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JUDICIAL INDEPENDENCE AND LEGAL EMPOWERMENT PROJECT

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QUARTERLY REPORT

OCTOBER 1, 2011 – DECEMBER 31, 2011

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Implementer

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BACKGROUND

On September 24, 2010, the United States Agency for International Development (USAID) awarded Cooperative Agreement No. AID-114-A-10-00008, the Judicial Independence and Legal Empowerment Project (JILEP), to the East-West Management Institute (EWMI).

JILEP is designed to support and strengthen the judiciary as an independent yet equal branch of government, and to improve Georgia's commercial law system. The program is organized around the following four sets of objectives: 1) strengthen judicial independence, accountability, and professionalism; 2) strengthen the institutional capacity of legal professional associations, legal rights NGOs, and the state legal aid system; 3) improve legal education; and 4) develop commercial law and improve commercial law related practice.

The following is submitted as JILEP's Quarterly Report for the reporting period October to December 2011.

COMPONENT 1: STRENGTHEN JUDICIAL INDEPENDENCE, ACCOUNTABILITY AND PROFESSIONALISM

A. Significant Results, Accomplishments, Activities

Working for Judicial Independence through the High Council of Justice (HCOJ)

Over the course of the past year, JILEP worked with the HCOJ and the Supreme Court to develop more fair and transparent judicial selection, evaluation, and disciplinary processes. At the suggestion and encouragement of JILEP, the HCOJ asked both international and domestic civil society groups to provide input on how these processes could be improved. This led to an open dialogue between the NGOs and the HCOJ, and to an extensive review of the rules that guide these processes. Ultimately, the HCOJ drafted amendments to both their internal guidelines and to the *Organic Law on the Courts*. Some of the suggestions provided by JILEP and its NGO partners made it into the HCOJ's amendments to the *Organic Law*, amendments which are expected to be passed by the Georgian Parliament in 2012. Some of these suggestions were adapted by the HCOJ into their new administrative rules for selecting judges. In JILEP's view, these changes that will soon be made to the legal and administrative framework represent an important step in the direction of establishing a lasting framework for judicial independence and system transparency but there is still much more to be done to accomplish this goal. More details of this initiative are provided in the sections below.

Judicial Selection, Evaluation, and Appointment

During the quarter, JILEP suggested amendments be made to the HCOJ's internal rules entitled, *Rules for Selecting the Judges*. JILEP's suggestions were designed to help make the selection of judges more merit based, as well as make the selection process easier to understand and more transparent. The HCOJ responded positively to JILEP input and some of JILEP's suggestions made their way into the draft amendments to the rules. For example, following JILEP's suggestion, the HCOJ amended the *Rules* in a way that separated the evaluation criteria used to pick HSOJ judge candidates that needed to attend the HSOJ ("listeners") from the criteria used to evaluate former judges applying for new judge positions. The draft amendments to the *Rules* require judicial candidates to submit their *curriculum vitae* as part of the application process, another JILEP suggestion. The amendments also make interviews for short-listed candidates mandatory rather than

discretionary, yet another JILEP suggestion. The amendments to the *Rules* are expected to be approved in early 2012.

JILEP supported the efforts of civil society groups to meet with HCOJ to provide their suggestions to the HCOJ. On December 3-4, JILEP sponsored a working meeting at the Bazaleti conference center near Tbilisi, where HCOJ, JILEP, local NGOs, and international actors shared their thoughts on how the *Rules for Selecting Judges* could be improved. Some of the suggestions provided by NGO participants during the Bazaleti meeting were taken into consideration by the HCOJ and incorporated into the draft amendments to the *Rules* as well. For example, the HCOJ accepted the NGOs' suggestion that the number of HCOJ members needed to approve a judicial appointment, be raised from one-third of the voting members to not less than one-half, thus ensuring a more democratic and inclusive decision making process.

At the same time the HCOJ was amending its own internal guidelines on judicial selection, evaluation and discipline, it was working on amendments to the *Law on Common Courts* in a way that would help the HCOJ become more independent from the other branches of government. For example, the HCOJ sought to change the part of the *Law on Common Courts* that allowed both the president and the Parliament to veto the selection of individual judicial candidates through their representatives on the HCOJ. Ultimately, the HCOJ was successful in amending the *Organic Law* so that neither the president nor the Parliament will have the power to veto judicial candidates through their representative members and decisions on the appointment of judges will be made by the majority vote of the HCOJ members, not by only a third of the attending members as it was before. The HCOJ was also successful in amending the *Organic Law* to state that all non-judge members of HCOJ will be selected based on their professional experience, moral reputation, and ethical standards and that the HCOJ members appointed by the president will not be active politicians. They also added a provision making it clear that the primary role of the HCOJ is to protect the independence of both the judicial system and individual judges. While some amendments revised some of the definitions of judicial selection criteria, in JILEP's view, they did not go far enough. Aspects of the judicial selection process remain unclear, and the HCOJ is still left with the task of choosing judges without sufficient information about their qualifications.

In the coming year, JILEP will encourage the HCOJ, the MoJ, and the other relevant justice system actors to consider making additional amendments to the *Organic Law* and to the

HCOJ *Rules* that will make the selection process easier to understand and even freer from the possibility of executive or other outside influence.

During the quarter, JILEP continued to work with ONYX, Ltd and the HCOJ to develop a software platform for judicial examinations. ONYX completed a requirements definition entitled, “Judicial Selection Process Automated System Implementation,” which describes the details of the automated system they are building. ONYX and HCOJ expect to have the new system in place and operational sometime in April 2012.

Improve the judicial evaluation system

Last year, the HCOJ took the first steps toward creation of a system of internal judicial evaluation by creating a basic list of rules that guide the evaluation process. Last quarter, the HCOJ adopted these new rules entitled *Evaluation of Efficiency of Judges’ Performance*, and abolished the rules they had used in 2010. JILEP participated in some of the meetings organized by the HCOJ and Supreme Court in which the change in rules was discussed. JILEP came away from these meetings with the concern that the HCOJ and Supreme Court seem to favor a top-down, heavily administrative approach to evaluation that could be used by the court leadership to control judicial behavior and discourage judicial independence. JILEP plans to do an assessment of the new judicial evaluation system during the next quarter which it hopes will lead to a rethinking of the rules, and the establishment of an approach that will do more to encourage the independent thought and action of individual judges.

Judicial Discipline

In November, JILEP brought Victoria Henley, the Chief Counsel of the California Commission on Judicial Performance, to Georgia to advise the HCOJ on how they might improve the judicial disciplinary process. Ms. Henley conducted a workshop for HCOJ members and key staff in which she explained how judicial discipline is handled in the U.S. and in other parts of the world. Ms. Henley gave her input on the recently drafted amendments to the *Law on the Disciplinary Responsibility and Disciplinary Proceedings of Judges of the Georgian Common Courts*. The HCOJ responded positively to Ms. Henley’s suggestions on how to make the disciplinary process more transparent and some of her suggestions were included in the draft amendments. The most important change suggested by Ms. Henley and included in the draft amendments relates to the transparency of disciplinary procedure outcomes. According to the current law, disciplinary proceedings and decisions are closed to the public as well as to the party that filed the complaint. Under the proposed

amendments, an individual filing a complaint against a judge may receive notification from the HCOJ of any disciplinary action taken against the judge related to the complaint. In addition, the decisions of Judicial Disciplinary Chamber will be published on the HCOJ official web site with all names redacted in most cases. However, under the draft amendments the Disciplinary Chamber has the discretion to publicize the entire text of its decisions and even disclose the names of the judge involved.



Victoria Henley leads workshop on judicial discipline at the HCOJ

HCOJ Outreach Capacity Building

In the previous quarter, EWMI's Dr. Mark West, helped the HCOJ draft its first "Public Trust and Confidence Plan." This quarter, JILEP helped the HCOJ put the Plan in action. During the reporting period, the HCOJ took the following actions in furtherance of the Plan:

- On October 3, HCOJ hosted Georgian Institute of Public Affairs (GIPA) students and introduced these students to the mission and function of the HCOJ;
- On October 4, HCOJ hosted GAU law students and provided them information regarding internship opportunities for law school students at the HCOJ;
- On October 13, 17, and 31, the HCOJ conducted meetings with NGO representatives, international donors, and legal professionals to exchange viewpoints on the proposed draft amendments to the laws and regulations related to judicial selection, transfer, discipline of judges as well as the composition of the HCOJ; and
- On October 25, HCOJ conducted its regular meeting and interviewed judicial candidates in sessions open to the media and to the public.



HCOJ meets with NGOs, international donors, and law professionals to discuss changes needed in the legislative and administrative framework

During the quarter, Digital Design Studio completed the new HCOJ website design. While the website is not yet operational, the draft layout promises to provide much more information and deliver much greater transparency than the previous website. For example, the draft site includes a window dedicated to providing information on judicial disciplinary matters, an area once considered off limits to public observation. The HCOJ expects to have the new website in place and operational in February 2012.

After observing what JILEP was doing for the HCOJ in terms of public outreach, the Supreme Court approached JILEP and asked if it would be willing to support the development of a public communication and outreach strategy for the entire court system (as opposed to just the HCOJ). JILEP made plans to cooperate with the Supreme Court to clearly define the scope of this assistance and develop the requested strategy. Dr. Mark West is expected to visit Georgia in February 2012 and begin providing assistance to them in this regard.

Strengthening the High School of Justice (HSOJ)

At the request of the Supreme Court and the HCOJ, JILEP brought U.S. judge Kenneth Stuart to Georgia to deliver a pilot course entitled, “Courtroom Communications Skills for Judges.” JILEP saw this as an opportunity to deliver its core messages – the need for independent judicial thought and action, and the need for strict adherence to a code of judicial ethics. Judge Stuart delivered a two-day course to 11 specially selected members of the judiciary and court administrative staff in which he attempted to weave these themes into his presentations. During the course, it became clear that the Supreme Court’s vision for the training was much narrower than JILEP’s. It did not want a training that linked judicial behavior to the code of judicial ethics; it was not interested in exploring questions of judicial independence or developing

judicial philosophies. Rather the Supreme Court wanted a course that simply told judges how to communicate more politely and more effectively with the parties and the public. While JILEP saw the importance of the goal, it felt that any effort to lecture judges on these topics that was not based upon the philosophical foundation of individual judicial independence as well as the rules of judicial ethics ran the risk of reinforcing the top-down control currently exerted by court leaders upon line judges. At training end, the Supreme Court and JILEP mutually agreed that it would be better for the Supreme Court to use other resources to deliver the kind of training program they had in mind.

Monitoring and Evaluation (M & E) Indicator Results¹

Anticipated Result A: The High Council of Justice (HCOJ) appoints, advances, and disciplines judges in a more objective and transparent manner.

Number of policy changes recommended by the project:

For year (annual reporting): four (4) sets. These policy changes were in the following areas: judicial selection/appointment; composition and mission of HCOJ; transfer of judges; discipline of judges; access to court information including videotaping, audiotaping, and note taking. (Another set of recommendations was made to the HCOJ regarding the establishment of court-annexed mediation (see Component 4 for details)).

Number of policy changes recommended by the project that are adopted by the HCOJ:

For year (annual reporting): 0 sets in this year but the recommended changes mentioned above are expected to be formally adopted by Parliament and HCOJ in the early part of 2012. (The recommendations made to change the Civil Procedure Code to establish court-annexed mediation were adopted by Parliament in December 2011. (See Component 4 for details.))

End of Project Target: TBD

¹ The M & E results reported in this Quarterly Report (and in the previous 2011 quarterlies) are based on the M & E Plan submitted by JILEP and approved by USAID in 2011. JILEP recently submitted an amended M & E Plan to USAID that provides missing baseline information and clarifies some indicators and targets. Future M & E reporting will be based on this amended M & E.

Anticipated Result B: The High School of Justice (HSOJ) is more sustainable and better prepared to meet evolving needs.

Number of new curricula developed or existing curricula improved with JILEP assistance:

For year (annual reporting): 2 for year (Tax Code Training for Judges, Courtroom Communications Skills).

End of Project Target: TBD

Number of judges, judge-candidates, and court personnel trained with JILEP assistance.

For quarter (quarterly reporting): 19 (7 men/12 women). (The training courses were: Courtroom Communications Skills 11 (7 men/ 4 women) and Judicial Discipline 8 (4 men/ 4 women).

For Year: 150 [79 (Q2) + 52 (Q3) + 0 (Q4) + 19 (Q5)]

End of Project Target: 210

PPR YR2011 Target: 40 (Number of judges trained with USG assistance) (Exceeded target)

B. Key Issues and Challenges

JILEP will need to closely monitor the development of the HCOJ computer software system to help ensure that it will ultimately serve to reduce the opportunity for arbitrary or politically motivated judicial selections. JILEP will also need to closely monitor the development of the HCOJ website to help ensure that it will serve the goals of greater public understanding and greater transparency.

JILEP will continue its involvement in the process of drafting new judicial appointment, transfer, and disciplinary laws and regulations. The challenge here will be to convince the HCOJ not to be content with the draft amendments waiting to be passed into law but to continue its efforts to develop more clear, well-thought-out regulations that will encourage judicial independence and increase transparency.

C. Plans for Next Quarter

The following activities are expected to take place during the next reporting period:

- Continued assistance to the HCOJ to reform the judicial selection process, including improvement of the judicial qualification exam, and the interview and

evaluation processes. JILEP will again engage Judge Timothy Baland to provide advice in the area of judicial selection, and possibly judicial evaluation and promotion;

- Continued assistance to the HCOJ in developing judicial examination software that will help the HCOJ to select more qualified judicial candidates and reduce the opportunity for unfair or arbitrary judicial selection;
- Continued assistance to the HCOJ to improve the judicial disciplinary process. As a result of Ms. Henley's last quarter consultancy, JILEP determined that the HCOJ also needs assistance in determining how to assess the *grounds* for disciplinary action, as well as how to improve their internal processes for accepting and investigating complaints. In order to provide additional information and maintain the momentum for reform in this area, JILEP will arrange training for the HCOJ in the area concerned and encourage continued their dialogue with Ms. Henley;
- Continued cooperation with the HCOJ in the area of judicial evaluation. JILEP will do an assessment of the system of judicial evaluation currently being used by the HCOJ and will engage an international expert to provide a written set of recommendations on how the HCOJ can develop an evaluation system that will better protect the independence of individual judges;
- Continued assistance in creating and launching the new HCOJ website that will help the HCOJ keep the public informed about its makeup, mission, and activities;
- Continuation of HCOJ outreach support, including technical assistance to finalize and carry out the elements of a Public Trust and Confidence Plan that may include the development of public service announcements (PSAs) and documentary shorts;
- Provide technical support to the Supreme Court to define the scope of assistance in the area of outreach strategy development for entire court system.

COMPONENT 2: STRENGTHEN THE INSTITUTIONAL CAPACITY OF LEGAL PROFESSIONAL ASSOCIATIONS, LEGAL RIGHTS NGOs, AND THE STATE LEGAL AID SYSTEM

A. Significant Results, Accomplishments, Activities

NGO Coalition Building (EPF)

On November 14, EPF and the Coalition for an Independent and Transparent Judiciary (CITJ) organized the Coalition's second public forum. This second forum focused on topics directly related to the independence of the judiciary namely, the appointment, promotion, transfer, and discipline of judges. Coalition members, international NGO's, and representatives from the judiciary engaged in a lively debate about what changes should be made to the processes used to hire, promote, transfer and discipline judges. The forum was preceded by an awards ceremony that recognized the NGOs that received Legal Aid and Advocacy Grants under EPF's Civic Initiative. U.S. Ambassador, John R. Bass, and Supreme Court Chairman Konstantine Kublashvili, made opening remarks.

To continue the momentum established at the forum, EPF organized a two-day working retreat for CITJ members. The aim of the retreat was encourage member NGOs to get more actively involved in Coalition activities and advocacy. During the retreat, the members established six working groups broken down by subject area: court administration, commercial law, legal aid, legal education, and professional development of lawyers, criminal law, and public relations/advocacy. The working groups then designed action plans they hoped to implement in the coming next year.

During the last quarter, JILEP was able to convince the HCOJ to include CITJ members and international donors in their discussion of amendments needed to the *Law on the Courts* and the HCOJ administrative rules that would work to make judges more independent and the processes of judicial selection, transfer, and discipline more fair and transparent. This quarter, the HCOJ invited these international and local civil society actors to several meetings where these topics were discussed and opinions shared. The meetings resulted in draft amendments being made to the law and the administrative rules that are expected to be adopted in 2012. (See Component 1 above for a more detailed description of the initiative.)

To publicize the activities of the Coalition, the EPF team, in cooperation with the Coalition Steering Committee, developed and launched the Coalition web-site (www.coalition.org.ge). The site has a built-in interactive calendar, which will improve information sharing and coordination among coalition members.

EPF also produced the first Public Service Announcement, which will be shown on Georgian Public Broadcasting (GPB). The PSA was the first in a series of planned PSAs that will convey a message that successful judicial reform in Georgia requires active engagement of the local civil society. Many of the Coalition members took an active role in producing the PSA.

In addition to initiatives mentioned above, the Coalition began an advocacy campaign aimed at amending the *Code on Administrative Violations* to provide greater due process protection for citizens charged with administrative offenses which include a possible penalty of incarceration (up to 90 days according to the current *Code*). GYLA played the leading role among coalition members and actively advocated for revision of the *Code* during the reporting period. On December 14, GYLA organized a roundtable on the topic of administrative detention and presented its opinions on how the regulatory framework and practice should be changed. Representatives of the judiciary, as well representatives from the Ministry of Interior Affairs and High Council of Justice attended the roundtable. GYLA and other coalition members are planning to continue their advocacy campaign in 2012.

Legal Advocacy Grants (EPF)

EPF was able to provide grant funding to eight legal advocacy projects starting in September and October 2011. These projects conducted the following work during the quarter:

1. Civil Development Agency (CDA)

CDA aims to improve the quality of services provided by the Legal Aid Service (LAS) and promote the protection of human rights for Georgia's indigent population through civil society monitoring of the LAS.

During the quarter, the CDA produced a study assessing public awareness, public access, and perception of the quality of the services provided by the LAS's legal aid bureaus and consulting centers. The study was based on a quantitative survey of 300 respondents in the towns of Akhaltskhe, Akhalkalaki, Mtskheta, Rustavi, Telavi, and Gori and 18 focus group involving beneficiaries of the legal aid agencies, legal practitioners, representatives of the local civil society organizations, and local government. The draft study, which has already been submitted to the LAS and other stakeholders, will be released in February at a roundtable involving representatives of civil society, the judiciary and the government. The study which generally speaking, positively assesses the work of the LAS, calls for the geographical expansion of legal aid service bureaus as well as increased publicity of the services that are currently being offered.

2. Article 42 of the Constitution (Article 42)

The project aims to improve the business environment in Georgia by advocating amendments be made to the Tax Code and other regulations having an impact on commerce. It also hopes

to raise public awareness of important commercial law issues and provide access to justice for indigent citizens involved in commercial or tax law disputes with government entities.

Article 42 created a working group made up of commercial law specialists recruited for the project to research the areas of commercial law of most critical importance to commercial development. The group identified the topics of taxation, the law on entrepreneurship, and licenses and permits. They then conducted in-depth interviews with experts and researched legislation and legal practice in these areas. The two most problematic issues identified within these subject areas were the ambiguity of the tax legislation, and the too frequent changes made to legislation and non-normative acts. Article 42 plans to release the results of their research at the end of March. They issued an electronic bulletin describing their new project and publicizing the services they plan to offer. Article 42 also began providing consultations to indigent citizens in the area of commercial law, mainly on the issues of taxation. They provided 10 consultations and drafted complaints to the Revenue Service in three of these cases. The decisions on these complaints are pending.

3. Association "Sachino" for the Struggle against Corruption and for the Protection of Consumers' Rights in Imereti

Sachino aims to conduct a targeted campaign to bring about greater court transparency in the Imereti region and surrounding areas.

In the first reporting period, Sachino conducted two, two-day training events on the topic, "Ways and Means of Obtaining Information from the Courts." Twenty (20) regional journalists, 15 students, and 5 journalism lecturers from Kutaisi Akaki Tsereteli University took part in the trainings. Sachino trained the participants on the mechanisms they could use to obtain information from the courts. It also organized a roundtable with representatives of local media to discuss the problems that journalists are having obtaining information from the courts.

4. Georgian Small and Medium Enterprises Association (GSMEA)

GSMEA advocates for the development of a business friendly legal framework and improvement of the administration of justice in the area of tax law. During the first three months of the project, GSMEA completed a comparative study of the local and international legislation and practice relating to criminal sanctions for tax evasion and explored the feasibility of creating a tax tribunal in Georgia. They wrote a draft report and submitted it to EPF and JILEP for review. They plan to present the study to the government and the broader

business community in the next quarter with the aim of spurring discussion of changes that need to be made to the tax law.

5. American Chamber of Commerce (AmCham)

The ACC seeks to ensure that tax disputes between the government and businesses are resolved in the most transparent, predictable and equitable fashion as possible. In the first two months of the project, the ACC consulted its membership to identify the most suitable focus of an advocacy campaign for change. Their deliberations were overtaken by the recent changes made to Article 239.6 of the *Tax Code*, and to Article 83 of the *Law on Enforcement Proceedings of Georgia*, which allow the claims of the government tax authorities to receive priority over the secured claims of financial institutions. AmCham approached the Prime Minister, the Minister of Finance, the Head of the National Bank and the Head of the Revenue Service regarding this issue. AmCham's position was that the new tax law operated to undermine the security of financial institution collateral and this was likely to have a negative impact on Georgia's investment climate. AmCham asked the government leaders to repeal the amendments to the *Tax Code* and *Law on Enforcement Proceedings*. AmCham plans to continue its advocacy in the next quarter.

6. Institute for the Development of Freedom of Information (IDFI)

IDFI aims to promote the transparency and accountability of the Georgian judicial system by advocating for the creation and maintenance of comprehensive, coherent, and accessible court websites.

During the first three months of the project, IDFI developed the set of criteria they will use to assess the 16 existing Georgian court websites. IDFI developed detailed and thorough criteria for the Supreme Court and the courts of first instance. The criteria for the Courts of Appeals and the Constitutional Court are yet to be developed. In addition, IDFI conducted and is expected to publish, research that includes a comparative analysis of the proactive disclosure of public information by the judicial branch of Georgia and eleven other countries. IDFI is planning to post this study on its web-site.

7. Public Movement Multinational Georgia (PMMG)

PMMG seeks to ensure the right to a fair trial for the representatives of the Armenian and Azeri ethnic minorities residing in Georgia by reducing language barriers they face in judicial proceedings.

PMMG completed the draft of the Georgian-Armenian and Georgian-Azerbaijani dictionary of legal terms for court translators. After reviewing the draft, EPF concluded that the

document needs to be significantly revised. PMMG also approached the Ministry of Internal Affairs (MIA), the Ministry of Justice (MOJ), the Supreme Court (SC) and the High Council of Justice (HCOJ) to find out whether state bodies certify translators/interpreters employed in administrative and court proceedings and how the accuracy and quality of translation is ensured. PMMG also asked for the lists of the interpreters that translate for a party in criminal and administrative law cases in Tbilisi, Samtskhe-Javakheti and Kvemo Kartli regions. HCOJ was the most responsive to the request. It proposed to meet with PMMG to discuss in detail the questions that were raised by PMMG in its request.

8. Georgian Lawyers for Independent Profession (GLIP)

GLIP hopes to increase the effectiveness of arbitration as a form of dispute resolution in the area of private law. It will do this by analyzing the legislation and practice in the area of arbitration by advocating for the improvement of the legislative framework for arbitration, and by increasing public awareness of arbitration.

During the quarter, GLIP organized an advisory committee and developed a draft report on the current legislation and legal practice in the area of arbitration. The report identified problems in such areas as the rules for the selection of arbiters, the independence of arbiters, the qualifications of arbiters, and conflicts of interest in the practice. In the next reporting period GLIP will finalize the report and present it to the stakeholders at a briefing.

Legal Aid Grants (EPF)

EPF was able to provide grant funding to four legal advocacy projects starting in September and October 2011. These projects conducted the following work during the quarter:

1. Racha-Lechkumi and Kvemo Svaneti Self-government Resource Center (Racha)

Racha aims to protect human rights and fundamental freedoms of Georgian citizens by providing pro bono legal assistance to the population of the most underserved regions of Georgia – Racha-Lechkumi and Kvemo Svaneti. During the reporting period, the Racha completed an assessment of the needs of 312 residents and provided 133 consultations (64 female clients/and 69 male clients) on such issues as inheritance law, divorce, and breach of contract. It also provided representation in 46 legal aid cases (7 criminal law cases, 38 civil law cases, and 2 administrative law cases).

2. Non-commercial Legal Entity Tbilisian Lawyer (TL)

The goal of this project is to provide free legal assistance and ensure equal access to justice for the most vulnerable residents of Tbilisi, as well as for individual entrepreneurs and limited liability companies that are carrying out business activities at Tbilisi flea markets.

During the reporting period, TL printed 30 different brochures, each covering a different topic that is relevant to their clients. TL also organized regular meetings with the representatives of small and medium businesses at flea markets. TL publicized its project by way of TV advertisements. TL has had problems launching their web-site. Currently, the website for the Tbilisi Mayor's Office has some brief information explaining TL's work (see www.new.tbilisi.gov.ge/lawyers). TL will provide more information about their operations when their own site is launched in the next reporting period.

During the first quarter of the project, TL provided 82 indigent individuals (70 females/ 12 males) with free consultations on civil/administrative law issues. TL also provided 11 free legal consultations to individual entrepreneurs and small and medium business owners (10 males/1 female). TL provided legal representation to 4 individuals.

3. Institute of Democracy (ID)

ID provides free legal aid to the most vulnerable segments of the population residing in the five municipalities of Adjara, Keda, Shuakhevi, Khulo, Khelvachauri, and Kobuleti.

During the quarter, ID began its legal aid operations in Keda. They conducted public outreach designed to let the public know about their services. They printed and distributed posters and brochures describing their project and encouraging the public to seek their services. They also advertised their services through newspaper inserts and TV advertisements. ID provided 22 consultations in Keda. ID's Batumi office was also active during this period. It provided consultation to 16 individuals and began legal representation in 6 legal aid cases. ID also provided legal consultations on property law issues to the citizens residing in close proximity to the planned Choloki-Sarpi highway. They provided 92 consultations to this group of citizens. In total, the ID offices provided 155 consultations and 15 representations in legal aid cases. The topics ranged from illegally imposed customs duties to property disputes. In three customs duties cases, ID obtained decisions in favour of their clients. Out of the 155 legal consultations, 103 consultations were provided to men, and 52 were provided to women.

4. Human Rights House (HRH)

HRH aims to protect human rights and freedoms in Georgia by providing pro bono legal assistance to the most vulnerable segments of Georgian society: IDPs, the elderly, the disabled, and the poor.

During the quarter, HRH provided 149 legal consultations in the areas of criminal and civil/administrative law. The consultations were provided to 55 men and 94 women. As part of their representation in these cases, HRH prepared legal opinions, appeals for amnesty and conditional release.

Organizational Development of NGO partners (EPF)

EPF uses its Capacity Mapping Initiative (CMI) to promote organizational development of its advocacy and legal aid grantees. The CMI consists of a detailed set of questions designed to assess organizational capacity in six areas: governance, financial management, human resources, program management, communications, and fundraising. After conducting extensive interviews with a grantee, EPF generates a report which tells the grantee where it stands in the above mentioned areas and offers concrete recommendations for addressing their institutional problems. The grantee is encouraged to create a strategic development plan based on this report and to submit a proposal aimed at improving their organizational capacity to EPF for funding.

During the reporting period, EPF completed and submitted the baseline Capacity Mapping Initiative (CMI) reports to four advocacy grantees: Article 42, GLIP, PMMG, and CiDA. The reports included the “diagnosis” for each organization, as well as specific recommendations for further organizational development activities. EPF expects to receive organizational development strategic plans from each of the four advocacy grantees.

EPF conducted assessment interviews of three legal aid organizations: the Institute of Democracy, Human Rights House Tbilisi, and the Tbilisians’ Lawyers. It will produce the CMI reports based on these interviews in the next quarter.

CRRC Judicial Independence Study

The CRRC team completed the draft baseline report on “Attitudes towards the Judicial System in Georgia.” The report provides detailed analysis of the quantitative and qualitative information collected in past quarters. EWMI shared the report with the courts and with

USAID. EWMI and CRRC gave a presentation of the report to USAID and U.S. Embassy staff. The report will be officially presented and released in January 2012.

Support for NGO Legal Aid Providers

In this quarter, JILEP continued supporting NGOs providing legal aid services.

Georgian Young Lawyers Association (GYLA)

GYLA's Legal Aid Centers in Tbilisi and seven regional offices continued to provide free legal assistance to citizens, journalists, non-governmental organizations and other persons. GYLA provided legal assistance face-to-face in GYLA's offices, over the telephone, through the drafting of legal documents, and by representing clients in court. GYLA claims that the greatest success was reached in the cases in which the citizens faced problems in establishing property titles to land plots, correcting civil registration documents, and securing child support payments. In total, GYLA issued 28,339 pieces of legal advice. 30% of costs associated with this assistance were covered by JILEP.



GYLA providing legal consultations to a citizen in Tbilisi

In this quarter, GYLA took on a number of cases where it defended the rights of citizens against the overreach of government ministries and administrative bodies. In total, GYLA took 62 new cases to the domestic common jurisdiction courts. By the end of December, GYLA was providing representation in 225 pending cases. In addition, GYLA took one case

to Constitutional Court and 4 cases were identified for submission to the European Court of Human Rights. The applications were prepared and lodged to address violations of the right to life, prohibition against torture and inhuman or degrading treatment, right to liberty, fair trial, and property, freedom of expressions, freedom of peaceful assembly and association. As was the case with client consultations, 30% of costs associated with representation at the domestic courts of general jurisdiction were covered by JILEP. The cost of cases pursued at the Constitutional Court and European Court of Human Rights were fully covered by JILEP.

Transparency International (TI)

During the quarter, TI Georgia continued providing free legal aid as part of its JILEP-supported programming. 241 individuals contacted TI's Advocacy and Legal Advising Centers (ALAC) in Tbilisi. TI provided consultations to 198 of these individuals. Of these, TI selected 17 to take to court. These were cases involving property right disputes between citizens and such government entities as the Ministry of Economy, the Property Rights Declaration Commission, the Georgian Railway, the Motor Roads Department, and Batumi City Hall.

In October, TI conducted mobile clinics in Poti, Zugdidi, Ozurgeti and Grigoleti. ALAC Lawyers advised the local population on property rights issues. Following these public meetings, TI's lawyers provided consultation to individuals who had property rights-related problems.

TI reported that the mediation it undertook between the residents of Terjola and the Motor Roads Department during the quarter was successful. The case concerned a dispute over land adjacent to the Zestafoni-Kutaisi-Samtredia bypass currently being constructed by the Motor Roads Department of Georgia. At the beginning of November, residents of the Tschognari village contacted ALAC, claimed that their property rights were being violated by the Road Department, and asked for ALAC's assistance. The ALAC mobile clinic visited Tschognari, met with the landowners, and provided them with a clear explanation of their property rights. ALAC also met with the officials of the Motor Roads Department. As a results of the extensive negotiations between the parties brought on by ALAC's involvement, the Department offered better prices for the land plots owned by the residents of Tschognari.

TI is an active member of the Coalition for an Independent and Transparent Judiciary. Its representative chairs the Legal Aid Working Group, which is currently involved in the effort to “map” free legal aid providers.

TI advertises its activities through Public Broadcaster, Channel 3, Kavkasia, Maestro and Channel 25 in Adjara. In October, TI distributed around two- thousand flyers and one-hundred posters in Western Georgia. In Batumi, ALAC published advertisements in Batumelebi Newspaper. In the next reporting period, TI will distribute four-hundred posters advertising their legal aid services in the underground trains in Tbilisi.

Trainings for Journalists

GYLA conducted three trainings for the representatives of Georgian media outlets within the framework of the two USAID-funded projects, JILEP and G-Media. The three-day trainings covered such issues as the main judicial institutions of Georgia, the rules relating to access to court information, the basic elements of criminal and civil procedure, and basic legal terminology. Fifty-nine (59) journalists from both Eastern and Western Georgia took part in the trainings.

Court Monitoring

In the reporting period, GYLA and TI continued to monitor Georgian courts and developed pilot monitoring reports. GYLA’s report reflects the results of its monitoring of 106 hearings of the Criminal Cases Panel of Tbilisi City Court. The TI report covers 40 property rights-related cases considered by the Batumi and Tbilisi City Courts. In total, TI monitors attended 230 hearings.

GYLA’s report makes the following major findings:

- The vast majority of criminal cases (98%) are resolved by plea agreement;
- Despite several positive improvements, the right to a public hearing is occasionally violated;
- Judicial impartiality was mostly observed. However, several procedural violations were observed in this area;

- Monitoring revealed that the court monitoring revealed that in *some* cases the court violated the defendant's right to examine witness under the same conditions as the prosecutor, although some positive trends were detected in the area;
- The right to be assisted by an interpreter was violated in one of the two relevant cases;
- The right to a reasoned decision was violated in the hearings concerning imposition of forced measures;
- The report also points to the violation of the right to liberty and prohibition of ill-treatment. With the regard to the right to liberty, the monitors found that except for a few cases, the court's use of detention on remand as a preventive measure was not proportional to the severity of the crime and that judicial decisions on this issue are not explained and rationalized as required by the law. Monitoring revealed that the court did not meet its burden to ensure that the accused's freedom from ill-treatment was not violated. In many cases, at the time of first appearance of a defendant before the court, the judge did not explain the defendant his/her right to lodge a complaint about torture or inhuman treatment. In many cases, at the time of the plea agreement being entered, the judge did not explain to the defendant that lodging a complaint by the defendant concerning torture, inhuman and degrading treatment would not impede the approval of a plea agreement, if the later had been concluded in observance of the law.

The TI report makes the following major observations:

The report points at the differences between Tbilisi City Court and Batumi Citi Court with respect to the inquisitorial principle upheld in the Georgian administrative process and various procedural issues. In Tbilisi Court procedural formalities at the opening stage of the hearing are usually followed. However, the judges in Tbilisi show little or no initiative. They ask fewer questions and do not legally substantiate their interim decisions. Contrary to the legal requirements judges do not offer settlement to the parties. This was observed in 66% of the cases monitored in Tbilisi. In Batumi City Court judges show a high level of initiative. They request additional information, ask more questions and generally are more active during the hearing. They provide legal grounds for their interim as well as final decision. In cases when one of the parties has no representative, judges explain their rights to them.

TI reports an early success story resulting from their monitoring of cases. In the early stages of their monitoring, before June 10, TI monitors noted that in only 17.64 % of the cases did the judges inform the parties about their right to challenge the judge, and did not warn the

parties about the consequences of violating in a court order. By June 20, after the TI monitoring program was in full swing, monitors reported that the judges properly informed the parties of these rights and consequences in 100% of the cases. TI is certain that the dramatic change is due to judges being aware that their in-court behaviors are being monitored.

Legal Aid Services

Georgian Participation in International Pro Bono Forum

During the reporting period, JILEP supported Georgian state and non-state actors attend the Public Interest Law Network (PILnet)'s Fifth Annual European Pro Bono forum, held in Berlin, Germany on November 17-18. The major aims of the forum were to provide a unique international comparative perspective on pro bono practice in Europe and provide networking possibilities for pro bono lawyers and NGOs representatives from around the world. JILEP supported the participation of four representatives of the following four Georgian organizations: the Georgian Bar Association; the state funded Free Legal Aid Service (LAS); the Georgian young Lawyers' Association, and Transparency International – Georgia.

Forum participants were able to study the various approaches taken by European toward pro bono services. Of special interest to the Georgian participants was the discussion of how students can be a source of legal aid manpower. They also noted how some European countries use a system of “clearing-houses” to provide legal aid services to needy clients.

After attending the Forum, the Georgian participants, all members of the Coalition for Independent and Transparent Judiciary (and the free legal aid working group created under the coalition), decided in cooperation with the GBA to study the present practice of pro bono legal services delivered by Georgian law firms, and identify ways to promote the development of the pro bono legal culture among legal professionals. In addition, they agreed to work on the development of the Georgian system of *referrals* for legal aid among state and non-state legal aid providers by taking into account the experience of the clearing houses discussed at the Forum.

Monitoring and Evaluation (M & E) Indicator Results

Anticipated Result A: A Network of NGOs generates advocacy campaigns, advocates for rule of law and commercial law reforms, educates the public, and monitors the courts.

1. *Numbers of legal institutions, associations, domestic human rights NGOs, and business organizations receiving project support.*

For year (annual reporting): 18 [4 gov't institutions + 2 associations + 14 NGOs]

Life of Project Target: 40

2. *Increased capacity of NGOs measured by CMI: Not measured yet since the baseline CMI's are just being completed and insufficient time has passed to measure progress.*

3. *Number of reports published, and advocacy and monitoring campaigns conducted by coalition of NGOs.*

For year (annual reporting): 3 (Campaigns on audio and video recordings, changes to the administrative proceedings code, and selection and appointment of judges.)

Life of Project Target: At least 6 reports published and 6 campaigns conducted

Anticipated Result B: NGOs provide quality legal representation to the public in civil, administrative and criminal matters in order to better protect their rights.

2. *Number of persons advised and represented by organizations supported by JILEP:*

For quarter: 6,677

TI Georgia provided consultations or representation to 241 individuals (116 male, 100 female).

GYLA provided consultations or representation to 5,896 individuals (2450 male, 3449 female).

EPF grantees provided consultations or representations to 540 individuals (253 male, 287 female).

For year (annual reporting): 26,258 individuals

Life of project target: TBD

B. Key Issues and Challenges

The Coalition continues to face organizational challenges. This was noted at the second forum. The active engagement by the representatives of the judiciary was met with relatively less activism by the majority of the Coalition members who remained largely passive. To address this issue, EPF organized a retreat where they encouraged the Coalition members to create working groups and action plans. This strategy has already generated positive results but more encouragement will be needed to keep the Coalition members motivated and moving in a forward direction.

GYLA's court monitoring project is still not where it should be in terms of generating meaningful results and producing professional standard reports. JILEP plans a number of interventions in the next quarter that should improve their operation in both areas. JILEP hopes to use the US DOJ-Georgia monitoring team to provide training to the GYLA monitors. JILEP also plans to contract an outside expert to help GYLA write their first publishable report, a report that should be the model for those that follow.

JILEP will be working with its legal aid partners to improve their system of reporting case and client statistics. This is necessary to show the true impact of their work. It is also likely to identify issues and trends that will help inform JILEP and the other organizations target their legal reform efforts.

C. Plans for Next Quarter

The following activities are expected to take place during the next reporting period:

- CRRC plans to update the assumptions document, which has served as the basis for the research instrument (survey questionnaire and focus group/interview guides) for Year 2 and to develop the 2012 plan of activities;
- EPF will organize the third in a series of public forums planned under the Coalition's Civic Initiative for an Independent Judiciary. This forum will be dedicated to the commercial law issues;
- EPF will air their first public service announcement (PSAs) about the project and its grantees will complete the development of the next two;
- EPF will monitor the implementation of legal aid and advocacy grants;
- EPF will work with the grantees on finalizing their organizational development assessments and develop strategic plans for further organizational development activities;
- GYLA will continue to provide legal assistance to the indigent population in Tbilisi and the seven regions (Imereti, Adjara, Shida Kartli, Kvemo Kartli, Guria, Kakheti, Dusheti);
- TI will continue to provide legal consultations for ALAC clients. In addition, TI will organize mobile legal aid clinics for different regions of Georgia;
- TI and GYLA will continue court monitoring.

- JILEP, together with other donors (EU HD, OSGF) will continue their dialogue with the LAS and its monitoring board with the aim of identifying their development plans and strategy and determining avenues of potential support.

COMPONENT 3: IMPROVE LEGAL EDUCATION

Legal Education

National Centers of Learning

The National Center for Alternative Dispute Resolution (NCADR) and the National Center for Commercial Law (NCCL) have been fully constituted, have hired their respective administrative directors, and have successfully applied for grant funding for their first full year of operation. JILEP will continue to provide technical assistance to the Centers to help in the professional development of law professors and to help create new courses and teaching materials. Both Centers will be increasing their level of activity over the next year and will continue to make these activities open to all Georgian law school students and professors.

*National Center for ADR (NCADR)*²

Formal Opening of the NCADR and Visit by STCL Dean

Donald J. Guter, President and Dean of South Texas College of Law (STCL), and Rear Admiral, JAGC, U.S. Navy (Ret), led a working delegation to attend the formal opening of the NCADR at Tbilisi State University (TSU). Dean Guter was accompanied by STCL professors Catherine Green Burnett and Elizabeth A. Dennis. While in Tbilisi, Dean Guter provided remarks at TSU's traditional school year opening day ceremonies as well as at the separate opening ceremony of the Center. During the course of the week, Dean Guter held meetings with TSU Rector, Alexander Kvitashvili and faculty; joined TSU Faculty of Law Dean, Irakli Burduli, for introductory high-level meetings with Georgian and international officials interested in the work of the NCADR; and gave a public law lecture at TSU. Professor Dennis, for her part, set the groundwork for the launch of a student-run law review at the NCADR by holding discussions with Dean Burduli and meeting with a group of TSU

² As explained in previous quarterlies, the NCADR is a partnership between STCL, TSU and JILEP, working to promote the development of alternative dispute resolution (ADR) techniques in Georgia, teach practical lawyering skills to law students and legal professionals, and improve critical legal thinking within Georgian law schools and the Georgian legal profession.

professors interested in supporting such a law review. Professor Dennis answered their questions and explained how student-run law reviews are formed and managed in US law schools. Professor Burnett facilitated ongoing discussions between TSU and STCL on future NCADR activities and institutional development.



Dean Irakli Burduli (TSU), Dean Donald Guter (STCL), Rector Alexander Kvitashvili (TSU) and Herbert D. Bowman (JILEP) sign the NCADR Memorandum of Understanding

Experimental Course on Legal Writing and Reasoning

In November, STCL Professor Katerina Lewinbuk traveled to Tbilisi and taught a course entitled, “Legal Methods in Business Law” to a group of 29 TSU law students. While the course used the general subject of business law as context, the main aim of the course was to teach legal writing and reasoning. The course design was influenced by discussions held between Professor Lewinbuk and TSU Professor Sophie Chachava’s during Professor Chachava’s visit to South Texas last quarter and was meant to be a type of “pilot course” that could be adapted for future use by the school. The course was monitored by Georgian teaching faculty who may at some point down the line, conduct classes on the subject based upon the results of the pilot. During her stay, Professor Lewinbuk also met with a number of TSU professors to discuss in practical terms how legal writing and reasoning could be better taught in Georgian law schools. She also met with a group of Russian-speaking professors

(Professor Lewinbuk is fluent in Russian) and discussed the differences in teaching methodology between the U.S. and former Soviet-based legal education systems.

Experimental Course on Legal Ethics

STCL Dean *Emeritus*, Jim Alfini, came to Tbilisi in December and delivered an interactive course to 11 TSU Masters and PhD students on legal ethics. The course was considered a type of experimental course aimed at exposing Master's and PhD students to both Georgian and U.S. approaches to legal ethics. It is hoped that some of the students who attended the course will go on to teach ethics courses at TSU and other universities.

Mediation Skills Training

In December, Kim Kovach, Director of STCL's Frank Evans Center for Conflict Resolution, traveled to Tbilisi and among other activities, provided training to 10 TSU professors in the area of mediation. The main aim of the course was to show the participants how to develop ADR curriculum for law school education. Professor Kovach not only introduced the participants to the type of content that should be included in ADR courses but explained and demonstrated teaching methodologies that could be used for best effect. It is hoped that some of the professor participants will take the initiative to develop and teach their own courses in ADR. JILEP will be working with TSU to continue to develop this core group of professors.

National Center for Commercial Law (NCCL) at Free University

Although the formal opening of the NCCL will not occur until March 2012 (in order to link the formal opening with a planned Commercial Law Symposium) the NCCL became operational and engaged in the following activities during the last quarter:

Co-sponsored GBA CLE Conference on Commercial Law. As described in Component 4 below, the NCCL took the lead in hosting the first national CLE Conference on Commercial Law. Interest in the course was so great that registration had to be closed early since there were only around 100 seats available and more than 200 lawyers expressed interest in attending the event.

Launched Lecture Series on Commercial Law. To provide needed information on developing commercial law topics and to encourage students to take an interest in commercial law, the NCCL launched a public lecture series on commercial law topics. The NCCL sponsored the following lectures during the quarter:

- In cooperation with G-PAC, the NCCL hosted NYU Professor Hans Decker (former President of Siemens-USA) who spoke on the topic, “The Role of Lawyers in a Corporate Environment: How does the Rule of Law Apply to Business?”
- Kakha Bendukidze, founder of Free University, spoke on the topic “Reform of the Georgian Law on Entrepreneurs;”
- Sergi Kapanadze, Georgia’s Deputy Foreign Minister, spoke on Russia’s accession to the World Trade Organization and its impact on Georgia

Launched NCCL Facebook Page. In order to announce activities and more easily interact with students and lawyers, the NCCL established the page at the web address - www.facebook.com/nccl.freeuni.

Conducted Public Outreach. NCCL representatives spoke at a regularly scheduled GIZ Alumni Conference to introduce the NCCL and its mission to GIZ alumni from around the Caucasus. NCCL representatives also attended a meeting of the JILEP-sponsored Commercial Law Advisory Council. During the meeting some private law firm representatives requested NCCL assistance in providing training in legal writing for young lawyers.

Sponsored Writing Competitions. During the reporting period, the NCCL sponsored two separate national writing competitions on commercial law for Georgian law students and practicing lawyers. NCCL will announce the winners of the competitions at their formal opening in March 2012, and will feature the best compositions in the initial edition of the NCCL’s Georgian Commercial Law Review.

Live Client Legal Clinics

Following up on recommendations made in June 2011 by the Public Interest Law Network (PILnet), JILEP facilitated meetings between two regional university law clinics - Akaki Tsereteli State University (KSU) and Shota Rustaveli State University (BSU), and a number of regional legal aid organizations. The goal of the meetings was to encourage collaboration between the university clinics and the legal aid organizations. Representatives from KSU and BSU chaired the roundtable discussions; three local NGOs from Kutaisi and four local NGOs from Batumi participated. During the discussions, the participants agreed that it would be helpful to have the university legal clinics provide a written list of clinic needs in order to seek further assistance from local free legal aid providers (NGOs). The list provided by the clinics included such items as books and other resource materials, computer equipment, and

expert advice from practicing lawyers. The local NGOs agreed to provide the libraries of the legal clinics with publications that explained their work. They also agreed that whenever possible, they would engage clinical students in their activities and send NGO lawyers to meet with students to discuss aspects of legal aid practice.

In line with the earlier recommendations provided by PILnet, JILEP encouraged BSU, KSU and the Georgian-American University (GAU) to submit grant requests for projects that would improve and expand the operations of their live-client clinics. JILEP expects to award a grant to each of the clinics sometime in early in 2012.

General Legal Skills Training

Trial Advocacy Skills

In order to help provide the next generation of Georgian lawyers the information and skills they need to make their new, adversarial-based system work more effectively, JILEP, in cooperation with TSU, trained 75 students and 10 law professor “coaches” from universities around Georgia on basic trial advocacy skills. The program taught such skills as giving opening and closing statements and doing direct and cross-examinations of witnesses. The program’s interactive format required students to practice many of the skills in front of their peers using sample problems. The participants also received instruction on the parts of the new Georgian *Criminal Procedural Code* that most directly impact the practice of criminal trial advocacy. One of the stated goals of the training was to prepare the students to represent their schools at the National Trial Advocacy Competition JILEP would be sponsoring later in the quarter

JILEP provided each participant in the training a copy of the “Georgia Criminal Trial Advocacy Handbook.” This handbook was based on a handbook written in 2005 by JILEP COP, Herbert Bowman, for another international development program but was revised with the input of JILEP DCOP Giorgi Chkheidze, to address the reality of the Georgian legal system and the Georgian courtroom. The Handbook was revised in part to help the Georgian lawyer understand why some of the key new procedural code sections were created and how they were designed to fit into the developing regime of international criminal law and practice. The *main* goal of the Handbook however, was to give Georgian legal practitioners a written resource that would help them acquire the skills necessary to effectively operate in a more adversarial courtroom environment. The Handbook provides explanations and examples of how a trial advocate should prepare for trial, examine witnesses during trial, and make persuasive arguments to judges and juries. It was also designed with the development

of Georgian legal education in mind. It can be used as the basic text for a course on trial advocacy taught by any Georgian law school. It can be used in the same fashion by institutions providing professional level courses for prosecutors and defense attorneys.



JILEP COP Herbert Bowman gives sample opening statement

Georgia's First National Criminal Trial Advocacy Competition

As mentioned above, in early November, JILEP provided 75 students and 10 law professor “coaches” intensive training in criminal trial advocacy. The students and coaches then went back to their schools and spent the next month preparing the case problem, a “missing body homicide,” for trial.³ On December 1-2, they returned to compete with one another in Georgia’s first National Criminal Trial Advocacy Competition. The competition itself lasted two days and involved 40 students (4 students from each of 10 competing schools). It was judged by both Georgian and international judges and lawyers. The semi-final and final rounds were held at the Georgian Supreme Court. U.S. Ambassador John R. Bass and Supreme Court Chairman Konstantine Kublashvili handed out the prizes and made comments at the awards ceremony which was attended by members of the local press. The top prize went to TSU with Kutaisi State University taking second place. JILEP plans to use the momentum created through its sponsorship of the competition to encourage the establishment of accredited trial practice courses in Georgia’s law school curriculum.

³ This problem was written by JILEP COP Herbert D. Bowman. Similar to the Handbook, it was based on a 2005 problem Mr. Bowman wrote for another international criminal trial competition.



*U.S. Ambassador Bass and Supreme Court Chairman
Kublashvili pose with winners of the National Criminal Trial
Advocacy Competition*

Willem C. Vis International Commercial Arbitration Moot Competition Tbilisi Pre-Moot

JILEP continued its preparations to sponsor Georgia's first Willem C. Vis International Commercial Arbitration "Premoot" in Tbilisi in February of 2012. During the reporting period, JILEP announced its intention to sponsor the moot on the official Vis Moot web-page (<http://www.cisg.law.pace.edu/cisg/moot/pre-moots.html>) as well as on the TSU Vis team webpage (<http://vismoot.law.tsu.ge/>). As a result of the publicity and personal solicitations by JILEP, several international teams expressed their interest and others confirmed their participation. The schools that have so far confirmed their entry into the competition are the University of Latvia, Humboldt University Berlin, the University of Marburg (Germany), American University in Kosovo, and the Belarusian State University.

The TSU Vis Moot team will of course compete in the competition. This year, for the first time, TSU's Vis Moot alumni will serve as assistant coaches, sharing the task of preparing the team and providing them the benefit of their experience. The TSU team enjoys the continued support of several law firms, including DLA Piper (Georgia), BLC Law Firm, and LPA LLC, as well as that of the TSU Faculty of Law.

The Pre-Moot will be preceded by a half-day conference on arbitration which will give international and Georgian student participants, faculty members, Georgian practitioners and

officials an opportunity to participate in discussions of the most current and topical issues in international commercial arbitration. The pre-moot and conference will also serve as a unique venue for Georgian practitioners to network with one another and with international experts. The first panel discussion will address the *Model Law on Arbitration* on which the Georgian Law is based and the recent digest of the case law prepared by UNCITRAL. Two other issues of current importance in the Georgian arbitral practice that will also be addressed during the first panel are the role of professional associations in the establishment of practice standards, and current trends in arbitration clauses in the corporation-individual context. The second panel will discuss conflicts of interest in international commercial arbitration. The international delegates to the conference will include: Mrs. Corinne Montineri; Secretary of the UNCITRAL Working Group on Arbitration; Ms. Bennar Balkaya, Chairman of the European Branch of Chartered Institute of Arbitrators; and Dr. Galina Zukova, Counsel at the ICC International Court of Arbitration. It is hoped that one or two Georgian practitioners will also serve as presenters at the conference.

In addition to involving the NCADR and NCCL in hosting the event, JILEP was successful in gaining the support and sponsorship of other international organizations. GIZ agreed to provide some financial support. The International Court of Arbitration (ICC), the United Nations Commission on International Trade Law (UNCITRAL), and the Chartered Institute of Arbitrators (CIArb) will be sending representatives to speak at the Conference.

West Georgia Masters of Law Scholarship Program

The West Georgia Masters of Law Scholarship Program aims to provide students from the western regions of Georgia who possess diverse backgrounds and limited means, the opportunity to pursue master's level legal study at Batumi State University (BSU) and Kutaisi State University (KSU). The program is managed on the ground through a sub-grant given by JILEP to the Georgian organization, the Foundation for the Support of Legal Education. During the reporting period, 20 students applied for the scholarship to study at KSU; four were chosen. The BSU portion of the program is currently on hold pending formal accreditation of BSU's Masters of Law program.

Professional Ethics of Lawyers

Legal ethics consultant, James Moliterno, traveled to Georgia in mid-November. During his visit, he met with the GBA working group preparing the amendments to the ethics code for lawyers. The professor shared his opinions with regard to the proposed amendments and

provided his recommendations for improving them. Professor Moliterno also made a presentation at a national conference on lawyer ethics sponsored by the European Union.

Also in November, JILEP and the GBA signed a grant agreement that allowed JILEP to fund the GBA's effort to train the majority of its members on ethics and to build the capacity of the GBA Training Center. The grant period is one year and the grant amount is USD \$92,000. The GBA immediately began putting the funds to use. The GBA Training Center developed a special computer program to register lawyers for the ethics trainings which begin February 20, 2012. GBA members will be able to register for the training online starting January 16, 2012. The Training Center also used grant funds to print an informational brochure, a public service announcement, and a flyer that inform members about the establishment of CLE program and tell them how to register for the ethics trainings.

In addition to the funding provided through the grant, JILEP helped the GBA Training Center organize a series of ethics training planning meetings. As a result of these meetings, JILEP and the Training Center identified 25 trainers and established a year-long training schedule. The first ToT for trainers is scheduled for February 2012. This ToT will be led by Ethics Committee members Eka Gasitashvili and Koba Bochorishvili.

GBA Continuing Legal Education (CLE)

Last quarter, with the advice of JILEP and other international actors, the Georgian Bar Association adopted their "Continuing Legal Education Concept" and established a CLE Committee made up of Executive Board members. JILEP advised and supported the Chairman of the CLE Commission organize a meeting with donor organizations to inform them about the CLE initiative and seek further cooperation in building a CLE program. In addition to JILEP, the following organizations attended the meeting and expressed an interest in helping the GBA build a comprehensive CLE program: UNFPA, UNDP; UNICEF, ABA; EU; and NORLAG.

JILEP held separate meetings with the representatives of the Executive Board and Ethics Commission to determine the needs of the GBA and to identify the activities JILEP can support in the next year in order to strengthen the organization. JILEP and the GBA representatives agreed that support is needed in the following areas: drafting amendments to the *Law on Advocates* that will help improve the professionalism of Georgia's lawyers as individuals and of the Bar as an institution; drafting a strategic plan for Bar development in 2012-2013; supporting the Ethics Committee to draft advisory opinions; strengthening

communication skills of Ethics Committee members; organizing customer satisfaction surveys; and organizing annual conferences on issues important to the development of the legal profession.

Monitoring & Evaluation

Anticipated Result A: Legal Education is strengthened through improved accreditation process, introduction of more practical skills training, availability of more specialized training, and establishment of collaborative relationships with US law schools.

2. Number of policy recommendations regarding accreditation made by JILEP and adopted by the NEAC

Annual Reporting: One (1) policy recommendation made. 0 adopted.

3. Number of law professors trained with JILEP assistance.

Annual Reporting: A total of 173 professors were trained. 46% were female (79 professors) and 54% were male (94 professors). 59% of the professors attended two or more training events.

Target: TBD

4. Number and type of educational materials developed with JILEP assistance used in law schools.

Annual Reporting: JILEP developed and shared course materials in 4 areas: Legal Methods (called legal writing and reasoning in the US); Legal Ethics; Teaching Mediation Skills; and Trial Advocacy; these materials were used by U.S. professors in teaching students at TSU and in the trial advocacy training program that prepared students for the National Trial Advocacy Competition.

Target: TBD

5. Increase in percentage of law students receiving practical skills training.

Annual Reporting: A total of 140 law students received practical skills training. 68% were female (95 students) and 32% were male (45 students).

Target: TBD

Anticipated Result B: The GBA is better equipped to train, monitor and discipline its members.

3. Number of Bar members trained with JILEP assistance

For quarter (quarterly reporting): 122 (109 at CLE Conference with Free University (48 male, 61 female); 13 at Ethics Code Workshop (6 male, 7 female).)

Target: TBD

B. Key Issues and Challenges

The TSU Center (NCADR) has been officially opened and a number of activities have already taken place. Renovation of Building 1, the physical site of the NCADR, however, has not been completed. Therefore, while JILEP has agreed to provide furniture, equipment and learning materials for the Center the purchases cannot be made until the space in Building 1 is available. It is expected that renovation will be completed in the first quarter of the 2012 calendar year.

While the GBA was active in establishing a CLE plan and finalizing the amendments to the *Ethics Code for Lawyers* in December, the GBA General Assembly failed to adopt the proposed amendments and elect a new representative to the Ethics Committee to replace the one who had just resigned. The GBA Executive Board is planning to call another general assembly meeting in spring 2012. It is critical that the General Assembly meet and adopt the amendments so that the training done on the amended Code sections will not be irrelevant.

C. Plans for Next Quarter

During the next reporting period:

- A WUSL professor will travel to Georgia to participate in a NCCL Winter School on International Commercial Transactions and Contract Drafting;
- TSU Dean Burduli, two TSU law professors, and the Executive Director of the NCADR will travel to the U.S. to for a study visit to STCL to allow the team to make connects with STCL faculty mentors, and receive academic training and exposure to the process of teaching ADR, including mediation; NCADR will move into its office space in TSU Building 1 and become fully operational;

- NCCL will have its formal opening, combined with a two-day, “Symposium on Commercial Law;”
- NCCL will announce the winners of their student and lawyer commercial law writing competitions;
- A WUSL professor will provide training in legal writing for young lawyers and will consult on developing the legal writing program at Free Uni;
- NCCL will start work on its Georgian Commercial Law Journal;
- NCCL will continue its lecture series on commercial law topics;
- NCADR will begin its lecture series on topics related to ADR;
- The live client clinic programs at BSU, KSU and GAU will receive grant funding;
- It is hoped that BSU will receive accreditation for its LLM program and that the Western Georgian Masters of Law Scholarship recipients for BSU will be selected;
- The First Tbilisi Willem C. Vis International Pre-Moot and International Arbitration Conference will take place, co-hosted by the NCADR and NCCL.
- JILEP will sponsor a meeting of donor organizations and GBA leaders to amend the Strategic Plan and Action Plan of Legal Aid Service in Georgia (January 18, 2012);
- JILEP will sponsor planning session for the GBA (January 20-22);
- Help deliver GBA model training on Professional Legal Ethics (February 1);
- Support meeting between GBA and representatives of the law schools to introduce new GBA CLE system (February 9);
- Support training for Ethics Committee Members on Effective Communication (February 10-12).

COMPONENT 4: DEVELOP COMMERCIAL LAW

Strengthening commercial law practice is essential to Georgia’s sustainable economic development. Commercial law development cross-cuts many of the JILEP activities described above. JILEP is currently engaged in developing commercial law curricula for the universities, HSOJ and the GBA. As mentioned above, the National Center of Learning housed at Free Uni and partnered with Washburn University School of Law is focusing on commercial law and practice issues. The National Center housed at TSU is focusing on ADR development.

A. Significant Results, Accomplishments, Activities



Head of GBA Ethics Commission Irakli Kordzakhia speaks attendees of CLE Commercial Law Conference

Commercial Law Conference

Recently, the GBA Governing Board adopted regulations developed by the GBA CLE Commission which require Bar members to take a certain number of CLE courses each year in order to retain their Bar membership. (These regulations were developed with JILEP advice and participation.) According to the new regulations, starting January 1, 2012, every Bar member must complete a total of 12 CLE class hours per year in order to maintain his license to practice law; 3 of these hours must be in area of legal ethics.⁴

In an effort to help the GBA build CLE delivery mechanisms, JILEP helped organize and deliver the first-ever CLE Commercial Law Conference for lawyers, held December 17-18 at Free University. This was a cooperative effort between JILEP, the GBA, and National Center

⁴ More accurately, for the year 2012, Bar members will only need to complete 6 hours CLE study. The 12 hour requirement will begin in 2013.

for Commercial Law (NCCL) at Free Uni. 109 Georgian lawyers participated in the conference. They were selected through an on-line application process and paid a fee for their admission to the conference. USAID Mission Director Stephen M. Haykin, Dean of Free Uni School, Natia Khantadze, and the Head of the GBA Ethics Commission, Irakli Kodzakhia, provided opening remarks. Members of the national media covered the event.

The conference gave participants the opportunity to improve their knowledge and practice in the field of business law. The participants heard various presentations from experienced speakers selected for the event by the conference's organizational board. Participants were able to attend lectures on nine different topics. These were:

- Professional Ethics for Business Lawyers;
- International Commercial Contracts and Recognition and Enforcement of the Related Foreign Court Decisions in Georgia;
- Types of Trademark and the Determination of Similarity of Trademarks;
- Mediation – a Form of Alternative Dispute Resolution: A New Area of Activity for Georgian Lawyers;
- Preparation and Implementation of Corporate Due Diligence;
- Termination and Cancellation of Contracts in Georgian Civil Law;
- Problematic Issues in Georgian Insolvency Law and Relevant Court Cases; and
- Developments in the Registration of Immovable Property in Georgia.

The organizers provided the participants with certificates of participation. The GBA will treat the courses taught at the conference as credits toward the attending members' yearly CLE requirements.



Dr. Giorgi Tsertsvdze conducts CLE training on Lawyers' Role in Mediation

The event enjoyed very positive feedback from the participants and the GBA. The majority of speakers received a grade higher than 9 points on a 10 point scale in evaluations done by participants. Furthermore, the question “Will you participate in the similar events in future?” was answered with a “yes” by 100% of the participants. Looking ahead to the future, JILEP hopes to assist NCCL and GBA establish the Commercial Law Conference as a solid brand on the emerging CLE market.

Commentary on Georgian Tax Code

JILEP continued its work with selected authors to create an online commentary to the new tax code of Georgia. The first full draft of the commentary is expected to be submitted by the end of January 2012.

ADR Development in Georgia

ADR expert Michel Blechman (USA) and the JILEP commercial law team prepared a report providing an analysis of the legal framework, case law, and practice of ADR in Georgia. In addition to analyzing the statutory framework and real world environment for ADR development in Georgia, the report provides specific recommendations on how Georgia could

go about developing trustworthy and sustainable ADR systems. JILEP provided USAID the final version of the report. The main findings will be made public on the JILEP-EWMI website.

During Mr. Blechman's time in Georgia, he and the JILEP team met with the HCOJ Secretary to talk about the environment for ADR expansion in Georgia. The Secretary showed great interest in the topic of mediation and, apparently energized by the meeting, shortly thereafter, established a "Working Group on Mediation" with the aim of creating a "court-annexed" mediation system for Georgia. JILEP representatives Sophie Tkemaladze (ADR Specialist) and George Jugeli (Commercial Law Specialist) were invited to participate in the Working Group along with representatives of the judiciary, law firms (mainly members of JILEP Commercial Law Advisory Council) and international organizations (GIZ, EWMI-JILEP). Several meetings of the Group took place in October and November 2011. Almost immediately, the group set to work on drafting amendments to the *Civil Procedural Code of Georgia* that would allow the introduction of the court annexed mediation into the legal system. The JILEP mediation team reviewed the draft and provided its opinions to the members of the Group during the meetings.

The essence of JILEP's contributions to the draft amendment is as follows:

JILEP suggested that the amendments should provide for two types of referral to mediation by the court: 1) mandatory referral in cases of family, inheritance, neighborhood, labor disputes ("court-mandated mediation") and 2) recommended referral in commercial disputes ("court-referred mediation"). JILEP believed that adding recommended referral in commercial disputes to the amendments would help lay the foundation for the later introduction of mandatory mediation in commercial disputes. The JILEP position was ultimately shared by the members of the Group. The final draft amendments submitted by HCOJ to Parliament provided for both court-mandated (in cases of family, inheritance and neighborhood disputes) and court-referred mediation upon agreement of the parties in all other civil law cases and at any stage of court proceedings. The amendments establish a similar procedural path for both forms of court-annexed mediation.

The preliminary amendment drafts submitted by HCOJ created an enforcement mechanism for mandatory mediation that allowed a court to make an ex-parte decision on the merits against a party who did not show up for the mediation sessions without a valid reason. JILEP suggested that this was too severe a consequence for non-appearance in mediation and would

raise mediation proceedings to the same level of importance as court proceedings in terms of consequences to the parties. JILEP suggested that a better enforcement mechanism would be to require a party no-show to pay the costs of litigation, irrespective of the party's success on the merits. The Working Group took JILEP's advice and the final draft provided for a party no-show to pay litigation costs and a fine.

The preliminary drafts created an obligation of confidentiality only on the part of the mediators. JILEP argued that it was just as important for the *parties* to be bound by a confidentiality agreement and that, in most cases, it was essential that parties be barred from introducing statements and documents introduced in the course of mediation in other judicial or arbitral proceedings. JILEP also proposed that mediators be prohibited from participating as judges, arbitrators, lawyers or other actors in disputes in which they had served as mediators. These positions were eventually supported by the majority of the Working Group and became part of the final draft.

JILEP also suggested that the *Civil Procedural Code* should list the commencement of mediation proceedings as one of the grounds for suspension of ordinary court proceedings. This suggestion was also accepted by the Working Group and included in the amendments to the *Code*.

In sum, the code drafting collaboration between JILEP, its partner organizations, and the HCOJ was highly successful. JILEP was gratified to see that its suggestions on the *Draft Law on Amendments to the Civil Procedural Code* were accepted by the HCOJ and other members of the Working Group and were included in the draft submitted to the Georgian Parliament. On December 20, 18, 2011 (Law of Georgia No. 5550) the Georgian Parliament voted to make the amendments relating to court annexed mediation part of the *Georgian Civil Procedural Code*.

In addition to providing assistance in drafting the mediation-related code amendments, JILEP's commercial law team developed a concept paper outlining an approach to implementing court annexed mediation in Georgia. JILEP shared the paper with the HCOJ and the Mediation Working Group. The concept identifies the necessary elements of a mediation system – ranging from the need to acquire the advance commitment of the stakeholders in the process, to the further definition of mediation's legal basis, to the training of mediators. The paper also describes JILEP's ideas for the creation of court annexed

mediation pilot program at Tbilisi City Court. This pilot would last approximately six months; it would involve, among other things, training of 12-15 mediators and judges.

Commercial Law Textbook Creation

JILEP continued its development of written teaching materials for Georgian law students and commercial law practitioners, specifically textbooks on contracts law and property law. The authors are being guided in their work by Washburn University School of Law Professor, Michael Schwartz, a leading expert in the fields of textbook design and modern teaching methodology. All materials developed with JILEP support will be published online and be available for law students, practitioners, academics and other interested groups. The textbooks should be completed in the fall of 2012.

Monitoring & Evaluation Indicator Results

Anticipated Results A: Increased training available for judges on commercial law topics.

1. *Number of judges and lawyers receiving training on commercial law topics with JILEP assistance.*

In quarter: 109 (48 male/ 61 female)

(First National CLE Conference in Commercial Law with NCCL and Free University)

In year: 173

(Breakdown: 109 (48 male/ 61 female) First National CLE Conference in Commercial Law; 64 (37 male/27female) tax law (new tax code) training for judges (in cooperation with HSOJ))

Annual Target: TBD

2. *Number of curricula and other training materials on commercial law topics developed for judges and lawyers.*

In quarter: 8

(8 training units developed for and presented during the First National CLE Conference in Commercial Law with NCCL and Free University)

In year: 45

(Breakdown: Materials for 8 training units for the First National CLE Conference in Commercial Law; Training materials on tax code developed for tax law training for judges (in cooperation with HSOJ)), 36 video-seminars on topics of tax law for judges, lawyers, auditors and accountants available on EWMI-JILEP web-link: <http://www.ewmi-jilep.org/en/news/143-2011-05-06-12-32-24>.)

Annual Target: TBD

Anticipated Result B: Increased access to commercial law topics for law students.

- 1. Number of curricula and other training materials on commercial law topics developed by law professors and used in the law faculties.*

In quarter: 1

(Training materials for Georgian professors in mediation (Professor Kovach's workshop demonstrating how to teach mediation skills)

In year: 2

(Training materials for Georgian professors on teaching mediation developed by Professor Kovach; Teaching materials on law on contract developed by Prof. Kobakhidze (July-September 2011)

(Note: Development of the commentary to the Georgian Tax Code is in the final stage and is expected to be completed by February 2012); Development of 2 textbooks in contract law and property law has started and expected to be completed by the end of 2012).

Annual Target: TBD

Anticipated Result C: Advocacy and business groups provide free and low cost legal assistance to small and medium sized enterprises on commercial law issues, provide public education programs, and advocate for necessary reforms.

- 1. Number of small and medium sized businesses receiving representation and advice through JILEP supported organizations.*

In quarter: 14 small and medium sized business organization

In Year: 14 small and medium sized business organizations

Annual Target: TBD

2. *Number of policy changes relating to commercial law practices recommended by the project that are adapted and implemented by the government.*

In quarter: 1

(Changes to the Civil Procedural Code of Georgia related to the court-annexed mediation)

In Year: 1

Annual Target: TBD

Anticipated Result D: Increased use by the business community of arbitration and other forms of ADR.

3. *Change in Georgia’s ranking for the indicator “Efficiency of legal framework in settling disputes” from the World Economic Forum’s Annual Competitiveness Report:*

<i>Year</i>	<i>2010-11</i>	<i>2011-12</i>
<i>Rank</i>	<i>89 (out of 139 economies)</i>	<i>82 (out of 142 economies)</i>

Annual Target: Improvement upon performance in 2010-2011 GCI index [Exceeded Target]

B. Key Issues and Challenges

JILEP will expend significant energy in coming months to develop a pilot mediation project that will hopefully be the first stage in large-scale development of mediation in Georgia. JILEP and its partners will need to select and train mediators. It will need to assist the HCOJ developing bylaws and the types of standard forms necessary to implement the project. It will also need to help its partners create a special ethics code for mediators. All of this will be a challenge, however the greatest challenge may be managing the expectations of the actors involved – the courts, TSU and possibly the MoJ. Building successful court-annexed mediation system cannot be done overnight, even in a developed legal system. It will take a long time to set up and it will take years before the system runs smoothly and efficiently.

C. Plans for Next Quarter

The following activities are expected to take place during the next reporting period:

- Work with the HCOJ Mediation Working Group to further develop the statutory framework for mediation;
- Assist the HCOJ, and TSU to build the elements necessary for a successful mediation pilot project at Tbilisi City Court;
- Help select a pool of mediator-candidates;
- Complete the drafting of tax law commentary and prepare for its publication;
- Assist textbook authors in their drafting of contract and property law textbooks; and
- Begin planning for a second GBA Commercial Law Conference.

ANNEX A

Success Stories:

JILEP Creates Unique Partnership to Deliver Continuing Education to Lawyers

Using the relationship it had built with the GBA, the support it had created for its programs by establishing a Commercial Law Advisory Council made up of members of Georgia's best commercial law firms, and its programming with Free University's National Center for Commercial Law (NCCL), JILEP was able to create a sustainable "delivery system" for GBA CLE. As mentioned under Component 4 above, in December, the NCCL delivered the first-ever, CLE Commercial Law Conference to 109 Georgian lawyers, all of whom paid a fee to attend. The training program provided the lawyers needed CLE credits but perhaps more importantly, showed that a Georgian university can be used as a large scale training provider for Georgia's lawyers. Both the GBA and JILEP's Commercial Law Advisory Council appear to have endorsed the NCCL as such a provider and the Commercial Law Conference experience has shown that other universities may be able to do the same.

Transparency International Legal Aid Achieves Results in Land Case

As reported in Component 2 above: TI undertook mediation between the residents of Terjola and the Motor Roads Department during the quarter was successful. The case concerned a dispute over land adjacent to the Zestafoni-Kutaisi-Samtredia bypass currently being constructed by the Motor Roads Department of Georgia. At the beginning of November, residents of the Tschognari village contacted ALAC, claimed that their property rights were being violated by the Road Department, and asked for ALAC's assistance. The ALAC mobile clinic visited Tschognari, met with the landowners, and provided them with a clear explanation of their property rights. ALAC also met with the officials of the Motor Roads Department. As a result of the extensive negotiations between the parties brought on by ALAC's involvement, the Department offered better prices for the land plots owned by the residents of Tschognari.

Transparency International Monitoring Program Brings About Change

As reported in Component 2 above: TI reports an early success story resulting from their monitoring of cases. In the early stages of their monitoring, before June 10, TI monitors noted that in only 17.64 % of the cases did the judges inform the parties about their right to challenge the judge, and did not warn the parties about the consequences of violating in a

court order. By June 20, after the TI monitoring program was in full swing, monitors reported that the judges properly informed the parties of these rights and consequences in 100% of the cases. TI is certain that the dramatic change is due to judges being aware that their in-court behaviors are being monitored.