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CONTRACT LAW ENFORCEMENT (CLE) PROGRAM

FIRST ANNUAL REPORT *May 2013 - April 2014*



Photo: CLE Program

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Project Overview

The USAID Contract Law Enforcement (CLE) Program contract was executed by USAID and Checchi and Company Consulting, Inc. on May 7, 2013. The CLE Program will build on the progress achieved by the SEAD Program and other USAID and donor programs. It works to address a range of challenges, including the reduction of the judgment backlog in Kosovo's court system; the effective enforcement of court judgments and enforcement of contracts; the training of judges, lawyers and enforcement agents; the expansion of mediation mechanisms; improvements to commercial legislation including – potentially – bankruptcy legislation; and related work with the business community.

The CLE Program focuses on improving the ability of citizens, businesses and the judicial system to enforce contracts and obligations and court judgments so as to benefit citizens and businesses in a timely and just manner. Recognizing that the timely resolution of disputes is essential to the facilitation of commerce and economic growth, the Program also supports the establishment of an accessible and effective alternative dispute resolution system able to provide efficient, reliable, and respected mediation services.

Executive Summary

In its first year, the CLE Program's backlog reduction activities resulted in large-scale, systematic enforcement against private bank accounts with over five thousand cases enforced against bank accounts. At the conclusion of Year One, the CLE Backlog Reduction Initiative (BRI) team was embedded in two courts (Gjilan and Gjakova), and providing continuing support to three other courts, to work towards functional elimination of court judgment caseloads. At the very end of Year One, support to the Pristina Basic Court was embedded as well, supporting 8 newly hired KJC Special Enforcement Unit (SEU) clerks. The CLE Program support resulted in the disposal of over 8,000 cases, or a 15% reduction of enforcement caseloads in the five Courts receiving CLE Program assistance, and the collection of over 1,000,000 Euro of previously uncollected judgment debt.

The CLE Program supported the Ministry of Justice (MOJ) to fully implement the new Private Enforcement Agent (PEA) system, including providing drafting assistance for 22 regulations; 13 of these regulations were adopted by MOJ, and the remaining 4 will be adopted later. The CLE Program developed and conducted a week long training course for PEA candidates, and conducted training for 31 candidates who are qualified to receive a commission from the MOJ. The system will formally launch by a Decision of the Minister in early May, 2014.

Under the CLE Program's commercial law activities, regulations are being drafted to finalize implementation of the Law on Obligations. Three training programs in commercial law have been implemented, with two training sessions already delivered to 40 judges (34 male and 6 female) through the Kosovo Judicial Institute (KJI); and to 618 lawyers (527 male and 91 female, with 13 participants being members of non-majority communities) in 10 sessions through the Kosovo Chamber of Advocates

(KCA) (now the Kosovo Bar Association (KBA)). Additionally, the CLE designed year-long training on commerce and business for the judges assigned to commercial matters at the Pristina Basic Court, the Appellate Court, and the Supreme Court was inaugurated and underway. In cooperation with the USAID New Opportunities for Agriculture (NOA) Program, CLE is working with farmers and their processor buyers to implement the increased use of written contracts, and providing liaison between the parties to ensure no problems with performance are arising, on contract implementation for over 700 contracts. Six “Put it On Paper” roundtables with businesses on contracting practices and Alternative Dispute Resolution (ADR) were held, including one with Gracanica Municipality Kosovo-Serbian businesses. Two additional roundtables – on Access to Finance, and Negotiations Skills – were held together with the Women’s Chamber of Commerce G7. Throughout the year, the CLE Program navigated government uncertainty as to whether the Ministry of Justice, which sponsored the previous Law on Insolvency (Bankruptcy), or the Ministry of Trade and Industry (MTI) should properly sponsor a new law. In the Third Quarter, the question was resolved, and throughout the Fourth Quarter the Program supported MTI with a variety of concept documents, legal analyses, roundtables for public feedback, and other actions required to place an Insolvency law on the legislative agenda (anticipated in the First Quarter of Year Two).

Mediation activities have accelerated, with the Peja and Gjilan centers both seeing steady growth in case intake. Through Year One, a total of 169 cases were accepted for mediation, of which 82 were mediated to agreement and finalized. A third mediation center was opened in Prizren, and preparation was underway to open an additional center or centers in Gjakova and/or Pristina, where Court Presidents have sought the CLE Programs’ support for establishing centers within these courts. Multiple training programs have been delivered on mediation, both to train new mediators and as refresher training for experienced mediators.

The CLE Program’s Outreach, Gender, and Monitoring activities included ensuring well-organized CLE event presentation, ample media coverage, and active participation at all CLE events; development of the CLE Gender Mainstreaming Plan; focus groups for baseline Program measurement; the development of two television Public Service Announcements – one on the new PEA system, and one on Mediation – and one radio advertisement for Mediation, and overseeing the conduct of a national survey (over 1,200 respondents) on Women and Commerce.

Summary of Progress

A. Component 1: Improved Systems for Enforcement of Judgments and Reduction of Backlog in Enforcement Cases

Enforcement of Judgments activities have two goals: 1) Functional elimination of the courts' execution case backlog (although activities also extend to more current "inventory cases"), and 2) Assistance to the Ministry of Justice to establish the Private Enforcement Agent System.

A.I. Backlog Reduction

In Year One, CLE assistance to the courts included support to court execution personnel on the preparation of cases for a variety of enforcement actions, with teams embedded in the Gjilan and Gjakova Basic Courts, and continuous support provided to the Peja, Ferizaj, Prizren, and briefly the Mitrovica¹, Basic Courts. In the final quarter, the CLE Program supported the KJC's efforts to recruit and hire an additional 20 Special Enforcement Unit (SEU) clerks, 8 of which are assigned in Pristina (and 3 each in Ferizaj, Peja, Prizren, and Gjakova). At the end of the 4th Quarter, the Program also began embedded support to the Pristina Basic Court.

Generally, the CLE Program's support to court execution rests on three elements: 1) Development and exploitation of IT tools and infrastructure for improved case management. 2) Working with court enforcement judges and clerks to refocus court enforcement on more efficient procedural methods. This includes training and assisting in implementation of procedural mechanisms contained in the new Law on Execution Procedures (LEP) that enable the courts to better manage execution caseloads. 3) The CLE Program's Backlog Reduction Teams provide administrative support to court enforcement personnel, including preparation of cases for the delivery of notice to debtors (when required); preparing cases for final enforcement by court personnel; and segregating cases that require archiving, suspension, or dismissal. During its first year, the CLE Program met the target agreed upon with the KJC of reducing the execution caseload in the courts it supports by 15%, and supported the courts in the enforcement and full recovery of over 1,000,000 Euro of previously unenforced claims. 2014 will be the first year ever when Kosovo Courts will enforce more judgments and enforcement claims than are filed.



¹ Assistance to the Mitrovica Basic Court did not prove practicable in year one, partly for reasons of limited capacity, including space and personnel, but also because the court is currently the subject of ongoing political discussions with Serbia. Support is anticipated to resume once these issues resolve.

Additionally, CLE developed with the KJC a set of performance norms for enforcement, and institutionalized a shift in focus towards enforcement against bank accounts and wages and away from the less efficient seizure and sale of movable property. CLE also brokered a Memorandum of Understanding between the Ministry of Internal Affairs and the Kosovo Judicial Council (KJC) to provide all citizens' Personal Identification Numbers (PINs) to the courts, which will facilitate relation of judgments to debtor property and address records. Since nearly all official records – except court cases – in Kosovo are associated with the PIN, access to this information will make relating enforcement cases to judgment debtors considerably easier and more efficient.

Not having access to PINs has also prevented full exploitation of employment information from the Tax Administration of Kosovo (TAK). Integration of PINs with CLE's judgment database will take place in the first Quarter of Year Two, and will result in full use of this mechanism for enforcement, alongside the Central Bank of Kosovo Registry of Bank Account Holders (CBK Registry). Enforcement against monetary assets (soon to include wages, for those judgment debtors who are employed) has expanded from no cases in 2012, to more than 4,632 cases against bank accounts, with 2,612 cases enforced against bank accounts in the 4th Quarter of Year One alone.

[Establish with KJC clear goals and targets for the complete reduction of backlogged enforcement cases in the Kosovo court system.](#)

At the outset of the Program clear goals and targets for backlog reduction were set in consultation with the KJC. CLE met the Year One target of an overall 15% of execution caseload reduction in CLE supported courts. Year Two targets are an overall reduction of 45% of caseloads in courts where CLE is working.

[A.I.1. Assist KJC to improve systems for statistics related to execution caseload.](#)

In Year One, CLE worked with the KJC chair, KJC secretariat, individual courts, and the Statistical Department of KJC to inform CLE design, development, and implementation of a web-based reporting application that has been installed in the five courts that CLE is supporting. CLE developed this application to add reporting functions to the electronic judgment database. Developing the application entailed programming, and data verification for all 108,299 cases in the database.²

The application works in Albanian, Serbian and English, and can generate a wide range of user-defined reports. The database is backed up weekly on an external disk and monthly to three CDs. Automatic weekly reporting is now enabled. The application enables a user to review reports that are updated twice weekly. This application has been installed and is fully operational in the Ferizaj, Gjilan, Gjakova, Prizren and Peja Basic Courts. It will be installed in the Pristina Basic Court during the coming quarter, with installation in the Mitrovica Basic Court to follow.

² It should be noted that this database is incomplete, as many courts have failed to keep up with the electronic registration of enforcement cases; however, it does contain the vast majority of cases, so serves its purpose. CLE updates the database to contain complete enforcement case records when it embeds teams in courts). The database includes both backlog and current inventory of cases.

Cognizant of KJC’s eventual deployment of its own Case Management Information System (CMIS), this database and reporting application were developed in programming languages that will make integration into CMIS possible.

A.I.2. Support Basic Courts with backlog reduction activities.

CLE began work on backlog support to enforcement (see A.I above) in the Gjilan Basic Court in September-October 2013 (data entry was conducted between July and September). By the end of April 2014 effectively half (~45%) of all of the Gjilan Basic Court’s execution caseload had been eliminated.

In November 2013, the CLE enforcement team began to assist other Basic Courts with backlog reduction. Work began in Gjakova and in early 2014 assistance was also extended to the Prizren, Ferizaj and Peja courts. At the end of April 2014, after the hiring of new enforcement clerks (see below), backlog reduction efforts began in the Pristina Basic Court as well.

As of April 30, 2014, caseload was reduced as follows:

Basic Court	Percentage of backlog cases removed	Percentage of inventory cases removed	Percentage of total caseload removed
Gjilan	38.0%	47.7%	42.4%
Ferizaj	2.5%	9.2%	5.4%
Prizren	2.7%	12.9%	6.0%
Peja	7.2%	15.2%	10.1%
Gjakova	16.8%	11.9%	15.1%

Overall, 8,371 cases were removed from caseload with CLE assistance in Year One.

CLE began work in the Pristina Basic Court ahead of schedule (anticipated start date was summer of 2014). This is by far the largest of the seven Basic Courts and itself has about 40% of Kosovo’s judgment cases. Work there only began in April 2014. Work in the seventh court, Mitrovica, as noted above, proved impracticable in the context of ongoing political negotiations over the composition of that court.

A.I.3. Support KJC and Basic Courts to improve performance of court enforcement clerks

Throughout Year One CLE conducted a number of activities to improve the professional competence of court enforcement clerks and to expand the number of clerks.

CLE bound and distributed copies of the new Law on Execution Procedures and provided direct training to court enforcement personnel on a number of new procedural mechanisms in the law, as well as shifting the practice of enforcement to more efficient cash means, such as bank accounts. Program staff assisted the CBK and KJC/Courts to refine and expand use of the CBK Registry. The Program also developed data transfer mechanisms, and tested them with TAK employment information, in order to facilitate increased use of enforcement against wages when the national PIN database is provided to the KJC.

CLE assisted the KJC to increase the number of enforcement clerks. This involved coordination with the Assembly budget committee, the Ministry of Justice, the Ministry of Public Administration, and the KJC itself. As a result 20 new clerks were engaged by KJC in March 2014. CLE designed a two-day training course for the new enforcement clerks, which was delivered in April 2014. The clerks have been deployed to four of the Basic Courts, with the largest group going to the Pristina Basic Court. The new clerks are working closely with CLE's Backlog Reduction teams.

CLE revised and finalized a set of Standard Operating Procedures (SOPs) for enforcement clerks, which was adopted by a KJC Board decision in March of 2014. The SOP includes clear goals and norms for each enforcement clerk. For example, in a given month, a minimum of 20 cases must be enforced against bank accounts and wages; 40 cases is considered average, 60 cases good, and 80 considered excellent.

A.I.4. Utilize improved methods and information resources to improve enforcement against bank accounts and earnings.

The enforcement of judgments in Kosovo has improved significantly in the last ten months. This includes enforcement against bank accounts and wages. Where no enforcement against bank accounts was conducted in at least the past several years, over four thousand cases were presented for enforcement against bank accounts since



October, 2013, with more than 600 of these fully collected and closed. Additionally, no case had ever been presented against wages prior to this year. This procedural avenue is also now open, and has been procedurally verified with the preparation of 25 cases, and the full collection of 1 case.

a. Enforcement against Bank Accounts and KJC cooperation with CBK

The earlier SEAD Program created for the CBK the Unique Account Holder Registry (Registry) of all bank accounts in Kosovo. CLE has followed through with implementation to ensure that the Registry is accessible to judges and court enforcement staff through a software link created by CLE in September of 2013. Since October 2013, this has allowed direct enforcement of judgments against bank accounts. While this was legally possible in the past, it was rare if it happened at all. Prior to creation of the Registry, enforcement required multiple trips by an enforcement clerk to the same bank, and typically resulted in a failed effort. As such, enforcement personnel largely abandoned using bank enforcement, and even judgment creditors did so: having become accustomed to court practices for seizing and auctioning movable properties, creditors failed to request bank enforcement in their execution proposals. This further limited enforcement against bank accounts, as enforcement actions are limited to remedies sought by judgment creditors.

CLE's implementation of a data link between courts and the Registry, work with creditors on amendments of execution proposals to seek enforcement against bank accounts and wages, and work with court enforcement personnel to change the culture and practice of enforcement to emphasize bank enforcement has resulted in a significant acceleration of enforcements. The new SOP instructs court enforcement personnel to seek enforcement first against bank accounts, then against wages, and only to attempt enforcement against movable properties after these two remedies have been attempted. This represents a significant culture shift and change in enforcement practice.

b. Enforcement against Wages and KJC cooperation with TAK

Developing processes for enforcement against wages has proceeded more slowly than against bank accounts. Employment information maintained by TAK is associated with the Personal Identification Number (PIN) issued by the Civil Registration Agency. Courts, however, have traditionally not collected the PIN; instead, cases are managed by case number and party (creditor and debtor) names. Execution against wages is dependent upon obtaining PINs from the Civil Registration Agency (CRA) to associate with case files. CLE brokered a MOU between KJC and the CRA to provide all PINs to the KJC. This MOU was finalized in April 2014; the transfer of PINs will begin in May. The association of cases to PINs will commence immediately, and once completed will facilitate a similar dramatic increase in enforcement against wages. CLE has, in order to test this procedural avenue and prepare for robust implementation, manually associated several hundred cases with PINs, and has begun piloting enforcement against wages in the Gjakova basic court. 250 cases of enforcement against wages have been prepared, and 25 garnishment actions have been levied, with delivery to employers. One case was fully collected, and closed.

CLE also has developed a data link between KJC and TAK, through which KJC can immediately acquire and examine non-confidential information about taxpayers. This link went live in November 2013.

A.I.5. Improve enforcement mechanisms related to immovable property.

In Year One, CLE activities involved training the Private Enforcement Agents (PEAs) on how to enforce claims against immovable property, and collaborating with the US Treasury Department Advisor to the CBK on a variety of activities (primarily regulatory instruments) related to mortgage lending. CLE maintains that the chief obstacle to enforcement against immovable property is the requirement in the LEP that two "fixed-price" auctions be held before a third auction, with no fixed price at which buyers may actually offer what they think a property is worth can be held. Predictably, few potential buyers attend the first two auctions, and the law's requirements result in several months of unnecessary delay before a conclusion can be reached. As 2014 is an election year, there is currently no appetite for amending this provision of the LEP. CLE will continue to work with the CBK and the courts at the regulatory level, and will be prepared to amend LEP should the opportunity to do so arise.

A.I.6. Streamlined procedures for management and dismissal of cases

Under previous versions of the LEP Kosovo courts were granted some discretion to dismiss or suspend cases, but demonstrated an unwillingness to exercise this option. Under the new LEP, however, several procedural mechanisms were introduced to put an end to enforcement processes when cases prove clearly uncollectable (e.g., the debtor is deceased) or impracticable to collect (e.g., a case valued at 25 Euro where the debtor was clearly unlocatable after 13 unsuccessful attempts to provide notice). The new LEP provisions now provide that judges “shall” suspend, instead of previous versions which granted discretion and provided that judges “may” suspend. CLE staff have provided direct training and administrative assistance to judges and enforcement clerks to inform them about this change and to help them prepare administrative systems for suspension. Additionally, CLE staff assisted the courts in archiving civil judgment claims based on criminal fines that had passed the statute of limitations, rendering these cases “dead” at law.

Through Year One, nearly 2,000 cases have been suspended, and an additional 2,400 have been prepared for suspension.

Activities under A.I. relate to the following PMEP indicators:

IR 1.1.1 - Number and percentage of (backlogged) civil cases enforced as a result of USG assistance. Target: 15%:

During the fourth quarter, the total number of cases enforced as result of CLE assistance was 3,956 cases or 6.8% from the total number of 57,899 cases in execution caseload for five Basic Courts where CLE is working (CLE supports 6 Basic Courts, support to Pristina Basic Court only started in the last two weeks of the reporting period well ahead of schedule, so is not counted here). The total number of cases enforced as result of CLE assistance for the year is 8,381 cases or 15.1% from the total number of 57,899. This indicator is a smaller, subset, of the total execution caseload (see next indicator).

IR 1.1.1.1 - Number of USG assisted courts with improved case management: Target: 2 Basic Courts.

CLE supports 6 Basic Courts and 8 branch courts for a total of 14. During Quarter Four, the same 14 courts (6 Basic Courts plus branches) benefited from CLE assistance.

IR 1.1.2 - Progress on implementing EU recommendations – Year 1 Target 35,000:

During Year One 8,371 cases were closed. During the fourth quarter 3,956 cases were closed. The overall target was not met because of a combination of factors including a reduction in force of 30 KJC enforcement personnel, which emaciated the court staff which CLE supports, leaving approximately 30% court enforcement personnel. Additionally, CLE discovered that in many courts, particularly in Gjilan, court personnel had concealed that on over 8,000 cases, no notice to debtors had ever been attempted. This meant that notice had to be prepared and delivered before any enforcement actions could take place. This combination of factors meant that far more preparatory work was required, and significantly fewer court personnel were available to do that work. Both of these issues were resolved by CLE in Year One: with CLE support 20 additional clerks were hired by the KJC, and the Program worked closely with all Basic Court Presidents to address issues of notice delivery prior to CLE support being embedded in their courts.

IR 2.1.1 - Number of civil execution cases enforced or cleared as a result of USG assistance: Target: 15,000.

In Year One, the total number of cases enforced as result of CLE assistance is 8,381 cases. This target was not met for the same reasons discussed above, for IR 1.1.2. However, as an indication of the increasing numbers 3,956 or roughly half of the year's enforcements took place in the fourth quarter and at this rate CLE should be able to meet our year 2 goal of 30,000 cases.

IR 2.1.1.1 - Percent of backlog of judgments reduced: Target 15%.

In Year One, the total number of cases enforced as result of CLE assistance is 8,371 cases or 15.1% of the total number of 57,899 cases in execution caseload for five Basic Courts and branches where CLE is providing support. The percent of backlog judgments reduced with CLE assistance in Gjilan Basic Court is 42.4%; in Gjakova 15.1%; in Peja 10.1%; in Prizren 6.0 %, and in Ferizaj is 5.4% during Year One.

During Quarter Four, the total number of cases enforced as result of CLE assistance is 3,956 cases or 6.8% from the total number of 57,899 cases in execution caseload for five Basic Courts. During Quarter Four, the percent of backlog judgments reduced with CLE assistance in Gjilan Basic Court is 22.9%; in Gjakova 13.0%; in Peja 5.6%; in Prizren 4.0 %, and in Ferizaj is 5.0%.

IR 2.1.1.2 - Percent change of court enforcement actions against bank accounts: Target 20%.

At the start of the CLE Program, no cases were being enforced against bank accounts. CLE established its baseline of 501 cases enforced against bank accounts at the end of Quarter Two. In Quarter Four, 2,612 cases were enforced against bank accounts in, resulting in a total percentage change of 421%.³ Any percentage increase from a baseline of zero is not meaningful; however, it should be noted now that a baseline is established, the percentage change in future years should indicate a positive trend.

A.II. Establish the new enforcement system

Work on the new private enforcement system moved forward very rapidly in the fourth quarter. All necessary regulations were drafted and adopted. Thirty-one Private Enforcement Agents (PEAs) were trained. CLE coordinated and trained personnel at a variety of institutions – including the CBK, TAK, the Public Procurement Regulatory Commission, the Ministry of Public Administration, the Police, the KJC, and others – on their roles and responsibilities vis-à-vis the new system. The first cohort of fourteen PEA candidates were sworn in and accepted commissions at the end of January; throughout this quarter they were setting up their practices, and they will begin work in the first week of May. The second cohort was tested in November and trained in January; they will be ready to accept their commissions in May. When the second

³ Percentage change means the number for the current year (in this case, because there is no current year, Quarter Two was established as a baseline for comparison) minus the prior year (period) divided by the prior year (period) x100 (delta).

group is commissioned, the threshold of 20 commissioned agents to establish a Chamber of Enforcement Agents, which will have a large role in regulating the profession, can be established. CLE is poised to provide this assistance in the next Quarter.

A.II.1. Develop with MoJ secondary legislation for the new enforcement system

Throughout Year One, CLE has supported the Ministry of Justice (MoJ) in drafting secondary legislation necessary to implement the Law on Execution Procedures (LEP). Working with MoJ's Legal Office, CLE staff drafted sixteen regulations and conducted an analysis and provided comment on one for a total of 17 regulations/administrative instructions. Thirteen have already been adopted – specifically, those necessary for the PEA system to come into operation. The adopted regulations are as follows:

1. Administrative Instruction NO.02/2013 on the Program and Manner of Passing the Exam for Private Enforcement Agents (adopted by the Minister of Justice on 22/04/2013);
2. Administrative Instruction MoJ-NO.06/2013 on IDs of Private Enforcement Agents (adopted by the Minister of Justice on 22/10/2013);
3. Regulation MoJ-NO. 01/2013 on Rules of Procedure of the Commission for the Evaluation of Candidates for Private Enforcement Agents (adopted by the Minister of Justice on 22/10/2013);
4. Administrative Instruction MoJ-NO.03/2013 on Minimal Technical Conditions and Other Conditions Regarding Required Equipment of Private Enforcement Office (adopted by the Minister of Justice on 22/10/2013);
5. Decision No.185/2013 on Determining the Number of the Private Enforcement Agents for the Territory of each Basic Court in the Republic of Kosovo (adopted by the Minister of Justice on 16.09/2013).
6. Administrative Instruction MoJ-NO.04/2013 Setting the Valid Mandate and Number of Deputy Private Enforcement Agents who may Operate Simultaneously Under the Responsibility of One Private Enforcement Agent (adopted by the Minister of Justice on 22/10/2013);
7. Administrative Instruction MoJ-NO.05/2013 on the Report of the Work of the Private Enforcement Agents (adopted by the Minister of Justice on 16.09/2013);
8. Administrative Instruction on the Form and manner of keeping records of the private enforcement agents (Article 399) (adopted by the Minister of Justice on 22/10/2013);
9. Administrative Instruction MoJ-NO. 07/ 2013 on the Form and Manner of Holding Evidence for Private Enforcement Agents (adopted by the Minister of Justice on 22/10/2013)
10. Administrative Instruction on the Form and manner of keeping records of completed castes (adopted by the Minister of Justice on 19/11/2013);
11. Administrative Instruction on Fees (adopted by the Minister of Justice on 8/4/2014);
12. Administrative Instruction on Ethics (adopted by the Minister of Justice on 8/4/2014); and,
13. Administrative Instruction on the Temporary Statute of the Chamber of Private Enforcement Agents (adopted by the Minister of Justice on 8/4/2014).

List of A.I.s adopted in the Fourth Quarter:

1. Administrative Instruction MoJ-NO.02/2014 on the Temporary Statute of the Chamber of Private Enforcement Agents (Adopted by the Minister of Justice on 05/02/2014);
2. Administrative Instruction MoJ-NO.03/2014 on Format and Content of the Writs, Official Records and Other Acts Private Enforcement Agents undertake during Formal Enforcement Actions (Adopted by the Minister of Justice on 05/02/2014).
3. Administrative Instruction MoJ-NO.06/2014 on Fees for Rewards and Compensation of the Expenses for Private Enforcement Agents (Adopted by the Minister of Justice on 27/03/2014);
4. Administrative Instruction MoJ-NO.07/2014 on Temporary Code of Ethics of the Chamber of Private Enforcement Agents (Adopted by the Minister of Justice on 04/04/2014. Brochure discussions pending);

Four regulations have been drafted but not yet adopted. These fall into three groups.

First, there are two regulations that are still undergoing internal discussion within MoJ. These are the regulations on Disciplinary Procedures, and on Managing Monetary Means. Both of these are complex and politically sensitive, and both have attracted comments from the new PEAs themselves. CLE has submitted final drafts of both regulations, has collected stakeholder input and has responded to comments. The regulations are ready for adoption by the Ministry, awaiting only the Minister's signature.

Second, there is one regulation for which progress is paused until at least June 2014. This is the regulation on Inspection and Control of PEAs. The Ministry has stated that it wants to wait until PEAs have begun work and the Chamber of PEAs is organized before proceeding with this regulation. Organization of the Chamber is expected to take place in the coming quarter.

Finally, there is one regulation that must be approved, not by the Ministry, but by the Professional Commission that will be created to oversee the new PEAs. This is the regulation on the Commission's own Rules of Procedure. The Professional Commission does not exist yet. It is expected to come into existence in the summer of 2014. Members of the Commission will be appointed after the PEAs have begun their work and Chamber of PEAs has been organized. The regulation has been drafted and finalized, and has been reviewed by the Ministry, so it is expected that its adoption will be the Commission's first action.

The drafting of all necessary regulations is complete. All regulations necessary for the new system to begin operation have been adopted; the remaining regulations require commencement of system operation as a condition precedent before they can be adopted.

[A.II.2. Conduct training for private enforcement agents](#)

The CLE Program has trained two cohorts of Private Enforcement Agents (PEAs), one in autumn 2013 and one in early 2014. (A third cohort has been selected and will undergo training in the summer of 2014.) Thirty-one qualified PEA candidates have been trained and are ready to receive their commissions and begin work.

The goal of this training was to introduce key concepts of private enforcement work, discuss common issues, problems and solutions to lay out a “road map” for the new PEAs. The program covered subject matter related to private enforcement and best practices, including international standards and principles of enforcement; the structure of the new enforcement legislation in Kosovo; the relationship between PEA and creditor; territorial competence and jurisdiction; access to information; cooperation with authorities and the PEA’s relationship with police and courts; cross-border enforcement, means and objects of enforcement, professional ethics, and many other topics. The program also covered topics with regard to office organization and business management, including organizational aspects of the PEA office, financial management, proper record keeping, IP related issues, and tax concerns.

A total of 19 trainees participated in the first CLE training. However, two of these 19 had not yet passed the PEA exam, and another two did not pass the bar examination. The Minister of Justice signed decisions for the appointment of the remaining 15 as PEA candidates. One of these withdrew before taking oath. The remaining 14 (13 men and one woman) were sworn in on January 22, 2014.

Twenty-two PEA candidates participated in the second CLE training. Five of these had not yet passed the PEA exam and so were not eligible to be appointed as PEAs. Thus, a total of 17 PEA candidates (5 female and 12 male) emerged from the training eligible to take the oath. They are expected to take their oaths and assignments in May, 2014.

A.II.3. Establish Chamber of private enforcement agents

The Chamber will be formed, in accordance with the law, once 20 agents are licensed. Fourteen agents were licensed from the first cohort. The second group included seventeen agents, of which fourteen are expected to be licensed in May. Once the second group has taken up their licenses, formation of the Chamber will begin. CLE has already prepared for this, working closely with the PEAs and the MoJ to develop a work plan for the development of the Chamber.

Activities under A.II relate to the following PMEP indicators:

IR 1.1.2.1 - Number of people/person days of training delivered with USG assistance: Target: 100.

During Year One, the total number of person days of training delivered to justice sector professionals was 971 and the total number of individuals trained was 787. Out of the total, there were 131 females and 656 males. Out of the total trained, 771 were Albanian, 6 Serbian, 5 Turkish, and 5 Bosnian.

During Quarter Four, 462 participants attended trainings organized by CLE, of which 68 were female and 394 male. The total number of judges was 18, out of which 10 judges were from Prizren Basic Court, 1 Judge from the Branch Court in Suhareka, and 1 judge from the Branch Court in Dragash. 7 Court Associates in total attended trainings organized by CLE, and 30 enforcement clerks out of which 11 were female and 19 male. The total court training amounted to 75 person days.

B. Component 2: Development of the Contract/Commercial Law Framework and Systems, Improvement of Contract Enforcement Systems and Functioning of Mediation Mechanisms

In the original program design CLE commercial law activities were intended to revolve around assistance to the GoK in developing a new Civil Code for Kosovo. However, immediately upon Program start up, USAID directed CLE to not implement activities towards this end, as developing the Civil Code would be handled by an EU project.

CLE Commercial Law Framework activities serve to advance a “culture of contract” with the business community, working directly with businesses to assist them in developing better contracting practices. The Program also provides ongoing general legal support on contract and commercial law matters to government, donor, and private sector organizations, including the Ministry of Trade and Industry, the Central Bank of Kosovo, the Ministry of Justice, the Kosovo Bank Association, and Chambers of Commerce in addition to other USAID and USG technical assistance programs (most notably, collaboration with the US Treasury Advisor at the Central Bank on developing mortgage lending framework regulations). Additionally, this component has developed and implemented a robust set of training activities in commercial law for judges and lawyers.

B.I. Development of the Contract/Commercial Law Framework and Systems

B.I.1. Implement the Law on Obligations

Full implementation of the new Law on Obligations requires drafting and promulgating secondary regulations, particularly those associated with financial services. Until these regulations have been drafted (to date none have been), the old Law (from 1978) remains in force. CLE has been working with the banks and the Central Bank legal department to coordinate development of these regulations. Work on the new regulations began in March with a set of stakeholder meetings, which have continued through the end of Year One. Drafting of the new regulations began in April. This work is expected to be substantially complete early in Year Two.

B.I.2. Review of the commercial law framework and development of a legislative drafting schedule.

CLE staff completed a “gap” review of the commercial laws, resulting in a draft matrix of recommended changes to the laws in question. Several of these have already been converted into proposals for new laws (i.e. bankruptcy) or amendments to laws (Mediation, the Law on Business Organizations, the Law on Obligations).

Two rather important, but not urgent amendments were identified as being necessary in the short term. Concept proposals for amendment on these issues were prepared and provided to the Ministry of Justice. One issue arose from the recently enacted Law on Consumer Protection, which states “Courts may refer cases to Mediation in accordance with the Law on Arbitration.” The Ministry, unfortunately, determined that as this law was so new, it wouldn’t be possible to seek amendment during this legislative session,

presumably to avoid embarrassment over such a glaring error having made it into the text of the law. CLE will resume efforts to seek this amendment following elections and the seating of a new parliament.

Similarly, one provision of the Law on Obligations could, if conservatively applied, cast doubt on the validity of contracts between PEA's and their clients. Although an absurd outcome, this is theoretically possible. Similarly, a concept calling for amendment was communicated to the Ministry of Justice, which similarly declined to pursue this amendment during this legislative session, believing that the general norm had extensive political ramifications beyond PEA contracting and therefore determined to wait for the next legislative session to pursue amendment.

B.I.3. Develop amendments to the Law on Contested Procedures

As noted in previous reports, there is little political appetite for amending this law. This continues to be the case. However, CLE continues to monitor developments to ensure that the ongoing debate over certain provisions of this law relating to the recognition and enforcement of arbitral awards, mediation agreements, and case disposition (i.e., rules for dismissal of judgment cases that have proven to be uncollectable) includes CLE in the discussion.

B.I.4. New Bankruptcy law

As noted in previous reports, a firm basis for revision of the bankruptcy law already exists, based on the reports from the World Bank ROSC (2012) and the IFC (2013). Local counterparts have already been for some time clamoring for a new bankruptcy regime, as the current law fails to apply to the vast majority of businesses (or individuals – the law is applicable only to juridical persons). Even with this limited jurisdiction, no secondary legislation has been passed and no procedures have ever been developed. CLE has regularly engaged with a number of stakeholders, including the Society of Chartered Accountants and Auditors of Kosovo (SCAAK), the Bankers' Association, and the Business Registry. All of these counterparts are ready and willing to provide assistance with this activity, up to and including participating in a working group.

The set of documents necessary for the Law on Bankruptcy to be placed on the Legislative Agenda is currently at the Prime Minister's Office (PMO) awaiting approval by the government. Approval, and subsequent amendment to the Legislative Agenda, is expected in May or June of 2014.

B.I.5. Legal information materials

In Year One, CLE staff completed a revision of the nine standard form contracts drafted and distributed by SEAD in 2011-12. One contract (construction) was based on a law that has since been replaced; this contract had to be completely rewritten. At the end of January, CLE and the USAID NOA Program began working with farmers and agricultural processors to use a simplified form of the standard form agricultural contracts developed by CLE. This has already resulted in over a thousand new written contracts being used in the agricultural sector, mostly between farmers and agricultural

processors and collection centers (packhouses). NOA recommended that contract monitors should be provided to oversee compliance with the contracts. In March 2014, CLE engaged three (unpaid) legal interns to carry out this work. The interns began work in April, and will continue to work with NOA throughout the growing season until the harvest (September 2014). Previous focus groups and analysis of contracting practices showed that changing contracting practices and behaviors in the Agricultural Sector was necessary and was the most difficult sector to achieve headway in. The CLE – NOA collaboration, if successful at the end of the growing season, will be expanded considerably in Year Two. Additionally, CLE will begin using a sector based approach to increasing and improving contracting practices, starting early in Year Two with the advertising sector, the garment industry, and others.

Twelve “Know Your Rights” brochures on a wide range of commercial law and related topics, including the new PEA system, were created by the Program, and they have been distributed to businesses and other interested parties. Topics include contract enforcement against the public sector, the new system of PEAs, consumer protection, workplace health, basic labor law (including individual pamphlets on maternity leave and the rights of the employer and employee in termination), an introduction to intellectual property for entrepreneurs, and how to get access to legal advice and counsel.

Activities under B.I relate to the following PMEP indicators:

IR 2.1.2.1 - No. of laws, regulations, and procedures designed to enhance judicial independence supported with USG assistance: Target: 22.

CLE drafted during Year One 22 Laws, regulations, and procedures: A) With MOJ, 17 regulations governing PEA system drafted/13 adopted; B) with KJC, 4 drafted/3 adopted; C) with MTI 1 drafted/1 adopted.

B.II. Mediation (and Arbitration monitoring)

Mediation activities have accelerated, with the Peja and Gjilan centers both seeing steady growth in case intake. A third mediation center was opened in Prizren, and preparation was underway to open an additional center or centers in Gjakova and Pristina, where Court Presidents have sought CLE support for establishing centers within these courts. Multiple training programs have been delivered on mediation, both to train new mediators and as refresher training for experienced mediators.

CLE continued operating the two mediation centers in Gjilan and Peja. These two Centers have been operating continuously since July 2011; they were created by the USAID SEAD program, and then operated for a year by the USAID EROL Program. They accept cases referred by the courts as well as cases submitted directly by the parties. CLE opened a third mediation center in Prizren this quarter but no case statistics were generated during the reporting period, as the center has not begun resolving cases yet.

	Gjilan		Peja	
	Qtr 4	To date	Qtr 4	To date
Cases reviewed by Project for potential referral	312	1652	339	1537
Cases selected by Project and judge for potential referral	255	1356	308	1116
Cases referred to mediation (based on agreement of parties)	35	173	28	166
Cases settled through mediation and approved by court	22	103	10	61
Cases not settled and transferred back to court	9	54	6	42
Cases in progress (agreement to mediate signed and mediator selected)	10	16	21	61

CLE is not directly involved in arbitration but does monitor the performance of the courts in recognizing and enforcing awards. In the reporting period, no domestic arbitral awards were pending recognition or enforcement at the Commercial Department of Pristina Basic Court. Both the American Chamber of Commerce (AmCham) and the Kosovo Chamber of Commerce (KCC) confirmed that no parties have requested recognition and enforcement of arbitral awards.

KCC received and closed three arbitration cases during this period. In the first case, the Tribunal established lack of jurisdiction. The lack of jurisdiction has not been raised for judicial review by the parties. In the second case, the Tribunal rendered an award and the respondent promptly complied. The third case was resolved by a settlement agreement between the parties prior to the rendering of an arbitral award.

A single foreign arbitration award was presented to the Commercial Department of the Pristina Basic Court for enforcement. As of April 2014, the Court had recognized the award, and opened enforcement proceedings, beginning with formal notification to the debtor of the recognition and notice that Court would pursue execution.

The AmCham ADR Center received and closed two arbitration cases without entering into the merits of the case. The first case submitted and filed resulted in immediate fulfillment of obligations by the respondent while in the second case, the claimant decided to pursue commercial mediation. In addition, the AmCham ADR Center received and concluded one commercial mediation case dealing with a shareholder dispute (value of shares 4,000,000 EUR) which has been properly recognized by the Commercial Department of the Pristina Basic Court.

CLE has prepared and distributed a legal explanatory memorandum on the enforcement of foreign arbitral awards and foreign judgments. The purpose of this memorandum is to offer detailed explanations to creditors and judges of the Commercial Department on the procedural steps required in order to recognize and enforce foreign judgments and arbitral awards.

Finally, CLE developed a training program on compliance with USAID assistance funding rules and regulations for a number of USAID Forward award partners, including both Arbitration institutions.

Arbitration and the Commercial Department at the Pristina Basic Court: On January 1, 2013, the Commercial Court in Pristina was restructured into the Commercial Department (CD) within the Pristina Basic Court. Recognition and enforcement of arbitral awards, and enforcement of interim measures of arbitral tribunals, now fall within the competence of the CD. During Year One, CLE staff met regularly with the representatives of the CD, including the Presiding Judge, Mr. Bajram Myftari, and the CD Administrator. As of May 1, 2014, the CD has recognized and enforced two local arbitral awards and one major foreign arbitral award. As of now, the CD still has the competence to recognize and enforce arbitral awards. The authority to enforce arbitral awards will be transferred to PEAs exclusively from July 1, 2014.

Activities under B.II relate to the following PMEIP indicators:

IR 1.1.3.2 Number of ADR (mediation) agreements concluded and enforced. Target: 100.

During Year One 169 mediation agreements were concluded and enforced; during Quarter Four 82 mediation agreements were concluded and enforced.

IR 2.1.3.1 Number of ADR (mediation) cases filed and resolved through mechanisms supported by USAID funding, TA, or training. Target: 100.

During Year One 169 mediation agreements were concluded and enforced at the CLE mediation centers; during Quarter Four 82 mediation agreements were concluded and enforced.

IR 2.1.3.2 Percent of arbitral awards recognized or enforced by courts. Target: 100%.

During Year One, 100% of awards presented for recognition and enforcement have been properly treated by the Court.

B.II.1. Develop Mediation Infrastructure

The mediation centers started under SEAD in Gjilan and Peja have been operated by CLE since June 2013. The Gjilan center was re-located within the court at the invitation of the Court President, demonstrating institutional support for the institution of mediation. The move has facilitated a growth in case flow based on being more conveniently located for judges and parties.

The number of cases in mediation has grown steadily since June, 2013. In that month, an average of about 8.5 cases were referred to each center per week for possible mediation; by March 2014, that figure had more than doubled, to 18 cases/week. The number



of cases resolved has also more than doubled, from 5 cases in the month of July 2013 to 11 cases in March 2014.

Through the end of 2013, there were only a handful of “walk-in” cases to the two centers (i.e. parties who self-initiated Mediation as opposed to Court referred cases). Most cases were referred by the courts. However, in January 2014 CLE launched an advertising campaign with a Public Service Announcement played on Radio Dukagjini. Since then, more than thirty walk-ins have contacted the centers and asked for mediation assistance. Twelve of these have brought disputes appropriate for mediation.

CLE assisted the Mediation Association to establish itself as a legal entity, including assistance in the drafting of bylaws, disciplinary rules, and a code of ethics.

CLE assisted the Mediation Commission at the Ministry of Justice to develop its first work plan, which covers the period September 2013-August 2014.

[B.II.2. Support and establish Mediation Centers, and continued implementation of KJC protocol on the Court referral of cases to Centers](#)

CLE continued to operate its Mediation Centers in Peja and Gjilan and at the end of the 4th Quarter opened a third center in Prizren.

Implementation of the Protocol is in full effect in the Basic Courts. CLE continuously liaises with the Court Presidents and staff to ensure proper implementation of the Protocol (see B.II.4, below).

[B.II.3. Establish new Mediation Center](#)

In October and November, CLE went through a site selection process that concluded the best locations for new centers would be in Pristina and Prizren. This recommendation was forwarded to USAID. In the fourth quarter, CLE opened a new center in Prizren, renting office space there and hiring a full-time manager. This was accompanied by training for the judges and clerks in Prizren and two of its branch courts, and also with an outreach campaign that included articles in the local media and the regular cycling of a public service announcement on local radio.

The possibility of a center in Pristina and/or Gjakova remains open, with both Court Presidents expressing their desire to locate a Mediation Center in their court; space is at a significant premium in Pristina, however. CLE will work with USAID and the Court Presidents to determine whether locating a center in these courts is possible. This decision will be reached in the First Quarter of Year Two.

[B.II.4. Implement KJC Protocol on referral of cases to Mediation Centers](#)

Implementing the Protocol was a major Year One activity that is now substantially complete. CLE staff liaised with all Basic Court Presidents on mediation and the Protocol. The Program then developed training materials, and trainings were conducted in six of the seven Basic Courts (and several branch courts) for both judges and clerks on the subject of the Protocol, mediation law, and how to administer the referral

process. All Basic Courts except for Mitrovica have now received thorough direct training on the Protocol. Based on continuing engagement with the Mediation Commission, it appears that five of the seven Basic Courts (Gjilan, Peja, Gjakova, Prizren and Ferizaj) are all implementing the Protocol properly, and the Pristina Basic Court has committed to using the Protocol once the UNDP mediation project in Pristina comes to an end in the summer of 2014.

For several courts, there was a long delay between the adoption by KJC of the Protocol, and actually implementing it. This was resolved by a combination of training plus regular follow-up visits to the relevant courts.

B.II.5. Support to the Mediation Association

CLE support to the MOJ Mediation Commission in Year One took three forms. First, CLE supported two meetings of the Association board.⁴ Second, CLE staff provided training with the Association staff to increase their capacity, including their capacity to apply for and administer donor grants. And third, CLE worked with the Association to offer training programs for new mediators in November. Each training session lasted 40 hours (five full work days) and involved training on law, practice, ethics, and international best practices. 42 new mediators were trained, of which 15 are female. Refresher Training was provided for mediators already licensed, as well. Refresher training was provided to 45 total mediators, 19 of which were female.

It should be noted that while the Association is the only professional organization for mediators, membership is not mandatory. While most mediators have joined the Association, some have not. The Program is working with the Association on outreach, while always keeping in mind that membership is voluntary.

Two significant challenges were encountered. First, the Law on Mediation delegates the responsibility for adopting implementing regulations and setting mediation policy to a five member Mediation Commission composed of representatives of different bodies, with the representative of the Ministry of Justice serving as Chairperson. Unfortunately, most of the Mediation Commission members are not active and show little interest in their duties. The Program was able to work around this to some extent by working almost exclusively with the Chair of the Commission. The Chair is a younger lawyer who is energetic and ambitious, and for most purposes she was able to serve as sole local counterpart. However, it was occasionally necessary to cajole other members of the Commission into working on Commission business.

A second problem was donor coordination. Several donors are involved with mediation in Kosovo, and neither the MoJ nor the Mediation Commission have much capacity to coordinate donor activities. CLE currently takes the lead role, in ensuring donor coordination.

⁴ The MOJ Mediation Commission is the government regulatory agency responsible for overseeing and developing Mediation; the Mediation Association is a private association of Mediators, formed to advance the interests of Mediation, Mediators, and to be a voice for the profession with the MOJ Commission.

B.II.6. Building Sustainability – ICC Mediation Moot Competition

Team practices begin in November and continued regularly for two months, with only a short break for the holiday season. The team departed for Paris in early February. The team performed well, scoring above the 50th percentile of all teams participating and “losing” only to the eventual “winner” of the competition, the team from New York University.

B.III. Training

B.III.1. Improve the skills and knowledge of judges assigned to the commercial departments of the Pristina Basic Court, Court of Appeals, and Special Chamber of the Supreme Court.

CLE implemented five major training initiatives in Year One – Two programs for judges, one for advocates, one for PEA’s and one for Mediators. One training program was for judges through the KJI, and one was the aforementioned customized year-long training program for judges of the Commercial Division of the Pristina Basic Court. Two courses were offered with KJI, training a total of 40 judges (36 male and 4 female).

Training for advocates was in cooperation with the Kosovo Bar Association (KBA; formerly the Kosovo Chamber of Advocates), Ten courses were offered to the advocates through KBA. 618 attorneys attended these courses, including 91 women and 13 lawyers from non-majority communities (Serb, Bosnian, and Turkish). CLE also developed three entirely new legal courses: “Arbitration”, “Business Organizations”, and “Bankruptcy” in addition to reviewing and revising previously developed SEAD training materials.

The year-long training on business and commerce for judges of the Commercial Division was inaugurated; all of the Commercial Division judges attended, along with the President of the Pristina Basic Court and one judge from the Supreme Court. All of these trainings used CLE trainers.



In addition to the regular support CLE has been providing to the Commercial Department, the Program has prepared a compilation of reading materials for the Judges, upon their request. Reading materials are in the form of e-books and include the most updated texts on business and corporate law, insolvency law and selected articles from international journals. For several important topics such as corporate asset evaluations, corporate restructuring and corporate tax issues, the CLE Team has provided on-site support and advice to the Judges on how to address these issues.

Training for Mediators and PEAs is discussed above, under the relevant section headings.

B.III.2. Assessment of the LLM Program in Contract and Commercial Law

STTA Prof. Ted Parnall of the University of New Mexico traveled to Pristina between October 19th and November 2nd to carry out the assessment of the LLM Program. Prof. Parnall conducted more than fifty interviews with students, professors, staff and administrators in the LLM program. His report was completed in November 2013. The assessment concluded that the LLM Program, while still operational and an improvement over the alternative of no program at all, suffers in quality from a lack of foreign professor participation and recommends that, if resources were to be made available, the program would benefit considerably from that participation.

Activities under B.III relate to the following PMEP indicators:

IR 1.1.2.3 - Number of legal courses/curricula developed with USG assistance:
Target: 2.

During Year One, legal courses/curricula developed by CLE were:

1. Contract on Licensing, Leasing, Storage and Control of Goods
2. Arbitration
3. Business Organizations
4. Bankruptcy
5. Initial Training for Development of the Professional Skills of Private Enforcement Agents
6. Corporate Governance
7. Contract on Loan, Interest and Penalty Interest
8. Pre-Contractual Liability, Formation And Interpretation Of Contracts
9. United Nations Convention on the Contracts for the International Sales Of Goods (CISG)
10. Law on Mediation
11. Enforcement Procedures

During the fourth quarter, an updated training course was developed by CLE for Contracts on Licensing, Leasing, Storage, and Control of Goods.

IR 2.1.2.2 - No. of judges and judicial personnel trained with USG assistance: Target: 100.

During Year One, the total number of judges and judicial personnel trained with USG assistance is 128 (of which 29 were female). Out of the total people trained, 39 participants are from the Prizren Basic Court and its branches, 18 from Pristina Basic Court and its branches, 26 Peja Basic Court and its branches, 12 Mitrovica Basic Court and its branches, 8 Gjakova Basic Court and its branches, 5 Ferizaj Basic Court and its branches, and 21 from the Gjilan Basic Court and its branches.

During Quarter Four a total of 55 judges and judicial personnel have been trained with USG assistance, including 15 females and 40 males. 5 judges were from Basic Court of Pristina, including the Court President and 4 judges were from Commercial Department; 1 judge was from

Supreme Court – Civil Department, 10 judges were from Prizren Basic Court, 1 Judge Basic Court in Prizren – Suhareka branch, 1 judge form Basic Court of Prizren – Dragash branch. Also, 7 Court Associates (all male) attended trainings organized by CLE, and 30 enforcement clerks, of whom 11 were females, received training.

IR 2.1.2.3 Lawyer Opinion Survey – re commercial department of basic court. Target: 10%.

Commercial lawyers with frequent cases before the Commercial Department responded to an email inquiry from CLE. Respondents were asked whether the contract/commercial framework has improved over the last year. 87.5% responded “Yes.”

C. Component 3: Outreach, Gender and Monitoring

C.I.1. Conduct Outreach on the New Enforcement System

CLE outreach activities are targeted at raising general awareness among interested stakeholders and specific awareness on targeted issues (e.g., the new PEA system and Mediation) as well as presentation of CLE events, ensuring ample media coverage, and wide participation. Throughout Year One, CLE has held numerous public events, published articles, and closely coordinated with broadcast, print, and online media in order to inform the public and about USAID, CLE Program activities, and new developments related to CLE activities.

CLE organized an event to award potential private enforcement agents for the successful completion of the initial training. The event took place in Pristina, on November 27, 2013 and brought together key figures from Government institutions, the Courts, and the Private Sector. The hosts of this event were the USAID Kosovo Mission Director, Maureen A. Shauket, and Deputy Prime Minister and Minister of Justice, Hajredin Kuçi. Over 50 attendees were present

CLE has published two articles on the New Private Enforcement Agents: 'The Private Enforcement Agents System - A Relief for the Judiciary' and 'The Guide for Creditors - How to Collect Debts.' The aim of the articles was to inform the public regarding the procedures of the new enforcement of judgments system and the roles and authorities of the enforcement agents. The articles appeared online at Gazeta Express and telegrafi.com; both were on the front page originally and are still available in the archives. CLE also drafted an article on “The New Enforcement Agents System” which has been published in the 'Revista e Arte', a news journal published by students of journalism in the University of Pristina.

CLE developed and published a Public Service Announcement (PSA) on the PEA System in three languages - Albanian, Serbian, and English. The PSA has been broadcast on local public television - the Radio Television of Kosovo (RTK) – since January 2014. The PSA has also been uploaded to the CLE official web page, the CLE Facebook page, and the CLE YouTube page. During the fourth quarter, the video was viewed 584 times at CLE's Facebook page, and 856 times at CLE's YouTube page. A second PSA on Mediation was finalized at the end of the reporting period.

CLE has also produced a Private Enforcement Agents' brochures in three languages, Albanian Serbian, and English. During the fourth quarter, CLE distributed more than 345 of

these brochures, out of which 210 were in Albanian, 110 in Serbian, and 35 in English.

CLE serves as a resource to the Ministry of Justice and to the potential private enforcement agents. CLE printed the Law on Enforcement Procedure and distributed it to the judges in all Kosovo Basic Courts. CLE designed the stamps of the private enforcement agents. During the fourth quarter, CLE had regular meetings with the Ministry of Justice staff and the candidates for enforcement agents to discuss the needs of the candidates in order to start their work, including both legal concerns (compliance with the laws and regulations) and technical, financial, and administrative issues. CLE also prepared an event calendar of events for PEAs and has prepared a work plan for the organization of the new Chamber of PEAs.

CLE printed the new Law on Enforcement Procedure, in a convenient brochure form, for distribution to the new PEAs and to the judges and enforcement clerks in Kosovo courts. Up to now, the law was only available in the Official Gazette and online.

C.I.2. Conduct Outreach on Backlog Reduction

Work on this activity began in the fourth quarter. CLE published an article on “Reduction of the Enforcement Judgment Backlog” in *Ekonomia Magazine*, Kosovo's monthly business magazine. The article appeared in the April edition. CLE also organized a press conference on the reduction of the enforcement backlog cases on April 24, 2014 in Gjilan. The panelists in the press conference were the USAID's Mission Director, Maureen A. Shauket; the President of the Kosovo Supreme Court, Fejzullah Hasani; and the President of the Gjilan Basic Court, Zyhdi Haziri. The press conference obtained substantial media coverage.

Also in the fourth quarter, CLE began developing a Public Service Announcement (PSA) on the Backlog Reduction Initiative to reach the public and interested stakeholders. The PSA should be complete and ready to broadcast in the next quarter.

C.I.3. Conduct outreach with business community

Since September 2013, CLE held eight roundtables with the business community, meeting more than 120 business representatives. The roundtables were held in cooperation with multiple other stakeholders, including two with the USAID New Opportunities for Agriculture Program, two with the Kosovo Women's Chamber of Commerce (G7), and one apiece with the American Chamber of Commerce in Kosovo, the Kosovo Chamber of Commerce, the National American Albanian Council Hope Fellowships Program, and the Ministry of Labor and Social Welfare. The roundtables gathered businesses from various sectors including the agricultural community, wholesale and distribution companies, NGO representatives, journalists, consultancy, social research, academic institution businesses, food processors, collection



centers, and others. CLE is also distributing 'Put It On Paper' USBs containing standard form contracts, drafted by CLE, in three languages. During the fourth quarter only, CLE distributed more than 200 USBs to its business partners; in total more than 450 of these USBs have been distributed in Year One.

CLE is developed a series of working sessions with female entrepreneurs to further develop their business and transactional skills. Two of these, on 'Access to Finance' and 'Negotiations Skills', were held with the Kosovo Women's Chamber of Commerce (G7).

"The standard form contract has been very useful for me, it includes the details and the elements a contract should have. Therefore, the standard form contract has been a relief for my everyday work"

- Drilona Emrullahu, RTC

During the fourth quarter, CLE began outreach specifically targeting the non-majority business community. The Program organized a Put it on Paper roundtable with the Serbian business community in Gracanica on April 29th, 2014. It is believed that no USAID Program had ever conducted such an event with the Gracanica business community. The event was co-hosted with the Ministry of Labor and Social Welfare and the US Ambassador. CLE is also reaching out to the non-majority businesses community in North Mitrovica. CLE has distributed 100 USBs with the standard form contracts to Serbian businesses there, and will be conducting two round tables and a focus group there early in the next quarter.

CLE conducted 8 roundtables among the non-non-majority business community through its first year, working directly with 86 business owners or representatives (43 of which were women owned or represented businesses). The non-majority community participants were 25 male business owners from Gracanica.

In the second quarter, CLE developed a standard form contract for construction. In March, CLE held a Workshop on this contract jointly with the USAID Partnerships for Development and the business members of the American Chamber of Commerce in Kosovo. The aim of the workshop was to solicit industry feedback on the new form contract.

C.I.4. Monitoring, Evaluation, and evidence gathering to inform CLE Activities - Establish baselines

In Year One, CLE conducted five focus groups of 60 participants with the purpose of gathering data on the usage of contracts, knowledge on the availability on mediation services, knowledge on the system for the enforcement of judgments, and effectiveness of the SEAD Program media campaign.

C.I.5. Prepare CLE Gender Analysis and Action Plan

CLE's Gender Action Plan was developed and finalized in July. It is serving as a guide for CLE activities going forward. In accordance with the Plan, CLE will strive to ensure the full inclusion of female judges and other female professionals in all relevant training related to the new enforcement system, new contract law related legislation, arbitration, and mediation.

CLE is also taking into consideration gender balance in its outreach materials. For example, to show to the public that private enforcement agents need not necessarily be male, the CLE presented a female enforcement agent in the first Public Service Announcement. CLE is following a similar approach in all its activities and in all of its outreach materials.

C.I.6. CLE Nationwide Survey on Women and Commerce

CLE conducted a nation-wide survey of over 1,200 respondents (more than half of whom were women) on women and commerce. The aim of the survey was to gather evidence about deeply perceived barriers to women in business in order to ground-truth these problems and also to learn about other perceived problems. The report findings uncovered a number of gender gaps and therefore provide for concrete opportunities to address them. The report, along with recommendations, was presented to USAID in April 2014, and will be presented at a major conference and media event in June, 2014. CLE is coordinating this effort with the Agency for Gender Equality (AGE) of the Prime Minister's Office. The subject of the conference will be 'Gender Issues - Women and Commerce'.

C.I.7. Outreach on Mediation

CLE is actively engaged with the business community to inform them on the availability of alternate dispute resolution mechanisms, especially mediation. In Year One CLE distributed nearly 4,000 brochures, in Albanian, Serbian, English and Turkish, to the Prizren, Peja, and Gjilan mediation centers, the Courts, and Court Branches. CLE also uses its 'Put it on Paper' roundtables as means to reach businesses; each of the nine round tables has included presentations on arbitration and mediation. CLE also uses door to door marketing for these brochures. During the fourth quarter, CLE distributed 1,500 brochures, mostly to businesses, 500 of which were in Turkish for the non majority Turkish community in Prizren.

During the fourth quarter, CLE arranged a radio show to discuss the mediation services. The show was broadcast on March 7, 2014 on Radio Dukagjini, a program with Kosovo-wide coverage. The radio show promoted the mediation services, procedures, and other related issues. CLE is also advertising mediation services and its centers in Gjilan and Peja, and its new center in Prizren, with a radio advertisement that is broadcast regularly on Radio Dukagjini. Both previously active CLE mediation centers, in

"I am tremendously happy that mediation is a reality in Kosovo and that our mediators are exceptionally successful in settling parties disputes. We are looking forward to expand the mediation in entire territory of Kosovo and the success story of mediation centers are the model to be followed."

- Lindita Ademi, Chair of Kosovo Mediation Commission

Peja and Gjilan, report multiple “walk-in” clients as a result of this radio spot. The radio show and the advertising spot can both be accessed online at the CLE website, kontrata.net. A television Public Service Announcement on Mediation was in development and nearly ready for broadcast at the end of the reporting period.

Other outreach related activities

CLE is continuously engaged with women’s NGOs and representative groups to observe their needs and explore opportunities for cooperation. CLE is working particularly closely with the Kosovo Women's Chamber of Commerce G7, as well as the Hope Fellowships program; it has offered trainings on transaction skills to both of these groups. CLE staff have helped G7 finalize their overall strategy, their action plan, and their budget. CLE has also drafted a communication strategy for G7.

CLE developed a list of articles and is periodically publishing them in local newsletters and business magazines. The articles cover a variety of topics such as Enforcement of Judgments and Contracts, Insolvency, Mediation, and Continuing Legal Education. During the fourth quarter, CLE published an article discussing the success of efforts to reduce backlog. The four page long article appeared in the Ekonomia - a monthly Kosovar business magazine - in the April edition.

Other outreach related activities – Institutional Support to USAID Forward Partners

CLE is also supports institutional capacity building for USAID Forward grant partners. In autumn 2013, CLE conducted a workshop on Administering USAID Forward Grants covering the laws and regulations applicable to grant recipients, and at which “template” policy, human resources, operational, and finance manuals were provided. The participants were walked through the requirements of grant administration and given the tools to write and adapt the template policy manuals to their own organizations. Participants included the Arbitration Tribunals of the Kosovo Chamber of Commerce and the American Chamber of Commerce, the Kosovo Women’s Chamber of Commerce - G7, BIRN, and the Advocacy Training and Research Center. CLE launched its web page in January 2014. The page has been uploaded with CLE's documents and promotional materials. The website is similar to the SEAD website but includes additional resources.

CLE’s Facebook page was launched at the end of January; it has over 500 likes is updated at least once per week.

Activities Planned for Next Quarter (May-July 2014)

A. Component 1: Improved Systems for Enforcement of Judgments and Reduction of Backlog in Enforcement Cases

Next quarter should see very intense activity in this component. The new Chamber of Private Enforcement Agents will be organized. The PEAs will officially begin work in early May. Backlog reduction activity will rise dramatically as the 20 new KJC hired court enforcement agents begin to demonstrate results for their work. Garnishment of wages should join execution against bank accounts as an important new tool for judgment enforcement.

B. Component 2: Development of the Contract/Commercial Law Framework and Systems, Improvement of Contract Enforcement Systems and Functioning of Mediation Mechanisms

CLE will begin working with value chains in selected business sectors such as garment industries, pharmaceuticals, freight forwarders, and the like, in order to expand the use of contracts and improve their quality. Work on the new Bankruptcy Law should begin in earnest next quarter, with the creation and convening of the working group. The drafting of regulations for the Law on Obligations will be completed. The number of mediations referred and completed is expected to rise. Trainings with the Chamber of Advocates will continue, as will the specialized training program for commercial court judges. Cooperation with USAID NOA on agricultural contract issues will go on through the summer. Round tables will continue, including round tables in Mitrovica North.

A fourth mediation center is a possibility, depending on the availability of funds and cooperation from the relevant Basic Court. CLE expects to work closely with the Mediation Commission on drafting secondary legislation to the Law on Mediation. Amendments to the Law, based on the experience of the last three years, will be drafted and introduced.

C. Component 3: Outreach, Gender, and Monitoring

CLE will help organize a national conference on gender issues, and will continue to offer support to USAID 15th anniversary activities as needed. A set of focus groups will be held with businesses in May and June.

Going forward, CLE's approach will continue to include outreach activities, gender sensitivity and balance in training activities, and gender sensitive legislation review.

CLE will intensify and expand its advertising, marketing, public education, and outreach on Mediation.

Miscellaneous – Consultants, Environmental Compliance, Budget, and Deliverables

Short term consultants this quarter

Under subsection F.7.A.3 of the CLE program contract (Contract No. AID-167-C-13-00001), a quarterly statement is required on any short-term consultants, including progress and observations, significant issues, and a description of follow-on activities and plans.

Sefadin Blakaj (Legal trainer): Professor Blakaj undertook 1 day of training for lawyers at the Kosovo Bar Association in February 2014. The training was on interest payments and penalties and their regulation under Kosovar law. It completed without significant issues or problems. This is the third training that Prof. Blakaj has done for the program in Year One. He may be asked back next year to provide additional or advanced training.

Peter Swanson (Mediation trainer): Mr. Swanson jointly led the two-week training in Prizren

for new mediators. He also served as an evaluator and observed each participant during their required mock scenarios, provided critical feedback, and ultimately made recommendations for or against certification of each of the 19 participants to the Mediation Commission. Mr. Swanson also advised on the bylaws and structure of the Commission and provided recommendations for the continuing training, evaluation and development of mediation.

Sheldon Dunn (Database engineer for judicial statistics): Mr. Dunn worked on the KJC database. Most of this work was completed in the previous quarter, but two days were billed in Quarter Four, so he is included here. His work is now complete.

Alice Gillispie (Mediation Advisor): Ms. Gillispie jointly led the two-week training in Prizren for new mediators. She also served as an evaluator and observed each participant during their required mock scenarios, provided critical feedback, and ultimately made recommendations for or against certification of each of the 19 participants to the Mediation Commission.

Environmental Compliance Statement

Under subsection F.7.A.3 of the CLE program contract (Contract No. AID-167-C-13-00001), a quarterly statement is required on actions taken related to environmental regulation compliance. Due to the nature of the CLE program's work, its activities are not likely to implicate environmental regulations. Nevertheless, the program has appointed an Environmental Compliance Officer who continuously reviews program activities to ensure compliance with relevant environmental regulations. No issues arose in Quarter Four.

Status of Budget Expenditures

Under subsection F.7.A.3 of the CLE program contract (Contract No. AID-167-C-13-00001), a quarterly statement is required on the status of budget expenditures. As of 31 March 2014, CLE had expended \$ 1,909,360.00. During the reporting period, spending was \$277,303.77. CLE anticipates the monthly burn rate to be approximately \$174,000.00 per month over the next quarter.

Deliverables

The Following Deliverables were submitted to USAID during the Reporting Period, including a consolidated annual report outlining achievements for the following contractual deliverables (Section B.5):

Component 1: Improved Systems for Enforcement of Judgments and Reduction of Backlog in Enforcement Cases

1. Report with evidence documenting the reduced backlog of enforcement of judgments based on the targets set together with the [Kosovo Judicial Council] KJC.
2. Report with evidence documenting that the KJC reporting on execution caseload has improved.
3. New enforcement of judgments system established.*

4. Secondary legislation and procedures for the implementation of the new law on execution procedure adopted.
5. Chamber of Enforcement Agents established and its operation procedures adopted*
6. New Enforcement Agents selected and trained.*
7. Report documenting increased capacity of enforcement agents as a result of Program training and capacity building efforts.
8. Report with evidence documenting that the established disciplinary system for new enforcement agents is functional.*
9. Report with evidence documenting that enforcement of judgments has improved as a result of the KJC cooperation with the Central Bank and the Tax Administration of Kosovo.

Component II: Development of the Contract and Commercial Law Framework and Systems, improvement of contract enforcement systems and functioning of the ADR mechanisms

1. Secondary legislation to implement the Law on Obligations adopted.*
2. Report with evidence documenting improved skills and knowledge of judges assigned to the Commercial departments of the Pristina Basic Court and the Court of Appeals as a result of the training provided by the Program.
3. Report documenting that the process of enforcement of arbitral awards and mediation agreements functions efficiently.
4. Mediation Centers become sustainable and continue receiving and mediating cases.
5. Report with evidence documenting improved awareness among business community of contracts and ADR services.
6. Report with evidence documenting improved professionalism of Mediators and Arbitrators as a result of the training provided.

(Deliverables marked with an asterisk are not Year One deliverables).

Additionally submitted during the reporting period were:

Administrative Instructions for PEAs

Administrative Instruction on Fees (adopted by the Minister of Justice on 8/4/2014); Administrative Instruction on Ethics (adopted by the Minister of Justice on 8/4/2014); and, Administrative Instruction on the Temporary Statute of the Chamber of Private Enforcement Agents (adopted by the Minister of Justice on 8/4/2014).

Enforcement of Judgments

Standard Operating Procedure Manual and Enforcement Body Performance Evaluation
Enforcement - informative leaflet Private Enforcement Agent and obligations of state bodies and legal persons towards them
Private Enforcement Agents system 2014 – 2015 mini work plan
Rights and obligations of the parties to enforcement procedure - document

Commercial Law Activities

Standard Form Contract Agriculture Brokerage (short version)
Standard Form Contract Agriculture Sales (short version)
Concept document for drafting the draft-law on amending and supplementing the law no. 2003/4 on liquidation and reorganization of legal persons in bankruptcy
Concept Policy for the governmental policy on bankruptcy in Kosovo
Know Your Rights – Consumer Protection Laws and Your Business
Know Your Rights – Consumer’s rights and responsibilities
Know Your Rights – Protection of innovative ideas by law
Know Your Rights – Free legal representation
Know Your Rights – Labor Law for Businesses
Report on interns’ selection for contract monitoring in the field
Presentation materials on the need for a new insolvency regime in Kosovo
Memorandum on recognition and enforcement of foreign judgments and foreign arbitral awards
Legal Opinion on promulgation of the Regulation on Default Interest for the Central Bank

Component II: Outreach, Gender, and Monitoring

ARTICLES

1. Article at *Ekonomia* - New Approaches to Enforce Civil Judgments in Kosovo Courts
2. Guide for collecting debt
3. Importance of Contracts
4. New Enforcement System

KNOW YOUR RIGHTS BROCHURES

1. Consumer Protection Laws and Your Business
2. Contract Enforcement Against the public sector
3. Do you know how safe and healthy should your workplace be
4. Do you know that you don’t have to wait for the Court to enforce your claim
5. Law on Labor for businesses
6. If you have innovative ideas, protect them by law
7. Learn what you are entitled to if you are having a baby or are not in good health
8. Terminations
9. The rights and responsibilities of the consumer
10. You have the right to free legal representation

LEAFLETS

1. Contracts
2. Enforcement
3. Mediation

NEWSLETTER

1. December Edition
2. March Edition

PROGRAM SHEETS

- 1) Backlog reduction
- 2) Mediation
- 3) New Enforcement System
- 4) Reasons to use contracts
- 5) CLE Program description

PSAs

1. Private Enforcement Agent
2. Mediation Radio Advertisement

SUCCESS STORIES

1. Mediation- USAID supported mediation centers set the standard for Kosovo
2. NOA-CLE- Business Community Enhances Transactional Skills
3. PEA Oath taking ceremony
4. USAID Programs Transform the Construction Sector

Webpage

Facebook Page

Roundtables Materials (Agenda, Power-point, Standard Form Contracts, Participants List)

Women and Commerce Survey Report

Gender Analysis Report

Promotional Materials (Folders, Notebooks, Pens, USBs)

Consultant Trip Reports