LASER

Legal Assistance for Economic Reform

First synthesis paper

Investment Climate Reform: Doing it Differently

What, Why and How

DFID Legal Assistance for Economic Reform Programme

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WHAT IS INVESTMENT CLIMATE REFORM (ICR)?

Although definitions vary, the 'investment climate' is the environment in which businesses operate and which fosters competitive markets, growth and job creation[1]. Accordingly, investment climate reforms comprise programmes across a range of areas, such as commercial contracting, commercial dispute resolution, registering property, tax reforms, trading across borders, etc. With the private sector vital for sustainable inclusive growth and development, many developing countries are in need of ICR programmes with support from external donors.

WHY DO DONORS NEED TO APPROACH ICR DIFFERENTLY?

ICR programmes have typically focused on 'institutional reforms' relying on the correlation between better institutions and higher levels of income and growth[2]. But the evidence for a causal link between institutional reforms and higher levels of income and growth is in fact rather weak[3]. Donor driven institutional reforms have generally failed to foster competitive markets, growth, and jobs in practice[4]. Where success is claimed, it is typically based on simple before-and-after comparisons, with no control for pre-existing trends or concurrent events in the economy, meaning that a sufficient evidence base has not yet been established[5].

The new 'doing development differently' approach to ICR (and other programmes more broadly) adopts a problem rather than institutional focus from the outset, with a greater focus on impact over outputs and gathering data for building the evidence base. Given the appreciation of the complexity of problems and breadth of actors, rules and institutions at play, the approach is more country-specific, politically informed and flexible in nature. Given the importance of building a robust evidence base of what works and what doesn't work, the approach requires a willingness to 'fail', learn, and adapt.

HOW SHOULD DONORS APPROACH ICR PROGRAMMING DIFFERENTLY?

The new approach is at odds with traditional donor practice which implies unrealistic levels of predictability with locked-in objectives and activity plans, strict budgets with pressure to spend and

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[1] World Bank Investment Climate department.

[2] North 1990 asserted that absence of a low-cost means of enforcing contracts is the most important source of historical stagnation and contemporary underdevelopment in the third world; Acemoglu and Robinson 2012.

[3] There is a wide literature that interrogates the association between the investment climate and growth and investment, including studies commissioned by DFID. In particular Cox 2008 and more recently Aboal et al 2012.

[4] Andrews et al 2012 and Pritchett et al 2012.

[5] McKenzie 2009.

closely monitored pre-determined results. Accordingly, the new approach to ICR requires a fundamental shift in donor programming. DFID has taken a step towards adopting this new approach to ICR in its Smart Rules for better programming (2014) which includes payment by results and provides space for flexible programming, even in large, multi-year programmes such as LASER. Putting this new approach into practice will require programmes to have extended design phases (e.g. six to twelve months) for 'designing by doing', engaging with reforms that are both technically sound and politically possible, and, as much as possible, <u>not</u> putting the prospect of substantial funding on the table up front. It's important for donors to be realistic about the pace of change, as supporting local actors takes longer than delivering 'first world' technical fixes. Donors will need to allow for flexible (not over-designed) programme documents, which focus on <u>how</u> change will be brought about, rather than in what form. High-level log frames can provide frameworks for more detailed interventions to be designed progressively and revised as assumptions underpinning theories of change are tested. Using short planning cycles to enable small, iterative steps to be taken and tested, while ensuring strong lesson learning and feedback loops are put in place to strengthen on-going programme design including through the use of stories of change. DFID is now beginning to deploy this new approach in relation to its major programmes.

<u>HOW</u> SHOULD DEVELOPMENT PRACTITIONERS OPERATE DIFFERENTLY ON THE GROUND?

The new approach implies that development practitioners implementing ICR (and other) programmes should primarily be 'facilitators and enablers', rather than drivers of reform; that they should develop relationships of trust and respect with local counterparts; and have strong political astuteness. All the case studies in this paper highlight the importance of having the right people in the field with significant technical experience, strong interpersonal skills and deep in-country knowledge. However, simply putting a person in place is not enough. The new approach to ICR requires that person to maintain a continued focus on locally-identified <u>problems</u> from the perspective of the 'user' (which needs to be explored). It requires him/her to undertake a methodical process of identifying the institutions, rules, and actors that maintain the status quo and the political interests and networks at play[6]. Only then is it possible to design politically-informed, context-specific interventions for where there is sufficient traction and local leadership. In carrying this out, development practitioners should seek to identify lessons learnt and use them to build evidence for ongoing design.

LASER'S OFFER…

As a flexible DFID HQ-funded programme, LASER has the mandate to support DFID country offices in designing and implementing ICR programmes deploying this new approach, including supporting the development of business cases, theories of change and log frames, and providing technical support during programme implementation. In addition, LASER continues to share lessons learnt as the programme models the new approach to ICR on the ground[7].

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[6] World Bank Just Development, Four Cardinal Questions, D. Isser, L-A berg and D. Porter (2014).
[7] LASER currently operates in Bangladesh, Kenya, Rwanda, Sierra Leone, Somaliland, Tanzania and Uganda.

INTRODUCTION

'Doing development differently' has become an aid effectiveness mantra, and even perhaps a movement[8]. This paper explores <u>why</u> donors need to approach ICR differently, <u>how</u> donors should approach ICR programming differently and <u>how</u> development practitioners should operate differently on the ground. Doing development differently encompasses a range of ideas, which may be summarised as:

> *An approach which starts with locally identified problems, rather than with attempting to reform institutions; is locally (rather than donor) led, context specific and politically informed; and leads to donor programming that is designed and implemented in a highly flexible and adaptive way.*

Of course there are elements of this which are not new at all. It has long been understood that political astuteness and context relevance are essential for effective development interventions[9]. And in the last ten years there has been a renewed focus on the need for donor interventions to go with the grain of local politics[10]. The challenge is for donor programming to adopt all of these elements. As LASER has worked with donors engaged ICR, three common responses to the doing development differently agenda have been as follows: *(i) this kind of approach is fine for small programmes such as LASER[11], but not appropriate for major ICR programmes; (ii) no change is needed – we've been doing this all along; and/ or (iii) the approach implies that putting the right people on the ground and giving them flexibility will achieve anything.* Other commentators have noted similar challenges with mainstreaming this new approach – that it may in fact be *confined to 'under the radar' individuals and small projects*[12] and / or that it may be seen as a *trend* which the members of the development community claim to have adopted, without interrogating what it means in practice[13].

This paper aims to address these three challenges and to show why the doing development differently approach really is different and how it can become mainstream practice in donor (particularly DFID) IC programming. It does so with reference to the growing stable of donor supported programmes in different contexts that deploy this approach to address complex developmental challenges[14] (see table 1 on next page).

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[8] Matt Andrew's DDD Manifesto is a call for international organisations of all kinds to embrace a set of six common principles as the best way to address complex challenges and foster impact. (http://buildingstatecapability.com/the-ddd-manifesto).

[9] Ferguson 1990.

[10] Kelsall 2011 and Unsworth 2010.

[11] LASER is a £4.3 million programme to be implemented in eight countries over three years. A similar example of a relatively small DFID programme which adopts similar approaches is FOSTER (see table 1).

[12] Wild and Foresti 2013.

[13] This issue was also noted in relation to problem driven iterative adaptation in Denney, L and Kirwen, E (2014) 'Politically Smart and Locally Led Justice Programming: Learning from Other Sectors'. *World Bank Just Development,* issue 7, November.

[14] See for example: Faustino and Booth 2014 and Booth and Chambers 2014.

Table 1: Some IC related donor programmes which do development differently

Programme / Funder	Country	Date	Funds	Funding modality	Type of implementer	Key results to date
Facility for Oil Sector Transparency and Reform (FOSTER) (DFID)	Nigeria	2010 - 2015	£14 million	Commercial contract	For-profit company	▪ Supported the establishment of a specialist oil and gas unit within central government to strengthen oversight of revenues from the sector; ▪ Supported international initiatives to strengthen transparency in the sector e.g. Nigeria Natural Resource Charter; and supported civil society to encourage public debate e.g. Oil Revenue Transparency Initiative[15]
State Accountability and Voice Initiative (SAVI) (DFID)	Nigeria	2007 - 2016	£30 million	Commercial contract	For-profit company	▪ Acceleration of State legislation to support better governance including on fiscal responsibility, public procurement, and freedom of information ▪ Improvements in service delivery at State level especially in health and education sectors (e.g. in Kaduna new primary health care and drug management agency; in Jigawa more female staff recruited)[16]
Legal Assistance for Economic Reform (LASER) (DFID)	Various[17]	2014 - 2017	£4.3 million	Commercial contract	For-profit company	▪ Sierra Leone: facilitated development of first ever commercial law and justice component of National Justice Strategy, setting out clear national priorities for reform and investment ▪ Kenya: facilitated Judiciary Transformation Initiative to develop operational work plan for alternative dispute resolution pilot to address very low rate of out of court settlements on civil disputes ▪ Rwanda: facilitated cost savings for GoR through support on commercial contract negotiation and management[18]

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[15] FOSTER, OPM project page.
[16] ITAD project page.
[17] Currently Bangladesh, Kenya, Rwanda, Sierra Leone, Somaliland, Tanzania and Uganda.
[18] LASER Programme reports.

Programme / Funder	Country	Date	Funds	Funding modality	Type of implementer	Key results to date
Justice Reform	Mozambique	2013 -	£20 million	Initial pro bono from Harvard, then EU contract	/	▪ In initial eight month design phase, yielded more potential functionality than was achieved through five years and $5m in the preceding justice sector planning and monitoring (SIPMAJ) project through supporting a local reform group to identify missing capacities in the justice sector. ▪ Leverage of EU funding for management information system[19].
Land titling	Philippines	/	/	Grant	Not for profit	▪ The 2010 enactment of a law on Residential Free Patents resulted in a 1,400% increase in residential land titling in the Philippines, with large immediate and other anticipated benefits for ordinary urban dwellers. Success was achieved despite unfavourable political context[20].
Tax reform	Philippines	/	/	Grant	Not for profit	▪ New law on excise taxes on alcohol and tobacco closed loopholes in previous legislation and increased revenues year-on-year by 85.6%, yielding fresh revenue of US$ 1.18 billion in 2013. Nearly 80% of this figure is earmarked to health-care subsidies for the poorest Filipinos[21].
Forest Law Enforcement and Governance (EU, incl. Dutch funding)	Various	2003 -	/	Various	/	▪ Development of voluntary licensing scheme for timber imports to EU. ▪ Voluntary Partnership Agreements resulted in significant policy and legal reform, and decline in illegal logging in major timber-producing countries[22].
Strengthening Security and Justice (IP-SSJ) (DFID)	Nepal	2014 - 2018	£35 million	Various	Various	▪ No key results have been published to date.

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[19] Andrews 2014.

[20] Booth 2014.

[21] Booth 2014.

[22] Lawson and MacFaul 2010.

WHY DONORS NEED TO APPROACH INVESTMENT CLIMATE REFORM DIFFERENTLY

Despite there being little evidence that institutional reforms lead to higher levels of growth[23], ICR programmes still typically focus on institutional reform. Although there is a strong theoretical basis for the assertion that economic institutions matter[24], and in general better institutions are correlated with higher levels of growth[25], correlation does not imply the existence or direction of a causal relationship between institutions and growth. Many other variables – such as market size, political stability, infrastructure quality and/ or level of economic development – are likely to be important[26] and IC 'sceptics' who doubt a causal link also point to layers of historical, economic, political and cultural influences instead[27].

Traditional approaches to institutional reform have had limited impact. Recent research[28] suggests that failure is the norm. In many countries, institutions have actually deteriorated following donor interventions in terms of effectiveness, corruption, etc. By way of example, a 2011 World Bank study found that the quality of public administration improved in only 13% of the 80 countries receiving World Bank support for public sector reforms between 2007 and 2009[29]. A key reason for this is 'isomorphic mimicry' where donors drive through institutional reform based on 'best practice' – 'modern' solutions which fail to deliver in practice[30]. Uganda, for example, has with donor support developed some of the world's best institutional frameworks for accountability (including for anti-corruption) yet is perceived as one of the most corrupt countries in the world[31]. Isomorphic mimicry is a particular challenge for ICR programmes, where developed country solutions – such as regulatory impact evaluations, one stop shops for foreign investors, or competition authorities[32] – may provide the superficial semblance, but not the substance, of reform. A recent paper[33] has suggested that the traditional formulation of the 'right' institutions for growth are not supported by the evidence. And a recent survey[34] of donor IC efforts in eight sub-Saharan countries[35] concluded that ICR reflected the priorities and dogmas of the aid community, were poorly implemented and insufficient to deliver growth.

ICR programmes have typically focused on delivering outputs rather than focusing on impact and significantly enhancing the evidence base. The World Bank[36] has concluded that '*given the short-term nature of particular reform programmes and focus on output-based indicators, credible findings in terms of impact remain elusive'.* There is scant evidence about the sequencing of ICR and about which

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[23] There is a wide literature that interrogates the association between the investment climate and growth and investment, including studies commissioned by DFID. In particular Cox 2008 and more recently Aboal et al 2012.
[24] Evans and Ferguson 2013.
[25] North 1990; Acemoglu and Robinson 2012.
[26] World Bank 2010.
[27] See Unsworth's 'An upside down view of governance' which emphasises the importance of informal rules.
[28] Andrews 2013.
[29] World Bank 2011.
[30] Andrews et al 2012 and Pritchett et al 2012.
[31] Andrews 2013:110.
[32] See LASER's work supporting development of the National Competition Authority in Rwanda.
[33] Booth 2015.
[34] Page 2014.
[35] Ethiopia, Ghana, Kenya, Mozambique, Nigeria, Senegal, Tanzania and Uganda.
[36] World Bank 2012.

reforms matter most[37]. Where ICR linkages to growth or job creation are claimed, the methodology tends not to be rigorous, typically using simple before and after comparisons, with no control for pre-existing trends or concurrent events in the economy[38]. There is a strong need to strengthen the analytical underpinnings and evidence-base of ICR, and its relationship to economic growth. This requires stronger market analysis and growth dynamics, and consistently supporting developing country counterparts in data collection and analysis.

The doing developing differently agenda addresses the need for a more country-led, nuanced, adaptive approach to ICR. ICR is now seen as highly complex, deeply political and context specific. Specific business constraints, such as limited access to finance, markets, infrastructure and labour, vary across firms, sectors and regions and are often extremely heterogeneous in nature. A recent DFID practice note on ICR[39] sees it as being *beset with complex interactions and weak incentives; … intensely political; the social benefits are often unclear to actors or are overshadowed by the status quo's private benefits; both supply and demand of reform are critical to success and sustainability; and both depend on the capacity and incentives of actors in the systems who must therefore own and take charge of reforms at the pace that internal capacity constraints allow. Purely technocratic solutions are unlikely to deliver lasting change.* Paul Collier's recent letter to the UN underlines the principle of country leadership: *There is no magic bullet for delivering economic growth – it requires an effective state, productive firms, functioning cities, and access to energy. Helping societies to achieve economic growth [thus] means empowering them to create their own solutions*[40, 41]. Commentators have conceptualised this approach in various ways: *thinking and working politically*[42]*; dealing with complexity and uncertainty*[43]*; systems approaches*[44]*; 'searching' model of assistance*[45]*; problem driven approaches*[46]*; problem driven political economy analysis*[47]*; problem driven iterative adaption*[48]*; adaptive management*[49]*; development entrepreneurship*[50]*; good enough governance*[51] and *'good/ best fit'* approaches to governance improvement[52]. The approach is summarised in Box 1 on the next page.

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[37] See especially Davis & Trebilcock 2008 and also Haggard and Tiede 2011.
[38] McKenzie 2009.
[39] Laric, M 2012.
[40] Collier 2014.
[41] Grindle 2007, Rodick 2007, Unsworth 2010 and Booth 2011.
[42] Faustino, J and Booth, D 2014.
[43] Harford 2011; Ramalingam 2013; Ries 2011; Root 2013; Sims 2011; The Asia Foundation 2011; Hummelbrunne and Jones 2013; Blank 2013; Young et al 2014.
[44] Laric 2012.
[45] Faustino and Booth 2014.
[46] Harris 2013 i.e. diagnosing the underlying drivers that explain how things work in practice and why chronic problems persist and looking at motivations an incentives of different stakeholders.
[47] Fritz et al 2014.
[48] Andrews 2013.
[49] Holling 1978.
[50] Faustino and Booth 2014.
[51] Grindle 2007.
[52] Booth and Cammack 2013, also see World Development Report 2011.

Box 1: Key aspects of doing development differently

- Locally identified and defined problems provide the entry point (not institutional reform)

- Solutions and results are not 'locked in' at the beginning of the programme, but instead are based on on-going, strategic political economy and context analysis

- Solutions are developed iteratively and taken forward through 'small bets', which can be adapted (or abandoned if unsuccessful)

- Solutions are not based on 'best practice' from developed countries, but instead 'best fit' for the country context

The key is the ability to 'fail', learn and adapt on an ongoing basis, building a stronger evidence base for what works and what doesn't work. Doing development differently – the new approach – emphasises the need to navigate through complex development challenges such as ICR by way of trial and error[53], experimentation[54], *purposive muddling*[55]*,* problem-solving and learning by doing[56]*,* with reforms emerging via multiple incremental steps[57]. Unlike the more rigid, traditional approaches to ICR, this approach builds in ongoing lesson learning within the approach so as to build a stronger evidence base for what works and what doesn't work in ICR. The approach is particularly relevant in fragile and conflict-affected states where growth and job creation and are critical[58], but where there is less clarity about priorities and sequencing of interventions: traditional *business as usual* approaches are not appropriate in contexts with institutional and regulatory vacuums and/ or extremely weak business environments. Acknowledging and embracing the complexity of the reform process implies a highly dynamic and lesson-learning approach to programming, as the diagram on the next page from the 2015 World Development Report[59] illustrates.

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[53] Faustino and Booth 2014 and McCay 2002.

[54] World Development Report 2015.
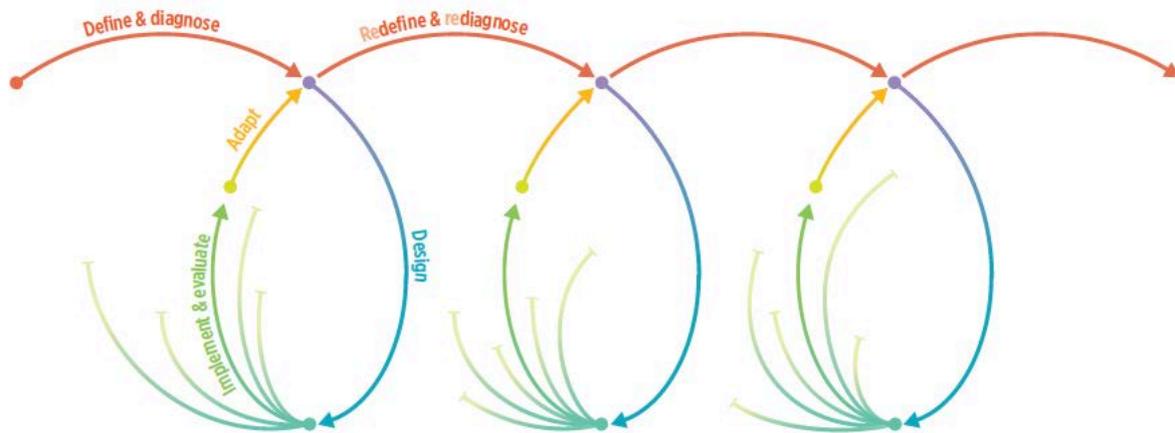
[55] Andrews 2013.

[56] Faustino and Booth 2014.

[57] McCay 2002.

[58] See for example World Development Report 2011; New Deal for Engagement in Fragile States - Peacebuilding and Statebuilding Goals.

[59] World Development Report 2015.

Figure 1: Non-linear approach to programming

Source: WDR 2015 team.

This new approach is at odds with standard donor practice and implies a fundamental shift in donor programming. Traditional donor programme/ project management practice implies un-realistic levels of predictability[60]. Locked-in objectives and activity plans, strict budgets with pressure to spend and inflexible targets mitigate against the flexibility that the real world requires. Developing country frustrations with traditional donor approaches can be seen in Kenya, where a World Bank project aimed at supporting improvements in judicial performance has stalled due to rigid implementation procedures. Significant funds remain unspent, and a donor opportunity to engage with and support what is potentially transformational change in Kenya's Judiciary has been missed. As the Judge heading the transformation process put it[61] *you can't predict when a good idea will come along.* Donors need to programme in different ways[62], *ventur[ing] into the unknown and accept[ing] more open-ended, flexible, adaptive and ultimately messy processes*[63]. As the next section shows, some donor (including DFID) programming has already begun to adopt these new practices*.*

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[60] Allana 2014, Faustino and Booth 2014, Wild and Foresti 2013.
[61] Interview with The Law & Development Partnership 25 February 2015.
[62] Booth and Chambers 2014.
[63] Wild and Foresti 2014.

HOW SHOULD DONORS APPROACH ICR PROGRAMMING DIFFERENTLY?

Flexible programming has already been deployed in large, multi-year programmes. And DFID's new Smart Rules for Better Programme Delivery provide the space to mainstream the approach. Table 1 on pages 5 and 6 above highlights a selection of IC related programmes which have adopted flexible approaches to programming within the current donor (including DFID) political and bureaucratic environment[64]. DFID's new 'programming bible[65]' states (emphasis added)*:*

> *To eradicate poverty in a complex and fragile world, we need to transform the way DFID programmes are managed. Delivering results and addressing the underlying causes of poverty and conflict requires programmes that **can adapt to and influence the local context**[66].*

DFID's business case approach enables (though does not require) flexible and politically informed programming, with scope to present 'feasible options' for appraisal that are more open and flexible than traditional projects. DFID's contracting approach to suppliers is also undergoing major change, with an increasing focus on payment by results (see results framework section below) and negotiated delivery approaches that increase flexibility during implementation subject to commitment to delivering an overall outcome. An output based payment regime can give space for a problem driven and demand led approach to flourish. For example LASER's quarterly payment milestones are set on a six monthly basis enabling short term planning and allowing LASER to remain responsive to changing priorities and demand at the country level. Donor – and in particular DFID – emphasis on value for money is not inconsistent with "doing development differently" provided that inputs aren't tied down and focus remains at the impact/effectiveness level.

Design process need to become much longer and focused on 'learning by doing'. Identifying / defining a problem takes time – let alone finding solutions. People have different ideas of what problems are and often the powerful have more say in having their problems prioritized. The problem deconstruction process cannot be carried out effectively by way of a two or three week mission by a design team. Instead, uncovering the issues involves working carefully and respectfully with local counterparts. It has been suggested[67] that programme design should typically take six to twelve months. The 2015 World Development Report notes the advantages of *concentrating more on the definition and diagnosis of problems, and expending more cognitive and financial resources at that stage…[68].* During an extended design period there is time for the development practitioner(s) (which will likely include a combination of local and international consultants) to begin to uncover problems and to facilitate local actors to identify appropriate solutions. There is the opportunity to operate with a degree of freedom and explore a range of potential partners, without the constraints imposed by a log frame, or by having a large sum of donor money on the table. A key success factor for SAVI was its experience based design process, where design was taken in steps and programme design continued to be refined on an on-going basis[69]. Similarly LASER as a central DFID programme has the resources to support DFID country offices with their IC programming by supporting extended scoping and design before the development of a business case (see box 2 below for examples). The design phase is an

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[64] Booth and Unsworth 2014.
[65] DFID 2015.
[66] DFID 2015.
[67] Professor Matt Andrews' comment during LASER Strategic Advisory Board meeting 2 December 2014.
[68] World Development Report 2015.
[69] Booth and Chambers 2014.

ideal opportunity aggressively to test assumptions and to tease out political economy issues, as well as to take 'small bets' and iterate around problems and potential solutions before they are 'locked in'. LASER does not establish project implementation offices when it undertakes design in this way, instead, it simply offers to help – by providing a development practitioner (who in the case of LASER is normally a lawyer with substantial international development expertise). Money is not offered (LASER itself does not have programming funds) and the focus is on facilitation, problem solving and improving functionality. So far all LASER's offers of assistance have been made to DC governments (in the first instance to a Minister, Permanent Secretary or senior member of the Judiciary), and in all cases the offer has been accepted with alacrity.

Box 2: Examples of new approaches to designing ICR programmes

Uganda: LASER is scoping out for the DFID country office the potential to undertake significant programming in commercial justice. But the entry point for engagement with the GoU is not a funding offer, nor institutional reform, but rather on getting involved with a key initiative identified through *purposive muddling*: the Judiciary's piloting of small claims procedures. This initiative has the potential significantly to improve access to commercial dispute resolution for MSMEs. LASER personnel on the ground will work incrementally – first with the Judiciary to help them to develop an M&E system for this initiative; then use this as a platform to work iteratively with local stakeholders to support them to identify commercial justice problems for businesses and potential solutions; and then eventually, and if appropriate, to suggest a role for DFID-U to invest funds. The initial 'small bet' provides an entry point and convening power, enabling the LASER team to investigate the scope for further support.

Kenya: The Kenyan Judiciary is undergoing fundamental transformation. Part of this process is to introduce court annexed ADR to speed up case disposal and reduced the backlog. A senior member of the Judiciary requested LASER to support him to plan and facilitate a high-level retreat for key legal figures to develop detailed plans for piloting of this initiative. The Judiciary paid for the LASER team to attend the event and then requested on-going support in particular with work planning and monitoring and evaluation. In this case, DFID programming is not planned, but the LASER team is investigating the potential to support the Judiciary to better access significant funds in a World Bank project – the Judiciary Performance Improvement Programme.

Mozambique[70]**:** In initial 8 month design phase, a small team from Harvard University supported a local reform group to identify missing capacities in the justice sector. This resulted in more potential functionality than was achieved through 5 years and $5 million spent in the preceding justice sector planning and monitoring (SIPMAJ) project. The group was able to initiate processes to close capacity gaps. Inter-agency tensions in the justice sector that had undermined the donor programme became identifiable and were in some cases addressed and significant donor funds 'unlocked'. The challenges experienced reinforced the importance of doing reform step-by-step and constantly paying attention to legitimacy and authority issues.

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[70] Andrews 2014.

Focus on 'the art of the possible' – engage with reforms that are both technically sound[71] and politically possible[72]. This is particularly important given the limited evidence base about the sequencing of ICR and which reforms matter most[73]. The aim of LASER's approach is that during the extended design phase, doors are pushed, leads are followed, conversations are held, and as good an understanding as possible of the political economy is gained. And then LASER starts 'taking small bets', working with local counterparts, usually embedded in a local institution (in the case of LASER normally a government MDA or the Judiciary). The approach is to *… allow local actors to take the lead in finding solutions to problems that matter to them[74]* involving a range of stakeholders to avoid bias or capture by certain interests. If, through the approach, no IC problems are identified as priorities for economic reform, LASER is able to shift and focus more attention on other countries where pressing IC needs have been identified.

Putting the prospect of substantial funding on the table during the initial, delicate stage distorts the relationship between development practitioner and developing country counterparts, and detracts from the need for locally led reform. Thus in the case of LASER the initial offer is to help and get involved, rather than providing substantial funding[75] (although the point is made that there may be potential for LASER to assist with leveraging additional funding, if this is what is required). Thus in the Mozambique case study in box 2 above, the initial approach involved a considerable amount of hard work on the part of local actors to identify a key problems and discover a solution to it. It was only after this process had been undertaken, that donor (in that case EU) funding was unlocked[76]. Similarly SAVI's decision not to provide grant funds to local civil society organisations in Nigeria has been seen as avoiding the pitfall of a donor-driven approach by 'taking money off the table'[77]. The aim is to be *problem focused*, rather than *aid or institution focused*.

Consider alternative funding modalities. If the solution to locally identified problems involves additional funds, consideration should be given to alternatives to traditional contracting out of programme implementation, which may involve lengthy procurement and breaking relationships of trust built up during the design phase. Alternatives may include: (i) ex post reimbursement processes to support government systems while ensuring accountability of financial expenditure modelled on the Afghanistan Reconstruction Trust Fund; (ii) separating technical support from fund management; (iii) sector budget support; or (iv) supporting increased funding from the developing country budget through enhanced budget allocations or efficiency savings.

Be realistic about the pace of change, and allow spend to build up over time. Supporting local actors to identify problems that they care about and solutions that work takes considerably longer than delivering 'first world' technical fixes. Results frameworks must be realistic about the pace of change[78],

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[71] In terms of impact, scale and sustainability.
[72] Faustino and Booth 2014.
[73] See especially Davis and Trebilcock 2008 and also Haggard and Tiede 2011.
[74] Booth and Unsworth 2014.
[75] Booth 2013.
[76] See Ries 2011 and Blank 2013.
[77] Booth and Chambers 2014.
[78] Booth and Chambers 2014.

enabling a slow build-up of spending[79]. Several case studies note the importance of not having immediate pressure to spend[80] (see above), or achieve direct short term results[81].

Results frameworks must enable flexibility. Proposed interventions need to crystallise sufficiently in order to develop donor programme documents - in the case of DFID a business case, log frame and theory of change. Programme documents should focus on <u>how</u> change will be brought about, rather than on 'locking in' up front <u>what</u> the change will be. SAVI for example was under-designed at inception (relative to the norm in DFID), without a heavily pre-programmed set of outputs and activities[82]. The perhaps surprising fact that World Bank projects in fragile states have out-performed projects in the rest of the portfolio has been attributed in part to the fact that they have avoided 'over-designing'[83]. The aim is for the programmes' principles, development philosophy, goals and objectives to be clear and fixed, but to enable flexibility for strategies and tactics to change as new information or unexpected opportunities become available[84]. Examples of DFID log frames which have used these principles are provided in the annex, and some approaches are highlighted below.

- *'Framework' log frame*: Develop a high-level log frame which provides a framework for more detailed interventions which will be designed progressively. The business case for DFID's Nepal Security and Justice for the Poor Programme sets out three distinct outcome areas, bringing together what would often be separate programmes in order to increase coherence and reduce time spent on reporting and management. The programme design does not pre specify which partners or which funding modalities will be used, allowing for maximum flexibility and facilitating the country office to respond[85]. Similarly LASER has a broad overarching framework log frame. Under this are nested log frames with more specific indicators, which are regularly reviewed and updated (in the case of LASER, nested log frames relate to country interventions, but the approach could also be taken to broad output areas).

- *Indicators which permit tangible results to be judged retrospectively*: SAVI did not pre-programme in advance the 'tangible' changes in government budgets or laws that the programme was obliged to bring about, instead such changes were tracked as retrospective stories of change[86] (short case histories of significant changes in the intervention country). LASER's outcome indicators also include a commitment to deliver significant stories of change, without specifying in advance what these should be. This approach provides the flexibility for country-led solutions to problems to emerge, and also for the programme to adapt to emerging circumstances (see box 3 on the next page).

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[79] Booth and Chambers 2014.
[80] Booth and Unsworth 2014.
[81] Booth and Unsworth 2014.
[82] Booth and Chambers 2014.
[83] Hellman 2013.
[84] Allana 2014 and Faustino and Booth 2014.
[85] Denney and Kirwen 2014.
[86] Booth and Chambers 2014.

Box 3: Flexible programming enables flexible responses as circumstances change

> In Sierra Leone the Minister of Justice's initial request to LASER was for assistance with developing procedures for negotiating and managing commercial (especially mining) contracts. The Ebola crisis is constraining LASER operations, but LASER is now assisting the GoSL with legal issues that have arisen in the light of the crisis e.g. advising on force majeure clauses in commercial contracts.

- *Adaptable log frame:* Log frames can and should be changed during the course of a programme. There have been at least a dozen working versions of the SAVI log frame[87]. One way forward may be to adopt a 'portfolio' approach to output indictors which recognises upfront that some proposed indicators will turn out to be inappropriate and will need to be changed – while maintaining the same level of overall ambition. This involves undertaking a regular (say annual) log frame review (as is the case with some donor – including DFID – practices, but not all) and going through a process of discussing and agreeing changes to the log frame with implementing partners to maintain the level of ambition. Similarly theories of change should be living management tools, used on an on-going basis to interrogate the assumptions underlying the programme and revised perhaps every three to six months[88].

- *Pocket of flexibility:* Where a more traditional log frame is adopted, with 'hard' deliverables locked in through specified outputs, it may be possible to maintain pockets of flexibility – for example through one output area which focuses more on process.

Work plans should be based on short planning cycles. Applying a problem driven, adaptive approach to ICR means that activities will change on an iterative basis during the life of the programme. Changing activities is not a symptom of failure, but is an inherent part of the process, and is mitigated by taking 'small steps' and iterating around problems, and also by adopting a portfolio approach to spread the risk. A challenge of this approach is that the programme could end up with a wide range of 'scatter gun' interventions, failing to add up to more than the sum of the programme's parts. This is a risk that programmes must actively manage through a strategic approach to problem identification and a clear focus on the programme's overall outcome.

Invest in lesson-learning. Iterating around problems involves trial and error[89]. Strong processes need to be put in place to ensure that lessons learnt during this process are fed back into on-going programme adaptation (see figure 1 above). As discussed above, using the programme's theory of change as an active management tool to regularly test the programme's assumptions may assist. This level of lesson learning, on-going interrogation of the political economy and adaptation inevitably consumes a great deal of programme management time. Several case studies on doing development differently (and LASER's experience) points to the need to devote considerable resources to this[90]. Resource allocation should be planned for up front and emphasis put, as LASER does, on developing practical and appropriate guidance for others to follow to avoid re-inventing the wheel.

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[87] Booth and Chambers 2014.
[88] Corlazzoli and While 2013. Allana 2014.
[89] Faustino and Booth 2014.
[90] Booth and Unsworth 2014 and Allana 2014.

HOW SHOULD DEVELOPMENT PRACTITIONERS OPERATE DIFFERENTLY ON THE GROUND?

External actors are most effective as facilitators or brokers, rather than drivers of reform[91]. LASER's approach is to broker and foster relationships with coalitions of reformers, seek to understand incentives and build common interests in order to solve specific problems. The aim is to engage with a broad set of agents from across government, business, and nongovernmental organisations with technical and political skills, and help them to explore the nature of problems in some detail, craft potential solutions, make the connections so that they can together authorise changes, motivate others, provide connections, bring resources, generate ideas, and implement the reforms. This means developing strong relationships of trust with local actors with local supporting hard work on the part of the local actors. This approach moves away from *oversimplified concept of 'ownership' and 'partnership' and unrealistic assumptions about the scope of outsider to lead transformational change*[92]. It implies modesty, and a willingness not be in the limelight. The success of both FOSTER and SAVI has been attributed to their ability to operate on a low-profile basis[93].

Ensure the right team is in place, in order to facilitate problem deconstruction within the specific institutional and political context. All the case studies on doing development differently referred to in this paper highlight the importance of having the right people in the field. The key role of politically savvy development practitioners in facilitating change suggests the critical need for funders to track the performance of practitioners on the ground, and invest in ensuring that the right people are appointed to run the programmes they are funding. Those best placed for selection as development practitioners will depend upon the requirements at hand and is not limited to international consultants but to putting in place those with both technical expertise and strong in-country, political awareness (e.g. FOSTER's use of local 'invisible' actors). Key aspects are:

- *Strong leaders:* people with a great deal of field experience, deep knowledge of the country and a passion for and vision of feasible change, empowered to operate with a high degree of autonomy[94].

- *Development entrepreneurs*: innovative, committed individuals able to absorb setbacks and failure, with deep levels of curiosity and engagement empowered to work flexibly and opportunistically within the system[95].

- *Soft skills:* the right combination of technical and soft skills (see box 4 below).

However, simply putting in place development practitioners is not enough. The new approach to ICR requires development practitioners to maintain a continued focus on locally identified underlined problems from the perspective of the 'user' (which needs to be explored). It requires him/her to undertake a methodical process of identifying the institutions, rules and actors that maintain the status quo and the political interests and networks at play[96]. Only then is it possible to design politically informed, context specific interventions that are locally (rather than donor) led and feasible given the natural constraints faced by external actors. Indeed, the approach responds to the constraints development

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[91] Wild and Foresti 2013, Booth 2013 and Tavakoli et al 2013.
[92] Booth and Unsworth 2014.
[93] LDP interview with Mark Henstridge, OPM January 2014. Booth and Chambers 2014.
[94] Booth and Chambers 2014 and Faustino and Booth 2014.
[95] Booth and Unsworth 2014, Allana 2014 and Faustino and Booth 2014.
[96] World Bank Just Development, Four Cardinal Questions, D. Isser, L-A berg and D. Porter (2014).

practitioners – whether international or local experts – often face in as a result of what the problems are, how institutions are designed, who the interested parties are and where there's most traction for potential reform – hence why the new approach is exploratory, responsive and adaptive within the context.

Box 4: LASER advisers

LASER advisers combine technical legal expertise[97] with strong international development experience. Their most important attributes are their *soft skills*: political savviness; ability to navigate complex and changing political realities; to work behind the scenes and not take the credit; and to build trust with local actors, sometimes based on relationships which go back many years. LASER advisers are given strong and regular support from the experienced LASER technical leadership team in London, including in relation to mentoring and coaching skills (LASER has produced a Guide for LASER advisers on soft skills including tools and approaches to be used as appropriate e.g. Appreciative enquiry; Bridges Transition Model; Star Questioning Technique; and the Five Whys Technique). Where appropriate LASER advisers are backed up by legal specialists, for example, in Tanzania LASER is forging peer to peer links between the Tanzanian judiciary and UK practising judges with significant hands on experience of commercial contract enforcement for small businesses.

Relationships of respect and trust are vital. Building and consolidating this kind of relationship with local counterparts is particularly important where a development problem seems to be politically intractable[98]. For LASER, in some cases strong personal relationships with developing country governance have been forged over twenty years; in others they have been developed quickly, usually helped by common professional (legal) ties. The need to develop trust and respect has implications for the length of programme commitment and the continuity of staffing[99].

Strong collegiate relationships with counterparts should not detract from the need to be politically astute. Politics and the broader political economy – diagnosing the political drivers of decision-making, understanding incentives and the mechanisms used to manage political support – should be core to operations[100], and should underpin the programme's continually up-dated theory of change. In some cases a formal political economy analysis is useful in addition to 'thinking and working politically' on an on-going basis. One needs to be mindful that it's likely easier for government to domestically sell 'International best practice' rather than 'incremental reform based on trial and error'. Accordingly, practitioners should continually think of the relationships within and between different parts of government and whether "bridges" can be built to support the reform process[101].

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[97] Able to draw on international best practice / peer-to-peer learning as required.
[98] Faustino and Booth 2014.
[99] Booth and Unsworth 2014.
[100] Fritz et al 2014 and Booth and Unsworth 2014.
[101] Levy, 2014.

Box 5: Political economy analysis in Rwanda

In Rwanda, in addition to the resident adviser thinking and working politically, LASER commissioned a formal political economy analysis (PEA) in relation to the IC issues the programme is engaging with – in particular in relation to competition policy. The PEA is confidential and 'under the radar' and will be incorporated into a theory (ies) of change which will be actively used as a tool for on-going context analysis and testing of programme assumptions.

Support on-going processes or initiatives rather than necessarily trying to start your own. Developing countries have their own national processes which are, or could be, used to take forward reforms. An obvious example is the national budgeting process, during which IC institutions engage with planning and resource allocation. The receipt of the budget call circular may be a point at which institutions are particularly receptive to offers of help. There may be sector working groups as part of the national planning and budgeting process which it may be possible to engage with (see Rwanda example in box 4 below).

Box 6: Engaging with local processes in Rwanda and Kenya

Where possible LASER advisers work with existing local processes with their own convening power e.g. in Rwanda LASER is working with standing Justice Sector budget working group (which feeds into GoRs national planning and resource allocation mechanisms) to develop and take forward activities that contribute to the growth targets and objectives of Rwanda's national development plan (the Second Economic Development and Poverty Reduction Strategy).

In Kenya LASER was invited to support the Judiciary in improving judicial performance by operating within the Judiciary Transformation Framework, being their home-grown, comprehensive, institutional framework.

CONCLUSION

This paper draws on an in-depth literature review, initial lessons from LASER's first year of operation and lessons from more established programmes deploying similar approaches. The aim has been to demonstrate there is a need for a fundamental shift away from traditional donor programming towards a much more flexible, less 'locked in' approach. The new approach is not 'rocket science' and can be accommodated within current donor (certainly DFID) programming structures and requirements. The challenge is for country offices to have the mandate and the confidence to start programming their IC interventions in more flexible, less conventional ways. The approach also sets out key principles for development practitioners to apply on the ground to maximise impact and continually build the evidence base for IC reform.

ANNEX: LOGFRAME EXAMPLES

SAVI – Extract from Results Framework[102]

Super-Impact (The SLP suite's combined Impact) Nigeria's own resources used efficiently and effectively to achieve the Millennium Development Goals (MDGs) (Primarily on Health, Education and Economic Growth).
Impact (SPARC's Outcome) The efficiency and effectiveness of selected state-level government's use of public resources is enhanced.
Outcome (SAVI's contribution to SPARC's Outcome) State houses of assembly, civil society, media and citizens demonstrate more effectiveness in demanding better performance from government and holding government to account.
Output 1 Civil society demonstrates a replicable and sustainable approach to issue-based policy advocacy and monitoring.
Output 2 Civil society demonstrates a replicable and sustainable approach to facilitating public involvement in government budget and planning processes.
Output 3 More open and inclusive systems of communication and improved understanding between citizens, civil society, media, SHoAs and government.
Output 4 Improved systems for transparency, public engagement and financial oversight in SHoAs.
Output 5 Other development partners take a more sustainable and replicable approach to strengthening V&A.

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[102] Booth and Chambers 2014.

Integrated Programme for Strengthening Security and Justice (Nepal) - Extract from Results Framework

Impact Improved rule of law in Nepal
Outcome 1 Improved security and access to justice for poor and traditionally excluded people, especially women.
Outcome 2 Change to social barriers that impede access to justice
Outcome 3 Increased engagement among communities and security and justice institutions for better prevention of crime and insecurity
Outcome 4 Improved responses to criminal violence through higher capabilities and performance of S&J institutions.

LASER - Extract from Results Framework

Impact Improved business environment and increased investment
Outcome Developing country governments and donors adopt a more strategic evidence based approach to CLJ reform and develop, test and implement measures to promote investment and enhance the business environment.
Output 1 Improved capability of Government, private sector and donors in DCs to identify CLJ problems, articulate demand and prioritise and deliver CLJ interventions.
Output 2 Better matching of supply to demand with higher quality, more developmentally appropriate expert legal support to developing countries.
Output 3 Increased availability for DC Governments, donors and CLJ suppliers of high quality guidance and policy relevant research.

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