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The paper has further demonstrated that there are different modes of implementing international law and international agreements. However with the constitutional framework in Malawi, this paper argues, that for Malawi,

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<sup>223</sup> Speech delivered at a workshop on the International Criminal Court: Rome Statute Implementing Legislation for Malawi, on 26-27 February 2010, Crossroads Hotel, Lilongwe, Malawi. In attendance was Deputy Prosecutor of the ICC, Madam Fautou Bensouda.

legislative incorporation is the key to effective implementation of the Rome Statute.

## 5.2 Recommendations

Malawi by ratifying the Rome Statute assumed international obligations for the suppression of genocide, crimes against humanity and war crimes. These crimes, according to the Rome Statute, are the most serious crimes of international concern. Malawi must therefore, demonstrate its commitment to the aspirations of the Rome Statute by enacting enabling legislation to incorporate the Rome Statute in its municipal law. Ratification alone is insufficient. Section 211(1) of the Constitution already provides the legal framework through which international agreements can only be implemented in Malawi, through legislation. Malawi must therefore adhere to that Constitutional provision. Examples are abound on how other States Parties have domesticated the Rome Statute without diluting its objects. Malawi should emulate those examples.

All laws which impede the effective domestication of the Rome Statute must be amended to bring them in *pari pasu* or in conformity with the Rome Statute. These include but not limited to, the Extradition Act, the Immunities and Privileges Act and the Criminal Procedure and Evidence Act. Extra-territorial jurisdiction must also be created to enable the investigation and prosecution of the core crimes even in instances of their commission taking place wholly

outside Malawi. Where appropriate, the provisions of the domesticating legislation may be drafted with reference to the relevant Articles in the Rome Statute. For the substantive criminal law of the Rome Statute, that must be incorporated wholesale into the domestic law so that the grave nature of the crimes is not lost through redrafting.

On immunity of persons, the domestic legislation must be clear that no one will be protected if they commit the core crimes regardless of their official capacity, and diplomatic status. This will send a clear signal that Malawi is not a haven for perpetrators of these core crimes. The South African ICC Act can be emulated in that regard. President al Bashir failed to travel to South Africa because he had no immunity there and he faced arrest if he went there.

All in all Malawi must ensure that it enacts legislation, which will fully domesticate the Rome Statute in Malawi. Ratification of the Rome Statute is meaningless without domesticating it in Malawi, through legislation. And Malawi should, just like New Zealand be at liberty to incorporate, in addition to the core crimes, other serious crimes which will enhance Malawi's obligations under the Rome Statute, and Malawi's resolve in fighting impunity.

**(Word count: 19,130 words)**

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