THE EVOLVING NATURE OF ENERGY ARBITRATION IN AFRICA: RECENT TRENDS AND ISSUES ARISING

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INTRODUCTION

It gives me great pleasure to stand before such a distinguished audience and deliver this keynote address at the 8th Energy Arbitration Conference. Perhaps the impact of this conference can be perceived in the way the energy sector has evolved in the past couple of years. When I first graduated 45 years ago, phrases such as clean energy, renewable energy, climate change, resource control, environment, social and governance (ESG) were not common phrases. The energy world was more concerned with issues such as increased oil production, oil pricing, cross-border gas supply, and bilateral investment treaties (BITs).

A glance at the program of this conference confirms that the world is in a new era, an era of energy transition. A movement from dependence on oil and gas to solar and wind power, with relatively new concerns and challenges, including the performance of new technology, relevant regulatory control, environmental impacts, and financing renewable energy projects.

What does this portend, with particular reference to my continent? Africa, with its abundant energy resources, apart from its significant natural oil and gas reserves, has vast reserves of renewable energy sources, solar, hydro, wind, and geothermal, waiting to be tapped. A continent at the centre of energy discussions and disputes.

A continent undergoing a global shift towards cleaner energy sources, decarbonisation, and heightened awareness of environmental, social, and governance (ESG) concerns. The wave of "green transition" is reshaping the nature of energy disputes on the continent, introducing new complexities that challenge traditional arbitration frameworks.

Historically, energy-related disputes in Africa involve unique challenges due to the international nature of same, the state ownership of energy assets and the frequent collaboration between state-owned entities and foreign investors. It is projected that with the ongoing transition, energy-related disputes are not only expected to increase sporadically but also pose novel challenges to relevant stakeholders, including the arbitration community.

My address is focused on highlighting some recent trends and related issues within the changing landscape of Africa's energy sector, the evolution of energy disputes in light of these developments, and the role of arbitration and arbitral institutions in ensuring that disputes are resolved expeditiously and effectively and within a transparent, open and diverse system.

- **BRIEF FACTS AND STATISTICS**
- **POTENTIAL FOR GROWTH AND PREDICTIONS**
- **RECENT TRENDS AND ISSUES ARISING IN AFRICA'S ENERGY SECTOR**
- **EVOLUTION OF ENERGY DISPUTES IN AFRICA FOLLOWING THE RECENT TRENDS**
- **THE ROLE OF ARBITRATION AND ARBITRAL INSTITUTIONS IN RESOLVING THE EMERGING ENERGY DISPUTES IN AFRICA**
- **CONCLUSION**

BRIEF FACTS AND STATISTICS

Africa:

- ❑ accounts for approximately 8 per cent of global oil production and roughly 8.9 per cent of global oil exports.

- ❑ is home to four of the top 30 oil-producing countries: Nigeria, Angola, Algeria, and Egypt.

- ❑ accounts for 6.9 per cent of the world's proven gas reserves. Within the continent,
  - Nigeria has the largest proved gas reserves, followed by Algeria, Senegal, Mozambique and Egypt.

- ❑ has abundant potential for renewable energies, most of which remains under-exploited.

- ❑ according to the report by the International Energy Agency, only 10 per cent of sub-Saharan Africa's hydropower potential is being exploited - **Africa is an investor's dream.**

- solar potential is estimated to hold 40 per cent of world's total solar potential, and 60 per cent of the world's best sources of solar (10TW), hydropower energy (35GW), wind (110GW) and geothermal energy (15GW).

- The total renewable capacity in Africa at the end of 2022 was around 30GW, projected to increase to 150GW by 2030. The projections are that solar PV, onshore wind and hydrogen capacity will reach 70GW, 51GW and 50GW respectively by 2035.

POTENTIAL FOR GROWTH AND PREDICTIONS

- 27% of the respondents in the 2022 Queen Mary University of London (QMUL) survey predict that Africa will see the most significant growth in energy disputes due to increased exploration activity on the continent.

RECENT TRENDS AND ISSUES ARISING IN AFRICA'S ENERGY SECTOR

Africa's potential as a hive of activity for energy-related disputes is ultimately a consequence of its leading position in global energy production, both in oil & gas and renewable energy.

- Africa's energy sector is impacted by;
  - The transition from fossil fuels due to various international commitments (such as the Paris Climate Agreement and the United Nations Sustainable Development Goals (SDGs)
  - The increase in renewable energy projects
  - The launch of climate change initiatives, policies and regulations
  - Resource nationalism with its local content requirements
  - Human rights, Environment, social and governance (ESG) issues
  - Foreign exchange controls

❑ The Paris Climate Agreement (PCA)

The PCA is a legally binding international climate change treaty adopted by 195 Parties (including several African countries e.g., Algeria, Nigeria, Zimbabwe, Togo, Ghana) at the UN Climate Change Conference (COP21) in Paris, France, on 12 December 2015 and came into force on 4 November 2016.

The goal of the Agreement is to hold "*the increase in the global average temperature to well below 2°C above pre-industrial levels*" and pursue efforts "*to limit the temperature increase to 1.5°C above pre-industrial levels.*"

All Parties to the Agreement (country, state, or regional economic organisation) must submit and update plans for their nationally determined contributions (NDCs) every five years. The Paris Agreement also mandated a "*Global Stocktake*" (GST) or report card of progress in 2023 and every five years thereafter.

❑ United Nations Sustainable Development Goal 13 – Climate Action

SDG 13 is the United Nations Global Goal to limit and adapt to climate change. It is one of 17 Sustainable Development Goals established by the United Nations General Assembly in 2015. The official mission statement of this goal is to "*Take urgent action to combat climate change and its impacts*". SDG 13 and SDG 7 on clean energy are closely related and complementary.

SDG 13 has five targets to be achieved by 2030. The targets include:

1. Strengthening resilience and adaptive capacity to climate-related disasters;
2. Integrating climate change measures into policies and planning;
3. Building knowledge and capacity to meet climate change;
4. Implementing the UN Framework Convention on Climate Change; and
5. Promoting mechanisms to raise capacity for planning and management

❑ Increase in Renewable Energy Projects

- The rapidly growing interest in renewable energy sources - solar, wind, hydro, and geothermal, has diversified Africa's energy portfolio.

- Many African countries, in line with Africa's ***Agenda 2063***, have embarked on or are planning to launch various ambitious renewable energy projects to harness this potential to meet their energy demands.

    - **Agenda 2063 -**Africa's blueprint and master plan for transforming the continent into a global powerhouse of the future. Agenda 2063 recognises that by 2070 the global population will grow by 2.4 billion people, with more than half of this growth occurring in Africa. Against this background, Agenda 2063 seeks to accelerate the development of Africa's energy and infrastructure requirements, recognizing that sustainable energy solutions are key to transforming the continent.

- Studies estimate that Africa could meet nearly a quarter of its energy needs from local and clean renewable energy sources by 2030, with the potential for its share of renewables to increase to two-thirds of its total energy demand by 2050, due to commitments to the Paris Climate Agreement and the United Nations Sustainable Development Goals.

❑ **Key renewable energy projects that have recently been executed, planned or are ongoing in Africa include:**

- The world's fourth-largest solar power plant is the Benban Solar Park, in ***Egypt***.
- The Redstone project in the Northern Cape Province of ***South Africa***.
- The Khoumagueli solar project in ***Guinea***.
- The Menengai geothermal power plant in ***Kenya***.
- ***Morocco*** 1,600km high-voltage line and the Noor Midelt Hybrid Solar Park
- The Al-Sadada 500MW Solar PV Park in ***Libya***.
- The Adétikopé or Arise IIP Solar Power Station in ***Togo***.
- Mambilla Hydropower Project in ***Nigeria***.

- ***Uganda***, unveiled its 2050 net-zero Energy Transition Plan at COP 28 in 2023, building a 20MW solar PV power project in its western region. Plans a 150MW solar plant in the east and a new transmission line linking Mbale to Bulambuli.
- The Julius Nyerere Hydropower Project in ***Tanzania*** and the Miombo Hewani Wind Farm,
- ***Ethiopia*** built the Assela 100MW wind farm in its central region, supplying 300,000 kWh of electricity and powering 400,000 homes.
- ***Mauritania*** plans to develop the USD40 billion AMAN project, which, if built, will comprise 8GW of wind capacity and 12GW of solar capacity, producing up to 1.7 million tonnes of green hydrogen per year.
- ***Angola*** and ***Namibia*** have a hydrogen project, which involves a 5GW renewables-powered hydrogen plant on the border of the two countries, at an estimated cost of US$10 billion.
- There are also ongoing feasibility studies regarding a mega-solar complex straddling the border between ***Botswana*** and ***Namibia***, which, if built, will have a capacity of 5,000MW, making it one of the world's largest solar plants.

- The potential for increase in disputes is highly likely due to energy transition in Africa and the concerted efforts being made to expand capacity across the continent through renewable energy projects.

- The changing regulatory environment, developments and investments required, the variety and number of stakeholders, supply chain complexity and the deployment of new technologies all create the perfect conditions for disputes.

- Arbitration will ultimately be the preferred dispute resolution mechanism given the cross-border nature of the disputes.

❑ LAUNCH OF CLIMATE CHANGE INITIATIVES, POLICIES AND REGULATIONS

- At the Conference of Parties (COP) 28, the 28th United Nations Climate Change Conference held in Dubai from 30 November 2023 to 13 December 2023, the participating States, including African countries, reached what has been described as an historic agreement for '*transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, to achieve net zero by 2050'*.

- As part of their undertakings, the participating states are expected to submit their next round of climate action plans (i.e., their ***nationally determined contributions (NDCs)***) by 2025 for COP 30. The goal is that these NDCs will be aligned with the 1.5°C limit (adopted under the 2015 Paris Climate Agreement) based on the best available science and the outcomes of the 2023 global stocktake.

- Though many African countries' economies are heavily dependent on fossil fuels, it is expected that this heightened concerns for climate change and transition away from fossil fuels will engender significant changes in the energy policies and regulations of African states, possibly including incentives for renewable energies, environmental impact assessments, obligations for new investments, stricter application of exchange control rules, increased reporting obligations, increased taxation and measures driven by resource nationalism, offset emissions obligations and obligations to refine and process materials within the continent instead of exporting them in their raw form.

- Coalition for High Ambition Multilevel Partnerships (CHAMP)

12 African countries, including Nigeria, Burkina Faso, Chad, Ivory Coast, Ethiopia, Ghana, Kenya and Morocco, have joined the Coalition for High Ambition Multilevel Partnerships (CHAMP) for Climate Action, which was launched at COP 28. CHAMP aims to enhance cooperation in the planning, financing, implementing and monitoring climate strategies, including NDCs, to collectively pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.

❑ The Pan-African Investment Code (PAIC)

The PAIC, adopted by the African Union member states in Nairobi in 2016, indicates the direction African states could take and the legislative and regulatory developments that may intensify. Though it is a non-binding model law, the PAIC is perceived to be quite innovative due to its primary objective to '*promote, facilitate and protect investments that foster the sustainable development of each Member State*'.

❑ The Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment (POI)

- On 19 February 2023, ***the African Continental Free Trade Area Agreement (AfCFTA)*** member states adopted ***the POI***, which follows the PAIC and includes detailed direct obligations for investors.
- In relation to climate change, investors shall, in particular, promote and facilitate investments '*that support actions to mitigate greenhouse gas emissions and measures to adapt to the negative impacts of climate change',* that are '*of relevance for a fair and just transition in sectors such as renewable energy, low-carbon technologies*' and '*that mitigate climate change impacts on exhaustible natural resources such as fresh water and biological diversity*'.

- The future will tell how arbitral tribunals will deal with these evolutions, considering that new obligations in principle should not be enforced retrospectively. An intricate issue requiring a case-by-case assessment may be the compatibility between new obligations arising from the POI or similar investment norms and the provisions of existing international investment agreements or contracts (e.g., concession agreements and production-sharing agreements) applicable to foreign investments. Several governments have already questioned the compatibility between the investment treaty regime and the Paris Climate Agreement goals owing to the constraints of international investment agreements on a host state's ability to enact climate change regulations.

❑ RESOURCE NATIONALISM AND LOCAL CONTENT REQUIREMENTS

Recent examples of resource nationalism in Africa include:

- **The Zimbabwean government's action** in December 2022, prohibiting the export of raw lithium ore and imposing an immediate ban on the export of all raw mineral ores in January 2023.

- **The Namibian government** in June 2023 imposed a ban on the export of unprocessed critical minerals, including lithium, cobalt, manganese and graphite, despite agreeing a deal to supply rare earth minerals to the European Union in October 2022. This measure aimed to increase the value extracted from native minerals before international export, thereby promoting domestic processing.

- **The Ghanaian government** approved a policy banning the export of raw critical minerals ores, including lithium, bauxite, and iron, in August 2023. It insists on a higher level of local participation in the green minerals value chain than its current 10 per cent vested interest.

- **The termination of mining licenses by the new populist or military leadership in the Republic of Niger and the pending ICSID arbitration cases related thereto.**

❑ Local content requirements (LCRs)

- Resource nationalism, amongst other effects, often engenders stricter enforcement of LCRs in many African States.

- Over the years, the energy sectors of most African countries have been controlled by foreign companies with foreign staff. Consequently, many African states have amended their energy legislation to incorporate LCRs to enable indigenous companies have greater participation in the industry.

Examples:

- The 2019 Senegalese statute on Local Content in the Hydrocarbons Industry,
- Nigeria Oil and Gas Industry Content Development Act 2010 (the NOGICD Act)
- The 2013 Ghanaian Local Content and Local Participation in Petroleum Activities Regulations.

SENEGAL: The Senegalese oil and gas industry was formerly regulated by the 1998 Petroleum Code; how upon the oil discovery at the Sangomar (formerly SNE Deepwater) Oil Field in 2016, Senegal amended its Petroleum Code by enacting the Senegalese Petroleum Code and the Local Content Law in February 2019. Senegal also aims to achieve 50 per cent local content by 2030.

The new petroleum code introduces

- provisions dedicated to LCRs.
- It mandates the participation of the national private sector in oil operations, contracts relating to the construction of related infrastructure, and the supply of services relating to oil and gas projects.
- It also contains obligations for technology transfer to Senegalese companies.
- mandates that oil and gas operators annually submit a content plan that outlines their use of either local or international contractors, service providers or suppliers.
- In each step of the project, oil and gas operators must show that they have made efforts to utilise Senegalese personnel and companies, provided that the local personnel and companies are equipped with the required qualifications and capacity.

More recently, in 2021, the Senegalese government set up a local content monitoring committee, the National Committee for Monitoring Local Content, to enforce and implement the local content policy developed by Senegal.

NIGERIA:

- The Nigerian oil and gas sector, regulated by the Nigerian Oil and Gas Industry Content Development Act 2010 (the NOGICD Act) and the Nigerian Content Development and Monitoring Board (NCDMB).
- The Act provides that Nigerian independent operators shall be given first consideration in awarding oil blocks, oil field licenses, oil lifting licenses, and all projects for which a contract will be awarded in the Nigerian oil and gas industry.
- The Act explicitly provides that compliance with the provisions of the Act and promotion of Nigerian content development shall be a major criterion for the award of licenses, permits and any other interest in bidding for Oil exploration, production, transportation and development or any other operations in the Nigerian Oil and Gas industry.
- In February 2024, the Nigerian government issued a directive on Local Content Compliance Requirements aimed at improving foreign participation in the Nigerian oil and gas industry. The Directive aims to mitigate any negative impact of strict adherence to local content regulations on investments and operations. ***E.g.,*** the Directive grants the NCDMB discretion to take into consideration the practical challenges of insufficient in-country capacity for certain services, and power to act in a manner that does not hinder investments or the cost competitiveness of oil and gas projects.

❑ Human rights, Environment, social and governance (ESG) issues

Incorporating ESG principles into energy investment agreements, has heightened the focus on human rights and environmental stewardship. Given the nature of energy projects, particularly the fact that most projects demand a large expanse of land and generally have some adverse environmental impacts, disputes often arise from allegations of land dispossession, inadequate compensation, and violations of community rights.

❑ The 2016 Morocco–Nigeria Bilateral Investment Treaty (BIT)

Under the BIT, investors must conduct environmental and social impact assessments and shall not operate investments in a manner that circumvents international environmental, labour and human rights obligations to which the host state and/or home state are Parties.

❑ FOREIGN EXCHANGE CONTROL AND AFRICA'S ENERGY SECTOR

- Foreign exchange control regulation represents a significant challenge in the relationship between emerging countries and investors in the energy sector.

- Foreign exchange control is crucial in relation to energy project financing and the foreign distribution of proceeds generated by local operations. The applicable regime can impact the financing structure through restrictions on the flow of money, reimbursement conditions, account opening, and currency used. These may all have direct consequences on the profitability of an energy project.

- Since foreign exchange regulations often have instant consequences on the proceeds generated by an investment, any new or more stringent interpretation of exchange control rules will likely immediately raise new challenges for foreign investments in the energy sector.

- Foreign exchange control is a field with rapid and numerous developments. **Examples:** The ***Nigerian government*** floated the naira in June 2023. Similarly, new regulations entered into force in Morocco on 2 January 2024, ***Tanzania*** modified its 2022 Foreign Exchange Regulations through the 2023 Foreign Exchange (Amendment) Regulations on 1 September 2023, ***Angola*** adopted new rules applicable to the mining sector, and ***Tunisia*** introduced a draft of the new Foreign Exchange Code in 2024.

❑ The CEMAC Region

Recent events in ***the Central African Economic and Monetary Community (CEMAC region)*** also illustrate how changes to foreign exchange control can cause significant constraints for foreign investors. The CEMAC's new foreign exchange regulation, which entered into force on 1 March 2019, contains more stringent rules and possible fines against operators and banks that fail to repatriate export earnings. This development has led to concerns among hydrocarbon and mining companies. After several years of discussion and a moratorium on enforcing the regulation, new regulations have been issued. As CEMAC regulations have precedence over local legislation of the CEMAC member states, these new regulations have created additional challenges for companies in the energy sector.

EVOLUTION OF ENERGY DISPUTES IN AFRICA FOLLOWING THE RECENT TRENDS

Due to the above-mentioned recent trends in Africa's energy sector, the nature of energy disputes in Africa is undergoing a significant transition, moving beyond traditional issues such as breaches of production sharing contracts, concession agreements, and pricing disputes. Recent trends have changed the nature of energy disputes, making them more multifaceted and legally intricate, and demanding a recalibration of dispute resolution mechanisms to address the new realities of Africa's energy transition effectively.

Some of the energy disputes that are envisaged to arise or increase **include:**

1. Renewable Energy Disputes – Particularly performance disputes in relation to new technologies

- Africa is currently transitioning to renewables energy projects which often involve complex and sometimes pioneering and relatively "untried and untested", technology (or, a situation where an existing technology is being used in a new, larger or more arduous operating environment, or by a party who is not familiar with the technology).

- 61% of the respondents in the 2022 QUML Energy arbitration survey report agreed that "design and performance issues" will be the primary driver of renewable energy disputes going forward.

- The failure of technology to work as intended is relatively common in renewable energy projects. Consequently, disputes in relation to the performance of new technology are perceived to be inevitable. Depending on when the issue is discovered, disputes may arise concerning construction completion regimes, commissioning and performance testing regimes, post-completion defect regimes, or operation and maintenance regimes.

- Resolving such disputes is considered difficult mainly due to the technical nature of the underlying issues. Discerning the cause of the problem is often a matter of complex scientific or engineering expertise. Therefore, the most effective strategy for dealing with such disputes is for the tribunal to obtain a relevant independent expert report very early in the proceedings.

❑ ***Mambilla arbitration*** - ***Sunrise Power and Transmission Company Ltd. v. Federal Republic of Nigeria*** (though contractual in nature)

Sunrise Power and Transmission Company Ltd., a company previously awarded the construction contract for the Mambilla Hydropower project, instituted an action against the Nigerian government by initiating an arbitration under the auspices of the International Chamber of Commerce (ICC), International Court of Arbitration. This legal action followed the government's cancellation of the original contract in favour of a Chinese consortium in 2007.

Sunrise Power claims damages of USD 2.3 billion on the ground that the government breached its 2003 agreement. Significantly, in 2020, the parties entered into a settlement Agreement in the earlier ICC Arbitration (i.e., ***Sunrise Power and Transmission Company v. Federal Republic of Nigeria and Sinohydro Corporation, ICC Case No. 23211/TO***) where the government agreed to pay Sunrise Power USD 200 million. However, Sunrise Power asserts that the government failed to adhere to this settlement agreement, prompting the current ICC arbitration proceedings.

In a recent development in January 2025, former President Olusegun Obasanjo GCFR, President Muhammadu Buhari GCFR and a former Minister of Power testified in Paris regarding the project. Their testimony provided the political and economic context surrounding the project's development and cancellation.

The Mambilla arbitration has attracted considerable attention as it highlights the complexities of large-scale renewable energy infrastructure projects in Africa, involving foreign investors, government contracts, and potential for international disputes. The outcome of this case is expected to have significant implications for the Mambilla project and future renewable energy infrastructure development initiatives across the continent.

2. License and expropriation disputes

- With the increase in resource nationalism and heightened focus on renewable energy sources, disputes involving license issuance, revocation, and expropriation may increase within Africa's energy sector.

- In an attempt to enforce resource nationalism, many African countries may opt to revoke existing licenses of foreign companies, expropriate and transfer energy projects to local partners or state-owned companies or enact stricter regulations and requirements for issuing permits to foreign companies/investors. Indeed, as earlier mentioned above, such disputes have arisen in Niger where multiple ICSID arbitration proceedings have been instituted against the country.

- Furthermore, with the heightened focus on renewable energy projects, issues surrounding the issuance of licenses, permissions, and consents required for the construction of the projects are also expected to increase.

- This complication may be unique to renewable energy projects because they are typically in remote, greenfield locations, usually require a lot of space, and can have environmental impacts, which may be uncertain or complex to assess (windfarms being a prime example). These difficulties can lead to delays in obtaining approvals and, as a result of those delays, disputes run through the contract chain as deadlines are not met, and expectations are frustrated.

- The most proactive way to address these disputes may be to ensure due diligence before committing to the project, i.e., understanding the regulatory and legal landscape. In relation to disputes involving revocation of licenses and expropriation of energy projects, negotiation and mediation, wherein both parties make concessions, may be more effective in resolving such disputes.

❑ **License and expropriation disputes in Africa -** the multiple arbitration claims against ***the Republic of Niger*** in relation to the revocation of uranium mining licenses of certain foreign companies in the country.

- ***GoviEx Niger Holdings Ltd. and GoviEx Uranium Inc. v. Republic of Niger* (ICSID Case No. ARB/25/1)**

In January 2025, GoviEx Niger Holdings Ltd. and GoviEx Uranium Inc. instituted an ICSID arbitration (i.e.,) against the Republic of Niger alleging breaches of their mining rights (due to the revocation of their mining license) under the country's mining laws and a 2007 Mining Convention.

- ***Orano Mining SAS v. Republic of Niger (ICSID Case No. ARB/25/9) and Orano Mining SAS v. Republic of Niger* (ICSID Case No. ARB/25/8)**

Orano Mining SAS in March 2025 instituted two ICSID arbitrations (i.e.,) against the Republic of Niger for similar breaches after losing operational control over the Somair uranium mine.

- Another recent example of an expropriation dispute, though not energy-related, is the ICSID Arbitration between ***Rome Resources PLC and IM Minerals Limited v. Republic of Mozambique* (ICSID Case No. ARB/24/4)** instituted in February 2024. The dispute is in respect of the alleged revocation of a mining license and the alleged unlawful expropriation and transfer of a 25-year mineral sands mining concession, initially held by UK-based Pathfinder Minerals, to local partners. The dispute was fortunately resolved through a settlement wherein the Mozambique government agreed to grant five new research and exploration licenses to a registered Mozambican company (or companies) to be nominated by IM Minerals Limited.

3. Joint venture/contractual disputes

- Joint ventures (JVs) are a common investment structure in Africa's energy sector. Therefore, energy joint venture disputes involving African parties are common. Notwithstanding, due to the new wave of renewable energy projects on the continent, joint venture disputes are expected to increase.

- Energy Joint venture disputes often involve numerous stakeholders in multiple jurisdictions and are usually complex, given that they are frequently intertwined with politics, corporate governance, power tussles between foreign and local stakeholders, etc.

❑ **Recent energy joint venture disputes involving African parties include**

- ***The Shell Petroleum Development Company of Nigeria Limited v Sunlink Energies and Resources Limited*** which was commenced in 2023 by Shell Petroleum Development Company of Nigeria Limited (SPDC) against Sunlink Energies and Resources Limited (a Nigerian company) regarding a 2005 Joint Operating Agreement (JOA) for oil operations under a Nigerian Oil Prospecting License.

- ***AVZ Minerals vs. Cominière (Democratic Republic of Congo) ICC No. 27720/SP*** The overarching dispute is in relation to the control and rights over the Manono lithium project, one of the world's largest hard rock lithium deposits. AVZ initially claimed to hold a 75% stake in the Manono lithium project, in a joint venture (the Dathcom joint venture agreement) with the state-owned Congolaise d'Exploitation Minière (Cominière). The project attracted international interest, including an agreement with Chinese battery manufacturer, CATL, which intended to invest USD240 million for a 24% stake.

Significant issues arose following AVZ's disputed attempts to consolidate ownership. Further complications arose after AVZ contested Cominière's sale of a 15% stake in the project to China's Zijin Mining in late 2021. AVZ repeatedly challenged the sale in Congolese courts but failed to overturn the decision, leading to prolonged legal conflicts and operational uncertainty. These legal battles significantly delayed the project's development timeline, ultimately prompting the Congolese government to revoke AVZ's mining license/rights and terminate the joint venture in February 2023. The mining rights were later granted to a subsidiary of China's Zijin Mining, prompting AVZ to seek relief with the ICC.

Recently on 10 March 2025, the International Court of Arbitration of the International Chamber of Commerce (ICC) issued a partial award ordering DRC's state-owned Cominière to pay a penalty of €39.1million for not complying with the emergency orders issued on 5 May and 15 November 2023 to stop any actions terminating its joint venture with AVZ.

- Another example of an energy joint venture agreement dispute with political interference is the ICC arbitration between ***Savannah Midstream Investment Limited v. Republic of Chad, SHT Overseas Petroleum Limited, SHT Doba Pipeline Investment Inc., Société Nationale des Hydrocarbures (SNH) and Cameroon Oil Transportation Company (COTCO) S.A., ICC Case No. 27914/SP*** **(the Chad–Cameroon Petroleum Development and Pipeline Project dispute).** This dispute escalated into a diplomatic crisis between Chad and Cameroon, including Chad recalling its ambassador from Cameroon in 2023.

4. ESG and climate change disputes

As highlighted above, with climate change concerns and increased awareness regarding ESG, energy disputes, which border on environmental and human rights issues, are expected to increase.

Such disputes may arise in an instance where investors believe that new environmental laws or the phase-out of fossil fuels adversely impact their investments. This scenario has emerged in other regions, such as the Netherlands in 2021, when RWE and Uniper commenced an ICSID arbitration (i.e., ***RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands, ICSID Case No. ARB/21/4***) against the Kingdom of the Netherlands, alleging that its decision to phase out all coal-fired power plants by 2030 violates the Netherlands' obligations under the Energy Charter Treaty (ECT).

In the circumstances, stakeholders in the energy sector, particularly energy lawyers, should anticipate and proactively address potential disputes that may arise from the intersection of investment and environmental policies.

- **A notable recent African energy-related case which intertwines human rights and environmental, social, and governance (ESG) considerations**

- ***The TotalEnergies East African Crude Oil Pipeline (EACOP) Project***. While not an arbitration case per se, the case has attracted significant international attention and legal scrutiny, highlighting the increasing convergence of ESG issues with energy projects.

TotalEnergies, a French multinational oil and gas company, has faced scrutiny over its EACOP project, which involves the construction of a crude oil pipeline from Uganda to Tanzania. Allegations of human rights abuses, including forced evictions and violence against women, have been raised by organisations such as Just Finance International (JFI). Considering the allegations, Germany's Union Investment, in 2025, removed TotalEnergies from its sustainable funds and called for an independent human rights audit. The UN Special Rapporteur on Human Rights, on 22 May 2025, urged the company to address these concerns promptly. While these issues have not yet resulted in arbitration, they underscore the growing intersection of ESG considerations and energy projects in Africa.

- ***The TotalEnergies' $20 billion liquified natural gas (LNG) project***, which commenced in 2020 in Mozambique, encountered the same challenges concerning human rights and ESG concerns, corruption scandals, and opposition from NGOs and European governments.

These cases highlight the complexities of balancing large-scale energy projects with human rights and environmental considerations. Therefore, this has become a critical area of attention for investors, governments, and civil society within the energy sector. Though energy arbitration cases involving human rights and ESG consideration in Africa are currently limited, it is anticipated that future energy arbitration cases in Africa may increasingly entail these complex issues.

5. Adverse government actions (including policy change and foreign exchange control)

Adverse government action, such as unfavourable foreign exchange policy (as seen in the earlier mentioned case of CEMAC countries), removal of subsidies, withdrawal of other incentives for foreign investors, tax policy, etc., may give rise to energy disputes. Given the government's direct or indirect control over key areas, energy projects are vulnerable to political changes and instability over their lifetime. This often leads to investor-state energy arbitrations wherein the investor challenges the government's decision.

The key to managing these disputes from an investor's perspective is effective investment structuring from the outset and pushing for contractual stabilisation clauses in contracts with states or state-owned entities. This means proper investment treaty planning.

- ***Pungwe B Power Station (Pvt) Ltd v. Zimbabwe Electricity Distribution Company (ZETDC)*** (which was commenced in 2020 and the final award delivered in favour of the Republic of Zimbabwe in October 2021), the overarching dispute was in relation to the currency for the payment due to Pungwe B.

The arbitration was instituted by Pungwe B, a local power company owned by Nyangani Renewable Energy, Zimbabwe's largest energy producer, which is in turn owned by the UK-based PGI Group.

The brief fact of the case is that in 2014, Pungwe B signed a power purchase agreement with Zimbabwe's national electric company, whereby Pungwe B would provide the country with hydroelectric power. The dispute arose upon Zimbabwe's claim that it was entitled to make payments (due to Pungwe B) in its national currency (the RTGS dollar), which was introduced in 2019 to replace the highly devalued Zimbabwean dollar, while Pungwe B believed that given that the contract was denominated in US dollars, payments had to be made in the far more stable US currency. The arbitral tribunal agreed with Zimbabwe, holding that the power purchase agreement allowed the State to make payments in its national currency. This decision is expected to have significant repercussions in the energy sector in Zimbabwe.

6. Construction-related disputes

The infrastructure of renewable energy projects can be massive in scope and capacity (for instance, offshore wind farms, large solar farms, and hydroelectric dams). Therefore, as with any major infrastructure project, typical construction-related disputes may arise, such as delay claims, cost overruns, defect claims and claims relating to design and performance.

THE ROLE OF ARBITRATION AND ARBITRAL INSTITUTIONS IN RESOLVING THE EMERGING ENERGY DISPUTES IN AFRICA

- Arbitration remains the preferred method for resolving energy disputes principally due to its neutrality, the technical expertise of arbitrators, enforceability, and flexibility. Adopting the New York Convention by many African countries facilitates the recognition and enforcement of arbitral awards, making it an attractive option for international investors.

- In the 2022 survey report by Queen Mary University of London in conjunction with Pinsent Masons LLP, 55 per cent of the respondents chose the highest rating of 5, confirming their strong belief in the suitability of arbitration to resolve international energy disputes. Seventy-two per cent of respondents in the end-user subset also indicated a strong belief in the suitability of arbitration for resolving international energy disputes. However, the respondents in the survey also desire innovations in arbitration, especially in relation to **more efficiency** and **early decision-making**. Indeed, this confirms that arbitration and arbitral institutions must adopt **innovative ideas and procedures** to effectively resolve the emerging energy disputes and retain the preference for arbitration within the energy sector.

- **Consequently, in light of the emerging new energy disputes in Africa, the following are some of the roles and steps that may be taken to ensure the efficacy of arbitration in the rapidly transforming energy disputes landscape:**

1. Aligning arbitration to the new challenges through continuous legislative reform of national arbitration laws and amendment of institutional arbitration rules

To address the unique challenges posed by emerging energy disputes in Africa, national arbitration laws and institutional arbitration rules must incorporate innovative procedural provisions to ensure the effective resolution of the emerging disputes. Innovative provisions such as third-party funding, joinder, consolidation of claims, expedited procedures and emergency arbitrator proceedings can enhance the efficiency of arbitration in this context.

- ❑ According to the 2019 Report of the ICC Commission on Arbitration and ADR Task Force on Emergency Arbitrator Proceedings, half of the first 80 emergency arbitrator proceeding applications concern disputes in the construction, engineering and energy sectors.

- ❑ Half of all respondents and 66% of arbitration end-user respondents in the 2022 QMUL survey report selected expedited procedures (including faster constitution of arbitral tribunals and time limits for awards) as the most crucial procedural provision in energy arbitration. Indeed, expediting the resolution of energy disputes is commercially beneficial to the parties as it saves significant time and costs.

Furthermore, considering that most traditional energy disputes involve multiple parties and the newly emerging disputes are not expected to be different, innovative multiparty procedural provisions such as joinder and consolidation of claims will also ensure the expeditious resolution of disputes and avoid multiple parallel proceedings on the same subject matter.

Fortunately, African states are increasingly aligning their legal frameworks to an international standard. **Examples:**

- **Nigeria:**

Nigeria's new Arbitration and Mediation Act (AMA) came into force in 2023. The new arbitration law follows the 2006 UNCITRAL Model Law and incorporates multiparty procedural provisions, third-party funding, Award Review Tribunal, and other innovative provisions.

- **Malawi:**

In February 2024, the President of the Republic of Malawi assented to the International Arbitration Bill passed by the Malawi Parliament in 2023. The Bill (now the International Arbitration Act 2024) adopts the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 2006 and gives effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention").

- African arbitration institutions also amend their rules to incorporate international procedural best practices. **Example:**

- **The Cairo Regional Centre for International Commercial Arbitration (CRCICA)** updated its 2011 Rules by issuing the 2024 Arbitration Rules. The 2024 Rules follow the UNCITRAL Arbitration Rules with innovative provisions such as the multiple contracts provision, , which enables parties to make claims arising out of or in connection with more than one contract in a single arbitration and early dismissal of claims.

- **Legislative reform of national arbitration laws and the amendment of institutional arbitration Rules to incorporate modern procedural provisions should continue to ensure that arbitration is tailored to resolve emerging energy disputes in Africa.**

2. Encouraging Diversity and Inclusivity in Africa's Energy Arbitrations, particularly in relation to the appointment of African arbitrators and counsel in African energy disputes

African energy disputes are more often arbitrated outside the continent, with low appointments of African arbitrators and engagement of African Counsel. Though the recognition of African practitioners and institutions in the international arbitration landscape has gradually improved, it has remained uneven in recent years when compared to their international counterparts.

- While Africa accounts for a significant number of global energy and mining disputes, African arbitrators and counsel remain underrepresented in African energy arbitrations. Statistics from leading arbitral institutions reveal that only about 3-5% of ICC arbitrators and 7-10% of ICSID tribunal members in Africa-related cases are African nationals, despite the continent generating approximately 25-35% of all known investor-state disputes in the energy and mining sectors.

- The LCIA Annual Casework Report 2023 indicates that only **1% – 3%** of appointed Arbitrators in LCIA cases are of African origin.

https://www.lcia.org/media/download.aspx?MediaId=988

- The ICC Arbitration 2023 Dispute Resolution Statistics Report shows that only about **3-5% of ICC arbitrators** are of African origin.

https://iccwbo.org/news-publications/news/icc-dispute-resolution-statistics-2023/#top

- The ICSID 2023 Annual Report indicates that Africa accounts for **25% – 35%** of global energy and mining disputes, yet, only **7% – 10%** of arbitrators in Africa-related cases are African nationals.

https://icsid.worldbank.org/sites/default/files/publications/ICSID_AR2023_ENGLISH_web_spread.pdf

The underrepresentation of African arbitrators in high-profile energy cases reflects structural challenges within the international arbitration system. Many major institutions continue to favour arbitrators from traditional hubs in Europe and North America, often citing their extensive case experience, while overlooking qualified African practitioners. This dynamic creates a self-perpetuating cycle where African arbitrators receive fewer opportunities to gain the experience needed for more prominent appointments. However, there are encouraging signs of change, with a growing cadre of African arbitration specialists beginning to break through these barriers. This recent change has been engendered by various initiatives, including the establishment of regional arbitration centres, the Africa Promise Initiative, Equal Representation in Arbitration (ERA Pledge Initiative), the establishment of the African Arbitration Association (AfAA) and the enactment of national arbitration policies such as the Nigerian National Policy on Arbitration and Alternative Dispute Resolution 2024.

❑ The *"African Promise"*

The *"African promise"* campaign aims to improve the profile and representation of African arbitrators and encourage the appointment of Africans as arbitrators, especially in arbitrations connected with Africa. The drafters of the African Promise consider that African arbitrators should be appointed as arbitrators on an equal opportunity basis.

❑ The African Arbitration Association (AfAA)

The AfAA was founded in 2018 as a pan-African organisation. Amongst other objectives, the organisation aims to promote African international arbitration practitioners and African arbitration institutions within and outside the African continent and facilitate and encourage the appointment of African international arbitration practitioners and the use of African arbitration institutions.

The vision of AfAA aligns with progressive thinking on diversity and inclusion as supported by ***the 2020 SOAS Africa Arbitration Survey,*** which reports that 88% (307) of the respondents will recommend African arbitral centres.

❑ The Nigerian National Policy on Arbitration and Alternative Dispute Resolution 2024

The policy establishes a structured process for appointing arbitrators and counsel, ensuring competence, transparency, and fairness. The key guidelines in relation to the appointment of an arbitrator include:

1. Where parties agree to a three-member tribunal, the arbitrator to be appointed by the Federal and State ***Ministries, Departments and Agencies (MDAs)*** shall be an ADR expert with the requisite qualification and competence to act as an arbitrator.

2. In International Commercial Arbitration involving Federal/State MDAs, the Attorney General of the Federation or the State may request the Director of the Regional Centre for International Commercial Arbitration, Lagos (RCICAL), to appoint suitably qualified and competent Nigerian arbitrator(s) for the Federal/State MDAS.

3. Where the parties agree to appoint a sole arbitrator, the sole arbitrator shall be a suitably qualified and competent Nigerian arbitrator.

4. In cases where the parties fail to agree on the procedure of appointment and/or the appointing authority, the Attorney General of the Federation or the State shall request the RCICAL or any other centre to appoint suitably qualified and competent Nigerian arbitrator(s) for the Federal/State MDAs.

To ensure professionalism and competence in arbitration proceedings, the Policy provides guidelines for engaging legal counsel. The key guidelines include:

1. Federal and State MDAs must adopt a clear and transparent process for engaging Nigerian counsel in arbitration and ADR proceedings.

2. Where foreign counsel is engaged due to specialised expertise, they must partner with Nigerian counsel for the Nigerian counsel to gain hands-on experience in the course of the prosecution of the case.

3. The selection of counsel must be based on merit, considering technical ability, experience in international arbitration, and depth of knowledge.

4. The choice of both Nigerian and Foreign counsel must, however, be made using reasonable selection criteria of a person so qualified.

- **Indeed, diversity and inclusion in African energy arbitration, with the appointment of qualified African arbitrators and counsel, will ensure the legitimacy of energy arbitration on the continent. As stated by the UNCITRAL Working Group 3 in 2018, the current lack of diversity in decision-making in the field of Investor-State Dispute Settlement (ISDS) undermines the legitimacy of the ISDS regime and needs to be addressed.**

4. Encouraging the use of ADR Mechanisms during arbitration

- Arbitral institutions and arbitrators should encourage parties in energy disputes to explore alternative dispute resolution mechanisms, including mediation and conciliation, during the arbitration proceedings. As highlighted earlier, some emerging energy disputes, such as license and expropriation disputes, may be more effectively resolved through negotiation or mediation. This will provide a holistic approach to resolving energy disputes expeditiously.

- The ***Singapore Convention on Mediation*** (i.e., ***United Nations Convention on International Settlement Agreements Resulting from Mediation***), which has since come into force, enhances the efficacy of the enforcement regime of international mediation settlement agreements. As of June 2025, there are 12 African countries of the 58 signatories to the Convention.

5. Capacity Building and Training

Investing in developing arbitrators with expertise in renewable energy technologies, climate change law, and ESG principles is crucial for effectively resolving emerging energy disputes in Africa.

- In the 2022 QMUL survey report, 76% of the respondents identified the most critical procedural elements as being the technical expertise of the arbitrators. The respondents understood technical expertise in this context broadly to cover both an understanding of the case's underlying legal and technical facets and experience in shaping the dispute resolution process to the commercial needs of the parties.

Therefore, the African arbitration community must continue its initiatives for capacity building and training African practitioners to ensure that Africans and African Institutions are actively involved with foreign colleagues and foreign institutions in arbitrating energy disputes not only in Africa but internationally.

Examples of capacity-building initiatives in Africa include:

❑ The Chartered Institute of Arbitrators

The Chartered Institute of Arbitrators has played and continues to play a key and active role in ensuring the availability of qualified arbitration practitioners in Nigeria and other parts of Africa and in various fields, including the energy sector. The Institute approved the formation of the Nigerian Branch in 1999, having fulfilled the requirements to be granted Branch status.

❑ The ICC AFRICA COMMISSION

In 2018, the ICC Court of Arbitration launched the Africa Commission. One of the Commission's objectives is to build the capacity of African practitioners specialising in dispute resolution. The Commission currently has 18 members from 16 African countries. In furtherance of this objective, the Commission has organised several conferences and training sessions targeted at capacity building and enhancing the expertise of African practitioners.

❑ The Annual Flagship Arbitration Academy Programme

The Africa Arbitration Academy (AFA) organises the Annual Flagship Arbitration Programme for young African arbitration practitioners. In July 2024, the Academy also published the Arbitration Compass as a comprehensive guide for individuals and entities involved in or interested in arbitration proceedings on the African continent. The compass offers essential insights and practical advice to navigate the diverse and evolving arbitration landscape across Africa's vibrant jurisdictions.

- **Collaboration between arbitral institutions**. In March 2024, the Nairobi Centre for International Arbitration, the Cairo Regional Centre for International Commercial Arbitration, the Kigali International Arbitration Centre (KIAC), and the Hamburg Chamber of Commerce signed a memorandum of understanding to enhance the visibility and growth of arbitration in Africa.

CONCLUSION

The era of energy transition signifies change, of likely predominance of even more long-term contracts, of huge investments, of uncharted new areas and within the identified parameters of resource nationalism, political risks and other challenges.

I conclude by reaffirming that the arbitration world, institutions, arbitrators, counsel must be ready to pick up the mantle of change, to innovate and embrace diversity in all its ramifications. We must move beyond traditional concepts as forewarned by Hon Justice Robin Knowles in ***Federal Republic of Nigeria v Process & Industrial Developments Ltd [2023] EWHC 2638 (Comm).*** To Hon. Justice Robin Knowles,

> *"The tribunal should have taken the initiative to encourage exploration and new bounds of contract law and the law of damages that may today be required where major long-term contracts are involved."*

In the same vein, the arbitration community must continue to interrogate itself on new boundaries required to deal with the changes in the energy legal and arbitration system and in all its ramifications.

I commend the organizers of this forum for the opportunity presented to dialogue on the way forward.

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