



Accountability in Shadows: The Role of Domestic Courts in Enforcing International Humanitarian Laws

¹Ms. Deeksha Sharma, ²Dr. A T AM Sadiqur Rahman

¹LL.M. Student, ²Assistant Professor

¹University Institute of Legal Studies, Chandigarh University, Mohali, Punjab, India

Abstract: This article argues that national courts are the main, yet often underestimated, sparks for accountability for breaches of international humanitarian law (IHL). Instead of focusing on international courts, national courts often interpret, apply and enforce IHL. They conduct investigations, initiate litigation and provide reparations that shape the interpretation and implementation of IHL. Recent national convictions for wartime sexual violence and crimes against humanity, such as the recent cases in Guatemala demonstrate how national courts can achieve accountability even decades after a conflict and provide reparations to victims.

The article proposes a three-fold framework to understand the variations in the domestic enforcement of IHL: (1) legal embedding, which is the recognition and definition of IHL and atrocity crimes in domestic legislation, (2) institutional capacity and independence, which is the ability of courts, prosecutors, and police to deal with complex atrocity cases, and (3) transnational catalytic mechanisms which are precedents of universal jurisdiction and advocacy networks that activate domestic responses (such as the Pinochet case). Each part is linked with legal sources and case law.

It also proposes that domestic legal processes are both enabling and threatening to international criminal justice. These processes can lighten an international burden and develop alternative interpretations of IHL that affect international law. The article traces critical structural issues such as evidence deficiencies, political pressures, amnesty provisions and resource constraints through doctrinal analysis and region-specific case studies. It provides recommendations on improving international policy by better recognizing IHL in domestic law, strengthening forensic and prosecutorial units, and strengthening mutual legal assistance frameworks, adopting victim-focused procedures and exercising universal jurisdiction with caution.

This research offers a road map towards strengthening the rule of law after mass violence by empowering national courts as central and not isolated actors, and ensuring that national responses are consistent with international humanitarian law.

Key Words: International Humanitarian Law, Domestic Courts; Accountability, International Criminal Justice, Universal Jurisdiction; Rule of Law, Atrocity Crimes.

I. INTRODUCTION

The quest for accountability for violations of international humanitarian law (IHL) has tended to focus on international criminal justice. The International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and, more recently the International Criminal Court (ICC) have been the subject of much research and debate. Their creation was heralded as a significant achievement, indicative of the international community's commitment to addressing atrocities and preventing impunity, But despite their contribution to the development of law these courts have limitations. They face jurisdictional, resource, political and selectivity constraints. These hinder their ability to deliver total accountability. Not all IHL offences are addressed at the international level leaving a gap between justice and victim experiences [1].

On the other hands national courts often overlooked are crucial to upholding humanitarian values. They are embedded in national justice systems, closer to the affected and victims, and have the capacity to incorporate IHL into domestic processes [2]. They do so through direct prosecution, reparations or legal interpretations which impact international law. Notable examples, such as the issue of wartime sexual violence in Guatemala, the Hissène Habré case in Senegal and the consequences of the Pinochet case in the United Kingdom highlight the role of national legal frameworks in promoting accountability decades after the crimes were committed [3]. These examples highlight an important but often overlooked factor. The international humanitarian justice project is sustainable and legitimate if and only if international tribunals are complemented by the readiness and ability of domestic courts to enforce IHL.

This research adds to the academic tradition by highlighting the role of national courts as a central-players in the accountability through a process that can be called "accountability behind the scenes". It argues that while international courts symbolize justice, domestic courts enforce it. They do so through three interrelated factors the integration of IHL into domestic laws, the efficiency and independence of legal systems, and international factors such as universal jurisdiction and advocacy. These impact the effectiveness and limits of domestic enforcement and account for differences between countries [4]. In parallel, this study acknowledges the challenges to domestic accountability such as political interference, lack of evidence, amnesty laws and limited resources [5]. These obstacles are often similar to those of international organizations. Unlike global courts, domestic courts

enjoy the advantages of proximity, contextual understanding, and legal flexibility to connect global and domestic realities. Their involvement not only alleviates the pressures on international organizations but also promotes diverse interpretations of IHL that may strengthen, challenge or even transform international law.

Legal analysis and comparative case studies in this article present domestic courts as not just servants of international justice but as independent and essential actors for implementing IHL. The claim made here is both theoretically and practically enhancing national legal systems, embedding IHL standards into national law and fostering international legal co-operation are fundamental for a post-violence accountability. The influence of international courts can only be realized when national courts are recognised, reinforced and supported as primary vehicles for delivering humanitarian justice [6].

1) From Tribunal-centric to Court-multiple

In the early post-Cold War period, the focus of the academic discussion about the responsibility for mass crimes was on international criminal courts (ICTY and ICTR) and, later, the ICC [7]. Pioneer texts praise the legal innovations of the court's personal criminal responsibility for serious violations, collective criminal enterprise, command responsibility and their communicative function in the fight against impunity. In this vein, those texts and tribunal centrality portrayed international courts as norm innovators and superior implementers, while national courts were seen as often unreliable and secondary implementers.

But criticisms began to mitigate that excitement. Doctrinal and empirical studies stress constraints on tribunal accountability, limited jurisdiction, resourcing inconsistent cooperation, and unintended agendas arising from selective politics in case and state selection. The Rome Statute's complementarity doctrine was set to promote national investigations but has led to what appears to be "positive complementarity" rhetoric rather than action [8]. Norm diffusionists have documented a "justice cascade" but have noted inconsistencies in north-south differences and selective approaches. Meanwhile, an increasing body of international law scholarship has sought to reinstate domestic formal and informal institutions. Some comparative criminal law scholars stress the importance of recognising that domestic courts have traditionally maintained atrocity crime standards in their jurisdiction through ordinary homicide, torture, sexual violence crimes, military codes or modified legislation.

2) Domestic Courts as the Main Avenues for IHL Accountability

2.1 Integration and Legal Incorporation

The domestic enforcement of IHL depends on a country's constitutional framework and legal reforms. Legal scholars' monism/dualism debate aims to explain how a country incorporates treaties and customary law into its domestic legal order. Research on 'law transplantation' shows that states "embed" IHL in a range of ways including (a) adopting the Rome Statute, (b) reforming their criminal codes to create new crimes, (c) reforming military justice, and (d) recognizing a corpus of customary IHL within national jurisprudence. This case studies, ranging from the constitutional reforms subsequent to regimes in Latin America to the adoption of social-change inspired universal jurisdiction legislation in Europe, demonstrate how parliamentary wording can facilitate or block change.

2.2 Institutional Capacity and Independence

Capacity is an important moderating factor. In comparative research, several elements were identified as interrelated with the success of complex cases these include the establishment of war crimes units, expertise in forensic science, and legal advice to protected witnesses and victims, as well as career advancement that guarantees judicial and prosecutor independence. In systems where prosecutorial forensic independence and autonomy exist in investigative procedures, cases belonging to atrocity crimes are able to withstand interference yet in systems with fragile institutional arrangements advancement is stalled. Hybrid or internationalized courts such as the Extraordinary African Chambers in Senegal offer an example of how readily accessible international justice mechanisms can be used to boost the national prosecutorial capacity but maintain national ownership.

2.3 Transnational Catalysts: Universal Jurisdiction and Advocacy Networks

A large amount of literature shows how transnational litigation, grievances by a diaspora and NGO-based fact finding generate external pressure for accountability that "boomerangs" into domestic forums. One case study that exhibited the positive cycle of transnational advocacy and its impact is the Pinochet case in the United Kingdom which was partly initiated by an advocacy campaign by the Chilean diaspora seeking accountability for crimes against international humanitarian law. Synthesis, In the relationship between legal embedding, agency and transnational factors, domestic courts frequently play the lead role, while international courts usually set the pace or play the safety net [9].

3) What National Courts Can Do That International Courts Can't

3.1 Closeness, Accessibility and Victim Justice

Domestic courts are closer to victims, offering a more accessible platform for participation and redress, with a locally sensitive approach [10]. In the recent landmark cases of Sepur Zarco (2016) and Molina Theissen (2018) in Guatemala, the judges ruled the sexual violence that occurred during the conflict constituted crimes against humanity and ordered reparations that included community-based projects.

3.2 Scope of Caseload and Long-Term Accountability

In most cases, national courts can deal with networks that facilitate atrocities and can bring to trial mid-level perpetrators that are rarely prosecuted before the international courts on the basis of the "gravity" threshold of the crime [11]. Long term accountability often occurs sometimes after the conflict and is often evident on the national level, where cases may be reopened as amnesties are refined.

3.3 Normative Plurality and Development

National level determinations often generate the development of normative jurisprudence that becomes internationally recognised, such as expanded definitions of sexual and gender-based crimes, improved principles relating to command responsibility and new rules regarding the use of evidence. Although international courts establish binding vertical precedents, domestic courts also provide horizontal comparative law, which helps to adapt customary international humanitarian law [12].

4) Structural Obstacles are Present, but Some Can be Overcome

Political challenges, amnesty, evidentiary and resource disparities remain barriers to domestic accountability [13]. But legal precedents that limit blanket amnesty increase the potential for domestic enforcement. The investment in forensic institutions facilitates domestic enforcement and implementing survivor focused investigative processes is associated with successful prosecution.

5) The Relationship between International and Domestic: Complementarity, Replacement and Tension

Complementarity theory presumes the ICC presence will mobilize states but mixed evidence exists. Universal jurisdiction provides an opportunity but can also lead to tension as states grapple with conflicting feelings of accountability and disbelief, as is evident in the ICJ's Arrest Warrant case [14]. Academics warn of possible fragmentation as different states take on differing notions of national and international acceptance of international humanitarian law (IHL), but interaction often enhances IHL. Synthesis, it is ultimately helpful to think of this relationship as an ecosystem, Domestic courts do most of the work, international courts provide the underlying framework of incentives, standards, and are outlet for rare exceptions.

6) Regional Perspectives on Domestic IHL Implementation Europe:

Universal Jurisdiction and War Crimes Units

Europe is a leader in using universal jurisdiction. For example, while early and broad-ranging universal jurisdiction legislation in Belgium (adopted in 1999) had political consequences, it provided a template for later efforts [15]. The case of a former Syrian intelligence officer found guilty of crimes against humanity in Koblenz, Germany in 2021 demonstrates how national courts through legislative exceptions and recognition of international law obligations, as well as with the help of war crimes units and NGOs, can efficiently prosecute atrocity crimes. Also, Spain's Justice Garzón's work in the 1990s, such as the case against Pinochet demonstrated how European courts could provide transnational justice.

Latin America: Transitional Justice and Reinstated Trials

In Latin America, domestic courts have begun to reopen cases that had been covered by amnesty laws. The Guatemala trials on wartime sexual violence (Sepur Zarco) and disappearances (Molina Theissen) demonstrate the courts' willingness to incorporate IHL into national law. Likewise, Argentina's post 2005 legal landscape that saw the repeal of amnesty laws and the reopening of hundreds of charges for crimes committed during the dictatorship also confirmed the primary role of domestic courts as the key avenue for justice [16].

Africa: Hybrid Justice and Regional Dynamics

Hybrid justice has been particularly successful in Africa. The Extraordinary African Chambers in Senegal that convicted Hissene Habre serve as a symbol of an international-endorsed African justice model. National courts in Uganda and DRC have also had some success in enforcing war crimes using domestic legislation despite challenges such as limited resources and local political pressures [17].

Asia: Hesitant Steps and Political Barriers

The domestic enforcement framework has been less developed in Asian region. The situations in the Philippines, Bangladesh and Nepal show that political factors often prevent the prosecution of mass crimes despite the existence of various domestic mechanisms. While the International Crimes Tribunal in Bangladesh was a domestic initiative, it has been accused of political interference and lack of due process, and thus a case of "localisation without independence" [18].

Synthesis: The various regional responses reaffirm the idea that domestic accountability is contextual, but also highlights important innovations in various systems that often move faster than the remit and lifespan of international tribunals.

7) National Courts and the Fight for Gender Justice in International Humanitarian Law

National court responses to gender-based crimes are a major step towards achieving accountability. The recognition by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) that rape may be used as a weapon of war and as an act of genocide was a commendable step, but subsequent developments in national courts have gone beyond this achievement. For example, in the case of Sepur Zarco, Guatemalan judges found several former members of the military guilty of sexual slavery and ordered a variety of symbolic and material reparations for the benefit of survivors of sexual slavery during the civil war [19]. Likewise, the Peruvian judiciary has adopted a similar approach to respond to cases of sexual violence during the country's internal armed conflict through the re-investigation of events that were deemed not worthy of legal consideration five years ago and the reconsideration of the legitimacy of previous convictions in the context of the Inter-American Court's jurisprudence. In such cases it is the local context, the judges, and the need to address the needs of survivors that give domestic courts the power to respond to the needs of survivors or administer justice which is often difficult for international criminal tribunals to do given their remoteness, procedural limitations and lack of resources.

Many commentators and scholars not only recognise the significance of these developments in domestic gender justice but their potential to shape customary international law and the obligation to prosecute sexual and gender-based crimes.

8) State Sovereignty, Immunity and National Jurisdiction

Domestically prosecuting crimes against humanity is often at odds with notions of state sovereignty and official immunity. In the International Court of Justice's (ICJ) Arrest Warrant case (DRC v Belgium), the Court upheld a traditional interpretation of immunity *ratione personae* for serving foreign ministers, thus limiting the application of universal jurisdiction [20]. Furthermore, the African Union has been reluctant to accept interventions and the ICC's engagement, at least in part due to issues of immunity. Yet, there have been cases where domestic courts have been able to circumvent immunities for former officials such as the Pinochet case, in which the UK House of Lords ruled that former heads of state do not enjoy immunity for torture. These legal contradictions, with the ICJ recognising absolute immunity and domestic courts establishing functional exceptions to immunities reflect the pluralistic nature and complexities of global accountability [21].

Academic literature frequently emphasises that although immunities can provide some degree of protection for officials during their term in office, domestic prosecutions may be pursued after a political transition as part of a long-term accountability strategy.

II. Research Methodology

The current article adopts doctrinal and comparative legal research, case studies, and critique of domestic and international courts. Because the main purpose of this article is to explore how domestic courts implement international humanitarian law (IHL), the methodology is to examine the legal frameworks, capabilities and practices with regard to accountability.

1. Nature of research

This is a qualitative, doctrinal, and analytical study. It will not employ empirical fieldwork, but will engage in a systematic review of legal documents, judicial outcomes, legislative amendments, and international treaties. Moreover, this research will be more granular in nature by examining the application of law, legal doctrines and jurisprudence on the domestic implementation of IHL at the national level.

1. Sources of data

Secondary Sources:

- Scholarly and peer reviewed journals concentrating on the fields of international humanitarian law (IHL) and accountability.
- Reports from non-governmental organizations, truth commissions and other advocacy groups on national implementation practices.
- Comparative studies highlighting regional approaches in Latin America, Africa, Europe and Asia.

2. Mode of Analysis

The research uses doctrinal analysis to examine the incorporation and application of IHL norms into domestic legal frameworks and the jurisprudence that is used in atrocity crimes cases. The study also adopts a comparative legal approach to assess the content, differences and developments of various jurisdictions.

Three interrelated factors that guide the analysis:

- Legal Integration comprising constitutional amendments, domestic law reform and domestic incorporation of customary IHL.
- Institutional Capability and Autonomy including the presence of war crime units, independence of the prosecution, forensic capacity and judicial independence.
- Transnational Influences examining the impact of universal jurisdiction, advocacy and litigation by diaspora communities on domestic enforcement. The case law will be incorporated as precedent to the extent that it is jurisprudentially significant and relevant to the case, thus enabling the research to capture the successes and failures of domestic implementation.

3. Research Design and Approach

This research is based on a thematic and case study approach that combines theoretical and case study analysis to create a balance between the advancement of theory and the examination of case studies, through its two elements:

- Normative: examining the "ideal" operation of the law through the analysis of the principles of International Humanitarian Law (IHL) and the states' obligations, as well as aspects of complementarity.
- Practical: examining how IHL is interpreted and applied by domestic courts in practice but not in theory, while also considering the various obstacles that may be faced such as political influence, amnesty laws or issues regarding evidence.

III. Research problem

Although international tribunals (such as the ICTY, ICTR or ICC) have been established, implementation of international humanitarian law (IHL) primarily depends on domestic legal systems. While theoretical research on tribunals has identified the normative advances of international courts, empirical research has revealed the limitations of international courts such as limited territory, political pressures and limited resources. Therefore, domestic legal systems have become key yet overlooked fora for accountability. Despite the increasing recognition of the importance of domestic courts in ensuring accountability for the enforcement of international humanitarian law (IHL), there is still a significant gap in terms of understanding what factors enhance their effectiveness in translating IHL principles into effective, independent and victim-oriented justice. On the other hand, it is also important to find the factors which undermine their capacity. It is important to understand the structural, legal and political factors that play into this enforcement, and explore the evolving dynamics or barriers to co-operation between international and domestic courts in the increasingly fragmented accountability system.

IV. Result and Findings

1. Legal Embedding

When international humanitarian law (IHL) is firmly entrenched through constitutional changes, amendments to domestic penal codes, or jurisprudence establishing customary IHL there appears to be greater accountability. This is the case in post 2005 Argentina, while the less robust embedding in various parts of Asia is problematic and has stalled. Finding: Legal embedding is critical for local accountability and needs to be supported through institutional and political support.

2. Institutional Capacity

Essential components such as war crimes units, forensic services and independent prosecution are essential for accountability. The 2021 Koblenz trial in Germany is an example of how ongoing technical capacity allows for the continuation of a complex trial, while those lacking capacity or political will tend not to succeed. Finding: Technical capacity and judicial independence are crucial in putting law into action.

3. Transnational Catalyst

Diaspora activism, pressure from NGOs and universal jurisdiction are often the drivers of domestic enforcement. This was evident in the case of Pinochet. Finding: Transnational mechanisms are important incentives for states to enforce.

4. Victim-Centered Justice

Local courts are more accessible than international courts. Domestically, cases like Sepur Zarco (Guatemala) have led to both the ability to convict and to provide survivors with reparations that are best suited to their specific needs. Finding: Local venues provide a more accessible, inclusive and relevant justice.

5. Normative Innovation and Ecosystem Dynamics

Domestic courts expand legal doctrines with respect to gender justice, command responsibility and evidence, and in turn advance the development of international humanitarian law. At the same time, structural barriers (such as political interference, amnesty laws, and immunity doctrines) play a role in the inconsistencies of accountability. The interaction between domestic and international mechanisms is an ecosystem where domestic courts carry out most of the work of accountability, and international courts provide the norms and have the capacity to influence. Conclusion is National courts serve as both norm producers and norm implementers, shaped by the dynamics and tensions with international mechanisms.

V. Conclusion

This research has demonstrated that the enforcement of accountability for international humanitarian law (IHL) violations cannot be solely dependent on international courts, but involves instead mainly relying on the enforcement and accountability by domestic courts. Through an analysis of factors such as legal incorporation, capacity building, and transnational processes it has been shown that domestic courts are not only important secondary actors but they also play important roles as connectors between global and local settings. The examples from Latin America, Europe, Africa and Asia demonstrate that while national accountability efforts differ as they are often the only forms of timely accessible and victim-oriented justice that are available.

However, structural impediments such as political commitment, amnesties, evidence gathering, and lack of resources continue to present challenges in terms of domestic enforcement. However, the emergence of practices such as gender justice, universal jurisdiction, and hybrid justice suggests that domestic courts can also make normative claims which influence international law's development. It is also important to remember that domestic and international jurisdictions should not be viewed merely in terms of hierarchy, but rather in terms of ecology where domestic courts undertake the bulk of the work of accountability, leaving international courts as leaders, monitors, and specialist courts for accountability.

This research highlights the need for both a conceptual and policy emphasis accountability in the aftermath of atrocities can only be realised and achieved if domestic justice systems are enhanced, not politicised, and supported internationally. It is critical that domestic courts are seen as independent and complementary components of the international justice system so that international humanitarian law remains not only aspirational, but realisable. In creating a platform for accountability at both the international and domestic level. The process of accountability can move from invisibility to becoming part of a legal framework that embraces both international and domestic justice systems to foster justice.

References

- [1] Bartels, R. and Fortin, K., 2016. Law, justice and a potential security gap: the 'organization' requirement in International Humanitarian Law and International Criminal law. *Journal of Conflict and Security Law*, 21(1), pp.29-48.
- [2] Fletcher, L.E., 2004. From indifference to engagement: Bystanders and international criminal justice. *Mich. J. Int'l L.*, 26, p.1013.
- [3] Sansani, I., 2001. The Pinochet Precedent in Africa: Prosecution of Hissène Habré. *Human Rights Brief*, 8(2), p.13.
- [4] Sloss, D. ed., 2009. *The role of domestic courts in treaty enforcement: a comparative study*. Cambridge University Press.
- [5] Pensky, M., 2008. Amnesty on trial: impunity, accountability, and the norms of international law. *Ethics & Global Politics*, 1(1-2), pp.1-40.
- [6] Weill, S., 2014. *The role of national courts in applying international humanitarian law*. OUP Oxford.
- [7] ROSHI, A. and GÉRDECI, A., 2025, October. RESPONDING TO MASS ATROCITIES: TRACING THE ORIGINS AND REFLECTING ON THE EVOLVING ROLES OF THE RESPONSIBILITY TO PROTECT AND INTERNATIONAL CRIMINAL COURT. In *Proceedings of the International Scientific Conference "Social Changes in the Global World"* (Vol. 1, No. 12, pp. 139-149).
- [8] Hobbs, P., 2020. The catalysing effect of the Rome statute in Africa: Positive complementarity and self-referrals. *Crim. LF*, 31, p.345.
- [9] Benvenisti, E. and Downs, G.W., 2009. National courts, domestic democracy, and the evolution of international law. *European Journal of International Law*, 20(1), pp.59-72.
- [10] Hoyle, C. and Ullrich, L., 2014. New court, new justice? The evolution of 'justice for victims' at domestic courts and at the International Criminal Court. *Journal of International Criminal Justice*, 12(4), pp.681-703.
- [11] Novak, A., 2015. *The international criminal court*.
- [12] Mitchell, S.M. and Powell, E.J., 2011. *Domestic law goes global: Legal traditions and international courts*. Cambridge University Press.
- [13] Payne, L.A., Lessa, F. and Pereira, G., 2015. Overcoming barriers to justice in the age of human rights accountability. *Human Rights Quarterly*, 37(3), pp.728-754.
- [14] Kurgat, D.C., 2025. Appraising the Efficacy of Universal Jurisdiction: A Quest to Advance the Working of the International Criminal Justice System. Available at SSRN 6056074.
- [15] Mossialos, E. ed., 2010. *Health systems governance in Europe: the role of European Union law and policy*. Cambridge University Press.
- [16] Nazreno, P., 2020. Impunity reconsidered international law, domestic politics, and the pursuit of justice. *Harv. Hum. Rts. J.*, 33, p.173.
- [17] Ssenyonjo, M., 2005. Accountability of non-state actors in Uganda for war crimes and human rights violations: Between amnesty and the International Criminal Court. *Journal of Conflict and Security Law*, 10(3), pp.405-434.
- [18] Billah, M., 2021. Prosecuting crimes against humanity and genocide at the international crimes tribunal Bangladesh: An approach to International Criminal Law standards. *Laws*, 10(4), p.82.
- [19] Martin, C. and SáCouto, S., 2020. Access to justice for victims of conflict-related sexual violence: Lessons learned from the Sepur Zarco case. *Journal of International Criminal Justice*, 18(2), pp.243-270.
- [20] Bankas, E.K., 2022. Invoking State Immunity Before the ICJ, International Tribunals and Foreign Courts. In *The State Immunity Controversy in International Law: Private Suits Against Sovereign States in Domestic Courts* (pp. 581-612). Berlin, Heidelberg: Springer Berlin Heidelberg.
- [21] Popko, Y., 2023. Development of the State Jurisdictional Immunity Institution in Private International Law. *Legal Horizons*, p.52.