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RULE OF LAW STABILIZATION– FORMAL SECTOR COMPONENT PROGRAM EVALUATION

FINAL REPORT

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This is an external evaluation. The views expressed in this document are the authors' and do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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ACRONYMS AND ABBREVIATIONS

ASEC	Afghanistan Communal Section Assembly
ACAS	Afghanistan Court Administration System
ACT	Anticorruption Tribunal
AIBA	Afghanistan Independent Bar Association
AIHRC	Afghanistan Independent Human Rights Commission
AWJA	Afghanistan Women Judges' Association
ALAO	Afghanistan Legal Aid Organization
AREU	Afghanistan Research and Evaluation Unit
CLE	Continuing Legal Education
DOS	Department of State
EUPOL	European Union Police Mission in Afghanistan
GIRoA	Government of the Islamic Republic of Afghanistan
ILF-A	International Legal Foundation – Afghanistan
INL	International Narcotics and Law Enforcement Affairs
JSSP	Justice Sector Support Program
M&E	Monitoring and Evaluation
MHE	Ministry of Higher Education
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
NITA	National Institute of Trial Advocacy
NLTC	National Legal Training Center
OSA	Open Society of Afghanistan
RLS-F	Rule of Law Stabilization Program – Formal Component
RoL	Rule of Law
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

This report is the result of an evaluation of the results of a two-year (2010–2012) rule of law program implemented by Tetra Tech DPK Consulting, Inc. (DPK) under United States Agency for International Development (USAID) contract number DFD-I-00-04-00173-00. This rule of law program totaled USD \$33,752,979 in USAID funding.

DPK's program focused primarily on supporting the development of the formal judicial structure in Afghanistan. The overall goal of the program was to support USAID/Afghanistan's Rule of Law Strategy for Afghanistan, specifically Pillar 1 (improve the justice sector and reduce corruption) and Pillar 4 (build leadership in the justice sector and civil society). To support Pillar 1, DPK attempted to develop the capacity of judiciary and the law schools; for Pillar 4, DPK worked to raise public awareness and encourage citizens to resolve disputes through the formal justice sector. The program was divided into four components: (1) capacity building of the judiciary; (2) capacity building of court management systems; (3) capacity building of the faculties of law and *Shari'a*; and (4) public legal outreach and awareness through strategic communication. For simplicity, this evaluation report presents findings, conclusions, and recommendations for the major activities conducted under each component. Based on the findings of this evaluation, the results of this program are mixed.

Under Component 1, the *Stage* and continuing legal education training programs for judges has made significant strides. However, more needs to be done with regards to ethics training and monitoring the effectiveness of this training. Any future assistance that focuses on the capacity building of the judiciary should determine if training investments are worthwhile by instituting appropriate monitoring and evaluation procedures through objective sources to find out if trainees utilize the lessons taught.

Under Component 2, DPK had success with extending the Afghanistan Court Administration System (ACAS), a program designed for case tracking, to around 514 of the 551 courts. Anecdotal information indicates that ACAS saves time in responding to case inquiries. However, other efforts to modernize the Supreme Court— such as improved financial planning, modern hiring and employee management techniques—fell on deaf ears. Interviewees frequently stressed that the Supreme Court simply does not want to modernize. This is evidenced by the fact that the Supreme Court does not commit any of its own resources to modernization. If USAID wishes to continue to work to stabilize and enhance the formal court system, it should substantially reduce its efforts, limited to only projects that the Supreme Court requests and is willing to co-fund. Even then, aid should be predicated on actual implementation of modern management practices and parcelled out only after mutually agreed upon benchmarks have been met.

The results of Component 3 were more positive. Through the development of legal clinics, core curricula, the Jessup Moot Court competition, and study missions, DPK was able to impart modern legal techniques to the next generation of Afghan judges and lawyers. Future rule of law endeavours should remain engaged with Afghan youth, particularly through the formal education system. One way to do this would be through a grant to a law school in the United States that has international programs, rather than tie work with legal clinics into a much larger judicial reform project. Additional youth-oriented rule of law sector programming could include expanding USAID's work in Afghan law schools; developing a training course for teachers to effectively teach the new curricula; and partnering with local organizations, such as the Afghanistan Independent Bar Association (AIBA) to assist students and young lawyers.

Component 4 focused on developing radio and TV campaigns with local partners to educate and motivate citizens to utilize the formal justice sector and to “instill justice and pride in the Afghan justice system.” DPK and its local partners developed and produced printed materials and radio public service announcements (PSAs) to educate the Afghan public on accessing the formal justice sector. However, public legal outreach activities seemed like an afterthought to the rest of DPK's program, as if someone in USAID realized, late in the program development process, that there was no element of public outreach in a program designed to improve the efficiency and effectiveness of the judiciary. In addition, none of the print materials or radio and television programs target the main goal in USAID's Statement of Work or

DPK's workplan: to create interest and pride in the Afghan judicial system. Instead, the materials present citizens with their legal rights and discuss how they can access the formal justice system, creating a demand on the system that the courts may not desire or be able to fulfill.

Overall, the evaluation team felt that DPK was effective in reaching its programming goals when program beneficiaries bought into the program. When buy-in was not explicit, results of DPK's program were mixed at best. During the evaluation, several issues emerged that affected DPK's ability to achieve its goals, including: slow establishment of the program; a lack of administrative agility; fragile monitoring and evaluation systems; USAID issuing the contract for one year, with a one-year option; and security issues affecting how and when training could be conducted. All of these issues affected not only how much the project could achieve in the time available, but also how well the project could answer the "so what" questions about the value of its efforts. Going forward, emphasis should be placed on programs that focus on Afghan youth, as this group demonstrated enthusiasm for participating in and implementing the lessons learned from DPK's program.

OVERVIEW

This evaluation covers USAID Contract DFD-I-00-04-00173-00, otherwise known as the USAID/Afghanistan Rule of Law Stabilization Program for Formal Justice, implemented during the period from May 2010 to May 2012.¹ The report also attempts to take into account the context in which this contract was awarded: Through a successful protest by DPK Consulting which led to the splitting of USAID's justice sector support programs into a formal and informal component. The informal component is being implemented by Checchi and Company Consulting, Inc. (Checchi), which had worked in the formal justice sector from 2004 to 2009. The formal sector program implemented by DPK is the follow-on to Checchi's program.

In the last 45 years, there have been few periods of peace in Afghanistan. This tumultuous history has led to the development of two competing judicial structures. Through the formal structure, Afghanistan has attempted to modernize its legal system in order to provide citizens with redress through a structure that adheres to international standards and norms from indictment to verdict to appeal. However, large sectors of the population, particularly in remote areas, still rely on the informal structure, where *shuras* and *mullahs*, who are well-respected in the local communities, determine disputes based on tradition, custom, and religion. As post-9/11 Afghanistan works to consolidate its democracy, these two judicial systems are naturally at odds with each other. It is within this context that USAID has worked to transform how rule of law operates in Afghanistan.

There are several factors that affect the successful implementation of any rule of law project in Afghanistan. The first and foremost issue is security. Since large portions of the country are insecure, project staff and beneficiaries, such as judges and court administrators, are constrained in their ability to travel to courts, conferences, and training sessions. In addition, in many jurisdictions, there is no security for judges; thus, although they might have been appointed to serve a particular area, judges do not live and take the bench where they are assigned. At the same time, while rule of law advocates work to increase the use of formal courts to resolve disputes, the judges and villagers who might use the courts may receive threats of repercussion from the Taliban. Finally, USAID project managers have little opportunity to visit project activities, make assessments of progress, and provide guidance outside of Kabul.

Another factor that affects any rule of law project in Afghanistan is the fact that there is little history of a formal court system. A formal legal system has never operated in many areas of the country. In those where it has, there has been a long history of corruption, delay, and expense to litigants.

Perhaps the most important limiting factor to improving the rule of law in Afghanistan is the lack of buy-in from the key policy makers with whom a project must work. As Anna Larson wrote in *Deconstructing "Democracy" in Afghanistan*, there is often resentment by Afghan counterparts of internationals engaging in Afghan affairs. It is reported that the president of the country has told key administrators not to cooperate with foreign entities that have judiciary projects. Without political will, foreign assistance can only achieve small, insignificant changes under judicial reform projects. Even in the university community, Afghan professors fear being labeled as trying to import Western culture to the detriment of traditional Afghan culture. The fact that USAID and its implementing contractor and grantee staff cannot have informal sessions with their counterparts, sitting down to tea or coffee or accepting invitations to dinner, hampers their and their counterparts' ability to reason together on an equal footing.

An effective rule of law judicial improvement program in Afghanistan involves interacting and coordinating with multiple actors, including judicial institutions (Supreme Court, appellate courts, local courts of first instance), administrative bodies (Ministry of Justice, the Ministry of Higher Education, the Supreme Judicial Council), enforcement agencies, and other organizations with a rule of law mandate as part of its responsibility (the Afghanistan Independent Human Rights Commission). In addition, there are

¹ As May 2012 drew near, DPK was granted an extension through July 15, 2012 to complete its work. During the evaluation, DPK was in discussions with USAID concerning a longer extension for this program.

local civil society associations that act as watchdogs on the judiciary; promote civic education that educates citizens about their rights in the judicial system; and assist lawyers with their needs. However, the existing judiciary-themed NGOs are very weak and foreign intervention can easily over-resource them. If foreign resources are not given in measured doses, it would be easy to ruin them by large infusions of grant monies.

It is estimated that up to 90 percent of the financial resources spent in the justice sector comes from foreign donors. These donors represent a large number of international institutions, each with its own mandates, interests, culture, and projects to promote; some might be competing with those of other countries and organizations. A lack of communication and coordination among donors allows Afghan institutions to play donors against another.

Likewise, several US departments and agencies play a role in judicial reform in Afghanistan, including, the International Narcotics and Law Enforcement Affairs (INL), the Department of Defense (DOD), the Department of Justice (DOJ), and the Department of State (DOS). As each of these organizations has its own priorities and goals, they may complement and facilitate USAID's role, or just as easily, compete with it. Moreover, the rapid turnover of personnel across the board, due to short-term assignments, and staff members' frequent absences from the country for rest and recuperation, often leads to a lack of institutional memory.

METHODOLOGY

Consistent with the terms in the Statement of Work (SOW) of the Task Order, DI submitted a detailed workplan to USAID before arriving in Afghanistan. The work plan included the evaluation's methodology and activities, an outline of the final report, an illustrative list of individuals and organizations the evaluation team planned to interview, and a preliminary list of interview questions. Upon arrival in Afghanistan, the evaluation team met with USAID to finalize and approve the workplan and to identify additional interviewees.

The evaluation team consisted of Jack Leeth as Team Leader, Terence Hoverter as Evaluation Expert, and Aman Tajali as Justice Sector Expert. The team was in Kabul from June 6 through June 26, 2012. Originally, USAID was to provide a fifth team member, but none was available during the evaluation time frame. Before their arrival in country, team members reviewed documentation sent by USAID (e.g., contracts between USAID and DPK) and DPK (e.g., formal contractual documents, work plans, monthly reports, success stories, and program highlights), as well as other relevant documents. The team used the desk study to understand the genesis of DPK's program, gather accomplishments and lessons learned, and identify interviewees. It also used these documents while drafting the evaluation report.

DI's evaluation is based on a series of interviews with program stakeholders, including judges, court personnel, university officials and professors, civil society activists, students, donors, and representatives of international organizations. Evaluation questions were designed to elicit information on each of the contract's core components and how they were designed. Where necessary, an interpreter was used. To elicit the effectiveness of program components focused on the law schools, two focus groups of university students were conducted. Most of these interviews were conducted face-to-face and followed a standardized questionnaire. However, due to the security situation and the prohibitive security cost of traveling outside the capital, telephone interviews were conducted with program beneficiaries in the provinces.² The team interviewed a total of 67 individuals and met with representatives from 30 international and domestic organizations (see Appendix A: Persons Interviewed).

The SOW asked the team to evaluate the "effectiveness, achievements and sustainability of . . . USAID's Rule of Law Stabilization Program – Formal Justice Sector . . . and to make recommendations to increase its impact and effectiveness."³ The evaluation team used these criteria to draft its questionnaire and focus its interviews. Following fieldwork, the team drafted an outline of its findings, conclusions, and recommendations and presented its findings to USAID in an oral briefing on June 25, 2012.

Methodologically, the lack of effective performance monitoring, ambiguous data reported during the program, and the continuity of Checchi's activities under DPK's follow-on made it difficult to empirically substantiate the evaluation findings regarding program impact. Nonetheless, the evaluation team is confident its findings are valid.

² Program beneficiaries were contacted in Balkh, Herat, Kapisa, Khost, Kunar, Kunduz, Nangarhar, and Paktia.

³ Specifically, the evaluation team was asked to: "1. Evaluate the impact of the RLS-F program, identifying those aspects that have been the most effective and the reasons why, as well as those aspects that have been the least effective and the reasons why[;] 2. Evaluate the sustainability of the program, particularly in view of the transition in 2014 and decreasing levels of donor support for the sector[; and,] 3. Provide recommendations to maximize the effectiveness of the follow-on programs to improve justice sector capacity and citizen support."

COMPONENT ONE: JUDICIARY

INTRODUCTION

This component tasks DPK with trying to improve the public's image and use of the formal judiciary by undertaking a series of pre-service training activities for aspiring judges through the judicial *Stage* (the systematic training program of the Supreme Court) as well as developing and providing a number of in-service continuing legal education (CLE) courses for sitting judges and others within the system. The program was to develop and teach the following CLE subjects: practical legal skills, judicial ethics, criminal law, civil law, inheritance law, and criminal and civil procedure. These activities are carried directly over from those worked on by USAID's previous Rule of Law Project and the Justice Sector Support Program (JSSP), a short-term interim project.⁴

Additionally, DPK was to train all judges assigned to the Corruption Panels and the new Anticorruption Tribunal on Afghan laws that prohibit waste, fraud, abuse, and financial crimes. DPK's workplan also envisioned developing a cadre of judges to sustain the program's work in the future.

FINDINGS

JUDICIAL TRAINING

The Supreme Court's formal, two-year training program for judges is known as the judicial *Stage*. For students graduating from the *Shari'a* or Law curriculums at an Afghan university, entry into the *Stage* is based on merit, evaluated through an entrance exam. In 2011, 125 students entered the first year of the program. Historical statistics show that more than 70 percent of the students enrolled in the *Stage* graduate from *Shari'a* faculties and approved madrassas. In addition, around one-fifth of the students are female.⁵

Approximately 80% of judge candidates who begin the *Stage* program complete it, but not all graduates were offered or accepted judgeships for several reasons, including: not wanting to be associated with a perceived corrupt organization; receiving a better offer from the private sector; not wanting to take an assignment in an insecure area of the country; obtaining a position in another government agency, such as the Ministry of Justice, or not having the "appropriate connections" for assignment.

Based on the evaluation team's interviews, *Stage* training was conducted for several years before DPK's contract began in 2010, and was an important component of previous USAID cooperation with the Supreme Court. Through a tripartite agreement with the Max Plank Institute, the Institut International Pour les Etudes Comparatives (International Institute for Comparative Studies, IIPPEC), and DPK, the first year of the *Stage* program was jointly developed and conducted for the 125 students undergoing the first year of the *Stage*. With the approval of the *Stage* director, each organization found qualified professors from the law faculties or the Supreme Court bench and paid these professors to teach the training courses. Sometimes the teachers were international experts. In addition to providing textbooks, each organization paid each student a stipend to help with transportation and meals. The second year of the *Stage* program was promoted and financed solely by DPK.

DPK also provided USD \$20,000 for material support—including air conditioners, heaters, computers, classroom furniture, a computer lab and furniture, internet connections, and books—for the *Stage* to carry out administrative and educational functions. In addition to this material support, DPK financed housing for four months for female *Stage* students who were not from Kabul and had no relatives with whom they could board. DPK also sponsored a trip to France for the Director of the *Stage* to observe the French

⁴ This evaluation focused on DPK's follow-on project and not on Checchi's initial formal rule of project. The evaluation team reviewed no formal contract documents from Checchi's original program. The evaluation team utilized anecdotal information provided in interviews, including with Checchi personnel, to make comparisons to DPK's program. Future program design should take into consider the performance monitoring plans of Checchi, DPK, and any other implementer that has conducted rule of law work with the formal judicial system.

⁵ In 2011, of the 125 students in the *Stage*, 25 of them were women: 20 from a *Shari'a* law faculty, 5 from a law faculty.

judicial training school. At the time of the evaluation, DPK was in the process of conducting training on information technology for five *Stage* staff members to improve their effectiveness in preparing reports.

ETHICS TRAINING

Afghanistan citizens view the judiciary is seen as one of the nation's most corrupt institutions.⁶ The Asia Foundation 2011 Afghanistan Report notes that, of those Afghans who accessed the courts, the majority (64 percent), encountered some level of corruption. Because of this view, USAID emphasized judicial ethics training in both the *Stage* and CLE program components. According to interviewees and DPK reports, almost all participants in the *Stage* and CLE courses received this training. Despite this training, one observer in the Supreme Court Monitoring and Control Unit suggests that up to 25 percent of *Stage* graduates have engaged in some kind of corrupt behavior after taking the bench.

There are no quantitative or qualitative studies (i.e., focus groups, triads, in depth interviews, or direct monitoring by attorneys or others) to demonstrate whether there have been any improvements in the handling of cases, or a lessening of corruption, to determine if these trainings have any practical effects, or if it is “business as usual” in the courts. Nevertheless, although almost all interviewees felt that the Supreme Court and Supreme Judicial Council do not investigate and punish corruption, statistics published by the Supreme Court show that some limited steps have been taken in that direction. As of August 2011, of the nearly 2,300 judges in the system, 65 judges were convicted of corruption, some receiving jail terms. In addition, the Supreme Court disciplined 737 judges by levying fines, transferring them from a desirable post to a less-desirable post, and transferring them from the bench to an administrative post. However, it is unclear to project managers if any of these judges had received ethics training, or even if these instances of corruption were incorporated into training sessions as examples to avoid. In addition to these judges, 37 clerks were convicted and sentenced to jail terms, and 105 clerks were disciplined. In terms of non-court personnel (i.e., litigants, lawyers, citizens), 113 were convicted for bribing or attempting to bribe court officials and personnel. However, it was difficult to verify these figures as the Supreme Court rarely publicizes disciplinary actions and most persons interviewed expressed ignorance of these actions.

Some observers stated that even though some anticorruption actions were taken by the court, those actions were against judges and others who had no “connections” and were vulnerable, or who the judiciary wanted to silence.

The in-service judicial training component, known as Continuing Legal Education (CLE), is primarily donor-driven and financed; the Supreme Court does not budget for it. DPK pays the instructors, provides course materials, and pays all per diems and transportation costs for judges attending CLE courses. In 2011, the Supreme Court instituted a Judicial Education Committee whose responsibilities include overseeing the CLE courses. However, DPK's adviser on judicial training has not been able to meet with the committee, although the JSSP project apparently does meet with it.

DPK has developed and carried out CLE courses for sitting judges in the provincial courts in five regions. DPK contracts and pays sitting justices of the Supreme Court, other judges, and law professors to develop CLE training materials and teach judges. For most judges who were appointed to the bench but had not attended the judicial training school, it was the first training that they had ever received. In addition, during the course of the project, President Karzai appointed several judges who had not passed through the *Stage* program, but who might have worked in the courts in an administrative capacity. DPK provided CLE training to many of these new judges as well.

Some of the interviewees affirmed that the CLE courses are helpful and affect how judges justify and write their opinions. In the project's two years, DPK has given some form of training to 628 attendees. However, this number can be misleading as some judges attended more than one training session. In fact, DPK statistics indicate that some judges attended two or more training sessions. As such, it is hard to determine exactly how many *individuals* received some sort of training from DPK. Some interviewees

⁶ See The Asia Foundation, *Afghanistan in 2011: A Survey of the Afghan People*, pp. 137-52 (2011) (discussing citizens' views on the judicial system).

said that it was a waste of time trying to change the attitudes and habits of older judges who had never studied law, but just went to the courses.

During the course of the evaluation, the evaluation team was given conflicting information on the current number of judgeships in Afghanistan. This number ranged from 1,500 to 2,300. Given those numbers, only about a quarter to a third of judges have received any kind of training on important legal and ethical issues through this project, although others might have been received training from previous contractors or the JSSP project.⁷

DPK also conducted training of trainer programs (ToTs) for university professors and judges teaching in both pre-and in-service programs. DPK worked with five Supreme Court justices, as well as Law Faculties and *Shari'a* Faculties in nine public universities to instill modern pedagogical methods. However, respondents noted that as many as 50 percent of those trainers do not use modern pedagogical techniques even though they have received instruction in them. In an effort to remedy those results, DPK granted scholarships to three program participants to receive CLE experience in the United States so that they will be able to continue this work in the future.

Although in-service training of judges for the Anticorruption Tribunals (ACTs) was an important task of the project, DPK's training was inconsequential at best. According to the DPK August 2011 Monthly Report, "the Judicial Section met with the Chief Judge of the ACT in Kabul, Judge Akhari, to request the opportunity to provide training for judges at the ACT. He stated that training was not needed or desired and requested, only a new building, salary supplements, cars, and internet access." USAID directed DPK to discontinue efforts with the ACTs. However, DPK reports that some type of anticorruption training was given to 576 persons affiliated with the judicial sector.

Although DPK surveyed some of the judges that they trained to see if they reported changes in their behavior, there have been few or no objective follow-up evaluations to see if trainees are putting knowledge and skills from the *Stage* or CLE sessions into practice. Anecdotal remarks to the evaluation team indicate that some of the chief judges find that trained judges make better decisions, cite the applicable law, and even write their opinions as a result of the training. However, there is no evidence to show that the Appellate Courts have upheld more decisions rendered by trained judges than decisions rendered by those who have not been trained through this project. There are also no studies to see if the trained judges are trying all of their cases in open court as they should or to show if judges are treating all of parties equally and acting as neutral arbiters. Similarly, there have been no surveys of those using the courts, such as attorneys in civil and criminal cases, legal aid and other defense attorneys, prosecutors or others to determine the actual effects of the *Stage* or CLE programs.

ISSUES WITH CONTINUING THE CONTINUING LEGAL EDUCATION PORTION OF THE PROGRAM

All persons the evaluation team interviewed said that the sustainability of the foreign donor initiatives is in question as the donor community pulls back in the short term. The Supreme Court is not currently budgeting funds to cover the *Stage* or CLE training when the project ends. In addition, the inability of project staff to travel freely throughout Afghanistan due to security concerns has hampered DPK's ability to carry out the amount of training necessary to improve the judicial system. Travel restrictions have also hampered judges' ability to attend trainings.

IMPROVING THE IMAGE OF THE STATE COURT SYSTEM

USAID hoped that its program with the Supreme Court would change the public's perception of the state courts, "instill a sense of confidence in the justice system," (SOW, RLS-F document), and lead to greater use of the state courts to resolve conflict. Unfortunately, the Asia Foundation's 2011 survey shows that the public's perception of the judiciary and state courts had not significantly improved in the previous four years. The most notable difference in citizens' confidence in the formal system is the timeliness of the decisions, which citizens seem to feel has declined, as shown below:

⁷ It should be noted that JSSP has been conducting in-service training for long-time judges as well as for judges appointed without going through the *Stage*. Nevertheless, DPK and JSSP, two United States development "partners," did not compare their curriculums that they developed and taught separately.

		2007	2011
1.	Accessible	78%	77%
2.	Fair and trusted	58%	59%
3.	Local norms & values	57%	57%
4.	Effective	58%	58%
5.	Timely/prompt	51%	41%

By contrast, the same survey showed that the general public’s perception of traditional *shura* or *jirga* “tribunals” has improved slightly, as shown below:

		2007	2011
1.	Accessible	83%	87%
2.	Fair and trusted	78%	79%
3.	Local norms & values	76%	77%
4.	Effective	76%	75%
5.	Timely/prompt	72%	73%

This indicates that the formal judicial system needs significant reform, if the Afghan public is to prefer it over traditional, informal structures.

EFFECT ON WOMEN

A desire to increase the participation of women in the judicial sector permeates DPK’s activities. In this regard, DPK promoted the participation of women in several ways. DPK held roundtables and public discussions on women’s rights that were recorded and broadcast nationally in an attempt to inform religious leaders that women’s rights are compatible with Islam. DPK also helped draft the regulations of the Afghanistan Women Judges’ Association (AWJA). Unfortunately, at the time of the evaluation, the Supreme Court had not recognized the AWJA as a formal body. In addition, DPK prepared a study tour for female professors to Turkey, which it hopes to carry out in the future; previous study tours resulted in the incorporation of the Quran’s teachings about gender equality into the new, unified core curriculum. DPK also incorporated issues relating to human rights and the treatment of women and children under international treaties in both the *Stage* and CLE sessions, marking the first time judicial personnel received training on some of these themes.

CONCLUSIONS

- The number of female graduates from Shari’a law faculties who enroll in the Stage to seek judicial appointments is impressive, and a hopeful sign for the future, particularly in light of the fact that a prominent representative of the Supreme Court reportedly told one of our interviewees that “women should not be judges.”
- Given the number of Shari’a faculty graduates accepting judgeships now and in the foreseeable future, the state court system will be dominated by Shari’a law graduates and will reflect their training and their attitudes. This means that if students learn the modern interpretation of the Quran taught in the universities as a result of the new core curriculum developed through this program, modern rule of law ideals and practices will eventually supplant traditional, archaic versions.
- While most, but not all, of the interviewees have positive views of the judiciary capacity building training programs, they also note that the inspiration, the content, the techniques and the financing have been provided by international donors, placing the sustainability of this component in serious doubt. Unless the Afghan government provides financing as the donors draw back, these efforts will not be sustainable.
- It is clear that the Supreme Court has not developed the Stage program so that a sufficient number graduate to replace the number of judges who leave the system through attrition, assassination, firing, or to fill newly created judgeships. If only 125 judges graduate from the Stage program

every year, and the President of Afghanistan also has to appoint that many or more judges who have no training, then the quality of those sitting on the bench is only marginally improved. Only when a super-majority of judges are finding in accordance with the law, understanding and applying the international treaties on human rights, understanding and obeying a judicial code of ethics, and writing defensible and fair opinions will the public perception of the judiciary change.

- Over at least a four-year period (2007-2011), training projects associated with the Supreme Court have done little to change the public's impression of the formal court system, in spite of the tremendous resources dedicated to this effort. This is a logical outcome in those situations in which, for whatever reason, there is not the political will in the host institutions to change and invest their own resources to achieve those changes. This means that the desired change must be seen as generational, but even then public opinion change will require motivated change agents within the executive, legislative, and judicial branches of government, probably pushed along by strong civil society institutions.
- In a tradition-bound society like that of Afghanistan, judiciary improvements are iterative. In order to improve the public perception of the judiciary, the judiciary itself must want this perception changed and be willing to take proactive steps to achieve this end.

RECOMMENDATIONS

- If there is evidence that the Supreme Court and other government institutions want to eradicate corruption in the judiciary and improve the workings of the judicial system in a reasonable amount of time, then USAID should work with the Supreme Court to determine how many judges need to graduate every year to fill all vacant judgeships and increase the number of students entering the Stage program required to meet those needs. USAID should also work with the Supreme Court, the Minister of Finance, and the legislature to ensure that there is sufficient funding for the program to meet this level of effort.
- USAID should determine if future investments are worthwhile by setting up appropriate monitoring procedures through independent sources to determine if Stage and CLE participants are using lessons learned in these trainings.
- If monitoring and evaluation results show that future investments are worthwhile, then USAID should determine which judges require training and develop an accelerated program to deliver the training in an abbreviated time frame. A master roster of which judges have received which training, from all sources, is important to deliver the right training to the right judges.

COMPONENT TWO: COURT ADMINISTRATION

INTRODUCTION

The purpose of this component was to develop systems to increase the courts' administrative efficiency, and thereby increase the number of citizens that utilize the formal court system. Specifically, USAID tasked DPK to:

- Provide technical assistance and monitor the full implementation of the Afghanistan Court Administration system (ACAS) with the possibility of hooking it up to the computerized case-tracking system developed by INL;
- Provide support for Supreme Court Inspection tours;
- Develop the Supreme Court's capacity for budget management, pay and grade reform, personnel management, and infrastructure management to produce a more professional, properly paid, resourced, and protected judiciary;
- Design and implement a mechanism for enforcement of the Judicial Code of Conduct to reduce corruption and increase public confidence in the state courts;
- Provide technical assistance for judicial performance assessment standards;
- Provide technical assistance and support to develop the Supreme Court's financial management ability to be certified to directly handle U.S. government direct assistance; and
- Help the Anticorruption Tribunals to begin hearing and deciding cases.

To achieve these results, DPK hired and embedded Afghan nationals in Supreme Court departments to implement these directives.

FINDINGS

ACAS is a paper-based, manual case management system that enables court personnel to effectively and efficiently track cases. Since its introduction, evidence shows that the ACAS system has been extended to between 514 and 551 courts. (Because of the remoteness of the other 37 courts, DPK does not know with certainty that they are using ACAS.) The system is being used for case tracking and limited management, but is not a full-scale case management system that neither makes random assignments to judges to avoid "judge shopping," nor ensures an equitable distribution of cases to judges. DPK staff members have drafted a random case assignment system, but it has not been adopted by the Supreme Court. It is important to note that INL is also funding a case management program; however, this program focuses on tracking the case from "indictment to final verdict." Some interviewees note that DPK may not have wholeheartedly cooperated with INL to incorporate INL's case management program into its own case tracking system.

ACAS case management is based on a color-coded file folder system. The color of the folder indicates to court personnel the type of crime the case is about. USAID has purchased the file jackets since 2008, but the Supreme Court has promised to pay for them for the 2013 budget year. An addition to the ACAS system was designed in the final months of the contract, and DPK had developed a plan for pilot testing. The Supreme Court, however, ordered that the new system be rolled out without the pilot testing. It is unclear at this time how successful this new addition has been.

Anecdotal information indicates that the ACAS case filing system has been welcomed by judges and clerks because it has made finding cases much easier. The system has thus saved court personnel

considerable time and enabled the court to respond more quickly. Previously, cases were stacked haphazardly in judges' quarters or another room; now, case files are appropriately filed and stored. Although no objective monitoring and evaluation of this component has been done, DPK reports that it has trained 822 clerks and judges in ACAS-related matters.

Under this component, DPK also assisted the Supreme Court with its judicial inspection tours. Over the course of the project DPK facilitated 50 "inspection tours" to over 10 courts by providing transportation and per diems for 50 inspectors. However, DPK reports that some "inspection" trips were for just going to their courts. In addition, it appears that administrative issues uncovered on the inspection tours were not properly documented, making it difficult for the Supreme Court to take corrective action.

Another issue encountered by DPK was lack of buy-in by the Supreme Court to the inspections. For example, although a Judicial Inspections Manual was developed, it has not been adopted nor implemented; Judicial Inspection Regulations have yet to be developed; and Judicial Performance Standards were developed by DPK, but they have not been adopted and implemented by the Supreme Court.

DPK also worked to develop the Supreme Court's administrative capacities. Several activities were planned to help the Supreme Court modernize. For example, personnel files were automated into a secure system. However, several of these activities were either rejected by the Supreme Court, or postponed at the last minute. These activities included:

- A Human Relations Department Manual, which was not adopted or implemented by the Supreme Court;
- A pay system, which was not adopted or implemented by the Supreme Court. When it was to be piloted in one department, protests ensued because certain staff salaries that had been enjoyed were to be cut. There were no "grandfather provisions" incorporated on salary being paid to ameliorate dissatisfaction when the introduction of the new grades cut salaries that staff had enjoyed for many years. Interviewees said that another reason that the Supreme Court did not adopt the pay grade system was that it would affect entrenched recruitment practices and substantially curb non-merit, discriminatory practices and nepotism;
- A training on results-based budgeting, which was rejected by the Supreme Court. The Supreme Court also rejected any offers to train its staff in results-based budgeting. Interviewees report that Supreme Court budgets appear to be approved in the Ministry of Finance based on personal relationships rather than on performance and caseload reported by the regional courts to the Statistics Unit;
- A training on financial management for court personnel, which the Supreme Court postponed;
- A five-year training plan for the Information Technology Unit on, among other things, handling sensitive data, which is still waiting approval and translation from the Supreme Court. DPK established the Information Technology court and trained five court staff members. DPK also provided USD \$60,000 of software and equipment, including a server for the Court;
- A first-of-its-kind training course for court executives, which was developed over an eight-month period but was subsequently dropped by the Supreme Court. The Supreme Court never identified the requisite 60 candidates for the training;
- Material support—printers for architectural drawings and a laser and GPS to determine facility coordinates—to the Facilities Management Office of the Supreme Court. Since the Supreme Court did not acquire the necessary software to develop an electronic database of its inventory, this information is still kept in ledgers; and
- A reform committee, which was disbanded by the Supreme Court.

Overall, there appears to be little ability on the part of the court to plan for aid from international donors because it has no planning capacity. Essentially, the Supreme Court tells the donors to bring suggestions

and implement them, if the donors wish, with the understanding that the Supreme Court and the Supreme Judicial Council have the right to reject these suggestions and activities at any point along the development continuum. The judiciary commits almost none of its resources, and hence there is no real “buy-in” to what DPK and USAID hope to achieve.

CONCLUSIONS

- All of the tasks that DPK completed were important, indeed essential, for any well-run court system. It is unfortunate that the Court has not taken advantage of the many intellectual talents and financial resources expended on its behalf by USAID through DPK.
- Although DPK has made a good faith effort to comply with the tasks entrusted to it, the actions (or inactions) of the Supreme Court show that the Court itself has never really bought into the modernization proposed.
- The Supreme Court has absolutely no capacity to directly administer USAID funds for administrative, programmatic, or training issues.

RECOMMENDATIONS

- If USAID wishes to continue to work to stabilize and enhance the formal court system, it should substantially reduce its efforts to change the administration of the courts and limit engagement to only projects that the Supreme Court itself requests and is willing to co-fund. Even then, aid should be predicated on implementation of modern management practices, and parceled out only after mutually agreed upon benchmarks have been met.
- Mutually agreed upon projects should be ranked in order of importance and undertaken sequentially, with the most important tackled first. If the first project is completed to mutual satisfaction, then the second-ranked project should be implemented, and so forth. This is perhaps the only way to modernize a stabilized court system.

COMPONENT THREE: LEGAL EDUCATION

INTRODUCTION

Strengthening Afghanistan’s legal education will help the country modernize its formal legal system. Unfortunately, many interviewees noted that the Afghan legal sector suffers from a “brain drain”: Many graduates from law and *Shari’a* faculties do not go into the legal profession but rather take positions in other sectors, such as business or government. To help strengthen legal education in the *Shari’a* and law faculties, DPK stated it would:

- Develop and refine a core curriculum;
- Conduct moot courts;
- Conduct study tours abroad to see secular and Islamic law integrated in a curriculum;
- Provide five scholarships to law professors to attend an LLM program abroad;
- Provide technical assistance on legal English;
- Develop advocacy skills, critical thinking, and legal analysis courses as part of the core curriculum; and
- Develop law libraries in universities outside Kabul.⁸

DPK also established law clinics based on a request from the United States Ambassador in charge of rule of law coordination.

LAW CLINICS

FINDINGS

During the two years of the RLS-F program, DPK succeeded in partially supporting six law clinics at five universities.⁹ However, the level of support provided to these law clinics varied with university and ranged from material support (i.e., computers, office space, furniture) to technical support. For example, at Herat University, which has had a legal clinic since 2007 (established with support from the International Legal Foundation-Afghanistan¹⁰ and Open Society Afghanistan), DPK’s initial assistance focused on material support. Recently, however, DPK has worked with Herat University’s clinic program to develop a street law component.¹¹ In other universities where clinical programs were nonexistent, DPK has helped to partially establish, fund, and staff the clinics.¹²

⁸ See DPK, Afghanistan Rule of Law Stabilization (Formal Component): Draft First Year Annual Work Plan, May 19, 2010 to May 18, 2011, 15-19 (2010); DPK, Afghanistan Rule of Law Stabilization (Formal Component): Draft Option Year Annual Work Plan, May 19, 2011 to May 18, 2012, 15-19, 20-24 (2011).

⁹ These universities are Al Beroni, Balkh, Kabul, Kandahar, and Nangahar. These universities all established one law clinic, except for Kabul, which established two clinics—one at the Shari’a law school and one at the law school.

¹⁰ The International Legal Foundation-Afghanistan (ILF-A)¹⁰ has been working with legal clinics since 2007. Since then, ILF-A has assisted with the establishment of legal clinics at Herat University (2007), Mazar-e Sharif (2009), Jalalabad (2009), and Kabul University (2011). The Afghanistan Independent Bar Association (AIBA) attributes some of the increase in its membership from the opening of the first clinic at Herat University in 2007 and the practical legal skills that a clinic program builds. Between then and 2012, membership in the AIBA has grown from 400 to 1,300 (250 women).

¹¹ Street law focuses on developing educational materials and grassroots programs to educate citizens and students about law, democracy, and human rights. See About Us, STREET LAW, INC., http://www.streetlaw.org/en/about/who_we_are#WhatWeDo (last visited June 15, 2012).

¹² Al Biruni, Balkh, and Kabul University—both the Shari’a law and Law Faculties—received varying degrees of support to establish legal clinics, including material and financial support, locating clinic space, and complying with registration regulations.

As a result of its work with these legal clinics, DPK reports that 427 students are involved in these clinics.¹³ However, interviewees report that not many students have been able to perform practical legal work. Thus, although 427 students may have signed up for the clinics, few have gained practical experience under this project. Interviewees also noted that the clinic only teaches theory at the present time. Due to financial and other constraints, clinic students are more likely to attend seminars on legal drafting or advocacy methods rather than receive practical legal experience for which the clinics were established in the first place.¹⁴ Therefore, while a law clinic is designed to provide hands-on legal experience to law students, such as conducting legal research, drafting legal arguments, and meeting with clients, only a small percentage, if any, of the students participating in the law clinics established by DPK have this experience.

Interviewees also noted that the legal clinics are understaffed. For example, the clinic at the *Shari'a* law faculty at Kabul University has approximately 350 students with only a few professors assisting and no practicing attorneys to mentor the students. By comparison, a prominent U.S. law school commits “17 full-time faculty, 26 graduate fellows, and several adjunct faculty to supervise and teach the 300 J.D. students who enroll in the 23 clinical courses offered by [the] 14 clinics each year.”¹⁵ Although clinical programs in Afghanistan are not as established as clinical programs in other countries, this comparison demonstrates the amount of human it takes to maintain a successful clinical program.

This lack of practical experience can be attributed partly to several administrative reasons. First, lengthy approval processes between DPK headquarters and the field office resulted in significant delays in establishing the legal clinics. In addition, lack of full financial support for the legal clinics (i.e., salaries, transportation costs) hamstrung the ability of the legal clinics to provide the type of practical experiences to which the students aspire. (Note: no local Afghan funding sources have been identified for sustainability). Regardless of these difficulties, several interviewees not associated with the legal clinics recommended that future rule of law programming focus on practical skills development within the law schools. Most of those who recommended practical skills development also suggested that the legal clinics be strengthened. In addition some law faculties have requested the Ministry of Higher Education to include clinic work as part of the normal university learning process for those students who want to participate. This would facilitate GoIRA funding of the program, resulting in the sustainability of these clinics.

CONCLUSIONS

- Although DPK’s work with clinics has resulted partially in the establishment of the only practical avenue for law students to gather critical experience before graduating, more needs to be done to strengthen these clinics so that they actually function. These steps include the recruitment and training of clinical staff, the budgeting for clinics’ finances, and the identification of cases that provide experience to the students. Law schools might seek to partner with another organization, such as the Afghanistan Independent Bar Association (AIBA) to share the technical and administrative burden associated with legal clinics. With few other avenues to gain practical experience, these legal clinics could have the ability to change the complexion of young lawyers in Afghanistan.
- Students appear to be very motivated to undertake clinical work.
- It is unclear how effective these law clinics will be in some universities under their present admittance policies. One interviewee reported that, in his law school, all third and fourth year law students applied and were accepted into the clinical program. In other countries, such as the United

¹³ There appeared to be a disconnect between the monthly reports prepared by DPK about student participation in the clinics and how developed legal clinics actually were and what was actually happening outside Kabul. One interviewee reported being shocked to find out that USAID/Kabul was reporting that a legal clinic at a provincial university was up and running when, in fact, it was not.

¹⁴ Interviewees at one university reported that all 350 third and fourth students in its legal clinic have not yet had practical experience. Because they do not have the funds to hire lawyers to work at the clinic or to provide transportation expenses to the students, the legal clinic has only provided trainings, such as legal drafting, to the clinical students.

¹⁵ See Georgetown Law, Law Center Clinical Program, available at <http://www.law.georgetown.edu/clinics/> (describing for current students Georgetown Law’s clinical program).

States and the United Kingdom, acceptance to a law clinic is based on a student's interest and experience in the subject area offered by the clinic.¹⁶ This approach could be adopted in Afghanistan. If this is “culturally impossible,” then the budgets need to be increased in proportion to the number of students seeking clinical experiences.

- It would seem that DPK staff did not fully understand the purpose of the clinics and did not make a master plan, taking into account all of the factors required for success, such as staffing, lawyers in private practice to mentor the students, and transportation required to get them from the university to the courthouse or to wherever they would need to interview clients.

RECOMMENDATIONS

- Because all persons interviewed found merit in legal clinics as a way to build support for a functional judiciary that the populace could respect, a way to fund the clinics at an appropriate level should be found. A master plan including the real personnel and other costs should be established and include the following:
- Continue to build the capacity of clinic staff. A legal clinic is only as good as the staff that runs it. Any future programming should focus on training the staff of legal clinics—lawyers, administrative staff—on how a law clinic functions. Sufficient financial and material support should be provided to reach this objective.
- The AIBA should be engaged to provide attorneys to work pro bono for the clinics. Afghan defense attorneys are required to provide pro bono legal services for at least three cases a year. If the law can be changed to show that mentoring clinic students could substitute for the pro bono requirement, it would accomplish two things: 1) it would enable students to obtain practical legal experience through a mentor; and 2) it would enable defense attorneys to meet their pro bono requirements.
- Support Afghanistan universities that have petitioned the Ministry of Higher Education to officially sanction legal clinics as an important part of the law school learning experience.
- Legal clinic development would seem to be an appropriate area for a USAID grant to an interested law school in the United States which has international programs and successfully runs clinics, rather than tie it into a much larger judicial reform project.
- Provide other avenues for students to gain practical experience. Legal clinics are only one method for training the next generation of lawyers. Other methods laws schools could utilize include clerkships, law reviews, and moot court. Any method that enables law students and young lawyers to gain practical skills will bolster their ability to represent clients and build the legal profession.

CORE CURRICULUM

FINDINGS

Another task of DPK was to develop a uniform core curriculum for law schools.¹⁷ During the RLS-F two-year program, DPK worked with law and shari'a law faculties to develop core curriculums for each faculty. To develop these core curricula, DPK held a conference that brought together professors and administrators from various universities to agree on common core subjects. Through short-term technical advisors, DPK assisted with the development of this uniform core curriculum that included internationally recognized legal courses, such as trial advocacy and defense techniques, and, as one interviewee noted, removed “too many courses that were not related to law”. For example, the *Shari'a* law curriculum no

¹⁶ See E-mail from Sara Pollock Hoverter, Senior Fellow & Adjunct Professor, Harrison Institute for Public Policy, Georgetown University, to author (June 13, 2012, 20:43 AFT) (on file with author) (elaborating on the selection criteria for clinical programs at Georgetown University). At Georgetown University, each clinic has its own selection process although a few use a lottery system. Clinics that use a competitive selection process use certain criteria to select students, including prior experience, writing ability, and interest in the clinic's focus area.

¹⁷ See USAID, Spotlight: A Unified Curriculum for Legal Education [hereinafter Unified Curriculum] (on file with author).

longer includes eight semesters of Arabic language; instead, Arabic language has been reduced to six semesters and new classes, such as business law and international law, have been added.

As a result of DPK's work, all nine of Afghanistan's *Shari'a* public law schools have adopted a uniform curriculum of 74 courses, as well as designing syllabi, with DPK's help, that list the texts and scope of these core courses.¹⁸ However, this core curriculum is only being implemented for the first year law students in most universities. It is interesting to note that although DPK stated that the core curriculum is not in use yet at any *Shari'a* law faculty, professors, students, and administrators at one university all indicated that their university started to use the uniform core curriculum in the Spring 2012 semester. Those first, second, and third year students using this curriculum rave about it. Fourth year students are ineligible to take this new curriculum; however, fourth year students are asking to take the new courses.¹⁹

The law faculties have also agreed on a new, unified curriculum. All eight of Afghanistan's law faculties have approved a uniform curriculum that emphasizes practical legal education, emphasizing subjects such as research methods, legal drafting, and forensics, while keeping traditional theoretical courses.²⁰ However, unlike some of the *Shari'a* law schools which have begun to implement the new curriculum, the law schools are waiting for approval from the Ministry of Higher Education. Once approved, this core curriculum will be used in all the public law schools throughout the country. It is unclear whether the approximately 20 private law schools will be required by the Ministry of Higher Education to use this core curriculum. Part of the new curriculum for both the *Shari'a* and law faculties includes an English course for students so that they can learn "legal English" to assist with legal research and participation in such events as the Jessup Moot Court competitions.

In addition to developing the core curricula, DPK provided training to universities on modern teaching methods. However, some interviewees indicated that professors, mainly the older ones, are resisting the change to the new pedagogical methods. They indicated that approximately only 30 to 50 percent of the professors trained in modern teaching techniques are using these new teaching methods.

CONCLUSIONS

- It appears that DPK's goal of developing a uniform core curriculum has gained traction in the Afghanistan higher education system. If the Ministry of Higher Education were to make the core curriculum a requirement for all public and private universities, USAID will have made a significant contribution in helping Afghanistan develop a cadre of lawyers who have a solid foundation in the basic subjects a lawyer must know.
- The professors utilizing the new teaching methods, and their students, indicate that these new techniques enhance learning.

RECOMMENDATIONS

- The initiation of a uniform core curriculum will necessitate the development of professors to teach new courses. Emphasis should be placed on training professors, both in the content of the new courses as well as on new teaching techniques. The development of a training course for teachers would enable Afghan professors to learn new techniques, but monitoring them in the classroom would be crucial to know if the effort results in real changes.

JESSUP MOOT COURT

FINDINGS

Since its inception in 2010, DPK's Jessup moot court activity has provided law students with practical experience. In just two years, Afghanistan's entrance into the Philip C. Jessup International Law Moot

¹⁸ See USAID, Hearings, *supra* note 8 (noting that DPK published and distributed to each *Shari'a* law school a handbook with the course syllabi).

¹⁹ Interviewees noted that although fourth years are ineligible to take the new curriculum, the new legal clinic at *Shari'a* law school is designed for them.

²⁰ See *id.* (discussing a September 2011 conference where a unified core curriculum was approved by these eight law schools).

Court Competition²¹ has gone very well. In 2010, one of Afghanistan's team members was recognized as one of the top 75 Best Oralists from among 600 competitors.²² In 2012, the Balkh University Jessup team, which represented Afghanistan at the international competition in Washington, DC, beat Sri Lanka and lost to eventual champions Russia in the preliminary rounds. This was the best showing ever by an Afghanistan team in the Jessup competition.²³ In addition, former Jessup participants have received scholarships to obtain LL.M.s at American universities, including the University of Washington.²⁴

A total of 76 students have participated in the Jessup Moot Court Competition since DPK started it in 2010. A positive trend: Balkh University, which fielded one team in the initial competition, fielded eight in the last competition (Afghanistan's 2012 representative was from Balkh University). Students who participate in the Jessup program are successful in winning scholarships to obtain a Masters of Laws (LL.M.) through at United States universities. Interviewees noted that the students that participate in the Jessup moot court are the best students from Afghanistan that these U.S. universities have accepted. One university representative reported that of the approximately 100 Afghans that that university has accepted into its LL.M. program over the past five years, the top three have come out of the Jessup Moot Court teams over the past two years.

However, there have been a few, minor issues with the Jessup moot court program. Interviewees reported that inter-university rivalries and jealousies put a damper on the last Afghanistan-wide competition. In addition, a few interviewees stated that when DPK advanced the date for applying for visas for student competitors, several were eliminated because they were operating on information previously given by DPK.

CONCLUSIONS

- Afghan law students and professors are very motivated to participate in moot court programs.
- Moot courts provide students with the practical experience of what it means to be a lawyer instead of the theory and rote learning of the Afghan classroom. Coupled with a unified curriculum and clinical program (see above), Afghanistan's law schools are moving in the direction of providing its law students with necessary skills for becoming effective attorneys, but need continued, sustained support from experts in the field.

RECOMMENDATIONS

- Strengthen the Jessup Moot Court competition. One way to do this is to develop university-based moot court competitions in the lead-up to the Jessup competition. Build competition within the university so that students have to "win" their spots on to the Jessup team.
- This is another area where a USAID grant could be given to an interested university in the United States that has expertise in the Jessup Moot Courts so that the universities in Afghan fully institutionalize the program. However, a grant to any university that participates in the moot court competition in Afghanistan would create jealousies and friction with the other universities there.
- Work with the universities so that they focus on trial advocacy in the classroom. This can be done by conducting trial advocacy classes (i.e., criminal, civil) that allow students to practice courtroom skills throughout a semester. One suggestion is to examine what the National Institute for Trial Advocacy (NITA) has done in law schools in the U.S. NITA helps schools to design trial advocacy programs, train professors in teaching trial advocacy, and develops materials to be used in trial advocacy programs.²⁵

²¹ The Jessup competition is the largest moot court competition in the world, with participants from over 500 law schools and 80 countries. See Philip C. Jessup International Law Moot Court Competition, available at <http://www.ilsa.org/jessuphome>.

²² See USAID, Spotlight: Jessup Inspires Next Generation of Afghan Lawyers [hereinafter Jessup (on file with author)].

²³ See DPK, Monthly Report: Afghanistan Rule of Law Stabilization Program: Formal Component, 13-14 (March 2012) (discussing the success of the Balkh University Jessup team).

²⁴ See *id.*

²⁵ See National Institute for Trial Advocacy, available at <http://www.nita.org>.

STUDY MISSIONS

FINDINGS

As part of its efforts to build the capacity of the law and *Shari'a* law faculties, DPK conducted study tours for professors. According to interviewees, study tours were conducted to Egypt, to learn new teaching methods, up-date curriculum materials, and build relationships with Egyptian legal clinics, and Turkey, to see modern teaching practices in action.

Over the course of the program, DPK conducted three study tours: 1) to Egypt to visit Al Shams and Cairo universities (January 2011) for eight members of the *Shari'a* law faculties of Al Biruni, Balkh, Heart, Kabul, Kandahar, Khost, Nangarhar, and Takhar universities; 2) to Turkey to visit Bilgi, Dogus, Galatasaray, Istanbul, and Marmara universities (June 2011) for seven members from Law Faculties of Al Biruni, Balkh, Heart, Kabul, Khost, Kundoz, and Nangahar; and 3) to Egypt to visit Al Azhar and Cairo universities (September 2011) for four members from the *Shari'a* law faculties of Al Biruni, Kabul, and Kandahar universities.

The study tours to Egypt and Turkey were expected to lead to memoranda of understanding (MOU) about future cooperation between Afghan and Egyptian and Turkish universities, specifically concerning exchanging professors and students, providing trainings and scholarships, conducting collaborative research, and providing material support (i.e., books).²⁶ The MOU with Dogus University (Turkey) is completely executed; the one with Al Azhar University (Egypt) has been approved by the Ministry of Higher Education and is currently pending before the Ministry of Foreign Affairs. MOUs with Istanbul and Cairo universities have not yet been signed by the host countries. Books have been provided and Dogus University offered to host a study tour for women professors but the women professors could not attend at this time due to timing and difficulty of traveling abroad. DPK plans to re-schedule that trip if they have additional programs after July 15, 2012.

The January-February 2011 Egyptian study tour resulted in a Memorandum of Understanding (MOU) that will enable 75 *Shari'a* law students from around Afghanistan to receive scholarships to attend Al-Ahzar University in Egypt. In addition, Egypt is to send professors to Kabul University's *Shari'a* law faculty in its graduate program.²⁷ A second study tour to Egypt for the deans of Kabul, Herat, and Kandahar *Shari'a* law faculties, as well as one professor from Kabul University's *Shari'a* law faculty was scheduled to take place in late June 2012. The 2011 Afghan participants obtained information about the core curriculum for *Shari'a* faculties in Egypt, which served as a model for Afghanistan's adoption of a modern core *Shari'a* curriculum consistent with that used in modern Muslim countries, which will make study tours and exchange programs easier between Afghanistan and other Muslim countries.

CONCLUSIONS

- DPK met its Task of completing study tours under this component. The fact that MOUs were drafted between Afghan beneficiaries and their counterparts speaks to the seriousness of Afghans' desires to modernize Afghanistan's law schools.

RECOMMENDATIONS

- Encourage the implementation of the MOUs and protocols between the Afghan universities and their foreign counterparts. Too often in Afghanistan relationships are built between Afghans and foreign counterparts during a study tour only to have the relationship collapse upon a return to Afghanistan. To prevent this, activities should be designed to take advantage of the relationships that are already built, and the MOUs and the protocols that have been drafted as a result.

²⁶ See DPK, Monthly Report: Afghanistan Rule of Law Stabilization Program: Formal Component, 16 (August 2011) (discussing the signing of the protocols).

²⁷ See DPK, Monthly Report: Afghanistan Rule of Law Stabilization Program: Formal Component, 15 (October 2011) (describing the follow-up meeting of study tour participants).

LIBRARIES, COMPUTER ROOMS AND RESEARCH CENTERS

FINDINGS

Part of DPK's mandate under this component was supporting the development of provincial law libraries through the material support in the form of books, computers labs, and other research centers, and trainings for librarians. Under its program, DPK continued the work of the previous contractor and provided books for law libraries at five universities. In addition, DPK organized a study tour for law librarians to Islamabad to see how law libraries in Pakistan function. In addition, DPK held training courses for law librarians.

Interviewees noted that, at least one university law library, the DPK-donated books still sit in boxes on the floor. In addition, the evaluation team noted that the computer rooms established by DPK are often kept locked and unavailable to students because no staff or interns are hired by the universities to keep them open. The same is true of the research centers.

CONCLUSIONS

- There have been no objective follow-up monitoring of the use of these donations to see if students and faculty have access to them, how often they are used, and if the books donated by USAID are those most sought by students and faculty.

RECOMMENDATION

- There are standard library user surveys that show how many patrons use the facilities, the hours most patrons wish to use them, as well as the most used and needed resources. These should be instituted before additional training or donations are given.

COMPONENT FOUR: PUBLIC LEGAL OUTREACH

INTRODUCTION

Through its public legal outreach component, DPK aimed to “instill justice and pride in the Afghan justice system.”²⁸ To reach this goal, DPK sought to develop radio and television campaigns with partner organizations—namely, the Supreme Court, Ministry of Justice (MOJ), and Afghanistan Independent Human Rights Commission (AIHRC)—to educate and motivate citizens to utilize the formal justice system. In addition, DPK indicated that it would publish two million publications that could be distributed through legal outreach campaigns. Finally, DPK stated it would work with its Afghan partner ministries to develop their capacity to produce and disseminate public outreach campaigns.

FINDINGS

DPK’s public outreach work with its three Afghan partners has been varied. USAID stopped working with the AIHRC after President Karzai failed to appoint new commissioners to the AIRHC following the dismissal of three commissioners in late 2011. DPK implemented some projects with the Supreme Court, such as financing the building of a radio studio and a TV studio and teaching Supreme Court employees how to produce and write radio and TV scripts. However, more critical activities, such as disseminating public service announcements (PSAs) and other messages, were not carried out due to lack of political will within the Supreme Court. For example, a large percentage of interviewees who should have known the situation, adamantly stated incorrectly that the Supreme Court/Supreme Judicial Council did not fire or discipline judges for corrupt acts. One way to let the public know that the Supreme Court took some stands against corruption, would have been to highly publicize such actions.

Results of work with the Ministry of Justice and the Ministry of Education appear to be more positive, however. DPK was able to use the good will of both of these ministries to disseminate comic books and children’s workbooks on critical rule of law issues. The comic book series focuses on key legal rights topics, including access to justice, children’s rights, women’s rights, anticorruption, and defendant’s rights. Interviewees familiar with the distribution of comic books in the rural areas indicated that these comic books were distributed and placed in primary and secondary schools in the districts, with the cooperation of the Ministry of Education.

Outreach efforts with the Supreme Court and the MOJ have been mostly in print form. The Supreme Court publishes the *Qaza*, a monthly magazine on legal issues; the *Mizan*, published every 10 days, which reports on the day-to-day activities of the judiciary and statistics; and the Supreme Court Bulletin, which is published bimonthly in English (started by DPK) and Dari, and focuses on counter-narcotics, anticorruption, and administrative reforms. The Supreme Court now is able to publish these periodicals with limited technical assistance from DPK staff. These magazines have very limited circulations and are tailored to the legal community, not the public at large. The MOJ publishes *Agai Huqooqi*, a biweekly newsletter, with financial support from DPK. Although the MOJ does not have the ability to produce radio or TV programming, DPK works through its partner organization, Equal Access Afghanistan, to develop TV and radio content with the MOJ.

There is only anecdotal evidence that these activities have generated any respect for the formal court system. No serious monitoring and evaluation of the effectiveness of this component has been done.

²⁸ DPK, Afghanistan Rule of Law Stabilization (Formal Component): Draft First Year Annual Work Plan, May 19, 2010 to May 18, 2011, 2 (2010).

CONCLUSIONS

- The Supreme Court's reluctance to produce PSAs can be partially attributed to the mindset of its leadership. At the lower court levels, many of the judges' spent their formative years under the Taliban regime. As such, their way of doing business is in direct conflict with modern rule of law public information techniques. Targeting the youth, through message-appropriate print, radio, and television media, as a means to foment generational change, is essential.
- The public legal outreach activity seemed to be an afterthought to the rest of DPK's program. It is as if someone in USAID realized, late in the program development process, that there was no element of public outreach to a program designed to improve the efficiency and effectiveness of the judiciary. Whatever the case may be, DPK's work plan, which, only measures outputs, not the effectiveness of these outreach campaigns, is evidence of this perception. The results center only on the number of publications produced and the number of radio and television programs produced and broadcast.
- None of the print materials or radio and television programs target the main goal in USAID's Statement of Work or DPK's workplan: To create interest and pride in the Afghan judicial system. Instead, the materials present citizens with their legal rights and discuss how they can access the formal justice system, creating a demand on the system that the courts may not wish or be able to fulfill.

RECOMMENDATIONS

- Any public outreach activity in Afghanistan should be implemented only if there is an appropriate mechanism in place to measure effectiveness. One way to measure effectiveness of radio or television programs would be to establish listening groups. Listening groups bring together citizens at set times (e.g., weekly or monthly) in a community to hear a radio program and debate and discuss the program's messages in a controlled environment.
- Mass media campaigns require close monitoring and evaluation. Surveys, focus or listening groups, and other studies could include questions designed to discover what percentage of the population have heard or seen the radio and TV programs, and their reaction to them.
- USAID should work with the Ministry of Education to develop a high school-level course focused on civic education. This would complement the work DPK is doing at the university level. Many interviewees stated that judicial reform programming should focus on Afghan youth. By engaging youth in high school, rule of law messages would be engrained in the next generation of Afghan lawyers and judges and instill youth with the roles and responsibilities of the justice sector in Afghanistan.

CONCLUSION

DPK's rule of law program aimed to improve the effectiveness of the formal justice sector along two tracks. One track focused on changing the attitudes and practices of judges and court personnel and modernizing an established formal justice system. The second track aimed to educate Afghan youth (i.e., law students and young lawyers) on modern legal practices and anticorruption issues, give them practical experience, and modernize the legal education sector. Overall, the evaluation team felt that DPK was effective in reaching its programming goals only when program beneficiaries bought into the program. When buy-in was not explicit, results of DPK's program were mixed at best. Going forward, rule of law programs should focus on Afghan youth, as this group demonstrates enthusiasm for participating in and implementing the lessons learned from DPK's program.

CROSS-CUTTING ISSUES

During the two years of this project, there were five key issues that adversely affected all project components: (1) the slow establishment of program; (2) administrative agility; (3) fragile monitoring and evaluation systems; (4) USAID issuing the contract for only one year, with a one-year option; and (5) security issues affecting how and when training could be conducted. These cross-cutting issues affected not only how much the project could achieve in the time available, but also how well the project could answer the "so what" questions about the value of its efforts.

While the transition from Checchi to DPK should have been seamless, there was a hiatus of several months after the close-out of the previous project and before DPK was awarded its contract, and there were more than five months at the beginning of project implementation when the office and living quarters were not available. As a consequence, staff needed to work in a secured hotel. This not only brought bad publicity but also limited the prompt and full development of the programs.

In addition, there were key personnel changes in the early stages of the project that slowed the project momentum. Even after the staffing structure stabilized, the Chief of Party and the project's main international staff did not approach their Afghan counterparts informally (e.g., over tea) and try to gain their confidence. Several of these counterparts resent foreigners telling them how to set up their court system. Without mutual respect and understanding, which is best established through informal dialogues, few proposals have a chance of implementation. In these efforts, intercultural understanding can be as important as the program's substance.

Time after time, DPK staff members remarked on and questioned the slowness of responses to requests for funds or materials. Interviewees noted that this issue stemmed from DPK headquarters in San Francisco rather than its Kabul office. Some cited that periods as long as six months elapsed between their requests and project responses.

During the life of the project, there was little monitoring and evaluation. Almost all of the reporting of goal achievement has been related to outputs, such as the number of judges trained or the number of legal clinics established in universities. There has been little attempt to determine if, as a result of the trainings, judges have become more ethical in their day-to-day duties, if they consistently use the material taught to make their findings, or whether they treat all parties impartially. Additionally, the number of clinics established in law schools is important only to the extent that clinics train students through hands-on experiences, not how many signed up or took theoretical classes. Without concrete answers to what the program really changed, it is difficult to know whether future investments would be a wise use of USAID resources.

Future rule of law projects that target the formal justice sector should include indicators that: track progress from multiple data sources (e.g., surveys, document reviews, or administrative data); are flexible; include group indicators for better tracking; measure performance; include vulnerable groups; and track changes over time. With this in mind, sample indicators USAID could consider for a formal rule of law program include:

- Decrease in the number of victims having to pay an unofficial fee to have their complaints proceed to trial;
- Increase in the public’s perception that citizens are being treated fairly by the courts, regardless of income, ethnicity, gender, or religion;
- Increase in the public’s perception that cases are being heard in a timely fashion;
- Increase in the public’s perception that judges are free to make decisions free from direct or indirect interference;
- Increase in the ability of the courts to effectively administer its duties;
- Increase in the ability of newly graduated law students to effectively represent clinics; and,
- Increase in the ability of law schools to prepare its students to practice law.²⁹

By awarding a one-year contract with a one-year option for such an extensive project, USAID did not give DPK much operating certainty. The evaluation team was in the field three weeks before project close-out. At this point, USAID had not determined if there would be a third-year extension. DPK staff, both host-country national and expatriate personnel, were worried as much about their status after July 15 as finishing up whatever could be successfully wrapped up before then. In fact, some key staff had already given notice.

This lack of operating certainty is especially true for USAID staff members who are rotated in and out for short stints: one person might design the project, another person might negotiate the contract, and yet another might be responsible for deciding on the continuation of the project. This situation can lead to a lack of “ownership” by USAID personnel who inherit a project with which they have little knowledge or experience.

The need to gather judges in one venue for training was often hampered by not being able to travel, and the decisions about which cities training could be conducted in, was always subject to the security concerns of the moment. The same logistics concern was true for working with the universities and courts in areas outside Kabul.

²⁹ For a further discussion of recent developments on monitoring rule of law programs, see United Nations, Rule of Law Indicators: Implementation Guide and Project Tools (1st ed., 2011).

ANNEX A: PERSONS INTERVIEWED

AMERICAN EMBASSY

Lesslie C. Viguerie, Senior Director of the Interagency Rule of Law Office

USAID

Katherine Dow

Steven Kelly, Senior Rule of Law Advisor

Gloria Jean Garland, Senior Rule of Law Advisor

Amy Bruins, Field Program Officer, RC-N

Keith Wood, Field Program Officer, RC-N

Kevin Griffiths, Field Program Officer, RC-N

Arlene Gella, Field Program Officer, RC-E

JUSTICE SECTOR SUPPORT PROGRAM

Donald M. Cinnamond, Chief of Team, DOS/INL Contractor PAE

TETRATECH-DPK

Robert Underwood, Director of Afghanistan and Iraq Programs

Timothy King, Chief of Party, Afghanistan

Shakila Faqeer, Senior Communications Advisor

Linda Wood, Senior Judicial Training Advisor

Ahmed Shaker Morid, Court Administration Systems Advisor

Dan Blumhagen, International Development Specialist

Obaidullah Najimi, Court Organizational Development Specialist

Safiullah Zahid, Facilities Advisor

Asadullah Omer, Judicial Planning & Analysis Advisor

SUPREME COURT

Mohammad Osman, Chief of Research and Studies

Abdul Wakeel Omari, Head of Publication Department

Qazawatpoh Amrullah Abdali, Chief of General Detection of Supreme Court

Dr. Atayee, Head of Judicial Training Center

Aziz Ahmad, Clerk, Balkh Provincial Court

Judge Nelaab, Head of Children's Court, Balkh Province

UNIVERSITIES

Mohammad Salim, Deputy Dean, Kabul University, Shari'a Faculty

Saeed Lutfurahman, Legal Clinic Director, Kabul University, Shari'a Faculty

Abdul Iqrar, Dean of the Law Faculty, Kabul University

Pohnyar M. Haroon, Deputy Dean of Law Faculty, Kabul University

Gholamshah Adel, Dean of Law Faculty, Herat University

Mirwais Ayoubi, Clinic Director, Herat University

Shohabudin Saqeb, Clinic Director, Alberoney University

Abdul Alem Khoshal, Vice Dean of Shari'a School, Alberoney University

Noorallah Mohseni, Dean of Law Faculty, Balkh University

Naqebulla Saqeb, Dean of Law faculty, Ningarhar University

Abdul Mohammad Aimaq, Dean of the Law Faculty, Kunduz University

Mohammad Mandozai, Dean of the Law Faculty, Khost University

Mir Hamed, Chancellor, Kunar University

Noor Ahmad Shahim, Dean of the Law Faculty, Paktia University

Abdul Basser, Dean of the Law Faculty, Takhar University

Two Focus Groups of students from the Law and Sharia Faculties at Kabul University (5 females, 7 males)

AFGHANISTAN AND OTHER ORGANIZATIONS WORKING IN THE JUSTICE SECTOR

Dr. Abdul Raof Herawi, Ministry of Justice, Public Outreach area

Dr. Azizulla Amir, Ministry of Higher Education, Director of Foreign & Cultural Affairs

Mohammad Zarif Alam, Head of Training, National Legal Training Center

Rohullah Qarizada, President, Afghanistan Independent Bar Association

Thahmad Rasinaderi, Member Board of Directors, Afghanistan Independent Bar Association

Mir Ahmad Joyenda, Deputy Director, Afghanistan Research and Evaluation Unit (AREU)

Renee Carrico, Chief of Party, International Development Law Organization

Sayed Hameed Zia, Head, Max Plank Institute

Fraidoon Haidary, Head, International Institute of Comparative Studies

Anisa Rasooli, Afghan Women Judges' Association, and Appellate Judge

Abdul Basir Faizi, Open Society Foundation, Rule of Law Officer

Dr. Jamili Anwar, Country Director, Equal Access

Norbert Koster, Head of Rule of Law Component, EUPOL

Cornelia Schneider, Head of Rule of Law Reform, EUPOL

Jennifer Round, Afghanistan Legal Education Project, Stanford Law School, American University of Afghanistan

Mark Hough, In-Country Administrator, Legal Education Support Program Afghanistan, University of Washington

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ANNEX C: EVALUATION INTERVIEW QUESTIONS

GENERAL QUESTIONS TO BE ASKED OF ALL INTERVIEWEES

1. What is the judiciary ambiance in which the USAID/ RLS-Formal project is working?
2. How many donor organizations are working in Rule of Law projects in Afghanistan? Which are the most important?
3. How is cooperation between these international donor organizations determined as to who undertakes which subject areas?
4. What is “donor fratricide”? What might be some examples?
5. How do Afghans in the judiciary react to a plethora of international donor assistance?
6. What percentage of the court system budget in Afghanistan is currently USA or other donor financed? What is happening within Afghanistan to reduce significantly or eliminate this reliance on outside resources?

SPECIFIC QUESTIONS FOR JUDICIAL IMPROVEMENT COMPONENT

1. Is entrance to the Stage program based solely on merit? How is merit judged, by exam scores, by recommendations from professors or others, a combination of factors?
2. How many persons enter the Stage program and how many complete the course?
3. Does the number of female Stage participants reflect the number of women enrolled in Afghanistan law schools?
4. Are the cultural norms against women in judiciary positions easing?
5. What factors mitigate against admitting women to the Stage program?
6. What motivates applicants for judgeship positions? Pay? Prestige? Steady Income?
7. Do Stage graduates take positions in the courts no matter where they might be assigned?
8. How are Continuing Education Courses developed?
9. How are judges chosen to participate in CLE courses?
10. Have judges applied the information imparted in their daily judicial duties? How has this been determined and what are the results?
11. What specifically have been the results of training on Judicial Ethics? Have judges been sanctioned for violations of judicial ethics, and if so, in how many cases, and what kinds of sanctions have been imposed?

SPECIFIC QUESTIONS FOR COURT MANAGEMENT COMPONENT

1. Have the Case Management reforms been completed and accepted by the Supreme Court?
2. Have they been rolled out to all of the courts in Afghanistan?
3. What has been the reaction of judges and court “clerks” who need to implement them?

4. What kind of data is being collected to show that the reforms are being implemented?
5. What specific administrative improvements have been proposed to the Supreme Court during this project? Which of them have been approved in whole or in part? Which have been rejected?
6. Specifically, what is occurring with the Court Management Professionals initiative?
7. Are court personnel generally chosen on merit through position advertisement?
8. Do court personnel serve at the pleasure of the “Chief Judge” or “President” of the court or do they have job tenure?
9. Are periodic performance evaluations made on court personnel?
10. Has the Supreme Court budgeted to carry on the court reform activities should USAID funds not be available. In other words, what is the real “buy-in” to the suggested reforms?

SPECIFIC QUESTIONS FOR LEGAL EDUCATION COMPONENT

1. What activities have been undertaken to train law professors to use “modern teaching methodologies”?
2. What percentage of law professors in Afghanistan has received this training?
3. What evidence exists to show that the training is being implemented on a regular, sustained basis in the law faculties?
4. What has been the reaction of law students to these changes?
5. Are grades given for merit or, as in some countries, for personal or financial considerations?
6. Has the development of Moot Courts improved the ability of law school graduates to practice law in Afghan courts? If so, what evidence exists to indicate this?
7. Has instituting Legal Clinics improved the ability of law school graduate to practice law in Afghan courts? If so, what evidence exists to indicate this?
8. What activities have been undertaken to refine core curricula and texts?
9. How have these refinements been accepted by the faculties of Sharia and Law and Political Science faculties?
10. What evidence exists to indicate that these curricula and text changes are being implemented?
11. What has been the reaction of law and political science students to these changes and how has the reaction been measured?

SPECIFIC QUESTIONS FOR THE PUBLIC LEGAL OUTREACH COMPONENT

1. What activities have been undertaken to assist the Supreme Court, the Ministry of Justice, the Afghanistan Independent Human Rights Commission in conducting public legal outreach?
2. Has there been any resistance on the part of these institutions to conducting outreach? If so, what is the nature of this resistance? How did the program deal with it?
3. If the Supreme Court, the Ministry of Justice, the Afghanistan Independent Human Rights Commission have conducted outreach activities, who have been the main beneficiaries of these activities? What topics have the outreach activities addressed?
4. What has been the response of the public to these activities?

5. Does the Afghan public have a greater awareness of its legal rights and responsibilities? How has the project measured this greater awareness? Might one segment of the public exhibit a greater awareness than other segments?
6. How does the public view the state justice sector? Have these views changed since the start of the RLS-F program? If so, what aspects of the program contributed to this shift?

ANNEX D: STATEMENT OF WORK

C.1.: Purpose of the Evaluations:

The purpose of the two evaluations is to assess the effectiveness, achievements and sustainability of both USAID's Rule of Law Stabilization Program – Formal Justice Sector and the Afghanistan Parliamentary Assistance Program and to make recommendations to increase its impact and effectiveness. The Rule of Law program is implemented by Tetra Tech DPK (DPK) and the Afghanistan Parliamentary Assistance Program is implemented by the State University of New York (SUNY).

The primary audience for the assessments is USAID/Afghanistan's Democracy and Governance (DG) Office and USAID/Afghanistan's Front Office.

The results of the first evaluation will assist USAID in identifying any adjustments or mid-course corrections to the program in the case of the Rule of Law Program prior to its May 2012 end date, as well as those areas of the program that should be incorporated into or eliminated from any follow-on program.

The second evaluation should assess whether and how APAP has contributed to the political and institutional development of the Afghan parliament. The evaluation will focus on programming undertaken since 2004 and is also expected to provide analysis and recommendations that will assist USAID in developing future parliamentary support initiatives in Afghanistan.

C.2. First Evaluation: Rule of Law Stabilization Program – Formal Justice Sector:

I. Background:

Prior USAID Justice Initiatives:

In 2004, USAID launched the Afghanistan Rule of Law Project (ARoLP) implemented by Checchi and Company consulting. Its principal partner was the Supreme Court of Afghanistan; other partners included the Ministry of Justice (principally the Taqnin and the Hoqooq), Kabul University faculties of Law and Sharia, other law faculties in the provinces, and local NGOs. Through this program, USAID assisted the Supreme Court in improving institutional management capabilities (personnel management, financial management and budgeting, data collection from lower courts, and strategic planning), and supported the development of the Afghan Court Administration System (ACAS). In addition, USAID trained both incoming judicial candidates as well as sitting judges, worked to develop core curricula for the faculties of Law and Sharia, provided training to law faculty members, and sponsored study tours for Afghan faculty to the US and India.

Other assistance under the ARoLP included training for the Ministry of Justice's legislative drafting unit, the Taqnin, as well as the National Assembly and various ministries. USAID educated Afghans about their basic legal rights through a nationwide public outreach campaign utilizing television and radio dramas, comic books, bumper stickers, and pamphlets produced and distributed in Dari and Pashto. In the commercial sector, USAID provided a Commercial Law Seminar Series for government officials and assisted various ministries in drafting commercial laws.

Regarding women's issues, USAID has promoted awareness of women's rights through dialogue and education among Afghan religious leaders about the rights of women under Islam. The program produced televised legal rights spots focusing on women's rights, and held 19 roundtables and public discussions on women's rights which were broadcast nationally.

Current Rule of Law Stabilization – Formal Component Program:

The RLS-F program supports Assistance Objective 1: Improved performance and accountability of governance, IR 1.1: Increased public confidence in the Rule of Law System, and focuses on two objectives: (1) Developing the capacity of the judiciary and the law schools, and (2) raising public awareness and encouraging the citizens of Afghanistan to resolve their disputes through the formal justice system. The program also supports two of the four pillars of the US Government’s Rule of Law Strategy for Afghanistan:

Pillar 1: Tackle the pervasive culture of impunity and improve and expand access to the state justice sector, by increasing capacity and reducing corruption in the justice sector institutions.

Pillar 4: Build the leadership capacity of the Afghan Government’s justice sector, and civil society generally.

The program supports Pillar 1 by developing the capacity of the judiciary and the Faculties of Law and Shari’a, and Pillar 4 by increasing public legal outreach and raising public legal awareness through strategic communication.

The program has four primary components:

1. The judiciary
2. Court management
3. Legal education
4. Public legal outreach

Component 1 (judiciary) supports both initial training through a two-year “stage” program for new judges and continuing legal education for sitting judges, which includes ethics and programs to encourage women judges.

Component 2 (court management) focuses on extending the Afghanistan Court Administration System (ACAS), on developing the Supreme Court’s administrative capacities, and developing a cadre of court management professionals.

Component 3 (legal education) supports development of the capacity of the Shari’a and Law and Political Science faculties through refining core curricula and texts, developing practical applications such as legal clinics and moot courts, and training in teaching methodologies for law professors.

Component 4 (public legal outreach) assists the Supreme Court, Ministry of Justice, and Afghan Independent Human Rights Commission in conducting public legal outreach. This includes development and dissemination of print publications and radio and television broadcasts on legal topics, including women’s rights.

The development hypothesis for this program assumes that improved capacity of judges, administrative support systems, and law faculties will result in the delivery of better-quality justice services, which, along with increased citizen awareness of legal rights and processes, will result in turn in greater public confidence in the state justice system and in rule of law. The results framework reflecting this hypothesis is attached.

Relationship to Mission Strategy:

Strengthening rule of law is a high priority for and an integral part of U.S. assistance work in Afghanistan. Under the US Government’s Post Performance Management Plan for 2011-2015, enhancing Afghan rule of law is a principal objective. “The principal focus of the U.S. rule of law effort is to reverse the public perception of GIRoA as weak or predatory by helping the Afghan government and local communities develop responsive and predictable dispute resolution mechanisms that offer an alternative to the Taliban shadow justice system. Assistance will be provided in support of Afghan efforts to strengthen the formal

state justice system, stabilize the traditional justice system, and build a safe, secure, and humane civilian corrections system.”

II. Other USAID, USG and other Donor Programs:

Rule of law assistance in Afghanistan is a complex web of programs and support from a large variety of international actors. The United States is the largest single nation contributor to these efforts. USAID’s Rule of Law Stabilization – Informal Component works with the traditional (informal) justice sector to promote closer ties with the formal justice system and a better understanding of Afghan, Sharia and international human rights law on the part of village elders and others involved in dispute resolution.

Other USG-funded programs working on rule of law in Afghanistan include the International Narcotics and Law Enforcement Bureau’s (INL) Justice Sector Support Program (JSSP), working with the Attorney General’s Office, the Ministry of Justice, and other criminal justice GIROA institutions to develop capacity, and Corrections System Support Program (CSSP), working with the Central prison Directorate to build safe, secure and human prisons.

International actors include the United Nations (UNAMA, UNDP, UNODC, UNOPS), with bilateral contributions coming from the United Kingdom, Japan, Canada, Italy, Germany and France. A Justice and Human Rights in Afghanistan Project (JHRA) managed by the UNDP is funded by the European Union, Canada, Norway and Switzerland, delivering a range of services at the District level.

Development Challenges:

Afghanistan remains a highly challenging and complex environment for rule of law development. The limited infrastructure, layered and interrelated formal and informal justice systems, booming narco-economy and deteriorating security situation create an environment in dire need of rule of law. Those same factors, however, create a complex and problematic situation for the implementation and sustainability of reform. In particular, outside of Kabul, lack of infrastructure, security concerns and seasonal travel uncertainty often contribute to delays and difficulties with program implementation and in some cases limit or dictate the extent of the intervention. Rampant corruption and a public that remains highly skeptical of the state justice system compound the situation.

The rule of law donor and implementer community is significant both in terms of size and influence. This presents a complex and dynamic working environment requiring devotion of considerable effort to coordinate on an ongoing basis. Different approaches by military and civilian actors and by bilateral and multilateral donors to addressing rule of law concerns present challenges in coordinating efforts. Uncertainty surrounding the upcoming transition from donor-led to Afghan-led efforts in 2014 further complicates development planning in the justice sector.

III. Objectives of the Evaluation:

This evaluation will assist the USAID mission in determining which aspects of the RLS-F program have been effective, which have not, and the underlying reasons why. The results of the evaluation will be used to guide current and future activities in developing the justice sector and promoting greater respect for the rule of law.

The objectives of the evaluation are as follows:

1. Evaluate the impact of the RLS-F program, identifying those aspects that have been most effective and the reasons why, as well as those aspects that have been least effective and the reasons why
2. Evaluate the sustainability of the program, particularly in view of transition in 2014 and decreasing levels of donor support for the sector.

3. Provide recommendations to maximize the effectiveness of follow-on programs to improve justice sector capacity and citizen support.

IV. Evaluation Questions:

In evaluating the RLS-F program, the Evaluation Team will answer the questions provided below. The questions are not exhaustive and the evaluation team is free to propose additional questions and criteria that they believe will assist in the evaluation of the program. In addition, the Evaluation Team should identify opportunities and recommendations for improvement.

1. Has DPK's training of judges had an impact on their performance (professional conduct, timeliness of decisions, adherence to ethical standards, etc.) and/or the quality of decisions issued (explanations for the result, application of law, etc.)? Why or why not?
2. Have DPK's efforts vis-à-vis the judiciary had an impact in increasing the participation of women?
3. Have court administrative systems improved as a result of RLS-F efforts?
4. Has there been improvement in the quality of teaching or capacities of law graduates as a result of RLS-F efforts?
5. Are there any improvements in public awareness of legal rights and responsibilities that can be traced to RLS-F efforts?
6. Are there improvements to the public perception of the state justice sector?
7. Which aspects of the RLS-F program have been most effective and why?
8. Which have not worked well and why?
9. Sustainability -- Are processes, systems, and programs in place to ensure that the results and impact of DPK activities will be sustainable in terms of encouraging greater GIRoA support for the program? Is there any evidence that GIRoA or local government entities are taking ownership of activities? Is the role of local project staff increasing? What obstacles exist for achieving sustainability? What measures should be taken to increase sustainability?
10. Evaluate the Mission's Results Framework and Performance Monitoring Plans as it relates to this program. What M&E measures have been the most successful? What M&E lessons can be learned? What suggestions can be made for future M&E programming?
11. What are the evaluation team's recommendations for future programming in the justice sector?

V. Proposed Assessment Methodology:

Following preparatory work in background document review and preparation of an evaluation plan, the Evaluation Team is expected to spend 15 working days (2-1/2 weeks) in-country conducting research, interviews and meetings. The Team will present an outline of its initial conclusions and recommendations prior to leaving post, and will spend an additional five working days outside of Afghanistan to prepare a draft report. It will perform the following tasks:

1. Desk Study:

The team will spend an estimated two days conducting a thorough document review, including the current RLS-F program description and monthly reports, prior assessments of Afghanistan's rule of law sector, background information on the Afghan justice sector and how it functions, assessments and reports on other donor programs, scholarly papers, and other documents needed to gain an understanding of the Afghan justice system and prior reform efforts.

2. Development of an Evaluation Plan:

The team after review of the baselines, indicators, and monthly reports will prepare a detailed design and evaluation plan describing how the team will determine the impact and effectiveness of the RLS-F program. This may include public perception surveys, focus groups or other methods deemed appropriate by the Evaluation Team.

3. Conduct an analysis of the program's performance:

Using the evaluation plan developed above, the team will gather and review documentation and other evidence demonstrating results achieved. The team will meet with DPK, program beneficiaries, other donors, stakeholders, civil society representatives and others to examine the program's approaches, effectiveness, and results achieved and to conduct an analysis of those approaches and efforts that have succeeded, those that have not, and underlying reasons why, including the political environment and outside factors as well as the program approaches themselves.

4. Prepare recommendations for follow-on program:

After analyzing the results and impact of the RLS-F program, the evaluation team will develop recommendations for an effective and sustainable follow-on program. This recommendation will take into account efforts undertaken by other donors in order to avoid duplication and provide for reinforcement and coordination with those efforts.

VI. Deliverables:

Specific deliverables and timetable for delivery are:

1. Preparation of an evaluation plan for USAID approval within 15 days of the contract award.
2. Initial briefing with USAID/Afghanistan within one day of the team's arrival in Afghanistan.
3. Preparation of a list of planned interviews and list of questions and/or questionnaire prior to arriving in Afghanistan. [Note: Fine-tuning of the interview schedule will need to take place after arrival in Afghanistan, but a preliminary list should be prepared in advance.
4. Interim briefings and feedback on the team's findings as requested by USAID or proposed by the Evaluation Team.
5. The outline of a draft report containing findings, conclusions, and recommendations to ODG and OPPD prior to the team's departure from Afghanistan, as well as a briefing to key USAID staff and other stakeholders one day prior to the team's departure from Afghanistan.
6. A draft report to ODG one week after the Evaluation Team's departure from Afghanistan.
7. A final report which incorporates Mission's input within three working days of receipt of USAID's input.

The main body of the final report, which shall include a table of contents, executive summary, and findings and recommendations, etc., shall not exceed 30 pages. The list of interviewees, acronyms, annexes, and other related documents will not be counted against the 30-page limit.

VII. Team Composition:

The assessment will be carried out by a five person team. USAID/Afghanistan's Office of Democracy and Governance (ODG) will provide a representative. In addition to that person, the contractor shall provide:

1. Team Leader

2. Evaluation Specialist
3. Local Justice Sector Expert
4. Administrative Assistant / Translator

Team Leader: The team leader should be a mid-level or senior level political scientist or attorney with at least eight years' experience in assessing and designing DG programs, including justice sector / rule of law programs. S/he must have excellent writing skills. An advanced degree in law (juris doctor), political science, public administration, or similar degree is required. Regional or country experience is desirable; prior USAID experience is a plus.

Evaluation Expert: The evaluation expert should be a mid- to senior-level Program Development Specialist with experience in evaluation research design and methodology, with at least 7 years of relevant experience in assessing and designing DG programs, preferably including rule of law / justice sector programs. Regional or country experience is desirable; prior USAID experience is a plus.

Local Justice Sector Expert: The local justice sector expert should be an Afghan national, preferably with a law degree, with at least five years' relevant experience in the Afghan justice sector. S/he must speak English at a 3/3 level.

Administrative Assistant/Translator: This person will provide secretarial, logistical and operations support to the contractor team, USAID and cooperating country personnel, and will provide translation services for the team. The Administrative Assistant should have relevant experience in the provision of administrative/operational support. This person must possess the communication and organizational skills to set up interviews with key subjects, manage the interview schedule of the evaluation team, and take the lead in other logistical details such as housing, transportation, and other issues as required by the team. Knowledge of Dari is required. Knowledge of Pashto is desirable.

Period of Performance:

The task outlined in this Scope of Work is substantial and shall require significant pre-planning and team building prior to the conduct of field work. The evaluation shall require time both in Kabul as well as in outlying areas where the project has been active. USAID will assist the team with the identification of appropriate field visits.

The evaluation team is expected to conduct its work over a period of one month, of which approximately two and one-half weeks will be spent in Afghanistan. An outline of draft findings and recommendations is due prior to departure from Afghanistan. The team will have 5 working days to prepare a draft report. The Mission will respond with comments in 3-5 days and the evaluation team will have 3 days in the US to respond to Mission comments and finalize the report. A six-day work week while in-country is authorized.

Estimated level of effort:

- Four days US-based preparation, including document review and preparation of an evaluation plan
- Two and a half weeks in-country (15 work days) including 1-2 days to prepare and present draft findings and conclusions.
- Five days to prepare a draft report in the US, and three days to incorporate Mission comments and finalize the report.

The following level of effort broken down by team member is required for the evaluation:

Tasks	Estimated Timeline for Completion	Team Member's Responsible
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Preparation and Research (prior to arrival in country, includes draft of an initial work plan, review of background materials and discussions with USAID/OAPA and DPK)	4 days	Team Leader and Evaluation Expert
Administrative Support prior to arrival of international team	2 days (concurrent with preparation time in the U.S. by International Team Members)	Administrative Assistant
Round trip travel (US-Afghanistan)	4 days	Team Leader and Evaluation Expert
In-Country Evaluation and Out-brief	15 days	Entire team
Draft Report	5 days for Team Leader and Evaluation Expert; 2 days review and comments Local Expert	Team Leader, Evaluation Expert and Local Expert
Final Report due	3 days	Team Leader and Evaluation Expert

Total Days: 33