



Vanuatu

Gender and Investment Climate Reform Assessment

In Partnership with AusAID

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IFC

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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 Vanuatu*: primarily the Ministry of Finance and Economic Management and the Ministry of Trade, Investment, Industries and Tourism: to make recommendations for reform actions for Government to further enable women in Vanuatu to participate effectively in the country's economic development.
- *The International Finance Corporation*: to inform its Vanuatu Regulatory Simplification and Investment Policy and Promotion Program and ensure that a new component on gender issues is 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 Vanuatu from April 21–25, 2008. The mission team was led by Amanda Ellis (World Bank), and included Sonali Hedditch (IFC), Kristie Druzca (AusAID), Anna Hutchens (AusAID consultant), Clare Manuel (The Law & Development Partnership), and Vijaya Nagarajan (AusAID consultant). Jozefina Cutura (World Bank consultant) and Kristie Druzca (AusAID) undertook useful preparatory research from March 3–7, 2008. This mission led to the publication *Women in Vanuatu: Analyzing Challenges to Economic Participation*¹, from which this report heavily draws.

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Finally, we wish to thank the women entrepreneurs who took the time to share their stories and challenges during focus group discussions in Port Vila, Santos, and Tanna islands.

¹ Bowman, C; Cutura, J; Ellis, A; and Manuel, C. *Women in Vanuatu: Analyzing Challenges to Economic Participation*. 2009. The World Bank, Washington DC.

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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.

A handwritten signature in black ink, appearing to read 'P. Guislain', written in a cursive style.

Pierre Guislain
Director
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Abbreviations

AusAID	Australian Agency for International Development
ADR	Alternative Dispute Resolution
BWF	Business Women's Forum
CCL	Community Company Limited
FIC	Foreign Island Country
GWG	Gender Working Group
IBRD	International Bank for Reconstruction and Development
JICA	Japan International Cooperation Agency
M & E	Monitoring and Evaluation
NGO	Non-Governmental organization
PPD	Public private dialogue
PICTA	Pacific Island Countries Trade Agreement
SME	Small and medium sized enterprise
US	United States
VIPA	Vanuatu Investment Promotion Authority
NZAID	New Zealand's International Aid & Development Agency

Executive Summary

Introduction

Report purpose

This Report is one of six Gender and Investment Climate Reform Assessments undertaken in six Pacific nations including Vanuatu.² 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 mediation, 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 Vanuatu'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, Vanuatu's *Regulatory Simplification and Investment Policy and Promotion Program*. The Program was established in 2008 by the Ministry of Finance and Economic Management and the Ministry of Trade, Investment, Industries and Tourism, and is supported by IFC Advisory Services (Pacific).

This Report does not aim to cover all gender issues in Vanuatu or all gender issues in private sector development or investment climate reform. Gender constraints in Vanuatu are wide-ranging and 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 Vanuatu's attractiveness for local and international investment and business growth. It is hoped that these reforms could be part of broader reform in Vanuatu to create equal opportunities for women and men.

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

Country context

Vanuatu comprises more than 80 islands, about 65 of which are inhabited. The population of 135,000 is 94 percent indigenous Melanesian. About 33,700 live in the capital Port Vila. Another 10,700 live in Luganville on Espiritu Santo. The remainder live in rural areas.

The country's major natural resources are manganese, hardwood, and fish. Vanuatu is classified by the World Bank as a lower-middle income country with a per capita income of \$2,401 (USD) in 2007. It ranks poorly in UNDP's 2009 human development index at 126 out of 182 countries. It was estimated in 2002 that about 40 percent of the total population and about 50 percent of the rural population had income below the poverty line.³ Although high levels of economic growth have reduced poverty levels in urban areas, poverty levels remain high in rural ones.⁴

² The others are Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, and Tonga.

³ Asian Development Bank An Assessment of Poverty and Hardship. Manila, 2002.

⁴ Briguglio, L, Cordina, G, and Farrugia, N. Vanuatu: A Profile of Economic Vulnerability and Economic Resilience. Report prepared for the Commonwealth Secretariat, London.

The country was colonized by the British and French in the nineteenth century, and was ruled as an Anglo-French Condominium from 1906 until independence in 1980. The country is now a stable democracy.

The private sector in Vanuatu faces the challenges and high costs associated with operating a business in a small and remote island state, including:

- Remoteness and isolation resulting in relatively high transport costs, coupled with a small domestic market (Vanuatu's small population of 215,000⁵ is scattered over 65 islands)
- Exposure to events in global markets and trade regimes over which it has little influence
- Susceptibility to natural disasters and environmental change
- Limited diversification because of small domestic markets, and
- Limited capacity in the public and private sector.

Despite these challenges, Vanuatu has experienced recent rapid economic growth. But doing business in Vanuatu is not easy by international standards. The country is ranked at number 59 out of 183 economies in the World Bank's *Doing Business in 2010* report, behind several other small island states including Singapore (first), St Lucia (36th), Tonga (52nd), and Fiji (54th). Trading across borders (Vanuatu is ranked 141st), registering property (104th), and starting a business (110th) are largely to blame as the most problematic indicators.

Vanuatu's Doing Business 2010 rankings⁶

Doing Business indicators	Vanuatu's ranking out of 183 economies
Starting a business	110
Dealing with construction permits	22
Employing workers	75
Registering property	104
Getting credit	71
Protecting investors	73
Paying taxes	20
Trading across borders	141
Enforcing contracts	73
Closing a business	52

The Government of Vanuatu has recognized the importance of addressing these issues,⁷ and is taking forward important legal and regulatory reforms to reduce the costs of doing business. Vanuatu has recently enacted a new best practice Personal Property Securities Act, is introducing alternative dispute resolution to ease the backlog in the Courts, and plans to computerize its Land Registry. It makes good economic sense to design and implement these measures so that they benefit all businesses in Vanuatu – those run by women as well as men.

Methodology

An assessment team⁸ undertook a mission to Vanuatu for 5 days from April 21–25, 2008. This mission led to the publication *Women in Vanuatu: Analyzing Challenges to Economic Participation*⁹, from which this report heavily draws. The methodology for the assessment was guided by the IFC's Gender and Investment Climate Reform Practitioner's Guide, which at that stage was under development. Interviews, using semi-structured questionnaires, were held with a wide variety

⁵ National Statistics Office, 2004 estimate.

⁶ World Bank, *Doing Business in 2010*. World Bank, Washington, DC, 2009.

⁷ In his 2008 foreword to the Budget, the Minister of Finance identified reducing the cost of doing business in Vanuatu as a key ingredient to further strong growth.

⁸ Funded by IFC and AusAID. The team comprised: Amanda Ellis (World Bank – team leader), Sonali Hedditich (IFC), Kristie Druzca (AusAID), Anna Hutchens (AusAID consultant), Clare Manuel (The Law & Development Partnership), and Vijaya Nagarajan (AusAID consultant).

⁹ Bowman, C; Cutura, J; Ellis, A; and Manuel, C. *Women in Vanuatu: Analyzing Challenges to Economic Participation*. 2009. The World Bank, Washington DC.

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 two focus group discussions were held with business women in Port Vila and on the island of Tanna. These were opportunities to canvass views from business women on the investment climate issues considered in this Report. Notes from the focus group discussions 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 ni-Vanuatu business women 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 a joint IFC-AusAID publication entitled *Economic Opportunities for Women in the Pacific*.

Key findings and recommendations

Social, cultural, and legal constraints

Vanuatu is a traditionally male dominated and largely patriarchal society. Also in terms of total population the sex ratio is 105 males to 100 females. Women have extremely low representation in Parliament and in other decision-making bodies. Traditional custom law administered by Chiefs and recognized by Vanuatu's Constitution can operate to discriminate against women.¹⁰ Despite ratification of the Convention Against all Forms of Discrimination against Women a number of Vanuatu's laws continue to discriminate against women, for example in relation to matrimonial property, inheritance, and citizenship.

As in many other societies, economically active women suffer from a double workday – combining responsibilities for home and family with their economic activities. Although parity in enrolment rates has been achieved at primary and junior secondary school level, women remain less likely than men to have a completed secondary school education and to go on to tertiary education. Domestic violence against women appears to be a serious and growing problem.¹¹

Public private dialogue

Private sector associations engaged in public private dialogue with Government include the Chamber of Commerce and Industry of Vanuatu, the Vanuatu Finance Centre Association, the Vanuatu Hotel and Resort Association, VANWODS Microfinance, and the Manufacturers Association. Although VANWODS represents the interests of its exclusively female clients, there is at present no formal national private sector organization in Vanuatu that specifically represents the interests of the business women in the country.

Government has stated its support for women's economic empowerment, but in practice Government support for women in business has been limited. The Department of Women's Affairs, tasked with implementing the National Plan of Action for Women 2007–2011, has limited capacity and resources and other Ministries such as Finance and Trade are not actively engaged with follow-up.¹² An Equity Desk has been established under the Department of Strategic Management, with a Social Equity Task Force (with representatives from Government and civil society) to monitor the development and implementation of the Gender Equity Policy. But the Task Force has remained inactive.¹³

There is no formal national private sector organization in Vanuatu that represents the interests of the business women in the country. Women's voice is therefore not properly represented in 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 activities for business women in Vanuatu 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 Office of the Prime Minister and Department of Women's Affairs. Combined Initial, Second, and Third Reports on CEDAW. Port Vila, 2004.

¹¹ AusAID. Violence against Women in Melanesia and East Timor: Building on Global and Regional Promising Approaches. 2008. http://www.ode.usaid.gov.au/publications/pdf/vaw_cs_full_Report.pdf.

¹² Interview with Acting Director-General, Ministry of Justice, April 2008.

¹³ Office of the Prime Minister and Department of Women's Affairs. 2004. Combined Initial, Second, and Third Reports on CEDAW. Port Vila. p 24.

Target 1.1 Improved policy dialogue on investment climate reform for women's economic empowerment

Measured by: the proportion of members representing business women's interests on the Doing Business Reform Task Force and Working Groups, and the number of policy papers featuring women's economic empowerment considered by Cabinet.

Activities

- Ensure appropriate representation of women's interests on existing PPD structures (Doing Business Reform Task Force). 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 (Doing Business Reform Task Force) does not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance.

Target 1.2 Improved legal framework for women's businesses

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

Activities

- PPD structures (Doing Business Reform Task Force) and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms.
- Introduce law reforms to Parliament, including those reforms 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 Vanuatu Business Women's Forums (with open invitation to business women ranging from the informal sector through to big business), as commenced by IFC in April 2008, 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 Vanuatu running enterprises that are, or have the potential to be, growth-orientated. Enabling such women to formalize and thus grow their businesses and increase their income can reap benefits at the household level: there is international evidence that resources in the hands of women do more for family welfare than if they are controlled by men.

At present, most women in Vanuatu are not formalizing their businesses. The vast majority of formal sector enterprises are run by men. 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. 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.

Most Ni-Vanuatu owned businesses are microenterprises, and operate informally or semi-informally. Men register many more companies than do women. But women appear to find the cooperative a particularly attractive business form – they make up 30–40 percent of cooperative members. Generally all businesses are required to hold a business license. The business licensing regime operates as a tax, generally serving no regulatory purpose. The fee must be paid by all businesses – no matter how small – and imposes a significant challenge to microenterprises, many of which are run by women.

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

Measured by: Companies Registry and Business Owners Survey Data.

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, developing partnerships with NGOs, staff training, establish Women's Help Desk at Vanuatu Financial Services Commission).
- 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 businesses and community groups as companies.
- 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 Regulatory Impact Assessments and perception surveys

Activities

- Improve legislation/policy on Business Names Registration process based on international best practice.
- Simplify licensing procedures that have an adverse impact on female-headed businesses (revealed in Regulatory Impact Assessments and focus group discussions).

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.

Access to justice, the courts, and mediation

In practice the only route to justice open to many of Vanuatu's women is to rely on chiefs who dispense custom law. The most accessible Courts in the formal system are Island Courts – but these also dispense traditional justice, which tends to be biased against women. IFC provides assistance to Pacific Courts to establish and enhance court-referred mediation as a simple, time and cost efficient method to resolve commercial disputes. The targets and activities for incorporation into the Mediation 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 court-referred mediation reform process as per Table 5.1 in Chapter five.
- Undertake outreach to inform business women of availability and appropriateness of mediation.

Target 3.2 At least 20 percent of accredited mediators are women

Measured by: accreditation records

Activities

- Train and accredit female mediators.

Access to, and enforcement of, rights over registered land

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. Vanuatu's land laws do not discriminate against women. But 97 percent of land in Vanuatu is under customary tenure¹⁴ which generally means that women have very limited rights to control and manage land. Women's rights over land are increasingly threatened because the rights they do have – to use the land – cannot be registered. Once customary land is registered, women's rights over it tend to be extinguished. The vast majority of registered leases are in the sole name of a man.

These issues have been recognized by the 2006 National Women's Forum and the National Land Summit whose recommendations for enhanced and clarified land rights for women are being taken forward by the National Land Steering Committee. Recommendations to address the constraints faced by women within the context of that reform process include:

- Implement the National Land Summit recommendation for research into gender roles relating to land and encourage chiefs to support women's participation in land matters and to promote women's traditional leadership roles.
- Mainstream consultation with women stakeholders in Government administration processes relating to land (for example grant of land leases, environmental impact assessments, infrastructure development).
- Provide more information about and be proactive in ensuring that women's overriding rights to land (for example rights of way, rights to use the land) are registered through the Land Registry.
- Enhance representation of women on land boards/committees.
- Include, in the National Land Steering Committee's public awareness campaign about land reform, a campaign educating Vanuatu about the benefits of including women in decision-making and the risks to social security when they are marginalized from land matters.

¹⁴ Russell Nari. 2000. Land Tenure and Resource Management: A Major Challenge in Vanuatu. Pacific Economic Bulletin, Volume 15, No 2.

Chapter 1. Economic, social, and cultural framework

Summary

Women make a significant contribution to the rural agricultural economy but are less well represented than men in the formal economy. Women have generally derived less benefit than men from Vanuatu's recent land development fuelled economic growth. Ni-Vanuatu women face significant social and cultural constraints to entrepreneurship and participation in the formal economy.

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

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

Women are significant but minority participants in Vanuatu's business sector

Vanuatu has experienced strong economic growth over the last five years (estimated at nearly 6.5 percent in 2007¹⁵), largely driven by foreign investment. But small scale agriculture is still responsible for the livelihoods of 80 percent of the population,¹⁶ who live in *subsistence affluence* benefiting from Vanuatu's generally abundant fertile land and favorable climate. Agriculture accounts for about 20 percent of the country's GDP, with services accounting for a further 60 percent. Nearly all exports are primary unprocessed agricultural commodities mainly produced by small-holder farmers, especially copra and cocoa.

¹⁵ Economist Intelligence Unit, Vanuatu, Country Report, 2008.

¹⁶ Economist Intelligence Unit, Vanuatu, Country Report, 2008.

There are few large businesses in Vanuatu with nearly 70 percent having receipts of less than \$50,000 a year.¹⁷ Most are operated as sole proprietorships.¹⁸ Over 90 percent of businesses are located in the two major urban centers of Port Vila and Luganville (on the northern island of Espiritu Santo).¹⁹ Most ni-Vanuatu businesses tend to be focused in a few sectors – small retail outlets, buses and taxis, kava bars, and catering.²⁰ Vanuatu has the lowest formal sector employment in the region, estimated at under 15 percent in 2004.²¹

But there is very limited sex disaggregated data on women in private sector development in Vanuatu. The Vanuatu Investment Promotion Authority, the Financial Services Commission, and the Customs and Inland Revenue Department – all gatekeepers to formalizing a business – do not sex-disaggregate data on business entry. According to the 1999 census women made up 27 percent of people engaged in business, although only two percent of overall census respondents indicated being a businesswoman/man (see Table 1.1 below).

Table 1.1. Economically Active Population by Employment Status and Sex, 1999

Employment Status	Female		Male		Persons	
	No.	%	No.	%	No.	%
Businessman/woman	375	27	998	73	1,373	2
Government employee	1,770	37	3,074	63	4,848	6
Other employee	4,368	36	7,814	64	12,182	16
Working in the Garden	26,295	49	27,442	51	53,737	70
Helping family business (no pay)	482	34	927	66	1,409	2
Voluntary community worker	108	35	203	65	311	0
Pastor/religious leader	109	15	599	85	708	1
Other position (no money)	333	68	154	32	487	1
Not stated	458	35	857	65	1,315	2
Total	34,298	45	42,072	55	76,370	100

Women are under-represented in the formal labor force...

Vanuatu has the lowest formal labor force participation in the Pacific region.²² Women represent only a third of employees in the formal sector and are mainly employed as clerks, service workers, and in Government services (see Table 1.2 below).²³ According to the 2000 Labor Market Survey, women made up only 21 percent of senior officials, legislators, and managers. But interestingly, women in the formal sector have slightly higher average monthly salaries than men – 38,800 vatu (\$408) versus 37,000 vatu (\$398).

Table 1.2. 2000 Labor Market Survey by Type of Occupation and Sex, 2000²⁴

Occupation	Female	Male	Total	% Female
Legislators, Senior Officials and Managers	280	1,035	1,315	21
Professions, Technicians and Associated Professionals	1,375	2,157	3,532	39
Clerks	1,060	693	1,753	60

¹⁷ Pacific Enterprise Development Facility, Small and Medium Sized Enterprise Business Survey for the Pacific Region. International Finance Corporation, Sydney, 2003.

¹⁸ Pacific Enterprise Development Facility, Small and Medium Sized Enterprise Business Survey for the Pacific Region. International Finance Corporation, Sydney, 2003.

¹⁹ Vanuatu Statistics Office. Labor Market Survey Report. Port Vila. 2000.

²⁰ AusAID, The Unfinished State – Drivers of Change in Vanuatu. p 6, 2007.

²¹ World Bank. At Home and Away - Expanding Job Opportunities for Pacific Islanders Through Labor Mobility, Manjula Luthria, p39, 2006.

²² World Bank. At Home and Away-Expanding Job Opportunities for Pacific Islanders through labor Mobility. Manjula, Lithuania, 2006.

²³ Vanuatu Statistics Office, 2000. Labor Market Survey Report. Port Vila. p39.

²⁴ National Statistics Office, The 1999 National Population and Housing Census Report: Main Report, Port Vila, 2000.

Service and Sales Workers	1,146	1,437	2,583	44
Skilled Agriculture and Fishery Workers	36	424	460	8
Crafts and Related Workers	77	1,418	1,495	5
Plant/Machine Operators and Assemblers	52	813	865	6
Elementary Occupations	658	1,611	2,269	29
TOTAL	4,684	9,588	14,272	33

...but play a key role in the rural economy

The Government's 2004 Report on the Convention on the Elimination of All Forms of Discrimination against Women²⁵ describes the key role of ni-Vanuatu women in the rural subsistence economy:

...women play a critical role ...devoting most of their working lives balancing their time between meeting family as well as community needs and cultural obligations. Women's work includes an array of work from... caring for children, old people, people with disabilities and the infirm to domestic tasks such as fetching of water and firewood, cleaning the house, washing clothes, cooking food, and gardening. Women are involved in food production including animal husbandry and production of handicrafts such as mats, baskets for the home as well as weaving of mats, baskets, and grass skirts for sale as well as for cultural purposes. Nearly all women in rural areas also participate actively in church activities and participate in meetings organized within the community...²⁶

Women's increased economic activity may decrease their status in the community

Balancing such an array of economic and non-economic tasks suggests that ni-Vanuatu women may bear a disproportionate burden of the new economic pressures. With the increasing penetration of cash into subsistence economies there is more pressure on women to spend more time earning money. The need to pay school fees is an important driver. It has been suggested in a recent AusAID Report that women's increasing involvement in economic activity is decreasing their status in the community:

...Women are becoming more involved in income earning activities whether by traveling to the market to sell produce or taking on more of the agricultural labor in the absence of their husbands... One might expect that the entry of women into the formal economy would result in their economic empowerment and a consequent increase in social status. However, according to the ni-Vanuatu women interviewed for this study, the opposite is generally the case. Within rural communities, the status of women depends upon how active they are in their community roles, including church and women's groups, and the contribution they make in caring for the elderly and vulnerable. When women are obliged to increase their involvement in income-earning activities, in addition to their domestic roles, they have little time left for other activities and consequently suffer a loss of status...²⁷

Women have derived less direct benefit than men from recent economic growth...

Vanuatu's recent economic growth has been largely fueled by a land boom. Relatively cheap beach front land has attracted significant investment from Australian and New Zealand developers. The Lands Department estimates that over 90 percent of the land on Efate, Vanuatu's main island, has now been alienated. Limited access to land rights means that women have been largely excluded from the economic benefits that this investment has brought (see Chapter 6 on registering property).²⁸

But women are increasingly entering the economic sphere and are involved in most sectors of Vanuatu's rapidly growing

²⁵ Government of Vanuatu (Office of the Prime Minister and Department of Women's Affairs). 2004. Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women. Port Villa.

²⁶ Government of Vanuatu (Office of the Prime Minister and Department of Women's Affairs). 2004. Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women. Port Villa.

²⁷ Cox, M. et al, The Unfinished State – Drivers of Change in Vanuatu. AusAID, Canberra. 2007. p12-13.

²⁸ Government of Vanuatu. 2006. Land Summit Report.

economy. For example, tourism accounted for 35 percent of total employment in 2008²⁹, with significant numbers of women engaged in the tourism sector both as employees and as entrepreneurs.

...but significant gains have been made in women's health and education

Ni-Vanuatu³⁰ women have achieved significant improvements in health and education. The Education Act of 2001 specifically legislates against discrimination based on sex for enrollment of school children and gender parity has been achieved at the primary and secondary level. Women also enjoy improved access to health care, although birth rates remain high and teenage pregnancy and sexually transmitted diseases are on the increase.³¹

Politics is considered to be a male sphere

Political leadership is perceived to be masculine in Vanuatu. Since 1980 only four women have been elected to Parliament.³² In 2006 women held four percent of seats in Parliament (two females out of 52 members), and one out of 13 ministers was female.³³

Female representation in Provincial and Municipal Councils is also poor. There has only been one female lord mayor in the country (in Luganville).³⁴ There have been no female Councilors in the six Provincial Councils since 1994, despite the legal requirement for them to contain a mixture of elected members and appointed representatives including women (see Box 1.1 below).³⁵

Box 1.1. Restricted leadership roles for women on Ambae island, Penama Province³⁶

The Penama Provincial Council has fifteen elected and seven appointed members. The elected members are almost always men. The nominated members [should] include one women's and two youth representatives.

As well as the Provincial Council, Ambae has an Island Council of Chiefs, the members of which are elected by the chiefs of all the villages around the island. Chiefs are always men.

Women have their own island council called Vavine bulu meaning 'women together'. Women in all the villages elect members to the council which meets three or four times a year... representatives from Vavine bulu attend the biannual conference of the National Council of Women, an NGO.

At the village level, women's groups may be organized by the churches or by the women's network, but usually there is only one women's group in each village, and it is that group which send representatives to *Vavine bulu*.

A 2002 study³⁷ on why women in Vanuatu are so under-represented politically highlighted cultural reasons (*kastom*) and the reluctance of political parties to adopt women candidates.³⁸ Encouragingly, there are moves to address the issue. In November 2006 the political parties committed themselves to adopt more women candidates,³⁹ and the NGO Vanuatu Women in Politics is organizing women to run as independent candidates. In 2003 the Electoral Commission recommended

²⁹ World Travel and Tourism Council. 'Vanuatu Key Facts at a Glance.' Available online: http://www.wttc.org/eng/Tourism_Research/Tourism_Satellite_Accounting/TSA_Country_Reports/Vanuatu/.

³⁰ The population of Vanuatu are referred to as ni-Vanuatu.

³¹ Plau-Lynch, Andonia. 2007. Vanuatu: Country Profile on Gender. JICA.

³² Government of Vanuatu. Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women. Office of the Prime Minister and Department of Women's Affairs, Port Villa. p 17, 2004.

³³ Government of Vanuatu. Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women. Office of the Prime Minister and Department of Women's Affairs, Port Villa. p 17, 2004.

³⁴ Piau-Lynch, A., Vanuatu: Country Profile on Gender. Japan International Cooperation Agency, Tokyo, 2004.

³⁵ Cox, M. et al, The Unfinished State – Drivers of Change in Vanuatu. AusAID Canberra p 45, 2007.

³⁶ Tarisesei, J. Today is not the same as yesterday, and tomorrow it will be different again: *Kastom* in Ambae-Vanuatu, in *Women and Governance: From the Grassroots in Malanesia*, ed Douglas, B. Sorrento, Victoria: State, Society and Governance in Melanesia, 1998.

³⁷ By the Department of Women's Affairs.

³⁸ Government of Vanuatu. Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women. Office of the Prime Minister and Department of Women's Affairs, Port Villa. p 17, 2004.

³⁹ Vanuatu Rural Development & Training Center's Association, Vanuatu NGO Shadow Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women, May 2007.

an amendment to the Representation of the People Act to ensure that 30 percent of Parliamentary seats are reserved for women and Government has said it will adopt this by 2015. At the Provincial level, Shefa Provincial Council is actively promoting increased female representation in local politics.⁴⁰

Women's traditional status is as nurturer, but traditional norms can oppress women...

Gender roles in Vanuatu have been shaped by *kastom*, which refers to certain practices or beliefs that distinguish ni-Vanuatu from other people. Evoking something as *kastom* has great potency in Vanuatu. Given the multiplicity of tribal societies spread across Vanuatu's 65 islands, the issues facing women can vary considerably. The majority of tribes are patriarchal, but some are matriarchal and tribal lore differs significantly as a consequence (see Box 1.2 below). Generally across Vanuatu, however, men tend to have cultural dominance. Societies place a strong emphasis on family and on women's role as nurturers – the protectors of culture and the land. For many ni-Vanuatu women, their identity is associated with religious worship, *kastom*, family and motherhood. Despite poor representation politically women influence decision making in the home rather than in public fora. In the church context, women do hold leadership positions: church treasurers for example tend to be female.

Box 1.2. Variations in the traditional role of women in Vanuatu society⁴¹

In most areas, such as the island of Tanna, communities operate on a patriarchal basis, with men being the administrators of societies, and women's roles being highly restricted.

In the few matriarchal societies in central Vanuatu, such as Epi, women can attain chiefly title, but the role of administrator is delegated to her brother or other male relative. In other areas, such as North Ambae and North Pentecost, women traditionally play important roles in succession, inheritance, and peace-making.

The uncertain futures associated with modernity cause some ni-Vanuatu to hold tight to *kastom* and even use it to control others. In particular, *kastom* can be used to curtail the actions of women.⁴² For example bride price, while intended to celebrate the union of families, has been used to undermine women⁴³ (see Box 1.3 below). The late Grace Mera Molisa, ni-Vanuatu poet and women's activist asserted that women were oppressed both by traditional structures and by introduced structures of church and politics.⁴⁴

Box 1.3. Bride price in Vanuatu

Bride price in the form of cattle, pigs, mats, or money is demanded by most cultures in Vanuatu. In theory these are tokens of appreciation which bring wealth to the family and so enhance the status of the woman, but in practice bride price has come to be regarded as payment for the bride giving husband the right to treat their wife as property.⁴⁵ The Malvatumauri⁴⁶ ceiling on bride price was removed in 2006 and (in theory) replaced with exchange of goods between the families emphasizing custom over cash.

⁴⁰ In May 2004 Shefa Provincial Council adopted CEDAW as its platform for action for women in the province, with the express aim of achieving 30% female representation in decision-making positions. The Provincial Office has widely information on CEDAW. Government of Vanuatu (Office of the Prime Minister and Department of Women's Affairs), Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women, September p 26, 2004.

⁴¹ Government of Vanuatu. Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women. Office of the Prime Minister and Department of Women's Affairs, Port Villa, 2004.

⁴² Jolly, Margaret, Women of the Place: Kastom, Colonialism and Gender in Vanuatu. London: Routledge, 1994.

⁴³ Naviti Restorative Justice and Women in Vanuatu. In S. Dinnen (ed.) A Kind of Mending: Restorative Justice in the Pacific Islands, Pandanus Books, Canberra, 265-74, 2003.

⁴⁴ Molisa, G. The Politics of Difference: Feminism, Colonialism and Decolonisation in Vanuatu. In Intersexions: Gender/Class/Culture /Ethnicity ed G. Bottomley, M. de Lepervanche and J. Martin. Allen and Unwin, Sydney, pp 52-74, 1991.

⁴⁵ Government of Vanuatu (Office of the Prime Minister and Department of Women's Affairs), Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women, p 57, September 2004.

⁴⁶ National Council of Chiefs.

Domestic violence against women is rife

There is strong and deeply worrying anecdotal evidence of the prevalence of domestic violence against women in Vanuatu. Accurate data is hard to come by, partly because of under-reporting of rape and domestic violence to the police. Yet the experience of NGOs dealing with the issue, such as the Vanuatu Women's Center,⁴⁷ suggests that the problem is increasing, or that more cases are being reported.⁴⁸ While donors have supported NGOs dealing with the issue, systems for dealing with cases of rape and domestic violence remain weak, with a prevailing culture of impunity (Box 1.4 below).

Box 1.4. Frequent impunity for domestic violence against women

A Family Protection Order Bill was drafted in 1997 but took more than a decade to pass through the legal system. Among other reforms, this legislation aims to introduce a statutory system of interim protection orders for victims of domestic violence. Opposition by traditional and church leaders due to the perceived shift of jurisdiction from them to the formal justice system has brought the legislation under presidential scrutiny for noncompliance with the Christian principles and some fundamental rights enshrined in the Constitution. The Supreme Court ruled in late 2008 that the Bill was to be signed by the President, which occurred in December 2008.

Meanwhile in 2001 a new Court rule was introduced⁴⁹ which enabled women to apply for interim protection orders *ex parte*⁵⁰ through a simple procedure. However limited legal literacy and poor access to legal advice has meant that very few orders have been made in practice, and there is concern about poor execution of the orders by the Police, despite establishment of a Family Protection Unit.⁵¹

Traditional justice systems often fail to deal adequately with case of domestic violence – for example, awarding *kastom faen* (customary fines which can include custom materials such as mats, kava, or chickens) in cases of physical and sexual assaults.⁵²

⁴⁷ An NGO with has an extensive network of Counselling Centers in all six provinces in Vanuatu.

⁴⁸ Government of Vanuatu (Office of the Prime Minister and Department of Women's Affairs), Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women, September 2004 p 29.

⁴⁹ Courts (Domestic Violence Protection Order) Rule no 67 of 2001.

⁵⁰ An *ex parte* order is one made by the Court without requiring all the parties to the argument to be present.

⁵¹ Vanuatu Rural Development & Training Center's Association, Vanuatu NGO Shadow Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women, May 2007.

⁵² Government of Vanuatu (Office of the Prime Minister and Department of Women's Affairs), Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women, September 2004 p 44.

Chapter 2. Legal and policy framework

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

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

Vanuatu has ratified CEDAW...

Vanuatu ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) without any reservations in 1995.⁵³ Below are the key international commitments made by Vanuatu towards gender equality.

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

Convention on the Elimination of All Forms of Discrimination against Women.
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
Beijing Platform of Action.
The Millennium Development Goals.
Equal Remuneration Convention.
Discrimination (Employment and Occupation) Convention.

But the Government's 2004 CEDAW Report⁵⁴ highlighted the comment of Chief Noel Mariasua, Chairman of the *Malvatumauri* (National Council of Chiefs), on the National Day of Women in 1995 when he warned Vanuatu's women:

*...not to take the Convention for the Elimination of All Forms of Discrimination against Women to start thinking highly of themselves and forgetting their place in society*⁵⁵

As discussed below, despite the ratification of CEDAW, Vanuatu's statute book still contains laws that directly discriminate against women. Unlike Fiji and Tuvalu, Vanuatu's Constitution does not contain a provision enabling the Court directly to apply international conventions, and the extent to which CEDAW can be directly applied in Vanuatu is being worked out through the Courts (see Box 2.4 below).

...and Vanuatu's Constitution guarantees non-discrimination...

Vanuatu has an unusual legal heritage, having been administered as a joint French and British Condominium (joint territory) since 1906, before independence in 1980. The 1980 Constitution provides for both English and French law to apply. However in practice, most lawyers and Judges have been trained in the English system, and English-based statutes and common law system is relied on.

⁵³ Act No 3 of 1995.

⁵⁴ Government of Vanuatu (Office of the Prime Minister and Department of Women's Affairs), Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women, September 2004.

⁵⁵ Government of Vanuatu (Office of the Prime Minister and Department of Women's Affairs), Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women, September 2004, p 20.

Vanuatu's Constitution⁵⁶ guarantees fundamental rights and freedoms and prohibits discrimination including on the basis of sex. It goes further and provides for positive discrimination, making provision for specific programs to advance disadvantaged groups including women (see Box 2.2 below).

Box 2.2. Constitutional provisions on sexual equality

Article 5 of the Constitution states:

The Republic of Vanuatu recognizes, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language, or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defense, safety, public order, welfare, and health:

- (a) life*
- (b) liberty*
- (c) security of the person*
- (d) protection of the law*
- (e) freedom from inhuman treatment and forced labor*
- (f) freedom of conscience and worship*
- (g) freedom of expression*
- (h) freedom of assembly and association*
- (i) freedom of movement*
- (j) protection for the privacy of the home and other property and from unjust deprivation of property*
- (k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this subparagraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children, and young persons, members of under-privileged groups or inhabitants of less developed areas.*

The precise effect of the Constitution's equality provisions is unclear. They clearly bind the State and discriminatory laws made by Parliament can be declared unconstitutional by the Courts. But what is less clear is the extent to which the Constitutional provision can be applied to discriminatory acts on the part of individuals. The Penal Code addresses this to some extent, making unlawful discrimination a criminal offence.⁵⁷ However, there are no reported judgments of prosecutions under this provision.⁵⁸

...but also enshrines customary law

In practice, the formal legal system is generally relevant only to the 30 percent of Vanuatu's population who live in the urban and peri-urban areas⁵⁹ of Port Vila and Luganville. In rural areas where 70 percent of the population live, in practice *kastom* administered primarily by chiefs (nearly always men) prevails. Women often do not fare well when using custom law in resolving family law disputes. The customary law as applied by the chiefs prioritizes the family's interests rather than the individual woman's interests.

Custom law operates in parallel with the formal legal system and is enshrined in Vanuatu's Constitution (see Box 2.3 below). Other legislation such as the Criminal Procedure Act also allows for Courts to take the *kastom* system into account enabling the Court to promote reconciliation through customary processes and to take customary settlement into account when determining the sentence.⁶⁰

⁵⁶ Article 5.

⁵⁷ Section 150 provides no person shall discriminate against another person with respect to his right to the supply of any goods or services, or to gain or to continue in any employment, or to be admitted to any public place, by reason of the sex, ethnic or racial origin... of any such person.

⁵⁸ Jalal, P.I., *Law for Pacific Women: A legal rights handbook*, 1998.

⁵⁹ Including peri-urban land around Port Vila. Source: AusAID, *The Unfinished State – Drivers of Change in Vanuatu*, April 2007, page 15.

⁶⁰ Section 118 and 119 of the Criminal Procedure Act [Cap 136] No 8 of 1988.

Box 2.3. Vanuatu's Constitution and custom law

The following are relevant portions of the Vanuatu Constitution on the role of customary law in the legal system:

- Customary laws shall continue to have effect as a part of the law of the Republic. (Article 95(3))
- If there is no rule of law applicable to a matter before it, a Court shall determine the matter according to substantial justice and whenever possible in conformity with custom. (Article 47(1))
- The rules of custom shall form the basis of ownership and use of land. (Article 74)
- One of the fundamental duties of every person is to bring children up with a true understanding of Vanuatu custom and cultures. (Article 7)
- Village or island Courts will have jurisdiction over customary matters. (Article 52)
- The National Council of Chiefs (*Malvatumauri*) may be consulted in connection with any bill, particularly relating to custom and tradition. (Article 30(2))

The extent of Constitutional equality guarantees and their relation with custom law is unclear

The provisions in the Constitution that enshrine custom law (see Box 2.3 above) seem to be in direct conflict with Constitution's equality provisions (see Box 2.2 above). The inequality between the formal legal system and custom law is still being developed by the Courts, and there are some seemingly conflicting decisions (see Box 2.4 below).

Box 2.4. Constitutional guarantees of equality of sexes: relationship with discriminatory custom law

A list of cases appear to limit the application of custom law and provide guidance that implies that the equality provisions of the Constitution take precedence over it:

Public Prosecutor v Kota⁶¹, 1993 – The Court held that the Constitutional guarantee of liberty of people and freedom of movement took priority over custom law. In this case the Court upheld the prosecution of a husband, who in accordance with custom law had forcibly taken his wife back to the village. The Court noted that consideration should be given to amending the Constitution to clarify the role of the Chiefs. They said that it was only by doing so that the fundamental rights of women could be protected.

John Noel and others v Obed Toto⁶² 1995 – The Supreme Court held that Article 5 of the Constitution granting equal rights to men and women overrides Article 72 which says the rules of custom shall form the basis of ownership and use of land. The Court held that Article 5 is a fundamental principle which overrides any law or custom contrary to it. The Court went further and said that a decision giving more rights to women than to men would be contrary to CEDAW, taking the view that although the Convention was not directly part of domestic law, by ratification, the Government had created a legitimate expectation that it will act in accordance with CEDAW principles⁶³.

Banga v Waiwo⁶⁴, 1996 – The Court stated that custom law should only apply if there is no legislation or relevant common law and the custom is not unjust or against the Constitution. In this case the Supreme Court affirmed that Vanuatu law recognized the customary practice of paying damages in cases of adultery.

Molu v Molu No 2⁶⁵, 1998 – The Court stated that custom claims can only be made when customary arrangements apply. Thus there could be no custom claim in relation to a marriage that had not been entered into as a customary marriage.

⁶¹ Criminal Case 58 (1993) [1989-1994] 2 Van LR 661.

⁶² John Noel v Obed Toto (1995) Supreme Court of Vanuatu 18 (1994), Luganville, Santo.

⁶³ Jalal, P.I., Law for Pacific Women: A legal rights handbook, 1998.

⁶⁴ 1996 VUSC 5.

⁶⁵ 1998 VUSC 15.

But a more recent case appears to limit the application of Article 5:

Joli v Joli,⁶⁶ 2003 – The Court of Appeal stated that although article 5 of the Constitution guaranteed equal treatment for women, these Constitutional principles were aspirational (rather than fundamental as discussed in the *Noel v Toto* case) and had to be translated by Parliament into law. The Court stated that Parliament had to decide how Vanuatu could reflect CEDAW in its domestic law taking into account the changes it wanted to see in the social patterns of men and women and how this should occur.

Formal statute law contains provisions that hinder women's full economic participation

Despite the ratification of CEDAW, Vanuatu's statute book still contains laws that hinder women's full economic participation and require amendment (see Table 2.1 below). Women's NGOs have advocated for amendments to the Constitution to better enshrine non-discrimination principles. A study commissioned by Vanuatu Women in Politics in the late 1990s found that out of 208 acts reviewed, 12 were discriminatory against women, including in the areas of marriage, sexual offences, labor and employment, and rent.⁶⁷

Vanuatu has policies for women's economic empowerment, but implementation is weak

Vanuatu's Government is focused on enabling economic growth through private sector development.⁶⁸ The Government's *National Vision for Vanuatu* focuses on economic growth led by the private sector, and emphasizes the Government's role in creating an enabling environment for both domestic and foreign investors. Encouragingly, the Government recognizes the vital role that women have to play in Vanuatu's development. The Minister of Finance in the 2007 Budget Policy Statement said:

Sustainable growth and development is achievable only through the participation and involvement of all sections of society. Unfortunately, women in almost all sectors of their lives are disadvantaged when compared to men. The Government is committed to creating an environment through the development of legislation and positive economic and social policies for the full development of women necessary for the achievement of equality, development, and peace.

Under its Comprehensive Reform Program the Government of Vanuatu has developed its *Gender Equality Policy 2003* as well as a *Priorities and Action Agenda for 2006–2015*. The Agenda includes nine benchmarks to improve the situation of women (see Box 2.5 below).

Box 2.5. Vanuatu's Priorities and Action Agenda 2006–2015 benchmarks to improve the situation of women

- Visibility and meaningful participation in decision-making
- Valuation of the contribution of women
- Economic equality and independence
- Violence against women and discriminatory laws
- General physical and mental health
- Reproductive health
- Customs, religion, and culture
- Education
- Environmental management and subsistence production.

⁶⁶ *Joli v Joli* (2003) Civil Appeal 11 (2003) Port Vila.

⁶⁷ Office of the Prime Minister and Department of Women's Affairs. 2004. Combined Initial, Second, and Third Reports on CEDAW. Port Vila.

⁶⁸ Government of Vanuatu Priorities and Action Agenda 2006-2015.

As well as the Priorities and Action Agenda initiative, the Department of Women's Affairs has compiled a *National Plan of Action for Women 2007–2011*⁶⁹ which includes an explicit focus on women in the economy, promoting women's access to employment, appropriate working conditions, and control over economic resources. However, it is not clear whether this document contains merely recommendations, or is in fact established Government policy. In August/September 2006 the Department of Women's Affairs organized the first National Women's Forum where women from all six provinces met to review implementation of the Beijing Platform, and made recommendations designed to enhance women's economic and political participation.

Despite its stated policies, Government support for women's economic empowerment and women in business has been limited. The Department of Women's Affairs, tasked with implementing the National Plan of Action for Women 2007–2011, has limited capacity and resources, and other Ministries such as Finance and Trade are not actively engaged with follow-up.⁷⁰ An Equity Desk has been established under the Department of Strategic Management, with a Social Equity Task Force (with representatives from Government and civil society) to monitor the development and implementation of the Gender Equity Policy. But the Task Force has remained inactive.⁷¹

Other potentially positive moves include the establishment of Gender Focal Points in all Government Ministries, and the establishment in 2006 of a CEDAW Committee, which includes both Government and civil society representatives, to oversee recommendations from the 2004 CEDAW Report and prepare for future reporting.

Probably the most visible practical initiative has been VANWODS, a microfinance scheme for women established in 1996 and now run independently. The Department of Cooperatives provides support for women's groups with savings and loans schemes and the Rural Economic Development Initiative also includes a focus on women in rural areas.

69 Published in 2007 with AusAID support after widespread national consultations.

70 Interview with Acting Director-General, Ministry of Justice, April 2008.

71 Office of the Prime Minister and Department of Women's Affairs. 2004. Combined Initial, Second, and Third Reports on CEDAW. Port Vila. p 24.

Table 2.1. Key statute laws in Vanuatu that hinder women's full economic participation

Area of law	Statutory provision	The practice
<i>Constitutional rights:</i>		
Equality	Article 5 of the Constitution and Article 95(3) (and other Articles that uphold custom law)	Customary norms that discriminate against, or undermine the status of, women (such as the payment of bride price) continue to operate. Need to translate CEDAW principles into domestic law, including through amending the Constitution to clarify the position of custom law.
<i>Property rights:</i>		
Marital property	Common law	A married woman has no automatic overriding interest in the matrimonial home. Therefore she has no redress should her husband sell or mortgage the home without her knowledge, unless the woman has lodged a caveat (notice on the title) to protect her interest.
Divorce	Matrimonial Causes Act (cap 192)	The extent to which the division of matrimonial property on divorce recognizes non- financial contributions to the marriage (for example a wife looking after the home) is unclear. Following a 1991 Court of Appeal case ⁷² it appears that the starting point for division of matrimonial property may be for the wife to be awarded a third.
Inheritance	The English Administration of Estates Act 1925 applies where the customary practices do not.	The custom in some communities is that the daughters lose their entitlement to land when they marry. The English Administration of Estates Act 1925 applies where the customary practices do not. However the customary laws are subject to Article 5 of the Constitution as discussed in Noel v Toto (see above Box 2.4).
<i>Employment rights:</i>		
Employment	Employment Act	Employment law provides for ban on night work for women and unequal retirement ages.
<i>Citizenship:</i>		
Citizenship	Citizenship Act (cap 112).	Women and men are treated differently for the purpose of determining Vanuatu citizenship. ⁷³ A man applying for citizenship after 10 years residence can include his wife and children in his application. A woman applying for citizenship after 10 years residence cannot include her husband and children in her application (s12). A woman is entitled to citizenship if she is married to a ni-Vanuatu man. A man is not entitled to citizenship on the basis of marriage to a ni-Vanuatu woman (s10). In the case of joint adoption of a child, the child is automatically a citizen if his or her father is ni-Vanuatu, but not if his or her mother alone is ni-Vanuatu (s11). A woman can regain her citizenship if she gave up her ni-Vanuatu citizenship because of marriage to a foreign national and the marriage later broke down; a man cannot (s18).

⁷² Fisher v Fisher (1991) Court of Appeal, Appeal Case, 1/1991.

⁷³ Office of the Ombudsman. 1999. 'Public Report on the Illegal and Unconstitutional Discrimination in the Citizenship Act.' Port Vila.

Chapter 3. Public private dialogue

Summary

There is no formal organization in Vanuatu that represents the interests of business women. Women's voice is therefore not currently 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 Vanuatu 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, 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.

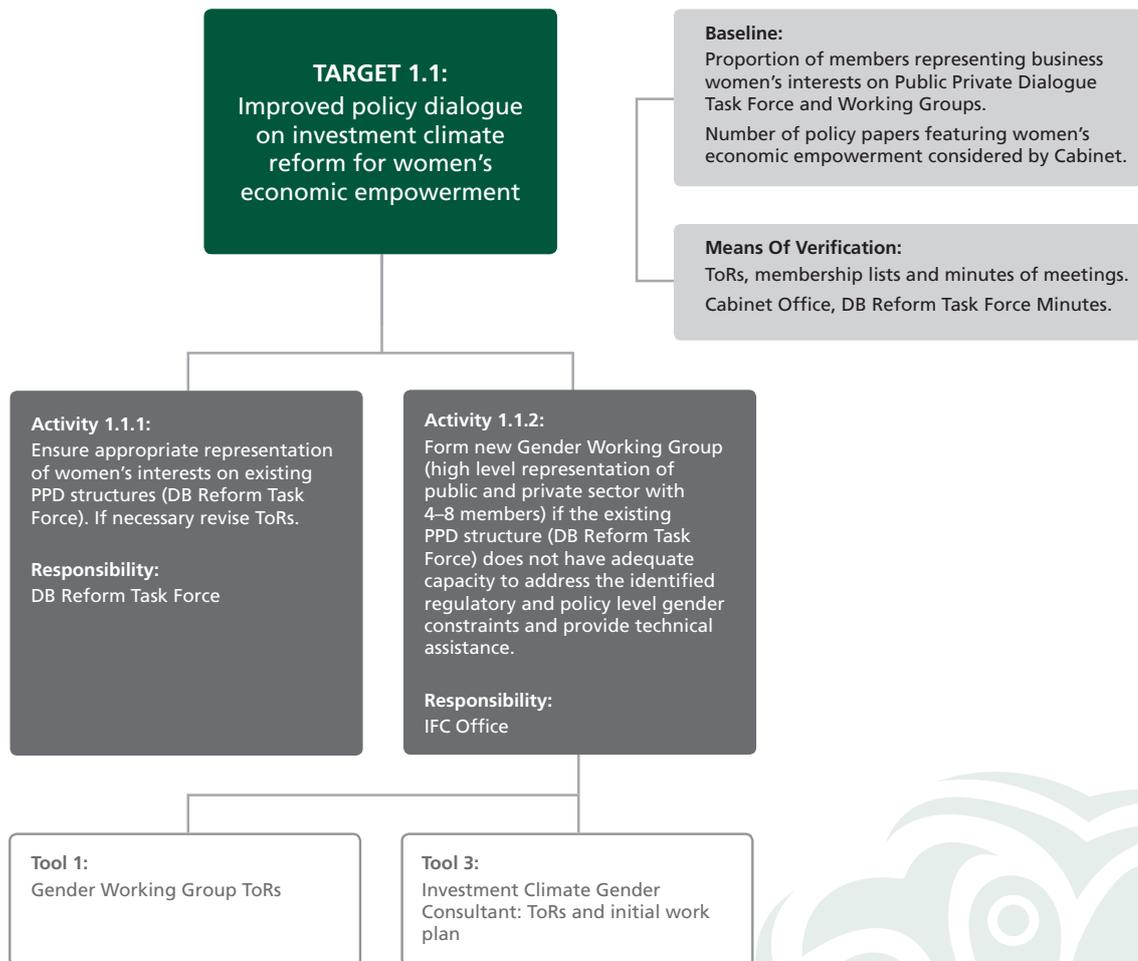
Figure 3.1. Public private dialogue: goal and targets

Goal: improved policy environment and support network for business women



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



Public-Private Dialogue structures are in place in Vanuatu...

With support from IFC the Government of Vanuatu, led by the Ministry of Trade established a Doing Business Task Force in August 2008 to drive forward key investment climate reforms. It is chaired by the Director General for Trade. Membership includes representation from Government departments and agencies as well as private sector organisations (see Box 3.1 below)

Box 3.1. Role and membership of the Doing Business Task Force

The Task Force provides a high level, public-private consultative mechanism to drive forward investment climate reforms. In particular it:

- Provides a forum for identifying and assessing critical reform issues to support private sector development
- Identifies and recommends the development and sequencing of related reform measures and programs
- Carries out public dialogue on reform issues and initiative within Government, the business community, and development partners and communicates with the general public and media on reform issues and initiatives

- Monitors the progress of reform implementation, and
- Reports on the progress of reform and recommends, where necessary, changes to policy and legislation.

The public sector members of the Task Force are: the Ministry of Trade (Chair); the Department of Strategic Planning and Aid Coordination (Prime Minister's Office); the Ministry of Finance and Economic Management; Vanuatu Investment Promotion Authority; Department of Cooperative and Ni-Vanuatu Business Development; and Vanuatu Financial Services Commission.

The private sector members are: the Chamber of Commerce and Industry of Vanuatu; the Vanuatu Finance Centre Association; the Vanuatu Hotel and Resort Association; Vanwoods Microfinance; and Manufacturer's Association.

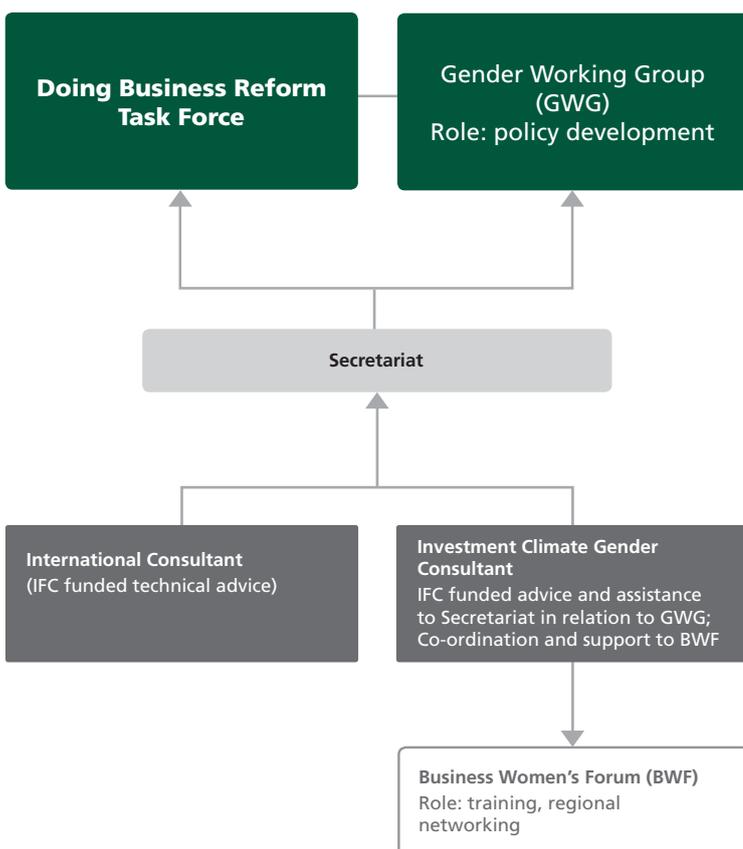
...but there is limited public sector representation of women

As discussed in Chapter 2 above, although Government has stated its support for women's economic empowerment, in practice Government support for women in business has been limited. The Department of Women's Affairs, tasked with implementing the National Plan of Action for Women 2007–2011, has limited capacity and resources. At present neither the Ministry of Finance and Economic Management nor the Ministry of Trade, Investment, Industries and Tourism 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

None of the organisations on the Task Force – neither public nor private sector – have a particular focus on the specific issues facing women in business. In order to ensure that women's voice is heard in the reform process, it is intended both to review the composition and terms of reference of the Doing Business Task Force to ensure that it embraces gender issues, and to set up a Working Group under the auspices of the Task Force with the specific mandate of driving forward reforms that will enable women's economic empowerment (see Figure 2.1 above), if the existing structures do not have adequate capacity to address the identified gender constraints.

Figure 3.3. Regulatory Simplification and Investment Policy and Promotion Program: PPD Structure



The Gender Working Group (GWG) will focus on taking forward reforms to the legal and regulatory framework that impact on women – for example the issues relating to property rights and employment law discussed in Chapter 2 above. Box 3.2 below sets out the key features of the proposed GWG.

Box 3.2. Gender Working Group

If the existing PPD structures (DBTF and Working Groups) are assessed to have inadequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance, a Gender Working Group will be established. The Gender Working Group would be a policy dialogue body within 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 on the DB Reform Task Force, and **Activity 1.1.2:** if necessary, the formation of a Gender Working Group supported by technical assistance – could supplement existing PPD mechanisms to improve women's representation in private sector policy development.

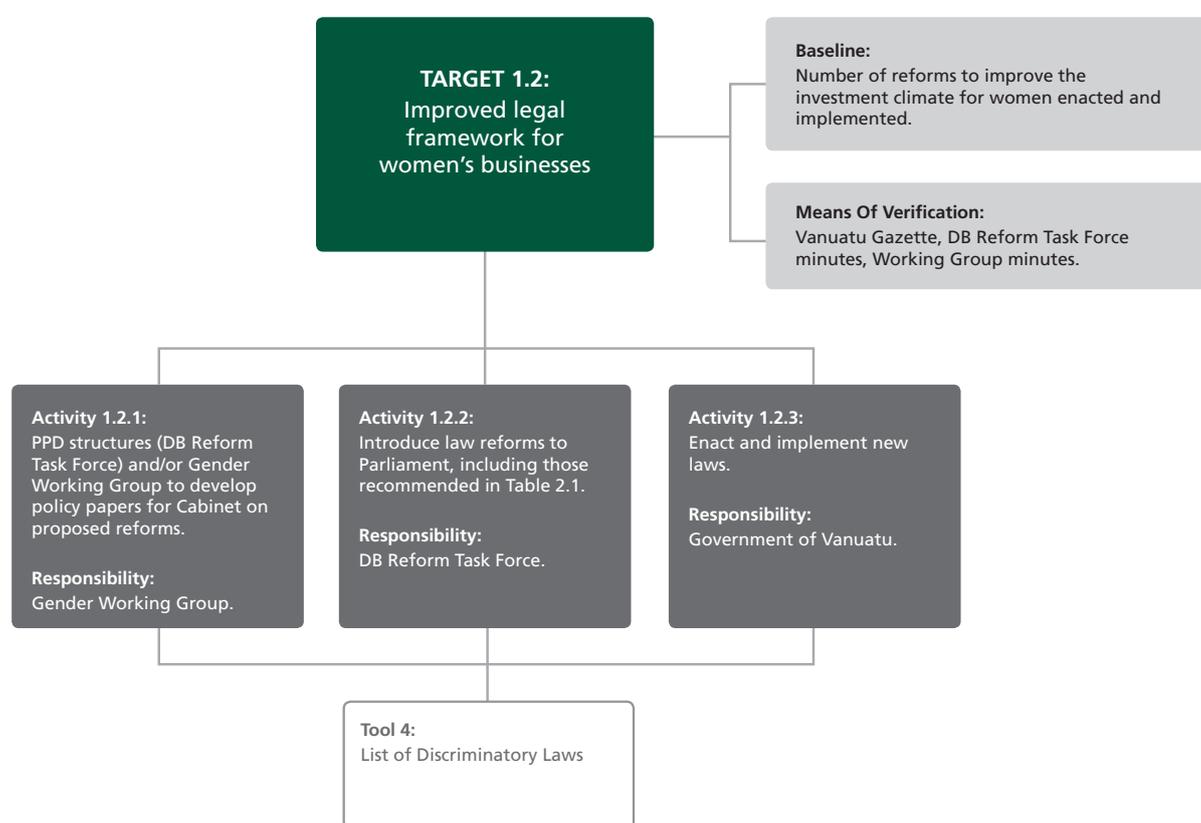


Target 1.2:

Improved legal framework for women's businesses

Figure 3.4. Target 1.2. Activities and Tools

This section notes key issues in Vanuatu'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 a tool in support. (Tools can be found at the end of the Report).



The Legal Framework discriminates against women

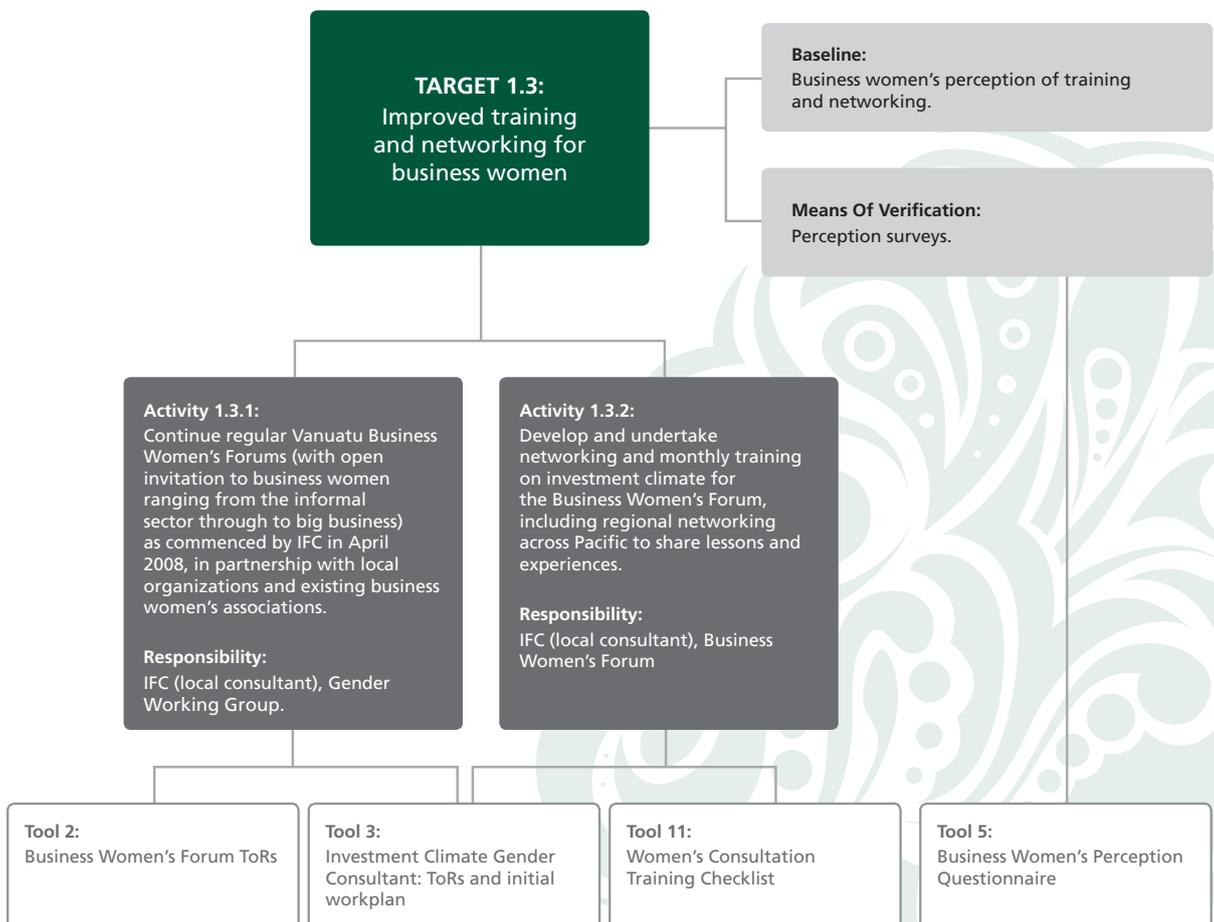
As discussed in Chapter 2 (Legal and Policy Framework) above, a number of key statute laws in Vanuatu discriminate against women or do not adequately protect their interests. Table 2.1 and Tool 4 summarize key statutory provisions in Vanuatu that require reform. A key task of the Gender Working Group will be to develop proposals for policy reform in these areas.

Activity 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 Vanuatu.

Target 1.3:
Improved training and networking for business women.

This section reviews opportunities for training and networking for business women in Vanuatu 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



Business women have limited networking and training opportunities

Because there is no women's business association in Vanuatu, ni-Vanuatu business women have limited opportunities to network and to receive training and support. Although there are a number of NGOs that focus on women, these tend to be concerned with domestic violence and social issues. Examples include women's branches of religious organizations such as the Presbyterian Women's Missionary Union, Anglican Mothers Union and Catholic Mothers Union, the Vanuatu National Council of Women, and the Vanuatu Women's Centre.

The desire for business-related training opportunities came out strongly from the focus group discussions held during the mission (see Annex C). Although significant gains have been made in female general education, with parity at both primary and secondary level, this success will take time to feed through into the workplace. Females remain under-represented in vocational, technical, and tertiary education. Fewer females than males apply for scholarships. In 2004 only 35 percent of applications were from females. Anecdotal evidence from interviews with banks, business development services providers, and women entrepreneurs indicates that women tend to have low levels of literacy and numeracy and limited business management and technical skills.

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

Box 3.3. Business Women's Forum

IFC facilitated a first Business Women's Forum meeting in April 2008. 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 Vanuatu 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 a Business Women's Forum in Papua New Guinea, "Knowledge is Power". Possible topics for training that address some of the constraints identified in this report and gender and investment climate constraints more broadly are covered in Tool 2 in the Annex, and could include:

How to balance family, custom and business

How to deal with harassment from public officials

Financial literacy, basic book-keeping, developing business plans

Graduating to the formal sector. Why and how.

Which business form is right for you? (including training on basic partnership agreement and the benefits and obligations of operating a Limited Liability Company)

Licensed to operate. How and why to license your business

Dealing with clients: the basics of contracts

Small Debt Claims. What are your options to see that money again? (including training on mediation)

Confronting corruption. What should you do when asked to pay a bribe?

Setting up shop. How to register a property transfer. Your rights when leasing

Microfinance institutions and banks tell you how they can support your business.

Trading across borders. The ins and outs of customs.



Chapter 4. Starting and licensing a business

Summary

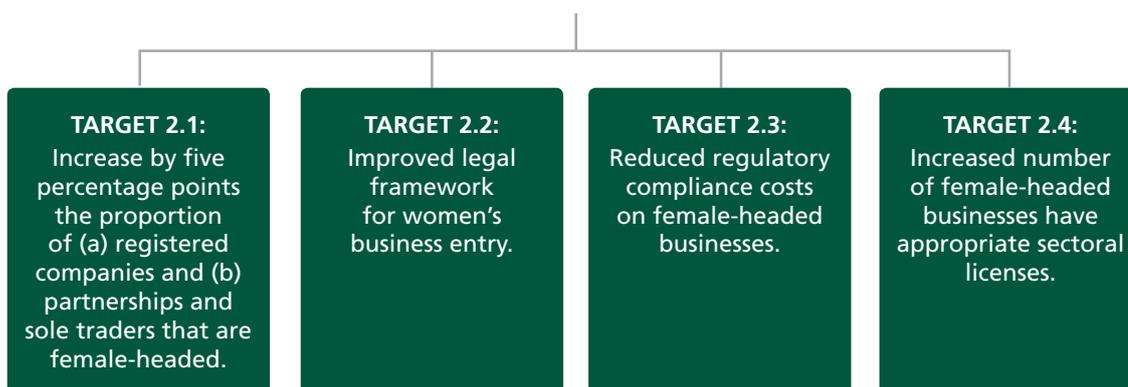
Most businesses in Vanuatu are microenterprises and operate informally or semi-informally. Men register many more companies than do women. But women appear to find the cooperative a particularly attractive business form – they make up 30–40 percent of cooperative members. All businesses are required to hold a business license issued by the Department of Customs and Inland Revenue. The business licensing regime operates as a tax, serving no regulatory purpose. The fee must be paid by all businesses – no matter how small – and imposes a significant challenge to microenterprises, many of which are run by women.

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, and
- Increase number of female-headed-business that have appropriate sectoral licenses.

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

Goal: enhanced ability of women to start and run businesses



For both male and female entrepreneurs formalizing a business brings with it advantages including the potential for growth, access to credit, and investment. When a woman grows her businesses, not only her but her 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 mean that they are more likely than men to keep their businesses in the informal sector. Intra-household resource allocation may mean that a woman will not see the benefit of any additional income that business growth and formalization may bring, and so the incentive to formalize is low. Or the prevailing culture may mean that women's sphere is considered to be restricted to low level economic activity and the domestic environment.

Overall, while informal enterprises may provide a short-term solution to a household's livelihood needs, creating an economy with a higher proportion of formal enterprises and jobs is important to long-term welfare creation, stability, and poverty reduction. As the case studies in this Report show, there are women in Vanuatu 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.

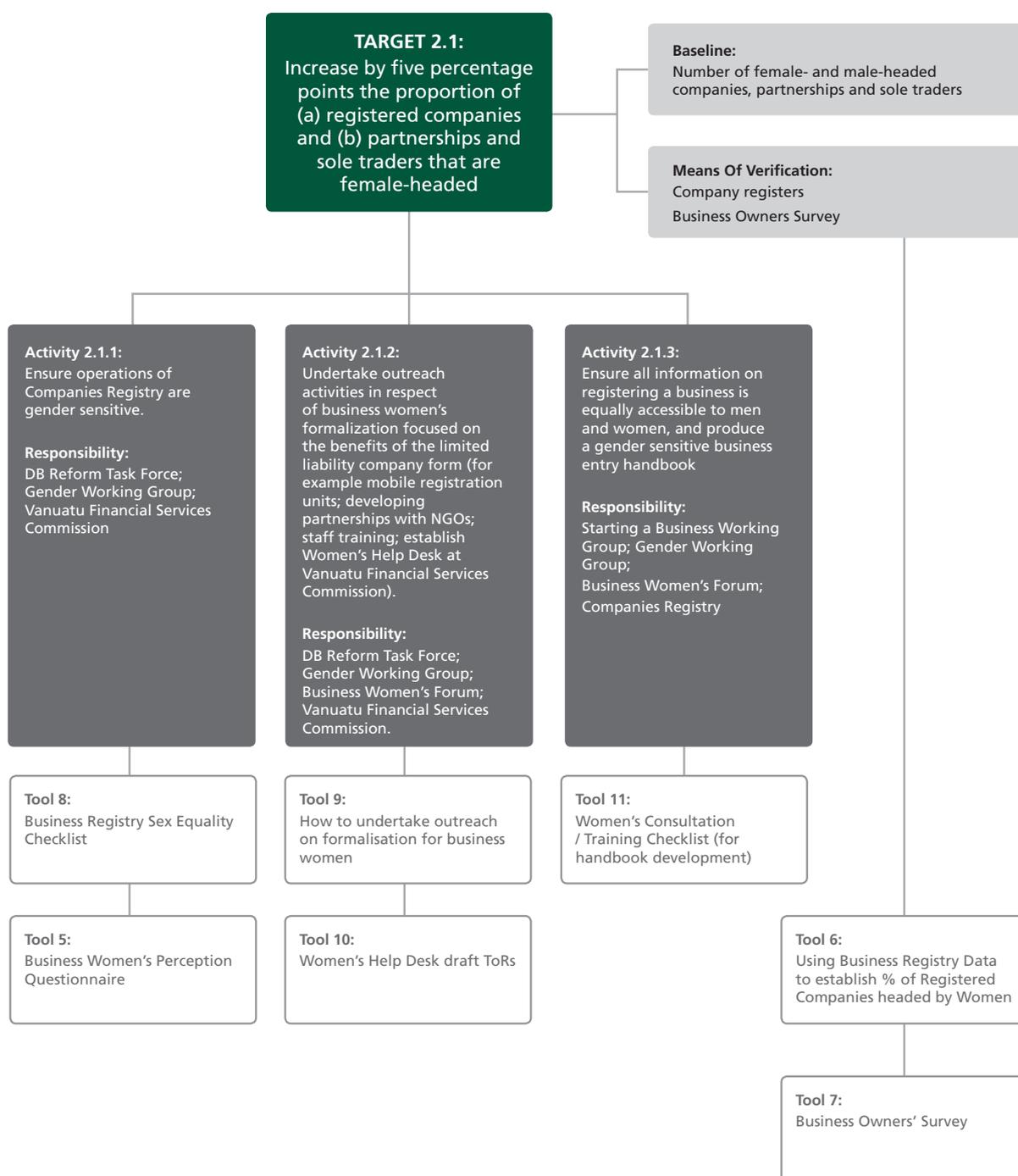


Target 2.1:

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 four 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



Few women register their businesses as companies

According to the World Bank's *Doing Business in 2010* Report, starting a business in Vanuatu is costly and time consuming by international standards. The process of starting a business costs over 40 percent of the country's per capita income and takes 39 days (Table 4.1). This compares with a cost of 0.4 percent per capita income and a time of 1 day in New Zealand, the top ranking country in the 2010 Doing Business index. However, with support from IFC, the Government of Vanuatu has recently taken forward reforms which have improved the situation. It now takes only 8 days for a local firm to start a business and 18 days for a foreign firm.

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

Indicator	Vanuatu	New Zealand	East Asia and Pacific	OECD
Procedures (number)	8	1	8.1	5.7
Duration (days)	39	1	41.0	13.0
Cost (% of income per capita)	42	0.4	25.8	4.7
Paid in minimum share capital (% of GNI per capita)	0	0	21.3	15.5

There are a number of legal routes to setting up a business in Vanuatu. The appropriate route depends on the status of the investor and on the desired status of the business (see Table 4.1 at the end of this chapter). The Doing Business indicators focus on the costs of a local investor registering a limited liability company. In fact, less than 30 percent of businesses in Vanuatu operate on this basis.⁷⁴ The vast majority are operating as sole traders or as partnerships. But companies are generally regarded as the optimum business form. They give the owners the protection of limited liability status, encouraging risk-taking and entrepreneurship. The division of ownership of the company into shares facilitates changes in ownership, enabling the business to continue beyond the life of the original owners, and well as facilitating investment by third parties. The legal structure they provide facilitates the survival and growth of the business.

Registration of companies takes place at the Vanuatu Financial Services Commission. The Commission does not keep sex disaggregated data to establish how many of the 1,300 companies formally registered in Vanuatu⁷⁵ are owned or managed by women, but officials indicate that there are many more registrations by men than there are by women. According to the Chamber of Commerce, couples often register businesses together, even if the wife runs the business operations.

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.

Company formation in Vanuatu is based on the regime in the UK in 1948. It requires the preparation and filing of a number of documents which realistically are likely to require the assistance of either a lawyer or a company formation agent (see Box 4.2 below). The legislation allows the Minister to refuse an application for registration.⁷⁶ Planned reforms to simplify and streamline Vanuatu's Companies Act, building on the administrative reforms that have already taken place, are therefore likely to be of particular benefit to women entrepreneurs.

⁷⁴ IFC Pacific Enterprise Development Facility, Small and Medium Sized Enterprise Business Survey for the Pacific Region, 2003.

⁷⁵ Foreign Investment Advisory Services, Vanuatu: Mini-Diagnostic Analysis of the Investment Climate, March 2007. In addition, there are a further 5,000 companies registered as overseas companies.

⁷⁶ Section 16 off Companies Act [Cap 191] 1986.

Box 4.1. Company formation process in Vanuatu

- Search register of company names
- Reserve desired company name
- If foreign applicant – obtain license from VIPA
- File:
 - memorandum
 - articles of association
 - information regarding directors and secretary
 - statement of nominal capital
 - notice of registered office, and
 - declaration of compliance.
- Pay fee (ranging from 30,000 vatu (\$300) to 250,000 vatu (\$2,500)).

There is no evidence of any form of direct discrimination by the Financial Services Commission against women who seek to register their businesses as companies. But neither is there any outreach to women to encourage them to register. Complex company formation provisions, requiring the assistance of a professional, are likely to be a particular problem for women who are likely to be less well educated than their male counterparts.

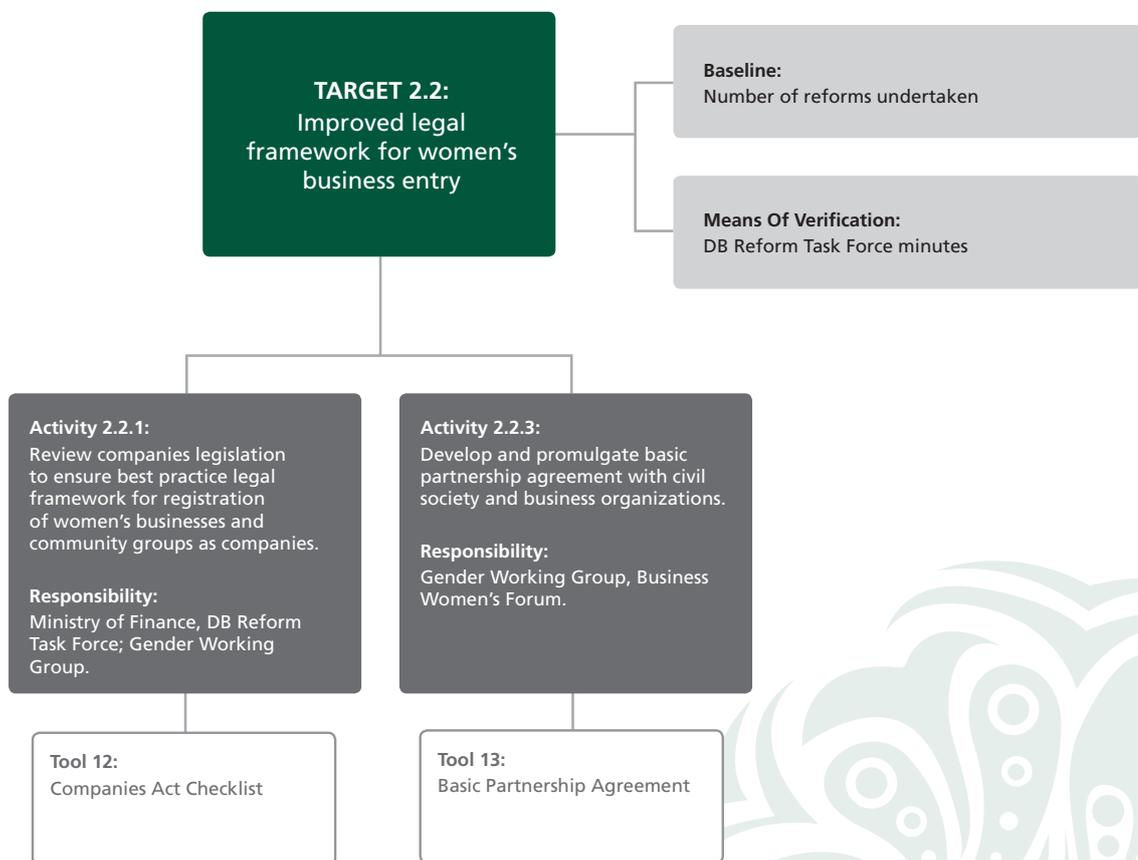
Activity 2.1.1: ensuring gender sensitive operations of Companies Registry; **Activity 2.1.2:** undertaking outreach activities in respect of business women's formalization; and **Activity 2.1.3:** ensuring all information on registering a business is equally accessible to men and women, and the production of a business entry handbook – will assist in lessening some of the barriers that currently discourage women from registering their businesses as companies.

Target 2.2:

Improved legal framework for women's business entry

This section reviews the legal framework for women's businesses in Vanuatu, 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 two 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



Vanuatu's Companies Act is under review – the new regime needs to be as quick and as simple as possible

The Government of Vanuatu has recognized that more businesses are likely to incorporate if company formation were to be easier, quicker, and certain. A fundamental review of Vanuatu's Companies Act is therefore taking place, with a view to producing a White Paper (discussion document) setting out options for reform, followed by new legislation. Table 4.5 at the end of this chapter presents a review of Vanuatu's current Companies Act in the light of good practice and gender equity principles.

It is anticipated the Vanuatu's company law will be streamlined in line with international best practice – currently to be found in New Zealand and Australia.⁷⁷ Key reforms would be to simplify company formation processes down so that one simple application form is required: to abolish the complex company law concepts of nominal capital,⁷⁸ par value shares,⁷⁹ and ultra vires⁸⁰ that complicate both company formation and ongoing company administration; and to enable sole person companies rather than requiring two members as at present. This last point would enable even microenterprises where women's businesses are more likely to be found to incorporate.

The introduction of *community companies* in line with Solomon Islands' new Companies Act would enable women's community groups, such as church-based income-generating programs, to reap the benefits of incorporation. It appears that women's groups currently prefer to register as cooperatives, but the current regulatory framework for such entities is far from satisfactory (see Box 4.3 below).

Box 4.2. Cooperatives offer an alternative business form

Ten percent of businesses in Vanuatu are registered as cooperatives,⁸¹ and their combined membership is 20,000 of whom it is estimated that 30–40 percent are women.⁸² Like companies, cooperatives offer a convenient form for a group of individuals to form a business, benefit from limited liability status, and share profits between them.

With their values of self-help, democracy, equality, equity, and solidarity, cooperatives often combine business and a social agenda. They operate on the basis of one vote per member, and unlike companies that are based on majority control, cooperatives are designed to facilitate equal participation of all members. Cooperatives are used for conducting businesses and also as a structure to facilitate savings and loans. In Port Vila business cooperatives are involved in the retail sector while in the provinces they are involved in fishing and agricultural (copra, kava, and cocoa) industries.⁸³

Vanuatu's regulatory regime for cooperatives is contained in the Cooperative Societies Act.⁸⁴ By international standards, the regime set out in the Act is cumbersome, with an unnecessarily high degree of supervision from the State (the Department of Cooperatives). Cooperatives tend to be grassroots, community-based organizations and so the requirements to form and run a cooperative should aim at making them as accessible a business form as possible. This means that regulatory controls should be kept to a minimum, consistent with adequate regulation to protect the interests of their members. At the very least, the regime for regulating cooperatives should be as straightforward as the regime for regulating companies. It should also distinguish between trading and non-trading cooperatives and should allow greater flexibility for fundraising from non-members. Further educational programs which inform members of their rights and responsibilities within such a structure would be important in facilitating sound governance practices. Therefore, once proposals for streamlining Vanuatu's Companies Act have been developed, the Cooperative Societies Act should be reviewed and consideration given to providing a 'lighter touch' regime for cooperative regulation, aimed as at reducing the time and cost of forming and running cooperatives. As with simplification of the Companies Act it is likely that women will benefit disproportionately from such reforms.

⁷⁷ And not in the UK, where Company Law has been confused by the imposition of Continental law concepts through European Union directives.

⁷⁸ The concept that the company's worth is determined by the amount of capital originally paid into it or agreed to be paid in.

⁷⁹ The par value of a share is linked to its nominal capital, but is generally regarded as a misleading and confusing concept, having no relation to the true value of the share.

⁸⁰ The concept that a company can only do what it is authorized to do by its constitution. Other acts are outside its powers and therefore void or voidable.

⁸¹ IFC Pacific Enterprise Development Facility. 2003. Small and Medium Sized Enterprise Business Survey for the Pacific Region. IFC.

⁸² Department of Cooperatives and Ni Vanuatu Business Development Services.

⁸³ Department of Cooperatives and Ni-Vanuatu Business Development Services.

⁸⁴ Cooperatives Societies Act [Cap 152] 1987.

Activity 2.2.1: a review of the Companies Act to ensure best practice legal framework for registration of women's businesses and community groups as companies will assist in making it easier for women to take advantage of the corporate form.

Partnerships may provide an alternative route for women

If two or more people go in to business together, but do not wish to register the business as a company, they will be operating as 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. But in the absence of a written partnership agreement the arrangements between the partners may be unclear. It is therefore prudent for partners to draw up a partnership agreement setting out the arrangements between them. Partnership agreements can be lengthy and complex. When women are in business partnerships with their husbands they are unlikely to enter into a partnership agreement. However, if a partnership agreement is not in place, women have little protection on divorce or separation as it is difficult to prove their contribution to the partnership.

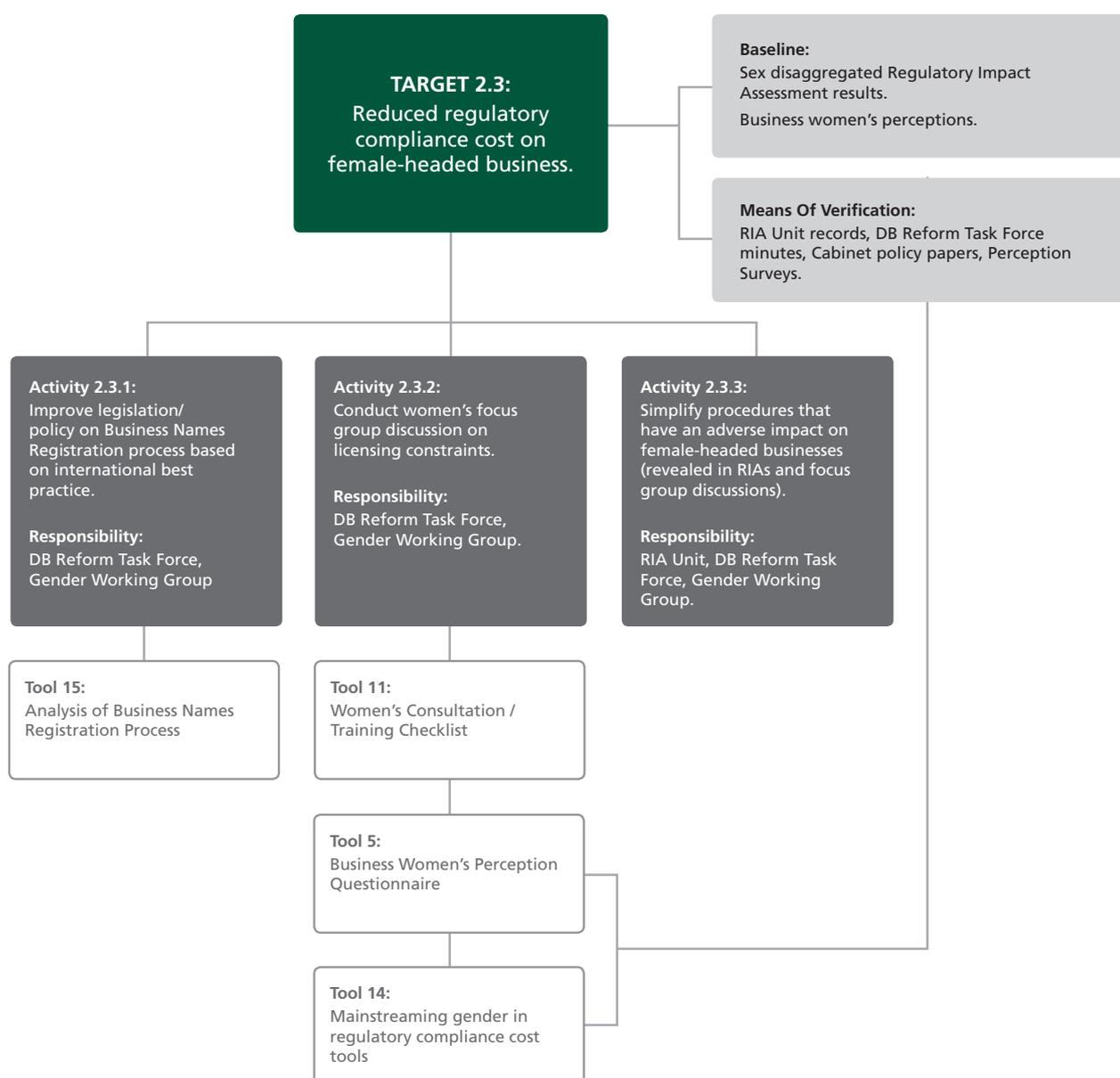
Activity 2.2.2: the development of a basic partnership agreement will facilitate women protecting their business interests.

Target 2.3:

Reduced regulatory compliance cost on female-headed businesses.

This section reviews the impact of Vanuatu'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



The business names registration regime adds needless red tape, but is rarely enforced

Businesses that are not companies or cooperatives operate as sole proprietorships (if one owner) or partnerships (if more than one owner). This applies to the vast majority of both male- and female-run businesses in Vanuatu. All businesses that operate under a name which is not the surname of the owner or the surnames of the partners are required to register their business name under the Business Names Act.⁸⁵ Registration under this Act does not confer separate legal status on a business. Rather, the purpose of registration is to protect business names; to allow the public to search the register to determine the names of individuals trading under a business name; and to restrict the use of certain business names, particularly those that may be misleading.

The concept of business names registration originated in England and Wales, but the regime has been recognized as overly burdensome and has been scrapped in favor of a streamlined regime requiring permission for use only of certain potentially misleading names.⁸⁶ One solution is to have a single database for all kinds of businesses – companies, sole proprietors, partnerships. Alternatively, in many countries assumed business names are registered in the trademarks registry.

The Financial Services Commission, which is responsible for business names registration, has no capacity to enforce the Act. So in practice there are many small businesses operating in Vanuatu under an unregistered business name. This fact in itself suggests that the Act serves little or no purpose and should be repealed. Banks may however require a business names certificate as a pre-requisite to lending to a small business.

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

The business licensing regime imposes a burden, which is being particularly felt by women operating small businesses

All businesses operating in Vanuatu whether owned by an expatriate or a ni-Vanuatu require a business license from the Department of Customs and Inland Revenue. Annual renewal is required. The institutional home of this license highlights the fact that the license is in fact a tax. It serves no regulatory purpose.

The minimum business license fee of 5,000 vatu⁸⁷ applies to businesses with a turnover of less than 10 million vatu (\$100,000). But nearly 70 percent of businesses in Vanuatu have receipts of less than \$50,000 a year,⁸⁸ and many operators of microbusinesses would have turnovers which are much less than this. Women operating microenterprises supported by VANWODS, a microfinance institution with exclusively female clients, argue that this fee is prohibitively expensive for them and should be reduced (see Box 4.4 below).

Box 4.3. Women operating microenterprises are adversely affected by the business license

VANWODS had an agreement with the Customs and Inland Revenue Department that business licenses would be issued to each VANWODS center (each center has up to 35 members), rather than issuing individual licenses to the women members. However in 2007 the Government advised that going forward business licenses would have to be purchased by each VANWODS member. Members of VANWODS argue that the new regime is prohibitive and will force many of them out of business.

Outside Port Vila and Luganville the business license regime is operated by the six provincial Governments of Shefa, Malampa, Penama, Sanma, Tafea, and Torba who are empowered to collect the license fee on an annual basis from all businesses operating within their geographic boundaries. Provincial Governments set their own fees which they retain.

⁸⁵ Business Names Act No 6 of 1990.

⁸⁶ UK Business Names Act, 1985.

⁸⁷ US\$55.

⁸⁸ IFC Pacific Enterprise Development Facility 2003. Small and Medium Sized Enterprise Business Survey for the Pacific Region.

Again, the license is in effect a tax. There have been complaints from women operating small businesses⁸⁹ that license fees are high, appear arbitrary, and the receipts are not always given. The varying rates (see Box 4.5 and Box 4.6) below) would appear to make confusion about the level of fee more likely.

Box 4.4. Shefa Business license fee

Type of business	Vatu	US\$ equivalent (approx)
Retail store	5,000	50
Home manufactures	2,500	25
Tourism	6,000	60
Rent house	5,000	50
Cooking	2,500	25
Sale of Kerosene	2,500	25
Bakeries Bread	2,500	25
Sale of fuel	2,500	25
Kato	5,000	50
Sale of drass and calico printing	2,500	25
Kava bar	5,000	50
Brick manufacture	6,500	65
Lawn mower	3,000	30
Ice cream	2,500	25
Other	3,000	30

Box 4.5. Santos Business License fee

Type of business	Fee: Vatu turnover < 10 million	Equivalent Fee: US\$	Fee: Vatu turnover > 10 million	Equivalent Fee: US\$
Mining, quarrying and logging	20,000	200	50,000	500
Manufacturing industries and trade	20,000	200	50,000	500
Imports	10,000	100		
Retailer & wholesaler	20,000	200	50,000	500
Hotels, motels, restaurants, cafes and bars	20,000	200	50,000	500
Open-air vendors, mobile shops and tourism services	5,000	50	50,000	500
Transportation storage facilities and tourism services	20,000	200	50,000	500
Construction, Industry & Trade	20,000	200	50,000	500
Domiciled Vanuatu License	20,000	200	50,000	500
Non-Domiciled Vanuatu License	20,000	200	50,000	500
Insurance Brokers	20,000	200	50,000	500
Medical and Dental practitioners, Optometrists and similar	20,000	200	50,000	500
Telecommunications	20,000	200	50,000	500

⁸⁹ Passed on by VANWODS.

Business licenses add little to the Government's tax take but impose a significant burden on micro-operators, many of whom are women

Business licenses account for only 2.5 percent of Government's tax revenue. But the tax is payable by all businesses, no matter how small, and small businesses are charged a disproportionately high rate by central Government. At the local level varying rates of license lead to a confusing regime. Women entrepreneurs often hire agents to procure their business licenses, paying up to 25,000 vatu (\$250) for the 5,000 vatu (\$50) license.

Officers of the Department of Customs and Inland Revenue, responsible for enforcing the Business License laws, are constrained by resources and regard compliance as voluntary. However they do undertake random checks.⁹⁰ Not having a license or obstructing the search for the license can result in high penalties and the legislation also provides for imprisonment for three months.⁹¹ Women selling food and clothing at markets have complained that they are an easy target and subject to such checks. This ad hoc method of enforcement impacts on women adversely.

With support from the IFC, the Government of Vanuatu has recently taken the decision to set up a Regulatory Impact Assessment Unit.

Activity 2.3.2: reforming licensing in the light of its impact on female-headed businesses (revealed in RIAs and focus group discussions) – will reduce the regulatory burden on women.

⁹⁰ Section 16 of Business License Act No 19 of 1998.

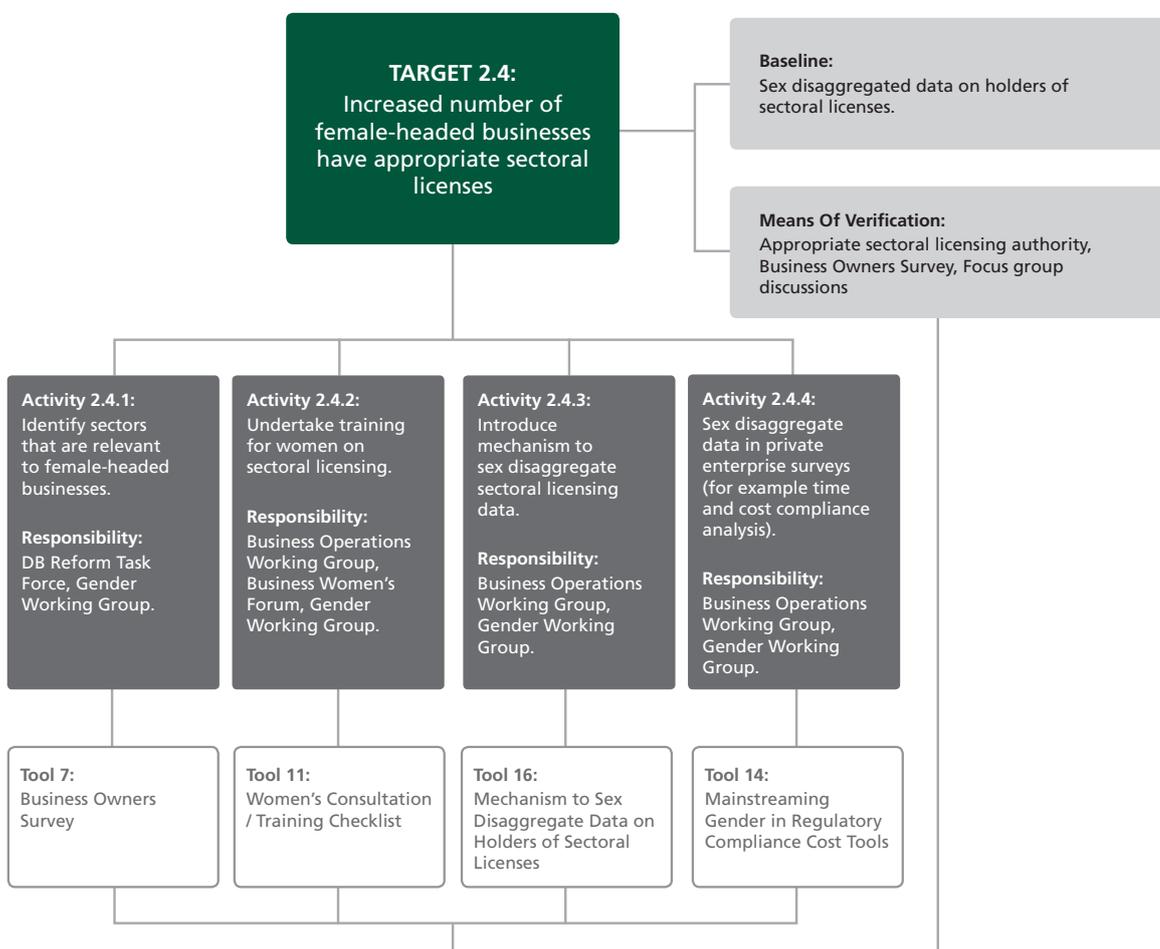
⁹¹ Section 16 and 23 of the Business License Act No 19 of 1998.

Target 2.4:

Increased number of female-headed businesses have appropriate sectoral licenses.

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).

Figure 4.4. Target 2.4: Activities and Tools



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.

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.

Table 4.1. Business forms in Vanuatu

Status of investor(s)	Status of business	Legislative framework for business entry
Overseas investor/s	Offshore company (for tax reasons)	International Companies Act ⁹² – exempts companies for 20 years from tax on profits, capital gains or distributions, stamp duty, and exchange control restrictions. Not allowed to carry on a business or raise money from the public in Vanuatu. Otherwise same requirements for setting up a company as a local investor.
Overseas investor/s	Local company	Companies Act ⁹⁴ – same requirements for setting up a company as a local investor. Foreign Investment Act ⁹⁵ provides for special licensing regime for foreign investors administered by the Vanuatu Investment Promotion Authority (VIPA) ⁹⁶ . Business License Act ⁹⁷ requires all businesses operating in Vanuatu to have a business license issued by the Department of Customs and Inland Revenue. In addition, a foreign investor requires a work permit (administered by Department of Labor) and a residency permit (administered by Department of Immigration).
Local investor/s	Business with legal identity separate from its owner/s and with limited liability ⁹⁸ status	Companies Act – incorporation of the company by registration with the Financial Services Commission ⁹⁹ . Business License Act – see above.
Local investor/s	Business with legal identity separate from its owner/s, and with limited liability ¹⁰⁰ status, and operated under democratic, cooperative principles	Cooperative Societies Act ¹⁰¹ - registration of cooperative with the Ministry for Commerce and Cooperatives. Business License Act – see above.
Local investor/s	Business operated either as a sole trader or in partnership, without separate legal identity.	Where there is more than one owner, the Partnership Act ¹⁰² provides a framework for relations between the owners. If the business is operating under a name which is not the name of the owner or one of the owners, registration with the Financial Services Commission under the Business Names Act ¹⁰³ is required. Business License Act – see above.

Table 4.2. A comparative review of Vanuatu Companies Act against gender equality and good practice principles

Best practice indicator	New Zealand	Timor Leste	Vanuatu	Solomon Islands	Tonga	Samoa	Papua New Guinea
Law	Companies Act 1993	Law No 4/2004 on Commercial Companies.	Companies Act 1986	Companies Act 2009	Companies (Amendment) Bill 2009	Companies Act 2001	Companies Act 1997

⁹² International Companies Act No 13 of 1992.

⁹³ Companies Act [Cap 191] 1986.

⁹⁴ Foreign Investment Act No 15 of 1998.

⁹⁵ Approval is required prior to setting up the business and takes about three weeks. The fee ranges from 15,000 vatu (US\$160) to 50,000 vatu (US\$540) depending on the size of the investment. Annual renewal is required. VIPA estimates that about 25% of license applications are from women.

⁹⁶ Business License Act No 19 of 1998.

⁹⁷ I.e. the liability of the owner (s) is limited to the extent of the paid in share capital of the company.

⁹⁸ Under the Ministry of Finance.

⁹⁹ I.e. the liability of the owner (s) is limited to the extent of the paid in share capital of the company.

¹⁰⁰ Cooperatives Societies Act [Cap 159] 1987.

¹⁰¹ Partnership Act [Cap 92] 1975.

¹⁰² Business Names Act No 6 of 1990.

Best practice indicator	New Zealand	Timor Leste	Vanuatu	Solomon Islands	Tonga	Samoa	Papua New Guinea
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.	Yes	Yes (is available in English and Portuguese).	Yes	Yes	Yes. Tongan language version available.	Yes. Samoan language version available.	Yes
Streamlined legislation: companies legislation should only contain core company law and should not include insolvency law or securities law.	Yes. Separate legislation for securities and receiverships.	No	Yes	Yes. Some securities law included. Separate legislation for insolvency, receiverships, and secured transactions.	Yes	Yes. Separate legislation for securities and receiverships.	Yes
Ease of incorporation: incorporation can take place on a single, simple form that can be completed without a lawyer.	Yes. Additional forms must be lodged showing directors consent.	Needs assistance of lawyer or agent.	Needs assistance of a lawyer or company formation agent.	Yes	Yes	Simple forms used, however additional form must be lodged for directors consent.	Yes. Advisors assist with forms and forms are available online.
Constitution: no requirement to file a copy of Memorandum and Articles of Association.	Yes. Standard constitution in legislation.	Yes – needs to file a Memorandum and Articles.	Yes – have to file documents. Standard rules provided in the legislation.	Yes. Model Rules provided in legislation.	Yes. Standard constitution in legislation.	Yes. Model Rules provided in Act.	Yes. Standard rules provided in Act.
Focus on small private companies: Act should be drafted to facilitate business for small private companies with no blanket requirements to hold formal meetings, file formal reports and no mandatory use of lawyers.	Yes, but also provides for larger companies given economic context in NZ.	Yes – to a limited extent.	Yes – private companies are exempt from these requirements.	Yes	Yes	Yes	Yes
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.	Yes	No – there are requirements on par value and share capital.	No – the requirements of par value, issue share capital, and nominal capital remain.	Yes	Yes	Yes	Yes
Company secretary: role of company secretary is optional.	Yes	Mandatory for companies with over ten shareholders.	No – every company has to have a company secretary.	Yes	Yes	Yes	Yes
Civil penalties: 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).	No. Criminal penalties apply.	Yes	Yes	Yes	Yes	No. Criminal penalties apply for minor matters, for instance failure to file annual return.	Yes

Best practice indicator	New Zealand	Timor Leste	Vanuatu	Solomon Islands	Tonga	Samoa	Papua New Guinea
Shareholder remedies: include remedies that make it easy for shareholders to take directors to Court if their rights are being abused.	Yes	Yes – but must be a minimum number of members.	Yes	Yes	Yes	Yes	Yes
Directors' duties: clearly state directors' duties including duties of care and good faith.	Yes	Yes	Yes – deals with some duties, particularly conflict of interest and loans but does not clearly deal with care and good faith.	Yes	Yes	Yes	Yes
Related party transactions¹⁰⁴ and minority shareholders: permit shareholders with 10 percent or less of a company's shares to sue the company for related-party transactions.	Yes	No	Yes	Yes	Yes	Yes	Yes.
Disclosure of related party transactions: require disclosure of related party transactions to the board of directors and in annual Reports.	Yes – disclosure to Board and in interests register	No specific procedure prescribed	Yes – disclosure to Board and in interests register	Yes – disclosure to Board, interests register, and in annual Report.	Yes – disclosure to Board and in interests register only.	Yes – disclosure to Board, interests register, and in annual Report.	Yes – disclosure to Board
Approval of related party transactions: require third-party approval for all related-party transactions.	No	No specific procedure prescribed	No	No	No	No	No
Approval of related party transactions: appointment of a Government inspector to investigate related-party transactions.	No	No	No	No	No	No	No
Transparency of records: allow company records and documents to be open to shareholder inspection without need to instigate Court proceedings.	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Permission: 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?	No	No	No	No	No	No	No

¹⁰⁴ Note that the Acts all deal with director's self interest as the related party, not a related company.

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

Chapter 5. Access to justice, the courts, and mediation

Summary

The only route to justice open to many of Vanuatu's women is to rely on chiefs who dispense custom law. The most accessible Courts in the formal system are Island Courts – but these also dispense traditional justice, which tends to be biased against women.

IFC provides assistance to Pacific Courts to establish and enhance court-referred mediation, as a simple, time and cost efficient method to resolve commercial disputes. The introduction of mediation at Supreme Court offers the opportunity to open up Vanuatu's justice system to women.

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 Vanuatu 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

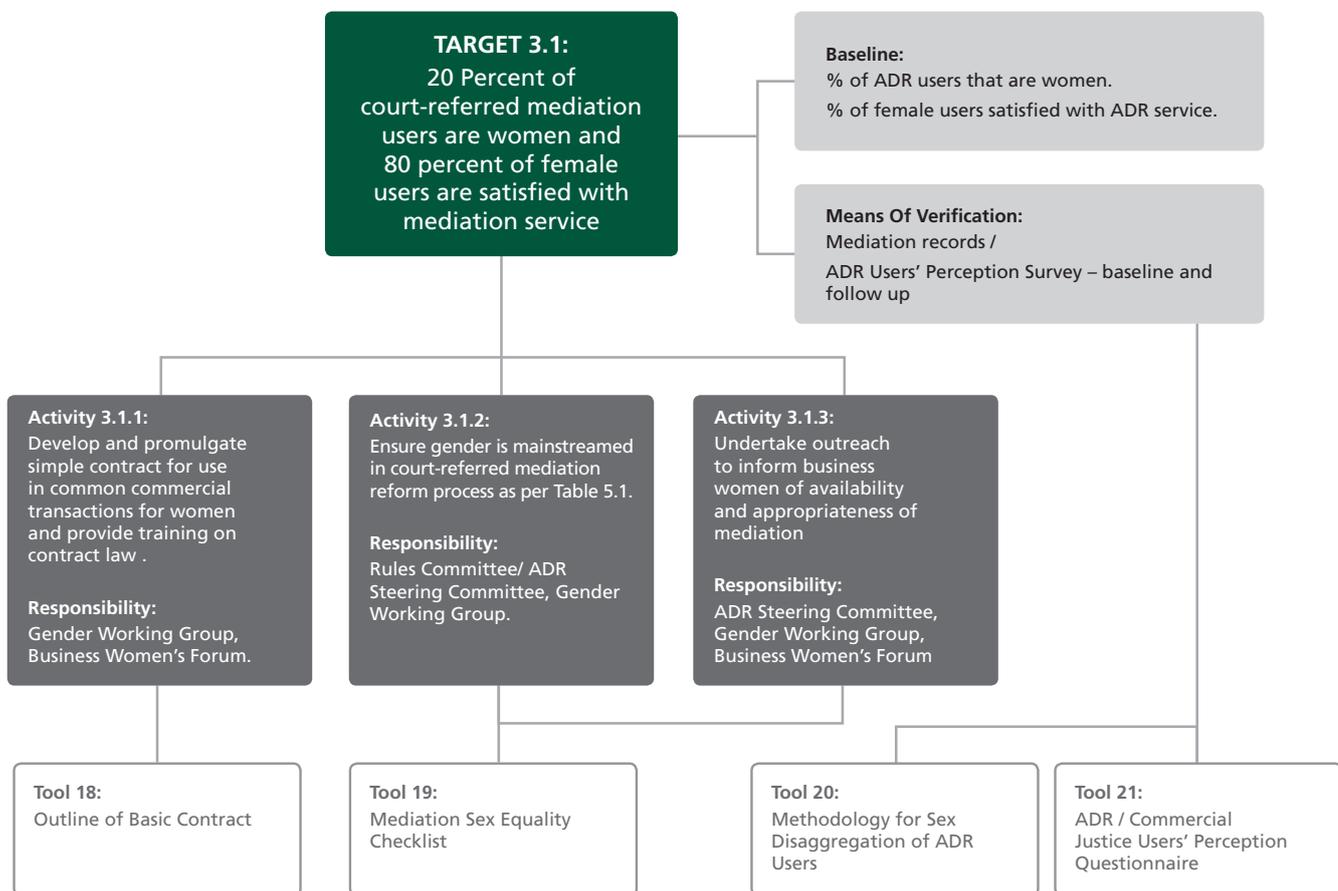


Target 3.1:

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 Vanuatu, 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).

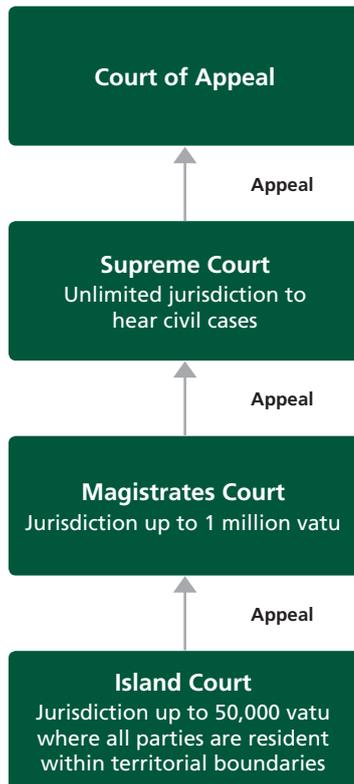
Figure 5.2. Target 3.1: Activities and Tools



Contract enforcement in Vanuatu's formal system is costly

Vanuatu has two legal systems operating simultaneously: the formal legal system and the customary system comprising customary rules and dispute resolution procedures, which vary across the country. The vast majority of disputes are dealt with either in the lower Courts (Magistrates or Island Courts) or informally by chiefs.

Figure 5.3. The formal system in relation to civil disputes



Vanuatu is ranked 73 out of 183 economies for contract enforcement (see Table 5.1 below). This is in relation to the enforcement of contracts through the Supreme Court. It is estimated that there is a backlog of about 1,000 cases in Vanuatu, mostly commercial matters (including many land disputes), in the Supreme Court.¹⁰⁴ Contract enforcement has recently been set back following the burning down of the Court building in Port Vila, and the consequent loss of all the Court's records. Vanuatu's performance can be considerably improved in this area especially in comparison to New Zealand, the best performing country in the Pacific.

104 Foreign Investment Advisory Services, Vanuatu: Mini-Diagnostic Analysis of the Investment Climate, March 2007.

Table 5.1 Enforcing a contract – benchmarking in the Doing Business index¹⁰⁵

Indicator	Vanuatu	New Zealand	East Asia and Pacific	OECD
Procedures (number)	30	30	37.2	30.6
Duration (days)	430	216	538.1	462.4
Cost (% of claim)	74.7	22.4	48.5	19.2

Traditional justice systems are accessible, but tend to marginalize women

In rural areas formal Courts may be available only sporadically when the Courts go on circuit.¹⁰⁶ There is no option therefore but to rely on chiefs to dispense justice in relation to disputes. The vast majority of chiefs are men, and women are rarely called as experts at the *nakamal* (village Court) although they are frequently considered the carriers and sustainers of custom from one generation to the next.¹⁰⁷ Chiefs are not subjected to any formal accountability mechanisms. During the 1994 *Violence and the Family* Conference, the Chief Justice stated that *custom is failing ni-Vanuatu women*.¹⁰⁸

It has been suggested that *more women are using the formal system and the formal law and avoiding custom Courts because they think they won't get justice there*.¹⁰⁹ The most accessible Courts in the formal system, Island Courts, also dispense traditional justice, with each Court being constituted by at least three justices knowledgeable in custom, one of whom must be a custom chief from the region covered by the Court. The Constitution¹¹⁰ states that Island Courts should decide matters *wherever possible in conformity with custom* and the Island Court Act provides¹¹¹ that *an island Court shall administer the customary law prevailing within the territorial jurisdiction of the Court so far as the same is not in conflict with any written law and is not contrary to justice, morality, and good order*.

As women increasingly run their own businesses and become successful they are likely to become involved in disputes. Box 6.5 in Chapter 6 below provides an example of one such dispute, where successful business women on Tanna found that their land rights came into dispute as others noted their success and tried to profit from it.

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 providing training on contract law will increase women's knowledge of the law and their rights and provide the basis for them to use the formal legal system.

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:

¹⁰⁵ World Bank. 2009. *Doing Business in 2010*. World Bank, Washington, DC.

¹⁰⁶ Vanuatu Rural Development & Training Center's Association, Vanuatu NGO Shadow Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women, May 2007.

¹⁰⁷ Jalal, P.I., *Law for Pacific Women: A legal rights handbook*, 1998.

¹⁰⁸ 1996 *Woman Ikat Raet Long Human Raet O No?: Women's Rights, Human Rights and Domestic Violence in Vanuatu*. In A. Curthoys, H. Irving and J. Martin (eds) *The World Upside Down: Feminisms in the Antipodes*. *Feminist Review* 52:169-90.

¹⁰⁹ Jalal, P.I., *Law for Pacific Women: A legal rights handbook*, 1998 p 42.

¹¹⁰ Article 45.

¹¹¹ Section 10 .

- 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.

The introduction of mediation offers an opportunity to enhance access to justice for women

In an effort to reduce the cost of contract enforcement and to make the system more efficient and effective, the Supreme Court of Vanuatu has begun the implementation of Court-referred mediation. Significant work has already taken place to implement this, including the setting up of an ADR Steering Committee and the training and accreditation of mediators.

Support for this initiative is being provided by the IFC through the Regulatory Simplification and Investment Policy and Promotion Program. Table 5.1 below provides gender perspectives on activities taking place as mediation is introduced. As part of this initiative, the intention is to undertake a public awareness campaign on mediation during Vanuatu's Law Week in October 2009, highlighting its benefits for the private sector, legal community, and Judiciary. It will include a communications strategy to effectively promote the awareness training as well as a general public awareness campaign. It will be important to ensure that the campaign is designed so that it reaches women, and highlights the relevance of this route to resolving their business disputes.

Table 5.2. Incorporating gender in mediator accreditation and mediator awareness training

Activity	Gender perspective
Strengthen ADR Steering Committee	Ensure gender balance (at least 30 percent ¹¹²). Ensure women included are representative of ni-Vanuatu Women, particularly business women.
Select mediators	Trainees should include women.
Train mediators	Training should include gender relations, including in power relations between men and women in the cultural context.
Pilot process	Select some cases involving women as part of the pilot to assess how the process impacts on them. Sex disaggregate results.
Undertake public awareness campaigns	Ensure this engages with women. Involve women's civil society organizations. Develop literature / radio campaigns showing how women as well as men can benefit from mediation ¹¹⁴ .
Develop mediation skills training course, possibly in conjunction with the University of the South Pacific	Need to ensure that the course includes a gender element – as above.
Develop monitoring and evaluation framework	Ensure statistics are sex disaggregated.

Activity 3.1.2: ensuring that gender is mainstreamed in the IFC support to the court-referred mediation process as per Table 5.1 above, and Activity 3.1.2: undertaking outreach on mediation to business women will enable women to benefit from the introduction of mediation.

¹¹² In accordance with Beijing Platform for Action targets.

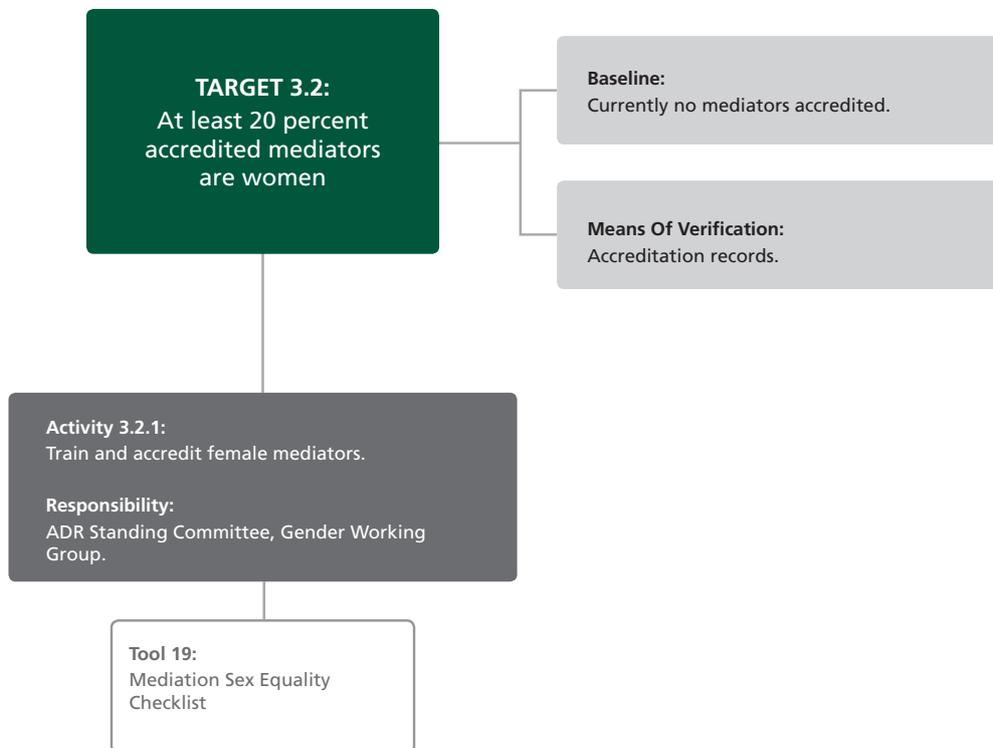
¹¹³ The example given in Annex 7 of the FCA Report of a Mediation Practice Note from Supreme Court of Australia is gender neutral. But in addition, proactive steps should be taken to encourage women to use the system.

Target 3.2:

At least 20 percent of 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: Activities and Tools



The legal profession is male dominated...

None of Vanuatu's Court of Appeal or Supreme Court Judges are female, although there are women magistrates. There are only a few female lawyers practicing in Vanuatu. There are a number of legal advice centers, some of which are aimed specifically at women, such as the Vanuatu Women's Center which offers free legal advice in relation to domestic violence and child abuse.

...but the accreditation of mediators offers opportunities for women

IFC is to provide support to the training of the Judiciary and Magistrates in Vanuatu on mediation and the accreditation of mediators. The training and accreditation will meet Australian Accreditation Standards. The training of mediators offers an opportunity for women to participate in justice provision in Vanuatu.

The target is for at least 20 percent of the mediators 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 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 among 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.

Activity 3.2.1: training and accrediting female mediators has the potential to open up the justice system for women.

Chapter 6. Access to, and enforcement of, rights over registered land

Summary

Vanuatu's land laws do not discriminate against women. But 97 percent of land in Vanuatu is under customary tenure which generally means that women have very limited rights to control and manage land. Women's rights over land are increasingly threatened because the rights they do have – to use the land – cannot be registered. Once customary land is registered women's rights over it tend to be extinguished. The vast majority of registered leases are in the sole name of a man.

Land is not currently being addressed under the Government's Regulatory Simplification and Investment Policy and Promotion Program, supported by IFC. However, these issues have been recognized by the 2006 National Women's Forum and the National Land Summit, whose recommendations for enhanced and clarified land rights for women are being taken forward by the National Land Steering Committee.

This chapter sets out a number of additional key recommendations to improve women's position in relation to access to land and enforcement of rights over registered land, within the context of ongoing reforms.

Land registration in Vanuatu is time consuming and costly

Land registration in Vanuatu is time consuming and costly. Vanuatu scores badly in the Doing Business index on registering property (see Box 6.1 below) ranking at a low 104 out of 183 economies. The key issue is the length of time it takes to register – an average of 188 days, compared to 2 days in top ranking New Zealand. The land registry in Vanuatu is not computerized, the records are disorganized, and there are some concerns about the integrity of the register with complaints of multiple registrations of the same plot of land.

Box 6.1. Registering property – benchmarking in Doing Business index¹¹⁴

Indicator	Vanuatu	New Zealand	East Asia and Pacific	OECD
Procedures (number)	20	2	5	4.7
Duration	188	2	97.5	25
Cost (% of property value)	7.0	0.1	3.9	4.6

Land is a vital economic resource for Vanuatu

The problems in the Land Registry are important because land is one of Vanuatu's key assets. It is generally rich, fertile, and abundant, although in some areas there is some land pressure due to a population that is growing at the rate of 2.4 percent per year, coupled with poor quality soil or poor water supply.¹¹⁵ Land is highly valued in Vanuatu, not only for what it produces but also for what it symbolizes in terms of status and identity.¹¹⁶

Tourism, agriculture, and the recent land boom are dependent on the ability to use land as an economic resource. On Efate, the main island in the group, about 90 percent of customary land has now been leased out¹¹⁷ and Santo, Malekula, and Epi are now beginning to be developed. Recently the sales have been driven by foreign investment in holiday and retirement homes.

¹¹⁴ World Bank. 2009. Doing Business in 2010. World Bank, Washington, DC.

¹¹⁵ For example Tanna, Tongoa, the Shepherds, Paama and parts of Ambae. AusAID, The Unfinished State – Drivers of Change in Vanuatu, April 2007 p 16.

¹¹⁶ Government of Vanuatu (Office of the Prime Minister and Department of Women's Affairs), Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women, September 2004 p 15.

¹¹⁷ Economist Intelligence Unit Vanuatu Country Profile, 2007.

Vanuatu's land laws do not discriminate against women

Despite the recent land boom, the vast majority of land in Vanuatu is still held under customary tenure.¹¹⁸ This means that it is held according to the landholding system of the people of the area in which it is situated. Vanuatu's Constitution entrenches customary landholding providing: *all land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendents*. The Constitution also provides for the National Council of Chiefs to be consulted on all land matters.

The basic legal framework for landholding in Vanuatu is set out in three key pieces of legislation (see Box 6.2 below). Originally intended as an interim arrangement, this system has remained in place since independence in 1980. The system is fraught with uncertainties (for example, around rights to renew leases) and problems (for example there is no provision for registration of customary land, only leases may be registered).

Box 6.2. Basic legal framework for land in Vanuatu¹¹⁹

Land Reform Act 1980 provided for all state land to be vested in the Government of Vanuatu and for it to be used by its custom owners.

Alienated Land Act 1982 provided for the replacement of freeholds and other titles in alienated land with long-term leases.

Land Leases Act 1983 provided for the registration of leasehold titles. It defined the procedure for lease agreements and established the lands records office.

Land in Vanuatu cannot (in theory at least) be permanently alienated. Freehold does not exist. But instead long leases (up to 75 years) can be granted by the owner/s of customary land for a single up-front payment with a minimal annual ground rent. These long leases are considered almost as good as freehold. Leasehold title can be sold on with the permission of the original owner or his heirs.

With high land values and strong demand for new leases, determining the ownership of customary land – and who has the power to grant a lease over the land – has become vitally important. Vanuatu has a wide range of landholding customary landholding practices. These are mainly unwritten, complicated rules of inheritance and traditional practices¹²⁰. They range from family and clan-based holdings to individual holdings centered around the head of a nuclear family.

Women are largely excluded from ownership of customary land...

Land legislation does not directly discriminate against women. But customary landholding practices do. Commentators agree that all customary landholding systems in Vanuatu are characterized to a greater or lesser extent by the marginalization of women. Vanuatu has both *patrilineal* and *matrilineal* landholding systems. The *patrilineal* system is the most common with land control and management being passed through male line. In most cases the system is also *patriarchal* meaning that women do not have the right to have land passed to them. Even in *matrilineal* societies where land passes through the female line, women do not necessarily control or manage the land.

In practice, women in Vanuatu have very limited rights to control and manage customary land. They are marginalized from decisions about how it is used, whether it can be mortgaged to obtain loans for development and whether it can be leased to individuals. But under custom law women nearly always have some rights over land, in the form of *usufruct* rights – rights of use, but not of control or management (Box 6.3 below).

¹¹⁸ Vanuatu – recent economic performance and outlook.

¹¹⁹ Adapted from Naupa A & Simo, J August Matrilineal Land Tenure in Vanuatu 2007.

¹²⁰ Jalal, P.I., Law for Pacific Women: A legal rights handbook, 1998.

Box 6.3. Women's rights over land under custom law¹²¹

- Women usually have *usufruct* rights, or rights of use, while primary land rights are held by men. These usage rights typically allow a women to use her parents' land until she marries. A married woman has usufruct rights in her husband's village. But if her husband dies, these rights are usually lost.
- Women sometimes assume a custodial right over land when no male heirs existed to inherit primary rights. In the central islands for example, a women can bring with her into marriage a right to specific parcels of land which she and her husband can use during her lifetime.
- In *matrilineal* societies women are regarded as the source of land rights rather than the exercisers of land rights. Women may have rights in their mothers' land before and after marriage, but their maternal uncles or their brothers usually control and manage those rights.

Women's rights over customary land are increasingly threatened

Any rights a woman has over land are extinguished on registration of a lease over that land. *Usufruct* rights are not noted on the register, despite the fact that the Land Leases Act provides that overriding interests, including easements and rights of way, can be registered. Furthermore, it has been argued (Naupa and Simo 2007) that the imposition of external religions and gender ideologies into customary societies, and in some cases moves to codify custom law, have increasingly excluded women from rights over land (see Box 6.4 below).

Box 6.4. Customary land: women's increasing marginalization¹²²

Raga, North Pentecost

Raga operates a matrilineal system with tribes consisting of matrilineal descent groups which are tied to a particular area of land. Traditionally, women may be consulted in land matters, with avenues for women to gain rank within society, permitting them access to and participation in decision-making processes. The final decision about land matters rests with the males.

However, there has been a gradual shift in attitudes towards women's involvement in land matters. Increasingly it is being perceived as a male-only domain.

Mele, South Efate

Villagers can claim land right through either parent, although typically the males make all land decisions and women are not active participants in the process.

Customary law on Efate has recently been codified in the Efate Vaturisu Customary Land Law, 2007. This codification has further marginalized women, with male heads of households recognized as holding the primary land rights. No women were involved in the codification discussions at the Council of Chiefs.

It has been reported that, on Tanna, women's rights to use land for their businesses are being challenged as the businesses are perceived as being successful¹²³ (see Box 6.5 below).

Box 6.5. Tourist development and land disputes in Tanna

Ni-Vanuatu women on the island of Tanna were finding expansion of their successful tourism business blocked by customary land tenure rules. The growing tourism industry on the island has led to the creation of several female-owned enterprises, including bungalows, guesthouses, and restaurants, as well as tourist markets for crafts, clothing, and food. However, interviews during a field visit to Tanna in April 2008 suggested that many of these women could

¹²¹ Government of Vanuatu (Office of the Prime Minister and Department of Women's Affairs), Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women, September 2004 p 16.

¹²² Naupa, A & Simo, J. Matrilineal Land Tenure in Vanuatu. Port Villa. 2007.

¹²³ Source: Field visit to Tanna – 25 April 2008.

not meet the growing demand for their services because they could not get permission from customary landowners to build more guesthouses on nearby land. According to the business women, several of the landowners on Tanna initially agreed to hand over land for private development but once the business started to grow and make profit the customary landowners wanted to claim the land back for themselves to share in the profits. Other women noted that their business start-ups or growth were being constrained by the lack of large and low-interest business loans. Unreliable supplies of power and water were also perennial concerns for those catering to tourists.

Women are marginalized from making decisions about customary land

Disputes involving custom land are in the first instance referred to the nakamal, an unofficial village Court, where customary land principles are applied. Women are highly unlikely to be part of this process. Nor are they likely to participate if a dispute enters the formal legal system. The Customary Land Tribunals Act 2001 gave jurisdiction over customary land to a hierarchy of Customary Land Tribunals, starting with the Village Land Tribunal and ending with the Island Land Tribunal. Tribunal membership comprises chiefs and elders. These are almost always men, although there is scope to include women as elders.

Women hold a minority of registered leases

It is virtually unknown for a woman to be recognized as the owner of customary land, and for a lease to be granted in her favor. Not surprisingly therefore, only a tiny minority of registered leases are in women's names. The only way a woman can acquire title to land is to buy an existing lease in an urban area. The Land Registry Reports that of the 30,000 registered leases, fewer than 20 are held solely by a woman (although more leases are registered in the names of both husband and wife).

The need to enhance women's rights over land has been recognized

The 2006 Vanuatu National Women's Forum and the National Land Summit placed women's access to land on the national agenda. Both were highly participatory processes. The Land Summit, organized by the Ministry of Lands and the Vanuatu Cultural Center, followed a series of six Provincial land summits. The most pressing issues as far as women were concerned were: the need for women to take a greater role in decision-making about land and to be encouraged to participate in the interpretation of custom and in the granting of leases; as well as the need to ensure an adequate definition of custom owner in the legislation. The current legislation recognizes neither group ownership of custom land, nor women's rights over the land. It was recognized that the current legislative framework for land administration, originally intended as an interim measure, is unsatisfactory and needs to be replaced by a coherent national land policy supported by a national land law as provided for in the Constitution.¹²⁴

A National Land Steering Committee was subsequently formed to take forward the recommendations of the Land Summit, and reform efforts are being supported by the Australian and New Zealand agencies for international development.

¹²⁴ Lunnay C, Fingleton J, Mangawai M, Nalyal E & Simo, J Vanuatu: Review of Nation Land Legislation, Policy and Land Administration, March 2007.

*Recommended Reforms*¹²⁵

- Implement the National Land Summit recommendation for research into gender roles relating to land and encourage chiefs to support women's participation in land matters and to promote women's traditional leadership roles
- Mainstream consultation with women stakeholders with Government administration processes relating to land (such as grant of land leases, environmental impact assessments, infrastructure development)
- Provide more information about, and be proactive in, ensuring that women's overriding rights to land (such as rights of way, rights to use the land) are registered through the Land Registry
- Enhance the representation of women on land boards and land committees
- Explore compulsory joint titling and equal land rights after divorce
- Encourage the National Land Steering Committee to include, in its public awareness campaign about land reform, a campaign educating Vanuatu about the benefits of including women in decision-making and the risks to social security when they are marginalized from land matters
- Expedite the computerized recording system.

125 Drawn largely from Naupa A & Simo, J, August 2007 *Matrilineal Land Tenure in Vanuatu: Case Studies of Raga and Mele'* in *Matrilineal Land Tenure in the Marshall Islands, Solomon Islands and Vanuatu*. Suva, Fiji: Pacific Forum Secretariat.

Annex A: Vanuatu Planning Matrix

Vanuatu: Gender and Investment Climate Reform Planning Matrix

Planning period: 3 years

GOAL 1: IMPROVED POLICY ENVIRONMENT AND SUPPORT NETWORK FOR BUSINESS WOMEN					
Targets	Baseline ¹²⁷	Means of Verification	Activities	Responsibility ¹²⁸	Tools to support activities/ baseline
1.1 Improved policy dialogue on investment climate reform for women's economic empowerment.	Proportion of members representing business women's interests on the Doing Business Reform Task Force and Working Groups.	ToRs, membership lists and minutes of meetings. Cabinet Office.	<p>1.1.1 Ensure appropriate representation of women's interests on existing PPD structures (DB Reform Task Force). If necessary revise ToRs.</p> <p>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 (DB Reform Task Force) does not have adequate capacity to address the identified regulatory and policy level constraints and provide technical assistance.</p>	IFC (local consultant). Gender Working Group. Business Women's Forum.	<p>TOOL 1: Gender Working Group ToRs.</p> <p>TOOL 3: Investment Climate Gender Consultant: ToRs and initial work plan.</p>
	Number of policy papers featuring women's economic empowerment considered by Cabinet.	DB Reform Task Force minutes.			
1.2 Improved legal framework for women's businesses.	Number of reforms to improve the investment climate for women enacted and implemented.	Vanuatu Gazette DB Reform Task Force minutes Gender Working Group minutes.	<p>1.2.1 PPD structures (DB Reform Task Force) and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms.</p> <p>1.2.2 Introduce law reforms to Parliament, including those recommended in Table 2.1.</p> <p>1.2.3 Enact and implement new laws.</p>	DB Reform Task Force. IFC Office.	TOOL 4: List of Discriminatory Laws.
1.3 Improved training and networking for business women.	Business women's perception of training and networking.	Perception surveys.	<p>1.3.1 Continue regular Vanuatu Business Women's Forum (with open invitation to business women ranging from informal sector through to big business), as commenced by IFC in April 2008, in partnership with local organizations and existing business women's associations.</p> <p>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.</p>	Gender Working Group. DB Reform Task Force. Govt of Vanuatu.	<p>TOOL 2: Business Women's Forum ToRs.</p> <p>TOOL 3: Investment Climate Gender Consultant ToRs and initial workplan.</p> <p>TOOL 11: Women's Consultation / Training Checklist.</p> <p>TOOL 5: Business Women's Perception Questionnaire.</p>

¹²⁶ (Or Method to Obtain Baseline).

¹²⁷ Lead entity is listed first.

GOAL 2: ENHANCED ABILITY OF WOMEN TO START AND RUN BUSINESSES

Targets	Baseline ¹²⁹	Means of Verification	Activities	Responsibility ¹³⁰	Tools to support activities / baseline
<p>2.1 Increase by five percentage points the proportion of (a) registered companies, and (b) partnerships and sole traders that are female-headed.</p>	Number of female- and male-headed companies, partnerships, and sole traders.	<p>Company registers.</p> <p>Business Owners Survey.</p>	<p>2.1.1 Ensure operations of Companies Registry are gender sensitive.</p> <p>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 partnerships with NGOs, staff training, establish Women's Help Desk at Vanuatu Financial Services Commission).</p> <p>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.</p>	<p>DB Reform Task Force / Gender Working Group .</p> <p>Business Women's Forum.</p> <p>Vanuatu Financial Services Commission.</p>	<p>TOOL 8: Business Registry Sex Equality Checklist</p> <p>TOOL 5: Business Women's Perception Questionnaire</p> <p>TOOL 9: How to Undertake Outreach on Formalization for Business Women</p> <p>TOOL 10: Women's Help Desk draft ToRs</p> <p>TOOL 11: Women's Consultation / Training Checklist (for handbook development)</p> <p>TOOL 6: Using Business Registry Data to establish % of Registered Companies Headed by Women.</p> <p>TOOL 7: Business Owners' Survey</p>
<p>2.2 Improved legal framework for women's businesses entry.</p>	Number of reforms undertaken.	DB Reform Task Force minutes	<p>2.2.1 Review companies legislation to ensure best practice legal framework for registration of women's businesses and community groups as companies.</p> <p>2.2.2 Develop and promulgate basic partnership agreement with civil society and business organizations.</p>	<p>Ministry of Finance Business Entry Working Group. Gender Working Group. Business Women's Forum</p>	<p>TOOL 12: Companies Act Checklist</p> <p>TOOL 13: Draft Partnership Agreement</p>

¹²⁸ (Or Method to Obtain Baseline).

¹²⁹ Lead entity is listed first.

GOAL 2: ENHANCED ABILITY OF WOMEN TO START AND RUN BUSINESSES

2.3 Reduced regulatory compliance cost on female-headed businesses.	Sex disaggregated Regulatory Impact Assessments. Business women's perceptions.	RIA Unit records DB Reform Task Force minutes Cabinet policy papers Perception Surveys	2.3.1 Improve legislation/policy on Business Names Registration process based on international best practice. 2.3.2 Conduct women's focus group discussion on licensing constraints. 2.3.3 Simplify procedures that have an adverse impact on female-headed businesses (revealed in sex disaggregated Regulatory Impact Assessments and focus group discussions).	RIA Unit DB Reform Task Force. Gender Working Group.	TOOL 15: Analysis of Business Names Registration Process. TOOL 11: Women's Consultation / Training Checklist. TOOL 5: Business Women's Perception Questionnaire. TOOL 14: Mainstreaming Gender in Regulatory Compliance Cost Tools.
2.4 Increased number of female-headed businesses have appropriate sectoral licenses.	Sex disaggregated data on holders of sectoral licenses.	Appropriate sectoral licensing authority. Business Owners Survey. Focus group discussions.	2.4.1 Identify sectors that are relevant to female-headed businesses. 2.4.2 Undertake training for women on sectoral licensing. 2.4.3 Introduce mechanism to sex disaggregate sectoral licensing data. 2.4.4 Sex disaggregate data in private enterprise surveys, for example time and cost compliance analysis.	DB Reform Task Force. Gender Working Group. Business Women's Forum.	TOOL 7: Business Owners Survey. TOOL 11: Women's Consultation / Training Checklist (for handbook development). TOOL 16: Mechanism to Sex Disaggregate Data on Holders of Sectoral Licenses. TOOL 14: Mainstreaming Gender in Regulatory Compliance Cost Tools.

GOAL 3: IMPROVED ACCESS TO COMMERCIAL JUSTICE FOR WOMEN

Targets	Baseline ¹³	Means of Verification	Activities	Responsibility ¹³²	Tools to support activities / baseline
<p>3.1 20 percent of court-referred mediation users are women and 80 percent of female users satisfied with mediation service.</p>		<p>Court-referred mediation records.</p> <p>ADR Users Perception Survey – baseline and follow up.</p>	<p>3.1.1 Develop and promulgate simple contract for use in common commercial transactions for women and provide training on contract law.</p> <p>3.1.2 Ensure gender is mainstreamed in court-referred reform process as per Table 5.1 in the Vanuatu Gender and Investment Climate Reform Assessment.</p> <p>3.1.3 Undertake outreach to inform business women of availability and appropriateness of mediation</p>	<p>Gender Working Group, Business Women's Forum.</p> <p>Rules Committee / ADR Steering Committee, Gender Working Group</p>	<p>TOOL 18: Outline of Basic Contract</p> <p>TOOL 19: Mediation Sex Equality Checklist</p> <p>TOOL 20: Methodology for sex Disaggregation of ADR Users</p> <p>TOOL 21: ADR / Commercial Justice Users' Perception Questionnaire</p>
<p>3.2 At least 20 percent of accredited mediators are women.</p>	Currently no mediators accredited	Accreditation records.	<p>3.2.1 Train and accredit female mediators.</p>	Rules Committee / ADR Steering Committee, Gender Working Group	<p>TOOL 19: Mediation Sex Equality Checklist</p>

¹³⁰ (Or Method to Obtain Baseline).

¹³¹ Lead entity is listed first.

Annex B: People met

Australian High Commission: John Pilbeam, (High Commissioner), Nick Cumpston (Counsellor), Anna Naupa (SPO), and Colette Hull (Second Secretary, Trade in AHC)

Anita Derouin, Vice-President, Vanuatu National Council of Women

Anita Jowett, USP

Annie Niatu, Vanuatu Tourism Office

Adam Ward, General Manager, Westpac

Betty Toa, A/g Director, Department of Finance

Ben Leeshi, Director, Department of Customs

Belinda Harries, Research Director, Pacific Institute of Public Policy

Bob Hughes, General Manager, National Bank of Vanuatu

Charlot Longwah, Kava Store

Chris Bleakley and other members, Governance for Growth

Don Paterson, USP

Gayle Stapleton, General Manager, ANZ

Gary Blake, Ridgway Blake Lawyers

Hon. James Bule, Minister, Ministry of Trade

Howard Aru, Center for Development and Enterprise

Jean-Marc Pierre, Director, Department of Land Record

John Aruhuri, Chamber of Commerce

John Salong, Managing Director, VANWODS

John Capper, James Toa, NZ AID

James Hudson, BRED Bank

John Malcolm, Geoff Gee & Co.

Morris Kaloran, A/g Director-General, Ministry of Justice and Social Welfare

Melanie Wayne-Wilson Manager/Owner, Lotus Health and Beauty

Marilyn KALANGIS, Human Resources Manager, ANZ

Nicolas Berlanger, European Commission

Odo Tevi, Governor, Reserve Bank

Pacco Siri, A/g Director, Department of Women's Affairs

Russell Nari, Director-General, Ministry of Land

Reginald Tabi, Vanuatu Investment Promotion Authority (VIPA)

Rachel Young, Department of Foreign Affairs and Trade (Australia)

Sarah Obed, Deputy Commissioner, Vanuatu Financial Services Commission

Sowany Joseph, Department of Cooperatives and Ni-Vanuatu Business Development Services

Tess Newton Cain, Enterprise Challenge Fund

Annex C: Summary of Focus Group Discussions with Female Entrepreneurs in Vanuatu

As part of in-country research, the team conducted two focus group discussions with female entrepreneurs in Port Vila and on the island of Tanna. The consultations revealed that gender relations are not homogenous across Vanuatu, and neither are business women's issues. For example, business women in Port Vila discussed pitiable bank service, while women on Tanna noted a lack of access to finance. Business women in Port Vila discussed their involvement in the lucrative kava bar industry, while women on Tanna are excluded from this traditionally male industry because of customary associations of kava with male fertility. The most striking observation from both groups is how willing and appreciative the business women were to be consulted, because they so rarely are. Below is a summary of the main barriers to business development that the women raised:

- Women need more affordable training and advice to succeed in business. They asked for the following skills and training opportunities: advocacy, bargaining, stock control, financial management and investment services (managing value-added tax returns, how to invest money rather than just save), human resources, product development, sourcing markets (international and domestic), and legal knowledge about business rights and start-up requirements.
- Vanuatu women rarely ask for help and feel that they should take a back seat to men. Women are willing to learn but are reluctant to take training, especially if it costs money.
- A number of steps are required to start a business and involve different government departments that appear to operate as silos and can give conflicting advice. Women noted that often the business license fees and other start-up requirements to formalize a business are out of reach for them. These requirements are confusing, expensive, or time consuming. The women also complained that the government departments are not friendly to business women and do not take them seriously. Women suggested a one-stop shop where all business processes could be managed or at least a place they felt comfortable going to for business information, financing options, and training opportunities.
- Women were interested in mentoring between successful business women and those who are just starting out, and hoped for more networking and associations friendly to women.
- Human resources are a concern. Staff are poorly trained, have attitude problems and a poor work ethic, and lack customer service and other skills. Women expressed interest in business training to help train Pacific Islanders in customer service and for ni-Vanuatu businesses to learn how Australian and New Zealand businesses operate. The possibility of the Australian Pacific Technical College offering customer service certificates and courses in small business management and beauty therapy was raised. Lack of education and illiteracy are problems among the staff. Many business women have to train their staff themselves.
- Rural women are less educated and struggle to understand business requirements.
- Men are meant to be patriarchs and sometimes feel emasculated when women are assertive. When considered too successful, women are often harassed by men and even by other women. As a result, women sometimes stop promoting and networking, hindering their business growth.
- Access to finance is a major issue for Tanna business women. While microfinance and savings and loans schemes have been established, they are often used as a cash management system—women can only loan what they have saved and enjoy getting their cash 'out of sight.' Other women have withdrawn their superannuation to start businesses. Because land cannot be used as collateral, women can access finance only through long-term savings. To put this into perspective, women will often save for 10 years before they can take out a loan.
 - Many women told stories of banks denying women credit, perpetuating the belief that banks are frightening, untrustworthy, and unwelcoming to women.
 - Women feel the 12 percent interest rate is too high.
 - Many women felt that banks should be friendlier. They said they are not taken seriously as business owners and felt that banks need to explain their products better.
 - Debt collectors should be regulated.

- Women expressed great need for improved access to markets and product development. Businesses compete with one another and produce similar goods. The women did not understand how to access international markets, unless they spent time in an advanced economy. Few used the Internet to access markets.
- A lack of infrastructure and crippling utility costs are barriers to business growth. Utilities are unreliable and it can take 'forever' to get a phone connected, unless you have a family member or friend in a relevant department to expedite the process. Women on Tanna also mentioned the irregular supply of water and electricity to be problematic. Transportation and freight costs are seen as a barrier to business growth.
- Transportation from outlying islands to Port Vila is costly, and rising petrol prices make getting goods to market expensive. An inefficient port monopoly makes importing and exporting problematic. Lengthy and costly delays hurt businesses engaged in importing and exporting.
- Security incidents such as pillaging and stealing are increasing, adding to the costs of doing business. Women are often targeted, especially if alone.
- Familial responsibilities can hinder enterprise development. It is difficult for women to get ahead in business because there is pressure to support more family every time the business grows. For example, it is common for successful business women to pay for their sibling children's school fees. Some business women move away from extended family as a strategy for business growth.
 - Family 'credit' sends many small enterprises out of business.
 - Men and family "need to understand what business means for a woman so they do not keep helping themselves" to her profits.
- Land disputes are an extremely common problem on the island of Tanna. They prevent women from expanding their businesses and from operating to full capacity. One woman explained that land owners were "jealous of her success" and so denied her access to the land she uses.
- Women who worked in marketplaces or sold food at stalls commented on the lack of shelter and areas designated for the sale of goods, forcing them to sell food at roadside stalls rather than under cover with proper sanitation facilities. Marketplaces require expansion to accommodate the women.
- There is need for some sort of alternative dispute resolution system or a small claims court to hear women's grievances in a cost-affordable manner.

Port Vila Business women Lunch - Monday April 2008

Host: Nick Cumpston, Counsellor

Eslie Turner, Ezy Wash Laundromat

Votausi Mackenzie, Lapita Café Catering

Jeannette Tuserong, Kava Export

Clarence Ngwele, Teoumaville (Real Estate)

Nicole Kalofaru, JCK Secondhand

Nadine Haines, Air & Ice Solutions (Air Conditioning Company)

Colette Hull, Second Secretary, Australian High Commission

Elaine Lam, Lam Store (Wholesaler/Retail Chain)

Gayle Stapleton, General Manager, ANZ

Sandrine Metois, Free Trade Association

Cornelia Wylie, Rainbow Gardens (Fruit, vegetable, and nursery supplier)

Louise Stevens, Pacific Supplies (Whitegoods, home, and garden supplier)

Tess Newton Cain, Enterprise Challenge Fund (manages AusAID fund)

Debbie Hogarth, Retreat Seaside (Hospitality)

Linda Trenker, Volcanic Earth (Beauty)

Amanda Ellis, World Bank

Clare Manual, World Bank

Sonali Hedditch, IFC Sydney

Kristie Druzca, AusAID

Anna Naupa, AusAID

Anna Hutchens

Vijaya Nagarajan

Janet Laban, VANWODS

Leina Simon, Wan Smolbag

Meresei Shem, Chamber of Commerce

Anita Faye, Young People's Program

Tanna Business women Lunch – Friday 25 April 2008

Merian Numake, Tanna Evergree Bungalows

Helen Jimmy, Sunset Bungalows

Madeline Tao, Talapoa Guest House and Shop

Ola Loughman, Uma Guest House

Selina Iakapas, Niu Geelong Guest House

Mary Naes, Lenakel Restaurant

Gabiko Karlo, Road Market

Meriani Kero, Wholesale business

Wina Waiwai, Second-hand shop

Florie Antony, Second-hand shop

Janet Ngau, Lending scheme

Rachel Nauka, Sunrise Bungalows and shop

Serah Daniel, Retail shop

Erolyn Hep, Road Market

Mary Jack, Tafea Provincial Govt

Emily Niras, Tafea Tourism Officer

Kaloka Naung, Tafea Counselling Center

Loti, Tafea Counselling Center

Ipai, RSE Labor Scheme organizer

Lily, Lenakel Cove Resort

Antoinette, Lenakel Cove Resort

Rose Iati, Retail Shop

Serah, Harbourview Restaurant



Annex D: Bibliography

AusAID, The Unfinished State – Drivers of Change in Vanuatu, April 2007.

AusAID, Pacific Economic Survey 2008 – Connecting the Region, April 2008.

AusAID, Vanuatu Technical Vocational, Education and Training Sector Strengthening Program: Tracer Study for Vanuatu Institute of Technology Graduates. Draft Report, 2005.

AusAID Governance for Growth Program: Design Document, September 2007.

Asian Development Bank 2002. An Assessment of Poverty and Hardship. Manila, ADB.

Briguglio, L, Cordina, G, and Farrugia, N. Vanuatu: A Profile of Economic Vulnerability and Economic Resilience. Report prepared for the Commonwealth Secretariat, London.

Bazeley, P. & Mullen, B, Vanuatu – Economic Opportunities, Fact-Finding Mission, July 2006.

Bleakley, C. 2008, Advisor, Governance for Growth (AusAID), Interview with World Bank–AusAID research team, 23 April 2008.

Capper, J. 2008, Deputy High Commissioner, New Zealand High Commission, Port Vila. Interview with World Bank-AusAID research team, 24 April, 2008.

Celso, P. 2005, Managing Director and Executive Vice President, RD Cannery. Interview with Chakriya Bowman, 17 May 2005.

Care, Jennifer Corrin, Tess Newton Cain, Don Patterson. 2007. Introduction to South Pacific Law. Routledge-Cavendish.

Douglas, B (ed) State, Society and Governance in Melanesia: Women and Governance from the Grassroots in Melanesia, Edited papers from workshop held at Sorrento, Victoria in November 1998.

DFID (practice paper) Gender and Growth. Growth Team Briefing Note 5, March 2007.

Enterprise Research Institute, Vanuatu – A Private Sector Assessment: Issues, Challenges and Policy Options (prepared for Asian Development Bank), May 2003.

FTAANZ (1.5.08). Fair Go for Fair Trade! (media release). Accessed at <http://www.fta.org.au/files/Fair-Go-FTF08-Press-Release-20080501.pdf> on May 21, 2008.

FTAANZ Annual Report 2006-2007. Accessed at <http://www.fta.org.au/system/files?file=FTAANZpercent20FLANZpercent202007percent20Annualpercent20Reportpercent20LR.pdf> on May 21, 2008.

Foreign Investment Advisory Services, Vanuatu: Mini-Diagnostic Analysis of the Investment Climate, March 2007.

Government of Vanuatu (Office of the Prime Minister and Department of Women's Affairs), Combined Initial, Second and Third Reports on the Convention on the Elimination of All Forms for Discrimination against Women, September 2004.

Government of Vanuatu (Asian Development Bank, UNDP and Vanuatu National Statistics Office) Analysis of the 2006 Household Income and Expenditure Survey and a Report on the Estimation of Basic Needs Poverty Lines, and the Incidence and Characteristics of Poverty in Vanuatu, April 2008.

IFC Pacific Enterprise Development Facility, Small and Medium Sized Enterprise Business Survey for the Pacific Region, 2003.

Interview 2008, National Tourism Office, 23 April 2008.

-
- Interview with World Bank-AusAID research team, 23 April, 2008. Mourgues, A. Program Officer, Delegation of the European Commission in Vanuatu.
-
- Jalal, P.I., Law for Pacific Women: A legal rights handbook, 1998.
-
- JICA, Vanuatu: Country Profile on Gender prepared by Andonia Piau-Lynch, January 2007.
-
- Kaplinsky, R. How can agricultural commodity producers appropriate a greater share of value chain incomes? In Sarris, A. & Hallam, D. Agricultural Commodity Markets and Trade. New Approaches to Analysing Market Structure and Instability. Edward Elgar: Cheltenham, 2006.
-
- Lapi, G. and Jimmy L. A Review of the Education and Training of Women and Girls in Vanuatu. Paper prepared for the National Women's Forum. 2006.
-
- Lunnay, C, Fingleton J, Mangawai et al, J Vanuatu: Review of Nation Land Legislation, Policy and Land Administration, March 2007.
-
- Mapasua, K. & Maccari, M An Overview of Organic Agriculture in the Pacific. Commissioned by IFOAM, 2007.
-
- Mayne-Wilson, M. Owner, Natural Therapist and Holistic Counsellor, Lotus Health and Beauty, Interview with World Bank-AusAID research team, April 21, 2008.
-
- McDonald, H. Rich and poor share the harvest, Sydney Morning Herald, April 28 2008.
-
- Naupa A & Simo, J Matrilineal Land Tenure in Vanuatu, August 2007.
-
- Nicholls, A. and Opal, C Fair Trade. Market Driven Ethical Consumption. Sage Publications Ltd.: London, 2005.
-
- Regenvanu, R., The Year of the Traditional Economy – What is it all about? (undated).
-
- Robbins, P. Stolen Fruit: the tropical commodities disaster. Zed Books: New York, 2003.
-
- Russell, N. 'Land Tenure and Resource Management: A Major Challenge in Vanuatu', Pacific Economic Bulletin, Volume 15. No 2.
-
- TAFEA Chamber members (Tanna Island), Focus Group with World Bank-AusAID research team, April 25, 2008.
-
- United Nations Development Program (UNDP). Human Development Report International Cooperation at a Crossroads: Aid, trade and security in an unequal world. UNDP: New York. 2005.
-
- Vorley, B. Food, Inc.: Corporate concentration from farm to consumer. IIED: London. 2003.
-
- Vanuatu National Statistics Office, The Vanuatu Poverty Report Card: A summary of key results from the analysis of the Household Income and Expenditure Survey, 2006.
-
- Vanuatu National Statistics Office, Labor Market Survey, 2000.
-
- Vanuatu Rural Development & Training Center's Association, Vanuatu NGO Shadow Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women, May 2007.
-
- World Bank, Doing Business 2009: Vanuatu Country Report, 2010.
-
- World Bank, At Home and Away – Expanding Job Opportunities for Pacific Islanders Through Labor Mobility, Manjula Luthria 2006.
-

Annex E: Tools

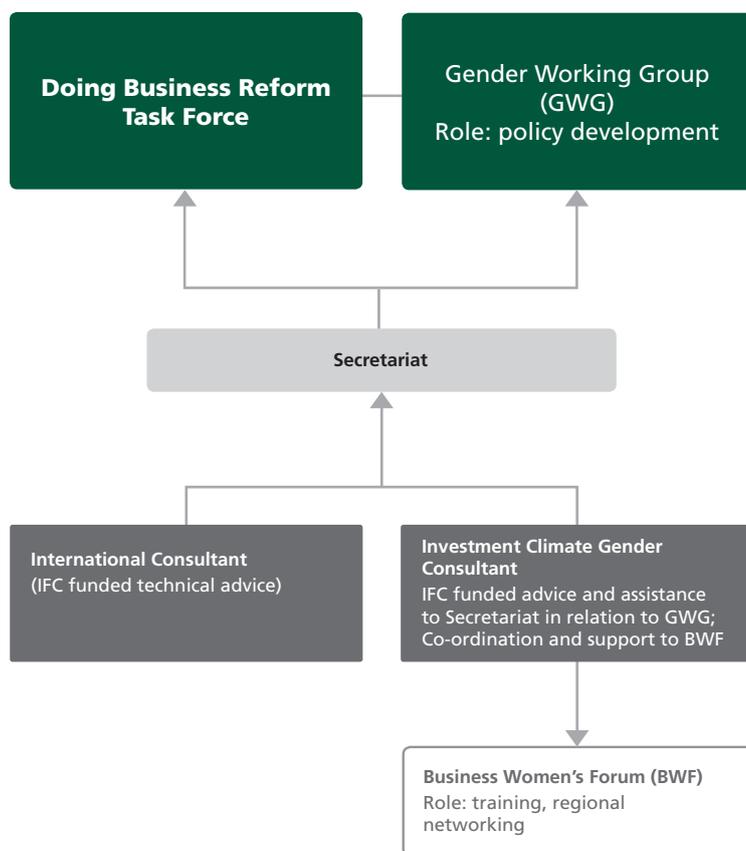
Tool 1: Gender Working Group: Terms of Reference

Introduction

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

The Vanuatu Gender and Investment Climate Reform Assessment, funded by IFC and AusAID, undertook a review of Vanuatu's investment climate with a gender lens. The Assessment concluded that Vanuatu'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 Vanuatu proposes that if the existing PPD structures in Vanuatu (including the Doing Business Task Force and Working Groups) do not have adequate capacity to address the identified regulatory and policy level gender constraints, then a new Gender Working Group be formed to address these issues (see structure in diagram below). This initiative is taking place under the IFC funded Regulatory Simplification and Investment Policy and Promotion Project.



Composition

If the government decides to form a Gender Working Group (GWG), it could comprise of...(up to) four public and four private sector representatives including:

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

Secretariat

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

Mandate

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

General

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

Business Women's Forum

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

Reform of general legal framework

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

Business entry and licensing

- Work with Business Registry to ensure its operations are gender sensitive [see Tools 6 - 12].
- Work with Business Registry to undertake outreach activities in respect of business women's formalization in accordance with recommendations in Gender and Investment Climate Reform Assessment, working in partnership with other groups (such as NGOs) where appropriate.
- Work with [NAME OF RELEVANT ORGANISATION] to develop a Women's Help Desk.
- Produce business women's handbook aimed specifically at women.
- Work with the Doing Business Task Force 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 among broader women's networks.
- Work with the Doing Business Task Force to improve policy/legislation on Business Names Registration process based on 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 the Doing Business Task Force to simplify business licensing procedures that have an adverse impact on female-headed businesses.
- Work with the Doing Business Task Force 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.

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 Courts and Master of Mediation 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 Courts and Master of Mediation 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 aims¹³².

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

[Members should be actively sought through, for example, Business Women's Associations, NGOs operating at grass roots, MFIs (could their clients automatically be members), markets, National Council of Women, church groups.]

Support

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

Governance

A small board comprising:

- Representatives of groups working with grass roots business women (for 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*

¹³² Link with similar networks in other Pacific Island Countries and also with women's business associations in developed countries (e.g. US National Association of Women Business Owners <http://www.truevo.com/the-national-association-of-women-business-owners/id/2573590569>; Women's Network Australia http://www.womensnetwork.com.au/page.cfm?pageCode=whats_on; NZ Business Chicks <http://www.businesschicks.co.nz/>.)

- *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 example through mentoring.
- Explore and develop regional networking opportunities for a Pacific Business Women's Forum
- Develop a networking website for information and support [but consider the extent to which women have access to computers].

Launch

- Major launch event in an appropriate place (such as in a market) building on Business Women's Forum.

Tool 3: Investment Climate Gender Consultant: Terms of Reference and Initial Work Plan

Terms of Reference

Introduction

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

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

The Assessment concluded that Vanuatu'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 the Doing Business Reform Task Force and Working Groups; and the number of policy papers featuring women's economic empowerment considered by Cabinet.

Activities	<ul style="list-style-type: none"> • Ensure appropriate representation of women's interests on existing PPD structures (Doing Business Reform Task Force). 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 (Doing Business Reform Task Force) does not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance.
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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	<ul style="list-style-type: none"> • PPD structures (Doing Business Reform Task Force) and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms. • Introduce law reforms to Parliament, including those reforms recommended in Table 2.1. • Enact and implement new laws.
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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 Vanuatu with support from the IFC to enable the Government more effectively to take forward investment climate reform to facilitate private sector development. If formed, the GWG will:

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

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

- Drive forward the formation of the GWG: agree with Government its appropriate composition and mandate; liaise with key private sector organizations; and with relevant NGOs to ensure appropriate membership.
- Provide advisory support to the secretariat of the GWG: that is, to call meetings; develop and coordinate the agenda; take minutes and highlight action points; and proactively ensuring follow up of action points.
- Ensure that the agenda of the GWG drives forward the reforms recommended in the Gender and Investment Climate Reform Assessment.
- Establish working relationships between the GWG and other key PPD groups (in particular those dealing with business entry, licensing, the informal sector¹³³, 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 [INSERT NAME OF INSTITUTION].

Target 1.3 Improved training and networking for business women

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

Activities	<ul style="list-style-type: none"> • Continue regular Vanuatu Business Women’s Forums (with open invitation to business women ranging from the informal sector through to big business), as commenced by IFC in April 2008, 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.
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¹³³ In the case of PNG.

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

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

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

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

Business Entry and Licensing

The Investment Climate Gender Consultant's role will be to undertake the activities listed below to achieve targets 2.1–2.4.

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

Measured by: Companies Registry and Business Owners Survey Data.

Activities	<ul style="list-style-type: none">• 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; developing partnerships with NGOs; staff training; establish Women's Help Desk at Vanuatu Financial Services Commission).• Ensure all information on registering a business is equally accessible to men and women, and produce a gender sensitive business entry handbook.
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Target 2.2 Improved legal framework for women's business entry

Measured by: number of reforms undertaken.

Activities	<ul style="list-style-type: none">• Review companies legislation to ensure best practice legal framework for registration of women's businesses and community groups as companies.• Develop and promulgate basic partnership agreement with civil society and business organizations.
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Target 2.3 Reduced regulatory compliance cost on female-headed businesses

Measured by: Sex disaggregated Regulatory Impact Assessments and perception surveys.

Activities	<ul style="list-style-type: none">• Improve legislation/policy on Business Names Registration process based on international best practice.• Simplify licensing procedures that have an adverse impact on female-headed businesses (revealed in Regulatory Impact Assessments and focus group discussions).
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Target 2.4 Increased number of female-headed businesses that have appropriate sectoral licenses

Measured by: sex disaggregated data on sectoral business licenses.

Activities	<ul style="list-style-type: none">• 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, such as. time and cost compliance analysis.
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Access to Justice, the Courts, and Mediation

The Investment Climate Gender Consultant's role will undertake the activities listed below to achieve targets 3.1–3.2.

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	<ul style="list-style-type: none"> • Develop and promulgate simple contract for use in common commercial transactions for women and provide training on contract law. • Ensure gender is mainstreamed in court-referred mediation reform process as per Table 5.1 in Chapter 5. • Undertake outreach to inform business women of availability and appropriateness of mediation.
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Target 3.2 At least 20 percent of accredited mediators are women

Measured by: accreditation records

Activities	<ul style="list-style-type: none"> • Train and accredit female mediators.
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The table below outlines an initial work plan for the first 6 months of a 12 month consultancy.

Initial Work plan (first 6 months)

	Month					
	1	2	3	4	5	6
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						
Identify and make linkages with potential BWF members and partner organizations						
Develop BWF networking and training schedule						
Review terms of reference and membership of other PPD groups in light of gender considerations and make recommendations for alteration if appropriate						
Commence gender dialogue through PPD structure: facilitate first meeting						
Launch BWF: major launch event, for instance in a market						
Develop policy paper on reforms to laws that discriminate against women as recommended in Gender and Investment Climate Reform Assessment						
Facilitate focus group discussion with women on business licensing reform						
Facilitate gender aspect of PPD meetings						
Facilitate BWF training / networking events						
Facilitate presentation of policy paper to Cabinet						

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

Vanuatu		
Area of law	Current provision (discrimination or inadequate protection)	Reform required
Constitutional law	Article 5 of the Constitution and Article 95(3) (and other Articles that uphold custom law).	Need to translate CEDAW principles into domestic law, including through amending the Constitution to clarify the position of custom law. (See Rwanda's Constitution)
Divorce – division of property	Under the Matrimonial Causes Act (cap 192), the extent to which the division of matrimonial property on divorce recognizes non-financial contributions to the marriage (such as a wife looking after the home) is unclear.	Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account. Training to judges on gender implications on their decision making.
Inheritance – in the absence of a will	The English Administration of Estates Act 1925 applies where the customary practices do not. The custom in some communities is that the daughters lose their entitlement to land when they marry.	Enact an Intestate Succession Act to provide for inheritance where there is no will. Clarify that statute law over-rides discriminatory customary law. (See Ghana Law 111 Intestate Succession Law)
Employment	Employment law provides for unequal retirement ages.	Amend the law to provide for the same retirement age for men and women.
Employment	The Labor Code protects women from discriminatory practices and guarantees maternity leave. However it does not apply to the informal sector where a large percentage of women work.	Improve enforcement of the Labor Code

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 and similar)?
3. Describe who owns your business?
4. Describe who manages your business?

Networking and training

5. Do you belong to any business association/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 Vanuatu regionally / internationally? [Excellent / Good / No opportunities]
8. Have you had any training opportunities relevant to your business in the past year? If yes, please specify.
9. How many business training sessions have you attended in the past year?
10. How would you rate the business training sessions you have attended? [Excellent / Good / Satisfactory / Poor]

Business registration

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

Licensing regulatory compliance

15. Does your business have any licenses? If no, please move on to question [21].
16. Please list the licenses that your business holds.
17. For each license, list the steps you need to take to obtain it. How often does each license need to be renewed?

18. [If IFC have undertaken process maps] Please refer to the license process maps developed by the IFC. In your experience of obtaining your license did you have to go through a process that was different from the one described in this annex? Did you have to go through any steps to obtain your license that are not included in the annex? If yes, please describe these steps.
19. For each license list the cost associated with obtaining it (both authorized and unauthorized payments you make / are asked to make).
20. For each license, explain the most burdensome/problematic aspects for you of obtaining it.
21. Are you aware of any licenses that your business should have but does not have? If your business does not hold any license, why doesn't it?

Harassment

22. In the last year, have you / your business suffered any harassment by public officials? If no, please move on to question [27].
23. Who harassed you?
24. Why do you think you were harassed?
25. What form did the harassment take?
26. Do you think the situation was made worse because you are a man / woman?
27. Are you concerned that you might suffer harassment from a public official in the future? If yes, which organization is most likely to cause you problems?

Commercial justice

28. Have you had a dispute / legal problem associated with your business in the past 5 years? If no, please move on to question [31].
29. If yes, how was it resolved?
30. How would you rate the dispute resolution method you used? [Excellent / Good / Satisfactory / Poor]
31. What do you consider to be the best option for resolving legal disputes / problems associated with your business (assuming you can't sort it out yourself)?
32. Do you think that your business has access to good and affordable methods for dealing with legal disputes / problems? [Yes / No / Don't know]

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

1. Introduction

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

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

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

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

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

- Just because a man or woman is registered as a director or shareholder doesn't mean that they take a role in the running of the company. For example, in some countries it is necessary to have a minimum of two directors/shareholders in order to register a company. In these cases it is common for man and wife to be joint directors/shareholders, although the business in practice 'belongs to' and is run by only one of them.
- Companies may be registered as 'shelf' companies by company formation agents with staff as directors/shareholders. When the shelf company is purchased, shareholdings and directorships are transferred.

3. Method

- a) Decide if you are measuring 'stock' or 'flow'

Stock	Number of existing companies that have male/female directors/shareholders (sample)
Flow	Number of new registrations that have male/female directors/shareholders (total number over a period of time)

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...

	Only male	Only female	Male + Female	Corporate
TOTALS				

Number of companies registered with shareholders who are...

	Only male	Only female	Male + Female	Corporate
TOTALS				

- 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 (such as those who have business premises) that 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/Usa/L_Wbo.Htm

Survey methodology

Rather than beginning a new survey process, it may be possible to ‘piggy back’ on an existing survey and insert appropriate questions (such as 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 (for example donor projects, NGOs) to mainstream business formalization within their existing programs / courses / operations which outreach to women. Business entry handbook (to be developed) will be useful source.
- Develop an information campaign on formalization aimed specifically at female entrepreneurs focusing on: a) benefits (including access to finance, facilitation of separation of business and household assets, facilitation of joint enterprises), and b) processes. Radio may be a particularly effective medium as women may have lower literacy rates than men. Drama may be effective at the community level.
- Train registry staff on sensitivity to their female clients (in partnership with NGO's promoting women's issues)

Reach

- Develop nationwide registration points (even if system is initially manual) using, for example Local Government Offices, Women's Resource Centers).
- Develop peripatetic registration service. Set up registration desks in market places as a starting point, open during market hours.
- In longer term, in conjunction with development of e-registry, consider registration by mobile phone.

Tool 10: Women's Help Desk: Draft Terms of Reference

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

1. Prime point of contact for women seeking information and assistance with business formalization, in particular registration, licensing, and tax.
2. Co-ordination and dissemination of business entry handbook (to be developed).
3. Prime responsibility for delivering business formalization outreach activities *[This means that the desk will not be static, but peripatetic, such as in market places where the informal sector is.]*
4. Provide technical expertise gained from front line experience on gender perspectives of ongoing business registration and licensing reform for Government / Working Groups.

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 (such as for completing survey forms)
- Middle class urban women are not necessarily representative of women generally, and
- Women may not be able to attend meetings, either due to their time poverty and household tasks, or it may be socially unacceptable for them to do so and they may not be permitted by their husbands.

Tool 12: Companies Act Checklist

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

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

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

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

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

Companies Act checklist

- Provision for sole person shareholder and officer (director/secretary) *[This enables a woman to set up a business on her own without the need to involve her husband / male relative as a co-owner or director.]*
- Straightforward registration requirements which do not require the services of a lawyer. Ideally registration should be by way of a simple, single form.
- Straightforward registration process which is accessible to women. Provide options other than personal attendance at a single registry in the capital city. *[Consider online registration; postal registration; registration at local government offices; peripatetic registration offices; involving community based organizations including NGOs in outreach.]*
- Straightforward ongoing filing / oversight requirements, such as 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 principle 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:

Name of partner	Amount of contribution

- 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 equalize the income accounts of the partners, and
 - v) to discharge the balance of the income accounts of the partners.

9. Death of a partner

- a) Upon the death of a partner, any surviving partner(s) may purchase the interest of the deceased in the partnership by giving notice to the deceased's heir or personal representative.
- b) If there is more than one surviving partner, all partners must agree for such purchase to take place, and if they cannot agree, the partnership is terminated.
- c) The purchase price shall be equal to:
 - the deceased partner's capital account as at the date of his /her death, plus
 - the deceased partner's income account as at the end of the prior fiscal year
 - increased by the deceased partner's share of partnership profits or decreased by their share of partnership losses for the period from the beginning of the fiscal year in which their death occurred until the end of the calendar month in which their death occurred, and
 - decreased by withdrawals charged to the deceased partner's income account during such period.

Date:

Name and signature of each partner

Tool 14: Mainstreaming Gender in Regulatory Compliance Cost Tools

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

Non compliance may be assessed by comparing (i) the total number of license holders with (ii) the total number of businesses. An attempt should be made to find sex disaggregated data on both (i) and (ii). The licensing authority may have sex disaggregated information on the proportion of licenses held by male-headed firms on the one hand and female-headed firms on the other.¹³⁴ 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.

134 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).

Key aspects Standard Cost Model (SCM)	Key aspects Compliance Cost Tool (CCT)	Gender perspective	Gender checklist
<p>1. Provides a framework methodology for measuring <i>administrative</i> costs imposed on businesses by Government. Aim is to measure the average cost to a business of complying with the regulation.</p>	<p>Provides a framework methodology for measuring <i>policy</i> as well as <i>administrative</i> costs imposed on businesses by Government. Aim is to measure the average cost to a business of complying with the regulation.</p>	<p>If impacts on female-headed and male-headed businesses are assessed separately, both tools will enable differentiated impacts to be revealed and then explored.</p>	<p>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 instance they may be well educated / run large businesses.)</p>
<p>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) is carried out. For example, often it will be necessary to distinguish between smaller and larger firms.</p>	<p>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.</p>	<p>Male- and female-headed firms tend to be different – in terms of size and sectors in which they operate.</p>	<p>The sample should reflect the proportions of male- and female-headed firms of different sizes and in different sectors.</p>
<p>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.</p>	<p>As per SCM</p>	<p>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.</p>	<p>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.</p>

Key aspects Standard Cost Model (SCM)	Key aspects Compliance Cost Tool (CCT)	Gender perspective	Gender checklist
<p>4. Administrative costs are defined as ‘the costs imposed on enterprises when complying with information obligations stemming from government legislation’.</p> <p>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.</p>	<p>Administrative costs are defined as per Standard Cost Modal. But importantly they can include costs of <i>avoiding compliance</i> with these requirements, including paying bribes to avoid queuing up or to avoid being caught.</p>	<p>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.¹³⁶ 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:</p> <p>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 and experience and confidence in dealing with officialdom, and given they tend to have wider and deeper networks of influence than female entrepreneurs.</p> <p>b) On the other hand there is international evidence that women are more susceptible than men to queue bargaining, harassment, and requests for ‘speed payments’, being seen as soft targets.¹³⁷</p>	<p>Ensure sex disaggregated data is gathered on unauthorized payments when obtaining a license.</p> <p>If possible, gather sex disaggregated data on costs of avoiding compliance.</p>
<p>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’.</p>	<p>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.</p> <p>Compliance costs can also include the <i>opportunity cost</i> (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.</p>	<p>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.</p>	<p>Sex disaggregate information on opportunity cost (if obtained). Undertake careful analysis in the light of different gender roles.</p>
<p>6. Enables reduction targets to be set and key areas for reform to be identified.</p>	<p>Enables reduction targets to be set and key areas for reform to be identified.</p>	<p>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.</p> <p>They will also reveal any differences in the experiences of men and women dealing with public officials in connection with licensing.</p>	<p>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</p>

¹³⁶ Daniel Kaufman & Shang Jin-Wei, March 2000 Does Grease Money Speed up the Wheels of Commerce?, World Bank.

¹³⁷ Corbridge, S Gender, Corruption and the State: Tales from Eastern India, 2007 quoted in DFID The Gender Manual: A Practical Guide. Also Governance, Management and Performance in Health and Education Facilities in Bangladesh: 2007, Oxford Policy Management, Financial Management Reform Program, Ministry of Finance, Government of Bangladesh.

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 in to 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?

Source: adapted from *Working Aid: Gender Impact Assessment: Gender mainstreaming in the Preparation of Legislation* 2007 Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Germany.

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.¹³⁷
- b) The Act requires a business name to be registered by anyone who wishes to carry on business which is:
 - i) NOT as 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 misleading¹³⁸.
- c) However, in developed countries where similar legislation has been abolished, it has been discovered that a blanket registration requirement is not required, nor necessarily the best way to deal with these issues.
- d) In all the countries considered by the Pacific Gender and Investment Climate Assessments it was acknowledged that the regime was not in practice enforced, and no action is taken against businesses that fail to comply. In practice therefore the register is out of date and incomplete. In all countries considered it is therefore currently failing in its regulatory purpose.
- e) Because the register is not designed to be a comprehensive register of all businesses, but rather for the specific purposes described in paragraph b) above, it is not used by other public authorities, for example 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.

137 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.

138 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 Analysis¹³⁹ suggests that this regime, taken together with the Trade Licensing regime, together cost the Kenyan economy in the region of 1 percent of GDP each year¹⁴⁰. 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 Kong¹⁴¹. 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, for example, invoices, letters and at the place of business.
- The issue of protection of business names is now a matter for businesses themselves, rather than the State. If a business wishes to protect its name, it may do (at its own discretion) by registering it as a trademark. Where a business already has a reputation and goodwill in a business name which another company tries to take advantage of by using the same business name, a common law 'passing off' action can be taken.¹⁴²
- 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 or 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.)

¹³⁹ Supported by the UK Department for International Development.

¹⁴⁰ 'Improving the Legal and Regulatory Environment for Business through Trade Licensing Reform' Presentation by KIPPRA, 27 September 2000.

¹⁴¹ Business names registration operates in some other common law jurisdictions eg Australia and Canada.

¹⁴² Sources: The Law & Development Partnership; UK Companies House website www.companieshouse.gov.uk.

5. Recommendations for policy paper on Business Names

- a) The benefits of a blanket requirement for the registration of every unincorporated business which uses a business name needs to be balanced against the costs of compliance. It is important to note that the potential benefits of the regime relate only to businesses that are NOT companies and that are NOT trading under the name/s of their owners. The current regime is NOT intended to be, nor is it, a comprehensive register of businesses. The potential uses of the regime are:
- To enable members of the public to learn who is 'behind' a business
 - To provide limited protection to businesses from use of their business name by another business, and
 - To enable the State the right to restrict the use of certain business names.
- b) In practice the regime is currently largely un-enforced. The business registration regime should either be enforced or abolished.
- c) The UK, New Zealand, and Hong Kong have all abolished the business names regulation regime with no apparent adverse consequences, thus liberalizing the business formation process and reducing the regulatory burden on business start-ups.
- d) The experience from UK, New Zealand, and Hong Kong is that a much lighter and more focused regulatory regime is a satisfactory way to address the mischiefs which the Registration of Business Names Act was intended deal with. These more liberalized regimes do not involve the compulsory registration of business names.
- e) If the requirement for business names registration were to be abolished, businesses that are concerned to protect their business name would be able to do so on a voluntary basis by registration under trademark legislation. Consideration would need to be given to whether it would be appropriate to introduce new legislation which:
- Requires disclosure of who is behind a business on letterheads, business premises and similar (as in the UK under the Business Names Act, 1985, section 4), and
 - Controls the use of certain business names by a system of certain names requiring approval from a Government authority.

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

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

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

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

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

Establishing a baseline

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

Stock	Number of existing companies that have male/female directors/shareholders (sample)
Flow	Number of new registrations that have male/female directors/shareholders (total number over a period of time)

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...

	Only male	Only female	Male + Female	Corporate
TOTALS				

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

	Only male	Only female	Male + Female	Corporate
TOTALS				

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

	Only male	Only female	Male + Female	Corporate
TOTALS				

Tool 17: Gender Perspectives on CIMC Informal Policy Concept Paper

Tool 17 does not apply in Vanuatu



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.¹⁴³

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.

¹⁴³ Source: Who Answers to Women: Progress of the World's Women 2008/2009 UNFEM.

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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