



Business Environment Reform Facility

Scoping Study on Customary Law and Women's Entrepreneurship

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About Business Environment Reform Facility (BERF)

BERF is funded by the UK Department For International Development (DFID) under the Business Environment for Economic Development (BEED) Programme. BERF is a central facility responding to demand from the DFID's priority Country Offices and stakeholders to initiate, improve and scale up business environment reform programmes. BERF is managed by a consortium led by KPMG LLP. The programme started in January 2016 and will finish in January 2019.

We provide expert advice, analysis of lessons learned, policy research about what works and what doesn't and develop innovative new approaches to involving businesses and consumers in investment climate reform.

BERF has a strong emphasis on strengthening the Business Environment for women and girls, as well as for young adults more generally. It is also aiming to improve the relationship between business and the physical environment including where relevant through linkage to climate change analysis. BERF recognises the need for appropriate political economy analysis in order to underpin business environment reform processes and interventions.

About this Report

Research for this study was conducted by Zahrah Nesbitt-Ahmed and Laura MacLean between February and March 2017.

The views contained in this report are those of the authors and do not necessarily represent the views of KPMG LLP, any other BERF consortium member or DFID.

This is a working paper shared for discussion purposes only. No reliance should be placed upon this report.

Acronyms

ADRM	Alternative Dispute Resolution Mechanism
BE	Business Environment
BER	Business Environment Reform
BERF	Business Environment Reform Facility
BEWG	Business Environment Working Group (DCED)
CO	Country Office
CPT	Central Policy Team
DCED	Donor Committee for Enterprise Development
DFID	Department for International Development
IFC	International Finance Corporation
ILO	International Labour Organisation
LEAT	Lawyers' Environmental Action Team
LIFT	Land Investment for Transformation
LTR	Land Tenure Regularisation Programme
OECD	Organisation for Economic Cooperation and Development
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires
SIGI	Social Institutions and Gender Index
SME	Small and Medium-sized Enterprise
TAWLA	Tanzania Women Lawyers Association
WBL	Women, Business and the Law
WRI	World Resources Institute

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1. Executive Summary

This scoping study indicates the ways in which customary laws and practices can impact on women as owners and managers of enterprises and as employees of these enterprises. It highlights the ways in which customary laws and practices intersect with the three elements of Business Environment (BE): **regulatory and administrative framework** through the processes by which **business registration and licensing** are administered; the **policy and legal framework** through **discriminatory labour laws** that have implications for the sectors where women can work or the hours when they can operate their businesses; and the **institutional arrangements** through women's limited representation in decision-making bodies that administer land rights or hold public bodies to account.

Functional components of BER most directly affected by customary laws and practices include:

- **Access to finance**, with banking laws discriminating against women's ability to apply for loans or credit without a signature from a male family member;
- **Business registration and licensing**, with restrictions imposed on interacting with men who are not family members;
- **Land titles, registration and administration**, with a lack of property rights limiting women's ability to use land as collateral; and

Access to commercial courts and dispute resolution mechanisms, where judges may rule in favour of males on the basis that men are responsible for the family. Customary laws and practices particularly can impact women's physical mobility and ability to access employment and their freedom to choose what work they do, where they work and when – particularly if they need a husband's permission to work. Significant areas that particularly affect women entrepreneurs include:

- **Land and property rights** that constitute a barrier to growth of women-owned enterprises. Restrictions on women's ability to own, sell, acquire and use property limit their access to capital by means of credit and equity. For example, restricted property rights limit women's prospects of having savings, investments and sufficient collateral for loans and therefore their prospects to start and run businesses.
- **Inheritance practices and norms, as inheritance is one of the key means of acquiring assets.** **Marriage** can impact women, including their inheritance and land rights, and therefore on women's access to collateral and finance for business growth. Child marriage is also indirectly linked to a reduction in the likelihood of formal employment and diminished earnings throughout a woman's lifetime.
- **Religious laws** and women's land, property and inheritance rights that may be particularly tenuous in cultures where polygamy is the norm. In addition, customary practices such as paying for brides and polygamy can reduce women's security in relation to land.

The scoping study identified a few positive and promising examples of reforms and interventions that directly or indirectly address customary law and practices to create a more gender equitable BE. These include **reforms around land and property rights** in Ethiopia to increase women's ownership and security of tenure and their labour force participation, and **reforms around secured transactions system** in China to enable SMEs, including many female-owned businesses, to draw on a wider range of movable assets and improve their access to finance.

Based on the evidence reviewed, the scoping study has identified a few areas for a more in-depth follow-up study – **using case studies to analyse changing customary laws and practices over time**

for BER on: i) land tenure/titling reform; and ii) access to finance. Within these case studies, it will be important to look at marital property regimes (as well as other factors) and how these have impacted the prospects for women's (or joint) businesses.

2. Introduction

2.1 Purpose of the scoping study

The objective of Policy Research commissioned through the Business Environment Reform Facility (BERF) is to help DFID country offices (COs) and central policy teams (CPTs) to improve their understanding and implementation of business environment reform (BER) by contributing to the evidence base of what works and what does not work.

This scoping study reviews existing evidence on the impact of customary laws and practices on women as owners and managers of enterprises of all sizes and as employees of these enterprises. The Scoping Study is commissioned by DFID's Investment Climate and Infrastructure Team. The Business Environment Working Group of the Donor Committee for Enterprise Development (DCED), in which DFID participates, acted as a steering committee for the research and will help to disseminate the findings. Other immediate clients include DFID COs and other CPTs which are responsible for designing BER in environments where customary law may affect key outcomes. Beneficiaries include all donors, development practitioners and governments interested in securing greater outcomes for women entrepreneurs.

Although many women own or run enterprises, in many countries women are concentrated among micro-entrepreneurs in the informal sector, and relatively few women enter the formal sector.^{1 2} The reasons for this vary from country to country. While most countries have enacted formal legal and regulatory frameworks that attempt to remove discrimination normally faced by all small and medium-sized enterprise (SME) entrepreneurs (and in particular women entrepreneurs), discrimination persists in a number of countries³ - in both formal and informal sectors. Given the existence and persistence of customary and traditional practices in many developing countries (which, in some cases, result in discriminatory laws and practices), customary laws and practices have significant implications for women's labour force participation and for women-owned and -managed enterprises.

2.2 Objectives and methodology of the scoping study

The objective of the scoping study is to address three overarching questions:

- What (specific) customary laws and practices impact on women in enterprises – as owners and as employees?
- What implications do these have for women wanting to start or grow their enterprises, and in what ways can business environment reform (BER) take these into consideration to address these challenges?
- To what extent and in what ways, if any, do customary laws and practices determine the sectors in which women in business tend to engage?

This scoping study is not intended to be an exhaustive literature review. Its aims are:

- to consider whether a more detailed study of these issues is merited and whether such a study is likely to yield insights that can usefully inform the formulation of gender-responsive BER programming; and

¹ UNWomen, 2015

² Ghosh, 2013

³ World Bank, 2015

- to set out potential options and parameters for a more detailed study (e.g. primary research or desk-based secondary review of existing evidence).

This scoping study identifies key issues, questions and potential cases for further research on the impact of customary laws and practices on women as owners, managers and employees of enterprises. The intention of a larger study in future would be to provide policy makers and development practitioners involved in the design of gender-sensitive BER policies and programmes with a greater understanding about the gender-specific constraints faced by women in business.⁴ It would allow them to design programmes which have a greater impact on women in enterprises, and as employees, either by targeting the negative impacts of customary law and practices directly, or by understanding how customary laws and practices may undermine BER or lead to greater gender imbalances. Such programmes may take into consideration how customary law can undermine the implementation of policies, laws, or BER reforms; and also how they can impact women's participation in different stakeholder groups through institutional arrangements of the business environment and therefore potentially restrict their voice.

The methodology for this scoping study included a desk-based review of literature on customary laws and practices relating to women's entrepreneurship, complemented by stakeholder consultations with GIZ – a member of the DCED Business Environment Working Group (BEWG) steering committee.

2.3 Structure of the scoping study

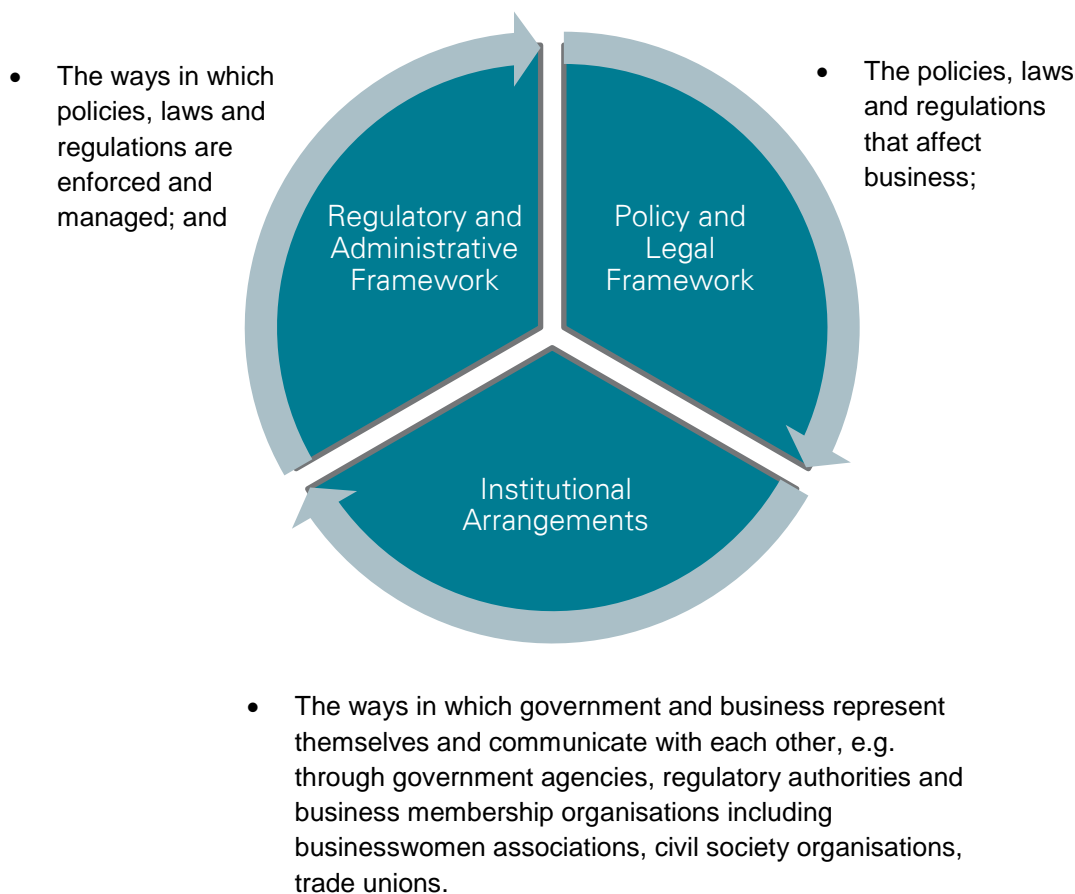
The next section of the study provides the theoretical framework to underpin the remaining analysis. Section 3 provides an overview of key areas where customary law and practice are relevant to the three elements of BE and the main components of BER, as well as the levels at which customary law and practice manifest. Section 4 goes into more depth about how customary law and practice impact women as entrepreneurs and employees in enterprises, the implications of this on BER, and explores some emerging examples of positive practice in BER in relation to customary law and practices. Section 5 concludes with the ways in which customary laws and practices can impact on women as owners and managers of enterprises and as employees, and sets out suggested next steps for more in-depth research based on the emerging findings of this scoping study.

⁴ This assignment provides expert external assistance and does not replace the work of DFID civil servants

3. Definitions

3.1 Business Environment and Business Environment Reform

This scoping study adopts the DCED definition of the **business environment** (BE) as a complex of policy, legal, institutional, and regulatory conditions that govern business activities.⁵ It is a sub-set of the broader investment climate, and is comprised of **three elements**⁶:



There are four 'levels' at which Business Environment Reform (BER) can be supported by donor programmes: regional, national, sub-national and sectoral. There are also a number of '**functional areas**' of BER that affect business activity.⁷ These include:

- 1) Simplifying **business registration** and licensing procedures;
- 2) Improving **tax** policies and administration;
- 3) Enabling better access to **finance**;
- 4) Improving **labour** laws and administration;
- 5) Improving the overall quality of **regulatory** governance;
- 6) Improving **land** titles, registers and administration;

⁵ DCED, 2008.

⁶ Ibid.

⁷ Miles, 2016

- 7) Simplifying and speeding up access to commercial **courts** and to alternative dispute-resolution mechanisms;
- 8) Broadening public-private **dialogue** processes with a particular focus on including informal operators, especially women; and
- 9) Improving **access** to market information.

This study employs the above definitions and categories to illustrate how customary laws and practices potentially impact on different areas of the BE and BER.

3.2 Women-owned and managed enterprises

This scoping study uses the International Finance Corporation's (IFC) definition of **women-owned and managed enterprises**. These are firms with 51 per cent women's ownership, or with 26 – 50 per cent women's ownership and a woman Chief Executive Officer or Chief Operating Officer, as well as with 30 per cent of the board of directors being women when a board exists.⁸ Women-owned and managed enterprises may be **formal** or **informal**.⁹ Formal (or informal) enterprises are often distinguished by whether they are registered (or unregistered), organised (or unorganised), and regulated (or unregulated).

In many developing countries, women entrepreneurs are self-employed and own-account workers in the informal sector.¹⁰ One reason for this is the flexibility offered by informal arrangements to manage their paid work and businesses alongside their domestic tasks and childcare responsibilities, as well as with their lack of opportunities to access formal employment. Formal women-owned enterprises also appear to face different or higher barriers to growth than men-owned ones. This includes, for instance, disproportionate barriers and lack of information when registering business, and a lack of funds to contribute to start-up capital requirements or lack of collateral to access finance to grow their business.

3.3 Customary law and practice

The terms **customary law** and **customary practice** are used fairly interchangeably in the literature, and there is no single agreed definition for either term. In general, **customary law** focuses on indigenous systems. The International Council on Human Rights of non-state legal orders states that customary law is formed from:

“norms and institutions that tend to claim to draw their moral authority from contemporary to traditional culture or customs, or religious beliefs, ideas and practices, rather than from the political authority of the state.”¹¹

Unlike formal law (which tends to be uniform, relatively stable, formally recorded and publicised), customary law is diverse and remains largely unwritten, informal, and often difficult to ascertain. Customary law may have its origins in social, cultural, ethnic, or religious experience. It may predate colonial interventions, but it may also have undergone substantive transformations as a result of contact

⁸ IFC, 2014.

⁹ White and Aylward, 2016

¹⁰ The standard ILO definition of own-account workers is: “Own-account workers are those workers who, working on their own account or with one or more partners, hold the type of job defined as a self-employed job, and have not engaged on a continuous basis any employees to work for them during the reference period.” (OECD Glossary of statistical terms - <https://stats.oecd.org/glossary/detail.asp?ID=1986>)

¹¹ International Council on Human Rights Policy, When Legal Worlds Overlap: Human Rights, State and Non-State Law (Geneva, 2009), 43.

with colonial powers or other significant historical events – as is the case in many African countries, where customary law has been heavily influenced by the interaction between African customs and colonial rule.¹² In this respect, customary law, like culture itself, is dynamic and constantly adapting to changing social and economic conditions. The sources of customary law that are accepted as authoritative are a product of the melding of local customs and practices, religious norms and social and economic imperatives.

While customary law borrows from tradition, it also develops in response to changing contemporary conditions. The content and processes of customary law may in certain contexts have more to do with power hierarchies and contemporary politics than tradition and culture. Discriminatory practices against women may result from the interpretation of customary law by individuals currently in authority rather than reflecting long-standing traditions and broadly shared values.¹³

The perceived legitimacy of customary law is often derived from shared respect for recognised traditional practices based on prevailing social norms, culture and religion. In this sense, customary law is a cultural artefact that gains its meaning and significance when shared among people who have a common understanding of how a given society works. Equally, customary legal systems are deeply entwined in local cultures and history – indeed, they are constituent elements of the social fabric. The uniqueness and idiosyncrasy of each context means that attempts by external agents to introduce new, uniform procedures are inherently destined to struggle.¹⁴

Customary practices are traditional practices that have been in operation in a community for a long time, and are accepted and respected by the members of that community.¹⁵ They often reflect the values and beliefs held by members of a community for periods, and usually span generations. While some customary practices can be beneficial to all members, such as customary water management systems developed locally over many centuries, others have become harmful to specific groups (such as early and forced marriages, virginity testing, widow's rituals and female genital mutilation). These harmful customary practices tend to persist because they enforce dominant power relations and existing hierarchies. Such practices are often taken for granted among those who practice them – and can also take precedence over formal laws in the communities where they are carried out.

In defining customary laws and practices, this scoping study also makes connections with social norms and informal institutions. **Social norms** can be defined as a social construct depending on mutual beliefs and conditional preferences of a given population. These play an important role in both explaining what generates and supports damaging customary practices, such as female genital mutilation, and as an entry point towards eradicating these damaging practices.¹⁶ Norms matter because they substitute for law, particularly in developing country contexts, given that a written law cannot govern every aspect of interaction between people.¹⁷ Social norms can then be said to be part of the way in which gendered hierarchies and power relations that make up customary laws and practices are maintained. For example, norms related to gender roles for care and housework as well as norms surrounding mobility can limit women's participation in the labour market, as these norms impose restrictions the types of work accessible to, or deemed appropriate for, women.

¹² <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1437&context=ijgls>

¹³ Loiselle, 2014

¹⁴ Chiyarath et al., 2015

¹⁵ <http://www.humanium.org/en/customary-practices/>

¹⁶ Bicchieri and Mercier,

¹⁷ de Soysa and Jütting, n/d.

Informal institutions are “a behavioural regularity based on socially-shared rules, usually unwritten, that are created, communicated, and enforced outside of officially-sanctioned channels”.¹⁸ While formal rules are enforced by official entities, such as courts, judges, police and bureaucrats, informal institutions are largely self-enforcing through mechanisms of obligation, such as in patron-client relationships or clan networks, or because following the rules is in the best interests of individuals who may find themselves better off if they cooperate.¹⁹ Informal institutions can also include mutual help, family assistance, and social capital – which make up the cornerstone of informal social security systems and can have different effects in different environments. People in both rich and poor countries rely on informal institutions to varying degrees to facilitate transactions, but these institutions are relatively more important in poor countries and small, traditional communities where formal institutions are less developed and the reach of formal law and state power relatively weak.²⁰

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ De Soysa and Jütting, n/d.

4. Impact of customary law and practice on women as entrepreneurs and women as employees

4.1 Scope and Influence of Customary Laws and Practices on Women's economic opportunities

Customary legal systems are the **dominant form of regulation and dispute resolution** in many developing countries, covering up to 90 per cent of the population in some parts of Africa.²¹ The WBL 2016 report provides an overview of general trends of customary law in formal legislation. Out of the 173 economies considered, 37 formally recognise customary law.²² Out of the 37 countries, 29 consider customary law to be invalid if it violates constitutional provisions on non-discrimination or equality, whilst the 8 remaining countries do not (list included in Annex 3). However, the extent to which customary law is applied in practice is not covered in the report.

In Sierra Leone, for example, approximately 85 per cent of the population use customary law as part of the formal and informal legal system.²³ IFC's gender and climate reform assessment of the Solomon Islands noted that while the country's constitution does commit to non-discrimination, customary law is also given formal legal status and the principle of equality, as set out in the constitution, does not take precedence over customary law when there is a conflict between the two.²⁴ The same situation applies in Papua New Guinea, Samoa, Timor-Leste, and Vanuatu in the Pacific Region. The Tongan Constitution does not recognise customary law, although in practice it is applied at the community level. The vast majority (85 per cent) of the population live in rural areas predominately ruled by customary law in the Solomon Islands.²⁵ In all of these cases, the lack of rights as a result of the precedence of customary laws can have a significant spill-over effect on women's access to economic opportunity.

Examples of **customary practices** which can be exempted from constitutional equality provisions include early and forced marriage, property grabbing by the husband's family on his decease, and polygamy – all of which affect women's ability to obtain decent work and fully participate in the paid labour market.²⁶ For instance, a lack of land titles due to property grabbing can restrict the availability of collateral for women to access credit to maintain or scale a business or buy necessary agricultural inputs.

Gender-based discrimination in customary practices, laws and social norms have also been documented by the OECD's Social Institutions and Gender Index (SIGI), which covers 160 countries and economies. In Latin American and Caribbean countries, for example, discriminatory family codes as well as customary laws on marriage and parental authority continue to limit women's and girls' decision-making within the family and perpetuate traditional gender norms and roles.²⁷ ²⁸ Early marriage is still legal in many countries, although rates are declining (16 per cent in the region). The legal age of marriage is 12 in Honduras and 15 with parental authority in many other countries (e.g. the Bolivarian Republic of Venezuela, Panama, and Trinidad and Tobago). The SIGI also identified 21 countries that

²¹ Chiyarath et al., 2015

²² World Bank, 2015

²³ Ibid.

²⁴ IFC, 2010

²⁵ Ibid.

²⁶ Ibid.

²⁷ Latin American and Caribbean countries included in the SIGI: Argentina, Plurinational State of Bolivia, Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Bolivarian Republic of Venezuela

²⁸ OECD SIGI, 2014

have high levels of gender discrimination in social institutions,²⁹ including discrimination against women with regard to the legal age of marriage, parental authority and inheritance.

Additionally, in many countries, **legal pluralism** (the recognition that law takes multiple forms) means that legal state institutions also recognise rules and norms developed and practiced by non-state actors, including religious and customary laws. Legal pluralism is a particularly notable feature of African legal systems and in all settings, it tends to create greater insecurity for women entrepreneurs and employees. For example, Botswana, Zambia and India have constitutions that provide for equality before the law as well as some legal protections against discrimination on grounds of sex. However, glaring exemptions are provided for personal or customary law, meaning that it remains legal to discriminate against women when it comes to marriage, divorce and marital property ownership.

According to a 2013 World Bank-funded study of women's legal rights and economic opportunities, all common law³⁰ countries and almost half of the civil law³¹ countries in sub-Saharan Africa recognise customary law in their constitutions.³² In countries that do not explicitly recognise customary law, there is often an implicit recognition of customary practices in statutes, especially in relation to marriage and inheritance. However, countries vary in the extent to which customary law is implemented.³³

Understanding the scope of customary law and its likely impact on the business environment for women is complicated by the fact that customary law can be:

- Codified and exempt from constitutional provisions on equality and non-discrimination;
- Codified but not exempt from constitutional provisions on equality and non-discrimination;³⁴ or
- Uncodified.

Religious laws are also important to consider, such as the Islamic (*Sharia*) law. In countries such as Egypt, Iran, Saudi Arabia, and Syria, customary and religious laws are permitted to supercede the fundamental equality guarantee. In the Philippines, despite the constitutional guarantee of equality before the law, the Code of Muslim Personal laws permits polygamy and the marriage of girls under 18.³⁵ These types of provisions substantially impede women's ability to participate equally in economic life as owners or employees of businesses. The next section explains these impacts in detail.

4.2 Relevance of Customary Laws and Practices to the Three Elements of the BE and the Key Coomponents of BER

Table 1 below suggests areas where customary laws and practices intersect with the three elements of the Business Environment and which of the nine components of BER outlined in section 2 are most

²⁹ These are Afghanistan, Albania, Armenia, Azerbaijan, Benin, Burkina Faso, Cameroon, Central African Republic, Côte d'Ivoire, Ethiopia, Ghana, Guinea, India, Iraq, Jordan, Lebanon, Myanmar, Nepal, Pakistan, Tanzania and Timor-Leste

³⁰ Common law is generally uncodified (i.e. there is no comprehensive compilation of legal rules and statutes).

³¹ Civil Law is codified. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure and the appropriate punishment for each offense. Civil law systems historically deriving from Roman law are found for example in Latin America, Francophone and Lusophone ex-colonies in Africa, the Middle East and North Africa, East Asia Pacific and the former colonising countries in Europe such as France, Spain, Portugal, Germany and the Netherlands.

³² Hallward-Driemeier, Hasan and Rusu, 2013

³³ Ibid.

³⁴ List of countries included in categories a (codified and exempt from constitutional provisions on equality and non-discrimination) and b (Codified but not exempt from constitutional provisions on equality and non-discrimination) can be found in World Bank's Women, Business and the Law report 2016.

³⁵ Fredman, 2013

directly impacted by customary laws and practices.³⁶ This provides an initial framework which could be elaborated through further research and a potential tool for assessing restrictions in the BER.

Under the **regulatory and administrative framework** and **institutional arrangements of the BE**, the processes by which **business registration and licensing** are administered tend to differ for men and women. This is due to social norms that restrict women interacting with unrelated male officials or restrict their mobility to access registration facilities, and customary practices that may require women to obtain consent from male relatives.³⁷ These factors may contribute to women entrepreneurs choosing not to formalise their businesses and continuing to operate informally. Consequently, the informality has implications for tax collection and women's social protection as informal work often lacks work-related measures of social protection. There are also impacts on women entrepreneurs' ability to borrow and business growth, since they would lack the necessary documentation to access finance without a credit history.³⁸

Under the **regulatory and administrative** framework element, customary law can restrict women from acquiring land titles that they are entitled to under formal law, which can impact on women's access to property and affect their workforce participation and access to credit.³⁹ This can be though, for example, customary ruling in favour of males on the basis that men are responsible for the family.⁴⁰

Under the **policy and legal framework element**, there are **discriminatory (informal) labour laws**, related to social norms around gender roles for care and housework, that prevent women from working.⁴¹ These have implications in limiting the sectors where women can invest or the hours when they can operate their businesses. The **lack of land rights** also indirectly affects women's businesses access to and control of financial resources.⁴² The lack of secure land rights undermines the land owner's ability to use it as collateral, which can lead to credit constraints.

Table 1: Summary of Areas where Gender-related (or Gender implications of) Customary Laws and Practices Intersects with Identified BE Function and Component

Business Environment Component	Business Environment Element		
	Policy and Legal	Regulatory and Administrative	Institutional Arrangements
Business registration and licensing		Perceived need for prior consent from male relative Restrictions on women's mobility that limit access to registration facilities	Restrictions on interaction with unrelated males
Access to Finance	Customary Laws that discriminate against women's access to collateral on the basis of gender and marital status		
Land Titles, Registration and Administration	Inheritance laws impacts land rights, asset	Customary law impacts the ability to have joint	Women's limited representation in customary decision-

³⁶ BER components that are not covered in the Table, as where Customary law may also indirectly have significant implications are tax policies and administration (affected by customary marriage arrangements) and broadening public private dialogue, likely to be limited by cultural practices which restrain male / female interactions and particularly female interactions with public officials. These are not included as the initial search for this scoping study did not find specific examples in the literature.

³⁷ Miles, 2016

³⁸ Ibid

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Chamlou, 2008.

⁴² World Bank, 2010; IFC and GPF, 2011

	ownership, earning and business growth.	land titling, length of registration processes.	making bodies that administer customary land rights or hold public bodies to account.
Access to Commercial Courts and Alternative Dispute Resolution Mechanisms (ADRM)	Women more likely to rely on customary courts due to cultural factors, and it often being easier to access.	Gender discrimination by members of the judiciary that see men as heads of households.	

Source: Adapted from Miles (2016)

Gender-sensitive business environment reform can also take place at **multiple levels** of the business environment – regional, national and subnational. Existing **business environment reform and gender programmes are primarily focused on national level changes**.⁴³ However, sub-national and local level contexts are particularly crucial, as customary laws and practices tend to be specific to particular socio-cultural contexts. For example, in Sierra Leone over 300 local customary courts preside in the 149 chiefdoms found in the provinces, regulating matters of **marriage, divorce, succession and land tenure**, and these legal systems are recognised and defined in the constitution as ‘the rules of law which, by custom, are applicable to particular communities in Sierra Leone’.^{44 45} In Botswana, for example, the Botswana's Tribal Land Act (1968) established a system of regional land boards and transferred the land administration and management powers of customary leaders to the boards, which originally included both customary leaders and state officials among their members. It also codified the customary practices of the Tswana, and elevated their customary land rights and practices up into national legislation.⁴⁶

On the other hand, the Tanzania's Village Land Act (1999) makes the village both the primary land-holding unit and the centre of local land administration, management, record-keeping and land dispute resolution. It also makes customarily-held land rights equal to formally-granted land rights, and explicitly protects the land rights of vulnerable groups. In doing so, it creates a hybrid of customary and codified law allowing the village to dictate how things are done but holding it to strictly-defined legal mandates.⁴⁷ In these situations, working with accepted local level institutions to change discriminatory norms and practices is a pre-requisite for gender sensitive changes in the business environment.

4.3 Impacts of Customary Laws and Practices on women as owners of enterprise and as employees

Many countries in the world still have legal provisions that discriminate overtly against women in both formal and customary legal systems. This is particularly true for those laws broadly related to **marriage, inheritance, and property ownership** – on which customary laws can have influence and impact on women's ability to engage in the labour market.⁴⁸ Such discrimination affects both women employees and women owners and managers of enterprises. The impacts of customary law on women as

⁴³ Overall there is a shortage of international and / or regional level evidence of the business environment factors and sub-factors for many of the BE functional areas (see Miles, 2016)

⁴⁴ Chirayath et al., 2015

⁴⁵ Succession mainly refers to succeeding to the “status of the deceased”, ie, assuming the role of the deceased or taking his position and obtaining authority over the people and property over which the deceased exercised authority – often relevant when the head of household dies (Bekker and De Kock, 1992)

⁴⁶ Knight, 2010

⁴⁷ Knight, 2010

⁴⁸ World Bank, 2015

entrepreneurs and as employees cannot be distinguished clearly, and some aspects of customary law impact on both.

A 2012 World Bank study on norms and agency found that in countries where women's physical mobility is restricted, such as **Yemen**, women were less attractive as potential employees. Even when they were equally or more qualified than male applicants, the need for their husbands to give permission for wives to work made them less reliable in the eyes of employers.⁴⁹ Such restrictions, along with their domestic responsibilities, means that many women are more likely to run and operate smaller businesses from their homes. This limits their access to contacts for markets, raw materials, role models, and social interaction.⁵⁰

Customary systems can also impact on the types of labour which women engage in as employees and which sectors they are working in. In **Afghanistan**, customary restrictions on mixing between the sexes and on women's mobility has resulted in a growth in female employment in certain sectors. Sectors where there is high potential for hiring women are commonly those with an all-female environment or with female clients where they wish to deal with female employees. For instance, USAID's Promote: Women in the economy report found that demand for female employees has been largely in private education and healthcare, while it is increasingly so in the retail sector.⁵¹

Customary law marriage can also have significant impact on a woman's' freedom of movement and her ability to choose whether and where she works.⁵² For instance, under customary law in Swaziland, a wife is functionally equivalent to a minor and husbands have control of a significant proportion of women's everyday lives including their ability to access employment and their freedom to choose where they work.⁵³ Customary laws that limit a **woman's right to choose concerning marriage**, or on the minimum age for marriage, therefore may also have an impact on her subsequent involvement in the economy both as an entrepreneur and employee. As a case in point, child marriage is indirectly linked to a reduction in the likelihood of formal employment and diminished earnings throughout a women's lifetime because of reduced time in education.⁵⁴

4.4 Impacts on Women as Entrepreneurs

In addition to the above examples, there are specific issues affecting women entrepreneurs. These issues can arise in areas such as unmarried and married women's property rights; inheritance rights; registration of business or business assets; the need for spousal permission for opening a bank account or signing a contract; access to credit; and property ownership.⁵⁵

While legislation may support women owning assets (such as land and property) in their own right, customary practice within societies, communities and families very often prevents this from happening in reality. Customary practices may determine the amount of assets controlled and owned by women, restrict their mobility, and limit their autonomy to make everyday decisions such as going to court. These restrictions often mean that a married woman cannot open a bank account or sign a contract on her

⁴⁹ Women & the Law database, 2011

⁵⁰ Priya, 2011

⁵¹ Internal draft of BERF Evidence and Learning note on business enabling reform (BER) and women's economic empowerment (WEE) in Afghanistan (2017)

⁵² Gender Index – Swaziland <http://www.genderindex.org/country/swaziland>

⁵³ Foster, 2013

⁵⁴ Wodon et al., 2015

⁵⁵ World Bank, 2015

own.⁵⁶ Practices determining control of assets can have significant impact on female entrepreneurs. In some cases, **only the husband's name can be on the land use certificate, meaning his permission is required to use the land as collateral.** Although women can legally jointly own the land, customary practice is such that sometimes only one name is written down on the land registration certificate. Restrictions can also affect women's agency and mobility as they are required to seek permission to carry out everyday activities. In some countries, such as Cameroon, the head of household (usually a man) can exert control over household finances. In Jordan, the head of household can claim exclusive access to state benefits.⁵⁷

Customary laws and practices may influence women's ability to do business by **restricting their ability to own or manage property, conduct business, or travel without their husbands' consent.** These restrictions can in turn create obstacles preventing women from being registered as formal owners. As a case in point, women's ability to start or register a business can be affected by cultural factors that restrict women's mobility and interaction with male officials and the burden of domestic responsibilities which leaves them with less time to complete lengthy procedures.⁵⁸ Constrained mobility – as a result of social norms – can reduce women's economic opportunities by, for instance, limiting their choice of location to set up their businesses, their access to final goods and factor markets and their access to information relevant to their work.⁵⁹ The result is a relatively higher tendency for women to operate in the informal sector, who thus lose out on business and employment opportunities.

Even where women have equal rights in the formal legal system – and the legal right to establish their own enterprises – there are often cultural or religious hurdles that hinder women from setting up a business. Research conducted in **Zambia, Tanzania and Ethiopia** revealed instances where even though women are allowed to own property and land and to do so in their own right, bank officials still require the signature of their male spouse to open a business bank account. This may be a valid requirement where properties are jointly owned, but it is regressive in the case of sole ownership by a woman.⁶⁰

Religious laws are also important. As noted in a 2008 study on Sharia law and women's microfinance in **Morocco**, it is traditional gender roles in Islamic customary law, and not inequality in the legal code, that restrict women's micro-businesses from growing.⁶¹ Morocco has a *Mudawanaor* Code of Personal Status, which governs marriage, child custody and inheritance and codifies women's equal personal and economic status. Nevertheless, due to the influence of Sharia, gender inequality persists in areas such as marriage. For example, wives must follow the principle of *ta'ah* or obedience, which often means that a woman cannot be away from home for more than one night at a time. For some women, business trips of any kind are out of the question because the women are not allowed to sleep away from home. **The inability of the business owner to travel limits their access to suppliers, customers and markets in other areas of the country and in international and cross-border trade.**⁶²

⁵⁶ Hallward-Driemeier, Hasan and Rusu, 2013

⁵⁷ Ibid.

⁵⁸ IFC and GPF, 2011.

⁵⁹ Priya, 2011

⁶⁰ Richardson et al., 2004. It may be, however, that in such instances women use personal bank accounts for their business.

⁶¹ Hofstetter, 2008

⁶² Ibid.

In general, customary laws tend to treat women as minors, and this works against women entrepreneurs and employees in matters concerning contractual arrangements.⁶³ Women entrepreneurs also describe cases where suppliers preferred to negotiate with their husbands rather than them, even though they are the owner of the business.⁶⁴ In a 2014 ILO study conducted in **Ethiopia, Zambia and Tanzania**, women reported that the suppliers, clients, bank staff or government officials with whom they did business did not take them seriously, saw them as a higher risk, did not believe they could pay their way, or simply felt that as women they should not be in business and therefore should not be assisted.⁶⁵

Women's enterprises, especially those operating in the informal economy, also face significant problems in accessing appropriate and affordable premises. Customary practices in communities, such as those determining inheritance rights and land and property ownership, often prevent or restrict women from owning or leasing premises in their own right. In some cases, even where women have resources to rent premises, some landlords are reluctant to make legal agreements with the women without their families' approval.⁶⁶ The lack of a husband's approval can also prevent women from using joint assets or property as collateral to secure credit to buy or lease a property.

These challenges may be particularly acute in sectors – such as food preparation and food processing – where regulations require that business accommodation meet specific hygiene standards. Since these are sectors in which women predominate, addressing these issues requires looking at gender issues at the sectoral level in the business environment reform (see section 2.1).

Unequal land and property rights for women constitute a barrier to growth of women-owned enterprises. Insecure land and property rights limit women's access to, and control of, land. The inability of women to own land and property in their own right, combined with banking regulations on collateral requirements for loans and credit, can place severe restrictions on the access of female entrepreneurs to finance. In rural parts of Africa, customary laws frequently prevent women from inheriting or acquiring ownership of land and other property and from accessing financial credit and capital. These problems are especially severe when customary laws are exempted from constitutional requirements on equality – such as in **Zambia** where the “constitution explicitly excludes customary law from its prohibition on discriminatory practices, a significant limitation considering the vast amount of land held under custom”.⁶⁷

An ILO study into **Cameroon, Mali, Nigeria, Rwanda** and Senegal found that in all five countries, while women do have statutory legal rights to property, their ability to exercise these rights is commonly overridden by customary laws and practices. In Mali, for example, married women tend to be considered as “outsiders” to their original family's land once they become members of their husband's family. However, different practices may be observed in different regions of the country. In some areas women can own plots for small-scale vegetable growing for their family or for income generation. They can transfer these plots on loan to their sons, but not to their daughters, as daughters would forgo the plots when married. (Richardson et al., 2006) The ILO study concludes that: “the implication for women entrepreneurs is a lack of control over assets of the business and the inability to offer secure collateral for loans. Addressing these property ownership issues is imperative for the development of women's enterprises.” (Stevenson and St-Onge, 2011)

⁶³ When referring to women being treated as minors, the report refers to an administrative system that renders women incapable of making key decisions for themselves. The impact of this on women's freedom or ability to make decisions varies considerably, but makes certain factors dependent on the will of a male guardian.

⁶⁴ Richardson et al., 2004

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ferracini, 2015

In addition, certain **customary practices related to marriage**, such as paying for brides and polygamy, can reduce women's security in relation to land. Culturally, the act of paying bride price is regarded as making the woman the property of her husband, which nullifies any claims she might have to land and transfers her property rights to her husband.⁶⁸

Customary marriage can also impact women's access to collateral and finance for business growth.⁶⁹ A study in **Swaziland** noted that many

women who have been married under customary law do not have marriage certificates because of difficulties to register. As the study finds, "This often creates problems once the husband dies, as the woman is denied access to inheritance on allegations that she was never married to the deceased".⁷⁰ This consequently impacts her ability to access finance. Additionally, the lack of a marriage certificate can mean that women have restricted ability to meet the know-your-customer (KYC) requirements of banks or financial institutions that are required in order to open a bank account or access credit.

"When women do break this customary law [*ird*], other members of society subject them to "some form of social sanction such as name calling and, in some cases, sexual harassment." (Hofstetter 2008)

In **Morocco** where Sharia law is practised, the traditional idea of *ird*⁷¹, or honour, may limit both the size and types of enterprises women are engaged in. As a woman's actions can have a detrimental effect on the *ird* of her husband and extended family, women often restricted to business activities that are deemed appropriate and do not hurt the honour of the family.⁷² These tend to be those associated with traditional gender roles. In a survey of 108 microfinance recipients, 34 per cent of the women worked in embroidery or sewing, and another 30 per cent traded small goods.⁷³ As further observed in the 2008 study, "honour re-enforces the practice of female segregation. Women do not interact with non-kin males and cannot sell their wares in markets. Thus they must work from home. Overall, these factors lead to smaller businesses and very high rates of competition among women's micro-enterprises."

Also crucial are **inheritance practices and norms**, particularly as inheritance can be a key mean of acquiring assets. **Inheritance laws** vary considerably from place to place and differ in the extent to which they recognise women's rights to property. In much of Latin America, inheritance is the primary means through which women acquire land, although men are much more likely than women to inherit land.⁷⁴ In both Africa and Asia, on the other hand, the most widely practised form of customary inheritance is patrilineal – through the male line only. Such systems relegate women's work to the status of unpaid labour on family farms or in family businesses while they are married, which can lead to extreme poverty and homelessness in cases of widowhood, desertion, singlehood, or divorce.

Customary law provisions on property and inheritance rights may impact on women's **ability to invest assets into starting a business or business growth on widowhood**. A study into the impact of customary laws on widows in urban Uganda found that laws may restrict a widow from transferring the title deed of the matrimonial home into her name.⁷⁵ The use of property as collateral for credit and loans may thus be restricted. The study finds that "in cases where a husband leaves a large matrimonial home

⁶⁸ Ibid.

⁶⁹ World Bank, 2016

⁷⁰ Civil society contribution to the Universal Periodic Review – Women and LGBTIs Cluster The Swaziland Positive Living (SWAPOL) leading a coalition of members of civil society. Swaziland: JOINT UNIVERSAL PERIODIC REVIEW SUBMISSION SWAZILAND.

⁷¹ *Ird* refers to "the honour or moral purity of a group, its prestige in the community, and its strength."

⁷² Hofstetter, 2008

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Asiiimwe and Crankshaw, 2011

in a prime area, the widow may find it difficult to sell the large home and buy a smaller one and invest the remaining money in business ventures."⁷⁶

Additionally, studies into **customary practices** of widow eviction and widow inheritance demonstrate the links between these practices and widows' economic instability and high rates of poverty.⁷⁷ As a study into women's inheritance in **Kenya** has found, such practices have resulted in women having to earn income through sex work or other unstable forms of informal employment, clearly affecting women's freedom of choice on how they engage in the labour market.⁷⁸

In countries or communities within countries where Hinduism or Islam is widely practiced, courts may be inclined to defer to prevailing religious customs and norms of behaviour regarding marital and inheritance rights.⁷⁹ Even within a single country, there may be nuances in customary law and practice depending on tribes or sects. In Sri Lanka, under *Kandyan* law practised by the Sinhalese people, women's rights are generally not recognised in matters of marriage, divorce, property and inheritance. Tamils in **Sri Lanka**, on the other hand, follow *Thesavalamai* law, under which the property rights of women are partially recognised, but even so married women cannot sell, transfer, or gift their property without the written consent of their husbands.⁸⁰

In **Bangladesh**, there is a constitutional provision guaranteeing gender equality and equal protection. However, with an 80 per cent Muslim population, courts often follow Islamic law, which stipulates that daughters and wives inherit half as much as sons and husbands. Similarly, Hindu family law denies full inheritance rights to women; moreover, there are no provisions for divorce.

Women's land, property and inheritance rights may be particularly tenuous in cultures where polygamy is the norm, such as many African and Muslim cultures in the Middle East and North African region and Asia. For example, customary and formal laws in **Ghana, Kenya, Rwanda** and **Uganda** do not protect the rights of women in polygamous unions. This means that if a cohabitating woman's partner dies she is not able to claim inheritance to the house and other properties they shared, even if she had contributed toward their acquisition.⁸¹ In contrast, it is more common in **Latin America** for women's contributions to the family's assets to be at least partially recognised in the event of marital breakup. Even in countries where women are afforded legal inheritance rights upon the husband's death, polygamy may result in a number of women each inheriting a tiny plot of land which is too small to yield enough food for family subsistence let alone for economic gain.

4.5 The implications of the relationship between customary law, practice and women as entrepreneurs or employees for BER

The previous section illustrates the potential impacts of customary law and practices on marriage, property and inheritance and land on women's autonomy, agency and capacity to operate as employees and entrepreneurs in ways that may affect gender outcomes in key areas of BER including business registration, access to finance and land titling (see Table 1). Another key component of BER which is affected by customary law and practice is access to (commercial) courts and dispute resolution mechanisms.

⁷⁶ Ibid.

⁷⁷ The International Women's Human Rights Clinic, Georgetown University Law Center and The Federation of Women Lawyers, 2009

⁷⁸ Ibid.

⁷⁹ International Housing Coalition, 2011

⁸⁰ Ibid.

⁸¹ Cooper, 2011

In some regions, particularly rural and lower income areas that have strong links to customary practices, people are less likely to turn to the formal legal system to resolve disputes. In areas where the formal system does not recognise customary law, many women will have their economic rights decided by traditional informal institutions without the protections which constitutions and formal statutes may provide.⁸² Furthermore, women are more likely than men to rely on customary legal systems due to structural and cultural factors.⁸³ This is because it is often easier to access such systems in rural areas than the state system. Women also often have limited resources – time and knowledge – to access and use the formal legal system, and they often lack the financial resources to seek justice. Additionally, discriminatory state laws or social stigma associated with women seeking legal remedies from the state can deter women from using formal justice mechanisms. Lower levels of education and limited access to information can also restrict women's understanding on how to seek formal justice.⁸⁴

A study on women's access to land rights in **Kenya** showed that women who use courts to assert their rights are seen to have “undercut the man's household role of ‘owner’ and ‘controller’, with respondents also calling it ‘insulting and disrespectful toward a husband and community.’”⁸⁵ The study noted that women that have their rights recognised in the formal legal system can subsequently face threats of violence, altercations, beating and murder. Another study carried out in **East Timor** found that 50 per cent of respondents thought that the formal system favoured the rich whereas only 15 per cent felt the same way about the informal system.⁸⁶ Nine out of ten respondents were comfortable with solving a problem through the informal systems.⁸⁷

Against this background, customary law is appealing to women who may be more comfortable navigating these systems with procedures rooted in the local context. Customary law also uses a familiar language for women which is seen to be more accessible and easier to understand. Furthermore, there can be perceptions that women should not be partaking in dispute processes on their own. Another study in **East Timor** found that 58 percent of Timorese surveyed disapprove of women speaking on their own behalf in local disputes, with roughly equal numbers of women and men disapproving of women speaking for themselves in the local justice process.⁸⁸

The need to engage with these systems (customary laws and practices) is all the more pressing given that a majority of people in developing countries seek resolution of their disputes through customary law. In some countries, as many as 80 per cent of disputes are resolved through these mechanisms.⁸⁹ As such, it is important to address these entrenched customary laws and practices that discriminate against women for BER initiatives to succeed. By focusing on customary laws, it can become an effective platform for implementing new norms “by providing a link to the community, its myths, its elites and its traditions.”⁹⁰ Hence, customary law may open opportunities for change by connecting BER actors with communities to promote an incremental transformation of social norms.

⁸² Ibid.

⁸³ International Development Law Organization, 2012

⁸⁴ Chamlou, 2008

⁸⁵ Harrington and Chopra, 2010

⁸⁶ Asia Foundation, 2004

⁸⁷ Ibid.

⁸⁸ Asia Foundation, 2008

⁸⁹ For an overview of the reasons that draw individuals towards customary justice systems see Harper, 2011

⁹⁰ Chase, 2005

4.6 Positive examples for BER

While most BER programmes have not significantly addressed customary practices and laws or their gendered implications, this scoping study has identified the following examples of reforms or interventions that directly or indirectly addressed customary law and practice and may be promising for more gender equitable BER:

Where customary law is codified or a formal source of law, aligning legal systems and ensuring that customary law is not exempt from constitutional provisions on non-discrimination can improve gender outcomes of BER. Fiji's new constitution no longer recognises customary law as a source of law, whereas previously customary law was exempt from constitutional provisions on non-discrimination (Women, Business and the Law 2016).⁹¹ In **South Africa**, the Constitution establishes a clear hierarchy, allowing the Court to strike down customary laws which infringe equality. Thus in *Bhe*, the customary law of male primogeniture (by which only male relatives of the deceased could inherit property) was found to be in breach of the Constitution.⁹²

Changes to Collateral Requirements: Laws and regulations can help expand the range of assets that banks accept as collateral, such as as livestock, crops, inventory, and equipment – benefiting owners of micro, small, and medium-size businesses regardless of their gender.

Reforming laws and regulations to help women access capital. Regulatory reforms affecting credit bureau and registry rules can benefit women entrepreneurs by improving their capacity to build reputational collateral, circumventing the problem of their lack of titles or property rights as collateral. Women, Business and the Law finds that between June 2009 and March 2011, 11 economies implemented reforms in the areas covered by the “building credit” indicator. New credit bureaus and registries were established in **Ghana, Moldova, Papua New Guinea, the Syrian Arab Republic, and Uganda**. Other economies lowered the minimum loan amounts covered by their credit bureaus and registries, allowing coverage of smaller loans to be included. Jordan cut its minimum loan amount by a third, Mauritania cut its by half, and Yemen eliminated its altogether, allowing loans of any size to be covered. Azerbaijan's micro-borrowers can now build credit histories through local credit bureaus.

Reforming secured transactions systems can also increase women's access to capital. In 2007, **China** completed a wide-ranging reform of its secured transactions system, enacting a new Property Law and establishing a centralised security interest registry. The new framework enabled small and medium-size enterprises to leverage a broader set of movable assets and helped female-owned businesses. Of the companies surveyed, nearly two-thirds of them that leveraged their accounts receivable due to the reform had female ownership, and 20 per cent were majority owned by women.

Working towards shifting social norms and attitudes, reinforced by customary laws or practices, towards increased acceptance and awareness of women as entrepreneurs and employees. This is critical, but is also a long-term process. The German Technical Cooperation implemented the Economic Integration of Women in the MENA region (EconoWin) project aimed at changing awareness and perceptions of women at work and increasing acceptance and appreciation of women's role in the economy. The programme used a regional film and media campaign to look into issues on how women obtain paid employment, how they assert themselves and the difficulties that they face. Results from the programme showed changes in viewers' appreciation of working women.⁹³

⁹¹ World Bank, 2015

⁹² Fredman, 2013

⁹³ Spath, 2016

Improving legal regulation of land ownership to increase women's ownership and security of tenure may have a significant impact on women's overall economic opportunities. Such reforms provide women with increased bargaining power and allow more control and use of major assets.⁹⁴ Together with the **Ghanaian Government**, the German Technical Cooperation implemented a land reform programme aimed at improving the legal regulation of land ownership, which is crucial for economic independence of women. Furthermore, the access to land as a productive resource is fundamental for women who want to become entrepreneurs. The programme focused on developing harmonised rules by aligning modern law and different customary laws, with the aim of an improved legal situation of women regarding the ownership of land as they are discriminated against by customary laws.⁹⁵

Improving women's representation in local land governance systems. For example, The **Tanzania Women Lawyers Association (TAWLA)**, in partnership with the World Resources Institute (WRI) and Lawyers' Environmental Action Team (LEAT), developed model by-laws to improve women's participation in local-level decisionmaking on village land management.⁹⁶ Developed through a bottom-up participatory process, the model by-laws include explicit provisions to promote meaningful participation by women in village-level decision-making, such as having a local dialogue on key principles that could provide the foundations for local by-laws and formulating the village by-laws in the local working language (Swahili). In general, the process generated new know-how for enhancing women's participation in land governance at the village level, challenged gender stereotypes and created greater demand for gender equity in local governance. TAWLA has also engaged women in informal meetings on a weekly basis to raise awareness about the importance of their participation in decision-making processes.⁹⁷

Reforms to marital property. In 1981, legal reforms were enacted in Spain to recognise women's equality in administering marital property, allowing them to participate fully in economic life without permission from their husbands.⁹⁸ Chile adopts a 'hybrid model' – the husband legally manages marital property, including any property generated in the marriage and any property brought into the marriage by his wife. The wife can keep earnings that she generates from work if she can show that they came from her own job.⁹⁹ While there have been several attempts since the 1980s to equalise administrative rights over marital property, they have so far been unsuccessful.

A more recent example can be found in **Ethiopia** with the reform of family laws in 2000. The reform raised the minimum age of marriage, removed the husband's ability to deny permission for women to work outside the home, and amended its legislation to improve women's access to productive resources by granting joint land titles to wives and husbands. This reform was introduced at the regional level before being implemented nationwide. **Joint titling of marital property** is presumed to provide married women with access to a greater pool of titled property as collateral. In the regions where the reform occurred first, there was a significant shift in women's economic activities, including increases in women's participation in work outside the home, full-time work and higher skilled work.¹⁰⁰ This case study provides important insights for gender-sensitive BER programmes wishing to address customary

⁹⁴ Almodóvar-Reteguis et al. (n/d)

⁹⁵ Frickenstein, 2009

⁹⁶ Kisambu, 2016

⁹⁷ Ibid.

⁹⁸ Frickenstein, 2009

⁹⁹ World Bank 2011a

¹⁰⁰ Hallward-Driemeier, Hasan and Rusu 2013

law and suggests how BER programmes can test interventions at a subnational level before rolling out nationally.

Other reform examples aimed at changing the structures of marital property regime, or giving spouses a greater range of options to pick from, include the following:

- In 2001, **Turkey** adopted partial community as its default regime in a move towards greater legal protection for property rights of married women.¹⁰¹
- In **Nepal**, as part of the Constitutional process leading to the interim Constitution in 2007, the 2006 Gender Equality Act was passed, revising discriminatory provisions in the areas of property, marital rape and marriage age. It should be stressed, however, that change in the law has not necessarily brought change in the practices.¹⁰²
- In **Kenya**, a new Constitution was passed in 2010 providing that any law – including customary law – that is inconsistent with the Constitution is void. It also introduced several legal changes on gender equality, including granting women equal rights before, during, and after marriage and on inheritance.¹⁰³

Business Law reform that can impact women's ability to participate in the economy on equal terms, or can change the requirements for spousal signatures for women to access finance or register a business. In 2010, the **Democratic Republic of Congo** (DRC) adhered to the *Organisation pour l'Harmonisation en Afrique du Droit des Affaires* (OHADA)¹⁰⁴ – the pan-African organisation overseeing the harmonisation of business law in Africa.¹⁰⁵ Various local customary laws regulate both personal status laws and property rights in DRC, especially the inheritance and land tenure systems in traditional communities throughout the country. As OHADA contains gender equity provisions, its implementation in DRC national law, supported by DFID's Essor programme, potentially over-rides customary law on male signatures.¹⁰⁶ This is important as it challenges practices where women are required by customary laws to have agreements from males in their families or a male signature on documents, even for activities affecting assets they own. This, in turn, can enable women to purchase land or apply for bank loans without the approval and signature of a male relative.

Recognition of non-monetary contributions and its importance for women's property rights. While being able to secure property ownership upon dissolution of marriage is essential for women's access to collateral, recognition of women's non-monetary contributions are crucial as well.¹⁰⁷ These contributions include domestic work, management of the matrimonial home, family business and property, childcare and farm work. Women typically have fewer monetised contributions than men and thus fewer assets during marriage¹⁰⁸, making the recognition of non-monetary contribution to household wealth crucial. Recognising these non-monetary contributions makes it significantly more inclusive of the types of contributions typically made by women to the household. In Kenya for example, when determining distribution of property upon divorce or separation, the court takes into account both monetary and non-monetary contributions, allowing women's care giving and other household related contributions to be valued in determining the appropriate allocations.¹⁰⁹ A key element is clear

¹⁰¹ Almodóvar-Reteguis et al. (n/d)

¹⁰² Fredman 2013

¹⁰³ Almodóvar-Reteguis et al. (n/d); Fredman 2013

¹⁰⁴ Translates into 'Organisation for the Harmonisation of Business Law in Africa' in English

¹⁰⁵ US State Department's Office of Investment Affairs' Investment Climate Statement

¹⁰⁶ Information from Essor programme (as at November 2015).

¹⁰⁷ Almodóvar-Reteguis et al. (n/d)

¹⁰⁸ World Bank, 2011b

¹⁰⁹ World Bank, 2013

legislation specifying what compensation upon divorce should be to ensure an equitable sharing of assets.¹¹⁰

¹¹⁰ World Bank, 2011a

5. Conclusions

5.1 Summary

This scoping study has explored the ways in which customary laws and practices can impact women as owners and managers and as employees of enterprises. It has showed how women often rely on customary law and practices underpinned by social norms and informal institutions, especially in circumstances where formal institutions are less developed and the reach of formal law and state power is relatively weak.

The study also highlighted the ways in which customary laws and practices intersect with the three elements of Business Environment (BE) and identified the functional components of BER most affected by customary laws and practices. Functional components of BER most directly affected by customary laws and practices include **access to finance, business registration and licensing, land titles, registration and administration**, and **access to commercial courts and dispute resolution mechanisms**. Women are particularly affected by discriminatory provisions and practices in customary law and practices because they hold sway over key areas of personal law, where there are often exceptions to wider equality provisions, and because they are more likely to be governed by, or have recourse to, these systems. In addition, women can face stigma, sanctions or even violence if they are thought to have transgressed customary law, practice or entrenched social norms.

This scoping study has revealed that even though most formal legal and regulatory systems do not discriminate against women in various aspects of conducting business, customary laws and practices can affect the business environment in ways that discriminate against women both directly and indirectly. Customary marriage practices directly restricts women's autonomy and agency to establish or register businesses, lease premises, or sign other contracts in their own right. Weak property rights can undermine women's access to their assets and their ability to use assets as collateral for loans to grow their businesses. Customary land tenure and governance has similar knock-on effects for women's capacity to secure loans.

This scoping study suggests that the impacts of customary laws and practices on women seem to be more pronounced in sub-Saharan Africa, Middle East and North Africa and South Asia – with Islamic laws a common feature amongst predominantly Muslim cultures. Nevertheless, many countries in Latin America and the Pacific Islands also have gaps or contradictions between customary and formal laws that can impact women's ability to, for instance, own and manage their own enterprises.

In particular, customary laws and practices impact on women's physical mobility and ability to access employment; their freedom to choose what work they do, where they work and when, particularly if they need a husband's permission to work; their ability to open bank accounts – which often requires the signature and consent of a male spouse; negotiating with clients and suppliers and business registration; and land titling and registration.

Overall, as women are more likely to use and be impacted by customary legal systems, more attention should be paid to customary laws and practices when designing BER programmes. The scoping study identified a few positive examples of initiatives that have begun to address these issues, such as land and property rights reforms in Ethiopia to increase women's ownership and security of tenure and their labour force participation and reforms in China to implement a secured transaction system which enabled SMEs to draw on a wider range of assets, helping female-owned businesses. These promising cases can provide the basis for further analysis to ascertain what works for more gender equitable BER while taking into account customary law and practices.

5.2 Suggested next steps

When designing BER programmes in specific country contexts, analysis should be conducted on the constraints that customary laws and practices (and associated social norms and informal institutions) pose for gender equitable outcomes for women entrepreneurs and employees. Table 1 in this scoping study provides an initial mapping of issues which could be further developed as an assessment tool.

The scoping study has identified a few positive examples of how specific interventions led customary laws and practices (as well as social norms and informal institutions) to evolve in ways that may support more gender equitable outcomes under BER. Based on the evidence reviewed, this study recommends further research **analysing changing customary laws and practices over time conducted in the form of case studies on:** i) land tenure/titling reform; and ii) access to finance. Within these case studies, it will be important to look at marital property regimes (as well as other factors) and how different regimes have impacted the prospects for women's (or joint) businesses.

The follow-up study needs to draw out lessons on how customary laws and practices can change over time and the impact the changes can have on women entrepreneurs and employees, looking at one or both of the aforementioned examples. Subsequently, a guide can be created by compiling a collection of tools which can facilitate BER programmes. More specifically, the guide could look into a number of areas:

1) Changes in customary laws and practices affecting women's rights in land tenure/titling:

The scoping study showed that the right to land security is one of the key components of BER for women, particularly on issues such as inheritance rights and land titling. The follow-up study could explore how different land titling programmes can affect women's capacity to do business (i.e. access to finance, business operations, etc.).

Some examples of programmes focused on land tenure reform include: GEMs 3 in Nigeria; DFID's Land Investment for Transformation (LIFT) in Ethiopia; the Land Tenure Regularisation Programme (LTR) supported by DFID, the Netherlands, Sweden, and the EU in Rwanda; and the Land Tenure Support Programme for Tanzania launched in February 2016 supported by DFID, SIDA and DANIDA.¹¹¹ **Cases could be selected** from these countries. The follow-up study could focus on how gender-sensitive these land reform programmes are, and the extent to which the programmes account for **customary laws and practices related to land tenure and their impacts on women's rights in land tenure for BER.**

2) Reforms in regulatory or institutional measures to offset the impact of customary law and practice on women's access to finance:

A follow-up study could elaborate on the impact of **changes in collateral requirements on women owners** of micro, small, and medium-size businesses – including the context and conditions, the processes that facilitated the change, the key actors involved, and the successes, challenges and lessons learned from the reform.

Case studies could be selected from countries where collateral registry reforms¹¹² have been introduced, such as Ghana where more than 9,000 SMEs and almost 30,000 micro-businesses had received loans secured with movable property on the registry – about 20 percent of businesses that

¹¹¹ Miles, 2017

¹¹² Collateral regimes expand the types of assets that can be used as security to all tangible (inventory, crops and livestock, vehicles, machinery and equipment, etc) and intangible (accounts receivable, shares, deposit accounts, intellectual property rights, etc.) assets and support more efficient enforcement mechanisms for lenders.

were able to obtain loans are owned by women – since 2008.¹¹³ The follow-up study could gather evidence on the extent to which this approach to reform takes into account existing customary laws and practices and gather evidence on the impact the reform has on expanding women's access to finance.

A proposed methodology for both suggested case studies would involve a mix of secondary desk-based reviews and primary research. The **desk-based research** will enable identification of published and grey literature on areas such as country contexts, background to cases, objectives and outcomes and actors involved. In selecting literature, there should be a focus on existing peer reviewed articles from journals and book chapters, as well as working papers, publications by practitioners, evaluation reports, policy papers and conference papers. The literature review should draw on a wide range of disciplines to ensure coverage of qualitative, quantitative and mixed-method studies. On the other hand the **primary research** should involve semi-structured interviews with selected key stakeholders¹¹⁴ in order to obtain a better understanding of the enabling context and background of each programme. The interviews should capture the interviewees' perceptions of each programme's impact on the BE for women and also fill any gaps in knowledge that may have emerged from the literature review.

¹¹³ IFC, 2013

¹¹⁴ Identifying stakeholders will be done in consultation and agreement with DFID and other members of the DCED BEWG steering committee.

Annex 1: Terms of Reference

The objective of Policy Research commissioned through the Business Environment Reform Facility (BERF) is to help DFID country offices (COs) and central policy teams (CPTs) to improve their understanding and implementation of business environment reform (BER) by contributing to the evidence base of what works and what does not work. The research will aid implementation of DFID's programmes, DFID's central policy work and the global development community more broadly.

We will produce a number of reports over the course of the project, each taking 2-6 months to complete. In order to identify the priority gaps in the evidence for BERF policy research to address, and to develop a suitable set of hypotheses which the research should test, we will commission very short term scoping studies.

These terms of reference are for a scoping study into the impact of customary laws and practices on women as owners of enterprises and as employees in enterprises.

Although female labour force participation has increased substantially in recent years and women's entrepreneurship is expanding globally, significant disparities still exist. A higher percentage of women than men workers are informally employed.¹¹⁵ Women are also concentrated in the lowest-earning segments of informal employment. Within the informal economy, women are more likely to be self-employed, but are over-represented among own-account operators and unpaid family workers and under-represented among employers.¹¹⁶ Women-owned enterprises are usually undercapitalised and have poorer access to machinery, information and credit.

Legal and regulatory frameworks of a country - a core element of a well-functioning business environment - can play a significant role in women's economic opportunities.¹¹⁷ Legal discrimination between men and women is estimated to significantly decrease female labour force participation and undermine GDP growth. The World Bank's World Development Report on Gender Equality and Development estimated that eliminating barriers discriminating against women working in certain sectors or occupations could increase labour productivity by as much as 25% in some economies.¹¹⁸ Laws and regulations directly affecting women's capacity to participate in labour force include requirements for male consent to start or operate a business. Laws concerning marriage, ability to own land and inheritance influence women's ability to participate in the economy or start and operate a business.

Since 2009, the World Bank's 'Women, Business and the Law' (WBL) programme has collected data about legal restrictions on women's entrepreneurship and employment in order to inform policy discussions and promote research on the linkages between the law and women's economic opportunities. The 2016 WBL Report provides quantitative measures of laws and regulations that affect women's economic opportunities in: accessing institutions, using property, getting a job, providing incentives to work, building credit, going to court and protecting women from violence. The report focuses on the formal legal and regulatory environment that determines whether women can open their

¹¹⁵ Chen. M. (2016) Informal Employment, Poverty and Gender. UN Expert Group Meeting.

¹¹⁶ Ibid

¹¹⁷ World Bank Group (2015) *Women, Business and the Law 2016: Getting to Equal* (Washington, DC: World Bank).

¹¹⁸ World Bank.(2011). *World Development Report 2012: Gender Equality and Development*. New York: Oxford University Press.



own businesses or work. Socio-cultural constraints that impact on women's ability to engage in employment and entrepreneurship are not included, though are equally important.

Customary laws and practices have implications for women's labour force participation and women-owned and managed enterprises. Customary law can, for example, exist in parallel with formal legal regimes. Where these systems co-exist, customary law can determine women's rights in marriage or to property and inheritance, which are often different from the rights the statutory legal system grants. This can affect women's workforce participation and access to credit. Customary law forms part of the legal frameworks in many parts of the world. In Sub-Saharan Africa, customary law plays a larger role than in other regions of the world. A study of Sierra Leone suggests that up to 85 percent of the population used customary law as part of the formal and informal legal system.¹¹⁹

1. Objectives

Business environment reforms on women's employment and business activity need to also consider the influence of socio-cultural factors. The objective of the scoping study will be to address the overarching questions:

- What (specific) customary laws and practices impact on women in enterprises – as owners and as employees? This will include discussing the notions of customary laws and practices, noting when they overlap and how they differ.
- What implications do these have for women wanting to start or grow their enterprises, and in what ways can business environment reform (BER) take these into consideration to address these challenges?
- To what extent and in what ways, if any, do customary laws and practices determine the sectors in which women in business tend to engage? This will take into account both formal and informal economies.

2. Link with BER/investment/jobs/poverty (ToC)

This scoping study will identify key issues and questions and potential cases for further study and shape any further research that follows, on the impact of customary laws and practices on women in business – as entrepreneurs and as employees in enterprises. The intention of this larger study is to provide policy makers and development practitioners involved in the design of BER a greater understanding about the specific constraints faced by different kinds of women in business. It will allow them to design programmes which will have a greater impact on women in enterprises either by targeting the negative impacts of customary law and practices directly, or by understanding how customary laws and practices may undermine BER or lead to greater gender imbalances. This assignment provides expert external assistance and does not replace the work of DFID civil servants.

3. Client and Beneficiaries

The primary client is DFID's Investment Climate Team. The Business Environment Working Group of the Donor Committee for Enterprise Development will act as a steering committee for the research and disseminate the findings. Other immediate clients include DFID COs and other CPTs which are

¹¹⁹ Kane et al (2004) World Bank



responsible for designing BER in environments where customary law may affect results. Beneficiaries will include all donor, development practitioners and governments interested in securing greater outcomes for women entrepreneurs.

4. Scope

The scoping study will focus on topics including: registration of individual or group businesses, opening bank accounts, access to credit, property ownership, registering business assets/property or joining business associations, as well as the cultural reasons for women not joining business associations, or for wanting to create their own associations.

Addressing the overarching questions will require:

- Framing understandings of customary laws and practices to also include social norms and informal institutions.
- Clarifying the links between formal legislation and customary laws and practices.
- Understanding how customary law and practice relates to, and potentially, impacts on women's entrepreneurship in both the formal and informal economy. This will also include sectoral segmentation.
- Detailing the different types of customary laws and practices that undermine different elements/types of BER.
- Understanding implications of the relationship between customary law, practice and women entrepreneurs for BER.
- Identifying the political economy factors and circumstances (education, ethnicity, wealth, etc.) that might influence the extent to which customary law and practices affect women entrepreneurs in developing countries

The scoping study should, where possible, provide initial examples from BER initiatives in low – and lower-middle-income countries:

- Where BER sought to modify or over-ride customary laws and practices.
- Where customary laws and practices have hindered implementation of BER to address gender inequalities.

This scoping study is not intended to be an exhaustive literature review, but will consider whether a more detailed study is required and how it should be approached (e.g. primary research or desk based secondary review of existing evidence).

In particular, the scoping study should assess the benefits of a larger study on customary practices and laws for BER using up to four case study countries, and, if appropriate, elaborating on a criteria for selection countries, such as:

- WBL indicators where there is a gap between formal legislation and customary laws and practice.
- Geographical diversity, focusing on diverse regions and socio-economic contexts – with emphasis on low income countries, and DFID priority countries where BER programmes are in place.
- Availability of information to be able to provide concrete examples from BER initiatives in countries where:

- BER sought to modify or override customary laws and practices, and
- customary laws and practices have hindered implementation of BER to address gender inequalities.

5. Method

The consultant will undertake the following steps.

- Complete a desk-based review of literature on customary laws and practices relating to women's entrepreneurship
- Identification of relevant examples from low and middle income countries where:
 - Customary laws and practices have been constraints to women's entrepreneurship, and
 - How BER has addressed these constraints.
- Undertake consultations (by phone) with DFID and other members of the DCED BEWG steering committee.
- Draft a short report in the BERF template providing:
 - A summary of the findings from the literature review
 - Examples of the interaction between customary laws and practices and BER
 - Recommended next steps.

6. Timeframe

Item/Activities	Date
Drafting of ToRs	12 December
Approval of ToRs	16 February
Team mobilisation and consultant brief	20 February
Submit draft report to Dan Aylward (Activity D Coordinator)	13 March
Submission of Report to DFID / DCED BEWG	20 March
Receive comments back from DFID / DCED BEWG	27 March
Address comments from DFID / DCED BEWG	3 April
Submit Report to BERF Team Leader	7 April
Approval of final report by DFID	14 April

7. Deliverables

The deliverables will be a draft and final report in the BERF template, approximately 10-20 pages in length, excluding annexes. The consultant will ensure that these meet the standards set out in the BERF style guide and be suitable to be published.

The report should include:



- A summary of the findings from the literature review
- Examples of the interaction between customary laws and practices and BER
- Assessment of the need for, and feasibility of, further research work
- Recommended next steps.

8. Dissemination

This report will be posted on the BERF website and the R4D website and circulated in DFID. It may form the basis of subsequent discussions with other institutions and therefore be circulated more widely. It will be used to guide further research.

Annex 2: Selected References

- Almodóvar-Reteguis, N., Kushnir, K. and Meilland, T. (n/d) Mapping the Legal Gender Gap in Using Property and Building Credit. Washington, DC: World Bank.
- Asia Foundation (2004) Law and Justice in East Timor: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice in East Timor. Dili: The Asia Foundation.
- Asia Foundation (2008) Law and Justice in East Timor: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice. Dili: The Asia Foundation.
- Asiimwe, F. and Crankshaw, O. (2011) The impact of customary laws on inheritance: A case study of widows in Urban Uganda. *Journal of Law and Conflict Resolution* Vol. 3(1), pp. 7-13, January 2011.
- Bekker, J.C. and De Kock, P.D. (1992) 'Adaptation of the customary law of succession to changing needs', *Comparative International Law Journal of Southern Africa* 25:3, 366-378
- Bicchieri, C and Mercier, H (n/d) Norm and Beliefs: How Change Occurs. To appear in B. Edmonds (ed.) *The Dynamic View of Norms*. Cambridge: Cambridge University Press.
- Chamlou, N. (2008) *The Environment for Women's Entrepreneurship in Middle East and North Africa*. Washington, DC: World Bank.
- Chase, O. G. (2005) *Law, Culture and Ritual: Disputing Systems in Cross-cultural contexts*. New York: NYU Press
- Chirayath, L., Sage, C. and Woolcock, M (2005) *Customary Law and Policy Reform: Engaging with the Plurality of Justice Systems*. Background paper for the World Development Report 2006: Equity and Development. Washington, DC: World Bank.
- Cooper, E. (2011) *Women and Inheritance in Sub-Saharan African Countries: Opportunities and Challenges for Policy and Practice Change*. Chronic Poverty Research Centre, Working Paper no.182. Manchester: Chronic Poverty Research Centre.
- DCED (2008) *Supporting Business Environment Reforms – Practical guidance for development agencies*. Business Environment Working Group of DCED.
- Deere, C. and Doss, C. (2006) 'Gender and the Distribution of Wealth in Developing Countries'. Research Paper No. 2006/115.
- De Soysa, I and Jütting, J (n/d) *Informal Institutions and Development—What do we know and what can we do?.* Overview paper: roundtable discussion. OECD.
- Foster, S. (2013) "Swaziland" *Cultural Sociology of Divorce: An Encyclopaedia*. Ed. Robert E. Emery. Sage Publications.
- Fredman, S. (2013) *The Role of Equality and Non-Discrimination Laws in Women's Economic Participation, Formal and Informal*. Background Paper for the Working Group on Discrimination against Women in Law and Practice (the Working Group): Economic and Social Life. Geneva: OHCHR.
- Frickestein, J. (2009) 'Gender equality is smart economics: What implications for the business environment in Africa?' Paper for the 2009 Annual IAFFE Conference "Engendering Economic Policy"
- Ghosh, J. (2013) *Microfinance and the Challenge of Financial Inclusion for Development*. *Cambridge Journal of Economics* 37, 6: 1203–19.
- Hallward-Driemeier, M. and Hasan, T. (2013) *Empowering Women: Legal rights and economic opportunities in Africa*. Washington, DC: World Bank.

- Hallward-Driemeier, M., Hasan, T. and Rusu, A. B (2013) Women's Legal Rights over 50 Years Progress, Stagnation or Regression? Policy Research Working Paper. Washington DC: World Bank.
- Harper, E. (2011) Working with Customary Justice Systems: Post-Conflict and Fragile States. Rome: International Development Law Organization.
- Harrington, A. and Chopra, T. (2010) Arguing traditions : denying Kenya's women access to land rights. Justice for the poor research report; no. J4P 2. Washington DC: World Bank.
- Hedditch, S. and Manuel, C. (2010) Gender and investment climate assessment: Solomon islands. Washington DC: IFC.
- Hofstetter, S. (2008) 'The Interaction of Customary Law and Microfinance: Women's Entry into the World Economy', *William & Mary Journal of Women and the Law*, 14:2.
- Honohan, P and Beck, T. (2007) Making Finance Work for Africa. Washington, DC: World Bank.
- International Council on Human Rights Policy (2009) When Legal Worlds Overlap: Human Rights, State and Non-State Law. Geneva: ICHRP.
- International Development Law Organization (2012) Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment. Rome: IDLO.
- IFC (2013) Stories of Impact: Pioneering Lending System Opens Doors to Finance for Ghana Small Enterprises. Washington, D.C: IFC
- IFC and GPFI (2011) Strengthening Access to Finance for Women-Owned SMEs in Developing Countries.
- International Housing Coalition (2011) Gender and Property Rights: A Critical Issue in Urban Economic Development. Washington DC: IHC.
- The International Women's Human Rights Clinic, Georgetown University Law Center and The Federation of Women Lawyers (2009) Empowering Women With Rights to Inheritance—A Report on Amendments to the Law of Succession Act Necessary to Ensure Women's Human Rights: A Human Rights Report and Proposed Legislation. Georgetown Journal of International Law Volume 40.
- Kisambu, N. (2016) Mainstreaming gender in Tanzania's local land governance. London: IIED
- Knight, S.R. (2010) Statutory recognition of customary land rights in Africa An investigation into best practices for lawmaking and implementation. Rome: FAO
- Loiselle, M. (2014) 'Emancipating Rituals: Women's Empowerment through Customary Justice', Paper delivered at the 'Rituals of human rights' workshop, Centre for International Governance and Justice, Regnet Australian National University Canberra, Australia, 25-27 June 2014.
- Marques Ferracini, C. (2015) Women Empowerment Through Business Member Organizations. International Training Centre of the ILO and the Dutch Employers Cooperation Programme.
- Miles, K. (2016) Business environment reform and gender. Business Environment Working Group (BEWG) of the Donor Committee for Enterprise Development.

Narayana, M.R. (2006) 'Formal and informal enterprises: concept, definition, and measurement issues in India' in Guha-Khasnobis, B., Kanbur, R. and Ostrom, E. (eds.) *Linking the Formal and Informal Economy: Concepts and Policies*. Oxford: Oxford Scholarship.

Ndulo, M. (2011) 'African Customary Law, Customs, and Women's Rights,' *Indiana Journal of Global Legal Studies*: Vol. 18: Issue 1, Article 5.

OECD (2014) *Social Institutions and Gender Index – 2014 Synthesis Report*. Paris: OECD.

OHCHR (undated) Fact Sheet No.23, *Harmful Traditional Practices Affecting the Health of Women and Children*

Priya, U. T (2011) *Gender and Mobility in the Developing World*. Background Paper for World Development Report 2012. Washington, D.C.: World Bank.

Richardson, P., Howarth, R. and Finnegan, G. (2004) *The Challenges of Growing Small Businesses: Insights from Women Entrepreneurs in Africa*. SEED Working Paper No. 47. Geneva: ILO.

Spath, B. (2016) *Women's Economic Empowerment in Technical Assistance Programmes - Examples of good practice in private sector development*. Bonn and Eschbor: GIZ.

Stevenson, I. and St-Onge, A. (2011) *Assessment of the environment for the development of women's entrepreneurship in Cameroon, Mali, Nigeria, Rwanda and Senegal*. Geneva: ILO

Tillmar, M. and Ahl, H. (2015) 'Translating feminism in the neoliberal era: The role of women's entrepreneurship in East Africa vs Scandinavia'. Paper to be presented at ECPR, Uppsala, June 2015. Panel No. PO63, Section "Governance, Institutions and Public Policy".

UN-Habitat (2005) *Land tenure, housing rights and gender – National and urban framework: Colombia*. Nairobi: UN-Habitat.

UN Women (2015) *Progress of the World's Women 2015-2016: Transforming Economies, Realising Rights*. New York: United Nations.

White, S. and Aylward, D. (2016) *Formalisation of smallholder agriculture and agri-business - Scoping study on formalisation of the agriculture and agribusiness sector*. London: KPMG.

Wodon, Q., Petroni, S., Male, C., Onagoruwa, A., Savadogo, A., Edmeades, J., Kes, A. and John, N. (2015) *Economic Impacts of Child Marriage: Preliminary findings from analyses of existing data*. Research brief 2015. Washington DC: ICRW and World Bank.

World Bank (2010) *Gender Dimensions of Investment Climate Reform: A Guide for Policy Makers and Practitioners*. Washington DC: World Bank.

World Bank (2011a) *World Development Report 2012: Gender Equality and Development*. Washington, DC.: World Bank.

World Bank (2011b) *Women, Business and the Law 2012: Removing Barriers to Economic Inclusion*. Washington DC: World Bank.

World Bank (2013) *Women and Land Rights: Legal Barriers Impede Women's Access to Resources*. Washington DC: World Bank.

World Bank (2015) *Women, Business and the Law 2016: Getting to Equal*. Washington DC: World Bank.

Annex 3: Countries which formally recognise customary law

Women, Business and the Law 2016 data ¹²⁰		
Country	Are customary law courts recognized?	Is customary law recognized / invalid if it violates provisions on non-discrimination or equality?
Angola	No	Recognised and invalid
Bangladesh	No	Recognised and invalid
Benin	Yes	Recognised and invalid
Botswana	No	Recognised but not invalid
Burkina Faso	No	Recognised and invalid
Cameroon	Yes	Not recognised
Chad	No	Recognised and invalid
Colombia	Yes	Not recognised
DRC	No	Recognised and invalid
Cote d'Ivoire	No	Recognised and invalid
Djibouti	No	Recognised and invalid
Ecuador	Yes	Not recognised
Ethiopia	Yes	Recognised and invalid
Ghana	Yes	Recognised but not invalid
Hong Kong	No	Recognised and invalid
Indonesia	No	Recognised and invalid
Kenya	No	Recognised and invalid
Kyrgyz Republic	Yes	Not recognised
Lesotho	Yes	Recognised but not invalid
Liberia	No	Recognised and invalid
Malawi	No	Recognised and invalid
Malaysia	No	Recognised but not invalid

¹²⁰ World Bank, 2015



Mauritius	No	Recognised but not invalid
Mozambique	No	Recognised and invalid
Myanmar	No	Recognised and invalid
Namibia	Yes	Recognised and invalid
New Zealand	Yes	Not recognised
Niger	No	Recognised and invalid
Nigeria	Yes	Recognised and invalid
Pakistan	No	Recognised and invalid
Papua New Guinea	Yes	Recognised and invalid
Philippines	Yes	Not recognised
Rwanda	No	Recognised and invalid
Sierra Leone	Yes	Recognised but not invalid
South Africa	Yes	Recognised and invalid
South Sudan	Yes	Recognised and invalid
Sri Lanka	No	Recognised but not invalid
Swaziland	Yes	Recognised and invalid
Timor-Leste	No	Recognised and invalid
Togo	No	Recognised and invalid
Uganda	No	Recognised and invalid
Zambia	Yes	Recognised but not invalid
Zimbabwe	Yes	Recognised and invalid