

GROUND TO STAND ON: FURTHERING WOMEN'S RIGHTS THROUGH
INTERNATIONAL GUARANTEES FOR PROPERTY RIGHTS

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ABSTRACT

Current international human rights legislation devotes significant attention to the protection and realization of women's rights, but overlooks the importance of property rights as a foundation for all those that follow. Without specific property rights protections, women will continue to suffer severe impacts of such deprivation in every area of their lives, ranging from their health and safety to economic prosperity, reproductive rights, and political participation. Moreover, a lack of property rights for women starves entire communities of both overall well-being and productivity. International bodies must commit to legislation that provides for the common, narrow goal of protecting women's property rights; specific, detailed protections for those rights; and means of legal enforcement so that women's rights in general can progress at an appropriate pace around the globe. Various authors with the United Nations have highlighted the negative impacts of the current lack of protection in this arena, and others have called for more practicable legal protections. An international commitment embodying the aspects described in this paper could facilitate progress across the globe both regarding property and all the rights and liberties property lays ground for.

The meeting of property theories and international human rights perspectives renders a space for change yet to be explored. If the international community recognizes how important property rights are for women, and affirms that importance through legislation, it could catalyze significant changes in many other areas of women's rights and lead to crucial outcomes for women everywhere.

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I. INTRODUCTION

Women around the world have faced restrictions of their property rights since the beginning of recorded history.¹ There have been glimpses of legal freedom in this arena within some societies. In Ancient Egypt, for example, women could acquire, own, and dispose of property in their own name; and when others threatened those rights, they could bring civil suits.² However, under Jewish law, wives could not inherit directly from their husbands.³ As other civilizations progressed, restrictions grew more dire, where in Ancient Greece women could not inherit property at all or take a case to court without a male guardian.⁴

¹ See Suzanne McGee & Heidi Moore, *Women’s Rights and Their Money: a Timeline from Cleopatra to Lily Ledbetter*, THE GUARDIAN (Aug. 11, 2014, 4:15 PM), [https://www.theguardian.com/money/us-money - blog/2014/aug/11/women-rights-money-timeline-history](https://www.theguardian.com/money/us-money-blog/2014/aug/11/women-rights-money-timeline-history) [<https://perma.cc/Q6F5-6JGS>].

² *Id.*

³ *Id.*

⁴ *Id.*

English common law, the foundation of the United States' legal system, undermined women in the 1100's with the advent of coverture.⁵ The National Women's History Museum defines coverture as "a legal practice that ... held that no female person had a legal identity."⁶ The concept meant "the husband and wife were considered a single entity: the husband" and he had "almost exclusive power and responsibility" over all of her real and personal property.⁷ Some of the most basic forms of property inheritance, such as the fee tail, historically have excluded women. The fee tail and primogeniture similarly subjugated women in the property realm, where in general the fee tail could be inherited by any of the heirs of the body of the first taker, but where the estate often contained the limitation "by only the male heirs of the body."⁸ The United States began to unravel this restrictive system in 1839, when Mississippi allowed women to own property in their own names.⁹ In 1848, New York passed the Married Woman's Property Act, allowing women to contract on their own, receive rents, receive inheritances, file lawsuits, and avoid liability for their husbands' debts.¹⁰

Restrictions on women's property rights, at least in the United States, may superficially appear to be a vestige of the distant past.¹¹ However, women's rights to control their land and property continued to demand vindication in significant ways until as recently as 1981, with *Kirchberg v. Feenstra*.¹² In that case, an imprisoned husband executed a second mortgage on the home he owned with his wife who had alleged he molested their minor daughter.¹³ A Louisiana statute at that time gave the husband exclusive control over their community property, and his wife did not consent or even receive notification of the second mortgage.¹⁴ The Court found that Louisiana's statute designating the husband as "head and master" of jointly owned property with his wife, giving him the unilateral right to dispose of it, violated

⁵ *Id.*

⁶ Catherine Allgor, *Coverture: the Word You Probably Don't Know But Should*, NAT'L WOMEN'S HIST. MUSEUM (Sept. 4, 2012), <https://www.womenshistory.org/articles/coverture-word-you-probably-dont-know-should> [<https://perma.cc/B4QC-D8SG>].

⁷ Encyclopedia Britannica, *Coverture*, ENCYC. BRITANNICA (Apr. 26, 1999), <https://www.britannica.com/topic/coverture> [<https://perma.cc/JX2X-SQ3C>].

⁸ David Tollen, *The "Entail," Primogeniture, and Why Matthew Inherits Downton Abbey*, PINTS OF HIST. (Feb. 28, 2013), [https://pintsofhistory.com/2013/02/28/the-entail-primogeniture-and-why-matthew-or-his-son-inherits-downton-abbey/#:~:text=An%20entail%20\(a.k.a.%20%E2%80%9Cfee%20tail,all%20the%20family's%20real%20estate](https://pintsofhistory.com/2013/02/28/the-entail-primogeniture-and-why-matthew-or-his-son-inherits-downton-abbey/#:~:text=An%20entail%20(a.k.a.%20%E2%80%9Cfee%20tail,all%20the%20family's%20real%20estate) [<https://perma.cc/Q9LM-FM87>].

⁹ See McGee & Moore, *supra* note 1.

¹⁰ *Id.*

¹¹ *Kirchberg v. Feenstra*, 450 U.S. 455, 459 (1981).

¹² *Id.*

¹³ *Id.* at 456-57.

¹⁴ *Id.* at 457.

the Equal Protection Clause of the Constitution.¹⁵ This statute remained functional in the United States until just 41 years to date.

This historical narrative offers a glance at the injustices women have endured for too long, but importantly it establishes the context for a discussion regarding current legislation and regulation that continues to fail women around the world. Property rights have been regarded as foundational since the advent of their exploration. John Locke theorized that labor entitles one to property, illuminating the importance of property rights to recognize such labor.¹⁶ According to the labor theory, “everyone ‘has property in his [or in this case, her] own person’” and when someone performs labor with their body, they have “mixed’ their labor with the thing performed on.”¹⁷ Such mixture renders the thing their property, where the person has mixed something of their own with the property that others have not.¹⁸ The moral force and claim of right inherent in this theory lend to a universal extension of property rights to all people performing labor.

The more popular theory underlying property rights today is utilitarianism, which also suggests that women’s rights need guarantees. Responding to economic considerations, “[t]oday, there is widespread agreement that the law orders property in response to societal needs, rather than in obeisance to a moral command or the natural order of the universe.”¹⁹ The utilitarian lens focuses on efficiency through minimizing externalities and transaction costs.²⁰ As will be explored later, guaranteeing women property rights increases efficiency and economic prosperity for everyone.²¹

The final major theory rationalizing property rights is that of personhood. Friedrich Hegel proposed that “property provides the mechanism by which humans achieve self-actualization.”²² This comes to be because a person’s core derives from their will, and Hegel theorized people need material objects to exercise such will over.²³ Property rights, according to this theory, allow recognition for self-expression and human agency.²⁴ A person’s very identity, via connection to their ancestors, history, and their own self-worth, connects to their property rights according to the personhood theory. Women deserve

¹⁵ *Id.* at 456.

¹⁶ Lawrence C. Becker, *The Labor Theory of Property Acquisition*, 73 THE J. OF PHILOSOPHY 653 (1976).

¹⁷ *Id.* at 653-4.

¹⁸ *Id.*

¹⁹ Abraham Bell, *A Theory of Property*, 90 CORNELL L.REV. 531, 546-47 (2005).

²⁰ *Id.*

²¹ *Securing Women’s Land and Property Rights*, OPEN SOC’Y FOUND., 7 (Mar. 2014), <https://www.opensocietyfoundations.org/uploads/0e82bca7-6ede-4fbf-b2d9-5a0dac3ba071/Securing-Womens-Land-Property-Rights-20140308.pdf>.

²² *See* Bell, *supra* note 19, at 542.

²³ *Id.*

²⁴ *Id.*

the same rights to possess and exercise their will over property so that they may exercise their will and achieve the same self-actualization as others. Each of the three theories that have dominated property law for centuries offers a unique justification in support of protecting women's property rights to secure a stronger international community.

Both internationally and in regional jurisdictions across the globe, the law must afford women greater protections for their rights to own, acquire, and inherit land. The current calls for legislative action by the United Nations lack the specificity to secure women the rights they need to, at the least, survive and enjoy a quality of life universally demanded for all human beings. The current deprivations of women's property rights effects their economic prosperity, health and safety, reproductive rights, political freedom, and the prosperity of communities as a whole.²⁵

II. INTERNATIONAL LEGISLATION

Several pieces of international legislation currently exist to protect women's property rights, specifically those to land.²⁶ In 1979, the United Nations General Assembly conducted a Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), resulting in a treaty with provisions for countless injustices against women.²⁷ The treaty is brief and broad in its address of property concerns specifically, stating parties to the treaty "shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals."²⁸ It takes up marriage in Article 16 of the same Part, proclaiming the parties shall ensure, "[t]he same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."²⁹ The same rights that legislatures have historically threatened for women come to light in these provisions.

One hundred and eighty-nine countries have become State Parties to this treaty, meaning they have expressed their consent to be bound by the treaty under international law.³⁰ Two countries remain signatories to the treaty, notably the United States of America along with Palau, meaning they will

²⁵ *Infra* Section V.

²⁶ *See e.g.*, Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 at Article 14(g), Article 15(2), and Article 16(1)(h) (hereinafter "CEDAW").

²⁷ *Id.*

²⁸ *Id.* at Part. IV, Article 15.

²⁹ *Id.* at Part IV, Article 16.

³⁰ *Status of Ratification Interactive Dashboard*, OFFICE OF THE HIGH COMMISSION OF HUMAN RIGHTS <https://indicators.ohchr.org/> [<https://perma.cc/94F8-ZZRA>] (last visited Jan. 28, 2023).

examine the treaty domestically and consider its ratification.³¹ Only six countries have taken no action.³² Despite the large amount of ratification, many obstacles legally, economically, educationally, and socially remain in a variety of countries in contradiction to the equal rights espoused by the treaty.

The United Nations finds that the treaty as a tool has proven “invaluable” for women around the world.³³ Regarding property rights, it notes that the treaty has aided in securing inheritance rights in Tanzania and property rights in Costa Rica.³⁴ Its basic tenants demand that States that ratify the Convention are legally obliged to: “1) Eliminate all forms of discrimination against women in all areas of life; 2) Ensure women’s full development and advancement in order that they can exercise and enjoy their human rights and fundamental freedoms in the same way as men; and 3) Allow the CEDAW Committee to scrutinize their efforts to implement the treaty by reporting to the body at regular intervals.”³⁵ The aforementioned committee meets annua and monitors the implementation of the treaty around the world.³⁶ It is comprised of twenty-three independent experts.³⁷

CEDAW includes another important right this paper will address in a discussion of obstacles facing women; it guarantees rights to legal representation.³⁸ In its Article 2, the treaty discusses various legal protections to ensure women can exercise their rights.³⁹ In Article 15.2, the treaty states “States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.”⁴⁰

The United Nations deems this treaty “the most important human rights treaty for women,” but others exist as well. The International Covenant on Economic, Social and Cultural Rights entered into force before CEDAW, in

³¹ *Id.*

³² *Id.* (Tonga, Sudan, Somalia, Niue, Iran, and the Holy See have taken no action with regard to this treaty.)

³³ *Introduction to the Committee: Committee on the Elimination of Discrimination Against Women*, OFFICE OF THE HIGH COMMISSION OF HUMAN RIGHTS, <https://www.ohchr.org/en/treaty-bodies/cedaw/introduction-committee#:~:text=The%20Committee%20on%20the%20Elimination,human%20rights%20treaty%20for%20women> [https://perma.cc/WTC9-CTXZ] (last visited Mar. 9, 2023).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 26, at Article 2(c).

³⁹ *See id.*

⁴⁰ *Id.*

1976.⁴¹ This covenant guarantees equality between men and women and prohibits discrimination based on sex. However, the covenant demands only that countries do not *discriminate* based on property ownership, rather than ensuring rights to property in the first place. The Universal Declaration of Human Rights takes a more pointed stance in its Article 17, explicitly insisting “[e]veryone has the right to own property alone as well as in association with others” and “[n]o one shall be arbitrarily deprived of his property.”⁴² Of note, this is a “non-binding instrument,”⁴³ meaning the document may have significant “moral or political weight,” but does not create legal rights or obligations to joining States; however, as integrated into international customary law, the treaty can be regarded as mandatory.⁴⁴ These legal conditions shape the suggestions developed below.

International legislation exists to protect women, but like so much protective legislation, it is often not heeded to in practice. Specifically, regarding property rights, more clear and specific legislation may ensure better regional practices.⁴⁵ More than merely speculating, the Montreal Protocol on Substances that Deplete the Ozone Layer demonstrates this ability.⁴⁶ The UN adopted the protocol in 1987 to phase down consumption and production of Ozone Destroying Substances (ODS).⁴⁷ It is regarded as one of the most effective international treaties and has been universally ratified. It affords “all parties...specific responsibilities” and includes provisions that focus on very specific action steps from the calculation of control levels to reporting and technical assistance.⁴⁸ The treaty also names certain chemicals and groups of chemicals that have the most harmful impacts. This treaty has phased out 98% of Ozone Destroying Substances and, with “full and sustained implementation,” will allow full recovery of the ozone layer by 2050. Although just one case, this treaty demonstrates an instance where clear and specific international legislation has led to impactful results.

⁴¹ G.A. Res. 2200A (XXI), at 1, (Dec. 6, 1966).

⁴² G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

⁴³ Comm. on Human Rights, Rep. of the Independent Expert in Its Forty-Ninth Session, U.N. Doc. E/CN. 4/1994/19, at 38 (1993).

⁴⁴ *Guidance on Non-binding Documents*, U.S. DEP'T OF STATE (Jan. 20, 2017), <https://2009-2017.state.gov/s/l/treaty/guidance/index.htm>.

⁴⁵ *About Montreal Protocol*, UN ENVIRONMENT PROGRAMME, <https://www.unep.org/ozonaction/who-we-are/about-montreal-protocol> [<https://perma.cc/7MYW-BRLY>] (last visited Jan. 28, 2023).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

III. REGIONAL LEGISLATION

The countries where women continue to face high barriers to land and property rights mainly include those where an absence of legislation altogether exists. This includes those that lack legal guarantees to such rights, and those with gender-blind and unequal provisions.

Regional legislation often follows similar patterns to the international legislation on this topic in terms of its generality. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in its articles 7, 16, and 19 "address[es] women's land and property rights. State parties are required to ensure that in the event of separation, divorce, or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage; grant to women, whatever their marital status, access to adequate housing; promote women's access to and control over productive resources such as land; and guarantee their right to property."⁴⁹

The Charter of Fundamental Rights of the European Union offers: "[e]veryone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest," in its Article 17.⁵⁰

Article 25 of the Arab Charter of Human Rights guarantees "[t]he right to private ownership is guaranteed to every citizen. Under no circumstances shall a citizen be arbitrarily or illegally deprived of all or part of his property."⁵¹ In Latin America and the Caribbean, the Regional Conference on Women restated their commitment to international treaties on women, naming in particular the leaders' commitment "to ensure women's access to productive assets, including land and natural resources, and access to productive credit"⁵² and to "adopt an approach of gender, race, and ethnic equality and the corresponding measures in relation to economic, fiscal, and tax policy, agrarian reform, and access to ownership of land, housing, and

⁴⁹ Sandra Ka Hon Chu, et al., *Realizing Women's Rights to Land and Other Productive Resources*, UN WOMEN (2013), <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2013/11/OHCHR-UNWomen-land-rights-handbook-WEB%20pdf.pdf>.

⁵⁰ 2016 O.J. (C 202) 397.

⁵¹ UNHCR, *Arab Charter on Human Rights*, REFWORLD, art. 25 (Sept. 15, 1994), <https://www.refworld.org/docid/3ae6b38540.html>.

⁵² *Brasilia Consensus*, UNITED NATIONS, 5 (July 16, 2010), https://www.cepal.org/sites/default/files/events/files/consensobrasilia_ing.pdf.

other productive assets, in order to ensure the equitable distribution of wealth.”⁵³

IV. FRAMEWORK

A. *The International Center for Research on Women Presents Useful Categories*

To combat these issues, proposed frameworks for regional legislation for protecting women’s property rights should be adopted internationally. In particular, the work of the International Center for Research on Women (ICRW) offers a comprehensive framework that could begin necessary changes. The ICRW conducted “a global scan of legislation in 102 countries in Africa, Asia (including the Caucasus), the Pacific, Latin America, and the Caribbean” to develop its framework.⁵⁴ The ICRW claims “the national and international formal legal framework can override these other realms of law” where current structures fail women in terms of their property rights.⁵⁵ This paper will focus specifically on its analysis as it pertains to inheritance law, and land and tenure reforms, as it will propose that these reforms have the greatest impact while lending to the most straightforward legislation. Issues regarding marriage may be too complex and culturally distinct to define on an international level.

The framework which the ICRW offers consists of twelve different areas of focus.⁵⁶ The first two ingredients of a progressive legal framework are constitutional in nature.⁵⁷ First, the ICRW recommends that constitutions guarantee men and women equal protection under the law.⁵⁸ Next, it proposes recognition of women’s right to own and control separate property in State constitutions.⁵⁹ Such provisions are especially useful because they “ha[ve] the effect of embedding them in all other statutory law, and even in customary and religious law if so provided.”⁶⁰

The ICRW next identifies inheritance law as a key ingredient for its framework.⁶¹ This recommendation is simple: it only asks that sons and

⁵³ *Id.*

⁵⁴ ANNA KNOX ET AL., *Connecting Rights to Reality: A Progressive Framework of Core Legal Protections for Women’s Property Rights*, INT’L CNTR. FIR RSCH. ON WOMEN, 1 (2007), <https://www.icrw.org/wp-content/uploads/2016/10/Connecting-Rights-to-Reality-A-Progressive-Framework-of-Core-Legal-Protections-for-Womens-Property-Rights.pdf>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 3.

⁶¹ *Id.*

daughters inherit equally.⁶² However simple this guarantee may seem, it has significant repercussions. In rural communities where wills are not commonly written, intestate laws can provide important guarantees for women who may be restricted by other economic factors.⁶³ Another instance where such a guarantee could significantly impact women arises in some Asian and African countries that “codify or defer to Islamic Shariah law.”⁶⁴ Such laws might demand, for example, that daughters receive one third of their father’s estate, while sons receive two-thirds.⁶⁵ Shifts have begun in some Muslim countries already, but clear, international guidelines could support more specific reforms that would guarantee equality for women in inheritance law.

Land and tenure reforms constitute the next category in the ICRW framework. Specifically, such reforms should include 1) “recognition of women as direct beneficiaries and eligible for land, regardless of marital status,” and 2) “joint titling for spouses and consensual union partners.” Joint titling, or joint tenancy, by definition guarantees an equal interest in land to both parties, including the women who need this right.⁶⁶ A study conducted by the World Bank Group found that “property and inheritance law... had four reforms, the fewest of all eight indicators [of women’s economic freedom]” in the last decade.⁶⁷ Changes took place in Ecuador, Mali, Timor-Leste, and Togo where, for example, the law finally “granted women equal ownership rights to property and sons and daughters equal inheritance rights.”⁶⁸ The study found “the pace of reform in this indicator is very slow,” demonstrating that, although global reforms for women are a high priority, those taking place in the realm of property, and specifically as to managing assets, lag behind.⁶⁹

The ICRW identifies a final category in its framework: marital property law.⁷⁰ Seven subcategories exist within marital property law, ranging from guaranteeing consensual unions to defaulting to a community property regime.⁷¹ The ICRW notes, “to protect women’s property rights, married women must be guaranteed a say in how marital assets and income are

⁶² *Id.*

⁶³ *Id.* at 5.

⁶⁴ *Id.*

⁶⁵ *See id.* (describes this Algerian law).

⁶⁶ *Understanding Common Ways of Holding Title*, CALIFORNIA LAND TITLE ASSOC. (Apr. 2014), <https://www.clta.org/page/Consumer3/Understanding-Common-Way-of-Holding-Title.htm> [<https://perma.cc/PEJ6-BQXY>].

⁶⁷ Kristalina Georgieva, *Women, Business, and the Law 2019: A Decade of Reform*, WORLD BANK GROUP, 19 (2019), <https://thedocs.worldbank.org/en/doc/702301554216687135-0050022019/original/WBLDECADEOFREFORM2019WEB0401.pdf>.

⁶⁸ *Id.* at 19.

⁶⁹ *Id.*

⁷⁰ *See Knox, supra* note 54.

⁷¹ *Id.*

used.”⁷² It also includes various iterations of marriage, from polygamous to customary and religious ones.⁷³ This paper will not explore marriage reforms as their breadth and cultural specificity do not lend neatly to international reform.

B. For this Framework to Function, the Law Must Ensure Women’s Access to Legal Resources

Even when legal protections stand in place, without any means for enforcement, they will not serve their intended end.⁷⁴ Especially where cultural systems exist with a long history of accepting the status quo, the ability to enforce such legal rights is paramount. This applies to women, evidenced by a 2017 study by the World Justice Project.⁷⁵ The survey found that 53% of women surveyed suffered a legal incident within the last two years, but 87% of them “did not turn to an authority or third party to help resolve the problem.”⁷⁶ Of those with an ongoing legal problem, only 52% knew where to get legal advice, 49% were confident they could get a fair result, and only 40% “received all the expert help they wanted.”⁷⁷ This survey used a probability sample of 1,000 adults over the age of 18 in the largest cities for each country included, indicating that women in rural areas likely suffer even greater disparities.⁷⁸ The survey included 47 countries ranging from the United States to Europe, the Middle East, Asia, Latin America, and Africa.⁷⁹

Treaties have attempted to protect against these challenges in the past. Article 15 of Part IV of CEDAW demands that “States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.”⁸⁰ The treaty, though, does not outline specific protections that can meet this goal.

An exploration of the current obstacles to women’s access to legal resources can offer some direction. Economic, educational, social, and

⁷² *Id.* at 8.

⁷³ *Id.*

⁷⁴ See *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 63 (1992) (holding that a private right of action exists for Title IX violations).

⁷⁵ *Women’s Access to Justice: A Global Snapshot*, WORLD JUSTICE PROJECT (Mar. 18, 2019), <https://worldjusticeproject.org/news/womens-access-justice-global-snapshot> [<https://perma.cc/ZEH3-ZZR9>].

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See e.g., *supra* note 26, at Part IV, Art. 15.

psychological factors hinder women's legal access.⁸¹ Finally, their lack of representation in politics or political institutions prevents the vindication of their rights.⁸² A 2016 study titled *Barriers, Remedies and Good Practices for Women's Access to Justice in Five Eastern Partnership Countries* explores a case study that illustrates each of these points.⁸³

First, women's limited economic capacity and lack of economic protection prevents them from attaining legal resources. The five studies the partnership conducted identified a number of ways economic policies can exclude women from legal resources.⁸⁴ First, women suffer lower employment rates, lower employment in high-paying areas, and continue to suffer a gender wage gap, precluding them from accumulating the resources necessary to procure legal resources. Additionally, traditional roles and gender stereotypes may prevent women from working or controlling their financial assets. "Expensive legal services and lack of access to free legal aid" are also major impediments to women's access to the legal system.⁸⁵

Next, educational factors impact women's access to legal resources in multiple ways. Without a basic education, women stand very little chance of obtaining legal literacy. Like many other countries, "Georgian society considers giving education to children as equally important for both sexes, [but] in case of limited financial resources, 44% of the respondents would rather pay an education fee for boys, compared to 22%, who would prefer to pay for educating girls."⁸⁶ This preference, along with limited educational access around the world, where "[o]ver 600 million children and adolescents worldwide are unable to attain minimum proficiency levels in reading and mathematics, even though two-thirds of them are in school," means that many women will not have the basic skills necessary to attain legal aid.⁸⁷ What is more, basic education may still not assure women's awareness of their rights. This was true for female citizens of Azerbaijan, where "high literacy rate among women cannot be a key indicator of women's awareness about their

⁸¹ See generally *Barriers, Remedies, and Good Practices for Women's Access to Justice in Five Eastern European Countries*, THE COUNCIL OF EUROPE (2016), <https://rm.coe.int/16806b0f41> (emphasizing limited job options, the gender pay gap, and work-life balance challenges that hinder women's legal access and economic empowerment).

⁸² See generally *id.*

⁸³ See generally *id.*

⁸⁴ See *id.*

⁸⁵ Parvana Bayramova, *Azerbaijan in Barriers, Remedies, and Good Practices for Women's Access to Justice in Five Eastern European Countries* 35, 48 (THE COUNCIL OF EUROPE, 2016), <https://rm.coe.int/16806b0f41>.

⁸⁶ Parvana Bayramova, *Georgia in Barriers, Remedies, and Good Practices for Women's Access to Justice in Five Eastern European Countries* 65, 80 (THE COUNCIL OF EUROPE, 2016), <https://rm.coe.int/16806b0f41>.

⁸⁷ *Education*, UNICEF <https://www.unicef.org/education> [<https://perma.cc/DAY2-5QB2>] (last visited Jan. 28, 2023).

rights. Women's rights and gender equality are not included into the secondary school curriculum as mandatory subjects."⁸⁸

Additionally, social and psychological factors play a huge role in limiting women's access to legal aid. As the ICRW noted in a case study on South Africa, "the broader culture also must change to help interpret and enforce these laws."⁸⁹ Women who seek legal recourse for deprivation of their rights often face stigma. For example, in Azerbaijan, "50% of female respondents believed that women should endure violence from their husband rather than seek formal legal protection from domestic violence."⁹⁰

Aside from social pressure to abstain from seeking legal aid, women face time constraints and responsibilities that may preclude them from accessing legal resources. A 2022 UN Women study that addressed "Regression in Attitudes Towards Gender Roles" found "52% of men aged 16-19 and 54% of men aged 20-34, agree that 'women should work less and devote more time to caring for their family,'" across 20 countries including the United States.⁹¹ Where women are responsible for the non-stop job of providing care for their families and are expected, per longstanding gender roles, to make a home, they may not have the time or freedom to seek legal aid.

Finally, women may face restrictions on mobility, affirmed through gender stereotypes, that prevent them from accessing legal resources. For example, "[i]n India, restrictions on girls' liberty to move freely in public spaces contribute to school dropout and early marriage, and negatively affect girls' health and wellbeing, from adolescence into adulthood."⁹² In this study, researchers found this factor to be especially pervasive, where "[g]ender-related scripts were found more significant than either economic rationales or women's empowerment."⁹³ Gender norms that revere "modesty, a deferential demeanor, proficiency in household chores and above all sexual purity" restrict women's mobility in all public spaces, including those where they might access legal aid.⁹⁴

Beyond practical restrictions that prevent women from accessing legal aid, a lack of representation in politics and legal professionals' insufficient training about women's rights prevent women from access once they have

⁸⁸ Babutsa, *supra* note 86, at 52.

⁸⁹ Knox, *supra* note 54, at 9.

⁹⁰ See Babutsa, *supra* note 86, at 53.

⁹¹ *UN Women Reveals Concerning Regression in Attitudes Towards Gender Roles During Pandemic in New Study*, UN WOMEN (June 22, 2022), <https://www.unwomen.org/en/news-stories/press-release/2022/06/un-women-reveals-concerning-regression-in-attitudes-towards-gender-roles-during-pandemic-in-new-study> [<https://perma.cc/HH68-P4UH>].

⁹² Shweta Bankar, *et al.*, *Contesting Restrictive Mobility Norms Among Female Mentors Implementing a Sport Based Programme for Young Girls in a Mumbai Slum*, 18 BMC PUB. HEALTH 471, 471 (2018).

⁹³ *Id.* at 472.

⁹⁴ *Id.*

breached personal barriers.⁹⁵ “As of 19 September 2022, there are 28 countries where 30 women serve as Heads of State and/or Government. At the current rate, gender equality in the highest positions of power will not be reached for another 130 years.”⁹⁶ As of 2021, women make up 49.6% of the world’s population,⁹⁷ yet women only “represent 22.8 per cent of Cabinet members heading Ministries,” and “only 26.5 per cent of parliamentarians in single or lower houses are women.”⁹⁸ Although male politicians may support women, “[a]cross time, office, and political parties, legislative women, compared to their male counterparts, care more about, know more about, and do more about ‘women’s issues’ (and the more general interests from which they are derived).”⁹⁹ Aside from the legislature, judges and lawyers may also significantly impact women’s rights.¹⁰⁰ Judges especially could do so, where “equal representation of both sexes on the bench – as well as in administrative functions – can have an impact on the gender-responsiveness of courts.”¹⁰¹ And, those with legal authority need better education regarding women’s rights and enforcement thereof. “There needs to be a comprehensive approach to justice and the rule of law in the country. It should encompass the entire justice chain, including police, lawyers, prosecutors, judges and prison officers,” including “train[ing] on gender equality, including the concept of ‘gender.’”¹⁰²

Amidst all of these challenges, women continue to face significant barriers to accessing the legal aid necessary to vindicate their property rights.

V. INHERITANCE, LAND, AND TENURE DISPARITIES DISPROPORTIONATELY IMPACT WOMEN AROUND THE WORLD WHEN VIEWED HOLISTICALLY AS COMPARED TO OTHER

⁹⁵ *Facts and Figures: Women’s leadership and political participation*, UN WOMEN (Sept. 2022), <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures> [<https://perma.cc/SGX8-XP47>].

⁹⁶ *Id.*

⁹⁷ *Population, Female (% total of population)*, WORLD BANK (2022), <https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS> [<https://perma.cc/4SM2-KDUW>].

⁹⁸ UN WOMEN *supra* note 95.

⁹⁹ Beth Reingold & Kerry L. Haine, *Representing Women’s Interests and Intersections of Gender, Race, and Ethnicity in US State Legislatures*, in *Representation: The Case of Women 183-84* (Maria C. Escobar-Lemmon & Michelle M. Taylor-Robinson, 2014).

¹⁰⁰ *See generally* Gayane Makaryan, *Armenia*, in *BARRIERS, REMEDIES, AND GOOD PRACTICES FOR WOMEN’S ACCESS TO JUSTICE IN FIVE EASTERN EUROPEAN COUNTRIES 9* (THE COUNCIL OF EUROPE, 2016), <https://rm.coe.int/16806b0f41>.

¹⁰¹ *Id.* at 24.

¹⁰² *Id.* at 28-29.

GENDER DISPARITIES

A. *Issues*

The manifestations of gender discrimination as it pertains to inheritance, land, and tenure rights are startling. The next section will review some of the most glaring issues to date as well as data-supported impacts of these issues that women suffer around the world.

Until countries recognize women as direct beneficiaries and eligible for land, regardless of marital status, they will fail to afford them appropriate rights to land. Today, “thirty-nine countries allow sons to inherit a larger proportion of assets than daughters.”¹⁰³ Though these daughters may be eligible for land, they are not treated equally. In a different realm of inheritance, “thirty-six economies do not have the same inheritance rights for widows as they do for widowers.”¹⁰⁴

A UN case study illustrated the impact of such policies on a widow in Uganda.¹⁰⁵ After her husband died, Felitus Kures’ in-laws sold her farm without her knowledge, leaving her without any means to support herself or their children.¹⁰⁶ In discussing women’s land rights in Africa, the UN explains:

[I]and rights tend to be held by men or kinship groups controlled by men, and women have access mainly through a male relative, usually a father or husband. Even then, women are routinely obliged to hand over the proceeds of any farm sales to a male and have little say over how those earnings are used.¹⁰⁷

The same UN discussion cited a study that found more than a third of widows in Zambia lost access to family land when their husbands died.¹⁰⁸

Some scholars point out that lenses may be distorted by ineffective studies or a lack of data. In *Gender Inequalities in Ownership and Control of Land in Africa: Myths versus Reality*, authors argue “using claims that are not substantiated by data or credible sources is problematic” because, although “initially used to raise awareness of women’s lack of property ownership,” they may have “lacked statistical backing.”¹⁰⁹ The resulting paper focused on

¹⁰³ Meighan Stone, *A Place of Her Own*, COUNCIL ON FOREIGN RELS. (May 21, 2018), <https://www.cfr.org/blog/place-her-own-womens-right-land> [<https://perma.cc/53PC-XYDL>].

¹⁰⁴ *Id.*

¹⁰⁵ Mary Kimani, *Women Struggle to Secure Land Rights*, AFRICA RENEWAL (Apr. 2008), <https://www.un.org/africarenewal/magazine/april-2008/women-struggle-secure-land-rights>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Cheryl Doss et al., *Gender Inequalities in Ownership and Control of Land in Africa: Myth vs. Reality*, INT’L FOOD POL’Y RSCH. INST., 1 (Dec. 2013), .

Africa, though it discusses global statistics as well.¹¹⁰ In providing clearer data, the authors aim to avoid pitfalls like, “an inability to clearly articulate a policy response to the inequalities faced by women and men, both geographically and programmatically,” and “endanger[ing] future efforts” with the “shock value” of “stark figures.”¹¹¹ The authors specifically claim that “programs in countries in which women own only 10 percent of the land may be overlooked in favor of programs that claim lower, unsubstantiated figures.”¹¹² For the purposes of this exploration, this paper raises two important points. First, the concern raised by the authors supposes a country-by-country treatment of this issue, rather than an international reform of treaties that are specific enough to foster results. Second, it highlights the importance of citing the most accurate data possible.

These authors provide a data table compiled primarily from data derived from the Food and Agriculture Organization, Gender and Land Rights Database.¹¹³ The table compiled data from eight countries in Africa comparing numbers of women landholders in each country as compared to total landholders, providing a percentage.¹¹⁴ Neither grouping included jointly or communally held land.¹¹⁵ In the aggregate, women landholders in 2008 made up 23.8% of landholders across those countries.¹¹⁶ This number may be in some ways encouraging, but closer examination of the table shows individual countries, such as Mali with 3.1%, have seen much less success.¹¹⁷ The lack of a more recent study to demonstrate improvements speaks to the lack of attention afforded women’s property rights across the international legal field. Recent data asserted by the United Nations, though, continues to claim that between 10-20% of the world’s landholders are women.¹¹⁸ Such data is further complicated by record keeping issues, where “90% of all Africa’s land is still completely undocumented” as of 2017.¹¹⁹

¹¹⁰ *Id.*

¹¹¹ *Id.* at 2.

¹¹² *Id.*

¹¹³ *Id.* at 17.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 16-17.

¹¹⁶ *Id.* at 17.

¹¹⁷ *Id.*

¹¹⁸ *Commission on the Status of Women 2012: Facts and Findings*, UN WOMEN (2012), <https://www.unwomen.org/en/news/in-focus/commission-on-the-status-of-women-2012/facts-and-figures#:~:text=Less%20than%2020%20percent%20of%20the%20world's%20landholders%20are%20women> [<https://perma.cc/78QL-WWLS>].

¹¹⁹ Monique Villa, *Women Own Less Than 20% of the World’s Land. It’s Time to Give Them Equal Property Rights*, WORLD ECONOMIC FORUM (Jan. 11, 2017), <https://www.weforum.org/agenda/2017/01/women-own-less-than-20-of-the-worlds-land-its-time-to-give-them-equal-property-rights/> [<https://perma.cc/74H6-MRU8>].

Another challenge to data collection arises in the structure of census data itself. “[C]ensuses are deficient...since they implicitly assume that the owner of an owneroperated farm must be the household head or principal farmer of the household. Until recently few household surveys have probed further, inquiring as to the legal owner(s) of the land or how it was acquired.”¹²⁰ In some countries, there may be limited concepts of women’s property ownership, such as when, “[a]lthough deeds clearly identify an owner (or owners), in many places in Africa and throughout the world, individuals may have only partial ownership rights.”¹²¹ The reality of such limitations may result in a situation where “a woman may have the right to farm a parcel of land and bequeath it to her children, but not to sell it without permission from her kinship group.”¹²²

Another reason international legislation needs to offer more specificity arises in these areas of nuance. For example, “[i]n Latin America men are favored in all forms of land acquisition” including inheritance (both by children and marriage), community (in Mexico and Peru where peasant communities may own land collectively), expropriation and redistribution by the state, and the market (where women face more discrimination by creditors and have even more limited financial resources).¹²³ Without addressing each of these areas, and only offering general terms, international treaties fail to offer the guarantees women need in each of these distinct arenas. Especially in areas of the law such as inheritance law, where legal recourse is obvious, legislation needs to better protect women’s interests.

In light of the above discussed data concerns, the following data arrives from the Food and Agriculture Organization of the United Nations. The organization used various sources to compile gender and land statistics pertaining specifically to distributions of agricultural holders by sex in a variety of countries.¹²⁴ For the purposes of that data, an agricultural holder is “the civil or juridical person who makes the major decisions regarding resource use and exercises management control over the agricultural holding.”¹²⁵ The country with the lowest percent of female agricultural holders is Saudi Arabia, with just 0.8% of holders being female.¹²⁶ The World Bank recognizes that “Middle East and North Africa and South Asia are the regions with [the] most restrictive laws, particularly in inheritance. For

¹²⁰ Carmen Diana Deere & Magdalena Leon, *The Gender Asset Gap: Land in Latin America*, 31 *WORLD DEVELOPMENT* 925, 925 (2003).

¹²¹ Doss, *supra* note 109, at 1.

¹²² *Id.*

¹²³ Deere, *supra* note 120, at 929.

¹²⁴ *Gender and Land Statistics*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, https://www.fao.org/gender-landrights-database/data-map/statistics/en/?sta_id=982 [<https://perma.cc/4298-G8HG>] (last visited Feb. 2, 2023).

¹²⁵ *Id.*

¹²⁶ *Id.*

example, South Asia, Afghanistan, Bangladesh, Pakistan, Nepal and Maldives do not provide for equal inheritance rights for sons and daughters.”¹²⁷ The effects of such legislation, possibly paired with other factors, arise in the same data, where Bangladesh had the low value of 4.6% and Nepal had only 8.1% female agricultural holders.¹²⁸ Cape Verde had the highest percentage of female agricultural holders across the world, with an astounding 50.5% (almost 20% higher than any other nation).¹²⁹ According to this data set, the United States has only 13.7% female agricultural holders, raising the concern that disparities may be based more on tradition and farming culture rather than legal protections.¹³⁰ Cultural traditions evidently effected women’s ability to own land in the 1993 Independent Expert’s report on property rights around the world, where “field research in Cameroon, organized by UNESCO, revealed that women were excluded from land ownership even after the introduction of a Western-type civil code, due to the coexistence of traditional land tenure and modern institutions.”¹³¹

Son preference constitutes another way women’s rights to land become compromised. Preference in passing land to sons arises because “they have a higher wage-earning capacity (especially in agrarian economies), they continue the family line[,] and they usually take responsibility for care of parents in illness and old age.”¹³² Such reasoning circularly perpetuates sexism regarding property rights and leads to unwanted consequences according to the World Bank, including increases in crime, unmarried and childless men, and lower levels of human capital impacting the job market.¹³³

Montenegro provides a pertinent case study. It is one of the 10 countries around the world with the most imbalanced sex to birth ratio, indicating son preference not only in property rights but potentially sex-selective abortion and care for children as well.¹³⁴ Post-socialist Montenegro included legal incorporations of women’s rights to land, from declarations in its constitution that women will have equal opportunities to men and that no one will be

¹²⁷ Nayda L. Almodovar-Reteguis, *Where in the World do Women Still Face Legal Barriers to Own and Administer Assets?*, WORLD BANK BLOGS (June. 18, 2019), <https://blogs.worldbank.org/opendata/where-world-do-women-still-face-legal-barriers-own-and-administer-assets> [https://perma.cc/7N4A-E24J].

¹²⁸ *Gender and Land Statistics*, *supra* note 124.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Comm. on Human Rights, *supra* note 43.

¹³² THERESA HESKETH ET AL., *The Consequences of Son Preference and Sex-Selective Abortion in China and Other Asian Countries*, 183(12) CANADIAN MED. ASS’N JOURNAL 1374 (2011).

¹³³ S. Anukriti et al., *Son Preference: Why We Should Care About It*, WORLD BANK BLOGS (Oct. 19, 2021), <https://blogs.worldbank.org/developmenttalk/son-preference-why-we-should-care-about-it> [https://perma.cc/KY7H-EG44].

¹³⁴ Diana Kiscenko, *An Ethnographic Exploration of Son Preference and Inheritance Practices in Montenegro*, 69 COMPARATIVE SE. EUROPEAN STUDIES, 69 (2021).

deprived of their property rights, to Family Law guarantees that “property relationships... are based on the principles of equality, reciprocity, and solidarity.”¹³⁵ But in practice son preference in property descent continued, so that only 4% of women in Montenegro own a house and only 8% own land.¹³⁶ Motivations specifically to maintain land in the family name lead to direct consequences for women, where birth to sex ratios staggered in the 1990’s and one mother reported conducting four abortions in an attempt to bring about a male heir.¹³⁷ Women in Montenegro had varied concerns when contemplating the need to bear a son, but the passage of land in the family name was central.

China faced similar concerns especially in conjunction with emergent sex selection technology.¹³⁸ In response, China, India, and South Korea have all instituted laws forbidding fetal sex determination and sex-selective abortion.¹³⁹ These countries also exemplify the connection between property rights and the perceived value of women, where “women in rural China still marry into their husband’s family and cannot inherit family land, so daughters are often perceived as having ‘no value’ to parents.”¹⁴⁰

B. Impacts

CEDAW spends only a brief attention to women’s property rights, yet their impacts are significant. Identifying the impacts lends to both supporting a shift in legislation and providing for sufficient specificity in policy goals.

First, failure to protect women’s property rights leads to decreased food security, not only for women but for communities as a whole.¹⁴¹ Data-driven findings lead “FAO (the UN Food and Agriculture Organization) [to] estimate that if women had the same access to productive resources as men, they could increase yields on their farms by 20–30 percent. The gains in agricultural production could lift some 100–150 million people out of hunger.”¹⁴² The current scheme of property rights can also lead to “discrimination in access to food or resources for food.”¹⁴³

This connects to the larger aim of increasing women’s economic prosperity. Without protected property rights, women around the world have

¹³⁵ *Id.* at 78.

¹³⁶ *Id.*

¹³⁷ *Id.* at 70.

¹³⁸ Hesketh et al., *supra* note 132.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ OPEN SOCIETY FOUNDATIONS *supra* note 21, at 7-8.

¹⁴² *Id.* at 8.

¹⁴³ *Id.*

lesser possession of assets and more limited ability to invest.¹⁴⁴ They also do not have the resources men do to produce goods or labor that would allow them to rise out of poverty.

Access to employment in general would increase with improved property protections. A “study in Mumbai demonstrated that secure housing could increase women’s weekly earnings from home-based businesses by 35 percent.”¹⁴⁵

Women’s very health and safety are compromised when their societies fail to protect their property rights. A study in India found that “7% of women who owned land and housing experienced domestic abuse, compared to nearly 50% of women who did not.”¹⁴⁶ This may be due, in part, to property laws grounded in religion, where “Hindu law of property goes back historically to the classical Indian legal treaties. According to this law, for example, women did not inherit immovable property such as land (although they may receive it as a gift) and at best enjoyed a life interest in ancestral property under specific circumstances.”¹⁴⁷ The *Special Rapporteur on Violence against women, its causes and consequences*, also found socio-economic rights, specifically land and inheritance rights, are imperative to guarantee women’s protection from domestic violence.¹⁴⁸ In this report, the UN found lack of land ownership and control to be the “single most critical contributor to violations of the economic, social and cultural rights of women among the agrarian economies of most developing countries.”¹⁴⁹

Another major concern persists in the incidence of HIV/AIDS for women without property rights, where research suggests that women who have secure access to, ownership and control over land and other assets are better able to avoid relationships that threaten them with HIV.¹⁵⁰ Women make up 50% of people living with HIV around the world, and limited access to productive resources “leave many women trapped in relationships where they are

¹⁴⁴ Ana Revenga & Sudhir Shetty, *Empowering Women is Smart Economics*, 49 FIN. AND DEV. 40 (Mar. 2012).

¹⁴⁵ Bethany Martin-Breen, *In the Developing World, Property Rights for Women are About More Than Just Housing*, THE ROCKEFELLER FOUNDATION (Nov. 5, 2014), <https://www.rockefellerfoundation.org/blog/developing-world-property-rights-women/> [https://perma.cc/6GDH-XMFP].

¹⁴⁶ *Id.*

¹⁴⁷ Open Society Foundations, *supra* note 141.

¹⁴⁸ See Comm. on the Status of Women, Statement by Ms. Rashida Manjoo, Special Rapporteur on Violence against women, its causes and consequences at the Forty-Sixth Session, (Feb. 29, 2012), <https://www.un.org/womenwatch/daw/csw/csw56/statements/statement-spec-rap-manjoo.pdf>.

¹⁴⁹ *Id.*

¹⁵⁰ *Keeping the Promise: An Agenda for Women and AIDS*, UNAIDS (May 16, 2006), https://www.unaids.org/en/resources/documents/2006/20060516_jc1201-gcwa-keepingpromise_en.pdf.

vulnerable to HIV infection.”¹⁵¹ What is more, they may face difficulties in obtaining treatment due to stigma and fear of abandonment by family or their community.¹⁵²

The same freedom implied by the studied areas above could impact women’s freedom in political activity and reproductive rights. Without fear of violence at home, with the economic ability to exit compromising situations, and with better health and safety in general, women around the world would be in a much better position to exercise such freedoms.

Lack of land rights affects women in fundamental ways all around the world. Exploring such impacts shows how foundational land and property rights are to prosperity in every other aspect. The attention granted by CEDAW and other legislation like it to such rights is unfortunately limited, perhaps overlooking the broad sweep of their effect. By focusing on such basic rights, international bodies can better lay the groundwork for establishing other important human rights (like those to economic prosperity, safety, and health) outcomes.

VI. PROPOSED LEGISLATION

A. *Avoiding Pitfalls: Careful Specificity*

International legislation has addressed a wide array of areas with varying degrees of success.¹⁵³ As mentioned above, the Montreal Protocol has seen great success since its enactment.¹⁵⁴ That treaty pertained to environmental conditions and saw the success it did because it was 1) clear and specific in its goal; 2) provided modes for civil action; 3) targeted specific changes; and 4) contained actionable steps for success. With the narrow focus of property rights within the broader umbrella of women’s rights across the world, similar legislation might find success, even though it would focus on human rights. Other theories and explorations regarding international legislation address some areas of concern. Certain types of legislation have best addressed fundamental human rights in the past on an international scale.

1. Establishing a Common Goal

In *Reframing Human Rights During a Turbulent Era*¹⁵⁵, Grainne de Burca notes human rights treaties see increased success (based on three case

¹⁵¹ Open Society Foundations, *supra* note 141, at 3.

¹⁵² *Id.*

¹⁵³ See U.N. Secretary-General, *Multilateral Treaties Deposited with the Secretary General*, 27 May 2016, https://treaties.un.org/doc/source/events/2016/Treaties/list_english.pdf.

¹⁵⁴ UN Environment Programme, *supra* note 45.

¹⁵⁵ Grainne de Burca, *REFRAMING HUMAN RIGHTS IN A TURBULENT ERA* (Oxford University Press, 2021).

studies¹⁵⁶) when the “human rights norms themselves have generally been agreed by states in the treaties or other instruments they sign, whether for strategic or sincere reasons.”¹⁵⁷ Since legislation regarding women’s property rights already finds a strong basis in CEDAW, this common goal requisite should be supported, where the treaty explicitly protects property rights in Article 15.2.¹⁵⁸

2. Narrow, Outcome Focus

Beyond established norms, human rights goals can also be more successful when they have a specific and narrow focus. Despite its distinct area of focus, the Montreal Protocol provides an important model for goal creation because it has proven so effective (with significant improvements in the ozone layer since its enactment).¹⁵⁹ In its preamble, the Montreal Protocol makes a point to note the importance of its focus, identifying its parties as “mindful of [their] obligation... to take appropriate measures to protect human health and the environment” and “determined to protect the ozone layer,” along with other commitments.¹⁶⁰ A commitment to women’s property rights could similarly solidify the gravity of guaranteeing such rights, in accordance with the analysis in Section V.

The preamble to CEDAW recognizes “extensive discrimination against women continues to exist,” and emphasizes that such discrimination “violates the principles of equality of rights and respect for human dignity.”¹⁶¹ Rhetorically, and in function, the foundation for such goals stands very broad. By focusing on property rights with the recognized goal that protections of such rights should reduce food insecurity, domestic violence, improve health outcomes, economic prosperity, access to employment, political activity, and reproductive rights,¹⁶² nations will be better oriented toward the specific outcomes that should arise from the proper enactment of the proposed legislation. Targeting such specific outcomes, along with the specific changes discussed below, avoids a pitfall Professor Eric A. Posner argues befalls much of current human rights legislation.¹⁶³ Posner asserted that international

¹⁵⁶ *Id.* at 49.

¹⁵⁷ *Id.* at 25.

¹⁵⁸ CEDAW, *supra* note 26.

¹⁵⁹ UN Environment Programme, *supra* note 45.

¹⁶⁰ Montreal Protocol on Substances that Deplete the Ozone Layer, Preamble, Jan. 1, 1989, 1522 U.N.T.S. 3.

¹⁶¹ CEDAW, *supra* note 26.

¹⁶² *See supra* Section V.B.

¹⁶³ Becky Beaupre Gillespie, *Experts Debate Effectiveness of International Human Rights Law*, UNIVERSITY OF CHICAGO LAW SCHOOL (Oct. 30, 2014), <https://www.law.uchicago.edu/news/experts-debate-effectiveness-international-human-rights-law>.

human rights laws have failed before he organized a conference to debate their efficacy in 2014.¹⁶⁴ Specifically, he critiques human rights law as “often vague and purposely unenforceable” in his book, *The Twilight of Human Rights Law*.¹⁶⁵

When CEDAW recognizes specific outcomes, as the Montreal Protocol did, it initially avoids this pitfall when it states the parties are “concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs.”¹⁶⁶ However, CEDAW’s wide breadth of areas of concern prevents the proper attention necessary to revolutionize women’s property rights around the world, where (as of 2013) “of 161 countries surveyed, only 37 had specific laws granting equal rights for men and women to own, use and control land.”¹⁶⁷

3. Supporting Civil Action; Shifting Attitudes

The international legislation should account for processes of civil action, too. Burca argues her experimental account of human rights shows “the crucial importance of social mobilization and civil society activism, but argues that the interaction of domestic activism with international accountability institutions is particularly effective in promoting human rights.”¹⁶⁸ The book examines three case studies that it proposes best legislatively advance human rights.¹⁶⁹ De Burca recognizes scholarly criticism that has suggested human rights treaties are not effective.¹⁷⁰ However, “in circumstances where there is a certain degree of political liberalization and hence at least some space for domestic civil society and for social mobilization, the presence of international human rights treaties ratified by a state correlates with a measurable improvement in human rights outcomes.”¹⁷¹

CEDAW notes the importance of societal shifts in its preamble, when it finds the parties “[a]ware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ CEDAW, *supra* note 26.

¹⁶⁷ Press Release, Economic and Social Council, Commission on the Status of Women, Gender Equality in Land Rights, Ownership Vital to Realizing 2030 Agenda, Women’s Commission Hears amid Calls for Data Collection on Tenure Security, U.N. Press Release WOM/2143 (Mar. 16, 2018).

¹⁶⁸ *See de Burca, supra* note 155, at 9.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 15.

¹⁷¹ *Id.* at 16.

equality between men and women.”¹⁷² Calling for such shifts implicitly calls on members (and leaders) of nations to take action in changing their own attitudes and supporting those around them to do the same. The proposed legislation regarding women’s property rights should explicitly call for change regarding attitudes about gender and property. Beyond merely acknowledging cognitive and cultural issues, though, the legislation should provide avenues for legal recourse, as discussed in Section IV.B.

Therefore, this proposed legislation should include specific recognition that in order to reinforce their property rights, women need (1) equal protected opportunities to participate in national economies, (2) equal protected opportunities to obtain an education, (3) national commitments to educate society about gender equality (to account for promoting social/cultural shifts), and (4) a commitment to properly train legal professionals in women’s rights.¹⁷³ The legislation also should include the four identified categories of legal protection from the ICRW framework (constitutional guarantees, inheritance laws, land and tenure reforms, and marital property laws) so that nations provide a basis for (1) how they must shift their current system, and (2) a basis for legal recourse when such shifts are ineffective or lacking. If the legislation provides both for protections for women to participate in the legal system and guidance for what women should have, it creates a specific space for enforcement.

On an individual level, such legislation would also encourage behavior aligned with nations’ goals, as was the case in the Montreal Protocol. Courts, legislatures, and individuals will be better incentivized, and also more clear regarding how to deal with inheritance and land and tenure reforms, if those goals are clear and popularized by an international treaty.

4. Exemplary Successes

Targeted specific actions allowed for the success of the Montreal Protocol, where “it provided a set of practical, actionable tasks that were universally agreed on. The Protocol has successfully met its objectives thus far and continues to safeguard the ozone layer today.”¹⁷⁴ The Protocol provided explicit control measures to correct issues with the ozone, addressing the exact chemicals causing it harm.¹⁷⁵ In the summary of control measures, the United Nations notes the base level of contaminants, the freeze level, and dates for reductions. Such a format offers nations accountability for changes with a scientific method that could similarly serve human rights legislation.

¹⁷² CEDAW, *supra* note 26.

¹⁷³ *See supra* Section IV.B.

¹⁷⁴ Montreal Protocol on Substances that Deplete the Ozone Layer, *supra* note 160.

¹⁷⁵ *Id.*

The framework described in Section IV.A. offers an analogous set of specific goals to the chemicals identified in the Montreal Protocol.¹⁷⁶

Other instances of more subject specific legislation falling under the umbrella of commitments in CEDAW have demonstrated the success of such forms of legislation.¹⁷⁷ The case study of violence against women provides such an example. The UN recognizes that “CEDAW’s standard-setting has been strengthened by the many additional regional human rights instruments for the protection of women and girls against violence.”¹⁷⁸ It also acknowledges that several of those instruments “go[] beyond CEDAW’s standards,” as the property rights legislation here would.¹⁷⁹

Of note, an international monitoring system (The Elimination of Discrimination and Violence against Women Platform) exists to keep states accountable for implementation of these international and regional instruments. The same could exist pertaining to property rights if the international community better recognized their gravity. At present, there are “a number of special bodies, established in accordance with international conventions dealing with particular aspects of human rights, that devote full time and attention to monitoring the implementation of the provisions of” conventions focused on human rights.¹⁸⁰ The Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Discrimination against Women each monitor progress in this area “[w]ith respect to the right to own property,” but no committee yet exists that devotes its attention to property exclusively.¹⁸¹ These committees review periodic reports submitted by Governments, unfortunately impacted by “a major shortcoming of the reporting procedure, [] the limited number of responses received from Governments and the ‘rosy’ picture often painted in their reports.”¹⁸² With a more specific and intentional focus, international bodies might avoid some of these pitfalls.¹⁸³

¹⁷⁶ See Knox, *supra* note 54.

¹⁷⁷ See e.g., *Istanbul Convention*, Council of Europe (11 May 2011), <https://rm.coe.int/coe-istanbulconvention-infographic-en-r04-v01/1680a06d0d>.

¹⁷⁸ *Using the international and regional framework to stop all forms of violence against women and girls*, OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS (Mar. 8, 2022), <https://www.ohchr.org/en/statements/2022/03/using-international-and-regional-legal-framework-stop-all-forms-violence-against> [<https://perma.cc/7QYZ-GZEA>].

¹⁷⁹ *Id.*

¹⁸⁰ Comm. on Human Rights, *supra* note 43.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ See de Burca, *supra* note 155.

B. Independent Expert Backing

As protections for women's property rights remain broad and overly generalized, women around the world will continue to see slow progress. An independent expert report through the Commission of Human Rights explicitly found that "[w]hile States accept the fundamental principle of justice and equality for all, enunciated in the Charter of the United Nations and other international instruments, the reality is that women by and large do not yet enjoy equal status."¹⁸⁴ The International legislation that exists today mainly focuses on a person's ability to enjoy property they already own, or on limiting a State's ability to deprive someone of their property.¹⁸⁵ They lack guarantees for property ownership in the first place; the independent expert found it "clear that the Court (ECrHR [European Court of Human Rights]) does not see any right to acquire property, as arising under the Protocol or the Convention."¹⁸⁶ The Court takes the view that "the hope of recognition of a property right which it has been impossible to exercise effectively" and "conditional claim which lapses as a result of the non-fulfilment of the condition" lie outside the meaning of possessions of Article 1 of Protocol No.1" in the European Convention on Human Rights.¹⁸⁷ If such rights had explicit protection, especially those described in Section IV., States might do a better job of constructing Constitutions and local laws consistent with the rights meant to be protected.

After all, "States' laws, as inspired by their constitutions, are designed to provide for a detailed and harmonious regulation of [the property] right."¹⁸⁸ A number of States' Constitutions recognize the importance of property rights as a means to realize other human rights already, viewing them as "contributing to the realization of economic and social development as well as to the promotion of other human rights in those countries."¹⁸⁹ Countries can only guarantee these rights effectively in their Constitutions, though, with a domestic commitment to protecting women's property rights. As evidenced by the data above, this may be lacking. Where it is, international legislation that specifically calls for the necessary guarantees outlined creates space for progress.

A commitment to protect a specific category of human rights is not a new idea. As mentioned above, international bodies ventured into various conventions regarding violence against women with their protection in mind. A survey of a timeline of Human Rights Treaties reveals topics of focus, rather

¹⁸⁴ Comm. on Human Rights, *supra* note 43.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

than groups such as children or women or refugees.¹⁹⁰ This range includes the Genocide Convention, Discrimination in Employment Convention, Economic, Social, and Cultural Rights Convention, and Convention Against Torture.¹⁹¹ Though property rights may not raise as many eyebrows as those focused on violence, a lack of property rights protection and violence are intimately intertwined.¹⁹² The mid-period conventions, too (Employment and Economic), invite those concerned with human rights to consider why property rights might not be an independent focus of their own.¹⁹³ What is more, the Independent Expert for the Commission of Human Rights himself “strongly believes that these two main organs of the United Nations should give greater consideration to the right to own property in the context of ongoing human rights endeavours.”¹⁹⁴

C. Proposed Language/ Barriers and Solutions

Specific legislation regarding gender and the right to own property should be considered by international bodies. The legislation should recognize that gender is not binary and people along the entire spectrum of gender need protected property rights.¹⁹⁵ CEDAW has shown reluctance to do this, and it should be considered in this legislation so as to be more inclusive.¹⁹⁶

Compared to CEDAW’s previous efforts to protect property rights, this legislation needs to also be much more particular and detailed, as outlined in the proposed framework above.¹⁹⁷ It needs to address constitutional protections, inheritance laws, land and tenure reforms, and legal access.¹⁹⁸ As described below, it should also express a commitment to raising awareness and educating citizens about gender discrimination in the context of property rights.

The international legislation on its own will face challenges in realizing particularized change without local commitments. This should extend beyond constitutional recognition of women’s property rights; “it will be even more efficacious if the international treaty requires domestic laws and regulations

¹⁹⁰ See *Timeline of Major International Human Rights Treaties*, HUMAN RIGHTS COMMISSION, <https://www.humanrightscommission.ky/human-rights-treaties> [https://perma.cc/X663-5NVM] (last visited Feb. 2, 2023).

¹⁹¹ See *id.*

¹⁹² See *id.*

¹⁹³ See *id.*

¹⁹⁴ Comm. on Human Rights, *supra* note 43.

¹⁹⁵ See Dianne Otto, *Queering Gender [Identity] in International Law*, 33(4) NORDIC JOURNAL OF HUM. RTS 299 (Oct. 2015).

¹⁹⁶ *Id.*

¹⁹⁷ *Supra* Section IV.

¹⁹⁸ *Id.*

to be altered to comply with the obligations undertaken, and if a State party is required to provide a remedy for any of the rights violated.”¹⁹⁹

Regulatory laws have seen great success in the United States in reducing gender discrimination in the work force.²⁰⁰ Since enactment of Title VII of the Civil Rights Act in 1964, prohibiting discrimination in the workplace based on sex, race, disability, and age, “women have arguably benefitted the most.”²⁰¹ Over 46 years, the percentage of women making up the United States workforce rose from 29% to 47%.²⁰² Such a dramatic improvement must be due in part to the law’s means of enforcement; Title VII has “teeth.”²⁰³ The law established the Equal Employment Opportunity Commission which allowed a “succession of numerous lawsuits” to define the scope of the right.²⁰⁴ In parts of the world where women’s property rights remain the most vulnerable, guaranteeing the opportunity to seek a remedy will better motivate change.

The power of local action applies in the context of women’s rights in the United States. In response to the United States’ failure to ratify CEDAW (where President Carter signed the treaty, but Congress refused to make it law),²⁰⁵ a feminist organization called Cities for CEDAW arose in 2014.²⁰⁶ A recent study²⁰⁷ examined the efficacy of the organization, where it proclaimed a goal to catalyze a “local boomerang effect” that would propel the United States into ratifying CEDAW at the national level. However, the study found Cities for CEDAW “cannot necessarily overcome bureaucratic inertia or compel lasting change in the absence of political will in a country where basic women’s rights remain contested.”²⁰⁸

¹⁹⁹ Comm. on Human Rights, *supra* note 43.

²⁰⁰ Tamara Lytle, *Title VII Changed the Face of the American Workplace*, SOCIETY FOR HUMAN RESOURCE MANAGEMENT (May 21, 2014), <https://www.shrm.org/hr-today/news/hr-magazine/pages/title-vii-changed-the-face-of-the-american-workplace.aspx> [<https://perma.cc/SN2V-Z9DG>].

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Cities for CEDAW*, WOMEN’S INTERCULTURAL NETWORK (2019), <http://citiesforcedaw.org/about-cedaw/> (last visited Nov. 19, 2023).

²⁰⁶ Teena Halbig, *Cities for CEDAW: Promoting Women’s Equality in Your Community Guidelines and Toolkit*, UNITED NATIONS ASSOCIATION OF THE UNITED STATES OF AMERICA (2021), [https://unusa.org/wp-content/uploads/2021/06/UNAWomenCEDAWToolkit.pdf?emci=05d81494-9cbc-eb11-a7ad-501ac57b8fa7&emdi=4a713dd8-70c5-eb11-a7ad-501ac57b8fa7&ceid=2749364#:~:text=This%20initiative%20was%20launched%20in,\(CSW\)%20in%20New%20York](https://unusa.org/wp-content/uploads/2021/06/UNAWomenCEDAWToolkit.pdf?emci=05d81494-9cbc-eb11-a7ad-501ac57b8fa7&emdi=4a713dd8-70c5-eb11-a7ad-501ac57b8fa7&ceid=2749364#:~:text=This%20initiative%20was%20launched%20in,(CSW)%20in%20New%20York) (last visited Nov. 19, 2023).

²⁰⁷ Anne Sisson Runyan & Rebecca Sanders, *Prospects for Realizing International Women’s Rights Law Through Local Governance: the Case of Cities for CEDAW*, 22(3) HUM.RTS.REV. 303 (2021).

²⁰⁸ *Id.* at 305.

Still, Cities for CEDAW cites significant success in cities where CEDAW focused ordinances have been passed, beginning with San Francisco.²⁰⁹ The ordinances passed in San Francisco created a task force to monitor the city's progress in compliance with CEDAW and report findings to top government officials.²¹⁰ Parallel to the framework proposed here, the ordinances named specific target areas for improvement.²¹¹ It also allowed for analysis of city government and regular reporting of findings.²¹² Overall, the study found "the movement's primary success lies in more incremental reforms to local policy and practices" rather than shifting the national lens on CEDAW.²¹³

For the purposes of this endeavor, though, Cities for CEDAW demonstrates the success of local reform in ensuring women's rights. The group endeavors to "make the global local;"²¹⁴ to realize change, though, efforts must be made on all levels, from the local to the international. By specifically committing to local reforms, the proposed international legislation will have a better chance at making real change for women's property rights.

Perhaps the largest barriers to the implementation of such policies, regardless of legislation, are gender discrimination²¹⁵ and longstanding traditions that oppress women.²¹⁶ Especially in countries with less legal infrastructure or more informal procedures, property rights will be realized on the ground, rather than in courts of law.²¹⁷ The Council of Europe recognizes key components needed to realize a global shift in combating gender stereotyping and sexism: equal access to justice, balanced participation in decision-making, and education.²¹⁸ The first two of these necessary ingredients should arise and be protected in the legislation,²¹⁹ with specific and clear guidance for ratifiers. The final component, though, of education, will be inherently more state-directed.

²⁰⁹ *Id.* at 313.

²¹⁰ *Id.* at 311.

²¹¹ *Id.* at 312.

²¹² *Id.*

²¹³ *Id.* at 305.

²¹⁴ *Id.* at 303.

²¹⁵ *See supra* Part V.A.

²¹⁶ Comm. on Human Rights, *supra* note 43, at 7.

²¹⁷ *See* Ka Hon Chu, *supra* note 49.

²¹⁸ *Combating Gender Stereotypes and Sexism*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/genderequality/gender-stereotypes-and-sexism> [<https://perma.cc/93TH-3Z5Z>] (last visited Feb. 2, 2023).

²¹⁹ *See supra* Part VI.B.

Sexism within culture is “powerful and covert.”²²⁰ Psychologists recognize the unique way such an “invisible” force can resist change.²²¹ Those studying psychological and social forces identify the inattention and dissociation that allows sexism to persist, like so many other forms of discrimination around the world.²²² But, far from hopeless, they propose dialogue as a step in moving forward.²²³

Enactment of international legislation could spark some of this dialogue. Especially if the legislation were to conform with the suggestion above that it requires local changes, citizens and governments may expand their dialogue regarding gender discrimination and sexism to better recognize the importance of property rights.²²⁴ The EU suggests by inclusion of other mitigation strategies that that legal protection alone is not enough to shift current discriminatory paradigms.²²⁵ Even though it is illegal to discriminate against people for their age, disability, gender, religion, race, or sexual orientation, “only one-third of EU citizens are fully aware that they are legally protected.”²²⁶ Steps toward remedying this include supporting NGO’s and social partners, supporting equality policies on a national level, establishing anti-discrimination training, and pushing for diverse management in companies.²²⁷

By enacting legislation that focuses specifically on women’s property rights, more funds and efforts will be directed toward the issue. International laws can be efficacious in this way.²²⁸ CEDAW allocates resources toward ending discrimination against women.²²⁹ It created U.N. Women, providing financial and technical support to better implement policies and practices to end discrimination.²³⁰ The 1960 Convention Against Discrimination in Education similarly allocated resources to effect change in the realm of education.²³¹

²²⁰ Maria Nardone, *The Powerful and Covert Role of Culture in Gender Discrimination and Inequality*, 54(4) J. CONTEMP. PSYCHOANAL. 747 (May 10, 2019).

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ See *supra* Part VI.B.

²²⁵ *Raising Awareness on Discrimination*, EUROPEAN COMMISSION https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/tackling-discrimination/raising-awareness-discrimination_en [<https://perma.cc/3KKE-Y387>] (last visited Feb. 2, 2023).

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ Lucinda A. Low, *International Law: 100 Ways it Shapes Our Lives, 2018 Edition*, AM.SOC’Y INT’L L. (2018).

²²⁹ Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 26.

²³⁰ See Low, *supra* note 228.

²³¹ *Id.*

Raising awareness on the international governmental stage and at local levels could work to combat the deeply rooted cultural barriers toward progress. Societal shift demands individual awareness, though.²³² An increased understanding of how sexism works could reduce both overt and covert sexism that impacts women's ability to exercise their property rights.²³³ Research has also found that increased egalitarian roles fight these problematic cultural norms;²³⁴ increased property rights inherently allow more egalitarian roles by ensuring women greater freedom to participate in society and the economy.²³⁵ Although international legislation should not demand such particular local shifts in education or training at the work place, it can ask for broader commitments that support change. By including a provision committing ratifying countries to raising awareness about gender discrimination as it regards property, the legislation could better ensure an actual shift.

VII. CONCLUSION

The bottom line is that women's rights around the world have a long way to go, and without ground to stand on, progress will continue slowly. Property rights pervade every area of social justice, from the political, to health outcomes, to education, and economic freedom. Progress for women is progress for everyone; "gender equality and the empowerment of women and girls is not just a goal in itself, but a key to sustainable development, economic growth, and peace and security."²³⁶ Research in the context of the AIDS epidemic demonstrated that ensuring women stronger property rights could increase global productivity,²³⁷ decrease violence,²³⁸ and lead to greater sustainability across the world.²³⁹

And a mechanism exists to do so. International laws have demonstrated success when they focus on clear, specific goals, even within the complex field of human rights.²⁴⁰ Especially when they demand commitments for systemic change and integration at a local level, treaties like those explored

²³² Manuela Barreto & David Matthew Doyle, *Benevolent and Hostile Sexism in a Shifting Global Context*, 2 NATURE REVS.PSYCH. 98 (Dec. 2, 2022).

²³³ *Id.*

²³⁴ *Id.*

²³⁵ See *supra* Part V.B.

²³⁶ Press Release, Commission on the Status of Women, 'Standing Up for Women's Rights and Development Is Standing Up for the Global Good,' Deputy Secretary-General Tells Women's Commission at Session's Opening, U.N. Press Release WOM/1775 (Mar. 1, 2010).

²³⁷ Revenga & Shetty, *supra* note 144.

²³⁸ UNAIDS, *supra* note 150.

²³⁹ *Women's Rights*, POPULATION MATTERS, <https://populationmatters.org/womens-rights/> [<https://perma.cc/9Y6W-Y6T5>] (last visited Feb. 3, 2023).

²⁴⁰ OFF.HIGH COMM'R HUM.RTS., *supra* note 178.

above can be very powerful. Why not focus on property? The ability to own, possess, and control property can establish necessary independence for women. By laying foundational guarantees for property rights reflective of the particularized framework here, women across the globe could have ground to stand on.