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**THE GENDER AND DEVELOPMENT (GAD) PARADIGM IN
THE KENYAN CONTEXT: CONTESTING TRADITIONAL
DEVELOPMENT THEORIES**

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INTRODUCTION

The country's development agenda is now underpinned by the Gender and Development (GAD) theory, with gender mainstreaming as a tool for its realisation. Although this later theory has been adopted in Kenya, there is paucity of literature on how it is being implemented and the extent to which it is embracing inclusive development and the gaps the shortcomings that need to be addressed. This paper provides an analysis of the GAD paradigm by addressing the issue of gender inequality in the context of Kenya's Constitution 2010. Adopting economic feminist approach, the paper examines GAD in the Kenyan context and faults the dominant development models for side-lining women in development.

The Article gives a background to dominant economic theories, specifically focusing on the classical economic theory, neoclassical economics, Keynesian Economics and the Neoliberal economic theory. It notes their underlying abstract economic principles which were blind to women's participation and gender needs. The article explores the feminist critique of the dominant economic theories, leading to the birth of the women in development theory and the Gender and development theory as a reaction against women's participation in economic development. It explores GAD in Kenya and how the country is implementing it. It makes an observation of the challenges that are still faced within the GAD paradigm and what should be done by way of conclusion and recommendations.

BACKGROUND

Women in around the world have for centuries, been marginalised in economic development. All dominant economic paradigms since the end of the World War II cast a jaundiced eye to development, and did not consider gender inequality as an important variable in development.¹ The central character of mainstream economic analysis is the rational, autonomous agent who trades with others in order to maximise a utility or profit function. He is the very image of the completely autonomous man, independent of all natural needs and social influences, and the fundamental question of economic theory is the investigation of how he makes choices in a world of scarcity, given unlimited wants. Feminists consider the traditional economic approaches as mechanical, law-driven economy.² According to Ferber, prominent mainstream economists (Even macroeconomists now tend to base their work on theories of the individual, rational agent) have been casting a jaundiced eye on the narrow neoclassical approach.³

Until the adoption of the economic analysis of gender relations in the 1960s as a tool for measuring growth and development, early dominant development frameworks or conventional economic theories, women were invisible in early economic development theory.⁴ When development economics emerged as a sub-discipline of economics in the 1950s its main concern, like that of most economic theory, was (and largely remains) understanding how the economies of nation-states have grown and expanded.⁵

This means it has been concerned with looking at the sources and kinds of economic expansion measured via increases in Gross Domestic Product (GDP), the role of different inputs into production (capital, labour and land), the impact of growth in the various sectors of the economy (agriculture, manufacturing and service sectors) and, to a lesser extent, the role of the state. These concerns are at the heart of classical and neoclassical development economics.⁶ In contrast, most radical development economics starts from the other side of the coin – how to improve the welfare of the population and the planet. Economic feminist paradigm on the other hand calls for an approach that harks back to Adam Smith's production and distribution of all "the necessaries and conveniences of life," that emphasizes "provisioning" as well as choice.⁷

In Kenya, the introduction and experimentation of the dominant development theories and their neutral assumptions, coupled with patriarchy and culture to marginalise women from economic participation. Gender inequalities that are characteristic of Kenya's society had caused barriers to women entering or participating fully in markets, economic growth and private sector development.⁸ With the growing recognition internationally that gender equality is good for economic growth and essential for poverty reduction, Kenya adopted a new constitution in 2010 which seeks to address gender inequality and narrow the gap between men and women in economic development of the country.⁹

The following section examines some of the dominant or traditional economic theories.

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¹ CM Blackden and C Bhanu. 'Gender, Growth, and Poverty Reduction, Special Program of Assistance for Africa: 1998 Status Report on Poverty' (1999) World Bank Technical Paper No. 428, Washington D.C.

² JA Nelson 'Can We Talk? Feminist Economists in Dialogue with Social Theorists' (2006) 31:4 *Journal of Women in Culture and Society*

³ MA Ferber 'The Study of Economics: A Feminist Critique' 85:2 *The American Economic Review*

⁴ I Tinker and E Zuckerman *Women's Economic Roles and the Development Paradigm*

⁵ SN Engel 'Development economics: from classical to critical analysis' (2010) In RA Denmark (Eds.), *The International Studies Encyclopaedia* Volume II (874-892) West Sussex: Blackwell Publishing 1.

⁶ Engel (n 5 above)

⁷ See S Adam *The Theory of Moral Sentiments* (1759) Ed. DD Raphael and AL Macfie (1976) Oxford: Clarendon.

⁸ Adam (n 7 above)

⁹ Adam (n 7 above)

Classical economic theory

Adam Smith's *Wealth of Nations* (1776 / 2001) was the original English classical economic text and, as he says on the first page, what he was examining was why some nations became so productive while others did not, that is to say why they developed.¹⁰ Smith essentially sees economic development: "as a process embedded in, and limited by a particular physical, institutional, and social environment. More specifically, Smith conceives of economic development as the filling-up with people and physical capital ('stock') of a spatial container ('country') that encompasses a given endowment of natural resources and is shaped internally and bounded externally by laws and institutions".¹¹

Smith and the other classical economists hypothesized that it was the combination of private capital and property, the free operation – or the 'invisible hand' – of the market and human labour that was the source of economic growth.¹² They also posit that, with few exceptions, the most efficient one for allocating and distributing resources in society and furthermore, that it was a fair system.¹³

Neoclassical economics

Neoclassical economics originated in the early 1870s. When John Bates Clark identified the key postulates of neoclassical economics as: "private property, individual freedom, a limitation of government activity to those fields which Adam Smith had laid down as proper to it, the mobility of capital and labour according to the stimulus of varying remuneration, and, finally the desire of the individual to satisfy certain objective wants" he could equally have been summarising the key postulates of classical economics.¹⁴ However, neoclassical economics was clearly a break from classicism, starting with its more individualistic approach to society, through to its consequent emphasis on consumption, demand and utility (of conglomerations of individuals), which replaced classical economics' emphasis on production, supply and costs.¹⁵

In the immediate post World War II period, neoclassical development economics was strongly influenced by the Modernisation Theory – a historical and sociological theory which aimed to create an alternative to neo-Marxist accounts of development based on need to transform societies from 'simple,' tradition or underdeveloped to complex and modern.¹⁶

Keynesian Economics

In 1936, with the memory of the Great Depression still very fresh, John Maynard Keynes published his magnum opus, *The General Theory*, which provided both an extensive critique of neoclassical economics and developed an alternative framework for analysing liberal capitalist economic relations.¹⁷ The core point about Keynes' critique is that it finds that capitalist economies will not always tend to a balance between supply and demand, that is equilibrium or, at any rate, an equilibrium that produces full employment. This was due, in Keynes' analysis, to a lack of demand in the economy.¹⁸

¹⁰ Adam (n 7 above)

¹¹ G Arrighi 'Adam Smith in Beijing: Lineages of the Twenty-First Century' (2007) London, Verso. In SN Engel (eds) *Development economics: from classical to critical analysis* (2010)

¹² Engel (n 5 above) 3.

¹³ Engel (n 5 above) 3.

¹⁴ E Roll *A History of Economic Thought* (1973) Faber and Faber Ltd: London

¹⁵ Roll (n 14 above)

¹⁶ Engel (n 5 above) 13

¹⁷ JM Keynes 'The General Theory of Employment, Interest and Money' (1973) Macmillan: London for the Royal Economic Society; J Love 'The Orthodox Keynesian School' (1991) In D Mair & AG Miller (eds.) *A Modern Guide to Economic Thought: An Introduction to Comparative Schools of Thought in Economics*. Aldershot, Edward Elgar. In SN Engel (eds) *Development economics: from classical to critical analysis* (2010) 13

¹⁸ J Love 'The Orthodox Keynesian School' (1991) In D Mair & AG Miller (eds.) *A Modern Guide to Economic Thought: An Introduction to Comparative Schools of Thought in Economics*. Aldershot, Edward Elgar. In SN Engel (eds) *Development economics: from classical to critical analysis* (2010) 13

The key policy implication was that government can and should intervene in economies to boost demand and thus achieve full employment. So the Keynesian ‘revolution’ was actually a two headed animal — “...first, the theoretical revolution in economic analysis; and, second, the practical revolution in governmental policies”.¹⁹ At the end of World War II, Keynesianism was the dominant economic theory across the West and it penetrated the developing world too.

Neoliberal economic theory

Neoliberals take as given the neoclassical assumption that individuals are rational and maximize their utility or benefits and from this, the logic runs that the productive economies are ones in which individuals are allowed the greatest freedom to engage in the market and to receive the full rewards of this participation.²⁰ Milton Friedman, neoliberalism’s founding father along with Friedrich von Hayek, added to neoclassical economics a focus on demand, consumption, utility and a preference for monetary policy (in particular control of the money supply and interest rates) to address economic cycles over fiscal policy (Keynes’ preferred mechanism).²¹

In 1990, John Williamson labelled the development strategy associated with neoliberalism as the Washington Consensus because it was hammered out in Washington between the US Treasury, the World Bank and the IMF.²² The strategy did not appear overnight but within a few short years - by the early 1980s – a common set of policy prescriptions could be identified. The prescriptions involved two phases: first, policies to achieve short-term macroeconomic stabilisation which were carried out quickly via ‘big bang’ reforms; and second, policies aims at long-term structural change via a range of detailed microeconomic reforms.²³

Despite their confidence, nineteenth-century liberals soon encountered fierce critics, including feminists who introduced debates about women and to what extent they benefit or do not benefit from development. This led to the emergence of two distinctive models, Women in Development (WID) and Gender and Development (GAD). These models seek to explain how development affects women and why women and men are affected by development differently. These models are discussed in some detail below.

ECONOMIC FEMINIST CRITIQUE OF DOMINANT ECONOMIC THEORIES

When talking about feminist theories, we are referring to a diverse and multifaceted corpus that resists simplifications or uniform labels. As a theoretical approach, feminism has been permanently engendering new version of itself, reflected in multiple qualifications such as liberal, radical, cultural etc. that have been progressively attached to its name.²⁴ For the purposes of the Article, Economic Feminist theory is adopted.

Economic feminists emerged as lead critics of neoliberalism and other traditional economic theories that have omitted gender relations in their approach. Economic feminists argue that considerations such as labour market discrimination, household production, and caring work have traditionally been much marginalised within traditional mainstream economics.²⁵ They stress how gender roles, traditional divisions of labour, issues of language and communication, interpersonal relationships, and organizational problems are just as

¹⁹J Meade ‘The Keynesian Revolution’ (1975) In M Keynes (ed.) ‘Essays on John Maynard Keynes’ Cambridge University Press: Cambridge In SN Engel (eds) *Development economics: from classical to critical analysis* (2010) 13

²⁰ J Rapley ‘Understanding Development: Theory and Practice in the Third World’ (2002) Lynne Rienner Publishers Inc: Boulder, Colorado In SN Engel (eds) *Development economics: from classical to critical analysis* (2010) 13

²¹ Engel (n 19 above) 13

²² B Fine ‘Social Capital Versus Social Theory: Political Economy and Social Science at the Turn of the Millennium’ (2001) Routledge:London In SN Engel (eds) *Development economics: from classical to critical analysis* (2010) 13

²³ Engel (n 5 above) 16

²⁴ JP Bruno ‘Third World Critiques of Western Feminist Theory in Post-Development Era’ The University of Texas at Austin. Available at [http://western_feminy_theory%20\(1\).pdf](http://western_feminy_theory%20(1).pdf), 3.

²⁵ Nelson (n 2 above)

important in economic life as such traditionally considered factors as competitive market forces and profit orientation.²⁶

At a theoretical level, they point out that neoliberals – as well as the other traditional ideologies – overlook the fact that men and women participate in the economy in different ways. Feminists have made three salient charges against this liberal tradition as a philosophy that might be used to promote women's goals. They have charged, first, that it is too "individualistic": that its focus on the dignity and worth of the individual slights and unfairly subordinates the value to be attached to community and to collective social entities such as families, groups, and classes. They have charged, second, that its ideal of equality is too abstract and formal that it errs through lack of immersion in the concrete realities of power in different social situations. Finally, they have charged that liberalism errs through its focus on reason, unfairly slighting the role we should give to emotion and care in the moral and political life. All these alleged failings in liberalism are linked to with specific failings in the tradition's handling of women's issues.²⁷

In addition to gendered economic analyses, development feminism addresses the political issue of women's rights versus national and cultural traditions. At the United Nations Fourth World Conference on Women Forum held in Beijing in 1995, the popular slogan was "human rights are women's rights and women's rights are human rights."

Women in Development (WID)

By the 1970s it had become very clear that women were being left out of development. They were not benefiting significantly from it and in some instances their existing status and position in society was actually being made worse by development.²⁸ This is more so in respect of African women whom colonialism disempowered in many ways.²⁹ This saw the birth of Women in Development (WID) paradigm.

The term WID was initially used by the Washington-based network of female development professionals who criticised the existing development theories and practices on the basis of the new evidence provided by Boserup as well as their own experiences. They argued that modernisation was impacting women in an unfavourable manner, and demanded as a solution the better integration of women into the economic system.³⁰ This demand coincided with the rise of American liberal feminist movement.

Boserup points out that economic development is accompanied by two major movements: first, a gradual movement of the population from village to town, and, second, a gradual movement from agricultural to non-agricultural activities. Examining the implications of these two major movements on the sexual division of labour, Boserup concludes that the process of economic development affects women's position and situation within the sexual division of labour adversely and deteriorates their status.³¹ The significance of this study lies in the fact that it was the first to analyze the Third World women's role in economic development. Eva Rathgeber describes Boserup's work as remarkable for being the first to use gender as a variable in analysis of data and evidence which had long been available to social scientists and development planners.³² In the

²⁶ Nelson (n 2 above)

²⁷ Nelson (n 2 above)

²⁸ L Muyoyeta 'Women, Gender and Development' Women for Change, Zambia 80:20 and Educating and Acting for a Better World, Ireland 2.

²⁹ FC Magbaily *Introduction to the History of African Civilization: Pre-colonial Africa* (1999) Maryland: University Press of America. Whilst it is true that patriarchy did exist in Africa, women were not entirely removed from political positions. According to FC. Magbaily, although men dominated politics in Africa in the pre-colonial period there were quite a few women who played an active role in politics and government.

³⁰ Magbaily (n 29 above) 12

³¹ Boserup (1970: 174). In K Tal (eds) *A Conceptual Framework for Gender and Development Studies: From Welfare to Empowerment* (2005) erstellt am Institut für Institutionelle & Heterodoxe Ökonomie, Wirtschaftsuniversität Wien von Kaan TAŞLI 9352482, Wien 12

³² E Rathgeber (1990: 490)

context of the 1970s, Boserup's work can be considered critical since it challenges the earlier welfare approach.³³

The liberal feminist movement put a strong emphasis on "strategies and action programs aimed at minimising the disadvantages of women in the productive sector".³⁴ Razavi and Miller similarly point out that one important theme of the liberal feminists in the United States was equal employment opportunities for women.³⁵ Therefore, in turning to developing countries, "WID gave primacy to women's productive role and their integration into the economy as means of improving their status".³⁶

The term WID became popular particularly throughout the United Nations Decade for Women (1976-1985) which started following the First World Conference on Women held in Mexico City in 1975. In this period, the WID approach became institutionalized in the United Nations system as well as in governments, development agencies and NGOs.³⁷ The popularity of the concept encouraged new discussions and research on the matter which in turn influenced the development practice. The main achievement of the WID approach was that women became visible in development theory and practice.³⁸

As regards the criticisms of the WID approach, Rathgeber makes the following points³⁹: First, the WID concept was "solidly grounded in traditional modernization theory" which reflected the mainstream thinking on development from the 1950s to the 1970s. Modernisation theory considered development simply identical with industrialisation. Second, the WID concept was "non-confrontational" and put its main emphasis on the question "how women could be better 'integrated' into on-going development initiatives", and this without challenging the existing structures in which the sources of women's subordination and oppression are embedded. Finally, the WID concept "focused exclusively on the productive aspects of women's work", and ignored the reproductive aspects of their lives.⁴⁰

Similarly, Young points out to the following weaknesses in the WID approach: First, the WID approach ignored the 'gender' aspects of the matter, and assumed that "women can become sole agents of their destiny, without any corresponding change in or reaction from men." Second, the WID approach neglected ideological aspects of the matter.⁴¹ Young argues that "[t]he unequal balance of responsibilities, work and value was seen perfectly 'natural' if not God given, and therefore unchangeable." Third, the strong and exclusive emphasis on poverty had the effect of masking the structures of gender inequality.⁴²

Participants at a 1978 workshop on "The Continuing Subordination of Women in the Development Process" at the Institute of Development Studies at Sussex University underscored challenges to WID coming from Marxist feminists. Noting that the growing literature on development was largely descriptive, the participants found that this approach, by treating women as a distinct and isolated category, ignored gender relationships

³³ K Tal A Conceptual Framework for Gender and Development Studies: From Welfare to Empowerment (2005) erstellt am Institut für Institutionelle & Heterodoxe Ökonomie, Wirtschaftsuniversität Wien von Kaan TAŞLI 9352482, Wien 12

³⁴ Rathgeber (n 32 above) 490

³⁵ Razavi, Shahrashoub and C Miller From WID to GAD: Conceptual Shifts in the Women and Development Discourse (1995) UN Fourth World Conference on Women, Occasional Paper No. 1. United Nations Research Institute for Social Development (UNRISD) 6

³⁶ K Tal (n. 33 above) p 12

³⁷ Andersen (1992: 167-172) gives a brief account of the "political recognition" of the WID by governments and international organizations

³⁸ K Tal (n 33 above) 13

³⁹ NE Igandu 'Women's Empowerment and the Anthropology of Participatory Development' (1999) in VU James and JS Etim (eds.) *The Feminization of Development Process in Africa: Current and Future Perspectives* Westport, Connecticut and London: Praeger 47-48

⁴⁰ James and Etim (n 39 above) 13

⁴¹ K Young *Planning Development with Women: Making a World of Difference* (1993) 130 Macmillan: London

⁴² K Tal (n 33 above) 25

within the household and labour force. In this ground-breaking volume, the authors analyse “the persistent forms of gender inequality in the processes of development”⁴³

GENDER AND DEVELOPMENT PARADIM (GAD)

The WID is followed by the gender and development approach (GAD). One important quality of this approach is that it shifts the focus from 'women' to 'gender' in that it looks at women and men in their relative positions within the socio-economic, political, and cultural structures. This new gender focus put an emphasis on power relations between women and men, and their relative positions in socio-economic and political structures. The GAD concept urged an institutional change within socio-economic and political structures in order to eliminate the gender inequalities, and to strengthen the position of women. In order to realise this structural change, the GAD concept introduced the instrument of gender.⁴⁴ It urges for a gender-sensitive transformation of these structures through top-down interventions. The main instrument of the GAD is the 'gender-mainstreaming' which demands giving a higher priority to women's concerns in the design and implementation of socio-economic and political interventions.⁴⁵

One of the early definitions of the term 'gender' dates back to 1978 and was put forward by Whitehead⁴⁶ :

No study of women and development can start from the viewpoint that the problem is women, but rather men and women, and more specifically the relations between them. The relations between men and women are socially constituted and not derived from biology. Therefore the term gender relations should distinguish such social relations between men and women from those characteristics, which can be derived from biological differences. In this connection sex is the province of biology, i.e. fixed and unchangeable qualities, while gender is the province of social science, i.e. qualities which are shaped through the history of social relations and interactions.⁴⁷

The GAD concept sees women as agents of change rather than as passive recipients of development efforts. And, unlike the WID concept, it puts a strong emphasis on women's emancipation. The WID concept assumes that any betterment in women's economic situation will automatically lead to advancement in other spheres of their lives. The GAD concept, however, is not that optimistic about this assumption. Women's weakness in socio-economic and political structures as well as their limited bargaining power puts them in a very disadvantageous position.⁴⁸

The GAD concept suggests that the state can play an important role with respect to women's emancipation. Young points out to the role the state can assume in its dual role as major employer and allocator of social capital. This, however, would be contradictory, especially for third world women who are underrepresented in decision-making apparatus.⁴⁹

A very important strategy and instrument of the GAD concept is 'gender mainstreaming' (also referred to as 'gender awareness'), which aims at increasing gender awareness in all areas and all levels of public life. The following definition of gender mainstreaming was developed by the Economic and Social Council of the United Nations:

Mainstreaming as a gender perspective is the process of assessing the implications for men and women of any planned action, including legislation, policies and programmes, in all areas and levels. It is a strategy for making

⁴³ I Tinker and E Zuckerman *Women's Economic Roles and the Development Paradigm* 20

⁴⁴ K Tal (n 33 above) 25

⁴⁵ The IDS conference held in 1978 on the topic: "The Continuing Subordination of Women in the Development Process". See A Whitehead (1979:10-13).

⁴⁶ K Tal (n 33 above) 25

⁴⁷ L Østergaard 'Gender (1992) in L Østergaard (ed.) *Gender and Development: A Practical Guide* 1-10,6 Routledge: London and New York

⁴⁸ K Tal (n 33 above) 24

⁴⁹ Young (n 41 above) 53.

women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.⁵⁰

The above mentioned definition of gender mainstreaming raises the question of institutionalising the gender perspective, in other words the question of "gender sensitive institutional change".⁵¹ The relevant institutions include, above all, the family as the primary institution, and then all respective institutions of the state, the market, and the community. This is however an extremely demanding task which makes the GAD concept difficult to implement.⁵²

One problem with the gender mainstreaming is that it is rather difficult to implement. The goal of integrating women in all spheres and at all levels of the society is not an easy task. Gender mainstreaming implies a major institutional change in all areas and levels of the public sphere. Such an institutional change which is supposed to come from above through 'top-down strategies' requires in the first place political will of the state. However, women's inferior position in the hierarchy of all social structures (including the state), male dominance and resistance, and a generally hostile environment constitute serious obstacles for gender mainstreaming. Arnfred argues that fighting for gender mainstreaming involves the risk of diverting the attention of the feminist struggle from the overall impossibility of the task.⁵³

CONCEPTUAL PERSPECTIVES IN GENDER AND DEVELOPMENT

There are important concepts in the gender and development discourse which are discussed below.

Culture

Culture denotes the distinctive patterns of ideas, beliefs, and norms which characterise the way of life and relations of a society or group within a society. Culturally determined gender ideologies define rights and responsibilities and what is 'appropriate' behaviour for women and men. They also influence access to and control over resources, and participation in decision-making.⁵⁴ These gender ideologies often reinforce male power and the idea of women's inferiority. Culture is sometimes interpreted narrowly as 'custom' or 'tradition', and assumed to be natural and unchangeable. Despite these assumptions, culture is fluid and enduring. Dominant cultures reinforce the position of those with economic, political and social power, and therefore tend to reinforce male power. Globalisation also has implications for the diffusion of culture, particularly of western culture.⁵⁵

Gender

Gender is a primary marker of social and economic stratification and, as a result, of exclusion. Regardless of one's socioeconomic class, there are systematic gender differences in material well-being, although the degree of inequality varies across countries and over time. As a result, gender inequality is a characteristic of most societies, with males on average better positioned in social, economic, and political hierarchies. For more than two decades, the goal of reducing gender inequality has held a prominent place in international organizations

⁵⁰ Economic and Social Council of the United Nations (1997) quoted in UN 1999: ix

⁵¹ AM Goetz and SR Gupta 'Who Takes the Credit? Gender, Power, and Control Over Loan Use in Rural Credit Programs in Bangladesh' (1996) 2 in World Development 24 (1), 45-63.

⁵² K Tal (n 33 above) 27

⁵³ K Tal (n 33 above) 27

⁵⁴ H Reeves and S Baden 'Gender and Development: Concepts and Definitions'. Prepared for the Department for International Development (DFID) for its gender mainstreaming intranet resource, February 2000. <http://www.bridge.ids.ac.uk/sites/bridge.ids.ac.uk/files/reports/re55.pdf>

⁵⁵ Reeves and Baden (n 54 above)

and in national strategy statements.⁵⁶ Although the term “gender” has been widely used over the past few decades, much of the interest of gender relations is due to feminism. Feminists of all descriptions have characterized gender relations as relations of inequality and subordination. Against this unequal gender relations, feminist academics have been trying to make sure that gendered analysis are incorporated into all areas and into all approaches to development theory.⁵⁷

Millennium Development Goal 3 reflects the global attention to the issue of gender inequality and has been providing the impetus for governments to eliminate gender inequality in primary and secondary education by 2005 and in all levels by 2015.⁵⁸ Gender inequality is not perpetuated exclusively through differential access to and control over material resources. Gender norms and stereotypes reinforce gendered identities and constrain the behaviour of women and men in ways that lead to inequality.⁵⁹

Gender discrimination

The systematic, unfavourable treatment of individuals on the basis of their gender, which denies them rights, opportunities or resources. Across the world, women are treated unequally and less value is placed on their lives because of their gender.⁶⁰ Women’s differential access to power and control of resources is central to this discrimination in all institutional spheres, i.e. the household, community, market, and state. Within the household, women and girls can face discrimination in the sharing out of household resources including food, sometimes leading to higher malnutrition and mortality indicators for women. (See Intra-household Resource Distribution).⁶¹

At its most extreme, gender discrimination can lead to son preference, expressed in sex selective abortion or female feticide. In the labour market, unequal pay, occupational exclusion or segregation into low skill and low paid work limit women’s earnings in comparison to those of men of similar education levels. Women’s lack of representation and voice in decision making bodies in the community and the state perpetuates discrimination, in terms of access to public services, such as schooling and health care, or discriminatory laws.⁶²

The law is assumed to be gender-neutral when in fact it may perpetuate gender discrimination, being a product of a culture with oppressive gender ideologies. Even where constitutional or national legal provisions uphold gender equality principles, religious or other customary laws that privilege men may take precedence in practice. However, the law, when reformed with women’s input, can be a potent tool for challenging discrimination, if combined with other strategies, including capacity-building to overcome barriers to claiming rights.⁶³

Gender equality

Gender equality denotes women having the same opportunities in life as men, including the ability to participate in the public sphere. This expresses a liberal feminist idea that removing discrimination in opportunities for women allows them to achieve equal status to men.⁶⁴ In effect, progress in women’s status is measured against a male norm. Equal opportunities policies and legislation tackle the problem through measures to increase women’s participation in public life.

⁵⁶ C Riphenburg Gender relations and development in a weak state: the rebuilding of Afghanistan (2003) 162 *Central Asian Survey*, 22 (2/3), 187-207

⁵⁷ D Sarker *Development theory and gendered approach to development: some theoretical issues in the Third World’s perspective* 1

⁵⁸ Riphenburg (n 56 above) 162

⁵⁹ Riphenburg (n 56 above) 162

⁶⁰ Riphenburg (n 56 above) 162

⁶¹ Riphenburg (n 56 above) 162

⁶² Riphenburg (n 56 above) 162

⁶³ Riphenburg (n 56 above) 162

⁶⁴ Riphenburg (n 56 above) 162

Although most studies predominantly focus on women we recognise that men in less developed countries also suffer from behaviours and policies that foster hierarchical gender relations. Gender hierarchy is manifested in family relationships, inheritance laws and customs; valuations of women's work and its general invisibility; and the power to make decisions in society, the family, work place, religious and other cultural institutions. It is apparent in the relative opportunities available to women and girls for development, education, health and nutrition and in the pattern of violence between the sexes. Such hierarchy is generally accepted by both genders, and it is not normally questioned within its cultural context.⁶⁵

Achieving gender equality means to create a situation in which the social and cultural environment recognizes both men and women as being of equal value. Since the 1970s, the world has witnessed many national and international attempts to eliminate gender inequalities in all the domains of women's daily lives. The UN decade for women, which took place between 1976 and 1985, initiated the integration of women in the development agenda. In 1979, the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and set up an agenda for national action to end discrimination against women. Gender equality has been acknowledged as an important development goal, as shown by its inclusion as the 3rd Millennium Development Goal in 2000.⁶⁶

Gender equality is central to development for several reasons. Damiano K. Manda and Samuel Mwakubo summarise the importance of addressing the role of women in economic development:

Gender equality matters as an instrument for development as it enhances economic efficiency and improves other development outcomes in three ways. First, it removes barriers that prevent women from having the same access as men to education, economic opportunities and productive inputs resulting in broad productivity gains. Second, it improves women's absolute and relative status which feeds in many other development outcomes, including those for their children. Third, it levels the playing field with women and men having equal chances to become socially and politically active, making decisions and shaping policies.⁶⁷

Further, the freedoms women enjoy in a society are an integral part of the development process. According to Sen, development should be understood as a process of expanding freedoms people enjoy in addition to the growth of gross national product or rise in individual incomes.⁶⁸ These freedoms enable individuals to make independent choices during their life course – for example, whom they should marry, electing a political leader, getting an education and a job, which they prefer, or living in the country they want.⁶⁹

Thus, in a society where half the population faces discrimination, it is not possible to speak of a developed society. Second, achievement of democratic and economic development is dependent on the freedoms of individuals, in particular of women.⁷⁰ As mentioned, eliminating the conditions that produce inequalities between men and women is relevant not only for intrinsic reasons but can also be “smart economics” in the long run.⁷¹

Gender equity

Gender equity denotes the equivalence in life outcomes for women and men, recognising their different needs and interests, and requiring a redistribution of power and resources. The goal of gender equity, sometimes called substantive equality, moves beyond equality of opportunity by requiring transformative change. It

⁶⁵ A Mikkola 'Development and Gender Equality: Consequences, Causes, Challenges and Cures' Discussion Paper No. 159 April 2007 ISSN 1795-0562 HECER Discussion Paper No.p 6.

⁶⁶ Mikkola (n 65 above)

⁶⁷ Mikkola (n 65 above)

⁶⁸ A Sen *Development as freedom* (1999) Oxford University Press: Oxford

⁶⁹ B Kok 'Global maternal health: from women's survival to respectful care' <https://obgyn.onlinelibrary.wiley.com/doi/full/10.1111/1471-0528.13156>

⁷⁰ A Sen (n 68 above) 4

⁷¹ World Bank 2011

recognises that women and men have different needs, preferences, and interests and that equality of outcomes may necessitate different treatment of men and women.⁷² An equity approach implies that all development policies and interventions need to be scrutinised for their impact on gender relations. It necessitates a rethinking of policies and programmes to take account of men's and women's different realities and interests. So, for example, it implies rethinking existing legislation on employment, as well as development programmes, to take account of women's reproductive work and their concentration in unprotected, casual work in informal and home based enterprises.⁷³

Patriarchy

Some feminists use the concept of patriarchy to explain the systematic subordination of women by both overarching and localised structures. These structures work to the benefit of men by constraining women's life choices and chances. There are many differing interpretations of patriarchy. However, the roots of patriarchy are often located in women's reproductive role and sexual violence, interwoven with processes of capitalist exploitation.⁷⁴

The main 'sites' of patriarchal oppression have been identified as housework, paid work, the state, culture, sexuality, and violence. Behaviours that discriminate against women because of their gender are seen as patriarchal 'practices'; for example occupational segregation, exclusion, and unequal pay. The concept of patriarchy has been drawn into gender and development theorising; in order to challenge not only unequal gender relations but also unequal capitalist relations, sometimes seen as underpinning patriarchy.⁷⁵

Within patriarchy, social structures and the individuals within them create and reproduce inequalities linked to sex, race, class, religion, ethnicity, and other "differences."⁷⁶ Although oppression of women is not the point of patriarchy, a social system that is male-identified, male-controlled, male entered will inevitably value masculinity and masculine traits over femininity and feminine traits. In such a system, men (and women) will be encouraged to regard women as beings suited to fulfil male needs.⁷⁷

Feminists who explain gender inequality in terms of patriarchy often reject male-biased societal structures and practices and propose greater female autonomy or even separatism as a strategy. In some views, women are seen as having room for manoeuvre within a constraining patriarchal system by negotiating a 'patriarchal bargain' with men. This entails a trade-off between women's autonomy, and men's responsibility for their wives and children.⁷⁸ A rigid and universal concept of patriarchy denies women space for resistance and strategies for change. A more nuanced analysis is needed that takes into account difference and complexity, and the agency of women.⁷⁹

Social justice

Fairness and equity as a right for all in the outcomes of development, through processes of social transformation The idea of 'social justice' as the outcome of struggles against social inequalities implies change towards a more 'fair' society. This requires strategies to redress past injustices, violation of rights or persistent economic and social inequalities. Social movements such as the women's, worker's, and human rights movements, have fought against perceived social injustices from a variety of entry points. Such

⁷² World Bank 2011

⁷³ World Bank 2011

⁷⁴ World Bank 2011

⁷⁵ World Bank 2011

⁷⁶ HR Kerbo *Social Stratification and Inequality: Class Conflict in Historical and Comparative Perspective* (1996;3d ed)10-14 WCB/McGraw Hill

⁷⁷ M Becker 'Patriarchy and Inequality: Towards a Substantive Feminism' (1999) *The University of Chicago Legal Forum*

⁷⁸ Becker (n 77 above)

⁷⁹ Becker (n 77 above)

movements have also challenged the ideologies and prejudices that legitimate social inequalities, in order to mobilise people for change.⁸⁰

The existing definitions of "economic rights", including the right to an adequate standard of living, tend to replicate Western priorities and assumptions within both human rights and international economics. For example, the division between political and civil rights versus economic, social and cultural rights reproduces the separation between public/private, State/market, the State and market/domestic sphere and male/female. This division has had an effect on how economic rights and social justice are discussed, and how women are seen as fitting within this model.⁸¹

Instead, the "private" law of trade practices, commerce, contract and property, including real estate and intellectual property govern these economic rights. Social justice is seen as an issue within the rights discourse, but its relationship to and conflict with economic rights in their actual operation is hidden. For women, this disguise means that issues of employment, standards of living and economic well-being are not seen as directly related to major economic issues of, for example, corporate mergers and the creation of cartels or monopolies; the operation of free trade zones; the mobility of capital across national boundaries; or the fluctuations of currency and commodity prices. By creating a dichotomy between public and private, we not only artificially separate these areas of human activity, but we also presuppose how these spheres are defined and discussed. Because women are seen as inhabiting only the most private and hidden recesses of the private sector, women's voices are doubly and trebly silenced.

Strategies towards social justice have often overlooked the specific gender injustice or discrimination, as well as wider social injustices, faced by women. The women's movement has been working to ensure that efforts to address injustice, through human rights measures, or economic and social policies, are informed by an understanding of gender inequalities.⁸²

GENDER AND DEVELOPMENT IN KENYA

In Kenya, GAD is the driving force behind the development agenda. The Kenyan government has institutionalised its commitment to addressing gender inequalities by creating a National Commission on Gender and Development and a Ministry of Gender, Sports, Culture and Social Services in 2004, as well as initiating Gender Desks in various ministries. Kenya is today also one of only two African countries with an active local chapter of the Organization of Women in International Trade (OWIT) in the private sector. Indeed, encouragement from OWIT promoted the creation of the Gender Unit in the Ministry of Trade and Industry.⁸³

Development theory has changed from a focus on needs to support for rights. Basic rights are those rights which flow from people's basic needs such as water, food and housing. The 2010 Constitutional Framework On 27th August 2010, Kenya promulgated a new constitutional dispensation which guarantees everyone their basic human needs. Through the efforts of Kenyan feminists, the constitution, among other things brought in recognition women's rights as human rights.⁸⁴ The Constitution 2010 recognises dignity, economic, social and cultural rights including the right to education, housing and right to health including reproductive health care. Kenya has committed to gender equality through international law and is party to many key international conventions on the status of women including the important Convention for the Elimination of All Forms of

⁸⁰ Becker (n 77 above)

⁸¹ S Wright 'Women and the Global Economic Order: A Feminist Perspective' 10:2 p 873-. 874 *AM. U. J. INT'L L. & POL'Y VOL*

⁸² Wright (n 81 above)

⁸³ Gender and Economic Growth in Kenya: Unleashing the Power of Women (2007) The International Bank for Reconstruction and Development / The World Bank Overview xxii

⁸⁴ W Lichuma 'Gender Equality Challenges in Kenya and Africa' Paper presented during the event: Gender Equality: International Challenges and Strategies for Success organized by Australian federal police at the Australian high commission in London offices on 28th June 2017

Discrimination against Women (CEDAW)) and gone as far as putting measures in place to ensure that CEDAW and other international conventions are domesticated and harmonised with national laws.⁸⁵

The principle of equality and non-discrimination is established as a core value of leadership. The national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human dignity.

Kenya's Institutional Framework to promote gender equality and freedom from Discrimination

In order to facilitate implementation of gender equality and freedom from discrimination, the government has put in place the State Department of Gender under the Ministry of public service, Youth and Gender with the mandate to: i. Institutionalize gender mainstreaming in ministries, departments and agencies as well as in the devolved county level and private sector; ii. Promote the development and review of gender policies and legislations iii. Promote research, collection and analysis, storage and dissemination of sex disaggregated data to inform programming iv. Coordinate programmes for reduction of SGBV v. Oversee the implementation of socio-economic empowerment for the benefit of women and youth vi. Set standards to build the capacity of National and County level actors, monitor compliance and report on progress.

Empowering women

The Kenyan poverty levels are very high with women bearing the brunt. Women are unable to access credit that requires collateral which majority do not have. Feminization of poverty is experienced across all regions. Women with disability and women with HIV and AIDs suffer the consequences. The Government of Kenya has put in place various programmes to empower women to overcome poverty, access leadership, begin businesses and live decently. The programmes include gender mainstreaming, affirmative action and gender responsive budgeting.

There are special catalytic funds dedicated to women, persons with disabilities and the youth for development programmes. These are: - a) Women Enterprise Fund (WEF) that provides micro-finance credit and other financial support for women; b) The Youth Enterprise Development Fund (YEDF) that provides credit for young men and women to enable them establish businesses to earn a living aimed at reducing unemployment; c) The Uwezo fund (Kiswahili word for Ability) that empowers women, persons with disabilities and youth that give seed money to the special interest groups as start-up capital for businesses. It gives up to 5000 USD to one group. d) The Social Protection Fund is given as credit and cash transfers to older members of society and people with severe disability.

The target is for senior citizens beyond age 65 years. e) 30% procurement reservation affirmative action to Special Interest Groups (SIG) that include women, persons with disabilities and the youth. The SIG access 30 % value of all all-public procurement tenders f) There is the national Government Affirmative Action Fund, established in 2015 administered through female members of parliament to run programs targeting socio-empowerment of women, youth, persons with disabilities, children and elderly persons.

Women and access to land

Kenya's legal framework is undergoing significant changes following promulgation of a new Constitution in 2010.⁸⁶ This is particularly true in the areas of land and property rights and women's rights, which require the development of new legal frameworks that conform with the provisions of the Constitution. Relevant provisions include: a Bill of Rights recognising the right of women to equal treatment under the law and prohibiting gender-based discrimination;⁸⁷ devolution of services, including land-related services to the county

⁸⁵ See Article 2 (5) and (6) of the Constitution of Kenya

⁸⁶ R Gaafar The Constitution of Kenya 2010, Women's Land and Property Rights in Kenya. <https://www.landesa.org/wp-content/uploads/LandWise-Guide-Womens-land-and-property-rights-in-Kenya.pdf>

⁸⁷ Constitution of Kenya Article 27

level;⁸⁸ recognition of traditional dispute resolution mechanisms;⁸⁹ a prohibition on the use of traditional dispute resolution mechanisms in a way that contravenes the Bill of Rights;⁹⁰ and, requiring legislative implementation of the principle that women make up at least one-third of the members of elected or appointed political bodies.⁹¹

A set of land laws giving effect to the Constitution, the Land Act, Land Registration Act, and National Land Commission Act, were approved in 2012. A new set of marriage laws, the Matrimonial Property Act, 2013, and the Marriage Act, 2014, recently replaced the older framework, which included seven different marriage laws but did not include explicit provisions governing customary marriages. Other legislative reforms, including Community Land and Evictions and Resettlement laws have been passed.⁹²

The Constitution also stipulates that any treaty or convention ratified by Kenya shall form part of the laws of Kenya.⁹³ This is important because the Government of Kenya has ratified a number of international conventions and treaties with non-discrimination provisions, including women's rights conventions that support women's equal rights to land, such as: the Universal Declaration on Human Rights (1948); the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979); and the African Charter on Human and People's Rights (1981).⁹⁴ The Constitution recognises customary law, but invalidates it to the extent that it conflicts with the provisions of the Constitution, providing Kenyan women with legal protection against discriminatory customary practices.⁹⁵

Women and Education

The right to education is guaranteed by the constitution as a variable to empowerment of women and girls. Many girls are still out of school due to among other factors customary practices that expose them to early marriages and child pregnancies. Marginalised communities in arid and semi-arid areas have to endure high climatic challenges that keep the girls out of school to engage in livelihood and domestic chores. HIV and AIDS prevalence among school children has also affected the transition rates. Despite these drawbacks, Kenya performed well on select measures of education in the 2000 MDGS. There is gender parity in enrolment in primary schools with declining transition rates to higher levels secondary schools, tertiary and universities. A recent study by NGEK indicated that there is increasing neglect of the boy child, a trend that is worrying.

Women and Health

The Constitution provides for the right to the highest attainable standard of health, which includes the right to health care services including reproductive health care. Among other underlying determinants of health there is the right to housing, free from hunger, right to clean and safe water and social security. Kenya has significantly high maternal mortality and morbidity from preventable causes. The Kenya Demographic Health Survey (KDHS 2015) Maternal mortality is estimated at 362 maternal deaths per 100,000 live births, child mortality 39 deaths per 1,000 live births and under-five mortality is 52 deaths per 1,000 live births. Kenya performed dismally on most indicators of MDG on maternal health and has recently begun a pathway to reversing the trend. The now broadly provides for relevant goals in SDGs goals 3, 5, 10, 16, 13.

⁸⁸ Constitution of Kenya Article 7

⁸⁹ Constitution of Kenya Article 67(2)(f) and Article 159 (2)(c)

⁹⁰ Constitution of Kenya Article 159(3)(c)

⁹¹ Constitution of Kenya Article 27(8)

⁹² FIDA Kenya, Women's Land and Property Rights in Kenya (2009) [hereinafter Women's Land]

⁹³ Constitution of Kenya Article 2(6)

⁹⁴ Each declaration protects women's property rights to some extent, but language and interpretations vary.

⁹⁵ Constitution of Kenya Article 2(4)

Sexual Gender Based Violence

Sexual Gender Based Violence is very rampant in the country despite existence of progressive legal framework with very severe penalties for perpetrators. The law prohibits sexual violence at the family level too. The cost implication for SGBV is enormous for both the family and the health providers. In some cases, women and young girls are subjected to grievous harm and others suffer death. The burden of proof is very high and in most cases perpetrators are acquitted on technicalities.

Women's public and political participation

Kenya is one of the countries with observably low participation of women in political processes. Kariuki observes that even though women make up to about 52% of the population, decision making organs has remained largely minimal and marginal to women since independence.⁹⁶ The 2010 Constitution introduced a two-third gender rule to enhance parity in legislative bodies at both lower and national legislative bodies. Not only does Article 27 provide for protection against discrimination; it puts the full weight of the constitution behind initiatives aimed at the active promotion of the rights of marginalised groups and minorities, requiring the state to take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.⁹⁷ This includes those measures to implement the requirement that not more than two thirds of the members of elective and appointive bodies shall be of the same gender.⁹⁸

CHALLENGES

There is no doubt that Kenya has made tremendous strides to put in place a constitutional, legislative and policy frameworks that can be conducive to inclusive development and result in overall social justice.

- Although legislation has been put in place to guarantee the personal security of individuals, Women do not enjoy security and safety in either the public or private sphere. Violence against women continues to increase. Studies show rising incidents of rape, assault and killings of women. Child abuse too is on the increase, thus reflecting the depth of the problem at both the family and community level.
- Despite a progressive legal framework, Kenyan women's land rights continue to lag behind those of men. Customary law, which often discriminates against women and limits their land and property rights, governs at least 65% of land in Kenya, and the patriarchal nature of Kenyan society often limits the rights of even those women not living on land governed by custom.⁹⁹ Some estimates indicate that as little as 1% of land is titled in the names of women and 5-6% is titled jointly by women and men.¹⁰⁰
- A Supreme Court advisory opinion to put in place legislative framework for the realisation of the principle by August 27, 2015 remains unfulfilled, thus cutting back the constitutional guarantees for women's participation in politics. Guided by the terms of Article 100 on promotion of representation of marginalized groups, and by the Fifth Schedule, which prescribes the timelines for the enactment of required legislation to effect the full implementation of the constitution, the Supreme Court held that legislative measures for giving effect to the two-thirds gender principle under Article 81(b) should be taken by August 27, 2015. This remains unfulfilled, thus clawing back the women's gains in politics and public participation.

⁹⁶ NM Bochari 'Women's participation in political processes in Kenya: The case of Nyamira county 1963-2013' Master of Arts (history) thesis, Kenyatta University

⁹⁷ Supreme Court of Kenya Advisory Opinion No. 2 of 2012

⁹⁸ Institute of Economic Affairs

⁹⁹ FIDA Kenya (n 92 above)

¹⁰⁰ FIDA Kenya (n 92 above)

CONCLUSION

The journey to put gender parity at the centre of economic development has been long and tedious. From the exclusionary development theories to the present GAD, feminists have waged a relentless war, through feminist scholarship, analysis and method. However, the struggle continues and more vigilance is required, if the fruits of inclusivity in economic development have to be realised. Otherwise, Kenya could continue to live in a world of traditional economics, when the new constitution and legislation expands the space for women and other marginalised persons to participate and benefit from economic development. The challenges noted in Kenya's case demonstrate that achieving economic theories that recognise gender parity are but just the beginning of another journey which calls for concerted and collective voices of those who are serious about equitable development.

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