



Legal  
Assistance  
for Economic  
Reform

## Uganda Case Study: Designing an Institutional Reform Programme at Scale

DFID Legal Assistance for Economic Reform Programme

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**Abstract:** *This case study explains how LASER went about scoping legal-based options for investment climate reform in Uganda. It illustrates LASER's seven-phase hourglass methodology for undertaking institutional reform which is not a panacea but does offer new insights and ways into tackling complex problems which lie at the heart of investment climate and other sector programming. It describes how roll out of a new small claims procedure was an effective entry point for subsequently widening engagement with the Uganda Judiciary on issues of commercial dispute resolution. This case study is one of a suite of LASER products which develops latest thinking on doing development differently.*



The Legal Assistance for Economic Reform (LASER) programme is an institutional reform programme that supports developing countries to strengthen their investment climates. It is a £4.3 million DFID-funded initiative (2014-17) implemented by The Law & Development Partnership (LDP) and KPMG that supports developing countries in strengthening their investment climates. LASER has three broad components:

- (1) Working with developing countries to support new approaches to investment climate reform / commercial law and justice that deliver results;
- (2) Supporting the appropriate targeting of legal technical assistance; and
- (3) Learning and disseminating lessons about good practice in investment climate programming.

LASER works in two main ways: –

- Directly with developing country governments (including Ministries of Justice, Commerce, Trade and the Judiciary) on investment climate / commercial law and justice problems – in a demand driven, politically informed and highly flexible way: and
- With donors (to date DFID and the World Bank Group) on the design of large-scale investment climate / institutional reform programming which incorporate flexible, adaptive approaches.

LASER has a strong focus on working fragile and conflict affected states, and current countries of operation are: Bangladesh, Kenya, Myanmar, Uganda, Rwanda, Sierra Leone, Somaliland and Tanzania.

This case study is part of a suite of LASER products which address latest thinking on approaches to institutional reform (including *doing development differently*, *thinking and working politically* and *problem driven iterative adaptation*), which can be accessed via the LASER website <http://www.laserdev.org/resources/>.

The case study assumes some familiarity with thinking on doing development differently, problem driven iterative adaptation (PDIA), and systems approaches. For more background on these approaches see LASER synthesis papers at <http://www.laserdev.org/resources/>.

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## Introduction: the hour glass approach

1. This paper describes how LASER set about scoping legal-based options for investment climate reform in Uganda, using an approach described in two recent LASER products – LASER’s [second synthesis paper](#)<sup>1</sup> and [guidance on politically smart approaches to donor investment climate programming](#)<sup>2</sup>. The

<sup>1</sup> C. Manuel, *Doing development differently: Delivering institutional reform at scale*. London: LDP, 2016.

<sup>2</sup> C. Manuel, *Politically smart approaches to donor investment climate programming – A guidance note*. London: LDP, 2016.

approach – which is conceptualised as an hour glass (see figure on next page) is not provided as a panacea. It does however offer new insights and ways in to tackling complex problems of institutional reform and organisational change, and governance issues which lie at the heart of investment climate programming.

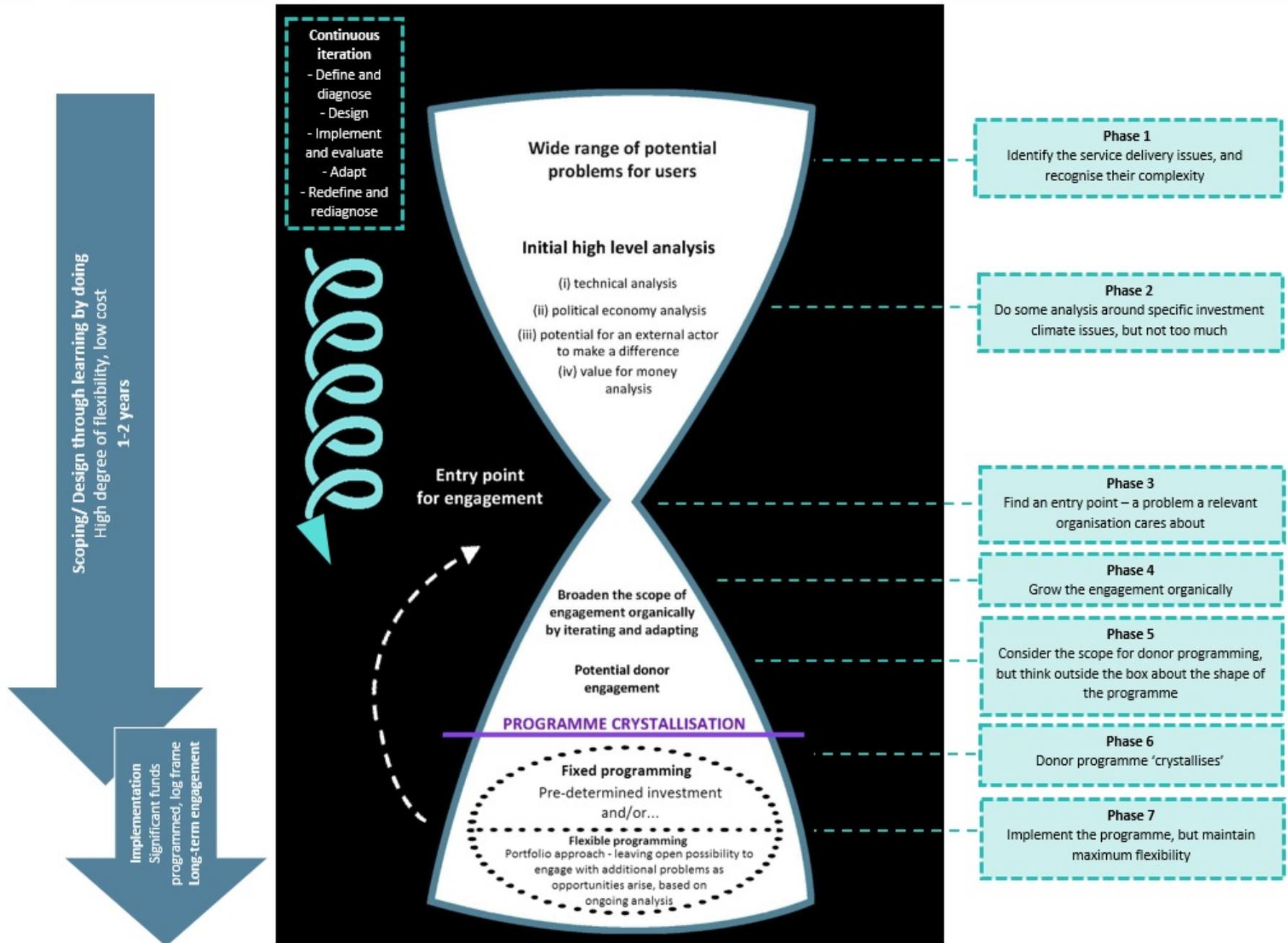
2. The hour glass approach is relevant to large scale (multi-million pound) donor interventions designed to improve one or more aspects of the investment climate at national, sub-national or regional level. Typical interventions could include for example: contract enforcement; business entry; tax administration; and licencing reform. The hour glass model suggests some changes to the way investment climate programmes are currently developed, in particular:
  - A lengthy scoping / design phase during which the key activity is not technical analysis, but rather a process of discovery and ‘learning by doing’ (in line with latest thinking about systems approaches)<sup>3</sup>;
  - Beginning the engagement where there is traction on the ground – a problem that a relevant organisation cares about, rather than what the donor or development practitioner perceives the problem to be (in line with ‘problem driven iterative adaptation’ thinking<sup>4</sup>); and
  - As far as possible, keeping money off the table during the design process, and instead focusing on working with local people to facilitate finding solutions to problems that they care about.
3. The hour glass approach to investment climate reform programme scoping, design and implementation has seven phases:
  - Phase one: Identify the service delivery issues, and recognise their complexity
  - Phase two: Do some analysis around specific investment climate issues, but not too much
  - Phase three: Find an entry point – a problem a relevant organisation cares about
  - Phase four: Grow the engagement organically

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<sup>3</sup> Miguel Laric (2012) ‘Systems change in the business enabling environment’. DFID Investment Climate Practice Note. London: DFID.

<sup>4</sup> Matt Andrews et al (2015). Building capability by delivering results: Putting PDIA principles into practice. In A Governance Practitioner’s Notebook: Alternative Ideas and Approaches (2015). Paris: OECD.

Figure: Doing investment climate reform differently - applying a new framework for DFID-U



- Phase five: Consider the scope for donor programming, but think outside of the box about the shape of the programme
  - Phase six: Donor programme ‘crystallises’
  - Phase seven: Implement the programme but maintain maximum flexibility
4. The approach, the evidence upon which it is based, and the reasons it was developed are discussed in the second synthesis paper<sup>5</sup>. This case study describes how the approach was applied in Uganda during 2015, following DFID-Uganda’s request for LASER to assist with scoping the potential for investment climate programming, based on regulatory, legal or institutional reforms. It follows the seven hour glass phases illustrating a process of discovery and learning by doing.

### **Phase 1: Identify the service delivery issues and recognise their complexity**

5. Initial, high level scoping undertaken by the LASER team revealed a long list of wide-ranging systemic investment climate constraints at national and local level. These included land administration systems, business registration and licensing, and non land secured transactions, and encompassed sector-specific issues such as regulation of seeds and other agricultural inputs. Sources included Uganda’s Competitiveness and Investment Climate Strategy, Doing Business and other indicators<sup>6</sup>, existing enterprise and other surveys<sup>7</sup>, existing analysis<sup>8</sup> including DFID’s recent Inclusive Growth Diagnostic, as well as exploratory discussions with members of the private sector and their representative organisations, donors and the Government of Uganda.
6. At the same time, the LASER team undertook a light-touch political economy analysis focused tightly on investment climate reform. The team drew on existing analysis, supplemented with interviews with a range of individuals and organisations with a strong grasp of the country context and the stakeholder landscape, with key conclusions triangulated where possible. The box below sets out the framework for the analysis.

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<sup>5</sup> C. Manuel, Doing development differently: Delivering institutional reform at scale. London: LDP, 2016.

<sup>6</sup> World Bank Group (2015) Doing Business 2015: Going Beyond Efficiency. Economy Profile, Uganda. Washington DC: World Bank. Heritage Foundation (2015) Index of Economic Freedom. Washington DC: Heritage Foundation.

<sup>7</sup> World Bank Group (2013) Enterprise Surveys: Uganda Country Profile. Washington DC: World Bank.

<sup>8</sup> US Department of State (2014) Investment Climate Statement. Kampala; UNIDO (2008) Creating an Enabling Environment for Private Sector Development in Sub-Saharan Africa. Vienna; Private Sector Platform for Action (2010) A Synopsis of Key Private Sector Growth Challenges and Proposals for Policy Reforms. Kampala.

### A framework for initial, contextual political economy analysis

Institutional framework: What is the architecture of relevant formal institutions? What are the relevant informal institutions? Do accountability institutions work?

Interests and incentives: What incentives and interests do institutions and their actors face? Does the structure of the economy favour particular groups? How is economic power concentrated (e.g. de facto monopolies, oligopolies)? How do economic and political interest combine? How are rents generated and from whom?

Ideas, ideology and legacy: What is the role of political ideology, and cultural / religious influences? What has happened to investment climate reform efforts in the past?

### Phase 2: Do some analysis around specific investment climate issues, but not too much

7. With a wide range of potential areas of intervention, and no overall international consensus about which IC reforms matter most<sup>9</sup>, the initial ‘long list’ of investment climate problems identified by the private sector and relevant actors were sifted by light touch high level analysis against four dimensions – (i) technical difficulty, including looking at the problem with a gender lens, (ii) political economy, (iii) the potential for DFID-U (as an external actor) to make a difference, and (iv) value for money. A simple matrix with a traffic light scoring system was used to undertake the analysis (see pro forma in annex). An example of a completed matrix can be found in annex C of LASER’s guidance on politically smart approaches to donor investment climate programming<sup>10</sup>.
8. The conclusion from the high level initial analysis was that contract enforcement / commercial dispute resolution provided the best option for further investment climate programming. Factors contributing to this conclusion included (i) that engagement with the Judiciary (rather than the executive) holds out the greatest prospect of success; (ii) that DFID / HMG has strong potential to add value in the contract enforcement/ commercial dispute resolution area; and (iii) that this engagement has the potential to offer value for money as likely benefits (reduced business costs; capital freed for investment; reduced transactions costs for small businesses) are likely to exceed the costs of intervening and offer an opportunity for sustainable impact. It should also be recognised that LDP’s prior commercial law and justice experience in Uganda (going back over twenty years) and strong institutional and personal relations are likely to have influenced the analysis.

### Phase 3: Find an entry point – a problem a relevant organisation cares about

9. In line with latest thinking on strategies for institutional reform, the aim of this sifting was to identify a realistic entry point around *a problem that local people care about*,<sup>11</sup> i.e. which is perceived as a significant problem by the private sector, and where there appears to be traction on the public sector

<sup>9</sup> See C. Manuel (2015) Is there a causal link between investment climate and growth? A review of the evidence London: LDP. Available at <http://laserdev.org/media/1106/laser-evidence-paper-the-link-between-ic-reform-and-growth.pdf>

<sup>10</sup> C. Manuel, Politically smart approaches to donor investment climate programming – A guidance note. London: LDP, 2016. Available at <http://www.laserdev.org/resources/>

<sup>11</sup> D. Booth and S. Unsworth (2014) ‘Politically smart, locally led development’. ODI discussion paper. London: ODI.

side to reform. The aim was to focus on ‘the art of the possible’ and to identify an issue with a realistic entry point which offered scope for successful initial, tentative engagement through taking a series of ‘small bets’ to test out appetite for change and scope for deeper engagement and significant reform.

10. Within the area of commercial dispute resolution / contract enforcement, an initial entry point was identified where it was judged that there was real traction for change on the public sector side. This was the Judiciary’s demonstrated will to address small firms’ difficulties with dispute resolution, through their piloting and then roll out of new Small Claims Procedures (SCP) in magistrate courts. SCP are streamlined, user friendly procedures for very small claims (less than US\$ 10 million / £1,700). The LASER team noted that this is the category of dispute from which the date used for the World Bank Doing Business score is generated, although this did not appear to have been a driver for this home-grown initiative.
11. Having discussed the issue with a wide range of agents within the Judiciary (including the leadership, middle-level and front line staff) the LASER team concluded that SCP pilot offered an initial feasible entry point for engagement. The LASER team agreed to provide support for monitoring and evaluation (M&E) initially of the pilot SCP system and then of the roll out.

#### **Phase 4: Grow the engagement organically**

12. A key aspect of the hour glass approach is that scoping / design takes place by a process of discovery. This involves working with local people to assist with understanding what lies at the bottom of problems, and facilitating them to find relevant local solutions. While the entry point for LASER engagement was supporting M&E for SCP, linkages to a much broader set of problems soon became clear, which involved the Judiciary as a whole. These included the need for improved budgeting, with clear linkages to performance, which linked to the need for improved M&E across the board, including performance management. These issues emerged not through an analytical process, but primarily through a process of discovery involving close engagement with local counterparts. The problems are ones that local actors have identified, and care about. This phase of the engagement was characterised by:
  - Slow build: Scoping took place over an extended, seven month period, and focused on ‘learning by doing’ by supporting the Judiciary with their SCP pilot. The premise was that identifying, defining and deconstructing a problem takes time, let alone finding solutions to it.
  - Incremental working: An offer to help with evaluating the SCP pilot was made. The next stage was to facilitate the development of a monitoring and evaluation system for the proposed roll out. This was followed by an offer to facilitate the development of a phased roll out plan, work on which is ongoing. Throughout, the focus was on working with local people to help them to define and deconstruct the problem, taking as a starting point a key priority for the Judiciary, and finding solutions that worked in the Ugandan context.

- No funding on the table: Financial support was not offered. The ‘offer’ was of immediate highly flexible technical assistance (rather than programming significant funds), with no pre-set agenda beyond contributing to improving the business environment for investment and growth.

**Phase 5: Consider the scope for donor programming, but think outside the box about the shape of the programme**

13. The SCP offered LASER an initially narrow entry point for engaging with the Judiciary on commercial dispute resolution. But there is potential, as trust is consolidated, value is added and successes achieved, for this initial ‘small bet’ to broaden into a wider engagement which could be taken forward by DFID-U.
14. At the time of writing, LASER’s engagement with the Judiciary is continuing, but after a period of about seven months, LASER set out options for DFID-U to take forward scaled-up programming to address commercial contract enforcement and address the emerging broader issues described in paragraph 12 above. Alternatives to a new stand-alone programme contracted out to a service provider (which DFID-U did not favour) were considered and included consideration of a payment by results mechanism, and ‘piggy-backing’ off existing DFID-U or other donor programmes.

**Phase 6: Donor programme ‘crystallises’**

15. At the time of writing it is unclear whether DFID-U will decide to strengthen its engagement with contract enforcement in Uganda, in the light of competing country level priorities. However, LASER is taking opportunities to engage with existing donor programming in the form of the Judiciary support component of Danida’s Uganda Good Governance programme (2011-2016). The Danida programme provides funds and advice to support the SCP pilot including through an embedded adviser. The Danida adviser values the insights and approach that an external, more arm’s length actor can bring, including facilitation and strategic planning skills, which are seen as complementing Danida’s support
16. If DFID-U were to add to this, and provide further support, the next phases would be as follows.

**Phase 7: Implement the programme, but maintain maximum flexibility**

17. Programme crystallisation involves setting in stone the function of donor assistance (for example technical advisory services, support to automation, institutional strengthening) as well as the form (for example engaging a service provider, direct financial aid, or a payment by results mechanism). Once a programme has crystallised, and substantial funds have been committed, the dynamic may change between ‘donor’ and ‘recipient’, and may impact on the relationship of trust that has been built up during the design / discovery phase. In addition, depending on the design, the programme may have its own institutional presence, and convening power, which changes the political dynamic.
18. This is why the hour glass approach is for the form and function of the donor programme to be determined only after a substantial period of learning by doing, discovery, problem de-construction and facilitating local people to identify relevant solutions to their context. Once a programme has

crystallised and implementation starts, latest thinking<sup>12</sup> suggests that flexibility should be maintained, within the framework of donor accountability requirements, through adaptive management<sup>13</sup> processes. The process of discovery and thus of on-going, adaptive design should therefore continue after programme crystallisation and throughout implementation.

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<sup>12</sup> For example World Bank (2015) World Development Report 2015 – Mind, society and behaviour. Washington DC: World Bank.

<sup>13</sup> See LASER Third Synthesis paper – forthcoming.

## Annex: Pro forma 'traffic light' matrix (phase 2)

Investment climate issue	High level initial analysis of investment problems			
	(i) Technical issues and level of difficulty to resolve (including looking at the problem with a gender lens)	(ii) Political economy issues	(iii) Potential to make a difference?	(iv) Value for money (likely impact vs estimated cost)
1.				
2.				
3.				
4.				
5.				
6.				