

## Conference Paper

# Prospects And Challenges of Women's Right Against Domestic Violence Under International Law

Muhamad Helmi bin Md Said\*, Kaka Emanuel Grace, Tinuk Dwi Cahyani, Poppy Putri Hidayani

Faculty of Law, University of Kebangsaan Malaysia, 43600, UKM Bangi, Selangor, Malaysia

**ORCID**

Muhamad Helmi bin Md Said: <https://orcid.org/0000-0001-7652-5231>

**Abstract.**

In addition to being a violation of human rights, domestic violence against women and girls has been seen as the most extreme example of gender inequality. Due to its widespread nature, the consequences for children, families, and communities, as well as the significant economic costs to society, it has been recognized as a violation of human rights under international law. Numerous international legal instruments were adopted and ratified to assure women's protection from domestic violence. The study looked at domestic abuse's status as a human rights violation under these treaties. It was found that victims of domestic violence in the family now have a chance to enforce their rights because it is recognized as a violation of their human rights. However, because these tools are not legally binding, victims find it difficult to rely on them. Therefore, we are unable to coerce state compliance. As a result, it is recommended that instruments of international law have a single standard that has the legal power and is applied to all parties who violate them on a global scale.

**Keywords:** Domestic violence, Family, International Law, Human Rights, Women

## 1. INTRODUCTION

This essay defines domestic violence against women as any form of physical, emotional, sexual, or psychological abuse or violence committed against women by close friends or family members.[1] Along with women, men,[2] and kids are also impacted by domestic violence. Women and children, who are the most at risk for violence in the home, are the only groups on whom domestic violence is focused in this study. Mannie I Obarisiagbon, Barr. Emmanuel Imuetinyan., Omage, "Emerging Trend in the Culture of Domestic Violence against Men in Southern Emerging Trend in the Culture of Domestic Violence against Men in Southern Nigeria University of Benin, Benin City," *International Journal of Humanities and Social Science* 9, no. 3 (2019): 50–51, <https://doi.org/10.30845/ijhss.v9n3p7>.

Corresponding Author:

Muhamad Helmi bin Md Said;  
email: mhelmisaid@ukm.edu.my

Published 5 January 2024

Publishing services provided by  
Knowledge E

© Muhamad Helmi bin Md Said et al. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the 4th INCLAR Conference Committee.

 OPEN ACCESS

Decades of activist action worldwide led to the identification of domestic violence as a human rights violation under international law. States are currently required by international conventions and policy pronouncements to prevent and hold accountable those who commit domestic abuse. The rights to life, physical and mental integrity, equal protection under the law, and freedom from discrimination are all outlined in the United Nations Declaration on Human Rights (UNDHR), which paved the way for the declaration of domestic violence as a human rights issue.[4] Similar to how the Women's Convention was silent on violence, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) used its committee to adopt recommendation 19, U.N. Doc A/47/38 (1992), which stated that gender-based violence is a "form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men." This makes it abundantly evident that domestic abuse violates the human rights of women.[5]

They are "signposts of the direction in which international human rights law is developing and should influence states that have accepted a commitment to progressive development toward enhanced respect for human rights in their international conduct and domestic law," despite the fact that these international legal instruments have no legally binding effects.[6] The Report of the World Conference of the United Nations Decades for Women: Equality, Development, and Peace, Copenhagen, 1980, was the first official UN document to explicitly mention domestic violence.[7] This document made multiple references to domestic violence, with a focus on the adoption and enforcement of laws to protect women from both domestic and sexual abuse, as well as to guarantee that victims are treated fairly in all criminal procedures. The Nairobi Conference in 1985,[8] the Vienna Declaration and Programme of Action in 1993,[9] and the Beijing Platform for Action in 1995[10] all recognized domestic abuse as a breach of human rights requiring stringent enforcement of protection and prevention by state parties.

Five years after the UN's conferences and developments on domestic abuse as a violation of human rights, it was observed that women continue to encounter a number of challenges in the battle against domestic violence.[11] These challenges include a lack of comprehensive programs addressing perpetrators, a lack of suitable actions to assist perpetrators in resolving conflicts without resorting to violence, and a poor knowledge of the root causes of domestic violence against women and girls. Economic inequality and persistently discriminatory sociocultural beliefs that place women below men in society. These listed barriers kept women and girls at a disadvantage, making them more susceptible to all types of violence, including domestic abuse that is physical,

sexual, emotional, or psychological. include domestic violence, sexual assault on female children, violence stemming from dowries, marital rape, damaging cultural practices, and violence stemming from exploitation. Additionally, it was found that there is still a lack of understanding regarding domestic violence's effects, how to stop it, and victims' rights.

The International Conference on Population and Development (ICPD) program of action in 1994[12] in Cairo, the Special Rapporteur in 1994, United Nations, "Special Rapporteur on Violence against Women, Including Its Causes and Consequences 1994," United Nations, 2023, <https://www.ohchr.org> the Cairo plus 5 document in 1999,[14] and the Durban Declaration in 2001[15] all reiterated the necessity of ending domestic violence. The Durban statement includes particular rules to safeguard immigrant women and children who are abused by their spouses from such abusive situations. Although it lacks the legal force of a treaty or convention, the Declaration on the Elimination of Violence Against Women (DEVAW) has significant universal support and guiding principles in the international community. Violence is described as an act that happens in both private and public life. DEVAW demands that states use the legal system to look into and punish domestic abuse incidents in addition to creating extensive legal, political, administrative, and cultural initiatives to prevent violence against women. DEVAW denounces significant social systems that disadvantage women in comparison to men. Additionally, they must to promote research, train law enforcement officials, and compile data on the occurrence of domestic violence.

## 2. METHODOLOGY/ MATERIALS

This study employs normative legal theories, analytical and descriptive research techniques. The normative juridical approach, on the other hand, necessitates conducting library legal research, which is done by looking at secondary data or pre-existing library materials. Combined with a legal strategy that is implemented by adhering to all laws pertinent to the research issue. 2017[16]

## 3. RESULTS AND DISCUSSIONS

### 3.1. FAMILY AN INTERNATIONAL LAW CONCERN

Early versions and finalized international human rights laws did not include private sector protection. The public domain was thought to be the sole domain of international law. There is a separation between the public and private spheres as a result of the fact that

women's rights are a matter of the private sector and are not subject to official protection. But the family was singled out by ICESCR specifically because, as the smallest unit, it serves as the cornerstone upon which civilizations are created. Realizing the value of the family and the state's responsibility to safeguard it by assistance, provision of basic family needs, and protection of children's education. Depending on the provisions of domestic law, it also suggests that nursing mothers be given additional protection through social security and paid leave during and immediately after pregnancy.[17]

It ensures that kids are safeguarded against all forms of exploitation, including sexual and human trafficking as well as forced labor. Similarly, CEDAW makes provisions for marriage and family life, and ICCPR Art. 15 makes specific provisions for marriage life, and Art. 3 makes specific provisions against non-discrimination, minority protection, and equality before the law. These provisions, though they are specific and limited, are made more comprehensive when read in conjunction with Art. 26 and 27 on the independent autonomous equality principle, for particular measures safeguarding women see table 1 below. This demonstrated the significance of safeguarding women against prejudice in the family. Therefore, in the instance of *AT v. Hungary (2005)*,[18] the CEDAW committee determined that failing to protect women from domestic violence constitutes discrimination and a breach of their human rights.

Numerous regional treaties and conventions emphasize the role of the state in protecting family life to support the value of family life and ensure protection against domestic violence for women and children, making domestic violence against women a human rights issue requiring international law protection. For instance, the African Charter on Human and People's Rights' Art. 18 (2-4) specifically requires state parties to support the family in its role as the custodian of morals and traditional values,[19] as well as to ensure the abolition of gender discrimination and the protection of women's and children's rights under international treaties.

In a similar vein, Article 17(4) of the American Convention on Human Rights[20] mandates that state parties guarantee equality of rights and proper distribution of duties among spouses before, during, and after marriage, with the best interests of the children taking precedence in the event of a dissolution. The domestic court granted exclusive custody of a kid to a man who had been found guilty of offences including domestic violence against his partner, according to the CEDAW committee's citation of the *J. I. v. Finland* General for Justice and Consumers, European Equality Law Review, 1st ed. (Europe Commission, 2020), <https://www.migpolgroup.com/wp-content/uploads/2020/07/27juli-WEB-EELR2020-1.pdf>. case in support of this claim. The

CEDAW committee highlighted that this ruling showed a disdain for the best interests of the child, which should come first, and gender stereotypes in judicial decision-making.

In addition, nations and societies are required by Art. 33 (2) of the Arab Charter on Human Rights[22] to ensure the protection of the family by enhancing family bonds and shielding its members from violence or abuse in family relationships, with a particular focus on women and children. Additionally, society should offer the best chances for the physical and emotional well-being of women, the elderly, kids, and young people. The family is regarded by society and each ASEAN member state as the natural and essential unit of society that is entitled to governmental protection, according to the ASEAN Human Rights Declaration.[23] Both men and women of legal age have the right to locate a spouse, enter into a marriage based on their free and informed consent, start a family, and dissolve their marriage in accordance with applicable laws. In a similar vein, the European Convention on Human Rights,[24] which is a legally binding document enforceable in the European Court of Human Rights against any member state instituted by an aggrieved person, has advanced beyond other regions in its protection of family life with its extensive provisions in Art. 8. All of these international agreements made it clear how crucial family protection is on a global scale and that domestic violence is a human rights issue that needs to be urgently addressed by state parties on the international stage by creating the right conditions for such protection in their various domestic laws.

In addition to being a violation of human rights, domestic violence against women and girls has been seen as the most extreme example of gender inequality.[25] Being a global problem with repercussions for children, families, and communities as well as significant societal financial costs, it became a problem that needed to be addressed for sustainability. Thus, according to the Sustainable Development Goals, all forms of violence against women and girls, including harmful cultural practices and all types of sex-based inequality, will be eliminated by 2030. In order to do this, two goals were set: preventing violence against women and girls; and fostering an environment that will help victims recover from their experiences of abuse.

Although having laws written down is a valuable thing, the writers contended that it is insufficient. The justification for this is that strong regulations may coexist with widespread sexual harassment or domestic abuse. This may be the result of inadequate enforcement of the laws, insufficient resources, or a dearth of additional procedures, policies, and targeted programs or interventions to address the threat.

They asserted that sexual assault has historically received little legal protection, that physical assault has historically been the most well-protected kind of violence, and

that legal protection for economic violence is nonexistent in half of the world's nations. Similar to this, intimate companions who are not married are not protected by the law.[25] It was also discovered that the Middle East, North Africa, and sub-Saharan Africa had legal gaps regarding domestic violence prevention and protection.[25] Paula and Quentin made the case that close to 1.4 billion women do not have legal protection from domestic economic abuse, and that there has been little improvement in this area over the years. They asserted that more than one billion women lack legal protection against sexual violence by an intimate partner or family members. As a result, we estimated that 359 million, 1.5 billion, and 2.2 billion women worldwide lack legal protection against harassment in the workplace, in the classroom, and in public areas, respectively. In order to preserve the survival of humanity, it is therefore suggested that there is an urgent need for legal protection on a global scale.

### 3.2. RIGHTS OF WOMEN IN INTERNATIONAL LAW

1. (a) **Human beings have a right to dignity.**[26] This right entails protecting women from all sorts of abuse, notably sexual and verbal violence, as well as ensuring that they are not exploited or degraded. the right not to suffer torture or other cruel, inhumane, or humiliating treatment, and to be treated with humanity This clause is crucial for defending women against mistreatment, whether it be economic, psychological, or sexual. When there are no comparable provisions in their country's national laws, victims of such domestic abuse by intimate partners may seek recourse under these instruments.
- (b) **Persons have the right to life, liberty, and security.** According to Table 1 above, Article 3 of the UNDHR guarantees the rights to life, liberty, and security of individuals as stated in Articles 6 and 9 of the ICCPR, which address the respective rights to life and liberty and security. The rights to the highest standards of bodily and mental health, as well as ICESCR Art. 12 on the right to equal protection under the law, all address incidents of domestic violence. Therefore, it is implied that state parties must safeguard women and criminalize domestic abuse against them. This right is unquestionably important in ensuring that domestic violence in all of its forms can be eliminated because it forbids all types of violence against women, including unwanted and forced sex (rape, marital rape, sexual violence, molestation, and other acts are covered by this provision), prevention, punishment, and eradication mechanisms, identification of the causes and effects of domestic

S/N	Instruments	Protected Rights	Obligations	Accession	Status
1.	UNDHR	<ul style="list-style-type: none"> <li>- Equality (Art. 1 &amp; 7)</li> <li>- Life, liberty &amp; security (Art. 3)</li> <li>- Dignity (Art. 5)</li> <li>- Equality before the law (Art. 8 &amp; 10)</li> <li>- Nationality (Art. 15)</li> <li>- Marriage (Art. 16)</li> <li>- Own property (Art. 17)</li> <li>- Vote &amp; be voted for (Art. 21)</li> <li>- Social security (Art. 22)</li> <li>- Equal employment (Art. 23)</li> <li>- Adequate standard of living, health &amp; well-being (Art. 25)</li> <li>- Education (Art. 26)</li> <li>- Cultural life (Art. 27)</li> </ul>	<ul style="list-style-type: none"> <li>- Protection against discrimination (Art. 7)</li> <li>- Protection to unemployed, sick, disabled, widows, elderly, nursing mothers (Art. 25)</li> </ul>	Adopted in 1948	No legal binding effect  Has universal application
2.	ICESCR	<ul style="list-style-type: none"> <li>- Self-determination (Art. 1)</li> <li>- Equal employment (Art. 6)</li> <li>- Fair &amp; equal wage (Art. 7)</li> <li>- Social security &amp; insurance (Art. 9)</li> <li>- Physical &amp; mental health (Art. 12)</li> <li>- Education (Art. 13)</li> <li>- Cultural &amp; scientific progress (Art. 14)</li> </ul>	<ul style="list-style-type: none"> <li>- Protection to:                             <ul style="list-style-type: none"> <li>a) Family life</li> <li>b) Nursing mothers (maternity leave with pay) (Art. 10)</li> </ul> </li> <li>- Provide adequate standard of living (Art. 11)</li> </ul>	Adopted in 1966 Enforced in 1976	Not binding and enforceable
3.	ICCPR	<ul style="list-style-type: none"> <li>- Self-determination (Art. 1)</li> <li>- Freedom from discrimination (Art. 2)</li> <li>- Equality on civil and political rights (Art. 3)</li> <li>- Life (Art. 6)</li> <li>- Dignity of human person (Arts. 7 &amp; 10)</li> <li>- Liberty &amp; security (Art. 9)</li> <li>- Equality before the law (Art. 14)</li> <li>- Marriage (Art. 15)</li> <li>- Vote &amp; be voted for (Art. 25)</li> <li>- Equality before the law (Art. 26)</li> </ul>	<ul style="list-style-type: none"> <li>- Provide security &amp; declare state of emergency (Art. 4)</li> </ul>	Adopted in 1966 Enforced in 1976	
4.	UNCAT	<ul style="list-style-type: none"> <li>- Dignity of human person</li> <li>- Fair &amp; adequate compensation (Art. 14)</li> </ul>	<ul style="list-style-type: none"> <li>- Prevent acts of torture and legislate on it (Art. 2 &amp; 4)</li> <li>- Effective legal system (Art. 14)</li> </ul>	Adopted in 1984 Enforced in 1987	Not binding and enforceable
5.	CEDAW	<ul style="list-style-type: none"> <li>- Equality of both sexes (Art. 2 &amp; 4)</li> <li>- Vote &amp; be voted for (Art. 7)</li> <li>- Equal representation at the international level (Art. 8)</li> <li>- Equal right to acquire, change or retain nationality (Art. 9)</li> <li>- Education &amp; training (Art. 10)</li> <li>- Equal employment (Art. 11)</li> <li>- Economic &amp; social life (Art. 13)</li> <li>- Equality before the law (Art. 15)</li> <li>- Marriage &amp; family life (Art. 16)</li> </ul>	<ul style="list-style-type: none"> <li>- Eliminate discrimination against women (Art. 2)</li> <li>- Ensure full development &amp; advancement of women (Art. 3)</li> <li>- Eliminate prejudices, customary &amp; practices about men &amp; women (Art. 5)</li> <li>- Suppress trafficking in women &amp; prostitution (Art. 6)</li> <li>- Provide security of jobs pregnant women, maternity leave with pay (Art. 11)</li> <li>- Provide access to health care and family planning (Art. 12)</li> <li>- Special care to rural women (Art. 14)</li> </ul>	Adopted in 1979 Entered into force in 1981	No legal binding effect
	Optional Protocol	Recommendation 19		Adopted in 1999 Enforced in 2000	
6.	DEVAW	<ul style="list-style-type: none"> <li>Reporting Procedure (Art. 18)</li> <li>Inter-state procedure (Art. 29)</li> <li>- Life; equality; liberty and security of person; equality before the law; freedom from discrimination; physical &amp; mental health; favourable condition of work and dignity (Art. 3)</li> </ul>	<ul style="list-style-type: none"> <li>- Condemn and eliminate customs, traditions or religious beliefs that support violence against women (Art. 4)</li> <li>- Use legislation to prevent, investigate and punish acts of violence against women (Art. 4)</li> <li>- Provide budget adequate resources for fight against VAW (Art. 4)</li> <li>- Provide adequate education on social and cultural stereotype for men &amp; women (Art. 4)</li> <li>- Research, data &amp; statistics on VAW (Art. 4)</li> <li>- Provide guidelines for implementation (Art. 4)</li> <li>- Recognize, facilitate &amp; encourage women movement and organizations on women's rights (Art. 4)</li> <li>- Provide safety homes and support for victims and their children (Art. 4)</li> <li>- Train law enforcement and public officers on implementation (Art. 4)</li> </ul>	Adopted in 1993 Enforced in 1994	Universal application but without the status of a treaty or convention

Figure 1: Summary of International Instruments on Women's Rights against Domestic Violence.

violence, promotion of peace education in order to eradicate traditional and cultural beliefs, and actualization of the right.

(c) **Rights to equality and anti-discrimination freedom.** States parties were urged by CEDAW to denounce all types of discrimination against women. Similar to this, recommendation 19 to the CEDAW focused on domestic abuse as a form of discrimination that needed to be condemned. In the recommendation, it is said that one of the most pernicious types of violence against women is familial violence. Women of all ages and statuses are frequently the victims of physical, sexual, psychological, and other forms of violence in family relationships. These acts of coercion are often motivated by traditional beliefs and a lack of economic independence, which forces women to remain in abusive relationships.[27] Together, these disparities raise the likelihood that women may experience domestic abuse in the home and in public. After that, in 1999, the UNGA approved the optional protocol to the CEDAW, which established two processes for assessing adherence to the CEDAW: first, a communication procedure for individuals or groups of women to report violations to the CEDAW after exhausting all domestic remedies without success; and second, an inquiry procedure that enables the committee to look into instances of “grave or systematic violations” of women’s rights.

(d) **Freedom from Torture is a right.** Domestic violence against women violates the right to be free from torture and other cruel, inhumane, or humiliating treatment or punishment guaranteed by the UNDHR and the ICCPR, according to CEDAW recommendation 19. Similar to this, CAT outright forbids any form of torture. United Nations, “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Fifth Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” United Nations (English: United Nations, 2012), [https://www2.ohchr.org/english/bodies/cat/opcat/docs/CAT-C-48-3\\_en.pdf](https://www2.ohchr.org/english/bodies/cat/opcat/docs/CAT-C-48-3_en.pdf). The act of purposely causing someone great pain or suffering, either physically or mentally, is referred to as torture.[29] The CAT committee places a strong emphasis on state parties’ efforts to prevent and protect victims of gender-based violence, as failing to do so constitutes a member state’s violation of the CAT. Where torture is defined as any act by which severe pain or suffering.

(e) **Equal Justice under the Law and Access to Justice.** Both men and women are afforded equal legal protection by these devices.[9] Everybody has the right to an appropriate remedy in cases of fundamental rights violations through a fair and public hearing by an independent and impartial judiciary.[5] State parties are required to guarantee women's effective access to judicial and legal services, including legal aid, adequate educational opportunities and structures that pay special attention to women's rights, the provision of law enforcement personnel at all levels with the tools they need to effectively interpret and uphold gender equality laws, and equal representation of women in the judicial and law enforcement branches.[5] Equal rights to enter into contracts and manage property, treating women equally with men at all stages of the legal process in courts and tribunals, repealing laws that limit women's legal capacity and treating them as null and void, and abolishing discriminatory laws that support violence against women are also requirements in civil matters.

(f) **Marriage.** According to CEDAW, regardless of their marital status, men and women have the same rights to enter into marriage, the same rights to freely choose a spouse, the same rights to only contract marriage with their free and full consent, the same rights and obligations during marriage and at its dissolution, and the same rights and obligations as parents. They shall have the same rights to make decisions about the number and spacing of their children freely and responsibly and to have access to the information, education, and resources necessary to enable them to exercise these rights. They shall also have the same rights and obligations with regard to guardianship, wardship, trusteeship, and adoption of children, or institutions where these concepts exist in national legislation, with the best interests of the children as paramount. This right also includes the same personal rights for both spouses regarding ownership, acquisition, management, enjoyment, and disposition of property, whether free of charge or in exchange for a valuable consideration. These rights include the right to choose a family name, a profession, and an occupation. To ensure that a woman and a man jointly contribute to preserving the interests of the family, protecting, and educating their children, as well as that a woman has the right to acquire her own property during her marriage and the freedom to administer and manage it, the state must enact the necessary national legislation.

- (g) **Nationality.** The right to nationality ensures that women have the same rights as men to acquire, change, or retain their nationality and that neither marriage to an alien nor a husband's changing of nationality while they are married will cause the wife's nationality to automatically change, leave her stateless, or be forced upon her.[5] Women must also enjoy equal rights regardless of the nationality of their offspring.[5] This right is crucial because it would relieve migrant women of the burden of determining their own identities and the identities of their children.[30] However, they can now select the nationality of their choosing, and in the event of a divorce, their children can also take the nationality of their mothers.
- (h) **Education and Training.** Based on the equality of men and women, women and men have the same rights in the sphere of education.[5] This includes access to technical and professional education at higher levels based on merit as well as free and required elementary education.[4] This right is intended to alleviate some societal cultural norms that prevent women from working for pay and supporting their families.
- (i) **Economic and Social Welfare Rights.** For instance, equal pay, benefits, and treatment; social security; health protection; safe working conditions;[5] and the prevention of discrimination on the basis of marriage or pregnancy. Equal rights are also required with regard to career choice, job security, and all other advantages and conditions of employment. Men and women should have equal access to family benefits, bank loans, mortgages, and other types of credit, as well as the freedom to engage in leisure pursuits, sports, and other facets of cultural life.[5] Legislation ensuring women's full development and advancement on an equal basis with men,[5] the abolition of prejudices and customs, and the end to all other practices based on the idea that one sex is inferior to the other or that men and women have different roles to play are all examples of social, economic, and cultural rights.[5] Recognize and enforce the right of salaried women to the same allowances and entitlements for their spouses and children as those granted to salaried men. Recognize the economic value of the work done by women at home. Ensure adequate and paid pre- and post-natal maternity leave in both the private and public sectors. Last but not least, stop using and abusing women in porn and advertising. Since doing so will contribute to the eradication of violence against women in both public and private settings.

(j) **Health and Reproduction.**[5] Women have the right to sexual and reproductive health, the ability to control their fertility, and the freedom to determine whether to have children as well as how many and how far apart they should have them. Similar to males, women should pick a method of contraception, take precautions against HIV/AIDS and STDs, and be aware of their health status. To do this, it is necessary to increase current prenatal, delivery, and postnatal health and nutrition services during pregnancy and while breast-feeding. These services must also be adequate, inexpensive, and accessible. For women who have experienced sexual assault, rape, incest, or if the pregnancy is threatening to their physical or mental health, medical abortion should be permitted.

### 3.3. STATE OBLIGATIONS UNDER INTERNATIONAL LAW

1. **Private Acts of violence.** One of the biggest challenges to overcome in identifying domestic violence as a violation of human rights is the conventional belief that private acts of violence are exempt from the application of international law. Prior to recognizing domestic violence as a human rights violation, efforts were made to include it under human rights protections. For instance, the ICCPR requires states to protect citizens against private citizens who violate human rights.[10] The UN Human Rights Committee, the European Committee on Human Rights, and the European Court of Human Rights all affirmed this as a result.[31] The approach is further supported by case law interpreting national and regional human rights laws. The Inter-American Court of Human Rights,[32] for example, ruled in the Velasquez-Rodriguez Case that Honduras was required 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’s adequate compensation”.[33] According to this human rights law, even while one instance of domestic violence may not give rise to safeguards under international law, a state’s silence in the face of a widespread violation renders it immune from international duties.[35] Therefore, if a state uses its laws discriminatorily, providing resources for the commission of crimes against domestic abuse, it may be in violation of its international commitments. Joan believes that although victims typically find it challenging to cut off relations with their attackers in a way

that allows the application of regular criminal laws, states can provide additional services for these victims in order to fully achieve equal treatment.[36]

2. **Prohibit Discrimination.** Prohibiting all forms of discrimination against people, including women, establishing equal legal protection for women's rights with those of men, and ensuring that women are effectively protected from discrimination by appropriate national tribunals and other public institutions.[5] States are required to take all necessary steps to end discrimination against women by any individual, group, or business and to remove any national criminal laws that support it.
  
3. **Abolish customs, traditions, or religions that foster violence against women.** Any custom, practice, or belief that opposes or runs counter to the elimination of violence against women must be abolished. And to that end, state parties[5] must ratify or accede to the CEDAW or revoke their reservations regarding that Convention, abstain from violence against women, take reasonable steps to prevent, look into, and punish acts of violence against women, whether those acts are committed by the State or by private individuals, and create criminal, civil, administrative, and labor sanctions in domestic law to punish and redress the situation. The state must ensure that women have access to the legal system through national legislation,[5] offer them with fair and effective redress for the wrongs they have endured, and inform them of their legal rights and accessible channels of redress. Similar to this, the state must allocate sufficient funds in its annual budget to combat violence against women, raise awareness of gender stereotypes in society and culture, provide implementation guidelines, support organizations and movements for women's rights, provide safe housing and support for victims and their children, and educate law enforcement officials on domestic violence and its prevention.[5] States have a responsibility to create comprehensive preventive strategies and all the legal, political, administrative, and cultural measures that advance the protection of women against all forms of violence. They also have a responsibility to prevent the re-victimization of women due to laws, enforcement methods, or other interventions that are insensitive to gender considerations. In addition, accessible and specialized aid should be made available, including rehabilitation, help with childcare and maintenance, treatment for women victims and their children, counseling, health and social services, facilities, and programs, as well as support systems to encourage safety and physical and psychological rehabilitation.

4. **Job Security and Health for Women.** States are required to outlaw discrimination against employees due to pregnancy, maternity, or marital status, implement paid maternity leave without jeopardizing seniority or social benefits, and offer extra protection to expectant mothers.[5] A good standard of life, food security, decent housing, and a safe and sustainable environment are all included in this. In the same way, it is important to ensure that men and women have equal access to health care services, including family planning, prenatal care, labor and delivery, and postpartum care, and that both women and men receive adequate nutrition during pregnancy and lactation.[5] Because fulfilling these commitments would help to reduce societal discrimination against women.

### 3.4. MALAYSIA'S EXPERIENCE

In 1995, Malaysia joined and ratified CEDAW with a few reservations. However, it recently lifted the restriction on underage marriage in Article 16(2).[37] Gender stereotypes based on the roles of men and women as providers of care and wage earners are allowed under both shariah and civil law.[37] After 11 years of agitation by the Joint Action Group against Violence Against Women (JAG), a confederation of five regional women's organizations, the Malaysian Domestic Violence Act (DVA) was passed in 1992 but didn't go into effect until 1994.[38] Domestic abuse laws were originally enacted in Malaysia, the first Muslim nation in the world. Although the DVA of 1994 did not include provisions for support and protection, the Ministry of Women and Family Development was established in 1995 to fulfill this task.

The main goals of the Malaysian DVA are to increase public awareness, refute the notion that domestic violence is a private matter, and streamline victim protection. Domestic violence was included in the criminal law's offenses, definitions, and processes for harm, criminal force, and assault. The Women's Aid Organization (WAO), the All-Women's Action Society (AWAM), and the Women's Center for Change (WCC) were the three domestic abuse organizations that existed as of 2008.[38] Because there was an increase in reports of domestic violence to the police and in the media, the work of the women's advocates was successful. However, in terms of implementation and complete adherence to the legislation, victims continue to encounter challenges from police to judges.[39]

In order to provide victims and their children with immediate physical and psychological relief through shelter houses and therapy, the first anti-domestic violence organization was founded in the 1980s. In order to offer victims of crimes medical,

counseling, shelter, and legal services, the One Stop Crisis Center (OSCC) was founded in the 1990s.[40] Currently, there are 873 nongovernmental organizations in Malaysia, 32 of which work to protect women from domestic abuse. There are PERWANI lay counselors who have received official training who impart knowledge and psychology and counseling skills to women in order to aid female victims. Since 2017, it has 172,307 members overall and has counseled 26,232 victims.[41] Malaysia has safe places where survivors can find assistance, employment possibilities, and medical care. With a minimum stay of 14 days and a maximum of 2 years, it serves as a place of rehabilitation and the start of a new life.[42] This development demonstrates that Malaysia has made significant strides toward upholding its responsibilities with regard to the protection of women against domestic violence as a human rights issue. However, additional work needs to be done in order to reach a bigger population and lessen the threat.

### 3.5. PROSPECTS AND CHALLENGES TO WOMEN'S HUMAN RIGHTS UNDER INTERNATIONAL LAW

1. **Prospects.** Both substantive equality and non-discrimination are essential tenets of CEDAW. As a result, the above-discussed acknowledgment of domestic abuse as a human rights issue opened up several opportunities for women to secure the protection of their rights on a global scale. Several studies on women revealed a large number of prospects. It was suggested that the growth of women's rights within the framework of international human rights protection was a result of international legislation.[43] Using Cities for CEDAW[44] as an example, progressive political momentum at the local level can be used to assert pressure from the general public in order to achieve gender equity results globally. Similar attempts were made by the UN to ensure gender equality by founding the UN agency for women in 2010. Silja Bara Omarsdottir, *Feminism's Influence on Iceland's Foreign Policy, E-International Relations (E-International Relations, 2012)*, <https://www.e-ir.info/2012/08/21/feminisms-influence-on-iceland-foreign-policy>. With the inclusion of the head of UN Women as a member of all senior UN decision-making bodies—a strategy for gender perspective inclusion as well as a statistical analysis of women representatives in national and international legal and political bodies and in states power—the status of human rights on domestic violence against women also led to a *de jure* and *de facto* realization of women's human rights. Realizing women's rights requires the abolition of

all types of discrimination against them. Another possibility was that it might be accomplished through intersectional perspectives on women's human rights that took into account the intersections of gender, race, and class, or caste.[46] Additionally, a cooperative approach to compliance bodies will assist in addressing societal and cultural barriers to the effective implementation of women's human rights under international law at the national level by state parties.

- 2. Challenges.** Despite the likelihood that women's human rights against domestic abuse will be realized, there are still barriers in the way of its actualization. It was stated that women's ability to exercise their fundamental human rights is constrained by culture and traditional values. According to Mullin, this issue is a result of cultural relativism, or the reliance on a "fixed" behavior regardless of the effects.[47] It has also been discovered that difficulties to women's human rights under international law may arise from linkages between cultural stereotypes and regressive or discriminatory laws or policies relating to women and religion. Rebecca Sanders, "Norm Spoiling: Undermining the International Women's Rights Agenda," *International Affairs* 2 (2018): 271–91, <https://doi.org/10.1093/ia/iyy023>. Women's growth in society is hampered by social views, cultural norms, and behaviors. The non-legally enforceable impacts of international laws defending the human rights of women against domestic abuse provide a similar difficulty. According to research, the numerous caveats that are attached to its provisions are where its flaws reside.[43] So that some of the reservations essentially undermine the treaty's goal and partially render its provisions meaningless.[43] Indicate, for instance, that important clauses in Articles 2(f), 5, and 16 of CEDAW, which are the foundation of protection and the substance of women's human rights, are subject to reservation.[49] In addition, the fact that these international agreements have not been ratified and that their general and non-specific clauses on domestic abuse present a threat to women's human rights.[43] Others include the separation of women's human rights into the public and private realms, which poses a constant threat to human rights, and nations' failure to uphold international law, which they justify by citing a lack of resources for implementation, cultural norms, and patriarchy.[43] The issue of implementation is yet another. Most of these international laws have structural issues with their implementation and enforcement procedures.[49] For instance, it was claimed that CEDAW lacked the authority to impose sanctions on infraction-prone state parties.[50] The gender wage disparity globally, including recent figures in America,[50] the high maternal death rates in the industrialized world, and the locational and institutional divide are further obstacles. These concerns

illustrate the claim that women's rights are essentially discrimination issues.[51] Finally, the problem of the intersectionality of race, class, ethnicity, culture, and gender heightens women's vulnerability. The conceptual challenge dealing with the isolation of women's rights in different legal instruments further isolates them inside the international/legal political cycle. Particularly, the ongoing debate over the idea that human rights should be "culturally neutral and universally applicable" ignores the need for self-determination mandated by the ICESCR.[52] Therefore, these instruments must have the power of law and be applicable to all people in order to effectively address these issues and give women access to the rights they have earned under international law.

#### 4. CONCLUSION AND RECOMMENDATION

Due to the current inadequacy of international law to protect women's rights from infringement by all states, a universal standard for international law against domestic violence is required. To the extent that the norm has legal force and effect, individuals or groups of victims may bring legal action against a state for failing to uphold the prohibition of domestic abuse. This is due to the inability of current international law to compel states to allocate more funds and infrastructure to protecting women from domestic violence.

Mechanisms for protection should focus on a broad definition of domestic violence that highlights issues of economic, sexual, physical, and psychological abuse. Additionally, groups of people who require legal protection under international law must meet a minimal requirement. This should apply to anyone who is or has ever been in an intimate connection, including those who are married, not married, not cohabiting, related to one another by family, live in the same home, and domestic help.

In order to comprehend the root reasons of domestic violence and suggest appropriate intervention strategies based on cultural and traditional patterns of life, there is an urgent need for research on batterer typology across the globe.

#### References

- [1] A. Harefa, "FAKTOR-FAKTOR PENYEBAB TERJADINYA TINDAK PIDANA KEKERASAN DALAM RUMAH TANGGA," *J. Panah Keadilan*, vol. 1, no. 1, pp. 18–21, 2021.

- [2] A. Aragbuwa, "A Standard Reading of Selected Online Readers' Comments on Domestic Violence against Men in Nigeria," *SAGE Journals*, vol. 24, no. 3, pp. 1–17, 2020, doi: 10.1177/1097184X19898875.
- [3] M. I. Obarisiagbon, Barr. Emmanuel Imuetinyan., Omage, "Emerging Trend in the Culture of Domestic Violence against Men in Southern Nigeria University of Benin , Benin City," *Int. J. Humanit. Soc. Sci.*, vol. 9, no. 3, pp. 50–51, 2019, doi: 10.30845/ijhss.v9n3p7.
- [4] United Nations, *United Nations Human Rights Declaration*. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, 1948, pp. 1–8.
- [5] U. Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, vol. 27, no. September. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>, 1981, pp. 1–10.
- [6] R. J. Cook, *The elimination of sexual apartheid: prospects for the fourth World Conference on Women*, 5th ed. Washington, D.C: American Society of International Law, 1995.
- [7] United Nations, "Report of the world conference of the united nations decade for women: quality, development and peace," Copenhagen, 1980.
- [8] U. Nations, "General Assembly, Advancement of Women: Implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women to the Year 2000," 2000.
- [9] U. Nations, *Vienna Declaration and Programme of Action*, no. June. 1993.
- [10] U. Nations, "United Nations Report of the Fourth World Conference on Women Beijing, 14-15 September 1995," Beijing, 1995.
- [11] United Nations, "Women 2000: Gender Equality, Development and Peace for the Twenty-first Century," *United Nations*, 2000. .
- [12] United Nations, *Programme of Action of the International Conference on Population Development*. 2014.
- [13] United Nations, "Special Rapporteur on Violence against Women, Including Its Causes and Consequences 1994," *United Nations*, 2023. .
- [14] U. Nations, *Programme of Action Adopted at the International Conference on Population and Development (ICDP), Cairo, Egypt 5-13 September 1999*. Cairo: United Nations, 1994.

- [15] U. Nations, “World Conference against Racism , Racial Discrimination , Xenophobia and Related Intolerance,” South African, 2001.
- [16] P. M. Marzuki, *Penelitian Hukum Edisi Revisi*. Jakarta: PT. Kharisma Putra Utama, 2017.
- [17] J. Saul, Ben. Kinley, David. Mowbray, *The International Covenant on Economic, Sosial and Cultural Rights Commentary, Cases and Materials*, 1st ed. Oxford University Press, 2014.
- [18] LSE, “A.T. v. Hungary: CEDAW,” LSE, 2005. .
- [19] United Africane, “African Charter on Human and People’s Rights 1981.pdf.” Organisation de Unite Africane, Africa, 1981.
- [20] A. Convention, H. Rights, T. Convention, S. Jose, and C. Rica, “The American Convention on Human Rights,” no. November 1969, 1978.
- [21] General for Justice and Consumers, *European equality law review*, 1st ed. Europe Commision, 2020.
- [22] M. Al-Minadi, Mohammed Amin., Cabanettes, “ARAB CHARTER ON HUMAN RIGHTS 2004,” *Boston Univ. Int. Law J.*, vol. 24, no. 147, pp. 147–164, 2004.
- [23] ASEAN Secretariat, *ASEAN HUMAN RIGHTS DECLARATION (AHRD) AND THE PHNOM PENH STATEMENT ON THE ADOPTION OF THE AHRD AND ITS TRANSLATIONS*. Jakarta: ASEAN Secretariat, 2013.
- [24] C. of Europe, “European Convention on Human Rights.” European Court of Human Rights Council of Europe, France, 1950.
- [25] Q. Tavares, Paula., Wodon, “ENDING VIOLENCE AGAINST WOMEN AND GIRLS : GLOBAL AND REGIONAL TRENDS IN WOMEN ’ S LEGAL PROTECTION AGAINST DOMESTIC VIOLENCE AND SEXUAL HARASSMENT,” *worldbank*, no. February, p. 2, 2018.
- [26] United Nations, “THE INTERNATIONAL BILL OF HUMAN RIGHTS,” *United Nations*, vol. 1, no. 1, 1948.
- [27] United Nations, “General recommendations of the Committee on the Elimination of Discrimination against Women,” vol. 1, no. 1. United Nations, pp. 1–53, 1987.
- [28] United Nations, “Convention against Torture and Other Cruel , Inhuman or Degrading Treatment or Punishment Fifth annual report of the Subcommittee on Prevention of Torture and Other Cruel , Inhuman or Degrading Treatment or Punishment,” *United Nations*, no. March. United Nations, English, 2012.
- [29] The Advocates for Human Rights, “The Advocates for Human Rights. Stop Violence against Women,” *stopvaw.org*, 2018. .

- [30] M. Helmi, B. Said, and G. E. Kaka, "Domestic Violence in Cross-Border Marriages: A Systematic Review," *SAGE Journals*, vol. 1, no. 20, pp. 1–20, 2022, doi: 10.1177/15248380221074321.
- [31] A. Byrnes, *WOMEN, FEMINISM AND INTERNATIONAL HUMAN RIGHTS LAW - METHODOLOGICAL MYOPIA, FUNDAMENTAL FLAWS OR MEANINGFUL MARGINALISATION?*, no. 1989. 1992.
- [32] H. G. Navia, Rafael Nieto., Espiell, "Inter-American Court of Human Rights Case of Velásquez-Rodríguez v . Honduras," vol. 1988. American Court of Human Rights, American, 1988.
- [33] Oxford Reports on International Law [ORIL], "Plattform 'Ärzte Für Das Leben' v Austria, Merits, App no 10126/82, A/139,
- [34] ECHR 15, (1991) 13 EHRR 204, IHRL 79 (ECHR 1988), 21st June 1988, European Court of Human Rights [ECHR]," 1988.
- [35] D. Q. Thomas, M. E. Beasley, D. Q. Thomas, and M. E. Beasley, "Domestic Violence as a Human Rights Issue," *JH Johns Hopkins Univ. Press*, vol. 15, no. 1, pp. 36–62, 2014.
- [36] United Nations, "THE INTERNATIONAL LEGAL FRAMEWORK," *Minnesota Advocates for Human Rights.*, 2003. .
- [37] OECD, "Gender equality in times of crisis SIGI 2023 Global report," 2023. .
- [38] L. A. Hebert, "Gender Norm Change in the Security Arena: Analyzing Sexual Misconduct in UN Peacekeeping Missions," *Glob. Int. Stud. Conf. (Ljubljana, Slov.*, no. July, 2008.
- [39] Berhad v Ratigah Shim binti Mohammad Aris, "Air Asia," *Komisi Penyiaran Indonesia*, 2014.
- [40] G. Ferrant, L. Fuiet, and E. Zambrano, "OECD DEVELOPMENT CENTRE The Social Institutions and Gender Index ( SIGI ) 2019: A revised framework for better advocacy," *OECD Dev. Cent.*, no. 342, 2020.
- [41] F. Ahmad, N. Driver, M. Jane, and D. E. Stewart, "Social Science & Medicine " " Why doesn " t she seek help for partner abuse?" An exploratory study with South Asian immigrant women," *Soc. Sci. Med.*, vol. 69, no. 4, pp. 613–622, 2009, doi: 10.1016/j.socscimed.2009.06.011.
- [42] U. Nations, "A framework to underpin action to prevent violence against women," 2015.
- [43] S. Qureshi, "Progressive Development of Women ' s Human Rights in International Human Right Law and within United Nations System," *J. Polit. Stud.*, vol. 19, no. 2, pp. 111–124, 2012.

- [44] A. Moinet, “DePaul Law Review CEDAW: United States Federal Ratification and the Case for a CEDAW Ordinance in Chicago AND THE CASE FOR A CEDAW ORDINANCE IN CHICAGO,” vol. 72, no. 3, 2023.
- [45] S. B. Omarsdottir, *Feminism ’ s Influence on Iceland ’ s Foreign Policy*. E-International Relations, 2012.
- [46] R. Runyan, Anne Sisson., Sanders, “Prospects for Realizing International Women ’ s Rights Law Through Local Governance: the Case of Cities for CEDAW,” *Hum. Rights Rev.*, vol. 22, pp. 303–325, 2021, doi: 10.1007/s12142-021-00635-z.
- [47] United Nations, “Submission by IRAW Asia Pacific 1 to the call for inputs by Working Group on Discrimination Against Women and Girls on ‘women’s human rights in the changing world of work,’” *IWRAW ASIA PACIFIC*.
- [48] R. Sanders, “Norm spoiling : undermining the international women ’ s rights agenda,” *Int. Aff.*, vol. 2, pp. 271–291, 2018, doi: 10.1093/ia/iyy023.
- [49] S. Joseph, K. Mitchell, and C. Benninger-budel, *for Torture Victims A HANDBOOK ON THE INDIVIDUAL COMPLAINTS PROCEDURES OF THE UN TREATY BODIES Preface by Manfred Nowak*. Switzerland: World Organisation Against Torture (OMCT), 2006.
- [50] P. Alston and J. Crawford, *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING*, 1st ed. Australia: Cambridge University Press, 2000.
- [51] N. Martin, “Nothing Protects Black Women From Dying in Pregnancy and Childbirth,” *ProPublica*, and Renee Montagne, *NPR News*, 2017. .
- [52] M. Fagbongbe, “Th e Future of Women ’ s Rights from a TWAIL Perspective,” *Int. Community Law Rev. Martinus NIJHOFF Publ.*, vol. 10, pp. 401–409, 2008, doi: 10.1163/157181208X361449.