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ON CULTURAL ISSUES, HUMAN RIGHTS AND SECURITY

WOMEN'S RIGHTS AND INTERNATIONAL INDIVIDUAL LEGAL ACCOUNTABILITY IN THE CONTEXT OF THE TALIBAN'S DISCRIMINATORY POLICIES

By Costina-Mădălina Ghibu

Abstract

This article considers the nexus between women's rights, the Taliban's discriminatory rules, and individual international legal responsibility within the parameters of international law and the United Nations structure. It examines legal options for responding to human rights abuses such as UN resolutions, treaty-based obligations, and international criminal accountability mechanisms, including the International Criminal Court (ICC) together with structural obstacles in the pursuit of accountability against de facto regimes. The article emphasizes the normative influences of UN tools and jurisprudence, and illuminates ongoing shortcomings.

Keywords

Accountability; Apartheid; CEDAW; ICC; Justice; Rights; Taliban; UN; Women.

Introduction

The Taliban's return to power in Afghanistan 2021 marked a dramatic turning point for the protection of fundamental human rights, particularly those of women and girls. The collapse of Islamic Republic and the withdrawal of international forces left a political vacuum quickly filled by the Taliban, who re-established an authoritarian regime grounded in their strict interpretation of Islamic law. For Afghan women, this shift was not simply a political change but a profound reversal of two decades of modest progress in education, employment and participation in public life. From the earliest days of their rule, the Taliban adopted a series of decrees and administrative directives that effectively erased women from public visibility. The Ministry for the Promotion of Virtue and Prevention of Vice reinstated regulations mandating strict dress codes, while women were barred from traveling without a male guardian. Secondary and tertiary education for girls was formally suspended, undermining constitutional guarantees once enshrined in Afghan law and contradicting Afghanistan's international obligations. The exclusion of women from most forms of employment, particularly in the public sector and humanitarian organizations, further entrenched a system of economic dependence and marginalizations. These restrictions are not isolated but rather form a coherent pattern of institutionalised discrimination designed to enforce female subordination in both public and private spheres. International law provides a clear lens for understanding the gravity of these policies. Afghanistan remains a party to numerous human right treaties, most prominently the Convention on the Elimination of all Forms of Discrimination against Women.¹ Article 2 of CEDAW requires States Parties to pursue by all appropriate means and without a delay a policy of eliminating discrimination against women.² Importantly, treaty obligations bind the state as a legal entity, irrespective of changes in government or political leadership. Thus, the Taliban, although

¹ UN, Res. 34/180, Convention on the Elimination of All Forms of Discrimination against Women (Dec. 18, 1979).

² *Id.*, para. 2.



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unrecognised as the legitimate government of Afghanistan by the United Nations General Assembly, remain bound to respect Afghanistan's international commitments. The continuity of obligations underscores a critical principle in international law: the responsibility of states is not extinguished by political upheaval, and *de facto* authorities are equally accountable for compliance.

The Taliban's restrictions on women's rights amount to violations not only of human rights treaties but also of *jus cogens* norms and potentially crimes against humanity. The systematic denial of education, employment, and freedom of movement to half the population reflects a deliberate policy of persecution on gender grounds. Under the Rome Statute of the International Criminal Court, persecution against an identifiable group based on gender constitutes a crime against humanity when carried out as part of a widespread or systematic attack directed against a civilian population. The potential classification of Taliban policies as crimes against humanity highlights the intersection of human rights law and international criminal law in addressing gender-based oppression.

United Nations bodies have consistently documented and condemned these violations. The Human Rights Council has mandated a Special Rapporteur on the situation of human rights in Afghanistan, whose reports detail the severity of restrictions and their cumulative impact on women and girls. The Office of the High Commissioner for Human Rights has characterized the situation as the most extreme case of gender-based discrimination globally. In parallel, the General Assembly has adopted resolutions reaffirming the rights of Afghan women and urging the Taliban to reverse their policies. While such resolutions are not legally binding, they provide authoritative evidence of the international community's consensus and create normative pressure that can inform judicial and quasi-judicial processes.

At the Security Council, the Women, Peace and Security (WPS) agenda, inaugurated with Resolution 1325 (2000), provides an important framework for situating the Afghan case.³ That resolution recognized both the disproportionate impact of armed conflict on women and the need for their full participation in peace processes. Subsequent resolutions, including 1820 (2008) and 2467 (2019), elaborated the legal and political imperatives to protect women from sexual violence and ensure accountability for violations.⁴ In the context of Afghanistan, these resolutions highlight the gap between international commitments and their domestic realization, raising questions about enforcement and the role of the Council when *de facto* regimes openly defy international norms.

The Taliban's policies have broader implications beyond Afghanistan's borders. They challenge the universality of human rights by asserting a cultural and religious justification for gender segregation and exclusion. They also test the resilience of the international legal system in responding to violations committed by actors who neither seek international legitimacy nor recognize international jurisdiction. The refusal of the Taliban to engage constructively with UN mechanisms underscores the difficulty of ensuring compliance in the absence of traditional state-to-state accountability.

³ UNSC, Res. 1325/2000 (Oct. 31, 2000).

⁴ UNSC, Res. 1820/2008 (June 19, 2008).
UNSC, Res. 2467/2019 (Apr. 23, 2019).



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The question that emerges, therefore, is not only how the rights of Afghan women can be restored but also how the international community can hold perpetrators accountable in legal terms. Mechanisms within the United Nations treaty bodies, fact-finding missions, special rapporteurs, and resolutions provide important tools for documenting and condemning violations. Yet, without avenues for individual accountability, such as those offered by the ICC or through universal jurisdiction, the risk remains that systemic abuses will persist unchecked.⁸

This paper seeks to address these concerns by situating Taliban policies within the broader framework of international human rights and criminal law. It examines relevant UN resolutions, treaty obligations, and international jurisprudence to assess how existing mechanisms can be mobilized to confront gender-based persecution. It also considers the challenges of enforcement, particularly in light of the Taliban's rejection of international authority, and explores potential pathways for advancing accountability. By doing so, it contributes to the ongoing legal discourse on women's rights and the responsibility of international law to respond to systemic discrimination.

International Legal Means for Individual Accountability

International Legal law provides the most concrete mechanisms for addressing the Taliban's gender-based prosecution. The Rome Statute of the International Criminal Court expressly defines persecution on gender grounds as a crime against humanity when carried out in a widespread or systematic manner. This provision is directly relevant to the Taliban's exclusion of women from education, employment and public life.

The jurisprudence of international tribunals first recognised gender-based violence as a constitutive element of international crimes in the *Akayesu case* before the International Criminal Tribunal for Rwanda. In its landmark 1998 judgment, the Tribunal held that systematic acts of rape and sexual violence during the genocide constituted in not only crimes against humanity but could also amount to acts of genocide when committed with the intent to destroy, in whole or in part, a protected group. This decision was the first to explicitly affirm that rape could be used as a tool of genocide, thereby embedding gender-based violence within the core of international criminal accountability.⁵

A further milestone was the *Bemba* judgment at the International Criminal Court in 2016, which marked the court's first conviction focusing on command responsibility for sexual violence. Jean-Pierre Bemba, former Vice-President of the Democratic Republic of Congo, was held liable for crimes committed by the troops in the Central African Republic, including the widespread and systematic use of rape as a weapon of war. Although, his conviction was later overturned on appeal in 2018, the initial judgment underscored the principle the senior political and military leaders can bear criminal responsibility for failing to prevent or repress gender-based crimes committed by subordinates.⁶

Afghanistan's ratification of the Statute in 2003 gives the Court territorial jurisdiction.⁷ In March 2020, the ICC Appeal Chamber authorized the Prosecutor to investigate crimes committed in Afghanistan. Building on that mandate, the Court in July 2025 issued arrest warrants for senior Taliban leaders, including the *de facto*

⁵ ICC, Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-T, Trial-Chamber, Judgment (Sept. 2, 1998), para. 731–734, 736.

⁶ ICC, Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/08, Trial Chamber III, Judgment (Mar. 21, 2016).

⁷ UN, A/CONF.183/9, Rome Statute of the International Criminal Court (Feb. 10, 2003).



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supreme leader, on charges of gender-based persecution. These developments demonstrate that the ICC can, at least in principle, hold Taliban officials individually accountable despite their control of the state apparatus.⁸ A further illustration of the ICC's evolving jurisprudence on gender-based crimes is found in the *Al-Hassan* case concerning atrocities committed in Timbuktu, Mali, during 2012–2013. In June 2024, the Trial Chamber convicted Al-Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud of multiple war crimes and crimes against humanity, including torture, mutilation, and cruel treatment. However, the Chamber acquitted him of charges of rape, sexual slavery, and gender-based persecution. While the conviction established accountability for grave abuses, the acquittal on gender-related charges drew criticism from international legal scholars and women's rights advocates, who argued that it represented a missed opportunity to consolidate the recognition of sexual and gender-based violence as core international crimes. The decision underscores the ongoing doctrinal and evidentiary challenges in prosecuting systemic gender persecution before international tribunals.⁹ In July 2025, the International Criminal Court advanced this trajectory by issuing arrest warrants against the Taliban's supreme leader, *Haibatullah Akhundzada*, and the Chief Justice, *Abdul Hakim Haqqani*, on charges of gender-based persecution as a crime against humanity. This was the first time the Court recognized the systematic exclusion of women and girls from education, employment, and public life as constituting individual criminal responsibility at the leadership level. The decision marks a significant step in consolidating the notion that structural gender oppression may amount to crimes against humanity under the Rome Statute.¹⁰ Beyond the ICC, accountability may also be pursued through **universal jurisdiction** in national courts. This doctrine allows states to prosecute individuals responsible for grave crimes such as torture, war crimes, and crimes against humanity regardless of where those crimes occurred or the nationality of the perpetrators. European prosecutions of Syrian officials for torture exemplify the potential of domestic courts to address impunity when international institutions face obstacles.

A complementary forum lies in the International Court of Justice. While the Court does not prosecute individuals, it can adjudicate disputes between states under human rights treaties. Because Afghanistan is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), other States Parties may invoke its dispute settlement provisions to bring cases against Afghanistan for systemic violations of women's rights. Although the ICJ's role is limited to inter-state responsibility, its judgments carry binding legal weight and can reinforce broader accountability efforts.

Taken together, these avenues—the ICC, universal jurisdiction, and the ICJ—illustrate the layered architecture of international law. Each mechanism faces challenges of jurisdiction, enforcement, and political will, yet their availability underscores that the Taliban's discriminatory policies are not shielded from international legal scrutiny.

⁸ ICC, Situation in the Islamic Republic of Afghanistan, ICC-02/17-138, Pre-Trial Chamber, Judgment (Mar. 5, 2020).

⁹ ICC, *Prosecutor v. Al-Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, ICC-01/12-01/18, Trial Chamber, Judgment (June 26, 2024).

¹⁰ ICC, *Situation in Afghanistan: ICC Pre-Trial Chamber II issues arrest warrants for Haibatullah Akhundzada and Abdul Hakim Haqqani*, ICC (July 8, 2025), <https://www.icc-cpi.int/news/situation-afghanistan-icc-pre-trial-chamber-ii-issues-arrest-warrants-haibatullah-akhundzada>.



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UN Mechanisms and Reports

United Nations monitoring mechanisms have been central in documenting and condemning the Taliban's discriminatory policies. In October 2021, the Human Rights Council adopted Resolution 48/1 establishing a Special Rapporteur on the situation of human rights in Afghanistan.¹¹ The mandate reflects the Council's recognition that the Taliban's actions required sustained and independent scrutiny. Since then, successive reports of the Special Rapporteur, supported by the Office of the High Commissioner for Human Rights (OHCHR), have identified patterns of systematic exclusion of women from education employment and public participation. These reports conclude that the cumulative effect of Taliban edicts amounts to one of the most severe and institutionalised forms of gender-based discrimination currently existing in the world.

In 2024 and 2025, the Special Rapporteur advanced the legal characterization of these policies by describing them as a form of *gender apartheid*. The use of this terminology, deliberately echoing the international prohibition on racial apartheid, underscores the institutionalized and pervasive nature of the Taliban's system of control over women. By framing Taliban practices in this way, the reports urge the international community to consider codifying gender apartheid as a distinct crime under international law, whether as a development of customary norms or through amendments to existing international instruments.⁵

Although Human Rights Council resolutions and rapporteur reports are not legally binding, they perform vital legal and political functions. First, they consolidate a factual record of violations, often relying on victim testimonies and independent verification. This evidentiary base can be used to support judicial proceedings before the International Criminal Court or domestic courts exercising universal jurisdiction. Second, they help shape normative discourse, clarifying how evolving practices should be understood under international law. Finally, they keep violations on the international agenda, reinforcing the principle that systemic discrimination against women is not an internal matter but one of legitimate international concern.⁶

Through these mechanisms, the UN provides both documentation and normative framing that strengthen the prospects for future accountability. While lacking enforcement powers of their own, such reports play a crucial role in bridging the gap between human rights fact-finding and international criminal responsibility.

Challenges and Considerations

Efforts to ensure accountability for the Taliban face a host of structural, political and legal obstacles that significantly complicate the pursuit of justice. These challenges highlight the gap between the normative framework of international law and the practical limitations of enforcements in cases involving entrenched *de facto* regimes.

One of the most fundamental barriers in the Taliban's outright rejection of international judicial authority. Since regaining power in 2021, Taliban's officials have consistently denied Afghanistan's obligations under international treaties, dismissing them as the products of governments they view as illegitimate. This stance undermines cooperation with mechanisms such as the International Criminal Court, which relies heavily on state cooperation to facilitate investigations, gather evidence and enforce arrest warrants. Without access to the country or cooperation from its authorities, international investigators face enormous difficulties in collecting documentation or security custody of alleged perpetrators.

¹¹ UNHRC, Res. 48/1, Strengthening the promotion and protection of human rights in Afghanistan (Oct. 7, 2021).



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This impasse raises broader questions about the efficacy of international criminal justice in contexts where *de facto* regimes are insulated from external pressure. The Taliban's entrenched control over state institutions, borders, and security forces effectively shields senior officials from the reach of international law. Even when arrest warrants are issued, the likelihood of execution remains minimal in the absence of domestic enforcement or external intervention. This reality underscores a structural weakness in the international accountability system: it is most effective against actors who have already lost political or military power, not those who remain firmly in control.

In response, some actors have turned to complementary mechanisms outside the ICC framework. Universal jurisdiction, exercised by national courts, offers a potential avenue to prosecute Taliban officials when they travel abroad. A handful of jurisdictions have shown willingness to initiate such proceedings, though practical challenges such as access to evidence, witness protection, and diplomatic repercussions limit their scope. Still, the very existence of these cases can signal to perpetrators that impunity is not absolute and that accountability may one day materialize.

At the multilateral level, UN human rights mechanisms play a critical role in sustaining international attention. The Special Rapporteur on the situation of human rights in Afghanistan, along with the Working Group on discrimination against women and girls, continues to document violations and provide authoritative assessments that feed into broader accountability efforts. While these reports lack coercive power, they establish a factual record that may serve future prosecutions and reinforce normative condemnation of Taliban policies.

Sanctions regimes represent another instrument of pressure. Targeted measures against Taliban leaders—asset freezes, travel bans, and restrictions on financial flows—can both isolate perpetrators and reinforce international condemnation of their actions. However, sanctions also face limits, as enforcement is uneven and their humanitarian impact on the Afghan population risks undermining international legitimacy if not carefully calibrated.

Ultimately, the pursuit of accountability for crimes committed under Taliban rule illustrates the tension between legal principle and political reality. International law provides a framework that unequivocally prohibits gender persecution and other grave crimes, but enforcement hinges on political will, international coordination, and long-term persistence. While immediate justice remains elusive, the continued articulation of legal responsibility, the preservation of evidence, and the maintenance of international scrutiny are essential steps in narrowing the space of impunity and preparing the ground for future accountability.

A second challenge arises from the fractured political context at the United Nations Security Council. The Council retains primary responsibility for addressing threats to international peace and security, but divisions among its permanent members often paralyze collective action. Certain states may prioritize strategic or geopolitical interests over human rights enforcement, making it difficult to achieve consensus on measures such as referrals to the ICC or the establishment of ad hoc tribunals. In the case of Afghanistan, these divisions mirror broader global rivalries, leaving women's rights vulnerable to the vagaries of political bargaining.

Third, practical obstacles to evidence collection remain acute. Afghanistan under Taliban rule is one of the most closed environments for human rights monitoring. Independent organizations have restricted access, witnesses fear reprisals, and documentation of violations must often be carried out covertly or remotely. The evidentiary burden for establishing crimes against humanity is high, requiring proof that abuses form part of a



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widespread or systematic attack directed against civilians. Gathering sufficient reliable evidence in such restrictive circumstances poses immense logistical and ethical challenges for investigators.

From a legal standpoint, unresolved doctrinal issues also complicate accountability. While the Rome Statute recognizes persecution on gender grounds as a crime against humanity, questions persist about whether such persecution can be established absent an ongoing armed conflict. Some commentators argue that the Taliban's discriminatory policies amount to systemic violations of human rights law but may not fit neatly within the traditional categories of international criminal law. Others counter that the scale and institutionalization of these measures clearly satisfy the requirements for crimes against humanity, even if they occur outside a wartime setting. This debate illustrates the tension between established doctrinal boundaries and the evolving nature of contemporary human rights violations.

Another concern is the potential politicization of accountability efforts. Critics warn that attempts to prosecute Taliban leaders could be portrayed as selective justice, particularly if pursued in forums dominated by Western states. Such perceptions risk undermining the legitimacy of proceedings and diminishing support from key stakeholders, including regional actors whose cooperation is essential for enforcement. Balancing the imperative of accountability with the need for impartiality and fairness remains a delicate task for international institutions.

Despite these formidable obstacles, there are important precedents suggesting that accountability for gender-based crimes is both legally possible and morally necessary. International criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) recognized sexual violence and gender-based persecution as integral components of crimes against humanity and war crimes. Their jurisprudence affirmed that systemic violations against women can rise to the level of international crimes warranting prosecution. These cases provide a legal foundation upon which efforts to hold Taliban leaders accountable may build, even if the political and practical challenges differ.¹²

Ultimately, the pursuit of accountability in Afghanistan must confront the reality of limited enforcement capacity. Arrest warrants may remain unenforced, trials may be delayed indefinitely, and victims may struggle to see tangible results. Yet the symbolic and normative value of accountability efforts should not be underestimated. Investigations, reports, and indictments reaffirm the principle that systematic discrimination against women is not merely a domestic concern but an international crime. Even in the absence of immediate enforcement, these actions establish historical records, delegitimize perpetrators, and lay the groundwork for future justice when political circumstances shift.

In this sense, the challenges facing accountability for Taliban policies highlight both the fragility and resilience of international law. While obstacles are substantial, the continued documentation, legal framing, and pursuit of justice even in imperfect conditions send a powerful message that violations of women's rights on such a scale will not be ignored by the international community.

Pathways Forward and Emerging Norms

¹² ICTY, *Prosecutor v. Dragoljub Kunarac*, IT-96-23/1-T, Trial Chamber, Judgment (Feb. 22, 2001), para. 586–595.

ICTR, *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Chamber, Judgment (Sept. 2, 1998), para. 731–734, 736.



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Despite the considerable obstacles outlined above, there are several potential pathways for strengthening accountability for the Taliban's gender-based persecution. These approaches combine legal innovation, political strategy, and normative development within international law.

First, universal jurisdiction remains a vital tool. The experience of European courts in prosecuting Syrian officials for torture demonstrates that determined domestic prosecutors can fill accountability gaps left by international institutions. Expanding such efforts to Taliban leaders, should they travel abroad, would reinforce the principle that grave international crimes cannot be sheltered by borders.

Second, the United Nations Security Council retains the authority to refer situations to the International Criminal Court under Article 13(b) of the Rome Statute. Although divisions among permanent members often hinder action, precedents such as the Darfur referral in Resolution 1593 (2005) show that consensus can emerge when violations are egregious and well-documented.¹³ Even absent a referral, Security Council resolutions contribute to normative pressure and help sustain international attention.

Third, treaty bodies such as the Committee on the Elimination of Discrimination against Women (CEDAW Committee) provide avenues for accountability. Under the Optional Protocol to CEDAW, individual communications may be brought against Afghanistan, while the Committee's inquiry procedure could be triggered to investigate systematic violations.¹⁴ Although not criminal in nature, such procedures establish authoritative findings that can reinforce broader accountability strategies.

Fourth, the international legal discourse is evolving toward recognizing *gender apartheid* as a distinct international crime. In 2023, the UN Special Rapporteur on Afghanistan explicitly described Taliban practices as a system of gender apartheid.¹⁵ The concept echoes the international prohibition of racial apartheid codified in the Apartheid Convention (1973) and Article 7(1)(j) of the Rome Statute. Codifying gender apartheid—whether through amendments to the Rome Statute or the development of customary international law—would provide a stronger basis for future prosecutions.

Finally, sustained documentation and evidence preservation remain indispensable. Initiatives such as the Independent International Fact-Finding Mission on Myanmar illustrate how even in the absence of immediate prosecutions, systematic evidence collection can prepare the ground for future trials.¹⁶ Applying this model to Afghanistan could ensure that when political conditions shift, a robust evidentiary base is available to hold perpetrators accountable.

Taken together, these strategies illustrate that accountability, though fraught with difficulty, is not unattainable. Legal norms continue to evolve, and persistent efforts by states, civil society, and international institutions can narrow the space for impunity. The Taliban's gender-based persecution has already prompted new developments in jurisprudence and UN practice. If these trends are sustained, they may not only bring eventual

¹³ UNSC, Res. 1593, Referral of the situation in Darfur to the International Criminal Court (Mar. 31, 2005).

¹⁴ UN, Res. A/RES/54/4, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Oct. 6, 1999).

¹⁵ UNHRC, A/HRC/52/84, Report of the Special Rapporteur on the situation of human rights in Afghanistan (Feb. 9, 2023), para. 13.

¹⁶ UNHRC, Res. 39/2, Situation of human rights of Rohingya Muslims and other minorities in Myanmar (Sept. 27, 2018).



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justice for Afghan women but also advance the global recognition of gender-based oppression as among the gravest crimes under international law.

Conclusion

The Taliban's discriminatory policies against women represent more than a regression in social rights, the constitute clear violations of binding international legal obligations. By dismantling access to education, employment and public life for women and girls, the Taliban have created a system of institutionalised discrimination that goes for beyond cultural or religious practices. These measures may amount to crimes against humanity, particularly persecution on gender grounds as defined under the Rome Statue of the International Criminal Court.

The United Nations framework offers a range of responses to these violations. Treaty obligations under the Convention on the Elimination of All Forms of Discrimination against Women remain binding on Afghanistan, irrespective of the Taliban's non-recognition of international law. Security Council resolutions, particularly those in the Women, Peace and Security agenda, establish political commitments to protect and promote women's rights in conflict situations. General Assembly resolutions and Human Rights Council mandates provide additional normative guidance, ensuring that the plight of Afghan women remains firmly on the international agenda.

Yet, enforcement of these norms is constrained by political will, institutional fragmentation, and the limits of jurisdictional reach. Without cooperation from de facto authorities or consensus among powerful states, efforts to hold Taliban leaders accountable will remain difficult. Practical barriers such as limited access to evidence and restrictions on international monitoring further complicate the pursuit of justice.

The situation of Afghan women underscores the pressing need to bridge the gap between normative commitments and enforcement mechanisms. While challenges are significant, sustained legal, political, and normative efforts are essential to ensure that violations on this scale are neither normalized nor forgotten. International law's credibility depends on its ability to confront such systemic abuses with both clarity and resolve.



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