Centuries of Globalization; Centuries of Exclusion: African Women, Human Rights, and the New International Trade Regime

Uche U. Ewelukwa

Follow this and additional works at: https://scholarship.law.berkeley.edu/bglj

Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z383F4KM62

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley Journal of Gender, Law & Justice by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
Centuries of Globalization; Centuries of Exclusion:

African Women, Human Rights, and the "New" International Trade Regime

Uché U. Ewelukwa†

PROLOGUE

The year was 1929. It was October 14th. Trouble began in Oloko village, a small village in Owerri Province of South Eastern Nigeria, when a Warrant Chief, Chief Okugo, acting under the direction of a colonial officer, Captain

Copyright © 2005, The Regents of the University of California.

†. Uché U. Ewelukwa, Assistant Professor, University of Arkansas School of Law; Fellow, Carnegie Council on Ethics and International Affairs 2003-2004; S.J.D. 2003, Harvard Law School. The University of Arkansas School of Law has supported this work with a summer research grant in 2002 for which the author is grateful. The author would like to thank Fran Ansley who provided detailed and insightful comments on a prior draft. Special thanks also to Chris Kelly and Susan Schneider for commenting on earlier drafts.

This paper represents the first phase of a project that takes a critical look at the evolving international trade regime, particularly the various rules that underpin the multilateral trading system today and interactions between civil society groups, international trade institutions and dominant actors in the global economy. Adopting a historical approach, this paper examines engagements between African women and major “drivers” of globalization in the early part of the twentieth century. For Third World women, the history of global trade appears to have been one of exclusion, exploitation and resistance. As new rounds of global trade negotiations get underway and debates about the future structure and constitution of the World Trade Organization (WTO) gain momentum, history may provide a useful lens through which to evaluate neoliberal claims about the benefits of free trade and globalization. By highlighting the mistakes of the past, history may also offer valuable insights on how best to structure a more equitable and participatory global trading system.

The author would like to acknowledge Mariana Collins who provided very valuable research assistance. This article is dedicated to the loving memory of the author’s dear late brother Engr. Chinedu Uzo, Ewelukwa.

BERKELEY JOURNAL OF GENDER, LAW & JUSTICE
Cook, proceeded to count all women, children and livestock.\(^1\) Already devastated by the steady decline in the price of palm oil and palm kernels in the world market, and feeling themselves exploited by local chiefs appointed by colonial officials and by the representatives of oversea trading companies operating in the Niger delta, Igbo women, many of whom were actively involved in export trade, viewed the census with deep suspicion. They saw the census as a deceptive prelude to the arbitrary imposition of "female" taxation — what indeed amounted to a double taxation of women.\(^2\) When the local chief intimated that the counting was most likely for the purposes of taxation, widespread protest action by women erupted. Drawing on such social institutions as the female marketing network, Igbo women fought to defend their economic right through collective public action.\(^3\) Between November 23 and December 30, 1929, women numbering between 10,000 and 15,000 stormed colonial administrative buildings and the premises of multinational corporations.\(^4\) The women demanded, amongst other things, a halt in the decline of the prices of palm products, a modification of the colonial tax law, a review of colonial administrative laws and practices that adversely affected them, and a review of the rules of engagement between the women and the oversea trading companies.\(^5\) The movement spread throughout large areas of South Eastern Nigeria so much that armed soldiers, including a platoon of the West African Frontier Force ("W.A.F.F."),\(^6\) were dispatched to confront the women and bring the matter under control using "every means possible."\(^7\) European merchants were also advised to arm themselves and their servants as a precautionary measure.\(^8\) Downplaying the economic justifications for the struggle, colonial officials

2. Id. ¶ 35, 37, at 12.
3. See D. C. Dorward, INTRODUCTION TO ABA COMMISSION OF INQUIRY, THE IGBO "WOMEN'S WAR" OF 1929; DOCUMENTS RELATING TO THE ABA RIOTS IN EASTERN NIGERIA 1 (D.C. Dorward ed., Microform Limited 1983), [hereinafter Dorward INTRODUCTION] (noting that female solidarity in Igbo land rested on such institutions as natal bonds with kinswomen and marketing networks).
4. REPORT, supra note 1, ¶ 43, at 15.
5. REPORT, supra note 1, ¶ 38, 43, at 14.
6. Id. The W.A.F.F. was formed at the turn of the twentieth century to administer the regular colonial forces of West Africa. Included in the W.A.F.F. were: the regiment which was raised on the Niger in 1897-98, the local forces formerly known as the Gold Coast and Lagos Constanbularies (Hausa Forces), the Royal Niger Constabulary, the Sierra Leone Frontier Police, and the Niger Coast Protectorate Force. See A. HAYWOOD & F.A.S. CLARKE, THE HISTORY OF THE ROYAL WEST AFRICAN FRONTIER FORCE 31 (1964). See also T.F. Mills, Royal West African Frontier Force, in LAND FORCES OF BRITAIN, THE EMPIRE AND COMMONWEALTH (Regiments.org ed., 2004), at http://www.regiments.org/regions/africawest/regs/rwaff.htm (last modified Nov. 4, 2005).
8. Id. at 113.
dismissed the protest as the work of ignorant, erratic "hordes of women" and singled out the local chiefs for blame and punishment.\(^9\) Chief Okugo, for example, was arrested one week into the women's protest and, following a one-day trial, was convicted on charges of "spreading news likely to create alarm" and of assault.\(^10\) Mr. Emeruwa, the man who actually counted the women, also met a similar fate.\(^11\) The swift action against the local chief appeared to be a hasty attempt by colonial officials to shift the focus of attention from the economic to the political and from global (external) factors to factors domestic (internal) to the local community.\(^12\) By focusing on the domestic factors, the government deliberately left intact broader economic and structural issues that impinged on the survival of Igbo women, particularly, the impact on them of the unequal terms of trade they experienced in their dealings with overseas trading companies operating in the region.\(^13\) For these women, external trade did not necessarily translate into fair trade.\(^14\) Women saw their means of livelihood evaporate as giant corporations backed by a strong colonial state enjoyed free reign in the colony.

By the end of December of 1930, at least fifty-five women were reported dead and another fifty wounded.\(^15\) Women identified as the leaders of the

---

9. REPORT, supra note 1, ¶ 56, at 19.
10. Id. ¶ 46, at 16. Though the protest began on or about November 24, Chief Okugo was arrested on November 28, 1929. Id. ¶ 41, at 15. His trial started on December 3, 1929. Id. ¶ 46, at 16. On December 4, 1929, Chief Okugo was convicted and sentenced to two years imprisonment. Id.
11. Id. Mr. Emeruwa, the counter, was detained, tried and sentenced to three months imprisonment. Id. He also lost his job as a teacher in a local school. Id. ¶ 38, at 14. The Commission of Inquiry subsequently concluded that there had been insufficient basis for his conviction and recommended that he receive a pardon. Id. ¶ 47, at 16.
12. Id. Evidence that the action against the local chief was a hasty attempt to mask the economic underpinnings of the women's struggle is found in the conclusions of the Commission of Inquiry. Id. Indeed there was no credible justification for putting the chief on trial, since he was only carrying out the instructions of the District Officer. Id. The author argues that, by singling out the local chief for trial and punishment, there appeared to be a clear attempt to paint the picture that the women's war was a mere local struggle by the natives. Id. ¶ 48, at 16. According to the Commission: "In regard to Okugo we are of the opinion that he did not receive a fair trial. In throwing Okugo's cap to the women the day before the trial Captain Hill had as it were prejudged the issue, and after that action it was humanly impossible for him to bring a wholly impartial mind to bear on the case." Id. The Commission of Inquiry recommended that the Governor General grant a free pardon to Chief Okugo in part because the Chief was acting under the instruction of the District Officer. Id. According to the Commission: "This arrest of Okugo, an old man who for over twenty years had been recognised [sic] by Government as Chief of Oloko and had been reluctantly carrying out the District Officer's instructions to count population and livestock was in our view the first of a series of ill-advised surrenders to the demands of the mob." Id. ¶ 42, at 15.
13. See id. ¶ 48, 49, at 17.
14. See id.
15. See generally CLough, supra note 7. According to one eyewitness account: "There were a few sharp cracks – and there was death and injury among the singing crowd. All movements were suspended for a second before panic set in. Women fell in heaps in their effort to get away from the front, and turned back into the crowd... The horror stricken crowds were piling up in the Olomo River." Id. See ELIZABETH ISICHEL, A HISTORY OF THE IGBO PEOPLE 143, at 155 (1970) (noting that "the official casualty list was 55 women killed, 32 of them at
movement were arrested and imprisoned.\textsuperscript{16} Collective punishment was imposed on some towns and villages.\textsuperscript{17} Despite massive government clampdown, localized protests persisted well into 1930.\textsuperscript{18} In addition the British Government decided to hastily set up a commission of inquiry to investigate and report on the event.\textsuperscript{19}

I. INTRODUCTION

Globalization is the pervasive buzzword today.\textsuperscript{20} More than seventy years after the Aba Women's War, African women are still confronted by forces of globalization and are still engaged in various struggles for survival. For example, on July 9, 2002, hundreds of local women in the Niger Delta region of Nigeria stormed an oil plant in Escravos Island, off the southern coast of Nigeria, belonging to U.S. oil giant ChevronTexaco.\textsuperscript{21} On July 17, 2002, a different group of women occupied oil facilities in Nigeria's coastal Delta State also belonging to ChevronTexaco.\textsuperscript{22} According to news reports, the actions by the women were intended to draw attention to widespread poverty in villages and towns where giant transnational oil companies operate in Nigeria and where, despite considerable oil wealth, the Delta region of Nigeria remains very poor.\textsuperscript{23} The local population feels that it has gained nothing from the operations of giant

\textsuperscript{16} See NINA EMMA MBA, NIGERIAN WOMEN MOBILIZED: WOMEN'S POLITICAL ACTIVITY IN SOUTHERN NIGERIA 1900-1965 84 (1982) (noting, for example, that Nneta Nma, one of the leaders of the women, was sentenced to two years imprisonment).

\textsuperscript{17} Id.

\textsuperscript{18} Dorward, \textit{Introduction}, supra note 3, at 3.

\textsuperscript{19} See \textit{REPORT}, supra note 1, ¶ 1, at 1. In the aftermath of the women's protest action, the British Government was quick to set up several commissions of inquiry. \textit{Id.}


\textsuperscript{23} \textit{Id.}
multinational oil companies in the region in the last fifty years.\textsuperscript{24}

Despite attempts to depict globalization as a condition of the present and the future, globalization is not a new phenomenon.\textsuperscript{25} Of course, whether globalization is a new phenomenon that represents a radical departure from the past or whether it is merely a continuation of previous developments in world history is one issue that has generated a lot of controversy. To some scholars, judged by the economic and social history of international relationships, the present globalization process is not new but merely represents a continuation of the internationalization process of the eighteenth, nineteenth and twentieth century.\textsuperscript{26} For African women, interaction with international economic actors in the form of transatlantic slave traders and oversea trading companies dates back, at least, to the sixteenth century.\textsuperscript{27} The partition of Africa through the adoption of the Berlin Act in 1885\textsuperscript{28} marked the official turning point in Africa’s

\begin{itemize}
\item \textsuperscript{24} Id.
\item \textsuperscript{25} OXFAM CAMPAIGN REPORTS (Nov. 30, 2003), [hereinafter OXFAM], available at http://www.oxfamamerica.org/pdfs/rigged_rules_report.pdf (last visited Mar. 4, 2005).
\item \textsuperscript{26} See Emma Rothschild, Globalization and the Return of History, 115 FOREIGN POLICY 106 (Summer 1999) (noting that “there is indeed a history of globalization – there is even a history of the idea of globalization as a phenomenon without a history”). Id.
\item \textsuperscript{27} See Bruce Fetter, Introduction and Historical Summary, in COLONIAL RULE IN AFRICA: READINGS FROM PRIMARY SOURCES 5 (Bruce Fetter ed., 1979). In Africa, the era of empire building and conquest in the nineteenth century was preceded by at least four centuries of European contact. Id. The earliest Europeans to assert title to territories in Africa were the Portuguese. From their bases in Mozambique and Luanda, the Portuguese established slave trade which subsequently attracted other Europeans. Bruce Fetter notes that during the 17\textsuperscript{th} century, “the most successful European newcomers were the Dutch, the English, and the French.” Id.
\item European contact with the Igbo-speaking peoples of Nigeria, for example, dates back, at least, to the middle of the 15\textsuperscript{th} century with the arrival of the Portuguese traders. See VICTOR C. UCHENDU, THE IGBO OF SOUTHEAST NIGERIA 4 (1965); CLOUGH, supra note 7, at 112. (noting that “the first Europeans to influence the course of African history were traders, who had begun to appear on the West African coasts in the fifteenth century, and whose influence as harbingers of change was unchallenged until the beginning of the nineteenth century”). Id. For nearly four centuries, following the initial contact in about 1434, the Niger Delta formed a contact point between African and European traders (the Portuguese in the 15\textsuperscript{th} and 16\textsuperscript{th} sixteenth centuries, the Dutch from the 17\textsuperscript{th} century and the British from the eighteenth century). Id. But see FRIEDMAN, supra note 20, at xvii (suggesting that developing countries are new to the globalization process and were left out of the pre-1914 era of globalization).
\item \textsuperscript{28} The intense competition for the unclaimed territories of Africa raised serious concerns about the possibility of war among the various European countries struggling for a piece of the African continent. See Fetter, supra note 27, at 34-38 (discussing the General Act of the Conference of Berlin of 1885). So frenzied was the scramble that in 1884 Germany’s Chancellor, Otto von Bismarck, invited the major Western Powers to Berlin for a conference to determine rules that will regulate the process of annexation of Africa. Id. The conference met during the winter of 1884-1885 and gave birth to a legal document – the Berlin Act of 1885 – that specified rules for the colonization of Africa. Id.
\end{itemize}
engagement with the outside world. However, by the early 1880’s, the scramble for Africa was well under way; the Berlin Act was “the logical consequence of the nibbling at the continent which started some 300 years ago.”

Although global trade manifestly impacts women’s lives, the voices of women have been largely excluded from debates about the virtues of trade liberalization. With the collapse of Soviet communism and the emergence of a more mobile, more confident, and a largely unregulated form of capitalism, the time has come to examine more closely the impact of globalization on women across the globe, particularly women in very poor countries. As Ann Orford rightly argues, the effect of globalization is a feminist issue for several reasons. First, “women often bear a disproportionate burden of the costs of globalization.” Second, feminists seek to “resist the practices of exploitation and division of people against each other that are inherent in notions of competition, comparative advantage, free trade, and the international division of labor.” Third, with respect to economics, feminist scholars have argued, it is a “means of imagining the world that is premised upon denigrating that which is understood as ‘feminine.’”

Numerous questions beg for answers. For example, what has been the

29. Id. The period 1880-1910 witnessed the hurried conquest and occupation of virtually the whole continent of Africa and the establishment of the colonial system. See A. Adu Boahen, Africa and the Colonial Challenge, in GENERAL HISTORY OF AFRICA VII: AFRICA UNDER COLONIAL DOMINATION 1880-1935 1 (A. Adu Boahen ed., 1985) (noting that “by as late as 1880, about as much as 80% of the continent of Africa was being ruled by her own kings, queens, clans and lineage heads, in empires, kingdoms, communities and politics of various sizes and shapes.” However and very swiftly, “[b]y 1914, with the sole exception of Ethiopia and Liberia, the whole of Africa had been subjected to the rule of European powers in colonies of various sizes which were generally much larger physically but often bore little or no relationship to the pre-existing politics”). Id.


32. See WILL HUTTON, GLOBAL CAPITALISM 11 (Will Hutton, ed., 2000) (arguing that although communism failed, it did have one good impact: “it kept capitalism on its guard – In a sense it kept it aware that it had to have a human face.” With the collapse of communism, capitalism has no alternatives or obstacles and can now “regress to its fundamentalist origins”). Id.


34. Orford, supra note 3, at 387.

35. Id.

36. Id.
impact on women of centuries of globalization? Is there any reason to believe that the present era of globalization, compared with the previous eras, will benefit women? What gender issues are frequently ignored in the current debate about globalization? Does international trade law adequately address the problems women encounter in the global market place?

In general, while proponents of globalization exhort the virtues of free trade, critics point to its devastating impact on societies around the globe.  

37. Peter Martin, The Moral Case for Globalization, in THE GLOBALIZATION READER 12 (Frank J. Lechner & John Boli eds., 2000) [hereinafter Martin, THE GLOBALIZATION READER]. Essentially, proponents view the market as a benevolent and wealth-creating force and not the devil opponents make it out to be. Id. Globalization is said to hold the key to economic growth and happiness. Martin, for example, argues that “the accelerated integration of previously marginalised societies is the best thing that has happened in the life-time of the post-war generation.” Id. To proponents of globalization, therefore, there is a convincing moral case for globalization in the sense that globalization “has produced an enormous degree of improvement in human happiness in those countries which have taken advantage of the opportunities it provides.” Id. To them, “there is no more elevated value than delivering billions of people from poverty, creating opportunities for choice and personal development, and reinforcing democracy all round the world.” Id.

Additionally, proponents argue that globalization improves world peace based on the assumption that countries that reach a certain level of economic development demonstrated by the density of their McDonalds network do not go to war with each other. FRIEDMAN, supra note 20, at 248-75. According to Friedman’s Golden Arches Theory of Conflict Prevention, “no two countries that both have McDonalds have ever fought a war against each other since each got its McDonalds.” Id. Proponents of globalization are generally suspicious of the motivations of the critics of globalization. Wolf, THE GLOBALIZATION READER, supra note 20, at 10. Wolf, for example, argues that the critics of globalization have three motivations: “hatred of markets; fear of foreigners; and concerns about wages, jobs and economic activities” and posits that the damage that globalization is alleged to cause, at least in the West, is “largely mythical.” Id. In the final analysis, proponents argue that globalization must be accepted despite its flaws because there is no feasible alternative. FRIEDMAN, supra note 20, at 334. Friedman specifically argues that with communism, fascism, and socialism discredited, it is unlikely that the world will see “a coherent, universal ideological reaction to globalization,” because, according to him, it is doubtful that “there is an ideology or program that can remove all of the brutality and destructiveness of capitalism and still produce steadily rising standards of living.” Id.

This paper moves beyond these two camps and argues that although free trade has the potential to improve the condition of Third World women, judged through the lens of history, trade has not benefited most Third World women. Formal and informal international trade rules have frequently failed poor women. Contrary to the assertion by Peter Martin that globalization “is the best thing that has happened in the lifetime of the post-war generation,” the history of economic globalization has been one of a gradual erosion of political, social, and economic space for vulnerable groups. Overall, the prediction that globalization will lead to an improved standard of living for all and bring about “an irreversible shift of power away from the developed countries to the rest of the world” has thus far proved to be a false and grossly misleading prophecy.

To say that centuries of global trade have not resulted in a net gain for Third World women is not to say that global trade is inherently evil or to ignore isolated cases of success in the developing world. External trade can yield


39. See infra Part II. For African women, at least, discussions of the benefits of trade must take into account the impact of slave trade on women and their children and the profound economic, political, and social impact of colonialism on Africa as a whole. See A. Adu Boahen, Colonialism in Africa: Its impact and Significance, in GENERAL HISTORY OF AFRICA VII: AFRICA UNDER COLONIAL DOMINATION 1990-1953 782 (1985) [hereinafter Boahen, Colonialism in Africa].

40. OXFAM, supra note 25, at 24 (“International trade can act as a force for good, or for bad. Trade rules can be designed to disadvantage the poor and concentrate benefits in the hands of the rich, or they can be designed to create an enabling environment in which poor countries can catch up with the rest of the world”). Id.

41. Martin, THE GLOBALIZATION READER, supra note 37, at 12.

42. World Bank, ADVANCING GENDER EQUALITY: WORLD BANK ACTION SINCE BEIJING V I (2000), [hereinafter World Bank, ADVANCING GENDER EQUALITY], available at http://siteresources.worldbank.org/INTGENDER/Resources/fullreport.pdf (last visited Mar. 4, 2005). Far from being the panacea for underdevelopment, poverty, and gender inequality, the neoliberal economic agenda with its emphasis on trade liberalization and export-led development appear to have furthered the exploitation of Third World women and exacerbated their vulnerability to global market forces. Id. While international institutions, such as the World Bank, appear to have begun to take the gender question seriously, the overall impact of the economic policies advanced by these institutions preclude any lasting response to the problems Third World women encounter in their attempts to navigate the harsh terrains of the global economy. Id. Moreover, the unwillingness and/or inability of the international community and international law to check the activities of entities, such as transnational corporations and international economic institutions, remains a major obstacle to any attempt towards a more humane global economic order. Id.

43. Martin, supra note 37, at 12 (arguing that the process of globalization is “a true collaboration across borders, across societies, across cultures – not the false collaboration of spurious North-South dialogues and bureaucratic elites”).

44. See THE WORLD BANK, WORLD DEVELOPMENT REPORT 1999/2000: ENTERING THE 21ST CENTURY 56 (2000) (noting that “the share of high-technology products exported by East Asian economies increased substantially between 1985 and 1996” and that “Latin American countries and India have shifted their exports from resource-based manufactures to low- and medium-technology exports”), available at http://www.worldbank.org/wdr/2000/fullreport.html (last visited Mar. 4, 2005) [hereinafter WORLD BANK, DEVELOPMENT REPORT 1999/2000]. Some developing countries are exporting more to industrialized countries. Id. What is more, the composition of developed countries’ exports is also changing and broadening for these countries. OXFAM, supra note 25, at 10. Success stories have been concentrated in East Asia. Id. Thus, while East Asia “accounts for more than
huge financial benefits and, compared to development aid, is a more efficient engine of poverty reduction. For Third World women, the disappointing outcomes associated with expansion of global trade point to problems with past and present rules that structure the global trading system and problems in the economic, social, and political environment within which trade liberalization is pursued. The dissonance in the rhetoric of free trade mantra – the fact that despite claims about the benefits of free trade, the empirical reality is that rich countries are getting richer and poor countries are getting poorer – is a major concern for most women in the Third World. The vulnerability of the agricultural sector in the global economy, shrinking market share for goods originating in developing countries, crisis in the commodity markets (seen in the steady decline in the prices of primary commodities), and the market dominance of transnational corporations (“TNC’s”), are (some of the factors) that currently account for the gap between theory and practice.

For these reasons, relevant trade for African women in particular must be people-centered, sustainable, empowering, transparent, inclusive, and above all, participatory. This calls for a fundamental reform of international trade rules and structures of governance of the global economy. It also calls for a bold reinterpretation of international human rights norms in light of the numerous challenges globalization poses. The starting point must be a move away from

three-quarters of manufactured exports, South Asia and Sub-Saharan Africa “together account for less than two percent, and (with the exception of Mexico) Latin America’s share is shrinking”). Id. In some cases the success stories have been seriously questioned given the limited impact of growth in external trade on poverty reduction efforts and the growing tendency for developing countries to be simply trapped in “low-value-added ghettos.” Id.

45. OXFAM, supra note 25, at 8. Oxfam, the U.K. based development agency, estimates that “if developing countries increased their share of world export by just five percent, this would generate $350 [billion] – seven times as much as they receive in aid.” See also Mariama Williams, Free Trade or Fair Trade – An Overview of the WTO and the Myths Surrounding It, in DAWN SPECIAL SUPPLEMENT (discussion paper on the WTO first published Nov. 1999 and revised June 2002 in preparation for the 5th Ministerial Meeting, Cancun, Mexico, 10-14 Sept.), available at http://www.dawn.org/fj/global/globalisation/trade&gender/3wtosupp2003.pdf (last visited Apr. 1, 2005) (noting that trade is an important tool in the process of economic development of Southern economies).

46. OXFAM, supra note 25, at 13. Because many of the world’s poorest countries are heavily dependent on primary commodities for their foreign exchange earnings, crisis in the commodity market has serious implications for the survival and welfare of many in the Third World. Id. Oxfam estimates that more than fifty developing countries depend on three primary commodities. Id. Crisis in the commodity market includes the fall in market prices, a product of structural oversupply. Id. Because output exceeds demands, this leads to excessive stocks and price collapse. Id. With respect to coffee, for example, prices “have fallen by 70 percent since 1997, costing developing-country exporters some $8 [billion] in lost foreign-exchange earnings,” Oxfam estimates. Id.

47. Id. at 42. Transnational corporations (“TNC’s”) are not new arrivals on the international stage. Id. Indeed, since “the days of the East India Company in the eighteenth and nineteenth centuries, private firms have been the main link between producers in the developing world and consumers in the industrialised world.” Id.

48. Id.

49. ROBERT GILPIN, GLOBAL POLITICAL ECONOMY: UNDERSTANDING THE INTERNATIONAL ECONOMIC ORDER 11 (2001) (noting that significant changes in the world economy have made the governance of the global economy a pressing issue).
what I call the “invisible theory of globalization” or the “inevitability syndrome” – the idea that globalization is a process of the invisible hand of the market driven by new technology.\(^5\) Usually forgotten are “the institutional and social mechanisms that manage and structure the marketplace and the agents who engage in market transactions.”\(^5\) At the apex of the global economy, therefore, are the increasingly sophisticated regulatory frameworks such as the International Monetary Fund (“IMF”),\(^5\) the World Bank Group (“World Bank”),\(^5\) and the World Trade Organization (“WTO”);\(^5\) next are new multilateral trade rules such as those embodied in the Uruguay Round Multilateral Agreements on Trade in Goods and the Uruguay Round Agreement on Agriculture;\(^5\) and finally there are entities such as transnational corporations

---

\(^5\) FRIEDMAN, supra note 20, at xxii. “I didn’t start globalization, I can’t stop it – except at a huge cost to human development – and I’m not going to waste my time trying,” argues Friedman. Id. What is surprising is that even those critical of the globalization process accept the inevitability thesis. See Oscar Arias, A New Ethic in the Age of Globalization (Paper presented at the Aspen Institute Fiftieth Anniversary Symposium, Aug. 19-22, 2000: Globalization and the Human Condition, available at http://aspeninstitute.org/fifty/arias.asp (last visited Mar. 4, 2005)). “The truth,” Arias argues, “is that globalization is not an ideology, or a religion, or a philosophical vision of the world. What it is... is an inescapable part of reality, neither good nor bad in itself. It is simply here, in our day and age, and societies and individuals must adopt their presents and plan their futures within globalization.” Id.

\(^5\) Id. See also GILPIN, supra note 63, at 18 (asserting that while the territorial state continues to be the primary actor in both domestic and international affairs, other significant actors exist and include the World Bank, the International Monetary Fund, and the Commission of the European Union).

\(^5\) See THE INTERNATIONAL MONETARY FUND, ABOUT THE IMF, available at http://www.imf.org/external/about.htm (last visited Mar. 4, 2005). The IMF is an international organization of 184 member countries. Id. It was established to promote international monetary cooperation, exchange stability, and orderly exchange arrangements; to foster economic growth and high levels of employment; and to provide temporary financial assistance to countries to help ease balance of payments adjustment. Id.


\(^5\) BHALA, INTERNATIONAL TRADE HANDBOOK, supra note 54, at 285-601. The multilateral agreements on trade in goods exist as an annex to the WTO Agreement. Id. Altogether there are thirteen agreements that make up the Uruguay Round Agreements on Trade in Goods including: General Agreement on Tariffs and Trade 1994 (GATT 1994); Agreement on Agriculture; Agreement on the Application of Sanitary and Phyto-sanitary Measures (SPS Agreement); Agreement on Textile and Clothing (ATC Agreement); Agreement on Technical Barriers to Trade (TBT Agreement); Agreement on Trade-Related Investment Measures (TRIMS Agreement); Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping or “AD” Agreement); Agreement on
and private investors, the unofficial representatives of globalization that exert considerable pressure on nation-states and multilateral institutions.56

Local conditions must be constantly scrutinized in any effort to unearth the root causes of women's marginalization from the global marketplace.57 An adequate understanding of the impact of globalization on African women inevitably calls for an understanding of the relationship between women, culture, and nation states in Africa.58 Do traditional customs constitute a stumbling block to the survival of women under capitalism? What has been the impact on women, in terms of their vulnerability to global market forces, of the persistence of traditional values that view them as inferior to men and deny them access to vital assets and markets? States in Africa, by embracing, endorsing, and ultimately preserving discriminatory customs and practices, deny African women the right to effectively participate in the global economy.59 Gwendolyn Mikell is right in her conclusion that the new international economic order is not only able to function very well within existing authoritarian (including patriarchal) structures, but may, in fact, depend on the continuing existence of these structures.60 Moreover, internal conflicts, corruption, inept elite politics, and a host of other internal factors are trade-inhibiting rather than trade-enhancing.61

This article is divided into three main parts. In Part II, I take a historical look at interactions between African women and transnational corporations during the colonial period in Africa. Focusing particularly on the Aba Women's War, I attempt to interpret African women's varied engagement with and resistance to the forces of globalization during the inter-war period. I draw primarily on the report of the Commission of Inquiry62 established by the

Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Custom Valuation Agreement); Agreement on Preshipment Inspection; Agreement on Rules of Origin; Agreement on Subsidies and Countervailing Measures (SCM Agreement); Agreement on Safeguards; and Agreement on Import Licensing Procedure. Id. 56. See FRIEDMAN, supra note 20, at 113 (noting that "the global marketplace today is an Electronic Herd of often anonymous stocks, bonds and currency traders and multinational investors, connected by screens and networks"). Friedman identifies two basic groups of Electronic Herd -- the "short-horn cattle" and the "long-horn cattle." The short-horn cattle, according to him, are people and corporations involved in buying and selling stocks, bonds, and currencies around the world and who move around and shift their assets with relative ease and on short-term basis. These include currency traders, major mutual and pension funds, insurance companies, and private investors. The long-horn cattle are the increasing number of multinationals that are involved in foreign direct investment and usually make long-term commitment when they invest in a company. Id. at 112-42.

57. See Andrews, supra note 33, at 379.
58. Id. (arguing that "[t]he peculiarities of each country, premised on its history, geography, culture and economic status, demand that local inquiry is the preeminent one").
60. Id. (noting that much of the difficulties African women face "derive from the confrontation between traditional cultural norms and Western colonial and global institutional norms").
61. See id.
62. REPORT, supra note 1, ¶ 1-2, at 1. By an instrument dated February 7, 1930, a commission of inquiry was appointed to investigate the incidents that occurred in the Calabar and Owerri
colonial administration in the aftermath of the women's action to analyze the complex events that transpired in the Niger Delta in 1929. I argue that African women's engagement with global economic actors during the colonial period was primarily exploitative. The move from slave trade to "legitimate commerce" carried with it the promise of mutual benefit for Africans and Europeans. In many instances, however, the promised gain from trade for Africans proved illusory. Given an underlying colonial policy that assigned the colonies an inferior position in global trading arrangements, the unequal terms of trade between African traders and the "unofficial representatives of imperialism," particularly the overseas trading companies, and harsh tax laws and regulations imposed by the colonial state, Igbo women found themselves in a very difficult position. While colonial economic policies also affected African men, African women were particularly disadvantaged because they did not enjoy access to the few formal employment positions that were open to men. Moreover, women were also excluded from the new political structures of power that were established to replace traditional institutions.

Part III focuses specifically on the post-war multilateral trading system ("MTS") and its present and potential impact on Third World women,
particularly women in Africa. As in times past, a majority of African women are farmers who produce agricultural products both for domestic consumption and for export. Unlike the past, however, new global trade rules have emerged and new international organizations have been created to supervise the MTS and structure the global economy. Given these changes, how Third World women interact with dominant global economic actors and institutions, and how they are affected by global trade rules, is now a matter of critical concern. I will examine trends in global trade in agriculture, as well as the evolving rules of the global trading system. In particular, I will review provisions of the WTO Agreement on Agriculture ("AOA"). Furthermore, I will examine the implications of the MTS for women in poor countries.

In Part IV, I will offer modest suggestions on pathways to reform. The task of engendering the MTS—ensuring that women effectively participate in the system and benefit from it—falls on national governments as well as regional and global trade, economic, and development institutions. Undoubtedly, women's groups and national and transnational advocacy networks have a major role to play in any effort to shape a fairer, more equitable global trading system. I will examine some proposals for reform and recent efforts within the WTO to address the concerns of developing countries regarding the imbalances in the present structure of global trade.

The overall goal of this paper is to highlight the changes and continuities in Third World women's experiences of globalization and the complicity of states in Africa in furthering the exploitation of African women by global market forces. A second goal of the paper is to identify core issues that need to be addressed, given a commitment to creating an equitable, pro-poor, gender-sensitive global trading system.

---

69. See Agreement on Agriculture, supra note 68.
II. COLONIALISM, TRADE, EXPLOITATION, AND RESISTANCE: AFRICAN WOMEN, TRADE, AND FOREIGN TRADING COMPANIES IN THE INTER-WAR PERIOD

The colonial period in Africa fell roughly into three distinct phases: the period of annexation and conquest (roughly 1880-1910),70 the high colonial period or the period of administration (roughly 1919-1939),71 and the decolonization period (roughly 1940-1960).72 Between 1880 and 1891, the competition for unclaimed territories of Africa was intense. While some African kingdoms resisted European invasion outright and were vanquished, others “fought, sued for peace, then fought again until they were finally conquered,”73 while others abandoned fixed combat in favor of guerilla warfare.74 Sadly, “[t]he outcome in all these cases was, nevertheless, the same: the European prevailed and destroyed the old kingdoms.”75

Colonialism had a wide-ranging effect on the Igbo society.76 One of the justifications for the colonial project in Africa was the need to replace slave trade with “legitimate trade.”77 Legitimate trade called for trade in alternative

70. Fetter, supra note 27, at 6-7 (noting that in 1880 the Europeans were poised for the conquest of Africa and that the scramble for Africa began with the occupation of Tunisia in 1881 by the French and Egypt in 1882 by the British). Attempt at precise periodization is a risky exercise and none is attempted here. The periods described are estimates at best and scholars are bound to differ. Id. “British expansion into Africa between 1876 and 1904 was rapid in every zone. Vast new territories were acquired in both West and East Africa.” KENNETH KIRKWOOD, BRITAIN AND AFRICA 20 (1965).

71. Fetter, supra note 27, at 11 (describing the high colonial period as a time of political stability at least, when compared to the scramble which preceded it and the decolonization which followed).

72. Id. at 163 (noting that the preconditions for the rush to independence were established in the 1940s and early 1950s).

73. Id. at 7.

74. Id.

75. Id. The Foreign Jurisdiction Act of 1890 was one of a series of laws used by the British Parliament to extend jurisdiction of Britain to foreign territories. Article I stipulated: “It is and shall be lawful for Her Majesty the Queen to hold, exercise, and enjoy any jurisdiction which Her Majesty now has or may at time hereafter have within a foreign country in the same and as ample manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory.” Id. Article III stipulated that: “every act and thing done in pursuance of any jurisdiction of Her Majesty in a foreign country shall be as valid as if it had been done according to the local law then in force in that country.” See The Foreign Jurisdiction Act, 1890, 53 & 54 Vict., c. 37 (Eng.), reprinted in Fetter, supra note 27, at 27-28.

76. See UCHENDU, supra note 27, at 3. See generally CLOUGH, supra note 7; MARGARET M. GREEN, IBO VILLAGE AFFAIRS (1964). The Igbo (also referred to as “Ibo”) people of Nigeria are located in South East Central Nigeria. The Igbo people occupy a common territory and speak a common language (the Igbo language). Id. Today, the term “Igbo” is used in at least three senses, “to refer to Igbo territory, to the domestic speakers of the language, and to the language spoken by them.” Id. Today, the Igbos are considered one of three dominant ethnic groups in Nigeria. Id.

Some of the principle commodities of legitimate trade were palm kernels and palm oil, needed by European soap and cosmetic manufacturers; thus, a major trade in palm oil grew between Africans and British enterprises. Given a climate conducive to the cultivation of palm trees, the trade in palm oil and palm kernels came to be concentrated in the Niger Delta, particularly Igboland, where palm trees grew in abundance.

The introduction of a capitalist economy and the concomitant expansion of export of primary goods held out the promise of significant economic gains for African women. In many instances, however, African farmers faced drops in the price of their produce, extortion from European firms and middlemen, and harsh regulations that robbed them of the promised gains from economic restructuring and increased global trade. Overall, it was the inequitable terms of trade held out by oversea trading companies, the vulnerability of African traders to fluctuations in the world price for agricultural products, and the women’s heartfelt conviction that the colonial State was undermining their best efforts at survival that triggered the women’s action.

Colonialism affected African women differently than it did African men. The introduction of a capitalist economy with its emphasis on export-led

---


78. See AllRefer.com Encyclopedia, Nigeria: Commodity Trade (Information provided by Library of Congress, June 1991), available at http://reference.allrefer.com/country-guide-study/nigeria/nigeria24.html (last visited Feb. 24, 2005). The war to end the slave trade gained momentum with the enactment in 1807 of legislation prohibiting British subjects from participating in the slave trade. The legislation forbade ships under British registry from engaging in slave trading activities. The campaign to end slavery called for the substitution of trade in humans with trade in other commodities. Id. ("The development of 'legitimate' trade was the final phase of private and official British efforts to find a positive alternative to the traffic in slaves"). Id.

79. Id. ("It was a relatively simple adjustment for many Igbo families to transport the oil to rivers and streams that led to the Niger Delta for sale to European merchants").

80. Id. ("Initially most palm oil (and later kernels) came from Igboland, where palm trees formed a canopy over the densely inhabited areas of the Ngwa, Nri, Awka, and other Igbo peoples").

81. Fetter, supra note 27, at 11. One of the arguments for international trade is that it is mutually beneficial for importing and exporting countries. This argument underpins more recent efforts to promote an export-led growth culture in the multilateral trading system. On its face, therefore, trade meant increased income for African farmers and traders. Id. Women could sell their products to foreign trading companies where before such a demand did not exist. Logically, this should have resulted in a win-win situation for the participants in the export trade. Id.

82. Id. "Africans received certain economic benefits from the export industries developed at the onset of colonial rule, but much of the profit was siphoned off by European Entrepreneurs and governments." Id. Economic/agricultural-related protests were not uncommon throughout the colonial period. See generally ROBERT H. BATES, ESSAYS ON THE POLITICAL ECONOMY OF RURAL AFRICA (1983); GEOFFREY KAY, THE POLITICAL ECONOMY OF COLONIALISM REVISITED (1993); THE POLITICAL ECONOMY OF COLONIALISM IN GHANA: A COLLECTION OF DOCUMENTS AND STATISTICS, 1900-1960 (Geoffrey Kay ed. 1972).

83. REPORT, supra note 1, at 12, ¶ 35, 37, at 12.
development introduced serious change agents that altered the fragile balance of power between women and men that existed during the pre-colonial era. Compared to African men, women were disproportionately affected by these factors; with access to jobs in the colonial administration closed to women, African women, more than the men, were forced to depend on their labor and land for survival.

Because colonialism affected African women differently than it did men, it often elicited a different reaction from women. In countries such as Kenya and Nigeria, women fought back often with intensity that surprised the colonial officials. The Ogu Umunwanyi or Aba Women’s War (“Women’s War”) that occurred in East Central Nigeria in 1929 was one example of African women protesting the exploitative aspects of imperial rule and their apparent marginalization in the emergent global trading system. Throughout the month of November, 1929, peasant women armed with nothing but sticks and palm leaves engaged colonial officials and armed troops as they sought to negotiate better terms of trade with oversea trading companies and demand a more humane tax policy from the state.

The Women’s War was one of many collective revolts against the forces of globalization as they existed in Africa at the turn of the twentieth century. In Ghana, Kenya, and many more countries, peasant producers substantially exposed to international market forces fought back the best way they could

84. See Walter Rodney, The Colonial Economy, in GENERAL HISTORY OF AFRICA VII: AFRICA UNDER COLONIAL DOMINATION 1880-1935 332, 333 (A. Adu Boahen ed., 1985). The imposition of colonial rule in the late nineteenth century marked a turning point in Africa’s engagement with the outside world. Id. “The most decisive variable affecting the implanting of the colonial economy,” Rodney notes, “was the extent to which various parts of Africa had already been participating in the world economy.” Id. Consequently, the slaving zones of West Africa were the stretches of coastline first encroached. Rodney notes further that “[f]rom the late fifteenth century onwards, Africa participated in the Europe-oriented world economy as a peripheral and dependent sector.” Id. at 332.


86. Id.

87. See CORA ANN PRESLEY, KIKUYO WOMEN, THE MAU MAU REBELLION, AND SOCIAL CHANGE IN KENYA 1 (1992) (noting that while women’s anti-colonial struggle operated in tandem with men, women were often forced to act on their own, for example, when men and male associations failed to address women’s concerns).

88. See Mumbi Mathangani, supra note 85 at 298. In Kenya women protested against different oppressive policies of the colonial officials. Id. Nonviolent protest in the form of civil disobedience took various forms. Id. In Kiambu District in 1947, women protested against exploitative labor conditions by halting work on the coffee plantations and picketing roads until their demands were met. Id. The anti-inoculation protest in 1951 is another example. Id. Women protested against the cattle-inoculation policies of the British. Id. The policy, which resulted in the massive death of cattle owned by Africans, witnessed a massive demonstration by women directed at halting the inoculation policy. Id. Women in the hundreds stormed the inoculation centers, chased away inoculation operators, and burnt down the cattle pens. Id.

89. See HARRY A. GAILEY, THE ROAD TO ABA: A STUDY OF BRITISH ADMINISTRATIVE POLICY IN EASTERN NIGERIA (1970); MARGERY PERHAM, NATIVE ADMINISTRATION IN NIGERIA (1937).
through nonviolent protests, refusal to deliver produce, and hold-ups. For example, the most serious hold-up in Ghana occurred between October and December 1930. It was “an economic strike for higher prices,” directed “against the large expatriate buying firms and their monopoly control.”

A. Background to Colonial Administration in the Niger Delta Region

The problem of administration loomed large in the minds of the colonial powers once territories were acquired. All of the colonizing powers faced the same challenge: how to organize alien rule over vast territories at minimal cost to imperial treasuries given the fact that money was not always forthcoming from the mother country. To address this problem, several schemes were devised to ensure that territories were annexed without passing on the cost to metropolitan taxpayers. One popular method was “the attribution of governmental activities to private companies financed by metropolitan investors.” In this way, chartered companies came to play a vital role not only in the initial partition process but also in the direct and indirect administration of the colonies. Between 1886 and 1899, the territory now known as Nigeria was controlled and administered by a private company – the Royal Niger Company (“RNC”). Inevitably, the close relationship between colonial officials and private companies continued long after the companies ceased managing the territories. Another method of financing colonial administration was through stringent taxation imposed on the local population.

A second challenge that colonial administrators confronted was effectively administering the local African population. For the British, the solution was
found in the policy of Indirect Rule.99 Espoused by Lord F.D. Lugard, this policy preached that Africans should administer their own affairs within the context of colonial domination.100 Although "justified to the outside world as a means of teaching Africans modern forms of government," the policy effectively called for the co-optation of African chiefs into subordinate positions in the colonial hierarchy.101 Throughout the colonial period, the colonizers never relinquished their political power.102 However, as more Africans became educated and as nationalist struggles intensified, the British granted Africans limited representation in local affairs.103

In areas with clearly identifiable indigenous ruling elite, it was relatively easy to apply the policy of indirect rule; governments and boundaries of traditional kingdoms were simply retained and/or revived.104 In the Niger Delta region leadership was much more diffused, and efforts to find legitimate indigenous rulers through whom the policy could be implemented met with frustration.105

**B. Background to the Aba Women’s War of 1929**

Traditional Igbo society was an agrarian economy.106 Trade, production of palm oil and palm kernels, and animal husbandry played important roles in the Igbo economy.107 Though farming was a collective activity, labor was divided by age and sex such that there were recognized “men’s crops” and “women’s

---

99. *Id.* at 12 (observing that the policy of indirect rule became dogma among the British administrators trained between the two World Wars).

100. Lord F. D. Lugard, *The Dual Mandate in British Tropical Africa, in Colonial Rule in Africa: Readings from Primary Sources* 94 (Bruce Fetter ed., 1979). Lugard argued that the British Empire had only one mission – liberty and self-development on no standardized line and that liberty and self-development could be “best secured to the native population by leaving them free to manage their own affairs through their own rulers, proportionately to their degree of advancement, under the guidance of the British staff, and subject to the laws and policy of the administration.” *Id.* (emphasis added).

101. Fetter, *supra* note 27, at 12 (noting that a more likely justification for the policy was its cheapness because it was financed primarily by local taxes rather than allocation from the central colonial treasuries).

102. *Id.*

103. *Id.* (“In recognition of increased urbanization, colonizers granted limited representation to Africans in local affairs, sometimes creating special councils for Africans”).

104. *Id.*

105. Dorward, *Introduction, supra* note 3, at 2. See generally Adiele E. Afigbo, *The Warrant Chiefs: Indirect Rule in South-Eastern Nigeria 1891-1929* (1972). The reason the British could not locate indigenous leaders was obvious; as the report of the Commission of Inquiry observed: “in the Niger Delta and east of the river the native communities were for the most part in the clan or family stage of development ... Each village or at most each group of villages was self-sufficing and recognized no other control than its own elders, among whom one might be called a chieft, though his position was precarious and his authority small. REPORT, *supra* note 1, ¶ 5, at 2-3.


107. *Id.* (noting that “farming is the Igbo staff of life, trading their chief support, and palm produce their cash earner”).
Women's crops included maize, vegetables, cassava, palm oil, and kernels. The patrilineal nature of the Igbo society circumscribed women's economic and political role. Women did not enjoy equal status with men. Yet under certain circumstances, women could take leadership roles in religious, social, economic, and political life. Historian D.C. Dorward notes of the pre-colonial economic position of Igbo women that:

Igbo women were active in commerce and could take prestige titles, a woman's status being independent of that of her husband. In addition, from the latter part of the nineteenth century the growing (trade) in palm kernels, a "women's crop," had resulted in increasing numbers of women amassing considerable wealth which they reinvested in palm trees and male wage labour, as well as more traditional avenues, e.g. prestige titles.

The unequal position of women vis-à-vis men was mitigated by the absence of any central sovereign governing authority. The inequality women experienced in pre-colonial times was counterbalanced with the existence of strong female solidarity resting on institutions such as meetings or organizations of village women, female marketing networks, and "natal bonds with kinswomen which cut across the more parochial male ties of the patrilineage and the virilocal village." These institutions empowered women to defend their rights and redress grievances through collective public action. Overall, "[w]hile male

---

108. Id. at 24-25. See also MBA, supra note 16, at 29 (noting that “agriculture was the basis of the Igbo economy, and there was a sex division in labor in farming”). Yam – the chief staple in Igbo country – was a typical example of a “male crop.” Id. Yam was planted and harvested by men even though women and children helped maintain the farm between the time the yams were planted and when they were harvested. Id.

109. UCHENDU, supra note 27, at 26. The palm tree was, and still is, a very important tree in Igboland. The palm oil extracted from the fruit of the palm (palm kernel) was used locally for cooking. The kernels left after the oil had been extracted were also a source of food. The trunk of the tree was tapped for palm wine, and the fronds were used for building material. Id. Because interest in palm oil could easily be acquired through lease, pledge, and sale, it was fairly easy for women to participate in the cultivation and sale of palm produce. Id. While men frequently had ownership of the palm trees, palm fruits were processed in a cooperative venture that accommodated women. Id. For their cooperation in the processing of palm, women enjoyed traditional rights over the palm kernels while the oil processed from the palm kernels belonged to the men. Id. Kernels were, however, very valuable because of the value of palm nuts at the turn of the twentieth century. Palm nuts for example provided raw materials for the manufacture of soap and similar products in European factories. Id.


111. Id.

112. See GREEN, supra note 76, at 4-5 (notes that “[i]t is not...possible, at least among the Ibo people of the interior...to point to any definite territorial unit within which there [was] a sovereign governmental authority”).


114. Id. In the account of District Officer, Capt. J.N. Hill, to the Commission of Inquiry: “there has existed amongst the Ibo women an organised [sic] sisterhood, the origin of which...dates to pre-government and pre-missionary days when each town had its women’s
dominance was built into the social system of some Nigerian Ethnic groups, women played a significant and vital role in all aspects of the lives of their community. . . . Complementarity gave women a greater deal of autonomy in their own affairs.\textsuperscript{115} Economically, the shift from slave trade to legitimate trade had significant implications for relations between the sexes. In many coastal societies, for example, the shift from slave trading, an overwhelmingly male activity, to trade in agricultural product, particularly trade in “female crops” such as palm nuts, initially appeared to tip the balance of economic power in favor of women.\textsuperscript{116} The gain was short-lived, however. From the start, inequitable terms of trade between European merchants and African traders, exploitative practices of European middlemen, and coercive regulation by the colonial state precluded Africans from obtaining any benefit from trade with European merchants throughout the colonial period.\textsuperscript{117} Politically, colonialism required dismantling the traditional African system and structures of governance and the introduction of Western systems of administration from which women were excluded.\textsuperscript{118} In almost every part of the continent, colonial officials ignored the traditional balance of power that characterized most African societies and established a new axis of power that functioned in disregard of the earlier arrangements.\textsuperscript{119}


\textsuperscript{116} \textit{Id.} at 9.

\textsuperscript{117} Kaniki, \textit{ supra} note 63, at 408 (observing that “[t]rade with Britain put African dependencies at a greater disadvantage”).

\textsuperscript{118} \textit{MEMORANDUM, supra} note 114, \textit{ ¶ 29}, at 5. The Warrant Chiefs in the newly introduced Native Courts exercised a broad range of powers that in pre-colonial times were more evenly dispersed. Most importantly they were in theory and in practice agents of the colonial administration. According to the Commission of Inquiry:

\begin{quote}
In addition to their judicial functions, they were made responsible for seeing that the orders of Government were carried out in their towns and villages. These duties involved frequent visits to administrative headquarters and, not infrequently, punishment for failure to carry out orders. The position of a Court member therefore required a \textit{man} of intelligence, ready to travel, with some knowledge of the ways of Europeans.
\end{quote}

\textit{Id.} (emphasis added).

\textsuperscript{119} \textit{See Mathangani, supra} note 85, at 298-99 (noting, with respect to Kenya, that women’s power and sphere of influence largely disappeared under the impact of colonialism and external religion, which upset existing economic and social complementarity between the sexes). It is important to stress that the position of women in pre-colonial Africa was not perfect. \textit{Id.} at 290. In discussing the balance of power that existed between men and women, I do not attempt to naturalize or approve gender relations in pre-colonial Africa, but simply to highlight the fact that colonialism worsened things for women.
The Native Court system and the Warrant Chief system are two examples of new structures of power. The Native Courts were formed by choosing from each village a representative appointed by a member of the court and given a warrant to rule, hence the label "Warrant Chiefs." The Native Court system drastically altered pre-existing arrangements in at least three ways. First, it greatly excluded women from established native administrative structures. Second, men who were neither the natural rulers nor eligible for leadership under native law were often appointed to serve as Warrant Chiefs. Third, the Warrant Chiefs exercised a broad range of executive and judicial powers that in pre-colonial times were more evenly dispersed.

As noted in the government's Memorandum as to the Origin and Causes of the Recent Disturbances in the Owerri and Calabar Provinces,

[the Native Court system introduced by the Government... has to some extent acted as a disintegrating influence upon the ancient framework of native organization. Especially has this been the case where... Native Courts, largely composed of men who were not the natural rulers, have been appointed native authorities for their respective areas, under the Native Authority Ordinance. Though it may appear paradoxical it should none the less be realised [sic] that the Native Court introduced by Government was not a natural native institution.]

This is not to suggest that colonialism did not bring about anything positive in the continent. As Fetter rightly notes, "[a]lthough the Europeans exploited their African subjects economically, they did provide certain services in return." In many cases, colonial governments put an end to slavery and local wars, created new modes of transportation, and improved communications within the colonies. The most notable, long-term capital investment that was available to Africans was education provided in the early period, not by the colonial government, but by Christian missionaries. Although education was not free, the legacy was lasting.

120. See Memorandum, supra note 114, ¶ 29, at 5 (noting that the Native Court system was another innovation of the colonial Government).
121. Id. ¶ 30, at 6.
122. Id. ¶ 29, at 5.
123. Id.
124. Id. ¶ 31, at 6.
125. Id. ¶ 29, at 5.
126. Fetter, supra note 27, at 11.
127. Id. at 13.
128. Id. (noting that colonial administrators, recognizing that public education would drain their limited resources, avoided running schools everywhere but in French West Africa. Instead, missionaries constructed the first good post-primary schools in Africa and that after the First World War the graduates of these educational institutions would constitute the nucleus of a colonial elite).
129. Id. (noting that schools frequently charged fees which absorbed a large proportion of the family's available income).
C. The Political and Economic Underpinnings of the Aba Women's Struggle

Faced with a steady fall in the price of agricultural produce in the global market, an increase in the price of imported goods from Britain, and harsh regulatory laws that depressed local competition, Igbo women of Nigeria fought back. They engaged in a struggle that left the colonial officials scrambling for answers seen in the speedy attempt to put the local chief on trial and establishing a commission of inquiry. The Aba Women's War began initially as an attempt to resist what appeared to be a credible plan to impose new taxes on women. It was much more than a protest against taxation, however. The steady decline in the price of palm products coupled with the arbitrary introduction of a host of internal regulatory policies, the monopolistic practices of transnational corporations operating in the region, and the perceived lawlessness of the Warrant Chiefs threatened the position of Igbo women in significant ways.

1. The Economic Motivations for the Struggle

The primary motivation for the women's protest was economic. From the demands the women made in the course of their protest, it was evident that the women were concerned about at least four economic issues: the fall in the price of palm produce compared to the price of imported goods, the tax imposed supposedly on African men a year earlier in 1928, the proposed or rumored plan to impose taxes on African women, and some of the regulations that hindered the full and effective participation of Africans in external trade. In his testimony to the Commission of Inquiry, Mr. Ferguson, District Officer of the Owerri Province, stated:

I listened to what they said, but their demands were impossible. . . . The first demand was that women should not be taxed. The second was that the price of produce should go up at once and the price of imported

130. See REPORT supra note 1, ¶ 41-42, at 15.
131. Id. ¶ 34, at 12. In her testimony before the Aba Commission of Inquiry, Ikodia, one of the women of Oloko stated:

We heard that women were being counted by their chiefs. Women became annoyed at this and decided to ask who gave the order, as they did not wish to accept it. As we went to various markets we asked other women whether they too had heard the rumour about the counting of women. They replied that they had heard it. We heard also that Oloko chiefs had counted their respective women. We, women, therefore held a large meeting at which we decided to wait until we heard definitely from one person that women were to be taxed, in which case we would make trouble, as we did not mind to be killed for doing so. We went to the houses of all chiefs and each admitted counting his people.

Id.
132. ISICHEI, supra note 15, at 154 (arguing that the war was "a protest against taxation and the extortion of the Chiefs, which escalated into a total rejection of the whole colonial presence").
133. REPORT, supra note 1, ¶ 41, at 15.
articles should go down. The third was that the tax on men should be reduced and they gave various reasons why these things should be done. . . . They said, 'We have got to pay higher prices for what we buy, but we cannot get any money as the price of palm oil is going down.' They all kept saying they were ‘Ohandum,’ that is to say ‘women of all towns.’

Regarding the fall in the price of palm produce between 1925 and 1929, the price of agricultural export fell steadily while the price of imported goods from Europe rose. The fall in the price of palm produce – a “female crop” – was particularly devastating for women. As noted in the official report on the women’s protest, “[i]t is significant that the drop in kernels is the more pronounced, in view of the fact that kernels are more generally sold by women.” The money women realized from palm oil and palm kernels paid for such things as clothes, school fees, medical fees to European doctors, taxes, as well as imported goods such as soap and salt.

Interactions between African women and European merchants occurred within the context of a predatory state system. Local laws and regulations were frequently skewed in favor of the trading companies to the detriment of African traders. Colonial officials deliberately ignored the predatory, monopolistic, and anti-competitive practices of the companies. Quite apart from the fact that

<table>
<thead>
<tr>
<th></th>
<th>Oil Per 4 gallon tin 1928</th>
<th>Oil Per 4 gallon tin 1929</th>
<th>Kernels Per 50 lb. 1928</th>
<th>Kernels Per 50 lb. 1929</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aba (December)</td>
<td>7s. 0d.</td>
<td>5s. 10d.</td>
<td>5s. 9d.</td>
<td>4s. 6d.</td>
</tr>
<tr>
<td>Umuahia (December)</td>
<td>6s. 10d.</td>
<td>5s. 8d.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

According to the Supervising Agent of the United Africa Company, a foreign trading company that was operating in the Niger Delta region during the period: “oil opening at £24 a ton in 1926 fell to £23 10s. This fall was continuous until in 1927 the price reached £18, rising again later to £21. In 1928 it reached £26 5s. per ton since then prices have fallen steadily to £20 15s.” He also noted that: The price of palm kernel “opened in 1926 at £16 10s. a ton and fell later in the year to £15 12s., and in 1927 to £13 10s. A revival in price took place late in 1927 . . . After this the price fell to the present limit of £11 5s.”

The relationship between the colonial administration and private companies was such that one can draw a reasonable inference even in the absence of specific evidence of collusion. As noted elsewhere, the fact that private companies initially assumed governmental activities in the colonies secured the interest of these companies. One of the policies developed in the 1880s was the attribution of governmental activities to private companies financed by investors in the U.K. Id.. Although private companies gave up their political role at the turn of the twentieth century, their influence on colonial administration continued. See Kirkwood, supra note 70, at 26. “Granted its royal charter in 1886, the Niger Company exercised governmental and military functions until 1900, when
private British companies helped to advance the overall interest of the Crown in
the colonies, there existed a close relationship between the private companies
and the colonial administrators.139 As Kirkwood observed, “Nigeria was won by
the courage and determination of traders like Sir George Goldie whose Royal
Niger Company Lugard was proud to serve.”140 Lord Lugard, of course, was the
architect of the policy of Indirect Rule and a one-time Governor General of
Nigeria.141 Arbitrary changes in the rules regulating trade in palm oil and palm
kernels were common; for example, trade in palm oil and palm kernels by
measure was replaced by trade by weight.142 Arguably this was a cosmetic and
minor change to modern, literate minds, but because most African women
traders were illiterate, the new metric scales proved to be yet another tool of
exploitation.143 As one colonial official admitted to the Commission of Inquiry,
“where the weighing system had been instituted there can be little doubt that a
comparatively new method such as this which makes it difficult for an illiterate
seller to check the price paid would tend to heighten discontent.”144

Produce inspectors were introduced ostensibly to ensure quality control in
the palm trade.145 However, inspectors frequently intimidated women merchants,
jeopardized their direct access to critical markets, and drove them into the hands
of middlemen.146 Allegations of extortion and intimidation by the produce
inspectors were widespread.147 Women who failed to pay the bribe demanded
by the inspectors encountered delays in selling their products, and in some cases
could not sell their products at all.148 In other cases, “overzealous” inspectors

139. See KIRKWOOD, supra note 75, at 26.
140. Id.
141. See Id., at 55.
142. MEMORANDUM, supra note 114, ¶ 220-221 at 38.
143. Id. ¶ 224, at 38.
144. Id. ¶ 224, at 38.
145. Id. ¶ 227, at 39.
146. Id. In his testimony, the Resident of the Calabar Province noted:
The unpopularity of produce inspectors will be understood so easily that it hardly
requires comment... Not perhaps that produce inspectors were worse than other
Government subordinates, but a new class of man... had been created, out to make
what they could, and the seller of produce was obliged to have continuous
transactions with them which he was not forced to do by circumstances in the case
of say Court messengers, forest guards or constables.

Id., ¶ 199, at 34-35. One of the demands of the protesting women was the elimination of the
office of produce inspectors. According to the Report of the District Officer for Ahoada
Province: “I returned to Umuaturu to wait for the women. Their complaints were: That when
they tried to earn some money by taking palm oil and kernels to the factories their trade was
interfered with by produce inspectors.” Id. ¶ 187, at 33.
147. Id. ¶ 228, at 39. Referencing Rex v. David Ogbu Awani of Warri and Bokili of Benin, Benin
Provincial Court, Case No. 89/1929 (July 1, 1929), in which two men who worked as
produce inspectors were charged under section 98(1) of the criminal code with the crime of
extortion. The accused had hinted “a drink” and “two shillings” were given to him before he
inspected some produce brought by one Mr. Jegede and two others. Id.
148. Id. ¶ 187, at 33.
simply overdid their work with serious economic consequences for the women.\textsuperscript{149} Overall, while there was little evidence that produce inspection improved the quality of goods sold to European firms, the activities of the inspectors cut deeply into what profit might have accrued to the women. In his testimony, Mr. W.E. Hunt noted

As to the effects of produce inspection on the quality of produce brought in, reports vary. On the one hand it has been said that there have been no adverse effects, and on the other, that the women have been frightened off the beaches into the hands of middlemen. Also it is said that while the general quality has been much improved, so far as drying kernels or elimination of impurities the inspection has been often over-done.\textsuperscript{150}

The taxes imposed on the local population also threatened the economic situation of Igbo women and heightened their vulnerability to global market forces. The Native Revenue (Amendment) Ordinance of 1927 introduced male taxation in Eastern Nigeria.\textsuperscript{151} Although labeled male taxation, women were nonetheless affected in more ways than one.\textsuperscript{152} The cooperative nature of the African village economy made it impossible to compute household income along strict gender lines.\textsuperscript{153} Because the basic unit of production in a typical African village was the household (a man, his wives and children), assessment of male

\begin{itemize}
\item 149. MEMORANDUM, supra note 114, ¶ 227, at 39. Mr. W.E. Hunt, Resident of Calabar province, for example, testified that “[t]he inspectors have made the native sellers dry their kernels so long that the oil has come to the surface, and soaked through the bags in the store, so that they have to be re-bagged.” \textit{Id.}
\item 150. \textit{Id.}
\item 151. REPORT, supra note 1, ¶ 5, at 2-3. The taxation, which represented a significant departure from past practice in the region was seen as necessary in order to provide funds to support the provision of education to the natives. A government memorandum had noted earlier that, “the idea of direct taxation in the Niger Delta and in the Eastern Provinces was a new one,” but concluded that that, “[i]t was, however, manifest that no progress could be made in the Government’s policy of educating these tribes in the art of self-government unless funds to establish Native Administrations were forthcoming in the shape of direct taxation.” \textit{Id.}
\item 152. \textit{Id.} ¶ 6-7, at 3. By the early 1920s, colonial officials felt that the time was ripe for the introduction of direct taxation in Southern Nigeria. In August 1924, the Lieutenant Governor of southern Nigeria, Lieutenant-Colonel Moorhouse, proposed a scheme for the imposition of tax on all adult males in southern provinces. His proposal called for a poll tax rather than an income tax because of what he felt were practical difficulties of making an assessment for purposes of the tax. In 1925 the Governor-General of Nigeria directed the Lieutenant-Governor of the southern provinces to report on the necessary means of imposing taxation in southern Nigeria. In his proposal, the Lieutenant Governor attached the draft of a new ordinance that legalized direct taxation. The direct tax was scheduled to take effect on April 1, 1928. \textit{Id.}
\item 153. GREEN, supra note 76, at 34-35 (noting of the Igbos of Nigeria that the household made up of a man, his wives, and children cooperated in the production of the staple food crops, though a certain amount of outside help may be employed occasionally). While men typically cleared the bush, tilled the ground and planted the crops, it was the women who were responsible for weeding throughout the planting season. \textit{Id.} What the officials ignored, however, was that in a society where the household formed the main unit of production, determining the male income for purposes of “male” taxation was ridiculous at best. Women directly and indirectly paid the taxes assessed. \textit{Id.}
\end{itemize}
income inadvertently took into account the earnings of women. Moreover, to the locals, taxation was tantamount to slavery because taxation in the colonies did not translate into improved social welfare for the taxpayers. Even though the imposition of “male” taxation had elicited some protests from the local population, these protests were attributed to a deep-rooted cultural objection to being counted and ignorance about the benefits of an effective tax system. Taxes were imposed not only to raise revenue but also to destroy local competition.

154. REPORT, supra note 1, ¶ 11, at 4-5. In attempting to estimate a typical farmer’s tax obligation, for example, colonial officers were required to “inspect a number of average individual farms in different areas and estimate the annual value of produce derived therefrom, together with the income derived from palm produce and livestock.” Id. An official circular instructed the assessment officers to assess flat rates “on a basis of 2½% of an average farmer’s income.” Id. Section 4 of the Native Revenue (Amendment) Ordinance provided:

In making an assessment, the Resident, acting in co-operation with the chiefs or elders or other persons of influence in each district, and, as far as circumstances may permit, in accordance with native custom and tradition, shall first estimate or compute – the annual value of the lands and the produce thereof used, occupied or enjoyed by the members of each community; the annual value of the profits or gains from any trade, manufacture, office or employment in which the members of each community may be engaged; the value of all live-stock owned by each individual or by each community.

Id. ¶ 10, at 4. Ultimately, the method adopted “was for an officer to inspect a number of average individual farms in different areas and estimate the annual value of produced derived therefrom, together with the income derived from palm produce and livestock.” Id.

155. MEMORANDUM, supra note 114, ¶ 14, at 22. In the aftermath of the struggle, a government memo noted belatedly: “There can be little doubt that the unpopularity of the tax . . . was a contributory cause of unrest . . . Had the tax been entirely dissociated from Government revenue, and the whole tax been available for expenditure on local projects . . . the measure would not have encountered the same amount of opposition.” Id.

156. REPORT, supra note 1, ¶ 6, at 3. It was assumed that the resistance stemmed from a superstitious fear about being counted for any purpose. For example, a one-time Lieutenant-Governor of the southern province, Lieutenant-Colonel Moorhouse, in calling for a poll tax rather than an income tax, stated that “the native has a deeply-rooted objection to giving the number of his women and children.” Id. A report by Captain Hanitch, the District Officer of Ikot Ekpene, alluded to “the well known objection of primitive people to being enumerated or having their families or possessions counted.” Id. ¶ 14, at 6.

157. Id. ¶ 12, at 5. In Owerri Province, colonial officials reported that although the announcement of taxation “was received with general sullen and obstinate signs of defiance and refusal to accede to the demand, yet by a dint of patient explanation, the townspeople . . . invariably adopted a sensible view of the matter.” Id. It is, however, ridiculous to conclude that the natives were ignorant about the benefits of taxation for public works. While monetary taxation may have been new, collective action for the common good was an integral part of the Igbo system of governance. As the government admitted: “The presumption that taxation would have been not unpopular if it could have been introduced in the form of a purely native institution for local purposes is borne out by the readiness and alacrity with which the inhabitants of a town or a group of towns will subscribe towards any common object or public amenity, where they are enabled to see the immediate benefits resulting from their contribution.” MEMORANDUM, supra note 114, ¶ 141, at 23.

158. Kaniki, supra note 49, at 397 (arguing that taxation was often used to “drive Africans to serve the interest of international capitalism”). As a one-time Governor of Kenya admitted: “We consider that taxation is the only possible method of compelling the native to leave his reserve for the purpose of seeking work. . . . It is on this that the supply of labor and the price of labor depend.” Id.
At least two factors undoubtedly contributed to the women’s weak economic position vis-à-vis the foreign trading companies. First, the peasant-owned export sector in colonial Africa operated as a local initiative without government support, when governments did intervene, such interventions were frequently counterproductive. Second, the agricultural export sector was dominated by unspecialized small producers who operated without any fundamental technological innovation and who could not “take full advantage of market opportunities to maximize their profits.”

2. Political Motivations for the Struggle: The Complicity of Local Chiefs

If the primary causes of the women’s struggle were economic, the secondary causes were political. The women demanded the removal of the Warrant Chiefs and a reform of the Native Court system. In destroying native court buildings and factories belonging to European merchants, for example, the women evidently sought to destroy the political symbols and visible reminders of their exploitation. The coercive and male-dominated native administration that replaced traditional institutions of governance undermined women’s economic and political positions. In general, the chiefs were largely perceived “as allies or agents through whom the demands of alien rule might effectively be made on the African population at large.”

159. Id. at 393 (noting that “contrary to what colonial historians would want us to believe, the peasant export sector . . . was established with little government initiative. As a matter of fact, in some cases advances were made despite discouraging official policies and practices”).
160. Id. at 394. Government regulations were primarily directed at “making and reinforcing regulations governing the quality of the produce.” Id. Thus, a host of health and sanitation measures worked to undermine the bargaining positions of local producers vis-à-vis the oversea trading partners. Id.
161. Id. at 313, 393.
162. MEMORANDUM, supra note 114, ¶ 140, at 22 (noting that that there could be no doubt that the Native Courts and their members were disliked). Women were vulnerable to the exploitative and arbitrary practices of the new Warrant Chiefs. Id.
163. ABA COMMISSION OF INQUIRY, NOTES OF EVIDENCE TAKEN BY THE COMMISSION OF INQUIRY APPOINTED TO INQUIRE INTO THE DISTURBANCES IN THE CALABAR AND OWERRI PROVINCES (1930), reprinted in THE IGBO “WOMEN’S WAR” OF 1929: DOCUMENTS RELATING TO THE ABA RIOTS IN EASTERN NIGERIA, ¶ 916, at 49 (D.C. Doward ed., Miroform Limited 1983) [hereinafter NOTES OF EVIDENCE]. Asked why he thought the women destroyed the native court building, Chief Nwanmuo told the Commission of Inquiry that the women had concluded that by destroying the properties, the Europeans would be forced to go home, thus putting an end to the idea of taxation. According to him: “[T]hey said that they wanted to destroy property generally so that all White-men might go home, because if they went home there would be no question of tax being paid.” Id.
164. R.F. BETTS, METHODS AND INSTITUTIONS OF EUROPEAN DOMINATION 312, 317 (J. Asiwaju ed. 1985) (noting that the most important and most discussed African component of European Colonial domination was the local chief. “Indeed, every colonial power in Black Africa depended on the Chiefs, whether traditional or warrant in authority, as the basic element of the administrative structure”).
Overall, although political factors undoubtedly contributed to the women's frustration, they were by no means the principal motivations for the struggle as suggested by some colonial officials. Rather, the economic vulnerability and perception that the foreign trading companies were exploiting the colonized people triggered the 1929 protest action by Igbo women of Southeast Nigeria.

Overall, the Women's War was largely non-violent action aimed at calling attention to some of the hardships women were experiencing. It appeared the women simply wanted to present their grievances to colonial officials, which they did.

D. Official Response to the Women's War

From the start, colonial officials sought to trivialize the women’s struggle and to ignore the economic demands put forth by the women. While the women referred to their action as the "Women's War," denoting perhaps some kind of strategic and principled action, colonial officers described it as the "Aba Riot" suggesting uncontrolled, unruly, irrational, riotous action. The pervasive strategy of colonial officials was to portray the women’s struggle as no more than the work of a pack of wild, illiterate, hysterical "hordes of women," or, alternatively, to portray it as the work of ignorant, gullible women exploited by the men-folks to advance a male agenda. For example, Captain Hill, District

165. *Id.* at 321.
166. REPORT, supra note 1, ¶ 143, at 51. Of the many requests made by the women, Mr. Ingles, the Resident for Aba Division, stated:

"The women have absolutely not a vestige of grounds to stand upon; the first complaint is always 'We hear... that women are to be taxed' – this is followed by dissatisfaction with their Native Court Members. ... I feel bound to say that I do not believe the first but think that fear of extortion by Chiefs (entirely behind the backs of Government and without Native Administration's orders) is the real grievance."

*Id.*

167. MBA, supra note 16, at 93-94. The geography of the struggle also underscores the economic motivation for the struggle. The war occurred primarily in the "palm-belt" region and was largely driven by peasant women. Compared to rural women, urban women played minimal role in the struggle. *Id.* The reasons for this are obvious. Urban women enjoyed a higher standard of living and had less to lose by taxation. *Id.* As opposed to rural women, majority of whom were farmers, the urban women had very little incentive to participate in the struggle. *Id.* Urban women were neither involved in the cultivation of palm kernels nor were they heavily involved in the palm trade. *Id.* Finally, urban women were more often wives of men connected to the colonial administration and probably did not want to rock the boat or jeopardize their husband's position. *Id.*

168. MEMORANDUM, supra note 114, ¶ 238-39, at 39-40
169. *Id.* A memorandum by the Secretary of the Southern Province, for example, described "stone-throwing, stick-throwing mobs of women" that were throwing "missiles" at lorries and were generally "out of hand." *Id.*

170. *Id.* ¶ 200, at 35. Not surprisingly, in the aftermath of the Aba Women's War, colonial officials sought to trivialize the women's struggle, to deny women's agency in the protest action, and to search for the men whom they presumed were really behind the struggle. A January 16, 1930 Memorandum of the Secretary of the southern province stated:
Officer for Enugu, told the Commission of Inquiry:

[T]he women numbering over 10,000 were shouting and yelling round the office in a frenzy. They demanded his cap of office, which I threw to them and it met the same fate as a fox’s carcass thrown to a pack of hounds... It took me two hours to get an opportunity of sending the wire asking for more police.  

Echoing the same idea of a possible psychotic episode by a pack of wild, frenzied, unreasonable, animalistic, uncoordinated people constituting a dangerous mob, C.T. Lawrence, Secretary of the southern province, stated in his testimony: “His Honour’s view is that the women were in an abnormal condition, the rumour of taxation of women reacted upon their mood, they became disorderly.” He thought it was important to further investigate, “how it was that in so short a time reasonable and law-abiding women were transformed into utterly unreasonable and hostile subjects,” noting that “[t]he previous movements indicate that the women of the Eastern Provinces are specially liable at this time of year to fall into a curious excitable condition.”

The Aba Women’s War was not the work of an ignorant, excitable mob. Although the protest action may not have risen to the level of “strategic nonviolent conflict,” analyzed by social movement theorists like Peter Ackerman and Christopher Kruegler, it was essentially a principled, largely non-violent

The Resident is further of opinion that outwardly the movement was a women’s movement, but the men most certainly supported them, and the fact that no woman can leave her village without her husband’s express consent tends to support this view. The men knew that women would be spared and so sought to obtain their ends through them.

Id.  

171. REPORT, supra note 1, ¶ 43, at 15. (emphasis added).  

172. MEMORANDUM, supra note 114, ¶ 261, at 42.  

173. Id. ¶ 262, at 35.  

174. See generally PETER ACKERMAN & CHRISTOPHER KRUEGLER, STRATEGIC NONVIOLENT CONFLICT: THE DYNAMICS OF PEOPLE POWER IN THE TWENTIETH CENTURY x (1994) [hereinafter ACKERMAN & KRUEGLER]. The technique of nonviolent action (“people power”) has been employed by diverse groups in diverse cultures for centuries as the means for advancing specific social and economic objectives such as fighting for political freedom and human rights. Id. From the Solidarity movement in Poland to the South African anti-apartheid struggle; from the Mau Mau protest in colonial Kenya to the East German, Slovak and Czech struggles of 1989, non-violent action is increasingly the preferred means for achieving political ends. Id. Experts on this type of non-violent action argue that non-violent movements have often lacked a strong strategic component. Id. at xx. Gene Sharp argues that “Nonviolent movements have often been merely reactive, often relying on spontaneous mobilizations and tactical countermoves rather than focusing on maintaining the initiative and the wise ‘calculation and co-ordination of the ends and the means.’” Id. at ix. What set of strategic principles should form the core of any nonviolent movement? With the argument that “comprehensive adherence to a set of strategic principles enhances performance, which bear importantly on the outcome” of a struggle, Ackerman and Kruegler offer twelve key strategic principles of nonviolent conflict. These include: (1) Formulating functional objectives; (2) Developing organizational strength; (3) Securing access to critical material resources; (4) Cultivating external assistance; (5) Expanding the repertoire of sanctions; (6) Attacking the opponents’ strategy for consolidating control; (7) Muting the
weapon, deployed by peasant women to advance specific economic objectives.\textsuperscript{175} A close reading of the report of the Commission of Inquiry indicates that neither the women’s conclusions that a new form of taxation was imminent\textsuperscript{176} nor their rejection of the half-hearted reassurances from lower-level colonial officials that no such taxes were intended was unreasonable.\textsuperscript{177} The colonial experience had hitherto been characterized by successive breaches of trust and a total lack of transparency such that the women’s assessment of the situation that unfolded in the fall of 1929 was totally reasonable.\textsuperscript{178} For example, a census that was equally shrouded in mystery preceded the imposition of “male” taxation in 1928; not until the tax collectors began to hunt down the surprised natives did the real motivation for the census become apparent.\textsuperscript{179}

impact of the opponent’s violent weapon; (8) Alienating opponents from expected bases of support; (9) Maintaining non-violent discipline; (10) Assessing events and options in light of levels of strategic decision making; (11) Adjusting offensive and defensive operations according to the relative vulnerabilities of the protagonists; and (12) Sustaining continuity between sanctions, mechanisms, and objectives. \textit{Id.} at 21-53.

\textsuperscript{175} \textit{See} ISICHEI, \textit{supra} note 15, at 155 (noting that the war was “a spontaneous protest against oppression,” rather than a carefully thought out campaign).

\textsuperscript{176} The secrecy that shrouded the census reasonably fueled the suspicion of the women. Admittedly, a person’s goats and sheep are rarely counted for the sheer fun of it. As the Commission of the Inquiry noted:

This action of the Resident in causing a count to be made without revealing its object must be unhesitatingly condemned as a breach of one of the first principles of administration. It is a fundamental axiom of good government, which applies even more cogently to backward tribes, that all dealings of Government with the governed should be characterized by complete candour and honesty of purpose. \textit{REPORT, supra} note 1, \textit{ ¶} 29, at 9-10.

\textsuperscript{177} \textit{See} \textit{Id.} \textit{ ¶} 34, at 12. Given their previous course of dealings, the women had no basis to trust the colonial officials. \textit{Id.}

\textsuperscript{178} \textit{NOTES OF EVIDENCE, supra} note 163, para 904-08, at 49. The evidence of one local chief before the Commission of Inquiry sheds some light on the matter:

\begin{quote}
The Chairman: Do you know that the District Officer assured the women that they were not going to be taxed?

The Witness: The assurance was given in my presence.

The Chairman: Do you think that the women believed it?

Witness: They did not believe it. They thought that it was a deception . . .

The Chairman: Why did they think it was a deception?

Witness: They said, ‘It was in the same manner that men were made to pay tax. After the men were counted they were made to pay tax, eventually after the women have been counted they will be made to pay tax.

\textit{Id.}

\textsuperscript{179} \textit{REPORT, supra} note 1, \textit{ ¶} 27, at 9. The report of the Commission of Inquiry noted that, “[T]he real purpose was not revealed to them: in the graphic language of Mr. Weir, the District Officer, ‘the cat’ was ‘fairly successfully kept in the bag.’” \textit{Id.} An Assessment Report noted that, “the people were not aware that the counting had any connection with taxation and in this way a fairly accurate census of the Oloko and Ayaba Court areas was obtained very quickly and comparatively easily.” \textit{Id.}

Evidence offered by different local chiefs buttresses this fact. As one local chief recounted to the Commission of Inquiry: “When the counting was going on we did not know the object of it. We did not know it was for taxation. . . . They were discontented on that account. . . . Because they were deceived.” \textit{Id.} \textit{ ¶} 30, at 10. Deception, lack of transparency and accountability, thus, best characterized past interactions between the colonizers and the colonized and between the African State and her female subjects – a fact that was not lost on
Moreover, concerns about the steady decline of the price of agricultural produce were either ignored or treated as a matter determined solely by the invisible hands of the market.¹⁸⁰

E. Conclusion: What Lessons from History?

The Aba Women’s War was essentially a rejection of the neoliberal assurances about the benefits to Africans of export trade, or at the very least, an attempt to expose a host of internal and external factors that work together to deprive poor Third World women of the promised gains from trade. Though many Africans willingly and voluntarily embraced cash crop farming, drawn by its apparent income-generating potential, African peasants found themselves up against the dominant commercial system and at significant disadvantage as a result. What lessons are we left with today?

In the first instance, the Women’s War was a challenge to the hegemonic tendencies of foreign corporations operating in the Niger Delta during the inter-war period. It highlighted the fact that as between the peasant women and giant foreign trading companies, the playing field was far from level. Foreign trading companies throughout the continent guarded their interests by refusing to compete in such a way as to raise the prices they paid to local producers.¹⁸¹ Moreover, foreign trading companies obtained impressive concessions from the colonial government at the expense of the local populations and helped shape colonial laws and policies in ways that advanced their own economic interests.¹⁸²

Second, the Women’s War highlighted the fact that state officials unwittingly furthered the exploitation of poor women by global market forces. As between the women and the foreign trading companies, the colonial state sided with the latter.¹⁸³ In general, laws and policies of the colonial state were

the women. Chief Oparoacha told the Commission of Inquiry: “The women said, ‘You have deceived us about men not going to pay tax but afterwards they paid tax... First of all the counting of men was done and nobody told them the object of it, but some time afterwards they were told they were to pay tax.’... That is a fact. Men were counted without anybody explaining the object. Afterwards they were made to pay tax. They said we had conspired together with the Government not to tell them why they were being counted.” Id. Another chief, Chief Akalonu of Olakwo (Ngor), also told the Commission of Inquiry, “[c]ounting took place first at Nguru. For about three months no one knew the object of it. After that they came to Olakwo and counted people. The same day they started to count yams and domestic animals. The people were enraged and a fight ensued.... It was on that day taxation was announced.” Id.

¹⁸⁰. Id. ¶ 103, at 38. In Owerrinta, the District Officer, Mr. Jackson, merely offered to arrange a meeting between the women and the agents of the transnational companies operating in the region. In his words to the women: “If it is the question of taxation of women there is no truth in it, and if it is a question of produce prices, I will arrange a meeting, if necessary with the Agents to explain all about the prices.” Id. By “Agents” the District Officer was referring to the agents of European trading companies. Id.

¹⁸¹. See Kaniki, supra note 63, at 344.

¹⁸². Id. at 383.

¹⁸³. JOHN HATCH, NIGERIA: THE SEEDS OF DISASTER 204 (1970) (arguing that “as political power involved control over economic legislation and regulation, colonial governments, often under orders from their own masters in European capitals, could subordinate the
carefully designed to further the goals of foreign capital. Colonial laws raised taxes to exorbitant levels, in part to destroy the autonomy of indigenous village economy, and arbitrarily introduced new quality control measures for the products the women were interested in, all heightening the African women's vulnerability to global market forces. Today, African women are still concerned about the market dominance of transnational corporations. In a February 10, 2004 press release, the Institute for Agriculture and Trade Policy (IATP) announced that U.S. based multinational food companies are continuing a decade-long trend of agricultural dumping of five major export commodities into the world market. As a result, "developing country agriculture vital for food security, rural livelihoods, poverty reductions and trade, is crippled by the competition from major commodities sold at well below cost of production in world markets." The 2004 IATP study that analyzed dumping calculations from 1990 to 2001 for five commodities grown in the U.S. and sold on the world wide market: wheat, corn (maize), soybean, rice and cotton, found that wheat was exported at an average price of 40 per cent below cost of production, corn was exported at 25-30 per cent below cost of production, and cotton was exported at nearly 60 per cent below cost of production. It is therefore important that domestic local laws and policies are constantly scrutinized for their effect on the capacity of the local population to effectively participate in the global market. It is important to ensure that domestic laws do not privilege foreign capital at the expense of the local population. Third, the Women's War highlights the problem that arises when some participants in the global trading system are locked into the position of producers and exporters of raw materials and cheap agricultural products which are offered in exchange for more expensive manufactured products. Mass insecurity caused by unstable or declining prices and unfavorable terms of trade for agricultural products creates a massive distrust of external trade and deep-seated discontent among the loser that could destabilize the international system.

interests of their subjects to those of the merchants, manufacturers, and financiers of Europe". Whether the colonial government actually sided with European interests or simply failed to adequately protect their African subjects is a source of controversy among scholars. Id. But see Charles Wilson, The Economic Role and Mainspring of Imperialism in Colonialism in Africa 1870-1970: The Economics of Colonialism, 68, 80-81 (Peter Duigan and L.N. Gann, eds., 1975) (observing that "[u]nlike the great trading companies of earlier times . . . the new African companies received no officially sanctioned monopolies of trade. Only the Niger Company was to achieve a virtual, de facto monopoly through circumstances, not through law").

Fourth, the Women’s War teaches that the problems women experience in global trade are not so much a result of overt discrimination in the rules regulating trade, but are frequently a result of structural inequities and blindness of the law to these inequities. Colonial governments ignored the fact that women, more often than men, were excluded from public service in the colonial administration and were forced to depend exclusively on agriculture for survival. Colonial governments also ignored the fact that women were dominant in the trade in palm produce and were more likely to be affected by changes in price or changes in rules regulating trade in palm and palm products.

Finally, the Women’s War highlights the importance of strong female networks in efforts to advance women’s causes and bring about needed reform. As the processes of globalization intensify, the need to strengthen the capacity of local women’s groups and promote transnational activism will become even more evident in this era of intense globalization. The women’s protest was a success to the extent that it forced colonial officials to embark on hasty, albeit symbolic, political reforms that included greater attention to gender issues. The protest also reaffirmed the agency of African women and highlighted the importance of social capital in women’s struggle for economic survival in a fast-changing world. “Once it became evident to the women that taxation may be imminent, a spokesperson sent a palm-leaf around to all the women. The palm-leaf was an old custom that signified that the sender was in trouble and needed help. The reaction from the women was immediate: Forthwith the women of adjoining and even distant towns rallied to the signal.”

Arguably, the absence of global trade rules and a credible international trade institution compounded the problem Igbo women faced during the interwar period. More than seventy years after the Aba Women’s War, is the landscape of international trade less hostile, more navigable, and more beneficial

188. See Boahen, Colonialism in Africa, supra note 39, at 792.
189. MEMORANDUM, supra note 114, ¶ 224-31, at 39.
190. See ISICHEI, supra note 15, at 155 (noting “the Women’s War was a disastrous failure on one level, but a complete success on another. It forced the British, as no reports or criticisms had done, to re-examine the nature of their government of the Igbo and their neighbors”). Commissions of Inquiries were established, numerous intelligence reports published, and attempts were made to reintroduce a new system of local administration that attempted to restore “the political system of pre-colonial times.” Id. In the place of the corrupt Warrant Chiefs, new clan councils were introduced. Id. Isichei, however, notes that the new system was equally a failure for three particular reasons. First, the reform “was in appearance, but not in reality, a restoration of traditional government.” Id. Second, the reform suffered from a break in continuity brought about by the invasion of Africa – a continuity that could not be arbitrarily resurrected as and when the colonial administration chose. Id. Third, attempts at resurrecting traditional patterns of governance were at odds with other changes that the colonization introduced. Id.
191. REPORT, supra note 1, ¶ 37, at 14. One woman who participated in the struggle testified that, “One Sunday an alarm was raised. Our attention was called to the fact that the case had occurred, that is to say, what we had anticipated had occurred. We all started that night for Oloko to see what had happened there.” Id.
for peasant women? In other words, given the emergence of a multilateral trading system and the proliferation of global trade rules, are the positions of Third World women more secure? Has the power and influence of multinational companies waned or has it reappeared in new ways? And, are States in Africa more willing and able to intervene on behalf of their citizens to shield them from exploitative global market forces?

II. WOMEN, TRADE, AND GOVERNANCE: THE "NEW" INTERNATIONAL TRADE REGIME AND THE POLITICS OF SURVIVAL

Globalization is not new. However, the present era of globalization is qualitatively and quantitatively different from the previous eras in ways that are unsettling to the weak and frightening to the vulnerable. What is new is the emergence of new markets, new actors, and new rules. What is also new is the development of a multilateral trading system ("MTS") with rules that regulate trade between nations and an institution to monitor compliance with these rules. The Dictionary of Trade Policy Terms defines multilateralism in the context of global trade as "an approach to the conduct of international trade based on cooperation, equal rights and obligations, non-discrimination and participation as equals of many countries regardless of their size or share of international trade."

Between 1947 and 1994, the General Agreement on Tariffs and Trade ("GATT") and associated documents adopted in the course of successive trade rounds laid down the rules to govern the MTS. The year of 1994 was an...
important milestone in the history of the MTS. In that year, the Uruguay Round agreements ("URA") were adopted. One of the major outcomes of the URA was the establishment of the World Trade Organization (WTO) in January 1995. WTO is the successor of GATT and describes itself as the only global international organization dealing with the rules of trade between nations. In paragraph five of the preamble to the Agreement Establishing the World Trade Organization, Member States "[r]esolved... to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations."

Under the rules that underpin the MTS, states are urged to adopt market-oriented trade policies and market reform strategies. Trade liberalization

---

199. Thaddeus McBride, Rejuvenating the WTO: Why the U.S. Must Assist Developing Countries in Trade Disputes, 11 INT'L LEGAL PERSP. 65, 78 (1999) (noting that the passage of the Uruguay Round Agreement was arguably the most significant development in the GATT's history).


202. *Id.* at 12.

203. Agreement on Agriculture, *supra* note 68. The functions of the WTO are spelled out in the Agreement Establishing the WTO. According to Article III(1), "[t]he WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements."

*Id.* Article III(2) further provides that the WTO "shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement," and "may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference." *Id.*

204. *Id.* Review of state policies to ensure compliance with the market reform objectives fall under the mandate of the WTO's Trade Policy Review Mechanism ("TPRM"). *Id.* Established in Annex 3 of the Marrakech Agreement, the objectives of the TPRM are "to contribute to improved adherence by all Members of the WTO to its rules, disciplines and commitments." *Id.* Reviews are conducted in the Trade Policy Review Body ("TPRB"), a full-membership body of the WTO. *Id.* Most members are reviewed every six years with the exception of the four largest trading entities (the European Union, the United States, Japan, and Canada) which are reviewed every two years, and the next sixteen largest trading
and associated market reform strategies, however, pose tremendous risk to the poor. As the World Bank readily admits, every reform has winners and losers, and market reforms, even when successful, "do not always serve poor people as they could." ^206 In many Third World countries, trade liberalization has the potential to erode women’s fragile economic base. ^207 This is particularly so when trade liberalization in developing countries is not met by openness in developed countries in sectors where women enjoy comparative advantages, such as the agricultural and textile sectors. ^208 Additionally, new trading partners which are reviewed every four years. Id. By the end of 1999, the TPRB had conducted about 120 reviews covering seventy-one WTO members. See WORLD TRADE ORGANIZATION, ANNUAL REPORT 2000 79 (2000) [hereinafter WTO, REPORT 2000], available at http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep00_e.pdf (last visited Mar. 4, 2005). Is the TPRM advantageous to the global trading system? According to the World Bank, the TPRM process "reduces the incentive for governments to adopt and retain trade policy measures that contravene international rules," and helps minimize tension among member nations. WORLD BANK, DEVELOPMENT REPORT 1999/2000, supra note 44, at 55.


207. See OXFAM, supra note 25, at 9 (noting that inequalities in trade are reinforcing wider inequalities and that the expansion of world trade has, so far, produced disappointing outcomes for poverty reduction and human development). See also David A. Gantz, FAILED EFFORTS TO INITIATE THE "MILLENNIUM ROUND" IN SEATTLE: LESSONS FOR FUTURE GLOBAL TRADE NEGOTIATIONS, 17 ARIZ. J. INT’L & COMP. L. 349, 350-51 (2000) (noting that while trade liberalization over the past fifty years has brought about significant growth in world-wide Gross Domestic Product and has helped some nations to achieve enormous political and economic benefits, many more nations have been left behind). Even more damning, Gantz notes that “[e]ven in those nations where the benefits have been substantial such as the United States . . . there are significant populations . . . who oppose further trade liberalization.” Id. at 350.

208. GLOBALIZATION, GROWTH AND POVERTY, supra note 192, at 8-9 ("While many developed
arrangements between developed countries and developing countries appear to replicate former colonial arrangements under which the colonies primarily exported cheap raw materials and agricultural goods at very low prices and imported manufactured goods from the metropolis at relatively higher prices.\(^{209}\)

This section focuses on the MTS as it has developed in the last fifty years and, particularly, on the post-war structure of global trade in agriculture and its implications for women in the Third World - particularly African women. The focus on agricultural trade is important for at least three reasons. First, a majority of the Third World poor have important stakes in markets for agricultural produce. Agriculture accounts for over one-third of export earnings in almost half of all developing countries.\(^{210}\) Second, women comprise a significant percentage of the agricultural workers and farmers in developing countries.\(^{211}\) Third, as Oxfam Campaign Reports notes, "[f]ew markets are more hostile to developing countries than the market for primary commodities such as coffee and cocoa."\(^{212}\) Overall, agricultural export plays a significant role in poverty reduction strategies of most developing countries.

I start with a broad overview of the MTS and examine its basic rules and principles. I will then proceed to examine the structure of the global trade in agriculture in terms of market share and market access and to highlight the trends in the trade for agricultural products today. Next, I will examine key provisions of the Agreement on Agriculture ("AOA"). In conclusion, I will examine the implications of past and present developments discussed in the preceding sections for women in Africa.

---

\(^{209}\) Id. at 6-7 (observing that "about 2 billion people live in countries that are not participating strongly in globalization" and that many of these are in Africa. Observing further that these countries do not participate strongly in part because their exports are confined to a narrow range of primary commodities).

\(^{210}\) Id. at 111.


In sub-Saharan Africa women contribute between 60 and 80 percent of the labour for food production, both for household consumption and for sale. Moreover, agriculture is becoming a predominantly female sector as a consequence of faster male out-migration. Women now constitute the majority of smallholder farmers, providing most of the labour and managing a large part of the farming activities on a daily basis.

*Id.* (footnotes omitted).

\(^{212}\) OXFAM, *supra* note 25, at 53.
A. The Multilateral Trading System: An Overview

GATT was adopted in 1947 to function as a framework of rules.\textsuperscript{213} It is one of the main foundations of the MTS.\textsuperscript{214} The rules of GATT were to establish standards to guide the conduct of trade between contracting states.\textsuperscript{215} As an institution, GATT was supposed to serve as a forum for trade negotiations and as a mechanism for modifying and enforcing trade rules.\textsuperscript{216}

The basic principles that underpin the MTS are non-discrimination and progressive trade liberalization.\textsuperscript{217} The non-discrimination principles are embodied in two GATT rules – the "most favored nation" rule ("MFN")\textsuperscript{218} and the "national treatment"\textsuperscript{219} rule. Trade liberalization demands the removal by states of all protective barriers to trade.\textsuperscript{220} Over the past fifty years, the world has witnessed the gradual ascendance of the free-trade paradigm in international trade policy.\textsuperscript{221} Proponents of this paradigm argue that trade liberalization

\begin{itemize}
\item GATT, supra note 197.
\item Understanding the WTO, supra note 201, at 12.
\item GATT, supra note 197, at 1. The Preamble to GATT states, "Being desirous of contributing to these objectives by entering into reciprocal and usually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce." \textit{Id.}
\item Id.
\item Id.
\item GATT art. I, supra note 197, at 2. Article I(1) of GATT provides: 
With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties. \textit{Id.}
\item GATT art. III, supra note 197, at 6. Article III(1) of GATT provides:

The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production. \textit{Id.}
\item Understanding the WTO, supra note 201, at 15. Not surprisingly, the WTO is a strong proponent of trade liberalization. According to the WTO, "[t]he economic case for an open trading system based on multilaterally agreed rules is simple enough and rests largely on commercial common sense." \textit{Id.} More specifically according to the WTO:

The data show a definite statistical link between freer trade and economic growth. Economic theory points to strong reasons for the link. All countries, including the poorest, have assets — human, industrial, natural, financial — which they can employ to produce goods and services for their domestic markets or to compete overseas. Economics tells us that we can benefit when these goods and services are traded. Simply put, the principle of "comparative advantage" says that countries prosper first by taking advantage of their assets in order to concentrate on what they can produce best, and then by trading these products for products that other countries produce best.
\end{itemize}
allows countries to leverage their comparative advantages which ultimately results in increased economic growth and higher standards of living for citizens in participating countries.\textsuperscript{222}

Since 1947, the rules that underpin the MTS have broadened and deepened. Beyond the traditional negotiation of tariffs and quotas on manufactured goods, global trade rules have extended to untraditional areas, including intellectual property, services, and agricultural products.\textsuperscript{223} In addition, these rules are now more detailed in terms of the commitments states are expected to accept and some have built-in implementation mechanisms.\textsuperscript{224}

Institutionally, the MTS has grown much stronger. The WTO, the successor to GATT, was established by adoption on April 15, 1994\textsuperscript{225} and came into existence the first day of the following calendar year.\textsuperscript{226} The WTO was created to “provide the common institutional framework for the conduct of trade relations among its Members.”\textsuperscript{227} An important feature of the WTO is its very strong dispute settlement mechanism which “increases the likelihood that trade disputes between state parties will be decided by expert panels, rather than being resolved through informal means.”\textsuperscript{228} Since 1995, membership in the WTO has grown. As of October 13, 2004, membership in the WTO stood at 148\textsuperscript{229} up from 128 at the end of 1994.\textsuperscript{230}

\begin{itemize}
  \item \textit{Id.}
  \item \textit{Id.}
  \item \textit{Id.} (noting that more and “more detailed rules have been and are being developed to reduced perceived impediments to trade”).
  \item Marrakech Agreement Establishing the World Trade Organization arts. I, IV, Apr. 15, 1994 [hereinafter WTO Agreement].
  \item WTO Agreement, \textit{supra} note 225, at art. II. Four principle functions are assigned to the WTO under the WTO agreement: facilitating “the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements,” providing “the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement,” administering the dispute settlement procedure established under the Understanding on Rules and Procedures Governing the Settlement of Disputes, and administering the Trade Policy Review Mechanism. \textit{Id.} at art. III.
  \item Trade Impact Review, \textit{supra} note 223, at 2-3.
  \item World Trade Organization, \textit{The 128 Countries}, \textit{supra} note 201. This site contains a list of the 128 GATT signatories at the end of 1994, together with the dates they signed the agreement. The governments that had signed GATT were officially known as “GATT contracting parties.” Upon signing the new WTO agreements, they officially became known as “WTO members.”
\end{itemize}
B. Trends in Global Trade of Agricultural Products

Trade in agriculture has important implications for economic growth in developing countries. More than two-thirds of the developing world's population live in rural areas and depend on their land for food and income. For many developing countries, agricultural trade accounts for over fifty percent of the Gross Domestic Product ("GDP"). Export of agricultural products can provide income for many household farmers, expand non-farm employment, and stimulate rural economies. Yet compared to the impressive growth in world trade in manufactured goods, trade in agricultural products has grown at a slower rate. "One reason for this slow growth," according to the World Bank, "is the continuing protection of agricultural products by developed countries – protection not only through tariffs and quotas but also through export subsidies."

Farm products from developing countries face direct exclusion. The Cairns Group notes:

- For most developing and least developed countries, including those which are net food importers, agriculture is the foundation of economic development and growth.
- For example, more than 70% of the populations of low income countries live in rural areas, and 97% of their rural populations are engaged in agriculture.

Income generated by the export of agricultural produce is often the major source of employment, revenue and foreign exchange. This is true whether countries are current or potential exporters or produce primarily for their domestic markets. Neither countries with a comparative advantage nor countries producing mainly for domestic consumption can compete with unfair competition from export subsidies.

The Cairns Group was formed in Cairns, northern Queensland, Australia, in 1986 with the goal of forming an alliance to ensure that agricultural trade issues would be given a high priority in the multilateral trade negotiations. Since its inception, the Group has pushed to put agriculture squarely on the agenda of the multilateral trading system. Seventeen states that make up the Cairns group together account for one-third of the world's agricultural exports.


Id. (noting that "[a]t almost 5 percent, world export of manufactured goods again recorded the strongest volume of trade growth among all sectors").

M. RAFOUL ISLAM, INTERNATIONAL TRADE LAW 170 (1999) (noting that GATT "has achieved considerable success in freeing up trade in manufactured goods but the same has not been paralleled in agricultural trade"); WORLD BANK, DEVELOPMENT REPORT 2000/2001, supra note 206, at 180 ("[W]hile world trade in manufactured products expanded at 5.8 percent a year from 1985 to 1994, agricultural trade grew at only 1.8 percent; see Clayton Yeutter, International Trade Agreements: Implication for Agriculture, 18 HAMLIN L. REV. 319, 320 (1995) (noting that "agricultural trade is more distorted than is trade in any other major area of merchandise in the entire world. That has been true for a long time and it has been getting worse rather than better").

WORLD BANK, DEVELOPMENT REPORT 2000/2001, supra note 206, at 180; see ISLAM, supra note 235, at 170 (attributing the lack of success in the agricultural sector to "the political unwillingness of major trading countries and the inferior bargaining power of countries having interests in agricultural trade"); see also The Cairns Group, Papers, supra note 231 (observing that "[t]he ability of developing and least developed countries to benefit from an expansion in trade in agriculture has been hampered by high levels of protection and
from the markets of developed countries as a result of a myriad of tariff and non-
tariff barriers, and the gradual erosion of trade preference arrangements.237

i. Protectionism in Developed Countries

Today, the landscape of global trade in agricultural products is extremely
grim. General trends indicate: (i) unequal market share as between developing
and developed countries,238 (ii) continuing dependence on primary commodities
by many developing countries;239 (iii) a major crisis in agricultural commodities
market reflected in slow market growth,240 adverse price trends,241 low value-
added242 and intense market competition;243 and (iv) old and new barriers to
trade in agricultural products.244

Protectionism prevents developing countries from benefiting in a sector
where they enjoy a natural comparative advantage. Export subsidies245 by

237. WORLD BANK, DEVELOPMENT REPORT 2000/2001, supra note 206, at 180 (“The tariffs that
high-income countries impose on agricultural goods from developing countries... are
almost five times those of manufactures”).
238. OXFAM, supra note 25, at 69. As between developed countries and developing
countries, developed countries enjoy a significant share of the export market. Currently, “[d]eveloping
countries, with almost four-fifths of the world population, generate less than one-quarter of
total exports.” Id. As between the developing countries, Oxfam found that “East Asia
accounts for the entire increase in world-market share achieved by developing countries. It
expanded its world-market share by four percent in the 1990s, to just under ten percent;” that
“Sub-Saharan Africa has suffered a catastrophic loss of market share, extending over three
decades;” that “South Asia increased its share of world markets from 0.8 to one percent;”
and that “Latin America increased its world-market share from one to five percent of the
total, although this was almost entirely due to exports from Mexico.” Id.
239. Id. at 73 (noting that excessive dependence on agricultural export is “an almost automatic
route to a diminishing share of world exports and world income...”).
240. Id. at 74 (“Since 1985, the share of primary commodities in world trade has halved, to 11
percent. Within the commodities sector, agricultural trade has fallen dramatically as a share
of world trade. In the 1990s, it grew at least less than two percent a year, or one-quarter of the rate
for manufactured goods. The share of food and agriculture in total merchandise trade fell
from 17 percent to 10 percent between 1980 and 1997”).
241. Id. (“The terms of trade (the price of exports compared with the price of imports) for Africa’s
commodity exports were one-fifth lower at the end of the 1990s than in the early 1970s”).
242. As a result of several factors including higher tariffs on processed food and supply-side
constraints, most commodities are exported from developing countries in unprocessed form.
This translates into direct loss for developing countries as they are unable to capture the
immense value added to primary commodities along the supply chain. Id. World Bank
studies found that “in Japan and the European Union fully processed food products face
tariffs twice as high as those on products in the first stage of processing. In Canada the ratio
is even higher, with tariffs on fully processed food products twelve times those on products
in the first stage.” WORLD BANK, DEVELOPMENT REPORT 2000/2001, supra note 206, at
180.
243. OXFAM, supra note 25, at 74. According to Oxfam, “markets for products such as sugar,
cereals, beef, dairy, and some edible oils are dominated by rich countries, which subsidize
their own farmers to the extent of $1billion [sic] a day.” Id.
244. Id. at 102.
245. Export subsidies are special incentives contingent on export that are provided by
governments to encourage increased foreign sales. Export subsidies “may take the form of
cash payments, disposal of government stocks at below-market prices, subsidies financed by
governments of developed countries allow their farmers "to undersell local producers both in the developing countries and in third nations," while domestic agricultural support systems in industrialized countries allow farmers in the industrialized world "to sell at prices below production cost within their home country market, as well as within markets of other nations, including those of developing countries." The Double Standards Index ("DSI") developed by Oxfam offers a comprehensive comparative indicator of levels of protectionism employed by industrialized countries. The DSI indicates that "developing-country exports of agricultural and labour-intensive manufactured products face far higher barriers when they enter the major Northern markets than do industrial products, which are primarily exported by industrialised countries." The DSI also indicates that "[a]gricultural subsidies account for one-quarter of farm output in the USA, rising to 40 percent in the EU and over 60 percent in Japan;" that "[a]verage tariffs on processed agricultural products exported to Japan and Canada are more than three times higher than those facing unprocessed agricultural products;" and that "[a]verage agricultural tariffs are close to 10 percent in Canada and the USA, rising to more than 20 per cent in the EU and Japan." The primary motivation for tariffs on agricultural products is the desire to protect domestic farmers and domestic industries from foreign competition. Tariff peaks and tariff escalations are especially problematic. Tariff peaks refer to "exceptionally high tariffs on selected products" that are permitted by WTO rules. While industrialized countries significantly reduced their average level of tariff protection on manufactured goods from around 10 percent in the early 1980s to about 5 percent in 1999, they have maintained exceptionally high tariffs on agricultural products. Examples include tariff peaks on fish and fish products, fruits and vegetables, food industry products, clothing, and textiles. Tariff escalation refers to situations where an importing country sets lower tariffs on material imports and higher tariffs on finished products or processors as a result of government actions such as assessments, marketing subsidies, transportation and freight subsidies, and subsidies for commodities contingent on their incorporation in exported products. See Economic Research Service/United States Department of Agriculture, WTO Glossaries, at http://www.ers.usda.gov/briefing/WTO/Glossaries.htm#12 (last visited Jan. 30, 2004).

247. Id.
248. See OXFAM, supra note 25, at 99.
249. Id. at 100.
250. Id. Oxfam's findings are collaborated by the World Bank. For example, "[t]he European Union's tariffs on meat products peak at 826 percent." WORLD BANK, DEVELOPMENT REPORT 2000/2001, supra note 206, at 180.
252. Id.
253. Id.
products in order to protect its processing or manufacturing industry.\textsuperscript{254} The WTO admits that “[t]ariff escalation remains after the Uruguay Round, but it is less severe.”\textsuperscript{255}

ii. The Cost of Exclusion

For developing countries, Northern protectionism translates into declining market share, lost foreign exchange earnings, reduced opportunities for employment, and reduced income for essential goods and long-term economic losses associated with restricted opportunities for investment.\textsuperscript{256} Tariff and non-tariff barriers by developed countries pose “huge obstacles for developing countries striving to break into export markets.”\textsuperscript{257} Tariffs on processed goods from developing countries, for example, discourage industrialization efforts in developing countries by locking them into a vicious cycle of unhealthy dependence on pure agricultural products. Worse, it perpetuates patterns of trade established during the colonial period that found the colonized supplying cheap raw materials, and receiving in return very expensive finished products from oversea trading companies.\textsuperscript{258}

The cost of Northern protectionism in terms of lost export earnings and welfare losses is huge. Northern protectionism costs an estimated annual welfare loss of about $19.8 billion for developing countries, an amount “equivalent to about 40 percent of the official development assistance given to developing countries in 1998.”\textsuperscript{259} The impact on least developing countries (“LDCs”) is even more catastrophic. LDCs lose an estimated $2.5 billion a year in potential export earnings as a result of protectionism in the United States, the EU, and Canada alone.\textsuperscript{260} Oxfam estimates that “[i]f sub-Saharan Africa had the same share of world exports today as it had in 1980, the foreign-exchange equivalent would be in the order of $278 billion. Expressed in per capita terms, the income gain would be $432, which would almost double the current average income.”\textsuperscript{261}

\textsuperscript{254} Id.
\textsuperscript{255} Id.
\textsuperscript{256} See CARL, supra note 246, at 436 (noting that developing countries’ share in the world market for agriculture fell from 4.2 percent in 1970 to 1.0 percent in 1993; while agricultural exports from industrialized nations were growing).
\textsuperscript{257} WORLD BANK, DEVELOPMENT REPORT 2000/2001, supra note 206, at 180.
\textsuperscript{258} OXFAM, supra note 25, at 73 (noting that current participation in the international economy of many developing nations is based on trading relationships established during the colonial period). “In the past, Northern-based TNCs invested in developing countries for one of essentially three reasons: access to cheap labour, access to raw materials and commodities, and access to local markets.” Id. at 43.
\textsuperscript{259} WORLD BANK, DEVELOPMENT REPORT 2000/2001, supra note 206, at 180.
\textsuperscript{260} OXFAM, supra note 25, at 101.
\textsuperscript{261} Id. at 50 (observing that the impact of Northern protectionism is startling when expressed through economic models that predict the potential gains from import liberalization in industrialized economies). Studies show that moving to full import liberalization by industrialized nations between 2000 and 2005 would generate at least more than $3 billion each for India, China, and Brazil, more than $14 billion for Latin America, more than $2 billion for sub-Saharan Africa, and more than $600 million for Indonesia. Id. at 100. These
The loss in export earnings offsets any benefits from development aid from industrialized economies and points to a glaring incoherence between industrialized-countries trade and development policies. Calculated in terms of lost opportunity to invest in human and social development, the cost of protectionism is huge. During the colonial period, the British regime "depended primarily on the agency of Africans." Today, African women worry that their leaders are not representing their interest but are rather serving the interests of international institutions and multinational corporations. According to the Kurasini Declaration on Gender and Trade:

Our governments are signatories to World Trade Organisation (WTO) agreements . . . . Northern governments and large corporations have written these agreements in ways that allow them to continue protecting their own markets and force open the markets of southern countries to sell their products. Our governments can no longer use import and export taxes to protect local farmers from unfair competition due to subsidised imports from other countries. They are prevented from introducing subsidies or laws giving preference to local producers and companies in order to promote the domestic economy.

According to the Cairns Group: "Distortions in world agricultural markets undermine the ability of developing countries to achieve sustained economic growth, promote development and eliminate poverty . . . agricultural reform is needed if developing countries are not to be left behind in the world trading system. Correcting the situation would result in increased incomes in developing countries, leading to global economic and social gains, including additional demand for imports of benefit to everyone." This calls for a more equitable global trading environment. Reform must address problems of tariff peaks and tariff escalation. Reform must also figures increase when such factors as the dynamic effects on investment and innovation that market opportunities frequently generate are factored in. See, e.g., id. With respect to LDC's, "[i]n 1999, the Quad countries provided LDCs with almost $10 billion in aid. But for every $4 of aid, the same countries took back $1 through the imposition of trade restrictions on LDC exports." See 23rd Cairns Group Ministerial Meeting, COMMUNIQUE (The Cairns Group, Dohar, Qatar), Nov. 9, 2001 [hereinafter 23rd Cairns Group Ministerial Meeting], at http://www.cairnsgroup.org/meetings/min23communique.html (last visited Mar. 4, 2005).


The World Bank estimates that "[t]he tariffs that high-income countries impose on agricultural goods from developing counties, especially such staples as meat, sugar, and dairy products, are almost five times those on manufactured products. The European Union's tariffs on meat products peak at 826 percent." WTO, Some Issues Raised, supra note 251. Oxfam notes that "the USA and Canada impose import tariffs exceeding 120 percent on groundnuts and meat products respectively. Leather shoes exported to Japan face standard import tariffs as high as 160 percent . . . ." OXFAM, supra note 25, at 102.
address trade rules relating to export subsidies. While improving access to the markets of industrialized countries does not address the supply-side constraints to the participation of developing countries in the global trade, it would at the very least help address past and present imbalances in the global trading system. Market access requires removal of barriers to developing country goods in industrialized markets.

C. The Agreement on Agriculture ("AOA"): Toward A More Equitable Trading Regime for Developing Countries?

GATT offered very little in terms of an adequate legal framework for the liberalization of agricultural trade. Agricultural trade was either ignored or exempted from most of GATT’s regulatory norms. The AOA, WTO’s Agreement on Agriculture, marked the first attempt by states to meaningfully address the double standard in the multilateral trading system – the exclusion of agriculture from multilateral trade disciplines. In part due to pressure from the

---

268. The agricultural sector is a major target of tariff escalations. According to Oxfam, “The processed-food sector is particularly affected by tariff escalation. Fully processed, manufactured food products are subject in the EU and Japan to tariffs twice as high as products in the first stage of processing . . . Thirty percent of all peak tariffs applied by the EU protect the food industry. These tariffs range from 12 to 100 percent, affecting sugar-based products, cereals, and canned fruit. The situation is similar in the USA, where the food industry accounts for one-sixth of all peak tariffs, including orange juice (30 percent) and peanut butter (132 percent).” OXFAM, supra note 25, at 102-03.

269. See ISLAM, supra note 235, at 172. Islam attributes GATT’s failure to bring agricultural trade under tighter GATT discipline to “its weak and relaxed provisions open to violation in as much as it was due to the uncooperative attitudes of main members, especially the US and the EC.” Id. at 173. The European Union was established under that name in 1992 by the Treaty on European Union (the Maastrict Treaty). Wikipedia, European Union, at http://en.wikipedia.org/wiki/European_Union (last visited Mar. 4, 2005). Prior to 1992, however, many aspects of the EU existed through a series of predecessor organizations. Id. At that time, it was known as the European Community (originally the European Economic Community). Id.

270. GATT, supra note 197. The exemption of agriculture from Articles XI (quantitative restrictions) and XVI (subsidies) are good examples. Article XI outlaws “prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures” on importation or exportation of products. Id. Article XI (2), however, exempts agricultural products from these prohibitions. Id. Quantitative restrictions on export are permissible if applied to prevent or relieve critical food shortages or other products essential to the exporting contracting party. Subject to stated conditions, import restrictions are also permitted if designed to protect domestic farm producers and programs or if necessary “to the application of standards or regulations for the classification, grading or marketing of commodities in international trade.” Id. art. XI (2)(b)-(c). See ISLAM, supra note 235, at 172. (arguing that “Article XI was drafted especially to accommodate the US domestic legislation”).

271. WTO/GATT, Ministerial Declaration on the Uruguay Round of Multilateral Trade Negotiations, Sept. 20, 1986, available at http://www.jus.uio.no/lm/wto.gatt.ministerial.declaration.uruguay.round.1986/id (last visited Apr. 4, 2005). The ground work for new negotiations in agricultural trade was laid in the September 20, 1986, Ministerial Declaration. Id. In the Ministerial Declaration contracting parties agreed that there was “an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions including those relating to structural surpluses so as to reduce the uncertainty, imbalances and instability in world agricultural trade.” Id. at ¶ 51.
Cairns Group, a coalition of seventeen agricultural exporting and mostly developed countries, the AOA attempted to impose new disciplines relating to market access on State Parties. Despite this attempt, ambiguities and gaps in the AOA have so far prevented developing countries from reaping any tangible benefit from the Agreement.

i. Basic Provisions of the AOA

The AOA is a highly complex document. It attempts to set a new standard for trade liberalization in agriculture. The agreement defines agricultural products by providing a list of products to which it applies. Thus, Article 2 states, “[t]his Agreement applies to the products listed in Annex 1 to this Agreement, hereinafter referred to as agricultural products.” With respect to domestic support commitments, Article 1 defines “basic agricultural product” as “the product as close as practicable to the point of first sale as specified in a Member’s Schedule and in the related supporting material.” Under the AOA, all WTO Members are expected to accept conditions related to market access, domestic support, and export subsidy.

The market access objectives of the Agreement are to be achieved through Members’ specific undertakings on tariffication, tariff bindings, and tariff

See also Mary Anne Normile & Mark Simone, Agriculture in the Uruguay Round, available at http://www.ers.usda.gov/briefing/wto/uraa.html (noting that the “AOA represents a fundamental change in the way agriculture is treated under the rules governing trade among WTO member countries”). Prior to the AOA, the authors note, “GATT rules on trade in agricultural products were largely ineffective” resulting in a highly distorted world market for agricultural goods. Id. For example, by exploiting the loopholes and exceptions in GATT rules, many countries maintained high levels of domestic support, used export subsidies to dispose of surplus production, and used a host of tariff and non-tariff measures to exclude imports). Id.


273. See Ambassador Celso L.N. Amorim, The WTO From the Perspective of a Developing Country, 24 FORDHAM INT’L L.J. 95, 98 (noting that despite the promises of the Uruguay Round, “developing countries have either reaped very small concessions in the areas of their greatest interest or have seen such concessions nullified by restrictive trade practices”).

274. Agreement on Agriculture, supra note 68 at 14. Annex 1 of the AOA contains a list of all products classified as agricultural products under the Agreement. Pursuant to Article 1.b of the Agreement, each Member’s schedule annexed to the Agreement also contains a list of “basic agricultural products” of that country. Id. at 2.

275. Chad E. Hart & John C. Beghlin, Rethinking Domestic Support Under the World Trade Organization, BRIEFING PAPER 04-BP 43 (Center for Agriculture and Rural Development, Iowa State University, Ames, Iowa), Nov. 2004, at 3, available at http://www.card.iastate.edu/publications/DBS/PDFFiles/04bp43.pdf. Domestic supports are supports that governments provide to agriculture. Governments provide support to agriculture in different ways including direct payments, loan programs, research grants and storage programs. Id.

276. Agreement on Agriculture, supra note 68 at 44.

277. See CARL, supra note 184, at 246; see also ISLAM, supra note 235, at 176.
reductions. These are specified in the national schedules annexed to the Agreement. Tariffication requires that Member States convert all non-tariff barriers to tariffs or tariff-quotas that provide substantially the same level of protection. The Agreement thus prohibits the use of restrictions on imports other than tariffs. Tariff bindings ensure that no new tariff measures can be introduced unless negotiated by the parties. Commitments on tariff reduction oblige member states to reduce their tariffs on agricultural products to specified levels. The goal of reform was to ensure a steady shift from non-tariff barriers to a system of bound tariff-only protection. Because non-tariff barriers operate as hidden barriers to trade, the idea was that a shift away from non-tariff barriers would create a fairer and more market-oriented agricultural trading

278. World Trade Organization, Agriculture: Explanation – Market Access (noting that "[f]ollowing the entry into force of the Agreement on Agriculture, there is now a prohibition on agriculture-specific non-tariff measures, and the tariffs on virtually all agricultural products traded internationally are bound in the WTO") [hereinafter WTO, Market Access], at http://www.wto.org/english/tratop_e/agric_e/agaIntroO2_access_e.htm (last visited Mar. 4, 2005).

279. ISLAM, supra note 235, at 176. WTO members are required to offer a “schedule” of tariff concessions covering all agricultural products. The schedule “sets out for each individual agricultural product, or in some cases agricultural products defined more generally, the maximum tariff that can be applied on imports into the territory of the Member concerned.”

280. CARL, supra note 246, at 439. Under the agreement, measures such as voluntary export restraints, discretionary import licensing, minimum import prices, quotas, and similar border measures other than ordinary custom duties must be converted to tariffs or tariff-quotas. Tariff-Quotas allows a country with respect to a specific commodity to permit the same level of imports as was previously permitted under a low or non-restrictive tariff. However, once such a level of import is reached in any given year, “a higher above-quota rate will be applied. The above-quota rate will be basically the difference between the internal and the world prices during the base period.” The agreement also prohibits the use of non-tariff border measures, including quantitative import restrictions, minimum import prices, voluntary export restraint agreements, variable import levies and discretionary import licensing procedures. Excepting normal custom duties, all similar border measures are prohibited.

281. BHALA, INTERNATIONAL TRADE HANDBOOK, supra note 54, at 685.

282. Agreement on Agriculture, supra note 68, at 46.

283. With respect to developed countries, the average tariff reduction called for is 36% (minimum 15%) over a six-year period beginning in 1995. WTO, Market Access, supra note 278. Developing countries must reduce their tariffs 24% (minimum 10%) over 10 years. Where a developing country already undertakes commitments at bound “ceiling” levels, no further reduction is required except on an ad hoc basis. Least developed countries are required to bind all agricultural tariffs but are not required to undertake further tariff reductions. “Ceiling” levels are “levels higher than the applied rates prior to the WTO.”

284. According to the WTO, a key aspect of this change has been to stimulate investment, production and trade in agriculture by “(i) making agricultural market access conditions more transparent, predictable and competitive, (ii) establishing or strengthening the link between national and international agricultural markets, and thus (iii) relying more prominently on the market for guiding scarce resources into their most productive uses both within the agricultural sector and economy-wide.” Members are obliged to refrain from reverting back to non-tariff barriers except under Article 5 and Annex 5 of the AOA. Article 5 provides for conditional safeguards to protect sensitive products.
With respect to export subsidies, Member States are required to accept commitments not to provide export subsidies in a manner inconsistent with their undertakings as specified in their respective schedule. The AOA capped export subsidies and required Member States to reduce both the value of subsidies and the volume of subsidized export, with varying reduction commitments for developed countries, developing countries, and LDC’s.

**ii. Initial Assessment of the AOA**

Multilateral trade negotiations in agriculture are of particular interest to developing countries because agriculture accounts for a significant percentage of their total export and a majority of their jobs. Most countries depend almost exclusively on agricultural export for their foreign exchange earnings.

---

285. Agreement on Agriculture, supra note 68, at 43 (recalling that their long-term objective as agreed at the Mid-Term Review of the Uruguay Round “is to establish a fair and market-oriented agricultural trading system” and that a reform process should be initiated through the negotiation of commitments on support and protection and “through the establishment of strengthened and more operationally effective GATT rules and disciplines”).

286. See id. at 50. Developing countries receive differential treatment. Thus, while developed countries “are committed to reduce their export subsidies, over the implementation period, to a level of 36 percent and 21 percent below the levels in the 1986-90 base period,” the percentage reduction for developing countries is set at 24 and 14 percent over a ten year period. ISLAM, supra note 235, at 179. Least developed countries are generally not required to undertake any export subsidy reduction commitment. Id.

287. Agreement on Agriculture, supra note 68, at 50. Article 9 expressly defines the export subsidies subject to reduction commitments. Id. Export subsidies especially targeted are:

   a. direct subsidies provided by governments or their agencies, “including payments-in-kind, to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers... contingent on export performance;”
   
   b. governmental sale or disposal for export, “of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market;”
   
   c. payments on the export of an agricultural product that are financed through governmental action whether or not a charge on the public account is involved. Included are “payments that are financed from the proceeds of a levy imposed on the agricultural product concerned or on an agricultural product from which the exported product is derived;”
   
   d. subsidies to reduce “the cost of marketing exports of agricultural products... including handling, upgrading and other processing costs, and the costs of international transport and freight.”
   
   e. government provided or government mandated internal transport and freight charges on export shipment that are on “terms more favourable than for domestic shipments;”
   
   f. subsidies on agricultural products “contingent on their incorporation in exported products.”

Id. at 50-51. Subject to the provisions of Article 9(2)(b) members may grant subsidies beyond its permissible annual limit. Id. at 51. Subsidies not covered are subject to a separate agreement—the Subsidies Agreement. Id.

288. See AFRICAN DEVELOPMENT BANK, AFRICAN DEVELOPMENT REPORT 2004 157 (2004) (observing that many countries in Africa depend on the exportation of a limited range of primary commodities. According to the report, “many African countries obtain over half of
Developing countries generally are highly dependent on foreign trade in agriculture as a portion of their GDP.\textsuperscript{289} Reactions to the AOA have been mixed. To some, the AOA represents "[t]he triumph of economic rationality over politics,"\textsuperscript{290} and is an unqualified success because it is the first time that the issue of agricultural trade liberalization is being addressed in more than a perfunctory manner in the MTS.\textsuperscript{291} The Agreement succeeded in converting "a wide range of trade distortions into three observable trade policies, with maximum levels that can be negotiated down over time."\textsuperscript{292} Furthermore, the AOA comes with a built-in monitoring and implementation mechanism. A Committee on Agriculture is given the task of overseeing the implementation of the Agreement.\textsuperscript{293} The "Peace Clause" in the AOA also signals a new direction in agricultural trade negotiations. Pursuant to this clause, members bind themselves to continuing negotiation in view of the "long-term objective of substantial progressive reduction in support and protection."\textsuperscript{294}

Despite its positive aspects, there are some inherent weaknesses in the AOA. Loopholes in the Agreement encourage member states to circumvent agricultural trade disciplines.\textsuperscript{295} Furthermore, some provisions of the AOA

\begin{itemize}
\item their export earnings from only one or two primary commodities," and at least sixteen countries were dependent on primary commodities for over 90 percent of their export revenue.)
\item CARL, supra note 246, at 436 (noting that in many low-income countries, agriculture accounted for between fifty percent and one hundred percent of total exports. She notes that of foreign exchange earnings, "80 percent derived from coffee in Uganda, 70 percent from peanuts in Gambia, 60 percent from coffee in Ethiopia, 60 percent from tobacco in Malawi, and 50 percent from spices in Comoros").
\item ISLAM, supra note 235, at 180.
\item Id. (noting that the Uruguay Round was "the first ever occasion where the issue of agricultural trade liberalization was addressed in a more than perfunctory manner").
\item WORLD BANK, DEVELOPMENT REPORT 1999/2000, supra note 44, at 63.
\item See Agreement on Agriculture, supra note 68, at 55 (listing article 17 of the Agreement on Agriculture).
\item See id. at 56 (listing article 20 of the Agreement on Agriculture). Members agreed to continue the negotiation process one year before the end of the implementation period. Amorim, supra note 273, at 101 (noting that Article 20 arose out of a general perception of negotiators that the results of the Uruguay Round had fallen behind the expectations of developing countries). Pursuant to Article 20, negotiations on agriculture were launched at the beginning of 2000. Id.
\item 15th Cairns Group Ministerial Meeting, COMMUNIQUE (The Cairns Group, Manila, Philippines), May 26-27, 1995, at http://www.cairnsgroup.org/meetings/min15_communique.html (last visited Mar. 4, 2005) [hereinafter 15th Cairns Group Ministerial Meeting]. The World Bank has noted that some countries have taken advantage of the opportunity provided by the Agreement to "convert their non-tariff barriers into extremely high maximum tariffs." At the 15th Cairns Group Ministerial Meeting held in 1995, Cairns Group Ministers "called upon the major agricultural producing and importing countries to ensure that changes to domestic programmes introduced subsequent to the conclusion of the Uruguay Round negotiations are fully consistent with the commitments and with the reform direction charted in the Uruguay Round Agreement on Agriculture, namely away from production and trade distorting forms of support towards more decoupled forms of support, and the further dismantling of export subsidy practices." Id. The ministers cautioned that "any temptation to circumvent disciplines would be against the spirit and letter of the Uruguay Round Agreement 1st WTO Ministerial Conference, MINISTERIAL DECLARATION
seriously undercut the potency of the market access provisions. Additionally, measures maintained under the general safeguards provisions, the general exceptions provisions, and the balance of payment provisions of GATT could potentially conflict with undertakings under the agreement and render them meaningless. The biggest criticisms are that the AOA encourages anti-small farm policies and will increase the likelihood that Third World countries will be inundated with cheap, highly-subsidized products from leading industrialized countries.

a. Anti-Small Farm Policies:

Trade liberalization generally, and the AOA in particular, by emphasizing competition and openness, pit giant agribusinesses against small peasant farmers. The conventional wisdom is that small farms are backward and unproductive. In the place of small farms, large-scale, mechanized, chemical intensive, corporate-dominated agriculture is increasingly promoted. Under conditions of

---

296. WTO, Market Access, supra note 278. Article 5 of the AOA, for example, offers “special safeguards protection against import volume surges or import price declines below a trigger level” for sensitive products. At least thirty-eight Members have reserved the right to make use of the special safeguards provision for specified products. The prohibition on non-tariff border measures also “does not prevent the use of non-tariff import restrictions consistent with the provisions of the GATT or other WTO agreements which are applicable to traded goods generally.” Id. The Agreement will be interpreted in the light of such agreements as the Agreement on Sanitary and Phytosanitary measures. Id. Article 14 “[r]eaffirms right of countries to set their own health and safety standards provided they are justified on scientific grounds and do not result in arbitrary or unjustified barriers to trade; encourages use of international standards; includes certain special and differential treatment provisions.” See WTO, Agriculture: Explanation – Summary [hereinafter WTO, Agriculture – Summary], at www.wto.org/english/tratop_e/agric_e/ag_intro07_summary_e.htm#marketaccess.

297. GATT, supra note 197, art. XIX.

298. GATT, supra note 197, art. XX

299. GATT, supra note 197, art. XII & XVIII.

300. WTO, Market Access, supra note 278. Under the “special treatment” clause (Annex 5) four countries were permitted “to maintain non-tariff border measures on certain products during the period of tariff reductions (with the possibility of extending the special treatment, subject to further negotiations).” Id. Japan, the Philippines, and Korea were granted special protection for rice, and Israel received special treatment for cheese and sheep meat. Japan ceased to apply special treatment on April 1, 1999. Id.

free trade, Third World countries are required to reduce the level of protection offered to their domestic food producers and eliminate barriers to foreign imports. Trade liberalization forces countries to move towards policies that promote large farms and to increasingly adopt anti-small farm policies. Peter Rosset, Executive Director of the Institute for Food and Development Policy, argues that the AOA “has the potential to severely undercut the remaining viability of small farm production, with potentially devastating consequences for rural economies and environments worldwide.” He warns that further liberalization “would mean greater freedom for the big to drive out the small.” The Organic Consumer Association agrees, arguing that more than seven years after the AOA, “small farmers are not experiencing the prosperity promised by the agreement’s proponents.”

With the demise of small farms, the world is likely to see the demise of traditional farming communities and the loss of many benefits that small scale production of food offers. Currently, small farms serve multiple functions and provide myriad benefits for society and for the biosphere. Small farms promote biodiversity, provide employment for millions, promote sustainable agriculture and land use, and ensure the health and viability of families and communities. Small farms are also vital to the economy of most Third World countries. As Peter Rosset rightly notes:

> [i]n traditional farming communities the family farm is central to maintaining community and to the sustainability of agricultural production. On the small farm, productive activities, labor mobilization, consumption patterns, ecological knowledge and common interests in long-term maintenance of the farm as a resource, contribute to a stable and lasting economic and family-based enterprise.

The multiple functions of farms in the Third World is also recognized by the Food and Agricultural Organization (FAO) of the United Nations. As noted by the FAO:

302. Id. at 1.
303. Id. at 15.
304. Id. at 1.
305. Id. at 17.
307. Rosset, supra note 301, at 2 (noting that “small farms have multiple functions which benefit both society and the biosphere, and which contribute far more than just a particular commodity”). Id.
308. Id. at 4 (“On the small farm, productive activities, labor mobilization, consumption patterns, ecological knowledge and common interest in long-term maintenance of the farm as a resource, contribute to a stable and lasting economic and family-based enterprise”).
309. Id. at 10-12 (arguing that small farms are more productive, more efficient, and the surest route to broad-based economic development).
310. Id. at 4.
To face the current challenges of agriculture, we need to address agriculture and land in a broader context by integrating multiple roles (economic, food production, nature and land management, employment etc.). Sustainable agriculture and land use is not just a means to obtain more food and income, in socially acceptable ways which do not degrade the environment. Rather, it has an all-encompassing impact on communities, environments, and consumers.\footnote{Id.}

Overall, the potential social implications of trade liberalization in agriculture for millions of small farmers in the Third World could be catastrophic.\footnote{Id.} In Sub-Saharan Africa, it is estimated that 96 percent of farmers are small, farming less than five hectares, with over two-thirds having less than one hectare.\footnote{Id.} A vast majority of the farms have weak associations to markets and little if any access to external inputs; most farmers are also far from extension programs and have no access to new technologies.\footnote{Id.} Dunstan Spencer, Managing Director of Dunstan Spencer and Associates, Sierra Leone, concludes that “[u]nless concerted steps are taken, the small farmer in Sub-Saharan Africa is doomed to a life of poverty, isolation and disease stuck in remote areas away from urban cities.”\footnote{Id.}

A recent study on the effects of the North American Free Trade Agreement (“NAFTA”) on Mexico’s agricultural sector is also very revealing.\footnote{Id.} The study found that although Mexico’s economy may have grown since NAFTA came into force, small and subsistence farmers grew poorer.\footnote{Id.} Farmers who are unable to compete are forced to leave the agricultural sector.\footnote{Id.} The study also found that although NAFTA created more new jobs than it destroyed, the new

\footnote{Organic Consumers Association, supra note 306. Speaking on March 8, 2002, at International Women’s Day, Sarojeni Rengam, Executive Director of Pesticide Action Network Asia and the Pacific (PAN AP) was of the view that agricultural trade liberalization “has indeed harmed small farmers and impoverished the poor further, making them more food insecure.” \textit{Id.} She holds the view that “for millions of small farmers and peasants, especially women, the result has been the entrenchment of poverty, destruction of livelihoods, increased burdens, and for many it has literally meant empty stomachs.” \textit{Id.}}


\footnote{Id. at 2.}

\footnote{Marceline White, Carlos Salas & Sarah Gammage, \textit{NAFTA and the FTAA: A Gender Analysis of Employment and Poverty Impacts in Agriculture} (Nov. 2003), in \textit{TRADE IMPACT REVIEW: MEXICO CASE STUDY 17} (study done by the Women’s Edge Coalition) [hereinafter \textit{MEXICO CASE STUDY}], \textit{available at} www.womensedge.org/documents/mexicocasestudy.pdf.}

\footnote{Id. at iii (noting that small farmers – including three million corn farmers – grew poorer because they could not compete with cheaper, imported products such as corn and beans).}

\footnote{Id. at 18 (observing that between 1991 and 2000 the total number of corn producers for household consumption declined by 670,000).}
jobs were generally out of the reach of subsistence farmers.319

b. Danger of Agricultural Dumping

Trade liberalization also increases the likelihood that developing countries will become victims of agricultural dumping.320 Owing to factors such as industrialized production, access to better technologies, and subsidies (both hidden and open), developed countries are in a position to send cheap agricultural products into the Third World at prices below the local cost of production.321 Although in theory the AOA should give small farmers access to lucrative world markets, Spencer predicts that the agreement is “likely to spell death for many small farmers who will lose much of the urban market of their major cities to imported goods from other continents.”322

According to one study, real corn prices in Mexico have fallen more than 70 percent since NAFTA began.323 In India, the emerging picture is grim; an epidemic of farmers’ suicide is reported.324 Vandana Shiva attributes the suicides to the pressures from globalization. According to Shiva, “the globalization of non-sustainable industrial agriculture is evaporating the incomes of Third World farmers through a combination of devaluation of currencies, increase in costs of production and a collapse in commodity prices.”325 Because of competition from agro-businesses, prices of food have fallen drastically and cost of production (seeds) has risen with dire consequences for local farmers who depend on their produce for income. As Shiva notes:

Capital-intensive, corporate-controlled agriculture is being spread into regions where peasants are poor but, until now, have been self-sufficient in food. In the regions where industrial agriculture has been introduced through globalization, higher costs are making it virtually impossible for

319. Id. at 3 (noting that the new jobs created under NAFTA are out of reach of the poor farmers because most required more education than the farmers have). The study also observes that 1.3 million agricultural jobs were lost due to NAFTA, causing small farmers to lose their livelihoods at an “alarming rate.” Id. at 42.

320. Stephen Powell & Mark Barnett, The Role of United States Trade Law in Resolving the Florida-Mexico Tomato Conflict, 11 FLA J. INT’L L. 319, 322-23 (1997). Agricultural dumping is the exportation of commodities at prices below their cost of production. Id. at 323. The term is used to describe “price discrimination in which a producer charges a higher price in its home market than in an export market.” Id.

321. Sheelu Francis, Trade Liberalisation in Agriculture and Food Security: Impact on Peasant Women, INTERNATIONAL SOUTH GROUP NETWORK (Nov. 22-24, 2001) (noting that India has not benefited from the decision to phase out the controls on all imports from the month of April 2001. Instead, India has seen a massive increase in the imports of agricultural commodities and products from about Rs. 50 million in 1995 to over Rs.1,50,000 million in 1999-2000 — a threefold increase), at http://www.isgnweb.org/pub/08-008.htm (last visited Mar. 4, 2005).

322. Spencer, supra note 313, at 2.

323. MEXICO CASE STUDY, supra note 316, at 14.


325. Id.
small farmers to survive. Farmers everywhere are being paid a fraction of what they received for the same commodity a decade ago . . . In India, from 1999 to 2000, prices for coffee dropped from Rs.60 to Rs.18 per kg and prices of oilseeds declined by more than 30%.  

Echoing the experience of Aba women in 1929, Sheelu Francis reports that in India, "[c]oconut prices have crashed down from Rs.10 to Rs.2, putting the coconut farmers' livelihoods at stake. Rubber has plummeted from Rs.60 to Rs.16 and coffee from Rs.58 in 1999 to Rs.30 per kg in 2001. Even spices have not been spared, with pepper prices falling from Rs.2600 to Rs.1300 per quintal in the consecutive period. The small tea growers association is demanding a better price for their green tea, whereas Government is importing green tea."  

At first glance, flooding Third World countries with cheap products could arguably be a blessing and may help end Third World hunger. Experts from the Institute for Agriculture and Trade Policy are, however, of the view that the long-term effect of dumping would be negative. In an August 2003 report, IATP warned that "[d]eveloping-country agriculture, vital for food security, rural livelihoods, poverty reduction and trade are crippled by the practice of major commodities sold at well below cost of production prices in world market." The report notes that "[t]he U.S. is one of the world’s leading sources of dumped agricultural commodities." According to the report:

[I]n 1998 U.S.-based multinational companies sold U.S. wheat abroad at an average price of $34.00 per metric ton ($1.43 per bushel) below the cost of production. U.S. wheat export totaled 28,332,000 metric tons in 1998, which means the companies sold the wheat at a discount worth a total of $963,288,000 (almost $1 billion).

Why is dumping bad for Third World farmers? In the first instance, a drop in farm prices can drive already poor, indebted farmers off the land and trigger mass exodus from rural areas to already saturated urban slums. As the IATP report notes, "below-cost imports drive developing country farmers out of their local markets. If the farmers do not have access to a safety net, they have to abandon their land." As domestic food production falls in the face of cheap

326.  Id.
327.  Francis, supra note 321.
328.  Institute for Agricultural Trade Policy, About IATP, at http://www.iatp.org/iatp/about.cfm (last visited Mar. 4, 2005). The Institute for Agriculture and Trade Policy (IATP) is a non-profit organization based in Minneapolis, Minnesota.  Id.  According to its mission statement, IATP "promotes resilient family farms, rural communities and ecosystems around the world through research and education, science and technology, and advocacy."  Id.
329.  Id.
330.  IATP, CANCUN SERIES PAPER No. 1, supra note 186, at 2.
331.  Id.
332.  Id. at 5.
333.  Id. at 2.
334.  Id. at 2.
imports, experts predict that more and more people will be forced to depend on paid employment rather than land to feed themselves. In Mexico, the wages agricultural workers earned in the corn and beans sector fell significantly between 1991 and 2003; “In 1991, self-employed farmers earned 1959 pesos per month, while in 2003, they earned only 228 pesos for the same amount of work.” Ultimately, the unregulated influx of cheaper goods from the North could significantly displace local production, lead to the loss of traditional market domain of small farmers, and threaten the livelihood of millions. While data is not currently available to demonstrate the effect of dumping on farmers in rural communities in Africa, the problem in Mexico is replicated in many communities around the globe. As the IATP report rightly notes, the displacement of farmers as a result of agricultural dumping “is happening around the world, in places as far apart as Jamaica, Burkina Faso and the Philippines.”

A second problem with dumping is that Third World farmers who venture to sell their product to exporters “find their global market share undermined by the lower-cost competition.” Additionally, dumping has important implications for a nation’s food security.

Trade liberalization also triggers changes in the supply and distribution of produce that privilege large-scale producers and suppliers. Trade liberalization in services opens doors for foreign investors to establish large grocery stores in place of the traditional open-air markets that are prevalent in Africa. As large grocery stores spring up, the tendency would be for the stores to turn to agro-businesses for their supply of produce because local farmers lack the capital and the know-how to meet the quality standards the grocery stores demand. In Africa, the Food and Agricultural Organization of the United Nations (“FAO”) reports that small farmers risk being swept out of agriculture by a wave of supermarket expansion. The FAO reports that the wave of supermarket expansion is not limited to major cities but has spread to rural towns. FAO’s Kostas Stamoulis predicts that “[t]he onslaught of supermarkets will improve the quality and safety of food sold locally as farmers strive to meet supermarket’s quality standards for the domestic market,” and argues that supermarkets

335. Id. at 13.
336. MEXICO CASE STUDY, supra note 316, at iii.
337. IATP, CANCUN SERIES PAPER No. 1, supra note 186, at 2.
338. Id.
339. Id. According to the committee on World Food Security of the United Nation’s Food and Agriculture Organization (FAO), food security means that “food is available at all times, that all persons have means of access to it, that it is nutritionally adequate in terms of quantity, quality and variety and that it is acceptable within the given culture. Id. Only when all these conditions are in place can a population be considered ‘food secure.” Id. Similarly, the World Bank defines food security as “access by all people at all times to enough food for an active and healthy life.” Id.
341. Id.
could provide "a stable, dependable market for farmers' produce and may boost employment in cities and surrounding areas by providing jobs in transport and distribution." The impact on small farmers is likely to be catastrophic. For example, giant corporations could institute new quality and safety standards in order to wipe out local competition.

D. Third World Women, Agricultural Trade, and the AOA

What, if any, are the implications of trade liberalization in agriculture and the AOA for women in developing countries? Arguably, it is poor people in the Third World, particularly women, who bear the brunt of trade barriers from rich countries and in trade liberalization generally. Because agriculture accounts for 62 percent of women's employment in developing nations, trade liberalization and industrialized countries' trade policies have significant implications for women and gender relations. To understand the impact of trade liberalization on Third World women, it is necessary to understand three related issues: the fate of small farms under conditions of trade liberalization, the way trade and other market mechanisms reinforce social biases and inequalities, and the vulnerable position of developing countries in the global economy.

To some, it appears impossible that seemingly gender-neutral market processes and trade policies can negatively impact women. Indeed, trade agreements rarely, if ever, contain any overt discrimination against women and are rarely singularly responsible for the inequalities women face. Yet, after decades of research, scholars such as Amartya Sen and Diane Elson have demonstrated that seemingly neutral market mechanisms can reinforce social biases and inequalities. Additionally, trade liberalization does not occur without significant economic and social cost that is disproportionately borne by women. Trade also produces changes in employment, price, income, and consumption – the effects of which are frequently different between women and men. Finally, men are in a better position to overcome the pressures of trade liberalization because of human-controlled factors that generally work in their favor. As the FAO very rightly notes: "[w]hile men and women generally face the same external constraints, they have an unequal access to human-controlled factors. They have different endowments, such as land rights and education, and different access to technologies, labour, capital, support services and credit. This disparity results in differentials in productivity to the detriment of women."

Several factors help explain the likely differential impact of trade on men

342. Id.
343. See MEXICO CASE STUDY, supra note 316, at 4.
344. Id. at 3.
345. Id. at 4-5.
and women, including the existence of asymmetric rights and responsibilities between the genders, the fact that women bear most of the burden of reproduction and motherhood, the existence of gendered social norms, and labor market segregation.\footnote{Id. (noting that some studies show the relative productivity of men and women in farming in sub-Saharan Africa and indicate that women farmers have lower productivity for reasons of poor access to resources).}

With respect to labor market segregation, women are likely to be affected by changes in agricultural trade because women account for roughly 60% of the workforce in agriculture and food production in the Third World. Moreover, an increasing trend towards feminization of agriculture owing to conflicts and rural-urban migration is also very noticeable.\footnote{Francis, \textit{supra} note 321. According to Sarojeni Rengam, "Women are the worst hit by the process of liberalization. As a farmer, she faces loss of livelihood as subsidized imported food products are dumped into the country. She is working longer and harder, and is increasingly exposed to hazardous pesticides. The cost of food production has increased due to costlier inputs. All these factors are intensifying rural women's impoverishment, displacement and hunger." \cite{Organic Consumers Association, \textit{supra} note 306.}}

In Mexico, it appears that as small farmers abandon their farms, women are forced to begin work in the informal sector selling food and other products on street curbs and in local open-air markets.\footnote{MEXICO CASE STUDY, \textit{supra} note 316, at 23.} In the informal sector, women work long hours, earn very little, and are generally unprotected by labor laws.

Social and cultural discrimination frequently limit women's access to land, credit, technological training, and education, which in turn affects the level and quality of their participation in external trade. In Africa, for example, African states condemn discriminatory customary practices and loudly espouse the principles of equality, at the same time that they seek to preserve discriminatory customary law rules from attack and redefine gender ideologies that place women in inferior positions.\footnote{See Mathangani, \textit{supra} note 85, at 287 (noting with respect to Kenya that "[t]hroughout Kenya's historical, colonial, and contemporary experience, two factors have been a hallmark of the country's existence: (1) the preservation of the patriarchy, and (2) the marginal role of women in public life").} The April 1999 decision of the Zimbabwean Supreme Court is illustrative. In the landmark 5-0 decision in \textit{Magaya v. Magaya}, the court upheld a rule of customary inheritance law that gave priority to male heirs and justified its decision on the grounds that "women were not able to look after their original family (of birth) because of their commitment to the new family (through marriage)."\footnote{Magaya v. Magaya, SC No. 21-98 (Zimb., Feb. 16, 1999).} Cases such as these highlight the plight of a teeming number of women in Africa who lack access to the most important productive asset in the continent—land—and the role of state officials in preserving male privileges. Clearly if women do not enjoy access to land, they cannot engage in large scale farming or contemplate export of agricultural products. Ownership of land is usually a prerequisite for access to other productive resources. Without land rights women cannot make important
decisions regarding agriculture and cannot control the income from the land. Not surprising, some studies that have examined relative productivity of men and women in farming in sub-Saharan Africa found that “women farmers have lower productivity for reasons of poor access to resources.” In Burkina Faso, there is evidence that “compared to males from the same household, female cultivators of the same crops in the same year achieved yields 30 percent below average.” Of the finding in Burkina Faso, the FAO observed:

One reason for this differential was the lower level of male and child labour used on plots controlled by women. Additionally, virtually all fertilizer was concentrated on male-controlled plots. It was estimated that a reallocation of the variable factors of production from male- to female-controlled plots in the same household would raise household output by between 10 and 20 percent. An important conclusion of the findings was that households generally do not act as a single individual and that appropriate modelling of the complexity of the household decision-making process is needed in order to provide better policy guidance.

Today, African women rarely own land. When they do, their holdings are frequently smaller, less accessible, and less fertile than those of men. According to the Food and Agricultural Organization:

In sub-Saharan Africa women are particularly disadvantaged compared with men because they farm smaller plots of land with more uncertain tenure. Women’s access to land is limited by legal and institutional factors such as legal discriminations against their ownership and inheritance of land. Although legislative changes now permit women to own property, in many countries in the region traditions and customs continue to prevent women from having effective ownership.

Customary law accords greater rights over land to men than women. During the colonial period, the introduction of export production and cash crops inevitably led to an increasing demand for land and a movement towards privatization of what was once communal property. As property became

353. Id.
354. Id.
355. Id. at 63-64 (emphasis added).
356. See Mikell, supra note 59, at 226 (noting that among the Akan of Ghana “[n]either wives nor children could inherit property from, respectively, husbands and fathers”). Traditionally, ownership vested in the family and was controlled by the heads of the family, a majority of whom were male. Id. To ensure that land remained in the family, inheritance passed from father to son and never from father to daughter or from husband to wife. Id. In the event of a man’s death, property passed to his sons, and if he had no son to the nearest surviving male relative. Id.
357. Id. at 228. In Ghana, the introduction of cocoa cash-cropping gave birth to new claims of private ownership of land and new controversies over who was the actual owner of family land. Id. Mikell notes that “Akan society began to ask to what extent a family had to work a piece of land before the community automatically considered it lineage property.
increasingly privatized during colonial rule, African women disproportionately lacked access to land. Trade liberalization with its emphasis on competition and privatization has the tendency to privilege property holders, thus reinforcing gender ideologies and exacerbating gender inequality in the continent.

The biggest problem with the free trade mantra lies not in any overt hostility to women but in the dominant perception that globalization is inevitable, the belief that the playing field is level for all participants in the market, and the conviction that global trade always results in a win-win situation for all. Parallels could be drawn with the situation under colonial rule. While British colonial officers could not be accused of having animosity toward African women, they appeared oblivious of the external barriers to trade and the way human-controlled factors affected women’s gains from trade.

E. Conclusion

Despite continuing internal debates about the dangers of free trade, policymakers in the developing countries have by and large embraced the evolving system. Nevertheless, concerns persist over the place of developing countries in this new economy. There is a growing perception within the developing world that developing countries’ commitment to trade liberalization is not

Likewise, under what circumstances would a community accept the alienation of land worked primarily by individuals? Id.

358. Id. at 229.
359. See id. at 238-39.
360. See WORLD BANK, WORLD DEVELOPMENT REPORT 1999/2000, supra note 44. Developing countries have, either willingly or unwillingly, shown commitment to liberalizing their trade regimes. Id. This commitment is manifested in various ways, including membership in the WTO (three quarters of WTO members are developing countries and as of 1999, 110 of 152 developing countries were WTO members), participation in regional trade agreements, and unilateral reforms. Id. See also Amorim, supra note 273, at 95-96 (noting that while a few decades ago many developing countries regarded the global trading system as fundamentally unfair and adopted a host of interventionist policies, the situation has changed dramatically in recent years. Most developing countries have become thriving democracies, have embarked on market reform, and are beginning to discover or rediscover the value of a rule-based multilateral trading system. Thus “not only in rhetoric, but in practice as well, developing countries have been adjusting to a system that they rightly feel entitled to influence, at least to a limited degree, even though they did not shape the system”); Jayashree Watal, Developing Countries’ Interests in a “Development Round,” in THE WTO AFTER SEATTLE 71, 71 (Jeffrey Schott ed., 2000) (noting that “the Uruguay Round marked a watershed in the participation of developing countries in the multilateral trading system.”) According to Watal, “[f]or the first time, developing country participants chose to strike bargains on the basis of reciprocity. Id. By and large, they committed themselves to lowered industrial and agricultural tariffs, accepted stringent disciplines in new areas such as intellectual property, and opened up some of their services sector in return for improved and more secure market access for their exports”). Id.

361. See Amorim, supra note 273, at 96 (noting that an analysis of recent data demonstrates beyond doubt that the global trading system is failing to play a positive role in terms of global income distribution. According to him, “comparing figures concerning the participation of different groups of countries in the world trade, from 1994 to 1998, one can verify that the volume of total trade of the developed countries increased by about 33%, whereas the volume of total trade of the developing countries increased by only 20%”).
reciprocated by developed nations.\footnote{362}

Throughout the developing world, an emergence or reemergence of farmers' movements and women-led protest against globalization is noticeable. In Mexico, "the reemerg[ence] [of the] Mexican Farmers' Movement reflects a serious crisis in the country's agricultural sector and a crisis of faith in free trade itself."\footnote{363} Marching with the slogan "El campo no aguanta más" (The countryside cannot take it anymore), on January 31, 2003, thousands of peasant farmers demanded that the Mexican government renegotiate the agricultural chapter of NAFTA.\footnote{364} On November 9, 2001, about 500 people marched through central Johannesburg, South Africa, to protest the Doha, Qatar, meeting of the WTO, the South African government's participation in it, and the effect of WTO-enforced neoliberalism on South Africa. The march was jointly coordinated by the Johannesburg branch of the Alternative Information and Development Centre (AIDC) and the Gender & Trade Network in Africa, an organization, which works on research, economic literacy and advocacy on gender and trade issues in Africa.\footnote{365} Protesters carried a huge cutout of Alec Erwin (South Africa's Minister of Trade and Industry) through the Johannesburg streets, with a WTO hammer, falling heavily onto another cutout of Africa, stamped with the words "for sale." Placards condemned water privatization, the selling-out of the people in the name of trade and the controversial WTO Agreement on the Trade-Related Aspects of Intellectual Property (TRIPS).\footnote{366}

The barriers to markets in industrialized countries that impede agricultural products from developing countries are of particular concern because "most developing-country exports are directed towards industrialised-country markets,"\footnote{367} and because, for most countries in the developing world, agriculture provides a means for export trade and improvement of the livelihood of rural populations.\footnote{368} According to Ambassador Celso L.N. Amorim, Permanent Representative of Brazil to the United Nations:

\begin{itemize}
\item \footnote{362} See id. at 98. Following the Uruguay Round, for example, developing countries accepted obligations on a diverse range of issues including intellectual property and trade in services that entailed significant changes in domestic laws and policies. \textit{Id.} \textit{See also ISLAM, supra} note 235, at 442 (arguing that the unfairness of fair trade became apparent right from the inception of GATT, "particularly at the early stages of GATT when widespread dissatisfaction among GATT members over its operation led to the review of GATT in 1955"). \textit{Id.}
\item \footnote{363} Laura Carlsen, \textit{The Mexican Farmers' Movement: Exposing the Myths of Free Trade}, \textit{AMERICAS POLICY REPORT} Mar. 2003, at 1, \textit{available at} \url{www.americaspolicy.org/pdf/reports/0302farm.pdf} (last visited Feb. 22, 2005).
\item \footnote{364} \textit{Id.} at 1-2 (emphasis added).
\item \footnote{365} Int'l Gender & Trade Network, \textit{South Africa Says No to WTO} (Nov. 9, 2001), \textit{at} \url{http://www.genderandtrade.net/Africa/Africa_No_WTO.htm} (last visited Mar. 31, 2005).
\item \footnote{366} \textit{Id.}
\item \footnote{367} OXFAM, \textit{supra} note 25, at 97 (Oxfam estimates that more than 50% of Asia's exports, 75% of Latin America's exports and 70% of Africa's exports of merchandise goods were destined for Western Europe, North America or Japan).
\item \footnote{368} \textit{WORLD BANK, DEVELOPMENT REPORT 1999/2000, supra} note 44, at 61.
\end{itemize}
Developing counties . . . have a genuine feeling of disproportion between their efforts to liberalize and their effort to subject their policies to internationally agreed upon rules (mostly inspired by developed countries) . . . and the lack of commensurate measures on the part of their counterparts in the developed world. There still remains countless examples of tariff barriers and other obstacles applied by developed countries that affect precisely those products in which poor countries would have a chance to compete.\(^{369}\)

Women in developing countries are doubly affected by inequities in global trade in agricultural products. First, as citizens of developing countries, second as women. Pro-small farm policies are needed at the national and international level. Currently, between small farmers and agribusinesses, the playing field is far from level. To even it out, incentives, including fair market prices and curbs on agricultural dumping, are needed for small farmers to continue producing for their households and marketing their surplus. Small farmers need market and technological incentives; they also need subsidies and domestic support to thrive. At the national level, infrastructure development, rural development, and access to technologies are very important. At the global level, it is important to ensure that agribusinesses are not eating into the political and economic space of small farmers. This could be achieved by empowering organizations of the poor and providing opportunities for their views to be heard on trade policies that affect them. Most important, subsidies and other barriers of the developed countries such as the United States, the E.U., and Japan, must be urgently addressed.

III. TOWARDS A MORE EQUITABLE TRADING ENVIRONMENT

A comparison of the experiences of Igbo women at the turn of the twentieth century with those of other Third World women at the turn of the twenty-first century reveals surprising continuities in the structure of global trade. Similarities between the two eras include: the continuing domination of the global trading system by a few countries; the dominance of transnational companies operating often on a quasi-monopolistic basis\(^370\); the persistence of structural forces that marginalize countries that make up the global South in the international trading system; the dependence of developing countries on primary commodities;\(^371\) the downward trend in world prices for primary commodities

---


370. OXFAM, supra note 25, at 42 (noting that TNC's are not new arrivals on the global stage. What has changed “is the broader role and importance of TNCs in the international trading system”). Oxfam notes: “Collectively, corporations operating in more than one country now account for about one-quarter of global output . . . The annual foreign sales of the largest 100 TNCs amount to $2.1 trillion (United Nations 2000) . . . It is equivalent to about seven percent of the global GDP and more than 25 percent of world trade. It is also larger than the combined GDP’s of South Asia and Sub-Saharan Africa, home to one-third of the world’s population.” Id.

371. Id. at 73. Developing countries continue participating in the world market on terms that inhibit long-term development. Id. As Oxfam notes, “many developing countries continue
and the deterioration in terms of trade as between developed and developing countries;\textsuperscript{372} the relative powerlessness of African women to influence domestic economic and trade policies or international trade policies; and the complicity of states in Africa in the exploitation of African women by global market forces.

Despite persisting continuities, African women must contend with the changing context of international trade today – particularly the emergence of international law and international institutions as key agents of globalization in the twenty-first century. Today, international institutions operate as the dominant "regulatory agents of globalization"\textsuperscript{373} and global trade is conducted in large part under the auspices of international law.\textsuperscript{374} This means that international law now affords protection and legitimacy to the new threats to human rights that are rooted in the activities of dominant global actors, such as agricultural dumping discussed earlier.\textsuperscript{375} Unlike their counterparts at the turn of the twentieth century, poor women in the Third World engaged in export trade must now contend with new and more complex international trade rules and more formal structures of power at the global level. African women, like other Third World women, must contend with the existence of the WTO and international financial institutions such as the World Bank and the International Monetary Fund. As African women noted in the Kurasini Declaration on Gender and Trade adopted in Dar Es Salaam Tanzania, in June 2002:

Governments and international institutions promoting corporate globalisation, trade liberalisation and structural adjustment policies have promised that these would deliver better lives... Over the past two decades poverty has been exacerbated by these processes and policies: 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.\textsuperscript{376}

\textsuperscript{372} See African Development Bank, supra note 288, at 151-52 (noting that "[a]lthough primary commodity prices overall recovered in the early 2000s, prices of some commodities important to Africa continued to decline"). The report notes that "between 1995 and 2002, prices of cotton, sugar and copper lost almost half of their value while coffee prices collapsed to almost a third of their value." \textit{Id.}

\textsuperscript{373} See Orford, supra note 33 (noting that world trade is now conducted under the auspices of international law and international institutions).

\textsuperscript{374} \textit{Id.}

\textsuperscript{375} \textit{Id.}

\textsuperscript{376} See Int'l Gender & Trade Network, Kurasini Declaration on Gender and Trade, (June 24-28, 2002) \textit{available at} http://www.genderandtrade.net/Africa/Kurasini.htm. (last visited Mar. 3, 2005). The Kurasini Declaration came out of a meeting of the Economic Justice Network of FOCCISA (Fellowship of Christian Councils in Southern Africa) and partner organizations from eleven southern African countries, in Kurasini, Dar Es Salaam. \textit{Id.} The organizations met to reflect on and address the marginalization and injustices women face in their economies and societies as a result of trade liberalization. \textit{Id.}
Markets and trade are important to developing countries.\textsuperscript{377} In general, trade is preferred to aid, debt relief, and a host of other charitable handouts intermittently extended to poor developing countries.\textsuperscript{378} In most countries in Africa, income from cash crops constitutes a significant source of household income for farmers and is used to pay school fees, pay for health care, and put food on the table.\textsuperscript{379} Anthony Gidden is therefore right in his conclusion that “without spaces for markets, freedom and prosperity are both threatened.”\textsuperscript{380} However, he also notes that an uncontrolled market that promotes commercialization is also threatening.\textsuperscript{381} Despite the potential gains from trade, Africa’s experience has been one of declining market share,\textsuperscript{382} threat to food security and development,\textsuperscript{383} and increasing marginalization in the global trading

\textsuperscript{377} World Bank, Development Report 1999/2000, supra note 44, at 51. The World Bank advances at least three reasons for why trade is important to developing countries. First, according to the United Nations Development Program (“UNDP”), trade “is frequently the primary means of realizing the benefits of globalization,” such as market access for exports, new technologies through international transfers, and more efficient allocation of resources as a result of heightened competitive pressure. Id. Second, “the continuing reallocation of manufacturing activities from industrial to developing countries offers ample opportunity to expand trade not only in goods, but also in services,” a tradable commodity in the twenty-first century. Id. Third, trade is believed to be intertwined with other elements of globalization, such as the spread of international production networks, which in the long term may result in further dispersion of production and increased trade among cities, regions and countries. Id. Studies by Oxfam suggest that modest increases in the market share of developing countries have the potential to generate large increases in income. Oxfam, supra note 25, at 48. It is estimated that a one percent increase in export expressed in income terms would be equivalent to an increase of $30 per capita in low-income countries, representing an increase of seven percent; an increase of one-fifth in average income for sub-Saharan Africa; an increase of $53 per capita, or 12 percent, for South Asia; and an increase of around four percent of per capita income for Latin America and East Asia.” Id.

\textsuperscript{378} Oxfam, supra note 25, at 48. Aid is important. Strategically utilized, it can enable poor countries to break loose from the shackles of poverty and enable them to participate more favorably in external trade. Id. Aid is, however, not a good long-term strategy for poverty reduction. Id. According to Oxfam, trade is more important than aid for at least three reasons. First, because “even modest increases in developing countries’ share of the world export market will massively outweigh any conceivable increase in aid.” Id. Second, trade promotes broad-based economic growth which “provides an outlet for the productive potential of poor people, enabling them to produce their way out of poverty.” Id. Third, trade arguably promotes self-reliance and thus, has the potential to reduce developing countries’ dependence on aid and its attendant exposure on the whims and caprices of donors. Id.

\textsuperscript{379} Id. at 155.

\textsuperscript{380} Hutton, Global Capitalism, supra note 32, at 18.

\textsuperscript{381} Id.

\textsuperscript{382} Oxfam, supra note 25, at 50. Africa’s share of the export market has experienced steady decline since the 1970’s such that the continent accounts for only 1.3 percent of export – one-third of the level at the start of the decade of the eighties. Id. Oxfam estimates that if “sub-Saharan Africa had the same share of the world exports today as it had in 1980, the foreign-exchange equivalent would be in the order of $278 billion [sic]. Expressed in per capita terms, the income gain would be $432, which would almost double the current average income.” Id.

African women's experience of globalization through the centuries has been one of systemic exploitation, diminishing political and economic spaces, and harsh domestic policies imposed by states often in cooperation with foreign capital.

Today, the debate is less about whether there is a need for rules to regulate global trade and more about the content of these rules, the differential impact of these rules on the strong and the weak, and attempts by the powerful to capture markets. Globalization challenges us to question and rethink assumptions about the benefits of free trade, to make information and resources available for research on gender and international trade, and to make room for such research to inform trade policies through processes that are transparent, participatory, and inclusive. To ensure a more balanced, gender-sensitive trade policy, trade impact reviews are called for urgently.

The relationship between human rights and trade also deserves closer scrutiny and is one of the central issues confronting international lawyers today. Growing allegations of serious conflict between global trade rules and trade arrangements, on the one hand, and human rights norms, on the other, must be addressed. There is need for a better understanding of the different ways global trade rules and the overall policy of trade liberalization unwittingly encourages human rights violations, particularly of vulnerable groups within states. Studies on the impact of WTO rules on agriculture on women, children, developing countries through world price levels, export earnings, and availability of food aid).


385. Andrews, *supra* note 33, at 390-91 (noting that there is a growing realization that globalization privileges certain economic interests which are predominantly non-African, non-southern and overwhelmingly male. Noting also that, “[a]ll the evidence suggests that globalization has merely cemented women’s unequal economic status”). *Id.*

386. Williams, *supra* note 45, at 5. Mariama Williams, Joint Coordinator for the Political Economy of Globalization of the Development Alternative for Women for a New Era (“DAWN”), is right in her conclusion that “from the vantage point of Southern women, the issue is not whether there is need for a rule-based Multilateral Trade System, rather the critical questions are: What are these rules? What are they for? Who is setting them? Who stands to gain or lose from them? And what will any such system of rules mean for women’s subordination and the struggle for gender equality and gender justice in the short and longer terms?” *Id.*


and other vulnerable groups are therefore urgently needed. More important, there is need for a better analysis of the role of the international human rights law and the international trade apparatus in addressing the emerging conflict between trade and human rights. Finally, there is need for a better analysis of the relevance of the norm and standards of human rights in the multilateral trading system. Do traditional international human rights norms and standards provide an appropriate legal framework for addressing the social dimensions of trade liberalization?

To the extent that global trade rules, particularly WTO rules on agriculture, are shown to have a negative impact on the rights of certain individuals and groups, of what relevance is the international human rights machinery? There are three possible options for international lawyers. International lawyers could attempt to address the emerging problems resorting strictly to international human rights norms, processes, and institutions. Second, international lawyers could attempt to reform the international trade regime by borrowing tools afforded by the international human rights regime and developing a coherent human rights approach to trade. Finally, the problems could be addressed using existing mechanisms in international trade law. In the following section, I will briefly highlight the strengths and weaknesses of these three approaches.

Women, International Human Rights Law, and Trade

Caught between the state and the forces of globalization, does international human rights law ("IHRL") offer any hope to African women? On the one hand, the discourse of rights can and is empowering women to challenge archaic customary laws and practices that hamper their participation in global trade. IHRL represents hope to the extent that women are increasingly relying on human rights rhetoric to push for domestic reform and are utilizing the language of international and regional human rights instruments to challenge entrenched and highly discriminatory customary law and practice. The adoption of the African Charter on Human and People's Rights in 1982, the growth of

---

389. Globalization and its Impact on the Full Enjoyment of Human Rights: Report of the High Commissioner for Human Rights Submitted in Accordance with Commission on Human Rights Resolution 2001/32, United Nations, Economic and Social Council (Session No. 58, Item No. 10 of the Provisional Agenda), at ¶ 11E/CN.4/2002/54 (2002) (observing that the WTO rules on agriculture have the potential to affect the enjoyment of human rights, particularly, the right to food, the right to development, the right to health, the right to social security, as well as the right of particular groups;) [hereinafter Globalization and Human Rights].

390. See Ala'I, supra note 387, at 537; Cohn, supra note 387, at 427.

391. Id.

392. See generally WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW (Kelly D. Askin and Dorean M. Koenig eds., 2001)

indigenous women’s rights organizations, and new attempts at law reform, evidence a heightened level of consciousness about women’s rights in Africa, in part as a result of the influence of IHRL. However, the discourse of human rights appears very weak in addressing some of the problems that trade liberalization poses for African women.

The 1990 case of Ephraim v. Pastory and Kaizilege originating in Tanzania and the 1993 case of The Attorney-General v. Unity Dow originating in Botswana are frequently cited to support the proposition that human rights discourse is good for African women. Both cases witnessed bold


396. See, e.g., Hilary Charlesworth, What Are “Women’s International Human Rights”? in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 1994 (Rebecca J. Cook, ed. 1994). Despite the many promises of human rights discourse, it must be pointed out that the human rights discourse also represents dangers to African women. Id. It is highly individualistic in nature. In pursuing the often unattainable promises embedded in the discourse, African women run the risk of jeopardizing family-based and customary entitlements that protect them. Id. Women’s choices of strategies and forum for dispute-processing is often influenced by factors such as social and cultural impediments to accessing the modern legal system, personal (emotional and psychological) cost of utilizing modern mechanisms and their assessment of the overall benefit and cost of deploying the human rights system. In the context of an ambivalent or predatory state and underdeveloped legal and judicial system, women may lose more than they gain from deploying the rights discourse as a specific strategy in their struggle over land. Id. In the absence of social and economic resources and in the absence of opportunity to “exit” from a communal group albeit temporarily, African women, particularly the poor, uneducated, rural dwellers may risk more by appealing to the courts and deploying the rights discourse. Id.

397. In Ephraim v. Pastory and Kaizilege, the validity of a Haya customary law that vested the right to sell land in men and not in women was in question. 67 I.L.R. 106 (PC, Civil Appeal No. 70 1990). The appellant, a nephew of the first respondent and a woman, challenged her right to sell clan land that she inherited from her father. Id. Evidence given in court established that under Haya customary law and practice only men can sell clan land. Id. The court held such a customary law invalid to the extent of its inconsistency with the Tanzanian Constitution and several international human rights treaties which Tanzania had ratified. Id. Judge Mwalusanya, in delivering the judgment of the court, declared that “[f]rom now on, all females all over Tanzania can at least hold their heads high and claim to be equal to men as far as inheritance of clan land and self-acquired land of their fathers is concerned. It is part of the long road to women’s liberation.” Id.

398. [1992] B.L.R. 119 (Court of Appeal, Civil Appeal No. 4/91); See also [1992] L.R.C. (Const.) 623. In the Unity Dow case, the State failed to justify the constitutional validity of the Botswana Citizenship Act of 1984 – a patently discriminatory Act – on grounds that it was necessary to preserve the male orientation of the Botswana society. Id. The court made reference to the African Charter on Human and People’s Rights and several international human rights instruments in coming to its conclusion that the provisions of the Citizenship Act were discriminatory and hence void. Id. In the instant case, Judge Aguda observed that it appears . . . now more than ever, the whole world has realized that discrimination on the grounds of sex, like that institution which was in times gone-by permissible both by most religions and the conscience of men of those times, namely, slavery, can no longer be permitted or even tolerated, more so by law.

Id.
attempts by the court to overrule discriminatory laws or interpret existing laws in the light of prevailing international human rights norms and standards. Cases such as these are few, however. Apart from a few cases brought by elite women, the rights discourse appears to have had little resonance with the majority of women in the continent.\footnote{See Adetoun Ilumoka, The Human Rights of Women: International Instruments and African Experiences, 46 Afr. Stud. Rev. 2, 319 (2003) (noting that “[t]he discourse of rights has had little resonance for the majority of African women, and the national and international rules and procedures for enforcement of rights have rarely been their arenas of struggle”).} Fear, lack of resources, lack of support from family, and discouragement from traditional leaders are some of the factors that prevent poor, uneducated women from utilizing the legal system and advancing a rights claim.\footnote{See Mikell, supra note 59, at 233-34. In a study of twenty-five cases from the docket of the Sunyani High court in Ghana, Gwendolyn Mikell found that “males – either uncles, brothers, or sons – constituted the major group of applicants requesting rights of inheritance, letters of administration, or probate for a will” in the event of the death of a man. \textit{Id.} While the wife was usually joined as a second plaintiff in cases over land, wives seldom obtained sole control over their husband’s farm. Even in cases where a deceased left specific farm and buildings to his widow, Mikell found that the deceased’s family frequently challenged such a will. \textit{Id.}} Overall, because access to law, the courts, and the utilization of the rights discourse is presently determined by social and power relations, the rights discourse remains relevant only to elite women in the cities.\footnote{See Ilumoka, supra note 399, at 319 (noting that “[t]he discourse of rights has had little resonance for the majority of African women, and the national and international rules and procedures for enforcement of rights have rarely been their arenas of struggle”). This author has not studied--how poor or rural women in Africa view international human rights instruments. However, while conducting research on the plight of widows in Africa, I did not encounter women using the language of international human rights law in their struggle. However, international human rights law frequently came up in my discussion with lawyers and law professors in the major cities that I visited.} The norms and mechanisms of human rights are still largely incomprehensible to poor, rural women.\footnote{See \textit{id.}} The human/women’s rights project thus appears to be serving the interests of elite women.\footnote{See \textit{id.}}

At first glance, IHRL appears to offer effective emancipatory tools to women whose rights have been affected by the forces and processes of globalization. The legal ideology of international law has gradually expanded to accommodate women’s rights.\footnote{See Andrews, supra note 33.} A closer examination reveals that IHRL does not adequately address the problems women encounter in the global market place. Two factors pose major obstacles to efforts to the use of human rights law to address violations of women’s rights by global market forces. First is IHRL’s obsession with nation-states and the continued exclusion of international institutions, transnational corporations, and other non-state actors from the scrutiny and processes of IHRL.\footnote{See \textit{Convention on the Elimination of All Forms of Discrimination against Women} (CEDAW), Dec. 18, 1979, 1249 U.N.T.S. 13, 15, \textit{available at} http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article2 (last visited Apr. 15, 2005). The
rights machinery to meaningfully and imaginatively address the problems that arise as a result of growing linkages between trade and human rights.

IHRL's obsession with nation-states is reflected in the fact that human rights norms impose obligations on states and are primarily binding on states. The design of major human rights treaties appear directed only at constraining state power. Today, however, the exercise of power by non-state actors raises serious questions for international human rights lawyers. As Orford rightly notes, globalization has radically altered the conditions in which IHRL operates today. One major change is that "the state no longer poses the principle threat to human rights. Instead, the processes of... economic restructuring, and trade and financial liberalization are the primary causes of human rights abuses."^406 Thus, although IHRL might have provided effective relief to women in the past, there is need to address the human rights obligations of non-state actors including transnational corporations and global trade and financial institutions.

Globalization necessitates a rethinking of the scope of the international human rights discourse. The international human rights machinery must take the lead in highlighting the threat to human rights of unbridled trade liberalization and must progressively adapt IHRL to the new challenges of our time. Oloko-Onyago rightly calls for a holistic approach to human rights that involves a more nuanced and critical reconsideration of international practice and challenges the traditional ambivalence of the international community.^407 Although some work has begun in this area, there is still much that can be done.^408 Examples of efforts in this direction are the works of the independent expert on the right to development, the open-ended Working Group on the Right to Development, the Special Rapporteur on the right to food and the Committee on Economic, Social and Cultural Rights.

obession with nation-states is seen in the fact that international human rights instruments impose obligations primarily on states. Id. Described as the international bill of rights for women, CEDAW is instructive on this point. Article 2 provides, "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women." Id. at 16. Article 24 states, "States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention." Id. at 22. Only State Parties are obliged to present reports to the Committee on the Elimination of Discrimination Against Women. Id. at 14, 22. Article 18 provides: "States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention." Id. at 22.

^406. Orford, supra note 33, at 173. Traditionally construed, IHRL was a means of constraining one form of power – that exercised by the state. Id. This was inevitable given IHRL's roots in liberal philosophies that fueled popular revolutions in France and the United States in the eighteenth century. Id.


^408. See Globalization and Human Rights, supra note 389 at ¶ 6 (reporting that the independent expert on the right to development has recently linked the implementation of the right to development to trade and macroeconomic issues concerning access to food and food security and that in his report to the General Assembly in 2002, the Special Rapporteur on the right to food also underlined that free trade does not automatically feed the hungry).
Integrating International Human Rights into Trade Law

How can international trade rules respond effectively and imaginatively to global economic injustice and threats to human rights that new trade agreements pose? To start with, there is little reference to human rights in most international trade agreements. However, some international trade lawyers are calling for a greater integration of human rights into the law of international trade and the operations of the WTO. Ernst-Ulrich Petersmann, for example, has argued that the law of worldwide organizations such as the WTO must be interpreted in conformity with universally recognized human rights law. Petersmann believes that to effectively develop a human rights framework for coherent international multi-level governance, a “global compact” for promoting human rights in the public law of international organizations such as the WTO would be required. He cites as a model the integration approach of the European Community under which citizens are recognized and empowered as legal subjects not only of human rights but also of integration law. Petersmann’s proposal, however, has been criticized. Philip Alston fears that mainstreaming human rights law into international trade law as suggested by Petersmann would undermine human rights law dramatically and lead to a hijacking of international human rights law “in a way which would fundamentally redefine its contours.”

Utilizing Existing Flexibilities in Global Trade Rules

Since its inception, the global multilateral trading system has been at the center of debates about the relationship between trade and development, the nature of international trade policies that is appropriate for development, and the overall status of developing countries in the global trading system. A significant question that has plagued the system is whether, in fashioning global trade rules, the economic differences between developed and developing countries should be recognized and the special challenges developing countries face taken into account.
consideration. In fashioning global trade rules, a distinction is frequently drawn between developed and developing countries indicating a recognition of the special vulnerability of countries at lower levels of development and the need to fashion appropriate policies that are inclusive and that would ensure the full integration of these countries into the global trading system.

The concept of special and differential treatment (S&DT) is used to describe the totality of the responses to the development concerns within the MTS. S&DT refers to the set of trade policies pursued within the MTS to address the complex challenges of development and to respond to the

---

415. WTO, Who are the developing countries in the WTO?, at www.wto.org/english/tratop_el/d1who_e.htm (last visited Apr. 7, 2005). There is no definition of "developed" and "developing" countries in the multilateral trade agreements. Members of the World Trade Organization (WTO) decide for themselves whether they are "developed" or "developing." Id. See Development Since the Fourth WTO Ministerial Conference, 1DOHA ROUND BRIEFING SERIES (The International Center for Trade and Sustainable Development (ICTSD) and the International Institute for Sustainable Development (IISD)) Feb. 2003, 1 [hereinafter "DOHA ROUND BRIEFING SERIES"], available at http://www.iisd.org/publications/publication.asp?pno=516 (last visited March 14, 2005) (noting that "one of the most contentious issues to face the multilateral trading system is the debate over differentiated rights and obligations between developed and developing countries.").

416. Agreement Establishing the World Trade Organization, 9, available at http://www.wto.org/english/docs_e/legal_e/04-wto.pdf. (last visited March 14, 2005). "Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development." Id. The preamble of numerous multilateral trade agreements contain references committing the WTO and WTO members to implement trade rules in ways that take into account the interests of developing countries. Id. See also, Agreement on Agriculture, at http://www.wto.org/english/docs_e/legal_e/14-ag.pdf, 43 (last visited March 14, 2005).

Having agreed that in implementing their commitments on market access, developed country Members would take fully into account the particular needs and conditions of developing country Members by providing for a greater improvement of opportunities and terms of access for agricultural products of particular interest to these Members, including the fullest liberalization of trade in tropical agricultural products as agreed at the Mid-Term Review, and for products of particular importance to the diversification of production from the growing of illicit narcotic crops. Id. See also, Agreement on Trade-Related Investment Measures, at http://www.wto.org/english/docs_e/legal_e/18-trims.pdf (last visited March 14, 2005) ("Taking into account the particular trade, development and financial needs of developing country Members, particularly those of the least-developed country Members").

417. See generally Constantine Michalopoulos, Trade and Development in the GATT and the WTO: The Role of Special and Differential Treatment for Developing Countries, 18, paper presented at WTO Seminar on Special and Differential Treatment for Developing Countries, Geneva (Mar. 7 2000) (on file with author) (noting the fact that WTO agreements contain provisions that call on Members to take into account the needs and interest of developing countries and least developed countries).

inequitable distribution of wealth among participants in the system.\textsuperscript{419} Traditional S&DT was based on the recognition that developing countries faced conditions which were different from the conditions in developing countries and that these conditions required that developing countries be treated differently in the MTS.\textsuperscript{420} As a result, the basic content of S&DT provisions had three main components: (i) better market access for products from developing countries so they could boost economic development through exports; (ii) a lower level of obligation for developing countries, providing them with necessary flexibility to protect their markets and pursue policy options appropriate for development and industrialization; and (iii) broad exemptions from various GATT Agreements.\textsuperscript{421}

It is possible that by fashioning S&DT that specifically target vulnerable countries and groups and people within these countries, by fully operationalizing the S&DT provisions in existing trade agreements,\textsuperscript{422} and through greater commitment to fair trade liberalization and improving market access for goods from developing countries, some of the problems African women face may begin to disappear.

A major weakness of this strategy is that more than fifty years after the creation of the MTS, the meaning, scope, and content of the S&DT provisions in most trade agreements are still very much debated,\textsuperscript{423} and serious implementation problems plague even those provisions that appear to be unambiguous.\textsuperscript{424} Today also, the premise for S&DT is shifting. The focus appears to be no longer on the special problems of development but rather on the problems that developing countries may face implementing the multilateral trade agreements;\textsuperscript{425} the understanding is that all members of the MTS should be treated equally and that the level of development has no relationship with the level of rights and obligations under the MTS.\textsuperscript{426} Given what developing countries' governments perceive to be an erosion of S&DT, serious questions thus arise regarding the continued usefulness of the concept of S&DT as an analytical tool and the effectiveness of S&DT provisions in existing trade agreements.

\textsuperscript{419} Peter Lichtenbaum, Reflections on the WTO Doha Ministerial: “Special Treatment” vs. “Equal Participation:” Striking a Balance in the Doha Negotiations, 17 AM. U. INT’L L. REV. 1003, 1007 (2002) (noting that the principle of S&DT has been the traditional approach of the MTS to address inequitable distribution of wealth among its members”).


\textsuperscript{421} Id.

\textsuperscript{422} Time and space does not permit the author to discuss S&DT in this article exhaustively. See id. for a fuller discussion.

\textsuperscript{423} See Ewelukwa, supra note 420.

\textsuperscript{424} Id.

\textsuperscript{425} Id.

\textsuperscript{426} Id.
IV. CONCLUSION

Women’s experiences of globalization vary in the sense that not all women are losers and not all women are winners in the globalization process. Effectively capturing the varied and subjective experiences of the world’s women thus remains a challenge. It is important that future studies focus on the different positioning of women under globalization. Trade is not gender-neutral. Only with consistent trade impact reviews can we hope to understand the present impact of trade on different groups of women. With so much controversy surrounding the impact of trade on women, WTO has a responsibility to carry out gender and other social assessments of trade. To date, the WTO has not done commissioned any gender-impact study.

Unequal terms of trade as between Africa and the West was and remains a problem. One of the causes of the economic deterioration in the period leading to the Women’s War “was the high cost of imported goods” relative to exported goods. The women protested against a backdrop of “inexorably falling prices for palm oil.” Today, over 80 percent of export earnings of African countries are derived from the sale of primary commodities. Worse, relative to manufacturers, the price of primary commodities has been deteriorating for at least a century at an average rate of about 0.5 percent per annum. Inevitably, with their dependence on primary product exports, the present structure of global trade favors developed countries since they presently account for the lion’s share of manufactured exports.

It is impossible to blame Africa’s many woes solely on globalization or on international trade. Increased trade does not automatically translate into better protection for women. The fate of Africa cannot be divorced from broader problems in the continent including civil strife, corruption, poor infrastructure, poor manufacturing base, and a host of other government-related factors. Necessary pre-conditions for development, such as peace, security, democracy, transparency, accountability, and reliable political and economic governance, are

427. S.N. NWABARA, IBOLAND: A CENTURY OF CONTACT WITH BRITAIN 1860-1960 184-185 (1978). “The British importers blamed this on the phenomenal increases of custom duties. For example, the duty on tobacco (of which large quantities were used in Iboland), rose from 1s 6d in 1928 to 2s per lb in 1929, making the duty approximately 177 percent of the real value. Similarly the duty on grey baft (used for clothing, particularly among school children) was increased from 1d to 2d per lb.”
428. ISICHEI, supra note 15, at 152.
429. AFRICAN DEVELOPMENT BANK, supra note 288, at 122. See also id. at 433 (observing that “Africans have also witnessed an indirect international transfer of wealth to rich countries through a secular deterioration in the commodity terms of trade of poor countries”).
430. Id. at 122.
431. OXFAM, supra note 25, at 91.
432. Lisa Cook & Jeffrey D. Sachs, Executive Summary, in WORLD ECONOMIC FORUM, THE AFRICA COMPETITIVENESS REPORT 2000/2001, at 16 (noting that “[c]ivil strife continues to ravage the region, from Ethiopia to Eritrea, through the Democratic Republic of Congo, and on to Angola. Political unrest grips several countries such as Zimbabwe, and this unrest translates strongly into a decline of international competitiveness in those countries”).
CENTURIES OF GLOBALIZATION; CENTURIES OF EXCLUSION

presently lacking in many countries in Africa.\textsuperscript{433}

Effective economic policies, a new culture that promotes honesty and accountability in public life, and positive poverty-reduction strategies are needed.\textsuperscript{434} Reforms that aim at eliminating structural constraints to rural agriculture and eliminating cultural barriers to women’s access to assets and markets are also critical.\textsuperscript{435} African governments must embrace effective strategies of poverty reduction that go beyond market reform by increasing investment in rural infrastructure and improving the access of the poor (particularly poor women) to productive assets.\textsuperscript{436} Policies that cushion the most vulnerable members of society from the harshest effects of structural adjustment and trade liberalization are urgently needed as well.\textsuperscript{437} Finally, diversification is critical. The continued dependence in primary commodities in Sub-Saharan Africa must be reexamined.\textsuperscript{438}

Also at the domestic level, there is a need to increase awareness of the important role women play in economic development. Governments must constantly reaffirm their commitment to gender equality and create an enabling environment to ensure and encourage the effective participation of women in economic development.\textsuperscript{439} At the very least, this calls for more aggressive efforts to combat cultural prejudices against women, the enforcement of laws responsive to women’s needs and concerns, and efforts directed at overturning age old laws that limit women’s access to productive resources. Legal reform, education of women and the general public, and purposeful eradication of discriminatory customs and culture are all important goals that must be pursued.\textsuperscript{440} As the FAO suggests:

\begin{itemize}
\item \textsuperscript{433} See The African Union, NEW PARTNERSHIP FOR AFRICA’S DEVELOPMENT (NEPAD) ANNUAL REPORT 2003/2004 4 (2003). As the Nigerian President H.E. Obasanjo noted, “an effective African Union is crucial to ending conflicts, fostering peace and consolidating democracy and good governance on the continent.” Id.
\item \textsuperscript{434} AFRICAN DEVELOPMENT BANK, supra note 288, at 125 (noting the existence of several constraints to export trade including: the existence of inappropriate trade regime and trade policy, poor supply conditions, imprudent commercial policies, adverse political and socio-cultural conditions, low investment in human and physical capital, and insufficient linkage between the export sector and the rest of the economy).
\item \textsuperscript{435} OXFAM, supra note 25, at 52 (noting that African states must pay attention to structural forces, including gender relations that shape reward in the market place).
\item \textsuperscript{436} See Food and Agricultural Organization, supra note 211 (observing that “[t]raining and extension services, and in particular the use of female field extension workers, have been identified as a potentially important factor in raising female productivity”).
\item \textsuperscript{437} OXFAM, supra note 25, at 143-45 (observing that because no trade reform is gender-neutral, internal reforms triggered by the new climate of trade liberalization must routinely investigate and address the consequences of reform on income distribution).
\item \textsuperscript{438} AFRICAN DEVELOPMENT BANK, supra note 288, at 156-57 (discussing the problem of excessive dependence on primary products and the need for diversification).
\item \textsuperscript{439} An enabling environment simply means that effort must be put into removing the constraints women currently face. See id. (observing that “evidence shows that the apparent low productivity of women is a result of the social and economic constraints they face”).
\item \textsuperscript{440} See generally, Uche Ewelukwa, Post-Colonialism, Gender and Customary Injustice: Widows in African Societies, 24 HUM. RTS. Q. 424 (2002) (discussing the abusive cultural practices widows in Africa experience, the problem of discriminatory customary rules of inheritance,
To improve women farmers' productivity in the region, much change is required. Less discriminatory laws and policies must replace legislation and customs that constrain women's access to factors of production such as land, credit, inputs, information and technology. The interventions must be situation-specific. Actions must be technically relevant and be suited to the sociocultural and religious precepts of the farming community and the resources of the community.441

African governments must also ensure greater opportunity for women to participate in bilateral, regional, and trade negotiations and in the processes of the WTO. This calls for a review of the staffing at the Ministries of Trade, Finance and Development of the different countries. Given the present barriers to civil society's participation in the WTO, women's access to the processes of the WTO for now will be through their governments.442 Women must be involved in the decision-making processes that shape and determine Africa's obligations under the new international trade regime.

However, domestic reform is insufficient to address structural inequities in the global trading system; much more effort by the international community is required to establish a more beneficial trading climate within which poor developing countries can hope to benefit. The capacity of African states to cushion women and other vulnerable groups from consequences of adjustment and protect them from the vagaries of the market is questionable, however.443 Declining terms of trade and unsustainable debt burden seriously undercut attempts by states in Africa to address the needs of poor peasant women in the continent.444

At the international level, therefore, a lot of institutional and policy changes are needed. The basic concepts and precepts of neoliberalism must be increasingly questioned, particularly as they apply to Third World countries.445 The impact of the international trade agreements, particularly the Agreement on


442. See Agreement on Agriculture, supra note 68, at art. 5:2 ("The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO"). The WTO is a member-only organization. Membership is limited to state parties. Private individuals and non-governmental organizations cannot join the WTO nor can they participate in the formal meetings of the organization. Id.

443. The reason for this is that African countries are themselves beleaguered by a number of problems.

444. AFRICAN DEVELOPMENT BANK, supra note 288, at 157 (observing that the economic situation in Africa is "worsened by the phenomenon of declining terms of trade, which became quite pronounced in the 1980s when the prices for many primary commodities collapsed").

Agriculture, on women's rights must be more closely scrutinized bearing in mind that trade liberalization affects countries differently and that the AOA "will affect the human rights of people within a country differently." Policymakers need to reexamine the structure of international trade and economic institutions with a view for developing effective regulatory frameworks that balance the interests of transnational capital against those of individuals. As Gidden argues, "a good society, locally, nationally and internationally is one that balances the state and government, civil society and a market economy. There can be, and are, pathologies long the edges of all of these." Such an examination need not mean the abandonment of market principles. Instead it would represent a global commitment to equity in the market place and a recognition of the special vulnerability of least developing countries and of vulnerable groups within these countries. As the UN High Commissioner for Human Rights rightly notes, "[e]ven where the net social benefit from trade liberalization favours the majority in a certain country, the principle of non-discrimination under human rights law requires immediate action to protect the human rights of those who do not benefit.

What type of marketization process will encourage effective participation by women, particularly poor peasant women? A useful starting point is a united effort towards developing a detailed gender-disaggregated assessment of the impact of international trade on poor Third World women. Ideally, gender impact reviews should be carried out for all trade agreements, especially those that directly bear on the lives of poor women in the Third World. Gender or social assessment of core trade agreements "could anticipate and address any negative consequences that such commitments might have, as well as build upon positive effects, for women and vulnerable groups, particularly in developing countries."

Beyond a commitment to carry out gender-impact reviews, there is a need to integrate gender perspectives into multilateral trade agreements, policies and practices.

446. Globalization and Human Rights, supra note 389, at ¶ 32.
447. HUTTON, GLOBAL CAPITALISM, supra note 16, at 18. A society where the state is too strong becomes oppressive to the detriment of the populace. A society, however, lacks "steering mechanisms, including those necessary for economic development," where the state is too weak. Id. Similarly, a balanced civil society is important. Id.
448. Id.
449. Cheru, supra note 445, at ¶ 111 (noting that "a realignment of economic structures is as much a matter of realignment of power structures which, more often than not, will be resisted by powerful social and political groups within a given country or powerful forces in the global economy").
450. Globalization and Human Rights, supra note 389, at ¶ 34.