Timor-Leste

Gender and Investment Climate Reform Assessment

In Partnership with AusAID

January 2010  Sonali Heddit & Clare Manuel
Preface and Acknowledgements

This Report is 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 Report has been produced for:

- The Government of Timor-Leste, primarily the Ministry of Economy and Development: to make recommendations for reform actions for Government to further enable women in Timor-Leste to participate effectively in the country’s economic development.

- The International Finance Corporation: to inform its Timor-Leste Better Business Initiative, and ensure that gender issues are incorporated in the program'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 a mission to Timor-Leste from February 2–5, 2009. The mission team, led by Sonali Hedditch (IFC), included Mark Blackden (IFC consultant), Fiona MacCulloch (The Law & Development Partnership), Vijaya Nagarajan (AusAID consultant), Tamara Haig (AusAID consultant) and supported by locally based experts Rui Gomez (economist) and Tiago Sarmento (lawyer). Kristie Drucza (AusAID) and Anna Hutchens (AusAUD consultant) undertook useful preparatory research in September, 2008.

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 private sector operators; civil society; Government Departments and bodies; and donors. The mission team received guidance from the IFC’s Country Coordinator in Timor-Leste, Rainer Venghaus, and valuable support from IFC staff including Johanna Johannson, Milissa Day, Bernardo Dos Reis, and Alberto Nunes.

Finally, we wish to thank the wonderful women entrepreneurs in Dili who took the time to share their stories and challenges with us during the mission.
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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
### Abbreviations

<table>
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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>ADB</td>
<td>Asian Development Bank</td>
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<td>AusAID</td>
<td>Australian Agency for International Development</td>
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<td>BBI</td>
<td>Better Business Initiative</td>
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<td>BWF</td>
<td>Business Women’s Forum</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<td>FCA</td>
<td>Federal Court of Australia</td>
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<td>GWG</td>
<td>Gender Working Group</td>
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<td>IFC</td>
<td>International Finance Corporation</td>
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<td>LPD</td>
<td>Land and Property Directorate</td>
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<td>M&amp;E</td>
<td>Monitoring and Evaluation</td>
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<td>MDG</td>
<td>Millennium Development Goals</td>
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<td>MFI</td>
<td>Micro finance institution</td>
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<td>MoJ</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>MTCI</td>
<td>Ministry of Tourism, Commerce and Industry</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental organization</td>
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<td>PPD</td>
<td>Public private dialogue</td>
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<tr>
<td>PNG</td>
<td>Papua New Guinea</td>
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<td>SME</td>
<td>Small and Medium sized Enterprise</td>
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<td>SSPE</td>
<td>Office of the Secretary of State for the Promotion of Equality</td>
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<tr>
<td>ToR</td>
<td>Terms of Reference</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>UNFPA</td>
<td>United Nations Population Fund</td>
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Executive summary

Introduction

Report purpose
This Report is one of six Gender and Investment Climate Reform Assessments undertaken in six Pacific nations including Timor-Leste. The Report analyses gender-based investment climate barriers which constrain private sector development, and identifies solutions to address them. Four key investment climate areas 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.

In each area the Report considers legal, regulatory, and administrative barriers to private sector development with a gender perspective. It asks whether women face different or additional constraints to those faced by men. And it makes recommendations aimed at ensuring that women benefit from ongoing efforts to improve Timor-Leste’s 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, the Report’s recommended solutions are presented in the form of specific targets with associated activities (see Planning Matrix at Annex A) which will be incorporated into, and implemented through, Timor-Leste’s Better Business Initiative. The program was established in January 2008 by the Ministry of Economy and Development and is supported by IFC.

This Report does not aim to cover all gender issues in Timor-Leste or all gender issues in private sector development or investment climate reform. Gender constraints in Timor-Leste are wide-ranging and deeply entrenched in cultural and historical factors. All targets and activities recommended in this report only relate to reducing gender constraints through the investment climate reforms that IFC is undertaking as part of its Public Private Dialogue and Business Registration projects. 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 Timor-Leste’s attractiveness for local and international investment and business growth. It is hoped that these reforms could be part of broader reform in Timor-Leste to create equal opportunities for women and men.

The primary audience for this Report is IFC and the Timor-Leste Government, 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 stakeholders working to increase women’s economic empowerment.

Country context
Timor-Leste, an area of 15,000 square kilometers with a population of 1.2 million (2007), became a sovereign state on May 20, 2002. The restoration of independence marked the end of 450 years of Portuguese colonization, occupation by the Japanese, and Indonesian occupation. Following a referendum which voted for independence from Indonesia there were violent clashes in 1999. Political unrest also led to violence and riots in 2006 which was quelled with support from Portuguese and Australian troops.

Timor-Leste is the poorest country in the Association of Southeast Asian Nations (ASEAN) region, with non-oil GDP per capita of $364 (USD) in 2007. Following social and political turmoil in April/May 2006 the economy contracted by an estimated 5.8 percent. Since that time however, the economy has been growing steadily with the main source of growth being the sharp increase in Government spending funding construction, improvements in public services, and transfer programs. Inflation continues to remain at relatively high levels, fueled largely by higher food and fuel prices.

1 The others are Papua New Guinea, the Solomon Islands, Samoa, Tonga and Vanuatu.
Timor-Leste suffers severe human resource capacity problems. Less than 50 percent of the adult population is literate and the UN Human Development Index ranks Timor-Leste at 150 out of 177 countries surveyed. The youth population is very high and growing. Timor-Leste has one of the highest fertility rates in the world and more than 40 per cent of the population is aged between 15 and 24. It will be important for Timor-Leste’s future stability to do as much as possible to facilitate private sector growth to provide jobs and income for this young and rapidly growing population.

The private sector in Timor-Leste faces the typical challenges of operating in a post-conflict environment that have been well summarized in a World Bank Report:2

Conflict damages the fundamental structures that underpin private sector activity, pushing businesses into the informal sector and forcing entrepreneurs to find new ways to operate. A diminished private sector means fewer jobs, lower incomes, and damaged livelihoods. As countries and regions emerge from periods of conflict, one of the most pressing challenges is to re-establish an investment climate conducive to private sector activity. A strong investment climate provides the conditions necessary to put labor and capital back to work, creating jobs and wealth. Private sector activity can also play an important role in delivering public services and, more subtly, start to replenish some of the social capital that is destroyed during conflict. In these ways, getting the private sector back on its feet becomes a vital factor in cementing the peace and setting countries on a sustainable path to peace and development.

Timor-Leste currently has one of the most challenging investment climates in the world, ranking 164 out of 183 economies in the World Bank’s Doing Business 2010 Report.

<table>
<thead>
<tr>
<th>Doing Business indicators</th>
<th>Timor-Leste's ranking out of 183 economies</th>
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<td>Closing a business</td>
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The need for Government to focus on making it as simple and easy as possible for investors to start up and run businesses is particularly acute in Timor-Leste. There is an urgent need to stimulate economic development in view of high population growth rates, low human capital endowment, the high incidence of poverty, the fact that many rural and urban entrepreneurs lost businesses, property, stock, and land during the 1999 crisis, and in view of the ongoing negative impact of the events of 1999 and 2006 on business activity.

Timor-Leste was ranked between 125 and 126 in the world in the United Nations 2004 gender-related development index – significantly lower than many of its ASEAN neighbors in terms of significant differences in earning power, standard of living, life expectancy, and overall status of women and men in Timor-Leste.4 A high proportion of women are illiterate and malnourished with high fertility and mortality rates. A significant proportion of women’s work is in subsistence production and the informal sector in activities such as agriculture, small-scale trade, and home-based industries like traditional weaving and handicrafts. They earn little and their ability to participate in productive work outside the household is constrained by the amount of time they spend on household and family chores.

The government is committed to gender equality and this policy is taken forward through its Secretariat of State for the Promotion of Equality.

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Methodology
An assessment team undertook a mission to Timor-Leste for four days from February 2–5, 2009. The Methodology was guided by the IFC’s Gender and Investment Climate Reform Practitioner’s Guide. Interviews using semi-structured questionnaires were held with a wide variety of stakeholders including: private sector representative organizations, private sector operators, lawyers, civil society, Government Departments and bodies, and donors. A full list of people consulted is at Annex B. 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 Timorese businesswomen were conducted and compiled into case studies which both highlight the investment climate constraints faced by women, and celebrate the successes that they have achieved. Some of these case studies will also be published in November 2009 in a joint IFC-AusAID publication entitled Economic Opportunities for Women in the Pacific.

Key findings and recommendations
Social, cultural, and legal constraints
Although largely absent from the formal sector, Timorese women are very active in the agricultural sector with approximately 88 percent of Timorese women working in agriculture, compared with 82 percent of men. Women are also active in trading, especially in selling their produce to the market and managing kiosks. They are estimated to own over 40 percent of micro-enterprises.

But women professionals and entrepreneurs face several constraints that inhibit their full potential for economic growth. Women are under-represented in the formal sector, are paid less, and have lower levels of education attainment. Women are held back by a male dominated culture, a double time burden as they combine their businesses with social and domestic responsibilities, and by vulnerability to poverty. Women are further constrained by a legal framework that does not adequately protect their interests, particularly in relation to property rights and marriage. Customary law, which frequently discriminates against women, is commonly applied.

Public private dialogue
The Timor-Leste Better Business Initiative (BBI) is a formal dialogue mechanism between the government and the private sector, both foreign and domestic. The BBI was established in January 2008 between the International Finance Corporation and the Ministry of Economy and Development to improve the business-enabling environment by providing a platform for effective and constructive dialogue between the business community and the government of Timor-Leste. The BBI helps strengthen the role and voice of the private sector in Timor-Leste. The dialogue’s effectiveness stems fundamentally from a solid partnership and direct linkage between four main parties: the domestic and foreign private sector, the Timor-Leste government, donor partners, and multilateral institutions. IFC serves as the Secretariat for the dialogue, assisting the public private BBI in Timor-Leste. In this role, IFC collaborates with the Ministry of Economy and Development, which is the Government’s coordinator for the BBI, as well as the various associations representing the business community and individual business representatives.

The BBI has a Working Group on financial services in which Timor-Leste’s two main microfinance institutions (MFIs) are represented. The MFIs serve over 16,000 poor women nationally. The representatives of the MFIs are able to bring the investment climate issues that female-owned micro businesses face into the public private dialogue.

Additionally, there is a small Women's Business Association, which consists of about 15 women in Timor-Leste’s capital of Dili. The women involved in this Association head medium sized businesses, mostly involved in Timor-Leste’s burgeoning construction industry. Although there has been strong female attendance at BBI Working Group meetings, generally women's business issues have not been prominent in the BBI process. One notable exception is the consistent participation in the Financial Services Working Group of non-bank financial institutions serving over 15,000 rural entrepreneurs, most of them women. Their participation in the PPD process has resulted in improved credit information sharing practices. However, there is no formal national private sector organization in Timor-Leste that represents the interests of the vast majority of business women in the country, ranging from subsistence agricultural producers and/or petty traders to bigger businesses.

The Government of Timor-Leste is committed to building a culture of equality in Timorese society. The Ministers of Finance and Justice are women and some of the most influential parliamentarians are women, including the Vice President of the National Parliament. Steps have been taken to promote gender equality through the Office of Promotion of Equality, now the Office of the Secretary of State for the Promotion of Equality under the Prime Minister’s Office. Each Ministry has a gender focal point. However, there is limited activity and policy on building the capacity of business women, and to allow women wider access to economic opportunities, including entrepreneurship.
Women’s voice does not appear to be well represented in public private dialogue (PPD) 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, training and business networking activities for business women in Timor-Leste are limited. Targets and activities for incorporation in the PPD component of the Better Business Initiative to improve the policy environment and support network for business women are:

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 the Better Business Initiative and Working Groups; and the number of papers featuring women’s economic empowerment considered by Cabinet.

Activities
- Ensure appropriate representation of women’s interests on existing PPD structures (Better Business Initiative, Administrative Barriers Working Group and Financial Service Working Group). 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 structure (Better Business Initiative, Administrative Barriers Working Group, and Financial Service Working Group) does 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.

Activities
- PPD structures (Better Business Initiative, Administrative Barriers Working Group, and Financial Service Working Group) and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms.
- Introduce law reforms to Parliament including those recommended in Table 2.2.
- Enact and implement new laws.

Target 1.3 Improved training and networking for business women
Measured by: business women’s perception of training and networking.

Activities
- Establish Timor-Leste Business Women’s Forum with open invitation to business women ranging from the informal sector through to big business, as commenced by IFC in 2009 in other Pacific countries 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, including regional networking across Pacific to share lessons and experiences.

Starting and licensing a business
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 micro-enterprises 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 this Report show, there are women in Timor-Leste 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.

Men and women may face different barriers to formalization. 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. Doing business in Timor-Leste is expensive by international standards, with business start-up featuring near the top of the list of problems. Legal and administrative reforms undertaken since 2004 have speeded up the business start-up process, but the reforms have also led to confusion, including a duplication of the business registration function between the Ministry of Justice and
the Ministry of Tourism, Commerce and Industry. An additional source of confusion is that all laws and registration forms are in Portuguese, and yet only a very small proportion of the population speaks Portuguese, a language confined mainly to the educated elite.

Women own only 16 percent of formalized businesses in Timor-Leste. The dysfunctional formalization procedure impacts disproportionately on women because women are more likely to be seen as ‘soft targets’ and therefore harassed by officials, and with their lower education levels women are less able to navigate the system. This Report does not recommend that all businesses should formalize without consideration of the business’ nature, potential, and goals, but it does recommend that for female-headed businesses that are ready to graduate from the informal sector to the formal sector, it should be just as easy for female-headed businesses as it is for male-headed. This Report suggests that men and women face different barriers to formalization. It is therefore sensible for investment climate reforms designed to facilitate business formalization to address the barriers faced by women, as well as those faced by men. Targets and activities for incorporation in the business startup and licensing component of the Better Business Initiative to improve business start up for women are:

**Target 2.1 Increase by five percentage points the proportion of (a) registered companies and (b) partnerships and sole traders that are female-headed**

Measured by: Companies Registry and Business Owners Survey data.

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<tr>
<td>• Ensure operations of the Business Registry are gender sensitive.</td>
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<tr>
<td>• Incorporate gender into BBI registration reform activities.</td>
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<tr>
<td>• Ensure all information on registering a business is equally accessible to men and women and produce a gender sensitive business entry handbook.</td>
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**Target 2.2 Improved legal framework for women’s business entry**

Measured by: number of reforms undertaken.

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<tr>
<th>Activities</th>
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<tr>
<td>• Review companies and business registration legislation to ensure best practice legal framework for registration of women’s enterprises and community groups as companies.</td>
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<tr>
<td>• Develop and promulgate basic partnership agreement with civil society and business organizations.</td>
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<tr>
<td>• Undertake basic training in contract law in English, Tetum, and Portuguese.</td>
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**Target 2.3 Reduced regulatory compliance cost on female-headed businesses**

Measured by: sex disaggregated time and cost compliance assessments.

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<th>Activities</th>
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<tr>
<td>• Facilitate women’s focus group on licensing constraints.</td>
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<tr>
<td>• Simplify procedures that have an adverse impact on female-headed businesses (revealed in focus group discussion and time and cost compliance analysis).</td>
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**Access to justice and alternative dispute resolution**

Timor-Leste is the hardest place in the world to enforce a contract. Because of lack of capacity within the Court system and a focus on criminal cases, the Court system has been unavailable to deal with either commercial dispute resolution or commercial contract enforcement since 1999. The Supreme Court has yet to be established, and formal Courts are effectively functioning in some districts but not others. The use of Portuguese language in the Courts in circumstances in which less than seven percent of the population understands Portuguese adds an additional layer of complication.

There is strong evidence of discriminatory attitudes towards women on the part of Judges and other Court officials. Traditional justice systems (the adat system) are perhaps more accessible, but tend to marginalize women because they are administered by men and uphold traditional gender roles and values that favor men. Community-based mediation may offer a way forward, assuming the new Mediation Law addresses the need for mediation systems to be accessible and responsive to women.
Alternative dispute resolution is not currently being addressed under the Government’s Better Business Initiative supported by IFC. However, the Government is undertaking an ongoing justice reform process. Recommendations to enhance women’s access to justice within the context of that reform process include:

- When implementing the proposed new Mediation law, consider the appointment of female mediators and gender training for all mediators including in power relations between men and women in the cultural context.
- In partnership with appropriate NGOs that support women and have links to the community level, Government should undertake an information campaign (including to rural women) on what women’s rights are (including property and commercial rights) and how to enforce them.

**Access to, and enforcement of rights over, registered land**

Despite providing large amounts of agricultural labor the majority of women in Timor-Leste have limited rights to own land, to control the way it is used, or to control any production and income deriving from land. This means that they are in a very weak economic position and greatly dependent on men: fathers, husbands, brothers, and sons. Rights of control and disposal of land are exercised by men.

Preliminary steps are now being taken in peri-urban areas to begin a land titling and registration process. Proactive efforts to encourage women to participate in the land claims and titling process will be required. The Draft Civil Code currently under consideration has the potential to ensure that women are able to achieve equal rights to land and property. Land is not currently being addressed under the Government’s Better Business Initiative supported by IFC, although there could be future scope to look at improving processes at the property registry. However, the Government is undertaking an ongoing land reform process. Recommendations to address the constraints faced by women within the context of that reform process include:

- Ensure that women’s groups are fully included in the consultation process on the proposed new Land Policy and Law. Engage with women in ways that are culturally sensitive, for example at realistic times given women’s domestic responsibilities, and in an environment that will enable women to speak freely.
- Reform women’s property rights under the Civil Code, and the extent to which it over-rides customary law.
- Ensure that equal land rights for women are entrenched in the new Land Policy and Law. These may include: (i) land dispute resolution processes that are fair to women, and (ii) requirement that family land is registered jointly in the name of husband and wife.
- Take forward education and information campaigns aimed at women emphasizing the rights to: (i) participate in the land administration process, (ii) declare yourself as a claimant, and (iii) participate in public meetings regarding land.
- Undertake training for women in negotiation skills in order to empower them to settle disputes over land from an informed and empowered perspective.
Chapter 1. Economic, social, and cultural framework

Summary
This chapter considers the contribution that women in Timor-Leste make to the country’s economy. Although largely absent from the formal sector, Timorese women are very active in the subsistence agricultural sector. Women are also active in trading, especially in selling their produce to the market, and managing kiosks. They are estimated to own over 40 percent of micro-enterprises.

But women professionals and entrepreneurs face several constraints that inhibit their full potential for economic growth. Women are under-represented in the formal sector, are paid less, and have lower levels of education attainment. Women are held back by a male dominated culture, a double time burden as they combine their businesses with social and domestic responsibilities, and by vulnerability to poverty and violence against them.

The economic, social, and cultural context is vital for ‘gendered’ investment climate reform
This chapter provides an overview of the economic, social, and cultural context for women engaged in private sector development in Timor-Leste. This provides essential background for the Report’s recommendations and more specifically for the formulation of IFC’s interventions designed to ensure that women benefit from investment climate reforms on the same basis as their male counterparts. 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. For example:

• The cultural context may mean that women may be unlikely to participate in public meetings or to put forward their views in the same way in or the same forums as men. It may also impact on business women’s ability to access commercial justice

• To the extent that investment climate reforms are focused on particular sectors (for example in relation to licensing reform) it is important to understand which sectors of the economy women on the one hand, and men on the other operate in

• If women suffer from a ‘double time burden’ – combining domestic duties with income-generating activities – reforms aimed at simplifying processes such as in relation to business formalization, land registration, or commercial justice have the potential to have a disproportionately beneficial impact on women, and so it is particularly important to engage with women when taking forward such reforms

• When considering initiatives to encourage businesses to formalize, it is important to understand the different incentives to remain informal that may operate on women on the one hand and men and the other.

This chapter provides the background to assist with a consideration of these types of issues, and thus provides the framework for designing effective investment climate reform interventions – for women as well as men.

Women predominate in subsistence agriculture
The Timorese economy is primarily agrarian, with 80 percent of the workforce engaged in subsistence farming. Using the Timor-Leste Survey of Living Standards 2007 data, it is estimated that women are more active in agriculture than men, particularly in producing and processing food crops for family consumption (see Table 1.1). According to the survey, approximately 88 percent of Timorese women work in agriculture, compared with 82 percent of men. The Government estimates that 70 percent of women engaged in agriculture do not receive cash income for their services.5


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Table 1.1. Industry of main job by gender

<table>
<thead>
<tr>
<th>Types of Industry</th>
<th>Total %</th>
<th>Men %</th>
<th>Women %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>84.3</td>
<td>82.2</td>
<td>87.8</td>
</tr>
<tr>
<td>Industry</td>
<td>0.9</td>
<td>1.3</td>
<td>0.2</td>
</tr>
<tr>
<td>Wholesale trade, retail, restaurants and hotels</td>
<td>2.2</td>
<td>1.3</td>
<td>3.6</td>
</tr>
<tr>
<td>Public administration, military</td>
<td>2.2</td>
<td>3.0</td>
<td>0.9</td>
</tr>
<tr>
<td>Health</td>
<td>0.9</td>
<td>1.0</td>
<td>0.7</td>
</tr>
<tr>
<td>Education</td>
<td>2.8</td>
<td>3.4</td>
<td>1.7</td>
</tr>
<tr>
<td>Other community, social and personal services</td>
<td>1.8</td>
<td>2.2</td>
<td>1.1</td>
</tr>
<tr>
<td>Other</td>
<td>5.0</td>
<td>5.5</td>
<td>4.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
<td><strong>100</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Women are also engaged in microenterprises and work in the public sector

Only 12 percent of women work in non-agricultural sectors, mainly in trading, with over 10 percent of women engaged in trading in urban areas especially in selling their produce to the market and managing kiosks. It is estimated that some 43 percent of microenterprises are female-owned. Anecdotal evidence suggests that female workers are primarily found in tais weaving, tailoring, salt-making, bakeries, and handicrafts.

Box 1.1. Case Study: Isabel Cortilde, borrower from Moris Rasik

Moris Rasik, meaning Stand on your own, is a microfinance institution supporting rural women. Moris Rasik’s most popular product is its small business loans, the only loans of this type in Timor-Leste. The loans average $393 per client. Almost all of Moris Rasik’s 12,000 clients are women and many are illiterate, but they tell stories of improved livelihoods through the businesses started and built with the help of the loans and support offered by Moris Rasik.

Before she began her business in mid 2005 with a loan from Moris Rasik, Isabel Cortilde used to sell coffee from Almera district to a company. She did this because I needed more money to feed my 7 children. I want to be able to send them to school.

Isabel is now on her 7th loan from Moris Rasik, worth $2,500. Her first loan was for $100, and she used this to supplement her own savings of $500. With this first loan she bought sugar, salt, milk, and drinks for a stall. Now Isabel owns a small trading store in Gleno.

My plan is to pay all the loan off first. Then, if I gain another loan, I will buy a car so that I can go to rural areas to buy the coffee and then sell it in Dili, she says. Gleno is 45 minutes’ drive south-west of Dili.

Isabel wants to buy the car next to overcome her main issue: lack of transportation. The condition of the rural roads in Timor-Leste is bad. I would have to rent a car to go and buy the coffee to sell in Dili. But because of the road condition not all drivers will go. For the cost of a car I could then go myself to buy the coffee. An advantage to selling coffee in Dili she says, is that people know you are selling and will come to you – you don’t have to seek them out. And they pay cash.

She adds that while Timorese are comfortable with women selling coffee, she normally needs to take her brothers or nephews to make the purchase although she has the money. I couldn’t do it on my own.

Within paid employment women are most likely to work in the public sector (see Table 1.2 below). As suggested in Box 1.2 below, efforts are being made to ensure gender equality in the public sector but still only 15 percent of public sector employees are women (see Table 1.4 below). It is, however, encouraging to note that 29 percent of the seats in Timor-Leste’s National Parliament are held by women.

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Table 1.2. Profile of Wage Employees by Gender, 2007

<table>
<thead>
<tr>
<th>Types of Industry</th>
<th>Total %</th>
<th>Men %</th>
<th>Women %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private company, enterprise, or cooperative</td>
<td>9.9</td>
<td>10.0</td>
<td>9.5</td>
</tr>
<tr>
<td>Rural public works program</td>
<td>13.8</td>
<td>13.8</td>
<td>13.6</td>
</tr>
<tr>
<td>Government, public sector, army</td>
<td>37.3</td>
<td>37.1</td>
<td>38.3</td>
</tr>
<tr>
<td>State-owned enterprise</td>
<td>4.3</td>
<td>4.5</td>
<td>3.7</td>
</tr>
<tr>
<td>Private Individual</td>
<td>16.0</td>
<td>16.5</td>
<td>13.6</td>
</tr>
<tr>
<td>NGO</td>
<td>16.2</td>
<td>16.2</td>
<td>16.1</td>
</tr>
<tr>
<td>Other</td>
<td>2.5</td>
<td>2.0</td>
<td>5.1</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100.1</td>
<td>99.9</td>
</tr>
<tr>
<td>Signed a contract</td>
<td>70.4</td>
<td>68.7</td>
<td>78.3</td>
</tr>
<tr>
<td>Pay taxes on wage</td>
<td>52.2</td>
<td>51.2</td>
<td>56.5</td>
</tr>
</tbody>
</table>

Box 1.2. Lobbying for Women’s Representation in the Public Service

Women’s organizations, at the 2004 Second National Congress of Timorese Women, asked for the Government to commit to a target of 30 percent females in the Public Service. Since then progress has been made towards a better gender balance in some public sector employment. A civil service survey carried out in 2001 identified that 32 percent of employees working in the Ministry of Health were female, 29 percent in the Ministry of Education, and 17 percent in the Ministry of Justice. By the end of March 2006 the percentage of female employees in the Ministry of Health had increased to 40 percent, in Education this had decreased to 25 percent, and in Justice increased to 22 percent. By 2006 women occupied 13 percent of the most senior positions in Governments ministries. There have been efforts to mainstream gender equality in public service policies and legislation, but these fall short of a systematic approach to addressing the issue.

But women do not participate in the labor force as much as men...

As Table 1.3 below shows, the labor force participation rate is much higher for men (over 77 percent) than for women (48.5 percent). Female workers in Timor-Leste are still considered secondary in the labor force, with female participation largely limited to a supporting role aimed at assisting their husbands to improve family welfare.

Table 1.3. Labor force participation

<table>
<thead>
<tr>
<th></th>
<th>Men %</th>
<th>Women %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall</td>
<td>77.4</td>
<td>48.5</td>
</tr>
<tr>
<td>Urban</td>
<td>63.8</td>
<td>33.8</td>
</tr>
<tr>
<td>Rural</td>
<td>82.7</td>
<td>54.1</td>
</tr>
</tbody>
</table>

Several factors contribute to the low labor force participation rate among women. These include low levels of female education, discrimination, family dynamics, and the burdens of household tasks that fall disproportionately on women (see Box 1.3) below.

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Box 1.3. Women and Employment

In 2008, Rede Feto, the largest women’s non-Governmental organization in Timor-Leste, organized a series of District Conferences addressing the main obstacles facing women in their access to employment opportunities. The findings were, among others, that women are more likely to be dismissed due to pregnancy and they are offered lower pay for equal work, caused by low level of education, skills, and experience. This is further exacerbated by the fact that, culturally, women’s place is at home which, in turn, limits their mobility and hence their likelihood to be engaged in wage-earning employment.

…and are under-represented in the formal labor market

As women are less educated and have fewer skills they have limited access to formal wage employment opportunities. Men dominate waged jobs. Overall, less than one-third of wage workers are women although in service sectors (wholesale trade, retail, restaurants, and hotels), women outnumber men. Only seven percent of industrial workers are women (see Table 1.4 below). Gender-differentiated wage gaps persist in Timor-Leste. That labor income generation for women is far lower than for men can be explained by the fact that the sectors where women predominate are, as Table 1.4 shows, those that are often perceived as women’s sectors, which are generally lower paying and require lower skills.

Table 1.4. Wage Employees by Industry of Main Job and Gender, 2007

<table>
<thead>
<tr>
<th>Industry of Main Job</th>
<th>Men %</th>
<th>Women %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>93</td>
<td>7</td>
</tr>
<tr>
<td>Wholesale trade, retail, restaurants, and hotels</td>
<td>39</td>
<td>61</td>
</tr>
<tr>
<td>Public Administration/ Military</td>
<td>85</td>
<td>15</td>
</tr>
<tr>
<td>Health</td>
<td>72</td>
<td>28</td>
</tr>
<tr>
<td>Education</td>
<td>77</td>
<td>23</td>
</tr>
<tr>
<td>Other community, social, and personal services</td>
<td>78</td>
<td>22</td>
</tr>
<tr>
<td>Other</td>
<td>71</td>
<td>29</td>
</tr>
<tr>
<td>Total</td>
<td>72</td>
<td>28</td>
</tr>
</tbody>
</table>

On average, the number of women engaged in formal enterprises is less than men across all skill levels. The Urban Enterprise Survey 2004 illustrates that the gender gap by skill level appears to be quite pronounced among manual and less so among service workers. Either manual work in formal enterprises is considered a man’s job or women’s skill level in manual work is limited and hence they are unlikely to be in these jobs. The gender gap also widens with higher skill levels in technical and managerial roles. The ratio between men and women workers is less distinct when it comes to service and administrative skill-levels, as opposed to manual, technical, and managerial work, where men clearly dominate (see Table 1.5).

Table 1.5. Distribution of workers by skill-level and gender in formal enterprises

<table>
<thead>
<tr>
<th>Category</th>
<th>Average No. of Men</th>
<th>Average No. of Women</th>
<th>Ratio (Women = 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manual</td>
<td>6.9</td>
<td>1.0</td>
<td>1: 6.9</td>
</tr>
<tr>
<td>Service</td>
<td>4.4</td>
<td>1.3</td>
<td>1: 3.4</td>
</tr>
<tr>
<td>Administrative</td>
<td>2.8</td>
<td>0.8</td>
<td>1: 3.5</td>
</tr>
<tr>
<td>Technical</td>
<td>2.7</td>
<td>0.3</td>
<td>1: 7.0</td>
</tr>
<tr>
<td>Managerial</td>
<td>1.4</td>
<td>0.2</td>
<td>1: 7.0</td>
</tr>
</tbody>
</table>


Box 1.4. Case Study: Tanz Yeo, Konnecto Labor Hire

Tanz Yeo is CEO of a Labor Hire company in Timor-Leste. The company has 500 employees, 90 percent of whom are women. Konnecto Labor Hire subcontracts its staff to a variety of companies in Timor-Leste with a key company being PDL Toll, a logistics provider for the Australian Defense force. The women are engaged for jobs such as cleaning, laundry services, and catering. Tanz struggles to recruit labor that have skills and experience but they learn so much on the job. Tanz would like to set up an accreditation standard for Konnecto so that the skills that the women learn while with Konnecto are certified and valued, and so the women have a goal and take pride in their work. Tanz is working with the Timorese Government to establish such an accreditation system. Representatives from Victoria University in Australia were visited in December 2009 to assist in setting up the standards for an international certification system in partnership with Konnekto.

Women are held back by lower education levels than men...

Improving access to education is a significant challenge for Timor-Leste. The 2007 Living Standards Survey shows that nearly 47 percent of the Timorese population had never been to school (see Table 1.6 below). The situation is worse in rural areas where 53 percent of the population never attended school. Gender disparities are pronounced, with women having far lower educational attainment than men, and the situation is again worse in rural areas.

Table 1.6. Highest Educational Attainment of the Adult Population (%), 2007

<table>
<thead>
<tr>
<th>Educational Level</th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary, incomplete</td>
<td>10.7</td>
<td>13.3</td>
<td>7.9</td>
</tr>
<tr>
<td>Primary, complete</td>
<td>8.7</td>
<td>9.4</td>
<td>8.0</td>
</tr>
<tr>
<td>Pre-Secondary, incomplete</td>
<td>4.5</td>
<td>4.9</td>
<td>4.0</td>
</tr>
<tr>
<td>Pre-Secondary, complete</td>
<td>9.1</td>
<td>10.1</td>
<td>8.2</td>
</tr>
<tr>
<td>Secondary, incomplete</td>
<td>5.1</td>
<td>5.8</td>
<td>4.4</td>
</tr>
<tr>
<td>Secondary, complete</td>
<td>13.8</td>
<td>16.6</td>
<td>10.9</td>
</tr>
<tr>
<td>Academy, university</td>
<td>1.3</td>
<td>1.7</td>
<td>1.0</td>
</tr>
<tr>
<td>Vocational, non-formal</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

...by a male dominated culture...

Timorese social order is organized on a patriarchal basis. The family is an essential feature of traditional Timorese society which is based on the clear distinction of roles and responsibilities of men and women, different patterns of the exchange of goods and services between household members, and arrangements regarding individual and collective decisions. Custom reinforces the role of women as being responsible for bearing and raising children, taking care of the house, and cultivating the garden. Outside the home, women help others in childbirth and care for newborns, the sick, and the elderly as well as performing ceremonial and ritual roles.13

The very common practice of polygamy may undermine the position of women. Polygamy is an accepted practice although there is little data on its prevalence. Although it is not accepted by the formal law, it continues to be practiced and recognized by customary law. The practice of payment of bride price (barlaque) has also affected the status of women (see Box 1.5 below).

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13 Narciso, V and Henriques, P, Gender and Development: The Role of Women and Land in East Timor.
Box 1.5. Bride price in Timor-Leste

Bride price is practiced in many rural areas of Timor-Leste. Here a prospective husband’s extended family pays a negotiated price combination of animals, cash, and other traditional gifts (such as woven cloths) to the family of a prospective bride.\(^{14}\) Whereas the concept of barlaku is symbolic and traditionally was intended to ensure kinship ties between the wife’s family and the groom’s family, the concept is often misinterpreted and misused in practice. Rather than elevating the value of women, barlaku is said to give men a sense that they own their wives; that they are entitled to make decisions for them; that their wives should serve them; and that they have a right to hit their wives. The draft Civil Code prohibits dowry but the practice remains widespread.

These cultural values, norms, and practices define different roles and functions for men and women, who, as a consequence, have unequal social status and conditions. These have contributed to unequal access to and control of basic services, goods, property, and opportunities for participation in decision-making between women and men.

...and by a double time burden

The 2007 Living Standard Survey highlighted some differences in the number of hours worked per week by employed men and women. For example, men worked 40 hours during the week on average while women worked six hours less per week in all jobs, including wage\(^{15}\), non-wage\(^{16}\) and farming\(^{17}\) (see Table 1.7 below). Women spend more time on unpaid work and farming. According to the definitions employed in the Survey, the category of non-wage work refers to unremunerated productive work, but does not include domestic tasks or ‘care’ work, and therefore understates women’s total labor contribution.

Table 1.7. Hours spent in employment per week, 2007\(^{18}\)

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>37.9</td>
<td>40.3</td>
<td>33.9</td>
</tr>
<tr>
<td>Wage</td>
<td>5.3</td>
<td>7.0</td>
<td>2.3</td>
</tr>
<tr>
<td>Non-Wage</td>
<td>3.1</td>
<td>2.5</td>
<td>4.1</td>
</tr>
<tr>
<td>Farming</td>
<td>29.6</td>
<td>30.8</td>
<td>27.5</td>
</tr>
</tbody>
</table>

Besides paid employment, most households have some form of household production. Most households allocate most of their time in household production for fetching water, collecting firewood, cooking, cleaning, and washing clothes. 50 percent of women aged 10 and older allocate time to taking care of their children, as opposed to only 36 percent of men. Women who take care of their children tend to spend longer hours compared to men in household production. This is more pronounced in rural areas than in urban areas. In all household activities, women carried most of the burden compared with their male counterparts (see Table 1.8 below).

---

\(^{14}\) Some women advocacy groups argue that the concept of barlaku is symbolic and integral to ensuring kinship ties between the wife’s family and the groom’s family. However, the concept of barlaku is often misinterpreted and misused in practice.

\(^{15}\) Wage employment, or paid employment, refers to all persons performing some work for wage or salary, in cash or in kind.

\(^{16}\) Non-wage employment, or self-employment, refers to all persons performing some work (other than farming) for profit or family gain, in cash or in kind.

\(^{17}\) Farming refers to all persons working in agriculture, livestock, forestry, or fishing.

Table 1.8. Use of Time by Gender (percentage of population 10 years and older)19

<table>
<thead>
<tr>
<th>Activity</th>
<th>National Total</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fetch Water?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes (%)</td>
<td>71.7</td>
<td>65.0</td>
<td>78.6</td>
</tr>
<tr>
<td>Hours per Week</td>
<td>4.3</td>
<td>4.1</td>
<td>4.5</td>
</tr>
<tr>
<td>Fetch Wood?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes (%)</td>
<td>66.7</td>
<td>72.7</td>
<td>60.7</td>
</tr>
<tr>
<td>Hours per Week</td>
<td>3.7</td>
<td>3.8</td>
<td>3.6</td>
</tr>
<tr>
<td>Cook, clean, wash clothes?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes (%)</td>
<td>62.7</td>
<td>39.2</td>
<td>86.5</td>
</tr>
<tr>
<td>Hours per Week</td>
<td>5.5</td>
<td>4.3</td>
<td>6.1</td>
</tr>
<tr>
<td>Take care of children?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes (%)</td>
<td>36.3</td>
<td>29.8</td>
<td>42.0</td>
</tr>
<tr>
<td>Hours per Week</td>
<td>6.6</td>
<td>4.6</td>
<td>8.0</td>
</tr>
<tr>
<td>Take care of elders?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes (%)</td>
<td>1.7</td>
<td>1.6</td>
<td>1.9</td>
</tr>
<tr>
<td>Hours per Week</td>
<td>3.6</td>
<td>3.6</td>
<td>3.7</td>
</tr>
</tbody>
</table>

If one accounts for the amount of (additional) time spent on various housework and care giving activities per week, women tend to work six hours more than men.

**Women are vulnerable to poverty and violence**

According to the 2007 Living Standards Survey, the incidence of poverty is higher among female-headed households than among male-headed ones. Violence against women is very prevalent in Timor-Leste, and was particularly prevalent during periods of civil violence and instability (see Box 1.6 below).

**Box 1.6. Violence against women in Timor-Leste20**

> Violence inflicted on women and girls during the Indonesian occupation and subsequent military conflicts was what first propelled violence against women to the nation and international arena. Since then, it has been increasingly recognized that women experience a great deal of violence in normal life, particularly in the family…

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Chapter 2. Legal and policy framework

Summary

This chapter sets out Timor-Leste’s international commitments and Constitutional guarantees in relation to gender equality. The chapter reviews statute laws in Timor-Leste that discriminate against women, particularly in relation to property rights, vital for women’s economic empowerment. Finally, the chapter considers Timor-Leste’s Government policy on gender equality and the institutional framework responsible for taking it forward.

The broader legal and policy context is vital for ‘gendered’ investment climate reform

Legal and regulatory reforms designed to improve the investment climate will have limited impact on women if more fundamental legal constraints limit their full participation in economic life. A key issue is whether women enjoy property rights, including rights to land, on the same basis as their male counterparts. An understanding of the broader legal framework for gender equality is therefore key in designing effective investment climate reforms. Provisions that discriminate against women analyzed in this chapter will be addressed in the context of the public private dialogue on investment climate reform discussed in Chapter 3.

Timor-Leste has a rich legal tradition

Timor-Leste has undergone dramatic changes over the recent past. For many centuries the customary law applied in what was primarily an agrarian society. Portuguese traders occupied the land in the 1600s introducing Portuguese civil law to the country. From 1975 to 1999 Indonesia took control and introduced several laws including the Civil Code that embodied Muslim influences. This was followed by transitional United Nations administration, becoming an independent state in May 2002. However the transition to independence has not been easy, with institutional breakdown in 2006 witnessing the establishment of the United States Integrated Mission which has assisted in introducing democratic processes and legal and regulatory reforms. The new National Parliament was inaugurated in 2007 and has embarked on the formidable task of nation building.

Today the laws of Timor-Leste constitute a unique mix of laws – based on both Indonesian and Portuguese law. But rapid change is taking place, with all the major laws in the country being redrafted in line with the country’s Constitution.

The country has entered into international commitments to gender equality

Timor-Leste has ratified the main human rights Covenants including the Convention on the Elimination of All Forms of Discrimination against Women as set out in Box 2.1 below.

Box 2.1. Key international commitments to gender equality made by Timor-Leste

- Convention on the Elimination of All Forms of Discrimination against Women.
- International Covenant on Economic, Social, and Cultural Rights.
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
- Beijing Platform of Action.
- The Millennium Development Goals.
Timor-Leste's Constitution (section 23) states that the interpretation of all rights shall be in accordance with the Universal Declaration of Human Rights, thus endorsing the principles of the promotion of human, civil, economic, and social rights. Box 2.2 below contains a summary of CEDAW principles which are reflected in domestic law in Timor-Leste. The Government has complied with its obligation to submit a Report to the UN on its compliance with CEDAW principles but NGOs have been highly critical of Government’s progress towards gender equality.21

Box 2.2. CEDAW principles reflected in Timor-Leste’s Constitution

Equality of opportunities for men and women: Section 6(j) of the Constitution confirms a fundamental objective of the State as being to create, promote, and guarantee the effective equality of opportunities between men and women, and Section 17 establishes the principle of equality for women and men.

Non-discrimination and Equality: Section 16 guarantees freedom from discrimination on the basis of, for example, marital status and gender and section 17 confirms that women and men shall have the same rights and duties in all areas of family, political, economic, social, and cultural life.

Equality within the Marriage: Section 39 establishes the principle of equality for women and men in the family, marriage, and motherhood.

Maternity rights: Section 39 states that maternity shall be dignified and protected, and special protections are guaranteed to pregnant women and new mothers. Maternity leave is guaranteed without loss of remuneration or any other benefits, in accordance with the law.

Right to work and choice of profession: Section 50 (1) gives every citizen, regardless of gender, the right and the duty to work and to choose freely his or her profession.

Property: Section 54 of the Constitution establishes the right to private property and states that every individual has the right to own private property and to transfer ownership.

The Constitution contains commitments to gender equality…

Timor-Leste’s legal framework demonstrates that progress has been made towards formalizing equal rights and integrating gender considerations. The Constitution contains a number of specific provisions promoting gender equality (see Table 2.1 below).

Table 2.1. Provisions on gender equality in the Timor-Leste’s Constitution

<table>
<thead>
<tr>
<th>Constitutional Provision</th>
<th>Specific Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 9 and 23</td>
<td>Adoption of principles of international law and main conventions on human rights.</td>
</tr>
<tr>
<td>Section 2</td>
<td>Safeguards norms and customs that are in keeping with the Constitution and the laws of the country</td>
</tr>
<tr>
<td>Section 16 &amp; 17</td>
<td>Sets out the principles of non-discrimination on grounds of marital status or gender and equality for women and men in all areas of family, political, economic, social, and cultural life</td>
</tr>
<tr>
<td>Section 39</td>
<td>Declares that the marriage is based on free consent and upholds equality between spouses</td>
</tr>
<tr>
<td>Section 54</td>
<td>Allows for private ownership and transfer of ownership</td>
</tr>
</tbody>
</table>

…but recognizes discriminatory customary law

The role of customary law in Timor-Leste is important particularly in the rural areas where over 70 percent of the people live. Customary law in Timor-Leste gives a prominent position to older men, often with the support of older women, in setting and maintaining socio-economic standards and the cultural rights of the community. The application of customary law reinforces the established social order, determining the obligations and rights of men, women, and children. It usually

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ensures that men control decision-making within the household including on how money is spent and over productive resources, in particular the use of land. The traditional system of justice, known as adat, is used by many rural people for resolving disputes. These disputes range from land disputes to gender-based violence.22 In most cases, the traditional system is not favorable to women, for example women do not inherit land and do not participate in traditional decision-making institutions such as the council of Katuas.

The Constitution recognizes that there may be a conflict between the constitutional provisions enshrining gender equality and customary law (see Box 2.3 below) and provides that international norms should prevail over discriminatory laws and customs. In reality the reach of these international norms is limited and, in practice at the community level, it is customary law that is applied.

Box 2.3. Constitutional provisions relating to principles of international law and customary law

| Article 9 of the Constitution states that the legal system shall adopt principles of international law, and that rules provided for in international conventions, treaties, or agreements that have been ratified shall apply and that all rules contrary to these international conventions, treaties, and rules are invalid. |
| Article 2(4) confirms the State will recognize values, norms, and customs of Timor-Leste that are not contrary to the Constitution and to any legislation dealing specifically with customary law. |

The Civil Code contains provisions that hinder women’s full economic participation…

The Indonesian Civil Code currently applies in Timor-Leste. It contains significant provisions that hinder women’s full economic participation and affect their ability to engage in business (see Table 2.2 below).

Table 2.2. Examples of discriminatory provisions of the Indonesian Civil Code

<table>
<thead>
<tr>
<th>Area of law</th>
<th>Discriminatory provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property rights</td>
<td>The husband is the head of the matrimonial union... and he shall manage his wife’s personal assets (Article 105). A wife cannot dispose, acquire, or encumber any property without the written consent from her husband (Article 108).</td>
</tr>
<tr>
<td>Freedom of movement</td>
<td>A wife shall obey her husband and is obliged to live with her husband and follow him wherever he deems fit (Article 106).</td>
</tr>
<tr>
<td>Enforcing contracts</td>
<td>A wife cannot appear in Court without the assistance of her husband even if she has private property in her own name or a profession (Article 10).</td>
</tr>
</tbody>
</table>

A new Draft Civil Code has been proposed which addresses a number of these discriminatory practices. For example it would provide for marital property to become common property (belonging to both the husband and wife) during the marriage. But the proposed Draft Code also contains some number of potentially discriminatory provisions that are contrary to CEDAW (see Table 2.3 at the end of this chapter). The Government has sought to consult on the draft, including through a Gender Land Law Working Group comprising representatives from Government, civil society, and the donor community. This Group has made recommendations to strengthen the draft Civil Code to improve women’s property rights (see Box 2.4 below).

Box 2.4. Key recommendations on the Draft Civil Code by the Gender Land Law Working Group

- Adopt gender inclusive language throughout the Civil Code to avoid language that could potentially be considered discriminatory.

- The Code should recognize all religious marriages, not just Catholic marriages, equally (in addition to civil and traditional monogamous marriages already recognized.)

- Recognize consensual de facto marriages (those who live together and are recognized in their local communities as traditionally married, but have not registered their marriages in the civil registry for various reasons including, for example, lack of knowledge or understanding or fees) to give them equal rights as couples in civil marriages, including in relation to land and property rights.

- Adopt a no-fault divorce system so that women who seek a divorce, but are victims of domestic violence or other abuse, are not forced to endure the humiliation or embarrassment it might cause them to produce evidence of this in Court.

- Recognize non-financial contributions (including unpaid domestic labor undertaken to maintain and care for the family and the family home) in the division of property on divorce.

- Ensure security of occupancy under succession intestate law for the life or remarriage of the surviving spouse.

...but employment laws contain strong protections for women

Timor-Leste has not ratified the Equal Remuneration Convention or the Discrimination (Employment and Occupation) Convention. However, there are strong protections for women workers enshrined in the 2002/5 Establishment of a Labor Code for East Timor. These include:

- Remuneration for men and women must be equal (section 9(4)).

- Women workers are entitled to 12 weeks maternity leave on two third of the remuneration (section 11(10)).

- Working women shall after resumption of work be entitled to two one hour breaks for breastfeeding for 3 months after resumption of work (section 11(13)).

- Termination cannot be for reasons of gender or pregnancy (section 35(2) (d) and 35(2) (e)).

- In practice it has been reported that many women do not receive remuneration or lose their former position upon returning from maternity leave. And there are concerns that these protections may have the unintended consequence of reducing job opportunities for women in the formal sector.

The Government is committed to gender equality, but more needs to be done

The Government of Timor-Leste is committed to building a culture of equality in Timorese society. The Ministers of Finance and Justice are women and some of the most influential parliamentarians are women, including the Vice President of the National Parliament. Steps have been taken to promote gender equality through the Office of Promotion of Equality, now the Office of the Secretary of State for the Promotion of Equality (SSPE), under the Prime Minister’s Office. Encouragingly, the budget of this office will be doubled in 2010. On June 4, 2008, the Council of Ministers approved Decree-Law no. 16/2008, which established the Organic structure of the SSPE thereby instituting the SSPE as a legal agency and as a central government body. The SSPE has drafted a five year plan (2010–2015) responsible for advocacy, drafting, and implementing key policy, overseeing vital legislation to protect women, and creating innovative programs across Government and civil society to provide education on gender related issues in all 13 districts of Timor-Leste. On March 8, 2008 the joint statement known as the Dili Commitment was signed by the Government, the National Parliament, Civil Society, and Churches in favor of gender equality. One of the major accomplishments was the drafting of the Domestic Violence Law which was approved on August 19, 2009 by the Council of Ministers and is now in the National Parliament. The SSPE is also actively contributing to the process of integrating a gender perspective in the Penal Code, particularly concerning the article defining Domestic Violence as a public crime as well as the Civil Code, concerning access to land and properties.
Starting in 2008 for the first time, the Government allocated funds to assist small women’s groups that submitted their bids to create and/or develop economic activities. Fifty-five women’s groups have benefited from this initiative. On 15 October, coinciding with International Rural Women’s Day, a Fair day in both 2008 and 2009 was held to highlight the work done by rural women demonstrating their ability to contribute to the economic development of the country.

The SSPE has also signed a creative and innovative Memorandum of Understanding with TVTL (Timor Television) to use television and the media to promote gender equality through various programs including a rural cooking competition. Secretary of State Ágio Pereira noted, "As a post conflict nation we have many social and psychological obstacles to overcome, and as a Government it is our duty to legislate and support the most vital of rights… One of the most important is gender equality; for the daughters, for sisters, for wives of Timor-Leste. We as a Government are ensuring that attitudes and behaviors are changed to ensure gender equality for all future generations of women, providing equal opportunities and protection. These are their rights enshrined in the Constitution. The SSPE should be congratulated for the work achieved and the work planned for 2010 to empower, educate, advocate, and uphold the values inherent in a democratic nation."

As part of its 2010 national priorities, the Government has close to doubled the budget for the SSPE. The 2010 Budget includes an allocation for the SSPE to provide financial support to all 13 districts to organize and celebrate the International Women’s Day (8 March), the International Rural Women’s Day (15 October), and the National Women’s Day (3 November).23

However, there remains limited Government policy on women’s economic empowerment, and no current activity or policy on building the capacity of business women, or to allow women wider access to economic opportunities, including entrepreneurship, beyond the limited rural grants.

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<table>
<thead>
<tr>
<th>Article</th>
<th>Meaning</th>
<th>Potential impact on women</th>
<th>Practical Constraints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial value of customs</td>
<td><strong>Article 2</strong>&lt;br&gt;States that the local customs are judicially applicable when the law so determines.</td>
<td>This has the effect of allowing the law to give effect to customary law when appropriate.</td>
<td>Women are discriminated by customary law in a number of instances. This provision does away with the automatic application of customary law. Potentially it allows for greater scrutiny of the specific customary law before they are given effect.</td>
</tr>
<tr>
<td>Pre nuptial Agreements and regime of property</td>
<td><strong>Articles 52 &amp; Articles 1591–1609</strong>&lt;br&gt;Recognize prenuptial agreements made between spouses as long as they are in specified form.</td>
<td>This provision allows for couples to determine their own rights to property during marriage and upon divorce or death.</td>
<td>Such a provision can be utilized by women to assert equal rights to property that they bring into a marriage and the division of property accumulated during a marriage. Potentially this allows for individuals to strike an equitable bargain.</td>
</tr>
<tr>
<td>Matrimonial property regimes</td>
<td><strong>Articles 1611 &amp; Articles 1610–1629.</strong>&lt;br&gt;Provide rules for determining communal and individual property where there is no pre nuptial Agreement.</td>
<td>Individual property is the property owned by the parties at the time of marriage and any property acquired through inheritance. Communal property is the proceeds of the work of the spouses and the property acquired by the spouses during the marriage. The spouses share the communal property equally.</td>
<td>These provisions provide for a system of recognizing individual and community property within a marriage.</td>
</tr>
<tr>
<td>Divorce and legal separation of individuals and property</td>
<td><strong>Articles 1650–1675.</strong>&lt;br&gt;Divorce can be by mutual consent (for instance, separation or agreement) whereby the parties can agree to the division of property. Alternately divorce can be through litigation (for instance, violation of conjugal rights) and the rights to property depend on the culpability of the parties. The rights to occupy the family home are left to the discretion of the Court taking into account the needs of the spouses and the children.</td>
<td>The availability of both a fault and non-fault basis of divorce and division of property allows men and women to choose the system that applies to them.</td>
<td>Many women are unlikely to be aware of their rights in order to assert them without the availability of legal advice and adequate financial counseling. The right to the family home is 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 stand to lose all their rights where they are the sole principal culpable party, which undermines an individual’s autonomy and does not have a place in modern family law.</td>
</tr>
<tr>
<td>Article</td>
<td>Meaning</td>
<td>Potential impact on women</td>
<td>Practical Constraints</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>---------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Women’s rights to alimony or support payments</td>
<td>Alimony payments are payable to the spouse if it has been mutually agreed, or it is payable only to the spouse who is not guilty or culpable in the divorce.</td>
<td>This system is codifying the fault and non-fault basis of divorce and linking it to maintenance payments.</td>
<td>This provision is clearly reducing the ability of women who have been at fault in the marriage to claim alimony payments. The issue of calculating the alimony payments is left to the Court under section 1884, which has a wide discretion to determine the issue. The current difficulties in taking matters to Court and accessing legal assistance mean that, for all practical purposes, women are unlikely to be able to gain alimony payments that they may be eligible for.</td>
</tr>
</tbody>
</table>

Inheritance in the absence of a will

<table>
<thead>
<tr>
<th>Article</th>
<th>Meaning</th>
<th>Potential impact on women</th>
<th>Practical Constraints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inheritance in the absence of a will</td>
<td>Provision is made for inheritance by family members in the following order: a) Spouse and descendants b) Spouse and ascendants, and c) Siblings and their descendants. Special provision is made for preferential treatment of the spouse to remain in the family home by paying compensation. This offer expires at the end of a year if it is not taken up by the spouse.</td>
<td>These rules are non-discriminatory making equal provision for men and women. The preferential treatment of the right to the family home is likely to be of assistance to the women whose husband has died and the home is left to others in the will.</td>
<td>These provisions are providing for equal treatment of men and women, unlike the Indonesian Code that gave preferential treatment to men.</td>
</tr>
</tbody>
</table>
Chapter 3. Public private dialogue

Summary

There is no formal organization in Timor-Leste that represents the interests of the vast majority of business women in the country, who are small-scale agricultural producers and/or petty traders. At present, women’s voice is therefore not effectively represented in national public private dialogue (PPD) processes and the significant legal and regulatory impediments that relate specifically to women’s economic empowerment are not satisfactorily addressed. In addition, training and business networking opportunities for business women in Timor-Leste are limited.

Targets for incorporation in the PPD component of the Government’s IFC supported Better Business Initiative to improve the policy environment and support network for business women are:

• Improved policy dialogue on investment climate reform for women’s economic empowerment
• Improved training and networking for business women in Timor-Leste, and
• Improved legal framework for women’s businesses.

This chapter sets out the activities to take place to achieve each of these targets, and provides the analysis to justify them.

Figure 3.1. Public private dialogue: goal and targets

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
This section reviews the existing mechanisms for policy dialogue on investment climate reform, and highlights how Target 1.1 and its associated activities would give women a greater voice in public private dialogue. Figure 3.2 below lists two activities to achieve the target, along with tools in support. (Tools can be found at the end of the Report).

**Figure 3.2. Target 1.1 Activities and Tools**

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

**Activity 1.1.1:**
Ensure appropriate representation of women’s interests in existing Better Business Initiative (BBI) PPD structures (BBI, Administrative Barriers Working Group and Financial Service Working Group). If necessary revise ToRs.

**Responsibility:**
BBI PPD Group

**Activity 1.1.2:**
Form new Gender Working Group (high level representation of public and private sector with 4–8 members) if the existing PPD structure (BBI, Administrative Barriers Working Group and Financial Service Working Group) does not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance.

**Responsibility:**
IFC Office

**Means Of Verification:**
ToRs, membership lists and minutes of meetings, Cabinet Office, BBI Minutes

**Baseline:**
Proportion of members representing business women’s interests on BBI PPD Group and Working Groups

**Number of policy papers featuring women’s economic empowerment considered by Cabinet**

**Tool 1:**
Gender Working Group, ToRs

**Tool 3:**
Investment Climate Gender Consultant, ToRs, and initial work plan

**Public Private Dialogue structures are in place in Timor-Leste**

Public private dialogue is recognized in Timor-Leste as an important mechanism for driving forward private sector development policy reforms. The Timor-Leste Better Business Initiative (BBI) was established in January 2008 between the International Finance Corporation (IFC) and the Ministry of Economy and Development to improve the business-enabling environment by providing a platform for effective and constructive dialogue between the business community and the Government of Timor-Leste (see Box 3.1). It is also intended to facilitate information-sharing with potential investors.
Box 3.1. Timor-Leste Better Business Initiative

The Better Business Initiative (BBI) draws on IFC’s successes with similar efforts in other countries notably the Vietnam Business Forum, the Cambodia Government-Private Sector Forum, and the Lao PDR Business Forum.

IFC serves as the Secretariat for the dialogue assisting the public private BBI in Timor-Leste. In this role IFC collaborates with the Ministry of Economy and Development which is the Government’s coordinator for the BBI, as well as the various associations representing the business community and individual business representatives.

The objectives of the Better Business Initiative are to:

- Facilitate dialogue between the Government of Timor-Leste and the private sector which includes the broadest private sector participation possible, including the districts
- Assist the Timor-Leste Government in developing the private sector
- Remove the barriers that businesses face with regard to entry, exit, access to credit, and other priorities determined by the private sector
- Promote consistent enforcement and non-discretionary interpretation of laws and regulations
- Provide feedback on various Government policies affecting the private sector
- Provide feedback on draft Government laws and regulations that could affect the private sector.

The Better Business Initiative is a formal dialogue mechanism between the Government and the private sector, both foreign and domestic. The BBI also helps strengthen the role and voice of the private sector in Timor-Leste. The dialogue’s effectiveness stems fundamentally from a solid partnership and direct linkage between four main parties: the domestic and foreign private sector, the Timor-Leste Government, donor partners, and multilateral institutions.

However, there is no coordinating unit in Government and private sector coordination remains weak. The BBI currently facilitates both public and private dialogue coordination. While the BBI continues working on this issue, the establishment of mechanisms on both sides is essential to deepening the impact and ensuring the sustainability of activities. The increased take-up of BBI recommendations and potential spin-off projects (company registry and licensing) is evidence of progress and a higher level of trust between public and private sectors.

The BBI has established two Working Groups to-date, one addressing administrative barriers and one addressing access to financial services. The Working Groups includes representatives from the private sector, representatives of business associations, and all persons working in legally operating private enterprises in Timor-Leste who wish to attend. It is also expected that the BBI will work through a Bi-annual Forum bringing Government and private sector stakeholders together.

The Working Group on financial services includes Timor-Leste’s two main microfinance institutions (MFIs). The MFIs serve over 16,000 poor women nationally. The representatives of the MFIs are able to bring the investment climate issues that female-owned microbusinesses face into the public private dialogue.

Additionally, there is a small Women’s Business Association which consists of about 15 women in Timor-Leste’s capital of Dili. The women involved in this Association head medium sized businesses, mostly involved in Timor-Leste’s burgeoning construction industry. The IFC often consults with this association to ensure their perspectives are included in the BBI.

However, there is no formal national private sector organization in Timor-Leste that represents the interests of the vast majority of business women in the country, ranging from the subsistence agricultural producers and/or petty traders to bigger business.
The BBI has made progress in a difficult environment. The two BBI Working Groups held 140 meetings with a total of 232 people participating in the meetings. Female participation was strong, representing 39 percent of those attending. In addition to the meetings, six larger events were also held. These events represent a deepening of dialogue between private sector and Government. This was evidenced when the BBI facilitated the Prime Minister’s private sector consultation in March 2009. Private sector representatives cooperated on a joint presentation recommending priorities for Government to support the sector. As a result of the presentation, Government recognized the need for reforming the business registration processes.

It is expected that further Working Groups will be established depending on the evolving interests and needs of the business community, for example on tourism, and potential sub-groups to address specific issues as they arise.

Outside of these formal PPD structures often there is informal networking between Government and private sector representatives. Sometimes it is difficult for women to be included in this informal PPD networking due to cultural constraints — for example attending meetings in men’s exclusive meeting places and clubs. PPD can take place at all levels of the economy: between central Government and private sector organizations representing national and international corporations, and at local level between local authorities and businesses. Most women entrepreneurs have small businesses operating at local market level, and therefore it is particularly important to strengthen local PPD opportunities and to ensure women are fully engaged in these.

Although there has been strong female attendance at BBI Working Group meetings generally women’s business issues have not been prominent in the BBI process. One notable exception is the consistent participation in the Financial Services Working Group of the MFIs. Their participation in the PPD process has resulted in improved credit information sharing practices.

There is limited public sector representation of women

As discussed in Chapter 2 above, the Government of Timor-Leste has taken steps to promote gender equality through the Office of Promotion of Equality, now the Office of the Secretary of State for the Promotion of Equality under the Prime Minister’s Office. But much more needs to be done in terms of developing women’s capacities to allow them wider access to economic opportunities. Currently the Ministry of Economy and Development, responsible for private sector development, does not have a gender policy nor does it support any specific programs targeted at women’s economic empowerment.

There is scope for enhancing women’s voice in PPD

There is scope for strengthening the voice of Timorese business women in the process of policy-making and planning for investment climate reform. As well as ensuring proper representation for business women’s interests on Working Groups considering investment climate issues (such as business entry), it is proposed to set up a Gender Working Group (GWG) which will focus on taking forward reforms to the legal and regulatory framework that impact on women – for example the issues relating to property rights and employment law discussed in Chapter 2 above. Box 3.2 below sets out the key features of the proposed GWG.

Box 3.2. Gender Working Group

If the existing PPD structures (BBI and Working Groups) 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. The Gender Working Group would be a policy dialogue body within Timor-Leste’s public private dialogue structures. It could comprise of four public and four private sector representatives and will be supported by the Government’s PPD Secretariat. Its key mandate will 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 provide initial support to the PPD Secretariat for the GWG by funding a locally appointed consultant who will advise and assist the PPD Secretariat in relation to the GWG.
Activity 1.1.1: ensuring appropriate representation of women’s interests in existing PPD structures, and Activity 1.1.2: if necessary, the formation of a Gender Working Group supported by technical assistance – could supplement existing PPD mechanisms to improve women’s representation in private sector policy development.
Target 1.2: Improved legal framework for women's businesses

This section notes key issues in Timor-Leste's legal framework for female businesses, and highlights how Target 1.2 and its associated activities would address current deficiencies. Figure 3.4 below lists three activities to achieve this target along with a tool in support. (Tools can be found at the end of the report).

Figure 3.4. Target 1.2: Activities and Tool

The Legal Framework discriminates against women

As discussed in Chapter 2 (Legal and Policy Framework) above, a number of statute laws in Timor-Leste discriminate against women or do not adequately protect their interests. Women in the private sector tend to have somewhat different experiences of legal, regulatory, and administrative barriers to business than their male counterparts. A key task of the Gender Working Group will be to develop proposals for policy reform in these areas.

Activities 1.2.1, 1.2.2 and 1.2.3: the development of Cabinet policy papers on reforms to eliminate discrimination, and taking forward reforms through the enactment and implementation of new laws, including those recommended in Table 2.2 – will improve the legal framework within which women-headed businesses operate in Timor-Leste.
This section reviews opportunities for training and networking for business women in Timor-Leste and highlights how Target 1.3 and its associated activities would increase these opportunities. Figure 3.5 below lists two activities to achieve this target, along with tools in support (Tools can be found at the end of the report).

**Figure 3.5. Target 1.3: Activities and Tools**

**TARGET 1.3: Improved training and networking for business women**

**Baseline:**
Business women’s perception of training and networking.

**Means Of Verification:**
Perception surveys.

**Activity 1.3.1:**
Begin regular Timor-Leste Business Women’s Forum, (with open invitation to business women ranging from the informal sector through to big business) as commenced by IFC in partnership with local organizations and existing business women’s associations.

**Responsibility:**
IFC (local consultant), Gender Working Group.

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

**Activity 1.3.2:**
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.

**Responsibility:**
IFC (local consultant), Business Women’s Forum.

**Tool 3:**
Investment Climate Gender Consultant: ToRs and initial work plan.

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

**Tool 5:**
Business Women’s Perception Questionnaire.
Business women have limited networking and training opportunities

In Papua New Guinea, Samoa, Solomon Islands, Tonga, and Vanuatu IFC was able to facilitate a Business Women’s Forum, which provided a networking opportunity for business women and an opportunity for discussion about the particular constraints that they faced. Scheduling constraints meant that it was not possible to hold such an event in Timor-Leste. But the regional experience of these successful events and discussions with business women in Timor-Leste suggests that there is an appetite for this type of event, and for improved access to business skills training for female entrepreneurs. If such a Business Women’s Forum took place in Timor-Leste the Business Women’s Association and members of the microfinance institutions would be invited, as well as other NGOs that focus on broader gender issues. IFC would also partner with local organizations to deliver training.

In order to strengthen business women’s networking and training opportunities IFC therefore intends to support the development of a Timor-Leste Business Women’s Forum. Box 3.3 below sets out the key features of this initiative.

Box 3.3. Business Women’s Forum

Similar to the Business Women’s Forums facilitated by the IFC in the other Pacific countries, the BWF in Timor-Leste 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 GWG to consider and if appropriate take forward reform.

Activity 1.3.1: the launching of a Timor-Leste Business Women’s Forum, and Activity 1.3.2: undertaking networking and training – will assist women to develop their skills and support each other.

In partnership with existing business associations and training providers, and using international/regional resources where appropriate, IFC could assist the Women’s Business Forum to develop, promote, and undertake training for business women focusing on ‘Running a Formal Business’. The objective of the training would be to address investment climate constraints that women face. It is noted that throughout the report, although women are not necessarily constrained by the law or its application, they lack the information to understand investment climate processes and are intimidated by such processes. By providing the information that they currently lack, women will be empowered to undertake official formal processes. As several women repeated during a Business Women’s Forum held in Papua New Guinea, “Knowledge is Power”. Possible topics for training that address some of the constraints identified in this report, and gender and investment climate constraints more broadly, are covered in Tool 2 in the Annex and could include:

- How to balance family, custom, and business
- How to deal with harassment from public officials
- 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 mediation)

• 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.
Chapter 4: Starting and licensing a business

Summary

Women own only 16 percent of formalized businesses in Timor-Leste. Doing business in Timor-Leste is expensive by international standards, with business start-up featuring near the top of the list of problems. Legal and administrative reforms undertaken since 2004 have sped up the business start-up process but the reforms have also led to confusion. New laws and registration forms are in Portuguese, a language confined mainly to the educated elite. The vast majority of formal enterprises in Timor-Leste are owned by men. The dysfunctional formalization procedure impacts disproportionately on women because women are more likely to be seen as soft targets and therefore harassed by officials, and with their lower education levels women are less able to navigate the system.

Targets for incorporation in the business entry and operations component of the Government’s IFC supported Better Business Initiative to enhance the ability of women to start and run businesses are:

• Increase by five percentage points the proportion of (a) registered companies, and (b) partnerships and sole traders that are female-headed

• Improved legal framework for women’s business entry

• Reduced regulatory compliance cost on female-headed businesses.

• This chapter sets out the activities to take place to achieve each of these targets, and provides the analysis to justify them.

Figure 4.1. Starting and licensing a business: goals and targets

Goal: enhanced ability of women to start and run businesses

TARGET 2.1: Increase by five percentage points the proportion of (a) registered companies and (b) partnerships and sole traders that are female-headed

TARGET 2.2: Improved legal framework for women’s business entry

TARGET 2.3: Reduced regulatory compliance cost on female-headed businesses
This section reviews existing barriers for women wishing to do business in the formal sector, and highlights how Target 2.1 and its associated activities would help to lower these barriers. Figure 4.2 below lists three activities to achieve this target along with tools in support (Tools can be found at the end of the report).

**Figure 4.2. Target 2.1 Activities and Tools**

**Target 2.1:**
Increase by five percentage points the proportion of (a) registered companies, and (b) partnerships and sole traders that are female-headed.

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

**Means Of Verification:**
Company registers, Business Owners Survey.

**Activity 2.1.1:**
Ensure operations of Companies Registry are gender sensitive and establish Women’s Help Desk in Registry.

**Responsibility:**
Business Registry/ Ministry of Justice, Administrative Barriers Working Group, Gender Working Group.

**Tool 8:**
Business Registry Sex Equality Checklist

**Activity 2.1.2:**
Incorporate gender into the BBI registration reform activities as per Table 4.4.

**Responsibility:**
Administrative Barriers Working Group, Gender Working Group.

**Tool 9:**
How to Undertake Outreach on Formalisation for Business Women

**Activity 2.1.3:**
Ensure all information on registering a business is equally accessible to men and women, and produce a gender sensitive business entry handbook.

**Responsibility:**
Administrative Barriers Working Group, Gender Working Group, Business Women’s Forum Business Registry/ Ministry of Justice.

**Tool 10:**
Women’s Help Desk: draft ToRs

**Tool 11:**
Women’s Consultation / Training Checklist (for handbook development)

**Tool 6:**
Using Business Registry Data to establish % of Registered Companies Headed by Women

**Tool 7:**
Business Owners’ Survey
**Businesses in Timor-Leste tend to be very small and informal**

For both male and female entrepreneurs, formalizing a business brings with it advantages including the potential for growth, access to credit, and investment. When a woman grows her businesses not only her but her household benefits: there is international evidence that resources in the hands of women do more for family welfare (for example improving health, nutrition, and education levels) than if they are controlled by men. But some women may prefer to run microenterprises and remain informal. This may be because of disincentives operating on women which mean that they are more likely than men to keep their businesses in the informal sector. Intra-household resource allocation may mean that a woman will not see the benefit of any additional income that business growth and formalization may bring, and so the incentive to formalize is low. Or the prevailing culture may mean that women’s sphere is considered to be restricted to low level economic activity and the domestic environment.

Overall, 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. This report does not recommend that all businesses should formalize without consideration of the business’ nature, potential, and goals, but it does recommend that, for female-headed businesses that are ready to graduate from the informal sector to the formal sector, it should be just as easy for female-headed businesses as it is for male-headed. As the case studies in this report show, there are women in Timor-Leste running enterprises that are, or have the potential to be, growth-orientated. This report suggests that men and women face different barriers to formalization. It is therefore sensible for investment climate reforms designed to facilitate business formalization to address the barriers faced by women, as well as those faced by men.

Timor-Leste’s businesses are primarily family firms mostly engaged in subsistence farming. Urban enterprises in Timor-Leste, including the registered ones, are very small with almost all having fewer than ten workers and more than half having only a single worker. Enterprises have low levels of start-up capital – about 25 percent of formal enterprises and 90 percent of informal firms have start-up capital of less than $100 and only about 70 percent in either category use non-personal or non-family resources as start-up capital. Most urban enterprises operate in an informal environment with the household being the basic unit of economic activity and workers being unpaid or paid in kind. Around 43 percent of informal entities are female-headed. Petty trading is the most prominent activity after farming, especially among women.

**The formal sector is male dominated**

Male-headed businesses dominate the formal sector with only 16 percent of formal businesses being owned by women, whose businesses are mainly centered on tais weaving, tailoring, salt-making, bakeries, and handicrafts. More recently they have entered the construction and catering sectors, where female-headed firms have emerged in response both to increases in Government infrastructural spending and to requirements by international development agencies for catered workshops and functions.

Tool 6 in the Annex of this Report provides guidance on how to use business registry data to ascertain the percentage of businesses that are female-headed. In using registry data one will be able to ascertain to what degree women own businesses. However, it could be the case that, although businesses are owned by men, they are managed day to day by women. Tool 7 provides guidance on conducting surveys to ascertain both female ownership and management. It would be interesting to undertake a management survey of all the businesses in the registry to assess if there are more or less women in management than in ownership, or if figures are similar.

Table 4.2 at the end of this chapter shows the various routes to starting a business on a formal basis in Timor-Leste, and the potential advantages and disadvantages of each for women.

**Formalizing a business is costly and time-consuming…**

Formalizing a business in Timor-Leste is expensive by international standards. Starting a business as a private limited liability company involves 10 procedures and takes 83 days (see Table 4.1 below). Timor-Leste’s ranking for starting a business (150 out of 183) remains better than the Philippines (162) and Indonesia (161), but does not compare well to New Zealand, the top ranking Pacific country in the 2009 Doing Business index, where start-up takes one day and involves only a single procedure.

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Box 4.1. Starting a business – benchmarking in the Doing Business index

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Timor-Leste</th>
<th>New Zealand</th>
<th>East Asia and Pacific</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedures (number)</td>
<td>10</td>
<td>1</td>
<td>8.1</td>
<td>5.7</td>
</tr>
<tr>
<td>Duration (days)</td>
<td>83</td>
<td>1</td>
<td>41.0</td>
<td>13.0</td>
</tr>
<tr>
<td>Cost (% of income per capita)</td>
<td>4.1</td>
<td>0.4</td>
<td>25.8</td>
<td>4.7</td>
</tr>
<tr>
<td>Paid in minimum share capital (% of GNI per capita)</td>
<td>202.9</td>
<td>0</td>
<td>21.3</td>
<td>15.5</td>
</tr>
</tbody>
</table>

The process involves the Ministries of Justice and Tourism Commerce & Industry, and the Timor-Leste Revenue Service of the Ministry of Finance (see Box 4.2 below). It appears that in practice pre-incorporation requirements provided for under the law are not enforced, but instead requirements not included in the law are demanded.

Box 4.2. Certificates required for company registration

- Certidão de admissibilidade - certificate of admissibility – from the Timor-Leste Revenue Service.
- Matrícula de comercio - commercial registration number – from the Ministry of Tourism Commerce and Industry.
- Certificado de inscrição - certificate of registration – from the Ministry of Justice.

...with confusing and inappropriate registration requirements

Legal and administrative reforms undertaken since 2004 have sped up the business start-up process, but the reforms have also led to confusion. Key problems appear to be:

Obscure legal framework

In general, the law governing business start-up is opaque. In no small measure this is attributable to the style in which much of the legislation is written. It is difficult to make out, for example, clear distinctions in the Code of Business Registration between the processes for registering non-incorporated and incorporated entities (see Box 4.3 below). Probably because of this, the terms registration and incorporation are used virtually interchangeably by officials as well as in official reviews and policy notes. The confusion extends to the private sector. Interviewees, including lawyers the team spoke to, appeared confused about the difference between the incorporation, registration, and licensing, and unaware of the benefits of limited liability status.

Many appeared to believe (wrongly) that a license obtained from the Ministry of Trade, Commerce and Industry, confers a separate legal identity on the business.

Box 4.3. Business registration

The Code of Business Registration purports to provide for registration for sole ownership operators, trading companies, non-trading companies of a business nature, sole ownerships of limited liability, cooperatives, public companies, and company subsidiary groups, and offers registered entities formal legal status.

But the Code is 117 articles and 47 pages long, and has a complicated scatter gun structure which makes the distinction between the compliance requirements for different types of entities highly confusing.

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32 “not including the organization and operation of the Business Registration Office and the organization of the computer system for the registration process, which according to A117, “shall be dealt with in separate legislation.”
Double registration requirement

Incorporated entities as well as cooperatives, public companies, sole ownerships, and corporate bodies appear to have to register twice – under (i) companies/cooperatives legislation, and (ii) the Code of Business Registration. A business entity, whether or not operated by a sole trader in his or her own name, is required to have a corporate name and number. Registration requirements under the Code of Business Registration are onerous (see Box 4.4 below).

Box 4.4 Code of Business Registration: registration requirements

- Article 27 appears to provide that that registration can only be done by an attorney, by a representative, or a lawyer – all with valid power of attorney.
- All entities are required to have a business name, which must be certified as being legally admissible (Article 29).
- Application for a name must be accompanied by numerous documents including those which substantiate the request for the admissibility of the corporate name. An applicant’s full particulars include name of spouse, and matrimonial property regime adopted must be included in an application, and any change in personal details and marital status together with documentary proof thereof must be recorded (Article 33).
- Documents must be submitted in one of the official languages or with an officially notarized translation (Article 31).
- A registration certificate must contain the full name of a sole ownership operator and his/her tax registration number, or the corporate name, or the name of the corporate body of a sole ownership of limited liability and the tax identification number of the corporate body or similar entity. (Article 64).
- Any change in personal details, including marital status, must be registered and registration of certain information remains valid by default for 3 years, whilst other information remains valid for only one year.

Use of Portuguese

An additional source of confusion is that all laws and registration forms are in Portuguese and, where translations exist, these are unofficial only. The team was not able to obtain, even through law firms, translated versions of the registration forms relating to business start-up. Only a very small proportion of the population speaks Portuguese, a language confined mainly to the educated elite.

Two competing business registries

Recently enacted laws aimed at reforming business start-up have led to confusion, including a duplication of the business registration function between the Ministry of Justice and the Ministry of Tourism, Commerce and Industry (see Box 4.5 below).33

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33 One prominent international NGO reported that “It took 18 months to register our organisation, and most NGOs are not registered because of the bureaucracy involved. You need to build a relationship with people in the office – this is the approach that finally worked for us.”
Box 4.5. Duplication of business registration function

Before 2004 business registration was governed by UNTAET Regulation 2000/4 which mandated that business registration of all types be undertaken by the Business Registration Unit at the Ministry of Development (today, the Ministry of Tourism, Commerce & Industry (MTCI)). The procedure was confined to obtaining a business operating license from the Ministry of Development and registering with the tax authority.

Law 4/2004 on Commercial Companies and Decree Law 6/2007 Code of Business Registration transferred registration services to the Ministry of Justice (MoJ). Business licensing remains with MTCI. Government has set up and staffed a registration office within MoJ which also performs notarization functions. The office has experienced considerable teething difficulties getting up and running, including capacity constraints. MTCI is continuing to register all business entities.

The problems may impact more on women than men

Women own only 16 percent of formalized businesses. Women may not be formalizing their businesses for a number of reasons. It tends to be men who control a family’s assets. There may therefore be little incentive for a woman to grow (and formalize) her business if her husband appropriates her increased income.

The complex procedures may also present a particular barrier for women. Clearly, navigating Timor-Leste’s business start-up procedures presents considerable challenges to both men and women. But women face additional constraints over and above those of their male counterparts. They tend to be “time poor” – having to combine the demands of their business with domestic tasks such as cooking, cleaning, and taking care of children. Women’s lower levels of literacy make navigating their way through complex requirements even more difficult than it is for their male counterparts. And women’s limited networks of influence mean that they have limited scope to smooth the start-up process. Particularly problematic for micro and small business operators (the sector in which the majority of women-headed businesses exist) is the fact that laws, regulations, and application forms are all in Portuguese. This makes them virtually inaccessible to the majority of the population.

Given incorporation is such an advantageous business form, and so facilitates greater investment in a business, it is important not only that women are aware of the benefits of incorporation but that the process of forming a company is as simple and easy as possible. But even larger women-headed businesses interviewed by the team appeared to have no understanding of the difference between incorporation and ordinary business registration, and none of those interviewed were in fact incorporated.

There is a gender focal point officer within MTCI but there is at present no service desk in the Ministry to help women deal with the difficulties described above. There are no publicly available process maps on business start-up procedures, and there is no information available to distinguish the various types of business form and obligations and benefits related to each.

34 See Women in Business in Timor-Leste: Key findings from the September 2008 Scoping Mission - Kristie Drucza and Anna Hutchens.
38 in that it encourages risk-taking by separating the business in law from its owner and protects an entrepreneur’s personal assets if the business fails, and in that it allows a business to survive an owner’s death, thus encouraging a pooling of resources and the formation of joint enterprises.
Planned reforms offer the opportunity of opening up formalization for women...

The business registration process is Timor-Leste is in meltdown. With two Ministries simultaneously responsible for registration; forms only available in a language only few can comprehend; legislation which appears confused and which even professionals do not understand – urgent reform is clearly necessary. There is a need for Government to engage with the fundamental policy decisions that need to be taken – superficial procedural changes will not solve the problems. While the legislation and business concepts that lie behind the confusing procedures remain in place, effective reform will be impossible.

Encouragingly, amendments to the law to streamline business procedures to facilitate business and investments have been identified by Government as a national priority.39 And some reforms have already taken place. For example, approvals previously required by the Department of Land & Property and the Ministry of Health and Environment have been eliminated. And Government has now created local business registration facilities at the four Business Development Centers of Baucau, Maliana, Maubisse, and Oecusse.40

Under the Better Business Initiative, IFC has begun providing support to Government to assist in the introduction of an efficient and effective business registration regime.41 Table 4.4 at the end of this chapter provides detailed recommendations on how to integrate gender considerations into the proposed activities under this initiative.

Activity 2.1.1: ensuring the operations of the Business Registry are gender sensitive and establishing a Women’s Help Desk in the Registry, and Activity 2.1.3: ensuring all information on registering a business is equally accessible to men and women, and producing a business entry handbook – will help to make business formalization more accessible for women.

Activity 2.1.2: the incorporation of gender into the BBI registration reform activities (as per Table 4.4) will ensure that women’s views and interests are taken on board in the reform process.

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41 It is intended that IFC is working collaboratively with the Ministry of Justice to develop the proposed package of reforms further, and to ensure that the reform package is developed and implemented as an integral part of the overall strategic framework of the Ministry.
This section reviews the legal framework for women’s business entry in Timor-Leste, and highlights how Target 2.2 and its associated activities would make it easier for women to formalize their businesses. Figure 4.3 below lists three activities to achieve this target along with tools in support. (Tools can be found at the end of the report).

**Figure 4.3. Target 2.2 – Activities and Tools**
Companies are the optimum business form, but the legal framework is inadequate

The World Bank’s index of ease of starting a business (see Box 4.1 above) focuses on the costs to a local investor of registering a limited liability company. This is because company incorporation is frequently considered as the optimum business form. Incorporation gives owners the protection of limited liability status, thus encouraging risk-taking and entrepreneurship. The division of ownership of the company into shares facilitates changes in ownership, enabling the business to continue beyond the life of the original owners, and well as facilitating investment by third parties. The legal structure they provide thus facilitates the survival and growth of the business.

Timor-Leste’s law relating to company formation contains unwelcome and complex provisions (see Box 4.6 below). Most significantly, the company incorporation process is used as a controlling mechanism. The Registration Office uses the process to check on the activities that the entrepreneur is intending to conduct. Not only does this significantly increase start-up times, but it introduces a significant element of risk, uncertainty, and lack of transparency – all of which are associated with the exercise of discretionary decision-making and all of which act as a key disincentive to formalization. Table 4.3 at the end of the chapter provides a comparative review of Timor-Leste’s Companies law in the light of gender equality and best practice principles.

Box 4.6. Key provisions in Law 4/2004 on commercial companies, affecting business start-up and ongoing administration

<table>
<thead>
<tr>
<th>Section</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>188</td>
<td>Must have a minimum of $5,000 capital to start a company and a maximum capital of $500,000.</td>
</tr>
<tr>
<td>217</td>
<td>Single shareholder companies have to be specifically identified by including the term unipessoal or sociedade unipessoal within its name.</td>
</tr>
<tr>
<td>7</td>
<td>Documents must be in one of the official languages of Timor-Leste namely Tetum or Portuguese.</td>
</tr>
<tr>
<td>7</td>
<td>The memorandum must contain company objects.</td>
</tr>
<tr>
<td>16</td>
<td>Proof of paid up capital must be supplied.</td>
</tr>
<tr>
<td>189</td>
<td>Each share has to be a minimum of $100.</td>
</tr>
<tr>
<td>212</td>
<td>Private companies with capital of less than $200,000 shall be administered by one or more directors.</td>
</tr>
<tr>
<td>213</td>
<td>Private companies with capital of $200,000 or more shall be administered by a collective organ which has an odd number of shareholders.</td>
</tr>
</tbody>
</table>

Cooperatives are an alternative, but the regulatory regime is burdensome

Cooperatives are a popular business form in Timor-Leste, particularly for agricultural produce. The Constitution guarantees that the State shall promote the establishment of cooperatives of production and shall lend support to household businesses as sources of employment. Because cooperatives are intended to be grass-root, community-based organizations, ideally the requirements to form and run them should be as straightforward and accessible as possible. Regulatory controls should be kept to a minimum consistent with adequate regulation to protect the interests of their members. Paperwork should be simple and straightforward. Unfortunately Timor-Leste’s current regime does not comply with international best practice in this respect (see Table 4.1 below).
Table 4.1. Timor-Leste’s Cooperative law compared with international best practice

<table>
<thead>
<tr>
<th>Current provision</th>
<th>International best practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 4 specifies the sectors within which cooperatives can operate.</td>
<td>International best practice allows for cooperatives to operate in all sectors as long as the ‘not for profit’ requirement is satisfied.</td>
</tr>
<tr>
<td>Article 11 specifies that 15 persons are necessary to establish a cooperative.</td>
<td>Unnecessarily onerous to require a specific number of members.</td>
</tr>
<tr>
<td>Article 18 requires at least $1000 to start a cooperative.</td>
<td>This amount of money may be too much for many women engaged in agricultural and fishing activities.</td>
</tr>
<tr>
<td>Article 15 lists what the articles should contain without further guidance.</td>
<td>It would be appropriate to provide model rules directed at specific cooperatives to encourage formation.</td>
</tr>
</tbody>
</table>

**Proposed legal reforms offer an opportunity to open up formalization for women**

The BBI has plans to review the legislation for starting up a business – the Commercial Companies Law and Business Registration Code (see activity 4 in Table 4.4). In their scoping study in 2008 the Business Registration team identified several reforms including abolition of the notification and waiting periods for registrations; removal of notarization requirements for documents; abolition of the minimum capital requirement; and institution of a single registration certificate.

Following this a detailed and consultative assessment and review of business registration procedures and reform process is proposed. The review will begin with a consultation with the private sector conducted through the auspices of the MoJ. The aim of the assessment will be to identify the main regulatory burdens imposed on business during the registration process, to identify and understand the regulations that impose these burdens, and the way they are currently administered. Proposals for reform will also be solicited from the private sector during this process. On the basis of the information gathered through this process, a structured program of reforms will be developed and implemented. This provides an opportunity to engage with women and include them in the process.

**Activity 2.2.1:** the review of companies and business registration legislation to ensure best practice legal framework for the registration of women’s enterprises / community groups as companies will ensure that women’s enterprises, as well as men’s, can benefit from the proposed reforms.

**Women have limited understanding of different business forms and how to operate them**

When operating in a family context or with a business partner or partners a de facto partnership arises. In the absence of a written partnership agreement the arrangements between the partners may be unclear. It is therefore prudent for partners to draw up a partnership agreement, setting out the arrangements between them. Partnership agreements can be lengthy and complex. When women are in business partnerships with their husbands they are unlikely to enter into a partnership agreement. However, if a partnership agreement is not in place, women have little protection on divorce or separation as it is difficult to prove their contribution to the partnership.

**Activity 2.2.2:** the development of a basic partnership agreement will help women to protect their business interests when operating in a partnership.
Similarly when dealing with third parties, women’s limited knowledge of their legal rights and responsibilities make them less likely to use formal contracts to protect themselves and their businesses.

Female entrepreneurs across the Pacific region reported that they often rely on verbal contracts rather than written ones. Reasons for using verbal contracts include limited literacy and a lack of knowledge of what should be included in a written contract. Business women also reported that they often feel vulnerable entering into written contracts in the sense that they often do not understand well what they are signing up to. This reservation applies to simple contracts for the supply of goods to more complex contracts such as those relating to borrowing money and leasing property. Many women expressed a desire for training in basic contract law, and on how to read and understand the implications of basic contracts. For a Timor-Leste example, see Box 5.2 below on Helena Monteiro Pastaleria Mal Makira.

When relying on a verbal contract, it can be more difficult for a woman to enforce her rights under the contract. A simple pro forma contract that can be used for common commercial transactions, and training on the use of the contract, may help to alleviate contractual disputes or resolve them more quickly.

**Activity 2.2.3:** undertaking basic training in contract law in English, Tetum, and Portuguese will assist women in their business dealings
This section reviews the impact of Timor-Leste’s business licensing regime on female-headed businesses, and highlights how Target 2.3 and its associated activities would reduce the regulatory impact on women. Figure 4.4 lists two activities to achieve this target along with tools in support. (Tools can be found at the end of the report).

**Figure 4.4. Target 2.3: Tools and Activities**
**Licensing requirements are complex**

All businesses in Timor-Leste except very small micro businesses for which there is no clear definition are subject to licensing requirements. Entrepreneurs are required to hold a separate license for each separate activity they undertake. A business may therefore be required to hold a large number of licenses. Businesses will often obtain a fresh license under a new name for Government procurement purposes. If there has been a shortfall in delivery on a Government contract, the business owner may register under a different name so as not to prejudice the winning of a new contract. There are 2,570 licensed businesses on the register at the Ministry of Tourism, Commerce and Industry but it is estimated that these represent only a small percentage of entities.

The World Bank has recommended eliminating licensing requirements for economic activities that have no implications for health and safety or national security as one of the highest priority reforms aspects of the legal and regulatory framework. See Timor-Leste, The Business Environment, World Bank Report April 2006 at p. 3.

**New laws and directives complicate the licensing system further**

Recently the Ministry of Tourism, Commerce and Industry issued a Directive containing temporary provisions for the licensing of business activities and business locations, which would considerably increase the complexity of Timor-Leste’s licensing regime (see Box 4.7 below).

*Box 4.7. Key features of directive 1/2008 on business licensing*

- No temporary license may be issued without presenting a certificate tax identification number and confirming registration has been applied for, and applications must be accompanied by the same documentation as is required by the Commercial Registry Bureau and set in Decree-Law no. 712006 or respective duplicates or authenticated photocopies including officially notarized documentation in the case of companies or legal entities.
- Even for no or low risk activities, applications are forwarded to relevant departments, ministries and sectoral authorities to provide recommendations on whether or not a license should be granted to the applicant. There are no criteria specifying on what basis decisions will be made.
- Each business activity requires separate approval and it is expected that inspections at the business location will be conducted, although it is not clear what the purpose of the inspection/s will be.
- Time limits of 5–15 days for approval apply and certificates of approval are valid for a year.

These and other changes have the potential to adversely impact on Timor-Leste’s investment climate. It is of particular concern that they:

- Provide only very limited specified exemptions from the requirement that all businesses, other than micro businesses, obtain a license
- Introduce new licenses for businesses, in particular broad sectors such as industry and commerce
- Duplicate bureaucratic processes required for business registration
- Impose additional cost and administrative burden by requirement for official notarization
- Are subject to a high degree of discretion on the part of public officials
- Require consideration by more than one Government department, and possibly inspections
- Require annual renewal.

In addition, the Government plans to expand the administration of the licensing regime to the Provinces, setting up provincial centers to collect license fees. As women in the Provinces tend to run very small businesses, it may be that they will not be caught by these new arrangements. However, there is a risk that they will be seen as soft targets by collectors seeking to enhance their revenues.

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43 For which there is no clear definition.
The licensing system in Timor-Leste is opaque and it is of great concern that recent changes serve not to simplify the system but rather to add to its complications. It is therefore far from clear that there is a serious appetite for reform in this area within Government. It rather appears that licenses are perceived as a way of Government exerting control on who engages in what activity, and/or raising revenue. There is clearly work to be done with key policy makers on winning hearts and minds on the benefits of licensing reform. However, at the operational level, the situation is more encouraging. Despite the fact that they operate with very limited resources, licensing officials in MTCI appear keen to ensure that they provide high quality services to businesses and that licenses do not generate unnecessary burdens on businesses. Licenses are typically issued in a timely manner – usually within a few days. Officials expressed a strong desire to improve licensing systems and processes including learning from regional good practice.46

Complex and costly licensing regimes tend to impact disproportionately on women

Complex and costly licensing regimes tend to encourage firms to short-cut the system through bribes47 or evade compliance through informality. They tend to be disproportionately burdensome for women. The evidence internationally is that women entrepreneurs:

- Can be seen as softer targets than men and therefore may be more likely to suffer from harassment from regulatory officials
- Have less sophisticated networks for obtaining permits and licenses than their male counterparts, and
- Have less access to information about permits and licenses than men.48

Because the Ministry does not hold sex disaggregated data is not possible to make an assessment of the numbers of women holding licenses, or of the types of licensed business activities in which women predominate.

Proposed reforms offer an opportunity to reduce regulatory burden on women

The IFC is hoping to work with the Minister of Tourism, Commerce and Industry on reform of the licensing system. Activities would include undertaking a review of licenses, beginning with a stocktake of existing licenses. The review would reverse the burden of proof: where an agency is unable to prove to the high-level committee that the license satisfies the criteria for quality and clear rationale established by the high-level committee, the license will be abolished. With the major review of licenses complete, activities would focus on those required to support and maintain reforms. These would include: creation of a simple Regulatory Impact Assessment (RIA) process in a key agency; consideration of an e-registry of licensing regulations to document all regulations; provide process maps and contact details of relevant officials; a capacity building program for public officials involving education on the effects of regulation; discussion of optimal regulation; and development of the RIA function.

Consultation with the private sector will be undertaken throughout the life of the project to inform project objectives and build support for reform. It will be important to ensure that business women as well as men are fully involved in this process.

Activity 2.3.1: facilitating women’s focus group discussions on licensing constraints, and Activity 2.3.2: simplifying procedures that have an adverse impact on female-headed businesses – will reduce the regulatory burden on women.

47 At a rank of 26/32 countries in the Asia-Pacific regional ranking, Timor-Leste shows a worsening in perceived levels of corruption in 2008 Transparency International Corruption Perceptions Index.
<table>
<thead>
<tr>
<th>Type of business entity</th>
<th>Definition of entity</th>
<th>Applicable laws</th>
<th>Summary compliance requirements</th>
<th>Special implications for women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Trader (less than $5000).</td>
<td>One person run business, such as kiosk.</td>
<td>Code of Business Registration, Decree Law 2005 (Article 2).</td>
<td>For business registration: Name: Activities: Marital status: Address: Any amendment to above information.</td>
<td>Married women have to provide the forenames and surname of her husband in addition to their own.</td>
</tr>
<tr>
<td>Sole Trader (more than $5000).</td>
<td>An Investor within a permitted sector (Domestic Investment Law Art 6) and with $5000 (Domestic Investment Law Art 7).</td>
<td>Domestic Investment Law (Law 2005). Code of Business Registration, Decree Law 2005 (Article 2).</td>
<td>Registration with relevant agency (Domestic Investment Law Articles 17 and 18) For business registration: Name: Activities: Marital status: Address: Any amendment to above information.</td>
<td>Married women have to provide the forenames and surname of her husband in addition to their own.</td>
</tr>
<tr>
<td>Partnership (unlimited liability).</td>
<td>Two or more people involved in business (e.g., two women set up handicrafts shop)</td>
<td>The Code of Business Registration, Decree Law 2005 (Article 2) Law 4/2004 on Commercial Companies (Chapter II, Article 160).</td>
<td>For business registration: Name: Activities: Marital status: Address: Any amendment to above information. Must comply with following: 2 or more people (Art 160) Must work in partnership or contribute capital (Art 161) Articles of association (Art 162).</td>
<td>Married women have to provide the forenames and surname of her husband in addition to their own. Women going into partnerships with their husbands may not appreciate the consequences of unlimited liability or the advantages of having a written partnership agreement and may be disadvantaged especially in the case of divorce.</td>
</tr>
<tr>
<td>Partnership (with limited liability).</td>
<td>A partnership which involves general partners and limited partners who have the benefit of limited liability.</td>
<td>Code of Business Registration, Decree Law 2005 (Article 2). Law 4/2004 on Commercial Companies (Chapter III).</td>
<td>For business registration: Name: Activities: Marital status: Address: Any amendment to above information. Must comply with following: 2 or more people, Articles of Association identifying silent and general partner (Art 179), Ensure that Silent partner knows that she will have one vote per $10 of capital held (Art 161).</td>
<td>Complex formation procedures may be more problematic for women than men.</td>
</tr>
<tr>
<td>Type of business entity</td>
<td>Definition of entity</td>
<td>Applicable laws</td>
<td>Summary compliance requirements</td>
<td>Special implications for women</td>
</tr>
<tr>
<td>-------------------------</td>
<td>----------------------</td>
<td>-----------------</td>
<td>--------------------------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>Joint stock company.</td>
<td>Entity with legal status but without limited liability, for example construction business.</td>
<td>Code of Business Registration, Decree Law 2005 (Article 2). Law 4/2004 on Commercial Companies (Chapter 1).</td>
<td>For business registration: Name: Activities: Marital status: Address: Any amendment to above information. Other requirements: Must obtain a criminal record clearance for every person involved in the management of the company from Ministry of Justice and the three certificates before being eligible to operate. Get proof of business address from Department of Land. Make company seal.</td>
<td>This is an outmoded vehicle which does not offer the benefits of limited liability and is unlikely to be useful. Complex formation procedures may be more problematic for women than men.</td>
</tr>
</tbody>
</table>
Table 4.3. A comparative review of Timor-Leste’s Companies Law against gender equality and good practice principles

<table>
<thead>
<tr>
<th>Best practice indicator</th>
<th>New Zealand</th>
<th>Timor-Leste</th>
<th>Vanuatu</th>
<th>Solomon Islands</th>
<th>Tonga</th>
<th>Samoa</th>
<th>Papua New Guinea</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simplicity of law: basic principles and core provisions of the Act can be easily understood by all business people and investors. Can include plain English drafting, transparent structure and availability in local language.</td>
<td>Yes</td>
<td>Yes (is available in English and Portuguese).</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes Tongan language version available.</td>
<td>Yes Samoan language version available.</td>
<td>Yes</td>
</tr>
<tr>
<td>Streamlined legislation: companies legislation should only contain core company law and should not include insolvency law or securities law.</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes.</td>
</tr>
<tr>
<td>Ease of incorporation: incorporation can take place on a single, simple form that can be completed without a lawyer.</td>
<td>Yes. Additional forms must be lodged showing directors consent.</td>
<td>Needs assistance of lawyer or company formation agent.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes. Separate legislation for securities and receiverships.</td>
<td>Yes. Separate legislation for securities and receiverships.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Focus on small private companies: Act should be drafted to facilitate business for small private companies with no blanket requirements to hold formal meetings, file formal reports and no mandatory use of lawyers.</td>
<td>Yes, but additional forms required for larger companies in NZ.</td>
<td>Yes – to a limited extent.</td>
<td>Yes – private companies are exempt from these requirements.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes.</td>
</tr>
<tr>
<td>Share capital: abolition of complex requirements of par value shares and nominal capital. Replace with a straightforward solvency test before payments (such as dividends) can be made to shareholders.</td>
<td>Yes</td>
<td>No – there are requirements on par value and share capital.</td>
<td>No – the requirements of par value, issue share capital and nominal capital remain.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes.</td>
</tr>
<tr>
<td>Best practice indicator</td>
<td>New Zealand</td>
<td>Timor-Leste</td>
<td>Vanuatu</td>
<td>Solomon Islands</td>
<td>Tonga</td>
<td>Samoa</td>
<td>Papua New Guinea</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------------</td>
<td>-------------</td>
<td>-------------</td>
<td>---------</td>
<td>----------------</td>
<td>-------</td>
<td>-------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Company secretary: role of company secretary is optional.</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Civil penalties: civil penalties (fine, late filing fee) not criminal sanctions are imposed on company office bearers for relatively minor matters (for example failure to file annual return).</td>
<td>No.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Shareholder remedies: include remedies that make it easy for shareholders to take directors to Court if their rights are being abused.</td>
<td>Yes</td>
<td>Yes – but must be a minimum number of members</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Directors’ duties: clearly state directors’ duties including duties of care and good faith.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Related party transactions and minority shareholders: permit shareholders with 10 percent or less of a company’s shares to sue the company for related-party transactions.</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Approval of related party transactions: require third-party approval for all related-party transactions.</td>
<td>No</td>
<td>No specific procedure prescribed.</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Approval of related party transactions: appointment of a Government inspector to investigate related-party transactions.</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Transparency of records: allow company records and documents to be open to shareholder inspection without need to instigate Court proceedings.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Note that the Acts all deal with director’s self interest as the related party, not a related company.

49
<table>
<thead>
<tr>
<th>Best practice indicator</th>
<th>New Zealand</th>
<th>Timor-Leste</th>
<th>Vanuatu</th>
<th>Solomon Islands</th>
<th>Tonga</th>
<th>Samoa</th>
<th>Papua New Guinea</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permission:</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>do women need permission from a male relative/husband in order to be a company director or shareholder? If yes, do men require reciprocal permission?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Officeholders:</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Can women be directors and shareholders of companies in the same way as men?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Age:</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>is the age at which women and men can be directors/shareholders the same?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Sole person companies:</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>is there provision in the Act for registration of sole director/shareholder companies?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Method of registration:</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>are women permitted to undertake the registration process without involving a man (for example, to accompany them to the registration office)?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Registration process:</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Is the company registration process the same for a woman (including married woman) promoter as for a man? For example, do women have to file additional documents, answer additional questions, go to a different place, or go through additional procedures? Is it different in any way for widowed, divorced or separated women?</td>
<td>Yes. The procedure is the same for all people regardless of gender, marital status, age.</td>
<td>Yes. The procedure is the same for all people regardless of gender, marital status, age.</td>
<td>Yes. The procedure is the same for all people regardless of gender, marital status, age.</td>
<td>Yes. The procedure is the same for all people regardless of gender, marital status, age.</td>
<td>Yes. The procedure is the same for all people regardless of gender, marital status, age.</td>
<td>Yes. The procedure is the same for all people regardless of gender, marital status, age.</td>
<td>Yes. The procedure is the same for all people regardless of gender, marital status, age.</td>
</tr>
<tr>
<td>Place of registration:</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Is it necessary/usual to travel (for instance to a town) in order to register a company? If yes, are there any travel restrictions on women?</td>
<td>No. Companies can be registered online.</td>
<td>Yes. There are no travel restrictions on women.</td>
<td>New hybrid registration process will enable personal registration by post or online.</td>
<td>Yes at present, however new Bill contemplates electronic filing.</td>
<td>Yes. There are no travel restrictions on women.</td>
<td>Yes. There are no travel restrictions on women.</td>
<td>Yes. It is possible to submit by post but then have to travel to Bank of South Pacific to deposit the registration. No official travel restrictions on women.</td>
</tr>
</tbody>
</table>
Table 4.4. How to incorporate gender into the BBI registration reform activities

<table>
<thead>
<tr>
<th>Proposed BBI activity</th>
<th>How to Incorporate Gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Conduct a detailed mapping of existing procedures for business registration.</td>
<td>• Assess proportion of female-headed businesses on register (see Annex A of Solutions Design Report for methodology) as baseline.</td>
</tr>
<tr>
<td></td>
<td>• Ascertain detailed information on how procedures work in practice – for men and women. Therefore ensure women are asked how the process works for them. Ensure issues interrogated include: ability to travel; opening hours; facilities; harassment; dealing with male public officials; requirement to produce photo; extent to which requirement for personal attendance is a barrier.</td>
</tr>
<tr>
<td></td>
<td>• If possible, include cooperatives in the analysis (as a business form which may be more appropriate for women's enterprises than companies).</td>
</tr>
<tr>
<td>2. Assess administrative burdens imposed on businesses due to business registration.</td>
<td>• Consult women as well as men in making assessment.</td>
</tr>
<tr>
<td>3. Assist in developing streamlined and simplified processes for business registration including institutional responsibilities.</td>
<td>• Engage with women's groups (such as NGOs) in developing processes.</td>
</tr>
<tr>
<td>4. Assist in revising the legislation for starting up a business – the Commercial Companies Law and Business Registration Code.</td>
<td>• Engage with women's groups (such as NGOs) in the consultation process.</td>
</tr>
<tr>
<td>5. Assist in re-engineering the process.</td>
<td>• Engage with women's groups (such as NGOs) in developing processes.</td>
</tr>
<tr>
<td>6. Develop a framework to integrate the business entry system.</td>
<td>• Engage with women's groups (such as NGOs) in developing processes.</td>
</tr>
<tr>
<td>7. Provide training and capacity building of civil servants involved in the business entry procedures.</td>
<td>• Include training on gender.</td>
</tr>
<tr>
<td>8. Provide broad information campaign to let entrepreneurs know about new streamlined regulatory requirements for registering a business.</td>
<td>• Ensure outreach campaign includes a focus on female entrepreneurs (see section on outreach below).</td>
</tr>
</tbody>
</table>
Chapter 5. Access to justice and alternative dispute resolution

Summary

Timor-Leste is the hardest place in the world to enforce contracts. Women are disadvantaged in the formal justice system. Traditional justice systems are more accessible, but tend to marginalize women because they are administered by men and uphold traditional gender roles and values that favor men. Community-based mediation may offer a way forward, assuming the new Mediation Law addresses the need for mediation systems to be accessible and responsive to women.

Access to justice and alternative dispute resolution is not currently being addressed under the Government’s Regulatory Better Business Initiative supported by IFC. However, the Government is undertaking an ongoing land reform process. This chapter sets out a number of key recommendations and findings to improve women’s position in relation to access to justice and alternative dispute resolution within the context of ongoing reforms.

Timor-Leste is the hardest place in the world to enforce a contract

Efficient and effective commercial dispute resolution mechanisms are critical for businesses. Without them entrepreneurs are likely to be highly conservative about who they deal with, both as supplier and customer, and confine their dealings to those within their existing networks. Outside these networks, transactions are likely to be structured to forestall disputes, for example large upfront payments may be sought constraining efficient business transactions. International evidence is that when contracts can be efficiently enforced, businesses expand their networks and employ more workers50 and small businesses get better financial terms on loans.51

Timor-Leste is the most difficult place in the world to enforce contracts according to the World Bank’s Enforcing Contracts indicator. It takes an average of five years to enforce a commercial dispute through the Courts, and costs more than the actual cost of the claim. Timor-Leste’s performance in enforcing contracts is especially weak in comparison to New Zealand, the best performing country in the Pacific region (see Table 5.1 below).

Box 5.1. Enforcing a contract – benchmarking in the Doing Business index52

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Timor-Leste</th>
<th>New Zealand</th>
<th>East Asia and Pacific</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedures (number)</td>
<td>51</td>
<td>30</td>
<td>37.2</td>
<td>30.6</td>
</tr>
<tr>
<td>Duration (days)</td>
<td>1,435</td>
<td>216</td>
<td>538.1</td>
<td>462.4</td>
</tr>
<tr>
<td>Cost (% of claim)</td>
<td>163.2</td>
<td>22.4</td>
<td>48.5</td>
<td>19.2</td>
</tr>
</tbody>
</table>


Pride in her country’s people and heritage has been a mark of Donna Helena’s work from the beginning. There are many celebrations in Timor-Leste. Cakes are usually a traditional and indelible part of these. It is this tradition that started Donna Helena her catering business in the early 1970s. Donna Helena’s business has catered on hundreds of these occasions – births, birthdays, anniversaries, and funerals. “There are so many that I forget”, she says. She recently catered for a 500 person graduation from a college that lasted seven days. To assist, she brought eight people from her district and home town Homé in Los Palos. She also often caters for weddings. Her catering products travel internationally too, going as far as Bali. Timorese people living there take her cakes back on flights.

Language barriers prevent written contracts from being used and enforced. Timor-Leste’s native Tetum language is a verbal one and is only beginning to be developed into a written language. Portuguese is the other official language of Timor-Leste. Yet according to the latest census less than five percent of the Timorese population is proficient in Portuguese. While many people speak Indonesian it was rejected as an official language after Timor-Leste achieved independence. In February 2004 the Superior Council of Judicial Magistrates adopted the Directive on the Use of Official Languages in the Judicial System which established only Tetum and Portuguese as the languages to be used in court.

Donna Helena does not use written contracts, but if she did they would likely just be lost in the courts. Seven months is the average time it takes at the first ‘filing and service’ stage of enforcement. Even pending a successful outcome from over three years of trial and judgment, enforcing that judgment in her favor would take another three months. The Dili District Court is overwhelmed by criminal cases and burdensome procedures.

While this situation is burdensome for all businesses, women suffer disproportionately. There is strong evidence of discriminatory attitudes and practices towards women on the part of judges and other court officials. A study carried out in 2005 found that progress of women-related cases in courts is extremely slow and non-existent in many cases. According to this study, only 16 percent of all women-related cases actually proceed to the trial stage. Alarmed by this situation, a Women’s Justice Unit was established in 2004 to monitor cases and decisions involving women.

Given this situation, it is no wonder that Donna Helena prefers verbal contract arrangements. However, clients that come to her through word of mouth do not always pay her bill without reminders. While some do pay within a week or two others do not pay for up to a few months. She or one of her sons has to go to the clients’ office in Dili and ask them for payment. Often the bottleneck is with the finance staff in the departments who are also seeking funds from others pay their various creditors. If debtors do not pay for a few months she often decides that she will not cater for them in the future.

Knowing someone can greatly influence the speed by which a contractual dispute can be resolved. She laughs recounting how the President of Timor-Leste has assisted her in the past. He insisted to their government departments that because “they want to keep using Helena’s catering, they should go and pay her immediately!” This has helped and often meant immediate down payment of 50 percent of the outstanding amount. Despite such occasional help issues of cash flow and working capital remain critical for Donna Helena’s small business.

**The Courts are clogged up with criminal cases**

Since the events of 1999 the Timor-Leste Court system has been fully engaged with criminal cases and has had little or no time for civil cases. The Court system has suffered from a lack of Judges, lawyers, clerks, computer equipment, poor records and data management, and poor access to information by practitioners or the public. There have been extended periods when the four District Courts were not functioning at all due to the absence of Judges on training. Communications of decisions between the District Courts and the Court of Appeal have been inadequate.

In practical terms, because of lack of capacity within the Court system and a focus on criminal cases, the Court system has been unavailable to deal with either commercial dispute resolution or commercial contract enforcement since 1999.

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53 Mainly in relation to gender-based violence.


55 See Judicial Monitoring Project Report. Between January and October 2005 only 17 civil cases were tried in the district Courts, compared to 337 criminal cases. During the same period the backlog for criminal cases decreased by 29 percent but this has yet to trickle down to the civil cases and over 18 the same period the backlog for civil cases increased by 39 percent. As of October 2005 the Court of Appeals had a backlog of 54 civil cases compared to 4 criminal cases. All of these civil appeals cases are in the Indonesian language and date from the 2000-2003 period.
Discussions with both men and women in the private sector confirm that they regard the Court system as practically non-functional.

The Court and legal system is undeveloped

The Supreme Court, provided for in the Constitution, has yet to be established although for the time being the Court of Appeals is adequately assuming its functions. Formal Courts are effectively functioning in some districts but not others.\(^{56}\) The Commercial Code (Law No 17/2005) sets out the legal framework for the filing and enforcement of civil proceedings, but is not in effect in practice.

The legal profession is undeveloped in Timor-Leste. It is estimated that there are only 30–40 practicing lawyers, the majority of whom struggle with capacity challenges.

Use of Portuguese impedes access to justice

An additional layer of complication is the use of the Portuguese language in the Courts. This clearly impedes access to justice: less than 7 percent of the population understands Portuguese and even fewer have a developed Portuguese legal language capacity.\(^{57}\) Despite this, the Court system functions primarily in Portuguese, often without written translation into Tetum or local dialects. Private lawyers, NGOs monitoring cases, and Government officials have all said they had difficulty accessing information from the Courts and decisions because of language difficulties.

Since independence many laws have been drafted only in Portuguese and often they are without timely official or even unofficial translation into Tetum. This presents barriers for civil society seeking to comment on or monitor implementation of the laws. It makes it difficult for the Court to implement them. Insufficient resources are being spent on translation and the development of the Tetum language to a point where it could be used interchangeably with Portuguese. A perception of laws from without has been created. In general, the choice of language has precluded the Timorese community from active participation in the processes of justice and has led to feelings of alienation toward the sector and laws.\(^{58}\) To quote a 2007 news article, the choice has brought a tangle of complications, disenfranchising a generation of Indonesian speakers and introducing a new language barrier to the country's many other problems.\(^{59}\)

Women have limited access to the formal justice system and suffer discrimination within it

A series of reports has re-affirmed that women have limited access to the justice.\(^{60}\) Key issues are:

- Women have limited information on the law and legal procedures, and lack of awareness of their legal rights. This is compounded by the fact that few women have business experience equal to that of men, which makes them more vulnerable to unscrupulous deals.
- Women cannot afford to go to Court. Legal aid services are available in Timor-Leste, but in practice they are not used in relation to civil matters.
- There is strong evidence of discriminatory attitudes and practices on the part of Judges and other Court officials. Progress of women-related cases\(^{61}\) is extremely slow even non-existent in many cases.\(^{62}\)

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61 Mainly in relation to gender-based violence.
Traditional justice systems are more accessible, but tend to marginalize women

The adat system (described in Box 5.3 below) is realistically the only justice system available to most women63. Women generally do not participate in adat proceedings and, if they do, they tend not to be given the right to speak. Therefore in traditional dispute resolution procedures women’s voices are not heard and decisions will perpetuate the patriarchal culture.

Box 5.3. Traditional Approach to Dispute Resolution

The traditional approach to dispute resolution is to seek the intervention of a trusted community leader who will call the villagers to congregate together and discuss the issue at hand. Women are not allowed to join the congregation except if they need to give evidence as a party to the dispute or as a witness. Community elders will normally decide on a solution and a fee to be paid and the process will conclude with a traditional ceremony.

A key challenge is that the traditional system absolves individuals from negotiating a solution to the problem – it is left to a third party to decide.

The traditional system of conflict resolution is expensive due to the fee and cost of hosting the traditional ceremony. The result is that a large number of conflicts are not settled because the costs of subjecting the dispute to traditional conflict resolution mechanisms are too high.

Community-based mediation offers a way forward

A number of projects are focusing on community-based mediation as a way of enhancing access to justice (see Box 5.4 below for examples). Mediation processes can be seen as more compatible with traditional approaches to dispute resolution than formal Court processes.

Box 5.4. Community-based mediation

Avocats Sans Frontières: The project is into its 5th year and provides basic paralegal and mediation training for rural and village communities through mobile legal aid clinics. A clinic is initiated by a community discussion. Trainers consult with elected community leaders who then recommend three people in the community who are respected and literate, to be trained as paralegals and mediators. The project requests that the three should include at least one woman. And of the 170 people trained so far as paralegals/mediators, 30 percent are women. Mediation must be provided for free and only relates to disputes between individuals – not criminal issues. “In our experience, offering a service is not enough – you need to combine this with information on what your rights are as well as on how to protect them.” ASF is also working with a small team of lawyers to equip them with skills to train others on how to deal successfully with civil cases.

GTZ ADR Project: The focus of the project is to empower civil society to deal with conflicts constructively and without violence. With MoJ as the counterpart, the project supports community-based mediation in two districts. The main conflicts are land conflicts and family disputes (often related to domestic violence). Mediation panels comprise two people, one of whom is elected by the community. A written record is made of each case so that outcomes of mediation are tracked. Only one female mediator has been trained out of 75 to date. No specific outreach work is being conducted for women teaching them of their rights to access justice.

UNDP Justice Project: is focusing on access to justice and the interface between traditional and formal justice systems.

Recommendations

The fundamental weaknesses of Timor-Leste’s justice system clearly need to be addressed. The capacity of the Court system, its personnel, and systems need be strengthened so that they can start to deal effectively with contract enforcement and other civil cases. The recommendations below focus on measures that can be taken in the meantime, to strengthen avenues for women with business disputes to obtain access to justice.

The recommendations are currently outside the scope of the IFC supported Better Business Initiative. But they should be considered in the context of public private dialogue (see recommendations to integrate gender issues in PPD in Chapter 3).

- Ensure the proposed new Mediation law addresses the need for mediation systems to be accessible and responsive to women. Issues to consider include providing for male/female balance on mediation panels.

- The Ministry of Justice should take the lead in providing information on women’s right to access justice, and what women’s rights are, as well as on how to protect them.
Chapter 6. Access to, and enforcement of, rights over registered land

Summary

Land in Timor-Leste is governed primarily by traditional systems of inheritance, management, and ownership which largely exclude women. Women have very limited control in decision-making about land including over the way it is used and over production and income deriving from it. This means that they are in a very weak economic position and greatly dependent on men: fathers, husbands, brothers, and sons.

Land is not currently being addressed under the Government’s Better Business Initiative supported by IFC, although there could be future scope to look at improving processes at the property registry. However, the Government is undertaking an ongoing land reform process. This chapter sets out a number of key recommendations and findings to improve women's position in relation to access to, and enforcement of, rights over registered land within the context of ongoing reforms.

Land rights are vital for women’s economic empowerment

Women who own and control land and property (either individually or jointly with their husbands) reap benefits in a number of ways:

- food and economic security (for example from agricultural production on their lands)\(^\text{64}\)
- added income for livelihood purposes (for example proceeds from the sale or income from the rental of land, or access to credit), and
- ability to obtain higher status and identity within their household and society.

Evidence also points to the fact that women who own land and/or property are less likely to be the victims of domestic violence than women who do not own land.\(^\text{65}\) And women who own assets tend to spend more on their children’s educational and nutritional well-being to the benefit of future generations.\(^\text{66}\)

Insecure land rights, on the other hand, discourage women from making the necessary investments into their land which would increase its productivity and economic value.\(^\text{67}\) Likewise, if claims to land are uncertain, households are more vulnerable to shocks or economic distress (such as caused through illness or an economic crisis) because those with land may be able to sell or lease it out to tide them over financially during times of crisis.

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\(^\text{64}\) In Burkina Faso it was estimated that shifting existing resources between men’s and women’s plots within the same household could increase output by 10-20 percent. (Source: Blackden and Bhanu, Gender, Growth and Poverty Reduction- Special Programme of Assistance for Africa, 1998 Status Report on Poverty, World Bank technical Paper no. 428, World Bank, Washington DC., 1999.

\(^\text{65}\) In India, one study found that 49 percent of women who did not own property versus seven percent of women that owned property, reported that they were victims of domestic violence. (See Panda P. Rights-based Strategies in the Prevention of Domestic Violence” ICRW Working Paper 344, International Centre for Research on Women, Washington DC. 2002).


\(^\text{67}\) If claims to land are uncertain, households living at the margin are unlikely to see the value of, or feel they can afford, investing scarce resources in soil quality, irrigation systems, or higher value crops that require expensive inputs or offer delayed economic returns. In different parts of the developing world it has been found that secure title to land is positively correlated with agricultural investments and outputs. In Thailand, for example, a study found that gaining title to land induced higher investment in farming capital - output was 14-25 per cent higher on titled land than on untitled land of equal quality.
In addition, women’s limited control over land means that their ability to access finance is seriously impeded because they are unable to provide collateral for business loans. On top of this, uncertain access to land may limit women in their ability to locate suitable premises from which to start up in business.

Land is a crucial economic resource in Timor-Leste...

Land is a vital resource in Timor-Leste. Agriculture (mainly rice, maize, and coffee) is the main source of income for the rural poor, with three quarters of the population dependent on it for their livelihoods. Land is also essential for the provision of other natural resources such as water, forests, game, and fish, as well as providing sites for housing. Agriculture represented one-third of non-oil GDP in 2007. Land is also a crucial resource for business development: where land markets operate poorly, private sector development is constrained by making it difficult for investors to start or expand businesses and borrow capital.

...but land rights are highly problematic

The concept of property rights over land, as operated in the West, is still an emerging concept for the vast majority of the population in Timor-Leste. The new Constitution guarantees rights to housing, private property, and protection against expropriation. There is a legal framework governing the definition and nature of state land, as well as the grant of leases over state and private land. But the key issue of land ownership – who owns what land, where, and under what title – is yet to be fully resolved.

The most problematic feature of land tenure in Timor-Leste is the fact that there are numerous competing land rights. These arise from: (i) traditional land ownership structures dating back centuries, (ii) changes effected during the Portuguese and Indonesian occupations, (iii) the enforced uprooting of large sections of the population in 1999, (iv) the destruction of the land registry, and (v) decisions taken during the UN transitional administration and under the rule of the present independent Government. The widespread displacement in 1999 (of more than 75 percent of the population) reawakened endemic cycles of land conflict as some took advantage of displacement or abandonment to repossess lands allegedly lost as a result of dispossession in the Portuguese, Japanese, and Indonesian periods. These cyclical phases of displacement and re-occupation are the primary cause of land-related conflicts.

Women have extremely limited access to land

While Article 54 of the Constitution gives every individual equal rights to ownership of land, in reality the majority of women have limited opportunities to actually obtain land ownership. Whereas women carry out a significant number of family and community tasks which in many cases are closely related to land, the large majority of women do not have property and inheritance rights over land; they have limited control over the way it is used, and over production and income deriving from land. This means that they are in a very weak economic position and greatly dependent on men: fathers, husbands, brothers and sons. It has been recognized that the implications can be potentially devastating, perpetuating gender discrimination and the ability of women and men, girls and boys, and families to improve their livelihoods.
Government’s initial CEDAW Report, which received the Council of Ministers of Timor-Leste’s approval in January 2008, highlights a number of factors that hinder women’s opportunities to gain greater land rights, the most salient being the predominance of highly patriarchal and patrilineal traditions in Timor-Leste. Males are typically favored in inheritance practices, land is typically registered in the name of the head of the household (typically considered to be a man), and women typically do not have equal access to land markets for a variety of factors.

Rights to land in Timor-Leste are governed primarily by traditional systems of management and ownership. Two thirds of the land is held under community ownership, with groups holding usufruct rights determined by customary rules. Gender inequalities in customary law and social practices result in women having very limited rights over community land.

Four fifths of the land is acquired by inheritance under customary law – a process which largely excludes women because East Timor’s inheritance systems are largely patrilineal. Within patrilineal communities, upon marriage, women generally give up their right to their parents’ land and move to reside on their husbands’ land. While residing on her husband’s land, the woman is considered an outsider with respect to the sacred house associated with her husband’s lineage, and thus cannot own any related land or property. Moreover, the bride-price (barlaque) tradition – whereby there is an agreed upon exchange of material goods between the bride’s family (wife-giver) and the groom’s family (wife-taker) – is still widely practiced within patrilineal communities with implications on the husband’s perceived rights of control over his wife in many domains, including land use and decision-making. In the event of divorce or the death of the husband/father, the mother and her children may not be able to stay or have access to the husband’s land, and her children may not have rights to inherit that land, particularly if she has no sons or if she initiated the divorce.

A few areas of Timor-Leste have matrilineal inheritance systems. Typically in matrilineal communities, the surviving spouse will continue to stay on her parents’ land and her sons and/or daughters will inherit the land (provided the sons do not marry.) Even in such communities, women have limited control over the use or transfer of the land they own – they are rarely, if ever, appointed as traditional leaders. Rights of control and disposal are exercised by men. Only men have a voice and a vote at meetings that decide on crucial issues such as the allocation of new land or the reallocation of land after the death of a family member.

Also, single and divorced women may lose out on being allocated smaller and poorer quality parcels of unclaimed land. Typically where land is divided, women may only be given access to and control of small plots to establish backyard/homestead gardens, whereas men would tend to be allocated larger plots of agricultural land with the potential to create more profit. Global experience indicates that access to credit may be dependent on size of landholdings. In Timor-Leste, poverty also appears to increase with small land size both in urban and rural areas, with smallholder farmers being among the poorest.

When a woman does potentially have rights to land, she will experience great difficulty enforcing them. Most disputes involving women do not go to the Courts and are dealt with under customary law (see Box 6.1 below).

Box 6.1. Customary dispute resolution practices governing land

The customary justice system is generally headed by traditional elders who are typically men, and this system is widely regarded as discriminatory against women. Most land disputes (for example about inheritance rights) are intra-family, and are usually resolved by the family. Women will tend not to speak up for themselves in the patriarchal family environment so can be deprived of their rights as a result of ‘forced acquiescence’. In situations outside family disputes – for example where rivers are dammed or irrigation projects established that impact on the quality or productiveness of women’s land – women are unlikely to speak up in their own defense.

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77 In patrilineal communities, sons are more likely than daughters to inherit their parents’ land. Daughters may retain land rights if they remain unmarried.
78 Oxfam and UNESCO, Obstacles to the Effective Participation of Women in Adult Education Programmes, Focus on Social Cultural Factors, Dili, Timor-Leste, 2004.
Preliminary steps are being taken to determine land title and to register land

Timor-Leste is undertaking a much anticipated and needed nationwide effort to formalize and modernize its land and property rights system. Consideration of gender issues is essential in order to ensure that both women and men benefit and are not negatively impacted by reform of land related laws, processes, and procedures. In this regard, global evidence suggests that legal measures to protect women’s land rights and public awareness campaigns are essential but not sufficient to effectively improve the opportunities women have to obtain land to ensure security. In some cases, preferential treatment of women is needed to increase the number of women with secure land and property rights.87

Preliminary steps are now being taken in peri-urban areas to begin a land titling and registration process (see Box 6.2 below), land registration and titling being one of the key areas requiring attention in order to strengthen the business environment.82 Proactive efforts to encourage women to participate in the land claims and titling process will be required.

Box 6.2. Land registration on titling

In July 2008, Ministerial Regulation 229 on the National Cadastre confirmed the right of the Land and Property Directorate to collect land cadastral information and register undisputed claims to land.83 With support from the USAID funded Land Law Program, registration work is being undertaken by invitation only in peri-urban areas, but not in relation to customary land which is simply being registered as such.

The process is that the Land & Property Directorate (LPD) team will go to villages to which they have been invited, explain the land demarcation and registration process, collect all relevant paperwork, hold discussions with neighboring landholders and other villagers relating to disputed or unclear boundaries, and attempt to demarcate boundaries with the consent of the parties involved. Once the demarcation process is complete, draft boundary maps are drawn up and left on display in a central village location for public inspection for 30 days so that villagers have the opportunity to note their concerns or disputes relating to the draft maps. Where there are boundary disputes or other disputes relating to who is entitled to rights over a piece of land, the LPD has the power to aid in the resolution thereof through mediation,84 (not decision-making). If it is not possible to resolve the dispute through mediation, the land is marked down as disputed, and no claim to ownership can be registered.

Registration of a claim is not indefeasible title – it is only the first step to title registration.85 Officials in the Land Law Program believe that the majority of land will be able to register as undisputed, except in Dili and places of high value land. Registration of interests in land is not recorded – anyone who registers a claim is taken to be registering a claim to ownership.

Encouragingly, gender considerations have been integrated and mainstreamed throughout the USAID supported Strengthening Property Rights in Timor-Leste Program,86 and the Government’s Land and Property Directorate is encouraging husbands and wives to register claims to land in their joint names. In fact, if a family chooses to do so, the names of each family member can be included in the claim.87

But it would be premature to consider that this registration process heralds the development of a land market in Timor-Leste, or the use of land as collateral. The registration is of ‘claims’ to land only, and not to land title. Claimants are given receipts and a claim number. It is unlikely that such claims or documents would be sufficiently robust to be used as collateral for loans, for example from microcredit institutions. Nor is it clear that registered claims can be transferred and therefore whether they have a market value.

82 IFC Policy note: The Land Market in Timor-Leste: Fundamental for Growth and Development.
83 However, it is extremely difficult to keep this register updated. Given that there is still a market in property notwithstanding the absence of formal titling, this Register will quickly become out of date and inaccurate until such time as it becomes universally appreciated that any unregistered land transaction is of no legal effect. As things currently stand, transactional data is not able to be recorded, although the LPD is currently refining its database to take account of such.
84 The Land & Property Office cannot mediate land conflicts where one party is the State or a Government official. State land in Timor-Leste is defined to include all land owned by the Portuguese State, and all land acquired by the Indonesian administration. This is a key limitation on Timor-Leste’s land conflict mediation model.
85 Or in other words, the most clear indication of title.
86 The project aims to create enabling conditions to provide women and men opportunities to obtain equitable land and property rights. The Project also envisions increasing the capacity of key Government and civil society actors to mainstream and integrate gender sensitivity, and undertake gender specific activities on a number of fronts to promote women’s land and property rights beyond the life of the Project.
87 There is also provision for recording claims by representatives of “legal entities” e.g. registered companies, societies, churches, schools the majority of which are recorded as being male.
Registration of claims is only the beginning of the story. The second stage of the land formalization process is titling, but the most difficult and costly stage of all is to ensure that all transfers of claimed/registered property are formalized. The longer the titling process takes, and the more costly it is to formalize transfers, the quicker formalized titles will revert to informal again as owners choose to dispose of their property through informal channels.

Making land more alienable poses a potential threat to women. Interviewees reported that women tend not to understand the value of their land and so can be taken advantage of, such as by entering into long term leases at an under-value. But, on the other hand, where land can be registered, women have the scope to protect their rights, and use the land to grow their businesses.

Box 6.3. Case Study: Maria Agusta, Leusari I, II, III

Maria Agusta and her husband began by selling baby doves in a shop – Leusari I. As a secondary larger business – Leusari II – and to assist family, they began using a bus as a form of public transport for Timorese from Los Palos (where Maria is from) to Dili. By 1999 they had 23 buses operating across East Timor. The revenue from 25 percent of these buses was sufficient to pay back the loans in purchasing them. Finally, Maria’s husband became a supplier for wood, furniture, and timber through their third business – Leusari III – making Maria and her husband significant players amongst Timorese entrepreneurs.

Maria says it was important for her to start a business to gain an income for her family. I do everything for my family and my kids. Maria believes that it is true that women are limited in economic opportunities and that it is more difficult for them to start a business. She says this is cultural among Timorese, Culturally, people have preferred to be dealing with men in business. Sometimes though, without support from a husband and family, your own means of gaining finance or income and also a lack of land, can make it difficult. Also, many Timorese women have so many children to look after.

Owning or having access to land in Timor-Leste is particularly difficult for women. It is men who most often own or inherit leases. Although women carry out a significant number of family and community tasks, which in many cases are closely related to land, the large majority of women do not have property and inheritance rights over land and limited control over the way it is used, or over production and income deriving from land.

Maria and her husband own five acres of land in Dili. Some land is in her husband’s name, in part inherited from his family. The other land she owns as her two brothers gave it to her. This is an exception though, it is mostly men who retain the rights to land in Timor-Leste, not women. Maria’s name is on the certificate of registered property.

Having registered land in her and her husband’s name has made starting and growing Maria’s businesses much easier than it would be for most business women in Timor-Leste.

During the 1999 crisis Maria and her family fled to Portugal for 3 years, where her husband was from. All of their buses and the shop were ransacked, taken, or burnt. There was nothing left. Maria says, When we left I only had time to take a plastic bag of rice for my youngest son. We had no time to take anything else. However, on their return to Timor-Leste in 2002, they used their registered property as a guarantee for the $100,000 loan she gained with her husband from the largest bank in Timor-Leste, BNU. Having the land made it easy she says.

They decided to use the funds from the loan to further invest in registered property. They rebuilt their house and also her mother’s house, which they then rented out in part to international advisers working in Dili.

In 2006 there were further riots in Dili and troubles following the shooting of President Ramos Horta. The local Dili markets were burned. When things started to settle and people returned to sell their produce, they searched for a marketplace. Without any formal marketplace they instead started to set up on the vacant 5 acres of land owned by Maria Agusta and her husband.

Lahane markets, as it is now known, is full with hundreds of market stalls though no proper facilities. Market stall owners pay no rent to the government or Leusari. The stall owners believe that the government pays Leusari for the Timorese to use the land as market-space. However Maria confirms that Leusari has never charged the government or the stall owners to sell on the land.
In 2008 Maria and her husband came to an agreement with the Government of Timor-Leste, through the Ministry for Trade, Commerce and Industry. They agreed that on completion of the new markets being built by the Government back in the original location of the marketplace, that the market stall owners would be relocated. The agreed date for completion of the new markets was April 2009 but construction did not progress to meet that deadline. When asked of her plans for the land after the market stalls have gone, she says, *The first thing I will do is build a fence around the land!*

...and a new legal framework is being put in place

A new draft Land Policy has been developed and is out for consultation. A Transitional Land Law has also been drafted and is available for comment. The aim of the proposed new Policy and Law is to build on the registration of land claims as described in Box 6.2 above, and bring certain land up to first stage of title registration (see Box 6.4 below).

**Box 6.4. Draft Land Policy and Law**

The draft Policy and Land Law provide that where a property was acquired by peaceful means, those who are currently, and have been in possession of the said property for minimum of 5 years, will be registered as the owner thereof, with compensation being awarded to the dispossessed. There is an additional proposal that land disputes should be resolved under the auspices of an Arbitration Council, given that the Courts are heavily over burdened. A Land Registration Code, which is currently being drafted, will determine matters related to dealings in land after first registration. The creation of a Land Disputes Tribunal is possible from 2010.

In addition, the Draft Civil Code which covers individual rights, relationships between individuals, and property, is an important mechanism through which to ensure that women are actually able to achieve equal rights to land and property in accordance with the law (see discussion of on Draft Civil Code in Chapter 3).

**Recommended reforms**

It is very encouraging that land reform is going forward in Timor-Leste and the extent to which the Strengthening Property Rights in Timor-Leste Project is ensuring that gender issues are mainstreamed and integrated at all levels of the project.

Ensuring that women are not marginalized in the land reform process is a particular challenge given their high degree of marginalization in current land holding and land use mechanisms. Women are not used to getting involved in land processes and are slow to assert their land rights. The Government needs to ensure that they fully incorporate women's views in their consultation process on the draft Land Policy and Law. Women's private sector organizations must be involved.

Land and property legislation was recommended by the BBI as an urgent priority for the Prime Minister, including approval of draft legislation by the Council of Ministers. The reform recommendations set out below are currently outside the scope of the IFC supported Better Business Initiative. But they should be considered in the context of public private dialogue (see recommendations to integrate gender issues in PPD in Chapter 3).

- Ensure that women's groups are fully included in the consultation process on the proposed new Land Policy and Law. Engage with women in ways that are culturally sensitive, for example at times that are realistic given women's domestic responsibilities, and in an environment that will enable women to speak freely.

- Consider the wider legal context in relation to women's property rights (see discussion in Chapter 2). In particular, consider women's rights under the Civil Code and under customary law. Key issues are:
  - Need to clarify whether customary law or the Constitutional guarantee of sex equality prevails.
  - Proposed new Civil Code needs to clarify that it overrides customary law, if this is what is intended.

- Ensure that equal land rights for women are entrenched in the new Land Policy and Law. Consider:
  - Land dispute resolution processes that are fair to women including compliance with Beijing Platform for action target of least 30 percent women.
- If traditional authorities are to continue to make land determinations, decisions that unfairly discriminate on basis of gender or social position should not be recognized by Courts.

- Requirement that family land is registered jointly in the name of husband and wife (current practice of registering land claims in the name of the family can potentially entrench marginalization of women).

• Take forward education, information, and training campaigns aimed at women emphasizing the rights to: i) participate in the land administration process, ii) declare yourself as a claimant, iii) participate in public meetings regarding land, iv) strengthen your boundaries, v) buy, sell, transfer, lease, or rent land.

• Sensitize rural communities and traditional leaders to women’s rights to land in the Constitution and in the proposed new legal framework.

• Enact reforms to the Draft Civil Code recommended by the Gender Land Law Working Group.

• Provide training for women in negotiation skills in order to empower them to settle disputes over land from an informed and empowered perspective.
### Annex A: Timor-Leste Planning Matrix

#### Timor-Leste: Gender And Investment Climate Reform Planning Matrix

**Planning period:** 3 years

<table>
<thead>
<tr>
<th><strong>GOAL 1: IMPROVED POLICY ENVIRONMENT AND SUPPORT NETWORK FOR BUSINESS WOMEN</strong></th>
<th><strong>Targets</strong></th>
<th><strong>Baseline</strong></th>
<th><strong>Means of Verification</strong></th>
<th><strong>Activities</strong></th>
<th><strong>Responsibility</strong></th>
<th><strong>Tools to support Activities</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.1</strong> Improved policy dialogue on investment climate reform for women’s economic empowerment.</td>
<td>Proportion of members representing business women’s interests on Better Business Initiative (BBI) Public Private Dialogue Group and Working Groups. Number of policy papers featuring women’s economic empowerment considered by Cabinet.</td>
<td></td>
<td><strong>1.1.1</strong> Ensure appropriate representation of women’s interests in existing PPD structures (BBI, Administrative Barriers Working Group and Financial Service Working Group). If necessary revise ToRs.</td>
<td>BBI, IFC Office</td>
<td>TOOL 1: Gender Working Group ToRs</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td><strong>1.1.2</strong> Form new Gender Working Group (high level representation of public and private sector with 4–8 members) if the existing PPD structure (BBI, Administrative Barriers Working Group, and Financial Service Working Group) does not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance.</td>
<td></td>
<td>TOOL 3: Investment Climate Gender Consultant: ToRs and initial work plan</td>
<td></td>
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</tbody>
</table>

| **1.2** Improved legal framework for women’s businesses. | Number of reforms to improve the investment climate for women enacted and implemented. | Timor-Leste Official Gazette, BBI PPD Group minutes, Gender Working Group minutes. | **1.2.1** PPD structures (BBI, Administrative Barriers Working Group and Financial Service Working Group) and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms. | Gender Working Group, BBI, Govt of Timor-Leste | TOOL 4: List of Discriminatory Laws |
|  | | | **1.2.2** Introduce law reforms to Parliament, including those recommended in Table 2.2. | | |
|  | | | **1.2.3** Enact and implement new laws. | | |

| **1.3** Improved training and networking for business women in Timor-Leste. | Business women’s perception of training and networking. | Perception surveys. | **1.3.1** Establish Timor-Leste Business Women’s Forums (with open invitation to business women ranging from the informal sector through to big business) as commenced by IFC in other Pacific countries in 2009, in partnership with local organizations and existing business women’s associations. **1.3.2** Develop and undertake networking and monthly training on investment climate for the Business Women’s Forum, including regional networking across Pacific to share lessons and experiences. | IFC (local consultant), Gender Working Group, Business Women’s Forum. | TOOL 2: Business Women’s Forum ToRs |
|  | | | | TOOL 3: Investment Climate Gender Consultant: ToRs and initial work plan |
|  | | | | TOOL 11: Women’s Consultation / Training Checklist |

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88 (Or Method to Obtain Baseline).
89 Lead entity is listed first.
### GOAL 2: ENHANCED ABILITY OF WOMEN TO START AND RUN BUSINESSES

<table>
<thead>
<tr>
<th>Targets</th>
<th>Baseline⁹⁰</th>
<th>Means of Verification</th>
<th>Activities</th>
<th>Responsibility⁹¹</th>
<th>Tools to support Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 Increase by five percentage points the proportion of (a) registered companies and (b) partnerships and sole traders are female-headed.</td>
<td>Number of female and male-headed companies, partnerships and sole traders.</td>
<td>Company registers Business Owners Survey</td>
<td>2.2.1 Ensure operations of Business Registry are gender sensitive and establish Women's Help Desk in Registry.</td>
<td>Business Registry, Ministry of Justice</td>
<td>TOOL 8: Business Registry Sex Equality Checklist</td>
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<td></td>
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<td></td>
<td>2.2.2 Incorporate gender into the BBI registration reform activities as per Table 4.4 in Chapter 4.</td>
<td>Administrative Barriers Working Group Gender Working Group Business Women's Forum</td>
<td>TOOL 5: Business Women's Perception Questionnaire</td>
</tr>
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<td></td>
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<td></td>
<td>2.2.3 Ensure all information on registering a business is equally accessible to men and women, and produce a gender sensitive business entry handbook.</td>
<td></td>
<td>TOOL 9: How to Undertake Outreach on Formalization for Business Women</td>
</tr>
<tr>
<td>2.2 Improved legal framework for women's businesses.</td>
<td>Number of reforms undertaken.</td>
<td>BBI PPD Group minutes</td>
<td>2.2.1 Review companies and business registration legislation to ensure best practice legal framework for registration of women’s enterprises / community groups as companies.</td>
<td>Ministry of Economy and Development Administrative Barriers Working Group Gender Working Group Business Women’s Forum</td>
<td>TOOL 10: Women’s Help Desk: draft ToRs</td>
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<td></td>
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<td></td>
<td>2.2.2 Develop and promulgate basic partnership agreement with civil society and business organizations.</td>
<td></td>
<td>TOOL 11: Women’s Consultation / Training Checklist (for handbook development)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2.2.3 Undertake basic training in contract law in English, Tetum, and Portuguese</td>
<td></td>
<td>TOOL 6: Using Business Registry Data to establish % of Registered Companies Headed by Women</td>
</tr>
<tr>
<td>2.3 Reduced regulatory compliance cost on female-headed businesses.</td>
<td>Licensing stock-take and process maps. Women’s focus group discussions on licensing stock-take and process maps.</td>
<td>Gender Working Group minutes. Cabinet policy papers. Women’s focus groups.</td>
<td>2.3.1 Facilitate women’s focus group’s on licensing constraints. 2.3.2 Simplify procedures that have an adverse impact on female-headed businesses (revealed in time and cost compliance analysis).</td>
<td>Administrative Barriers Working Group Gender Working Group</td>
<td>TOOL 12: Companies Act Checklist TOOL 13: Basic Partnership Agreement TOOL 18: Outline of Basic Contract</td>
</tr>
</tbody>
</table>

⁹⁰ (Or Method to Obtain Baseline).
⁹¹ Lead entity is listed first.
Annex B: People consulted

Alfedo Pires, Secretariat of State for Promotion and Equality
Carla Tilman, Entrepreneur and member of Women Entrepreneur Association
Carolyn Tanner, Head of Mission, Avocats Sans Frontieres, Dili, Timor-Leste
Domingos Guterres, Licensing Division, MTCI, Delfina Amaral
Director of Registration, Ministry of Justice
Dulce Alves, Director, Salomon Brothers
Eva-Maria Jungen, GTZ ADR project
Elias dos Santos, Director of Statistics
Fernando Encarnacao, Women In Small Enterprise, WISE Project, ILO
Hernani Soares, Director, Business Development Centre
Idelta Rodrigues, Secretariat of State for Promotion and Equality
Ivania Gonscalves, Gender focal point, MTCI
Jurgen Glemboski, World Bank
Joao Saldanha, Focal point of Millennium Challenge Corporation
Marjorie Huang, Gender Specialist, Strengthening Property Rights in Timor-Leste
Ms. Tan, Head, UNIFEM
Nigel Thomson, Head, Strengthening Property Rights in Timor-Leste
Palmira Pires, Director, East Timor Dev. Agency
Pamela Dale, Justice for the Poor program
Rosa Pires Silva da Costa, Head of Commercial Registration office, Ministry of Justice
Rosa Vong, Ministry of Infrastructure
Tanz Yeo, International investor
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Annex D: Tools

Tool 1: Gender Working Group: Terms of Reference

Introduction

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

The Timor-Leste Gender and Investment Climate Reform Assessment, funded by IFC and AusAID, undertook a review of Timor-Leste’s investment climate with a gender lens. The Assessment concluded that Timor-Leste’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 Timor-Leste proposes that if the existing PPD structures in Timor-Leste (including the Better Business Initiative and Working Groups) do not have adequate capacity to address the identified regulatory and policy level gender constraints, then a new Gender Working Group be formed to address these issues (see structure in diagram below).

Better Business Initiative: PPD Structure
Composition
If the government decides to form a Gender Working Group (GWG), 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.
- 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 addresses 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 the Better Business Initiative to review business entry legislation 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 amongst broader women’s networks.

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

- Work with the Better Business Initiative to simplify business licensing procedures that have an adverse impact on female-headed businesses.

**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.
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 launching 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.

Funding
Costs should be kept to minimum. Sponsorship of training events could be provided by the local organizations that deliver the trainings. 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


92
• 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 example 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 (such as 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 Timor-Leste and make a significant (although frequently unrecognized) contribution to Timor-Leste’s economy. Many female-headed businesses are micro or small. Business ownership and management in the formal sector is dominated by men.

The Timor-Leste Gender and Investment Climate Reform Assessment (GICRA), funded by IFC and AusAID undertook a review of Timor-Leste’s investment climate with a gender lens.

The Assessment concluded that Timor-Leste’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 Better Business Initiative to ensure that the gender activities align with IFC’s broader investment climate reform program.

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

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 the Better Business Initiative and Working Groups; and the number of papers featuring women’s economic empowerment considered by Cabinet.

Activities

• Ensure appropriate representation of women’s interests on existing PPD structures (Better Business Initiative, Administrative Barriers Working Group and Financial Service Working Group). 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 structure (Better Business Initiative, Administrative Barriers Working Group and Financial Service Working Group) does 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.

Activities

• PPD structures (Better Business Initiative, Administrative Barriers Working Group and Financial Service Working Group) and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms
• Introduce law reforms to Parliament, including those recommended in Table 2.2
• Enact and implement new laws.
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 Timor-Leste 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: that is, to call meetings, develop and coordinate the agenda, take minutes and highlight action points, and proactively 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 sector93, 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.
- 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].

Target 1.3 Improved training and networking for business women
Measured by: business women’s perception of training and networking.

<table>
<thead>
<tr>
<th>Activities</th>
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<tbody>
<tr>
<td>Establish Timor-Leste Business Women’s Forum, with open invitation to business women ranging from the informal sector through to big business, as commenced by IFC in 2009 in other Pacific countries, in partnership with local organizations and existing business women’s associations.</td>
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<tr>
<td>Develop and undertake networking and monthly training on investment climate for the Business Women’s Forum, including regional networking across Pacific to share lessons and experiences.</td>
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</tbody>
</table>

93 In the case of PNG.
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 instance 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 and sole traders that are female-headed**

Measured by: Companies Registry and Business Owners Survey data.

<table>
<thead>
<tr>
<th>Activities</th>
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<tbody>
<tr>
<td>• Ensure operations of the Business Registry are gender sensitive.</td>
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<tr>
<td>• Incorporate gender into BBI registration reform activities.</td>
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<tr>
<td>• Ensure all information on registering a business is equally accessible to</td>
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<tr>
<td>men and women, and produce a gender sensitive business entry handbook.</td>
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</tbody>
</table>

**Target 2.2 Improved legal framework for women’s business entry**

Measured by: number of reforms undertaken.

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<th>Activities</th>
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<tr>
<td>• Review companies and business registration legislation to ensure best</td>
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<td>practice legal framework for registration of women’s enterprises and</td>
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<td>community groups as companies.</td>
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<tr>
<td>• Develop and promulgate basic partnership agreement with civil society</td>
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<td>and business organizations.</td>
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<td>• Undertake basic training in contract law in English, Tetum, and Portuguese.</td>
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**Target 2.3 Reduced regulatory compliance cost on female-headed businesses**

Measured by: sex disaggregated time and cost compliance assessments.

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<th>Activities</th>
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<tr>
<td>• Facilitate women’s focus group on licensing constraints.</td>
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<td>• Simplify procedures that have an adverse impact on female-headed</td>
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<td>businesses (revealed in focus group discussion and time and cost</td>
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<td>compliance analysis).</td>
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The table below outlines an initial work plan for the first 6 months of a 12 month consultancy.

**Initial Work plan (first 6 months)**

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<th>Month</th>
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<tr>
<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>
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<td>Identify and make linkages with potential BWF members and partner organizations</td>
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<td>Develop BWF networking and training schedule</td>
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<tr>
<td>Review terms of reference and membership of other PPD groups in light of gender considerations and make recommendations for alteration if appropriate</td>
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<td>Commence gender dialogue through PPD structure: facilitate first meeting</td>
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<td>Launch BWF: major launch event, for instance in a market</td>
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<tr>
<td>Develop policy paper on reforms to laws that discriminate against women as recommended in Gender and Investment Climate Reform Assessment</td>
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<tr>
<td>Facilitate focus group discussion with women on business licensing reform</td>
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<tr>
<td>Facilitate gender aspect of PPD meetings</td>
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<tr>
<td>Facilitate BWF training / networking events</td>
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<tr>
<td>Facilitate presentation of policy paper to Cabinet</td>
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## 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>
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<tbody>
<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 contradicting international covenants (CEDAW) has not been tested.</td>
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<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>
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<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. At present 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>
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<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>
</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 Timor-Leste 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 or 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>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTALS</td>
<td></td>
<td></td>
<td></td>
</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>
</thead>
<tbody>
<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 (for example 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 help 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 on 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 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.

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/womensof.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 grass roots women, such as 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 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, for example, Local Government Offices, Women’s Resource Centers.

- 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 example 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 in 0 [This means that the desk will not be static – but peripatetic, for example 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 instance business licensing

• Holding training/networking events for business women.

Who to engage with
• Business women who operate informally including those normally ‘off the radar’, such as 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 provides 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 instance buying shares)
- the group would have its own legal identity separate from its members which facilitates:
  - the group entering into transactions, for example 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 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 resource 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: such as 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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<tbody>
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<tr>
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</tbody>
</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.

c) 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. But 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 (such as through interviews, focus group discussions, surveys) and then appropriate policy response can be developed (for instance 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.

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94 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).
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.

<table>
<thead>
<tr>
<th>Key aspects</th>
<th>Standard Cost Model (SCM)</th>
<th>Compliance Cost Tool (CCT)</th>
<th>Gender perspective</th>
<th>Gender checklist</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>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>Ascertains 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 women-headed firms in the sample frame. For example if 50 percent of license holders are women-headed firms by women, 50 percent of sample should be women-headed firms. (See footnote 1 on definition of female-headed firm). If non-compliance is gender-skewed (for example 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 / run large businesses).</td>
</tr>
<tr>
<td>2.</td>
<td>The administrative burden is measured through in-depth 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) is 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.</td>
<td>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>
## Gender and Investment Climate Reform Assessment

### Key aspects Standard Cost Model (SCM)

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.

### Key aspects Compliance Cost Tool (CCT)

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.

### Gender perspective

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.

### Gender checklist

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

### Key aspects Compliance Cost Tool (CCT)

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, 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.

### Gender perspective

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.

### Gender checklist

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

### Key aspects Compliance Cost Tool (CCT)

6. Enables reduction targets to be set and key areas for reform to be identified.

Enables reduction targets to be set and key areas for reform to be identified.

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.

### Gender perspective

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.

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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

Tool 17 does not apply in Timor-Leste
**Tool 16: Mechanism to Sex Disaggregate Data on Holders of Sectoral Licenses**

**Finding out the sex of owners/managers of business that hold 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 or 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>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
</tr>
</thead>
</table>

**TOTALS**

**Number of license holders that are 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>
</thead>
</table>

**TOTALS**

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

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

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

Tool 17 does not apply in Timor-Leste
**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: ADR 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.97

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 (ADR / Small Claims / other)**

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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