Papua New Guinea
Gender and Investment Climate Reform Assessment
In Partnership with AusAID
January 2010  Sonali Hedditch & 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 Papua New Guinea, primarily the Ministry of Finance and Ministry of Commerce and Industry to make recommendations for reform actions for Government to further enable women in Papua New Guinea to participate effectively in the country’s economic development.

- The International Finance Corporation: to inform its Papua New Guinea Regulatory Simplification and Investment Policy and Promotion Program 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 Papua New Guinea from March 14–20, 2009. The mission team, led by Sonali Hedditch (IFC), included Clare Manuel (The Law & Development Partnership), Vijaya Nagarajan (AusAID consultant), Tamara Haig (AusAID consultant) and supported by locally based experts William Boas (economist) and Florence Willie (lawyer). Kristie Drucza (AusAID) and Anna Hutchens (AusAID consultant) undertook useful preparatory research from October 27–31, 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 Papua New Guinea Government’s various ministries and departments, including Dame Carol Kidu, the PNG Investment Promotion Agency, donors, the Chamber of Commerce, Business Women Associations, Gini Goada, PNG Microfinance, and banking institutions. We also thank the National Council of Women for its valuable insights into the overall position of women in Papua New Guinea’s society. We are especially grateful to the IFC office, and notably Anna Manega, for the exceptional organization and support she provided during the mission.

Finally, we wish to thank the wonderful women entrepreneurs who took the time to share their stories and challenges during the Women in Business Forum in Port Moresby, and in one-on-one interviews in Port Moresby and Mount Hagen.
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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 among 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
Executive summary

Introduction

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

• Public private dialogue
• Starting and licensing a business
• Access to justice, the courts, 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 Papua New Guinea'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, Papua New Guinea's Regulatory Simplification and Investment Policy and Promotion Program. The Program was established in November 2008 by the Ministry of Finance (MoF) and is supported by IFC Advisory Services (Pacific).

This Report does not aim to cover all gender issues in Papua New Guinea, or all gender issues in private sector development, or investment climate reform. Gender constraints in Papua New Guinea 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 Regulatory Simplification and Investment Policy and Promotion Program. 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 Papua New Guinea's attractiveness for local and international investment and business growth. It is hoped that these reforms could be part of broader reform in PNG to create equal opportunities for women and men.

The primary audience for this Report is IFC and the Papua New Guinea 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
Papua New Guinea comprises both the mainland and 600 offshore islands. It has a total land area of 470,000 square kilometers. The capital of Papua New Guinea is Port Moresby with a population of 255,000 people. The second largest city is the industrial city of Lae in the Morobe Province. PNG's population currently stands at 5.9 million people with around 15 percent of the population living in the ten major urban areas. Over 800 different languages are spoken by the people of Papua New Guinea. English is the official language, while Tok Pisin and Motu languages are national languages.

PNG has very high rates of population growth. Between 1980 and 2000 PNG's population grew by 2.7 percent per annum. At this rate of increase the population will double in 26 years time. PNG has a 'dual economy': a modern economy based on mining (gold, silver, copper, and nickel) and petroleum and natural gas production, and a traditional economy based on fishing, forestry, palm oil, copra, cocoa, and vanilla.

1 The others are Solomon Islands, Samoa, Timor-Leste, Tonga, and Vanuatu.
Despite its rich resource base Papua New Guinea remains one of the poorest countries in the Pacific. More than 30 percent of the population lives in poverty. Despite the recent economic growth and the country’s cultural diversity and abundance of natural resources, the bulk of the population, who are primarily engaged in subsistence agriculture, remains poor. It is estimated that over half of the population now lives below the national poverty line (the national poverty line allows for 2,200 calories per adult per day and an allowance for basic non-food expenditure), rising from 37.5 percent in 1996 to 53.5 percent in 2005.

A recent AusAID Report has identified PNG (together with East Timor) as one of the countries of greatest concern in the Pacific in terms of being off-track on almost all of the MDGs. Urban unemployment and crime rates in PNG are high. The delivery of basic services and the state of infrastructure is poor and PNG ranks poorly in surveys on governance and corruption. Law and order problems add significantly to economic costs and remain a deterrent to investment. Life expectancy in PNG is 56 years. Infant mortality rates are 64 per 1,000 births. Gender inequality is significant in PNG. Women have substantially poorer access to health care services, and lower levels of educational attainment and literacy pose barriers to their equal participation in economic activity and political life. Most women lack access to credit, banking, and markets.

The Government of PNG is working to reverse this decline and to improve the country’s investment climate for foreign and local investors. This report considers these efforts from a gender perspective. The aim is to ensure that measures are designed and implemented so that they benefit all businesses – those run by women as well as men.

### PNG’s Doing Business 2010 rankings

<table>
<thead>
<tr>
<th>Doing Business indicators</th>
<th>PNG’s ranking out of 183 economies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Starting a business</td>
<td>104</td>
</tr>
<tr>
<td>Dealing with construction permits</td>
<td>121</td>
</tr>
<tr>
<td>Employing workers</td>
<td>26</td>
</tr>
<tr>
<td>Registering property</td>
<td>83</td>
</tr>
<tr>
<td>Getting credit</td>
<td>135</td>
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<tr>
<td>Protecting investors</td>
<td>41</td>
</tr>
<tr>
<td>Paying taxes</td>
<td>96</td>
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<tr>
<td>Trading across borders</td>
<td>89</td>
</tr>
<tr>
<td>Enforcing contracts</td>
<td>162</td>
</tr>
<tr>
<td>Closing a business</td>
<td>104</td>
</tr>
</tbody>
</table>

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4 Samson, M. Cash Transfers to Improve the Protection and Care of Vulnerable Children and to Empower Families in the Context of the HIV Epidemic in Papua New Guinea, Institute of National Affairs and the Department for Community Development in Papua New Guinea.
6 AusAID, Tracking development and governance in the Pacific, August 2009.
Methodology

An assessment team10 undertook a mission to Papua New Guinea for five days from March 16–20, 2009. The methodology for the assessment 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 bodies, private sector operators, banks and micro-credit institutions, lawyers, civil society, Government Departments and bodies, and donors. A full list of people consulted is at Annex B. During the mission, a half day Business Women’s Forum was held and attended by 29 business women. This was an opportunity to canvass views from business women on the investment climate issues considered in this Report. Notes from the Forum and a full list of participants are at Annex C. 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 Papua New Guinean businesswomen were conducted and compiled into case studies which are used throughout this Report to 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

Women in PNG derive limited benefit from the formal economy, mainly operating small-scale informal businesses. Women are held back by a male dominated culture, limited ability to control business income, exclusion from decision making, and by violence directed against them. Women are further constrained by a legal framework that does not adequately protect their interests, particularly in relation to property rights and employment. Customary law, which frequently discriminates against women, is commonly applied.

Public private dialogue

PNG’s Business Women’s Association represents women involved in the formal business sector. Its focus is on mutual support and on fund-raising for scholarships, rather than on policy advocacy and public private dialogue. The PNG Business Council is the prime body for the private sector to discuss policy issues with Government. Again, its focus is on businesses operating in the formal sector and it has no particular remit for the specific issues facing women in business in PNG. There is thus no formal national private sector organization in PNG at present that represents the interests of the vast majority of business women in the country, who are small-scale agricultural producers and/or petty traders.

On the Government side, the Office for the Development of Women in the Department for Community Development has the mandate to lead on strategic thinking on women’s development. The Office commissions research and formulates gender policy, operating under the mission statement that it will enable increased participation by women as both beneficiaries and agents in the social, economic, political, and cultural development process for improvement in the quality of life for women and all. It has been recognized that the Department at present has limited status and ability to influence policy across Government, and there are possible moves to re-locate it to the Prime Minister’s Department.

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 PNG are limited. Targets and activities for incorporation in the PPD component of the Regulatory Simplification and Investment Policy and Promotion Program to improve the policy environment and support network for business women are:

10 Funded by IFC and AusAID. The team comprised: Sonali Hedditch (IFC team leader), Clare Manuel (The Law & Development Partnership); Tamara Haig (AusAID consultant); Vijaya Nagarajan (AusAID consultant); and supported by locally based experts Florence Willie (lawyer); and William Boer (economist).
Target 1.1 Improved policy dialogue on investment climate reform for women's economic empowerment
Measured by: the proportion of members representing business women's interests on PPD Task Force and Working Groups, and the number of papers featuring women's economic empowerment considered by Cabinet.

Activities:
- Ensure appropriate representation of women's interests in existing PPD structures (Task Force and Working Groups). 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/s do not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance.

Target 1.2 Improved legal framework for women's businesses
Measured by: the number of reforms to improve the investment climate for women enacted and implemented.

Activities:
- PPD Structures (Task Force and Working Groups) and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms.
- Introduce law reforms to Parliament, including those recommended in Table 2.1.
- 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:
- Continue regular PNG Business Women’s Forums (with open invitation to business women ranging from the informal sector through to big business), as commenced by IFC in March 2009, in partnership with local organizations and existing business women's associations.
- Develop and undertake networking and monthly training on investment climate for the Business Women's Forum, 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 PNG running enterprises that are, or have the potential to be, growth-oriented. 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. Currently most women in PNG are not formalizing their businesses. The vast majority of formal sector enterprises are run by men. Despite a Companies Act that is broadly in line with international best practice, few women-owned businesses are registered. The same applies to business names registration. Few women have business licenses either. It thus seems that women are almost entirely excluded from the formal sector. Informal sector enterprises run by women have suffered under harsh enforcement action recently taken against them in Port Moresby. 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 into the business start up and licensing reform component of the Regulatory Simplification and Investment Policy and Promotion Program to enhance the ability of women to start and run businesses are:
Target 2.1 Increase by 5 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.

**Activities:**
- Ensure operations of the Companies Registry are gender sensitive.
- Undertake outreach activities in respect of business women’s formalization focused on the benefits of the limited liability company form (such as mobile registration units, strengthen Women’s Help Desk at SBDC).
- Ensure all information on registering a business is equally accessible to men and women, and produce a gender sensitive business entry handbook.

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

**Activities:**
- Review companies legislation to ensure best practice legal framework for registration of women’s community groups as companies.
- Review Business Groups Incorporation Act to ensure women can be adequately represented in community companies, and that women’s community groups can register.
- Develop and promulgate basic partnership agreement with civil society and business organizations.

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

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

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

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

Activities:

- Work with Informal Sector Technical Working Group to contribute to development of PNG policy on informal sector, including:
  a) Proposal for a market based solution, providing more legitimate market space for small vendors.
  b) Review of Informal Sector Development and Control Act with transparent rights and responsibilities for market vendors operating in legitimate space, with less emphasis on control.
  c) Review NCDC's policy on betel nut selling to explore ways to enable it to be a legitimate business while balancing health and public order concerns.

Access to justice, the courts, and alternative dispute resolution

The justice system in PNG is male dominated. There is some evidence that women are using Village Courts satisfactorily. Apart from this, women make little use of the formal Court system. IFC provides assistance to Pacific Courts to establish and enhance court-referred mediation as a simple, time and cost efficient method to resolve commercial disputes. Mediation appears to be a form of alternative dispute resolution favored by women, but there are concerns about the quality of mediation at District Court level. Moves to introduce mediation to the National Court are unlikely to have a huge impact on women as they make little use of the National Court (and are likely to make less use of it as its civil jurisdiction is raised). But the National Court mediation does have the potential to provide a flagship for mediation throughout the PNG Court system. The target and activities for incorporation into the ADR component of the Regulatory Simplification and Investment Policy and Promotion Program to improve access to commercial justice for women are:

Target 3.1 20 percent of court-referred mediation users are women and 80 percent of female users are satisfied with mediation service
Measured by: Mediation user statistics and perception surveys.

Activities:

- Develop and promulgate simple contract for use in common commercial transactions for women and provide training on contract law.
- Ensure gender is mainstreamed in ADR reform process as per Table 5.2 in Chapter 5. This includes mainstreaming gender into Mediation Rules.
- Undertake outreach to inform business women of availability and appropriateness of court-referred mediation.

Target 3.2 At least 20 percent accredited mediators are women
Measured by: accreditation records

Activities:

- Train and accredit female mediators.

Access to and enforcement of rights over registered land

Women have very limited rights over the vast majority of land in PNG that is held under customary tenure. Incorporated Land Groups that enable land-owning groups to formalize their interests and use their land for economic exploitation have marginalized women, as women tend to have little say in decision-making and reap few of the benefits. Women are minority users of the formal, registered land system. Land is not currently being addressed under the Government's Regulatory Simplification and Investment Policy and Promotion Program 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:
• Undertake a fundamental review of the Land Groups Incorporation Act to protect the interests of individual members of the group, particularly women. For example, consideration should be given to specifying a minimum female representation on management committees, and ensuring that women’s secondary land rights are recognized in patrilineal systems.

• Ensure that women’s interests are properly recognized on the Land Task Force and that women are involved in the reform process.

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

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<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>ALAC</td>
<td>Advocacy and Legal Advice Center</td>
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<td>AusAID</td>
<td>Australian Agency for International Development</td>
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<td>BWF</td>
<td>Business Women’s Forum</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>CIMC</td>
<td>Consultative Implementation Monitoring Commission</td>
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<tr>
<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>ILG</td>
<td>Incorporated Land Group</td>
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<td>INA</td>
<td>Institute of National Affairs</td>
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<td>IPA</td>
<td>Investment Promotion Agency</td>
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<td>MDG</td>
<td>Millennium Development Goals</td>
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<td>MTDS</td>
<td>Medium Term Development Strategy</td>
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<tr>
<td>NCD</td>
<td>National Capital District</td>
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<tr>
<td>NCDC</td>
<td>National Capital District Commission</td>
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<tr>
<td>NGO</td>
<td>Non Governmental organization</td>
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<tr>
<td>NRI</td>
<td>National Research Institute</td>
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<tr>
<td>NZAid</td>
<td>New Zealand’s International Aid and Development Agency</td>
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<td>PNG</td>
<td>Papua New Guinea</td>
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<td>PPD</td>
<td>Public private dialogue</td>
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<tr>
<td>SBDC</td>
<td>Small Business Development Corporation</td>
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<td>SME</td>
<td>Small and medium sized enterprise</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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<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
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</table>
Chapter 1. Economic, social and cultural framework

Summary

This chapter considers the contribution that women in Papua New Guinea make to the country’s economy on the one hand, and the limited benefit that they have derived from economic growth on the other. It then reviews social and cultural constraints that women entrepreneurs face in PNG.

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 PNG. 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.

Men and women contribute to PNG’s economy in different ways

PNG’s private sector is mainly made up of very small and informal enterprises, with many of them based on family units in village communities. These account for 80 percent of consumption and fixed investment, 95 percent of gross domestic savings, and more than 90 percent of employment. More than 90 percent of private enterprises are micro and informal enterprises with their main economic activity being subsistence and smallholder, market-based agriculture. These microenterprises supply all domestically produced food, about 70 percent of coffee, 65 percent of cocoa and copra, and 35 percent of palm oil. They also dominate the livestock sector – mainly pigs and chickens.11

Men and women participate almost equally in PNG’s labor force (see Table 1.1 below). But women dominate in subsistence employment, and men are more predominant than women in the urban sector.

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Table 1.1. Labor force participation in PNG

<table>
<thead>
<tr>
<th></th>
<th>Women %</th>
<th>Men %</th>
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<tbody>
<tr>
<td>Overall</td>
<td>67</td>
<td>68</td>
</tr>
<tr>
<td>Urban sector</td>
<td>36</td>
<td>58</td>
</tr>
<tr>
<td>Rural sector</td>
<td>71</td>
<td>70</td>
</tr>
<tr>
<td>Subsistence employment</td>
<td>77.5</td>
<td>66</td>
</tr>
</tbody>
</table>

Men and women play different roles in PNG’s economic life (see Table 1.2 below)

Table 1.2. Different economic roles of men and women

<table>
<thead>
<tr>
<th>Economic activity</th>
<th>Women</th>
<th>Men</th>
</tr>
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<tbody>
<tr>
<td>Subsistence / semi-subsistence economy</td>
<td>Gardening (producing food crops), rearing small livestock and poultry, inshore and river fishing, gathering forest products. Provide significant amount of labor in cash crops. Market surplus. 13</td>
<td>Clearing land, fishing and hunting, cash crops 14</td>
</tr>
<tr>
<td>Micro-businesses</td>
<td>Trade stores, second hand clothes stalls, baking, marketing, manufacturing handbags, sugar cane cultivation, fruit and nut cultivation, betel nut growing and retailing.15</td>
<td>Passenger motor vehicle transport, coconut and cocoa production and sales, coffee cultivation, construction, small-scale mining and forestry / logging,17 whole sellers of betel nut.18</td>
</tr>
<tr>
<td>Mining and petroleum</td>
<td>Very few women employed.19</td>
<td>Majority employees are men</td>
</tr>
<tr>
<td>Other commodity sectors (such as palm oil)</td>
<td>Social factors discourage women from participating in other major commodity sectors such as palm oil.16</td>
<td>Majority workers are men.21</td>
</tr>
</tbody>
</table>

The bulk of the informal economy in urban areas comprises petty trading (82 percent), the rest is manufacturing (14 percent), and services (four percent).22 In Port Moresby women dominate in the petty trading sector – selling for example produce from their gardens, fish, betel nut, and clothes. They work in markets, as hawkers, and as mobile food sellers. A recent analysis of a survey of the formal sector23 highlighted women’s predominance in the market trade sector (see Table 1.4 below).

Table 1.3. Female / male informal sector activity

<table>
<thead>
<tr>
<th></th>
<th>% of total women in informal sector</th>
<th>% of total men in informal sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market traders</td>
<td>51</td>
<td>32</td>
</tr>
<tr>
<td>Other form of trading</td>
<td>17</td>
<td>31</td>
</tr>
<tr>
<td>Goods production</td>
<td>22</td>
<td>30</td>
</tr>
</tbody>
</table>

Overall, women’s businesses tend to be smaller and less profitable than those run by their male counterparts (see Table 1.5 below).

12 National Statistical Office, Papua New Guinea 2000 Census National Report, Port Moresby, 2003 The labour force is described as all those over the age of ten years who are economically active, including those employed in subsistence agriculture.
16 NRI Survey.
17 NRI Survey.
21 NRI Survey.
Table 1.4. Female / male owned firm profitability in 2006\(^\text{24}\) (K = PNG kina)

<table>
<thead>
<tr>
<th>Profit per annum</th>
<th>% of women owned firms</th>
<th>% of male owned firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal sector firms:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generated less than K10,000</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>Generated more than K20,000</td>
<td>12</td>
<td>30</td>
</tr>
<tr>
<td>Informal sector firms:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generated less than K10,000</td>
<td>77</td>
<td>38</td>
</tr>
</tbody>
</table>

**Women make a significant contribution to PNG’s economy** …

Although women’s businesses may less profitable than their male counterparts’ their businesses are generating substantial amounts of cash (Box 1.1 below), and their labor (much of it unpaid) is making a significant contribution to PNG’s economy (see Box 1.2 below).

**Box 1.1. Women’s businesses are profitable**

2006 Survey of women roadside sellers in Madang Province of Papua New Guinea\(^\text{25}\)

This was a survey of women roadside vendors in significant markets (of more than ten vendors) along the major highways of Madang Province. Women formed 95–100 percent of sellers in most of these markets. Women earn a weighted\(^\text{26}\) average income of more than three times the national minimum wage. Substantial surpluses are being produced and the subsistence economy therefore is linked into the cash economy. Almost all the sellers were growers of the produce they sold. Items that attracted the highest returns were betel nut and peanut, followed by fruit such as melons and mangoes. A majority of sellers had at least one other source of income, for instance, sale of other items such meat, eggs, kava, prawns, chicken rearing, pig rearing and sales, and manufacture and sale of cooked foods.

2003 Rural Informal Sector Survey\(^\text{27}\)

In four provinces: Central, East New Britain, Morobe, and Western Highlands, average incomes across informal activities were between (PNG kina) 248 kina ($100) and 315 kina ($125) a fortnight. This is more, for example, than the workers in Madang’s tuna factory (who are overwhelmingly women) are paid.

**Box 1.2. Women’s contribution to PNG’s economy**

Women are largely responsible for food production in PNG:

- It has been estimated (using 1996 Household Survey data) that the total value of household food consumption in 1996 was 2,253 billion kina ($1 billion) This suggests that PNG’s national accounts underestimate farming’s contribution greatly.\(^\text{28}\)
- The production of staple foods was valued at 2,850 kina ($1,115) in 2004.\(^\text{29}\)
- In 1995 the Fresh Produce development Corporation estimated total PNG fruit production at 88 million kina and total vegetable production at 54 million kina ($20 million).\(^\text{30}\)

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\(26\) According to market size.


When women earn cash they tend to use it for the family, for example to pay school fees, for food, and clothing. Women are also good savers (see Box 1.3 below). It is said that men on the other hand often spend ‘fortnait’ (fortnightly pay) on a six pack, smoke, and betel nut. In one study 70 percent of male employees spent between 50 and 80 percent of their fortnightly wages on beer.

Box 1.3. Women as savers

PNG Microfinance Limited has about 100,000 customers, of whom almost 50 percent are women. The vast majority of women open savings accounts.

PNG Microfinance Limited has made about 3,000 loans, mainly to men. Loans require cash security of 50 percent of the sum lent.

**Women derive limited benefit from PNG’s formal economy...**

Despite their significant contribution to PNG’s economy, women have derived limited benefit from PNG’s economic growth. Women do not work in key economic sectors. For example in 1990 the number of PNG men employed in mining and quarrying was 3,390. The number of women was 152. Women gain little benefit from royalties from mining and petroleum reserves or from the palm oil sector (see Box 1.4 below). Commercial exploitation of land has been associated with loss of women’s land rights.

Box 1.4. Loose Fruit Mamas

Oil palm is now grown in five areas in PNG with small holders accounting for 43 percent of the areas under oil palm and 33 percent of total production. Men get payment for their collection of fresh fruit bunches, but little of the oil palm income received by the male heads of households has filtered through to women.

Families are issued with cards by the oil palm agricultural extension service and the oil palm company. Men receive the main card, and there is also a ‘mama card’ for loose fruit that women collect from the ground. Sometimes a third card is issued to the household. Payment for the loose fruit goes directly to the mama. The mama card enables women to obtain durable household items and to purchase food and clothing for their families.

However, the real value of the scheme for women has been questioned. Research suggests that the average weekly income from loose fruit cards is less than PNG’s minimum wage, and that it compares poorly with all other income generating possibilities.

Only 20 percent of workers in PNG are employed in the formal economy. Of these, only a third are women. And women tend to be employed in junior positions. Only nine percent of senior managerial and professional posts in the public sector were held by women in 1995, and even fewer women occupy managerial and operational positions in medium to large sized businesses. Women earn less than men – on average just over 70 percent of the male wage in non-agricultural sectors.

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34 See Chapter 6 below on land.
35 See Chapter 6 below on land.
37 Consultative Implementation and Monitoring Council.
Female entrepreneurs in the formal sector are the exception in PNG. Women who have started their own businesses see themselves as the exception and as pioneers. Successful women entrepreneurs tend to be landowners, educated, have supportive husbands and family (or female friends), and have a strong character. Those who attended the Business Women’s Forum held during the mission were nearly all engaged in the service sector, including training, consultancy, florist, pest control, and hairdressing.

...and face challenges in many aspects of their lives

In its recent Report to the UN’s Committee on the Elimination of All Forms of Discrimination Against Women, the Government recognized a number of dimensions to the inequality faced by women in PNG, summarized in Table 1.5 below.

### Table 1.5. Dimensions of inequality faced by women in PNG

| Economic disparities and livelihoods | Gender based impediments to private sector development need to be addressed at the highest policy making levels. Attention needs to be given to women’s entrepreneurship in the informal economy and the marginalization of women from land and resource rights that have increased the feminization of poverty. |
| Status of women | Papua New Guinea has a 2007/8 Gender Related Development Index of 145, the lowest ranking for all Pacific Island Countries, just above Haiti and Sudan. |
| Reproductive Health and HIV/AIDS | Girls between 15 and 19 have the highest rate of HIV/AIDS in the country. Trans-generational infection routes are common and customary practices enhance girls’ and women’s vulnerability. Strategies for changing behavior are essential. |
| Gender based violence | Extreme forms of gender violence are common with half of all reported victims of sexual abuse being under 15 years of age. Efforts to address these issues within Government have been slow due to reluctance by policy makers to acknowledge such issues as public matters. |
| Women’s representation in decision making | Ranked 132 out of 139 countries with only one women representative in National Parliament over the last decade. Lack of women in the public service and the judiciary is notable. Affirmative action policies are necessary. |
| Education, literacy and life expectancy | Girls and women are significantly disadvantaged with the adult literacy rate at 50.9 percent for women compared to 63.4 percent for men. Life expectancy for women is lower than that of men, whereas the reverse is true for most societies around the globe. |

Women are challenged by a male dominated culture...

Women in PNG have a low status. PNG ranks 145 out of 177 countries in UNDP’s gender-related development index. The low status of women is reflected in the country’s exceptionally high maternal mortality rate – one of the highest in the world at 930 per 100,000 live births. Early marriage and childbearing are common. The 1996 Demographic and Health Survey estimated that 20 percent of 19 year old girls had given birth to at least two children. Women have a lower life expectancy than men: the reverse is true for most societies around the world.

- Polygamy is common in PNG, especially in the Highlands. Bride price is also widely practiced, and may account in part of early female marriage – to secure a reasonable bride price. Bride price may encourage a man to feel that he owns the woman and has been identified as a contributor to sexual and domestic violence against women in PNG (see Box 1.5).

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45 The greater the gender disparity in basic capabilities, the lower a country’s gender-related development index compared with its human development index. http://hdrstats.undp.org/indicators/268.html.
Box 1.5. Bride price is identified as a contributor to domestic violence

Jane Ben told the consultation workshop… that men who believed that they owned their wives because they had paid bride price were inflicting serious family and sexual violence in the communities, causing hatred, fear, resentment, and bitterness within families… Ms Ben said police and the clerks of Court at the Court registry counter had always seen victims and survivors of family and sexual violence as inferior, adding that sometimes no attempts were made to help them.

“When you try to seek help from the police, they will say ‘em famili problem na yupela yet i mas stremi long haus’, (it is a family problem and should be settled in your homes)” Ms Ben said.

She said she took refuge with her family for weeks but they had to send her and the children back because of bride price.

Relationships between the sexes in PNG tend to enforce rigid expectations of feminine behavior for girls and women (see Box 1.6 below).

Box 1.6. Men’s expectations about their wives’ behavior

[The man] is head of the family. In Papua New Guinean culture, men are to be the leader in our societies and tribes… Ladies, no matter how important you are at our professional level, when it comes to your home, your man is head of the family… [The] wife encourages and strengthens her husband’s masculine leadership role and must never try to destroy, usurp, weaken, or eliminate it… A man has status among his peers if the wife is seen to have respect for him.

Support his ego. Be submissive to him… [A wife] submits to her husband, not because he (the husband) demands it but because Christ directs her to it in his word…

Extract from an interview with a family counselor of PNG Counseling and Care, published as ‘Things that husbands want their wives to know’ in New Age Woman (a monthly supplement to the national newspaper, The Post Courier, February 2008 pp26-27

This view of women has a direct impact on their ability to do business. Many men’s restrictions on their wives’ and daughters’ mobility limit women’s ability to use their time in the evenings or outside of the home or to travel far from their villages. Their ability to build business relationships can be constrained. For example, success in obtaining a loan is often dependant on building a relationship with bank loans officers. But when a woman meets a male loans officer, she can face cultural problems, with gossip that she is having an affair.

...by violence directed against them...

The incidence of violence against women is exceptionally high in PNG (see Box 1.7 below).

49 Frank R., Bride price contributes to violence in homes, PNG Post Courier, 4 June 2008.
50 Samson, M. Cash Transfers to Improve the Protection and Care of Vulnerable Children and to Empower Families in the Context of the HIV Epidemic in Papua New Guinea, Institute of National Affairs and the Department for Community Development in Papua New Guinea (undated).
52 AusAID, Community Development Scheme, Papua New Guinea Gender Strategy, 2006.
53 Women’s Business Forum and interview with Westpac.
Box 1.7. Violence against women

PNG Law Reform Commission Survey 1992:
• 67 percent of wives had been beaten by their husbands (national average).
• Close to 100 percent of wives in the Highlands were beaten by their husbands.
• In urban areas, one out of every six women interviewed needed treatment for injuries caused by her husband.
• 97 percent of patients treated for domestic violence injuries were women.

PNG Institute of Medical Research 1994 study:
• 60 percent of men interviewed reported having participated in lainap (gang rape) at least once.
• 50 percent of women have experienced forced sex

Rape, forced sex in marriage, adultery, polygamy, child marriages, and women’s difficulty in negotiating safe sex practices result in women and girls being most vulnerable to PNG’s HIV/AIDS epidemic. Women are much more likely than men to be blamed for causing or spreading the disease, and this had led to resurgence in witch-burning in some communities. Government has taken some important steps to address the issues of violence against women (see Box 1.8 below).

Box 1.8. Steps to address violence against women

• Amendments to the Criminal Code and Evidence Act came into force in 2003. Key reforms are making marital rape an offence; improvement of Court procedures protects safety and dignity; and inadmissibility in Court of victim’s previous sexual conduct.
• Police Commissioner Gari Baki has declared war on men who abuse women and has vowed to ensure that perpetrator face the full force of the law. He is reported to have begun with the Royal Papua New Guinea Police Constabulary, by suspending an officer who allegedly beat up his wife.

This level of violence has an economic cost for PNG. Women are constrained in their ability to run their businesses (see Box 1.9 below for example); there are major security issues for women traveling for business purposes; employees are unable to work effectively as the workplace becomes a threatening environment (see Box 1.10 below); and employers need to provide time off for women employees recovering from their injuries.

Box 1.9. Case study: impact of domestic violence on woman entrepreneur

Susan got married when she was 16. She came to Port Moresby to study registered nursing and training. She met her husband at church. She is from Manus province in the north. They got married and had five children. Susan’s husband began to use violence against her early in the marriage. She was beaten and her husband would hold a knife to her throat and rape her. On one occasion her husband took an axe against her and beat her until she passed out. When she came to she found her husband pointing a bow and arrow at her head. She now has scars on her arm and near her left eye from knife cuts.

59 Women’s Business Forum.
Susan has had a number of businesses including a crocodile skin business, second hand clothes, gold trading, and real estate. But when clients phoned her husband would answer the phone and swear at her clients and tell them to go away. Susan was often locked in the house, not allowed out. Her husband would tell her I am a man. I can go out and do whatever I want. You’re a woman, you must stay in the house.

She has been divorced five years. Her husband was a public servant – an inspector.

**Box 1.10. Impact of violence against women in the workplace**

[Violence against women is] very, very common in workplaces in PNG. It’s happening everywhere these days, where the boss says “You must do this” or she’ll lose her job. Even a married woman has to do it, and she can’t tell her husband, because if she does, he will beat her up on the spot.

International evidence suggests that overall, gender-based violence impacts on a country’s economy (see Box 1.11 below).

**Box 1.11. International evidence: economic impact of violence against women**

A World Bank Report on gender-based violence suggests that lost wages due to family violence amounted to two percent of GDP in Chile and 1.6 percent in Nicaragua.

Women who depend economically on men are less able to end abusive relationships. International experience suggests that women who have authority and power outside the home experience lower levels of abuse. On the other hand, in the short term, there is a risk that enhancing women’s economic empowerment may put them at risk of increased violence if measures to address this are not put in place.

...by limited ability to control business income

Business success and the rewards it brings are traditionally viewed as community goods in PNG. While this can sometimes be a positive force (see Box 1.12 below), on the other hand this can make it difficult for women in PNG to retain control over their business income, with husbands assuming control of any significant financial resources. The wantok system also impacts strongly on income and resource allocation and control, with male relatives such as husbands, fathers, brothers, and uncles requesting or demanding female relatives to hand over resources.

**Box 1.12. Men’s attitudes to women’s businesses**

An evaluation of grants given to women’s projects through an AusAID program noted that:

[When women’s enterprises succeed] it is the man as well as the women who gain in prestige... In Western cultures responsibilities, prestige, and rewards are an individual thing whereas in PNG cultures the collective psychic is all pervasive... The evaluation team noted that, in all the projects visited, the men attended and gave outspoken support for the women.

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61 AusAID, Violence against women in Melanesia and East Timor: Building on Regional and Promising Approaches, 2008.
64 AusAID, Community Development Scheme, Papua New Guinea Gender Strategy, 2006.
65 Aitsi, L. An Analysis of the Efficient Delivery, Effectiveness and Impact of Community Development Scheme Funded Gender and Equity Sector Activities.
Women in PNG are marginalized in decision making. Only four women have been elected to the national Parliament in the 33 years since independence. Today only one out of 109 seats is held by a woman, Dame Carol Kidu, who is also the first female cabinet minister. Dame Carol's background is unusual – originally from Australia and married to the Chief Justice of PNG. A Bill has recently been introduced to reserve three Parliamentary seats for women, with the women being selected by the Prime Minister. In March 2009, after an extensive selection process, the Bill was presented to Parliament nominating three women for the reserved seats. It was defeated, and shortly after this Dame Carol announced her intention to not stand for Parliament again in 2012 (see Box 1.13 below).

Box 1.13. Radio Australia Report: Veteran PNG woman MP to step down

Papua New Guinea’s only female Parliamentarian, the Minister for Community Development, Dame Carol Kidu, has announced she will not stand again in 2012, reports Radio Australia. Dame Carol said her decision to quit politics makes it imperative that the bill to nominate three women to Parliament is passed in the May session of Parliament. The motion, which was being brought forward by Prime Minister Sir Michael Somare, and strongly supported by Dame Carol, was defeated, she says, through a lack of understanding from the opposition and the National Council of Women.

Dame Carol said her workload was too great and she needs more women in Parliament to help her, not just with gender issues but also poverty alleviation and a calendar of social reforms. Dame Carol said she has never regarded herself as a career politician and does not want her professional career to end in politics, and is committed to leaving in 2012.

Dame Carol was born in Queensland, Australia. She moved to Papua New Guinea after marrying Sir Buri Kidu, who was then Chief Justice. Sir Buri died in 1993. Dame Carol was a teacher before entering politics in 1997. She is the first female cabinet minister in Papua New Guinea, serving since 2002 in the community development portfolio. But Dame Carol said times are changing and doesn’t care too much for the way campaigns are now being run.

The position is rather better at local Government level, where women serve either through election or nomination. In 2006 there were 12,579 women councilors. This is largely due to the 1995 Organic Law on Provincial and Local-level Government which provides for a nominated woman member (the President of the local Council of Women) to serve at this level. In addition, each Ward Development Committees has two positions reserved for women. But these Committees have not been functional.

At the community level it is frequently the men who make decisions (see Box 1.14 below).

Box 1.14. Decision-making at the community level

In engaging with communities, AusAID’s Community Development Scheme staff note that women do not attend community meetings with them to discuss projects or, if they do, they will be in the background and rarely speak out. But in some communities women are outspoken and participate openly. In one case, the men of the village met with project staff and arranged training in improved agricultural production techniques. On the first day of the training the men attended to bring their wives and then left.

Possible reasons why women do not participate in public meetings include:

- Women’s time is taken up with reproductive and productive tasks and thus they have less time to attend community activities
- Women may feel it is men’s business to talk to outsiders
- Culture and tradition may dictate that women should respect their men and therefore not speak out.

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66 Pacnews, Port Moresby, 31 March 2009.
68 Sources: Martin Syder, PNG Democratic Governance Transition Program, and AusAID, Community Development Scheme, Papua New Guinea Gender Strategy, 2006.
Traditionally, although men played a leading role in decision-making, there was a role for women especially in matrilineal cultures (see Box 1.15 below). But traditional, communal ways of decision making break down with the cash economy and women tend to be dominated by men in decision making processes.69

Box 1.15. Women’s traditional role in decision making

**Women’s role in consulting ancestors**70

Women play an important but different role to men in traditional decision-making. Men make ‘political’ speeches and debate issues publicly and ultimately ‘announce the decision’ – decisions often reached through consensus following long, but controlled, discussions… The process of discussions …often involved traditions… These traditions, or ‘the way it is done’ are the providence of women. [They] often include inputs from the spirits of deceased ancestors which are of equal import as the actual decision making process itself… If the presentation (usually orchestrated by the women) is not done properly, then [the] entire process is voided, even worse, spirits and individuals are insulted…

**Big man / big woman system**71

[Traditionally] indigenous authority and leadership systems evolved around a big man system whose achieved position was the result of [skills such as] physical strength and endurance, organizing ability, and oratory. Variations of a big woman situation also existed where women held rights to land and passed it from mother to daughter in parts of the Island Region and eastern coast of the Southern Region. Even within matrilineal societies, a woman’s brother spoke for and made all decisions pertaining to land. In one or two matrilineal societies women had equal authority in participation as host of important ceremonies, land mediation, and the authority to trade in her own right.

...by the double time burden...

Women in PNG on average work nearly twice as many hours as men (including household chores).72 Women work on multiple tasks, carrying out the majority of reproductive and productive work. The HIV/AIDS epidemic may mean that women as primary carers of sick family members have even greater pressures on their time.

...by poor education...

Female illiteracy in PNG militates against women’s economic empowerment.73 Nearly 50 percent of Papua New Guinean women are illiterate, compared to fewer than 40 percent of men.74 Worryingly, this gap is widening.75 The gender gap in primary school enrolments is also widening: the ratio of girls to boys enrolled in primary school in 1999 was 0.92, while in 2004 it was 0.89.76

...and by corruption

Corruption is a problem for everyone in PNG. The country ranks 152 out of 184 on Transparency International’s Corruption Perception Index for 2008. There is anecdotal evidence77 that women are seen as ‘soft targets’ and are more likely to be asked for bribes than their male counterparts. For example women complain that staff in Government agencies ask them to sponsor their child to attend school, as a bribe to facilitate the transaction.

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69 Aitsi, L. An Analysis of the Efficient Delivery, Effectiveness and Impact of Community Development Scheme Funded Gender and Equity Sector Activities, 2006.
70 Aitsi, L. An Analysis of the Efficient Delivery, Effectiveness and Impact of Community Development Scheme Funded Gender and Equity Sector Activities, 2006.
73 Chairman, Small Business Development Corporation.
77 Including from the Women’s Business Forum.
Chapter 2. Legal and policy framework

Summary

This chapter sets out Papua New Guinea’s international commitments and Constitutional guarantees in relation to gender equality. The chapter reviews statute laws in PNG that discriminate against women, particularly in relation to property rights, vital for women’s economic empowerment. Finally, the chapter considers PNG’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 three.

PNG has entered into international commitments for sex equality

The Government of PNG has made a number of international commitments in relation to gender equality, including the ratification in January 1995 of the important Convention on the Elimination of All Forms of Discrimination against Women (Box 2.1 below).

Box 2.1. Key international commitments to gender equality made by PNG

- 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 for Action
- The Millennium Development Goals
- The Revised Pacific Platform for Action on Advancement of Women and Gender Equality 2005–2010
- Equal Remuneration Convention
- Discrimination (Employment and Occupation) Convention.

The Government submitted its Combined Initial, Second, Third, and Fourth Report CEDAW Report to the United Nations in 2008, and consultations are currently being undertaken by civil society in relation to a shadow report. The report states that despite PNG being a signatory to CEDAW, it can be characterized as a patriarchal society in which women continue to face, at times, severe inequalities in all spheres of life: social, cultural, economic, and political.
The Constitution guarantees sex equality, but customary law tends to limit such guarantees…

The Preamble to PNG’s Constitution calls for equal participation by women citizens in all political, economic, social, and religious activities. It also recognizes the equality of citizens and specifically provides that all citizens have the same rights, privileges, obligations, and duties irrespective of race, tribe, place of origin, political opinion, color, creed, religion, or sex.79 However, the Constitution does not contain a definition of discrimination or a specific anti-discrimination provision. Further as CEDAW has not been given any status under the Constitution or an Act of Parliament, it has no domestic effect. Cabinet has decided to introduce an organic law on gender equity into PNG, although no action has yet been taken on this.

…by giving legal status to customary law…

The Constitution supplies PNG’s underlying law and provides for its development by the Courts.80 The Constitution states that customary law applies in PNG unless it is inconsistent with a written law or with the Basic Rights and Basic Social Obligations enshrined in the Constitution.81 As well as in the Constitution, the role of custom as a source of law has been recognized and legislated for in particular statutes. For example the Customs Recognition Act 1963 provides for the Courts to take into account issues of custom when determining sentence. Particular elements of custom law which tend to discriminate against women include:

- Bride price: as discussed in Chapter 1, this is a very common practice. Women who divorce their husbands in custom are usually expected to pay back the bride price and Village Courts have made such orders.82

- Polygamy: as discussed in Chapter 1, this is particularly common among leaders from the Highlands provinces. It is regarded as valid by the Marriage Act which allows customary marriages in accordance with the custom prevailing in the tribe or group to which the parties or either of them belong or belongs.83

- Witchcraft and sorcery: accidents, illnesses, and misadventures can be blamed on witchcraft and sorcery. Older women are frequently blamed for this and such cases are frequently heard in the Village Courts (see Box 2.2 below)

Box 2.2. Women are blamed as witches84

Many people believe in the power of ancestral spirits to affect the living, and in the power of sorcery (both good and bad) as it often explains the inexplicable – with death and mysterious illness sometimes blamed on evil curses and suspected sorcerers often blamed and then killed. The number of female victims appears to have increased in some areas, usually elderly women of little economic value to the village. In 2007 women in the highlands were murdered as sorcerers because they were believed to have caused a fatal road accident.

Village Courts and Local Courts usually give effect to customary law. They frequently award compensation payments (or imprisonment in default of payment) in cases of adultery, sorcery, or theft. Where cases have been appealed, the National Court has had the opportunity to strike down decisions as being inconsistent with Constitutional rights (Box 2.3). But in practice very few decisions of Village or Local Courts ever reach the National Court.

Box 2.3. Cases decided by the National Court upholding Constitutional rights

Re Thesia Maip: The National Court recognized that a woman’s Constitutional right to personal liberty had been violated by a Village Court and refused to uphold an order for compensation for adultery.

M and S had lived together for two years before S was arrested and taken to Bougainville and imprisoned. S escaped in 1990 and came to the village to look for M. By that time M was with another man. S took M to the Village Court. He claimed that M was his wife and had left him for another man and claimed compensation. This discriminatory

79 Section 55 of the Constitution.
80 Section 20 of the Constitution.
81 Section 3(1) and section 4(2) of the Underlying Law Act 2000.
82 Re Raima, Unreported National Court judgment, Mt Hagen WHP, 15 April 1991.
83 Section 3 of the Marriage Act.
84 CEDAW Report p87.
practice was condoned by the Village Court which ordered M to pay 700 kina ($280) compensation. This was later reduced to 300 kina ($120) by the Local Court Magistrate. Upon failure to pay this compensation, M was imprisoned for 30 weeks by the Local Court. M filed a Constitutional complaint invoking the jurisdiction of the National Courts. The National Court decided that M and S were not married in custom (or according to a religious or civil ceremony). Rather they were in a casual non customary relationship and the customary practices did not apply.

**Re Yongo Mondo:** The National Court again recognized that a woman’s Constitutional right to personal liberty had been violated by a Village Court and refused to uphold an order for compensation for return of bride price. A woman, Y, was held on a warrant for 84 weeks imprisonment by virtue of an order of the Village Court because she had failed to pay compensation for her bride price after she left her husband and returned to her village. The National Court held that the imprisonment of Y was unlawful. Even though the Village Court had power to order imprisonment for failure to obey an order for the payment of compensation, it was subject to the Constitution which states that no person shall be deprived of their liberty except under certain exceptions and allows the National Court to enquire into the detention of persons held in custody.

**Raramu v Yowe:** The National Court refused to recognize a customary practice which breached the Constitutional guarantee of the inherent dignity of humankind and equality. R, a widow, was accused of having a relationship with a man. The customary practice of the area did not allow widows to have subsequent relationships. The Village Court sentenced R to six months imprisonment for this conduct. She was held in prison with her four month old child. The National Court refused to recognize such a customary practice because it was oppressive of and discriminatory against women.

...and formal statute law contains provisions that hinder women’s full economic participation

Statute law in PNG falls short of giving women equal property rights with men. Robust property rights provide the basis for economic activity, including the ability to accumulate capital and obtain credit. The paragraphs below outline how PNG’s framework in relation to marriage, divorce, and inheritance hinder women’s full economic participation. Employment law is also discussed. Table 2.2 at the end of the chapter provides a summary of provisions that hinder women.

**Women’s property rights on marriage**

PNG law recognizes both customary and formal systems of marriage. Although customary marriage is recognized, a Court can stop a customary marriage where the woman objects and excessive pressure has been brought to bear to persuade her to enter into the marriage, or where it would be a hardship to compel her to conform to custom. But although this protection exists in the law, it is rarely used in practice. Child betrothal and arranged child marriages are common. PNG law requires a girl to be 16 years old before she can marry but, in reality, many girls are married before they turn 16.

The Married Women’s Property Act 1953 gives women who are formally married the right to own property in their own name. But this law does not apply to the vast majority of women who are married under customary law. De facto marriages have no legal basis and women who are deserted have no financial claim for themselves or their children.

**Women’s property rights on divorce**

Fault-based divorce has been abolished in most countries today but still exists in PNG. Evidence of fault includes adultery and desertion. The Government’s CEDAW Report recognizes that the operation of fault-based divorce tends to discriminate against women, inhibiting their ability to leave abusive marriages (see Box 2.4 below). Moreover, the law does not provide clear principles and protection for women as far as maintenance, settlement of property, and custody in the event of divorce are concerned. Rather the process is highly dependent on the discretion of the Court, which will take into

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85 Section 3 of the Marriage Act 1963.
86 Section 5 of the Marriage Act 1963.
87 Section 17 of the Matrimonial Causes Act.
consideration earning capacity, conduct of the parties, and all relevant circumstances.88

Box 2.4. Discriminatory laws relating to divorce and property89

The whole body of family law relating to divorce, separation, division of marital property, maintenance orders, and custody of children is both confusing and discriminatory against women, making it very hard for women to leave abusive marriages; and fault-based divorces, which require proof of a matrimonial offence such as desertion or habitual rape, place women in the difficult position of having to provide evidence of situations that may be humiliating, embarrassing, or that may interfere with their dignity and privacy.

Women’s property rights on widowhood

The Wills and Probate Act 1966 states that, where there is no will, it is custom law that governs the distribution of a deceased person’s property.90 Customary inheritance practices tend to exclude women – particularly in relation to land which is mainly held on a patrilineal basis, with men being the decision makers about land ownership and management. The issue of land is discussed in more detail in Chapter six below.

Employment law

PNG’s Employment Act makes it an offence to discriminate against a woman in the workplace including in relation to pay.91 But the law also prohibits women from working in certain positions at night, and from working underground or in jobs that involve heavy labor.92 There is limited provision for maternity leave and pay – public servants are eligible for 14 weeks paid maternity leave, of which six weeks are on full pay whereas women in the private sector are eligible for 12 weeks unpaid leave.93 There is no general provision outlawing sexual harassment in the workplace. As described in Box 1.10 in Chapter 1 above, violence in the workplace is a serious problem for female employees.

Government promotes the empowerment of women, but the institutional framework is weak

Government makes it clear in its Medium Term Development Strategy (MTDS) that the empowerment of women is key to PNG’s development: The success of the MTDS will be constrained if the issues of gender equality and empowerment of women are not addressed. Much work is still required to improve women’s participation in decision-making at all levels. But in its recent CEDAW Report94, Government recognized that it has no overall strategy for implementing gender mainstreaming across its operations. It noted the lack of strategies and competent structures for women’s empowerment and gender equality resourced to carry on the task of institutionalizing gender in Government institutions, systems, processes, and programs.

Currently the Office for the Development of Women in the Department for Community Development has the mandate to lead on strategic thinking on women’s development. The Office commissions research and formulates gender policy, operating under the mission statement that it will enable increased participation by women as both beneficiaries and agents in the social, economic, political, and cultural development process for improvement in the quality of life for women and all.

The intention is to relocate this Office to the Prime Minister’s Department or possibly to constitute it as a stand-alone statutory authority reporting to the Prime Minister, with the aim of enhancing its status and ability to influence policy across Government.

88 Sections 73, 74 and 75 of the Matrimonial Causes Act.
89 CEDAW report 167.
90 Wills and Probate Act 1966.
91 Section 97 of the Employment Act 1978.
93 Section 100 of the Employment Act 1978.
Table 2.1. Key statute laws in Papua New Guinea that hinder women’s full economic participation

<table>
<thead>
<tr>
<th>Area of law</th>
<th>Statutory provision</th>
<th>The practice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Property rights:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marriage</td>
<td>Marriage Act 1963 recognizes formal and customary marriages. The Adultery and Enticement Act 1988 provides for the restitution of conjugal rights.</td>
<td>Although the minimum age (for both males and females it is 16), many customary marriages involve girls younger than 16. In formal marriages a woman can own property. However this is less likely to be the case in customary marriages where men control assets making it difficult for women to access them for personal or business purposes. As customary marriages are recognized, discriminatory practices including bride price and polygamy are legitimized. The provision for the restitution of conjugal rights can operate against women, forcing them to return to their husbands against their will.</td>
</tr>
<tr>
<td>Divorce</td>
<td>Matrimonial Causes Act 1963 empowers Courts to determine divorce, property distribution, maintenance, and custody.</td>
<td>Fault-based divorce places women in the difficult position of having to provide evidence of situations that may be humiliating. The division of the property is left to the Courts to decide, which can cause uncertainty for women. The Court examines earning capacity and the conduct of the parties which again places pressure on women to bring embarrassing evidence to the Courts. In practice, marriage break up are largely dealt with by Village Courts applying customary law, which tends to deny women rights to property on the break up of the marriage.</td>
</tr>
<tr>
<td>Inheritance – in the absence of a will</td>
<td>Wills and Probate Act 1966 provides for the application of customary law where there is no will.</td>
<td>Customary inheritance law is based on patrilineal lines and can discriminate against women. Inheritance to customary land (which constitutes 97 percent of PNG’s land) is also based on customary laws.</td>
</tr>
<tr>
<td><strong>Employment rights:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employment</td>
<td>Employment Act 1978 outlaws discrimination on the basis of sex and provides for equal pay.</td>
<td>Women are prohibited from working in certain positions at night and from working underground or in jobs that involve heavy labor. There is no general provision prohibiting sexual harassment in the workplace. Maternity leave is unpaid in the private sector.</td>
</tr>
</tbody>
</table>

95 Section 98 and 99 of the Employment Act 1978.
Chapter 3. Public private dialogue

Summary

There is no formal organization in PNG that represents the interests of the vast majority of business women in the country, who are small-scale agricultural producers and/or petty traders. Women’s voice, at present, 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 PNG are limited.

Targets for incorporation in the PPD component of the Government’s IFC supported Regulatory Simplification and Investment Policy and Promotion Program 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 PNG, 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
**Target 1.1:**
Improved policy dialogue on investment climate reform for women’s economic empowerment

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 PPD structures (Task Force and Working Groups). If necessary revise ToRs.
**Responsibility:**
Public Private Dialogue Task Force

**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 (Task Force and Working Groups) does not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance.
**Responsibility:**
IFC Office

**Tool 1:**
Gender Working Group ToRs

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

**Baseline:**
Proportion of members representing business women’s interests on Public Private Dialogue Task Force and Working Groups
Number of policy papers featuring women’s economic empowerment considered by Cabinet
Public Private Dialogue structures are in place in PNG

Public private dialogue is recognized in PNG as an important mechanism for driving forward private sector development policy reforms. A PPD forum includes representatives of both the public and private sector. Within Government, the key bodies responsible for driving forward reform of PNG’s investment climate are the Treasury and the Department of Commerce and Industry. Dialogue between these bodies and the private sector is structured around the following forums and organizations:

Key private sector organizations:

- The PNG Business Council is the apex organization for the private sector and Government. It is the prime body for the private sector to discuss policy issues with Government.
- The Consultative Implementation & Monitoring Council (CIMC) is an independent NGO which aims to engage with Government on policy issues. It is an effective forum for facilitating dialogue and consultation between the Government, private sector, and civil society. CIMC has recently produced a policy paper on the informal sector for Government’s Informal Sector Working Group (see below).
- The Institute of National Affairs (INA) is a private sector funded think tank.

Key PPD forums:

- The National Working Group on Removing Impediments to Business and Investment (the Committee) is a forum designed to foster public private dialogue on policy matters and regulations that impact on the business community. The Committee was established in 2002 as an initiative of the former Chief Secretary Sir Barry Holloway to formalize public private dialogue at the National Government level in PNG. Membership of the Group is set out in Box 3.1 below. Successes of the Committee include changes to Government policy on dual citizenship and permanent resident status for expatriates. The Committee is involved in the preparation of submissions for Cabinet on reforms. It is able to submit these directly to the Central Agencies Coordinating Committee (the senior public officials committee that vets submissions before they are put to Cabinet). The Committee stopped meeting for a period, but a new Acting Chief Secretary convened a meeting in September 2009 and it is hoped that regular meetings of the Committee may resume soon. If meetings resume, this may be a suitable body for ongoing public private dialogue that can drive the reform agenda set out in IFC’s Regulatory Simplification and Investment Policy and Promotion project.

Box 3.1. Membership of National Working Group on the impediments to business and investment

On the public sector side, the Committee consists of: the Chief Secretary; Secretary of the Treasury; Secretary for Finance; Secretary for National Planning; Secretary for Commerce and Industry; Secretary for Labor; Attorney-General; Commissioner-General of the Internal Revenue Commission; Director of Immigration; and MD of the IPA.

On the private sector side, the Committee includes: PNG Business Council; Chamber of Commerce; Rural Industries Council; and the Institute of National Affairs.

- The Informal Sector Working Group is an inter-departmental, Ministerial committee charged with formulating a policy framework for the informal sector in PNG. The committee includes Ministers of Trade and Industry, Finance, Treasury, and Labor and Industrial Relations.

There is limited public sector representation of women

As discussed in Chapter 2 above, at present, the Office for the Development of Women in the Department for Community Development has the mandate to lead on strategic thinking on women's development. The Office commissions research and formulates gender policy, operating under the mission statement that it will enable increased participation by women as both beneficiaries and agents in the social, economic, political, and cultural development process for improvement in the quality of life for women and all. But, as previously discussed, the Department has limited status and ability to influence policy across Government. Currently, the Ministry of Finance, Treasury nor the Ministry of Commerce and Industry has a gender policy nor supports any specific programs targeted at women’s economic empowerment.
Women are not effectively represented in private sector policy development

More than 70 percent of businesses in PNG consider that Government’s process of consultation with the private sector is inadequate. Because the vast majority of women’s businesses in PNG are small and operate in the informal sector, their interests are especially poorly represented in relation to Government policy. The recent informal sector petition to Government in relation to NCDC’s control of informal sector operators (see Chapter 4) was an exception. Women’s interests are not represented on the National Working Group on Impediments to Business and Investment. There is a Business Women’s Association, but this represents formal businesses and its focus is on mutual support and on fund-raising for scholarships, rather than on policy advocacy and public private dialogue. As described above, business women’s interests are not satisfactorily represented within the public sector either.

Under its Regulatory Simplification and Investment Policy and Promotion Program, the Government supported by IFC is proposing to support PPD structures in PNG. These will comprise a PPD Task Force under which will sit Working Groups to consider particular regulatory and investment policy and promotion issues in depth (see Figure 2.1 on the following page). These new structures present an opportunity to bring business women’s voice into PNG’s policy making and planning process 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 existing or newly established PPD structures are assessed to have inadequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance, a Gender Working Group will be established. The Gender Working Group would be a policy dialogue body within PNG’s public private dialogue structures. It will comprise 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.

96 Asian Development Bank 2006 citing a survey conducted after the 2007 election by the Institute of National Affairs.
Figure 3.3 Regulatory Simplification and Investment Policy and Promotion Program: PPD Structure

PNG PPD Task Force

- Working Group
- Working Group
- Gender Working Group (GWG)
  Role: policy development

Secretariat

- International Consultant
  IFC funded technical advice

- Investment Climate Gender Consultant
  IFC funded advice and assistance to Secretariat in relation to GWG;
  Co-ordination and support to BWF

Business Women’s Forum (BWF)
  Role: training, regional networking
Target 1.2:
Improved legal framework for women’s businesses

This section notes key issues in PNG’s legal framework for female businesses, and highlights how Target 1.2 and its associated activities would address this. Figure 3.4 below lists three activities to achieve this target along with tools in support. (Tools can be found at the end of the Report).

Figure 3.4. Target 1.2: Activities and Tools

The Legal Framework hinders women’s full economic participation

As discussed in Chapter 2 (Legal and Policy Framework) above, a number of statute laws in PNG discriminate against women or do not adequately protect their interests. Table 2.1 and Tool 4 summarize key statutory provisions in PNG that require reform. 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 – will improve the legal framework within which women-headed businesses operate in PNG.
This section reviews opportunities for training and networking for business women in PNG 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

**Activity 1.3.1:**
Continue regular PNG Business Women’s Forums (with open invitation to business women ranging from the informal sector through to big business) as commenced by IFC in March 2009, in partnership with local organizations and existing business women’s associations.

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

**Activity 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.

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

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

**Means Of Verification:**
Perception surveys

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

**Tool 3:**
Investment Climate Gender Consultant ToRs and initial workplan

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

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

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**Business women have limited networking and training opportunities**

The National Council of Women can be considered as the key representative body for women in PNG. But it has weak networks and limited influence (see Box 3.3 below).
Box 3.3. National Council of Women

The National Council of Women is composed of 20 Provincial Councils of Women with an affiliation of over 44 major national and provincial women’s groups. It was formed in 1975 and was recognized as a legal entity in 1979 by an Act of Parliament. Most of its members are rural women. Church and other NGOs have affiliated to the Council. Its extensive network of fairly autonomous Councils at the Provincial, District, and local-Government level have varying degrees of capacities and impact.97

Community-based women’s groups feed into the local level groups. Yet the networks are weak due to poor communications and transportation infrastructure, lack of resources, and internal conflicts. Each level of the women’s Council is meant to receive financial support from their respective level of Government, but often the amount promised is not received.98

Overall the National Council for Women is not considered an effective voice for women’s needs.99

As well as the structure provided by the National Council of Women, there are a number of grass root organizations that work with women at the community level. These include:

- Church groups: churches often have their own women’s chapters or women’s fellowship groups which sometime focus on traditional income generating activities such as cooking and sewing (see Box 4.3 in Chapter 4 below for an example).100

- MFIs and finance groups that support women in business, for instance, AusAID’s Community Development Scheme supports North Sibu Rural Women’s Finance Project.

- Donor project, in particular AusAID’s Democratic Governance Transition Program,101 which gives grants to community groups, churches, NGOs and similar. It has a reach across PNG with a provincial office.

- Training organizations such as the Government-run Small Business Development Corporation (see Box 4.2 in Chapter 4 below) and GiniGoada Bisnis Development Foundation (see Box 3.4 below).

Box 3.4. GiniGoada Bisnis Development Foundation102

GiniGoada started as an urban youth empowerment program in 2002, as an initiative of Dame Carol Kidu. The aim of GiniGoada is to improve the income earning opportunities of disadvantaged groups. The Chairman of the Board of Directors is David Conn, who is also the President of the Chamber of Commerce. They run short term skills training for women and men in skills empowerment to engage in the informal economy and sourcing formal jobs. Examples of training undertaken includes basic cooking, sewing, basic electronics, fish handling and processing, outboard motor skills, food processing, art and craft, bilum making, and trade weaving.

They have strong ties with microbanks, particularly PNG Microfinance. They are also working to link with Nationwide Microbank.

100 AusAID, Community Development Scheme, Papua New Guinea Gender Strategy, 2006.
101 And its earlier form, as Community Development Scheme (see http://www.dgtp.org.pg).
102 Gabriel Iso, Foundation Manager.
They run a one day business awareness course. This covers what is a business, what qualities do you need to get into business, time management, setting goals, what makes a business successful and how do you use the wantok system in a positive manner. They do this at the community level, where they will go into a village, the church provides the venue, and brings in 20–50 attendees. All courses are in Port Moresby. Most people start off with one day course. Increasingly women are doing men-oriented courses and vice versa – traditions are being waived. They have not done any training on legal requirements to formalize. They would like to do this when they see more people getting the basic things right in running their informal businesses.

Funding for GiniGoada is entirely from donors – including NZAID, AusAID (PNG Democratic Governance Program), British High Commission, France, Austria.

In order to strengthen business women’s networking and training opportunities IFC intends to support the development of a network of business women in PNG – the PNG Business Women’s Forum. Box 3.5 below sets out the key features of this initiative.

**Box 3.5. Business Women’s Forum**

IFC facilitated a first Business Women’s Forum (BWF) meeting in March 2009. The meeting was an opportunity for business women to network and to discuss common concerns. The intention is now to strengthen and institutionalize this initiative.

The BWF will comprise a network of women entrepreneurs, both formal and informal, who will meet on a monthly basis for networking and to receive training on business issues, particularly related to business formalization.

The intention is that the BWF will be supported by, and linked to, existing business women’s associations and other relevant groups, such as microfinance institutions. The aim is for about 50 women to be targeted to attend each training/networking meeting. The Forum will develop its own governance structures (for example a small board) and this will, during the pilot phase, be supported by an IFC funded consultant who will be locally recruited. If there is ongoing appetite among 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 PNG 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 Business Women’s 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 the PNG Business Women’s Forum, “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 (including the wantok system)
• 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

The vast majority of formal sector enterprises in PNG are run by men. Despite a Companies Act that is broadly in line with international best practice, few women-owned businesses are registered. The same applies to business names registration. Few women have business licenses either. It thus seems that women are almost entirely excluded from the formal sector. Women’s enterprises in Port Moresby face the additional challenge of action being taken against informal sector operators by the city authorities.

Targets for incorporation in the business entry and operations component of the Government’s IFC supported Regulatory Simplification and Investment Policy and Promotion Program to enhance the ability of women to start and run businesses are:

- Increase by 5 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
- Increased percentage of female-headed businesses holding appropriate sectoral licenses, and
- Reduced harassment of informal sector traders.

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 5 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
TARGET 2.4: Increased % of female-headed businesses holding appropriate sectoral licenses
TARGET 2.5: Reduced harassment of female informal sector traders
**Target 2.1:**

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

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**

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**Activity 2.1.1:**
Ensure operations of Companies Registry are gender neutral.

*Responsibility:* Business Entry Working Group, Gender Working Group, Business Registration and Regulation Division of IPA

**Activity 2.1.2:**
Undertake outreach activities in respect of business women’s formalization focused on the benefits of the limited liability company form (for example, mobile registration units, strengthen Women’s Help Desk at SBDC)

*Responsibility:* Business Women’s Forum Business Registration and Regulation Division of IPA SDBC

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

*Responsibility:* Business Entry Working Group Gender Working Group Business Women’s Forum Business Registration and Regulation Division of IPA SDBC

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

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

**Tool 7:**
Business Owners’ Survey

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

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

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

**Tool 11:**
Women’s Consultation / Training Checklist (for handbook development)
The vast majority of formal enterprises are run by men

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 also 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 means 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 PNG 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.

Currently over 90 percent of businesses in Papua New Guinea are informal. Of businesses that are in the formal sector, the vast majority are run by men. The Internal Revenue Commission estimates that 90 percent of businesses registered for tax are run by men. Women business owners in PNG are much more likely than men to own completely informal enterprises. 61 percent of women business owners operate informally, compared to 45 percent of male business owners. A gender gap exists in all regions of the country and in most sectors, especially in goods production and market trading.

Few women register their businesses as companies

Since the introduction of a simplified registration regime under PNG’s Companies Act 1997, the number of companies registered has increased. But the vast majority of registrations are in respect of companies with male directors and shareholders. Company directors are nearly all men. The Registrar estimates that women signatories, as members of boards of directors or as company directors, would be on average less than three persons in every ten applications lodged in a week.

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.

PNG’s Companies Act, based on the New Zealand Act is based on the ‘think small first’ principle. In other words it recognizes that the vast majority of businesses are small family run or sole owner businesses and provides a regime that is applicable to them. The Act enables one-person companies. Registration and ongoing compliance is thus simple and streamlined (see Box 4.1 below).
Box 4.1. Company registration procedures

The application form for company registration is simple and accessible, and the registration fee is 450 kina ($180). A schedule of fees is readily available. The Companies Registry is at the Investment Promotion Authority (IPA). The registration office in Port Moresby is on the fourth floor of a tower block. It is well organized with a customer help desk. Many of the staff (including the front office staff and the Registry supervisor) are women. Receipts are given when the registration fee is paid. IPA discourages personal callers at the Registry preferring application to be made by post. An online registration service has recently started. IPA has helpful brochures on display about its work and on the registration process. They undertake outreach programs to encourage businesses to register including on provincial radio stations and through workshops. They have a complaints system. Outside Port Moresby, IPA has a Highlands Registration Office at Mount Hagen, one at Lae, and one at Buka.

Company formation has been made as simple and straightforward as possible because limited liability companies are the best legal form for growth and development. Their advantages include: they shield the owner from the company's creditors should the business fail, thus encouraging risk taking; their share structure enables new investors to join the enterprise; and by having their own legal status separate from their owner/s they facilitate the separation of business and personal assets. Limited liability companies thus have the potential to benefit business women as well as business men in PNG.

The relatively straightforward procedure for company registration is reflected in PNG’s Doing Business ratings for the time and cost of starting a limited liability company (see Table 4.1 below), although there is room for improved administrative processes to speed the process up, especially in comparison with the best performing country in the Pacific region, New Zealand.

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

<table>
<thead>
<tr>
<th>Indicator</th>
<th>PNG</th>
<th>New Zealand</th>
<th>East Asia and Pacific</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedures (number)</td>
<td>8</td>
<td>1</td>
<td>8.1</td>
<td>5.7</td>
</tr>
<tr>
<td>Duration (days)</td>
<td>56</td>
<td>1</td>
<td>41.0</td>
<td>13.0</td>
</tr>
<tr>
<td>Cost (% of income per capita)</td>
<td>20.5</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>0</td>
<td>0</td>
<td>21.3</td>
<td>15.5</td>
</tr>
</tbody>
</table>

The reasons why women are not taking advantage of the corporate form in PNG are not clear, but could include:

- Women’s enterprises tend to be smaller than men’s. Most women are engaged in petty trading and small-scale marketing. Their small profits may not merit the time and cost involved in registering a company.
- Anecdotal evidence indicates that women are intimidated by the IPA office. The IPA is located in a high rise building in the central business district, which is an area that female owners of SMEs indicated they are uncomfortable approaching. They do not know what would be involved in going to the IPA, and are uncertain if they would be welcome. They therefore do not approach it. The ‘Starting Your Business’ course run by the Small Business Development Centre could help to remove some of this mystique (see Box 4.2 below).

Box 4.2. Small Business Development Corporation

The Small Business Development Corporation, established in 1990 under the auspices of the Department of Commerce and Industry, is a statutory corporation mandated to promote, develop, and grow SMEs. One of the Corporation’s key roles is to provide training, particularly in business management skills. The aim is to assist informal enterprises to graduate to the formal sector.

The Corporation has a database of business women. Encouraged by the new female Deputy Chair of the Board, the Corporation has recently established a Women’s Desk with the specific aim of addressing the needs of women in business. However, considerable clarification is required on the mandate and role of this position.

The Corporation has networks into rural areas where they undertake training. Supported by AusAID and the ILO they are implementing two programs which aim to strengthen business formation and development: Start Your Business and Improve Your Business. The aims of these programs are:

To produce basic small business training programs and deliver training to potential and existing small business owners throughout the country

To address the specific needs of businesses in the transition from microenterprises to small and medium enterprises

To ensure that women not only have adequate opportunity to participate in the program but also have access and equal opportunity to participate in, and contribute to, every level within the SME sector

To develop specific programs to meet the needs of special target groups, for example agriculture, eco-forestry, fisheries

To develop suitable institutional arrangements to stimulate, expand, and coordinate small business training throughout the country

To link the program to other aspects of SME development services, such as credit schemes and business extension services, with a view to produce an integrated approach to SME development in PNG.

The programs have excellent, very detailed, and practical handbooks on the responsibilities of business owners, including for example how to do basic bookkeeping. The material is gender sensitive with line drawings of both men and women in business. Two of the Corporation’s trainers are women, and they have run some women-only courses, which include modules on the legal and regulatory requirements for starting a business.

**Activity 2.1.1:** ensuring gender sensitive operations of Companies Registry and **Activity 2.1.3:** ensuring all information on registering a business is equally accessible to men and women, and the production of a business entry handbook – will assist in lessening some of the barriers discouraging women from registering their companies.

**Activity 2.1.2:** undertaking outreach activities in respect of business women’s formalization, including staff training and strengthening the women’s help desk at SBDC – will address this knowledge barrier.

- Women may not know about company formation and the benefits that it can bring.  
  
  Although FIAS (in Removing Barriers to Enterprise Formalization in Papua New Guinea: A Gender Analysis, June 2008) suggested that this was a problem for both women and men.

- Women’s businesses may not be growth-orientated. Women may be in business to supplement their household income, and have no ambition to expand and develop their enterprises. This may be related to cultural perception of women (held by both women and men) or to intra-household allocation of resources which result in men (rather than women) benefiting from increased household income (see Chapter 1 above).

**Activity 2.1.1:** ensuring gender sensitive operations of Companies Registry and **Activity 2.1.2:** undertaking outreach activities in respect of business women’s formalization – will assist in shifting such perceptions.
This section reviews the legal framework for women’s businesses in PNG, 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 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

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

**Activity 2.2.1:**
Review companies legislation to ensure best practice legal framework for registration of women’s community groups as companies

Responsibility:
IPA, Business Operations Working Group, Gender Working Group

**Tool 12:**
Companies Act Checklist

**Activity 2.2.2:**
Review Business Group Incorporation Act to ensure women can be adequately represented in community companies and women’s community groups can register (in parallel with Companies Act review in 2.2.1)

Responsibility:
IPA, Business Operations Working Group / Gender Working Group

**Activity 2.2.3:**
Develop and promulgate basic partnership agreement with civil society and business organizations.

Responsibility:
Business Operations Working Group, Gender Working Group, Business Women’s Forum

**Tool 13:**
Draft Partnership Agreement
PNG’s Companies Act is in line with international best practice…

PNG’s 1997 Companies Act is based on New Zealand law and is broadly in line with international best practice (see Table 4.5 at the end of this chapter).

…but women’s community groups should be able to formalize

The Asian Development Bank’s 2006 Report\(^{107}\) calls for Companies Act to be amended to provide for inexpensive incorporation of women’s community groups, a common form of organization in both urban and rural areas. Many of these groups are not commercially minded but exist mainly for social purposes (see Box 4.3 below).\(^{108}\)

**Box 4.3. Case studies – Kimbe Our Lady of Sacred Heart women’s bakery and sewing project\(^ {109}\)**

This is a Catholic Group which has received support from AusAID’s Community Support Program – mainly for the purchase of an oven and sewing machines. The women bake and sell bread, and make and sell clothes. They bake as a group every Friday and Saturday, charging members of the group 5 kina ($2) to use the oven (which was in a private house). The sewing machines are stored at another member’s house and they have sewing sessions every Tuesday. The women keep an excellent computerized cashbook, but have failed to make the profit they had anticipated from their enterprise.

The original women leaders of the Group have died, but younger women had taken up the leadership role. In another project the team noted the clear difference between the younger, more educated, and articulate women and the older, less confident women.\(^ {110}\)

**Activity 2.2.1: a review of the Companies Act to ensure best practice legal framework for registration of women’s community groups as companies will assist in creating a more enabling legal framework for women’s community groups.**

The Business Groups Incorporations Act (see Box 4.4 below) provides for the incorporation of customary groups for business and other economic purposes, and legislates for them to be controlled and regulated by such groups. Such an entity has the advantages of a private company including limited liability, perpetual succession, and the payment of dividends to members. A minimum of three members are required to form a business group.

**Box 4.4. Business Groups Incorporation Act (Cap 144)**

The groups tend to be formed in relation to the economic exploitation of a resource (for example timber) to facilitate the payment and distribution of royalties. The larger groups tend to be comprised just of men. The smaller ones include women. A Business Group has to have a constitution, name, chairman, treasurer, and secretary. The business group model is often used by family groups wishing to run a business. As a minimum of three members are required, this model would not assist a husband and wife running a business.

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109 Aitsi, L. An Analysis of the Efficient Delivery, Effectiveness and Impact of Community Development Scheme Funded Gender and Equity Sector Activities, 2006.

110 Although research published in 1992 suggests that in the Upper Bena Bena rural village of Ganaga in the Eastern Highlands Province, it is the older women who are benefiting most from new income earning opportunities. (Dickerson-Putman J. Age and Gender Stratification in the Highlands of Papua New Guinea: Implications for Participation in Economic Development. Human Organization Vol 31 (2), 1992).
Partnerships may provide an alternative route for women

Two or more people can also conduct business in a partnership. There are a number of advantages to partnerships. No legalities are required to set them up and no requirements exist for annual public filing of documents. 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: a review of the Business Group Incorporation Act will ensure that women are adequately represented in community groups and that women’s community groups can register.

Activity 2.2.3: the development of a basic partnership agreement will facilitate women protecting their business interests.
This section reviews the impact of PNG’s business registration and 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 three 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**

**Target 2.3:**
Reduced regulatory compliance cost on female-headed businesses

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

**Tool 14:**
Mainstreaming Gender in Regulatory Compliance Cost Tools

**Activity 2.3.1:**
Improve legislation/policy on Business Names Registration process based on international best practice.

*Responsibility:* Business Operations Working Group, Gender Working Group

**Activity 2.3.2:**
Conduct women’s focus group discussion on trade and other license process maps developed by IFC to assess: a) which licenses women most commonly obtain, and b) if women identify steps different/additional to process map

*Responsibility:* NCDC, Business Operations Working Group

**Activity 2.3.3:**
Simplify procedures that have an adverse impact on female-headed businesses (revealed in focus group discussion and time and cost compliance analysis)

*Responsibility:* NCDC, Business Operations Working Group, Gender Working Group

**Baseline:**
Licensing stocktake and process maps; Women’s Focus Group discussions on licensing stocktake and process maps; Sex disaggregated time and cost compliance assessment

**Means Of Verification:**
Gender Working Group Minutes, Cabinet Policy Papers, Women’s focus groups

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

**Tool 15:**
Analysis of Business Names Registration Process
**Few women register business names…**

The alternative to carrying on business as a company is to run it as a sole trader (if it has a single owner), or as a partnership (if it has more than one owner). Neither of these business forms requires any legalities to set them up, although it is advisable in the case of a partnership to draw up a partnership document setting out the arrangements between the partners. The pros and cons of these different business forms for women owned businesses are summarized in Table 4.3 at the end of this chapter.

The only legal requirement when starting out in business as a sole trader or as a partnership is in relation to the name chosen for the business. If the name of the business is not the owner/s’ name/s, the business name must be registered at IPA under the Business Names Act. Registration costs 50 kina ($20) and is effected by completing and filing a straightforward form with IPA. Registration needs to be renewed every three years. Sole traders and partnerships using an unregistered business name (that is not their owner/s’ name) are trading illegally and are liable to prosecution. In practice IPA does not take any action to enforce the Act.

The reasons why the business names register is dominated by male-owned businesses could include:

- Women’s businesses may be so small and informal that they do not have a name at all. Market vendors for example will not trade under a business name
- Women may not know about the requirement to register their business names
- Women may not consider their businesses to be ‘proper’ enterprises, but rather income earning activities to supplement household income
- Women may consider that the time and cost of a registration process that brings them no benefit, and which is not enforced in any event, is not a sensible use of their time (this may apply to men as well).

The business names registration regime has been abolished in the UK (from where it came) and in other developed economies, including New Zealand. The main purpose of the Act was to prevent more than one business trading with the same name. But, for businesses for which this is a concern, one solution is to have a single database for all kinds of businesses – for example companies, sole proprietors, partnerships. Alternatively, in many countries, assumed business names are registered in the trademarks registry. There seems little merit for PNG to retain an incomplete register and an un-enforced registration requirement.

**Activity 2.3.1: Improve legislation/policy on Business Names Registration process based on international best practice.**

**…or have trade licenses**

All businesses operating in Port Moresby are required to have a trade license (or in the case of a business selling alcohol, a liquor license). This is issued by the city authority, the National Capital District Commission (NCDC). The process is a lengthy one (see Figure 4.5). NCDC provides applicants with a checklist of documents they need to file in order for an application to be processed (see Box 4.5 below).
Box 4.5. NCDC’s Application checklist for trade / liquor license

<table>
<thead>
<tr>
<th>Document name</th>
<th>Issuing authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completed application form, property dated, and signed</td>
<td>NCDC Regulatory Services</td>
</tr>
<tr>
<td>Copy of previous year’s liquor license</td>
<td>Applicant</td>
</tr>
<tr>
<td>Physical planning clearance</td>
<td>NCDC Regulatory Services</td>
</tr>
<tr>
<td>Building authority clearance</td>
<td>NCDC Regulatory Services</td>
</tr>
<tr>
<td>Land title or lease agreement</td>
<td>Applicant / landlord</td>
</tr>
<tr>
<td>Certificate of incorporation</td>
<td>Applicant (IPA)</td>
</tr>
<tr>
<td>Certificate permitting foreigners to operate business in PNG</td>
<td>Applicant (IPA)</td>
</tr>
<tr>
<td>Current subscribing membership list (for clubs)</td>
<td>Applicant</td>
</tr>
<tr>
<td>Names of all bars in the premises</td>
<td>Applicant</td>
</tr>
<tr>
<td>Indicate number of rooms in the premises</td>
<td>Applicant</td>
</tr>
<tr>
<td>Land / garbage rate</td>
<td>Applicant</td>
</tr>
</tbody>
</table>

A clear fee schedule is made available to applicants. Fees are based on turnover (see Box 4.6 below)

Box 4.6. NCDC Trade license fees

<table>
<thead>
<tr>
<th>Annual Turnover (Kina)</th>
<th>Annual License fee (Kina)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–250,000 ($0.40–100,000)</td>
<td>250 ($100)</td>
</tr>
<tr>
<td>250,000–500,000 ($100,000–200,000)</td>
<td>500 ($200)</td>
</tr>
<tr>
<td>500,000–1 million ($200,000–$400,000)</td>
<td>750 ($300)</td>
</tr>
<tr>
<td>1 million–2 million ($400,000–$800,000)</td>
<td>2,500 ($1,000)</td>
</tr>
<tr>
<td>More than 2 million (more than $800,000)</td>
<td>5,000 ($2,000)</td>
</tr>
</tbody>
</table>

Trade (and liquor) licenses are an important source of revenue for NCDC. But they also appear to have a genuine regulatory purpose. The inspections carried out by NCDC’s two licensing inspectors (both of whom are female) are to ensure that the premises meet the requirements of the Public Health Act and that they are suitable for trade. The inspectors’ Reports on these issues are considered at a monthly meeting of the NCDC Licensing Committee, chaired by the City Governor and with membership including a Police and business representative. Each meeting considers more than 20 applications. All trade licenses expire on 31 June and all liquor licenses on 31 December, and must be renewed on an annual basis with a new inspection and consideration by the Licensing Committee required on each occasion. Appeal against a decision of the Licensing Committee lies to the District Court, but appeals are very rare. Businesses operating without a license are liable to be closed down by NCDC.

About 70 percent of economic activity in PNG takes place in the informal sector. Businesses defined as ‘informal’ by the Informal Sector Development and Control Act, 2004 are exempted from the need to obtain a trade license. The Act defines an informal business as one operating on a small scale, engaging in legal activities, employing no more than five persons, and not liable to pay tax. This is likely to include many businesses operated by women. Before the Act was passed, NCDC did make some attempt to obtain licenses from petty traders.

In practice, NCDC acknowledges that only a tiny minority of businesses operating within the capital hold trade licenses. The licensing committee deals with only 800–1,000 application and renewals each year. There are clearly many more businesses than 1,000 in Port Moresby. Most license applications are made in business names (rather than the names of the owners), so it is not possible to sex disaggregate them. However, NCDC’s impression is that most applications are made by men, and this would be consistent with the fact that most business names and companies registrations are by men.

Figure 4.5. Procedure for acquiring a trade license from NCDC

- Visit NCDC in person to obtain application form and checklist of requirements
- Submit application in person
- Inspection of business premises by NCDC inspector
- Inspector writes report and submits to NCDC Licensing Committee
- NCDC Licensing Committee meets and makes decision (monthly meetings)
- Applicant is informed of decision by phone and letter
- Applicant pays fee and collects license

Activity 2.3.2: conducting women’s focus group discussions on trade and other license process maps and Activity 2.3.3: simplifying procedures that have an adverse impact on female-headed businesses – will reduce the regulatory burden on women.

4-6 weeks. Can be as long as 3 months, for example if no quorum for Licensing Committee Meeting.
This section considers the extent to which female-headed businesses hold sectoral licenses, and highlights how Target 2.4 and its associated activities would facilitate compliance with sectoral licensing requirements. Figure 4.6 below lists four suggested activities to achieve this target, along with tools in support. (Tools can be found at the end of the Report).

**Target 2.4:**
Increased number of female-headed businesses have appropriate sectoral licenses

Figure 4.6. Target 2.4: Activities and Tools
Few women hold sectoral licenses

Sectoral licenses are granted to industries in particular sectors (for example mining, petroleum, fisheries and gold, pharmaceuticals) by the relevant Government Ministry or regulatory authority. These types of licenses tend to apply to large enterprises, and therefore it is thought that they are generally not applicable to businesses run by women, although more analysis is required in this area.

**Activity 2.4.1:** identifying sectors that are relevant to female-headed businesses;  
**Activity 2.4.2:** undertaking training for women on sectoral licensing;  
**Activity 2.4.3:** introducing a mechanism to sex disaggregate sectoral licensing data; and  
**Activity 2.4.4:** sex disaggregating data in private enterprise surveys – will assist in establishing the extent to which women-headed businesses currently hold sectoral licenses, identify constraints, and encourage compliance with licensing requirements.
This section reviews the particular challenges facing business women operating informally in Port Moresby, and highlights how Target 2.5 and its associated activities address these challenges. Figure 4.7 below shows an activity to achieve this target, along with a tool in support. (Tools can be found in at the end of the Report).

**Figure 4.7. Target 2.5 – Activity and Tools**

**TARGET 2.5**
Reduced harassment of female informal sector traders in Port Moresby

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

**Means Of Verification:**
Newspaper reports, television, radio, internet surveys
Business Women’s Perception Questionnaire

**Activity 2.5.1:**
Work with Informal Sector Technical Working Group to contribute to the development of PNG policy on informal sector, including:

a) Proposal for a market place solution, providing more legitimate market space for small vendors – fee based, nil registration
b) Review of the Informal Sector Development and Control Act with transparent rights and responsibilities of market vendors rather than emphasis on control. Focus groups could be conducted with market vendors, including female vendors, to see what they would like included in the policy
c) Review of NCDC’s policy on betel nut selling and exploring ways to enable it to be a legitimate business, while balancing health and public order concerns.

**Responsibility:**
Business Operations Working Group, Gender Working Group, PNG Government

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

**Tool 5:**
Business Women’s Perception Questionnaire
Women pay market fees to NCDC...

The majority of vendors in rural and urban fruit and vegetable markets in PNG are women.\textsuperscript{112} Market trading is a common entry-level business activity for women, with women moving from market trading to some other form of trading.\textsuperscript{113} Although their businesses are too small to require a trade license, market women in Port Moresby who use one of the five NCDC markets are required to pay a daily fee of 2 kina to the Council for their market spot. But conditions in PNG’s markets are generally poor.\textsuperscript{114} The environment tends to be dirty, crowded, and often unsafe. Women working in markets can suffer from sexual harassment and violence by young males under the influence of marihuana or alcohol.\textsuperscript{115} They frequently have to sell their produce from the ground, rather than from market stalls. The recent People’s Petition to Prime Minister and the National Government\textsuperscript{116} sets some of the key complaints – the lack of sufficient market space and the poor conditions in existing markets.

Box 4.7. Informal sector complaints about NCDC markets

- NCDC does not have any plans for betel nut markets in the city to meaningfully create an avenue where betel nut sellers were expected to do their business.
- NCDC does not have plans for Second Hand Markets. There is a boom in this industry but there are no plans to accommodate the needs of vendors in the city so that they may service the public on their clothing needs.
- The Yakapilin market has posed many problems for customers and vendors alike. There have been instances of bag snatching, car hijacking, and harassment to the women folk. Besides, there are no sewerage and water facilities. We wonder where vendors go when they need to use the toilet.

...and are subject to the ‘control’ of the informal sector

A key aim of the Informal Sector Development and Control Act is to control the informal sector. The Act has been described as a disaster,\textsuperscript{117} enabling NCDC’s City Rangers to disrupt traders’ reasonable operations (see Box 4.8 below).

Box 4.8. Newspaper Extract, September 2009 – City vendors left in limbo\textsuperscript{118}

“Yumi nogat Waigani market moa nau” (There is no longer a Waigani market for us now), was the cry from a worried youth who walked away from the scene of burning market tables and stalls as mobile police patrolled the area. Commuters, vendors, and children became prey to police activity when two police vehicles and the southern command mobile squad members came as early as 8.30am and bulldozed the market tables at the Waigani to Morata bus stop opposite North Waigani Stop ‘N’ Shop.

By 9am the usually busy buai and open air food market on the opposite side of the road was deserted. Amid the smoke and dust, morning sellers could be seen scurrying around in a daze wondering where they were going to go next.

Wali Jacob, Martha Kulu, Katrina Kewa, Ai Peter, and Sera Petrus from Western Highlands sat huddled in a group confused as to what to do next and where to go as Wali’s crate, three sausage packets, sauce, table, and umbrella were lost in the middle of the confusion when everyone tried to escape from the police cars. The police “drove straight into our tables, one at the top end and one at the bottom end like a bulldozer knocking eskys and tables in their path”, Wali said.

Women and men fled from the oncoming vehicle once they realized the vehicles meant to knock down their tables. Some lifted their wares and tables and scurried for cover. The stands were gathered and burnt while some were seen at the bottom of the drain in water and damaged. “We got the eviction warning on Tuesday, but on that day whoever ordered our removal should take into consideration the fact that this is our bread and butter.”

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\textsuperscript{113} FIAS, Removing Barriers to Enterprise Formalization in Papua New Guinea: A Gender Analysis, June 2008.

\textsuperscript{114} Apart from in Mount Hagen, where AusAID has funded the renovation of the market.


\textsuperscript{116} Signed by George Kamala, Community Leader Morata for and on behalf of the concerned city residents and community leaders of Port Moresby city.

\textsuperscript{117} Interview with Dame Carol Kidu.

Where to go and sell next was not mentioned then. Where will we go to sell our stuff? What is going to happen to us? Why are they (police and city council) doing this to us?” Wali asked.

Police operations boss Anderson Bawa when contacted and asked who gave the orders said, “I am not aware of this. It certainly was not from my office.” Deputy City Manager Honk Kiap was not aware of the operation as he was away from work for a week and referred us to the acting deputy city manager, Rabura Aiga, who could not be reached for comments.

The Informal Sector Development and Control Act has a number of problems, including an insufficiently precise definition of what the informal sector is, and excessively wide powers given to the administering authority (see Box 4.9 below).

Box 4.9. Informal Sector Development and Control Act, 2004

As well as seeking to encourage the informal sector in urban and rural area, the Act also seeks to regulate and control the development of informal businesses for the protection of public health and safety.

Vague definition of informal sector: a business carried on by citizens comprising no more than five persons, which is characterized by the following:

- a) it is a very small scale unit or
- b) it operates with no or very little capital or
- c) it utilizes low levels of skills or technology or
- d) it does not engage in activities which constitute an offence or
- e) it operates at low levels of productivity and includes a mobile trader

But does not include a business which –

- f) provides professional services
- g) acts as an agent of a business which is not an informal business
- h) is liable to pay tax under the law

(section 2)

A simpler and more easily identifiable definition, relating to turnover or tax threshold, would make it easier to identify which businesses are within the auspices of the Act.

Grants excessive powers of control to ‘administering authority’ (NCDC or Local-level Government or Provincial Government) which may declare areas on which informal businesses may be conducted… powers to monitor, declare restriction on the kind of informal businesses that may be operated (section 3). Gives wide powers to inspectors to close down the business.

Enables informal businesses to be operated in other areas where:

- a) it is not hazardous to health and safety
- b) it will not cause unreasonable obstruction to motor traffic or pedestrians
- c) it will not cause environmental harm… and
- d) it will not cause substantial annoyance to neighbors… and
- e) [it is] in conformity with minimum standards (some of which are set out in the Act, with additional powers to administering Authority

(section 9)
Part IV of the Act sets out detailed minimum standards for sale of food, sale of cooked food, ice block and drinks, frozen fish and meat, live animals, betel nut, second-hand clothing and second-hand goods, manufacture of goods, and provision of services.

The recent People’s Petition to Government about informal sector summarizes some of the key concerns (see Box 4.10 below).

**Box 4.10. Informal sector complaints about NCDC control**

- New NCDC law is not good for us
- Rights of public are being abused, income earning opportunities lost
- The petition highlights abuses of the rights of women and children
- It petitions against a plan to outlaw the selling of betel nut in NCD. It points out that women’s groups rely on the revenue earned from selling betel nut
- The implementation of removing all betel nut marketing policy, also extended to outlawing the selling of other wares including ice blocks, soft drinks, boiled eggs, peanuts, lollies, cooked food, cigarettes, and fast-selling basic groceries on roadside stalls and in the streets.
- We are very concerned that most of street vendors’ items have been confiscated and tables, coolers, eskies, and shelters smashed down. If it is illegal to be in business in this manner, we should be advised which [law] was passed by Parliament is being breached by our actions. Is it the Informal Sector Act…

---

**Activity 2.5.2:** Proposal for a market place solution, providing more legitimate market space for small vendors and Activity 2.5.2: a review of the Informal Sector Development and Control Act with transparent rights and responsibilities of market vendors rather than emphasis on control – will assist in working towards a more favourable environment for informal sector workers in PNG.

---

**Female betel nut sellers in Port Moresby are particularly vulnerable**

Betel nut sellers in Port Moresby in particular have fallen foul of the Informality Act. Betel nut whole-sellers are men, but retailers are nearly all women. The Act contains strict provisions in relation to betel nut sales (see Box 4.11 below).

**Box 4.11. Minimum standards for sale of betel nut**

The minimum standards for the sale of betel nut are as follows:

a) the area where the betel nut is sold shall be kept tidy and clean and free from betel nut skins and other rubbish

b) rubbish bins, bags, or other receptacles acceptable to an inspector.

A person who fails to comply with Subsection (1) is guilty of an offence. Penalty: A fine not exceeding 50 kina ($20)

---

120 People’s Petition signed by George Kamala, Community Leader Morata for and on behalf of the concerned city residents and community leaders of Port Moresby city.

There is an ongoing war between the female betel nut traders who set up illegally on the streets of Port Moresby and NCDC’s City Rangers, who frequently clear betel nut sellers off the streets, often using undue violence and appropriating the seller’s wares (see Box 4.12 below). NCDC has designated nine areas outside the city centre for betel nut sales but these areas are unused.

4.12. Box Newspaper Report: the lawless streets of Papua New Guinea\textsuperscript{122}

\begin{quote}
Saturday night, late January. The incident is, by Port Moresby standards, neither here nor there. We come off an overpass and notice people scattering in light rain. Blocking traffic is an urban response-style light police truck, with a two-sided troop seat in the back. A woman is running, followed by two police. One of the officers punches her hard in the face, then she doubles over from what appears to be a truncheon in the guts.

We go through a roundabout and come back. The woman is running now, arms crazy above her head as the police truck pursues her over gutters. Soon after we find the woman and a group of her friends standing by the roadside panting and bleeding heavily. One man has a deep gash running across his left cheek. The bashed woman is half-laughing, half-crying. They are drunk on ‘steam’, the local metho-rated liquor cooked in secret stills, flavored with orange cordial and sold dirt cheap in the markets.

The man with the cut face is leaning through the window, spraying bloody protestations of innocence. I ask why they didn’t just run away. All they can repeat is: “It wasn’t our fault; we didn’t do anything.”

Papua New Guineans will stand before they fall. “The trouble is,” says my friend as we drive off, “they are Goilala, which means they probably did do something, anything from holding up a car to illegally selling betel nut by the side of the road.”
\end{quote}


\textbf{Activity 2.5.1:} A review of NCDC’s policy on betel nut selling (exploring ways to enable it to be a legitimate business, while balancing health and public order concerns) will assist in improving the situation for women involved in this industry in PNG.
### Table 4.2. A comparative review of PNG Companies Act 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 – 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, Separate legislation for securities and receiverships</td>
<td>No</td>
<td>Yes</td>
<td>Yes, Some securities law included. Separate legislation for insolvency, receiverships and secured transactions</td>
<td>Yes</td>
<td>Yes. Separate legislation for securities and receiverships</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, for example</td>
<td>Needs assistance of lawyer or agent</td>
<td>Needs assistance of a lawyer or company formation agent</td>
<td>Yes</td>
<td>Yes</td>
<td>Simple forms used, however, additional form must be lodged for directors consent</td>
<td>Yes. Advisors assist with forms and forms are available online.</td>
</tr>
<tr>
<td>Constitution: no requirement to file a copy of Memorandum and Articles of Association.</td>
<td>Yes. Standard constitution in legislation</td>
<td>Yes – needs to file a Memorandum and Articles</td>
<td>Yes – have to file documents. Standard rules provided in the legislation</td>
<td>Yes. Model Rules provided in legislation</td>
<td>Yes. Standard constitution in legislation</td>
<td>Yes. Model Rules provided in Act</td>
<td>Yes. Standard rules provided in Act</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 or file formal reports, and no mandatory use of lawyers.</td>
<td>Yes, but also provides for larger companies given economic context 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>
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<td>---------</td>
<td>-----------------</td>
<td>-------</td>
<td>-------</td>
<td>------------------</td>
</tr>
<tr>
<td><strong>Company secretary:</strong> role of company secretary is optional</td>
<td>Yes</td>
<td>No</td>
<td>No –</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Yes</td>
<td>every company has to have a company secretary</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Civil penalties:</strong> civil penalties (fine, late filing fee), not criminal sanctions, are imposed on company office bearers for relatively minor matters (such as failure to file annual return).</td>
<td>No – Criminal penalties apply</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No. Criminal penalties apply for minor matters, such as failure to file annual return</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Shareholders remedies:</strong> 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><strong>Directors’ duties:</strong> clearly state directors’ duties including duties of care and good faith.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes – deals with some duties particularly conflict of interest and loans but does not clearly deal with care and good faith</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Related party transactions</strong> 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><strong>Disclosure of related party transactions:</strong> require disclosure of related party transactions to the board of directors and in annual reports.</td>
<td>Yes – disclosure to Board and in interests register</td>
<td>No specific procedure prescribed</td>
<td>Yes – disclosure to Board and in interests register</td>
<td>Yes – disclosure to Board, interests register, and in annual report</td>
<td>Yes – disclosure to Board, interests register only</td>
<td>Yes – disclosure to Board, interests register, and in annual report</td>
<td>Yes – disclosure to Board</td>
</tr>
<tr>
<td><strong>Approval of related party transactions:</strong> 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><strong>Approval of related party transactions:</strong> 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>
</tbody>
</table>

122 Note that the Acts all deal with director’s self interest as the related party, not a related company.
<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><strong>Transparency of records:</strong> 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>
<tr>
<td><strong>Permission:</strong> 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>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Officeholders:</strong> 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><strong>Age:</strong> 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><strong>Sole person companies:</strong> is there provision in the Act for registration of sole director/shareholder 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><strong>Method of registration:</strong> are women permitted to undertake the registration process without involving a man (for instance, 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><strong>Registration process:</strong> is the company registration process the same for a woman (including married woman) promoter as for a man? For instance, 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>
</tbody>
</table>
Table 4.3. Business forms in PNG

<table>
<thead>
<tr>
<th>Legal form</th>
<th>Advantages</th>
<th>Disadvantages</th>
<th>Gender perspective</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Company</strong> (1997 Companies Act)</td>
<td>Business has own legal status, separate from it owner/s, facilitating the separation of business from personal assets. If the regulatory framework is streamlined, registration will be quick and simple. Limited liability status protects the owners from personal liability should the business fail. The corporate structure facilitates business growth through joint enterprises and investment by third parties.</td>
<td>Expensive, slow, and cumbersome process at present. Annual public disclosure requirements through filing at companies registry.</td>
<td>Enables women to separate their business assets from personal/family assets. If the enterprise is a family one, the share structure specifies the proportions held by each family member.</td>
</tr>
<tr>
<td><strong>Partnership between two or more people</strong></td>
<td>Straightforward registration of a business name required if the partnership uses a name other than of its owners. No requirement for annual public filing of documents. Does not require formal formation documents although ideally there will be a partnership agreement setting out, for instance, arrangements for division of profits and how assets will be dealt with in case of dissolution.</td>
<td>No limited liability. In the absence of a written partnership agreement, the arrangements between the partners may be unclear. Partnership documents can be lengthy and complex document, and changing the members of a partnership is complex.</td>
<td>When women are in business partnerships with their husbands they are unlikely to enter into a partnership agreement. Where there is no clear evidence of a partnership agreement on divorce or separation it may be difficult to make out a case that the married couple have participated equally in the business, particularly where the man was the face of the business and the woman was involved in the behind the scenes work such as accounting and management.</td>
</tr>
<tr>
<td><strong>Sole Trader</strong></td>
<td>Straightforward registration of business name required if sole trader trades using name other than of the proprietor. No requirement for annual public filing of documents. No formal formation documents.</td>
<td>A sole trader business is likely to remain small.</td>
<td>A woman sole trader may find it difficult to separate her assets from those of her husband/family.</td>
</tr>
</tbody>
</table>
Chapter 5. Access to justice, the courts, and alternative dispute resolution

Summary

The legal system in PNG tends to be male-dominated and women face difficulties in enforcing commercial contracts. There is some evidence that women are using Village Courts satisfactorily. Apart from this, women make little use of the formal Court system.

IFC provides assistance to Pacific Courts to establish and enhance court-referred mediation as a simple, time and cost efficient method to resolve commercial disputes. Mediation, being less formal and more culturally relevant, appears to be a form of alternative dispute resolution favored by women, but there are concerns about the quality of mediation at District Court level. Moves to introduce mediation to the National Court are unlikely to have a huge impact on women as they make little use of the National Court (and are likely to make less use of it as its civil jurisdiction is raised). But the National Court mediation does have the potential to provide a flagship for mediation throughout the PNG Court system.

The targets for incorporation in the commercial mediation component of the Government’s IFC supported Regulatory Simplification and Investment Policy and Promotion Program to improve access to commercial justice for women in PNG are:

- 20 percent of court-referred mediation users are women and 80 percent of female users are satisfied with mediation services, and
- At least 20 percent of accredited mediators are women.

This chapter sets out the activities to take place to achieve this target, and provides the analysis to justify them.

Figure 5.1. Access to justice and ADR: goal and targets

Goal: improved access to commercial justice for women

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

TARGET 3.2
At least 20 percent of accredited mediators are women
**Target 3.1:**

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

This section reviews the commercial justice environment for women in PNG and highlights how Target 3.1 and its associated activities would improve business women’s ability to access commercial justice. Figure 5.2 below lists three activities to achieve this target, along with tools in support. (Tools can be found at the end of the Report).

**Figure 5.2. Target 3.1: Activities and Tools**
Enforcing contracts in PNG is uneconomic

Enforcing contracts through the Courts in PNG is difficult and expensive for everyone. According to the World Bank’s Doing Business indicators, the cost of enforcement exceeds the cost of the claim, especially in comparison to the best performing country in the Pacific region, New Zealand (see Table 5.1 below).

Table 5.1. Doing Business: enforcing contracts

<table>
<thead>
<tr>
<th>Indicator</th>
<th>PNG</th>
<th>New Zealand</th>
<th>East Asia and Pacific</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedures (number)</td>
<td>42</td>
<td>30</td>
<td>37.2</td>
<td>30.6</td>
</tr>
<tr>
<td>Duration (days)</td>
<td>591</td>
<td>216</td>
<td>538.1</td>
<td>462.4</td>
</tr>
<tr>
<td>Cost (% of claim)</td>
<td>110.3</td>
<td>22.4</td>
<td>48.5</td>
<td>19.2</td>
</tr>
</tbody>
</table>

The data in the table above is drawn from the Port Moresby District Court. But most justice in PNG is dispensed at the community level, through Village and Local Courts (see Figure 5.3 below).

Figure 5.3. The formal Court system in PNG

Women tend to be marginalized in the formal Court system

Since 2004 AusAID has been supporting the justice sector through the Law and Justice Sector Program. It is helping Government to improve sectoral coordination and the functioning of the formal law and justice agencies. With the support of the Law and Justice Sector Program, the justice sector has adopted a Gender Strategy (see Box 5.1 below).
Box 5.1. PNG’s Justice Sector Gender Strategy 2005–2010

**Strategies:**

- Develop policies and practices that will enable men and women to participate equally as employees of the justice sector
- Develop and support a human rights approach to service delivery throughout the sector
- Develop sector-side knowledge and involvement in the prevention and management of HIV/AIDS
- Strengthen relationships between sector agencies and civil society organization to promote non-violent conflict resolution
- Increase women’s access to the formal justice system
- Monitor women’s experiences of restorative justice initiatives and encourage gender equitable practices
- Enhance PNG’s capacity to provide detailed information on the situation of women and men before the law

Despite the focus on gender issues, the formal Court system remains difficult for most women to access due to:

- lack of knowledge of the law and their rights
- male dominance within staff and the judiciary, and
- the placement of services only in major towns.

**Apart from Village Courts, women make little use of the formal Court system**

Village Courts, the lowest tier of the Court system, lie between formal Courts and customary dispute-setting procedures. They focus on mediation and the pursuit of peace and harmony in the settlement of low-level disputes. They are the Court most used by women (see Box 5.2 below).

**Box 5.2 Women’s use of Village Courts**

Field evidence shows that women use Village Courts more than any other forum (ranging from village moots to the higher formal Courts) to settle disputes, and that their use of Village Courts is increasing.

In a village in East Sepik Province in 1977 women were plaintiffs in only about 22 percent of orders made by the Court, but by 1987 they were the complainants in 53 percent of all orders.

There are 1,200–1,300 Village Courts in PNG dealing with customary cases for example customary marriage, customary adoption, division of property on divorce, and land disputes. They are under the auspices of local Government. Port Moresby’s 24 Village Courts (administered by NCDC) each hear between 10 and 20 cases a day. Each Court is presided over by lay Magistrates who are selected by the community on the basis of their integrity and good knowledge of local customs. The process of determining a dispute in the Village Court is for the Court first to attempt to mediate, and encourage settlement. If settlement cannot be achieved there is a hearing before a full Court of Magistrates. The vast majority of Magistrates in Village Courts are men although the situation is improving (see Box 5.3 below).

Box 5.3. Female Magistrates in Village Courts

• By the late 1990s only a handful of female Magistrates could be found in PNG with estimates of only eight or ten across 1,400 Courts from a total pool of 7,500 magistrates.

• Proposed amendments to the Village Court Act requiring each Village Court to have one or more female magistrates (out of a usual total of four or five per Court) failed to pass PNG’s Parliament in 2000.

• But more women magistrates are now being appointed. In 2006, the numbers had risen to 60 and by mid-2008 the total had risen to 250 Magistrates. 100 women Magistrates are shortly to be appointed country-wide

• Of the 75 Magistrates in NCDC 10–15 are women. NCDC recognizes that it needs more women to come in.

• Women frequently serve as Village Court clerks.

The evidence on how women fare in these Courts is mixed (see Box 5.4 below) but, on balance, it does seem that, in the light of their domination by men and cultural norms that prevail in PNG (see Chapter 1), overall the ability of women to obtain justice on the same basis as their male counterparts in such a setting must be questioned.

Box 5.4 Village Courts: women’s experience

Business Women’s Forum: anecdotal evidence is that women are vulnerable in this setting to demands from Magistrates for money and sex. Women at the Business Women’s Forum complained of experiences where Court officers had been paid money or threatened by the other side to either decide cases before they are heard, or not even list cases so they don’t even make it to Court.

US Department of State Human Rights Report: Reported that Village Courts tended to impose jail terms on women found guilty of adultery while penalizing men lightly or not at all.

Research in Village Courts in the National Capital District: In some Courts claims by women exceeded those by men, and women received more decisions in their favor than did men (many were marital problems).

The legal profession is male dominated

The Legal Profession is 90 percent male. In 2001, Justice Catherine Davani became the first woman appointed to the Supreme Court. At National Court level only one of 23 Judges is female. Women lawyers in PNG tend to stop practicing at a young age – probably due to family responsibilities.

Women have limited access to legal advice and representation

There is no system of legal aid in Papua New Guinea. Some NGOs are providing basic legal services free of charge (see Box 5.5 below for examples), as is the Legal Training Institute and the University of Papua New Guinea. The Government funded Public Solicitors Office has an office in Port Moresby as well as paralegal desks in the districts. Half of its staff are women.

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135 And there is also one acting female judge.
Box 5.5. Free legal advice and assistance

- Transparency International (TI) is setting up an Advocacy and Legal Advice Centre (ALAC) in PNG, which has been done by TI in other countries. ALAC will have relationships established with relevant law and justice agencies to get them to follow up on complaints. The intention is that ALAC will go public with the complaint if nothing happens after 6 months.

- The Individual Community Rights Advocacy Forum is an NGO based in Port Moresby and focuses on family law and violence against women.136

Female entrepreneurs across the Pacific 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.

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 3.1.1:** the development of a simple contract for use in common commercial transactions and provide training on contract law will increase women’s knowledge of the law and their rights.

**Women are involved in mediation in the PNG legal system**

To the extent that women are involved in the justice system in PNG, it is largely through mediation processes:

- Mediation is a key form of dispute resolution at the Village Court level
- It is less formal than the court system making it accessible to women, and culturally relevant
- Women are being trained as mediators (see Box 5.6 below), and
- Women’s groups are becoming involved in peace-making efforts using mediation processes (see Box 5.7 below).

**Box 5.6. Peace Foundation**

The Peace Foundation Melanesia Inc runs a community justice course focusing on win-win mediation and restorative justice. With support from the Law and Justice Program, it is training mediators in peer group mediation. About 14,000 mediators have been trained over the last six years, of which 20 percent are women.

**Box 5.7. Women as peacemakers**137

The organization that became Kup Women for Peace in Simbu Province grew out of the activities of three women, driven by the atrocities they had experienced during 30 years of tribal fighting. They risked their lives by breaking custom and secretly meeting with women of enemy tribes to talk about peace. Between 1999 and 2002 they formed a committee of women in each tribe and clan. During the 16 Days of Activision to End Violence Against Women in 2002, peace was finally made at the compensation ceremony for a university student killed in the fighting.

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People say that the mothers are doing all they can to bring peace and they made a settlement, at which the KWP leader gave their first public speech. Since then, KWP volunteers have helped maintain the peace by acting as polling officers during national elections, doing community awareness on good governance, and helping arrange the public surrender of armed gangs.

There may be an appetite amongst women for mediation to deal with a broader range of issues (see Box 5.8.

**Box 5.8. Mediation as a tool to solve women’s commercial disputes**

Kate is owed a significant sum of money in rent by a Member of Parliament. She has considered taking legal action to recover the money, but believes (rightly) that it would cost more than the amount of money owed. Her only option is to go to the Parliament building and wait in the hope of meeting him to demand the money. If mediation was available she’d consider using that. In a follow up interview conducted one month after initially meeting Kate, she reported that she had given up waiting outside parliament, and that she felt she had no other recourse to collect the money. Kate was now investigating her limited options to obtain a loan, as she had been relying on the owed rent to make repairs to the rental property.

A new mediation centre was opened in PNG in September 2009. The construction of the building was funded by AusAID. The building is located at the entrance of the Courts to symbolize that parties should attempt mediation before taking a matter to Court. The mediation centre is intended to be a secure environment in which women are welcome.

**Mediation has many benefits for the private sector...**

IFC provides assistance to Pacific Courts to establish and enhance court-referred mediation, as a simple, time and cost efficient method to resolve commercial disputes. Mediation can benefit the private sector in the following ways:

- Lowering the costs for both of the parties in resolving the dispute
- Shortening the time and simplifying the process involved in resolving the dispute
- Creating value for both parties through an amicable way of resolving the dispute, as opposed to a litigious way of resolving it
- Ensuring confidentiality
- Ensuring an informal process compared to the formal process of litigation
- Releasing funds or assets that are in dispute. Although only one of the parties will benefit from the release of funds or assets even for the party that is releasing the assets, the process could produce positive outcomes such as, for instance, the improvement of business relationships with the other party and maintaining its commercial reputation, and
- Creating greater control over the process by the parties.

...and has the potential to make justice more accessible

Mediation is already widely used in PNG’s lower Courts (Village Courts and District Courts). However, as discussed above, there are questions about the quality of justice being dispensed through this method in the Village Court setting. Similar questions arise in relation to the District Courts (see Box 5.9 below). The Law and Justice Program is providing support to the District Courts to provide mediation training.
At the District Court level 65 percent of cases were until 2004 said to be settled by mediation. The momentum for mediation at this level now appears to have gone.

The standard of the mediation at this level is in doubt. There are now systems, processes, standards or guidelines to clarify or systematize ADR across District Courts. Of those disputes included in the statistics are those where the magistrate send the parties to ‘sort it out’ between themselves and return to Court with their agreement. This has been applied to serious criminal offences in addition to civil disputes.

There are widely disparate understandings between Magistrates as to what constitutes mediation and how the process is to be conducted. This has led to significant inconsistencies in the application and conduct of mediation.

The intention is now to mainstream alternative dispute resolution (including mediation and arbitration) within the operations of the National Court and possibly the Supreme Court (see Box 5.10 below).

**Box 5.10. National Court and Supreme Court**

The National Court hears major commercial cases (where the claim is more than 10,000 kina ($4,000). The intention is to change the jurisdiction of the National Court to cases above 50,000 kina ($20,000) initially, rising to 100,000 kina ($40,000).140

It sits in Provincial and other major centres. Judges are resident in the National Capital District, Lae, Mount Hagen, Goroka, Madang, Wabag, Kokopo, and Kimbe. Circuits are conducted monthly to non-resident provincial locations.

The Supreme Court hears appeals from the National Court.

The Judiciary has developed a strategic plan to establish a system of Court-referred mediation in the National and Supreme Court during 2010. A national ADR Committee was formed in 2000; the National Court (Amendment) Act 2008 enables the Court to refer matters to and conduct mediation and Rules under the Act are being developed; an ADR centre (funded through the Law and Justice Program) has been opened in Port Moresby; and all National Court Judges have been trained in mediation. The ADR Committee is made up of 12 members. This includes 2 female members, namely Magistrate Regina Sagu and Faith Baron, from the Solicitor’s General’s office.

- The Judiciary has requested IFC support to this initiative through the Regulatory Simplification and Investment Policy and Promotion Program. Details of IFC’s support with a commentary on the gender perspective can be found in Table 5.2 at the end of this chapter.

**Activity 3.1.2:** ensuring that gender is mainstreamed in the IFC support to the ADR process, including mainstreaming gender into Mediation Rules, and **Activity 3.1.3:** undertaking outreach on ADR to business women will enable women to benefit from these reforms.

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**Target 3.2:**
At least 20 percent accredited mediators are women.

This section highlights how Target 3.2 and its associated activity – to train women as mediators – would improve business women’s ability to access commercial justice. Figure 5.4 below sets out the relevant target, activity, and associated tool. (Tools can be found at the end of the Report).

Figure 5.4. Target 3.2: Activity and Tool

The intention is for 12 mediators to be trained at the pilot stage for mediation at National Court level. The target is for at least two of these to be women. Although this could be perceived as a low target, it is a number that will meet the demand of female parties currently bringing commercial disputes to the National Court, and the target to increase the number of women bringing commercial cases to court to 20 percent. This target will not risk alienating male users, who may not at this stage be comfortable with a female mediator. To drive for equitable representation amongst mediators in a jurisdiction where cultural norms militate against women performing such a function may be counter-productive when considering the successful implementation or advancement of the court-referred mediation system as a whole. It is for this reason that a holistic approach must be adopted, with all stakeholders collaborating in advancing the use of court-referred mediation, including women’s access. As mediation is more firmly established and expands, and the role of women in the private sector and in accessing the national court and mediation grows, as measured by IFC’s monitoring and evaluation systems, it will be appropriate to increase the gender target accordingly.

It should be noted that the National Court’s focus is on high-end cases over 10,000 kina ($4,000) shortly to rise to 50,000 kina ($20,000), and then to 100,000 kina ($40,000). Realistically, this means that the National Court will not be the appropriate forum for most business women. Even in the formal sector, only 40 percent of women-headed firms generate more than 10,000 kina ($4,000) a year (see Table 1.1 in Chapter 1). As IFC’s focus of assistance is currently at the National Court level, the targets pertain to the National Court. However, the National Court does have the potential to be the flagship Court for ADR provision in PNG, and so it is important that the ADR system is set up so that it is capable of serving the needs of both business women and business men in PNG, and can demonstrate a successful model as court-referred.
mediation is extended/enhanced at the lower courts. If IFC continues to provide assistance in this area as the model is expanded, gender targets would be adjusted to reflect the higher use of the lower courts by women.

**Activity 3.2.1:** training and accrediting female mediators at the National Court level has the potential to open up the justice system for women at other levels.

**Further recommendations for all stakeholders to improve women’s access to commercial justice**

- In the context of the current review of the Village Court Act, consider re-introducing an amendment requiring each Village Court to have one or more female magistrates.

- Undertake country-wide research on the experiences of women using the Village Court system to ascertain the extent to which they are receiving a satisfactory service.

- Expand the current mandate of the Public Solicitor’s office/paralegal service to include women’s rights, including property and commercial rights. Establish a women’s help desk in the office.

- The Magistrates Service should in partnership with appropriate civil society organizations develop and roll out gender training for Magistrates at District Court level in relation to property rights and commercial disputes.

- The Judiciary should, at the National Court level, take forward reforms in relation to mediation, Commercial Track, and case management fully integrating gender. For example: mediation rules should make explicit reference to power relations between men and women; mediation panels should include an appropriate number of women and men; implementation teams should include a gender expert; and all M&E should contain sex disaggregated data.

- 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. Drama and radio soaps could be used to promote women’s right to justice.
### Table 5.2. Gender perspective on proposed IFC support to Commercial ADR in PNG

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Detail (where appropriate)</th>
<th>Gender perspective</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Support the implementation of mediation in the National and Supreme Court</td>
<td>Rules to be made under the National Court (Amendment) Act 2008. The rules will provide: a cost schedule; guidelines on the mediation models to be followed; appropriate standards for mediators including threshold qualifications; training requirements; and referral procedures.</td>
<td>The Act is gender neutral. The more detailed Rules could make explicit reference to gender issues including in relation to power relations between men and women; and qualifications to include training in gender issues.</td>
</tr>
<tr>
<td>1.1 Peer review and assist with the passage of Draft Court Rules for Mediation</td>
<td>Constitute a roundtable of ADR national and international experts including University of PNG; the Peace Foundation; and the Australian National ADR Board to develop a mediation course.</td>
<td>Peace Foundation has experience of training female mediators and of gender issues in mediation. Ensure role of advising on gender issues is included in their ToR. If necessary, recruit additional gender adviser.</td>
</tr>
<tr>
<td>1.2 Support the development of appropriate mediation training</td>
<td>Intention is for 12 mediators at pilot stage.</td>
<td>Ensure gender balance. Peace Foundation advises that, at village level, it is not appropriate for women to mediate in a dispute involving men. Prevailing cultural attitudes may impact on male mediators’ role in relation to female litigants. A target of 15 percent female mediators at the pilot stage should allow for a female mediator to be available for disputes involving female parties.</td>
</tr>
<tr>
<td>1.3 Support the recruitment of external mediators and administrative secretariat</td>
<td>Entity to deliver training to be determined under 1.3 above.</td>
<td>Training must include gender as core component in PNG’s cultural context.</td>
</tr>
<tr>
<td>1.4 Support the delivery of mediation training</td>
<td>Training in relation to referral of cases to mediation including the types of cases suitable for mediation.</td>
<td>Training should include gender issues. For example mediation may be more acceptable to female litigants and less so to male ones who may prefer a more adversarial approach.</td>
</tr>
<tr>
<td>1.5 Develop and deliver training for judicial officers in mediation / case management</td>
<td>Include training on how to capture relevant data and monitor cases referred to mediation.</td>
<td>Data must be sex disaggregated to include sex of litigants, lawyers, and mediators.</td>
</tr>
<tr>
<td>1.6 Support the development and delivery of training for an administrative secretariat</td>
<td>Need to capture and analyze relevant qualitative and quantitative data.</td>
<td>All data must be sex disaggregated including: - user satisfaction surveys - number of cases referred - outcomes.</td>
</tr>
<tr>
<td>1.7 Develop monitoring and evaluation framework</td>
<td>The intention is to use Court users forums, TV, radio, print media, lectures and public information sessions.</td>
<td>Mainstream awareness of gender issues in training</td>
</tr>
<tr>
<td>1.8 Develop and deliver ADR training for lawyers</td>
<td>The message includes that mediation and the Courts are for women as well as men. Use women as well as men to promote mediation.</td>
<td>Sex disaggregate all performance data.</td>
</tr>
<tr>
<td>1.9 Support the development and roll-out of a public awareness campaign</td>
<td>Includes expert input into revising the Court rules.</td>
<td>Review outcomes in the light of gender considerations. Compare performance and outcomes of male and female mediators. Consider use of mediators by male and female litigants and their respective experiences of the system.</td>
</tr>
<tr>
<td>1.10 Support, monitor and evaluate the mediation pilot</td>
<td>Arbitration is provided for in PNG legislation but is not used in practice.</td>
<td>Commercial arbitration is a formal system of dispute resolution, suitable for high-end, technical cases (for example involving disputes about construction or engineering). Given the very low levels of involvement of women in PNG in major commercial enterprises, gender issues are unlikely to arise, apart from in relation to ensuring that there are equal opportunities for women as well as men to train and be appointed as arbitrators.</td>
</tr>
</tbody>
</table>

2. Operationalize national and international arbitration in PNG
Chapter 6. Access to, and enforcement of, rights over registered land

Summary

Women have limited rights over, and control of, the vast majority of land in PNG that is held under customary tenure. Incorporated Land Groups that enable land-owning groups to formalize their interests and use their land for economic exploitation have marginalized women: women tend to have little say in decision-making and reap few of the benefits. Women are minority users of the formal, registered land system.

Land is not currently being addressed under the Government’s Regulatory Simplification and Investment Policy and Promotion Program 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 is a key resource for PNG

For the vast majority of Papua New Guineans land is their most valuable asset, the basis for social cohesion, food security, culture, and ecological management. The special status of land is supported by PNG’s Constitution, which emphasizes that villages and communities should remain viable units of society, and states that “Land policy should be an evolution from a customary base, and not a sweeping agrarian revolution or total transformation of society.”

Only about 30 percent of the country’s land is suitable for agriculture, of which about 97 percent is held under customary tenure. The Government has recognized the need for land reform to reconcile customary land holdings with the need to alienate the land for economic development, particularly for large-scale and efficient agricultural projects. With rapid urbanization, land has become a major problem in urban areas, particularly Port Moresby, which is surrounded by extra-legal squatter settlements on customary land. Squatters do not have legal tenure and so do not pay rent, or benefit from service provision such as sewerage and other utilities.

Although there is no legal restriction on women’s ability to hold land in PNG, in practice women generally have very limited rights over customary land; are marginalized when customary land is converted to economic use; and are largely absent from the formal land market.

Women have limited control over land held in customary tenure

The vast majority of land in PNG is held under customary tenure, entrenched in culture, and recognized in the legal system. The land is held by customary groups, who grant usufruct rights – to control, manage, and use the land – to individuals, families, and extended families (clans). In some cases (for example the Foe in Southern Highlands Province) usufruct rights are exercised by specific individuals or, at most, a set of male siblings and their father.

Nearly all customary land is held on a patrilineal basis, passing from father to child (either son or daughter), with senior male clan or family leaders allocating the land. There are a very few areas in PNG which operate a matrilineal system (for example New Islands in the north and Milne Bay in the east). Matrilineal land passes from mother to daughter or son if there is no

daughter. Men, including those who marry into the clan, must access land through their mothers, sisters, or wives.\textsuperscript{145}

In both matrilineal and patrilineal descent systems, traditionally both sexes have land rights by virtue of their birth in their clan or kinship group (see Box 6.1 below).\textsuperscript{146} But whether land use takes place on an individual, family, or clan basis, in the patrilineal system, men are seen as custodians of the land and therefore decision-making about the land lies with them.\textsuperscript{147} Even with matrilineal societies, while land inheritance was through the women’s lineage, it is the man who made the final decisions about land use (as with other community matters).\textsuperscript{148}

\textbf{Box 6.1. Men and women’s right to use land}\textsuperscript{149}

Amongst the Tolai of East New Britain Province (a matrilineal society), Tolai women married Tolai men from villages remote from their home area. The women usually moved at marriage to live with their husbands, so their children would grow up remote from the land to which they were entitled under custom. In theory such children would have no land rights in the village in which they lived, but in practice they were provided with land.

Legislation places restrictions on the purchase and sale of customary land, and on its forfeiture when it is held as security for a loan.

\textbf{Group holdings of land for economic use have marginalized women}

The Land Groups Incorporation Act 1974\textsuperscript{150} enables land-owning communities to register as corporate entities, and thus become legal vehicles that can deal with customary land, and exploit it for commercial purposes. It gives legal recognition to customary groups for purposes of land ownership and decision-making over the use and management of their land. Incorporated Land Groups (ILGs) have mainly been used for royalty distributions.\textsuperscript{151} There are more than 10,000 ILGs.\textsuperscript{152}

The process for ILG formation and registration is protracted and expensive. Once genealogical investigations have determined who is in the Group, it can be registered – with the right to acquire, hold, dispose of, and manage land. The usufruct rights of individuals within the Group are in theory preserved. Incorporated Land Groups can vary in size. There is a proliferation of family-based Groups, rather than Groups that reflect clan (group) ownership.\textsuperscript{153}

Each ILG has a Management Committee headed by a Chairman, who is responsible for administering the land on behalf of the Group. Members of the Committee are chosen by the community in part for their suitability for the job – people who are recognized as good administrators or orators may be selected. In rare cases a woman will be selected, but women are rarely Chairmen. Where the matrilineal system applies, women will normally select a member of the Management Committee as their representative (who could be a man) although this is not required by law.

The registration of an Incorporated Land Group simply defines a Group: it does not define the area of land that the group owns or confer registered title. In order to do this it is necessary to undertake a survey to identify the land boundaries; go through dispute resolution processes if necessary (through the Land Court); lodge a plan of the land with the Surveyor General for approval; and then register the land (as freehold or leasehold) with the Land Registry.

If the land is to be used commercially by an investor, the lease, lease-back system is frequently used. Under this system the Incorporated Land Group grants a lease of their land to the State, so landowners acquire a leasehold interest in the land which may then be sub-leased to the investor.\textsuperscript{154}

\begin{itemize}
  \item \textsuperscript{146} Fingleton, J. Rethinking the Need for Land Reform in Papua New Guinea, Pacific Economic Bulletin, vol 22 (1), March 2007.
  \item \textsuperscript{147} Aitsi, L. An Analysis of the Efficient Delivery, Effectiveness and Impact of Community Development Scheme Funded Gender and Equity Sector Activities, 2006.
  \item \textsuperscript{148} Aitsi, L. An Analysis of the Efficient Delivery, Effectiveness and Impact of Community Development Scheme Funded Gender and Equity Sector Activities, 2006.
  \item \textsuperscript{149} Fingleton, J. Rethinking the Need for Land Reform in Papua New Guinea, Pacific Economic Bulletin, vol 22 (1), March 2007.
  \item \textsuperscript{150} In March 2009, two new laws were passed to strengthen Group Incorporations: The Land Groups Incorporation (Amendment) Act and the Land Registration (Customary Land) (Amendment) Act.
  \item \textsuperscript{151} Fingleton, J. Rethinking the Need for Land Reform in Papua New Guinea, Pacific Economic Bulletin, vol 22 (1), March 2007.
  \item \textsuperscript{152} Fingleton, J. Rethinking the Need for Land Reform in Papua New Guinea, Pacific Economic Bulletin, vol 22 (1), March 2007.
  \item \textsuperscript{153} Source: Land Registry.
\end{itemize}
The legislation does not set out the rights of individual members of an Incorporated Land Group. The unspecified nature of individual rights, together with poor administration of the Act\textsuperscript{155} has created major problems. Powerful members of a family or clan (usually male members) frequently dominate weaker members (usually women). This is particularly the case in patrilineal land holding systems, but it also applies in matrilineal systems where women can be marginalized in the Incorporated Land Group process. The Act does not contain controls on distributions of funds paid to ILG management. In practice this means that royalties paid to the Land Group – for example by investors exploiting minerals on the land – tend to be distributed to the male members of the group only, and not to the women. Women may be further disadvantaged: it has been suggested that over a period when royalties are paid, rates of domestic violence increase as men use the funds received to buy drink and drugs, resulting in violent behavior.

Women are minority users of the formal land system...\textsuperscript{156}

Only three percent of PNG’s land lies outside the customary system. This alienated land, which is mostly in urban areas (although some is plantation land in rural areas) is almost entirely owned by the national Government\textsuperscript{156} which then allocates portions of land to citizens. Land that is allocated is freehold.

PNG’s Land Registry registers freehold and leasehold\textsuperscript{157} titles using the Torrens system. The Registry is currently overwhelmed. It deals with 4,000 transactions a year, with a staff of eight. The backlog is large; it takes months to register title and is very expensive, especially in comparison to the best performing country in the Pacific region, New Zealand (see Table 6.1 below).

Table 6.1. Cost of Doing Business: Registering title\textsuperscript{158}

<table>
<thead>
<tr>
<th>Indicator</th>
<th>PNG</th>
<th>New Zealand</th>
<th>East Asia and Pacific</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedures (number)</td>
<td>4</td>
<td>2</td>
<td>5</td>
<td>4.7</td>
</tr>
<tr>
<td>Duration</td>
<td>72</td>
<td>2</td>
<td>97.5</td>
<td>25</td>
</tr>
<tr>
<td>Cost (% of property value)</td>
<td>5.1</td>
<td>0.1</td>
<td>3.9</td>
<td>4.6</td>
</tr>
</tbody>
</table>

The Registry confirmed that few women register land or are involved in transfers of already-registered land. A sample of transfers filed at the Land Registry from Southern Region on one day\textsuperscript{159} revealed that 56 percent of land transfers (mainly of leases and freeholds granted by the State) were made to men (see Table 6.2 below).

Table 6.2. Numbers of registrations made in Southern Region on 21 November 2008

<table>
<thead>
<tr>
<th>Transferee</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>22</td>
<td>56</td>
</tr>
<tr>
<td>Female</td>
<td>5</td>
<td>13</td>
</tr>
<tr>
<td>Joint</td>
<td>12</td>
<td>31</td>
</tr>
<tr>
<td>Total</td>
<td>39</td>
<td>100</td>
</tr>
</tbody>
</table>

...and are subject to bribes when they do use it

Land Registry staff admitted that the backlog of cases to be registered resulted in making of speed payments a common occurrence. Business women interviewed\textsuperscript{160} considered that they were particularly vulnerable to requests for bribes, being perceived as easy targets.


\textsuperscript{157} Leaseholds of three year or more must be registered. Shorter leases may be registered.


\textsuperscript{159} 21 November 2008 was selected at random.

\textsuperscript{160} Including at the Business Women’s Forum.
**Recommended reforms**

The National Land Development Task Force, following extensive consultations, has made a number of important recommendations designed to make the land tenure system more suitable for a modern economy. Their key recommendations are:

- Reform the Land Group Incorporation Act 1974
- Make land titles accessible to the public
- Store files electronically to reduce the danger of their destruction

The recommendations below build on this.

**Legal reforms**

- Undertake a fundamental review of the Land Groups Incorporation Act to protect the interests of individual members of the group, particularly women. For example, consideration should be given to specifying a minimum female representation on management committees, and ensuring that women’s secondary land rights are recognized in patrilineal systems.
- Ensure that women’s interests are properly recognized on the Land Task Force and that women are involved in the reform process.

**Institutional reforms**

Government should strengthen both the Land Registry and the Incorporated Land Groups Registry and in doing so should:

- Ensure that women are properly represented on any task force or group set up to take the institutional reform forward
- Ensure that these institutions are ‘friendly’ to women, for example suitable opening hours and facilities; help desks; adequate proportion of female staff; user guides and staff procedures manuals that recognize that they are for women as well as men.
Annex A: PNG Planning Matrix

Papua New Guinea: Gender And Investment Climate Reform Planning Matrix

Planning period: 3 years

Goal 1: Improved Policy Environment And Support Network For Business Women

<table>
<thead>
<tr>
<th>Targets</th>
<th>Baseline</th>
<th>Means of Verification</th>
<th>Activities</th>
<th>Responsibility</th>
<th>Tools to support activities / baseline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Improved policy dialogue on investment climate reform for women’s economic empowerment.</td>
<td>Proportion of members representing business women’s interests on Public Private Dialogue Task Force and Working Groups. Number of policy papers featuring women’s economic empowerment considered by Cabinet.</td>
<td>ToRs, membership lists and minutes of meetings. Cabinet Office Task Force minutes.</td>
<td>1.1.1 Ensure appropriate representation of women’s interests in existing PPD structures (Task Force and Working Groups). If necessary revise ToRs. 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/s do not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance.</td>
<td>Public Private Dialogue Task Force. IFC Office.</td>
<td>TOOL 1: Gender Working Group ToRs. TOOL 3: Investment Climate Gender Consultant ToRs and initial work plan.</td>
</tr>
<tr>
<td>1.2 Improved legal framework for women’s businesses.</td>
<td>Number of reforms to improve the investment climate for women enacted and implemented. PNG Gazette Task Force minutes, Gender Working Group minutes.</td>
<td></td>
<td>1.1.1 PPD Structures (Task Force and Working Groups) and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms. 1.1.2 Introduce law reforms to Parliament, including those recommended in Table 2.1. 1.1.3 Enact and implement new laws.</td>
<td>Gender Working Group, Public Private Dialogue Task Force, Govt of PNG.</td>
<td>TOOL 4: List of Discriminatory Laws.</td>
</tr>
<tr>
<td>1.3 Improved training and networking for business women.</td>
<td>Business women’s perception of training and networking. Perception surveys.</td>
<td>1.3.1 Continue regular PNG Business Women’s Forums (with open invitation to business women ranging from the informal sector through to big business) as commenced by IFC in March 2009, in partnership with local organizations and existing business women’s associations. 2.3.1 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>
<td>IFC (local consultant), Gender Working Group, Business Women’s Forum.</td>
<td>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. TOOL 5: Business Women’s Perception Questionnaire.</td>
<td></td>
</tr>
</tbody>
</table>
Goal 2: Enhanced Ability Of Women To Start And Run Businesses

<table>
<thead>
<tr>
<th>Targets</th>
<th>Baseline</th>
<th>Means of Verification</th>
<th>Activities</th>
<th>Responsibility</th>
<th>Tools to support activities / baseline</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 that 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>2.1.1 Ensure operations of Companies Registry are gender neutral. 2.1.2 Undertake outreach activities in respect of business women’s formalization focused on the benefits of the limited liability company form (for example mobile registration units; developing a partnership with NCDC; staff training; strengthen Women’s Help Desk at Small Business Development Corporation). 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.</td>
<td>Business Entry Working Group / Gender Working Group, Business Women's Forum, Business Registration &amp; Regulation Division of IPA, SBDC</td>
<td>TOOL 8: Business Registry Sex Equality Checklist  TOOL 5: Business Women’s Perception Questionnaire TOOL 9: How to Undertake Outreach on Formalization for Business Women TOOL 10: Women’s Help Desk draft ToRs TOOL 12: Companies Act Checklist TOOL 13: Draft Partnership Agreement</td>
</tr>
</tbody>
</table>

| 2.2 Improved legal framework for women’s business entry. | Number of reforms undertaken. | Task Force minutes. | 2.2.1 Review companies legislation to ensure best practice legal framework for registration of women’s community groups as companies. 2.2.2 Review Business Groups Incorporation Act to ensure women can be adequately represented in community companies, and that women’s community groups can register (in parallel with Companies Act review in 2.2.1). 2.2.3 Develop and promulgate basic partnership agreement with civil society and business organizations. | IPA Business Operations Working Group Gender Working Group Business Women’s Forum | TOOL 6: Using Business Registry Data to establish % of Registered Companies Headed by Women. TOOL 7: Business Owners’ Survey |

163 (Or Method to Obtain Baseline). 164 Lead entity is listed first.
## Goal 2: Enhanced Ability Of Women To Start And Run Businesses

<table>
<thead>
<tr>
<th>Targets</th>
<th>Baseline&lt;sup&gt;162&lt;/sup&gt;</th>
<th>Means of Verification</th>
<th>Activities</th>
<th>Responsibility&lt;sup&gt;163&lt;/sup&gt;</th>
<th>Tools to support activities / baseline</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.3 Reduced regulatory compliance cost on female-headed businesses.</td>
<td>Licensing stocktake and process maps.</td>
<td>Gender Working Group minutes.</td>
<td><strong>2.3.1</strong> Improve legislation/policy on Business Names Registration process based on international best practice.</td>
<td>NCDC.</td>
<td>TOOL 15: Analysis of Business Names Registration Process.</td>
</tr>
<tr>
<td></td>
<td>Women’s focus group discussions on licensing stocktake and process maps.</td>
<td>Cabinet policy papers.</td>
<td><strong>2.3.2</strong> Conduct women’s focus group discussion on trade and other license process maps developed by IFC to assess (a) which licenses women most commonly obtain, (b) if women identify steps different/additional to official process map.</td>
<td>Business Operations Working Group.</td>
<td>TOOL 11: Women’s Consultation/Training Checklist.</td>
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<td></td>
<td>Time and cost compliance assessment, such as the Standard Cost Model result.</td>
<td>Women’s focus groups/perception survey.</td>
<td><strong>2.3.3</strong> Simplify procedures that have an adverse impact on female-headed businesses (revealed in time and cost compliance analysis).</td>
<td>Gender Working Group.</td>
<td>TOOL 5: Business Women’s Perception Questionnaire.</td>
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<td>TOOL 14: Mainstreaming Gender in Regulatory Compliance Cost Tools.</td>
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<tr>
<td>2.4 Increased number of female-headed businesses have appropriate sectoral licenses.</td>
<td>Sex disaggregated data on holders of sectoral licenses.</td>
<td>Appropriate sectoral licensing authority.</td>
<td><strong>2.4.1</strong> Identify sectors that are relevant to female-headed businesses.</td>
<td>NCDC.</td>
<td>TOOL 7: Business Owners Survey</td>
</tr>
<tr>
<td></td>
<td>Sex disaggregated data on businesses that require sectoral licenses.</td>
<td>Business Owners Survey.</td>
<td><strong>2.4.2</strong> Undertake training for women on sectoral licensing.</td>
<td>Business Operations Working Group.</td>
<td>TOOL 11: Women’s Consultation/Training Checklist</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Focus group discussions.</td>
<td><strong>2.4.3</strong> Introduce mechanism to sex disaggregate sectoral licensing data.</td>
<td>Gender Working Group.</td>
<td>TOOL 16: Mechanism to Sex Disaggregate Data on Holders of Sectoral Licenses.</td>
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<td>TOOL 7: Business Owners Survey</td>
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<td>TOOL 14: Mainstreaming Gender in Regulatory Compliance Cost Tools.</td>
</tr>
<tr>
<td>2.5 Reduced harassment of female informal sector traders.</td>
<td>Present level of harassment suffered by female informal sector traders.</td>
<td>Newspaper Reports, television, radio, internet, surveys.</td>
<td><strong>2.5.1</strong> Work with Informal Sector Technical Working Group to contribute to development of PNG policy on informal sector, including: a) Proposal for a market based solution, providing more legitimate market space for small vendors b) review of Informal Sector Development and Control Act with transparent rights and responsibilities for market vendors operating in legitimate space, with less emphasis on control c) review of NCDC’s policy on betel nut selling and explore ways to enable it to be a legitimate business while balancing health and public order concerns.</td>
<td>Business Operations Working Group.</td>
<td>TOOL 17: Gender Perspectives on CIMC Informal Policy Concept Paper.</td>
</tr>
</tbody>
</table>

*TOOL 7: Business Owners Survey*
## Goal 3: Improved Access To Commercial Justice For Women

<table>
<thead>
<tr>
<th>Targets</th>
<th>Baseline16</th>
<th>Means of Verification</th>
<th>Activities</th>
<th>Responsibility17</th>
<th>Tools to support activities / baseline</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 20 percent of mediation users are women and 80 percent of female users are satisfied with court-referred mediation service.</td>
<td>% of ADR users that are women, % of female users satisfied with ADR service.</td>
<td>Court-referred mediation records. ADR Users Perception Survey – baseline and follow up.</td>
<td>3.1.1 Develop and promulgate simple contract for use in common commercial transactions for women and provide training on contract law. 3.1.2 Ensure gender is mainstreamed in ADR reform process as per table 5.2 in Chapter 5. This includes mainstreaming gender into the Mediation Rules. 3.1.3 Undertake outreach to inform business women of availability and appropriateness of court-referred mediation.</td>
<td>ADR Standing Committee / Gender Working Group.</td>
<td>TOOL 18: Outline of Basic Contract  TOOL 19: Mediation Sex Equality Checklist  TOOL 20: Methodology for sex Disaggregation of ADR Users  TOOL 21: ADR / Commercial Justice Users' Perception Questionnaire</td>
</tr>
<tr>
<td>3.2 At least 20 percent accredited mediators are women.</td>
<td>Currently no mediators accredited</td>
<td>Accreditation records.</td>
<td>3.2.1 Train and accredit female mediators.</td>
<td>ADR Standing Committee / Gender Working Group.</td>
<td>TOOL 19: Mediation Sex Equality Checklist</td>
</tr>
</tbody>
</table>

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165 (Or Method to Obtain Baseline).  
166 Lead entity is listed first.
Annex B: People met

Angela Mageta, Director, Regulatory Services Department, NCDC
Alessandro Martinatto, IFC Regulatory Specialist
Alex Tongayu, Deputy Registrar of Companies, Investment Promotion Authority
Andrew Oaeke, Assistant Secretary for the Economic Policy Division, Department of Treasury, PNG
Benjamin Samson, Land Registry
Christine Num, Manda Trading
David Hebbend, Director, Internal Revenue Commission
Dame Carol Kidu, Minister for Community Development, PNG National Parliament
Diri Kobla, Small Business Development Corporation
Dora Fleming of Chatterbox and Complete Pest Control
Emily George Taule, Executive Director, Transparency International (PNG) Inc
Fego Ota, Executive Manager, ICCC
Gabriel Iso, Foundation Manager, Ginigoada Bisnis Development Foundation
Helen Disney, Agency Performance Monitoring Advisor, PNG-Australia Law and Justice Sector Program
Henry Marasembi, KAB Project Manager, Small Business Development Corporation
Imelda Makap, Mount Hagen Airport Motel
Janet Sape, PNG City Mother’s Business Foundation
Julie Bukikin, National Program Officer, UNIFEM
Kim Arut, Kumul Lodge, Mount Hagen
Law & Justice Program
Mary Elizabeth Saun, Maryelzs Orchid In-Bloom
Martin Syder, Deputy Team Leader, PNG Democratic Governance Transition Program (Transition Phase)
Marjorie Andrew, CIMC Secretariat and Deputy Director
Michael Goddard, World Bank, Justice for the Poor Program
Nathan Timo, Small Business Development Corporation
Patricia Willie Kidu, Gaudi Kidu & Associates
Pauline Magari, Marketing and Community Relations Manager, Westpac Bank (PNG)
Pauline Acman, Woslake Business Group
Paul Barker, Executive Officer, CIMC
Paul Thornton, Managing Director, PNG Microfinance Ltd
<table>
<thead>
<tr>
<th>Name</th>
<th>Position/Role</th>
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<tbody>
<tr>
<td>Peace Foundation</td>
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<tr>
<td>Peter Piawu, Acting Manager,</td>
<td>Small Business Development Corporation</td>
</tr>
<tr>
<td>Peter Fahe, Administration Coordinator,</td>
<td>Regulatory Services Department, NCDC</td>
</tr>
<tr>
<td>Rachel Pokesy</td>
<td></td>
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<tr>
<td>Ray Clarke, Chairman,</td>
<td>Nationwide Microbank</td>
</tr>
<tr>
<td>Rod Hoffman, Managing Director,</td>
<td>National Development Bank</td>
</tr>
<tr>
<td>Roger Dickson, Lead Facilities Advisor,</td>
<td>PNG-Australia Law and Justice Sector Program</td>
</tr>
<tr>
<td>Ross Hammond, Managing Director,</td>
<td>Westpac Bank (PNG)</td>
</tr>
<tr>
<td>Steve Burke, Internal Revenue Commission</td>
<td></td>
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<tr>
<td>Steve Sims, Law &amp; Justice Development</td>
<td>Practitioner, PNG-Australia Law and Justice Sector Program</td>
</tr>
<tr>
<td>Susan Ryle, First Secretary, AusAID</td>
<td></td>
</tr>
<tr>
<td>Tarcissius Karaut, Business Information</td>
<td>and Facilitation Director, Investment Promotion Authority</td>
</tr>
<tr>
<td>Tessa Te Mata, PNG Country Manager, NZAid</td>
<td></td>
</tr>
<tr>
<td>Temu Elly, Social Services, Law &amp; Order</td>
<td>Coordinator, NCDC</td>
</tr>
<tr>
<td>Titus Mengi, Pricing Analyst, ICCC</td>
<td></td>
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<tr>
<td>Tom Vere, Copyrights Officer, Intellectual Property Office</td>
<td></td>
</tr>
<tr>
<td>Visko Alu, Manager, Licensing, Regulatory</td>
<td>Services Department</td>
</tr>
<tr>
<td>Winifred Kamit, Senior Partner, Gadens</td>
<td>Lawyers</td>
</tr>
</tbody>
</table>
Annex C: Notes from Business Women’s Forum

IFC/AusAID Pacific Gender Mainstreaming Program
PAPUA NEW GUINEA
BUSINESS WOMEN’S FORUM
MONDAY, MARCH 16, 2009
11.30am – 2.30pm, Lamana Hotel conference room, Port Moresby

Agenda

Team: Sonali Hedditch; Clare Manuel; Vijaya Nagarajan; Tamara Haig; Florence Willie; William Boas
(in between M&E meetings)

1. Intros (30 mins): PLENARY
   - FW: Prayer
   - SB: Open, Brief welcome, IFC generally
   - Business women: Introductions
   - VN: Pacific Gender Mainstreaming, examples in Vanuatu, Tonga, Samoa, etc; Possibility of Pacific women network
   - CM: Business women in Africa
   - TH: Pacific women – celebrating success and case studies

2. Hates & Loves (20 mins): PAIRING for DISCUSSIONS
   - Discuss highlights and difficulties they have encountered
   - Write up on separate pieces of paper
   - Facilitators will pin the stickers to the swiveling board

3. Problems & Solutions (45 mins):
   - Five groups will discuss the main challenges faced by women in each of the 5 areas, that is, Business registration & licensing (CM); Paying tax & Access to Finance (SB); Corruption / Access to registered land (TH); Access to Justice (Vij/FW?); Employing workers (FW/Vij?)
   - Stick problem and solutions cards on to butchers’ paper
   - Discuss each of the 5 areas, with a participant from each group speaking to the problems and solutions (Plenary – Vij to lead)

4. Prioritization (20 mins):
   - Where to now? Next steps? (Vij lead)
   - Identify main solutions to these challenges
Brief Notes

‘I loves’

‘I loves’

- Dealing with different types of people, meeting new people, following-up on payments. Dealing with public, marketing, training. I love training with microbanking, create good relationship with bank.

- Employing new staff to bring work to them, employing others, helping my own people to own a living (at least for basic needs), I love my children.

- I love getting paid after completing a job, seeing smiles on clients’ faces after a training or report delivery.

- Freedom to do other things, hours are flexible, the creativity and opportunity to start things, working for myself, making decisions, networking, variety and creativity, own boss, the challenge to compete in an industry dominated by men.

- I love to see the success of our women in business, training into the communities (how to grow flowers), working with groups – gender balance.

- Passion for what we want to do, I love my culture arts and handicrafts, I love to hear of my own herbal ‘miracle’ stories, I love experimenting in the garden, I love doing new recipes, cooking a new dish, I love making people well, Gardening.

‘I hates’

‘I hates’

- Stubborn people who don’t want to change, seeing computer users manually manipulating data for a report, seeing business not managed properly, no record-keeping from the group, un-productive people and businesses, trying to address business issues in Court, difficulties in training employees to follow process and systems, when people don’t take advice, people ask for money.

- Inability to sustain businesses and connect to buyers overseas, in getting registered/licensed (time consuming and bribes), cost of workspace, corruption, complaints about price, people wanting discounts (especially friends), teaching my staff in what I’ve trained them already.

- Finding work, finding workspaces (security and availability), nonsense issues being raised, calls with complaints for no reason.

- I hate debt, lack of money/capital, over-demanding wantoks, wantoks asking for money, managing time, working after-hours, working so hard to convince my potential clients, managing priorities for family/work, being disturbed after hours, SMS/calls after midnight, long working hours, jealousy and wantoks draining you, don’t have proper family time, other people coming with their problems.

- Bureaucracy and red tape, The Internal Revenue Commission (but they are here to stay), the delay in dealing with the workings of Government organizations, used to hate book-keeping (but computers have made me love it), paying taxes, doing end of year finances.

- After completion of job done if when following up the customer/client questions payment and the excuses come out.
<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
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<tbody>
<tr>
<td>Kathleen Ipi Johnson</td>
<td>After Dark Fashions PNG</td>
</tr>
<tr>
<td>Rellice P. Munasinghe</td>
<td>PNG Work Wear</td>
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<tr>
<td>Laeko M. Bala</td>
<td>President, Council of Women CP</td>
</tr>
<tr>
<td>Donna Harvey-Hall</td>
<td>Retail / Real Estate / Guest House</td>
</tr>
<tr>
<td>Roselyn Nesik</td>
<td>Hamamas Nau Services</td>
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<tr>
<td>Anne Pouru</td>
<td>Rapha Herbal</td>
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<tr>
<td>Pauline Acman</td>
<td>Woslake Business Group</td>
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<tr>
<td>Mary E. Saun</td>
<td>Floriculture Training Services</td>
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<tr>
<td>Veitu Digo</td>
<td>Culinary Delights Catering Service</td>
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<tr>
<td>Dora Fleming</td>
<td>Complete Pest Control / Chatterbox</td>
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<td>Shelley Launa</td>
<td>Wilshel Ltd</td>
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<td>Thes Macaset</td>
<td>EITech Engineering Services Ltd</td>
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<tr>
<td>Monica Alu</td>
<td>Forward Real Estate</td>
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<tr>
<td>Rhoda Moses</td>
<td>Leadership PNG</td>
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<td>Janet Sape</td>
<td>Country Mother's Foundation</td>
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<td>Tessa Te Mata</td>
<td>NZAID</td>
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<tr>
<td>Robin Hedditch</td>
<td>PATTAF</td>
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<tr>
<td>Vivien Carroll</td>
<td>PATTAF</td>
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<tr>
<td>Margaret Aila</td>
<td>New Image T. Solutions</td>
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<tr>
<td>Val Salama</td>
<td>Learnfast PNG</td>
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<tr>
<td>Virginia Elmslie</td>
<td>Sustainable Business Consulting</td>
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<td>Rage Thoa</td>
<td>Semafo Ltd</td>
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<tr>
<td>Maria Kopkop</td>
<td>Kopkop Kollege</td>
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<tr>
<td>Kim Arut</td>
<td>Kumul Lodge</td>
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<tr>
<td>Dina N. Vada</td>
<td>Tailoring</td>
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<tr>
<td>Patricia W. Kidu</td>
<td>GKA Architect &amp; Project Managers</td>
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<tr>
<td>Filomena Cazzman</td>
<td>Bearing Point (PNG) Ltd</td>
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<tr>
<td>Zilar Miro</td>
<td>IT Consultancy</td>
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<tr>
<td>Maria Bautista</td>
<td>Abel Computing</td>
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</table>
Annex D: Bibliography

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World Bank, 1998 Gender Analysis in Papua New Guinea


Annex E: Tools

Tool 1: Gender Working Group: Terms of Reference

Introduction

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

The PNG Gender and Investment Climate Reform Assessment, funded by IFC and AusAID, undertook a review of PNG’s investment climate with a gender lens. The Assessment concluded that PNG’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 PNG proposes that if the existing PPD structures in PNG 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). This initiative is taking place under the IFC funded Regulatory Simplification and Investment Policy and Promotion Project.

Regulatory Simplification and Investment Policy and Promotion Program: PPD Structure
Composition
The Gender Working Group will comprise (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 will provide technical assistance for 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 the IPA and Small Business Enterprise Development Centre to develop a Women’s Help Desk.
• Produce business women’s handbook aimed specifically at women.

• Work with [NAME OF RELEVANT PPD GROUP] to review business entry legislation 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.

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

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

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

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

• Work with Business Women’s Forum to deliver training on sectoral licensing for women.

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

**Commercial justice / ADR**

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

• Work with the ADR Steering Committee to ensure gender is mainstreamed in ADR process as recommended in the Gender and Investment Climate Reform Assessment.

• Work with the Business Women’s Forum to assist them to develop appropriate outreach to women on availability and appropriateness of ADR.

• Work with the ADR Steering Committee to ensure that female mediators are trained and accredited.
Tool 2: Business Women’s Forum: Terms of Reference

Indicative outline Terms of Reference

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

Forum aims

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

b) To share information and knowledge.

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

Membership

Open to all women in business – those trading formally and informally.

Initial focus on capital city, but with the intention of expanding country-wide.

Support

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

Governance

A small board comprising:

- Representatives of groups working with grass roots business women (for instance, NGOs, donor projects, church groups, National Council of Women).
- If possible, a formal private sector sponsor.
- Individual business women.

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

Funding

Costs should be kept to minimum. Sponsorship of training events could be provided by the local organizations that deliver the 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]
• 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 (for example in a market) building on Business Women’s Forum.
**Tool 3: Investment Climate Gender Consultant: Terms of Reference and Initial Work Plan**

**Terms of Reference**

**Introduction**

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

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

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

**Role**

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

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

The Consultant will work closely and collaboratively with other IFC funded technical advisors on the Regulatory Simplification and Investment Policy and Promotion Project, to ensure that the gender activities align with IFC’s broader investment climate reform program.

In 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 PPD Task Force and Working Groups, and the number of papers featuring women’s economic empowerment considered by Cabinet.

**Activities**

- Ensure appropriate representation of women’s interests in existing PPD structures (Task Force and Working Groups). 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/s do not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance.

**Target 1.2 Improved legal framework for women’s businesses**

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

**Activities**

- PPD Structures (Task Force and Working Groups) and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms
- Introduce law reforms to Parliament, including those recommended in Table 2.1
- Enact and implement new laws
Gender and Investment Climate Reform Assessment

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 PNG 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 it's 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 pro-actively ensuring follow up of action points
- Ensure that the agenda of the GWG drives forward the reforms recommended in the Gender and Investment Climate Reform Assessment
- Establish working relationships between the GWG and other key PPD groups (in particular those dealing with business entry, licensing, the informal sector\(^{168}\), 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 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.
- 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 the IPA and/or Small Business Enterprise Centre

Target 1.3 Improved training and networking for business women

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

**Activities**

- Continue regular PNG Business Women's Forums (with open invitation to business women ranging from the informal sector through to big business) as commenced by IFC in March 2009, in partnership with local organizations and existing business women’s associations
- Develop and undertake networking and monthly training on investment climate for the Business Women’s Forum, including regional networking across Pacific to share lessons and experiences.
The Business Women’s Forum (BWF) comprises a network of business women and has the mandate of providing support and training for business women to assist them in the legal, regulatory, and administrative interactions required to run a formal business and enabling women to share information on knowledge on business issues, and benefit from mutual support. The BWF will:

✓ be open to all business women – informal and formal SMEs through to big business, and will draw from existing associations, networks, NGOs, and MFIs, as well as invite and include business women who have not been involved in existing associations

✓ offer regular training to business women focusing on Running a Formal Business. Example topics for training include:
  - How to balance family, custom, and business (including the wantok system)
  - Which business form is right for you? (including training on a basic partnership agreement and the benefits and obligations of operating a Limited Liability Company)
  - Dealing with clients: the basics of contracts.

✓ provide a forum for business women to network and give support to each other, for example through mentoring, and possibly regional networking opportunities.

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

• Set up the BWF to identify potential members and 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 5 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.

**Activities**
- Ensure operations of the Companies Registry are gender sensitive.
- Undertake outreach activities in respect of business women’s formalization focused on the benefits of the limited liability company form (for example mobile registration units; strengthen Women’s Help Desk at SBDC).
- Ensure all information on registering a business is equally accessible to men and women, and produce a gender sensitive business entry handbook.

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

**Activities**
- Review companies legislation to ensure best practice legal framework for registration of women’s community groups as companies.
- Review Business Groups Incorporation Act to ensure women can be adequately represented in community companies, and that women’s community groups can register.
- Develop and promulgate basic partnership agreement with civil society and business organizations.

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

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

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

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

**Activities**
- Work with Informal Sector Technical Working Group to contribute to development of PNG policy on informal sector, including:
  a) Proposal for a market based solution, providing more legitimate market space for small vendors.
  b) review of Informal Sector Development and Control Act with transparent rights and responsibilities for market vendors operating in legitimate space, with less emphasis on control.
  c) review NCDC’s policy on betel nut selling to explore ways to enable it to be a legitimate business while balancing health and public order concerns.

Access to Justice, the Courts, and Alternative Dispute Resolution
The Investment Climate Gender Consultant’s role will undertake the activities listed below to achieve targets 3.1–3.3.

Target 3.1 20 percent of court-referred mediation users are women and 80 percent of female users are satisfied with court-referred mediation service
Measured by: Mediation user statistics and perception surveys.

**Activities**
- Develop and promulgate simple contract for use in common commercial transactions for women and provide training on contract law.
- Ensure gender is mainstreamed in ADR reform process as per Table 5.2 in Chapter 5. This includes mainstreaming gender into the Mediation Rules.
- Undertake outreach to inform business women of availability and appropriateness of court-referred mediation.

Target 3.2 At least 20 percent accredited mediators are women
Measured by: accreditation records

**Activities**
- Train and accredit female mediators.
The table below outlines an initial work plan for the first 6 months of a 12 month consultancy.

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

<table>
<thead>
<tr>
<th>Month</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
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<tbody>
<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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<tr>
<td>Identify and make linkages with potential BWF members and partner organizations</td>
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<tr>
<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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<tr>
<td>Commence gender dialogue through PPD structure: facilitate first meeting</td>
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<tr>
<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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<td></td>
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<tr>
<td>Facilitate focus group discussion with women on business licensing reform</td>
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<td></td>
</tr>
<tr>
<td>Facilitate gender aspect of PPD meetings</td>
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</tr>
<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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</tbody>
</table>
## Tool 4: List of Laws that hinder women’s full economic participation

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

<table>
<thead>
<tr>
<th>Area of law</th>
<th>Current provision (discrimination or inadequate protection)</th>
<th>Reform required</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Constitutional law</strong></td>
<td>The Constitution does not contain a definition of discrimination or a specific anti-discrimination provision.</td>
<td>Support the consideration by Cabinet to introduce an organic law on gender equity. Legal status should be given to CEDAW in the Constitution. (See Rwanda's Constitution)</td>
</tr>
<tr>
<td><strong>Marriage</strong></td>
<td>The minimum age for marriages is 16. Marriage Act recognizes customary marriages and discriminatory practices such as bride price and polygamy are common. Adultery and Enticement Act provides for the restitution of conjugal rights.</td>
<td>The Act should be amended to change the minimum age of marriage. The rights to conjugal rights should be removed from the Adultery and Enticement Act.</td>
</tr>
<tr>
<td><strong>Divorce – division of property</strong></td>
<td>Matrimonial Causes Act provides the courts with the power to determine divorce, property distribution, maintenance, and custody.</td>
<td>Amend the law to introduce no fault-based divorce. Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account. Training to judges on gender implications on their decision making.</td>
</tr>
<tr>
<td><strong>Inheritance (in the absence of a will)</strong></td>
<td>Wills and Probate Act provides for the application of customary law where there is no will. As customary inheritance laws are based on patrilineal lines, they discriminate against women.</td>
<td>Amend the law providing for non discriminatory division of assets where there is no will and to provide for statute law to prevail over custom law in relation to inheritance. (See Ghana Law 111 Intestate Succession Law)</td>
</tr>
<tr>
<td><strong>Employment</strong></td>
<td>Employment Act Sexual harassment is not outlawed in the private sector and women have no redress. Maternity leave is unpaid in the private sector Women are prohibited from working in certain positions at night, and from working underground or in jobs that involve heavy labor.</td>
<td>Amend the law to include prohibitions against sexual harassment. Introduce provisions making paid maternity leave compulsory in the private sector. Remove discriminatory provision from legislation.</td>
</tr>
</tbody>
</table>
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 Papua New Guinea / 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 instance 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 in 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 the 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 whether they are male- or female-headed) comes from the US Census Bureau’s Survey of Business Owners and the Self-Employed (see http://www2.census.gov/econ/sbo/sample_forms/sbo1_2007.pdf)

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

**2. Using Business Registry data: measuring male and female directors and shareholders:**

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

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

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

**3. Method**

a) Decide if you are measuring ‘stock’ or ‘flow’

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

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

b) Develop simple data collection sheets. For example:

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

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

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

<table>
<thead>
<tr>
<th></th>
<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTALS</strong></td>
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</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 instance those who have business premises) who hold licenses. Small and informal businesses will not be captured, and
- The license tends to be in the name of the business – rather than the name of the owner and details about ownership are not held by licensing authorities.

This situation is not unusual. In many developing countries the process to open a business has been liberalized, and there is no blanket requirement to register a new business (apart from informing the tax authorities). Both the UK and US rely on survey data to obtain data on business ownership, including 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/UsaL_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 instance 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, for example National Council of Women, NGOs, donor projects.

**Methods**

- Work with partners (such as 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 (for example 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 O?? [This means that the desk will not be static – but peripatetic, that is, in market places where the informal sector is.]
Tool 11: Women’s Consultation/Training Checklist

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

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

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

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

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

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

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

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

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

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

**Companies Act checklist**

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

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

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

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

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

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

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

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

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

5. Salaries and withdrawals
   a) Neither partner shall receive any salary for services rendered to the partnership.
   b) Each partner may, from time to time, withdraw the credit balance in their income account.

6. Banking
   a) All funds of the partnership shall be deposited in its name in a bank account or accounts.
   b) All withdrawals from such bank account(s) may be made on authority of one / both partners(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 discharge the balance of the income accounts of the partners.

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

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

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

Date: ________________________________

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

**Tool 14A: Standard Cost Model / Compliance Cost Tool: gender checklist**

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 by targeted information for female-headed businesses.

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

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

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

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

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

The making of unauthorized payments is fertile ground for consideration of gender issues. There is international evidence that firms paying small bribes are likely to spend more management time dealing with officialdom, not less. This imposes a double burden – both the cost of the bribe and the additional management time. But it is unclear if male- or female-headed firms are more likely to pay bribes: a) Men may be more likely to try to avoid compliance with regulatory requirements than women (such as by paying bribes). This may be due to their greater exposure to bureaucracy, 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.

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

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

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

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

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

Sex disaggregate information on opportunity cost (if obtained).

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.

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**

1. Business name registration legislation
   a) PNG, Solomon Islands, Tonga, and Vanuatu (and most developing countries with an English legal system heritage) all have a similar Business Names Registration Act. The regime is modeled on a system that operated in England and Wales from 1916, but was abolished there in 1982. The Act and the registration requirements have not only been abolished in the UK but also in many developed countries that previously had such legislation.172
   b) The Act requires a business name to be registered by anyone who wishes to carry on business which is:
      i) NOT registered as a company under the Companies Act
      ii) Carried on under any name except the name/s of the proprietor/s.
   c) The business names registration regime is not designed to register all businesses. As described above it does not, and is not designed to, capture either companies or businesses trading under the name of their owner/s.
   d) In some cases (for example PNG) the registration of a Business Name is valid for a limited period of time (in the case of PNG three years). It must be renewed after that period if the business is still in operation.

2. Purpose of business name registration
   a) Registration under the Registration of Business Names Act has a quite different effect to registration under the Companies Act. It does not create a new legal body or confer any legal status on a business. It is simply a register of names of some unincorporated businesses.
   b) The rationale behind the regime (as behind the original English legislation) is threefold:
      i) The main purpose of the regime is to allow members of the public, by searching the register, to see who the individuals are that are trading under a business name (where the business is not a company)
      ii) It also provides some ‘protection’ for existing business names – by preventing other businesses trading with a registered name, and
      iii) The Act gives the State the right to restrict the use of certain business names, particularly ones that may be misleading173.
   c) However, in developed countries where similar legislation has been abolished, it has been discovered that a blanket registration requirement is not required, nor necessarily the best way to deal with these issues.
   d) In all the countries considered by the Pacific Gender and Investment Climate Assessments it was acknowledged that the regime was not in practice enforced, and no action is taken against businesses that fail to comply. In practice therefore the register is out of date and incomplete. In all countries considered it is therefore currently failing in its regulatory purpose.
   e) Because the register is not designed to be a comprehensive register of all businesses, but rather for the specific purposes described in paragraph b) above, it is not used by other public authorities, such as the tax authorities, as a compliance tool. This contrasts with the situation in Hong Kong for example, where ALL businesses (whatever their legal form and whatever name they use) are required to register with the Tax Authority. This is quite different from a business names registry.

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

172 The UK, New Zealand, Hong Kong have all abolished the requirement. Australia and Canada continue to maintain a business names registration regime similar to that in PNG, Tonga, Solomon Islands, and Vanuatu.
173 Registration may for example be refused if the proposed name includes the word ‘Presidential’ or ‘Government’.
b) The procedure for registering a business name is straightforward. It requires the completion of a single form and paying a small fee. In most cases, the forms need to be taken to the Business Names Registry which is located in the capital city. Despite this seemingly straightforward procedure, there is evidence that the requirement imposes a burden on businesses (see box below).

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

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

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

4. International Best Practice

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sectoral licenses tend to be held in the name of individual businesses. In most cases the businesses will be companies or trading under a business name. The sex of the owner/s 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 (at present 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 staring 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>
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</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>
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<td><strong>TOTALS</strong></td>
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Number of license holders that are companies registered with shareholders who are…

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<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
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<td><strong>TOTALS</strong></td>
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Number of license holders that are un-incorporated businesses with owners who are …

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

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

Background

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

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

Policy goal

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

Policy rationale

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

Policy objectives

• To address those constraints on business development that particularly impact on women.

Other policy areas

• Infrastructure and services – need to acknowledge that women fare much worse than men in these areas – particularly health and education.

• Property rights – need to acknowledge that, here again, women are in a worse position than men including in relation to rights over land and their own income (due to male domination of allocation of household resources).

Governance of the informal economy

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

- Need to ensure women informal sector operators are key players in the consultation process (note points made in Annex E: Women's consultation checklist).

- Process should be “context specific based on the reality of different categories of informal workers...”. Need to identify men on the one hand and women on the other as categories of informal workers. As highlighted in PNG Gender and Investment Climate Reform Assessment, they face different constraints and have different roles in the informal sector.

- “It should be gender sensitive…” paragraph does not acknowledge that women are in fact the major players in the informal sector. ‘Women’s work’ is what the informal sector mainly is!

- Membership of Technical Working Group does not include a gender expert. Currently this expertise is with the Department of Community Development.

**Registration**

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

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

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

**Integrated policy research support**

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

**REFORM OPTIONS: LEGITIMIZATION OF MICRO-BUSINESSES**

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

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

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

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

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

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

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

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

Contract for sale of future goods

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

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

Date:

Buyer: [Insert name] of [Insert address]

Seller [Insert name] of [Insert address]

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

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

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

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

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

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

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

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

______________________________ Buyer
______________________________ Seller

[Signatures]

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

Goods received in accordance with above contract

______________________________ Buyer

[Signature]

Date:
Tool 19: Mediation Sex Equality Checklist

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

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

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

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

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

In the United States some cities such as New York and Washington DC provide free or subsidized day care services close to court premises to enable mothers to attend court and facilitate access to justice.179

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

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

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

Tool 20: Methodology for Sex Disaggregation of ADR Users

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

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

Tool 21: ADR / Commercial Justice Users Perception Questionnaire

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

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

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

In this survey the scale of 1 to 4 is as follows:
1 = very satisfied
2 = satisfied
3 = not satisfied
4 = very dissatisfied

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