

SCHOLARLY ARTICLE

Just Energy Transition in Africa: Towards Social Inclusion and Environmental Rights-Based Imperatives

Godswill A. Agbaitoro¹  and Eghosa O. Ekhatior²

¹University of Essex School of Law, United Kingdom and ²University of Derby Law School, United Kingdom

Corresponding author: Godswill A. Agbaitoro; Email: g.agbaitoro@essex.ac.uk

Abstract

This article examines the concept of just energy transition in the context of Africa. It explores two key imperatives: (1) social inclusion and (2) an environmental rights-based approach to promote just energy transitions within African countries. The article looks at social inclusion from the perspective of local communities that host energy infrastructures, highlighting potential injustices and negative impacts that may arise from the energy transition. It further argues that social inclusion and environmental rights-based approaches can be useful tools for achieving just energy transitions in Africa. The article also analyses strategies that underpin social inclusion and environmental rights-based approaches within the governance and legal frameworks for energy transition projects in Africa, including empowering local communities to ensure the transition aligns with their socio-economic standing. The article suggests that adopting socially inclusive and environmental rights-based imperatives are significant steps towards overcoming and addressing injustices in energy transition projects in Africa.

Keywords: Africa; environmental rights-based approach; just energy transition; local communities; social inclusion

1. Introduction

Over the years, energy transition has been linked to the need to address climate change impacts experienced in different parts of the world, with a greater impact on the least developed and developing countries.¹ With the global energy industry continuing to contribute greenhouse gases (GHGs) from carbon-based energy sources to the atmosphere,² this has resulted in more climate change impacts for different countries.³ Climate change impacts necessitated the call for global energy systems to shift towards decarbonization, especially as fossil fuels, which constitute a large

¹ Peter Newell, *Power Shift: The Global Political Economy of Energy Transitions* (Cambridge University Press, 2021).

² Nana Obeng-Darko, 'Energy Transitions,' OGEL Special Issue – Editorial, OGEL 1 (2021) www.ogel.org (accessed 18 October 2024).

³ International Energy Agency, 'Global Energy Reviews: CO2 Emissions in 2021,' <https://www.iea.org/reports/global-energy-review-co2-emissions-in-2021-2> (accessed 18 October 2024).

percentage of the present global energy mix, are known to be responsible for most of the GHG emissions in the atmosphere.⁴

Presently, in many African countries, the benefits of energy transition have not been enjoyed by local communities set to host (or which are hosting) energy infrastructure projects for transition.⁵ This is manifested in issues such as the lack of access to energy services and human rights violations arising from the development of energy transition projects, which also affect access to land and rights, thus exacerbating existing injustices in vulnerable African communities.⁶ For example, in June 2022, a report by the Business & Human Rights Resource Centre (BHRRC) focused on the human rights violations arising from renewable energy projects in Kenya.⁷ This report found evidence of loss of livelihoods, violations of land and water rights and failures to respect the rights of local communities.⁸ Furthermore, according to the Business & Human Rights Resource Centre's Transition Minerals Tracker, Africa has recorded 92 allegations of human rights violations connected to extracting transition minerals since 2010, thus making Africa second highest after South America.⁹ Guinea, Zimbabwe and the Democratic Republic of Congo (DRC) are countries where human rights violations arise from energy transition projects.¹⁰ These challenges are attributed to the energy transition approach in African countries that appears to ignore existing socio-economic issues, including the lack of a socially inclusive and human and environmental rights-based approach leading to the reduction of structural, socio-economic and technological inequalities in the transition processes.¹¹

This article contributes to the literature in two ways. First, it adds to the current debate in the literature on how to ensure just energy transition but with a focus on Africa by offering two critical approaches. This contribution is focused on the discourse on the lack of integration of social inclusion measures in Africa's legal and governance structure on energy transition. Unfortunately, this has led to injustices experienced by local communities linked to energy transition projects. Second, the article adds to the critical legal scholarship concerned with the protection of the environment by providing a concrete strategy for mainstreaming environmental rights into the energy transition processes in African countries. Overall, this article argues that adopting a just energy transition standard based on social inclusion, including recognizing the rights of local communities in places where transition infrastructures will be built, and an environmental rights-based approach would ensure that the transition process in Africa is founded on the principles of justice and

⁴ International Energy Agency, 'CO2 Emissions in 2022,' <https://iea.blob.core.windows.net/assets/3c8fa115-35c4-4474-b237-1b00424c8844/CO2Emissionsin2022.pdf> (accessed 18 October 2024).

⁵ Xolisa Ngwadla, 'Just Transition Framework' African Perspectives of a Just Transition to Low-Carbon Economies (Technical Report 2024), https://uneca.org/sites/default/files/ACPC/2024/African_perspectives_of_a_just_transition_to_Low_Carbon_economies_Technical_report.pdf (accessed 18 October 2024).

⁶ A/78/155, 'Report of the Working Group on the Issue of Human Rights Transnational corporations and other Business Enterprises. Extractive sector, Just Transition and Human Rights,' (July 2023), A/78/155: Extractive sector, just transition and human rights | OHCHR (accessed 18 October 2024).

⁷ Joseph Kibugu, 'Kenya's Energy Transition Risks Being Derailed by Human Rights Failures,' China Dialogue (13 December 2022), <https://chinadialogue.net/en/energy/kenyas-energy-transition-risks-being-derailed-by-human-rights-failures/> (accessed 18 October 2024); Business & Human Rights Resource Centre, 'Fast and Fair Renewable Energy for Africa: Lessons from Kenya,' (June 2022), <https://www.bhrrc.org/en/from-us/briefings/fast-and-fair-renewable-energy-for-africa-lessons-from-kenya/> (accessed 18 October 2024).

⁸ Business & Human Rights Resource Centre, 'Fast and Fair,' *ibid.*

⁹ Business & Human Rights Resource Centre, *note 6.*

¹⁰ *Ibid.*

¹¹ African Perspectives of a Just Transition to Low-Carbon Economies (Technical Report 2024), https://uneca.org/sites/default/files/ACPC/2024/African_perspectives_of_a_just_transition_to_Low_Carbon_economies_Technical_report.pdf (accessed 11 October 2024).

equity.¹² The methodology adopted in this article is doctrinal. It primarily involves the evaluation of legal instruments and case law as a strategy to examine the extent to which social inclusion and environmental rights could be leveraged to promote just energy transitions in Africa.

Following this introduction, section 2 examines the concept of just energy transition and what it could mean for African countries. Section 3 introduces the two key imperatives, namely: (i) social inclusion and (ii) an environmental rights-based approach that could be used to drive just energy transitions in Africa. Further, it analyses strategies that can underpin social inclusion and environmental rights-based imperatives in energy transition projects, including empowerment of local communities, environmental rights-based approaches to transition, reliance on litigation and corporate and business respect for environmental rights. Section 4 evaluates potential injustices that may arise from the energy transition processes. Section 5 suggests recommendations on how to incorporate the two imperatives in the energy transition process. Section 6 is the conclusion.

II. Just Energy Transition: Social Inclusion and the Environment Pillars

The just transition concept has gained prominence on a global scale in theory and practice.¹³ It is known to have originated in 1970s United States (US) politics and is attributed to a unionist known as Anthony Mazzochi, who was an official within the Oil, Chemical, and Atomic Workers Union in the US from 1977 to 1991.¹⁴ The movement advocated for a worker ‘superfund’ in the form of financial and educational support for workers whose jobs were threatened by increasingly stringent environmental regulations.¹⁵ Various labour organisations subsequently appropriated the idea with principles of justice and equity that hold that workers and communities most negatively impacted by the fossil fuel-based economy should not be left to bear the burden of transitioning to a low-carbon economy.¹⁶ This conception is rooted in union movements with concerns about justice and is currently being carried out in the framework of the International Labour Organisation (ILO) to promote social justice in energy transition.¹⁷

According to the ILO, a just transition from carbon-intensive energy sources to low-carbon sources means having a bridge from where we are today to a future where all jobs are

¹² Generally, see Nabin Rawal, ‘Social Inclusion and Exclusion: A Review (2008) 2 *Dhaulagiri Journal of Sociology and Anthropology* 161, for analysis of the evolution of the social inclusion concept.

¹³ Darren McCauley, Tracy-Lynn Field and Iain Todd, ‘What is a Just Transition?’ in Darren McCauley, Tracy-Lynn Field, Raphael Heffron and Iain Todd (eds.), *The Future of Just Transitions: Theory and Implementation* (Edward Elgar, 2024) 1.

¹⁴ Just Transition Research Collaborative, ‘Mapping Just Transition(s) to Low-Carbon World,’ (2018), https://rosalux.nyc/wp-content/uploads/2020/11/RLS-NYC_Just_Transitions.pdf (accessed 18 October 2024). See also Lovleen Bhullar, ‘Meanings of Energy Justice in the Low-Carbon Transition’ in Giuseppe Bellantuono et al (eds.), *Handbook of Energy Law in the Low-Carbon Transition* (De Gruyter, 2023) 65.

¹⁵ Labour Network for Sustainability and Strategic Practice (LNS), ‘“Just Transition” – Just What Is It?: An Analysis of Language, Strategies, and Projects,’ (2016), <http://www.labor4sustainability.org/uncategorized/just-transition-just-what-is-it/> (accessed 18 October 2024). See also Just Transition Research Collaborative, ‘Mapping Just Transition(s) to a Low-Carbon World,’ (2018), http://www.rosalux-nyc.org/wp-content/files_mf/reportjtrc2018_1129.pdf (accessed 18 October 2024).

¹⁶ Lauren Contorno, ‘Power, Agency, and Equity in Decarbonization: A Multi-Scalar Analysis of Just Transitions Politics’ (DPhil Thesis: Northeastern University Boston, 2019), <https://repository.library.northeastern.edu/files/neu:m044wv72g/fulltext.pdf> (accessed 18 October 2024).

¹⁷ Kees Van Der Ree, ‘Promoting Green Jobs: Decent Work in the Transition to Low-carbon, Green Economies’ in Christophe Gironde and Gilles Carbonnier (eds.), *The ILO at 100: Addressing the Past and Future of Work and Social Protection* (Brill, 2019) 248.

green and decent, where poverty is eradicated, and communities are thriving and resilient.¹⁸ This means developing a systemic approach to sustainability that should include measures to reduce job losses and industry phase-out impacts on workers and communities and produce new, green and decent jobs, sectors and healthy communities.¹⁹ The ILO's understanding of just transition also touches on aspects of the concept to be used to address externalities arising from social, economic and environmental issues linked to energy development.²⁰

As for the concept of just energy transition, this remains to be seen as an offshoot from just transition, and like other concepts in energy law, it is often discussed with different nuances for both developed and developing countries.²¹ For example, the idea of just energy transition is a process centred on dialogue that seeks to minimize the negative impacts of energy transitions on workers and communities with high-carbon sectors while maximizing new decent jobs in the low-carbon growth sector.²² The emphasis here is on achieving just outcomes in the process and results of energy transitions. The concept allows policymakers to understand better how climate policies will affect different sections of the economy and provide them with the tools to ensure that the decarbonization goal is fair and equitable.²³

Whilst the just energy transition concept is gaining momentum in the current energy literature, there is no single approach to a just transition, only multiple and interdependent approaches that states may need to adopt to ensure the delivery of a just and timely transition to a low-carbon energy future.²⁴ According to Eisenberg, the just energy transition concept is linked to easing the burden decarbonization poses to those who

¹⁸ International Labour Organisation, 'A Just Transition to Climate-Resilient Economies and Societies: Issues and Perspectives for the World of Work,' Technical Paper, The Green Initiative, International Labour Organisation, (December 2016), [wcms_536552.pdf](https://www.ilo.org/wcms_536552.pdf) (ilo.org) (accessed 18 October 2024).

¹⁹ Ibid.

²⁰ Ibid.

²¹ Pablo García-García, Óscar Carpintero and Luis Buendía, 'Just Energy Transitions to Low-Carbon Economies: A Review of the Concept and its Effect on Labour and Income' (2020) 70 *Energy Research and Social Science* 101664. For analysis of the debate regarding the utility and nexus between just transition and energy justice, see Ping Huang and Ying Liu, 'Toward Just Energy Transitions in Authoritarian Regimes: Indirect Participation and Adaptive Governance' (2021) 64:1 *Journal of Environmental Planning and Management* 1; Thomas L Muinzer, 'Challenges in Research Approaches to the 'Just Energy Transition' in Legal Studies and Other Branches of the Social Sciences' (2023) 16:1 *The Journal of World Energy Law & Business* 8; Darren McCauley, 'Just Transition and Energy Justice: Different Objectives, Common Approaches?' in Darren McCauley, Tracy-Lynn Field, Raphael Heffron and Iain Todd (eds.), *The Future of Just Transitions: Theory and Implementation* (Edward Elgar 2024) 42.

²² Anna Zinecker et al, *Real People, Real Change – Strategies for Just Energy Transitions* (International Institute for Sustainable Development, Canada 2018) 2.

²³ Smart Energy International, 'A Just Energy Transition vs Rising Inequality,' <https://www.smart-energy.com/industry-sectors/finance-investment/a-just-energy-transition-vs-rising-inequality/> (accessed 18 October 2024).

²⁴ Simone Abram et al., 'Just Transition: Pathways to Socially Inclusive Decarbonisation,' (COP26 Universities Network Briefing October 2020), https://uucn.ac.uk/uucn_briefings/just-transition-pathways-to-socially-inclusive-decarbonisation/ (accessed 18 October 2024). See also Giuseppe Pellegrini-Masini et al, 'Delivering a Timely and Just Energy Transition: Which Policy Research Priorities?' (2020) 30 *Environmental Policy and Governance* 293. Furthermore, the justice issues surrounding energy transitions can also be analyzed via the energy trilemma lens or framework. According to Becky Mawhood and Nikki Sutherland, 'Tackling the energy trilemma' (House of Commons Research Briefing 22 March 2023) <https://commonslibrary.parliament.uk/research-briefings/cdp-2023-0074/> (accessed 18 October 2024), the energy trilemma 'is a framework of three objectives that energy policymakers need to balance, and which is often used as a guide in designing energy policy. The energy trilemma comprises Sustainability: decarbonising energy; Security: ensuring the security and reliability of energy supplies; Affordability: minimising the cost of energy to consumers.' Different governments in different parts of the world have successfully based their energy policies on the energy trilemma framework.

depend on high-carbon industries.²⁵ This idea encompasses the need for equity and justice to be included in efforts to support energy transitions.²⁶ Therefore, a just energy transition is a negotiated vision and process centred on dialogue, supported by guiding principles needed to shift energy production and consumption practices.²⁷ The approach to undertaking just energy transitions is founded on principles that strive to ensure that the costs and benefits of the transition are equitably shared.²⁸

The just energy transition debate features in policy and political discourse and appeals to the need to ensure that efforts to steer society towards a low carbon-based energy future are underpinned by attention to issues of equity and justice.²⁹ This means that the process should endeavour to consider those currently without access to reliable energy supplies who are living in energy poverty and those whose livelihoods are affected by and dependent on a fossil fuel-based economy.³⁰ To achieve this, there is a need for a practical approach to viewing the transition process from a holistic standpoint to ensure that externalities, such as environmental challenges linked to transition infrastructures and the potential lack of social inclusion of local communities in the process that may hinder a successful transition, are addressed.

It is, therefore, important to view the just energy transition concept as a process that must strive to capture principles of equity and justice, not only in the context of a shift from carbon-based energy to low-carbon energy but also a shift that takes into account other externalities such as human, economic development and environmental rights likely to be impacted by the transition.³¹ This means that energy policies and laws relating to decarbonization should not only focus on creating new jobs to replace fossil fuel-based ones but should go beyond to ensure that they identify and address other potential negative impacts on human and environmental rights. This conception makes adopting the imperatives of social inclusion and the environmental rights-based approach a viable tool to undertake just energy transitions in Africa. The next section focuses on the case for the integration of social inclusion and an environmental-based approach to energy transition in Africa.

III. Integrating Social Inclusion and Environmental Rights-Based Approach in Africa's Energy Transition Process

This section argues for two key imperatives to drive just energy transition in Africa. First, it argues for integrating social inclusion to recognize and protect the rights of local communities when undertaking clean energy projects. This would require informing and consulting people in local communities or those who represent them and respecting their rights, including the possibility of the restitution of land or land ownership rights. Second, it argues for integrating an environmental rights-based approach to energy transition. The two imperatives are examined to show how they could enhance just energy transitions in Africa.

²⁵ Ann M Eisenberg, 'Just Transitions' (2019) 92:2 *Southern California Law Review* 308.

²⁶ Peter Newell and Dustin Mulvaney, 'The Political Economy of the "Just Transitions"' (2013) 179:2 *The Geographical Journal* 132.

²⁷ *Ibid.*

²⁸ International Institute for Sustainable Development (GSI), *Real People, Real Change: Strategies for Just Energy Transitions*, GSI Report (2018), <https://www.iisd.org/system/files/publications/real-people-change-strategies-just-energy-transitions.pdf> (accessed 18 October 2024).

²⁹ Newell and Mulvaney, note 26.

³⁰ *Ibid.*

³¹ Victoria Nalule, 'Transitioning to a Low Carbon Economy: Is Africa Ready to Bid Farewell to Fossil Fuels?' in Geoffrey Wood and Keith Baker (eds.), *The Palgrave Handbook of Managing Fossil Fuels and Energy Transitions* (Palgrave Macmillan, 2020) 267; Raphael Heffron and Darren McCauley, 'What is the Just Transition' (2018) 88 *Geoforum* 74.

A. Social Inclusion for a Just Energy Transition in Africa

The global energy system has done little to improve the plight of many local communities in the extractive sector in many parts of the world, including Africa.³² This has necessitated the call for an energy transition approach that would prioritize vulnerable and local communities and people through a socially inclusive approach. Social inclusion is based on an inclusive approach and recognizing local communities' rights in the energy transition process.³³ This conception involves having socially inclusive laws and policies in the energy transition process peculiar to African states. This implies adopting an energy transition approach that involves recognizing the rights of people in local communities in the energy transition process—including distributive, recognition, procedural and restorative rights. Thus, social inclusion in the energy transition process necessitates the involvement of members of local communities that host energy transition projects.

In Africa, energy transition impacts local communities in intersectional ways.³⁴ For example, a variety of intersectional inequalities of energy transition negatively impact local communities in different African states, including a high incidence of poverty, heightened vulnerabilities of marginalised groups, including women, people living with disabilities and children and people who encounter barriers militating against access to justice and restriction of environmental rights amongst others.³⁵ Therefore, for the energy transition to be just in Africa, it must adopt a social inclusion approach and address injustices caused by the energy transition processes in local or host communities. This process, which should be driven by national governments and policymakers in African states, needs to embed the following actions.

Empowerment of Local Communities in Energy Transition

Africa's energy transition process should be primarily skewed towards empowering local communities and other relevant stakeholders, including workers dependent on fossil fuels. Energy transition processes, seen as just and equitable, must address the plight of persons and local communities likely to be negatively impacted by energy transitions. This conception has long remained the basis for the argument that any transition to a low-carbon energy future, particularly if it is to be seen as just, must consider local communities that host energy projects in Africa. Consequently, there have been calls for energy transitions to ensure that communities dependent on fossil fuel extraction and production for employment do not become 'victims' of the decarbonization process. In practice, this would require introducing policy measures that would, on a large scale, seek to ameliorate the socio-economic well-being of these communities.

There have been significant developments in the domestic legal frameworks on energy transition in African countries such as Nigeria, Ethiopia, Kenya, South Africa, Morocco and Egypt.³⁶ For example, the legal framework on energy transition in Kenya includes the Energy

³² Margaretha Wewerinke-Singh, 'A Human Rights Approach to Energy: Realizing the Rights to Billions Within Ecological Limits' (2022) 31:1 *Review of European, Comparative & International Environmental Law* 16, 24.

³³ Damilola S Olawuyi, 'Gender, Indigeneity, and the Search for Environmental Justice in Postcolonial Africa' in Sumudu A Atapattu, Carmen G Gonzalez, and Sara L Seck (eds.), *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge University Press, 2021) 208.

³⁴ Oliver W Johnson et al, 'Intersectionality and Energy Transitions: A Review of Gender, Social Equity and Low-Carbon Energy' (2020) *70 Energy Research & Social Science* 101774.

³⁵ Eghosa O Ekhatior and Pedi Obani, 'Women and Environmental Justice Issues in Nigeria: An Evaluation' in Jarpa Dawuni (ed.) *Intersectionality and Women's Access to Justice* (2022 Lexington Books, 2022) 259.

³⁶ See Laura Webb du Preez, 'Africa: Energy Transition Policies and Regulatory Developments Light Up Across the Continent,' (Baker McKenzie October 2022), <https://www.bakermckenzie.com/en/newsroom/2022/10/energy-transition-policies> (accessed 18 October 2024). See also Eyene Okpanachi et al, 'Energy Regime

Act 2019, the National Energy Policy 2018 and the Kenya Energy Transition & Investment Plan 2023-2050.³⁷ Notwithstanding that Kenya is lauded for its laws and policies that encourage explicit public participation or meaningful engagement with local communities, there has been a rise in human rights violations in infrastructural energy projects and inadequate engagement with local communities.³⁸

South Africa is at the forefront of energy transition initiatives in Africa.³⁹ The South African government has developed measures to enhance the transition from a fossil-based to a low-carbon economy. For example, South Africa has developed a Just Energy Transition Investment Plan (JET IP) for 2023-2027, which seeks to

establish an ambitious long-term partnership to support South Africa's pathway to low emissions and climate-resilient development, to accelerate the just transition and the decarbonization of the electricity system, and to develop new economic opportunities such as green hydrogen and electric vehicles amongst other interventions to support South Africa's shift towards a low carbon future.⁴⁰

Furthermore, South Africa has developed the Just Transition Framework, which 'is a planning tool for achieving a just transition in South Africa, setting out the actions that the government and its social partners will take to achieve a just transition and the outcomes to be realized in the short, medium, and long term.'⁴¹ The Presidential Climate Commission (PCC) plays an invaluable role in the just transition oversight in South Africa.⁴² Notwithstanding criticisms of the PCC, it has enhanced consultation and participation of local communities in energy transition decisions through a series of engagement activities organized in different parts of the country.⁴³

The legal and regulatory framework of energy transition in Nigeria comprises the Climate Change Act 2021, the Nigerian Energy Transition Plan (ETP) 2022 and the Electricity Act 2023.⁴⁴

Reconfiguration and Just Transitions in the Global South: Lessons for West Africa from Morocco's Comparative Experience' (2022) 139 *Futures* 102934. It should be noted that there exists a plethora of regional and subregional initiatives on energy transitions in Africa, including the Africa Energy Commission (AFREC), the New and Renewable Energies Commission and the ECOWAS Master Plan for the Development of Regional Power Generation and Transmission Infrastructure. See Michael Addaney and Bernard Kengni, 'Energy Transitions and the Emerging Energy Law in Africa' in Giuseppe Bellantuono et al (eds.), *Handbook of Energy Law in the Low-Carbon Transition* (De Gruyter 2023) 277, for an extensive analysis of the subregional and regional initiatives on energy transitions in Africa.

³⁷ Also see du Preez, note 36.

³⁸ Generally, see Kibugu, note 7.

³⁹ Harald Winkler et al, 'Just transition Transaction in South Africa: An Innovative Way to Finance Accelerated Phase-out of Coal and Fund Social Justice' (2023) 13:2 *Journal of Sustainable Finance & Investment* 1228. Also, the South African Climate Change Act 2024 was enacted in 2024.

⁴⁰ South Africa's Just Energy Transition Investment Plan (JET-IP), <https://www.climatecommission.org.za/south-africas-jet-ip> (accessed 18 October 2024).

⁴¹ South Africa Just Transition Framework, <https://www.climatecommission.org.za/just-transition-framework> (accessed 18 October 2024).

⁴² Katie Connolly, '5 Lessons from South Africa's Just Transition Journey,' World Resources Institute (1 September 2022), <https://www.wri.org/technical-perspectives/5-lessons-south-africas-just-transition-journey> (accessed 18 October 2024).

⁴³ Rajesh Ramluckun, et al 'A Review of the Energy Policies of the BRICS Countries: The Possibility of Adopting a Just Energy Transition for South Africa' (2024) 16:2 *Sustainability* 703.

⁴⁴ Ivie Ehanmo and Oghosa Erhahon, 'Legal and Regulatory Pathways for sub-Saharan Africa's Energy Access and Energy Transition Agenda' in Ishamael Ackah and Charly Gatete (eds.), *Energy Regulation in Africa: Dynamics, Challenges, and Opportunities* (Springer, 2024) 107. Some of the other regulatory measures on energy transition in Nigeria include the Petroleum Industry Act 2021, the National Determined Contribution (NDC)—with the aim of achieving Net Zero by 2020, the National Energy Policy 2013, the National Climate Change Policy for Nigeria

A key objective of the Electricity Act 2023 is promoting or integrating the Nigerian energy sector.⁴⁵ Nigeria intends to achieve a zero-carbon emission target by 2060, and in August 2022, Nigeria launched its Energy Transition Plan as a strategy to pursue this ambition.⁴⁶ However, several stakeholders (including civil society groups and local communities) in the Nigerian oil and gas industry have been highly critical of the ETP.⁴⁷ For example, the Nigerian ETP is criticised for inadequate stakeholder engagement, and the interests of local communities are not integrated into the consultation process of the ETP.⁴⁸ Hence, the ETP does not allude to host or local communities in its provisions, and these communities have borne the negative impacts of oil operations in the Niger Delta area of Nigeria.⁴⁹ Thus, the Nigerian ETP does not mainstream the interests of local communities in its provisions.

Additionally, in November 2021, the Nigeria Climate Change Act came into law. This is the first separate or explicit climate change law in Nigeria. The Nigerian Climate Change Act is one of the laws established to drive energy transition in the country. It provides the basis for realizing low GHG emissions and embedding climate action into national policies and programmes in Nigeria.⁵⁰ However, implementation and bureaucratic challenges have negatively impacted the Climate Change Act.⁵¹ Also, the provisions of the Nigerian Climate Change Act do not explicitly mention the inclusion of interests/engagement with local communities.

Also, recent developments have promoted the interests of local communities in energy transition projects in Africa. The Sierra Leone Customary Land Rights Act (CLRA) 2022 promotes local communities' rights and access to and prohibits industrial projects, such as mining, plantation activities, farming and housing development, in protected or environmentally sensitive areas.⁵² One key innovation of the CLRA is that it 'grants every community across the country the right to free prior informed consent over any industrial

2021–2023, the Environmental Impact Assessment Act and various gas flaring regulations including the Flare Gas (Prevention of Waste and Pollution) Regulation 2018. Generally, see Victoria Ibezim-Ohaeri et al, 'Energy Transition in Nigeria's Oil-Rich Communities,' Spaces for Change, (December 2022) <https://spacesforchange.org/energy-transition-in-nigerias-oil-rich-communities/> (accessed 18 October 2024).

⁴⁵ See UN Trade & Development (UNCTAD) 'Electricity Act 2023 Liberalizes the Sector and Promotes Renewables' (09 June 2023), <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/4339/nigeria-electricity-act-2023-liberalizes-the-sector-and-promotes-renewables> (accessed 18 October 2024) for analysis of some of the relevant provisions of the Nigerian Electricity Act 2023.

⁴⁶ Nigeria Energy Transition Plan <https://energytransition.gov.ng/> (accessed 18 October 2024). According to Ehanmo and Erhahon *note* 44, 119, the Nigerian Energy Transition Plan 2022 'places the country as a pacesetter, being the first African nation to put forward a clear pathway for achieving net-zero emissions. The Nigerian Energy Transition Plan seeks to attain carbon neutrality by 2060. Generally, see the Nigerian Energy Transition Plan 2022, <https://energytransition.gov.ng/> (accessed 18 October 2024).

⁴⁷ Generally, see Ibezim-Ohaeri et al, *note* 44; Spaces for Change, 'Energy Transition in Nigeria: Expanding Opportunities for Inclusive Stakeholder Engagement' (Policy Brief, 8 March 2024) <https://spacesforchange.org/policy-brief-expanding-opportunities-for-inclusive-stakeholder-engagement-in-energy-transition/> (accessed 18 October 2024).

⁴⁸ Spaces for Change, *ibid*.

⁴⁹ See also Spaces for Change, *note* 47. Furthermore, human rights considerations are missing from the Nigerian ETP.

⁵⁰ Generally, see PwC Nigeria, 'Nigeria's Climate Change Act – Things to Know and Prepare for,' 18 January 2022. See also Catherine Higham et al, 'Innovations in Climate Change Acts: Kenya, Uganda and Nigeria' (2023), <https://www.cpahq.org/knowledge-centre/blogs/climate-change-acts-in-kenya-uganda-and-nigeria/> (accessed 18 October 2024).

⁵¹ See also Obinna Dike, Ololade Periola-Fatunsin and Alexander Ezenagu, *Regulating Energy Transition in Nigeria: Articulating a Development Policy Approach*, The Nigerian Economic Summit Group (August 2023) 30.

⁵² Customary Land Rights Act 2022, <https://sierralio.gov.sl/akn/sl/act/2022/20/eng@2022-09-23> (accessed 18 October 2024).

activity on their territory.⁵³ Furthermore, the CLRA is a testament to the struggles of local communities affected by large infrastructural projects in Sierra Leone. The communities supported by activists and NGOs campaigned over the years for legal framework changes to enshrine local communities' explicit recognition and participation into law.⁵⁴ The enactment of the CLRA in Sierra Leone means that local communities are recognized stakeholders in energy transition projects. This conception, therefore, makes the issue of public support important as national governments need it to confront climate change and realize the quest for energy transition.⁵⁵ However, to get the support of the public in Sierra Leone, the use of the instrument of law and policy to facilitate the transition is needed, and more importantly, such an instrument must adopt a system that protects communities that may be adversely affected during the transition.⁵⁶

Against the above background, the authors recognize that a just energy transition process encompasses practices that seek to enhance the conditions of local communities that are likely to be impacted negatively by energy transition decisions. We argue here that a just energy transition should include deliberate efforts through practical social dialogue that gives workers a voice equal to that of industrialists or companies. The social dialogue or social inclusion approach would help policymakers manage or overcome difficulties local communities would have faced regarding the loss of traditional energy industries.⁵⁷ Conversely, a lack of practical social inclusion initiatives could promote the narratives of pro-fossil fuels organisations.⁵⁸ To date, social inclusion through participation and dialogue has been identified as an important tool for managing the effects of decarbonization. It can empower pro-fossil fuels workers and communities.⁵⁹

In sum, the empowerment of local communities dependent on fossil fuels as a form of just energy transition should mean that they are heard, in good faith, early in the transition process, and more importantly, given a chance to participate meaningfully in the decision-making process that concerns their future.⁶⁰

Corporate and Business Respect for Environmental Rights in Energy Transition Projects in Africa

Another valuable standard of what social inclusion in just energy transition should encompass in Africa is addressing environmental injustices related to clean energy projects through corporate and business reforms. Clean energy proponents and other public officials in African states need to recognize and rectify potential harm done to communities, emphasizing the inextricable link between the environmental and social

⁵³ Sonkita, Conteh and Vivek, Maru 'How Sierra Leone Enacted One of the Most Progressive Land, Climate, and Environmental Justice Laws in the World' (2024) 17 (6) *Environmental Justice* 404.

⁵⁴ Conteh and Maru, *ibid.*

⁵⁵ David J Doorey, 'Just Transitions Law: Putting Labour to Work on Climate Change' (2017) 30:2 *Journal of Environmental Law and Practice* 207.

⁵⁶ See also Kieran Harrahill and Owen Douglas, 'Framework Development for 'Just Transition' in Coal Producing Jurisdictions (2019) 134 *Energy Policy* 110990.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ International Labour Organisation, 'A Just Transition to Climate-Resilient Economies and Societies: Issues and Perspectives for the World of Work,' International Labour Organisation (29 November 2016) <https://www.ilo.org/publications/just-transition-climate-resilient-economies-and-societies-issues-and> (accessed 18 October 2024).

⁶⁰ Oliver Sartor, 'Implementing Coal Transitions: Insights from Case Studies of Major Coal-Consuming Economies,' IDDRI and Climate Strategies, (September 2018), https://coaltransitions.files.wordpress.com/2018/09/coal_synthesis_final.pdf (accessed 18 October 2024).

remediation processes.⁶¹ We note that there can be no meaningful or successful energy transition in Africa if the process, which corporations mainly champion, fails to consider outstanding injustice issues impacting negatively on local communities that may become prevalent in the post-energy transition era.

Furthermore, a plethora of international agencies are emphasizing the invaluable role of the private sector in just transition.⁶² For example, just energy transitions approaches for African states could be through the lens of the United Nations Guiding Principles on Business and Human Rights (UNGPs), which have had a massive influence on the development of human rights due diligence among different stakeholders operating in the Business and Human Rights (BHR) arena.⁶³ Due diligence commitments can also improve the inclusion of local communities in the energy transition decision-making process in Africa. This can be in the form of agreements between local communities and energy companies regarding the energy infrastructural development projects and how the project will be undertaken in the community.⁶⁴

Furthermore, in 2021, the Kenyan Government approved the Kenyan National Plan on Business and Human Rights (NAP).⁶⁵ The Kenyan NAP provides the framework for implementing the UNGPs in Kenya.⁶⁶ In the context of energy projects in Kenya, the NAP posits that human rights violations should be avoided, and protection of human rights, environmental protection and access to remedies are some of its integral provisions.⁶⁷ Thus, African states should develop NAPs as one strategy to promote the human rights of local communities in energy transition projects. Currently, only a few African countries have developed NAPs for business and human rights.⁶⁸ The Nigerian government adopted a business and human rights NAP in 2023. The NAP is now part of the wider National Action Plan for the Promotion and Protection of Human Rights (2024 - 2028), which came into effect in January 2024.⁶⁹ However, energy transition and allied issues such as just transition are not mentioned or integrated into the provisions of the Nigerian NAP.⁷⁰ NAPs on business and

⁶¹ Joseph W Dorsey, 'Restorative Environmental Justice: Assessing Brownfield Initiatives, Revitalization, and Community Economic Development in St. Petersburg, Florida' (2009) 2:2 *Environmental Justice* 69. See also Darren McCauley and Raphael Heffron, 'Just Transition: Integrating Climate, Energy and Environmental Justice' (2018) 119 *Energy Policy* 1.

⁶² Working Group on Business and Human Rights, note 6.

⁶³ Surya Deva et al, 'Beyond Human Rights Due Diligence: What Else Do We Need?' (2023) 8:2 *Business and Human Rights Journal* 133.

⁶⁴ Generally, see Ibronke T Odumosu-Ayanu and Dwight Newman, *Indigenous-industry Agreements, Natural Resources and the Law* (Routledge, 2020).

⁶⁵ The Danish Institute for Human Rights, 'Human Rights and the Energy Transition in Kenya,' (February 2022), https://www.humanrights.dk/sites/humanrights.dk/files/media/document/Kenya%20Energy%20Transition%20and%20Human%20Rights%20Scoping_accessible.pdf (accessed 10 October 2024).

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ United Nations Human Rights Office of the Commissioner, 'National action plans on business and human rights' <https://www.ohchr.org/en/special-procedures/wg-business/national-action-plans-business-and-human-rights> (accessed 10 October 2024). Currently, four African countries – Kenya, Liberia, Nigeria and Uganda have developed NAPs on BHRs.

⁶⁹ National Action Plans on Business and Human Rights: Nigeria, (22 February 2024) <https://globalnaps.org/country/nigeria/#:~:text=A%20NAP%20on%20Business%20and,adopted%20on%2014%20January%202024> (accessed 10 October 2024).

⁷⁰ National Human Rights Commission, 'National Action for the Promotion and Protection of Human Rights 2024 - 2028,' (21 January 2024) <https://www.nigeriarights.gov.ng/activities/nap/458-national-action-plan-for-the-promotion-and-protection-of-human-rights-2024-2028.html> (accessed 18 October 2024). See also Oyenyi Abe, *Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions* (Routledge, 2022) for an analysis of the utility of NAPs on business and human rights in Africa.

human rights in African countries should explicitly include issues surrounding energy transition projects in local communities in their provisions.

Furthermore, in Sierra Leone, a ground-breaking law—the Mines and Minerals Development Act 2022—was enacted to promote accountability and transparency in the extractive sector.⁷¹ This law is said to be unprecedented and contains many innovations.⁷² For example, it requires companies operating to obtain the free, prior and informed consent (FPIC) of local communities before starting mining, and those who own land will now have the right to veto any project that affects it. Thus, this law promotes the social inclusion of relevant stakeholders (including local communities) in the extractive sector, including energy transition projects in Sierra Leone.⁷³

B. Environmental Right-Based Approach to Energy Transition

An environmental rights-based approach to driving just energy transition in countries entails using the environmental rights-based framework as a policy tool for addressing environmental issues/inequalities associated with the energy transition process. This approach involves mainstreaming environmental rights into the planning and execution of energy transition projects. Additionally, it would include formulating and implementing policies that incorporate environmental rights that effectuate just energy transition. In practice, such a process would mean adopting measures to address injustices affecting local communities arising from energy transition initiatives. Injustices in this sense include environmental challenges arising from energy transition with negative implications for the rights of local people in host communities due to their close affiliation and reliance on the land.⁷⁴ Local communities can use an environmental rights-based approach and litigation to achieve a more just energy transition in Africa.

Adopting an Environmental Rights-based Approach to Energy Transition in Africa

Just as energy scholars have argued for the utilization of the United Nations Human Rights-Based approach framework to mainstream human rights into carbon-based energy access projects,⁷⁵ the same approach could be used to mainstream environmental rights into clean energy projects to drive a just energy transition in Africa. This approach implies that energy policies that seek to promote energy transition in African countries should take into consideration the possibility of mainstreaming environmental rights into low-carbon energy projects. An environmental rights-based approach involves extending constitutionally guaranteed rights to encompass energy justice issues arising from decarbonization. This implies having rights that largely seek to protect citizens affected by decarbonized energy systems and allowing them to seek redress against negative externalities associated with clean energy systems. In practice, this conception

⁷¹ Parliament of the Republic of Sierra Leone, 'Parliament Passes Mines and Development Act 2022,' (9 August 2022), https://www.parliament.gov.sl/uploads/press_release/pdf/PARLIAMENT%20PASSES%20MINES%20AND%20MINERAL%20DEVELOPMENT%20ACT%202022%20-%209th%20AUGUST,%202022.pdf (accessed 18 October 2024).

⁷² Business & Human Rights Resource Centre, 'Sierra Leone Enacts Unprecedented Law Requiring Explicit Community Consent, Land Rights for Women, and Strong Environmental Protection,' (16 August 2022), <https://www.business-humanrights.org/en/latest-news/sierra-leone-enacts-unprecedented-laws-requiring-explicit-community-consent-land-rights-for-women-and-strong-environmental-protection/> (accessed 18 October 2024).

⁷³ In Kenya, the FPIC is arguably well-integrated into national law and policies. See Nqobizitha Ndlovu and Enyinna S Nwauche, 'Free, Prior and Informed Consent in Kenyan Law and Policy After Endorois and Ogiek' (2022) 66:2 *Journal of African Law* 201.

⁷⁴ Shawkat Alam, 'The Collective Rights of Indigenous Peoples, Environmental Destruction, and Climate Change' in Erika Techera et al (eds.), *Routledge Handbook of International Environmental Law* (2nd edition, Routledge 2021) 359, 359

⁷⁵ Damilola Olawuyi, *The Human Rights-Based Approach to Carbon Finance* (Cambridge University Press, 2016).

implies that the environmental right-based approach remains helpful in mitigating the externalities arising from energy transition projects in Africa.

This article further posits that existing human rights can be interpreted to encapsulate claims regarding access to clean energy for local communities. Article 260 of the Kenyan Constitution acknowledges energy as part of natural resources in Kenya.⁷⁶ Furthermore, several African (for example, Kenya and South Africa) constitutions have many provisions on human rights, including socio-economic rights. Article 43 of the Kenyan constitution focuses on socio-economic rights, including the right to food, health, education and clean and safe water. Muigua argues that access to energy is essential for actualising several of these rights.⁷⁷ Hence, the realization of socio-economic rights in the energy sector can improve access to energy justice for local communities that bear the brunt of energy injustices arising from energy transition infrastructural projects.

Litigation by Local Communities

Due to the failings of many energy transition initiatives in Africa, several local communities have resorted to litigation to enhance access to justice and ensure that project developers (businesses) and the government do not ignore their interests. According to Wewerinke-Singh, litigation in this context ‘involves the potential of legal human rights claims to ensure greater accountability of governments and private actors for action and inaction relating to energy.’⁷⁸ Thus, litigation can be used to encapsulate the justice issues arising from the quest to attain a low-carbon economy in African countries. In practice, local communities are one of the major losers of energy transition projects, and some local communities have explicitly relied on litigation to protect their rights.⁷⁹ If the concerns of the local communities are not explicitly encapsulated in energy transition projects, litigation can have detrimental impacts on the quest to attain energy transition in Africa.⁸⁰

A recently published report by BHRRC titled ‘Unjust Transition on Trial’ suggests that there has been a massive rise in lawsuits against energy firms in different parts of the world due to the worrying trend of systemic abuse or exploitation of local communities in the energy transition sector.⁸¹ Thus, there has been a noticeable increase in the number of lawsuits instituted by local communities against energy companies in different parts of the world. It should be noted that many of the lawsuits filed by local communities are arguably

⁷⁶ KLEIN, ‘Media Guide on Land and Energy Rights Reporting,’ <https://www.kelinkkenya.org/wp-content/uploads/2024/09/Media-guide-on-land-and-energy-rights-reporting.pdf> (accessed 18 October 2024).

Furthermore, relevant international human rights treaties can also be reconceptualized to include access to energy issues. Generally, see Kaisa Huhta, ‘Conceptualising Energy Justice in the Context of Human Rights Law’ (2023) 41 (4) *Nordic Journal of Human Rights* 378. Also, based on the African regional human rights system, scholars have argued that the right to energy can be derived from the provisions of Articles 22 and 24 of the African Charter on Human and Peoples’ Rights (Banjul Charter). See Michelle Barnard and Werner Scholtz, ‘Fiat Lux! Deriving a Right to Energy from the African Charter on Human and Peoples’ Rights’ (2013) 38:1 *South African Yearbook of International Law* 49.

⁷⁷ Kariuku Muigua, ‘Towards Energy Justice in Kenya’ (2020), <https://kmco.co.ke/articles-publications/towards-energy-justice-in-kenya/> (accessed 18 October 2024).

⁷⁸ Wewerinke-Singh, note 32, 18.

⁷⁹ Also, see Elodie Aba, ‘A Fast and Fair Energy Transition: How Community Legal Action and New Legislation are Shaping the Global Shift to Renewable Energy’ (2023) 8:2 *Business and Human Rights Journal* 252.

⁸⁰ Generally, see Isabella Kaminski, ‘“Disturbing” Rise in Just Transition Lawsuits Threatens to Derail Energy Transition,’ *Wave* (7 August 2024), <https://www.the-wave.net/disturbing-rise-just-transition-lawsuits-threatens-derail-energy-transition/> (accessed 18 October 2024).

⁸¹ Business & Human Rights Resource Centre, ‘Unjust Transition on Trial: Communities and Workers Litigate to Shape Corporate Practice,’ (10 July 2024), <https://www.business-humanrights.org/en/from-us/briefings/unjust-transition-on-trial-communities-and-workers-litigate-to-shape-corporate-practice/> (accessed 18 October 2024).

seen as the last resort and many communities want to contribute to shaping the quest to attain energy transition.⁸² In simple terms, local communities want their perspectives or viewpoints to be considered in the energy transition projects.

Due to human rights violations and other injustices, protests and litigation instituted by local communities have suspended or stopped some energy transition projects in Africa. Local communities in Kenya have instituted several cases against energy companies. For example, in *Save Lamu & 5 others v National Environmental Management Authority (NEMA) & another*, the Kenyan National Environment Tribunal cancelled an EIA permit issued to the company that wanted to set up a coal plant in the Lamu community due to inadequate public participation.⁸³ The tribunal emphasized that the people and local community must have a say on each aspect of the project and their potential impacts.⁸⁴

Also, in the *Lake Turkana Wind Farm case*,⁸⁵ a lawsuit was instituted by several local communities against the Lake Turkana power project and the court held in their favour.⁸⁶ In this case, the Kenyan Environment and Land Court held that ‘the only effective remedy would be an order for demolition or removal.’⁸⁷ However, implementation of the judgment has been slow, and several challenges are currently militating against the successful enforcement of this decision.⁸⁸ Recent developments show that the project developers have been unable to overturn this decision.⁸⁹

Furthermore, litigation has positively impacted the behaviour of project developers in energy transition in parts of Africa. For example, after the initial dispute, ‘dialogue between the company and the community has led to a community in Kenya now reaping co-benefits from a wind power project. These benefits include reasonable compensation—on the community’s terms—by the company, who also benefit from a more stable and cooperative investment environment.’⁹⁰

Additionally, there has been an increase in litigation involving local communities and their concerns regarding energy transition projects in different parts of Africa. For example, in *Baleni and Others v Minister of Mineral Resources and Others*, the South African High Court held that the Umgungundlovu community has a right to consent before the utilization of natural

⁸² Generally, see Business & Human Rights Resource Centre, *ibid*; Annalisa Savaresi and Margaretha Wewerinke-Singh, *A Just Transition?: Investigating the Role of Human Rights in the Transition Towards Net Zero Societies*, EUI, LAW, AEL, Working Paper, 2024/09, (European Society of International Law [ESIL]) <https://hdl.handle.net/1814/76752> (accessed 18 October 2024).

⁸³ *Save Lamu & 5 others v National Environmental Management Authority (NEMA) & another*, Tribunal Appeal No. NET 196 of 2016, (2019) eKLR. Also cited in Muigua, *note 77*.

⁸⁴ *Save Lamu* *ibid*; Muigua, *ibid*.

⁸⁵ *Mohamud Iltarakwa Kochale and others v Lake Turkana Wind Power Ltd and others* (ELC Case No. 163 of 2014), https://media.business-humanrights.org/media/documents/Lake_Turkana_Wind_Power_Judgment_October_2021.pdf?fbclid=IwAR1CWK61-TnoE0fWTnngWp7f43uZRaG7A-oeBmOn9B7rWvsznOuLH80lXkU (accessed 18 October 2024).

⁸⁶ Business & Human Rights Resource Centre, ‘Kenya: Lawsuit by Locals Against Lake Turkana Wind Power Over Land Allocation & Community Participation Slowing Down Project,’ (19 March 2020) <https://www.business-humanrights.org/en/latest-news/kenya-lawsuit-by-locals-against-lake-turkana-wind-power-over-land-allocation-community-participation-slowing-down-project/> (accessed 18 October 2024).

⁸⁷ *Mohamud Iltarakwa Kochale and others v Lake Turkana Wind Power Ltd and others* (ELC Case No. 163 of 2014).

⁸⁸ Generally, see Nurit Hashimshony Yaffe and Hilah Segal-Klein, ‘Renewable Energy and the Centralisation of Power. The Case Study of Lake Turkana Wind Power, Kenya’ (2023) 102 *Political Geography* 102819.

⁸⁹ Waweru Wairimu, ‘Multi-million Turkana Wind Power Project in Limbo; Land Acquired Irregularly,’ *Nation* (Thursday 25 May 2023), <https://nation.africa/kenya/counties/marsabit/multi-million-turkana-wind-power-project-in-limbo-land-acquired-irregularly-4246328> (accessed 18 October 2024).

⁹⁰ Business & Human Rights Resource Centre, ‘Fast and Fair,’ *note 13*, 2. See also Caiphys B Soyapi, ‘Environmental Governance, Hollow Environmentalism, and Adjudication in South Africa’ (2023) 26 *Potchefstroom Electronic Law Journal* for criticisms of some of the relevant lawsuits in the South African context.

resources in their traditional lands.⁹¹ According to Mensi, this judgment ‘represents one of the few cases where a domestic court refers to a right to consent of an indigenous community under both domestic and international law.’⁹² Also, in South Africa, relevant stakeholders, including local communities and NGOs, have taken Shell to court to prevent it from engaging in seismic surveys of the Wild Coast of South Africa in the quest for the development of further oil and gas reserves or resources.⁹³ In South Africa, the rights of local communities regarding ownership, living and all other rights are protected by the law.⁹⁴ In the *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*⁹⁵ case in 2021, the court held that there is ‘reasonable apprehension of irreparable harm and imminent harm of the right as the seismic survey will promote extraction of fossil fuels and adversely impact climate change, the applicant communities’ cultural practices, ocean conservation, and the spiritual and sustainable use of the ocean for healing and fishing purposes.’⁹⁶ A second case involving Shell—*Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*—was decided in 2022.⁹⁷ In this case, the court held that the consultation process was flawed and unfair and could be set aside on this basis.⁹⁸ Thus, litigation can enhance positive outcomes for local communities and other relevant stakeholders and ensure adequate participation in energy transition projects in Africa.⁹⁹ In essence, litigation has improved the social inclusion of local communities in energy transition projects in many parts of Africa.

IV. Injustices Arising from Energy Transition in Africa

An important indicator of the realization of a just energy transition is in relation to the dimensions of energy justice, namely (i) distributive, (ii) procedural, (iii) recognition and (iv) restorative justice. Just as we have different forms of injustice existing in carbon-based energy systems, there are also potential injustices that could be manifested in decarbonized energy systems.¹⁰⁰ Therefore, the energy transition process, particularly for African

⁹¹ *Baleni and Others v Minister of Mineral Resources and Others* (73768/2016) [2018] ZAGPPHC 829; [2019] 1 All SA 358 (GP); 2019 (2) SA 453 (GP) (22 November 2018). See also Andrea Mensi, ‘The South Africa High Court Baleni Judgment: Towards an Indigenous Right to Consent?’ (2022) 6 *African Human Rights Yearbook* 375.

⁹² Mensi, *ibid* 375.

⁹³ Louise Du Toit, Caiphas Soyapi, and Louis J Kotzé, ‘David Versus Goliath? Indigenous People, Carbon Majors and Climate Litigation in South Africa’ (2024) 33:2 *Review of European, Comparative & International Environmental Law* 326.

⁹⁴ For example, Sections 30 and 31 of the Constitution of the Republic of South Africa, 1996. See also Du Toit et al, *ibid*.

⁹⁵ *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* 2022 (2) SA 585 (ECG) (also known as the Shell 1 case).

⁹⁶ *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* (Shell Case 1), Climate Change Litigation Database website <https://climatecasechart.com/non-us-case/sustaining-the-wild-coast-npc-and-others-v-minister-of-mineral-resources-and-energy-and-others/#:~:text=The%20Court%20agreed%20that%20there,and%20sustainable%20use%20of%20the%20ocean> (accessed 18 October 2024).

⁹⁷ *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* 2022 (6) SA 589 (ECMk) (also known as the Shell 2 case).

⁹⁸ Shell 2 case, *ibid*, para 103. Also, see Du Toit et al, *note* 93.

⁹⁹ Also, see Oyeniyi Abe, ‘Between Control and Confrontation: The Pitfalls and Potential of Corporate-community Participatory Development in Africa’s Energy and Extractive Industries’ (2022) 11 *The Extractive Industries and Society* 101095.

¹⁰⁰ Noel Healy and John Barry, ‘Politicizing Energy Justice and Energy System Transitions: Fossil Fuel Divestment and a “Just Transition”’ (2017) 108 *Energy Policy* 451. For divergent academic perspectives on the utility of the energy justice concept, see Aileen McHarg, ‘Energy Justice: Understanding the “Ethical Turn” in Energy Law and Policy’ in Inigo del Guayo and others (eds.), *Energy Justice and Energy Law* (Oxford University Press 2020); Raphael J Heffron, ‘Energy Law in Crisis: An Energy Justice Revolution Needed’ (2022) 15:3 *Journal of World Energy Law & Business* 169.

countries relying heavily on carbon-based energy sources, must deliver ‘just’ and ‘equitable’ outcomes for everyone. To achieve these, there is a need to pursue a just energy transition process that is socially inclusive and adopts an environmental rights-based approach. This can be achieved through analyses identifying the four dimensions of energy justice, highlighting the potential negative implications of energy transitions on African communities.¹⁰¹ The four dimensions in the energy transition context are discussed below.

A. Distributive Injustices

In the energy transition context, ‘distributive justice refers to the fair distribution of energy benefits and resources among society members, protecting and empowering those most affected by energy policies and decisions.’¹⁰² For example, achieving distributive justice in the era of energy transition is largely seen as achieving a fair distribution of material goods from decarbonized energy systems.¹⁰³ While we note that on an overall scale, energy transitions have significant benefits in mitigating climate change impact, it should go beyond climate change mitigation to deal with the unfair distribution of material goods from decarbonized systems, thus resulting in social and economic inequalities in the transition process.

In Nigeria, the Nigerian National Petroleum Company (NNPC) Limited has signed various memorandums of understanding (MOUs) with Morocco, Cote Ivoire, Liberia, Benin and Guinea as part of the Nigeria-Morocco gas pipeline (NMGP) project.¹⁰⁴ NNPC Limited avers that this project provides an opportunity to monetize Nigeria’s abundant hydrocarbon resources by expanding access to energy to support economic growth, industrialisation and job creation across the African continent and beyond.¹⁰⁵ However, relevant stakeholders, including civil society groups and local communities, are highly critical of this project.¹⁰⁶ They suggest that companies operating in the energy sector have been at the centre of various human rights violations, environmental degradation, gas flaring and injustices arising from the activities in the extractive sector in Nigeria.¹⁰⁷ Additionally, local communities hosting this energy transition project contend that the proposed gas project will negatively affect their well-being and livelihoods and worsen societal injustices.¹⁰⁸

B. Procedural Injustices

Procedural injustice entails a lack of opportunity for people, especially members of local communities, to participate in decisions that promote energy transition. The point here is that energy transition decision processes should ensure that they build on extensive

¹⁰¹ Stephen Williams and Andréanne Doyon, ‘Justice in Energy Transitions’ (2019) 31 *Environmental and Societal Transitions* 144.

¹⁰² Maria A Tigre and Natalia Urzola, ‘Just Transition Litigation: A Toll for More Just and Sustainable Economies,’ International Institute for Environment and Development (4 September 2023), <https://www.iied.org/just-transition-litigation-tool-for-more-just-sustainable-economies> (accessed 18 October 2024).

¹⁰³ Hanri Mostert and Heleen Van Niekerk, ‘Disadvantage, Fairness, and Power Crises in Africa’ in Yinka Omorogbe and Ada Ordor (eds.), *Ending Africa’s Energy Deficit and the Law* (Oxford University Press, 2018) 59.

¹⁰⁴ Bunmi Aduloju, ‘NNPC Signs Gas Pipeline Agreement with Morocco, Benin,’ *The Cable* (16 June 2023) <https://www.thecable.ng/nnpc-signs-gas-pipeline-agreement-with-morocco-benin/> (accessed 18 October 2024).

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Health of Mother Earth Foundation (HOMEF), ‘Nigeria-Morocco gas pipeline: Not in Our Interest’ (16 March 2018), <https://homef.org/2018/03/16/nigeria-morocco-gas-pipeline-not-in-our-interest/> (accessed 18 October 2024).

community engagement that allows people who may be affected by the transition to participate in decision-making. This means adopting an approach that provides opportunities for listening and responding to genuine concerns before, during and after installing low-carbon energy systems. This conception implies that just energy transitions must encompass principles of procedural justice, including fair and equitable procedures that seek to engage and treat all stakeholders as equal subjects in a non-discriminatory way.¹⁰⁹

Achieving procedural justice in the energy transition context means ensuring the meaningful participation of those directly affected by the transition or its decisions. Meaningful participation is supported by a plethora of human rights concepts and international legal principles such as procedural rights to information and free, prior and informed consent.¹¹⁰ In practice, procedural injustices are likely to occur when groups of individuals or local communities are forced to abandon their homes due to the construction of energy infrastructure for transition.¹¹¹ Achieving a just energy transition through this energy justice dimension requires that the transition processes provide not only for individuals and local communities that may be affected to participate in decision-making but also for their concerns to be taken seriously.¹¹²

In pursuing procedural justice, there is limited stakeholder participation in the design, creation and execution of energy transition initiatives, which raises human rights issues and leads to conflict in many instances.¹¹³ For instance, the Lake Turkana wind project in Kenya exemplifies the absence of procedural justice in energy projects in Africa. This project was supposed to be Africa's largest wind project. A plethora of stakeholders averred that the lease for the land was issued without satisfactory stakeholder consultation and compensation. The lease process caused a negative impact on the livelihood of local communities in the area.¹¹⁴ Also, in Kenya, the Kinangop wind power project was jettisoned due to resistance or rejection by landowners over inadequate compensation.¹¹⁵ The members of local communities protested, and some community members were hurt during the protest with one person alleged to have died.¹¹⁶ This accentuates the view that government and businesses lack stakeholder engagement in many African local communities where energy transition projects are sited. The failure to involve relevant stakeholders, such as local communities, in developing energy transition projects in Africa not only leads to power imbalances, inequalities and marginalization but also hampers the achievement of fair and just outcomes in the transition to the detriment of human rights.¹¹⁷ Hence, the explicit participation of relevant stakeholders (such as the local communities) in the energy transition process is paramount to ensuring a just energy transition in Africa.¹¹⁸

¹⁰⁹ Mostert and Van Niekerk, note 103, 63.

¹¹⁰ Tigre and Urzola, note 102.

¹¹¹ Kostina Prifti, Alberto Quintavalla and Leonie Reins, 'The Legal Implementation of Distributive and Procedural Justice for a Just Transition' in Darren McCauley, Tracy-Lynn Field, Raphael Heffron and Iain Todd (eds.), *The Future of Just Transitions: Theory and Implementation* (Edward Elgar 2024) 66.

¹¹² Darren McCauley et al, 'Advancing Energy Justice: The Triumvirate of Tenets' (2013) 3 *International Energy Law Review* 107.

¹¹³ Working Group on Business and Human Rights, note 6.

¹¹⁴ Kibugu, note 7.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Working Group on Business and Human Rights, note 6.

¹¹⁸ This will arguably translate into a 'social licence to operate' (SLO) in communities where energy projects are executed. Generally, see Raphael J Heffron et al 'The Emergence of the 'Social Licence to Operate' in the Extractive Industries? 74 *Resources Policy* 101272; Godswill A. Agbaitoro, 'Resolving Energy Challenges: Implementing and Evaluating an Energy Justice Framework for Nigeria' (PhD. Thesis: University of Essex, 2023). The advantage of getting an SLO in host communities is enormous, including providing opportunities for host communities to be part of the project through a sense of belonging.

C. Recognition Injustices

This principle emphasises recognizing people's various needs, rights and experiences affected by energy transition decisions and determining which part of society becomes privileged or ignored.¹¹⁹ The essence of recognition justice is to examine, understand and ultimately address the basis and cause of inequalities in the energy system. Furthermore, this tenet advocates the various needs, rights and experiences of those affected by energy systems and ensures that their opinions are respected, acknowledged and appreciated.¹²⁰ This conception implies that just as misrecognition in carbon-based energy systems results in injustices, the same injustice of misrecognition may be present in the build-up to low-carbon energy systems. Thus, the energy transition process must ensure that vulnerable people whose vulnerability may worsen due to the low-carbon transitions are identified and prioritized.¹²¹ As such, the recognition justice dimension in the context of energy transitions has to be delivered to people who face intolerance and discrimination and should support and promote the idea that these people should be guaranteed a fair representation of their views without distortion or fears of reprisal.¹²²

It is important to note that relevant stakeholders, including local communities, are not always recognized as legitimate parties in energy transition in African countries.¹²³ For example, one of the primary reasons for the conflicts in the Niger Delta region of Nigeria is the lack of recognition and participation of the people in host communities of the natural resource governance framework.¹²⁴ As we know it, this relates to developing carbon-based resources for economic development. Therefore, it is imperative that when it comes to energy transition, this injustice should be avoided mainly through a process that incorporates an inclusion mechanism that facilitates a just transition.

D. Restorative Injustices

Restorative justice concerns in the energy transition process raise burden-sharing and restorative questions that are not too dissimilar to those associated with developing carbon-based energy infrastructures.¹²⁵ This implies repairing and restoring any harm caused by transition policies and activities interfering with people's rights.¹²⁶ For example, energy proponents may decide to build large-scale hydroelectric power infrastructure such as a dam, which may negatively impact the rights of people in a particular community. This idea may lead to a situation where the energy transition process delivers injustices or harm, such as exacerbating the social inequalities and inequities arising from energy systems. In

¹¹⁹ Darren McCauley and Raphael Heffron, 'Just Transition: Integrating Climate, Energy and Environmental Justice' (2018) 119 *Energy Policy* 1.

¹²⁰ Ayodele Morocco-Clarke, 'In the Midst of So Much Injustice, Can There Be a Seat for Energy Justice at the Nigerian Table?' (2023) 16:3 *The Journal of World Energy Law & Business*: 251, 261.

¹²¹ Benjamin Sovacool et al, 'Decarbonization and its Discontents: A Critical Energy Justice Perspective on Four Low-carbon Transitions' (2019) 155 *Climatic Change* 589.

¹²² Darren McCauley et al, 'Energy Justice in the Transition to Low Carbon Energy Systems: Exploring Key Themes in Interdisciplinary Research' (2019) 233 *Applied Energy* 916–21; Benjamin Sovacool et al, 'Energy Injustice and Nordic Electric Mobility: Inequality, Elitism, and Externalities in Qualitative Expert Perceptions of Electrification of vehicle-to-Grid (V2G) Transport' (2019) 157 *Ecological Economics* 205.

¹²³ Eghosa Ekhatior and Edward Okumagba, 'Climate Change, and Multinationals in Nigeria: A Case for Climate Justice in Kim Bouwer, Uzuazo Etemire, Tracy-Lynn Field and Ademola Oluborode Jegede (eds.), *Climate Litigation and Justice in Africa* (Bristol University Press, 2024) 247.

¹²⁴ Ibid.

¹²⁵ Annalisa Savaresi, 'Community Energy and a Just Energy Transition: What We Know and What We Still Need to Find Out' in Iñigo del Guayo et al (eds.), *Energy Justice and Energy Law* (Oxford University Press 2020) 79.

¹²⁶ Tigre and Urzola, note 102.

practice, this includes reported human rights abuses associated with renewable energy generation projects that resulted in killings, threats, intimidation, land grabs, inadequate working conditions and encroachment upon local communities' land and livelihoods.¹²⁷ Against this background, restorative justice could be a valuable tool for addressing potential injustices that arise from energy transition processes, particularly as the energy transition infrastructures may have a greater impact on local communities.

In Africa, energy transition is causing irreparable damage, especially in local communities. For example, the Lake Turkana wind farm in Kenya has negatively impacted the quality of life of the local communities. This project has led to forced migration, gender-based violence, conflicts, water and food insecurity and the disruption of the language and traditions of the local communities.¹²⁸ This is sometimes attributed to the need for more legal and regulatory policies to drive renewable energy development. According to the Guardian, none of the world's 15 largest energy renewable companies have policies on respecting land rights despite wind and solar requiring substantial amounts of land; only a quarter have policies recognizing the rights of people in local communities.¹²⁹ This exemplifies the near absence of restorative justice considerations in Africa's energy transition projects.

Restorative justice must be delivered in the energy transition process, opening opportunities to provide remedies to those who may be vulnerable or have been negatively impacted by energy transition decisions. Restorative justice in the face of energy transitions defines the duty to rectify injustices arising from decision-making that aims to drive energy transition.¹³⁰ This observation implies that national governments, even in Africa, have a vital role to play, particularly in terms of creating an enabling environment, improving the level of support and access to clean energy and mediating the competing powerful interests at stake in the quest to transition to low-carbon forms of energy production.¹³¹

The next section discusses some recommendations that can be used to enhance or promote just energy transition in Africa.

V. Recommendations

This section provides recommendations drawn from the social inclusion and environmental rights-based imperatives to promote just energy transitions. Some of the recommendations include the development of new laws and policies on energy transition, enhancing public participation of local communities in energy transition projects, mainstreaming environmental rights considerations into energy transition projects and building institutional capacity that would promote just and equitable transition.

A. Development of Laws and Policies on Energy Transition

Due to the failings of some of the existing legal frameworks on energy transition in Africa, this article suggests that African countries should develop laws and policies dealing

¹²⁷ Annie Signorelli and Eniko Horvath, 'Fast & Fair Renewable Energy Investments: A Practical Guide for Investors,' Business & Human Rights Resource Centre (2019), https://media.business-humanrights.org/media/documents/Renewable_Energy_Investor_Briefing_0.pdf (accessed 18 October 2024).

¹²⁸ Nina Lakhani, 'A Just Transition Depends on Energy System that Works for Everyone,' Guardian (13 November 2022), <https://www.theguardian.com/environment/2022/nov/12/cop27-dash-for-gas-africa-energy-colonialism> (accessed 18 October 2024).

¹²⁹ *Ibid.*

¹³⁰ Raphael Heffron and Darren McCauley, 'The Concept of Energy Justice Across Disciplines' (2017) 105 *Energy Policy* 658, 660.

¹³¹ Newell and Mulvaney, *note 26*.

explicitly with energy transition issues. Here, such laws should explicitly promote the rights and interests of local communities in energy transition projects and decisions. We note that some African countries have gone beyond only achieving energy access or addressing energy poverty to legislate on just transition. This approach should be strengthened by having national governments establish independent bodies to provide advice and facilitate stakeholder (including local communities) engagement in the energy transition process in Africa. For example, South Africa has set up the Presidential Climate Commission (PCC), which is a multi-stakeholder body created by the President of South Africa 'to (1) advise on the country's climate change response and (2) support a just transition to a low-carbon climate-resilient economy and society.'¹³²

Arguably, the PCC can be a tool for integrating the viewpoints or perspectives of relevant stakeholders (including local communities) as one of the strategies for enhancing the just transition initiatives in South Africa.¹³³ Thus, the role of the PCC is to accelerate the transition in South Africa.¹³⁴ Through its numerous activities (such as workshops, campaigns and reports), the PCC enhances the social inclusion of local communities in the energy transition underpinned by its extensive stakeholder engagement.¹³⁵ Furthermore, the recently passed South African Climate Change 2024 has codified PCC into law as an independent and 'statutory body tasked with providing advice on the country's climate change response.'¹³⁶ Hence, African countries should draw lessons from South Africa and establish independent bodies to enhance the participation of host communities in the development of energy transition projects.¹³⁷

Energy transition projects in Africa are afflicted by several challenges, especially regarding the inclusion and rights of local communities. Furthermore, despite the rise in the laws and policies on energy transition in Africa, enforcement still needs to be improved.¹³⁸ Thus, for the energy transition to be fair and successful, African governments must fully implement the legal instruments for it and ensure that the interests of local communities (and other relevant stakeholders) are enshrined in the legal frameworks. Furthermore, national policies on energy transition should explicitly mainstream human rights and the meaningful engagement of host communities in its provisions. This will help improve the ability of host communities to play an active role in energy transition projects in Africa. Hence, African governments (and regulators) must exhibit political will to implement

¹³² Presidential Climate Commission Report, 'A Framework for a Just Transition in South Africa' (2022), <https://pcccommissionflow.imgix.net/uploads/images/A-Just-Transition-Framework-for-South-Africa-2022.pdf> (accessed 18 October 2024).

¹³³ See the Presidential Climate Commission (PCC), 'A Critical Appraisal of South Africa's Just Energy Transition Investment Plan' (14 May 2023), <https://www.climatecommission.org.za/publications/a-critical-appraisal-of-south-africas-just-energy-transition-investment-plan> (accessed 18 October 2024).

¹³⁴ Cynthia Elliott, 'South Africa establishes an Inclusive Process towards a Just Transition, with Broad Stakeholder Engagement,' World Resources Institute (6 March 2024), <https://www.wri.org/update/south-africa-establishes-inclusive-process-toward-just-transition-broad-stakeholder> (accessed 18 October 2024).

¹³⁵ Ibid.

¹³⁶ Argus Media, 'South Africa Adopts Climate Change Law' (25 July 2024), <https://www.argusmedia.com/en/news-and-insights/latest-market-news/2591302-south-africa-adopts-climate-change-law> (accessed 18 October 2024).

¹³⁷ However, according to Pegah Mirzania, et al, 'Barriers to Powering Past Coal: Implications for a Just Energy Transition in South Africa' (2023) 101 *Energy Research & Social Science* 103122, some barriers militating against just transition initiatives in South Africa include deficient institutional capacity, lack of transparency and inadequate regulatory monitoring capacity. See also Iain Todd and Darren McCauley, 'Assessing Policy Barriers to the Energy Transition in South Africa' (2021) 158 *Energy Policy* 112529.

¹³⁸ Generally, see Yinka Omorogbe and Ada Ordo, (eds.), *Ending Africa's Energy Deficit and the Law: Achieving Sustainable Energy for All in Africa* (Oxford University Press, 2018.)

laws and regulations and compel private companies (including) and public entities to live up to their energy transition obligations.¹³⁹

B. Enhancing Public Participation of Local Communities in Energy Transition Projects

Public participation and consultation is a key component of a just transition. It also enhances the rule of law in energy transition projects.¹⁴⁰ The legitimacy of energy transition projects in Africa depends highly on citizen engagement. Hence, laws on just transition in the energy sector should aim to remove barriers against public participation in the process. In simple terms, public participation can be defined as the process by which public concerns, needs and values are incorporated into governmental and corporate decision-making.¹⁴¹

The Nigerian Climate Change Act provides for public participation to a limited extent for stakeholders that will have implications for the quest to actualize energy transition in Nigeria.¹⁴² Thus, scholars have also been highly critical regarding whether the Nigerian Climate Change Act is a vehicle of public participation in climate change governance and the quest for a low-carbon economy in Nigeria.¹⁴³ Therefore, Nigeria can learn lessons from Kenya. For example, in Kenya, *locus standi* is readily available for victims of environmental and energy injustices based on the constitutionality of the right to an environmental provision in the Kenyan constitution.¹⁴⁴ Thus, the Nigerian Climate Change Act should be revised to explicitly grant legal standing to local communities that are victims of energy injustices arising from energy projects in Nigeria to institute cases in court to protect their interests. This can enhance the possibility of litigation premised on the Nigerian Climate Change Act as a tool to ensure that GHG emission targets are met. Thus, laws encouraging public participation and consultation with the local communities in energy projects to facilitate just energy transition are essential in African countries.

C. Mainstreaming Environmental Rights Considerations into Energy Transition Projects

An environmental approach also entails relying on existing constitutional human rights provisions, laws and policies to enhance access to energy justice and improve the role of local communities in the development of energy transition projects in Africa. This will enhance local communities' inclusion in Africa's energy justice architecture. Thus, constitutionally guaranteed rights (for example, in Kenya) can be used to improve the

¹³⁹ Generally, see Benjamin K Sovacool, 'Clean, Low-carbon but Corrupt? Examining Corruption Risks and Solutions for the Renewable Energy Sector in Mexico, Malaysia, Kenya and South Africa' (2021) 38 *Energy Strategy Reviews* 100723; Olusola J Olujobi, et al, 'Legal Responses to Energy Security and Sustainability in Nigeria's Power Sector Amidst Fossil Fuel Disruptions and Low Carbon Energy Transition' (2023) 9:7 *Heliyon*.

¹⁴⁰ See also Jenny Hall and Peter J Lukey, 'Public Participation as an Essential Requirement of the Environmental Rule of Law: Reflections on South Africa's Approach in Policy and Practice' (2023) 23:2 *African Human Rights Law Journal* 303.

¹⁴¹ J L Creighton, *The Public Participation Handbook: Making Better Decisions through Citizen Involvement* (John Wiley & Sons, 2005) 7. Generally, see Kariuki Muigua, Didi Wamukoya, and Francis Kariuki, *Natural Resources and Environmental Justice in Kenya*, Vol. 1. (Glenwood Publishers Limited, 2015)

¹⁴² According to Olusola Joshua Olujobi and Ikiyouleimo Success Odogbo, 'Strategic Evaluation of the 2021 Nigeria Climate Change Act: Surmounting Challenges, Paving the Way for Success, and Envisioning Future Trajectories' (2024) 10 *Social Sciences & Humanities Open* 100928, the Nigerian Climate Change Act 'acknowledges the importance of public participation and mandates MDAs [Ministries, Departments and Agencies], and CSOs under sections 22, 23 and 25 of the Act in their efforts to adopt some form of mitigation policy.'

¹⁴³ Pontian Okoli and Etisang Abraham, 'In Search of a Sustainable Future: A Comparative Assessment of Climate Change Regimes in Nigeria and Kenya' (2024) 33:2 *Review of European, Comparative & International Environmental Law* 276.

¹⁴⁴ Also see Okoli and Abraham, *ibid*

participation, consultation and promotion of the rights of local communities regarding the implications or impacts of energy transition projects in such communities. Furthermore, Huhta ‘argues that human rights law can be used to frame the same substantive issues as energy justice and that, because of this, human rights law could provide energy justice with a legal (rather than purely academic or policy-focused) framework for its operationalisation.’¹⁴⁵ Hence, in the African context, an environmental rights-based approach can be used to integrate energy justice issues in just transition laws and policies in Africa. Additionally, activities or operations arising from energy infrastructural projects should not infringe or violate the human rights of members of local communities thus also ensuring that local ‘communities are meaningfully informed and represented in energy decisions.’¹⁴⁶

Furthermore, legal instruments on energy transition in Africa should explicitly promote and protect the human (environmental) rights of members of local communities during the development and throughout the operational cycle of the infrastructural energy projects and beyond.

D. Building Institutional Capacity to Drive Just Energy Transition

A vital aspect of the success of energy transition is the role of institutions required to manage and oversee energy transition processes. Developing a clear and strong legal framework for energy transition in Africa is vital to ensure that the process is just and equitable. However, this approach must be complemented by a strong institutional framework established at all levels. This implies that the diverse stakeholders and institutions involved in the energy transition processes must coordinate and cooperate. Scholars have argued the importance of a coordinated governance approach that brings together the relevant agencies, institutions, and local communities through pragmatic and standardized approaches to foster cooperation and minimize duplication of responsibility.¹⁴⁷ Achieving just energy transition also requires knowledge and information sharing between relevant energy institutions, stakeholders and local communities. This should be built on capacity development geared towards advancing the objectives of transitioning to low-carbon energy. Establishing strong institutions in Africa’s energy sector will potentially bring together environmental and human rights actors to jointly implement energy transition projects in a just and equitable manner. This approach would allow for the practical inclusion of local communities and other relevant stakeholders in effectively implementing energy transition laws and policies.

VI. Conclusion

Achieving a just energy transition requires more than simply engaging in decarbonization and adopting a low-carbon energy future. Clearly, socio-economic issues need to be addressed if African countries are to advance just energy transitions. The challenges of the lack of social inclusion and an environmental rights-based approach to energy transition in Africa are key factors that, when addressed, could help to ensure a just and equitable transition that aligns with the socio-economic status of African countries. Thus, the article proposed the adoption of the two imperatives of social inclusion and environmental rights-based approach as part of strategies that African countries could utilize to pursue the realization of just energy transitions.

¹⁴⁵ Huhta, note 76, 378.

¹⁴⁶ Benjamin K Sovacool and Michael H Dworkin, ‘Energy Justice: Conceptual Insights and Practical Applications’ (2015) 142 *Applied energy* 435, 441.

¹⁴⁷ Damilola Olawuyi, ‘Sustainable Development and the Water-Energy-Food Nexus: Legal Challenges and Emerging Solutions’ (2020) 103 *Environmental Science & Policy* 1.

To ensure the practical implementation of these two imperatives on just energy transitions in Africa, there is a need for explicit laws and policies on energy transition that will consider not only the socioeconomic challenges and status of African countries but are also centred on addressing injustices linked to energy transition. A just and equitable energy transition for Africa also requires practical public participation of local communities whose interests are likely to be affected by the development of energy transition projects. Furthermore, environmental rights considerations in energy transition projects remain a valuable way to drive just energy transitions. Ensuring that proponents of energy transition projects give due regard to the rights of local communities set to host or are already hosting projects will ensure social inclusion. Additionally, the success of just energy transition processes requires a robust institutional framework attributed to capacity building for all stakeholders, including local communities, regulators and government agencies involved in the transition.

Competing interest. The authors declare none.

Financial support. No funding was received for this article.

Cite this article: Godswill A. Agbaitoro and Eghosa O. Ekhaton, 'Just Energy Transition in Africa: Towards Social Inclusion and Environmental Rights-Based Imperatives' (2025) *Business and Human Rights Journal* 10, no. 1: 34–55. <https://doi.org/10.1017/bhj.2024.30>