateral investment treaties signed between host states and foreign investors, as a mode of support for economic

growth in developing SSA countries and often, the execution of electricity projects. Over the years, power sectors of countries across SSA have either threatened or completed the termination of their bilateral investment treaties due to wide range of disputes such as disputes arising from government measures to reduce or phase out demand for fossil fuels by incentivizing investments in renewable energy, and difficulties in dispute settlement through investor-state dispute settlement (ISDS).

The fossil fuel industry which is the most significant contributor to climate change, is also the most litigious industry in the ISDS system by number of cases. This is due to the fact that a majority of investments made by foreign investors are fossil fuel related, and considering that under current international investment law, such investors are granted special protection access to ISDS, dispute resolution processes are often initiated through the ISDS system regarding regulatory measures adopted by host states which aim at curtailing fossil fuel activities.

3.4 Climate related Disputes

Energy Corporations across SSA face increased levels of scrutiny of their environmental impact and thus potential disputes in relation to their contribution to climate change effects. Such disputes are initiated by the state or private entities and at national courts or arbitral tribunals. As stated beforehand, the fossil fuel industry is the most litigious in the ISDS system, and according to the International Institute for Sustainable Development, over 30% of the publicly available decisions awarded in fossil fuel arbitrations contain environmental components. There has also been an increasing initiation of arbitration against specific climate related measures adopted by host states such as the phasing out of fossil fuels.

4. International Commercial Arbitration in Energy Contracts across SSA

Naturally, disputes related to energy projects should be resolved through local litigation or alternative dispute resolution. However, in energy projects or contracts involving foreign entities as parties, the terms of the venture often require that disputes be resolved by rules of arbitration outside the host state and at internationally recognized and reliable arbitral institutions such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the American Arbitration Association/International Centre for Dispute Resolution (AAA/ICDR). Thus, the seat of arbitration in such energy contracts are often stated as London, Paris, or Switzerland. It is also common for parties to agree that large scale energy contracts should be governed by foreign law rather than the law of the host state

While the basis for such choices by foreign entities to have their large scale contracts governed by international arbitral institutions and laws, to avoid concerns about interference in the arbitral process by local courts, there have been increased consequent concerns about the enforceability of foreign arbitral awards in many SSA countries as not all of these

countries are signatories to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and in addition, many SSA countries still use outdated arbitration laws (for example, South Africa, Botswana, Namibia, Malawi, Lesotho and Swaziland all retain arbitration statutes based on the now-repealed English Arbitration Act 1950).

This eventually causes difficulties for foreign parties seeking to enforce foreign arbitral awards in some SSA jurisdictions where recourse must be made to national law which may not be favourable, in comparison to the laws in countries that have ratified and implemented the New York Convention. Even in countries where the New York Convention has been ratified, there may be issues with the implementing legislation and the local courts may be unreliable and inexperienced in handling enforcement of foreign arbitral awards by virtue of such legislation. Despite these concerns, international commercial arbitration is often incorporated into energy contracts across SSA as a safe bet for foreign entities to have their energy related disputes resolved efficiently.

5. Investment Treaty Arbitration in Energy Contracts across SSA

Investments made in the energy sectors across SSA often emanate from bilateral treaties that include protection for the investments of foreign investors and offer arbitration for the resolution of disputes between foreign investors and host governments under the International Centre for Settlement of Investment Disputes (ICSID). Apart from bilateral treaties, other regional agreements such as the South African Development Community (SADC) Protocol on Finance and Investment, the Economic Community of West African States (ECOWAS) Supplementary Act on Foreign Investment and the Common Market for Eastern and Southern Africa (COMESA) Treaty also provide protection for foreign investors. Notably, not all SSA countries are parties to the ICSID Convention.

Under the umbrella of the ICSID, commercial arbitrations deal with a wide variety of treaty claims and disputes including: the imposition of new tax regimes and associated breach of stabilisation provisions; unpaid invoices under power purchase agreements; and the cancellation of contractual rights or licence revocations. There is little information as to whether SSA countries voluntarily comply with treaty awards issued against them.

6. Challenges to equitable Dispute Resolution in the SSA Power Sector

There are several existing challenges that plague the equitable practice of dispute resolution in the electricity sectors of countries in SSA. Some of these challenges include:



Reluctance of Foreign Investors and Local Parties to Arbitrate In Africa



Lack of Insight into Arbitration Proceedings outside SSA



Parties may be wary of logistical challenges that are presented by arbitrating in some SSA jurisdictions



Achieving enforcement of awards may be difficult owing to excessive delays or inconsistent decisions before the local courts

7.Recommendations

The following recommendations are proposed to foster equitable Dispute Resolution procedures in SSA power sector:



There is the need for a clear legislative framework that provides for alternative dispute resolution mechanisms for electricity matters



There should be an increase in judicial support and attitude towards ADR through enforcement and recognition of awards



Investments should be put into improving the institutional capacity of arbitral bodies and ADR centres in the SSA region



With the increased mode of virtual workspaces and hybrid work environments, it is important that countries in SSA work towards improving ADR mechanisms by encouraging the adoption of virtual proceedings to resolve electricity matters



The establishment of a local regional case management centre for countries in Sub-Saharan Africa as done in other regions such as Brazil and UAE

8. Arbitration in Nigeria: Case Study

Arbitration is considered the most preferred mode of dispute resolution globally especially in matters of commerce for many reasons. Some of these reasons include the efficiency in the arbitration process; simplicity; flexibility; autonomy of each of the parties involved and the cost effectiveness. As a result of these reasons, several countries have adopted laws and policies that promote the use of arbitration in settling their disputes. It should however be noted that arbitration is only used in settling disputes bordering around commerce. It is not used to resolve criminal and socio-economic matters, but only matters of a civil and economic nature.

For a country like Nigeria that relies heavily on the input of foreign investment to grow its economy, it is inevitable for parties to enter into complex commercial agreements with foreign companies. Some of these complex commercial agreements usually include arbitration as a means of dispute resolution in the event of a dispute arising. This depicts that arbitration is an important mode of dispute resolution for foreign investors, because it allows for disputes to be settled effectively and speedily by an impartial arbiter to foster and allow business relationships existing between parties to thrive.

Arbitration practice in Nigeria

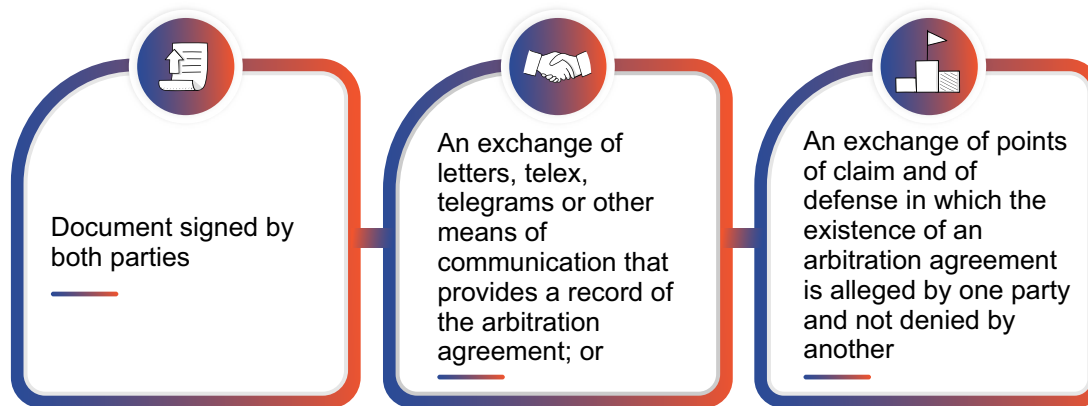
The practice of Arbitration in Nigeria is governed by the Arbitration and Conciliation Act (ACA) Chapter 18, 2004 enacted as a federal legislation, which incorporates the 1985 UNCITRAL Model Law on the International Commercial Arbitration. Nigeria was the first African

country to adopt the UNCITRAL Model Law in 1988. The Law also contains Nigeria's ratification of the New York Convention on Recognition and Enforcement of Arbitral Awards.

The above depicts that arbitration is only used to settle matters of a commercial nature in Nigeria.

The courts of Nigeria have given effect to the intention of parties to submit their disputes arising out of their contractual relationships to arbitration. For instance, in the case of Kano State Urban Development Board v. Fanz Construction Ltd, the Supreme Court held that once parties have already agreed and submitted, without objection, to arbitration as their mode of dispute resolution, they cannot challenge the authority of the arbitrator to settle the matter.

The Act specifies that the arbitration agreement of parties must be put into writing before it can be given effect to. The arbitration agreement will fulfil this requirement if it is contained in:



Doctrine of separability

This doctrine is provided for in section 12(2) of the Act. It provides that “an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract”. The English case of *Heyman v Darwin Ltd.* encapsulates this doctrine as it was held that in arbitration agreements, where the arbitration clause is a part of the agreement, the arbitration clause is regarded as separate. Hence, where there is novation, the purpose of a contract may fail but the arbitration clause survives.

Thus, the modification of the terms of an obligation in an original contract does not extinguish the arbitration clause in the original contract. In the Nigerian case of *NNPC v. Clifco Nigeria Limited*, the Supreme Court relied on the decision of the Court in *Heyman v. Darwin Ltd.* that the arbitration clause survives the novation of an agreement.

Judicial attitude to the enforcement of Arbitration agreements in Nigeria

The Nigerian judiciary in certain instances, has not been quick at enforcing Arbitration agreements in the settlement of commercial disputes as most of these agreements were dismissed based on technicalities. This is illustrated in the case of *Imoukhuede v. Mekwunye*, where parties to the agreement inserted an arbitration clause to the effect that in the event of a dispute arising, the parties would settle their disputes via an arbitration process by a sole arbitrator to be

appointed by the President of the Chartered Institute of Arbitration (London) Nigerian Chapter. The arbitration clause was rendered unenforceable considering that there was no organisation known as the Chartered Institute of Arbitration (London) Nigerian Chapter.

The current attitude of the judiciary is that once a dispute arises out of an agreement that has an arbitration clause, the courts will stay all proceedings pending the determination by an arbitral tribunal. This attitude of the judiciary is manifested in the case of *Frontier Oil Limited v. Mai Epo Manu Oil Nigeria Limited*.

In that case, the court held that the Courts of law have inherent jurisdiction to decide disputes between parties, but where the parties by their own agreement opt for arbitration, the courts will always respect such agreements and decline jurisdiction.

Enforcement, recognition, and annulment of foreign arbitral awards in Nigeria

Section 26 of the Act specifies that the arbitral award must be in writing and signed by the arbitrator. In addition, the award must contain the reasons upon which the decision was made, the date the award was issued and the place of arbitration. In Nigeria, an arbitral award is considered final and cannot be appealed. A person wishing to enforce a foreign award must file an application in writing accompanied by the duly authenticated original and certified copy of the award and arbitration agreement. Section 51 (1) provides that if the award is not in English, a translation must be provided.

In Nigeria, foreign arbitral awards are enforced in four ways:



Enforcement through an action upon the award under common law



Enforcement through the foreign Judgment Registration and Enforcement Statutes: Reciprocal Enforcement of Judgments Ordinance 1922, Cap. 175, Laws of the Federation of Nigeria (LFN) 1958 or the Foreign Judgments (Reciprocal Enforcement) Act, Cap. F35, LFN 2004



Enforcement under the International Centre for Settlement of Investment Disputes Convention (Enforcement of Awards) Act CAP I20, LFN 2004



Enforcement through the Arbitration and Conciliation Act, Cap. A18, LFN 2004

Section 52(2) specifies five (5) grounds upon which a court may refuse the recognition or enforcement of an arbitral award:



A party to the arbitration agreement is under some incapacity



The arbitration agreement is not valid under the law which the parties have indicated should be applied, or failing such indication, that the arbitration agreement is not valid under the laws of Nigeria



The party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his/her case



The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration



The composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties

9. SSA Dispute Resolution Legal Comparison Tool

EL DISPUTE RESOLUTION LEGAL SNAPSHOT							
S/N	Country	Court Option	Administrative Tribunals	ADR Structures	Popular Choice of Law	Interim Reliefs	Enforcement of Judgment(s) or Award(s)
1	Angola	Litigation	Regulatory Institute for Electricity and Water Services (IRSEA)	Arbitral tribunal	Angolan Civil Law	✓	✓
2	Benin	Litigation	Electricity Regulatory Authority (ERA)	Arbitration	Beninese Electricity Law	✓	✓
3	Botswana	Litigation	Botswana Electricity Regulatory Authority (BERA)	Arbitration	Botswana Electricity Law	✓	✓
4	Burkina Faso	Litigation	Electricity Subsector Regulatory Authority	Arbitration	Burkina Faso Electricity Law	✓	✓
5	Burundi	X	Water and Energy Regulatory Authority (AREEN)	X	Burundi Electricity Law	✓	✓
6	Cameroon	X	Electricity Sector Regulatory Agency (ARSEL)	Arbitration and Conciliation	Cameroon Electricity Law	✓	✓
7	Cape Verde	X	X	Conciliation	National Legislation	X	X
8	CAR	Litigation	X	Arbitration and Conciliation	OHADA laws and Regulations	✓	✓
9	Chad	X	X	Arbitration	French Civil Law	✓	✓
10	Comoros	X	Ministry of Energy	Arbitration, Conciliation, and Mediation	OHADA laws and Regulations	✓	✓

S/N	Country	Court Option	Administrative Tribunals	ADR Structures	Popular Choice of Law	Interim Reliefs	Enforcement of Judgment(s) or Award(s)
11	Djibouti	X	Regulatory Service	Arbitration and Conciliation	Djibouti Electricity Law	✓	✓
12	DRC	Litigation	Electricity Regulatory Authority (ARE)	X	DRC Electricity Law	✓	✓
13	Equatorial Guinea	Litigation	X	Arbitration	Civil and Customary law of Equatorial Guinea	✓	✓
14	Eritrea	X	X	X	Treaties that Eritrea is a party to	✓	✓
15	Ethiopia	X	Ethiopian Energy Authority (EEA)	Mediation	Ethiopian Proclamations	✓	✓
16	Gabon	Litigation	X	Arbitration	French Civil Law	✓	X
17	Gambia	X	Public Utility Regulatory Authority (PURA)	X	Gambian Electricity Law	✓	✓
18	Ghana	X	X	Arbitration	Ghanaian Electricity Law	✓	✓
19	Guinea	Litigation	X	Arbitration and Mediation	Organisation for the Harmonisation in Africa of Business Law (OHADA)	✓	✓
20	Guinea-Bissau	Litigation	National Electricity and Water Corporation (EAGB)	X	Guinea-Bissau Investment Law	✓	✓

S/N	Country	Court Option	Administrative Tribunals	ADR Structures	Popular Choice of Law	Interim Reliefs	Enforcement of Judgment(s) or Award(s)
21	Ivory Coast	Litigation	ANARE-CI	X	Ivorian Electricity Law	✓	✓
22	Kenya	Litigation	Energy and Petroleum Tribunal	X	Kenyan Electricity Law	✓	✓
23	Lesotho	Litigation	Lesotho Electricity and Water Authority (LEWA)	Arbitration and Mediation	Lesotho Dispute Laws	✓	✓
24	Liberia	Litigation	Liberia Electricity Regulatory Commission (LERC)	X	Liberian Electricity law	✓	✓
25	Madagascar	Litigation	ARELEC	Mediation	French Civil Law	✓	✓
26	Malawi	X	Malawi Energy Regulatory Authority (MERA)	Arbitration	Malawi Electricity Law	✓	X
27	Mali	X	X	Arbitration	African Corporate Law (OHADA)	✓	✓
28	Mauritania	X	Electricity Regulatory Authority (ARE)	Conciliation	Mauritania Electricity Law	✓	✓
29	Mauritius	Litigation	Utility Regulatory Authority (URA)	Arbitration and Mediation (ICSID)	English Common law and French Civil Law	✓	✓
30	Mozambique	X	Energy Regulatory Authority (ARENE)	Arbitration, Mediation and Conciliation	Mozambique Electricity Law	✓	✓

S/N	Country	Court Option	Administrative Tribunals	ADR Structures	Popular Choice of Law	Interim Reliefs	Enforcement of Judgment(s) or Award(s)
31	Namibia	Litigation	Electricity Control Board (ECB)	Arbitration and MediationX	Namibian Electricity Law	✓	✓
32	Niger	Litigation	Ministry of Energy	Arbitration	Nigerien Law	✓	✓
33	Nigeria	Litigation	Nigerian Electricity Regulatory Commission (NERC)	Arbitration, Mediation and Conciliation	Nigerian Laws	✓	✓
34	Republic of Congo	Litigation	X	International arbitration	French Commercial Legislation	X	X
35	Rwanda	Litigation	Rwanda Utility Regulatory Authority (RURA)	Arbitration, Mediation and Expert determination	Rwandan Electricity Law	✓	✓
36	Sao Tome and Principe	Litigation	X	X	International Investment Law	✓	X
37	Senegal	X	X	Arbitration or conciliation	International Investment Law	✓	✓
38	Seychelles	Litigation	Investment Appeal Tribunal	X	Seychelles Investment Law	✓	✓
39	Sierra Leone	X	Sierra Leone Electricity and Water Regulatory Commission (SLWERC)	Mediation	Sierra Leone Electricity Law	✓	✓
40	Somalia	Litigation	X	Mediation	Somalia Civil Code	✓	X

S/N	Country	Court Option	Administrative Tribunals	ADR Structures	Popular Choice of Law	Interim Reliefs	Enforcement of Judgment(s) or Award(s)
41	South Africa	Litigation	National Energy Regulator of South Africa (NERSA)	Mediation and International arbitration	South African Investment Law	✓	✓
42	South Sudan	X	South Sudan Electricity Regulatory Authority	X	X	X	X
43	Sudan	X	X	Arbitration or mutual reconciliation	X	X	X
44	Swaziland	X	Electricity Disputes Tribunal	Arbitration	International agreements that Sudan is a party to	✓	✓
45	Tanzania	X	Fair Competition Tribunal	Mediation	Arbitration Rules of the United Nations Commission on International Trade Law	✓	✓
46	Togo	Litigation	Electricity Sector Regulatory Authority (ARSE)	Arbitration, Mediation and Conciliation	Togolese Investment Law	✓	✓
47	Uganda	X	Electricity Disputes Tribunal	Mediation	Ugandan Electricity Law	✓	✓
48	Zambia	Litigation and Appeal	Energy Regulatory Tribunal	Expert determination	Zambian Electricity Law	✓	✓
49	Zimbabwe	Litigation	Zimbabwe Electricity Regulatory Authority (ZERA)	X	Zimbabwe Electricity Law	✓	✓

6. Conclusion

This toolkit has showcased the Desert to Power initiative, which was established by the African Development Bank, in G5 Sahel countries: Burkina Faso, Chad, Mauritania, Niger and Mali, while providing an assessment of the feasibility of the initiative in these five countries. The toolkit has also depicted the practicability and process of the projects in two countries: Chad and Niger, to ascertain the implementation of the initiative. The information highlighted will be useful to stakeholders who wish to gain more knowledge about energy access in the Sahel region.

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- See Nigerian Oil and Gas Industry Content Development Act 2010, available at www.eisourcebook.org/cms/January%202016/Nigerian%20Oil%20and%20Gas%20Industry%20Content%20Development%20Act%202010.pdf. The Nigerian Act states at section 1(2) that 'all regulatory authorities, operators, contractors, subcontractors, alliance partners and other entities involved in any project, operation, activity or transaction in the Nigerian oil and gas industry shall consider Nigerian content as an important element of their overall project development and management philosophy for project execution.' It also provides at section 1(3) that 'compliance with the provisions of this Act and promotion of Nigerian content development shall be a major criterion for award of licences, permits and any other interest in bidding for Oil exploration, production, transportation and development or any other operations in Nigerian Oil and Gas industry.'
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- Supra Note 11
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- Steven P Finizio, Energy Arbitration in Africa. 10 May 2018. Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2018/article/energy-arbitration-in-africa#endnote-001>
- Ibid .

- SSA Countries which are parties to the Convention include Cape Verde, Seychelles, Burkina Faso, Comoros, Mauritania, Central African Republic, Malawi, Liberia, Guinea, Uganda, Angola, Mali, Senegal, Cameroon, Sudan, Zimbabwe, Nigeria, Ghana, South Africa, Benin, Botswana, Burundi, Djibouti, Democratic Republic of Congo, Ethiopia, Gabon, Ivory Coast, Kenya, Lesotho, Madagascar, Mauritius, Mozambique, Niger, Rwanda, Sao Tome & Principe, Sierra Leone, Tanzania, and Zambia. SSA Countries which are not a party to the Convention include Chad, Republic of the Congo, Equatorial Guinea, Eritrea, eSwatini, Gambia, Guinea-Bissau, Namibia, Somalia, South Sudan, and Togo.
- Around half of African countries have adopted modern arbitration legislation based on a model law: 10 countries in Africa have arbitration legislation based on the UNCITRAL Model Law (www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html) and in Central and West Africa the 17 member states of the Organisation for the Harmonisation of Business Law in Africa (OHADA) have adopted the Uniform Act on Arbitration, which was revised in 2017, together with a new set of rules for the Common Court of Justice and Arbitration (see Armand Terrien, *The New OHADA Arbitration and Mediation Framework: A Glass Half Full?* (2018), available at <http://arbitrationblog.kluwerarbitration.com/2018/02/18/new-ohada-arbitration-mediation-framework-glass-half-full/>).
- Ibid
- Supra, Note 10
- Ibid
- Stewarts, "Investment in the Sub-Saharan Energy Sector: a promising future for arbitration", available <https://www.stewartslaw.com/news/investment-in-the-sub-saharan-energy-sector-a-promising-future-for-arbitration/>
- Folashade Alli & Associates, 'Arbitration in Nigeria: Overview and Challenges' available at <https://www.faa-law.com/arbitration-in-nigeria-overview-and-challenges/#:~:text=Arbitration%20in%20Nigeria%20is%20primarily,of%201985%20with%20minor%20differences.>
- Arbitration and Conciliation Act (Chapter 18, Laws of the Federation of Nigeria 2004)
- Section 57, Arbitration and Conciliation Act (Chapter 18, Laws of the Federation of Nigeria 2004)
- (1990) JELR 42963 (SC) Supreme Court
- Section 1(1) Arbitration and Conciliation Act (Chapter 18, Laws of the Federation of Nigeria 2004)
- (1942) AC 356 at 373
- (2011) 10 NWLR (Pt. 1255) 209
- (2015) 1 CLRN 30
- (2005) 2 CLRN
- Folashade Alli & Associates, 'Arbitration in Nigeria: Overview and Challenges' available at <https://www.faa-law.com/arbitration-in-nigeria-overview-and-challenges/#:~:text=Arbitration%20in%20Nigeria%20is%20primarily,of%201985%20with%20minor%20differences>
- The information under this Parameter titled "Court Option", was obtained from the data in the Electricity Lawyer Legal and Regulatory Briefs and Legal and Regulatory Factsheets which spell out whether the specified country employs the use of normal and administrative courts through a litigation process to settle disputes on electricity related matters.

- The information under this Parameter titled “Administrative tribunal”, was obtained from the data in the Electricity Lawyer Legal and Regulatory Briefs and Legal and Regulatory Factsheets which spell out whether there is an existing body or tribunal that settles and gives decisions on electricity related matters in the respective country, of which the decisions can be appealed in a court or by a higher ADR body
 - The information under this Parameter titled “ADR structures”, was obtained from the data in the Electricity Lawyer Legal and Regulatory Briefs and Legal and Regulatory Factsheets which spell out the kind of ADR method that is employed in the electricity sector either by the administrative tribunal or another ADR body.
 - The information under this Parameter titled “Choice of Law” was obtained from the data in the Electricity Lawyer Legal and Regulatory Briefs and Legal and Regulatory Factsheets which spell out the laws that are applicable in the settlement of disputes on electricity related matters, either by express contract or international agreements/conventions.
 - The information under this Parameter titled “Interim reliefs” was obtained from the data in the Electricity Lawyer Legal and Regulatory Briefs and Legal and Regulatory Factsheets which spell out whether a country allows for interim reliefs in the settlement of disputes regarding electricity related matters.
 - The information under this Parameter titled “Enforcement of foreign judgment or award” was obtained from the data in the Electricity Lawyer Legal and Regulatory Briefs and Legal and Regulatory Factsheets which spell out whether a country's judicial system allows for the enforcement of foreign judgments or awards issued in another jurisdiction, in settling disputes on electricity related matters
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