

**EXPERT WITNESSES IN ARBITRATION PROCEEDINGS:
HIRED GUNS OR NEUTRAL FACT-FINDERS? RETHINKING
INDEPENDENCE, PROCEDURAL INTEGRITY, AND
EVIDENTIARY VALUE IN ARBITRATION PRACTICE**

Agada John Elachi*
Ifeoma G. Konwea1**

Abstract

The legitimacy of arbitral proceedings increasingly depends not only on the application of law but also on the perceived neutrality and integrity of expert evidence. While expert witnesses are conventionally viewed as impartial providers of specialised knowledge to aid arbitral tribunals, the practical reality is more ambiguous. This paper interrogates the dual nature of expert witnesses as impartial aides or partisan tacticians within the structure of contemporary international arbitration. Drawing on comparative legal systems, institutional rules [including International Bar Association (IBA), United Nations Commission on International Trade Law (UNCITRAL), International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), International Centre for Settlement of Investment Disputes (ICSID)], and behavioural insights from legal psychology, it explores whether current frameworks adequately safeguard against bias, manipulation, and inequality of arms. It critiques the unregulated influence of shadow experts and the strategic overreliance on elite technical witnesses and evaluates emerging questions surrounding algorithmic and AI-generated evidence. The paper ultimately proposes reforms

* * **Agada John Elachi**, SAN, Ph.D., FICMC, FCI Arb (UK), Managing Partner, Greenfield Chambers

** **Ifeoma G. Konwea**, FICMC, MNIC Arb., FNILA, ASHRM-CP, CVA, Lecturer 1, College of Law and Faculty Member, Prof. Epiphany Azinge Centre for Immigration Law Studies, Gregory University, Uburu, Principal Partner, I. G. Konwea Legal Luminary Per se (IGKL).

aimed at reinforcing the expert's role as a neutral agent of justice, through hybrid tribunal-appointed models, regulatory harmonisation, and context-sensitive institutional standards.

Keywords:

Expert Witnesses in Arbitration, AI-Generated Expert Evidence, Ethics of Expert Witnesses, Procedural Integrity in Arbitration, Tribunal-Appointed vs Party-Appointed Experts, Digital Forensics and Arbitration, Arbitration Reform and Governance.

Commented [H1]: Reduce to maximum of 5 words or phrases

1.0 INTRODUCTION

Expert witnesses occupy a pivotal yet contested space in modern arbitration proceedings. Recruited to provide specialised technical or scientific knowledge that lies outside the scope of legal expertise, they have become indispensable in resolving complex commercial, construction, maritime, energy, and investor-state disputes. Their evidence is increasingly decisive from construction claims and intellectual property to investment arbitration and commercial fraud, contributing specialised knowledge that helps tribunals understand issues beyond the lay competence of arbitrators. However, a central dilemma persists, are these experts genuinely neutral or merely hired guns advocates cloaked in technical robes?

The value of expert input is frequently undermined by concerns of partisanship, undue influence, and strategic manipulation by parties who shop for favourable testimony. Indeed, the strategic use (and sometimes abuse) of expert witnesses raises serious concerns for procedural integrity. Tribunals often struggle to assess credibility when experts deliver opposed opinions based on the same set of facts, exposing a fundamental tension in arbitral proceedings, how can

arbitration preserve its procedural integrity when the neutrality of experts is more presumed than real?

This leads to critical questions: are expert witnesses advancing justice, or are they co-opted as loyal agents of the appointing party? What defines independence in expert testimony in arbitration? Which procedural and psychological factors erode or reinforce neutrality? How do legal cultures across jurisdictions shape and regulate this dynamic? This paper explores these dilemmas by tracing the fault lines between party autonomy, procedural integrity, and the ethics of evidence in arbitral practice. It engages with theoretical foundations, procedural architecture, regional comparisons, and strategic behaviour, culminating in a reformist outlook to reassess the evidentiary and institutional function of experts in arbitration.

2.0 EXPERTISE, INDEPENDENCE, AND ADVERSARIAL DYNAMICS

An expert witness in arbitration is someone with specialist knowledge, skill, or experience who gives opinion evidence on technical matters to assist the tribunal. Unlike factual witnesses, their role is interpretive rather than narrative. Article 5.2 of the IBA Rules 2020 mandates experts to be independent and impartial, but the enforceability of this ethos remains fragile. This invites a core jurisprudential tension, the dual loyalty paradigm, where party-appointed experts are subtly incentivised to align with the instructing party's case theory, a phenomenon Shuman and Greenberg describe as adversarial allegiance.²

² Daniel W. Shuman and Stuart A. Greenberg, 'The Expert Witness, the Adversary System, and the Voice of Reason: Reconciling Impartiality and Advocacy' (2003) 34(3) *Professional Psychology: Research and Practice* 219-224.

The legal fiction of independence can mask calculated advocacy. Bourdieu's field theory aptly characterises such experts as occupying a dual space, subordinate to both juridical and economic capital.³ Theoretically, expert witnesses straddle two key functions, epistemic authority and advocacy reinforcement. In common law jurisdictions, the adversarial model legitimises party-appointed experts, with cross-examination serving as the truth-testing mechanism.⁴ In contrast, civil law systems prioritise tribunal-appointed experts, grounded in the belief that technical knowledge should serve the court rather than adversarial interests.⁵

From a behavioural and psychological standpoint, cognitive biases are endemic in expert testimony. Anchoring, confirmation bias, and the overconfidence effect documented phenomena in forensic psychology, skew the perception and delivery of expert analysis.⁶ Experts may unconsciously select or interpret data that reinforces the narrative of the party that retained them. Daniel Kahneman's "System 1" thinking explains how even seasoned professionals can default to intuitive shortcuts under adversarial pressure.⁷ Loyalty bias further distorts

³ Bourdieu Pierre, *The Logic of Practice* (1990, Stanford University Press) 80-98, 'Bourdieu's Field Theory posits that experts operate within the overlapping fields of law and economics, subject to both juridical authority and market incentives hence their divided loyalty and the risk of "adversarial allegiance".'

⁴ Damaska R. Mirjan, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process* (1986, Yale University Press) 109-178.

⁵ Poudret Jean-Francois and Sebastien Besson, *Comparative Law of International Arbitration* (2nd Ed., Sweet & Maxwell 2007) 450-642.

⁶ Neal M. S. Tess, Kristy A. Martire, Jennifer L. Johan, et al., 'The Law Meets Psychological Expertise: Eight Best Practices to Improve Forensic Psychological Assessment' (2022) 18 *Annual Review of Law and Social Science* 169-92.

⁷ Kahneman Daniel, *Thinking, Fast and Slow* (2011, New York: Farrar, Straus and Giroux) 15-386.

neutrality, especially in high-stakes arbitration where reputational and financial incentives abound.⁸

Despite the IBA Guidelines on Party Representation in International Arbitration 2013 warning against unethical influence over witnesses, the practical enforcement of such norms remains limited. Therefore, the notion of independence in expert testimony is often more aspirational than functional under prevailing adversarial norms.

3.0 PROCEDURAL ARCHITECTURE OF EXPERT EVIDENCE IN ARBITRATION

Institutional rules governing expert evidence vary across arbitral regimes. The IBA Rules 2020, UNCITRAL Notes⁹, Article 25 of the ICC Rules 2021, Article 20 of the LCIA Rules 2020, and the ICSID Arbitration Rules 2022 all provide for flexible mechanisms concerning the presentation of expert evidence. Their common denominator is procedural discretion. Tribunals may accept party-appointed expert reports, order tribunal-appointed experts, or conduct expert conferencing.

Party-appointed experts dominate in common law jurisdictions, where they are treated as part of the legal team and subjected to adversarial scrutiny. In contrast, civil law systems prefer tribunal-appointed

⁸ Neal M. S. Tess and Stanley L. Brodsky, 'Forensic Psychologists' Perceptions of Bias and Potential Correction Strategies in Forensic Mental Health Evaluations' (2016) 22(1) *Psychology, Public Policy and Law* 58–76; Koehler J. Jonathan, 'The Influence of Prior Beliefs on Scientific Judgments of Evidence Quality' (1993) 56(1) *Organizational Behaviour and Human Decision Processes* 28–55.

⁹ United Nations Commission on International Trade Law (UNCITRAL) Notes on Organizing Arbitral Proceedings 2016 available at <https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/arb-notes-2016-e.pdf> accessed 7 May 2026.

experts as extensions of the judicial fact-finding mission.¹⁰ While tribunal-appointed experts are ostensibly neutral and may reduce partisan bias, their appointment raises concerns over the loss of narrative control and strategic leverage by parties. Studies show that tribunal-appointed experts reduce partisan influence but may also risk under-exploration of divergent views.¹¹

Procedural innovations such as hot-tubbing or concurrent expert evidence have emerged to counteract adversarial bias. This method allows multiple experts to testify together, respond to each other's views in real-time, and be questioned simultaneously by the tribunal and counsel. Originating in Australian courts, hot-tubbing is gaining traction in international arbitration for its efficiency and capacity to enhance clarity and expose inconsistencies. However, its success hinges on tribunal skill and cultural receptiveness to non-linear evidentiary exchange.¹²

4.0 COMPARATIVE LEGAL AND REGIONAL PERSPECTIVES

The divergence in expert witness practice across jurisdictions underscores contrasting procedural philosophies. In common law systems like the UK and US, expert witnesses are adversarial instruments retained to support a party's case and tested via cross-examination. Civil law systems, such as France and Germany, favour court or tribunal-appointed experts and often view party-appointed

¹⁰ Julian D. M. Lew, Loukas A. Mistelis, Stefan Michael Kröll, Stefan Kröll, *Comparative International Commercial Arbitration* (2003, Kluwer Law International) 553-579.

¹¹ Catherine A. Rogers, 'Ethics in International Arbitration' (2015) 16(4) *The Journal of World Investment & Trade* 751.

¹² Doug S. Jones, 'Redefining the Role and Value of Expert Evidence' (2023) *ICC Institute Dossiers XX* 142.

experts with suspicion.¹³ In England and Wales, for example, CPR Part 35¹⁴ regulates expert evidence in litigation, promoting the principle of independence over loyalty, which increasingly informs arbitral proceedings.

Nigeria's Arbitration and Mediation Act (AMA) 2023 codifies expert evidence provisions, allowing both party- and tribunal-appointed experts.¹⁵ While the Act empowers tribunals to exclude biased evidence and mandates independence declarations, practical enforcement remains aspirational without a broader cultural shift. The continued dominance of party-appointed experts, especially in high-stakes oil and gas arbitrations, suggests entrenched systemic bias. Moreover, arbitral institutions in Africa such as the Lagos Court of Arbitration (LCA)¹⁶ and the Kigali International Arbitration Centre (KIAC)¹⁷ have yet to adopt robust ethical frameworks governing expert evidence. The normalization of hot-tubbing and expert conferencing in African arbitration remains an important yet unrealised reform.

Investor-State arbitration under ICSID presents a paradox. While the ICSID Arbitration Rules (Rule 38) support tribunal-appointed experts, both states and investors continue to favour partisan expert reports. High-profile cases such as *Perenco v. Ecuador*¹⁸ and *Tethyan v.*

¹³ Antonio Rigozzi and Gabrielle Kaufmann-Kohler, *International Arbitration: Law and Practice in Switzerland* (2015, Oxford University Press) 274-348.

¹⁴ Part 35 - Experts and Assessors, Practice Direction Civil Procedure Rules (England and Wales) 1998 available at <https://www.justice.gov.uk/courts/procedure-rules/civil> accessed 7 May 2026.

¹⁵ Sections 20–22 Arbitration and Mediation Act (AMA) 2023.

¹⁶ Lagos Court of Arbitration available at <https://lagosarbitration.org> accessed 7 May 2026.

¹⁷ Kigali International Arbitration Centre available at <https://kiac.org.rw> accessed 7 May 2026.

¹⁸ ICSID Case No. ARB/08/6.

*Pakistan*¹⁹ illustrate how opposing experts can present radically different valuation methodologies, reframing alleged losses by orders of magnitude.

In Asia, the Singapore International Arbitration Centre (SIAC)²⁰ and Hong Kong International Arbitration Centre (HKIAC)²¹ promote hybrid models, including tribunal-directed expert conferencing and joint expert reports. In Latin America, jurisdictions like Colombia (via Decree 1074/2015) have moved toward global best practices, although expert commodification remains high in construction disputes.²² While countries like Brazil still rely on court-appointed experts in domestic litigation, commercial arbitration in the region increasingly mirrors international norms.²³

5.0 STRATEGIC DEPLOYMENT OR MANIPULATION?

The strategic deployment and, at times, manipulation of expert evidence has become increasingly sophisticated. Empirical studies highlight the growing use of shadow experts, non-testifying consultants who influence case theory, pleadings, and expert reports behind the scenes.²⁴ While not inherently unethical, this practice raises

¹⁹ ICSID Case No. ARB/12/1.

²⁰ Singapore International Arbitration Centre available at <https://www.siac.org.sg> accessed 7 May 2026.

²¹ Hong Kong International Arbitration Centre available at <https://www.hkiac.org> accessed 7 May 2026.

²² Juan G. Moure, Felipe J. Acosta and Isabella Herrera, 'Cartels in Colombia' (2018) *Olarte Moure* available at <https://www.lexology.com/library/detail.aspx?g=5bfa5f51-017b-4c1e-aa37-df1b40b86bc7> accessed 7 May 2026.

²³ Marco Tulio Venegas Cruz, 'Why arbitration is a smart choice in Latin America's evolving legal landscape' (The Guide to Arbitration in Latin America - 4th Ed., 2025) *Global Arbitration Review* (GAR) 3-11.

²⁴ Cass R. Sunstein, Lucia A. Reisch and Julius Rauber, 'A World-Wide Consensus on Nudging? Not Quite, But Almost' (2017) *Harvard John M. Olin Discussion Paper Series* 1-20; Christopher Tarver Robertson, 'Blind Expertise' (2010) 85:174 *New York University Law Review* 174-257.

transparency concerns and blurs the lines between technical analysis and legal strategy. In investment arbitration, the dominance of elite experts in repeat appointments has created a knowledge oligopoly, disproportionately disadvantaging developing-state respondents.²⁵

Cross-examination, while valorised as a truth-testing tool, often degenerates into rhetorical theatre. Arbitrators, especially those lacking technical backgrounds, frequently struggle to adjudicate between conflicting expert views in battle of the expert scenarios. Heuristics such as fluency, confidence, and credentials may override rigorous engagement with methodological validity. The absence of robust admissibility standards, such as the Daubert standard in US litigation, permits questionable scientific evidence to evade scrutiny.²⁶

Notable cases underscore the dangers of excessive or biased expert deployment. In *SD Myers v. Canada*²⁷, the tribunal criticised both parties' environmental experts as "unduly partial." Likewise, in *Caratube v. Kazakhstan*²⁸, the damages expert's valuation was dismissed as "so speculative as to be unhelpful." These examples highlight how overreliance on partisan experts can erode tribunal credibility, inflate costs, and prolong proceedings.

Moreover, strategic witness coaching, while ethically ambiguous, can distort the epistemic integrity of arbitration. The widespread but

²⁵ Sophie Nappert, 'International Arbitration as a Tool of Global Governance: The Use (and Abuse) of Discretion' (2017) *Oxford Handbook on International Governance, Forthcoming* 1-24; David Earnest, Raul Gallardo, Garðar Viðir Gunnarsson and Tobiasz Kaczor, 'Four Ways to Sharpen the Sword of Efficiency in International Arbitration' (2012) Young ICCA Group Paper 1-30; Puig Sergio, 'Social Capital in the Arbitration Market' (2013) 25(2) *European Journal of International Law* 18.

²⁶ *Daubert v Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

²⁷ UNCITRAL Partial Award (Nov. 13, 2000).

²⁸ ICSID Case No. ARB/13/13.

opaque use of shadow experts complicates the transparency and reliability of expert evidence. As expert testimony becomes more entangled with legal strategy, the line between neutral fact-finding and persuasive advocacy continues to blur, posing enduring challenges to the legitimacy of arbitral decision-making.

6.0 ETHICAL AND REGULATORY GAP

The absence of a universal code of conduct for expert witnesses in arbitration constitutes a critical regulatory gap. While the IBA Rules 2020 and the IBA Guidelines on Party Representation 2013 recommend disclosure obligations and emphasize impartiality and transparency, these instruments remain non-binding soft law. Consequently, there is no global accreditation, enforcement, or disciplinary framework specifically tailored to arbitral expert witnesses, unlike the established systems governing arbitrators. This fragmentation presents significant challenges to procedural fairness and undermines the credibility of expert testimony across jurisdictions.

Unlike arbitrators, expert witnesses in arbitration cannot generally be challenged or sanctioned for bias or misconduct, even where partisanship is evident. This creates an ethical vacuum, particularly in transnational disputes where parties engage in expert shopping with little scrutiny. While certain jurisdictions such as the United Kingdom impose a clear duty to the tribunal,²⁹ others permit experts to function as de facto advocates, exacerbating disparities in ethical expectations. The conceptual tension remains unresolved: should an expert owe fiduciary duty to the tribunal as a neutral aide to justice, or to the appointing party as a paid consultant?

²⁹ Part 35 Civil Procedure Rules (CPR England and Wales) 1998.

The arbitration process, straddling adversarial and inquisitorial traditions compounds this tension. If the goal is truth-finding, as articulated in the UN Basic Principles on the Role of Experts in Justice Systems, then allegiance must shift toward the tribunal. However, the economic realities of arbitration reward client loyalty and repeat appointments, perpetuating incentives for strategic alignment rather than neutrality.

Australian jurisprudence offers a progressive model. In *Dasreef v. Hawchar*³⁰, the High Court underscored the primacy of an expert's duty to assist the decision-maker objectively, rather than act as a partisan advocate. Yet such judicial reinforcement remains rare in the international arbitration arena, where cross-border enforcement of ethical norms lacks the support of national disciplinary institutions.

In response to these gaps, scholars such as Rogers and Weeramantry have advocated for a model Expert Witness Code of Ethics that would introduce mandatory certification of expertise, a duty to the tribunal over the client, compulsory disclosure of prior retentions and affiliations, and enforceable sanctions for misconduct.³¹ These standards could be operationalised through institutional rosters, peer-reviewed training schemes, or independent ethics boards embedded within arbitral centres.

Although professional bodies such as the UK's Expert Witness Institute (EWI)³² and the Academy of Experts (TAE)³³ promote codes of conduct and encourage peer review, these frameworks remain

³⁰ (2011) 243 CLR 588.

³¹ Catherine A. Rogers [n11] at 4.

³² Expert Witness Institute available at <https://www.ewi.org.uk> accessed 7 May 2026.

³³ The Academy of Experts available at <https://academyofexperts.org/> accessed 7 May 2026.

jurisdictionally confined and lack global coordination. A harmonised international approach, possibly under the auspices of UNCITRAL, World Intellectual Property Organization (WIPO)³⁴, or International Council for Commercial Arbitration (ICCA)³⁵ could introduce a cross-border accreditation system, model code of ethics, and centralised vetting mechanisms. Analogous to the IBA Guidelines on Conflicts of Interest for Arbitrators 2023, such an initiative would significantly enhance procedural legitimacy and uniform ethical standards in global arbitral practice.

7.0 EMERGING FRONTIERS: AI, ALGORITHMIC EXPERTS, AND DIGITAL FORENSICS

The advent of artificial intelligence (AI), algorithmic modelling, and digital forensics is transforming the nature and function of expert evidence in arbitration. Increasingly, AI-based systems are being used to perform or supplement expert roles, ranging from quantum modelling in construction disputes to blockchain-enabled forensic audits. Tools like the SCC's Digital Dispute Resolution Protocol 2021³⁶ and decentralised platforms such as Kleros exemplify how expert systems may eventually replace or augment human testimony.

Machine learning (ML) algorithms are already being deployed to calculate loss valuations, assess project delays, and detect accounting anomalies. In International Federation of Consulting Engineers FIDIC-based³⁷ infrastructure disputes, AI-generated delay analysis reports

³⁴ World Intellectual Property Organization available at <https://www.wipo.int> accessed 7 May 2026.

³⁵ International Council for Commercial Arbitration available at <https://www.arbitration-icca.org> accessed 7 May 2026.

³⁶ Arbitration Institute of the Stockholm Chamber of Commerce (SCC) at <https://sccarbitrationinstitute.se/en/> accessed 7 May 2026.

³⁷ International Federation of Consulting Engineers available at <https://fidic.org/> accessed 7 May 2026.

have become routine in the Asia-Pacific region. However, the opacity of algorithmic processes, the so-called black box problem raises procedural challenges. The lack of transparency in training data, algorithmic architecture, and validation methodologies renders traditional evidentiary thresholds (relevance, reliability, expertise) increasingly strained.

The explainability of AI-generated expert output becomes a serious procedural concern. If parties are unable to interrogate how an AI system arrived at a conclusion, the principle of *audi alteram partem* (the right to be heard) is fundamentally compromised. The 2023 UNESCO AI Ethics Recommendation³⁸ has warned against excessive reliance on opaque algorithmic systems in adjudicatory settings, highlighting the risks posed to fairness, accountability, and legitimacy.

Attribution of responsibility poses further ethical dilemmas. When an AI-based expert system errs, who bears liability, the developer, the instructing party, or the tribunal that admitted the evidence? Additionally, traditional mechanisms such as cross-examination lose efficacy when applied to algorithmic testimony. Scholars like Surden have proposed the development of a new epistemology to address the unique features of algorithmic testimony in legal processes.³⁹

To future-proof arbitral procedure, several safeguards are essential, mandatory disclosure of algorithmic architecture, training data, and bias assessments; guaranteed cross-party access to the expert systems used; and the tribunal's appointment of independent technical auditors

³⁸ Recommendation on the Ethics of Artificial Intelligence adopted November 2021 (actual document, revised or applied in 2023 discussions) available at <https://unesdoc.unesco.org/ark:/48223/pf0000381137> accessed 7 May 2026.

³⁹ Surden Harry, 'Artificial Intelligence and Law: An Overview' (2019) 35(4) *Georgia State University Law Review* 1305.

in disputes involving AI-generated evidence. As AI tools such as predictive coding, financial analytics, and blockchain tracing become more prevalent, arbitral institutions must also clarify evidentiary standards, ethical liabilities, and admissibility protocols.

Furthermore, forensic technologies now enable the analysis of digital footprints, cyber breach analytics, and metadata verification, generating new forms of expert evidence. While these tools enhance investigative capability, they demand heightened technical competence and ethical scrutiny from both experts and tribunals. The intersection of law and emerging technology thus necessitates a new jurisprudence of digital expertise.

8.0 BALANCING FAIRNESS AND FUNCTION

Restoring procedural integrity and balancing the adversarial tendencies in arbitration requires comprehensive reform of how expert evidence is governed. A key strategy lies in encouraging hybrid models that allow tribunals to appoint experts from a pool of party-nominated candidates, effectively combining adversarial participation with the objectivity of judicial neutrality. This approach, already adopted by institutions such as ICSID⁴⁰ and SIAC⁴¹, enhances both fairness and efficiency. A compelling illustration of this in practice is *Tethyan Copper Company v. Pakistan*⁴², where triangulation through a mixed expert panel helped reconcile divergent damages methodologies. The result was a more internally consistent award that proved more resistant to annulment, demonstrating the potential of such hybrid models to increase the credibility and reliability of arbitral outcomes.

⁴⁰ International Centre for Settlement of Investment Disputes available at <https://icsid.worldbank.org> accessed 7 May 2026.

⁴¹ Singapore International Arbitration Centre available at <https://siac.org.sg/> accessed 7 May 2026.

⁴² ICSID Case No. ARB/12/1.

The reform agenda must also prioritise transparency in the appointment process. Publishing clear guidelines on expert selection, ensuring disclosure of prior engagements, and allowing parties a role in the vetting process can reduce suspicions of bias and foster procedural legitimacy. Alongside this, institutionalised accreditation schemes at regional and international levels are needed to certify the competence and ethical standing of expert witnesses, paralleling existing systems for arbitrators and mediators. These schemes can help build trust and provide a framework for ongoing professional accountability.

Standardising procedural protocols for expert engagement is another crucial step. Institutions should adopt harmonised rules on expert reports, joint statements, and the practice of hot-tubbing to ensure consistency and clarity across jurisdictions. Procedural efficiency can be further enhanced through the use of expert protocol orders jointly issued directives that define the timelines, scope, and boundaries of expert involvement. These have proven particularly effective in institutional contexts like the LCIA and SCC, enabling more disciplined and cooperative expert participation.

Ethics oversight must also be integrated into institutional structures. Arbitral centres should establish ethics boards or review panels capable of investigating and sanctioning expert misconduct. Internal disciplinary mechanisms would offer a much-needed layer of accountability, deter unethical conduct, and reinforce the perception of neutrality. In tandem, the development of shared expert rosters, enriched with conflict disclosures and AI ethics declarations, can support consistency and transparency. An Expert Witness Register would provide a useful model, which could be expanded and enhanced

to reflect jurisdictional specialisation and evolving technological standards.

Leadership from key institutions is essential to advance these reforms. The ICC could establish a permanent expert certification body within its International Centre for ADR, while the LCA might partner with technical professional institutes, such as the Council for the Regulation of Engineering in Nigeria (COREN) and the Nigerian Institute of Quantity Surveyors (NIQS), to build domestic registries of qualified technical experts. Other centers, such as KIAC, MCIA, and SCCA, are well-positioned to pioneer regionally adapted, technology-integrated ethical frameworks for expert evidence in arbitration. These centers can serve as incubators for best practices that reflect both global standards and local realities. A comprehensive model code of conduct should underpin these reforms. It must articulate a duty of candour and methodological transparency, prohibit contingency or outcome-based fees, mandate procedural cooperation through mechanisms such as joint statements and hot-tubbing, and require disclosure of prior appointments in similar disputes. Such a code, modelled on the UNIDROIT-ALI Principles of Transnational Civil Procedure⁴³ and adapted to arbitral contexts, would not only harmonise ethical expectations but also enhance confidence in the reliability of expert testimony across borders.

9.0 CONCLUSION

Expert witnesses remain an indispensable component of modern arbitration, especially in technically complex disputes. However, their role is increasingly undermined by procedural deficiencies, ethical ambiguity, and epistemic instability. While party autonomy is a defining feature of arbitration, the unchecked partisanship that often

⁴³ International Institute for the Unification of Private Law & American Law Institute (ALI) available at <https://www.unidroit.org> accessed 7 May 2026.

accompanies expert engagement risks distorting rather than clarifying contested facts. This tension between autonomy and fairness reveals a critical need for recalibration, one that transforms the expert's role from a partisan agent to a principled contributor to institutional truth-finding.

Unchecked expert partisanship does more than erode credibility, it undermines arbitration's legitimacy as a reliable dispute resolution mechanism. When expert evidence is wielded as a strategic weapon rather than an evidentiary tool, both procedural integrity and substantive justice are compromised. The current default where parties shop for favourable experts and tribunals struggle to navigate conflicting opinions cannot endure if arbitration is to meet the demands of increasingly sophisticated, high-stakes disputes.

Hence, this paper calls for collective and systemic reform. Arbitral institutions, tribunals, and the broader legal community must develop and enforce ethical, procedural, and technological safeguards that ensure expert evidence remains a servant of justice. Tools such as tribunal-appointed experts, expert conferencing, protocol orders, and evidentiary admissibility thresholds should no longer be optional enhancements, but standard features of arbitral procedure. These mechanisms can restore balance between adversarial freedom and institutional control.

As arbitration submerges in an era shaped by AI technologies and digital forensics, the need for robust ethical and procedural scaffolding becomes urgent. Without clear standards, the evidentiary legitimacy of both human and machine-generated expert input will remain in question. Institutions must lead in embedding safeguards that uphold due process and ensure transparency, whether testimony comes from a person or a predictive model.

But reform must go beyond symbolic codes and aspirational declarations. It must entail concrete action: mandatory declarations of methodological independence, institutionalised hot-tubbing as the default for technical cases, independent and vetted expert databases, tribunal-curated hybrid appointment models, and arbitral-specific admissibility standards akin to the Daubert test.

Ultimately, the future of arbitration demands a fundamental epistemic rebalancing, one that shifts the emphasis from persuasive advocacy to principled expertise. Only by restoring expert testimony to its original role as a vehicle for truth, rather than a tool of tactics. The ideal of the neutral expert, for a long time aspirational, must now be realised through institutional design, coordinated governance, and a global commitment to reform.