THE STATUS OF THE ROME STATUTE IN SIERRA LEONE: MOCK SUPPORT FOR INTERNATIONAL CRIMINAL JUSTICE?

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1. Introduction

In the annals of legal history, the crossroads where domestic jurisprudence intersects with international criminal justice often presents a profound arena for analysis and debate. This article delves into the intricate tapestry of legal dynamics surrounding the status of the Rome Statute in Sierra Leone, casting a discerning eye upon the nuances of domestication, or the absence thereof, through the lens of legal scholarship. It embarks upon a critical expedition to assess whether Sierra Leone's purported support for international criminal justice stands as a tangible testament or a mere semblance in the face of its hesitance to fully enshrine the Rome Statute's provisions within its domestic legal framework.

Against the backdrop of Sierra Leone's unequivocal commitment to advancing international criminal justice, this article meticulously navigates the legal intricacies surrounding the Rome Statute's adoption, highlighting the paradoxical scenario of significant contributions coexisting with apparent inertia in its domestication. The discourse centers on the commendable jurisprudential achievements attributed to the Special Court for Sierra Leone, an exceptional hybrid tribunal that ushered in a new era of accountability for grave international crimes. Its pronounced jurisdiction over war crimes, crimes against humanity, and other violations of international humanitarian law has cast a resplendent spotlight on the global stage of justice. [2]

The Special Court for Sierra Leone (the Special Court) was established by an agreement[3] between the Government of Sierra Leone and the United Nations (UN) Security Council and was principally charged with a mandate to prosecute those who bore the greatest responsibility for the civil conflict in Sierra Leone. [4] This Court, like the Special Tribunal for Lebanon and the Extraordinary Chambers in the Courts of Cambodia, is exceptional in that it is a hybrid tribunal combining both international law and national legal provisions.[5] This Court, an unprecedented species in the modern framework of international tribunals, was established primarily to address serious crimes against civilians and UN peacekeepers within the domestic setting of Sierra Leone, and is funded by voluntary contributions from UN member states. [6]

Of course, the scholarly exploration that has given rise to that jurisprudential prominence of the judgments/decisions of the Special Court resides beyond the parameters of this

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[2] Sierra Leone's civil conflict ended almost the same period when the Rome Statute came into force. See, Statute of the Special Court for Sierra Leone , Articles 2, 3, 4 and 5 http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnd1MJeEw%3D& (accessed 5 August 2011).

[3] UNSC Resolution 1315(2000) of 14 August 2000 (UN Doc.S/RES/1315).

[4] Article 1(1), Statute of the Special Court for Sierra Leone. http://www.sc-sl.org (accessed on 28th July, 2011)

[5] See generally, Chacha Bhoke Murungu, 'The Trial of Charles Taylor: Conflict prevention, International law and an impunity-free Africa' in V Menon (ed.) *War crimes and law* (Hyderabad: Icfai University Press, 2008) ch.8, 174-215.

[6] Visit the website of the Special Court: http://www.sc-sl.org.

work. However, it is noteworthy that in terms of international criminal justice, the Special Court delivered unprecedented and momentous judgments when it held that forced marriage and conscription and enlistment of child soldiers constitute war crimes.[7] Such jurisprudential extension of the ambit of the war crime has no doubt earned the Special Court much respect in legal and scholarly circles, and one might presume that it has justified the establishment and continuing need for financial and moral support even as the Court enters its completion phase. Moreover, it is the first Court to indict and arrest a former head of state who is now facing prosecution at the Court's sub-office in The Hague.[8]

The analysis undertaken here resonates with the very essence of legal scholarship, seeking to unravel the complexities woven into Sierra Leone's legal fabric. As the echoes of a tumultuous civil conflict[9] reverberated within the international community a little over a decade ago, Sierra Leone's agonizing ordeal bore witness to unprecedented violations of human rights. Amidst the ruins of lawlessness, the trajectory of international criminal justice began to cast its illuminating glow on the nation. The signing and prompt ratification of the Rome Statute[10] served as a testament to Sierra Leone's aspirations for accountability and justice, setting the stage for potential referrals to the International Criminal Court.

However, this discourse does not merely pivot upon the theoretical realm; it delves into the realm of practical implementation. The chasm between the aspirations embedded in the Rome Statute and their translation into tangible legal instruments within Sierra Leone's legislative framework is a pivotal focal point. The conspicuous absence of implementing legislation and the curiously selective embrace of core international instruments such as the Torture Convention and the Genocide Convention underscore a dissonance that warrants rigorous exploration.

Against this backdrop, this article scrutinizes the drafts of proposed bills aimed at domesticating the Rome Statute. It dissects these drafts, evaluating their alignment with the Rome Statute itself, and in doing so, it peels away layers of legal intricacy to expose the hurdles and challenges that beset the path to domestication. From political inertia to resource constraints, the impediments are manifold and multifaceted.

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[7] For a thorough analysis of the jurisprudential contributions of the Special Court for Sierra Leone, see generally, Cyril Laucci, *Digest of Jurisprudence of the Special Court for Sierra Leone 2003-2005* (Boston: Martinus Nijhoff, 2007); Chacha Bhoke Murungu 'Prosecution and punishment of international crimes by the Special Court for Sierra Leone', in Chacha Bhoke Murungu & Japhet Biegon (eds) *Prosecuting International Crimes in Africa,* (Pretoria: Pretoria University Law Press, 2011) ch. 4, 97-118.

[8] *Prosecutor v Taylor*, Case No.SCSL-2003-01-I, cf. http://www.sc-sl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx (accessed on 5 August 2011).

[9] See generally, The Truth and Reconciliation Commission Report, Government of Sierra Leone, 2004, particularly the chapters titled 'Causes of Conflict'.

[10] Sierra Leone signed and ratified the Rome Statute on 17 Oct 1998 and 15 September 2000 respectively http://www.coalitionfortheicc.org/documents/Signatories_RomeStatute.pdf (accessed 28th July, 2011) and has also signed the Agreement on the Privileges and Immunities of the International Criminal Court (adopted on 09/09/2002) on 26 September 2003. Ambassador Foday M. Daboe made statements during the Rome Conference as Sierra Leone's Ambassador to the US and Deputy Permanent secretary to the UN: http://www.un.org/icc/index.htm (accessed on 28th July 2011). On 12 May 2011, the sixth colloquium of international prosecutors was held in Freetown for the second time: http://www.gnnliberia.com/index.php?option=com_content&view=article&id=1942:colloquium-of-international-prosecutors-hold-press-conference&catid=40:politics&Itemid=53 (accessed 30th July, 2011).

As the discourse unfurls, it beckons attention to the pivotal role of civil society and the fourth estate in galvanizing a concerted effort to bridge the gap between international obligations and domestic action. While not foregone, the conclusion resonates with the scholarly echoes of accountability. It posits the urgency of synergizing civil society endeavors with the clarion call for governmental commitment, thereby amplifying the pressure upon Sierra Leone's authorities to embrace their obligations under the Rome Statute. The clarion call extends not only to the honorable domestication of the statute but also to the formidable task of complementing the International Criminal Court through domestic prosecution of the gravest international crimes.

The journey embarked upon within the confines of this article mirrors the very expedition undertaken by the legal community itself – an expedition to ascertain whether Sierra Leone's stance on international criminal justice is an unequivocal pillar or a transient facade. With roots tracing back to Sierra Leone's tumultuous past and branches reaching towards the evergreen landscape of global justice, this discourse is both an exploration and a testament to the intricate interplay of law and its manifestations on the international stage.

2. The Status of International Law in Sierra Leone

Sierra Leone is a common law state by virtue of its historical ties to Great Britain, which spanned several centuries – from the gloomy era of slavery and colonialism to the glorious dawn of independence in 1961. Section 170(1) of the 1991 Constitution of Sierra Leone and section 74 of the Courts Act 1965[11] enumerate that laws enacted by Parliament, orders/rules/regulations made by or under the authority of Parliament, the existing law and common law, which comprises "the rules of law generally known as the common law, the rules of law generally known as the doctrines of equity, and the rules of customary law including those determined by the Superior Court of Judicature," constitute the body of laws in Sierra Leone.[12] These constitutional provisions make clear that international law (treaties, conventions, agreements) does not form part of the composite of laws that are applicable in Sierra Leone.

However, in Chapter II of Sierra Leone's Constitution, international law is enumerated as one of the objectives of Sierra Leone as a nation. Section 10(d) states that "respect for international law and treaty obligations" shall be one of the foreign policy objectives of Sierra Leone. The inclusion of international law in the overall objectives of Sierra Leone does not, however, bestow any legislative status on treaties, conventions, pacts or constitutive acts. In fact, as Sierra Leone is a dualist state, drawing authority from both international and domestic law, in addition to ratifying any treaty, agreement or convention, Sierra Leone must also incorporate laws into domesticate legislation for that treaty, convention or agreement to form a justiciable legislative mechanism.[13]

[11] Act No. 6 of 1991 and Act No.31 of 1965 respectively.
[12] Sec. 170(2).
[13] The provision to sec. 40(4) of the 1991 Constitution of Sierra Leone.

In addition to the tenuous attachment with international law evinced in the constitutional provisions highlighted above, case law in Sierra Leone has been very reluctant to tap into international jurisprudence for legal enrichment and sound juxtaposition of domestic and international provisions. Hence, judgments from Sierra Leone do not normally bother to gain interpretative insights and useful guidance from the splendour of international jurisprudence, especially in relation to those areas of the law which international law has effectively navigated. Of course, the indispensability of case law in the jurisdiction of Sierra Leone cannot be overstated, as it forms an important aspect of the common law dispensation.

Furthermore, while the Sierra Leone Parliament has been indolent or unfriendly towards international law, the executive arm of government in Sierra Leone has also demonstrably neglected to manifest sufficient interest in international laws and the judicial lever of government equally has collaborated with its compatriots in the refusal to accommodate international law on the legislative plane of Sierra Leone.

3. The Rome Statute and the Prosecution of Egregious Crimes

After five weeks of critically intense debates in Rome in 1998, 120 states voted to adopt the Rome Statute[14] of the ICC – the milestone establishment of the first permanent international judicial body charged with the responsibility of prosecuting individuals for genocide, crimes against humanity, war crimes and the crime of aggression.[15] This move has been described as an immeasurably significant step towards the fight against the wanton destruction of humanity by perpetrators of the egregious core crimes.[16] The preambular paragraphs to the Rome Statute re-echo the urgent need for humanity to "put an end to impunity for the perpetrators of these crimes" and thus contribute to the prevention of such crimes such that the ICC "shall be complementary to national criminal jurisdictions."[17] This provision describing the relationship between the ICC and national Courts has come to be labelled as the "complementarity principle." Max du Plessis notes that:

> The principle of 'complementarity' ensures that the ICC operates as a buttress in support of the criminal justice systems of States Parties at a national level, and as part of a broader system of international criminal justice. The principle proceeds from the belief that national courts should be the first to act. It is only if a State Party is 'unwilling or unable' to investigate and prosecute international crimes committed by its nationals or on its territory, that the ICC is then seized with jurisdiction.[18]

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[14] http://untreaty.un.org/cod/icc/statute/romefra.htm (accessed on 5 August 2011) The Statute came into force in July 2002 after 120 ratified same.

[15] Art. 5 of the Rome Statute. Pursuant to Art. 123 of the Rome Statute, a review conference was held in Kampala between 31st May 2010 and 11 June 2010 and the definition of the crime of aggression was agreed upon: *Report on the first review conference on the Rome Statute* , available at – http://www.iccnow.org/?mod=browserdoc&type=25&year=2010 (accessed on 28th July, 2011).

[16] See generally, Chacha Bhoke Murungi 'Implementing the international criminal court statute in Africa: Some reflections' (2007) *East African Journal of Peace and Human Rights* 7(1) 136. See also, Philipp Kastner 'The ICC in Darfur – Saviour or Spoiler?' (2007) *ILSA Journal of International and Comparative Law* 14, 145 153-156. See also, Okechukwu Oko 'The challenges of international criminal prosecutions in Africa' (2008). *Fordham International Law Journal* 31, 343.

[17] This is also re-stated in art. 1 of the Rome Statute.

[18] See, Max du Plessis, ISS Paper 172, November 2008. Page 5

Hence, the ICC Statute is firmly established on the principle of cooperation between the ICC and state parties. Thus, the State parties, rather than the ICC, are primarily obliged to prosecute. The ICC will not establish jurisdiction over a matter unless a state party is unwilling or genuinely unable to prosecute an individual in respect of the core crimes specified in article 5 of the Rome Statute. ICC prosecutions can be triggered in three ways:[19]

a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

4. Steps to Implementing the Rome Statute in Sierra Leone

It would be grossly misleading to assert that there has been no significant move to make the Rome Statute justiciable in Sierra Leone. While Sierra Leone, as noted earlier, has been highly involved in modern efforts towards international criminal justice, the Rome Statute, which embodies the defining ideals of international criminal justice, has yet to become part of the country's legislative mechanism. Despite this, the legislative inspiration for the domestication of the Rome Statute in Sierra Leone has already been set. There have been two proposed bills to domesticate the Rome Statute, namely, the International Criminal Court Bill 2005 and the International Criminal Court (Implementation) Bill 2007, though neither draft has been tabled before the Sierra Leone Parliament for enactment. This article will not venture to scrutinize the proposed bills, but a cursory consideration will be given to the essential areas of the proposed bills to assess their conformity with the Rome Statute. It is pertinent to analyse and contrast some provisions of the proposed bills. This exercise might provide useful guidance for future drafting or improvement of either of the two foregoing bills. While neither of the proposed bills are comprehensive, they both represent the underlying tenets and intendment of the Rome Statute.

5. Do the proposed bills incorporate the Rome Statute?

While the 2005 proposed bill incorporates the entire Rome Statute as the *First Schedule*, the 2007 draft bill does not incorporate the Rome Statute as a schedule. Failing to include this reference may indicate that the Rome Statute cannot be used to clarify the domesticating acts, which may, in turn, impede domestic prosecution or create nebulosity or lacuna in the law. However, section 5(a) of the 2007 proposed bill stipulates that the Rome Statute, in particular, must be "strongly considered" in any matter arising from the application of the Implementing Act of the Rome Statute. Hence, interpreting the language of this provision broadly, it could be argued that the Rome Statute is implicitly incorporated.

[19] Article 13 of the Rome Statute.

6. **Do the bills make provisions for the general principles of international law?**

Both proposed bills[20] make express provisions regarding conventional international law and customary international law. Whereas in the 2007 draft bill, overriding force is given to the constitution and laws of Sierra Leone over the Rome Statute and international law, the 2005 proposed bill specifically stipulates that articles 20-33 must prevail where there is inconsistency or discrepancy with the laws of Sierra Leone.[21] The fundamental beauty of the 2005 provision is that it has the potential to positively influence the conservative understanding of international law; it would ensure the steady infiltration of international (criminal) law into the judicial spheres of Sierra Leone, thereby pushing the frontiers of the state's jurisprudence.

7. **Jurisdictional Scope**

Section 8 of the 2005 proposed bill provides that:

[a] person who is alleged to have committed an offence under section 6 may be tried and punished in Sierra Leone for that offence if—

a) the act or omission constituting the offence is alleged to have been committed in Sierra Leone; or

b) at the time the offence is alleged to have been committed—

(i) the person was a Sierra Leonean citizen or was employed by the Government of Sierra Leone in a civilian or military capacity;

(ii) the person was a citizen of a state that was engaged in an armed conflict against Sierra Leone, or was employed in a civilian or military capacity by such a state;

(iii) the victim of the alleged offence was a Sierra Leonean citizen; or

(iv) the victim of the alleged offence was a citizen of a state that was allied with Sierra Leone in an armed conflict.

Section 14 of the 2007 proposed bill states that "[t]he High Court shall have jurisdiction over any person who is alleged to have committed an offence stated in section 2 [Genocide], 3 [Crimes against humanity] or 4 [War crimes] irrespective of the location of the offence or the nationality of the person alleged to have committed the offence."[22] The disparity between the two proposed bills in terms of jurisdiction is that while the draft 2005 bill places limitations on the exercise of jurisdiction in domestic prosecution, the 2007 proposed bill does not do so for the core international crimes. Hence, the latter provision invokes the principle of universal jurisdiction in its most unlimited scope.

It is noteworthy that the more limited scope of the draft 2005 bill is in tandem with Option 2 of the Commonwealth Model Law on the Implementation of the Rome Statute: "The penalty for an offence referred to subsection (1) shall be …… (Penalty consistent with domestic law)."[23] In regards to the application of the concept of universal jurisdiction,

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[20] Sec. 5(a) & (b) of the ICC (Implementation) Bill 2007; sec. 7(2) of the 2005 ICC Bill.
[21] Sec.7(2)(b), provision (i).
[22] Emphasis added.
[23] Article 13 of the 'MODEL LAW To Implement the Rome Statute of the International Criminal Court': http://www.iccnow.org/documents/ModelLawToImplementRomeStatute_31Aug06.pdf (accessed 8 August 2011).

Cassese[24] has stated that the concept of universal jurisdiction, without a more narrowly tailored scope, cannot reasonably constitute a ground for jurisdictional competence. Cassese has noted that while states endeavour to act in accordance with their international duty to respond to inhuman and macabre acts/conduct that send consciences reeling in shock, they must do so on the "condition that the alleged offender be on the territory of the prosecuting state."[25] Thus, from the point of view of academics and the Rome Statute, limiting the jurisdiction of domestic prosecution in respect of the core crimes of the Rome Statute is both realistic and achievable.

8. Privileges and Immunities

Section 53(1) of the 2007 proposed bill provides that the "ICC shall have the privileges and immunities set out in article 48 of the Rome Statute and in the Agreement on the Privileges and Immunities of the International Criminal Court."[26] However, such immunities and privileges are not accorded to domestic judicial officers who are responsible for prosecuting perpetrators in Sierra Leone for offences connected to the core international crimes. With respect to immunities and privileges for state officials or individuals with official status, sections 12(1)-(2) of the 2007 draft Bill provide that official capacity shall not constitute a justification, excuse or defence to an offence under the proposed law nor shall it constitute grounds for reducing or mitigating sentences. Section 27(1) of the 2005 draft bill similarly provides that immunity or special procedures for official capacity shall not affect any assistance to be rendered to the ICC by the Sierra Leone government. This bill has limited provisions on the issue of immunity/privilege/official capacity.

The issue of immunity from prosecution is certainly a grey area due to the lack of international or academic consensus on the matter. However, historically speaking, State officials were not subjected to criminal liability for their actions because of the apparent fusion of the "sovereign" and the "sovereignty of the state."[27] Scholars have tended to agree that the immunity of state officials "exists by virtue of customary international law."[28] This position is seemingly incompatible with states' international obligations to prosecute and punish, notwithstanding any defence of immunity or certain privileges, but has nonetheless been reaffirmed by the International Court of Justice (ICJ).[29] Legal recognition of such immunity has further fuelled the blazing flames of contempt from despots and tyrants, prompting little or no cooperation with institutions like the ICC in terms of arrest and surrender of indicted state officials.

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[24] Antonio Cassese 'Is the Bell Tolling for Universality? A Plea for a Sensible Notion of Universal jurisdiction' (2003) *Journal of International Criminal Justice*, 1, 589-595.

[25] As above.

[26] Immunity and Privileges of: the Court, its property funds and assets (Art. 6); Representatives of States participating in the proceedings of the Court (Art. 14); Judges, Prosecutors, Deputy Prosecutors and Registrar (Art. 15); Personnel recruited Locally (Art. 17); Counsel and persons assisting defence counsel (Art. 18); Witnesses (Art. 19); Victims (Art. 20); Experts performing functions for the Court (Art. 21); Other persons required to be present at the seat of the Court (Art. 22)

[27] M. Cherif Bassiouni *Crimes against humanity in international criminal* (Boston: Martinus Nijhoff, 1999) 505-508 (stating that this is particularly true with respect to monarchies as evidenced by Louis XIV's statement: 'L'etat c'est moi' meaning 'the state is mine', - **translation mine**)

[28] William A. Schabas *An introduction to the International Criminal Court* (Cambridge: Cambridge University Press, 2007) 231.

[29] *The Democratic Republic of Congo v Belgium* ICJ Reports 14 February 2002 paras 58 – 59; The *Republic of the Congo v France* Provisional Measures Order of 17 June 2003 ICJ Reports 2003 paras 1-39, particularly paras 1 and 28.

9. Cooperation with the ICC

Both the 2005[30] and 2007 proposed legislation[31] provide for cooperation with the ICC in terms of arrest, surrender, or extradition of an accused or imprisoned. Such provisions reinforce the principle of complementarity[32] on which the Rome Statute is founded. However, section 29(1) of the 2007 proposed ICC (Implementation) Bill states that the Attorney-General may, in some instances, refuse to comply with a request for assistance from the ICC: for example, where the request concerns the production of documents prejudicial to Sierra Leone's national security, or where the request cannot lawfully be complied with.[33] Furthermore, the 2007 bill does not provide for extradition in respect of surrender.[34]

10. Protection of Accused Persons and Punishment

Section 7(2)(b) of the 2005 proposed bill and section 9(1) of the 2007 proposed bill stipulate that an accused may be entitled to any justification, excuse or defence available under the laws of Sierra Leone and customary international law. The latter provides for adherence to Article 31 of the Rome Statute ("Settlement of Disputes with Third Parties") and adds that the fact that the act was legal in the location where it was committed cannot be used as a defence or excuse. Neither Bill addresses the issue of amnesty, which has attracted many legal debates in respect of its recognition under customary international law and the consequences on international criminal justice.

Section 4(1)(f) of the 2005 bill incorporates Part 7, article 77 of the Rome Statute, which deals with penalties. The 2007 draft bill, inspired mainly by the relevant provisions of the Rome Statute, goes beyond this in stipulating that the Sierra Leone Court shall consider and, where appropriate, apply the Rome Statute, customary international law, and relevant judgments from the ICC and Special Court for Sierra Leone[35] when determining the term of punishment (not exceeding 30 years), fines, or forfeitures. This is especially significant in a bid to exclude any chance of application of capital punishment recognised and legal in the penal system of Sierra Leone.

11. The Significance of Domestication of The Rome Statute in Sierra Leone

States have an inherent duty to ratify an international instrument and ensure its domestic legal significance by incorporating it into national legislation, especially for dualist states. As such, domestication of the Rome Statute is an obligation imposed equally on all State parties.[36] Therefore, it is unsurprising that the African Commission on Human and Peoples'

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[30] Sec. 57 & 58 of the 2005 proposed ICC Bill.
[31] Part III, IV & V of the 2005 proposed bill; Part IV and V of the proposed 2007 ICC bill.
[32] Art. 1 of the Rome Statute.
[33] *'Where the request cannot lawfully be complied with; a third party refuses to give consent…; the request concerns the production of any documents or the disclosure of evidence which would be prejudicial to the national security interests of Sierra Leone'.*
[34] Sec. 47.
[35] Sec. 6 thereof.
[36] Murungi has argued that the obligations that state parties assume under the Rome Statute necessarily require that they adopt implementing legislation in order to fulfil the obligations – n 15 above 137.

Rights urged AU member states, particularly those that are parties to the Rome Statute, to immediately incorporate the agreement.[37]

The Rome Statute principally aims to eradicate impunity for the worst crimes known to humanity. These "core crimes," or *jus cogens* norms,[38] are peremptory norms of international law from which no derogation is permitted, thereby automatically imposing obligations that international law regards *erga omnes* (obligations owed to mankind).[39] These obligations include the duty to extradite or prosecute accused perpetrators (*aut dedere aut judicare*). These *erga omnes* duties are legally enforceable, non-derogable, and binding on all members of the international community.[40] As such, the Rome Statute imposes a non-negotiable duty on Sierra Leone to prosecute and punish perpetrators who violate the core international crimes, thereby requiring domestication of the Rome Statute to ensure that the requisite legal and administrative mechanisms are available to ensure national prosecution and punishment of offenders. Inherent in the act of domestication is the capacity to foster complementarity between the ICC and state parties by enhancing effective cooperation with the ICC in terms of arrest, surrender and other kinds of necessary interaction, including the transfer of relevant information/evidence between the ICC and state parties.

International law requires states to act in good faith with respect to all treaties in force, regardless of ratification. Many scholars argued that a mere signature (compared to ratification) should oblige a state to respect the spirit and intent of a treaty or international agreement. The principle, which is widely known as *pacta sunt servanda,* offers persuasive reasoning with respect to the domestication and/or incorporation of the Rome Statute.[41] Indeed, for a state party to act in good faith by fostering cooperation with the ICC to domestically prosecute and punish offenders of the core international crimes, it must start by domesticating the Rome State. Section 18 of the Vienna Convention on the Law of Treaty 1969 states that:

> A State is obliged to refrain from acts that would defeat the object and purpose of a treaty when:
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> (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance, or approval, until it shall have made its intention clear not to become a party to the treaty.

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[37] ACHPR /Res.59 (XXXI) 02: Resolution on the Ratification of the Statute of on the International Criminal Court by OAU Member States (2002).

[38] See, Art. 53 of the Vienna Convention on the Law of Treaties 1969 [under the rubric *Treaties conflicting with a peremptory norm of general international law ("jus cogens")*] states that: A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

[39] M. Cherif Bassiouni 'International crimes: jus cogens and obligation erga omnes' (1996) *Law & Contemporary Problems* 59, 63, 67.

[40] As above, 65-68. Bassiouni indicated that 'the implications of jus cogens are those of a duty and not of optional rights … Consequently, these obligations are non-derogable', but noting that the question of these implications 'has neither been resolved in international law nor addressed by International Customary Law doctrine'.) For a more sceptical view of the legal force of jus cogens, see Alfred P. Rubin 'Actio popularis, jus cogens, and offences erga omnes?' (2001) *New England Law Review* 35, 265.

[41] 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith' – Art. 26 of the Vienna Convention on the Law of Treaty, 1969 Available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (Accessed 11 August 2011).

It would appear that a persistent reluctance to domesticate the Rome Statute by the State party could constitute an act with the proclivity, however latent, of defeating the ends of the Rome Statute. States parties' failure to domesticate the Rome statute would inundate the ICC with cases, thereby clogging the prosecutorial wheels. In effect, domestication by a state party would save the Court the lurking perils of handling many more cases than its logistics and resources could manage and the corollary of inefficiency and protracted delays that could emanate from such a situation.

12. Conclusion and Recommendations

In light of the intricate legal landscape traversed in this discourse, it is evident that the path to the domestication of the Rome Statute in Sierra Leone, much like in several other developing African countries, is riddled with challenges. As noted by Professor Dugard, the initial vigor with which Africa contributed to the foundational aspects of the International Criminal Court (ICC) has somewhat waned in recent times, manifesting as tepid interest in the process of domestication and the moral support indispensable for the ICC's solidification on the global stage of criminal justice. [42] This sentiment finds resonance in the scholarly analyses of Bekou and Shah, who delve into the intricacies of domestication in Africa, revealing both the sluggish pace and the underlying complexities impeding swift progress. [43]

The very process of enacting implementing legislation, particularly for international instruments that may encroach upon the sovereignty of African states, emerges as a formidable obstacle. The nexus between the political will of governments and the protracted drafting and passage of such legislation underscores the multifaceted nature of this challenge. Compounded by inherent drafting intricacies, some African states lacking the necessary resources and expertise dismiss the imperative of domestication, deeming it expendable. [44]

Moreover, the notion that the ICC, a functioning international tribunal, obviates the need for domestication has gained traction, particularly among monist states. This assertion, though debatable, underscores the nuanced dynamics at play.

In view of these complexities, a concerted multi-pronged approach is requisite to surmount the hurdles obstructing the domestication of the Rome Statute in Sierra Leone. The pursuit of swifter domestication necessitates unrelenting pressure applied across all tiers of government. Elevating the Rome Statute's visibility through grassroots campaigns can wield substantial influence over governmental attitudes.

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[42] John Dugard 'Africa and international criminal law: Progress or marginalization?' (2000) *American Society of International Law Proceedings* 94, 229 230.

[43] Olympia Bekou & Sangeeta Shah 'Realising the potential of the International Criminal Court: The African experience' (2006) *Human Rights Law Review* 499, 502-505.

[44] Monism, Brownlie notes, is represented by a number of jurists whose theories diverge in significant aspects. This, obviously, has implications for the practical application of the said doctrine – Ian Brownlie *Principles of public international law* (2008) 31-33.

The harnessing of multi-stakeholder collaboration is pivotal, with institutions such as the Sierra Leone Human Rights Commission, the Sierra Leone Bar Association, the Sierra Leone Association of NGOs, and the media converging to create a formidable front for catalyzing political stakeholders towards domestication. The unification of the proposed draft bills into a comprehensive legislative framework stands to enhance efficacy in Sierra Leone's cooperation with the ICC and its battle against impunity.

In the crucible of Sierra Leone's historical struggle for justice, the synergy of legal scholarship, civil society activism, and governmental commitment is indispensable. The clarion call to action resonates not merely within the borders of the nation but across the global expanse as a profound testament to the imperative of realizing international criminal justice's promise of accountability and peace.