

ORIGINAL ARTICLE

INTERNATIONAL LEGAL THEORY

Unwholesome marriages and diamond drills: The making of the UN Marriage Convention (1962)

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Abstract

The article analyses archival materials from the drafting of the UN Marriage Convention (1962) between 1949 and 1962. This Convention is usually understood as a human- and women's rights Convention. The article expands this understanding by showing that the Convention was produced through a collaboration between the UN Commission on the Status of Women, and the Trusteeship Council, Committee on Information from Non-Self-Governing Territories, and metropolitan administrators of former colonies, then having the status of dependent territories. The treaty-makers focused exclusively on marriages in the dependencies but were in great doubt about the form and amount of force in these marriages. They, accordingly, were unsure how to measure such force. Nevertheless, they proceeded with the drafting, as their visions of free marriage and emancipated women were bolstered by their commitment to the ongoing economic transformation accompanying decolonization of the territories. The article shows how human rights of marriage thus emerged from ideas about economic development convoluted with ideas about marriages and women; and articulates this history's theoretical implications for the rights' applicability today. It also expands our understanding of international women's rights as regulatory models, and of the post-colonial political economy of international law.

Keywords: decolonization; gender; marriage; political economy; women's rights

1. Prologue

On 31 October 1949, a Visiting Mission dispatched by the UN Trusteeship Council entered Douala, the capital of the Cameroons under British administration. The Mission consisted of four UN officers, one each from Iraq, Belgium, USA, and Mexico. They 'crossed rivers, climbed steep hills and slippery paths on [their] way to the picturesque village in which the Fon and his entourage are living'.¹ The 'main task of the Visiting Mission . . . was the examination of . . . the degree of plural marriage among the chiefs'.²

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¹UN Trusteeship Council, Reports of the United Nations Visiting Mission to Trust Territories in West Africa and Related Documents, Supplement N°2 (T/798) (1951), at 5.

²*Ibid.*

The arduous journey was enforced by an international scandal. ‘The Bikom scandal’³ began with a petition submitted to the UN by the St. Joan’s Social and Political Alliance, an English Christian feminist organization.⁴ ‘Just Cargo’ was the title of this unsettling document describing a scene witnessed by Christian missionaries in 1947 in ‘the Bekom’ tribe. It involved a 13-year-old girl being stripped of her clothes, branded as a wife and dragged away by tribal men against hers and her father’s will to become one of Fon’s wives.⁵

This testimony prompted the Trusteeship Council to carry out an investigation on the ground. Western journalists and anthropologists, too, felt compelled to travel to Cameroon to report whether Fon, the chief of the tribe, indeed had ‘six hundred wives’.⁶ Angered by the international scrutiny, Fon petitioned back to the Trusteeship Council⁷ and so did his wives,⁸ a committee of his village⁹ and his son.¹⁰ All claimed that the missionaries were fabricating facts and demanded that the UN lets them retain their social organization.

Our commissioned visitors by their own admission ‘did not so much undertake a sociological study but rather tried the method of direct contact and human touch’.¹¹ Their work was aided by ‘the greatest kindness and cooperation by the British administrators’ – His Excellency Sir John Macpherson, Governor of Nigeria, and Brigadier E. J. Gibbons, Commissioner of the Cameroons.¹² Hosted at the Commissioner’s home, ‘a solidly-build house, a *Schloss* of the German régime’ with exquisite collection of art ‘perched high on Mount Cameroon’,¹³ they admired the administration’s ‘enterprise’¹⁴ and its indulgence with the rebelling Africans.¹⁵

When they reached Fon, he ‘remained calm and polite through the discussion’ although ‘he was clearly annoyed about another inquiry’.¹⁶ His wives told the Mission that ‘they were quite contented with the present arrangement’ and that ‘any wife had the liberty to leave the compound if she wished and, in a point of fact, a number of them have done so’.¹⁷ With this information, the ‘Mission did not feel that it should carry the investigation further’ and decided to let the Trusteeship Council evaluate its findings. Back in their offices in Geneva in February 1950, our observers concluded:

The visit to the village of Fon seemed to the Mission members like a visit into the Africa of Stanley and Livingstone. While it was thus a unique experience, the Mission could not help but wonder about the tasks of economic and social development still laying ahead. . . . The Mission also wondered how long it would take to introduce into these villages the 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

³G. Russo, ‘Contested Practices, Human Rights, and Colonial Bodies in Pain: The UN’s Gender Politics in Africa, 1940s–1960s’, (2018) 30 *Gender & History* 196, at 202; K. Knop, *Diversity and Self-Determination in International Law* (2002), at 333–40.

⁴Petition from St. Joan’s Social and Political Alliance, T/PET.4/2 (1947).

⁵*Ibid.*, at 3.

⁶*Ibid.* The investigation is described in detail by R. Reyher, *The Fon and His Hundred Wives* (1952), at 18–21.

⁷Petition from Foin Ndi of Laikom Concerning the Cameroons under British Administration, T/PET.4/36 (1950).

⁸Petition from the Women of Kom Concerning the Cameroons under British Administration, T/PET.4/38 (1950).

⁹Petition from the Kom Improvement Association Concerning the Cameroons under British Administration, T/PET.4/35 (1950).

¹⁰Petition from Mr. Sama C. Ndi Concerning the Cameroons under British Administration, T/PET.4/37 (1950).

¹¹See UN Trusteeship Council, *supra* note 1, at 4.

¹²*Ibid.*, at 2.

¹³*Ibid.*, at 3.

¹⁴*Ibid.*

¹⁵*Ibid.*, at 4.

¹⁶*Ibid.*, at 5.

¹⁷*Ibid.*

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 in which it finds itself now.¹⁸

2. Introduction

Twelve years after this report, in 1962, the UN adopted a Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (UN Marriage Convention or the Convention) which defined free will as a human rights standard of marriage that should help elevate the status of women in marriage. This standard significantly influenced subsequent human rights law, humanitarian law, private international law, and migration law, but as I will argue, its contribution to the emancipation of women is contentious. The Convention emerged from a collaboration of three UN agencies between 1949 and 1962. These were the Commission on the Status of Women (CSW), responsible for women's rights, and two UN agencies responsible for monitoring the process of decolonization – the UN Trusteeship Council (TC) and the Committee on Information from Non-Self-Governing Territories (CNSGT).¹⁹ In this article, I analyse the Convention's *travaux préparatoires* based on archival data retrieved from the UN,²⁰ and follow the drafters on their journey of defining global standards for marriage and the needs of women in marriage. I draw on this history to reveal some of the functional shortcomings of human rights of marriage while also highlighting broader shortcomings of general women's rights today. Additionally, through this history, I position marriage at the centre of studies on decolonization and economic transformation of the former colonies.

At the outset, I would like to establish the meaning of key terms used in this article. 'Decolonization' refers to the UN-supervised process of the attainment of national independence of former colonies taking place after 1945.²¹ Two UN agencies – TC and CNSGT – were mandated in this process 'to promote the . . . advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence'²² and 'to develop self-government' of non-self-governing territories.²³ These formerly colonized territories placed under UN-supervised administration of former colonial metropolises are jointly called 'dependencies' (term used by the UN) or 'former colonies'. Geographically, they include territories in Africa, the Caribbean, and the Pacific²⁴ which were among the last territories enabled to self-govern as the twentieth century progressed. 'Western metropolises' and 'administrators' then refer to the

¹⁸*Ibid.*

¹⁹Previous studies noticing this collaboration include: G. Russo, *Women, Empires, and Body Politics at the United Nations, 1946–1975* (2023); see Knop, *supra* note 3; K. Knop, 'Of the Male Persuasion: The Power of Liberal Internationalism for Women Power', (1999) 93 *American Society of International Law Proceedings* 177.

²⁰The main reviewed materials are annual reports made by the Trusteeship Council and the Committee on Non-Self-Governing Territories to the Commission on the Status of Women, and to the UN Secretary General and General Assembly, together with summary records of sessions held by the Commission on the Status of Women. All materials are now available at UN Online Document System: documents.un.org/.

²¹For history of UN decolonization, see: E. Luard, *A History of the United Nations: Volume 1: The Years of Western Domination*, (1982), vol. I; M. M. Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (2009); J. L. Pearson, 'Defending Empire at the United Nations: The Politics of International Colonial Oversight in the Era of Decolonisation', (2017) 45 *Journal of imperial and Commonwealth History* 525.

²²1945 Charter of the United Nations, Art. 76(b).

²³*Ibid.*, Art. 73(b). The difference between those two agencies was that the TC overtook the former mandate territories and UN supervision competencies were stronger, than the CNSGT which included other 'dependent' territories of the UN members.

²⁴The list of original 11 trust- and 72 non-self-governing territories can be found at: UN, Dag Hammarskjöld Library, UN Trusteeship Council Documentation, available at research.un.org/en/docs/tc/territories and UN, The United Nations and Decolonization, List of Former Trust and Non-Self-Governing Territories, available at www.un.org/dppa/decolonization/en/history/former-trust-and-nsgts. Further in the text, I use names of these territories as they appeared in the archival documents.

administering members – they were English, Belgian, Australian, New Zealand, French, American, and Italian²⁵ – supervised by the UN TC and monitored by the CNSGT in leading the dependencies to self-governance, specifically by economically, politically, and socially developing them.

The Convention's standard of free will in marriage was designed to protect the dignity and freedom of women and especially women in the gradually decolonizing dependencies.²⁶ Just as the envoy followed in the Prologue left their inspection unsure how freely or unfreely women lived in Fon's compound, the drafters of the Convention, too, were unsure whether marriages in the dependencies really were unfree. Neither were they united in their opinions on women's subordination or equality in these marriages nor did they know how to measure freedom and equality – and they showed little investment in finding out.²⁷ Just like our envoy, everyone involved in the drafting – the feminists, the decolonizing agencies, and the administrators – agreed that people in the dependencies did not live to their full potential.

Freedom of will in marriage thus became a way of discussing uneasiness with a sedentary agricultural lifestyle organized on extended kinship, and the procrastination in developing industries, markets, and trade which it nurtured. Economic development, or economic transformation which involved commodification and the expansion of market- and wage labor-based economy, was considered one of the conditions of post-colonial independence.²⁸ Extended marriages and their productive and reproductive roles of family members were in the way of that. Marriage reform was thus a condition of the economic transformation and, by extension, of decolonization.

In this article, I excavate this history of the international human rights of marriage and thereby make three contributions. First, I question the capability of human rights of marriage, as they are conceived, to expand female freedom and autonomy. The relevance of this point is enforced by the widespread application of these rights in humanitarian, migration, and private international law today. Second, I suggest that a distinct regulatory model of women's rights was constructed in the studied pivotal era which might have had consequential regulatory influence, and which harbors inherent functional failures in emancipating women. Thereby, I contribute to studies on international gender equality law and feminized poverty.²⁹ Third, I bring marriage

²⁵Additionally, Portugal, the Netherlands, Spain, Denmark, and South Africa initially administered several territories listed as non-self-governing but for diverse reasons these administering powers did not feature in the drafting discussions.

²⁶1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Preamble.

²⁷Notable is, for example, the CSW's and the TC's disengagement during the drafting with petitions sent to the TC by inhabitants of the trust territories, including women, under GA Resolution 321(IV) International Trusteeship System: Petitions and Visiting Missions, GA Res 321(IV) (1949). These petitions sent by women are examined for example by: N. Štýbnarová, "Deceiving with a Sweet Banana": Women in Trust Territories as Theorists of International Law (Forthcoming); M. Terretta, *Petitioning for Our Rights, Fighting for Our Nation. The History of the Democratic Union of Cameroonian Women, 1949–1960* (2013); see Knop, 'Of the Male Persuasion: The Power of Liberal Internationalism for Women Power', *supra* note 19. General historical studies about petitions to the TC include: M. Terretta, "We Had Been Fooled into Thinking That the UN Watches over the Entire World": Human Rights, UN Trust Territories, and Africa's Decolonization', (2012) 34 *Human Rights Quarterly* 329, at 338 et seq.

²⁸S. Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (2017); A. Getachew, *Worldmaking after Empire* (2019); N. Tzouvala, *Capitalism As Civilisation: A History of International Law* (2020); S. Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (2011), at 110 et seq; R. Knox, 'Valuing Race? Stretched Marxism and the Logic of Imperialism', (2016) 4 *London Review of International Law* 81, at 81. For relation to the context of the Cold War, see R. Saull, 'Locating the Global South in the Theorisation of the Cold War: Capitalist Development, Social Revolution and Geopolitical Conflict', (2005) 26 *Third World Quarterly* 253; U. Özsü, *Completing Humanity: The International Law of Decolonization, 1960–82* (2023).

²⁹S. Wright, 'Women and the Global Economic Order: A Feminist Perspective', (1995) 10 *American University International Law Review* 861, at 884–85; K. Rittich, 'Black Sites: Locating the Family and Family Law in Development', (2010) 58 *The American Journal of Comparative Law* 1023; A. Ahmed, 'Bandung's Legacy: Solidarity and Contestation in Global Women's Rights', in L. Eslava, M. Fakhri, and V. Nesiha (eds.), *Bandung. Global History, and International Law: Critical Past and Pending Futures* (2017), 450; S. Tamale, *Decolonization and Afro-Feminism* (2020), at 245 et seq.

to the front of studies on the role of international law in facilitating colonization,³⁰ decolonization,³¹ and the subsequent formation of the world order.³² Thereby, I add marriage among legal doctrines previously articulated to sustain global economic inequalities³³ and I add the international law side to previous studies in customary African law³⁴ and anthropological and sociological studies on colonial socio-economic re-organization.³⁵

These three arguments are developed in Section 5 of this article. Before that, in Section 3, I introduce the UN Marriage Convention – its substantive legal provisions and impact (Section 3.1) and the political context of its drafting (Section 3.2). I then present and analyze the drafting materials in Section 4. I firstly introduce the regulatory discourse on marriage and the presented reasons for changing marriage practices in the dependencies (Section 4.1). Next, I introduce the associated regulatory discourse on the social roles of married women and the reasons for their adjustment through the modification of marriage patterns (Section 4.2).

3. The UN Convention on Marriage – Historical context and significance

3.1 Legal and political significance

The UN Marriage Convention's formal objective was to eradicate 'ancient marriage practices' preventing women in the dependencies from attaining human dignity.³⁶ The Convention thus defined certain marriages as forced and, therefore, human rights non-compliant. The Convention

³⁰A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005); S. N'Zatioula Grovogui, *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law* (1996), Ch. 2; M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2001); M. Shahabuddin, 'The Myth of Colonial "Protection" of Indigenous Peoples: The Case of the Chittagong Hill Tracts under British Rule', (2018) 25 *International Journal on Minority and Group Rights* 210.

³¹See Pedersen, *supra* note 28; A. Anghie, 'Legal Aspects of the New International Economic Order', (2015) 6 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 145; L. Eslava, M. Fakhri, and V. Nesiha (eds.), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (2017); E. Muschik, *Building States: The United Nations, Development, and Decolonization, 1945–1965* (2022).

³²C. Miéville, 'Multilateralism as Terror: International Law, Haiti and Imperialism', (2008) 19 *Finnish Yearbook of International Law* 63; R. Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (2008); A. Orford, 'The Past as Law or History? The Relevance of Imperialism for Modern International Law', (2011) 2012/2 *IILJ Working Paper (History and Theory of International Law Series)*.

³³In addition to economic rules and foundational doctrines of international law: B. Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (2018); K. Rittich, 'Historicising Labour in Development: Labour Market Formalisation through the Lens of British Colonial Administration', in D. Ashiagbor, *Re-Imagining Labour Law for Development: Informal Work in the Global North and South* (2019), 21; V. Nesiha, 'A Double Take on Debt: Reparations Claims and Shifting Regimes of Visibility', in C. Shane and P. Sundhya (eds.), *Routledge Handbook of International Law and the Humanities* (2021), 254; R. Knox, 'International Law, Race, and Capitalism: A Marxist Perspective', (2023) 117 *AJIL Unbound* 55.

³⁴S. W. Kang'ara, 'Beyond Bed and Bread: Making the African State through Marriage Law Reform – Constitutive and Transformative Influences of Anglo-American Legal Thought', (2012) 9 *Hastings Race and Poverty Law Journal* 353; see Tamale, *supra* note 29, at 286 et seq; O. Oyewumi, *The Invention of Women: Making an African Sense of Western Gender Discourses* (1997), at 51 et seq.

³⁵K. Pallaver, "'The African Native Has No Pocket': Monetary Practices and Currency Transitions in Early Colonial Uganda', (2015) 48 *The International Journal of African Historical Studies* 471, at 492; D. Chakrabarty, 'The Difference—Deferral of a Colonial Modernity: Public Debates on Domesticity in British Bengal', in F. Cooper and A. L. Stoler (eds.), *Tensions of Empire: Colonial Cultures in a Bourgeois World* (1997), 373; F. Cooper, *Decolonization and African Society: The Labor Question in French and British Africa* (1996), at 87; K. Tranberg Hansen (ed.), *African Encounters with Domesticity* (1992).

³⁶See Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *supra* note 26, Preamble; Status of Women in Private Law: Customs, Ancient Laws and Practices Affecting the Human Dignity of Women, Resolution 843 (XI) (1954).

was the first international legal instrument to treat this topic comprehensively and to define the exact elements of the form and procedure of marriage which are human rights violations.³⁷

The Convention stipulated that a certain (undefined) minimum age and freely expressed will in person are human rights conditions of marriage as required by the UN Charter and the Universal Declaration of Human Rights.³⁸ It also prescribed exceptional conditions under which proxy marriage was human rights compliant.³⁹ Finally, it provided that all marriages must be registered.⁴⁰ The combination of age and in-person will expression was thus enacted as a guarantee of ‘freedom of choice of spouse’ and hence, as a measure preventing forced marriages outlawed generally by Article 16 of the Universal Declaration of Human Rights.

The Convention has 16 signatories and 56 state parties.⁴¹ Its effective power, however, lays in the substantive impact it made in the subsequent human rights law, private international law, migration law, and international humanitarian law.

Two subsequent UN human rights conventions addressing women and children, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC) build on the foundations laid in the Convention. Read in conjunction, CEDAW’s and CRC’s rules on marriage provide that child marriages, i.e., marriages under 18 years of age, are against human rights especially rights of women and children.⁴² CRC and CEDAW Committees also define forced marriage, in accordance with the Convention, as a marriage where free consent was not personally expressed.⁴³ Additionally, UN development programs also refer to the Convention⁴⁴ in policies targeting marriages under 18 as harmful to health and social emancipation of women and children.⁴⁵

These commitments further translate into the fields of private international law and migration law. For example, the UN Human Rights Council refers to the Convention⁴⁶ and recommends that countries tackle forced marriages especially in cross-border contexts.⁴⁷ Further, in compliance with the Convention, International Commission on Civil Status recommends that member states

³⁷Forced marriage was before that addressed by the UN and the League of Nations fragmentally in anti-slavery agenda: 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Art. 2. For the previous more diversified motives behind addressing ‘forced marriages’ see, for example: D. Gorman, ‘Empire, Internationalism, and the Campaign against the Traffic in Women and Children in the 1920s’, (2008) 19 *Twentieth Century British History* 186, at 211; B. Metzger, ‘Towards an International Human Rights Regime during the Inter-War Years: The League of Nations’ Combat of Traffic in Women and Children’, in K. Grant, P. Levine, and F. Trentmann (eds.), *Beyond Sovereignty: Britain, Empire and Transnationalism, c. 1880–1950* (2007), 54 at 62.

³⁸See Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *supra* note 26, Art. 1, 2 in conjunction with the Preamble.

³⁹*Ibid.*, Art. 1(2).

⁴⁰*Ibid.*, Art. 3.

⁴¹United Nations Treaty Collection (Depositary) – Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages’, available at treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-3&chapter=16&clang=_en.

⁴²1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 16; 1989 Convention on the Rights of the Child (CRC), General Assembly Resolution 44/25, Art. 1; Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/ General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices (2019), at 7.

⁴³See Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/ General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices, *Ibid.*, at 7.

⁴⁴UN Women, Multi-Country Analytical Study of Legislation, Policies, Interventions and Cultural Practices on Child Marriage in Africa (2019), at 85, endnote 145, available at africa.unwomen.org/en/digital-library/publications/2018/multicountry-fgm.

⁴⁵UNICEF, Child Marriage and the Law: Legislative Reform Initiative Paper Series (2008), at 2–3; UN Population Fund, Harmonizing the Legal Environment for Adolescent Sexual and Reproductive Health and Rights (2017), at 9, available at esa.un.org/unfpa/sites/default/files/pub-pdf/2017-08-Laws%20and%20Policies-Digital_0.pdf.

⁴⁶Preventing and Eliminating Child, Early and Forced Marriage: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/26/22 (2014), at 4.

⁴⁷*Ibid.*, at 10.

recognize free choice of a spouse as an ‘essential element of marriage law’,⁴⁸ and adjust their private international law provisions to align on a minimum age for recognizable marriage (at 15) and to eliminate proxy marriages (besides in exceptional cases).⁴⁹ The Parliamentary Assembly of the Council of Europe then, in reference to the Convention, recommends that minimum age for marriage should be 18 and that Member States respect this in cross-border recognition,⁵⁰ which should further verify that both parties gave consent to the marriage, as a means to eliminate forced marriages.⁵¹

The marriage standards articulated in the Convention thereby entered national private international- and migration law frameworks for cross-border marriage recognition as human rights requirements.⁵² National legislators then referred to the Convention directly⁵³ or to its standards replicated in the subsequent human rights instruments,⁵⁴ to justify changes to cross-border rules on marriage recognition.⁵⁵

These human rights standards of marriage are also prominent in international humanitarian and refugee law. For example, the Office of the United Nations High Commissioner for Human Rights calls in its resolution for stakeholders, states and organizations to ‘prevent, respond to and eliminate child, early and forced marriage, including in humanitarian settings’.⁵⁶ It urges states and humanitarian actors, including health-care providers, to strengthen monitoring and interventions with the practices of child and forced marriages.⁵⁷ Actors providing humanitarian aid now recognize forced and child marriages as a special form of vulnerability.⁵⁸ This has implications, for example, for the management and provision of aid and protection in refugee and relief camps where workers are tasked to spot forced marriages and help the victims.⁵⁹ Unwillingness of encamped people to cooperate and adjust their marriage practices can exclude them from receiving aid.⁶⁰

The Convention thus instituted a notion of a human rights-compliant marriage, resting on the pillars of will expression in person, age, and civil registration which then branched into various

⁴⁸Commission Internationale de l’État Civil, *Conventions et Recommandations* (1988), at 334.

⁴⁹Commission Internationale de l’État Civil, Recommandation (n°2) relative au droit du mariage adoptée à Vienne le 8 septembre 1976 (1976), Arts. 5 and 9.

⁵⁰Parliamentary Assembly, Forced Marriages and Child Marriages, Resolution 1468 (2005), para. 7, para. 14.

⁵¹*Ibid.*, para. 14 (2).

⁵²A. Laquer Estin, ‘Marriage and Divorce Conflicts in International Perspective’, (2017) 27 *Duke Journal of Comparative & International Law* 485, at 494; R. Gaffney-Rhys, ‘International Law as an Instrument to Combat Child Marriage’, (2011) 15 *The International Journal of Human Rights* 359, at 364–5; A. Tambe, ‘The Moral Hierarchies of Age Standards: The UN Debates a Common Minimum Marriage Age, 1951–1962’, (2020) 125 *The American Historical Review* 451, at 459.

⁵³House of Commons Library, ‘Minimum Age for Marriage and Civil Partnership (Debate Pack)’, 2019, at 4, available at searchbriefings.files.parliament.uk/documents/CDP-2019-0119/CDP-2019-0119.pdf; T. S. Schmidt, *International Person-, Familie- Og Arveret* (1990), at 40.

⁵⁴For arguments on continuity in constructing the international legal notions of child and forced marriages, see I. 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; R. E. Keyse, *Imperial, International, and Local Responses to Early and Forced Marriage in British Colonial Africa, c.1920–1962* (2019), Doctoral dissertation, at 313.

⁵⁵In the UK and Denmark respectively: House of Commons, ‘Marriage and Civil Partnership (Minimum Age) Bill’, (2022) *HL Bill* 121, Explanatory Notes, para. 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 para. 4; Internationale forpligtelser; Code civil (Law n° 2014-873 of 4 August 2014) 2014, Art. 202(1).

⁵⁶Resolution 35/16: ‘Child, Early and Forced Marriage in Humanitarian Settings’, WRGS/COW/Res 35/16 (2019), at 3.

⁵⁷*Ibid.*, at 4.

⁵⁸ILO, *Global Estimates of Modern Slavery Forced Labour and Forced Marriage* (2022), 104, available at www.ilo.org/wcmsp5/groups/public/—ed_norm/—ipecc/documents/publication/wcms_854733.pdf; NGO Action On Child Early and Forced Marriage, Submission to the United Nations Office of the High Commissioner for Human Rights (2018), 7–8, available at www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/HumanitarianSettings/ActiononChildEarlyandForcedMarriage.pdf.

⁵⁹See ILO, *Ibid.*, at 104–5.

⁶⁰A. M. Neikirk, ‘A Moral Marriage: Humanitarian Values and the Bhutanese Refugees’, (2018) 31 *Journal of Refugee Studies* 63.

other fields of law as a legal standard.⁶¹ As such, it today impacts for example migration, cross-border private law relations, and humanitarian aid.

The UN characterizes the Convention as a women's rights convention⁶² and legal scholars follow suit.⁶³ Subsequent implementations of the human rights of marriage are thus also often presented as pursuing women's rights and wellbeing. For example, the relevant EU⁶⁴ and national provisions, e.g., in the United Kingdom⁶⁵ and Denmark,⁶⁶ preventing forced marriage in migration, explicitly aim at releasing young women from the pressure to marry.

As a women's rights convention, the Convention emerged from the political context of decolonization.⁶⁷ Previous analyses of this temporal and political context of the Convention, argued that decolonization might have prompted the Convention's adoption because Western control over the wellbeing of women in the dependencies was diminishing.⁶⁸ Further, decolonization arguably allowed the newly independent states to participate in the UN's programs and bring attention to female struggles in the dependencies.⁶⁹ At the same time, the Convention, with its gender equality focus, arguably allowed Western powers to gain a moral high ground in the 'adversarial atmosphere of decolonization and Cold War',⁷⁰ and as such represented an exportation of the 'Eurocentric ideal of the nuclear family'.⁷¹

In the following subsection, I will articulate the relationship between the Convention, decolonization, and political interests of the former colonizers in yet another light. I do not question the analyses made previously, but I add to them that changing marriage patterns in the dependencies was, under the UN supervision, seen as essential for their economic transformation and, in the idealized picture, development and growth.

3.2 Historical and political context of the Convention's drafting

The CSW was the primary UN agency responsible for drafting the UN Marriage Convention.⁷² It was officially 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' in 1956.⁷³ Before granting the mandate to the CSW, the UN General Assembly flagged marriages in 'certain areas of the world where women are subject to customs, ancient

⁶¹See Ebetürk, *supra* note 54, at 296 et seq.

⁶²See 'United Nations Treaty Collection (Depositary) – Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages', *supra* note 41, Chapter XVI, Status of Women.

⁶³E. Schwelb, 'Marriage and Human Rights', (1963) 12 *The American Journal of Comparative Law* 337, at 337–8; A. Weldon Adkins, 'Forced Marriage: An International Issue Calling for International Regulation and Accountability', (2021) 50 *Georgia Journal of International and Comparative Law* 284, at 288–9.

⁶⁴European Union Agency for Fundamental Rights, 'Addressing Forced Marriage in the EU: Legal Provisions and Promising Practices', at 12–16, available at fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu_en.pdf.

⁶⁵HM Government, 'The Rights to Choose: Multi-Agency Statutory Guidance for Dealing with Forced Marriages', 2023, available at assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1153014/English_version_contents_page_updated_14.04.23.pdf.

⁶⁶Parliamentary Committee for Immigration and Integration (Udvalget for Udlændinge- og Integrationspolitik), 'Assessment of Law Proposal No. L 152/2001-02' (2002), 5.

⁶⁷See Russo, *supra* note 19, at 112.

⁶⁸See Knop, *supra* note 3, at 327 et seq; see Russo, *supra* note 3; see Tambe, *supra* note 52, at 456 et seq.

⁶⁹R. Burke, 'Universal Human Rights for Women: UN Engagement with Traditional Abuses, 1948–1965', in R. Adami and D. Plesch (eds.), *Women and the UN: A New History of Women's International Human Rights* (2021), 71.

⁷⁰R. E. Keyse, "'Hidden Motives'? African Women, Forced Marriage and Knowledge Production at the United Nations, 1950–1962', (2022) 57 *Journal of Contemporary History* 268, at 269.

⁷¹*Ibid.*, at 291; see Keyse, *supra* note 54, at 269; see Schwelb, *supra* note 63, at 340.

⁷²Draft Convention and Draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (Memorandum), A/4844 (1961), at 2–4.

⁷³*Ibid.*, at 2.

laws and practices' as a regulatory problem and entrusted the 'administration of Non-Self-Governing and Trust Territories' to take measures in this regard.⁷⁴ After the CSW overtook the agenda, it collected the existing reports and issued new questionnaires to prepare the future Convention.⁷⁵

The CSW originally intended to address the oppressive elements of marriage globally, however, the final Convention was adopted with an explicit focus on women in the former and gradually emancipating colonies: 'women particularly in the developing countries',⁷⁶ with 'customs, ancient laws and practices'.⁷⁷ During the drafting, 'certain representatives expressed the view that . . . their Governments would not alter [national] legislation to conform to the terms international instrument'.⁷⁸ The response was that 'the proposed instrument would establish only a minimum standard and that those countries enjoying a higher standard could comply with the proposed texts without changing their legislation', and that the 'Convention . . . was primarily designed to help women in underdeveloped and newly emerging nations'.⁷⁹

In the drafting process, the CSW conflated two of its pre-existing work agendas: 'Status of Women in Private Law' and 'Women in Trust- and Non-Self-Governing Territories'. Originally, the works under 'Status of Women in Private Law' focused on a wider range of matrimonial problems, for example, property regimes, parental rights, and legal competences of married women.⁸⁰ Those were relevant to women in former metropolises and dependencies. However, gradually, the idea of getting rid of 'ancient' customs with prevalence in the 'emerging nations' dominated the focus of the drafting.⁸¹ The initial concerns about marriage rules in the former metropolises conserving women's dependence and inferiority via tax-, custody- and legal competence regulations were mentioned in some of the reports but did not imprint in the Convention. The specifically 'white' forms of matrimonial oppression of women thus disappeared from the purview.

The CSW came to focus on marriages in the former colonies through its monitoring of gender relations in trust- and non-self-governing territories since 1949⁸² and summarizing the information in yearly reports. These reports consisted of observations by the Western administrators in the dependencies which the TC and the CNSGT collected for the CSW.⁸³ Representatives of the administrations in the dependencies thus acted as correspondents delivering information from the ground to the TC, the CNSGT, and the CSW. The CSW drew

⁷⁴Status of Women in Private Law: Customs, Ancient Laws and Practices Affecting the Human Dignity of Women, Resolution 843 (XI).

⁷⁵See Draft Convention and Draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (Memorandum), *supra* note 72, at 2; Resolution 2 (XII): Age of Marriage, Free Consent and Registration of Marriages (1958).

⁷⁶UN Commission on the Status of Women, Report of the Fifteenth Session, E/3464 (1961), at 8. Similarly, Commission on the Status of Women, Consent to Marriage and Age of Marriage/Report by the Secretary-General, E/CN.6/317 (1958), at 3.

⁷⁷See Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *supra* note 26, Preamble.

⁷⁸UN Commission on the Status of Women, Report of the Fourteenth Session, E/CN.6/367 (1960), at 9.

⁷⁹*Ibid.*

⁸⁰UN Commission on the Status of Women, Report of the Seventh Session, E/CN.6/227 (1953), at 6–7; UN Commission on the Status of Women, Report on the Tenth Session, E/CN.6/286 (1956), at 15.

⁸¹UN Commission on the Status of Women, Report on the Thirteenth Session, E/CN.6/350 (1959), at 6.

⁸²UN Economic and Social Council, Report of the Third Session of the Commission on the Status of Women, E/1316 (1949), paras. 18(2) and (3).

⁸³For example: UN Commission on the Status of Women, Information Concerning the Status of Women in Non-Self-Governing Territories, Report by the Secretary General, No E/CN.6/255 (1954), at 2; UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by the Secretary-General, E/CN.6/235 (1954), at 3–4.

heavily on these reports through the drafting of the Convention,⁸⁴ particularly in its two key summarizing studies ‘Consent to Marriage and Age of Marriage’ from 1958 to 1961.⁸⁵

Through the collaboration in 1950s between the CSW, the TC, and the CNSGT, two existing programs of the UN – supervised decolonization and women’s rights – conflated to underwrite the future Convention. Arguably, this conflation helped scrounge the political support for international legal intervention for the sake of, explicitly, the women in the dependencies. Finding support was easier when the standards in the future Convention did not force former metropolises to radically alter their marriage practices; and when the Convention’s provisions aided the administering powers in implementing economic policies in the dependencies deemed necessary for their independence.

In the UN’s perspective, the trust- and non-self-governing territories’ system of decolonization was also a system of economic development with its motives to ‘build firm foundations for a peaceful and prosperous world’.⁸⁶ As put by the United Kingdom’s Colonial Office, a CNSGT member at the time, ‘no grants should be made unless and until a community had made a matching contribution in labor and material’.⁸⁷ This framing of development effectively meant that national independence was conditioned by economic growth measured by orthodox economic computations.⁸⁸ Intellectuals from territories struggling for independence at the time criticized these policies as not only spurring local economic growth and trading but also sustaining economic relations advantageous to the metropolises.⁸⁹ The drafting materials accordingly reveal the, at times clearly extractivist, intentions of the administrations.

The administering powers knew that the intended economic development was premised on changes at the individual level: ‘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 . . .’.⁹⁰ To this end, they deployed policies to ‘stimulate the initiative of individuals and to create an atmosphere favorable to the extension of the efforts of men and women who . . . will contribute to the public good’.⁹¹ The next section shows how the economic transformation was threaded through, among other things, local re-organization of matrimony and social roles of women.

4. Drafting of the Convention

4.1 Modern marriage

The CSW regularly requested information from the dependencies’ administrators about women’s wellbeing as well as the general political and economic development of the territories.⁹² In 1954, the CSW observed that

⁸⁴See UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by the Secretary-General, *ibid.*, at 3; UN Commission on the Status of Women, Report of the Twelfth Session (17 March–3 April 1958), E/CN.6/334 (1958), at 23; see Draft Convention and Draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (Memorandum), *supra* note 72, at 2–3.

⁸⁵See Commission on the Status of Women, *supra* note 76, at 9 et seq.

⁸⁶UN Secretary General, Annual Report of the Secretary-General on the Work of the Organization, A/315 (1947), at 56.

⁸⁷General Assembly, Report No. A/3837 of the Committee on Information from Non-Self-Governing Territories, A/3837 (1958), at 19.

⁸⁸As argued in related contexts by, e.g., Tzouvala, *supra* note 28, at 45; see Getachew, *supra* note 28, at 58.

⁸⁹W. Rodney, *How Europe Underdeveloped Africa* (2018), Chapter 6; K. Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism* (1965).

⁹⁰General Assembly, Report No. A/2729 of the Committee on Information from Non-Self-Governing Territories, A/2729 (1954), at 15.

⁹¹*Ibid.*

⁹²See UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by the Secretary-General, *supra* note 83, at 3–4.

there are areas of the world, including certain Trust and Non-Self-Governing Territories, where women are subject to customs, ancient laws and practices respecting marriage and the family which are inconsistent with the principles set forth in the United Nations Charter and the Universal Declaration of Human Rights.⁹³

At this initial stage of what later became the drafting of the Convention, the CSW urged administrators in the territories to target such practices because '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'.⁹⁴

In the subsequent CSW's summary reports and the General Assembly's Resolutions echoing them,⁹⁵ the CSW's mission seemed to be defined clearly: to 'act without delay in order to put a stop to practices which were harmful to large numbers of women in vast areas of the world'.⁹⁶ However, materials deeper in the weeds of the drafting reveal that, despite such determinate vision for the CSW's course of action, the Commission and its collaborators had difficulties grappling with the definition of free will, or stating with certainty that marriages in the dependencies were unfree.

In 1958 and 1961, CSW issued two reports which taxonomized the world's territories based on their conception of consent to marriage. Most territories in Africa plus other rural areas in China and Pakistan were gathered in a category where individual will was not required. The CSW was aware that marriages in these territories were conceived as 'not only an association between two persons but also an alliance between groups of kin'.⁹⁷ This meant that consent was given by families or 'clans' and wishes of individuals were disregarded but 'in practice much depended on the actual case'.⁹⁸ Because individual will was secondary to communal will, the CSW doubted whether this construct can qualify as free will. This concept of will was 'often based on religious beliefs or it might be rooted in custom' and it did not quite match the free will that the CSW had in mind. Polygamy and bride price came up in this category as legal arrangements associated with the communal will and kinship marriage. The CSW concluded that 'it would seem that men are completely free to enter a second marriage' and that 'there is an increasing tendency to consult a daughter before proceeding with arrangements for a marriage'.⁹⁹

The CSW members, nevertheless, agreed that these marriages did not meet the requirement of a 'true consent' and that marriages resting on bride price where the true consent of the bride is not ascertained were a 'form of slavery'.¹⁰⁰ They argued that 'where marriage is a matter of ritual only, consent can never be adequately expressed'¹⁰¹ and that 'it was impossible for a true consent to be given by young girls whose judgement was unformed and immature'.¹⁰²

In writing the two reports, the CSW drew on ground information from administrators in the dependencies which offered equally ambiguous interpretations of practices of expressing will in local marriages and their impact on women. The administrators generally felt sorry for local

⁹³UN Commission on the Status of Women, Report on the Eighth Session, E/CN.6/253 (1954), at 14.

⁹⁴*Ibid.*

⁹⁵Status of Women in Private Law: Customs, Ancient Laws and Practices Affecting the Human Dignity of Women, Resolution 843 (XI).

⁹⁶See UN Commission on the Status of Women, *supra* note 78, at 8.

⁹⁷See Commission on the Status of Women (1958), *supra* note 76, at 9.

⁹⁸Commission on the Status of Women, Consent to Marriage and Age of Marriage/Report by the Secretary-General, E/CN.6/356 (1961), at 24.

⁹⁹*Ibid.*, at 25.

¹⁰⁰See UN Commission on the Status of Women, *supra* note 78, at 8.

¹⁰¹*Ibid.*

¹⁰²*Ibid.* For literature on the gender policies of UN denying women of agency: M. Rodríguez García, 'The League of Nations and the Moral Recruitment of Women', (2012) 57 *International Review of Social History* 97, at 109; See Russo, *supra* note 3, at 198.

women, understanding that they were less 'receptive to civilization' than men and local marriages kept them 'contented in a rude, primitive life of [their] village'.¹⁰³

The administrators also understood that marriages were not an individual affair. For example, the Australians in Papua explained that 'marriage involves a variety of acts and transactions carried out by the kinship groups of the parties concerned'.¹⁰⁴ The CNSGT's observation was also that 'the traditional marital union was more concerned with an alliance between family groups than between the two individuals immediately involved'.¹⁰⁵

The administrators, however, were wary of equating the lack of individual consent to force and ignorance of women's will in the matrimonial consummation: 'many parents . . . would not force on a daughter a union which was distasteful, recognizing that she would not long remain faithful in such circumstances'.¹⁰⁶ Similarly, administrators in Tanganyika reported to the CSW that 'payments [of bride-price] are no more indicative of the purchase of a bride than are the payments made by the white man for the rings or precious stones which it is customary for him to present to his bride'.¹⁰⁷ The British in Cameroon stated that should a woman 'express marked dislike of her betrothed, neither the parents nor the proposed husband are likely to be too insistent about the marriage'.¹⁰⁸ They added that 'every tribe, primitive or otherwise, must be given credit for some delicacy of feeling about such matters and for a great deal of natural affection between parents and children'.¹⁰⁹ Despite the existence of child marriages in the territory, 'in practice, nobody expect[ed] a child bride to perform her marital functions until her parents consider[ed] her old enough'.¹¹⁰

The administrators also advised the CSW not to interpret traditional marriages through Western perspective. In the words of the British administration in Cameroon: 'it would be a mistake to look at [polygamy] on the basis of western standards'.¹¹¹ While the British representative considered polygamy 'unwholesome', they advised that its 'economic factor' should not be ignored¹¹² because 'plural marriage was partly a means of sustenance to the women involved' and a 'type of social security'.¹¹³

During the Fon of Bikom scandal, this economic function of extended families, executed through polygamy and bride-price, was examined in detail. When Fon petitioned to the UN, he explained that he paid a bride price and received a dowry and the wives as laborers in the village.¹¹⁴ Alluding to one of the economic functions of these marriages – the accumulation of economic resources of the family, in particular, labour. This was further elaborated by an American writer and women's rights activist Rebecca Reyher who followed the scandal in Cameroon and then wrote several books about it. Her conversations with the resident British District Officer confirm that the marriages were not always also sexual and romantic.¹¹⁵ The officer explained that men

¹⁰³UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by the Secretary General, E/CN.6/210 (1953), at 12.

¹⁰⁴UN Commission on the Status of Women, Information Concerning the Status of Women in Non-Self-Governing Territories, Report by the Secretary General, E/CN.6/293(1957), at 5.

¹⁰⁵See General Assembly, *supra* note 87, at 24.

¹⁰⁶UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories Contained in Annual Reports Made by the Administering Authorities, No. E/CN.6/138 (1950), at 9, 15.

¹⁰⁷UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by Secretary General, No. E/CN.6/163 (1951), at 14.

¹⁰⁸See UN Commission on the Status of Women, *supra* note 106, at 9.

¹⁰⁹*Ibid.*

¹¹⁰See UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by the Secretary-General, *supra* note 83, at 9.

¹¹¹See UN Commission on the Status of Women, *supra* note 107, at 10.

¹¹²*Ibid.*

¹¹³*Ibid.* The Visiting Mission dispatched to investigate Fon's tribe made similar observations: see UN Trusteeship Council, *supra* note 1, at 5.

¹¹⁴See Petition from Foin Ndi of Laikom Concerning the Cameroons under British Administration, *supra* note 7, 3.

¹¹⁵See Reyher, *supra* note 6, at 40.

assembled women as farmers in families to work on the land, which in turn gave women access to the land.¹¹⁶ He reportedly stated: 'You are thinking of this in terms of your own background. A Fon's wife has a lot of property, prestige. It is a purely economic matter; the women need land, and they want children. They manage, they have their lovers.'¹¹⁷

The scandal was eventually resolved. It took Fon declaring that no woman in his village lives there involuntarily and also promising that he will not accept any new wives under other than this condition.¹¹⁸ However, even if the UN scrutiny eased, Fon's rule was crumbling. Reyher observed that since wage-labour and cash were implemented by the administering authority and non-waged labour was consequentially prohibited, men labouring for individual wage gradually refused the socio-economic organization in Fon's extended family.¹¹⁹ The British administrators in their debrief of the scandal accordingly observed these developments and stated that 'the harmful effects of the practice and its inability to adapt itself to the needs of progressive society, should not be lost from view'.¹²⁰ They recommended that the CSW should 'proclaim, and effectively protect, the right of women and girls to not take part in any forced union' and allow women to release themselves from the bond 'when it appears that they no longer want to accept positions as additional wives'.¹²¹

One might wonder how, despite the apparent confusion about the un/forced nature of traditional marriages and despite the general awareness that the marriages were not conceived as individual romantic unions but as communal economic unions, the administrators and the CSW continued to reform the marriages to protect women and to allow them to express their 'true will'. The materials reveal that this regulatory determination continued not despite understanding of the economic function of traditional marriages, but precisely because of it.

Marriages arranged by the families produced large networks of kin, or even villages, as described in Fon's case. These functioned as basic economic units in the local communal economy based on agriculture and barter. As such, they obstructed the economic transformation inducted by the administrators. As the CNSGT summarized: 'to accelerate industrial development, far more capital needs to be attracted' by urging families to move to cities and form a 'modern labor force'.¹²²

This reveals more of the administrators' problem with traditional families: they were immobile and unwilling to earn a living through wage labour. Although some rural men came to the cities for new dwellings, they often found themselves to be, in the words of the CNSGT, 'deprived of the support of traditional life, insufficiently paid for urban needs and faced with numerous material difficulties with respect to housing, food, transportation and social amenities'.¹²³ Because 'wage policies [we]re based on the assumption that the families of the workers normally support themselves by the land in the rural areas',¹²⁴ urban labourers far from their rural kin were left poor and maladjusted to urban life.

Disparity thus grew between familial organization in the villages and in the cities. The French administration even called this disparity 'one of the most important social problems' and appealed that 'the family change taking place in urban industrial areas' must extend 'among all elements of the population'.¹²⁵ The deprived situation of solo labourers without wives and families made urban life obviously less attractive: 'The lack of stable family and organized family life hinders the

¹¹⁶*Ibid.*, at 25, 40; See UN Commission on the Status of Women, *supra* note 107, at 10.

¹¹⁷See Reyher, *supra* note 6, at 40.

¹¹⁸See UN Commission on the Status of Women, *supra* note 106, at 11.

¹¹⁹See Reyher, *supra* note 6, at 159 et seq.

¹²⁰See UN Commission on the Status of Women, *supra* note 107, at 11.

¹²¹*Ibid.*

¹²²See General Assembly, *supra* note 90, at 25.

¹²³General Assembly, Report No. A/2908 of the Committee on Information from Non-Self-Governing Territories, A/2908 (1955), at 21.

¹²⁴*Ibid.*

¹²⁵See General Assembly, *supra* note 87, at 2.

emergence of public opinion which would set norms of behavior between sexes, within the family, and within the community.¹²⁶

The solution was not to move large rural families to cities as whole units, instead, traditional families needed to ‘disintegrate’.¹²⁷ Administrators deployed policies aimed at ‘loosening family ties’¹²⁸ supported by the CNSGT which considered those ‘a regular accompaniment of the transition to the urban environment, in which the very conditions of employment and residence militate against the reconstitution and continuation of the rural forms of family life’.¹²⁹ In urban life, sustained by labor instead of land, ‘integrated and interdependent units, based on kinship, break down into small and independent units’.¹³⁰ ‘Detribalization’ was accordingly a set of policies spurring ‘assimilation to the urban conditions in Africa’,¹³¹ and the ‘rejection of ties with the customary community’.¹³² The success of processes of ‘detribalization’, ‘commercialization’, and ‘urbanization’ inherent to the envisioned economic development and transformation to modern labor- and competitive markets-based economies thus hinged on the ‘breakdown of kinship solidarity’.¹³³ With urbanization ‘the traditional concept of marriage was shaken’.¹³⁴

In this context, marriage as a social formation required different socio-economic functions and people were directed to think differently about it. Arranged marriages lost their economic safeguards when people began to sustain themselves individually by waged labour and became unstable. In CNSGT’s words: ‘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’.¹³⁵

Bulk of the social transition from large immobile kin families to mobile nuclear families was meant to be carried by the economic transition itself. The administrators explained that families remain tribal because of poverty and insufficient contact with the market.¹³⁶ Polygamy was repetitively explained as resulting from the ‘unsatisfactory’ rural economy.¹³⁷ As explained above, traditional marriages were, however, not just a consequence of non-marketized economy but also its constituent. While the administrators hoped that the economic transformation would lead populations to prefer individual marriages, the traditional matrimonial organization was too deeply socio-economically embedded to seamlessly follow.

The key was to present the economic transformation and urban marriage with its multiple ‘spiritual, ethical and material sides’¹³⁸ positively to the public and shape peoples’ thinking and expectations of marriage. The CNSGT argued: ‘there can be no success in fostering or preserving individual self-reliance unless there is a strengthening and deepening human relations within the family’.¹³⁹ In developed societies ‘home’ shall mean ‘the place where the restricted family of husband, wife and children live’¹⁴⁰ – also known as the nuclear family.

¹²⁶See General Assembly, *supra* note 123, at 21.

¹²⁷*Ibid.*

¹²⁸See UN Commission on the Status of Women, *supra* note 103, at 15.

¹²⁹See General Assembly, *supra* note 123, at 21.

¹³⁰*Ibid.*

¹³¹*Ibid.*, at 20.

¹³²*Ibid.*

¹³³*Ibid.*, at 21.

¹³⁴*Ibid.*

¹³⁵*Ibid.*, at 20.

¹³⁶UN 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, S/3066 (1953), at 58; General Assembly, Report of the Trusteeship Council Covering the Period from 4 December 1952 to 21 July 1953, Supplement no.4 (A/2427) (1953), at 72.

¹³⁷See UN Commission on the Status of Women, *supra* note 106, at 16, 18; see UN Trusteeship Council, *supra* note 1, at 38; see UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by the Secretary-General, *supra* note 83, at 12; see UN Commission on the Status of Women, *supra* note 104, at 3.

¹³⁸See General Assembly, *supra* note 123, at 22; see General Assembly, *supra* note 87, at 16.

¹³⁹See General Assembly, *supra* note 123, at 18.

¹⁴⁰See General Assembly, *supra* note 87, at 24.

The administrators thus faced one problem with local marriages, and this was a problem of its immobility and failure to support urban waged labour-based industrial expansion. This problem was economic. The administrators' second problem was their sense that local marriages, by not demanding individual choice of a spouse, in the way they knew it from Western cultures, harm women. While the economic problem with marriages was analyzed by the administrators quite elaborately, their analysis of the feminized harm in matrimony was rather thin. It consisted of their bewilderment with seemingly conflicting observations made in their reports to the CSW – people were not individually choosing spouses, but they were also not always forced to marry, and when asked, they seemed content with the configuration. The administrators did not quite try to understand these, seemingly conflicting, propositions to better navigate available remedies.

In thinking how to resolve the problems with local marriages, they were pragmatic. They generally understood that any territory-wide prohibitions were unwise because they could lead to social instability and political resistance.¹⁴¹ Incremental regulations of economic and feminist kinds were thus preferred. Economic incentives, included, for example, polygamy tax.¹⁴² These were coupled with substantive marriage regulations to 'improve the status of women' concentrated in the urbanized centers, such as, decrees protecting monogamous marriage, and annulling polygamous marriages entered customarily.¹⁴³ Notably, regulations were accompanied by religious conversion.¹⁴⁴

The marriage reforms ostensibly aimed to raise women's status. At the same time, broader systemic reforms based on the principle of gender equality seemed unwise. Belgian administrators in Ruanda-Urundi warned that 'introduction of law proclaiming equal rights for all, contrary to custom, would have caused social upheaval and done more harm than good',¹⁴⁵ adding that such reforms could 'undermine the husband's authority and loosen family ties'.¹⁴⁶ French administrators in Cameroon reported that incremental reforms, including prohibition of child marriages, raising the minimum age of marriage, requiring the express consent of the wife and prohibiting polygamy 'progressively increased the freedom of women'.¹⁴⁷

Instead of enforcing gender equality as a principle, the administrators focused on altering marriage patterns, which seemed to them as the second-best approach to emancipating women, but the best approach overall – after calculating costs and benefits. As such, it was an approach which kept societies stable and husbands in authority, all while transitioning to a new form of economy which brought different forms of women's status, socio-economic stability, and husband authority. The CSW, presented with these approaches chosen by the administrators, also focused on marriage reform, proclaiming that international standardization of free-willed marriage was necessary 'in order to hasten the process [of improving the status of women] and prevent young girls from being married before . . . maturity'.¹⁴⁸

This understanding of the UN Marriage Convention as an instrument which improves lives of women by enforcing freedom of matrimonial will as a legal standard remains dominant. The archival materials, however, allow me to reverse-engineer this legal standard to show that its

¹⁴¹See UN Commission on the Status of Women, *supra* note 107, at 10–11; UN Commission on the Status of Women, *supra* note 106, at 10; see UN Commission on the Status of Women, *supra* note 104, at 4; see Keyse, *supra* note 54, at 140 et seq.

¹⁴²See UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by the Secretary-General, *supra* note 83, at 11–12.

¹⁴³See UN Commission on the Status of Women, *supra* note 103, at 16. Similar decree was issued in French Cameroon. *Ibid.*, at 12.

¹⁴⁴See UN Commission on the Status of Women, *supra* note 107, at 8; see UN Commission on the Status of Women, *supra* note 103, at 12.

¹⁴⁵See UN Commission on the Status of Women, *supra* note 103, at 14.

¹⁴⁶*Ibid.*, at 15.

¹⁴⁷See UN Commission on the Status of Women, *supra* note 107, at 8.

¹⁴⁸See UN Commission on the Status of Women, Report of the Twelfth Session (17 March–3 April 1958), *supra* note 84, at 7.

relevance is only fundamental if marriage is socially constructed to be a romantic individual union. This social construction of marriage accompanies an economy based on individual earnings and market competition prompting mobility of labor and capital. Thereby, under the legal terms of freedom and dignity, the nuclear family, in reality, became the standardized marriage model for the world alongside the expanding standard economic model. This means that the socio-economic conditions in the background of individual marriage freely chosen by adults in person, which the Convention defined as a human rights-compliant marriage, were its small size, economic dependency on individual earnings and geographic mobility.

Although the administrators' ideas were not imbued with theory of gender and political economy, some of the conceptual and historical arguments made in that theoretical literature can help make the stakes of the administrators' evolving idea-set clearer. Especially, as pertains to the relationship between the economy, marriage, and women's roles; and the mechanics of the evolving idea that women can emancipate in marriage and simultaneously, their husband's authority can remain unthreatened.

Extended families presented a twin ethical and economic problem. The economic problem was that these marriages could accumulate wealth (by acquiring land and labour through marriage) outside the inducted economy, outside cash, and taxes (hence, the 'polygamy-tax'), and thus resisted the leverages for economic transformation. The twin ethical problem was that the function of modern marriage was meant to be emotional, based on affection, devotion, and hence monogamous and individually chosen, and non-economic.¹⁴⁹ Despite this nominal ethical concept of modern monogamous marriage, its economic function in the background is equally accumulative.¹⁵⁰ That modern marriage indeed has an economic function, is evidenced by the economic transition which apparently stalled without it at its centre.

Marriage in capitalist economy,¹⁵¹ for example, manages the day-to-day social reproduction of labourers by providing nutritional, hygienic, and emotional replenishment during their rest which alleviates employers' costs of labour and allows them to accumulate a larger surplus. Instead of large families accumulating labour and resources through marriage, the production-owners are allowed to accumulate revenues thanks to the reproductive function of marriages of their employees. Notably, this function of marriage historically contributed to the relegation of women to socio-economical inferiority because their roles in social reproduction did not generate profit directly and as such were understood as 'unproductive' work.¹⁵² Further the economic function of monogamous nuclear marriage is that it provides for social reproduction of labourers as a class – by producing children and indoctrinating them in desired economic socialization.¹⁵³ Lastly, marriage in capitalist social orders supports the economy ideologically, as a site of self-actualization of labourers working under the condition of alienation from the product of their labour.¹⁵⁴ Notably, both forms of marriages harbour (and harboured), through their functions in the economies, forms of social domination. While modern monogamous marriages furthered gendered social domination, in marriages based

¹⁴⁹F. Engels, *The Origin of the Family, Private Property, and the State* (First text published 1972 (Lawrence and Wishart), Introduction by Tristram Hunt, Penguin Books 1884), vol. 3.

¹⁵⁰Further on the accumulative function of modern marriage: S. Coontz, *The Social Origins of Private Life: A History of American Families, 1600–1900* (1988), at 24.

¹⁵¹The functions of marriage in a capitalist economy were elaborated under theories of gender and political economy, notably, the theory of social reproduction, see, e.g., S. Federici, *The Caliban and the Witch: Women, the Body and Primitive Accumulation* (2004); see Coontz, *Ibid.*; E. Zaretsky, *Capitalism, the Family & Personal Life* (1976).

¹⁵²Further on these functions of marriage, see, e.g., Federici, *supra* note 151); see Coontz, *supra* note 150; see Zaretsky, *supra* note 151.

¹⁵³J. Donzelot, *The Policing of Families* (1979), at 73.

¹⁵⁴See Coontz, *supra* note 150; S. Coontz, *Marriage, a History: How Love Conquered Marriage* (2006); see Zaretsky, *supra* note 151.

on extended networks of kin,¹⁵⁵ social status depended less on gender and more on familial affiliations¹⁵⁶ and functional and ideological roles in kinship reproduction.

The economic function of marriage as they knew it, thus helped the drafters to overcome gaps in their knowledge about will in local marriages; and proceed assured of the social benefits of the standardizing project. They generally sensed that large kin marriages were a thing of the past and prevented socio-economic development, which they thought was for the benefit of the dependencies, but was also in the administrations' self-interest. The UN decolonization programme leading to national independence of the territories confronted metropolitan governments with the approaching loss of direct economic control over them.¹⁵⁷ The administrations were invested in finding ways to sustain economic relations with the dependencies and access to their resources. They believed that 'the future ... State must be capable of feeding its growing population as well as maintaining export trade'¹⁵⁸ while the CNSGT urged that administering efforts 'attain a dynamic of equilibrium in seeking to improve the benefits accruing to all the economies concerned [the metropolitan countries, the Territories themselves and the world economy]'.¹⁵⁹ Sustained trading required a functioning local industry and market, including cash circulation and available labour. One way of solidifying these foundations of the economy was to enhance the dependency of local populations on wages, cash, and international markets while still in direct economic control. Large families resisting this dependence thus threatened not only the territories' economic expansion, but also metropolitan economic interests.

Besides the anticipated economic growth, the administrators were inspired by another vision of social benefits of the matrimonial reform despite not really knowing if local marriages were free or not. This was a vision of a dignified life of a wife which native women in the ongoing economic transition did not enjoy, according to the administrators. The CNSGT summarized this sentiment stating that: 'The woman in particular is vulnerable to the changes imposed by urbanization. She is no longer supported by traditional customs and yet she has not found other recourses and may be left to every type of degradation and temptation.'¹⁶⁰ Women in the economic transition were thus seen as lacking purpose. In the next section, I discuss how dignified and emancipated roles were awaiting women in modern marriage and assured the drafters that matrimonial transition would indeed be good for women.

4.2 Modern women

As mentioned earlier, the administrators reported to the Commission on the Status of Women that traditional marriage 'contended [women] in a rude, primitive life of [their] village'.¹⁶¹ In this section, I ask which existing practices and relations affecting women were considered rude and primitive; what kind of life awaited in the next stage; and how it made women better off – free,¹⁶² independent,¹⁶³ and emancipated.¹⁶⁴ The Convention aspired to help women access 'equal rights

¹⁵⁵The marriages termed by the drafters as 'traditional' took many forms in different communities with different implications for structures of social domination: see Tamale, *supra* note 29, at 307.

¹⁵⁶*Ibid.*, at 308.

¹⁵⁷Elsewhere, I studied the imperial policies of regulating marriages in the colonies prior to internationally enforced decolonization, and prior to the adoption of the Convention, which as I argued tended to be non-interventionist, see: N. Stybnarova, 'The (Neo-)Imperial Economic Functionality of the International Regulation of Marriage', (2025) *American Journal of Comparative Law* (forthcoming).

¹⁵⁸See UN Security Council, *supra* note 136, at 72.

¹⁵⁹See General Assembly, *supra* note 90, at 15.

¹⁶⁰See General Assembly, *supra* note 123, at 21.

¹⁶¹See UN Commission on the Status of Women, I, *supra* note 103, at 12.

¹⁶²See UN Commission on the Status of Women, *supra* note 106, at 16.

¹⁶³*Ibid.*, at 10.

¹⁶⁴*Ibid.*, at 18.

as to marriage, during marriage and its dissolution'.¹⁶⁵ However, the journey to women's equality was, in the minds of the drafters, far more dependent on the economic change, than the Convention itself. Their conception of female freedom and equality was arguably also limited in that it mimicked the predicted emancipatory function of the economic change.

Just as the administrators disagreed on will and force in traditional marriages, they disagreed on gender equality in them. The administrators in Tanganyika reported to the CSW that 'status of women varies considerably from tribe to tribe'.¹⁶⁶ Nevertheless, they overall assessed that women were clearly inferior to men.¹⁶⁷ Other administrators could not make such a univocal conclusion. In Ruanda-Urundi, some tribes apparently 'held women in high esteem' and in others women were 'treated as beasts of burden'.¹⁶⁸ British administrators in Cameroon reported that a woman, although generally subordinate, 'shares with [her husband] a common interest in the welfare of their children . . . , they work together for a common end and make decisions in their respective fields of activity on behalf of the members of the household'.¹⁶⁹ In New Guinea, the Australian administrators reported that 'in many cases women have considerable indirect influence and it is customary for a man to consult his wife . . . in matters of importance. . . . economically, the sexes are mutually independent'.¹⁷⁰

Accordingly, the CNSGT observed that, in traditional families, both men and women partook in both care and sustenance:

In conditions that have passed or are passing, the family or the extended family produced all that was needed or all that could be produced for living needs. It provided a form of social assistance for the sick, the old and the orphaned. With alternative and more attractive means of livelihood, family obligations in the traditional sense might disintegrate; or the principal and most enterprising earners might find themselves overburdened with obligations resulting from a family relationship that had lost its basic characteristic.¹⁷¹

The latter sentence also reveals why such division, or sharing, of sustenance and care labour in the family was a policy problem. In social conditioning of 'alternative and more attractive means of livelihood' the all-around roles of family members became inapt. They became burdensome for the members, especially the 'enterprising earners', and as such made marriages failing their function in supporting the economy. The CNSGT described that people labouring in industrial conditions of shifts and wages per work hours could not be expected to provide the same care, maintenance, and duty to their relatives as they did in traditional families. The prioritized social role of enterprising earners would thus become labor, and the responsibility for care would fall on less enterprising earners. The latter group, as the next paragraphs show, would become women.

The infrastructure of care was in the economic transformation adjusted through a set of policies called 'community development'. Community development was described by the CNSGT as a co-operative movement assisting in 'transition from subsistence to money economy and in the further transition of local trade to marketing economy for export or other large scale'.¹⁷² Through these policies, the tasks of 'providing for the needs of children and young people', 'care of family and child' and 'educational action'¹⁷³ were made common and shifted to women.

¹⁶⁵See Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *supra* note 26, Preamble.

¹⁶⁶See UN Commission on the Status of Women, *supra* note 107, at 13.

¹⁶⁷*Ibid.*

¹⁶⁸See UN Commission on the Status of Women, *supra* note 103, at 14.

¹⁶⁹See UN Commission on the Status of Women, *supra* note 106, at 10.

¹⁷⁰*Ibid.*, at 12.

¹⁷¹See General Assembly, *supra* note 123, at 18.

¹⁷²See General Assembly, *supra* note 90, at 29.

¹⁷³See General Assembly, *supra* note 87, at 23–24.

The CNSGT presumed that ‘co-operative organization [was] essential in preparing a people for a transition to modern economy’,¹⁷⁴ and added that ‘the problem revolves around the most important member of the family, namely, the woman 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’.¹⁷⁵ The administrators agreed that the ‘time [was] ripe for expansion of community development work among women’.¹⁷⁶ The CNSGT even regarded female participation in the economic transition as a condition of national independence: the ‘whole process of national improvement will be delayed until a great drive is made to reach the women and girls’.¹⁷⁷ Women were equally imagined gaining from this transition: released from ‘household drudges’ – heavy manual work surrounding the rural household¹⁷⁸ – they would move to other roles which better corresponded to the drafters’ visions of a dignified female life.

Women, as much as men, thus were to be released from their duties in large rural families and were summoned to cities, and urban familial organization, albeit to perform different types of labour. In some territories, the restructuring of care, or community development, took form of building communally provided social reproduction. There, women were called to public health,¹⁷⁹ care,¹⁸⁰ and schooling sectors. Some of the territorial administrations conceived this form of women’s work as labour, others saw it as a hobby. In Western Samoa, women gathered in ‘village women’s committees which assisted the work of the village schools, hospitals and dispensaries’.¹⁸¹ In Mauritius, women formed leisure clubs to ‘learn new skills in needlework, homecraft and childcare and . . . desire further education’.¹⁸²

Women’s labour in these socially reproductive public sectors was, by its relation to the development of productive forces, and hence to development, also conceived as advancement in status and a platform for demanding future rights. For example, the British administrators reported that they organized clubs and community centers with ‘the purpose . . . to raise the status of women by associating them more fully with social development schemes and community development activities’.¹⁸³ In Papua, the work of ‘female trainees’ in ‘maternity hospitals and welfare clinics’ was listed as ‘the most significant development affecting the status of Papuan women’.¹⁸⁴ ‘Schools and monitrices’ were to ‘attract women into the social services’ which were projected to promote ‘emancipation of indigenous women, with results that will be of value to the whole community’.¹⁸⁵

In other territories, the restructuring of care via community development took form of a domestication of wives á à la Western male breadwinner/female house-maker model. The administrators then advocated for the introduction of ‘family wage’ earned by the man.¹⁸⁶ Women at home still had an economic role in ‘creating incentives for the increased production

¹⁷⁴*Ibid.*, at 27; see General Assembly, *supra* note 123, at 26.

¹⁷⁵See General Assembly, *supra* note 87, at 24.

¹⁷⁶See UN Commission on the Status of Women, *supra* note 104, at 3–4.

¹⁷⁷General Assembly, Report No. A/2465 of the Committee on Information from Non-Self-Governing Territories, A/2465 (1953), at 17. Similarly, UN Commission on the Status of Women, Report of the Twelfth Session (17 March–3 April 1958), *supra* note 84, at 9.

¹⁷⁸See UN Commission on the Status of Women, *supra* note 107, at 15.

¹⁷⁹See General Assembly, *supra* note 87, at 3; see General Assembly, *supra* note 136, at 75.

¹⁸⁰See UN Commission on the Status of Women, *supra* note 103, at 12; see UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by the Secretary General, *supra* note 83, at 20; see UN Commission on the Status of Women, Information Concerning the Status of Women in Non-Self-Governing Territories, Report by Secretary General, *supra* note 83, at 6; see UN Commission on the Status of Women, *supra* note 104, at 3–4.

¹⁸¹See UN Security Council, *supra* note 136, at 77.

¹⁸²See UN Commission on the Status of Women, *supra* note 104, at 4.

¹⁸³See General Assembly, *supra* note 87, at 25.

¹⁸⁴See UN Commission on the Status of Women, *supra* note 104, at 9.

¹⁸⁵See UN Commission on the Status of Women, *supra* note 103, at 15.

¹⁸⁶See General Assembly, *supra* note 123, at 27; see General Assembly, *supra* note 87, at 23.

of foods and other consumer goods' by addressing 'needs for families improved nutrition, housing and other elements of daily life'.¹⁸⁷ Some administrators evaluated positively when the domesticated women earned a complementary petty income but only if the household was managed:

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.¹⁸⁸

The re-training of women from traditional roles to urban roles, was by many administrations considered to be 'education', and they proudly reported how releasing women from traditional families helps achieve the educational goal. A twofold version of female education, which copied the two forms of adjusting the infrastructure of care in the territories, appeared in the reports. First, education in 'domestic science',¹⁸⁹ i.e., in privately provided social reproduction, had the main 'purpose to give women a sound family and social education which would enable them to be better mothers, wives and homemakers'.¹⁹⁰ Second was education in communally provided social reproduction. Administrators in Nauru introduced mandatory 'instruction in technical training in case of boys, and domestic arts for the girls'.¹⁹¹ In New Guinea, girls' education included 'English, hygiene, mothercraft, cookery, sewing and handicrafts'.¹⁹²

Such form of education and exposure to social and care work were argued to 'awaken [women's] intelligence',¹⁹³ and 'develop integrated personality and adapt to modern life'.¹⁹⁵ This 'education', while representing a compromised aspiration for female emancipation, was considered a precursor for other forms of women's emancipation which were perhaps more ambitious. Administrators from Ruanda-Urundi reported that 'visits at hospitals and dispensaries and attendance at religious services have liberated the Mututsi women' and cleared their way for 'school education'.¹⁹⁶ In Morocco, girls' education was implemented to advance according to the following steps: (i) practical education, (ii) education in the most important 'feminine tasks', (iii) physical development, (iv) 'where possible, to teach them to trade which they can carry on at home and thus supplement their income'.¹⁹⁷ Administrators in Papua reported that 'opportunities for [Papuan] women to enter the service of the Administration are still largely limited by lack of education and training, but the impact of stepped-up teaching, nursing and infant and maternal welfare training is already evident'¹⁹⁸ and new schools were 'providing the next stage of their education, including domestic science subjects'.¹⁹⁹ According to the French in Togoland these 'two forms of progress, scholastic and domestic, [we]re mutually advantageous and complementary'.²⁰⁰

¹⁸⁷See General Assembly, *supra* note 87, at 28.

¹⁸⁸See UN Commission on the Status of Women, *supra* note 106, at 18.

¹⁸⁹UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by the Secretary-General, E/CN.6/288 (1956), at 5; See UN Commission on the Status of Women, *supra* note 106, at 11.

¹⁹⁰See General Assembly, *supra* note 87, at 24.

¹⁹¹See UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by the Secretary General, *supra* note 83, at 18.

¹⁹²*Ibid.*

¹⁹³UN Commission on the Status of Women, *supra* note 103, at 14.

¹⁹⁵See UN Commission on the Status of Women, Information Concerning the Status of Women in Non-Self-Governing Territories, Report by the Secretary General, *supra* note 83, at 6.

¹⁹⁶See UN Commission on the Status of Women, *supra* note 103, at 14.

¹⁹⁷See UN Commission on the Status of Women, Information Concerning the Status of Women in Non-Self-Governing Territories, Report by the Secretary General, *supra* note 83, at 6.

¹⁹⁸See UN Commission on the Status of Women, *supra* note 104, at 9.

¹⁹⁹*Ibid.*, at 10.

²⁰⁰See UN Commission on the Status of Women, Information Concerning the Status of Women in Trust Territories, Report by the Secretary General, *supra* note 83, at 20.

The administrators were aware that these new roles which they imagined for women were incompatible with traditional marriages. Rather than seeing it as incompatibility between existing and incoming infrastructures of care and productivity, they discussed this as incompatibility between traditional marriages and women's emancipation. Emancipated women in this discourse, were understood to have different expectations of marriage and of men. The administrators imagined that once women tried this new lifestyle of social reproduction, they would look at marriage differently. In this vision, the economic change was a more powerful tool than any possible legislation for nudging women's opinion against traditional marriages.

Administrators in Cameroon argued that 'it is erroneous to believe that anomalies and inequalities will yield to legislation' and suggested education and economic involvement of women, via 'domestic science centers' as a means of emancipation instead.²⁰¹ The Belgians in Ruanda-Urundi explicitly warned against direct regulatory intervention towards gender equality in marriage.²⁰² Instead, they found the successful employment of indigenous women as monitrices to be of 'great assistance in promoting the emancipation of indigenous women'.²⁰³

Administrators in Tanganyika were equally skeptical about the normative force of legislation and reported success in moving public opinions about marriage by the introduction of cash: 'cash economy tends to weaken the dependence of women on their husbands and male relations'.²⁰⁴ This is how the causality between emancipation, marriage and cash would work:

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, if she even had the inclination, of helping in the production of the crops for food or for sale, the townswoman expects all her wants to be supplied by the efforts of the husband. He in consequence must devote his energies to the making of money, whether it be as a wage earner or by trade, and can no longer live the comparatively free and easy life of the tribesman in the rural areas.²⁰⁵

This view of female emancipation through modern marriage matches the Western bread-winner/homemaker model.²⁰⁶ In a slight alteration of this model offered by the Papuan administrators, women's emancipation was further enhanced by their involvement in petty jobs: 'Women are increasingly economically independent as they now produce copra and sell it in their own right to local co-operative organizations', this contributes to 'noticeable changes in the attitudes of men towards the position of women'.²⁰⁷ Similarly, in Togo, women's position of 'petty trades [gave] them money' which led to them 'refusing household drudges . . . and asserting themselves more and more in questions of marriage'.²⁰⁸

Other administrators ascribed female emancipation and ensuing rejection of traditional marriage to the economic changes in a more general way. The British in Cameroon said that the mix of money, enlightened traders, educated wives of government employees, and Christians makes local women 'want a better standard of living, new wants and more independence in certain

²⁰¹See UN Commission on the Status of Women, *supra* note 106, at 10–11.

²⁰²See UN Commission on the Status of Women, *supra* note 103, at 14.

²⁰³*Ibid.*

²⁰⁴See UN Commission on the Status of Women, *supra* note 106, at 16.

²⁰⁵*Ibid.*

²⁰⁶This model was described by Western materialist–feminist theorists as the very reason for social subordination of women in Western societies, see, e.g., N. Fraser, 'After the Family Wage: Gender Equity and the Welfare State', (1994) 22 *Political Theory* 591.

²⁰⁷See UN Commission on the Status of Women, I *supra* note 104, at 4. Similarly in British Cameroon: see UN Commission on the Status of Women, *supra* note 106, at 10.

²⁰⁸See UN Commission on the Status of Women, *supra* note 107, at 15.

matters' including 'claiming the right to select a spouse'.²⁰⁹ The administrators in Tanganyika accordingly described the future of gender and economic relations in the following way:

In some hitherto isolated areas, where the women in particular had perhaps seldom seen a white man before, they are now watching the Overseas Food Corporation's dozers at work. The isolation of some of the people . . . has been disturbed by Colonial Development Corporation's diamond drills working on a prospective coal field. The tendency of such changes . . . has been to increase the opportunities for improving the status of both men and women.²¹⁰

The economic transition thus brought marked changes in women's roles which were described by the administrators as emancipation. In relation to marriage, this form of emancipation would, in their understanding, manifest as women's desire to choose their spouse. The CNSGT summarized the logics of this argument as follows: 'in towns, the survival of the union of marriage is mainly dependent on the will of the husband and wife',²¹¹ this is because

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.²¹²

Free will thus became a way of discussing the economic transition influencing matrimony, rather than a social goal in itself. It became a moral foreground, which accompanied economic ideas about women's purpose and ambitions in the background. As an ethical scaffolding for marriage, it replaced the previously operating economic scaffolding and moved its own economic conditions in the background.

To summarize, the economic transition influenced women. Their work was rechanneled and their relations to their husbands, children, and extended families changed. These changes were unitedly described by the administrators as signs of independence, freedom, and intelligence. Inspired by these descriptions, the Commission on the Status of Women seemed to agree that social reorganization under way in the dependencies, through economic means and incremental legislation, was good for women and that traditional marriages, particularly by disregarding individual will, impeded the process. It presented its international convention against traditional marriages as a moral support for women in the dependencies, while the fuller picture was that the matrimonial transition was as much a 'material a[s] moral evolution' of marriage as once described by the TC.²¹³

Perhaps the CSW was not just in the train of the economically transformative projects of the UN agencies and metropolitan administrators in the business of decolonization. Perhaps it wittingly took advantage of the political support which this women-oriented Convention received thanks to these ongoing projects. The urgency with which marriages in the dependencies were discussed by the UN's General Assembly, and the Secretary-General, would suggest that the political climate was unusually supportive of the drafting efforts.²¹⁴ The TC, CNSGT, and the administrators saw the development of a modern family, through adjusting the roles of women, as one of the principal policy objectives of the UN decolonization program.²¹⁵ The economic convenience if not necessity of adjusting women's roles and the function of marriage elevated the

²⁰⁹See UN Commission on the Status of Women, *supra* note 106, at 10.

²¹⁰See UN Commission on the Status of Women, *supra* note 107, at 14.

²¹¹See General Assembly, *supra* note 87, at 24.

²¹²*Ibid.*, at 24.

²¹³See UN Trusteeship Council, *supra* note 1, at 38.

²¹⁴See Status of Women in Private law: Customs, Ancient Laws and Practices Affecting the Human Dignity of Women, Resolution 843 (XI); see Commission on the Status of Women, *supra* note 76.

²¹⁵See General Assembly, *supra* note 87, at 16.

discourse about the harms of traditional marriages from the narrow province of feminist lobbyism²¹⁶ into a prominent UN agenda.

The CSW then found itself with lacking information about the regulation's subject, but with a good opportunity of action. The Convention and its legal standards are thus a product of imaginaries of agents perceiving the local marriage, women, and their needs, primarily through the purview of the economic development plans which they carried out. The lessons about human rights of marriage and women's rights as tools of regulation which we can carry away from this study are discussed next.

5. Implications for human rights of marriage, general women's rights, and post-colonial international law

5.1 Implications for understanding human rights of marriage

In this section, I will, based on the analysis of the regulatory background of the Convention, draw two implications revealing the general regulatory and distributive functions of the human rights of marriage today. In the next section, I will elaborate how from this, distributive analysis can be integrated into evaluating and reconstructing regulatory models of general women's rights.

The first implication is that human rights of marriage, as they are formulated now, are only fundamentally relevant as a moral construct if marriage is constructed as non-economic. The non-economic construction of marriage corresponds to a form of economy based on individual wage, commodification of labor and competitive market with mobility (of labour and capital) as a competitive advantage. The ethical standards of marriage are thus ethical standards of individual marriage with individualized economic resources. While they were universalized without declaring or acknowledging this material background condition, the condition is a key to the ethical function being considered fundamental and emancipatory. The CNSGT and the TC thought that the development in the dependencies was an iteration of Western industrial revolution.²¹⁷ They, however, wanted to do it better, avoid the 'loneliness and soullessness of a life in the big towns' which they thought was experienced in 'Western Europe and America' due to disproportionate focus on technical development at the expense of living conditions.²¹⁸ They wanted to make sure that ethical standards, which gradually crystalized in the West to catch up with the economic changes, were implemented in the dependencies as those changes happened.

This perception of the situation was flawed in that the territories did not experience industrial revolution with the same (or qualitatively better) rise in living standard as experienced in the West. While lacking on the living standard, the subject territories did adopt cash and market exchange, and commodified labor as basic constituents of their economies and became exporters and traders in global markets. Perhaps, the 'expansion of capital's economic logic simply may not require the kind of deep cultural transformations'²¹⁹ presumed by the drafters. Marriage practices, such as bride price, polygamy, matrimonial decisions made by parents, early marriages, which were problematized by the drafters in the 1950s thus still exist in the states which replaced the dependencies. The enforcement of human rights of marriage on these marriages might not always be, due to their imperfect overlap with the operating economy, socially possible or desirable – emancipatory.

This brings me to the second implication which pertains to the capacity of human rights of marriage to function towards the distribution of power and privileges to women, or women's emancipation. The drafting data shows how the drafters lost the sense of the subject of their

²¹⁶See Keyse, *supra* note 54, at 140 et seq.

²¹⁷See General Assembly, *supra* note 87, at 20.

²¹⁸See General Assembly, *supra* note 123, at 20.

²¹⁹V. Chibber, *Postcolonial Theory and the Specter of Capital* (2013), at 45.

emancipatory regulation in the process. While officially tasked to better lives of women, the drafters did not center women as subjects of their regulation – they made marriages the subjects instead. All while being unsure of the form and amount of force and gender in/equality in the marriages. The motive became a general change of culture not a net expansion of women's autonomy.

Can a regulation which is aimed at expansion of women's autonomy in a certain constellation, but is not based on mapping forms of constraint and empowerment at said constellation, ever effectively expand women's autonomy? As apparent from the observations of the administrators, there is nothing inherently non-feminist about collective economic marriages. Similarly, there is nothing inherently feminist about individual romantic marriages.

We must first understand what exactly non-feminist about the existing model of marriage is, to make sure this element will be adjusted or reverted in the next model.²²⁰ Emancipatory function can only be ascribed to a marriage model through analysing the impacts of the model on bargaining positions of variously positioned women in it. This means, not just women to men, but also subsistence-seekers to subsistence-providers or cash-seekers to cash-providers, natives to colonialists, etc. When the Convention drafters narrowed their picture of harmful elements of marriage to forms of harm prevalent in kin marriages in the dependencies, human rights harm became harm in exclusively black and brown marriages interpreted through assumptions about economic deficiencies. Simultaneously, human rights of marriage became responses to only this specific form of harm while divorcing the problem of identified economic deficiencies from the statutory rights-based solutions.²²¹

The model of individual, free-willed, and romantic marriage supported by the current human rights of marriage, carries with it privileges that have come to be valued as rights in societies organized on individual economic self-reliance and market competition.²²² The model of large families, functioning as economic units and arranged by collective will, also carried social privileges. Some privileges got lost, while others were gained in the transformation of the economic function and ethical reconstruction of marriage. Without having done the empirical distributive comparison of the two marriage models, I can only illustrate this trade-off with examples devised from the theory of political economy. Nuclear marriage, which is small and mobile, can optimize its income by following economic opportunities geographically. In turn, it loses its economic independence, or dependence on land, and a choice in relation to wage work. This means less 'household drudgeries,' and more dependence on wages and the market, and on economic decisions made outside the family. Nuclear family thus also loses some control over its sustenance, specifically by losing access to sustenance alternatives. On the one hand, relations between family members are loosened and they generally possess less power over one another. On the other hand, relations between families and the industry and the market are tightened, with the latter extending more power over the former.

Systemic expectations of women with reflection to women's status differ in each marriage, and are derived, among others, from the socio-economic function and parameters of marriage. The release from 'household drudgeries' – a mix of sustenance and care work – to the domain of

²²⁰For a guide on distributive analysis of feminist legal reforms, see: J. Halley et al., *Governance Feminism: An Introduction* (2018), at 253 et seq.

²²¹On disintegration of causes and effects in devising human rights as solutions to social problems generally, see: S. Marks, 'Human Rights and Root Causes', (2011) 74 *The Modern Law Review* 57; D. Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (2005); D. Kennedy, 'The International Human Rights Movement: Part of the Problem?', (2001) 3 *European Human Rights Law Review* 245.

²²²Freedom of choice is one, although, free will as a legal principle is always constrained in social materialization, see, e.g., R. L. Hale, 'Coercion and Distribution in a Supposedly Non-Coercive State', (1923) 38 *Political Science Quarterly* 470. Regarding the free choice of marriage and spouse, see Engels, *supra* note 149.

the household cannot be said to have led to higher net gender equality.²²³ Even if this model morphed through complementary income of the wife earlier and her full-fledged income later, the initial association of women with housework made lasting imprint in practical and ideological obstacles to women's equality today. Gender relations arrived through the route of nuclear marriage, with individualization of income and privatization of care are configured fundamentally differently than they were in traditional marriage. As observed by the administrators, expectations of labour and care were not divided binarily according to gender.²²⁴ Women's standing thus did not hinge on their partaking in production²²⁵ or the home, as these two were not clearly separated.²²⁶ This is not to say that women in traditional marriages observed by the administrators had higher standing than women in Western individual marriages, but that their social standing was qualitatively different. The analysis thereof can look at the distribution of social benefits and strength of bargaining positions within marriage, family, and the larger socio-economic network and infer evaluations of in/equality from those. Such grounded theory approach would be the opposite approach to the evaluation than the one chosen by the treaty-makers (which was devised from the top – from theories and visions of economic development and modern women and societies).

Marriage forms (not) corresponding to the Convention's human rights standard should thus not be assumed to signalize female autonomy or subordination as we can see happening today in migration law, humanitarian law, private international law, and other fields as described in Section 3. Enforcing the value of free will, removed from the material conditions which accompany the nuclear economically independent marriage model, can only give women's autonomy a different form but cannot be assumed as a net enlargement of it, particularly in, but not limited to, situations in which the economic configuration in the background of the marriage is not driven by economic individualism. Next, I outline possible ways of extending the analysis of the distributive impact of women's rights beyond rights in marriage.

5.2 Implications for analyzing social functioning of women's rights

The Convention drafters' regulatory approach to stimulating female emancipation, with its convictions and insecurities, might serve as laboratory for analyzing it as a distinct regulatory model of women's rights and its possible shortcomings in instituting gender equality. In my analysis, the regulators wronged in their understanding and intended use of law's normative force on at least two accounts, if indeed, their main aspiration was to enlarge women's social autonomy. The first account pertains to their intended form of legal intervention in the society; the second to their perceived social content of emancipation.

During the drafting, the CSW drew on territorial reports which suggested that women's emancipation would not follow from a directly redistributive legal intervention. Such intervention would face resistance and ignorance. The informants suggested that emancipation would be more effectively instituted along the advancement of economic transformation and growth. They thus presumed that the most effective use of law for female emancipation is the following. Law should not be an instrument of direct redistribution of bargaining positions in the society, shifting rights and privileges among men and women, cash-seekers and cash-providers, and colonizers and natives. Law should instead be an instrument which facilitates women's participation in economic

²²³These negative effects on women by this form of marriage were elaborated in the theory of social reproduction, see, e.g., Federici, *supra* note 151; see Coontz, *supra* note 150; see Zaretsky, *supra* note 151. The subsequent dual bread winner replacing the domestication model neither achieved gender equality: see Fraser, *supra* note 206.

²²⁴For historical and theoretical studies on traditional marriages in Uganda and Nigeria, see Oyewumi, *supra* note 34, at 65; see Tamale, *supra* note 29, at 285 et seq.

²²⁵See Oyewumi, *supra* note 34, at 65.

²²⁶S. Tamale, 'Gender Trauma in Africa: Enhancing Women's Links to Resources', (2004) 48 *Journal of African Law* 50, at 52.

production (directly or indirectly). The shifting of bargaining positions in society would then arrive through a buffer of partaking in the economy.

The model presumed that if women joined the course of economic growth, in roles which facilitate production, they will eventually attain more social, political, and economic power, as well as legal recognition via political, civil, and other rights. The treaty-makers thus presumed that economic development would do for women the same, which, they perceived, it has done for white men and for white metropolitan capitalist societies with a powerful middle class. With the benefit of the hindsight, we can assess how this presumption was wrong; women did not experience economic participation as advancement in social status at the same speed as men, neither in the white metropolitan capitalist societies²²⁷ nor in the decolonizing states. The ways in which economic growth disappointed women on both ends bear some similarities but also differences.²²⁸

The regulatory model of women's rights and its reliance on economic participation and general economic growth in female emancipation can be further clarified by looking at the regulators' interpretation of the operating background rules.²²⁹ The drafters understood that symbolic recognition of women by rights depends in its materialization on economic forces. Women could not be made equal; they needed to gain status and autonomy through socially operating processes of gaining status and autonomy. This shows the drafters' awareness of operating background rules, according to which the economy, joined by cultural factors, distributes rights and entitlements and stratifies the society. The drafters dismissed the capacity of law to overturn the distributive and stratifying functions of the traditional, communal barter, economy but believed that dosing concurrently incentives of the imported economy could aid the overturn. In their belief in widespread positive social changes synchronous with economic growth, they did not think to interrogate or adjust the distributive and stratifying functions of the imported, capitalist, economy.

What we see here is quite the unambitious regulatory conception of law's capacity to interfere with the economy. The drafters thought that law cannot change the existing economy, but that law must direct its subjects around existing preferred economic background rules (of the new economy) and the unwanted background rules (of the old economy), to achieve its social objectives.

The drafters' distinction between the operating background rules which law can and cannot effectively alter makes this regulatory model one in which law does not aim to redistribute power and benefits to women directly. Instead of focusing on the subject whose autonomy is to be enlarged and considering modifications to all background conditions granting or denying said subject resources and privileges, the regulation identifies the economy as unmodifiable, and it places the subject more internally to its distributive mechanics. The aim is to grant (what is perceived as) access to these mechanics, not privileges and resources. This also means that this model's ambitions for emancipation end with the successful navigation of the capitalist distribution of resources and privileges.

²²⁷C. Rottenberg, *The Rise of Neoliberal Feminism* (2020).

²²⁸Women in some of the formerly colonized states are argued to suffer from, for example, increased informality of work: C. Bigler et al., 'Rwanda's Gendered Agricultural Transformation: A Mixed-Method Study on the Rural Labour Market, Wage Gap and Care Penalty', (2017) 64 *Women's Studies International Forum* 17; J. Charmes and R. Njonkam, 'Gender and the Labour Market in Cameroon', in A. Mbaye, S. Golub, and F. Gueye (eds.), *Formal and Informal Enterprises in Francophone Africa: Moving Toward a Vibrant Private Sector* (2020), 285; lacking infrastructure of transport: M. Gupta et al., 'Protocol: The Effects of Road Infrastructure, and Transport and Logistics Services Interventions on Women's Participation in Informal and Formal Labour Markets in Low- and Middle-income Countries: A Systematic Review', (2018) 14 *Campbell Systematic Reviews* 1; lacking access to technology in the agricultural sector: P. Abbott and D. Malunda, 'The Promise and the Reality: Women's Rights in Rwanda', (2016) 24 *African Journal of International and Comparative Law* 561, at 573 et seq.

²²⁹R. L. Hale, 'Bargaining, Duress, and Economic Liberty', (1943) 43 *Columbia Law Review* 603; D. Kennedy, 'The Stakes of Law, or Hale and Foucault', (1991) 15 *Legal Studies Forum* 327.

This brings me to the second shortcoming of the introduced regulatory model of women's rights: the drafters' understanding of the social meaning of emancipation. The imagined social manifestations of women's raised status were always articulated in relation to the economic transformation. The transformation changed women's social roles, and these were described by the drafters as emancipation, but these do not exhaust the possible meaning of emancipation.

For example, the transformation of care from large families to communitarian care required training and education in new skills. This might appear as emancipation. However, the content of education was limited to facilitating the assigned roles in community development, or in other words, social reproduction – whether within urban families or through the communized version. The drafters' visions of female 'emancipation' largely consisted of women's involvement in the economic growth, whether we see this involvement as merely smoothing the social effects of the economic transition; indirectly allowing the possibility of economic growth and accumulation of a surplus²³⁰; or as an actual, if imperfect, road to women's economic independence.²³¹ The drafters also imagined that these adjustments in women's social roles would lead to women's further education and public participation, franchise, and other forms of expansion of women's autonomy. However, these political rights and legal privileges depended on the success of the social elevation of women derived from the economy, as described above.

This is an extremely narrow vision of emancipation, which can only conceive of expansion of autonomy within the bounds of social organization geared toward economic growth. It disregards other forms of emancipation not evolving from economic autonomy,²³² which might take place at the expense of productivity and economic effectivity; or which unfold outside of the individual autonomy paradigm.²³³

The Convention marked, together with the UN Convention on the Nationality of Married Women (1958), the UN's initial success in women's rights treaty-making which ended with four conventions in total (the last being CEDAW in 1979). I suggest that this analysis of the regulatory model introduced at the pivotal era of international women's rights law can help us evaluate women's rights adopted internationally and nationally after the Convention, particularly with regard to a possible path-dependence of the regulatory model relying on (exaggerated) expectations from the economy.

5.3 Implications for post-colonial international law

Finally, the Convention's drafting records attest to the crucial role that marriage played in international legal regulation of the economic transformation of the post-colonies, and in decolonization. This enlarges how we comprehend international legal doctrines and practices facilitating decolonization and defining the subsequent world order.²³⁴ Joining prior studies on the political economy of decolonization which addressed, for example, self-determination,²³⁵ Third World participation²³⁶ and standards of development and economic transformation,²³⁷ this article

²³⁰N. Fraser, *Cannibal Capitalism: How Our System Is Devouring Democracy, Care, and the Planet – and What We Can Do About It* (2022), at 53 et seq.

²³¹N. Kabeer, *Renegotiating Patriarchy: Gender, Agency and the Bangladesh Paradox* (2024), at 13.

²³²N. Kabeer, 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment', (1999) 30 *Development and Change* 435, at 442 et seq.

²³³See Tamale, *supra* note 29, at 221.

²³⁴M. Bedjaoui, *Towards a New International Economic Order* (1979); B. S. Chimni, 'Capitalism, Imperialism, and International Law in the Twenty-First Century', (2012) 14 *Oregon Review of International Law* 17.

²³⁵See Pedersen, *supra* note 28; R. Knox, 'Haiti at the League of Nations: Racialisation, Accumulation and Representation', (2020) 21 *Melbourne Journal of International Law* 245; see Miéville, *supra* note 32; E. D. Loefflad, *Popular Will and International Law: The Expansion of Capitalism, the Question of Legitimate Authority, and the Universalisation of the Nation-State* (2019), Doctoral dissertation, University of Kent.

²³⁶See Özsu, *supra* note 28; see Eslava, Fakhri, and Nesiah, *supra* note 31.

²³⁷See Getachew, *supra* note 28; see Tzouvala, *supra* note 28.

opens the conversation about the role of marriage, family, and women's rights in the political economy of decolonization. The economic transformation of the post-colonies thus was not only facilitated by trade, monetary, financial, and other ostensibly economic international regulations. As this article shows, these rules would have no fertile ground for economic engineering of the post-colonies if they were not seconded by rules addressing marriage and the family. This is equally true in regard to the legal subjectivation of women in the process of decolonization and its centrality to the post-colonial economic transformation.

6. Conclusions

The UN Marriage Convention's declared objective was to alter marriage practices in the dependencies to deliver human rights and dignity to the local women. In the present article, I analyzed the Convention's archival *travaux préparatoires* and argued that its concurrent objective was to engineer the social organization of the dependencies to nurture their economic transformation and subsequent ability to trade in international markets, and to continue economic relations with the former metropolises. Based on this understanding of the Convention, I drew three main arguments.

As the first and central argument of the article, I questioned the possible causal relationship between human rights of marriage as they are conceived and the enlargement of women's autonomy. Based on excavating the connections between marriage forms and the economy, this argument critiques the formalism in evaluating gender-positive and negative forms of marriage, which finds wide applicability today in a range of legal fields. Second and deriving from this, I pointed out the emancipatory shortcomings of the regulatory model of women's rights introduced in the Convention based on the regulators' engagement with the background rules operating in the society, and their imaginations of social manifestations of emancipation. The intention behind both arguments is for them to turn into analytical lenses in evaluating constraining and enabling emancipatory functions of other women's and human rights. Third, I argued that international regulation of marriage was as important for the process of decolonization and the subsequent economic world ordering, as other political and economic regulations. Thereby, I positioned marriage, families and women's labour at the front of post-colonial studies of the political economy of international law.