Environmental Correlation between National and International Human Rights Laws in the Context of Domestic Violence

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Abstract

The hard work of human rights activities across the globe has made a lot of impacts on the recognition of domestic violence. The Governments of various countries of the world have seen reasons why laws must be enacted to eradicate or limit domestic violence to the barest minimum. Both national and international instruments have crucial role to prevent violation of human rights and punish perpetrators. The number of countries which explicitly criminalized domestic violence in their primary legislations is increasing due to its negative effect in human societies or environment. The victims are majorly women and girl child. Example of this is the early girl child marriage which harms a girl child's health, particularly her sexual and reproductive health, which most times lead to infertility and morbidity due to early pregnancies. Most women also suffer beating and other forms of violence from their husbands and such perpetrators are left unchallenged under the guise that it is a family issue that should be settled by the family which, more often than not are treated with triviality. Despite the numerous human rights laws put in place to curtail domestic violence. The problem still persists and the drive to eradicate this persistent anomaly, gave rise to this research. This research adopts the doctrinal research methodology and examines the environmental correlation between national and international human rights law in the context of domestic violence. To curtail the anomaly, the research recommends a reformation on enforcement mechanism to tackle all cases of domestic violence.

Keywords: Human Rights Law, Domestic Violence

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1. Introduction

The term environmental correlation in this research serves as a pointer to the synergy between national human rights laws and international human rights laws or conventions that interplay in curbing domestic violence. This cut across environmental rights vis-à-vis human rights which operate at both national and international spheres. Domestic violence is home-based violence arising from denial or abuse of environmental rights or human rights. Domestic violence has been recognized as a violation of human right under international law. This was due to the hard work of activists globally. International instruments clearly show that states have a duty under international law to prevent domestic violence and punish perpetrators. Early human rights' instruments negotiated under the United Nations prohibit domestic violence.[1] Nigeria has ratified some of these international human rights' treaties, a number of which protect the rights of women including freedom from domestic violence.

Pertinent provision for equality of the sexes in the enjoyment of Rights is provided for in all the major human rights covenants of the UN and the African Union. These International and Regional Human Rights instruments emphasized the need for the society to prevent and totally prohibit every actions or inactions which are associated with domestic violence. This study discusses relevant covenants, treaties, and protocols which are cantered on the issues of Human Rights of the persons who suffer any form of domestic violence and the need for all persons to enjoy equality of these rights and opportunities without any form of discrimination whatsoever. This followed a global gender equality roadmap where countries like Beijing formed the Beijing platform for Action on Women, Development and Peace (1995) condemned violence on women and outlined specific steps government can take to end it. Again, in 2003, the Maputo Protocol which guarantees a comprehensive right of women including the right to take part in the political process, to social and political equality with men and an end to female genital mutilation was officially adopted by the African Union (AU). Thus, civil societies and governments have

[1] SVAW- D**o**mestic Violence: Law and Policy, 2023. <https://hrlibrary.umn.edu> accessed 9 June, 2026.

continued to acknowledge that violence against women and children is a public health and human rights concern.[2]

Presently, the number of countries which explicitly criminalized domestic violence in their primary legislation is increasing. Domestic violence legislation has been enacted in more than 125 countries around the world and in countries that have not enacted specific laws; it may be possible to prosecute offenders under more general criminal statutes.[3] Spain was the first European country to approve a comprehensive legislation aimed at eradicating violence in families. Its legislation adopted in 2004 set a precedent in Europe. Then there was the United Kingdom Domestic Violence, Crime and Victims Act, 2004, the Italian Criminal Code Excerpts approved in 2005, the French Parliament Law in 2006 and so many others. In the United States, the Violence Against women Act was approved in 2005. The Brazilian government in 2006 approved a law in 2006 with the symbolic name ‘‘maria da penha law on Domestic and family violence.’ It is pertinent to note that in the Italian Penal Code, domestic violence is not included as an explicit crime on its own, therefore, to prosecute the behavior labelled as domestic violence; lawyers need to make use of other types of crime to fight gender violence.[4]

The fear of victimization, making most women not to report their cases of domestic violence; the provision of section 55 of the penal code that gave right to a husband to beat his wife for the purpose of correction; the nonchalant attitude of the police in prosecuting cases of domestic violence; among others, are some of the major factors militating against the national and international moves to prevent violation of human rights. This research aims at curtailing these militating factors against human rights in order to reduce or eradicate domestic violence from the human environment. To achieve this purpose, the research is

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[2] C Brunch, ‘Women’s Rights as Human Rights: Towards a Re-vision of Human Rights,’ (1990) (12) (4) *Human Right Quarterly* 486-498

[3] D Rosche, “Ending violence against women,” 2013 <http://www.oxfam.org/files/bn-ending-violence-against-women-action-plan-220213-en.pdf.> accessed 9 June, 2026.

[4] MR Bartolomeo, ‘Legal Cultures in Transition: The Role of Italian Jurist Women’ in Eva Schandwyl, *Women in Law and Lawmaking in Nineteenth and Twentieth Century Europe*, (Furham, Ashgate, 2014) 253-274

divided into five sections including the introduction as section one. Section two provides for the conceptual clarification on human rights provided for under the Nigerian Constitution; section three discusses the nature of domestic violence, section four deals with prevention of domestic violence through human rights provisions while section five concludes the research and makes recommendations.

2. Conceptual Clarification

Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) makes provision for the fundamental rights of Nigerians. There is no distinction as to whether the fundamental rights are applicable to a particular group of persons. Men and women enjoy equal rights under the 1999 Constitution. In the primitive era, more often than not, the Nigerian societies often upheld the notion that man is superior to woman and as such, any attempt for the woman to see herself as equal with the man to equally enjoy certain rights together could generate violence against the woman. Though victims of domestic violence could be either man, woman or child, however, this research focuses more on women who are more vulnerable than men. The human rights which are guaranteed by the 1999 Constitution have a direct relevance to this study and they are as follows.

2.1 The Right to Life

Every person has a right to life which must be respected and that a person shall not be intentionally deprived of his or her right to life unless the deprivation is based on the execution of a sentence of court in relation to a crime of which he or she has been found guilty.[5] Other constitutional grounds in which a person's right to life can be violated include a case of self-defense from unlawful violence or arrest to prevent the escape of a person lawfully detained for the purpose of suppressing a riot, insurrection or mutiny.[6] It is clear from the above that any act which does not fall under the above exception will constitute a violation of the right to life of the person affected. This will include harmful traditional practices such as female genital mutilation, violence against women, girls and children, cases of early marriages which could lead to serious health complications and girl child mortality amongst many others.

[5] Section 33 of the 1999 Constitution

[6] Section 33 (2) (a)-(c) of the 1999 Constitution

2.2 The Right to Dignity of Human Person

The Nigerian constitution provides that all persons are entitled to the respect of their dignity.[7] Hence, no person whether male or female shall be subjected to torture or inhuman treatment, be held in slavery or servitude or be required to perform forced or compulsory labour.[8] The point is made that the early marriage of a girl child is a violation of her right to dignity and her right not be held in slavery or servitude. The supplementary convention on the Abolition of slavery, the slave trade and institutions and practices similar to slavery 1957 states that any marriage where the woman's consent is absent is similar to an institution of slavery. The female child whose consent was not voluntarily obtained before the celebration of marriage is in most cases sexually molested/exploited as a result of her mental and physical immaturity in matters of marriage.[9] Again, female genital mutilation of the female child who must go through the sharp knife before she puts to bed is another violation of the dignity of the human person. What about the widow who must pass through the horrible experiences of tradition as a result of the loss of her husband. The girl child who goes through sexual molestation in the hands of the male members of a family or the public and the men who go through molestation in the hands of their wives are all examples of violation of the dignity of the human person.

2.3 Right to Personal Liberty

The Nigerian constitution provides further that every person shall be entitled to his or her personal liberty and no person shall be deprived of this right except in special circumstances and in accordance with a procedure permitted by law.[10] Thus, a person's right to personal liberty will be violated where the person has been subjected without legal justification to false imprisonment. In this case, it has been argued that gender-based violence, which could lead to physical or psychological

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[7] Section 34 of the 1999 Constitution

[8] ibid

[9] R Muftau, 'An Appraisal of the Legal Rights of Women in Nigeria'(2016) (52) *Journal of Law, Policy and Globalization* 78

[10] Section 35 of the 1999 Constitution

harm "to women, children, men including threats of such acts, coercion or arbitrary deprivation of liberty..." whether occurring in private or public life, is a violation of this constitutional provision.[11] It is also argued that elders and the disabled form part of the vulnerable.

2.4 Right to Freedom of Thought, Conscience and Religion.

By the provision of the constitution, every person shall be entitled to freedom of thought, conscience and religion including freedom to change his religion or belief and freedom (either alone or in community with others and in public or private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.[12] It is submitted that this right is in most cases not respected in relation to married women. In most cases a woman's right to freedom of thought, conscience and religion is linked to that of her husband's. It is also observed that the society often times treats it as morally reprehensive for a woman to profess a different religion other than the religion of her husband. Except in cases where it is consensually agreed by both parties, a married woman's identification to a particular religion needs to be respected by the society when it is different from that of her husband's.

2.5 Right to Freedom from Discrimination

On issue of right to freedom from discrimination, the constitution provides that no citizen shall be subjected to any form of discrimination, disability or deprivation by reason of his/her community, ethnic group, place of origin, circumstances of birth, sex, religion or political opinion.[13] The right to be free from discrimination also includes gender-based discrimination. The right to be free from discrimination on the basis of sex has also been addressed in a number of international, regional and municipal instruments which promote equality of sexes. Notwithstanding this constitutional provision, Nigerian women and girls are still being discriminated against in so many areas such as inheritance, succession, politics, family and child-care responsibilities, widowhood practices, rape, beating, early marriages and the relegation of the woman's role to domestic duties in the family. For instance, in terms of succession and inheritance, in

[11] OE Eghosa, 'Women and the Law in Nigeria: A Reappraisal'(2015) (16) (2) *Journal of International Women Studies*, 287

[12] Section 38 (1) of the 1999 Constitution

[13] Section 42 of the 1999 Constitution

Mojekwu v Mojekwu,[14] the court stated "Oliekpe" custom which permits the son of a deseeded person to inherit his property to the exclusion of his female child, is discriminatory and therefore inconsistent which the doctrine of equity..." The Supreme Court in *Akinubi v Akinubi*[15] and *Ukeje v Ukeje*[16] equally pronounced a similar custom which fails to recognise the right of a girl child to inherit properties as discriminatory and unconstitutional.[17] It is humbly submitted that the root and foundation of this discriminatory acts lies in the patriarchal nature of the Nigerian society which tends to place more value on the males than their female counterparts.

2.6. The Criminal Code and the Penal Code

Section 353 of the criminal code[18] prohibits assaults occasioning harm, it went further to provide for a maximum punishment of 3 years imprisonment for offenders. We submit that this provision of the criminal code does not protect women from domestic violence and does not provide any form of compensation for the victims.[19] Section 356 of the criminal code[20] provides that a person who unlawfully and indecently assaults a woman is guilty of a misdemeanour and is liable to imprisonment for two years. Section 358 of the criminal code[21] provides for the offence of rape and states that any person who commits the offence of rape is liable to imprisonment for life. Section 357 of the criminal code [22] provides that a husband cannot be charged with marital rape. We humbly submit that the above section negates the principles of human right and degrades the dignity of the human person who is the woman. So, a woman who is constantly subjected to mental and psychological torture by the man should not say no to the man's sexual advances. Even a man who is constantly under mental torture and harassment will find it difficult to have sexual knowledge.

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[14] [1997] 7 NWLR (pt. 512) 226 at 288-289

[15] [1997] 46 LRCN 137

[16] [2014] All FWLR (pt. 430) 1323

[17] Section 42 of the 1999 Constitution.

[18] Criminal Code Act, Cap A4, LFN, 2004

[19] Ibid

[20] O Nwankwo, *Manual on Domestic Violence* (Enugu, Fourth Dimension Publishing Co. Ltd, 2003) p.7

[21] Criminal Code Act, Cap A4 LFN, 2004

[22] Ibid

Under the penal code [23] Section 282 provides that husband cannot be charged with marital rape. Section 55 went further to provide that 'nothing is an offence which does not amount to the infliction of grievous harm upon a person and which is done by a husband for the purpose of correcting his wife.' The import of the above section is that even if the husband inflicts body injury on the wife for the purpose of correcting her, it does not amount to an offence. We submit that the above section is against the principles of the dignity of human person irrespective of the fact that the woman is his wife.

3. The Nature of Domestic Violence

Domestic violence is an adverse abuse of human rights or environmental rights in form of physical, mental, economical or sexual in environment. As earlier noted in the introductory section of this research, domestic violence is home-based violence arising from denial or abuse of environmental rights or human rights. This could have adverse effect on the victim. Sometimes it could lead to serious injury, loss of reputation or even life and property. Domestic violence is a pattern of behaviour used to make someone feel fearful and unsafe.[24] Globally, domestic violence has been recognized as a violation of human right under international law.

The Nigerian justice system does not specifically promise any protection for women or men against domestic violence. The criminal code and penal code, though, provide punishments for assault, still have discriminatory provisions thereby giving the accused the window to escape punishment. For example, Section 55 (10) (d)[25] of the penal code gives a husband the right to chastise an earring wife, thereby giving room for wife battering, while the criminal code considers assault on a woman to be a misdemeanour, that on a man is felony[26]. Moreover, women would not want to report or take such spouses to court as that may be the end of the marriage and they would incur the wrath of family members. The police also do not treat such cases with

[23] Penal Code of Northern Nigeria, Cap 89, LFN 2004

[24] 'Types of Domestic and Family Violence – Act Government', <https://.act.gov.au/community/domestic-family-and-sexual-violence/types-of-domestic-and-family violence#coercive-control-or-controlling-behaviour> accessed 16 June 2026.

[25] Penal Code of the Northern Nigeria, Cap P3, Laws of the Federation of Nigeria LFN 2004.

[26] Section 353 of the Criminal Code Act, Cap C38 L.F.N, 2004

seriousness as they consider them private matters and may tell the couple to go and settle their disputes at home.

4. Prevention of Domestic Violence through Human Rights Provisions

The followings are some of the legislations enacted for the purpose of preservation of human rights and prevention of domestic violence.

4.1 Violence against Persons (Prohibition) Act, 2015

The Act also known as VAPP Act is a law enacted by the National Assembly of Nigeria and was assented to by President Goodluck Jonathan in 2015[27]. The main aim of the Act is to eliminate violence in both public and private life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and it also provides for punishment of offenders and other related matter[28]. This VAPP Act was enacted as a result of many gender-based violence and human right abuse happening in Nigeria, including rape, maiming of spouse, forceful ejection from home, forced isolation, acid bath, killing and so many others.[29]

The VAPP Act is divided into six parts. Part I provides for offences including rape, inflicting physical injury on a person, coercion, wilfully placing a person in fear of physical injury, offensive conducts, prohibition of female circumcision or genital mutilation, frustrating investigation, wilfully making false statements, forceful ejection from home, depriving a person of his/her liberty, damage to property with intent to cause distress, forced financial dependence or economic abuse, forced isolation or separation from family and friends, emotional-verbal and psychological abuse, harmful widowhood practices, abandonment of spouses, children and other dependents with sustenance, stalking, intimidation, spousal battery, harmful traditional practices, attack with harmful substances, political violence, violence by state actors, incest schedule and indecent exposure.

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[27] International Labour Organisation (ILO) (2022-03-30),'Violence Against Persons (Prohibition) Act, 2015

[28] International Federation of Women Lawyers Nigeria (FIDA). 'Violence Against Persons (Prohibition) Act, 2015

[29] '5 ways the VAPP has changed the offence of Rape in Nigeria' Global citizen. <https://lawpadi.com/5-ways-vapp-changed-offence-rape-nigeria/> accessed 9 June 2026.

Part II provides for the jurisdiction of the court. Part III provides for the service providers i.e. those who are to give information regarding the offences and the offenders and it provides that no person shall give information that may reveal identity of people involved in proceeding. Part IV provides for the regulatory body mandated to administer the provisions of VAPP Act and it provides that the National Agency for the prohibition of trafficking in persons is the regulatory body saddled with this responsibility. Part V provides for consequential amendment while Part VI makes provision for interpretation of words. The Partners West Africa Nigeria reported in March, 2022 that out of the 36 states in Nigeria, only 19 states and the federal capital territory have domesticated the Violence Against Persons (Prohibition) Act 2015 and only 5 States House of Assembly has passed the VAPP Act.[30] However, as of November 2022, all the 36 states of the federation and the federal capital territory have domesticated the VAPP Act according to Premium Times Nigeria. This was made possible by the efforts of Nigerian Governors wives, UN Women, the Honourable Minister of Women Affairs and other state and non-state actors.

4.2 Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights (UDHR) 1948 is a milestone document in the history of human rights. This document was drafted by the representative with different legal and cultural background from all regions of the world. The declaration was proclaimed by the United Nations General Assembly in Paris on the 10th day of November, 1948. It set out for the first time fundamental human rights which are to be universally protected and enforced by member states. On the status of the UDHR, it is not a binding treaty. Therefore, the UDHR does not in and of itself have legal effects on all states, as it is only morally persuasive and it has been considered or assimilated as part of customary international law. The UDHR promotes the dignity and worth of the human person and the equal rights of men and women.[31] It specified gender as being among the

[30] VAPP TRACKER Partners West Africa. Nigeria. <https://www.partnersnigeria.org/vapp-tracker/> accessed 9 June, 2026.

[31] The Universal Declaration of Human Rights, General Assembly Resolution 217, U.N Document A/810, Article 7 1948, 71.

impermissible grounds of differentiation and provided an equal protection clause.

The UDHR proclaims in Article 1 that ‘‘all human beings are born free and equal in dignity and rights. The right not to be discriminated against on the basis of sex, amongst others in order to enjoy the rights contained in UDHR is emphasized in Article 2 of the UHDR. It further proclaims that both men and women enjoy equality of rights with respect to legal protection and that nobody should be discriminated against in relation to the rights contained in the UHDR.[32]

4.3 Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1984

This convention is also known as the United Nations Convention Against Torture (UNCAT) and it is an international human rights treaty the aims to prevent torture and other acts of cruel, inhuman or degrading treatment or punishments around the world. The convention requires member states to take effective measures to prevent torture in any territory under their jurisdiction and forbids member states to transport people to any country where there is reason to believe they will be tortured. The convention was adopted by the United Nations General Assembly on the 10th December, 1984[33] and was ratified by the state party on 20th and it subsequently came into force on the 26th June, 1987[34]. On the 26th of June, is now recognized of international day in support of victims of torture. Since the convention was enforced the absolute prohibition against torture and other acts of cruel, inhuman or degrading treatment has become accepted as a principle of customary international law.[35] The Convention has 173 State Parties including Nigeria who ratified the treaty on 28th June, 2001.

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[32] Article 7 of the UDHR, 1948.

[33] United Nations Treaty Collections; Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 1984 https;//treaties.un.org/ pages/view. Access 9 June 2026.

[34] General Assembly Resolution 40/128 https;//www.un.org/documents/ ga/ reg/40/a4or128.htm)(13 Dec 1985), status of the convention against torture and other cruel, inhuman or degrading treatment or punishment, A/RES/40/128, under 2

[35] CAT General Comment No 2: Implementation of Article 2 by States Parties, Committee Against Torture, 2007. p.2. <(https://www.2.ohchr.org/ english/ bodies/ cat/docs/CAT.cac.2.CRP.1.Rev.4-en.pdf).(PDF).> accessed 9 June, 2026.

Part 1(Article 1-16) contains a definition of torture and it commits Parties to taking effective measures to prevent any act of torture in any territory under their jurisdiction. Article 10 specifically provides that Parties are required to train and educate their public servants and private citizens involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, regarding the prohibition against torture. Article 11 provides that Parties must also keep interrogation rules, instructions methods and practices under systematic review regarding individuals who are under custody or physical control in any territory under their jurisdiction, in order to prevent all acts of torture. States Parties are enjoined to prevent all acts of cruel, inhuman or degrading treatment of punishment in any territory under their jurisdiction and to investigate any allegation of such treatment.[36] This is pertinent to note that our Nigerian police, Army, and some paramilitary bodies in Nigeria still engage in the brutality of suspects and degrading treatments and punishments of suspects under their custody. All state parties are obliged under the Convention to submit regular reports to the Committee Against Torture which is a body of Human Rights experts that monitors implementation of the Convention by state practice.

4.4 International Covenant on Civil and Political Rights, (ICCDR) 1976

The U.N General Assembly adopted the ICCRR in 1966. It however came into force in 1976 and Nigeria submitted its accession to the instruments on the 29th day of July 1993 this instrument is here to be domesticated as part of Nigerian laws. The ICCRR recognized amongst other things the inherent dignity and equal rights of men and women in the enjoyment of the civil and political rights which are expressed in the ICCRR. These rights include but are not limited to the rights to life[37], the right to be free from inhuman or degrading treatments[38] and slavery[39], the right to the freedom of expression[40], the

[36] Article 16, United Nations Treaty Collections; Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 1984
[37] Article 6 of the ICCPR, 1976
[38] Article 7 of the ICCPR, 1976
[39] Article 8 of the ICCPR, 1976
[40] Article 19 of the ICCPR, 1976

right to the freedom of Association[41] and the right to political participation in the country without discrimination or unreasonable limitation[42]. the equal responsibilities of spouses in marriages are emphasized by Article 23(4) of the ICCRR.

These equal responsibilities of men and women are also recognized during marriage and upon its breakdown. this simply could notice that the cultural practices of relegating a woman's position to domestic duties at home and restricted to the operating of children why the man goes to look for money is purely a violation of the rights of the women. The ICCRR Human Rights Committee[43] has developed interpretations of each substantive articles by issuing General comments. Comments 4/13 interprets Article 3, which required states to ensure for all individuals the right recognized in the ICCPR imposing a positive obligation or states to remedy sex discrimination. This positive obligation requires not only that states take measures to protect women such as enhancement of laws but to take measures of affirmative action designed to ensure the positive enjoyment of those rights. it also imposes on States a duty to obtain information regarding the role of women in its jurisdiction in order to determine specifically what additional measures need to be taken.[44] The Human Rights Committee's general comment elaborate on the obligation of the states interims of quality of Rights between men and women. It states thus:

> Inequality in the enjoyment of rights by women is deeply embedded in tradition, history and culture including religious attitudes. State parties should ensure that traditional, historical, religions and cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all covenant rights

4.5 International Convention on Economic, Social and Cultural Rights (ICESCR) 1976

In accordance with Article 27, the ICESCR which was adopted in December 1966 came into force in January 1976. Similar to ICCPR, the ICESCR received accession from Nigeria on the 29th day of July, 1993 but it is yet to be domesticated as part of Nigerian laws. The

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[41] Article 22 of the ICCPR, 1976
[42] Article 24 of the ICCPR, 1976
[43] Part IV of the ICCPR, 1976
[44] U.N. GAOR, 36th Session, Annex 7, U.N. Document A/36/40/1981

ICESCR obliges state parties to ensure the equal protection and guarantee of the economic, social and cultural rights of its citizens without any form of rights of its citizens without any form of discrimination.[45] The right of everyone whether male or female to work or to freely choose where they will work[46] and equally enjoy favourable conditions of work is guaranteed by ICESCR.[47]Of particular importance as it relates to the right to work is the provision of Article 7(a)(i) of the ICESCR which provides that a just and favourable condition of work must include:

> Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

The above provision no doubt is against discrimination of women in the workplace. It encourages state actors to ensure that their labour laws are not discriminatory against women and provides that men and women should at all times enjoy equal conditions of work. Article 10 of the ICESCR also recognises the right of employed women to be specially protected at the worl place during a reasonable period before and after childbirth. Thus, the ICESCR encourages state actors to ensure that "working mothers should be accorded paid leave or leave with adequate social security benefits."[48]

4.6 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1981

The Convention on The Elimination of all Forms of Discrimination against Women (CEDAW) is one of the most relevant and important instrument concerning the rights of women.[49] The provisions of the CEDAW touch on the social, cultural, economic and political lives of women and also define discrimination as ‘any distinction, exclusion or restriction, made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by

[45] See the Preamble to Article 3 of ICESCR, 1976
[46] Article 6 of the ICESCR1976
[47] Article 7 of the ICESCR1976
[48] Article 10(2) of the ICESCR1976
[49] D Gieryez , "Human Rights at the Fiftieth Anniversary of the United Nations" in Wolfang. Benedek et al (eds) Human Rights of Women: International Instr. & African Experiences (London: 2ed Books, 2002) p. 30

women irrespective of their marital status on the basis of men &women of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field."[50] To ensure compliance with these provisions, State Parties are called upon to create measures that would protect and promote the rights of women.

The General Assembly of the United Nations adopted CEDAW in 1979. The CEDAW guarantees the state responsibility to ensure the rights contained in it. The CEDAW is supplemented by a number of General Recommendations that further detail the content and the use of CEDAW. Up to date, 185 countries have ratified the CEDAW. The promulgation of CEDAW was the culmination of the efforts of the global women's human rights movement to bring together in a single document a charter of women's rights. Despite many of its shortcomings, it gives voice to the notion that women's rights are human rights.

The CEDAW covers the public as well as the private sphere and argues for the indivisibility of rights including civil and political rights like the right to health. For example, the convention seeks to enforce women's rights to equality in areas ranging from political participation to employment, to women's reproductive rights and articulates the importance of ensuring women's social and cultural equality by revisiting social and cultural patterns of conduct that lead to stereo-typed roles and hierarchies between the genders. To secure women's rights, the CEDAW calls upon state parties to adopt enabling legislation prohibiting discrimination against women and to take all appropriate measures to eliminate discrimination.

The CEDAW is structured in six parts. States parties agree to take all appropriate measures to bring about the advancement of women; these take the form of legal, administrative and other measures which include temporary special measures of affirmative action, modification of social and cultural patterns of conduct and suppression of trafficking in women and exploitation of prostitution of women.[51] States also undertake to protect women's rights in political and public

[50] Article 1 of CEDAW 1981.
[51] Articles 1-6, CEDAW 1981

life.[52] In Part 111(Articles 10-14), governments make various commitments to eliminate discriminate in education, employment, health and in economic, social and cultural life. In Part 1V- V1, State Parties agree to afford women equality with men before the law in exercise of legal rights and in the marriage and family law.

Since states are bound to eliminate discrimination as defined by Article 1, they are obliged to eliminate against women in all spheres of life including the private sphere especially in the family. This includes not only eliminating practices that are intended to constrain women's human rights but also those unintended consequences of facially neutral laws. In pursuing these goals, states may under the provisions of CEDAW even introduce temporary affirmative action until equality between men and women is achieved.[53]

Article 2 obliges states to take concrete steps to eliminate discrimination against women. This provision also requires states to eliminate discrimination against women by any ''person, organization or enterprise''. This provision makes the CEDAW unique since international human rights treaties are usually limited to the conduct of the state or its agencies. The main objective of Article 2 is to achieve the establishment of an appropriate legal structure that will guarantee de jure and de facto, equality, the necessary resources for its implementation and a definition of the necessary punishment for ''public and private discriminatory acts.' CEDAW's affirmative obligations are another distinct feature of the convention. Article 2 of the CEDAW specifies that State Parties must take affirmative actions to condemn all forms of discrimination against women and to pursue by all appropriate means, a policy of eliminating such discrimination. For example, Article 2(f) delineates that State Party to CEDAW must take all appropriate measures including legislation to dismantle or revise all existing laws, practices and customs that discriminate against women. One of the most important obligations under CEDAW is that under Article 2(f) and 5(a), State Parties must correct cultural customs and practices in addition to cultural patterns of conduct between men and women which promote any type of discrimination or stereotyped roles for men and women.

[52] Part 11Articles 7-9, CEDAW 1981
[53] Articles 4, CEDAW 1981

Articles 7,8 and 9 of the CEDAW recommend the specific provisions that should be adopted to guarantee women the full enjoyment of their civil and political rights on equal terms with men, both at national and international levels. The enforcement of Articles 7 and 8 require States Parties to adopt measures of affirmative action centred on the promotion of wider participation of women in political activities. Such measures would affect areas of public administration and sectors such as unions, business organisations and in general, social institutions and organisations. Article 16 also provides equal legal rights related to matrimony and to family related matters including the right of women to freely get married, to decide the number and timing of their children, to exercise their rights to administer property without interference. The CEDAW requires State Parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular to ensure on a basis of equality of men and women the same right to enter into marriage and the same right freely to choose a spouse and to enter into marriage only with their free and full consent[54]. The Convention also provides that the betrothal and marriage of a child shall have no legal effect and that all necessary action including legislation must be taken to specify a minimum age of marriage and to make the registration of marriages in an official registry compulsory.[55]

Although the CEDAW does not contain a specific provision on gender- based violence. Recommendation No. 19 notes that gender-based violence perpetrated by public authorities as well as by any person, organization or enterprise constitutes discrimination. It also affirms that family violence is one of the most insidious forms of violence against women and is prevalent in all societies. Recognizing that within family relationships, women of all ages are subjected to violence of all kinds including battering, rape, sexual assault, mental and other forms of violence which are perpetrated by traditional attitudes. In the light of General Recommendation No.19, State Parties must be requested to take positive measures to prevent and eliminate violence against women in public and private life[56]. Of importance is Article 16 of the CEDAW which provides thus for men and women:

[54] Article 16(1) of the CEDAW, 1979
[55] Article 16(2) of the CEDAW, 1979

a) The same right to enter into marriage
b) The same right to freely choose a spouse and to enter into marriage only with their free and full consent.

Article 16(2) states thus:

> The betrothal and the marriage of a child shall have no legal effect and all necessary action including legislation shall be taken to specify a minimum age for marriage.

Sexual and reproductive health problems linked to early marriage is also a result of general lack of information and education on sexual and reproductive health issues and thus violates CEDAW's entitlements that women shall have access to the necessary information, education and means to enable them to decide freely and responsibly on the numbers and spacing of their children.[57] In the light of early child bearing that mostly follows child marriage; the CEDAW Committee has cogently emphasized the negative effects child marriage has on the education and employment of girls. Again, the reporting obligation under CEDAW as a tool to combat child marriage is instructive. It enables women's rights advocates to play the role of watchdog for state compliance with CEDAW. Each State Party is required to submit report to the Committee within one year of entry into the CEDAW and every four years thereafter.[58] The report should illustrate the legislative, judicial, administrative and other measures the State Party has taken to give effect to the provisions of the CEDAW.[59]

In the "Guide to Reporting under the Convention," one of the required questions that a member state has to ask itself under Article 1 of the Convention is whether ''… the legal definition of discrimination is sufficiently broad or interpreted broadly enough to be compatible with that contained in the Convention"? Further, States are required to ask themselves whether the definition covers practices which although not intending to discriminate are discriminatory in effect and not reasonable or justifiable. State Party reporting is a very important tool

[56] Article 3 of the 'Declaration on the Elimination of Violence Against Women' 1993.
[57] Article 16(e) of CEDAW.
[58] Article 18, CEDAW 1981.
[59] Ibid

to keep State Parties accountable under the CEDAW. State Party reporting is not the only enforcement mechanism under CEDAW. The Convention has an optional protocol which provides for a right of complaint. It was suggested in the Vienna Declaration and Programme of Action adopted in 1993. It entered into force in July 22, 2001, after the requisite number of ratifications had been deposited.

Under the Optional Protocol, individual women and groups of women under the jurisdiction of a State Party can submit complaints to the Committee alleging violations of the convention provided that the State Party in Question has ratified the Protocol. A person other than the victim can also submit a complaint on her behalf. Complaints under the Optional Protocol are to be sent to the Division for the advancement of women.

Another novel enforcement procedure under the Optional Protocol is the provision which allows the CEDAW Committee to conduct an inquiry into allegations of grave and systematic violations of the CEDAW by a State Party. When the Committee receives information of such alleged violations, it can invite the State Party concerned to cooperate in the examination of the information and to submit relevant observations to the Committee. For countries that are yet to sign the Optional Protocol, advocates can however play a proactive role in ensuring state compliance with CEDAW by submitting information in the form of shadow or Alternative country Reports, presenting their own views on rights violations such as child marriage. Non-governmental Organizations (NGOs) have a very important role to play in making the CEDAW an instrument of women's empowerment through advocacy and monitoring their government's implementation of the treaty. Because CEDAW's enforcement mechanisms is based on a reporting system, it is imperative that NGO's understand and use the reporting mechanism to maintain government accountability both inside and outside the country.

Nigeria became a signatory to CEDAW on 23 April, 1984 and subsequent ratification took place on 13 July, 1985. The country has also signed the Optional Protocol on 8 September, 2000 which came into effect on 22 February, 2004. It has been established that Nigeria has complied with her obligations in terms of submitting her country

reports to the relevant body.[60] Despite meeting her reporting obligations to the Committee on CEDAW, a major source of concern is the paucity of legislation dealing with specific issues of women's rights. This makes it almost impossible to monitor her adherence to the provisions of the treaty because the Committee is unable to measure the progress made in those areas of concern.

4.7 The African Charter on Human and People's Right (ACHPR) 1986.

The African Regional system has the dual mandate to protect and promote human rights on the continent. The advisory body that administers the provisions of the Charter is the African Commission for Human and Peoples Rights (the African Commission).[61] The African Charter on Human and Peoples Right has notable features that distinguish it as an African instrument which emphasizes individual duties, inter-parties duties towards the family and the community at large, it also seeks to protect the family, morals and traditional values of the community.[62] These features underscore the importance of the African tradition and communal existence of the people. The African Charter allows for complaints from both individuals and other agencies of the commission for consideration.[63] The relevance of this procedure makes it distinguishable in that people with genuine cases of human rights violation could approach the commission for redress.

One of the interesting aspects of the application of African Charter as an international treaty came to the fore in several complaints. Notable among them is the case of *Dawood v. Minister of Home Affairs*.[64] In this case, Article 18 of the African Charter was relied on by the applicants demonstrating the importance of the right to family life and marriage and the State obligation to protect the family. One of the problems faced by the Commission is the enforcement of the Commission's decisions in cases brought before it because of the non

[60] 19 June 2024

[61] The Commission met for the first time on 2nd day of November, 1987.

[62] Articles 27 and 28 of the African Charter on Human and Peoples Rights as Published by the Secretariat of the African Commission, Banjul: The Gambia 1986

[63] African Commission on Human and Peoples' Rights, 1986, 5 & 8 <www.achpr.org/english/info/women-en-html.> Accessed 17 June 2026.

[64] [2000] (8) BCLR 837(CC)

-binding nature of their findings. One possible way of remedying this shortcoming would be by adopting a protocol that would empower the African court on Human Rights to enforce the rights embodied in the provisions of the character. The concerns expressed by the NGOs on the perennial violation of women's rights gave rise to the draft Protocol to a specific African Charter on Human and Peoples' Rights on the Rights of women.[65] The Commission further appointed a special Rapporteur on women's human rights whose duties involve giving communications to the Commission on violations of women's rights in Africa.[66]

4.8 Protocol to the African Charter on Human and Peoples' Rights of Women in Africa (Maputo Protocol), 2005.

The most important aspect of the provisions of the Protocol relate to the role of women in development, peace and security, promotion of equality between men and women and the preservation of African values.[67] Inherent in the provisions of the Protocol are the inalienable and inviolable rights of women as human beings and their rights as an integral part of human rights. It is very important that African values are protected and preserved, however, the general consensus of women activists is that customary practices that are harmful to the women should be outlawed.[68] Such a measure would empower State Parties to deal with gender issues as a matter of urgency. It is pertinent to state that the African Charter was transformed into Nigerian municipal law on the 17th of March, 1983. This was done through the promulgation of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[69] The text of the African Charter on Human and Peoples' Right was made a schedule to the Act. Section 1 of the Act enacts as follows:

> As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Right which are set out

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[65] Adopted in Maputo, Mozambique in July, 2003 and entered into force in November,2005.

[66] African Commission on Human and Peoples' Rights, 1986 <www.achpr.org/english/info/women-en-html.> Accessed 17 June 2026

[67] Preamble to the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa (Maputo Protocol), 2005.

[68] Delport Elize, Women in Africa in Christ of Heyns (ed.), Human Rights Laws in Africa (Netherlands: Martinus Nijhoff Publishers, 2004) p. 845

[69] Cap A9, LFN, 2004.

> in the Schedule to this Act shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.[70]

The Act makes it very clear that the Charter shall have the force of law and full recognition and effect in Nigeria. Its application without exception extends to all authorities and persons exercising executive, legislative and judicial powers in Nigeria. It is humbly submitted that the African Charter, more than any other international and regional human rights treaty, enjoys prominence, recognition and enforcement in Nigeria.

4.9 Convention on the Right of the Child (CRC), 1989.

The Convention on the Rights of the child was carefully drafted over the course of ten years from 1979 to 1989. Nigeria implemented the provisions of the CRC through an Act of the National Assembly in 2003.[71] The CRC recognizes that children are entitled to human rights in their own right. Thus, the CRC reflects a movement away from the view of the child as a recipient of privileges bestowed at the discretion of the family, community and the state towards a more progressive view of the child as the bearer of legal rights under international laws. The provisions of the CRC as they relate to the rights of the female child are to be protected and not to be discriminated against will be highlighted below.

It contains a provision calling for the abolishment of traditional practices prejudicial to the health of children.[72] The CRC prohibits State Parties from permitting or giving validity to marriages between persons who have not attained their majority.[73] In the context of the Convention on the rights of the child, a child is a human being who has not attained the age of 18 years unless, under the applicable law as it relates to the person, majority can be attained earlier than 18 years. The Committee on Rights of Child considers that the minimum age for marriage must be 18 years for both men and women. It is argued that

[70] Section 1 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9, LFN, 2004.
[71] The Child Rights Act, cap C50, LFN.2004.
[72] Article 24 (3) of the Convention on the Rights of the Child, 1897
[73] Article 16 (2) of the Convention on the Rights of the Child, 1989.

early marriage of girls in particular is connected to other children's rights such as the right to express their views freely, the right to enjoy protection from all forms of abuse and the right to be protected from harmful traditional practices which are prejudicial to the health of children.[74]

It is also noted that the best interests of the Child principle in the CRC provides a basis for evaluating the laws and practices of States with respect to the protection of children. Since empirical evidence reveals that girls who marry early are often exposed to violence, divorce, abandonment and poverty and in the light of the best interest of the child principle, states must take legal action to abolish child marriages.[75] Parents and government owe the children especially the girl child the obligation to protect the health, education, development and the total well- being of children to the best of their abilities. It is therefore submitted that since child or early marriage harms a girl child's health, particularly her sexual and reproductive health, which most times lead to maternal mortality, infertility and morbidity due to early pregnancies, States are obliged under the CRC to take necessary steps in abolishing traditional practices which are prejudicial to the health of the girl-child.[76] Inaction on the part of the states to eliminate child marriages also violates the principle of life, survival and development and the girl child's right to the highest attainable standard of health under the CRC.[77] Besides violating a girl's right to health, early marriage disrupts girls' schooling opportunities as guaranteed by the CRC[78] and employment rights. The responsibilities that women have to bear and the fact that they have to raise children often affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The rights to marry and have a family are the rights of adults and not children and adolescent.[79]

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[74] Article 16 (2) of the Convention on the Rights of the Child,1989.

[75] Article 3 (1) of the CRC 1989

[76] Article 24 of the CRC, 1989.

[77] Article 6 of the CRC 1989.

[78] Article 28 (1) (b), the CRC1989.

[79] R Cook, 'Women's Health and Human Rights: the Promotion and Protection of Women's Health through International Human Rights Law.'(Geneva; WHO, 1994)

5. Conclusion and Recommendations

Scholars and activists in the field of human rights abuse or domestic violence had continued to raise public awareness concerning violence problem and even demand for efficient legal interventions at both national and international levels. Hence, the Convention on the Elimination of All forms of Discrimination Against Women adopted by the United Nations General Assembly in 1979 and the Convention on the Rights of the Child (1989) both reflect this innovative consensus. It was the first real international legal intervention depicting such violence as neither casual nor indiscriminate but as perpetrated against women as such. Besides encompassing sexual, economic, psychological and moral abuse, it referred to domestic violence of any kind and criminalized it.

Conclusively, success story from the fight against human rights abuse or domestic violence is minimal to some extent, in that, effective strategies to address domestic violence is still being defined and some states differ on the type of relationship that qualifies under their domestic violence laws. Most Countries for instance require that the perpetrator and victim are either current or former spouses, living together or have a child in common while others specifically exclude same-sex relationships in their domestic violence laws. The current definition of domestic violence is very broad and may comprise a number of different behaviours and consequences but not all forms of domestic violence are illegal. Some kind of emotional abuse, for instance are not defined as crimes. Sequel to the above, this research makes the following recommendations:

This research finds out that the challenge of incessant violation of human rights vis-à-vis domestic violence lies majorly on difficulties usually encounter in the course prosecuting or enforcing the provisions of the relevant laws, hence this research recommends a reformation on enforcement mechanism to tackle all cases of domestic violence. It is recommended that since child or early marriage harms a girl child's health, particularly her sexual and reproductive health, which most times lead to maternal mortality, infertility and morbidity due to early pregnancies, States should take proactive necessary steps in abolishing traditional practices which are prejudicial to the health of the girl-child. It is also recommended to the effect that the section 55(10)(d) of the penal code which gives a husband the right to chastise an erring

wife, thereby giving room for wife battering should be amended to the effect of criminalizing the act of beating a wife. There should be a continuous re-echoing and creation of public awareness campaign on human rights laws against domestic violence. The reporting system of alleged cases of violence of any form should be strategized for a more effective implementation of human rights laws.