

Position Paper for Issue Three: Introducing Gender Analysis into Regulatory Frameworks

Dr. Jennifer Bremer, American University in Cairo

How Does Gender Mainstreaming Apply to Regulatory Reform?

Gender mainstreaming reflects large role that gender plays throughout society. It constitutes an approach to overcome the marginalization or “ghettoization” of gender concerns, that is, a policy approach that generally places them outside the mainstream of policy discussions and evaluation.

Regulation, particularly in the MENA, is also a force that broadly shapes interactions of individuals and business with each other and with the government. Given the large roles played by both gender and regulation as defining factors in society, it is self-evident that these two factors must interact.

At the same time, regulation is itself a tool to encourage greater responsiveness to gender issues. Regulation both shapes and is shaped by gender concerns in numerous ways.

As applied to regulatory reform, gender mainstreaming raises three separate sets of issues, which may be summarized as follows:

- Impact on Women and Equity: Will regulatory reform improve women’s access to services? Will it promote equitable treatment of women in all spheres?
- Impact on Women’s Roles: Will regulatory reform promote increased participation of women in the economy, public life, and society generally?
- Participation of Women in Decision-making: Will the reform process engage women directly?

Because regulation affects all aspects of people’s lives, nearly all regulation inevitably affects women as well as men. Regulation and regulatory reform becomes a gender issue only when one or more of the following three conditions is met:

- Regulation affects men and women differently, intentionally or otherwise.
- Regulation impedes the ability of women to become fuller participants in society, by making it more difficult for them to find employment, gain an education, start a business, meet the needs of their family, ensure their human rights, etc.
- Regulatory reform is planned or underway in regulations meeting one of the previous two conditions and the input of women or groups legitimately reflecting women’s needs is therefore needed to ensure equitable and effective outcomes.

Many regulatory issues do not directly touch on gender, but nonetheless affect women differentially. For example, a workplace regulation that permits parents to take leave to care for a sick child may apply equally to both genders, but is more likely to apply to women as primary caregivers.

Areas of Priority from a Gender Perspective

Based on the above considerations, there are three areas that generally constitute priority concerns the regulatory reform process and its outcomes. Each of these must be addressed in order to shape regulatory reform that responds to women's needs and to gender considerations. These areas and some of the main considerations in each area are summarized in Box 1:

Box 1. Priority Regulatory Reform Issues from a Gender Perspective

Regulations Generally Recognized as Affecting the Role of Women

- Education: access, discrimination, priority
- Health and health issues: access to healthcare, family healthcare access, gender-specific concerns
- Workplace issues: gender in the workplace, access to training, equity of pay, forced labor/trafficking
- Family issues: rights of women as wives and mothers, divorce, violence,
- The public sphere: limitations on appearance, behavior, or presence of women outside the home, access to courts of law, political participation, civil society

Regulations Needing Increased Attention with Respect to Impact on Women

- Property Rights
- Access to Capital
- Access to Non-Personal Government Services

Participation in the Regulatory Process

- Transparency: sufficient to create opportunities for participation
- Voice: public discussion sufficient to provide opportunities for input and raising of concerns, suggestions
- Accountability: reporting on outcomes sufficient to raise and address concerns in implementation

Obstacles to Gender Mainstreaming in Regulation

Fully incorporating gender concerns into the regulatory reform process is a challenging process in any socioeconomic or political setting, but it is particularly difficult in the MENA. This difficulty arises not only from the barriers to the full and equal participation of women in many areas of public life, reflecting the different social and historical circumstances within the region and across the region as a whole, but also from the constraints to public participation in political decision-making processes, limitations on the availability of data, and insufficiently articulated management systems in the public sector more generally.

Eight barriers to the full integration of gender concerns into the regulatory reform process may be identified:

- Non-Transparency of Regulatory Processes: Drafts of regulations in development may not be available to stakeholders within or outside the government in a timely manner; indeed, on occasion regulations are not available for review at all prior to their issuance.
- Absence of Consultative Processes: The steps and procedures involved in regulatory review and revision may not be sufficiently clear nor provide opportunities for input at key points. Formalized processes for review and comment are absent or not fully developed in a number of instances.
- Assumption of Representation: An implicit assumption exists that women's views are adequately if not fully represented by those of men, be they family members, senior officials, or legislators. This view naturally downplays the importance of direct consultation with women.
- Limited Information on Gender Issues: The lower priority assigned to gender in the past has resulted in a shortage of gender-differentiated data in many areas, such that policymakers are not able to assess the situation or measure progress over time.
- Deficit in Civil Society Effectively Engaged in Gender Mainstreaming of Policies: Particularly where political systems provide only constrained opportunities for direct participation in decision-making, all participants are forced to rely on an often limited set of civil society groups to deliver their message. The ability of such groups to accurately reflect the views of women in diverse situations is difficult to measure or insure.
- Weakness of Gender Monitoring of Impacts: Stemming in part from the absence of data alluded to above, monitoring of impacts remains incomplete. This leaves decisionmakers without the tools necessary for informed or evidence-based policy-making.
- Regulations as an Expression of Cultural Values: Regulations can shape behavior in both the public and the private sphere over time, but regulations are as much a reflection of societal values as a means of pushing the envelope toward greater gender mainstreaming throughout society. Research indicates that attempts to legislate (or regulate) changes in values are likely to fail, as strongly-held values assert themselves and new, often more subtle mechanisms are found to express social norms, despite the wording of the reformed regulations.
- Barriers to Mobilizing Political Will: Attitudes to women's equality and participation in society vary greatly across the region, within countries, and even within the individual households that make up society in the MENA (as elsewhere). Whether or not operating in a fully democratic framework, political leaders cannot expect to violate the strongly-held norms of significant segments of their population with impunity. This reality limits the effectiveness of regulatory reform as a driver of gender equity, and does so precisely in those settings where gender issues are of most concern. Given that political will is broadly cited as a prerequisite for regulatory reform success, the unresolved conflicts in views of gender equity pose a barrier to regulatory reform in this arena.

Tools for Gender Mainstreaming in Regulatory Frameworks

Incorporating Gender into Regulatory Reform at the Top Level

The OECD “Policy Brief on Measuring Regulatory Quality” (April 2008) identifies seven principles for regulatory reform. Table 1 presents these principles and examines them from a gender lens.

Table 1: Applying a Gender Lens to the OECD Principles for Regulatory Quality

OECD Principle	Gender Perspectives
1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.	1. Has a commitment to gender been incorporated at a high level into the regulatory reform, or is it an add-on (or absent from the agenda altogether)?
2. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.	2. Does the review process examine whether regulations have differential impacts on men and women and determine whether corrective measures are needed?
3. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.	3. Are there opportunities for women to participate directly or indirectly through civil society groups and is there monitoring of actual participation?
4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.	4. Are there barriers to entry for women-owned firms overall or in government procurement?
5. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.	5. Are there administrative requirements that, in addition to posing barriers to entrepreneurs generally, are especially cumbersome for women or are there areas where women’s property or other rights are deficient in ways that impede business development?
6. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.	6. Do women face particular barriers in gaining access to credit or employment? Are there barriers to women’s access to training, advisory services, or other activities that would strengthen their economic participation as employers and employees?
7. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.	7. Are these and other gender linkages identified and are policy-makers encouraged to take them into consideration actively in forming policy?

Applying a Gender Lens to Regulatory Impact Analysis

The *European Union Impact Assessment Guidelines* (15 January 2009, available online) provide a good basis for applying a gender lens to Regulatory Impact Assessment, the principal tool for assessing proposed regulatory changes. These guidelines place gender and other equity concerns within the overall assessment process and thus are particularly useful from a mainstreaming perspective.

Gendered Data Collection

All of the measures needed to mainstream gender into regulatory reform require that policymakers be able to assess the situation to develop appropriate, evidence-based responses.

This function can only be performed well if there is a base of gender-differentiated data, information, and analysis. Such data must be collected and analyzed in advance of the need for it within the policy-making process, ideally building a database of several years' information to assess changes and take corrective action. When gender-differentiated (or "engendered") variables are incorporated into routine data collection and monitoring, the cost is minimal; nonetheless, this practice is far from routine, leaving policymakers with insufficient access to information that can shape policy.

With sufficient guidance from the appropriate political level, this deficiency can and should be corrected at the earliest opportunity and in a systematic manner, so as to facilitate better incorporation of gender concerns into all phases of the regulatory reform cycle, from initial assessment, through regulatory redesign, testing, implementation, and evaluation.