

TABLE OF CONTENT

TITLE PAGE.....	i
APPROVAL PAGE.....	ii
ENDORSEMENT PAGE.....	iii
DISCLAIMER.....	iv
ACKNOWLEDGEMENT PAGE.....	v
DEDICATION.....	vi
ABSTRACT.....	ix
INTISARI.....	x
CHAPTER I: INTRODUCTION.....	1
A. Background.....	1
B. Problem Statement.....	4
C. Objectives.....	5
D. Originality.....	5
E. Conceptual Framework.....	9
1. State immunity.....	9
2. <i>Jus cogens</i> and <i>erga omnes</i>	11
3. Exception of head of state immunity in respect to <i>jus cogens</i> and <i>erga omnes</i>	15
4. Institutional framework.....	17
F. Research Method.....	19
CHAPTER II: ANALYSIS.....	22
A. ICC exercise of jurisdiction in the case of Omar Al – Bashir and Uhuru Kenyatta.....	22
1. The exercise of ICC jurisdiction in the case of Omar Al – Bashir.....	25
2. The exercise of ICC jurisdiction in the case of Uhuru Kenyatta.....	26
B. Legal relationship between the AU and ICC.....	27
1. Lack of institutional framework.....	27
2. Indirect legal relationship of AU and ICC under Rome Statute.....	33
3. Deferral of a case by Security Council.....	34
C. Binding force of AU decision.....	36
1. Attributed Powers.....	37
2. Implied Powers.....	39

3. Inherent Powers.....	47
4. Delegation of power and treaty analogy.....	50
5. Article 103 of UN Charter.....	52
D. The obligation of states to cooperate with the ICC.....	56
1. Obligation of state cooperation under the Rome Statute.....	57
2. Reluctance from non – state parties to cooperate with the ICC.....	63
3. The rationale that African non – state parties would still be obliged to cooperate.....	64
E. Lack of ICC enforcement.....	66
F. Binding force of Security Council Resolution 2033.....	69
1. The power of the Security Council and its relation with the AU.....	69
2. Criteria for binding resolution.....	72
3. The test for binding force of Security Council Resolution 2033.....	73
4. The consequences of breach of Security Council Resolution 2033.....	78
CHAPTER III: CLOSING.....	82
A. Conclusion.....	82
B. Recommendation.....	83
BIBLIOGRAPHY.....	84