

Editorial

The positionality of student-editors is a peculiar problem. Some, through an elitist lens, view student-editors as unqualified in their tasks due to lack of the required depth of knowledge that faculty have, and their inexperience in editing scholarly work. A contrastingly, yet deeply profound view, is for student-editors, their lack of knowing is their super power – their epistemic advantage. That, as a *carte blanche*, in chasing the errant footnote of that highly complex paper, they consistently edify themselves and evade any implicit biases that come with knowing.¹

A third view that I align myself with is, student-editors, similar to the framing of grassroots movements of women groups, workers unions, indigenous groups as ‘international law from below’,² work within the space of ‘academic scholarship from below’. Here is my reason. The composition of a student-run editorial board is filled with amateur students, with the most qualified having four years’ experience.³ With high turn-over rates, student-editors rarely develop proper expertise in the art and science of editing. The crucial point however is, as these grassroots movements are involved in norm creation and furtherance in international law, such is the role and ability of student-editors. This means, they are an important cog in the machinery of academic publishing in any continent, as any other cog.

¹ This is a view propounded by Humphrey Sipalla, Editor-in-Chief of the Kabarak University Press and a mentor to *Kabarak Law Review*.

² Balakrishnan Rajagopal, *International law from below: Development, social movements and Third World resistance*, Cambridge University Press, 2003, 1.

³ This is assuming that the editor has been in the law review since their first year of law school and has been increasingly involved throughout the years.

This question of positionality has plagued me throughout my three years in the *Kabarak Law Review*. A suggestion that I propose is, as student-editors, we occupy a structurally *liminal location*, neither fully inside nor outside academic authority. We are entrusted with gatekeeping functions such as selection, evaluation, curation, while lacking the enduring institutional authority that typically underwrites such roles. Our editorial authority is therefore delegated, temporary, and procedural. This liminality shapes how decisions are made, justified, and experienced. Only in understanding this position, can we then fully be able to fulfill our sacred editorial duties.

It is within our positionality that the *Kabarak Law Review* Editorial Board 2024-2025 presents its fourth volume. The issue theme of volume four is, 'Reflecting on 25 years of the African Union Constitutive Act'. The study of African Union law, or the Public law of Africa is neglected in most undergraduate law programmes in Africa. Rarely is the undergraduate student exposed to this large corpus of law within the classroom, and only in liberated zones such as moot court competitions, book clubs, and in this case, a law review, are they able to engage with this field of knowledge that governs our continent. Thus, this volume both commemorates this foundational anniversary of the African Union and critically engages with the successes, failures and future prospects in years to come.

Kabarak Law Review volume four has a total of twelve (12) pieces. Three (3) full-length, double-blind reviewed papers, three (3) single-blind reviewed essays which alongside two of the full-length papers lay the ground for this year's theme. One (1) essay in the 'Honouring our elders: Conversations with the Living-Dead' section reflecting on the contributions of the Pan-Africanist, Tajudeen-Abdul Raheem and in furtherance of our issue theme. In relation to our now four-year-old tradition of paying tribute to Emmanuel Ndwiga, a former Kabarak University law student and his brother Benson Njiru who were killed by rogue police officers on 1 August 2021, we publish two (2) pieces on police accountability. Lastly, we close the volume with three (3) timely case commentaries.

Opening the volume is Anopa Tamuka's paper, *Between supranationality and intergovernmentalism: Re-evaluating the relationship between the African Union and regional economic communities*. Tamuka relooks the trajectory of the precarious relationship between the AU and regional economic communities (RECs) and argues for subsidiarity and complementarity over direct oversight. Tellingly, he proposes the African Continental Free Trade Area Agreement (AfCFTA Agreement) as a foundational model for establishing a robust framework for the REC-AU relationship.

Still within the AU's mandate, Raphael Okochil's paper *Strategic silence? The AU and South-South solidarity in the Israel-Palestine question* foregrounds a key and timely question. Compellingly, he contends that although the African Union's foundational principles affirm commitments to human rights and solidarity, there remains a pronounced disjuncture between these normative ideals and its diplomatic conduct in relation to the Palestinian question. He further maintains that the AU's strategic silence does not reflect principled neutrality, but rather emerges as a calculated outcome of internal divisions among member states, the securitisation of foreign policy, and the influence of powerful external geopolitical forces.

Thereafter, Ben Kioko's essay, *The search for African unity: A dream deferred* discusses the two foundational African legal instruments, the Constitutive Act of the African Union and the Charter of the Organisation of African Unity, noting the reasons that necessitated the change from the latter to the former. This insider relooking brings to life some aspects of the process of this change and the main issues or challenges, including during the early implementation of the Constitutive Act. He also discusses aborted processes for a Union government and African Union Authority from 2005 to 2013. His overall argument is deeper unity in Africa is in effect a 'deferred dream'.

In similar vein, Hajer Gueldich in *Reflecting on 25 years of the African Union Constitutive Act: Drafting history, legal philosophy and broad objects of the renewal of Africa's continental body* traces the aspirations and tensions that have shaped the African Union's legal and institutional

evolution since Lomé. She presents the Constitutive Act not merely as a treaty but as a bold normative project grounded in non-indifference to atrocities, democratic governance, and an integrated vision of peace and development, while highlighting its broader influence on global legal norms through instruments such as the African Charter on Democracy Elections and Governance, and the AU Transitional Justice Policy. At the same time, she confronts the persistent challenges of coups, insecurity, and eroding political will, concluding with a call for a renewed AU whose transformative promise is collectively owned by citizens and the wider Pan-African community.

Closing the issue theme papers section is Don Deya's essay, *Reflecting on 25 years of the African Union Constitutive Act: Unconstitutional changes of government*. Based on the oral remarks he made during the International Law Month at Kabarak 2025 webinar of 21 August 2025, this essay discusses the perennial problem of unconstitutional changes of government laying down its legal regime and insisting that political courage and active citizenry engagement are feasible steps to combating the conundrum.

Daniel Chemorei in the general full-length papers section puts forth a profound legal and philosophical dissection of spousal rape in Kenya. Titled *Deconstructing the legal treatment of spousal rape in Kenya*, his paper interrogates Kenya's exemption of spouses from the definition of rape under Section 43(5) of the Sexual Offences Act, showing how the law's denial of marital rape rests on the assumption that consent, once given, is irrevocable. As both theory and method, he draws on Jacques Derrida's critique of hierarchical binaries and Spivak's account of subalternity, to demonstrate how marital consent is framed in rigid oppositions that obscure a woman's capacity to withdraw consent and render her voice legally unintelligible. The paper concludes by calling for a re-orientation of legal understandings of consent as ongoing and situated, and by proposing interpretive and reform strategies that make visible voices long excluded from legal recognition.

Next is our now famed 'Honouring our elders: Conversations with the Living-Dead' section.⁴ *Kabarak Law Review* has committed to celebrating the ideas of African great thinkers and true to Franz Fanon, we aim to read them both sympathetically and critically.⁵ As visibly noticeable, we have retitled this section. Caroline Gatonye starts this section with an intriguing introduction. She brilliantly lays down the intellectual animations that necessitated this change in the name; tellingly through John S Mbiti's philosophy of the Living-Dead. Following this, Sarah Muhonja Andambi in '*Don't agonise, organise*': *Analysing modern-day Pan-Africanist thought through Tajudeen Abdul-Raheem* explores the oeuvre of the great Pan-Africanist intellectual and activist, Tajudeen Abdul-Raheem. Andambi examines the Pan-African legal and political thought of Tajudeen Abdul-Raheem (1961-2009), showing how his institutional leadership and writings translated Pan-African ideals into practical frameworks for legal reform, democratic accountability, and continental integration.

She argues that Abdul-Raheem's emphasis on citizen-driven governance anticipated the African Union's contemporary commitments in instruments such as the Constitutive Act, Agenda 2063, and the AfCF-TA, while also exposing the limits of an AU still constrained by elite dominance and cautious integration. Situating this African ancestor as an embodiment of Pan-African unity in the tradition described by Wal-

⁴ I would like to thank Dr Harrison Otieno Mbori for originally recommending the changing of title of the section from 'Know your elders'. Further, I thank both Mwalimu Humphrey Sipalla and Caroline Gatonye for suggesting this further revision to 'Honouring Our Elders: Conversations with the Living-Dead'. This change fully reflects the journal's aim to honour African intellectual elders who although departed, continue to live on through their ideas. This reflects John Mbiti's philosophy and more truly, several African societies ontology of celebrating the Living-Dead.

⁵ 'Each generation must discover its mission, fulfill it or betray it, in relative opacity... [W]e must shed the habit of decrying the efforts of our forefathers or feigning incomprehension at their silence or passiveness. They fought as best they could with the weapons they possessed at the time, and if their struggle did not reverberate throughout the international arena, the reason should be attributed not so much to a lack of heroism but to a fundamentally different international situation'. Fanon, 'On national culture', *The Wretched of the Earth*, 1959, 160. See also this discussion in Christopher Gevers, 'Literal 'decolonisation': Re-reading African international legal scholarship through the African novel', in Jochen von Bernstorff and Phillip Dann (eds) *The battle for international law in the decolonisation era*, Oxford University Press, 2019, 383-84.

ter Rodney of a model public intellectual, the paper positions his legacy as a continuing blueprint for reimagining African jurisprudence as a people-centred and emancipatory project.

Following this is the 'Kianjokoma Brothers' tribute: The police accountability review' section. Eugène Pascal Parfait and Arsène Stéphane Zindi in *Insights into the realities of police custody and remand to custody in Cameroon* examine police custody and remand in custody in Cameroon as liberty-depriving measures that are legally grounded in human dignity but, in practice, frequently function as instruments of humiliation and dehumanisation within a repressive institutional system. Using legal analysis, they identify the constitutional and international protections afforded to detainees while demonstrating the persistent non-compliance of state authorities despite the existence of oversight and sanctioning mechanisms. Ultimately, they seek to raise public awareness of detainees' rights and available legal remedies, arguing that their effective enforcement is essential to the reality of the rule of law in Cameroon.

In a rather striking and equally philosophy-grounded essay, James Mulei problematises the patterns of delayed justice, institutional weakness, and political expediency that plague the accountability of police brutality. In *A reply to Tekin Saeko: From Kianjokoma to Kajiado, police brutality and the cross-border crisis of accountability*, he responds to Tekin Saeko's tribute to the Kianjokoma brothers, situating the prior analysis of delayed justice and institutional weakness within broader philosophical questions of violence, legitimacy, and accountability. It draws connections between the Kianjokoma murders and the killing of journalist Arshad Sharif, illustrating how Kenya's policing system operates as a 'dysfunctioning functioning system' where procedural compliance masks substantive failure, and where political expediency perpetuates impunity. By engaging with insights from postcolonial theory, the paper argues that justice in Kenya is often endlessly deferred, transforming victims' families into subjects of temporal and bureaucratic violence, while oversight bodies like IPOA perform accountability theatrically rather than effectively, leaving substantive disclosure and remedial action largely absent.

Lastly, the volume closes with three salient case commentaries. First, Ana Cristina Vasquez in *Climate justice unpacked: Breaking down the 2025 Inter-American Court of Human Rights and International Court of Justice advisory opinions on environment, human rights and state obligations*, analyses Advisory Opinion OC-32/25 of the Inter-American Court of Human Rights (IACtHR) alongside the ICJ's 2025 climate change advisory opinion, arguing that climate inaction now constitutes a breach of due diligence and a human rights violation under international and regional law. It shows how the IACtHR transforms general principles of state responsibility, customary law, and UNCLOS obligations into enforceable duties within the American legal system, particularly by linking transboundary harm, private actor regulation, and extraterritorial responsibility to substantive and procedural human rights. In relation to Caribbean Small Island Developing States, the paper demonstrates how these opinions provide unprecedented legal leverage for climate justice, loss and damage claims, and protection of vulnerable populations, while acknowledging persistent enforcement gaps rooted in unequal state capacities.

Harrison Otieno Mbori in *Proportionality on the 'lite': The Kenyan Supreme Court's fatalism in the Fatma Athman Abud (FAAF) case* discusses this 2025 precedent by the Kenyan apex court that caused upheaval from various fronts. He situates this case at the intersection of religious pluralism and equality, and argues that the Court, alongside the Court of Appeal and, to a large extent, the High Court, failed to properly apply Islamic law, influenced by a lingering colonial framing of Islamic law as a retrogressive culture subject to the doctrine of repugnancy. It further contends that the Court's conflation of constitutional limitations and derogations, coupled with its introduction of the four-part proportionality test through a 'side-door', distorted the analytical framework and casts doubt on an outcome widely celebrated as progressive.

Closing the volume is Daniel Ominde's case commentary that reviews the jurisprudence of criminal defamation in *Jacqueline Okuta and another v AG and others* and *Bloggers Association of Kenya (BAKE) v Attorney General & 3 others* furthering that the former precedent serves as the

proper conclusion on the status of criminal defamation, particularly in this digital age. He argues that ‘criminal defamation – when unrelated to state security or public peace – cannot be properly categorised as a constitutionally legitimate limitation on the right to freedom of expression’.

The creation of this journal was only achievable by a collective convergence of efforts by different people. My Editorial Board has served both as the engine and comradeship in this sacred duty. First, I would like to thank the Managing Editor, Patience Chepchirchir, who spear-headed the editorial training programme, a vital limb of our institution that ensures perpetuity. James Mulei, the Peer Review Editor deserves a standing ovation. From the wide array of reviewers contacted to the timely delivery of all communications, you exemplified this role.

I equally am grateful to Jimmy Wambua, the Partnerships Editor, who tirelessly worked to fulfil his duty with the pinnacle being the Inaugural Annual African student-led law reviews conference held on 31 October 2025. Jimmy with the help of several Board members, was able to bring together 16 law reviews and a knowledgeable array of panelists to establish collaborative frameworks for editorial excellence, ethical publishing practices, and mutual recognition across African jurisdictions, with the goal ultimate goal of consolidation and longevity of student-led law reviews as vital contributors to African legal knowledge production. Jimmy also ensured we continue our altruistic duty (that which was done to us, so should we do to others), of helping establish and/or revive student-led law reviews in Kenya: Kisii University Editorial Committee, *Daystar Law Review*, *Moi University Law Journal* that recently published its latest volume and most recently Catholic University of East Africa. I thank you Jimmy!

Special thanks to the different section editors – Victoria Ogochukwu Okeke, George Njogu Murimi, Pawi Sylvian Fortune, Laetitia wa Nciko Nabintu – who took up their new roles with zeal and ensured that the manuscripts in their various sections were well-edited and relevant for our journal. Particularly, I thank Gabriel David Jimenez Benavides for your consistent commitment and striking editorial reviews as

our first Associate Editor outside of Kabarak University. You and Elena Catalina Villarreal Sánchez, are fruits of our project to internationalise the Editorial Board and you have truly been a wonderful addition.

Alongside the Editorial Board, our Advisory Board, led by the chairperson Mr Delbert Ochola, played a pivotal role in bringing this volume to life. Their unwavering commitment and leadership has been instrumental in shaping this volume. Immense gratitude to our esteemed Advisory Board members: Chief Justice (Emeritus) Prof Willy Mutunga, Lady Justice Teresia Matheka, Dr Jonathan Rindolmsom Kabré, Hon Yusuf Shikanda, Dr Rosemary Mwanza, Mr Abdullahi Ali, Mr Arnold Nciko, Prof John Osogo Ambani and our two new members, Ms Ilana le Roux and Mr Isaac Ibikunle. Your availability, consistent commitment, support and wisdom have been the driving force behind this volume as has been in previous volumes.

It would be remiss not to thank the indomitable Humphrey Sipalla, our publisher, guardian, and mentor. You unrequitedly hold our hands and guide our paths in this sacred duty of editing. Through endearment, you mould us and advise us. We sincerely thank you! Special thanks to Laureen Mukami Nyamu, former Editor-in-Chief (Volume 2) and KABU Press graduate intern for 2025, and Salome Cheptoo Tonui the incoming KABU Press graduate intern for 2026, for your revise-edits of this volume. We truly indebted to you. I also thank Judge Ben Kioko for penning down the Foreword to this volume. Your words inspire us. I thank you for putting up with my many questions about our issue theme and my many reminders on submitting the Foreword. We are eternally grateful.

Lastly, this tireless journey would not have succeeded without the guidance of our esteemed Dean, Professor John Osogo Ambani, who has nurtured the *Kabarak Law Review* from its earliest foundations, witnessing it grow, strengthen, and find its stride as a thriving publication. Thank you for equally consistently penning down forewords to all the previous volumes and this one included.

I close with a word of encouragement to the 2026 Editorial Board, associates, and editorial trainees. Our positionality as student-editors, is liminal, precious yet still, taxing. We ought to understand this. Many a time, you will tire, the thoughts of stepping back will tempt you but I write this to buoy your spirits. This commitment you undertake is not merely a duty; it is a craft, a cultivation of rigour, resilience, and vision. There will be long nights, debates that test patience, and moments when progress feels slow, yet each challenge is a step toward mastery and collective impact. Remember that your labour shapes not just a journal, but a legacy of thought, discourse, and integrity – civilisation. When weariness comes, let it remind you not of the burden, but of the significance of the path you tread. Stand firm, support one another, and let the weight of the task remind you of its value, for it is in enduring the trials that your contributions will shine brightest.

Elvis Mogesa Ongiri
Editor-in-Chief, *Kabarak Law Review*, Volume 4
Kabarak, December 2025