

LASER

Legal
Assistance
for Economic
Reform

Guidance note for donors and
development practitioners

Learning lessons from LASER's
use of pro bono legal expertise:
how legal pro bono assistance
can add value to development
programming.

May 2016



Contents

Introduction	1
Background	1
Lesson 1: Different models of pro bono assistance are capable of achieving impact as long as they are sufficiently demand driven. Which model is most appropriate is determined by context.	1
Lesson 2: Pro bono expertise can provide highly strategic interventions, including market intelligence to feed into investment climate reform programming and prioritisation	3
Lesson 3: A developing country may require assistance to identify need for international expertise, articulate it, and source an appropriate pro bono supplier.....	4
Lesson 4: Understanding the political context makes it more likely that technical inputs make a difference on the ground	6
Lesson 5: Peer-to-peer approaches based on professional relationships can be very effective and give access to expertise that is not available on the open market....	7
Lesson 6: Strong logistical support and funding should be built into the costs for pro bono assistance.....	7
Lesson 7: The impact of pro bono technical support is increased if embedded within a broader and longer term programme	8
Conclusion	8

Tables

Table 1 Models of pro bono assistance tested by LASER	2
---	---

Boxes

Box 1 Using pro bono assistance to inform investment climate reform strategy	3
Box 2 Working with the client to identify and articulate the need for pro bono support and to source it	4
Box 3 Increasing access to pro bono support	6
Box 4 Making technical advice relevant to local context	6
Box 5 Embedding pro bono technical assistance in broader development programming for sustainability	8

Introduction

This guidance note highlights lessons learnt about effective use of legal pro bono assistance by LASER (DFID's Legal Assistance for Economic Reform programme). The focus is on how this assistance can be woven into development programming to enhance the impact of both the programming and the pro bono assistance provided. Although LASER has been focused on investment climate reform, emerging lessons from LASER on the use of pro bono expertise have broader value for donors and practitioners seeking to engage and harness international pro bono legal and judicial expertise across a range of reform processes.

The key audience for this guidance note is DFID and other development partners; development practitioners designing and implementing development programmes; and programmes or initiatives deploying pro bono technical assistance, such as ROLE-UK.

Background

Given the obvious value for money benefits of harnessing pro bono assistance, it has long been an area of interest for donors. Development programmes carried out by DFID and other donors recognise that opportunities exist to strategically tap into the goodwill of an extensive international legal pro bono offer, and not just in commercial law and justice work but across a range of reform processes including in relation to social sectors, energy and climate change, security and justice reform, trade and regional integration, governance reform and regulatory and policy frameworks. However, evidence of impact is limited and there are significant gaps in knowledge and measurement tools¹.

LASER has been tasked to test the assumption that pro bono international legal advice can make a significant contribution to reform processes in developing countries². This includes testing the theory that greater impact can be achieved through a better matching of pro bono supply to demand, and linking pro bono legal expertise to broader programming and reform processes. This guidance note presents lessons from different models of pro bono legal assistance that LASER has piloted, drawing out practical lessons from interventions in Sierra Leone, Burma, Uganda, Rwanda and Somaliland.

- **Lesson 1: Different models of pro bono assistance are capable of achieving impact as long as they are sufficiently demand driven. Which model is most appropriate is determined by context.**

LASER has piloted a number of different models to support the matching of pro bono supply of expertise to in-country demand from developing country partners and from DFID country offices (see examples from LASER in table 1 below).

¹ The Law & Development Partnership reviewed the evidence for impact of pro bono legal assistance in an Evidence Report for DFID (Commercial Law and Justice Programme Evidence Report, 14 November 2013)

² Development programming that uses legal pro bono assistance include New Zealand technical assistance and USAID, African Development Bank's Legal Support Facility, and the American Bar Association's partnership with UNDP

Table 1 Models of pro bono assistance tested by LASER

Model	LASER pilot	Detail	LASER in-country support
Country network	UK Sierra Leone Pro Bono Network (UKSLPBN)	LASER has supported the establishment of a formalised structure – the UKSLPBN - to coordinate the different sources of UK based pro bono support available to Sierra Leone. LASER has worked with the UKSLPBN to build its capacity, and facilitate its coordination with the Government of Sierra Leone justice sector with the objective of ensuring a more coordinated and coherent approach, both on the supply and demand side. LASER has partnered with the UKSLPBN to support work streams on development of government policy, government contracting and commercial court reform.	<ul style="list-style-type: none"> • Remote during Ebola epidemic • Resident adviser for one year post- epidemic
Partnership between donor and law firm	Economic Development Legal Information Service (EDLIS)	EDLIS is a service piloted under LASER with the international law firm Clifford Chance. The service enables DFID country offices the opportunity to access in-depth legal advice and market intelligence on key commercial issues on a pro bono basis from relevant Clifford Chance lawyers.	<ul style="list-style-type: none"> • Remote (Burma and Uganda)
Mix of UK and regional pro bono support	Paul Hastings international law firm, and the Africa Legal Network	LASER has delivered pro bono assistance to the government of Rwanda as part of its long term support to the Ministry of Justice (MINIJUST) on improving government contracting. Two different models of pro bono assistance have been used; the first was to build a partnership between an international law firm and a regional network of law firms to deliver training to government lawyers on construction law and review a government model contract on supervision of works. The combination of providers was designed to ensure that the Rwandan government lawyers had access to international, East African and Rwandan specifics of contracting in this area.	<ul style="list-style-type: none"> • Resident adviser full time 1 year • Resident adviser part time (50%) 1 year
Peer to peer support	UK Government Legal Department and Legal Advisory Service, Rwanda Ministry of Justice	Peer to peer support is the second model used by LASER in Rwanda to deploy pro bono assistance to support its work with MINIJUST on improving government contracting. LASER worked with UK Government Legal Department (GLD) lawyers to design and deliver training and a handbook on how to manage government contracts. A long term broader institutional relationship between GLD and MINIJUST is now under discussion.	<ul style="list-style-type: none"> • Resident adviser full time 1 year • Resident adviser part time (50%) 1 year
Specialist UK pro bono support	Slaughter and May	LASER helped the government of Somaliland identify and engage an international law firm, Slaughter and May, to advise on the legal framework necessary to take forward a pilot cross-border electricity modernisation project. This assistance was in the context of a year of LASER support to the government in the sector – both in relation to modernisation and to trade.	<ul style="list-style-type: none"> • Resident adviser full time 1 year

We have found all models to have potential to achieve impact as long as time is invested in getting the demand side right - assisting the developing country partner to identify, shape and manage the assistance required. Which model is most appropriate for use, largely depends on the in-country resources available to support. Some models, country networks and peer to peer institutional relationships for example, require an investment of effort upfront to build an operational mechanism that can deliver relevant and appropriate pro bono assistance, but require less on the ground support once established and can become a way to sustain development programme results. . Others, such as more ad hoc arrangements with individual law firms, are more bespoke and require more intensive inputs to build relationships, align priorities and ensure they are properly informed by context

➤ **Lesson 2: Pro bono expertise can provide highly strategic interventions, including market intelligence to feed into investment climate reform programming and prioritisation**

In Sierra Leone, the combination of LASER’s technical assistance to the Government of Sierra Leone on the one hand, and a UK co-ordination mechanism for pro bono expertise (the UKSLPBN) on the other, enabled UK pro bono legal expertise to provide relevant, strategic inputs into the Government’s National Justice Strategy. This assisted the government to identify, prioritise and begin to take forward the reforms that matter most to UK investors and potential investors. In Burma and Uganda the EDLIS facility (see table 1 above) was able to provide highly strategic advice which fed into the development of a new investment code and donor programming respectively. More details are in box 1 below.

Box 1 Using pro bono assistance to inform investment climate reform strategy

Sierra Leone: Building on the government of Sierra Leone’s commitment to get more private sector input into its Justice Sector Strategy and Investment Plan in 2014 and at the Minister of Justice’s request, LASER supported the UKSLPBN to facilitate private sector consultations. The aim was to draw out from international and domestic business and legal service advisors with experience of doing business in Sierra Leone, what they viewed as key constraints to investment in Sierra Leone. This highly strategic intervention fed directly into the Government of Sierra Leone’s policy development and enabled the Government to increase its evidence base for prioritising certain reforms over others. The consultation identified fast and reliable dispute resolution as key to building investor confidence. This was subsequently prioritised by the National Justice Strategy and Investment Plan that was approved by Cabinet in June 2015.

LASER’s support to the government of Sierra Leone in relation to the development of its National Justice Sector Strategy and Investment Plan was found by DFID’s mid-term review of LASER to have contributed to significant change in policy and behaviour in the justice sector in Sierra Leone – including through the use of pro bono assistance.

Burma: In response to a request from DFID Burma LASER facilitated pro bono legal assistance from international law firm Clifford Chance to review Burma’s draft Investment Law through the EDLIS facility (see table 1 above). DFID Burma had received concerns from stakeholders on the draft Investment Law, which DFID advisers were concerned that they did not have the technical legal expertise to evaluate, and which they recognised may be more related to vested interests. The draft Investment Law was reviewed by Clifford Chance and the LASER team in parallel, within a very short

time frame of two weeks. Written comments were provided to DFID and IFC – who were advising the Directorate of Investment and Company Administration (DICA), the Burmese Government agency responsible for the draft law – followed by a joint telephone conference call with LASER and Clifford Chance experts. Following the advice, DICA agreed to a further round of consultations and to incorporate the advice into the draft law.

Uganda: Clifford Chance has responded to a request from DFID Uganda to advise on priority constraints to foreign investors in Uganda, drawing on its experiences of advising overseas investors and financiers on mergers & acquisitions, financing and project development transactions in Uganda to do so. DFID Uganda intends to use the advice to inform its own programming on economic growth and to share it with other international partners in-country.

➤ **Lesson 3: A developing country may require assistance to identify need for international expertise, articulate it, and source an appropriate pro bono supplier**

Developing countries tend to have generalist as opposed to specialist local legal professionals. In both Rwanda and Somaliland LASER legal advisers embedded within line ministries in host governments were key to supporting their client governments to identify their need for expert legal expertise which not available locally.

In Rwanda LASER was working with government lawyers who lacked up to date and in-depth knowledge of construction contract law, negotiation and management. LASER identified this as an area where pro bono expertise and assistance could be woven into its work and used to enhance the impact of its intervention. In Somaliland LASER’s embedded adviser supporting the Government of Somaliland on the development of a regulatory framework for the electricity sector also identified the need for specialist international legal assistance, and worked with the government to articulate that demand, and source pro bono expertise provided by senior lawyers at partner level from a top global law firm. Sierra Leone having seen the value of pro bono support was a ‘repeat client’ and requested further pro bono support. Box 2 below provides more detail.

Box 2 Working with the client to identify and articulate the need for pro bono support and to source it

Rwanda: LASER worked closely with the national Rwandan Institute of Legal Practice and Development (ILPD) to support improved training on construction law and projects owing to the number of infrastructure-related projects that had experienced serious delays and resulted in litigation. In parallel LASER was also working with Rwanda’s Ministry of Justice to strengthen contract management by developing model contracts and new contract management tools. Drawing on LASER’s advisory work enabled the trainers and participants to include very practical and in-depth discussions of the new proposed model contracts in the curriculum and training that was eventually delivered. LASER then worked with ILPD to identify specialist national and international trainers. The lead trainers were chosen:

- as a result of their existing relationship with the government and their knowledge of the challenges it faces on contracting- Paul Hastings, an international law firm had acted for government of Rwanda in expensive litigation in the past and had highlighted issues in relation to contract drafting and management that could reduce the government's exposure to litigation. They therefore had a deep knowledge of the context, and of the particular problems experienced in Rwanda;
- to provide a peer perspective - lawyers from the UK Government Legal Service who manage similar contracts on behalf of the UK government; and
- to ensure that regional and national experience was incorporated to ensure maximum relevance; Kenya law firm Anjarwalla and Khanna and Rwanda firm K-Solutions are both members of the African Legal Network, a network of African law firms offering an end to end service for clients in the region.
- While it is too early to measure the long-term impact of the training and introduction of tools, a LASER survey has revealed that more than 50% of legal officers are reporting stronger contract management processes as a result of this initiative.

Somaliland: LASER's resident adviser supported the government of Somaliland (GoSML) to draw up an action plan for the development of the electricity sector and identified the need for specialised external legal assistance, as local legal expertise on electricity sector development was not available. Advice was specifically sought on assessing the value of establishing a national electricity company (including advice on incorporation and rules for the entity), and developing rules and regulations for a cross border pilot. LASER supported the GoSML to identify and then negotiate support for provision of international pro bono assistance required. An international law firm; Slaughter and May, was engaged in August 2015. The firm committed a team of seven to the project; including three partners all with considerable expertise of energy/regulatory/Africa work, two associates, a trainee and business development manager. By December 2015 the firm had provided pragmatic advice and guidance on how to take modernisation of the sector forward through a cross border pilot, part of an ongoing negotiation with Ethiopia.

LASER's resident adviser played a key role as an interface between the GoSML and Slaughter and May. She supported the GoSML to develop the terms of reference for the assistance; and ensured that the project was positioned as an attractive proposition to potential providers. Being embedded in the enabled the resident adviser to coordinate the working relationship between the GoSML and Slaughter and May once the work was underway. Somaliland law is partly based on UK statutes so Slaughter and May were able to produce their advice remotely. However, key to ensuring that the advice was relevant to local needs was the intelligence that the LASER resident adviser was able to provide Slaughter and May in terms of context, priority areas and key issues for the GoSML. This meant Slaughter and May were better informed about how best to tailor their advice, and the level at which to present their guidance to ensure that it was positively received by GoSML officials.

Sierra Leone: Following successful pro bono involvement in investor consultations (see box 1 above) Sierra Leone's acting Chief Justice approached LASER with a request to facilitate pro bono assistance from the UKSLPBN to help the new Fast Track Commercial Court develop an action plan to improve the Court's performance. This direct request from a developing country partner demonstrates how

having recognised the value add pro bono assistance could add the client was keen to explore how pro bono assistance could be further mobilised.

LASER has gone further in Rwanda and increased government access to pro bono assistance both through introducing and nurturing a relationship with DFID’s ROLE UK programme³ and by advising the government to include a pro bono ‘offer’ as a criterion in the government’s procurement of external specialist legal advice – a new process to establish a pre-qualified list of firms that LASER has supported. For more details see box 3 below.

Box 3 Increasing access to pro bono support

LASER supported the government of Rwanda in its endeavour to create a centrally owned list of pre-qualified firms who could be approached by government institutions for external legal support, to allow institutions to more easily access appropriate advice. Information on fee rates and pro bono support available has been received from all firms shortlisted, and LASER is supporting MINIJUST to analyse and consider how best to use this information appropriately; pro bono support could, for example, be leveraged to implement the Ministry’s training and capacity building strategy.

➤ Lesson 4: Understanding the political context makes it more likely that technical inputs make a difference on the ground

Investment climate issues are inherently political, and investment climate problems and dysfunctionalities tend to have their roots in the vested interests of players at the political, managerial and operational level⁴. Technical fixes on their own are unlikely to solve complex investment climate problems. LASER’s advisers have a strong knowledge of local context including the political economy. The examples in box 3 below in relation to support given to DIFD and IFC in relation to Burma’s new investment law; and to the government of Somaliland in relation to the development of a regulatory framework for the electricity sector highlight illustrate the importance of embedding pro bono support within a proper understanding of the local context.

Box 4 Making technical advice relevant to local context

Burma: IFC and DFID commented on advice received on Burma’s draft investment law (see box 1 above) that LASER facilitated timely interaction with very senior (partner level) and experienced commercial lawyers, who not only provided useful legal comments but, being based in the region and with significant experience of regional investment from a client perspective were able to

³ <http://www.roleuk.org.uk/>

⁴ LASER guidance note: Politically smart approaches to donor investment climate reform programming. February 2016. <http://www.laserdev.org/media/1160/laser-pea-guidance-note-final-15-feb-2016.pdf>

discuss the law in the Asia policy context. DFID also recognised that the input of LASER was to ensure that the pro bono team involved were fully briefed on the positions of various stakeholders and that the advice provided was developmentally appropriate. The knowledge of context and political economy ensured that the advice given to DFID and IFC was of a high relevance and practical use

Somaliland: In fragile states, the political context changes very quickly and development programmes need to ensure that the pro bono providers working remotely are kept abreast of political and context specific changes. In this case, Slaughter and May’s advice was provided to the ministry of Foreign Affairs in the context of the GoSML’s intention to enter into negotiations with Ethiopia for the supply of cheap electricity, and against a background of a dispute between two other ministries for the mandate on electricity. This context subsequently changed with a resolution of the mandate dispute and a re-focussing of GosML priorities on a broader domestic energy policy. LASER and Slaughter and May were aware of the potential change in ministerial responsibility for energy and of the challenge of providing relevant advice in a changing context. But the prospect of negotiations with Ethiopia and the desire to press on with a long-stalled process meant that delaying the obtaining of advice was not considered appropriate. Although the Slaughter and May advice is seen as high quality and well thought through, it is too early to tell how impactful it will be in the long term, given the current change in leadership and policy in the sector.

Rwanda: Key to the effectiveness of pro bono training on commercial contracts was LASER briefing for the pro bono trainers on relevant background policy documents and laws. This helped ensure that training was tailored to the context and included perspectives from both local and regional lawyers.

➤ **Lesson 5: Peer-to-peer approaches based on professional relationships can be very effective and give access to expertise that is not available on the open market**

In its work on supporting pro bono legal assistance in both [Sierra Leone](#) and [Rwanda](#) LASER has found peer-to-peer approaches to be an effective mechanism for learning and skills transfer. In the case of [Sierra Leone](#) the UKSLPBN sourced a retired Senior Circuit Judge to assist Sierra Leone’s new Fast Track Commercial Court to develop an action plan to improve its performance. Relationships were facilitated by the UK expert’s substantive relevant expertise and the respect that this accorded him by his Sierra Leone peers. In [Rwanda](#), using UK government lawyers as part of the training team for Rwandan government lawyers was highly appreciated by the Ministry of Justice. The Permanent Secretary has now asked LASER to help to build what she hopes will be a long term institutional relationship between the Ministry and the UK Government Legal Department.

➤ **Lesson 6: Strong logistical support and funding should be built into the costs for pro bono assistance**

In all the examples cited in this guidance note where the pro bono assistance was delivered in-country, either LASER or ROLE-UK paid for and organised airfares, accommodation and per diems, with the pro

bono providers left free to focus on providing legal professional services. While pro bono providers are able and often willing to 'fund' their time for free, even the larger commercial firms do not have budgets to support accompanying project and logistical costs which can be significant.

➤ **Lesson 7: The impact of pro bono technical support is increased if embedded within a broader and longer term programme**

In each of the LASER interventions pro bono technical assistance was provided in the context of broader programming which pro bono support fed into. In Sierra Leone and Rwanda where LASER support continue after the provision of the pro bono assistance, LASER was able to follow up on the pro bono inputs and support their implementation and sustainability. Sustainability of interventions relies, in turn, on the relationship that LASER has helped build between its developing country and pro bono partners. Pro bono providers are typically very open to a long term partnership with their clients that has the potential to last well beyond the life of the average development programme. Box 5 below provides more detail.

Box 5 Embedding pro bono technical assistance in broader development programming for sustainability

Sierra Leone: Following pro bono assistance to Sierra Leone's Fast Track Commercial Court, including the development of an action plan to improve its performance, LASER continued the engagement with Sierra Leone's judiciary, including supporting a judicial conference that took place in April 2016. Shortly after the pro bono support was provided a permanent Chief Justice was appointed. He subsequently appointed two judges to oversee the Fast Track Commercial Court. The judicial conference was a key event for the new regime to clarify its priorities. LASER developed facilitator guidelines for the commercial law and justice session of the conference based on the pro bono advice. The recommendations from the session largely mirror the recommendations in the report. These now have the high level endorsement of the new regime in the judiciary and have been identified as a national priority and form part of the action plan for the delivery of the next 24 months of the country's recovery priorities, overseen by the President.

Rwanda: In conjunction with supporting ILPD on commercial contract training (see box 2 above) LASER also worked closely with ILPD to provide a guidance note that will help institutionalise knowledge about how to best identify, manage, and engage with pro bono training providers in the future, and supported ILPD to develop their own relationships with pro bono providers.

Conclusion

There are obvious financial benefits to using pro bono expertise in development programming, despite costs of deployment and logistical support, it provides a solution to budgetary constraints/funding obstacles for developing country partners, and aligns with donor value for money approaches. LASER VFM analysis reveals, for example, that the cost per £1,000 value of pro-bono assistance deployed by

LASER and ROLE UK is £73.⁵ LASER's experience of using pro bono expertise is that the non-budgetary value of using pro providers: the importance of the peer to peer approach; working with experts whose services might not be for sale (such as judges); and the value attributed to pro bono providers precisely because they are not consultants, is as, if not more important, than the financial savings.

Lessons learned from LASER demonstrate how legal pro bono expertise can be effectively woven into broader development programming. This requires working not only with the supply side (the pro bono providers) but also with the demand side in developing countries – to ensure that the need for pro bono expertise is identified, articulated and sourced; that it is properly contextualised, including in relation to the political economy; and that there is effective follow up.

LASER's experience is that the impact of pro bono assistance is greater if woven into longer term and broader development programming. Development programming has the potential to have a greater impact too, through the use of pro bono assistance – in that it may create relationships between pro bono providers and developing country governments and institutions that are sustainable beyond the life of the average development programme and also enable access to specialist legal advice not available on the open market.

⁵ Using market based hourly rate bands for legal professionals deployed