

A WOMAN'S WORTH: ACCOUNTING FOR WOMEN IN THE GLOBAL MARKET

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*The manipulation of women's issues as an ideological and political resource in the Third World nationalist history commonly develops . . . into the manipulation of women themselves as a socio-economic resource in Third World nation states.*²

I. INTRODUCTION

Globalization is increasingly shaping the goals and methods of international actors in all realms of interaction: social, cultural, political, economic, etc.³ The term "globalization" has many definitions, but perhaps the most succinct is that globalization is "the growing integration of economies and societies around the world."⁴ As economies and societies become more interdependent, the problems of developing countries become more intertwined with the conduct of developed countries and, therefore, require mutual effort to minimize. Minimizing the problems of developing nations requires creating and implementing programs and policies that promote sustainable development.⁵

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2. Ann Stewart, *Juridifying Gender Justice: From Global Rights to Local Justice*, in LAW AND DEVELOPMENT: FACING COMPLEXITY IN THE 21ST CENTURY 36, 46 (John Hatchard & Amanda Perry-Kessaris eds., 2003), quoting Geraldine Heng, "A great way to fly": nationalism, the state and the varieties of third-world feminism, in FEMINIST GENEALOGIES, COLONIAL LEGACIES, AND DEMOCRATIC FUTURES 31-32 (M. Jacqui Alexander & Chandra Talpade Mohanty eds., 1997).

3. E.g., JOSEPH E. STIGLITZ, MAKING GLOBALIZATION WORK 4 (W.W. Norton & Company, Inc. 2006).

4. The World Bank Group, Globalization, <http://www1.worldbank.org/economicpolicy/globalization> (last visited Feb. 18, 2009). For a more critical definition, see Nsongurua J. Udombana, *How Should We Then Live? Globalization and the New Partnership for Africa's Development*, 20 B.U. INT'L L.J. 293, 306 (2002) ("the growth of international capitalism – driven by market forces – and capitalism is the ideology of the strong, based on selfishness and exploitation of resources, perpetuating forced servitude across the world.").

5. Sustainable development is most often defined as development that meets "the needs of the present without compromising the ability of future generations to meet their own needs." Report of the

It is widely acknowledged that sustainable development cannot be achieved without investing in women and reducing the inequalities faced by women in both developed and developing nations.⁶ The United Nations Conference on Trade and Development (UNCTAD) has observed that trade, being the most important form of globalization, can have significant implications for gender equality.⁷ Additionally, globalization tends to be more harmful to women than men because women are more likely to be targets of illegal labor practices such as low wages, sexual harassment, and resistance to unionization.⁸

This paper will focus primarily on the harmful effects economic globalization⁹ has had on women in Africa as a result of various international and regional trade agreements and economic unions.¹⁰ While there has been positive progress in recognizing the important role women play in the global economy and in economic development, there is a persistent gap between policy and practice. Without the ability to rely on the rights they have been promised, women will not be able to reach their full potential as individuals or help their countries to reach their full potential as nations. Investing in women and accounting for them and the work they do may improve the current generation's lives only marginally, but it will provide the catalyst for improving the lives of this generation's daughters and granddaughters and great-granddaughters, thereby enhancing those women's contributions to their countries' economic progress and sustainable development.

Section one provides a brief history of women's status in Africa as a basis for analyzing how this status has changed from the pre-colonial period, through colonization and into today's post-colonial societies. Section two will then present an overview of the empirical data available on the reality African women face as a result of economic globalization. The third section of this discussion analyzes a number of human rights agreements, international and regional institutions and agreements, and the role of governments in promoting and

World Commission on Environment & Development, G.A. RES 42/187, Preamble, U.N. DOC. A/RES/42/187 (Dec. 11, 1987).

6. See discussion *infra* section III.

7. United Nations Conference on Trade & Development (UNCTAD), Sao Paulo, Brazil, June 13-18, 2004, *Report of the United Nations Conference on Trade and Development on its Eleventh Session*, ¶ 73, U.N. Doc. TD/412 (Aug. 20, 2004), available at http://www.unctad.org/en/docs/td412_en.pdf (last visited Feb. 18, 2009) [hereinafter UNCTAD].

8. E.g., Liane M. Jarvis, Note, *Women's Rights and the Public Morals Exception of GATT Article 20*, 22 MICH. J. INT'L L. 219, 220 (2000). The author of this paper understands "resistance to unionization" to mean women's inability to form unions because of such factors as lack of education, lack of knowledge about unions, intimidation through physical or sexual coercion, and the high turnover rate of female employees. See, e.g., Gurushri Swamy, *The impact of international trade on gender equality*, 86 PREM NOTES (May 2004), available at <http://www1.worldbank.org/prem/PREMNotes/premnote86.pdf>.

9. Jarvis, *supra* note 8, at 220 (defining economic globalization as "the closer economic integration of [countries] through the increased capital flow of goods and services, capital, and even labor.").

10. The author recognizes that African women's experiences differ from country to country and region to region; therefore, much of this paper will necessarily be written in broad terms. Where more detailed data for a particular country is available, it will be used as much as possible to provide more specific examples in support of or contradiction to the argument.

protecting women's rights. The final section discusses the steps that have been taken, are being taken, and still need to be taken to improve women's capacity to participate in the global economy and contribute to sustainable development.

II. A BRIEF HISTORY OF AFRICAN WOMEN

Because women's status and duties varied from region to region in pre-colonial African societies, it is inaccurate to say that all African women shared the same experience. For example, in some societies, like the Tswana and Shona, women were essentially legal minors; while in other societies, like the Mende and Serbro, women could become chiefs.¹¹ Regardless of their pre-colonial status, it is generally accepted that the process of colonization resulted in women losing rights they previously held.¹² Colonialism produced a detrimental intersection of African patriarchy and Western ideology regarding the subservient role of women.¹³

For example, pre-colonial Igbo women and men were by no means equals, but there was a level of respect inherent in the recognition of their separate spheres of rights and duties.¹⁴ Women's status was independent of their husbands' status. In this pre-colonial society, as was common in many pre-colonial African societies, women's concerns and grievances were given voice through strong female institutions and marketing networks. These parallel authority structures enabled women to defend their rights and retain a level of autonomy in their societies.¹⁵

The European colonists failed to appreciate, or chose to ignore, the delicate balance of these parallel structures. Instead they viewed African society through a European lens and proceeded to impose gendered roles on men and women.¹⁶ These imposed roles were not always accepted and, by and large, served to dissolve the traditional social fabric of the Africans' lives.¹⁷ For example, in

11. *E.g.*, APRIL A. GORDON, *Women and Development*, in UNDERSTANDING CONTEMPORARY AFRICA 293, 295 (April A. Gordon & Donald L. Gordon eds., 2007).

12. Stewart, *supra* note 2, at 48; *see also* Susie Jacobs, *Land Reform: Still a Goal Worth Pursuing for Rural Women?*, 14 J. INT'L DEV. 887, 888-91 (2002).

13. FREDERICK COOPER, *AFRICA SINCE 1940: THE PAST OF THE PRESENT, NEW APPROACHES TO AFRICAN HISTORY* 125 (Cambridge Univ. Press 2002).

14. *See* Uché U. Ewelukwa, *Centuries of Globalization; Centuries of Exclusion: African Women, Human Rights, & the "New" International Trade Regime*, 20 BERKELEY J. GENDER L. & JUST. 75, 92-3 (2005).

15. *Id.* at 93-4; Gordon, *supra* note 11, at 295.

16. Heads of State and Government Implementation Committee (HSGIC), *The New Partnership for Africa's Development (NEPAD) Framework*, Abuja, Nigeria, October 2001, ¶ 21 [hereinafter NEPAD] ("Colonialism subverted hitherto traditional structures, institutions and values or made them subservient to the economic and political needs of the imperial powers."), available at http://www.europarl.europa.eu/intcoop/acp/60_04/pdf/atelier_educ_en.pdf (last visited Feb. 19, 2009); *see also* Gordon, *supra* note 11, at 297.

17. One example of this dissolution of the social fabric, which is beyond the scope of this paper, relates to the effect codification of customary law and the imposition of Western values had on traditional marriage arrangements, i.e. multiple wives. For an interesting discussion on how formal legislation recognizing only one wife per man has further harmed some African women and their property rights *see, e.g.*, Laurel L. Rose, *Women's Land Access in Post-Conflict Rwanda: Bridging the Gap Between Customary Land Law & Pending Land Legislation*, 13 TEX. J. WOMEN & L. 197, 208-11 (2004).

Nigeria men were selected and trained to work in wage-earning positions with the railroads while women were taught modern methods of homemaking and childrearing.¹⁸ Despite this, women often continued to engage in the more traditional Yoruba practice of trading in order to continue to contribute to their families' well-being.¹⁹ Conversely, colonialism in Kenya forced Kikuyu and Kamba women to engage in trading and marketing practices as early as the mid-nineteenth century, which was a relatively unusual practice for this traditionally patrilineal and patrilocal society.²⁰ Although such shifts in social patterns evidence the impact of colonialism, the brunt of colonialism's imposed prejudicial system is most evident in two ways: provision of access to resources and the codification of traditional, or customary, law.

In an attempt to integrate African societies into the global capitalist economy, agriculture was commercialized. This commercialization had a tendency to disadvantage women, the primary food producers, more than men.²¹ First, agricultural commercialization meant the introduction of cash crops and new methods of farming, which were taught almost exclusively to men while women continued to produce subsistence crops. Second, educational opportunities were primarily available to men, meaning women were not provided with access to the same skills and resources as men and were consequently barred from jobs in the colonial administration.²² Finally, men were forced into the wage economy through work on plantations, in the mines, or in towns while women remained in the rural areas.²³

The codification of customary law served to promote and institutionalize these inequalities. Customary law is by nature an oral form of law, passed on by word of mouth in communities; therefore, any attempt to codify or record it will be limited by the static nature of this process. The customary practices were based on ensuring order and norms in the best interest of the entire community. As such, customary practices were not strict, unchangeable rules but rather a set of malleable guidelines inclusive of tradition but also reflective of the changing values and beliefs of the community at that time.²⁴ In today's society there are at least two forms of customary law: official and living.²⁵ The living law consists of those nebulous, flexible, changing practices actually observed by African

18. COOPER, *supra* note 13, at 124.

19. *See id.*

20. Claire Robertson, *Trade, Gender, and Poverty in the Nairobi Area: Women's Strategies for Survival and Independence in the 1980s*, ENGENDERING WEALTH & WELL-BEING 65, 66 (Rae Lesser Blumberg et al. eds., 1995) ("Trade in Nairobi...became a survival strategy for women seeking independence from men.").

21. Gordon, *supra* note 11, at 297.

22. *E.g., id.*; Ewelukwa, *supra* note 14, at 89-90.

23. Ewelukwa, *supra* note 14, at 89-90.

24. Megan Berry, *Gasa v. Road Accident Fund*, No. 579/2006, Amicus Curiae Brief, Annexure A (Supreme Court of Appeal of South Africa, *hearing date* Nov. 19, 2007) (unpublished brief) (on file with author).

25. SOUTH AFRICAN LAW REFORM COMMISSION (SALRC), REPORT ON CUSTOMARY MARRIAGES: THE HARMONIZATION OF THE COMMON LAW AND THE INDIGENOUS LAW (Project 90) 18 (August 1998) [hereinafter SALRC].

communities. The official law is the attempted codification of these practices relied on by courts and other state organs.²⁶ Because the official law is written down and recorded, it is less susceptible to change and less reflective of the true customary practices of a given community.²⁷ The official version of customary law has also been criticized as having been “invented”; that is, it describes less the practices people were actually observing at the time of codification and more what the colonial government thought they should be doing.²⁸

This tendency to impose Western or Northern values on African societies through law continues today. Despite the good intentions supporting many international treaties and agreements, modern attempts to introduce laws based on international norms largely ignore cultural practices, thereby continuing a pattern of neglect toward domestic values in post-colonial societies.²⁹ In many countries, independence did not always bring the expected positive revolution of economic and political structures. In fact, despite African women's integral contributions to many of the independence struggles,³⁰ many newly independent African nations retained the same colonial structures and institutions that created and contributed to women's subordination.³¹

III. OVERVIEW OF AVAILABLE DATA ON GENDER AND TRADE

*Women do two-thirds of the world's work, receive 10% of the world's income and own 1% of the means of production.*³²

26. *Id.*

27. See Kim L. Robinson, *The Minority and Subordinate Status of African Women under Customary Law*, 11 S. AFR. J. HUM. RTS. 457, 460 (1995) (“If the purpose of indigenous law is to reflect the living cultures of African peoples, by definition, codified customary law cannot fulfill this objective because it ‘freezes’ African life... When laws that allegedly reflect traditions cease to be appropriate to people's lives they are obsolete and should be rejected.”).

28. SALRC, *supra* note 25, at 19-20 (“[I]n principle, only the rules grounded on contemporary social practice should be deemed valid.”); see also Alice Armstrong et al., *Uncovering Reality: Excavating Women's Rights in African Family Law*, 7 INT'L J.L. & FAM 314, 324-26 (1993) (describing the terminology used in the codified version of customary law to support the argument that it was invented. Colonialists termed levirate marriage “widow inheritance,” transforming the view of the institution from women being owed a duty of support to women as property).

29. Stewart, *supra* note 2, at 48.

30. See, e.g., Ewelukwa, *supra* note 14, at 78, 92-108 (discussing the causes and results of the Aba Women's War of 1929 of the Igbo women in Nigeria); see also COOPER, *supra* note 13, at 125-26. See generally, SEMBENE OUSMANE, *GOD'S BITS OF WOOD* 186-204 (Francis Price trans., Heinemann 1995) (1960).

31. See, e.g., JEFFREY HERBST, *STATES AND POWER IN AFRICA: COMPARATIVE LESSONS IN AUTHORITY AND CONTROL* 98-103 (Princeton Univ. Press 2000); Gordon, *supra* note 11, at 299.

32. United Nations Development Fund for Women (UNIFEM), *WORLD POVERTY DAY 2007: INVESTING IN WOMEN – SOLVING THE POVERTY PUZZLE, FACTS & FIGURES*, available at www.womenfightpoverty.org/docs/WorldPovertyDay2007_FactsAndFigures.pdf [hereinafter UNIFEM] (referencing the informal slogan of the Decade of Women).

Women comprise roughly 70% of the world's poor.³³ In 2002, women constituted 40% of the world's total economically-active population and carried out about 70% of the informal work in developing countries.³⁴ Unfortunately, women's actual and potential economic capacity generally goes under- or unaccounted for in policy decisions.³⁵ In this manner, women are considered as a means to an end in products of trade, rather than as ends in and of themselves.³⁶

Global trade and investment tend to favor large companies rather than small and micro entrepreneurs, such as women working in the informal sector of the economy.³⁷ While trade tends to increase the availability of wage jobs for women, numerous other factors counteract that increased availability, which results in women remaining unable to benefit from the trade expansion.³⁸ UNCTAD notes that social norms linked to the traditional functions of men and women, both within the home and in the workplace, are the root causes of gender inequality.³⁹ These social norms directly and significantly impact women's ability to access the necessary resources – i.e. capital financing, education, and land – to be competitive in the economic market.⁴⁰

A. Invisible Work

In the developing world, much of the work in which women are engaged is in care services. Care services are those activities necessary for social reproduction,

33. Doris Mpoumou, *The Proof is in the Numbers, The Power is in the Women*, NEWS & VIEWS 15 (Women's Environment & Development Organization), March 1, 2002; Eugenia McGill, *Poverty and Social Analysis of Trade Agreements: A More Coherent Approach?*, 27 B.C. INT'L & COMP. L. REV. 371, 414-15 (2004).

34. UNCTAD, *supra* note 7, ¶ 5; African Caribbean Pacific – European Union (ACP-EU) Joint Parliamentary Assembly, Resolution on gender issues, ¶ C., ACP-EU/3392/02/fin (March 21, 2002) [hereinafter Cape Town Declaration].

35. See, e.g., Barbara Evers, *Gender, International Trade and the Trade Policy Review Mechanism: Conceptual Reference Points for UNCTAD 5-6*, GLOBALIZATION AND POVERTY (2002), <http://www.gapresearch.org/governance/BE%20evers%20unctad%20paper1.pdf>; COOPER, *supra* note 13, at 104 (“Unofficial cross-border trading networks...may well be doing more to create regional trading relations than official efforts...”).

36. Jarvis, *supra* note 8, at 224.

37. MARILYN CARR & MARTHA ALTER CHEN, WOMEN IN INFORMAL EMPLOYMENT GLOBALIZING & ORGANIZING, GLOBALIZATION AND THE INFORMAL ECONOMY: HOW GLOBAL TRADE AND INVESTMENT IMPACT ON THE WORKING POOR 2 (2001), available at <http://www.wiego.org/papers/carrchenglobalization.pdf>; McGill, *supra* note 33, at 422.

38. Swamy, *supra* note 8, at 1 (explaining that the factors that may impede women's ability to benefit from trade expansion include discrimination, lower skills, and gender inequalities in access to resources); cf. Elizabeth Gwaunza, Tsitsi Nzira & Virginia Chitanda, *The Socio-economic and Legal Implications of EPZs in Zimbabwe: Some Emerging Gender Concerns*, in DEMANDING DIGNITY: WOMEN CONFRONTING ECONOMIC REFORMS IN AFRICA 145, 159 (Dzodzi Tsikata et al. eds., 2000) [hereinafter DEMANDING DIGNITY] (noting that the jobs generated for women by trade tend to reflect a judgment on women's capabilities to perform certain tasks; hence, women are typically employed as support staff in administrative offices or as packers and quality inspectors in textile and agricultural factories, positions that pay less than the positions for which men were employed).

39. UNCTAD, *supra* note 7, ¶ 5.

40. E.g., *id.*; see also Swamy, *supra* note 8, at 3 (“An important institutional determinant of women's gains from trade, particularly in agriculture, is the extent of their control over land, labor, and the additional income generated by a switch to export crops.”).

or the “care and development of people and their capacity to work.”⁴¹ This sector of the economy involves activities like subsistence farming, providing food, healthcare, and education for the family, as well as cleaning and laundry. Barbara Evers describes this “uncounted, unrecognized and undervalued” work as an “invisible policy variable” because it is:

- (i) An obligation which has costs in terms of time and energy (“work”).
- (ii) Not remunerated by a wage (“unpaid”).
- (iii) Indispensable for the continuation of the entire society (“social reproduction”).
- (iv) An opportunity and a constraint for the achievement of food security, improved agricultural productivity and output.⁴²

The expectation that women, rather than men, will perform these jobs is promulgated by cultural, religious, and family norms in many societies.⁴³ For example, girls generally have to drop out of school at an earlier age than boys because they are expected to help out at home or because they need to take care of their own children.⁴⁴ Lack of education is one of the most crucial factors when evaluating gender inequalities, for it ties together women’s inability to access resources in other sectors of society, such as training for skilled labor, and inclusion in policy-making discussions.⁴⁵

Engaging in care services requires a substantial amount of a woman’s time; thus reducing the amount of time she has available to participate in more formally recognized economically-productive activities.⁴⁶ This contributes to women’s inability to compete for higher paying jobs and thereby take advantage of international trade schemes. A study in Tanzania reveals that reducing women’s time burdens results in a 10% increase in household cash incomes, a 15% increase in labor productivity, and a 44% increase in capital productivity.⁴⁷

41. U.N. Econ. & Soc. Comm’n For Asia and the Pacific [UNESCAP], Emerging Soc. Issues Div., Gender and Dev. Discussion Paper Series, *Discussion Paper: Women in International Trade and Migration: Examining the Globalized Provision of Care Services 2*, (February 2005) (drafted by Marina Fe B. Durano), available at <http://www.unescap.org/esid/GAD/Publication/DiscussionPapers/16/Discussion%20Paper%2016.pdf>.

42. Evers, *supra* note 35, at 6.

43. UNCTAD, *supra* note 7, ¶ 4.

44. See Robertson, *supra* note 20, at 67-68 (reporting that in Kenya the average number of years of education among traders was 5.1 for women and 7.9 men, and stating that “Women lack education as a result of a number of discriminatory factors, such as fewer and poorer schools, pregnancy terminating school attendance, parental reluctance to allow schooling because of the labor value of girls, and the poverty that forces that parental choice.”).

45. See UNCTAD, *supra* note 7, ¶ 4 (“In many societies, cultural, religious or family norms continue to confine women to certain roles and are barriers to their participation in economic life on an equal basis with men . . . the prevailing gender order gives more authority to men in society . . . men tend to exclude women from their decision-making networks.”).

46. Evers, *supra* note 35, at 5 (reporting that women’s work burden averages 20% more than men, and even more in rural areas).

47. *Id.* at 405 (citing A. Tibaijuka, *The Cost of Differential Gender Roles in African Agriculture: A Case Study of Smallholder Banana-Coffee Farms in the Kagera Region, Tanzania*, 45 J. AGRIC. ECON. 69 (1994)).

There is a substantial amount of evidence supporting the fact that when given access to resources, such as financial income, women invest more of those resources into their families to meet basic needs and cannot, therefore, invest in external resources as a means of production.⁴⁸ This keeps women tied to subsistence so that even when they are able to access the labor market they end up poorer than similarly-situated men.⁴⁹ For example, a study conducted among traders in Nairobi reveals that the majority of female traders relied solely on their own labor for their income and were not provided with supplemental income from their spouses, whereas most of the male traders were able to supplement their income with cash crops sold by their wives.⁵⁰ This knowledge should lead to the conclusion that because women engage in such socially-responsible investment practices, they should receive increased investment and that doing so is likely to benefit national growth and development more than a comparable investment in men.⁵¹

B. The Informal Sector

The expectation that women will provide for the family, regardless of the level of support received from a husband, propels many women into wage labor.⁵² Due to social norms and the gender-segregated nature of most developing countries' labor market, women's engagement in the market is generally through informal means such as market trading; therefore, the effects of trade liberalization, which often result in an increase in export-oriented industry, predominately affect women.⁵³

The effect trade liberalization has on women often results in negative economic consequences for the country in which those women live. An example of how this process occurs can be witnessed by analyzing Zimbabwean cross-border traders. These traders, who are predominantly women, cross the borders into South Africa or Botswana on a weekly or monthly basis using a visitor's visa.⁵⁴ They buy goods in the receiving country, which they then bring back into Zimbabwe to sell on the informal market. This hurts Zimbabwe's economy because these traders spend the majority of their profits in the formal sector of the receiving country, not in Zimbabwe.⁵⁵ These traders are also able to sell their foreign-bought goods more cheaply through Zimbabwe's informal market than

48. *E.g.*, Helene Lambatim & Aichta Sy, *Chad: Gender-Specific Impacts of Economic Reforms*, in DEMANDING DIGNITY, *supra* note 38, at 237, 244-45.

49. *See* Robertson, *supra* note 20, at 69-70.

50. *Id.*

51. *See* Rae Lesser Blumberg, *Introduction: EnGENDERing Wealth and Well-Being in an Era of Economic Transformation*, in ENGENDERING WEALTH & WELL-BEING, *supra* note 20, at 1, 10.

52. *See* McGill, *supra* note 33, at 414-15.

53. *See id.* at 414-16, 421-24; *see also* Robertson, *supra* note 20, at 81 (“[W]omen undertook trade in order to meet family needs . . . not because they viewed trade as a career they might enjoy.”).

54. SALLY PEBERDY & JONATHAN CRUSH, SOUTHERN AFRICAN MIGRATION PROJECT, MIGRATION POLICY SER. NO. 6, TRADING PLACES: CROSS-BORDER TRADERS AND THE SOUTH AFRICAN INFORMAL SECTOR 26-27 (1998), available at <http://www.queensu.ca/samp/sampresources/samppublications/policyseries/Acrobat6.pdf>.

55. *Id.* at 2.

people would be able to buy them in the formal markets in Zimbabwe; thereby, depriving the state of much-needed revenue.

Another reason export-oriented industries predominately affect women is because women tend to have fewer rights to land, which means their land can be taken from them by a large corporation for agricultural purposes or as development space for factories. Women need their land not only for subsistence farming for their families, but as a means for producing crops that can be sold on the informal market. Because women also tend to receive less education and job-specific training than men, they generally have fewer skills that are "marketable" in the industrial sector. The informal agricultural market, therefore, is often their only wage-earning option.⁵⁶

C. Property Rights & Agricultural Liberalization

Generally speaking, the inequality in ownership and control of land is due to a reliance on traditional norms regarding the appropriate roles of the sexes.⁵⁷ Most traditional systems throughout Africa are patrilineal, meaning that land and property inheritance favors male heirs. This pattern of male preference is realized through marriage laws, inheritance laws, land reforms, inequalities in the markets, and the concept of the male as being "head of the household."⁵⁸ Many of these traditional practices are embodied in customary law, which, while not necessarily promoting the status of women, was also not necessarily historically harmful to them. In Kenya, for example, land was traditionally held communally and women were able to bargain for access to land based on the notion of mutual obligations and responsibilities.⁵⁹ Because land in many African communities was viewed as being held in trust for future generations, many families were reluctant to alienate their land.⁶⁰ Therefore, although women may not have owned their own land, they were ensured access to and cultivation of it.

These traditional norms, and women's relative status, all changed with the imposition of Western views of property law brought by colonization. European colonizers emphasized private ownership of land.⁶¹ There was a focus on registration of ownership, typically only in the name of the head of the household, i.e. men.⁶² This focus on privatization, or individualization of property ownership increased as African communities adopted the more Westernized market. Individuals were more likely and willing to alienate land, thereby undermining the

56. See generally, e.g., McGill, *supra* note 33, at 414-24; UNCTAD, *supra* note 7; Swamy, *supra* note 8.

57. Karen O. Mason & Helene M. Carlsson, *The Development Impact of Gender Equality in Land Rights*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 114, 120 (Philip Alston & Mary Robinson eds., 2005).

58. See *id.*

59. Renee Giovarelli, *Customary Law, Household Distribution of Wealth, and Women's Rights to Land and Property*, 4 SEATTLE J. SOC. JUST. 801, 802 (2006).

60. L. Amede Obiora, *Remapping the Domain of Property in Africa*, 12 U. FLA. J.L. & PUB. POL'Y 57, 64 (2000).

61. See Giovarelli, *supra* note 59, at 802.

62. See T.W. BENNETT, HUMAN RIGHTS AND AFRICAN CUSTOMARY LAW 123 (1995).

traditional protections women had in terms of usufruct and collective accountability.⁶³ Along with the loss of communal ownership was women's loss of bargaining ability and socio-economic security. Because land and livestock from the point of colonization onward were generally held in a man's name and because land and livestock were the focus of the Westernized market for property, women's contributions to the household property were typically disregarded.⁶⁴ Recent studies reveal that women head about one out of three households in Zimbabwe, but tend to have smaller farm sizes than their male counterparts.⁶⁵ While there are legal documents on the records granting equal land rights to women, these rights are unenforceable due to the constitutional provision that makes customary law superior to civil law in cases of conflict. Because customary Zimbabwean law is patriarchal, women can never truly be secure in their land holdings.⁶⁶

Agricultural trade liberalization is perhaps the area that most directly harms women.⁶⁷ The World Bank states that trade in agriculture benefits women by increasing their ability to exercise control over land, labor, and the "additional income generated by a switch to export crops."⁶⁸ This statement ignores the reality that women in developing countries often lack access to the resources necessary to make that switch, i.e. credit, education, and enforceable property rights. Furthermore, public farm aid programs are typically not adapted to small-scale production, such as the farming in which most women are engaged; hence, trade liberalization of agricultural markets has historically benefited medium- and large-scale farms, bypassing women.⁶⁹ The World Bank also ignores the reality that even if women could gain access to the necessary resources, they would still likely need to engage in subsistence farming to support themselves and their families and would be unable to make a complete switch to cash crops.⁷⁰

It is this historical base and continued practice of discrimination against women that the international community now seeks to improve. The next section of this paper will discuss the efforts made by the global international community as

63. See Obiora, *supra* note 60, at 67-68; see also FAREDA BANDA, WOMEN, LAW AND HUMAN RIGHTS: AN AFRICAN PERSPECTIVE 149 (2005).

64. See BANDA, *supra* note 63, at 132-33 (explaining that women's contributions to the household property are generally consumable so she has nothing to show for her efforts. Also, domestic contributions are not seen as being on par with financial contributions).

65. See INST. OF ENVTL. STUDIES (Zimbabwe), EVALUATING THE IMPACT OF FARMER PARTICIPATORY RESEARCH AND EXTENSION IN NATURAL RESOURCE MANAGEMENT IN ZIMBABWE 2 (2001), available at http://www.prgaprogram.org/modules/DownloadsPlus/uploads/PRGA_Publications/Natural_Resource_Mgmt/Reports/ies_small_grant.pdf; LLOYD M. SACHIKONYE, LAND REFORM FOR POVERTY REDUCTION? SOCIAL EXCLUSION AND FARM WORKERS IN ZIMBABWE 12 (2003), available at <http://www.chronicpoverty.org/pdfs/Sachikonye.pdf>.

66. See generally *Magaya v. Magaya* [1999] 3 L.R.C. 35 (Zimb. Sup. Ct.).

67. See UNCTAD, *supra* note 7, ¶¶ 18-19, 25.

68. See Swamy, *supra* note 8, at 3.

69. McGill, *supra* note 33, at 422; Lambatim & Sy, *supra* note 48, at 244.

70. Robertson, *supra* note 20, at 69-70.

well as the continental international community of Africa to ensure women's status is equal to that of men.

IV. INTERNATIONAL INFLUENCE

*Long-term domination of all bodies wielding political power nationally and internationally means that issues traditionally of concern to men become seen as general human concerns, while "women's concerns" are relegated to a special, limited category.*⁷¹

The International Monetary Fund (IMF) and the World Bank, which are heavily influenced in their economic policies by the United States' blend of neoclassical and neoliberal economic theory, have played a central role in "developing" the economies of African states.⁷² This base in economic theory means that the various institutions and instruments created to manage IMF and World Bank funds assume that states will act rationally to ensure their own best interests and that competition in the market will reward good performance and penalize poor performance; therefore, the IMF and World Bank promote deregulation, privatization, and the rule of the "free" market.⁷³ Basing policy decisions on this economic structure ignores the informal sector of the economy, which is a major component of many African nations' national economies and the dominant economic playing field for many women in these countries.⁷⁴ The following discussion of international documents provides support for the argument that by ignoring the informal sector, the international community has consistently and systematically marginalized and discriminated against women as rational actors in the economic market.

Following the end of World War II, amidst a general feeling of world unity, two major international instruments were created: The Universal Declaration of Human Rights⁷⁵ and the General Agreement on Tariffs and Trade (GATT).⁷⁶ The Universal Declaration of Human Rights has become the foundation for modern

71. Jarvis, *supra* note 8, at 222.

72. See generally Dr. Kevin Archer, Lecture for International Political Economy class at the Josef Korbel School of International Studies, University of Denver (Fall 2006); NEIL J. SMELSER & RICHARD SWEDBERG, *THE HANDBOOK OF ECONOMIC SOCIOLOGY* 4-6 (1994); ROBERT O. KEOHANE & JOSEPH S. NYE, *POWER AND INTERDEPENDENCE: WORLD POLITICS IN TRANSITION* (1977); DAVID K. LEONARD & SCOTT STRAUSS, *AFRICA'S STALLED DEVELOPMENT: INTERNATIONAL CAUSES & CURES* 26 (2003).

73. See, e.g., Archer, *supra* note 72; Emmanuel Opoku Awuku, *International Competition Law and Policy in Developing Countries*, in *LAW AND DEVELOPMENT: FACING COMPLEXITY IN THE 21ST CENTURY*, *supra* note 2, at 99, 102.

74. See, e.g., CARR & CHEN, *supra* note 37, at 1, 3; Gumisai Mutume, *How to boost trade within Africa: Lower Barriers and Diversify Production*, 16 *AFR. RECOVERY* 20, Sept. 2002, available at <http://www.un.org/ecosocdev/geninfo/afrec/vol16no2/162reg3.htm> ("For many years it has been recognized that many countries' real economies have been mostly informal and much larger, more dynamic and more regionally integrated than their official economies.") (internal quotation omitted).

75. See Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 10, 1948).

76. See General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT].

human rights, including the rights of women. In fact, it was the first formal recognition of women's equality as a fundamental human right.⁷⁷ The preamble affirms the member states' faith "in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women."

Meanwhile, GATT was intended to create a third institution, the International Trade Organization (ITO), which would operate alongside the World Bank and the International Monetary Fund to handle the trade side of international economic cooperation.⁷⁸ GATT was to achieve this through the reduction of tariff barriers, quantitative restrictions, and subsidies on trade. The concurrent creation of these two documents reflects the general focus of the international community, namely: human rights and economic issues are two separate spheres of international concern, requiring separate documents and political bodies to govern them.

A. *International Human Rights Norms*

Since the Universal Declaration on Human Rights was adopted in 1948, a number of subsequent international documents have acknowledged that women's rights are human rights and, as such, should be protected and promoted. For example, in 1979 the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁷⁹ The Convention recognizes that

discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.⁸⁰

Within two years, the Organization of African Unity adopted the African Charter on Human and Peoples' Rights (Banjul Charter).⁸¹ The Banjul Charter incorporates the traditional values of African culture into a modern conception of human rights and women's equality.⁸² In doing so, the Banjul Charter affirms

77. Universal Declaration of Human Rights, *supra* note 75, at preamble (demonstrating that the Universal Declaration of Human rights has numerous statements asserting the inherent equality of men and women).

78. Due to the impossibility of some national legislatures, namely the U.S., to ratify the ITO Charter, the institution never came into being. Thus, the GATT Agreement "became the only multilateral instrument governing international trade from 1948 until the WTO was established in 1995." World Trade Organization, Understanding the WTO: Basics, The GATT years: from Havana to Marrakesh, http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm (last visited November 15, 2008).

79. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res 34/180, U.N. Doc A/RES/34/180 (Dec. 18, 1979), *entered into force* Sept. 3, 1981 [hereinafter CEDAW].

80. *Id.* at preamble.

81. See African [Banjul] Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (June 27, 1981), 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986 [hereinafter Banjul Charter].

82. *Id.* at preamble ("Taking into consideration the virtues of their historical tradition and the

African leaders' beliefs that all people are equal before the law and that parties to the charter should make efforts to eliminate all forms of discrimination, including discrimination against women.⁸³

Continuing along these lines and building on numerous conventions and declarations signed in the interim, the international community adopted the Beijing Declaration at the Fourth World Conference on Women in 1995.⁸⁴ This declaration acknowledges that while there has been some advancement in women's rights, inequalities between men and women persist, resulting in "serious consequences for the well-being of all people."⁸⁵ This document further reiterates that women's rights are human rights and that

[e]radication of poverty based on sustained economic growth, social development, environmental protection and social justice requires the involvement of women in economic and social development, equal opportunities and the full and equal participation of women and men as agents and beneficiaries of people-cent[er]ed sustainable development.⁸⁶

African leaders recognized the validity of this statement and the reality that, despite ratification of numerous regional and international instruments, African women were continuing to be victims of discrimination and marginalized in development efforts. Therefore, the Heads of State or Government of the Southern African Development Community (SADC)⁸⁷ signed the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Protocol) in 1997.⁸⁸ While this instrument asserts many of the statements that have come to be expected in documents promoting women's rights, such as equality before the law and the right to personal integrity; it also includes provisions that recognize the specific problems faced by African women, such as unequal access to employment and education, inadequate food security, and the need to include women in the process of formulating cultural and developmental policies.⁸⁹

values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights.").

83. *Id.* at arts. 2, 3, 18.

84. Fourth World Conference on Women, Beijing, China, Sept. 15, 1995, *Final Declaration*, ¶¶ 8, 10 available at <http://www.un.org/womenwatch/daw/beijing/beijingdeclaration.html> [hereinafter Beijing Declaration].

85. *Id.* ¶ 5.

86. *Id.* ¶ 16.

87. For information regarding the formation of the SADC, see *infra* text accompanying notes 88, 89.

88. African Commission on Human and Peoples' Rights, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Sept. 13, 2000, preamble, CAB/LEG/66.6 (entered into force Nov. 25, 2005) ("Noting...women's essential role in development... Recogniz[ing] the crucial role of women in the preservation of African values based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy ...Concerned that despite...solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices...").

89. See generally *id.*

However, the fact that this Protocol took over ten years to enter into force exhibits the very lack of commitment by African leaders the Protocol sought to rectify.

The creation of the United Nations' Millennium Development Goals (MDGs) has been one of the most recent developments in international recognition of women's rights.⁹⁰ The MDGs place issues of gender equality at the center of any discussion regarding development by declaring that the MDGs cannot be realized without advancing gender equality.⁹¹ In pursuit of achieving the MDGs, the United Nations Development Programme (UNDP) has created an agenda to make gender equality a reality through gender mainstreaming and women's empowerment.⁹² Incorporating gender into the core development discussions is no longer an option; it is an important necessity. As the UNDP points out, gender discrimination is at the center of endemic poverty, low economic growth, and poor governance; therefore, "[g]ender equality is not merely a desirable by-product of human development; it is a core goal in its own right."⁹³

B. International & Regional Institutions

The wave of African states' independence occurred primarily during the 1960s. Over the course of the next two decades a number of regional and international institutions affecting both trade and gender developed. The first Pan-African multidisciplinary institution,⁹⁴ the Organization of African Unity (OAU), was established in 1963 to promote greater coordination and cooperation of African states.⁹⁵ In July 2003, the African Union (AU) replaced the OAU as the

90. See United Nations Millennium Declaration, G.A. Res. 55/2, U.N. GAOR, 55th Sess., U.N. Doc A/Res/55/2 (Sept. 18, 2000).

91. U.N. Dev. Programme (UNDP), Gender and Poverty Reduction, Key Initiatives: Women's Empowerment – access to markets, lands and assets and the assessment of inheritance, marital laws and social norms, <http://www.undp.org/poverty/genpov.htm> (last visited Nov. 10, 2007); UNITED NATIONS DEVELOPMENT FUND FOR WOMEN (UNIFEM), *Resource Guide for Gender Theme Groups*, at 3, Jan. 2005, available at http://www.unifem.org/attachments/products/ResourceGuideGenderThemeGroups_200511_eng.pdf (“Gender equality and women’s empowerment are Millennium Development Goals (MDGs) in their own right and central to all other development efforts.”).

92. U.N. Dev. Programme [UNDP], *Gender Equality Practice Note*, 4 (Nov. 2002) (prepared by Jan Vandemoortele, Aster Zaoude, Dasa Silovic, & UNDP), available at <http://www.undplao.org/whatwedo/bgresource/poverty/GenderequalityPracticeNote.pdf> [hereinafter *Gender Equality Practice Note*].

93. *Id.*

94. The Southern African Customs Union originated in 1889 and is one of the oldest formal trading blocks on the continent; however, the OAU was the first post-independence organization of African Heads of State. DANIELLE LANGTON, CRS REPORT FOR CONGRESS ON UNITED STATES-SOUTHERN AFRICAN CUSTOMS UNION (SACU) FREE TRADE AGREEMENT NEGOTIATIONS: BACKGROUND AND POTENTIAL ISSUES, Order Code RS21387, at 3 (2007), available at <http://www.nationalaglawcenter.org/assets/crs/RS21387.pdf>; see also Department of Foreign Affairs, Southern African Customs Union (SACU), History and Present Status Department of Foreign Affairs, Southern African Customs Union (SACU), History and Present Status, <http://www.dfa.gov.za/foreign/Multilateral/africa/sacu.htm> (last visited Nov. 10, 2007).

95. Organization of African Unity (OAU) Charter states that the objectives of the union are: (1) to promote the unity and solidarity of the African States; (2) to co-ordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa; (3) to defend their sovereignty, their territorial integrity and independence; (4) to eradicate all forms of colonialism from Africa; and (5) to

governing pan-African unit.⁹⁶ The founding documents of both the OAU and the AU recognize the equality and dignity of all people, including women.⁹⁷

The Southern African Development Co-ordination Conference (SADCC) was established in 1980 with four primary objectives: 1) to reduce Member States dependence, particularly, but not only, on apartheid South Africa; 2) to implement programmes and projects with national and regional impact; 3) to mobilize Member States' resources, in the quest for collective self-reliance; and 4) to secure international understanding and support.⁹⁸ In 1992 the Heads of State and Government of the SADCC signed a Declaration and Treaty creating the Southern African Development Community (SADC).⁹⁹ The SADC member states coordinate on a wide array of social and economic policies and projects to promote self-reliance and an improved quality of life for all.¹⁰⁰ The SADC was just one of the many regional African organizations formed during the 1990s to promote cooperation among member states for improved economic status. Some of the other important unions are: the Common Market for Eastern and Southern Africa (COMESA)¹⁰¹; the East African Community (EAC)¹⁰²; and the Economic Community of West African States (ECOWAS).¹⁰³

promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights. Organization of African Unity (OAU) Charter art. II, May 25, 1963, 479 U.N.T.S. 39 [hereinafter OAU Charter].

96. Constitutive Act of the African Union (AU), *opened for signature* July 11, 2001, OAU Doc. CAB/LEG/23.15.

97. *Id.* at preamble, arts. 3, 4; OAU Charter, *supra* note 95, at preamble ("Conscious of the fact that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples.").

98. Southern African Development Community (SADC), SADC History, Evolution and Current Status: The Origins, Southern African Development Community, Sept. 26, 2008, <http://www.sadc.int/index/browse/page/54> [hereinafter SADC] (last visited Oct. 20, 2007).

99. Declaration by the Heads of State or Government of Southern African States Regarding the Establishment of the Southern African Development Community, Aug. 17, 1992, 32 I.L.M. 267 (1993).

100. *Id.* at preamble, art. 5.

101. The Treaty Establishing the Common Market for Eastern and Southern Africa, Nov. 5, 1993, 33 I.L.M. 1067 (1994) [hereinafter COMESA Treaty].

102. The Treaty Establishing the African Economic Community, June 3, 1991 30 I.L.M. 1241 (1991); Treaty for the Establishment of the East African Community, Nov. 30, 1999, *entered into force* July 7, 2000 [hereinafter EAC]. The original East African Community (EAC) dissolved in 1977; however, the member states continued negotiation and discussion, which led to the signing of the Agreement for the Establishment of the Permanent Tripartite Commission for East African Co-operation on November 30, 1993. Then, wanting to further consolidate regional co-operation, the member parties engaged in making the Agreement a Treaty, resulting in the (re)creation of the EAC in 1999. *See* East African Community, History, <http://www.eac.int/about-eac/eac-history.html> (last visited Feb. 10, 2009).

103. ECOWAS was originally established in Lagos on May 28, 1975; however, the parties revised the founding treaty in 1993 to better incorporate and reflect the principles of the Banjul Charter and the Declaration of Political Principles of the Economic Community of West African States (July 6, 1991). *See* Articles of Association for the Establishment of an Economic Community of West Africa, May 4, 1967, 6 I.L.M. 776 (1967); Economic Community of West African States (ECOWAS): Revised Treaty, July 24, 1993, 35 I.L.M. 660 (1996) [hereinafter ECOWAS Revised Treaty].

Each of these unions expressly state the important and central role women have in development efforts, and contain at least one article addressing the specific actions to be conducted regarding women's status. For example, Article 63 of the revised ECOWAS treaty orders "[m]ember States undertake to formulate, harmonize, coordinate and establish appropriate policies and mechanisms, for advancement of the economic, social and cultural conditions of women." This is to be done by, among other things, identifying and assessing constraints that inhibit women's ability to contribute to development efforts and to provide a framework within which to address these constraints.¹⁰⁴

The articles addressing women's empowerment in the COMESA and EAC documents are almost identical. They begin by asserting that "[t]he Partner States recognise that women make a significant contribution towards the process of socio-economic transformation and sustainable growth and that it is impossible to implement effective programmes for the economic and social development of the Partner States without the full participation of women."¹⁰⁵

These articles then continue by describing certain actions member state governments must make through enacting or abolishing certain legislative and other measures. The required measures include ensuring that women are more involved at all levels of socio-economic decision-making, promoting programs aimed at changing negative attitudes towards women, adopting or creating technologies to increase women's employment stability and progress, and any other measures to eliminate prejudices against women and promote equality.¹⁰⁶

One provision of particular importance requires member states to abolish discriminatory legislation as well as to discourage discriminatory customs.¹⁰⁷ The provision requires abolishing legislations and customs that are discriminatory *against* women, but does not address legislation and customs that are discriminatory in favor of women.¹⁰⁸ As mentioned previously, many of the "traditional" customs, as codified during colonialism, disproportionately affect women and their livelihood capabilities. For example, although women in many "traditional" societies were not able to own land, they were assured support and access to land by their husbands and husbands' families.¹⁰⁹ When colonialists codified this custom of male-dominated land ownership, they failed to factor in the accompanying societal expectation of support of the woman. In doing so, and with the disruption to societies caused by increasing industrialization and urbanization, colonialists removed women's sense of security in their livelihoods and in their

104. ECOWAS Revised Treaty, *supra* note 103, art. 63(2)-(3).

105. COMESA Treaty, *supra* note 101, art. 154; EAC, *supra* note 102, art. 121.

106. COMESA Treaty, *supra* note 101, art. 154; EAC, *supra* note 102, art. 121.

107. COMESA Treaty, *supra* note 101, art. 154(b); EAC, *supra* note 102, art. 121(b).

108. For an interesting discussion of international affirmative action approaches to the gender equality issue see Lia Hayes, *International Affirmative Action: Current Gender Affirmative Action Approaches in International Trade Serving as a Possible Model for Minority Groups*, 12 CURRENTS INT'L TRADE L. J. 78 (Winter 2003).

109. See, e.g., T.W. BENNETT, HUMAN RIGHTS AND CUSTOMARY LAW 124-28 (1999); Armstrong, *supra* note 28, at 317, 346.

ability to provide for their families. Therefore, by not only encouraging member states to recognize and eliminate these customs, but by *requiring* them to, the COMESA and EAC instruments provide a major move forward for women's equality. As should be expected, however, there remains a lag between the written aspiration and the daily reality.

One of the most recent regional organizations formed among African countries is the Economic, Social and Cultural Council of the African Union (ECOSOCC), which was established in March 2005.¹¹⁰ ECOSOCC is an advisory organ of the AU and is intended to facilitate the building of a strong partnership between African governments and civil society.¹¹¹ It is an organization composed of various social, cultural, and professional groups.¹¹² The importance of promoting gender equality is referenced throughout the Statutes of ECOSOCC.¹¹³

ECOSOCC Article 11 enumerates the Sectoral Cluster Committees, of which the Committee on Women and Gender is one.¹¹⁴ It is interesting that although gender is widely accepted as a "cross-cutting issue", ECOSOCC separates the two, providing one committee for Women and Gender and another committee for Cross-Cutting Programmes.¹¹⁵ One could argue that this indicates ECOSOCC's dedication to promoting gender equality by establishing an entire committee that will do nothing but focus on gender issues. Conversely, by separating gender from other cross-cutting issues such as HIV/AIDS and international cooperation it perpetuates the marginalizing practice of distinguishing "women's issues" from "core" issues of international economy and politics.

C. International & Regional Development Agreements

In an effort to fulfill the obligations set out in the various international declarations and founding documents of the institutions described above, as well as to facilitate trade and capital flow generally, most African states have signed on to various multi- and bilateral agreements. The most far-reaching of these agreements in terms of trade and economic development has been African states' membership in the World Trade Organization (WTO) and the subsequent Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).¹¹⁶

110. The Statute of the Economic, Social & Cultural Council (ECOSOCC), Assembly/AU/Dec.42 (III) was adopted by the Heads of State and Government at the Third Ordinary Session of the Assembly in July 2004; however, the organization was not formally launched until March 2005. The Economic, Social & Cultural Council (ECOSOCC) of the African Union, ECOSOCC as an Organ of the AU, http://www.ecosocc.org/ecosocc_au.php (last visited Nov. 10, 2007).

111. African Union, *Statutes of the Economic, Social and Cultural Council of the African Union (ECOSOCC)*, at preamble, Assembly/AU/Dec.42 (III), (July 2004), available at http://www.ecosocc.org/reports/24spt/ECOSOCC_STATUTES-English.pdf.

112. *Id.* art. 3.

113. *See id.* arts. 2, 3, 7.

114. *Id.* art. 11(i).

115. *Id.* art.11(j).

116. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, April 15, 1994, 33 I.L.M. 1125 (1994), available at http://www.wto.org/english/docs_e/legal_e/04-wto.pdf; Agreement on Trade-Related Aspects of Intellectual Property Rights, January 1995, Agreement Establishing the World Trade Organization, signed as Appendix 1C, 33 I.L.M. 81 (1994),

Just after independence many developing countries were “sponsored” into the GATT (and subsequently the WTO) by their former colonial powers and, therefore, did not go through the “full working party examination process” through which current WTO-applicant states must go.¹¹⁷ Many of these African states became WTO members without really understanding the substance of GATT or how to incorporate its trade mechanisms and provisions into their development policies.¹¹⁸ This initial lack of understanding regarding the international trade regime at independence and the African states’ relative lack of power to influence policy still today has often resulted in unfavorable regulations. The brunt of the burdens resulting from these unfavorable regulations has fallen disproportionately on women.¹¹⁹

The oil crisis of the 1970s, coupled with a prolonged and severe drought across much of the continent, and reduced global prices for agricultural goods shocked the fragile, developing African economies, resulting in national economic crises.¹²⁰ The response of the majority of these states was to accept foreign assistance in the form of structural adjustment program (SAP) loans from the World Bank.¹²¹ SAPs promoted price liberalization and deregulation, trade reform, and the privatization of state-owned enterprises.¹²² Rather than boost the national economies however, SAPs merely reinforced the colonial, export-oriented structures of the state and the gatekeeper¹²³ role of the government.¹²⁴

Although some scholars claim SAPs were successful in transforming Latin American economies, there is a growing consensus that they failed in Africa.¹²⁵ Not only did SAPs fail to transform African states’ economies into robust capitalist markets, there is also evidence they actually increased poverty, unemployment, and wage reductions.¹²⁶ Additionally, in the social sector, SAPs have been linked

available at http://www.wto.org/english/docs_e/legal_e/27-trips.pdf [hereinafter TRIPS].

117. Mary E. Footer, *Technical Assistance and Trade Law Reform Post-Doha: Brave New World*, in *LAW AND DEVELOPMENT: FACING COMPLEXITY IN THE 21ST CENTURY* 108, 113 (John Hatchard and Amanda Perry-Kessaris eds., 2003).

118. *See id.*

119. *E.g.*, Ewelukwa, *supra* note 14, at 80.

120. *See, e.g.*, NICOLAS VAN DE WALLE, *AFRICAN ECONOMIES AND THE POLITICS OF PERMANENT CRISIS, 1979-1999: POLITICAL ECONOMY OF INSTITUTIONS AND DECISIONS* 1-10 (2001); LEONARD & STRAUSS, *supra* note 72, at 23.

121. *See* JOHN MUKUM MBAKU, *INSTITUTIONS AND DEVELOPMENT IN AFRICA* 141-45 (2004). The first structural adjustment loan extended to Africa was received by Senegal in 1979. VAN DE WALLE, *supra* note 120, at 1.

122. VAN DE WALLE, *supra* note 120, at 8.

123. COOPER, *supra* note 13, at 5, (describing gatekeeper states as states without a strong national economic base and economies that are externally-oriented. The state’s economic power remains concentrated at the gate between inside and outside.).

124. VAN DE WALLE, *supra* note 120, at 80-81.

125. *See generally, e.g., id.*; LEONARD & STRAUSS, *supra* note 72, at 24-25; NEPAD, *supra* note 16, para. 24; Mutume, *supra* note 74, at 20 (“across Africa many incentives to promote industrial development have been dismantled through structural adjustment.”).

126. Nandini Gunewardena, *Reinscribing Subalternity: International Financial institutions, Development, and Women’s Marginality*, 7 *UCLA J. INT’L L. & FOR. AFF.* 201, 213 (2003); Oduor Ong’wen, *The Political Economy of Regional Trade Agreements in Africa*, 7 *SEATINI BULLETIN*

to reductions in access to health care and education as well as an increased prevalence of prostitution.¹²⁷ In this manner, the World Bank's structural adjustment programs contributed to the continued discrimination against women in Africa because, in their attempts to reduce the effects of these adjustments on their families, women disproportionately absorb the majority of the negative impacts.¹²⁸

The TRIPS Agreement is another example of a seemingly gender-neutral policy that has a detrimental effect on women and the ability of African states to engage in sustainable development strategies. TRIPS was created to "promote effective and adequate protection of intellectual property rights" and to reduce the possibility that intellectual property right protection would impede trade by balancing Member states' rights and obligations.¹²⁹

Article 27 describes the types of products and processes that are "patentable subject matter." According to Article 27, patents should be granted to "subject matter" that involves "an inventive step and are capable of industrial application."¹³⁰ This definition ignores the possibility that, to foreign scientists from industrialized nations, many of the "products and processes" used by people in African states that incorporate native plants, for example, may involve an inventive step for the foreign scientists.¹³¹ Once a patent is granted to the industrialized scientist, it becomes protected and must, therefore, be imported and bought through international trade.¹³² As noted in the Kurasini Declaration¹³³, the TRIPS Agreement "allows Northern companies and universities to claim exclusive ownership over local resources and knowledge, often developed by women."¹³⁴

Recognizing that the existing trade and development regimes were inadequate, African leaders adopted the New Partnership for Africa's Development

(March-April 2004), available at www.bilaterals.org/article.php3?id_article=257.

127. Economic Justice Network of Fellowship of Christian Councils in Southern Africa, Kurasini, Dar Es Salaam, June 24-28, 2002, *Declaration on Gender and Trade*, para. 4 (July 1, 2002) [hereinafter Kurasini Declaration] ("social services have been depleted, unemployment is rife, international commodity prices have fallen drastically, and farmers and producers no longer receive subsidies and protection from unfair competition."); Cape Town Declaration, *supra* note 34, para. F; Gunewardena, *supra* note 126, at 213.

128. See Kurasini Declaration, *supra* note 127, para. 5 ("Structural adjustment policies have been imposed on the population at the expense of women's social and economic empowerment."); Gunewardena, *supra* note 126, at 218 ("Emerging evidence now reveals that export-led growth is a strategy that has hurt the poor, and poor women in particular.")

129. TRIPS, *supra* note 116, at preamble, art. 7.

130. *Id.* art. 27(1).

131. *Id.* art. 27(1), fn 5 ("For the purposes of this Article, the terms 'inventive step' and 'capable of industrial application' may be deemed by a Member to be synonymous with the terms 'non-obvious' and 'useful' respectively.")

132. See Kurasini Declaration, *supra* note 127, para. 7.

133. The Kurasini Declaration is the result of "the Economic Justice Network of FOCCISA [Fellowship of Christian Councils in Southern Africa] and partner organisations from eleven countries in southern Africa [who] gathered in Kurasini, Dar Es Salaam, from 24-28 June 2002 to reflect on and address the marginalisation and injustices women face in [their] economies and societies as a result of trade liberalisation." Rev. Malcolm Damon, Director of the Economic Justice Network of Focccisa (July 2002), available at http://www.igtgn.org/pdfs/91_Kurasini.pdf.

134. *Id.*

(NEPAD) in July 2001. This agreement affirms these leaders' dedication to eradicating poverty, to placing their countries on a path of sustainable growth and development and to participating in the world economy.¹³⁵ Unlike many international agreements, NEPAD does not separate women and gender into its own focus-category to achieve these aims; rather issues of gender equality are addressed within the core sections of the agreement. For example, Article V (the Program of Action) of NEPAD identifies the promotion of women in all activities as a long-term objective and the elimination of gender disparities in education as one of its top goals.¹³⁶

Another example of NEPAD's acceptance of gender equality as a core issue in development is the focus given to improving land tenure security and the productivity of agriculture, "with particular attention to...women farmers."¹³⁷ NEPAD further supports this effort to incorporate gender as a truly cross-cutting issue by integrating it into the core issues of the agreement and establishing a "gender task team" to ensure that poverty reduction strategies include specific issues of concern to poor women.¹³⁸

The Cotonou Agreement similarly, and even more expressly, recognizes gender as a crosscutting issue for any development or poverty reducing policies.¹³⁹ The Cotonou Agreement replaced the Lomé Convention in managing and regulating relations between African, Caribbean, and Pacific (ACP) countries and the European Union.¹⁴⁰ Article 9, which lays out the fundamental principles of the agreement, reaffirms the equality of men and women.¹⁴¹ Article 31 builds on this principle and calls on the ACP governments to support and promote gender equality through increased access to resources, such as land and education; increased access to social services, such as healthcare; and increased involvement of women at all levels of development policy-making.¹⁴² Throughout the

135. NEPAD, *supra* note 16, at preamble.

136. *Id.* paras. 67, 68.

137. *Id.* paras. 154, 155.

138. *Id.* para. 116.

139. Partnership Agreement between the Members of the Group of African, Caribbean and Pacific States and the European Community and its Member States, ACP-EU, Cotonou, Benin, June 23, 2000 [hereinafter Cotonou Agreement].

140. *Id.*

141. *Id.* art. 9.

142. The full text of Article 31 reads:

Cooperation shall help strengthen policies and programmes that improve, ensure and broaden the equal participation of men and women in all spheres of political, economic, social and cultural life.

Cooperation shall help improve the access of women to all resources required for the full exercise of their fundamental rights. More specifically, cooperation shall create the appropriate framework

to:

(a) integrate a gender-sensitive approach and concerns at every level of development cooperation

including macroeconomic policies, strategies and operations; and

(b) encourage the adoption of specific positive measures in favour of women such as:

agreement, focus is given to strengthening technology, training, and investment in both the formal and informal sectors.¹⁴³ Assuming the member states are willing and able to incorporate gender equity within this structure of economic development, the Cotonou Agreement could be a major stepping-stone for the empowerment of African women.¹⁴⁴

The initial provisions of the Cotonou Agreement provide for review and revision of the agreement every five years.¹⁴⁵ Accordingly, the parties met in 2004 and produced the first compendium to the agreement in February 2005.¹⁴⁶ This compendium reasserts Member states' dedication to promoting gender equality and further defines the steps needed to ensure success in this area.¹⁴⁷ However, it may still be too early to tell if the governments of those states will transform the words in the document into transformative action.

D. The role of Governments in protecting and promoting women's equality

As the above discussion makes clear, African governments, like nearly all governments world-wide, are becoming increasingly aware of the need to include a broad spectrum of concerns in their process of reform. It is no longer enough to support just the core market functions because in so doing, important components of those structures will be neglected and the reforms will not be successful. Therefore, it is necessary for these governments to expand their efforts to include areas such as gender equality, land tenure, and equal opportunity.¹⁴⁸

The World Bank is also taking steps to incorporate a wider array of issues into its development strategies.¹⁴⁹ For instance, in 2001 the World Bank published a comprehensive policy research report with the intention of improving

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- (i) participation in national and local politics;
 - (ii) support for women's organisations;
 - (iii) access to basic social services, especially to education and training, health care and family planning;
 - (iv) access to productive resources, especially to land and credit and to labour market; and
 - (v) taking specific account of women in emergency aid and rehabilitation operations.

Id.

143. See Cotonou Agreement, *supra* note 139, arts. 21-23.

144. *But see*, APRODEV & AID TRANSPARENCY, ANALYTICAL REPORT ON GENDER DIMENSIONS OF ECONOMIC PARTNERSHIP AGREEMENTS 10-11, Dakar, Senegal, October 27-29, 2003, (Sept. 2004) [hereinafter Dakar Report] (noting that although the Cotonou Agreement has clearly stated commitments to gender equality, "it is a basis for major concern that gender issues are missing in relation to the 'hard' areas of negotiations, especially trade and trade-related areas.").

145. Cotonou Agreement, *supra* note 139, art. 95.

146. European Commission, *Compendium on co-operation strategies: Partnership Agreement between the Members of the Group of African, Caribbean and Pacific States and the European Community and its Member States* (Feb. 23, 2005).

147. *Id.* at 45-46.

148. Stewart, *supra* note 2, at 42-43.

149. *Id.* at 43 (referencing the World Bank's 2000/2001 World Development Report in which the World Bank says that development strategies must consider social and political causes of poverty as well as economic).

understanding of the links among gender, development, and public policy.¹⁵⁰ The authors of the report observe that the effectiveness of development policies will continue to be undermined by ignorance regarding the nature and costs of gender inequalities to individuals' well-being and countries' potential for sustainable economic growth.¹⁵¹ The report notes that while disparities in basic rights hurt women and girls the most, such gender inequalities ultimately harm everyone.¹⁵² Therefore, one of the primary themes the report hopes to convey is that "to enhance development effectiveness, gender issues must be an integral part of policy analysis, design and implementation."¹⁵³

The combined awareness of international and national governing bodies regarding the crucial role of women in development is beginning to slowly produce tangible results. Numerous African states have enacted constitutions and legislation promoting and protecting gender equity; however, customary laws are more often followed in practice, denying women the equal rights promised in these instruments.¹⁵⁴ Women activists often find that state-based legal strategies make it difficult to assert these constitutional rights, thereby exposing the gendered nature of citizenship in many states.¹⁵⁵ Similarly, States' attempts to facilitate global economic liberalization policies can have an intense effect on social and political relationships at a local level.¹⁵⁶ States often employ inconsistent approaches to development as leaders attempt to legitimize their policies in the international community while also attempting to maintain cultural hegemony.¹⁵⁷ This inconsistent approach exposes women to additional dangers as they attempt to realize equality.¹⁵⁸

Ugandan women have experienced this inconsistency first hand. In 1992 the government implemented a broad-reaching policy of financial sector liberalization, which was intended to spur economic growth and investment through lower interest rates and deregulated credit.¹⁵⁹ These policies failed to benefit women, in large part because of the government's failure to account for women's unequal starting position relative to men. Failing to realize the unequal starting positions was primarily due to unquestioned acceptance of "traditional" culture. These policies were based on the faulty assumption that women and men have equal access to resources, such as upper-level education, ownership title to land, and the

150. WORLD BANK, *ENGENDERING DEVELOPMENT: THROUGH GENDER EQUALITY IN RIGHTS, RESOURCES, AND VOICES* (2001).

151. *Id.* at xi, xiii.

152. *Id.* at xi.

153. *Id.* at xii.

154. *See, e.g.*, Gordon, *supra* note 11, at 307; S. AFR. CONST. (1996); *compare* CONSTITUTION, art. 23 (1979) (Zimb.) with *Magaya v. Magaya* [1999] 3 L.R.C. 35 (Zimb. Sup. Ct.).

155. Stewart, *supra* note 2, at 46.

156. *Id.* at 50.

157. *Id.* at 50-51

158. *See id.*

159. Enid Kiiza, Winifred Rwe-Beyanga, & Agnes Kamya, *Accounting for Gender: Improving Ugandan Credit Policies, Processes, and Programs*, in *DEMANDING DIGNITY: WOMEN CONFRONTING ECONOMIC REFORMS IN AFRICA*, *supra* note 38, at 47, 49.

ability to establish long-term relationships with banks.¹⁶⁰ In response to a study conducted to measure these differences, bank officials' articulated the reason for this continued discrimination, namely "that women customers are not worth making changes for."¹⁶¹

Another factor contributing to inconsistent or ineffective approaches to addressing gender is lack of resources. Zimbabwe is one such example. In 2004 the government formulated a National Gender Policy coupled with a National Plan of Action to guide its implementation.¹⁶² This policy is focused on eliminating negative economic, social, legal, and political policies as well as cultural and religious practices that contribute to gender inequality.¹⁶³ While the National Plan of Action created ministries and commissions to focus solely on gender issues, the national government lacks the resources to support and operate these departments. Many of the departments, or "focal points," dealing with gender equity concerns are staffed by individuals who have "no link with development policy formation and implementation."¹⁶⁴ Additionally, junior officers and women, who have no real decision-making powers, staff many of the gender focal points.¹⁶⁵ Finally, Zimbabwe has no system for monitoring and evaluating the changes in gender equality resulting from the National Policy.¹⁶⁶ This means that, in reality, the government has likely done more harm than good by implementing a sham institutional structure to promote and oversee the progress and development of Zimbabwean women's equality.

Some African countries are making impressive progress toward institutionalizing equality. One such country is Rwanda, which has the highest representation of women in a house of parliament of any country in the world: 49%.¹⁶⁷ Similarly, Liberia made international headlines in 2005 by swearing in Ellen Johnson-Sirleaf, Africa's first elected female head of state.¹⁶⁸ It may still be too early to see how such female representation will affect trade and development policies in these countries and across the continent, but one can assume gender equality will play a more prominent role in policy discussions and formation.

160. *Id.* at 54.

161. *Id.* at 52.

162. Inter-Agency and Expert Group Meeting on the Development of Gender Statistics, United Nations Secretariat Department of Economic and Social Affairs Statistics Division, *The Development of gender statistics: Zimbabwe's experience*, 2, U.N. Doc ESA/STAT/AC.122/14.1 (Dec. 2006) (prepared by Joyce Malaba) [hereinafter Malaba Report].

163. *Id.* at 2-3.

164. *Id.* at 3.

165. *Id.*

166. *Id.* at 8.

167. Gordon, *supra* note 11, at 293-94; Gumisai Mutume, *Women break into African politics*, 18 AFRICA RECOVERY 4, Apr. 2004, available at <http://www.un.org/ecosocdev/geninfo/afrec/vol18no1/181women.htm>.

168. *African first for Liberian leader*, BBC NEWS, Jan. 16, 2006, available at <http://news.bbc.co.uk/2/hi/africa/4615764.stm>.

E. Case Studies: Zimbabwe & South Africa

There are countless examples of the reaffirmation of both women's status as equal to men and of women's inferiority to men. This section will briefly discuss two notable examples from Zimbabwe and South Africa.

Let us begin with the controversial and infamous 1999 case from Zimbabwe's Supreme Court, *Magaya v. Magaya*.¹⁶⁹ The issue faced by the *Magaya* court involved how to apply the customary law of inheritance in light of the government's general acceptance of human rights norms of gender equality. Although the court notes Zimbabwe's acceptance of various international human rights instruments, it primarily focuses on domestic law in declaring its holding. Specifically, the court states that the legislative intent in passing the Legal Age of Majority Act (the Act) was that it should co-exist with customary law, not replace it. Furthermore, while the Act was intended to remove certain legal disabilities, it was not intended to "create positive new rights."¹⁷⁰

The main argument in the *Magaya* case, however, is based on the Constitution of Zimbabwe. The court notes that Section 89 of the Constitution sanctioned the application of customary law.¹⁷¹ Customary law preferred male heirs above female heirs upon an intestate's death.¹⁷² The court further supports its application of customary law in this case, despite its discriminatory nature, by referencing Section 23 of the Constitution. The court first notes that sex is not one of the enumerated grounds for anti-discrimination protection in this section.¹⁷³ Second, the court says that even if sex is protected by international human rights instruments, the Constitution expressly exempts both matters involving property inheritance upon death and matters involving customary law issues of Africans.¹⁷⁴

Because the court ultimately held that customary law was exempt from international human rights norms, the decision reinforced the inferior status of women in Zimbabwe, especially in matters related to recognition of property rights.¹⁷⁵

Conversely, however, was the South African Constitutional Court's 2005 decision of *Bhe and Others v. The Magistrate, Khayelitsha and Others*.¹⁷⁶ In *Bhe*

169. *Magaya v. Magaya* [1999] 3 L.R.C. 35 (Zimb. Sup. Ct.).

170. *Id.* at 37.

171. *Id.* at 36; see also CONST. art. 89 (1979) (Zimb.), amended by §13 of Act 25 (1981) ("Subject to the provisions of any law for the time being in force in Zimbabwe relating to the application of African customary law, the law to be administered by the Supreme Court, the High Court and by any courts in Zimbabwe subordinate to the High Court shall be the law in force in the Colony of the Cape of Good Hope on 10th June, 1891, as modified by subsequent legislation having in Zimbabwe the force of law.").

172. *Magaya*, 3 L.R.C. at 36.

173. *Id.*

174. *Magaya*, 3 L.R.C. at 36.

175. *Id.* at 40-42.

176. *Bhe and Others v. The Magistrate, Khayelitsha and Others* 2005 (1) 580 1 (CC) (S. Afr.); see also *Ephraim v. Pastory* (2001) AHRLR 236 (TzHC 1990) (going even further than the South African court by holding that customary law had to accord with human rights norms despite the omission of sex as a protected ground in the Constitution's non-discrimination clause).

the court had to decide an issue involving the application of the customary law of intestate succession as dealt with in the Black Administration Act 38 of 1927 and the Intestate Succession Act 81 of 1987.¹⁷⁷

The court determined that the laws were discriminatory and, therefore, unconstitutional.¹⁷⁸ Both domestic and international law support this conclusion.¹⁷⁹ The court says the Acts violate Sections 9, 10 and 28 of the South African Constitution.¹⁸⁰ The court also explicitly stated that “customary law is subject to the Constitution.”¹⁸¹ Farenda Banda argues that this is a “universalist” construction of the Constitution, which makes both customary law and the right to culture subject to the ideas of equality and non-discrimination before the law.¹⁸² This is an important example for all African judicial systems to follow in not only ensuring women’s equality through respect for customary laws, but also the recognition of the organic nature of law and its necessary evolution towards the accepted international norms.

V. RECOMMENDATIONS AND STRATEGIES

Actually effecting change in the gendered effects of trade and development policies will be difficult and will require great cooperation and effort, but it can be done. Part of the problem with current policies is the gap that remains between discussion and practice. Eliminating the gap between policy and practice will involve a multi-dimensional approach and a serious effort aimed at gender mainstreaming.¹⁸³ The United Nations Development Programme (UNDP) defines gender mainstreaming as “being deliberate in giving visibility and support to women’s contributions rather than making the assumption that women will benefit equally from gender-neutral development interventions.”¹⁸⁴ This means governments will need to take the extra step to ensure that the legal rights that have been created for women – such as access to education, health care, land, and training – are enforced.¹⁸⁵ Without the ability to rely on the rights they have been promised, women will not be able to reach their full potential or help their countries to reach theirs. The three main areas where major changes can and should be made are: Investment, Policy Discussions, and Enforcement.

Let us first talk about Investment. Addressing gender issues requires investing in ways that have been shown to improve women’s status and opportunities and that have a positive impact on a nation’s development. If we

177. *Bhe*, (1) 580 1 (CC) para. 1.

178. *Id.* para. 68.

179. *Id.* para. 55 (“In interpreting both section 28 and the other rights of the Constitution, the provisions of international law must be considered.”).

180. *Id.* para. 47; S. AFR. CONST. § 9 (equality), § 10 (human dignity), § 28 (rights of children).

181. *Bhe*, (1) 580 1 (CC) para. 44.

182. BANDA, *supra* note 63, at 34-38.

183. *E.g.*, Int’l Conference on Population and Dev., Cairo, Egypt, Sept. 5-13, 1994 *Plan of Action*, U.N. Doc. A/CONF.171/13, § 4.1 (Oct. 18, 1994) [hereinafter Cairo Agreement] (“Experience shows that population and development programmes are most effective when steps have simultaneously been taken to improve the status of women.”).

184. *Gender Equality Practice Note*, *supra* note 92, at v.

185. Gordon, *supra* note 11, at 311.

truly want to design and implement laws and policies that are effective and enforceable, they must be grounded in knowledge of the specific regions and countries in which they are to take effect. This will require investing resources to gain knowledge and understanding of local and national gender relations, practices, and procedures, and then incorporating that knowledge into law and policy development.¹⁸⁶

It also means that international agencies and organizations need to work with national ministries and agencies to provide training and guidance on gender mainstreaming – what it means, strategies for implementation, and education and sensitization sessions on gender issues.¹⁸⁷ Not only do we need to invest in training and education on gender mainstreaming, we also need to invest financial resources to support the governments that have implemented (or might attempt to implement) agencies, departments, or ministries specifically focused on gender issues. This financial investment should be narrowly targeted to the specific gender agencies so they will have the capacity to carry out the work they were created to do. Too many good ideas fail because they lack the financial resources to succeed.

Another area where targeted investment could play a crucial role in improving women's lives is education. The importance of investing in the education of women and girls cannot be stressed enough. In fact, many scholars claim that educating girls and women is the most important and effective investment a developing nation can make.¹⁸⁸ Educating women and girls improves the productivity of the labor force (once they are allowed to participate), improves family health and nutrition, improves the spacing of births and lowers infant and child mortality.¹⁸⁹ By improving the status of women and girls through improved access to continuing education, a developing nation could improve its overall social and economic development.

Next, we must talk about Policy Discussions. Mainstreaming gender means that human rights law, and therefore women's rights law, needs to be more expressly integrated into development agreements and policies. While there are numerous agreements, some of which have been described in this paper, that imply the need to invest in women in order to build successful sustainable development policies, few expressly state this need. The agreements that do expressly mention gender tend to separate these issues from the "more serious" development issues like trade and investment, which serves to further marginalize women's role in the economy and hinder efforts toward true equality. Formal economic modeling and empirical studies have demonstrated that trade policies do not necessarily have the same effect on men as they do on women; therefore, because gender relations can

186. See Stewart, *supra* note 2, at 38.

187. See Malaba Report, *supra* note 162, at 9.

188. E.g., Ilhan Ozturk, *The Role of Education in Economic Development: A Theoretical Perspective*, 33.1 J. OF RURAL DEV. AND ADMIN. 39, 40 (2001), available at <http://mpr.ub.uni-muenchen.de/9023/>.

189. See, e.g., *id.*

affect trade policy outcomes, it is essential that these considerations be accounted for from the beginning of any trade agreement or policy discussion.¹⁹⁰

The preamble of the WTO does not expressly reference women although it does mention its goal of achieving sustainable development.¹⁹¹ Despite the fact that it is now well-accepted that sustainable development is not possible without improving the status of women, by not expressly stating so, the WTO provides an opening for member states to ignore women and the detrimental effects trade policies can have, under a veil of ignorance. The WTO, as the primary body governing international trade, must expressly include provisions through which the important role of women in economic development can be accounted for and incorporated into policy decisions.

Additionally, women should be included in policy discussions, both at an international and a domestic level. Women are better equipped to understand the daily demands on their resources than men; however, if they are to provide meaningful contributions to these discussions, they must be given the proper tools. This means providing women and girls with educational opportunities. It also means providing women with equal standing when they are included in the discussion, which requires sensitization training for their male counterparts.

The final area where improvement and change must be made is in Enforcement. Rather than maintaining separate spheres of law for human rights and trade, human rights should form the basis for trade tribunal decisions.¹⁹² Just as environmental concerns are starting to be incorporated into trade and development policy discussions, gender must be too. If trade tribunals were required to consider human rights as well as potential profits in their decision-making process, it would quickly become apparent that the current structures need to be reformed.

A final option is to provide incentives for implementing gender-conscious trade reforms, rather than punishments. Incentives could be offered to companies and individuals from developed nations who are investing in, operating in, or trading with developing nations. Such incentives could include tax breaks or financial assistance from the developed nation's government when the company or individual makes positive gender-conscious business decisions. It could also include incentives from the developing nation to those same developed-nation investors in the form of import tax breaks or some other financial guarantee for their products or services. Finally, the incentives could run to the developing nation itself, either from developed nations' governments, private investors, or international organizations and agencies. These incentives could include financial aid, training, medical and/or nutritional resources -- really almost anything developing nations need, but all contingent on implementing gender-focused development goals.

190. McGill, *supra* note 33, at 411.

191. Jarvis, *supra* note 8, at 233.

192. *Id.* at 223.

VI. CONCLUSION

*Africans must not be wards of benevolent guardians; rather they must be the architects of their own sustained upliftment.*¹⁹³

Women comprise the majority of the world's poor yet the bulk of the work they perform continues to be unaccounted for in national and international economic development policies.¹⁹⁴ Women, particularly those in developing countries, continue to have unequal and inadequate access to the resources necessary to become viable players in the global market. In many African countries, women, compared to men, receive less formal schooling, job training, and opportunities for advancement within their jobs. Furthermore, women generally have less access to land and property despite the expectation that they will provide food, clothing, and healthcare for their families and regardless of the level of support received from husbands, fathers, brothers, or other male relatives.

Until this discrimination against women is eliminated, the international community will continue to see its trade agreements fail to achieve the desired results and will continue to undermine any real hope of achieving sustainable development policies for the developing countries of our world. That sustainable development is impossible without investing in women's lives and opportunities is a widely accepted fact. It is time to move beyond just stating the fact; it is time to take action to make it happen.

193. NEPAD, *supra* note 16, ¶ 27.

194. Although this statement has been promoted throughout this paper and in numerous sources, for a good summary of available statistics see UNIFEM, *supra* note 32.