

**CAN THE WORLD'S POOREST WOMEN BE SAVED?:
A CRITICAL THIRD WORLD FEMINIST ANALYSIS
OF THE CEDAW'S RURAL WOMEN'S ECONOMIC RIGHTS
AND ALTERNATIVE APPROACHES TO
WOMEN'S ECONOMIC EMPOWERMENT**

AMANDA ULRICH*

This article discusses the continued subordination of Third World women, despite the protections implemented by international law. The author focuses on the experience of impoverished women living in rural areas, and how initiatives implemented by international organizations and international human rights documents such as the Convention on the Elimination of All Forms of Discrimination against Women, although well-intentioned, have not been successful in improving the social and economic position of women. In analyzing these initiatives, the author adopts a Third World Feminist Approach, concluding with a discussion of the reliance of Third World women upon models outside the realm of international law in order to improve their rights and economic status.

Cet article porte sur la subordination continue des femmes dans le Tiers monde, malgré les protections mises en place par le droit international. L'auteur insiste sur l'expérience des femmes appauvries vivant dans les régions rurales et de quelle manière les initiatives mises en place par les organismes internationaux et les documents des droits de la personne internationaux tels que la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, qui, quoique bien intentionnés, n'ont pas réussi à améliorer la situation sociale et économique des femmes. En analysant ces initiatives, l'auteur adopte une approche féministe du Tiers monde, et conclut avec une discussion sur le fait que les femmes du Tiers monde se fient sur des modèles à l'extérieur de la portée du droit international pour améliorer leurs droits et situation économique.

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* Third-year J.D. candidate, University of Idaho College of Law. The author obtained a Bachelor's degree in Political Science/Pre-Law at Washington State University and spent the summer of 2006 studying International Human Rights Law in Shimla and Dharamsala, India. The author wishes to thank Professor Russell A. Miller for providing feedback and giving her the opportunity to publish this article.

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I. INTRODUCTION: THE STATE OF WOMEN IN THE WORLD TODAY

While it is simple to frame laws to charge husbands who abuse their wives, it is not as simple to deal with the economic violence of capitalism.

– Yumi Lee¹

Despite the protections created within international law over the past sixty years, women still remain subordinated in every corner of the globe. Women are at a disadvantage socially, economically, legally, politically, and culturally when compared to men living in comparable situations. The status quo remains that a small and privileged group of men maintain their powerful grasp, controlling secular, religious, national, and international forms of power.² Economically, women continue to be relegated to the margins, while men reap the benefits of better market access. According to a report of the UNDP, women's wages world-wide are consistently lower than men's, with women's average income approximately 75 percent of the average male income.³ In its report, the UNDP also noted that out of the roughly 1.3 billion people living in poverty at the time of the study, 70 percent of them were female.⁴ Women's impoverishment is primarily a consequence of unequal access to markets and a lack of status and influence within the family and community.⁵

Women, particularly those in developing countries, are being left behind, even in an era of globalization and the expansion of markets into formerly isolated corners of the world. While globalization tends to economically marginalize developing countries,⁶ it economically marginalizes women even further. At the Millennium Summit and the Fifty-Fifth Millennium Assembly of the United Nations, reports demonstrated that “[s]ome 40 less-developed

¹ Anne Orford, “Contesting Globalization: A Feminist Perspective on the Future of Human Rights” (1998) *Transnat'l L. & Contemp. Probs.* 171 at 192, citing Yumi Lee, “Violence Against Women: Reflections on the Past and Strategies for the Future — An NGO Perspective” (1997) 19 *Adel. L.R.* 45 at 50.

² Hilary Charlesworth & Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester, U.K.: Manchester University Press, 2000).

³ United Nations Development Programme, *Human Development Report 1995: Gender and Human Development* (New York: Oxford University Press, 1995) at 36 [*HDR 1995*].

⁴ *Ibid.*

⁵ *Ibid.*; The United Nations Fourth World Conference on Women, “Actions for Equality, Development and Peace: Platform for Action” (Held in Beijing, China, September 1995), online: Division for the Advancement of Women (DAW) <<http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm#objectives>> at para. 46.

⁶ Cristina N. Campanella, “The United Nations’ New Approach to Human Development and Poverty” (2001) 17 *N.Y.L. Sch. J. Hum. Rts.* 951 at 953.

countries [were] economically worse off ... than a decade ago."⁷ Agriculture in particular plays a critical role in developing countries.⁸ Women, in turn, play a critical role in the agricultural economy of those developing countries.⁹ For example, women in sub-Saharan Africa make up 70-80 percent of the food production force, and women in Asia make up 65 percent of the food production force.¹⁰ However, women's work in agricultural production has decreased due to development programs that direct national and international aid towards men.¹¹ Also, women struggle within the agricultural sector in developing countries because the shift in focus of land use from subsistence to export farming has displaced women from the land they used to work.¹²

Women have also been adversely affected by globalization outside of the realm of agriculture. Women tend to be exploited when countries industrialize. Generally, within the service and production industries, most industrialized countries rely upon women, often immigrants and racial and ethnic minorities, for low-wage labour.¹³ At the same time, the push for market development has also meant the loss of benefits and subsidies on goods and services that had previously been enjoyed by women.¹⁴ Although this loss has affected men as well, women are disproportionately affected by these losses, particularly because of their role as caregivers and because they bear the responsibility of acquiring basic necessities for the household.¹⁵ In addition, policies instituted to facilitate globalization have also introduced flexible, merit-based compensation into markets in which it had not previously existed.¹⁶ The result has been that, due to societal constructs in which women have responsibilities outside of the work environment, men tend to be the beneficiaries of higher wages while women continue to receive lower wages.¹⁷

Gender equality has obviously not been achieved. This article argues that given the current state of women within the context of international economic development and globalization, a re-examination of international conventional and treaty law concerning the protection and equality of women within the economic realm is necessary, with a focus on the *Convention*

⁷ Warner P. Woodworth, "Third World Economic Empowerment in the New Millennium: Microenterprise, Microentrepreneurship, and Microfinance" (2000) 65 S.A.M. Advanced Management Journal 19 at 19.

⁸ While agriculture as the primary economic activity of developing countries is on the decline, it still provides for 60 percent of employment in developing countries: see Xinshen Diao, Eugenio Diaz-Bonilla & Sherman Robinson, "How Much Does it Hurt? Measuring the Impact of Agricultural Trade Policies on Developing Nations," International Food Policy Research Institute (IFPRI) (August 2003), online: IFPRI <<http://www.ifpri.org/media/trade20030826.htm>> at 4.

⁹ Eugenia McGill, "Poverty and Social Analysis of Trade Agreements: A More Coherent Approach?" (2004) 27 B.C. Int'l & Comp. L. Rev. 371 at 421.

¹⁰ *Ibid.*

¹¹ Charlesworth & Chinkin, *supra* note 2 at 7.

¹² McGill, *supra* note 9 at 422.

¹³ Kerry Rittich, "Feminism and Contingency: Regulating the Stakes of Work for Women" in Joanne Conaghan, Richard Michael Fischl & Karl Klare, eds. *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (Oxford: Oxford University Press, 2002) 117 at 118 [Rittich, "Feminism and Contingency"].

¹⁴ Kerry Rittich, "Transformed Pursuits: The Quest for Equality in the Globalized Markets" (2000) 13 Harv. Hum. Rts. J. 231 at 248 [Rittich, "Transformed Pursuits"].

¹⁵ *Ibid.* at 249.

¹⁶ *Ibid.* at 252.

¹⁷ *Ibid.*

on the Elimination of all Forms of Discrimination Against Women.¹⁸ In particular, it argues that the CEDAW would benefit from a Third World Feminist Analysis (TWFA),¹⁹ as women in developing countries tend to be the most exploited in the process of globalization. Noting the flaws within the existing protections of the CEDAW, other global models for women's economic protection and advancement outside of formal international law is examined and whether these models effectively do what the CEDAW and other conventions and treaties seeking to promote women's rights have failed to do is addressed.

II. NEO-LIBERALISM AND THE FREE MARKET ECONOMY

The modern undermining of women as key economic players is largely a result of neo-liberalism and its application by international financial institutions. The neo-liberal movement is characterized by the push for a transition to market economies where they had not previously existed, promoting macro-economic stabilization.²⁰ Key aspects of this transition include "the privatization of state enterprises, the liberalization of prices through the elimination of all forms of price controls and the administrative setting of wages, the removal of state subsidies to both consumption and production of goods and services, and the structuring of an open, 'deregulated' economy to foster the entry of foreign goods, services and investment."²¹ Neo-liberalism is problematic because its policies, instigated via the World Bank, International Monetary Fund (IMF), and other development agencies and partners, ignore evidence that they are in fact harmful to low-income groups.²²

The World Bank and IMF institute neo-liberal policies into the economies of developing countries through the use of Structural Adjustment Programs (SAPs).²³ SAPs are based on the neo-liberal philosophy that an unregulated free market and private sector are the engines of economic growth and that, through the market, benefits will trickle down to the rest of a country's population.²⁴ SAPs tend to create wage freezes and remove subsidies and controls on basic foods and consumer goods.²⁵

SAPs negatively impact women in particular. The short-term effects of the transition include cutbacks in government expenditures for health, education, and other social

¹⁸ 18 December 1979, 1249 U.N.T.S. 13, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW].

¹⁹ Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses" in Chandra Talpade Mohanty, Ann Russo & Lourdes Torres, eds., *Third World Women and the Politics of Feminism* (Bloomington: Indiana University Press, 1991) 51.

²⁰ Kerry Rittich, *Recharacterizing Restructuring: Law, Distribution, and Gender in Market Reform* (Boston: Kluwer Law International, 2002) at 30; Martha T. McCluskey, "Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State" (2003) 78 *Ind. L.J.* 783 at 784-85; Alan Greenspan, "The Challenge of Globalization" (Robert P. Maxon Lecture delivered at George Washington University, 3 December 2004) (LEXIS).

²¹ Rittich, *ibid.* at 31.

²² Nandini Gunewardena, "Reinscribing Subalternity: International Financial Institutions, Development, and Women's Marginality" (2002) 7 *UCLA J. Int'l L. & Foreign Aff.* 201 at 206.

²³ Joel M. Ngugi, "Policing Neo-Liberal Reforms: The Rule of Law as an Enabling and Restrictive Discourse" (2005) 26 *U. Pa. J. Int'l & Econ. L.* 513 at 567. For a World Bank perspective on the institution of neo-liberal policies in the late 1980s, see The World Bank, "Bank Issues Sub-Saharan Africa: From Crisis to Sustainable Growth" (22 November 1989), online: The World Bank <<http://go.worldbank.org/9CTWIZ59U0>>.

²⁴ Gunewardena, *supra* note 22 at 213.

²⁵ *Ibid.* at 216.

services,²⁶ services which women rely upon to sustain both themselves and their families.²⁷ The transition to free market economies also perpetuates women's place on the margins. Despite the fact that the globalization via the free market economy has increased women's economic activity rate, it also entrenches hierarchical gender occupational structures that come part and parcel with global production, and it reinforces the practice of compensating women with lower wages than men.²⁸ Women also are put at a disadvantage concerning labour because of bans on collective action and vulnerability to being hired and fired according to cycles of production dictated by major market actors.²⁹ So although trade and integration seems to promise growth and improvements to welfare, the rewards of market activity are unevenly dispersed in developing economies,³⁰ leaving women on the bottom rung of the ladder.

Another side-effect of SAPs has been the movement of women from the public employment sector to the unregulated and uncounted "non-market" work sector, which includes unpaid work within the home, or "reproductive" activity.³¹ The transition from work within the market to work outside the reach of the market is largely a result of many women's loss of a social safety net.³² SAPs have eliminated programs such as state-subsidized daycare, which forces women to leave the workforce and to take on both unpaid work and "home work."³³ One complication resulting from women moving back into the realm of the home to perform paid work is that home work is either excluded from employment regulation and collective bargaining, or is badly served by them. Consequently, these women tend to be ignored by trade unions, which tend to focus on mainstream paid work.³⁴ It should be noted that although women tend to be exploited because of their position at the bottom end of the market,³⁵ the gap between men's and women's wages over the past 30 to 40 years has improved. This improvement is evidenced by the fact that women's average pay remained stable at around two-thirds of men's wages until 1970, but by 1980, women's wages had increased to three-fourths of men's wages,³⁶ and they remain at that level today.³⁷ However, despite this increase, more needs to be done to improve women's economic situation on all fronts and to eliminate the wage gap completely.

²⁶ Ngugi, *supra* note 23 at 568.

²⁷ Gunewardena, *supra* note 22 at 215.

²⁸ *Ibid.* at 211.

²⁹ *Ibid.* at 212.

³⁰ Rittich, "Transformed Pursuits," *supra* note 14 at 232.

³¹ *Ibid.* at 247.

³² *Ibid.* at 248.

³³ Rittich, "Feminism and Contingency," *supra* note 13 at 123. Note that in this context, "home work" denotes work done at home, including industrial work, subcontracting, self-employment, and informal work.

³⁴ *Ibid.* at 119-20.

³⁵ *Ibid.* at 123.

³⁶ Barbara Stark, "Women, Globalization, and Law: A Change of World" (2004) 16 *Pace Int'l L. Rev.* 333 at 341.

³⁷ *HDR 1995*, *supra* note 3.

III. EXISTING PROTECTIONS FOR WOMEN WITHIN INTERNATIONAL LAW

With the expansion of the free market economy, women in developing countries are in need of legal protections to ensure access to new markets and to provide the necessary infrastructure to guarantee that their entry into the economy is successful. Several treaties sought to protect women even before globalization took hold of the world. The *Charter of the United Nations*³⁸ expressed the newly formed coalition's commitment to equal rights for men and women. As stated in the preamble, the *UN Charter* sought "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women."³⁹ The *Universal Declaration on Human Rights*⁴⁰ reiterated the commitment to the protection of both men and women stated in the *UN Charter*. Finally, the *International Covenant on Economic, Social and Cultural Rights*,⁴¹ and the *International Covenant on Civil and Political Rights*,⁴² both ratified by the UN General Assembly in 1966, put the protections idealized in the *Universal Declaration* into legally binding form. Both documents impose on signatory states the duty to apply the articulated rights to all persons without distinction of any kind and state that sex is an impermissible ground for distinction.⁴³ But even with the protections provided within those international human rights documents, such instruments were not adequately tackling the disadvantages and injustices faced specifically by women.⁴⁴ Recognizing this problem, the UN General Assembly asked the Economic and Social Council to request that the Commission on the Status of Women (CSW) prepare a declaration outlining the equal rights of men and women.⁴⁵ After this document, known as the *Declaration on the Elimination of Discrimination Against Women*, was adopted in 1967, the CSW entertained the idea of a legally binding treaty outlining the same principles.⁴⁶ In 1974, the CSW began work on the *CEDAW*,⁴⁷ keeping in mind the systematic obstacles originating in the historic discrimination faced by women in all societies, which had previously hindered the application of other international human rights instruments.⁴⁸

The *CEDAW*, adopted by the General Assembly in December of 1979, conveyed a broad range of rights to women, among them rights concerning political and public life, nationality, education, employment, health, and economic and social benefits.⁴⁹ Concerning women's economic rights in particular, the *CEDAW* contains articles specifically addressing the

³⁸ 26 June 1945, Can. T.S. 1945 No. 7 [*UN Charter*].

³⁹ *Ibid.* at Preamble.

⁴⁰ GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 at Preamble, para. 5 [*Universal Declaration*].

⁴¹ 16 December 1966, 993 U.N.T.S. 3, 6 I.L.M. 360 (entered into force 3 January 1976) [*ICESCR*].

⁴² 16 December 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (entered into force 23 March 1976) [*ICCPR*].

⁴³ *ICESCR*, *supra* note 41, art. 2; *ICCPR*, *ibid.*, art. 2. See also "Short History of CEDAW Convention," online: DAW <<http://www.un.org/womenwatch/daw/cedaw/history.htm>> [Short History].

⁴⁴ Laboni Amena Hoq, "The Women's Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights" (2001) 32 Colum. Hum. Rts. L. Rev. 677 at 680.

⁴⁵ *Draft Declaration on the Elimination of Discrimination Against Women*, GA Res. 1921 (XVIII), UN GAOR, 18th Sess., UN Doc. A/Res/1921(XVII) (1963).

⁴⁶ Short History, *supra* note 43.

⁴⁷ *Ibid.*

⁴⁸ Hoq, *supra* note 44 at 681.

⁴⁹ *CEDAW*, *supra* note 18.

special economic status of rural women.⁵⁰ Such articles are particularly pertinent to women in developing countries who have been marginalized economically.

But, despite the rights established in the *CEDAW*, women continued to be victimized by discrimination and left at the margins, largely due to a lack of enforcement mechanisms.⁵¹ At the time of its adoption, only two enforcement mechanisms, found in arts. 18 and 29, were incorporated into the treaty.⁵² Article 18 requires state parties to submit a report to the Committee on the Elimination of Discrimination Against Women (Committee) within one year of joining the convention and every four years thereafter, detailing the steps the state has taken in integrating its *Convention* obligations domestically.⁵³ The Committee may review the report and provide recommendations to the state, but state parties are not obligated to follow the recommendations of the Committee.⁵⁴ In any event, state parties often submit erroneous or late reports.⁵⁵ The second enforcement mechanism, found in art. 29, provides state parties with conflicting views concerning interpretation or application of the *Convention* framework within which to solve their conflict.⁵⁶ The article allows parties first to submit their dispute to arbitration.⁵⁷ If the dispute is not resolved within six months, it can be sent to the International Court of Justice for a decision, and then becomes binding on state parties under international law.⁵⁸ Although this mechanism has the appearance of creating greater obligations for state parties, the effectiveness of this process is thwarted by the inclusion of art. 29, para. 2, which allows state parties to reserve the right to be held to the dispute procedure.⁵⁹ Also, state parties are rarely motivated to bring challenges under art. 29, as most states support the international law norm of non-intervention in the internal affairs of other states,⁶⁰ which seems to be at odds with the article itself. In addition, art. 28 allows state parties to make reservations as long as they are not incompatible with the object and purpose of the *CEDAW*.⁶¹ No enforcement mechanism exists to ensure the reservations comply with this requirement.⁶²

Realizing the enforcement mechanisms within the *CEDAW* failed to provide adequate protections for the world's women, the international community convened the Open-Ended Working Group on the Optional Protocol, working along side the CSW, to develop an optional protocol to the *CEDAW*.⁶³ The *Optional Protocol* was adopted in 1999 and includes two new mechanisms to protect women: the communications procedure and the inquiry

⁵⁰ *Ibid.*, art. 14.

⁵¹ Hoq, *supra* note 44 at 678.

⁵² *CEDAW*, *supra* note 18, arts. 18, 29.

⁵³ *Ibid.*, art. 18.

⁵⁴ *Ibid.*, art. 17, para. 1.

⁵⁵ Hoq, *supra* note 44 at 687.

⁵⁶ *CEDAW*, *supra* note 18, art. 29.

⁵⁷ *Ibid.*, art. 29, para. 1.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, art. 29, para. 2. In this context, the ability of the state parties to reserve the right to be held to the dispute procedure means that the state may choose not to be bound to the dispute procedure articulated in the convention. Instead, the state may choose to opt out of the procedure.

⁶⁰ Hoq, *supra* note 44 at 684.

⁶¹ *CEDAW*, *supra* note 18, art. 28, para. 2.

⁶² Hoq, *supra* note 44 at 688.

⁶³ See "History of an Optional Protocol," online: DAW <<http://www.un.org/womenwatch/daw/cedaw/protocol/history.htm>>.

procedure.⁶⁴ Under arts. 1 and 2 of the *Optional Protocol*, individuals and groups may bring complaints, or communications, before the Committee concerning violations of the *CEDAW* by state parties.⁶⁵ This communications procedure gives women direct access to the Committee, thereby providing them with a forum in which to have their voices heard within the international community. The inquiry procedure, found in art. 8, allows the Committee to begin an investigation into state party actions where it has received reliable information that the state party has engaged in grave or systematic violations of the *Convention*.⁶⁶

Despite the improvements concerning individual accessibility, the *Optional Protocol*, coupled with the *CEDAW*, still does not do enough to provide the protection that women need. Although art. 2 provides access to the Committee, it fails to provide an avenue for women who wish to bring complaints anonymously,⁶⁷ and art. 3, in fact, states that anonymous communications will not be allowed.⁶⁸ An anonymous mechanism would ensure that women who are in situations where divulging their identity to the Committee would place their safety or even their lives in jeopardy could seek justice without fear.⁶⁹ In addition, the *Optional Protocol* does not allow public interest actions, which would allow non-governmental organizations and other advocacy groups to bring complaints against states on behalf of groups of women, or all women, within a state, if an individual complainant cannot be found.⁷⁰ This is especially important in cases where illegal alien women or women in neighbouring countries are adversely affected by state policies but cannot bring complaints against the states under the *Optional Protocol* because the women are not subject to the jurisdiction of the offending state.⁷¹

IV. THE IMPORTANCE OF RE-EXAMINING EXISTING INTERNATIONAL INSTRUMENTS CONCERNING WOMEN'S RIGHTS

Given the economic state of women worldwide who are victimized by globalization, relegated to earning lower wages than men, losing social benefits in the transition to capitalism, and forced into unpaid work within the "women's sphere," in addition to the failures of the *CEDAW* and the *Optional Protocol*, a critical re-examination of the existing instruments concerning women's economic rights is needed. There are, perhaps, two significant reasons why the *CEDAW* has failed women in terms of economics: first, the weak adherence to the normative principles of the *CEDAW* are overridden by patriarchal injustices entrenched into the social and political structures of many, if not all, societies.⁷² These injustices cannot be corrected solely through legal rights, especially where women do not

⁶⁴ *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, 10 December 1999, 2131 U.N.T.S. 83, 38 I.L.M. 763 (entered into force 20 December 2000) [*Optional Protocol*]. It should be noted that only 87 states have become party to the *Optional Protocol*, via ratifications, accessions, and successions. See "Signatures and Accessions/Ratifications to the Optional Protocol," online: DAW <<http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm>>.

⁶⁵ *Optional Protocol*, *ibid.*, arts. 1, 2.

⁶⁶ *Ibid.*, art. 8.

⁶⁷ Hoq, *supra* note 44 at 709.

⁶⁸ *Optional Protocol*, *supra* note 64, art. 3.

⁶⁹ Hoq, *supra* note 44 at 710.

⁷⁰ *Ibid.*

⁷¹ *Ibid.* at 709.

⁷² Hilary Charlesworth, Christine Chinkin & Shelley Wright, "Feminist Approaches to International Law" (1991) 85 Am. J. Int'l L. 613 at 633.

have access to enforcement of those rights.⁷³ Second, the CEDAW focuses on individual rights that are in direct conflict with many communities that place group or community rights over those of the individual.⁷⁴ As Laboni Amena Hoq notes, “the convention fails to recognize those rights that a woman may possess in relation to her group membership in her class, her caste, and her ethnic group that may in fact be more beneficial to her well-being in that society.”⁷⁵

What kind of analysis would remedy these problems? Although there are many possible approaches, I would suggest that both the CEDAW as a whole, and its economic articles pertaining to rural women specifically, could benefit from a TWFA⁷⁶ analysis.

V. A CRITICAL THIRD WORLD FEMINIST APPROACH TO THE CEDAW’S RURAL ECONOMIC ARTICLES AS THEY AFFECT RURAL WOMEN IN THE VILLAGE OF MASURE, INDIA

When conducting a critical analysis, it is necessary to first understand the reasons for the critique, and the possible faults of the critique. Therefore, this part of the article begins by explaining both the necessity of critiquing the CEDAW via a TWFA, and my limitations as a Western woman in using this approach. This explanation is followed by a critique of the CEDAW using the TWFA from the point of view of women in the rural Indian village of Masure.

A. THE NECESSITY OF CRITIQUING VIA A THIRD WORLD FEMINIST APPROACH AND MY LIMITATIONS AS A WESTERN WOMAN

According to the UN, 57.1 percent of the population of less-developed countries⁷⁷ and 73.3 percent of the population of the least developed countries⁷⁸ lives in rural areas.⁷⁹ It is the rural women of these countries (also known as Third World countries) who would benefit much from a TWFA of the economic rights granted to them by the CEDAW so that proper, useful reforms could be implemented. Human rights law has often been criticized as the imposition of Western values upon the rest of the world.⁸⁰ Concerning women’s issues, this

⁷³ Hoq, *supra* note 44 at 691.

⁷⁴ Radhika Coomaraswamy, “To Bellow Like a Cow: Women, Ethnicity, and the Discourse of Rights” in Rebecca J. Cook, ed., *Human Rights of Women: National and International Perspectives*, Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, 1994) 39 at 46.

⁷⁵ Hoq, *supra* note 44 at 692.

⁷⁶ Although “Third World” is no longer considered politically correct terminology, the term is still used by feminist scholars. Therefore, I will use the term as well. See Charlesworth & Chinkin, *supra* note 2 at 46.

⁷⁷ Least developed regions comprise all regions of Africa, Asia (excluding Japan), Latin America and the Caribbean, Melanesia, Micronesia and Polynesia: UN, Department of Economic and Social Affairs, Population Division, *Urban and Rural Areas 2005*, online: UN Economic Social Development <http://www.un.org/esa/population/publications/WUP2005/2005WUP_urban_ruralchart.pdf> at n. 2 [*Rural Areas Report*].

⁷⁸ Least developed countries, as defined by the UN General Assembly in 2003, include 50 countries, of which 34 are in Africa, 10 in Asia, 1 in Latin America, and 5 in Oceania. They are also included in the less developed regions: *ibid.* at n. 3.

⁷⁹ For more detailed information, see *ibid.*

⁸⁰ See generally Isabelle R. Gunning, “Arrogant Perception, World Traveling and Multicultural Feminism: The Case of Female Genital Surgeries” (1992) 23 Colum. Hum. Rts. L. Rev. 189.

particular type of feminist analysis is important because other feminist approaches tend to ignore the important issues of women in developing countries or the Third World.⁸¹ More specifically, Western feminist theories tend to focus solely on the removal of sex-based discrimination, while women in developing countries must also deal with issues of race and imperialism, the remnants of colonialism.⁸² It should be noted that, in this application, one must be cognizant of “[e]ssentialism, or the notion that women have a fixed ‘essence’ or set of characteristics.”⁸³ It cannot be assumed that all women within a certain externally-applied category deal with the same problems or would be served by the same solutions.⁸⁴ However, it seems that, in order to accomplish change, at some level, a baseline set of commonalities must be established. As noted by scholar Jodi Dean,

the importance of coming to an agreement about those aspects of our lives affecting us all, of working within our differences to find norms and practices worthy of the consent of each individual. The recognition of difference remains meaningless so long as it is not included as an element of our common life context and incorporated into the struggle to end exclusion and oppression.⁸⁵

Operating from this baseline, I should address my qualifications as a Western woman attempting to understand the lives of Third World women and applying a TWFA to the CEDAW. Western women who have attempted to see and analyze the developing world have used various methods. Some European women employ the “rooting and shifting” method, in which a woman remains rooted in her own history and identity while shifting to understand the roots of other women.⁸⁶ Another approach is the “world-traveling” method, in which feminists shift from being one person in one world to a different person in another world.⁸⁷ The world-traveling woman utilizes a three-pronged methodology for understanding other cultures: first, she recognizes her own historical context and makes herself aware of her own will and interests; second, she must understand how her status as an “outsider” impacts the “other’s” world and how that status is perceived by the “other.” The goal in this stage is to make an effort to see oneself as another might see you. Third, she recognizes the complexities of the life and circumstances of other women, attempting to see through the other woman’s eyes.⁸⁸ While I am aware of the suspicion with which some Western women are viewed when trying to sympathize with women of the developing world, I will not sympathize or empathize, but simply attempt to see the world through the eyes of other women. I realize that I am a world away from women in the rural-developing world, but as

⁸¹ Charlesworth & Chinkin, *supra* note 2 at 46.

⁸² *Ibid.* at 46-47.

⁸³ *Ibid.* at 52.

⁸⁴ For a discussion of the differing priorities and needs of women in the Third World, and the development of Third World Feminism, see generally Mohanty, *supra* note 19; Elizabeth Grosz, “A Note on Essentialism and Difference” in Sneja Gunew, ed., *Feminist Knowledge: Critique and Construct* (New York: Routledge, 1990) 332 at 342.

⁸⁵ Jodi Dean, *Solidarity of Strangers: Feminism After Identity Politics* (Berkeley: University of California Press, 1966) at 173.

⁸⁶ Charlesworth & Chinkin, *supra* note 2 at 53.

⁸⁷ Gunning, *supra* note 80 at 202.

⁸⁸ *Ibid.* at 194.

I apply the TWFA, I will, to the best of my ability, use this world-traveling method to help me understand the issues facing these women and avoid the “us helping them” approach.⁸⁹

**B. CRITICAL ANALYSIS OF RURAL WOMEN’S ECONOMIC RIGHTS:
ARTICLES AND ENFORCEMENT MECHANISMS OF THE CEDAW
USING A THIRD WORLD FEMINIST APPROACH**

First and foremost, it is important to define international law, as the CEDAW itself is an instrument of international law. Currently, international law is fashioned around the state-centric model.⁹⁰ Therefore, the definition of international law, within the confines of this model is the law that governs relations between states.⁹¹ Immediately, this state-centric model is problematic because it focuses completely on the public sphere and ignores the private sphere, which is traditionally the domain of women. Thus, the traditional focus of international law places women on the periphery of international law.⁹² As a result, in order to garner greater protections via international law, women need to move out of the peripheral sphere of the family and into the core of public international law.⁹³ But the question remains: is it possible to shift women’s issues into the spotlight of international law within the current male-centric structure and vocabulary?

As noted by David Kennedy, some baseline vocabulary is necessary when one sets about to understand the intellectual history, or a prospect for renewal within a given field.⁹⁴ But at the same time, he states that although international lawyers may have the best intentions, “[t]he blindness and biases of the disciplinary vocabulary have been enhanced rather than eliminated by the current generation of enthusiastic renewalists.”⁹⁵ Perhaps the best solution to this problem is found within Third World Feminism, which, unlike radical feminist approaches,⁹⁶ focus less on women’s inequality as a result of male domination and more on the particular historical context and their legal needs that have developed within that context.⁹⁷ Third World Feminists worry that the antagonism between universalism (a more general approach which focuses on commonalities amongst all women⁹⁸) and cultural relativism (which focuses on the separate needs of women based upon differing culture⁹⁹) has restricted and channeled the vocabulary concerning women’s human rights into even

⁸⁹ Vasuki Nesiah, “The Ground Beneath Her Feet: TWAIL Feminisms” in Antony Anghie *et al.*, eds., *The Third World and International Order: Law, Politics and Globalization* (Boston: Martinus Nijhoff, 2003) 133 at 134, explaining the connection between colonialism and the move to “liberate” women within the Western idea of liberation, specifically the case of French colonial powers unveiling women.

⁹⁰ Stephen C. McCaffrey, *Understanding International Law* (Newark, N.Y.: LexisNexis, 2006) at 141.

⁹¹ David Kennedy, “When Renewal Repeats: Thinking Against the Box” (2000) 32 N.Y.U.J. Int’l L. & Pol. 335 at 343.

⁹² Karen Engle, “Views from the Margins: A Response to David Kennedy” (1994) Utah L. Rev. 105 at 107.

⁹³ *Ibid.*

⁹⁴ Kennedy, *supra* note 91 at 343.

⁹⁵ *Ibid.* at 409.

⁹⁶ Radical feminist approaches focus on the fault of addressing women’s issues within international law using a “male yardstick,” including the use of a male-developed vocabulary: see Charlesworth & Chinkin, *supra* note 2 at 42.

⁹⁷ *Ibid.* at 42-43, 46-47.

⁹⁸ *Ibid.* at 55.

⁹⁹ *Ibid.* at 55, 222.

narrower areas.¹⁰⁰ Although the use of a feminist vocabulary cognizant of women's issues has, for the most part, been non-existent within the realm of international law, there has been some broader use of gender-inclusive language.¹⁰¹ However, this has led to little change in practice. The alteration has not required or helped to bring about any transformation concerning women's treatment by international law. Gendered assumptions concerning global power structures of economic and political power remain.¹⁰² And, outside of vocabulary concerns, action taken to bring women into mainstream activities concerning international law in many cases has been limited to adding women to the agenda but yet failing to rethink the structure of programs or consider gender awareness.¹⁰³

Given these shortcomings within the international community, a new approach to integrating women into the law-making process is necessary. In particular, as noted above, because women in developing countries are often ignored in this process, rethinking international law through the TWFA is beneficial. No single, over-arching definition of Third World Feminism exists, but in general, it refers to approaches developed by women in the South (southern hemisphere) and women of color in the North (northern hemisphere) based on their own historical contexts.¹⁰⁴ Beyond historical context, there are three major influences on Third World feminist theories. First, they are greatly shaped by nationalist movements and women's involvement with them.¹⁰⁵ Second, they are characterized by the role of the state in women's lives, especially the state's authoritarian nature, which forces feminist activity into informal alliances.¹⁰⁶ Finally, Third World feminist theory is hesitant about the role modernity plays in society.¹⁰⁷ Although the Third World feminist movement was originally concerned with nationalist struggles, it has shifted its focus towards ending poverty and is, therefore, very concerned with the perpetuation of poverty imposed by the global economy and by the reliance of the developed world upon the economic exploitation of developing countries.¹⁰⁸ This particular form of feminist analysis seems especially appropriate for use in evaluating the economic rights granted to rural women within the *CEDAW*, as well as its enforcement mechanisms.

This article focuses its analysis on the point of view of the women in the rural village of Masure, India, located on the Konkan Coast of western India.¹⁰⁹ This micro-level analysis

¹⁰⁰ Nesiah, *supra* note 89 at 138.

¹⁰¹ Orford, *supra* note 1 at 193.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ Charlesworth & Chinkin, *supra* note 2 at 46. See also Mohanty, *supra* note 19.

¹⁰⁵ *Ibid.*, citing Geraldine Heng, "A Great Way to Fly": Nationalism, the State, and the Varieties of Third-World Feminism" in M. Jacqui Alexander & Chandra Talpade Mohanty, eds., *Feminist Genealogies, Colonial Legacies, Democratic Futures* (New York: Routledge, 1997) 30.

¹⁰⁶ Heng, *ibid.* at 32.

¹⁰⁷ *Ibid.* at 33.

¹⁰⁸ *Ibid.* at 47.

¹⁰⁹ I have chosen to do my analysis based on a report by Anjali Bagwe, in which she focused on strategies used by the village women to deal with both poverty and patriarchy. Bagwe based her study on 12 years of observation in the village of Masure, India, located on the Western coast of India. See Anjali Bagwe, *Of Woman Caste: The Experience of Gender in Rural India* (London: Zed Books, 1995). I felt that choosing to focus on a village in India was appropriate, as 71.3 percent of India's population lives in rural areas. There is, then, a baseline commonality concerning women living a rural life, and therefore great value in examining village life. Although India is not technically a Third World country, it is considered a "less developed" country by the UN, and shares a history of colonialism with Third World

corresponds well with the Third World feminist emphasis on specific, local accounts of women, in creating change at the local level.¹¹⁰ Again, essentialism will be avoided as much as possible, but some basic conclusions as to pressing issues for these women to create a base line of commonality for the analysis will nevertheless be drawn. Using this approach, the workability and effectiveness of the economic articles concerning rural women within CEDAW as they would affect the women of Masure are analyzed.

Before any in-depth analysis can be conducted, it is important to have a basic understanding of a woman's place within the village culture of Masure. Women in the village have much lower status than men.¹¹¹ This secondary status of women within the village of Masure, a traditional society, originates from the view that women are mere possessions rather than individual members of the family.¹¹² They are expected to be concerned only with the needs of their families, not their own individual matters, and are often referred to not by their first names, but by their status as someone's wife or mother.¹¹³ Because girls are sent to live with their in-laws after being married while boys remain in their parents' home, villagers are hesitant to invest in their daughters; therefore, money spent on a son's education and upbringing is seen as a prudent investment which will bring returns once the son reaches adulthood, whereas money spent on a daughter is seen as wasted.¹¹⁴ Because of their elevated status, men tend to be better fed and clothed than women and children within their households, and the cash resulting from the trading of excess crops is more often than not used by men on liquor, gambling, and travel.¹¹⁵ Women, on the other hand, will sacrifice and sell jewelry and other personal items to ensure their household is taken care of during emergencies.¹¹⁶ Although men are generally the heads of a household, the phenomenon of out-migration of men to Mumbai in search of better jobs has made many women in Masure *de facto* heads of household. While this shift may initially seem empowering, the absence of a male representative in the household serves to disadvantage women and children alike. When negotiating with government officials or other villagers, these *de facto* household heads need male intermediaries because both officials and villagers hold onto negative, patriarchal values against women asserting their rights.¹¹⁷ The fact of the matter is that "cultural stereotypes concerning the lowly status of women and appropriate modes of female conduct are a part and parcel of daily existence for village women."¹¹⁸

In terms of the effect of British imperialism had on the women of the village and women throughout India during its occupation as a colony, the combination of traditional Indian Bramhanic values with Victorian values created social and religious norms even more rigid than those that existed in pre-colonial India.¹¹⁹ Women's status changed during India's anti-

countries: see *Rural Areas Report*, *supra* note 77. Therefore, using a TWFA within the context of a rural village in India, like Masure, is appropriate.

¹¹⁰ Charlesworth & Chinkin, *supra* note 2 at 47.

¹¹¹ Bagwe, *supra* note 109 at 204.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.* at 196.

¹¹⁵ *Ibid.* at 202.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.* at 203.

¹¹⁸ *Ibid.* at 197.

¹¹⁹ *Ibid.* at 16-17.

colonial campaign, as many women worked alongside men for India's independence.¹²⁰ Although women's political participation in the nationalist movement was empowering for the women of India in general, women's political participation peaked during that movement, and steadily declined afterward, with women's political participation reaching at an all-time low by the time this study was produced, especially with respect to women in public party platform leadership roles, and the numbers of women elected to state and national assemblies.¹²¹

Given the secondary status of women in Masure, it is questionable whether the articles of the *CEDAW* meant to empower rural women economically would actually be effective within the context of their lives. Article 14, para. 2(e) of the *CEDAW* asserts:

State parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: ... to organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment.¹²²

Women perform much of the agricultural work in Masure — transplanting rice paddies, weeding, harvesting, and cleaning and processing grain — yet they earn only half, or less, of what the men of the village earn doing agricultural tasks.¹²³ It seems that as they are already playing a large role in the agricultural economy, women could reap great benefit by forming co-ops and self-help groups to equalize wages and give women greater monetary control. However, there are three aspects of co-ops and self-help groups that are counter to the function of village life as it exists for women: the relationship between co-operatives and self-help groups and modernization, the administrative hierarchy required by the government for co-ops to be recognized, and the role caste plays in affecting a women's ability to function within the co-op structure.

First, the formation of co-ops and self-help groups involve a push towards modernization in that they challenge traditional roles. Challenging traditional roles is not inherently negative, but women in the village have reason to be wary of institutionalized modernization as other attempts to modernize the village and surrounding areas have been detrimental in many ways. For example, in the process of bringing electricity to the neighbouring town of Malvan, government officials approved massive tree felling out of the jungle in the area surrounding the town. The removal of the trees led to large-scale erosion, causing flooding and the shut-down of the town's harbor due to silt build-up. After the shutdown of the harbour, Malvan's economy failed.¹²⁴ In addition, modernization has led to out-migration and the move from a self-sufficient subsistence economy to a monetary economy (in which individualism is valued over the needs of the group), disassembling the traditional family structure (in which five or six related nuclear family units lived under the same roof and

¹²⁰ See Suruchi Thapar, "Women as Activists; Women as Symbols: A Study of the Indian Nationalist Movement," (1993) 44 *Feminist Review* 81.

¹²¹ Bagwe, *supra* note 109 at 214.

¹²² *CEDAW*, *supra* note 18, art. 14, para. 2(e).

¹²³ Bagwe, *supra* note 109 at 205.

¹²⁴ *Ibid.* at 152.

collectively took care of basic needs) and introducing rifts and family feuds.¹²⁵ Unless the formation of co-ops and self-help groups can be distanced from the negative effects of modernity, they are unlikely to garner favour among the village women in terms of improving their economic status.

To be officially recognized as a co-operative by the Indian government, a Western-style administrative hierarchy within the group is necessary.¹²⁶ A co-op must have a president, a vice-president, a treasurer, and a secretary.¹²⁷ This structural requirement is completely counter to the traditional egalitarian village structure applicable to interactions between women.¹²⁸ Uncomfortable with the structural requirements in co-op formation, rather than electing one of themselves to the position of president, the women of Masure instead asked the author of the village study to serve in that office.¹²⁹ As the author noted, “[a]fter all the levels of exploitation and undermining in traditional ways of village life, they [could not] take any more hierarchies, even of the most limited kind.”¹³⁰ Although art. 14(2)(e) of the CEDAW does not overtly require this specific structure to be part of its implementation at the state level, I would suggest that it is the natural result of Western influence in international affairs and that it has been a part of the implementation process anywhere co-ops and self-help groups are institutionalized by governments. Without attention to local practices concerning power structures, co-ops and self-help groups are unlikely to reach their full potential in improving the economic power of rural women.

Even if it is assumed that women are able to establish a successful business through the co-op structure, there is still the issue of working within the male hierarchical framework of the market. The experience of women creating their own businesses in the village of Masure is likely to parallel the experience of women in the village of Narsapur who worked as independent lacemakers.¹³¹ The lacemakers, who were essentially overworked housewives, had to deal with men in their household acting as middlemen, in addition to local male traders and international entrepreneurs who drew profits from the business scheme set-up.¹³² This resulted in a decrease of autonomy, health, and overall status for the women.¹³³ If women are to successfully gain economic power via loan programs aimed at the creation of co-op businesses, they need to be involved in the higher levels of trade as well in order to prevent their subjugation by the male-dominated market structure.

A final criticism of art. 14(2)(e) is that it completely ignores the role caste plays in the lives of village women. Castes are social class divisions within Indian society.¹³⁴ Belonging to a certain caste brings with it the requirement of adhering to caste practices and duties.

¹²⁵ *Ibid.* at 183-84.

¹²⁶ *Ibid.* at 50-51.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.* at 51.

¹³¹ Maria Mies, “Dynamics of Sexual Division of Labour and Capital Accumulation: Women Lace Workers of Narsapur (1981) 16 Economic and Political Weekly 487.

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Dictionary of Hindu Lore and Legend*, s.v. “caste.”

One's caste also determines what is socially acceptable and unacceptable behavior.¹³⁵ This can be problematic when it comes to the tasks involved with the form and function of co-operatives and self-help groups. For example, one village woman who found herself and her family in a desperate financial situation farmed her own small vegetable patch in order to earn a small income from selling the vegetables.¹³⁶ However, she was an upper caste woman, and trading in the market was beneath her.¹³⁷ Her family's misery drove her to sell her vegetables at the market, but instead of trading at her village market, where people would recognize her, she hiked to the next village where very few people knew her and where she would be less likely to bring shame upon her caste.¹³⁸ For co-ops and self-help groups to function productively, the women involved must vend their products so that some monetary profit can be had. For poor women of high caste like the Masure woman mentioned above, this can pose a challenge. In order for co-ops and self-help groups to be beneficial to women in positions similar to those of the women of Masure, organizers must work to develop a co-op structure in which women can still fulfill their caste duties while improving their economic situation.

Article 14(2)(g) states:

State parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: ... To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.¹³⁹

The guarantee of agricultural credit loans, marketing facilities, technological support, and equal treatment in land and agrarian reform sounds promising with respect to the economic empowerment of women in Masure. After all, as mentioned above, these women do the majority of agricultural work within the village. But this approach to economic equality also has its complications within the framework of the Masure social structure. Ultimately there are three hurdles to the effectiveness of this article: rigid patriarchal dominance of property ownership, failed government implementation of women's credit programs, and the need for women to work within a male hierarchical framework after creating a business with loans or property.

First, the patriarchal structure concerning property ownership within the village makes it highly unlikely that any village woman would retain control over the funds she obtained. In Masure, property ownership is the sole privilege of men.¹⁴⁰ Women technically do not even own the jewelry they received from their parents or in-laws when they were married.¹⁴¹ Concerning real property, ancestral land passes to the oldest son in the family, who often migrates to the city to work and send money home while the next oldest son stays in the

¹³⁵ *Ibid.*

¹³⁶ Bagwe, *supra* note 109 at 94.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ CEDAW, *supra* note 18, art. 14(2)(g), para. 2.

¹⁴⁰ Bagwe, *supra* note 109 at 202.

¹⁴¹ *Ibid.*

village and manages the family property.¹⁴² Women play no role in property ownership. Therefore, it is unlikely that a woman will take out loans on property received through a land redistribution scheme without losing control of the funds or the land to her husband. Perhaps a possible solution to this problem would be the institution of a policing scheme that ensures women retain control of funds and land. Implementing this scheme however, would be a challenge, especially the task of finding local male personnel to undertake the policing function.

India has, in fact, instituted special government-run loan facilities for women, and special programs at local women and child welfare departments provide leadership in encouraging women to try non-traditional methods of earning income.¹⁴³ However, such programs have not been effective due to the corruption of officials, as well as some of the officials' contempt for the programs. While the programs provide women with the means to pursue income independently, it does not teach women the proper aspects of management or accounting. Also, because the programs do not provide women with educational support for running a business, many women choose not to take out the loans at all, for fear of incurring a debt they will not be able to repay.¹⁴⁴ Along with this fear comes the worry that, in the case of default, the government will repossess essential family assets.¹⁴⁵ In a world where the family depends upon its very few assets for survival, taking out a loan that would jeopardize these assets is too much of a risk for women who are also wives and mothers.

Given the flaws within arts. 14(2)(e) and 14(2)(g) of the *CEDAW*, flaws that arise from their failure to take into account the status and societal context of rural women, the rights granted to economically empower rural women are essentially ineffective. Perhaps if rural women's status and societal context were taken into account, the articles would be more effective, but, until that time, the rural economic articles of the *CEDAW* will remain generally unfruitful in improving the economic status of rural women.

VI. IF THE *CEDAW* IS NOT ADEQUATELY PROTECTING OR EMPOWERING RURAL WOMEN IN THE DEVELOPING WORLD ECONOMICALLY, WHAT WILL?

What can be done to improve women's economic situation in the new global economy where treaties such as the *CEDAW* fail to provide necessary protections and where women, in transitioning to unpaid work and home work, are largely outside the reach of international labour protections? There are at least three possible solutions to this problem: the newly mandated practice of gender mainstreaming instituted by the UN as part of their Millennium Development Goals, the possibility of organizing through self-employment, and the expansion of microcredit.

¹⁴² *Ibid.* at 184-85.

¹⁴³ *Ibid.* at 210.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

A. GENDER MAINSTREAMING

Gender mainstreaming, according to the UN's Economic and Social Council (ECOSOC), is "the process of assessing the implications for women and men of any planned action, including legislation, policies, or programs, in all areas and at all levels"¹⁴⁶ and is "a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated."¹⁴⁷ The goal of gender mainstreaming is to achieve gender equality,¹⁴⁸ essentially narrowing the gender gaps that disadvantage women. The Office of the Special Advisor on Gender Issues and Advancement of Women (OSAGIAW) of the UN outlines a strategy to implement this goal in the realm of trade, suggesting that special research be undertaken on the differential impact of trade patterns on women.¹⁴⁹ Practically speaking, gender mainstreaming is implemented by taking gender into account for *all* activities funded or undertaken by an organization (such as the UN, the World Bank, or the IMF) through appropriate guidelines and training so that concerns about gender permeate the work of all staff members within an organization.¹⁵⁰ Specifically, the OSAGIAW describes seven ways in which an organization should use gender mainstreaming in analyzing policy formation:

- 1) ask questions concerning responsibilities, activities, interests, and priorities of men and women and how their experience and problems might differ;
- 2) challenge assumptions about "families," "households," or "people" that may be embedded in the way problems are presented or policies are created;
- 3) obtain information to allow experiences and situations of both women and men to be analyzed;
- 4) solicit commentary from both women and men about an organization's decision that will affect their lives;
- 5) ensure that areas where women tend to dominate in terms of numbers are given proper attention;
- 6) do not presuppose that *all* women or *all* men share the same perspectives (emphasis added); and
- 7) analyze the policy in question in terms of its consequences from a gendered point of view and seek to ensure that it supports equitable distribution of benefits and opportunities.¹⁵¹

¹⁴⁶ Office of the Special Advisor on Gender Issues and Advancement of Women, *Gender Mainstreaming: An Overview*, UN GAOR, UN Doc. E/2001/41 (2002) [*Gender Mainstreaming*].

¹⁴⁷ *Ibid.* at v.

¹⁴⁸ OSAGIAW, "Gender Mainstreaming," online: OSAGI <<http://www.un.org/womenwatch/osagi/gender-mainstreaming.htm>>.

¹⁴⁹ *Gender Mainstreaming*, *supra* note 146 at 2.

¹⁵⁰ Charlesworth & Chinkin, *supra* note 2 at 195.

¹⁵¹ *Gender Mainstreaming*, *supra* note 146 at 4-5.

The OSAGIAW notes that among the areas where this equalizing method should be applied are in situations where there are inequalities within the household¹⁵² and the gendered division of labour within the economy.¹⁵³

Gender mainstreaming is still a relatively new practice; therefore, not much research is available concerning its effectiveness.¹⁵⁴ One study of its implementation within the UNDP conducted by the World Bank and the International Labour Organization (ILO) suggests that even though the gender mainstreaming approach had technically been instituted, staff lacked sufficient analytical skills, supervision of its implementation was absent, and there was a lack of political commitment on the part of the organization.¹⁵⁵ However, it is too soon to know whether the implementation of gender mainstreaming will be a truly effective method in improving not only women's global economic situation, but also women's situation in general.

B. UNIONIZATION OF SELF-EMPLOYED WOMEN

An alternative to using gender mainstreaming to protect women's economic interests when they are beyond the reach of law is the unionizing of women who participate in home work.¹⁵⁶ In this model, international and domestic law is inherently insufficient to safeguard women's economic welfare because such laws have been created based upon the "ideal" worker model, or a male worker with a wife.¹⁵⁷ Home work actually affords women some benefit in that it allows them a flexible schedule and eliminates the need for transportation and work clothes.¹⁵⁸ At the same time, however, the nature of home work keeps women from organizing and therefore allows employers to treat them as subcontractors, thereby circumventing benefits required in the case of typical workers, and reinforcing the notion that unpaid work is "women's work."¹⁵⁹ But, despite barriers to the organization of women within the home work industry, women have successfully unionized in some places, forcing private market actors to take notice of women's contributions to the economy, and forcing them to pay fair compensation.¹⁶⁰ One such example is the Self Employed Women's Association (SEWA), formed in India.¹⁶¹ SEWA was created in 1972 by Ela Bhatt, an Indian lawyer and women's rights activist,¹⁶² who saw the need for organization among the 80 percent of Indian

¹⁵² This category is significant to women's economic empowerment as in most of the world, women have very little control over their economic status because of their status within the household.

¹⁵³ *Gender Mainstreaming*, *supra* note 146 at 5-7.

¹⁵⁴ To facilitate implementation of gender mainstreaming, the OSAGIAW has created a web database containing "good practices" of mainstreaming. See "Welcome to Good Practices in Gender Mainstreaming and Implementing the Beijing Platform for Action," online: OSAGI <<http://www.un.org/womenwatch/resources/goodpractices/>>.

¹⁵⁵ Charlesworth & Chinkin, *supra* note 2 at 196.

¹⁵⁶ Stark, *supra* note 36 at 350.

¹⁵⁷ Joan Williams, *Unbending Gender: Why Family and Work Conflict and What To Do About It* (New York: Oxford University Press, 2000) at 15.

¹⁵⁸ Stark, *supra* note 36 at 351.

¹⁵⁹ *Ibid.*

¹⁶⁰ The unionization of home workers serves as an example of what may be possible if women are able to overcome the barriers to forming co-ops and other self-help groups discussed earlier in this article.

¹⁶¹ SEWA, "About Us," online: SEWA <<http://www.sewa.org/aboutus/index.asp>>

¹⁶² Nic Paget-Clarke, "Interview with Ela Bhatt" *In Motion Magazine* (18 December 2003), online: In Motion Magazine <http://www.inmotionmagazine.com/global/ebhatt_int1.html> [Bhatt Interview].

women who worked within the home work sector.¹⁶³ Bhatt founded SEWA with the goal of creating “emploreliance” or full employment for self-employed women (where full employment means work security, income security, food security, and social security concerning health care, child care, and shelter) in addition to self-reliance (note that where women are autonomous and self-reliant on an individual and group level, in both economics and their decision-making abilities).¹⁶⁴ As of 2006, SEWA’s membership encompassed 959,698 self-employed Indian women.¹⁶⁵

Women who are employed through the home work industry have specific protection within the realm of international law as well. The *Home Work Convention*,¹⁶⁶ developed by the ILO (the labour regulation body of the UN with 179 member countries¹⁶⁷) at the urging of many women’s groups, but especially SEWA, seeks to protect all those who rely on home work as a source of income. The *HWC* establishes the equality of treatment between home workers and other workers, and requires that signatories implement the *Convention*’s policy on home work into national policy.¹⁶⁸ Among the areas where equality of treatment of home workers is to apply are:

- (a) the home workers’ right to establish or join organizations of their choosing and to participate in the activities of such organizations;
- (b) protection against discrimination in employment and occupation;
- (c) protection in the field of occupational safety and health;
- (d) remuneration;
- (e) statutory social security protection;
- (f) access to training;
- (g) minimum age for admission to employment or work; and
- (h) maternity protection.¹⁶⁹

Although many Western feminists criticize the *HWC* because it reinforces a traditional notion of the division of labour in which a woman is responsible for the home and family,¹⁷⁰ nevertheless, it also increases women’s economic independence by allowing them to support themselves and their children.¹⁷¹

So, despite the fact that the *CEDAW* has failed in some ways to protect those women on the lowest rungs of the economic ladder, the principle of gender mainstreaming as well as the possibility of the unionization of self-employment through the *HWC*, provide alternate avenues for the expansion of women’s power within the economic sphere.

¹⁶³ *Ibid.*

¹⁶⁴ *Supra* note 161.

¹⁶⁵ SEWA, “SEWA’s Structure,” online: SEWA <<http://www.sewa.org/aboutus/structure.asp>>.

¹⁶⁶ *Home Work Convention, 1996*, 20 June 1996, 83rd Sess., ILO Doc. C177 (entered into force 22 April 2000) [*HWC*].

¹⁶⁷ ILO, Official Relations Branch, “Alphabetical list of ILO member countries,” online: ILO <<http://www.ilo.org/public/english/standards/reim/country.htm>>.

¹⁶⁸ *HWC*, *supra* note 166.

¹⁶⁹ *Ibid.*

¹⁷⁰ Stark, *supra* note 36 at 354.

¹⁷¹ *Ibid.* at 355.

C. MICROCREDIT

A final possible resolution to the problem of women's economic empowerment within the developing world is the principle of microcredit. This concept is so promising that Muhammad Yunus, the Bangladeshi developer of the microfinance system and founder of the Grameen Bank, the first bank to put into practice the idea of microfinance, won the 2006 Nobel Peace Prize for his microfinance economic development programs.¹⁷² The concept of microcredit developed out of the realization that SAPs and other trickle down approaches were not eliminating poverty nor were they having much impact on the world's very poorest people.¹⁷³ As a result, new approaches, including the microcredit model, focused on bettering economics within developing countries from the ground up, rather than the top down.¹⁷⁴ A positive side effect of this new policy was the inclusion of the voices of disadvantaged groups in the dialogue for grassroots development, thereby empowering them as both the beneficiaries of the policy as well as contributors to it.¹⁷⁵

At its core, the goal of microfinance is to reduce poverty among the poorest of the poor generally and women specifically by providing them with access to credit in order to increase their income and productivity.¹⁷⁶ Women are considered the best group to lend to, according to Yunus, because "[g]iven the opportunity to fight against poverty and hunger, women turn out to be natural and better fighters than men."¹⁷⁷ Although the Grameen Bank initially pursued both men and women as clients, the Bank shifted its focus to women because they used household resources in a more altruistic fashion, with the outcome being greater health, nutritional and income levels within the borrowing households.¹⁷⁸ Studies have found that the microcredit approach is fairly successful at helping families move out of poverty, with one study in particular showing that on average, about 5 percent of participants in microcredit programs move out of poverty each year.¹⁷⁹ Other studies reflect even higher numbers, where upwards of 50 percent of all borrowers within the microcredit system successfully transcend the poverty line.¹⁸⁰ However, it can also be argued that microcredit actually subverts women's economic power due to the gender-based lending rationale, women's role within the home and society, the microcredit loan circle lending structure, and the requirements of some lenders for obtaining a loan.

¹⁷² See "Nobel Peace Prize Laureats — 2006 — Muhammad Yunus, Bangladesh, 1940 and Grameen Bank: For their efforts through microcredit to create economic and social development from below," online: The Nobel Peace Prize <http://nobelprize.org/eng_lau_list.html>.

¹⁷³ Celia R. Taylor, "Microcredit as Model: A Critique of State/NGO Relations" (2002) 29 Syracuse J. Int'l L. & Com. 303 at 314.

¹⁷⁴ *Ibid.* at 315.

¹⁷⁵ *Ibid.* at 316.

¹⁷⁶ *Ibid.* at 317, 319.

¹⁷⁷ Rashmi Dyal-Chand, "Reflections in a Distant Mirror: Why the West has Misperceived the Grameen Bank's Vision of Microcredit" (2005) 41 Stan. J. Int'l L. 217 at 262, citing Muhammad Yunus, *Banker to the Poor: Micro-Lending and the Battle Against World Poverty* (New York: PublicAffairs, 2003) at 204.

¹⁷⁸ Dyal-Chand, *ibid.*

¹⁷⁹ Sahidur K. Khandker, *Fighting Poverty With Microcredit: Experience in Bangladesh* (New York: Oxford University Press, 1998) at 59.

¹⁸⁰ Catherine A. Madsen, "Feminizing Waste: Waste-picking as an Empowerment Opportunity for Women and Children in Empoverished Communities" (2006) 17 Colo. J. Int'l Envtl. L. & Pol'y 165 at 193.

In the context of a gender-based lending rationale, lenders rely on women's role as nurturers and their tendency to defer to authority in order to ensure repayment.¹⁸¹ Some studies show women are easier to control than men, and therefore easier to extract payment from.¹⁸² One scholar noted that in his study of the microcredit system in Bangladesh, bank workers told him women were "shy," "submissive," and "immobile," which allowed the bank to monitor their whereabouts and admonish them for falling behind on loan repayments, while the bank workers characterized men as "arrogant," "argumentative," and in some respects, "threatening," making them more difficult to control.¹⁸³ Home and societal restraints also serve to subordinate women within the microcredit scheme because women bear the burden of preserving their families' honour. The pressure to maintain this honour applies to the realm of economics as well, where a woman's failure to pay back a loan to the bank negatively affects her family's honour and standing within the community.¹⁸⁴ This social burden often forces women into repaying microcredit loans, at the risk of shaming themselves and their families in the case of default. In some countries where microfinance has been instituted, such as Bangladesh, there is additional pressure on women to repay loans rather than default because women have no options outside of marriage.¹⁸⁵ Whereas an unmarried woman would be able to run away from her home or village after defaulting on a loan, social constructs in which women have no role outside of marriage keep women tied to their husbands' residences, and consequently within the reach of loan institutions and the pressure to repay loans.¹⁸⁶

The loan circle structure within microfinance creates new opportunities for the exploitation and subordination of women as well. The Grameen Bank model uses two group structures to guarantee repayment of loans. At the bottom level, women organize in groups of five. The groups of five are in turn organized into groups of eight, which together make up a "center." Borrowers are required to attend weekly meetings where they make their loan payments. Borrowers are charged commercial rates, such that the Bank uses "group configuration" instead of credit checks to ensure repayment, such that other group members are responsible if another group member defaults on a loan.¹⁸⁷ While in theory this concept of women helping women seems to be empowering, several aspects of this system actually fracture the solidarity of women, pitting woman against woman instead. First, the loan circle structure tends not to reach the poorest women in rural villages. Second, loan circles exist solely to secure the repayment of loans for the bank involved and tend not to engage in activities of "mutual support, education, social, or individual capacity building."¹⁸⁸ Without these supplemental group activities, long-term benefits of microcredit are potentially sacrificed, as although women are given the financial means for empowerment through loans, without the technical support for further development, the capital will not perpetuate itself.

¹⁸¹ Claire Moore Dickerson, "Sex and Capital: What They Tell Us About Ourselves" (2005) 79 St. John's L. Rev. 1161 at 1164.

¹⁸² *Ibid.*

¹⁸³ Dyal-Chand, *supra* note 177 at 263, citing Aminur Rahman, *Women and Microcredit in Rural Bangladesh: Anthropological Study of the Rhetoric and Realities of Grameen Bank Lending* (Boulder: Westview Press, 1990) at 73-74.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ Rahman, *supra* note 183 at 74-75.

¹⁸⁷ Madsen, *supra* note 180 at 193.

¹⁸⁸ Taylor, *supra* note 173 at 327.

This is evidenced through studies on the long-term affects of some microcredit programs, which have shown an inability on behalf of women to create assets and withstand future economic stress.¹⁸⁹

Another practice among microfinance institutions that furthers the subordination of women is the requirement that there must be steady income from a male family member within the borrower's household. One common criteria for participation within lending groups is "the presence in the household of at least one male who earns a regular income."¹⁹⁰ Within this system, "widows are excluded... unless they have the guarantee of a group leader or male relative."¹⁹¹ The requirement of a male presence in the household also gives way to another problem for women within the microcredit system — that of women being forced to relinquish control of the loan money.¹⁹² One study estimates that women only retain control of their loans 22 percent of the time, and instead, male relatives use the seized women's loan funds for personal or business purposes.¹⁹³ Several studies show that 50 to 60 percent of the time, after being given loans, women do not retain direct control of the money, usually yielding control to male relatives.¹⁹⁴ Some studies also suggest that domestic violence increases when women are given economic power through loans. Concerning women obtaining loans from the Grameen Bank, 57 percent reported an increase in "verbal aggression" from male household members, while an additional 13 percent reported an increase in "verbal aggression" and "physical assault."¹⁹⁵

Although the pre-existing social structure and women's place within it makes women both good financial risks for microcredit financiers, microfinance, in and of itself, tends to both enforce pre-existing social structures of subordination and create new ones through the loan circle structure, thereby undermining the goal of women's economic empowerment through microfinance. Even if microcredit does seem to further the goal of eradicating poverty by bringing a small percentage of woman borrowers and their families above the poverty line each year, consequently enabling women to take the first step on the way to financial independence, structural reforms of the lending process and practice are necessary in order to guarantee women are not exploited in the process of being economically empowered.

VII. CONCLUSION

The state of women in the world today indicates that gender equality has not been achieved despite the existence of international human rights documents and women's rights documents. As articulated above, this is especially true for the world's poorest women, those who live in developing countries and make up the vast majority of the world's impoverished population. Unless current protections and grants of rights within the instruments of international law are restructured so as to assure that they truly help the poor, rural women

¹⁸⁹ Madsen, *supra* note 180 at 193.

¹⁹⁰ Jude L. Fernado, "Nongovernmental Organizations, Micro-Credit and the Empowerment of Women" (1997) 554 *The Annals of the American Academy of Political and Social Science* 150 at 171.

¹⁹¹ *Ibid.*

¹⁹² Dickerson, *supra* note 181 at 1164-65.

¹⁹³ Rahman, *supra* note 183 at 263.

¹⁹⁴ *Ibid.* 109.

¹⁹⁵ *Ibid.* at 126-27.

they are intended to aid, those women will have to rely upon models outside of the realm of international law to protect their economic rights and to improve their economic status. But the world's poorest women will not necessarily be saved through the approaches of gender mainstreaming, unionization of self-employed women, and institutions of microfinance discussed in this article. Reforms and monitoring mechanisms are needed within these alternative modes to ensure that they do not subjugate women in the process of attempting to ameliorate their economic positions. Perhaps if those reforms can be effectively instituted, and changes to existing international women's rights instruments like the *CEDAW* can be made to take into account the specific context of rural women's reality, the world's poorest women really *can* be saved.