‘Legitimacy, Public International Law and Intractable Problems’

Inaugural Lecture

Professor Dr. Thoko Kaime

I. Introduction

Dear reader,

I would like to thank you for taking the time to learn more about me, my career path, and my work in public international law which I presented during my Inaugural Lecture. I gave this Lecture as part of the official commencement as Chairholder at the Chair of African Legal Studies at the Faculty of Law, Business and Economics, University of Bayreuth in November 2021.[1] The text that follows below is an adapted version of the speech which I delivered on this occasion. It highlights my personal experiences and insights which I have gained along my way in exploring the intersection between human rights, cultural legitimacy, and international law. For most of my career, I have sought ways to connect individuals and polities to the mechanics of international law, be it in the context of human rights or sustainable development. My preoccupying question has always been: how does state action on the international plane matter for individuals at the grassroots? In my speech, I share some stories on how my work has attempted to realise this mission.

[1] I would like to thank all my colleagues at African Legal Studies for their tremendous work in building this Chair. If you wish to watch my original Inaugural Lecture, I invite you to do so with the following link: <https://www.youtube.com/watch?v=Os_MLi6tzO8>.

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II. About Me

My name is Thoko Kaime. I am from Bangwe, a Township on the edge of Blantyre City in Malawi. As a bright-eyed lawyer fresh out of law school,[2] I fancied myself the quintessential commercial lawyer. Busy running contract litigation and other private law stuff. My contemporaries and I imagined ourselves heading some big commercial law firm in the future.

But as they often say: 'life happens', and for me it really did happen. Overwork quickly led to burnout whereupon my principals recommended that I perhaps take a break from legal practice. Whilst this conversation was going on, an opportunity came along to undertake a master's degree in human rights at the University of Pretoria.[3] For me, it was a nice way to take a long holiday in a foreign country whilst making some new friends along the way without spending the money I did not have. Little did I know that this would be one of the most defining events of my life. Masters completed, I rushed back home to continue my commercial lawyer life but something was missing. It was just impossible for me to not wonder about the global human rights project. What did these rights mean; what promises did they hold for those who could not speak or identify with the formalist language in which they were couched; or whether it was possible to articulate these ideas in locally recognisable forms whilst keeping true to the normative prescriptions that we call international human rights. I knew at this point that I wanted to know a little more about human rights; particularly the idea of articulating human rights principles in forms and structures that were readily recognisable by the communities towards whom these messages were addressed.

III. Human Rights, Culture, and Legitimacy

My preoccupation with children's rights and culture began after I attended a master's class on the subject at the University of Western Cape in South Africa under the tutelage of Julia Sloth-Nielsen. Her introduction into the subject was nothing short of outstanding. She was able to draw from her experiences in developing child law not just in South Africa but in many other jurisdictions across the globe and at the international level. The course offered immediately useful skills for anyone engaged in child rights work.

2 LLB at the Faculty of Law, Chancellor College, University of Malawi.

3 LLM in Human Rights and Democratisation in Africa (HRDA) at the Centre for Human Rights, University of Pretoria.

Yet, despite this depth of knowledge, I still struggled with the place of this category of rights at the local level, beyond the state-centric measures that are so capable of logical examination. What were children's rights inside children's families, where tangled webs of considerations are in play?

Unable to shake these doubts, I decided to write a note to myself outlining my thoughts regarding culture and children's rights. This note metamorphosed into an article, and subsequently into a multi-year PhD inquiry into the cultural legitimacy of children's rights undertaken at SOAS University of London. Right at the outset, I discussed my ideas with Frans Viljoen, and then subsequently, Fareda Banda, two of the greatest teachers I have ever met. Our discussions quickly revealed that it was not possible to undertake this sort of inquiry without going to the field and asking questions to children, parents, teachers, and other community members. It is this introduction to the field that has influenced my legal analysis of children's rights.

My first book is an outcome of my socio-legal inquiry into the human rights of African children and claims as its focus the first and only regional treaty on children's rights: The African Children's Charter.[4] Following the Charter's concomitant focus on universal children's rights principles as well as local traditions and practices. Article 1 of the African Children's Charter calls upon all state parties to recognise the rights, freedoms, and duties enshrined in the Children's Charter and to undertake all necessary steps to adopt measures that will give effect to the Charter. At the same time, Section 5 of the Preamble states that the concept of the rights and welfare of the child should be characterised and inspired by 'the virtues of their (African) cultural heritage, historical background and the values of the African civilization'. By positing African culture and civilisation as the inspiration for the protection and promotion of the rights and welfare of the child, the African Children's Charter considers the need for cultural legitimacy in implementing children's rights standards and of the need for enhancing it where cultural support is weak. The appeal to tradition and African civilisation is meant to increase the sense of ownership of the African Children's Charter as well as of the standards which it elaborates and thereby enhance the legitimacy of the rights and welfare of the child. In this regard, the African Children's Charter attempts to strike a balance between the need for recognition of universal human rights standards on the one hand and of the need to respect local values on the other. Conse-

4 Thoko Kaime, The African Charter in the Rights and Welfare of the Child. A Socio-Legal Perspective (Pretoria: Pretoria University Law Press 2009).

quently, the book centres itself on two aspects: first, providing a coherent analysis of the concept of culture and, second, demonstrating how it relates to children's rights protection and to elucidate the concept of cultural legitimacy to explain how this concept affects public policy action in favour of the protection and promotion of children's rights.

Culture plays a very crucial role in all human societies whatever their level of socio-economic conditions, religious or ideological orientation, or forms of political organisation. To be human is to have been enculturated to some specific culture whose characteristics have been internalised. The cross-cultural theorist Abdullahi Ahmed An-Na'im suggests that we use the term culture in what he calls 'its widest meaning', denoting 'that of the totality of values, institutions and forms of behaviour transmitted within a society, as well as the material goods produced by men [and women] […] this wide concept of culture covers *Weltanschauung* (worldview), ideologies and cognitive behaviour.'[5]

Whilst this view of culture is fundamentally correct, it is vital to avoid conceptualising culture 'as a static, homogeneous, and bounded entity defined by its specific "traits"'. Evidence from the field indicates that cultures are not quantifiable things that sometimes happen to come into contact with each other. Instead, culture is at once a dynamic process and specific practice without discrete boundaries.[6]

One benefit of conceptualising children's rights as a set of cultural practices is that such a stance emphasises their adaptability. Because the African Children's Charter lays down only minimum standards which are stated in the broadest terms, each act of application requires modification and adjustment. As such, children's rights standards must certainly be moulded by the exigencies of local culture taking into consideration the specific dynamics of the community concerned.[7]

How then does the issue of legitimacy fit into the analysis?

Cultural legitimacy denotes the quality of being in conformity with the accepted principles or rules and standards of a particular culture. The defining characteristic of cultural legitimacy is the authority and reverence derived from internal validity. A culturally legitimate norm, rule, or value is respected and observed by members of the particular culture, presumably because it is assumed to bring benefits (whether real or imagined, tangible or intangible) to the members of that particular culture. The corollary of this is that a rule

5 Abdullahi Ahmed An-Na'im, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press 1992), 23.

6 Kaime (n. 4), 32.

7 Kaime (n. 4), 33.

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or norm which does not command adequate legitimacy will not enjoy sufficient observance or support. Such a rule is more likely to be breached than observed.

As was noted above, the difficulties in implementing children's rights standards as charted down in the African Children's Charter derive in part from the insufficiency of cultural support for the set of social practices that comprise the particular claims or rights. The level of cultural support for any particular norm on the rights and welfare of the child will be different at the international, regional, national, and local level. Whilst strategies for securing the cultural legitimacy at any of these levels will be aimed at the same result: the enjoyment of the rights by children; the strategies employed at any of these levels will be different to suit the dynamics of the context under consideration.

There are benefits associated with seeking to raise the cultural legitimacy of children's rights within the various African states that have subscribed to the standards promulgated by the African Children's Charter. In the first place, enhancing the cultural legitimacy of children's rights motivates individuals and communities to take action in favour of the rights and welfare of the child as this is now viewed as a legitimate goal or interest. Secondly, the mobilisation of individuals influences political forces within the community, thereby inducing those in power to accept accountability for the implementation and enforcement of the rights and welfare of the child.

Based on the above observations about the issue of how legitimacy fits into the analysis, it is concluded that the protection of children's rights is not a concept which is alien to African traditional culture. Consequently, international human rights principles relating to the protection of the child do find support within both the African cultural conception of human rights and the construction of childhood. In short, children's rights discourse is a culturally legitimate enterprise within the African cultural context.

I really enjoyed working on this book, particularly finding the alternative languages in which human rights could be addressed. For me, as a typical common law, black letter lawyer, the learning curve was steep as it was enlightening. My personal conclusion, away from the scientific findings that I had postulated, was that to make children's rights useful, it was important to look beyond the formal systems that I had been so thoroughly trained in and see the pathways embedded in societal structures. Yes, it is important to bring cases to the African Commission on Human Rights or the African Court of Human Rights or present state reports to continental and global human rights bodies but is it not even better to weave these normative prescriptions into the lived reality of the people?

These were interesting questions, but once this project was over, I quickly went back to private practice. This time at a consulting firm in London Town. Again, my belief that I was a commercial lawyer first and foremost meant I could not wait to get back to doing commercial lawyer stuff.

But at the back of my mind, these questions about the alternative languages in which human rights find expression kept nagging me. I wanted to understand how expressions of supposedly universal normative prescriptions take hold in day to day life – beyond the strictures of legal practice so to speak.

Two major events happened whilst I worked in London. First, I was asked by Philippe Cullet to contribute to teaching on environmental law at my beloved School of Oriental and African Studies at the University of London and through this connection I maintained 'my reluctant' connection in academia. I say reluctant but I was only too happy to crash into other people's conferences and workshops as well as undertake a spot of writing and publishing much to the bemusement of my colleagues and bosses. Yes, quite the quintessential commercial lawyer, you would say. As I juggled my double life in London, I quickly discovered that human rights training was like the priesthood. You may leave midstream, but you cannot unlearn to be a priest. It is weird to look back but my Thursday teaching sessions at SOAS were the best part of my week. The second major event that happened during this time was that I was offered the opportunity to begin my academic career in earnest by Rosalind Malcolm at the University of Surrey. I remember in our first conversation she asked me what I wanted to teach and I eagerly said public international law. Her response? Public international lawyers were 3 a penny, she said and that since I was a common lawyer I would teach contracts, property law, and jurisprudence. Still, I claimed space at Surrey to think a little more about these questions that I had mentioned earlier: how to look beyond the formal protection systems and what this means for children's rights?

IV. 'Vernacularising' Human Rights Institutions

Now I have been often asked why a lawyer steps away from the strictures of legal fiat and concerns oneself with inquiries that are perhaps best reserved for anthropologists or sociologists. These questions are often asked by folks who do not have the benefit of my context and experience. In the place that I come from, formal legal systems were often imposed by outsiders, and despite a history of independence, their reach is short and uneven. Yet, there

are competing normative systems that have been side-lined just because they are 'informal'. These so-called informal systems have carried the people for thousands of years and despite earnest attempts by the colonisers' legal systems to delete them, they still rise. They still work. For me, incorporating these systems in the protection and promotion of human rights is a no-brainer. I think it is necessary work.

My second book 'The Convention on the Rights of the Child: A Cultural Legitimacy approach' gave me the opportunity to explore this idea further, to investigate how the cultural legitimacy of children's rights could be raised through an institutionalist critique of the structures designed to implement this category of rights.[8] The departure point of the book is Article 44 of the Convention on the Rights of the Child (CRC) which provides that: 'every state party to the Convention undertakes to submit to the Committee periodical reports on the measures that the state party has put in place to give effect to provisions of the Convention'. The Committee on the Rights of the Child ('Children's Committee' or 'Committee') has extensive powers under the state reporting system. The Committee's mandate extends to examining any information that is relevant to the issue of implementing children's rights.

Under the CRC, the formal protection of children's rights relies on a mixture of both domestic and supranational processes. Central to the operation of the supranational processes is the role of the Committee which is given the general mandate of promoting and protecting the rights enshrined in the Convention. In particular, the Committee is charged with the duty of examining the progress made by states in achieving the realisation of the rights enshrined in the Convention. This task is fulfilled through the exercise of the Committee's principal function: the examination of state reports. With regard to the domestic processes, which constitute the second limb of the formal implementation processes, states that are parties to the Convention commit to respect and ensure the rights enshrined in the Convention to each child within their jurisdiction. In particular, states are required to undertake all appropriate legislative, administrative, and other measures for the implementation of the CRC's prescriptions. Thus, the Convention envisages that states parties to it will incorporate its provisions in their constitutions or national legislation as well as through policy development and implementation. Both the domestic and supranational implementation activities are aimed at the domestication of the CRC into local law. The singling out of

8 Thoko Kaime, *The Convention on the Rights of the Child: A Cultural Legitimacy Critique* (Groningen: Europa Law Publishing 2011).

'legislative' and 'administrative' measures in Article 4 of the Convention is not by accident but indicates a preference for state-centred measures that focus on parliamentary processes and formal government institutions and the resulting legal structures that enforce children's rights. Thus, the main thrust of the formal mechanisms is to put in place structures that ensure the legal justiciability of the Convention's various principles.

However, because of various structural and institutional reasons, legal protection strategies that focus on domestication and justiciability may be slow in raising the cultural legitimacy of children's rights. Notwithstanding procedural differences amongst the various legal protection mechanisms at both the domestic and supranational level, narrowly conceived legal protection comes down to justiciability. This model of children's rights protection requires the court or tribunal to identify an individual victim, the wrongdoer and then to pronounce a remedy for the violation. According to this model of children's rights protection, when children or their representatives believe that rights have been violated, the aggrieved party may institute a claim for redress before a court of law or tribunal. If the issue is not settled out of court, a trial may follow whereby the court will determine whether a violation has occurred and direct the implementation of appropriate remedy. For example, if a child proves that she is being denied access to education by a particular state policy or actions of state employees, a court will direct that the offending policy be discontinued or order that state officials refrain from implementing or effecting the policy.

It is clear from the example given above that this conception of legal protection presupposes that the violation of children's rights is the exception rather than the rule, because the slow and often expensive process of judicial vindication of rights on a case by case basis cannot ably cope with systematic violations or competently tackle the systemic absence of cultural legitimacy for certain children's rights principles.

There are various reasons for this rather pessimistic outlook. Effective legal protection assumes the existence of several factors that favour the proper adjudication of human rights disputes. These factors include a certain degree of political stability, economic resources, institutional capacity, and the willingness to resort to the courts for the enforcement of children's rights, for instance.[9]

9 Kaime (n. 8), 138. For further information, for instance: See generally, Matías Iaryczower, Pablo T. Spiller and Tommasi Mariano, 'Judicial Decision-Making in Unstable Environments: The Argentine Supreme Court, 1936-1998', AJPS 46 (2002), 699-716; See generally, John Mukum Mbaku, 'Bureaucratic Corruption in Africa: The Futility of Cleanups', Cato Journal 16 (1996), 99-118.

Strict adherence to the legal protection model discourages the development of a more harmonious relationship between children's rights and culture concentrating as it does on the state sanctioned machinery for the vindication of rights. Such approaches assume that the possibility of the realisation of children's rights does not exist in local practice or custom and can be found only in alternatives offered by national legislation or the international children's rights regime. This rendering of implementation efforts presents various theoretical as well as practical difficulties. First, it assumes a radical disjuncture between the sphere of custom and the sphere of formal law and institutions, thereby obscuring the active role that state apparatus plays in shaping cultural norms at the local level and vice-versa. Second, the assumption that local practices offer no basis for children's rights pre-empts an open-minded assessment of local practice and institutions, which assessment could lead to the recognition and utilisation of whatever positive openings are presented by general principles of fairness and justice in a community's value system.[10]

I do not propose ignoring legal protection as a means of securing the promotion and protection of the rights of the child. Rather it is proposed that the focus of implementation models also be shifted to 'other measures' as stipulated under Article 4 of the Convention. The open-ended nature of the provision allows for imaginative responses tailored to suit local situations and help achieve broader, more affordable, accessible, and inclusive protection regimes aimed at raising the cultural legitimacy of children's rights. Such an approach is also clearly in line with the call that consideration must be taken of local traditions and cultural values in the promotion and protection of children's rights.[11]

V. Beyond Children's Rights – Towards a Legitimacy Theory of Public International Law

At Surrey, when the teaching roll was called, I was pleasantly surprised to find out that despite Rosalind Malcolm's mortal threats against public international law, my teaching obligations included public international law, international environmental law, and jurisprudence. Additionally, she also asked me to serve as deputy director for the Environmental and Regulatory Research Group.

10 Kaime (n. 8), 139.
11 Kaime (n. 8), 140.

What these concentrated roles offered me was the opportunity to further think about the questions on legitimacy and apply them to institutions beyond human rights practice. I was able to do so in a broader way because there too, the level of contestation and challenge between normative ideals and practice was really solid. In particular, I was curious about the possibilities offered by a general theory of legitimacy in public international law – something a number of scholars such as Mattias Kumm and Chris Thomas were working on.

There are several reasons for undertaking such work. First, the subject matter of international law has expanded significantly. Today, there is significant overlap between the kind of questions that traditionally have been addressed by states as domestic concerns and the kind of questions that international law addresses. The negotiation of international rules creates pressures to harmonise other regulatory choices. Thus, for example, trade issues addressed in the context of the World Trade Organization are no longer conceived as involving exclusively economic questions. There are pressures to link it to environmental concerns and human rights. International law, then, has been the handmaiden of denationalisation by having generated an increasingly dense set of substantive rules that directly concern questions traditionally decided by national legal processes. Second, the procedure by which international law is generated increasingly attenuates the link between state consent and the existence of an obligation under international law. Traditionally international legal obligations arose either because of specific treaty obligations assumed by states ratifying the treaty or as a matter of customary international law reflecting long-standing customary practice of states. Treaties today, though still binding only on those who ratify them, increasingly delegate powers to treaty-based bodies with a quasi-legislative or quasi-judicial character. Within their circumscribed subject-matter jurisdiction, these bodies are authorised under the treaty to develop and determine the specific content of the obligations that states are under. This means that, though states have consented to the treaty as a framework for dealing with a specified range of issues, once they have signed on, the specific rights and obligations are determined without their consent by these treaty-based bodies.

It is therefore doubtful that much legitimating value can be placed on a state's consent to a treaty, when the state is confronted with a take it or leave it option and the costs of not participating are prohibitively high.

So, in the context of this changing reality of the reach of public international law beyond states to regular pedestrians like myself, how then should citizens engage international law? To what extent should they see themselves

constrained by it and design domestic institutions so that compliance with international law is assured? To what extent should they see themselves free to disregard it and design institutions to ensure the desired flexibility? If a duty to obey international law is a function of its legitimacy, how should such legitimacy be assessed?

In a series of five journal articles between 2011 and 2015,[12] I developed a discursive framework for establishing this particular one. Through these works which focused primarily on sustainability governance, three core dimensions of a discursive institutionalist framework of legitimacy in international law can be identified.

First, Input Legitimacy. This refers to the notion that those being ruled should have something to say in the policy- making process. In a representative democracy, input is secured through the right to vote and assures the accountability of decision-makers to those whom they represent.[13] Input legitimacy is one of the most difficult to achieve in international norm creation. Firstly, the absence of strong transnational interest representation leads to decision-making that is not informed by the interests of those affected. Secondly, and most significantly in regard to global issues such as climate, those affected by a decision are often not represented in the decision-making process.[14]

Second, Throughput Legitimacy. This refers to the quality of the process by which rules are determined. To ensure throughput legitimacy, it is important that it is clear who is responsible for which decisions. From a democratic theory perspective, a legitimate decision-making process also cannot simply rely on majority voting but must involve deliberative processes in which individual interests are subjected to public scrutiny. Thus, to secure throughput legitimacy, it is essential that at the international level

12 Thoko Kaime, '*International Climate Change Law and Policy: Cultural Legitimacy in Adaptation and Mitigation'* (London: Routledge 2014); Thoko Kaime, '*Cultural Legitimacy and Regulatory Transitions for Climate Change, International Climate Change Law and Policy: Cultural Legitimacy in Adaptation and Mitigation*' (London: Routledge 2014), 29; Thoko Kaime and Robert L. Glicksman, 'An International Legal Framework for SE4ALL: Human Rights and Sustainable Development in Law Imperatives', (Fordham Int'l L. J. 38 (2015), 1405-1444; Thoko Kaime, '*Cultural Legitimacy and International Law and Policy on Climate Change: an Introduction, International Climate Change Law and Policy*', (London: Routledge 2014), 1-6; Thoko Kaime, '*Democracy, Legitimacy and International Climate Change Law and Policy*', '*International Climate Change Law and Policy: Cultural Legitimacy in Adaptation and Mitigation*', (London: Routledge 2014), 206-219.

13 Kaime, '*Cultural Legitimacy and Regulatory Transitions for Climate Change, International Climate Change Law and Policy: Cultural Legitimacy in Adaptation and Mitigation*' (London: Routledge 2014), 29, 326.

14 As above n. 13.

decisions are not simply made through diplomatic bargaining, but via a process of deliberative argumentation in which individual interests are scrutinised and debated in regard to their justifiability.[15]

Third, Output Legitimacy. This refers to the substantial quality of rules themselves. This is an important aspect of the concept of legitimacy since even a system which follows a legitimate process in its decision-making but produces unacceptable outcomes must be considered illegitimate. Its subjects will not voluntarily comply with its rules.[16]

Now if this theoretical construction sounds so far from the daily international law concerns of citizens, it is because it actually is. I will give an example from climate change:

VI. Legitimacy and the International Climate Change Regime

Because of its tremendous temporal and spatial scope, climate change poses profound regulatory issues. Significant transboundary effects and spatially differentiated effects make it highly desirable that international regulatory mechanisms are utilised in order to arrive at effective mitigation and adaptation solutions.[17] Yet, the different spaces that states occupy in terms of causation and effect makes agreement on what must be regulated through international mechanisms and indeed how to regulate such subject matter very difficult.

The adaptation and mitigation strategies proposed by governments and non-governmental organisations (NGOs) are likely to require radical and fundamental shifts in socio-political structures, technological and economic systems, organisational forms, and modes of regulation. The sheer volume of law and policy emanating from the international level makes it uncertain which type of regulatory or policy framework is likely to have a positive impact. As a result, climate change is not just an environmental problem requiring technical and regulatory solutions; it is a cultural arena in which a variety of stakeholders – state agencies, firms, industry associations, NGOs, and local communities – engage in contestation as well as collaboration over the form and substance of evolving regimes of governance. The success or failure of pro-

15 As above n. 13.

16 As above n. 13.

17 Thoko Kaime, '*International Climate Change Law and Policy: Cultural Legitimacy in Adaptation and Mitigation*', (London: Routledge 2014).

posed measures will depend on their acceptability within the local constituencies within which they are sought to be applied. Therefore, there is an urgent need to better comprehend and theorise the role of cultural legitimacy in the choice and effectiveness of international legal and policy interventions aimed at tackling the impact of climate change. In this regard, it is crucial to recognise that legitimacy critiques of international climate change regulation have the capacity to positively influence policy trends and legal choices.

Now, whilst the subject matter of my book about International Climate Change Law and Policy[18] was extremely relevant for current debates relating to the efficacy of a fast-evolving climate change regime; for me its importance was less about applying theories of legitimacy to public international law and more about how we learn together, how we think together and co-produce knowledge on matters of importance in public international law. Working on this book allowed me the privilege to assemble a team across disciplines and try to learn and think about climate change: a crucial problem of international legal policy contributes to that. As public international law becomes ever more expansive, it is clear that legitimacy critique as a framework of inquiry will continue to hold an important place in international rule-making and policy implementation.

What started out as a modestly funded project at Surrey's Environmental and Regulatory Research Group gave me the opportunity to establish a network of colleagues who have had a profound impact not only on the way I think about the law but also on how I teach. More importantly, our community of practice has influenced the choices that I have made in public international law focusing on legitimacy critiques. This is a formula that I have had the opportunity to deploy on repeat at Surrey, at Leicester, and all the way to Essex. Through this work, I found my tribe.

VII. The Chair of African Legal Studies

My tribe continues expanding here in Bayreuth. I have met several fellow travellers who are committed to fight for social justice, anti-racism, and any form of discrimination. Looking ahead, I have chosen to focus my work on tackling intractable problems of international law. These are so defined because of the apparent difficulties to resolve them despite an ever-growing framework of treaties and institutions dedicated to their resolution. There are a number of obvious examples: such as child labour, human trafficking,

18 As above n. 17.

Lesbian, Gay, Bisexual, Trans, Inter, Queer (LGBTIQ), and racial inequality. One must ask, why despite the establishment of these extensive legal frameworks, do violations of these rights still persist on a large scale?

Whilst it is tempting to analyse these failures of international law at a theoretical level, this can never be sufficient because the grounded factors that prevent full compliance are almost always outside of the law. Even though it is hard for us as lawyers to accept. Consequently, it is important to pursue a grounded research agenda in understanding why these attempts at regulation continue to fail. And sometimes fail at a massive scale. What are the factors that are holding back the legitimacy of these internationally accepted normative standards? And what can be done to achieve durable compliance with these standards? Of these intractable problems, racism, particularly its systemic and institutional manifestations, have a particular urgency for me as a black person way beyond international law. It affects my sense of place in the world, in Bayreuth, and at my University. In 2020, at the height of the Black Lives Matter (BLM) demonstrations following the murder of George Floyd, I was asked by a prominent German international law blog to write my opinions about non-discrimination, my experience as an African and an African scholar in England and now in Germany. As I reflected on this, it struck me how little progress has been made despite tremendous strides in the legal and institutional protection of human rights, specifically non-discrimination. I grapple with the question why there is such a huge disparity between the legal framework and the incidence of human rights violations based on one's race? What can be done to close the gap between the formal protection as against the lived reality of citizens?

I concede the continuation of neo-colonial structures in the making and implementation of public international law makes the extension of legitimacy critique rather urgent. Research and teaching must provide the tools for a sustained examination and deconstruction of international law's claim to abstract universality, to properly provincialise the Eurocentric approach in public international law and to give space to alternative voices.

I see African Legal Studies as my launching ground to undertake these tasks. I am joined by interlocutors from several disciplines with whom I hope to figure out workable solutions because it is clear that the law is not enough.

VIII. Update from 2023

Some time has now passed since the inaugural and the business of teaching and doing research has allowed us to implement some of our planned pro-

jects. For example, the Intractable Problems of Human Rights Project <https://www.africanlegalstudies.uni-bayreuth.de/en/research/IntractableProblems/index.html> reflects our continuing quest for legitimacy in local legal orders, bringing as it does grounded methods to tackling some enduring problems of human rights. Our engagement with the process of the Somali Constitutional Review allows us to prioritise local and indigenous legal systems in the making of the Constitution. Furthermore, we created the African Legal Studies Blog <https://africanlegalstudies.blog/> where scholars, students and practitioners analyse key issues in African politics, law, and development. Indeed, as we ramp up our work on anti-racism, we will remain steadfast in our mission to make a difference through and within international law.[19]

19 Additionally, I would like to thank the Faculty of Law of the University of Bayreuth and the 'Africa Multiple – Cluster of Excellence' for their cooperation and support.