

Access to Justice: Lessons from the Field

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Access to Justice: Lessons from the Field

I. Introduction

Rule of law and access to justice are important elements for the stability and development of transitional states. Governments gain significant legitimacy, both domestically and internationally, when rights are respected and promulgated. Access to justice is a particularly important aspect of the rule of law in the context of development work. Indeed access to justice has been a principal objective in many programs of international cooperation in which DPK consulting been engaged. Academics and policy makers agree that access to justice is a social good that is enhanced through active government participation.¹ As such, by providing access to justice governments enhance their legitimacy, improve their ability to create social change, and facilitate economic development. While this concept is well understood and accepted in the developed world, at times governments in the developing world have not seemed to grasp its full importance. Other governments rightly recognize that in addition to being a right, access to justice is a tool for social change and economic prosperity.²

This paper discusses access to justice. The first part will elaborate on the significance of access to justice. Second, this paper will identify access to justice, both theoretically and in practice. Finally, the study will examine lessons learned from access to justice projects throughout the developing world.

Significance of Access to Justice

Academics and policy makers define “rule of law” as follows: First, it implies separation of powers: it is a mechanism by which political power is checked and balanced under formalized rules. Second, rule of law signifies “the existence and real application of a body of rules and rights which regulate the relationship between the state and the individuals in a society, and between individuals themselves.”³ Finally, rule of law provides effective protection and advancement of constitutional rights and entitlements. Accordingly, rule of law is a basic requirement for any properly functioning government. The UN Secretary General believes that “the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”⁴

¹ Fordham University School of Law, “Eleventh Annual Philip D. Reed Memorial Issue Partnership? Across Borders: A Global Forum on Access to Justice April 6-8, 2000: Transcript What is Access to Justice? Identifying the Unmet Legal Needs of the Poor,” 24 *Fordham Int’l L.J.* 187, 2000.

² Samuel Donnelly, “Reflecting on the Rule of Law: Its Reciprocal Relation with Rights, Legitimacy, and Other Concepts and Institutions,” *The Annals of the American Academy of Political and Social Science* 603 (2006) 37-42.

³ Pilar Domingo, “Rule of Law, Citizenship and Access to Justice in Mexico,” *Mexican Studies*, 15.1 (1999): 154

⁴ United Nations Rule of Law, “Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” <http://www.un.org/en/ruleoflaw/index.shtml>

Civil rights and liberties are protected and advanced when citizens have access to and confidence in the justice system of the state.⁵ In order to create a stable social, political, and economic environment, a state must be able to provide and protect justice services. If citizens lack confidence in the justice services provided by the state, they will take matters into their own hands. In turn, a state loses its legitimacy when it becomes incapable of monopolizing the use of force and providing security for its citizens against private violence.

A state must be capable of availing courts for dispute resolution, settlements and enforcement of such decisions to all citizens, regardless of their class, identity, or geographical location. The existence of a properly functioning justice system increases citizens' confidence and their willingness to bring disputes to court. Strong rule of law principles and availability of judicial services facilitate proper solutions to commercial disputes and guarantee that decisions are enforced.

International courts such as European Court of Justice and European Court on Human Rights have recognized that governments have an affirmative obligation to provide access to justice.⁶ Specifically, in *Airey v. Ireland*, the Court held that the European Convention on Human Rights and Fundamental Freedoms "is intended to guarantee, not rights that are theoretical or illusory, but rights that are practical and effective. This is particularly so of the right to access to the courts, in view of the prominent place held in a democratic society by the right to a fair trial."⁷ The Court concluded that simply appearing in the trial court without a lawyer does not provide the applicant with effective access to justice. The justice system becomes more effective when citizens have access to legal advice. As such, states must provide equal access to justice for low-income citizens.⁸

Relevance of Access to Justice

Judicial procedure affects the perceptions of judicial fairness.⁹ According to Gangl, three factors affect the assessment of the legitimacy of a judicial decision. First, individuals must believe that the decision-making process takes their views into account. Second, decision-making should be neutral and all opinions must be granted equal consideration without favoritism. Finally, citizens must trust the judicial system and its representatives.¹⁰ Parties' satisfaction with the procedural justice (i.e., their views of the neutrality of the process and their access to representation), affects their perception of legitimacy over and above their preferred outcome. Thus citizens' favorable perception of the fairness of the process increases the likelihood that they will report satisfaction with the process of decision-making and the decision itself. They are more likely to accept

⁵ Donnelly, 43

⁶ Fordham University School of Law 193 citation unclear –is it a law journal?

⁷ European Court on Human Rights, *Airey v. Ireland*, 32 Eur. Ct. H.R. (ser. A) , (1979).

⁸ Samuel Donnelly, *A personalist Jurisprudence, the next Step. A person centered philosophy of law for the twenty-first century*. Lanham, MD: University Press of America, 2003).

⁹ John Thibaut and Laurens, *Procedural Justice: a Psychological Analysis* (NJ: Lawrence Erlbaum 1975).

¹⁰ Amy Gangl, "Procedural Justice Theory and Evaluations of the Lawmaking Process," *Political Behavior*, 25.2 (2003): 121.

outcomes when the process is perceived favorably.¹¹ Implicitly, individuals accept that in an adversarial situation sometime one wins and sometime one loses. However, such acceptance is only possible when everyone has a fair hearing in the decision-making process.

Access to Justice in Developing Countries

The understanding of rights and accessibility to the legal system differs between and within states. For example, Mexicans differ from the Americans in their beliefs regarding the strength of their judicial system. And even within Mexico, there is great disparity of perceived rights between indigenous communities of Chiapas or Oaxaca and the urban middle class in Mexico City.¹² The different worldview of indigenous populations compared to residents of urban communities stems in part from real physical barriers to judicial services. Specifically, most courthouses are heavily concentrated in urban areas, leaving large areas of the country poorly attended. In addition, bureaucratic procedures and paperwork in justice administration are highly complex and quite incomprehensible to the layman. Thus rural citizens have less access to courts, while the courts themselves are excessively bureaucratic, inefficient, and not transparent. The difficulties in accessing the legal system increase distrust and aversion to dealing with any kind of legal process.¹³ Therefore, rights protected through formal legal channels become highly unattractive, creating an unfavorable environment for government legitimacy.

DPK has approached the topic of access to justice and access to justice systems as complimentary approaches. It has been our methodology to suggest that there be dual strategies explored when addressing these topics. Access to justice relates to providing every citizen the opportunity or the wherewithal to address their issues of concern whether be personal, community or institutional outside the formalities of the state provided justice system. By fostering a more independent self-reliant citizenry, society has greater capacity to be creative and live in harmony. Examples of strategies that reinforce these ideas are school and neighborhood mediation centers, chambers of commerce centers for dispute resolution, entities to mediate water disputes, etc.

Access to justice systems refers to the creation of paths to resolve conflicts that properly are within the purview of the formal legal structure by using differentiated strategies such as mediation, early neutral evaluation, arbitration and the many combinations of other methodologies all designed to promote early swift resolution of conflicts. We have seen over the past 30 plus years how the litigation process has become an end in of itself without the litigants having a meaningful role. The rapid expansion of dispute mechanisms in the past 20-30 years has evolved, in part, due to the ability of these processes to adapt to the needs of the litigants. The justice system has become more responsive by focusing on the needs and interests of the litigants and not exclusively on the process and its formalities.

During two decades of working in implementing alternative dispute resolution (ADR) reforms in the developing world, William Davis, one of the founders of DPK Consulting (now Tetra Tech DPK), noticed a consistent pattern of issues facing those seeking access to the justice system.

¹¹ Gangl 127.

¹² Domingo 169.

¹³ Volkmar Gessner, *Los Conflictos Sociales y la Administracion de Justicia en Mexico* (Mexico: UNAM 1984).

Namely, the lawyers and judges were more interested in adherence to the code of civil and criminal procedure than to the outcomes. For example, in Central and Latin America, adherence to the code or mastery of its vagaries is considered the ultimate of lawyering skills. Indeed, “pulling off” a special trick against an opponent was praised and had a special name, “la chicana.” More importantly, judges seemed peculiarly uninterested in the provision of greater access. While they expressed deep concern about their workload, they refused to open the door to any new litigants.

The absence of any significant advocacy groups for access contributed to an environment where the “only” discussions about reform centered on reform of the codes. In the early 90’s, the Latin American Institute for Civil Procedure based in Montevideo, Uruguay had control of the intellectual agenda for civil justice reform. Most of the members of the Institute were among the most prominent lawyers and judges in the region. Working closely with two of the three leaders in the Institute, Davis tried to find a way to introduce concepts of dispute resolution that were outside the single point of reference in the code of civil procedure “conciliation”.

In order to make better arguments and support the ideas for including ADR mechanisms in the civil procedure, Davis began to attend court sessions almost always officiated at by the secretary of the court, rarely by the judge. The observed procedure would proceed as follows: the secretary would ask the parties if they wanted to conciliate and when they would most frequently say no, the secretary would declare the conciliation phase closed. The setting for this conversation would generally be in a very crowded clerk’s office with no place for privacy or a place to sit down.

When Davis asked the lawyers or sometimes the litigants if they would prefer to negotiate or reach some level of accommodation rather than pursue the litigation course, most often they would say that negotiation was preferred but they did not want to “show” their hand by extending it to negotiate. In their opinion, such a gesture would make them appear unconvinced of their argument.

Judges throughout Central and South America complained about their workload, citing that there were x number of cases pending. The numbers cited were most frequently inaccurate, because very few judges had verifiable statistics. Nonetheless, the numbers provided a veil of complexity to suggest that unless something was done with the volume of cases, progress toward judicial reform would be difficult.

In order to combat these arguments DPK did case sampling exercises to find out what was really occurring within the courts. It is critical to remember that in Latin America each judge is a court unto him or herself. The concept of a corporate court did not exist where the movement of delayed cases could be managed. DPK studies showed that more than 50% of the cases did not move beyond the filing of the case. These statistics are substantially similar to results of studies done in West Bank, Pakistan, and elsewhere including the U.S. The remaining cases were largely dealt with through the litigation process. Litigation in Latin America differs from litigation in the US. In additional studies we found that approximately 70-80% of the cases filed in commercial courts are collection cases from banks. The remaining cases originate from what might be called tort and other forms of commercial disputes.

The courts treated these collection cases much as the U.S. does with traffic cases. The most effective law firms organized their practice around filing these cases for collection, which required very little effort and almost no legal expertise. The incentives to change this process were not there from the perspective of the private lawyers. The courts invested little energy in these cases yet they reflected a significant number of filings.

In Argentina, Davis found a more receptive audience. Working closely with an Appellate Judge, Gladys Alvarez and the Ministry of Justice, a pilot project was initiated with one group of four commercial judges who referred cases to a group of mediators. The judges were reluctant initially to submit cases but encouragement from the Ministry and Judge Alvarez they gradually overcame their opposition. As the mediators gained experience and were able to resolve nearly 74% of the cases between the parties the Ministry of Justice under the leadership of a dynamic Minister took real interest in expanding the program. Argentina passed national legislation enabling mediation to be developed across the country. Religious opposition prevented it from being used in divorce cases.

In discussions with bankers in Venezuela and Colombia, Davis discovered that they only collect about 7 cents on the dollar in the cases filed in court. This was the result of an incredibly inefficient court process for collecting debts. The court inefficiencies have domino effects in economies that are largely supported by small businesses. For example, in both Venezuela and Colombia, the overwhelming percentage of debtors is small business people who live on the margins. If one of their commercial clients is late or does not pay, they cannot pay the bank thus precipitating a whole chain reaction in commercial meltdown. If the formal commercial credit system fails them, they resort to the black market or the unofficial commercial system evading taxes and relying on usurious loans.¹⁴ Given the severity of the problems caused by an inefficient court process in this region, a commercial mediation system would help to recover more funds and permit the parties to stay in business. DPK found significant opposition from the banks' lawyers who tended to use attorney friends as collection agents.

Starting a project with the aim to address these issues proved to be very difficult because of the opposition of bank lawyers and the Chambers of Commerce who have adopted a fees schedule that is prohibitively expensive for this group of commercial interest. In addition, most Chambers of commerce with whom we dealt did not see a social role to assist these particular interests.

In those countries with a history of violence, such as Colombia and El Salvador, there is a high level of frustration and fear about how to confront these issues. In a conversation with then-Minister of Justice of Colombia, Nestor Humberto Martinez, Davis discussed the experiences of the Community Boards' peer mediation in the schools. The Minister of Justice saw this effort as a means to address the violent culture so deeply embedded in Colombia. He funded a team of people from the Ministry of Education to come to San Francisco for a period of time to study peer mediation and developed a similar but culturally appropriate methodology for Colombia. Colombia became the first country in the hemisphere to aggressively extend peer mediation programs throughout the country. El Salvador has also embraced this initiative.

¹⁴ Hernando de Soto's, *The Other Path: The Economic Answer to Terrorism* (NY: Basic Books, 1989)

Davis who served as Senior Advisor for the National Center for State Courts proposed to USAID that in order to promote greater understanding and create a group of supporters for the use of ADR procedures there be a series of region-wide conferences on ADR be held. Beginning in 1992 in Buenos Aires and subsequently, two years later in Santa Cruz de la Sierra, Bolivia, and two years after that in San Jose, Costa Rica conferences were held with nearly 200 people attending each session. These conferences highlighted the need for to cultivate and in some cases reinforce existing informal processes to solve disputes and to build enthusiasm for promoting ADR in the justice systems throughout the hemisphere. Strong advocates emerged in some countries such as Argentina and Colombia. Within five years projects had sprung up in more than ten countries greatly accelerating the reform process. To a degree, the pace of development depended more on who was championing the reform than the external support. In some countries, such as El Salvador, Costa Rica, and Uruguay, the Supreme Court opposed the initiatives. In other countries such as Argentina and Colombia a member of the Supreme Court or a Minister of Justice became the principal advocate for change.

Concomitantly, the Inter-American Development Bank begins an initiative to promote the development of commercial dispute centers in Chambers of Commerce throughout the region. Each of these would have a center for dispute resolution. Colombia was the first recipient of funds to strengthen their center and expand its activities. Soon thereafter, a number of projects were implemented in Peru, Ecuador, El Salvador, Costa Rica, Uruguay, Chile, Panama, Guatemala, and Argentina. Davis worked on the development of the centers in Chile and Ecuador. Subsequently, DPK evaluated the projects in Colombia, El Salvador and Peru, and Davis served as the moderator for the Conference on Lessons Learned at the Inter American Bank in Washington, DC. By the time of the conference, five years after launching the initiative, virtually all the Chambers of Commerce in the hemisphere had functioning centers for dispute resolution.

In the beginning of this effort, we found that there was already an active arbitration practice in most capital cities. This practice was controlled by a very small group of elite lawyers who passed cases among themselves. They were the primary obstacles to expanding the concepts of ADR in the commercial activities. The most successful presentations that motivated the businesses to engage in ADR were made to Chief Financial Officers (CFOs) and not to the lawyers. By emphasizing the ability to control costs, CFOs became advocates for change over the objection of many corporate lawyers. In addition, the introduction of ADR into the documents creating the new Trading Blocs, NAFTA, MERCOSUR, created legitimacy for the concepts that finally opened doors in law schools and with the Chambers of Commerce.

Looking back 18 years, the effort to introduce ideas of ADR which emanated from North America has largely succeeded with significant adaptations to each country's legal system. The ownership over these reforms is all local and national. Rather robust efforts are being made in many countries. The countries slowest to join the process, Brazil and Mexico, are rapidly catching up to their neighbors. Latin American professionals regularly attend international conferences and present their own experiences. Increasingly, we are seeing information on the development of these processes in distinguished magazines such as the AAA Dispute Journal now carry news of Latin America in every addition. The Center for Justice Studies of the

Americas is sponsoring an International Workshop on Lesson Learned across the entire region at the end of October, 2010.

II. Strategic Approach to Access to Justice

Access to justice complements the rule of law, in that it creates venues for those with economic, social, and cultural disadvantages to accede to and benefit from judicial services. According to Cappelletti, there are three main obstacles, which make civil and political liberties non-accessible to so many people.¹⁵ First, due to economic reasons, individuals are unable to access information or adequate representation. Second, due to organizational obstacles, the isolated individual lacks sufficient motivation, power and information to initiate and pursue litigation. Finally, access to justice could be impaired because sometime procedural processes are inadequate, that is, traditional contentious litigation in court might not be the best possible way to provide effective vindication rights. Among the proposed solutions are to provide legal aid and advice for the poor. Law school clinics are a feasible way of providing help for the poor while also helping students gain valuable real world experience. Rule of law awareness campaigns also help to inform citizens about their rights and encourage their participation in the decision making process. Second, government agencies can take a more proactive role in helping individuals. This can be achieved by simplifying the procedural process, provide continuing legal education for justice system personnel, and strengthening the administrative capacity of the judiciary. Third, access to justice must provide real alternatives to ordinary courts and litigation procedures, though alternative dispute resolution.¹⁶ DPK Consulting projects around the world have dealt with all three elements of access to justice. The following is a discussion of problems and challenges in justice systems in El Salvador, West Bank/Gaza, Dominican Republic and Jordan.

Legal Clinics and ADR Programs in Law Schools

Access to justice in the developing world can be challenging. This is especially so in the rural communities given the unequal distribution of services, extreme poverty and sometime illiteracy.¹⁷ Clinical programs increase access to justice by providing a wide range of otherwise unavailable legal services.¹⁸ Some countries have enacted clinical programs with constitutional and legislative directives, thus acknowledging the importance of alternative means of providing access to justice.¹⁹ However, the extent and quality of justice available to lower income and other disfavored groups of citizens varies considerably from one country and region to another.²⁰

Thus a global clinical movement for access to justice will create new approaches to access to justice and assure that the new generation of clinically trained lawyers will be able to provide

¹⁵ Cappelletti 283.

¹⁶ Cappelletti 283.

¹⁷ William E. Davis, "Implementing ADR Programs in Developing Justice Sectors: Case studies and Lessons Learned," *ADR and Rule of Law* 16.4 (2010): 16-18.

¹⁸ Franck S. Bloch, "New Directions in Clinical Legal Education: Access to justice and the Global Movement," 28 *Wash. U. J.L. & Pol'y* 111.

¹⁹ S. Afr. Const. 1996 § 35(2); India Const. pt IV; The Legal Services Authorities Act, Acts of Parliament, 1987 (India); Legal Aid Act 22 of 1969 (S. Afr.).

²⁰ Bloch 118.

such services.²¹ Through its work, DPK Consulting has implemented numerous programs that specifically trained students through legal clinics. The following paragraphs outline DPK's work with law clinics in a variety of jurisdictions around the world.

West Bank/Gaza

Through the implementation of Netham, a five-year rule of law program, DPK was able to work with Al-Quds University (AQU) School of Law in developing legal clinics. This was the first time that this type of legal assistance was provided in Palestine. The Program introduced the "Street Law" program, which trains law students to teach law in high schools in the West Bank. In cooperation with a local NGO called Human Rights Center, the existing moot court program at AQU was strengthened and formalized as part of the formal curriculum.²² Formalizing the moot court program helped create the street law program and provide free legal advice.

Creating Accessible Justice Systems

Justice systems in developing countries have significant backlogs on the dockets. Sometimes formal courts' infrastructures do not properly serve the needs of transient, scattered, rural communities. Proper adherence to the relevant rules of procedure, and correct application of such rules to all cases, increases state legitimacy.²³ Procedural fairness requires the existence of rules which are consistently applied to all individuals.²⁴

Procedures that minimize opportunities for favoritism diminish opportunities for corrupt treatment of litigants. A particular area of concern is the discretion to assign a particular case to a particular judge. A significant reform in many multi-judge courts (most common in major urban centers) has been the installation of a credible system for random assignment of cases among judges. Another frequent cause of corruption is a lack of control over official files that constitute the record of the case. Where clerks of individual judges maintain case files in unsecure environments there is a substantial risk that documents, or even entire files, might disappear. A records center staffed by records management experts who are assigned responsibility for maintaining accurate and up-to-date case files not only increases efficiency and conserves space, but it also eliminates a potential source of corrupt manipulation of judicial records.

Efforts to delay proceedings are often seen at the stage of enforcing a judgment. Delay may provide an opportunity to conceal or transfer assets. It is equally obvious that a judicial system's failure to enforce its judgments is a denial of meaningful access to justice. There are many kinds of weaknesses that can provide opportunities for delay in the enforcement of judgments. These include procedural weaknesses that lend themselves to corrupt manipulation, such as complex rules, broad discretion of enforcement personnel, excessive opportunities for dilatory appeals, and inadequate access to information. Corrective measures often include simplifying required procedures, clarifying the duties of judgment debtors to disclose and surrender assets, expanding

²¹ Bloch 139.

²² DPK Consulting, "Final Report – West Bank and Gaza: Netham Rule of Law Program – Justice and Enforcement," USAID (September 2010): 10.

²³ B. Barry, *Political Argument*, 2nd ed, (London: Harvester 1990); T. D. Cambell, "Formal Justice and Rule Changes," *Analysis* 33: 113-18.

²⁴ Alan M. Hay, "Concepts of equity, fairness and justice in geographical studies," *Transactions of the Institute of British Geographers*, New Series 20.4 (1995): 500-509.

available options for seizing and liquidating assets and, most important, diligent judicial oversight of the execution process and timely rejection of frivolous appeals.

A frequently encountered risk is the desire of judiciaries to automate processes, records systems, and statistical databases before they adequately review and improve existing practices. It is important that the efficiency of procedures and the quality of data be assured before proceeding to automate systems that, absent such review, are likely to prove inadequate.²⁵ The following projects implemented in DR Congo, Dominican Republic, Guatemala, and Jordan helped foster access to justice through mobile courts, accessibility to the system through merit-based evaluation, foster opportunities for women to be part of the justice system, and create procedures that citizens can understand.

Democratic Republic of Congo

The DPK project in the Democratic Republic of the Congo was designed to provide more effective, transparent, and accessible court operations in pilot jurisdictions of Bandundu, South Kivu, Maniema, and Katanga Provinces. Studies show that mobile courts are the most effective means of reducing judicial delay and allowing more vulnerable populations to access the justice system in countries where courts are centralized in the capitals and remote areas are not well connected by roads. Many cases in remote areas go unheard because people cannot access the courts and witnesses cannot be called. The project supported successful mobile court sessions to increase access to justice for vulnerable populations. Due to the very poor infrastructure in some parts of DR Congo, the project provided motorcycles for one regional office because it is impossible for cars to access some sites where mobile courts are located. In order to increase awareness of these services, the project awarded over \$100,000 in grants to local NGOs.²⁶

Dominican Republic

In the Dominican Republic, DPK assisted the Public Ministry to create a pilot project on National Service for Legal Representation of Victim's Rights. One of the most important aspects of this pilot program was to create an organization that would select its staff on merit-based competition and better train the selected lawyers.²⁷

Guatemala

The 1993 Criminal Code in Guatemala was one of the first of its kind in Latin America because it did away with the inquisitorial system. The new code transitioned the Guatemalan justice system from a document-based system originally based on French law, toward an oral process and a new adversarial system. Major features of the new code were shortened pretrial detentions, plea bargaining, the presumption of innocence and a right to defense, a right to use one's native language, and changes in appeal processes. The reform in the criminal justice procedure, which

²⁵ DPK Consulting, "USAID Brief – Reducing Corruption in the Judiciary," USAID (December 2008): 8.

²⁶ DPK Consulting, "Projustice: Promoting and Strengthening Justice in the Democratic Republic of Congo," USAID (June 2010): 1.

²⁷ DPK Consulting, "Dominican Republic-Strengthening Rule of Law and Respect for Human Rights & Enhanced Anti-Corruption Systems," USAID (May 2003): 32.

created new rules of oral process, allowed citizens to better understand and participate in the judicial process.²⁸

Jordan

In Jordan, DPK implemented the Judicial Upgrading Strategy (JUST 2004-2006). The project trained all judges and court staff in new, specialized areas of the law, such as intellectual property rights, international trade, commerce, and alternative dispute resolution.²⁹ The project worked with the Jordanian Ministry of Justice to strengthen its operating capacity, continuing legal education, and jumpstart its Judicial Studies Diploma program – a new preparatory program for judges in training.

In 2004, DPK worked with the Judicial Institute of Jordan (JIJ) (a post-graduate institution for future lawyers) to strengthen its academic program and create a merit-based admission process. At the start of the project, the number of female students enrolled in the Judicial Studies Diploma Program was about 10%. However, by 2007 women comprised almost half of the class. The recruitment changes have had a tremendous impact on the number of women judges and therefore opened new opportunities to this underrepresented segment of society.

The ABA had initiated an ADR project in Jordan in 2004. The project did proposer in part due to the resistance from the judges. The judges perceived that they would be seen as inadequate to their superiors if they referred cases to mediators. USAID transferred the project to DPK and in Secondly, there were sessions held with other judges to explain how referring of cases would be seen in the evaluation of their performance. In 2007 we began a different strategy. First, a small group of judges (4) were trained as mediators. Finally, in 2008 we began to see a gradual flow of cases for referral and the judges gained expertise in the mediation process. The legitimacy of the procedures is no longer in doubt and mediation is gradually gaining in credibility.

Implementing ADR

At times, formal mechanisms of conflict resolution do not provide the best solution for conflicting parties, especially when they are poorly represented and informed. ADR can be more effective and acceptable as they form part of traditional community forms of conflict resolution. For example, conciliatory justice allows the parties to resolve their issues while maintaining a complex relationship. This form of conflict resolution has the potential to preserve the relationship, treating the episode as a temporary disruption rather than a break of the relationship. Conciliatory justice is the better choice in litigation among neighbors, schools, offices, and villages where people are in daily contact with each other. Due to their proximity and lifestyle it would be too difficult for the parties to avoid their environment because that would involve changing jobs or home. A formal adversarial dispute of grievances would lead to exacerbation of conflicts, whereas conciliation works to the advantage of all parties involved. This partially accounts for the traditional preference for conciliatory solutions in some communities, where avoidance could mean loss of village solidarity, which in some societies is essential for survival.³⁰

²⁸ DPK Consulting, “Guatemala-Administration of Justice,” USAID (August 1999): 6.

²⁹ DPK Consulting, “MASAQ-Rule of Law: Final Report,” USAID (February 2009): 17.

³⁰ Cappelletti 295.

Dominican Republic

In the Dominican Republic, DPK implemented a rule of law program that encompassed both formal and informal workshops to familiarize justice system actors with mediation. Technical assistance was provided to the Commission for the Drafting of the Family Code, in order to introduce family mediation into the code. The project was highly successful, in that it formally introduced alternative methods of conflict resolution within the justice sector. The Supreme Court of Justice of Dominican Republic passed a plenary resolution that established the application of ADR by all courts.³¹

El Salvador

During 2000-2005 DPK implemented two USAID-funded projects in El Salvador. Both projects aimed to promote the development of ADR mechanisms, by targeting rural legal centers designed to improve access to justice. In partnership with the local government, the projects set up 10 *casas de justicia* (rural justice centers) in rural communities and 14 *centros de mediación* (mediation centers). The *casa* program was separate from the formal court structure and it focused on community-based means to resolve disputes. The *casas* were able to significantly reduce the volume of cases in the court, especially family and neighborhood disputes.

The more interesting result of these two programs in El Salvador was the strong participation of women. In 6 communities where the 14 *centros* were located, women requested 70-75% of the mediations conducted. The overwhelming majority of the women requested mediations regarding family matters. Furthermore, women were the largest audience in the ADR presentations conducted by *casa* staff.

In 2007, DPK implemented a USAID-funded Mediation Program, which built on previous work toward harmonizing the legal framework for ADR in El Salvador and disseminate information about available mediation services. The project targeted youth by conducting school-based mediation programs. Through outreach campaigns with local partners, the program was able to educate youth on peaceful means to resolve conflicts and utilize ADR services. Through TV and radio coverage, articles in major publications, and essay writing competitions, the public outreach campaign promoted the use of mediation. A study conducted as part of the Mediation Program found that mediation allows for access to justice “free of obstacles based on gender, educational background, or type of dispute.” The study revealed that 78 percent of the cases that went to mediation centers were successfully resolved. Furthermore, 92 percent of service users stated that they would use ADR again.

In the other principal legal reform in Latin America in the past 20 years (criminal procedural reform), we now see the adaptation of reformatory justice concepts being introduced. Specifically, DPK Consulting implemented an “El Salvador Mediation Project” that introduced the use of mediation into the new Criminal Code that came into effect in June 2010.³² Initially, the project implemented an ADR pilot mediation project for criminal cases and subsequently institutionalized it at the Office of the Attorney General. The project supported expanding mediation for criminal matters as an innovative and creative effort to reach agreements between

³¹ DPK Consulting, “Dominican Republic-Strengthening Rule of Law and Respect for Human Rights & Enhanced Anti-Corruption Systems,” USAID (May 2003): 32.

³² DPK Consulting, “El Salvador Mediation Project,” USAID (June 2010): ii.

parties affected by minor criminal acts such as threats, bodily harm, traffic accidents, misappropriations, damages, fraud, robbery, or unlawful seizure. DPK supported a strategic alliance between Office of the Attorney General and Office of the Public Defender. It fostered the continuity of mediation as a permanent alternative for public defenders as well as prosecutors.

The pilot program began in December 2007 and ended in April 2009. The success and impact on access to justice, as well as the reduction in violence among parties in conflict and subsequent streamlining of the judicial system, led the Office of the Attorney General to create five Prosecutor Units for ADR in Criminal Matters. One of the most encouraging milestones was the introduction of mediation into criminal matters and its insertion in into the new Criminal Procedure Code in October 2008.³³

These achievements are especially important in the context of a long history of violence in El Salvador. El Salvador remains one of the most violent countries in the Western Hemisphere with an average of 10 murders a day.³⁴ Hence, the introduction of mediation as an ADR in the criminal system will contribute to foster a more peaceful society and indirectly a more democratic state.

Jordan

The Rule of Law Program, a DPK project in Jordan, has created mediation centers in eight courts, providing environments conducive to confidentiality, informality, and problem solving. The project has also developed and delivered training to judges assigned as mediators in the court. In cooperation with the Ministry and Justice, the Project held training sessions with Chief Judges and hearing judges of the pilot courts to inform and encourage them to refer cases to mediation.³⁵

Between 2008-2009 mediation use and settlement success increased in the Conciliation (limited jurisdiction) Courts. The number of cases referred to mediation increased from by 107%, and the number of cases increased by 79%. However, results in the First Instance (general jurisdiction) Courts have been less successful. The Jordanian Ministry of Justice recognizes that mediation does reduce the demand on courts and increase public satisfaction with the justice system. Therefore, it has established a department to manage the mediation program and encourage the use of mediation through expanded awareness, training, and possible legal framework amendments.

Unlike regular courts, which focus on procedure, mediation tackles the essence of a case. Judges in Jordan noted that in some cases “winning” is not as important as an apology, and mediation allows for more personal solution to the problem.³⁶

West Bank/Gaza

³³ DPK Consulting, “El Salvador Mediation Project,” USAID (June 2010): 8.

³⁴ Overseas Security Advisory Council, “Security Reports and News by Country: El Salvador,” August 27, 2010 <https://www.osac.gov/Regions/country.cfm?country=102>.

³⁵ Rule of Law Project, “Mediation,” August 19, 2010 <http://www.rolpjo.com/component/22>.

³⁶ Rule of Law Project, “Mediation,” August 19, 2010. <http://www.rolpjo.com/component/22>.

Given the major cultural change involved in introducing new forms of ADR in Palestine, the DPK Netham Project coordinated numerous conferences and workshops with the Ministry of Justice's ADR Directorate to open dialogue about ADR and mediation and whether it is right for Palestine. Netham implemented Mediation Settlement Training for seven Palestinian Judges, to assist High Justice Court in reviewing mediation cases at the Conciliation and First Instance Court. Introducing settlement courts in Palestine is expected to lower the number of pending cases, and will allow for more efficient use of court resources.³⁷

One of the major successes in West Bank and Gaza was the campaign to strengthen the rule of law in the towns of Bani Naim, Al Shyoukh, and Sa'er resulting in a formal agreement among 57 tribal leaders to make a commitment to respect and resort to formal justice sector in solving disputes. The "31 point Memorandum of Understanding" (MOU) aimed to give the public a clear picture of some of the negative practices in the tribal system. The MOU attempted to reduce tribal punishment, while documenting and incorporating the positive elements of the tribal system into the law.

III. Conclusion

Implementing access to justice projects in the developing world is challenging. The most important lesson is to involve the judicial system leadership and familiarize them with the processes. Support and buy-in from essential justice system stakeholders such as judges, justice system officials and lawyers is essential for successful implementation of access to justice programs. It is important to have support for the programs internally, and positive voices within the justice system can act as visionaries or champions of access to justice. Throughout its work in developing countries DPK has found that creating successful pilot programs upon which successful stories can be built facilitates support from the higher ranks in the justice system. In its implementation of Netham in West Bank/Gaza, DPK learned that allocating resources to the most pressing problem and achieving visible results is important to a successful project.³⁸ In El Salvador, the Supreme Court changed its position to support the ADR programs nearly three years after USAID-funded Mediation Program started. Similarly, the Judicial Council in Jordan initiated efforts to cooperate with the Ministry of Justice to establish an ADR center in the main courthouse in Amman.³⁹ Thus, a strong start that is focused and has fast impact will create favorable conditions for program implementation

Throughout the past 30 years of implementing access to justice programs in the developing world, DPK has learned that a standard ADR system is not the answer to diverse and complex justice systems. Indeed, it is imperative that the ADR system follow a context-specific design that answers questions such as: what is the relationship between formal courts and the ADR system? who will provide the service? what kind of fees with ADR systems charge? how will the cases be referred? and what kind of regulatory framework should structure the system? what kind of facilities will be used?

³⁷ DPK Consulting, "Final Report – West Bank and Gaza: Netham Rule of Law Program – Justice and Enforcement," USAID (September 2010): 99.

³⁸ DPK Consulting, "Final Report – West Bank and Gaza: Netham Rule of Law Program – Justice and Enforcement," USAID (September 2010): 99.

³⁹ DPK Consulting, "MASAQ-Rule of Law: Final Report," USAID (February 2009): 21.

Finally, ADR programs must be sustainable. Most of international aid programs are funded for a specific period of time. In order for these systems to continue, local authorities must ensure the continuation of services once an international program is complete. In El Salvador, for example, DPK worked with municipalities to set up the *Casa de Justicia* and with the Public Defender's Office to create mediation centers. Formal agreements between the parties established that local municipalities would provide the physical space for the program and assume responsibility after the Mediation Program is complete. This approach offers assurance that the ADR program would continue to operate after the USAID-funded program was complete and create ownership among the local justice system authorities.

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