

Transitioning to renewable energy in Africa – reflecting on the critical role of public sector lawyers

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A. Introduction

The law plays a critical role in underpinning sustainable development (SD). It shapes the governance context in which environmental, economic and social objectives can be balanced. Many legal principles already exist to help this: for example, i) [Polluter Pays](#), ii) [User Pays](#), iii) [Precautionary Principle](#), iv) [Free Prior and Informed Consent](#) and v) [Intergenerational Equity](#). International treaties, such as the [Montreal Protocol](#), the [Paris Agreement](#) and the [Convention on Biological Diversity](#) all seek to reduce the negative impact of human activity on the environment, but require national legal processes to domesticate their requirements.

If developing country governments have a cadre of well-qualified public sector lawyers, they can respond quickly to changing social, economic and environmental circumstances by shaping new laws of SD and adapting existing ones. In parallel, if the judiciary has a good understanding of these laws, then they can be applied and enforced more consistently and fairly. With the right legal expertise and supporting institutions, therefore, developing country governments can continue to adapt their legal environment so their economies remain on SD pathways and create just and fair societies in which people want to live.

There is considerable flux in the energy sector. On the one hand, a transition is underway, albeit falteringly, towards the goal of reaching net zero-carbon emissions by 2050. This goal is critical if the world is to avoid the worst impacts of climate change, and it has led to much interest in harnessing renewable sources of energy that have lower environmental footprints than fossil fuels. On the other hand, given significant levels of energy poverty, an accessibility transition is underway: new ways are also being sought to ensure that poor groups are able to access reliable, cheap and clean energy for domestic and productive purposes.¹

Many African countries are urgently exploring how they can move their economies away from expensive and polluting fossil fuels to renewables, in ways that also support poverty reduction. This strategic choice is not a reaction to pressures from northern countries to mitigate carbon emissions but rather governments wanting to utilise their comparative advantage in renewable resources as an effective way of expanding their economies, reducing poverty, powering their communication networks, and improving the sustainability of their agriculture.

Without foreign investment, however, it is unlikely that developing countries will be able to transition at speed. Critical to attracting foreign investors is to shape legislative frameworks that minimise risk so that investors can develop ‘bankable’ projects. Failure to have, for example, a Renewable Energy Act, to secure land tenure arrangements, and robust processes to resolve disputes makes it difficult for companies to secure investment from commercial lenders.

While policy progress in Africa’s energy sector has been good towards renewable technologies and towards energy accessibility, the law is a step behind. This threatens realisation of new visions for renewable energy. Little work has been done to assess whether the legislative frameworks of developing country governments can support the transition. In light of this, in 2022, the [Oxford Policy Fellowship](#) (OPF), with

¹ Recent [data](#) from the International Agency suggests that Sub-Saharan Africa’s share of the global population without access to electricity has risen to 77 per cent.

financial support from the [Rockefeller Foundation](#) (RF) commissioned Ernst & Young (EY) to explore the legislative frameworks for renewable electricity generation in Sierra Leone and Malawi to determine if they would both facilitate the transition to renewables and attract foreign investment. Their reports demonstrated that some laws and regulations needed to be changed and new laws introduced to accelerate the transition.²

Governments will need well-qualified and knowledgeable public sector lawyers to ensure their legislative frameworks for renewable and accessible energy are robust to current and future needs. Many public sector lawyers in low- and middle-income countries would now benefit from acquiring the skills needed to establish the legal and regulatory foundations to catalyse the growth of renewables.

OPF, in collaboration with [ILI-SACE](#), an Africa-based NGO with experience of developing and running legal training courses, agreed to work together to develop a new course that would transfer these skills to African public sector lawyers to help them manage the legal issues of the transition. In 2022, 14 public sector lawyers from across the continent shaped the course's curriculum.

During the process there was an emerging awareness of the complexity of the transition process – not only a rapid phasing-in of renewable technologies but also the careful phasing-out of the use of fossil fuels and the necessary changes in investment flows – all in ways that do not alienate powerful actors who are currently tied to fossil fuels. The legal environment is a critical foundation to facilitate this balance.

B. Supporting the transition to renewable energy

For decades, fossil fuels have generated the energy that has sustained both commercial and domestic activities. This has been underpinned by public policy and legislation that has supported fossil fuel extraction and production, and subsidised its consumption.

The *status quo* is no longer sustainable. It is environmentally unsustainable: the world now recognises that carbon emissions generated by burning fossil fuels are heating the planet to dangerous levels and that everything must be done to keep the rise in temperature below 1.5 degrees.³ Thus governments have agreed that reform to fossil fuel legislation and regulations is urgently needed to reduce consumption. It is also socially unsustainable: in Sub-Saharan Africa (SSA), electricity reaches only about half of its people, leaving 600 million without electricity – the lowest energy access rates in the world. Transitioning to renewable energy is now timely because SSA can neither meet its energy needs based solely on fossil fuel, nor afford to suffer the harmful climate change and environmental pollution impacts.

Recognising these problems, many bilateral and multilateral donors and philanthropic foundations have been supporting developing countries to make the transition away from fossil fuels to renewables.⁴

² Please see these reflection pieces for [Sierra Leone](#) and [Malawi](#).

³ For example, since 1970 annual carbon emissions have doubled and continue to increase, Up to 3.6 billion people now live in contexts highly vulnerable to climate change, economic losses from climate related disasters have increased sevenfold. Over the same period, global biodiversity has seen an unprecedented decline. On average, monitored populations of mammals, fish, birds, reptiles and amphibians have decreased by over 69%. At least 75% of the world's land surface and 66% of the ocean has been significantly altered and degraded by human activity, and an estimated one million species are facing extinction – please this UK government [report](#) p.11

⁴ In the literature many descriptions of the transition process fail to explain the phasing out of fossil fuels as well as the role that government legal services play in shaping a supportive legislative environment.

A new programme, the [Global Energy Alliance for People and Planet](#) (GEAPP), was launched at CoP 26, Glasgow in 2021.⁵ The initiative has been joined by 10 multilateral banks and development agencies.⁶ GEAPP aims to accelerate investments that will produce green energy transitions and renewable power solutions in developing countries. Over the next decade, GEAPP aims to attract USD100 billion in public and private capital to: i) bring reliable and renewable energy to one billion people, ii) avoid four billion tons of carbon emissions and iii) create, enable, or improve 150 million jobs.

When working with partner countries, GEAPP applies three levers to maximise the effectiveness of its investments.⁷ One lever focuses on getting the *'enabling environment'* right. GEAPP provides financial support, technical assistance and training to partner countries so they can shape their own policies and legislation to promote the adoption of green technologies, to improve people's access to clean energy, and to ensure that investment in renewable energy makes commercial sense.

C. Factors enabling and constraining the transition

The process of transitioning an economy to renewables is complex and wide-reaching. Many developing countries have little experience of implementing similar change processes.⁸ In government, the process straddles different state institutions. In business, it involves several sectors. Without careful coordination and good communication, synergies may be missed, and the transition will be slower than expected.

In Sierra Leone, for example, EY argued that the Ministry of Energy, State House, the Ministry of Finance and Economic Development, and the Ministry of Agriculture and Forestry – as the key state bodies involved – must communicate and work together during implementation. There are many other stakeholders, such as parliamentarians, judges and civil society leaders whose support for the transition is also critical. They need to understand their government's renewables strategy and keep abreast of progress to ensure they play their roles in the transition.

The power producers who are rooted in the fossil fuel economy are significant stakeholders, too. Their ability to disrupt the process if they think it will undermine their businesses – and sometimes their monopolies and monopsonies and powers over consumers – should not be underestimated. To that end, government strategies that seek to retire fossil fuel power plants in a fair and just manner, so they mitigate any negative socio-economic consequences, are more likely to be supported by their owners and other stakeholders.⁹

Existing methods of assessing energy infrastructure programmes may need to be adapted so that they can more accurately assess the potential costs and benefits of renewables, which are invisible to many current assessment frameworks.¹⁰ For example, Environmental Impact Assessment methods, originally developed to assess the impact of large infrastructure projects, may deter investment in (often smaller) renewables projects if they are not adapted to make the assessment process less expensive but no less rigorous.

EY's review of the legal frameworks in Sierra Leone and Malawi demonstrated that both countries need to change elements of their legislative frameworks to set the transition process on the right pathway. EY

⁵ Its founding members are: the [Rockefeller Foundation](#), the [Bezos Earth Fund](#) and the [IKEA Foundation](#).

⁶ Examples include: i) African Development Bank, ii) European Investment Bank, iii) International Finance Corporation, iv) USAID and v) World Bank.

⁷ The levers i) Enabling Environment, ii) Innovation & Entrepreneurship and iii) Risk Capital are explained in full [here](#).

⁸ Renewables refer to sources that generate electricity, notably solar, geothermal, and wind energy.

⁹ The Asian Development Bank's [Energy Transition Mechanism programme](#) is informative here: it is addressing these issues in three Asian countries.

¹⁰ Please see this [article](#) by Sanne Vammen Larsen in Impact Assessment and Project Appraisal

argued that a Renewable Energy Act would give a clear signal to investors that the country was committed to renewables and demonstrate that investing in renewable energy makes commercial sense. It emphasized how Public Private Partnership (PPP) units in government ministries must be structured correctly and operate efficiently as they are likely to be the main channel through which foreign direct investment will flow to renewable energy projects.

In Malawi, for example, EY argued that the government should use its Public Private Partnership Act of 2022 to forge a cohesive framework and strategy for renewable energy projects, thus making it more attractive to foreign investors. In Sierra Leone, EY considered the PPP unit too reliant on the Ministry of Justice for legal support, and it urgently needed in-house specialist legal support to manage increasing flows of foreign investment.

While it is recognised that the transition to renewable energy can be achieved only through integrated and interdisciplinary approaches that involve government and others, the law often remains confined within its own silos.¹¹ The importance, therefore, of the lead government institutions working together to review legislation and draft new laws and regulations cannot be overestimated. It is critical therefore that the legal services of developing country governments have the skills and expertise to support the legal framework for the energy transition. Currently, no course exists to transfer these skills.

D. Origins of the new course, its main elements, problems and next steps

To make progress in legal capacity and reform, OPF invited organisations with expertise in designing and running legal training courses in Africa to submit proposals describing how they would develop a course for public sector lawyers. ILI's proposals were accepted. Using a competitive process, ILI identified 14 public sector lawyers drawn from across SSA to participate in two five-day workshops. The outcomes of the workshops were used to develop a draft curriculum.

Workshop participants agreed that the objective of a new course should be to provide SSA public sector lawyers with the knowledge and skills they need to draft state-of-the-art renewable resource legislation, and to negotiate and draft state-of-the-art contracts that protect the interests of their country.

They agreed that the major legal barriers to making the transition to renewable sources of energy, that need to be addressed by the course, are:

1. Inadequate supporting legislation (and existing legislation that militates against the transition);
2. Government lawyers untrained in and inexperienced in i) the drafting of relevant legislation, ii) negotiating and drafting the myriad of contracts that are used in renewable energy development and implementation, and iii) the range of dispute settlement processes;
3. Legislators, policy makers and judicial personnel untrained in the issues of renewable energy transition; and
4. Inadequate dispute settlement fora and mechanisms.

The new course will comprise two phases. The first will take place online and be interactive over a four-week period. The topics discussed will include: i) legislative drafting, ii) negotiating, iii) contract drafting, iv) adapting dispute-settlement mechanisms and v) legal research and writing. The aim of this module is to give participants sound background information about: i) the need for renewable energy, ii) sources of

¹¹ Please see this [article](#) by Kaisa Huhta in Global Environmental Change

renewable energy, iii) key concepts and terminology relating to renewable energy development, iv) types of renewable energy project, and v) policy issues.

The second phase will be a face-to-face learning forum lasting for two weeks. It is focused on the work of lawyers as legislative draftspersons, drafters and negotiators of a wide variety of contracts, and designers of dispute settlement provisions in contracts. It includes a focus on the variety of stakeholders affected by renewable energy projects, the social and environmental impacts of renewable energy projects, issues of project financing, risk management and methods for preventing project-related corruption within government and by private parties.

The full course will deliver 10 learning outcomes. Students will become fully conversant with the major international and national policy considerations relating to renewable energy, and will be able to apply the right legal and regulatory instruments to promote and enable renewable energy programmes and projects.

Other skills will help participants to evaluate and advise on, the legal aspects of renewable projects from community programmes to large utility-scale projects. Importantly, they will become aware of the contractual documents needed to implement these projects, whether through public-private partnership arrangements or otherwise. They will have a thorough understanding of the issues relating to contract implementation, management of pre-construction and post-construction.

But course design is only one pillar of the necessary capacity-building. Workshop participants were asked to highlight what the course organisers should do to ensure good access to, and engagement in, the course:

- “I am concerned applicants may not secure their line manager’s approval to attend the course. OPF should publicise the benefits of the course widely and emphasise what new skills graduates of the programme will bring back to their places of work.”
- “In my experience when someone returns from training, they are often promoted to a position where they cannot apply their new skills. OPF should agree with sponsoring governments what can be done to guard against this and to make strategic use of the skills.”
- “I hope OPF establishes systems that capture feedback from course stakeholders so the training is regularly refreshed to deliver the knowledge and skills that we (public sector lawyers) really need to support the transition.”
- “I would benefit enormously if OPF were to establish a repository for information about renewable energy and the transition. It would be invaluable to have examples and guidance about the elements of a Renewable Energy Act, the different mechanisms to resolve disputes, the many issues involved in repealing fossil fuel legislation, and examples of how to run power auctions and set feed-in tariffs.”
- “When I finish the course, I would find an online monthly meeting very helpful – to interact with course faculty and trainees, to clarify issues I have learned during the course, and to raise questions about what I am dealing with now.”

Before the training course kicks off, OPF plans to identify and deploy Fellows to work in the main government ministries to support the transition in Sierra Leone, Malawi and Uganda, and will run the training course in these countries as a trial. Once lessons have been learned and improvements to the course made, it is hoped to take it to scale elsewhere in Africa.

In each of the three trial countries, eight government lawyers from (approximately) four government institutions will be invited to take the course. Ministry staff will have the opportunity of not only acquiring new legal skills and knowledge but also forging new working relationships with colleagues in other ministries who are working on the transition.

The agency that delivers the course will identify national universities in the three countries who can help in not only running the trial course but also institutionalising it in those countries, so that it is integrated into their teaching programmes for both undergraduate and post-graduate students.

E. Lessons and reflections

The workshops gave public sector lawyers from across Africa the opportunity to shape a course that would transfer the knowledge their colleagues need to support the transition. What follows are some lessons from the process and further reflections on the critical role that public sector lawyers play in supporting the transition to renewables and in realising the Sustainable Development Goals.

1) The transition to renewable energy:

The rapid changes in renewable energy technology, plus the changes in the resulting energy mix, tend to be what dominates discussion and media interest in the renewable energy 'transition'. But the process of transitioning to renewables is more complex than this. It is deeply rooted in the political economy. Changes in the legal regime are as critical to the transition as are technological and investment changes, providing essential guiderails for making the right institutional changes at the right pace for the stakeholders concerned. Participants emphasised, for example, that policy makers need to strike a balance between supporting the adoption of renewables and carefully managing those stakeholders that are generating power utilising fossil fuels and who can undermine the process.

2) Critical importance of the public sector legal community and their capacity:

There is only weak awareness of the important work that public sector lawyers do in supporting SD needs. This needs to be communicated better to stakeholder groups and donor agencies. Many donors in particular fail to appreciate that public sector lawyers play a critical role in creating supportive SD legislative frameworks and fail to give government legal services the investment they need and deserve. Consequently, important policy initiatives are rendered impotent and critical investments do not materialise.

OPF plans to establish a Community of Practice (CoP) that will allow government colleagues involved in the transition to interact easily with each other. EY's research suggested that staff working in the ministries of: i) Energy, ii) Public, Private Partnership units (usually situated in Ministries of Finance), iii) Justice, iv) Agriculture / Environment and the Electricity Regulator would benefit from such an opportunity. It is hoped that the CoP would facilitate the exchange of experience, knowledge and lessons in the renewables sector between and amongst African countries.

If the CoP becomes an effective and efficient way of sharing experience amongst legal practitioners in the renewables sector, then lawyers working on other SDGs may want to establish a similar CoP so they, too, can benefit from being part of a community where a diverse range of practitioners share insights from their work for the benefit of many.

3) Tracking how legislative frameworks are changing to support the transition

We have only begun to identify the legal provisions required for an effective, just transition: OPF's legal reviews provide enough information to suggest what and how to track the legal provisions countries are putting in place and to encourage exchange on what works.

In collaboration with others, we will develop a tool to track these critical provisions. It will provide African governments, the donor community and civil society organisations with information to gauge what progress is being made by different countries towards shaping favourable legislative environments. Such a

tracker may foster dialogue between different countries who want to learn from each as well as the sharing of laws and regulations that support the transition.

It will also highlight which countries are not progressing as quickly as expected in making changes to their legislative frameworks which may help donors, for example, target their resources more effectively and efficiently.

4) The role of the law in achieving other sustainable development aspirations:

OPF's involvement in the energy sector in Africa suggests that many countries will have to make significant (and often quite rapid) changes to their laws and regulations if they are to attract the investment needed to transition to renewables and this will require a cadre of well-trained public sector lawyers.

We see similar dynamics in other sectors like agriculture, industry and urbanisation. More broadly, this suggests that, where developing country governments want to move their economies on to SD trajectories, regular reviews of their legislative frameworks and regulations will be essential. If they cannot adapt them to align with changing social, economic and environmental contexts, then achieving SD public policy objectives will be challenging.

OPF's experience in mainstreaming legislative reviews and building legal capacity in the public legal services can reveal what is needed for achieving other SDGs.

5) Sustainability of the training:

One issue that the review of the training course will explore is if, as currently structured, it can be both institutionally and financially sustainable. Without these elements in place, the course is unlikely to be rolled out successfully.

During the trial phase, OPF and its implementing partner will assess whether local academic institutions can deliver the course to the necessary standard. It will also examine if they have the ability to integrate it into their teaching programmes so that law students can learn about the legal issues involved in adopting renewable energy technologies as well as understanding the legal instruments involved in retiring fossil fuel driven power generation facilities.

Relying upon donor funds to support the roll out of the course is a risky strategy. The aim, therefore, is to create a course that is self-financing. When the course is trialled, the implementing partner will determine if governments are willing and able to pay the full cost of the course. If they cannot, the constraining factors will be identified and strategies developed to overcome them. As the course is trialled over 2024, OPF will engage with regional bodies: the [African Development Bank](#), the [Southern African Development Community](#), the [East African Community](#) and RF's new [African School of Regulation](#) to seek their insights into the structure of the course, how best to achieve institutional and financial sustainability and how they can support its roll out across the continent.

6) The workshop process – remote versus face-to-face:

The workshops were held when restrictions on international air travel had just been lifted. OPF and ILI discussed the possibility of utilising Zoom and Teams to deliver certain elements of the workshop which would help reduce costs and carbon emissions.

While it was agreed that these technologies had worked well during the pandemic, it was felt that they would not be suitable for this kind of interactive workshop where open discussion between and amongst participants and speakers would be critical in generating the course curriculum.

During the first workshop, however, one of the guest speakers had to deliver his presentation remotely. While the content of the presentation was good, the speaker and participants were unable to interact satisfactorily with each other – so discussing ideas informally, sharing experiences on an individual basis and discussing possible collaboration did not happen. This experience confirmed the value of our decision to hold face-to-face meetings.

The [Oxford Policy Fellowship](#) (OPF) is a unique development programme. It sees the rule of law as being central to achieving sustainable development. It responds to demand from low- and middle-income country (LMIC) governments for legal expertise by providing them with lawyers who work for two years as local civil servants.

The lawyers, known as Fellows, work alongside their ministry colleagues to strengthen government's legal and public policy capacity as well as supporting processes that improve the rule of law. This improved capacity helps LMIC governments to negotiate, for example, better terms with aid agencies for loan agreements, domesticate international conventions, and strengthen national policies and legislative frameworks (in order, for instance, to attract foreign investment). Strengthening governments' legal capacity is a fundamental step in achieving sustainable development.

OPF's key strength lies in its Fellows. Fellows come from all over the world and are from a range of backgrounds, yet all have one clear thing in common: they are high-calibre, resilient individuals who display a dedicated and flexible approach as they empower colleagues and support partner governments in addressing their legal and policy needs.

[ILI South African Centre for Excellence](#) (ILI-SACE) vision and mission is to empower lawyers and business executives to become new leaders in Africa.

ILI-SACE was established so that Africa could be more fully prepared to play the role that it should in fostering development on the continent; and so that the continent could play the leadership role that it should play on the world stage.

ILI-SACE offers courses that explore how laws and regulations and issues of finance and corporate governance affect business management and government. Courses explore a range of subjects that are central to the work of African lawyers, and business executives, and public officials and to African development in the 21st century.

The focus is on practical problems and practical solutions. The hallmarks of the programme are case studies from Africa and elsewhere, problem-solving, interdisciplinary teaching, and emphasis on creative thinking.

ILI-SACE encourages communication and understanding between lawyers and their private and public clients and creating networks of lawyers and business executives and public administrators across the continent.