

# LASER

Legal  
Assistance  
for Economic  
Reform

Politically smart approaches to donor  
investment climate programming

## *Annexes to Guidance Note*

DFID Legal Assistance for Economic Reform Programme

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## Annex A: Guidance on politically informed and politically astute approaches

<p>DFID has produced a series of Public Information Notes on <i>Drivers of Change</i>, which emphasise the importance of understanding the interaction between underlying political institutions, and the mechanics of change (pro-poor), the role of formal and informal institutions and structural features.</p>		
<p>Political Economy Analysis: <i>Topic Guide (2<sup>nd</sup> Ed.) – This guide, produced with the University of Birmingham, outlines more fully findings informing tools and includes examples of analysis at country, sector and programme level.</i></p>	2014	<a href="http://www.gsdrc.org/docs/open/PEA.pdf">http://www.gsdrc.org/docs/open/PEA.pdf</a>
<p>Systems change in the business enabling environment <i>Investment Climate Practice Note</i></p>	2012	<a href="http://www.businessenvironment.org/dyn/be/docs/234/investment_climate_practice_note_taking_a_systems.pdf">http://www.businessenvironment.org/dyn/be/docs/234/investment_climate_practice_note_taking_a_systems.pdf</a>
<p>Building the State and Securing the Peace <i>Emerging policy paper – Here the importance of inclusive political settlements in conflict reduction and the development of effective institutions.</i></p>	2009	<a href="http://www.gsdrc.org/docs/open/con64.pdf">http://www.gsdrc.org/docs/open/con64.pdf</a>
<p>Political Economy Analysis <i>How to note – This builds on earlier Drivers of Change theory with the inclusion of a Politics of Development Framework, advocating more detailed examination of political processes.</i></p>	2009	<a href="http://www.gsdrc.org/docs/open/PO58.pdf">http://www.gsdrc.org/docs/open/PO58.pdf</a>
<p>Using Drivers of Change to Improve Aid Effectiveness <i>Briefing Note</i></p>	2005	<a href="http://www.gsdrc.org/docs/open/DOC84.pdf">http://www.gsdrc.org/docs/open/DOC84.pdf</a>
<p>Lessons Learned: Planning and Undertaking a Drivers of Change Study <i>How to note</i></p>	2005	<a href="http://www.gsdrc.org/docs/open/DOC84.pdf">http://www.gsdrc.org/docs/open/DOC84.pdf</a>
<p>Drivers of Change <i>Public Information Note</i></p>	2004	<a href="http://www.gsdrc.org/docs/open/DOC59.pdf">http://www.gsdrc.org/docs/open/DOC59.pdf</a>
<p>Better government for poverty reduction: more effective partnerships for change. <i>Consultation Document</i></p>	2003	<a href="http://www2.ids.ac.uk/gdr/position%20papers/Unsworth.pdf">http://www2.ids.ac.uk/gdr/position%20papers/Unsworth.pdf</a>
<p>What does Drivers of Change mean for DFID? A draft approach paper</p>	2003	<a href="http://webarchive.nationalarchives.gov.uk/+http://www.dfid.gov.uk/contracts/files/ojec_5512_background.pdf">http://webarchive.nationalarchives.gov.uk/+http://www.dfid.gov.uk/contracts/files/ojec_5512_background.pdf</a>
<p><b>The World Bank</b></p>		
<p>Problem-Driven Political Economy Analysis: The World Bank's Experience <i>This presents eight case studies of WB experiences using PEA in different sectors before outlining recommendations</i></p>	2014	<a href="http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/12/19/000356161_20131219172059/Rendared/PDF/835020PUB0Prob00Box382092B00PUBLIC0.pdf">http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/12/19/000356161_20131219172059/Rendared/PDF/835020PUB0Prob00Box382092B00PUBLIC0.pdf</a>
<p>Political Economy Assessments at Sector and Project Levels <i>How to note</i></p>	2011	<a href="http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/PoliticalEconomyAssessments.pdf">http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/PoliticalEconomyAssessments.pdf</a>
<p>Problem-Driven Governance and Political Economy Analysis <i>Good Practice Framework</i></p>	2009	<a href="http://siteresources.worldbank.org/EXTPUBLICSECTORANDGOVERNANCE/Resources/PGPEbook121509.pdf">http://siteresources.worldbank.org/EXTPUBLICSECTORANDGOVERNANCE/Resources/PGPEbook121509.pdf</a>
<p>The Political Economy of Policy Reform: Issues and Implications for Policy Dialogue and Development Operations</p>	2008	<a href="http://siteresources.worldbank.org/EXTGOVANTICORR/Resources/3035863-1286395629347/SDV_PE_of_Policy_Reform_10-2008.pdf">http://siteresources.worldbank.org/EXTGOVANTICORR/Resources/3035863-1286395629347/SDV_PE_of_Policy_Reform_10-2008.pdf</a>

The <b>UN</b> defines its methodology as “institutional and context analysis” <sup>1</sup> , “focusing on political and institutional factors as well as processes concerning the use of national and external resources in a given setting, and how these have an impact on the implementation of UNDP programmes and policy advice”.		
UNDP Institutional and context analysis guidance note	2012	<a href="http://www.undp.org/content/dam/undp/library/Democratic%20Governance/OGC/UNDP_Institutional%20and%20Context%20Analysis.pdf">http://www.undp.org/content/dam/undp/library/Democratic%20Governance/OGC/UNDP_Institutional%20and%20Context%20Analysis.pdf</a>
Political Economy Assessments at Sector and Project Levels <i>How-to note</i>	/	<a href="http://www.gsdrc.org/docs/open/PE1.pdf">http://www.gsdrc.org/docs/open/PE1.pdf</a>
<b>LASER</b>		
<b>LASER:</b> Rwanda case study: PDIA in practice – strengthening contract management	2016	<a href="http://laserdev.org/media/1153/rwanda-enhancing-govt-contract-mgmt-processes-jan-2016-f.pdf">http://laserdev.org/media/1153/rwanda-enhancing-govt-contract-mgmt-processes-jan-2016-f.pdf</a>
<b>Clare Manuel:</b> Doing development differently: Delivering institutional reform at scale	2016	Forthcoming on: <a href="http://laserdev.org/resources/synthesis-papers/">http://laserdev.org/resources/synthesis-papers/</a>
<b>LASER:</b> Kenya case study: Exploring how to use a problem-driven iterative adaptation approach in restructuring pre-existing institutional reform programmes	2016	Forthcoming on: <a href="http://laserdev.org/resources/case-studies/">http://laserdev.org/resources/case-studies/</a>
<b>LASER:</b> Monday morning in Kigali: Putting PDIA into practice. London: LDP	2016	<a href="http://laserdev.org/media/1151/monday-morning-in-kigali-updated-january-2016.pdf">http://laserdev.org/media/1151/monday-morning-in-kigali-updated-january-2016.pdf</a>
<b>Clare Manuel:</b> Investment climate reform, doing it differently: What, why and how	2015	<a href="http://laserdev.org/media/1102/laser-synthesis-paper-investment-climate-reform-doing-it-differently.pdf">http://laserdev.org/media/1102/laser-synthesis-paper-investment-climate-reform-doing-it-differently.pdf</a>
<b>Clare Manuel:</b> Is there a causal link between investment climate and growth? A review of the evidence.	2015	<a href="http://laserdev.org/media/1140/i-is-there-a-causal-link-between-ic-reform-and-growth-june-2015.pdf">http://laserdev.org/media/1140/i-is-there-a-causal-link-between-ic-reform-and-growth-june-2015.pdf</a>
<b>LASER and the Government of Sierra Leone:</b> The UK Sierra Leone Pro Bono Network: a case study on demand led pro bono assistance	2015	<a href="http://laserdev.org/media/1110/sl-pbn-case-study_24-august_final.pdf">http://laserdev.org/media/1110/sl-pbn-case-study_24-august_final.pdf</a>
<b>LASER:</b> Rwanda case study: PDIA in practice during the pilot – foreign direct investment.	2015	<a href="http://laserdev.org/media/1154/rwanda-pilot-case-study-foreign-direct-investment-april-2015-f.pdf">http://laserdev.org/media/1154/rwanda-pilot-case-study-foreign-direct-investment-april-2015-f.pdf</a>
<b>LASER:</b> Rwanda case study: PDIA in practice during the pilot – domestic resources.	2015	<a href="http://laserdev.org/media/1152/rwanda-pilot-case-study-domestic-resources-april-2015-f.pdf">http://laserdev.org/media/1152/rwanda-pilot-case-study-domestic-resources-april-2015-f.pdf</a>
<b>LASER:</b> Rwanda case study: Using pro bono support to build government capacity. LASER/DFID.	2015	<a href="http://laserdev.org/media/1094/rwanda-case-study-1-using-pro-bono-support-to-build-government-capacity.pdf">http://laserdev.org/media/1094/rwanda-case-study-1-using-pro-bono-support-to-build-government-capacity.pdf</a>
<b>LASER:</b> Retrospective study of the progress, performance and impact of the Uganda Commercial Court 1996 - 2015	2015	<a href="http://laserdev.org/media/1141/ii-retrospective-study-of-uganda-commercial-court-vol-1-6-november-2015.pdf">http://laserdev.org/media/1141/ii-retrospective-study-of-uganda-commercial-court-vol-1-6-november-2015.pdf</a>

<sup>1</sup>UN(2012) Institutional and Context Analysis - Guidance Note

Other		
<b>Debra Ladner:</b> Strategy testing: An innovative approach to monitoring highly flexible aid programs.	2015	<a href="https://asiafoundation.org/resources/pdfs/AnInnovativeApproachtoMonitoringHighlyFlexibleAidPrograms.pdf">https://asiafoundation.org/resources/pdfs/AnInnovativeApproachtoMonitoringHighlyFlexibleAidPrograms.pdf</a>
<b>Sakuntala Akmeemana et al:</b> The case for thinking and working politically: The implications of ‘doing development differently	2015	<a href="http://ecdpm.org/wp-content/uploads/Case-Thinking-Working-Politically.pdf">http://ecdpm.org/wp-content/uploads/Case-Thinking-Working-Politically.pdf</a>
<b>Nicholas Waddell:</b> Why those promoting growth need to take politics seriously, and vice versa	2015	<a href="http://oxfamblogs.org/fp2p/why-those-promoting-growth-need-to-take-politics-seriously-and-vice-versa/">http://oxfamblogs.org/fp2p/why-those-promoting-growth-need-to-take-politics-seriously-and-vice-versa/</a>
<b>Jean G. Boulton:</b> Embracing Complexity – Strategic Perspectives for an age of turbulence	2015	Oxford University Press
<b>Leni Wild et al:</b> Adapting Development: Improving services to the poor.	2015	<a href="http://www.odi.org/publications/8125-adapting-development-service-delivery-sdgs">http://www.odi.org/publications/8125-adapting-development-service-delivery-sdgs</a>
Alan Whaites: Thinking and working politically – Enable add-ons. Governance for Peace and Development.	2015	<a href="http://g4dpblog.blogspot.co.uk/2015/07/thinking-and-working-politically-enable.html">http://g4dpblog.blogspot.co.uk/2015/07/thinking-and-working-politically-enable.html</a>
<b>Matthew Andrews et al:</b> Building capability by delivering results: Putting PDIA principles into practice. In A Governance Practitioner’s Notebook: Alternative Ideas and Approaches	2015	<a href="http://www.oecd.org/dac/governance-peace/governance/docs/Governance%20Notebook%202.3%20Andrews%20et%20al.pdf">http://www.oecd.org/dac/governance-peace/governance/docs/Governance%20Notebook%202.3%20Andrews%20et%20al.pdf</a>
<b>OECD:</b> a Governance Practitioner’s Notebook: Alternative Ideas and Approaches (particularly Section One: Politics)	2015	<a href="http://www.oecd.org/dac/governance-peace/governance/governance-practitioners-notebook.htm">http://www.oecd.org/dac/governance-peace/governance/governance-practitioners-notebook.htm</a>
<b>Sam Hickey, Kunal Sen and Badru Bukenya (eds.):</b> The Politics of Inclusive Development – Interrogating the evidence <i>Chapter 2 provides a very helpful overview</i>	2015	Oxford: Oxford University Press
<b>Brain Levy:</b> Working with the Grain – Integrating Governance and Growth in Development Strategies	2014	Oxford: Oxford University Press
<b>David Booth and Sue Unsworth:</b> Politically smart, locally led development	2014	<a href="http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9158.pdf">http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9158.pdf</a>
<b>David Booth:</b> Aiding Institutional Reform in Developing Countries: Lessons from the Philippines on what works, what doesn’t and why.	2014	<a href="http://www.businessenvironment.org/dyn/be/docs/287/O DI_WorkingPoliticallyPhilippinesCaseStudy.pdf">http://www.businessenvironment.org/dyn/be/docs/287/O DI_WorkingPoliticallyPhilippinesCaseStudy.pdf</a>
<b>Matt Andrews:</b> Can one retell a Mozambican reform story through problem-driven iterative adaptation?	2014	UNU WIDER
<b>Jaime Faustino and David Booth:</b> Development Entrepreneurship: How Donors and Leaders Can Foster Institutional Change	2014	<a href="http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9384.pdf">http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9384.pdf</a>
<b>Verena Fritz, Brian Levy and Rachel Ort:</b> Problem-driven political-economy analysis: The World Bank’s experience	2014	<a href="https://openknowledge.worldbank.org/handle/10986/16389">https://openknowledge.worldbank.org/handle/10986/16389</a>

<b>David Booth and Victoria Chambers:</b> The SAVI Programme in Nigeria: Towards Politically Smart, Locally Led Development	2014	<a href="http://www.odi.org/publications/8876-politically-smart-nigeria">http://www.odi.org/publications/8876-politically-smart-nigeria</a>
<b>David Hudson and Adrian Leftwich:</b> From political economy to political analysis	2014	<a href="http://publications.dlprog.org/From%20Political%20Economy%20to%20Political%20Analysis.pdf">http://publications.dlprog.org/From%20Political%20Economy%20to%20Political%20Analysis.pdf</a>
<b>Greg Larson, Peter Biar Ajak, and Lant Pritchett:</b> South Sudan's Capability Trap: Building a state with disruptive innovation	2013	<a href="https://www.wider.unu.edu/publication/south-sudan%E2%80%99s-capability-trap">https://www.wider.unu.edu/publication/south-sudan%E2%80%99s-capability-trap</a>
<b>Matt Andrews:</b> The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions	2013	Cambridge: Cambridge University Press
<b>Tim Kelsall:</b> Business, Politics and the State in Africa – Challenging orthodoxies on growth and transformation <i>Thought provoking read on the influence of politics on economic development</i>	2013	London: Zed Books
<b>Matt Andrews and Lawrence Bategeka:</b> Overcoming the limits of institutional reform in Uganda	2013	<a href="http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/centers/cid/publications/faculty/wp/269_Andrews_Uganda.pdf">http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/centers/cid/publications/faculty/wp/269_Andrews_Uganda.pdf</a>
<b>Thomas Carothers and Diane de Gramont:</b> Development aid confronts politics: The Almost Revolution	2013	Carnegie Endowment for International Peace
<b>David Booth:</b> Facilitating development: an arm's length approach to aid	2013	<a href="http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8330.pdf">http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8330.pdf</a>
<b>Matthew Andrews et al:</b> Escaping Capability Traps through Problem-Driven Iterative adaption	2012	Center for Global Development
<b>Lant Pritchett et al:</b> Looking Like a State: Techniques of Persistent Failure in State Capability for Intervention	2012	UNU WIDER
<b>James Copestake and Richard Williams:</b> The evolving art of political economy analysis – Unlocking its potential through a more interactive approach.	2012	<a href="http://www.opml.co.uk/sites/default/files/OPM_DF_PEA_0.pdf">http://www.opml.co.uk/sites/default/files/OPM_DF_PEA_0.pdf</a>
<b>David Booth:</b> Development as a Collective Action Problem: Addressing the Real Challenges of African Governance	2012	<a href="http://www.institutions-africa.org/filestream/20121024-appp-synthesis-report-development-as-a-collective-action-problem">http://www.institutions-africa.org/filestream/20121024-appp-synthesis-report-development-as-a-collective-action-problem</a>
<b>Peter Davis:</b> The Political Economy of Business Environment Reform: An introduction for practitioners.	2011	DCED
<b>Jaime Faustino et al:</b> Built on Dreams, Grounded in Reality: Economic Policy Reform in the Philippines	2011	<a href="https://asiafoundation.org/resources/pdfs/BuiltOnDreamsGroundedInReality.pdf">https://asiafoundation.org/resources/pdfs/BuiltOnDreamsGroundedInReality.pdf</a>
<b>Donella Meadows and Diana Wright:</b> Thinking in Systems: A Primer.	2009	London: Routledge.
<b>Donor Committee for Enterprise Development:</b> Supporting Business Environment Reforms: Practical guidance for development agencies.	2008	DCED
ODI: Political Economy Analysis and Analytical Framework for understanding the Political Economy of Sectors and Policy Arenas	2005	<a href="http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/3898.pdf">http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/3898.pdf</a>
<b>Ricardo Hausmann, Dani Rodrik, and Andres Velasco:</b> Growth Diagnostics.	2004	Cambridge: Harvard University

**There is less assistance available in the particular context of investment climate reform.** Some context specific resources do exist:

<p><i>Lessons for Reformers: How to launch, implement and sustain regulatory reform (World Bank)</i></p>	<p>2009</p>	<p><a href="http://regulatoryreform.com/wp-content/uploads/2015/02/Lessons-for-reformers-on-regulatory-reform-2009.pdf">http://regulatoryreform.com/wp-content/uploads/2015/02/Lessons-for-reformers-on-regulatory-reform-2009.pdf</a></p>
<p><i>The Political Economy of Business Environment Reform: An Introduction for Practitioners (DCED)</i>  This paper emphasises the need to identify political will, build coalitions of support, time and phase reforms appropriately, utilise public-private dialogue strategically and manage stakeholders carefully, bearing in mind the routes to public sector reform and the local and national level strategies working to that end and using the business environment itself as a diagnostic for what is preventing achievement of that strategy. A typology of possible issues is suggested, which includes corruption, leadership problems, elite capture, capacity constraints and implementation gaps between official structures and reality.</p>	<p>2011</p>	<p><a href="http://www.businessenvironment.org/dyn/be/docs/214/Political_Economy_An_Introduction_for_Practition.pdf">http://www.businessenvironment.org/dyn/be/docs/214/Political Economy An Introduction for Practition.pdf</a></p>
<p><i>Systems Change in the Business Enabling Environment (DFID)</i>  This paper instead emphasises a systemic approach, where the system comprises the commercial market and government, supported by media, civil society and business organisations in the broader context of the political, economic and legal systems. A diagnostic framework which filters problems based on feasibility, assessed by reference to political economy issues, is suggested followed by implementation which emphasises flexibility and a feedback loop. The approach is illustrated by reference to the typology of issues suggested by the DECD paper.</p>	<p>2012</p>	<p><a href="http://www.businessenvironment.org/dyn/be/docs/234/INVESTMENT_CLIMATE_PRACTICE_NOTE_Taking_A_Systems.pdf">http://www.businessenvironment.org/dyn/be/docs/234/INVESTMENT CLIMATE PRACTICE NOTE Taking A Systems.pdf</a></p>

## **Annex B: Anonymised examples of initial analysis to inform politically engaged thinking**

### **Country (i)**

#### **Overall political economy, governance and institutional framework for IC reform**

- 1. Country (i)'s political settlement is hostile to deep IC reform, despite the fact that barring a few years immediately after the war of liberation successive governments have been staunchly pro-business.** Country (i) was the earliest economic liberaliser in the region. A combination of external pressure and domestic politics provided political space for the state to adopt business friendly economic policies throughout 70s, 80s and 90s. Investor uncertainty due to regime changes has never been a serious issue. But the political settlement is characterised by intense partisan competition, high levels of corruption, extensive patronage networks with durable informal institutions norms and networks. The system is attractive to powerful economic and political interests, ensuring predictability and profitability including generally low and predictable tax rates for key economic actors, while serving as a valuable conduit for patronage politics. Long-running political rivalries often paralyse government decision making, particularly at election times.
- 2. Changes in the regulatory environment have encountered broad based resistance from many groups including influential members of the business community.** The period of 'democratic transition', in the 1990s and 2000s, witnessed business elites' strong and growing influences in politics. Such influences have meant increasing state/regulatory capture by the powerful business elites (garments, real estate, banks, transport sector). Such influences have led to adverse impacts on environmental and social compliance and labour standards (wage, factory standards) and have generated grand corruption. The official chambers of commerce include manufacturers' in protected industries and well-connected commission agents pursuing government contracts. Chamber members have called for a greater voice for the private sector in government decisions and for privatisation, but at the same time many support protectionism and subsidies for their own interests. Generally the civil service, businesses, professional, trade unions and political parties have vested interests in a system in which confidentiality is used as an excuse for lack of transparency and in which patron-client relationships are the norm. Poorly paid civil servants have often use regulatory processes as rent seeking opportunities.
- 3. The IC policy and institutional landscape is fragmented, weak and complex.** Responsibility for IC policy and administration spans a number of agencies, including the Ministry of Commerce, Export Promotion Board, Ministry of Finance, Ministry of Industry and Privatisation Commission. The Board of Investment (BoI) is housed in the Prime Minister's Office, but regulatory and administrative power remains vested in line ministries. The state's failure to maintain regulatory/environmental/labour standards is not only due to capture of state by the business elites, but the state's low level of bureaucratic capacity (to monitor, to enforce rules) has also been a major factor, together with systemic corruption. In summary, *...there are positive aspects of the performance of some institutions...notably some impressive advocacy and*



*service providing bodies. However, many others are either ineffective, or are used for purposes that are predatory and often corrupt patron-client relationship<sup>2</sup>.*

4. **State-business interactions in Country (i) tend to focus on individual firms lobbying on particular issues.** Powerful private sector players use connections to ‘solve’ IC problems: one interviewee stated- *when I have a problem, I don’t take it to the chamber of commerce, I just pay an MP.* Business collective forums have tended to avoid strategy of ‘rocking the boat’ (not raising politically sensitive reform) and have remained content with demanding ‘low hanging fruits’.
5. **Within this complex and hostile environment, there may be entry points for donor support to address collective action failures<sup>3</sup>.** Free and aggressive media and citizen activism have managed to ensure some degree of accountability of the business. In contrast to authoritarian countries, Country (i) has some institutional constraints on business and government behaviour through the vibrant civil society, particularly by the media through its exposure of illegal practices (plunder of financial institutions, land grabbing by real estate and non-payment of wages are typical examples media expose). And beyond the traditional large collective forums, varieties of active trade-specific smaller association have emerged in the last decade, such as the association of freelance software developers. The emergence of such new fora may signal that the need for collective action is increasing among new generation of business actors, but the spectrum of such associations needs to be mapped to understand their incentives and interests.

## Country (ii)

### Political economy challenges

6. Country (ii) pushed through first generation economic and IC reforms during the 1990s. But the pace of reform has now slowed. The President, and the government more broadly, are keen to promote a strong image of a conducive environment for business. However, in reality the country’s political settlement is hostile to deep IC reform. The key challenge is the closely intertwined relationship between economic and political power, centred on the dominance of the President. Characteristics of this ‘limited access order’<sup>4</sup> which impact on IC reform include:
  - Policy delivery dependent on interventions by the President;
  - High levels of corruption, extensive patronage networks, with durable informal institutions which militate against proper enforcement of regulatory standards. For example investors (within the ruling party, or those who have access to high level champions) have been offered land free of charge, despite breaching legal procedures on land allocations .
  - Weak regulation of competition. Companies in high-earning industries can begin to find themselves pushed out by well-connected and powerful competitors.

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<sup>2</sup> DFID Drivers of Change 2002.

<sup>3</sup> See David Booth, Development as a Collective Action Problem. 2012 <http://www.institutions-africa.org/filestream/20121024-appp-synthesis-report-development-as-a-collective-action-problem>

<sup>4</sup> The relationship between political and economic power is close and strongly shaped by the generation and allocation of various kinds of economic rent. The President is a crusader for business, but his inclination to monopolise decision-making mirrors the preference among business people for individual rather than collective representation. In combination, these create a rather unfavourable climate for large-scale investors, especially those that prefer to play by the formal rules.

- Resistance to change in the regulatory environment from many groups including influential members of the business community. The relationship between the state and the business community is complex and ambivalent, including elements of both opposition and clientelism.
  - Limited collective action for reform. The Presidential Investment Forum intended to enable the government to hear the voices of the members of the business community and international experts, including the IMF and World Bank, has been challenged by a lack of cohesion within the business community, with many lobbying for their own interests rather than the collective interests of the private sector.
  - Generally the civil service, businesses, professionals and politicians have vested interests in a system in which patron-client relationships are the norm. Poorly paid civil servants use regulatory processes as rent seeking opportunities.
7. In addition, the IC policy and institutional landscape is fragmented, weak and complex. The government's failure to improve the investment climate is not only due to capture of state interests by the business elites, but also to the government's low level of bureaucratic capacity including to monitor and enforce rules, together with systemic corruption. Attempts by the Investment Climate Strategy secretariat to drive forward substantive reforms to improve the country's DB ratings have met with little success, despite significant donor support. In short, the Investment Climate Strategy Secretariat does not appear to enjoy the high level political support necessary to progress real reform.
  8. Generally, the institutions that hold vested interests in check are not strong, despite having what has been noted as amongst the most complete sets of accountability institutions in the world. Alongside the courts, other accountability institutions include the office of the Auditor-General, the Inspectorate-General of Government and the Public Accounts Committee in parliament. However, actual prosecutions are uncommon. Similarly, parliament seems to hold little power in opposing the position of the executive.
  9. The links between political and economic interests are likely to be furthered complicated as exploitation of oil resources increases. There is a concern that oil wealth could contribute to political tensions, as competing powers seek maximum wealth for their own benefit. The potential tensions are exacerbated by the country's opposition to joining the Extractive Industries Transparency Initiative, which aims to prevent corruption in oil revenue payments.

### ***The Judiciary***

10. The constitutional position of the Judiciary emphasises its independence from the executive, and the Judiciary has traditionally guarded that independence fiercely. A 2004 ODI report noted that political disputes were being resolved in the courts and that the Judiciary is increasingly being seen as confident and impartial. At the same time the executive has been keen to maintain control over the Judiciary's budget and its staffing. To some extent this can be seen to be a healthy tension.
11. More worrying have been incidents of Presidential interference with Judiciary independence, and the hiatus when the Judiciary were without a Chief Justice. The power vacuum left the Judiciary without effective leadership and undermined the public's confidence in it as an institution. The situation also had operational repercussions. The Rules Committee, which has

delegated authority for making and amending rules of court was unable to meet and make decisions as it had no quorum.

12. The recent appointment of a new Chief Justice has been generally well received. He has positioned himself as a reformer vowing to harmonise the judicial team, lobby for increased budgetary allocation to the Judiciary, and restore public trust by fighting internal corruption.
13. There are some strong reformers within the Judiciary both at senior judicial level, and at the more operational level.
14. The Judiciary is seen, and sees itself, as the leader and driver of reforms within the justice sector. More generally, the Judiciary has adopted a broad reform mandate. The speech of the acting Chief Justice at the most recent Judicial Annual Conference, who has strong connections with the ruling party, at the opening of the conference advocated strongly for reform.
15. The Judiciary have pursued a range of initiatives to enhance access to justice including centres providing free legal advice and alternative dispute resolution. A justice sector performance report from 2013/14 placed an emphasis on enhancing of judicial services especially to vulnerable persons. The Commercial Court has been seen as a flagship, encouraging reforms in other parts of the Judiciary.

## **Conclusion**

16. Investment climate reform has overall proved challenging in Country (ii) over the past decade or so, with limited political buy-in, or will to push real reform forward. While institutional reforms have taken place (such as the new business registry, and new commercial laws) the impact has been limited, and implementation generally weak.
17. In contrast, the Judiciary has a relatively strong reform record, especially in relation to the Commercial Court, and there is initial evidence that reform has had an impact on growth and investment. With the appointment of a new Chief Justice, and the pressures likely to be put on it in the run up to and in the aftermath of the upcoming Presidential election, the Judiciary, which sees itself as having a transformative role in the country's economy and society, now stands at something of a cross roads.

## Annex C: Traffic light matrix: initial, high level analysis on specific investment climate issues

### High level initial analysis tool

Investment climate issue	High level initial analysis of investment problems			
	(i) Technical issues and level of difficulty to resolve (including looking at the problem with a gender lens) <sup>5</sup>	(ii) Political economy issues	(iii) Potential to make a difference?	(iv) Value for money (likely impact vs estimated cost)
1.				
2.				
3.				
4.				
5.				
6.				

### Anonymised example of high level initial analysis

CLJ problem	High level initial analysis of CLJ problems			
	(i) Technical issues and level of difficulty to resolve (including looking at the problem with a gender lens)	(ii) Political economy issues	(iii) Potential for a donor to make a difference?	(iv) Value for money
<b>1. Inefficient company registration</b>	Country X has a new Companies Act, which although updated is not in line with best practice in terms of business entry, and still imposes more steps and costs than necessary. Reform would require a fundamental re-think of the country's approach to companies law and would require expert legal input.	The process of Companies Act reform began in the late 1990s and it took four years for the current Act to become law, following the updated Companies Bill. The Act falls under the auspices of the Ministry of Justice, with much of the technical work being undertaken by the Law Reform Commission. There is unlikely to be traction within the Ministry, the Law	Donors previously supported commercial law reform under a government pioneered commercial justice reform programme, but this component was only partly achieved. UK company law is no longer a good model for common law countries in view of the impact on it of EC directives.	<u>Likely impact:</u> Evidence is mixed on the impact of simplification of registration on formalisation. <sup>6</sup> <u>Estimated cost:</u> Technical inputs would be extensive: drafting primary and subsidiary legislation, but key issue would be supporting implementation – which in the past, despite successive donor inputs, has proved challenging.

<sup>5</sup> S. Simavi, C. Manuel and M. Blackden (2010) Gender Dimensions of Investment Climate Reform – A guide for policy makers and practitioners. Washington DC: World Bank.

<sup>6</sup> See Manuel, C. (2015) Is there a causal link between investment climate and growth? A review of the evidence. LASER/DFID

CLJ problem	High level initial analysis of CLJ problems			
	(i) Technical issues and level of difficulty to resolve (including looking at the problem with a gender lens)	(ii) Political economy issues	(iii) Potential for a donor to make a difference?	(iv) Value for money
	The Business Registry has undergone significant reform and streamlining following its establishment as a semi-autonomous body	Reform Commission nor Parliament for further reform.	Reform of the Business Registry falls under a current World Bank competitiveness and business environment project.	
<b>2. Inefficient business licensing across a range of sectors</b>	In some cases reform of primary or secondary legislation may be necessary - but the real issue is implementation at both central and local government level. This would require engagement across a wide range of institutions including at local government level.	The country's Investment Climate Strategy II focuses on construction permits, in line with DB indicators, where Country X scores particularly poorly. Generally simplification of licenses requires a high degree of political will, and reform 'on the books' needs to be followed through with strong implementation. The current situation does not indicate that the Investment Climate Strategy secretariat has the political ability to push forward reforms of this nature.	A donor supported regulatory reform in the early 2000s under a well-regarded regulation programme, funding the setting up of the precursor to what is now the Doing Business Secretariat. The Secretariat is now supported by the World Bank. Licensing offers legitimate and illegitimate payment opportunities, and internationally and in Country X regulatory reform has proved challenging.	<u>Likely impact:</u> Focusing on key licenses in selected sectors, linked to other donor inputs, e.g. M4M work could reap benefits if political economy challenges could be overcome. <u>Estimated cost:</u> Particularly if linked to other programming, working on political economy issues and implementation, technical legal inputs would be fairly modest.
<b>3. Inefficient land registry</b>	Country X's basic legislative framework for land administration is sound. The key piece of legislation is the Land Act which was drafted by a British academic, funded by a donor. However, implementation is weak, with Country X ranking poorly in the DB indicators. Key problems are: (i) The vast majority of land is still unregistered, despite on-going efforts at titling (ii) the poor performance of the Land Registry, reflected in the poor DB ranking and (iii) the large number of land disputes	Land is a highly political issue at a range of levels. Land is bound up with traditional beliefs and structures and can be related to local level conflict, as well as with larger conflicts as the interests of local communities potentially conflict with the interests of government/major economic actors. At the operational level, land registration offers rent seeking opportunities. Donors have engaged with Land Registry reform since the late 1990s with very limited success.	A donor was a significant player in the current legislative framework, having provided highly regarded TA for land legislation reform. However follow-on engagement with the Land Registry/Ministry of Lands proved problematic and did not achieve expected results. Reform of the Land Registry falls under a current World Bank programme. As with licensing reform, a problem driven, politically informed approach in line with latest thinking on institutional reform may offer a more realistic approach than traditional approaches, and may	<u>Likely impact:</u> A donor could add marginal value to the existing WB programme. However, it would need to be very clear that the WBG is open to more politically informed and iterative ways of working. <u>Estimated cost:</u> A relatively small investment to add a more politically informed dimension to existing WB programming.

CLJ problem	High level initial analysis of CLJ problems			
	(i) Technical issues and level of difficulty to resolve (including looking at the problem with a gender lens)	(ii) Political economy issues	(iii) Potential for a donor to make a difference?	(iv) Value for money
			provide a useful opportunity to engage with the WBG on these issues.	
<b>4. Land disputes</b>	Land disputes comprise the majority of civil claims in Country X. Many disputes are resolved by traditional leaders, or at lower court level, despite the fact that only the magistrates court is empowered to hear land disputes at the local level. Key issues are the backlog of cases in the magistrates court, and questions about the quality of justice dispensed in other fora, particularly for women. There is a large backlog of land disputes at the High Court Level. Ambiguities around jurisdiction across the division impact on the relative authority of the Land and Commercial Division.	At High Court level at least, there is appetite amongst key members of the Judiciary for reform and to improve the processes for dealing with land disputes, following on from what are seen as successful reforms in the Commercial Court. Conservative elements of the Judiciary may oppose reform, and the Judiciary's lack of control over its administrative staff (who report to the Public Service Commission) and who reportedly are a major cause of dysfunctionality and rent seeking – may make reform challenging, as well as resistance from state/business elite and traditional leaders.	Donor's former engagement with the Commercial Court provides a foundation for re-engagement with the Judiciary. Current technical support under LASER to the Judiciary provides a solid basis of trust and good relations. The Judiciary has recently requested HMG support (training and capacity development).	<u>Likely impact:</u> Likely to be modest in light of the scale of the problem. Best strategy would probably be to focus initially at High Court level, leveraging Commercial Court success with the aim of supporting the creation of a 'flagship' Division? which would in due course support reform more broadly across the system. <u>Estimated cost:</u> Would comprise mainly TA – likely to be focused on management issues.
<b>5. Contract enforcement/commercial dispute resolution</b>	Changes in court rules and practice at magistrates court level are required to streamline the process of contract enforcement, and to improve Country X's DB rating. This includes home-grown innovations such as ADR and small claims which the Judiciary is currently seeking to roll out from the Commercial Court to magistrates courts.	See above for general comments. There is very strong ownership of the small claims roll out at the centre, but implementation in magistrates courts is patchy. Home grown efforts to improve M&E and performance improvement initiatives across the Judiciary may offer mechanisms to push reform.		<u>Likely impact:</u> Impact on very small claims brought by micro enterprises is likely to be significant in light of findings of a recent evaluation. Less clear is the extent to which small claims reforms have the potential to drive forward further reforms across the magistrates court system. <u>Estimated cost:</u> Would comprise mainly TA – likely to be focused on management issues.

CLJ problem	High level initial analysis of CLJ problems			
	(i) Technical issues and level of difficulty to resolve (including looking at the problem with a gender lens)	(ii) Political economy issues	(iii) Potential for a donor to make a difference?	(iv) Value for money
6. Law on non-land secured transactions	The basic law enabling non land assets to be taken as security is in place, but is not in line with international best practice. Reform would require a fundamental re-think of legal principles as well as the establishment of a new electronic registry. In addition, there may be need for a review of supporting legislation eg, in relation to warehouse receipts.	The process of non-land secured transactions law began in the late 1990s, led by the Law Reform Commission and it took a number of years for the current Act to become law. There is unlikely to be traction from the the Law Reform Commission or Parliament for further legislative reform.	A donor supported commercial law reform under the government led commercial justice reform programme, but this component was only partly achieved. UK law on non-land secured transaction is not in line with international best practice and is not a good model for common law countries.	<u>Likely impact:</u> At least one bank appears to be lending on the basis of non-land collateral despite lack of best practice framework <u>Estimated cost:</u> Legal reform and setting up an electronic registry will require significant investment.

## Annex D: Problem diary template and examples

One way that LASER tracks, and can reflect on, how problems are identified and prioritised is through the “problem diary”. Testing how best to get value from the problem diary was an evolutionary process. By capturing fortnightly the changes in the positions, policies, actions, behaviours and performance of the main stakeholders and LASERs support, the resident adviser could begin to determine patterns, reflect on progress and discuss with the global team where to focus attention.

Key questions to ask throughout the process:

- Whose problem are we trying to solve?
- Who is set to gain from any change?
- Who are the key stakeholders?
- What assumptions are we making?

Regular discussion amongst the team on these questions allow the LASER adviser to keep the broader aims of the programme in mind while being flexible and adaptive on the ground. Applying these questions to the problem diary approach can also be seen as an opportunity to frankly evaluate failures in a particular line of enquiry, and to discuss these, exploring alternatives to help the project evolve.

At the outset the LASER adviser might aim to capture each potential problem in a diary. Once they have narrowed the focus to a set of problems, then they can similarly focus the diary on the problem identification and resolution process for these priority areas. The regular reporting enables the LASER adviser to identify twists and turns in the narrative, and to capture the iterative process. Over time we can reflect on what has happened each fortnight to provide not just a description of the process but also analysis. Themes or failures which might not be apparent at the outset become clearer.

### LASER Problem Diary Template

<i>Problem no. X</i>	<i>Problem title</i>
<i>Brief description of problem</i>	
<i>Process by which problem was first identified (who, where, when, how, why etc)</i>	
<i>Narrative of how problem deconstruction and solving has been approached over time</i>	
<i>What happened (who, where, how, why etc)</i>	

### Applying the problem diary in practice

The LASER global team started to hold monthly sessions with the adviser to interrogate particular problems in the diary. The problem diary sessions allowed assumptions to be tested, alternative approaches to be suggested and failures to be identified and reflected on, in line with a real time lesson learning, iterative and adaptive approach. The value and uses of the problem diary include identifying interesting themes and experiences for case studies or further research, reflecting on unanticipated outcomes or possible opportunities, and ensuring a collaborative and sound approach. No doubt new benefits will continue to emerge as it is tested in different contexts.



### LASER Problem Diary Example 1

<i>Problem no. 5</i>	<i>Special Economic Zones</i>
<i>Brief description of problem</i>	The Special Economic Zone (SEZ) Agency has weak capacity to implement the regulatory framework required to enable the SEZ to be effective. There is a draft regulation on land management and use of land in SEZs. Approval of the regulation has been delayed for over a year. The lack of clarity on land titles in the SEZ is perceived to be a disincentive to potential investors. It was not clear to the international community why the regulation had not been implemented.
<i>Process by which problem was first identified (who, where, when, how, why etc)</i>	The government's Private Sector Development Strategy identified capacity gaps within the Agency to progress the regulatory framework. A major donor raised concerns about the delays in implementation of the regulations regarding land tenure at sector working group meetings.
<i>Narrative of how problem deconstruction and solving has been approached over time</i>	
<p><i>What happened (who, where, how, why etc)</i></p> <p>The adviser discussed with the agency the causes for non-approval of the land management regulations. Two specific legal obstacles were identified - one on the lease period provided to the developer and one on the tax status faced by the developer. From discussions with another government agency responsible for land policy, it appeared there was a misunderstanding of the legal position regarding the lease period by the SEZ agency.</p> <p>It is likely that the real issue for the delay is the developer's desire for an exemption from district property taxes. The developer has an outstanding tax bill; land title in the SEZ cannot be transferred from the developer to users until the tax matter is resolved. Local government officials currently benefit from the status quo because the developer is required to pay a property tax to the district. The tax authority is interested in what precedent will be set for the SEZ in terms of tax status – given they want to attract foreign investors but also have revenue targets to meet. The overarching political interests of the government are to support the developer, because the developer's shareholders are companies which are controlled by key individuals in the ruling party.</p> <p>Therefore resolving the tax status of the developer requires agreement on a policy position by the prime minister's office, local government officials, the tax authority, the land agency and the SEZ agency. A senior level meeting on the matter has been called.</p> <p>In the meantime, LASER was asked to provide technical advice on the land regulations for the SEZ and attended an inter-agency meeting to review and decide how to progress these and other regulations. The meeting highlighted that: there is a clear lack of policy direction on the purpose the SEZ; there is non-compliance with the law in part due to the non-existence of a governing Board for the agency; the developer is effectively acting as the SEZ agency in lieu of capacity within the agency and given their political standing; there is a reluctance by other government agencies to have 'special' measures for the SEZ – in part due to a lack of understanding of the policy merits in doing so; and there is a lack of technical capacity and resources within the SEZ agency.</p> <p>LASER provided research on international best practice in two areas of interest to feed into the regulation drafting and approval process. Ultimately neither of the recommendations based on international evidence were adopted as they indicated an approach that was not in line with the political outcome desired.</p> <p>LASER was requested to provide further technical support to the agency. A process of reflection was undertaken which included analysis against the following criteria: how significant the problem was to the investment climate, our current understanding of the political economy compared to what would be required to engage effectively, a value for money assessment and the likely sustainability of any support. Ultimately we decided to not engage further with this particular problem.</p>	

LASER Problem Diary Excerpt - Example 2

<i>Problem no. 2</i>	<i>Lack of competition</i>
<i>Brief description of problem</i>	Country X doesn't have a competition authority, but it is proposed to establish one. The design of such an authority should be effective in enhancing competition, particularly given the context where a significant number of large enterprises are wholly or partially state or ruling party owned. It is unclear what the exact design is for such a body and whether it would be effective in encouraging competition and growth or not. There is no consensus on what the powers of the new authority should be and stakeholders are not clear on whether a new entity would be effective. It is anticipated that a decision on the authority's responsibilities has been made by government without consultation.
<i>Process by which problem was first identified (who, where, when, how, why etc)</i>	LASER during initial discussions with key donors. It has long been identified by international donors that there is need for a competition authority.
<i>Narrative of how problem deconstruction and solving has been approached over time</i>	
<p><b>What happened (who, where, how, why etc)</b></p> <p>A literature review and initial discussions with a wide range of actors indicates strong state involvement in business across the key economic sectors is a concern and there is a view that this contributes to a lack of competition. However, it was clear during the problem identification process that the private sector faces a number of other general investment climate constraints, such as the low availability of raw materials and high cost of production, power and transport as well as a poor regulatory framework. Thus, it was evident that the main challenges for the private sector were not a lack of competition per se, but a resource-constrained private sector that is crowded out by the state.</p> <p>LASER continued to discuss the issues with a range of stakeholders to better understand the background and context. These discussions revealed that attempts to establish a competition authority appear to be driven by donors and in part agreed to by the government as a box-ticking, isomorphic mimicry exercise, as opposed to any desire to better regulate competition issues. A basic understanding of the context also indicates there has been minimal discussion of (and lack of agreement on the importance of) the issues across government – ie the Judiciary and Minister of Justice have not been involved but the proposed changes would impact on how competition issues are investigated, enforced and disputes resolved. There are also serious concerns about the potential for the authority to be independent and legitimate given it will be regulating government-dominated markets. At the same time we undertook a high-level political economy analysis which highlighted that there would be pockets of openness to competition regulation depending on the extent of the ruling party's commercial interests in a particular industry or sector. Initial discussions were had with the ministry about undertaking a joint sectoral or market analysis.</p> <p>A draft law establishing the authority has been submitted to Parliament. The senior government officials responsible for drafting the regulations have asked for input. Over the last few months a range of options for appropriate inputs have been explored. Given the need for technical drafting advice and what we know about the context, we have discussed internally the best way to support this request. We have decided to provide inputs on the institutional design and governance arrangements for the authority. This will provide an entry point to discuss a sensitive matter (the degree to which the authority is independent and transparent) with the government and development partners, grounded in evidence of what has worked elsewhere and highlighting policy considerations. After delivery of the paper to a range of relevant government and development partner institutions, LASER held informal discussions with each organisation on appropriate and desirable possible solutions to the challenges. This process revealed broad agreement on the best approach, helped to inform non-legal officers working in this area of the implications of the proposed legislative provisions and raised awareness of the proposed reforms amongst the justice sector.</p> <p>The legislative process for establishing the competition authority has now stalled, allowing more time to discuss the content of the paper. This delay highlights the relative lack of priority of this initiative for the government and the range of underlying political dynamics at play.</p>	

**Annex E: Example outline theory of change for flexible, adaptive large-scale programme to support IC reform**

