

PATRIARCHY, DUE DILIGENCE, AND HUMAN RIGHTS: RETHINKING THE ECOWAS COURT'S JUDGMENT IN LOVINA AMINA ADONOR V NIGERIA*

Abstract

This article examines the ECOWAS Court of Justice's decision in Lovina Adonor v Federal Republic of Nigeria,¹ where the Court declined to hold Nigeria accountable for its failure to investigate and prosecute the destruction of a female traditional religious leader's shrine by non-state actors. Situating the case within international human rights law-particularly the doctrines of attribution and state due diligence obligations-the paper argues that the Court adopted an unduly narrow approach to state responsibility. Drawing on feminist legal theory and comparative jurisprudence from other regional human rights systems, the article contends that the judgment marks a retreat from emerging international norms recognizing indirect state complicity in private actor violence. Engaging with Power Threat Meaning Framework (PTMF), the paper proposes a meaningful adjudication in accordance with evolving international human rights norms so as to eliminate structural barriers women face in human rights litigation.

Keywords: ECOWAS Court of Justice, Patriarchy and Feminist Legal Critique, Due Diligence, Power Threat Meaning Framework (PTMF), Women's Rights

1. Introduction

The ECOWAS Court dismissed a suit filed by a priestess against the Federal Government to pay the reparation for the destruction of the shrine.²In this case, the applicant has been practicing African Traditional Religion and Spiritism on Iseh Ground and the applicant was chased out, her office was destroyed and the land gifted to her by the accused persons was retrieved alongside her cows and sheep. The ECOWAS Court noted that the respondent had taken steps to investigate the complaints, and the individuals responsible for the alleged acts were private citizens who had been detained and later released after due process. The key legal issue is whether a member state can be sanctioned for failure to investigate human rights violations and if yes, whether the Court can make an order for reparations. The court modified the issue to whether a state can be sanctioned for human rights violation of a non-state actor. The rights at stake include the right of a woman to propagate her religion and belief, the right of a woman to own property security of her person and not to be discriminated against. There is also a disconnect between court decision and reality and normative expectations of African communities which barricades legitimacy and effectiveness and enforcement of these decisions. This epistemological disconnect manifests in various ways in this case under review, from the over reliance on technicality above restorative justice inherent in our African traditional dispute resolution systems³The international jurisprudence on state responsibility acknowledges obligations of states arising from the negative rights of individuals leading to a positive obligation on states to put in place appropriate measures to protect individuals from violence and abuse even within the private set up and also to ensure that individuals enjoy their rights and the failure of a state attracts reparation.

The ECOWAS court has caught the interest of several national and international scholars, and there is a consensus that the human rights system is getting weaker by day.⁴ When negligence by state actors or institutions results in breaches of non-derogable rights, it constitutes breach of states protective obligation not merely an affront to the individual but a transgression of international legal obligations as a state's failure to act is construed as acquiescence to violations. No doubt, the State failed to investigate the allegation against the private persons mentioned in the case with resultant effects. The state, being the primary guarantor of rights, is often found culpable when its omission or failure to act with reasonable diligence results in a violation of fundamental right. Interestingly, there have been long history of standard decisions in the African system was far ahead of other regional systems.⁵ One factor stands out- the professionalism within the secretariats of the court. This has assisted the court to exert independent influence within an overreaching structure of state power. The sub-regional secretariats have been identified as age-brokers for international court backlash.⁶ For instance , the secretariat facilitated the creation of an ECOWAS Judicial Council that used merit-based process in the selection of savages.⁷

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¹Judgment No: ECW/CCJ/JUDGEMENT/02/2025. The judgment was delivered on 13 February 2025

²Olugbode, M. 'ECOWAS Court Dismisses Case of Violations of Religious Rites Against Nigeria', *ThisDay Newspaper*, Feb 13, 2025. See <https://www.thisdaylive.com/2025/02/14/ecowas-court-dismisses-case-of-violations-of-religious-rites-against-nigeria/>

³ For general reading on African Epistemological system of values read J, Oloka-Onyango 'Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa' *Cal. W. Int. Law Journal*, 1995, 1-74; Nduibisi Christian Ani 'Appraisal of African Epistemology in the Global System', *Alternation*, 20, 1 (2013) 295-320

⁴ Alter, K.J; L, Helfer, & J.R, McAllister (2013). A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice. *The American Journal of International Law*, 107(4), 737–779 @ 757

⁵ Okafor, O.C (2024) 'Global Diversity and the Living International Human Rights Law' A Lecture Delivered at Third Owada Chair Symposium, 16 Jan 2024, at the University of Leiden; O.C. Okafor and G.k Dzah 'The African Human Rights System as a 'New Leader': Three case studies' (2021) 21 *African Human Rights Law Journal* 669

⁶ Alter, K.J, Galhi, J.T, and Haifer, L. R (2016) 'Backlash against International Courts in West, East and Southern Africa: Causes and Consequences' *European Journal of International Law*, 27 (2), 293-328 @ 319

⁷ Ibid

Similarly, Gambia attempted to stop private litigants' access to the court and the states were mobilized to resist the push.⁸ On Gambia's proposal for amendment of the jurisdiction to include exhaustion of local remedies and create an appeal procedure⁹ the secretariat informed the judges about the impact of the reform and assisted the court to mobilize CSOs to oppose the initiative.¹⁰

The Vienna Conference for Human Rights in 1993 was the first meeting to endorse the importance of ensuring that the international human rights system responded to the concerns of women as well as men.¹¹ The rhetoric of a feminist transformation of human rights law is evolving and, historically, much of this debate began within religious contexts. The symbolic devaluing of women is reflected in the truth of a supreme, male God who makes a covenant symbolically with men. Sara and Angelina Grimké, two leading abolitionist feminists, highlighted as early as the nineteenth century the inseparability of equality at the state level and equality within religion.¹² According to the sisters, the struggles for the abolition of slavery and for women's rights were two inseparable parts of the same whole, and the church government, which stood in the way of reform on both issues, would have to come down in order for the reform to take place.¹³ Matilda Joslyn Gage (1893), a contemporary of the Grimkes and an avowed feminist in her own right, pointed to the clergy attacks on the Grimke sisters and the timid response of the anti-slavery leadership as the cause of the sisters' withdrawal from public advocacy for the abolitionist movement.¹⁴ Yet, feminist scholarship also recognizes that religious traditions are not monolithic: while some interpretations have entrenched patriarchy, others have served as sources of empowerment, community solidarity, and resistance for women. For example, African traditional religions have historically provided leadership roles for women, such as priestesses and diviners, even if these roles were later suppressed under colonial and patriarchal legal systems. In the *Lovina* case, this tension is evident: the applicant claimed legitimacy through traditional spiritual authority, but the state and court's responses reflected a continuing bias toward patriarchal structures. Thus, the broader feminist project of transforming human rights law cannot ignore how religion can simultaneously marginalize and empower women.

2. Background of the Case

Priestess Lovina Amina Adonor, a spiritual leader in Nigeria, is regarded by members of the Weppa community as the reincarnation of the Spirit of Iseh. In 2018, she was formally installed as the community's priestess, assuming custodianship of the sacred Iseh Ground in Ikwator. This site, which includes a river believed to possess cleansing and life-enhancing properties, attracts individuals seeking ritual purification and good fortune. While deeply embedded in local cosmology, the Iseh Ground also falls under the administrative oversight of the Edo State Ministry of Tourism. Priestess Lovina Amina Adonor understands her office as a mediatory role between the divine and the community, involving the offering of sacrifices, the interpretation of spiritual signs, the foretelling of future events, and the provision of remedies for collective misfortune. In her account, these functions came under severe disruption in 2022 when her shrine was attacked by a group of men, including Charles Inwumoh and Aminu Momoh, who allegedly removed ritual objects and livestock valued at over ₦5 million. The incident, which she reported to the Nigeria Police Force at Agenebode, illustrates not only the vulnerability of sacred sites but also the contested legitimacy of traditional authority within the framework of the modern state. Although petitions were submitted to the Commissioner of Police and the Ministry of Tourism, and although she presented evidence such as photographs, receipts, and her trade-medical license, her claims were treated as a civil dispute rather than a violation of her fundamental rights. Subsequent police interventions were marred by community unrest, during which officers advised her to flee for safety while releasing the accused on administrative bail. For Adonor, this sequence of events exemplifies both the precariousness of indigenous religious leadership in contemporary Nigeria and the ambiguous protection such leaders receive from state institutions.

A year after the initial incident, the applicant reported that the Edo State Police Command had failed to take further steps toward investigation or prosecution, with officials suggesting that the case file had been withdrawn. Contesting this claim, she petitioned the ECOWAS Court of Justice, asserting that she had never withdrawn the case and arguing that the state's inaction reflected a broader complacency rooted in the perceived invisibility of traditional religious practitioners. In her submissions, she sought judicial declarations affirming that the destruction of her shrine, ritual objects, and livestock constituted a violation of her property rights under Section 43 of the 1999 Constitution, as well as a breach of her right to security under Nigerian law and international treaties ratified by the state. The government's response, however, was that the acts in question had been committed by private individuals beyond its direct liability, and that administrative complexities surrounding the transfer of the case file further constrained prosecution. The applicant, in her rejoinder, categorically denied ever initiating such a transfer, insisting that responsibility lay squarely with the state for failing to protect her religious community and enforce the law. This dispute reveals a deeper structural tension: the difficulty of

⁸ (Ibid) 294

⁹ Gambia submitted to the ECOWAS Commission an official request to revise the 2005 supplementary Protocol. A/SP/1/01/05

¹⁰ Alter, K.J., et al (supra) 319

¹¹ Hilary, C (1995) 'Feminist Critiques of International Law and Their Critics', *Third World Legal Studies*, Vol. 13, Article 1 @ 15-16

¹² Lerner, G, The Creation of Patriarchy at Rosemary Radford, Sexism and God-Talk: Toward A Feminist Theology 47 (1993) 284, 189-90

¹³ Ibid

¹⁴ Matilda Joslyn Gage, *Woman, Church and State: A Historic Account of the Status of Woman through the Christian Age: with Reminiscence of Matriarchate* (CH Kerr 1893) 554

translating indigenous religious grievances into a rights-based legal framework, and the tendency of state institutions to deflect responsibility when confronted with conflicts rooted in spiritual authority and communal legitimacy.

3. The ECOWAS Court's Decision

The ECOWAS Court of Justice, dismissed the Applicant's claims for lack of direct attribution of the alleged human rights violations to the state. The three-member panel found that 'the acts complained of were committed by private individuals, and that the Respondent had taken reasonable steps to investigate the allegations, thereby absolving the state of liability. The Court held that 'there was an incident which was reported to the Respondent's agents and that the act was perpetrated by private citizens, who were detained for investigation and later released on bail. It is evident that the perpetrators were not agents of the Respondent, nor were they acting under its instruction or within the scope of any delegated authority. Having regard to the apparent lack of connection between the act and the Respondent, the Court declines to make an order in this regard and dismisses the Applicant's claim.'¹⁵ There was also a procedural flaw in the Applicant's pleadings and the court refused to correct it,¹⁶ even though the Court has the power to invoke the correct legal provision where the facts and evidence are consistent and non-prejudicial.

4. Legal and Jurisprudential Analysis of the case

In Lovina's case, the court dismissed the applicant's reliefs sought under the Constitution¹⁷ as it falls outside the scope of applicable laws.¹⁸ According to the court, the determination of claims for human rights violations are contained in the Statute of the International Court of Justice.¹⁹ The ECOWAS Court can interpret human rights claim violating a national constitution, or international treaties like the African Charter on Human and Peoples' Rights and the ECOWAS Court of a member state. The court derives its legitimacy from international treaties but can hear cases involving constitutional provisions, as long as they relate to human rights violations under international law. The Constitution is not just a national law; it is the supreme law that governs all laws. National laws exist under the Constitution and must comply with it. The Constitution holds a higher legal status than any national law. The Constitution, however, is the fundamental legal document that establishes the framework of government, defines the powers of different arms of government, and guarantees fundamental rights. Importantly, the Constitution is not a law but the ground norm as explained in the Kelsenian Pyramid of Norms.²⁰ By this doctrine, we have the Ground norm (Basic Norm) which represents the fundamental assumption from which all legal norms derive their validity. This is followed by the International Law which contains treaties, customary international law, and decisions from international bodies (e.g., the UN Charter, ICC rulings). This is followed by the National Constitution which establishing government structure, fundamental rights, and national sovereignty. Others are National Legislation (Statutes, Acts, and Laws) and regulations and administrative rules issued by government agencies.

The investigation report shows that the applicant has disclosed a prima facie case and the failure of the state to prosecute makes the agents of the state liable. The court wrongfully tied the applicant's case primarily to the actions of the accused instead of the state negligence as captured in the reliefs sought. A claim, in our adjectival law, originates an action, it is the pivot or the cynosure of the case, as it sets out the relief.²¹ The case of the applicant is strictly against the state for failure to prosecute the accused persons eight months after an investigation report that shows their guilt. Under international law, a private person can be held liable for fundamental human rights violations in actions that directly violate international law and also a member state can be sanctioned for failure to investigate human rights violations of a non-state actor. The conduct of private persons acting strictly in their private capacity may incur state responsibility where the state failed to prevent such conduct.²² The responsibility of the state in such cases not as direct result of the private person's conduct but indirectly as a result of the failure of the state to prevent such conduct.²³

The Inter-American Court case of *Velasquez Rodriguez v Honduras*²⁴ was the global first to detail the due diligence standard. In this case, Angel Rodriguez, a graduate student, was kidnapped from a parking lot by armed men in civilian clothes. The targets of the abductions were persons suspected of being a threat to national security. In this landmark case, the central issue before the Inter-American court was whether Honduras's obligation under the American Convention was

¹⁵ Judgment No: ECW/CCJ/JUD/02/25 @ page 21 para. 55

¹⁶ (Ibid) 61 – 62 Pages 23 – 24

¹⁷ Sections 35, 38, 41, 42 and 43 of the 1999 Constitution

¹⁸ Para 50, page 19.

¹⁹ Art 38 (1) reads 'The Court whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply international conventions, international customs, general principle of law as recognized by known national decisions and decisions of most highly qualified and publicists of the various nations and subsidiary means for the determination of the rules of law.' Article 19 (1) of the Protocol of the ECOWAS Court States that; 'The Court shall examine the dispute before it in accordance with the provisions of the Treaty and its Rules of procedure. It shall also apply as necessary, the body of laws as contained in Art 38 of Statutes of the International Court of Justice.'

²⁰ Kelsen, H (1967) *Pure Theory of Law*. (Translated by Max Knight), University of California Press. See also Riofrio, J.C. (2019); Kelsen, the New Inverted Pyramid and the Classics of Constitutional Law, 7 (1) *Russian Law Journal* 87-118

²¹ *Osuji v. Ekeocha* (2009) 16 NWLR (Pt. 1166) 81

²² Articles 8 and 9 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)

²³ Crawford, J & Olleson, S (2014) 'The character and forms of international responsibility' in MD Evans (ed) *International Law* 443 456.

²⁴ *Velasquez Rodriguez v Honduras Inter-American Court of Human Rights* (29 July 1988) Ser C No 4

merely to respect' the rights of individuals by refraining from violating them, or whether Honduras had an obligation to take positive steps to protect individuals from human rights violations by non-state actors.²⁵ The Court held that the state has a legal duty 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, identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.²⁶ The Inter-American Court explained that the second obligation of state parties to 'ensure' under article I(1) of the Convention was not limited to state actors but may extend to non-state actors.²⁷ Where a state fails to prevent acts, its failure is interpreted as complicity, and what would otherwise have been a purely private act independent of the state, turns into a constructive act of the state' for which the state will be held accountable.²⁸ The duty to prevent human rights violations means that states are to take all reasonable measures – legal, political administrative and cultural- to protect individual rights.²⁹ The duty to protect includes providing legal assistance, health care, counseling centers, shelters, restraining orders and financial aid to victims of violence.³⁰

In its judgment, the Court accepted the state's account that it had investigated the matter, briefly detained the accused, and released them on bail in line with due process. It further relied on the state's claim that the applicant's legal team requested a transfer of the case, thereby stalling the investigation. However, this reasoning reveals a troubling reliance on procedural technicalities rather than substantive human rights obligations. The Court overlooked the fact that due diligence under international law requires not merely opening an investigation, but ensuring it is effective, timely, and capable of leading to prosecution where warranted. By absolving the state based on minimal investigative steps and an unverified claim of case transfer, the Court effectively lowered the standard of state responsibility, leaving serious violations unaddressed

5. Feminist Legal Critique

Feminist legal theory argue that law is not neutral but reflects and reinforces patriarchal power structures often empowering male experiences while marginalizing women's voices. It seeks to expose how legal doctrines and institutions perpetrate inequality and to interpret law so as to activate the living right- substantive gender justice. The use of the word 'critique' in the theory is not in the negative but constructive. This is because the feminist legal critique shows how law marginalizes women, and also opens up possibilities for reimagining legal reasoning that promotes women's right. Lovina's case conceptualizes failure to redress gendered based discrimination as a breach of positive state obligations under international and constitutional law. The central question in *Lovina's* case is not merely whether private actors destroyed a shrine, but why the prosecution by the state was halted and whether the state fulfilled its duty of due diligence. The Court's reasoning revealed little gender-sensitive awareness of the structural barrier women face when seeking justice for private actor violence. By deferring to the state's minimal investigation and avoiding a deeper inquiry into prosecutorial lapses, the Court exposed the limits of institutional protection for marginalized religious identities in West Africa. Instead of seizing the opportunity to affirm the state's positive obligations, the Court relied on a rigid state and private actor divide, thereby neglecting the broader implications of its decision for women's rights.

Generally, patriarchy is the manifestation and institutionalization of male dominance over women in society. Gerda Lerner (1986) defines patriarchy as 'the manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general.'³¹ Sherry Ortner (1996) argues that in every known culture women are considered in some degree inferior to men.³² Archeological and historical evidence indicates that for thousands of years and across cultures the mother – Goddess was worshipped as the Supreme Being.³³ Gerda Lerner's³⁴ seminal historical analysis demonstrates that before the emergence of archaic states, many societies were organized along relatively egalitarian lines, with men and women exercising substantially equal roles. The subsequent shift in religious symbols and narratives, however, marked the progressive erosion of female authority and the consolidation of patriarchal dominance. This transformation was reinforced through the transition from matrilineal kinship and succession systems to patrilineal structures that privileged male inheritance and authority.³⁵ Central to this symbolic reordering is the biblical covenant between God and the Hebrews: a covenant articulated exclusively with Abraham and not with Sarah. As Lerner (1986) observes, this exclusion is neither incidental nor symbolic alone; it represents the theological legitimization of patriarchal authority, whereby divine sanction is conferred upon the leadership of men over women in family, religion, and

²⁵ Steiner, H.J, Alston, P & Goodman, R (2019) *International Human Rights in Context: Law, Politics, Morals* (2007) 214

²⁶ Human Rights Council 'Accelerating Efforts to Eliminate all forms of Violence against Women: Ensuring Due Diligence in Prevention' (2010) A/HRC/RES/14/12 para 1. Also, UN General Assembly 'Intensification of efforts to eliminate all forms of violence against women' (2013) ARES/67?144 para 11.

²⁷ (Ibid) 173

²⁸ Meyerfeld, B.C (2003) 'Reconceptualizing domestic violence in international law' 67 *Albany Law Review* 371.

²⁹ Henkin, L. et al 'Human Rights' (2009) 851, citing R Coomaraswamy 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences' UN Doc ECN.4/1996/53 (1996) para 54. Human Rights Council (n 33). See also Addadzi-Koom, M.E, (2019) 'He beat me, and the state did nothing about it': AN African perspective on the due diligence standard and state responsibility for domestic violence in international law' 19 *African Human Rights Law Journal* 624-652 @ 632

³⁰ Ertruk, Y. 'Integration of human rights of women and the gender perspective: Violence against women: The due diligence standard as a tool for the elimination of violence against women' (2006) E/CN.4/2006/61 Report para 61

³¹ Lerner, G. (1986) *The Creation of Patriarchy*, Oxford University Press, New York 155

³² Sherry B Ortner, *Making Gender: The Politics and Erotics of Culture* (Beacon Press 1996) 23

³³ Lerner, G (supra) 141-60

³⁴ (Ibid) 154-158

³⁵ Ibid

society. Such narratives provided enduring justification for women's exclusion from direct access to the divine and from participation in religious and political decision-making, thereby embedding patriarchy at the very foundation of law, culture, and institutional power.

Importantly, the power utilized by the church to silence the Grimke sisters and to perpetuate the hegemony of white patriarchy was neither the power of law nor that of the sovereign. It was strictly the private power of religious and cultural prejudice in a society in which women were, in the words of Elizabeth Cady Santo 'slaves of custom, creed and sex'³⁶ Today, the state continuously refuses to intervene in patriarchal religion and culture on behalf of women, leaving them the impossible task of achieving equality from a position of deep inferiority.³⁷ Elizabeth Cady Stanton, a contemporary of the Grimke sisters³⁸ believed that religion was the most effective tool for the subordination of women. In a practical adjustment of that, she published the *Woman's Bible* in which she and other feminist writers gave their own feminist interpretations of biblical passages that were traditionally used to justify the subordination of women.³⁹ Domingo and O' Neil (2014) mentioned favorable conditions or opportunity structures for legal empowerment include rights consciousness, organizational capacity and vetted judiciaries among others.⁴⁰ These works did not specifically identify if outcome of the action validates the empowerment. It identifies and how customary system can transit to formal legal system. Feminist scholars believe that state inaction on issues affecting women are trivialized or privatized, highlights patriarchal power dynamics and masculinity bias of law and governance.⁴¹ A gender- sensitive interpretation of state inaction examines how the failure of the state to act or its passive complicity perpetuates gender-based discrimination. The Interpretation is rooted in feminist legal theory, human rights law and critical gender structure.

According to Obiora. C. Okafor (2024) in what he calls the living international human rights law, which he refers to as human rights engaged and interrogated as a field and the experiment of the text in the living world.⁴² He emphasized interpretation, application and implementation of the adoption of international human rights law with five dimensions of global diversity.⁴³ He stated that global diversity of practice mischaracterizes the living international human rights law in the process of interpreting and applying international human rights law in relation to particular states and in many a time producing in effect a patchwork of different 'living international human rights law' for different states/ people.⁴⁴ The applicant in this case, shared in the problem associate with the living international human rights notion which revolves around the westernization of human rights thought and ideas.⁴⁵ In this case, the jurisprudence was insufficiently rooted in African epistemologies. The court despite operating on the African continent, largely adopt and apply legal frameworks, doctrines, and interpretive approaches primarily derived from Western legal traditions. The court neglected, marginalized or overlooked in its judicial reasoning and outcomes, the distinct cultural values, historical experiences, and philosophical understandings of religious practices prevalent in many African societies.

By tolerating the violation of Lovina's rights against her religious, cultural, and associational rights, and by refusing to prosecute the accused persons, the state legitimates the continued existence of overt patriarchy and protects patriarchy's power base inside-out. The dereliction of duty opens the floodgates of criticism, where the ECOWAS Court failed to determine whether the state's laxity has occasioned irreparable harm to the applicant. One of the concepts that has been most distorted due to liberalism's lack of a proper understanding of power is toleration, which is regarded by many as the fundamental tenet of liberalism.⁴⁶ Liberalism disregards the institutions, practices, discourses, and norms of a religion or culture as a socially and politically significant site of power, which severely curtails its ability to ensure that the exercise of power and authority over the individual is justified and that the rights of the individual are safeguarded.⁴⁷ The liberal suggestion that the appropriate remedy for discrimination within the group is for the oppressed to exit and exit only entrenches and legitimates the differences of power instead of mitigating them.⁴⁸ On the option of exit protects patriarchal power from the need to answer calls for change within the community.⁴⁹ Michael Foucault (1980) posited that a major problem with western perceptions of power is both the representation of power in a juridical form and its attribution to the

³⁶Stanton, E.C et al (supra) 229

³⁷Stopler, G (Supra) 391

³⁸ Stanton, E.C et al (supra) 182-93.

³⁹ (Ibid)

⁴⁰ Pilar Domingo and Tam O'Neil (2014) *The Politics of Legal Empowerment: Legal Mobilization Strategies and Implications for Development*, ODI: 42

⁴¹ Mackinnum, C.A. (1989). *Toward a Feminist Theory of the State*, Harvard University Press, 88

⁴² Obiora Chinedu, Okafor (2024) 'Global Diversity and the Living International Human Rights Law' A Lecture Delivered at 3rd Owada Chair Symposium, 16 Jan 2024, at the University of Leiden @ 17

⁴³(Ibid) 3

⁴⁴ (ibid) 10

⁴⁵ (Ibid) 7

⁴⁶John Rawls, *Political Liberalism*, xxvi (2nd ed. 1996).

⁴⁷Elizabeth Frazer and Nicola Lacey, *The Politics of Community: A Feminist Critique of the Liberal-Communitarian Debate* (Harvester Wheatsheaf 1993) 33, 76.

⁴⁸ Ibid

⁴⁹ Okin, S.M (2002) 'Mistresses of Their Own Destiny': Group Rights, Gender, a Realistic Rights of Exit, 112 *ETHICS* 205, 214

sovereign.⁵⁰ According to him, ‘the language of power is law, not magic, religion or anything else.’⁵¹ It is focused on the rights of the individual vis-à-vis the sovereign and neglects all other forms of power that threaten individual rights.⁵² The new threats mature as a political act that sustains patriarchy power dynamics rather than neutral bureaucratic omission.

According to G Stopler ‘restraining arbitrary and prejudiced power should start in those places in which it is most influential.’⁵³ Toleration as properly understood can only be invoked to restrain the use of arbitrary and prejudiced power against powerless ‘others.’ When it is used to enforce and perpetuate arbitrary and prejudiced power, toleration is being misused.⁵⁴ All invocations of toleration as justification for the continued subordination of women are in conflict with the true meaning and purpose of toleration and serve as status-enforcing mechanism that perpetuates the hegemony of patriarchy.⁵⁵ The consequences of women’s inequality within religion and culture are far reaching, as Gardner Lerner (1993) argues that the conclusion that woman was made after man, of man, and for man, an inferior being, subject to man⁵⁶ and the structuring of society in such a way that women were for millennia excluded from the creation of the cultural product has more decisively disadvantaged women in their economic and political rights than any factor tilts the opium standard.⁵⁷ The call for tolerance are made without considering the power relations between those who demand toleration and those who suffer the consequences thereof, the result is that most often toleration is itself used as a status enforcing-mechanism. This is particularly true with regard to women, who are a-priori excluded from most accounts of toleration. For Habermas Jurgen, toleration properly understood would entail respect for women’s right to equality and to conscience within their religion and culture both from members of their communities and from society at large and there should be no tolerance for prejudice and discrimination.⁵⁸ The oppressed have the practical and psychological desire to leave the community. The relationship between state action and women’s rights is far from trivial; it strikes at the core of how power is constituted and exercised within legal and cultural systems. If, as critical theorists suggest, power is mediated through discourse, and if toleration remains one of liberalism’s most celebrated yet contested principles, then the framing of women’s equality as inherently opposed to toleration places feminist claims at a discursive disadvantage within both religion and culture. This construction renders calls for gender equality as disruptive rather than as integral to the liberal project. Yet, a more rigorous and principled understanding of toleration reveals precisely the opposite: that genuine toleration must restrain arbitrary power and protect equality, rather than serve as a justification for the continued subordination of women.

6. Theoretical Framework

The theoretical frameworks adopted are Power Threat Meaning Framework (PTMF)⁵⁹ and feminist legal theory. Together, they provide a complementary lens for analyzing *Lovina v. Nigeria*. While PTMF shifts the focus from diagnosing ‘what is wrong’ to asking ‘what happened’ in contexts of power, threat, and meaning, feminist legal theory interrogates how law itself reflects and entrenches patriarchal hierarchies. Using both frameworks allows for a multidimensional critique: PTMF highlights how Lovina’s marginalization was not simply the result of individual violence but of systemic failures by institutions that wield power selectively, while feminist legal theory situates this failure within the broader historical exclusion of women from religious and legal authority. This combined approach underscores that the Court’s reasoning was not merely a technical application of attribution doctrines but part of a deeper structural bias that renders women’s rights precarious within international legal systems. The framework shifts the focus from ‘what is wrong?’ to ‘what happened to you?’ This provides a way to understand emotional distress, unusual experiences and troubled behavior not as symptoms of disorder but as meaningful responses to power imbalances and threats in a person’s life. The framework applies the following questions; what forms of power have you been subjected to or denied? what kind of threat did this experience pose to you, what is the meaning you have made of the experience, and what ways you have learned to respond to these threats?

Religion and culture are quintessential sites of power because they are highly determinative of individual actions and are regarded as positively informing rather than obstructing free choice.⁶⁰ For Stopler (2008), not allowing women an equal voice in religion and culture is ‘a rank usurpation of power’.⁶¹ In this case, the social power is the gender which was traded upon by institutional power which is the law enforcement agencies. The failure of the state to respond adequately to the

⁵⁰ Michel Foucault, *Truth and Power*, In *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, 109, 119-21 (Colin Gordon et. Al. trans., 1980).

⁵¹ (Ibid) 201

⁵² (Ibid) 121-22

⁵³ Stopler, G (supra) 394-397

⁵⁴ Ibid

⁵⁵ Stopler, G (supra) 394-397

⁵⁶ Elizabeth Cady Stanton, Susan B. Anthony Reader: *Correspondence, Writings, Speeches* 81 (Ellen Carol Dubois Ed., 1981 @ 229

⁵⁷ Gerda Lerner, *The Creation of Feminist Consciousness: From the Middle Ages to Eighteen-seventy* (OUP 1993) 10–11.

⁵⁸ Jurgen Habermas, *Intolerance and Discrimination*, 1 I. CON 2, 3 (2003)

⁵⁹ The framework was developed in the UK. See Lucy Johnstone and Mary Boyle, *Threat Meaning Framework: Towards the identification of patterns in emotional distress, unusual experiences and troubled or troubling behavior, as an alternative to functional psychiatric diagnosis* (BPS, 2018)

⁶⁰ Stopler, G (2008) ‘A Rank Usurpation of Power - The Role of Patriarchal Religion and Culture in the Subordination of Women’ 15 *Duke Journal of Gender Law & Policy* 368

⁶¹ (Ibid) 377

needs of marginalized women reveals the racial and gender biases embedded in the structure of power.⁶² The threat is that the applicant was overlooked and silenced to her peril by the institutions before she went to the police to report, after reporting to the police and interestingly after approaching the court. The key advantages of the framework are that it fits well with human rights-based approaches on social justice and lived experiences and promotes non-clinical languages for ease of references. One of the criticisms is that the framework lacks the structure of diagnostics manuals⁶³ and overly ideological.⁶⁴ Although religion and culture are as fundamental to women as they are to men and are shaped by both women and men, the current legal protection afforded to patriarchal aspects of religion and culture perpetuates patriarchy's hegemony and seriously undermines women ability to achieve equality.⁶⁵ The analysis of women's rights, mutual tolerance, and religious liberty must foreground power relations and crystallize both dominant and minority interests, since ignoring these dynamics risks reinforcing patriarchal hierarchies and undermining the substantive protection of vulnerable groups.

7. Impact of Lovina's Decision on Women's Rights to Property and Religion

This case challenges the culture of impunity that often surrounds such complaints in Nigeria, where victims particularly women and religious minorities are frequently denied justice due to systemic bias, inaction, or selective enforcement. The case of *Mary Sunday v The Federal Republic of Nigeria*⁶⁶ filed on 24 August 2015 by the Women Advocates Research and Documentation Centre (WARDC) and the Institute for Human Rights and Development in Africa (IHRDA) on behalf of Ms. Mary Sunday against the Federal Republic of Nigeria. Corporal Gbanwuan action cannot lead to a direct responsibility of Nigeria as discriminating against women although it gives rise to an indirect responsibility for the failure of Nigeria to provide an effective remedy for Mary Sunday. The court was of the view that taking into consideration the discrepancies surrounding the incident, the police should not have hastily concluded its investigations so as to dismiss the matter, but rather should have deferred to a national court of competent jurisdiction to resolve the matter in accordance with the law. The court found Nigeria to have been in violation of Mary Sunday's right to access justice. Although, Nigeria did not directly incur liability for the violence perpetrated against Mary Sunday, it indirectly incurred responsibility for its failure to provide her with the appropriate legal remedy by conducting serious investigations.⁶⁷

Also, in *Opuz v. Turkey*,⁶⁸ the European Court of Human Rights, Nahide Opuz and her mother were repeatedly assaulted and threatened by Opuz's husband. Despite numerous complaints to the authorities, the state failed to adequately investigate or intervene. Opuz's mother was eventually killed. The European Court found that Turkey had an obligation to investigate and prevent gender-based violence and ensure adequate legal remedies for victims. Similarly, in *González et al. ('Cotton Field') v. Mexico*⁶⁹, three women bodies were found dead in a cotton field in Ciudad Juárez, Mexico. The victims' families alleged that the Mexican authorities failed to investigate the disappearances and deaths adequately, which was part of a broader pattern of gendered based religious violence and systemic failure to protect women from violence in the region. The Inter-American Court of Human Rights ruled that Mexico had violated the women's right to life, right to personal integrity, and right to personal liberty, among others. The court emphasized that states have a duty to conduct thorough and effective investigations into gender-based violence and ensure that perpetrators are brought to justice. The state was ordered to compensate the families and take measures to prevent further violence against women. These cases established the principle that states cannot escape liability where failures to investigate or prosecute effectively deny victims meaningful remedies. In *Lovina*, however, the Court adopted a terse ratio and rushed judgment, leaving critical issues underexplored. This omission signals more than a technical oversight, it reflects an abdication of the Court's fundamental responsibility to protect religious freedom and gender equality where state inaction amounts to complicity. Ultimately, the case is less about Ms. Lovina as an individual and more about the systemic failure to address gendered religious discrimination in Nigeria, a failure now compounded by the regional Court's unwillingness to confront it.

The right to freedom of religion includes freedom either individually or in community with others and in public or private to manifest her religion or belief in worship, observance, practice and teaching. This freedom may be subject only to prescription by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedom of others.⁷⁰ The concept of worship extends to ritual and ceremonial acts giving direct expression, beliefs as well as various practices integral to such acts including the building of places of worship, the use of ritual formulae and objects and the display of symbols. The observance and practice of religion or belief extend far beyond ceremonial worship; they encompass everyday acts such as dietary practices, distinctive clothing, head coverings, ritual participation, and the use of

⁶²Crenshaw, K (1991). Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color, *Stanford Law Review*, 43(6), 1241-1299

⁶³ Timimi, S. (2014) *No More Psychiatric Labels: Why Formal Psychiatric Diagnostic Systems Should Be Abolished*. *International Journal of Clinical and Health Psychology*, 14(3), 208–215. Please read (Heaton, 2024).

⁶⁴ Craddock, N., & Mynors-Wallis, L. (2014). Psychiatric diagnosis: impersonal, imperfect and important. *The British Journal of Psychiatry*, 204(2), 93–95.

⁶⁵ Stopler, G (supra) 365-39]7

⁶⁶ ECW/CJ/APP/26/15

⁶⁷Addadzi-Koom, M.E. (2019) 'He beat me, and the state did nothing about it': AN African perspective on the due diligence standard and state responsibility for domestic violence in international law' 19 *African Human Rights Law Journal* 624-652 @ 631. See <http://dx.doi.org/10.17159/1996-2096/2019/v19n2a4>

⁶⁸ Application No. 33401/02

⁶⁹ Inter-American Court of Human Rights Series C No 205 (16 November 2009).

⁷⁰ Article 18 (1) and (3) of the International Covenant on Civil and Political Rights (ICCPR) of 1966.

culturally specific languages.⁷¹ These expressions of belief are not peripheral but integral to identity and dignity, particularly for women whose religious practices are often policed or devalued within patriarchal structures. At the intersection of civil rights and fundamental rights lies the responsibility of the state to guarantee protection for such expressions. When states neglect this duty—whether through indifference, ineffective investigations, or selective enforcement, they not only breach the standard of due diligence under international human rights law but also entrench gendered hierarchies of power. This failure transforms what should be protected as inviolable rights into precarious privileges, exposing women to systemic discrimination and reinforcing their marginalization in both legal and cultural sphere

With the judgment in *Lovina's* case, the applicant is left with no choice but to leave the Weppa Community permanently and to live with the reality of her destroyed property without any prospect of reparation. Beyond its personal toll, the case underscores a deeper institutional failure: it tests the extent to which the ECOWAS Court of Justice is willing to deploy existing legal frameworks to hold Nigerian authorities accountable for neglecting their duty to prosecute once a citizen has lodged a complaint. By refraining from thoroughly adjudicating on the state's obligation to protect individuals from violations perpetrated by private entities, particularly in matters implicating freedom of religion and belief, the Court missed a pivotal opportunity to affirm the positive duties incumbent upon member states to prevent, investigate, and redress such infringements. This judicial omission not only weakens the normative framework for the protection of religious liberty but also risks entrenching impunity, especially where vulnerable groups—such as religious minorities or female spiritual leaders—are systematically subjected to discrimination, violence, or exclusion. Its broader significance lies in exposing how questions of gender and religion continue to shape access to justice in West Africa, and in revealing the Court's reluctance to address these systemic vulnerabilities through a robust application of its human rights mandate.

8. Conclusion

A critical concern emerging from this case is the pervasive institutional bias against women, which underscores the broader systemic protection gaps that persist in adjudicating the rights of female religious leaders. From the police officers who first received the complaint to the senior management team that oversaw the file, and ultimately to the three-member all-male panel of justices, every stage of the investigative and prosecutorial process was dominated by men. This homogeneity raises serious questions about whether patriarchal structures, both conscious and unconscious, shaped the Court's unwillingness to engage empathetically or adopt a gender-sensitive approach. The *Lovina* decision thus reflects more than a narrow doctrinal debate on state responsibility; it reveals how entrenched gender hierarchies within legal institutions can distort justice and perpetuate the marginalization of women in the exercise of their religious and cultural rights. This gendered based religious discrimination not only diminishes the confidence of female victims in the justice system but also risks distorting the course of justice itself. To remedy this, it is imperative to incorporate comprehensive gender studies into the curriculum of police academy and to foster an adoption of gender policy for justice stakeholders so as to enhance deeper understanding of gender dynamics. This would empower them to recognize and confront gender-based prejudice, and ultimately enhance institutional capacity to adjudicate gender-sensitive cases with fairness, cultural competence, and respect for human dignity.

Again, the Court's reluctance to assert jurisdiction over this dimension of the case signals a troubling retreat from its mandate as a guardian of human rights and a beacon of justice for those marginalized by both state and societal structures. This narrow approach has significant implications for the protection of women's rights in West Africa. By treating the stalled investigation as sufficient compliance with due process, the Court ignored the structural barriers that already prevent women, especially religious minorities, from accessing justice. The applicant's denial of ever withdrawing the case file was brushed aside, illustrating how institutional biases can reinforce patriarchal power even within international courts. A more robust application of the due diligence principle would have required the Court to interrogate the state's narrative, assess the credibility of the alleged case-file transfer, and hold the state accountable for its failure to prosecute. Instead, the Court's deference to the state's account not only weakened its jurisprudence but also signaled a retreat from its role as a regional guarantor of justice for marginalized groups.

⁷¹ General Comment No. 22 on the Right to Freedom of Thought, Conscience and Religion (Art. 18), Human Rights Committee, 30 July 1993