



Kenya Case Study:  
Exploring how to use a problem-  
driven iterative adaptation approach  
in restructuring pre-existing  
institutional reform programmes

DFID Legal Assistance for Economic Reform Programme

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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. 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 in fragile and conflict affected states, and current countries of operation are: Bangladesh, Kenya, Burma, 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 [www.laserdev.org/resources](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's synthesis papers at [www.laserdev.org/resources](http://www.laserdev.org/resources).

## Introduction and background

1. This paper explores how LASER used a problem-driven approach to support the Kenyan Judiciary and the World Bank to incorporate characteristics of a PDIA approach into a pre-existing large-scale justice sector reform programme in Kenya, mid-way through the programme's life cycle.

2. The PDIA<sup>1</sup> approach and methodology, as coined by Matt Andrews, is discussed and conceptualised in two recent LASER publications<sup>2</sup>. The PDIA agenda calls for a more country-led, nuanced, adaptive approach to institutional reform, with a continued focus on locally identified problems from the perspective of the beneficiary institution.
3. Whilst other LASER case studies explore how to design new programmes using the PDIA approach, this paper tests the practical application of the approach in justice sector reform programmes that are already underway, and describes how pre-existing programmes can be practically refashioned to incorporate characteristics of PDIA. Although the academic literature on PDIA is quite limited, there is an example of where this approach has been tried before in the justice sector (see box below).

**Box: Mozambique – Using PDIA to reinvigorate an existing justice sector project<sup>3</sup>**

In Mozambique, the multi-donor integrated System for Justice Sector Planning, Monitoring and Evaluation (SIPMAJ) project was intended to create a joint information database, gathering different sets of data relevant to the justice sector. However, by 2012, there was no system in place in the justice sector, despite disbursements of between \$5-7million, with no evaluations or formal assessments to explain why SIPMAJ had not delivered. Matt Andrews of the Center for International Development at Harvard University and World Bank staff members helped the Ministry of Justice undertake action research, to try and re-tell the reform story in Mozambique. This involved empowering a local ‘reform group’ to hold regular, facilitated engagements at which the problem would be agreed, and ideas for action would be determined, with a purposive approach taken in choosing the actions. The real value of the PDIA approach was realised, with the assembling of a larger set of data than had previously existed in the sector, within eight months of the project’s inception. This data was combined into a spreadsheet that was readily accessible by members from statistical bureaus across the sector. Moreover, the iterative process has helped the local reform group to learn to identify and respond to problems as they arise.

4. In Kenya, the Judicial Performance Improvement Project (JPIP) is a \$120 million, four-year World Bank financed project aimed at improving the performance of the Judiciary to provide its services in a more effective and accountable manner. However, by early 2015, almost halfway through the project’s life cycle, the project had not been able to fully support key reforms in the Kenyan Judiciary and was suffering from low disbursement levels (approximately 9%). The Judiciary felt unable to access funds

<sup>1</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) OECD.

<sup>2</sup> 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)

<sup>3</sup> Matt Andrews, in his CID Working Paper No.278 (2014) ‘Can one retell a Mozambican reform story through Problem Driven Iterative Adaptation?’ explores whether and how the problem driven iterative approach could re-design a large-scale justice sector reform programme in Mozambique.

in a sufficiently timely and flexible manner, and were becoming increasingly disengaged from the project.

5. Whilst there is no ‘one size fits all’ instructive formula for taking a PDIA approach, there are a series of guiding principles or ‘characteristics’ of PDIA to direct practitioners<sup>4</sup>. LASER has curated these principles into a seven-phase hour glass methodology<sup>5</sup> that describes the steps for ‘doing development differently’ using a PDIA approach. Whilst other LASER publications use the hour glass to illustrate how to design *new* donor interventions, and though restructuring an existing institutional reform programme is a distinct task, through our experience on LASER Kenya we have found that the typology of the hour glass phases are also applicable when retrospectively incorporating PDIA into existing institutional reform programmes:
  - i. **Phase one: Identify the issues (service delivery problems or deficiencies with the existing programme)** - LASER took a problem-approach and engaged quickly and productively with the Judiciary to provide immediate support to a locally-driven alternative dispute resolution (ADR) retreat when no other support was available.
  - ii. **Phase two: Do some analysis around sector-specific issues, but not too much** - By linking in with local Judiciary processes and taking a problem-led approach, the structural and communication issues with the existing donor programme (JPIP) also became apparent.
  - iii. **Phase three: Find an entry point - a problem that a relevant organisation cares about** - The ADR retreat provided the opportunity for problem oriented analysis of the needs of the Judiciary, and led to meetings with the World Bank which identified a further ‘entry-point’ problem in the institutional context of the World Bank, of very low project disbursement and their consequent need for assistance with restructuring of the project.
  - iv. **Phase four: Growing the engagement organically** - LASER continued to work directly with the Judiciary on the court-annexed mediation pilot and iterate through the constraints of the political and administrative incentives of the Registry to incrementally build towards launching the pilot. This engagement grew into a parallel offer of support to the JPIP task team to help re-focus the project onto locally-defined problems, while still operating within the donor’s own engagement framework.
  - v. **Phase five: Consider the scope for donor programming, but think outside the box about the shape of the programme** - LASER supported the donor in restructuring JPIP from an input-based, to an output-focused, approach such that the restructured project framework incorporates PDIA characteristics.

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<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) OECD

<sup>5</sup> 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)

- vi. **Phase six: Donor programme (re-) crystallises** - The project was re-conceptualised to incorporate the output-focused programme delivery components.
  - vii. **Phase seven: Implement the programme, but maintain maximum flexibility** - As the JPIP restructure rolls out, the programme’s political dynamic may change. LASER will therefore provide ongoing support to both the Judiciary and JPIP, in a problem-driven manner to help ensure the project continues to be output-focused and adaptive to user needs, maintaining maximum flexibility in doing so.
6. Whilst it would be a stretch to characterise the restructured JPIP as a ‘PDIA programme’, this case study does show that by taking a problem-driven and iterative approach to complex, pre-existing reform programmes, it is possibly better to identify and respond to local needs that tend to be unseen in conventional reform designs. This case study describes how characteristics of the PDIA approach were incorporated into JPIP during the course of 2015, following the Kenyan Judiciary and the World Bank’s direct requests for assistance.

### Using a PDIA approach to diagnose deficiencies in existing institutional reform programmes

#### Phase 1: Identify the issues (service delivery problems or deficiencies with the existing programme)

- 7. LASER took a problem-focused approach to its engagement in Kenya, developing an initial opportunities matrix that identified where the existing energy and momentum lay in terms of commercial law and justice (CLJ) reforms that LASER could support. During this process LASER held scoping discussions with several senior members of the Judiciary, one of whom approached LASER with a request for assistance.
- 8. The Judiciary explained that ADR had been a key priority and focal point of internal discussion within the Kenyan Judiciary for more than 15 years, yet they were unable to access adequate funding to hold a necessary ADR retreat that had been planned for many months. The retreat was to provide a crucial forum to discuss possible alternative dispute resolution models that could be piloted in the commercial division of the High Court in Kenya. LASER undertook, at short notice, providing technical, financial and facilitatory support necessary for the planned retreat, and arranged a South-South partnership by organising the attendance of senior judicial officers from Nigeria and Uganda with experience of implementing court-annexed ADR.
- 9. By supporting the Judiciary and going ‘where the energy was’ in facilitating the retreat in a timely and effective manner, LASER was able to help sustain the momentum of political will and energy garnered within the Judiciary for an ADR mechanism to be trialled in Kenya.

#### Phase 2: Do some analysis around sector-specific issues, but not too much

- 10. The ADR retreat provided LASER with the opportunity to undertake a problem-approach in analysing the needs of the Judiciary. By linking in with a local Judiciary initiative, the open engagement of the

retreat threw up an early diagnosis of some of the structural problems with the \$120 million JPIP project, as well as initial exploratory discussions on how the project could be better structured.

11. Through follow-on scoping discussions held separately with the World Bank JPIP team, and with senior members of the Judiciary, it became apparent that JPIP channels of communication were insufficient, that there was a limited sense of participation amongst Kenyan stakeholders and that key concerns about the systems, processes and lending mechanism of the programme had not been addressed. Meetings with the World Bank task team identified a further ‘entry-point’ problem in the institutional context of the World Bank, of very low project disbursement and their consequent need for assistance with restructuring of the project.

### **Taking a problem-driven approach to apply PDIA characteristics into an existing reform programme**

#### **Phase 3: Find a (re-) entry point – a problem that a relevant organisation cares about**

12. Whilst the ADR retreat allowed the Kenyan Judiciary to collaborate and agree on the importance of a court-annexed mediation pilot as an entry point for CLJ reform, and discussions with the World Bank identified a need for restructuring of the JPIP to address disbursement constraints, it was important to find a (re-) entry point that was politically supported, technically feasible and met local needs.
13. LASER therefore took an inclusive and participatory approach to problem deconstruction in Kenya and convened a series of bilateral and group consultations to ‘test’ uptake for the pilot, better understand what others are doing in the justice sector, and to understand where the gaps lie in the architecture of justice sector reform.
14. It was hoped that the consultations would not only raise locally identified problems, but also throw up suggestions for locally derived solutions and lessons learnt, and help fill key evidence gaps behind JPIP.
15. LASER undertook a mapping of justice sector actors in order to identify suitable stakeholders for the consultations. These consultations were open and participatory, and included a broad, but strategic cross-section of Kenyan legal, academic, civil society and private sector representatives to ensure that both JPIP and the Judiciary began to re-build local understanding and ownership of the project. Further, LASER facilitated the consultations to ensure that each was steered productively to grapple with the issue of ‘where the energy’ lies in justice sector reform, and considered what the most pressing locally identified problems are for the sector.
16. LASER undertook a detailed analysis of the recommendations and issues raised during the course of the consultations, in order to prioritise the crucial problems and concerns that JPIP could feasibly (technically and politically) take on-board, and distilled these into briefing notes for the mid-term review (MTR) mission. In bridging the gap between donor and beneficiary and facilitating the consultations, LASER was able to support local actors to identify problems that they care about, deliberate solutions, and have their insights heard by the donor programme.

17. This process of discovery with local partners helped determine (re-) entry or new focal points for the JPIP restructuring.

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

18. The initial ADR retreat allowed for the Kenyan Judiciary to collaborate and agree that a court-annexed mediation pilot should be launched at family and commercial divisions of the Milimani High Court, and drafted an initial work plan for the pilot. But subsequently the launch of the pilot failed to gain traction once the retreat itself was over.

19. LASER undertook a light touch political economy analysis of the Judiciary in order to understand and manage the procedural and capacity blockages holding the pilot back. It became apparent that the greatest obstacle preventing the pilot's launch was a lack of resources at the Registrar's office to provide strategic direction for the pilot.

20. LASER therefore provided technical support directly to the Judiciary to help develop a more nuanced work plan, with each detail talked through and approved with the Registrar of the Milimani High Court directly. This support was provided by putting in place a LASER-funded interim programme manager, with a view to the full-time programme manager being appointed by the Judiciary. Having an interim programme manager embedded in the Registry has helped build a strong collegiate relationship with the Judiciary and helped LASER to understand better the internal mechanisms, as well as the political and administrative incentives motivating the pilot's success.

21. By convening timely meetings between the Kenyan Judiciary, the Mediation Rules Committee and the donor (World Bank JPIP team), facilitating coalitions of change within both the Judiciary and the donor, and offering appropriate technical input to guide the meetings, LASER was able to catalyse the energy behind the pilot, and support the Judiciary in change management as it prepared to launch the court-annexed mediation pilot. This includes supporting stakeholders in establishing a legal framework for the pilot; in November 2015, 'Legislative Supplement No.69, The Mediation (pilot Project) Rules, 2015' was officially gazetted.

22. Moreover, in acting as trusted interlocutor between the Judiciary and the donor as a facilitator of reform providing technical input into the pilot's design, LASER's intervention improved the general working relationship between the Judiciary and the World Bank, and has helped ensure that JPIP earmarks funds for, and prioritises, the court-annexed mediation pilot within the project restructure.

23. A guiding principle of the PDIA approach is to understand the incentives, interests, as well as the constraints and reservations, of partner institutions. By working with political astuteness and embedding an interim programme manager within the Registrar's office, LASER was quickly able to ascertain what technical and operational input was needed, and to iterate, adapt, and provide this on demand. This immediate support is helping to bridge gaps before JPIP can restructure and provide this support to the Judiciary directly.

24. Through LASER's support to the Judiciary, LASER grew this engagement into a parallel offer of support to the JPIP task team, to help consider the rationale for change, and in turn, re-focus their project onto locally-identified problems.

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

25. The PDIA approach calls for practitioners to focus on the 'art of the possible' and to identify realistic (re-) entry/focal points around 'a problem that local people care about' <sup>6</sup> that can be incorporated into the scope of the donor's framework.

26. Having worked with the Judiciary on the building blocks of the court-annexed mediation pilot, and 'tested' its value as a JPIP concept during the course of the pre-MTR consultations, the LASER team supported the World Bank in shaping JPIP to include this (amongst other) focal area into JPIP's restructure.

27. LASER drafted a concept note on the court-annexed mediation pilot for the JPIP MTR mission. The concept note detailed the CLJ need behind the pilot, a summary of its proposed function and form, and an estimated costing for the pilot and its roll-out which would allow the Bank to secure funds for the pilot in advance of the Judiciary submitting a proposal, and incorporate it within JPIP's restructured framework. This formed part of LASER's broader engagement with JPIP, helping it restructure from an input-based, to a more user-focused programme that incorporated PDIA characteristics.

#### **Phase 6: Donor programme (re-) crystallises**

28. The PDIA approach calls for programmes to shift to a problem, rather than an institutional focus. LASER has supported JPIP to move away from an input-based framework to an output-led project that focuses on the 'needs of frontline service providers that interact with court users, such as magistrates and registry staff.'<sup>7</sup>

#### **Phase 7: (Re) implement the programme, but maintain maximum flexibility**

29. Finally, LASER will continue to parallel track its support, by providing both direct technical assistance to the Judiciary (through the interim programme manager seconded to the Registrar of Milimani High Court) in establishing the pilot, and also by continuing engagement with the World Bank to help support an adaptive approach to implementation of the restructured project.

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<sup>6</sup> Booth and Unwin, 2014

<sup>7</sup> JPIP Mid-Term Review and Restructure Mission, Aide Memoire (July 2015)