



**Constructing Justice in a Fragile Territory:
Reflections on Building the Rule of Law
in the West Bank/Gaza**

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Rule of law practitioners and development agencies can make a significant contribution to building the rule of law in fragile regions when they have a coherent strategy for engaging the active participation of the justice sector, building trust and remaining flexible. The experience of USAID/DPK Consulting in contributing to the development of the Palestinian judicial system during a period of heightened conflict demonstrates how to plan a judicial reform program in a fragile territory and carry it out.

Overview

Faced with the ubiquitous presence of violence, emergency evacuations, closed borders, and disrupted communications, many development programs have chosen to cease operations in what have come to be known as “fragile” regions. Such decisions reflect a candid assessment of the challenge of maintaining operations in the context of violence and lack of centralized governmental control. However, in recent times, aid agencies have called for a new approach.

Recognizing that “when development and governance fail in a country, the consequences engulf entire regions and leap around the world”, USAID proposed, in January of 2005, a Fragile State Strategy to address the core issues associated with violence and conflict. This approach outlines a vision of how USAID can more effectively respond to the far-reaching challenges posed by fragile regions. This strategy is guided by the overarching principle that aid agencies need to engage carefully and selectively. The approach recognizes that at times there are regions where development assistance may not be able to make a major contribution. In those regions where assistance is appropriate, it has outline a strategy that calls for: better monitoring and analysis, priorities responding to the realities on the ground, programs focused on the sources of fragility, and streamlined operational procedures to support rapid and effective response.

Among the strategic priorities targeted for fragile regions is building the capacity of institutions that serve key social and economic sectors. Included in such development is the strengthening of a regions legal system. A strengthened legal system not only supports positive reform within the political and economic sector, it also provides enhanced security by supplying citizens with forums for resolving disputes.

In the following pages, we describe DPK’s experience under the auspices of USAID in the West Bask/Gaza region, supporting the development of the Palestinian legal system. We will focus in particular on the lessons that pertain to operating a legal development program in the context of a fragile territory.

Overview of project

Recognizing the need for a modernized Palestinian justice sector to encourage market development and democratic governance, USAID contracted with DPK Consulting in September 1999 to oversee the implementation of an Administration of Justice Project in the West Bank/Gaza. The project had three major components: strengthening the capacity of judges and prosecutors through training and commodity support, the development of pilot courts to increase efficiency, and the expansion of alternative dispute resolution to moderate the workload of the courts. These components were designed to meet the continuing basic needs of judges, prosecutors, non-judicial staff, and practicing lawyers. The project goals were focused primarily on ensuring the efficient delivery of judicial and prosecutorial services at the trial court level. DPK concentrated on developing programs, primarily through the pilot courts, that provided materials such as standardized legal forms and bench books, access to increased automation, and focused training programs that would facilitate the work of the practitioners. DPK worked with a core local team that received on-site guidance from its international resident staff, and periodic guidance from key international short-term experts.

Security Situation

During the project period from 1999-2004 The West Bank/Gaza region experienced an unexpected deterioration in its security environment. Physical movement was constrained. Operations of courts, universities and other institutions were interrupted. The threat of violence was pervasive. Most donors during that time period withdrew or substantially reduced their support for the justice sector. On two occasions, project staff had to be evacuated. However, USAID and DPK made the decision to remain in the region.

The positive results of the project, including the introduction of automated case control and information retrieval systems, the development of a National Caseflow Management Committee and manual, the upgrading of equipment and furnishings in selected pilot courts, the development of detailed statistical reports regarding caseloads for each pilot court, and the completion of the criminal procedures manual demonstrate that despite security risks, substantial contributions can be made in regions characterized as “fragile states” so long as the program proceeds according to three major principles: building trust, ensuring local participation, and maintaining flexibility. The following examples highlight the successful application of these three principles in the context of project implementation.

I. Building Trust

Perhaps the greatest challenge in a fragile state program is building trust where patterns of conflict have eroded its foundations. Without trust, the transaction costs at every level of human interaction, from everyday interaction between neighbors to commercial dealings between business associates, are high.¹

Historians such as Francis Fukuyama have explained that trust “is critical to the health of an economy, [and] rests on cultural roots”² and “a key by-product of the cooperative social norms

¹ Putnam, p.135.

² Fukuyama, Trust.

that constitute social capital.”³ When trust is present, communities comply with shared norms, avoid taking advantage of each other and readily form groups to achieve common purposes. The energy that is consumed by second guessing is replaced by a commitment to take action on social problems.

DPK’s experience in the West Bank/Gaza suggests that development strategies in fragile environments characterized by high levels of distrust can be strengthened by: 1) integrating consultative decision making processes with local and international staff at the outset of project implementation and 2) demonstrating long-term commitment of the project team to achieving shared goals.

Decision Making to Unlock Group Capacity

Integrating consultative decision making processes with local and international staff at the outset of project implementation serves to build a sense of social trust and justice. Effective exercise of the capacity for collective decision making and collective action contribute to the development of “institutions... [that] engender public trust.”⁴ DPK’s experience in the West Bank/Gaza staffing the project with a local team of rule of law resource persons demonstrates the practical gains to be made by cooperative action.

At the outset of the project, DPK’s local staff developed strong working relationships with judicial counterparts in the region. They solidified relations with key Palestinian institutions and earned the good will of their counterparts. Through regular meetings between project staff and Palestinian counterparts, shared objectives were defined and project plans outlined.

This kind of intervention requires an important time commitment from all participants. The time required for these processes of decision making to gain credibility and support varies in each circumstance. Changing old habits of debate, conflict, and violence and establishing new principles of initiative, rectitude and collaboration requires patience and a long-term commitment. When viewed in this manner, the project design phase becomes a part of project implementation. Significantly, “it also underscores the importance of structured learning in generating and sustaining an integrated set of social and economic activities.”⁵

Demonstrating Long-Term Commitment

The second element of building trust in fragile environments is demonstrating long-term commitment to achieving shared goals. DPK’s approach to long-term sustainability has relied both upon a sequence of training programs which include a segment for training future trainers, thus ensuring that community based capacity is sustained in the long run, as well as remaining active in a region despite hardships and challenges.

The fruits of DPK’s long-term training and approach strengthened the favorable relationship between DPK and Palestinian counterparts. This relationship was significantly strengthened when DPK declined to withdraw following the outbreak of violence on the project’s first anniversary and persevered during the fluctuating levels of violence for the subsequent four years of project life. In the words of one observer: “DPK [and its staff] . . . deserve all the credit in the

³ Fukuyama, *Great Disruption*, p.49.

⁴ *Ibid.*

⁵ *Ibid.*

world for hanging in there.” For this and other reasons the opinion was expressed by one Palestinian official that DPK has the most influence on improving justice in this area of the Arab world. USAID also generated considerable goodwill among Palestinians by its continued project support during a period when most other international donors withdrew from Palestinian programs.

II. Engaging the Active Participation of the Justice Sector

In addition to building trust, engaging the active participation of members of the local justice sector was an additional key factor in achieving project success in a fragile environment. Francis Fukuyama notes that “moving the locus of decision making authority down the hierarchy and closer to local sources of information also allows organizations to respond more rapidly to certain types of change in the external environment.” He observes that this is particularly true in the legal sector.⁶

DPK’s experience in assisting the Palestinian Judiciary in the area of court administration and caseload management demonstrates the critical importance of involving local constituents in assessing, planning and designing appropriate court reform initiatives. In early 2000, local DPK staff in the West Bank/Gaza made two important decisions that would shape subsequent efforts to formulate a caseload management plan and later introduce the concept of caseload management into the Palestinian courts: they decided to visit the trial courts in person to do a needs assessment, and they decided to seek the endorsement of the Palestinian High Court for these proposed visits.

By first getting the endorsement of the High Court, DPK staff members were able to travel with official backing and foster good relations with the High Court which were sustained with the Supreme Judicial Council throughout the project. In visiting the courts in both the West Bank and Gaza, the project staff created working relationships with the judges and staff, gained trust and cooperation, and were able to survey the operational status of the courts and assess needs. Palestinian Chief Justice Saurani expressed views that were repeated by other local counterparts during site visits. “DPK was fast, practical and professional” and “follow up was prompt and effective.” A variation on this theme was expressed by the Director General of the Supreme Judicial Council, who speculated that without DPK, and the USAID Rule of Law Project, the Palestinian judiciary would not have progressed one step further in the last five years.

Another early decision that reinforced local participation was the request that the High Court designate four Pilot or Model Courts to work with the DPK team on project goals. The four Pilot Courts that were designated by the High Court in 2000 were located in Ramallah, Jenin, Gaza and Khan Yunis.

After a series of court visits, DPK staff formed some initial conclusions based on the judges’ perspectives on the courts’ problems. The judges’ concerns included: delays and problems in the notification system, heavy trial caseloads with a mounting backlog of pending cases, and poor facilities and poor working conditions.

The DPK staff supplemented informal interviews with a Closed Case Survey to identify, assess, and address caseload problems in the courts. DPK contracted with a survey specialist in the summer of 2000 to design and conduct a statistical survey and then analyze the results. Because

⁶Fukuyama, *Fragile State*, p.69

of restrictions on access to court records, DPK decided to conduct a training program for court clerks in the four Pilot Courts to involve them in gathering and recording data for use in the Closed Case Survey. After the data was collected and reported, the surveyor analyzed the data and produced four separate reports, one on each of the four Pilot Courts. The separate reports were also consolidated into one Closed Case report. This data was later validated for statistical accuracy.

Based on the survey results, DPK staff learned that data collection, reporting, and analysis would be a large part of a successful caseload management effort. DPK staff proposed a phased automation plan. The first steps in the automation development program included: developing an Administrative Manual with an outline of the existing court structure and a listing of all job descriptions, documenting the caseload process, and identifying and then standardizing all of the forms used in the courts. Shortly after the planning phase of this project, the Second Intifada began. However, due to the High Court's continued backing of the reform initiative, the project continued as planned.

In early fall of 2001, the first software package was installed at the Ramallah First Instance Court, followed by software installation at the other three Pilot Courts. Group training was provided on site at each Pilot Court. All pending case data were entered at the Pilot Courts. The software was well received by the courts, and the judges and staff soon sought an enlarged software package that would include minutes, criminal case data, Notary Public, and Execution.

Due to the success DPK achieved in the Pilot Courts, other courts were included in the Rule of Law project and became part of DPK's team effort with automation, caseload management, and improved judicial and staff education. An additional seven courts were selected as the Expansion Courts for the project. The expansion courts included five new courts in the West Bank and two in Gaza.

DPK's experience supporting the strengthening of case management in the Palestinian court system generated a number of important lessons pertaining to local involvement in court reform efforts. First, getting the early backing of the High Court (and later the Supreme Judicial Council) for the project was critical to the later success of project efforts. Second, visiting most of the courts early in the project was important in establishing good working relationships and trust with judges and court staff. Third, the decision to concentrate on four Pilot Courts during the early stages of the project enabled project staff to test the efficacy of initial case management programs while judiciously expending project resources. Fourth, the decision to proceed with a Closed Case Survey was important in obtaining accurate data that enabled DPK staff to better formulate subsequent project efforts based on data rather than anecdotal perspectives. Finally, involving the Chief Clerks in the early training programs ensured their sense of ownership in the project and supported their ability to contribute to achieving project goals.

III. Remaining Flexible

The final component of achieving project success in a fragile state environment is maintaining flexibility.

DPK's experience in the West Bank/Gaza demonstrates the importance of remaining flexible in the face of volatile and ever-changing surroundings. Project activities often had to be rescheduled because of curfew restrictions. Conferences and training sometimes had to be conducted in neighboring countries so that a broad geographic range of Palestinians could attend.

It often became necessary to rely on telephone calls, electronic mail, and videoconferencing in order to maintain communication among key actors.

An example of project flexibility was demonstrated through DPK's experience with prosecutorial training in the West Bank/Gaza region. This component of the project was funded by USAID to address the needs of the Attorney General/Prosecution Department (AG/PD) in Palestine, taking into account its impact on the criminal justice system as a whole, and the court system in particular.

In the midst of implementing joint training objectives outlined by DPK and the Attorney General's office in Palestine which included the development and improvement of prosecutorial skills in the region, travel restrictions, roadblocks and closures precluded travel outside of Gaza. As a result, multiple trainings in Gaza and Ramallah became a necessity. Serious logistical problems made travel within Palestine increasingly difficult. With the closures, it was often impossible to work other than at home, and interaction with Palestinian partners was reduced to fax, telephone, and computer. Fortunately, through project flexibility, Gaza closures were frequently overcome by DPK installing teleconferencing equipment between Ramallah and Gaza, allowing work to continue.

In addition to teleconferencing equipment and multiple training sites, a series of train the trainer sessions was organized aimed at creating a permanent cadre of trainers within the Attorney General's office to support the ongoing training needs within the various regions of Palestine. DPK sent a group of prosecutors to Jordan's Judicial Training Institute in order to be trained on a variety of criminal law subjects, including procedure, evidence, and civil law. They were also trained on training techniques, so they could subsequently train their own personnel in Palestine. Subsequently, a trial advocacy manual was written, translated into Arabic, and distributed throughout the Attorney General's office and a permanent Training Division for the Attorney General's office was established.

Conclusion

DPK's experience under the auspices of USAID in the West Bank/Gaza supporting the development of the Palestinian legal system provides a number of lessons that pertain to operating a legal development program in the context of a fragile territory. Its experience has demonstrated that rule of law practitioners and development agencies can make a significant contribution to building the rule of law in fragile regions when they have a coherent strategy for engaging the active participation of the justice sector, building trust, and remaining flexible.