

THE TIME IS NOW TO ACCELERATE
WOMEN'S PUBLIC PROCUREMENT

Snapshot: Gender Climate, Legal And Institutional Reform: An Ecosystem Analysis

BUILDING BETTER ECOSYSTEMS

USAID's Gender Climate, Legal and Institutional Reform (GenderCLIR) methodology builds on the World Bank's "Doing Business" themes. It can provide sectoral analyses, identify gaps in a country's ecosystem for women's public procurement, and recommend ways to strengthen policies, facilitate access to finance, and provide capacity-building, mentoring and subcontracting. GenderCLIR 2.0 can play a major role in accelerating women's procurement.



Overview

The Commercial, Legal, and Institutional Reform (CLIR) diagnostic was developed by United States Agency for International Development (USAID) in 1999 as a framework to analyze a country's commercial law regime. It enables USAID Missions to develop an evidence-based approach for determining the degree of development of a country's private sector; the status of commercial law reforms in a country; and the root causes of gaps in implementation or enforcement of reforms. These insights aimed to inform new approaches to sustainable, cost-effective interventions addressing commercial, legal, and institutional reform in a given country, with a more system-wide lens.¹

1. Bruce Y. Lee, Shawn T. Brown, Marie Ferguson, Daniel Hertenstein, Leila Haidari, Patrick Wedlock, Sarah Bartsch, et al., *SPACES MERL: Systems and Complexity White Paper* (Washington DC: USAID, 2016), https://pdf.usaid.gov/pdf_docs/PA00M7QZ.pdf.

The Time Is Now To Accelerate Women's Public Procurement is a 23-part toolbox and call to action series created by USAID.



USAID
FROM THE AMERICAN PEOPLE

This quantitative and qualitative tool facilitates comparisons across countries and between areas of law by assigning numerical values to qualitative judgments. The assessment methodology uses a complex systems approach to analyze 11 areas of commercial law: anti-money laundering and terrorist financing, bankruptcy, company, competition, contract, commercial court administration, commercial dispute resolution, foreign direct investment, international trade, real property, and secured transactions. Each of these areas is assessed across four dimensions: written laws, implementing institutions, supporting institutions, and the social dynamics of commercial legal reform. This matrix format allows for a detailed analysis not only of legal and judicial/institutional issues but also of demand, resulting in a multi-faceted perspective that is missing from other, more limited indicator strategies.²

Methodology

The CLIR diagnostic is versatile in that it can be tailored to specific sectors. Also the time required to conduct a CLIR assessment is relatively short. CLIR also offers different levels of depth in research, which can be customized to meet budget and time constraints of the project—ranging in cost from \$250,00 to \$500,000 (in 2011 dollars). The CLIR Assessment is carried out by a team of experts (primarily lawyers and subject matter experts) who begin with in-depth desk research on the legal framework in the country based on the four CLIR dimensions and the specific area of commercial law. This initial research is followed by two to three weeks in-country, conducting in-person interviews with numerous government officials, private sector companies, chambers of commerce, non-governmental organizations, multilateral and bilateral donor representatives, and other stakeholders relevant to the topic to assess the CLIR environment in a selected country. In many cases, a validation conference is held with preliminary findings when the team is still in country; a final report is delivered within six to eight weeks of the team's return from the country.

Use And Evolution

Since 1998, there were numerous instances of use of the CLIR diagnostic by USAID missions and on specific programs, such as Feed the Future. From 1998 to 2006, USAID implemented a CLIR assessment to analyze specific commercial and trade laws that affected trade and investment. Between 2006 and 2010, USAID funded the Business Climate, Legal and Institutional Reform (BizCLIR) project that was designed to examine the overall business-enabling environment of a country or region. One of the big changes to this very deep and technical diagnostic was to change the chapters to mirror the *Doing Business* themes. In 2002, the World

2. Maria Dakolias, "Methods for Monitoring and Evaluating the Rule of Law," *Applying the "Sectoral Approach" to the Legal and Judicial Domain*, CILC's 20th Anniversary Conference (The Hague: Center for International League, 2005), https://www.cilc.nl/cms/wp-content/uploads/2014/11/Conference_publication_2005.pdf.

Bank began developing a set of indicators to analyze the business environment while using a different approach to collect the data. The first Doing Business study, published in 2003, covered five indicator sets and 133 economies.³

The Doing Business studies created a strong response in government leaders to improve their scores while the CLIR and BizCLIR studies provided a deep dive into the issues with clear recommendations for change that could be implemented by the country single-handedly or with help by USAID and/or another donor. USAID and the World Bank agreed that USAID would reframe its diagnostics to mirror the titles of the indicator chapters, allowing USAID to be more responsive to Missions' requests from their host country government to assist with Doing Business scores while maintaining the integrity of the deep diagnostic tool. The tool became known as BizCLIR and mirrored the following World Bank areas: Starting a business, Dealing with construction permits, Employing workers, Registering property, Getting credit, Protecting investors, Paying taxes, Trading across borders, Enforcing contracts, and Closing a business.

The CLIR methodology was then adapted to other sectors or issues beyond the original focus on the business-enabling environment that the BizCLIR assessment provided. These include agriculture (AgCLIR), health (HealthCLIR), gender (GenderCLIR), and the performance of specific value chains (MicroCLIR). A number of these CLIR methodologies—Biz, Gender, and Micro as it relates to value chains—can easily be adapted to women's public procurement, and women's access to finance and value chains.

**A number of
these CLIR
methodologies...
can easily be
adapted to
women's public
procurement...**

3. "About Us," Doing Business: Measuring Business Regulations, The World Bank, n.d., <https://www.doingbusiness.org/en/about-us>.



Evaluation Of The Tool

Based on an evaluation of the USAID-funded BizCLIR project by AMEX International in 2011, 92 percent of respondents indicated that the BizCLIR assessments were useful.⁴ Also, Maria Doukalis (then Lead Counsel for the World Bank Legal Department) noted this, in a paper presented at the Center for International Legal Cooperation's 20th Anniversary Conference at The Hague:

“Notwithstanding its thematic focus on commercial law, the CLIR methodology takes the most holistic approach to rule of law indicators. By looking at the legal framework, related institutions and the social dynamics of reform for each area of law, it can offer a detailed, comprehensive view of the issues and players involved. Most of the other indicator methodologies are more narrowly focused on either legal or judicial issues and pay little attention to other factors.”⁵

Evolution Of Gender Integration

In 2007, the World Bank realized that its framework for Doing Business had overlooked the conditions that women face in trying to set up a business, so it launched a Doing Business Gender Project. A year later, the Economic Growth Office at USAID decided to create a specialized set of indicators called GenderCLIR, which modified and streamlined the indicators in BizCLIR into seven sections, while incorporating the 10 major areas examined in Doing Business. The first full GenderCLIR diagnostic pilot was conducted in Rwanda in April 2009, and a full diagnostic was conducted in Vietnam in July 2009. The Vietnam GenderCLIR included a desk review of existing literature and research as well as on-the-ground interviews with 240 people in three cities; it was released in August 2010. Components included:

- » Women's role in society
- » Women and the private sector
- » Women and labor
- » Women and property (both real property relating to land, and intellectual property)
- » Women and trade
- » Women and commercial justice

Crosscutting themes for Vietnam related to: women as a full partner in Vietnam's economic transformation, insufficient data on women, women's family obligations and other cultural roles.

Each issue and chapter followed a consistent structure:

- » Introduction
- » Legal framework
- » Implementing institutions
- » Supporting institutions
- » Social dynamics
- » Recommendations
- » Indicators

4. Milton Nunez-Garces, Alexander Kitain, and Thomas Cook, *Evaluation of USAID BIZCLIR Program* (Amex International and USAID, 2011), http://pdf.usaid.gov/pdf_docs/Pdact328.pdf.

5. Maria Dakolias, "Methods for Monitoring and Evaluating the Rule of Law," *Applying the "Sectoral Approach" to the Legal and Judicial Domain*, CLIC's 20th Anniversary Conference (The Hague: Center for International League, 2005), https://www.cilc.nl/cms/wp-content/uploads/2014/11/Conference_publication_2005.pdf.

Scores awarded to the key indicators were structured as follows:

- | | |
|---|-----------------------|
| 1 = strong negative | 4 = moderate positive |
| 2 = moderate negative | 5 = strong positive |
| 3 = negative, or having some negative and some positive qualities | |

The GenderCLIR indicators were then integrated into the regular BizCLIR indicators, first used in the BizCLIR for the Palestinian Territory (2010); they were also integrated with AgCLIR indicators, first used in Uganda (2010).

Use Of GenderCLIR For Women's Public Procurement

As part of its high-priority Ecosystem Development initiative, the Women20 (W20) of the Group of 20 countries' Women Entrepreneurship Working Group will be developing a GenderCLIR 2.0 and will update this methodology for advancement in the enabling environment. This process will be phased; priority areas will include access to procurement, access to finance, access to markets, and digital and information and communication technology. In view of the immediate benefits seen from examples in the United States with regard to procurement policies, Access to Public Procurement will be the first area of focus.⁶ This is an important opportunity to capture advances in the ecosystem and evolving issues, and to provide an updated diagnostic that donors, countries and gender advocates can use to advance this field.

The TIME IS NOW for Women's Public Procurement. Read how the stage is set for action!

6. Development is being coordinated by Anne Simmons-Benton, a U.S. delegate to the W20 who chairs the Working Group's Ecosystem Development Task Force; an attorney, and co-head of the U.S. Delegation, she was involved with developing and rolling out GenderCLIR 1.0 in several countries.