

## **Faire affaire avec les dames : genre, réforme juridique et entrepreneuriat à la Société financière internationale**

Kate Bedford

### *Résumé*

*Depuis 2007, la Banque mondiale s'est écartée de l'approche en cours à l'ère Wolfensohn, qui plaçait la différence entre les sexes au cœur des problèmes de développement, pour se tourner vers un modèle d'analyse de rentabilisation qui alloue au secteur privé un rôle nettement plus important dans les efforts pour réduire la pauvreté et atteindre l'égalité des sexes. À l'aide d'une étude de cas sur la Société financière internationale (IFC) et son projet « Doing Business » (faire des affaires), conçu pour faciliter le commerce à travers le monde, j'étudie l'impact de cette nouvelle direction sur les efforts en Genre et développement de la Banque mondiale, et j'examine les nouveaux liens qui se forment entre l'augmentation du pouvoir des femmes et la réforme du marché libre. À cet égard, je traite trois thèmes : d'abord, comment l'attention portée à la différence entre les sexes au sein du projet Doing Business aide à promouvoir la dérégulation du marché du travail; ensuite, la manière contestée dont marché libre, réforme juridique et égalité des sexes sont reliés; et finalement, les reconfigurations régionales des réseaux GED (Genre et développement) révélées par le rapport du projet sur les Femmes en Afrique, faisant que les femmes entrepreneures sont célébrées et que de nouveaux réseaux de spécialistes GED sont constitués.*

## **Doing Business with the Ladies: Gender, Legal Reform, and Entrepreneurship in the International Finance Corporation**

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### *Abstract*

*Since 2007 the World Bank's gender approach has moved away from the Wolfensohn-era emphasis on gender as central to social development concerns, towards a business case model that involves a far greater role for the private sector in efforts to reduce poverty and achieve gender equity. Using a case study of the International Finance Corporation (IFC) and its project, 'Doing Business', to promote the ease of doing business across the world, I ask what this new direction entails for the Bank's gender and development efforts, and examine the new links being forged between gender empowerment and free market reform. The article focuses on three themes in this regard: first, how attention to gender within the 'Doing Business' project helps promote labour market deregulation; second, the contested way in which free markets, legal reform, and gender equality are linked together; and third, the regional reconfigurations of Gender and Development (GAD) evident in the project's report on Women in Africa, wherein women entrepreneurs are celebrated and new networks of GAD specialists are drawn together.*

### **Introduction**

In this article I examine how gender is being discussed in a recent International Finance Corporation (IFC) initiative to promote the ease of doing business across the world. I do this because, as a feminist interested in the Bank, I want to keep up with the on-going changes in the World Bank's gender approach and understand how gender and development (GAD) initiatives are faring as the institution goes through a process of reform, adjusting its approach to reflect a greater concern with poverty. In this regard, the article takes as a starting point that the Bank has moved beyond its commitment to 1980s roll-back neoliberalism (Peck and Tickell, 2002), particularly in relation to its intensified

anti-poverty commitments,<sup>2</sup> its support for institutional strengthening measures aimed at facilitating market expansion,<sup>3</sup> and its moves to take gender more seriously. In particular, I suggest here that the approach to poverty reduction and gender that gained prominence within the World Bank under Wolfensohn's leadership is being reconfigured, in a move that offers new possibilities for, and new constraints on, gender policymakers.

More broadly, though, I intend to contribute to ongoing debates about how feminists on the Left can best respond to international development initiatives that promote women's entrepreneurship and labour market participation as anti-poverty strategies. A variety of feminists have explored the links being made by free market advocates between paid labour and gender emancipation, and many urge critical interrogation of what Judith Squires and Johanna Kantola (2008) call "market feminism," wherein gender empowerment merges with free market rationales.<sup>4</sup> For example, Drucilla Barker notes the troubling links between certain feminist interests and the interests of global capitalism, cautioning against feminists' potential complicity in promoting export-led growth strategies reliant on cheap female labour in the name of women's empowerment (Barker, 2005: 2202). Likewise, Nancy Fraser has explored the "disturbing convergence" (2009: 97) of some feminist ideals with the demands of post-Fordist capitalism, focusing particularly on the way that feminist critique of the family wage has been, perversely, used to help legitimate neoliberal capitalism's valorization of waged labour and flexible employment. This process is perverse because the feminist critique of the family wage was grounded in a commitment to value unpaid work. However, selectively interpreted, "our critique of the family wage now supplies a good part of the romance that invests flexible capitalism with a higher meaning and a moral point" (Fraser, 2009: 110) – the empowerment of women via waged work. Feminists from the Left are thus confronted with a general discursive construct of 'feminism' that they only partially recognize, a 'feminism' "gone rogue" (ibid.: 114) that functions as a generic signifier of the good while potentially shoring up the interests of global capital.

This article aims to add to these conversations, by presenting a case study of how gender and labour are understood

in a new IFC project, *Doing Business*. This project is a work in progress, and its gender activities are under construction. Moreover, the article is based on document analysis – a method recognized by multiple scholars as inadequate for tracing the complex contours of the Bank’s development activities (See Mosse, 2005; Bedford, 2009a; and Goldman, 2005). The conclusions I reach here are, therefore, tentative. Nonetheless, the questions raised by the IFC’s new interest in gender are important for critical scholars to examine as we consider the Bank’s new anti-poverty approach. I ask, in particular: What work is gender doing in *Doing Business*? What gender reforms are being advocated, and how are they understood to be linked to the Bank’s broader development project? What are the empirical grounds upon which the links between labour and gender empowerment are being made, and what new alliances are being produced, in practice, to further those links?

In answering these questions I resist the notion that the Bank is a unitary actor, whose projects serve one singular set of interests. The Bank exists to promote growth, but there are significant variations and inconsistencies across time, over the Bank’s five organizations, and sometimes even within individual projects over what this means. These variations have implications for the gender work undertaken by the institution, and they can be fruitfully explored to reveal fault lines in ongoing attempts to bind gender empowerment to market freedom. Moreover, the rhetorical work done to link gender progress and market reform in *Doing Business* texts takes place alongside the practical work undertaken by the IFC in promoting concrete change in gendered legal systems, and in stimulating new gender expertise networks. While I explore, in some depth, how attention to gender within *Doing Business* texts helps to deepen labour market deregulation, I also elaborate on two additional themes: i) the contested way in which free markets, legal reform, and gender equality are linked together; and ii) the regional reconfigurations of GAD evident in the project’s report on Women In Africa, wherein women entrepreneurs are celebrated. I hereby seek to do more than show how gender empowerment rhetoric helps sell market reforms; I also examine how ‘market feminism’ is being operationalized as a political and legal project. I hence explore the struggles underway to maintain a sharp division between ‘bad’ protectionist law that harms women and ‘good’ equal treatment

law that facilitates their market participation and thereby reduces their poverty, and I explore the new gender networks being promoted in the project. Gender is not simply a rhetorical cover for deepened neoliberalism within the IFC, then, and gendered regulations are, to paraphrase Peck and Tickell (2002), being rolled out in *Doing Business* as well as rolled back. This article is a first-cut effort to consider what questions to ask about this reconstituted ground.

### **The Business Case for Gender within the Bank**

The Bank started paying attention to the inequitable effects of its development policies on women, and the need to incorporate gender concerns into lending, in the 1970s (Murphy, 1995). However, the organization's mid-1990s crisis in mission and its (re)turn to poverty eradication as a dream opened particularly conducive space for gender advocates. Gender issues within the Bank became increasingly visible after 1995, with Wolfensohn regarded as "a tremendous positive resource for change" by gender staff (O'Brien et al., 2000: 53). Between 1995 and 2001 the proportion of projects that included some consideration of gender issues in their design almost doubled, to nearly 40 per cent (Long, 2003: 7), and in 2001 the Bank published its most comprehensive policy paper on gender to date. Some self-identified feminists were also hired as part of Wolfensohn's push to bring in more social sector staff; these people often had NGO backgrounds, including in organizations that had criticized the Bank for the negative gendered effects of structural adjustment lending.

Under Wolfensohn, gender staff was able to strategically utilize the new legitimacy granted to concepts such as empowerment and rights to circumvent those mainstream economists within the organization who insist on a narrow, technocratic reading of gender. The post-1995 changes in the Bank's GAD policy thus relate to a long-running and much-discussed tension between what Sophie Bessis (2001) calls instrumental feminism – involving economic appeals to the 'fact' that attention to gender is good for growth – versus attempts to broaden definitions of development beyond narrow growth concerns.<sup>5</sup> Under Wolfensohn there was a flurry of Bank GAD activity in the social sectors, and new spaces to argue for attention to women in areas such as education and HIV/AIDS. A

new plurality of voices, methods, and ways to represent truth claims was also evident; photographs were used alongside graphs, and stories of poor women's lives appeared alongside tables of statistics.

With Wolfensohn's departure this approach was revised, in line with concerns that gender activities were (still) peripheral to the core economic work of the Bank, and that a more instrumental approach should be taken to convince mainstream economists of the value of GAD work. Hence, in 2007, the Bank launched a new four year Gender Action Plan, entitled *Gender Equality as Smart Economics*. This re-focused the Bank's gender work on the economic sectors, through increasing women's access to land, labour force participation, agriculture, infrastructure and finance. It has so far received US\$36 million in pledged implementation funds (World Bank et al., 2008: ii). At a 2008 press conference President Zoellick announced six new commitments as part of a concerted effort to 'bridge gender gaps'; these included channeling at least \$100 million through the IFC to women entrepreneurs via credit lines at commercial banks; creation of a private sector forum to support the GAP; and launch of a program with private and public sector lenders on "young women count for economic development," showcasing the development value of increasing adolescent girls' economic opportunities: "A first program already being implemented in this space is a public-private partnership with the Nike foundation and the Government of Liberia to expand economic opportunities for adolescent girls in Liberia through job training and transit-to-work programs" (Zoellick, 2008: n.p.).

As can be seen from this list of priorities, the GAP has shifted attention away from the 'usual suspects' in Bank GAD action – the International Development Association, the reproductive health projects, or the anti-indigence projects in the social sectors – to other sites of Bank action (credit lines, job training), with new partners (Nike). In particular, the IFC has emerged as a key arena for GAD policy as it, in turn, becomes more important within the Bank group overall. The IFC, founded in 1956, "was the first inter-governmental organization to have as its main objective the promotion of private enterprise", as its website proudly pronounces.<sup>6</sup> It pledges to support private sector development by mobilizing private capital and providing advisory and risk mitigation services to businesses and governments. The

IFC is an increasingly important part of the World Bank Group, a fact very much related to the Bank's embrace of a 'universal competitiveness' agenda that involves a heightened role for the private sector (see Cammack this issue). The IFC's new investments in FY 2008 totaled US\$16.2 billion, a 34 per cent increase over the previous year, and it has moved to better link its work supporting private investment to the Bank's anti-poverty mandate: its mission statement is "that people should have the opportunity to escape poverty and improve their lives."<sup>7</sup>

Given that gender has fared better within the social development parts of the Bank than its financial parts, particularly under Wolfensohn, the IFC is an under-researched site for Bank gender specialists. However, the IFC's Executive Vice President, Lars Thunell, has foregrounded its gender work in recent years. As he explained at a 2007 United States Agency for International Development (USAID) conference: "IFC supports women's participation in business as an important part of its mission to foster sustainable private sector growth in developing countries. IFC creates opportunities for women entrepreneurs, by providing financial products and advisory services that help increase their access to finance, reduce gender-related barriers in the business environment, and improve the sustainability of IFC projects." (Thunell, 2007: n.p.). Such commitments raise important questions about what the IFC's new interest in gender will entail, and how it will mesh with the Bank's other GAD lending.

My route into these questions has been to look at *Doing Business*, an IFC research project launched in 2003, which examines the regulations affecting 10 stages<sup>8</sup> of a business' life. It provides a database of the regulatory environment in 181 countries, as part of an effort to analyze and promote pro-business reform (for a thorough summary, see Davis and Kruse, 2007). Countries are ranked based on the ease of doing business, and the IFC also ranks those who have made the most progress in the last year (World Bank/IFC, 2009: 2). *Doing Business* has been tremendously influential. Its yearly reports are the most highly circulated texts produced by the Bank (ITUC /Global Unions, 2007), and its annual rankings have been widely reported in the media.<sup>9</sup> Indeed, several countries have actively tried to rise up the ranks of the project,<sup>10</sup> as they are encouraged to do. Since 2004, *Doing Business* has charted more than 1000 reforms with an

impact on the 10 indicator sets. Between June 2007 and June 2008, 113 economies implemented 239 reforms – the most recorded in a single year since the project started (World Bank/IFC, 2009: 1).<sup>11</sup>

The initiative has been much debated, with the methodology coming under sustained scrutiny,<sup>12</sup> and several critics, including the ILO, have taken aim at the project's celebration of labour market reforms.<sup>13</sup> However, there has been little sustained critical attention paid to gender, even though *Doing Business* frames this as a central issue. In October 2007, the Bank issued a press release headed *IFC Empowers Women by Promoting Entrepreneurship, Job Creation, and Growth*, in which Thunell announced a “groundbreaking” collaboration between *Doing Business* and the new Gender Action Plan. This sought to identify laws and regulations that discriminate against women; investigate which reforms of business regulations have the highest impact on opportunities for women; and prepare regional case studies of women entrepreneurs. The first set of case studies, on Africa, was published in 2008. Most recently, as part of its gender initiative, the *Doing Business* project supported the Gender Law Library, an online library of laws impacting women in business. In the following sections I explore what these new gendered outputs involve, focusing in particular on their role in furthering labour market deregulation, making new – but contested – claims about the law, and promoting new gender networks of entrepreneurs.

### **Marketing Labour Reform as Pro-Poor Through Women**

In general terms, *Doing Business* argues that women benefit from free market reforms. The positive gendered impacts of regulatory change are thus made central to the IFC's claims that increasing the ease of doing business helps the poor. Thunell has recently summarized the initiative: “*Doing Business* 2008 finds that the benefits of reforming business regulations and leveling the playing field are especially significant for women. Countries with higher rankings for the ease of doing business have more women entrepreneurs and more women in the workforce. Reform is good for women and fuels development.” (2007: n.p.). This claim is repeated several times in *Doing Business* 2008, and in publicity materials.<sup>14</sup> Elsewhere claims are made that complex start-up procedures requiring high

degrees of contact between entrepreneurs and bureaucrats disproportionately harm women because they are more likely to be harassed and are easier targets for bribery (World Bank/IFC, 2008: 5); that women stand to gain more than men from property titling programs (25); that women perceive tax and customs as greater constraints to business growth than do men (Ellis, 2007); and that improving credit information systems will enable women to leverage their microcredit repayment rates to access formal credit markets (World Bank et al., 2008).

It is especially significant that women are so visible in *Doing Business* debates about hiring and firing workers, the most controversial of its 10 categories. The IFC's work on labour market reform has generated extensive criticism (e.g. ITUC/Global Unions, 2007), and *Doing Business* has repeatedly acknowledged that this is the least likely arena of reform to be adopted; in some years more countries slipped backwards than progressed (World Bank/IFC, 2009: 3). The political agenda of the project, as one to roll-back worker protections and rebrand precarious employment as flexibility, is most obvious here, and pitching these changes is a hard sell. The *Doing Business 2007* report offered a "lesson for all reformers" in this regard: "market your goals. Making labour regulations more flexible is about creating jobs, but the message is often lost in bad marketing. Opponents of flexible employment laws pit businesses against workers. It is a simple trick to stall reforms" (World Bank/IFC, 2007: 21). Better marketing will make it clear that strict regulations benefit a minority of privileged workers, and that "the best protection for workers is to make labour rules flexible so more formal sector jobs are created" (22).

Promises of gender equality are a key component of this marketing strategy, in a classic example of how feminist discourses about gender empowerment through labour force participation can be used to help legitimate neoliberal restructuring measures. Women are invoked repeatedly to prove that 'excessive rigidity' hurts workers (World Bank/IFC, 2008: 19): they are hurt by protectionist legislation that restricts their access to jobs; they are pushed into the informal sector, along with young people and unskilled workers (World Bank/IFC, 2006: 1); their share of private sector employment goes up in countries with less rigid employment laws (World Bank/IFC, 2008: 20); and they stand to gain when export industries, such as

textiles, get the flexible labour regulations they need to handle high demand volatility (21). The 2009 *Doing Business* report includes a section headed “regulatory reform – what are the benefits?” citing several studies showing that less regulation is correlated with increased formal registration, lower unemployment, and faster economic growth. “But” ultimately, it goes on:

“[N]othing says more than the experience of the people affected. Janet, who runs a business producing baskets in Kigali, Rwanda, says, “I have survivors, I have widows, I have women whose husbands are in prison. To see them sitting under one roof weaving and doing business together is a huge achievement...these women are now together earning an income” (World Bank/IFC, 2009: 7-8).

In short, then, what engendering *Doing Business* means in the first instance is claiming that women will gain, often more than men, from free market reforms, and deploying women’s stories as particularly compelling examples of the pro-poor benefits of the IFC’s work. Nowhere is this clearer than in the publicity materials put out to summarize the report on African women’s entrepreneurship. As I suggest below, the report is a multilayered collection of narratives, revealing much about gender, race, migration, international capitalism, and state-business relations. However, the announcement about it on the *Doing Business* website simply provides bullet points for each woman featured, summarizing the business in which she is involved and the obstacle to doing business that her story highlights: Kah = paying taxes; Janet = trading across borders; Aissa = employing workers; Sibongile = getting credit; Zoe = registering property; Victoria = getting credit; Julina = starting her business. African businesswomen are rhetorical linchpins of the IFC’s reform efforts here, providing crucial ‘proof’ that free market reform – especially in relation to labour flexibilization – is a pro-poor strategy being demanded by progressive constituencies in society. This is, of course, the unsurprising finding about the project: that superficial attention to gender functions to deepen the reform process, to further a neoliberal vision of global capitalism in which rational market woman (Benería, 1999) is deployed as a central rhetorical trope. This will come as no shock

to critical Bank observers, who are used to seeing the organization warp feminist arguments to legitimize neoliberal restructuring (e.g. Bessis, 2001; Bergeron, 2006; Kuiper and Barker, 2006).

### **New Knowledge Claims about Gender, Law, and Markets**

However, there is also more going on here, and hence I draw out two additional themes in the remainder of this article, regarding the empirical messiness of the new knowledge claims being made about gender, markets, and law; and the value of closely examining the Africa report on entrepreneurship with respect to the ways in which it invokes new GAD networks. Firstly, *Doing Business* reflects and reinforces the new centrality of law in the Bank's work on development, and it hereby raises new questions about the role of legal reform in the market feminism project, and about the evidential basis on which the links between law, growth, and gender equality are based. Concerns with law have (again) become central to the Bank's development mission (Santos, 2006; Rittich, 2006; Davis and Kruse, 2007), and its mainstream economists increasingly debate how to promote strong institutions, backed by law, in order to nurture growth.<sup>15</sup> Relatedly, the *Doing Business* project has a strong legal reform dimension. Being in the top 10 does not, the annual reports remind us, mean zero regulation – in fact for protecting property rights *more* regulation is often needed to rise up the ranks (World Bank/IFC, 2005: 2).

The project also picks up on debates about the importance of legal reform for progress on GAD goals,<sup>16</sup> and it aims to identify laws that discriminate against women and prevent them from participating in business. Examples include restrictions on women's rights to own or inherit property; to travel; to work at night or in certain professions; or to register their own businesses. *Doing Business* argues that these protectionist regulations backfire by taking work away from women and disproportionately relegating them to the informal sector (World Bank/IFC, 2008: 6). For example, laws allowing women's early retirement – intended to correct for the fact that the lifelong masculine worker norm systematically disadvantages women who drop out of the labour force to do unremunerated care – are reframed as efforts by countries to “force women to retire earlier than men,” reducing their pension pay and career

opportunities (23). Likewise, the 2006 *Doing Business* discussion of hiring and firing workers opens with the story of Yasmine, a graduate from Burkina Faso's University of Ouagadougou; she is the best qualified candidate for a position but the job goes to an older man. The report concludes that: "Yasmine's plight can be explained by rigid employment regulation" restricting women's working hours (21). The complex causes of, and solutions for, discrimination against women in the workplace are reduced to excessive labour market regulation, making flexibilization appear a gender empowerment initiative.<sup>17</sup>

*Doing Business* does not, though, advocate removal of all anti-discrimination provisions, and it recognizes the importance to free markets of legal measures to grant women equal treatment. In what might be seen as a pragmatic realization that market forces alone will not overcome sexism, the project distinguishes between (bad) protectionist regulations that harm women and (good) anti-discrimination laws that prevent employers from treating workers unequally on the grounds of sex. It advocates, above all, a gender-blind approach wherein women should be protected from the discriminatory impact of custom, tradition, and stereotypes and allowed to participate equally with men in the marketplace. The 2008 commentary on employing workers opens with this vision of gender blindness leading to greater efficiency, giving the example of 1970s symphony orchestras in the U.S. using blind auditions to increase the share of women among new hires (World Bank/IFC, 2008: 19).

Articulation of this position rests on the mobilization of new research findings about the relationship between law, gender equity, and free markets. As the 2008 report puts it: "[w]hat gets measured gets done." Put differently, in the Bank's view publishing comparative data on the ease of doing business inspires governments to reform (World Bank/IFC, 2008: 6). These interrelated imperatives – to measure and to do – very clearly shape the gender component of the project. The two year research initiative aims "to identify legal and regulatory barriers facing businesswomen in 178 countries, and to advocate change".<sup>18</sup> Mayra Buvinic (Sector Director of GAD) praised the report on women entrepreneurs in Africa as a way to reliably document and deepen research on how the investment climate impacts women (World Bank et al., 2008: iv). The measuring itself is presented as a neutral exercise, and the policy

recommendations that stem from it are depoliticized, a feature of evidence-based policy making more generally (see Bergamaschi in this volume), and a point of contention for several critics of Bank research.<sup>19</sup>

It is no surprise in this regard that findings which, in Robin Broad's terms, 'resonate' with the Bank's position on gender, work, and growth are foregrounded (Broad, 2006). For example, much is made of the 'fact' that "[c]ountries with higher scores on the ease of doing business have larger shares of women in the ranks of both entrepreneurs and workers."<sup>20</sup> The work that goes in to constructing these core 'facts' is arduous, and severs any assumption that the link between measuring and doing is self-explanatory. The Bank's gender specialists have always had to work hard to 'prove' that employment empowers women,<sup>21</sup> and the data they use to assert this link in *Doing Business* is far from conclusive. The key piece of statistical evidence provided in the many discussions of gender in *Doing Business* so far has been a graph on the female unemployment rate as a percentage of the male unemployment figures. However, this figure is of limited use in proving that countries with more advanced market reforms empower women: female unemployment figures systematically undercount women's labour force participation,<sup>22</sup> and the relationship of women's Labour Force Participation Rate to their empowerment is contested, especially in conditions of high male unemployment. Moreover, the gender data collected by the Bank's Enterprise Analysis Unit (EAU) – used by *Doing Business* to connect gender progress to progress on regulatory reform – should provoke pause over using women's employment as the unitary measure of women's empowerment.<sup>23</sup> This data shows that companies in the export sector, for example, have less women in senior positions and less women as owners than companies in other sectors, yet they employ more women. Moreover, the EAU data shows that many of the countries ranking highest on *Doing Business*, or the countries praised as top reformers in recent years (e.g. Egypt, Azerbaijan, Saudi Arabia), have highly unequal gender statistics (in narrow, economic terms). For example, Azerbaijan has 14.5 per cent of companies with female participation in ownership, compared to an average for all countries of 29.9 per cent. The claims being made to link pro-business environments to gender equality are thus easily contestable from within the datasets being used by the IFC itself.

The same is true of the claims being made about law and gender equality more broadly, in the Gender Law Library. Penelope Brook (Director of Indicators and Analysis) states that the Library will be “a baseline for researching which reforms of business regulation will have the most impact on women.” (World Bank, 2008: n.p.). This comparative gender and law project is in its very early stages – it was only launched in October 2008 and much of the data is incomplete – but it is interesting to examine, for several reasons, as a site of knowledge construction about gender, law, and development in the Bank.<sup>24</sup> The feature of the Gender Law Library that I am interested in highlighting here is its privileging of ‘law on the books’ in the same way across the world. This has a remarkable leveling effect, erasing regional and national specificities regarding the complex relationships between formal legal change and implementation and the importance of legal pluralism for understanding gender and law reform projects. In particular, the library’s categorization of ‘law on the books’ is highly partial in relation to discrimination. As noted above, *Doing Business* distinguishes between good, equal treatment anti-discrimination law and bad, differential treatment protectionist law, and this distinction is critical for maintaining the position that flexible labour markets empower women. The Gender Law Library categorizes in the same way, and this can entail an erasure of the substantive content of anti-discrimination law when it too closely resembles bad protectionism. For example, the two major international treaties covered – CEDAW (Convention on the Elimination of all Forms of Discrimination against Women) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women – are largely classified as non-discrimination instruments, and are not counted in categories such as childcare, sexual harassment, and maternity leave. It is clear in reading the reservations noted by many countries to CEDAW, in particular, that it is seen as being about maternity leave – this is precisely why some states refused to sign all parts of it. Yet the Gender Law Library interprets CEDAW as a narrow non-discrimination instrument, and non-discrimination as an overarching category is stripped of its substantive content.

Importantly, however, the Gender Law Library and the *Doing Business* project, even in their earliest stages, have been forced to grapple with these problems, and a close reading of

existing project materials reveals that the relationship between gender, law, and development is already being contested. A persistent tension is evident with respect to the question of what counts as law in relation to gender, wherein the privileging of law on the books is disputed and the project seeks greater 'reform reach' into informal norms and practices that shape gender relations. *Doing Business 2005* noted that in many cases anti-discrimination law exists, but is overridden by other systems of law (World Bank/IFC, 2005: 37). Commenting on the blind auditions reforms to U.S. orchestras, *Doing Business 2008* argued that there was nothing explicit in the regulations that discriminated against female musicians; rather "bias can be simply the prevailing practice." (World Bank/IFC, 2008: 19). Similarly, a project powerpoint presentation giving a summary of legal barriers to women in business urged participants to look beyond commercial law to civil law, customary law, traditional practice, cultural barriers, attitudes and mindsets of people in the judiciary, and lack of access to justice and legal services.<sup>25</sup>

In drawing attention to these tensions, I do not mean to suggest that they are transgressive moments. The characterization of customary and traditional law as the residual echo of discrimination and backwardness in an otherwise modern, progressive legal-economic system has been extensively criticized elsewhere (Merry, 2005; Povinelli, 2002), and there is nothing necessarily benevolent about the desire of Bank staff to reach deeply into informal norms and practices to reform gender relations. I mention the examples, rather, to suggest that the evidence about gender being invoked by the *Doing Business* project is in some cases contradictory, and there are elements of the exercise that already work against its premises (that gender equality is smart economics; that free market labour reform correlates with progress in non-discrimination; that there is a clear line separating good anti-discrimination law from bad different-treatment protectionism). As the project progresses, it will be informative for Bank critics to see how those tensions are worked out and resolved. Perhaps they will simply be ignored, and a formalistic insistence on the sole legitimacy of law on the books will prevail, or perhaps space for legal pluralism will be created through a racialized rendering of customary law as the brake on women's empowerment. Whichever option best resonates with the Bank, it will provide crucial insights to its

critics about how market reform and gender empowerment are to be understood to fit together.

### **Regional Reconfigurations of GAD: New Networks, New Subjects of Development**

A final set of questions about the IFC's new interest in gender is raised by the first collection of regional case studies of women entrepreneurs, focused on Africa. As *Doing Business* has repeatedly noted, Africa lags behind other regions in its pursuit of reform.<sup>26</sup> The geographical focus of the first regional case study of women's entrepreneurship needs to be understood in this context. As Simeon Djankov (Chief Economist of the indicators group, financial and private sector Vice Presidency) noted in the overview to the report, it offers a celebration of success in developing countries, recognizing top performance by entrepreneurs: "We start with Africa, the region that can most benefit from more and growing businesses" (World Bank et al., 2008: iv). The women featured, he went on, show that success is possible even in difficult circumstances, and they point out the reforms necessary to make success easier (iv).

A key feature of the Africa report is that very wealthy business owners – rather than women workers – are positioned as exemplars of how market openness can empower the disadvantaged. The eight women entrepreneurs showcased in the report control seven companies with an average annual turnover of US\$2.43 million dollars.<sup>27</sup> They include a Tanzanian micro-leasing and finance company with a turnover of US\$6 million, and a South African aviation company with a turnover of US\$5 million. That the women heading these companies are now the subjects of the Bank's narratives about gender and empowerment through markets is, in itself, noteworthy. As mentioned above, women have been most visible in the *Doing Business* discussion of hiring and firing workers, reflecting an attempt to market reform in that arena and reinforcing the long-held position of Bank GAD specialists that employment empowers. The Africa report, in contrast, indicates an increasing focus on women entrepreneurs as the symbols of women's empowerment. The two groups (of women workers and women entrepreneurs) are usually collapsed in the project.<sup>28</sup> However, they raise different questions for GAD specialists, as is very clear in the Africa report. For example, the issue of credit is treated very differently here than in

other sites of Bank GAD work. The company with the highest annual turnover of the seven is indeed a micro-leasing initiative (Sero Lease and Finance Ltd, with a US\$6 million turnover, 60 workers, and 12 branches across Tanzania); but while an IDA report might showcase the client of this company (a poor woman with a cow) as the emblem of GAD success, the IFC is interested in the CEO, and the reforms that will benefit her business. Another woman showcased, Zoë Dean-Smith, turned a not-for-profit development project in Swaziland to produce artesanias into an enterprise with an annual turnover of \$600,000. The 731 workers she employs (rural Swazi women, typically grandmothers supporting, on average, eight dependants) are not the focus of the IFC narrative about GAD: in fact, their needs for income are ‘trumped’ by the needs of international export markets for quality products. In a clear demonstration that the interests of women workers and women entrepreneurs are far from complementary, Dean-Smith explains “there’s the emotional issue attached to the rejection of poor quality – being able to look a woman in the eye and tell her that her finished product isn’t good enough can be heart-breaking, especially if you know her husband is lying at home dying, she is also sick and has perhaps 10 mouths to feed” (World Bank et al., 2008: 29). There is no attempt made to reconcile these tensions between employees and business owners: only the latter have a voice in the IFC.

One key consequence of this shift in focus from workers to entrepreneurs is an unapologetic celebration of a transnational class of women whose fates are deeply enmeshed with those of multinational corporations. The first company featured in the report on African women entrepreneurs is STRATEGIES, a management consultancy firm with an annual turnover of US\$500,000. It works with firms including Price Waterhouse Cooper and Shell (World Bank et al., 2008: 3). Another company, Gahaya Links, a Rwandan basket weaving firm run by two sisters (one of whom lives in the US), was promoted on Oprah, and supplies Maceys. The founder of a Senegalese design company featured was brought up in France, and her clients include Christian Lacroix (13). The entrepreneur who launched SRS Aviation Ltd, a South African company with a \$5 million annual turnover, was a winner at the 2006 Black Women in Business awards held in the UK, and in 2007 was selected for FORTUNE’s mentoring programme for women in the US.

These women are, importantly, being supported by *Doing Business* to advocate for change in business regulations and in women's legal standing (World Bank et al., 2008: iv). Many of their goals are shared by other GAD networks. For example, Dean-Smith is working with Women and Law in Southern Africa to improve women's legal standing in Swaziland. However, in other cases, the reforms being promoted by the entrepreneurs featured in *Doing Business* have weaker links to GAD networks. For example, the Senegalese design entrepreneur wants regulations governing work hours and overtime made more flexible, and reform to constraints on dismissals (13). The Cameroonian entrepreneur advocates for reductions in the business tax rate (2). Few GAD advocacy groups in the region have signed on so unequivocally to the IFC's idea that removing trade protections will reduce women's poverty, or that free-market versions of labour market reform will remedy gender inequalities – and unions actively resist these ideas.<sup>29</sup> The businesswomen featured in *Doing Business* are being drawn together as an alternative set of stakeholders.

The IFC's gender initiative is also supported by broader networks that promote the interests of women entrepreneurs (as distinct from women workers). A key partner in the Bank's research initiative on women's economic empowerment is Vital Voices Global Partnership, an NGO off-shoot of a Bill Clinton-era U.S. State Department initiative that identifies, trains, and empowers emerging women leaders and social entrepreneurs. Vital Voices involves several prominent U.S. politicians (Hilary Clinton was, until late 2008, the honorary chair of the Board of Directors) and businesspeople: its Board of Directors includes Mary Yerrick (President of Primetime Solutions); Paul Charron (emeritus Chairman of Liz Claiborne); Deborah Dingell (of the GM Foundation); Carly Fiorina (former CEO of Hewlett Packard); Mary Forster (of Boeing); Kate James (of Citi); and Dina Habib Powell (Managing Director of Goldman Sachs). Jan Piercy (former U.S. Director of the World Bank) is one of the few well-known GAD specialists involved – but she is also an Executive Vice President of Shore Bank. Similar links are evident in the regional activities on women's entrepreneurship that *Doing Business* has sponsored, including (with Vital Voices) a workshop entitled *African Women's Leadership Initiative: Leveling the Playing Field*. Intended to train women to be more

effective advocates for the removal of legislative barriers impeding women's economic progress,<sup>30</sup> this was supported by the Exxon-Mobil Foundation, the Bill and Melinda Gates foundation, Standard Chartered Bank, and the U.S. Department of State (World Bank et al., 2008: iv).

In short, there is a substantively new type of gender project in operation here, resting on and strengthening distinctive networks of expertise, trying to mould participants into resolving tensions between women CEOs and women workers in a distinctive way, and with a distinctive vision of GAD. To use Keck and Sikkink's (1998) framing, there is a new transnational advocacy network being pulled together by the IFC around gender, involving heavy input from corporations. Or, put more bluntly, it is not just that the celebration of women entrepreneurs in reports does rhetorical work in representing the reform impetus as a progressive, pro-feminist initiative; it is that in a very practical way *Doing Business* supports women who are leaders of a transnational entrepreneurial class.

At the same time, however, these case studies of women entrepreneurs also reveal the crucial role played by governments and international institutions in their success stories, in a way that goes far beyond the sort of gender-blind auditions advice being advocated in the 2008 *Doing Business* report. This might work against the attempt to mobilize these women's stories to tell a transnational, feminized Horacio Alger tale of bootstrap-pulling success, and it gives further insight into the sort of networks being strengthened by the IFC initiative. For example, the case study of the basket weaving company notes that Rwanda has the highest percentage of women parliamentarians in the world, as a result of the sort of quota system that the Bank criticizes as representing excessive, cumbersome employment regulation (World Bank et al., 2008: 8). More specifically, the business got funding when its founders won a World Bank contest (8), and it has been dependent on the aid industry for success since the outset; one of the sisters was sponsored by USAID to participate in a New York trade show, at which the link with Maceys was made, and the Rwandan government has heavily promoted the company. In another example, the South African entrepreneur showcased took advantage of the 2003 Black Empowerment Act (which promoted affirmative action) to start her own business. Her advice to her government included that the Financial Sector

Charter be revised to include financial outreach on the basis of gender as well as race (19). Dean-Smith's company, aside from being at first an aid project, was also supported by the IFC, which gave financial and technical support to help build a management information system and develop an export pricing strategy (29). Sero Leasing got support, in 1997, from the UK's Department for International Development (DFID), and ten years later it received a \$1 million credit line from EXIM Bank (the only bank in Tanzania with a woman CEO, which had itself started a women's banking program with IFC support) (34).

The sort of entrepreneurship story being told in the Women in Africa report is thus one bound up with the funding structures of the aid industry itself – it is in part the IFC's celebration of itself, writ large as the Bank's celebration of GAD for businesswomen. To return to Fraser, feminists from the Left are certainly confronted here with a discursive construct of 'feminism' that they only partially recognize (2009:114), and that draws on very different networks than those mobilized in social sector GAD work. On closer scrutiny, what emerges is an almost corporatist type of market feminism, wherein it is not simply that the interests of CEOs are being positioned as central to a gender empowerment drive, but that some of the CEOs were created by the IFC.

### **Conclusion**

In the context of this special issue on the Bank's new anti-poverty work, the *Doing Business* project is a good example of the organization's post-Wolfensohn perspective. It is not a simple 'back to basics' reassertion of the power of growth and mainstream economics over the softie social development types who were brought in under Wolfensohn; it is not a denial of the relevance of gender – it is a reincorporation of the social, and of gender, in different forms, and a repositioning of the central site for GAD action. There are new possibilities, as well as limitations, in that repositioning. The expansive social agenda of the Bank under Wolfensohn is without question being rolled back, and the spaces that it granted for gender policy entrepreneurship are being curtailed. Simultaneously, new spaces are being opened up in previously unfriendly sites, hailing new partnerships and networks. Women's empowerment through work clearly functions discursively as a cover for regulatory

rollback, but, in addition, labour law reform has become more important; GAD has new corporate sponsors; CEOs see their interests explicitly trumping those of their female employees in narratives of market feminism; and women empowered by the aid industry – as businesswomen – are repositioned as emblems of gender liberation through market growth.

These new gender narratives, research activities, and law reform initiatives tell us a lot about ‘rogue feminism,’ the flawed knowledge base on which it rests, and the sort of transnational networks it hails. Yet, they also reveal some of the limits, gaps, erasures and inconsistencies in that project, in ways that might hopefully prove enabling and productive for World Bank critics. It is useful to know, for example, that there are debates in play about what “law” means in relation to gender; that the evidence for claims that any work necessarily empowers is (still) easily contestable; and that quotas and affirmative action have played a key – but underplayed – role in the *Doing Business* hall of fame. Further inquiry into these gaps and inconsistencies may prove fruitful for those who understand labour as having a more complex relationship to emancipation, and/or who understand markets and feminism differently to the IFC.

#### **Endnotes**

1. Kent Law School, University of Kent. This article owes its existence to the 2008-9 seminar group on *Doing Business* held at Kent Law School, University of Kent. Email: k.bedford@kent.ac.uk. I am especially grateful to Toni Williams, Donatella Alessandrini, Paddy Ireland, and Iain Ramsay for their comments. Thanks also to Arne Ruckert and two anonymous reviewers for their suggestions.
2. For the Bank’s shift in mission to take poverty more seriously see Mallaby, 2004; Santos, 2006; Rittich, 2006; Moore, 2007; Fine, Lapavitsas and Pincus, 2001; Pincus and Winters, 2002.
3. For more on how the Bank views institutional strengthening, see the 2000-1 World Development Report; for gender and institutional strengthening, see Bedford, 2009b.
4. See, among others, Barker, 2005; Zein-Elabdin, 2003; Charusheela, 2003.
5. For more on efficiency pressures within the Bank see Prügl and Lustgarten, 2006; Zuckerman and Qing, 2003; Kuiper and Barker, 2006; Long, 2003; Bedford, 2009a.
6. IFC, 2009a
7. IFC, 2009a.

8. Starting a business, dealing with licenses, employing workers, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts and closing a business. Topics have been gradually added since the start, as have countries.
9. E.g. the 2005 report noted that: “Since its publication last October, *Doing Business* has been featured in more than 700 media stories around the world. And in Brazil, Colombia, the Czech Republic, Poland and Serbia and Montenegro, the media coverage helped policymakers to identify issues and reform to gain momentum” (World Bank/IFC, 2005: 14).
10. E.g. Georgia (which won as the top reformer in 2007) used DB indicators as benchmarks as it rose up the ranks (World Bank/IFC, 2008: 6).
11. This is not to argue that these reforms were, directly, caused by *Doing Business*, but rather to note that the project is successful in its own terms: providing a database that allows for benchmarking, raising the profile of business regulation as a key topic within development, and helping support reformers across the world. Many of the early reforms were spurred by the donor push to quantify the impact of aid programs. For example, the IDA set performance targets that included making business start up easier (World Bank/IFC, 2005, 1), and hence *Doing Business* should not be viewed as the key causal factor.
12. See the methodological debates examined in *Doing Business 2005* (World Bank/IFC, 2005: 10), and the recent changes made to the project’s methodology (World Bank/IFC, 2007); see Davis and Kruse (2007) for a critique of the project’s reliance on citations to unpublished Bank work as evidence. See Mitchell (2005) for a critique of Bank research in Peru claiming to show significant benefits from property titling; *Doing Business* continues to cite that research (e.g. World Bank/IFC, 2006: 6; and 2007: 26).
13. See ITUC/Global Unions 2007. For example, note that Colombia was the runner up in the top reformer category in 2004/5. For monthly bulletins detailing assassinations of union leaders and death threats received by unions throughout 2004 in Colombia, see the International Center for Trade Union Rights at: <http://www.ictur.org/Colombia-bulletin.htm>. Union leaders maintain that the state is involved in this violence. In April 2009, the Bank announced that it would no longer use the Employing Workers Indicator, but the 2010 edition of the *Doing Business* project does not provide the promised commentary on this decision; see ITUC, 2009.
14. E.g. World Bank/IFC, 2008: 5, and *Doing Business’ gender website* (IFC, 2009b)

15. See for example the Bank's extensive web site on Law and Justice Institutions (World Bank, 2009). To clarify, the claim is *not* that roll-back versions of neoliberalism saw no role for institutions in markets, but rather that as the neoliberal project evolved, interest exploded in the mechanics of how to craft those institutional support mechanisms, leading to a revival of the law and development movement, of interest in institutional economics, and of work on how different types of institutions inter-relate to promote growth.
16. For the Bank's work on gender and legal reform, on gender in truth and reconciliation processes, and on increasing women's access to judicial institutions, see Rittich, 2006; World Bank, n.d; World Bank, 2006; --Ruiz-Abril, n.d.
17. See also the story of Nerma, a Turkish woman, in the hiring and firing workers section of *Doing Business 2005* (World Bank/IFC, 2005: 4).
18. IFC, 2009b.
19. Mitchell, 2005; Goldman, 2005; Broad, 2006; Wade, 2002. For a critical analysis of knowledge claims in the Bank's GAD work, see the edited collection by Kuiper and Barker (2006).
20. IFC, 2009b.
21. The equation of work with women's independence and empowerment is not necessarily supported by the Bank's own research; see Bedford, 2009a.
22. This is because, among other reasons, women are disproportionately concentrated in the informal sector; they are less likely to register as unemployed; and they are more likely to work part time and be 'under' employed.
23. The EAU collects information on private enterprise through an Enterprise Survey. See IFC, 2009c for its gender data.
24. For example, it is far more interested in detailing certain forms of law than others, and in marking as 'traditional' and religiously-bound, the origins of certain countries legal systems. For example, it has a category on religious laws, <http://www.enterprisesurveys.org/ExploreTopics/?topicid=6containing> (as of January 2009) 54 entries. 51 are from Iran (2 are from Saudi Arabia, 1 is from Bahrain).
25. See the workshop *Leveling the Playing Field* (IFC 2008).
26. E.g. World Bank/IFC, 2006: 1 (note the location of the reference, in the overview, on the first page: institutionally sensitive reading methods must take note of the location of an argument in any Bank report, given that summaries and overviews are often the only parts read by busy staff). See also World Bank/IFC, 2005: 1.
27. One company is run by two sisters.
28. See the section on 'opportunities for women' in the overview of the 2008 report, noting that countries with higher scores have larger

- shares of women in the ranks of entrepreneurs and workers (World Bank/IFC, 2008: 5).
29. For a regional feminist critique of neoliberal reforms see, for example, Mbilinyi, 2009. See also the debates about the gender strategy in the Southern African Development Community in Ruiters, 2008 over trade, labour, and food security.
30. IFC 2008.

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