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## CONTRACT LAW ENFORCEMENT (CLE) PROGRAM

### NINTH QUARTERLY REPORT *May - July 2015*



Contract No.AID-167-C-13-00001

This publication was produced for review by the United States Agency for International Development. It was prepared by the Contract Law Enforcement (CLE) Program, implemented by Checchi and Company Consulting, Inc. Final Draft Submitted on August 24, 2015 by:

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## Project Overview

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The USAID/Kosovo Contract Law Enforcement (CLE) Program contract was executed by USAID and Checchi and Company Consulting, Inc. on May 7, 2013. It works to address a range of challenges, including the reduction of the judgment caseload in Kosovo's court system, and support to the Ministry of Justice (MOJ) to implement the new Private Enforcement Agent (PEA) system; the enforcement of contracts; the training of judges, lawyers and enforcement agents; the expansion of mediation; improvements to commercial legislation – particularly bankruptcy; and work with the business community to foster increased utilization of well-drafted written contracts.

## Executive Summary

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In its ninth quarter, CLE continued to provide embedded support through its Backlog Reduction Initiative (BRI) team in all seven Basic Courts and their branches in Kosovo, including Mitrovica. The BRI team continued to support court personnel and continued to support the courts to achieve functional elimination of the entire execution caseload. Through the end of the reporting period, July 31, 2015, CLE reports a 60.86%<sup>1</sup> reduction of the enforcement caseloads in the seven Courts receiving CLE Program assistance, and the collection of over 4,300,000 Euro of previously unrecovered judgment debt. CLE also developed a plan, in coordination with the Kosovo Judicial Council (KJC) to provide support and assistance to the Pristina Basic Court-Commercial Department and the new Division on Foreign Investor Disputes, created by the new Law on Courts.

The CLE Program continued to support the Ministry of Justice (MOJ) to fully implement the new Private Enforcement Agent (PEA) system and continued to assist the Chamber of Private Enforcement Agents in developing its operational procedures and a Monitoring, Evaluation, and Disciplinary System for the PEAs. After months of CLE's urging, the MOJ also this quarter published a call for and held an examination for a new cohort of PEAs.

Under CLE's commercial law activities this quarter, the draft Law on Bankruptcy was finalized and regulations were developed and promulgated to implement of the Law on Obligations. CLE also joined the Working Group established by the Ministry of Trade and Industry (MTI) to review and comment on the new Law on Business Organizations. Additionally, CLE developed Laws on Late Payments and Bills of Exchange, at the request of the Speaker of the Kosovo Assembly, as part of a package of laws related to economic growth and development in Kosovo that will undergo an expedited procedure through the Assembly, rather than the standard process of having a line Ministry sponsor the Law.

This quarter, CLE held three training programs: (1) a refresher mediation workshop for mediators in Peja and Gjilan; (2) a training workshop for licensed advocates with the Kosovo Bar Association; and (3) a training workshop for commercial judges.

In the ninth quarter, CLE continued its cooperation with the USAID Agricultural Growth and Rural Opportunities (AGRO) Program. CLE assisted farmers and collection points to increase use of written contracts, and acted as a liaison between the parties to ensure no problems with performance were arising on contract implementation for over 250 contracts.

One "Put it On Paper" roundtable was held with the Women in Business II (WiB) program on contracting practices and Alternative Dispute Resolution (ADR).

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<sup>1</sup> As measured against the CLE Program baseline caseload of 107,600 cases, that was established at the outset of the Program.

Mediation activities have accelerated, with the Peja, Gjilan, and Prizren centers both seeing steady growth in case intake. In the ninth quarter, 92 cases were accepted for referral to mediation, and 93 were mediated to agreement and finalized.

This quarter, CLE organized, with the USAID Effective Rule of Law (EROL) Program a Conference on Improved Court Administration and Enforcement of Judgments; and by itself held a Conference on Fostering Economic Growth and Legal Reform for Commerce.

## Summary of Progress May 2015-July 2015

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

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

#### A.I. Backlog Reduction

In Quarter 9, CLE continued to provide embedded support with backlog reduction teams in all 7 Basic Courts, including Mitrovica. The CLE team continued to assist court personnel to categorize civil enforcement cases in all Basic Courts and the majority of branches (CLE does not embed teams in the Gracanica branch (no cases), Novoborde (no cases), or the northern branches of the Mitrovica Basic Court in Zubin Potok, and Leposavic because of the ongoing negotiation over the status of institutions in the North).

Generally, the CLE Program's support to court execution rests on three elements:

- 1) Development and exploitation of IT tools and infrastructure for improved case management.
- 2) Working with court enforcement judges and clerks to refocus court enforcement on more efficient procedural methods. This includes training and assisting in implementation of procedural mechanisms contained in the new Law on Enforcement Procedure (LEP) that enable the courts to better manage execution caseloads.
- 3) The CLE Program's Backlog Reduction Teams provide administrative support to court enforcement personnel, including preparation of cases for the delivery of notice to debtors (when required); preparing cases for final enforcement by court personnel; and segregating cases that require archiving, suspension, or dismissal. In the Program's first quarter, CLE and the KJC established a target to reduce the execution caseload – measured against the official KJC statistical report of 107,600 cases - by 80% across all courts receiving CLE assistance by the end of Year Three. It must be noted that this reported figure, which included both backlog cases (2 years or older) and inventory cases (filed within the past two years), drastically under-reported the caseload (see below discussion on statistical reporting). In reality, the execution caseload is closer to twice this number; one pillar of CLE's support to the courts is establishing an accurate count of cases, with entry of all cases into a database. This system has been established, but CLE and the courts have not yet completed a full accounting of all cases, which is expected to be completed by the end of 2015, at which time targets, and progress measured against the targets, will be adjusted to reflect the actual caseload. This factor explains why, in several courts, substantially more than 100% of the target has been achieved, with many cases still requiring action.



By the end of the ninth quarter, CLE cleared 65,485 cases from the execution caseload across all courts receiving CLE assistance, which is an overall reduction of the reported execution caseload by 60.86%. This resulted in the full recovery of over 4,300,000 Euro of previously unenforced claims. In the ninth quarter alone, 16,362 cases were removed from the execution caseload of courts receiving CLE assistance.

Enforcement of judgments against bank accounts and wages continued to increase in the ninth quarter, as a result of various CLE-developed tools that were utilized by the KJC, including the Unique Account Holder Registry (the Registry) at the Central Bank, and the association of certain claims with citizen Personal Identification Numbers (PINs) enabling enforcement against wages.

Through end of the reporting period, over 17,500 cases were enforced against bank accounts, resulting in the recovery of over 1,400,000 Euro (of approximately 2,000,000 Euro claimed). There has also been further utilization of the CLE-brokered MOU signed between the KJC and Ministry of Internal Affairs (MIA), under which the Civil Registry Agency (CRA) has provided the KJC with Personal Identification Numbers (PINs), which are necessary to enforce judgments against wages. As of the end of this reporting period, 41,638 enforcement debtors' PINs were provided to the KJC and courts, making enforcement of cases against wages considerably easier and more efficient.

During the quarter, the design phase of the Registry system upgrade was completed and tested at the CBK and in 8 commercial banks operating in Kosovo. A Regulation to implement the system upgrade was developed, but prior to adopting the Regulation, the CBK requested a Legal Opinion from the State Agency for Protection of Personal Data (the Agency) stating that the Regulation on the Unique Account Holder's Registry is consistent with Kosovo data protection laws. Once this opinion is issued, the system upgrade will enable full automation of claims against bank accounts.

#### A.1.1. Establish with KJC clear goals and targets for the complete reduction of backlogged enforcement cases in the Kosovo court system.

At the outset of the Program, CLE set, in consultation with the KJC, clear goals and targets for backlog reduction. The agreed upon Year Three target is an overall 80% reduction in the reported execution caseload. Through the end of the reporting period, CLE, through its embedded assistance in all seven Basic Courts in Kosovo, and certain branches, has achieved a 60.86% reduction in the overall reported execution caseload in the courts where CLE is providing assistance.

#### A.1.2. Assist KJC to improve systems for statistics related to execution caseload.

This quarter, CLE's backlog reduction officers continued to provide embedded support in all seven Basic Courts and their branches, including the Mitrovica Basic Court, housed in Vushtrii. The backlog reduction officers continued to categorize cases and review the Court Registry Books for cases that are in fact closed, but have not been reported as such. Through these activities, CLE and the KJC are able to obtain accurate statistics concerning the execution caseload in the courts receiving CLE assistance. Moreover, as a result of the KJC's adoption, last quarter, of the CLE-developed statistical reporting application, the KJC, courts, and CLE are all informed by the same data regarding the execution caseload.

The following table expresses overall results by Basic Court and branches through July 31, 2015:

Basic Court	Percentage of backlog cases removed	Percentage of inventory cases removed	Percentage of total caseload removed	Total number of Cases removed
Pristina Basic Court	7.86%	71.15%	28.78%	13,424
Podujeva Branch	4.69%	42.65%	17.96%	1,660
Lipjan Branch	11.46%	68.76	37.58%	2,037
Pristina Basic Court and Branches	7.36%	59.20%	26.14%	17,121
Peja Basic Court	21.74%	88.22%	49.23%	7,336
Klina Branch	0.57%	6.07%	2.90%	125
Decan Branch	8.55%	26.43%	17.77%	784
Istog Branch	1.38%	55.97%	25.27%	876
Peja Basic Court and Branches	13.74%	69.74%	33.35%	9,121
Gjakova Basic Court	25.53%	92.49%	48.72%	6,650
Malisheve Branch	22.11%	42.11%	34.98%	976
Rahovec Branch	19.91%	40.25%	30.51%	1,346
Gjakova Basic Court and Branches	24.26%	68.63%	43.03%	8,972
Prizren Basic Court	25.15%	60.68%	42.72%	8,182
Suhareka Branch	14.72%	75.47%	49.74%	2,961
Dragash Branch	30.17%	36.17%	34.85%	207
Prizren Basic Court and Branches	23.10%	63.75%	44.17%	11,350
Gjilan Basic Court	47.23%	68.37%	60.29%	9,103
Viti Branch	16.62%	35.29%	23.21%	896
Kamenica Branch	63.79%	303.70%	139.60%	592
Gjilan Basic Court and Branches	38.85%	67.12%	54.64%	10,591
Ferizaj Basic Court	77.19%	38.90%	60.61%	5,907
Kacanik Branch	13.03%	57.95%	48.39%	1,970
Strpce Branch	68.75%	31.03%	44.44%	40
Ferizaj Basic Court and Branches	63.88%	49.87%	56.93%	7,917
Mitrovica Basic Court	6.23%	32.83%	8.62%	379
<b>Total</b>	<b>18.80%</b>	<b>61.36%</b>	<b>36.98%</b>	<b>65,485</b>

### A.1.2.a Support to Pristina Basic Court Commercial Department and Division for Foreign Investors

Though not a part of CLE's original Year Three Work Plan, at USAID's request, CLE in its ninth quarter developed a plan, in coordination with the KJC, to provide support to the Pristina Basic Court-Commercial Department, and the new Division on Foreign Investors (the Division), created by the new Law on Courts. CLE will employ legal support staff to assist the judges with legal research and drafting of decisions, as well as Backlog Reduction Officers who will inventory and categorize cases in the Commercial Department to get an accurate accounting of the number of cases, as well as the nature of the cases in Commercial Department's caseload. Such categorization will inform whether there are cases which are appropriate to be heard by the newly created Division.

### A.1.3. Support Basic Courts with backlog reduction activities.

In its ninth quarter, CLE continued to support the KJC and the Civil Registration Agency to implement fully the CLE brokered MOU between the two entities, and facilitated the transfer of 41,638 citizens' PINs, which will facilitate enforcement against wages.

### A.1.4. Support KJC and Basic Courts to improve performance of court enforcement clerks

In its ninth quarter, CLE continued to coordinate and liaise with courts providing direct training to court enforcement personnel on a number of new procedural mechanisms in the law, as well as inculcating more efficient enforcement practices such as enforcement against bank accounts and garnishment of wages. CLE assisted the CBK and KJC/Courts to refine and expand use of the CBK Unique Account Holder Registry. CLE also developed data transfer mechanisms, and tested them against TAK employment information in order to facilitate increased use of enforcement against wages.

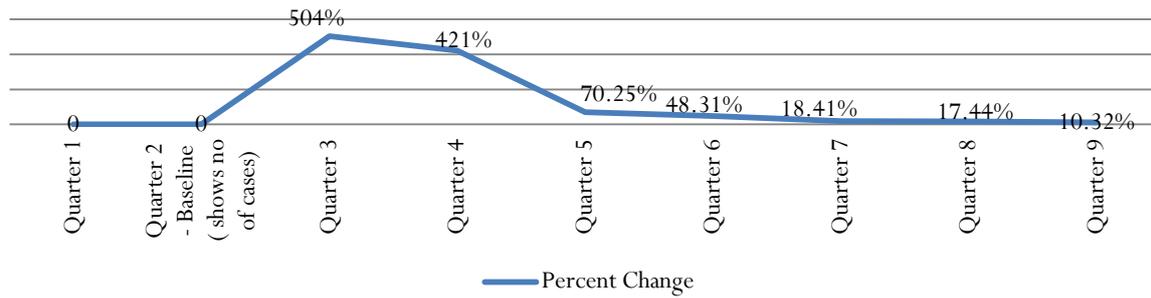
In the ninth quarter, CLE also analyzed and provided comments on the draft Law on Normative Acts.

### A.1.5. Utilize improved methods and information resources to improve enforcement against bank accounts and earnings.

#### ***a. Enforcement against Bank Accounts and KJC cooperation with CBK***

The CBK Unique Account Holder Registry (Registry) contains account information of all bank accounts in Kosovo. CLE has coordinated with the CBK and the KJC to ensure that the Registry is accessible to judges and court enforcement staff through a software link created by CLE during Year One. This avenue has now become an important tool for the courts and has resulted in a dramatic increase in the number of cases enforced through this mechanism. Through the ninth quarter, Courts have seized approximately 17,500 debtors' accounts pursuant to judgment debts, resulting in the closure and full recovery of approximately 5,000 cases (approximately 1,400,000 recovered of 2,000,000 Euro in claimed value). In the ninth quarter alone, 1,229 judgments were enforced against bank accounts.

### Percent Change Enforcement Against Bank Accounts



#### b. Enforcement against Wages and KJC cooperation with TAK and CRA

Developing processes for enforcement against wages has proceeded more slowly than against bank accounts. Employment information maintained by TAK is associated with the Personal Identification Number (PIN) issued by the Civil Registration Agency. Courts have in the past not had access to the PINs. Instead, courts only have access to case numbers and the names of the parties (creditor and debtor). Execution against wages, however, is dependent upon obtaining PINs from the CRA to associate with case files – without the PIN, in nearly every case the court cannot with certainty ensure that enforcement is pursued against the right person. CLE brokered a MOU between KJC and the MIA-CRA to provide all PINs to the KJC, which was finalized during Year One, and through July 31, 2015, the MIA-CRA distributed to KJC approximately 41,638 debtors PINs. The association of cases to PINs started immediately, and CLE assisted Courts with identification of debtor’s employers using the Tax Administration of Kosovo (TAK) database.

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

Under the old Law on Enforcement Procedure, Kosovo courts were granted discretion on whether to dismiss or suspend cases, but demonstrated an unwillingness to exercise this discretion regardless of whether the case was viable or not (e.g., in cases where the debtor is deceased, or simply unlocatable). The new LEP provisions now provide that judges “shall” suspend, instead of previous versions which granted discretion and provided that judges “may” suspend. Through the end of the reporting period, over 9,200 cases have been suspended, and approximately 9,000 conclusions have been prepared for suspension.

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

##### **IR 1.1(1) - Percentage of civil enforcement cases enforced as a result of USG assistance<sup>2</sup>**

To date, 60.86% of cases in the execution caseload of courts receiving CLE assistance have been cleared from the execution caseload.

Target Year 3: 80%    Actual Year 3: 60.86%

##### **IR 1.1(2) - Number of civil enforcement cases enforced as a result of USG assistance**

During the 9th quarter, the total number of cases cleared as a result of CLE's assistance is 16,362 cases from the execution caseload in courts receiving CLE assistance.

To date, the total number of cases cleared as a result of CLE's assistance is 65,485 cases from the

<sup>2</sup> The total caseload is based on KJC data.

execution caseload in courts receiving CLE assistance.

Target Year 3: 53,000 Actual Year 3: 65,485 Q9: 16,362

### **IR 1.1.1(1) - Number of USG-assisted courts with improved judgment/enforcement case management**

CLE assists 23 Courts: 7 Basic Courts (Pristina, Prizren, Gjakova, Peja, Ferizaj, Gjilan, and Mitrovica) and 16 branches (Podujeva, Lipjan, Glllogovc, Suhareka, Dragash, Malisheva, Rahovec, Decan, Istog, Klina, Kacanik, Strpce, Viti, Kamenica, Vushtrri, and Skenderaj).

Target Year 3: 22 (27)<sup>3</sup> Actual Year 3: 23 Q9: 23

### **IR 1.1.1(3) Percent change of court enforcement actions against bank accounts**

The “percent change” means the number for the current year minus the prior year divided by the prior year x100 (delta). At the start of the CLE Program, zero (0) cases were enforced against bank account. A Baseline of 501 cases was established at the end of Quarter 2. Declining percentage after year one is expected indicating that the number of cases enforced against bank accounts increases.

During the 9th quarter, 1,229 cases were prepared for enforcement against bank accounts. To date, 17,495 cases have been prepared for enforcement against bank accounts resulting in a total percentage change of 10.32% compared on quarterly basis. The percentage change at the conclusion of the last reporting period was 17.15 %.

Target Year 3: 0% Actual Year 3:10.32% (percent change) Q9: 10.32%

### **IR 1.1.1(4) KJC reporting on execution caseload improved (YES/NO indicator)**

The KJC continued transitioning from paper-based to the CLE designed electronic system which is more accurate and allows monitoring of individual enforcement personnel performance. While the KJC formally adopted the CLE-developed reporting application, CLE this quarter continued to encourage the KJC to mandate use of the electronic system.

Target Year 3: Yes Actual Year 3: Yes Q9: Yes

## **A.II. Develop the new enforcement system**

In its ninth quarter, CLE continued to fully and effectively implement and support the new private enforcement system. The total number of PEAs operating in Kosovo at the end of this reporting period is 25.

During the reporting period, CLE continued to urge the MOJ to issue a call for applications to examine and commission new PEAs; no call for or exam had been held for over 14 months. As a result of CLE’s urging, during this reporting period, the MOJ advertised for the third public call for the Private Enforcement Exam. The MOJ administered the written and oral exams which were held on July 1 and 11, 2015,



<sup>3</sup> CLE is currently not working at Zubin Potok, Leposavic; depending on the political developments, CLE will also support these 2 courts. CLE has not yet provided support to Novoberdo and Gracanica courts (Gracanica has no cases).

respectively. Forty individuals applied for the exam, thirty-seven individuals sat for the exam, and thirteen individuals passed the exam.

Although PEAs are not obligated to report on caseload and performance to CLE, most PEAs voluntarily provide reports on a periodic basis. From May 5, 2014, through July 1, 2015, 1,920 cases were resolved through the private enforcement system. As of February 2015, there were 1,217 objections filed against the writs of execution to enforce judgments. Once an objection is filed, it is considered a case in controversy and is governed by the Law on Contested Procedure. Of these objections, only 146 were resolved by the courts. CLE, in coordination with the Chamber of PEAs, presented the number of cases awaiting resolution in courts to the Supreme Court of Kosovo. Seeing that only 10% of filed objections have been resolved, and demonstrating an inefficient and ineffective handling of objections, the Supreme Court, at CLE's urging, drafted and circulated a Legal Opinion stating that Courts must decide on objections against enforcement writs within 15 days of receiving them. The Legal Opinion 223/2015 was adopted on July 14, 2015. This Legal Opinion serves as a stopgap until the 15 day deadline is incorporated into the amended Law on Enforcement Procedure. (See Section A.II.4 below).

The legal threshold of 20 operating PEAs required to establish the Chamber of PEAs (Chamber) was met in Year Two, and the Chamber was established on January 22, 2015. During the reporting period, CLE continued to support the Chamber in developing its operational procedures and developing the Monitoring, Evaluation, and Disciplinary system for the PEAs.

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

During the ninth quarter, Administrative Instruction (AI) MOJ-No 05/2015 on Control and Methods of Inspection was approved by the MOJ, and entered into force in May 2015. Pursuant to Article 7 of the AI, the MOJ will also adopt a Guide for the supervision of the private enforcement system, which CLE continued to develop during the reporting period. CLE anticipates that the MOJ will adopt the Guide by the end of the 2015.

The MOJ also signed Decision No. 14/2015 on establishing the Professional Committee for the Evaluation of the Enforcement System, which is comprised of six Members and Deputy Members. The Professional Committee will oversee the new PEAs, and during Year Three, CLE will support and coordinate with the Committee to approve a regulation concerning its own Rules of Procedure. The regulation has been drafted and finalized, and has been reviewed by the Ministry; it is expected that its adoption will be the Committee's first action.

#### A.II.2. Conduct training for private enforcement agents

During the reporting period, a five day training session was held for MOJ personnel on the "Effective Financial and Professional Supervision of Private Enforcement Agents," from June 15-19, 2015. The training session covered topics such as Basic Principles of Supervision, Institutions of Supervision in Kosovo under the Law on Enforcement Procedure, Information Sources and the Logic of Monitoring and Detailed Supervision Processes. Mr. Aliriza Beshi from the Chamber of Notaries, who is involved in inspections of the notaries in Kosovo, also presented at the training session and provided examples of best practices and challenges faced by the Chamber of Notaries.

#### A.II.3. Support newly established Chamber of Private Enforcement Agents

During the reporting period, CLE continued to support the Chamber in developing its institutional capacities. The Chamber's role is to monitor the Private Enforcement Agents, as well as to publicize and raise awareness to citizens in Kosovo about the profession and the services PEAs offers, in lieu of settling debts through the courts. The Chamber will also monitor the practice of the profession in

accordance with the Kosovo Law on Enforcement Procedures. During the reporting period, CLE support to the Chamber consisted of financial assistance for office costs and equipment; software necessary for case administration and management, especially for access in the Central Bank of Kosovo Unique Account Holder Registry, and one administrative assistant. The case administration software is still in the process of development.

#### A.II.4. Support MOJ to amend Law on Enforcement Procedure

The Law on Enforcement Procedure (LEP) entered into force in January 2014. Since the Law entered into force, CLE, along with various stakeholders such as commercial banks, private enforcement agents, and civil judges from the Basic Courts, Appellate Court, and Supreme Court, have identified provisions in the Law that are inconsistent or unclear, and that require amendment. Amendments to the LEP implicate both courts and backlog reduction efforts, and the private enforcement system.

Amendments to the Law on Enforcement Procedure were initially intended to be approved and adopted through an accelerated procedure by the Assembly, along with a package of laws related to the rule of law and economic growth in Kosovo. It was decided by USAID during the reporting period that the amendments to the LEP would go through the regular procedure for amending laws, through a sponsoring line Ministry, in this case, the MOJ, notwithstanding that duration of the legislative drafting cycle will likely extend past the end date of the Program. During the reporting period, CLE supported the MOJ and developed a Concept Document to amend the LEP, which must be adopted by the government prior to moving forward with the amendments to the Law. During the reporting period, the MOJ, with support and assistance from CLE, organized a Working Group chaired by MOJ to review, comment on, and finalize the Draft Concept Document. CLE anticipates that the Concept Document to amend the LEP will be approved in the next quarter, barring political turbulence in the Kosovo Government.

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

##### **IR 1.1(3) WB Doing Business indicator on contract enforcement: Time in days for enforcement**

World Bank Doing Business 2015 Rank: 138

Time (days): 330

Target Year 3: 120 Actual Year 3: 138 Q9: 138

##### **IR 1.1.3(4) Number of cases resolved through new procedures (e.g. bailiff) using USG assistance**

The Private Enforcement Agents established their offices in May 2014. The total number of cases resolved through new procedures (e.g. bailiff) using USG assistance is 1,920 cases of 25 PEA who has disclosed their data.<sup>4</sup>

Target Year 3: 20,000 Actual Year 3: 1,920

##### **IR 1.1.3(7) Enforcement agent disciplinary system implemented**

Not yet implemented; anticipated during 2015.

Target Year III: Yes Actual Year III: Yes Q9: Yes

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<sup>4</sup> PEAs are not obliged to report on caseload and performance to CLE, and MOJ will only collect information quarterly at most. Data gathered for AMEP is based on CLE's tracking mechanisms.

### **IR 1.1.3(8) Chamber of PEAs established**

Yes

Target Year III: Yes Actual Year III: Yes Q9: Yes

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

CLE Commercial Law Framework activities serve to advance a “culture of contract” with the business community, working directly with businesses to assist them in developing better contracting practices. The Program also provides ongoing general legal support on contract and commercial law matters to government, donor, and private sector organizations, including the Ministry of Trade and Industry, the Central Bank of Kosovo, the Ministry of Justice, the Kosovo Bank Association, and Chambers of Commerce in addition to other USAID and USG technical assistance programs. To expand the “culture of contract” that is critical to the functioning of a modern market economy, the Program works closely with small and medium enterprises (SMEs) among Kosovo’s Albanian and Serbian communities to foster improved contracting practices. Activities with the business community are ultimately directed towards developing and enhancing the greater use of written contracts through provision of information and efforts to demonstrate the utility of changing business attitudes to not view the use of written contracts as an affront or lack of trust, but as a tool to distribute risk, memorialize the transaction more effectively, and utilize Alternative Dispute Resolution (ADR) mechanisms.

Additionally, this quarter, through its commercial law activities, CLE developed and implemented a robust set of training activities in commercial law for judges and lawyers; has been leading with the Ministry of Trade and Industry (MTI) the development of a new Law on Bankruptcy; and drafted a new Law on Late Payments, and a new Law on Bills of Exchange at the request of the Speaker of the Assembly.

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

##### **B.I.1. New Bankruptcy Law**

CLE this quarter, continued to support the MTI Working Group, who was tasked with developing the new Bankruptcy Law. The Working Group first convened in June 2014 and finalized the draft Law in June 2015 during a retreat in Bogë. CLE again engaged the legal expertise of STTA Judge (ret.) Bruce Markel and CCN STTA Kosovo Commercial Judge (ret.) Ms. Suzana Sejdiu to develop and finalize the draft Law. The Working Group developed a draft Law consistent with international best practices and EU standards and recommendations, and in accordance with the Governmental Administrative Instruction on drafting legal acts. In addition to the Working Group established by the MTI, CLE also established a Supporting Working Group comprised of commercial Judges and Supreme Court Judges, to provide comments and feedback on the draft the Law.

##### **B.I.2. Implement the Law on Obligations**

Full implementation of the new Law on Obligations requires drafting and promulgating several secondary regulations, particularly those associated with financial services, including consumer lending and insurance. Until these regulations are drafted and adopted, the applicable provisions of the old Law (from 1978) will remain in force. CLE during the reporting period continued to liaise with the commercial banks and the Central Bank legal department to coordinate development of these regulations. CLE started drafting the necessary regulations in spring of 2014, and as of this reporting period, all regulations have been drafted, but some remain to be adopted and

promulgated. During the reporting period, per the CBK's request, CLE assisted in developing additional regulations to support implementation of the Law on Obligations.

CLE this quarter continued to collaborate with the Albanian Branch of the International Chamber of Commerce for technical and legal translation of the International Chamber of Commerce's (ICC) Uniform Customs and Practice for Documentary Credits (UCP 600) and Uniform Rules for Demand Guarantees (URDG 758) into the Albanian. Translation of the UCP and the URDG is expected to be completed in Year Three. These two instruments will then be promulgated as regulations on Letters of Credit and Letters of Guarantees by the CBK.

As of the end of this reporting period, the Regulation on Safe-Deposit Boxes entered into force. This quarter, four other regulations developed by CLE, were sent to the CBK, and subsequently (again) to the Kosovo Bankers' Association for feedback and comment. The four regulations awaiting comment and feedback are: (1) Regulation on Contracts for Loans; (2) Regulation on Letters of Credit and Bank Guarantees; (3) Regulation on Deposit of Securities; and (4) Regulation on Current Bank Accounts and Bank Deposit. After the CBK receives comments from the Kosovo Bankers' Association, it expects that these regulations will be sent to the CBK Board of Directors for approval next quarter.

This quarter, CLE continued to coordinate and discuss with the CBK approval of the Regulation on Factoring which was developed in line with the international model factoring law and best practices. The Regulation is expected to be adopted by the end of 2015.

CLE during this quarter also assisted the CBK in drafting a request for Technical Assistance to the International Monetary Fund (IMF) to ensure that the IMF's assistance is not duplicative of the assistance that CLE is providing.

### **B.I.3. Amendments to the Law on Business Organizations**

During the reporting period, CLE continued to review and comment on the draft law amending the Law on Business Organizations. However, this quarter, the MTI decided to establish a Working Group, which CLE is a part of, to draft a new Law on Business Organizations. The Working Group commenced its efforts to develop the new Law on Business Organizations in July 2015. CLE will continue to support the Working Group and provide comments through the end of the Program.

### **B.I.4. New Law on Mediation**

During the reporting period, CLE assisted the MOJ in developing a draft Concept Document on amending the Law on Mediation. In May 2015 the MOJ, with support from CLE, organized a working group comprised of MOJ officials, OPM officials, CLE, UNDP, CSSSP, and the European Commission. Based on comments and feedback from the Working Group, CLE, in its ninth quarter, revised the draft Concept Document for a new Law on Mediation. CLE expects to send the revised draft Concept Document for the new Law on Mediation to the MOJ for review in early August. The MOJ will also circulate the Concept Document to other relevant stakeholders for review and comment. Once the Concept Document is finalized, and approved by the Government, the MOJ will establish a Working Group to begin drafting the new Law. CLE anticipates that the Working group will be formed in late 2015 or early 2016; with this timing, it is unlikely that the draft will be concluded prior to program end.

CLE this quarter, CLE coordinated directly with the KJC, the Budget and Finance Committee of the Kosovo Assembly, and the Ministry of Finance, to place Mediation Centers in the Basic Courts, and

to create a budget line for seven (one for each Basic Court) Mediation Center Managers to be employed by the KJC.

#### B.I.5. Support to the University of Pristina Faculty of Law to improve skills of future commercial lawyers and organization of the 2<sup>nd</sup> Annual Western Balkans Vis Pre-Moot Competition

During the quarter, CLE met with team coaches and other interested Universities in Kosovo in order to maintain momentum and interest in the competition next Spring.

#### B.I.6. Coordinate with Assembly of Kosovo on Drafting and Amending Laws Related to Economic Development and Rule of Law

The issue of late payments has been raised by the Kosovo Bankers' Association and the private sector. CLE supported an initiative led by the Speaker of the Kosovo Assembly to draft and adopt several laws intended to foster greater economic development, which are intended to be adopted through an accelerated parliamentary procedure. Two of these laws include a Law on Late Payments and a Law on Bills of Exchange. In its ninth quarter, CLE finalized both draft laws, and provided them to the Speaker.

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

#### **IRI.1.3(1) Number of new laws and secondary legislation finalized and adopted to improve contract law and property rights using USG assistance**

None adopted during the reporting period.

Target Year 3: 2    Actual Year 3: 0    Q9:0

#### B.II. Engagement with the Business Community-Developing a Culture of Contract in Kosovo

##### Cooperation with USAID AGRO Program

During this quarter, through two full time Agricultural Contract Monitoring Officers, CLE continued to liaise with farmers and processors in the field. The current number of contracts being monitored is 254.

##### B.II.1 Legal information materials

During the reporting period, process maps on the Law on Contested Procedure, and on the Legislative Drafting Procedure were developed and widely distributed, along with a previously developed process map on the Law on Enforcement Procedure.

**Activities under B.II relate to the following PMEP indicators:**

#### **IR 1.1.3(5) Percent of businesses surveyed that regularly use written contracts**

In Year Two, CLE conducted a nation-wide survey of 900 businesses to measure the contract usage. 40% of the businesses respondents surveyed regularly use written contracts.

Target Year 3: 35%    Actual Year 3: N/A    Q9: N/A

### B.III. Mediation

#### B.III.1. Develop mediation infrastructure

See Section B.I.4 above for discussion regarding the new Law on Mediation.

##### Mediation Regulations:

This quarter, CLE, along with the MOJ, focused on developing the Concept Document for the new Law on Mediation. Neither the MOJ nor the Mediation Commission requested assistance in developing mediation-related regulations. Once the New Law on Mediation is adopted and promulgated, CLE will assist the MOJ with any necessary amendments, time permitting.

##### Support to the KJC to request a budget to place Mediation Centers and related staff in each Basic Court:

This quarter, CLE met with the KJC Chairperson and the Head of the Secretariat to discuss including seven positions for Mediation Center Managers, who would be under the competence of the KJC. CLE also held meetings with the Head of the Parliamentary Committee on Budget and Finance, the Minister of Finance, and the Speaker of the Assembly to build support for including these positions. Based on these discussions, during the reporting period, CLE prepared a request on behalf of the KJC to send to the Ministry of Finance (MOF) to include these positions in the KJC budget line for 2016.

#### B.III.2. Continued support for existing mediation centers

CLE continued operating its three mediation centers in Gjilan, Peja and Prizren.

In the ninth quarter, a total of 92 cases were referred to mediation (agreement to mediate signed and mediator selected); 26 in Peja, 66 in Gjilan and 0 in Prizren. During the same period, a total of 93 cases were settled through mediation; 25 in Peja, 66 in Gjilan, and 2 in Prizren. During the ninth quarter, CLE received 69 phone calls from individuals inquiring about mediation, and the Mediation Center Managers in Peja, Gjilan, and Prizren collectively met with 85 businesses to explain mediation and explain the benefits of using this mechanism to settle disputes as an alternative to the Courts.

The following table gives an overview of the cases referred to CLE-operated mediation centers during the 9th quarter:

	Peja		Gjilan		Prizren	
	Q9	To date	Q9	To date	Q9	To date
Cases reviewed by Program for potential referral	202	2554	102	2534	119	387
Cases selected by Program and judge for potential referral	162	2031	100	2267	103	363
Cases referred to mediation (based on agreement of parties)	26	297	66	411	--	35
Cases settled through mediation and approved by court	25	160	66	333	2	14
Cases not settled and transferred back to court	7	102	7	73	7	11
Cases in progress (agreement to mediate signed and mediator selected)	12	35	5	5	--	10

### B.III.3: Continue implementing the KJC Protocol on court referral of cases to mediation

CLE support to courts to implement the Protocol and refer cases in Peja, Prizren, and Gjilan is ongoing, with CLE employing center administrators and providing support, particularly review of cases that are referred from the judges in the Peja, Prizren, and Gjilan Basic Courts. In the ninth quarter, CLE staff regularly liaised with the presidents and staff of Basic Courts in Gjilan, Prizren, and Peja to implement the Protocol.

### B.III.4: Support to mediators and mediation-related activities:

CLE continued to support the Association of Mediators. Since late 2014, CLE has assisted the Association of Mediators to develop and design mediation-related outreach activities and draft proposals for funding. This quarter, the Association received a Letter of Support from RTK, stating that the public television station will air a show on Mediation. This letter will be helpful to the Association as it moves forward with requesting a grant to produce this television series, which will show and explain the benefits of mediation. CLE will review the final draft of the Association's grant request.



### Refresher and specialized training in mediation:

In the ninth quarter, CLE held three (3) refresher mediation training workshops for licensed mediators in Peja and Gjilan. Each workshop lasted 2.5 days (20 hours). Licensed mediators are required by the Law on Mediation to attend a refresher training every two years. 43 licensed mediators attended the training (15 female).

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

#### **IR 1.1.3(2) Number of mediation agreements concluded<sup>5</sup>**

During the 9th quarter, 92 cases were referred to mediation (agreement to mediation signed and mediator selected); 26 cases in Peja and 66 in Gjilan. To date, 743 cases have been referred to mediation (agreement to mediation signed and mediator selected), out of which 297 cases were in the Peja Mediation Center, 411 cases in the Gjilan Mediation Center, and 35 in the Prizren Mediation Center.

Target Year 3: N/A    Actual Year 3: 743    Q9: 92

#### **IR 1.1.3(3) Percent of arbitral awards recognized or enforced by courts**

100%

<sup>5</sup> Precise Definition at AMEP: Concluded means that all parties agree to attempt to reach a settlement (i.e. parties formally accepted mediator as a means to resolve the dispute, it does not mean parties approved the settlement).

Target Year 3: 100% Actual Year 3: 100% Q9:100%

#### B.IV. Training

During this quarter CLE held: (1) three training workshops for mediators; (2) one training workshop concerning the private enforcement system; (3) one training workshop for commercial judges; and (4) one training workshop for licensed advocates of KBA.

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

During this quarter, CLE in cooperation with KJI delivered one training workshop on "Internet Technology, Business Processes and Law," on June 2, 2015, to the CD judges of Pristina Basic Court and Appellate Court and civil judges of the Supreme Court. A total of five (5) Kosovo-Albanian judges were present; 1 female and 4 male.

##### B.IV.2: Provide training on commercial law topics for judges in cooperation with KJI

See Section B.IV.1 above.

##### B.IV.3: Improve the commercial law and contracting skills of Kosovar lawyers

During this quarter, CLE in cooperation with Kosovo Bar Association, delivered one training workshop to licensed advocates on "Contracts on License, Leasing, Control and Storage of Goods," held on July 11, 2015. A total of 41 licensed advocates were present; 39 Kosovo-Albanian and 2 Kosovo-Bosnian (1 female and 40 male.)

#### **Activities under B.IV relate to the following PMEP indicators:**

##### **IR 1.1.2(1) Percent of lawyers trained with USG assistance**

During the 9th quarter, 41 active licensed advocates attended one training workshop organized by CLE, out of which 1 female and 40 male. From the total number 39 were Kosovo-Albanian and 2 Kosovo-Bosnian. During this quarter, the percentage of lawyers trained with USG assistance is 7.3%

To date, 504 active licensed attended training programs organized by CLE. The percentage of lawyers trained with USG assistance is 89.68%.

Target Year 3: 0/TBD Actual Year 3: 89.7% Q9: 7.3%

##### **IR 1.1.2(2) Number of legal courses or curricula developed/upgraded with USG assistance**

During the 9th quarter, CLE developed a training manual on Internet Technology, Business Processes, and Law. To date, CLE has developed 16 legal courses.

Target Year 3: 9 Actual Year 3: 16 Q9: 1

##### **IR 1.1.2(3) Number of person days of training delivered to justice sector professionals**

During the 9th quarter, CLE held a total of 188 person days of training; 54 female and 134 male. Disaggregated by ethnicity, CLE held 186 person days of training for Kosovo-Albanians and 2 person

days of training for Kosovo-Bosnians. To date, CLE conducted a total of 1,347 person days of training.

Target Year 3: 250    Actual Year 3: 188    Q9: 188

## C.      Component 3: Outreach, Gender, and Monitoring

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

During this quarter, with the support of the CLE Program, the PEA Chamber hosted an event commemorating the first Private Enforcement Agents Day (PEA Day), on July 1, 2015. Remarks were made by: the Deputy Minister of Justice, the Deputy-Director of the USAID Kosovo - Democracy and Governance Office (DGO), the President of the National Chamber of Private Bailiffs in Albania, and the President of the Chamber for the PEAs in Kosovo. The participants included PEAs operating in Kosovo, the MOJ, the Kosovo Bankers' Association, and other relevant stakeholders, including creditors. There were 100 participants present at this event, out of which there 26 were female and 74 were male. Media were present as well.

### C.I.2.    Conduct Outreach on Backlog Reduction

Concurrently with backlog reduction achievements, CLE assists KJC in conducting outreach to promote improvements in access to justice.

During this quarter, CLE together with the USAID EROL Program, organized the Conference on Improved Court Administration and Enforcement of Judgments to present results achieved, and to discuss continuing challenges that exist in eliminating the backlog of cases and unenforced judgments in the Kosovo courts. The event took place on July 23, 2015 with more than 150 participants (98 male, 52 female). The USAID Kosovo Mission Director and the Chair of KJC both made opening remarks, which were followed by two working group sessions: one addressing the backlog of disputed cases, and the other addressing the backlog of unenforced civil judgments. During the event, CLE presented and distributed two process maps, one on contested procedure and another on enforcement procedure. The event was covered by two major television stations, RTK and RTV 21 during the evening news, print media, including Koha Ditore, Kosova Sot, and more than 20 other online portals. CLE also prepared a memorandum regarding Reduction of the Backlog of Disputed Cases and Unenforced Judgments, which was also distributed during event. The memo served as a reference point reflecting the current situation, USAID's support, and steps to be taken to reduce the backlog in Kosovo courts. The document was later cited positively in one of the Kosovo's major printed newspaper, Kosova Sot.



### C.I.3.    Conduct outreach with business community

CLE organized a Put it on Paper roundtable for the Women in Business (WiB) Program II, a mentorship program for women entrepreneurs/managers. There were nine female participants from various sectors including consulting, marketing, information technology, and medicine.

CLE in cooperation with the Assembly of Kosovo also held a roundtable on “Fostering Economic

Growth: Legal Reform for Commerce.” The roundtable was organized to present a package of laws that are intended to improve the legal framework for commercial activities and lead to greater economic growth. With more than 70 participants present (51 males, 19 females), key decision makers from the Assembly, the Government, business community leaders and the justice sector gathered to discuss the draft laws. Five draft laws were presented including: Draft Law on the Establishment of the Kosovo Credit Guarantee Fund, Draft Law on Bills of Exchange, Draft Law on Late Payments, Draft Bankruptcy Law, and the Draft Law on Enforcement Procedure. There was substantial media coverage from both television and print media.

#### C.I.4. Conduct outreach on mediation

During the reporting period, CLE continued to advertise mediation services through radio Dukagjini and national TV – RTK, and also distributed leaflets to raise awareness on the availability of the ADR mechanisms, particularly mediation as an alternative to the courts to resolve disputes.

#### Other outreach related activities

During this quarter, CLE coordinated with the USAID Basic Education Program (BEP) and the CBK to develop materials to teach primary and secondary school students about basic financial literacy.

CLE this quarter continued to regularly update its web-page with events and content uploads. Complying with USAID’s rules on social media, CLE closed its Facebook Page in April, and it is currently reaching its Facebook followers through USAID Kosovo’s Facebook page.

During this quarter, CLE’s web page was visited more than 2,400 times and appeared more than 29,000 times in search results (shown in the graph below as Impressions). During this quarter, standard form contracts have been downloaded nearly 400 times (out of which 80 were in the



Serbian language). The most downloaded standard form contracts are those related to Employment, Leases, and Services. During this quarter, CLE developed training manuals have been downloaded more than 850 times (out of which 122 were in the Serbian language). The most downloaded training manuals are the ones on Arbitration, Bankruptcy, and Business Organizations.

#### Activities under C.I relate to the following PMEP indicators:

##### IR 1.1.1(2) Number of legal institutions and associations supported by USG

Fifteen legal institutions are supported by CLE: (1) Ministry of Justice (MOJ), (2) Kosovo Judicial Council (KJC), (3) Central Bank Kosovo (CBK), (4) Ministry of Trade and Industry (MTI), (5) Agency for Business Registration of Kosovo (ABRK), (6) Kosovo Bar Association (KBA), (7) Basic Courts and Branches - and the Commercial Department at Pristina Basic Court, (8) Kosovo Judicial Institute (KJI), (9) Kosovo Banking Association (KBA), (10) Tax Administration Kosovo (TAK), (11)

Association of Mediators, (12) Mediation Commission, (13) Kosovo Chamber of Commerce (KCC), (14) American Chamber of Commerce (AmCham), and the (15) Chamber of Private Enforcement Agents.

Target Year 3: 15 Actual Year 3: 15 Q9: 15

### **IR 1.1.3(5) Percent of businesses surveyed that regularly use written contracts**

CLE conducted a nation-wide survey in Year Two with 900 businesses to measure the contract usage. 40% of the businesses respondents surveyed regularly use written contracts.

Target Year 3: 35% Actual Year 3: N/A Q9: N/A

### **IR 1.1.3(6) Number of campaigns supported by USG to foster public awareness and respect for rule of law**

During the 9th quarter CLE had 4 campaigns to foster public awareness and respect for rule of law:

Conference on Improved Court Administration and Enforcement of Judgments (July 23, 2015)

Put it on Paper roundtable with Women in Business - RTC Consulting (July 2, 2015)

Conference on the Private Enforcement Agents Day (July 1, 2015)

Conference: Fostering Economic Growth: A Legal Reform for Commerce (May 27, 2015)

Target Year 3: 16 Actual Year 3: 4 Q9: 4

### Activities Planned for Next Quarter (August-October 2015)

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

In the next quarter, CLE expects that the Agency will issue a favorable Legal Opinion allowing the Regulation on the Unique Account Holder Registry upgrade to be approved and implemented by the CBK Board of Governors. Once the upgrade is implemented and all enforcement against bank accounts is fully automated, CLE expects that the execution caseload will be reduced at an accelerated rate.

CLE will also support the MOJ in organizing a workshop to discuss amendments to the Law on Enforcement Procedures, as well as coordinate with the MOJ Department of Free Professions to establish a disciplinary and monitoring mechanism to oversee the PEAs. Next quarter, CLE will continue to assist and support the Chamber of Private Enforcement Agents in becoming operational. During the next quarter, CLE will also continue to cooperate and coordinate closely with the MOJ to ensure that the PEAs who passed the exam are licensed and commissioned, bringing Kosovo closer to reaching the legal threshold of having at least 1 PEA for every 25,000 citizens, as required by the Law on Execution Procedure and in line with Council of Europe standards. CLE will also urge the MOJ to advertise for and hold additional PEA exams.

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

Next quarter, CLE will continue to coordinate with the MTI on getting approved and implemented the draft Law on Bankruptcy. During the next quarter, CLE will continue to support the process of inter-ministerial review and submission of the draft Law to the Assembly. Once the draft is submitted to the Assembly, development of secondary legislation will commence to ensure effective and full implementation of the Law after it is adopted and promulgated by the Government.

During Year Three, CLE will continue to support the drafting of a Bankruptcy Manual, and train judges and Bankruptcy Administrators on the new Law once it is adopted. CLE will also continue to deliver training courses, in cooperation with the KJI, to commercial law judges.

CLE will coordinate closely with the MOJ, and other donors to establish and organize a Working Group to develop the new Law on Mediation. Next quarter, CLE is also conducting refresher training workshops for licensed mediators in Prizren and Pristina, as well as certain mediators in Peja and Gjilan who were unable to attend the refresher training workshop May 2015.

### C. Component 3: Outreach, Gender, and Monitoring

CLE will organize additional Put it on Paper roundtables, focusing on various sectors within the business community throughout Kosovo, particularly more rural areas. CLE will continue to cooperate with the USAID Basic Education Program (BEP) and the CBK to develop materials to teach primary and secondary school students about basic financial literacy.

### **Short term consultants this quarter**

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

Judge (ret.) Bruce Markell (Bankruptcy Expert) regularly engaged with the working group, and participated in a two day working group session on the new law on bankruptcy, providing insight and guidance on concepts regarding modern bankruptcy laws and best practices. In addition, Judge Markell has been intensively engaged in drafting of the new law.

Judge (ret.) Suzana Sejdiu (Commercial Law and Bankruptcy Expert) was engaged in reviewing the current draft of the bankruptcy law produced by the working group (headed by CLE).

Peter Kahn (Senior Legal Expert) was engaged with training MOJ personnel on the supervision of the Monitoring, Evaluation, and Disciplinary System for the PEAs, as well as developing the Manual on Control and Inspection of PEAs.

Chris Thompson (Senior Legal Expert) was engaged with training MOJ personnel on the supervision of the Monitoring, Evaluation, and Disciplinary System for the PEAs, as well as developing the Manual on Control and Inspection of PEAs.

### **Environmental Compliance Statement**

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

### **Status of Budget Expenditures**

Under subsection F.7.A.3 of the CLE program contract (Contract No. AID-167-C-13-00001), a quarterly statement is required on the status of budget expenditures. As of 31 July 2015, CLE had expended \$4,399,070.52. During Q9, spending was \$521,685.21. CLE anticipates the monthly burn rate to continue to be approximately \$195,000.00 per month over the next quarter.