



Legal
Assistance
for Economic
Reform

Rwanda Case Study: Enhancing Government contract management processes to stem significant financial losses

DFID Legal Assistance for Economic Reform Programme

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Abstract: *This case study explains how a LASER resident adviser's ability to think and work politically on the ground in Kigali enabled her to support the Ministry of Justice (MINIJUST) and Institute of Legal Practice & Development (ILPD) to strengthen the management of Government contracts to help stem significant financial losses. The programme was able to work across institutions and support the development of tools and training for Government legal officers, strengthening existing Government systems to enhance sustainability. It comprises one of a suite of LASER products and illustrates phases one to five of LASER's seven-phase hourglass methodology for undertaking institutional reform.*



The Legal Assistance for Economic Reform (LASER) programme is a £4.3 million DFID-funded initiative (2014-17) implemented by The Law & Development Partnership (LDP) and KPMG that supports developing countries to strengthen their investment climates. LASER works with developing countries, including fragile and conflicted affected states (FCAS), on investment climate and institutional reforms including offering assistance to support the design and implementation of effective donor programming and leverage legal technical assistance, including pro-bono expertise. LASER shares lessons learned about what works and does not work, and partners directly with:

- Developing country governments (including Ministries of Justice, Commerce, Trade and the Judiciary) – in a demand driven, politically informed and highly flexible way; and
- Donors (such as DFID and the World Bank Group) on the design of large-scale investment climate / institutional reform programming which incorporate flexible, adaptive approaches.

LASER focus countries are Bangladesh, Kenya, Myanmar, Uganda, Rwanda, Sierra Leone, Somaliland and Tanzania.

This guidance note is part of a suite of LASER products which develops latest thinking on approaches to investment climate and 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/>. This note assumes some familiarity with those approaches (see LASER synthesis papers, which discuss the approaches in detail) and draws on a wide-ranging literature review; on experiences under the LASER programme; on discussions with implementers of other like-minded programmes¹; on a recent review undertaken by LDP of DFID and other donor justice programming²; and more generally on LDP's fifteen years' experience of working on investment climate issues on the ground.

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Context

1. There is no 'one size fits all' formula for taking a problem driven iterative adaptation (PDIA) approach, though there are a series of guiding principles³ which LASER has curated into a seven-phase hour glass methodology⁴. These seven phases are:
 - Phase one: Identify the issues (service delivery problems or deficiencies with the existing programme)

¹ Including Nigeria State Accountability and Voice Initiative (SAVI), the Budget Strengthening Initiative (BSI) and Nigeria Facility for Oil Sector Transparency and Reform (FOSTER).

² The Law & Development Partnership (2015) The Application of Problem Driven Iterative Adaptation approaches to DFID S&J assistance. London: LDP.

³ 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) OECD

⁴ LASER's second synthesis paper 'Doing Development Differently – Delivering institutional reform at scale' (Oct 2015) and LASER's Guidance Note 'Politically smart approaches to donor investment climate programming' (2015)

- Phase two: Do some analysis around sector-specific issues, but not too much
 - Phase three: Find an entry point - a problem that a relevant organisation cares about
 - Phase four: Growing the engagement organically
 - Phase five: Consider the scope for donor programming, but think outside the box about the shape of the programme
 - Phase six: Donor programme crystallises
 - Phase seven: Implement the programme, but maintain maximum flexibility
2. This case study illustrates phases one to phase five above which focus on identifying problems, carrying out initial analysis, determining entry points, and growing engagements organically. LASER in Rwanda has focused on supporting existing structures and mechanisms rather than taking a donor programme to scale (phase six and phase seven of the Hourglass). For more details on the Hourglass methodology please refer to the LASER synthesis papers.

Phase 1 and 2: Identifying issues and initial analysis

3. LASER undertook a scoping mission to Kigali in late 2014 to assess local demand for deeper engagement, get a sense of the lay of the land and carry out some initial analysis. This comprised considering what might be both technically possible and politically feasible. As there appeared to be strong demand for LASER's services, particular from the Ministry of Justice (MINIJUST), LASER designed a more detailed pilot to take place in February 2015 with a Resident Adviser on the ground in Kigali to explore problems and potential entry points in more detail.

Phase 3 and 4: Finding entry points and growing the engagement organically

4. During the pilot, a lack of foreign direct investment (FDI) was a problem which the Ministry of Justice (MINIJUST) appeared to care most about and was an entry point for a further, problem deconstruction process to be undertaken on the ground. Insufficient FDI had been critically holding back Rwanda's growth prospects without which the target growth rate (11.5%) in the Second Economic Development and Poverty Reduction Strategy (EDPRS2) could not be achieved in the short to medium term. But why was such an economic issue a priority for MINIJUST?
5. Through consultations with various stakeholders⁵ both it became clear that poor contract management processes were hindering Government-investor relationships. Not only were these problems resulting in less FDI, but it was also costing the Government significant amounts in delays and damages (which was reflecting poorly on MINIJUST as well as others). For example, the Office of the Auditor General's report for the financial year 2012/13 stated that poor implementation of construction works resulted in delays to 45 contracts (with a value of 23 billion RwF/approximately £21 million). As a result of the pilot, at the request of the Minister of Justice, a resident adviser was embedded in the Ministry of Justice for one year (2014-2015) to tailor a

⁵ See LASER Rwanda pilot report (2014)

range of support to strengthen contract management processes (as well as other work streams⁶) working closely with identified champions – MINIJUST, the Institute of Legal Practice and Development (ILPD) and Rwanda Development Board (RDB).

6. Having an embedded adviser enabled LASER to explore the contract management problem in more detail. The Resident Adviser first mapped and then consulted key stakeholders including the Director of Monitoring and Evaluation at the Rwanda Public Procurement Authority (RPPA), the Ministry of Infrastructure (MININFRA) Legal Adviser and the Director of Planning at the Rwanda Transport Development Agency (RTDA) (box below).

Box: Initial Stakeholder Mapping for Contract management
<ul style="list-style-type: none"> ▪ RPPA: public procurement law, standards, capacity building and monitoring ▪ Line ministries : management of specific projects ▪ MINIJUST: coordination, standards and capacity building of legal officers, management of litigation and overall legal adviser to government ▪ RDB: enable private sector growth, attract and negotiate with large investors ▪ ILPD: legal training and research for the justice sector

7. The Resident Adviser used a combination of soft skills techniques including ‘STAR’ and ‘5 Whys’ to gather information from these sources (see box below and LASER’s ‘Politically smart approaches to donor investment climate programming: A Guidance Note (2015)’). The decision on which technique, or combination of approaches, to use was largely a judgment call by the Resident Adviser based on an assessment of personalities and the type of knowledge each person held (see description of techniques below – further information can be found in LASER ‘Monday Morning in Kigali: What do you do when you get off the Plane? Practical guidance for PDIA practitioners (2014)’).

Soft Skills Techniques
<ul style="list-style-type: none"> ▪ STAR = asks short open questions in a structured way to gain a full picture of a problem. Questions focus on 4 key areas: Situation, Task, Action and Result. ▪ 5 Whys = seeks to quickly understand the root cause of a problem by asking Why? And what caused this? Why did that happen? Etc in an iterative way. ▪ Bridges Transition Model = a supportive tool particularly when groups are change averse or resistant. William Bridges’ developed his Transition Model to illustrate that, during a time of change, the transitional period is as important as the change itself. ▪ Current State to Desired State methodology = by creating a strong image of the desired state and comparing it with the current state this Neuro-Linguistic Programming based methodology uses a non-linear analysis to identify key actions. ▪ The Disney Strategy = this technique was originally formulated by Robert Dilts, a NLP expert. This creative, problem solving process aims to examine an issue from 3-4 key perspectives including the ‘dreamers’, the ‘planners’ and the ‘critics’.

⁶ See other LASER Rwanda case studies for further information.

■ **Appreciative Inquiry** = is a method for studying and changing social systems (groups, organizations, communities) that advocates collective inquiry into the best of what is, in order to imagine what could be.

8. Through this process, the primary ‘root problems’ to poor contract management were identified as (i) delays by suppliers; (ii) delays by the Government procuring entity in executing payment; (iii) disputes due to poorly drafted specifications and terms of reference; and (iv) poor day to day monitoring of obligations by the Government procuring entity. Behind these problems, appeared to be a combination of challenges relating to a lack of contract management tools and the need for greater accountability and training for legal officers.

Phase 5: Thinking outside the box

9. The LASER Resident Adviser undertook a review of draft model contracts and development of contract management tools. Perspectives on contract management challenges were sought from international law firms with experience in Rwanda, international business people involved in major infrastructure investments and from RDB’s Strategic Investment Unit.
10. Through the process it became clear that Government officers needed more training on the ‘Ministerial Instructions on Contracts’ that provided guidance on roles and responsibilities and the requirement to use Government model contracts. Accordingly, training needs were explored more with ILPD with a particular focus on construction contracts as these were some of the largest for the Government.
11. LASER supported ILPD and MINIJUST to design a training session on how to use and manage the Government’s construction model contract – which was contextually relevant and provide an opportunity to teach drafting in detail. LASER was also able to provide support for policy guidance on the risks involved in different types of construction projects and how to address these in drafting contracts.
12. Thinking outside the box, LASER was also able to support MINIJUST in establishing a sustainable mechanism for Government to identify legal expertise going forward. LASER worked with MINIJUST to encourage line ministries to allocate budgets for hiring legal assistance (on a fee basis) going forward. By way of guidance, LASER helped MINIJUST clarify what matters would (and would not) be appropriate for line ministries to outsource to private legal providers. In addition, LASER helped MINIJUST develop a list of international law firms willing to provide pro bono advice and guidance on how best to access it. To strengthen existing Government structures, LASER encouraged the list of pro bono firms and guidance about accessing these resources be shared with the Major Projects Units in the Presidency and Ministry of Finance. The Units are well placed to encourage government institutions with major projects to engage external legal support early on and reiterate key contract management messages including on coordination.
13. More widely, and complementary to the above, LASER supported MINIJUST in quarterly cross-ministerial legal officer meetings to continue to remind officers about updates to contract management processes, tools and training. It was an opportunity to share information, seek feedback and build support for change amongst legal officers across different line ministries,

within a country-led, legitimate forum. The meetings were attended by the Minister and provided a helpful authorizing environment for coalition building⁷.

Looking back: What change has occurred?

Improved coordination – Given the prominent role of procurement in contract management processes, LASER encouraged the Government to include procurement officers in the legal officers’ coordination meeting. Although initially resisted, it was well received in the end and resulted in requests for a range of other stakeholders to be included in discussions about efforts to improve contract management. In this way we are supporting local efforts at collaboration across institutions, or “multi-agent groups for change”.

Tools based on need – LASER supported a contract management tool to be developed in close coordination with MINIJUST which was shared with legal officers for feedback before finalisation. LASER also engaged the UK Treasury Solicitors to help MINIJUST develop further tools, based on the needs that were identified at the legal officers’ coordination meeting.

Compliance and accountability – Compliance with Ministerial Instructions and model contracts will now be measured through the quarterly reports. Each Chief Budget Manager will approve the report for their institution before submitting it to MINIJUST. Information gathered from the reports will be shared with institutions to discuss areas for improvement and understand common trends and challenges. Further change is expected during implementation.

Improved capacity – LASER is supporting implementation of multiple activities that aim to build capacity to manage contracts. The evolution of the component on contract management reflects a problem driven iterative approach. The component originally included drafting model contracts and contract management tools. It has expanded to embedding these documents within construction law training, on-the-job support to MINIJUST to improve coordination and developing mechanisms to enhance Government access to commercial and pro bono legal services.

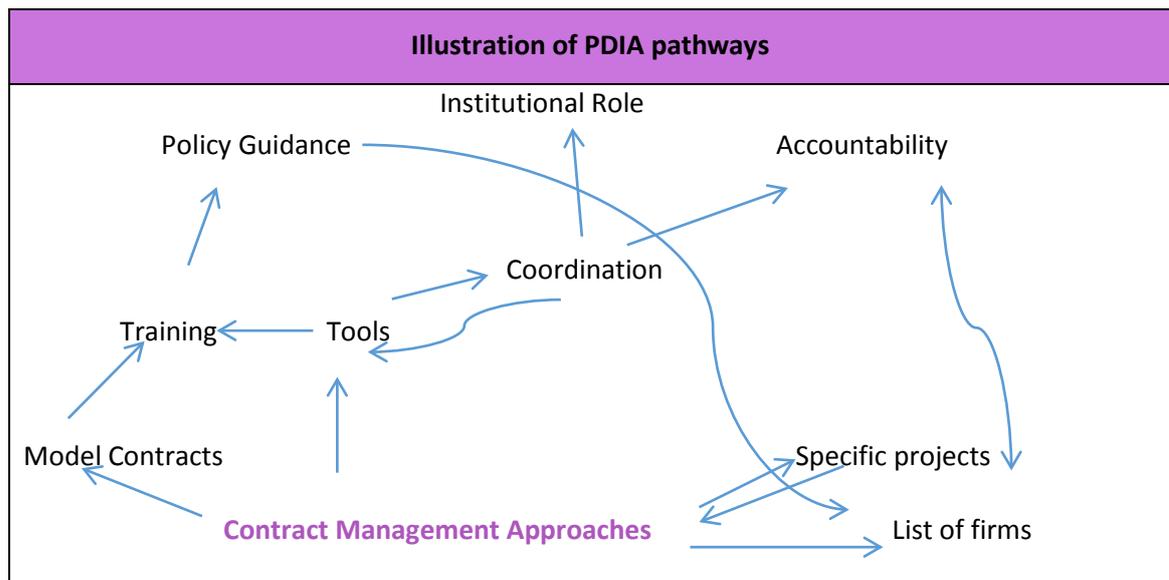
Lessons learnt

14. A problem driven approach helped ensure the programme focused on issues that were both a priority for the government and a major obstacle to economic reform. It required consultation and exploring different angles, which took time. Though the benefit was to provide the required space to consider the inter-relatedness of problems and how initiatives could complement each other. However, such an approach requires careful management of developing country government expectations because not all possible solutions will be pursued.
15. It was necessary to balance an iterative process with starting initiatives quickly to demonstrate responsiveness. Further needs will always be identified as the familiarity and understanding of the context is deepened, relationships built and as the context changes. Workplans need to be able

⁷ 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) OECD

to accommodate this flexibility by enabling initiatives to be added as contextual knowledge is strengthened. Advisers and technical staff need to remain open to new opportunities and to embrace constant change. On the programme, this required continually focusing on and returning to the problem rather than becoming fixated on a proposed solution.

16. LASER’s approach to strengthening contract management recognized that there can be many causes of, and potential solutions to, a problem. That is, it acknowledges the multiplicity of factors that affect change. Such an approach means that it is harder to pinpoint which single reform had the largest impact and requires careful examination of the programme’s monitoring and evaluation mechanisms.



17. In Rwanda, a highly centralised context, PDIA and multi-institutional support can be easily confusing for government institutions that are used to donors supporting a specific institution, with activities and partners clearly defined at the outset, rather than focusing on a cross-cutting, cross-institutional evolving problem. Good relationships and coordination is required, particularly with the host institution, to make this approach work.
18. In addition, while LASER is flexible it is focused on legal support. Yet often a problem requires a multi-sectoral response. For example, strengthening contract management requires financial, technical, and sector specific commercial knowledge that LASER may not necessarily be in a position to provide. As noted above, it may also be challenging for government institutions to obtain authorizing and convening power on a multi-sectoral problem. This lesson echoes findings of the Vale Columbia Center on Sustainable International Investment in developing the contract negotiation portal. The early evidence therefore points to the value of exploring the potential for a future PDIA programme that could provide integrated support across multiple sectors. Ideally such a programme would be housed within a central coordinating institution – such as a Prime Minister’s Office.