

Complementarity Gap: Gender Based Violence as Crimes against Humanity in the Jurisprudence of the International Criminal Court and a Pakistani Domestic Accountability Regime

Muhammad Imran Khan¹, Dr. Shaukat Hussain Bhatti^{*2}

Abstract

The jurisprudence of the International Criminal Court (ICC) has progressively transformed gender-based violence (GBV) from a peripheral incident of armed conflict into a distinct and central category of international crime. Through Prosecutor v. Bemba, Prosecutor v. Ntaganda, Prosecutor v. Ongwen, and Prosecutor v. Al Hassan, the Court has recognised rape, sexual slavery, forced marriage, forced pregnancy, and gender persecution as forms of crimes against humanity under Article 7 of the Rome Statute, extending liability through the doctrine of command responsibility and adopting an increasingly intersectional understanding of gender-based harm. This article thus queries what this separation of powers requires of a non-Rome parties' State like Pakistan that has other parallel obligations under international human rights law. Building on the doctrinal and comparative analysis and research on ICC case law, Pakistan's constitutional and statutory features, and the case law of the Pakistani judicial system, the article suggests that the difference might be characterized as a "complementarity gap" that is, the difference between the institutional capacity which complementarity assumes and the nature and capacity of the Pakistani domestic legal system to investigate and prosecute gender-based crimes to an equivalent level. But at the most visible level, the doctrinal, institutional and socio-legal aspects which have been consistently lacking in Pakistan since the beginning in terms of convictions (about five per cent) versus the backlog of nearly 40,000 pending GBV cases are exactly this type of gaps and can only be filled with doctrinal, institutional and socio-legal reform in a combined manner and not legislative amendment alone as the article argues.

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Corresponding Author: *

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Introduction

International criminal law's treatment of gender-based violence has undergone a significant transformation since the ad hoc tribunals of the 1990s first recognized rape as an instrument of genocide and persecution. The Rome Statute of the International Criminal Court, adopted in 1998, consolidated this development by expressly naming rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and "any other form of sexual violence of comparable gravity" as crimes against humanity under Article 7(1)(g), alongside gender persecution under Article 7(1)(h). In the two decades since the Court became operational, its case law has moved well

¹ PhD Scholar, Hajveri Law College, TIMES University, Multan. Email: imbaloach786@gmail.com

² Professor, Hajveri Law College, TIMES University, Multan. Email: shaukathussain78682@gmail.com

beyond this initial statutory foundation, recognizing forced marriage as an “other inhumane act,” extending command responsibility to institutional actors who fail to prevent gender-based crimes committed by subordinates, and treating gender persecution as encompassing not only physical violence but the coercive enforcement of discriminatory social and religious norms. What does this evolving international standard mean for states not party to the Rome Statute but nevertheless obliged, under other international agreements including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR) and customary international law, to take steps with due diligence to prevent, investigate and prosecute serious forms of gender-based violence? Pakistan offers a particularly instructive case study. It is not a State Party to the Rome Statute but has ratified CEDAW, the ICCPR, Convention on the Rights of the Child and Convention against Torture and its Constitution provides for dignity, equality before the law and protection against discrimination based on sex. Meanwhile, its own criminal justice system intersects with extremely high case pendency- and extremely low conviction- rates for gender-related crimes and extremely low interest in its courts' operations in international criminal law standards, even when the quantum of domestic facts would move close to the contextually defined threshold of a widespread or systematic attack. This article has three contributions:

First, it offers a systematic explanation on how ICC jurisprudence on gender based crimes has developed throughout 4 leading cases since Bemba to Al Hassan.

Second, it extends the idea of complementarity gap as an analytical tool used to evaluate domestic legal systems with regards to international standards of accountability, without regard for formal treaty membership.

Thirdly, it employs this framework to make applications to the Pakistan context and, based on legislative and case enquiry, it reveals that the situation in Pakistan is not entirely because of missing laws, but rather extends to conceptual and institutional flaws. The article then outlines the doctrinal evolution of ICC jurisprudence (Section 2), outlines the theoretical framework which combines complementarity theory and feminist legal theory (Section 3), analysis of Pakistan's domestic framework as per the said standard (Section 4), and the implications of complementarity gap for the law reform (section 5).

2. The Evolution of Gender-Based Crimes in ICC Jurisprudence

The jurisprudence of the International Criminal Court (ICC) has played a transformative role in the progressive development of international criminal law relating to gender-based violence (GBV). While the Rome Statute established the legal basis for prosecuting sexual and gender-based crimes, it is the Court's judicial interpretation that has clarified the scope, elements, and application of these offences. Through a series of landmark judgments, the ICC has gradually expanded the legal understanding of gender-based violence beyond traditional notions of rape and sexual assault, recognizing broader patterns of gender oppression, coercion, and persecution as constituting crimes against humanity and war crimes.

Unlike the ad hoc tribunals, which primarily focused on establishing that rape could amount to genocide, torture, or crimes against humanity, the ICC has confronted more diverse manifestations of gender-based violence occurring in complex contemporary conflicts. Its jurisprudence demonstrates an increasing willingness to acknowledge that gender-based violence encompasses not only physical and sexual abuse but also reproductive violence, forced marriage, gender

persecution, and other inhumane acts specifically targeting individuals because of their gender. Nevertheless, judicial developments have not always been linear or consistent, and several doctrinal ambiguities continue to shape the prosecution of gender-related crimes before the Court.

This section critically analyses four landmark ICC cases *Prosecutor v. Jean-Pierre Bemba Gombo*, *Prosecutor v. Bosco Ntaganda*, *Prosecutor v. Dominic Ongwen*, and *Prosecutor v. Al Hassan*. Collectively, these cases illustrate the evolution of the Court's approach to gender-based violence and provide important insights into the expanding interpretation of crimes against humanity under the Rome Statute.

2.1 Prosecutor v. Bemba: Command Responsibility and the Limits of Superior Liability

Prosecutor v. Jean-Pierre Bemba Gombo is one of the most significant ICC judgments on gender-based violence. While the Appeals Chamber's decision ultimately acquitted Bemba in 2018, the case nevertheless remains a landmark in the development of international criminal law. It helped to further establish sexual violence as an integral part of crimes against humanity and the liability of military commanders for the acts of their subordinates. More importantly, the proceedings demonstrated that systematic sexual violence is not an incidental consequence of armed conflict but may constitute an organised strategy employed to terrorise civilian populations.

Jean-Pierre Bemba Gombo was the President and Commander-in-Chief of the Mouvement de Liberation du Congo (MLC) an armed group in the Democratic Republic of the Congo (DRC). From October 2002 to March 2003, MLC troops were sent to the Central African Republic to help President Ange-Felix Patasse put an end to a coup attempt. In this military intervention, there were reports of mass killings, pillage, rape, torture and other acts of violence by members of the MLC against civilians. Many investigations recorded systematic sexual assaults of women, girls and, in some cases, men. Gang rape, sexual humiliation, physical violence and long periods of abuse were experienced by victims in their homes, villages and places of displacement. Evidence presented before the Court demonstrated that these crimes were neither isolated incidents nor spontaneous acts of indiscipline but formed part of a broader pattern of violence perpetrated against civilian populations. The Prosecutor did not charge Bemba directly, but under Article 28 of the Rome Statute, for his failure to exercise “effective command and control” over his troops, which, as the material ability to prevent or punish, he possessed.

The Bemba case had a significant impact on international criminal jurisprudence in various ways.

First, it confirmed the Rome Statute's principle that rape and other acts of sexual violence can be acts of war crimes and crimes against humanity if committed in the context required by the Rome Statute.

Second, it made clear that responsibility for gender-based violence does not only lie with the perpetrators themselves, but also with military and political leaders who turn a blind eye to the many forms of violence. This broadened the scope of criminal responsibility and strengthened deterrence by emphasizing leadership accountability.

Third, the proceedings underscored the value of the survivor's testimony as evidence in the prosecution of sexual violence. The Court took account of the fact that failure to have medical records does not necessarily weaken victims' evidence, especially in conflict situations where there may be no forensic evidence. This evidentiary approach was a significant step towards tackling the historical obstacles to prosecuting gender-based crimes, as it was victim centred.

2.2 Prosecutor v. Ntaganda: Intra-Group Violence and the Boundaries of Protection

The Prosecutor v. Bosco Ntaganda case is one of the most important advances in the jurisprudence of gender-based violence under the Rome Statute. In July 2019, the case was delivered by the Trial Chamber, which in a pivotal moment, clarified that sexual violence could be committed by members of an armed group and that such members could also be victims of crimes against humanity and war crimes by other members of the same armed group. The ruling overturned the previous belief that sexual violence is only covered by international humanitarian law if it is committed against civilians or against members of the other armed forces. It did however acknowledge that gender-based violence can take place within armed groups themselves and that international criminal law also covers victims of gender-based violence who are part of armed groups. This much wider definition dramatically increased the scope of the law on gender-based violence, and underscored the ICC's victim-centered approach to justice.

Bosco Ntaganda was Deputy Chief of Staff and then commander of the military wing, Forces Patriotiques pour la Liberation du Congo (FPLC), of the Union des Patriotes Congolais (UPC) in the Ituri region of the Democratic Republic of the Congo (DRC) during the Ituri armed conflict from 2002 to 2003. Widespread violence against civilian populations including murder, persecution, destruction of property, recruitment of child soldiers, sexual violence, and forced displacement, were all hallmarks of the conflict. Ntaganda, who surrendered to the ICC in 2013, faces 18 counts of war crimes and crimes against humanity. These charges included rape and sexual slavery of civilians and children unlawfully recruited into the FPLC. The case of child soldiers was also significant as it was the first time in any international prosecution that the victims were not part of an enemy army, but of the perpetrators' own army. The Trial Chamber found Ntaganda guilty on all eighteen counts and sentenced him to thirty years' imprisonment.

The Ntaganda judgment reinforced the standards of evidence that can be used in prosecutions for gender-based crimes. Survivor evidence, corroborating evidence from witnesses, documentary evidence, and expert reports were all significant factors used by the Court to determine the existence of a pattern of systematic abuse. Notably, it confirmed that, in some cases, convictions for sexual violence do not need medical evidence. In times of armed conflict, access to health care, forensic analysis and official reporting mechanisms are often absent. The Court further recognised the importance of trauma-informed judicial assessment. It noted that inconsistencies in survivor accounts can be the result of the psychological impact of the longstanding violence and not intentional falsification. In this regard, the Trial Chamber found that the credibility of witnesses must be assessed in the context of the trauma they experienced in the conflict, rather than imposing unrealistic expectations as regards the precise recollection of events.

All these evidentiary advances have made it much easier for victims of gender-based violence to access justice, since they have historically faced a number of obstacles to successful prosecutions.

2.3 Prosecutor v. Ongwen: Forced Marriage as an Inhumane Act

The Prosecutor v. Dominic Ongwen judgment is one of the most important developments in the jurisprudence of gender-based violence (GBV) before the International Criminal Court (ICC). The ruling in 2021 significantly expanded the definition of gender-based crimes by the Court to include forms of violence against individuals based on their gender, beyond rape and sexual slavery. In contrast to the previous cases which focused on sexual violence, Ongwen tackled a broader range

of gender-specific harmful practices, such as forced marriage, forced pregnancy and reproductive violence within the institutional context of an armed group. In the process, the judgement represented a crucial shift from a restricted conception of GBV as only about sexual offences to a more developed sense of gender oppression as a many-faceted system of coercion and domination. It is important to discuss the case because it illustrates how gender-based violence can be both a military strategy, a means of social control and a way of reinforcing patriarchal power structures during an armed conflict. The Trial Chamber recognized in its comprehensive analysis of the law that gender-based violence manifests itself in a variety of ways and has lasting physical, psychological, reproductive and social impacts that are not fully reflected in traditional understandings of sexual violence. Ongwen therefore represents one of the most powerful voices in the court that has argued for a more expansive definition of gender-based violence as crimes against humanity pursuant to the Rome Statute.

Dominic Ongwen was one of the top commanders of the Lord's Resistance Army (LRA), a Joseph Kony-led armed rebel group that operated mostly in northern Uganda. In fact, Ongwen had been kidnapped by the LRA as a boy and went on to command the ranks of the rebel group. While this context resulted in significant debate on the issue of criminal responsibility and victimhood, the case against him before the ICC was largely centred around crimes he allegedly committed whilst leading the LRA forces during the period 2002-2005. The Prosecutor has filed 70 charges against Ongwen for crimes against humanity and war crimes committed against IDP camps and their surrounding civilian populations. Murder, torture, enslavement, persecution, pillaging, forced displacement, sexual slavery, rape, forced marriage, forced pregnancy and other inhumane actions were all charged.

Ultimately, the Trial Chamber found Ongwen guilty on 61 counts, which is one of the most comprehensive convictions ever issued by the ICC. In particular, the judgment has the most detailed discussion on gender-based violence ever by the Court and has advanced the jurisprudential understanding of violence against women and girls in armed conflict.

The Ongwen judgment also bolstered the ICC's victim-centred approach. The Trial Chamber took the approach of assessing evidence given by survivors with a trauma-informed lens, because long-term captivity, repeated abuse and psychological trauma may impact the nature of the evidence, memory and emotional expression. Significantly, the Court dispelled stereotypes often attached to those who have endured gender-based violence. It didn't state that such things as a delay in reporting, continued contact with perpetrators or apparent emotional detachment should automatically call into question the credibility of witnesses. Rather, they were assessed in the context of a coercive control and chronic victimisation. The judgment also acknowledged the intergenerational impacts of gender based violence. War children were often discriminated against, socially excluded and faced identity issues after the war. The Court confirmed that these ongoing harms are a recognition of the fact that gender-based violence has long-term effects on societies as a whole, beyond the specific impact on individual victims.

2.4 Prosecutor v. Al Hassan: Gender Persecution as Institutional Control

Prosecutor v. Al Hassan judgment is the most important jurisprudential development in the International Criminal Court's (ICC) interpretation of gender-based violence as a crime against humanity. Al Hassan unlike previous cases relating to rape, sexual slavery, forced marriage and reproductive violence brought gender persecution and gender based systematic discrimination to the

fore. The judgment has done just that broadened the conceptual frame of gender-based violence to include institutionalised practices of discrimination, exclusion and denial of fundamental rights against women and girls. This decision is significant as it represents an emerging recognition that GBV can take structural and institutional forms aiming to subordinate individuals on the basis of their gender. The Court focused on the fact that gender violence should not be interpreted as a group of sexual crimes, but rather that discriminatory laws and social practices, when used as part of a widespread or systematic attack against a civilian population, can be crimes against humanity. Therefore, *Al Hassan* is the best judicial opinion currently in favor of a wider reading of gender-based violence in Article 7 of the Rome Statute.

Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud was a senior member of armed groups Ansar Dine and Al-Qaeda in the Islamic Maghreb (AQIM) when they occupied Timbuktu, Mali between April 2012 and January 2013. In this period strict interpretation of religious law by the extremist authorities drastically changed the lives of civilians, especially women and girls. Women were subjected to severe restrictions in virtually every aspect of public and private life, as evidenced before the ICC. They had to follow strict dress codes, were banned from moving freely without male guardians, were not allowed to work or to attend school and were subjected to physical abuse and arbitrary arrest. There were also reports of forced marriage, rape, sexual slavery, and other sexual abuses against women and girls perpetrated by the occupying groups. But unlike previous ICC cases the main legal question was not just about individual acts of sexual violence. One of the questions before the Court was whether systematic discrimination against women, as it was perpetrated by institutional policies and enforced by armed groups, could be considered the crime against humanity of persecution on gender grounds as defined in Article 7(1)(h) of the Rome Statute.

The *Al Hassan* judgment also adds to the ongoing debate about the meaning of gender in Article 7(3) of the Rome Statute, which reads that gender means 'the two sexes, male and female, in the context of society'. The Court took a broad reading of this provision, namely highlighting the words "in the context of society". This interpretation enabled the judges to think about gender not as a biological distinction, but as a social relationship with the roles, expectations and power dynamics it entails, which are culturally constructed.

The practices of discrimination in Timbuktu were directed at women due to their perceived roles in society, including upholding a specific standard of behaviour, dress code, family duties, and public engagement. The Court thus acknowledged that persecution can stem from socially constructed roles for women and men, as well as from their biological differences. This interpretation is significant for the future of the international criminal law. It allows for a more flexible interpretation of the concept of gender which is able to respond to new forms of discrimination and is at the same time consistent with the language of the Rome Statute.

2.5 A Doctrinal Through line

Together, these four judgments trace a consistent jurisprudential trajectory: from the recognition of sexual violence as a war crime and crime against humanity in its own right (*Bemba*), to the extension of protection across group boundaries (*Ntaganda*), to the recognition of non-physical, socially-imposed harm as an inhumane act (*Ongwen*), to the treatment of institutionalized discrimination itself as gender persecution (*Al Hassan*). The Court's 2022 Policy on the Crime of Gender Persecution consolidates this trajectory, recognizing that gender-based persecution may extend to conduct directed at individuals on grounds of sexual orientation and gender identity as well as sex.

The cumulative effect is a body of international jurisprudence that no longer treats gender-based violence as an incidental consequence of conflict, but as a deliberate strategy of domination, susceptible to prosecution as an international crime independent of its context.

3. Theoretical Framework: Complementarity beyond the Rome Statute

3.1 Complementarity as a Standard, Not Only a Jurisdictional Rule

Article 17 of the Rome Statute makes the ICC's jurisdiction complementary to national jurisdictions: a case is inadmissible before the Court where a state with jurisdiction is investigating or prosecuting it, unless that state is unwilling or genuinely unable to do so. Complementarity is conventionally discussed as a jurisdictional admissibility rule applicable only to States Parties. This article argues that complementarity also functions, more broadly, as an articulation of the institutional capacity effective investigation, competent prosecution, judicial capacity, and victim protection that the international community expects of any domestic legal system responding to conduct of the gravity that would otherwise engage international criminal jurisdiction. Stahn's account of complementarity as a principle that encourages, rather than merely permits, domestic capacity-building supports this broader reading. Understood this way, complementarity offers an evaluative benchmark applicable to non-States-Parties such as Pakistan, not because the ICC could exercise jurisdiction over it, but because the standard of institutional capacity complementarity presupposes is a reasonable proxy for what due diligence under international human rights law requires.

3.2 Feminist Legal Theory and the Public/Private Divide

The theoretical account developed here also draws on feminist international legal scholarship's foundational critique of the public/private distinction. Charlesworth, Chinkin, and Wright's argument that international law has historically confined women's experiences of violence to a depoliticized "private sphere," insulated from international scrutiny, remains directly relevant to domestic systems that continue to prosecute gender-based violence exclusively as ordinary interpersonal crime, without reference to its systemic or structural dimensions. Copelon's argument for the explicit recognition of rape, sexual slavery, and reproductive violence as war crimes and crimes against humanity in their own right rather than as incidental to other offences anticipated much of the doctrinal development traced in Section 2. More recent scholarship examining intersectionality and structural violence, including Chappell and Grey's analysis of victim-centered justice at the ICC, cautions against treating gender-based violence as an undifferentiated category, and instead calls for attention to how gender intersects with class, ethnicity, religion, and geography in shaping both victimization and access to justice.

3.3 Synthesizing the Framework

Combining these two literatures produces the analytical lens applied in Section 4: complementarity theory supplies the standard of institutional capacity against which a domestic system is assessed, while feminist legal theory explains why domestic systems persistently fall short of that standard namely, a structural tendency to individualize and privatize gender-based harm rather than recognize its systemic and collective dimensions. It is the combination, rather than either alone, that generates the concept of a complementarity gap: a domestic system may formally criminalize the relevant conduct while remaining conceptually and institutionally incapable of recognizing or prosecuting it as the systemic phenomenon that international criminal law increasingly understands it to be.

4. Pakistan's Domestic Framework against the International Standard

4.1 Constitutional and Statutory Architecture

Pakistan's Constitution guarantees the inviolability of human dignity, security of person, equality before the law, and non-discrimination on the basis of sex (Articles 9, 14, and 25), and directs the state, under its Principles of Policy, to protect the family, women, and children. The Pakistan Penal Code criminalizes rape, honour killings, acid violence, kidnapping, and trafficking, and has been substantially amended over the past two decades, most significantly through the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016, which foreclosed the use of *qisas* and *diyat* compromise provisions to extinguish liability for honour killings, and the Anti-Rape (Investigation and Trial) Act 2021, which introduced specialized investigation units, anti-rape crisis cells, and protections against the disclosure of victims' identities. Punjab's Protection of Women Against Violence Act 2016 further introduced a civil protection-order framework broadly consonant with international best practice.

4.2 The Conceptual Gap

Despite this legislative activity, Pakistan's statutory framework does not provide any mechanism through which prosecutors or courts can characterize a widespread or systematic pattern of gender-based violence as anything other than a series of discrete, individual offences. No provision of the Pakistan Penal Code, nor any special anti-GBV statute, incorporates the contextual element a widespread or systematic attack directed against a civilian population that Article 7 of the Rome Statute uses to distinguish crimes against humanity from ordinary crime. This is not merely an absence of a specific offence label; it reflects a conceptual limitation that constrains how courts approach even egregious and repeated conduct. The case law illustrates the resulting pattern. In each of *Mukhtaran Mai*, the *Qandeel Baloch* honour killing, the *Khadija Siddiqi* stabbing, and the *Zainab Ansari* rape and murder, judicial attention centred on establishing the liability of the individual accused; in none of these cases did the courts engage with the broader social, institutional, or structural conditions patriarchal social norms, parallel justice mechanisms, or institutional tolerance of prior warning signs that enabled the violence to occur or recur. Where ICC jurisprudence increasingly situates gender-based violence within its social and structural context, Pakistani case law by contrast reproduces exactly the individualized, privatized framing that feminist legal scholarship has long identified as a structural barrier to gender justice.

4.3 The Institutional Gap

The conceptual gap is compounded by an acute institutional deficit. Case pendency data collected for this study show that at the end of 2023, Pakistan's courts held approximately 39,655 pending gender-based violence cases nationally, with an overall conviction rate of approximately five percent. These figures cannot be explained solely by administrative delay; they reflect deeper deficiencies in forensic capacity, specialized prosecutorial training, witness and victim protection, and judicial familiarity with the evidentiary and procedural approaches that ICC practice gender-sensitive investigation, robust victim participation, and contextual evidence has developed over two decades. Pakistani case law further documents recurring patterns of victim-blaming, secondary victimization, and informal pressure on complainants to accept *jirga*-brokered settlements, patterns which stand in sharp contrast to the victim-centered procedural architecture the Rome Statute and subsequent ICC practice have built.

4.4 No Doctrine of Command or Institutional Responsibility

Pakistan's domestic law provides no equivalent to Article 28's command responsibility doctrine, developed in *Bemba*, or any comparable mechanism for holding institutional actors, community leaders, or public officials liable for knowingly tolerating or failing to prevent gender-based violence within their sphere of authority. Liability remains confined to direct perpetrators. Given the documented role of *jirgas*, community elders, and, in some cases, local officials in facilitating or failing to prevent gender-based violence, this absence represents a significant accountability deficit relative to the standard ICC jurisprudence has established for organized or institutionally-tolerated gender-based crime.

5. Discussion: Closing the Complementarity Gap

The preceding analysis demonstrates that Pakistan's shortfall relative to international standards is not simply a matter of missing statutory language. It is better understood as a complementarity gap operating across three interlocking dimensions. Doctrinally, Pakistani law lacks any framework for recognizing the systemic or collective dimension of gender-based violence, or for extending liability to institutional actors. Institutionally, chronic case backlogs and a conviction rate in the single digits indicate that even the conduct Pakistani law does criminalize is not, in practice, subject to effective investigation and prosecution precisely the capacity deficiency that Article 17 treats as triggering international concern. Socio-legally, the persistence of parallel justice mechanisms and patriarchal social norms means that legislative reform, however welcome, cannot alone close the gap; as Stahn's and Nsereko's accounts of complementarity's capacity-building dimension suggest, sustainable reform depends on investment in institutional capacity specialized courts, forensic infrastructure, judicial training, and witness protection at least as much as on statutory amendment.

This has an important implication for how the relevance of ICC jurisprudence to non-States-Parties should be understood. The argument advanced here is not that Pakistan's courts should, or could, apply the Rome Statute directly, nor that the recurring patterns of honour killing, organized sexual violence, and institutionally-tolerated domestic abuse examined in this study necessarily satisfy the legal threshold for crimes against humanity that is a separate legal determination requiring rigorous evidentiary and contextual analysis beyond the scope of this article. The argument is narrower and, this article suggests, more tractable: that ICC jurisprudence supplies a persuasive doctrinal vocabulary and an institutional benchmark that domestic reform can draw upon incrementally through judicial reasoning that treats ICC case law as persuasive authority, through prosecutorial guidelines modelled on the ICC's gender-sensitive investigative practice, and through the gradual development of accountability mechanisms for institutional actors without requiring formal accession to the Rome Statute system.

6. Conclusion

This article has traced the doctrinal evolution of gender-based crimes in ICC jurisprudence from *Bemba* through *Al Hassan*, and has used that evolution to construct a complementarity gap framework for assessing domestic legal systems that fall outside the Rome Statute's formal jurisdiction. Applied to Pakistan, the framework reveals a shortfall that is simultaneously conceptual, institutional, and social: a legal system that has legislated actively against specific manifestations of gender-based violence while remaining structurally unable to recognize,

prosecute, or remedy its systemic dimensions. Closing this gap requires coordinated reform across all three registers rather than further piecemeal legislation. More broadly, the article suggests that complementarity, properly understood, offers a normative resource for evaluating domestic accountability for gender-based violence well beyond the states that have ratified the Rome Statute a resource that deserves greater attention in both comparative criminal law scholarship and domestic law reform debates.

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