

EFFECTIVENESS OF NIGERIA'S INTERNATIONAL OBLIGATIONS IN CURBING DOMESTIC VIOLENCE

Abstract

Domestic violence is a global problem which cuts across race, ethnicity and geographical location. It is a serious universal scourge pervading every society and thus calling for serious attention and action. African women, like their counterparts all over the world, suffer domestic violence irrespective of class, age, religion or social status. In Nigeria, domestic violence has become endemic; a social, economic and health concern. This paper examines the issue of domestic violence in Nigeria to determine the effectiveness of Nigeria's international obligations in curbing the menace, suggesting how best to make these international instruments relating to domestic violence even more effective in their application. The need for a final solution cannot be over-emphasised, thus the need to make the international instruments more effective. The paper suggests that Judges should be bold and courageous in interpreting the Constitution and laws of the land so as to link them up with the international treaties even if not domesticated. The article concludes that ratified international treaties would be more effective if used as additional resources for curtailing the abuse of victims of domestic violence.

Keywords: *Domestic violence, Treaties, Effective, Nigeria*

1. Introduction:

Domestic violence is a global problem which cuts across race, ethnicity, and geographical location. It is a serious universal scourge pervading every society and thus calling for serious attention and action. African women, like their counterparts all over the world, suffer domestic violence irrespective of class, age, religion or social status.¹ In Nigeria, domestic violence has become endemic; a social, economic and health concern. It is equally a development problem. It is estimated that one in every three women suffers domestic violence from the hands of those who claim to love and protect them.² According to the World Health Organisation, 'One third of women, and more than two thirds in some countries have experienced physical or sexual violence inflicted by an intimate partner...'³ Unfortunately, many of the victims suffer in silence and do not report the violence mainly due to lack of positive response from the society. Worse still, some of the victims do condone it, claiming it is a sign of love. Adebayo noted that, 'Unfortunately, a staggering 97.2 per cent of the abused women do not report the crime to the authorities.'⁴ Those victims who sum up courage to report the violence to the police get so disappointed because the matter is seriously trivialised and termed a private matter. If report is made to a senior member of the family the reaction may be, what did you do?; you may have caused the beating by your behavior, and the issues ends with advise to be of good behavior and to be patient as everything will be alright. It is in fact unfortunate that some of our discriminatory laws condone and even legalise some forms of domestic violence. The perpetrator of violence thus, mostly is not condemned, and not punished. In any case, laws have been enacted in parts of Nigeria to deal with all sorts of gender based violence including domestic violence. Sadly, domestic violence persists with its attendant socio-

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¹ Eze-Anamba, *Domestic Violence and Legal Reforms in Nigeria: Prospects and Challenges* (2007) *Cardozo Journal of Law and Gender* 12: 21-59.

² AA Adebayo, *Sociological Implications of Domestic Violence on Children's Development in Nigeria*, *Journal of African Studies and Development* (2014) Vol 6(1) p 1.

³ WUNRN, *Violence Against Women: Unacceptable and Unmeasured* <http://hdr.undp.org> Accessed 2/2/2018.

⁴ Adebayo n 2 above.

economic consequences. More so, there are no laws in Nigeria specifically enacted against domestic violence to be applicable throughout the Federation. However, the Violence Against Persons (Prohibition) Act (VAPP), passed in 2015 provides protection for a wide range of types of violence against women, including domestic violence. It is limited to the Federal Capital Territory though and so not extended to many women across the country unless states adopt it.⁵ Thus, domestic violence has persisted and has become endemic in the country.

This paper examines the issue of domestic violence in Nigeria in order to determine the effectiveness of Nigeria's international obligations in curbing the menace, suggesting how best to make the international instruments relating to domestic violence even more effective in their application in Nigeria.

2. Meaning of Domestic Violence

Due to the fact that domestic violence takes place in almost all countries of the world, its definition differs from place to place and from time to time depending on the person and the purpose for which it is defined. What may amount to domestic violence in the United Kingdom or America may not be so in Nigeria because of the different cultural settings; and the rate differ from one country to the other. It is, however, astonishing that in spite of such differences, domestic violence exhibits similar trends globally. Although figures may differ from place to place, the causes and the manner of sufferings associated with it are similar all over the world.

‘Domestic Violence is not simply an argument. It is a pattern of coercive controls that one person exercises over another. Abusers use physical and sexual violence, threats, emotional insults and economic deprivation as a way to dominate their victims and get their way.’⁶ It is the intentional and persistent abuse of a wife or husband physically, emotionally or otherwise. Scott and Marshall⁷ define domestic violence as specifically male violence (physical and psychological) against women. To them, domestic violence is a reflection of gender inequalities in power and of women's oppression. Oyelade,⁸ on his part defines domestic violence as ‘physical, sexual, emotional, economic, psychological action or threats that influence another person. It includes any behavior that, isolates, frightens, terrorizes, coerces, threatens, hurts, injures or wounds, or even controls another person negatively.’ Also domestic violence has been defined as ‘an abuse towards one's spouse, ex-spouse, current or former boyfriend, or girlfriend or dating partner and includes actual or threatened physical or sexual violence as well as emotional abuse.’⁹ There are in fact many definitions of domestic violence but the common factor is that the effect is always negative on the parties involved and the abuse is also mainly intentional and deliberate.

The above definitions show that domestic violence can actually be against a man or a woman. One can even refer to it as bullying, and both men and women can be bullies. Thus, men could be victims of domestic violence as well as women. However, women are mainly victims. The important point to note

⁵ See C Onyemelukwe, *Legislating on Violence Against Women: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act 2015*.

⁶ B Susmitha, *Domestic Violence: Causes, Impact and Remedial Measures* journals.sagepub.com see WHO (2007). *Multi-country study on women's health and domestic violence against women*. Geneva: World Health Organisation.

⁷ J Scott & G Marshall, *An Oxford Dictionary of Sociology*, 2000 (Oxford Press)

⁸ JA Oyelade, *Domestic Violence, Not a Christian Culture*, 2012 (dby Ventures)

⁹ Aili Mari Tripp & Ladan Affi, ‘Domestic Violence in a Cultural Context’, (2004), *Family Advocate*, Vol 27 No 2 pp 32-36 <http://www.jstor.org/stable/25806395>. Accessed:10/5/13 in IP Enemo, *Dangerous Families in Nigerian Law; A National Albatross?* Inaugural Lecture, University of Nigeria, Nsukka, 2014.

though, is that, one person in a relationship purposely hurts the other person physically, emotionally or otherwise, and wants to dominate and control him or her. The abuser uses fear, guilt, shame and intimidation to wear down the victim and put him or her under his or her feet. Note that the abuser does not have to hit the victim for it to be abuse. He or she could degrade, humiliate, blame, curse, manipulate, or try to control the victim. It is still domestic violence.¹⁰

2. Forms of Domestic Violence¹¹

Domestic violence may occur in various forms and a victim may suffer more than one form of violence. It could also take place only once or repeatedly and may take any of the following many forms world-wide:

Physical aggression or assault: e.g., hitting- slapping, kicking, pushing, biting, shoving, throwing objects, or threats thereof, intimidation, stalking,¹² kidnapping, unlawful imprisonment, trespassing, harassment, including sexual harassment.

Sexual assault and rape: i.e., forcing a person to participate in unwanted, unsafe, or degrading sexual activity, forcing sex on you even though you do have consensual sex. This may be called marital rape if it takes place between a married couple, though it is not yet recognized by Nigerian law.

Emotional /psychological abuse: e.g., constant belittling of the other person, his actions and decisions; constant blaming or bringing up past sins and secretes in order to shame; isolation, intimidation, treating the person as a child; emotional neglect, withholding of affection, etc. This is quite destructive as the other forms of abuse but often overlooked.

Physical neglect: e.g., refusal to provide for basic needs, or even to take you in his or her car to drop you off at your work place.

Economic or Financial abuse: i.e., withholding of financial support, rigidly controlling your finances, collecting all your salaries once paid to you or making you account for every penny he gives you to spend, stealing your money, preventing you from working, yet withholding basic necessities like food, clothing, medication etc.

Verbal abuse: e.g., name calling, shouting and yelling, insults and nagging.

Controlling behavior: This is aimed at compelling another to comply with an abuser's wishes such as what the menu in the house will be, when to serve meals, whom and where to go (when a spouse can visit friends or family), when to bear a child and removal of a pregnancy, etc.¹³

¹⁰ www.searchquotes.com/search/domestic_violence Accessed 25/4/13 *Ibid*.

¹¹ IP Enemo, *Dangerous Families in Nigerian Law; A National Albatross?* Inaugural Lecture, University of Nigeria, Nsukka, 2014.

¹² Stalking is defined as 'harassing or threatening behavior that an individual engages in repeatedly, such as following a person, appearing at a person's home, or place of business, making harassing phone calls, leaving written messages or objects, or vandalizing a person's property. These actions may or may not be accompanied by a credible threat of serious harm, and they may or may not be precursors to an assault or murder.'

¹³ See 'Domestic Violence.' domesticviolence.com.ng accessed 29/5/ 13. See also *Domestic Violence in Nigeria*, www.iamaslucker.com/article/domestic-violence-in-nigeria/212. Also see ON Aihie, 'Prevalence of Domestic Violence in Nigeria:Implications for Counselling', (2009), Vol. 2, No. 1, *Edo Journal of Counselling*. www.ajol.info/index.php/ejc/article/download/52648/41252. Accessed 24/8/13 in IP Enemo n 10.

We must note that even though the physical form of violence may not occur always, the other forms are more constantly occurring.

3. Causes of Domestic Violence¹⁴

Abusers are said to behave violently to get what they want and gain control over the victim, believing it is their entitlement,¹⁵ as allowed by our patriarchal tradition. Apart from traditional and cultural factors, many other factors may cause domestic violence to take place, though the fact that such factors exist does not mean that domestic violence must take place. The following have been identified: use of drugs or alcohol (a drunk or a person who is high can hardly control himself at the slightest perceived provocation by the wife), infertility, couple's age difference, witnessing or being a victim of domestic violence as a child, unemployment, particularly of the male partner.¹⁶ This is worse where a wife has a job as against her husband, who would become frustrated and angry and unleash his anger on the wife and invariably his children. Other situations are where the woman earns more than the husband, or has influential and rich parents, is educated/more educated and/ or is in the same age bracket with her husband.¹⁷ Dr. Lola Akande,¹⁸ Lagos Commissioner for Women Affairs and Poverty Alleviation (WAPA) at a programme on Management of Domestic Violence organized by the Ministry in Lagos, laid blame on women when she stated that 'negligence, sophistication, misguided utterances, infidelity, use of abusive words and gullibility on the part of the women, are factors that drive domestic violence' She further stated that, 'the more we try to put the blame on the men folk, the more we continue to blind our eyes to the fact that many women are the cause of domestic violence we see today.' This view is not only totally unacceptable but incorrect. In reality, only very few cases may fall under the category mentioned by the Commissioner; majority of the cases fall under other causes listed above. It is obvious that the Commissioner does not really know the actual causes of domestic violence. However she quickly added that a 'man who beats a woman is a beast and does not deserve to live with humans no matter how provoked the man may be.' The truth is that, no spouse has the right or justification to batter the other.

4. Nigerian Domestic Legal Instruments to Curb Domestic Violence

The Nigerian justice system does not specifically provide any protection for women or men against domestic violence, even though there are general provisions protecting individuals from violence. The Domestic Violence Laws promulgated by only four or five states in Nigeria are relatively new and many people are yet to be aware of them, making aggressive sensitisation and awareness creation on the existence of these laws very urgent. However, the Nigerian legal system is generally unfavourable to women who are victims of domestic violence. The Criminal Code and Penal Code even as they provide punishments for assault still have discriminatory provisions thereby giving the accused the window to escape punishment. For example section 55 (10 (d))¹⁹ of the Penal Code gives a husband the right to chastise an 'erring' wife, thereby giving room for wife battering, while the Criminal code considers assault on a woman to be a misdemeanor while that on a man is felony.²⁰ 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

¹⁴ See IP Enemo n 10.

¹⁵ Women's Aid: What is the cause of domestic violence? www.womensaid.org.uk/domestic-violence-articles.asp? Accessed 26/8/13 IP Enemo *ibid*.

¹⁶ CDC (2006) Intimate Partner Violence- fact sheet www.Cdc.gov/injury in ON Aihie n 12.

¹⁷ S.N. Obi & B.C. Ozumba, Factors Associated with Domestic Violence in South-East Nigeria (2007) *Journal of Obstetrics and Gynaecology* 27 (1) 75-78.

¹⁸ Vanguard, 'Many women cause domestic violence by actions' Lagos Commissioner, August 31, 2017. <https://www.vanguardngr.com> Accessed 24/1/18.

¹⁹ Laws of Northern Nigeria Cap 89.

²⁰ Section 353 Criminal Code Act Cap C38 LFN 2004.

the wrath of family members. The police also do not treat such cases with seriousness as they consider them of private nature.

Domestic violence amounts to tort, specifically, trespass to the person. Akin to all other kinds of trespass, it is actionable *per se*; meaning, proof of actual damage or injury is not necessary.²¹ Trespass to the person comprises three distinct torts – assault, battery and false imprisonment. Since actions between husband and wife are allowed in tort law in Nigeria,²² a victim can successfully bring such an action in court. Unfortunately, victims hardly take advantage of such legal protection described above because it is unheard of that a wife dragged her husband to court to claim damages for domestic violence. That will be a taboo even when her husband's relations do not support his actions. On the other hand, a man who does the same will be looked down upon and regarded as a weakling. He is expected to deal with his wife decisively.

In Nigeria, bodily integrity and liberty are constitutionally protected human rights. For victims of domestic violence, section 46 of chapter IV of the 1999 Constitution is particularly important: 'any person who alleges that any of the provisions of this section has been, is being or is likely to be contravened in any state in relation to him may apply to a High Court in the State for redress.'²³ Domestic violence is a human rights issue and the Constitution of Nigeria forbids the violation of one's fundamental human rights, such as the rights to life, human dignity, personal liberty, privacy, movement and so forth. These are the same rights that are violated in cases of domestic violence.

Again, section 34(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria provides that every person is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment. The Constitution makes provision for the right to life, dignity of human persons and the right to liberty.²⁴

Under section 15 (2) (c) of the Matrimonial Causes Act²⁵, divorce could be granted a man or woman if he/she proves unreasonable behaviour on the part of his wife/her husband. Unreasonable chastisement falls under this category. Again, by section 16 (1)(e) of the Matrimonial Causes Act, one is entitled to petition for divorce if his wife /her husband has been convicted of inflicting 'grievous harm or grievous hurt', or attempting to inflict 'grievous harm or hurt, or to kill him/her. This is, however, for the benefit of those married under the Marriage Act only.²⁶ Acts of domestic violence are always unreasonable and do cause grievous bodily harm to warrant seeking redress under the Matrimonial Causes Act.

The Violence Against Persons (Prohibition) Act (VAPP) was passed into law on May, 2015 as a result of agitations especially by women, for the elimination of violence. It is however an improvement on the Penal and Criminal Codes with respect to violence, providing for compensation to victims as well as protection of their rights.²⁷ The Act is to eliminate violence in private and public life, to prohibit all

²¹ IP Enemo, *The Law of Tort* (Enugu, 2007).

²² Section 29(1) of the Torts Law Cap 150, Revised Laws of Enugu State 2004. See also section 29 of the Torts Law, Laws of Anambra State 1986 formerly applicable in both Anambra and Enugu States.

²³ See also Order 2 Rule 1 Fundamental Rights (Enforcement Procedure) Rules 2009 ('Enforcement Procedure Rules').

²⁴ Sections 33 34 and 35.

²⁵ Matrimonial Causes Act 1970 Cap M7 Laws of the Federation of Nigeria 2004.

²⁶ IP Enemo, Legal Implications of 'Bride Price' or 'Dowry' in Women's Human Rights in Nigeria in Joy N Ezeilo and JE Alumonah *Bride Price and the Implications for Women's Human Rights in Nigeria* 2008 Women's Aid Collective Publications Enugu pp 23-31.

²⁷ The Violence Against Persons (Prohibition) Act 2015, law pavilion .com

forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders; and other related matters.²⁸ The Act defines domestic violence as any act perpetrated on any person in a domestic relationship where such act causes harm or may cause imminent harm to the safety, health or well being of any person.²⁹ This may include physical abuse³⁰, sexual abuse,³¹ emotional, verbal and psychological abuse,³² intimidation,³³ economic abuse,³⁴ sexual harassment,³⁵ forceful eviction from a person's home except on court order,³⁶ stalking,³⁷ damage to property,³⁸ isolation from family and friends³⁹, abandonment of children, spouse and other persons⁴⁰, depriving a person of his or her liberty,⁴¹ harmful widowhood practices,⁴² harmful traditional practices,⁴³ spousal battery,⁴⁴ and others. Even though this Act is limited to the Federal Capital Territory and thus, not extended to many women all over the country until States adopt it, some States already have laws on different aspects of violence including domestic violence. The states are Lagos State, Ekiti State, Ebonyi State and Imo State. Despite all these, domestic violence still thrives in Nigeria.

5. International Obligations by Nigeria to Curb Domestic Violence

Domestic violence has been recognized as a human rights violation under international law. This was due to the hard work of activists the world over. The international instruments clearly show that states have a duty under international law to prevent domestic violence and punish perpetrators. Early human rights law enacted by the UN is relevant to domestic violence,⁴⁵ and Nigeria has actually ratified some international human rights treaties that protect the rights of women generally and thereby also protecting them from domestic violence.

The International Bill of Human Rights⁴⁶ consists of The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, and its implementing covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which entered into force in 1976.⁴⁷ While these documents do not explicitly address domestic violence, they, along with the Optional Protocol to the ICCPR, articulate a state's duty to protect fundamental human rights that are commonly violated in domestic violence cases.⁴⁸ Those rights include the right to life, the right to physical and mental integrity, the right to equal protection of the law and the right to be free from discrimination. The

²⁸ *Ibid.*

²⁹ Section 46.

³⁰ Section 4.

³¹ Section 5.

³² Section 14.

³³ Section 18.

³⁴ Section 12.

³⁵ Section 7; IP Enemo & JF Olorunfemi, 'Human Rights and National Development in Nigeria' (2001) *Law and Policy Review* (LPR) Vol. 2, pp. 21-44.

³⁶ Section 9.

³⁷ Section 17.

³⁸ Section 11.

³⁹ Section 13.

⁴⁰ Section 16.

⁴¹ Section 10.

⁴² Section 15.

⁴³ Section 20.

⁴⁴ Section 19.

⁴⁵ SWAV-Domestic Violence: Law and Policy hrlibrary.umn.edu Accessed 26/1/18.

⁴⁶ International Bill of Human Rights <http://hrlibrary.umn.edu/svaw/law/un/undocs.htm#basic>

⁴⁷ SWAV- Domestic Violence: Law and Policy n 43

⁴⁸ *Ibid*

Universal Declaration of Human Rights (UDHR) was originally not binding on member states but because it received wide acceptance as an outline of foundational human rights principles, it has been recognized as binding expression of customary international law and an authoritative interpretation of the UN Charter.⁴⁹ Domestic violence is deemed to be a violation of the right to life, liberty and security of the person, guaranteed under article 9 of the UDHR.⁵⁰

5.1. Binding International Treaties

The binding treaties on domestic violence to which Nigeria is a party are:

International Covenant on Civil and Political Rights of 1966 (ICCPR)⁵¹

This Convention, ratified by Nigeria in 1993, imposes obligations on all member states to the Covenant to take steps to secure the rights recognized in the convention to their citizens. It recognizes certain rights which have been interpreted to be relevant to the issue of domestic violence. Thus, the right to life is protected by article 6, and article 7 grants the right to be free from torture, inhuman and degrading treatment. Article 9 recognises the right to liberty and security of the person, while the right to equal protection under the law is provided for in article 14. Article 2(1) provides for non discrimination on the basis of sex, while chapter 4 provides equal right for everyone. All these are relevant to the issue of domestic violence. States parties to the Covenant are therefore under an obligation to protect women from domestic violence.

International Covenant on Social, Economic, and Cultural Rights (ICSECR)⁵² This was also ratified by Nigeria in 1993, and is also binding on member states. In addition to some of the rights mentioned above, it also recognises the right to the highest standard of physical and mental health in article 12. This is relevant to the issue of domestic violence.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁵³ The CEDAW which entered into force in 1981 was ratified by Nigeria in 1985 without reservations and its Optional Protocol in 2004. It does not explicitly mention domestic violence or violence against women. However the CEDAW's focus on condemning discrimination against women in all its forms has been interpreted as covering violence against women. In 1992, the Committee on the Elimination of All Forms of Discrimination Against Women, a United Nations Committee charged with monitoring the Convention, adopted General Recommendation Number 19,⁵⁴ because in its view, domestic violence is the most extreme manifestation of discrimination against women. The recommendation deals generally with violence against women even though it also referred to domestic violence or violence in the family. It provided thus:

⁴⁹Antonio Augusto CancadoTrindade,, Universal Declaration of Human Rights, Audio Visual Library of International Law, available at www.untreaty.un.org/cod/al/ha/udhr//udhr/udhr.html

⁵⁰Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), available at <http://www.un.org/en/documents/udhr/index.shtml>.

⁵¹International Covenant on Civil and Political Rights GA Res 2200A (XXI) 21 UN GAOR Supp (No 16) 52 UN Doc A/6316 (1966) 999 UNTS 171 available at <http://www2.ohchr.org/english/law/ccpr.htm>.

⁵²International Covenant on Economic Social and Cultural Rights GA Res 2200A (XXI) 21 UN GAOR Supp (No 16) 49 UN Doc A/6316 (1966) 993 UNTS 3 available at <http://www2.ohchr.org/english/law/cescr.htm>.

⁵³Convention on the Elimination of All Forms of Discrimination against Women GA Res 34/180 34 UN GAOR Supp (No 46) at 193 UN Doc A/34/46 available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

⁵⁴ General Recommendation No 19 of the Committee on the Elimination of All Forms of Discrimination Against Women UN Doc A/47/38 (1992)

The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

Furthermore, the Convention makes it clear that discrimination is not restricted to action by or on behalf of Governments. For example, under its article 2(e), the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Other obligations imposed by article 2 of the Convention are as follows:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.

This Convention is quite encompassing on the issue of women's rights. Countries like Nigeria that have ratified or acceded to the Convention are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.⁵⁵

Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for not providing compensation. This due diligence standard was laid down in the famous case of *Velasquez Rodriguez v. Honduras* by the Inter- American Court of Human Rights in 1988, as requiring states to 'take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within [its] jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim receives

⁵⁵ Article 18 CEDAW.

adequate compensation.’⁵⁶ This due diligence standard was adopted for violence against women, and laid out in the Declaration on the Elimination of Violence Against Women (1993) in Article 4(c), where States are urged to ‘exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.’ The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) noted in its General Comment No. 19 that ‘States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence’⁵⁷

The Optional Protocol to the Convention which entered into force on 22 December 2000, entitles the Committee to consider petitions from individual women or groups of women who have exhausted national remedies, and also entitles the Committee to conduct inquiries into grave or systematic violations of the Convention. The Committee on CEDAW stressed the need for Nigeria to take other measures to address domestic violence. Nigeria is expected to put the CEDAW provisions into practice.

Convention Against Torture (CAT).⁵⁸

Nigeria ratified the Convention Against Torture (CAT) in 2001 and the Optional Protocol to the Convention in 2009. However, the first recognition of violence against women as a violation of the right not to be subjected to torture, cruel or degrading treatment was in the CEDAW recommendation No.19. This view has however been confirmed by the Committee Against Torture, which is the body charged with monitoring the implementation of the Convention Against Torture.

The Convention Against Torture prohibits all forms of torture which is defined as ‘any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information, punishment, intimidation or coercion or for any reason based on discrimination.’⁵⁹ Even though the torture must be inflicted by a public official, the state may be responsible if it acquiesces to the act. Thus, the Committee has stated that states parties’ failure to prevent and protect victims from gender based violence, such as rape, domestic violence, female genital mutilation and trafficking is a violation of the Convention Against Torture.⁶⁰

Nigeria having ratified these treaties and conventions has the obligation to possibly amend the laws and policies to comply with the standards of the treaties and conventions. It can also implement them directly by getting them domesticated and making them part of Nigerian law.

5.2. Non-Binding Resolutions and declarations of the United Nations and other International Bodies

The General Assembly of the United Nations is only empowered to make non-binding resolutions to member states within their sphere of competence⁶¹ and as such resolutions passed by the Assembly are

⁵⁶ Velasquez Rodriguez Case, Inter-American Court of Human Rights Ser C No 4 Judgment of July 29 1988-1989 28 ILM 291.

⁵⁷ CEDAW General Recommendation 19 UN Doc A/47/38 (1992).

⁵⁸ Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, GA Res 39/46 annex 39 UN GAOR Supp (No 51) 197; UN Doc A/39/51 (1984) available at <http://www2.ohchr.org/english/law/cat.htm>

⁵⁹*Ibid* Article 1

⁶⁰ Committee Against Torture Marks the Thirtieth Anniversary of the Convention Against Torture www.ohchr.org Accessed 19/2/2018.

⁶¹‘Functions and Powers of the General Assembly, United Nations’ available at <http://www.un.org/en/ga/about/background.shtml>.

not binding on states but merely set forth international standards and best practices. There are many resolutions of the UN General Assembly⁶² and the Human Rights Council⁶³ that deal with domestic violence. These include: (a). Declaration on the Elimination of Violence against Women (DEVAW)⁶⁴ (b) Elimination of Domestic Violence Against Women⁶⁵ (c) Intensification of Efforts to Eliminate all Forms of Violence Against Women⁶⁶ (d) Elimination of all Forms of Violence, Including Crimes Against Women⁶⁷ (e) In-depth Study of all Forms of Violence Against Women.⁶⁸ Due to their non binding character, Nigeria is not under any obligation to enforce them.

6. African Charter on Human and People's Rights (ACHPR) and the Additional Protocol ⁶⁹

The African Charter on Human and People's Rights is a regional instrument that came into force on October 21, 1986. It explicitly provides for the right of women to be protected from domestic violence. Nigeria has adopted the African Charter on Human and People's Rights into her municipal law, and the provisions of the Charter are enforceable in the same manner as chapter IV of the 1999 Constitution which deals, amongst others, with the right to life⁷⁰, the right to dignity of human persons⁷¹ and the right to liberty.⁷² Articles 4 and 5 of the African Charter on Human and Peoples' Rights provide that every human being shall be entitled to respect for his life and the integrity of his person and no one shall be denied of such rights. Article 5 in particular, declares that every individual shall have the right to the respect of the dignity inherent in a human being and further prohibits all forms of exploitation and degradation of man such as, slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment which all constitute domestic violence. While the aforementioned rights protected herein and in the various Conventions and treaties apply to both man and woman, Articles 3 and 4 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), specifically recognizes the right to dignity and the right to life of a woman. It also prohibits all forms of exploitation, cruelty, punishment and treatment against women. The Protocol to the African Charter also enjoins state parties to adopt legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and the eradication of all forms of violence against women, particularly sexual and verbal violence⁷³. Article 5 of the Protocol to the African Charter also partly enjoins state parties to prohibit and condemn all forms of harmful practices which negatively affect the human rights of women which are contrary to international standards.

⁶²Work of the General Assembly on violence against women,' UN Women, available at <http://www.un.org/womenwatch/daw/vaw/v-work-ga.htm>.

⁶³Work of the Human Rights Council (2006-present) and the Commission on Human Rights (until 2006),' UN Women, available at <http://www.un.org/womenwatch/daw/vaw/v-hrc.htm>.

⁶⁴ UN General Assembly resolution 48/107 of 20 December 1993.

⁶⁵ UN General Assembly Resolution 58/147 of 2004.

⁶⁶ Resolutions 64/137 (2009),[11]63/155 (2008),[12]62/133 (2007)[13] and 61/143 (2006)[14],

⁶⁷Resolutions 59/167 (2004),[15]57/181 (2002),[16] and 55/68 (2000)[17],

⁶⁸Resolutions 60/136 (2005)[18] and 58/185 (2003)[19].

⁶⁹ The Protocol on Women's Rights in Africa.

⁷⁰ Section 33

⁷¹ Section 34

⁷² Section 35, See Enemo & Olorunfemi *op cit* p 30.

⁷³ The Declaration on the Elimination of Violence against Women defines violence against women as any act of gender based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women which may include but not limited to battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, See articles 1 and 2.

7. Effect of Nigeria's International Obligations in Curbing Domestic Violence

The issue of domestic violence has become topical globally and the international community regards it as a human rights issue and a punishable offence requiring stiffer penalties. The Nigerian Constitution, which is the supreme law of the land, dedicated a whole chapter for the protection of rights of every citizen, so human rights are therefore part and parcel of Nigerian law. It protects citizens from abuse of their fundamental human rights, and domestic violence is a violation of those rights, yet we still have laws that legalise domestic violence against women, eg, section 55 (1) (d) of the Penal Code applicable in Northern Nigeria. There is no national legislation on domestic violence against women in Nigeria; however some states have taken the lead by promulgating laws against domestic violence. Again, the promulgation of the Violence Against Persons Prohibition Act enacted in 2015 as a federal law which addresses all forms of violence (including domestic violence) against vulnerable persons especially women and girls is applicable only in the Federal Capital Territory.

International treaties have been signed and ratified by Nigeria and these instruments require Nigerian government to take specific action against domestic violence. Unfortunately these treaties have not been domesticated into Nigeria's national law and would only become effectual and more useful when so domesticated. It does not matter how valuable the treaty is. Only the ACHPR has been domesticated. Thus, the non domestication of the international treaties even though ratified, has on the face of it undermined their ability in effectively curbing domestic violence in Nigeria. The domestication/implementation of these treaties rather than their ratification is the issue here. Thus, they would only be of persuasive authority. This is a hindrance to the fulfillment of the rights of women as they continue to be victims of domestic violence in the privacy of their homes. It is therefore easy to see some of the reasons why there is not much impact of these international instruments in curbing domestic violence in Nigeria, and very little seem to have been achieved in terms of improvement in the lives of the women.

Difficulties in domestication may arise due to the fact that some of the provisions of the treaties are thought to be in conflict with some customs so that domestication of such would amount to adoption of alien foreign values of the West or destruction of the societal structure. In truth, such customs are obsolete, out of date and not in tune with the reality of modern world. For example, the customs that allow chastisement of a wife, male dominance and discrimination are unacceptable and condemned by provisions of the treaties⁷⁴ because they are customs used to justify violations of fundamental human rights and freedoms.

Be that as it may, the time has come for lawyers and judges to look beyond the issue and problems of non domestication of these international treaties, by becoming more proactive, bold and dynamic in the interpretation of the domestic laws as it were. There are some provisions of the treaties also found in our laws, particularly in the Constitution that can take care of the issue of domestic violence. A perusal of the Nigerian Constitution shows some provisions of the treaties that are traceable in the Constitution, if not expressly, then by implication. For example, the Constitution provides for the right to life, clearly stating that no person can deprive another of his life.⁷⁵ This is also found in the UDHR⁷⁶ and the ICCPR⁷⁷. Domestic violence is deemed a violation of the right to life. Thus, when a court applies the

⁷⁴ See the CEDAW and ACHPR.

⁷⁵ Section 33(1) of the 1999 Constitution.

⁷⁶ Article 9.

⁷⁷ Article 6.

relevant section of the Constitution to a domestic violence case, the provision of the treaty is also indirectly applied even without domestication.

The ACHPR, which is already domesticated contains most of the provisions found in the international treaties. Its article 4 for example, provides for respect for life and integrity of person, also. The Protocol on Women's Rights in Africa which is even more explicit, is also deemed domesticated, even though this is arguable. Its provisions cover very well the issue of protection of women's rights that are not even expressly covered by the treaties. For example, the protocol provides for specific legal protection against violence against women, both in the public and private spheres.⁷⁸ It in fact explicitly provides for the right of women to be protected from domestic violence. Its implementation will facilitate the realisation of significant progress in terms of dealing with domestic violence matters. The courts must begin to use these ones frequently and effectively for better results by way of curbing domestic violence.

The treaties themselves can be used by the courts as a guide and aid in interpreting our laws. This will give the positive effect required to deal with this issue. Some scholars even observed that, 'notwithstanding the non-domestication of the Protocol to Women's Rights in Africa and the CEDAW in Nigeria, it can be argued that the Protocol and the CEDAW are both applicable in Nigeria.'⁷⁹ The reason advanced is that the African Charter is domesticated and is part of Nigerian laws. Also, that section 18(3) of the African Charter states that 'the state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions,' thus, the Nigerian courts in construing the applicability of the CEDAW and the Protocol on Women's Rights can make allusions to the provisions of the African Charter by holding that they are applicable by virtue of section 18(3).⁸⁰

We therefore, should save the energy being used to pursue domestication of the international treaties and channel it towards awareness creation and insisting that our judges become bold, courageous and dynamic in interpreting and applying the existing domestic laws line with the treaty provisions. This would make both the domestic and international treaties, directly and indirectly, become more effective and responsive in curbing domestic violence in Nigeria. Lawyers, NGOs, and women should actually key in, seize the opportunity and make use of these international instruments, including the ACHPR and its Protocol in their domestic violence matters.

8. Conclusion

Domestic violence in Nigeria has reached an alarming dimension. Steps seem to have actually been taken to curb the menace and alleviate the sufferings of women; laws have been promulgated, treaties signed and ratified. Unfortunately, only a little progress has been made as lawmakers, legal practitioners, Judges, law enforcement agents and other stake holders are yet to solve the problem. Despite the international attention also received by domestic violence, the problem persists. The reason for all this attention is that the most basic and fundamental right of women (and a few others) is being violated and abused. The need for final solution cannot therefore be overemphasized, thus the need to make the international instruments more effective.

⁷⁸ Article 1(j) 3(4) and 4.

⁷⁹ See V Ayeni, *Domestic Impact of the African Charter on Human and People's Rights and the Protocol on the Rights of Women in Nigeria* Ph.D Thesis submitted to University of Pretoria South Africa 2011; also see F Viljeon *International Human Rights in Africa* (Oxford University Press 2007) in EO Ekhaton *Women and the Law in Nigeria: A Reappraisal* *Journal of International Women's Studies* (2015) Vol 16(2).

⁸⁰ EO Ekhaton *ibid*.

Consequently, Judges should interpret the Constitution and laws of the land in such a way as to link them up with the international treaties in order to succeed in curbing domestic violence in Nigeria. The ratified international treaties should be used as additional resources for curtailing the abuse on victims, thereby making them more effective.⁸¹ The Court is the last hope of the women. A Magistrate court in Fiji in the case of *State v Bechu*⁸² when sentencing a man accused of raping his girl friend stated:

Women are your equal and therefore must not be discriminated against on the basis of gender. Men should be aware of the provisions of CEDAW, which our country has ratified in 1981. Under the Convention, the state shall ensure that all forms of discrimination against women must be dealt with at all cost. The Court shall be the watchdog of this obligation. The old school of thought, that women are inferior to men, or part of your personal property that can be discarded or treated unfairly at will is now obsolete and no longer accepted by our society.

Though this is a Magistrate Court's decision, it shows how committed the courts can be to the obligations in the Convention. This makes the international instruments quite effective if our courts strongly key in.

⁸¹ See section 18(3) ACHPR.

⁸²First class Magistrate Court at Levuka, Criminal case No. 79/94 in L Tamata Application of Human Rights Conventions in the Pacific Island Courts, *Journal of South Pacific Law* www.paclii.org Accessed 23/2/2018.