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International Human Rights Law Protecting against Domestic Violence in Nigeria: A Focus on Violence against Woman

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ABSTRACT

Millions of women worldwide are affected by domestic violence, which occurs in many cultures. However, feminist movements that influenced the latter half of the 20th century are largely responsible for the relatively recent recognition of domestic violence as a matter of international human rights. Domestic violence affects both men and women, as well as children. This article, however, focusses on the experiences of women because statistics show that women are most often the victims of domestic violence. Women in Nigeria have been victims of rape, physical assault, psychological abuse, human trafficking, and femicide, among other types of domestic violence. The aim of this article is to examine the extent to which international human rights laws have helped in the control of domestic violence issues in Nigeria. It will also evaluate how Nigeria's efforts to combat domestic violence have been influenced by the rights-based approach, which is informed by the ideas of State accountability and due diligence. The doctrinal research method was employed in carrying-out this research. This entails the use of primary and secondary sourced materials such as statute, case laws, textbooks, articles from reputable journals, newspaper publications, and online sourced materials. The article found among others that Nigeria's legal system has not been successful in combating domestic violence. It is in this light that the article recommended among others that the Constitution of the Federal Republic of Nigeria 1999 should be amended to incorporate the concepts of State responsibility and due diligence, holding the State liable for any individual acts of domestic violence against women.

I. INTRODUCTION

Nearly every day in Nigeria, there are alarming reports of domestic violence in Nigerian homes. If the reports are not about the increasing cases of child mistreatment, they might involve a husband murdering his wife or the reverse is the case.³ Certain women face brutal acid assaults from their partners, whether husbands or boyfriends, resulting in severe agony or

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³ Ishola S. A., *Domestic Violence: The Nigerian Experience* 4(10) AAMM 3-5 (2016).

changes in appearance, and in some cases, these attacks can lead to the victims' death.⁴ Typically, law enforcement agencies have shown reluctance in stepping in during cases of domestic abuse and tends to see the family as a personal space. Incorrectly, hitting a wife is frequently viewed as a private matter within the household. Spousal abuse is socially accepted; it is deemed a usual part of life and sometimes even viewed as a manifestation of affection.⁵ Domestic violence is considered a private matter between partners in many African cultures and does not necessitate the involvement of the legal system. Women frequently bear this pain in silence, and they might even believe that this kind of violence in their homes is something they should tolerate.⁶ Anybody, regardless of gender, sexual preference, age, ethnicity, or religion, can be negatively affected by domestic violence. Sexual assault, physical harm, and emotional, financial, and mental abuses are just a few of the types of domestic violence.⁷ Previously, there was no social meaning associated with this practice, and the first way it was shown and understood were limited, suggesting only regular and organised physical harm.⁸ Various feminist scholars and activists have drawn attention to the gender-bias in international human rights law, which has historically been crafted to prioritise the experiences of men rather than women's needs and rights.⁹ Prior to the creation of international human rights laws to protect people's civil and political rights in public life, domestic violence was considered a private matter.¹⁰

From that initial phase, the field has changed, and the separation between public and private no longer appears to be an unmovable barrier since the private area is now controlled in different manners.¹¹ Prioritising wrongdoing committed by the government has prevented domestic violence from being recognised as a global human rights issue.¹² The concept of State responsibility now implies that the State has explicit obligations to protect, defend, and guarantee human rights, even when only private individuals are involved.¹³ The duty to safeguard is important in situations of domestic violence because through the idea called the

⁴ *Id.*

⁵ Nwankwo O., *Manual on Domestic Violence*, 2 (Fourth Dimension Publishing Enugu, 2003).

⁶ Erika C. and Bonthuys E., *Customary Law and Domestic Violence in Rural South African Communities*, (10 Mar, 2025, 10:09 AM), <http://www.csvr.org.za/old/wits/papers/papclaw.htm>.

⁷ Oluremi F. D., *Domestic Violence Against Women in Nigeria* 2(4) EJPR 21-22 (2015).

⁸ Kelly L. and Radford J., *Nothing Really Happened: The Invalidation of Women's Experiences of Sexual Violence* 5(10) Crit. Soc. Policy 48 (1990).

⁹ Charlesworth H. and Chinkin C., *The Gender of Jus Cogens* 6(15) HRQ 63 (1993).

¹⁰ *Id.*

¹¹ McQuigg R. J. A., *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*, 7 (Routledge, 2011).

¹² Roth K., 'Domestic Violence as an International Human Rights Issue' in Rebecca Cook J. (ed), *Human Rights of Women: National and International Perspective* 329 (University of Pennsylvania Press, 1994).

¹³ Sarah F. and Dipnall S. 'Scope of Application' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran, 115 (ed Oxford University Press, 2018).

indirect horizontal effect of human rights, a government can be accountable for not protecting people from the behaviour of non-State actors, like their partners.¹⁴ In Nigeria, the Violence Against Persons (Prohibition) Act (VAPP) of 2015 marked the first legal effort to tackle various forms of violence against individuals. Despite this initiative, the VAPP has not adequately addressed specific issues related to domestic violence affecting women. Additionally, while Nigeria has adopted both the African Charter on Human and Peoples' Rights (ACHPR) and its Optional Protocol, domestic violence remains prevalent and is quickly evolving into a significant social crisis in the country.

It is premised on the above that this article examines the extent to which international human rights laws have helped in the control of domestic violence issues in Nigeria. It will also evaluate how Nigeria's efforts to combat domestic violence have been influenced by the rights-based approach, which is informed by the ideas of State accountability and due diligence.

II. DOMESTIC VIOLENCE AS VIOLATION OF WOMEN'S RIGHTS

Increasing proof indicates that many women experience mistreatment from relatives, friends, and unknown individuals. The abuse directed at women is often worsened by deep-rooted in social and cultural beliefs that make it seem acceptable in our communities.¹⁵ More worrisome is that certain parts of the Nigerian legislation, like section 55 of the Penal Code governing Northern Nigeria,¹⁶ allows a husband to strike his wife under the guise of correcting her. This often encourages abuse towards women within the home.

Domestic violence has only lately been acknowledged as a component of international human rights law, despite the fact that it is a blatant violation of many established human rights.¹⁷ The United Nations (UN) Convention on the Elimination of All Forms of Violence against Women (CEDAW)¹⁸ does not specifically address domestic violence. However, in 1992, the UN Committee on the Elimination of Discrimination against Women (CEDAW) made a crucial announcement on domestic violence with its General Recommendation 19. This made it clear that CEDAW forbids violence against women in both private and public settings.¹⁹ In its final comments on the regular updates from countries that are signatory to CEDAW, the

¹⁴ Frédéric M., 'Nature of Obligations' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* 97-98 (Oxford University Press, 2018).

¹⁵ Enemo I. P. and J.F Olorunfemi J. F., *Human Rights and National Development in Nigeria* 5(11) LPRJ 21-44 (2001).

¹⁶ Penal Code Act Cap. P3, *Laws of the Federation of Nigeria (LFN)* 2004.

¹⁷ Enemo and Olorunfemi, *supra* note 13, at 37.

¹⁸ The CEDAW Committee, General Recommendation 19, UN Doc A/47/38 (1992), Para. 9.

¹⁹ *Id.*

Committee frequently recommends actions to undertake in addressing domestic violence. Back in 1993, the UN General Assembly issued the Declaration on the Elimination of Violence against Women (DEVAW). This declaration requires nations to take the necessary steps to end violence against women, whether it is committed by individuals or by State actors.²⁰ In 1994, the United Nations Human Rights Commission chose a specialist to focus on issues related to violence towards women. By 1996, this specialist created recommendations for laws related to domestic violence.²¹ Additionally, the Platform for Action was established following the Fourth World Conference on Women held in Beijing in 1995. It gave clear suggestions for steps that nations should take to address problems such as domestic violence and other types of abuse towards women.²² One new trend in international law is the push to acknowledge domestic violence as a violation of human rights. Since severe cases of domestic violence violate fundamental rights that are applicable to all people, they are regarded as human rights' violations that can be addressed by international legal frameworks.²³ In addition, domestic violence is the most common type of violence against women globally and poses one of the biggest health risks to women.

III. INTERNATIONAL INSTRUMENTS ON DOMESTIC VIOLENCE IN NIGERIA

This segment would highlight the following important international instruments in order to assess the degree to which women are protected from violence by international human rights law.

A. The Protocol to the African Charter on the Rights of Women

The Agreement associated with the African Charter on Human and Peoples' Rights, specifically addressing Women's Rights in Africa, is commonly known as the African Women's Bill of Rights,²⁴ is a declaration created by the African Union's member-States to restate their dedication to preserving the gender equality ideals set forth in the organisation's founding act,²⁵ encompassing ideals like democracy, freedom, peace, equality, fairness, and solidarity for African women. Through suitable laws and institutional measures, it seeks to reaffirm countries' commitment to end all harmful practices against women and advance

²⁰ Declaration on the Elimination of Violence against Women (DEVAW), GA Res. 48/104, 20 Dec. 1993, art. 4(c).

²¹ Framework for Model Legislation on Domestic Violence, Doc E/CN.4/1996/53/Add. 2, 2 Feb. 1996.

²² McQuigg, *supra* note 9, at 78–80.

²³ *Bevacqua v. Bulgaria* [2008] App No. 71127/01, European Court of Human Rights (Jan. 20, 2024, 1:13 PM), <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Bevacqua%20%7C%20v.%20%7C%20Bulgaria&sessionid=55485783&skin=hudoc-en>.

²⁴ Protocol to the African Charter on the Rights of Women 2003.

²⁵ The Organization of African Unity, Constitutive Act of the African Union, 2000, Article 4 (i).

gender equality.²⁶ The Protocol associated with the African Charter on Women's Rights defines discrimination against women as:

any difference in treatment, exclusion, limitation, or unequal treatment based on gender that aims to undermine or prevent women, regardless of whether they are married or not, from recognizing, enjoying, or exercising their human rights and basic freedoms in every aspect of life.²⁷

Harmful practices refer to:

any actions, beliefs, or behaviors that have a bad impact on the basic rights of females, including their right to live, be healthy, have respect, receive an education, and maintain their physical well-being²⁸; violence towards women refers to: any actions taken against women that result in, or could result in, harm that is physical, sexual, mental, or financial. This includes threats to commit such actions; or enforcing unfair limitations or taking away basic freedoms in both private and public life, whether in times of peace or during war or armed conflict.²⁹

The Protocol states that countries need to create laws and update their national rules to fight against all types of discrimination faced by women.

The laws need to be effective in reducing and removing every type of unfair treatment, especially those harmful cultural and traditional customs³⁰ which rely on the belief that one gender is better or worse than the other, or on fixed expectations for how women and men should behave.³¹ States authorities are also tasked with ensuring the safety of women and girls who might face dangerous customs or any types of violence, mistreatment, and discrimination.³² Women and young girls are human beings; thus, government members must guarantee that they have the right to respect, safety, and the ability to grow as individuals, free from any harm or disrespect, especially in the form of physical and verbal abuse.³³ Abuse and other dangerous actions toward women can result in death, which violates the rights of women

²⁶ *Id.*

²⁷ Protocol to the African Charter *supra* note 22 at art. 2.

²⁸ *Id.*, at art. 1(b).

²⁹ *Id.*

³⁰ *Id.*, at art. 2(a)-(c).

³¹ *Id.*, at art. 5.

³² *Id.*, at art. 2(2).

³³ *Id.*, at art. 5.

and girls to live safely and securely.³⁴ Affected States must implement suitable and impactful actions to safeguard women's right to live safely by banning all types of violence against women. This includes non-consensual or coerced sexual acts, no matter if these acts occur in private settings or in public spaces.³⁵ Women and men have the same legal protections. The government needs to ensure that women can easily access legal help and work to support and defend women's rights.³⁶ The law enforcement bodies in Nigeria needs to understand and apply gender equality rights properly both within the country and globally.³⁷ The guidelines require the Nigerian government to establish proper legal and organisational systems to safeguard women from domestic abuse.

B. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979

The Convention on the Elimination of All Forms of Discrimination Against Women was the first international legal document to explicitly assert that women's rights are human rights. It recognises the responsibility of countries to uphold, protect, and guarantee the rights of women and girls.³⁸ The CEDAW was officially adopted by the UN General Assembly on December 18, 1979, and came into effect on September 3, 1981. Nigeria ratified the CEDAW unconditionally in 1985, signed its Optional Protocol in 2000, and ratified it in 2004. In order to oversee the application of the convention's provisions, the CEDAW Committee was founded. A country must submit an initial report to this committee upon joining the CEDAW, and then updates every four years after that. The committee has the power to make broad recommendations about important matters or necessary actions within its purview.³⁹ By incorporating women's rights into the larger human rights framework, the implementation of the CEDAW has broadened the application of international human rights principles. It has motivated countries to take proactive measures and advocated for a rights-centered approach within optimally placed UN field organisations.⁴⁰ This convention is the first international agreement to concentrate on outright prohibiting discrimination against women, even though other agreements address different facets of women's rights.⁴¹ The original content of Article

³⁴ *Id.*, at art. 3.

³⁵ *Id.*, at art. 4.

³⁶ *Id.*, art. 8.

³⁷ *Id.*

³⁸ Ulrich J., *Confronting Gender-Based Violence with International Instruments: Is a Solution to the Pandemic within Reach?* 13(90) IJGLS 640 (2000).

³⁹ McQuigg (n 9) 38.

⁴⁰ Bayefsky A. F., *The CEDAW Convention: Its Contribution Today*: In *Proceedings of the American Society of International Law (ASIL) Annual Meeting 197* (Cambridge University Press, 2000).

⁴¹ Meron T., *Human Rights Law Making in the United-Nations: A Critique of Instruments and Process*, 126 (Oxford University Press 1986).

16 of the CEDAW encompasses three main concepts: eliminating discrimination against women, guaranteeing equal rights for both men and women, and the government's duty to achieve these goals.⁴² The Optional Protocol, adopted in 1999 and enacted in 2000, represented a major advancement for women's rights in Nigeria as delineated in the CEDAW by introducing two methods of enforcement: communication and investigation.

The communication process enables the CEDAW committee to accept reports of rights' violations stated in the convention from individuals or groups, either directly or on their behalf.⁴³ The process of investigation allows the CEDAW committee to look into cases where women's rights are being seriously or repeatedly broken according to the CEDAW.⁴⁴ Surprisingly, the CEDAW did not initially address violence against women directly, despite its global impact on countless individuals. Over the subsequent years, however, CEDAW broadened its scope to encompass various aspects of this issue that were not explicitly included in the original 1979 document.⁴⁵ The CEDAW committee has incorporated the issue of violence against women into the treaty, utilising innovative insights as a powerful means to combat discrimination against women.⁴⁶ According to this approach, one of the most important aspects of the strict laws currently in place, like the CEDAW Convention, is the prohibition of violence against women.⁴⁷ According to this explanation, the CEDAW committee released General Recommendation No. 19 which clearly places violence against women under the Convention's scope. This General Recommendation 19 states that for the Convention to be fully effective, countries must take active steps to remove all types of violence against women. It also explains that:

Gender-based violence, which targets women merely because they are female or because they are more affected than men, is a form of discrimination. This includes coercive measures, threats of coercive behaviour, acts that cause physical, mental, or sexual harm and suffering, and other forms of restriction on one's freedom. Certain provisions of the Convention may be

⁴² Susanne Z., *Translating International Women's Rights: The CEDAW Convention in Context*, 87 (Palgrave Macmillan, 2016).

⁴³ The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 6 Oct 1999, entered into force 22 Dec 2000) 2131 UNTS 38.

⁴⁴ Susanne *supra* note 40 at 130.

⁴⁵ *Treaty Collection available*, Jan. 30, 2025,

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en.

⁴⁶ Krivenko E. Y., 'The Role and Impact of Soft Law on the Emergence of the Prohibition of Violence Against Women within the Context of CEDAW' in Lagoutte S., Gammeltoft-Hansen T. and Cerone J. (eds), *Tracing the Roles of Soft Law in Human Rights 1*, (Oxford University Press, 2016).

⁴⁷ *Id.*

violated by gender-based violence even if they do not specifically address violence.⁴⁸

The government's acceptance of violence against women in what are commonly referred to as their personal lives has not been addressed, and the discussions about what is public and what is private have greatly influenced how people view women's rights.⁴⁹ The need to treat domestic violence as a human right issue rather than just a local law enforcement issue is highlighted by the States' inaction in addressing persistent violence and the fact that its effects vary depending on the gender.⁵⁰ As a result, the CEDAW committee moved beyond initial guidelines by approving General Recommendations, particularly General Recommendation 19. This action advanced the ban on violence against women from informal regulations to formal laws, alongside other additional measures⁵¹.

C. Maputo Protocol and CEDAW: A Joint Attack on Domestic Violence against Women

The African Charter on Human and Peoples' Rights is expanded to include the Maputo Protocol, also known as the African Women's Bill of Rights, which places a strong emphasis on women's rights in Africa. Along with the CEDAW, it represents a global effort to address domestic violence issues. Every person has the right to dignity under the Constitution of the Federal Republic of Nigeria (CFRN) 1999, which states that torture and other cruel or degrading treatment are prohibited.⁵² Every woman has the right to have her life, safety, and well-being respected, according to the Maputo Protocol. It also asserts a prohibition on any form of exploitation or treatment that is harsh, cruel, or degrading.⁵³ This viewpoint holds that domestic violence violates women's fundamental rights, which are protected by regional and international human rights legislation in addition to our national laws.⁵⁴ Nigeria is one of the original countries that signed the African Charter and the Maputo Protocol. It adopted the Charter on June 22, 1983, and the Maputo Protocol on December 16, 2004.⁵⁵

The Federal Ministry of Justice has been assigned the task of managing Nigeria's duties and

⁴⁸ The CEDAW General Recommendation 19, Para. 6.

⁴⁹ Economic and Social Council Commission on Human Rights, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, U.N. Doc. E/CN.4/1996/53; Para 26.

⁵⁰ *Id.*, at para 29.

⁵¹ Ireland P., *What women want* 88 (Penguin Publishers, 1995).

⁵² The CFRN 1999, s 34(1)(a).

⁵³ The African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) 2003, art. 4(1).

⁵⁴ Nigeria's Fifth Periodic Country Report: 2011-2014 on the implementation of the African Charter on Human and Peoples' Rights in Nigeria (2014) 1 & 2.

⁵⁵ African Union, *List of countries which have signed, ratified/acceded to the African Charter on Human and Peoples' Rights*, (Jan. 20, 2025, 2:14 PM), <http://www.au.int/en/treaties>.

reactions regarding the African Charter.⁵⁶ The department responsible for the ministry's work related to the African Charter is the Department of Comparative and International Law (DCIL) within the Federal Ministry of Justice.⁵⁷ The Department is also responsible for organising the gatherings of the Inter-Ministerial Committee regarding the African Charter. This committee was created to make sure that Nigeria meets its responsibilities according to the African Charter.⁵⁸ A central government representative has been appointed for the Maputo Protocol: the Federal Ministry of Women Affairs.⁵⁹ Following the suggestion of the African Commission, a National Working Group focused on reporting related to human rights treaties has been created.⁶⁰ The Maputo Protocol, in contrast to the African Charter, has not been directly included in Nigeria's legal framework. However, through legislative changes, some elements of the Maputo Protocol have been incorporated in an indirect manner. To meet the obligations resulting from the Protocol's requirements, some current laws have been updated, and new laws have been implemented. Because of Nigeria's Federal system and the types of matters addressed by the Maputo Protocol,⁶¹ domestication occurs on two distinct scales: national and sub-national. On the national scale, a comprehensive law known as the Violence Against Persons (Prohibition) Act was enacted on 25 May 2015.⁶² The law prohibits a number of behaviours, such as chopping off female genitalia, destroying widow customs, domestic abuse, verbal or psychological abuse, being evicted from one's home, being forced to rely on others for financial support, and being kept apart from friends and family.⁶³

Some of the Maputo Protocol's provisions have been incorporated into Nigerian States laws in different parts of the nation. These include prohibitions on female genital cutting and domestic abuse, promoting gender equality through positive measures, securing women's land rights, and addressing customs affecting widows.⁶⁴ In Nigeria, a treaty generally requires parliamentary approval to become law. However, there are alternative methods for implementing treaties not yet domesticated in the country. One approach involves the Constitution (Third Alteration) Act of 2011. This law enables Nigerian industrial courts to directly implement international human rights agreements pertaining to labour, employment,

⁵⁶ Yola A. A., *Overview of All Departments in the Federal Ministry of Justice* 6(12) J. Justice 44 (2012).

⁵⁷ *Id.*

⁵⁸ Nigeria: Initial Country Report on implementation of AU Solemn Declaration on Gender Equality in Africa (2004-2006).

⁵⁹ *Id.*

⁶⁰ The CFRN 1999, s 12(2)-(3).

⁶¹ *Id.*

⁶² Violence against Persons (Prohibition) Act of 2015.

⁶³ *Id.*

⁶⁴ Viljoen F., *International human rights law in Africa* 522 (AU Publication, 2012).

work environments, and industrial relations.⁶⁵ Therefore, whether or not they have been officially incorporated into national legislation, Nigeria is subject to the gender equality and anti-sexual harassment regulations set forth in the Maputo Protocol.⁶⁶ In addition, according to article 18(3) of the ACHPR, which Nigeria has made part of its laws, the country is required to remove discrimination and safeguard women as outlined in global agreements and treaties.⁶⁷ Experts in human rights believe that article 18(3) applies the CEDAW to every State involved with the ACHPR, regardless of whether they have officially approved the CEDAW.⁶⁸ It is also suggested that the Maputo Protocol might be seen as a component of the ACHPR based on this provision.⁶⁹ The effect of including this indirectly for a country like Nigeria, which has taken the African Charter exactly as it is, is to give local courts the authority to use the rules of the Maputo Protocol through article 18(3) of the African Charter (Ratification and Enforcement) Act 1983. This clever understanding could be used in situations where someone in Nigeria wants to depend on a part of the Maputo Protocol that is not yet included in local law.

IV. NIGERIA'S OBLIGATION UNDER INTERNATIONAL HUMAN RIGHTS LAW

Nigeria is required to respect, protect, and fulfil human rights for everyone within its jurisdiction under international human rights law. This obligation stems from treaties and conventions such as the CEDAW and the Protocol to the ACHPR regarding Women's rights in Africa. In order to advance these commitments, Nigeria has adopted a National Action Plan (NAP) for 2022-2026 focused on promoting and safeguarding human rights as outlined by both international instruments and its Constitution.⁷⁰ Under the NAP, the Nigerian government is committed to respecting, protecting, and fulfilling women's rights in the following areas: (a) Participation of Women in Public Life; (b) Addressing Harmful Traditional Practices Affecting Women; (c) Women's Issues Related to Crime; (d) Ensuring Safety and Security for Women; and (e) Facilitating Women's Access to Justice.⁷¹ The recognition of women's rights and the battle against domestic violence are becoming increasingly evident in various countries. In *Opuz v Turkey*⁷² where the applicant's mother

⁶⁵ The CFRN 1999, sec. 6.

⁶⁶ *Id.*

⁶⁷ Viljoen F., 'The African Commission on Human and Peoples' Rights: Introduction to the African Commission and the Regional Human Rights System' in Heyns C. 10(17) *Human rights law in Africa* 497-498 (2004).

⁶⁸ *Id.*

⁶⁹ Ulrich, *supra* note 36, at 302.

⁷⁰ *National Action Plan 2022 – 2026* (Feb. 10, 2025, 4:13 PM) www.nigeriarights.gov.ng/files/nap/nap-dec-2021.pdf.

⁷¹ *Id.*, at chap. 2.4.

⁷² *Opuz v. Turkey* [2009] Application No. 33401/02, Council of Europe: European Court of Human Rights.

was murdered following years of abuse by the applicant's husband, the European Court of Human Rights determined that Turkey had not exercised due diligence. The court found that Turkey's failure to promptly start criminal proceedings or issue protective orders constituted a breach of customary international law. This inaction effectively denied the applicant her rights to life and freedom from torture or ill-treatment.⁷³ Historically, human rights efforts have often placed limited emphasis on addressing domestic violence against women. States have frequently been reluctant to tackle forms of violence rooted in cultural norms, religious beliefs, or traditional practices.⁷⁴ While domestic violence is only one type of assault that millions of women experience annually, it remains incredibly prevalent.⁷⁵ All types of domestic violence against women are valid concerns for the international community, and States have responsibilities under international human rights law to address this issue.⁷⁶ Understanding cultural differences, it's reasonable to conclude that individuals' perspectives on relationships and domestic violence are often shaped by their upbringing. This influence can affect how they treat and interact with victims. Moreover, acknowledging the cultural elements within a domestic violence context can help inform best practices when supporting survivors of such situations.

Understanding the nuances of cultural diversity around the world enables people to respect cultural norms while demonstrating greater empathy and compassion for victims and survivors of domestic abuse.⁷⁷ Understanding cultural norms and differences is crucial to understanding the mechanisms that support victims of domestic violence. In certain countries and social groups within those nations, cultural reasons have been used to limit women's human rights to maintain traditional practices.⁷⁸ It is not only the government that uses culture as a pretext to restrict women's rights; various social groups within many countries are doing so as well.⁷⁹ According to Radhika Coomaraswamy, former Special Rapporteur on violence against women, substantial efforts are being made in terms of legal writing, standard-setting, and program planning. However, the primary challenge lies in individuals using culture and religion as justifications for denying women's rights.⁸⁰ The petitioner in *Jessica Lenahan*

⁷³ *Id.*

⁷⁴ Vienna Declaration and programme of Action, para 4, 1993.

⁷⁵ Paul S., *Combating Domestic Violence through Positive International Action in the International Community and in United Kingdom, India, and Africa* 5(7) Cardozo J. Int'l & Comp. L. 227 (1999).

⁷⁶ United Nations, *Women's Rights are Human Rights* 75 (United Nations Publication, 2014).

⁷⁷ Matos A., *Domestic Violence and Culture: How Cultural Perspectives Impact How We Understand Domestic Violence* 12(22) JWSS 45-47 (2020).

⁷⁸ *Id.*, at 16.

⁷⁹ *Id.*, at 4.

⁸⁰ Kelly P., *The Twilight of Customary International Law* 16(40) J. Int. L. 84 (2000).

(*Gonzales*) *Et Al v. United States*⁸¹ she was a survivor of domestic violence whose estranged husband ignored a restraining order and abducted her three daughters. Tragically, the situation resulted in the deaths of all three girls despite the mother's repeated calls to local police for help. The United States failed to adequately protect Jessica and her daughters from the dangers of domestic violence, according to the Inter-American Commission on Human Rights.

A. Due Diligence Requirements for State Responsibility

Clarifying that a State cannot escape its responsibilities just because the wrongdoer is a private individual has been made possible in large part by the due diligence standard. There is no universally accepted definition of what constitutes due diligence; rather, it varies based on context and specific details relevant to each situation.

Measures to prevent, investigate, punish, and ensure adequate compensation are among the four categories of action outlined in human rights instruments as part of due diligence standard.⁸² The concept of due diligence entails determining the degree of caution or accountability a State needs to demonstrate in order to fulfil its duties under international human rights law.⁸³ The Inter-American Court case of *Velasquez Rodriguez v Honduras*⁸⁴ was the first to outline the due diligence standard. In this situation, Armed men in civilian clothes took graduate student Velasquez Rodriguez from a parking lot. Several similar incidents occurred in Honduras between 1981 and 1984, including his kidnapping and subsequent disappearance. It was well-established that military personnel and other State agents carried out these actions under official directives. These operations targeted individuals deemed threats to national security. The main question in this historic case before the Inter-American Court was whether Honduras was required by the American Convention to actively protect its citizens from human rights' violations by non-State actors or merely to refrain from violating individual rights.⁸⁵ There is evidence that the kidnappers were State agents working in secret, according to the Inter-American Court of Human Rights.⁸⁶ The Court further noted that the state apparatus's inaction amounts to a violation of Honduras's obligations under article 1(1) of the American Convention, regardless of whether such evidence was found.⁸⁷ The Court

⁸¹ Jessica Lenahan (*Gonzales*) v. United States 5(18) HRLR 27 (2012).

⁸² Rebecca C. J., *Human Rights of Women: National and International Perspectives* 32 (Pennsylvania, 1994).

⁸³ European Union (EU) Agency for Fundamental Rights, *Violence against Women: An EU-wide Survey* (2014).

⁸⁴ *Velasquez Rodriguez v. Honduras* [1998] 28 ILM 291 IACHR Series C No 4.

⁸⁵ *Id.*

⁸⁶ Inter-American Court of Human Rights (29 July 1988) Ser C No 4.

⁸⁷ Articles of Responsibility of States for Internationally Wrongful Acts (ARSIWA) 2001, art. 2.

came to the conclusion that article 1(1) of the American Convention imposes two obligations on Honduras. According to article 1(1):

State parties must uphold and ensure that everyone under their control can freely and completely exercise the freedoms and rights recognised by this convention.⁸⁸

The Court also expanded on the core responsibilities that establish the criteria for due diligence.

The main responsibilities are commonly known as the five Ps: prevent, defend against, take legal action, penalise, and offer compensation. This implies that they have a legal duty to take reasonable steps to prevent violations of human rights and to use the resources at their disposal to thoroughly investigate violations that take place within their jurisdiction, hold those responsible, impose appropriate sanctions, and ensure that victims are fairly compensated. The obligation to stop human rights' abuses suggests that countries must implement all reasonable actions, whether legal, political, administrative, or cultural, to safeguard women's rights.

B. Extent of Nigeria's Responsibility under International Law

It must be understood from the beginning that a State's responsibility comes about in two situations: first, when a State's actions can be linked back to that State according to international law,⁸⁹ this happens when something done or not done is attributed to the government or considered to have been done by the government. Additionally, it occurs when a government's actions violate its international responsibilities;⁹⁰ this violates a responsibility set by a global legal guidelines.⁹¹ The Economic Community of West African States Community Court of Justice (ECCJ), also called the ECOWAS Court, has been able to provide valuable explanations about its legal decisions on how countries are accountable for domestic violence under international law. This was the court's first instance of mentioning the due diligence approach concerning domestic violence. In May 2018, the ECCJ made an important ruling that supported the complainants in the case of *Mary Sunday vs The Federal Republic of Nigeria*,⁹² the very first case of domestic violence to be presented in the ECCJ. This case is significant because it established the rule that States must guarantee a fair trial to

⁸⁸ *Id.*

⁸⁹ Abass A., *International law: Text, Cases and Materials*, United States v Mexico RIAA 1, 167 (Oxford University Press, 2014).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² [2018] ECW/CCJ/APP/26/15.

victims of domestic violence. However, the ECCJ found that the complainant's right to be shielded from violence and discrimination based on gender was not infringed by the defendant-State. This decision has ignited legal debates on how much responsibility should be placed upon States and what types of domestic violence incidents warrant international legal action. Against this backdrop, this segment of the article explores the *Mary Sunday* case, offering initial insights into how ECCJ's legal principles regarding domestic violence are developing. On 24 August 2012, an altercation occurred between Mary Sunday and her fiancé, Corporal Gbanwuan, resulting in physical harm to Mary Sunday. According to her account, during the dispute, Corporal Gbanwuan repeatedly struck her with his fists. She also claimed that she sought safety in a neighbor's kitchen, where she was burned after he allegedly poured hot oil on her. Police investigations, however, revealed that Mary Sunday was the one who tried to douse him in hot oil but instead burned herself. They decided that she was to blame for the regrettable circumstance. The plaintiff accused the Federal Republic of Nigeria of a number of violations, including: (a) deprivation of her right to an effective remedy; (b) infringement of her right to health; (c) infringement of her right to employment; and (d) gender-based discrimination. She sought from the ECCJ that Nigeria pay her ₦20 million to make up for her pain. Nigeria responded by contesting the ECCJ's jurisdiction over the case in a preliminary objection. On December 7, 2016, however, the Court dismissed this objection by reaffirming its jurisdiction to continue with the case. Nigeria contended that since the violent act was a private matter and no public official was acting in an official capacity, it should not be held accountable for the alleged violations against the plaintiff. The plaintiff's claims regarding violations of her rights to gender equality and health were rejected by the three-judge panel. However, the ECCJ decided in favour of the plaintiff and granted her ₦15 million in compensation in relation to her claim for an effective remedy. Because it expands our understanding of the State's liability for private individuals' actions based on due diligence obligations, this case is especially significant. According to Mary Sunday, Nigeria is liable for discrimination under article 2 of the African Women's Protocol and article 2 of the CEDAW because of its inaction against Corporal Gbanwuan, even though she was subjected to violence. Nigeria responded by claiming that it could not be held accountable for any human rights violations because a State official carried out the alleged violent act in private.

Nigeria argued that the actions in question were examples of domestic violence that could only be viewed as Corporal Gbanwuan's personal responsibility. The Court supported Nigeria's view that the violence in this case was a private matter. It clarified that the nature of the actions alleged did not show a consistent pattern that would confirm their discriminatory

nature. Essentially, the events leading to this case were limited to private domestic violence and were not part of a broader systematic issue. The Court also noted that the fact that the person involved was a government official did not affect the responsibility of the State, as he was acting solely on his personal behalf. The ECCJ further stated that even if these actions were done while he was in an official role, they should be treated as assaults or separate from the responsibilities of a police officer. As a result, the ECCJ found that Nigeria was not responsible for violating the right to be free from gender discrimination and suggested that this matter be handled nationally, where people could be held directly responsible. Mary Sunday argued that Nigeria had an obligation to enact legal measures and punish offenders; she contended that failing to do so amounted to gender-based discrimination. However, her argument did not hold up because the ECCJ emphasised that these actions were neither systematic nor generalised enough to constitute State-sanctioned gender discrimination. This interpretation is consistent with legal literature asserting that domestic violence must exhibit systemic characteristics for international human rights intervention and State accountability criteria to apply. In the *Fernandez Case*⁹³ there were statistical reports that proved the Brazilian justice system's lack of response to domestic violence against women was a common issue. Even in *AT v Hungary*⁹⁴ the incidents of domestic violence reported were part of an ongoing series of harm rather than a single occurrence. According to the evidence provided, the States and their justice systems had consistently not succeeded in stopping, safeguarding against, prosecuting, or punishing the abuses that the affected women experienced. However, this situation was different for Mary Sunday. Firstly, the violent act that led to Mary Sunday's injury was an isolated incident, which did not meet the criteria for being part of an ongoing pattern of harm that could hold Nigeria internationally accountable due to its lack of action. Second, the ECCJ was not provided with any data or evidence demonstrating that Nigeria or its legal system routinely failed to address comparable cases of violence against women. This emphasises a crucial component of the due diligence process, which calls on states to implement safeguards and preventative measures based on accurate information.⁹⁵ Corporal Gbanwuan's conduct in his personal life may constitute a violation of Mary Sunday's right to safety from violence against women, potentially making him accountable on a national scale. While his actions alone do not directly implicate Nigeria in

⁹³ *Maia Fernandez v Brazil* [2001] Inter-American Commission of Human Rights Case 12.051, Report No. 54/01.

⁹⁴ *A.T. v Hungary*, CEDAW Committee No. 2/2003, 9.4, U.N. Doc. CEDAW/C/32/D/2/2003 (2005) at <<http://www.un.org/womenwatch/daw/cedaw/protocol/decisionsviews/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf>> accessed 30 January 2025.

⁹⁵ *Fatma Yildirim v Austria* Commission (2004) U.N. Doc. CEDAW/C/39/D/6/2005 (2007) <<http://daccess-dds-n.un.org/doc/UNDOC/GEN/N07/495/37/PDF/N0749537.pdf>> accessed 26 February 19 2025.

terms of discrimination against women, they result in an indirect responsibility because the country failed to provide an adequate resolution for Mary Sunday, as determined by the ECCJ.

V. CONCLUSION AND RECOMMENDATION

Domestic violence has become a serious issue. The human rights framework has placed responsibilities on the government to tackle violence directed at women. This calls on governments to prevent violence against women, look into and prosecute such cases when they occur, punish offenders, and provide assistance to victims of domestic abuse. International human rights regulations allow for a shift in perspective concerning violence against women, pointing towards State accountability rather than individual blame. Not only do these laws specify what the State must do, but they also highlight crucial rights for those who advocate for the support, safety, and empowerment of domestic violence victims and survivors. Despite Nigeria's commitment to several international human rights treaties, including the CEDAW, violence against women remains a significant national concern. This article contends that by incorporating international agreements on domestic violence into its national legislation and upholding its responsibility to safeguard women from such abuse, Nigeria can improve women's well-being and serve as an exemplary model for other African countries.

The article recommends that Nigeria adopt the CEDAW and its optional protocol. It further recommends incorporating the concept of State accountability from the CEDAW Committee's General Recommendation No. 19 into changes in the Nigerian Constitution. This approach could enhance efforts to address domestic violence, as it emphasises government responsibility for acts committed by individuals within society.
