



Legal
Assistance
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Reform

Rwanda Pilot Case Study: PDIA in practice during the LASER pilot - Domestic Resources

DFID Legal Assistance for Economic Reform Programme

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Abstract: *This case study was developed as part of LASER's initial one-month pilot engagement in Rwanda. It explores how to take a problem-driven approach in supporting the Government and other stakeholders to identify and deconstruct problems, in this case relating to domestic revenue losses arising from poor contract drafting and management. LASER's experience in supporting stakeholders to help address these problems is set out in detail in a subsequent country case study. Together these all form part of a suite of LASER products on doing development differently.*



Context

1. LASER (Legal Assistance for Economic Reform) is a DFID-funded programme that aims to improve investment climates in eight developing countries by helping to identify and solve commercial law and justice problems, as well as documenting and sharing lessons about how to do this. Problem driven and iterative in nature, LASER supports partner governments to develop initiatives that are country owned and led. Its logframe commits to activities under broad outputs, but the specifics are determined at the country level on a rolling basis.
2. A scoping mission was undertaken to Kigali, Rwanda in November 2013 to investigate the potential for a LASER Rwanda pilot. A LASER one-month pilot was then undertaken in Kigali in February 2014 with a short-term LASER Adviser embedded in the Rwandan Ministry of Justice (MINIJUST). The objectives of the pilot were to (i) develop, explore and test what a problem driven approach means in practice in a commercial law and justice (CLJ) context; and (ii) test GoR support for a substantive CLJ initiative in Rwanda during LASER's implementation phase, through design of a short term work plan.

Identifying the Problem¹

3. In meeting with stakeholders during the LASER Rwanda pilot it became clear to the resident adviser that there was a problem relating to the availability and use of domestic resources. The Second Economic Development and Poverty Reduction Strategy (EDPRS 2) was designed at a time when Rwanda was receiving significant on-budget aid from development partners. However, over recent years levels of foreign aid (on and off budget) have been significantly falling and therefore to achieve EDPRS 2 objectives it is critical for the Government of Rwanda (GoR) to enhance domestic revenue and/or to ensure resources are more efficiently used. The GoR has prepared a comprehensive revenue mobilization plan, with new measures including: (i) revising the Investment Code (to reduce certain tax exemptions), (ii) introducing a royalty tax on mining, and (iii) increasing value added tax².
4. However, work is needed to reduce inefficiencies and there are clear signs of leakages in the commercial justice sector. The Minister of Justice, as well as other key stakeholders, recognize the large amounts that the GoR is losing through litigation. "Poor contractual drafting, management decisions taken without legal advice as well as deliberate flouting of tendering laws has cost the government over Rwf2.3 billion (US\$3.4 million) in court awards and compensation"³ – and that just refers to losses from Government ministries and provinces, not all public bodies. This clearly identified problem was explored further through a problem deconstruction process.

¹ This case study draws out experiences during the pilot period of LASER in February 2014. A later case study on "contract management" draws out how the steps proposed during the pilot and outlined here, were implemented in practice. The views expressed are those of the authors and not any of the specific parties mentioned herein.

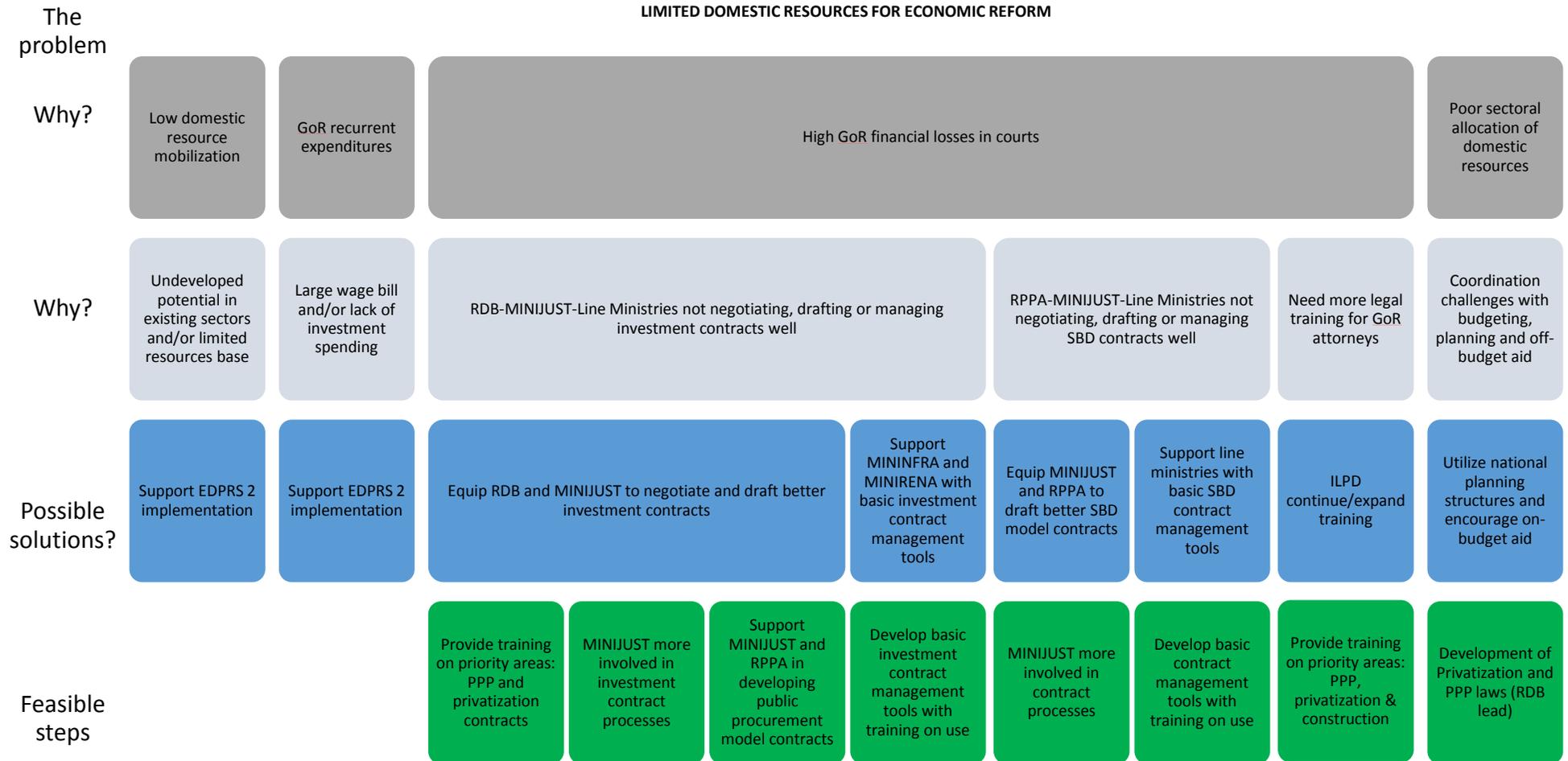
² World Bank, Rwanda Economic Update: Seizing Opportunities for Growth, 2013 and 2013/14 budget speech

³ Minister of Justice, "Government outlines plans to cut litigation losses", New Times, August 2013

Deconstructing the Problem

5. First, in 2008, following a business law reform task force recommendation and as part of its focus on improving Doing Business indicators, Rwanda established the commercial courts. The commercial courts have largely been successful, and helped contribute to reductions in case backlogs, and have received recent support from the Investment Climate Facility for Africa. However, various problems still remain as captured in the Justice, Reconciliation, Law and Order Sector Strategy 2013-2018 (JRLOS 2):
 - a. Court processes remain lengthy, in part due to automatic rights of appeal
 - b. Total cost of enforcing a contract remains high
 - c. Alternative Dispute Resolution (ADR) mechanisms need to be utilized
 - d. Computer systems need to be more integrated and upgraded
 - e. Stakeholders need to be more involved in the reform
6. Many of these challenges were discussed with stakeholders, to determine where the priority lies for LASER to potentially contribute, with the main finding being that the best entry point would be pre-courts, to deter cases, rather than deal with more cases. In meeting with the Kigali International Arbitration Centre (KIAC), it was clear that their establishment in 2012 had been in response to the need to reduce litigation, and now all GoR contracts are required to direct disputes to ADR rather than to litigation.
7. Second, exploring this further with MINIJUST, the following was discussed: is the main problem to do with the quality of contracts or the contract management process? If the former, is it to do with legal or commercial terms, and if the latter, why are ministries struggling to manage contracts? Which contracts and/or line ministries need the most help? There are significant challenges with the size and complexity of investment contracts, which line ministries can't appropriately manage. However, a key problem appeared to be that with day-to-day public procurement, line ministries were not using model contracts to enter into contracts and instead using contracts provided by the other parties which were drafted largely in the firms' favour and which were difficult to monitor going forward given the lack of consistency (so breach was common).
8. This led to discussions with the Ministry for Infrastructure (MINIFRA), which enters into routine public procurement contracts on roads and which requires a high quality model contract. Through these discussions it became clear that the Rwanda Public Procurement Authority (RPPA) and MINIJUST was in the process of finalizing 44 sets of Standard Bidding Documents (SBD) for (1) provision of goods and services, (2) large works, (3) small works, and (4) services. A key problem was not having high quality model contracts for all line ministries to use as part of the standard bidding documents SBDs. In summary, it was determined that the main problems centred on both contract drafting (need for high quality model contracts) and improving contract management processes (for public procurement) – which complemented, and could be addressed together with, the need to improve management of complex investment contracts. The diagram on the next page illustrates the problem deconstruction process.

Illustrating Problem Deconstruction and Identifying Solutions



Determining Feasible Steps

9. In the diagram the areas shaded in green comprise feasible steps and are complementary to efforts being undertaken by other stakeholders. There are a number of actors involved in ensuring contracts are appropriately drafted, negotiated and managed, for example, legal officers in line ministries, MINIJUST and RPPA for starters. Stakeholders largely agree that the GoR champions for this reform are the Minister of Justice and Minister of Infrastructure as both those ministries will benefit from reducing losses over contracts. The problem hinges on a combination of insufficient training of GoR legal officers and procurement rules not being followed. What's key is equipping parties to work better together and establishing positive norms of engagement.

Proposed Way Forward

10. It's clear that economic reform efforts can be better supported by stemming financial leakages from the commercial law and justice sector. It was possible to deconstruct the problem and identify the following priority areas for LASER to support:

Feasible Step 1: model contract development

11. The potential impact from being able to create and roll-out high quality model contracts is enormous. For all line ministries to be equipped to enter into fair contracts would help reduce disputes and losses to the GoR. As mentioned above, poor contracts cost the GoR millions of dollars a year. Specific champions for this reform include MINIJUST (suffering the most from litigation losses identified above) and MININFRA (which requires a model contract for the supervision of works to use in public procurement).

Quick Win during Pilot

During the pilot, the LASER Adviser was able to review and strengthen a very early draft Model Contract for Goods and Services. The Adviser worked closely with the MINIJUST team to create a significantly improved Model Contract and the Adviser created an accompanying Drafting Note setting out what has been done, why and proposing clear next steps for MINIJUST to follow. At the end of the pilot these were being put forward for GoR approval and to be rolled-out to line ministries.

Feasible Step 2: Strengthen contract management processes (training and tools)

12. There is clear need to develop basic tools (e.g. visual aids/dashboard templates) to help legal advisers/project managers in line ministries to more easily monitor parties' obligations and rights. Combining this with high quality model contracts and with training on contract management by the Institute of Legal Practice and Development (ILPD), drawing on pro bono support, will help to maximise impact. Specific champions for this reform include MINIJUST, MININFRA (key line ministry in need of contract management) and ILPD (in charge of training).