

THE ROME STATUTE OF THE
INTERNATIONAL CRIMINAL COURT 1998

THE NEED FOR
DOMESTICATION/IMPLEMENTATION
– THE SIERRA LEONE EXPERIENCE

Allieu I. Kanu
Barrister-at-Law

In all International Criminal Justice fora, Sierra Leone has demonstrated a commitment to Justice and the rule of law. As a practical demonstration of this commitment, Sierra Leone was among the first states to sign and ratify the Rome statute of the ICC. The Rome Statute, even though we have ratified it, cannot be invoked in our domestic courts. The Statute has to be incorporated into our laws by way of an implementing legislation by our Parliament. International Law determines the validity of treaties in the international legal system. It determines, inter alia, when and how a treaty becomes binding upon a state as regards other states parties. It also determines the available remedies for a breach of an obligation arising from a treaty. But it is the domestic legal system that determines the status or force of law which will be given to a treaty within a legal system i.e. whether national courts will apply the norms of a treaty. When treaty norms become part of domestic law, national courts apply them, and individuals may receive rights as a result of the treaty provisions. Sierra Leone is required under international law to bring its domestic laws into conformity with its validly contracted international commitments. Failure to do so may give the impression that Sierra Leone is acting *Mala Fides* - its international obligations.

Ladies and Gentlemen, the status of treaties in domestic law is determined by two different constitutional schools of thought referred to as the "Dualist" or "Legislative Incorporation School" and the "Monist" or "Automatic Incorporation School" Sierra Leone belongs to the "dualist or legislative incorporation school" What this means is that the provisions of ratified treaties do not become national law unless they have been enacted as implementing legislation. The Legislative Act, creating the norms as domestic law, is an act entirely distinct from the act of ratification of the treaty, without which the provisions of the treaty do not become national law. In other states belonging to the "Monist or Automatic Incorporation School" ratified treaties, become law by virtue of ratification. They are self executing. This is the method adopted by France, the Netherlands and some French speaking African States. The United States falls in the middle depending on the treaty, whereby some treaty obligations require implementing legislation before they are applied by domestic courts.

However, there is a school of thought which believes that international conventions reflecting customary international law, especially where they have taken the character of *Jus Cogens* - i.e. preemptory norms of international law from which no derogation is permitted, do not require implementation. There is another school of thought which argues that the obligations states parties to a treaty undertake cannot have the character of **Jus Cogens** but obligations **erga omnes** as between the parties to the treaty.

The question as to whether crimes under customary international law may be assimilated into domestic law without legislative action was answered in an opinion of Lord Bingham of Cornhill in the case of *R.V. Jones et al.* I will not go into the facts of the case in this intervention, but Lord Bingham rejected the

contention that customary international law is automatically incorporated into domestic law. His opinion pointed to the enactment of Section 134 of the Criminal Justice Act 1998, whereby English Courts were statutorily granted Jurisdiction over extra territorial torture, as an example where enabling legislation was needed to bring customary international law into the domestic framework. As additional support for rejecting the proposition that customary international law is adopted automatically into domestic law, the opinion cites cases in the courts of Australia and the United States addressing in particular genocide. As to the issue of assimilating customary international law into domestic criminal law, the opinion concludes “that it is for those representing the people of the country in parliament, not the executive and not the judges, to decide what conduct should be treated as lying so far outside the bounds of what is acceptable in our society as to attract criminal penalties”.

In this regard, I want to respectfully disagree with Lord Bingham. In my view, the Judges in this regard can assist in the codification and progressive development of the law. But this is a subject for another debate. However, the point one should stress in Lord Bingham's opinion is that he concedes that there are instances where crimes under customary international law may be assimilated into domestic law without legislative action.

Ladies and Gentlemen, when Sierra Leone ratified the Rome Statute, it assumed obligations to cooperate with the ICC, for example, to act on an arrest warrant issued by the Court or to assist the Court in locating and identifying witnesses. Sierra Leone is therefore under an obligation to ensure it is in a position to cooperate fully with the Court, which in Sierra Leone requires effective implementing legislation for the Rome Statute and the Agreement on privileges and immunities.

The International Criminal Court is based on the principle of complementarity, whereby national courts have the primary obligation to investigate and prosecute genocide, crimes against humanity and war crimes and only when they are unwilling or unable will the ICC be able to step in and assert jurisdiction. The current laws of Sierra Leone do not contain genocide, war crimes or crimes against humanity which in effect mean that Sierra Leone is currently unable to prosecute persons alleged to have committed such crimes. It is therefore, essential for Sierra Leone, to enact new legislation incorporating the crimes within the jurisdiction of the ICC.

Furthermore, there is need to incorporate the Rome Statute domestically:

1. to enable Sierra Leone Courts and other relevant authorities meet requests for the arrests and surrender of persons wanted by the ICC
2. to enable Sierra Leone Co-operate with requests for assistance in areas like investigations
3. to enable Sierra Leone meet obligations enunciated in concepts like **Universal Jurisdiction** and **aut**

dedere aut Judicare.

To conclude let me tell you how far we have gone in implementing the statute:

1. We now have a draft bill

This bill was prepared through a fully transparent drafting process, which has included consultations with parliamentarians and civil society at all relevant stages of the process.

On 11-15 December 2005 a national seminar on Implementation of the Rome Statute for the International Criminal Court was organised by No Peace Without Justice, in partnership with the Government of Sierra Leone, Manifesto 99 and the Commonwealth Secretariat at the Miatta Conference Centre, Freetown. Participants at the seminar included representatives of the Government, Parliament, legal practitioners, civil society and other opinion leaders. The seminar allowed stakeholders to devise substantive recommendations and guidelines to promote the drafting and adoption of national legislation implementing the Rome Statute of the ICC.

In the weeks preceding the national seminar on Implementation of the Rome Statute for the International Criminal Court, three regional meetings were held across Sierra Leone to ensure that the broadest number of interested parties from all parts of the country could provide input to the drafting process.

This process was undertaken to ensure that this bill provides for the broadest and strongest provisions for the national system to deal with the crimes and to ensure Sierra Leone authorities can provide the broadest possible cooperation with the ICC.

The bill incorporates the crimes of genocide, crimes against humanity and war crimes in to domestic Sierra Leone law and enables the investigation and prosecution of those crimes as well as ancillary offences such as crimes against the administration of justice.

It also contains provisions to enable full cooperation with the International Criminal Court and other States Parties; to ensure fulfillment of the obligations of Sierra Leone under the Rome Statute; and for other related *purposes*.

Thank you for your attention.