

# Harmonising Dispute Resolution for Sustainability: Towards an African Energy Arbitration Protocol?

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**Kariuki Muigua**

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**Harmonising Dispute Resolution for Sustainability: Towards an African Energy Arbitration Protocol?**

**Kariuki Muigua\***

**Abstract**

*This paper critically examines how arbitration can be effectively harnessed towards effective management of energy disputes in Africa. The paper argues that energy disputes are prevalent in Africa. It further notes that these disputes are undesirable since they affect the quest towards energy transition and energy justice in Africa. The paper asserts that arbitration is a viable tool for effective management of energy disputes in Africa. It discusses the key features of arbitration which makes it a viable process for managing energy disputes in Africa and globally. The paper further highlights some of the challenges associated with arbitration of energy disputes in Africa.*

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*In light of these challenges, the paper proposes reforms towards harmonizing dispute resolution through adoption of an African Energy Arbitration Protocol towards effective management of energy disputes for sustainability.*

## **1.0 Introduction**

Energy is a crucial resource human development. It has been argued that energy creates capacities to take advantage of the opportunities that development brings, as well as to face the challenges it poses<sup>1</sup>. The use of sustainable and clean energy sources has been identified as crucial in protecting the environment and promoting equitable development<sup>2</sup>. Further, it has been pointed out that energy plays a critical role in economic growth and development, and future economic growth in all countries is largely hinged on the long-term availability of energy which is to be derived from sources that are affordable, accessible and environmentally friendly<sup>3</sup>.

Despite its crucial role in fostering socio-economic development, the energy sector poses several challenges to people and the planet. For instance, a huge proportion of greenhouse gases responsible for the climate crisis are generated through energy production, by burning fossil fuels to generate electricity and heat<sup>4</sup>. It has been noted that fossil fuels, such as coal, oil and gas, are by far the largest contributor to global climate change, accounting for over 75 percent of global greenhouse gas emissions and nearly 90 percent of all carbon dioxide emissions<sup>5</sup>. In light of these challenges, there has been an increased global focus on energy transition aimed at shifting the global energy sector from fossil fuel- based systems of energy production and consumption including oil, natural gas and coal to renewable energy sources like wind and solar<sup>6</sup>. Global energy transition is envisioned under the United Nations *2030 agenda for Sustainable Development*<sup>7</sup>. Sustainable Development Goal (SDG) 7 seeks to ensure access to affordable,

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<sup>1</sup> United Nations Development Programme., 'Energy and Human Development' Available at [https://www.undp.org/sites/g/files/zskgke326/files/migration/py/UNDP-PY-engINDH\\_Py\\_2020\\_Summary.pdf](https://www.undp.org/sites/g/files/zskgke326/files/migration/py/UNDP-PY-engINDH_Py_2020_Summary.pdf) (Accessed on 24/04/2025)

<sup>2</sup> Ibid

<sup>3</sup> Muigua. K., Wamukoya. D & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>4</sup> United Nations., 'Renewable Energy - Powering a Safer Future' Available at <https://www.un.org/en/climatechange/raising-ambition/renewable-energy> (Accessed on 24/04/2025)

<sup>5</sup> Ibid

<sup>6</sup> S & P Global., 'What is Energy Transition?' Available at <https://www.spglobal.com/en/researchinsights/articles/what-is-energy-transition> (Accessed on 24/04/2025)

<sup>7</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at

reliable, sustainable and modern energy for all including through substantially increasing the share of renewable energy in the global energy mix<sup>8</sup>.

In order to achieve energy transition, there has been an increase in investments in the energy sector globally with specific focus on renewable energy projects<sup>9</sup>. While these projects are critical in achieving energy transition globally, they are also associated with several challenges including high incidence of disputes. Energy disputes are undesirable since they can adversely impact the viability and success of energy projects therefore undermining energy transition<sup>10</sup>. Effective management of energy disputes is therefore vital to achieve energy transition for Sustainable Development. Arbitration has been identified as an appropriate tool for managing energy disputes both globally and in Africa<sup>11</sup>.

This paper critically examines how arbitration can be effectively harnessed towards effective management of energy disputes in Africa. The paper argues that energy disputes are prevalent in Africa. It further notes that these disputes are undesirable since they affect the quest towards energy transition and energy justice in Africa. The paper asserts that arbitration is a viable tool for effective management of energy disputes in Africa. It discusses the key features of arbitration which makes it a viable process for managing energy disputes in Africa and globally. The paper further highlights some of the challenges associated with arbitration of energy disputes in Africa. In light of these challenges, the paper proposes reforms towards harmonizing dispute resolution through adoption of an African Energy Arbitration Protocol towards effective management of energy disputes for sustainability.

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<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 24/04/2025)

<sup>8</sup> *ibid*

<sup>9</sup> Burges-Salmon., 'Energy Disputes Guide: Managing Risk and Avoiding Disputes in your Energy Project.' Available at <https://www.burges-salmon.com/energy-disputes-guide-managing-risk-and-avoiding-disputes-in-your-energy-project> (Accessed on 24/04/2025)

<sup>10</sup> *Ibid*

<sup>11</sup> Clearly Gottlieb., 'Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR'). Available at Available at <https://content.clearlygottlieb.com/regions/africa-outlook/resolving-energy-disputes-in-africa-through-arbitration-and-alternative-dispute-resolution/index.html> (Accessed on 24/04/2025)

## 2.0 Energy Disputes in Africa

Energy disputes are inevitable. It has been observed that energy projects are, by their nature, often complex undertakings<sup>12</sup>. They frequently involve new and innovative technologies, significant investment, and also a high degree of interface between multiple parties who may sometimes have different, and even competing, interests<sup>13</sup>. This creates several risks and challenges including disputes which can adversely impact project viability and success<sup>14</sup>.

The global energy sector is being shaped by several factors including geopolitical shifts, regulatory changes, and the ongoing quest for energy transition<sup>15</sup>. It has been argued that as energy companies and governments navigate decarbonisation, energy security, and investment landscapes, energy disputes are becoming more frequent and complex<sup>16</sup>. These disputes include joint venture/contractual disputes, claims arising from weather conditions in renewable energy projects, construction related disputes, technology related disputes, investor/state disputes, and regulatory disputes<sup>17</sup>. Further, there has been a rise in climate litigation with a particular focus on the energy sector<sup>18</sup>. For instance, climate-washing cases, where statements made by public and private actors on contributions to climate action and the energy transition are challenged over their misleading or overstated nature, are on the rise globally<sup>19</sup>. Further, it has been noted that critical minerals which play a crucial role in energy transition are intensifying geopolitical tensions and driving global conflicts and disputes in the energy sector<sup>20</sup>.

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<sup>12</sup> Burges-Salmon., 'Energy Disputes Guide: Managing Risk and Avoiding Disputes in your Energy Project.' Op Cit

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Energy Disputes: Navigating Key Trends and Challenges., Available at <https://www.velaw.com/insights/energy-disputes-navigating-key-trends-and-challenges/> (Accessed on 25/04/2025)

<sup>16</sup> Ibid

<sup>17</sup> McMahon. M., Shah. P., 'The Rise of Renewable Energy Disputes and Arbitration.' Available at <https://www.stewartslaw.com/news/rise-of-renewable-energy-disputes/> (Accessed on 25/04/2025)

<sup>18</sup> What is Climate Change Litigation?., Available at <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-litigation/#:~:text=Climate%2Dwashing%20cases%3A%20those%20where,against%20the%20airline%20KLM%EF%BB%BF%20.> (Accessed on 25/04/2025)

<sup>19</sup> Ibid

<sup>20</sup> The critical minerals scramble: How the race for resources is fuelling conflict and inequality., Available at <https://globalwitness.org/en/campaigns/transition-minerals/the-critical-minerals-scramble-how-the-race-for-resources-is-fuelling-conflict-and-inequality/#:~:text=How%20are%20critical%20minerals%20driving,communities%20in%20resource%2Drich%20nations.> (Accessed on 25/04/2025)

Energy disputes are also prevalent in Africa. It has been argued that the demand for energy in Africa continues to rise as the continent's population and income grow<sup>21</sup>. Africa has huge reserves for fossil fuels including oil and gas, with a large capacity for green energy due to abundance of renewable sources of energy such as solar, wind, and geothermal energy<sup>22</sup>. Africa is endowed with numerous sources of energy including renewables such as wind, solar, hydro, bioenergy, ocean tidal waves, and geothermal among other renewables<sup>23</sup>. It is estimated that Africa is home to approximately 8 per cent of the world's natural gas and 12 per cent of the world's oil reserves<sup>24</sup>. According to the International Energy Agency (IEA), oil and gas continue to dominate energy use in North Africa and coal dominates in South Africa, due to the local availability of low cost resources, while renewables are the dominant fuel category in Sub-Saharan Africa<sup>25</sup>.

Due to the abundance of energy sources in the continent, there has been an increase in investments in the energy sector in Africa including through bilateral and multilateral investment treaties<sup>26</sup>. The rise of energy and infrastructure projects in Africa, combined with the challenges deriving from the energy transition have led to a wide range of disputes both under contractual instruments (such as concession agreements) and investment treaties<sup>27</sup>. For instance, renewable energy sources have resulted in an increase in energy projects and, with that, the potential for a growing number of disputes coming from the energy sector in Africa<sup>28</sup>. It has been correctly observed that as the energy transition in Africa continues to gather pace, and concerted efforts are made to expand

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<sup>21</sup> Kebe. M., 'Resolving infrastructure and energy disputes in sub-Saharan Africa' Available at <https://www.dlapiperfrica.com/en/senegal/insights/2024/resolving-infrastructure-and-energy-disputes-> (Accessed on 25/04/2025)

<sup>22</sup> Muigua. K., 'Adopting Green Energy for a Bright Tomorrow.' Available at Available at <http://kmco.co.ke/wp-content/uploads/2023/06/Adopting-Green-Energy-for-a-Bright-Tomorrow.pdf> (Accessed on 25/04/2025)

<sup>23</sup> Africa Union., 'Agenda 2063: The Africa we Want.' Available at [https://au.int/sites/default/files/documents/33126-doc-framework\\_document\\_book.pdf](https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf) (Accessed on 25/04/2025)

<sup>24</sup> United Nations Environment Programme., 'Our Work in Africa.' Available at <https://www.unep.org/regions/africa/our-workafrica#:~:text=The%20continent%20has%2040%20percent,internal%20renewable%20fresh%20water%20so%20urce> (Accessed on 25/04/2025)

<sup>25</sup> International Energy Agency., 'Africa Energy Outlook: 2022.' Available at <https://iea.blob.core.windows.net/assets/220b2862-33a6-47bd-81e9-00e586f4d384/AfricaEnergyOutlook2022.pdf> (Accessed on 25/04/2025)

<sup>26</sup> Kebe. M., 'Resolving infrastructure and energy disputes in sub-Saharan Africa' Op Cit

<sup>27</sup> Ibid

<sup>28</sup> Global Arbitration Review., 'Energy Arbitration in Africa.' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2022/article/energy-arbitration-in-africa> (Accessed on 25/04/2025)

energy capacity all over the continent through new renewable projects, energy disputes are bound to occur<sup>29</sup>. Unpredictable regulatory environments, the pace of development required to achieve energy transition, the variety and number of stakeholders involved, supply chain complexity and the deployment of new technologies all create fertile conditions for energy disputes in Africa<sup>30</sup>. It is estimated that Africa will see the largest growth in energy-related disputes, driven by an increase in energy exploration activities in many countries across the continent<sup>31</sup>. In addition, given the heavy presence of foreign investors in the African energy sector, energy disputes are likely to arise under both contractual instruments (such as concession agreements) and investment treaties<sup>32</sup>.

Energy disputes in Africa are undesirable. Such disputes can hinder the successful completion of energy projects therefore undermining energy transition<sup>33</sup>. Energy disputes in Africa need to be dealt with swiftly and amicably since access to energy and adequate infrastructures are necessary for Africa to sustain its growth<sup>34</sup>. In addition, it has been correctly asserted that for the quick and efficient resolution of disputes in strategic and vital sectors such as energy, it is important to always look for the most appropriate mechanism<sup>35</sup>. Effective management of energy disputes in Africa is therefore vital towards achieving energy transition and Sustainable Development.

### **3.0 Managing Energy Disputes in Africa through Arbitration: Opportunities and Challenges**

Arbitration is a private and consensual process where parties in dispute agree to present their grievances to a third party for resolution<sup>36</sup>. It has also been defined as a dispute management mechanism where parties through an agreement submit their dispute to

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<sup>29</sup> Hameau. P., Bentley. J., & Robert. M., 'Energy arbitration in Africa: potential sources of energy and natural resources disputes' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2024/article/energy-arbitration-in-africa-potential-sources-of-energy-and-natural-resources-disputes> (Accessed on 24/04/2025)

<sup>30</sup> Ibid

<sup>31</sup> Clearly Gottlieb., 'Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR').' Op Cit

<sup>32</sup> Ibid

<sup>33</sup> The World Bank Group., 'Renegotiation, Government Step-in rights, Termination, and Dispute Resolution' Available at <https://ppp.worldbank.org/public-private-partnership/renegotiation-government-step-rights-termination-and-dispute-resolution#:~:text=The%20accelerating%20availability%20of%20disruptive,in%20the%a20energy%20sector%20globally> (Accessed on 25/04/2025)

<sup>34</sup> Kebe. M., 'Resolving infrastructure and energy disputes in sub-Saharan Africa' Op Cit

<sup>35</sup> Ibid

<sup>36</sup> Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Glenwood Publishers, 4<sup>th</sup> Edition, 2022

one or more neutral third parties who make a binding decision on the dispute<sup>37</sup>. Arbitration has been embraced in dispute management at both the global and national levels. At the global level, Alternative Dispute Resolution (ADR) mechanisms including arbitration are recognized under the *Charter of the United Nations*<sup>38</sup>. The Charter provides that parties to a dispute shall first of all seek a solution by negotiation, enquiry, mediation, conciliation, *arbitration*, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice<sup>39</sup> (Emphasis added). At a national level, the Constitution of Kenya mandates courts and tribunals to promote ADR mechanisms including reconciliation, mediation, *arbitration* and Traditional Dispute Resolution Mechanisms (TDRMs)<sup>40</sup>.

Arbitration is considered an appropriate tool in managing energy disputes both globally and in Africa. Arbitration has been identified as the most preferred mechanism for settling energy disputes globally whether in its commercial or its investment modes<sup>41</sup>. Arbitration is a suitable process for managing disputes in the energy sector due to its flexibility, the ability to provide confidentiality, the ability to enlist specialist, commercial-minded arbitrators to determine the dispute, and its ability to provide for a neutral forum in complex energy disputes involving international parties, particularly when compared to litigation before domestic courts<sup>42</sup>. It has been argued that the principal goal in utilising arbitration in energy disputes is to avoid a dependence on national courts if the relationship is with a host state or its agent such as a national energy company, and if the relationship is with a private party, to achieve the efficiency and confidentiality benefits of arbitration as opposed to litigation<sup>43</sup>.

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<sup>37</sup> World Intellectual Property Organization., 'What is Arbitration' Available at <https://www.wipo.int/amc/en/arbitration/what-is-arb.html> (Accessed on 25/04/2025)

<sup>38</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

<sup>39</sup> Ibid, article 33 (1)

<sup>40</sup> Constitution of Kenya., 2010., article 159 (2) (c)

<sup>41</sup> Cameron. P., 'International Arbitration and Energy Disputes' Available at [https://discovery.dundee.ac.uk/ws/portalfiles/portal/99500417/GELS\\_ARTICLE\\_CAMERON\\_141120\\_22\\_FINAL.pdf](https://discovery.dundee.ac.uk/ws/portalfiles/portal/99500417/GELS_ARTICLE_CAMERON_141120_22_FINAL.pdf) (Accessed on 25/04/2025)

<sup>42</sup> Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR'), Available at Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR').' Available at <https://content.clearygottlieb.com/regions/africa-outlook/resolving-energy-disputes-in-africa-through-arbitration-and-alternative-dispute-resolution/index.html> (Accessed on 25/04/2025)

<sup>43</sup> Peter. C., 'International arbitration and energy disputes' Available at [https://discovery.dundee.ac.uk/ws/portalfiles/portal/99500417/GELS\\_ARTICLE\\_CAMERON\\_141120\\_22\\_FINAL.pdf](https://discovery.dundee.ac.uk/ws/portalfiles/portal/99500417/GELS_ARTICLE_CAMERON_141120_22_FINAL.pdf) (Accessed on 25/04/2025)

Due to its numerous benefits, arbitration has become the preferred method of managing energy disputes globally. It is being utilised to manage both investor/state disputes including contract-based disputes, treaty-based disputes, and domestic investment law-based disputes<sup>44</sup>; and private disputes<sup>45</sup>. It has been argued that the advantages of arbitration in energy disputes include party autonomy, access to a neutral forum, flexibility, confidentiality, the ability to choose arbitrators with the required expertise and the enforceability of arbitral awards globally under the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)*<sup>46</sup>; and the *Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention)*<sup>47</sup>.

Arbitration has been identified as the predominant method for settling energy-related disputes in Africa<sup>48</sup>. It has developed into a preferable process for managing disputes in Africa's growing energy industry<sup>49</sup>. It has been argued that arbitration is vital in energy transition in Africa providing a timely and effective avenue for managing disputes towards a just and smooth transition to cleaner energy sources in Africa<sup>50</sup>. Arbitration is vital in navigating the unique challenges and opportunities presented by the quest towards energy transition in Africa<sup>51</sup>. Effective dispute management mechanisms such as arbitration can play a key role in fast-tracking energy transition in Africa by facilitating investments in clean energy projects, mitigating risks for investors and stakeholders in the energy sector, and ensuring a win-win scenario for both environmental protection and economic development in the continent<sup>52</sup>.

Despite its promise, the use of arbitration in managing energy disputes in Africa raises several concerns. For example, it has been argued that the practice of arbitration in Africa

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<sup>44</sup> Resolving Energy Disputes Through Arbitration., Available at <https://www.acerislaw.com/resolving-energy-disputes-through-arbitration/> (Accessed on 25/04/2025)

<sup>45</sup> Ibid

<sup>46</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)

<sup>47</sup> Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (International Centre for Settlement of Investment Disputes [ICSID]) 575 UNTS 159

<sup>48</sup> Clearly Gottlieb., 'Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR').' Op Cit

<sup>49</sup> Ibid

<sup>50</sup> Owa. I., 'The Role of Arbitration in the Energy Transition in Africa' Available at <https://arbitrationblog.kluwerarbitration.com/2024/04/16/2024-lcia-west-africa-roadshow-the-role-of-arbitration-in-the-energy-transition-in-africa/> (Accessed on 25/04/2025)

<sup>51</sup> Ibid

<sup>52</sup> Ibid

faces several challenges including inadequate legal and institutional frameworks, inadequate marketing, uncertainty in drafting arbitration clauses, interference by national courts, uncertainty of costs, perception of corruption and bias against Africa<sup>53</sup>. These challenges undermine the suitability of Africa as a preferred seat for energy arbitration. The unique nature of energy disputes can also create challenges in managing such disputes through arbitration in Africa. For instance, issues may arise in energy arbitrations involving price review, for which experts are often needed<sup>54</sup>. It has been observed that expert determination and arbitration clauses can be ambiguous, creating difficulties as to the scope of the arbitral tribunal's and the expert's powers<sup>55</sup>.

The foregoing challenges are undermining the growth of energy arbitration in Africa with most disputes being managed outside the continent. It has been argued that the preference for energy arbitrations involving Africa to be seated outside of the continent denies it the opportunities to improve its reputation for jurisprudence, expand its legal skills and reap the financial benefits that flow to the local economy from being the venue of proceedings<sup>56</sup>. In light of the ongoing energy arbitration inequities, it is imperative for Africa to reposition itself in order to become a preferred destination for energy arbitration. Adoption of an African Energy Arbitration Protocol can play a key role towards achieving this objective.

#### **4.0 Towards an African Energy Arbitration Protocol?**

There may be need to adopt an African Energy Arbitration Protocol in order to harmonise energy dispute resolution in the continent for sustainability. At the global level, the *Energy Charter Treaty*<sup>57</sup> provides a guiding legal framework for managing energy disputes. The Charter stipulates that energy disputes between an investor and a contracting state shall be settled amicably<sup>58</sup>. It requires energy disputes to be managed through diplomatic channels and where such channels fail, then such disputes shall be

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<sup>53</sup> Muigua. K., 'Nurturing International Commercial Arbitration in Kenya.' Available at <https://kmco.co.ke/wp-content/uploads/2021/10/Nurturing-International-Commercial-Arbitration-in-Kenya.pdf> (Accessed on 25/04/2025)

<sup>54</sup> Resolving Energy Disputes Through Arbitration., Op Cit

<sup>55</sup> Ibid

<sup>56</sup> Li. R., 'Energy arbitration inequities affect Africa deeply' Available at <https://www.africanlawbusiness.com/news/20762-energy-arbitration-inequities-affect-africa-deeply/> (Accessed on 25/04/2025)

<sup>57</sup> The Energy Charter Treaty., Available at <https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ECTC-en.pdf> (Accessed on 25/04/2025)

<sup>58</sup> Ibid, Article 26 (1)

managed through an ad hoc arbitral tribunal<sup>59</sup>. The Energy Charter Treaty sets out mechanisms for management of energy disputes including amicable settlement, use of courts and tribunals, international arbitration, conciliation and diplomacy<sup>60</sup>.

However, it has been argued that the Energy Charter Treaty is unfit for purpose fueling several withdrawals from the Treaty<sup>61</sup>. For instance, its investor-state dispute settlement mechanism (ISDS) has been accused of potentially undermining national policies especially those concerning energy transition and environmental conservation<sup>62</sup>. Further, with several African countries seeking to join the Treaty, it has been argued that the extension of the Energy Charter Treaty represents a threat to developing countries<sup>63</sup>. The Treaty can hinder the exploitation of energy resources in developing countries in a way that guarantees local added value and compliance with environmental standards thus undermining energy transition and fueling energy related disputes<sup>64</sup>.

In light of the challenges associated with energy arbitration in Africa and the ISDS under the Energy Charter Treaty, adopting an African Energy Arbitration Protocol may be a viable option towards effective management of energy disputes in the continent for sustainability. Such a Protocol can cure challenges associated with energy arbitration in Africa including incomplete and unclear arbitration clauses, challenges in selecting governing law, and differences in legal frameworks in the continent<sup>65</sup>. It can also harmonise dispute resolution by tackling the challenge of parallel proceedings which can arise due to simultaneous adjudication of related disputes across multiple fora, including domestic courts, ICSID, the United Nations Commission on International Trade Law (UNCITRAL) tribunals, and commercial arbitration panels<sup>66</sup>. It has been argued that this

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<sup>59</sup> Ibid, Article 27

<sup>60</sup> Ibid

<sup>61</sup> Commercial Dispute Resolution., 'A bad year for the Energy Charter Treaty' Available at <https://www.cdr-news.com/categories/litigation/19704-a-bad-year-for-the-energy-charter-treaty/> (Accessed on 25/04/2025)

<sup>62</sup> Ibid

<sup>63</sup> Takoueu. J.M., 'London withdraws from the Energy Charter Treaty: a lesson for Africa?' Available at <https://africa-energy-portal.org/blogs/london-withdraws-energy-charter-treaty-lesson-africa#:~:text=The%20risk%20of%20extension%20to%20Africa&text=While%20several%20European%20countries%20have,process%20of%20joining%20the%20ECT.> (Accessed on 25/04/2025)

<sup>64</sup> Ibid

<sup>65</sup> Energy arbitration in Africa: Potential sources of energy and natural resources disputes., Available at <https://www.nortonrosefulbright.com/en-ke/knowledge/publications/da675a37/energy-arbitration-in-africa> (Accessed on 25/04/2025)

<sup>66</sup> Hameau. P., Asselineau. C., & Robert. M., 'Energy arbitration in Africa: parallel proceedings' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2025/article/energy-arbitration-in-africa-parallel-proceedings> (Accessed on 25/04/2025)

situations fuels jurisdictional fragmentation, as investors and state entities each seek to take advantage of overlapping legal frameworks to advance their interests<sup>67</sup>. It also creates tensions between arbitral tribunals and domestic courts, particularly where competing decisions challenge the primacy of arbitration agreements and the enforceability of arbitral awards<sup>68</sup>. Adopting an African Energy Arbitration Protocol may be vital in addressing this challenge and ensuring certainty and predictability in energy arbitration in Africa.

## **5.0 Conclusion**

Arbitration is a viable process for managing energy disputes in Africa ensuring flexibility, confidentiality, the ability to enlist specialist, commercial-minded arbitrators, neutrality of forum and enforcement of awards<sup>69</sup>. However challenges such as inadequate legal frameworks, capacity challenges, and bias undermine the viability of energy arbitration in Africa with many disputes being managed outside the continent<sup>70</sup>. Adopting an African Energy Arbitration Protocol may therefore be key in ensuring certainty and predictability while also strengthening and harmonizing energy dispute resolution in Africa for sustainability.

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<sup>67</sup> Ibid

<sup>68</sup> Ibid

<sup>69</sup> Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR'), Available at Resolving Energy Disputes in Africa Through Arbitration and Alternative Dispute Resolution ('ADR').' Op Cit

<sup>70</sup> Li. R., 'Energy arbitration inequities affect Africa deeply' Op Cit

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Cameron. P., 'International Arbitration and Energy Disputes' Available at [https://discovery.dundee.ac.uk/ws/portalfiles/portal/99500417/GELS\\_ARTICLE\\_CAMERON\\_14112022\\_FINAL.pdf](https://discovery.dundee.ac.uk/ws/portalfiles/portal/99500417/GELS_ARTICLE_CAMERON_14112022_FINAL.pdf)

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Constitution of Kenya., 2010., article 159 (2) (c)

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