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WHOSE KNOWLEDGE COUNTS? EPISTEMIC JUSTICE AND COMMUNITY EXCLUSION IN AFRICAN HYBRID ARBITRATION

AUTHORS

Ms. Namah Bose
Corporate and Technology, Media & Telecommunications Lawyer

Mr. Adamya Rawat
I Year, Rajiv Gandhi National University of Law

"In a Just Society, Law should be a Shield for the Weak, not a Weapon for the Strong."

— Justice Sheel Nagu

Introduction

Hybrid arbitration forums in Africa and the Global South often exclude the most affected communities while resolving disputes around extractives and infrastructure.[1] From *Barry Gondo v Republic of Zimbabwe* ["**Barry Gondo**"],[2] where the victims of government brutality were denied access to enforcement of their remedies, and *Mike Campbell Pvt. Ltd. v Republic of Zimbabwe* ["**Mike Campbell**"],[3] in which the defective acquisition of land occurred in the absence of genuine consultation, the stark evidence of the gap appears: forums meant to adjudicate harm often perpetuate epistemic injustice.

Building on Miranda Fricker's categories of testimonial and hermeneutical injustice, this article argues that hybrid arbitration structurally marginalises local knowledge.[4] Testimonies from communities are undervalued as being non-expert while their cultural frameworks are made unintelligible by rigid legal protocols.[5] Such erasures are not incidental; they are encoded in procedural norms: high evidentiary thresholds, linguistic filters and exclusionary standing rules that

[1] African Commission on Human and Peoples' Rights, Report of the African Commission's Working Group on Indigenous Populations/Communities: Report on Extractive Industries, Land Rights and Indigenous Populations/Communities' Rights (ACHPR 2009) 8–9; Columbia Center on Sustainable Investment and UN Working Group on Business and Human Rights, Impacts of the International Investment Regime on Access to Justice: Roundtable Outcome Document (September 2018) 10.
[2] *Barry Gondo & Ors. v Republic of Zimbabwe,* SADC Tribunal, Case No. 05/2008.
[3] *Mike Campbell Pvt. Ltd. & Ors. v Republic of Zimbabwe,* SADC Tribunal, Case No. 02/2007.
[4] Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford University Press 2007) 1–10.
[5] Leïla Choukroune and Lorenzo Cotula, "'Local Communities" and the Development Conundrum: Where International Investment Law Meets Human Rights and Businesses' (2024) 9 BHRJ 270, 280–283.

privilege western technocratic knowledge systems.[6] Drawing also from Third World Approaches to International Law ["**TWAIL**"] critiques, this Article demonstrates how arbitration mechanisms reproduce colonial asymmetries under the guise of neutrality.[7]

We examine these themes through procedural critique, doctrinal case analysis, and comparative interventions, before proposing reforms to embed epistemic justice into the architecture of arbitration. Without such change, hybrid arbitration risks becoming a tool of exclusion and not adjudication.

Locating Epistemic Injustice in Hybrid Arbitration Practice

i. *Defining the Concepts*

Epistemic injustice refers to unfair treatment that people suffer specifically in their role as knowers, i.e., individuals who are capable of contributing valid knowledge. Miranda Fricker developed two forms: testimonial injustice and hermeneutical injustice.[8] The first arises when a speaker's credibility is unfairly diminished due to identity-based prejudice or when someone is believed to be less trustworthy or capable simply because they are poor, rural, indigenous or otherwise marginalised.[9] In arbitration environments, it appears in the form of local populations lacking technical expertise to speak to matters of land use, environmental degradation or cultural loss.

Hermeneutical injustice, on the other hand, occurs when a community lacks access to the shared conceptual tools; legal language, procedural standing or institutional recognition needed to make their experiences intelligible within dominant decision-making forums. When traditional epistemologies do not align with the expectations of arbitral procedure, they risk being treated as legally irrelevant. Dotson argues that marginalised groups often face epistemic violence when their testimonies are not credible within dominant epistemic frameworks, thus resulting in their experiences being rendered invisible in formal discourse.[10]

ii. *Why Arbitration is Vulnerable*

Arbitration, especially investor-state or hybrid models, is particularly prone to creating epistemic injustice. These proceedings are often private, technical and controlled by parties with substantial

[6] Kristie Dotson, 'Tracking Epistemic Violence, Tracking Practices of Silencing' (2011) 26 Hypatia 243.
[7] Obiora Chinedu Okafor, 'Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?' (2008) 10 Int'l Community L. Rev. 371.
[8] Fricker (n 4) 1–10.
[9] ibid 28.
[10] Dotson (n 6) 243–250.

legal power.[11] Arbitrators typically prioritise formal legal arguments, economic assessments and expert testimony, all of which are steeped in western technical and legal epistemologies. This environment systematically sidelines indigenous knowledge systems, oral traditions and lived community experiences.[12] Structural features such as high thresholds for admissible evidence, rigid procedural rules and narrowly-drawn standing requirements further restrict participation by those most directly impacted by infrastructure or extractive projects. Even when harms are deeply felt, the pathways to express them are institutionally foreclosed. As Dotson notes, silencing in such settings can be so deep-rooted that local speakers self-censor or are never even heard.[13] Arbitration is therefore not only silencing marginalised voices but also structurally failing to even register their epistemic input.

Manifestations of Silencing: Mechanisms in Hybrid Infrastructure Arbitration

i. *Procedural Architecture as Barrier*

The procedural architecture of hybrid arbitration is not neutral. It acts as a gatekeeping mechanism that silences community knowledge. Its formalistic design embeds evidentiary and participatory hierarchies that systematically exclude local knowledge. One such hierarchy is the preference for documentary over testimonial evidence. Procedural rules elevate written submissions which are often inaccessible to low-literacy or tradition-based communities, over oral testimony or collective ritual. Local narratives which are transmitted through culturally embedded forms are thereby rendered epistemically inferior.

For instance, while the International Centre for Settlement of Investment Disputes ["**ICSID**"] Arbitration Rules allow for third-party submissions, Rule 37(2) leaves their admission entirely to the discretion of the Tribunal[14] while offering no guarantee that community knowledge,[15] however relevant, will be admitted or weighed appropriately.[16] Although Rule 37(2) is formally neutral, Tribunals have tended to privilege written, expert submissions, thereby leaving amicus

[11] Choukroune (n 5) 280–283.
[12] Choukroune (n 5) 270, 272–273.
[13] Dotson (n 6) 241–242.
[14] ICSID, *Rules of Procedure for Arbitration Proceedings (Arbitration Rules)* (April 2006), r 37(2).
[15] Luca G Radicati di Brozolo, 'Amicus Curiae in ICSID Arbitration: The Right to Participate and the Tribunal's Discretion' (*Kluwer Arbitration Blog*, 2021) <https://arbitrationblog.kluwerarbitration.com/2021/04/08/transparency-rules-in-investment-arbitration-institutional-differences-and-prospects-of-standardisation/> accessed 29 May 2025.
[16] Emilia Onyema, 'African Participation in the ICSID System: Appointment and Disqualification of Arbitrators' (2018) *ICSID Rev – Foreign Investment LJ* 2–4.

participation minimal and Tribunal-dependent.[17] This dynamic is evident in *Philip Morris v Uruguay* ["**Philip Morris**"],[18] where submissions from the World Health Organisation ["**WHO**"] and Framework Convention on Tobacco Control ["**FCTC**"] Secretariat were admitted for technical expertise while other non-disputing voices were excluded.

Language further compounds this exclusion. Arbitral proceedings are predominantly conducted in English or French with little provision for translation into local dialects. Even when translated, indigenous expressions are remoulded into legalist frames, stripping them of spiritual or ecological gravity.[19] Terms like "customary title" or "ancestral right" often lose meaning when filtered through contract-oriented procedures.

Equally exclusionary are the rules of standing. Communities are rarely signatories to Bilateral Investment Treaties ["**BITs**"] or investment contracts, and thus, have no procedural rights within investor-state arbitration frameworks. At best, they may appear as *amici curiae*, a role that offers no right to submit evidence, cross-examine witnesses, or appeal a decision.[20] This is worsened by hearing formats which are tailored for lawyers and experts, thus sidelining indigenous modes of dialogue and collective restitution.

These architecture-level exclusions give rise to what Dotson terms "testimonial smothering": a condition where speakers, anticipating that their epistemic contributions will be disbelieved or discarded, pre-emptively silence or flatten their knowledge.[21] This is not simply a matter of representation; it is the institutional design of arbitration that disables the epistemic agency of those most affected. In *Elisabeth Regina von Pezold v Republic of Zimbabwe* ["**Von Pezold**"], Courts in the United States had affirmed the enforcement of an ICSID arbitral award rooted in colonial-era land claims without ever addressing the epistemic or social justice implications of land redistribution for local Zimbabwean communities.[22]

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[17] Nicolette Butler, 'Non-Disputing Party Participation in ICSID Disputes: Faux Amici?' (2019) 66 Neth. Int'l L. Rev. 143, 144.

[18] *Philip Morris Brands Sàrl v Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Procedural Order No. 3 (8 July 2016).
[19] Choukroune (n 5) 273–274.
[20] Ibironke T. Odumosu-Ayanu, 'Local Communities and the Reform of International Investment Law' (2023) 24 J. World Invest. Trade 792.
[21] Dotson (n 6) 236, 242.
[22] *Elisabeth Regina Maria Gabriele von Pezold & Ors. v Republic of Zimbabwe* D.C. Cir. No. 23-7109 (2024); Ntina Tzouvala, 'Invested in Whiteness: Zimbabwe, the von Pezold Arbitration, and the Question of Race in International Law' (2022) 2 J. L. Pol. Econ. 226.

ii. *How Procedural Norms and Hybrid Structures Discredit Local Testimony*

Hybrid arbitration systematically privileges "technical" expertise, thereby sidelining local knowledge through epistemic hierarchies embedded in its procedures.

Tribunals give decisive weight to economic models, engineering assessments, and financial forecasts; often authored by consultants aligned with investors or states. These are framed as objective, while local views are dismissed as anecdotal or unscientific.[23]

In land valuation disputes, tribunals apply metrics like "market value" or "highest and best use", ignoring non-market attachments; spiritual, ancestral, or communal.[24] In *Mike Campbell*, the Southern African Development Community ["**SADC**"] Tribunal failing to recognise the cultural significance of dispossession instead reinforced the primacy of legal formalism over indigenous cosmologies.[25]

The same asymmetry appears in Environmental and Social Impact Assessments, where quantitative matrices overshadow qualitative narratives of environmental or spiritual loss.[26] Global North experts are often preferred over local scholars, thus reinforcing epistemic dependency.[27] This marginalisation is not due to overt bias but is institutionalised through procedural norms that code western technicity as the only credible epistemology.

Hybrid arbitration, which straddles public international law and commercial dispute resolution, exacerbates epistemic injustice through jurisdictional and normative ambiguities.[28] On one hand, the State presents itself as sovereign protector of public interest while on the other, it acts in contractual form to induce and protect investor rights.[29] This duality disempowers communities who are excluded from treaties yet affected by projects.[30]

This dynamic is evident in *Orissa Mining Corp. Ltd. v Ministry of Environment & Forest* ["**Orissa Mining Corp**"],[31] where the Supreme Court of India upheld tribal rights under the Forest Rights

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[23] Nicolás M. Perrone, 'The International Investment Regime and Local Populations: Are the Weakest Voices Unheard?' (2017) 7(3) Transnational Leg. Theory 383.
[24] Lorenzo Cotula and Mika Schröder, *Community Perspectives in Investor-State Arbitration* (IIED 2017) 13.
[25] *Mike Campbell Pvt. Ltd.* (n 3).
[26] Choukroune (n 5) 279–280.
[27] Boaventura de Sousa Santos, *Epistemologies of the South: Justice against Epistemicide* (Routledge 2016) 19.
[28] Anthea Roberts, 'State-to-State Investment Treaty Arbitration: A Hybrid Theory of Interdependent Rights and Shared Interpretive Authority' (2014) 55 Harvard Int'l L. J. 1.
[29] Alessandra Arcuri and Francesco Montanaro, 'Justice for All? Protecting the Public Interest in Investment Treaties' (2018) 59 Boston Coll. L. Rev. 2791, 2791–92, 2795, 2798.
[30] Drossos Stamboulakis, 'Legal Transfer and "Hybrid" International Commercial Dispute Resolution Procedures: Lessons from the Singapore International Commercial Court' in Vito Breda (ed), *Legal Transplants in East Asia and Oceania* (Cambridge University Press 2019).
[31] *Orissa Mining Corp. Ltd. v Ministry of Environment & Forest & Ors.* (2013) 6 SCC 476.

Act, mandating local consent for mining in Niyamgiri Hills. Similarly, the POSCO project in Odisha faced prolonged resistance due to inadequate recognition of community rights, leading to its eventual withdrawal.[32]

Case Analyses: Epistemic Injustice in Action

i. *Mike Campbell Pvt. Ltd v Republic of Zimbabwe*

The now-suspended SADC Tribunal's decision in *Mike Campbell* is a telling example of how procedural norms in arbitration can marginalise community knowledge. The case involved white Zimbabwean farmers challenging Amendment 17 which allowed for compulsory land acquisition without compensation and barred judicial review. The Tribunal held this to be racial discrimination as under Articles 4(c) and 6(1) of the SADC Treaty.[33]

However, while the Applicants succeeded, the ruling revealed deeper structural exclusions. Local communities, particularly black farm workers and indigenous custodians of the land, were not heard as parties or witnesses.[34] This silencing amounted to hermeneutical injustice; the silenced communities were not able to make their situated experiences intelligible in the investor rights-State sovereignty dualistic legal paradigm.[35]

Their non-commercial ties to the land, environmental stewardship practices, and traditional understandings of land tenure were procedurally bypassed due to the Tribunal's reliance on formal written pleadings and legal representation.[36] The State's postcolonial framing of justification for expropriation elided its epistemic failure to consult those with lived expertise on the social value of the land.[37] The result was a procedurally valid award that nonetheless failed to accommodate the hermeneutical value of local knowledge. Arbitration's preference for formalism over context thus translated into a testimonial and procedural erasure of those most affected.[38]

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[32] 'India: Amid resistance from communities, POSCO offers to surrender land acquired for $12 billion steel project' (*Business & Human Rights Resource Centre,* 27 March 2017) <https://www.business-humanrights.org/en/latest-news/india-amid-resistance-from-communities-posco-offers-to-surrender-land-acquired-for-12-billion-steel-project/> accessed 1 June 2025.
[33] *Mike Campbell Pvt. Ltd.* (n 3) [52].
[34] Dotson (n 6) 236.
[35] Choukroune (n 5).
[36] Tawanda Hondora, 'Off the Beaten Track into the Savannah: The Mike Campbell Pvt. Ltd. v. the Republic of Zimbabwe Ruling Imperils SADC Investment Law' (2012) SSRN Paper No. 2117318.
[37] Mwangi S Kimenyi and Josephine Kibe, 'A House of Justice for Africa: Resurrecting the SADC Tribunal' (2018) Brookings Institution.
[38] Odumosu-Ayanu (n 20).

ii. *Barry Gondo v Republic of Zimbabwe*

In *Barry Gondo*, victims of police and military violence had successfully obtained domestic judgments against the State but were denied enforcement due to Section 5(2) of Zimbabwe's State Liability Act,[39] which barred execution against State assets.[40] The Petitioners sought remedy under the same SADC Treaty provisions as was in *Mike Campbell*.

This is the classic example of testimonial injustice. While the Tribunal acknowledged the discriminatory nature of Section 5(2), its limited enforcement mandate made it incapable of securing a material remedy. Here, procedural injustice lay not in the hearing itself, but in the inability of the arbitral system to translate adjudication into enforcement.[41] In Fricker's terms, their testimony was heard but not believed in a legally actionable sense; their suffering was acknowledged but rendered structurally irrelevant. The victims' stories, though judicially admitted in form, were withheld from gaining traction in international law forums since enforcement was conceptualized as an intra-state matter and thus de-politicising the structural harm they endured. The Tribunal noted that this framework elevated the state above the law, breaching the principle of the rule of law and the Article 2(3) of International Covenant on Civil and Political Rights[42] on effective remedies.[43]

The ruling in *Barry Gondo* held that Section 5(2) was in violation of norms of human rights and that it discriminated in its application between victims of abuse by the state and private claimants.[44] The result was testimonial injustice: victims' experiences were recognised, yet rendered legally irrelevant. The Tribunal's institutional design, dependent on State consent, made it structurally incapable of correcting the asymmetry of power and knowledge.

Comparative Failures in Procedural Design: India's ADR Context and Community Silencing

Epistemic injustice in hybrid arbitration is not unique to Africa. India's land and environmental disputes reveal a similar disregard for community epistemologies in formal mechanisms.

[39] State Liability Act [Chapter 8:14] (Zimbabwe), as amended by Act No 22 of 2004, s 5(2).
[40] *Barry Gondo* (n 2).
[41] ibid 204–05.
[42] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 2(3).
[43] *Barry Gondo* (n 2) [5] and [6].
[44] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 3; *Barry Gondo* (n 2) [6].

In *Samatha v State of Andhra Pradesh*,[45] the Supreme Court categorically held that leasing tribal lands to private mining companies violates the rights of Scheduled Tribes under the Fifth Schedule of the Constitution, and the Andhra Pradesh Land Transfer Regulation Act, 1959. Yet this landmark ruling, which recognised tribal epistemologies of land as community custodianship rather than alienable property, has faced consistent circumvention. Private and State actors have, in practice, engineered legal workarounds through lease transfers and third-party management arrangements, thereby diluting the force of participatory consent and procedural inclusion envisaged by the ruling. The consequence: tribal knowledge continues to be treated as legally irrelevant.

A sharper procedural failure is evident in the Muthanga incident of 2003, where the Kerala Government violently evicted Adivasi protestors reclaiming forest land promised under a rehabilitation scheme.[46] Despite documented assurances, the community's claims were dismissed as lacking "legal authority". This reflects "testimonial smothering": the procedural setting did not merely reject their speech; it rendered it institutionally unintelligible.[47]

Similar themes of marginalisation echo in the *Orissa Mining Corp*. However, as subsequent implementation revealed, procedural justice faltered in the Gram Sabha consultations, with opaque processes and expert capture undermining substantive participation. Therefore, across hybrid and domestic tribunals, epistemic exclusion stems not from overt rejection but from procedures that silence alternative ways of knowing.

Towards Procedural Reform: Embedding Epistemic Justice in Arbitration Design

i. *Enhancing Procedural Access and Recognition*

Hybrid arbitration must reform not just to appear inclusive, but to reconfigure how knowledge is valued and admitted. The silencing of subaltern epistemologies is not incidental; it is architectural. First, appointing legal representatives from affected regions, advocates fluent in both law and local idioms of harm, can mediate between community worldviews and juridical expectations. This model, echoed in African Continental Free Trade Area ["**AfCFTA**"] investment consultations,[48] helps translate testimonial and hermeneutical injustice into legal legibility. While such dual-fluent advocates remain limited, initiatives like Timap for Justice in Sierra Leone and the Uganda

[45] *Samatha v State of Andhra Pradesh* AIR 1997 SC 3297.
[46] C R Bijoy and K Raman, 'Muthanga: The Real Story: Adivasi Movement to Recover Land' (2003) 38 EPW 1975–77.
[47] Manoj Viswanathan, 'Muthanga: Pain, Agony of a Lost Struggle' (*The New Indian Express*, 13 February 2023) <https://www.newindianexpress.com/states/kerala/2023/Feb/13/muthanga-pain-agony-of-a-lost-struggle-2546927.html> accessed 28 May 2025.
[48] African Continental Free Trade Area, *Protocol on Investment* (2023) arts 2(b), 35(1).

Association of Women Lawyers show local capacity for community mediation, while also facilitating amicus participation in ICSID to expand community representation.[49]

Second, Tribunals must structurally mandate the inclusion of local experts, anthropologists, ecologists, historians, whose interpretive registers illuminate non-quantifiable harm. Major arbitral frameworks already provide for such appointments: article 27 of the United Nations Commission on International Trade Law ["**UNCITRAL**"] Arbitration Rules, article 25(3) of the International Chamber of Commerce Arbitration Rules, and article 39 of the ICSID Arbitration Rules, all of which empowers Tribunals to appoint experts, who are independent of the parties.[50] The International Institute for Environment and Development [51] and African legal scholars[52] warn against privileging "certified" technocrats detached from vernacular systems, gatekeeping that reproduces epistemic hierarchies.

Third, evidentiary norms must evolve. Arbitration must admit oral traditions, sacred geographies, and visual testimonies as legitimate forms of knowing.[53] As Inter-American jurisprudence demonstrates, expert ethnographic testimony can bridge the chasm between lived experience and procedural admissibility.[54] Such experts help translate community worldviews into legally readable formats.

Standing must also shift. Communities cannot remain procedural ghosts; present yet unheard. Enhanced *amicus curiae* status or *sui generis* party roles must afford them rights to submit evidence, interrogate narratives, and challenge dominant framings. *Barry Gondo* taught us that remedy without recognition is a jurisprudence of erasure.[55] This must be embedded in Multilateral Investment Court and AfCFTA frameworks.[56]

ii. *Shifting Epistemic Practices*

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[49] Vivek Maru, *Between Law and Society: Paralegals and the Provision of Primary Justice Services in Sierra Leone* (Open Society Institute 2010); Ursula Grant, Ingie Hovland and Zaza Curran, *Bringing Community-learnt Knowledge into the Policy Debate: The Case of Legal Aid Centres* (Overseas Development Institute Working Paper 277, October 2006).

[50] UNCITRAL Arbitration Rules, art 27; ICC Arbitration Rules (2021), art 25(3); ICSID Arbitration Rules, art 39.

[51] Cotula (n 24) 31.

[52] Ibironke T. Odumosu-Ayanu, 'Governments, Investors and Local Communities: Analysis of a Multi-Actor Investment Contract Framework' (2014) 15 Melb. J. Int'l L. 1.

[53] Cotula (n 24) 18–19.

[54] Elisabeth Cunin, 'Anthropological Expertise in Court: Appropriation, Transformation and Instrumentalization of Anthropological Knowledge by the Inter-American Court of Human Rights' (2024) 5 Appartenances & Altérités.

[55] *Barry Gondo* (n 2) [4] and [5].

[56] Rimdolmsom Jonathan Kabré, 'Inclusivity in the Settlement of Investment Disputes: Making a Case for Local Communities' (2023) 48 S. Afr. Y. Int'l. L. 15.

Finally, Arbitrators must be trained not only in law, but in epistemic humility.[57] Certification modules rooted in Fricker's theory, TWAIL critiques, and instruments, like the African Commission Resolution 489,[58] can equip neutrals to see beyond technocratic filters. Procedural design is not neutral terrain; it either amplifies or smothers marginal knowledge.[59] Such training aids legal interpretation and sensitises arbitrators to epistemic asymmetries.[60]

iii. *Institutional and Rule Reform*

Institutions like ICSID, Organisation for the Harmonisation of Business Law in Africa, and UNCITRAL must codify these imperatives.[61] Soft-law preferences must harden into enforceable reforms: model BITs must carry community-context clauses; arbitrator appointments must undergo equity audits; procedural handbooks must enshrine standing for affected groups.[62] This is not utopian idealism; it is a structural correction. Arbitration cannot continue to adjudicate lives without hearing them. Reforms grounded in epistemic justice are not aspirational embellishments; they are conditions for legitimacy.

Conclusion

Hybrid arbitration, though framed as efficient and neutral, often excludes community knowledge and silences subaltern voices.[63] Epistemic injustice is not incidental; it is structural, rooted in testimonial disregard, hermeneutical exclusion and standing asymmetries.[64]

These silencing mechanisms, like exclusionary standing rules and marginalisation of cultural knowledge, undermine arbitration's legitimacy as a forum for equitable resolution.[65] These failures

[57] Fricker (n 4) 1–10.
[58] African Commission on Human and Peoples' Rights, 'Resolution on the Recognition and Protection of the Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Populations in Africa' (ACHPR/Res. 489 (LXIX) 2021).
[59] David Schneiderman, *Investment Law's Alibis: Colonialism, Imperialism, Debt and Development* (Cambridge University Press 2022) 17–23; Olabisi D Akinkugbe, 'Race & International Investment Law: On the Possibility of Reform and Non-Retrenchment' (2023) 117 Am. J. Int'l. L. 535, 538–541.
[60] Olabisi D. Akinkugbe, 'Africanization and the Reform of International Investment Law' (2021) 53 Case Western Res. J. Int'l. L. 7, 14–17.
[61] ibid.
[62] African Charter on Human and Peoples' Rights (1981) art 21(5).
[63] Fricker (n 4); Dotson (n 6) 236.
[64] Okafor (n 7); Wanli Ma, *Reforming Investor-State Dispute Resolution: Focusing on the Roles of Domestic Courts* (PhD thesis, Erasmus University Rotterdam 2022) <https://pure.eur.nl/files/70956292/wanli_ma_phd_thesis_reforming_investor_state_dispute_resolution_focusing_on_636e34d9d4374.pdf> accessed 1 June 2025.
[65] Ma (n 64); Gabrielle Kaufmann-Kohler and Michele Potestà, *Investor-State Dispute Settlement and National Courts: Current Framework and Reform Options* (Springer 2020).

reflect power asymmetries that hybrid arbitration replicates rather than resolves.[66] Correcting them demands more than ethics; it requires binding procedural reforms. The reform agenda must embed epistemic justice through new evidentiary norms, inclusive standing, and mandated cultural competence.

Ultimately, arbitration must reimagine itself; not as a technocratic space for investor-state bargaining, but as a forum accountable to affected communities.[67] Only then can it transition from a tool of exclusion to one of participatory legitimacy.

[66] Esma Yağmur Sönmez, *The Legitimacy Crisis of the Investor-State Dispute Settlement System* (PhD thesis, Middle East Technical University 2024) <https://open.metu.edu.tr/bitstream/handle/11511/112934/10689718.pdf> accessed 1 June 2025.

[67] Public Citizen, 'The Scramble for Africa Continues: Impacts of Investor-State Dispute Settlement on African Countries' (2024) <https://www.citizen.org/article/the-scramble-for-africa-continues-impacts-of-investor-state-dispute-settlement-on-african-countries/> accessed 2 June 2025.