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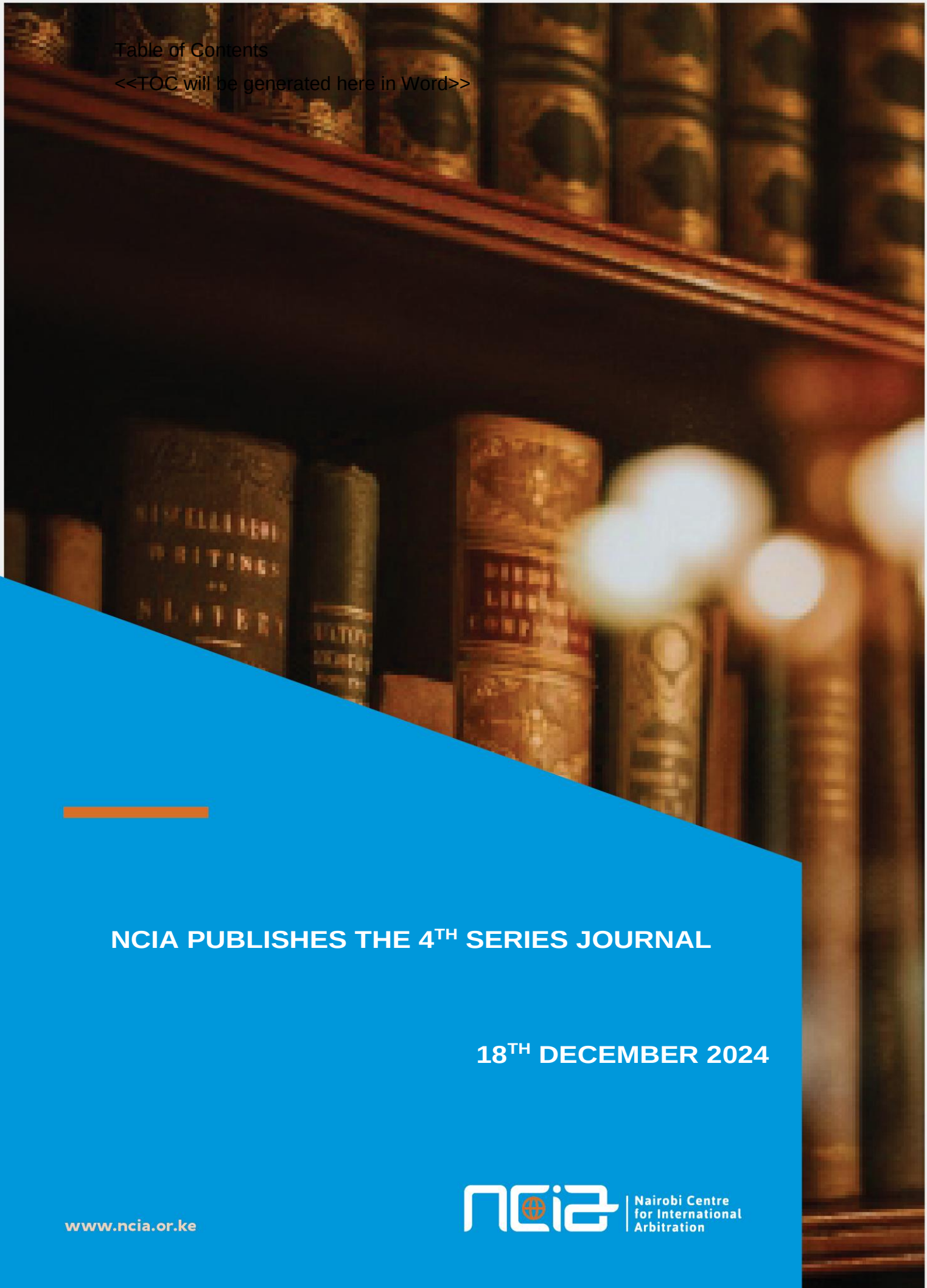

NCIA PUBLISHES THE 4TH SERIES JOURNAL

18TH DECEMBER 2024

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Nairobi Centre for International Arbitration

NCIA PUBLISHES THE 4TH NCIA JOURNAL

As part of the Centre's thought leadership and engagement in research in Alternative Dispute Resolution practice, the Centre released its 4th Journal on 18th December 2024. The 4th issue is part of the Centre's ongoing Journal series and has articles by various ADR experts articulating various emerging issues in ADR including a paper titled Harmonizing *Human Rights and Alternative Dispute Resolution in Tanzania Mainland: A Critical Analysis* by Martha Kanama, Jackson G. Balazi, and Matunda Mpogole.

This paper explores the intersection between human rights and alternative dispute resolution (ADR) mechanisms in mainland Tanzania, providing a comprehensive analysis of their harmonization. It examines the current state of human rights protections and the effectiveness of existing ADR frameworks within the Tanzanian legal system.

Through critical evaluation, the study identifies potential conflicts between human rights principles and ADR processes. The findings suggest that while ADR offers accessible and culturally relevant methods for conflict resolution, its implementation must be aligned with international human rights standards to ensure fairness and justice.

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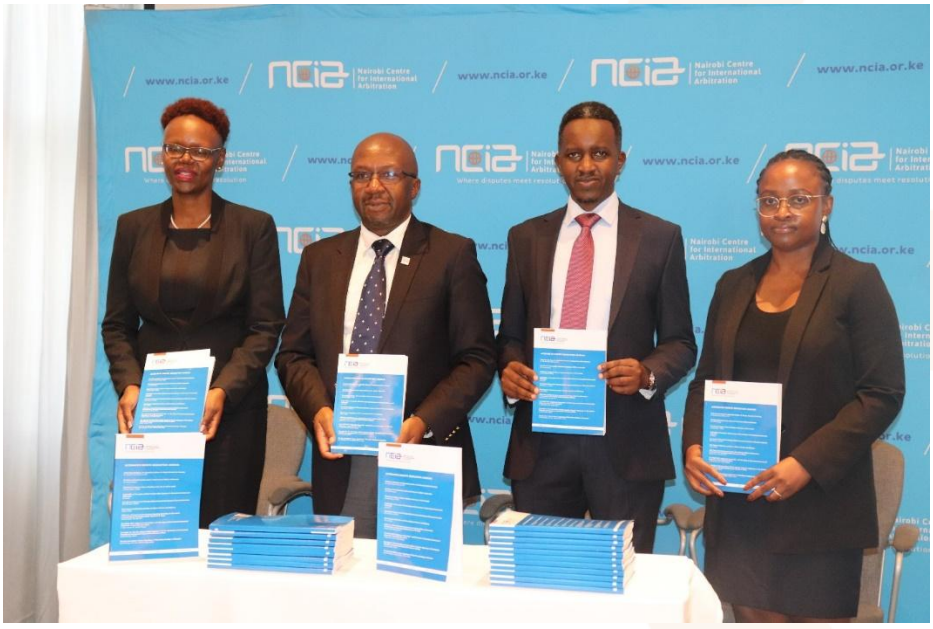
Prof. Kariuki Muigua in his paper titled *Utilizing Alternative Dispute Resolution in Climate Change Disputes* argues that climate change is a major threat to Sustainable Development in both developing and developed countries. It is the most pressing challenge currently facing humanity. In addition to its adverse environmental, social, and economic impacts, climate change is causing many disputes, and such disputes can affect the achievement of climate goals at levels. Effective management of climate change disputes is therefore crucial in strengthening the response towards climate change and delivering climate justice.

Another contribution titled *Advancing climate justice: Embracing Arbitration in Climate Change Disputes within the East African Community* by Macharia F, Et al, argues that in the wake of escalating climate change challenges, the East African Community (EAC) faces a growing volume of climate change related disputes. Traditionally, these have been handled through litigation, a process often hampered by prolonged durations and complex legal intricacies. They propose that as we navigate the multifaceted landscape of climate change impacts, the necessity for more efficient and effective dispute resolution mechanisms becomes increasingly apparent. This paper explores the viability of arbitration as a strategic option to address these challenges within the EAC and is a must read.



NCIA Board members during the launch of the 3rd NCIA Journal.

Another interesting contribution is by Omondi B.S and Nyanaro G.N titled *Investigating the potential of blockchain technology for combating corruption in construction disputes: An African Outlook.* This study explores the potential of

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applying blockchain technology to construction contract arbitration in Africa. By utilizing decentralized record-keeping and smart contract execution, they note that blockchain can streamline arbitration proceedings, ensure the integrity of agreements, and provide transparent documentation of the process. However, the adoption of blockchain technology also faces challenges such as technical complexity, regulatory hurdles, and financial constraints, particularly in the African context.

There is also a paper titled *Ethical Considerations for Counsel and Enforcement of Ethics in international Arbitration* by Beth Michoma where she observes that international trade has long been recognized as a vital engine of economic prosperity for nations, corporations, and individuals through the exchange of goods and services. A notable driver of this trade, she notes, is the provision of legal services. The legal sector, once restricted by national boundaries, has evolved to allow practitioners to operate across various jurisdictions. One of the key areas that has gained international prominence is arbitration with the rise in global disputes positioning international arbitration as an essential mechanism for conflict resolution. This paper explores the ethical considerations for Counsels in international arbitration, highlights examples of conflicting ethical norms, examines the challenges of applying national ethical obligations to international arbitration, and proposes solutions for resolving these conflicts as well as enforcing ethical obligations in this domain.

Lisa Nakachwa in her paper titled *Alternative Dispute Resolution in Environmental and Climate Change Disputes* notes that Climate change disputes are progressive in nature and attaining sustainable development includes effective resolution of these disputes as they arise. While climate change disputes are predominantly complex, often involving multiple stakeholders with varying interests, traditional litigation is limited when it comes to resolving such disputes. This is because it prioritizes adversarial arguments to win a dispute rather than upholding a consensus for mutual benefit and agreement of all stakeholders involved in a dispute.

She notes that Alternative Dispute Resolution presents an enabling environment for resolution of disputes in a more collaborative way. The paper suggests that ADR is relevant in resolving climate change disputes and can be used to complement litigation structures to uphold sustainable development.

Leah Field in her paper titled T*he due diligence dilemma: A critical Analysis of AAPL*

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V. Sri Lanka and The Objective of Due Diligence argues that included in the vast majority of Bilateral Investment Treaties (BITs), a Full Protection and Security (FPS) clause obligates a host state to protect foreign investments located in its territory from harm. The FPS clause is a duty of conduct, not result she argues. It does not impose strict liability upon a state whenever foreign investments are harmed, rather, it imposes an obligation for the host state to exercise due diligence in the protection of foreign investments. In other words, a state will only be held liable for an FPS violation if it fails to exercise due diligence in its protection of foreign investments. She notes that among arbitral tribunals, there is disagreement as to what the proper content of the FPS due diligence standard is.

This article argues that the subjective due diligence standard is the only interpretation of FPS due diligence that is logically consistent and faithful to the customary meaning of due diligence in international law.

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