Trends of National Implementation of the Rome Statute: Theoretical Perspectives

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The complementarity system relates to the primary responsibility to investigate and prosecute the core crimes; thus it envisages a strong collaboration between the national justice system and ICC. Theoretically, it might be impressive, however, how the interaction may be achieved remains the difficult question. Even during the negotiation phase of the Rome Statute, the member States envisage complementarity to be the core element because of the sovereignty aspect. However, in some national cases, we also found that the national judicial system accepted the definition of the core crimes in whole or in part or by extending it, but prosecuted the crime domestically without any international involvement and influence. In this article, we are going to discuss different trends of national implementation of the Rome Statute based on the principle of complementarity to understand the perspective from its core. In this article, three emerging models of complementarity will be discussed, which are quite new phenomena in the present world. From these emerging models, the author will focus more on the proactive model as it mirrors the perspective on mutual inclusivity more than others. Finally, the article will imply legal frameworks and institutional capacity-building concepts for States to implement Rome Statute nationally through mutual inclusivity.

Keywords: complementarity, Rome Statute, national criminal jurisdiction, International Criminal Court

1. Emerging Models of Complementarity

Complementarity is the dominant feature of the Rome Statute where the responsibility to investigate and prosecute is upon the State parties unless and until they lack certain conditions. Although there is a permanent international criminal court established under the Rome Statute 1998, the primary jurisdiction is upon the States, which was a reversal to previously established tribunals or courts, which had primacy over the domestic courts.[1] However, the ICC is complementary to national jurisdiction. This means despite establishing an international forum (ICC), the international community expects the states to take the primary responsibility to investigate and prosecute the core crimes on their national territory.

After observing the customary State practices, three models emerge, which are passive, positive, and proactive complementarity models. ElZeidy (2011)[2] mentioned that the concepts of these

[1] O. C. Imoedemhe, The Complementarity Regime of the International Criminal Court, Springer International Publishing, Cham, 2017, p.197.

[2] M. M. El Zeidy, *The genesis of complementarity*, in C. Stahn and M. M. El Zeidy, (Eds.), The International Criminal Court and

emerging models of complementarity systems date back to 1919 to the peace treaties of World War I. He mentioned three models which are the amicable, the mandatory, and the optional models.[3]

For the Nuremberg and Tokyo International Military Tribunals, the amicable model was the best option considering the nature of the crime, where the task has been divided and accomplished by both IMTs by amicable means. An example of the mandatory model could be found in the chapeau of Article 17,[4] where it is mentioned that it was mandatory for the States to investigate and prosecute the cases arising from their jurisdiction. The penalty provisions of the Treaty of Versailles held that if the German trials are unsatisfactory, the Allied authorities shall carry out their proceedings.[5] Thus, the primary responsibility has been given to the State party where the crimes have been committed. Similarly, the Rome Statute echoed these provisions in 1998. On the other hand, an optional model is when the State is waiving its right to investigate and prosecute the crime in a way of self-referral to an international tribunal, e.g., the ICC. It is opposite to the mandatory model however it is voluntary practice.[6]

So, from the above models drawn up by ElZeidy (2011), we can find that the most mutually inclusive interpretation of the complementarity system is the amicable model. This model suggests interaction and performance by both national and international institutions mutually, in an amicable manner. Thus, it is also suggested that the State should incorporate the provisions of the Rome statute and prepare its institution for performing the tasks of investigation and prosecution of international crimes by ensuring a prompt and proper way of justice. In case the State has institutional preparedness to perform its tasks, then the emergence of the optional model of complementarity will not even occur.

Similarly, in light of ICC, we found three emerging models which are passive, positive, and proactive models of complementarity.

1.1. Passive Complementarity

The narrow view of the understanding of complementarity is the passive complementarity model where ICC is the last resort, and domestic courts/institutions will have the primary jurisdiction to investigate and prosecute the core crimes. While drafting the Rome Statute, this was the same view of all participating nations too.[7] However, Anne-Marie Slaughter[8] mentioned it differently, "One of the most powerful arguments for the International Criminal Court is not that it will be a global instrument of justice itself - arresting and trying tyrants and torturers worldwide - but that it will be a backstop and trigger for domestic forces for justice and democracy. By posing a choice - either a nation tries its own or they will be tried in The Hague - it strengthens the hand of domestic parties seeking such trials, allowing them to wrap themselves in a nationalist mantle."[9]

Complementarity: From Theory to Practice, Cambridge University Press, Cambridge, 2011, pp. 124-126.

[3] Imoedemhe 2017, p. 43. Also, Treaty of Versailles 1919, Article 228-230.

[4] El Zeidy 2011, p. 125.

[5] El Zeidy 2011, p. 126.

[6] ibid

[7] C. Hall, *Positive complementarity in action*, in C. Stahn and M. M. El Zeidy, (Eds.), The International Criminal Court and Complementarity: From Theory to Practice, Cambridge University Press, Cambridge, 2011, p 1017.

[8] Dean, Woodrow Wilson School of Public and International Affairs, Princeton University.

[9] https://archive.globalpolicy.org/intljustice/general/2003/1221resort.htm#author (14 December 2022)

The narrow view does not only confer the duty upon the States to investigate and prosecute but also to provide a responsibility and obligation to have national preparedness and expertise to confer justice. Also, it is an obligation upon the States to define international crimes in their national legal systems. As mentioned in the Rome Statute 1998, there are some triggering factors when ICC can start its investigation and prosecution process.[10] The passive complementarity model suggests that the ICC remain dormant until and unless its jurisdiction is triggered by States or by UN Security Council referrals.[11] In these circumstances, the ICC prosecutor shall use the *proprio motu* power and initiate an investigation of the crime which leads to prosecution. It was perceived that the prosecutor may rarely use its power to initiate investigation and prosecution because that may conflict with the principle of [States'] sovereignty and non-intervention. However, during the era of the *ad hoc*, the mindset was like States have to take primary jurisdiction to carry out the justice process however their action was passive as they have seen ICC, only as an institute with expertise and ingenious organization to investigate and prosecute the core crimes. Thus, during that period of time, it has been seen that the establishment of *Ad hoc* tribunals which is conferring justice at the domestic level with international expertise and resources. As the States' responsibility is quite passive because of their lack of knowledge and understanding about complementarity which ultimately leads to State referrals, thus we're calling this model as Passive Complementarity Model.

The situation in some African countries represents the passive complementarity model. Countries like Uganda[12], the Democratic Republic of Congo[13], the Central African Republic[14], and Mali[15], due to their lack of knowledge and understanding of complementarity, national preparedness, and expertise, referred the cases to ICC as State referrals. Even the Prosecutor granted the request to initiate *the proprio motu* investigation process in the situation in Kenya[16] and Georgia[17], which was beyond the mindset of parties during the *Ad hoc* era. Thus, these situations lead to the positive complementarity model.

1.2. Positive Complementarity

On 16 June 2003, the very first Chief Prosecutor, Mr. Luis Moreno-Ocampo, at the ceremony for his undertaking of the duty, expressed the idea of a positive complementarity model the following way:

"The Court is complementary to national systems. This means that whenever there is genuine State action, the court cannot and will not intervene. But States not only have the right, but also the primary responsibility to prevent, control and prosecute atrocities. Complementarity protects national sovereignty and at the same time promotes state action. The effectiveness of the International Criminal Court should not be measured by the number of cases that reach it. On the contrary, com-

[10] The Rome Statute of the International Criminal Court, 1998, Article 17 (Unwillingness, inability, undue delay, Statutory limitations etc.) (hereinafter: Rome Statute)

[11] Imoedemhe 2017, p. 45.

[12] https://www.icc-cpi.int/news/icc-president-uganda-refers-situation-concerning-lords-resistance-army-lra-icc (December 2022).

[13] https://www.icc-cpi.int/drc (15 December 2022).

[14] https://www.icc-cpi.int/news/icc-prosecutor-receives-referral-concerning-central-african-republic (15 December 2022).

[15] https://www.icc-cpi.int/news/icc-prosecutor-fatou-bensouda-malian-state-referral-situation-mali-january-2012. (15 December 2022).

[16] https://www.icc-cpi.int/situations/kenya. (15 December 2022).

[17] https://www.icc-cpi.int/news/situation-georgia-icc-pre-trial-chamber-delivers-three-arrest-warrants. (15 December 2022).

plementarity implies that the absence of trials before this Court, as a consequence of the regular functioning of national institutions, would be a major success."[18]

It is very clear from his statement that this model puts the national jurisdiction ahead of the ICC, rather than competing with the national criminal jurisdiction. In the Diplomatic Corps, he mentioned, the key strategic decision includes:

> *"1. a collaborative approach with the international community, including cooperative states, international organizations, and civil society;*
>
> *2. a positive approach to complementarity, rather than competing with national systems for jurisdiction, we will encourage national proceedings wherever possible;*
>
> *3. While states have the first right to prosecute, and we will encourage them to do so, there may be situations where a state and the Office agree that consensual "division of labour" is appropriate (for example where a national system is fractured or where the impartiality or expertise of the. Court is needed). There is no doubt of admissibility in such scenarios, since Article 17 is clear that cases are admissible in the absence of national proceedings;*
>
> *4. At times, the territorial state may oppose ICC investigation. In such cases, I can use my proprio motu power, but it will be difficult to deploy investigators to the field, and difficult to carry out arrests. Thus, the positive approach to cooperation and complementarity is indispensable. Uganda and Congo are two examples of this approach.*
>
> *5. A policy of targeted prosecution, focusing on those who bear the greatest responsibility;*
>
> *6. A small and flexible office, relying on extensive networks of support with States, civil society, multilateral institutions, academics, and the private sector. This approach enables us to better represent 92 States Parties and to benefit from ideas and perspectives from around the world."*[19]

In the report on Prosecutorial Strategy[20] (14 September 2006), OTP brings back the aspects of the positive complementarity model. Consequently, on the Report of the Bureau on stocktaking,[21] it mentioned:

> *"Positive complementarity refers to all activities/actions whereby national jurisdictions are strengthened and enabled to conduct genuine national investigations and trials of crimes included in the Rome Statute, without involving the Court in capacity building, financial support, and technical assistance, but instead leaving these actions and activities for States, to assist each other on a voluntary basis."*

[18] https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D7572226-264A-4B6B-85E3-2673648B4896/143585/030616_moreno_ocampo_english.pdf (15 December 2022).

[19] https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/0F999F00-A609-4516-A91A-80467BC432D3/143670/LOM_20040212_En.pdf. (15 December 2022).

[20] https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/D673DD8C-D427-4547-BC69-2D363E07274B/143708/ProsecutorialStrategy20060914_English.pdf. (15 December 2022).

[21] https://www.icc-cpi.int/sites/asp/files/asp_docs/ASP8R/ICC-ASP-8-51-ENG.pdf (15 December 2022).

To uphold positive complementarity, the ICC assists the States in three aspects. First, is *legislative support*, which involves guidance in formulating the necessary legislative framework and assistance to get through national obstacles for adopting such legislation. Second, *assistance in technical matters and capacity building*, where the ICC may render assistance in training the national law enforcement agencies, also judges, investigators, forensic experts, and prosecutors in carrying out their duties, as well as building national capacity for victim and witness protection. Even by providing international judges and prosecutors, the ICC can help the national legal jurisdiction or hybrid courts in prosecuting core crimes. The idea is to make the national justice process comply with international standards and the requirement of transparency. Third, *physical infrastructure*, where ICC may assist the State in building courthouses and prison facilities and building capacity to keep their operation sustainable.[22]

The question may arise whether the ICC is acting as a "development agency" or not.[23] ICC doesn't have enough resources nor financial solvency to act as an organization for developing physical infrastructure or a technical capacity-building entity. It has its limited judicial mandate which is the investigation and prosecution of the core crimes.

However, we can see a shift in the first review conference held in Kampala, Uganda in 2010.[24] The notion of positive complementarity championed by the first Chief Prosecutor was limited to the cooperation between State and ICC, whereas the *Report of the Bureau on Stocktaking* (on the Review Conference of 2010), formulated by the OTP suggests cooperation among State parties, civil societies, and NGOs.[25] Though it is unclear how the interdependency works among the parties, which needs further clarification. But it is quite clear that the States need [some] assistance to be able to investigate and prosecute core crimes. The question remains who will ensure and how that entity will ensure that the coordination is working well or needs more exertion?

Therefore, for making positive complementarity work, the OTP's action is not only limited to inspiring the State parties to undertake the responsibility to investigate and prosecute the core crimes, but also to have a methodical tactic to empower the national criminal jurisdiction. It is worth mentioning that the aspirations from the OTP are significant without any doubt, but to make the positive complementarity model work, they are not enough on their own. Thus, we have to turn to examine the proactive complementarity model.

1.3. Proactive Complementarity

The basic idea of the proactive complementarity model is to enable both member States and ICC to involve in the investigation and prosecution process at the domestic level by implementing the complementarity features of the Rome Statute. Thus, it involves the States requesting to ICC for their expertise and practical proficiency to make the national judiciary empowered to try the core crimes at their domestic level. A pragmatic collaboration between States and the ICC is imperative to make the proactive complementarity model work.

[22] https://www.icc-cpi.int/sites/asp/files/asp_docs/ASP8R/ICC-ASP-8-51-ENG.pdf (15 December 2022).

[23] Report of the Bureau on Stocktaking: Complementarity Annex IV ICC-ASP/8/Res.9, adopted at the 10th plenary meeting, on 25 March 2010, para. 4.

[24] https://asp.icc-cpi.int/reviewconference/summaries-and-reports (15 December 2022).

[25] https://asp.icc-cpi.int/sites/asp/files/asp_docs/RC2010/RC-11-Annex.V.d-ENG.pdf (15 December 2022).

In this model, complementarity works as a catalyst, as it is providing serious responsibility to try core crimes upon the national authorities, and the court is playing a twofold role: where it's motivating States to strengthen their national judicial system, and supporting Member States to deliver justice, following the Rome Statute.[26] The OTP also suggests a similar approach by establishing external relations and outreach tactics to encourage and facilitate States to perform their responsibility to render justice.[27] Due to the *principle of non-intervention* and *state sovereignty*, the Member States do not want the ICC's intervention in their national jurisdictions, so the ICCs' triggering factors act as the catalyst.

But this approach can create an unintended distance between the Member States and ICC, which may result in non-compliance or/and non-cooperation by the parties. For example, two scenarios may occur. First, after getting the prosecutor's notification, if the State doesn't take any steps to carry out the investigation process, the case may return to the Prosecutor after one month. Secondly, after getting the prosecutor's notification, the State may initiate the investigation process, but the question remains whether the action can then be termed as genuine or not. In the *Saif Al Islam*[28] and *Muthaura et al*[29] cases, the State wasn't able to produce a proper investigation process and sufficient evidence of specificity and probative value. Therefore, their pleas for inadmissibility were rejected by Pre-Trial Chamber I.

So here we can see the "complementarity paradox", a perfect phrase by Paola Benvenuti (1999)[30], where [most of the time] the States are connected with the crime itself, but for making complementarity work effectively, States' cooperation is also needed. She raised the question that why would they (the State) carry out the investigation process willingly on the first hand, and su0bsequently cooperate with ICC.[31]

Now the question is how to conceptualize the catalyst effect of the ICC in the proactive complementarity regime. To address this question, we have to look at *Article 93 (10)* on other forms of cooperation:

> *"10. (a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct that constitutes a crime within the jurisdiction of the Court, or which constitutes a serious crime under the national law of the requesting State.*
>
> *(b) (i) The assistance provided under subparagraph (a) shall include, inter alia:*
>
> *a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation, or a trial conducted by the Court;*
>
> *b. The questioning of any person detained by order of the Court;*
>
> *(b) (ii) In the case of assistance under subparagraph (b) (i) a:*

[26] SC 4835th meeting, S/PV.4835.

[27] https://www.icc-cpi.int/sites/asp/files/asp_docs/library/organs/otp/030905_Policy_Paper.pdf. (15 December 2022).

[28] Judgment on the appeal of Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled 'Decision on the "Admissibility Challenge by Dr. Saif Al-Islam Gadafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute"' of 5 April. ICC-01/11-01/11-695.

[29] https://www.icc-cpi.int/defendant/muthaura (11 January 2023)

[30] P. Benvenuti, *Complementarity of the International Criminal Court to National Criminal Jurisdictions*. 1999, p. 21.

[31] Ibid p. 50.

a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;

b. If the statements, documents, or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of Article 68.

(c) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to this Statute."[32]

Here it is clear that the ICC and the State have to ensure a mutually inclusive independent relationship by providing cooperation and assistance for conducting investigations and trials. Here the ICC Statute mentions assistance from the ICC to States, but reverse assistance is also needed to ensure effective proactive complementarity, which is known as 'reverse cooperation', in the words of Federica Gioia.[33]

According to the above discussion, it is clear that the *principle of complementarity* and the *principle of cooperation* are the two important factors for ICC to function effectively and proactively. Rome Statute does mention a two-way process to address cooperation, from State to ICC and from ICC to State. As mentioned in Article 92(10), upon request from the State, ICC may cooperate with and assist State Party in conducting an investigation or trial of the cases which constitute core crimes and may also constitute a serious crimes under the national law of the requesting State.[34] The assistance may include the transmission of statements, documents or other types of evidence obtained for an investigation or trial.[35] It is provided that for such assistance (for example, the transmission of documents, etc.), States' consent is necessary and in some cases subject to the provisions of Article 68.[36] Furthermore, in the case of non-State parties, upon request, the ICC may assist them in the same manner.[37] Via such assistance and support from ICC, the State party can establish its genuine willingness to carry out the investigation and prosecution nationally.

To understand the assistance more clearly, the case of *The Prosecutor V. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali*[38] needs to be mentioned, where Kenya filed a request for assistance under Article 90(1) and Rule 194. The scope of the request was "for the transmission of all statements, documents, or other types of evidence obtained by the Court and the Prosecutor in the course of the ICC investigations into the Post-Election Violence in Kenya, including into the six suspects presently before the ICC", however, the appeal got rejected.[39] The Trial Chamber provided that the 'request for assistance' under Article 90(10) and Rule 194 cannot be invoked when the case is at the court, rather it has to be submitted *in advance* while requesting for the admissibility challenge.

Importantly, any such assistance and cooperation can be filed as a "request", because of safeguard-

[32] Rome Statute, Article 93(10)

[33] F. Giola, *Complementarity and 'Reverse Cooperation*. in C. Stahn and M. M. El Zeidy, (Eds.), The International Criminal Court and Complementarity: From Theory to Practice, Cambridge University Press, Cambridge, 2011, pp. 807–829.

[34] Rome Statute, Article 90(10) (a)

[35] Rome Statute, Article 90(10) (b) (i)

[36] Rome Statute, Article 90(10) (b) (ii)

[37] Rome Statute, Article 90(10) (c)

[38] Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute. ICC-01/09-02/11 OA.

[39] Ibid para. 114.

ing the States' sovereignty and independence. Therefore, ICC cannot intervene unless and until the State is formally and expressly requesting ICC for their assistance and cooperation. The State may or may not take that advantage, it's completely up to them. Initial understanding of proactive complementarity may sound coercive but according to Gioia (2011), she suggested a friendly approach of complementarity where the ICC doesn't act as a censor to the domestic courts but encourage effective circulation of competence and capability between States and ICC.[40] For facilitating constructive interplay between ICC and States, proactive complementarity indeed provides operative and efficient means to allow ICC to fulfill its mandate. It may face difficulties while coordinating between the States and ICC and there are ample legal risks for compromising the consequent admissibility of a case before the ICC. Therefore, as Imoedemhe (2017) suggested, "a cautious strategy of proactive complementarity be adopted, with appropriate limits in order to achieve its full benefits and minimize its potential challenges."[41]

2. The Concept of Genuine National Proceedings in International Law

The term "genuine" is one of the crucial factors determining whether a national proceeding of international crimes is merely a sham proceeding or an authentic one. The admissibility aspects of the 1998 Rome Statute already discussed the issue of "genuineness". However, this term plays a vital role in determining the jurisdiction of the Member States and the international institutions (e.g., ICC). From the State's perspective, it always tries to show that the trial and investigation process is genuine, therefore no interference from international institutes is required, whereas from the ICCs' perspective if the performance of genuineness is below the threshold, the ICCs interference is expected by setting aside the national process. Therefore, it is one of the most important qualifiers representing the States' requirement to perform and the ICCs' limit for exercising its jurisdiction.

Before briefly discussing the concept of genuineness, it is important to note that this concept is very crucial: to bring the perpetrators to justice, a genuine legal proceeding whether national or international, is required to establish justice in a society. Otherwise, due to the non-genuine adjudication, there will be impunity gaps, leading to injustice and international [political] interference. Here the caveat is not all the national proceedings can be termed as "not genuine" only because of some shortcomings in the national effort if the States' are acting in good faith. However, if the suspect is escaping the trial by abusing the national proceeding, then it is again creating impunity gaps, and international interference is required. Therefore, we see the threshold of the concept of "genuineness" is very subtle yet plays a significant role in the justice process.

The term "genuineness" means true, legitimate, authentic, sincere, not counterfeit, and not feigned which means it is something that is truly what it purports to be.[42] Accordingly, we can see two aspects of the meaning. The subjective aspect is sincerity or authenticity, whereas the objective aspect represents it should be something that is claimed to be. Thus factually, if a State carries out the national proceedings through the objective aspect, even with the wrong intention, it may pass ICCs' intervention, whereas with good intention, if a State fails to apply the objective aspects to its national process, it may pre-empt ICC interference.[43]

[40] Gioia 2011, p. 817.

[41] Imoedemhe 2017, p. 50.

[42] https://www.oxfordlearnersdictionaries.com/definition/english/genuine (17 January 2023)

[43] J. Stigen, *The Relationship between the International Criminal Court and National Jurisdictions*, Brill, Leiden, 2008, p. 216.

2.1. Process and outcome

Article 17 of the 1998 Rome Statute provides:

> *"1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:*
>
> *(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;*
>
> *(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;*
>
> *(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;*
>
> *(d) The case is not of sufficient gravity to justify further action by the Court.*
>
> *2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:*
>
> *(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in Article 5;*
>
> *(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;*
>
> *(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.*
>
> *3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings."*[44]

The reading of Article 17 on issues of admissibility delivers an idea that it focused more on the "genuine" nature of the proceeding, rather than the outcome. Even though according to Article 17(3), it may require certain outcomes such as the inability of a State for carrying out the proceedings or obtaining the evidence or/and testimony etc. However, some jurists claimed that in this Article the word – "genuinely" is not referred to as a verb [in order to carry out the proceeding] but as an adverb to the words – unable and unwillingness – for example, genuinely unable and genuinely unwilling.[45]

By definition, genuine proceedings shall produce genuine, acceptable, and correct findings. How-

[44] Rome Statute, Article 17

[45] Stigen 2008, p. 216.

ever, the correctness of the material will not determine the admissibility of such a case, rather it is the law and fact made in the proceeding which matters. Therefore, some aspects are to be checked to determine whether the criminal proceeding is genuine or not. First, whether the State has ensured a legal and institutional framework or not; second, resorting to the truth of the crime being committed; third whether the State incorporated substantial and procedural legislations or not; fourthly, whether the State is applying the given legislation impartially and independently or not to establish justice.[46]

2.2. National Limitations and Cultural Differences

Essentially the idea of the complementarity regime of the Rome Statute acknowledged the fact that the national criminal proceedings might be different from each other as the 1998 Rome Statute is a blend of both civil law and common law. Another fact is each country has its own legal and cultural differences. Therefore, the checkpoint for determining whether the State has any intention to bring the perpetrators of atrocity crimes to justice or not has to be the intention. If there is a clear idea that there is a lacking of such characteristics which can hardly be called a process based on the complementarity regime such as if the State is trying to shield the perpetrator/s, only that time the ICCs' intervention is required, as per the complementarity principle.

But always it must be remembered that the proceedings can be drastically different from State to State, and in these circumstances, whether the States are performing their subjective duties (sincerely and authentically) and objective (to what it has purported to be) duties to bring the perpetrators to justice in good faith or not, has to be the key point. The State may likely have a clear sign to establish justice through such proceedings but the proceeding itself is different from the "sophisticated" proceedings which are referred to in the Rome Statute as a standard.

In its *Paper on some policy issues*, the ICC prosecutor has said, "A major part of the external relations and outreach strategy of the Office of the Prosecutor will be to encourage and facilitate States to carry out their primary responsibility of investigating and prosecuting crimes. In any assessment of these efforts, the Office will take into consideration the need to respect the diversity of legal systems, traditions, and cultures. The Office will develop formal and informal networks of contacts to encourage States to undertake State action, using means appropriate in the particular circumstances of a given case. For instance, in certain situations, it might be possible and advisable to assist a State genuinely willing to investigate and prosecute by providing it with the information gathered by the Office from different public sources."[47]

Article 17(2) (a)(b)(c) identifies the subjective aspects of the term – "genuinely" as the main intention behind the criminal proceedings. It also identifies there must not be any delay, and the process must be independent and impartial. Article 17(3) identifies the objective aspects of the word - "genuinely". It provides that the State must be able to obtain the perpetrator and/or necessary evidence and testimony for carrying out its criminal proceeding. However, it is worth mentioning that the idea of genuineness is not fully explained by the Statute or is ill-defined, in comparison with the ideas of "unwillingness" and "inability". Whether a single statute is capable of clarifying the definition wholly or not, remains a question, but it is open to interpretation through the guidance outside statute.

[46] Ibid

[47] https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/1FA7C4C6-DE5F-42B7-8B25-60AA-962ED8B6/143594/030905_Policy_Paper.pdf (18 January 2023)

One can argue why not the ICC's own substantive and procedural framework should be taken as a standard. If we look deeper, the 1998 Rome Statute is a blend of both civil law and common law systems, thus application of such an instrument is difficult in every possible jurisdiction. Moreover, the national jurisdiction is not well-equipped with the various resources as the ICC. Furthermore, the standard the ICC is holding, the same standard should not be expected at the domestic level due to socioeconomic, political, and infrastructural reasons. But impliedly the standard can be followed by the States as an ideal standard to keep the proceeding in its optimum form, however, strict regulation of standard is not needed because of underlying purposes[48].

2.3. The Rationale for Implementing Legislation

The 1998 Rome Statute does not provide any express obligation on the State parties for implementing its provisions on the national level, except in a few circumstances under Article 70(4)(a)[49] – regarding penalizing offenses against the administration of justice, and Article 86 to 92[50] - regarding the obligation to cooperate. Therefore, incorporation of the atrocity crimes in national criminal jurisdiction is not an express obligation on the Member States. Some jurists even suggested that the integration of the Rome Statute in the national criminal jurisdiction is not needed.[51]

So, do these lacunas justify the non-incorporation of the States for applying the 1998 Rome Statute? Not necessarily. Even before the incorporation of the ICC Statute, the crimes mentioned in the Rome Statute were already a part of general international law and recognized by the States, so as the obligation to bring perpetrators to justice. Article V of the Genocide Convention 1948, Articles 49,50,129 and 146 of the four Geneva Convention 1949 respectively, Articles 85 to 87 of the Additional Protocol I, Article 6 of the Torture Convention 1984 and other international treaties expressly convey this obligation to enact the provision in the national jurisdiction. As a result, the obligation to incorporate such laws derives from the treaty laws customarily. Reference can be made from Article 1 of the 1998 Rome Statute that it does not expressly require national implementation; however, it echoed the idea of the complementarity principle through which the primary duty has been given to the Member States. Therefore, it implied the need for implementation whether the States can investigate and prosecute such crimes mentioned in Articles 6-8 of the Statute in their national jurisdictions, unless and until the State is unwilling or unable to carry out such responsibility.

According to the case of *Saif Al Islam Gaddafi,*[52] the Pre-Trial Chamber I (PTCI) clarified that the lack of legislation on crimes against humanity doesn't render the case admissible before the ICC, however, the PTCI mentioned that the reason for the admissibility was Libya's inability to pros-

[48] To ensure justice for the perpetrators of the international crimes.

[49] Rome Statute, Article 70(4)(a) "Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals".

[50] Rome Statute, Article 86-92.

[51] S. Nouwen, *Complementarity in Uganda: domestic diversity or international imposition,* in C. Stahn and M. M. El Zeidy, (Eds.), The International Criminal Court and Complementarity: From Theory to Practice, Cambridge University Press, Cambridge, 2011, p. 1127. Also, F. Megret, *Too much of a good thing? Implementation and the uses of complementarity*, in C. Stahn and M. M. El Zeidy, (Eds.), The International Criminal Court and Complementarity: From Theory to Practice, Cambridge University Press, Cambridge, 2011, pp. 361–390.

[52] Judgment on the appeal of Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled 'Decision on the "Admissibility Challenge by Dr. Saif Al-Islam Gadafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute" of 5 April, ICC-01/11-01/11-695.

ecute such crimes in their territory.[53] Moreover, the PTCI stated that Libya was unable to provide an adequate degree of evidence and probative value which validates that the investigation process has covered the *same conduct*.[54] The PTCI referred to two Kenyan cases (*The Prosecutor v William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang,*[55] and *The Prosecutor v Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*)[56] which was dealing with "same person same conduct" principle. The chamber held:

> *"The defining elements of a concrete case before the Court are the individual and the alleged conduct. It follows that for such a case to be inadmissible under Article 17(1) (a) of the Statute, the national investigation must cover the same individual and substantially the same conduct as alleged in the proceedings before the Court"*[57]

So, if we go through both the aspects of the Statute itself and the court's ruling, it seems that the comprehensive legislation is quite indispensable for the ICC to perform its complementarity mechanism. As the two pillars – the State and the ICC – are balancing the interplay of cooperation and implementation. Because by implementing the legislation, the State is having the primacy over ICC to perform investigation and prosecution in their national sovereign territory. When international crimes are reflected in the domestic jurisdiction, it becomes easier to investigate and prosecute the case/s with international legal characterization.

3. Legislation on Cooperation

Parts 9 & 10 of the 1998 Rome Statute expressly discusses the cooperation legislation where the Member States are expected to cooperate in good faith. Whether a new cooperation mechanism needs to be established or not, remains a matter of debate. The argument may arise that the States may use the pre-existing cooperation mechanism available to them already.

A careful reading of Parts 9 & 10 gives us three areas of cooperation, which are (1) mechanism for arresting and surrendering with the request of the court, (2) adequate and prompt support to the court for investigation and prosecution, and (3) general enforcement.[58] Unlike the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for former Yugoslavia (ICTY), the ICC doesn't allow trials *in absentia*.[59] Thus ICCs' success depends on how the partner States are reciprocating their compliance with the provisions related to the arrest and surrender of the suspects to ensure their appearance in court.

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[53] Ibid, para 30, 34, retrieved from https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_01904.PDF (accessed 05 May 2023).

[54] Ibid para 88.

[55] Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statue, ICC-01/09-01/11.

[56] Decision on the Prosecutor's Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, ICC-01/09-02/11.

[57] Appeal on behalf of Uhuru Muigai Kenyatta and Francis Kirimi Muthaura pursuant to Article 82(1)(a) against Jurisdiction in the "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ICC-01/09-02/11.

[58] The forms of cooperation include general compliance with the ICC requests for cooperation (Article 87); Surrender of persons to the Court (Article 89); Provisional arrests pursuant to ICC requests (Article 92); identification or location of persons or items, taking and production of evidence, service of documents, facilitating witnesses' and experts' attendance before the ICC, temporary transfer of persons, examination of sites (e.g. mass graves), execution of search and seizure Orders, protection of witnesses, freezing of sequestration of property and assets (Article 93); and enforcement of sentences (Article 103–107)

[59] Rome Statute, Article 63.

In the *Blaskic*[60] case, the ICTY stated that "enforcement powers must be expressly provided and cannot be regarded as inherent in an international tribunal".[61] However, the ICC does not have a police force, or/and cannot arrest somebody anybody. Thus, there is no such enforcement mechanism of international criminal legal jurisprudence. Thus, for such a cooperation regime, the court has to rely upon the horizontal cooperation mechanism among the States. as a result, it solely depends on the sovereign decision of the State itself whether they want to cooperate or not.

The 1998 Rome Statute mostly talks about mutual horizontal assistance from the States to the court. However, through the complementarity regime, it also came up with the concept of *sui generis* cooperation among like-minded States. That means the Statute has a mixed regime of cooperation, which is more horizontal, not vertical as that of the ICTR or ICTY. As the ICC Statute is a treaty thus reconciling the conflicting interests are must. Even ICC can seek help (cooperation) from a non-State party to provide assistance in the criminal proceeding on an appropriate basis.[62]

As mentioned before, it is not always the ICC that will seek cooperation from the States, but it may be the case that the State is seeking "reversed cooperation", according to Gioia (2011).[63] And this factor is quite essential to perform proactive complementarity. Thus, the cooperation regime is not just there to benefit ICC, but it is the vis-à-vis element for both the court and the State. And for such to happen there must be a bridge to refill the gap, and incorporation of such legislation may be the way to establish such a cooperation regime.

It is important to note that without cooperation, the ICC cannot perform its duty in full. However, the mechanism differs from State-to-State practices - how they will be cooperating with each other. Therefore, it can be suggested that along with the Rome Statute, a cooperation legislation/mechanism has to be incorporated as well to keep the inter-play sustainable. The next section will discuss the complementarity legislation and how the State can incorporate atrocity crimes into their national criminal jurisdiction.

3.1. Complementarity Legislation

Incorporation of the atrocity crimes referred by the 1998 Rome Statute in the national criminal jurisdiction is not only an expectation, but also it makes the legal basis for the States to perform their duty to try such crimes at their domestic level. We have to understand that the main differentiating point for the trial of an ordinary crime and an international crime is its intention with international classification and characterization. And to balance any possible lacunas, complementarity legislation is an imperative mechanism. It carries some potential challenges at a domestic level. Furthermore, atrocity crimes are already recognized as *jus cogens* internationally, thus it is imposing the duty upon the States to ratify the legislation. So, either the State can extradite the perpetrators or prosecute them at their domestic level, and in complementarity, the latter is more focused.

Hence, the idea of *aut dedere aut judicare*[64] brings twofold requirements. Firstly, development of the legislative competence is the primary duty to ensure, so that national criminal jurisdiction explicitly criminalizes atrocity crimes – genocide, crimes against humanity, war crimes, and crimes of

[60] https://www.icty.org/x/cases/blaskic/cis/en/cis_blaskic.pdf (19 January 2023)

[61] https://www.icty.org/x/cases/blaskic/acdec/en/71029JT3.html (accessed 05 May 2023), more case documents can be found in https://ucr.irmct.org/scasedocs/case/IT-95-14#appealsChamberDecisions, 19 January 2023.

[62] Rome Statute, Article 93(10).

[63] Gioia 2011, pp. 807-828.

[64] Either extradite or prosecute.

aggression. Without such legislative competence, prosecution or investigation will not be possible in the domestic jurisdiction. Secondly, ensuring the institutional capacity building to prosecute and investigate the atrocity crimes domestically. Therefore, the State must ensure that the institute has the capacity, adequate training, proper access to international resources etc. In the next segments, the integration methods will be discussed which a State can follow to incorporate atrocity crimes into the national criminal jurisdiction.

3.2. Minimalist Approach

When a State applies the ordinary [or military] criminal jurisdiction to address the conduct in question by solely relying upon domestic crimes such as murder, rape, destruction of property etc, that is called the minimalist approach.[65] Here the State is not incorporating any international crimes, but they are simply applying its categorizations in conduct.

The Supreme Court of Peru, in 2009 convicted former president Alberto Fujimori for murder, serious bodily harm, and kidnapping, however, they recognized that the accused could have fallen under the crimes against humanity too, but due to their limited jurisdiction, they followed the ordinary criminal code to adjudicate the case.[66] To note, Peru is a member State of the 1998 Rome Statute, they signed the Statute on 7 December 2000 and deposited their instrument of ratification on 10 November 2001,[67] yet they didn't have the crimes incorporated in their national criminal jurisdiction.

Similarly, Libya's connection with the International Criminal Court is complicated by the fact that it is not a signatory to the Rome Statute. It is debatable whether a nation that is not a signatory to the treaty is obliged by the ICC's mandates or not. Akande (2012) interpreted this issue by pointing out that the basis of Libya's responsibility to the ICC is UN Security Council Resolution 1970 (2011), which refers Libya's case to the Court and obligates Libya to comply with the Court's requests.[68]

It is evident that Libya and Sudan have an international legal responsibility to assist the Court, and that obligation stems from the UN Charter. Akande (2012) mentions that despite the fact that Libya is not a signatory to the ICC statute, it is a UN member state and hence subject to Resolution 1970 (2011). A non-party state is not normally bound by the ICC's demands since it has not accepted the Rome Statute. However, in the instance of Libya, the States' responsibilities to the court are settled because UN Security Council Resolutions are enforceable on all UN member States. As the Rome Statute expressly specifies that the Security Council has the authority to submit matters to the ICC, Resolution 1970 (2011) binds Libya to the Rome Statute even though the state of Libya is not a party to it.[69] Afterward, even though Libya approached the court with this minimalist approach to investigate and prosecute *Saif Al-Islam Gaddafi*, the Pre-Trial Chamber I held that state authorities were unable to perform their duties, thus the admissibility challenge was rejected.

It is important to note that the approach could be found mostly in dualist states. There are some cas-

[65] Imoedemhe 2017, p. 72.

[66] https://img.lpderecho.pe/wp-content/uploads/2016/12/Sentencia-del-Tribunal-Constitucional-caso-Fujimori-Legis.pe_.pdf (19 January 2023)

[67] https://asp.icc-cpi.int/states-parties/latin-american-and-caribbean-states/peru (19 January 2023)

[68] D. Akande, *The Effect of Security Council Resolutions and Domestic Proceedings on State Obligations to Cooperate with the ICC*, Journal of International Criminal Justice, Vol. 10, No. 2, 2012, pp. 299-324.

[69] Christian Rodriguez, *Libya and the International Criminal Court: A Case Study for Shared Responsibility*, https://pitjournal.unc.edu/2023/01/15/libya-and-the-international-criminal-court-a-case-study-for-shared-responsibility/, 19 January 2023.

es where the States incorporated the atrocity crimes with harsher sentences, e.g., Denmark, which may reflect the seriousness of the crime but not always reflect the scale, conduct and pattern of the international crimes.[70] The dilemma of the minimalist approach is - that crime and its prerequisites along with conformity of the penalty - are not active in international standards, as it does not serve the best interest of the States which are reluctant to incorporate the core crimes in their jurisdiction.

3.3. Express Criminalization Process

The Rome Statute may be specifically incorporated into national legislation through a wide and open-ended reference as a means of express criminalization of international crimes. The static or literal transcribing technique and the dynamic criminalization approach - both forms of express criminalization can be taken into consideration in State practice.

The static method entails repeating the definitions of genocide, crimes against humanity, and war crimes found in Articles 6, 7, and 8 of the Rome Statute when transposing international crimes into domestic law. The law specifies the punishments that apply to the offenses in question and contains phrasing that is the same as that of the Rome Statute. This approach has been used by countries including the United Kingdom, Malta, Jordan, and South Africa among others to adopt complementarity legislation. The static transcription method complies with the legality principle since it specifies precisely and reliably whatever conduct is regarded as an international crime and what penalties are associated with it. Additionally, it makes the task easier for those responsible for enforcing the law. Assistance about the fundamental components of international crimes as outlined in the 1998 Rome Statute is provided by adopting the identical terms of the Statute in domestic legislation. The drawback is that it could not account for recent advancements in international criminal law. As a result, modifications would need to be made to adjust for relevant developments.

Criticism of this method could be the States may incorporate only the crimes and its definition, as New Zealand, Uganda and Kenya did; however, variation could be found where the State (Australia), not only adopted the text of the given crime but also adopted the ICC Elements of Crime in whole.[71]

Another method is the dynamic criminalization method where the conduct of the crime mentioned in the Rome Statute has been reformulated, rearticulated, and reworded in order to make the integration process with domestic crimes easier. Thus, the legislation may provide some clarification to the atrocity crimes, however, there is a chance for limiting the scope of the crime/s, or/and overly defining the crime/s and its conduct. All the core crimes i.e., genocide, crimes against humanity, war crimes and crimes of aggression obtained jus cogens status and became a part of general international law. However, while domesticating the atrocity crimes, we can expect the definition of the crimes to be identical to the standard definition. Unfortunately, we can see a notable example of differences in the definition of the crime itself, which is significantly expanding or limiting the scope of the application of the crime.

Tamás Hoffmann has analyzed the crime of genocide in its almost countless domestic varieties by showing how the international definition may be integrated into states' national and international practice.[72] He briefly discusses the limiting scope of the crime of genocide mentioning as an ex-

[70] Imoedemhe 2017, p. 73.

[71] Imoedemhe 2017, p. 74.

[72] T. Hoffmann, *The Crime of Genocide in Its (Nearly) Infinite Domestic Variety*, in M. Odello & P. Łubiński (Eds.), *The Concept of*

ample that "racial" groups are not included in the definition of genocide in Bolivia, Ecuador, Guatemala, Paraguay, and Peru; "national" groups are missing from the criminal code of Nicaragua; while "ethnic" groups are excluded from the criminal law frameworks of Costa Rica, El Salvador, and Oman. He even mentioned some countries omitted or restricted the underlying offenses of the crime of genocide, such as the Czech Republic, Georgia, Guinea Bissau, Poland, and the Special Administrative Region of Macao have completely omitted the mental harm requirement by only criminalizing "serious bodily injury".[73] Moreover, he mentioned that some countries seemingly expand the list of protected groups, but these additions do not result in a different scope of application, such as Australia, Liechtenstein, and the US.[74] In his article, he provided three reasons for such changes in the definition which are the domestic version of genocide as a means to ensure historical justice, domestication of international criminal law, path dependency where States followed another State's legal instrument and blindly incorporated it, finally the translation and drafting error. In his research, he identified out of 196 countries, only 41 countries have an identical definition of the crime of genocide, whereas 100 countries have varying degrees of differences and 55 countries have not even implemented the crime of genocide in their national criminal jurisdiction.[75] Therefore, the method could be criticized for its lenient approach that may end up with uncountable means of the practice of the same crime by the States.

Through the above-mentioned discussion, the best possible approach could be the "dynamic criminalization method", even though it poses risks of speculation of a variety of practices of the same crime. And this approach is quite compatible with the 1998 Rome Statute and its complementarity principle as well.

4. Conclusion

This paper focused on different theoretical concepts and trends of complementarity to understand their core tenets. Although it is not an obligation of the Member States to adopt the 1998 Rome Statute, however for implementing the legislation and proper functioning of international [criminal] justice, it is imperative to incorporate (ratify) such legislation in the national criminal jurisdiction. the case of *Saif Al Islam Gaddafi* was discussed to demonstrate that implementing legislation plays an important part, and it also upholds the principle of *same conduct same person* test.

Of the three emerging models of complementarity, the proactive model mirrors the perspective of mutual inclusivity more than others. And for proactive complementarity to function, the two pillars of the International Criminal Court have to be well established: both cooperation and complementarity. Jon Heller takes the view that complementarity is a double-edged sword,[76] thus we see that implementing legislation through the dynamic criminalization method possess risks of speculation of various national practices of the same crime, however, it seemed the best possible way so far.

Legal scholars always suggested making sure the implementation legislation is enacted to the Member States. According to Amnesty International, 40 State parties enacted some form of imple-

Genocide in International Criminal Law - Developments after Lemkin, Routledge, Oxon, 2020, pp. 69-96.

[73] Hoffmann 2020, p. 7.

[74] Hoffmann 2020, p. 8.

[75] Hoffmann 2020, p. 25.

[76] K. J. Heller, *The shadow side of complementarity: the effect of article 17 of the Rome Statute on national due process*, Criminal Law Forum Vol. 17, 2006, pp. 255–280.

menting legislation.[77]

Out of them, only 22 Member States incorporated in their legal systems both complementarity and cooperation legislation.[78]

The ratification of the 1998 Rome Statute demonstrates the intention of the Member States for combating impunity gaps for the core crimes and carry an international responsibility. However, it is to remember that mere ratification cannot serve the complementarity regime of the Statute, the State parties must incorporate both complementarity and cooperation legislation to serve.

[77] Australia, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Burundi, Canada, Colombia, Congo (Republic of), Costa Rica, Croatia, Denmark, Estonia, Finland, France, Georgia, Germany, Iceland, Latvia, Liechtenstein, Lithuania, Mali, Malta, the Netherlands, New Zealand, Niger, Norway, Peru, Poland, Portugal, Romania, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, United Kingdom. Whereas 31 State parties have drafted their implementing legislation - Argentina, Benin, Bolivia, Botswana, Brazil, Central African Republic, Democratic Republic of Congo, Dominica, Dominican Republic, Ecuador, Gabon, Ghana, Greece, Honduras, Hungary, Ireland, Italy, Jordan, Kenya, Korea (Republic of), Lesotho, Luxembourg, Mexico, Nigeria, Panama, Samoa, Senegal, Uganda, Uruguay, Venezuela, Zambia. On the contrary, only 29 State parties didn't even draft any implementing legislation including Afghanistan, Albania, Andorra, Antigua and Barbuda, Barbados, Belize, Burkina Faso, Cambodia, Cyprus, Djibouti, East Timor, Fiji, Gambia, Guinea, Guyana, Liberia, Macedonia (FYR), Malawi, Marshall Islands, Mauritius, Mongolia, Namibia, Nauru, Paraguay, Saint Vincent and the Grenadines, San Marino, Sierra Leone, Tajikistan, Tanzania. See more: https://www.amnesty.org/en/wp-content/uploads/2021/06/ior400112009en.pdf (accessed 05 May 2023).

[78] Australia, Belgium, Bosnia-Herzegovina, Bulgaria, Canada, Croatia, Denmark, Estonia, Finland, Georgia, Germany, Iceland, Liechtenstein, Lithuania, Malta, the Netherlands, New Zealand, Slovakia, South Africa, Spain, Trinidad and Tobago, United Kingdom; 08 State parties only implemented complementarity legislation including Burundi, Colombia, Congo (Republic of), Costa Rica, Mali, Niger, Portugal, Serbia and Montenegro; only 10 State parties implemented cooperation obligation including Austria, France, Latvia, Norway, Peru, Poland, Romania, Slovenia, Sweden, Switzerland. See more: https://www.amnesty.org/en/wp-content/uploads/2021/06/ior400112009en.pdf (accessed 05 May 2023).