



**Legal
Assistance
for Economic
Reform**

Somaliland electricity sector
regulation:
A case study on pro bono
assistance

DFID Legal Assistance for Economic Reform Programme

May 2016



SLAUGHTER AND MAY

1. Introduction

The Legal Assistance for Economic Reform programme ([LASER](#)) is a UK Department for International Development (DFID) funded programme aiming to improve investment climates in eight developing countries. LASER supports partner government initiatives that are country owned and led. One of the assumptions being tested through LASER is that international legal advice can make a significant contribution to investment climate reform. LASER is therefore supporting the leveraging of pro bono legal support – and specifically UK pro bono expertise – to developing countries, working in partnership with DFID’s Rule of Law Expertise programme ([ROLE UK](#)).

This case study looks at pro bono support provided by international law firm [Slaughter and May](#) to the Government of Somaliland in relation to electricity sector regulation. The hope is that the lessons learnt (see section 6) will be useful to ROLE UK; to legal pro bono providers; to developing country governments seeking pro bono legal assistance; and to development partners and practitioners supporting investment climate reform.

This case study has been written by LASER with input from Slaughter and May; the DFID-funded Energy Security and Resource Efficiency in Somaliland programme; DFID Somalia; and Somaliland’s Ministry of Foreign Affairs and International Cooperation.

2. Somaliland context and background to LASER engagement

Somaliland is a self-declared independent state with a high level of fragility and a complex political environment. It has been functioning as a sovereign entity independent from Somalia since 1991 within the territorial borders of the former British Somaliland Protectorate.

Democratic elections in June 2010 brought to power a new government and enhanced international attention. In 2011, the Somaliland government (GoSML) launched its five-year National Development Plan (2012-16) requiring approximately US\$150 million per year, much of which remains unfinanced. Challenges include Somaliland’s small formal sector, limited capacity for revenue collection and lack of international recognition as a state. Quasi budget support has been established in the form of the Somaliland Development Fund financed by (amongst others) DFID and Danida.

Somaliland was selected as one of LASER’s eight focus countries because it met a number of LASER’s criteria for engagement. These include the fact that Somaliland is a fragile and conflict affected state and a [New Deal](#) pilot country. There was also strong interest from the DFID Somalia Country Office (responsible also for Somaliland), an increase in DFID funding to Somaliland in recent years, and strong potential to collaborate with other donors such as the World Bank and IFC.

In October 2014 LASER undertook a scoping mission to Somaliland. The objective of the scoping mission was to meet key stakeholders and explore options for LASER engagement including initial identification of problems, partners, feasible options, and risks. At the outset of the scoping mission a number of priority investment climate problems were identified. These broadly focused on the potential transformational drivers in the economy – the energy sector, commerce, investment and industry. The scoping mission also identified the need for a LASER long-term adviser on the ground in Hargeisa, to take forward any support requested. This was considered crucial given the high risks of

working in such a politically complex, fragile environment, and in order to maximise LASER effectiveness at exploring root problems and reacting to genuine demand. A resident adviser (RA) was identified and deployed to the country for one year from February 2015. The RA was embedded in the Ministry of Foreign Affairs and International Cooperation working primarily on three areas: trade, investment, and energy¹. This case study examines LASER's work in the third area, the energy sector.

3. The intervention - electricity regulation

The cost of electricity in Somaliland, at approximately US\$1 per kilowatt, is one of the highest in the world. This is in stark contrast to rates in neighbouring countries such as Ethiopia, which is able to source electricity at approximately US\$0.05 cents per kilowatt. High electricity costs in Somaliland hamper development of the manufacturing sector and establishment of enterprises, acting as a constraint on economic growth and development.

One reason for Somaliland's high electricity costs is the lack of an effective regulatory framework or regulatory body to enable development of the sector, guide private sector operators, provide incentives for investment in the sector and support uptake of renewable energy sources. The result is a highly fragmented and inefficient sector. It is also a risk to the health and safety of consumers and employees with no health and safety standards in operation.

The GoSML has developed an energy policy including the establishment of an independent regulator – the Somaliland Energy Regulatory Commission. A draft Electricity Act and related regulations have been developed through a USAID project in 2013, but have stalled and have been awaiting cabinet approval for the last three years. One reason for delayed action on the part of the GoSML lies with the historic ambiguity over ministerial responsibilities relating to the electricity sector and issues related to power interconnection, with confusion between the mandates of the Ministry of Public Works on the one hand and Ministry of Energy and Minerals and Natural Resources on the other.

This confusion was highlighted in LASER's initial scoping work² and was one of the factors that led to the decision for the LASER RA to be embedded in neither of these two potential lead ministries, but instead in the Ministry of Foreign Affairs and International Cooperation (MOFAIC). MOFAIC's strategy was to kick start activity in the sector and begin the modernisation process by leading negotiations to strike a deal with Ethiopia for the supply of cheap electricity, through accessing the latter's hydro-power electricity. MOFAIC was not part of the inter-ministerial wrangle over responsibility for the sector: its interest in electricity regulation flowed from its proposed lead role in the negotiations with Ethiopia.

MOFAIC's intention was to set up a pilot in two towns that border Ethiopia, extending the Ethiopian high voltage grid into Somaliland. If the pilot was successful, it would be extended to other towns. The prospect of such a deal presented an immediate imperative for putting in place a legal framework to enable it to be taken forward. LASER's RA initially supported this process by working with MOFAIC to produce an action plan for the development of the electricity sector, together with a paper setting out

¹ For details on the 'politically smart' approach adopted by the LASER team, see LASER case study: *Problem Driven Iterative Adaptation: Embedding a Resident Adviser in Somaliland* (2015)

² See LASER case study: *Problem Driven Iterative Adaptation: Embedding a Resident Adviser in Somaliland* (2015)

the challenges involved in taking this forward. This included the urgent development of an appropriate legal framework for the sector and the setting up of a regulatory authority.

4. Approach to obtaining pro bono assistance

The LASER RA advised the MOFAIC that to enter into negotiations with Ethiopia and take forward the pilot, specialised legal advice (not available locally) would be required to advise on the required legal framework. With no budget to contract such advice from outside Somaliland on a commercial basis, LASER's RA drew the existence of an international pro bono market to the GoSML's attention. The RA then supported the GoSML to develop terms of reference for the specific advice needed; and then to source an appropriate provider.

LASER considered UK law firms to have the expertise required. Although Somaliland has a hybrid legal system based on an interplay of customary law, Islamic law and initially transplanted statutory laws of European origin, pro bono suppliers from the UK have a strong offer given the focus on common law as a basis for Somaliland's commercial law, and strong links between legal practitioners and diaspora in both countries.

Accordingly, in the summer of 2015, LASER began discussions with two potential providers pre-identified by LASER as suitable on the basis of their expertise in the energy sector, their work in the region, and their size - it was considered more likely a large firm would have the capacity to deliver the support required. The terms of reference were discussed with both firms. While both had significant expertise in energy work and in providing similar advice, it became clear during discussions that what might divide the offers of assistance, was the ability to deliver the work to the time frame and schedule proposed by MOFAIC. Slaughter and May delivered a project brief outlining where they could best add value, and detailing the level of expertise and resources they could bring to the project. Although not able to respond to every aspect of the terms of reference, they offered a team to work on the high priority areas of incorporation and structure of a national electricity company, and guidance on the development of rules and regulations. The firm also offered to respond to the request for ad hoc policy advice to senior GoSML officials in relation to energy negotiations with Ethiopia, if the need arose. The second firm offered the services of a senior specialist lawyer, but without the resources to support delivery of the work to MOFAIC time scales.

In August 2015 MOFAIC asked LASER to facilitate the engagement of Slaughter and May, who committed a team of seven staff to the project: three of the firm's partners (all with considerable expertise in energy/regulation and Africa work), associates focusing on corporate matters, a special adviser on regulatory issues, a trainee, and its Senior Business Development Manager for Africa. Work began in September 2015, and was carried out remotely by the Slaughter and May team. In addition, LASER's RA was able to meet the team face to face during visits to London and provide background and context to the advice required at the beginning of the process. This was followed up with regular calls once the RA was back in Hargeisa. By December 2015 Slaughter and May had delivered its advice on the legal framework necessary to take forward the pilot project with Ethiopia comprising: a regulatory framework for the pilot and for development of the sector beyond the pilot (second and third phases of modernisation); structure and articles of association for a new electricity company needed to contract with Ethiopia; and changes that might be needed to the existing draft Act and regulations in order to take the pilot forward.

5. Results

Slaughter and May's advice was well received by MOFAIC who considered it to be of a high standard and delivered in timely manner. The ministry states the advice means that they are now better equipped for possible electricity negotiations with Ethiopia. DFID's Energy Security and Resource Efficiency in Somaliland (ESRES) programme who have also considered the advice consider it to be a clear explanation of how a cross border pilot could work. MOFAIC acted on it by undertaking further consultations with support from the LASER RA with private sector operators to get their input, and the advice is currently being reviewed by a Committee of Ministers established by Presidential Decree and tasked with trade and energy development. In addition, a working relationship has been established between Slaughter and May and the GoSML. MOFAIC staff who worked on electricity now have an awareness of pro bono as a potential source of expert advice, and are able to contact the Slaughter and May team direct. Slaughter and May have indicated they might be willing to continue their engagement in this sector, perhaps through a combination of pro bono and paid advice.

At the time of writing, it is too early to assess the broader impact of Slaughter and May's advice, due to a complex and developing political situation. Since Slaughter and May's engagement, ministerial mandates for the energy sector have been clarified, with the clear responsibility being assigned to the Ministry of Energy and Minerals (MOEM). It is not known whether MOFAIC's strategy of attempting to 'kick start' modernisation of the sector through negotiations with Ethiopia was instrumental in the clarification of ministerial responsibilities.

With a new ministry responsible for energy, strategies and priorities have changed. The deal with Ethiopia and the establishment of the cross-border pilot for hydro-power is no longer an immediate GoSML priority. Instead MOEM has decided to continue with sourcing electricity from private operators (independent power providers) through diesel generators. The focus is now on putting in place a regulatory framework within this context – getting the Act and regulations passed. Support for this is being provided by DFID through ESRES. The Slaughter and May advice is framed in terms of the proposed cross border pilot, but ESRES has confirmed that the advice still has the potential to feed into the MOEM's finalisation of the Act and regulations as:

- it makes sense for the Act and regulations to be future proofed and to ensure that they have the potential to set up the necessary structures and regulate electricity bought from Ethiopia (or another country);
- some of the advice on licensing and tariffs, although given in the context of the pilot, are more widely applicable; and
- the advice on the draft Act and regulations is sound and applicable more widely than the pilot.

More broadly ESRES has drawn on LASER's work including the action plan, challenges paper and pro bono advice. In particular the LASER [action plan](#) has been expanded into a roadmap for MOEM.

MOFAIC and ESRES report that buying in cheaper electricity from Ethiopia is still on the table as one of several options a bit further down the line. At such a stage Slaughter and May's advice would have more direct impact, also requiring technical advice from electricity supply and distribution experts.

6. Lessons learnt

A number of lessons can be drawn from Slaughter and May's pro bono assistance to the GoSML that have implications for all the stakeholders: the LASER programme, GoSML, Slaughter and May, and DFID and also for the wider UK pro bono community, other developing country governments and other donors.

Lesson 1: understanding and adapting to the political situation (which particularly in FCAS) may be rapidly changing is key to ensuring the relevance of advice provided

Slaughter and May's advice was provided in the context of the GoSML's intention to enter into negotiations with Ethiopia for the supply of cheap electricity, a context which subsequently changed. LASER, MOFAIC and Slaughter and May were all 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. The trade-off between obtaining targeted advice on the proposed pilot on the one hand, or asking for broader support on the other and waiting for a clarification of ministerial responsibilities was also considered – and the decision taken to go for targeted, specific advice.

Lesson 2: determine what and if pro bono support is needed from the outset

Having a clear idea of the precise nature of the pro bono support required, and a pragmatic timeline for completing the work is important in facilitating both the identification of potential providers, and the eventual delivery of the pro bono assistance. The initial terms of reference drawn up by the GoSML supported by the LASER RA provided information on the background context, deliverables, and timetable and so enabled potential providers to identify whether the work was of interest and whether they had the appropriate expertise and capacity to undertake it. The terms of reference were then a useful basis for negotiations both in terms of the scheduling of assistance and refining project outputs. They enabled potential providers to understand the scope of work involved and in the case of the firm that was not selected, enabled them to understand that in this instance they did not have the capacity to provide the work needed.

Lesson 3: clear communications and a flexible approach from both the provider and client helps manage expectations and the development of a good working relationship

Slaughter and May's project brief responded clearly to the GoSML's terms of reference both in terms of the support they were able to provide and those deliverables that they were not able to assist with. On its side the GoSML recognised that while Slaughter and May could not offer assistance for the entire process of energy reform, the expertise it could provide in the first stages would be invaluable. Initial negotiations about the scope of assistance that Slaughter and May could provide which were facilitated by LASER were useful in terms of flagging to the GoSML that the assistance provided was pro bono, and that while a pro bono provider might fill a short term gap, pro bono providers were not willing to provide free support indefinitely.

Having a transparent discussion from the outset about the limitations of assistance and its scheduling, enabled the GoSML and Slaughter and May to foster a good working relationship that helped improve the quality of the final advice provided. For example, the mutual agreement to increase the timeframe for Slaughter and May to deliver the advice sought, meant that the team had more time to develop and tailor the advice. A good working relationship was also fostered through personal contact; Slaughter and May's Senior Business Development Manager for Africa had initially built up a rapport with the GoSML's Minister of Foreign Affairs & International Cooperation during an international conference.

Lesson 4: it is important to help developing country partners understand what motivates and attracts pro bono providers to offer assistance

To attract and make best use of pro bono providers, developing country clients should be aware of potential motivators for the pro bono providers – for example to develop their business, relationships or human resources. LASER was able to assist the GoSML to draft terms of reference for the required assistance which made clear that the proposed work offered providers the opportunity for direct engagement with the GoSML, and to help shape the development of an entire sector. Pro bono expertise is often sought for parcels of work but relatively rarely do providers have the opportunity to influence and develop legislation from its outset – a potentially attractive offer for a provider looking to build and expand relationships and networks within the region.

Lesson 5: the provision of pro bono assistance can involve a commitment of significant time and resources

Slaughter and May committed a team of seven professionals to the project, including three of the firm's partners all with considerable expertise in energy/regulation and Africa work. Pro bono legal work requires the same level of resources, and be of a similar complexity to fee-paying work. Regulatory codes of conduct for legal professionals in the UK require that pro bono clients are owed the same professional responsibilities as all other clients. Pro bono providers need to factor these considerations into their decision making about whether or not to take on such work.

Lesson 6: LASER's role as broker was key in coordinating communication between the supply and demand sides

LASER's RA played a key role as an interface between the GoSML and Slaughter and May. The RA 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 GoSML and on the ground enabled the RA to develop relationships with key officials and coordinate the working relationship between the GoSML and Slaughter and May once the work was underway. During a trip to the UK, the RA was also able to meet face to face with Slaughter and May's team, which contributed to building their understanding of how to provide the most pragmatic advice to the GoSML, and supported the development of clear channels of communication.

Somaliland law is partly based on UK statutes (in this case the Companies Act for incorporating the National Electricity Company), so Slaughter and May were able to review the Somaliland statutes and produce their advice remotely. However, key to ensuring that the advice was relevant to local needs

was the intelligence that the LASER RA 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.

While all pro bono interventions will not have a dedicated local representative, what this does demonstrate is the importance of communication when work is being delivered remotely. Even if a pro bono intervention does not have a presence on the ground it is important to identify, within both pro bono provider and client organisations, individuals who will take responsibility for project co-ordination and information sharing.