

Foreword

Judge Ben Kioko*

It was with immense honour and gratitude that I accepted the invitation of the student editors of *Kabarak Law Review* Volume 4 (2025) to write this Foreword.

As noted by James Thuo Gathii, '*Kabarak Law Review* has emerged as an important scholarly journal publishing cutting edge scholarship from its students, faculty and leading scholars'.¹

During the webinar held on 7 August 2025, marking the 'International Law Month at Kabarak 2025: Reflecting on 25 years of the African Union Constitutive Act', I was honoured to deliver a presentation on the drafting history, legal philosophy, adoption and early implementation process of the Constitutive Act, which is featured in this volume. Professor Hajer Gueldich, AU Legal Counsel made a presentation on the first 25 years of the AU Constitutive Act. Ibrahima Kane, independent consultant, former Head of AU Advocacy at Open Society Foundation presented on the Governance Architecture under the AU Constitutive Act. Additionally, Dr Apollin Koagne Zouapet, Legal Officer, International Court of Justice presented on 'The AU Constitutive Act and the progress of an "African international law" or African approaches to international law'. Mr Don Deya, Chief Executive Officer of Pan African Lawyers Union made the closing remarks. Noteworthy, the session was

* Former AU Legal Counsel (2001-2012); Judge (2012-2024) and Vice President (2016-2021) at the African Court on Human and Peoples' Rights.

¹ 'Foreword: *Kabarak Law Review* as a vanguard of radical legal scholarship', 2 *Kabarak Law Review* (2023) vii.

ably moderated by Elvis Mogesa Ongiri, a student at Kabarak University Law School, who also serves as Editor-in-Chief of the student-led *Kabarak Law Review* (2025).

Although I have not set foot at Kabarak Law School, from my interactions with some faculty members and students, I got the sense that it must be an exciting place to be as students are not only engaged in research production but also play a critical role in the organisation and management of seminars and conferences. The fact that the articles in this volume are authored predominantly by students is a powerful testament to the vibrant intellectual life of Kabarak Law School community. Kabarak University Press (KABU Press) is also distinguishing itself as a notable publisher of academic writing.

I have also learned that in terms of the physical space, Kabarak Law School is a state-of-the-art facility comprising of two magnificent auditoriums, two Supreme Court level moot courtrooms, research centres, several ultra-modern classrooms and an outdoor amphitheatre. I believe that every lawyer of our generation would wish that as students they had been exposed to such facilities and more importantly to research production and conference management, which are innovative and effective methods of learning and enquiry.

I must confess that when I postulate that Kabarak Law School must be an exciting place for students, my judgment may be clouded by other extraneous considerations. Chief among these is the fact that my most favourite teacher and an accomplished scholar and practitioner of international repute, a principled man and a reformer in the person of Professor Willy Mutunga CJ, is associated with this School. I am also aware of the immense work done by other members of faculty including Professor John Osoyo Ambani, Humphrey Sipalla, Melissa Mungai and others.

The strength of this law review lies in the critical role that Kabarak Law School students have taken in advancing legal scholarship through rigorous research, thoughtful analysis, and dedicated effort, showcasing their intellectual curiosity and sophisticated legal reasoning. From

being passive recipients of knowledge, they have emerged as dynamic producers of original research, challenging existing paradigms and contributing fresh perspectives to complex legal debates.

For example, Raphael Okochil's article on the African Union and south-south cooperation in the Israel-Palestine conflict, examines a topical issue that has been predominant in the media especially in the last two years. Undoubtedly, this conflict along with the Russian/Ukraine war, has demonstrated the limitations and shortcomings of the international legal order as we know it and how dependent it is on the good will of states to play by the rules.

If international law is built on a system of norms, values, and standards that govern the interactions between states and other international actors, what is the recourse when a state or a group of states flagrantly disregard them or fail to take up their obligations under international law? If some states can flagrantly disregard their treaty obligations, why would others be expected to respect them? And how does this situation impact on the future of international law?

These two conflicts must have been in the back of the mind of Udo Jude Ilo, presently Chief Executive Officer at the Hague Institute for Innovation of Law (HiIL), when he asserted that *'we are now in a situation where the identity of the aggressor or the identity of the victim determines how the world responds, and you cannot maintain an international framework of protection if it is available à la carte'*.²

While the article is very well researched, I would suggest that since the position of African Union is determined by the Assembly of Heads of State and Government (the supreme organ of the Union), future enquiry on this issue could be directed at whether the Assembly has been consistent on the Palestine question since the time when the Palestine Liberation Organisation (PLO) was granted a unique and special status within the Organisation of the African Unity (OAU), with the exception-

² See, Patrick Wintour, 'Why US double standards on Israel and Russia play into a dangerous game', *The Guardian*, Tuesday 26 December 2023 referring to Udo Jude Ilo's quote.

al right for the President of the PLO and later the Palestinian National Authority or his High Representative to address the Assembly at each of its ordinary sessions. A good starting point would be the 1975 landmark Assembly decision.³

Anopa Tamuka's similarly well researched article relating to the relations between the African Union and regional economic communities (RECs) speaks to a vexing issue that has defied a solution for many years, despite numerous studies, retreats, meetings and decisions at all levels. Resultantly, thousands of pages of situational reports and policy recommendations later, the magic bullet has been elusive as to how to balance and cohere the programmes and activities of the RECs as the building blocks of the Union with the overarching vision of continental integration.

As rightly observed by the author, there are many interests and tensions at play that have made a suitable formula difficult to come by. There is no doubt that if member states were to conjure the necessary political will, as they make decisions at the level of RECs and the AU, the differences on subsidiarity, lack of effective coordination and overlapping memberships that contribute to the current stalemate, would be quickly resolved.

The article by Sarah Muhonja Andambi on "'Don't agonise, organise': Analysing modern-day Pan-Africanist thought through Tajudeen Abdul-Raheem' evokes in me memories of my professional and personal interactions with this colossus of a man, whose convictions on how Africa should be organised and managed were unshakeable. The acknowledgement of the contribution of Tajudeen to Pan Africanist thought is very appropriate.

³ See decision of Assembly of Heads of State and Government of the Organisation of African Unity, 'Resolution on the Question of Palestine', AHG/Res. 77 (XII), 12th Ordinary Session, Kampala, 1 August 1975, by which it asserted that the cause of Palestine is an African cause and that the PLO is the sole legal representative of the Palestine people and their legitimate struggle. Accordingly it undertook to provide full and effective support to the Palestine people in their legitimate struggle to restore their national rights, to work in all domains to concretise recognition of these rights and ensure respect for them. However, the commitment to sever political, cultural, and economic relations with Israel seems to have fizzled out.

Apart from the many contributions he has made, those who now enjoy easy access to Ethiopia have Tajudeen to thank for. During an open session of the AU Assembly, Tajudeen publicly challenged the then Prime Minister Meles Zenawi by demonstrating the absurdity of that country's restrictive visa policy for Africans, which resulted in a swift change not long after that. Tajudeen came out as a man on a mission who, like Martin Luther King Jr, did not seek to be a conformist.⁴ His big shoes have never found a new wearer in the space of civil society engagement with the AU. For me personally, I will always remember him as the man who refused to refer to me by my name and stuck to his standard salutation of 'bureaucrat'.

In this volume, there are also articles relating to domestic law in Kenya and Cameroon. James Mulei's article, 'A reply to Tekin Saeko: From Kianjokoma to Kajiado, police brutality and the cross-border crisis of accountability' seeks to link Saeko's reflection on the killing of the Kianjokoma brothers to that of Pakistani journalist Arshad Sharif on 23 October 2022 at Kajiado, police brutality and the cross-border crisis of accountability in Kenya.

The faculty members at Kabarak University Law School that had the vision of unleashing the creative, research production and managerial skills of the students should be encouraged by the words of John Quincy Adams: *'If your actions inspire others to dream more, learn more, do more and become more, you are a leader'*.⁵

The students' proactive engagement in research and conference organisation, particularly in the inaugural African student-led law reviews conference held on 31 October 2025, reflects a profound dedication to legal excellence and a clear vision for the future of the legal profession. Moreover, the extraordinary student-driven initiatives have

⁴ 'I would rather be a man of conviction than a man of conformity', Martin Luther King Jr., *The autobiography of Martin Luther King, Jr.*, Clayborne Carson (ed), Warner Books Inc., 1998, 331.

⁵ This quote is generally attributed to Mr Adams who served as the sixth president of the United States from 1825 to 1829. Other sources however suggest it was wrongly attributed to him and the original author is unknown.

become a hallmark of Kabarak University Law School. This generation of legal scholars is not waiting for a seat at the table; they are building their own.

As a last note, I congratulate the Editorial Board of *Kabarak Law Review* for being accredited by the African Journals Online (AJOL). This is a huge feat!

My sincerest congratulations go to all the student authors, editors, and conference organisers whose contributions brought this volume to fruition. I am confident that readers will find the articles both informative and thought-provoking.

Johannesburg, November 2025