Gender and Investment Climate Reform Assessment

Pacific Regional Executive Summary

In Partnership with AusAID

January 2010 Sonali Hedditch & Clare Manuel

IFC Advisory Services in East Asia and the Pacific

IFC | International Finance Corporation
World Bank Group
Preface and Acknowledgements

This series of six Gender and Investment Climate Reform Assessments for Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, and Vanuatu are the result of collaboration between the Australian Agency for International Development (AusAID) and the International Finance Corporation (IFC), a member of the World Bank Group.

The six Reports have been produced for:

- The Governments of Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, and Vanuatu: especially the Ministries focused on private sector development, to make recommendations for reform actions for government to further enable women in their countries to participate effectively in economic development.

- International Finance Corporation (IFC): to inform its Pacific Regional Program on Regulatory Simplification and Investment Policy and Promotion Promotion (in Papua New Guinea, Solomon Islands, Tonga, and Vanuatu), and the Timor-Leste Public Private Dialogue and Business Registration projects, and to ensure that gender issues are incorporated in each project’s design and implementation.

- AusAID: to assist development programs to mainstream gender and to enable women to benefit equitably from improvements in the business climate.

Research for the report was primarily carried out during two missions to the Pacific Region in February (Timor-Leste, Tonga, and Samoa) and March 2009 (Papua New Guinea and Solomon Islands). The project was led by Sonali Hedditch (IFC) and other team members were Mark Blackden (IFC consultant), Tamara Haig (AusAID consultant), Fiona MacCulloch (The Law & Development Partnership), Clare Manuel (The Law & Development Partnership), and Vijaya Nagarajan (AusAID consultant). Support was provided by locally-based experts William Boas (economist) and Florence Willie (lawyer) in Papua New Guinea; Margaret Malua (economist) and Fiona Ely (lawyer) in Samoa; John Zuma (lawyer) and Ishmael Ware (economist) in Solomon Islands; Rui Gomez (economist) and Tiago Sarmento (lawyer) in Timor-Leste; and Meleseini Faletau Lomu (economist) and Dana Stephenson (lawyer) in Tonga.

An earlier mission to Vanuatu was conducted in April 2008 by Kristie Drucza (AusAID), Amanda Ellis (World Bank), Sonali Hedditch (IFC), Anna Hutchens (AusAID consultant), Clare Manuel (The Law & Development Partnership) and Vijaya Nagarajan (AusAID consultant), which led to the publication Women in Vanuatu: Analyzing Challenges to Economic Participation.

Useful preparatory research was undertaken by Kristie Drucza (AusAID) and Anna Hutchens (AusAID consultant) in Papua New Guinea, Samoa, and Timor-Leste in August–October 2008, by Chakriya Bowman (AusAID), Anna Hutchens (AusAID consultant) and Sonali Hedditch (IFC) in Solomon Islands in April/May 2008, by Jozefina Cutura (World Bank consultant) and Christine Van Hooft (AusAID) in Tonga in February 2008; and by Jozefina Cutura (World Bank consultant) and Kristie Drucza (AusAID) in Vanuatu in March 2008.

The mission team received valuable guidance from AusAID and IFC staff from headquarters and in-country. In Washington DC, Zouera Youssoufou and Sevi Simavi of IFC’s Women in Business Program provided guidance on using ‘Gender Dimensions of Investment Climate Reform: A Guide for Policy Makers and Practitioners’ (also known as Gender and Investment Climate Practitioners’ Guide) for the research methodology and recommendations; in Canberra, Cindy Wiryakusuma provided logistical support; in Papua New Guinea, Anna Manega provided logistical support; in Samoa Keirsten Pedersen (IFC consultant) provided logistical support; in Solomon Islands from Aileen Croghan, First Secretary, AusAID; in Timor-Leste from IFC’s County Coordinator Rainer Venghaus and IFC consultants Milissa

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1 Bowman, C; Cutura, J; Ellis, A; and Manuel, C. Women in Vanuatu: Analyzing Challenges to Economic Participation. 2009. The World Bank, Washington DC.
Day, Johanna Johansson, and Bernardo Dos Reis; in Tonga from Task Leader for the Tonga Regulatory Simplification and Investment Policy and Promotion project, Jonathon Kirkby, and IFC consultants Christopher Hartwell and Vika Fusimalohi; and in Vanuatu from Anna Naupa of AusAID.

The authors wish to thank all the individuals who provided us with helpful information and were available for interviews during the in-country research. They include:

- In Papua New Guinea – Papua New Guinea Government’s various ministries and departments, including Dame Carol Kidu, the PNG Investment Promotion Agency, donors, the Chamber of Commerce, Business Women Associations, Gini Goada, PNG Microfinance and banking institutions. We also thank the National Council of Women for its valuable insights into the overall position of women in Papua New Guinea’s society.

- In Samoa – the Samoan Government’s various ministries and departments, the Judiciary, and the private sector.

- In Solomon Islands – the Solomon Islands’ Government’s various ministries and departments, the Solomon Islands Women in Business Association, the Regional Assistance Mission to Solomon Islands, and donors.

- In Timor-Leste – private sector operators, civil society, Government Departments and bodies, and donors.

- In Tonga – the Tongan Government’s various ministries and departments including the Ministry of Commerce, Industry and Labor, and Ministry of Finance, donors, the Peace Corp volunteers, and the Tongan Development Bank. We also thank the Women’s Affairs Division of the Ministry of Education, Women’s Affairs and Culture for its valuable insights into the overall position of women in Tongan Society.

- In Vanuatu – the Vanuatu Government’s various ministries and departments, the Vanuatu Investment Promotion Authority, donors, including AusAID’s logistical support, the Chamber of Commerce, VANWODS, banking institutions, and the National Council of Women.

Finally, we wish to thank the wonderful women entrepreneurs who took the time to share their stories and challenges with us. Particularly useful were Women in Business Forums held in Port Moresby (Papua New Guinea), Apia (Samoa), Honiara (Solomon Islands) and Nuku’alofa (Tonga). In Vanuatu useful focus group discussions took place in Port Vila and on Santos and Tanna islands. Particular thanks go to those women who participated in one-on-one interviews, which took place in all the capital cities, and in Mount Hagen (Papua New Guinea).
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface and Acknowledgements</td>
<td>i</td>
</tr>
<tr>
<td>Foreword</td>
<td>iv</td>
</tr>
<tr>
<td>Introduction</td>
<td>v</td>
</tr>
<tr>
<td>Chapter 1. Economic framework</td>
<td>1</td>
</tr>
<tr>
<td>Chapter 2. The legal framework</td>
<td>3</td>
</tr>
<tr>
<td>Chapter 3. Public private dialogue</td>
<td>6</td>
</tr>
<tr>
<td>Chapter 4. Starting and licensing a business</td>
<td>11</td>
</tr>
<tr>
<td>Chapter 5. Access to justice, the courts and alternative dispute resolution</td>
<td>17</td>
</tr>
<tr>
<td>Chapter 6. Access to and enforcement of rights over registered land</td>
<td>21</td>
</tr>
<tr>
<td><strong>Tools</strong></td>
<td></td>
</tr>
<tr>
<td>Tool 1: Gender Working Group: Terms of Reference</td>
<td>22</td>
</tr>
<tr>
<td>Tool 2: Business Women’s Forum: Terms of Reference</td>
<td>25</td>
</tr>
<tr>
<td>Tool 3: Investment Climate Gender Consultant: Terms of Reference and Initial Work Plan</td>
<td>27</td>
</tr>
<tr>
<td>Tool 4: List of Laws that hinder women’s full economic participation</td>
<td>33</td>
</tr>
<tr>
<td>Tool 5: Business Women’s Perception Questionnaire</td>
<td>39</td>
</tr>
<tr>
<td>Tool 6: Using Business Registry Data to Establish percent of Registered Companies Headed by Women</td>
<td>41</td>
</tr>
<tr>
<td>Tool 7: Business Owners’ Survey</td>
<td>43</td>
</tr>
<tr>
<td>Tool 8: Business Registry Sex Equality Checklist</td>
<td>45</td>
</tr>
<tr>
<td>Tool 9: How to Undertake Outreach on Formalization for Business Women</td>
<td>46</td>
</tr>
<tr>
<td>Tool 10: Women’s Help Desk: draft Terms of Reference</td>
<td>46</td>
</tr>
<tr>
<td>Tool 11: Women’s Consultation / Training Checklist</td>
<td>47</td>
</tr>
<tr>
<td>Tool 12: Companies Act Checklist</td>
<td>48</td>
</tr>
<tr>
<td>Tool 13: Basic Partnership Agreement</td>
<td>49</td>
</tr>
<tr>
<td>Tool 14: Mainstreaming Gender in Regulatory Compliance Cost Tools</td>
<td>51</td>
</tr>
<tr>
<td>Tool 15: Analysis of Business Names Registration Process</td>
<td>55</td>
</tr>
<tr>
<td>Tool 16: Mechanism to Sex Disaggregate Data on Holders of Sectoral Licenses</td>
<td>58</td>
</tr>
<tr>
<td>Tool 17: Gender Perspectives on CIMC Informal Policy Concept Paper</td>
<td>59</td>
</tr>
<tr>
<td>Tool 18: Outline of Basic Contract</td>
<td>62</td>
</tr>
<tr>
<td>Tool 19: ADR Sex Equality Checklist</td>
<td>63</td>
</tr>
<tr>
<td>Tool 20: Methodology for Sex Disaggregation of ADR Users</td>
<td>64</td>
</tr>
<tr>
<td>Tool 21: ADR / Commercial Justice Users Perception Questionnaire</td>
<td>64</td>
</tr>
</tbody>
</table>
Foreword

Pacific Island women are a powerful force for economic growth and development, making important contributions to the economy as entrepreneurs and employees, and to the welfare of their families. Studies show that when women are given economic opportunity, the benefits are large also for their families, their communities, and ultimately for national development efforts. Opening economic options for women puts poverty reduction on a faster track.

Across the Pacific, some obstacles in the investment climate such as a prevailing culture of informality amongst female entrepreneurs, unequal access to property, credit, justice, women’s lack of experience, and comfort with formal business processes such as business and license registration, have a disproportionately greater adverse impact on women. These constraints hinder women from contributing more to their country’s growth and development. Further, overly cumbersome regulations can unintentionally hurt women, young, and low skilled workers more than others and raise the risk of excluding them from doing business, due to a lack of education and lack of confidence to deal with government authorities and financial institutions. Women are less able to lobby government to have cumbersome regulations reduced, in part because female political representation in the Pacific is among the lowest in the world. Removing such obstacles can help not only to empower women but also to unlock the full economic potential of Pacific nations.

IFC and the World Bank Group more generally are committed to reducing gender based barriers in the investment climate, increasing access to finance for women entrepreneurs, and helping governments understand the gender dimensions of business reform and growth. Our Practitioners Guide on Gender and Investment Climate Reform was piloted in the Pacific region, resulting in a series of six Gender and Investment Climate Reform Assessments, on Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, and Vanuatu. These Assessments will guide the World Bank Group in the mainstreaming of gender into its investment climate projects in the Pacific, in particular through the Pacific Regional Program on Regulatory Simplification and Investment Policy Promotion (in Tonga, Solomon Islands, Papua New Guinea, and Vanuatu), and the Timor-Leste Public Private Dialogue and Business Registration projects.

The experience of Pacific Island countries in implementing the targets and activities recommended by this report should provide valuable lessons globally in mainstreaming gender in investment climate reform. I am grateful for the support and funding from the Australian Agency for International Development (AusAID), New Zealand’s International Aid and Development Agency (NZAID) and Japan International Cooperation Agency (JICA), and the Gender unit of IFC which has made this important effort possible.

Pierre Guislain
Director
Investment Climate Advisory Services
World Bank Group
Introduction

Background
This Pacific Gender and Investment Climate Reform Assessment Regional Executive Summary briefly summarises the solutions identified to address gender-based investment climate barriers which constrain women’s economic empowerment in six Pacific nations: Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, and Vanuatu. Four investment climate topics are considered:

- Public private dialogue
- Starting and licensing a business
- Access to justice and alternative dispute resolution, and
- Access to and enforcement of rights over registered land.

For each topic, this series of six Reports (the Reports) ask whether women face different or additional investment climate constraints to those faced by men. And they make recommendations aimed at ensuring that women benefit from ongoing efforts to improve the investment climate on the same basis as their male counterparts.

IFC in partnership with Pacific Island Governments aims to enable women’s greater participation in private sector development in the Pacific by improving the business enabling environment for women through its existing Investment Climate programs. Therefore, for each country in which IFC has an ongoing program, recommended solutions are presented in the form of specific targets with associated activities which will be incorporated into, and implemented through, the Pacific Program on Regulatory Simplification and Investment Policy and Promotion (for Papua New Guinea, Tonga, Solomon Islands, and Vanuatu), and in the case of Timor-Leste, IFC’s Public Private Dialogue and Business Registration projects. The Reports also provide tools which are to be used for guidance in implementing the recommended activities resulting from the Reports. The tools also provide guidance on collecting baseline data and conducting monitoring and evaluation against the targets.

The Reports do not aim to cover all gender issues in the six Pacific Island countries, or all gender issues in private sector development or investment climate reform. Gender constraints in the Pacific are wide-ranging and entrenched in cultural and historical factors. All targets and activities recommended in the Reports only relate to reducing gender constraints through the investment climate reforms that IFC is undertaking. Any further recommendations made that are not linked to targets or activities are for the Government and its development partners to consider and advance as appropriate. By IFC taking action to reduce or remove gender constraints in key aspects of the investment climate, it is anticipated that this will help to improve the Pacific’s attractiveness for local and international investment and business growth. It is hoped that these reforms could be part of broader reform in the Pacific to create equal opportunities for women and men.

The primary audience for the six Reports is IFC and Pacific Island Governments, especially Ministries focused on private sector development. It is hoped that the Report’s analysis of investment climate barriers with a gender lens will also be a useful tool for other stakeholders working to increase women’s economic empowerment.
**Methodology**

Assessment teams undertook approximately five day missions to each of the six countries covered by the Reports during April 2008 (Vanuatu) and February and March 2009 (Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, and Tonga). The methodology for the assessments was guided by the IFC’s Gender and Investment Climate Practitioner’s Guide\(^2\). Interviews, using semi-structured questionnaires, were held with a wide variety of stakeholders including: private sector representative bodies; private sector operators; banks and micro-credit institutions; lawyers; civil society; Government Departments and bodies; and donors. An extensive literature review was undertaken (see Bibliography).

To supplement the analytical work, a number of in-depth, one-on-one interviews with a range of businesswomen from each country were conducted and compiled into case studies which are used throughout the six Country Reports to highlight the investment climate constraints faced by women, and celebrate the successes that they have achieved. Some of these case studies are also published in a joint IFC-AusAID publication entitled *Economic Opportunities for Women in the Pacific*, which complements this series.

\(^2\) Which in the case of Vanuatu, was at that stage under development.
Chapter 1. Economic framework

This chapter provides an overview of the economic context for women engaged in private sector development in the Pacific region. This provides essential background for the recommendations and more specifically for the formulation of IFC’s interventions designed to ensure that investment climate reforms are inclusive and benefit a wide range of constituents. Before considering in detail any particular investment climate constraint from a gender perspective, it is helpful to have a basic understanding of the different roles than men and women play in the economy and in society.

Regional investment climate challenges

The private sector in each of the six countries faces considerable challenges. These include: remoteness and isolation resulting in relatively high transport costs, coupled with a small domestic market; exposure to events in global markets and trade regimes; susceptibility to natural disasters and/or environmental change; and limited capacity in the public and private sector and political and civil instability.

As can be seen from Table 1.1 below, the six countries have a mixed investment climate rating according to the World Bank’s Doing Business 2010 report. Some countries have taken significant steps to strengthen their investment climate – particularly Samoa, Tonga, and Vanuatu. Overall, Timor-Leste currently has one of the most challenging investment climates in the world, ranking 164 out of 183 economies.

Table 1.1. Doing Business 2010 rankings out of 183 economies

<table>
<thead>
<tr>
<th>Doing Business indicators</th>
<th>Papua New Guinea</th>
<th>Samoa</th>
<th>Solomon Islands</th>
<th>Timor-Leste</th>
<th>Tonga</th>
<th>Vanuatu</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall ease of doing business</td>
<td>102</td>
<td>57</td>
<td>96</td>
<td>164</td>
<td>52</td>
<td>59</td>
</tr>
<tr>
<td>Starting a business</td>
<td>104</td>
<td>20</td>
<td>111</td>
<td>150</td>
<td>32</td>
<td>110</td>
</tr>
<tr>
<td>Dealing with construction permits</td>
<td>121</td>
<td>48</td>
<td>40</td>
<td>87</td>
<td>35</td>
<td>22</td>
</tr>
<tr>
<td>Employing workers</td>
<td>26</td>
<td>18</td>
<td>65</td>
<td>89</td>
<td>11</td>
<td>75</td>
</tr>
<tr>
<td>Registering property</td>
<td>83</td>
<td>81</td>
<td>172</td>
<td>183</td>
<td>121</td>
<td>104</td>
</tr>
<tr>
<td>Getting credit</td>
<td>135</td>
<td>127</td>
<td>167</td>
<td>181</td>
<td>113</td>
<td>71</td>
</tr>
<tr>
<td>Protecting investors</td>
<td>41</td>
<td>27</td>
<td>57</td>
<td>132</td>
<td>109</td>
<td>73</td>
</tr>
<tr>
<td>Paying taxes</td>
<td>96</td>
<td>67</td>
<td>48</td>
<td>19</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Trading across borders</td>
<td>89</td>
<td>88</td>
<td>82</td>
<td>85</td>
<td>51</td>
<td>141</td>
</tr>
<tr>
<td>Enforcing contracts</td>
<td>162</td>
<td>83</td>
<td>108</td>
<td>183</td>
<td>55</td>
<td>73</td>
</tr>
<tr>
<td>Closing a business</td>
<td>104</td>
<td>139</td>
<td>107</td>
<td>183</td>
<td>103</td>
<td>52</td>
</tr>
</tbody>
</table>

Women are significant private sector players, but are mainly in the informal sector

In each of the countries considered in this series of six Reports, the vast majority of formal businesses are owned and controlled by men. In the Pacific, women are significant private sector players, but are mainly in the informal sector – and are frequently home-based focusing on subsistence agriculture, marketing of agricultural products, and petty trading. In the informal sector, women are subject to inefficiencies and limitations more than men. Women are less likely to have title to land and are often disadvantaged by prevailing family, marriage, and inheritance laws and practices. They often have greater difficulty in accessing finance to grow their business, and the justice system for resolving commercial disputes.

However, women’s contribution to the economy should not be underestimated. In Solomon Islands, the annual turnover at the Honiara Central Market is $10–16 million, with women responsible for about 90 percent of this marketing activity – both as bulk-buyers from farmers and as retailers.

In Papua New Guinea annual food production, largely the responsibility of women, has been valued at $55 million per year.

In Samoa, 80 percent of the private sector is comprised of micro businesses, and women are estimated to head over 40 percent of them.

In Timor-Leste, women are more active in agriculture than men, particularly in producing and processing food crops for family consumption, while they own only 16 percent of formalized businesses.

Women may not be formalizing their businesses for a number of reasons. Culturally women are in general not expected to become successful in business, although they are frequently expected to engage in income-generating activities. In some countries, for example Tonga, there is a growing acceptance of female entrepreneurship, at least at the sole trader level. As in many other societies, economically active women suffer from a double workday – combining responsibilities for home and family with their economic activities. In Papua New Guinea, for example, women work on average nearly twice as many hours as men. In Tonga, women work over 50 percent longer than men on non-economic activities each week.

*Development costs of these disparities are significant*

Promoting women’s economic empowerment is increasingly seen as one of the most important driving forces behind economic growth and the fight against poverty. Women’s economic participation as entrepreneurs, employees, and leaders is recognized as a measure of a country’s dynamism and viability. This includes women’s active participation in the formal sector.

There is a wealth of micro-evidence pointing out that inequalities in access to productive assets reduce their productivity. This limited access constitutes a distortion, especially in situations where women and men undertake different and/or separate productive activities. As ‘women’s activities’ are under-resourced and under-capitalized compared to men, declining marginal returns and the loss associated with talented women being starved of economic resources reduce aggregate output.

Empowering women through investment climate reform has a positive multiplier effect on economic development. There is a large body of evidence, especially at the microeconomic level, along with some macroeconomic analysis, which shows that gender inequality not only disadvantages women, but also reduces the growth potential, productivity, and performance of the economy as a whole. Gender-based inequalities impose significant development costs on societies.

When the inequality gap between men and women narrows, economies tend to grow faster, the poor move more quickly out of poverty, and the well-being of men, women, and children is enhanced. Societies that increase women’s access to education, health care, employment, and credit, and that narrow differences between men and women in economic opportunities increase the pace of economic development and reduce poverty.

Furthermore, improving women’s bargaining power has a significantly positive impact on investments in children’s education, health, and nutrition. Women’s bargaining power is, in turn, heavily influenced by their employment status, education, and access to unearned incomes such as inheritances and remittances. Improving the bargaining power of women would therefore lead not only to beneficial effects on the women themselves but also to considerable externalities in terms of improved outcomes for their families.

As such, countries that do not fully capitalize effectively on one-half of their human resources run the risk of undermining their competitive potential. Capturing this ‘missed potential’ is a core goal of gender-informed investment climate reform, as the payoffs could be considerable.

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6 Stotsky, Janet G. 2006. Gender and its Relevance to Macroeconomic Policy: A Survey, IMF Working Paper No. 06/233, Washington DC. It should be noted that the difficulties of providing empirically robust proofs of the linkages between gender inequality and economic growth do not necessarily invalidate the existence, and even the strength, of such linkages. Rather, they reflect inherent limitations in the data and the methodologies available to capture these linkages effectively. A World Bank research project, being undertaken as part of the Gender Action Plan, aims to address methodological issues in gender/growth analysis and to strengthen the foundations for such work in the future.
7 (e.g. Thomas, 1997; World Bank, 2001; Lundberg, Pollak and Wales, 1997; Murthi, et al. 1995).
8 This is, essentially, why the World Bank Group and its partners have embarked on a Gender Action Plan at the core of which is ‘gender equality as smart economics’. For more on the Gender Action Plan, see: http://Web.worldbank.org/WEBSITE/EXTERNAL/TOPICS/EXTGENDER/ Awareness of gender in the development agenda has grown considerably, and has been bolstered by mounting empirical evidence of the costs of gender inequality for development, and by greater recognition of the centrality of addressing gender as integral to development effectiveness.
Chapter 2. The legal framework

When analyzing laws and regulations that affect women’s economic participation, it is critical to pay attention to those laws that both directly (business registration, labor law) and indirectly (family law, inheritance law) affect women’s capacity to participate in the private sector. While family law or inheritance laws do not fall within the immediate scope of investment climate reform work, these can have a significant impact on women’s economic participation in a given country, thus need to be paid attention to.

The countries considered in this series of six Reports operate two parallel legal systems – the formal legal system, and the customary legal system. In practice it is the customary system that impacts on the lives of most people at community level. In general, custom law tends to have discriminatory practices against women – for example in relation to property rights and allocation of resources such as land. As far as the formal system is concerned, laws that impact women’s economic activity, particularly in relation to property rights and employment rights, remain on the statute books. Further, in all 6 countries, Civil Codes, Labor Laws or Inheritance Laws have provisions that need to be reformed to fosters women’s greater economic participation and remove obstacles.

On the positive side, all six countries have entered into international commitments to gender equality. Apart from Tonga, all five have ratified the important Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in which they commit themselves without delay to take measures to eradicate discrimination from all aspects of life. The Constitutions of Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, and Vanuatu all prohibit discrimination on the grounds of sex. The Tongan Constitution guarantees equality, although it does not contain a specific prohibition on discrimination on the basis of sex, nor does the equality provision apply to land holding, which is reserved for men.

However, alongside guarantees of equality, the Constitutions of Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, and Vanuatu enshrine and recognize customary law as part of their legal system. This appears to be in conflict both with CEDAW commitments and with the Constitution’s equality provisions. The extent of Constitutional equality guarantees and their relation with custom law can be uncertain, and national courts have shown varying degrees of robustness in applying international and Constitutional equality provisions to customary law practices. The Tongan Constitution does not recognize customary law, although in practice it is applied at the community level. CEDAW commitments, coupled with investment climate reform agenda to support sustainable private sector development and economic growth, can provide the right incentives to repeal the discriminatory provisions. These laws and regulations that hinder women’s full economic participation are summarized below.

Table 1.2. Key laws and regulations that hinder women’s full economic participation

<table>
<thead>
<tr>
<th>Area of law</th>
<th>Current provision</th>
<th>Proposed Reform</th>
</tr>
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<tbody>
<tr>
<td>PAPUA NEW GUINEA</td>
<td></td>
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<tr>
<td>Divorce – division of property</td>
<td>Matrimonial Causes Act Provides the courts with the power to determine divorce, property distribution, maintenance, and custody.</td>
<td>• Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account</td>
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<td></td>
<td></td>
<td>• Training to judges on gender implications on their decision making</td>
</tr>
<tr>
<td>Inheritance (in the absence of a will)</td>
<td>Wills and Probate Act Provides for the application of customary law where there is no will. As customary inheritance laws are based on patrilineal lines, they discriminate against women.</td>
<td>• Amend the law providing for non discriminatory division of assets where there is no will and to provide for statute law to prevail over custom law in relation to inheritance (i.e. Ghana Law 111 Intestate Succession Law)</td>
</tr>
<tr>
<td>Employment</td>
<td>Employment Act Women are prohibited from working in certain positions at night, and from working underground or in jobs that involve heavy labor.</td>
<td>• Remove discriminatory provision from legislation</td>
</tr>
<tr>
<td>Area of law</td>
<td>Current provision</td>
<td>Proposed Reform</td>
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<td>------------------</td>
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<tr>
<td><strong>SAMOA</strong></td>
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<tr>
<td><strong>Marriage</strong></td>
<td>Marriage Ordinance 1961 recognizes customary marriages and discriminatory practices are common</td>
<td>• Legislation should be amended to bring it into line with CEDAW and thus remove such discriminatory practices</td>
</tr>
<tr>
<td><strong>Inheritance</strong></td>
<td>Administration Act 1975 Although this Act provides for equal treatment, customary law applies to land and discriminates against women.</td>
<td>• Amend the law providing for non discriminatory division of assets where there is no will (i.e. Ghana Law 111 Intestate Succession Law)</td>
</tr>
<tr>
<td><strong>Employment</strong></td>
<td>Public Service Act – only protects women in the public service from discrimination and not private sector employees. Labor and Employment Act 1972 – Outmoded provisions preventing women from working from 12 midnight to 6 am in certain capacities exist</td>
<td>• Amend the Labor and Employment Act in line with ILO conventions in relation to female workers</td>
</tr>
<tr>
<td><strong>SOLOMON ISLANDS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Marriage</strong></td>
<td>The Islanders Marriage Act recognizes customary marriages and discriminatory provisions.</td>
<td>• Legislation should be amended to bring it in line with CEDAW and remove such discriminatory practices</td>
</tr>
<tr>
<td><strong>Citizenship</strong></td>
<td>The Citizenship Act provides that a woman can gain citizenship by marrying a Solomon Islander. However if she divorces him and marries a non-citizen she loses her citizenship, unless she has resided in the country for at least ten years.</td>
<td>• Amend the legislation to treat men and women equally</td>
</tr>
<tr>
<td><strong>Divorce – division of property</strong></td>
<td>The Divorce Act is silent on how the property that has been accumulated by the couple during the marriage will be divided. This is often left to the Court to decide and conflicting results can emerge. Affiliation, Separation and Maintenance Act provides that maintenance orders may be discharged by a Court in case of the wife committing adultery</td>
<td>• Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account</td>
</tr>
<tr>
<td><strong>Inheritance</strong></td>
<td>The Wills Probate and Administration Act gives equal inheritance rights to men and women. However customary law has constitutional status and customary inheritance laws discriminate against women</td>
<td>• Amend the law providing for non discriminatory division of assets where there is no will. Introduction of proposed constitution is required to address the effect of customary law in this area (See Ghana Law 111 Intestate Succession Law)</td>
</tr>
<tr>
<td><strong>Employment</strong></td>
<td>The Labor Act does not apply to domestic servants where many women work. Restrictions on women working in certain sectors including underground work in any mine.</td>
<td>• Amend the law to apply to domestic servants • Remove restrictions on women’s work</td>
</tr>
<tr>
<td><strong>TIMOR-LESTE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Marriage</strong></td>
<td>Customary law and Indonesian Civil Code is recognized and has discriminatory practices. Examples of discriminatory provisions include Article 105 which gives the husband the right to manage his wife’s personal assets and Article 108 which restricts the wife from disposing, acquiring or encumbering any property without the written consent from her husband.</td>
<td>• The Draft Civil Code provision allows for couples to determine their own rights to property during marriage and upon divorce or death and gives the option to circumvent the discriminatory practices in the Indonesian Civil Code.</td>
</tr>
<tr>
<td>Area of law</td>
<td>Current provision</td>
<td>Proposed Reform</td>
</tr>
<tr>
<td>-------------</td>
<td>-------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Divorce – division of property</td>
<td>The Indonesian Civil Code leaves matters of the division of property to the Courts to decide, which has been ineffective to date in Timor-Leste as the Courts have not been hearing civil cases. Under the proposed Civil Code, the rights to the family home are determined by the Court. However the time and expense in taking the matter to court cannot be underestimated and is unlikely to be exercised by many women. Women’s rights to alimony payments and child support are left to the Court under the Draft Civil Code, which has a wide discretion to determine the issue. Currently it is extremely difficult to have civil matters heard in courts and there is little legal assistance for women which means that, for all practical purposes, women are unlikely to be able to gain alimony payments.</td>
<td>• Amend the Draft Civil Code to remove discriminatory provisions in relation to entitlement for divorce. Clear guidelines on division of property on divorce should be set out (including recognition of women’s non-financial contribution to the marriage).</td>
</tr>
<tr>
<td>Inheritance (in the absence of a will)</td>
<td>Women have limited rights to inheritance under customary laws. In patrilineal communities, women cannot inherit the land although they have some rights in matrilineal communities. The Draft Civil Code provides for the equal treatment of men and women and will overcome some of the discriminatory practices in the Indonesian Civil Code. (See Ghana Law 111 Intestate Succession Law)</td>
<td>• The Draft Civil Code provides for the equal treatment of men and women and will overcome some of the discriminatory practices in the Indonesian Civil Code. (See Ghana Law 111 Intestate Succession Law)</td>
</tr>
<tr>
<td>Employment</td>
<td>The Labor Code protects women from discriminatory practices and guarantees maternity leave. However it does not apply to the informal sector where a large percentage of women work.</td>
<td>• Improve enforcement of the Labor Code</td>
</tr>
</tbody>
</table>

**TONGA**

| Divorce – division of property | The Divorce Act is silent on the consideration given to non-financial contributions and property accumulated during the marriage to be divided, which can be discriminatory against women. Due to restrictions in the Land Act, widows can obtain a life interest in their husband’s land upon his death but this is terminated upon a widow’s remarriage or in event of her committing adultery. | • Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account |
| Inheritance (in the absence of a will) | The Probate and Administration Act has codified customary law and contains discriminatory provisions including that, upon the death of her husband the wife only inherits a third of the estate (as opposed to the man who inherits the whole estate). | • Amend the Act to remove discriminatory provisions. (i.e. Ghana Law 111 Intestate Succession Law) |
| Employment | No legislation in this area and it is left to the parties, which often works against women. There is no anti-discrimination legislation and there is scope for women to be treated unfairly by employers. As there are no maternity leave provisions, there is the possibility for pregnant women to be dismissed and not re-employed, which is discriminatory. | • Enact employment laws which provide for non-discrimination in the workplace, prohibit sexual harassment, and introduce realistic and affordable provisions for maternity leave and pay. |

**VANUATU**

| Divorce – division of property | Under the Matrimonial Causes Act (cap 192), the extent to which the division of matrimonial property on divorce recognizes non-financial contributions to the marriage (for example, a wife looking after the home) is unclear. | • Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account |
| Inheritance (in the absence of a will) | The English Administration of Estates Act 1925 applies where the customary practices do not. The custom in some communities is that the daughters lose their entitlement to land when they marry. | • Enact an Intestate Succession Act to provide for inheritance where there is not will. Clarify that statute law overrides discriminatory customary law (See Ghana Law 111 Intestate Succession Law) |
| Employment | Employment law provides for unequal retirement ages | • Amend the law to provide for the same retirement age for men and women |
Chapter 3. Public private dialogue

Effective dialogue between the public and private sectors is now recognized as a key component of successful investment climate reform. The robustness of the public private dialogue (PPD) mechanisms varies between the six countries, and IFC is working with Government and the private sector to strengthen them. In each country there is need for the voice of business women (including the vast majority that operate in the informal sector) to be more effectively heard. As detailed in the six Reports, generally women's voice does not appear to be well represented in public private dialogue processes – in either the private or public sector. As a result, the existing legal and regulatory impediments that relate specifically to women's economic empowerment are not being satisfactorily highlighted or addressed. In addition, there is scope for strengthening training and business networking opportunities for business women across the region.

To address these issues where appropriate, IFC will support, within its Regional Regulatory Simplification and Investment Policy and Promotion Program, and Timor-Leste's PPD project, the development of increased public private dialogue on the gender issues raised in the six Reports, together with training for business women to address the investment climate constraints they identified at the initial Business Women's Forums held in February and March 2009 throughout the Pacific (see Table 2.1 and Figure 2.1 below).

Table 1.3. Gender Working Group and Business Women's Forum

IFC will support the development of enhanced dialogue on gender issues within existing PDD structures operating in each country. If the existing PPD structures are assessed to have inadequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance, a Gender Working Group will be established. It is envisaged that this would comprise four public and four private sector representatives, supported by the Government’s PPD Secretariat. The Group’s key mandate would be to ensure that women’s voice is effectively heard in PPD; to develop policies to promote women’s economic empowerment; and to ensure that business women’s concerns are taken on board in the investment climate reform process.

IFC will, if required, provide initial support to the PPD Secretariat to enhance dialogue on gender issues by funding a locally appointed consultant to advise and assist the PPD Secretariat in this regard.

Business Women’s Forum (BWF): IFC facilitated the first Business Women’s Forum meetings in Papua New Guinea, Samoa, Solomon Islands, and Tonga in February/March 2009. These meetings were an opportunity for business women to network and to discuss common concerns. The intention is now to strengthen and institutionalize this initiative.

The BWF will comprise a network of women entrepreneurs, both formal and informal, who will meet on a monthly basis for networking and to receive training on business issues, particularly related to business formalization. The intention is that the BWF will be supported by and linked to existing business women’s associations and other relevant groups, such as microfinance institutions. The aim is for about 50 women to be targeted to attend each training/networking meeting. The Forum will develop its own governance structures (for example a small board) and this will, during the pilot phase, be supported by an IFC funded consultant who will be locally recruited. If there is ongoing appetite amongst business women for such a forum, the aim is for it to continue on a self-financing basis after the initial pilot period.

The key aims of the BWF will be to provide support and training to business women; to share information and knowledge; and to develop linkages with regional and international organizations with similar aims. Where the BWF identifies investment climate constraints for business women, these will be fed across the Gender Working Group to consider and, if appropriate, take forward reform.
The figures below set out the specific goals, targets, and activities for incorporation in the PPD component of the Regulatory Simplification and Investment Policy and Promotion Program and in the Timor-Leste PPD project to improve the policy environment and support network for business women. More detail on these initiatives at the country level can be found in the six Gender and Investment Climate Reform Assessments. Specific Tools developed to support the incorporation of gender within IFC’s work can be found at the end of this Regional Executive Summary as well as the country Reports.

**Goal: improved policy environment and support network for business women**

**TARGET 1.1:** Improved policy dialogue on investment climate reform for women’s economic empowerment

**TARGET 1.2:** Improved legal framework for women’s businesses

**TARGET 1.3:** Improved training and networking for business women
**Target 1.1:**
Improved policy dialogue on investment climate reform for women’s economic empowerment

- Papua New Guinea
- Solomon Islands
- Timor-Leste
- Tonga
- Vanuatu

**Baseline:**
- Proportion of members representing business women’s interests in PPD structures.
- Number of policy papers featuring women’s economic empowerment considered by Cabinet

**Tool 2:**
Business Women’s Forum
ToRs

**Tool 3:**
Investment Climate Gender Consultant:
ToRs and initial work plan
Target 1.2:
Improved legal framework for women's businesses

Papua New Guinea
Solomon Islands
Timor-Leste
Tonga
Vanuatu

Baseline:
Number of reforms to improve the investment climate for women enacted and implemented

Enact and implement new laws

Introduce law reforms to Parliament, including those recommended in Table 1.2 above

PPD structures and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms

Tool 4:
List of Discriminatory Laws
**Target 1.3:**
Improved training and networking for business women

**Papua New Guinea**  
**Solomon Islands**  
**Timor-Leste**  
**Tonga**  
**Vanuatu**

- **Baseline:**  
  Business women's perceptions of training and networking

- **Develop and undertake networking and monthly training on investment climate for the Business Women's Forum, including regional networking across the Pacific to share lessons and experiences**

- **Continue regular country level Business Women's Forums (with open invitation to business women ranging from the informal sector through to big business), as commenced by IFC in February / March 2009, in partnership with local organizations and existing business women's associations**

**Tools:**

- **Tool 11:** Women's Consultation Training Checklist
- **Tool 3:** Investment Climate Gender Consultant: ToRs and initial work plan
- **Tool 2:** Business Women’s Forum ToRs
- **Tool 5:** Business Women’s Perception Questionnaire
Chapter 4. Starting and licensing a business

Most businesses in each of the six Pacific Island countries considered are microenterprises, and operate informally or semi-informally. But of the businesses that are formalized, the vast majorities are male-headed. Register records show that men register many more companies and business names than do women. For both male and female entrepreneurs, formalizing a business brings with it advantages, including the potential for growth, access to credit, and investment. Some women may prefer to run microenterprises and remain informal. But while informal enterprises may provide a short-term solution to a household’s livelihood needs, creating an economy with a higher proportion of formal enterprises and jobs is important to long-term welfare creation, stability, and poverty reduction. As the case studies in the six Reports show, there are women in each of the countries running enterprises that are, or have the potential to be, growth-orientated. Enabling such women to formalize and thus grow their businesses and increase their income can reap benefits at the household level: there is international evidence that resources in the hands of women do more for family welfare than if they are controlled by men.

Limited liability companies are generally considered to be the optimum business form for growth-orientated business. Limited liability status offers a number of significant business advantages: limited liability status, a share structure that facilitates investment, and a legal identity separate from the business owners. The clear distinction between business and household income that a separate corporate form offers could be a particular advantage to business women.

Men and women may face different barriers to formalization. Barriers for women may include limited knowledge about the formalization process or logistical problems in undertaking registration. It is sensible for investment climate reforms designed to facilitate business formalization to address the barriers faced by women, as well as those faced by men.

The figures below set out the specific goals, targets, and activities for incorporation in starting and licensing a business component of the Regulatory Simplification and Investment Policy and Promotion Program, and Timor-Leste’s Business Registration project, to improve business entry and formalization for business women. More detail on these initiatives at the country level can be found in the country Reports. Specific Tools developed to support the incorporation of gender within the IFC’s work can be found at the end of this Regional Executive Summary, as well as the country Reports.

Goal: enhanced ability of women to start and run businesses

<table>
<thead>
<tr>
<th>TARGET 2.1:</th>
<th>TARGET 2.2:</th>
<th>TARGET 2.3:</th>
<th>TARGET 2.4:</th>
<th>TARGET 2.5:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase by five percentage points the proportion of (a) registered companies and (b) partnerships and sole traders that are female-headed.</td>
<td>Improved legal framework for women’s business entry</td>
<td>Reduced regulatory compliance costs on female-headed businesses.</td>
<td>Increased number of female-headed businesses have appropriate sectoral licenses</td>
<td>Reduced harassment of female informal sector traders</td>
</tr>
</tbody>
</table>
**Target 2.1:**
Increase by five percentage points the proportion of (a) registered companies and (b) partnerships and sole traders that are female-headed*

* In the case of Tonga, the target in relation to partnerships and sole traders is to retain high levels of female-headed sole traders (currently 50 percent) and to focus on increasing the proportion of female-headed companies, which is currently very limited. This could involve graduating some of the sole traders to company status.

** In Timor-Leste more detailed activities are developed for mainstreaming gender within registration reform activities taking place under the IFC supported Business Registration project.
Target 2.2:
Improved legal framework for women’s business entry

Papua New Guinea
Solomon Islands
Timor-Leste
Tonga
Vanuatu

Tool 12: Companies Act Checklist
Tool 13: Draft Partnership Agreement
Tool 18: Outline of Basic Contract

Baseline: Number of reforms undertaken

Review companies legislation to ensure best practice legal framework for registration of women’s businesses and community groups as companies*
Develop and promulgate basic partnership agreement with civil society and business organizations
Review Business Groups Incorporation Act to ensure women can be adequately represented in community companies and that women’s community groups can register
Undertake basic training in contract law in English, Tetum, and Portuguese

* In Solomon Islands the activity relates directly to the new Companies Act and is – Develop regulations under new Companies Act for community companies that build in protection for women.
Target 2.3:
Reduced regulatory compliance cost on female headed businesses

Papua New Guinea
Solomon Islands
Vanuatu

Tool 15:
Analysis of Business Names Registration Process

Tool 11:
Women's Consultation / Training Checklist

Tool 5:
Business Women's Perception Questionnaire

Papua New Guinea
Solomon Islands
Timor-Leste
Tonga
Vanuatu

Tool 14:
Mainstreaming gender in regulatory compliance cost tools

Baseline:
Number of female- and male-headed companies, partnerships and sole traders

Simplify procedures and reform licenses in light of impact on female-headed business (revealed in focus group discussions and time and cost compliance analysis)

Conduct women's focus group discussion on licensing constraints

Improve legislation/policy on Business Names Registration based on international best practice.
**Target 2.4:**
Increased number of female-headed businesses having appropriate sectoral licenses

**Baseline:**
Sex disaggregated data on holders of sectoral licenses

**Papua New Guinea**

**Tonga**

**Vanuatu**

**Tool 7:** Business Owners Survey

**Tool 11:** Women’s Consultation / Training Checklist

**Tool 16:** Mechanism to Sex Disaggregate Data on Holders of Sectoral Licenses

**Tool 14:** Mainstreaming Gender in Regulatory Compliance Cost tools
**Target 2.5:**
Reduced harassment of female informal sector traders

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**Baseline:**
Current level of harassment suffered by female informal sector traders

**Tool 5:**
Business Women’s Perception Questionnaire

**Tool 17:**
Gender Perspectives on CIMC Informal Policy Concept Paper

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**Papua New Guinea**
**Solomon Islands**

Work with Informal Sector Technical Working Group (PNG) / BLAR Steering Committee (Solomon Islands) to contribute to:

a) Proposal for a market based solution, providing more legitimate market space for small vendors
b) Legislation/policy with transparent rights and responsibilities for market vendors operating in legitimate space
c) (PNG only) Review of NCDC’s policy on betel nut selling and exploring ways to enable it to be a legitimate business, while balancing health and public order concerns.
Chapter 5. Access to justice, the courts and court-referred mediation

In practice, the only route to justice open to many women is to rely on chiefs who dispense custom law at the community level. Traditional justice systems are accessible, but tend to marginalize women. Women tend to be minority users of the formal justice system where both the Judiciary and the legal profession are male-dominated. IFC provides assistance to Pacific Courts to establish and enhance court-referred mediation, as a simple, time and cost efficient method to resolve commercial disputes. The introduction of court-referred mediation offers an opportunity to enhance access to justice for women, and to train and accredit women as mediators.

The figures below set out the specific goals, targets, and activities for incorporation in the commercial justice / alternative dispute resolution (ADR) component of the Regulatory Simplification and Investment Policy and Promotion Program to improve women’s access to commercial justice. More detail on these initiatives at the country level can be found in the six Reports. Specific Tools developed to support the incorporation of gender within IFC’s work can be found in at the end of this Regional Executive Summary, as well as the country Reports.

Goal: improved access to commercial justice for women

TARGET 3.1: 20 percent of court-referred mediation users are women and 80 percent of female users are satisfied with mediation services

TARGET 3.2: At least 20 percent of accredited mediators are women

TARGET 3.3: (TONGA ONLY) Increase by 5 percent the proportion of Magistrates Courts plaintiffs that are women
**Target 3.1:**
20 percent of court-referred mediation users are women and 80 percent of female users are satisfied with mediation services.
Target 3.2:
At least 20 percent accredited mediators are women*

* In the case of Tonga, the target is to maintain at least 40 percent female accredited mediators
**Target 3.3:**
Increase by 5 percentage points the proportion of Magistrates Court plaintiffs that are women.

Baseline:
Percentage of Magistrates Court plaintiffs that are women

Tool 21:
ADR/ Commercial Justice Users Perception Questionnaire

In the medium to long term set up small claims function at the Magistrates Court, if there is appropriate demand

Undertake outreach to inform business women of availability and appropriateness of small claims function in Magistrates Court
Chapter 6. Access to, and enforcement of, rights over registered land

In all six countries covered by the Gender and Investment Climate Reform Assessments, women have very limited rights over the vast majority of land that is held under customary tenure. Where land has been commercially exploited (for example in Papua New Guinea and Solomon Islands for logging and other commercial purposes) women have generally had little say in the decision-making process and have reaped few benefits. Women are generally minority users of the formal, registered land system.

Land is not currently being addressed under the regional Regulatory Simplification and Investment Policy and Promotion Project supported by IFC, although there could be future scope to look at improving processes at the property registries.

Country level Gender and Investment Climate Reform Assessments do however make recommendations for Governments in the context of ongoing land reform process. These include:

- Ensuring that women’s interests are properly recognized in bodies tasked to consider land reform, and that women are involved in the reform process.

- When strengthening land registration process: ensure that women are properly represented on any task force or group set up to take the institutional reform forward; and ensure that these institutions are friendly to women – for example suitable opening hours and facilities; help desks; adequate proportion of female staff; user guides and staff procedures manuals that recognize that they are for women as well as men.

- Mainstream consultation with women stakeholders with government administration processes relating to land (such as grant of land leases, environmental impact assessments, infrastructure development).

- Providing more information about being proactive in ensuring that women’s overriding rights to land (such as rights of way, rights to use the land) are registered through the Land Registry.
Tools

The following tools are designed to assist in implementing the recommended activities to achieve the set targets.

**Tool 1: Gender Working Group: Terms of Reference**

**Introduction**

Women comprise half the population of [NAME OF COUNTRY] and make a significant (although frequently unrecognized) contribution to [NAME OF COUNTRY]’s economy. Many female-headed businesses are micro or small. Business ownership and management in the formal sector is dominated by men.

The [NAME OF COUNTRY] Gender and Investment Climate Reform Assessment, funded by IFC and AusAID undertook a review of [INSERT NAME OF COUNTRY]’s investment climate with a gender lens. The Assessment concluded that [NAME OF COUNTRY]’s legal and regulatory framework for private sector development discriminates against women and makes it more difficult for them to start and grow businesses, particularly in the formal sector, than it is for their male counterparts.

In response to this finding, the Government of [INSERT NAME OF COUNTRY] proposes that if the existing PPD structures do not have adequate capacity to address the identified regulatory and policy level gender constraints, then a new Gender Working Group (GWG) be formed to support investment climate reform (see structure in diagram below). This initiative is taking place under the IFC funded Regulatory Simplification and Investment Policy and Promotion Project [IN TIMOR LESTE SUBSTITUTE – BETTER BUSINESS INITIATIVE].
Composition
If the government decides to form a Gender Working Group, it could comprise of... (up to) four public and four private sector representatives including:

- The Ministry leading the investment climate reform process (Chair)
- The Ministry responsible for women
- The Ministry/agency responsible for small business development
- The Ministry responsible for Justice
- The National Council of Women
- Business women’s organizations
- NGO’s/donor projects working with business women at the grass roots level (if appropriate, two representatives)

Secretariat
The work of the GWG will be supported by an IFC funded local consultant who provides technical assistance to the secretariat for the GWG.

Mandate
The overall role of the GWG is to ensure that women’s voice is effectively heard in PPD, and that business women’s concerns are taken on board in the investment climate reform process. Specifically the GWG will:

General
- Work with other groups in the PPD structure charged with driving forward reforms in specific areas (for example business entry) to ensure that gender is mainstreamed in these reform efforts, and that the recommendations made in the Gender and Investment Climate Reform Assessment are taken on board.
- Review terms of reference of other PPD groups in light of need to mainstream gender within their make-up and operations and propose amendments if necessary.

Business Women’s Forum
- Support the development and launching of a Business Women’s Forum to facilitate networking and training opportunities for women.
- Work with the Business Women’s Forum to assist them to develop appropriate networking and training schedule and activities.

Reform of general legal framework
- Develop policy papers for Cabinet on reforms required to the legal framework to facilitate women’s business entry and operations. These will include reform of the discriminatory laws listed in Tool 4.
- Advocate for reform of legal framework in accordance with policy papers.
- [PNG, SOLOMON ISLANDS, TIMOR LESTE, AND VANUATU] Work with relevant Government institution to strengthen the process for the reporting to the UN on obligations under the Convention for the Elimination of All Forms of Discrimination. Work with Government to ensure that the country reports adequately address economic (as well as social) issues and that a robust and sustainable mechanism exists for driving forward reforms to enhance women’s economic empowerment.

Business entry and licensing
- Work with Business Registry to ensure its operations are gender sensitive [see Tools 6–12]
- Work with Business Registry to undertake outreach activities in respect of business women’s formalization in accordance with recommendations in Gender and Investment Climate Reform Assessment, working in partnership with other groups (such as NGOs) where appropriate.
• Work with [NAME OF RELEVANT ORGANISATION] to develop a Women's Help Desk.

• Produce business women's handbook aimed specifically at women.

• Work with [NAME OF RELEVANT PPD GROUP] to review business entry legislation [IN CASE OF SOLOMON ISLANDS: TO DEVELOP REGULATIONS UNDER NEW COMPANIES ACT] to ensure that women can benefit from proposed reforms on the same basis as their male counterparts. In particular, ensure that reforms facilitate women's informal business and community groups, formalizing their businesses and registering them as companies.

• Develop a basic partnership agreement and deliver training to Business Women's Forum on the partnership agreement and distribute among broader women’s networks.

• [PNG, SOLOMON ISLANDS, AND VANUATU] Work with [NAME OF RELEVANT PPD GROUP] to develop policy paper on Business Names Registration process, based on Gender and Investment Climate Reform Assessment recommendations and in line with international best practice, with aim of removing barriers to formalization for women entrepreneurs.

• Oversee conduct of women’s focus group discussions on business licensing to identify key constraints for women.

• Work with [NAME OF RELEVANT PPD GROUP] to simplify business licensing procedures that have an adverse impact on female-headed businesses.

• [PNG, TONGA, AND VANUATU] Work with [NAME OF RELEVANT PPD GROUP] to review sectoral business licensing with a gender lens, in particular identifying sectors that require licenses in which female-headed firms operate; developing sex disaggregation of sectoral licensing data; and sex disaggregation of tools to analyze time and cost of compliance with sectoral licensing requirements.

• [PNG, TONGA, AND VANUATU] Work with Business Women’s Forum to deliver training on sectoral licensing for women.

• [PNG ONLY] Work with Informal Sector Technical Working Group to contribute to development of PNG policy on the informal sector including: (a) Proposal for registration / legitimization of microenterprises; (b) review of Informal Sector Development and Control Act; and (c) review of NCDC’s policy on betel nut selling and explore ways to enable it to be a legitimate business while balancing health and public order concerns.

**Commercial Justice / ADR**

• Work with the Business Women's Forum to develop and provide training for women on basic contract law; and to develop and promulgate a simple contract for use in common commercial transactions for women.

• [PNG, SOLOMON ISLANDS, TONGA, AND VANUATU] Work with [RELEVANT ADR COMMITTEE / TECHNICAL ADVISER] to ensure gender is mainstreamed in ADR process as recommended in the Gender and Investment Climate Reform Assessment.

• [PNG, SOLOMON ISLANDS, TONGA, AND VANUATU] Work with the Business Women's Forum to assist them to develop appropriate outreach to women on availability and appropriateness of ADR and [TONGA ONLY] the small claims function in the Magistrates Court.

• [PNG, SOLOMON ISLANDS, TONGA, AND VANUATU] Work with [RELEVANT ADR COMMITTEE / TECHNICAL ADVISER] to ensure that female mediators are trained and accredited.
Tool 2: Business Women’s Forum: Terms of Reference

Indicative outline Terms of Reference

Terms of reference should be developed at initial meeting of the Forum in a participatory manner to ensure buy in and ownership from members. The outline below is provided by way of pointers, for fleshing out to develop fully fledged ToRs

Forum aims

a) To provide support and training for business women to assist them in the legal, regulatory and administrative interactions required to run a formal business

b) To share information and knowledge

c) To develop linkages with regional and international organizations with similar aims.

Membership

Open to all women in business – those trading formally and informally. Initial focus on capital city, but with the intention of expanding country-wide.

Support

Initial support for launch and development of Forum to be provided by IFC. IFC will partner with local organizations and draw on local expertise to deliver trainings.

Governance

A small board comprising:

- Representatives of groups working with grass roots business women (for example, NGOs, donor projects, church groups, National Council of Women)

- If possible, a formal private sector sponsor

- Individual business women

[If possible, an inspirational chairwoman should be found to head up the board: someone who has succeeded in business. Candidates may be drawn from the case studies undertaken as part of the Pacific Gender Mainstreaming Program.]

Funding

[Costs should be kept to minimum. Sponsorship of training events could be provided by the local organizations that deliver the training. In the longer term, as part of their corporate social responsibility, funding could be sought from major private sector operators]
Meetings
Say once a month for training / advocacy discussion as appropriate.

[Need to consider the best time, place, and format for such meetings. Women operating small-scale businesses are likely to be:

• time poor – running businesses and dealing with domestic/family demands
• unused to speaking in public, particularly in formal situations, and
• have family demands / cultural norms that may make it difficult for them to travel
Ask women what would suit them best].

Activities
• In partnership with existing business associations and training providers, and using international/regional resources where appropriate, develop, promote, and undertake training for business women focusing on Running a Formal Business. Possible topics for training could include:
  - How to balance family, custom, and business (including the wantok system)
  - How to deal with harassment from public officials
  - Self defense
  - Financial literacy, basic book-keeping, developing business plans
  - Graduating to the formal sector. Why and how.
  - Which business form is right for you? (including training on basic partnership agreement and the benefits and obligations of operating a Limited Liability Company)
  - Licensed to operate. How and why to license your business
  - Dealing with clients: the basics of contracts
  - Small Debt Claims. What are your options to see that money again? (including training on ADR)
  - Confronting corruption. What should you do when asked to pay a bribe?
  - Setting up shop. How to register a property transfer. Your rights when leasing
  - Microfinance institutions and banks tell you how they can support your business.
  - Trading across borders. The ins and outs of customs.
• Undertake training for front line public sector staff dealing with business women, for instance in Business Registry, licensing authorities.
• Provide forum for business women to network and give support to each other, for instance through mentoring.
• Explore and develop regional networking opportunities for a Pacific Business Women’s Forum
• Develop a networking website for information and support [but consider the extent to which women have access to computers].

Launch
• Major launch event in an appropriate place (for example in a market) building on Business Women’s Forum.
Tool 3: Investment Climate Gender Consultant: Terms of Reference and Initial Work Plan

Terms of Reference

Introduction
Women comprise half the population of [NAME OF COUNTRY] and make a significant (although frequently unrecognized) contribution to [NAME OF COUNTRY]’s economy. Many female-headed businesses are micro or small. Business ownership and management in the formal sector is dominated by men.

The [NAME OF COUNTRY] Gender and Investment Climate Reform Assessment (GICRA), funded by IFC and AusAID undertook a review of [INSERT NAME OF COUNTRY]’s investment climate with a gender lens.

The Assessment concluded that [NAME OF COUNTRY]’s legal and regulatory framework for private sector development discriminates against women and makes it more difficult for them to start and grow businesses, particularly in the formal sector, than it is for their male counterparts.

Role
The key role of the Investment Climate Gender Consultant will be to drive forward implementation of the reforms recommended in the Gender and Investment Climate Reform Assessment. In particular, the Consultant will undertake the activities in the GICRA to achieve the targets, which focus on three key areas:

- Public private dialogue
- Business start up and licensing
- Access to justice and alternative dispute resolution.

The Consultant will work closely and collaboratively with other IFC funded technical advisors on the Regulatory Simplification and Investment Policy and Promotion Project, to ensure that the gender activities align with IFC’s broader investment climate reform program. [IN TIMOR LESTE SUBSTITUTE – BETTER BUSINESS INITIATIVE]

In particular, the Consultant will support the delivery of the targets and activities detailed below:

[NOTE – TARGETS AND ACTIVITIES WILL NEED CUSTOMISING FOR EACH COUNTY]

Public Private Dialogue

Target 1.1 Improved policy dialogue on investment climate reform for women’s economic empowerment
Measured by: the proportion of members representing business women’s interests on PPD and Working Groups, and the number of papers featuring women’s economic empowerment considered by Cabinet.

Activities:

- Ensure appropriate representation of women’s interests in existing PPD structures (INSERT RELEVANT NAME). If necessary revise ToRs.
- Form new Gender Working Group (high level representation of public and private sector with 4–8 members), if the existing PPD structures (INSERT RELEVANT NAME) do not have adequate capacity to address the identified regulatory and policy level gender constraints, and provide technical assistance.
**Target 1.2 Improved legal framework for women’s businesses**

Measured by: the number of reforms to improve the investment climate for women enacted and implemented.

<table>
<thead>
<tr>
<th>Activities:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• PPD structures (INSERT RELEVANT NAME) and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms</td>
</tr>
<tr>
<td>• Introduce law reforms to Parliament</td>
</tr>
<tr>
<td>• Enact and implement new laws</td>
</tr>
</tbody>
</table>

Gender dialogue, and potentially the Gender Working Group (GWG), will form a key part of the Public Private Dialogue (PPD) structure developed by the Government of [NAME OF COUNTRY] with support from the IFC to enable the Government more effectively to take forward investment climate reform to facilitate private sector development. If formed, the GWG will:

- comprise (up to) four public and four private sector high level representatives
- develop policy papers for Cabinet on reforms required to the legal framework to facilitate women’s business entry and operations, and engage in advocacy for gender sensitive legal, regulatory, and administrative reform of the investment climate
- work with other groups in the PPD structure charged with driving forward reforms in specific investment climate areas (for example business entry) to ensure that gender is mainstreamed in these reform efforts, and that the recommendations made in the Gender and Investment Climate Reform Assessment are taken on board.

The Investment Climate Gender Consultant’s role in undertaking activities to support Targets 1.1 and 1.2 will be to:

- Drive forward the formation of the GWG: agree with Government its appropriate composition and mandate; liaise with key private sector organizations and with relevant NGOs to ensure appropriate membership
- Provide advisory support to the secretariat of the GWG: i.e. to call meetings, develop and coordinate the agenda; take minutes and highlight action points; and pro-actively ensuring follow up of action points
- Ensure that the agenda of the GWG drives forward the reforms recommended in the Gender and Investment Climate Reform Assessment
- Establish working relationships between the GWG and other key PPD groups (in particular those dealing with business entry, licensing, the informal sector10, and commercial justice. Ensure that the GWG is positioned to influence the deliberations of such other groups
- Review the terms of reference and composition of other key PPD groups to ensure that their mandate includes gender and their composition ensures adequate representation of women’s interests. Drive forward changes to current mandates and composition where appropriate
- [PNG, SOLOMON ISLANDS, TIMOR LESTE, AND VANUATU ] Work with relevant Government institution to strengthen the process for the reporting to the UN on obligations under the Convention for the Elimination of All Forms of Discrimination. Work with Government to ensure that the country reports adequately address economic (as well as social) issues and that a robust and sustainable mechanism exists for driving forward reforms to enhance women’s economic empowerment
- Provide technical assistance to the GWG, and to the reform process in particular, advising on the mainstreaming of gender issues in investment climate reform – for example:
  - reviewing legislation and policy decisions
  - developing policy papers for Cabinet proposing legislative reform of discriminatory laws
  - advising on reform of the operations of the Business Registry, and
  - supporting the development of a Women’s Help Desk in [INSERT NAME OF INSTITUTION].

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10 In the case of PNG and Solomon Islands.
Target 1.3 **Improved training and networking for business women**

Measured by: business women’s perception of training and networking.

### Activities:
- Continue regular Business Women’s Forums (with open invitation to business women attendance ranging from the informal sector through to big business), as commenced by IFC in February 2009, in partnership with local organizations and existing business women’s associations
- Develop and undertake networking and monthly training on investment climate for the Business Women’s Forum

The Business Women’s Forum (BWF) comprises a network of business women and has the mandate of providing support and training for business women to assist them in the legal, regulatory, and administrative interactions required to run a formal business, and enabling women to share information on knowledge on business issues, and benefit from mutual support. The BWF will:

- be open to all business women – informal and formal SMEs through to big business, and will draw from existing associations, networks, NGOs, and MFIs, as well as invite and include business women who have not been involved in existing associations
- offer regular training to business women focusing on Running a Formal Business. Example topics for training include:
  - How to balance family, custom, and business (including the wantok system)
  - Which business form is right for you? (including training on a basic partnership agreement and the benefits and obligations of operating a Limited Liability Company)
  - Dealing with clients: the basics of contracts.
- provide a forum for business women to network and give support to each other, for example through mentoring, and possibly regional networking opportunities.

The Investment Climate Gender Consultant’s role in undertaking activities to support Target 1.3 will be to:

- Set up the BWF: identify potential members; identify partner organizations (especially any existing organizations that represent business women’s interests; and donor projects and NGOs supporting business women at the community level)
- Facilitate development of terms of reference for BWF
- Facilitate linkages between the BWF and the GWG – the BWF should feedback investment climate constraints to the GWG to take forward in policy dialogue
- Support the development of a BWF website, possibly linked to similar regional organizations
- Help the BWF to build and develop networks of partner organizations locally and internationally
- Develop and operationalize business women’s networking activities with the BWF in partnership with relevant organizations
- Develop, operationalize, and promote training schedule with the BWF in partnership with relevant organizations to include:
  - Business entry, registration, and licensing requirements
  - Partnership agreements
  - Promulgation of basic contract and training on basic contract law
  - Commercial justice and ADR.
Business Entry and Licensing

The Investment Climate Gender Consultant’s role will be to undertake the activities listed below to achieve targets 2.1–2.5.

**Target 2.1 Increase by five percentage points the proportion of (a) registered companies and (b) partnerships that are female-headed and retain high levels of female-headed sole traders**
Measured by: companies registry and business owners survey data.

**Activities:**
- Ensure operations of the Companies Registry are gender sensitive
- Develop Women’s Help Desk at new Companies Registry
- Undertake outreach activities in respect of business women’s formalization, focused on the benefits of the Limited Liability Company form (for example training on the processes for the new Company Act, and Company Registry
- Produce gender sensitive business entry handbook

**Target 2.2 Improved legal framework for women’s business entry**
Measured by: number of reforms undertaken.

**Activities:**
- Review Companies legislation to ensure best practice legal framework for facilitation of women’s businesses registering as companies
- Develop and promulgate basic partnership agreement in partnership with civil society and business organizations

**Target 2.3 Reduced regulatory compliance cost on female-headed businesses**
Measured by: sex disaggregated time and cost compliance assessments.

**Activities:**
- Conduct women’s focus group discussion on trade and other license process maps developed by IFC to assess: a) which licenses women most commonly obtain, b) if women identify steps different/additional to official process map
- Simplify procedures that have an adverse impact on female-headed businesses (revealed in focus group discussion, and time and cost compliance analysis)

**Target 2.4 Increased number of female-headed businesses have appropriate sectoral licenses**
Measured by: sex disaggregated data on sectoral business licenses.

**Activities:**
- Identify sectors that are relevant to female-headed businesses
- Undertake training for women on sectoral licensing
- Introduce mechanism to sex disaggregate sectoral licensing data
- Sex disaggregate data in private enterprise surveys, for example time and cost compliance analysis
Target 2.5 Reduced harassment of female informal sector traders
Measured by: newspaper and media reports.

**Activities:**
- Work with Informal Sector Technical Working Group to contribute to development of policy on informal sector, including:
  - a) Proposal for registration/legitimization of microenterprises
  - b) Review of Informal Sector Development and Control Act
  - c) Review policy on betel nut selling to explore ways to enable it to be a legitimate business while balancing health and public order concerns

Access to Justice and Alternative Dispute Resolution

The Investment Climate Gender Consultant’s role will undertake the activities listed below to achieve targets 3.1–3.3.

Target 3.1 Increase by 5 percent the proportion of Magistrates Court plaintiffs that are women
Measured by: court records.

**Activities:**
- Develop and promulgate simple contract for use in common commercial transactions for women and provide training to women on basic contract law
- In the medium to long term, set up small claims function at the Magistrates Court, if there is appropriate demand
- Undertake outreach to inform business women of availability and appropriateness of small claims function in Magistrates Court

Target 3.2 Ensure at least 20 percent of accredited mediators are women (in Tonga, 40 percent)
Measured by: accreditation records.

**Activities:**
- Train and accredit female mediators

Target 3.3 30 percent of ADR users are women and 80 percent of female users are satisfied with ADR service
Measured by: ADR user statistics and perception surveys.

**Activities:**
- Ensure gender is mainstreamed in ADR reform process
- Undertake outreach to inform business women of availability and appropriateness of ADR
The table below outlines an initial work plan for the first 6 months of a 12 month consultancy.

### Initial Work plan (first 6 months)

<table>
<thead>
<tr>
<th>Month</th>
<th>Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Agree with Government appropriate composition and mandate of PPD on gender; liaise with key private sector organizations and with relevant NGOs to ensure appropriate membership</td>
</tr>
<tr>
<td>2</td>
<td>Identify and make linkages with potential BWF members and partner organizations</td>
</tr>
<tr>
<td>3</td>
<td>Develop BWF networking and training schedule</td>
</tr>
<tr>
<td>4</td>
<td>Review terms of reference and membership of other PPD groups in light of gender considerations and make recommendations for alteration if appropriate</td>
</tr>
<tr>
<td>5</td>
<td>Commence gender dialogue through PPD structure: facilitate first meeting</td>
</tr>
<tr>
<td>6</td>
<td>Launch BWF: major launch event, for instance in a market</td>
</tr>
<tr>
<td></td>
<td>Develop policy paper on reforms to laws that discriminate against women as recommended in Gender and Investment Climate Reform Assessment</td>
</tr>
<tr>
<td></td>
<td>Facilitate focus group discussion with women on business licensing reform</td>
</tr>
<tr>
<td></td>
<td>Facilitate gender aspect of PPD meetings</td>
</tr>
<tr>
<td></td>
<td>Facilitate BWF training / networking events</td>
</tr>
<tr>
<td></td>
<td>Facilitate presentation of policy paper to Cabinet</td>
</tr>
</tbody>
</table>
### Tool 4: List of Laws that hinder women’s full economic participation

**Key laws and regulations that hinder women’s full economic participation or do not adequately protect their interests**

<table>
<thead>
<tr>
<th>Area of law</th>
<th>Current provision (discrimination or inadequate protection)</th>
<th>Reform required</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Constitutional law</strong></td>
<td>The Constitution does not contain a definition of discrimination or a specific anti-discrimination provision.</td>
<td>Support the consideration by Cabinet to introduce an organic law on gender equity. Legal status should be given to CEDAW in the Constitution. (See Rwanda's Constitution)</td>
</tr>
<tr>
<td><strong>Marriage</strong></td>
<td>Marriage Act The minimum age for marriages is 16.</td>
<td>The Act should be amended to change the minimum age of marriage. The rights to conjugal rights should be removed from the Adultery and Enticement Act.</td>
</tr>
<tr>
<td></td>
<td>Marriage Act recognizes customary marriages and discriminatory practices, such as bride price and polygamy, are common</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Adultery and Enticement Act provides for the restitution of conjugal rights</td>
<td></td>
</tr>
<tr>
<td><strong>Divorce – division of property</strong></td>
<td>Matrimonial Causes Act Provides the courts with the power to determine divorce, property distribution, maintenance, and custody.</td>
<td>Amend the law to introduce no fault-based divorce. Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account. Training to judges on gender implications on their decision making.</td>
</tr>
<tr>
<td><strong>Inheritance (in the absence of a will)</strong></td>
<td>Wills and Probate Act Provides for the application of customary law where there is no will. As customary inheritance laws are based on patrilineal lines, they discriminate against women.</td>
<td>Amend the law providing for non discriminatory division of assets where there is no will and to provide for statute law to prevail over custom law in relation to inheritance. (See Ghana Law 111 Intestate Succession Law)</td>
</tr>
<tr>
<td><strong>Employment</strong></td>
<td>Employment Act Sexual harassment is not outlawed in the private sector and women have no redress. Maternity leave is unpaid in the private sector Women are prohibited from working in certain positions at night, and from working underground or in jobs that involve heavy labor.</td>
<td>Amend the law to include prohibitions against sexual harassment. Introduce provisions making paid maternity leave compulsory in the private sector. Remove discriminatory provision from legislation.</td>
</tr>
</tbody>
</table>
### SAMOA

<table>
<thead>
<tr>
<th>Area of law</th>
<th>Current provision (discrimination or inadequate protection)</th>
<th>Reform required</th>
</tr>
</thead>
</table>
| **Constitutional law** | Although the Constitution protects against discrimination, in practice customary law is given lawful status in numerous areas including rights over land and involvement in village governance, which discriminates against women. | Consider automatic incorporation of international treaties (including CEDAW) into Samoa's law via the Constitution  
(See Rwanda's Constitution) |
| **Marriage**       | Marriage Ordinance 1961 recognizes customary marriages and discriminatory practices, such as bride price and polygamy, are common  
Age of marriage is 16 for girls (18 for men)                                                                                                                                                | Legislation should be amended to bring it into line with CEDAW and thus remove such discriminatory practices |
| **Divorce – division of property** | Divorce and Matrimonial Causes Ordinance 1961  
Divorce is either fault-based or on 5 years separation, which can be difficult for women.  
No guidance in the legislation and the Courts generally only recognize financial contributions which discriminate against women. Proposed laws are considering equal division of property.  
Maintenance and Affiliation Act 1967  
No guidelines on maintenance payments and generally the court orders low payments. | Amend the law to introduce no fault-based divorce.  
Proceed with amendment on equal division of property or alternatively Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account  
Training to judges on gender implications on their decision making |
| **Inheritance** (in the absence of a will) | Administration Act 1975  
Although this Act provides for equal treatment, customary law applies to land and discriminates against women. | Amend the law providing for non discriminatory division of assets where there is no will  
(See Ghana Law 111 Intestate Succession Law) |
| **Employment**     | Public Service Act – only protects women in the public service from discrimination and not private sector employees  
Private sector employees do not get any maternity leave although public servants are eligible for 8 weeks leave.  
Labor and Employment Act 1972 Outmoded provisions preventing women from working from 12 midnight to 6 am in certain capacities exist | Amend the Labor and Employment Act in line with ILO conventions in relation to female workers |
<table>
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<tr>
<th>Area of law</th>
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</thead>
<tbody>
<tr>
<td>Constitutional law</td>
<td>Currently there is a conflict between its guarantee of equality and non-discrimination on the one hand, and its entrenchment of customary law which is often discriminatory to women</td>
<td>Support for the introduction of the proposed Constitution which would make international treaties which Solomon Islands had entered into automatically part of the Solomon Islands’ law (See Rwanda’s Constitution)</td>
</tr>
<tr>
<td>Marriage</td>
<td>The Islanders Marriage Act recognizes customary marriages which includes polygamous marriages and discriminatory practices such as ‘bride price’ Under this Act the minimum age for marriage is 15</td>
<td>Legislation should be amended to bring it in line with CEDAW and remove such discriminatory practices</td>
</tr>
<tr>
<td>Citizenship</td>
<td>The Citizenship Act provides that a woman can gain citizenship by marrying a Solomon Islander. However if she divorces him and marries a non-citizen she loses her citizenship, unless she has resided in the country for at least ten years.</td>
<td>Amend the legislation to treat men and women equally</td>
</tr>
<tr>
<td>Divorce – division of property</td>
<td>The Divorce Act is silent on how the property that has been accumulated by the couple during the marriage will be divided. This is often left to the Court to decide and conflicting results can emerge. Islander Divorce Act: divorce can only be on a ‘fault’ basis which means proving adultery, cruelty, being of unsound mind or desertion. Affiliation, Separation and Maintenance Act: provides that maintenance orders may be discharged by a Court in case of the wife committing adultery</td>
<td>Amend the law to introduce no fault-based divorce. Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account Training to judges on gender implications on their decision making Amend the legislation to remove discriminatory provision</td>
</tr>
<tr>
<td>Inheritance (in the absence of a will)</td>
<td>The Wills Probate and Administration Act gives equal inheritance rights to men and women. However customary law has constitutional status and customary inheritance laws discriminate against women</td>
<td>Amend the law providing for non discriminatory division of assets where there is no will. Introduction of proposed constitution is required to address the effect of customary law in this area (See Ghana Law 111 Intestate Succession Law)</td>
</tr>
<tr>
<td>Employment</td>
<td>The Labor Act does not apply to domestic servants where many women work. This Act does not contain any anti-discrimination provisions Restrictions on women working in certain sectors including underground work in any mine.</td>
<td>Amend the law to apply to domestic servants Include anti discriminatory provisions in the legislation Remove discriminatory provision from legislation</td>
</tr>
<tr>
<td>TIMOR LESTE</td>
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<tr>
<td><strong>Area of law</strong></td>
<td><strong>Current provision (discrimination or inadequate protection)</strong></td>
<td><strong>Reform required</strong></td>
</tr>
<tr>
<td><strong>Constitutional law</strong></td>
<td>The Constitution contains contradictory provisions which have not been tested in a Court. It states that the legal system adopts the general or customary principles of international law. Whereas it recognizes that all citizens are equal before the law and shall not be discriminated on grounds of gender, the Constitution also states that the interpretation of all rights shall be in accordance with the Universal Declaration of Human Rights. However customary law continues to be important in large parts of rural Timor and it incorporates many discriminatory practices in the areas of marriage, inheritance, and land ownership.</td>
<td>The effect of such laws and practices contradict international covenants (CEDAW) have not been tested.</td>
</tr>
<tr>
<td><strong>Marriage</strong></td>
<td>Customary law is recognized and discriminatory practices such as bride price (barlaque), child marriages, and polygamy is maintained in many rural parts of Timor giving women the status of property. The Indonesian Civil Code currently applies and upon marriage the women's rights are affected. Examples of discriminatory provisions include Article 105 which gives the husband the right to manage his wife's personal assets and Article 108 which restricts the wife from disposing, acquiring or encumbering any property without the written consent from her husband (Article 108). The Draft Civil Code provision allows for couples to determine their own rights to property during marriage and upon divorce or death and gives the option to circumvent the discriminatory practices in the Indonesian Civil Code. However taking up such an option requires access to advice and drafting skills which is unlikely to be available to most women.</td>
<td>Amend Draft Civil Code to recognize all religious marriages, and not just Catholic ones, as well as de facto marriages</td>
</tr>
<tr>
<td><strong>Divorce – division of property</strong></td>
<td>Divorce is discouraged by the Catholic Church and women do not find it easy to take this option. The Indonesian Civil Code leaves matters of the division of property to the Courts to decide, which has been ineffective to date in Timor-Leste as the Courts have not been hearing civil cases. Under the proposed Draft Civil Code a women must wait 300 days to marry again, while a man is only required to wait 180 days, which is discriminatory. Under the proposed Civil Code, the rights to the family home are determined by the Court. However the time and expense in taking the matter to court cannot be underestimated and is unlikely to be exercised by many women. Women's rights to alimony payments and child support are left to the Court under the Draft Civil Code, which has a wide discretion to determine the issue. Currently it is extremely difficult to have civil matters heard in courts and there is little legal assistance for women which means that for all practical purposes, women are unlikely to be able to gain alimony payments.</td>
<td>Amend the Draft Civil Code to remove discriminatory provisions in relation to entitlement for divorce. Clear guidelines on division of property on divorce should be set out (including recognition of women's non-financial contribution to the marriage)</td>
</tr>
<tr>
<td><strong>Inheritance (in the absence of a will)</strong></td>
<td>Women have limited rights to inheritance under customary laws. In patrilineal communities, women cannot inherit the land although they have some rights in matrilineal communities. The Draft Civil Code provides for the equal treatment of men and women and will overcome some of the discriminatory practices in the Indonesian Civil Code.</td>
<td>Amend Draft Civil Code to ensure security of occupancy of surviving spouse for life or until re-marriage. (See Ghana Law 111 Intestate Succession Law)</td>
</tr>
<tr>
<td><strong>Employment</strong></td>
<td>The Labor Code protects women from discriminatory practices and guarantees maternity leave. However it does not apply to the informal sector where a large percentage of women work.</td>
<td>Improve enforcement of the Labor Code</td>
</tr>
<tr>
<td>Area of law</td>
<td>Current provision (discrimination or inadequate protection)</td>
<td>Reform required</td>
</tr>
<tr>
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</tbody>
</table>
| Constitutional law | The Constitution provides that there shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. However the restriction on women’s rights to own land is discriminatory. | Strengthen Constitution so that it explicitly provides for gender equality, and application of CEDAW into domestic law.  
(See Rwanda’s Constitution) |
| Divorce – division of property | The Divorce Act is silent on how consideration given to non financial contributions and property accumulated during the marriage is to be divided, which can be discriminatory against women.  
Due to restrictions in the Land Act, widows can obtain a life interest in their husband’s land upon his death but this is terminated upon a widow’s remarriage or in event of her committing adultery. | Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account |
| Inheritance (in the absence of a will) | The Probate and Administration Act has codified customary law and contains discriminatory provisions including that, upon the death of her husband, the wife only inherits a third of the estate (as opposed to the man who inherits the whole estate). | Amend the Act to remove discriminatory provisions  
(See Ghana Law 111 Intestate Succession Law) |
| Employment | No legislation in this area and it is left to the parties, which often works against women.  
There is no anti-discrimination legislation and there is scope for women to be treated unfairly by employers.  
As there are no maternity leave provisions, there is the possibility for pregnant women to be dismissed and not re-employed which is discriminatory. | Enact employment laws which provide for non-discrimination in the workplace, prohibit sexual harassment, and introduce realistic and affordable provisions for maternity leave and pay. |
## VANUATU

<table>
<thead>
<tr>
<th>Area of law</th>
<th>Current provision (discrimination or inadequate protection)</th>
<th>Reform required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional law</td>
<td>Article 5 of the Constitution and Article 95(3) (and other Articles that uphold custom law)</td>
<td>Need to translate CEDAW principles into domestic law, including through amending the Constitution to clarify the position of custom law. (See Rwanda’s Constitution)</td>
</tr>
<tr>
<td>Divorce – division of property</td>
<td>Under the Matrimonial Causes Act (cap 192), the extent to which the division of matrimonial property on divorce recognizes non-financial contributions to the marriage (for instance a wife looking after the home) is unclear.</td>
<td>Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account. Training for judges on gender implications on their decision making</td>
</tr>
<tr>
<td>Inheritance (in the absence of a will)</td>
<td>The English Administration of Estates Act 1925 applies where the customary practices do not. The custom in some communities is that the daughters lose their entitlement to land when they marry.</td>
<td>Enact an Intestate Succession Act to provide for inheritance where there is no will. Clarify that statute law over-rides discriminatory customary law. (See Ghana Law 111 Intestate Succession Law)</td>
</tr>
<tr>
<td>Employment</td>
<td>Employment law provides for unequal retirement ages</td>
<td>Amend the law to provide for the same retirement age for men and women</td>
</tr>
</tbody>
</table>
Tool 5: Business Women’s Perception Questionnaire

The questions below are indicative only for inclusion in a survey on perceptions of aspects of the investment climate and/or for use in focus group discussions.

The questions could be included as part of a more general survey of the business community, or could be used on a stand-alone basis.

The questions are designed to explore the perceptions of business women, but ideally should also be asked of business men, and results sex disaggregated.

If used as formal means of verification, a survey should be undertaken as a base line at the beginning of the program, and then a follow up survey undertaken following program activities.

General
1. What sector does your business operate in?
2. What legal form does your business have (limited liability company / partnership / sole trader / other)?
3. Describe who owns your business?
4. Describe who manages your business?

Networking and training
5. Do you belong to any business associations/networks? If no, please move on to question [7]
6. If yes, which? How do you rate each one in terms of the networking and business training it provides? [Excellent / Good / Satisfactory / Poor]
7. How would you rate your opportunities to network with, and gain support from, other people in business in [SPECIFY COUNTRY] regionally / internationally? [Excellent / Good / No opportunities]
8. Have you had any training opportunities relevant to your business in the past year? If yes, please specify.
9. How many business training sessions have you attended in the past year?
10. How would you rate the business training sessions you have attended? [Excellent / Good / Satisfactory / Poor]

Business registration
11. Is your business registered? If no, please move on to question [14]
12. If yes, please specify what the registration is (for example as a company, with a business name) and who you registered with.
13. What was your experience of the registration authority?
   a. Did you suffer any harassment or discrimination?
   b. What was the biggest problem for you in registering your business?
14. If no, why did you decide not to register your business?
Licensing regulatory compliance

15. Does your business have any licenses? If no, please move on to question [21].

16. Please list the licenses that your business holds.

17. For each license, list the steps you need to take to obtain it. How often does each license need to be renewed?

18. [If IFC have undertaken process maps] Please refer to the license process maps developed by the IFC. In your experience of obtaining your license did you have to go through a process that was different from the one described in this annex? Did you have to go through any steps to obtain your license that are not included in the annex? If yes, please describe these steps.

19. For each license, list the cost associated with obtaining it (both authorized and unauthorized payments you make / are asked to make).

20. For each license, explain the most burdensome / problematic aspects for you of obtaining it.

21. Are you aware of any licenses that your business should have but does not have? If your business does not hold any license, why doesn’t it?

Harassment

22. In the last year, have you / your business suffered any harassment by public officials? If no, please move on to question [27].

23. Who harassed you?

24. Why do you think you were harassed?

25. What form did the harassment take?

26. Do you think the situation was made worse because you are a man / woman?

27. Are you concerned that you might suffer harassment from a public official in the future? If yes, which organization is most likely to cause you problems?

Commercial justice

28. Have you had a dispute / legal problem associated with your business in the past 5 years? If no, please move on to question [31].

29. If yes, how was it resolved?

30. How would you rate the dispute resolution method you used [Excellent / Good / Satisfactory / Poor]

31. What do you consider to be the best option for resolving legal disputes / problems associated with your business (assuming you can’t sort it out yourself)?

32. Do you think that your business has access to good and affordable methods for dealing with legal disputes / problems? [Yes / No / Don’t know]
**Tool 6: Using Business Registry Data to Establish percentage of Registered Companies Headed by Women**

1. **Introduction**
   Ascertaining how many female-headed businesses there are (or what proportion of businesses are headed by women) is not straightforward. Both the UK and US rely on survey data to make estimates (see box below and tool 7 below).

   In the US the prime source of information about businesses (including as to whether they are male or female-headed) comes from the US Census Bureau’s Survey of Business Owners and the Self-Employed (see http://www2.census.gov/econ/sbo/sample_forms/sbo1_2007.pdf)

   In the UK estimates are obtained from three principal sources of data: the Labor Force Survey (which focuses on self-employment); the Global Entrepreneurship Monitor (which focuses on founder-owned businesses); and the Annual Small Business Survey.

2. **Using Business Registry data: measuring male and female directors and shareholders:**
   A ‘quick and dirty’ estimate may be obtained by taking sample data of businesses registered over a period of time from the Business Registry. In the case of companies, the number of companies registered with male/female directors/shareholders could be counted over say a month period. But this type of data should be treated with caution because:

   • Just because a man or woman is registered as a director/shareholder doesn’t mean that they take a role in the running of the company. For example, in some countries it is necessary to have a minimum of two directors/shareholders in order to register a company. In these cases it is common for man and wife to be joint directors/shareholders, although the business in practice ‘belongs to’ and is run by only one of them.

   • Companies may be registered as ‘shelf’ companies by company formation agents with staff as directors/shareholders. When the shelf company is purchased, shareholdings and directorships are transferred.

3. **Method**
   a) Decide if you are measuring ‘stock’ or ‘flow’

<table>
<thead>
<tr>
<th>Stock</th>
<th>Number of existing companies that have male/female directors/shareholders (sample)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flow</td>
<td>Number of new registrations that have male/female directors/shareholders (total number over a period of time)</td>
</tr>
</tbody>
</table>

   It is usually more straightforward to measure flow. Many Business Registries will keep a daily register of applications which may contain the required data.

   b) Develop simple data collection sheets. For example:

   **Number of companies registered with directors who are...**

<table>
<thead>
<tr>
<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
<tr>
<td>TOTALS</td>
<td></td>
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</tr>
</tbody>
</table>

   **Number of companies registered with shareholders who are...**

<table>
<thead>
<tr>
<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
</tr>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTALS</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
c) Count – for companies registered over a time period (if measuring flow) or for sample of registered companies (if measuring stock). If registration documents do not require sex of directors/shareholders to be recorded, this can usually be deduced from the names.

4. Developing new registration systems

The development of a new companies registry or the modernization of an existing one – for example through the development of an e-registry – offers the opportunity to put in place systems for sex disaggregated data on shareholders and directors. In the company registration forms, and forms relating to changes in shareholders and directors, there should be a requirement to tick a box, indicating whether each director or shareholder is male or female.
**Tool 7: Business Owners’ Survey**

**Survey purpose**
The purpose of this Survey is to ascertain basic facts about who owns and manages businesses – and in particular the extent to which businesses are owned and managed by men on the one hand and women on the other.

**Background**
In most countries there is no blanket requirement for a business to register. In countries with legal systems derived from the UK, or in part from the UK (including Papua New Guinea, Samoa, Solomon Islands, Tonga, and Vanuatu) all businesses that have incorporated as companies are registered. But these tend to be only fairly large and formal businesses. Partnerships and sole traders only have to register if they are using a business name – and in most cases this outdated mode of controlling business names is not enforced. The business names register is therefore not a reliable source of data about businesses.

In all countries considered in the Gender and Investment Climate Reform Assessments, all businesses are required to hold a trade/business license if they are to operate legally. However the register of businesses holding such licenses cannot be relied on as a source of information about the ownership of businesses because:

- It tends to be only large and quite formal businesses (for example those who have business premises) who hold licenses. Small and informal businesses will not be captured; and
- The license tends to be in the name of the business rather than the name of the owner, and details about ownership are not held by licensing authorities.

This situation is not unusual. In many developing countries the process to open a business has been liberalized, and there is no blanket requirement to register a new business (apart from informing the tax authorities). Both the UK and US rely on survey data to obtain data on business ownership, including the extent to which businesses are headed by women (see box below and tool 7 below).

In the US the prime source of information about businesses (including whether they are male- or female-headed) comes from the US Census Bureau’s Survey of Business Owners and the Self-Employed (see http://www2.census.gov/econ/sbo/sample_forms/sbo1_2007.pdf)

In the UK estimates are obtained from three principal sources of data: the Labor Force Survey (which focuses on self-employment); the Global Entrepreneurship Monitor (which focuses on founder-owned businesses); and the Annual Small Business Survey.

**Definition of “female-headed business”**
If a survey is to be undertaken, the starting point is to define what female-headed business is. There are two basic options:

- a) to use ownership as the sole criteria. For example, the US 2002 Survey of Business Owners defines women-owned businesses simply in terms of ownership – as firms in which women own 51 percent or more of the interest or stock of the business. http://www.census.gov/econ/sbo/02/womenso1.html

- b) to consider both ownership and management. For example, The US 1988 Women’s Business Ownership Act defines a female-headed business as one that is:
  - at least 51 percent owned by a woman or women; and
  - ‘controlled’ by a woman or women (‘control’ in this context means exercising the power to make policy decisions); and
  - ‘operated’ by a woman or women (‘operate’ in this context means being actively involved in the day-to-day management). http://www.ilo.org/Public/English/Employment/Gems/Eeo/Law/Usa/L_Wbo.Htm
Survey methodology

Rather than beginning a new survey process, it may be possible to ‘piggy back’ on an existing survey and insert appropriate questions (for example household survey, labor force survey, enterprise survey). The Government’s Statistics authority should be able to advise.

It will be important to ensure that the sample does not include just formal businesses but also encompasses informal businesses. In the countries covered by the Gender and Investment Climate Assessments, most women’s businesses are unregistered and operate informally.

Careful thought will need to be given to sampling technique to ensure the survey is completed by a representative sample. When seeking the views of women, the checklist in Tool 11: (Women’s Consultation/Training Checklist) should be considered. In particular, if a formal survey instrument is being used, it should be borne in mind that women tend to have lower education and literacy levels than their male counterparts. Surveys should be translated into local languages. If surveys are distributed at the household level, the male head of the household may fill in the questionnaire even if it is the woman who runs the family business.

If it is desired to gather data about the extent to which female-headed businesses hold appropriate sectoral licenses, an analysis will first need to be undertaken of the sectoral licensing regime and a list drawn up of those sectors which require a sector specific license. The survey sample will then need to be designed so as to include those surveys, and a question included on whether or not the business holds the appropriate license.
Tool 8: Business Registry Sex Equality Checklist

Issues to consider during design of Business Registry

Questions to ask women:
1. What form of registration would be most accessible for you? Personal attendance? Post? Web-based?
2. What opening hours are most convenient for women?
3. When dealing with public officials, who do you find it easier to do deal with:
   a. Women
   b. Men
   c. No difference
4. Do you consider women are disadvantaged in any way during the registration process? Is it easier for men to register? If so, how? [Consider taking informal business women to the Registry and seeing how they react to it]
5. What improvements in the registration process would be of greatest assistance to women and make it easier for them to register? [May need to show informal business women the forms and take them through the process]

Institutional checklist:
1. Ensure the physical environment one where women would feel comfortable, for example women’s desk, washroom facilities
2. Ensure opening hours are convenient for women
3. Ensure customer charters, staff training, and procedures manuals include reference to gender equality issues
4. Ensure the Registry has formal links with groups representing women for consultation and input to policy development, management, and operations. (As most women operate informally, best groups to link with may be NGOs, MFIs, donor community programs)
5. Develop staff training on gender issues. Involve gender experts and NGOs in developing training course. Issues to cover could include: why women’s businesses are important and constraints that women face. Approaches to use could include role play on gender roles and drama.
6. Ensure women are employed in the organization, especially at levels where they interact with the public and at decision-making levels.
Tool 9: How to Undertake Outreach on Formalization for Business Women

Partners
Identify organizations that engage with informal/semi-formal women’s businesses organizations. May include:

• NGOs supporting women’s businesses and income generating activities
• microfinance institutions lending to women; donor community-based projects
• church-based organizations
• National Council of Women, and
• small business training/development organizations.

Identify organizations that have links/networks with grassroots women, for example National Council of Women, NGOs, donor projects.

Methods

• Work with partners (for instance donor projects, NGOs) to mainstream business formalization within their existing programs / courses / operations which outreach to women. Business entry handbook (to be developed) will be useful source.

• Develop an information campaign on formalization aimed specifically at female entrepreneurs focusing on: a) benefits (including access to finance, facilitation of separation of business and household assets, facilitation of joint enterprises and similar), and b) processes. Radio may be a particularly effective medium as women may have lower literacy rates than men. Drama may be effective at the community level.

• Train registry staff on sensitivity to their female clients (in partnership with NGO’s promoting women’s issues)

Reach

• Develop nationwide registration points (even if system is initially manual) using Local Government Offices, Women’s Resource Centers and similar.

• Develop peripatetic registration service. Set up registration desks in market places as a starting point, open during market hours.

• In longer term, in conjunction with development of e-registry, consider registration by mobile phone.

Tool 10: Women’s Help Desk: draft Terms of Reference

• These are indicative outline terms of reference only. Custom-made ToRs should be developed for each country, and will depend on precise circumstances including institution that will host the Help Desk, for instance in PNG – the Small Business Development Corporation; in Solomon Islands – the new Business Registry.

1. Prime point of contact for women seeking information and assistance with business formalization, in particular registration, licensing, and tax.

2. Co-ordination and dissemination of business entry handbook (to be developed)

3. Prime responsibility for delivering business formalization outreach activities (The desk will not be static but peripatetic, that is, in market places where the informal sector is.)

**Tool 11: Women’s Consultation / Training Checklist**

**When to use the checklist**
This checklist is for use when:

- developing a resource to be used by women (such as a business entry handbook), to ensure that it is relevant, accessible, and useable by them
- undertaking focus group discussions or interviews with women to ascertain their view on the investment climate issues, for example business licensing
- holding training / networking events for business women.

**Who to engage with**
- Business women who operate informally including those normally ‘off the radar, for instance market women, petty traders
- Organizations (such as NGOs and MFIs) who work with business women including at the community level, and
- Business women who have formalized their businesses.

**How to engage**
When engaging with women, careful thought needs to be given to the best time, place, and format to do this in view of the likelihood that:

- Women are likely to be time poor – running businesses and dealing with domestic/family demands
- They may be unused to speaking in public, particularly in formal situations
- Family demands / cultural norms may make it difficult for women to travel
- Women often have lower literacy levels (for example for completing survey forms)
- Middle class urban women are not necessarily representative of women generally, and
- Women may not be able to attend meetings, either due to their time poverty and household tasks, or it may be socially unacceptable for them to do so, and they may not be permitted by their husbands.
Tool 12: Companies Act Checklist

This tool considers providing a checklist for enabling women’s businesses and women’s community groups to register as companies.

In general, companies are the optimum business form. Their limited liability status encourages risk taking; their share structure facilitates joint ownership and investment; and their separate legal identity enables the business to continue even when its owners change. Yet in the countries considered in the Gender and Investment Climate Reform Assessments, few women appear to be company shareholders and directors. Best practice Companies Acts adopt the ‘think small first’ principle, enabling even the smallest businesses to incorporate and benefit from corporate status.

As well as individual small-scale business women, informal, community based groups of women engaging in income generating activities could benefit from a formal legal structure. Key benefits include:

- clear governance structure
- clear ownership structure
- makes investing in the group more straightforward (for example buying shares)
- the group would have its own legal identity, separate from its members which facilitates:
  - the group entering into transactions, for instance to own assets such as machinery or land
  - the group borrowing money
  - the group continuing as an entity despite changes in its membership and after the life of its original members

However, if Companies Acts have complex requirements for registration and ongoing compliance they will not be appropriate for such small enterprises.

Companies Act checklist

- Provision for sole person shareholder and officer (director/secretary) [This enables a woman to set up a business on her own, without the need to involve her husband / male relative as a co-owner or director]
- Straightforward registration requirements which do not require the services of a lawyer. Ideally registration should be by way of a simple, single form.
- Straightforward registration process which is accessible to women. Provide options other than personal attendance at a single registry in the capital city. [Consider online registration, postal registration, registration at local government offices, peripatetic registration offices, involving community based organizations including NGOs in outreach]
- Straightforward ongoing filing/oversight requirements, for example a simple annual return form with straightforward instructions for completion which should not require professional advice, requirement for directors to prepare simple annual financial statement.
- Accessible procedures for intervention if something goes wrong – company inspection regime.
- Provision for ownership of company by its members and for them to participate in its governance on a democratic basis.
- In the case of a company with the principal objective of the promotion of community interest (for example the exploitation of a community resources such as land), provision for an ‘asset lock’ prohibiting the disposal of company assets other than in the ordinary course of business or with shareholder approval. [Note: see Solomon Islands Companies Act provisions on community companies for best practice]
Tool 13: Basic Partnership Agreement

This basic agreement sets out the key terms that may be agreed by the parties before entering into a simple partnership arrangement. It does not require the services of a lawyer to complete, but both parties should ensure that they understand what they are agreeing to. Some of the proposed terms may need altering depending on the precise circumstances of the situation. The partners will need to set up basic books of account for the business in accordance with the terms of this agreement.

The basic agreement should be validated by a local lawyer in the country in which it is to be used, before it is promulgated.

1. Partnership name, business and start date
   a) Names of partners:
   b) Name of partnership:
   c) Purpose of partnership: e.g. to operate a shop / to manufacture a product
   d) Start date of partnership:

2. Partnership books of account
   The partnership will maintain books of account and each partner will, at all times, have access to them.

3. Capital
   a) Each partner will contribute capital in cash to the partnership as follows:

<table>
<thead>
<tr>
<th>Name of partner</th>
<th>Amount of contribution</th>
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</table>

   b) A separate capital account shall be maintained in the partnership’s books of account for each partner.
   c) Neither partner shall withdraw any part of their capital account.
   d) No interest shall be paid on the initial contributions to the capital of the partnership or on any subsequent contributions of capital.

4. Profit and loss
   a) The net profits of the partnership shall be divided equally between the partners and the net losses shall be borne equally by them.
   b) A separate income account shall be maintained in the partnership’s books of account for each partner.
   c) Partnership profits and losses shall be charged or credited to the separate income account of each partner.
   d) If a partner has no credit balance in their income account, losses shall be charged to their capital account.

5. Salaries and withdrawals
   a) Neither partner shall receive any salary for services rendered to the partnership.
   b) Each partner may, from time to time, withdraw the credit balance in their income account.
6. Banking
a) All funds of the partnership shall be deposited in its name in a bank account or accounts.

b) All withdrawals from such bank account(s) may be made on authority of one / both partner(s). [Delete as appropriate.]

7. Management duties and restrictions
a) The partners shall have equal rights in the management of the partnership business, and each partner shall devote their entire time to the conduct of the business.

b) Without the consent of the other partner, neither partner shall on behalf of the partnership borrow or lend money, or make, deliver, or accept any commercial paper, or execute any mortgage, security agreement, bond, or lease, or purchase or contract to purchase, or sell or contract to sell any property for or of the partnership other than the type of property bought and sold in the regular course of its business.

8. Termination of partnership
a) The partnership may be terminated at any time by any of the partners, or (subject to paragraph 9 below) by death of any of the partners.

b) In the event of termination, the assets of the partnership business shall be used and distributed in the following order:
   i) to pay or provide for the payment of all partnership liabilities and liquidating expenses and obligations
   ii) to replenish any partner's capital account if the balance is less than the total capital contribution
   iii) to discharge the balance of the capital accounts of the partners
   iv) to equalize the income accounts of the partners, and
   v) to discharge the balance of the income accounts of the partners.

9. Death of a partner
a) Upon the death of a partner, any surviving partner(s) may purchase the interest of the deceased in the partnership by giving notice to the deceased's heir or personal representative.

b) If there is more than one surviving partner, all partners must agree for such purchase to take place, and if they cannot agree, the partnership is terminated.

c) The purchase price shall be equal to:
   • the deceased partner’s capital account as at the date of his /her death, plus
   • the deceased partner’s income account as at the end of the prior fiscal year
   • increased by the deceased partner's share of partnership profits or decreased by their share of partnership losses for the period from the beginning of the fiscal year in which their death occurred until the end of the calendar month in which their death occurred, and
   • decreased by withdrawals charged to the deceased partner’s income account during such period.

Date:

____________________________________
Name and signature of each partner
Tool 14: Mainstreaming Gender in Regulatory Compliance Cost Tools


The Standard Cost Model and the Compliance Cost Tool both provide a quantitative assessment of the costs imposed on businesses by regulation (for example by business licenses). Both methods can capture: (i) the differential costs on female-headed businesses on the one hand and male-headed businesses on the other of obtaining a license, and (ii) the different experiences of male and female license applicants. This sex disaggregated information should inform the business licensing reform process. However neither method captures two important pieces of information which should inform business licensing reform and policy development:

(a) The sex disaggregated extent of non compliance. There is international evidence that suggests that women may be more likely than their male counterparts to choose not to license their businesses due to, for example, their double time burden, limited knowledge about licensing requirements, or limited business networks. If it is found that women are much less likely than men to license their businesses, then the reasons for this need to be investigated (for instance through interviews, focus group discussions, surveys) and then appropriate policy response can be developed (for example targeted information for female-headed businesses).

(b) Sex disaggregated qualitative costs. There is international evidence that women are liable to be subjected to sexual harassment when they deal with public officials. This type of experience is not quantifiable, but clearly imposes a significant personal cost on women, and is a clear disincentive to comply with licensing requirements. If these qualitative issues are revealed, appropriate policy responses can be developed, for instance, if sexual harassment is an issue the assignment of female licensing staff to deal with female license applicants.

Non compliance may be assessed by comparing (i) the total number of license holders with (ii) the total number of businesses. An attempt should be made to find sex disaggregated data on both (i) and (ii). The licensing authority may have sex disaggregated information on the proportion of licenses held by male-headed firms on the one hand and female-headed firms on the other. However, if licenses are in the names of businesses, rather than business owners, this may be problematic. Reliance could instead be placed on anecdotal evidence from the licensing authority or private sector survey evidence, if available.

Information on qualitative costs may be obtained from one-on-one interviews, focus group discussions, or private sector surveys where the experience of men and women when they apply for licenses may be explored.

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11 It will be necessary to identify a working definition of “female-headed / male-headed business”. The US Survey of Business Owners and the Self-Employed provides a helpful definition. A female headed business is: at least 51 percent owned by a woman or women; and ‘controlled’ by a woman or women (‘control’ in this context means exercising the power to make policy decisions); and ‘operated’ by a woman or women (‘operate’ in this context means being actively involved in the day-to-day management).
<table>
<thead>
<tr>
<th>Key aspects Standard Cost Model (SCM)</th>
<th>Key aspects Compliance Cost Tool (CCT)</th>
<th>Gender perspective</th>
<th>Gender checklist</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Provides a framework methodology for measuring administrative costs imposed on businesses by Government. Aim is to measure the average cost to a business of complying with the regulation.</td>
<td>Provides a framework methodology for measuring policy as well as administrative costs imposed on businesses by Government. Aim is to measure the average cost to a business of complying with the regulation.</td>
<td>If impacts on female-headed and male-headed businesses are assessed separately, both tools will enable differentiated impacts to be revealed and then explored.</td>
<td>Ascertain proportion of licenses held by female-headed businesses on the one hand and male-headed businesses on the other (see introduction above for suggestions about how to obtain this information). Based on the proportions above, use a statistically appropriate number of female-headed firms in the sample frame. For example if 50 percent of license holders are female-headed firms by women, 50 percent of sample should be female-headed firms. (See footnote 1 on definition of female-headed firm) If non-compliance is gender-skewed (for instance if women hold far fewer licenses than men), further analysis should be undertaken to ascertain why this is (see introduction above) and the sex disaggregated data should be treated with caution. If few women have obtained licenses, those who have are likely to be atypical (for example they may be well educated or run large businesses.)</td>
</tr>
<tr>
<td>2. The administrative burden is measured through indepth interviews with a small number of firms within the target group of the law. They are asked to specify how much time and money they spend performing each administrative activity that is required when fulfilling a given information obligation. The different effects that a law may have on various types of businesses (or a relevant segment of businesses) are carried out. For example, often it will be necessary to distinguish between smaller and larger firms</td>
<td>The methodology for measuring both the administrative and policy burdens is as per the SCM, but questions on each type of cost burden are separated so that separate information can be collected on each, and each can be measured separately.</td>
<td>Male- and female-headed firms tend to be different – in terms of size and sectors in which they operate</td>
<td>The sample should reflect the proportions of male- and female-headed firms of different sizes and in different sectors</td>
</tr>
<tr>
<td>3. Each administrative activity is a function of the internal and external costs to business, multiplied by the number of times each business has to perform the activity. ‘Time spent’ on fulfilling a requirement is translated into a cost using the wage of the person who is normally assigned to carry out the task, multiplied by the frequency with which that task is carried out.</td>
<td>As per SCM</td>
<td>Even where there is no explicit legal or regulatory restriction, cultural or economic reasons may force women to depend on men to act as intermediaries between themselves and state officials. As a result, women’s interactions with officials are less efficient and women’s choices are restricted.</td>
<td>The data should capture the sex of the person assigned to the task of license application and interaction with the public authority concerned. If the person who obtains the license is not the business owner, the reasons for this should be explored if possible.</td>
</tr>
</tbody>
</table>
4. Administrative costs are defined as ‘the costs imposed on enterprises when complying with information obligations stemming from government legislation’. Examples include keeping records, carrying out inspections, completing returns and reports, standing in queues to obtain approvals or file documents, entering information in a register, getting hold of the law or reading a brochure or paying a solicitor to understand what one’s compliance obligations are, cooperating with audits/inspections.

Administrative costs are defined as per Standard Cost Model. But importantly they can include costs of avoiding compliance with these requirements, including paying bribes to avoid queuing up or to avoid being caught.

The making of unauthorized payments is fertile ground for consideration of gender issues. There is international evidence that firms paying small bribes are likely to spend more management time dealing with officialdom, not less. This imposes a double burden – both the cost of the bribe and the additional management time. But it is unclear if male or female-headed firms are more likely to pay bribes:

a) Men may be more likely to try to avoid compliance with regulatory requirements than women (for example by paying bribes). This may be due to their greater exposure to bureaucracy and experience and confidence in dealing with officialdom, and given they tend to have wider and deeper networks of influence than female entrepreneurs.

b) On the other hand there is international evidence that women are more susceptible than men to queue barging, harassment, and requests for ‘speed payments’, being seen as soft targets.13

Ensure sex disaggregated data is gathered on unauthorized payments when obtaining a license.
If possible, gather sex disaggregated data on costs of avoiding compliance.

5. An information obligation is defined as ‘a compulsory duty to procure or prepare information and subsequently make it available to a public authority or 3rd party’.

An information obligation is defined as per SCM. But compliance costs can also include policy costs – that is, the cost inherent in meeting the aims of a regulation, for example a direct cash cost such as changing stationery to include a tax number, training staff on health and safety compliance, etc. paying direct fees, levies or taxes.

Compliance costs can also include the opportunity cost (what else could one have been doing or spending one’s money on, if the regulation were not there) of complying or not complying with a regulation, although this is notoriously difficult to measure.

Opportunity costs for men and women may be different, as women are more likely to juggle their businesses with family/domestic duties. For a woman, spending less time on a licensing requirement may not necessarily translate into additional time spent attending to her business.

Sex disaggregate information on opportunity cost (if obtained). Undertake careful analysis in the light of different gender roles.

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<thead>
<tr>
<th>Key aspects Standard Cost Model (SCM)</th>
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<tbody>
<tr>
<td>Enables reduction targets to be set and key areas for reform to be identified</td>
<td>Enables reduction targets to be set and key areas for reform to be identified</td>
<td>If sex disaggregated data is collected, both models will allow a consideration of the different impacts and cost burdens a law may impose on female-headed businesses, as compared with male-headed firms. They will also reveal any differences in the experiences of men and women dealing with public officials in connection with licensing</td>
<td>As well as sex disaggregating the data obtained, the reasons behind the differences revealed by the disaggregation should be explored, to enable appropriate policy responses to be developed</td>
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</table>

**Tool 14B: Regulatory Impact Assessment: gender checklist**

The aim of a Regulatory Impact Assessment (RIA) is to help improve policy-making by placing a greater emphasis on quantifying benefits and costs. An RIA is a detailed and systematic appraisal of the impacts of a regulation in order to assess whether the regulation is likely to achieve the desired objectives. In assessing these impacts it is important to understand them in relation to women, as well as to men. Key aspects to consider are:

- Is the data on which the proposed measure is based disaggregated by sex?
- Will men and women each be directly or indirectly affected by the proposed measure?

**Sample questions to determine impacts on gender equality:**

- Does the measure take into account differences between men and women in access to, and use of, infrastructure?
- Does the measure take into account the freedom of men and women to dispose of their time?
- Does the measure influence the choice and exercise of an occupation by women and men?
- Does the measure take into account the differences in access to information and education for women and men?
- Does the measure take into account the differences in the daily lives of women and men?

Tool 15: Analysis of Business Names Registration Process

1. Business name registration legislation
   a) PNG, Solomon Islands, Tonga, and Vanuatu (and most developing countries with an English legal system heritage) all have a similar Business Names Registration Act. The regime is modeled on a system that operated in England and Wales from 1916, but was abolished there in 1982. The Act and the registration requirements have not only been abolished in the UK but also in many developed countries that previously had such legislation.14
   b) The Act requires a business name to be registered by anyone who wishes to carry on business which is:
      i) NOT registered as a company under the Companies Act
      ii) Carried on under any name except the name(s) of the proprietor(s).
   c) The business names registration regime is not designed to register all businesses. As described above it does not, and is not designed to, capture either companies or businesses trading under the name of their owner(s).
   d) In some cases (for example PNG) the registration of a Business Name is valid for a limited period of time (in the case of PNG three years). It must be renewed after that period if the business is still in operation.

2. Purpose of business name registration
   a) Registration under the Registration of Business Names Act has a quite different effect to registration under the Companies Act. It does not create a new legal body or confer any legal status on a business. It is simply a register of names of some unincorporated businesses.
   b) The rationale behind the regime (as behind the original English legislation) is threefold:
      i) The main purpose of the regime is to allow members of the public, by searching the register, to see who the individuals are that are trading under a business name (where the business is not a company)
      ii) It also provides some ‘protection’ for existing business names – by preventing other businesses trading with a registered name, and
      iii) The Act gives the State the right to restrict the use of certain business names, particularly ones that may be misleading15.
   c) However, in developed countries where similar legislation has been abolished, it has been discovered that a blanket registration requirement is not required, nor necessarily the best way to deal with these issues.
   d) In all the countries considered by the Pacific Gender and Investment Climate Assessments it was acknowledged that the regime was not in practice enforced, and no action is taken against businesses that fail to comply. In practice therefore the register is out of date and incomplete. In all countries considered it is therefore currently failing in its regulatory purpose.
   e) Because the register is not designed to be a comprehensive register of all businesses, but rather for the specific purposes described in paragraph b) above, it is not used by other public authorities, for instance the tax authorities, as a compliance tool. This contrasts with the situation in Hong Kong for example, where ALL businesses (whatever their legal form and whatever name they use) are required to register with the Tax Authority. This is quite different from a business names registry.

3. Regulatory cost of business names registration
   a) Against the purpose of business names registration (as described in paragraph 2 b) above) must be weighed the regulatory cost it imposes on businesses.

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14 The UK, New Zealand, and Hong Kong have all abolished the requirement. Australia and Canada continue to maintain a business names registration regime similar to that in PNG, Tonga, Solomon Islands and Vanuatu.

15 Registration may for example be refused if the proposed name includes the word ‘Presidential’ or ‘Government’.
b) The procedure for registering a business name is straightforward. It requires the completion of a single form and paying a small fee. In most cases the forms need to be taken to the Business Names Registry which is located in the capital city. Despite this seemingly straightforward procedure, there is evidence that the requirement imposes a burden on businesses (see box below).

Kenya has almost identical Business Names Registration legislation to that in the countries considered by the Pacific Gender and Investment Climate Assessments. Research commissioned by the Deregulation Project of the Kenya Institute of Public Policy Research and Analysis\(^16\), suggests that this regime, taken together with the Trade Licensing regime, cost the Kenyan economy in the region of 1 percent of GDP each year\(^17\). This cost includes authorized and unauthorized payments and management time taken up with compliance.

c) As stated above, in practice many businesses using a trading name fail to register it, making the business owners in theory liable to criminal prosecution.

d) In practice, enforcement of the regime can occur when a business comes into contact with a formal authority such as a bank. When approaching a bank for a loan, a small business will typically be required to register under the Business Names Act for the transaction to proceed. Such registration seems to be regarded as bestowing a level of formality on a business. It also imposes a barrier on access to credit by small/informal businesses (especially those outside the capital city for whom business name registration imposes a more significant regulatory burden).

4. International Best Practice

a) As stated above, similar regimes have been dispensed with in other common law jurisdictions such as the UK, New Zealand (which has been at the forefront of business law reform in common law jurisdictions) and Hong Kong\(^18\). The regime remains in many less developed countries.

b) The experience of other jurisdictions has been that there are less burdensome and less costly ways of addressing the issues which the Act seeks to deal with – see box below.

In England and Wales the system of registering business names has been successfully abolished since the mid 1980's. The blanket requirement for registration has been replaced by other, less onerous and more specific requirements to address the need for transparency and protection of business names:

- The desire to see who is ‘behind’ a business is addressed by requiring the owners of businesses to have their name and address displayed on, for instance, invoices, letters and at the place of business.

- The issue of protection of business names is now a matter for businesses themselves, rather than the State. If a business wishes to protect its name, it may do (at its own discretion) by registering it as a trademark. Where a business already has a reputation and goodwill in a business name, which another company tries to take advantage of by using the same business name, a common law ‘passing off’ action can be taken.\(^19\)

- Finally, the issue of use of misleading names is dealt with by the Business Names Act 1985. The Act controls the use of certain words or expressions in business names, by requiring permission of the Secretary of State of other body. (For example: the use of words giving the impression that a business is connected with the Government or a local authority require the permission of the Secretary of State; the use of the word ‘Charity’ requires the permission of the Charity Commission.)

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16 Supported by the UK Department for International Development.
17 “Improving the Legal and Regulatory Environment for Business through Trade Licensing Reform” Presentation by KIPPRA, 27 September 2000.
18 Business names registration operates in some other common law jurisdictions eg Australia and Canada.
19 Sources: The Law & Development Partnership; UK Companies House website www.companieshouse.gov.uk.
5. Recommendations for policy paper on Business Names

a) The benefits of a blanket requirement for the registration of every unincorporated business which uses a business name needs to be balanced against the costs of compliance. It is important to note that the potential benefits of the regime relate only to businesses that are NOT companies and that are NOT trading under the name(s) of their owners. The current regime is NOT intended to be, nor is it, a comprehensive register of businesses. The potential uses of the regime are:

• To enable members of the public to learn who is ‘behind’ a business
• To provide limited protection to businesses from use of their business name by another business, and
• To enable the State the right to restrict the use of certain business names.

b) In practice the regime is currently largely un-enforced. The business registration regime should either be enforced or abolished.

c) The UK, New Zealand, and Hong Kong have all abolished the business names regulation regime with no apparent adverse consequences, thus liberalizing the business formation process and reducing the regulatory burden on business start-ups.

d) The experience from UK, New Zealand, and Hong Kong is that a much lighter and more focused regulatory regime is a satisfactory way to address the mischiefs which the Registration of Business Names Act was intended deal with. These more liberalized regimes do not involve the compulsory registration of business names.

e) If the requirement for business names registration were to be abolished, businesses that are concerned to protect their business name would be able to do so on a voluntary basis by registration under trademark legislation. Consideration would need to be given to whether it would be appropriate to introduce new legislation which:

• Requires disclosure of who is behind a business on, for example, letterheads, business premises (as in the UK under the Business Names Act, 1985, section 4); and
• Controls the use of certain business names by a system of certain names requiring approval from a Government authority.
Tool 16: Mechanism to Sex Disaggregate Data on Holders of Sectoral Licenses

Finding out the sex of owners/managers of business that holds licenses

Sectoral licenses tend to be held in the name of individual businesses. In most cases the businesses will be companies, or trading under a business name. The sex of the owner(s)/manager(s) of the business will not therefore be readily ascertainable from licensing records. In the case of registered companies, it is relatively straightforward to find out if the shareholders and directors are male or female by conducting a company search (currently the companies registry does not collect data on sex of directors and shareholders, but this can largely be ascertained from the registered names of directors and shareholders).

In the case of unincorporated businesses, the business names registry or other business registry may reveal who the owners are. Again, the sex of the owner(s) may be ascertained from the owner(s)’ names.

Going forward, new applicants in the application form for sectoral licenses could be required to specify who are the owners/managers of the business and their sex.

Establishing a baseline

When developing a baseline relating to the extent to which female-headed businesses hold sectoral licenses, the starting point is to decide if you are measuring ‘stock’ or ‘flow’.

<table>
<thead>
<tr>
<th>Stock</th>
<th>Number of existing companies that have male/female directors/shareholders (sample)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flow</td>
<td>Number of new registrations that have male/female directors/shareholders (total number over a period of time)</td>
</tr>
</tbody>
</table>

The analysis should be conducted for licenses granted over a time period (if measuring flow) or for total licenses granted – or possibly more realistically a random sample (if measuring stock). Simple data collection sheets should be developed. For example:

Number of license holders that are companies registered with directors who are...

<table>
<thead>
<tr>
<th></th>
<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
<tr>
<td>TOTALS</td>
<td></td>
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</tbody>
</table>

Number of license holders that are companies registered with shareholders who are...

<table>
<thead>
<tr>
<th></th>
<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
</tr>
</thead>
<tbody>
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<td></td>
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</tr>
<tr>
<td>TOTALS</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

Number of license holders that are un-incorporated businesses with owners who are...

<table>
<thead>
<tr>
<th></th>
<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
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<tr>
<td>TOTALS</td>
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</table>
**Tool 17: Gender Perspectives on CIMC Informal Policy Concept Paper**

This tool has been developed to provide a gendered response to the CIMC Informal Policy Concept Paper. It comments on various sections of the Concept Paper.

**Background**

Need to distinguish between men and women in the informal economy. Make the points that:

- Most informal sector operators are women (63 percent according to CIMC 2001 study)
- The retail marketing sector is dominated by women
- The service sector is dominated by women
- Rural semi-subsistence food production is dominated by women
- Women in business in the informal sector face problems that their male counterparts do not face / face to a lesser extent, including:
  - Insecurity / violence, including in the workplace
  - Lack of market space and poor conditions in markets
  - A culture that does not taken women in business seriously
  - Limited input into policy and decision-making
  - Poor education levels (worse than men's)
  - Limited ability to control their business profits and assets.

**Policy goal**

- The vast majority of formal sector enterprises are owned and run by men. Women's businesses are not making the transition to formality. The goal is to assist women as well as men to make this transition, and to protect those who continue to operate in the informal sector.

**Policy rationale**

- As well as emphasizing private sector led economic growth, the Medium Term Development Strategy also emphasizes gender equality and the contribution of women to PNG's economic development.

**Policy objectives**

- To address those constraints on business development that particularly impact on women

**Other policy areas**

- Infrastructure and services – need to acknowledge that women fare much worse than men in these areas – particularly health and education.
- Property rights – need to acknowledge that, here again, women are in a worse position than men including in relation to rights over land and their own income (due to male domination of allocation of household resources)

**Governance of the informal economy**

- Need to ensure that informal sector business women are adequately represented in the framework for an integrated approach to developing a National Policy on Informal Economy including on the National Consultative Committee and the Technical Working Group. In accordance with Beijing Platform for Action target, at least 30 percent of members of these bodies should be women. Need to ensure that proper representation is given to informal women, for instance through NGOs, training organisations.
Policy process

- Need to ensure women informal sector operators are key players in the consultation process (note points made in Annex E: Women's consultation checklist).
- Process should be ‘context-specific based on the reality of different categories of informal workers…’ Need to identify men on the one hand and women on the other as categories of informal workers. As highlighted in PNG Gender and Investment Climate Reform Assessment, they face different constraints and have different roles in the informal sector.
- ‘It should be gender sensitive…’ paragraph does not acknowledge that women are in fact the major players in the informal sector. ‘Women’s work’ is what the informal sector mainly is!
- Membership of Technical Working Group does not include a gender expert. Currently this expertise is with the Department of Community Development.

Registration

Urgently re-consider the proposal to introduce a registration system for informal sector operators. The justifications given for the proposal are: a) for monitoring purposes, and b) to provide support/ training to informal sector operators.

International experience suggests that blanket registration will, in practice, be impossible to enforce, and (assuming the penalty for non-registration will be criminal) will simply criminalize many informal sector operators and lay them open to harassment by public officials. (Women are likely to be particularly vulnerable to this). There will be problems of interpretation – at what point does informal income generation become a business that requires registration? And the expense of administering the registration regime and keeping the register up to date does not justify its purpose.

This is an extremely heavy handed, control-orientated, and probably ineffective way to ‘monitor’ the informal sector – periodic surveys would be a better way forward. And it is difficult to see why improved training or information provision needs to be linked to registration. This could be made generally available, and marketed so that those informal enterprises who wish to take advantage of it may do so.

Integrated policy research support

Deficiencies in the evidence base. Another deficiency is the limited sex disaggregated data on the informal sector. A deeper understanding of the issues in relation to women on the one hand and men on the other is required.

REFORM OPTIONS: LEGITIMIZATION OF MICROBUSINESSES

- It is suggested, under the paragraph on registration above, that it would not be appropriate in the PNG context to introduce a scheme for the registration of all businesses in order to legitimize them.

- What is meant by legitimization? In a business friendly environment, it is not the general role of the State to control businesses or to say who can or can’t start up a business. But the State does have a role in ensuring that all businesses:
  - Pay tax if their income/turnover is above a certain threshold, and
  - Comply with health, safety and planning requirements.

- In general, if a business does these things, it should be considered to be ‘legitimate’. Different countries have adopted different regimes in relation to ensuring businesses are operating ‘legitimately’. Some best practice principles from international experience suggest that:
  - Compliance with health and safety requirements is best enforced through risk-based inspection, or through targeted licensing (for example, of restaurants) rather than a blanket requirement for all businesses to be registered. However, in practice microenterprises, particularly if operating from home, are unlikely to be caught by such a regime.
  - Licensing of certain businesses may be considered necessary for specific reasons including for public health (for instance licenses to sell liquor, prepare food) or for planning purposes (for instance to limit numbers of hawkers / street traders / buskers / taxis). Licensing schemes can be designed to include microenterprises (for example street hawkers), if it is considered necessary to control them, but in practice enforcement is likely to be a major problem and may result in the criminalization of the poorest in society.

20 This is a general point. There may be situations where it is appropriate for the State to exercise more control over businesses – for example strategic businesses or where there are competition issues.
- Local bye-laws or planning controls may prohibit business activities in particular areas such as in public places. Unless satisfactory alternative areas are provided for the informal operators, enforcement of such planning laws is likely to be problematic.

• Ideally, if a businesses registration regime exists, it is linked to payment of tax. In neither of the best practice examples given below is there a general business registry kept for the purposes of Government information, control, or legitimization.

• UK. There is no general requirement to register a business. In general anyone can set up a business anywhere provided they comply with health, safety, and planning requirements. In some specific instances where there are genuine regulatory issues (for instance to control the sale of alcohol) prior approval is required through the obtaining of a license. Health and safety requirements are enforced largely through inspection and there are sanctions on businesses that are non-compliant (for instance, a restaurant that does not have proper hygiene standards can be closed down).

• Partnerships and sole traders are required to register with the tax authority as self-employed.

• Hong Kong. All businesses are required to register with the Inland Revenue Department (tax authority) within one month of starting business. Starting a business is defined widely to include any form of trade, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain.
**Tool 18: Outline of Basic Contract**

**Contract for sale of future goods**

This basic contract sets out the key terms that may be agreed by the parties in relation to the sale of future goods, for example, a craft item that has been ordered by the buyer subject to manufacture by the seller. It does not require the services of a lawyer to complete, but both parties should ensure that they understand what they are agreeing to. Some of the proposed terms may need altering depending on the precise circumstances of the situation.

The document should be validated by a local lawyer in the country in which it is to be used, before it is promulgated.

Date:

Buyer: [Insert name] of [Insert address]

Seller: [Insert name] of [Insert address]

1. The Seller agrees to provide for the Buyer, on or before [Insert date], the following goods: [Insert description of goods, for example type, number, measurement] at the following price [Insert price].

2. The goods will be delivered to the Buyer as follows: [Insert explanation of how the goods will be delivered, for example, the Buyer will collect them by a certain date / the Seller will deliver them to a certain address by a certain date]

3. The Seller acknowledges part payment of [Insert amount] for the goods.

4. The Buyer agrees to pay the balance due for the goods of [Insert amount] at the time and at the place where s/he receives them in accordance with paragraph 2 above.

5. If:
   a) the Buyer does not collect the goods by [Insert date], or
   b) the Buyer makes it impossible for the Seller to deliver the goods by [Insert date] as specified in paragraph 2 above, then ownership of the goods is deemed to pass to the Buyer on that date, and the Buyer is immediately liable to pay the balance of the purchase price to the Seller.

6. Until the goods have been received by Buyer (or are deemed to have been received by the Buyer under paragraph 5 above), all risks of damage to the goods shall be on the Seller.

7. The Seller warrants that at the time they are received by the Buyer the goods will be free from any security interest or other lien or encumbrance.

8. The Buyer has [insert number] days from receipt of the goods (or deemed receipt of the goods under paragraph 5 above) to notify Seller of any claim for compensation due to the condition, grade, or quality of the goods. Otherwise, the Buyer is deemed to have accepted the goods.

__________________________________ Buyer

__________________________________ Seller

[Signatures]

[On delivery of the goods, the following receipt should be signed by the Buyer]

Goods received in accordance with above contract

__________________________________ Buyer

[Signature]

Date:
Tool 19: Mediation Sex Equality Checklist

1. Provide gender specific training for ADR providers. This should ensure sensitivity to gender issues, particularly the perceived power imbalances between genders; and also that the ADR provider is knowledgeable about cultural values and norms of both genders in local context.

A skilled mediator should ensure that the power differences between men and women, which put women at a ‘disadvantage’ in negotiating with men, are not brought in to play. Mediation validates the parties’ ability to speak for themselves by the mediator's use of specific skills which help parties explore options and the possible repercussions of different courses of behaviour or action. But if handled incorrectly, mediation can silence the voices of women and result in unfair settlements that fail to address their needs.

2. Provide an environment in which women feel free to speak

3. Consider provision of separate front office desks, waiting areas, and bathroom facilities for women

4. Consider if opening hours are convenient for women (who may have to combine their business with domestic duties). Also consider child care issues – see box below

In the United States some cities such as New York and Washington DC provide free or subsidized day care services close to court premises to enable mothers to attend court and facilitate access to justice.21

5. Ensure operational / procedural manuals / codes of conduct / customer charters to address gender issues, and set out the level of service that women should expect

6. Grievance mechanisms, complaints boxes, help desks should be undertaken by teams which include women

7. Include women's groups (for example NGOs) and local women's interest groups in design and implementation.

**Tool 20: Methodology for Sex Disaggregation of ADR Users**

Where a new ADR system is being set up, sex disaggregated data should be collected from the beginning about who is using the system. This means that the data collected should include for each case:

- The sex of the claimant(s) (or if they are a legal entity such as a company)
- The sex of the defendant(s) (or if they are a legal entity such as a company)
- The sex of the mediator

**Tool 21: ADR / Commercial Justice Users Perception Questionnaire**

The questions below are indicative only for inclusion in a survey on perceptions of users of the commercial justice system (including ADR users). The design of perceptions surveys are best undertaken once these systems are up and running and the issues associated with the reforms have emerged.

The survey should be administered to women and men, and results sex disaggregated.

**Questions for users of the system (for instance ADR / Small Claims)**

In this survey the scale of 1 to 4 is as follows:

1. very satisfied
2. satisfied
3. not satisfied
4. very dissatisfied

a) Did you bring the initial claim, or were you defending?
b) Overall, how would you rate the service you received (on scale of 1 to 4)?
c) How would you rate (on a scale of 1 to 4):
   - Cost of service
   - Timeliness of service
   - Fairness of service
   - The performance of the judge / mediator
   - The facilities (court / ADR centre)
d) What impressed you most about the service?
e) What was the worst thing about the service?
f) How would you improve the service?
g) Do you have a preference for a male or female judge / mediator? If so, why?
h) Any other comments
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