

Decolonizing the Classroom: Towards Dismantling the Legacies of Colonialism & Incorporating TWAIL into the Teaching of International Law in Kenya

By: Florence Shako*

Abstract

The colonial encounter largely shaped the African continent and Kenya was no exception. In Kenya, formal western education was introduced by the missionaries as part of the civilising mission and continued to evolve in the post-colonial state with the establishment of universities offering legal programs. Core in the curricula of these law undergraduate and postgraduate programs are international law courses such as public international law, international criminal law, international commercial law, international trade law, inter alia. The objective of offering international law courses is to enable students to appreciate traditional aspects of international law as well as modern aspects such as globalization and their relevance in today's world. However, international law is mainly taught from a European perspective with the bulk of the textbooks utilized in these law programs written by European scholars. The literature used and the pedagogy adopted in the teaching of international law remains rife with exclusions and distortions of indigenous knowledge, voices, critiques and scholars. This article analyzes the potential of decolonizing the approach to the teaching of international law that is prevalent in law schools in Kenya. This article will analyze the mainstream narrative that is taught in the international law curricula and why it is problematic. Through the lens of Third World Approaches to International Law (TWAIL), this article argues for the teaching of international law in a manner which allows students to critically engage with its doctrines. This article will analyze the TWAIL theory of law and the potential for its incorporation into the teaching of international law with the aim of understanding the exclusions of the African perspective. The author will analyze why the use of TWAIL can aid in deconstructing western narratives and incorporate indigenous viewpoints into the classroom with the aim of decolonization. The author concludes by reflecting on third world visions of international law which can be integrated into the law curricula in Kenya and its wider implications for the study of international law going forward.

1. Introduction

Classrooms in law schools are one of the sites where the legacies of colonialism are perpetuated. In Kenya, the international law curricula adopted in various law schools is riddled with exclusions and distortions in its narrative and this results in a pedagogy that is less than ideal for students who ought to be engaging in critical thinking. Processes of exclusion in higher education are difficult to unpack as they are underscored by the complex dynamics of class, gender and race.¹ Experiences are complex and relational and are located at the intersection of structure, culture and agency.²

However, this article is at its core about the danger of a single story. Chimamanda Ngozi Adichie's words, in a TED talk that she gave ten years ago in 2009, ring true as this research evolves...

“So after I had spent some years in the US as an African, I began to understand my roommate's response to me. If I had not grown up in Nigeria, and if all I knew about Africa were from popular images, then I too would think that Africa was a place of beautiful landscapes, beautiful animals and incomprehensible people fighting senseless wars, dying of poverty and AIDS, unable to speak for themselves, and waiting to be saved by a kind, white foreigner ... This single story of Africa ultimately

* Law Faculty at Riara Law School; http://www.riarauniversity.ac.ke/law/index.php/our_team/florence-shako

¹ Heidi Safia Mirza 'Decolonizing Higher Education: Black Feminism and the Intersectionality of Race and Gender' [Fall 2014] *Journal of Feminist Scholarship* 7, 6-7.

² *Ibid.*

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comes, I think, from Western literature. Now, here is a quote from the writing of a London merchant called John Locke who sailed to West Africa in 1561 and kept a fascinating account of his voyage. After referring to the black Africans as beasts who have no houses, he writes, 'They are also people without heads, having their mouths and eyes in their breasts.' Now I have laughed every time I have read this and one must admire the imagination of John Locke. But what is important about his writing is that it represents the beginning of a tradition of telling African stories in the West, a tradition of sub-Saharan Africa as a place of negatives, of difference, of darkness, of people who, in the words of the wonderful poet, Rudyard Kipling, are 'half devil, half child'. And so, I began to realize that my American roommate must have, throughout her life, seen and heard different versions of this single story ...

Now, what if my roommate knew about my friend Fumi Onda, a fearless woman who hosts a TV show in Lagos, and is determined to tell the stories that we prefer to forget? What if my roommate knew about the heart procedure that was performed in the Lagos hospital last week? What if my roommate knew about contemporary Nigerian music? Talented people singing in English and Pidgin, and Igbo and Yoruba and Ijo, mixing influences from Jay-Z to Fela to Bob Marley to their grandfathers. What if my roommate knew about the female lawyer who recently went to court in Nigeria to challenge a ridiculous law that required women to get their husband's consent before renewing their passports? What if my roommate knew about Nollywood, full of innovative people making films despite great technical odds? Films so popular that they really are the best example of Nigerians consuming what they produce. What if my roommate knew about my wonderfully ambitious hair braider, who has just started her own business selling hair extensions? Or about the millions of other Nigerians who start businesses and sometimes fail, but continue to nurse ambition?

... So that is how to create a single story. Show a people as one thing, as only one thing over and over again, and that is what they become... The single story creates stereotypes, and the problem with stereotypes is not that they are untrue but they are incomplete. They make one story become the only story."³

The story of international law is one such narrative, where only a single story, the European story, exists in the international law curricula in Kenyan law schools. The literature utilized in these classrooms is heavily from a European perspective which results in the silencing of the African voice and the perpetuation of distorted and/or incomplete narratives. The pedagogy used therefore remains rife with exclusions and distortions of indigenous knowledge, voices, critiques and scholars. This article will delve into the concept of decolonizing the classroom in law schools in Kenya; attempting to begin to dismantle the legacies of colonialism still apparent in the international law curricula.

The first part of this paper will analyze the mainstream narrative that is taught in international legal scholarship and why it is problematic. The second part will evaluate the possibility of incorporating the Third World Approaches to International Law (TWAIL) theory of law into the understanding of international law to enable students to have a more inclusive understanding of international law. This does not mean throwing the baby away with the bath water, but instead means exposing students to TWAIL doctrines to enable them to have a more inclusive understanding of international law. The third part of this research will consider why the use of TWAIL can be used to deconstruct western narratives and incorporate indigenous viewpoints into the classroom with the aim of decolonization. The research concludes not by reflecting on what a decolonized

³ Chimamanda Adichie, <https://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story> accessed 14 May 2019.

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classroom looks like and its wider implications for the study of international law. The author suggests that attempting to dismantle the legacies of colonialism in the teaching of international law will necessarily include the incorporation of TWAIL and the deconstruction of western narratives to include African voices, African knowledge and critiques and African scholars. This article hopes to encourage a more critical understanding of international law and perhaps ultimately, tell more than one story.

2. The Mainstream Narrative

In the international law curricula in law schools in Kenya, one will find what this article refers to as the mainstream narrative of international law being disseminated. International law is often taught by first reflecting on its historical background which has its roots in the colonial period. A law student undertaking any strand of international law is expected to understand the history, sources and main concepts of international law. One of the core concepts is that of state sovereignty and it is usually discussed early on as part of the foundational aspects of the discipline.

The concept of an international community made up of sovereign States is the basis of the intellectual framework for international law.⁴ Antony Anghie in his book *Imperialism, Sovereignty and the Making of International Law* explains that in attempting to formulate a new, scientific international law, the jurists of the nineteenth century articulated a formalist model of sovereignty; sovereignty as an absolute set of powers which was bound by no higher authority and which was properly detached from all the imprecise claims of morality and justice.⁵ Herein began the exclusion of the Third World within this very framework of 'sovereignty.'

The interaction between European and non-European societies in the colonial encounter was not an interaction between equal sovereign states but between sovereign European states and non-European states denied sovereignty.⁶ The conventional way of accounting for this relationship is by recourse to the recognition doctrine, and to the story of the 'expansion of international society' - an ambiguous, euphemistic and somewhat misleading term when it is understood that this refers not to an open process by which the autonomy and integrity of non-European states were accepted, but to the colonial process by which African societies were made to accept European standards as the price of membership.⁷

This means that the sovereign European states were deemed to be civilized while the non-European states which were denied their sovereignty were viewed as uncivilized and hence the narrative of Africa as a Dark Continent emerged. For the uncivilized non-European states to gain sovereignty, they had to adopt European culture, laws and practices. Their own way of life would have to be abandoned or subjugated as it was viewed as barbaric. The process of colonization would therefore be a 'saviour' of the Dark Continent.

Therefore, in the teaching of international law, when the concept of sovereignty is discussed as one of the principles which must be understood at a foundational level, its conceptualization is already problematic. This problematic framework is the backdrop against which the story of colonialism is understood. The subjugation of indigenous institutions and mechanisms was part of the European justification of the colonization of Africa - that it was its moral duty to 'uplift' Africans from their primitive state.⁸ The *civilizing mission* was to ensure that the so-called Dark Continent was brought into the light. The *civilizing mission* operated by characterizing non-European peoples as the 'other' - the barbaric, the backward, the violent - who must be civilized,

⁴ Christoph Schreuer, 'The Waning of the Sovereign State: Towards a New Paradigm for International Law?' [1993] *European Journal of International Law* 4, 447.

⁵ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2004) 101.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Vincent Khapoya, *The African Experience: An Introduction* (4th edn, Routledge 2016) 106.

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redeemed, developed and pacified.⁹ Race played a crucially important role in constructing and defining the ‘other.’¹⁰ This concept of the *civilizing mission* justified the continuous intervention by the West in the affairs of Third World societies and provided the moral basis for the economic exploitation of the Third World that was an essential part of colonialism.¹¹ These ideas of the civilized versus the uncivilized, the idea of the ‘other’ helped to shape the dominant understanding of international legal scholarship. It also helped to justify any violent interventions in the Third World as it was viewed as the price that had to be paid to transform the uncivilized to the civilized.

Therefore, as students are taught about empire, the story unfolds from the point of view of the colonizer. The economic exploitation of the country and the intense violence during the colonial period is minimized and the focus turns on how Kenya developed ergo became *civilized* under colonial rule. This understanding of empire is distorted and excludes the narratives of violence meted out against the people, the loss of land to the settler community, the fight by the Mau Mau to reclaim the right to self-rule and the domino effect to-date of this economic exploitation. The story of colonialism in the dominant narrative excludes the legitimacy of African customs, beliefs and practices which pre-existed empire. This narrative further perpetuates the myth that European culture is superior to African culture and these viewpoints continue to manifest in the post-colonial state. A critical pedagogy employed in the study of international law would not only look at the point of view of the colonizer but also that of the colonized and further understand how there might have been points of inter-dependence in this relationship.

Another lens through which this mainstream narrative is perpetuated is through the dynamic of difference. For Anghie, the dynamic of difference, particularly of cultural difference between Europeans and non-Europeans, was an important impetus in the generation of some of the defining doctrinal problems of international law.¹² Anghie shows how the legacy of the dynamic of difference was embodied in international legal innovations such as the mandate and trusteeship systems, while all the time seeking to obscure its colonial origins, its connections with inequalities and exploitation inherent in the colonial encounter.¹³

The impact of this is that the dominant international legal scholarship, while legitimate in its own right and agenda obscures its origins in empire and the resultant inequalities which were perpetuated. It unwittingly silences the African voice and indigenous perspectives not only of empire but of today’s comprehension of the happenings in the international realm. The legacies of subjugation of the African culture continues and in the classroom, the African experience is ignored or minimized. When students are engaging with international law doctrines, they are seemingly in a ‘global’ space yet indigenous voices, critiques and scholars are either wholly excluded or continually subjugated.

Albert Memmi in his book *The Colonizer and the Colonized* speaks of the ‘mummification of the colonized society’ which implies that even when a nation has won its freedom, the relics of colonisation remain and sometimes grow even stronger, resulting in a kind of neo-colonisation by the elite sections of society; those sections which have appropriated the cultures of the coloniser to such an extent that they seek to propagate it as both modern and inevitable.¹⁴ Acknowledging the class compulsions of the process of colonization, Memmi further points to the fact that, the root of colonisation is the economic disparity that is cultivated assiduously

⁹ Antony Anghie and B.S. Chimni, ‘Third World Approaches to International Law and Individual Responsibility in Internal Conflicts’ [2003] *Chinese Journal of International Law*, 85.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² James T. Gathii, ‘TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography’ [2011] 3 *Trade Law & Development* 26, 31

¹³ *Ibid.*

¹⁴ Albert Memmi, *The Colonizer and the Colonized* (first published 1974, EarthScan Publications Ltd 2003) 142

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between the rulers and the ruled.¹⁵ Therefore, in addition to racial differences, cultural and class differences are an integral part of the understanding of international law today and the post-colonial state. It is important that as critical thinkers, students are exposed to a more than one narrative of international law and are exposed to a Third World perspective. One of the ways to do this is by exploring the possibility of including the Third World Approaches to International Law (TWAIL) theory of law into the international law curricula of various law programs.

3. Third World Approaches to International Law (TWAIL) Theory of Law

As Makau Mutua once stated, TWAIL is not a recent phenomenon.¹⁶ Broadly speaking, TWAIL scholars are united in their opposition to the politics of empire.¹⁷ TWAIL is an alternative narrative of international law that has developed in opposition to the realities of domination and subordination prevalent in the international legal apparatus.¹⁸ Therefore, TWAIL presents an alternative view of international law other than that which has dominantly been elucidated in international legal scholarship.

Eslava and Pahuja note: ‘Although there is arguably no single theoretical approach which unites TWAIL scholars, they share both a sensibility and a political orientation. TWAIL is therefore defined by a commonality of concerns which center on attempting to attune the operation of international law to those sites and subjects that have traditionally been positioned as the “others of international law”.’¹⁹

TWAIL is therefore an approach which allows those in the global south to tell their stories from their perspectives and provides an alternative perspective of international legal scholarship. This theory endeavours to reconstruct international law and give audience to those voices that have long been silenced in the dominant narratives. The ‘others of international law’ have always been those states in the global south which were perceived as non-sovereign and hence uncivilized and barbaric.

While seeking to reconstruct international law, TWAIL’s approach to the discipline is based on a philosophy of suspicion because it sees international law in terms of its history of complicity with colonialism, a complicity that continues now in various ways with the phenomenon of neocolonialism, the identifiable and systematic pattern whereby the North seeks to assert and maintain its economic, military and political superiority.²⁰

In understanding TWAIL, reference is made to the Third World. In a purely descriptive sense, Third World is frequently used interchangeably with other terms such as ‘less-developed’, ‘developing’ or ‘under-developed countries’ and increasingly, ‘the South’; referring to countries of Africa, Asia and Latin America that have traditionally been classified as lagging behind the ‘West’, ‘North’, ‘First World’ or ‘developed countries’ in terms of economic growth and indicators of economic prosperity.²¹ Karin Mickelson notes that the term Third World could also be used to designate a political coalition, much like any other grouping of states in pursuit of common goals but further notes that all these characterizations of the Third World are somewhat problematic.²²

¹⁵ Ibid

¹⁶ Makau Mutua, ‘What is TWAIL’ [2000] Proceedings of the American Society of International Law Annual Meeting 94, 31.

¹⁷ B.S. Chimni ‘The World of TWAIL: Introduction to the Special Issue’ [2011] Trade, Law and Development, Volume 3(1), 17-18.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Antony Anghie and B.S. Chimni, ‘Third World Approaches to International Law and Individual Responsibility in Internal Conflicts’ [2003] Chinese Journal of International Law, 96.

²¹ Karin Mickelson, ‘Rhetoric and Rage: Third World Voices in International Legal Discourse’ [1998] Wisconsin International Law Journal, 16(2), 356.

²² Ibid.

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She suggests that the Third World would better be characterized as occupying a historically constituted, alternative and oppositional stance within the international system.²³

The characterization of the Third World either from a political or economic standpoint still remains problematic to date with some scholars viewing it as outdated. There exists a further debate on whether speaking of the Third World in general terms properly deals with the issues specific to Africa and whether there is a need to rethink TWAIL in such terms. Perhaps there is need to develop an African Approach to International Law and think through what its constituent parts or features would be and its uniqueness as compared to the overall TWAIL theory. It is safe to say that there is not one universally acceptable meaning of the term Third World. In this article, it refers to those countries in the Global South.

TWAIL has also been referred to as an *approach* to international law. There has been a debate on whether TWAIL is a theory or a methodology of analyzing international law and institutions. Obiora Okafor has suggested that TWAIL is a broad approach; *approach* encompassing both the theoretical and methodological dimensions and properties of TWAIL scholarship.²⁴ He explains that TWAIL is an approach that is intimately connected to the kinds of theoretical propositions that are generated from its application.²⁵ In this context, TWAIL is analyzed as an approach to the understanding of the dominant narrative of international law and this necessarily includes its theoretical propositions.

There are many different perceptions of TWAIL. It has developed over the years and different scholars have had different areas of focus in their analysis. Bhupinder Singh Chimni asserts that anyone may be part of the TWAIL movement, as there is no need to subscribe to a party program and in his opinion, it is a loose network of scholars whose work is animated with the concern to establish a truly universal international law that goes to promote a just global order.²⁶ This is true to the extent that any scholar can be a TWAIL-er in so far as they analyze international law from a Third World perspective, although whether this results in a universal international law remains to be seen.

According to Obiora Okafor, some strains of TWAIL are more oppositional than reconstructive, while others are more reconstructive than oppositional.²⁷ Some TWAIL scholars are avowed socialists (such as Bhupinder Chimni), but many are not; some can be seen as leaning toward post-structuralism (such as Rajagopal and Vasuki Nesiah), but many do not accept the poststructuralist label.²⁸ He further espouses that some are feminists (such as Celestine Nyamu, Sylvia Tamale, and Nesiah), but many are not.²⁹ Scholars can therefore write in different strands of international law using the TWAIL approach and integrate this approach with other legal theories in their various fields.

TWAIL can also be divided into TWAIL I and TWAIL II. In Chimni's opinion, TWAIL I was the analysis during the first decades after decolonization which noted the contribution of Third World communities to the evolution and development of international law, it recognized that the complete rejection of the rules of international law was not a feasible option, it aptly underlined the significance of sovereignty and non-

²³ Ibid.

²⁴ Obiora Chinedu Okafor, 'Critical Approaches to International Law (TWAIL): Theory, Methodology or Both?' [2008] *International Community Law Review* 10, 377.

²⁵ Ibid.

²⁶ Larissa Ramina, 'Framing the Concept of TWAIL: Third World Approaches to International Law' [2018] *Justica do Dirieto*, 32 (1), 6.

²⁷ Obiora Chinedu Okafor, 'Newness, Imperialism and International Legal Reform in Our Time: A TWAIL Perspective' [2005] *Osgoode Hall Law Journal*, 43(1/2), 176.

²⁸ Ibid.

²⁹ Ibid.

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intervention for colonized people, it recognized the potential of the United Nations to usher in an era of change and believed in a global coalition of Third World states.³⁰

He explains that TWAIL II is irreverent in its critique of dominant western scholarship and hopes to transform international law in the era of globalization from being a language of oppression to a language of emancipation.³¹ This shifts what he perceives as the agenda of TWAIL in contemporary international law scholarship.

Antony Anghie and Chimni delve into a further explanation of TWAIL II explaining that TWAIL II scholars have developed powerful critiques of the Third World nation-state, of the processes of its formation and its concern is also to identify and give voice to the people within Third World states - women, peasants, workers, minorities - who had been generally excluded from consideration by TWAIL I scholarship.³² TWAIL II scholars have also examined how the great projects of 'development' and nation-building promoted by international law and institutions and embraced in some form by Third World worked to the disadvantage of Third World peoples.³³ By simultaneously examining the Third World state critically and recognizing the possibility of using international law to promote the interests of Third World peoples, these TWAIL II positions on international human rights law differ from either mainstream or critical Northern views on human rights as well as from the views of Third World states themselves.³⁴

TWAIL therefore continues to evolve as more scholars from the Third World engage in critical legal scholarship. What remains constant is the need to voice international law doctrines from a Third World perspective and continuously question the agenda of western narratives that are dominantly perpetuated. Further there is need to understand international institutions and their agenda in light of the understanding of the Third World for a more just and inclusive global order. It is hoped that ultimately there will be a universal global order which takes into account not only the voices of the Global North but the increasing voices of the Global South.

However, TWAIL as an approach to international law has also faced some criticism in its propositions. One of the criticisms of TWAIL scholarship is that the TWAIL movement suffers from the paradox that its argumentative logic ultimately relies on the same underlying assumptions of the system it sought to transcend.³⁵

James Gathii also reference another critique of TWAIL and that is the false charge of nihilism. He explains that many scholars in Europe and North America have sometimes not responded very favourably to Third World scholarship and views of international law.³⁶ Gathii rightly notes that TWAIL scholars have a broad agenda of seeking to transform international law from being a language of oppression to a language of emancipation - a body of rules and practices that reflect and embody the struggles and aspirations of Third World peoples and which, thereby promotes truly global justice.³⁷

³⁰ B.S. Chimni, 'Towards a Radical Third World Approach to Contemporary International Law' [2002] *ICCLP Review*, 5(2), 16.

³¹ *Ibid.*

³² Antony Anghie and B.S. Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' [2003] *Chinese Journal of International Law*, 83.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ J. D. Haskell, 'TRAIL-ing TWAIL: Arguments and Blind Spots in Third World Approaches to International Law' [2014] *Canadian Journal of Law and Jurisprudence*, 32.

³⁶ James T. Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' [2011] *3 Trade Law & Development* 26, 43.

³⁷ *Ibid.*

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Despite its critiques, there is merit in considering the incorporation of TWAIL into international legal scholarship with the aim of deconstructing western narratives which have dominated for far too long. The international law curricular adopted in Kenyan law schools needs to be reviewed to enlighten students on critical legal scholarship and alternative views of international law and ultimately, decolonize the classroom.

4. Towards Decolonizing the Classroom

Decolonization does not fit into one neat definition. However, in this context it does not refer to political change but rather a cultural one. It refers to the fact that during empire, the culture of the people of Kenya was annihilated and subjugated in favour of that of the Europeans and how this has had ripple effects to date that must be addressed.

Decolonization includes deconstruction and reconstruction; self-determination and social justice; ethics, language and therefore the internationalization of indigenous experiences, history and critique.³⁸ Deconstruction and reconstruction concerns discarding what has been wrongly written, and interrogating distortions of people's life experiences, negative labelling, deficit theorizing, culturally deficient models that pathologized the colonized; Self-determination and social justice relates to the struggle by those who have been marginalized by the Western academy and about seeking legitimacy for knowledge that is embedded in their own histories, experiences and ways of viewing reality; Ethics relates to the formulation, legislation and dissemination of ethical issues related to the protection of indigenous knowledge systems and Language concerns the importance of teaching/learning in indigenous languages as part of the anti-imperialist struggle.³⁹

The introduction of western education during the period of empire was one of the methods utilized to fulfil the colonizer's agenda in the country. Colonialism's historical association with academia is characterized by a mutually dependent relationship that resulted in the establishment and development of bodies of knowledge to describe, regulate, and order the indigenous 'other' based on European frames of reference.⁴⁰ Functioning as part of the state apparatus that provided internal legitimacy and technical support to the process of colonization, learned institutions delivered the intellectual goods by providing pseudo-scientific justifications of racial superiority and *civilizing missions*.⁴¹ Eurocentric knowledge was disseminated as being superior and a way of civilizing the Africans whose indigenous knowledge was subjugated as barbaric and primitive.

Africans strongly reject the characterization of their legacy as primitive yet both the process of Western education and the normative equation of modernization with Westernization condition them to endorse the charge of backwardness.⁴² Worse still, their denial only succeeds in pushing the charge to the dark corners of the unconscious.⁴³ Modernity requires embracing western education which was introduced during empire but a lacuna persists in the teaching of international law. This is the fact that the curricular fails to embrace indigenous knowledge. The perception that African customs, African customary law and African views of international law are inferior is one of the legacies of colonialism which still persists to date. There can be no modernity without universality.

Educators are called upon to play a central role in constructing the conditions for a different kind of encounter, an encounter that both opposes ongoing colonization and that seeks to heal the social, cultural, and spiritual

³⁸ L. le Grange, 'Decolonizing the University Curriculum' *South African Journal of Higher Education*, [2016] 30 (2), 3.

³⁹ *Ibid.*

⁴⁰ Soenke Biermann, 'Knowledge, Power and Decolonization: Implications for Non-Indigenous Scholars, Researchers and Educators,' *Counterpoints*, Volume 379, Indigenous Philosophies and Critical Education, 390.

⁴¹ *Ibid.*

⁴² Messay Kebede, 'African Development and the Primacy of Mental Decolonization' [2011] *Philosophy and African Development: Theory and Practice*, 98.

⁴³ *Ibid.*

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ravages of colonial history.⁴⁴ This means presenting an alternative narrative of international law that resounds with the Third World and explains current happenings in the world from a Third World viewpoint; a narrative that critically analyzes the role and actions of international institutions to date.

As Ngugi wa Thiong'o stated, the biggest weapon wielded and actually daily unleashed by imperialism is the cultural bomb – the effect of annihilating a people's belief in their names, in their language, in their environment, in their heritage of struggle, in their unity, in their capacity and ultimately in themselves.⁴⁵ Therefore, while international law should be embraced in the law curricular, the exclusions and/or distortions in its mainstream narrative should not. Students undertaking international law should be exposed to critical legal scholarship with the aim of decolonizing the mind and helping them to embrace their African culture, their African heritage and ultimately, themselves.

This research therefore argues that one of the ways to dismantle the legacies of colonialism with the goal of decolonization of the classroom is to include critical theories of international law and not just the mainstream narrative. Incorporating a TWAIL analysis to the teaching of international law would be a good starting point to deconstruct western narratives. While learning international law, engaging with Third World scholarship and viewpoints should be ingrained in the foundation of critical pedagogical work.

In relation to decolonization of higher education, a robust critical pedagogical and engaged epistemology is the means of understanding and acting upon difference, problems, concerns and longstanding inequities.⁴⁶ Critical pedagogy can assist in asking questions that are far from the mainstream narrative but which resonate with the realities of the majority of the Third World.⁴⁷

This will necessitate a review of the international law curricula of law schools in Kenya in order to include indigenous knowledge, voices and scholars. African scholars should endeavour to engage with third world scholarship to be able to disseminate it to the student body. Embracing TWAIL and other critical legal scholarship would be a good way forward. Since there is no blueprint that is TWAIL, it is applicable in different strands of international law. What is at the core of TWAIL scholarship is the goal of transforming international law to include Third World perspectives and contribute to a more universal and inclusive story of international law. For example, when empire is taught as part of the history of international law, including the story of the colonized persons and their view of empire would be more inclusive.

This also places an obligation on African academics to publish more. Part of the reason why western literature is so dominant is that African scholars are not publishing from the point of view of the Third World. Academics should add their authentic voices to international law in order to develop indigenous knowledge. This research suggests a repository of critical readings to be developed in the Kenyan context that can help academics to share specifically Third World scholarship and exchange ideas. There is already amazing scholarship from renowned TWAIL scholars such as Antony Anghie, James Gathii, Obiora Okafor, Chimni, among many others, which can be a good reference or starting point. It further suggests that international law scholars should have forums to discuss the impact this would have on the content that they teach and to encourage one another to slowly infuse the curricular with African scholars, African cases and African voices.

⁴⁴ Vanessa Andreotti, Sharon Stein, Cash Ahenakew, Dallas Hunt, 'Mapping Interpretations of Decolonization in the Context of Higher Education' [2015] *Decolonization: Indigeneity, Education and Society*, 4 (1), 36.

⁴⁵ Ngugi wa Thiong'o, *Decolonising the Mind: The Politics of Language in African Literature*, (London: Portsmouth, N. H.: J. Currey; Heinemann 1986) 3.

⁴⁶ Ali A. Abdi (ed.), 'Decolonizing Philosophies of Education' [2012] Sense Publishers, 27.

⁴⁷ *Ibid.*

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Indigenous education is self-determined; engages distinctive indigenous methods, structures, and content; and encourages respect for indigenous knowledge and self-reliance and self-respect of indigenous peoples.⁴⁸ It addresses the social, cultural, pedagogic, and epistemological needs of indigenous communities and explores indigenous collective heritage and contributions to global education.⁴⁹ It enables an understanding of indigenous ancestors' mimetic consciousness as well as examination and critique of colonization.⁵⁰ Our pedagogies, like our epistemologies, are in relation to the worlds we know and experience. Students should be conditioned to appreciate indigenous knowledge as much as they appreciate western knowledge and sometimes this is a question of exposure to critical legal scholarship. The continuous subjugation of indigenous knowledge which is a legacy of colonialism must be dismantled.

5. Conclusion

The teaching of international law in Kenyan law schools has for a long time been plagued by exclusions and distortions of African voices and perspectives. The time has come to incorporate critical thinking into the curricula of international law with the goal of exposing students to more than one narrative of international law. This is a good starting point towards dismantling the legacies of colonialism and ultimately decolonizing the classroom.

Eurocentric narratives of sovereignty and the dynamic of difference have for far too long helped to perpetuate the views of the colonizer. As Anthony Anghie posited, 'doctrinal and institutional developments in international law cannot be understood as logical elaborations of a stable, philosophically conceived sovereignty doctrine but rather as being generated by problems relating to colonial order.'⁵¹ The colonial encounter has therefore helped to shape international law as understood today and to subjugate the African experience.

International law should also be understood from the perception of the colonized. What did the colonized experience during empire? Was empire about civilizing the African people or was it part of economic and political exploitation? What cultures and practices of the colonized people pre-existed empire and were they legitimate? These and other kinds of interventions would help students to engage critically with international legal scholarship.

International law lecturers in law schools in Kenya should therefore reflect on the need to incorporate more critical legal scholarship. This research suggests the incorporation of TWAIL as an approach which can be used to give a more inclusive understanding of international law, no matter the strand being taught. TWAIL does not have one universal blueprint that must be followed by scholars but at its core is the need to collectively transform international law and have a more universal and just global order.

Through this lens, there is a more inclusive critical engagement of different strands of international law. The Third World is no longer seen as barbaric and uncivilized but as legitimate in its own right and western narratives are dismantled and unpacked to give a clearer picture of their agenda in each context. The Third World voices are finally heard and the story of the colonized told.

Besides infusing TWAIL into the pedagogy adopted in law schools, scholars in Kenya should endeavour to publish more from the Third World perspective which will increase third world scholarship and third world voices in the international arena. This will help shed light on the Kenyan experience from the point of view of Kenyans. This will also serve as an example to the students to be proud of their culture and not view it as an

⁴⁸ Judy M. Iseke-Barnes, 'Pedagogies for Decolonizing' *Canadian Journal of Native Education*, 31 (1), 123.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ James T. Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' [2011] 3 *Trade Law & Development* 26, 31.

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inferior way of life that must be rejected in favour of ‘modernity.’ Perhaps scholars in different universities could maintain repositories of critical legal scholarship where they could share ideas and critical readings.

Decolonizing the mind is what will lead to decolonizing the classroom. Decolonizing the classroom would mean the infusion of TWAIL and other critical legal theories into the international law curricular in Kenyan law schools. It would mean having an alternative story of international law that is more inclusive and just.

There have been interesting conversations relating to an African approach to international law (AAIL). The starting point of TWAIL scholarship is the Third World and it is worth considering a more African approach whose starting point would be Africa. However, this would necessitate an understanding of its features and examples and is an area for future research. The Keba M’baye Conference held in Pretoria in December 2018 considered such questions and it will be interesting to see the scholarship resulting from these conversations going forward.

The mainstream story of international law cannot be the only story taught in law schools in Kenya as this subjugates and silences indigenous knowledge, voices, critiques and scholars. Law students should be exposed to critical legal scholarship and a more universal narrative of international law. The African story and even more specifically, the Kenyan story ought to be taught in the international law curricula because as Chimamanda Adichie so eloquently stated “*The single story creates stereotypes, and the problem with stereotypes is not that they are untrue but they are incomplete. They make one story become the only story.*”⁵²

⁵² Chimamanda Adichie, <https://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story> accessed 14 May 2019.