LASER Legal Assistance for Economic Reform

Research paper

Commercial Law and Justice as an investable product: a value for money perspective

DFID Legal Assistance for Economic Reform Programme

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5 October 2016

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Acronyms

ADR	Alternative Dispute Resolution
BCR	Benefit/Cost Ratio
CBA	Cost Benefit Analysis
CLJ	Commercial Law and Justice
CF	Counterfactual
CPRCG	Civil and Political Rights Campaign Group
DBI	Doing Business Index
DC	Developing Country
DFID	UK Department for International Development
FDI	Foreign Direct Investment
ILPD	Institute of Legal Practice and Development
IRR	Internal Rate of Return
LASER	Legal Assistance for Economic Reform
LDP	The Law & Development Partnership
M&E	Monitoring and Evaluation
MINIJUST	Ministry of Justice, Rwanda
NGO	Non-Governmental Organisation
NPV	Net Present Value
O&M	Operational and maintenance costs
OAG	Office of the Auditor General, Rwanda
OMB	Office of Management and Budget
OSJI	Open Society Justice Initiative
PVB	Present Value of Benefits
PVC	Present Value of Costs
RIA	Regulatory Impact Assessment
RoR	Rate of Return
SCP	Small Claims Procedure
VFM	Value for Money
UNDP	United Nations Development Programme
WB	World Bank
WFP	World Food Programme
WTP	Willingness to Pay

LASER: Optimising commercial law and justice reform

The Legal Assistance for Economic Reform (LASER) programme is a £4.3 million initiative funded by the UK government that supports developing countries to strengthen their investment climates.

LASER works in two main ways:

- Directly with developing country governments (including ministries of justice, commerce, trade and judiciaries) 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 focus countries are Kenya, Uganda, Rwanda, Sierra Leone, and Somaliland, with Bangladesh, Burma and Tanzania as additional 'light touch' interventions.

This research is part of a suite of products that increases the availability of high quality guidance and policy relevant research on commercial law and justice (CLJ) reform for developing country (DC) governments, donors and practitioners. In doing so LASER seeks to contribute to the adoption of more strategic, evidence-based approaches to CLJ reform on the part of DC governments and donors focused on enhancing business environments and promoting investment.

LASER products can be accessed via the LASER website.

Executive Summary

1. This paper seeks to develop the evidence base on the investability of commercial law and justice (CLJ) reforms, by applying cost benefit analysis (CBA) as one tool through which to establish their value for money. It is intended to assist:

   - donors to determine the value for money of specific CLJ reforms and prioritise resource allocations accordingly;
   - developing country (DC) governments to conduct their own CBA and make the case for additional funding of CLJ reforms (alongside a forthcoming LASER guidance note for DC partners); and
   - donors, developing country governments and alternative funders to consider the applicability of impact investing to CLJ reforms – and the potential costs and benefits, and therefore investability, of specific reforms.

2. Impact investing is gaining momentum as a way of bringing new funds and different types of expertise to bear on efforts to solve pressing development challenges – with the recent emergence of Development Impact Bonds engaging new investors in international development. By leveraging new sources of finance to help solve social challenges, impact investing may present an exciting opportunity in the field of commercial law and justice. However, measurability of impacts – which are central to impact investing arrangements – is challenging and requires deeper understanding of the wider benefit flows associated with the costs of reform.

3. A rich body of literature exists on the benefits of open, competitive and predictable political, legal and economic institutions for creating an environment conducive to investment and growth. However, the evidence base on how specific legal reforms impact on investment and pro-poor growth remains inconsistent and empirically weak.

4. For this reason, there is particular value in ascertaining whether specific commercial law and justice interventions offer value for money (VFM) to those investing in reform. Cost benefit analysis (CBA) provides a tool to quantify and compare the total costs and benefits of a reform in monetary terms and determine the (relative) attractiveness of investment options. But good CBA is as much about the process of developing and justifying assumptions and data as it is about the specific outcomes of analysis; building understanding among participants as to what an investment will do, who will benefit, by how much, and what would happen in the absence of investment.

5. The application of CBA approaches to LASER-supported interventions suggests strong potential for value for money investment in CLJ reform, and scope for development of "investable CLJ products" that may be attractive to DC governments, donors and alternative funders; the two case studies explored in this report show minimum benefit: cost ratios (BCR) of 13:1 for the Ugandan Commercial Court, and 26:1 for contract management reform in Rwanda. Indeed, TA which seeks primarily to support local reformers and help them to

navigate reform processes – through ongoing strategic and operational advice – can play a catalytic role that may offer exceptional value for money.

6. It should be noted that applying CBA approaches can prove challenging in practice, not least owing to shortcomings and inconsistencies of available data. Wherever possible, data collection should be strengthened at the programme level to enable robust CBA of individual reforms – as well as meaningful comparison between them – to develop the evidence base as to which specific reforms contribute most to economic growth. To account for data limitations, the robustness of quantitative CBA should be tested through sensitivity analysis, and findings used conservatively and supported by relevant research and lessons from other countries.

7. To develop the potential for value for money investments in CLJ reform, possible next steps include:

   - Further research into the causal linkages between CLJ reform and economic growth, and the wider social benefits of CLJ reforms
   - Encouraging dialogue between donors, developing country governments, and practitioners on the applicability of impacting investing approaches to CLJ reform
   - Development of pilot CLJ "investable products" that offer attractive propositions for traditional donors and alternative funders alike, and create opportunities for new sources of funding and expertise to catalyse change and achieve impact at scale.

1: Why measuring the value for money of Commercial Law and Justice reforms is important and timely

1.1 **A rich body of literature exists on the link between open, competitive and predictable political, legal and economic institutions and the establishment of environments conducive to investment and growth.** The basic premise is that transparent regulatory frameworks, and low barriers, costs and risks of doing business give large and small firms alike the confidence to invest and expand, whilst weak investment climates may disproportionately affect small firms, less able to 'circumvent' inappropriate legal and regulatory regimes, resulting in informality and constraining growth.[1] A World Bank Doing Business study argued better business regulation and infrastructure to be associated with an increase in economic growth of up to two percentage points.[2]

1.2 More specifically, a number of studies cite institutions which determine property rights and enforce contracts – thereby increasing legal predictability and security – as fundamental to private sector development and foreign investment.[3] A recent DFID-commissioned evidence review found land rights in particular to have a relatively well-established link with economic growth – through increased security of tenure to protect investments; more active land markets to encourage efficient land use; increased mobility of assets to enable full and productive land use; easier facilitation of transactions; and reduced costs of protecting property.[4] Hypothesised links between security and justice improvements and economic growth are generally supported by data from business surveys and econometric studies.[5]

1.3 **Nevertheless, the evidence as to which specific legal reforms are most important for bringing about investment and pro-poor growth remains inconsistent and empirically weak.[6]** A second DFID review found that, in the period 1990-2010, none of the 19 studies which examined the causal relationship between contract enforcement and investment produced statistically significant results or were underpinned by a sufficiently strong theoretical base to demonstrate causality.[7] Critical scholars have observed that the causal relationship between judicial reform and economic development can work in both directions or alternatively, at times, be absent entirely.[8] Indeed, the specific economic impacts – as well as the relative

[1] LASER, 2015; De Soto, H., 2000.

[2] Djankov, S. & McLiesh, C., 2005.

[3] Hogan Lovells, 2015; Fukuyama, F., 2011; North, D.C., 1990; Barzel, Y., 1989.

[4] DFID, 2014.

[5] Cox, 2008.

[6] LASER, 2015; DFID, 2013.

[7] Aboal, D., Noya, N. & Rius, A., 2014.

[8] Upham, F., 2002; Messick, R.E., 1999.

importance in different contexts – of a wide array of CLJ institutions are complex and difficult to capture unequivocally.[9]

1.4 There is particular value, then, in ascertaining whether specific commercial law and justice reforms offer value for money to the donors and developing country governments investing in them.

1.5 Additionally, the development of an evidence base demonstrating the potential social and economic impact of particular reforms may also provide a basis for attracting new sources of finance to help solve CLJ problems. Specifically, the emerging practice of impact investing within international development may provide opportunities to access new financial sources and develop innovative approaches to solving long standing challenges.

1.6 This paper seeks to support policymakers and practitioners to assess the value for money of investments in commercial law and justice by proposing an approach to CBA for a range of CLJ reform types. The approach is not intended to be definitive but rather to provide a roadmap which might inform and encourage further development of relevant tools and approaches. Specifically, the paper is intended to assist:

- **donors to determine the VFM of specific CLJ reforms and prioritise resource allocations accordingly;**
- **donors, developing country governments and alternative funders to consider the applicability of impact investing to CLJ reforms – and the potential costs and benefits, and therefore investability, of specific reforms,** and;
- **developing country governments to conduct their own CBA and make the case for additional funding of CLJ reforms** (alongside a forthcoming LASER guidance note for DC partners)

1.7 The paper is divided into five sections. Whilst the concepts discussed throughout this paper relate to the investability of CLJ reforms from the perspective of donors, developing country governments *and* alternative investors, the applicability of impact investing to CLJ reforms is new. Accordingly the first section (chapter 2) introduces the concept of impact investing in the context of CLJ and explains its relevance not just to impact investors, but to donors and DC governments. The second section (chapter 3) articulates a typology of commercial law and justice reforms to provide a framework for considering the value for money of different types of reform. The third and fourth (chapters 4 and 5), respectively, set out key principles of CBA as a methodology for measuring VFM and propose an approach for applying CBA to CLJ reforms, drawing on LASER case studies, whilst the fifth (chapter 6) analyses the challenges of implementing this approach in practice, as well as approaches to overcoming them.

[9] LASER, 2015; DFID, 2013.

2: The evolution of impact investing and its applicability to Commercial Law and Justice

2.1 Impact investing is, as a term, a little over 10 years old and was coined by the Rockefeller Foundation as a way of describing investment activities which seek to generate social or environmental impact alongside a financial return.[10] Although impact investing has, as an activity, been around for many decades in various forms, **over recent years it has gained significant momentum as a potential approach to bringing new funds and different types of expertise to bear on efforts to solve pressing social and environmental challenges**.

2.2 As the concept has become more mainstream and the funds available through impact investing continue to grow, the potential enormity of funds that could be made available for this type of investing when compared to its origins on the fringe of financial services is now becoming clear. The G8's Social Impact Investment Task Force has noted that only a small proportion of the $45 trillion invested in mainstream investment funds that have committed to include social, environmental and governance matters into investment decisions, would need to be diverted to impact investing for it to move along the same growth path as venture capital and private equity.[11]

Box 1: Defining impact investing

The term 'impact investing' is used widely and covers a broad range of investment activities and relationships. The Global Impact Investing Network (GIIN), a US not-for-profit organisation and network of impact investors and advocates defines it as:

Investments made into companies, organizations, and funds with the intention to generate social and environmental impact alongside a financial return.[12]

As with the financial sector generally, impact investing can take the form of a wide range of asset classes and includes investors with very different expectations in terms of financial return. Investors may seek returns in line with other mainstream investments or, in return for delivering a social and environmental impact, accept below-market or concessionary rates of return on their capital. Under the GIIN definition, a financial return on investment is expected and capital should be returned at a minimum.[13]

Other **definitions emphasise the idea of generating 'shared value'**, building on a business concept set out by Harvard economist Michael Porter and social impact consultant Mark Kramer. Impact investing under this approach comprises investments that generate social, environmental and financial outcomes.[14] Whilst most definitions of impact investing start

[10] Hummels (2016).

[11] Social Impact Innovation Task Force (2014), p. 1.

[12] Global Impact Investing Network (undated)

[13] Global Impact Investing Network (undated)

[14] See Hummels (2016), Section: 'Defining Impact Investing'; and Porter and Cramer (2011) on the concept of Shared Value.

from the perspective of the investor or investment, the 'shared value' concept recognises the importance of other actors in achieving desired social, environmental and financial outcomes. Impact investing could therefore be defined as **the implementation of strategies and tools that enable a number of different actors collaborate to generate social or environmental and financial outcomes.**

Defining impact investing in terms of all stakeholders, rather than solely from the perspective of the investor, more clearly articulates that outcomes are a shared endeavour and that their achievement depends on a combination of a complex mix of skills and expertise combined with capital. This also moves the definition away from the notion that one actor is interested solely in financial return and another solely in a social impact. This may be the case, but in reality with different types of philanthropic investors becoming interested in impact investing, the situation is likely to be more nuanced. For example, although an investor has provided risk capital, it does not follow that the financial return only accrues to them; in fact, it is quite possible that, as part of the contracting arrangement, a party delivering social impact also receives an element of financial return.

Applicability of Impact Investing to Commercial Law and Justice

2.8 Impact investing is particularly topical in an international development context with the recent emergence of Development Impact Bonds (DIBs), which are bringing new funding sources and investors into the international development sector and taking new and innovative approaches to funding and designing development programmes.

2.9 Although DIBs are in their infancy, the Social Impact Bonds (SIBs) on which they are based have been around since 2010 and provide an established model. SIBs were developed as an innovative funding arrangement that combined government 'payment by results' contracting with private sector investing. Perceived benefits centred on leveraging private sector finance, improved performance and lower costs of public services, innovation and uptake of new solutions, and accelerated knowledge and best practice sharing.[15]

2.10 As both SIBs and DIBs remain relatively new approaches to solving social and environmental challenges, the evidence base on which to evaluate their effectiveness remains undeveloped. Nevertheless the concept has received widespread interest from policy practitioners, government donors, investors and other funders.

2.11 In the UK, DFID's first DIB funding – specifically, inception phase funding to set up a DIB to address sleeping sickness in Uganda – was awarded to Social Finance (the organisation which first came up with the concept of SIBs) in 2014,[16] whilst at the end of 2015 the World Bank

[15] Clifford, J. and Jung, T. (2016).

[16] Drew, R. and Clift, C. (2015), p13. Clifford, J. and Jung, T. (2016).

announced the development of a DIB to catalyse the creation of jobs in Palestine via a programme of private sector skills development focused on young people and women.[17]

2.12 A pilot DIB launched in 2015 to improve learning outcomes for girls in Rajasthan, India, shows that although SIBs and DIBs were originally conceived as mechanisms for government funding, this does not need to be the case. Under the financial and governance arrangements of the Educate Girls DIB, the UBS Optimus Foundation is providing the upfront at risk funding for the work, while the Children's Investment Fund Foundation are acting as the 'outcome funder' who provides a return to UBS when agreed outcomes are achieved. Other parties involved in the delivery include Educate Girls itself, the charity delivering the programme on the ground; Instiglio, a consultancy firm who designed the contracting mechanism and is performance managing the project; and ID Insight, impact evaluation specialists responsible for evaluating the projects outcomes.[18]

2.13 Owing to the complexity involved in setting up DIBs, it is likely that they will only be viable for large multi-million pound programmes that can be replicated or scaled. However the concepts involved, including their **focus on leveraging private sector finance, separating financing from outcome delivery and emphasis on delivering results also provide opportunities for innovative approaches** at a smaller scale. For example, an LDP report commissioned by the International Development Research Centre, Legal Education Foundation and Open Society Foundations, explored options for sustainably financing and scaling in the provision of basic legal services.[19] There are opportunities to consider small scale impact investing type approaches in current DFID programming. For example, DFID Ghana's Business Enabling Environment Programme will explore non-court options for delivery of commercial justice/ contract enforcement including public-private partnerships and the potential applicability of private commercial dispute resolution by non-state actors.

2.14 As an emergent set of tools and approaches that can leverage new sources of finance to help solve social challenges, impact investing may present an exciting opportunity in the field of CLJ. However, one area which may provide a particular challenge is in the measurability of impacts, something that is central to impact investing arrangements.

The challenge of measurability

2.15 As with other payment by results mechanisms, measurability of performance is central to impact investing from programme design to completion as it forms the basis of the contracting relationship. GIIN include 'impact measurement' as one of the four core characteristics of impacting investing.[20] From the investor's perspective, this is the way in which they are able to assess the financial risk they are assuming, as it is only when demonstrable results are achieved that they make their return. During the course of the

[17] World Bank (2015b).

[18] Intiglio (2015).

[19] The Law & Development Partnership (2015).

[20] Global Impact Investing Network (undated).

programme, the investor will be keen to ensure that the programme remains on track and so there is likely to be a need to measure performance throughout programme lifecycles and to make adjustments where necessary to ensure that results are delivered.

2.16 Alongside helping the investor to manage their financial risk and all stakeholders achieve their desired social impact, building a strong evidence base on outcomes also increases the likelihood that new investors can be attracted in the future, by reducing levels of uncertainty about programmes' ability to deliver results.

2.17 A key question for the applicability of impact investing to CLJ is **whether an evidence base can be developed that demonstrates that CLJ reforms can produce social and economic benefits**. Demonstrated benefits can form the basis of conversations around how to shape interventions to make the best use of impact investor funds. The remainder of this paper will explore how the benefits of CLJ interventions might be measured (or estimated in advance) to establish their value for money and provide case studies of potentially investable CLJ products and services.

3: A typology of Commercial Law and Justice reforms

3.1 This paper seeks to support value for money analysis of a wide range of potential commercial justice reforms, using, as far as possible, a standardised approach to facilitate comparison. This section sets out a broad typology of CLJ reform to illustrate the range of potential reforms and provide a framework for the application of VFM instruments in different contexts. The typology comprises four categories:

- Strengthening legislation and regulation;
- Enforcing contracts through enhanced commercial dispute resolution;
- Improving the quality of government contracting; and
- Enhancing access to legal assistance.

3.2 This typology is not intended to be exclusive; indeed, there is no commonly agreed definition on the parameters of "commercial law and justice reform". But it highlights important categories of reform in which commercial law and justice plays a key part, and where LASER has direct and relevant experience of supporting developing country governments. The potential benefits of each type of reform are discussed below.

Strengthening legislation and regulation

3.3 Opportunities and incentives for businesses to invest productively and expand depend on well-functioning investment climates – defined as the policy, legal and institutional arrangements which underpin the functioning of markets – and the level of risk and transaction cost associated with setting up and operating a business.[21] Of particular importance is the clarity, certainty and predictability of those laws and their application.[22] Further, well-designed regulation that corrects power imbalances between different players (e.g. creditors and borrowers, employers and employees) can result in fairer outcomes that leave everyone better off.[23]

3.4 **The reform of existing or creation of new laws or regulatory bodies can improve investment climates and facilitate competition, with the ultimate aims of improving the efficiency of the economy and increasing investment.** DC governments may seek technical assistance to identify and develop an appropriate legal framework as well as advice on the implementation of inclusive consultation processes to ensure that laws reflect the needs of stakeholders and are fit for purpose.

[21] IEG, 2014.

[22] Hogan Lovells, 2015.

[23] World Bank, 2016a.

Box 2: LASER and legislative and regulatory reform

LASER support which falls within this category of reform includes the following:

- In Burma, LASER has leveraged independent legal advice on the content of the country's draft Investment Law, and encouraged the relevant government agency – the Directorate of Investment and Company Administration – to open up the draft to an additional round of public consultation.
- LASER has supported Somaliland's Ministry of Foreign Affairs & International Cooperation to conduct research identifying key regulatory challenges in the energy sector, and, by facilitating public and private consultations, to develop a politically informed action plan for development of energy regulations.
- In Rwanda, LASER has supported the Ministry of Trade and Industry to develop a regulatory framework for competition and consumer protection – including the provision of advice on the design and powers of a new competition authority – and to review the internal trade law by supporting consultations and providing good practice examples.

Enforcing contracts through enhanced commercial dispute resolution

3.5 Efficient, transparent and equitable contract enforcement can help to improve business climates, foster innovation, attract FDI and secure tax revenues.[24] Dedicated systems for resolving commercial disputes usually fall into one of three models:[25]

- Specialised commercial courts or divisions provide a faster and higher quality service for commercial claims as they tend to promote consistency in the application of the law as judges develop expertise in the field, increasing predictability for court users. This is combined with reforms to judicial processes which facilitate faster and more qualitative dispute resolution. Increased levels of certainty can, in turn, bring about changes in economic behaviour vis-à-vis increased willingness of businesses and lenders to take measured risks.
- Small claims courts or simplified procedures for small claims are the form of justice provision most likely to be encountered by citizens and, as such, play an important role in building public trust and confidence in the judicial system. They help to fulfil objectives of efficiency and cost effectiveness by providing a mechanism for the quick and inexpensive resolution of legal disputes involving small sums of money.
- Alternative dispute resolution (ADR) can be implemented as part of the court system or separately by non-state actors, and does not replace litigation but is a tool to resolve disputes in a timely, cost-effective and transparent way. ADR gives parties more control

[24] Hogan Lovells, 2015; Fukuyama, F., 2011.

[25] World Bank, 2016b.

over the resolution of disputes and tends to increase satisfaction with outcomes, particularly where maintenance of relations or privacy are concerns. ADR can reduce delays caused by complex formal procedures or inadequate court resources, as well as avoid the high costs associated with formal procedures, filing fees and court delays.

Box 3: LASER and commercial dispute resolution

LASER support which falls within this category of reform includes the following:

- LASER undertook a study of the performance and impact of the Commercial Court Division of the High Court of Uganda (the 'Commercial Court') from its inception in 1996 to date, including the role that donor assistance has played in supporting institutional reform. The study reported encouraging findings on the Court's sustained performance and emerging evidence of its positive economic impact.
- In Uganda, LASER has assisted the Judiciary to reduce the time and cost associated with resolving commercial justice disputes by strengthening and supporting the national roll out of a pilot of simplified procedures for small commercial claims (up to a maximum value of $3,150). LASER assistance has included the development of a strategy, monitoring and evaluation framework and workplan for the roll out.
- LASER has facilitated a delegation of Rwandan judicial and government officials to undertake a study tour to learn from the Ugandan experience of piloting a small claims procedure. LASER continues to support the Government of Rwanda to develop and implement recommendations arising from that tour to establish a small claims procedure in Rwanda.
- In Kenya, LASER has supported the development of a new ADR – court-annexed mediation – pilot in the Milimani High Court as a mechanism to speed up the processing of commercial cases and lower costs to litigants and the justice system. LASER has played a catalytic role, facilitating collaboration on the proposed pilot between members of the Judiciary and building the capacity of the Office of the Registrar of the High Court to launch, manage and monitor the pilot.
- In Sierra Leone, LASER has supported the judiciary to establish a baseline against which to measure the performance of the Fast Track Commercial Court to develop and pursue an action plan for reform.
- In Ghana, although not a LASER country, approaches developed under LASER are being applied under the DFID Business Enabling Environment Programme to explore the potential for a market-based approach to ADR provision, outside the formal court system.

Improving the quality of government contracting

3.6 Poor drafting, negotiation and management of contracts can contribute to governments failing to secure full value for money from FDI and lose domestic resources through litigation. Such losses can occur through: disputes owing to poorly drafted specifications and terms of reference; poor day to day management and monitoring of obligations by the procuring entity; delays by suppliers; and delays by the procuring entity in executing payment.[26]

3.7 **Better drafted and negotiated contracts with tighter management, monitoring and enforcement can reduce losses through litigation and release state resources – both financial and human – to be redirected toward more productive uses**. In addition, more effective and efficient implementation of government projects can produce important flow on effects, including increased economic activity and a wide range of potential social benefits (for example, from improved health and educational infrastructure). Taken cumulatively, these relative advantages can, in turn, contribute to improved perceptions of doing business with government on the part of quality investors.[27]

Box 4: LASER and government contracting

LASER support which falls within this category of reform includes the following:

- In Rwanda, LASER has worked with the government to improve contract management processes and capacity, primarily in the context of large infrastructure projects. LASER supported the Ministry of Justice to implement key elements of the Ministerial Instruction on Contracts (which sets out modalities for drafting, negotiating and requesting opinions on signing and managing contracts), by reviewing existing model contracts as well as developing a Contract Management Handbook and training programme. LASER has also assisted the Government to establish a pre-qualified list of international law firms to enable ministries to engage specialised external legal services.
- In Sierra Leone, LASER has supported the Attorney-General's Law Officers Department to improve the drafting, negotiation and management of commercial contracts across government – including development of a model Memorandum of Understanding for use by the Ministry of Energy, and improving processes and technical capacity around significant agribusiness investments. Although we don't have access to the figures, these agreements have significant revenue implications for the Government of Sierra Leone.

[26] LASER, 2016.

[27] LASER, 2016.

Enhancing access to legal assistance

3.8 Those who are poor, geographically isolated or otherwise vulnerable are often unable to obtain assistance to resolve civil legal issues that affect their wellbeing, and hinder their ability to engage in commercial activity. They may be subject to discriminatory laws or lack the legal means to enforce norms that should protect them.[28] Basic legal needs surveys indicate that the most common urgent justice needs relate, first, to basic personal security, second, to protection of property rights and, third, to families and their work.[29]

3.9 **Community-based paralegals are one way of enhancing access to legal assistance. Paralegals can help citizens to address information gaps or administrative bottlenecks that prevent them from accessing justice in a timely manner**, or recommend non-judicial means to resolve problems where appropriate. They offer a bridge between state and non-state systems and may, as the result of intimate local knowledge, be able to identify underlying problems and help resolve issues more quickly than direct referral to lawyers and judges.[30]

Box 5: Grassroots legal empowerment

Although LASER does not work directly in the area of legal empowerment, it has, through its work in Burma (see Box 1), developed networks with grassroots legal advocates. Since 2013 international NGO Namati has partnered with five local civil society organizations to deploy 90 grassroots paralegals across seven states and regions to help farmers claim their land rights under new Burmese law. The law sets out a process through which individuals can register and receive a land use certificate for their farmland.

Paralegals conduct community education, assist farmers with application forms and complaint letters, accompany clients to government offices and conduct follow-up as needed. For clients who need extra assistance or have complex cases – such as reclaiming property seized through a "land grab" – paralegals also provide accessible legal advice. When cases that require court action arise, Namati partner organisations are also able to offer legal representation from in-house lawyers. As a result, hundreds of farmers have received land use certificates, vacant land has been converted into farmland and confiscated land has been returned to smallhold farmers.

[28] OSJI, 2010.

[29] Bahrendrecht, J.M., Kamminga, Y.P. & Verdonschot, J.H., 2008, cited in De Langen, M. & Barendrecht, J.M., 2009.

[30] Namati, 2014; OSJI, 2010.

4: Measuring Value for Money in public investments

4.1 Various tools and techniques can be used to evaluate value for money. DFID's approach to VFM is comprised of measures of economy, efficiency and effectiveness. This paper focuses on cost benefit analysis as a means of identifying the efficiency question: that is, **to what extent have reforms been designed to maximise the return on investment and generate benefits in *sufficient* excess of costs?**

4.2 **CBA is a conceptual framework that quantifies in monetary terms as many of the costs and benefits of a reform as possible**.[31] It can be applied after the fact, to assess how a project has performed. Such *ex post* analysis should typically be applied to real data on costs and measurements of the benefits to the actual beneficiaries. Alternatively, and most often, CBA is undertaken *ex ante*; a forward looking exercise to forecast an estimate of how a project will perform if undertaken.

4.3 Nevertheless, most of the **key principles of CBA** are similar regardless of whether it is forward- or backward-looking, and can be summarised as follows:

- **Benefits are broadly defined and represent the extent to which people impacted by a reform are made better-off, as measured – wherever possible – by their own willingness-to-pay**. In other words, central to CBA is the idea that people are best able to judge what is "good" for them i.e. what improves their wellbeing or welfare.

- **It should be borne in mind that CBA generally assumes a net increase in welfare – measured by the sum of individual welfare changes – to be a good thing**, even if some groups are made worse-off. When estimating a net gain in welfare, care must be taken not to double count a benefit if it is revealed in more than one way (e.g. counting decreased user fees *and* use of the resultant cash savings elsewhere). More generally, an important corollary of this assumption is that particular attention should be paid to impacts on poor and vulnerable groups when interpreting the outcomes of analysis.

- **The timing of benefits and costs must be taken into account** because CBA seeks to measure the welfare impacts of a reform over its entire lifecycle. Discounting is used to convert costs and benefits which occur at different points in time into a common year – that is, applying an appropriate discount rate converts future outcomes into their present value to permit a like for like comparison of options whose costs and benefits occur at

[31] There are a variety of existing national and institutional frameworks relating to the production of CBA in different contexts. In the production of this document, consideration has been given to guidance published by, among others, the US Government (1992), European Commission (2008), New Zealand (2015) and the UK Government (HM Treasury 2011 and 2015) including two sets of DFID guidance (2005 and 2009).

different rates over time. Discounting reflects the "time value of money";[32] the higher the discount rate the more one values present consumption relative to future consumption.

- It is also important to account for the uncertainty of the measures, projections and assumptions on which CBA is based. Sensitivity analysis is used to test the robustness of analysis by helping to identify key assumptions/variables and measure the impact of changes in their values on the outcomes of analysis.

4.4 It is worth noting that CBA differs in purpose and in scope from other types of economic analysis:

- *Effectiveness Analysis* represents an effort to determine whether the impacts of a reform are "as expected" (i.e. whether the reform has produced an improvement) and statistically significant.

- *Cost-Effectiveness Analysis* compares the outcomes associated with using a given amount of resource in different ways and is used to determine the "least costly way of achieving a given level of benefits" or service. It does not help to define optimal levels of service provision, because total benefits are not compared to total costs.

- *The financial analysis component of a Business Case* focuses on the costs and benefits accruing to a specific funding entity and considers payments received by that entity as a "benefit" (whereas CBA generally ignores transfers and considers all costs regardless of who is paying).

By contrast, the primary purpose of a CBA is to assess the total societal costs and benefits of a reform and to help identify the option that maximises welfare per dollar invested.

4.5 CBA produces a number of summary metrics that can be used to interpret the findings of analysis. However, it is important to note that CBA is as much about the process of developing and justifying assumptions and data as it is about end metrics. Good CBA is a vehicle for developing a shared understanding among participants about what an investment will do, who will benefit, by how much, and what would happen in its absence.

4.6 CBA is also useful from a risk assessment perspective as it forces the analyst to consider key assumptions underlying an investment and – through use of sensitivity analysis – offers a tool with which to analyse how forecasted net benefits are affected any variation in these assumptions.

[32] There are several reasons for this: uncertainty – the future is unknown; inflation which erodes the buying power of a dollar; enjoyment – consumption today allow more time to benefit from use of funds compared to future consumption; and investment opportunities – which can create more funds to spend in the future.

5: A proposed methodology for Cost Benefit Analysis of Commercial Law and Justice reforms

5.1 There are seven fundamental steps to undertaking a cost benefit analysis. These are:

- Estimating the counterfactual;
- Understanding the alternatives for reform;
- Accounting for the costs;
- Measuring the benefits;
- Determining the timing and applying discounting;
- Assessing risk or sensitivity of results; and
- Estimating results

5.2 This section sets out a proposed methodology for applying each of these steps to CLJ reforms. The approach developed here is not intended to be definitive but rather to provide a roadmap which might inform and encourage further development of relevant tools and methodologies that enable CLJ policy stakeholders to better assess value for money.

Estimating the counterfactual

5.3 The first, and one of the most crucial, steps in developing a CBA is defining the counterfactual scenario – that is, the situation that would exist if a reform did not go ahead, usually described as the "do nothing" or "do minimum" scenario. **It is important to characterise the counterfactual accurately and to use it consistently, as the baseline against which the benefits and costs of alternatives for reform are measured**.

5.4 **This includes forecasting the evolution of the "do nothing" scenario over the timeframe used by the analysis.** Analysts may take an optimised status quo approach – where the status quo is improved on without significant investment, through low cost changes in policy or minor investments. This suits assessments of individual projects, but can prove challenging when comparing multiple options across a wide variety of investment types owing to the difficulties of addressing investment-specific issues whilst maintaining a "level playing field" for comparison.

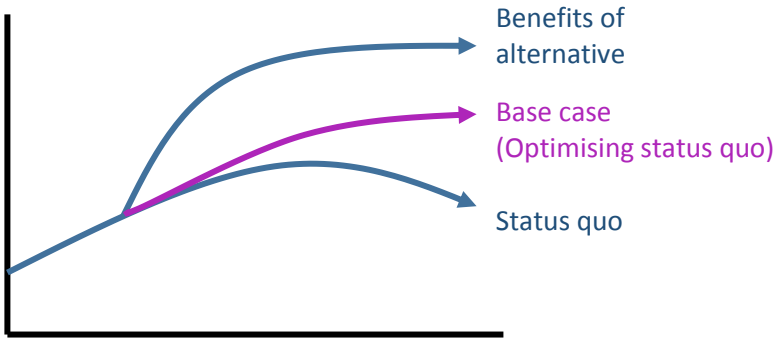


Figure 1: Optimised status quo approach

5.5 As such, **it is recommended that the baseline for CBA of CLJ investments include all planned investments that would be supplanted by the proposed investment as far as possible**. The construction of the counterfactual must, then, assess the likely future condition of key variables (such as caseloads, court or representation costs, claim sizes, resolution times, investment frequency and value) relevant to the benefits selected for estimation. Where pre-existing forecasts of key variables are not available, historical data should be used to construct forward-looking forecasts based on observed trends – taking into account any existing plans for policy change or investment.

5.6 In the case of *ex post* CBA, construction of a counterfactual is less critical because there is no longer an alternative to investment. However, an estimate of what would have occurred in the absence of investment remains necessary to enable valuation of benefits. Likewise, if the optimised status quo would have required expenditures which were displaced by the investment, this should be considered a benefit to be quantified.

5.7 The establishing of a counterfactual may be particularly relevant to the context of impact investing and the use of development impact bonds in particular. In their guide for local governments implementing SIBs in the United States, Liebman and Sellman point out that SIBs may not be feasible where there is no credible approach to obtaining a counterfactual.[33]

5.8 Box 6 illustrates the potential application of this step of the methodology to the introduction of alternative dispute resolution for commercial claims in Kenya.

Box 6: Example of ex ante CBA baseline comparison – introducing ADR in Kenya's High Court

In Kenya, LASER has supported the development of a **new ADR pilot – specifically, court-annexed mediation – in the Milimani High Court** as a mechanism to speed up the processing of commercial cases and lower costs to litigants and the justice system (see box 3).

[33] Liebman, J. and Sellman. A. (2013), p18, Drew, R. and Clist, P. (2015), p18.

In 2015, LASER subsidised and provided technical assistance to a retreat of the Judiciary and, in doing so, facilitated agreement that a court-annexed mediation pilot should be launched in the family and commercial divisions of the High Court, as well as on a workplan. ADR had been identified as a priority by the Judiciary 15 years previously, but efforts to make progress in 2015 would have stalled without LASER's assistance.

LASER has since worked to build the capacity of the Office of the Registrar of the High Court to launch the pilot, including support to the development of a detailed workplan and monitoring and evaluation framework.

The pilot was launched in April 2016; it is envisioned that court-annexed ADR will deliver value for money through:

- Reduced backlog in commercial and family cases;
- Savings for the judiciary related to decreased case load;
- Savings for the judiciary using mediators compared to judges;
- Savings for courts/judiciary related to reduced backlog;
- Improved investment climate related to improved dispute resolution mechanism;
- Costs related to backlog of commercial cases/obstacle to investment climate.

Although the pilot was launched only very recently, we can begin to explore possible productivity gains based on preliminary figures. Whilst operational costs and case disposal results are not yet clear, the Office of the Registrar reports that **between April and June 2016, 45 cases have been referred to mediation, representing a total disputed amount of KES 1,152,387,789.62** (£7.8million[34]) which will potentially be returned to the economy faster than would have been possible in the absence of the pilot. Five of these cases have already commenced mediation.

It is, in this case, difficult to apply an optimised status quo approach to constructing a counterfactual since it is difficult to predict when the court would have fulfilled its commitment to introduce ADR without LASER's assistance. **Thus, the estimated counterfactual looks much like the baseline** – that is, the business-as-usual low rate of out-of-court settlements on civil disputes, with most cases going through the backlogged courts **– adjusted for observable trends in costs and caseloads over time prior to the investment.**

Understanding the alternatives for reform

5.9 Once the counterfactual has been established, the alternative(s) for reform being proposed – usually described as the "intervention case" – should be clearly articulated to form the basis for a shared understanding of costs, timing and benefits and enable comparison where more than one option is on the table.

[34] HMRC rates for June 2016 were used.

5.10 The questions that need to be addressed in order to understand the CLJ intervention sufficiently to construct a CBA are as follows:

- What aspect of commercial justice will be affected (dispute resolution, contracting, paralegal services etc.)?
- What is the current problem that the intervention is intended to resolve?
- Who will be directly affected?
- Are there indirect (including possible negative) effects; what will they be, are they quantifiable, and who will experience them?
- When will the impacts of the intervention start to be felt?
- How long will it take for full and steady effectiveness to come about?
- How long will the intervention continue to deliver benefits relative to the counterfactual?
- Is the proposed intervention the minimum implementation alternative necessary to experience some positive impact relative to the counterfactual?
- Are there other proposals as to how a change to the existing system might alleviate the current problem?

Accounting for the costs

5.11 **The next step is to measure all costs, whether capital investments or ongoing operational and maintenance (O&M) costs, regardless of who is paying for them.** On-going O&M costs can be estimated from the bottom up by the team delivering the reform or be determined using fixed percentages based on historical spending patterns.

5.12 **Costs to users of new services should also be considered – but not double counted.** For example, CBA should not account for both the labour costs of providing paralegals and the fees paid by users to access those paralegals (if those fees are being used to pay labour costs). In such a case, best practice would be to account for the full project expenditure and identify the fees as a source of funds in addition to the direct project investment.

5.13 **The difference in costs to users in the counterfactual and intervention case should be accounted for – but typically defined as cost savings and described as a benefit**. If, for example, in the case of ADR reform, the costs to users of accessing means of resolving disputes are expected to decline, the net savings to the portion of total system users that switch from the existing system to ADR would constitute a benefit.

5.14 Sunk costs and transfers which move value from one economic actor or group to another but do not create or cost any value to the economy as a whole should not be included.

5.15 **The analysis should be conducted in constant prices**, normally those of the year in which the study is carried out. Using constant prices assumes that future inflation will have a neutral impact on the main cost and benefit items concerned i.e. relative values will be unchanged.

Only if there are good reasons to believe that the relative value of an important item will change should this be factored in.

5.16 Box 7 illustrates the potential application of this step of the methodology to the roll out of a procedure for small claims in Uganda.

Box 7: Example of cost estimate – rolling out a Small Claims Procedure in Uganda

In Uganda, LASER has assisted the Judiciary to reduce the time and cost associated with resolving commercial justice disputes by strengthening and supporting the **roll out of a pilot of simplified procedures in small commercial claims** (see box 3).

The input costs for the roll out of the Small Claims Procedure (SCP) can be divided into two categories – a one-off transition (roll out) cost and an annual operational cost – for each court. The former includes all costs relating to setting up equipment and software, initial public sensitisation and staff training, nationwide roadshows and court open days. Drawing on cost data from the pilot stage of the SCP, including overhead costs apportioned between courts, the **best estimate of transition costs is Ush 58m, per court.** It is possible that transition costs may fall over the period – as economies of scale, improved efficiency and greater expertise act to reduce average costs during the roll out period. In addition, it might be possible to benefit from synergies when rolling out the procedure to Chief Magistrate and Grade-1 courts in shared areas.

Annual operational costs, which cover the ongoing costs of service delivery, are estimated to be **Ush 9m, per court.** Further details of these costs are shown in the table below. Based on a planned roll out to all 39 Chief Magistrates and 73 Grade-1 courts over the three year period, the SCP will require an estimated investment of ***Ush 5.2bn***, while total operational costs will require an additional ***Ush 2.1bn over the three years***.

Description of Costs	Monetary Value
Estimated transition cost of rolling out SCP to a new court. Lower value based on a July 2015 Judiciary estimate of average roll out costs, excluding overheads. Upper value based on February 2016 estimate of updated costs of rollout, including overhead costs apportioned between courts.	Upper: Ush 61,000,000 Lower: Ush 54,000,000 Best Estimate: Ush 58,000,000 (roll out period, per court)
Estimated annual cost of operating the SCP, per court. Lower value based on current monthly operational costs. Upper value based on February 2016 estimate of updated operational costs.	Upper: Ush 12,000,000 Lower: Ush 6,000,000 Best Estimate: Ush 9,000,000 (annual, per court)

Measuring the benefits

5.17 **The analyst should next define categories of benefit that relate directly to the reform.** This paper provides pre-defined types of benefit of relevance to our four categories of CLJ reform. These are indicative rather than exhaustive, whilst not all benefits will be applicable in all cases. Indeed, the definition of benefit types will always be specific to the reform.[35]

5.18 Types of benefit of potential relevance to our four categories of reform are set out in the table below. It is hoped that analysts will use these suggestions as a starting point for developing an approach to estimating benefits, but tailor their approach to the specifics of the reform being considered. As with other assumptions discussed in this paper, there is no definitive "right" answer to measuring benefits; rather the objective should be to develop a well-justified answer, both on the benefits included (and excluded) and the chosen approach to measuring them. **Annex A explores each of these benefit categories in greater detail, with the aim of supporting analysts to apply those of relevance to the reform in question, including identification of relevant sources of data.**

Table 1: Potential benefits of CLJ reforms, by type

Benefit	Relevant data
Strengthening legislation and regulation	
Growth in consumer surplus from better functioning markets	Net price and quantity of goods and/or services bought and sold
Growth in private sector investment in the economy	Reduced government spending in direct market activities
	Investment displaced or attracted
	Average return on investment in the economy
Enforcing contracts through enhanced commercial dispute resolution	
Productivity of funds due to shortened processes when utilising the reformed system, process or capacity	Case load
	Net time savings
	Average size of the dispute
	Proportion of disputants to switch from the non-specialised court system

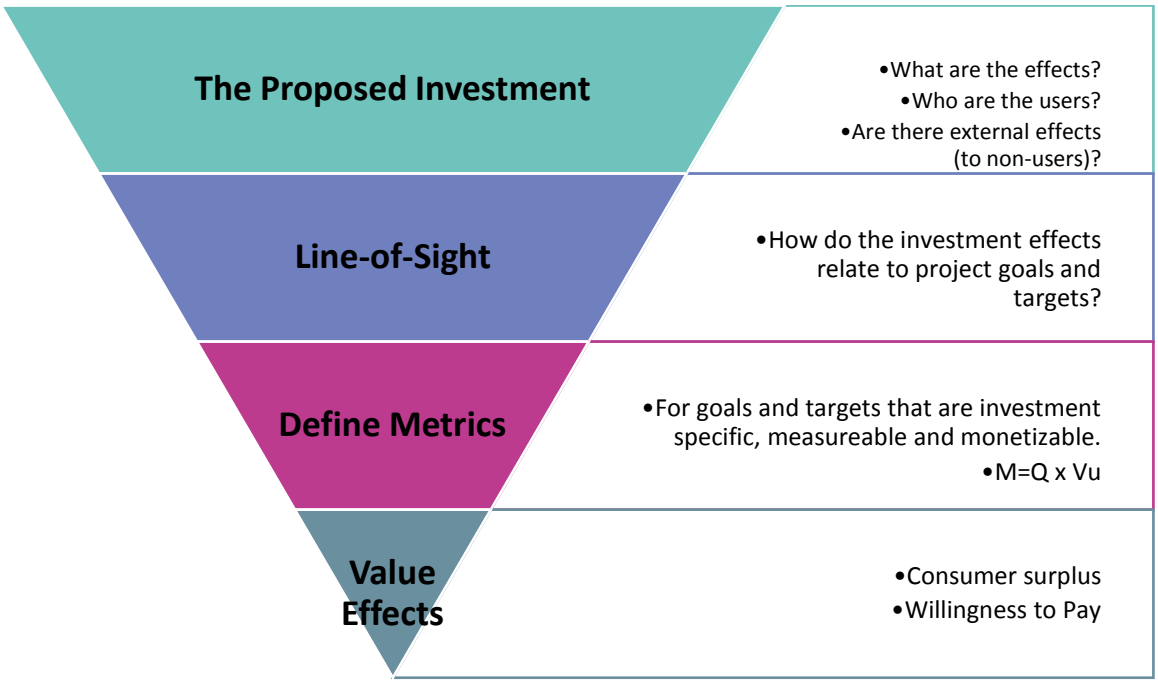
[35] Where a reform enables future improvements that may have their own benefits, these should not be included unless the investment costs for those improvements are also accounted for. Where there are multiple funders of a reform, analysis of benefits should be done at an aggregate level, without consideration of whether the benefit is directly attributable to the project sponsor in order to avoid double (or under) counting benefits.

Benefit	Relevant data
	No. new disputants who would not have used the prior system, procedure or capacity
	Average return on investment in the economy
Cost Savings to users of the court system when utilising the reformed system, process or capacity	Case load
	Net time savings
	Net direct cost savings in court costs
	Proportion of disputants to switch from the primary first instance court
	Number of new disputants who would not have used the prior system, procedure or capacity
	Average representation cost of using the mainstream or counterfactual (CF) system or capacity
	Reduction in average representation cost above
Productivity of economy due to reduced risk of unenforceable contracts	Baseline volume of loans; baseline average commercial loan interest rate
	Net volume of additional loans in the intervention case; average commercial loan interest rate or relative decline of the rate
	Average return on investment in the economy
Improving the quality of government contracting	
Procurement cost savings	Average annual number of contracts for goods and services, both successful and incomplete prior to the reform; estimate of the rate of growth or decline over time
	Expected rate of growth (or decline) of contracts for goods and services, both successful and incomplete
	Baseline time and cost to contract completion or abandonment in the CF case
	Estimated improvement in time and/or cost per contract implementation
User cost savings due to reduced litigation	Average annual number and value of contract-related litigations in the CF; estimate of the change over time
	Expected rate of change in frequency or amount of funds in dispute with implementation
Reduced costs of procured goods and services	Average annual no. procurements of goods and services in the CF; estimate of the change over time
	Average annual value of goods and services procured
	Estimated annual reduction in cost or profit rate on procured goods and services
Enhancing access to legal assistance	
User cost savings	Baseline case load; CF uptake trend
	Proportion of users to switch to the alternative form of assistance or representation

Benefit	Relevant data
	Relative cost difference between the new or reformed service and mainstream or existing legal services
Productivity of investment funds or economic productivity derived from the ability to use assets as collateral	No. of unique new users expected to use the service
	For land-related transactions: typical value of land in question, average rate of land productivity in the area served, normal rate of profit
	For agricultural sales: typical value of the transaction and normal rate of profit
	For loan processing: typical values of loans and return on investment for transactions of similar size
	For contracts and other economic services: typical contract value and normal rate of profit
	For wills, inheritances, and other family law needs: direct cost to the user in terms of fee for service
Social cost savings due to reduced needs of newly self-sufficient users	No. unique new users
	How many of these new users will receive social support in the CF
	Typical per capita support spend across all spending entities
	Decreased spending on average for new users

5.19 In addition to identifying types of benefit that can be directly linked to the reform – the benefit *line of sight* – the CBA must demonstrate a clear relationship between the newly developed capability and its effect. This effect must be forecastable – that is, the analyst must be able to estimate the volume of users or number of beneficiaries of the new capability. The flow of activities in defining and valuing benefits is set out in figure 2.

Figure 2: Defining and valuing benefits



5.20 As set out in the diagram above, effects are valued by multiplying a quantity (e.g. number of users or cases) by a value (e.g. savings per case), producing a benefits metric. The sum of all discounted benefits metrics produces the present value of investment benefits.

5.21 Quantities are always project-specific. The analyst should use the same assumptions regarding user base, contract volume, caseload or other relevant quantity metric as set out in existing project documentation. Data collection will be necessary where quantity metrics have not previously been articulated.

5.22 The valuation of benefits, however, may share common data, or at least practice, across similar reforms. Again, existing project documentation may already articulate these – either as percentages of current costs avoided, as in "reduces the current cost to settlement by 50%" or "cuts the time to resolution by 30%", or as specific values, such as "0.5 years of time to completion of procurement saved." Where project documentation does not provide these estimates, data collection should, wherever practical, be carried out via national datasets, past studies or surveys. In instances where estimates are lacking and data collection is not possible or practical, the analyst will need to rely on assumed values (e.g. based on estimates and/or data used in other countries and projects).

5.23 Whilst cost savings are typically directly observed and relatively easily measured, non-monetary benefits and indirect costs can be more difficult to measure in monetary terms. Wherever possible, valuation of non-monetary benefits should be based on market prices. If, for example, an investment improving access to basic legal services results in the improved ability of some users to make otherwise unproductive assets (such as land) usable, the valuation should be based on the measured productivity of similar existing assets in the economy.

5.24 **Valuation should, where practical, reflect the willingness-to-pay (WTP) approach** as a proxy for its (perceived) impact on the user's wellbeing. People's willingness to pay for a service reflects their ordering of preferences – and therefore the relative impact of services on their welfare. Using WTP thus ensures that the costs and benefits of project alternatives are compared using a common yardstick.[36] Where WTP is not known, or is unknowable, a benefit transfer approach may be used, whereby previous studies of analogous situations are used to provide information about the values of the case under consideration.

5.25 **Reduction of risk – either to users or of overall levels of risk within a market – is of particular relevance to CLJ reforms but can also be difficult to monetise.** The analyst should create a counterfactual cost of the baseline risk over time. For example, if a project is likely to reduce the risk of loan default, one approach is to estimate the annual cost of default risk which may be revealed in interest rates. Where it is not, or where new rates with the reform need to be estimated *ex ante*, a risk cost estimate can be constructed against the counterfactual default rate. For example a market of $1 billion in loans with a 10% default rate has a rough annual cost of $100 million. If the reform is expected to reduce defaults by 50%, this equates to approximate annual savings of $50 million.[37]

5.26 Boxes 8, 9 and 10 illustrate the potential application of this step of the methodology to the introduction of a specialised Commercial Court in Uganda, a community paralegal programme in Burma and contract management reforms in Rwanda.

Box 8: Example of measuring benefits – the Ugandan Commercial Court

In Uganda, LASER undertook a retrospective study of the **performance and impact of the Commercial Court Division of the High Court** from its inception in 1996 to date, including the role that donor assistance has played in supporting institutional reform (see box 3).

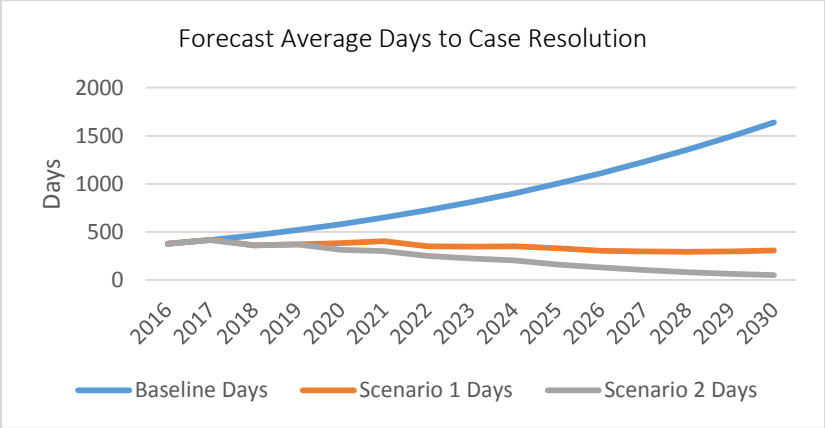
A forward-looking CBA has since been conducted, **analysing two funding scenarios relative to a counterfactual** condition. Scenario 1 aims to increase staffing as caseloads grow in order to maintain the current clearance rate and relative average time to resolution per case. Scenario 2 accelerates added staffing to improve clearance times even as caseloads grow. Each of these scenarios was compared to a base case where staffing remains at current levels, as the caseload increases and therefore the average time to case completion grows. Each scenario relies on the same estimates of caseload growth, based on the observed history of caseloads.

As with any CBA, our findings result from a number of estimates and assumptions. As the **benefits are estimated based on the relative amount of time the average case takes to resolve** in each of the scenarios as compared to the base case, the **key assumptions relate to the case load, the expected growth in cases, the impact of adding additional staff to the reduction of time to resolution, and the value of time savings**.

[36] Of course, willingness-to-pay depends on ability to pay; any such ethical or equity issues that arise should be noted in the CBA report, but be discussed separately. It is generally not practical to attempt to quantify and include them in the numerical evaluation.

[37] The figures here are simplified for presentation purposes. In an analysis, one should consider interest and principal loss, market growth, and any counterfactual changes in the default rate.

One key assumption is an estimate of the productivity of each added staff member, based on observed improvements in average clearance times with the addition of staff, relative to the growth in caseloads, since 2001. The diagram below illustrates the average case completion times expected under the base case and for each scenario between 2016 and 2030.



A second key assumption relates to the valuation of saved time to case clearance in the scenarios. We are assuming that, due to the risk of negative judgment or settlement, parties to litigation exercise some risk avoidance in investing funds that might be used to pay these. If firms and individuals do avoid or reduce investment, the economy is less efficient than it could otherwise be – i.e. this constitutes an economic loss. We assume a fairly conservative reduction of 2.5% of the total claim value, during the time between case filing and completion.

The benefit is calculated as the expected economic return; we use the national average commercial loan rate reported by the Bank of Uganda (2%)**, multiplied by the reduction in investment** (we estimate the average value of claims per case to be about 71 million Ush, based on the history of claims since 2001**), multiplied by the relative difference in resolution time between each scenario and the base case.** Use of a discount rate of 15%, gave a net benefit metric for scenarios 1 and 2 from 2015-2030 of 4.5 and 5.0 billion Ush respectively. See box 10 for estimated results.

Box 9: Example of measuring benefits – Namati's paralegal programme

Although LASER does not work directly in the area of legal empowerment, it has, through its work on legislative reform in Burma (see box 2), developed networks with grassroots legal advocates. Since 2013 international NGO Namati has partnered with local civil society organisations to deploy **90 grassroots paralegals across seven states and regions to help farmers claim their land rights** under new Burmese law (see box 5). To date Namati and its partners have worked on over 3,500 cases in Burma.

During the first 16 months of the programme, 30 paralegals served 2390 clients on cases affecting 7992 people – producing a resolution rate of 85.7% for cases in the first six months and 41.3% for all cases, including recently opened ones. This has resulted in returns

of land to small-hold farmers, conversion of vacant land for farming and securing of land use certificates. The programme is able to demonstrate its additionality as a means of improving access to justice by tracking progress in the resolution of land grab disputes in the districts it covers.[38]

The establishment of a baseline aside, a **CBA of the service could consider the following financial and social benefits:**[39]

Benefit	Relevant data
User cost savings	Decreased opportunity cost of land registration i.e. a reduction in the time taken to register land with paralegal assistance and, consequently, in e.g. foregone earnings. The counterfactual cases open with the government have been in process for a median of 400 days; whereas with paralegal assistance this is reduced to 185 days. Data on the average monetary costs of each of these alternatives e.g. fees, travel expenses and other overheads, would enhance understanding of this benefit.
Productivity of investment funds or economic productivity derived from the ability to use assets as collateral	The number of stakeholders who initiate a land claim with paralegal support who would not have done so previously i.e. unique new users. Improved outcomes for small-holder claimants as a result of better representation; on average Namati's baseline is that on average only 30% of land grab cases have seen either land returned or compensation paid. Value of land obtained and typical plot size / land productivity, or value of compensation. Value of loans obtained as a result of certification of land ownership, and typical return on investment.
Social cost savings due to reduced needs of newly self-sufficient users	The reduction in cost to the state of supporting these farmers; per capita data should be sought.

Although more difficult to monetise, the more intangible social benefits of the programme should also be articulated in the CBA narrative. These could include, for example, increased school attendance as the result of improved household finances, women's increased legal control of a 'new' household asset, and improved efficiency of administration and accountability of government institutions.

Box 10: Example of measuring benefits – contract management in Rwanda

In Rwanda LASER has, since 2014, supported the Government of Rwanda (GoR) to strengthen

[38] See for example, https://namati.org/wp-content/uploads/2015/12/Namati-Myanmar01-v6.pdf.

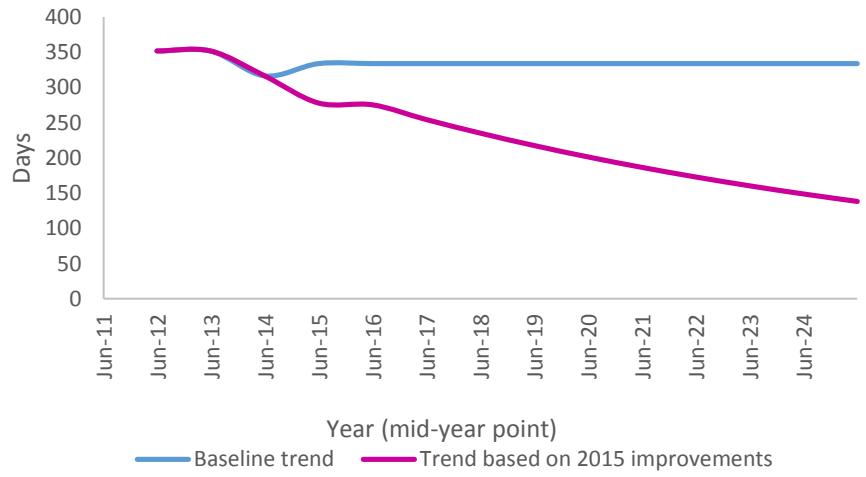
[39] Email from Namati, Myanmar Programme Manager, 13 September 2016.

its contracting capacity to help stem financial losses arising from delays resulting from poor quality government contracts and contract management processes. **A CBA has been undertaken looking forward from 2015, with a focus on increased efficiency in contract management.**

It is anticipated that the training, tools and policy reforms implemented by MINIJUST with LASER support have led to (or are likely to lead to) increased efficiency for the GoR, through better drafting and tighter monitoring and management, resulting in less cost and time overruns, which may be expressed as a financial saving. **This change was represented by the change in the number of days that contracts are delayed**, measured as the difference between the expected date of completion and the actual completion date.

The historical data available does not give a clear trend, complicating the task of establishing a baseline or counterfactual. The graph below shows **two possible projections: a flat-lined trend consistent with the average number of days' delay observed between 2012 and 2014 (counterfactual); and an improved trend which extrapolates the data including the average number of days' delay for the year which immediately followed the introduction of the changes (alternative)**. Benefits were offset by a period of one year.

Trend in mean no. days of contract delay
[Source: OAG reports 2012-2015]



The estimated reduction in days' delay under this alternative scenario were translated into a figure, by multiplying the average length of delay by the average number and cost of contracts. This was then translated into an annualised figure, by taking the proportion of the year during which contracts were delayed. An example is given below from the contracts reported in the 2013-14 annual report.

Average no. days delay	Delay as portion of the year	Annualised value of delayed contracts (RWF)
317	*317/365 =* ***0.8673***	*0.867 x 44,436,369,897 =* ***38,541,629,180***

The difference between the value of the baseline and the post-2015 scenario was considered to represent the savings achieved as a result of improvements in contract delay. **The benefit of this reduced delay was calculated as the expected economic return**, i.e. the money that could be made from returning these sums to the economy. The Bank of Rwanda's reported commercial loan rate is 17%, so we can take the saved economic return as 17% of the savings.

SAVINGS: Difference in annualised value	Value of savings to Rwandan economy
= Baseline – Scenario	*= Savings * 0.1695*

Determining the timing and applying discounting

5.27 As CBA measures the impacts of reform over its entire lifecycle, the timing of costs and benefits must be taken into account. Once cost and benefit data are assembled, the counterfactual and intervention cases should be arrayed in a spreadsheet with annualised entries throughout the period of analysis i.e. the lifecycle of the reform or, in other words, how long the reform is expected to continue to deliver value relative to the counterfactual.

5.28 Reforms rarely deliver benefits in perpetuity; in practice, the counterfactual is often likely to offer another solution to address the original problem in time. For this reason, it is advised that the time horizon be 20 years or less; a period of ten years from completion of implementation is commonly used. In addition to the time horizon and schedule of costs and benefits, any scaling up and/or down of benefits should also be identified.

5.29 Discounting should then be used to enable comparison of investment options whose costs and benefits occur at different rates over time. Discounting reflects the "time value of money". The higher the discount rate the more one values present consumption relative to future consumption. Applying an appropriate discount rate converts costs and benefits into a common year.

5.30 DFID recommends using the discount rate estimated by the relevant partner government, whilst recognising that most partner countries are unlikely to have conducted such analysis. DFID has generally advocated for relatively high rates in the range of 10 - 12% in DC contexts. In the absence of an established standard on the part of the funder as well as of a national estimate by the partner country, the analysis should make a reasoned choice; the average long term national borrowing rate plus 200 to 400 basis points (2 to 4%) is recommended.

Assessing risk or sensitivity

5.31 For *ex ante* CBA, the robustness of forecasting assumptions should then be tested through sensitivity analysis or stress testing.[40] Identifying key variables – and testing the effects of any variations in these on the outcomes of analysis – can indicate the degree of risk associated with achieving the forecast outcome as well as specific points of vulnerability that may cause outcomes to fall short of forecasted results.

5.32 Key variables typically subjected to sensitivity analysis include:

- Capital cost
- Implementation schedule
- Operations and maintenance costs
- Consumption or take-up rate
- Investment performance variables

5.33 Unlike complex statistical risk analyses (generally reserved for very large programmes), sensitivity analysis does not assess simultaneous adjustments to multiple assumptions, but instead measures the impact of significant adjustments to key variables, taken sequentially.

5.34 In addition to presenting the results of sensitivity analysis, analysts should document how tests were conducted, as well as the likelihood and potential impact of key risks identified.

Estimating results

5.35 The final step is to identify and use those CBA metrics of most relevance to the decision at hand. CBA produces a number of useful metrics which, as set out in the table below, include determinants of feasibility, as well as others which speak to the optimal timing of investment.

Table 2: Overview of CBA metrics

Whether to Proceed		
Measure of worth	**Definition**	**Interpretation**
Net Present Value	Present-day value of benefits less present-day value of costs	NPV greater than zero means project is economically efficient. Projects are ranked according to pay
Rate of Return	The discount rate at which NPV=0	Rate-of-Return should exceed pre-set hurdle to qualify for consideration
Benefit-cost-ratio	Present value of benefits divided by the present value of costs. Indicates dollars of benefit per $1.0 of cost	A ration of greater than one means a worthwhile project

[40] *Ex post* CBA does not require risk analysis as the outcomes are already known and therefore not uncertain.

Whether to Proceed		
When to proceed		
Measure of worth	**Definition**	**Interpretation**
First Year Benefit	Benefits in the first year after implementation, divided by costs to date including interest paid during construction, expressed as a percent	A ratio equal to hurdle rate means the project is optimally timed. A ratio below the hurdle rate means the project is immature. A ratio above the hurdle rate is overdue
Pay-Back Period	Number of years until capital recouped through flow of benefits	A short pay-back means less risk

5.36 The calculation of each metric is as follows:

- Net Present Value (NPV) = sum of discounted benefits – sum of discounted costs
- Benefit to Cost Ratio (BCR) = sum of discounted benefits / sum of discounted costs
- Internal Rate of Return (IRR) = the discount rate necessary such that the annual net *undiscounted* net benefits (undiscounted benefit-undiscounted cost in each year) = 0 when summed for all years.
- First year rate of return = discounted benefit in first year of full benefit / sum of discounted costs to that date
- Payback period = the first year for which the cumulative discounted benefits to that date > the cumulative discounted costs

5.37 Investment determinant metrics accord value to different kinds of projects. NPV metrics tend to value large, costly projects over smaller ones, even those with a high rate of return, whereas BCR can value very small projects over larger projects with a greater net contribution to society. Internal Rate of Return strikes a balance between these, although an individual, high-cost project with a substantial payback to the economy may still be valued less than a series of small projects with more limited contributions. As such, it is recommended that **both NPV and Rate of Return be considered when constructing rankings, but with Internal Rate of Return used as the primary ranking metric.**[41]

5.38 Boxes 11 and 12 illustrate the potential application of this step of the methodology to the roll out of a simplified procedure for small commercial claims in Uganda and contract management reforms in Rwanda.

[41] The production of a Rate of Return, often referred to as an Internal Rate of Return (IRR), can present some technical challenges. The flow of net benefits must include at least one year where costs exceed benefits (negative net benefits) in order to produce a valid Rate of Return. More importantly, *non-discounted* net benefits (benefits minus costs) must be used in the estimation of IRR. In MS Excel, the most typical tool used for producing CBAs, there is more than one function that can be used to estimate IRR. The IRR is an exponential function and can produce inconsistent results depending on the annual fluctuations of net benefit. Excel thus provides a Modified Internal Rate of Return (MIRR) function that smooths this volatility. MIRR is recommended for use in project evaluation. For CBAs that use the IRR excel function, the target rate required in the excel IRR function should be the discount rate.

Box 11: Example for estimating results and sensitivity analysis -- the Ugandan Commercial Court

Box 8 describes the application of our methodology to a **CBA of investment in the Ugandan Commercial Court,** with particular reference to measurement of benefits. Here we describe the way in which results were estimated and their robustness tested.

The benefits set out in box 8 were weighted against costs, estimated based on the staffing targets necessary to achieve certain targets: Scenario 1 staffing is designed to achieve a 100% clearance rate of pending cases by 2030, scenario 2 is designed to clear the entire backlog of cases by 2030. These are both based on estimated forecasts of the caseload -- itself based on the historical growth in new cases since 2001.

In non-discounted terms, between 2015 and 2030, Scenario 1 is estimated to cost a total of 10.2 billion Ush and Scenario 2 is 14.5 billion, or an average of 684 million and 964 million Ush per year respectively. In discounted terms -- considering the relative timing of expenditures – **the estimated aggregate costs of Scenarios 1 and 2 from 2015-2030 are 3.2 and 4.5 billion or an annual average of 215 million and 303 million Ush respectively.**

Comparison of the relative costs and benefits of the Commercial Court between 2016 and 2030 indicates that a **fairly modest investment could generate potentially large benefits for businesses and the wider economy**. The table below describes the CBA findings for each scenario.

CBA Metrics		
	Scenario 1	**Scenario 2**
NPV (Ush)	53,440,529,220	58,646,254,912
IRR (%)	244%	250%
BCR (Ush)	17	13

The annual benefit in terms of value of under-investment avoided through the shortening of relative case resolution times far exceeds the combined staffing and operational costs, giving a **net benefit of approximately Ush 53 bn for Scenario 1 and 59 bn for Scenario 2.** This estimate excludes possible reductions on representation costs due to reduced case resolution times and it also excludes broader growth and investment resulting from perceptions of a better functioning court system. While the full impact on economic growth is difficult to disentangle from other variables, the benefits from a successful and accessible Commercial Court are likely to be substantial. As public awareness and usage of the Commercial Court becomes more widespread, the potential benefits could be much higher.

Our **tests of the sensitivity of the findings to the assumptions made indicate that the CBA results are highly robust**. We tested using a lower average per case claim value, consistent with the figures reported by the World Bank. We also tested lowering the investment risk avoidance from our estimate of 2.5% to an extremely conservative 1%. As the table below indicates, even when changing both assumptions at the same time, the benefits exceed the

costs for both scenarios.

CBA Metrics – Sensitivity Tests		
	Scenario 1	**Scenario 2**
Reduced Claim Value		
NPV (Ush)	7,779,087,990	7,779,688,464
IRR (%)	67%	63%
BCR (Ush)	3	3
Reduced Risk Avoidance		
NPV (Ush)	19,338,497,713	20,656,800,245
IRR (%)	122%	124%
BCR (Ush)	7	6
All		
NPV (Ush)	1,073,921,220	310,173,666
IRR (%)	25%	17%
BCR (Ush)	1.4	1.1

Box 12: Example for estimating results – contract management in Rwanda

Box 10 describes the application of our methodology to a **CBA of investment in contract management in Rwanda,** with particular reference to measurement of benefits. Here we describe the way in which results were estimated.

The benefits set out in box 10 were weighted against costs i.e. the expenses incurred by LASER, Ministry of Justice and Institute of Legal Practice and Development in delivering the reforms. On the GoR side, we considered only marginal salary costs (i.e. the additional costs) and not general institutional running costs such as building maintenance, utilities etc.

The total cost of the first two years of the LASER Rwanda programme from July 2014 to June 2016 is comprised of the costs of embedding a resident adviser in MINIJUST, and technical and programme management support provided by the LASER team, totalling approximately £500,000. The LASER Rwanda programme involved multiple work streams; an estimate that approximately half of this time was spent on support to contract management reforms results in a total cost of approximately £250,000 (286,330,000 RwF).

The initial and ongoing costs to MINIJUST and ILDP were calculated based on estimates of the staff time taken to support the implementation of the improvements to contract management (with the salaries two MINJUST legal officers and one ILDP staff member totalling 20,050,700 RwF) and including an annual week-long training session with ILDP staff (20,126,750 RwF).

The NPV was calculated as the difference between the NPV (benefits) and the NPV (costs), and represents the total value today of the anticipated future changes. Here, a year's delay has been added from the first year of expenditures to the first year of claimed benefits, to give a more conservative estimate as to the realisation of the benefits.

CBA metrics	
NPV (RwF)	17,819,040,246
Benefit-to cost ratio	26:1
Payback period (years)	1

The benefit-to-cost ratio (BCR) is the sum of the discounted benefits relative to the sum of discounted costs. Here, the BCR demonstrates that **we could expect a 26-fold return on investment in improvements to contract management, over a ten-year period**, assuming ongoing time commitment from GoR. This gives a sense of the possible return to the Rwandan economy on investing in the staff time to continue to support improvements in contract management. The payback period of a year indicates that this expenditure is also worthwhile in the short-term.

Given the limited data available to conduct this analysis and related assumptions, we have conducted sensitivity testing to test the robustness of results.

The sensitivity analysis was conducted in two parts. First, we assessed the results of the analysis if benefits were 50% lower than anticipated, to allow for the fact that some portion of the benefits might not be attributable directly to the LASER and GoR investment and, instead, be the result of other GoR policies or changes in the commercial landscape; benefits may conceivably decline over time as participants adjust to new rules; or the limited historical data set may possibly overstate the scale of problem being addressed, leading the reduction in delay or litigation to be overstated. Second, we analysed how low the benefits would need to be, or how high the costs would need to be, in order for the investment to only break even i.e. what scale of benefits reduction or cost increase results in an NPV of RWF 0.

Sensitivity Test 1	
CBA metrics	**Benefits Reduced by 50%**
NPV (RwF)	8,356,027,432
Benefit-to cost ratio	13:1
Payback period (years)	1

Sensitivity Test 2	
CBA metrics	**Benefits Reduced by 50%**
Benefit multiplier to break even	0.0368
Cost multiplier to break even	32.194

At a benefits reduction of 50%, the investment in contract management reforms still offers a substantial return on investment, with payback on investment within one year. The project would still be expected to return 16 Rwf for each franc invested.

As sensitivity test 2 indicates, to merely break even, the LASER-supported GoR reform would need to only generate 3.1% of anticipated benefits, assuming that the estimate of the total costs of delivering the reforms is correct – that is, the costs would need to exceed 32 times the anticipated level of costs for the reforms to only break-even.

As these tests suggest, **the investment has a high likelihood of being justified by the benefits of the reforms, even given the uncertainty associated with the limited data available**. It should also be noted that there is potential for the return on investment to be significantly higher than that estimated here, given that important benefits – most notably decreased litigation costs – have not been taken into account.

6: Applying the methodology: practical challenges and lessons

6.1 The suggested approach to CBA outlined above may be applied to a wide range of CLJ reforms to assist policymakers and practitioners to assess the – in the case of *ex ante* analyses, potential and/or relative and, *ex post*, actual – value for money of investments. **However, perhaps unsurprisingly, LASER has found that implementation of this methodology is not without challenges**. These challenges relate most often to shortcomings and inconsistencies of available data, which mean that CBA must rely on proxy indicators or approximations based on that which is available – and can undermine robustness, as well as the usefulness of CBA metrics as a means of comparing options for reform.

6.2 **This section summarises the various challenges encountered during LASER's application of the methodology** to the case studies referenced in the previous section and sets out a series of practical recommendations as to how these might be addressed – considering each of the most relevant methodological steps in turn.

- *Establishing a counterfactual in the absence of budgets and investment plans*

In the case of *ex ante* CBA, a number of challenges were faced in establishing counterfactual or base case scenarios against which alternative scenarios could be modelled. Planned budgets, investments and policy initiatives were often unavailable, making it difficult to construct comprehensive forecasts for the period over which costs and benefits were estimated. Likewise, modelling alternative scenarios sometimes proved challenging in instances where there were not a variety of policy options on the table.

When specific, pre-existing forecasts of key variables are unavailable, it is good practice to collect as much historical data as possible and construct forecasts based on observed trends. In those instances where relevant variables – court costs and case values, for instance – fluctuate significantly over time, narrative explanations make it clear that constructing monetary forecasts for those variables could give a false impression of accuracy.

- *Overcoming data shortcomings when accounting for costs*

Shortcomings of available cost data can make extensive CBA difficult. In the example of dispute resolution reforms, both salary and operational costs were in many cases unavailable from court officers. In cases where data was available, problems arose in the form of gaps and inconsistencies across data sources.

In the case of the Ugandan Commercial Court, for example, cost estimates based on the staffing targets necessary to achieve certain targets – two scenarios both based on estimated forecasts of the caseload, itself based on the historical growth in new cases since 2001 – had to be made on the basis of assumptions, past trends and expert opinion from judicial staff. This limitation was mitigated by making the rationale for assumptions clear, as

well as the risks and sensitivities associated with them. Quantitative cost-benefit analysis was supported by detailed narrative, relevant academic research and anecdotal evidence.

- *Addressing data limitations when measuring benefits*

Similar assumptions must often be made – and made explicit – when estimating the benefits of reform. Calculation of the benefits of contract management reforms in Rwanda, for example, focused on financial savings from increased efficiency and the decreased number (and cost) of contracts resulting in litigation. For the latter, disaggregated data for cases which specifically related to contract management was available only for the year 2013/14, making it difficult to observe and forecast trends. For the former, the potential impact of reform on the costs of contracts at procurement stage and on completion or abandonment was similarly based on observed improvements over the course of a single year. These shortcomings were made explicit in the narrative, and recommendations made to improve the robustness of the CBA once additional data becomes available.

In the case of the Ugandan Commercial Court, where benefits were estimated based on the relative amount of time the average case takes to resolution in each of the scenarios, these assumptions relate to the case load, the expected growth in cases, the impact of adding additional staff to the reduction of time to resolution, and the value of time savings. The estimate of the productivity of each added staff member were based on the observed trends in average clearance times with addition of staff, relative to growth in caseloads, since 2001. To place a value on the saved time to case clearance, we assume a fairly conservative reduction of 2.5% of the total claim value between case filing and completion.

In presenting CBA of the above reforms, it was also important to emphasise to partner governments that the net benefit calculated represents a net societal benefit, and does not necessarily constitute direct savings to the implementing institution.

- *Capturing hard-to-measure social benefits*

Evidence as to the impacts of CLJ reform on social and distributional dimensions – the impacts on the poor and vulnerable groups – is generally under-researched, making it difficult to estimate the wider social benefits of our case study reforms. The core assumption that net increases in welfare constitute a good thing can also be problematic when conducting CBA of reforms that seek to improve equity within society, rather than net societal benefit. This is a particular concern for evaluation, for example, of paralegal or other programmes that seek to improve access to justice for the poor and vulnerable, where economic efficiency is not the prime object. In addition, willingness-to-pay approaches which establish economic value and individual utility may fail to capture, for example, collective benefits issuing from shared social goods.

The extent to which these more intangible benefits could practically be quantified was limited, necessitating fuller narrative explanations of the potential benefits of reform. It was also important to pay explicit attention to potential impacts on poor and vulnerable groups

when interpreting the outcomes of analysis, in recognition of the fact that positive CBA metrics reflect net increases in welfare.

6.3 It is hoped that the approaches to overcoming the practical challenges of conducting CBA outlined here will assist analysts when applying the proposed methodology. Above all, it should be emphasised that there can be no definitive "right" answer to each step of a particular CBA; rather **the objective should be to develop well-justified answers, both on the variables selected for study and the chosen approach to measuring them**.

7: Conclusions

7.1 **LASER's experience suggests that there is real scope for application of CBA approaches to commercial law and justice,** including for: donors to determine more accurately the value for money of specific reforms and make decisions on resource allocations; DC governments to make the case for additional funding of priority reforms; and non-traditional development funders to identify and value potentially high impact and high return CLJ investments in developing countries.

7.2 The LASER case study CBAs examined in this study produce minimum benefit: cost ratios of, in the case of the Ugandan Commercial Court, 13:1 and, for contract management reform in Rwanda, 26:1. These estimates are based on a number of assumptions and general trends cannot be drawn from only two case studies. Nevertheless, these estimates suggest **strong potential for value for money for DC and donor investment in CLJ reform, and substantial scope for the development of "investable CLJ products" of attractiveness to DC governments, donors and impact investors alike.** Indeed, evidence from LASER and like-minded technical assistance programmes[42] – which seek primarily to support local reformers and help them to navigate reform processes – suggests that TA which takes the form of ongoing strategic and operational advice can play a catalytic role that may offer exceptional value for money – and result in high benefit to cost ratios. It should be noted, though, that attribution may be challenging.

7.3 **It is hoped that these case study CBAs of CLJ reforms may provide a basis for DC governments, donors and alternative funders to strike up a dialogue about how new sources of finance might be leveraged to deliver and scale CLJ reform.**

7.4 By setting out both a detailed technical methodology and worked examples of its application, the paper has attempted to provide policymakers, funders and practitioners with a roadmap for measuring the VFM and relative attractiveness of investment options. This approach is not intended to be definitive but rather to inform and encourage further development of relevant tools and methodologies. As such, we welcome feedback and comments from practitioners.

7.5 LASER's reflections on the challenges of applying the proposed methodology in practice indicate that, wherever possible, **practitioners should strengthen monitoring and data collection at the project and/or programme level to enable robust CBA of individual reforms – as well as meaningful comparison between them – to develop the evidence base as to which specific reforms contribute most to economic growth**. Nevertheless, data limitations are likely to persist. This implies that the results of quantitative CBA should be used conservatively and, wherever possible, be supported by expert opinion, relevant research and lessons from other countries.

7.6 **The various challenges identified above point to areas where wider research is needed – not least as regards, first, the causal linkages between CLJ reform and economic growth and,**

[42] See, for example, the Budget Strengthening Initiative and TradeMark East Africa's programmes, described in LASER's fourth synthesis paper which explores new approaches to technical assistance.

second, the social and distributional dimensions of CLJ as donors and DC partners seek to foster inclusive growth. As mentioned above, because CBA measures *net* gains in welfare and intangible social benefits cannot be straightforwardly monetised, the latter do not usually form part of CBA calculations and thus should be given particular attention in accompanying narratives.

7.7 Given the potential VFM suggested by CBA of LASER CLJ reforms, a dialogue between donors, developing country governments, and policy practitioners on the applicability of impacting investing approaches to CLJ reform should explore the following areas:

a) **How to improve and build the evidence base in relation to CLJ reform** and developing an understanding of how impact investment approaches to evidence and impact measurement might apply to this.

b) **The potential for developing CLJ 'investable products'** that offer attractive propositions to traditional donors and impact investors alike, with the focus on identifying which interventions best deliver impact and VFM.

c) **How new sources of funding might be combined with existing CLJ/development expertise** to catalyse change and achieve impact at scale.

Annex A: Measuring the benefits of different types of CLJ reform

1. This paper has set out a methodology for conducting CBA of CLJ reforms. Table 1 (section 4) sought to provide a starting point for estimating project benefits by setting out types of benefit of potential relevance to each of our four categories of reform. This annex explores each of these benefits in greater detail, with the aim of supporting analysts to apply those of relevance to the intervention case being analysed, including the identification of relevant sources of data.

A. Strengthening legislation and regulation

2. As set out in section 2, the reform of existing or creation of new laws or regulatory bodies can improve investment climates and facilitate competition, with the ultimate aims of improving the efficiency of the economy and increasing investment. Reforms may include provision of technical assistance on identifying and developing an appropriate legal framework as well as advice on the implementation of inclusive consultation processes which ensure that laws reflect the needs of stakeholders and are fit for purpose.

3. The desirability of particular regulatory reforms is usually assessed using Regulatory Impact Analysis (RIA) which focuses on the positive and negative impacts of the regulation – with a regulatory action considered justifiable when the positive externalities outweigh the negative ones. However, in the context of donor investments in legislative and regulatory reform for investment climates, the primary question at hand is whether the investment, and not only the regulation itself, is justified. As such, we recommend that analysts include all investment costs, regardless of who is paying them, as well as any positive and negative externalities. The following table sets out the potential monetisable benefits of strengthening legislation and regulation.

Table 3: Potential monetisable benefits of strengthening legislation and regulation

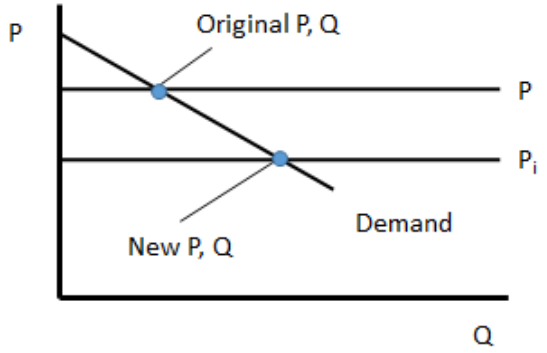
Benefit	Description	Relevant data	Possible sources
Strengthening legislation and regulation			
Growth in consumer surplus from better functioning markets	I.e. estimated net new price and quantity of goods and/or services bought and sold in the intervention case, less the estimated net new price and quantity of goods, assuming unitary elasticity, divided by two. This benefit is most likely to be the primary result of reforms that seek to improve domestic competition. Ultimately, better functioning markets should result in reduction in prices for goods and/or services. We recommend that the analyst function on primary markets – that is, the markets directly targeted by the regulation. The calculation of consumer surplus can be complicated by distortions in the CF market, lack of information regarding the price elasticity of demand, and possibly by lack of price data. Nevertheless, for competition regulations, improved competitive efficiency should have an effect on prices, which will likely be the most significant benefit. As such, it is incumbent on the analyst to attempt to quantify the change in consumer surplus. An approach to doing so is set out in paragraph 4 below.	Net price and quantity of goods and/or services bought and sold	See paragraph 4 below
Growth in private sector investment in the economy	I.e. return on investment of any net increase in investment funds. This benefit reflects the reduced displacement of private activity through a reduced	Reduced government spending in direct market activities	
		Investment displaced or attracted	Project documentation, DC government data, national accounts, analogous case

	government direct intervention in the market. First an estimate of the net new investment in the DC economy is made (this can be as simple as the reduction in government spending in direct market activities as compared to the CF, or a more complex assessment of the displacement effects, if available). Then the growth of private investment should be valued. The value is not the investment itself, but rather the productivity of the investment	Average return on investment in the economy	DC government data, national accounts, prevailing commercial interest rate can be an indicative "floor" for a return rate, given that borrowers won't borrow if the returns are below the costs

4. As referenced in table 3, in what follows we set out an approach to calculating consumer surplus, although it is recommended that the analyst tailor their approach to the market context:

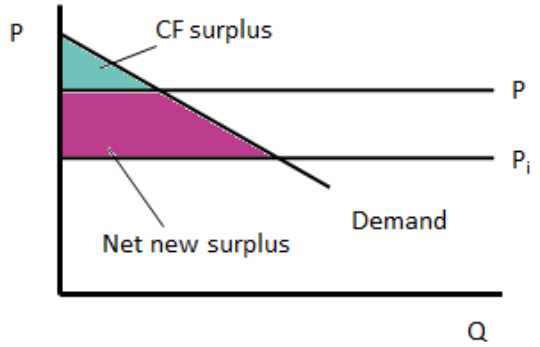
   - In the absence of information about the demand curve, we recommend a generic straight line elasticity of 0.5 across all goods. The scale of consumption in the baseline can be collected from industry data, government tax revenue data or from market studies. Likewise, unit price data can be taken from industry data or market studies or by survey. The simplest way to assess change in consumer surplus is to assess two points: the price, quantity in the CF and the price, quantity in the intervention case. If using a unitary elasticity (0.5), then one can assume that for each 1% decline in price, there is a 1% decline in consumption.

Figure 3: Assess the CF and intervention case price (p) and quantity (q)



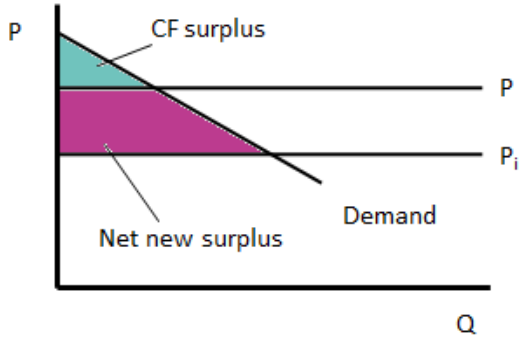
- This assumption allows for the construction of two triangles, as the elasticity of demand enables an estimate of the price at which 0 goods and/or services are bought (the 'y-intercept').

Figure 4: Determine the y-Intercept



- Once that y-intercept is calculated, the estimate of consumer surplus is straightforward. It is (the y-intercept minus the price) x quantity in the intervention case divided by ½ less (the y-intercept minus the price) x the quantity in the CF divided by ½. The division by ½, also called "the rule of the half" in intended ease calculation of the triangle based on an assumption of a straight-line demand curve.

Figure 5: Use the Rule of the Half to calculate the Intervention and CF Surplus



B. Enforcing contracts through enhanced commercial dispute resolution

5. Enhancing the capacity of the judicial system to enforce contracts efficiently, transparently and equitably can improve the business climate, foster innovation and secure tax revenues. Specialised commercial courts or divisions, simplified procedures for small claims and ADR can all reduce the time and cost associated with pursuing claims, increase the quality and predictability of judicial outcomes and reduce risk to market participants that may cause economic participation to fall short of potential. The following table sets out the potential monetisable benefits of improving the quality of commercial dispute resolution.

Table 4: Potential monetisable benefits of enforcing contracts through enhanced commercial dispute resolution

Benefit	Description	Relevant data	Possible sources
Enforcing contracts through enhanced commercial dispute resolution			
Productivity of funds due to shortened processes (reduced time funds are in dispute)	Where reform allows disputes to be resolved more quickly than in the CF, the funds in dispute may be put to productive use more quickly. The benefit results from the added productivity of those funds during the time saved.	Case load	Project documentation, court system data
		Net time savings	Project documentation, expert opinion, court system data
		Average size of the dispute	Project documentation, court system data

Benefit	Description	Relevant data	Possible sources
		Proportion of disputants to switch from the non-specialised court system	Project documentation, expert opinion, proportion of existing case load that includes attributes targeted by the reform (eg. Proportion of existing cases under or over a certain financial threshold), survey
		No. new disputants who would not have used the prior system, procedure or capacity	Project documentation, expert opinion, targeted participant interviews, survey, analogous case
		Average return on investment in the economy	DC government data, national accounts, prevailing commercial interest rate can be an indicative "floor" for a return rate, given that borrowers won't borrow in the long run if the returns are below the costs, analogous case
Cost Savings to users of the court system	In addition to making resolution more time efficient, reforms may also reduce both direct and ancillary costs to users. Savings can result from reduced court and filing fees or from reduced representation costs, either because the total time per case falls, or because the type of representation required under the reformed dispute resolution mechanism requires less costly resources. Note, however, that if representation cost reductions are included, improved productivity of legal resources should not also be included, as this would double-count the value of time savings.	Case load	Project documentation, court documentation
		Net time savings	Project documentation, expert opinion, World Bank DBI report for baseline times to adjudication and enforcement[43]
		Net direct cost savings in court costs	Project documentation, expert opinion, court documentation/data, legal association data, World Bank DBI report for baseline court costs
		Proportion of disputants to switch from the primary first instance court	Project documentation, expert opinion, proportion of existing case load that includes attributes targeted by the reform (e.g. Proportion of existing cases under or over a certain financial threshold), survey

[43] It should be noted that the World Bank DBI measurements relate specifically to commercial disputes valued 200% of income per capita or $5000 (whichever is greater) in first-instance courts, and so will not be relevant for all types of intervention.

Benefit	Description	Relevant data	Possible sources
		Number of new disputants who would not have used the prior system, procedure or capacity	Project documentation, expert opinion, targeted participant interviews, survey, analogous case
		Average representation cost of using the mainstream or CF system or capacity	Project documentation, court filings, legal association data, expert opinion, World Bank DBI report includes costs as percentage of claim
		Reduction in average representation cost above	Project documentation, court filings, law society or bar association data, expert opinion
Productivity of economy due to reduced risk of unenforceable contracts	I.e. reduced costs of borrowing and productivity on increased lending (as interest on added loan value). There are several possible approaches to quantifying this benefit. One is to estimate the increased willingness of commercial banks to lend following implementation of the reform. This would most likely require a benefits transfer approach, where an analogous reform implemented elsewhere is identified and the effects in that economy investigated, with the same or similar rates then applied to the specifics of lending in the DC economy being considered. Failing the identification of a similar case, expert opinion and bank industry group estimates may be applied. The measurement should take into account the volume of loans in the CF and intervention cases, as well as interest rates. The net interest differential for the baseline loan volume would indicate the risk reduction savings. The net added loan volume times and average return on investment would indicate the productivity of additional lending.	Baseline volume of loans in annualised monetary terms; baseline average commercial loan interest rate	national data from government/regulatory authority, banking industry association data
		Net volume of additional loans in the intervention case; average commercial loan interest rate or relative decline of the rate	Project documentation, prior evaluation of analogous case, expert opinion, banking industry association opinion, industry survey
		Average return on investment in the economy	DC government data, national accounts, prevailing commercial interest rate can be an indicative “floor” for a return rate, given that borrowers won’t borrow if the returns are below the costs

C. Improving the quality of government contracting

6. Better drafted and negotiated contracts with tighter management, monitoring and enforcement can reduce losses through litigation and release state resources – both financial and human – to be redirected toward more productive uses. In addition, more effective and efficient implementation of government projects can produce important flow on effects, including increased economic activity and a wide range of potential social benefits (for example, from improved health and educational infrastructure). Taken cumulatively, these relative advantages can, in turn, contribute to improved perceptions of doing business with government on the part of quality investors[44]. The following table sets out the potential monetisable benefits of improving the quality of government contracting.

Table 5: Potential monetisable benefits of improving the quality of government contracting[45]

Benefit	Description	Relevant data	Possible sources
Improving the quality of government contracting			
Contract management cost savings	I.e. net contract management activity costs of CF less intervention case. This is likely to be the most straightforwardly	Average annual number of contracts for goods and services, both successful and incomplete prior to the reform; estimate of the rate of growth or decline over time	Project documentation, government data, typically from the Finance Ministry or Auditor General

[44] LASER, 2016.

[45] **Attraction of foreign direct investment (FDI) and subsequent growth is often cited as a potential benefit of contact management reforms**. There is strong evidence from the World Bank's Doing Business Index that countries with higher capacity to enforce contracts and good judicial practices tend to have better functioning credit sectors. It stands the test of logic that more efficient and reliable procurement and contract management practices that reduce perceived risk to both government and supplier, will tend to attract more, and more competitive, bids, as well as improve perceptions of the DC as an investible market.

However, we generally recommend against seeking to quantify this benefit in CBA for the following reasons. Firstly, if the benefits of reduced procurement cost are already quantified, the analyst will risk double counting those savings if they are also framed as FDI. Secondly, including these benefits could violate two of the fundamental tenants of CBA: that all of the costs of the claimed benefits be accounted for and included in the analysis; and that there be a direct connection between the funded action and the result. In the case of FDI, the analyst would need to include the costs of the investment in the CBA calculation but also any other actions or reliances necessary to move from improved contract management to investment. However, the probability that improved contract management will logically result in FDI growth should be discussed qualitatively and included as an ancillary benefit in the CBA document.

Benefit	Description	Relevant data	Possible sources
	estimable benefit as governments should track the time and costs of procurement. Care should be taken to understand the basis of such estimates; some governments, for example, do not monetise their internal procurement labour costs. Existing project documentation e.g. inception study, will likely have already examined the baseline costs of procurement to establish the need for reform – and include either an estimate of the time or cost savings to be made by the proposed reform or reference to an analogous case that can be used in a benefits transfer approach to estimate impact. Care will also need to be taken to understand whether cost savings to suppliers, or only to government, are relevant. A good rule of thumb would be to limit inclusion to firms within national borders, to ensure that beneficiaries are limited to those targeted by the reform.	Expected rate of growth (or decline) of contracts for goods and services, both successful and incomplete	Project documentation, expert opinion, analogous case (see, for example, reports published by OECD, WTO, World Bank and Transparency.org)
		Baseline time and cost to contract completion or abandonment in the CF case	Project documentation, government data, typically from the Finance Ministry
		Estimated improvement in time and/or cost per contract implementation	Project documentation, expert opinion, analogous case
User cost savings due to reduced litigation	I.e. net difference in rate of litigation over contract related issues). Some reforms may seek to reduce the number of contracts that result in litigation, through better drafted contract terms or improved management and monitoring during implementation. To measure this benefit, the analyst will need to understand the baseline rate and value of funds in litigation and frequency of loss to government, and compare this to the expectation of frequency and/or loss value in the intervention case.	Average annual number and value of contract-related litigations in the CF; estimate of the change over time (care will need to be taken to balance any recent judgements of particularly significant size by looking at values over a number of years)	Project documentation, government data, typically from the Finance Ministry and litigation service or pubic procurement agency, expert opinion, survey
		Expected rate of change in frequency or amount of funds in dispute with implementation	Project documentation, expert opinion, analogous case
Reduced costs of procured goods and services and/or increased government revenue eg. licence	I.e. net cost of goods and services delivered in the CF and intervention cases).	Average annual no. procurements of goods and services in the CF; estimate of the change over time	Project documentation, government data, typically from the Finance Ministry or Auditor General

Benefit	Description	Relevant data	Possible sources
fees	In addition to government (and possibly firm) procurement savings, reforms may also reduce the actual cost of the goods and services purchased by government. This can occur through several routes; understanding the mode of the benefit creation will help the analyst to determine where to look for quantity (Q) and value (Vu) data. For example, improved management capacity can help avoid costly overruns and reduce losses. Reforms can also result in improved competition for provision of goods and services and, in turn, in improved terms for government. This may result from reduced perceived risk to the supplier or improved risk sharing between government and supplier – and, in turn, reduced risk premiums demanded by suppliers. Reforms can also create legal standing for alternative contractual approaches that place more pressure on suppliers to deliver within budget or share the risk and cost of overrun with government.	Average annual value of goods and services procured – by sector if reform is expected to affect specific types differently than others	Project documentation, government data, typically from the Finance Ministry or Auditor General
		Estimated annual reduction in cost or profit rate on procured goods and services (expressed in terms of a fixed percent reduction, a legislated profit cap, or a specific savings target)	Project documentation, expert opinion, analogous case

D. Enhancing access to legal assistance

7. Those who are poor, geographically isolated or otherwise vulnerable are often unable to obtain assistance to resolve civil legal issues that affect their wellbeing, and hinder their ability to engage in commercial activity. Solutions include the services of community-based paralegals who can identify and help citizens to address information gaps or administrative bottlenecks that prevent them from accessing justice in a timely manner, or recommending non-judicial means to resolve problems where appropriate. They offer a bridge between state and non-state systems and may, as the result of intimate

local knowledge, be able to identify common interests or underlying problems that help resolve issues more quickly than direct referral to lawyers and judges[46]. The following table sets out the potential monetisable benefits of improving the quality of government contracting.

[46] Namati, 2014; OSJI, 2010.

Table 6: Potential monetisable benefits of enhancing access to legal assistance

Benefit	Description	Relevant data	Possible sources
Enhancing access to legal assistance			
User cost savings	I.e. caseload times net of services provided by lawyers cost less paralegal services costs. Savings to users can be created if there is a portion of the newly served (or to be served) population that accesses more costly representation in the CF. However, this is unlikely given that costs and lack of service coverage tend to be the primary barriers to access. Where such a population does exist, simply multiplying the representation cost savings by the served population does not account for differences in the quality of representation. However, measuring the value of the quality difference requires willingness-to-pay surveys or revealed preference tests. If such a benefit is to be included, it is suggested that the analyst discuss this issue, but in the absence of survey data, not attempt to estimate the value of any loss in service quality.	Baseline case load; CF uptake trend	Project documentation, legal associations
		Proportion of users to switch to the alternative form of assistance or representation	Project documentation, survey, expert opinion, legal associations, targeted beneficiary interviews, analogous case data[47]
		Relative cost difference between the new or reformed service and mainstream or existing legal services	Project documentation, expert opinion, analogous case data
Productivity of investment funds or economic productivity derived from the ability to use assets as collateral	I.e. net investment in the intervention case less counterfactual, multiplied by rate of return. One primary monetisable benefit is the creation of capacity for the served populations to better participate in the economy – by, for example, enabling users to utilise land or non-land assets	No. of unique new users expected to use the service (netting out switchers and multiple visits), categorised by purpose if possible	Project documentation, survey, expert opinion, legal associations, targeted beneficiary interviews, analogous case data
		For land-related transactions: typical value of land in question, average rate of land productivity in the area served, normal rate of profit	Project documentation, survey, expert opinion, government data, targeted beneficiary interviews, analogous case data

[47] See, for example, the impact evidence data base maintained by NAMATI at https://namati.org/resources/#!/resource_types=impact-evidence.

Benefit	Description	Relevant data	Possible sources
	to raise investment funds. There may be other modes of improved economic participation, depending on the service. This benefit is key to CBA for this type of reform, because it does not rely on observing a switching behaviour – that is, all users will either improve their economic participation or avoid a loss resulting from lack of assistance or representation in the CF. We know this because accessing the intervention case service still has a cost to the user – even if only time or convenience – meaning that users must believe that the gain matches or exceeds the direct cost of taking up the service.	*For agricultural sales:* typical value of the transaction and normal rate of profit	Project documentation, survey, expert opinion, government data, targeted beneficiary interviews, analogous case data
		For loan processing: typical values of loans and return on investment for transactions of similar size (likely micro financed)	Project documentation, survey, expert opinion, government data, microfinance institution or association data, banking industry association data, targeted beneficiary interviews, analogous case data
		For contracts and other economic services: typical contract value and normal rate of profit	Project documentation, survey, expert opinion, government data, targeted beneficiary interviews, analogous case data
		For wills, inheritances, and other family law needs: direct cost to the user in terms of fee for service	Project documentation, survey, expert opinion, legal association, targeted beneficiary interviews, analogous case data
Social cost savings due to reduced needs of newly self-sufficient users	I.e. net social support costs CF less alternative. Such savings can occur if there are existing government (or NGO) social support expenditures that are made unnecessary or transferred to other areas of need as the result of improved capacity for the served population to participate in the economy. Even if the actual total value of government or community expenditure does not decrease, a net welfare benefit remains if the funds that would have been used to support users of the service can now be used to support other needy populations.	No. of unique new users (netting out switchers and multiple visit)	Project documentation, survey, expert opinion, legal associations, targeted beneficiary interviews, analogous case data
		How many of these new users will receive social support in the CF	Project documentation, survey, expert opinion, government data, NGO (WFP, WB, UNDP, etc) data, targeted beneficiary interviews, analogous case data
		Typical per capita support spend across all spending entities	Project documentation, survey, expert opinion, government data, NGO (WFP, WB, UNDP, etc) data, targeted beneficiary interviews, analogous case data
		Decreased spending on average for new users	Project documentation, analogous case data, expert opinion

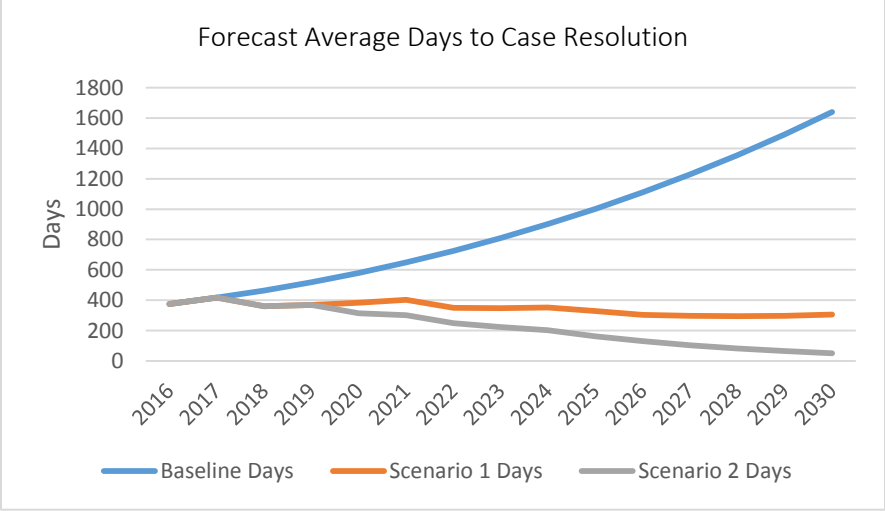
Annex B: Cost benefit analysis: the Ugandan Commercial Court

1. In Uganda, LASER undertook a retrospective study of the **performance and impact of the Commercial Court Division of the High Court** from its inception in 1996 to date, including the role that donor assistance has played in supporting institutional reform (see box 2).

2. A forward-looking CBA has since been conducted, **analysing two funding scenarios relative to a counterfactual** condition. Scenario 1 aims to increase staffing as caseloads grow in order to maintain the current clearance rate and relative average time to resolution per case. Scenario 2 accelerates added staffing to improve clearance times even as caseloads grow. Each of these scenarios was compared to a base case where staffing remains at current levels, even as the caseload increases, and therefore the average time to case completion grows. Each scenario relies on the same estimate of caseload growth, based on the observed history of caseloads.

3. As with any CBA, our findings result from a number of estimates and assumptions. As the **benefits are estimated based on the relative amount of time the average case takes to resolve** in each of the scenarios as compared to the base case, the **key assumptions relate to the case load, the expected growth in cases, the impact of adding additional staff to the reduction of time to resolution, and the value of time savings**.

4. One key assumption is an estimate of the productivity of each added staff member, based on the observed improvements in average clearance times with the addition of staff, relative to the growth in caseloads, since 2001. The diagram below illustrates the average case completion times expected under the base case and for each scenario between 2016 and 2030.

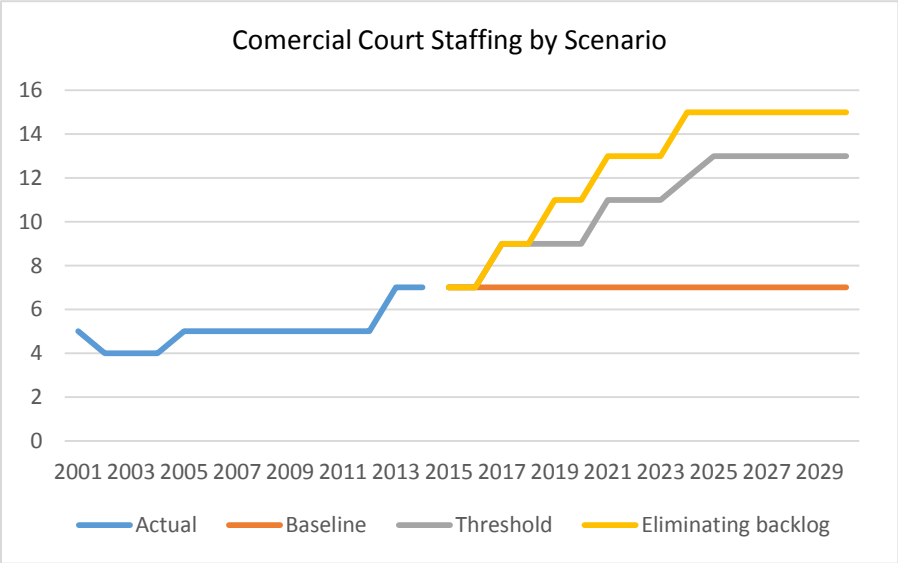


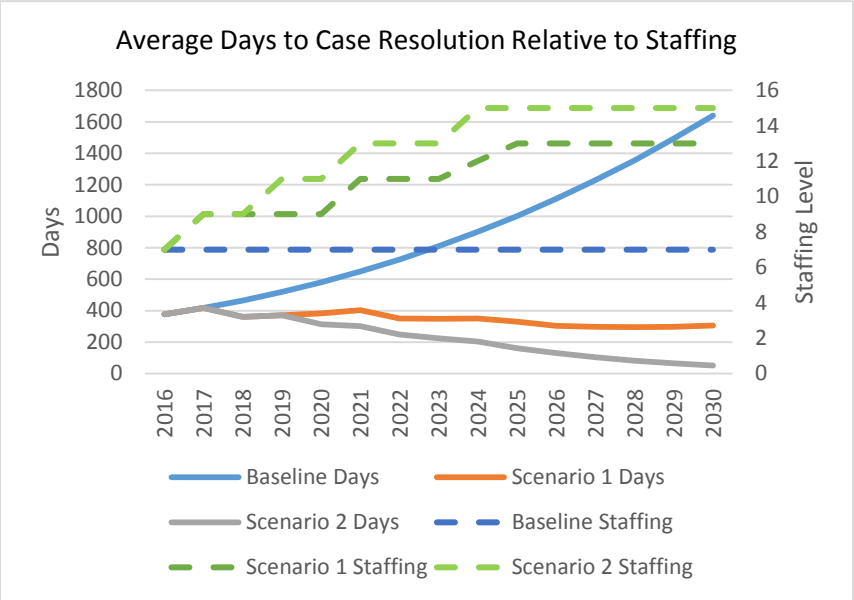
5. **A second key assumption relates to the valuation of saved time to case clearance in the scenarios**. We are assuming that, due to the risk of negative judgement or settlement, parties to litigation evidence some risk avoidance in investing funds that might be used to pay such

judgements or settlements. If firms and individuals do avoid or reduce investment, it is clear that the economy is less efficient than it could otherwise be. This constitutes an economic loss. For the purpose of this CBA, we assume a fairly conservative reduction of 2.5% of the total claim value, during the time between case filing and completion.

6. **The benefit, then, is calculated as the expected economic return; in this case we use the national average commercial loan rate reported by the Bank of Uganda, multiplied by the reduction in investment, multiplied by the relative difference in resolution time between each scenario and the base case.** The Bank of Uganda reports the current commercial loan rate to be about 22%. We estimate the average value of claims per case to be about 71 million Ush, based on the history of claims since 2001. (Nb. The World Bank reports a much lower average of about 14 million Ush, but as our figures are based on direct data from the Commercial Court, we rely on the 71 million estimate for our primary results.) Use of a discount rate of 15%, gave a net benefit metric for scenarios 1 and 2 from 2015-2030 of 4.5 and 5.0 billion Ush respectively.

7. Costs were estimated based on the staffing targets necessary to achieve certain targets: Scenario 1 staffing is designed to achieve a 100% clearance rate of pending cases by 2030, scenario 2 is designed to clear the entire backlog of cases by 2030. These are both based on estimated forecasts of the caseload -- itself based on the historical growth in new cases since 2001. The graph below describes the staffing plan for the base case and each scenario. The second figure illustrates relationship between the staffing levels and the forecast case completion times.





8. In non-discounted terms, between 2015 and 2030, Scenario 1 is estimated to cost a total of 10.2 billion Ush and Scenario 2 is 14.5 billion, or an average of 684 million and 964 million Ush per year respectively. In discounted terms -- considering the relative timing of expenditures – **the aggregate costs of Scenarios 1 and 2 from 2015-2030 are 3.2 and 4.5 billion Ush or an annual average of 215 million and 303 million Ush respectively.**

9. Comparison of the relative costs and benefits of the Commercial Court between 2016 and 2030 indicates that a **fairly modest investment could generate potentially large benefits for businesses and the wider economy**. The table below describes the CBA findings for each scenario.

CBA Metrics		
	Scenario 1	**Scenario 2**
NPV (Ush)	53,440,529,220	58,646,254,912
IRR (%)	244%	250%
BCR (Ush)	17: 1	13: 1

10. The annual benefit in terms of value of under-investment avoided through the shortening of relative case resolution times far exceeds the combined staffing and operational costs, giving a **net benefit of approximately Ush 53 bn for Scenario 1 and 59 bn for Scenario 2.** This estimate excludes possible reductions on representation costs due to reduced case resolution times and it also excludes broader growth and investment resulting from perceptions of a better functioning court system. While the full impact on economic growth is difficult to disentangle from other variables, the benefits from a successful and accessible Commercial Court are likely to be substantial. As public awareness and usage of the Commercial Court becomes more widespread, the potential benefits could be much higher.

11. Our **tests of the sensitivity of the findings to the assumptions made indicate that the CBA results are highly robust**. We tested using a lower average per case claim value, consistent

with the figures reported by the World Bank. We also tested lowering the investment risk avoidance from our estimate of 2.5% to an extremely conservative 1%. As the table below indicates, even when changing both assumptions at the same time, the benefits exceed the costs for both scenarios.

CBA Metrics – Sensitivity Tests		
	Scenario 1	**Scenario 2**
Reduced Claim Value		
NPV (Ush)	7,779,087,990	7,779,688,464
IRR (%)	67%	63%
BCR (Ush)	3	3
Reduced Risk Avoidance		
NPV (Ush)	19,338,497,713	20,656,800,245
IRR (%)	122%	124%
BCR (Ush)	7	6
All		
NPV (Ush)	1,073,921,220	310,173,666
IRR (%)	25%	17%
BCR (Ush)	1.4	1.1

Annex C: Cost benefit analysis: strengthening contract management in Rwanda

1. In Rwanda LASER has, since 2014, supported the Government of Rwanda (GoR) to strengthen its contracting capacity to help stem financial losses arising from delays resulting from poor quality government contracts and contract management processes.

2. **A CBA has been undertaken looking forward from 2015, with a focus on increased efficiencies in contract management represented by the change in the number of days that contracts are delayed**. The analysis is based on data provided by the Office of the Auditor General (OAG), the Civil Litigation Service (CLS), and the Rwanda Public Procurement Authority (RPPA).

Overview of contract management reforms

3. The Office of the Auditor General's reports show that in the year ending June 2014, 78 contracts worth a total of 126,053 million Rwandan Francs (RWF) (GBP 117.2 million) were not completed within the contract period. Of these, 14 projects worth RWF 3,368,946,434 (£3.1 million) were abandoned after paying RWF 1,898 million (GBP 1.7 million) to contractors (OAG, 2014). Poor contract negotiation and management processes also resulted in loss of domestic resources through litigation. They were considered to be damaging to Government-investor relationships and to hinder efforts to attract FDI. As a result, in 2014 LASER was invited to place a resident adviser in the Ministry of Justice, with a priority work stream focusing on supporting MINIJUST to strengthen contract management processes.

4. LASER support has helped the GoR to develop and roll out model commercial contracts as well as practical contract management tools and guidance across line ministries, and to hold related training sessions for government legal officers in partnership with the Institute of Legal Practice and Development (ILPD). **Changes observed include improved capacity to manage contracts, better coordination between stakeholders and strengthened processes for compliance and accountability** (LASER, 2016). An impact analysis of the LASER and GoR reforms found that 88% of legal officers reported improved capacity to identify risks arising from poor contract management and how to address them, 85% of respondents said there has been a positive change in the level of collaboration and engagement between legal officers, user departments, procurement and ministry of justice to achieve better quality contracts and 73% reported improved capacity to draft contracts, largely linked to increased use of model contracts.

5. The cost of the LASER intervention was considered justifiable given the potential for large savings to be made by reducing even a small proportion of the losses being sustained by the GoR as the result of poor quality contracts and contract management. However, it is also useful to consider the wider value delivered by these contract management reforms to the Rwandan economy. This CBA forms part of a broader impact analysis that considers the behavioural and policy impacts of contract management reform in Rwanda.

Accounting for the costs (inputs)

6. The costs were calculated based on the expenses incurred by LASER, MINIJUST and ILPD in delivering the reforms. On the GoR side, we considered only marginal salary costs (i.e. additional costs) and did not incorporate general institutional running costs such as building maintenance, utilities etc., as the marginal operational and maintenance (O&M) costs of this specific reform are judged to be minimal.

7. The total cost of the first two years of the LASER Rwanda programme from July 2014 to June 2016 is comprised of the costs of embedding a resident adviser in MINIJUST, and technical and programme management support provided by the LASER team, totalling approximately £500,000. The LASER Rwanda programme involved multiple work streams; an estimate that approximately half of this time was spent on support to contract management reforms results in a total cost of approximately £250,000.

½ LASER time spent on contract management:	*£250,000*	*286,330,000 RwF*[48]

8. The initial and ongoing costs to MINIJUST and ILPD were calculated based on estimates of the staff time taken to support the implementation of the improvements to contract management, including an annual week-long training session for legal officers managed by ILPD.

2 MoJ legal officers' salaries		*12,000,000 RwF*
1 ILPD staff member salary	*$10,000*	*8,050,700 RwF*
1 week-long training by ILDP	*$25,000*	*20,126,750 RwF*

Assessing the benefits

9. Possible benefits for consideration include, firstly, the decreased number of contracts resulting in litigation and, secondly, increased efficiency.

10. It is anticipated that the reforms have led, or will lead to, a decrease in the number of contracts resulting in litigation – leading to less time spent on defending the GoR in court and positive impacts on GoR capacity to manage contracts effectively, contract enforceability and the investment climate as the result of a reduction in the volume of cases that are under threat. Savings from the decreased cost of contracts resulting in litigation could be calculated as the difference in the number and value of contract management related cases under dispute and lost, combined with a forward-looking estimate of the CLS representation costs

[48] Based on HMRC exchange rates for July 2015

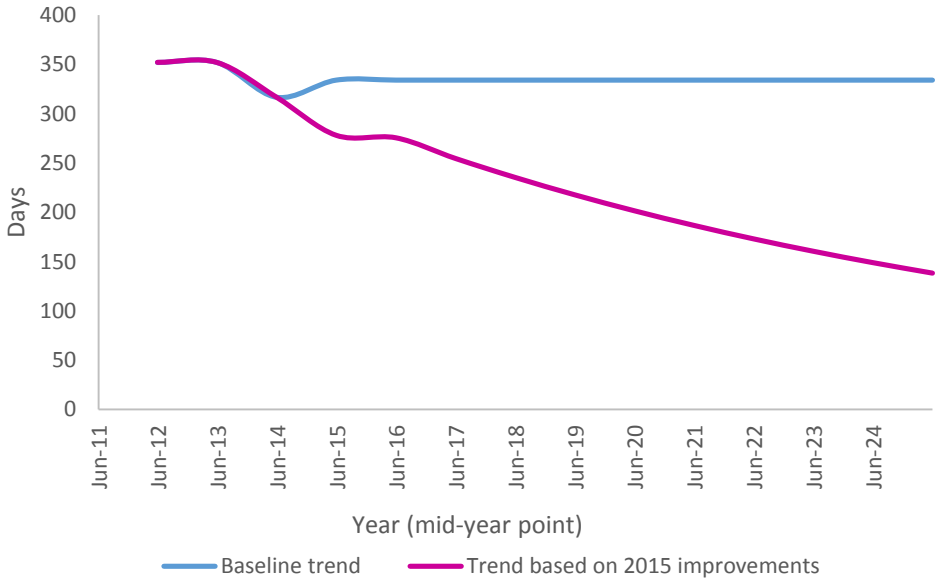
associated with these changes. However, owing to the lack of relevant data available this benefit has not been estimated for the purposes of this CBA.

11. Instead, the analysis focused on cost savings resulting from efficiency gains. It is anticipated that the training, tools and policy reforms implemented by MINIJUST with LASER support have led to (or are likely to lead to) **increased efficiency for GoR, through better drafting and tighter monitoring and management, resulting in fewer and decreased cost and time overruns**, which may be expressed as a financial saving.

12. **This change was represented by the change in the number of days that contracts are delayed**, measured as the difference between the expected date of completion and the actual completion date. Data was provided by the Office of the Auditor General, whose annual reports (year ending 30th June) provide data for the number of days that each delayed contract was overdue. The reports refer only to contracts which were completed during the following year. This was used to calculate an average delay for contracts in each year for which we have data. It should be noted that data was unavailable for a limited number of these contracts, and so the figures reached are approximations based on averages.

13. The historical data available does not give a clear trend, complicating the task of establishing a baseline or counterfactual. The graph below shows two possible projections: a flat-lined trend consistent with the average number of days' delay observed between 2012 and 2014 (counterfactual); and an improved trend which extrapolates the data including the average number of days' delay for the year which immediately followed the introduction of the changes (alternative).

Trend in mean no. days of contract delay
[Source: OAG reports 2012-2015]



14. The estimated reduction in days' delay under this alternative scenario were translated into a figure, by multiplying the average length of delay by the average number and cost of contracts. This was then translated into an annualised figure, by taking the proportion of the

year during which contracts were delayed. An example is given below from the contracts reported in the 2013-14 annual report. The average number of days' delay was 317. These calculations are carried out for both scenarios i.e. the counterfactual and alternative scenarios. This portion is multiplied by the average value of delayed contracts reported, to give an annualised value for the delays each year.

Average no. days delay	Delay as portion of the year	Annualised value of delayed contracts (RWF)
317	*317/365 =* ***0.8673***	*0.867 x 44,436,369,897 =* ***38,541,629,180***

15. The difference between the value of the baseline and the post-2015 scenario was considered to represent the savings achieved as a result of improvements in contract delay. **The benefit of this reduced delay was calculated as the expected economic return**, i.e. the money that could be made from returning these sums to the economy. The Bank of Rwanda's reported commercial loan rate is 17%, so we can take the saved economic return as 17% of the savings.

SAVINGS: Difference in annualised value	Value of savings to Rwandan economy
= Baseline – Scenario	*= Savings * 0.1695*

Discounting

16. Discounting is used to account for the way that the value of currency is considered to decline with increasing delay before the benefit or cost is realised. The Rwanda Central Bank real discount rate of 7.75% has been applied to calculate the present value (PV) of the future benefits and costs, using the following equation:

$$PV = \frac{value}{(1 + discount\ rate)^t}$$

Where 't' is the number of years before the benefit will be realized.

The net present value (NPV) of a sequence of annual benefits or costs is calculated as the sum of the present values for each year.

$$NPV\ (benefits) = \sum_{t=0}^{5} \frac{marginal\ benefit}{(1.075)^t}$$

$$NPV\ (costs) = \sum_{t=0}^{5} \frac{marginal\ cost}{(1.075)^t}$$

Estimated results

17. The final economic assessment involves comparing the benefits in terms of their net present value, with the net present value of the expected costs.

18. The NPV was calculated as the difference between the NPV (benefits) and the NPV (costs), and represents the total value today of the anticipated future changes. Here, a year's delay has been added from the first year of expenditures to the first year of claimed benefits, to give a more conservative estimate as to the realisation of the benefits.

CBA metrics	
NPV (RwF)	17,819,040,246
Benefit-to cost ratio	26:1
Payback period (years)	1

19. The benefit-to-cost ratio (BCR) is the sum of the discounted benefits relative to the sum of discounted costs. Here, the BCR demonstrates that **we could expect a 26-fold return on investment in improvements to contract management, over a ten-year period**, assuming ongoing time commitment from GoR. This gives a sense of the possible return to the Rwandan economy on investing in the staff time to continue to support improvements in contract management. The payback period of a year indicates that this expenditure is also worthwhile in the short-term.

Sensitivity Analysis

20. Given the limited data available to conduct this analysis and related assumptions, we have conducted sensitivity testing to test the robustness of results.

21. The sensitivity analysis was conducted in two parts. First, we assessed the results of the analysis if benefits were 50% lower than anticipated, to allow for the fact that some portion of the benefits might not be attributable directly to the LASER and GoR investment and, instead, be the result of other GoR policies or changes in the commercial landscape; benefits may conceivably decline over time as participants adjust to new rules; or the limited historical data set may possibly overstate the scale of problem being addressed, leading the reduction in delay or litigation to be overstated. Second, we

22. analysed how low the benefits would need to be, or how high the costs would need to be, in order for the investment to only break even i.e. what scale of benefits reduction or cost increase results in an NPV of RWF 0.

Sensitivity Test 1	
CBA metrics	**Benefits Reduced by 50%**
NPV (RwF)	8,356,027,432
Benefit-to cost ratio	13:1
Payback period (years)	1

Sensitivity Test 2	
CBA metrics	**Benefits Reduced by 50%**
Benefit multiplier to break even	0.0368
Cost multiplier to break even	32.194

23. **At a benefits reduction of 50%, the investment in contract management reforms still offers a substantial return on investment, with payback on investment within one year.** The project would still be expected to return 16 Rwf for each franc invested.

24. As sensitivity test 2 indicates, to merely break even, the LASER-supported GoR reform would need to only generate 3.1% of anticipated benefits, assuming that the estimate of the total costs of delivering the reforms is correct – that is, the costs would need to exceed 32 times the anticipated level of costs for the reforms to only break-even.

25. As these tests suggest, **the investment has a high likelihood of being justified by the benefits of the reforms, even given the uncertainty associated with the limited data available**. It should also be noted that there is potential for the return on investment to be significantly higher than that estimated here, given that important benefits – most notably decreased litigation costs – have not been taken into account.

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