

2011

All Players to the Table: Getting Total Buy-In to an Economic Approach to Women's Land Rights Reform

Nia K.N. Johnson

Follow this and additional works at: <http://scholarlycommons.law.hofstra.edu/jibl>

 Part of the [Law Commons](#)

Recommended Citation

Johnson, Nia K.N. (2011) "All Players to the Table: Getting Total Buy-In to an Economic Approach to Women's Land Rights Reform," *Journal of International Business and Law*: Vol. 10: Iss. 1, Article 10.
Available at: <http://scholarlycommons.law.hofstra.edu/jibl/vol10/iss1/10>

This Note is brought to you for free and open access by Scholarly Commons at Hofstra Law. It has been accepted for inclusion in Journal of International Business and Law by an authorized administrator of Scholarly Commons at Hofstra Law. For more information, please contact lawcls@hofstra.edu.

ALL PLAYERS TO THE TABLE: GETTING TOTAL BUY-IN TO AN ECONOMIC APPROACH TO WOMEN'S LAND RIGHTS REFORM

Nia K. N. Jackson*

*When an older man raised his hand to speak on the third day of a gender workshop in Hoedspruit, a rural community in northern South Africa, Bafana Khumalo's heart sank. As the facilitator of the workshop, which specifically targeted men, he had already touched on concepts of manhood and how gender inequality contributed to the sky-rocketing HIV rates in South Africa. Mr. Khumalo worried that the participant would deliver a lecture on how equality between men and women is contrary to African culture or how women's empowerment is dividing families. Older men are deeply respected in rural communities, and he knew this man had the ability to derail the workshop. 'Yesterday, after I got home', the participant began, 'I called my sons, I called my wife, and I explained to them what we are doing in this workshop.' He told his children that things had to change in their home. No longer could their mother arrive home tired from a day of work and be expected to cook, clean, wash the dishes and clear up all on her own. It was simply unfair. From now on, he told his children, they would have to contribute to household chores. 'You have to start cleaning and tidying the house. You have to begin preparing dinner so when your mother comes home she can see that we have all contributed. I can't learn to cook—I am too old. But I'm prepared to wash the dishes.'*¹

INTRODUCTION

To effectively implement change in any business or organization it is critical to have all participants buy-in to the change.² A missing piece in the fight for gender equity is convincing men that there is a problem and that this problem affects them, their children and the economic future of the countries in which they live. This note submits that people and organizations fighting for gender equity need to include every stakeholder in the gender equity discussion to make exponential advancements in the economic development of underdeveloped countries.

Although the fight for gender equity has been fought for decades, for many women in developing countries it is still an unresolved issue. Prescriptive laws notwithstanding,

* Juris Doctor Candidate, 2011, Hofstra University School of Law. I would like to thank the managing staff of the JOURNAL OF INTERNATIONAL BUSINESS & LAW for this opportunity. I am particularly thankful to Jamie Feldman and Zachary Blumenthal for their assistance and editing. I would also like to thank my advisor Professor Rose Cusion Villazor for providing me with invaluable guidance. I am eternally thankful for the support of my Grandmother, Mom, Dad, Aunt Sheryl, Uncle Les, family and friends. Lastly, I would like to thank Stephen Senior for making me smile everyday.

¹ Stephanie Urdang, *Enlisting Men for Women's Equality: South African Initiatives Against Sexual Violence, Gender Inequalities*, AFR. RENEWAL, April. 2008, at 6, 6.

² See John P. Kotter & Leonard A. Schlesinger, *Choosing Strategies for Change*, HARV. BUS. REV. July-Aug. 2008, at 130; Robert H. Miles, *Accelerating Corporate Transformation (Don't Lose Your Nerve!): Six Mistakes That Can Derail Your Company's Attempts to Change*, HARV. BUS. REV. Jan.-Feb. 2010, at 69.

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

many gender-based atrocities are still committed against women.³ Approximately 130 million women around the world are victims of genital cutting.⁴ In parts of India “bride burning” is still practiced as a means of punishing women for insufficient dowries or creating an opportunity for the husband to remarry, even though it has been outlawed for over 45 years.⁵ In fact, some studies estimate that 6,000 bride burnings are committed each year.⁶ Recent calculations indicate that there are between 60 and 107 million “missing women” around the world.⁷ Many of these women, missing primarily because of their gender, are victims of murder, sexual slavery or preventable deaths related to a lack of health care availability.⁸ The same differences in education, health care and job availability that existed 60 years ago between Indian men and women still exist today.⁹

In an effort to pinpoint one variable that will have the greatest effect in creating gender equity and decreasing the atrocities committed against women, many organizations and studies discuss land rights reform. Land rights are a “fundamental human right. . . an important element of [a] stable, peaceful and socially just society.”¹⁰

Recently, studies have begun to assess the economic impact land legislation revisions have had on women.¹¹ Some of these studies indicate that reducing gender disparity by creating or changing women’s land rights requires the consideration of certain variables; education (traditional and legal), social institutions and implementation potential are most frequently addressed.¹² However, more recent studies have presented “convincing evidence. . . that land registration has led to better access to formal credit, higher land values, higher investments in land and higher output/income.”¹³ More specifically, studies of economic growth in developing nations have determined that the cultural concept that classifies women as property or agents of their husbands is the linchpin that prevents women from owning land

³ See generally, Nicholas D. Kristof & Sheryl WuDunn, *The Women’s Crusade*, N.Y. TIMES, Aug. 23, 2009 (Magazine), available at http://www.nytimes.com/2009/08/23/magazine/23Women-t.html?_r=2&ref=nicholaskristof (hereinafter “Kristof & WuDunn”).

⁴ See *id.*

⁵ See *id.*

⁶ Carol S. Coonrod, *Chronic Hunger and the Status of Women in India*, THE HUNGER PROJECT (Jun. 1998), available at http://www.thp.org/where_we_work/south_asia/india/research_reports/chronic_hunger_and_status_of_women (hereinafter “Coonrod”).

⁷ See Kristof & WuDunn, *supra* note 3.

⁸ See *id.*

⁹ Johannes Jütting & Christian Morrisson, Org. for Econ. Dev. [OECD], *Changing Social Institutions to Improve the Status of Women in Developing Countries*, at 15, Policy Brief No. 27 (Jul. 22, 2005), available at <http://www.oecd.org/dataoecd/24/32/35155725.pdf>.

¹⁰ Ogata Sadako, U.N. Comm’r for Refugees, Opening Statement at the Inter-Regional Consultation on Women’s Land and Property Rights in Situations of Conflict and Reconstruction (Feb. 16-19, 1998) in U.N. Ctr. for Human Settlements [UNCHS], *Women’s Rights to Land, Housing and Property in Post-Conflict Situations and During Reconstruction: A Global Overview*, U.N. Doc. HS/589/99E (1999), available at http://www.unhabitat.org/downloads/docs/1504_59744_land.pdf2.pdf.

¹¹ Klaus Deininger, Daniel Ayalew Ali & Takashi Yamano, *Legal Knowledge and Economic Development: The Case of Land Rights in Uganda*, 84 LAND ECON. 593 (2008); Jütting & Morrisson, *supra* note 9.

¹² See Jütting & Morrisson, *supra* note 9, at 9; Dina Abu-Ghaida, *The Costs of Missing the Millennium Development Goal on Gender Equity*, 32 WORLD DEV. 1075 (2004); Deininger, Ali & Yamano, *supra* note 11.

¹³ Gershon Feder and Akihiko Nishio, *The Benefits of Land Registration and Titling: Economic and Social Perspectives*, 15 LAND USE POL’Y. 25, 25 (1999).

WOMEN'S LAND RIGHTS REFORM

and thus places an extremely costly burden on the economic development of countries in which this system is used.¹⁴

In developing countries the land rights discussion is often intertwined with the customs and religions practiced therein. This note will analyze the economic potential of resolving the conflict between customary/religious law and constitutional law as it relates to women's land rights. Part I presents the fundamental failures of past equalization efforts. Part II discusses women's economic contributions to their families and countries. Part III presents a brief legal history of India and Zimbabwe as two countries that have taken steps toward gender equality. Part III goes on to analyze the conflict between the domestic laws of India and Zimbabwe to determine what prevents these changes from being manifest throughout their respective societies. Finally, Part IV suggests that achieving buy-in from all stakeholders, including men afraid of losing their place in society and women concerned about what changes gender equity may bring, is the best way to quickly achieve exponential change in gender equality and ultimately increase economic development.

PART I: WHERE WE HAVE FAILED

Today only one percent of the world's landowners are women.¹⁵ The United Nations' figures estimate that there are approximately 5,000 honor killings around the world every year.¹⁶ The rate of maternal mortality in underdeveloped countries is a staggering one mother every minute.¹⁷ As of 1998, India still employed sterilization methods.¹⁸ In fact, sterilization accounts for over 85% of all types of modern contraception.¹⁹ Unfortunately, 90% of all sterilization procedures are performed on women.²⁰ In some countries up to one-third of adolescent girls say that their first sexual experience is not consensual.²¹ The shocking nature of these statistics illuminates a lingering problem in the fight for gender equity. Their existence does not negate, but rather provokes questions regarding the effectiveness of the past efforts of many.

The battle for women's rights has been fought around the world for decades. This fight has evolved over time from strictly being a women's issue, to a human rights issue, to what it is today: an archaic unresolved issue. Although many compelling equality arguments have been made around the world, most have yet to reduce the number and gravity of the problems women face in the developing world.

After the creation of the United Nations (UN), many global human rights issues were exposed. With the adoption of The Universal Declaration of Human rights in 1948, the UN

¹⁴ Rick Geddes & Dean Lueck, *The Gains from Self-Ownership and the Expansion of Women's Rights*, 92 AM. ECON. REV. 1079, 1079-1092 (2002) (stating an economic study of how American women's economic independence has effected per capita wealth over 100 years).

¹⁵ Kristof & WuDunn, *supra* note 3.

¹⁶ *See id.*

¹⁷ *See id.* This number is extremely sobering when one considers that maternal mortality is often not deemed important enough to warrant accurate tracking.

¹⁸ *See* Coonrod, *supra* note 6.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *See* World Health Order [WHO], Nat'l Sexual Violence Resource Ctr. [NSVRC], *Global Perspectives on Sexual Violence: Findings from the World Report on Violence and Health*, at 2 (2004).

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

set out to create a world in which rights were not granted or denied on the basis of gender.²² The following decades included various types of responses to human rights violations around the world. Unfortunately, gender was rarely addressed in the fight for human rights.²³ As such, the late eighties and early nineties were full of initiatives merely attempting to increase awareness.²⁴ However, such initiatives, in hindsight, seem to be superficial attempts at getting someone else to solve the problem.

Numerous international non-profit organizations were created specifically with the hopes of achieving gender equality by increasing awareness. Most notably, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was created by the UN's General Assembly in 1979.²⁵ CEDAW's incorporating document is described by many as the international bill of rights for women.²⁶ Nonetheless, the UN, the same organization that ushered in the reconstruction of most of Europe after World War II, has been unable to effect noticeable change to women's rights around the world. One reason is that there needed to be more than awareness of the difficulties women face to compel a change. What followed the creation of organizations like CEDAW were numerous attempts to incite change through compelling stories, government intervention and targeting aid distribution.

The 1990's signaled the beginning of the campaign for women's rights as human rights.²⁷ Many of the participants in the fight used the horrid nature of discrimination and violence aimed toward women as the captivating element of their argument.²⁸ These people and organizations generally went so far as to claim that if "any group other than women" were the recipient of or subject to the same demeaning and damaging behavior, the world would be more active in fighting it because the world would view the problem as a "civil and political emergency".²⁹ Even the sobering clarity of this claim and many others like it has not propelled change on an expansive scale. After decades of limited results, and in light of the outcome disparity when aid is directed toward men as opposed to women, the UN began to change its focus.³⁰ In the early 1990's the UN began targeting women and girls with much of the aid it previously provided to developing nations.³¹

Armed with the discouraging statistics that have persisted over decades, many scholars have pressured governments and multinational organizations to implement initiatives that will create equalizing opportunities for women. Some organizations call for governments to make some or all of their aid to developing nations contingent upon how the countries treat women.³² Many of these initiatives consider specific areas in which women are clearly disen-

²² Gender equity, however, was one of many initiatives highlighted in this declaration. See Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 HUM. RTS. QTY. 487 (1990) (citing Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. Doc A/810 (Dec. 10, 1948).

²³ Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 HUM. RTS. QTY. 486 (1990) (hereinafter "Bunch").

²⁴ See, Bina Agarwal, *Rural Women, Poverty and Natural Resources: Sustenance, Sustainability and Struggle for Change*, 24 ECON. POL'Y. WKLY., OCT. 28, 1989, at 46.

²⁵ See Convention on the Elimination of All Forms of Discrimination against Women [CEDAW], G.A. Res. 34/180, U.N. Doc. A/34/46 (Dec. 18, 1979) [hereinafter CEDAW].

²⁶ *Id.*

²⁷ See Bunch, *supra* note 23.

²⁸ *Id.*

²⁹ *Id.* at 486.

³⁰ See Kristof & WuDunn, *supra* note 3.

³¹ *Id.*

³² See Bunch, *supra* note 23, at 488.

WOMEN'S LAND RIGHTS REFORM

franchised. Other organizations have saturated the developed world with claims of the untapped potential possessed by women around the world.³³ All of this work was done with the appearance of encouraging involvement as opposed to creating change or a conjunctive effort.

Most recently, U.S. President Obama signed an Executive Order to create the White House Council on Women and Girls.³⁴ Therein the President cited the lingering gender inequality problem in America. Specifically, the 22 cents on the dollar wage disparity between men and women in the same positions, a lack of access to health insurance for women, and violence against women and girls.³⁵ Needless to say, the persistence of gender inequality issues in a country as developed as the United States, seriously questions the effectiveness of efforts in developing nations.

This decades-long fight has unearthed a few practical problems. The first problem is implementation.³⁶ Many legal venues are not available to women in developing countries. For example, many women who need land titles live in rural areas away from the lawyers and formal courthouses that are largely only available in cities.³⁷ Additionally, many courts still have a traditional perspective and believe the man is the head of the home and thus is the only one that can assert property rights.³⁸

Secondly, it is relatively uncontested that aid works best when directed toward women and children.³⁹ Many studies to date have determined that gender inequality hurts economic development.⁴⁰ However, critics conclude that there is no correlation between the traditional method of aid dispersion to developing countries and their economic growth rates.⁴¹ Consequently conflicting solutions have created a stalemate of sorts leaving past efforts to have little or no effect on the fight for gender equality. This is the reason why this paper posits that women's exponential affect on the economic development of the countries in which they live is the most compelling argument for gender equality and all the other by-product or contributory problems women experience.

PART II: ECONOMICS OF WOMEN

Women contribute to their families, religions, societies and countries in many ways. In recent decades, studies have begun to quantify these contributions.⁴² Of all the responsibilities given to women around the world, a few similarities can be seen in developing countries. The most recurring trait is that women usually bear the role of primary care giver.⁴³ How-

³³ See, e.g., CEDAW, *supra* note 25; INT'L WOMEN'S HEALTH COAL. [IWHC], available at <http://www.iwhc.org>; INT'L CTR. FOR RESEARCH ON WOMEN [ICRW], available at <http://icrw.org>; MADRE (Spa.), available at <http://www.madre.org>.

³⁴ See <http://www.whitehouse.gov/the-press-office/Executive-order-creating-the-white-house-council-on-Women-and-Girls/>.

³⁵ See *id.*

³⁶ See Mary Kimani, *Women Struggle to Secure Land Rights*, AFR. RENEWAL, Apr. 2008, at 10, 12.

³⁷ *Id.* at 12-13.

³⁸ See *id.* at 12. .

³⁹ See Kristof & WuDunn, *supra* note 3.

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See *Engendering Development: Through Gender Equality in Rights, Resources and Voice*, WORLD BANK POL'Y RES. REP. 21492 (Oct. 2000), at 1 [hereinafter "World Bank"].

⁴³ See Tiffany M. McKinney Gardner, *The Commodification of Women's Work: Theorizing the Advancement of African Women*, 13 BUFF. HUM. RTS. L. REV. 33, 35 (2007).

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

ever, because men are generally called to military service or national defense, the burden of cultivating land also falls upon women in many families.⁴⁴ The result of this gender role reversal forces women to be responsible for cultivating land they do not own and, in many countries, have no right to own. Ultimately, many societies that view women this way have suffered in large part because of the resulting illogical distribution of responsibility.

Women in African countries contribute more to the global economy than women in other regions of the world.⁴⁵ One reason for this is women's control of small commerce.⁴⁶ Estimates show that women cultivate 80% of the world's food but own less than 2% of titled land.⁴⁷ African women contribute 70% of food production to the global economy.⁴⁸ Women also account for nearly 50% of farm labor and up to 90% of food processing, storage and transport labor around the world.⁴⁹

The economic power of women in India is equally, if not more, encouraging than the statistics of African women. As a result of an increased parental focus on education, the earning potential of Indian women has improved.⁵⁰ Ninety percent of Indian women work in "agriculture, live stock, textiles and textile products, beverage and tobacco, food products, construction, petty retail trade, education and research and domestic services."⁵¹ The focus on education and communication is a significant reason why only three to six percent of Indian women are able to hold a managerial job.⁵² Although these statistics may be a great accomplishment, cultural bias toward women working in the home keeps more women from obtaining an education and working outside the home. These factors also make it difficult to calculate the economic power of Indian women. Nonetheless, the tide flows toward significant economic potential. If given the chance to live healthy educated lives, the success of even a small percentage of affluent women in business indicates great potential for all Indian women.⁵³

The economic impact of women in developing nations is clear. An institutional framework that disadvantages women ultimately hinders national development because it controls "the possibilities of half of the population for participation in economic activities."⁵⁴ The potential economic independence of women requires them to be able to earn an income in addition to doing work for the family in the home.⁵⁵ Achieving this level of income requires independence and this is where the discussion of land becomes extremely important.

⁴⁴ See WORLD BANK, *supra* note 42; McKinney Gardner, *supra* note 43, at 42.

⁴⁵ Garner, *supra* note 43, at 45.

⁴⁶ Christian Morrison & Johannes Jütting, OECD, Working Paper No. 234: *The Impact of Social Institutions on the Economic Role of Women in Developing Countries*, DEV/DOC(2004)03 (2004) at 22.

⁴⁷ See Kristof & WuDunn, *supra* note 3; World Pulse, available at <http://www.worldpulse.com>.

⁴⁸ Kimani, *supra* note 36, at 10.

⁴⁹ *Id.*

⁵⁰ Society for Human Resource Management, Perspectives on Women in Management in India, available at 6, http://www.shrm.org/Research/Articles/Documents/09-0677_India_Women_Ldrshp_FNL_.pdf [hereinafter SHRM].

⁵¹ Padma, *Women Workers in India in the 21st Century – Unemployment and Underemployment*, Communist Party of India (Feb. 2004), available at http://www.cpiml.org/liberation/year_2004/february/WomenWorkers.htm.

⁵² See SHRM, *supra* note 50, at 4-5.

⁵³ *Id.*

⁵⁴ Morrison & Jütting, *supra* note 46, at 29.

⁵⁵ *Id.*

WOMEN'S LAND RIGHTS REFORM

Land has been categorized as serving two major roles: a fundamental source of life and a "social asset."⁵⁶ Without an opportunity to own land, women are unable to reap the benefits of a major determinant of access to resources.⁵⁷ In agrarian economies, land is a critical factor of production.⁵⁸ An entire population can benefit either directly or indirectly from land.⁵⁹ Whether benefiting directly as landlords, farmers, and laborers or indirectly as producers of goods and services sold to the farming community, people in developing countries are vastly dependent on land.⁶⁰ The Organization for Economic Cooperation and Development (OECD) put it best:

The central role of women for economic development and ultimately the wealth of men needs better articulation to convince more men not to sabotage changes favouring women. A literate woman can better feed and educate her children, including boys. Women who have access to resources and gain economic independence contribute substantially to household revenue and thereby to the social status of the household head.⁶¹

The economic development of many countries will not be accomplished without giving women access to the most valuable complex element of life: land on which one can sustain oneself. Unfortunately, many countries have conflicting systems that control women's access to land. These strong dual systems have proven not only detrimental to the fight for gender equality, but also extremely difficult to consolidate.

PART III: WHERE WE STAND—TWO RULES OF LAW

Within the gender equity debate there are many variables. When considering the role of land rights in achieving gender equity the analysis becomes quite complex. Research shows that some countries use non-legal rules to determine land rights ownership.⁶² Often this creates a conflict between the constitution and informal laws of many countries.

The following section focuses on the opposing rules of law in two countries: India and Zimbabwe. Both countries have histories of being ruled by European countries, fighting for their independence and experiencing the long journey to achieve democracy. The opposing rules of laws are the common laws of the indigenous populations and the constitutional laws created and left by European settlers.

Customary Law

For women in many African countries, their lack of land rights is an issue created while their countries were under colonial rule.⁶³ Prior to the colonial period, male leaders of

⁵⁶ E. Njoki Wamai, *Women and Poverty (Land Rights and Ownership)* African Women's Rights Observatory 1, available at <http://awro.uneca.org/downloads/Women%20Land%20Rights%20and%20Poverty%20in%20kenya%20policy%20issue.doc>.

⁵⁷ *Id.*

⁵⁸ Clive Bell, *Reforming Property Rights in Land Tenancy*, 5 WORLD BANK RES. OBSERVER 143 (1990).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Jütting & Morrisson, *supra* note 9, at 18.

⁶² See UNCHS, *supra* note 10, at 21-27.

⁶³ Kimani, *supra* note 36, at 10.

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

“lineages, clans and families” controlled the land.⁶⁴ Essentially, the group, not an individual, owned land.⁶⁵ Within these cultural institutions, certain norms were created based on custom or religion.⁶⁶

The term “customary law” is used to describe the unwritten law of ethnic groups indigenous to Africa. The laws and their application are not uniform among all ethnic groups.⁶⁷ These laws are only binding upon members of that group and violations of these laws carry specific punishments.⁶⁸ Some of the differences in the laws are attributed to origin, history, social structure and economy.⁶⁹ Customary laws can vary between neighboring groups even if they speak the same language.⁷⁰

Customary law, although it varies in application, is not static.⁷¹ The influences of social and economic conditions that cause variations among ethnic groups also cause dynamic changes in the specific rules and their application.⁷² Thus, customary law can be changed so that ethnic groups are able to adapt to changes in their environment while maintaining the character of the law that binds them.⁷³ Land law is one area in which the adaptability of customary law has been seen.⁷⁴ Historically, customary law required land to be held by the family or clan.⁷⁵ However, customary law now allows land to be held by an individual.⁷⁶

Customary law plays an interesting role in the African legal system. The role of customary law as the primary legal system in African countries changed with the introduction of European colonialists into African society.⁷⁷ With the Europeans came a different legal system that has developed into one significantly similar to the common law system practiced in many western nations today.⁷⁸ For whatever reason, colonialists did not officially outlaw or overrule African customary law.⁷⁹ As a result many African countries were left with a dual or parallel legal system.⁸⁰

The courts created by this dual legal system are called “general courts” and “local courts”.⁸¹ General courts are presided over by magistrates and judges whose jurisdiction ex-

⁶⁴ *Id.* at 11.

⁶⁵ See Paul Kuruk, *African Customary Law and the Protection of Folklore*, 2 U.N. EDUC. SCO. & CULTURAL ORG. 4, 5 (2002).

⁶⁶ See Jütting & Morrisson, *supra* note 9 at 11.

⁶⁷ Kuruk, *supra* note 65 at 6

⁶⁸ *Id.* at 6.

⁶⁹ Kuruk, *supra* note 65, at 6; see also Francis Snyder, *Customary Law and the Economy*, 28 J. AFR. L. 34 (1984).

⁷⁰ Kuruk, *supra* note 65, at 4.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Kuruk, *supra* note 65, at 6; see also Snyder, *supra* note 69, at 34.

⁷⁸ Kuruk, *supra* note 65, at 4.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 11.

WOMEN'S LAND RIGHTS REFORM

tends to all people in both criminal and civil proceedings.⁸² General courts apply European and local statutes that were created based on European law.⁸³

Local courts were created by statutes that sought to formalize certain aspects of the customary law system that suited the goals of colonial administrations.⁸⁴ These courts and their proceedings are not officially recognized but are available for African parties to use as they wish.⁸⁵ Clan chiefs or local elders oversee the local courts.⁸⁶ These courts are only available to Africans and generally apply the customary law of their jurisdictions.⁸⁷ Administrative officers supervise local courts and control the appointment and dismissal of court members.⁸⁸ Attorneys are not permitted to appear before these courts.⁸⁹ Those seeking redress must argue issues that are brought to these courts themselves.⁹⁰

Implementing customary law is different in local courts and general courts. The members of the local courts are presumed to know customary law, understand how it should be applied and know the appropriate sanctions.⁹¹ If a party in a case before a local court disagrees with the magistrate, the party can call witnesses to prove his/her interpretation of the customary law.⁹² However, judges in the general courts are not presumed to be familiar with customary law and are prohibited from relying upon knowledge they have acquired from past experience with customary law.⁹³ In general courts, the parties are required to specifically allege and establish proof of the correct interpretation of customary law.⁹⁴

The jurisdiction of local courts is not exclusive.⁹⁵ In creating the general courts, European colonists gave them the power to apply customary law when raised in proceedings before them.⁹⁶ Over time the jurisdiction of the two types of courts began to blend. Some of the local courts have removed tribal chiefs from their positions and replaced them with magistrates that have minimal legal training.⁹⁷ And some of the procedures of the general courts have been phased into the requirements of the local courts.⁹⁸ Generally, the status of customary law varies throughout Africa.⁹⁹ Countries that were colonies of England have overwhelmingly retained the dual legal system while attempting to adapt customary law to the English system.¹⁰⁰ Countries that gained their independence from France and Portugal have tried to integrate customary law into general law.¹⁰¹ Ethiopia and Tunisia are examples of the

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

small number of countries that have moved toward legislatively abolishing some aspects of customary law.¹⁰² Ultimately, the current role and force of customary law in African countries varies and is enforced in different degrees.¹⁰³

Personal Law

Colonialism affected Indian traditions much the same way it affected African traditions. The British favored a code system for the country but allowed personal laws to continue being enforced in all non-commercial and non-criminal cases.¹⁰⁴ This resulted in a dual legal system. In India there are different personal laws for each religious group.¹⁰⁵ Personal laws govern marital proceedings, guardianship, adoption, inheritance and succession.¹⁰⁶ These laws can vary widely within the same geographic community because they are contingent upon the religious beliefs of the members of the community.¹⁰⁷

The dual legal system is divided into state courts and community courts.¹⁰⁸ The state courts do not consider membership of a religious group when choosing its members.¹⁰⁹ These judges are generally trained in Western common law traditions.¹¹⁰ The community courts rely on personal laws unlike the state courts.¹¹¹ They also do not follow the precedents set by state courts.¹¹² However, verdicts in community courts can be appealed to state courts.¹¹³

Constitutional Law

The Constitution of Zimbabwe begins just like many constitutions in that it proclaims the law of the constitution as the supreme law of the country. It specifically provides, "If any other law is inconsistent with [it] that other law shall, to the extent of the inconsistency, be void".¹¹⁴ The Constitution of India is charged with "securing for all its citizens" four specific things: (1) social, economic and political justice, (2) liberty of thought, expression, belief, faith and worship, (3) equality of status and opportunity and (4) to promote among them all fraternity that assures the dignity of the person and the Nation.¹¹⁵

The Constitution of India also outlines specific "fundamental rights" which include: equality before the laws and freedom from state discrimination on the basis of "religion, race,

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Martha C. Nussbaum, *India: Implementing Sex Equality Through Law*, 2 CHI. J. INT'L L. 35, 40 (2001).

¹⁰⁵ Nussbaum, *supra* note 104 at 40; Dr. Gita Robin Means, *Access to Land in Rural India* (WORLD BANK POL'Y RES., Working Paper No. 2123, (1999)).

¹⁰⁶ Nussbaum, *supra* note 104 at 40; Gopal, *Gender and Economic Inequality in India: The Legal Connection*, 13 B.C. THIRD WORLD L.J. 63, 66 (1993); See Narendra Subramanian, *Legal Change and Gender Inequality: Changes in Muslim Family Law in India*, 33 LAW & SOC. INQUIRY 631, 635 (2008).

¹⁰⁷ Sariko Fukuda-Parr, *Human Development Report 2004: Cultural Liberty in Today's Diverse World*, 57;

¹⁰⁸ Subramanian, *supra* note 106, at 635.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ CONST. OF ZIMBABWE Oct. 30, 2007, Chpt. 1, § 3.3

¹¹⁵ INDIA CONST, preamble.

WOMEN'S LAND RIGHTS REFORM

caste, sex, place of birth or any of them.”¹¹⁶ Article 13 expressly invalidates all the laws in force at the time the constitution was enacted that are inconsistent with the list of Fundamental Rights.¹¹⁷ Article 14 declares that all persons shall have the benefit of the fundamental right of “equality before the law”.¹¹⁸ Article 44 declares that the state will work “to secure for the citizens a uniform civil code throughout the territory of India.”¹¹⁹

This goal of uniformity is important because the personal laws of each group are different.¹²⁰ Nonetheless, federal and state governments have codified some Hindu personal laws.¹²¹ Many of the provisions of Hindu laws not only have inherent gender biases but also contravene the gender equality declarations of the Constitution.¹²² Ultimately, more than a portion of the dualist legal system consists of Hindu personal laws. Unfortunately, these laws are not uniformly enforced, which adds to the fight for gender equity.¹²³

PART IV: THE PROBLEM

Without knowing all the considerations of customary/religious law, it is difficult to predict whether and to what extent these laws will conflict with the constitutional law of each country. As such, it is not important to piece-by-piece attempt to supersede the power of customary/religious law. The main problem between customary/religious law and the constitutions of developing countries is the reluctance of courts to declare pre-Constitution laws effectively void when they conflict with the fundamental laws of the applicable country's constitution.¹²⁴ These courts are also hesitant to ensure that their judgments are enforced.¹²⁵

For decades efforts to work around these norms have been numerous but mostly unsuccessful. Many experts suggested that land should be titled to individuals and many countries followed suit.¹²⁶ However, women were not usually included in the titling process because men were arbitrarily considered the “household heads.” Therefore men were the only persons allowed to put their names on land titles.¹²⁷ In some instances, women had to obtain the approval and signature of a male relative to purchase land.¹²⁸

For example, Uganda implemented a co-ownership clause in its Land Act of 1998, which would technically vest the land title in both the husband and wife.¹²⁹ However, upon the death of the husband, any sons or daughters left behind can legally take the land from the

¹¹⁶ INDIA CONST. art. 14 and 15.

¹¹⁷ INDIA CONST. art. 13.

¹¹⁸ INDIA CONST. art. 13.

¹¹⁹ INDIA CONST. art. 44.

¹²⁰ Gopal, *supra* note 106, at 67.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Kimani, *supra* note 36, at 12.

¹²⁷ *Id.*

¹²⁸ Aili Mari Tripp, *Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda*, AFR. STUD. Q., at 8, available at <http://www.Africa.ufl.edu/asq/v7/v7i4al.htm>.

¹²⁹ *Id.* at 12.

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

mother.¹³⁰ Unfortunately the mother usually has very little knowledge of her rights and no means to assert them.¹³¹

In Mozambique in the late 1990's advocacy groups worked to create a law that entitled women to secure access to land and property.¹³² This law was, however, very poorly implemented because traditional courts, the courts used by many women who were aware of their rights, still saw men as the head of the home and therefore the only person with authority over the land.¹³³ Ultimately, even though the text of many countries' constitutions clearly states the superiority of the constitution, many members of the courts are extremely reluctant to enforce the constitution as such. One can hypothesize the reasons for this reluctance; some of which include powerlessness in making pivotal cultural or religion-based changes, reluctance to being the man that indirectly deprived other men of their position in society or just pure failure to believe that women deserve what they seek.

Magaya v Magaya

A prime example of the reluctance of a court to properly enforce its country's constitution is *Magaya v Magaya*.¹³⁴ In this case, the eldest daughter of Lennon Magaya's first wife sought claim to her father's land after he promised it to her during the years she took care of her elderly parents.¹³⁵ Lennon Magaya's second wife had three sons.¹³⁶ The eldest son declined to take the land because he was unable to look after the entire family, as customary law requires.¹³⁷ As a result, Venia, the eldest daughter, sought heirship at the local community court, which she was granted.¹³⁸ However, the middle son, Nakayi, sought to have Venia's appointment as heir cancelled. Nakayi argued that Section 68(2) of the Administration of Estates Act was violated because the previous proceedings did not involve all the people interested in the estate.¹³⁹ After being granted a new hearing, Nakayi was deemed the rightful heir under customary law. After receiving the judgment, Nakayi kicked Venia off the property.¹⁴⁰

In considering this case, the court looked at the Constitution of Zimbabwe, the Zimbabwe Administration of Estates Act (AEA) and the Legal Age of Majority Act (LAMA).¹⁴¹ The AEA specifically determines the role of customary law in the distribution of property.¹⁴² In Zimbabwe the question of intestate succession of land is a question of cus-

¹³⁰ *Id.* at 6.

¹³¹ *Id.*

¹³² Kimani, *supra* note 36, at 12.

¹³³ *Id.*

¹³⁴ *Magaya v. Magaya*, SC No. 210-98 (Zimbabwe, Feb. 16, 1999).

¹³⁵ Gardner, *supra* note 43, at 68.

¹³⁶ David M Bigge & Amélie von Briesen, *Conflict in the Zimbabwean Courts: Women's Rights and Indigenous Self-Determination in Magaya v Magaya*, 13 HARV. HUM. RTS. J. 289, 293 (2000).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Valerie Knobelsdorf, *Zimbabwe's Magaya Decision Revisited: Women's Rights and Land Succession In the International Context*, 15 COLUM. J. GENDER & L. 749, 763 (2006); Megan Berry, *A Woman's Worth: Accounting for Women in the Global Market*, 37 DENV. J. INT'L L. & POL'Y 465, 488 (2009).

¹⁴² Knobelsdorf, *supra* note 139, at 763.

WOMEN'S LAND RIGHTS REFORM

tomary law.¹⁴³ The *Magaya* court used a “positivist interpretation,” which resulted in its holding that the customary law of a preference for male heirs was superior to rights that prohibit sex discrimination.¹⁴⁴ Additionally, the court held that the legislature intended for the LAMA to “co-exist with customary law, not replace it.”¹⁴⁵ The sentiment of the court was well articulated by one Justice who claimed to be in “total agreement with the submission that there is a need to advance gender equity in all spheres of society” but also declared, “deference to customary law is a fundamental characteristic of the Zimbabwe construction of justice. . . .”¹⁴⁶

The court also spent considerable time examining Section 89 of the Zimbabwe Constitution.¹⁴⁷ This section allows the application of customary law in the courts except when “modified by subsequent legislation having in Zimbabwe the force of law.”¹⁴⁸ In cases of intestacy, customary law prefers male heirs to female heirs.¹⁴⁹ The court finds additional support to this facially discriminatory law by citing Section 23 of the Constitution.¹⁵⁰ Section 23 enumerates multiple grounds for anti-discrimination.¹⁵¹ Gender, however, is not one of the protected forms of discrimination listed.¹⁵² Section 23 also states that none of the enumerated protected forms of discrimination “shall be held to be in contravention” regarding “the application of African customary law. . . .”¹⁵³ The court ultimately held that considering these sections, the Constitution of Zimbabwe was expressly exempt from the “matters involving customary law issues of Africans.”¹⁵⁴

The decision by the Supreme Court of Zimbabwe to affirm the ruling of the intermediate appellate court, not only made it clear that the fight for women’s rights is far from over, it also compounded Zimbabwe’s developmental potential with its implication that cultural law is equal to the Constitution.¹⁵⁵ The justices determined that African customary law prohibited women from being appointed heir to their father’s estates if a man in the family has a valid claim to the estate.¹⁵⁶ Unfortunately, this problem is not unique to Zimbabwe or even Africa. The case that follows is from a High Court in India. Although factually different, it is equally impactful on the lives and liberty of women and the economic advancement of India.

Bombay v. Narasu Appa Mali

Courts in India have long been reluctant to hold that gender inequity in personal laws creates a constitutional violation. The case of *Bombay v. Narasu Appa Mali* referenced challenges to the Bombay Prevention of Hindu Bigamous Marriages Act of 1946 (the Act).¹⁵⁷

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Berry, *supra* note 141, at 488.

¹⁴⁶ Bigge & von Briesen, *supra* note 136, at 294.

¹⁴⁷ Berry, *supra* note 141, at 488.

¹⁴⁸ CONST. OF ZIMBABWE Oct. 30, 2007, § 89.

¹⁴⁹ Berry, *supra* note 141, at 488 (referencing *Magaya v. Magaya*, (1999) 3 L.R.C. 36 (Zim. Sup. Ct.)).

¹⁵⁰ Berry, *supra* note 141, at 488.

¹⁵¹ CONST. OF ZIMBABWE Oct. 30, 2007, § 23.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Berry, *supra* note 139, at 488 (citing *Magaya v. Magaya*, 3 L.R.C. 35, 36 (Zim. Sup. Ct. 1999)).

¹⁵⁵ Knobelndorf, *supra* note 141, at 749.

¹⁵⁶ *Id.*

¹⁵⁷ *Bombay v. Mali*, 1952 A.I.R. 84 (Bom.), ¶ 1.

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

The appellants asserted that the Act violated the fundamental rights enumerated in Articles 14, 15 and 25 of the Constitution.¹⁵⁸ The court found that the Act did not violate Article 15 because the article “is based on ‘vital and compelling’ social, economic, and religious grounds and not on grounds of gender.”¹⁵⁹ Additionally the appellants claimed that Subsection 2 of Article 13 declared that the state would not create any law that contravened any “rule, regulation, notification, custom or usage having in the territory of India the force of law.”¹⁶⁰ The court found a “clear and unambiguous” difference between a “custom or usage” and personal law. After determining that personal laws were not included in the set of legal creations that the government would not contravene, the court held that the Act was valid.¹⁶¹

Although the *Bombay* decision is only binding in the State of Bombay, it is important for two reasons.¹⁶² First, by finding that Subsection 2 of Article 13 did not include personal laws, the court reinforced the dual legal system. Specifically, this holding determined that the legislature is allowed to continue creating laws that govern the same subjects covered by personal laws. Secondly, the *Bombay* ruling upheld all of the inherently discriminatory norms of personal laws. The issue of personal laws and whether they contradict the Constitution of India was raised again in 1991 in the case below.

In re Amina

The question presented to the High Court of Bombay in *In re Amina* was whether personal laws are subject to Part III of the Constitution of India.¹⁶³ Part III presents fundamental rights.¹⁶⁴ This court determined that because personal laws are deemed to be subject to customary laws, they are also subject to the Constitution in its entirety.¹⁶⁵

The Court stated that the holding in *Bombay v. Narasu Appa Mali* “involved a question of public importance” and deserved to “be re-examined by a larger bench.”¹⁶⁶ Unfortunately, this judge did not have the power to overturn the decades old case because *In re Amina* was heard before only a single judge.¹⁶⁷ The *in re Amina* holding sheds light on the thesis of this note, in that this problem would be better tackled by having more people included in the solution, namely all the stakeholders in the gender equity fight.

PART V: THE SOLUTION

Through all the discussions, studies and symposia on gender equity it has become clear that this issue has many variables. As a result of determining the numerous variables, many studies have concluded that there may be multiple ways to resolve gender disparity in developing countries. However, there is one effort that lay comparatively un-tried: a multi-layered or multi-functional approach.

¹⁵⁸ *Id.* at ¶ 3.

¹⁵⁹ Gopal, *supra* note 106, at 67.

¹⁶⁰ *Mali*, 1952 A.I.R. 84 (Bom.), ¶ 12.

¹⁶¹ *Id.*

¹⁶² Subramanian, *supra* note 106, at 643.

¹⁶³ *In re Amina*, 1992 A.I.R. 214 (Bom.), ¶ 1.

¹⁶⁴ INDIA CONST. pt. III.

¹⁶⁵ *In re Amina*, 1992 A.I.R. 214 (Bom.), ¶ 12.

¹⁶⁶ *Id.* at ¶ 16.

¹⁶⁷ Gopal, *supra* note 106, at 68.

WOMEN'S LAND RIGHTS REFORM

Many of the past efforts to create gender equity have fallen short not because they failed to highlight pertinent problems but rather because past efforts have generally taken a singular approach.¹⁶⁸ This note proposes that all parties invested in gender equity can create a dynamic multifaceted solution based on a high-level understanding of all the areas of life, domestic and international, affected by gender inequality. Although this solution may seem overwhelming, there is actually only one issue that remains un-discussed over this decades-long debate: complete inclusion of all the participants. Specifically, considering the potential contributions and necessary participation of all men and women reluctant to enter this fight, and not just one or the other.

Men in most countries, especially developing countries, are in advantaged positions. Some of them think they stand to lose a lot if the status quo were to change.¹⁶⁹ Some studies indicate that there is more than just a cultural or religious link to change resistance.¹⁷⁰ Economic interests are also a strong variable in men's hesitancy.¹⁷¹ One economic area in which gender equity will change the perceived power of men is household spending.¹⁷² Many surveys indicate that when women are in control of the family income, monies are spent with greater consideration for the family as a unit.¹⁷³ Women particularly consider the welfare of the children and tend to focus on their education and access to health care.¹⁷⁴ Men on the other hand, are historically more inclined to spend the bare minimum on their families and use the remaining cash for personal interests.¹⁷⁵ This includes tobacco, alcohol and other recreational activities, even when some of their children are not attending school or receiving adequate medical care.¹⁷⁶

Conceivably, the financial independence of women that comes with gender equity will spur one of two reactions by men. They will either lose their influential power within the household because their wives have money to spend. Or the men will be indirectly forced to make sure that their spending considers what is good for the entire home and not primarily their personal interests.

Nonetheless, it is dismissive of humanity and the potential of men not to include them in the fight or to assume that because they have caused many of the problems, they will not be willing to contribute to changing the system. Men in developing countries have not been sold on the economic and social reasons why women should have equal rights and opportunities.¹⁷⁷ The societal norms taught to men have contributed to many problems in developing countries.¹⁷⁸ The cultures and religions that dominate developing countries usually require men to exhibit their strength with "aggression, dominance over women and sexual conquest."¹⁷⁹ Men are also more likely than women to "engage in combat."¹⁸⁰ After politi-

¹⁶⁸ See Bunch, *supra* note 22, at 493; Kimani, *supra* note 36, at 10, 12.

¹⁶⁹ Jütting & Morrisson, *supra* note 9, at 17.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Kristof & WuDunn, *supra* note 3.

¹⁷⁶ *Id.*

¹⁷⁷ Urdang, *supra* note 1, at 6-7.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 6; World Bank, *supra* note 42, at 9.

¹⁸⁰ Sadako, *supra* note 10, at 32.

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

cal coup d'états and civil unrest, the remaining work force and intellectual capital in many countries are women and children.¹⁸¹ It seems intuitive, that failure to cultivate this population, prior to war or unrest, will only result in a population that is unable to thrive because of lack of exposure, trust, responsibility and information.

Women must also be included in the change process. It is insufficient to merely target women as the receivers of aid and not consider their perspective in creating change. In fact, it is necessary to recognize that some women may not want any change. Even still, these desires can be and should be articulated in a formalized manner like voting. This alone, however, is a dramatic shift for many developing countries. Some studies specifically indicate that women should be the target of a quota system that will "give women considerable weight in decision making."¹⁸² Although, still struggling with gender equity in the application of law, India has taken strides to achieve gender equity in legislation by reserving one-third of municipal seats for women.¹⁸³

Women's lives would be better served if they were viewed and treated as being part of a dynamic culture.¹⁸⁴ Modern culture, however, is dominated by men and thus requires recognition that men can be significant contributors to the process of change.¹⁸⁵ Having focused much of the fight for gender equality on empowering women, we may have created more problems and solved fewer in the long run.¹⁸⁶ It's very conceivable that many women have suffered at the hands of their husband or father upon returning home to assert their newfound rights after attending an empowerment workshop.¹⁸⁷ Ultimately the economic and social stability in the developing world is highly contingent upon recognizing that women's rights are also the rights of all persons in developing countries to have economically stable lives.¹⁸⁸

A good example of how to effectively implement change to achieve gender equity can be seen in South Africa. In 1996 with the creation of its new constitution, South Africa "broke ground internationally" because it specifically brought attention to protecting and promoting women's rights and gender equality.¹⁸⁹ In addition to declaring all people equal under the law and entitled to the benefits therein, the South African Constitution also created the Commission on Gender Equality.¹⁹⁰ It was this Commission that determined ". . .if we (sic) don't bring men in as partners, we won't win the battle."¹⁹¹ The concept of needing men in developing countries to buy into the fight for gender equality is intuitive given that many of these countries are patriarchal.¹⁹²

¹⁸¹ *Id.* at 58.

¹⁸² Jütting & Morrisson, *supra* note 9, at 17

¹⁸³ *Id.*

¹⁸⁴ Gardner, *supra* note 43, at 33.

¹⁸⁵ Urdang, *supra* note 1, at 6.

¹⁸⁶ *Id.* at 7.

¹⁸⁷ *Id.*

¹⁸⁸ Knobelsdorf, *supra* note 141, at 770.

¹⁸⁹ Urdang, *supra* note 1, at 8.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 7.

¹⁹² Sadako, *supra* note 10, at 46-47; *see also* Urdang, *supra* note 1, at 7.

WOMEN'S LAND RIGHTS REFORM

Bhe & Others v. Magistrate, Khayelitsha & Others

South Africa continued to make progress when its Constitutional Court decided the case of *Bhe & Others v. Magistrate, Khayelitsha & Others* in 2005.¹⁹³ This case was about intestate succession. The pertinent laws were customary law, the Intestate Succession Act 81 of 1987 and the Black Administration Act 38 of 1927.¹⁹⁴ The Court determined that the two formal laws were discriminatory and thus unconstitutional, because they violated multiple sections of the South African Constitution.¹⁹⁵ The court also explicitly declared that customary law is subject to the Constitution.¹⁹⁶ Some argue that this means that the right to maintain one's culture and customary law are subject to the rights of non-discrimination and equality before the law.¹⁹⁷ Ultimately this case is important because it acknowledges and acts upon "the organic nature of the law" while moving an entire country toward accepted international norms.¹⁹⁸ It almost goes without saying that this case was not more complex than the cases from Zimbabwe and India. *Bhe* is clear proof that it is possible to maintain customary and religious law while solidifying the place and importance of a national constitution.

CONCLUSION

Studies in other countries have shown that many women think men are not ready to believe that women can be decision-makers in regard to land.¹⁹⁹ Nonetheless, resolution of this decades old problem requires getting men and women to buy into the idea that women are entitled to equal rights. We should all heed the bold example of South Africa. All developing nations need to ensure that their constitutions not only articulate that women are entitled to equal rights, but also specifically indicate the superiority of the Constitution over other rights, laws or norms. Achieving gender equality in the developing world is important for everyone and will take consideration and input from everyone. Ultimately, we should consider including all the players (men, women, governments and international nonprofit organizations) in the creation of gender equity as we continue to help families and countries sustainably develop themselves.

The severe effects of gender inequality have been clearly presented many times. The potential effects of its achievement are supported by significant evidence of the documented and estimated undocumented contributions of women to the global economy. However, given that many initiatives have not been successful, we must keep pushing forward. Ultimately the economic development of many countries is dependent upon the independence, availability of education and health care, and legal protection of woman and children. To achieve gender equality, an important variable in the economic development of many nations, it is imperative that we bring all the players to the table where power, access and knowledge are distributed to ensure that compromise, not preconceived notions of physical or intellectual capabilities, is the determinant of equitable distribution.

¹⁹³ *Bhe v. Magistrate* 2005 (1) SA 580 (CC) at 593 para. 1.

¹⁹⁴ *Id.*

¹⁹⁵ Berry, *supra* note 141, at 489.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Kimani, *supra* note 36, at 13.

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

“Bill Gates recalled one being invited to speak in Saudi Arabia and finding himself facing a segregated audience. Four-fifths of the listeners were men, on the left. The remaining one-fifth were women, all covered in black cloaks and veils, on the right. A partition separated the two groups. Toward the end, in the question-and-answer session, a member of the audience noted that Saudi Arabia aimed to be one of the Top 10 countries in the world in technology by 2010 and asked if that was realistic. ‘Well, if you’re not fully utilizing half the talent in the country,’ Gates said, ‘you’re not going to get too close to the Top 10.’”²⁰⁰

²⁰⁰ Kristof & WuDunn, *supra* note 3.