Do Women Only Have Rights When It Is Economically Profitable? Limits of the Legislative Rationality behind International Women's Rights

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Abstract

The thesis studies how capitalist logic is ingrained in the fabric of women's rights; and argues that it limits women's rights' ambitions and possibilities to emancipate women. The inquiry is based on two case-studies of adopting international women's rights: the UN Convention on Marriage (UNCM) granting women a right to reject forced marriage; and CEDAW, granting women a right to family planning in its Art. 16 e). The thesis, in the context of the case-studies, shows that a combination of capitalist imaginaries of women's needs, means of emancipation and the deference to 'autonomous' economic forces are imprinted in the legal form of women's rights. These imaginaries come together in a core unemancipatory dynamic of the rights. This dynamic is such that the aim of the legal form signified under 'rights' is not women's attainment of power or entitlements, but a creation of conditions for women to join the course of 'autonomous' economic forces which will then presumably lead to this attainment. This technology within the rights then functions to distribute emancipation and subordination according to the structures of patriarchal, racial, capitalism. This perspective helps explains why poor and non-Western women are structurally subordinated by and within the merit of the mentioned rights, despite these rights being adopted to empower these exact women.

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CEDAW – Convention on Elimination of All Forms of Discrimination Against Women

CSW – Committee on the Status of Women

GA – United Nations General Assembly

LoN – League of Nations

SCCAS - Supplementary Convention to the Convention on the Abolition of Slavery

SG – United Nations Secretary General

UNDHR – UN Universal Declaration of Human Rights

UNCM – UN Convention on Consent to Marriage, Minimum Age for Marriages and Registration of Marriages

UN – United Nations

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Introduction

This thesis studies the use and function of economic arguments in international women's rights-making. The analysis is based on two case-studies: the UN Marriage Convention (UNCM, 1962) and Convention on Elimination of All Forms of Discrimination against Women (CEDAW, 1981, focused on Art. 16 e), right to family planning). Based on studying the preparatory works to these conventions, the thesis aims to answer the following research question: How do economic arguments (economic reasons and arguments of economic benefits) function in adopting international women's rights? The interest in mapping how are economic logics ingrained in women's rights stems from today's application of the studied rights where economic logics function, often unarticulated, as limits of the possibility of women's emancipation.

The inquiry was motivated by the paradox that both treaties were adopted to benefit women in the Global South but today, the rights they enacted in many ways function to structurally minimize these women's agency and social power. I will, therefore, start by canvassing this paradox.

The UNCM, representing the first case-study, was adopted to end the practice of forced marriage and deliver 'human dignity' to women in the Global South. Today, the UNCM translates directly into rules for marriage recognition and marriage-based migration in Western Europe (often former empires). National legislators implement its provisions, as human rights, into national frameworks of Private International Law and Migration Law.[1] They refer to the UNCM-based

[1] Ann Laquer Estin, 'Marriage and Divorce Conflicts in International Perspective' [2017] Duke Journal of Comparative & International Law 485, 494; Ruth Gaffney-Rhys, 'International Law as an Instrument to Combat Child Marriage' (2011) 15 The International Journal of Human Rights 359,

standards, interpreted in conjunction with subsequent UN treaties,[2] to justify making laws for reunification and marriage recognition stricter and more exclusive.[3] As human rights standards of marriage, the UNCM's conditions also substantiate the invocation of public policy against marriage recognition. The application of these standards does not lead to universally distributed effects, but impacts negatively on Global South subjects, particularly from the former colonies.[4] This is because the human rights standards of marriage in the UNCM derived from the Western marriage standards and thus non-Western marriage forms practiced in the former colonies are usually seen as non-compliant with human rights.

The majority of applicants for family reunification in Europe are women[5] and at the same time, non-Western women are perceived by lawmakers as hardly employable and thus generally unprofitable migrants.[6] In consequence, the UNCM is applied to structurally exclude non-Western women from reunifying. Human Rights are often presented at the face of this application, while functionally it

364–365; Ashwini Tambe, 'The Moral Hierarchies of Age Standards: The UN Debates a Common Minimum Marriage Age, 1951–1962' (2020) 125 The American Historical Review 451, 459.

[2] For arguments on continuity in constructing the international legal notions of child and forced marriages, see: Irem Ebetürk, 'Global Diffusion of Laws: The Case of Minimum Age of Marriage Legislation, 1965–2015' (2021) 8 European Journal of Cultural and Political Sociology 294; Rhian Elinor Keyse, 'Imperial, International, and Local Responses to Early and Forced Marriage in British Colonial Africa, c.1920-1962' (2019) Doctoral dissertation 313.

[3] For example: House of Commons, 'Marriage and Civil Partnership (Minimum Age) Bill' (2022) HL Bill 121 Explanatory Notes § 6; Børne- og Socialministeren, 'Forslag Til Lov Om Ændring Af Lov Om Ægteskabs Indgåelse Og Opløsning, Udlændingeloven Og Værgemålsloven' (2016) LFF 2016-11-30 nr 94 § 4 Internationale forpligtelser; Torben Svenne Schmidt, *International Person-, Familie- Og Arveret* (Jurist- og okonomforbundets forlag 1990) 40.

[4] Helena Wray, 'Moulding the Migrant Family' (2009) 29 Legal Studies 592, 598; Mikkel Rytter, 'Between Preferences: Marriage and Mobility among Danish Pakistani Youth' (2012) 18 Journal of the Royal Anthropological Institute 572.

[5] Rosamund Shreeves European Parliamentary Research Service, 'Gender Aspects of Migration and Asylum in the EU: An Overview' (2016) Briefing PE 579.072 9; Caroline Oliver, 'The Impact of Restrictions and Entitlements on the Integration of Family Migrants' (2013) Compas, University of Oxford 29–30.

[6] 'Preparatory Works to Novelization of the Aliens Act (Udlændingeloven) by Law No. L 6/2003-04, Presentation Speech'.

excludes women who generally form an unprofitable migrant cluster (details are expounded in Chapter 1).

The second case-study focuses on the right to family planning in CEDAW. The right to decide on the number and spacing of children and to access to family planning services and information was formulated to release Global South women from excessive childbearing and expand their 'freedom of choice' and 'self-determination'. In many countries, including in the Global North, this right was expanded as a right to access to abortion counselling and services.[7] The actualization of this right, however, requires the participation of social and healthcare bureaucracy. The functioning of these bureaucratic structures then contributes to asymmetrical exercise of this right where poor women and especially migrants with non-Western background tend to undertake abortion more frequently[8] or tend to be more exposed to advice on the use of contraceptives.[9] Socio-economic background and the circumstances of non-Western migrant women are structurally interpreted by health- and social-care personnel to make abortion advisable and lead to repeated abortions.[10]

For example in a recent Danish media case, a pregnant Greenlandic woman living in Copenhagen was insistently approached by her social care adviser nudging her to abortion. The reasons for this were that her first child was removed to institutional childcare because of the mother's lack of cooperation with the state

[7] Kate Hunt and Mike Gruszczynski, 'The Ratification of CEDAW and the Liberalization of Abortion Laws' (2019) 15 Politics & Gender 722; Christina Zampas and Jamie M Gher, 'Abortion as a Human Right - International and Regional Standards' (2008) 8 Human Rights Law Review 249, 258.
[8] Lotti Helström and others, 'Abortion Rate and Contraceptive Practices in Immigrant and Native Women in Sweden' (2003) 31 Scandinavian Journal of Public Health 405; Vibeke Rasch and others, 'Induced Abortion in Denmark: Effect of Socio-Economic Situation and Country of Birth' (2008) 18 European Journal of Public Health 144.
[9] Dorothy Roberts, 'Reproductive Justice, Not Just Rights' (2015) 62 Dissent 79, 80.
[10] Helström and others (n 8) 406.

unemployment services leading to her having insufficient means to sustain herself.[11] This case represents larger structural bias in abortion advisory, and depicts how class and identity (the mother being a former colonial subject in the former metropole)[12] intersect in discriminatory effects of applying legal provisions emanating from the right to family planning.

Additionally, the label of family planning served and serves as a smokescreen to wholesale coercive policies in the Global South applied to reduce fertility.[13] The right to access family planning is thus applied to limit childbearing of poor and Global South women where the scope of their choice, dependent on the advice they receive from the healthcare personnel, appears limited in comparison with white native women.

The 'paradoxes' thus are that both treaties were adopted to help women, particularly from the Global South, but function to discriminate these women according to the logics of racial capitalism. The project recognizing these paradoxes, probes whether economic rationale was ingrained in these rights at inception. It shows it was: informing the treaty-makers' interpretation of social needs of women, elaboration of the best ways to address these needs, and the definition of legislative objectives. As will be explained below and in the Chapters, in both cases, the articulation of the agenda as women's agenda emerged from pre-existing

[11] Gry Hoffmann, Emil Eller and Karen Klærke, 'Vejle Kommune Har Forsøgt at Presse Kvinde Til Abort: "Det Er Langt over Grænsen"' (*DR*, 11 January 2022) <https://www.dr.dk/nyheder/indland/vejle-kommune-har-forsoegt-presse-kvinde-til-abort-det-er-langt-over-graensen> accessed 19 June 2022.

[12] Similarly: Rosalind P Petchesky, *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom* (Longman 1984) 8.

[13] Leigh Senderowicz, '"I Was Obligated to Accept": A Qualitative Exploration of Contraceptive Coercion' (2019) 239 Social Science & Medicine 112531; Paige Whaley Eager, 'From Population Control to Reproductive Rights: Understanding Normative Change in Global Population Policy (1965-1994)' (2004) 18 Global Society 145, 151–152; Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 The American Journal of International Law 613, 619.

geopolitical projects based on foundationally economic stakes involving colonial power dynamics: decolonization and population control. In both cases, the consciousness about the subject matter - marriage practices in the dependencies or family planning - existed already. In adopting the treaties, it was re-articulated as having an impact on women's equality, rights, dignity or generally social power and the existing economic register and logics were discursively rechannelled towards these ends. The economic and women's rights' registers and logics then intertwined and seemingly reinforced each other. They also, however, contradicted and continue to contradict each other in that, due to the intertwine of capitalism, racism and patriarchy, capitalist interests do not always overlap with women's utmost emancipation.

The analysis points to various links – articulated in the treaty-making discourses - between economic profitability and the expansion of women's social power by law. These are outlined below in the Introduction (Section 3). The articulation between women's rights and economic production was, however, not only a result of ingrained bias about the meaning of women's rights – but appeared also as deliberate linguistic strategizing to support the institutional legitimacy of the UN. Both the language of economic benefits and the language of human rights were at different moments perceived as depoliticising and universalising the interest; and, when targeted at the Global South, also globalizing it.

The aim of this study is to analyse the role of law, particularly women's rights, in co-constructing the imbrication of women's social power and patriarchal capitalism. While radical imaginaries of shifting social power must look beyond law, the thesis points out the ways in which women's rights are shielding the asymmetrical division of power between genders. By unearthing the invisible

capitalist logics in women's rights, it shows the particular and self-serving capitalist interests informing the functioning of, nominally, universal and women-oriented rights.

1. Methods and Theory

The study builds on records of annual sessions of the Commission on the Status of Women (CSW) obtained from the UN archives. The CSW provided a forum for drafting of both treaties. The data for case-study 1 (UNCM) additionally comprised reports from Trusteeship Council, the Committee on Information from Non-self-governing Territories, and consultations by IOs and NGOs. The data for case-study 2 (CEDAW's Art. 16 e)), additionally included reports of the Population Council and of the UN programme of assistance in advancement of women in developing countries.

The selection and interpretation of the data was guided by the approach of contextual history as recast by Koskenniemi and Orford.[14] This approach singles out more or less relevant aspects of the past by reference to contemporary concerns,[15] combining the classical contextual method with legal reading of past texts.[16] The analysis thus does not seek objective 'origins' of women's rights but it seeks to construct knowledge[17] about women's rights with focus on making visible the importance of economic productivity in understanding women's social needs and addressing them.[18] The motive for establishing that there is a condition of

[14] Martti Koskenniemi, 'Rights, History, Critique' in Adam Etinson (ed), *Human Rights: Moral or Political?* (Oxford University Press 2018); Anne Orford, 'On International Legal Method' (2013) 1 London Review of International Law 166; Anne Orford, *International Law and the Politics of History* (Cambridge University Press 2021).
[15] Koskenniemi, 'Rights, History, Critique' (n 14) 44.
[16] Orford, 'On International Legal Method' (n 14) 177; Orford, *International Law and the Politics of History* (n 14) 316.
[17] Orford, *International Law and the Politics of History* (n 14) 7–10.
[18] Nancy Fraser, 'Struggle over Needs: Outline of a Socialist-Feminist Critical Theory of Late Capitalist Political Culture' in Nancy Fraser (ed), *Unruly Practices: Power, Discourse and Gender in*

profitability ingrained in women's rights reacts to the current setbacks[19] in applying these rights canvassed above.

To argue for a relationship of determination between economy and women's rights, this thesis combines the material philosophical standpoint of Marxism (economic base that determines superstructure) and dialectical nature of the determination stressing the causal efficacy and the relative autonomy of the superstructure which 'overdetermines' the base.[20] The ways in which women are dis/empowered through laws[21] (superstructure) are thus understood here to be informed by the conditions of production (base).[22] Lawmakers create laws addressing women in bias- or with strategic emphasis of the economy when they purport that economic goals are universal and attained by autonomous economic forces.[23] The lawmakers' (or treaty-makers', in the case of this thesis) interpretation and articulation of the relationship between the economy and emancipation of

Contemporary Social Theory (University of Minnesota Press 1989); Carol Lee Bacchi, *Women, Policy and Politics* (Sage Publications 1999) 2–7.

[19] Martti Koskenniemi, 'Law, Teleology and International Relations: An Essay in Counterdisciplinarity' (2011) 26 International Relations 3, 5–6; Orford, *International Law and the Politics of History* (n 14) 316.

[20] Louis Althusser, 'Ideology and Ideological State Apparatuses (Notes towards an Investigation)', *On Ideology* (Verso 1971) 9; Julie Rivkin and Michael Ryan (eds), *Literary Theory: An Anthology* (2nd edition, Wiley–Blackwell 2004) 694–695; Martha E Giménez, *Marx, Women, and Capitalist Social Reproduction: Marxist-Feminist Essays* (Brill 2018) 57; Christopher Tomlins, 'Past Prescient' (2021) 92 University of Colorado Law Review 1129, 1144.

[21] Giménez (n 20) 42–43.

[22] On the basic theory of base-superstructure relationships, see: Karl Marx, *A Contribution to the Critique of Political Economy* (Progress Publishers 1977) Preface <https://www.marxists.org/archive/marx/works/1859/critique-pol-economy/preface.htm>; Shlomo Avineri, *The Social and Political Thought of Karl Marx* (Cambridge University Press 1968) 24–31; Giménez (n 20) 57.

[23] The view of production/economic growth as a natural unifier of interest has also been conceptualized by Marx as 'commodity fetishism': Karl Marx, *Capital: A Critique of Political Economy*, vol 1 (Introduced by Ernest Mandel, Translated by Ben Fowkes, Penguin Books in association with New Left Review 1867) 121 et seq; Duncan Kennedy, 'The Role of Law in Economic Thought: Three Essays on the Fetishism of Commodities' (1985) 34 American University Law Review 972.

women is then their autonomous input with which they overdetermine the imagination of and the possibility of women's emancipation through laws.

At the same time, laws and rights are indeterminate and their interpretation is not constant.[24] Accordingly, perceptions of women's needs, functions and emancipation are historically specific, and the adopted rights reflect historically specific roots in the more or less visible levels of social and economic reality[25] which change.[26] Despite this legal indeterminacy and historical specificity, women's bargaining power - agency and social power - tend to be continuously limited within the application of these rights along the logics of economic profitability.[27] Below, I elaborate how the economic determination of the studied women's rights limits the possibility of emancipation: through the construction of women's subjectivity imprinting in their bargaining power; and based on the interplay of symbolic and material recognitions.

Subjectivities and Bargaining Power

In embodying the imagined relations of and roles of women within the economy, rights buttress a fictional subjectivity of women.[28] In this way law as an ideological

[24] Duncan Kennedy, 'The Structure of Blackstone's Commentaries' (1979) 28 Buffalo Law Review 205; Duncan Kennedy, 'Form and Substance in Private Law Adjudication, 88 Harvard Law Review 1685 (1976)' in David Kennedy and William W Fisher (eds), *The Canon of American Legal Thought* (Princeton University Press 2006); Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (reprint 2006, Cambridge University Press 1989).

[25] Giménez (n 20) 69; Ntina Tzouvala, 'International Law and (the Critique of) Political Economy' (2022) 121 South Atlantic Quarterly 297, 313–314.

[26] Kerry Rittich, *Recharacterizing Restructuring: Law, Distribution and Gender in Market Reform* (Brill 2002) 153–157.

[27] On debate over indeterminacy; and contingency vs. structuralism in critical legal analysis see e.g. Rob Hunter, 'Critical Legal Studies and Marx's Critique: A Reappraisal' (2021) 31 Yale Journal of Law & the Humanities 411; Ntina Tzouvala, *Capitalism As Civilisation: A History of International Law* (Cambridge University Press 2020) 5–6; Umut Özsu, 'The Necessity of Contingency: Method and Marxism in International Law' in Ingo Venzke and Kevin Jon Heller (eds), *Contingency in International Law: On the Possibility of Different Legal Histories* (Oxford University Press 2021) 74–76; Koskenniemi, *From Apology to Utopia* (n 24) 606–607.

[28] Wendy Brown, 'Suffering the Paradoxes of Rights' in Wendy Brown and Janet Halley (eds), *Suffering the Paradoxes of Rights* (Duke University Press 2002) 429; Janet E Halley, 'Reasoning

structure with normative material force locks women's subjectivities or relegates women to a subordinate position. The subjectivation is done by, for example, selecting the priors which count for constituting women as bearers of rights[29] (because free consent-based marriages support capitalism better, women should have a legal foundation for rejecting forced marriages). In this way lawmakers influence how women are subjectivised through rights. The submission to this subjectivity[30] then happens by submitting to the necessity of proving economy-based deservedness when justifying more emancipation or accepting less emancipation if it is economically unprofitable, which translates as locking of the subordinate position.

The assignment of subjectivities affects groups' bargaining over the fruits of social cooperation.[31] Law is thus one of the forces which distribute groups' bargaining power.[32] 'Bargaining power' is in the thesis used interchangeably with 'emancipation' to the end where they both describe the extended ability of women to impact the distribution of entitlements and power in society.

Symbolic and Material Recognition

The adopted rights nominally shift bargaining power between women and other genders. Specifically, given the language and rationale of the reviewed data, between women and men. This shifting is, however, 'nominal' insofar as law's impact is supported or limited by operating 'background rules' (operating social

about Sodomy: Act and Identity in and after Bowers v. Hardwick' (1993) 79 Virginia Law Review 1721.

[29] Judith Butler, *The Psychic Life of Power: Theories in Subjection* (Stanford University Press 1997) 117.

[30] ibid 118.

[31] Liam Kofi Bright and others, 'On the Stability of Racial Capitalism' (SocArXiv, 23 May 2022) 6, 8–9; Cailin O'Connor, *The Origins of Unfairness: Social Categories and Cultural Evolution* (University Press 2019) 3–4.

[32] Robert L Hale, 'Bargaining, Duress, and Economic Liberty' (1943) 43 Columbia Law Review 603; Duncan Kennedy, 'The Stakes of Law, or Hale and Foucault' (1991) 15 Legal Studies Forum 327.

forces).[33] Law-making involves taking some of these background rules into account and omitting others. The theoretical distinction between recognitions on symbolic and material levels[34] assisted me in making visible how lawmakers' identification of operating background rules aids or hampers emancipation. Sometimes, symbolic recognition has limited reflection in the social reality because the background, economic, rules of its operation are unrecognized. Other times, symbolic and material recognitions go together – rights are accompanied by redistribution.[35] Yet other times background rules are recognized but interpreted as out of the law's influence, in a way that naturalizes them as a limit to the effects of the symbolic recognition. The last version applied in both case-studies when lawmakers explicitly relied on the 'autonomous' forces of the economy to elevate women's status. As such, law encapsulates women's subjectivities as dependent on and confined by the capitalist logic of development of productive forces.[36]

Lawmakers' interaction with the operating background rules involves arguing with 'false necessities'[37] about women's rights and needs (for example that higher partaking on production naturally contributes to the elevation of women's status, and also logically justifies legal intervention for elevating women's status)

[33] Hale (n 32) 625–26; Kennedy, 'The Stakes of Law, or Hale and Foucault' (n 32) 331.
[34] Nancy Fraser, 'Feminist Politics in the Age of Recognition: A Two Dimensional Approach to Gender Justice', *Fortunes of Feminism: From State Managed Capitalism to Neoliberal Crisis* (Verso 2013) 171–173. See further the debate on recognition and redistribution: Judith Butler, 'Merely Cultural' [1997] Social Text 265; Nancy Fraser, 'Heterosexism, Misrecognition, and Capitalism: A Response to Judith Butler' [1997] Social Text 279; Libby Adler, *Gay Priori: A Queer Critical Legal Studies Approach to Law Reform* (Duke University Press 2018) 156–170.
[35] Adler (n 34) 166–169.
[36] Giménez (n 20) 41.
[37] Roberto Unger, *False Necessity* (2nd edn, Verso 2004) Introduction to the New Edition, XX-XXX. Similar critique of false inherent logical belongingness between concepts presented by law-makers which is constructed by their active articulation can be found for example in: Ernesto Laclau, *Politics and Ideology in Marxist Theory* (NLB 1977) 7; Antonio Gramsci, *Selection from the Prison Notebooks* (Quintin Hoare and Geoffrey Nowell Smith eds, International Publishers 1992) 147; Stuart Hall, 'On Postmodernism and Articulation: An Interview with Stuart Hall' in D Morley and KH Chen, *Stuart Hall: Critical Dialogues in Cultural Studies* (Routledge 2005) 142.

and obscuring the hidden necessity in what is presented as contingency[38] (for example the imperialist causes of overpopulation in the Global South, presented as a failure of the local reason; or the apology for unmaterialized gender equality based on the argued unpredictable nature of the economy). Unveiling the patterns of false necessities and contingencies helps canvass the operating economic bias in the legal ideology.[39] Methodologically, this is done by tracing the reasons mobilized by the drafters to convey the necessity (or a 'common sense'[40]) of the legislative intervention and to argue for the necessity and contingency of factors influencing the effects of law.

A flip side to women's emancipation being limited by the legal gendering according to the impetuses of capitalist expansion is that of 'overdetermination' of the natural logic of these impetuses. The case-studies present specific and limited set of claims revealing how 'women's rights' give form'[41] to a sustained capitalist-patriarchal subjection of women.[42] The capitalist-patriarchal subjectivation of women allows production to expand based on women's subordination, which premise is seen as logical and formalized by, among others, women's rights. For example, by changing the form of marriage, law sets up conditions for women's

[38] Slavoj Žižek (ed), *Mapping Ideology* (Verso Books 2012) 4. Cited in: Susan Marks, 'False Contingency' (2009) 62 Current Legal Problems 1, 14.
[39] Althusser (n 20) 7. Both subjectification and ideology are representations of the imaginary relationship of individuals to their real conditions of existence. While ideology signifies the structural reflection of the base (discursive totality supporting the expansion of productive forces), subjectification signifies the identity produced by the discourse: Butler (n 29) 86.
[40] Gramsci (n 37) 322; Laclau (n 37) 7; Chantal Mouffe (ed), *Gramsci and Marxist Theory* (1st edition, Routledge 2014) 10.
[41] Brown (n 28) 429; Wendy Brown, 'Neoliberalism and the Economization of Rights' in Penelope Deutscher and Cristina Lafont (eds), *Critical Theory in Critical Times: Transforming the Global Political and Economic Order* (Columbia University Press 2017) 91–92.
[42] By this it contributes to the general critical scholarship pointing out the unempancipatory and obscuring functions of rights: Anthony Chase, 'Left on Rights: An Introduction' (1984) 62 Texas Law Review 1541; Paul O'Connell, 'On the Human Rights Question' (2018) 40 Human Rights Quarterly; Duncan Kennedy, 'The Critique of Rights in Critical Legal Studies' in Wendy Brown and Janet Halley (eds), *Left Legalism/Left Critique* (Duke University Press 2002).

work outside the family. It was presumed that women will combine family work with community work or light industrial labour, which will contribute to their dignity by the acquisition of petty cash, networks and 'awakening their intelligence'.[43] The premise of dual work as a condition of the actualization of dignity and freedom was screwed into the 'autonomous life of the economy'[44] as a natural, untameable phenomenon. By this the 'natural' logic was overdetermined again in the slightly new form of women's rights.

Determination through Repetitions

These links, and the form of gendering are not stable but modified through capitalism's various temporal and geopolitical iterations.[45] Especially the linguistic strategizing, described in case-study 2, shows that lawmakers are relatively autonomous[46] not only in interpreting the meaning and wants of economic processes but also in mobilizing dominant ideologies, such as human rights or the economy, to give 'common sense'[47] to the legislation. Both inputs influence the legal form of subjectivation, law-based emancipation and expansion of bargaining power.[48]

Both the language of the economy and the language of human rights, when used as depoliticising, capitalize on those priors within them which are already agreeable to the majority.[49] The re-articulating of those priors as foundations for

[43] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories' (1953) E/CN.6/210 14.
[44] The view of production/economic growth as a natural unifier of interest has also been conceptualized by Marx as 'commodity fetishism': Marx (n 23) 121 et seq; Kennedy, 'The Role of Law in Economic Thought: Three Essays on the Fetishism of Commodities' (n 23) 972.
[45] Wendy Brown and Amy Kapczynski, 'A Conversation between Wendy Brown and Amy Kapczynski' (2022) 121 South Atlantic Quarterly 239, 246.
[46] Giménez (n 20) 85.
[47] Gramsci (n 37) 322; Laclau (n 37) 7; Mouffe (n 40) 10.
[48] Nancy Fraser, 'Women, Welfare, and the Politics of Need Interpretation', *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory* (University of Minnesota Press 1989) 153–154; Fraser, 'Struggle over Needs: Outline of a Socialist-Feminist Critical Theory of Late Capitalist Political Culture' (n 18).
[49] While Fraser discusses depoliticizing as a strategy of the powerful majority against claims of marginal groups: Fraser, 'Struggle over Needs: Outline of a Socialist-Feminist Critical Theory of

emancipation delimits the meaning of the emancipatory intervention (adoption of a new right) and with that it also delimits the bargaining power afforded to women. The limits of the emancipation are thus implicitly present in the law-making discourse and they are replayed through the subsequent applications and reinstations of the rights in national frameworks.

Subjectification is too constantly being produced through subsequent repetitions.[50] Each of these repetitions in a slightly different situation allows for a subversion of this subjectification[51] and recognition of the subjectivising ideology.[52] The current reproductions of the subjectification and operating ideology of women's rights accordingly led me to identify and trace the existing contradiction between the manifest content of the rights and their functional properties.[53]

The thesis spells out the dialectics between the visible process of advancement based on women's rights and the underlying structure which is an advancement of capitalism; and which poses an inherent limit to the advancement of women through rights. The economic idea of the female subject is embedded in women's rights[54] and epistemologically functions as a limit to women's emancipation. This limit appears natural and common sensical but in fact has to be reconstructed each time when capitalist logic is mobilized to limit women's emancipation.

Late Capitalist Political Culture' (n 18) 168–169. I portray depoliticising as a used strategy in addressing the claims of marginal groups.

[50] Adler (n 34) 168–171; Butler (n 29) 93., my argument is that depoliticization is used as a strategy in passing of political intents into law. Diminishment of the claim's ambitions by its depoliticising rearticulation is than unintended.

[51] Butler (n 29) 99.

[52] Althusser (n 20) 47.

[53] Raymond Geuss, *The Idea of a Critical Theory: Habermas and the Frankfurt School* (First Edition, Cambridge University Press 1981) 9.

[54] Similarly as when neoliberal ideas become embedded in the 'rule of law': Rittich, *Recharacterizing Restructuring* (n 26) 17.

The arguments I present in this thesis contribute to Marxist,[55] feminist[56] and post-colonial[57] critiques of international rights in showing how rights can be unemancipatory and obscure sustained power dynamics.[58] My approach is not innocent of ideology and does not aim to offer a more neutral conception of women's rights. It aims to generate such thinking about women's rights which can be politically productive in expanding women's social power through 'rights' today.[59]

2. Progression of the Argument

The thesis establishes that articulating symbolic recognition of women to the expansion of productive forces had a significant part in legitimising the adoption of the rights. It also canvasses the variations of these articulations and their simultaneously mutually reinforcing and contradicting character.

The economic arguments identified through the law-making appeared to substantiate, contravene or reinforce human rights reasoning in five ways. First, it was understood that symbolic recognition of women's rights will lead to a national accumulation of wealth. For example that altered marriage patterns will lead to an increase of women's productive functions, or that family planning afforded to women will be reflected in growth. Women's rights were thus presented as a tool in fulfilment of economic aspirations. Second, the meaning of emancipation or actualization of rights was substantiated by women's choice to partake in production

[55] Susan Marks, 'Human Rights and Root Causes' (2011) 74 The Modern Law Review 57; O'Connell (n 42).
[56] CT Mohanty, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' in CT Mohanty, A Russo and L Torres (eds), *Third World Women and the Politics of Feminism* (Indiana University Press 1991); Anne Orford, 'Contesting Globalization: A Feminist Perspective on the Future of Human Rights' (1998) 8 Transnational Law & Contemporary Problems 171.
[57] Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Routlege-Cavendish 2007).
[58] Chase (n 42); Kennedy, 'The Critique of Rights in Critical Legal Studies' (n 42); David Kennedy, 'The International Human Rights Movement: A Part of the Problem?' (2001) 15 European Human Rights Review.
[59] Orford, *International Law and the Politics of History* (n 14) 310.

(women with human dignity or free choice choose to support capitalist production). In return, the perceived subordination of women is substantiated by the lack of their partaking in the production (relegation to duties within the traditional family leads to limited agency and limited rights). Third, it was understood that partaking on the production is the full actualization of the afforded rights or symbolic recognition (the peak of women's self-determination is when they choose to do productive work). Partaking in the production is thus regarded as the thick of women's agency, which in turn marks where the law-maker's ambitions for women's agency end. Second point thus means that women's dignity is when women support capitalism with their labour. Third point means that this version of dignity is enough and that is where the ambitions of law end (because productive forces will do the rest – see below).

Fourth, it was understood that to actualize any symbolic recognition, women need to partake directly or indirectly in production. In other words, laws can say that women have dignity but to actualize it, women need to work. In essence, the lawmakers argued that partaking in economic production is a condition of the actual functionality of women's rights. Fifth, regardless of symbolic recognition, the economic forces will naturally relegate subjects to their appropriate portions of social power (higher partaking on production by women will actualize their already legally recognized equality with men). These two points pertain to the recognition of operating 'background rules' determining the actual bargaining power of subjects, in that the treaty-makers portray economic forces as autonomously operating and out of their reach of influence.

Beyond this principial intertwine of economic and human rights arguments, there was also an intertwine on the level of admitted linguistic strategy. Both aspects are a part of the autonomous input of the legal superstructure but in the first case,

words are used to convey meaning, while in the other, they are used to obscure meaning.[60] In the case of linguistic strategizing, lawmakers as actors within the legal superstructure, take into account not only their interpretations of and ambitions for the social reality of women but also their perceptions of the negotiating process and persuasiveness of arguments.

3. Chapter 1 – The UN Convention on Marriage

Chapter 1, studying the drafting materials for the UNCM, argues that the need of the UN to intervene for the sake of women emerged from the agenda of expansion of capitalist economy in the trust- and non-self-governing territories. The UNCM was adopted particularly based on the perceptions of social reality in the former colonies approximated by the administrators in trust- and non-self-governing territories, the Trusteeship Council, the Committee on Information from Non-self-governing Territories, visiting missions and other international and metropolitan bodies. The general purview these bodies employed to interpret the social realities was that local social structures must support the expansion of capitalist economy, an objective inherent to the process of decolonization (as argued in Sub-Section 1.2 of the Chapter).

This expansion included instituting market- and wage-economy and implementing associated socio-economic processes, such as industrialization, urbanization and detribalization. As evidenced in the Chapter's Section 3, indigenous familial structures resting upon large, economically self-sufficient families and a transactional conception of marriage presented an obstacle to these processes. This is the first analytical layer, explained in Sub-Section 3.2, showing the 'base' reasons informing the 'superstructural' legislative and ideological

[60] Daniel J Whelan, *Indivisible Human Rights: A History* (University of Pennsylvania Press 2011) 3.

changes. The relationship between marriage formations and the economy was understood by the administrators to be dialectic: mutually dependent and reinforcing. Marriages needed to change to support the capitalist economy. Simultaneously, the actual capitalist expansion, such as the introduction of cash economy or large-scale industrialization, were understood to induce changes in familial structures. Small, wage-dependent urban families then represented the desirable constellation nudging people to labour and expand the production.

Accordingly, the UNCM defines such aspects of traditional marriages, which are constitutive of the economic conception of marriage as a transaction between families rather than individuals, as undesirable. It includes provisions against low age of marriage and provisions enforcing freedom of will in entering marriage. It also moves towards the elimination of proxy marriages and provides for mandatory registrations of marriages (as a means of enforcing the conditions). The UNCM, however, does not argue for the abandonment of traditional forms of marriages based on their malfunction in the capitalist economy. Rather it presents the social need for rethinking the concept of marriage as that of rights of women and girls, specifically in the Global South.[61]

The UNCM's rationale is thus founded on the imagined link between the elimination of 'ancient'[62] forms of marriages and the actualization of rights for women. Upon elimination of traditional marriages, new roles for women would emerge which correspond better to the notions of rights and dignity,[63] equal or

[61] UN Commission on the Status of Women, 'Report on the Eighth Session' (1954) E/CN.6/253 14; UN Commission on the Status of Women, 'Report of the Fourteenth Session' (1960) E/CN.6/367 9; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962 Preamble.

[62] Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages Preamble.

[63] United Nations, *Legal Status of Married Women: Reports Submitted by the Secretary-General.* (Commission on the Status of Women, United Nations 1958) 1

advanced status, and liberation from a 'form of slavery'.[64] As Sub-Section 3.3 shows, the substance of these legal notions derived from the economic base in several ways.

Firstly, the elimination of traditional families caused also the elimination of the self-contained system of care and support which needed to be replaced by an institutionalized form of care to create 'social conditions necessary for maintaining industrialized, urbanized, market-based economy'.[65] Production-supporting occupations in the so-called 'community development' thus represented one outlet for women in their new roles, involving labour in health, care, and schooling facilities. Additionally, women were expected to partake directly in trading and light industry.[66] These new roles of women, emerging upon the eradication of traditional families, were functional in the capitalist economy directly, by making women labour, and indirectly, by making the urban family as the basic economic unit sustainable and attractive. In this first point, the economic base thus creates new labour roles for women which are then portrayed in the superstructural legal language as women's 'advancement' and leading to their attainment of rights (next point).

Secondly, the rationale connecting women's rights with the eradication of traditional families further pertained to the understanding that direct or indirect partaking on the economic production will expand women's agency and wants, or

<https://catalog.hathitrust.org/Record/003021989> accessed 4 November 2021; UN Commission on the Status of Women, 'Report on the Thirteenth Session' (1959) E/CN.6/350 7; UN Commission on the Status of Women, 'Report on the Eighth Session' (n 61) 14.

[64] UN Commission on the Status of Women, 'Report of the Fourteenth Session' (n 61) 8.

[65] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (1957) E/CN.6/293 2.

[66] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (1954) A/2729 6; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories Contained in Annual Reports Made by the Administering Authorities' (1950) E/CN.6/138 18.

'awaken their intelligence'.[67] This in turn was imagined to lead to their demand of education; and political, civil, and other public participation. The economic function of women was thus seen as conditioning their mental development and aspirations leading to their acquisition of more social power and more rights. In explaining why this was socially desirable, the reports suggested that increased female independence and 'receptiveness to civilisation'[68] can 'further the economic development' in the states.[69] This second point is thus another instance where the economic base requiring development of productive forces informed the ideological superstructure in understanding the social need for 'advanced' women.

The argument of Chapter 1 is that the international legal intervention into marriage forms in the Global South, at the face motivated by protection and advancement of women, was a part of a large economic geopolitical project. This project largely aimed at the deepening of capitalist economy in the former dependencies and its objective then imprinted in the economic understanding of the social need of Global South women and the economic ways to remedy this need.

4. Chapter 2 – CEDAW, Right to Family Planning

The second case-study focuses on the international promulgation of the equal right to family planning in CEDAW's Art. 16 e). Chapter 2 shows that the legislative intervention expanding women's bargaining power in decision-making over childbearing also emerged from a pre-existing economic agenda. This was the

[67] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories' (n 43) 14.
[68] ibid 12.
[69] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (1958) No. 15 (A/3837) 28; General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 66) 6.

agenda of population control aiming at instituting an optimal production/reproduction ratio in, predominantly, the Global South countries. Sub-Sections 2.1 and 2.2 of the Chapter argue that family planning first emerged as one of the tools of population control and then was by the CSW rearticulated as a tool for advancing women.

Section 3 spells out the ways in which the logics of this agenda as economic and neo-colonial (aiming primarily at economic growth in the Global South), prevailed in the structure of the subsequent women's agenda (merging improvements for women with economic growth). The first of these logics imprinted in regarding family planning as an instrument for instituting a desirable ratio of childbearing and production by either boosting or slowing down birth-rate. Here, expanded women's reproductive autonomy was instrumental to strengthening the national economy.

The second logic saw women's right to family planning as a tool for instituting economic conditions necessary for the actualization of other basic human rights. The economic goal of the first logic was thus in this case intermediary to the attainment of rights. Here, the availability of material resources and services marked the level of national development necessary for actualizing rights guaranteed by international human rights treaties, such as the adequate standard of living or access to education.[70] This argument also involved a necessity of advancement of women to expand economic growth. Firstly, advanced women could contribute to the economy by childbearing less (lowering consumption). Secondly, advanced women controlling childbearing could contribute by partaking on the production (expanding

[70] Secretary General, 'Family Planning and the Status of Women. Interim Report of the Secretary-General' (1968) E/CN.6/497 35–36.

labour).[71] Here, the notion of women's self-determination was invoked as a signifier for status advancement and emancipation. Women with more self-determination were presumed to desire education and perform a job, which would lead to their higher economic contribution and translate into actualizing their equality with men, guaranteed by human rights treaties.[72]

Several moments of the economic base informing the legal imaginations can be identified here. The social need for symbolic recognition of women's rights was interpreted in the register of national economic benefits (women need more reproductive autonomy to bear less children and labour more). The autonomous economic forces, speeded up by a right to family planning, were understood to lead to the actualization of symbolic recognition guaranteed on paper (less childbearing will make richer societies and actualize existent rights). Similarly, women's labour and economic power were understood as women's advancement (women with 'self-determination' choose to labour); and were presumed to actualize gender equality guaranteed on paper. These last two points are instances where 'operating background rules' influencing subjects bargaining power are designated as autonomously functioning, out of law's reach.

The third economic logic substantiating the social need for symbolic recognition of women's access to family planning was that of higher quality social reproduction. The logic of the social reproduction argument thus was that family planning enhances the welfare of the family[73] and the welfare, adequate care, and nurture of children.[74] It was also argued to contribute to the stability of marriages

[71] Commission on the Status of Women, 'Report on the Nineteenth Session' (1966) E/CN.6/454 53.
[72] Special Rapporteur on the Interrelationship between Family Planning and the Status of Women, 'Status of Women and Family Planning' (1975) E/CN.6/575 9.
[73] Commission on the Status of Women, 'Report on the Eighteenth Session' (1965) E/CN.6/422 44, Res 7 (XVIII).
[74] ibid 36, 44, Res 7 (XVIII).

through the happiness of married life.[75] Family planning was in the social reproduction context for example studied in relation to the health of mothers and children, financial situation of the family, or prospects of children for education.[76]

In Sub-Section 3.3, the Chapter also demonstrates the perceived functionality of economic arguments for legitimising the legal intervention by the treaty-makers. The CSW members suggested that both the language of economic benefits and the language of human rights have depoliticising effects, especially when substantiating each other. As such, they were seen to represent common interests and overcome states' objections. Further, if both languages of the economy and human rights involved orientation on the Global South, they also functioned in globalizing the interest, thus legitimising the UN's intervention.

5. Implications for the Potential of Women's Rights to Contribute to Shifting Social Power

As apparent, the relationship between the perceived wants of the economy and the adoption of women's rights, or the expansion of women's bargaining power, was articulated by the treaty-makers in a variety of ways. As such, economic rationale was significant in forming the objectives of the legal intervention and its construction. The drafting discourse analysis expounded in the thesis shows how words both convey meaning (economic arguments substantiating the understanding of women's dignity) or they can be used to obscure (language strategizing).[77] Hence, sometimes economic arguments implicitly substantiated arguments about women's wellbeing (women with human dignity are women partaking on the production

[75] ibid 36.
[76] Secretary General, 'Family Planning and the Status of Women. Interim Report of the Secretary-General' (n 70) 4.
[77] Whelan (n 60) 3.

directly or through supporting a wage-earner). Other times the articulation of economic goals behind the legal intervention was more explicit and stressed over the goals of enlarging women's bargaining power (recognizing women's right to reject forced marriage will lead to the expansion of national wealth). In yet another version, economic arguments were used strategically to facilitate the intent to expand women's bargaining power by obscuring it (it is strategic to de-emphasize the benefits for women, although they might be there, and emphasize economic gains).

On both levels of meaning and linguistic strategizing in the studied treaty-making, market forces and production were apparently seen as apolitical and objective.[78] In this rationale, adopting women's rights to aid market forces and production was 'objectively' logical. It, however, translated in the vision of and the ambition for women's emancipation stopping short of impeding market forces and production. This for example applies when the purpose of the symbolic recognition is substantiated by its economic benefit for the nation. The problem with this articulation of the symbolic recognition to the economic worth is that the social need which is being addressed is emancipation of women co-constructed with women's productive activity and its imprint in the development of productive forces. The application and interpretation of this right, addressing the social need, then only makes sense if it has positive impact in enhancing economic production (and it does not make sense if the impact is negative). This is one emancipatory setback of the epistemological intertwine of interpretations of capitalist wants and emancipation of women in the rights.

[78] The critique of this imagination in legal thinking was articulated by the legal realists, see: Morton J Horwitz, *The Transformation of American Law 1780-1860* (Harvard University Press 1977) 263.

Another setback in emancipation emerges when the legislative rationale points to economic independence and material autonomy as conditioning the actualization of women's rights. Material autonomy and symbolic recognition arguably establish subjects' bargaining power best in tandem.[79] To do this, laws should aim for material redistribution together with symbolic recognition. The case-studies show that the treaty-makers recognized the material conditions of the effectuation of the adopted rights. However, they interpreted these as forces functioning independently of the law's reach, thus constructing the symbolic as relatively benign in so far as its actualization must be delivered through the autonomously functioning economy. When economic autonomy is understood to condition the actualization of symbolic recognition (financial independence conditions human dignity), it puts the subjects (women) into a dual battle. While they battled for the adoption of the symbolic, they still must battle to earn the material side to actualize the symbolic.

To elaborate further, in both case-studies, the treaty-makers understood that the symbolic recognition of women's rights needs to be accompanied by a material redistribution to have effect in raising women's autonomy and power. Their intent, however, was not for law to order the redistribution but for law to nudge women to partake on production which will lead to redistribution. The rationale was that partaking on production will 'naturally' increase women's status and power recognized symbolically, relying on the idea that the 'laws of [economic] nature will do their regulative work' independently.[80] The power redistribution was thus not ordered by law but was expected to happen 'naturally' through economic forces.

[79] Adler (n 34) 166–169.
[80] Kennedy, 'The Role of Law in Economic Thought: Three Essays on the Fetishism of Commodities' (n 23) 982.

This, I argue, is the key *dynamic* of the interplay between economic rationality and women's rights unveiled through the case-studies. The ambition behind the adopted rights is thus not to give women bargaining power. It is instead to set conditions for women to partake on productive forces which will then lead to shifting bargaining power and actualization of law's wishful goals of dignity, freedom, independence and equality. This presumption we now, when majority of women labour, know is false.[81]

In the studied cases, the shift in bargaining power materialized to some extent (as women's bargaining power was expanded, if only by providing a legal foundation for litigation) but at the same time neither of these rights functions to prevent women from being marginalized by or within the limits of the right's application. This applies especially to women being marginalized by or within the capitalist logic of the right insistent in the above described *dynamic* of setting up the capitalist chain rather than aiming for redistribution of power. Thus, in both cases, the initial argument of usefulness to the community, economically substantiated, functions to justify this simultaneous marginalizing effect.

[81] See UN Women statistics on female leadership in governments: UN Women, 'Facts and Figures: Women's Leadership and Political Participation' (*UN Women – Headquarters*) <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures> accessed 20 June 2022. Or World Economic Forum's statistics on female leadership in corporations: Katharina Buchholz, 'How Has the Number of Female CEOs in Fortune 500 Companies Changed over the Last 20 Years?' (*World Economic Forum*) <https://www.weforum.org/agenda/2022/03/ceos-fortune-500-companies-female/> accessed 20 June 2022.

Chapter 1: Thinking in Terms of Profits and the UN Marriage Convention (Case-Study 1)

1. Introduction

The UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages established free consent to marriage as a principial requirement within national marriage laws.[82] Accordingly, it pronounced some aspects of marriages (essentially non-Western aspects) as non-compliant with human rights: low marriage age, marriage entered without free will of the parties; and introduced compulsory registration of marriages and a joint presence of spouses to the ceremony as guarantees of free expression of will.[83] These aspects remain addressed in Western jurisdictions till today as human rights requirements for foreign marriages to be recognized[84] often in a rigidized and invigorated form as explained in this Chapter's Section 3.4 (Analysis).

The aim of this Chapter is to highlight the imperial economic motives behind the adoption of the UNCM. In its time, it was celebrated as expansion of the body of international human rights law.[85] The explicit aim of the UNCM was to enforce human rights for women in the Global South.[86] At the same time, it was adopted during the international legal and political process of decolonization which, as will

[82] Draft Convention and Draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (Memorandum) 1961 (A/4844) 4–5.
[83] UN Commission on the Status of Women, 'Report of the Fifteenth Session' (1961) E/3463 8.
[84] It is understood that the UNCM's provisions set the standard for later conventions: ECHR, ICCPR and ICESCR: Ann Laquer Estin, 'Families and Children in International Law: An Introduction Symposium: Families and Children in International Law' (2002) 12 Transnational Law & Contemporary Problems 271, 289.For example, national codes of Private International Law are bulit in respect of this convention: Schmidt (n 3) 40.
[85] Egon Schwelb, 'Marriage and Human Rights' (1963) 12 The American Journal of Comparative Law 337, 382.
[86] UN Economic and Social Council, 'Consent to Marriage and Age of Marriage / Report by the Secretary-General' (1958) E/CN.6/317 2.

be argued, crucially affected the legislative motives.[87] The adoption of the UNCM was largely driven by the Western interpretation of realities in the dependent territories[88] embedded in the project of local capitalist expansion inherent to decolonization. In this context, the Chapter argues that marriages in the Global South and the condition of women in those marriages were measured as human rights non/compliant according to their functionality within the Western version of modern capitalist economy. The capitalist logic continues to influence the application of the rights today.

To establish the argument, the Chapter presents an analysis of preparatory works for the UNCM. These consist of materials issued by the CSW, such as annual sessions' reports or reports on the Status of Women in Trust- and Non-Self-Governing Territories, and further reports to which the preparatory materials refer in their knowledge claims. These are for example reports of the Trusteeship Council and Council for Information on Non-Self-Governing Territories, visiting missions and administrators in the dependencies and the interventions of consulted NGOs.

Below, Sub-Section 1.1 explains the character of trust- and non-self-governing territories. Sub-Section 1.2 then explains the process of decolonizing in the framework of postcolonial Marxist scholarship of International Law and situates this Chapter's understanding of the UNCM in relation to the previous studies.

Section 2 gives a brief introduction of the legislative instruments preceding the UNCM issued under the League of Nations and under the UN targeting forced marriages. It explains that before the UNCM, forced marriages were seen as a

[87] Rhian Elinor Keyse, '"Hidden Motives"? African Women, Forced Marriage and Knowledge Production at the United Nations, 1950–1962' [2021] Journal of Contemporary History 00220094211031997, 21–22.
[88] ibid 24; Keyse (n 2); Schwelb (n 85) 381; UN Commission on the Status of Women, 'Report of the Fifteenth Session' (n 83) 6; UN Economic and Social Council, 'Consent to Marriage and Age of Marriage / Report by the Secretary-General' (n 86) 3.

broader problem – relevant for both the Global North and South; and beneficent to a broader array of subjects: women, metropolitan societies and children.

Section 3 shows that the CSW had a key role in drafting the UNCM and narrowing its aim at Global South women (3.1). Sub-Section 3.2 then argues that Global South marriages were defined as unmodern and human rights non-compliant because of their dysfunction in capitalist, wage- and market-based economy. Sub-Section 3.3 shows how the meaning of women's rights in marriges, or the argued lack thereof, derived from women's roles in the expansion of production. The implications of the substantiation of women's rights in the UNCM by the economic rationale are discussed last (3.4).

1.1 Trusteeships and Non-Self-Governing Territories

The drafting of the UNCM in the 1950s was crucially informed by the interpretation of social realities in trust- and non-self-governing territories. Trusteeships substituted within the UN the post-WW1 mandate system with the intention to involve a higher level of international scrutiny over the administration of these territories.[89] The system and its UN-centred administration were more firmly directed towards the independence of these territories.[90] Trust territories included for example Togo, Rwanda, New Guinea, Cameroon under the administration of European imperial powers, including France, England, Belgium, Italy. It is claimed

[89] James R Crawford, *The Creation of States in International Law (2nd Edition)* (2nd edn, Oxford University Press 2007) 573.
[90] Karen Knop, *Diversity and Self-Determination in International Law* (Cambridge University Press 2002) 329–332.

that this form of international administration retained in essence the contours of colonial governance.[91]

Non-self-governing territories included territories of Congo, Kenya, Morocco under, compared to trusteeships, more sovereign administration of European imperial powers.[92] The purpose of maintaining the legal status of non-self-governing territories was for the metropolitan powers to guide them to independence and to 'development of self-government'.[93] The UN supervised these metropolitan development programmes and adhered to the position that every effort should be made 'to reconcile the [native] interests with the interests of the world as a whole', however, that the interests of the native inhabitants are paramount.[94]

1.2 Statehood, Capitalism and Women's Wellbeing

Scholars of Marxist postcolonial International Law argued that the frameworks for supervising development in the dependencies under the League of Nations and the UN aimed at social transformation according to the imperatives of capitalist modernity.[95] The methods of measuring the development or 'progress' of dependencies against the constructed benchmark often included 'linking of independent statehood with the imperative of capitalist transformation and questions about the precise way new states would be incorporated into the global economy'.[96] The metropolitan efforts in the expansion of capitalist economy and export-oriented

[91] Siba N'Zatioula Grovogui, *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law* (University of Minnesota Press 1996) 153.
[92] Crawford (n 89) 613–614.
[93] China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill 2004) 264.
[94] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 66) 15.
[95] Tzouvala (n 27) 103–108; DK Fieldhouse, *Colonialism, 1870-1945: An Introduction* (1st edition, Palgrave Macmillan 1981) 77; Rudolf von Albertini and Albert Wirz, *European Colonial Rule, 1880-1940: The Impact of the West on India, Southeast Asia, and Africa* (Greenwood Press 1982) 494–496; Clyde Eagleton, 'Excesses of Self-Determination.' (1953) 31 Foreign Affairs (pre-1986) 592, 598–599.
[96] Tzouvala (n 27) 112.

production in the dependencies arguably peaked in the late 1940s and 1950s, also in response to a fear of local nationalist and communist movements.[97]

Deepening of capitalist economy in the former colonies then required 'the individualization of the social body necessary for a market economy to function'[98] responding to the need for more labour and corresponding support in familial structures.[99] This, as argued here, was an impetus for the international legal intervention into the colonial marriage forms. The pivotal projects of establishing wage economy, industrialization, urbanization and 'detribalization' in the dependencies required a guided transition from traditional or 'ancient',[100] economically self-sufficient, to 'modern', wage-dependent, family. The unsuitability of traditional families for capitalist socio-economic processes was often formulated by the drafters as lack of progressiveness or modernity of these marriages.[101] 'Progress' thus largely meant facilitation of the institution of modern capitalism.[102]

[97] Nicholas J White, 'The Business and the Politics of Decolonization: The British Experience in the Twentieth Century' (2000) 53 The Economic History Review 544, 550–551.
[98] Tzouvala (n 27) 112.
[99] Bill Freund, *The Making of Contemporary Africa: The Development of African Society since 1800* (Palgrave Macmillan 1984) 119–121.
[100] Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages Preamble.
[101] General Assembly, 'Report of the Trusteeship Council Covering the Period from 4 December 1952 to 21 July 1953' (1953) Supplement no. 4 (A/2427) 75; UN Security Council, 'Report of the Trusteeship Council to the Security Council on the Trust Territory of the Pacific Islands for the Period of 2 April 1952 to 21 July 1953' (1953) S/3066 29; UN Commission on the Status of Women, 'Statement Submitted by St. Joan's International Social and Political Alliance, a Non-Governmental Organization on the Register of the Secretary-General' (1958) E/CN.6/NGO/48 1–2; Commission on the Status of Women, 'Statement Submitted by the Catholic International Union for Social Service, a Non-Governmental Organization in Category B Consultative Status' (1958) E/CN.6/NGO/55 2.
[102] Freund (n 99) 121; Albertini and Wirz (n 95) 494–496; Fieldhouse (n 95) 77; Tzouvala (n 27) 45. This was also the argument of the Soviet representative present to the UNCM drafting, although her position should be regarded in the light of the Cold War political strategies and anti-imperial hostilities: Tambe (n 1) 458; Keyse (n 87) 22–23.

The 'modern', wage-dependent, and human rights compliant marriage imposed on the dependencies through the UNCM was a construct based on Western capitalist and cultural conditions. This construct of marriage induced its own vision for the role of a woman,[103] which was emancipatory under the logic of wage-economy but was also inherently limited by this logic. The preparatory works help unveil the definitional economic aspects of the legal construct of marriage with its corresponding distributional effects.[104]

Feminist critiques of the empire showcased how gender and familial relations in the colonies continuously served metropolitan power for moral self-assurance and justification of political and economic measures imposed on the colonies, while self-serving to metropolitan interests.[105] The international legal process of decolonization was also discursively larded with metropolitan anxieties over the wellbeing of colonial women.[106] While the expansion of the UN's focus on women's rights from political to economic aspects was regarded as a step towards acquisition of full rights,[107] the capitalist rationale impregnating the meaning of the adopted marriage rights permeates their impact in bargaining power today.

[103] Knop (n 90) 340.
[104] Janet Halley and Kerry Rittich, 'Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism' (2010) 58 American Journal of Comparative Law 753; Kerry Rittich, 'Black Sites: Locating the Family and Family Law in Development' (2010) 58 The American Journal of Comparative Law 1023.
[105] Anne Mcclintock, *Imperial Leather: Race, Gender, and Sexuality in the Colonial Contest* (1st edition, Routledge 1995); Ann Laura Stoler, *Carnal Knowledge and Imperial Power* (2nd edn, University of California Press 2010); Karen Knop, 'Gender and the Lost Private Side of International Law' in Annabel Brett, Megan Donaldson and Martti Koskenniemi (eds), *History, Politics, Law: Thinking Through the International* (Cambridge University Press 2021); Keyse (n 87).
[106] Knop (n 90) 344; Keyse (n 87) 24; Tambe (n 1).
[107] Giusi Russo, 'Contested Practices, Human Rights, and Colonial Bodies in Pain: The UN's Gender Politics in Africa, 1940s-1960s: The UN's Gender Politics in Africa, 1940s-1960s' (2018) 30 Gender & History 196, 210.

The UNCM was ostensibly adopted with focus on women in the Global South: 'women particularly in the developing countries'[108] with 'customs, ancient laws and practices'.[109] It was understood that Western states already have a modern standard of marriage, which imprinted in the UNCM, and don't have to amend their laws upon the adoption of the convention.[110] This is telling of the Western epistemological domination over the drafting project, although this conceptualization was contested.[111] While representatives of African states also supported the adoption of UNCM, they did so because they recognized the 'social, humanitarian and economic progress' this can stimulate.[112] Opinions of women's organizations from the Global South were neglected during the drafting,[113] while at the same time these arguably represented politically active elites rather than an 'authentic' female voice.[114]

The establishment of 'universal standards' of marriage through the UNCM was previously explained by the rising human rights consciousness of the international community,[115] growing prominence of feminism,[116] and moral hierarchies[117] or anxieties over expertise and power in the UN after decolonization.[118] Drawing from the current emancipatory setbacks in the application of the UNCM in

[108] UN Commission on the Status of Women, 'Report of the Fifteenth Session' (n 83) 6; UN Economic and Social Council, 'Consent to Marriage and Age of Marriage / Report by the Secretary-General' (n 86) 3.
[109] Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages Preamble.
[110] UN Commission on the Status of Women, 'Report of the Fourteenth Session' (n 61) 9.
[111] Schwelb (n 85) 341. On the petitioning activity of native women's councils see for example: Knop (n 90) 349 et seq.
[112] Schwelb (n 85) 341.
[113] Keyse (n 2) 304.
[114] Keyse (n 87) 19.
[115] Schwelb (n 85); Gaffney-Rhys (n 1) 363–364.
[116] Knop (n 90) 327 et seq; Russo (n 107).
[117] Tambe (n 1).
[118] Keyse (n 87); Keyse (n 2) 313 et seq.

Migration Law and Private International Law outlined in the Introduction, this Chapter emphasizes that the drafting arguments that Western marriages and the functions they induce for women are human rights compliant relied on their functionality within the Western capitalist economy.

2. Forced Marriage before the Adoption of UNCM

This section situates the UNCM in the context of preceding treaty-making by the League of Nations (LoN) and the UN. In the preceding projects, forced marriage was addressed as a problem for effective migration control in the Western states, as a harmful practice to children and youth in general and also as a harm to women. It was thus not formulated as a phenomenon harming primarily women and emerging predominantly in colonies as it became portrayed during the drafting of the UNCM.

The LoN addressed forced marriages during its treaty-making efforts to forbid slavery and practices similar to slavery,[119] and under the notion of 'white slave trade' as a part of treaty-making on human trafficking.[120] Here, forced marriages were framed mainly as an epiphenomenon of a larger problem of human trafficking and prostitution. Forced marriages were thus addressed as harmful to women, but this was motivated by the fact that these women then engaged in 'forced' labour or prostitution in urban centres of the colonies and in the metropoles.[121] Increasing the legal age of marriage was believed to prevent traffickers from marrying young girls

[119] Jean Allain, *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention* (Martinus Nijhoff 2008) 59, 68.
[120] Magaly Rodríguez García, 'The League of Nations and the Moral Recruitment of Women*' (2012) 57 International Review of Social History 97, 108; Daniel Gorman, 'Empire, Internationalism, and the Campaign against the Traffic in Women and Children in the 1920s' (2008) 19 Twentieth Century British History 186, 197.
[121] Gorman (n 120) 211; Barbara Metzger, 'Towards an International Human Rights Regime during the Inter-War Years:The League of Nations' Combat of Traffic in Women and Children' in Kevin Grant, Philippa Levine and Frank Trentmann (eds), *Beyond sovereignty: Britain, Empire and Transnationalism, c. 1880–1950* (Palgrave Macmillan UK 2007) 62.

in order to import them to Western countries and force them to work as prostitutes.[122] The economic interests were thus in the background of addressing forced marriages but in a different way than through the adoption of the UNCM.

The League also dealt with age and consent of marriage as a matter hampering the development of children. LoN's Advisory Commission for the Protection and Welfare of Children and Young People studied, for example, moral questions of protection of youth involved in setting up a minimum age for marriage and consent, without adopting any 'definite standard for purpose of comparison'.[123] The dominant focus in protection of children was also not on the colonies but rather on self-governing states.

The notion of forced marriage as a form of slavery was revisited by the UN in the Supplementary Convention to the Convention on the Abolition of Slavery (SCCAS, Supplementary Slavery Convention) in 1950s. The SCCAS orders states to enact 'suitable' minimum age for marriage to encourage the use of facilities, whereby the consent of both parties to marriage may be freely expressed in the presence of competent religious or civil authority and to encourage registration of marriages.[124] This phrasing of the SCCAS suggests that minimum age for marriage is not prescribed as an aim for itself but rather as an instrumental legal condition, existing to enforce that spouses will use official authorities for entering marriage to prove that they complied with this condition. Incorporating the legal requirement of the use of official authorities for entering marriage was motivated by the believe that only if the form of will expression is officialised, the legal requirement of free will

[122] Daniel Gorman, 'Moral Politics at the League of Nations and Its Imperial Ramifications', *The Emergence of International Society in the 1920s* (Cambridge University Press 2012).
[123] Child Welfare Committee, 'The Age of Marriage and the Age of Consent' (League of Nations 1928) C.P.E.90 (2) 5.
[124] UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956 Art. 2.

can be met.[125] As a 'white slave trade' forced marriage was linked to human trafficking and a need for higher bureaucratic supervision of entering marriages.

The constituents of 'forced marriage', i.e. conditions of will and age, were debated by the drafters. They, for example, could not agree on a minimum age for entering marriage. Firstly, some of the state representatives argued that people in warm and cold climates mature differently.[126] Secondly, the drafters aimed to avoid alterations of national rules on marriage.[127] They then mandated ECOSOC and the CSW[128] to 'study the question of marriage with the object of drawing attention to the desirability of free consent of both parties and of the establishment of minimum age for marriage',[129] which culminated in adopting the UNCM.

The UN Charter and Universal Declaration of Human Rights also addressed free will and minimum age as aspects of marriage before the adoption of the UNCM.[130] Article 16 of the UN Universal Declaration provides that 'Men and women of full age […] have a right to marry […]' (1); and that: 'Marriage shall be entered into only with the free and full consent of the intending spouses'. The term 'full age' represented the 'age at which persons were capable of procreating and

[125] Allain (n 119) 330–341.
[126] ibid 333; UN Commission on the Status of Women, 'Statement Submitted by St. Joan's International Social and Political Alliance, a Non-Governmental Organization on the Register of the Secretary-General' (n 101) 3. This reasoning clearly links to colonial epistemology of superiority and higher level of development: Philippa Levine, 'Sovereignty and Sexuality: Transnational Perspectives on Colonial Age of Consent Legislation' in Kevin Grant, Philippa Levine and Frank Trentmann (eds), *Beyond sovereignty: Britain, Empire and Transnationalism, c. 1880–1950* (Palgrave Macmillan UK 2007) 19.
[127] Allain (n 119) 67–68.
[128] UN Economic and Social Council, 'United Nations Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Summary Record of the Twenty-Fourth Meeting, 4 September 1956' (1958) E/CONF.24/SR.24 2.
[129] Draft Convention and Draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (Memorandum) 2.
[130] Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages Preamble.

which could be determined by the state according to local conditions'.[131] The requirement of free and full consent was then preventing practices where parents force 'a girl to give her full consent to a marriage which she did not wish but, logically, they could not force her to give her free consent'. Special relevance of forced marriage prohibition to women was thus mentioned in the drafting of the UN Universal Declaration, as well as the UN Covenant on Civil and Political Rights,[132] it was, however seen as relevant both in the metropoles and the colonies.

Marriage conditions formed as its own UN agenda (not as a part of another human rights code) in the early 1950s.[133] This, as demonstrated here, was preceded by fragmental efforts by the UN and the LoN to address forced marriage as a part of different socio-political problems and with different 'victims' in mind. This multi-angled relevance in the preceding treaty-making was, however, significantly narrowed in the preparatory works for the UNCM. Of all the mentioned angles to address harmfulness of forced marriages, the UNCM centralised exclusively that of wellbeing of Global South women.

The following Section establishes, that the CSW narrowed the regulatory knowledge (3.1) and interpreted the social needs of Global South women and the ways to address these needs according to the envisioned functionality of marriage and women in the development of capitalist productive forces (3.2, 3.3, 3.4)

[131] UN Economic and Social Council, 'Consent to Marriage and Age of Marriage / Report by the Secretary-General' (n 86) 15.
[132] UN Commission on Human Rights, 'Summary Record of the Three Hundred and Eighty-Third Meeting Held at Palais Des Nations, Geneva' (1953) E/CN.4/SR.383.
[133] UN Economic and Social Council, 'Consent to Marriage and Age of Marriage / Report by the Secretary-General' (n 86); Draft Convention and Draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (Memorandum).

3. UNCM: Defining Human Rights Aspects of Marriage Based on Functionality in the Capitalist Economy

The CSW, when drafting the UNCM, relied heavily on knowledge about the (former) colonies reported by metropolitan and international subjects. This, as argued below, went hand in hand with narrowing the human rights definitions in the UNCM to address only marriage practices occurring in the dependencies (requirements of age, will and registration) (Sub-Section 3.1). Sub-Section 3.2 elaborates how assumptions about modernity and human rights compliance of marriage rested on its function in the capitalist production. Sub-Section 3.3 then argues that the articulations of some conditions of marriage as human rights of women derived from their imagined new roles in urban marriages with more functionality in the development of productive forces.

3.1 UNCM: Regulatory Knowledge and the Legislative Discourse

The summary of the drafting history in the final draft of the Marriage Convention shows that the UNCM was essentially a CSW project.[134] The CSW drafted the first resolution addressing human rights in marriage in 1954, which declared a focus on 'complete freedom in the choice of spouse, abolishing the practice of the bride-price, guaranteeing freedom of widows as to remarriage; eliminating completely child marriages and the betrothal of young girls before the age of puberty […]'.[135] Additionally, it requested states to establish compulsory registration of marriages to ensure compliance with these practices.

[134] Draft Convention and Draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (Memorandum) 2–4.
[135] The General Assembly, 'Status of Women in Private Law: Customs, Ancient Laws and Practices Affecting the Human Dignity of Women' (1954) 843 (XI).

The CSW was then mandated to 'study on the question of marriage with the object of drawing attention to the desirability of free consent of both parties and the establishment of a minimum age for marriage' by the Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.[136] This mandate empowered the CSW to collect various reports and questionnaires related to the matter and lead the preparatory works.[137] The CSW pushed for the agenda to be addressed in a form of a convention[138] as it argued that marriage requirements are human rights, in that they condition the actualization the UNDHR.[139] In the final deliberations before the UNCM was open for state signatures,[140] the CSW was responsible for negotiating and revising the draft[141] as well as the subsequent recommendations.

This administrative power meant that the CSW exercised a crucial impact in defining the meaning and the substantive provisions of the future convention[142] and in constructing the regulatory knowledge. The project of UNCM conflated two of CSW's pre-existent agendas: Status of Women in Private Law and Women in Trust- and Non-Self-Governing Territories.

Originally, the agenda of Status of women in Private Law included more diversified focus areas, for example matrimonial property regimes, parental rights,

[136] Draft Convention and Draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (Memorandum) 2.
[137] ibid; Resolution 2 (XII): Age of Marriage, Free Consent and Registration of Marriages 1958.
[138] Draft Convention and Draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (Memorandum) 4.
[139] Resolution 3 (XIII): Age of Marriage, Free Consent and Registration of Marriages.
[140] Resolution 1763 (XVII): Draft Convention and draft Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962.
[141] Draft Convention and Draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (Memorandum) 5.
[142] UN Commission on the Status of Women, 'Report on the Thirteenth Session' (n 63) 7.

competences of married women.[143] Those aspects were also seen as relevant across various jurisdictions. However, towards the end of 1950s, the idea of getting rid of 'ancient' customs with a specific focus on Global South territories started to dominate the agenda.[144] The possible concerns about marriages in the West conserving women's dependence and inferiority via tax regulations or rules deterring the capacity to legally act or undertake labour were mentioned in some of the reports but did not imprint in the UNCM.

The CSW arrived at the key focus on women in the Global South in relation to marriage after monitoring gender relations in trust- and non-self-governing territories for years.[145] Since 1949,[146] the CSW issued yearly reports on the status of women in non-self-governing and trust territories which were frequently referred in the drafting.[147] These reports were build on knowledge provided by Western administrators in the dependencies and were grounded in a larger cooperative relationship between the CSW and Trusteeship Council and the Committee on Information from Non-self-governing Territories.[148]

The key treaty-making objective thus became to outlaw marriage practices harmful to women in dependent territories 'where such customs, ancient laws and

[143] UN Commission on the Status of Women, 'Report of the Seventh Session' (1953) E/CN.6/227 6–7; UN Commission on the Status of Women, 'Report on the Tenth Session' (1956) E/CN.6/286 15.
[144] UN Commission on the Status of Women, 'Report on the Thirteenth Session' (n 63) 6.
[145] Knop (n 90) 344.
[146] UN Economic and Social Council, 'Report of the Third Session of the Commission on the Status of Women' (1949) E/1316 § 18 (2) and (3).
[147] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories: Report by / the Secretary-General' (1954) E/CN.6/235 3; UN Commission on the Status of Women, 'Report of the Twelfth Session (17 March-3 April 1958)' (1958) E/CN.6/334 23; Draft Convention and Draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (Memorandum) 2–3.
[148] For example: UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (1954) E/CN.6/255 2; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories: Report by / the Secretary-General' (n 147) 3–4.

practices exist'.[149] Eventually, it was pronounced that Western states already have a 'modern' standard of marriage and do not have to alter their legal frameworks upon adopting the UNCM and that the convention is 'primarily designed to help women in underdeveloped and emerging nations'.[150]

The political economic project of the Western administrators was to 'stimulat[e] the initiative of individuals and to create an atmosphere favourable to the extension of the efforts of men and women who […] will contribute to the public good'.[151] As will be shown below, they interpreted 'modernity' of marriages and in consequence marriages' impact on the roles of women through this purview of imagined economic conditions of the dependencies' future self-governance. Based on their perception of the local realities, there reports interpreted local problems and by such input 'made up' the people and their needs.[152] The CSW then also measured the status of local women through their socio-economic conditions[153] resting often on the juxtaposition of the different roles of Western and non-Western women.[154]

The CSW often involved the language of human rights to signify the perceived lacks of marriages and the perceived harms they inflict on women. For example, the CSW denounced monogamy as a condition of the dignity of the wife.[155] It argued that polygamy and the practice of bride price compromised the notion of

[149] UN Commission on the Status of Women, 'Report on the Eighth Session' (n 61) 14.
[150] UN Commission on the Status of Women, 'Report of the Fourteenth Session' (n 61) 9.
[151] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 66) 15.
[152] Kerry Rittich, '"Making Up" with Law in Development' (2022) 59 Osgoode Hall Law Journal 1.
[153] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories: Report by / the Secretary-General' (n 147) pp.3-4.

[154] Knop (n 90) 333–336.
[155] Marilyn Lake, 'From Self-Determination via Protection to Equality via Non-Discrimination: Defining Women's Rights at the League of Nations and the United Nations' in Patricia Grimshaw, Katie Holmes and Marilyn Lake (eds), *Women's Rights and Human Rights International Historical Perspectives* (Palgrave Macmillan, 2001) 268.

free consent to marriage.[156] It also denoted marriage customs of bride price and child marriage as opposing to women's dignity[157] and argued that these were a 'form of slavery'.[158] 'Elimination of such customs would tend to the recognition of human dignity of women and contribute to the benefit of the family as an institution'.[159] The marriages practiced in the dependencies were also termed by the CSW as 'ancient' and 'impeding the attainment of human rights by women',[160] in particular, rights guaranteed in the UNDHR.[161]

The traditional marriage forms arguably impaired women's rights because of a lack of consent in entering them. It was, however, not elaborated how the Western legal constructs of consent served human dignity better than those in the dependencies. For example, the argument that child marriages equal to forced marriages was expounded as 'where marriage is a matter of ritual only, consent can never be adequately expressed'.[162] It is unclear how the expression of a will is lesser when entering a ritual rather than consenting in a registration office. It was also unresolved which age limit would assure a human rights compliant expression of consent, especially in the light of occasional arguments about a difference in biology of Global North and South women which arguably made early marriages more acceptable.[163]

[156] UN Economic and Social Council, 'Consent to Marriage and Age of Marriage / Report by the Secretary-General' (n 86) 18–19.
[157] The General Assembly (n 135).
[158] UN Commission on the Status of Women, 'Report of the Fourteenth Session' (n 61) 8.
[159] UN Commission on the Status of Women, 'Report on the Eighth Session' (n 61) 14.
[160] ibid 13.
[161] UN Commission on the Status of Women, 'Report on the Thirteenth Session' (n 63) 7.
[162] UN Commission on the Status of Women, 'Report of the Fourteenth Session' (n 61) 8.
[163] UN Commission on the Status of Women, 'Statement Submitted by St. Joan's International Social and Political Alliance, a Non-Governmental Organization on the Register of the Secretary-General' (n 101) 3. The term 'logic of biology' standing for perceived immutable natural difference between colonial and metropolitan subjects was introduced by Tzouvala (n 27) 2.

It was also claimed that prohibition of child marriages, raising minimum age of marriage, requiring the consent of a wife and renouncing polygamy 'increase freedom of women'.[164] The reports, however, did not explain the ways in which these different marriage practices impair the freedom of women. The assertions of lack of free will and dignity rested on a wholesale presumptions that women in the former colonies are agency-less victims of their social contexts: 'it was impossible for a true consent to be given by young girls whose judgement was unformed and immature'.[165] Women were claimed to be less 'receptive to civilization' then men which made them 'contended in a rude, primitive life of [their] village'.[166]

The Sub-sections below unpack how in evaluating social realities in the dependencies the foundationally socio-economic interests of Western administrators imprinted in their claims of unmodernity and human rights non-compliance of marriages (3.2) and the social roles of women therein (3.3).

3.2 Modern Marriage Functionally Supporting the Capitalist Economy

Because the Western knowledge about families in the dependencies was embedded in the envisioned processes of economic development, the forms of marriages practiced in the former colonies were assessed largely based on their conduciveness in processes of deepening capitalist economy.[167] Reports provided by the

[164] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories (Report by Secretary-General)' (1951) E/CN.6/163 8.
[165] UN Commission on the Status of Women, 'Report of the Fourteenth Session' (n 61) 8. Similar presumption appeared in the NGO interventions: UN Commission on the Status of Women, 'Statement Submitted by St. Joan's International Social and Political Alliance, a Non-Governmental Organization on the Register of the Secretary-General' (n 101) 3. For more literature on the gender policies of UN denying women of agency: García (n 120) 109; Russo (n 107) 198.
[166] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories' (n 43) 12.
[167] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 66) 3.

administrators specifically to the topic of status of women focused on all aspects of women's wellbeing including hygiene, political participation, educational programmes, introduction of industrial tools for households. Beyond these, the CSW relied on other documents of the Trusteeship Council and its records on all issues broadly relevant to the status of women in trust territories.[168] The documents considered by the CSW thus included for example reports from visiting missions, reports on economic development in the territories and general reports of the Trusteeship Council to General Assembly and Security Council.

In the foundationally economic undertone of these reports, social and familial structures in the dependencies were considered key for the expansion of capitalist economy there: 'it is not sufficient to raise the output of a country by increased production. There must be increased production of the peoples: this may require changes in the social structure […]'.[169] One of the key obstacles to the expansion of capitalism in the colonies was the communal, barter economy, sustained by large, economically self-sufficient families, persistent especially in the vast rural areas. Members in these families were less willing to move to cities to form a 'modern labour force'.[170] In the words of the French representative, the transformation of the family was one of the most important social problems of the local industrialization.[171]

Alteration of local family structures was particularly relevant for example for the capitalist socio-economic processes of 'detribalization' and 'urbanization'.

[168] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories: Report by / the Secretary-General' (n 147) pp.3-4.
[169] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 66) 15.
[170] ibid 25.
[171] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 69) 2.

'Detribalization' represented the 'rejection of ties with the customary community' which pertained to the degradation of the traditional concept of marriage within the customary social framework and the economic safeguards attached to it.[172] The undesirable traditional family lacked the 'functional adequacy and institutional efficacy' of urban family, forming a basic unit for the functioning of the modern labour force. 'Stable urban society' arguably required a 'transition to a new form, in which the family should be the firm basis on which broader relations can be established'.[173] Transition to urban family which was more nurturing for the modern labour force pertained to changing the form of marriage which in rural families existed as a contract between families, rather than individuals, and largely as an economic transaction.[174] 'The economic unity formerly represented by the rural family can no longer be maintained' if the 'economic independence [is] afforded [to] the young by their earnings'.[175] The local spread of the urban family with new 'spiritual, ethical and material sides' was a goal of 'basic importance'.[176]

The existent family forms were thus perceived as hampering economic progress. The reports often understood that family forms adhere to the prevalent form of the economy. As such, non-market economy prevailing in the countryside was understood to conserve these forms of marriages. For example, the practice of polygamy was repetitively explained by poverty and the conditions of 'ancient' and 'unsatisfactory' rural economy.[177] In return, the mere expansion of capitalist, cash-

[172] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (1955) No. 16 (A/2908) 20.
[173] ibid 21.
[174] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 69) 24.
[175] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 172) 20.
[176] ibid 22.
[177] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories Contained in Annual Reports Made by the Administering Authorities' (n 66) 16,

and market-economy was understood to pressure people into preferring smaller, urban family forms.[178]

The economically self-sufficient, traditional, family was termed unmodern for its economic dysfunction in capitalist economy. Traditional family arguably 'constitut[ed] an obstacle to introducing universal political suffrage and the communal economy offer[ed] comparatively few incentives for increasing production or accumulating capital'.[179] Traditional marriage and communal economy thus formed a tandem in the discourse, preventing capitalist expansion and further attainment of rights. Beyond that, the discourse on Western modernity in opposition to the traditional marriage forms involved Christian values[180] and a believe in essential backwardness of the colonized people.[181]

The traditional marriage practices thus still existed in the colonies in the in the 1940s and 1950s.[182] The agricultural, non-industrialized countryside practised polygamy, bride price and other customs more than urbanized economic centres,

18; Official Records of the Seventh Session of the Trusteeship Council UN, 'Reports of the United Nations Visiting Mission to Trust Territories in West Africa and Related Documents' (1950) Supplement no. 2 (T/798) 38; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories: Report by / the Secretary-General' (n 147) 12; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 65) 3.

[178] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories Contained in Annual Reports Made by the Administering Authorities' (n 66) 16; UN Security Council (n 101) 19, 29. Similarly: UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories Contained in Annual Reports Made by the Administering Authorities' (n 66) 18.

[179] General Assembly, 'Report of the Trusteeship Council Covering the Period from 4 December 1952 to 21 July 1953' (n 101) 75.

[180] Commission on the Status of Women, 'Statement Submitted by the Catholic International Union for Social Service, a Non-Governmental Organization in Category B Consultative Status' (n 101) 2; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories (Report by Secretary-General)' (n 164) 8.

[181] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories Contained in Annual Reports Made by the Administering Authorities' (n 66) 8; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 148) 5, 12.

[182] UN, 'Reports of the United Nations Visiting Mission to Trust Territories in West Africa and Related Documents' (n 177).

where people often 'belonged' to the Western trade structures.[183] Gradually, economic incentives[184] or even direct prohibitions[185] were implemented in urbanized centres to discourage polygamy. Metropolitan administrators were cautious about too abrupt interventions but at the same time were pressured by metropolitan feminist and conservative organizations to maintain a good public picture of colonial realities[186] and thus local decrees issued in 1950s also directly prohibited some of the practices.[187]

As demonstrated, the interest in alterations of forms of marriages in the former colonies as articulated by the CSW was spawned by broader projects of the UN and former Western empires of decolonization and expansion of capitalist economy in the dependencies. This presents a first layer in which the reasonability of social and legal forms was informed by the prevalent economic base. Denouncement of traditional local forms of marriages as unmodern and human rights non-compliant was thus nested in a discourse of dysfunctionality of these marriages in capitalist processes of urbanization, detribalization and introduction of wage-economy. The next Sub-Section (3.3) demonstrates that this dynamic of economic base informing the legal structure, pertained also to the understanding of human rights and dignity of women.

[183] ibid 38.
[184] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories: Report by / the Secretary-General' (n 147) 12.
[185] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories' (n 43) 16.
[186] Keyse (n 2) 140 et seq.
[187] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories' (n 43) 16.

3.3 Women with Human Rights are Women Developing Productive Forces

Marriages in the Global South were thus seen as unmodern and human rights non-compliant. Partly because of their dysfunction in the capitalist economic expansion and partly because of the roles of women these marriages generated. This Sub-Section explicates how the existent women's roles were understood as 'unprogressive' and preventing women's human dignity based on their conduciveness to the development of productive forces. Family patterns were seen as harmful to women largely because they did not provide to women the same production-derived worth, power and function that capitalist economy provided to women in the West. At the same time, the vision presented in the preparatory works of how women can 'emancipate' largely insisted in their partaking on the capitalist production.

New roles of women emerging upon abandoning traditional family forms were understood as 'emancipatory' or 'progressive' based on their economic functions in several ways. It was argued that 1) Women's new roles, particularly in community development, were seen as progressive because they substituted the care- and support- functions of the traditional family. 2) New women's roles in urban family and community were imagined as leading to the advancement of women in other directions, which made their input in the economy more productive. 3) New functions of women were understood to drive countries to be progressive and developed, which would lead to actualization of human dignity and other rights. The paragraphs below expound these points.

First, women's new roles were envisioned particularly in 'community development' – a process aimed at securing 'social conditions necessary for maintaining industrialized, urbanized, market-based economy'.[188] Since traditional families needed to transform to mimic the metropolitan urban family in its function as a support base for economic production,[189] the system of economic and social safeguards attached to them[190] needed to be functionally replaced. From the family-based system support and care thus transited to public sphere of 'community development' which is where women were particularly needed.[191] Their roles would thus take place in health[192] and care[193] and schooling facilities. 'Schools and monitrices' were to 'attract women into the social services' which will promote the 'emancipation of indigenous women, with results that will be of value to the whole community'.[194]

Where women were unwilling to give up their 'customary roles of mothers and wives', it was argued that education could 'awaken their intelligence'.[195] The indigenous subjects were to maintain traditional forms of cohabitation 'until a

[188] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 65) 2.
[189] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 69) 26.
[190] General Assembly, 'Report of the Trusteeship Council Covering the Period from 4 December 1952 to 21 July 1953' (n 101) 75; UN Security Council (n 101) 58.
[191] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 172) 25; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 65) 3–4.
[192] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 69) 3.
[193] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories' (n 43) 12; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories: Report by / the Secretary-General' (n 147) 20; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 148) 6; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 65) 3–4.
[194] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories' (n 43) 15.
[195] ibid 14.

Western civilisation through education convinces Africans that other ways are better and desirable'.[196] Additionally, contact with metropolitan families then could show African women 'the example of real partnership between men and women and show what an important part women can play'.[197] It was argued that 'indigenous household has to adjust for girls to learn about agricultural and household technologies' to achieve education and break from traditions,[198] including familial traditions. Remaining in traditional marriages was thus portrayed as preserving lesser intelligence and encapsulating pseudo partnerships, preventing women from taking more important parts.

New functions of women in the economy were imagined to fuel a transition from 'enslaved' wife to independent and free, urban, wage-earning wife (or a wife supporting a wage-earner). In tandem with partaking on capitalist production, the functioning capitalist economy would then take its own course in emancipating women as 'cash economy tends to weaken the dependence of women on their husbands and male relations':

> The possession of money makes the freedom of movement easier. The greater 'freedom' enjoyed by women living in towns resulted in some weakening of marital ties and has had its effect on the position of the husband. Freed from many wifely duties of her rural sister-without the opportunity […] the townswoman expects all her wants to be supplied by the efforts of the husband.[199]

If women were to be more community- and economically active, the urban marriage was meant to be a voluntary marriage of two independent individuals. Arranged and

[196] UN, 'Reports of the United Nations Visiting Mission to Trust Territories in West Africa and Related Documents' (n 177) 38.
[197] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories' (n 43) 14.
[198] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories: Report by / the Secretary-General' (n 147) 20.
[199] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories Contained in Annual Reports Made by the Administering Authorities' (n 66) 16.

economically defined marriage contracts were found to prevent larger economic partaking of the colonial subjects and especially women. Since 'the traditional marital union was more concerned with an alliance between family groups than between the two individuals immediately involved', marriage must have been rethought as a union of (economically) independent individuals.[200] It was understood that if young people earn their own wage, they are unwilling to deter to choices of their elderly and hence, individual choice-based marriage sustained by wage was the new basic 'economic unit'.[201] Individual choice of spouses was to contribute to the stability of marriages when economic impetuses were weakened: 'The change in the status of women gives the wife more economic independence and she may more easily break the bonds of marriage but the fact that she has more voice in choosing her husband is a compensating factor in the stability of marriage. The improvement in the status of women due to the break from her traditional marital role is extremely important but has obvious dangers'.[202]

Rechannelling women's (care) work from home to institutionalized forms was perceived as providing more independence, freedom and awakening intelligence. At the same time, this rechannelling supported the expansion of local capitalism as it made the urban families, as the new basic economic units, sustainable. Thus, what is signified as independence, freedom and intelligence in the legal form corresponds to what is useful for the economic form.

Second, beyond the benefits of productive work in 'community development', women's new roles were seen as beneficial to women in expanding

[200] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 69) 24.
[201] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 172) 20.
[202] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 69) 24.

their agency and potential. This point then shows that the image of free women was also largely substantiated by the economic benefits of thereof.

The existent familial status of women was perceived as unequal and preventing the attainment of rights. The agency of women in traditional families was seen as unactualized (as opposed to the agency of women in urban families) and it was understood that limited agency at home leads to limited agency in the public sphere.[203] Channelling women's work from family owed fields and crafting to production, market or domestic work in the urban family was seen as leading to political, civil and other participation of women. Thus, while presuming that a lack of women's dignity in marriages is conditioned by marriages' and women's economic function, emancipation was imagined also based on perceived economic productivity.

This manifests for example through arguments about the importance of women's education. While education would 'awaken [women's] intelligence' and make them realize that traditional family forms are subordinating them,[204] it would also make women more 'receptive to civilization'[205] and elevate them into a real partnership with men. The drafting materials argued that education will make women 'want more' of standards, emancipation, and rights.[206] However, when the background materials unfolded the imagined abilities of women gained through education (leading to their imagined emancipation), those were described often in

[203] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories (Report by Secretary-General)' (n 164) 8; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories Contained in Annual Reports Made by the Administering Authorities' (n 66) 4.
[204] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories' (n 43) 14.
[205] ibid 12.
[206] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories Contained in Annual Reports Made by the Administering Authorities' (n 66) 10–11.

terms of their better functionality for capitalism. Education was, for example, argued to make women: more skilled carers, suitable for light industrial labour and more effective in combining housework and labour (these arguments as expounded below).

Education in care-based skills was multiple times stressed as essential.[207] Education of women organized by the metropolitan administrations often had different focus than education of men and involved learning about domestic and familial chores 'with a purpose to give women a sound family and social education which would enable them to be better mothers, wives and homemakers'.[208] This involved educating women about nutrition and health,[209] child welfare[210] and 'homecraft'.[211] The vision of a life of free, emancipated, women in urban marriages thus rested either on the paradigm of a bourgeois housewife upkeeping the bread-winner's home and family,[212] or women labouring in community development or light industry.

This second image rested on the idea that skilled and more effective housewives can combine domestic work and labour. Education would allow 'young women to develop integrated personality and adapt to modern life', especially learning how to deal with family, occupational and social life would help women

[207] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories' (n 43) 12; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories: Report by / the Secretary-General' (n 147) 20; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 148) 6; UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 65) 3–4.
[208] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 69) 24.
[209] ibid 3.
[210] ibid 17.
[211] ibid 19.
[212] ibid 2.

'assimilate the necessary elements of progress and civilisation'.[213] This was desirable for the above-described project of 'community development' institutionalizing support and care infrastructure for productive forces. Women thus needed education to 'play greater part in the social development'.[214] As such they were 'the most important member of the family […] whose role in the transitional urban society remains largely undefined, and who, to raise her status has to adjust herself to a new pattern of family living'.[215] This meant that women should assume role in 'furthering the economic development'[216] as 'time [was] ripe for expansion of community development work among women'.[217] Petty income that women could earn if they learned how to combine housework and occupation would then give them more independence and emancipation: 'the increasingly large part played by the Togolese women in trade and local exchanges of the profit they make at the markets, which enable them to contribute more and more to the upkeep of the home, are clearing the way for their emancipation and independence'.[218]

This shows that the imagined benefits behind releasing women from traditional marriages and emancipating them often rested on women's ability to be more effective in housework and partake on market- and production-based economy. It means that laws under the notion of emancipation imagined different form of female subordination more conducive to capitalist expansion. This is how under the

[213] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 148) 6.
[214] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 65) 4.
[215] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 69) 24.
[216] ibid 28.
[217] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 65) 3–4.
[218] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories Contained in Annual Reports Made by the Administering Authorities' (n 66) 18.

veil of women's rights, laws exploit gendering to overdetermine patriarchal capitalism.[219]

The third economic benefit of changing roles of women, signified as emancipation was the enlarging wealth of the state. It was argued above that the visions of modern statehood, social development and progress rested on productive labour, individual ownership of land and other economic conditions constituting capitalism.[220] Capitalist wealth was then a condition of a society which can truly aspire to actualize human rights. Social conditions were below the level 'modernity' until they were elevated by large-scale production, including the extraction of natural resources:

> […] how long it would take to introduce into these villages social conditions upon which a society along modern lines could be built, if a policy of slow development were to be continued. This beautiful country, it seemed, would give even to the casual observer the impression that it has great agricultural, or horticultural, possibilities which are as yet untapped and which would remain untapped if it were to continue in the comparative isolation […].[221]

The envisioned capitalist social conditions were understood to induce the actualization of rights. The rationale here was that rights exist on paper, but expansion of local economy can actualize them. Reaching 'human dignity' of the people presumed a state of 'community development' which 'provides a wide range of social incentives to economic effort and makes it subservient to broader social goals and purposes'.[222] In this logic, if social structures attuned to the vision of the expansion of the economy, needs and welfare of the post-colonial subjects would be effectively met. 'Developing a family' which would 'contribute effectively to the

[219] Brown and Kapczynski (n 45) 246.
[220] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 69) 27–28.
[221] UN, 'Reports of the United Nations Visiting Mission to Trust Territories in West Africa and Related Documents' (n 177) 5.
[222] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (n 69) 20.

welfare of its members and to meeting the needs of the local and territorial community', particularly through the work of women, was an integral part of achieving the economically substantiated development and human dignity.[223] The institution of modern, urban, marriage where both spouses have in/direct role in capitalist production was even alleged as a condition of the countries' independence.[224]

Larger involvement of women in the capitalist production was thus key for countries' imagined development and independence. Since the rising poverty delegated more and more people in destitute 'it was felt that the tendency apparent in many countries towards a low age of marriage, and the universal tendency to a longer life expectancy, increased the importance of women's contribution to the national economy'.[225] The 'whole process of national improvement will be delayed until a great drive is made to reach the women and girls'.[226] Lacking education of women was claimed to be an obstacle to further development of the country with social, economic and cultural end implications of protection women and improving their status.[227] In this way the reports pursued a narrative that new functions of marriage and women (which as established above were those that facilitated capitalist expansion) are necessary for national, economic and other, progress and effective attainment of rights.

[223] ibid 16.
[224] UN Commission on the Status of Women, 'Statement Submitted by St. Joan's International Social and Political Alliance, a Non-Governmental Organization on the Register of the Secretary-General' (n 101) 2. More generally at: Knop (n 90) 332.
[225] UN Commission on the Status of Women, 'Report of the Twelfth Session (17 March-3 April 1958)' (n 147) 9.
[226] General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (1953) No. 15 (A/2465) 17.
[227] ibid; General Assembly, 'Report of the Committee on Information from Non-Self-Governing Territories' (1956) No. 15 (A/3127) 17.

In sum, expansion of capitalism was deemed necessary for people to have rights where the function of law was not to deliver rights but to set the conditions for capitalism to deliver rights. This third point thus demonstrates how the economic base defined the understanding of possibility or impossibility of rights. How rights cannot be delivered without capitalist expansion and for delivering rights to societies, family formations and individuals (including women) need to function towards the development of productive forces.

3.4 Analysis

This Section unfolded the rationale at the face of the UNCM that forms of marriages in the Global South restricted human rights of women. In the first step, it showed that Western legal constructs of marriage structurally subordinating women were eventually disregarded and not addressed by the Marriage Convention. In the second step, it showed that in narrowing the focus on marriages and women in former colonies, the CSW relied on metropolitan knowledge about the social realities there. It was argued that the purview of administrators, councils and committees tasked with reporting on the dependencies was largely defined by their vision of post-colonial self-governance. This vision essentially drew from the local expansion of capitalism which was seen to condition social progress and the attainment of rights.

In this spawn of knowledge, marriage practices in the dependencies were presented as unmodern and preventing human dignity, freedom and rights (particularly of women). In establishing human rights non-compliance, the arguments about the lack of consent in entering marriage and the economic transactionism of these marriages, were intertwined with arguments over the economic dysfunction of these marriages.

The section thus stressed that the international interest in intervening in the Global South marriage forms for the sake of women conflated with the interests of the political economical governance in the dependencies. As a part of the latter, familial and marriage structures needed to transit from large economically self-contained families to small, urban, wage-dependent families to expand the stock of productive labour necessary for the capitalist expansion. The economic form thus informed the concept of modern marriage, which at the same time became signified as a human rights' compliant marriage.

In a similar logic, modern, urban marriage was argued to nurture social empowerment of women – deliver them dignity, freedom, emancipation, independence. It was demonstrated above that these signifiers describing the state of women after transiting form traditional to modern marriage, were substantiated by the new roles of women with more utility for the capitalist production. The analysis extracted three ways in which new roles for women were argued to release them from slavery and deliver them more human dignity based on their usefulness to the capitalist form of production.

There are several ways to analyse this from the standpoint of feminist critique of political economy. The meaning of terms within the legal form (dignity, freedom, etc.), which at their face signify emancipation and expansion of women's bargaining power, embodies their function in the development of economic forces. The envisioned free woman in the preparatory works was a woman contributing to the expansion of capitalist economy. In the context of the adoption of UNCM, it can also be said that emancipation of women primarily made sense to the treaty-makers because this expansion of women's status was envisioned to lead to larger production of the former colonies. On the one hand, it was thus the meaning of

women's rights and dignity that was informed by the economic base, on the other, hand it was the purpose of the legislative intervention for the sake of women that was informed by the envisioned economic benefits.

In return, the meaning of women's emancipation or expansion of bargaining power infused in the legal form is logically limited by its functionality in the capitalist economy. This is not to say that the meaning of women's dignity in marriage, safeguarded in the legal form through the requirements of age and will, remains constant. Rather, it is to say that the emancipatory potential for women based on these requirements, signified in the language of human rights, is limited in the way these requirements were and are used by Western powers. The adoption of these requirements as human rights can be traced to the Global North (in that for example reports of imperial administrators served as the key source of regulatory knowledge) and at the same time, the application of these requirements by the Global North today leads to a wholesale deprivation of entitlements for large numbers of Global South subjects.

In the recent years, in response to elevated migration from the Global South, and in a situation where this is not as useful for the economy as it used to be,[228] Western European states (largely former empires) adopted rules that exclude from reunifying all marriages which are substantially non-conformist to the UNCM.[229]

[228] Peter Bejder and Kim Boye Holt, *Fra Huguenotter til Afghanere: indvandringens historie i Danmark* (Systime 2003) 157; Stephen Castles, 'Guestworkers in Europe: A Resurrection?' (2006) 40 International Migration Review 741, 742.

[229] For example, Denmark: Udlændingeloven Art. 9; Parliamentary Committee for Immigration and Integration (Udvalget for Udlændinge- og Integrationspolitik), 'Assessment of Law Proposal No. L 152/2001-02' (2002) 1392; Peter Starup, *Grundlæggende Udlændingeret: Udvalgte Emner* (Djøf Forlag 2021) 97 et seq., the UK: Marriage and Civil Partnership (Minimum Age) Bill 2018 (Bill 18 2021-22 (as introduced)). Sweden: Maarit Jantera-Jareborg, 'Populism and Comparative Law as Tools Not to Recognise Foreign Marriages' (2019) 6 Journal of International and Comparative Law. Belgium: Els Leye and Alexia Sabbe, *Forced Marriage in Belgium. An Analysis of the Current Situation* (2015) 17. Germany: Ralf Michaels and Nadjma Yassari, 'Early Marriage in the

This is not conducted with a mere reference to the UNCM but the national versions rest on more rigid and narrow constructs of free and child marriage. For example, in some states, marriage entered before the age of eighteen cannot serve as a ground for reunification even later when both spouses are adult.[230] In other states, foreign marriage conducted before the age of twenty-four is considered potentially forced and cannot serve as a ground for reunification.[231] The structural impact of the idea that certain forms of marriages are human rights non-compliant, emanating from the UNCM, is thus largely harmful to former colonial subjects migrating to the Global North.

This is not to say that the UNCM with its definitions of human rights compliant marriage is only applied to deprive the former colonial subjects of entitlements. For example, in individual and notably extreme cases, being forced to marriage can serve as a ground for asylum status.[232] In other cases, asylum status is denied.[233] Partaking on human rights non-compliant marriage also justifies separation in asylum proceeding form the spouse as the only relative,[234] and excludes the possibility of family reunification.[235] The limits of the emancipatory potential are spelled out when the subjects in early or presumed forced marriages litigate their cases in courts. Courts often argue that it is pitiful to be married before eighteen, but

Constitutional Spotlight' (*Max Planck Institute for Comparative and International Private Law Hamburg*, 2021) <https://www.mpipriv.de/early-marriage-in-the-constitutional-spotlight>.
[230] Jantera-Jareborg (n 229).
[231] Starup (n 229) 97–99.
[232] Kim Thuy Seelinger, 'Forced Marriage and Asylum: Perceiving the Invisible Harm' (2010) 42 Columbia Human Rights Law Review.
[233] Marzia Balzani, 'Constructing Victims, Constructing Credibility: Forced Marriage, Pakistani Women and the UK Asylum Process' in Aisha Gill and Sundari Anitha (eds), *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Books Ltd 2012).
[234] *ZH and RH v Switzerland* [2015].
[235] Sanna Mustasaari, 'The Married Child Belongs to No One? Legal Recognition of Forced Marriages and Child Marriages in the Reuniting of Families' (2014) 26 Child and Family Law Quarterly.

that this violation of human rights cannot really lead to granting a residence right[236] or to a sensitive individual treatment in asylum proceedings.[237] It is in arguments like these that the reproduction of the initial imperial, patriarchal and capitalist logic behind marriage requirement as human rights becomes visible: the initial motive was to fuel capitalist expansion (in the economic interest of the former empires) and the subsequent application is not going to threaten the economic interests of Western former empires.

Another limitation of law's emancipatory ambitions by the economy based on this case-study can be expounded through the lawmakers' interaction with operating background rules.[238] In points 2 and 3 of Sub-Section 3.3, the treaty-makers understood that symbolic recognition by law (of rights of women (2) and human rights (3)) depends in its materialization in social reality on economic forces. This shows their awareness of operating background rules coupled with the rationale that law cannot really disrupt those (i.e. law cannot interfere in the economy for greater social justice). Rather the economic background rules actualize law's wishful goals by their own means and tempo. There are thus social constructs (such as marriage forms) which are reasonably disrupted by law and there are those with which law should not interfere and which are logical (such as that capitalist economy expands based on women's combination of household and community work; or that women need to labour more to actualize their rights). The key for identification of malleable background rules then rests in the rationale of development of productive forces. In this logic, the expansion of women's bargaining power is only logical if it aligns to the production rationale.

[236] ibid.
[237] *Z.H. and R.H. v. Switzerland* (n 234).
[238] Hale (n 32); Kennedy, 'The Stakes of Law, or Hale and Foucault' (n 32).

The preparatory works thus suggest that Western, capitalist (and Christian[239]) marriage requirements will deliver human rights to Global South women and modernity to their societies. However, it must be noted that the administrators' reports were sometimes also polemic of the above formula. Occasionally, the administrators challenged that traditional marriage forms can be characterized as forced.[240] Sometimes they argued that these customs are not impairing women's dignity[241] or are no less oppressive to women than Western marriage customs.[242] These claims were in minority and were not debated by the CSW. It is, however, important to mention that these also appeared.

4. Conclusions

This Chapter established the economic rationale behind adopting standards of marriage through the UNCM as standards of human rights. In line with Marxist approaches to international law and decolonization, it demonstrated how the notion of 'progress' as an end state in the territories following, among other, projects of social engineering and family moulding, was largely underscored by the capitalist logic. The analysis aimed to, in the context of the socio-economic projects in the dependencies, highlight how the meaning of women's rights was informed by these projects and by the logic of capitalist economic expansion.

The outcomes showed that the legal form was informed by the economic form in several layers. Firstly, traditional marriages were decried as unmodern and

[239] Schwelb (n 85) 340; Commission on the Status of Women, 'Statement Submitted by the Catholic International Union for Social Service, a Non-Governmental Organization in Category B Consultative Status' (n 101) 2; Keyse (n 87) 24.
[240] UN, 'Reports of the United Nations Visiting Mission to Trust Territories in West Africa and Related Documents' (n 177) 38.
[241] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Non-Self-Governing Territories (Report by the Secretary General)' (n 65) 4.
[242] UN Commission on the Status of Women, 'Information Concerning the Status of Women in Trust Territories (Report by Secretary-General)' (n 164) 14.

human rights non-compliant because they did not rest on the premise of freedom of will of the spouses. The argument of non-modernity rested primarily on the fact that these marriages obstructed capitalist economic processes (urbanization, detribalization, induction of wage-economy); the argument of human rights non-compliance rested on the lack of consent of the spouses. The economic function of marriage and its legal construct, including the constructed ways to assure of voluntariness, were, however, understood as co-dependent. Traditional marriages were conceived as economic transaction, functioned as economic unit in the community economy and were not constructed on the freedom of will. In contrast, modern, urban marriage, sustained by individual or family wage and constructed around the freedom of will was portrayed as human rights compliant.

In the next layer, traditional marriages were argued to be harmful to women and prevent their attainment of human rights. The Chapter argued that this argument also derived from the logic of capitalist expansion. The claim evolved around the understanding that urban marriage offers new roles to women. These roles were seen as better serving to women's freedom, dignity, rights, emancipation. Through three analytical points, the Chapter argued that these signifiers of women's better life in urban (free) marriage represented essentially economically instrumental substance. Women's new roles were seen as better firstly because they would sustain the functioning of urban family as a basic economic unit in the capitalist economy. Secondly, they were understood to lead to better lives of women because they would allow women to combine family and community/industrial work with benefits in petty cash and expanded agency. This would also translate in enlarged productive forces for the capitalist form. Thirdly, greater involvement of women in the 'public' sphere was seen as a condition for countries to 'progress' into advanced societies

where human rights are respected. Overall, the sense in expanding women's bargaining power by symbolic recognition of rights, was established through arguments derived from the capitalist logic of developing productive forces.

Chapter 2: Thinking in Terms of Profits and Reproductive Rights in CEDAW (Case-Study 2)

1. Introduction

The Convention on Elimination of All Forms of Discrimination Against Women is widely regarded as an instrument which 'marked the placement of women's rights on the human rights agenda'.[243] In the area of reproduction, CEDAW includes Articles addressing access to adequate health care, education, protection in maternity and freedom of decision.[244] Generally, CEDAW's Articles 12(1) and 16(1) e) are understood to come the closest to providing women with options in cases of unwanted pregnancies[245] although scholars debate the strength of CEDAW's reproductive rights.[246]

Art. 12(1) of CEDAW provides that women shall have, on the basis of equality, access to health care services, including those related to family planning.[247] Art. 16 e) of CEDAW then provides that states shall on the basis of equality ensure the same rights of men and women to decide freely and responsibly on the number

[243] Alma Beltran y Puga, 'Paradigmatic Changes in Gender Justice: The Advancement of Reproductive Rights in International Human Rights Law' [2012] Creighton International and Comparative Law Journal 158, 159; Adrien K Wing, 'International Law and Feminism' in Robin West and Cynthia Grant Bowman, *Research Handbook on Feminist Jurisprudence* (Routledge 2019) 468.

[244] Carlota Bustello, 'Reproductive Health and CEDAW' (1995) 44 American University Law Review 1145, 1146–1148.

[245] Luisa Blanchfield, 'The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S. Ratification Debate' (United States Congressional Research Service 2010) R40750 14; Barbara Stark, 'The Women's Convention, Reproductive Rights, and the Reproduction of Gender' (2011) 18 Duke Journal of Gender Law & Policy 261, 269; Beltran y Puga (n 243) 160; CEDAW Committee, 'General Recommendation Adopted by the Committee on the Elimination of Discrimination against Women: General Recommendation No. 24: Article 12 of the Convention' (1999) § 11.

[246] Blanchfield (n 245) 14–16; Stark (n 245) 266–267, 269; Chad M Gerson, 'Toward an International Standard of Abortion Rights: Two Obstacles' (2005) 5 Chicago Journal of International Law 753, 754.

[247] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 Art. 12(1).

and spacing of their children and have access to the information, education and means to enable them to exercise these rights.[248] It was argued that the term 'free decision' which potentially comes close to a right to decide on abortion led states to raise objections against the ratification of the Women's Convention.[249] Because Art. 16 e) presents a symbolic recognition of women's bargaining power in decision-making about childbearing in tandem with accessing health- and social care advisory and services, the right is abbreviated here as a right to family planning and is of a key focus to this Chapter.

This Chapter treats the respective articles of CEDAW as the first international legal articulation of women's right to decide on unwanted pregnancies, although in general the emergence of international reproductive rights is usually dated later.[250] Regarding Art. 16 e) of CEDAW as the UN's first legislative articulation of women's right to family planning is subject to the reservation that it was formulated toothlessly and as an equal right of men and women. Despite this mild formulation, the Chapter shows that the CSW was aware of the stakes of family planning for individual women and the impacts it may have had to women's bodies, autonomy and share of power in the society. These stakes were then deemphasized through the legislative outcomes because of the perceived legislative goals as well as the UN bodies' negotiating strategy. The Chapter argues that the right, and the current replications of women's reproductive rights based on it, are spawned in the

[248] ibid Art. 16(1)e).
[249] Blanchfield (n 245) 14; Stark (n 245) 169.
[250] International Conference on Population and Development:, 'Report of the International Conference on Population and Development, Principle 4' (1994) UN Doc A/Conf.171/13/Rev.1 4; Rachel Rebouche, 'Reproducing Rights: The Intersection of Reproductive Justice and Human Rights' (2017) 7 UC Irvine Law Review 579, 582; Beltran y Puga (n 243) 160; Whaley Eager (n 13) 146. Yet even after Cairo international reproductive rights face significant setbacks, see for example: Dennis Hodgson and Susan Cotts Watkins, 'Feminists and Neo-Malthusians: Past and Present Alliances' (1997) 23 Population and Development Review 469, 469–470.

preceding UN agenda of advancement of women in developing countries[251] coupled with population control policy. The key aim here is to show how the economic logics of the latter translated into the former.

The Chapter builds on previous critiques of UN population control policy as a 'neo-colonial' agenda.[252] Scholars argued that the involvement of rights' rhetoric in population control instituted the rationale of economic development as a condition of enjoinment of human rights.[253] Rights' rhetoric was arguably infused in the population control agenda instrumentally to transcend some of the conservative, Catholic, voices in the Population Commission.[254] Although family planning was later articulated specifically as a right of women, the UN arguably continued in neo-colonial actions focused on limiting childbearing in the Global South[255] (details in Sub-sections 2.1 and 2.2).

The Chapter identifies several logics of the foundational economic approach to family planning pre-existent to the CSW's reformulation of it as women's right. It points to these logics to explain the limited bargaining power which the right to family planning provides to poor and non-Western women today, as depicted in the Introduction. It is beyond the scope of this Chapter to study the economic arguments and linguistic strategizing in the adoption of CEDAW as a whole.[256] The Chapter

[251] 1777 (XVII) United Nations assistance for the advancement of women in developing coutries 1962 (1777 (XVII)); Secretary General, 'United Nations Assistance for the Advancement of Women: Preliminary Report by the Sectretary General' (1965) E/CN.6/435 1.
[252] Roman Birke, 'UN Resolution on Human Rights Aspects of Family Planning (1968)' (*Quellen zur Geschichte der Menschenrechte*, December 2018) 1–2 <www.geschichte-menschenrechte.de/family-planning>.
[253] Roland Burke, 'From Individual Rights to National Development: The First UN International Conference on Human Rights, Tehran, 1968' (2008) 19 Journal of World History 275, 295–296. Similarly: Whelan (n 60) 7.
[254] John Richard Charters Symonds and Michael Carder, *The United Nations and the Population Question, 1945-1970* (McGraw-Hill 1973) 130–131.
[255] Whaley Eager (n 13) 151–152; Charlesworth, Chinkin and Wright (n 13) 619.
[256] Commission on the Status of Women, 'Consideration of Proposals Concerning a New Instrument or Instruments or International Law to Eliminate Discrimination against Women'

thus studies how economic reasoning functioned in the CSW's articulation of 'deciding on number and spacing of children' as a right with special relevance to women prior to its inclusion in CEDAW; and how it substantiated the meaning of this right and the benefits foreseen.

The first argument of this Chapter is that equal right in access to family planning in CEDAW, drew in many ways from the UN policies of population control. This argument also points to the pertaining Global North/South divide in the CSW's agenda of family planning; and proceeds as follows:

Section 2 establishes the foundational economic and neo-colonial logics of the UN policies of population control based on the goal to establish a desirable ration between birth-rate and national production. It also shows how the rhetoric of human rights was married into population control, understanding human rights as dependent on economic standard.

Section 3 then canvasses the way in which these pre-existent logics of a) economic, communitarian and national benefits of family planning (Sub-Section 3.1); and b) the Global North/South divide in relevance and functionality of family planning (Sub-Section 3.2), imprinted into the agenda as furthered by the CSW. The CSW married the perspective of benefiting women through family planning policies into the preceding communitarian approach of national economy and development. It then continued to oscillate between arguments about individual women and national economy and the respective languages attached to these arguments.

(1974) E/CN.6/574; Commission on the Status of Women, 'Report on the Twenty-Fifth Session' (1974) E/CN.6/589 28–46; Secretary General, 'Working Paper Prepared by the SG' E/CN.6/573. An overview of the drafting can be found for example here Lars Adam Rehof, *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination against Women* (Brill Nijhoff 1993).

Sub-Section 3.3 opens for the Chapter's second argument canvassing the strategizing of the CSW members about the way in which the right to family planning should be presented. They debated between the rhetoric of human rights and the economy, as they saw these in some aspects universalising, depoliticising, facilitating wider approval, and ehancing compliance. Sub-Section 3.4 then shows that economic reasoning on both levels of meaning and language limit the emancipatory potential of the right to family planning. Firstly, because some of the logics of the economy-based population control and development assistance policies are ingrained in the right and its understanding of emancipation. Secondly, because its ambition for emancipation of women was further weakened by submitting to the economic arguments emphasized as universalising and depoliticising.

2. Family Planning in the UN Agenda of Population Control

When the CSW started to argue for a reconsideration of family planning as relevant to women's autonomy and health,[257] it acknowledged the continuity with the preceding UN population control policy.[258] Sub-Section 2.1 explains that family planning under the UN population control, was an economic tool. It is argued that the UN population control programmes were neo-colonial in that they unilaterally applied Western epistemology and socio-economic models to former colonies. Slowing population growth in the 'developing countries'[259] was argued to be in the interest of those states but at the same time represented a projection of Western geopolitical anxieties. This economic and neo-colonial rationale of population

[257] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 43.
[258] ibid 43–44.
[259] Population Commission, 'Supplement No. 9: Population Commission: Report of the Thirteenth Session' (Economic and Social Council, 39th Session 1965) 7.

control then foregrounded the idea of family planning as a right (Sub-Section 2.2) and a right with special relevance for women as imprinted in CEDAW (Section 3).

2.1 Family Planning under Population Control

Family planning as an instrument of UN population control preceded family planning as an agenda of individual, reproductive, rights of women as it was re-articulated by the CSW. The population control programme was conducted by Population Commission under the main objective to establish 'harmonious relationship between population growth and economic development'.[260] This included assessing the rate of growth of population and its structure in relation to countries' national resources, productivity and structure of the labour force, redistribution within the country and other factors of wealth accumulation.[261]

In relation to the (former) colonies, the policy was primarily, although not exclusively[262] concerned with the 'problem' of overpopulation and its geopolitical implications. Family planning was one of the tools of population control, involving policies impacting fertility, childbearing, contraception, and other aspects of reproduction,[263] controlling the quantity and quality of population.[264]

The UN policies of population control were arguably fuelled by Western geopolitical anxieties of various kinds: the fear of implications on geopolitical power of growing population in the South and declining population in the North,[265] the fear

[260] ibid 8.
[261] ibid; Symonds and Carder (n 254) 69 et seq.
[262] Samuël Coghe, *Population Politics in the Tropics: Demography, Health and Transimperialism in Colonial Angola* (Cambridge University Press 2022) 15.
[263] Whaley Eager (n 13) 151–152.
[264] Matthew Connelly, 'Population Control Is History: New Perspectives on the International Campaign to Limit Population Growth' (2003) 45 Comparative Studies in Society and History 122, 122; Alison Bashford, 'Nation, Empire, Globe: The Spaces of Population Debate in the Interwar Years' (2007) 49 Comparative Studies in Society and History 170.
[265] Whaley Eager (n 13) 151–152.

that poor world regions will make a fertile ground for the spreading of communism,[266] or the fear that large world areas living in poor conditions might present a threat to world peace[267] by political unrest and uncontrolled migration flows.[268] Because of the dominance of Euro-American geopolitical interests channelled through the UN,[269] intellectual origins in Western national population policies (primarily British, American and French),[270] and financial bolstering by conservative American funds,[271] many scholars conceptualize the UN population control policy with its focus on the Global South as 'neo-colonial'.[272]

Although the Population Commission pronounced that population policies should not be considered merely in economic terms but also with regard to the mores and institutions of each society,[273] this perspective, primarily surfaced in relation to industrialized countries facing under-population and was less present in debates and actions towards 'developing countries'. On the opposite, in relation to countries 'in the course of economic and social development'[274] economic factors, which proved to hinder population growth in the former metropoles, were emphasized.

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[266] Matthew Connelly, *Fatal Misconception: The Struggle to Control World Population* (1st edition, Belknap Press 2008) 120.
[267] Population Commission (n 259) 9. Similarly: Department of Economic and Social Affairs UN, 'Five-Year Perspective 1960-1964: Consolidated Report on the Appraisals of the Scope, Trend and Costs of the Programme of the United Nations, ILO, FAO, UNESCO, WHO, WMO and IAEA in the Economic, Social and Human Rights Fields' (1960) United Nations Publication Sales no. 60.IV.l4. 9–11.
[268] Connelly (n 266) 121–122; Bashford (n 264) 183–188.
[269] Whaley Eager (n 13) 152; Birke (n 252).
[270] Connelly (n 264) 123 et seq; Hodgson and Watkins (n 250) 480 et seq; Connelly (n 266) 115 et seq; D Barrett and DJ Frank, 'Population Control for National Development: From World Discourse to National Policies' in J Boli and GM Thomas, *Constructing World Culture: International Nongovernmental Organizations since 1875* (Stanford University Press 1999) 199.
[271] Birke (n 252); Connelly (n 264); Agnes Czerwinski Riedmann, *Science That Colonizes: A Critique of Fertility Studies in Africa* (Temple University Press 1993); Connelly (n 266) 124 et seq; Symonds and Carder (n 254) 105 et seq.
[272] Birke (n 252) 1–2. Similarly: Whaley Eager (n 13) 152; Connelly (n 266) 123.
[273] Population Commission (n 259) 8.
[274] ibid.

The Population Commission focused on the demographic situation in 'developing countries'[275] to help them with 'acceleration of social and economic development' which was arguably 'the[ir] most pressing need'.[276] The relation between economic development and lower childbearing was constructed as mutually dependent.[277] 'Hopes of early achievement of economic and social goals would risk disappointment unless such mutually supportive measures of demographic […] policy were applied energetically and simultaneously'.[278] Many Global South countries supported the population control initiatives as they perceived high birth rates as an 'obstacle to their modernization'.[279]

The use of family planning as a population control tool adhered to the rationale that 'excessive population is a major cause of poverty, and that lowering fertility will facilitate prosperity'.[280] To this end, the Population Commission continuously suggested studies on the relation between birth-rates and marriage customs, education and employment of parents[281] and cooperated with various other interest-organizations promoting planned parenthood.[282] If considered, status of women was treated as an instrumental measure, as it was argued that its elevation can slow down the birth rates.[283]

[275] Economic and Social Council, 'Official Records, Sixth Session, Supplement No. 4: Report of the Population Commission' (1947) E/571 10.
[276] Population Commission (n 259) 8, 10.
[277] ibid 8; UN, 'Five-Year Perspective 1960-1964: Consolidated Report on the Appraisals of the Scope, Trend and Costs of the Programme of the United Nations, ILO, FAO, UNESCO, WHO, WMO and IAEA in the Economic, Social and Human Rights Fields' (n 267) 11; Symonds and Carder (n 254) 72.
[278] Population Commission (n 259) 8.
[279] Birke (n 252) 3; Symonds and Carder (n 254) 77.
[280] Hodgson and Watkins (n 250) 471. Similarly: Symonds and Carder (n 254) 120.
[281] ECOSOC, 'Population Commission: Report of the Fifth Session' (1950) E/EC.9/62 9.
[282] Birke (n 252) 2.
[283] Population Commission (n 259) 8.

The population control programme was multi-faceted and spanned over various regions. When ideas and actions were devised towards the Global South, they were often constructed on ratios between population and the strength of local economy and aimed specifically at lowering birth-rates rather than expanding peoples' choices.[284] Family planning under population control was thus devised to tackle poverty and in consequence prevent undesired geopolitical effects. Sections 2.2 and 3 below show how these logics translated respectively to the human rights rationale emerging from the spawn of population control agenda, and to the construction of family planning as a right with particular importance for women.

2.2 Family Planning as a Right

Through the influence of the Population Commission, family planning was incorporated into the UN human rights agenda. The causality between human rights and population growth was initially articulated in 1968 in Declaration on Population and in the Final Act of the Teheran Conference on Human Rights (1968) which included a Resolution on Human Rights Aspects of Family Planning. Both documents explicitly drew from the previous work of the Population Commission.

The Declaration on Population pronounces that 'there are important links between population growth and the implementation of human rights and freedoms'.[285] It elaborates that 'parents have a right to free choice with regard to size of the family as well as each family having a 'basic right' to information and the availability of services'.[286] Merging human rights arguments into the rationale of family planning meant that family planning was not anymore 'only an integral part

[284] Whaley Eager (n 13) 151–152; Charlesworth, Chinkin and Wright (n 13) 619.
[285] The Population Council, 'Declaration on Population: The World Leaders Statement' (1968) Studies in Family Planning, Vol 1, No 26 2.
[286] ibid.

of national efforts for economic and social development but also a way to human progress in modern society'.[287] Similarly, the SG proclaimed that 'we must accord the right of parents to determine the number of their children a place of importance' for as 'one of the consequences of backwardness, rates of population growth are very much higher in the poor two-thirds of the world' and the 'problem of growing food shortage cannot be solved without in many cases a simultaneous effort to moderate population growth'.[288] The concept of family planning thus compounded economic, geopolitical and human rights functions.[289] At this point, family planning was not considered especially relevant for women as the Declaration stated that family planning 'frees man to attain his individual dignity and reach his full potential'.[290]

The Resolution on Human Rights Aspects of Family Planning suggested in a similar tone that the UN should 'give close attention to the implications for the exercise of human rights of the present rapid rate of increase in the world population'.[291] Within this larger context, the Resolution declared that 'couples have a basic human right to decide freely and responsibly on the number and spacing of their children'. The economic instrumentality of the right to family planning was restated by the GA by conceiving it as a tool of enhancing social progress, especially in the Global South.[292] The rise of population arguably had 'inherent economic dangers' related to food supply which challenge the exercise of the right to life by population numbers being increased to the point where other rights are

[287] ibid.
[288] Secretary General, 'Press Release' (1966) SG/SM/620/Rev.1.
[289] The Population Council (n 285) 3.
[290] ibid.
[291] UN, 'Final Act of the International Conference on Human Rights' (1968) A/CONF.32/41 15.
[292] 2542 (XXIV) Declaration on Social Progress and Development 1969 Art. 4.

jeopardised.[293] Overpopulation was argued to lead to exploitation of natural resources where 'the preservation of natural wealth […] was an essential means of achieving respect for human rights'.[294]

Marrying human rights into the family planning-agenda at the forum of the UN thus rested on the presumption that attainment of human rights, as guaranteed by the Charter and the UNDHR, required an economic standard which was undermined by large (poor) populations. As such, family planning was seen as a complementary policy to, for example, wealth redistribution, which was more difficult to negotiate on both national and international levels.[295] In this context, family planning right was thus not a right because it enlarges the autonomy or agency of individuals, but it was a right because it can facilitate development and modernity in (Global South) societies.[296] This rationale was argued to manifest the 'intellectual contours of European colonialism'.[297]

The argument that family planning is a human right thus entered the UN debates in support of the implementation of population control policies. As shown, this right was argued to contribute to economic wellbeing and thus to facilitate the attainment other, basic, rights particularly in the Global South. This right was thus positioned at the tangent of development and rights, nested in the rationale that a collective should use family planning for its need to achieve economic standard, conditioning the actualization of human rights.

[293] Alfred Sauvy, 'Human Rights from the Family and Population Viewpoint' (International Conference on Human Rights 1968) A/Conf.32/L.1 22.
[294] ibid 38.
[295] ibid 18–19.
[296] Birke (n 252) 1–2.
[297] Burke (n 253) 296; Birke (n 252) 2.

3. CSW: Family Planning as Women's Right

This Section portrays the continuities in the conception of family planning under population control and under the CSW's treatment of it as women's rights agenda. Two aspects of these continuities are expounded through separate Sub-Sections: economic/communitarian importance of family planning (Sub-Section 3.1) and the Global North/South divide in the function of family planning (Sub-Section 3.2). Sub-Section 3.3 then unfolds the linguistic strategy discussed by the CSW to show that economic thinking did not only imprint into the principial understanding of family planning as a right with special relevance for women, but also into the form (language) in which it was presented. Lastly, Sub-Section 3.4 presents a theoretical analysis and links to current application.

Departing from the programmes of the UN in population control and development, the CSW aimed to formulate the special meaning of family planning for women. The CSW's project continued to be intertwined with the UN population control and development programmes, for example through the mutual referencing[298] but also substantively, through the reciprocal use of arguments. The UN development policies started to argue with advancement of women in campaigns for implementation of family planning policies in the Global South.[299] The CSW then used the economy- and development-based arguments of population control and technical assistance for development for articulating family planning in relation to the advancement of women (discussed below).

[298] Statistical Commission Economic and Social Council, 'Recent Activities in the Field of Population' (1968) E/CN.3/386 4; Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 43–44.

[299] Resolution adopted by the General Assembly 2716 (XXV): Programme on concerted international action for the advancement of women 1970 Annex, C.4.

As the CSW inaugurated[300] the agenda of status of women and family planning, it apparently understood family planning as primarily a population control tool and only secondarily as an individual right. As a tool of population control, family planning was argued to have relevance both for overpopulated countries[301] (which was primary) and industrialized countries suffering with under-population.[302] The CSW, however, suggested that: 'it was *not only* a matter of limiting families: it was a matter of enabling women to have a choice in the spacing of pregnancies and also, if necessary, to have access to information on how to overcome sterility'.[303] In consequence, the CSW initiated studies into the complexities of family planning in relation to the advancement of women in overpopulated countries[304] and into its effect on the individual woman and her choice over life.[305] These are the contours of the dichotomic family planning agenda under the CSW: a collective right for achieving goals of the community versus an individual right for achieving a higher autonomy of individual women. This dichotomy, as argued below, was loosely underscored by a division of geographic relevance: for Global South societies or Global North individual women.

The individual woman-oriented train of reasoning gained more prominence in the CSW debates with time. The language used to discuss the agenda also changed. While in mid-1960s and early 1970s, the dominant language was that of statistics and causal relations between variables (for example, economic standard

[300] The item was first discussed in 1963 without any outcome being adopted: Commission on the Status of Women, 'Report on Twenty-Third Session' (1970) E/CN.6/546 22; Commission on the Status of Women, 'Report on the Seventeenth Session' (1963) E/CN.6/413 8.
[301] Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 53.
[302] ibid 55; Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 36, 44.
[303] Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 55.
[304] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 43.
[305] ibid.

and childbearing), in mid-1970 the language involved agency of women. Gradually, the materials spoke less of 'affecting fertility'[306] or 'influencing growth of population'[307] and more about 'influencing reproductive decisions'.[308]

The change of tone is particularly visible through an agenda-setting 'Study of the Special Rapporteur on the Interrelationship between Family Planning and the Status of Women'[309] (further as Special Rapporteur's report). It was worked out by the Assistant Secretary General for Social Development and Humanitarian Affairs and was partly funded by the Population Commission.[310] The impact of family planning on 'women's status' was central to the report.[311]

The Special Rapporteur pointed out that for women this right has special impacts in terms of health and wellbeing, 'human dignity' and 'freedom'.[312] In pointing out the lacking perspective of rights in the pre-existing discourse, dominantly focused on population control and national profits,[313] she argued that it went without realization that the merit of family planning is an 'inherent justice of a policy that would help in raising the status of women and in promoting equality between men and women, in and of itself [as a goal].'[314]

[306] Commission on the Status of Women, 'Report on Twenty-Third Session' (n 300) 21.
[307] Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 54–55.
[308] Special Rapporteur on the Interrelationship between Family Planning and the Status of Women (n 72) 13.
[309] Special Rapporteur on the Interrelationship between Family Planning and the Status of Women (n 72).
[310] Commission on the Status of Women, 'Report on Twenty-Third Session' (n 300) 23.
[311] Secretary General, 'Family Planning and the Status of Women. Interim Report of the Secretary-General' (n 70) 24.
[312] Commission on the Status of Women, 'Report on Twenty-Fourth Session' (1972) E/CN.6/568 42.
[313] Special Rapporteur on the Interrelationship between Family Planning and the Status of Women (n 72) III.
[314] ibid 15.

The report was radical in some of its definitions and critiques. For example, it employed a definition of the status of women based on the social share of power[315] and measured it by the 'actual control people have over their own lives'.[316] Family planning was an 'essential element of the right of women as individuals to self-determination' involving decisions over their 'bodies; their right to personal autonomy, joy and happiness; their interest in developing the full range of their talents and abilities; and their equal rights and responsibilities with men not only within the family, but in the economic, cultural, social and political life of their communities and of their countries. In this context, family planning contributed both to the 'fulfilment of personal aspirations and to the achievement of broad national social goals'.[317] The report also criticized the logic and epistemology of the previous approaches. For example, it debated the possibility of cross-cultural measurement of status of women and the imagined immediate link between 'modernization' and female emancipation and equality.[318] It pointed out the disregard for equality aspect it the existent national policies of family planning.[319] It also highlighted the male gaze of the existent research and decision-making bodies[320] by for example suggesting that child-care is blindly regarded as solely women's responsibility[321] and that roles of mother and worker are not necessarily compromising each other.[322]

While spelling out the impacts of family planning in women's bargaining power, eventually only one of the report's 'threesome' recommendations[323] focused

[315] ibid 4.
[316] ibid 5.
[317] ibid 9.
[318] ibid 5–6.
[319] ibid 96.
[320] ibid 65.
[321] ibid 32.
[322] ibid 45.
[323] ibid 109–110.

on the individual, while the remaining two stressed communitarian benefits. The report also implied that the communitarian agenda of the two outcomes concerned especially the Global South (see Sub-Section 3.2).

This individual-oriented conclusion was implicitly relevant for both Western hemisphere and 'Asia' and 'Far East'.[324] Here family planning was argued to lead to women's freedom to take advantage of expanded opportunities, increased autonomy, improvements in physical and mental health.[325] The components of the right to family planning specific for women, were access to information,[326] services and a right to pregnancies and births without major health risks. The report recommended that 'universal provision of family planning information and services is one element of what should be a broad, radical programme for the redistribution of knowledge, wealth, services and power in a co-operative egalitarian society'. It was additionally an 'integral component of the personal autonomy needed for full participation in a and contribution to society'.[327]

Stakes of family planning policies for individual women were thus spelled out and stressed in the report. At the same time, neither the Special Rapporteur nor the CSW in using the report, divorced from the economic and communitarian way of arguing about family planning. The Sub-Sections below portray the ways in which economic rationale and language prevailed in establishing the importance and meaning of the agenda under the CSW.

[324] ibid 101.
[325] ibid.
[326] ibid 109.
[327] ibid 102.

3.1 Economic and Communitarian Meaning of Family Planning

It is argued below, that the CSW in arguing for family planning as a right of women overtook from the existing population control programme two economy-based logics and expanded them. One presented family planning as an instrument for instituting a desirable ratio of childbearing and production by either boosting or slowing down birth-rate. The other saw family planning as a tool for increasing the economic activity of women and by that instituting economic conditions necessary for the actualization of basic human rights. The CSW then elaborated another economic rationale for family planning as women's right, which was that of social reproduction.

Often in the CSW debates, the economic rationale linked to one of these ends was argued under the objective of 'advancement of women'. The term 'advancement of women' was up to this point (mid-1960s) mostly standing for the UN agenda of technical assistance programme for the advancement of women in developing countries.[328] Under the CSW, 'advancement of women' was thus an agenda overtaken from this programme[329] and remained primarily focused on the Global South even in the late 1960s as the inclusion of matters relevant for both 'developed' and 'developing' countries was rather sporadic.[330]

[328] 1777 (XVII) United Nations assistance for the advancement of women in developing coutries; Secretary General, 'United Nations Assistance for the Advancement of Women: Preliminary Report by the Sectretary General' (n 251) 1.
[329] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 34. The focus on developing countries continued in later sessions, e.g. Commission on the Status of Women, 'Report on the Twenty-First Session' (1968) 32.
[330] Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 51, §197; Commission on the Status of Women, 'Report on the Twenty-First Session' (n 329) 31.

Adjusting Birth-Rate to Establish a Desirable Proportion of Reproduction to Production

This economic logic suggests that countries with overpopulation can limit childbearing to optimize the use of their resources and 'develop', and countries with under-population can boost childbearing to make more resources. Family planning was then a tool to reach these goals. The rhetoric of this argument initially did not involve individual women and their agency. It was largely abstract and impersonalized, arguing with causalities and equations between variables such as fertility, childbearing, birth rate.

Within this logic, family planning policies, as women's agenda, should be applied to deliver economic and social progress.[331] Different states then could use family planning tools to their 'profit'[332] to either limit or boost the growth of population. Industrialized countries facing lack of 'human resources' could use it to overcome sterility.[333] Countries facing 'population explosions' in the Global South[334] would then use family planning to lower their birth rate. This CSW's family planning logic thus saw people as human resources or hungry consumers and reproduction as proliferation of either.

Women's activity and agency were added into this formula as the CSW gained interest in studying the relationship between fertility, family regulation and economic activity of women.[335] This was accompanied with an evolution in language from impersonalized terms of fertility or childbearing to empowering

[331] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 36.
[332] Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 55.
[333] ibid.
[334] ibid 54.
[335] Secretary General, 'Family Planning and the Status of Women. Interim Report of the Secretary-General' (n 70) 3.

'women to control their reproductive behaviour'.[336] Governments where then encouraged to use family planning policies to ensure that 'reproductive decisions are made in order to bring personal goals more in line with national needs'.[337]

Within this rationale, the Special Rapporteur argued that family planning expanding women's options, can lead to desired levels of childbearing. Her report claimed that governments that did not desire high fertility rates under-recognized that it is a result of a lack of say of women or a lack of their freedom of choice.[338] The report thus argued that the relation between high fertility and under-development is driven through the lack of women's choice: 'More often than not, high fertility is not a result of free choice'.[339] Policies focused on enhancing the equality of genders were then imagined to accompany family planning policies in order to enhance women's choice and boost national economy: 'promotion of equal rights for men and women is a right in and for itself to which the UN is already committed' but 'this objective has not hitherto been seen as a significant factor in the context of either development or population'.[340]

Unsuccessful family planning policies then arguably contributed to various socio-pathologic phenomena, such as poverty, drudgery, poor health, and conserved under-development. The given examples of unsuccessful policies, lacking focus on women's choice and equality, were countries with 'the practice of polygamy', 'countries where girls are married young', or countries 'where resources are

[336] Special Rapporteur on the Interrelationship between Family Planning and the Status of Women (n 72) 11.
[337] ibid 13.
[338] ibid 109.
[339] ibid.
[340] ibid 110.

limited'[341] and which are not 'most economically advanced',[342] or the 'world's rural areas and urban slums'.[343] There was thus a clear implication under this logic that although family planning can help with economic problems with 'human resources' in the Global North, it is an urgent economic solution for the Global South.

In this logic, symbolic recognition giving women family planning rights and a 'free choice' was aimed at boosting national wealth. The signifier of 'freedom of choice' was substantiated by lesser childbearing (limiting consumption of national resources) and expansion of women's partaking on production (next point). Similarly, as in the previous Chapter, lawmakers recognized economic forces as autonomously aiding or hampering law. The state representatives for example argued that family planning has little potential to initiate radical changes in the status of women which rested rather on 'mobilization of millions of women in the cause of national and social development'[344] (arguing that social changes in women's bargaining power were dependent on their usefulness in production and community work).

Family Planning to Contribute to Actualization of other Human Rights, through the Work of Advanced Women

The second logic was that family planning, through optimizing national economy and through the economic input of women with 'free choice', leads to the general societal attainment of human rights. Compared to the first logic, optimized economy

[341] ibid 109.
[342] ibid 103–104.
[343] ibid 109.
[344] Commission on the Status of Women, 'Report on the Twenty-Fifth Session' (n 256) 55.

was not presented as the end goal of family planning, but as an accelerator in the actualization of human rights.

This logic treated family planning as instrumental in reaching the level of development necessary to attain basic human rights. It was for example asserted that: where 'rates of population growth are high, [they] appear to threaten prospects for rapid economic and social development' and accordingly 'fall in birth rates, in countries with high rates of population growth would reduce the pressure on material goods and services'.[345] Overpopulation thus arguably caused food shortage,[346] hampered the right to adequate standard of living, work and education;[347] and prevented the actualization of rights stipulated by international human rights codes.[348]

The Special Rapporteur argued that UN policies should focus on promotion of social, economic and political independence or each country, elimination of poverty and assuring equal opportunities of all persons, which would lead to a 'natural decline' in birth rate and raise the status of women.[349] Family planning then should be an essential part of development plans but must be accompanied by policies focused on economic, social and political independence of states and on the improvement in the condition of women.[350] This reasoning, as explained below, suggested that family planning applied to expand opportunities for women will lead to national development and the attainment of rights.

[345] Special Rapporteur on the Interrelationship between Family Planning and the Status of Women (n 72) 106.
[346] ibid.
[347] Secretary General, 'Family Planning and the Status of Women. Interim Report of the Secretary-General' (n 70) 35–36.
[348] ibid 24.
[349] Special Rapporteur on the Interrelationship between Family Planning and the Status of Women (n 72) 106.
[350] ibid 110.

The CSW argued that family planning targeted at women will lead to a greater participation on the development of the 'mother's' community[351] or could 'raise the status of women […] and bring it up to the level of the development of the country as a whole'.[352] The CSW was thus interested in 'views on the role which women can play in the economic and social development of their countries and the degrees of priority which should be given to the contribution of women to the various areas of national social and economic development'.[353]

The CSW and the Special Rapporteur then assumed that expanding women's choices or broadening their interests would lead to a higher female employment. The Rapporteur claimed that education broadens women's interests, makes women have less children, be more receptive to family planning and enhances women's desire to perform a job.[354] Similarly, she claimed that women's self-determination, expanded through family planning, would lead to women having:

> equal rights and responsibilities with men not only within the family, but in the economic, cultural, social and political life of their communities and of their countries. In this context, family planning contributes both to the fulfilment of personal aspirations and to the achievement of broad national social goals.[355]

The report summarized that 'there is a vital link between the condition of women, population questions and overall development and that women have a crucial role to play in these areas which must be fully and universally recognized if effective solutions to current problems are to be found.[356]

[351] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 44, Res 7 (XVIII).
[352] Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 53.
[353] ibid 57.
[354] Commission on the Status of Women, 'Report on Twenty-Fourth Session' (n 312) 42.
[355] Special Rapporteur on the Interrelationship between Family Planning and the Status of Women (n 72) 9.
[356] ibid 109.

In this context, the meaning of free choice and self-determination, at the face of family planning as women's agenda, was women's larger partaking on economic production as a matter of 'development' of their countries.[357] It was imagined that agentic women with broadened interests will have more 'desire to perform a job'. Again, the function of family planning for national development was particularly elaborated in relation to the Global South countries by repetitively mentioning overpopulation, described as explosion[358] or suffering.[359]

Under the previous point, the role of law, providing family planning rights to women, was to nudge women to have less children. This point then elaborated how this would imaginably start the 'autonomous' course of the economy which would deliver human rights, already guaranteed on paper, to the under-developed societies. Additionally, providing family planning rights to women would 'expand their choices' and 'broaden their interests'. These human rights' signifiers then in the imagination of the lawmakers meant that women choose to labour and further boost the economic growth. This in return fuels the human rights actualization as well as improves the condition of women. Human rights and good conditions of women were thus desired goals, where family planning right would help configurate the economic set-up autonomously leading to actualizing these goals.

Social Reproduction

The economic logic of this last argument was in its focus on impacts of family planning on the quality of population. Here, the key reasons for implementing family

[357] ibid.
[358] Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 55.
[359] Secretary General, 'Family Planning and the Status of Women. Interim Report of the Secretary-General' (n 70) 3.

planning policies were that they create more stable and better families, therefore better conditions for raising children.

The CSW argued that family planning can be a 'source of assistance to married couples in fulfilling their parental responsibilities'.[360] Similarly, the SG argued that family planning as a human right means an 'equal right of men and women to access educational information to help in ensuring the health and well-being of families'.[361] The Special Rapporteur then claimed that we need more 'understanding of the role of women in family planning, in order to better undertake their responsibilities in the modern world both as wives and mothers and as participants in the public life'.[362]

The logic of the social reproduction argument thus was that family planning enhances the welfare of the family[363] and the welfare, adequate care, and nurture of children.[364] It was also supposedly contributing to the stability of marriages through the 'happiness of married life'.[365] Family planning as women's rights was in the social reproduction context for example argued to improve the health of 'mothers' and children, financial situation of the family, or prospects of children for education.[366] The Special Rapporteur argued that family planning as a human right is 'extremely important for the individual woman since it enabled her to broaden the scope of her activities, and better to secure the welfare of her family'.[367] As in the

[360] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 44, § 4.
[361] Secretary General, 'Family Planning and the Status of Women. Interim Report of the Secretary-General' (n 70) 36.
[362] Commission on the Status of Women, 'Report on Twenty-Third Session' (n 300) 21.
[363] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 44, Res 7 (XVIII).
[364] ibid 36, 44, Res 7 (XVIII).
[365] ibid 36.
[366] Secretary General, 'Family Planning and the Status of Women. Interim Report of the Secretary-General' (n 70) 4.
[367] Commission on the Status of Women, 'Report on Twenty-Fourth Session' (n 312) 42.

previous argument, the meaning of broadened women's activities was that women will be better at securing the welfare of their families. Although arguing with rights' register, the benefits of autonomy here were placed in the quality of social reproduction.

Through all these logics, the expansion of women's bargaining power – by giving women choices, education and generally 'advancing' them was signified in the language of freedom and rights but functionally was understood to nudge women into choices conducive for the above-described socio-economic ends. Partaking on the production thus substantiated the signifiers of 'freedom' and 'dignity' under the right to family planning. When it was argued why is it important that women's reproductive freedom is symbolically recognized, the reasons for this were expanded women's choices reflecting in economically (directly or indirectly) valuable outputs.

3.2 Global North/South Divide in the Function of Family Planning

When the CSW began to study the relation between family planning and advancement of women, it dominantly referred to the Global South countries. While gradually and especially through the Special Rapporteur's report, relevance for and inclusion of women in all geographic areas were acknowledged, the understanding of different functions of family planning in the Global South and North prevailed.

In its first debate on this topic, the CSW summarized that family planning affects the status of women in two ways: first, through the effect on the individual woman's plans for her life, education and career; and second, through the lack of educational facilities and employment opportunities for women in over-populated countries.[368] This shows the CSW's understanding that the emancipatory potential

[368] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 43.

of family planning extends over women's autonomy ('plans for her life'), education and partaking on production. In relation to over-populated countries, family planning is understood to more narrowly advance women in access to education and partaking on production. Notable is the rhetorical difference between 'career' (of individual women) and 'employment' (of Global South women as a class).

The original focus of the CSW on Global South women as the agenda was inaugurated is argued for three reasons: 1) the CSW explicitly mentioned the focus of further studies on over-populated areas;[369] 2) it referred to previous works in population control;[370] 3) it articulated connections to its programme of 'advancement of women',[371] while in the same report it established that advancement of women is an agenda emergent from UN technical support for developing countries.[372] The SG similarly proclaimed that the core focus of family planning policies should be on the status of women in countries suffering from overpopulation.[373]

Gradually, the CSW started to treat family planning as a tool in raising the status of women in 'developed and developing countries'.[374] It was also the aim of the Special Rapporteur 'to include the condition of women in relation to reproduction in all countries regardless of their demographic situation'.[375] As I claim below, although stakes of family planning for individual women were articulated

[369] ibid 44, § 5.
[370] ibid 44–45.
[371] ibid 43; Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 56, §1.
[372] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 35, Art. 119.
[373] Secretary General, 'Family Planning and the Status of Women. Interim Report of the Secretary-General' (n 70) 3.
[374] Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 56.
[375] Special Rapporteur on the Interrelationship between Family Planning and the Status of Women (n 72) 1.

also in relation to the Global South, the perceived function of family planning in addressing under-development and poverty by limiting childbearing was prioritized.

The conclusions of the Special Rapporteur's report focusing on the communitarian and economic impacts of family planning were for example dominantly pointing to the Global South countries. These conclusions focused on the mutual relationship between the status of women, fertility and national wealth and development. Frequent childbearing was associated with under-development.[376] Population growth was argued to 'have very serious implications both for the development and for the advancement of women in a great number of countries' as well as for the limited resources available.[377] To make population control policies more effective in addressing under-development, the report suggested higher status of women, more employment and education opportunities.[378] Only twice, among many specific mentions of Global South regions,[379] it pointed towards shortcomings in the Global North.[380] It was thus suggested that Global South countries should aim for a higher status of women, through family planning policies, to lower childbearing and alleviate socio-pathological phenomena like poverty, overwork and drudgery.[381] The aim was thus to limit reproduction rather than expanding women's reproductive choices towards both ends.

These communitarian aspects of family planning were then also prioritized by the state representatives reacting to the report. They largely focused on the functionality of family planning as a tool enlarging the economic input of women or

[376] ibid 109.
[377] ibid 106.
[378] ibid 109 (2).
[379] ibid 103–104, 109.
[380] ibid 104–105.
[381] ibid 109 (1).

a tool of population control.[382] They argued that demographic policy should limit itself to 'producing an optimum rate of population replacement by systematic action to stimulate or limit birth rate' which was 'hardly appropriate' for the UN to get involved in. The potency of the UN's involvement was, however, not so strictly dismissed in relation to countries where 'population problem' conditioned the 'success or failure of development', i.e. Global South countries. In these cases, it was argued desirable for 'some states' to adopt more 'comprehensive and positive policy,' and thus the UN could get involved in advising these states in intensification of rural development, providing more employment opportunities, developing better balanced budgets, and changing national legislation supporting those population policies necessary for development.[383]

When discussing family planning in relation to the Global South, the CSW and other UN bodies saw family planning's impact on women primarily in their lesser childbearing (rather than generally expanding availability of information and autonomy). The CSW stressed the communitarian/economic benefits of family planning and advancement of women by pointing to poverty of Global South countries. The UN actions were seen more legitimized when promoting family planning in relation to the Global South because of the perceived conflation between development and population management there. The economic benefits of advancing women through family planning in the Global North were perceived as optimalization, while in the Global South they were argued to be a 'major need'.[384]

[382] Commission on the Status of Women, 'Report on the Twenty-Fifth Session' (n 256) 55.
[383] ibid.
[384] Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 53.

3.3 Economic Language as a Strategy

The logics portrayed above demonstrate how economic reasons substantiated the meanings of human rights terms in the re-articulation of family planning as a right of women. Additionally, the CSW members emphasized economic arguments strategically in phrasing family planning as women's agenda in response to various objections against the CSW's progressing with it. The objections can be broken down into objections of domestic jurisdiction (where the corresponding strategy was to rhetorically globalize the matter), conflicting national interests (strategy to universalise and depoliticise) and compliance of states and subjects (strategy to articulate the matter as an interest of the states/subjects).

Reservations that the substance and implementation of family planning policies belong into the area of domestic jurisdictions were posed by the state representatives continuously.[385] To overcome these, the CSW members mobilized arguments tying family planning actions into the UN development programme[386] aimed at socio-economic development and targeted at the Global South. Similarly, the SG argued that family planning is not a substitute for national population control policies, which belonged to the realm of state sovereignty, but rather a supportive tool in social and economic development.[387]

It was accordingly contested, whether the agenda of family planning and advancement of women belongs to the CSW or the Population Commission. While the initial intervention of the CSW in family planning was seen as a 'taboo', the CSW arguably successfully reformulated the agenda as that of human rights and

[385] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 43. Commission on the Status of Women, 'Report on Twenty-Third Session' (n 300) 21.
[386] Commission on the Status of Women, 'Report on the Twenty-Fifth Session' (n 256) 55, § 139.
[387] Secretary General, 'Family Planning and the Status of Women. Interim Report of the Secretary-General' (n 70) 8.

made its involvement in it more accepted.[388] At the same time, tying the tandem of family planning and advancement of women to 'development plans of Governments' (which had then more to do with population control) was argued to increase the visibility of CSW's work.[389]

Objections also arose due to conflicting interests between the Global North and Global South states. As such, the content of resolutions was suggested to not be too oriented on limiting populations (as some states, had conflicting religious[390] and economic interests[391]). In this case, the CSW utilized two arguments. One was to cover only those aspects of family planning, which were of 'common concern by virtue of their relation to the status of women'.[392] For example, the focus on 'education of women' to make them 'more readily accept the new knowledge in the field of family planning which was becoming available' was argued be useful both to countries facing under- and over-population[393] (by educating either on contraception or overcoming sterility). Additionally, the economic reasoning that nations could benefit from family planning by overcoming 'internal difficulties arising from rapid population growth' or a 'lack of human resources' was used to argue that the agenda is 'universal in scope'.[394] The argument of advancement of women was thus considered depoliticising especially when its substance was a reflection in the national economic wellbeing.

[388] Commission on the Status of Women, 'Report on Twenty-Third Session' (n 300) 22, Art. 110.
[389] ibid 22, Art. 111.
[390] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 53.
[391] Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 55; Commission on the Status of Women, 'Report on Twenty-Fourth Session' (n 312) 41–42.
[392] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 43.
[393] Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 55.
[394] ibid 53.

Another problem was the lack of states' involvement in the matter. When family planning was debated as a part of advancing women, the CSW members argued that communitarian aspects of advancement of women must be emphasized to make states more involved.[395] Similarly, when discussing other actions under 'advancement of women' the CSW members claimed that 'the support of the whole community was essential to the success of programmes for the advancement of women' and therefore, the projects 'for the benefit of women' have arguably been the most successful when they formed a part in a broader pattern of the development of the community as a whole.[396] It was suggested that the goal of advancement of women should not be to 'advance women as such, in isolation, but to help them obtain equal status with men in their communities, taking part in all activities and sharing with men equal opportunities and responsibilities'.[397] The CSW members believed that it will enhance the success of the programme if governments realize that raising the status of women would make their population control policies more effective.[398] The Special Rapporteur was also advised to highlight the communitarian aspects of family planning in national economic and social development.[399] The phrasing of the agenda was thus seen more constructive if the economic reflection of the activity of advanced women was emphasised.[400]

In regard to the compliance of subjects, a contradictory language strategy was proposed by the Special Rapporteur:

> When the rationale of family planning is phrased in terms of population control rather than in terms of expanding individual rights to self-

[395] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 36, §130.
[396] ibid 35.
[397] ibid.
[398] Commission on the Status of Women, 'Report on Twenty-Third Session' (n 300) 22.
[399] Commission on the Status of Women, 'Report on Twenty-Fourth Session' (n 312) 41–42.
[400] Commission on the Status of Women, 'Report on the Eighteenth Session' (n 73) 35; Commission on the Status of Women, 'Report on the Nineteenth Session' (n 71) 52–53.

> determination […] then family planning programmes are, on occasion, naturally met with suspicion by those very countries or groups for whom they were intended'. [This] may lead to the false rejection of the former for political reasons, so that persons who genuinely desire family planning information and services […] are under these conditions, forced to reject them.[401]

The Rapporteur thus argued that it is better for compliance reasons to emphasize the human rights aspects of the agenda.[402] Instead of capitalizing on languages of instrumentality and communitarian and economic wellbeing, the report suggested that human rights language is more constructive. Nevertheless, it wrapped its conclusions into the coat of development issues and emphasized the communitarian and economic gains. Similarly, it stressed economic gains of gender equality.[403] This internal linguistic disparity of the report can be interpreted in different ways: it can be seen as an epistemological setback (given the Rapporteur's institutional and financial ensconcing in development and population agendas) as well as a strategic articulation, aiming to secure support of states' representatives.

Linking family planning and advancement of women to population control and development assistance programmes was thus a part of a linguistic strategy to justify the UN's actions in family planning. This linguistic legitimization of the UN involvement insists both in the economic rationale and the targeting at Global South countries. When human rights aspects of family planning were presented as justifying the CSW's involvement in the agenda, making the focus on the advancement of women a 'common concern,' they were substantiated by arguments of higher economic productivity of women. The language of women's advancement, especially when economically laden, was thus found depoliticizing and so was the

[401] Special Rapporteur on the Interrelationship between Family Planning and the Status of Women (n 72) 14.
[402] ibid.
[403] ibid 110.

argument that both Global North and Global South countries could 'profit' from using family planning. Languages of rights and economy were thus found depoliticizing when used in tandem. At the same time, the latter was found conducive in rising the involvement of governments, while the former was argued to enhance the compliance of subjects.

3.4 Analysis

One of the culminations of the CSW's reformulation of family planning from a tool of population control to a right of women was its involvement in CEDAW under Art. 16 e). The core aim of this Chapter was to depict the re-channelling of economic reasons substantiating family planning from the previously openly economic agenda to the new agenda understood as emancipation of women. The adoption of CEDAW and its Art. 16 e) are thus not studied here in detail. Instead, in the paragraph below, I provide a brief summary of the inclusion of the right to family planning in CEDAW. Then, I focus on summarizing how economic arguments formed the meaning of family planning as a right of women and on analysing the impact of this in the biased application of the right today and its limited emancipatory potential.

The right to family planning is in CEDAW conceived as equal access to information and advice on family planning, as to help ensure the health and wellbeing of families. [404] In the process of adopting CEDAW, references supporting the importance of the right to family planning remained primarily to development and population control programmes. Throughout the 26th session where the CSW finalized the draft of CEDAW, family planning was mentioned especially in the

[404] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Art. 16 (e).

context of development programmes.[405] Accordingly, in negotiating the final phrasing of Art. 16 e), the state representatives referred to outcomes of Population Conference and World Conference on International Women's Year[406] discussing family planning under programmes of integration of women in development in Asia and Africa.[407] This shows that the continuity with the pre-existent 'neo-colonial'[408] economic logics of population control and development assistance prevailed also in including family planning in CEDAW.

Section 3 argued that the 'neo-colonial' and economic epistemological spawn of population policies imprinted into the imagination of the benefits of the symbolic recognition of women's right to family planning and its potential for the expansion of women's bargaining power. The CSW arguably never divorced from the rationale of population control, while reformulating it in a new register of advancement of women. Three economic logics of the CSW discourse were identified in the Sub-Section 3.1.

The interlace of economic reasoning with the intent to emancipate women through family planning can be reduced into two basic versions. First is the economically productive activity of women substantiating the signifiers under rights' language, such as freedom of choice, self-determination, broadening interests, improvement of condition of women. As shown through Sub-Section 3.1, the meaning of these signifiers often rested on visions of more productive work of women, which was then translated as beneficial to national development and wealth.

[405] UN Commission on the Status of Women, 'Report on the Twenty-Sixth and Resumed Twenty-Sixth Sessions' (1976) E/CN.6/608 44, 66, 117.
[406] Commission on the Status of Women, 'Summary Record of the 650th Meeting' (1976) E/CN.6/SR.650 § 105.
[407] UN, 'Report of the World Conference of the International Women's Year' (1975) United Nations Publication E/CONF.66/34 58, 69.
[408] Birke (n 252) 2.

The second version is that of interaction of lawmakers with the operating background rules, in this case economic forces, and their perceived autonomy and untameableness. In this regard, lawmakers for example argued that the right to family planning has a small effect in advancing women, hence expanding their bargaining power, compared to the mobilization of women to labour.[409] Similarly, it was argued that the attainment of self-determination by women does not actualize only through the recognition of equal decision-making powers in law but that equality requires also assumption of equal responsibilities with men, among others, in the economic sphere.[410] Another version of this vision of law's reach in the expansion of subjects' bargaining power was that human rights of general populations will be actualized if their societies become wealthier. All these versions show the lawmakers' perception of the force of the economy, as an operating background rule, and the perceived relative impotence of law in challenging it. The presumption was that goals, or normative aspirations of law, such as advancement and self-determination of women, or human rights will be actualized if subjects reproduce less and partake on the expansion of production. Lawmakers were thus willing to define the symbolic as a wishful goal for the expansion of bargaining power but did not aim for its actualization; rather for nudging subjects to partaking on the economy in a way which will presumably lead to the actualization.

The Sub-Section 3.2 further established the existence of a Global South bias in the conception of the right. This right was conceived to empower women throughout the world in making any reproductive choice (although the benefits and meaning of this were understood economically). At the same time, towards Global

[409] Commission on the Status of Women, 'Report on the Twenty-Fifth Session' (n 256) 55.
[410] Special Rapporteur on the Interrelationship between Family Planning and the Status of Women (n 72) 9.

South women, family planning as a right and a tool of population control was more clearly conceived to make them choose to have less children.

The social impacts of the right to family planning today, as translated into the legal frameworks in the Global North as provisions on abortion or access to healthcare advice and services assisting in reproductive choices, align with the argued ingrained biases. As claimed in the Introduction, the right today seemingly functions to expand bargaining power of women in dealing with unwanted pregnancies. However, statistically, poor and non-Western migrant women tend to undertake abortions more often.[411] This is because their background tends to be interpreted by the social- and healthcare personnel such to make abortion advisable.[412] This background consisting in the insufficient participation on the economy fits into the pattern of operating background rules which are recognized as legitimate foundations for the right to function as subordinating rather than emancipating. The key operating background rule is the woman's partaking on the economic production strongly enough, which then establishes her position to benefit from the right. As such, this dynamic reproduces the capitalist *dynamic* of the right where the aim was not to directly expand women's bargaining power but to set them up for partaking on the development of productive forces which will expand their bargaining power.

Sub-Section 3.3 additionally depicted the rationalities in a deliberate use of economic language for presenting women's rights. The understanding among the CSW members was that the legislative intervention expanding women's bargaining power is less politicising and easier to pass, if linked to economic gains or if

[411] Helström and others (n 8); Rasch and others (n 8).
[412] Helström and others (n 8) 406.

glorifying the functions of mothers in social reproduction. This is because such functions of women are uncontroversial in that they do not significantly threaten the actual shift in bargaining power. However, different registers were seen as conducive for different reasons. Economic development arguments in the sense of making Global South countries richer and in turn more nurturing of human rights were used to justify the UN's competence and to establish the 'global' stakes of family planning. Human rights and arguments of advancement and status of women were then regarded as justifying the involvement of the CSW in the matter, but these were often economically substantiated. Here the advancement of women as 'common' goal was for example linked to the expansion of national 'human resources'. The economy and the advancement of women perspectives then served best in tandem to depoliticise the agenda, make it relevant for both the Global South and North and facilitate states' compliance and their involvement in the agenda.

4. Conclusions

The Chapter established the economic rationale ingrained in the right to family planning. It expanded the previous postcolonial critiques of population control programmes by merging Marxist, feminist and postcolonial perspectives to the concept and functioning of the right. The Chapter showed that the right to family planning, as equal right of men and women to decide on number and spacing of children and to access information and services of family planning, originated in UN's population control policies, which were in many ways neo-colonial and foundationally economic. They were neo-colonial because they reflected Western geopolitical interests translated into actions towards the Global South (in tandem with development policy) and were aimed essentially at limiting the reproduction of

Global South women. They also rested on a vision of economic gains. This conception of family planning is arguably one in which it received the most legitimacy as a UN agenda and met the least objections, as in the subsequent negotiations UN representatives returned to emphasizing the primary relevance of the agenda for the Global South and the economic profits thereof.

This manifested in two general versions: the meaning of women's rights signifiers was substantiated by women's work productive within the capitalist economy; and the ambitions of rights were conditioned in their actualization by women's partaking on the economy. The Chapter argued that these principial biases function similarly today based on the social impact of provisions on access to advice and services in reproductive healthcare. The Chapter additionally depicted the lawmakers' linguistic strategizing, showing how phrasing of the agenda when compromising on its emancipatory goals and emphasizing common and economic goals was seen as depoliticising and universalizing.

Conclusions

At the outset of this project, I thought that I will be able to say whether women's rights are only adopted in cases where emancipation of women is conducive to economic expansion, or where women can portray themselves as deserving of rights based on the contribution to economic expansion which they already make. I would then argue that this economic deservedness and conduciveness interlace the application of rights created on such premises. The research showed that the causalities between economic reasons and women's rights are more complex and multi-directional. It also showed, in the context of the case-studies, that capitalist logic is interwoven in women's rights in a foundational way described as the *dynamic* of setting up the capitalist chain rather than aiming for a redistribution of power. This dynamic is how women's rights give form to a continued capitalist expansion based on subordination of women, which goes beyond arguments of economic deservedness or conduciveness, although these are co-constructive of it.

In both cases, the idea to legislatively intervene to expand women's bargaining power or emancipate women emerged from foundationally economic projects self-serving to the Global North states. This self-service informed the vision of benefits to the Global South states and to Global South women. In other words, the intent behind intervening in the form of rights, was directionally furthering the intent of the pre-existent openly economic projects.

On this background, the vision of emancipated women, i.e. how women will be when the symbolic recognition materializes, was that of women's enhanced partaking on the production. The envisioned social impact of women's rights as ethical standards for women's existence in the society, signified by terms such as dignity, freedom, independence and self-determination, was thus largely women's

input in the capitalist economy. This imagined substantiation of women's rights, in addition to the key unemancipatory dynamic within the rights, are argued to co-constitute the mechanism by which women's rights marginalize women according to the impetuses of capitalist rationale.

The thesis thus showed that, albeit emancipatory to some extent, the symbolic recognition through the studied women's rights inherently also marginalizes within the capitalist logics on which these rights stand. In a higher level of abstraction these effects of emancipation and subordination might be argued to copy the general emancipatory and subordinating effects of capitalism. Generally, capitalist forces are both emancipatory (expand bargaining power) and subordinating: on the one hand, one becomes a free seller of labour; on the other hand, this freedom is conditioned and restrained by various compulsive capitalist structures.[413] Subjects at different intersections of class and identities experience these emancipatory and subordinating effects in different proportions. For example white wealthy women can perceive capitalism as emancipating because the liberal notion of meritocracy imitates their typical profiles,[414] while for the same reason, migrant, poor, non-Western women experience more of capitalism's subordinating effects. This class-identity key for distribution of emancipation and subordination also translates in the marginalizing effects of the studied rights described in the Introduction and throughout the thesis. This thesis can thus be read as showing how forces of emancipation and subordination, inherent to capitalism, reflect in capitalist conceptions of women's rights.

[413] Marx (n 23) 566–567.
[414] Christine Williams, 'The Happy Marriage of Capitalism and Feminism' (2014) 43 Contemporary Sociology 58, 59.

This thesis also indicates that this result of limited emancipation through the instrument of ‘women’s rights’ arises both from a conceptually limited imagination of emancipation nested in the capitalist epistemology, and from the way rights are presented and negotiated. Both aspects co-constitute the autonomous input of the superstructure in ‘overdetermining’ the base. There is an aspect which is epistemological, insistent in the way in which the lawmakers interpret the requirements of the economic base. Then there is an aspect which is semantical, insistent in the way in which lawmakers select and use possible registers to argue about rights. As a part of the autonomous input of the superstructure, both aspects define the limits of the emancipation based on the adopted rights.

Bibliography

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