

## EDITORS' INTRODUCTION

# Finding a Place for TWAIL in African Studies

In March 2024, the Office of the Prosecutor for the International Criminal Court (ICC) launched a consultation on a new Policy on Slavery Crimes, to add to its policies on gender persecution (2022), gender-based crimes (2023), and children (2023). The ICC has prosecuted 32 cases since its establishment in 1998, the overwhelming majority against African defendants. July 2024 also saw the International Court of Justice (ICJ) issue a groundbreaking and historic Advisory Ruling (No. 186) against Israel, finding its occupation of the West Bank, including East Jerusalem, to be contrary to international law—including the United Nations Charter, the Four Geneva Conventions, and the Convention on the Elimination of Racial Discrimination (CERD). Normally cases before the ICJ are between state parties but also include advisory opinions referred to it by the United Nations' (UN) General Assembly or other organs, as in this case. Not to be confused with its neighbour in The Hague (the ICC), the ICJ was established in 1945 by the UN.

Both of these high-profile and much-criticized global bodies invite us to think about international law in relation to the afterlives of slavery and colonialism, legal imperialism, international justice, and reparations in African studies. Or more specifically, it has me reflecting, as I rotate off the editorial team for *African Studies Review* (ASR), about the place of critical scholarship on international law in African studies. A search of ASR found no references to “Third World Approaches to International Law” (TWAIL), a critical body of work analyzing the international world order from the perspective of the Global South.<sup>1</sup> Of course, ASR has published key pieces on peacebuilding, humanitarian law, international law, and reparations for slavery and colonialism.<sup>2</sup> I am reflecting, however, as one of the only socio-legal scholars on the editorial team, on the dearth of critical articles on international law and policy or international human rights submitted to and published in the journal (Sesay 2024 and Ba 2020 are two exceptions). This short guest editorial is an invitation to critical international socio-legal scholars to think of *African Studies Review* readers as an important audience and interlocutors for our work, and for African studies scholars to engage with TWAIL scholarship.

There are several important intellectual synergies between TWAIL and African studies. Roughly dating back to the 1990s, TWAIL has its roots in the anti-colonial independence movements of the post-World War II period (Mutua 2000). TWAIL was founded by progressive international law scholars influenced by critical race theory (Crenshaw 1989; Cover 1986), subaltern studies (Spivak

1988; Said 1978), law and development (Anghie 2000), feminism (Mama 1997; Tamale 2020) and an earlier generation of Third World international law scholarship.<sup>3</sup> TWAIL'ers share a keen focus on histories of colonialism and international law as a tool of global exploitation of the Third World by the West (Okafor 2008). Makau Mutua (2000, 36) notes that TWAIL “scholarship or political action will be concerned with justice or the fairness of norms, institutions, processes, and practices in the transnational arena. Its overriding purpose must be the elimination of an aspect of Third World powerlessness.” Amina Mama (1997; 2005; 2007) is a good example of an African feminist scholar who has had a central impact and presence in both the fields of African studies and TWAIL, with her incisive critique of gender violence and gender studies, amongst other issues.<sup>4</sup>

In 2003, Antony Anghie, Bhupinder Chimni, Karin Mickelson, and Obiora Okafor published their edited collection, *The Third World and International Order: Law, Politics and Globalization*. The collection includes B. S. Chimni's TWAIL Manifesto wherein Chimni argues:

The ideological domination of Northern academic institutions, the handful of critical third world international law scholars, the problems of doing research in the poor world, and the fragmentation of international legal studies has, among other things, prevented it [TWAIL] from either advancing a holistic critique of the regressive role of globalising international law or sketching maps of alternative futures. It is therefore imperative that TWAIL urgently finds ways and means to globalize the sources of critical knowledge and address the material and ethical concerns of third world peoples. (2003, 3–4)

Some twenty years later, there is a rich scholarship building on this earlier work and a re-energizing of the TWAIL movement. There have been recent annual conferences and a new TWAIL open access journal, the *TWAIL Review* (first issue in 2020). While it is impossible to summarize the diverse and heterogeneous field (Gathii 2011) here, key amongst the claims of TWAIL scholars, for the most part, is that international law and policy is an extension of regressive institutions and practices and not a progressive solution to global inequalities and violence. International criminal law, in particular, reproduces these structural inequalities (Clarke 2020) and reproduces race/racism (Savvas 2023; Kattan 2020). From its inception, the “common themes of TWAIL's interventions are to unpack and deconstruct the colonial legacies of international law, and to engage in efforts to support the decolonization of the lived realities of the peoples of the Global South and the rupture or radical transformation of the international order which governs their lives” (*TWAIL Review*, Founding statement 2020, [www.twailr.com](http://www.twailr.com)). International legal scholarship is as much the object of deconstruction as international law itself, much like in the field of African studies.<sup>5</sup> As James Thuo Gathii (2022, 153) writes, “TWAIL's vantage point is critical of the universalizing mission and occidental authority of Eurocentric international legal scholarship and practice.”

Not only are the “colonial legacies of international law” the object of critique, but also the contemporary intertwining of international law and global capitalism, and international law’s impact on citizens in the Global South. Founding TWAIL scholars persuasively demonstrated the liberal, colonial underpinnings of the purported universal human rights regime (Shivji 1989) as well as the ways in which global capital is facilitated by the human rights regime (Baxi 2006; Gathii 2011; 2022). With some scholars building on Marxist theory, they argue that imperial extractive practices in Africa (and elsewhere in the Third World) have not been thwarted by international law—quite the contrary, international law and policy facilitate the exploitation of African resources and human capital.

These preoccupations in TWAIL run parallel to editor Roseline Wanjiru’s observation that, “[s]crutiny of these recent geopolitical and economic shifts has yet to take firm shape within African Studies scholarship, highlighting a need to generate fresh perspectives that strengthen the discipline’s relevance for Africa’s development realities” (Wanjiru 2023). They also echo ASR Chief Editor Cajetan Iheka’s call to shift the field of African studies’ “racial logics and its politics of exclusion” and recenter African agency (Iheka 2023). Indeed, the field of African studies shares many concerns, lines of inquiry, and themes with TWAIL scholarship, be they histories of slavery, colonialism, economic development, agency, decolonization, self-determination, or marginalization. While some TWAIL scholars are also in African studies, an even closer engagement between TWAIL’ers and African studies scholars could lead to new interdisciplinary insights and ways of understanding international law, thus enriching both fields. We look forward to seeing more of these connections explored in the pages of ASR.

Annie Bunting  
York University,  
Toronto, Ontario, Canada  
[abunting@yorku.ca](mailto:abunting@yorku.ca)

The September 2024 issue of ASR is packed with interdisciplinary insights accentuating the knowledges and praxes of ordinary people across African contexts and virtual spaces. The opening article, “Literary Imaginations from Below: Crowdsourced Verse and African Literature’s Digital Publics,” by ‘Gbenga Adeoba turns to the digital platform X (formerly Twitter) as the location of African literary production. Adeoba’s interest is in crowdsourced poetry, inspired by a prompt on X, that lies outside the formal literary tradition but nevertheless produces aesthetic projects that capture the affective registers of African peoples. For Adeoba, these digital inscriptions provide “an example of what we might call literary imaginations from below—texts, practices, and aesthetic forms often outside the purview of mainstream literary establishment, discourse, and histories.” Buttressing the creative dimensions of these cultural forms, Adeoba foregrounds the affordance of the digital sphere for enacting a participatory poetic tradition.

Publicness and its possibilities for creative expressions connect Adeoba's article to Amy Swanson's "The Art of Disruption: Decolonial Potentiality in Fatou Cissé's *La ville en mouv'ment*." Swanson's article turns its attention to the embodied space of Dakar—the setting of Fatou Cissé's street performance festival, *La ville en mouv'ment* (The City in Movement). Focusing on the third and fourth editions of the festival, Swanson highlights the decolonial prospects of the performances. Swanson concludes that the "street performance, as exemplified by *La ville en mouv'ment*, is a space of possibility for decolonial, future-oriented creative expression that is simultaneously fundamentally rooted in the present moment and physical space of instantaneous creation."

Christopher Tounsel's "A Tale of Two Divestments: South Africa, Sudan, and Howard University" shifts the geographical focus from West Africa to Southern and East Africa. Tounsel locates Howard University as a crucial node for African American activism and solidarity toward Africa. More specifically, the article surfaces the Black and racial internationalisms of the anti-apartheid and Save Darfur divestment campaigns at Howard. Tounsel is also attentive to the complexities and distinctions between the campaigns: whereas "a shared sense of struggle against anti-blackness" unified African Americans against white minority rule in South Africa, the Sudan racial picture was blurrier as it complicated the black-white binary.

Since the Darfur crisis that Tounsel studied, Sudan's territory has been reshaped with the creation of South Sudan as an independent nation in 2011. Conservation practices in the new nation constitute the focus of Christopher Day and Adrian Garside's "Wildlife Management in South Sudan 1901–2021: Conservation Amidst Conflict." Contributing to discourses on wildlife management in Africa and the militarization of conservation, Day and Garside argue that conservation persists in South Sudan despite war. In fact, the focus on the South Sudan Wildlife Service, in a context where park rangers double as armed actors in the country's conflicts, brings to the fore a neglected story of species vulnerability and protection. Day and Garside show the adaptation and resilience of wildlife institutions in South Sudan despite the limited resources available to park rangers.

Rundong Ning's contribution interrogates the dominant ethnic and racial configurations of Africa–China relations. In "Project Assemblages: Identity Realignment in China–Africa encounters in the Construction Industry in Congo–Brazzaville," Ning asks: "in what circumstances are China–Africa encounters shaped by identities other than racial and ethnic ones?" Ning's article recasts the Africa–China discourse by privileging economic positionality and relationships, arguing that "the rationale for many actions of Chinese in Africa is that they are workers, employees, entrepreneurs, or other identities than geographical or racial ones." Proposing "project assemblage" as a concept for capturing the complexities of subject positions in the Africa–China dyad, Ning highlights the affective bonds, anxieties, and survival dynamics that cohere as African and Chinese people coinhabit space in a late capitalist dispensation.

Two essays in the ASR African Studies Keyword series—on “Transformation” and “Organic”—appear in this issue. Shakirah E. Hudani’s essay limns the critical and socio-political affordances of transformation at the national and urban scales in African studies. Centering South Africa and Rwanda and cities across the continent, Hudani contends that transformation “is a capacious concept for thinking through political, social, and personal projects of change and their ranges of motion over time.” Transformation is encoded, in the essay, as a multivalent term, “as discourse of progress, as mechanism of narrative revalorization, and as a mode of material reclamation.” In their article, Nick Rahier and Emelien Devos position organic as a useful heuristic for foregrounding African perceptions and actions toward bodily and environmental transformations in an era of capitalist exploitation and climate change. Drawing on fieldwork in East Africa, the authors contend that the polysemous organic template allows for discourses and practices of the natural and healing in negotiating toxic environments, food insecurity, and other hazards. Concluding the issue are an assortment of book and film reviews, following three extensive scholarly review essays on decolonization and recuperation of local histories, electoral politics, and pathways to peace in Africa.

## Notes

1. One book review (Ibhawoh 2013) makes mention of TWAIL.
2. There were 52 articles published in ASR between 2005 and 2023 that include mention of “international law,” including crimes against humanity, human rights, migration and refugee law, truth and reconciliation, sexuality, and gender violence, amongst other topics.
3. Including Upendra Baxi, R. P. Anand, Oji Umzurike, Georges Abi-Saab, Mohammed Bedjaoui, et al. Thanks to Obiora Okafor for this addition.
4. In 2012, ASR published a special forum “The Case of Gender-Based Violence: Assessing the Impact of International Human Rights Rhetoric on African Lives” (Dewy and St. Germain 2012).
5. Similarly, there have been recent articles in ASR critiquing the role of the field of African studies in reproducing racial hierarchies and marginalization of African scholars in the field: see, for example, Mama (2007; 2018) and Phillips and Cheney (2023).

## References

- Anghie, Antony. 2000. “Time Present and Time Past: Globalization, International Financial Institutions, and the Third World.” *New York University Journal of International Law and Politics* 32 (2): 243–90.
- Anghie, Antony, Bhupinder Chimni, Karin Mickelson and Obiora Okafor, eds. 2003. *The Third World and International Order: Law, Politics and Globalization*. Leiden: Martinus Nijhoff Publishers.
- Ba, Oumar. 2020. “Contested Meanings: Timbuktu and the Prosecution of Destruction of Cultural Heritage as War Crimes.” *African Studies Review* 63 (4): 743–62.
- Baxi, Upendra. 2006. “What May the ‘Third World’ Expect from International Law?” *Third World Quarterly* 27 (5): 713–25.
- Clarke, Kamari Maxine. 2020. “Chapter 10: African Withdrawals and Structural Inequities.” In *The International Criminal Court: Contemporary Challenges and Reform Proposals*. Leiden: Brill/Martinus Nijhoff.
- Cover, Robert. 1986. “Violence and the Word.” *Yale Law Journal* 95: 1601–29.

- Crenshaw, Kimberlé. 1989. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics." *University of Chicago Legal Forum* (1) 8: 139–68.
- Gathii, James Thuo. 2011. "TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography." *Trade Law and Development* 3 (1): 26.
- . 2022. "The Agenda of Third World Approaches to International Law (TWAIL)." In *International Legal Theory: Foundations and Frontiers*, edited by Jeffrey Dunoff and Mark Pollack, 153–73. Cambridge: Cambridge University Press.
- Ibhawoh, Bonny, 2013, "Review of Peacebuilding in the African Union: Law, Philosophy and Practice, by Abou Jeng." *African Studies Review*, 56 (2): 207–209.
- Iheka, Cajetan. 2023. "New Beginnings at the African Studies Review." *African Studies Review* 66 (1): 1–5.
- International Criminal Court. 2024. "ICC Office of the Prosecutor Launches Public Consultation on Policy on Slavery Crimes." Statement, 19 March. <https://www.icc-cpi.int/news/icc-office-prosecutor-launches-public-consultation-policy-slavery-crimes>
- Kattan, Victor. 2020. "Palestinian Scholarship and the International Criminal Court's Blind Spot." *TWAILR: Reflections* #14/2020.
- Mama, Amina. 1997. "Women's Studies and Studies of Women in Africa during the 1990s." *Feminist Africa* 1 (1): 46–62.
- . 2005. "Challenging Knowledge: The University and Gender Discourse in Africa." *African Studies Review* 48 (2): 1–24.
- . 2007. "Is It Ethical to Study Africa? Preliminary Thoughts on Scholarship and Freedom." *African Studies Review* 50 (1): 1–26.
- . 2018. "Decolonizing African Studies." *African Studies Review* 61 (3): 1–7.
- Mutua, Makau. 2000. "What Is TWAIL?" *Proceedings of the Annual Meeting of the American Society of International Law* 94: 31–40.
- Okafor, Obiora C. 2008. "Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?" *International Community Law Review* 10 (4): 371–78.
- Phillips, Kristin D., and Kristen E. Cheney. 2023. "Eyes on the Prize: Toward a Reimagining of the Role of Awards in African Studies." *African Studies Review* 66 (2): 305–26.
- Said, Edward W. 1978. *Orientalism*. New York: Vintage Books.
- Savvias, Gervaise. 2023. "Conscious or Unconscious? The Issue of Race within International Criminal Law." *TWAILR: Reflections* #51/2023.
- Sesay, Mohamed. 2024. "(Re)negotiating State Authority: How Hinterland Protests against Global Capital Impact the Mediating Role of Traditional Rulers in Postcolonial Sierra Leone." *African Studies Review* 67 (1): 107–28.
- Shivji, Issa G. 1989. *The Concept of Human Rights in Africa*. Dakar: Codesria Book Series.
- Spivak, Gayatri. 1988. "Can the Subaltern Speak?" In *Marxism and the Interpretation of Culture*, edited by Cary Nelson and Lawrence Grossberg, 271–313. Basingstoke: Macmillan.
- Tamale, Sylvia. 2020. *Decolonization and Afro-feminism*. Quebec: Daraje Press.
- Wanjiru, Roseline. 2023. "Knowledge Creation for Africa's Development Contexts." *African Studies Review* 66 (3): 579–86.

Cajetan Iheka  
Editor-in-Chief  
Yale University,  
New Haven, CT, USA  
[chiefeditor@africanstudiesreview.org](mailto:chiefeditor@africanstudiesreview.org)