

HUMAN RIGHTS, VIOLENCE AGAINST WOMEN, AND ECONOMIC DEVELOPMENT (THE PEOPLE'S REPUBLIC OF CHINA EXPERIENCE)

*Ann D. Jordan**

Human rights instruments and scholarship addressing the issues of violence against women and economic development¹ fail to recognize that mainstream development projects directly impact upon the increasing levels of violence against women in the developing world.² An unstated assumption in these instruments, and in most scholarship, is that economic development is a neutral, even a positive, force for change. Development adherents argue that the Western model of economic development is an a-historical, universal, neutral, and efficacious natural force for improving peoples' well being and raising standards of living. This view has not gone unchallenged. Tinker, for one, has noted that "[p]olicymakers typically define the developmental process in terms of Western rationality and scientific knowledge,' which are culturally limited and yet have been presented as universally valid."³

Nonetheless, until recently, women and men of almost every political and religious affiliation and every social, ethnic, and national/regional group around the world have touted economic development as a panacea for problems confronted by peoples in the developing world. Its proponents in the developed and developing world (mainly the elites) have forcefully

* Lecturer-in-Law, The Chinese University of Hong Kong; Fulbright Professor, Law Department, Jilin University, Changchun, Jilin, P.R. China (1990-91), and Law Department, City University of Hong Kong (1989-90); Columbia University School of Law, J.D.; Columbia University School of General Studies, B.A.

¹ I use the terms 'economic development' and 'development' interchangeably. I recognize that the latter term is used in development literature to refer to the broader means by which change can increase human potential and dignity. However, I have chosen to limit the meaning of the term to economic development in this Article.

² I find the terms 'developing countries,' 'third world,' and 'underdeveloped countries' highly value-laden and fundamentally racist. The terms 'north' and 'south' are not precise and the terms 'east' and 'west' carry colonial connotations. Nonetheless, I have settled for the terms 'developing' and 'developed' in the sense that they express stages of capitalist economic development. I neither use the terms to bifurcate the world into 'advanced' nations and 'backward' nations, nor to infer that the systems under which 'developing countries' operated prior to capitalism were inferior or 'undeveloped.'

³ Charlotte Bunch & Roxanna Carillo, *Feminist Perspectives on Women in Development*, in *Persistent Inequalities: Women and World Development* 75 (Irene Tinker ed., 1990) (citing Sue Ellen Charlton, *Women in Third World Development* 8 (1984)); see also Rosi Braidotti et al., *Women, the Environment and Sustainable Development: Towards a Theoretical Synthesis* 20-24 (1994).

promoted development as a means to pull 'those backward peoples' and countries out of their collective and individual misery and into the twentieth century. They cite economic reform as a precondition to the realization of the rewards of Western-style modernization, and democracy. In this way, economic development, modernization, and democracy emerge as an atheistic trinity. According to the trinity theory adherents, economic reform is the key to transforming authoritarian governments in developing countries into free-market, rights-based democracies. Mainstream development models, trinity adherents assure us, inevitably lead to (Western) modernity, which consists of an educated population with a civic consciousness that demands democratic political reforms. The assumptions underlying the theory have yet to be proven.

This Article focuses on the economic prong of the trinity and attempts to link economic development to the increasing level of violence against women in the developing world. It also recommends changes to international human rights instruments and international lending practices. Additionally, it calls for research specifically targeted to uncover the process by which international development practices lead to acts of violence against women.

The problem is not that violence against women has gone unrecognized in international law. Human rights instruments recognize that violence against women is a violation of women's human rights and that violence against women comes in many forms not previously thought of as criminal, such as sexual harassment and domestic violence. International law also links women's subordinate status within patriarchal societies to acts of violence against women. However, neither international law nor women's rights advocates explore any linkage between economic development and violence against women. Consequently, international human rights instruments concerned with economic development or violence against women fail to mention any possible link between the two. The purpose of this Article is to argue that such a connection does exist and that this lacuna in human rights discourse and law should be remedied.

Part I introduces the major human rights instruments concerned with the human right to development and violence against women. These instruments evidence a conflict between the traditional individual-based definition of the human right to development and the newer 'collective' rights definition which many governments in the developing world prefer. The collective rights framework is especially detrimental to women who are consistently excluded from the collective decision-making process. The instruments that recognize violence against women as a human rights violation do not connect violence against women to development, except to argue that violence against women impedes women's ability to participate

fully in the development process. Both types of human rights instruments implicitly accept the premises of the development branch of the trinity.

Part II builds upon the argument made by others that, despite the dependence of mainstream development upon the labor of women, such development policies are inherently biased against women. Development consistently marginalizes women and assigns them to a permanently subordinate class. Furthermore, the trickle-down and 'catch up' models promoted by mainstream development economists in response to women's complaints are fundamentally flawed. The maldevelopment of trickle-down will not correct initial inequalities in development and marginalized women will be able to realize only limited improvements after reform has passed through the initial stage of redistributing the major sources of, and access to, assets, opportunities and capital.

Part III covers some of the evidence supporting the thesis that increases in, and/or the appearance of, new forms of violence against women are caused by the maldevelopment of mainstream projects and schemes. The interplay of most societies' pre-existing misogynistic social and cultural patterns, cultural beliefs pre-ordaining women to a subordinate status, the creation of a passive female labor force, and the transformation of women during development into 'feminine' commodities in a consumer society create a more dangerous world for many women in the developing world.

Part IV uses the experiences of Chinese women during the period of economic reform since 1979 to illustrate the relationship between development and violence against women in a newly-developing market economy. I chose China for two reasons: one, I am more familiar with the Chinese situation than with that in other countries; two, the rise of violence against women clearly parallels the recent implementation of mainstream economic development. Unfortunately and sadly, I am convinced by the literature and by my personal, admittedly anecdotal, experience with other Asian countries that the situation in China is not unique.

Part V concludes with a call for increased cooperation between development researchers and practitioners and violence against women researchers and practitioners. This Article calls for these groups to work together for changes to the existing human rights instruments relating to development and violence against women. It also calls for international lending organizations and governments to give increased attention to violence against women and development in recipient countries.

Two final comments are in order. This Article is not intended to be read as a condemnation of the *idea* of economic reform or of change in developing countries. Rather, it critiques a particular form (or forms) of top-down economic development that, in many countries, violates women's human rights and contributes to, or indirectly causes, acts of violence against women. Further, this Article should not be read to imply that all

women in all developing countries are disadvantaged by economic reform or that no women will never be able to 'catch up' with men. Many women have indeed benefited from economic reforms; many women in developing countries, including women in China, have more money and better living conditions than before development, and many women have and will overcome sex, class and race barriers. However, at the same time, many more women have realized no benefit from the development process or have seen their condition deteriorate as a result of development. Some women may even have improved living conditions while, at the same time, they may still be unable to avoid physical abuse. I want to understand and speak about the human rights of these women and ask whether their physical abuse is related to the development process.

Secondly, the idea developed in this paper is intentionally unidirectional. My purpose is not to offer any insights into the myriad of ways in which women in developing countries resist oppressive conditions. Neither is it meant to problematize women in developing countries as 'the oppressed' in contrast to some illusory notion of 'liberated' women in developed countries. My intention is rather to address the serious problem of violence against women in developing countries and to highlight what I perceive to be a serious oversight in the human rights discourse—the relationship between top-down mainstream Western development models and violence against women.⁴

I. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS, THE HUMAN RIGHT TO DEVELOPMENT, AND VIOLENCE AGAINST WOMEN

A. The Human Right to Development: Individual or State Right?

Prior to 1986, the human right to development was found primarily in the International Covenant on Economic, Social and Cultural Rights ("ICESCR") and the International Covenant on Civil and Political Rights ("ICCPR").⁵ Both Covenants declare that "[a]ll peoples have the right of

⁴ For an excellent critique of American feminist legal scholarship on women in developing countries, see Vasuki Nesiah, *Toward a Feminist Internationality: A Critique of U.S. Feminist Legal Scholarship*, 16 Harv. Women's L.J. 189 (1993).

⁵ International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) (hereinafter

self-determination" and, consequently, peoples have the right to "freely pursue their economic, social and cultural development."⁶ The ICESCR further sets out a corollary duty of states "to *ensure* the equal right of men and women to the enjoyment of all economic, social and cultural rights."⁷ Thus, states must make sure that men's right to development, among other rights, is no greater than that of women.

The Convention on the Elimination of All Forms of Discrimination Against Women ("Women's Convention")⁸ clarifies the application to women of the human right to development, emphasizing the necessity of governments' consideration of the needs of women in the development process. It states "that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women" and declares that "the full and complete development of a country . . . require[s] the maximum participation of women on equal terms with men in all fields."⁹ States are required to pay particular attention to the situation of rural women and must "*ensure* . . . that [women] participate in and benefit from rural development and, in particular, shall *ensure* to such women the right . . . [t]o participate in the elaboration and implementation of development planning at all levels."¹⁰ States thus have a positive duty to recognize women's individual right to development.

The United Nations General Assembly, in an attempt to clarify further the meaning of the human right to development, adopted the Declaration on the Right to Development ("DRD") in 1986.¹¹ The DRD declares that "[t]he human person is the central subject of development and should be the active participant and beneficiary of the right to development."¹² However, the presence (or absence) of other language supporting an active role for the individual makes it clear that individuals will participate in development only in the latter role of beneficiaries. For example, the DRD

ICESCR); International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (hereinafter ICCPR).

⁶ ICESCR, *supra* note 5, art. 1 §1; ICCPR, *supra* note 5, art. 1 §1.

⁷ ICESCR, *supra* note 5, art. 3 (emphasis added).

⁸ Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature, Dec. 18, 1979, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/180 (1979) (hereinafter Women's Convention).

⁹ *Id.* preamble.

¹⁰ *Id.* art. 14. §2.

¹¹ Declaration on the Right to Development, opened for signature Dec. 4, 1986, U.N. GAOR, 41st Sess., Supp. No. 53, at 186, U.N. Doc. A/41/925 (1986) (hereinafter DRD).

¹² *Id.* art. 2, §1.

proclaims that "[s]tates have the right and the duty to formulate appropriate national development policies,"¹³ but does not grant individuals a *right* to "freely pursue their economic . . . development" as do the ICCPR and the ICESCR.¹⁴ Nor does it require signatory states to *ensure* anyone a right to participate in all stages of the development process. Rather, it merely states that individuals and "all peoples are entitled to participate in, contribute to, and enjoy economic . . . development"¹⁵ and governments "should encourage popular participation."¹⁶ As to women, it simply says that "[e]ffective measures should be undertaken to ensure that women have an active role in the development process."¹⁷ The term "[e]ffective measures" could mean anything from sitting on planning committees to receiving development funds. The latter role is consistent with the DRD's collective rights view of development.

Thus, the DRD shifts the balance of rights away from the individual and toward the state. Where the ICESCR, ICCPR, and Women's Convention are concerned primarily with the rights of individuals to pursue economic, social, and cultural goals, the DRD remolds individuals into passive citizens subject to the dictates of their (male-dominated) governments. Where the ICESCR and the Women's Convention require governments to ensure equality and popular participation in development because people have a right to participate, the DRD recasts the state as the holder of the collective right to development and citizens as beneficiaries of state-created entitlements.

Entitlements are not rights. The state bestows the former upon people while the latter belongs to people naturally at birth. In societies adhering to the individual rights principles found in the ICCPR and ICESCR, entitlements are typically social-welfare benefits granted by the state, such as health care or unemployment insurance, while rights, such as the right to life, political participation, speech, thought, and movement, are the property of individuals and are recognized by and protected in law. The DRD, however, does not raise the right to development to the level of civil and political rights (the so-called first generation rights). For this reason, the human right to development has been called a 'third-generation right' to distinguish it from individual-based rights.¹⁸ The underlying premise

¹³ Id. art. 2, §3.

¹⁴ ICESCR, *supra* note 5, art. 1, §1; ICCPR, *supra* note 5, art. 1, §1.

¹⁵ DRD, *supra* note 11, art. 4, §1.

¹⁶ Id. art. 8, §2.

¹⁷ Id. art. 8, § 1.

¹⁸ Second generation rights, which are individually and communally held rights, are found in the ICESCR.

of the DRD is that governments can and do act objectively and impartially in the best interest of the people. This view renders direct public participation superfluous or redundant, thereby silencing those who are not counted among the elite policymakers. Women are doubly harmed by the DRD; not only are they disempowered generally, but they stand little chance of having their needs incorporated into development by a male-dominated state.

Not all commentators agree with the above interpretation. Paul states that the human right to development is "the 'inalienable *human right*' of peoples affected by 'development processes' to realize existing, universally recognized human rights *in and through 'development processes,'* and it is the duty of those who control these processes to protect and promote those rights."¹⁹ Accordingly, he does not believe that the DRD transforms the human right to development into a collective right. Other scholars agree and argue that the DRD gives individuals the power to resist central governments' attempts to control the development process.²⁰

These authors address the question of what the human right to development *should* be, while I am more interested in understanding what the drafters of the DRD (who are, after all, the ones who actually implement the human right to development) intended the human right to development *to be*. The commentators' positive view of the DRD stems from reliance, in part, upon statements made in the report Global Consultation on the Realization of the Right to Development as a Human Right ("Global Consultation Report").²¹ The Global Consultation Report gives an expansive, individualist, and pro-activist interpretation of the human right to development in the DRD. The most important conclusion in the Report is the reiteration of the rights language of the ICCPR and ICESCR, i.e., that individuals, groups, and peoples have a *right* to participate in all stages of the development process and that governments have a *duty* to democratize the entire process.²² However, the Global Consultation Report was written by a committee composed primarily of non-governmental organizations and academics whose views may not

¹⁹ James C. N. Paul, The Human Right to Development: Its Meaning & Importance, in *Law, Accountability and Development: Theories, Techniques and Agencies of Development* 17, 33 (Third World Legal Studies 1992).

²⁰ Wade Mansell & Joanne Scott, Why Bother About a Right to Development?, 21 *J. of L. & Soc.* 171, 188 (1994).

²¹ The Global Consultation Report, U.N. Commission on Human Rights, 46th Sess., Agenda Item 8, U.N. Doc. E/CN.4/1990/9/Rev.1 (1990). The Global Consultation Report was commissioned by the United Nations Secretary-General at the invitation of the Commission on Human Rights and the Economic and Social Council.

²² *Id.* ¶ 143.

necessarily parallel those of the governments of the developing countries that drafted the DRD. Nonetheless, the Global Consultation Report makes a substantial contribution to our understanding of how the DRD should be, or could be, interpreted, although its usefulness is limited because it does not reflect a consensus of the parties or even of the members who participated in the Global Consultation itself.²³ In principle, I agree with the conclusions contained in the Global Consultation Report about how the human right to development *should* be interpreted, but those conclusions do not recognize the politics imbedded in the DRD.

As previously discussed, I believe the DRD reflects a retreat from the pro-individual rights stance of the ICCPR, ICESCR and the Women's Convention. It is a political tool devised by certain states to deflect criticisms by governments in the developed world (the colonialists and neo-colonialists of the DRD Preamble) of human rights abuses brought about by economic reform in the developing world. The political struggle to control the definition of the human right to development is evidenced by the words of the numerous governments in the developing world that voted against the DRD because of its anti-individualistic stance. For example, the United States expressed concerns that "[r]eferences to the human rights of peoples were inconsistent with the proper concept of human rights as rights of the individual;" the Federal Republic of Germany noted that the DRD "failed to relate the right to development to the individual and feared as a result the erosion of the concept of individual human rights . . .;" and Austria expressed the need for "a clear distinction between the concept of the rights of peoples . . . and that of human rights and fundamental freedoms."²⁴ The dissenters realized that the creation of a 'collective' state-held right to development was an attack on the right of individuals to participate in all stages of the development process and, in this way, was a move to prevent people from realizing their human rights in and through the development process.

China's behavior supports the view that the DRD is a political document aimed at defining a new role for states in the growing global economy. China voted for the DRD even though it has consistently refused to accede to the ICESCR and the ICCPR because the DRD does not recognize the concept of individual human rights contained in the other instruments. If the DRD was intended merely to clarify the meaning of the human right to development, as some claim, then China would not have voted in favor of the DRD because that would be tantamount to accepting

²³ Id. ¶ 142.

²⁴ The United States voted against, while Denmark, Finland, Germany, Sweden, United Kingdom, Japan, Israel and Iceland abstained. 1986 U.N.Y.B., at 719.

the individual rights principles contained in the ICESCR and the ICCPR. The most reasonable interpretation of China's vote for the DRD but against the ICESCR and ICCPR is that the DRD establishes a new international norm favoring the 'collective' over the individual, at least with regard to economic development.²⁵

Despite their fundamental 'rights' language differences, the ICESCR, the Women's Convention and the DRD all share one important assumption: they agree that economic development requires transformation into a Western-style capitalist economy.²⁶ First, technology, scientific knowledge and modern modes of production and distribution are assumed to be the bases upon which economic development rests. For example, the ICESCR envisions a waged-labor economy in which people need "technical and vocational guidance and training programs, policies and techniques to achieve steady economic . . . development."²⁷ It also favors 'scientific' agriculture in which "technical and scientific knowledge" are needed to ensure "efficient development."²⁸ The Women's Convention also envisions societies undergoing transformations that demand new skills and technologies. The DRD's disdain for indigenous modes of production is evident in its call for "[s]ustained action . . . to promote more *rapid* development of developing countries" and "international co-operation" to assure success.²⁹ Implicit in these instruments is the assumption that countries *need* mainstream capitalist development, which further implies that indigenous forms of knowledge and production are somehow deficient. The more pro-grassroots Global Consultation Report, on the other hand, recognizes that 'development' is not a universally-applicable, objectively-defined concept, but rather varies according to the "conditions and needs" of the country.³⁰

²⁵ Another apparent inconsistency in the Chinese view of internationally recognized human rights is China's accession to the Women's Convention, which also has its roots in the ICESCR and the ICCPR. From the Chinese point of view, there is no inconsistency because women's rights are not considered human rights issues. Hosting the Fourth World Conference on Women in 1995 forced the Chinese government to re-examine the issue of women's rights as human rights. It was shocked to discover that it was hosting a human rights conference. Presumably, it was also shocked to discover that the rest of the world considers the Women's Convention to be an important individual rights-based human rights document.

²⁶ The ICCPR does not share similar assumptions because it is concerned with civil and political, not economic rights, although Part I does refer to the people-held right to self-determination and disposal of natural wealth and resources.

²⁷ ICESCR, *supra* note 5, art 6 §2.

²⁸ *Id.* art. 11 §2(a).

²⁹ DRD, *supra* note 11, art. 4 §2 (emphasis added).

³⁰ Global Consultation Report, *supra* note 21, ¶ 21.

Second, the ICCPR, the ICESCR, the Women's Convention, and the DRD all assume that women and men will have to, and want to, compete in a marketplace for access to work, knowledge, and resources, thereby giving short shrift to other possible forms of productive activity. Given this market-oriented framework, they incorrectly assume that women are typically disadvantaged because they are less skilled, less educated, and less experienced than men, while the real source of women's disadvantage can be traced to discriminatory practices. To remedy these shortcomings, the ICESCR and the Women's Convention focus on ways to make women 'more equal' in the commodity economy. They problematize women's skills and experiences and offer solutions for improving women's 'deficits' that are heavily dependent upon state intervention to bring about gender equality in the job market. They also emphasize strategies to improve women's rights within the economy, such as equal employment opportunities in hiring, training and promotion and equal pay for equal work.³¹ At the same time, they take the special rights position that recognition of the needs of pregnant and nursing mothers is "special protection"³² rather than simply recognition of a human need. They call for equality but continue to accept the male as the norm in the labor market force and view women solely through the economic development lens. Women are expected to willingly reorganize their lives to fit into the industrial wage labor model of development. The model of men as skilled workers and women as unskilled workers in need of 'special' treatment infuses the entire discourse of mainstream development.

In sum, the human right to development is interpreted as a state's right. Women's right to development is reduced to an entitlement defined by male-dominated governments. The male bias in development remains unchallenged in international law, and international human rights law constructs an 'international woman' who must remake herself as a worker in the global market economy.

B. Inadequate Human Rights Definition of, and Responses to, Problems of Violence Against Women.

Early human rights instruments addressing women's rights focused on women's vulnerability to harm in the public sphere, such as trafficking and

³¹ *Id.* art. 7; Women's Convention, *supra* note 8, art. 11.

³² ICESCR, *supra* note 5, art. 10 §2; Women's Convention, *supra* note 8, art. 11 §2(d) (does not stigmatize maternity leave as special treatment but does call for "special protection of women during pregnancy.").

work conditions considered dangerous to women's reproductive function.³³ More recent human rights instruments recognize that violence against women occurs in the public and in the private spheres. The women's movement, through activism and scholarship, has brought forth new knowledge informing our understanding of the human rights implications of violence against women. Out of this struggle, two important new international human rights instruments were created. The first is the Women's Convention which, taking the Universal Declaration of Human Rights³⁴ as its basis, was adopted by the United Nations General Assembly in 1979. It reaffirms the earlier recognition that "traffic of women and exploitation of prostitution of women" is a violation of women's human rights that must be suppressed.³⁵ It implicitly recognizes that discrimination can lead to violence against women in the family and in health matters. For example, article 12 on health can be interpreted to include, e.g., female genital mutilation, and article 16 on marriage and family can be interpreted to cover, e.g., spouse or partner abuse. The Women's Convention further distinguishes between (nonconsensual) forced prostitution, which it condemns, and consensual prostitution, which it does not mention. It does not specifically name any other forms of violence against women.

The 1985 Nairobi Forward-Looking Strategies brought the need for a broader definition of violence against women to the forefront.³⁶ The momentum generated at Nairobi culminated in 1992 with a new definition of violence against women. The Women's Convention Committee (also known as CEDAW), which reviews states' reports on measures taken to implement the Women's Convention, adopted a General Recommendation entitled "Violence Against Women" (the "General Recommendation").³⁷ The General Recommendation defines gender-based violence as "violence that is directed against a woman because she is a woman or that affects women disproportionately."³⁸ It recognizes that gender-based violence can

³³ See, e.g., Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, opened for signature Mar. 21, 1950, 96 U.N.T.S. 271 (1951).

³⁴ Adopted and proclaimed by the United Nations General Assembly resolution 217(III) A, Dec. 10, 1948.

³⁵ Women's Convention, *supra* note 8, art 6.

³⁶ Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, July 15-26, 1985, U.N. Doc. A/Conf.116/28/Rev.1, ch. 1, § A, ¶ 288 (1985).

³⁷ General Recommendation No. 19 (11th Sess.), Report of the Committee on the Elimination of Discrimination Against Women, U.N. GAOR, 47th Sess., Supp. No. 38, U.N. Doc. A/47/38 (1993).

³⁸ *Id.* ¶ 6.

be perpetuated by public and private acts³⁹ and calls for states to take "appropriate measures to eliminate discrimination against women by any person, organization or enterprise."⁴⁰ It also recognizes a relationship between poverty and unemployment, between trafficking in women and prostitution⁴¹ and between inequality in the workplace and sexual harassment.⁴² Moreover, it touches upon the "special risk" that rural girls and women face when they migrate to find work in towns.⁴³ Unfortunately, it continues the distinction between forced and consensual prostitution, implying that purportedly consensual prostitution is not a women's rights issue. Nonetheless, the General Recommendation represents a tremendous step forward as it is the broadest declaration to date on the public and private forms of violence against women. It is also the most important document linking violence against women to the economy.

Although the General Recommendation recognizes that violence against women can occur at the hands of the state or an individual, in fact, it implicitly limits violence against women to acts done by individuals. All of the specific forms of violence against women enumerated in it are perpetuated by individuals, such as trafficking, sexual exploitation, sexual harassment, rape and family violence. Even the neutral way it speaks of violence against women in the section on "wars, armed conflicts, [and] occupation of territories"⁴⁴ implies that individuals, not states, are at fault. It limits the state's role to punishing private perpetrators and eradicating the traditional attitudes, customs and practices that perpetuate violence against women. Inherent in this approach is the view that states are only capable of violating human rights through acts by legal representatives, such as the police, the military, the courts, or the laws, and that acts of gender-based violence against women are private acts, done by individuals without state encouragement, direction, or support.

Consequently, the General Recommendation calls upon states to provide legal protection for women,⁴⁵ to compile statistics and engage in research on the "extent, causes and effects of violence,"⁴⁶ and to take steps to overcome existing attitudes and practices that discriminate against

³⁹ Id. ¶ 9.

⁴⁰ Id. ¶ 9.

⁴¹ Id. ¶ 14-15.

⁴² Id. ¶ 17.

⁴³ Id. ¶ 21.

⁴⁴ Id. ¶ 16.

⁴⁵ Id. ¶ 24(b).

⁴⁶ Id. ¶ 24(c).

women.⁴⁷ The section calling for research on causes of violence theoretically could require states to investigate their economic development strategies as a possible cause of violence against women. However, given the focus on individual actors, a clearer statement is needed on the scope of the research that states are required to carry out. The General Recommendation also requires state parties to report on the nature and extent of gender-based violence, the steps taken to eliminate violence, and the effectiveness of such steps.⁴⁸

The General Recommendation does not require states to report on their own role in perpetuating or promoting violence against women. For example, although it states that "poverty and unemployment increase opportunities for trafficking in women"⁴⁹ and that poverty and unemployment also "force many women, including young girls, into prostitution,"⁵⁰ it does not require signatory states to report on how the structure of their economic policies might throw a disproportionate number of women into poverty or bestow upon men a privileged financial status enabling them to become purchasers and abusers of women's bodies. Such a reporting requirement may be implicit but, given the emphasis in the General Recommendation on gender-based violence done by individuals, it is unlikely that the "causes" envisioned by the CEDAW (or any signatory states) include the superficially neutral economic policies of signatory states. The core of the states parties' obligation, then, is to prevent and deal with the *phenomenon* of violence against women rather than with the *causes* (other than social, cultural or traditional sources) of violence against women.

The second international instrument to expand the definition of violence against women as a human rights violation is the Declaration on the Elimination of Violence Against Women (the "Violence Against Women Declaration"), which was adopted by the United Nations General Assembly in 1993.⁵¹ It states that any violence directed exclusively at women or female children is a human rights violation. Violence against women "is an obstacle to the achievement of equality, development and peace," and a violation of women's "rights and fundamental freedoms."⁵² This includes both individual acts of violence against women and "[p]hysical, sexual and

⁴⁷ Id. ¶ 24(f).

⁴⁸ Id. ¶ 24(e).

⁴⁹ Id. ¶ 14.

⁵⁰ Id. ¶ 15.

⁵¹ U.N. Gen. Assembly, 48th Sess., Agenda Item 111, Feb. 23, 1994, U.N. Doc. A/RES/48/104 (1994).

⁵² Id. preamble.

psychological violence perpetrated or condoned by the state.”⁵³ This latter phrase presumably refers to the traditional state violations of civil and political rights and state support for cultural, religious or traditional practices that harm women. It does not implicate economic policies in any way. Accordingly, it charges states with a duty to *protect* women from violence and to adopt educational strategies to change patterns of social, cultural and religious practices that are harmful to women. There is no mention of any economic basis for violence against women. The emphasis is on education, prevention and punishment while “research on the causes . . . of violence against women” is also encouraged.⁵⁴ This research would not include any investigation into development strategies because the Declaration language assumes that development is beneficial. For example, one aim is to eliminate misogynist cultural, social, and traditional practices in order to facilitate women’s integration into mainstream development, based on the assumption that integration is what women all want and need. In any event, the Declaration is not a legally binding instrument; it is hortative in nature and so states are not bound to do anything.

The Women’s Convention, the General Recommendation, and the Violence Against Women Declaration do not link violence against women to development because their authors all mistakenly named the sources of violence against women before thorough investigations had been carried out to discover the actual sources. For example, the instruments effectively eliminate a state’s economic policies from consideration as a ‘cause’ of violence against all women because they name the sources (discriminatory cultural, social and traditional practices) without asking whether eliminating these practices alone will end violence against women.⁵⁵ They also divide prostitution into two categories, coerced and non-coerced, when most of the so-called consensual prostitution is, in fact, economically coerced and not truly ‘freely’ given. The assumption in the three instruments is that a woman who is forced by poverty to ‘consent’ to sex for money is

⁵³ Id. art. 2(c).

⁵⁴ Id. art. 4(k). The same approach was adopted in the Vienna Declaration and Programme of Action at the U.N. World Conference on Human Rights, 32 I.L.M. 1661 ¶ 38 (1993), and by the Organization of American States in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 33 I.L.M. 1536–7, arts. 7,8 (1994).

⁵⁵ The Platform for Action, which was adopted at the 1995 World Conference on Women, makes the same assumption: “Violence against women . . . derives essentially from cultural patterns; in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetuate the lower status accorded to women in the family, the workplace, the community and society.” United Nations Fourth World Conference on Women, Beijing, China (Oct. 17, 1995), art. 118, U.N. Doc. A/CONF.177/20, available at gopher://gopher.undp.org:70/00/undocs/gad/A/CONF.177/95_11/20.

voluntarily entering into a valid contract. As a result, 'consensual' prostitution is not recognized as a human rights issue.

I do not accept that interpretation because I believe there is a connection between the view that contract-based economic policy is a neutral and beneficial force and the view that 'consensual' prostitution is not a form of violence against women. Fundamental to capitalism is the notion that individuals have a right to, and the ability to, enter into contracts to dispose of their services and properties as they wish (within certain parameters). Consensual prostitution is viewed as just another type of economic contract, albeit for sexual services. Some feminists condemn this view and consider all prostitution degrading to women, sexually exploitative, and, therefore, a violation of women's human rights.⁵⁶ I do not agree that all prostitution violates women's human rights or even that all prostitution constitutes violence against women because it is possible, in a nondiscriminatory and just society, to find women (or men) who choose to perform commercial sex work just as other women might choose a career in construction or medicine. However, as we live in a patriarchal world in which most commercial sex workers are poor women who have limited choices, their acts of selling sexual services to rich, middle- and working-class men who have more economic opportunities and power must be viewed as a form of violence against women. The way in which mainstream economic models of development bring or force women into the commercial sex industry and expose them to other forms of violence is discussed more fully in Part III.

Furthermore, unlike the drafters of the above instruments, I include the inhuman and dangerous conditions under which many women in developing countries are forced to work as a form of violence against women. Those women also entered into contracts, which hides the violence of development behind language about workers' rights. For example, the Women's Convention merely states that women to have the "right to protection of health and to safety in working conditions,"⁵⁷ which does not really bring the violent nature of women's integration to the fore. It should be asking why women submit to inhumane working hours, prison-like and physically assaultive working conditions, and exploitatively low wages in the first place.

The Women's Convention, the General Recommendation, and the Violence Against Women Declaration, in focusing exclusively on individual *acts* of violence against women, not only assume, but also reinforce the

⁵⁶ See, e.g., Kathleen Barry, *The Penn State Report—International Meeting of Experts on Sexual Exploitation, Violence, and Prostitution* (1991); Catherine A. MacKinnon, *Toward a Feminist Theory of the State* (1989).

⁵⁷ Women's Convention, *supra* note 8, art.11 §1(f).

view that the causes of violence against women are the result of existing social, cultural, and religious practices. The causes, in other words, are relics of a non-modern past and the solution is modernization. Furthermore, traditional mainstream human rights discourse includes only state-sanctioned or state-sponsored violations of political and civil rights (e.g., torture, arbitrary arrest), such as those found in the ICCPR.⁵⁸ The notion that a state not engaging in such practices could still be accused of state-sponsored violence arising from economic policies and practices would certainly be repugnant to most state leaders, especially those who believe in the neutrality and objectivity of the development-modernity-democracy trinity. However, as human rights practitioners continue to broaden the definition of human rights, they should not hesitate to shift their focus to the gender-specific damage caused by the headlong rush of developing countries to modernize.

II. MAINSTREAM DEVELOPMENT, MALE PRIVILEGE, AND MARGINALIZED WOMEN

A. A Mainstream Model of Capitalist Development and Male Privilege

The model for economic change that most developing countries have adopted is one that was created by the developed world for its own benefit. Since the collapse of colonialism, Western countries have lost the ability to have unimpeded access to the wealth of their former colonies. The former colonizers, however, have replaced force with markets as a way to continue this source of raw materialism and cheap labor. This 'neocolonialism' of the developing world is accomplished with the aid of international trade and lending institutions, such as the World Trade Organization, the World Bank and the International Monetary Fund, which dictate international trade policies as well as heavily influencing and sometimes dictating domestic trade policies. At the micro level, neocolonialism is implemented by large multinational corporations and small foreign corporations that dictate

⁵⁸ For a discussion of the failure of mainstream human rights discourse to deal with violations of women's human rights, see Andrew Byrnes, *Women, Feminism and International Human Rights Law—Methodological Myopia, Fundamental Flaws or Meaningful Marginalization?* *Some Current Issues*, 12 *Austl. Y.B. Int'l L.* 205 (1992).

investment conditions to governments and businesses in developing countries.

The major demands the institutions and businesses make upon developing countries are unimpeded market access, a pro-business legal system, free trade, a compliant low-wage workforce, and minimal governmental interference. The Chinese, for example, responded to these, and other demands, by providing multinational corporations with access to age-old tools of capital accumulation, such as worker exploitation and minimal or no social welfare benefits, despite laws to the contrary.⁵⁹ Most developing countries have to respond in a similar fashion to avoid losing investments and loans to other developing countries with more compliant governments. Additionally, governments need to assure the rapid transformation of agricultural and rural peoples into industrial laborers, the movement of unskilled and semi-skilled people to core industrialized regions that are close to the major national and international transportation links, the mass production of apparel, toys, electronics, and cheap goods, and the availability of an abundant, compliant, and cheap labor force composed primarily of young, unmarried women.⁶⁰ Governments must also actively promote the creation of a consumer society so there will be markets for the domestic and imported goods. Last, foreign companies depend upon the power of authoritarian governments that are more eager to cater to the demands of business interests than to serve the interests of the people for enforcement of the development plan. The mainstream model, then, is dictated from the top down, which is consistent with the 'collective right to development' view of the DRD.

Numerous scholars criticize this development model as well as the international development agencies and influential governments in the developed world that promote them. They argue that the model is class biased and does not inevitably lead to a higher standard of living for all, or even for most, people. As Drèze and Sen point out, despite the appearance of economic development in the developing world, the existence of persistent hunger during boom periods ("boom famine"), the transformation of previously self-sufficient people into vulnerable groups during periods of expanding market economies, and the tenuous existence of landless wage

⁵⁹ Hinton, I believe correctly, calls this decision to apply capitalist techniques to boost economic output a "counterrevolution" rather than a mere "reform" because the scope and depth of the changes are truly revolutionary, long-lasting, and profoundly destructive of the socialist state. William Hinton, *The Great Reversal: The Privatization of China, 1978-1989*, 11 n.* (1990).

⁶⁰ See, e.g., Gay Young, *Women, Development and Human Rights: Issues in Integrated Transnational Production*, 20 *J. App'd Behav'l Sci.* 383, 387-89 (1984).

laborers all stand as witnesses to the uneven effects of development.⁶¹ One explanation for this somewhat counter-intuitive situation can be found in the observations by Donnelly (and others) that economic development plans reflect decisions that are made, consciously or not, about which social values will be allowed to emerge, survive, and flourish during and after the development process, and about which sectors of society will be the primary beneficiaries of the plan's inevitable redistribution of a nation's wealth.⁶²

Markets . . . are a social product; neither they nor the inequality they engender are [sic] 'natural.' The distribution of income and wealth in a country rests on structural features of the state, society, and economy that are in large measure susceptible to political control. Distributional issues thus cannot be avoided in development planning; in fact, important distributional decisions will be made, whether consciously or unconsciously, in any development strategy.⁶³

Therefore, governments that unreservedly accept imported development policies also risk importing the values and the gender, race and class structures that are imbedded in the foreign model. Those values need not bring with them new constructs of gender, race or class; they may instead reinforce and strengthen the existing sexist, racist, and/or classist views held by the indigenous elite.

Foreign values will most easily find their way into development if they privilege the elite. In the absence of democratic institutions, and in the presence of an elite that insists on exercising a collective right to development, the governing elite in developing countries alone has the power to determine (consciously or not) the new forms of social and economic relations that will emerge out of the transition to a market economy. This elite always has a vested interest in perpetuating its own privileged status and, therefore, has a strong incentive to create an environment in which its members will be the primary beneficiaries of reform. This bourgeoisie is not interested in questioning the values implicit in the foreign model if it believes that it will benefit by them. Even elites who attempt to 'localize' the development strategy will not, as history has shown, bequeath an equal share of the new wealth upon the masses, let alone upon women. Localization will more likely take the form of an anti-

⁶¹ Jean Drèze & Amartya Sen, *Hunger and Public Action* 4-6 (1989).

⁶² Jack Donnelly, *Human Rights and Development: Complementary or Competing Concerns?*, 36 *World Pol.* 254 (1984).

⁶³ *Id.* at 275-76.

democratic consolidation of the government's power over development policy and the fruits of development.

Law is used to promote and protect the economic advantages of the ruling class both at the international level (such as the collective right to development in the DRD) and at the local level (such as property and contract laws). Seidman criticizes law as "part of the problem" in the new world order where "poverty and powerlessness" reign.⁶⁴ He notes that former populists who attain political power have successfully used laws to consolidate and strengthen their position in the new market economy as the new "bureaucratic" bourgeoisie.⁶⁵ For this reason, the international community must avoid becoming an accomplice to the new politics of economic authoritarianism and reject the DRD's collective rights stance.

The selfishness and class bias of China's elite is evident in China's state-created development model. The male-dominated Chinese Communist Party ("CCP") and the central government (with Deng Xiaoping's guiding hand) are the sole architects of China's transformation from a socialist economy to a socialist-market economy. Since 1979, they have transformed the Chinese citizenry from subjects acting to bring about a workers' state into the objects of reform. While pre-1979 economic policies in China were more often destructive rather than constructive, most Chinese people were at least minimally fed, clothed, and housed under the old 'low wages and high employment rate' policy, which guaranteed every able-bodied adult a job. Those socialist policies were abandoned under reform. Workers have lost their privileged status as the masters of the state; reform has reduced them to the status of commodities—a source of cheap labor—and the means of realizing economic transformation.⁶⁶ China is now a country in which each person looks after her or his own interests, without the state's protection or assistance.⁶⁷ Development also means that the country's wealth no longer belongs to the citizenry because the new

⁶⁴ Robert B. Seidman, *The Fatal Race: Law-making and the Implementation of Development Goals*, in *Law, Accountability and Development: Theories, Techniques and Agencies of Development* 79, 80–81 (Third World Legal Studies 1992).

⁶⁵ *Id.* at 91.

⁶⁶ "If the cultural logic of late capitalism in the West is postmodern fragmentation, the overriding logic of Chinese capitalism seems to be the market convertibility of the Chinese population, workers, and products to global capitalist norms of production and consumption." Aihwa Ong, *Engendering Cantonese Modernity: Social Imaginary & Public Culture in Southern China* 19 (June 22–26, 1992) (unpublished manuscript, presented at the U. Cal. Pac. Rim Conf.: Comparative Perspectives on Women, the State and Industrial Restructuring in East China) (citation omitted).

⁶⁷ In the blunt words of a peasant: "With this reform the Communist Party has shrugged off the burden of the peasantry. From now on, fuck your mother, if you get left behind blame yourself." Hinton, *supra* note 59, at 16.

privileged class is rapidly amassing state-owned assets. Hinton calls this wholesale transfer of China's collective assets to "people with influence and connections" one of the largest rip-offs in history because those state (public, in the socialist sense) assets are becoming the personal assets of an elite at scandalously low prices.⁶⁸ Members of the elite, so far, show no willingness to share the wealth with those impoverished by reform. If anything, they are becoming more unrepentently selfish day by day.

B. Sexism and Racism in Mainstream Development

In today's China, women are increasingly excluded from the development process and, consequently, form a new disadvantaged class. This result was entirely predictable; women in most developing countries undergo the same transformation. Boserup was the first to record this phenomenon and to provide an empirical and descriptive insight into the negative effects of economic reform upon women in developing countries.⁶⁹ In a multi-country study, she identified several patterns of women's participation in development, with one finding consistent across all cultures and within different capitalist economic reform strategies: women attain low levels of participation in the early stages of economic development and are able only at the later stages to improve their status.⁷⁰ Her research revealed the dramatically negative effect that mainstream economic development projects have on women in developing countries:

[W]hen home industries and market trade are replaced by modern forms of industry and trade . . . it was usually the men who were recruited for these modern activities, while women tended to be left behind in the traditional activities. . . . Economic progress benefits men as wage earners in the modern sector, while the position of women is left unchanged, and even deteriorates when competition from the growing modern sectors eliminates the traditional enterprises carried on by women.⁷¹

⁶⁸ Id. at 150. He is speaking of the distribution of the assets of the rural collectives but the same could be said of the transfer of urban industries to the well-connected and powerful elite who now run them as if the businesses were their private property.

⁶⁹ Ester Boserup, *Woman's Role in Economic Development* (1970).

⁷⁰ This finding was subsequently confirmed in a 70-nation study. "During expansion of industrial work [which is the main type of work in modern economic development projects], the labor force is so dominated by men and demand for women is so low that few if any other variables affect" the female labor force participation rate. Fred Pampel & Kazuko Tanaka, *Economic Development and Female Labor Force Participation: A Reconsideration*, 64 Soc. Forces 599, 614 (1986).

⁷¹ Boserup, *supra* note 69, at 139.

Her findings reveal that mainstream development policies, such as those favored by companies setting up shop in the developing world and promoted by governments and multinational corporations in the developed world, privilege men in the areas that matter under capitalism—jobs and money—while they force women into the non-cash or low-cash activities such as agriculture, animal husbandry, and home industries.

As others have pointed out, a major shortcoming of Boserup's research was her failure to develop any theoretical perspective on the data she collected.⁷² Further, she implicitly accepted the Western capitalist form of economic development as a given and as preferable to indigenous forms of economic activities or other models of development. Consequently, Boserup failed to ask whether women's uniformly disadvantaged position was due to universal gender bias in development or to some more particularized, localized social practices or cultural factors. For example, she did not ask why such similar cross-cultural responses to economic development occurred or what happened to women when faced with a deteriorating social status and economic dependence. Her research contains some hints. She noted that economic development normally involves industrialization in urban locations which forces rural women to move far away from home to find work. She also noted that many of those who cannot find work in the formal sector turned to prostitution.⁷³ She also found that in cultures where women take care of the family and the crops, women are necessarily excluded from participation in the new economy. However, she failed to link these observations to patriarchal strategies.

Instead of looking for structural impediments to women's participation, Boserup assumed that lack of skills and low rates of literacy caused women's low rates of participation in development. There is, of course, some truth to the argument that illiterate and unskilled workers (female or male) are less desirable workers. However, Boserup did not ask whether men with similar skills and educational levels were similarly disadvantaged, nor did she ask whether the economic development plan itself might include a strategy to *exclude* women or to shift women to low-paying, unskilled, and dangerous work. The blame-the-victim perspective, while having some value in certain circumstances, shifts attention away from any investigation into other causes. Additionally, by focusing on women's shortcomings, Boserup neglected to ask whether development creates an environment in

⁷² See, e.g., Noeleen Heyzer, *Working Women in South-East Asia: Development, Subordination and Emancipation* (1986); Lourdes Beneria & Amartya Sen, *Accumulation, Reproduction, and Women's Role in Economic Development: Boserup Revisited*, 7 *Signs* 280 (1981).

⁷³ Boserup, *supra* note 69, at 99–101.

which women are rendered vulnerable to abuse. In sum, Boserup's work left many tantalizing questions unanswered.

As a result of Boserup's ground-breaking work, the field of women in development arose to address the unanswered questions. The views of early women in development experts did not differ significantly from those of Boserup. The experts believed the problem stemmed from women's exclusion from the development process, rather than from development itself. As a result, they argued for women's inclusion in development projects, taking the traditional liberal feminist approach to equality that there is nothing inherently wrong with the system (here, of development), but its flaws need correcting. The result has been mixed; more attention has been paid to women's role in development, but liberalism's unquestioned belief in Western models of development has only limited the scope and impact of the change. Governments and agencies in charge of large development projects continue to ignore women's needs or to listen to women's ideas. Instead of incorporating women into the projects, agencies like the World Bank continue to divert women into numerous 'specialized' programs that provide small-scale traditionally feminine forms of work, such as home-based production.⁷⁴ Women in development's preoccupation with getting women greater access to development projects has also foreclosed investigations into the deeper issues concerning the institutionalized, entrenched bias that is now known to exist in development planning and programs.

Researchers dissatisfied with the limited impact of the women in development model took a more radical approach, creating the gender and development model. This model asks fundamental questions about how and why development harms women and how development responds to the needs of patriarchal capitalism.

Contrary to Boserup's implications, the problem for women is not only the lack of participation in this process as equal partners with men; it is a system that generates and intensifies inequalities, making use of existing gender hierarchies to place women in subordinate positions at each different level of interaction between class and gender.⁷⁵

Gender and development proponents reject institutional responses that problematize women. Instead, they call for the transformation of

⁷⁴ See Jane L. Parpart, Who is the "Other"?: A Postmodern Feminist Critique of Women and Development Theory and Practice, 24 *Dev. & Change* 439, 452 (1993); Katarina Tomasevski, Women-in-Development Cooperation: A Human Rights Perspective, 6 *SIM Newsletter: Neth. Q. Hum. Rts.* 29, 49-50 (1988).

⁷⁵ Benería & Sen, *supra* note 72, at 290.

mainstream development models into ones that include women on an equal basis with men.

However, gender and development proponents have not escaped criticism as they also operate within the mainstream development paradigm. They have been criticized for being simply another proposal to modify mainstream economic development theory and practice rather than a challenge to the nature of development itself.⁷⁶ Like women in development advocates, gender and development proponents accept the core premises of mainstream development, such as that peoples outside the developed world are backward, that the Western development model is universally applicable, and that the ultimate goal of development is modernization and Western-style democracy. It is true that gender and development advocates insist upon the inclusion of a different voice into mainstream development and that this voice takes equality as its guiding principle; however, it is still only another voice within the dominant development paradigm.

Nonetheless, gender and development proposals, despite their limitations, could result in a bottom-up development strategy that would be more capable than the present development models of being gender-sensitive. Gender and development proponents have identified institutionalized sexism as the source of women's second-class status. They take note of the power that the all-male leadership of governments, multinational corporations, and international lending and development institutions, such as the World Bank and the International Monetary Fund, have to control development policy in the developing world.⁷⁷ They also identify resistance of the male-led regional and local-level governments to women's participation in development. They recognize that men view the world from the male perspective and act according to their own male (and race and class) experience within it. This male bias makes men naturally more comfortable with development strategies that recreate their own gender, race, and class expectations than with dissonant models created by women (or people with different class or racial/ethnic backgrounds). Furthermore, as most men and women are raised to believe that a genetic basis exists for the sexual division of labor, the male managers and leaders in charge of development policy and implementation are arguably more likely to support mainstream development projects that recreate and support those firmly-held, supposedly scientific, beliefs.

⁷⁶ See, e.g., Parpart, *supra* note 74, at 452.

⁷⁷ "While no systematic data have been collected, it is estimated that only 5 or 10 percent of development experts are women." Katarina Tomasevski, *Development Aid and Human Rights Revisited* 193 (1993) (citations omitted).

The elite group of decision-making males, most of whom can afford to have a non-working wife, are more likely to assume, for example, that it is natural to create development strategies around men's needs because if men benefit and prosper, then women and children will also benefit and prosper. Unfortunately, this view is out of touch with the reality of the developing world where women, and even children, work in order to survive. Gender and development feminists argue that the only way to change this bias is to have more women in positions of authority over policymaking and implementation. Although attempts have been made over the last fifteen years to bring more women into positions of responsibility in development agencies, an equal commitment by governments in the developing world is lacking. Consequently, the results of female-needs policies developed at the institutional level are often met with resistance at the national and local levels.

Racism also plays a role in the subordination of women in mainstream development. Parpart attacks mainstream development strategies as a hegemonic force imposed upon developing countries in an attempt to displace local cultural mores and traditions.⁷⁸ Development planners from the developed world are often uninformed about the role of women in the developing world and view them as inferior and in need of improvement to overcome their 'natural' tendency to be lazy, submissive, and passive. Parpart sees imbedded in Western-dominated strategies (and in women in development discourse in general) a view of "Third World women as helpless victims trapped by tradition and incompetence in an endless cycle of poverty and despair."⁷⁹ The solution, she notes, has been the 'development' of non-western women into becoming "more western, more modern, not challenging that worldview."⁸⁰ According to Parpart, development's failure to benefit women stems from a paternalistic/maternalistic and racist plan to elevate 'Third World women' out of their lowly status as subservient, passive victims into compliant (in the sense of appreciating the opportunities offered by development) and independent (in the Western sense of self-sufficient) Western-style women. Until 'those' women become modern women, mainstream development strategists will continue to treat them as an exploitable labor force.

The men who control China's development policy exhibit similar biases against women. One aspect of China's push to create an efficient market-oriented economy is the forced return of millions of women to the hearth as state sector industries are downsized and labor is 'rationalized.' The

⁷⁸ Parpart, *supra* note 74.

⁷⁹ *Id.* at 451.

⁸⁰ *Id.* at 449.

majority of those laid off in the secure, better paid state sector are women.⁸¹ In addition, racism works hand in hand with classism in China to women's disadvantage. Members of the political and intellectual elite in China frequently express classist views about the 'backwardness' of their own rural or ethnic populations and are more than willing to treat the uneducated poor women of their own country as a source of cheap, exploitable labor. They are willing to accommodate the demands of foreign companies (including Hong Kong and Taiwanese companies) for a compliant, passive, subservient female workforce. This behavior reveals the complementarity of racism, sexism, and classism in the development process. It trebly disadvantages women who are harmed by racist foreigners who demand the right to low wages, a malleable, perhaps exotic, and powerless female workforce, by the sexist male-dominated Chinese government's protection of the 'male right' to work, and by the classist Chinese elite in Hong Kong, Taiwan, and China who feel they have a right to exploit 'backward' working-class and peasant Chinese women. China is hardly unique; the male-dominated governments and businesses of most other developing countries have entered into similar spoken or unspoken agreements with domestic and foreign businesses.

The tragedy of the sexist, racist, and classist view that poor, illiterate women are unworthy is that it dismisses any notion that 'those' women had any meaningful existence or engaged in any valuable economic activities prior to development. It also fails to acknowledge the voices, opinions, and needs of 'those' women and the genuinely useful and necessary contributions 'those' women make to society. Instead, the indigenous male elite, supported by foreign institutions and businesses, imposes change and modernization upon all women with the wishful promise that development will eventually improve their sad and unworthy lives.

C. Trickle-Down Economics and Women's Permanently Marginalized Status

The standard argument made by mainstream development proponents in rebuttal to the accumulated evidence of the negative effects of development on women is that women will eventually 'catch up' with men as the economy expands and reform deepens. However, trickle-down economics is fundamentally flawed and unattainable in reality. Contrary to

⁸¹ See, e.g., Stanley Rosen, *Women and Reform, China News Analysis*, Jan. 15, 1993, at 1, 4-5 (depending on job sector, 21% to 80% of women workers were classified as redundant).

the theoretical promise of a trickle-down of wealth to the poor, economic modernization in developing countries has proven the opposite to be true.

First, the trickle-down theory is used to support the 'equality tradeoff' form of development. The tradeoff involved is the suspension of certain human rights (such as the individual human right to development and women's equality rights) for the purpose of *creating* a 'temporary' state of inequality. Inequality, then, is an integral component of development, a "contributor to, rather than just an unavoidable consequence of, development."⁸² The tradeoff model is premised on the assumption that poverty permits capital to accumulate in the hands of a few who will invest the excess capital, thereby creating new jobs that will trickle down wealth to more people in the form of wages.

Models based on trickle-down and inequality typically lead quickly to the creation or expansion of class distinctions in which a few benefit and the majority see no change or a deterioration in their standard of living. Trickle-down does not later lead to egalitarian redistributions of wealth.

What is clear is that it is the initial distribution of assets which sets the pattern of growth. If asset distribution is unequal, it is probable that the additions to income from growth will be distributed unequally. It is for this reason that egalitarian growth requires that the initial distribution of assets be relatively equal.⁸³

Most mainstream development models are based on trickle-down to varying degrees. Those harmed at the outset must hope that wealth will trickle down to them once the economy 'takes off.' However, trickle-down does not occur as the newly wealthy, predominantly male, elites all over the developing world have shown themselves to be exceedingly unwilling to condone or promote any dramatic shifts of wealth, even when the economy has room for greater participation and wealth-sharing. Brazil is a particularly brutal example of the selfishness of an intransigent elite. For this reason, Donnelly derides the trickle-down theory for being unrealistic. "Quite aside from its political naiveté, such a [growth first] strategy ignores the extremely strong, probably overwhelmingly, resistance to *ex post facto* income redistribution."⁸⁴ Trickle-down might be a workable theory in a world dominated by saints, but it is an impractical one in the real world full of sinners or, at best, selfish opportunists.

⁸² Donnelly, *supra* note 62, at 257.

⁸³ Keith Griffin & Jeffrey James, *The Transition to Egalitarian Development* 7 (1981).

⁸⁴ Donnelly, *supra* note 62, at 276.

The non-trickle-down of wealth under the equality tradeoff model not only creates a new class society, it also ensures women a permanently marginalized status.⁸⁵ There are, of course, men who suffer as much as women and some women who are privileged during reform. Nonetheless, as a general rule, mainstream development strategies privilege men as the major beneficiaries of development and devalue women as those most marginalized by development. Boserup and others have revealed the sex bias of development, and Donnelly has exposed the class bias of development.⁸⁶ The implication of Donnelly's research for women is that even though Boserup found women's status rises at later stages of development, women will still find it exceedingly difficult to rise to the same status as men within their own economic and social class, let alone move into a higher socio-economic class. This is because the lion's share of the nation's wealth and opportunities is transferred at the outset of reform to men at all socio-economic levels. Thus, most women in the developing world (and, indeed, most women in the developed world) are unable to 'catch up' with men, no matter how hard they try. Whether as members of the working class, professional class, or another class, women can, at most, improve their status within their class. Only rarely will they be able to move up to a level that is equal to, or exceeds, that of men in the same class.

The elite in developing countries, nonetheless, advocates equality tradeoff and trickle-down as a means of curing the serious problems of poverty in their countries. For example, the Thai elite continues to argue that trickle-down will solve the problems of violence against women, such as prostitution. Equality tradeoff and trickle-down theories are elite strategies aided and supported by the DRD's collective right to development stance. It is difficult to imagine working-class and peasant peoples voluntarily agreeing to a 'temporary' state of poverty in order to permit a minority to gain control of the majority of the newly-created wealth.

China's elite similarly justifies its accumulation of wealth by saying that 'some must get rich first' (by which they mean themselves) and that the poor will benefit later on (the trickle-down model).⁸⁷ The main

⁸⁵ In the city-states of Singapore and Hong Kong, most women have benefited from development, but they are exceptions to the rule. Hong Kong and Singapore are small, self-contained regions whose governments have the ability to control population size. Consequently, locals have not had to compete with masses of cheap labor from the countryside as is the case in most developing countries. However, women have still not 'caught up' with men and many Hong Kong working-class women are now losing their jobs to cheap female labor across the Chinese border.

⁸⁶ See Boserup, *supra* note 69; Donnelly, *supra* note 62.

⁸⁷ The members of the elite "felt they could ideologically rationalize some people

beneficiaries of China's economic development are the very bureaucratic and CCP elite (and their families) at all levels who formulate and/or implement economic policies. They have been able to transform their pre-existing political power into economic power through their tight control over China's laws, policies, and assets.⁸⁸ In fact, one of the main complaints of protesters in the spring of 1989 was this very form of corruption by the elite. Since 1989, the situation has not changed; if anything, exploitation by the elite of its position is even more blatant. China's transformation from a socialist to a market economy has so far produced over 150 million unemployed or underemployed peasants and workers, with millions of them now roaming the country looking for work. It has also produced significant wage gaps between urban and rural regions, between east and west, and between men and women. Rural women from the interior are now the poorest of the poor and the objects of most of the prostitution, trafficking, sale, and rape that now exist. Women in urban areas are better off but are still the objects of prostitution, sexual harassment, and rape.⁸⁹

becoming wealthier than others as long as those who 'got rich' did not trample on the socialist principle of nonexploitation of labor. (In practice, exploitation of labor was condoned through a policy of benign neglect.)" Suzanne Ogden, *China's Unresolved Issues: Politics, Development and Culture* 84 (2d ed. 1992).

⁸⁸ Id. at 9, 168-69.

⁸⁹ Many Chinese feminists and the All-China Women's Federation (the government's mass line organization for women) recognize the negative impact of reform on rural women; however, most accept it as inevitable and advise women to improve their skills and wait for better times. See, e.g., Li Xiaojiang, *Economic Reform and the Awakening of Chinese Women's Collective Consciousness*, in *Engendering China: Women, Culture, and the State* 360, 373, 381 (Christina K. Gilmartin et al. eds. & S. Katherine Campbell trans., 1994) ("The spontaneous course of the development of productive forces in competition *naturally* selects the male . . . and rejects the female" so women should "make their way into the crevices of society."); Li Xiaojiang, *How Should We Approach the Current Women's Issues and the Study of Women's Issues*, 11 *Qiushi* [Seeking Truth] 32 (Dec. 1, 1988), translated in JPRS-CAR-89-021, at 29, 31 (Mar. 13, 1989) ("Women must . . . be mentally prepared for competing on an equal footing (with men) in an unfair society."); Guan Tao, *Yi Jingji Jianshe Wei Zhongxin Tuijin Funü Jiefang* [Carry the Cause of Women's Emancipation Forward with Economic Construction as the Key Link], *Funü Yanjiu Luncong* [Collection of Women's Studies] Jan.-Mar. 1993, at 5, 8 (women should develop the 'four haves' (have an ideal, moral judgment, education, discipline) and the 'four selves' (self-respect, confidence, independence, enhancement)); Huang Qicao, *Jiefang He Fazhan Shengchanli Yu Funü Jiefang* [The Liberation and Development of Productive Forces and Women's Liberation], *Coll. of Women's Studies*, July-Sept. 1992, at 3. Gao Xiaoxian, however, blames reform because it has feminized agriculture and disadvantaged rural women in the labor market. She rejects the *laissez-faire* model of capitalism and calls for "strengthened administrative controls" to create a fairer economic model that suits women's actual situation. Gao Xiaoxian, *China's Modernization and Changes in the Social Status of Rural Women*, in *Engendering*

The male-dominated Chinese political elite (like its political brethren in other developing countries) has chosen to place economic development above all other concerns (except political stability) and justifies its actions by reference to the overdetermined needs of the collective. The majority of the population is now expected to make 'temporary' sacrifices for the collective good. Interestingly, China's capitalist ideologues inverted the definitions of 'individual' and 'collective': the 'individuals' required to make sacrifices are China's millions of peasants and workers, and the 'collective' benefiting from reform is the privileged, mainly urban, elite. Thus, it may already be too late to expect that China's newly-formed elite class will permit any real egalitarian redistribution of income. The significant number of powerful and rich men (and a few women) throughout China who are benefiting from the 'growth first' strategy will resist any redistribution. Not long ago, for example, the elite in Guangdong Province and other coastal regions flexed their rich muscles when they successfully opposed the central government's attempt to redistribute wealth through a unitary taxation system.

III. VIOLENCE AGAINST WOMEN IS IMBEDDED IN MAINSTREAM DEVELOPMENT POLICIES

Very little in the development or violence against women literature explains how the marginalized status of women is translated into acts of violence against women. Typically, studies on violence in development demonstrate the ways in which women who are subjected to violence in their personal lives are unable physically or emotionally to participate in development,⁹⁰ or they focus on the manner in which large top-down projects, such as dam constructions, are inherently violent because of the damage they inflict upon local populations.⁹¹ Some studies note that development itself may be a cause of violence against women,⁹² but the

China, *supra*, at 80.

⁹⁰ See, e.g., Roxanna Carillo, *Violence Against Women: An Obstacle to Development in Gender Violence: A Development and Human Rights Issue* (Charlotte Bunch & Roxanna Carillo eds., 1991); Johanna Maria Richters, *Women, Culture and Violence: A Development, Health and Human Rights Issue* 150 (1994).

⁹¹ "[V]iolence is still inherent in the dominant development model—political and economic violence, sexual violence, genocide, and epistemological violence (the basis of science and technology)." Joke Schrijvers, *The Violence of "Development": A Choice for Intellectuals* 9 (1992); Paul, *supra* note 19, at 20–28.

⁹² See, e.g., All India Democratic Women's Association et al., *Towards Beijing: A Perspective from the Indian Women's Movement* 49–50 (1995); Asian Women's Bali Declaration on Violence Against Women, August 1993; Women, Violence and Human

topic has not been systematically or thoroughly analyzed, except for the link between prostitution and economic development.⁹³

Richters observed recently that, "[g]ender violence in development projects has apparently been a blind spot."⁹⁴ The blind spot exists because most researchers treat development and violence against women as discrete, independent phenomena. The paucity of material on the subject forced Richters to conclude that it is not possible, at this moment, to determine exactly when the interplay of development practices and "material and ideological factors" will lead to an increase or a decrease in violence against women. I agree with Richters that no conclusions can be drawn at this point in time; nonetheless, it is possible to demonstrate that certain aspects of development are dangerous for women and to show that the implementation of mainstream development projects is followed by increased violence against women. The primary source of information to support this thesis comes from anthropologists and sociologists whose work crosses numerous disciplinary boundaries. Research explicitly investigating the relationship between development and violence against women is needed before any theoretical strategies for change are possible.

A. Mainstream Development and the Feminine Body

Consumerism is an essential component of the mainstream model of economic development. Businesses have an insatiable appetite for new markets, and people must be educated to have an insatiable appetite for consumer goods. Economies based on the Western development model will flourish only if workers in the developing world become consumers, on the one hand, and a source of cheap labor, on the other. Without these new consumers and laborers, businesses in the developed world will stagnate, consumers in the developed world will have to pay more for goods, and governments in the developed world will not be able to satisfy their citizens' demands for jobs. Thus, workers in the developing world must be induced to become consumers. The growth of consumerism worldwide is testament to the success of the advertising industry, whose job it is to

Rights, 1991 Women's Leadership Institute Report 22, 23 (1992); Yayori Matsui, *Violence Against Women in Development, Militarism and Culture*, in *Human Rights Strategies and Mobilization* 13, 16-17 (Urvashi Butalia & Jose Antony eds., 1992).

⁹³ See, e.g., Barry, *supra* note 56, at 3-6.

⁹⁴ Richters, *supra* note 90, at 150; see also Peter Bell, *Gender and Economic Development in Thailand*, in *Gender and Development in Southeast Asia* 61, 73 (Penny & John Esterik eds., 1991) (demonstrates how the success of Thailand's development depends upon prostitution and women's labor).

convince people that success and happiness can be found by owning expensive status symbols and by living opulent lifestyles.

Counterpoint to consumerization of society is the commodization of women's bodies as 'feminine' objects.⁹⁵ Not only must the female consumer desire to purchase commodities, but she must also learn that she herself is a commodity, both as a 'feminine' worker and as a sexual feminine object.⁹⁶ Women who once were valued for their skills in the fields or behind the loom are reconceptualized in a public discourse of 'femininity.' This discourse encourages a belief in the inherent nature of 'feminine' traits, such as 'fast and nimble' fingers, docility, subordinate status, and depreciated value in the workplace. Governments interested in earning foreign exchange find it advantageous to exploit these 'feminine' qualities of women and to advertise that the women in their country display such traits. Women in developing countries who need jobs are quick to adapt and display those 'feminine' traits once they learn that being 'feminine' means being employable. They spend money on goods, such as beauty products and clothes, that accentuate those 'feminine' characteristics. Hence, the commodity is also a consumer.

A further component of the new 'femininity' is the "housewifization" of women in the development process.⁹⁷ Women are encouraged, or forced by lack of work, to consider themselves housewives first, workers second. Women have become the world's 'flexible' labor force. Reform typically defines women's role in the paid labor force as a temporary necessity for women who need to work to supplement their families' incomes. This view reflects the Western conceptualization of a world divided into the oppositional pairs of public/masculine and private/feminine. Housewifization means that women's 'real' or natural role is confined by women's socially-constructed (but conceived of as natural) 'femininity,' described as women's natural talent for homemaking and mothering. It also means that the public sphere of work is split into lesser paying, low status 'women's' work and higher paid, higher status 'men's' work. Thus, housewifization represents one of those Western values which, as Parpart points out, is brought in with development to 'modernize' women in the

⁹⁵ For an excellent analysis of the public campaign to 'feminize' Chinese women, see Stanley Rosen, *Chinese Women in the 1990s: Images and Roles in Contention*, in *China Review* 1994 (1994).

⁹⁶ "[W]omen are commoditized and dehumanized as cheap labour, as prostitutes, and as the poorest of the poor in rural areas as well as in the city slums." Yayuri Matsui, quoted in Richters, *supra* note 90, at 152.

⁹⁷ See Maria Mies, *Patriarchy and Accumulation on a World Scale: Women in the International Division of Labour* 112-45 (1986); Veronika Bennholdt-Thomsen, *The Future of Women's Work and Violence Against Women*, in *Women: The Last Colony* 113 (Maria Mies et al. eds., 1988).

developing world.⁹⁸ Housewifization, because it reduces women's independence and status, renders women vulnerable to abuse by their wage-earning husbands and to exploitation in the work force.

The coming of housewifization to China means that housework is no longer recognized as contributing to the country's development. During the collective era when people earned points for working instead of money, women received work points for domestic labor, which enabled them to contribute to their families' standard of living.⁹⁹ In today's commodity-based society, women who stay at home to raise children receive nothing, except perhaps for some rural women who make money from household production. Less money means less status because the value of domestic work can no longer be calculated in monetary terms, which renders women's labor at home invisible.

Housewifization in China supports development because it defines urban women's place in the new capitalist order. A key component of China's economic development is the downsizing of the bloated public sector labor force in order to turn loss-producing industries into efficient, profitable ones. Urban women feel the brunt of the efficiency drive as they are consistently the first fired. To encourage women to accept their second-class status in the labor market, much of the housewifization discourse in China is directed at urban women who are told to be good wives and mothers and good citizens by sacrificing their secure jobs for the benefit of their families and the greater society. The underlying message transmitted is that 'feminine' women do not work in factories; they devote their energies to the private sphere. As a result, many urban women have, in fact, returned to the home, but many others have turned to the lower-paid and less secure private or informal sectors where their 'feminine' skills are highly-prized, especially because they can be purchased so cheaply. As women's role in the public sector has become more insecure and narrowly defined and as women have been and are being shunted aside in order to assure men a place in the paid labor force, women's status in the home and at work is being diminished. Consequently, reports of sexual exploitation and violence in all types of workplaces, from the most prestigious to the smallest companies, are increasing.

Violence against women during development is thus positively correlated to the rise of consumerism and commodified femininity within

⁹⁸ See generally Parpart, *supra* note 74.

⁹⁹ See, e.g., Nahid Aslanbeigui & Gale Summerfield, *Impact of the Responsibility System on Women in Rural China: An Application of Sen's Theory of Entitlements*, 17 *World Dev.* 343 (1989); Govind Kelkar, . . . Two Steps Back? Two Agricultural Policies in China and the Woman Question, in *Structures of Patriarchy: The State, the Community and the Household in Modernizing* 121 (Bina Agarwal ed., 1988).

a society dominated by a male elite and a masculinist culture. Suddenly, 'worthless' (in the sense of not having a monetary value), uneducated, rural and poor women have a monetary value. They can be bought and sold, their sexuality can be commodified for prostitution or childbearing and their labor can be sold. In many developing countries, the "cult of materialism . . . has also reinforced gender blindness in government policies, such as turning a blind eye to large-scale prostitution and sex tourism, trafficking in child brides, commercialised marriage arrangements for the sake of increasing national income and serving the interests of powerful and wealthy (male) elites."¹⁰⁰ For example, Mies connected the consumerization of Indian society over the last twenty-five years directly to the rising violence against Indian women. "The most brutal forms of violence and of sexist terror are to be found in areas where agriculture has been rapidly 'developed' in recent years, where new forms of wealth appeared, where cinemas, alcohol, television and other new consumer goods were introduced as indicators of 'modernization.'"¹⁰¹ One particularly odious form of violence against Indian women, dowry murder, has increased dramatically because families are now so greedy that they will kill the son's wife to make room for a new daughter-in-law with a new dowry.¹⁰² Consumerism has also been blamed for widespread violence against women in Thailand.¹⁰³

Consumerism and commodization of women in China have also led to a quantitative leap in the incidence of violence against women (such as rape, trafficking in women, prostitution, and sexual exploitation). The extent to which Chinese people have transformed themselves since economic reform is evident from the development of a new word for commodization (*shangpinhua*) to describe the policy of placing a *renminbi* value on everyone and everything. So successful has been the government's efforts to rid the socialist state of any but the barest responsibility for its citizens that many people no longer view themselves as workers in a collective society. They now view themselves as individualized commodities (*shangpin*). However, men see themselves as a commodized labor only while women are likely to consider themselves to be commodized sexual objects and 'feminine' commodity labor. Even worse, because men earn

¹⁰⁰ Richters, *supra* note 90, at 153 (citation omitted).

¹⁰¹ Maria Mies, *Class Struggles and Women's Struggles in Rural India*, in *Women: The Last Colony* 133, 137 (Maria Mies et al. eds., 1988).

¹⁰² See Yayori Matsui, *Women's Asia* 75-81 (1987).

¹⁰³ See Peter Bell, *Gender and Economic Development in Thailand*, in *Gender and Development in Southeast Asia, Proceedings of the Twentieth Meetings of the Canadian Council for Southeast Asian Studies* 61, 68 (Penny & John Van Esterik eds., 1991) (violence against women blamed on "materialist-oriented perceptions of development").

more money than women at every level of society, many men also view women as commodized sexual objects for purchase and abuse.

Chinese women's sexuality is commodified through television programs and advertisements promoting consumerism. The government encourages consumerism and the commodization of women in the media by allowing companies to market women's sexuality along with the product and by praising the 'feminine' characteristics of Chinese women. Women, who used to hold up half the sky, are now praised for possessing those depressingly familiar 'feminine' traits of nimble fingers, attention to detail, docility, conformity, self-effacement (i.e., a willingness to accept low wages) and domestic skills (excellent mothers, self-sacrificing, and subordinate wives). Advertisers aggressively communicate the message that ownership of brand X will 'modernize' people's lives and hence Chinese society (thereby transforming consumerism into a patriotic act), enhance men's status, and improve women's 'femininity.' Fifteen years ago, people wanted a Flying Pigeon bicycle from Shanghai and an electric fan. However, after being exposed to Taiwan and Hong Kong television shows, they felt, for the first time in their lives, that China was backwards (luohou) by comparison. Now, they want cars, televisions, refrigerators, air conditioners, make-up, clothes, and portable telephones. Many men also want to have enough money to buy women or to have positions of power through which they can exploit women's sexuality or 'femininity.'

A sad but telling story illustrating the way in which consumerism and commodization of women's sexuality have penetrated Chinese society occurred a few years ago. Men who were desperate to have sons contracted with Qin, a poor peasant man, to buy children. Qin forced, even beat, his wife and two young daughters, aged fourteen and sixteen, into letting those men rape them for the purpose of producing babies. Altogether, the wife and two daughters gave birth to twelve boys and five girls for which Qin received tens of thousands of yuan. Upon his arrest, Qin expressed shock and outrage, claiming: "I didn't steal or rob. My wife is mine, my daughters are mine. The clients wanted sons and I wanted money. What's wrong with that?"¹⁰⁴

Mr. Qin carried on his 'business' activities openly, without interference, for several years inside a closeknit and prying community where all fertile women's ovulatory cycles are closely monitored for unauthorized pregnancies. The womb purchasers (and their families) also freely participated in these crimes without interference, either in Qin's village or in their own. They did, after all, have to explain how they managed to become fathers without wives or with non-pregnant wives. The

¹⁰⁴ "Baby Factory" Run by Farmer, S. China Morning Post, July 29, 1993, at 9.

free and open atmosphere in which they were able to operate is indicative of the prevalence of the view that women are exploitable commodities, just like any other commodity or resource to which one has access.

B. Feminization of Agriculture and Rural Reforms

A well-documented aspect of mainstream development is the increasing feminization of agriculture. The process by which women are becoming the primary agriculturalists in much of the developing world is not a natural or an unpredictable phenomenon. On the contrary, it has been strategically planned and implemented from the top down. In the process of industrialization, agriculture decreases in importance in direct proportion to the increased emphasis on and importance of industrial production. Concomitantly, the status of those who engage in agriculture decreases in direct proportion to the increase in the status of those who engage in paid labor. One goal of agricultural reform in the development process is to release large numbers of men of all ages and young unmarried women from their agricultural chores so that they can take up waged labor in rural and urban industries. This requires a mass migration of peasants from the countryside to towns and cities in search of waged labor, leaving older women and married women to grow subsistence and other crops that provide little or no profit. Whether a woman migrates depends upon several variables, one of the most important being a need for her labor in the household. For example, if married women alone have caregiving responsibilities, or if the culture has a tradition of female seclusion, then women will not migrate in search of work. They may, however, accompany their husbands to search for work if they have no children and no agricultural responsibilities. Consequently, the majority of women who migrate in search of work are young and single and the majority of the people left behind in the villages are married women and older women.¹⁰⁵ The women left behind assume the bulk of the responsibilities for the family and the field¹⁰⁶ and, at the same time, they experience a dependent and subordinate status in the home, which may leave them more vulnerable to abuse by their more independent, cash-earning husbands.

¹⁰⁵ See Sylvia Chant, Conclusion: Towards a Framework for the Analysis of Gender-Selective Migration, in *Gender and Migration in Developing Countries* 197, 197-98 (Sylvia Chant ed., 1992).

¹⁰⁶ See Heyzer, *supra* note 72, at 41; Janet Henshall Momsen, Women and Development in the Third World 21-23 (1991); Lynne Brydon, Gender and Migration, in *Women in the Third World: Gender Issues in Rural and Urban Areas* 121, 125, 129-30 (Lynne Brydon & Sylvia Chant eds., 1989).

In China, the most 'feminized' agriculture is found in locations undergoing the most rapid economic development.¹⁰⁷ In a study of three villages during the summer of 1986 and the winter of 1987-88, Judd found that, in contrast to the past, agriculture had become an increasingly feminine occupation.¹⁰⁸ In all three villages, due to childcare responsibilities and the lack of other employment opportunities, married women now predominate in agriculture, while young unmarried women tend to migrate to work temporarily in township and city industries. Any cash income for older and married rural women comes from household-based commodity production. Men hold all the best jobs and women have been relegated to manual labor jobs.¹⁰⁹ Women left in agriculture have only limited opportunities to earn money. Rural industries are a temporary source of work only for young women, while household industries are low profit and small scale. This means that, except for a few years prior to marriage, those rural women have only a short period in which they can work in waged labor or earn much money. For most of their adult lives, they are farmers and housewives dependent upon the income earned by their husbands and sons.

The feminization of Chinese agriculture also excludes women from access to new knowledge, which is a crucial commodity for anyone wanting to participate in the new market economy. Croll, in discussing shifting patterns of power in rural villages, observes that knowledge, which was always controlled by the male elite, is now and always has been a source of power in China, and that, traditionally, party leaders in rural villages were the sole conduit through which important information traveled.¹¹⁰ Today, those same former male cadres are able to convert that knowledge and the contacts acquired while they were cadres into profitable deals. Croll also points out that knowledge is no longer the property of a privileged elite because new knowledge now enters rural communities through the radio, television, books, magazines, and contacts with people outside the village. Knowledge is more diffused and less manipulable by

¹⁰⁷ See, e.g., Barbara Entwistle et al., *Gender and Family Businesses in Rural China*, 60 *Am. Soc. Rev.* 36 (1995); Huang Xiyi, *Changes in the Economic Status of Rural Women in the Transformation of Modern Chinese Society*, *Soc. Sci. China*, January 1992, at 83, 89-90.

¹⁰⁸ In pre-communist China, agriculture was primarily a masculine occupation. See Ellen Judd, *Alternative Development Strategies for Women in Rural China*, 21 *Dev. & Change* 30, 30-31, 35 (1990).

¹⁰⁹ See *id.* at 23, 26-27. The results of Gao's research in several villages is similar to Judd's findings. See Gao, *supra* note 89.

¹¹⁰ See Elizabeth Croll, *From Heaven to Earth: Images and Experiences of Development in China* 116-134 (1994).

the leaders. She fails to note, however, that all information obtained through these official sources remains state-controlled. Non-state-controlled information enters villages mainly through one conduit—men. As men can travel around the country at any age and return with information more easily than women can, men still maintain a grip on this crucial source of power. Even young women returning from working in factories outside the village would find their knowledge devalued because of their subordinate status and lack of political influence. They would be expected to return to farming, housework, and childrearing duties. On the other hand, men who convert their knowledge about resources and markets into a financial gain can further consolidate their superior financial power vis-a-vis women.

The process now evolving in China, whereby women's labor is being relocated within the family unit and agriculture, is playing a critical role in increasing women's vulnerability to male violence. Money now buys status and power in China so that those without wealth have less power and status both at home and in society. Increasingly, men gain both the wealth and the power. Women who lose the chance to contribute to the family's wealth are considered (once again) to be less important than men and become increasingly vulnerable to abuse. Thus, the current economic transformation is not only altering economic relations in the greater society, it is also having a dramatic influence upon gender relations within families and in the villages where seventy to eighty percent of Chinese women still live. I believe that this transformation directly contributes to increasing violence against women in China. The increase cannot be attributed solely to traditional Chinese views on male-female relations. A more accurate assessment is that the traditional anti-woman bias found new outlets for expression and support within China's economic reforms.

Feminization of agriculture in China can explain, at least partially, the different rates of wife battery in rural and urban regions, discussed later in this Article. It further contributes to the increase in the countryside of aborted female fetuses, female infanticide, abandonment of infant girls, and the sale of daughters into prostitution or marriage. Drèze and Sen note that the Chinese family responsibility system, which has been instrumental in the feminization of agriculture and in moving women back into rural homes, has probably played a key role in "strengthen[ing] the anti-female bias in the caring of children," and in the resulting increase in violence against, and a higher death rate for, female children.¹¹¹ The feminization of agriculture means rural girls are much less valuable than boys because girls

¹¹¹ Drèze & Sen, *supra* note 61, at 218–19; see also Kelkar, *supra* note 99, at 135–137 (discussing a link between the household responsibility system and violence against women and children).

will only work at waged labor for a short time before moving into their husbands' homes while sons will be able to work at waged labor their entire lives, which will enable them to support their elderly parents. The Chinese have an old expression that raising a daughter is like watering someone else's garden because all the return on the energy and money expended on raising a daughter is realized by the future parents-in-law. With the cost of living increasing every year and the opening of new opportunities to make money, parents want to maximize their investments. The easiest way to do so is to have only sons or to make as much money as possible from daughters before they leave home (or from a payment for their daughters upon departure from home).

C. Urban Industries and a Vulnerable Female Labor Force

Most economic reform strategies in developing countries include the creation of export-processing zones where labor and resources are concentrated and special tax and other concessions are available to investors. Unsophisticated, young, single, poorly-educated peasant or working-class women are the backbone of the labor force in these zones and they are often exploited and subjected to various forms of violence at work. Young, in writing about female Mexican workers, notes that the integration of 'naturally' nimble-fingered, patient, disciplined, docile women into tedious, monotonous, routine assembly-line work "increases their vulnerability to exploitation, not only in the factory but also in the larger society."¹¹² A notable feature of female migration to cities is the workplace encounter between young rural women and urban male factory supervisors. The men are strangers; they may speak a different dialect or language and tend to look down on people from the countryside. Migrant female workers may have no family or friends to protect or assist them and, thus, are easily subjected to the arbitrary and often exploitative temperaments of their male superiors. They can be easily forced to work under dangerous and exploitative conditions, and be subjected to sexual harassment, sexual assault, and rape.

Similar patterns of abuse exist in China where the majority of workers in the export-processing and manufacturing zones are young, poorly educated, single women.¹¹³ The supply of female labor is inexhaustible;

¹¹² Young, *supra* note 60, at 395 (citations omitted); see also Rosalinda Pineda-Ofreneo, *Subcontracting in Export-Oriented Industries: Impact on Filipino Working Women*, in *Development and Displacement: Women in Southeast Asia* 17, 17-24 (Glen Chandler et. al., eds.) (Monash No. 18, Aust. 1988) (similar policies and consequences in the Philippines).

¹¹³ See *Human Rights in China, Caught Between Tradition and the State*:

Chinese sources report that fifty million women gave up farming for industrial sector labor.¹¹⁴ Those lucky enough to find work in China's new economic order, such as in the labor-intensive export-processing factories in Guangdong Province's Shenzhen Special Economic Zone next to Hong Kong, are subjected to male control. Andors studied female labor in Shenzhen in 1984 and found that, similar to statistics from similar zones in other developing countries, seventy percent of the labor force consists of young women while the majority of management and skilled technical workers are men.¹¹⁵ Only the male-dominated managerial staff work under secure job contracts while female assembly-line workers have no security because they either work under short-term temporary contracts or in at-will employment.¹¹⁶ Furthermore, most of the female workers are from outside of Shenzhen and live in Shenzhen only so long as they are employed.¹¹⁷ If they lose their jobs, they must either leave Shenzhen and return home, find work in the informal labor market and remain in Shenzhen illegally, or migrate to another city. Non-local residents face the same problem in all Chinese cities because, although reform has loosened the household registration system, it has not changed the basic rule that one's permanent residence is fixed more or less for life. The system renders women extremely vulnerable to manipulation and exploitation by male bosses, especially under current conditions in which women constitute almost sixty percent of those 'waiting for work' and, in some places, as high as seventy to eighty percent of those laid off during 'economic restructuring.'¹¹⁸ Sexual harassment and demands for sexual favors are now a common part of many women's working experiences as a result.

Rural women who migrate to towns and cities and are unable to find work are often forced into even more dangerous living conditions and occupations. Many do not have enough money to return home and they may be forced to sleep out in the open. Even if they have enough money

Violations of the Human Rights of Chinese Women 64 (1995). One study of four counties found "that 48 percent [of rural female migrant workers] had only completed primary school [and] 30 percent had finished junior middle school" *Id.*

¹¹⁴ See *id.* at 64.

¹¹⁵ See Phyllis Andors, *Women and Work in Shenzhen*, 20 *Bull. of Concerned Asian Scholars* 22, 24, 30 (1988).

¹¹⁶ See *id.* at 31. A study in Shanghai found "about 30 percent [of female factory workers] had no written contract of employment" *Human Rights in China*, *supra* note 112, at 67.

¹¹⁷ See Andors, *supra* note 115, at 33.

¹¹⁸ See Research Institute of All China Women's Federation & Research Office of Shaanxi Provincial Women's Federation, *Zhongguo Funü Tongji Ziliao 1949-1989* [Statistics on Chinese Women 1949-1989] 232 (1991) (1988 figures); *Human Rights in China*, *supra* note 113, at 76.

to buy a train ticket home, they may not return because they are expected to support their siblings or parents. As a result, many do not have the psychological freedom to walk away from dangerous situations and so are extremely vulnerable to exploitation and violence. At this stage, they really have no alternative but to turn to the informal sector, such as commercial sex work or, if they are lucky, street vending, as a route to self-sufficiency.

IV. DEVELOPMENT HAS BROUGHT A TIDAL WAVE OF VIOLENCE AGAINST CHINESE WOMEN¹¹⁹

The increasing violence against women in China has attracted the attention of numerous mainland Chinese scholars and government officials, both female and male. Their views on the causes do not differ significantly. They attribute the prevalence of trafficking in women, rape, and prostitution to the resurgence of feudal ideas, moral decline, and greed, while they blame violence in the workplace upon foreign owners and managers. Those factors may, to some degree, be connected to the rise in violence against women, but they do not provide a complete explanation nor do they uncover the mechanism by which men have achieved enough power over women to enable them to act on their feudal, immoral, and greedy impulses. Chinese scholars and officials will eventually be forced to change their minds as the political left in India was forced to do in similar circumstances. Initially, the left blamed the rising violence against women upon traditional and cultural factors, but they were eventually forced to abandon that view when it became apparent that new forms of wealth and consumerism brought on by economic development had, in fact, led to the violence.¹²⁰ The closest that Chinese scholars have come to acknowledging that development has led to violence against women is their recognition that reform "has made females second-class citizens in jobs, education and career promotions," that violence against women has increased since reform, and that sixty percent of the population below the poverty line is composed of women and children.¹²¹

As discussed in Part III, the high level of violence against women in China is, to a great extent, a direct consequence of the way that opportunities for women's participation in the market economy are being

¹¹⁹ For a discussion of Chinese laws and violence against women, see Ann D. Jordan, *Women's Rights in the People's Republic of China: Patriarchal Wine Poured From a Socialist Bottle*, 8 *J. of Chinese L.* 47, 76-95 (1994).

¹²⁰ See Mies, *supra* note 101, at 137-139.

¹²¹ Women See Little Progress in Rights, *E. Express* (Hong Kong), Oct. 11, 1994, at 8.

channeled into 'feminine' labor or domesticity and the way that women's sexuality is being commodified. Those who do not have fast and nimble fingers or are not pretty or young enough to satisfy men's demands are now considered to be drags on the economy who should stay home for the sake of modernization. These factors, coupled with a resurgence of the traditional Confucian view of women as the property of a patriarchal household, have insured men's economic, physical, and psychological control over many women.

The worst form of violence against Chinese women is the burgeoning trade in female flesh. The practice is widespread, with 15,000 *reported* cases in 1993, most of which involve the kidnap and sale of women to men who cannot find a wife.¹²² Other sources report 40,000 women and children rescued from abduction in 1991 and 1992, and 24,751 women (and 2,731 children) rescued in 1993 and 1994.¹²³ Thus somewhere between 15,000 and 20,000 *known* cases occur every year. However, the real number could easily be double the reported figure for three reasons: first, the disappearance of rural women living in a city or town far away from home might go unnoticed and unreported; second, no one reports cases of women sold by their parents into prostitution or marriage; and third, figures are only available when women and children have been rescued. The figures for unresolved cases are unavailable.

A large percentage of trafficked women are raped by their procurers prior to sale to ensure that they become 'damaged' goods. They are next raped by their 'husbands' or johns to ensure total submission. The rapes are intended to dehumanize the women and to instill in them a sense of their powerlessness in order to ensure obedience. Rape is a successful tactic of subordination in Chinese society because women who lose their virginity have very little chance of ever leading a normal married life. Thus, whether they are forced to marry a stranger or to become a commercial sex worker, trafficked women are forced psychologically and physically to become virtual slaves. They are enslaved by the disgrace of being raped and by the physical constraints of the villagers who prevent them from escaping.¹²⁴ Thousands of women are rescued each year, but

¹²² See Trade in Women Uncovered, E. Express (Hong Kong), Feb. 25, 1994, at 7.

¹²³ See Human Rights in China, *supra* note 113, at 9 (citing respectively the State Report on the PRC's Implementation of the "Nairobi Forward-Looking Strategies for the Advancement of Women," translated in FBIS-CHI-94-206 (Oct. 25, 1994), and China Calls for Action Against Slave Traders, Reuters, Mar. 31, 1995 (quoting Fazhibao (Legal Daily))).

¹²⁴ In a small village in Guangdong, reporters found a brothel where more than 100 young women and teenage girls who had been kidnapped and raped were held by

unfortunately those thousands probably represent less than half of the actual number of trafficked women each year.

The economic origin of trafficking in women is clear. China now has millions more men than women. This sex imbalance gives women's families leverage over men's families to extort exorbitant amounts of money from the future bridegroom's family for the purchase of newly-available commodities, such as washing machines and televisions. Poor men, when faced with the possibility of never having a male child (because they cannot find a wife/womb), turn to the market to buy a woman at a much lower cost from traffickers. These trafficking entrepreneurs kidnap, lure, or buy (from the women's families) poor, uneducated women from isolated regions, usually in western China. Even with the millions fewer women than men, reform has assured a never-ending supply of young women for these criminals to prey upon because rural women can be tricked into leaving home upon a promise of work or can be kidnapped without leaving a trace. The profits are high and the demand is great, not only for wives but also for commercial sex workers because economic reform has given male laborers and businessmen enough disposable income to enable them to purchase women's bodies.

Another form of violence against women documented and recorded as increasing along with development is commercial sex work. The increase in unemployment among women in developing countries often forces many women into commercial sex work, which is now "one of the most important female occupations in urban areas around the globe."¹²⁵ Sex work is a highly-profitable business for everyone except the women themselves. For example, Bell reported that the Thai economy is so dependent upon foreign currency from sex tourism that the government has decided the country simply cannot afford to protect its women and children.¹²⁶ He reports that Thailand's sex tourism industry brought in about US\$3.16 billion in 1988 and US\$7.2 billion in 1992, which paid for one-third of Thailand's imports for industrial development.¹²⁷ The commercial sex industry has a history of affiliation with development in Asian societies. Sex tourism has been integral to Taiwan's development and has been under the government's supervision and control. Sex tourism reportedly also "expanded along with South Korea's spectacular economic

farmer-entrepreneurs and forced into prostitution. See *Farmers Run Huge Brothel*, S. China Morning Post, July 22, 1993, at 10.

¹²⁵ Charlton, *supra* note 3, at 133; see also Boserup, *supra* note 69, at 99–101.

¹²⁶ Bell, *supra* note 103, at 61, 70–71.

¹²⁷ *Id.* at 66.

rise during the 1980s.”¹²⁸ There is ample reason to fear that sex tourism could also become part of the development strategy for Vietnam, Cambodia, Laos,¹²⁹ and Burma.

The commercial sex industry also plays a role in China's development, although it has not yet developed into a full-fledged 'sex-tourism' industry. Nonetheless, women's status in China has sunk so low since 1979 that some people have come to feel it is acceptable, even necessary, to follow in the footsteps of their Asian brethren, openly advocating for the promotion of prostitution as a way to increase tourism and hence foreign earnings. Some government officials (presumably male) suggested that the legalization of prostitution is "a necessary means of increasing wealth or that it would help improve the 'soft environment' for encouraging investment."¹³⁰ Similarly, in the Fujian province, the government's tourism bureau distributed an official questionnaire to incoming travelers at the airport asking their opinion on the government's ban on prostitution, with response choices such as "It doesn't fit a market economy," and "It can badly affect the development of tourism."¹³¹ Obviously, these officials presumed that all investors and travelers are men and that the public would seriously consider such a proposal. Their views have been soundly criticized by other officials and have no chance of ever being officially implemented; however, prostitution and sex tourism could develop with the government's silent acquiescence because the amount of money involved is potentially enormous and the ability of the criminal elements to bribe officials is well-known. As it stands now, prostitution is openly tolerated in China's major cities despite numerous government-ordered crackdowns. Crackdowns have little or no impact on the growth of the business and have failed to change the tolerant (some would say approving) attitude of local officials.

Even without the government legalizing commercial sex work or officially or unofficially incorporating commercial sex work into the development strategy, the industry is rapidly becoming a major source of employment for women in China's cities and townships. For example, in Guangzhou, a wealthy city in southern China's Guangdong Province, only forty-nine commercial sex workers, johns, madams, and pimps were arrested in 1979 at the threshold of reform while, by 1987, that number had

¹²⁸ Women, Violence and Human Rights, *supra* note 92, at 26-27.

¹²⁹ Before the new bridge between Thailand and Laos even opened, Thai entrepreneurs had already signed contracts to construct a gambling casino on the Laos side of the bridge to attract tourists (and prostitutes and crime).

¹³⁰ Calls for Legal Prostitution Condemned, *E. Express* (Hong Kong), July 19, 1994, at 9. Other officials have called for legalization to eliminate syndicate control of the trade. See *S. China Morning Post*, Apr. 2, 1994, at 5.

¹³¹ Question of Sex Raised in Survey, *S. China Morning Post*, Feb. 8, 1994, at 8.

risen to 12,000.¹³² By 1993, the nationwide arrest figure for prostitutes stood at 240,000.¹³³ Assuming (conservatively) that fewer than fifty percent of the women involved in the sex trade were arrested in 1993, then at least half a million women were in the sex industry by 1993. A Chinese report puts the figure at about a million.¹³⁴

The two conditions necessary for commercial sex work to flourish—men with money and low-status women without jobs—exist in China's most prosperous regions, giving rise to the most dramatic increases in the commercial sex industry nationally. For example, Guangdong Province is the wealthiest province in China and, as mentioned above, its capital has a large number of commercial sex workers. As predicted, most commercial sex workers in the Province are from other regions and otherwise unemployed. Over an eight-month period in 1989, an astounding 91.2% of all commercial sex workers arrested in Guangdong Province were from outside the Province.¹³⁵ Of the women arrested over a five-year period in Shenzhen, a boom town next to Hong Kong in Guangdong Province, 85.9% were out of work or waiting for work.¹³⁶ Thus, the majority of Shenzhen's commercial sex workers are women from other areas who have not been able to find a place in the formal labor sector.¹³⁷

These statistics strongly refute the theory espoused by government officials and academics that sex workers are lazy, greedy women who leave their rural villages or gainful employment in order to lead the 'easy' life of a commercial sex worker in the rich cities¹³⁸ and that issues like prostitution are "the result of the resurfacing of the dregs after the

¹³² See Maiyin Piaochang yu Shehui Kongzhi [Prostitution, Whoring and Social Control] 91 (Yan Xin ed., 1992).

¹³³ See Crackdown on Kidnap and Prostitution, *S. China Morning Post*, Feb. 25, 1994, at 19.

¹³⁴ See Human Rights in China, *supra* note 113, at 13 (referring to Chinese Police Close Swingers Hotel, UPI file, July 28, 1994, citing report in *Guangzhou Evening News*).

¹³⁵ See Prostitution, Whoring and Social Control, *supra* note 132, at 120 (up from 68% in 1987).

¹³⁶ *Id.* at 93.

¹³⁷ The present situation is similar to pre-1949 Shanghai when prostitutes came from poverty-stricken families or were recent migrants. See Gail Hershatter, *The Hierarchy of Shanghai Prostitution, 1870-1949*, 15 *Modern China* 463, 477-478 (1989). However, few of today's rural families are pushed by starvation to sell their daughters; they are motivated more by greed and envy of those better off than themselves.

¹³⁸ See, e.g., Zhang Yiquan, *The Social Background of Prostitution*, 68 *Shanghai Shehui [Society]* 38 (Oct. 20, 1990), translated in JPRS-CAR-91-005, Jan. 31, 1991, at 62, 63.

loosening of social control."¹³⁹ Undoubtedly, some women do see commercial sex work as a fast track to quick cash, but the majority are more likely to become commercial sex workers by force of circumstances. The only other explanation for the sudden exponential increase is the misogynist view that hundreds of thousands of Chinese girls and women secretly always wanted to become commercial sex workers and were not able to realize their ambitions until reforms made commercialized sex work possible.

In heaping blame and shame upon the women for becoming commercial sex workers, government officials and scholars play a major role in promoting the belief that commercial sex workers should be exploited by the government for the economic benefit of society. The public understanding and attitude might be different if commentators paid more attention to the circumstances that brought women into the business, such as the poverty-stricken conditions in which the women lived, the parents, brothers, and sisters back home who depend upon the women's income for survival, or the way that traffickers and con-artists force many of them into the business. The commentators might then be forced to admit that poor women who take up the sex trade make a rational, intelligent choice from limited options. Rarely does anyone mention the johns who, with their new access to money, create the demand for commercial sex workers. Even rarer still is any reference made to the unevenness of development by region and by gender. Never mentioned is the fact that development gives men, who never gave up political control under socialism, an opportunity to express openly, under the amoral guise of competition and consumerism, their long-subdued or controlled distaste for the politics of sexual equality. The focus of the CCP-controlled dominant discourse and laws, instead, is on controlling, punishing, and reforming these 'amoral' women to become 'good' women who accept their inferior status and lack of opportunities in the new economic order.

Unofficial, but openly acknowledged, exploitation of women's sexuality is also a standard business practice of legitimate businesses in many Asian countries. It allegedly 'facilitates' dealmaking. For example, in South Korea:

Sexually explicit games and erotic parties have become an integral part of the business culture. . . . Government officials woo foreign clients and corporate executives vie for contracts by entertaining their colleagues at lavish private parties. Once

¹³⁹ Xiaojiang, *How Should We Approach the Current Women's Issues and the Study of Women's Issues*, *supra* note 89, at 31.

again, women's sexual services are being extracted to boost economic growth.¹⁴⁰

By all accounts, Chinese businesses use similar 'entertainment services' to attract businessmen and to facilitate dealmaking. They are careful not to call it prostitution, however, preferring the more respectable terms of 'public relations ladies' or 'private secretaries.' The only qualifications necessary for these jobs are youth, beauty, and a willingness to flatter, fawn over, entertain, and perhaps sleep with the company's clients. PR ladies are full-time employees of respectable Chinese companies; they are salaried workers paid to 'assist' their bosses in attracting and closing business deals. In one reported case, a PR lady accompanied the company's client on vacation to close a deal.¹⁴¹ PR ladies are also often the private mistresses of their bosses and many Shenzhen enterprise managers reportedly have such ladies accompany them.¹⁴² Many of these women are recruited from long distances away, especially from the north where the women are considered more beautiful, more naive, and hence more 'feminine,' than their southern sisters.¹⁴³ This dark side of the Chinese 'miracle' is treated by the public and the media as an unfortunate but necessary byproduct of reform and the commodity economy.

Work-related sexual harassment has also risen since reform because men have gained economic power over women in the workplace.¹⁴⁴ In the past, when jobs were guaranteed and were even handed down to one's children, male superiors had less power to coerce sexual favors from women. That system is now dead and more and more employers have the right to hire and fire at will. "Armed with the power of hire and fire, male managers are more likely to abuse their female staff and, according to the accounts of Chinese women, will probably get away with it."¹⁴⁵

¹⁴⁰ Women, Violence, and Human Rights, *supra* note 92, at 27.

¹⁴¹ See Liang Shang, Without Female Beauty Today Things Do Not Get Done —Account of Women's Public Relations on Mainland, *Kaifang [Open Magazine]* (Hong Kong), Sept. 15, 1991, at 57, translated in JPRS-CAR-92-001, Jan 14, 1992, at 83.

¹⁴² Prostitution, Whoring and Social Control, *supra* note 132, at 95.

¹⁴³ My female students in Northern China reported that men come in the spring to pluck the prettiest, young, unmarried female graduates for 'secretarial' or 'public relations' jobs in the south. The students were unaware of the real nature of the positions and were very tempted by the lure of a job with an export-oriented or other modern business in the fast-growing south.

¹⁴⁴ Sexual harassment may also extend into private homes. "[I]n 1989 there were more than 3 million rural women working as nannies in urban areas." Gao, *supra* note 89, at 87. High female unemployment has also led many poor rural women into becoming household servants to the newly wealthy elite. I do not know whether they are subjected to violence, but rape, sexual assault, and sexual harassment of poor and vulnerable domestic workers is common throughout the world.

¹⁴⁵ Boss's Bed is Means to Escape Factory Floor, *S. China Morning Post*, Mar.

Sexual harassment in China (and many other Asian countries) is more than merely an unwanted word from, or a touch by, a man that makes a woman feel uncomfortable or intimidated. It includes coerced sexual intercourse with business associates in order to close a business deal or with men in positions of power who have control over jobs, promotions, exit visas, or housing.¹⁴⁶ Men seeking promotions or closing deals can simply pay bribes to achieve the same result. Young, single female employees (not PR girls) are also forced to accompany their bosses and male clients to karaoke bars and dinner banquets. A recent study in Beijing revealed that twenty-five percent of women between the ages of sixteen and thirty reported losing their virginity through this so-called sexual harassment.¹⁴⁷ Another survey found that 18% of women in Shenzhen "had been the objects of 'sexual actions,' particularly at work"¹⁴⁸ Granted the term 'sexual harassment' is not clearly defined in China as it is such a new concept, the fact remains that these women felt they were harassed, deceived, or manipulated into losing their virginity. In fact, these women were not simply harassed; they were raped or assaulted. 'Consent' to unwanted sexual intercourse or advances in situations of unequal gender power relations in the workplace often means the consent was not truly voluntary; it was coerced.

Non-sexual workplace violence against women also has increased substantially since reform started. The opening of export-oriented factories and the proliferation of private and collective enterprises has led to skyrocketing increases in physical abuse of female workers (who are the majority of the employees in these types of factories). Working conditions are often inhumane and female factory workers are more frequently than not treated no better than prisoners. Women often work ten or more hours a day, are docked if they spend too much time in the lavatory, need permission to leave their factory dormitories at night or on weekends, may only get one day off per month, and are subjected to verbal and sometimes physical punishment for infractions of work rules.¹⁴⁹ Factory fires and

18, 1993, at 23.

¹⁴⁶ See John Kohut, Scandal of the "Trading Couch," *S. China Morning Post*, Aug. 22, 1993, at 11; Human Rights in China, *supra* note 113, at 67-69. Prior to Anita Hill's testimony at the Clarence Thomas hearings, there was not even a word in Chinese to describe the phenomenon. Research has only recently begun in China on the issue.

¹⁴⁷ Kohut, *supra* note 146.

¹⁴⁸ Human Rights in China, *supra* note 113, at 68 (citing Shenzhen Nuxing Tan Xing Saorao (Shenzhen Women Speak About Sexual Harassment), *China Women's News*, Ming Pao, Nov. 5, 1994).

¹⁴⁹ See generally, *China Labor Bulletin*, Workers' Rights Left Out of "Economic

building collapses are increasingly common and the majority of those injured or killed in factory fires are usually women.¹⁵⁰ The injuries and deaths were often caused by extremely dangerous slave-like working conditions in which employers have violated safety requirements, locked doors, and barred fire exits.¹⁵¹ Many, if not most, of the workers subjected to physical assault and injury from unhealthy working conditions are also women. For example, the majority of the 17,775 workers who come into contact with toxins in 158 Hainan Province factories are young women.¹⁵²

The government typically blames greedy foreign owners in order to avoid implicating local officials. In fact, most industrial and manufacturing industries in China, whether Chinese, Hong Kongese, Taiwanese, Korean, American, or European, flagrantly violate safety laws.¹⁵³ Furthermore, local officials can be paid to turn a blind eye to such practices. Greed is, obviously, a universal human trait.

Rape has also increased since 1979. There were 30,808 reported rapes in 1981¹⁵⁴ and 49,829 in 1992,¹⁵⁵ a sixty percent increase over eleven years. Nonetheless, the figures are deceptively low for several reasons. First, is the near-universal requirement that a woman be a virgin on her wedding night. This requirement is so absolute that some women who are not virgins reportedly undergo a surgical procedure that simulates virginity for the wedding night. Second, the thousands of rapes of trafficked women are not reported. Third, rapes by relatives, friends, employers, or

Miracle," China Rights Forum, Fall 1994, at 10.

¹⁵⁰ See Billing Wong Wai-Yuk, et al., *Rescuers in Race to Save Trapped Workers*, S. China Morning Post, June 5, 1994, at 1 ("Hospitals said 63 people, mostly women aged between 15 and 25, were injured in the tragedy [of a mainland factory collapse]."); Mark Hughes, *Delta Pays a High Price for Fast Economic Growth*, S. China Morning Post, June 5, 1994, at 2 ("[M]ore than 80 people, mostly migrant women workers from China's impoverished interior, died in a blaze which swept through a toy factory . . ."); Human Rights in China, *supra* note 113, at 65-67.

¹⁵¹ S. China Morning Post, *supra* note 150.

¹⁵² Human Rights in China, *supra* note 113, at 66 (citing Youzai, Dagongmei de Jiankang—Guanyu Sanze Siying Ziye Nügong Baohu Baodao (A Subject for Concern, the Health of "Laboring Sisters"—Reports on Protections for Female Workers in Foreign-Invested, Collective and Private Enterprises), China Women's News (May 9, 1994)). I once visited a small rural enterprise factory in which the gases in the unventilated factory were so pungent that I could not remain for more than two minutes. The pregnant woman operating the machine remained all day long, without any protective gear.

¹⁵³ Han Dongfang, *Without Real Trade Unions, Workers' Lives are Cheap*, China Rights Forum, Fall 1994, at 8-9.

¹⁵⁴ 1987 China Law Yearbook 604 (1st Eng. ed., 1989).

¹⁵⁵ 1993 Zhongguo Falü Nianjian [1993 China Law Yearbook] 940.

employer's clients are also unrecorded. This category of rape is often not reported because women may label it workplace 'sexual harassment' or find it difficult to report the rape because of a close relationship with the rapist. Fourth, rapes may not be reported because the women's families often negotiate financial settlements with the rapists or their families. Fifth, the death penalty for rape cases is a strong deterrent to reporting acquaintance rapes due to fear of being responsible for the death of the acquaintance. Consequently, the sixty percent increase in reported rapes between 1981 and 1992 should be interpreted as a measure of the increase in reported rapes and not in the actual number of rapes.

The relationships between economic reform and the increased incidence of rape in the workplace, and between kidnapping and abduction have already been explained. The reasons for a dramatic increase in stranger rapes are less clear. The media accuses the huge transient male population, but the figures show that, while transient men certainly do commit rapes, they are not the sole perpetrators. The increase may have more to do with how women are now portrayed—as commodities and as inferior, feminized persons—and the government's increased inability to closely supervise the population in the way that it did prior to reform. More and more, people are able to move about, free of the close neighborhood and workplace supervision that enabled the government to monitor everyone's lives under socialism. Nowadays, rural people move to the city and urban people move into the private work sector where the prying eye of the government is limited mainly to enforcing birth control policies. Also, more women have moved to cities and towns away from the protective environment of their homes. They are more likely to be in vulnerable situations than women in pre-reform times. Lastly, the increase may also be related to the male-female imbalance. The preference for boys in most Chinese families has resulted in China experiencing a serious shortage of women, which means that not every man will be able to marry. However, male sexual desire can hardly be a reason for rape when there are so many commercial sex workers available today in China. Other factors, such as the changing gender relations, probably play a greater role in redefining male privilege and right of access to the female body. Obviously, more research needs to be done.

As has been well-documented elsewhere, the increase in the abortion of female fetuses and death of female babies by neglect or outright murder is related to the interaction of the one-child policy and the traditional belief in the need for a male heir to worship the ancestors and take care of elderly parents. However, it is also now apparent that economic development has had an important influence. First, the government's pro-business policies have been accompanied by the abandonment of social welfare programs, including responsibility for the elderly. In the new 'each for him/herself'

environment, rural people are especially vulnerable in old age as guaranteed retirement funds are only available to employees of state enterprises, almost all of whom are urban dwellers. Without subsidized food, stable prices, and the large families of the past, rural elderly face a bleak retirement. This gap in old age security increases the incentive for rural parents to get rid of daughters who will leave home upon marriage anyway and to favor sons who will remain in the village after marriage. Sons will take care of them in their old age; daughters will take care of their in-laws. Second, the preference in the new economic order for male workers has also provided an incentive for families to want a son who will be more likely to have a paid job throughout his life and be able to support his elderly parents. Lastly, both the resurgence of patriarchal clan authority in villages and the restoration of ancestral temples where only the male lineage is strictly recorded bode ill for the survival of female infants.¹⁵⁶

Cross-cultural research confirms that violence in the home is related to women's low status in terms of lack of economic power, limited or no right to divorce, and an inability to make family decisions.¹⁵⁷ For example, Richters notes that, in Taiwanese villages, "where wife-beating used to be frequent and severe, as women increase their economic resources, redefine their gender roles, and no longer passively accept abuse, the level of gender violence in the family seems to be remaining constant or perhaps even to be dropping."¹⁵⁸ Campbell examined additional factors relating to domestic violence against women and found that an even greater degree of predictability exists if, in addition to economic dependence, women also have no decision-making power, no "female solidarity groups" for assistance and support, and few or no sanctions for wife abuse.¹⁵⁹ Thus, women with limited or no economic resources who are restricted by socially-constructed sexual stereotypes and forced to be passive are more likely to suffer from physical abuse in the home.

These studies describe fairly well the situation of many women in Chinese villages. Although Chinese women have the right to divorce, economic and cultural impediments mitigate against their exercising that right. Further, along with women's decreased power in areas where agriculture has been feminized, there is probably a decrease in women's

¹⁵⁶ See Geoffrey Crothall, *Gathering of the Clans Haunts Human*, *S. China Morning Post*, Oct. 30, 1993, at 18 (clans illegally abolished "national laws providing equal status for women").

¹⁵⁷ David Levinson, *Family Violence in Cross-Cultural Perspectives* 84 (1989).

¹⁵⁸ Richters, *supra* note 90, at 102.

¹⁵⁹ Jacqueline C. Campbell, *Wife-Battering: Cultural Contexts Versus Western Social Sciences*, in *Sanctions & Sanctuary: Cultural Perspectives on the Beating of Wives*, 229 (Dorothy Ayers Counts et al. eds., 1992).

ability to make important family decisions. Additionally, rural women are not likely to have female solidarity groups because they marry into villages as strangers and so do not have the strong ties expected among women who grew up together in the same community. Urban women are more likely to engage in paid labor, have decision-making power, exercise their right of divorce, have female solidarity groups, and are less likely to accept abuse passively. Domestic violence should be more prevalent in the countryside than in cities. Statistics show this to be the case in China. A 1991 nationwide survey on the status of women reports that 26.9% of rural women and 17.9% of urban women had been beaten by their husbands.¹⁶⁰

However, the real extent of the problem and whether it is increasing are unknown. Statistics have not been kept and surveys of the problem have not been carried out until recently. Nonetheless, anecdotal reports and divorce statistics indicate that nearly twenty percent of divorces filed by women contain allegations of physical abuse.¹⁶¹ Surveys and reports confirm that husbands are battering¹⁶² and murdering¹⁶³ their wives and that women are killing their abusive husbands,¹⁶⁴ all of which indicate that domestic abuse is a serious problem. Economic reform has certainly contributed to the problem.

To summarize, the economic basis of women's deteriorating status is evident from the fact that most acts of violence against women involve

¹⁶⁰ Women's Studies Institute of the All-China Women's Federation, *A Review of the Social Status of Women in China* 474 (Tao Chunfang & Jiang Yongping eds., 1995).

¹⁶¹ Domestic Violence Brings Rise in Divorce, *E. Express* (Hong Kong), Apr. 23-24, 1994, at 8 (citing report in the *China Daily*); Daughters Lead to Divorce, *E. Express* (Hong Kong), Dec. 7, 1994, at 18.

¹⁶² In a study in rural areas, the All-China Women's Federation reported that 90% of the women said that they had been beaten by their husbands and that marital rape is even more prevalent. See Jiang Wandu, *Development of Women's Rights in China*, *Beijing Rev.*, Nov. 15-21, 1993, at 18, 19-20. The 1991 nationwide survey reports 24.9% of women had been beaten by their husbands. Women's Studies Institute of the All-China Women's Federation, *supra* note 160, at 474. Two Beijing studies found that 80% of all domestic violence cases involved wife abuse and that "23 percent of husbands had beaten their wives." Human Rights in China, *supra* note 113, at 23 (citing Alarm Bell Sounds on Domestic Violence—Discussion Initiated by the Li Yiqin Incident (Jiating Baoli Jingzhong Chang Ming—Cong Li Yiqin Shijian Shuokaiqu), *Workers' Daily*, date unclear, 1994 and Beijing Marriage, Family Institute Conducts Marriage Survey, *Xinhua News Agency* (Mar. 9, 1995).) The inconsistent results of these studies means that the actual incidence of wife abuse is still a mystery.

¹⁶³ See, e.g., Guo, *An Analysis of 100 Cases of Criminal Domestic Violence*, 26 *Chinese Women and Soc'y* 14 (1993), originally in *Qingshaonian Fanzui Yanjiu* [Studies on Criminality Among Young People and Juveniles] 8 (1991).

¹⁶⁴ See Sun Xingzhong, *A Survey of 217 Women Murderers*, 26 *Chinese Ed. and Soc'y* 7, 8-9 (1993).

money in the hands of men. Men purchase women's sexuality in the form of commercial sex worker, PR girl, or womb; they use force to control economically dependent women in the form of wife abuse, sexual harassment, and dangerous working conditions. Chinese women's energies and abilities have become a labor commodity to exchange for money, and their bodies are being transformed into sexual commodities to be purchased, coerced, or taken by men for their own or another's sexual use. The influence of economic reform 'with Chinese characteristics' on gender relations cannot be underestimated. Economic transformation is putting the lion's share of the newly created wealth into the hands of men and only a pittance into the hands of women. It is creating gender politics based on money; those with money (men) control those without (women). This represents a radical departure from China's recent socialist past, when equality was given more than token attention, women's sex was valued for its powers of reproduction, and women's work was valued for its contribution to socialist development. Unfortunately, the personal use and abuse of women's bodies that was so prevalent during the Qing and other dynasties has returned with a vengeance. If the current inequality continues and Chinese women are denied respect and a meaningful role in the new social and economic order, violence against women in modern China will easily surpass the violence against women of China's past, if it has not done so already.

Unfortunately, China's master plan for a socialist market economy does not contain any significant role for women. Each of the government's development plans since 1978 continues and intensifies the priorities calling for consumerism, capital accumulation, massive layoffs, and centrally located, export-oriented, foreign-funded industries. As for violence against women, the government's strategy has been, and will continue to be, to imprison commercial sex workers, to pass worker safety and maybe even sexual harassment laws that will be rarely or selectively enforced, to execute kidnappers and rapists, and to make periodic attempts to rescue kidnapped women. The approach is remedial or punitive with no attempt to bring about the fundamental, structural changes required to decrease violence against women. For this reason, an internal momentum for changing the direction of reforms will arise only when the increasing lawlessness and public discontent with unemployment, inflation, and corruption reach a point where the government has no option but to respond. However, even then, women's voices will remain muted unless the All-China Women's Federation or some other official organ is able to bring women's concerns to the attention of male policymakers. This is unlikely, however, as women play almost no role, at any level, in formulating government policy.

V. PROPOSED AVENUES OF RESEARCH AND LAW REFORM

The transformatory power of economic reform goes much deeper into society than merely changing an agricultural society into a market-oriented one. Economic reform causes a radical change in a society's sociocultural relations and, if implemented improperly (from the human rights perspective), can exacerbate existing sexual inequalities and create new and dangerous forms of women's subordination.

The Chinese situation is by no means unique, which makes the task of finding the exact mechanisms by which women are excluded from, and made victims of, development an urgent one. Countries such as Vietnam, Burma, and Laos have not yet felt the full impact of mainstream development and, unless changes are made quickly and dramatically, women in these and other newly developing Asian countries will fare no better than their impoverished sisters in Thailand and China. In fact, reports of a cross-border trade in women between Laos, Burma, China, Vietnam, and Thailand have become quite numerous over the last few years. Investors are pouring into those countries from all over the world, mostly from other parts of industrialized Asia. Along with their investments, these businessmen are bringing in corrupt practices that require the peoples of those countries to alter their traditional lifestyles radically and that place tremendous stress upon family and community relations. Unless receiving countries just embarking on the path to economic reform are willing and able to withstand the pressure and insist that the donor countries, agencies, and investing industries alter their standard operating procedures to accommodate the needs of all members of the host country, especially women, the end result will certainly be no different from the negative results of development in Thailand, Taiwan, and China, to name a few.

Development practice is lagging behind theory, and feminist research is lagging behind events in developing countries. Even though there is probably little that can be done in the immediate future to stem the tide of violence against women in the developing world, I make the following proposals, if for no other purpose than to create an international tool for evaluating and criticizing the effect of economic development upon women. The tool is especially intended to counter the notion that the human right to development is a 'collective human right.'

1. Scholars and activists in developing and developed countries should document the various components of economic development strategies that place stress upon male-female relations, increase men's status in the family and the workplace, and have the potential for increasing or

leading to gender-related violence. Development experts should cease viewing economic development merely as a series of missed opportunities for women. They should acknowledge that development, as presently constructed, contains many aspects that women *should avoid* until the playing field is leveled and women's needs and concerns are addressed. To paraphrase Heyzer, the question is not *how* to incorporate women into development, but how women *are* incorporated.¹⁶⁵ At the same time, researchers should be sensitive to the myriad ways in which women are able to control their own lives despite legal, economic, cultural, and social pressures that attempt to relegate them to a subservient, passive, and contingent position. These modes of resistance could then be seen as realistic, non-moralistic foundations upon which to build more human, gender-sensitive, culturally appropriate development strategies. The need for an interdisciplinary dialogue is great because scholarship has influenced, and will continue to influence, the definition of women's human rights. In this way, it will also continue to have a direct impact upon the practices of women's human rights activists and women-in-development specialists.

2. Human rights organizations could do more to bring this issue to the fore. Violence against women is so serious and widespread that it can no longer be considered a private matter. If a state's laws, policies, and practices create an environment in which violence against women can flourish, then the state must be brought to task and made to face international censure, not only for its acts but, equally important, for its omissions. Even mainstream human rights organizations, such as Amnesty International, that traditionally only look at states' direct violations of individuals' human rights, could reinterpret their mandates to include the violence of development. This is because state-created 'collective rights' based on economic policies directly violate the individual's right to development and women's right to be free of, and protected against, gender-related violence.

3. The DRD should be amended to include a requirement that signatory parties' development strategies must include components that empower women rather than render women vulnerable to exploitation and violence. The amendment should incorporate the interpretations of the human right to development that are contained in the Global Consultation Report, especially the call for greater democracy in the entire development process¹⁶⁶ and the establishment of a high level committee of experts to report on the "progress made in the implementation of the [DRD] at the

¹⁶⁵ See Heyzer, *supra* note 72.

¹⁶⁶ See Global Consultation Report, *supra* note 21, ¶ 182.

national as well as international levels.”¹⁶⁷ The committee would, ideally, include grassroots participants. The DRD should also be amended to eliminate its statist collective rights position and incorporate the individual rights philosophy of the ICCPR, ICESCR, and the Women’s Convention.

4. The Women’s Convention should be amended to include a requirement that governments provide accurate statistical information on the incidence and forms of violence against women over time, including information regarding the changing status of women during the reform process. This provision would recognize the potential of poorly conceived development plans to threaten women’s physical safety. It would also acknowledge that violence against women is not simply an individual matter, that more than social, cultural, and religious practices and beliefs are involved in acts of violence against women, and that states have a responsibility to investigate their development strategies for linkages with violence against women. Governments should also be required to report the actions they have taken to de-masculinize economic development planning, strategies, and goals. Lastly, they should be required to report on the extent to which they have consulted with grassroots women’s organizations for the purpose of creating a more gender-sensitive development blueprint, and they should report the results of such consultations. The consultations would require more than merely helping women find assembly-line work in export-processing zones.

Additionally, the meaning of the call for research on the ‘causes and effects’ of violence against women set out in article 14 of the General Recommendation should be clarified by the Women’s Convention Committee (CEDAW) to include economic development as one of the potential ‘causes.’

5. The United Nations Commission on Human Rights, in 1994, appointed Radhika Coomaraswamy as the Special Rapporteur on violence against women. Her mandate is to investigate and report on the incidents, causes, and consequences of violence against women, and to recommend ways to eliminate such violence. Her preliminary report on the causes and consequences of violence against women acknowledges a relationship between economic vulnerability and violence against women, the damaging effects of modern technology, and “the economic exploitation of female labour spawned by modern technology.”¹⁶⁸ However, the report does not

¹⁶⁷ Id. ¶ 194.

¹⁶⁸ Radhika Coomaraswamy, Preliminary Report Submitted by the Special Rapporteur on Violence Against Women, its Causes, Consequences, United Nations Economic and Social Council, Commission on Human Rights, ¶ 53, 55, E/CN.4/1995/42 (Nov. 22, 1994), available at gopher.undp.org:70/00/undocs/eed/E/CN.4/1995/95_07/42.

take the next step and cite economic development policies as a cause of, or contributor to, violence against women. The mandate for the Special Rapporteur should be revised to permit her to investigate the effect of the economic development schemes of the signatory states on violence against women.

6. The periodic reporting requirement in the ICESCR should be expanded to require signatory states to include in their reports the type of information outlined in the above proposal for the Women's Convention. The addition of this requirement would link the two documents and would also catch those states that have not yet signed the Women's Convention.

7. International lending and development-assistance organizations should include gender as a factor in the formulation of all development projects. This would require more than simply adding a 'women's program' to the mainstream development plan as is presently the predominant practice (that is, when women's issues are considered at all). Organizations should invite women from recipient countries to contribute their comments and proposals prior to concluding lending or other types of agreements with recipient states. They should also investigate the effect that past and existing lending and assistance programs may have had upon the incidence of violence against women in developing countries. The lending practices of donor nations should, likewise, include a consideration of the impact of their loans on women in the recipient countries.

Governments and institutions such as the International Monetary Fund and the World Bank have a moral, if not a legal, obligation to alter their past practices. A consensus is now growing among human rights theorists, organizations, and activists that development can no longer be separated from other human rights concerns and that governments must promote democratic, bottom-up policies and be held accountable for their actions, or lack thereof.¹⁶⁹ They must protect human rights and create strategies that promote people's ability to enjoy the rights contained in the Universal Declaration of Human Rights and other human rights instruments. Without accountability and empowerment, the individual human right to development will continue to be treated as a collective right by governments and the funding of development projects will continue to be negotiated between a country's male elites and the male-dominated funding agencies, with no direct input from the grassroots women's organizations (and others, such as minorities) who will be directly and possibly adversely affected.

¹⁶⁹ See, e.g., Konrad Ginther, *Participation and Accountability: Two Aspects of the Internal and International Dimension of the Right to Development, Law Accountability and Development: Theories, Techniques and Agencies of Development* 55 (Third World Legal Studies 1992).

Lastly, scholars and practitioners should be careful not to allow the development of a body of knowledge and understanding on this complex and controversial issue to become the property and wisdom of 'experts.' We should all be listening to and learning from the experiences and insights of those women in developing countries who are being directly affected by top-down, mainstream, masculinist development schemes.