VOL. 5 - ISSUE 1 (2024)

Journal of International Criminal Law

Online Scientific Review

EDITED BY
Heybatollah Najandimanesh
Anna Oriolo

ISSN: 2717-1914

www.jiclonline.org

TABLE OF CONTENTS

VOLUME 5 – ISSUE 1

BOARD OF EDITORS

OVERVIEW

The Journal of International Criminal Law (*JICL)* is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and pubblication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;

- historical accounts that address the international, regional, and national levels; and
- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about "ecocide" is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

COPYRIGHT AND LICENSING

Journal of International Criminal Law [Vol. 5 – Issue 1]

International Crime and Armed Conflict Reconstruction Adjudication Practices: A Human Rights-Based Analysis of Sierra Leone and Western Darfur Experiences

by Harry Amankwaah[*]

ABSTRACT: The study explores International Crime and armed conflict reconstruction adjudication practices within the African context. It answers the extent to which both the Special Court for Sierra Leone and the Western Darfur case referral to the International Criminal Court's practices is consistent with Human Right-Based Approach principles, and the deterrent effect of these adjudication measures towards sustainable peace development. It employs a qualitative content analysis approach and a case study design respectively. It reveals the consistency of the Special Court for Sierra Leone practices with human rights principles, whereas the Western Darfur case referral practices appear the opposite. Largely, the Special Court for Sierra Leone's two-pronged approach (the primacy principle) to International Crime adjudication ensures the realization of human rights principles, whereas the International Criminal Court's complementarity principle as applied in Western Darfur obstructs justice. Therefore, the two-pronged approach should be the premium in international criminal justice administration to ensure sustainable peace development.

KEYWORDS: Complementarity Principle; Deterrence; Implementation Practices; Incarceration; International Crime; Primacy Principle.

I. Introduction

The failure of the League of Nations to secure collective security appears to have resulted in the World War II.[1] It is belief that over 50 million people were killed as a result of the war.[2] This outrageous killing is attributed to advanced weaponry usage.[3] Consequently, the idea that all human beings have rights which need to be respected dominated international political discourse after the war.[4] In protecting humanity, the international bills of rights were instituted: The Universal Human Rights Declaration (1948); the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966).[5] The mass killing of people, including those who were not or who were no more

DOUBLE BLIND PEER REVIEWED ARTICLE

[*] BA (Philosophy), University of Ghana – Legon; Master of Philosophy (Conflict, Human Rights and Peace Studies), University of Education (Winneba, Ghana).

[1] DONNA I. CROSMAN, THE RISE AND FALL OF THE LEAGUE OF NATIONS (2016), https://www.cfc.force.gc.ca/259/290/301/305/crosman.pdf.

[2] Anca Oltean, *The creation of the League of Nations*, in The European Space: Borders and Issues (M. Brie, A. Stoica, F. Chirodea eds., 2016), at 477-488.

[3] *Id.*

[4] JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE (2013).

[5] MICHAEL HAAS, INTERNATIONAL HUMAN RIGHTS: A COMPREHENSIVE INTRODUCTION (2014), at 179-276.

JICL (Vol. 5 – Issue 1 – 2024), pp.18-32
ISSN 2717-1914
Doi: 10.22034/JICL.2024.202182

participants in the hostilities, appears to have led the institution of these International Human Rights Laws (IHRL).[6]

Again, the devastating outcome of the World War II seems to have prompted the revisitation of the International Humanitarian Laws (IHL).[7] The mandate of the IHL is mainly to manage the means and methods of warfare and other armed hostilities to reduce killings, human suffering, and to protect public properties.[8] In page 13 of the International Committee of the Red Cross-national implementation database, most treaties and conventions which supports the IHL operations are listed.[9] Essential among them is the 1998 Statute of the International Criminal Court (ICC). The ICC establishes the rule of law measures in armed conflict reconstruction, as well as the means to ensure sustainable peace development.[10] Its mandate is to investigate and prosecute violations of international crime, namely, crime of aggression, war crime, crime against humanity, and the crime of genocide.[11] However, preceding the ICC establishment was the Versailles Treaty and the Nuremberg & Tokyo International Military Tribunals which tried international crime breaches after the First and the Second World War respectively.[12] Yet, literature that comparatively examines the ICC operations and the activities of its preceding tribunals to assert the extent to which they ensure the realization of human rights principles in practice appears underrepresented.

Armed conflict reconstruction entails the mechanism to rebuild war-devastated country or a community to prevent relapse.[13] This involves the use of either retributive, reconciliation or both as the rule of law measure in practice to ensure sustainable peace development.[14] Yet, the ICC and its preceding Tribunals seem to mainly offer a kind of retribution to ensure accountability, justice and security during armed conflict reconstruction.[15] However, how these International Criminal Justice mechanism practices ensure the realization of human rights principles appear not to have been given the due consideration. As such, this study explores the Special Court for Sierra Leone (SCSL) and the Western-Darfur case referral to ICC practices to assert its consistency with HRBA principles as part of international criminal jurisprudence.

II. Statement of the Problem, Objectives of the Study and Methodology

The use of International Criminal Justice mechanism in armed conflict reconstruction adjudication appears not a new creation.[16] The ad hoc International Criminal Tribunal for

---

[6] *Id*.

[7] NANCIE PRUD'HOMME, INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW: FROM SEPARATION TO COMPLEMENTARY APPLICATION (2012).

[8] *Id*.

[9] ICRC, *The Domestic Implementation of International Humanitarian Law* (2013), at 13, http://www.icrc.org/ihl-nat.

[10] SRIRAM L. CHANDRA., OLGA MARTIN-ORTEGA, JOHANNA HERMAN, WAR, CONFLICT AND HUMAN RIGHTS THEORY AND PRACTICE (2010), at 161-232.

[11] ICC, *Understanding the International Criminal Court,* Public Information and Documentation Section of the Registry.

[12] CHANDRA, MARTIN-ORTEGA, JOHANNA HERMAN, *supra* note 10, at 214.

[13] Harry Amankwaah, *The Rule of Law and Armed Conflict Reconstruction Implementation Practices: A Human Right-Based Analysis of the Rwandan Experience,* 9(1) COGENT SOCIAL SCIENCES 1 (2023).

[14] *Id*.

[15] NEIL BOITER, ROBERT CRYER, DOCUMENTS ON THE TOKYO INTERNATIONAL MILITARY TRIBUNAL: CHARTER, INDICTMENT AND JUDGEMENT (2008).

[16] *Id*.

Yugoslavia (ICTY), the special chamber for East Timor, and the hybrid tribunals for Cambodia and Kosovo is an affirmation. In Africa, a lot appears to have been written with respect to the Ad hoc International Criminal Tribunal for Rwanda (ICTR), the SCSL, and ICC adjudications in the Democratic Republic of Congo, Sudan, Uganda, and Central African Republic after the surge in armed conflict both before and after the Cold War.[17] However, what appears not to have been thoroughly examined is how the previous tribunal system's practices, and the current ICC operations in Africa could ensure the realization of human rights principles. In this regard, this study comparatively explores the extent to which the SCSL and the Western-Darfur case referral to ICC practices is consistent with HRBA principles to fill this gap in literature. The motive is to add to the existing literature on International Criminal Justice jurisprudence within the African context.

The objective is to explore the consistency of the SCSL and the Western-Darfur case referral to ICC practices with HRBA principles, and to analyze the deterrent effect of these criminal justice adjudication mechanisms on sustainable peace development. It seeks to answer questions on how the SCSL and the Western-Darfur case referral to ICC practices is consistent with HRBA principles, and what deterrent effects do these rule of law and armed conflict reconstruction mechanisms have on sustainable peace development**.** It employs a qualitative content analysis approach, and an explorative case study design respectively.[18] Philosophically, the constructivist paradigm which evaluates the content of what is said to assert reality was adapted.[19] The well-documented secondary material on these subjects both in print and the social media justifies the use of this methodology. On Data Collection, the instrument used was mainly secondary sourced materials (*i.e*., related books and articles), including social media material (precisely the YouTube interviews on this subject).[20] The YouTube interview materials adapted for this study include, 'Dialogues on international Criminal Justice: Brenda J. Hollis – Special Court for Sierra Leone, Wayomo Foundation (2017); Mohamad Fofanah | Human Rights, Transitional Justice, & the Special Court for Sierra Leone, Duke University School of Law (2020); David Crane, Chief Prosecutor of the Special Court for Sierra Leone, UNH Franklin Pierce School of Law (2012); Stephen Rapp, Prosecutor of the Special Court for Sierra | pt. 1, United Nations Association of the …. (2009); War crimes: Alleged militia leader at ICC's first | DW News (2022); ICC Prosecutor Karim A. A. Khan KC briefs the UNSC on the Situation in Darfur, Sudan, IntlCriminalCourt (2023); Outreach report 2008, Darfur, Sudan, IntlCriminalCourt (2009); Exclusive: Sudan's Bashir on ISIL, Darfur and accusations of genocide and war crimes, Global Conversation (2015). Data Analysis: The thematic analysis approach, through the direct comparative content analysis.[21] There were no personal interviews and questionnaires used to solicit responses. This is because of existing wide range of available materials on these armed conflicts, as provided by experts of this field both in print and on the social media.

III. Literature Review

[17] Babafemi Akinrinade, *International Humanitarian Law and the Conflict in Sierra Leone*, 15(2) NOTRE DAME JOURNAL OF LAW, ETHICS & PUBLIC POLICY 391 (2012).

[18] Reza Azarian, *Potentials and Limitations of Comparative Method in Social Sciences*, 1(4) INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCE 113 (2011).

[19] Jan Schilling, *On the Pragmatic of Qualitative Assessment: Designing the Process for Content Analysis*, 22(1) EUROPEAN JOURNAL OF PSYCHOLOGICAL ASSESSMENT 28 (2006).

[20] *Id*.

[21] KIMBERLY A. NEUENDORF, THE CONTENT ANALYSIS GUIDEBOOK (2002).

International Law appears a regulatory mechanism which binds all States or State parties to a stated interest under international supervision.[22] Available research highlights some special international legislations to regulate armed conflicts and other armed hostilities: the International Human Rights Law, which stresses States positive and negative obligation in respect of safeguarding the freedoms, rights, dignity and the uniqueness of all its subjects at all times; the Humanitarian Law, which is about the rules and regulations that governs the means and methods of wars and other armed conflicts; and the International Criminal Law (ICL), which deals with the rules and regulations that guides international crime breaches adjudication. Literature on the International Criminal Justice (ICJ) presents this system as the vehicle that makes the provisions of ICL operational.[23] It is argued that, the ICTY, the ICTR, the SCSL, the Special Chambers for Serbia and Bosnia-Herzegovina, and other rule of law measures in pre-ICC operations appear the vehicle that were used to try perpetrators of international crimes. The gap therefore, is on how these ICJ measures both in pre and post ICC ensures the realization of human rights principles. In this respect and within the African context, this study uses the Sierra Leonean and the Western-Darfur experiences" to fill this existing gap.

Historically, the Sierra Leonean armed conflict appears to have claimed thousands of innocent lives and displaced tens of thousands of its citizens.[24] However, unlike many other armed conflicts in Africa which are often attributed to ethnicity, the cause of the Sierra Leonean armed conflict seems to differ.[25] The author gives greed, grievances, radicalization of the youth, unemployment and political corruption as the catalyst that appears to have heightened the atrocities perpetrated during the armed conflict. Again, foreign involvement as its causation cannot be discounted.[26] The alliance formed by Charles Taylor and Corporal Foday Sankoh made the conflict to beseem an act of war.[27] They used maiming, sexual violence, random amputation, and systematic killings which was code named 'Operation No Living Thing' as a tool to perpetuate the atrocities.[28] This resulted to the random amputations, rape, killings, displacement of the citizenry and other criminalities with international crime ramifications.[29] Therefore, the SCSL's establishment as ICJ measure to investigate and prosecute perpetrators of international crime appears consistent with international standards.[30] Although, Sierra Leone at the time of the commission of what appeared an international crime violation have been a party to a number of international treaties, covenants and conventions.[31] Notably, the country signed the Convention against Torture and other Cruel inhuman or Degrading Treatment or Punishment in 1965; acceded to the Additional Protocols I & II of the Geneva Convention in 1986; signed and ratified the Rome Statute in 1998 and a host of others. Yet, context specific literature that interrogates the consistency of the SCSL's practices with HRBA principles appear underrepresented.

---

[22] *ABC of International Law, Swiss Federal Department of Foreign Affairs* (FDFA) (2009), https://www.eda.admin.ch.
[23] *Id*.
[24] *Id*.
[25] *Id*.
[26] ALEX DE WALL, THE CONFLICT IN DARFUR SUDAN: BACKGROUND AND OVERVIEW (2022), at 120-160.
[27] *Id*.
[28] *Id*., at 87-90.
[29] *Id*.
[30] *Id*.
[31] MOHAMED SUMA, SIERRA LEONE JUSTICE SECTOR AND THE RULE OF LAW (2014).

The Western Darfur armed conflict on the other hand appears a counter-insurgency operation.[32] The use of invisible forces which appears to be made up of the regular Sudanese soldiers and its auxiliary militia were alleged to have used chemical weapon, rape and other inhuman treatment against the citizenry resulting in mass killings.[33] The perceived grave crimes committed against the citizenry seems to have prompted United Nation Security Council's referral of the situation to the ICC under Resolution 1593 to investigate and prosecute perpetrators.[34] In line with ICC's complementarity principle, the Sudanese government instituted a Special Court for Darfur (SCD) to undertake an internal investigation and prosecution of perpetrators of international crime.[35] However, the SCD was accused to be mainly interested in sheep stealing cases, and reluctant to its core mandate.[36] Yet, whether the SCD's establishment is ostensibly a tool to prevent an international trial, or a way to evade justice appears not to have been thoroughly examined. Sudan amidst these legal inconsistencies appear not a party to most of the international laws, treaties and conventions.[37] Although, it lately signed the Rome Statute of the International Criminal Court in 2000, but yet to ratify most of the Geneva Conventions.[38] This notwithstanding, the ICL appears to bind all state parties regardless of affiliations.[39] Also, the common art. 3 of the Geneva Conventions appears to prohibit internal armed violence and other armed hostilities of all sorts against life and properties.[40] Despite, literature that subjects the Darfur adjudication practices by the ICC to a human right-based scrutiny seems underrepresented – hence, this study.

In both armed conflicts, literature evidence the use of peace accord or peace agreement as an integral component of its reconstruction. This appears the official negotiation between international actors and conflicting parties to bring hostilities to an end to promote sustainable peace development.[41] In this regard, the Lomé peace accord and the Abuja peace agreement I & II were initiated to bring lasting peace in Sierra Leone.[42] However, literature on this subject see the Lomé peace agreement which gave some level of constitutional concessions to the RUF rebels to be inconsistent with international practice. Its further lament on aspects of the accord which granted all combatants absolute Amnesty to be contrary with human right laws. Equally, existing literature shows that the Western Darfur armed conflict reconstruction brought in the Darfur Peace Agreement (DPA).[43] Regardless, the DPA seem dead on arrival because of its refusal to address the land tenure problem prominent to the conflict.[44] Again, the DPA appears to have been strategically used as a peace measure by the Sudanese government to evade justice.[45] However, how these accord as armed conflict reconstruction measure is consistent with HRBA principles appears not to have been thoroughly examined - hence this study.

---

[32] Pablo Castillo, *Rethinking Deterrence: The International Criminal Court in Sudan,* 13 UNISCI DISCUSSION PAPERS (2007), https://ciaotest.cc.columbia.edu/olj/unisci/unisj004/unisci004/pdf.
[33] JOHAN BROSCHE, DARFUR-DIMENSIONS AND DILEMMAS OF A COMPLEX SITUATION (2008).
[34] *Id*.
[35] *Id*., at 132.
[36] *Id*.
[37] *Id*.
[38] Human Rights Library, *Ratification of International Human Rights Treaties – Sudan*, https://www.hrlibrary.umn.edu/research/ratification-sudan.html.
[39] *Id*.
[40] *Id*.
[41] Hideaki Shinoda, PEACEBUILDING BY THE RULE OF LAW: AN EXAMINATION OF INTERVENTION IN THE FORM OF INTERNATIONAL TRIBUNAL (2001).
[42] *Id*.
[43] *Id*.
[44] *Id*.
[45] *Id*.

The HRBA requires all international and national conventions, treaties, policies, laws and practices to further the realization of International Human Rights principles.[46] Research shows that the HRBA is anchored on five cardinal principles as its parameter for measurement: 1) respect for the rule of law; 2) accountability; 3) participation; 4) non-discrimination and; 5) empowerment.[47] These principles of integration in social policy practice implementation appear to provide the requisite of knowledge, values, and skills needed to promote a sustainable development.[48] However, existing literature on how these HRBA principles could be integrated in ICJ jurisprudence during armed conflict reconstruction to impact sustainable peace development appears underrepresented, creating a significant gap. The rule of law principle of the HRBA appears a practice which seeks to create an enabling environment that allows the supremacy of acceptable and promulgated laws to function as standards in both international and national crime adjudications.[49] It strict adherence of the equality before the law, certainty and respect for fundamental human rights principles appear fundamental to sustainable peace development. Again, the ICCPR arts. 14 and 16 stresses the due process of law, and the rights to fair hearing by a competent, independent and impartial court respectively.[50] Largely, this principle appears a remarkable feature in international crime adjudication and armed conflict reconstruction practices.[51] Yet, literature that explores its adherence in practice towards sustainable peace development within the African context appears underrepresented. This study therefore seeks to interrogates the extent to which both the SCSL and ICC in Western Darfur satisfy this philosophy – a significant gap this study fills.

The Accountability principle of the HRBA on the other hand, emphasizes transparency and clarity of rules and procedure as well as the proactiveness to protect victims of crime infringements.[52] It further stresses the deserved punishment regime for crime violators to ensure justice towards sustainable peace development.[53] This involves prompt information distribution from justice policy formulators through to victims.[54] This principle in practice seeks to promote peace, safety, and security.[55] As a measure of accountability, the SCSL appears to have tried a number of landmark cases, inclusive is *the Prosecutor v Taylor* with case SCSL-03-0I-A.[56] Overall, it appears the international division of the SCSL indicted 13 people and arrested and tried 12 of them.[57] Although, statistics showing the trials of the domestic courts appears unaccounted. On the contrary, the ICC in Western Darfur in almost over a decade of its inception tried only Ali Kushayb.[58] In the mix of these legal accountability inconsistencies,

---

[46] UNRISD, *The Human Rights-Based Approach to Social Protection* (2016), www.unrisd.org.

[47] GIFT MUAMI SOTONYE-FRANK, A CRITICAL EXAMINATION OF THE SUITABILITY OF A HUMAN RIGHTS-BASED APPROACH FOR IMPLEMENTING GIRLS' RIGHT TO EDUCATION IN NIGERIA (2015).

[48] FANNY DUFVENMARK, RIGHTS-BASED APPROACH TO PROGRAMMING (2015).

[49] *Id*.

[50] *Id*., at 116-117.

[51] *Id*.

[52] *Id*.

[53] *Id*.

[54] *Id*.

[55] *Id*.

[56] International Criminal Law, *Accessory Library – Special Court for Sierra Leone Rejects "Special Direction" Requirement for Aiding and Abetting violations of International Law,* Prosecutor v Taylor, Case No. SCL-30-01-A, Judgment (Spec. ct. for Sierra Leone Sept. 26, 2013).

[57] Thierry Cruvellier, *The Special Court for Sierra Leone: The First Eighteen Months* (2002) https://www.ictj.org/sites/default/files/ICTJ-sierraleone-special-court-2004-English.pdf.

[58] *Id*.

literature which specifically analyses its human rights implications on armed conflict reconstruction in Africa appears scant.[59]

The Participation principle of the HRBA principally stresses stakeholder involvement in decision making process during policy implementation practices.[60] This inclusion principle in justice delivery is to help protect the vulnerable and the marginalize in society against structural injustices.[61] This principle appears armed conflict reconstruction and sustainable peace development imperative.[62] Yet, the extent to which stakeholder inclusiveness in ICJ practices impact sustainable peace development in Africa appears not to have received the needed attention in international criminal justice jurisprudence. Although, existing literature on the SCSL practices show the extent to which it involved stakeholders in its activities by instituting international court division to try high-profile cases, the domestic court for low-level trials and a reconciliation commission to settle non legal issues.[63] However, how the ICC which operated from the Hague in trying perpetrators of international crime in Western Darfur ensured participation is yet to be studied. This study therefore examines the impact stakeholder participation and inclusion in ICJ practices have on the realization of human rights and armed conflict reconstruction towards sustainable peace development.

The Non-discrimination and equality principle emphasizes equal treatment for all, regardless of any prevailing circumstances.[64] Therefore, the extent to which the ICJ system to adjudicate international crime satisfies this principle to ensure justice is paramount to this study. Particularly, ICC's jurisprudence in respect of its complementarity principle emphasizes the trial of mainly high-level perpetrators of international crime.[65] In this regard, ICC's mandate in the Western Darfur was to primarily tried high-level perpetrators as in the case of Ali Kushayb, by this principle a huge number of other perceived low-level perpetrators appears to have escaped justice.[66] Therefore, the extent to which this principle in practice is consistent with the non-discrimination as a non-derogatory right in respect of ICJ's jurisprudence in Africa needs further scrutiny. Although, available studies show the extent to which the SCSL practices seems consistent with the Non-discrimination and equality philosophy of the HRBA.[67] Yet, a comparable literature which seeks to do a comparative right-based analysis of how the SCSL and ICC in Darfur trials satisfy the non-discrimination principle appears underrepresented - this creates a significant gap in literature to be filled.

The HRBA Empowerment principle emphasizes the need to enlighten the citizenry as right-holders on why, how and when to claim or assert their human rights in case of infringement.[68] The authors further stress the need for governments as duty-bearers to be exposed to human rights principles, freedoms, obligations, as well as its responsibility to protect same. This appears a necessity for both the government and the individual to fully participate in social policy implementation practices.[69] It seeks to embolden victims as right-holders to be

---

[59] *Id*.
[60] *Id*.
[61] Sulaiman O. Rabin, *The Philosophy of Punishment as Attainable under English and Islamic Laws,* 4(4) INTERNATIONAL JOURNAL OF BUSINESS & LAW RESEARCH 67 (2016).
[62] *Id*.
[63] *Id*.
[64] *Id*.
[65] Linda E. Carter, *The Principle of Complementarity and the International Criminal Court: The Role of Ne Bis in Idem*, 8(1) Santa Clara Journal of International Law 165 (2010).
[66] *Id*.
[67] *Id*.
[68] *Id*.
[69] *Id*.

able to access justice.[70] However, a context specific literature on the extent to which ICJ practices in Africa empowers victims as right-holders to assert their rights in times of armed conflict reconstruction to ensure sustainable peace development appears not to have been thoroughly examined – hence this study.

IV. The Theoretical Underpinnings of the Study: The Deterrence Theory; The Denunciation Theory and the Theory of Incapacitation

These three public safety theories support punishment regime as a means of crime prevention and justice delivery. As such, these theories have been adapted to underpin this study on International Criminal Justice adjudication jurisprudence. Justifiably, existing research affirms their usage as a valid lens to view national criminal justice policy legislations.[71] Yet, a comparable idea that these theories when sequentially integrated could be adapted to study International Crime adjudication and armed conflict reconstruction practices within the African context appears not to have been thoroughly examined.

On the Deterrence theory, it stresses threat of sanctions to crime violators as a means to prevent the criminal from committing crime, and to discourage other intentions.[72] There are both micro-and-macro-level linkage of this theory to crime and punishment.[73] The micro-level crime liability deals with the assumption that criminals caught and punished will be deterred from future criminal activities, whiles the macro-level predicts the deterrent impact of this theory on the general population.[74] This seems consistent with the basic justification for instituting International Criminal Justice system whose intent is to deter perpetration of international crimes.[75] Punishment which is sufficiently certain and severe appears to make rational beings understand that crime does not pay and the cost of criminal violence outweighs its benefits.[76]

This theory appears to be built principally around three cardinal principles: certainty, celerity and Severity.[77] This is often called the three-pronged approach to criminal justice delivery.[78] Briefly, the certainty principle seems to echoes the assurance that criminal perpetrators will be apprehended through the institution of appropriate enforcement policy mechanisms; the celerity principle on the other hand, emphasizes the immediate or swift imposition of punishment as a consequence of one's criminal action; whiles the severity principle stresses crime commitment and its proportional corresponding punishment.[79] Its

---

[70] *Id*.
[71] Ben Johnson, *Do Criminal Laws Deter Crime? Deterrence Theory in Criminal Justice: A Primer,* MN HOUSE RESEARCH (2019).
[72] *Id*., at 63-73.
[73] Kelli D. Tomlison, *An Explanation of Deterrence Theory: Where Do We Stand? Federal Probation,* 80(3) UNITED STATES COURTS 33 (2016).
[74] *Id*.
[75] Yvonne M. Dutton, *Crime and punishment: Assessing Deterrence Theory in the Context of Somalia Piracy,* 46(1) THE GEO. WASH. INT'L. REV 607 (2014).
[76] Sheila R. Maxwell, Kevin M. Gary, *Deterrence: Testing the Effects of Perceived Sanction Certainty on Probation Violations*, 70(2) SOCIOLOGICAL INQUIRY 117 (2000).
[77] Daniel S. Nagain, *Integrating Celerity, Impulsivity and Extra-Legal Sanction Threats into a Model of General Deterrence: Theory and Evidence,* 39(4) CRIMINOLOGY 865 (2001).
[78] *Id*.
[79] *Id*.

relevance appears to be more of crime prevention.[80] Yet, how its integration in international criminal justice system could impact sustainable peace development appears underrepresented. Particularly, the celerity principle's which emphasizes speedy imposition of punishment appears inconsistent with the due process of law.[81] Again, how the deterrence theory principles impact International Criminal Tribunal or Court systems in respect of international crimes infringement trials and its consequence on sustainable peace development within the African context appears not to have been thoroughly examined.

The Denunciation Theory (DT) emphasizes the need to openly punish criminals to suffer their wrong doings.[82] It stresses the need to punish the criminal offender publicly to deter others from committing similar offence due to societal stigmatization.[83] This theory trumpets societal support for punishment infliction to criminals as a means to register its detestation.[84] Research shows that criminals who suffer from the consequences of their wrong doing compensates the larger society.[85] However, the DT has been criticised for its perpetual interest in punishment against crime prevention and corrections.[86] This makes the denunciation theory which is premiss on societal revulsion to appear a challenge.[87] This appears not enough to consider deterrence and denunciation theories in absolute terms in crime prevention, but incapacitating the criminal is also remarkable.[88]

The Incapacitation Theory stresses punishment that removes the criminal from his or her crime zone.[89] This theory according to Bolton, is to disable the perpetrator's influence, power, freedom and capability of continual crime commission. This incarceration principle appears a means of punishment to instil fear that deters the criminal from future intentions of committing crime.[90] However, this theory appears to have been abandoned in international criminal jurisprudence.[91] Instead, the deterrence theory appears to dominate the political discourse on punishment within the international circles since the inception of the International Criminal Court.[92] Regardless of its dominance, its celerity principle seems to have been plagued with jurisprudential challenge in respect of its impediment to the due process of law.[93] Again, the denunciation theory which emphasizes punishment infliction as a means to register societal detestation appears to have been partially applied in Rwanda with respect to the ICTR and the Gacaca Tribunal system.[94] However, how the convergence and integrative synthesis of these theories in international criminal justice delivery impact sustainable peace in Africa appears not to have been clearly articulated, hence, this application.

---

[80] Anthony Ellis, *A Deterrence Theory of punishment,* 53(212) THE PHILOSOPHICAL QUARTERLY 338 (2003).
[81] *Id*.
[82] Frederick M. Lawrence, *Punish hates: Bias Crimes under American Law* (1994). Harvard University Press.
[83] *Id*.
[84] *Id*., 67-75.
[85] *Id*.
[86] Gordon Bazemore & Mark Umbreit, *A comparison of four restorative conferencing models.* Office of juvenile justice and delinquency prevention, (2001), https://www.ojp.gov/pdffiles1/ojjdp/184738.pdf
[87] *Id*.
[88] *Id*.
[89] Tessa Bolton, *Potential and Peril: Incapacitation in the new age of International Criminal Law* (2015), A thesis submitted on partial fulfilment of the requirement for the Degree of Mater of Law. The University of Britain Columbia.
[90] Prashna Samadar, *Theories of Punishment*, 6(4). JETIR (2019), at 328-330.
[91] *Id*.
[92] *Id*.
[93] *Id*.
[94] *Id*.

V. Conceptual Framework

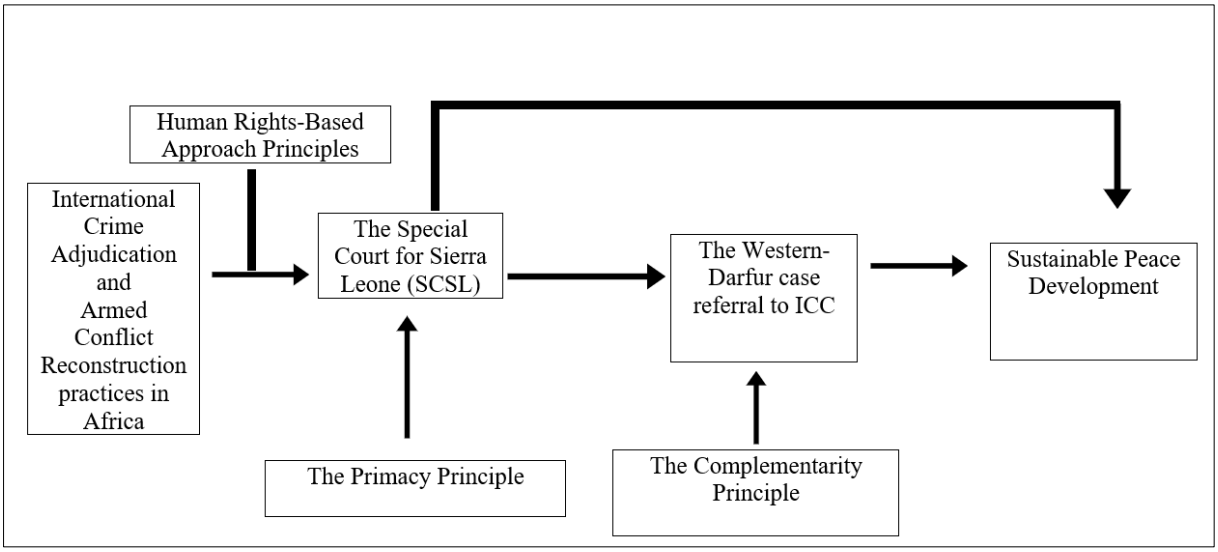

Figure 1.1 (Source: Researcher's construct, 2023)

The Figure 1.1 above conceptually summarizes the phenomenon being studied. It explains the variables in the study as follows: International Crime Adjudication and Armed Conflict Reconstruction Practices as the Independent Variable; the HRBA Principles as the Moderating Variable; the SCSL and The Western-Darfur case referral to ICC as Multiple Mediator Variables; both the Primacy and the Complementarity Principles as Control Variables and Sustainable Peace Development as the Dependent Variable.

VI. Findings

This section presents the findings on the extent to which the SCSL and the Western Darfur case referral to ICC practices is consistent with HRBA principles; and the deterrent effect of these adjudication practices on sustainable peace development.

A. On SCSL and Western Darfur Case Referral to ICC practices

The findings reveal that the SCSL was instituted to adjudicate international crime breaches in the aftermath of the about 10 years old armed conflict in Sierra Leone. According to analyst,

the court's establishment was a partnership between the Sierra Leonean government and the UN Security Council. It was a request by the government to the international community to aid the trial of perpetrators suspected to have violated the ICL during the armed conflict. The findings further reveal that the court was hybrid in nature with a limited mandate and mainly situated in Sierra Leone. It used both international and national laws in its prosecutorial mandate. As recorded, the court was composed of an International Division which had a superior mandate to try the high-level perpetrators of international crime, whereas the National court focused on the trial of low-level perpetrators. Its staff were appointed from both within and outside Sierra Leone. In all, the International Division indicted 13 high-level perpetrators but was able to try 12 of them with 1 on the loose. It convicted Charles Taylor whose trial happened in the Hague. Analyst calls this legal system 'the Dural track' approach. They see this approach as legal empowerment to the SCSL to be able to prosecute both high-level and low-level perpetrators in accordance with their level of perpetration. Besides, the findings report of a detachment to the court which is the Truth and Reconciliation Commission that arbitrated non-legal issues. It settled cases such as children who took part in the hostilities and committed atrocities but who by virtue of the ages at the time of the war could not be tried by the SCSL. This legal empowerment according to analyst helped brought the war to a closure and justice to victims.

On Western Darfur case referral to ICC practices, the findings reveal a countless allegation of human rights infringement, rape charges and other war crime related cases believed to have been largely perpetrated by the government and its affiliates. Analyst of the armed conflict belief the result is the mass killings and loss of properties within the region. Therefore, the passage of Resolution 1593 by UN Security Council to refer the situation to the ICC. The court as the findings shows was situated and operated from the Hague. The ICC through their investigations indicted about 4 out of the 51 inductees referred to it by the United Nation Security Council. Notable among them was Ali Kushayb the leader of the Janjaweed militia. Analyst pointed out that the complexities and the dynamics of the armed conflict hindered the effective operation of the court.

B. The Deterrent Effects of the SCSL and the Western Darfur Case Referral to the ICC

The findings on the deterrent nature of the SCSL was basically premise on the assertion of justice the people want versus justice the International Community seeks contradiction. Analyst belief this could best explain the deterrent effect of the SCSL. Reports on this armed conflict presents the justice the people want to be the immediate incarceration of the guilt to satisfy the quest of the larger society. The justice the International Community seeks on the other hand, emphasizes the assurance that crime perpetrators will be arrested and accorded the due sanction through the due process of law. This notwithstanding, the findings revealed that the SCSL mode of indictment towards conviction of perpetrators of international crime married the two. Yet, its approach appeared to be a somewhat problematic and grossly defective. Particularly, the use of the joint criminal enterprise as a tool for criminal indictment under SCSL. Specifically, its three mode of crime liability towards conviction: the sharing of basic intent; of which being a member of an organisation that condones crime or where crime commission is systemic to that particular institution; and the foreseeability test, appeared the grounds where perpetrators were convicted. 80% of the SCSL international crime convictions according to research came as a result of the JCE.

On Western Darfur the desire to see the perpetrators of international crime jailed appears the ultimate. It is clear from the findings that the victims wanted the perpetrators prosecuted and immediate incarceration by the ICC. Therefore, analyst of the armed conflict sees the almost 15 years delay before the start of prosecution of perpetrators by the ICC as legal obstruction. They belief the trial of Ali Kushayb the leader of the Janjaweed militia, President Bashir and Ahmed Haroun to be camouflage. According to analyst, the complementarity principle of ICC has not been able to bring the armed conflict to a closure. Analyst belief that this ICJ system has not brought the ultimate justice to victims.

VII. Discussions

How consistent is the SCSL and the Western-Darfur case referral to ICC in practice is with HRBA principles: The SCSL establishment as a partnership between the Sierra Leonean government and the international community promotes stakeholder inclusiveness consistent with the participation principle of the HRBA.[95] Again, the SCSL's reliance on both domestic and international criminal laws for the adjudication of international crime and other crimes is in conformity with the rule of law principle.[96] Also, the SCSL's indictment of about 12 high-level perpetrators, and the onward conviction of 8 of them satisfies the accountability principle.[97] Particularly, its landmark case which led to the conviction of Charles Taylor in the Hague is consistent with the non-discrimination and equality principle.[98] The SCSL's Dural track approach which offered a unique opportunity for victims of both international crime and other form of criminal violations to seek justice appeared consistent with the empowerment philosophy of the HRBA.[99] In sum, the SCSL adherence to the above HRBA principles furthers the realization of human rights principles.[100]

Regarding the Western Darfur case referral to ICC, both the court's location and its operation opposes the participation principle of the HRBA.[101] Specifically, the court situated in the Hague obstructs stakeholder participation.[102] Again, the composition of judicial staff to adjudicate the cases in practice seems to contradict the HRBA's transparency principle.[103] Also, the disregard for ICC indictment procedure by the Sudanese government citing political witch-hunting by the West as its basis is inconsistent with HRBA principle of the rule of law.[104] The inability of the ICC to deliver on its prosecutorial mandate in almost over a decade from its inception contravenes the accountability principle of the HRBA.[105] Regardless, the landmark case in respect of Ali Kushayb the leader of the Janjaweed militia and the indictment of President Bashir satisfies the non-discrimination and equality principle of the HRBA.[106] However, the complexities associate with the Western-Darfur armed conflict in respect of

---

[95] *Id*.
[96] *Id*.
[97] SCSL, International Criminal Law – *Accessory library – Special Court for Sierra Leone Rejects* (2013).
[98] SCSL, The Prosecutor v Taylor, Case No. SCL-30-01-A, Judgment (Sept. 26, 2013).
[99] *Id*.
[100] *Id*.
[101] *Id*., para. 247.
[102] *Id*.
[103] *Id*.
[104] Gus Waschefort, *Africa and International Humanitarian Law: The More Things Change, the More They Stay the Same; War and Security at Sea,* 98(2) INTERNATIONAL REVIEW OF THE RED CROSS 593 (2016).
[105] *Id*.
[106] *Id*.

human rights excesses, and how best to claim it is inconsistent with the empowerment philosophy of the HRBA.[107] This frowns on the HRBA requirement which mandates all international laws and practices to further the realization of International Human Rights principles.[108]

On the deterrent effects of these international crime adjudication variables towards sustainable peace development: The imprisonment regime for perpetrators of international crimes like Charles Taylor appears to be consistent with the philosophies underpinning both the denunciation and the incapacitation theories.[109] These theories stress the need to punish the criminal publicly to deter others from committing similar offence due to societal stigmatization.[110] This is consistent with the celerity principle of the deterrence theory which emphasizes swift imposition of punishment.[111] Yet, the Western Darfur case referral to ICC dealings with Ali Kushayb's prosecution, which processes and procedure delayed the case for over 10 years contradicts the celerity principle and other philosophies underpinning the adapted theories.[112] Largely, arts. 6, paras. 1 and 3 of the Rome Statute presents the required mode of indictment for international crimes.[113] Particularly, art. 6, para. 1 stresses the indictment for perpetrators of direct participation in planning and execution, whiles art. 6, para. 3 emphasizes threat of punishment for refusal of superiors to control their subordinates during hostilities.[114] However, the use of the complementarity principle by the Sudanese government in the Darfur region appears to mainly satisfy art. 6, para. 3, which stresses threat of sanctions to deter other crime violators; yet, this application in practice beseems a cover-up.[115] The SCSL'S primacy philosophy on the other hand appears consistent with both arts. 6, paras 1 and 3.[116] Again, the SCSL practices appear to conform with International Covenant on Civil and Political Rights (ICCPR) arts. 14 and 16, which stresses adherence to the due process of law to denounce and incapacitate criminal perpetrators, whiles the Western Darfur case referral to ICC practices in this face is opposite.[117]

VIII. Conclusion

Largely, the SCSL primacy principle as the rule of law measure in armed conflict reconstruction in Serria Leone ensured sustainable peace development, whereas the ICC complementarity principle as applied in Western Darfur appears a tool to either evade or obstruct justice. Therefore, the SCSL's dual approach to investigate and prosecute perpetrators of international crime ensures accountability for all. Particularly, its participatory roles accorded both the international and domestic courts to function. This dual mandate application satisfies the cardinal principles underpinning the HRBA, whiles the complementarity principle impedes the realisation of human rights principles. On the deterrent effects these international crime

[107] *Id*.
[108] *Id*.
[109] *Id*..
[110] *Id*.
[111] *Id*.
[112] *Id*.
[113] Arts. 6, paras. 1 and 3 of the Rome Statute.
[114] *Id*.
[115] *Id*.
[116] *Id*.
[117] MICHAEL HAAS, INTERNATIONAL HUMAN RIGHTS: A COMPREHENSIVE INTRODUCTION (2014), at. 116; see also arts. 14 and 16 ICCPR.

adjudication measures have on sustainable peace development, the sequential integration of the denunciation and incarceration theories which supports the use of punishment regime of imprisonment to satisfy the quest of the citizens appears the needful. The motive is to either discourage or prevent the criminal and others who may be nurturing similar intentions from perpetrating same. However, the deterrence theory which stresses threat of sanctions to discourage criminality is largely the foundation of ICC operations. Therefore, the amalgamation of both threat of sanctions and the actual execution of punishment appears the way forward towards sustainable peace development. This will accord the necessary sanctions to both low-level and high-level perpetrators involve in all levels of perpetration of criminalities to deter and satisfy societal interest. This appears to be mainly consistent with the primacy philosophy in practice.

IX. Recommendation

This study recommends a two-pronged approach to International Criminal Justice adjudication. It mainly supports the primacy principles adherence to International Crime investigations and prosecutions. This approach seems to be more of a top-down-bottom-up synthesis approach. It simultaneously vests international crime investigations and prosecutorial powers to both a constituted International Court system and a legally backed domestic courts. This promotes the realization of human rights principles. By this approach, both high-level and low-level perpetrators of international crime can be prosecuted in accordance with their level of perpetration. This appears to satisfy the non-discrimination principle as a non-derogatory right in international criminal justice delivery. Whereas the complementarity principle principally appears a top-down approach and discriminatory. The two-pronged approach therefore appears to have a kind of a due diligence mechanism to provide a standard of care to all citizens in armed conflict reconstruction. Therefore, a further study on "ICC's complementarity principle: A tool for justice evasion or sustainable peace development?" will help put this study in proper perspective.

X. Disclosure statement

There is no potential conflict of interest associated to this study.

XI. Data Availability Statement

The data supporting the findings of this study are available within the article.

XII. Notes

1. "International crime adjudication and armed conflict reconstruction practices" as used in this study defines the rule of law measures use to settle international crime breaches during armed conflict resolution to ensure sustainable peace development.
2. The complimentarily principle emphasizes sequential application of international crime justice delivery mechanism, where the affected State is given the greater leeway to lead the

investigation and prosecution of high-level perpetrators, however, the failure or the unwillingness on the part of the affected State to do so brings in the ICC.
3. The primacy principle is about a dual usage of International Criminal Justice system where the international division of an established court is given the supreme mandate to lead the investigations and prosecutions of mainly high-lever perpetration of international crimes and at the same time a somewhat participatory role is given to the domestic courts, tribunals and reconciliatory bodies to investigate and prosecute low-level perpetrators of other forms of criminalities.