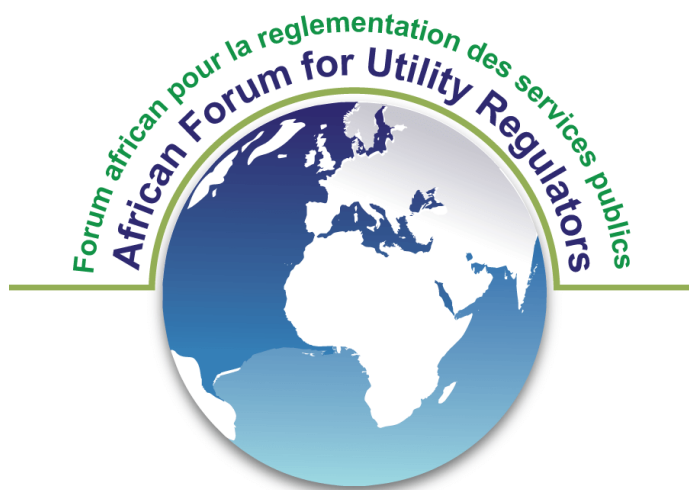




African Model Mini-Grid Regulations

Legal Guidelines

of the African Model Mini-Grid Regulations Tool

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Acronyms

AFUR: African Forum for Utility Regulators

ESCO: Energy Service Company

IPP: Independent Power Producer

MIGA: Multilateral Investment Guarantee Agency

SPD: Small Power Distributor

1 Introduction

The African Forum of Utility Regulators (AFUR) presents this Legal Guidelines as part of its work on the African Model Mini-Grid Regulations Tool which is being developed in partnership with GET.transform. Mini-grids hold immense potential to bridge the energy access gap in Africa. However, the successful development of mini-grids hinges on the existence of a robust legal framework that will govern their establishment, operation, and scalability.

The African Model Mini-Grid Regulations Tool addresses these critical needs by providing a comprehensive legal framework for adoption by regulators. Operating as an interactive document, the African Model Mini-Grid Regulations Tool enables users generate template mini-grid regulations, concession agreements or project agreements further to responses the user of the tool provides to a range of questions (which include mini-grid model features, structural, procedural technical aspects, and tariff considerations). The African Model Mini-Grid Regulations Tool has been developed through collaborative efforts of AFUR and GET.transform, recognising the challenges and opportunities in mini-grid regulation. The African Model Mini-Grid Regulations Tool will be published on the AFUR website in the first quarter of 2025.

The African Model Mini-Grid Regulations Tool also recognises the relationship between technical, financial, and legal aspects of mini-grids and further seeks to strike a balance between overly rigid regulations which can stifle innovation and investment. Also, excessively lax regulations which may compromise the overall reliability of a nation’s electricity network and service quality are addressed in the tool.

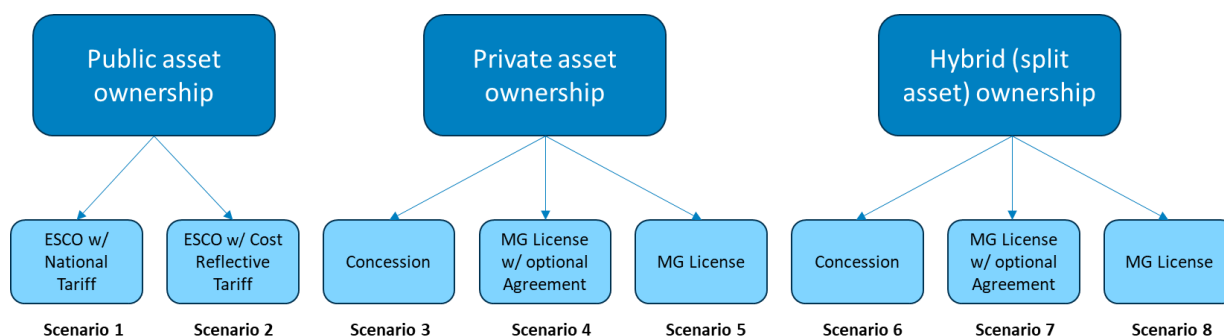
Importantly, the African Model Mini-Grid Regulations Tool effectively addresses the legal and regulatory considerations which span across eight high-level scenarios developed based on the following four criteria: (a) overarching mini-grid model features; (b) structural and procedural aspects; (c) technical aspects; and (d) tariff considerations (as shown in figure 1, below).

FIGURE 1. Decision criteria for mini-grid regulation scenarios



The next figure, figure 2, shows the eight high-level scenarios based on the ownership structures under the overarching mini-grid model features.

FIGURE 2. Mini-grid ownership scenarios



Regulatory environments vary significantly from country to country, particularly in terms of asset ownership structures. Hence, distinct legal regimes, categorised broadly into public asset ownership, private asset ownership, and hybrid (split asset) ownership scenarios have been considered in the development of the African Model Mini-Grid Regulations Tool. Each ownership scenario identified in figure 2 above, presents a spectrum of approaches to mini-grid development and a key consideration across these ownership structures is the balance between public and private sector involvement in financing, control, and operation of the mini-grid assets.

Under the public ownership model, such as scenarios 1 and 2, there is a potential for fast-paced deployment of mini-grid assets at scale with the involvement of private sector expertise through Energy Service Company (ESCO) models.

Under the privately owned and operated models, such as scenarios 3, 4 and 5, private sector investment and expertise are leveraged. These models offer opportunities for efficient project development, financing and operation, potentially expanding access to electricity in underserved areas. Accordingly, the African Model Mini-Grid Regulations Tool addresses potential risks such as procedural uncertainties and determination of the applicable tariff methodology.

The hybrid ownership structures, as seen in scenarios 6, 7, and 8, aim to capitalise on the strengths of both public and private sectors by splitting and allocating asset ownership between parties that can best bear the risks and responsibilities of developing and funding the infrastructure, land allocation and efficient operation, thereby reducing overall project costs. In these scenarios, the African Model Mini-Grid Regulations Tool effectively addresses the matters relating to alignment of project development milestones and timelines, establishment of technical specifications for publicly and privately owned assets and efficient risk allocation between the responsibilities of the public and private parties.

Additionally, the authorisation instruments for each scenario incorporate a stabilisation clause provision which is a key consideration for the Multilateral Investment Guarantee Agency (MIGA) and other international financial institutions. The provision seeks to protect investors from adverse impacts caused by changes in laws or regulations. It provides that where such changes occur which affect the financial

interest or operations of the Mini-Grid, the government and other competent authorities commit to engaging in good faith negotiations to mitigate such adverse effects that arise.

This **legal guideline discusses important issues from the African Model Mini-Grid Regulations** and considers the legal factors that support the establishment of effective mini-grid regulations by African regulators.

2 Authorisation Instruments

The instruments of authorisation serve as essential tools for establishing the rights of mini-grid developers to operate within the legal framework governing the different scenarios. These instruments include the mini-grid licence, concession agreements, and mini-grid licence with optional agreement, each serving specific purposes and reflecting the unique characteristics of the regulatory environment. Our observation from implementation in countries shows that regulators are more interested in flexible adaptation of these authorisation instruments. Accordingly, in some instances highlighted below, there may be dual adoption of authorisation instruments in countries.

2.1 Mini-Grid Licence

The Mini-Grid Licence is an instrument that confers legal authority upon the mini-grid operator to undertake specified activities in relation to the establishment and operation of a mini-grid within a designated geographical area. This instrument outlines the rights, obligations, and conditions under which the operator is permitted to construct, generate, distribute, and sell electricity to consumers. The Mini-Grid Licence typically incorporates regulatory requirements, technical standards, and performance targets that the operator must adhere to, ensuring compliance with applicable laws and regulations. In countries where the issuance of a licence is not yet provided for by law, it is expected that future legislative reforms will make it possible to adopt the issuance of such licences. Alternatively, other existing legal regimes in these countries, such as authorisation, with specifications, could make it possible to adapt the essential rules of the mini-grid licence.

The Mini-Grid Licence is commonly employed in jurisdictions where a concession-based model may not be suitable or feasible. It is typically Utilised in scenarios where the regulatory authority maintains full oversight and seeks to provide legal authorisation to the mini-grid operators in respect of undertaking specific activities within a defined geographic area.

Furthermore, the rationale behind the use of the Mini-Grid Licence lies in its applicability to regulatory environments where a more simplified and straightforward licensing approach is preferred or mandated. This also typically applies in contexts where the establishment of comprehensive concession agreements may pose logistical challenges or administrative complexities, and issuing licences would serve as a more efficient mechanism for Authorising mini-grid operations. Although, in some

jurisdictions where concessions operate, mini-grid licences are also granted to the mini-grid operators/concessionaires. This particularly occurs where the relevant government ministry is granting the concession, and the regulator grants the licence. Therefore, a Mini-Grid Licence is the authorisation instrument generated in the ESCO model scenarios (scenarios 1 & 2), as well as scenarios 4,5,7,8 and may be adopted in the concession scenarios (scenarios 3 & 6).

2.2 Mini-Grid Project Agreement

The Mini-Grid Project Agreement is a simplified version of the Concession Agreement tailored for specific regulatory contexts. This instrument simplifies procurement and administrative processes associated with entering a Concession Agreement and provides further provisions which enhance the bankability of mini-grid projects based on a contract between the public sector (typically represented by the rural electrification agency or the Ministry of Energy) and the private sector mini-grid operator. The Mini-Grid Project Agreement is suitable for countries where the adoption of concession agreements is not practically feasible and countries where a mini-grid licence alone is unattractive to promote the development of mini-grids by potential mini-grid operators, investors, and financiers.

In certain African countries, a common practice is the issuance of a licence by the regulator, in addition to the signing of a mini-grid project agreement (similar to a simplified concession agreement) between the private sector company and the government (represented by the rural electrification agency or ministry). While the licence gives regulatory authorisation and typically addresses matters relating to tariffs, reporting obligations, and technical standards, the agreement focuses on granting rights related to land use, boundaries of the licenced area of operations, the duration of the licence, and service level expectations. However, this split may pose challenges, particularly concerning the requirements for securing international guarantees such as those provided by the Multilateral Investment Guarantee Agency (MIGA).

To address the split issue highlighted above, the Mini-Grid Project Agreement integrates key aspects traditionally covered in separate documentary instruments. Having only the Mini-Grid Project Agreement reduces the risks of variations in separate instruments. For instance, the Mini-Grid Project Agreement includes provisions defining the geographic boundaries of the licenced area of operations which is equivalent to the licence area typically covered by a licence. This ensures clarity and consistency in delineating the operational area of the mini-grid developer. The agreement further outlines the rights and obligations of the mini-grid developer, including obligations to supply electricity and compliance with regulatory requirements, particularly those relating to public utility obligations.

Additionally, the Mini Grid Project Agreement specifies that the tariff calculation shall be determined in accordance with the procedures and methodologies issued by the regulatory authority in the regulations or other ancillary documents or guidelines. This however does not preclude a mini-grid developer and the government/ regulator from agreeing on specific tariff calculations where necessary. The agreement also stipulates that any changes to the contract require mutual agreement between both parties,

ensuring contractual stability and consistency over the contract duration. The duration of the contract can be set between 20 to 30 years or more, depending on the country context, providing long-term certainty, and fostering an environment conducive to large-scale investment and sustainable development of mini-grid infrastructure.

Also, in country adaptation, where the capacity of a single mini-grid or the aggregate capacity of a portfolio of mini-grids being developed is below a stipulated capacity (e.g. 250 kW in some countries), the mini-grid developer and country regulator can opt to use only a Mini-Grid Licence. Nevertheless, both a Mini-Grid Licence and a Mini Grid Project Agreement can be used in such an instance for comfort and to boost investor confidence. However, it is recommended that both instruments are used where the capacity of a single mini-grid or the aggregate capacity of a portfolio of mini-grids being developed exceeds a stipulated capacity.

2.3 Concession Agreement

The Concession Agreement is a more comprehensive instrument of authorisation that establishes a contractual relationship between a representative of the host country (typically a government ministry in charge of energy or finance, as Grantor), and the mini-grid operator (as Concessionaire). This agreement, paired with a mini-grid licence, typically grants the mini-grid operator exclusive rights to develop, operate, and maintain the mini-grid infrastructure within a defined concession area for a specified duration, typically above twenty (20) years. Concession Agreements include provisions relating to the right to operate, investment commitments, project development milestones, service level obligations, maintenance and repair obligations, and dispute resolution mechanisms, amongst other key terms and conditions which may be included based on country-specific considerations and legal frameworks such as public service obligations.

In contexts characterised by large-scale mini-grid deployments, the Concession Agreement covers provisions relating to the complex operational requirements, and significant investment commitments such as procurement and contracting procedures, tariff-setting mechanisms, performance benchmarks, bank guarantees and performance bonds, environmental and social impact assessments, or insurance and liability.

Notably, the Concession Agreement may further facilitate the establishment of a regulatory framework in the absence of a primary instrument given its robust nature and can serve as the basis for promoting private sector participation in the national electricity sector by fostering innovation and mini-grid deployment within served and underserved areas. By offering operators extensive periods and exclusive rights within a defined concession area, regulatory authorities that adopt the Concession Agreement as the primary instrument of authorisation, create incentives for driving investment in infrastructure, improving service delivery, and the overall quality of electricity services in the country. As earlier stated, licences are also issued to mini-grid operators/ concessionaires in some jurisdictions where concessions

are granted. This particularly occurs where the relevant government ministry is granting the concession, and the regulator grants the licence.

3 Legal and Regulatory Considerations

While the instruments of authorisation establish the rights of mini-grid developers to operate within a legal framework, key legal and regulatory issues were also considered in the development and adaptation of the African Model Mini-Grid Regulations Tool and templates which are outlined in this section below.

3.1 Regulatory Independence

The concept of regulatory independence calls for regulators to operate free from political interference, and for regulators to make decisions based on objective analysis and consideration of the public interest.

Accordingly, regulators cannot be direct parties to contractual agreements such as the Concession Agreements and Mini-Grid Project Agreements in order not to restrict their authority. Otherwise, regulators being signatories on such agreements can lead to distortions in market dynamics, reduced competition, and compromised consumer welfare, ultimately undermining the effectiveness and integrity of the regulatory framework. The relevant ministry of energy or rural electrification agency in a country should instead be the signatory to the earlier mentioned agreements.

The independence of regulatory authorities ensures that regulatory decisions are made transparently, based on merit and public interest, without being influenced by vested interests. By safeguarding regulatory independence, regulators can uphold the integrity of the regulatory process and foster investor confidence by promoting a balanced regulatory environment for all stakeholders.

Furthermore, regulatory independence enhances regulatory effectiveness and credibility by enabling regulators to act decisively and impartially in addressing emerging challenges or disputes and enforcing compliance with set regulatory standards. Thereby contributing to the long-term viability and sustainability of mini-grid electrification initiatives, building trust and confidence among consumers, investors, and other stakeholders.

Finally, it should be noted, however, that in countries where the regulatory authority is institutionally dependent on the Ministry of Energy, independence does not imply isolation. Rather, collaboration between the regulatory authority and the Ministry of Energy is essential in order to align regulatory goals with broader government policies and to ensure that regulatory decisions reflect national priorities.

3.2 Deemed Approval Mechanism

The deemed approval mechanism is designed to enhance the effectiveness of the licensing process and to ensure that approvals required for the development of mini-grid projects are obtained in a timely and efficient manner. The deemed approval mechanism addresses the need to expedite the licensing process for mini-grid projects, particularly in contexts where regulatory capacity may be limited or where there is a pressing need to accelerate energy access initiatives (e.g. as a key condition, if the energy policy states a national ambition to scale-up mini-grid projects beyond the pilot stage). By providing a clear timeframe within which regulatory decisions must be made, the deemed approval mechanism helps to reduce administrative delays, uncertainty, and regulatory bottlenecks, thereby facilitating the timely deployment of mini-grid infrastructure.

The procedure for obtaining deemed approval includes the submission of all necessary documentation and fulfilment of relevant criteria by the applicant to the regulator. Subsequently, where the regulator fails to respond to the application within the specified timeframe, and after the applicant has provided additional documentation or information, if requested, the applicant may send a notice of a pending decision to the regulator. This notice operates as a follow-up with the regulator to ascertain if there are pending issues with the application and to prompt the regulator to issue its decision within the timeframes set by regulations. The application will be deemed approved where the regulator fails to communicate its decision following a set timeframe after receipt of the notice of pending decision. Accordingly, where the approval of an application for a licence is deemed approved, the regulator would be mandated by regulation to issue a formal licence to the applicant.

It is worthy of note that the timeline for calculation of deemed approvals only begins to count from the submission of complete documents and information, and where there are no outstanding queries to the application. Thus, where an application is submitted to the regulatory authority, a notification letter is typically sent to the applicant acknowledging the completeness of the application and may specify any queries or requests for additional information. A deemed approval may only be calculated from the date of such acknowledgement.

Furthermore, whilst the application of the deemed approval mechanism is discretionary, regulators may adopt country-specific legal framework which accommodates the adoption of an approval-in-principle during the licencing process, prior to the issuance of a mini-grid licence certificate.

3.3 Grant of Exclusivity to Mini-Grid Developer

The basis for granting exclusivity to a developer for the development of a mini-grid project in a specific geographical area is to create a conducive environment for investment by providing assurance of market stability and revenue predictability. Exclusivity provides mini-grid developers pre-operation with the opportunity to conduct feasibility studies on the project to the exclusion of any other developer within a certain period and during operations, exclusivity to operate within the area that a licence/concession

is granted, will be either explicitly stated or implied. This will enable the developer to recoup their investments and generate returns over the projected periods in their financial models, further incentivising investment in mini-grid infrastructure.

However, the exclusivity granted to a mini-grid developer may be derogated depending on the country-specific context and breach of any performance standards stated in the service level agreements between the mini-grid developer and the customers. Thus, where the developer fails to meet the stipulated performance criteria or breaches its licence terms, regulatory authorities may consider derogating from the exclusivity rights granted to the mini-grid developer. This mechanism ensures that mini-grid developers are held accountable for meeting their obligations to deliver quality services to consumers, safeguard consumer interests, and promote the efficient operation of mini-grids in the country.

3.4 Grid Arrival

Grid Arrival refers to the event where the main electricity grid (or national grid) expands to an area where mini-grids are already operational. When the national grid arrives in the area served by a mini-grid, the mini-grid operator is primarily faced with two possibilities which include, transitioning from an isolated mini-grid to an interconnected grid (connected to and receiving power from the grid); or transferring all mini-grid project assets to the national grid operator in exchange for financial compensation.

Where the mini-grid operator elects to transfer the mini-grid assets to the main-grid operator, the factors to be considered in arriving at the applicable compensation typically include the book value of the depreciated mini-grid network assets (based on the historical acquisition cost, including the construction and development costs) and may include an equivalent of the pre-tax profit which the mini-grid developer earned from the mini-grid within a specified timeframe prior to the date for handover of the mini-grid assets.

On the other hand, where the mini-grid operator chooses to transition from isolated to interconnected operation, an evaluation of the technical feasibility and compatibility of integrating the mini-grid with the national grid infrastructure would need to be done in principle by the main grid operator. This may involve assessing the capacity and resilience of the existing mini-grid infrastructure to accommodate grid interconnection, as well as ensuring compliance with technical standards and safety regulations. Additionally, in accordance with applicable laws and regulations, the regulator may review and re-issue an interconnected mini-grid licence/ approval to the mini-grid operator to reflect the change in the operational model and any associated obligations or requirements.

Other possible outcomes to consider include the conversion to an Independent Power Producer (IPP), Small Power Distributor (SPD) or side-by-side operation of the mini-grid and main grid without physical connection. These will however be dependent on the established regulatory frameworks based on country specific considerations and subject to contractual arrangements between the mini-grid operator, the

national grid operator, or other electricity off-takers. The Economic Guidelines of the African Model Mini-Grid Regulations Tool cover the financial aspects to be considered for grid arrival decision-making.

3.5 Transfer of Licence

The African Model Mini-Grid Regulations Tool allow licensees the flexibility to transfer, assign, or sell the whole or part of the permitted business. However, such transfers must be subject to the consent of the regulatory authority, which is empowered to ensure that the transfer aligns with the objectives of the regulatory framework. Additionally, the licensee taking over the mini-grid/ concession must have the requisite capacity and meet regulatory requirements.

The requirement for regulatory consent serves to safeguard the integrity of mini-grid operations and protect the interests of consumers and stakeholders. By exercising oversight over licence transfers, the regulatory authority can assess the suitability of the proposed transferee, evaluate the financial and technical capabilities of the new owner or operator, and ensure continuity of service provision. Importantly, the African Model Mini-Grid Regulations Tool stipulates that regulatory consent must be subject to clear criteria and specific timelines, and should not be unreasonably withheld, thereby providing certainty and transparency to licensees seeking to transfer their permits.

To facilitate the transfer process, the African Model Mini-Grid Regulations Tool sets out the documents that are required for an application to obtain the consent of the regulatory authority. These documents typically include details of the proposed transfer, such as the identity and qualifications of the transferee, the terms of the transfer agreement, and any other relevant information deemed necessary by the regulatory authority. By establishing clear requirements and procedures for licence transfers, the African Model Mini-Grid Regulations Tool promotes transparency, accountability, and bankability of the country's mini-grid subsector.

Notably, the creation of security over the assets of the mini-grid licensee in favour of financiers, or the completion of a transfer between related parties or subsidiary companies of the mini-grid licensee should not require regulatory consent to the transfer of a licence. In effect, this facilitates financing by reducing regulatory burdens and provides some level of flexibility for the operations of the mini-grid licensee.

3.6 Reporting Obligations of the Licensee

The reporting obligations of the licensee consist of the mini-grid developer's regular submission of operational, financial, and performance data to the regulatory authority, enabling effective monitoring, evaluation, and oversight of the licensee's activities to the regulator. Notably, the regulations mandate the reporting of any emergency incidents occurring at the mini-grid site to the regulatory authority, enabling the regulatory authorities to ensure prompt response and mitigation of potential risks to public safety and property.

While the primary objective of these reporting obligations is to ensure transparency, accountability, and regulatory oversight, they also serve to promote the availability of data in the mini-grid sector. By mandating licensees to provide detailed information on factors such as electricity generation, distribution, consumption patterns, outage frequencies, and system reliability, regulators can access valuable insights into the operational dynamics of mini-grid systems in the country.

Such aggregated data enables policymakers to assess the efficacy and impact of mini-grid electrification initiatives, gauging their contribution to broader energy access objectives and socio-economic development goals. Additionally, it facilitates evidence-based policymaking, allowing governments to identify areas of improvement, allocate resources efficiently, and tailor interventions to address specific challenges and opportunities within the mini-grid subsector.

Particularly, access to comprehensive data on mini-grid installations and performance can also enhance the attractiveness of the mini-grid subsector to potential investors and financiers. Transparent and reliable data instils confidence in the market, mitigating risks and uncertainties associated with investments made into the mini-grid sector.

4 Adaptation of the African Model Mini-Grid Regulations Tool for Different Country Contexts

The African Model Mini-Grid Regulations Tool is adapted for different country contexts which involve a nuanced approach that considers the diverse legal frameworks within which mini-grid operators may function.

For **countries where mini-grid assets are predominantly publicly owned**, the African Model Mini-Grid Regulations Tool provides regulations that prioritise coordination with government agencies responsible for energy planning and infrastructure development. These regulations emphasise the establishment of clear licensing procedures, tariff-setting mechanisms, and performance standards to ensure the efficient operation and maintenance of mini-grid systems while aligning with national energy objectives. This model leverages the expertise and efficiency of private entities while maintaining public ownership of assets. Additionally, regulations in this context are focused on fostering partnerships between public entities and private sector stakeholders to leverage resources and expertise for effective mini-grid deployment and management.

Conversely, in **jurisdictions where mini-grid assets are primarily owned by private entities**, the African Model Mini-Grid Regulations Tool offers regulatory frameworks geared towards promoting investor confidence, competition, and consumer protection. Whether through concession contracts, mini-grid project agreements, or regulatory licensing, these scenarios provide legal clarity and stability for both

government and private sector stakeholders, fostering a conducive environment for mini-grid development. Furthermore, the regulatory measures encourage innovative financing models and business models that incentivise private sector participation in mini-grid development while safeguarding consumer interests and promoting affordability.

In **countries with hybrid ownership structures**, where mini-grid assets are jointly owned by public and private entities, the African Model Mini-Grid Regulations Tool seeks to balance the interests and responsibilities of both sectors. Under these scenarios, the public sector may finance and own distribution infrastructure while the private sector undertakes a similar role in relation to the generation of assets. The African Model Mini-Grid Regulations Tool establishes clear governance structures, delineating roles and responsibilities between public and private stakeholders, and ensuring equitable distribution of risks and benefits associated with mini-grid investments. Importantly, the regulations facilitate collaboration and coordination between the public and private sector parties to optimise risk allocation, streamline the decision-making processes, and enhance the sustainability of mini-grid operations.

It is also important to note that the African Model Mini-Grid Regulations Tool recognises and **accommodates the diverse legal systems across different countries**. A key aspect of adapting the regulations to French-speaking African countries is accounting for the peculiarities of the legal system in francophone countries, which influences the categorisation and treatment of concession assets. Moreover, the African Model Mini-Grid Regulations Tool is adapted to address specific circumstances, as provided for in laws of francophone countries, such as sudden crises or shortages in the electricity market, and changes in reasonably unforeseeable circumstances making the performance of the contract excessively onerous.

Other considerations for adaptation include rules governing the duration of agreements, the powers of regulatory authorities, periodic tariff reviews, and mechanisms for expropriation in the public interest. These aspects are adapted to align with local laws, policies, and institutional arrangements, while also reflecting the overarching objectives of promoting investment, ensuring consumer protection, and advancing energy access.

5 Conclusion

The potential for mini-grid systems to transform energy access throughout Africa is immense, but their success depends on the establishment of a strong legal and regulatory framework. The African Model Mini-Grid Regulations Tool represents a milestone in addressing this critical need, offering a comprehensive set of guidelines tailored to the diverse contexts of African countries.

These regulations, developed collaboratively by the African Forum for Utility Regulators (AFUR) and GET.transform, recognise the multifaceted nature of mini-grid regulations, encompassing technical,



financial, and legal considerations. By striking a delicate balance between flexibility and rigidity, they aim to foster innovation and investment while ensuring the reliability and quality of electricity services.

Moreover, the adaptability of the African Model Mini-Grid Regulations Tool for different country contexts underscores its relevance and applicability across diverse legal systems. Whether mini-grid assets are publicly owned, privately owned, or held in hybrid structures, these regulations provide a roadmap for effective coordination, governance, and risk allocation.

In conclusion, the African Model Mini-Grid Regulations Tool represents a significant step forward in unlocking the potential of mini-grids to bridge the energy access gap in Africa. By providing a clear and comprehensive legal framework, it paves the way for sustainable and inclusive energy development, driving economic growth, and improving the lives of millions across the African continent.

