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## Reflections on the Value of Socio-Legal Approaches to International Economic Law in Africa

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# Reflections on the Value of Socio-Legal Approaches to International Economic Law in Africa

Olabisi D. Akinkugbe\*

## Abstract

*In their Lead Essay for the 2021 Chicago Journal of International Law Symposium, Daniel Abebe, Adam Chilton, and Tom Ginsburg offer an account of “the rise of the social science approach to international law, explain the basics of the method, and advocate for its continued adoption.” This Essay critically assesses how and why one might use socio-legally inspired methods (analytical, empirical, and normative) for the study of international economic law (IEL) in Africa. It illustrates the empirical method’s importance in understanding one of the most challenging aspects of the study of IEL in Africa: capturing the data and dynamism of informal cross-border trade phenomenon. It argues that, by conceptualizing IEL in Africa as a social phenomenon, socio-legal approaches open IEL in Africa to the application of other social science methods, which enables us to understand the context in which African regional trade agreements are implemented and their contribution to the scholarly field of IEL.*

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## I. INTRODUCTION

The growing attention to embedding empirical and theoretical analyses into legal scholarly work has raised concerns about whether legal scholars could borrow methods from social science research, adopting an interdisciplinary approach.<sup>1</sup> In their Lead Essay for the 2021 *Chicago Journal of International Law* Symposium, Daniel Abebe, Adam Chilton, and Tom Ginsburg<sup>2</sup> offer an account of “the rise of the social science approach to international law, explain the basics of the method, and advocate for its continued adoption.”<sup>3</sup> They advocate for an approach with the goal of accounting for “how international law works in practice.”<sup>4</sup> This Essay builds on their analysis and focuses on international economic law (IEL)<sup>5</sup> as a subfield of international law.<sup>6</sup> More specifically, this Essay takes up Abebe, Chilton, and Ginsburg’s invitation and builds upon their perspective to reflect on the value of socio-legal approaches in deepening our knowledge of IEL and its variations in Africa.

This Essay critically assesses how and why one might use socio-legally inspired methods (analytical, empirical, and normative) for the study of IEL in Africa. It illustrates the empirical method’s importance in understanding one of the most challenging aspects of the study of IEL in Africa: capturing the data and dynamism of informal cross-border trade (ICBT) phenomenon. It argues that, by conceptualizing IEL in Africa as a social phenomenon, socio-legal approaches open IEL in Africa to the application of other social science methods, which enables us to understand the *context* in which African regional trade agreements

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<sup>1</sup> See, e.g., T. Brettel Dawson, *Legal Research in a Social Science Setting: The Problem of Method*, 14 DALHOUSIE L.J. 445 (1992).

<sup>2</sup> Daniel Abebe, Adam Chilton & Tom Ginsburg, *The Social Science Approach to International Law*, 22 CHI. J. INT’L L. 1 (2021).

<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.*

<sup>5</sup> I define international economic law (IEL) as the international law of trade agreements regulating cross- and trans-border transactions in goods, services, investments, and intellectual property, both in the formal and informal economic sense. Similar to Detlev F. Vagts, I exclude private international law and economic warfare. See Detlev F. Vagts, *International Economic Law and the American Journal of International Law*, 100 AM. J. INT’L L. 769 (2006) (discussing the history of international economic law since the *American Journal of International Law* was first published in 1907).

<sup>6</sup> For example, Joel Trachtman advocates for a “total de-fragmentation” and “a full integration of the field of trade law with every other kind of international law.” Joel P. Trachtman, *Functionalism, Fragmentation, and the Future of International (Trade) Law*, 20 J. WORLD INV. & TRADE 15, 16 (2019). On the debate regarding whether the World Trade Organization (WTO) is part of public international law, see Joost Pauwelyn, *The Role of Public International Law in the WTO: How Far Can We Go?*, 95 AM. J. INT’L L. 535 (2001); Joel P. Trachtman, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, 98 AM. J. INT’L L. 855 (reviewing Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law* (2003)).

(RTAs) are implemented.<sup>7</sup> The empirical socio-legal approach to IEL in Africa pluralizes the false universal narratives of conventional IEL. It deepens our understanding of the informal cross-border networks that characterize African trade regimes. As James Thuo Gathii has noted, African RTAs are perceived as “flexible legal regimes” and platforms of cooperation and should be understood as such.<sup>8</sup>

This Essay contains three substantive sections. Section II explicates IEL in Africa as a social phenomenon. Section III focuses on the promise of a socio-legally inclined theoretical and empirical analysis for deepening our understanding of African trade regimes. Lastly, in Section IV, I synthesize this Essay’s core arguments and identify three challenges in the socio-legal analysis of informal trade in Africa: data collection, insufficient training in empirical analysis, and funding.<sup>9</sup>

## II. INTERNATIONAL ECONOMIC LAW IN AFRICA AS A SOCIAL PHENOMENON

Trade regimes in Africa are a socio-political, legal phenomenon and a form of social interaction. Suppose we want to fully understand the variations in regional economic communities in Africa. To do so, we must reach beyond the discipline of law to other social sciences such as political science, economic sociology, history, social conflict theory, and anthropology.<sup>10</sup> Thus, conceptualizing IEL in Africa as a social phenomenon is a multidisciplinary exercise. Consequently, IEL regimes in different regions are constituted by varying underlying socio-political, cultural, and historical factors. Whether in Europe, North America, Asia, Latin America, the Caribbean, or Africa, IEL involves a unique constellation of local conditions, forces, and factors that coalesce in the

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<sup>7</sup> Olabisi D. Akinkugbe, *Revisiting the Economic Community of West African States: A Socio-Legal Analysis* (2017) (Ph.D. thesis, University of Ottawa).

<sup>8</sup> See JAMES THUO GATHII, *AFRICAN REGIONAL TRADE AGREEMENTS AS LEGAL REGIMES* 1 (2011); Olabisi D. Akinkugbe, *Theorizing Developmental Regionalism in Narratives of African Regional Trade Agreements (RTAs)*, 1 *AFR. J. INT’L ECON. L.* 297 (2020).

<sup>9</sup> Gregory Shaffer and Tom Ginsburg speak aptly of the “structural tilt in the ability of larger states and interests within them to shape and deploy World Trade Organization (WTO) rules to advance their interests, directly and diffusely, through using material, ideological, and institutional resources.” Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 *AM. J. INT’L L.* 1, 32 (2012).

<sup>10</sup> Clair Gammage, *(Re)conceptualising International Economic Law: A Socio-Legal Approach to Regionalism*, in *SOCIO-LEGAL APPROACHES TO INTERNATIONAL ECONOMIC LAW: TEXT, CONTEXT, SUBTEXT* (Amanda Perry-Kessaris ed., 2013); Amanda Perry-Kessaris, *What Does It Mean to Take a Socio-Legal Approach to International Economic Law?*, in *SOCIO-LEGAL APPROACHES TO INTERNATIONAL ECONOMIC LAW: TEXT, CONTEXT, SUBTEXT*, *supra* note 10.

mantra: context matters.<sup>11</sup> Further, the effectiveness of the regulation of economic interactions in IEL through trade agreements (in social fields) should not be assumed.

As a multidisciplinary method, socio-legal approaches focus on the mutually constitutive interaction between law and society. Generally, socio-legal approaches deepen our understanding of the role of law and legal institutions in social interactions,<sup>12</sup> but their methodologies may vary.<sup>13</sup> Some conventional socio-legal methods focus on the conceptual analysis of legal phenomena to understand the nature of law, its relationship to society, and how legal institutions function.<sup>14</sup> The utility of this approach lies in the ways it widens our understanding of the effectiveness of public institutions—such as courts and the broader social reforms that their decisions engender beyond strict implementation.<sup>15</sup> Others provide a detailed empirical examination of the research problem under study, combining qualitative and quantitative research methods. For instance, using semi-structured interviews and participant observations to gather data for a more sophisticated and interpretive analysis of law and legal institutions' interconnectedness.<sup>16</sup> Data and information gathered based on semi-structured interviews provide firsthand information that fills existing scholarship gaps and generates new theoretical explanations inductively.<sup>17</sup> Another strand of research

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<sup>11</sup> As Celine Tan aptly puts it,

the self-referential lens of formalist legal theory focusing on purely textual and interpretive aspects of international rules and institutions fail to account for their contemporary context . . . . It is only with the aid of a socio-legal eye that we can capture the constitutive function of law, especially how law influences modes of thought, which in turn shapes the conduct of legal actors.

Celine Tan, *Navigating New Landscapes: Socio-Legal Mapping of Plurality and Power in International Economic Law*, in SOCIO-LEGAL APPROACHES TO INTERNATIONAL ECONOMIC LAW: TEXT, CONTEXT, SUBTEXT, *supra* note 10, at 26.

<sup>12</sup> See Lisa Webley, *The Why and How to of Conducting a Socio-Legal Empirical Research Project*, in ROUTLEDGE HANDBOOK OF SOCIO-LEGAL THEORY AND METHODS 58 (Naomi Creutzfeldt et al. eds., 2019).

<sup>13</sup> See, e.g., Paddy Hillyard, *Law's Empire: Socio-legal Empirical Research in the Twenty-First Century*, 34 J.L. & SOC'Y 266 (2007).

<sup>14</sup> See, e.g., Roger Cotterrell, *The Sociological Concept of Law*, 10 J. L. & SOC'Y 241 (1983).

<sup>15</sup> See generally Olabisi D. Akinkugbe, *Towards an Analyses of the Mega-Political Jurisprudence of the ECOWAS Community Court of Justice*, in THE PERFORMANCE OF AFRICA'S INT'L COURTS 149 (James Thuo Gathii ed., 2020) (contending that incorporating the social, political, economic contexts that gave rise to disputes and their uses afterwards as levers for socio-political reform—even when the parties do not win—widens our understanding of the judicialization of mega-political disputes in ways that the traditional analyses do not).

<sup>16</sup> See, e.g., LUIS ESLAVA, LOCAL SPACE, GLOBAL LIFE: THE EVERYDAY OPERATION OF INTERNATIONAL LAW AND DEVELOPMENT 52 (2015).

<sup>17</sup> See Titilayo Adebola, *Intellectual Property Rights for Plant Varieties in Nigeria: Critical Reflections on TWAIL, Empirical and Comparative Methodologies*, AFRONOMICSLAW (Jan. 22, 2020), <https://perma.cc/QDN7-S4YF>.

combines legal and social science theoretical approaches to analyze asymmetry in the interaction of trade actors and the “hidden social, cultural and political consequences of economic transactions and relationships . . . that are framed in formalistic legal language.”<sup>18</sup>

Integrating social science techniques—and notably, socio-legal approaches—in the research of IEL is not new.<sup>19</sup> In spite of the increasing demand for, and the potential of, socio-legal research,<sup>20</sup> the formalist approach to understanding IEL dominates the study of conventional, or ‘mainstream,’ IEL. International legal scholars in this mode are concerned with the set of rules of the global trade regime that guide and constrain governments’ behaviors.<sup>21</sup> However, the study of IEL in Africa through socio-legal methods remains underexplored. In the African context, IEL is intricately interwoven into African societies’ historical, political, social, and economic peculiarities and diversity. As a result, the conventional, formalist, and doctrinal approaches do not effectively capture the heterogeneity of African trade regimes. As Büthe and Kigwiru note, research on African IEL grounded in theoretical and empirical analysis, particularly by African scholars, is scarce.<sup>22</sup> This leads to a significant blind spot in our understanding of IEL.

Demystifying the false universal pretenses of conventional IEL is, however, not a prerogative of socio-legal scholarship.<sup>23</sup> Therefore, this Essay does not suggest the primacy of the socio-legal approach over other methods. Instead,

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<sup>18</sup> Clair Gammage, *Critical Perspectives of International Economic Law*, AFRONOMICSLAW (Jan. 15, 2020), <https://perma.cc/FU6Z-D1VF>.

<sup>19</sup> See generally SOCIO-LEGAL APPROACHES TO INTERNATIONAL ECONOMIC LAW: TEXT, CONTEXT, SUBTEXT, *supra* note 10 (focusing on the distinctive virtues and vices of socio-legal approaches by identifying and interrogating three [analytical, empirical, normative] approaches to law and locating socio-legal approaches to international economic law along the stretch); INTERNATIONAL ECONOMIC LAW: THE STATE AND FUTURE OF THE DISCIPLINE (Colin B. Picker et al. eds., 2008); see also Moshe Hirsch, *The Sociology of International Economic Law: Sociological Analysis of the Regulation of Regional Trade Agreements in the World Trading System*, 19 EUR. J. INT’L L. 277 (2008).

<sup>20</sup> Stuart A. Nagel, *Law and the Social Sciences: What Can Social Science Contribute?*, 51 ABA J. 356 (1965).

<sup>21</sup> See Gathii, *supra* note 8; Gregory Shaffer, *A New Legal Realism: Method in International Economic Law Scholarship*, in INTERNATIONAL ECONOMIC LAW: THE STATE AND FUTURE OF THE DISCIPLINE 29, *supra* note 19, at 29–42 (classifying the varieties of IEL scholarship into formalist/doctrinal, normative/activist, theoretical/analytical, and empirical while arguing for a new legal realist empirical approach to the study of IEL).

<sup>22</sup> See Tim Büthe & Vellore Kigwiru, *The Spread of Competition Law and Policy in Africa: A Research Agenda*, 1 AFR. J. INT’L ECON. L. 41, 42 (2020).

<sup>23</sup> Third World Approaches to International Law (TWAAIL) is an active arena where scholars have exposed the biases of conventional international law. Also, Cecilia Juliana Flores Elizondo’s fascinating analysis examines the question: “Can a reflexive law approach facilitate the construction of an international economic law that is just, in the sense that it balances economic and wider social interests and values?” See Cecilia Juliana Flores Elizondo, *Reflexive International Economic Law: Balancing Economic and Social Goals in the Construction of Law*, in SOCIO-LEGAL APPROACHES TO INTERNATIONAL ECONOMIC LAW: TEXT, CONTEXT, SUBTEXT, *supra* note 10, at 118–32.

socio-legal approaches include diverse perspectives that consider the relationship between law, economy, and society.<sup>24</sup>

The underlying factor that unifies the different methods is the desire to broaden our understanding of the law by integrating socio-political contexts.<sup>25</sup> But socio-legal methods deepen the *contextual* understanding of formal and informal African trade regimes' heterogeneity, while revealing the precarity of ICBT in Africa, which helps inform policymaking. Perspectives that are rooted in socio-legal analysis, whether qualitative or quantitative, in combination with disciplines in broader social science (for example, politics, sociology, anthropology, ethnography, and history), highlight the constitutive power of IEL in Africa, the norms underpinning cross-border trade, and their embeddedness in social relations. In short, theoretical and empirical socio-legal research with a focus on the informal economy in Africa, when linked to policy, will enhance the expanded purpose of trade agreements for social inclusion.<sup>26</sup>

### III. THE PROMISE OF SOCIO-LEGALLY INCLINED EMPIRICAL METHODS FOR DEEPENING UNDERSTANDING OF TRADE REGIMES IN AFRICA

African IEL as a social phenomenon, like law, is not static. Instead, it is constitutive, changing, and embodies fundamental principles that reflect and shape society's values. IEL in Africa has evolved and been shaped not only by colonialism and post-colonial realities but also by social conflict within the region, economic orthodoxies, externalities, and regional struggle for power. Envisioning African IEL as a social phenomenon opens the pathway to reimagining different aspects of the field that have constrained ideas from the periphery.<sup>27</sup> It opens up space for a deeper understanding of the variations, norms, standards, principles, processes, and practices of African IEL and their interaction with the Western or traditional processes on their own terms. The emergent interaction will likely improve the global community's economic and social governance.

A socio-legal approach to IEL enables us to discern and appreciate the significance of two key related trends. *First*, the existence of emergent sites of normative authority for international economic rules and regulations outside the

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<sup>24</sup> For recent publications that explore the “socio” and “legal” in “socio-legal” research, see generally EXPLORING THE ‘SOCIO’ OF SOCIO-LEGAL STUDIES (Demnot Feenon ed., 2013); EXPLORING THE ‘LEGAL’ IN SOCIO-LEGAL STUDIES (David Cowan & Daniel Wincott eds., 2015).

<sup>25</sup> Akinkugbe, *supra* note 7.

<sup>26</sup> Gregory Shaffer, *Retooling Trade Agreements for Social Inclusion*, 1 U. ILL. L. REV. 2 (2019).

<sup>27</sup> Gammage, *supra* note 10, at 67 (“Moving away from the notion of the Westphalian state, these socio-cultural theories offer an alternative model of regionalism that conceptualise trade as a social phenomenon.”).

traditional interstate system.<sup>28</sup> And *second*, the shifting modalities of power in global economic governance that enable dominant actors to embed and globalize their models of economic organization. In the latter mode, innovative ideas and norms about African IEL can influence or inform changes in mainstream IEL.

In this section, I outline six opportunities and three challenges facing the implementation of socio-legal analyses in African IEL, specifically in the context of ICBT.

### A. Opportunities for Socio-Legal Analyses of African IEL

First, an empirically grounded socio-legal approach illuminates how socio-political, historical, and cultural factors influence and shape Africa's international economic interactions. African countries trade more with countries outside the continent. A significant level of intra-African trade occurs in the *informal* economy.<sup>29</sup> Although the IEL regime on intra-African trade is dominated by ICBT, the influence of ICBT on legal policy, negotiation, design, and interpretation of trade agreements has been minimal. There is a critical lack of research to inform policy. Unfilled, this critical void perpetuates a stereotype of failure and ineffectiveness of IEL in Africa. The socio-legal approach to IEL in Africa offers an important avenue for the systematic documentation of the regime of informal economy in Africa. An empirically informed analysis would show the multiplicity of legal orderings at the national and regional levels<sup>30</sup> and would explain the ineffectiveness in the formal aspects of regional integration in Africa.<sup>31</sup>

Second, the analytical and empirical assessment of data will enhance our understanding of the IEL regimes' performance. Hence, while practical work on formal aspects of intra-African trade abounds, the paucity of data and information on the practices of informal trade regimes in Africa is a source of concern for a holistic assessment of the regimes. The generation of consistent and reliable data on ICBT in Africa is essential for optimizing the gains of the sector and for policy

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<sup>28</sup> For how different legal orderings matter for our understanding of IEL in the indigenous context, see INDIGENOUS PEOPLES AND INTERNATIONAL TRADE: BUILDING EQUITABLE AND INCLUSIVE INTERNATIONAL TRADE AND INVESTMENT AGREEMENTS (John Burrows & Risa Schwartz eds., 2020); Sergio Puig, *International Indigenous Economic Law*, 52 U.C. DAVIS L. REV. 1243 (2019) (exploring the extent to which the main fields of international law that are tasked with promoting economic interdependence—international finance, investment, trade, and intellectual property—address the rights and interests of indigenous peoples).

<sup>29</sup> See NANCY BENJAMIN ET AL., *THE INFORMAL SECTOR IN FRANCOPHONE AFRICA: FIRM SIZE, PRODUCTIVITY, AND INSTITUTIONS* (2012).

<sup>30</sup> See, e.g., PEBERDY SALLY, *CALIBRATING INFORMAL CROSS-BORDER TRADE IN SOUTHERN AFRICA* (2015).

<sup>31</sup> See, e.g., Sami Bensassi, Joachim Jarreau & Cristina Mitaritonna, *Regional Integration and Informal Trade in Africa: Evidence from Benin's Borders*, 28 J. AFR. ECON. 89 (2019) (empirically analyzing the relationship between trade barriers and informality of trade based on recording informal and formal CBT flows between Benin and its direct neighbors).

making. However, many African states do not collect ICBT data on a regular and systematic basis.<sup>32</sup> For example, as it relates to the COVID-19 pandemic, a contextual analysis is emerging that advances our understanding of the impact on informal markets.<sup>33</sup> The informal economy is vulnerable to suffering more from the negative implications of external shocks. With the shutdown of borders, the socio-economic impact of COVID-19 on the informal sector and its actors and their performance during the pandemic will be enriched by socio-legal methods.

Third, socio-legal analysis of IEL improves our understanding of the heterodox trade regimes in Africa. ICBT in Africa is often homogenized in the literature, but it is heterogeneous. The heterogeneity of ICBT is interconnected with local skills, resources, and geographic conditions, among other factors.<sup>34</sup> An empirically informed socio-legal analysis will help tease out the practices of each sector. In the context of the Agreement Establishing the African Continental Free Trade Area,<sup>35</sup> empirical methods in socio-legal analysis will exemplify the heterogeneity of ICBT in Africa and provide a clearer understanding of the dynamics in specific sectors, regional variations in cross-border practices, informal trade between neighboring states, movement of persons, goods and services as well as which goods and services to mention a few. In effect, the outcome of such a method will likely yield more effective policy making.

Fourth, socio-legal method for the study of IEL in Africa illuminates our understanding of the actors' perceptions of trade regimes—specifically, how they may influence institutional changes and inclusive development. One of the recipes that has been suggested for African trade policy is the formalization of the informal economy in trade agreements. Formalizing ICBT in Africa may attenuate the precarity of the sector and its actors. The perennial problems encountered at the borders that contribute to the growth of ICBT can be better understood through socio-legal methods of research.<sup>36</sup> Empirical data on the factors that lead to the incessant border challenges and their costs are germane to illuminating Africa's trade policy making. ICBT is rooted in long standing indigenous trade

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<sup>32</sup> Rwanda and Uganda are the exceptions in this regard. See AFRICAN EXPORT-IMPORT BANK, AFRICAN TRADE REPORT 2020: INFORMAL CROSS-BORDER TRADE IN AFRICA IN THE CONTEXT OF THE AFCFTA 17 (2020).

<sup>33</sup> Various ongoing country projects have been commissioned that focus on resilience of the informal sector in light of the COVID-19 pandemic. See, e.g., Nathan Fiala & Jörg Peters, *Resilience and Recovery: The Economic Impact of COVID-19 on the Informal Sector in Uganda*, <https://perma.cc/5UAM-7QY5>; Jessica Gottlieb & Adrienne LeBas, *Resilience & Risk in the Informal Sector: Responses to Economic & Security Risks of COVID-19 in Lagos, Nigeria*, <https://perma.cc/P77H-9EBX>.

<sup>34</sup> See Eldrede Kahiya & Djavlonbek Kadirov, *Informal Cross Border Trade as a Substratum Marketing System: A Review and Conceptual Framework*, 40 J. MACROMARKETING 88 (2020).

<sup>35</sup> Agreement Establishing the African Continental Free Trade Area, adopted Mar. 21, 2018 (entered into force May 30, 2019).

<sup>36</sup> See generally Erick Mwakibete, *The EAC and the Never Ending Cross-Border Headaches*, THE CITIZEN (Mar. 14, 2021), <https://perma.cc/V9PY-N72N>.

practices of African communities.<sup>37</sup> It also predates the artificial division of African communities into states as a result of the colonial encounter. As such, ICBT is critical to deepening inclusive trade and sustainable development in Africa. Consequently, policy making based on the incorporation of the experiences and perspectives of the actors would be important to sustaining trade and cultural linkages.

Fifth, socio-legal approaches in African IEL provide an opportunity to generate theoretical frameworks that implicitly examine research from African perspectives. The process of developing theories occurs through the case studies, hypothesis analysis and observation of the repetitive patterns of phenomenon.<sup>38</sup> In Africa, the discourse of decolonizing IEL's embedded universalism and Eurocentricity is still unraveling. Mainstream narrative of IEL belies the heterogeneity of methods, approaches, and conceptualizations of international economic law across regions and spaces. To date, Eurocentric theoretical frameworks have dominated research on African IEL. While focusing on methods are useful, they do not do the work that belongs to theory in research. The quest for theory-building offers a contextual understanding of the factors that drive the actual performance of informal trade and actor preference. Theorizing on the basis of such studies would gradually enhance, rather than position informal trade as an exception to mainstream studies of IEL. Studies of African IEL grounded in data collected from the continent will give insight to the consistent phenomenon in intra-African trade. Overtime, these ideas can be the basis of the development of theories that situate and effectively contextualize the phenomenon of formal and informal trade in Africa.<sup>39</sup> From an economic development dimension, the bottom-up theorizing of IEL complements other arguments that show the deficit of IEL in engaging processes that are attentive to local situations.<sup>40</sup>

Sixth, socio-legal approaches provide scholars of African IEL with a broader set of research tools. Data visualization, ethical considerations, reliability of data, and validity are concepts that many lawyers who base their research on secondary

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<sup>37</sup> See Stephen S. Golub & Jamie Hansen-Lewis, *Informal Trading Networks in West Africa: The Mourides of Senegal/ the Gambia and the Yoruba of Benin/ Nigeria in Benjamin and Mbaye*, in THE INFORMAL SECTOR IN FRANCOPHONE AFRICA: FIRM SIZE, PRODUCTIVITY, AND INSTITUTIONS, *supra* note 29, 173–93.

<sup>38</sup> Roberto Cipriani, *Empirical Data and Theory Construction: An Example of Application in Social Science Research*, 118 BULL. SOCIO. METHODOLOGY 73 (2013).

<sup>39</sup> See generally Richard Swedberg, *Theorizing in Sociology and Social Science: Turning to the Context of Discovery*, 41 THEORY & SOC'Y 1 (2012).

<sup>40</sup> Akinkugbe, *supra* note 7. See generally David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1062 WIS. L. REV. 1062 (1974).

data miss out on.<sup>41</sup> For example, the rise of digital trade has added to the complexity of African IEL.<sup>42</sup> Also, the normative foundations of IEL are expanded today by data governance.<sup>43</sup> Robust policy making on African IEL is significantly inhibited by the paucity of data on digital economy and data governance that are expanding the structure of IEL. Practically, this hinders researchers from formulating good research questions, hypotheses, sampling techniques, and theoretical frameworks to explain a particular outcome.

## B. Challenges Facing Socio-Legal Approaches to African IEL

For all its promises, empirically inclined socio-legal analysis of IEL in Africa engenders some challenges. The approach requires a lot of training and familiarity with the research tools of social scientists. The challenges are not unique to geographical boundaries. Legal scholars, untrained in the methods of social science, face this challenge globally. Hence, legal scholars “lack the tools of consequentialist social science empiricism, which are most importantly used to assess the social effects of rules.”<sup>44</sup> As such, there is a professional training dimension to this proposal. African law schools, institutes, and organizations must be willing to assist with the training required to undertake this form of research.<sup>45</sup>

The perennial challenge that scholars face across the world is that of funding for empirical research. Many African scholars may not easily afford the financing associated with comprehensive empirical research. Empirical research, which involves fieldwork and complicated software to analyze data, is costly. The assistance offered by a semi-structured interview that leverages technological opportunities is limited depending on the audience that is the focus of the research. One way to address the financial burden is more collaboration between Global North researchers and institutions and their Global South counterparts. This recommendation has potential ethical challenges. The power imbalance resulting from the provision of funds by the Global North institutions can easily become a challenge in relation to intellectual property and ownership of the research work. The challenges should not prevent institutions from the Global

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<sup>41</sup> See generally AMANDA PERRY-KESSARIS, *DOING SOCIOLEGAL RESEARCH IN DESIGN MODE* (forthcoming).

<sup>42</sup> See Franziska Sucker, *COVID-19 Pushes Digital Solutions and Deepens Digital Divides: What Role for African Digital Trade Law*, AFRONOMICSLAW (May 9, 2020), <https://perma.cc/VZ8E-RZKG>.

<sup>43</sup> See generally Neha Mishra, *International Trade Law Meets Data Ethics: A Brave New World*, 53 N.Y.U. J. INT'L. & POL. 303 (2021); Thomas Streinz, *RCEP's Contribution to Global Data Governance*, AFRONOMICSLAW (Feb 19, 2021), <https://perma.cc/FAT2-ZE4L>.

<sup>44</sup> Joel P. Trachtman, *International Economic Law Research: A Taxonomy*, in INTERNATIONAL ECONOMIC LAW: THE STATE AND FUTURE OF THE DISCIPLINE, *supra* note 19, at 43.

<sup>45</sup> The Cardiff Law and Global Justice socio-legal writing workshops for socio-legal scholars is an example of this initiative. See generally *Socio-Legal Journals Global South Initiative*, CARDIFF LAW AND GLOBAL JUSTICE, <https://perma.cc/JF9F-M7HQ>.

South and Global North from embracing the opportunities to collaborate. The key would be to ensure that it is done on equal terms.

Lastly, the promise of an empirically inclined socio-legal analysis is enriched by a theoretical framework. A theoretical framework is an ideological or practical lens that informs the researcher's understanding of the law. The theoretical framework permeates all aspects of the decision-making process and the analysis of the data. As such, it is essential. Global South scholars have a variety of critical theoretical approaches to draw on depending on their research's focus. Whether one chooses to answer a research question through one or a combination of feminism, political economy, Third World Approaches to International Law, comparative, or other approaches, the overall research must both account for how the theoretical approach is effectively accommodated by the data and illustrate the method.<sup>46</sup>

#### IV. CONCLUSION: EMPIRICALLY INFORMED RESEARCH FOR POLICY FORMATION

Africa's contemporary complex regime of trade agreements calls for a diversity of methods to tell its own unique narratives on its own terms. The ideal IEL research centers multidisciplinary approaches that weaves in theory (for example Third World Approaches to International Law) with the appropriate choice of method to illuminate our understanding of specific trade regimes. Such an approach focuses on the diversity of actors (focusing on gender and social inclusion), their social interactions in the formal and informal trade they co-constitute, and the legal institutions affected by these trade regimes. The ideal research will also seek to foreground the different legal orderings that are at work and the roles of law. For example, it would be interesting to know the legal orderings that are 'internal' to the social structure that supports ICBT in contrast to the 'external' legal ordering of the state and institutions that support formal trade regimes.

There is a significant opportunity for empirically inclined socio-legal research methods to produce insight and knowledge to inform trade policy in Africa. For

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<sup>46</sup> See, e.g., AMAKA VANNI, PATENT GAMES IN THE GLOBAL SOUTH: PHARMACEUTICAL PATENT LAW-MAKING IN BRAZIL, INDIA AND NIGERIA (2020) (adopting a combination of TWAIL and nodal governance theory to explore how the confluence of various actors frame the way(s) pharmaceutical patents are adopted and implemented in a given locale within the confines of World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights); Adérayò Sànúsí, *Patent Law-Making in Context and the Value of Socio-Legal Approaches to Studying Intellectual Property in Global South Countries*, AFRONOMCISLAW (Feb. 5, 2021), <https://permac.cc/WN4C-EJLK> (reviewing Vanni's book and arguing that the future research of intellectual property requires creative application of interdisciplinary methods (historical, ethnographic) and theoretical frameworks (law, history, anthropology, political theory, STS) that respond to the unique socio-material circumstances shaping scientific innovations and legal processes in the local context under study).

example, in addition to understanding the dynamics of informal economies and cross-border trading at the regional levels, the African Continental Free Trade Area Agreement provides another layer of research enterprise. We will need to understand the distributive effect of this new trade regime on both formal and informal trade in Africa. The future of research on IEL in Africa will need to incorporate more social science and socio-legal methods in particular, as well as theoretical frameworks that respond to and account for the socio-political and economic context of African societies' interactions.

As the practice of IEL in Africa deepens, social science approaches and socio-legal methods in particular offer an important lens to substantiate the innovation of the regime. The decision on which theoretical and methodological approach is best for one's research is not easy for researchers. Finding a creative combination of approaches, theories, and methods that address these challenges is the key to documenting the narrative of IEL in Africa based on their own logic.<sup>47</sup>

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<sup>47</sup> See Olabisi D. Akinkugbe, *Symposium Introduction: Assessing the Roles of Theory and Methodology in the Study of IEL in Africa*, AFRONOMICSLAW (Jan. 13, 2020), <https://perma.cc/ZR59-NNEQ>.