SYSTEMS FOR ENFORCING AGREEMENTS AND DECISIONS (SEAD) PROGRAM IN KOSOVO:

ANNUAL ACTIVITY REPORT OCTOBER 2009 – SEPTEMBER 2010

Contract No. DFD-I-00-04-00170-00 TO 03

Implemented by Checchi and Company Consulting, Inc.

October 15, 2010

This Report is made possible by the support of the American people through the United States Agency for International Development (USAID).

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PROJECT OVERVIEW

The USAID/Kosovo Systems for Enforcing Agreements and Decisions (SEAD) Task Order was executed by USAID and Checchi and Company Consulting, Inc. on September 30, 2009. The overarching goal of the SEAD Project is to improve the rule of law foundational structures that provide the basis for increased foreign and domestic economic investment and generally lead to an improved business-friendly environment.

This program is to strengthen the legal systems in Kosovo available to citizens and businesses for 1) the enforcement of contracts and obligations; 2) the enforcement of judgments; and 3) the use of alternative dispute resolution mechanisms.

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

EXECUTIVE SUMMARY

In the Project's final quarter of its first year, in continuation of its progress across the previous three reporting periods, technical assistance efforts built upon the momentum generated across all components. Overall, the Project has built the foundation in all activity areas that will enable it to foster unique solutions, leveraging partnerships with key counterparts and counterpart institutions, which lead to sustainable and lasting development impact.

In Component 1, the Project is fully engaged with the Ministry of Justice legislative drafting group activities on the Law on Obligations, the fundamental legislation governing contract and commercial law (as well as Torts) in Kosovo. This legislation is the foundation upon which all future component activities will rest, and therefore constitutes a threshold issue for further development of the Project's expected results - standard form contracts, training programs for lawyers and judges, and other legal information materials. The Project has supported throughout Year One the working group's efforts with technical legal review of the draft, including an analysis of whether the draft is in compliance with the Constitutional and Public Law framework, European Union Private Law (and including the so called *EU Acquis*). Project legal advisors participate in formal membership in meetings of the working group, and lead discussion on substantive development of the legislation, as well as delivering business community feedback on the law generated through the Project's series of business round tables on the law (which have been conducted regularly throughout Year One, and which will continue until the law is adopted). Additionally, the Project negotiated the scope of its assistance to the University of Pristina Law Faculty, and prepared a Memorandum of Understanding to assist the Law Faculty to establish a Master of Law (LL.M.) degree program in Contract and Commercial law. This establishes the foundation to achieve the Project's expected result of providing specialized, practical and clinical training to law students on Contract Law. Several trainers were identified and contracted with to develop lawyer and judicial training materials, which will be delivered in the early part of the Project's Year Two. This approach blends Project and international expertise with local consultants knowledge and experience with the Kosovo environment and audience, while at the same time developing that local expertise and leaving behind a sustainable resource for the Courts and Bar to draw on. Additionally, the Project initiated the development of a standard form contract on Construction, including layperson's explanatory guide and a legal professional's commentary. The Commentary and Laypersons' guide go beyond, in many ways, the expected tasking; nevertheless, the Project has determined that these products are critical to ensuring implementation as the business community seeks to "catch up" to European and international contracting practices. Additional

standard form contracts will be developed subsequent to the adoption of the Law on Obligations, as this law constitutes the basic legal framework upon which all contracts will rest.

In Component 2, the Project team continued to engage with Kosovo institutional partners – the Kosovo Judicial Council (KJC) and the Ministry of Justice (MOJ) – on leading working groups to develop new legislation reforming and streamlining enforcement procedures, which will be completed and forwarded to the government for adoption in the 1st quarter of Year Two of the Project. This legislation will be immediately followed by a similar working group that will develop separate legislation introducing the institution of Private Bailiffs. Additionally, the Project continued to seek additional, related systemic reforms via the promulgation of a Central Bank Regulation designed to foster greater commercial bank compliance with writs of enforcement, which we anticipate will be promulgated by the Central Bank in the near future, once a new Governor of the Central Bank is confirmed. The Pristina Municipal Court Pilot Initiative, which was launched in the spring of 2010 and sought to mobilize and combine the resources of major utility company judgment creditors with those of the courts in pursuing more efficient enforcement of judgments, continued throughout the last quarter. This initiative has resulted, in Year One, in the execution of 652 cases, with a total monetary value of 149,744 Euro. This impact was achieved by implementation teams consisting of enforcement agents together with representatives of major utility company judgment creditors using the SEAD developed methodology only one day per week (for a total of approximately 30 days of effort). The Project developed a proposal to expand the initiative in consultation with USAID, and will devote considerable attention to expand the application of this methodology in the coming year by utilizing additional staff resources and interns from the Kosovo Judicial Council to deploy a team that works full time on categorizing cases and "batch" processing them in a more efficient manner in an effort to substantially reduce the backlog. Finally, the KJC has become enamored of the approach developed by SEAD in the PMC Pilot project, and has requested that the Project assist it in developing its own budget for, and plan for deployment of, its own resources in order to further augment the existing court resources in a "full-court press" effort to reduce backlog.

In Component 3, the Project solidified its relationships with the Kosovo Chamber of Commerce (KCC) and the American Chamber of Commerce in Kosovo (AmCham), both of which will be home to Commercial Arbitration tribunals, and began implementing strategic action plans for laying the foundation for the launch of arbitration tribunals. Memoranda of Understanding with both Chambers were entered into in the last quarter, and strategic planning for the development of the tribunals commenced immediately after they were signed. Additionally, the component team continued working closely with the Mediation Commission at the Ministry of Justice, (as well as other interested donors), and continued drafting the secondary legislation necessary to implement mediation activities in commercial cases. Finally, the Project developed a plan for two Pilot Court-Referred Mediation Centers, and has secured the preliminary backing of the KJC to pay the mediator fees at those centers from the State Budget, in order to establish sustainable commitment and to prepare the market for the acceptance and utilization of Mediation services.

SUMMARY OF PROGRESS OCTOBER 2009 – SEPTEMBER 2010

OBJECTIVE 1: Support Local Institutions to Improve the Means and Mechanisms for the Enforcement of Obligations and Contracts

Objective one can be broadly characterized as having three subcomponents: Legal Education (including educational training programs for Judges and practicing attorneys, as well as for law students); Legal Information Materials in Contract and Commercial law; and Public Education and Outreach. Project involvement in the development of the underlying legislation – the Law on Obligations – is a key foundational intervention from which, by and large, the other activities will flow.

LEGAL EDUCATION - THE UNIVERSITY OF PRISTINA LAW FACULTY

In the previous reporting periods, the Project was engaged in a dialogue with the UP Law Faculty about the introduction of *accredited* clinical programs for undergraduates covering practical skills training in contract law. However, since 2005, the Law Faculty, in cooperation with other partner universities and international donor organizations, which sought to offer progressively more elective clinical components along with its primary mandatory courses, have developed and implemented several clinical training programs. The Public Law Faculty, with the help of ABA ROLI and USAID, intending to develop practical skills courses, developed one-semester civil and criminal law clinics. During the 2008-2009 academic year, the Public Law Faculty piloted a two-semester seminar on Legal Writing and Research developed by ABA ROLI. None of these training programs and trainings has been incorporated into the present formal bachelor degree curriculum.

Problems and Implementation Issues

Because there has been so much attention paid to curriculum reform (and in particular, response to donor initiated clinical training programs) in recent years, it is clear that the Law Faculty is experiencing "reform fatigue" and is not willing at any level to yet again restructure and revise its undergraduate curriculum to provide further clinical training in contract and commercial law.

Resistance to the incorporation of clinical programs, however, also presents an opportunity. The Law Faculty is eager to develop an LL.M. program in contract and commercial law. An LL.M. program in contract and commercial law would establish the basis to more intensively and comprehensively prepare a cadre of young legal professionals for the future. This approach will have much greater long-term impact than enhanced clinical courses, as a full-blown LL.M. would provide a full and complete survey of both Kosovar and International legal theory, and more intensive clinical training for the next generation of lawyers and judges.

In the last quarter of Year One, the Project explored together with the Law Faculty and USAID the feasibility of pursuing this assistance, and agreed with the Law Faculty to do so. A Memorandum of Understanding will be entered into with the Law Faculty, and the Project will mobilize assistance to develop the curriculum, obtain accreditation, and provide support to professors to prepare courses and materials. The program objective will be for the LL.M. program to be available to students in the fall semester of 2011.

THE KOSOVO JUDICIAL INSTITUTE – CONTINUING LEGAL EDUCATION FOR JUDGES

The OSCE Mission in Kosovo under the Department of Human Rights and Rule of Law established a judicial training unit, which later was transformed in February 2000 as the Kosovo Judicial Institute (KJI). Over the last ten years KJI has developed and increased its capacity to offer many trainings and continuing legal education for judges, prosecutors and other legal professionals in Kosovo.

The KJI is a well run institution that receives enormous donor support. The SEAD Project has developed and expanded the coverage of training sessions the KJI dedicates to civil law to include additional courses on commercial and contract law. (Although the KJI held 25 civil law training sessions in its last training year, very few were dedicated to commercial/contract law.) These programs primarily fit into the KJI's CLEP 2010. SEAD employs the same proven approach to developing sustainable training courses introduced and implemented by the USAID EMSG Project.

The courses SEAD has developed for the 2010 KJI – CLEP include:

1. Execution cases under the 2008 Law on Execution Procedure;
2. International Standards in Civil Enforcement;
3. Construction contracts;

4. Proposal and determination of execution;
5. Law on Arbitration;
6. Case presentation and maintenance of registry of the court in civil execution.

* An additional training on the Contract for the Sale of Goods under the Law on Obligations and the Vienna Convention on the International Sale of Goods (CISG) will be held in early 2011. Because the KJI developed its 2010 training program more or less at the same time as the Project was awarded (and even before Project startup) the SEAD developed trainings will be delivered only in the final quarter of 2010, and after the end of Year One. During the final quarters of Year One, these trainings were under development, and delivery will commence starting in October of 2010. The Project will be engaged with KJI to schedule repeat delivery of these and the development of additional trainings in 2011.

The Kosovo Council of Advocates – Mandatory Continuing Legal Education for Attorneys

In general, advocates have had some degree of access to continuing legal education. However, although not yet implemented in practice, under current law, continuing legal education for advocates is mandatory. To date, KCA's training programs have been ad-hoc and lacking a coherent program. Donors supported most of the legal trainings provided so far to members of the KCA.

Problems and Implementation Issues

In contrast with KJI, there is no existing ready-made mechanism that the Project can "plug in" to, and there is no existing training scheme. Anticipating the imminent launch of MCLE in late 2010 or early 2011, however, the Project has designed its training materials for KJI to contain modules that can be readily focused for provision of training to attorneys. While ABA/ROLI has worked with the KCA to develop a mandatory CLE program, at the time of this report that effort is still in progress. As a preliminary step to providing formal attorney training, SEAD has applied with the KCA to receive accreditation as a trainer in the CLE program. With six trainings already developed, and more to be developed in Year Two, the Project has positioned itself to respond quickly when MCLE at the KCA commences.

Legal Information Materials

The utilization of standardized forms for contracts and common transactions by lawyers is not a conventional practice in Kosovo. This in turn causes inconsistency in contract formation and enforcement, undermines confidence in the legal community, and results in business' turning to informal mechanisms to resolve disputes. Standardization will increase legal certainty and provide the basis for a more coherent and consistent system of interpretation and adjudication by courts. The Project is tasked to develop a number of standard form contracts, which will be accompanied by legal commentary and explanatory notes on their use.

Problems and Implementation Issues

The development of standard form contracts presumes some certainty with regard to the basic legislation that will inform the preparation of those contracts. The Government of Kosovo is presently in the process of amending the Law on Obligations. In order to ensure that these forms are firmly grounded in applicable law, the Project delayed development of these forms (with one exception – the Construction Contract) and instead focused its Year One interventions on providing assistance to the government in finalizing this law for passage.

Support to the Ministry of Justice Legislative Drafting Working Group – Law on Obligations

The Project agreed with the Ministry of Justice that it will support the legislative drafting working group to determine how and to what extent the present Draft Law on obligations should be updated and amended to best reflect existing practices, and to avoid the unnecessary imposition of direct and opportunity costs on business that wholesale (unnecessary) replacement might entail. For this purpose, the present law was be reviewed and compared, point by point, with the 2004 draft by Project and short-term experts.

The Project has provided support to the Ministry of Justice working group through:

a. conducting a series of roundtables designed to elicit from the business community and the legal profession their feedback on the draft law. The working group was invited to observe these roundtables, and feedback from businesses was communicated to the working group experts;

b. working with other donors, particularly UNDP and the EU Twinning project, the Project ensured that the working group was resourced sufficiently to undertake the point by point comparison of the two laws, and to ensure that the Draft is fully compliant with *EU acquis* (some of this effort had already been done by EU Twinning, but the Project supplemented that effort by retaining a pair of University of Graz, Austria based Professors who are experts in European Private Law and who also have knowledge and experience with similar legislative reform initiatives in former Yugoslav countries);

c. The Project will retain a legal editor to ensure that the language in the document is consistent, and clear, throughout the draft law, and will prepare for the Ministry an "explanatory note" cover document to accompany the draft when it is submitted to the Government and the Assembly for review.

d. The Project, in order to enable the Government to promulgate the law in its final form to the business community in advance of its adoption, will engage in public education and publication of summary materials to highlight key changes to ensure that the adoption of the law is as seamless as possible

Finally, although the original Government Legislative Plan for 2010 called for this law to be adopted by the Assembly in November, nearly all interested observers deemed that a too ambitious schedule for the law to advance (notwithstanding that the draft was initially prepared in 2004, it has received little attention until this year). As such, in cooperation with the Ministry of Justice and with the working group, the timetable has been pushed back to at least February of 2011, and likely later as early elections virtually guarantee that there will not yet be a government and assembly in place and organized (i.e., committee assignments, etc.) sufficiently to allow for this timetable. Due to the size and scope of the law, this is actually a good outcome as it will allow for a more thorough "leveling" of the law with existing business customs, editing of the language, etc., and ensure that the final law is as polished as possible. Further, this delay will provide ample time for the Government of Kosovo, and the Project, to conduct outreach and public education on the law, smoothing its path to implementation.

Lessons Learned

Kosovo is crowded with donors. Crucial to programmatic success is ensuring that, at a minimum, USAID Projects avoid programmatic interventions that contradict, or are contradicted by, other donors. Not all donors are the same, however, and with some donors cooperation is significantly more readily possible than it is with others. At the same time, it is certainly worth committing time

and effort to enjoy the synergy that can arise from collaboratively and cooperatively planning and implementing assistance efforts. One example is with regard to the Law on Obligations legislative drafting efforts, where it has been quite easy to share efforts to support the working group. Others, however, can sometimes view USAID programming quite jealously, or even as an outright threat leading to a situation where active opposition to interventions occurs. The Project practices a policy of maximum transparency with all other interested donors, and interfaces as frequently as necessary to ensure that, where possible, technical assistance efforts avoid duplication, overlap, and are designed to develop cooperative strategic approaches that lead to maximum impact via the most efficient possible use of resources.

Kosovar institutions, unlike in many environments, are eager to embrace reform. This can lead, however, particularly where several donors are interested or involved, to "assistance overload" – an example of which most glaringly reveals with regard to the curriculum reform activities that have taken place over the last several years at the University. It is important to, as a fundamental first step, to assess needs, and also not just the capacity to implement, but the capacity to absorb more. In this context, and recognizing the quite crowded dynamic, it is important to maintain both flexibility, and an opportunistic approach to seizing opportunities that can be "backwards planned" *from* expected results in order to achieve those results.

Finally, recognizing that Kosovo generally, Pristina, and the target audiences with which program activities intersect are all small populations, casting a wide and inclusive net to as many interested parties as possible, in as many was as possible, is quite important. For example, notwithstanding that the Ministry of Justice has primary responsibility for developing the Law on Obligations, it is not resourced to, and therefore has not conducted comprehensive outreach to the private sector during the development of legislation. An important factor in ensuring that the law reflects existing custom, and avoids changing those customs when it is not necessary to do so, is to reach outside of working merely with the responsible counterpart to ensure that the largest subset of interested parties is kept informed and included in the process. This is a necessary component of ensuring not only that legislation is drafted (and other policy reforms advanced) in a way that makes the most sense, but also in ensuring rapid and effective implementation.

Steps to Improve Performance and Impact

Because the donor community is so large and there is so much overlap in so many areas, the Project should more frequently invoke USAID leadership involvement in coordination of interventions at a higher level than that of project implementation. Although the Project (indeed, implementing partners generally) and USAID do clearly rather vigorously interface with other donors, protocols for task-specific coordination at the level of operational detail is as yet not wholly refined, the Project's experience in Year One suggests that greater synergy and impact can be achieved by more closely combining with, rather than paralleling other donors' efforts.

OBJECTIVE 2: Enforcement of Judgments

Objective two can be broadly characterized as having two subcomponents: Reform of the system of enforcement, including the likely introduction of private bailiffs; and reduction of the backlog of unenforced civil judgments. The backlog is currently more than 100,000 cases. The two areas are parallel activities, which are complementary in most respects, but not necessarily intertwined. Some aspects of backlog reduction depend upon elements of systemic reform; however, generally speaking, most systemic reform efforts will have mostly prospective impact, and will not significantly facilitate backlog reduction efforts. The backlog reduction efforts will inform systemic reform activities, but will not by themselves necessarily result in streamlined systems.

Systemic Reform leading to improved enforcement of judgments

Kosovo courts are not presently able to enforce civil judgments with reasonable speed and certainty. This undermines the effectiveness of the entire court system, since parties bring their disputes to the courts to seek an effective remedy. When prompt and reliable enforcement of judgments is lacking, there is no remedy. More fundamentally, the inability to effectively enforce civil judgments means that citizens have no real certainty in their legal rights. This is a major impediment to investment, to economic growth, and to Rule of Law. Problems with the enforcement of judgments derive from cumbersome legal and procedural rules, insufficient institutional resources, and non-existent linkages with relevant systems (e.g., employer information related to judgment debtors, which is maintained by the Tax Administration and is information which would facilitate wage garnishment, but which is not made available to the courts). Problems with enforcing civil judgments have resulted in a large and growing backlog of cases that place overwhelming burdens on the courts' enforcement officials, and virtually guarantee that new cases will face a long and frustrating delay before their judgments can be collected or otherwise enforced.

A key aspect of the solution to Kosovo's enforcement problems derives from a fundamental rethinking of the nature of the enforcement system. The Project conducted in Year One an examination of the structure, incentives, and responsibilities of enforcement, as well as a broader look at procedure to develop recommendations to ensure that enforcement processes are as simple and reliable as possible, and to establish better integration of a range of affiliated institutions critical to enforcement, such as banks, and others. During the assessment phase of Year One, the Project explored solutions with key partner institutions, the National Bank of Kosovo, the Tax Administration, and the Pension Fund, and prepared proposals for legal or regulatory fixes. These approaches will be advanced further in Year Two.

Revisions to the Law on Executive Procedures

Based on the assessment that completed in the first half of Year One, the Project identified two general groups of problems with the current Law on Executive Procedures: first, procedures and requirements that imposed unnecessary time or reduced the chances of success in collections or realizations; and second, procedural issues that interfered unnecessarily with efforts to reduce the backlog. The first category includes, for example, a requirement that authentic documents claims be converted to contested procedure claims when the defendant enters an objection. The second category of problems includes, for example, the reality that it is almost impossible to dismiss or suspend a case, no matter how old the case is or how unsuccessful efforts at enforcement have proven to be.

In meetings with the Ministry of Justice, the Project was requested to propose the membership of the MOJ Working Group to develop revisions to the Law on Executive Procedure. The Project proposed a diverse group of judges, lawyers, execution clerks, and other legal specialists who were knowledgeable about enforcement issues. The Ministry accepted all of Project recommendations, and formed the Working Group in July of 2010, consisting of Project recommended personnel.

After several meetings of the Working Group, in which members submitted proposals for revision of portions of the Law, the Project developed a set of proposals for reform. The Ministry adopted this draft as the Ministry's own proposal. Working cooperatively with the Balkans Enforcement Reform Project (BERP), a regional project of the Kingdom of the Netherlands and GTz, a final set of proposals was developed, and a careful review and editing of the entire statute in the Albanian version was completed by the end of Year One. In the first quarter of Year Two the draft law will be ready to be submitted to the Government for approval and submission to the Legislature in accord with the Government's own legislative schedule, which specified November 15, 2010, as the date by which the Government was to have an approved draft ready for legislative submission. The draft contains substantial improvements on the existing law, and several provisions which are expected to have a major impact on the backlog and the ability of enforcement agents to reduce the backlog.

Whether early elections will derail the passage and entry into force of this new law, which will replace the *two* laws currently in force (1978 law applicable to all claims filed prior to a law which was passed in 2008, and the 2008 law applicable to claims filed after its entry into force) is as yet unknown. The Project has positioned itself to rather aggressively promote the law, together with key counterparts – the Ministry of Justice and the KJC – as it advances through the legislative process in order to seek its passage prior to elections. Success is dependent upon the political environment, obviously, but generally all interested parties recognize the need for this reform and there is a reasonable chance that this effort will succeed before the end of this Assembly's last session. In any event, the new law will unquestionably streamline cumbersome processes when it enters into force.

Finally, as the new draft Law on Execution Procedures is completed early in the next quarter, the Project will immediately begin, again together with the Ministry of Justice and other donors, working within another legislative drafting working group to develop a Law on Private Bailiffs.

OTHER PROCEDURAL REVISIONS TO EXISTING ENFORCEMENT PRACTICES

There are two other important revisions to existing enforcement practices that are being pursued by the Project: first, Central Bank involvement in the process of enforcing judgments through bank accounts; and second, facilitating enforcement against earnings by garnishing employer payments to workers.

(a) Enforcement of Judgments through bank accounts

The weaknesses in the current system of collection through bank accounts are widely understood. Banks do not reliably comply with court orders to transfer funds. Though there are clear requirements on banks to promptly comply, and clear penalties for non-compliance, it is relatively easy for banks to evade these requirements, because information about bank accounts can only be obtained from banks, and evidentiary requirements of compliance are inadequate.

The ideal solution to these problems would be to centralize the process of bank transfers within the Central Bank of Kosovo, which could maintain a database of bank accounts allowing immediate identification of all accounts held by a specific debtor. Given sufficient resources, the Central Bank of Kosovo could establish a Department of Enforced Collections; however, neither the Project, nor the Central Bank possesses the resources to do so.

In the alternative, the Project has prepared and proposed to the staff of the Central Bank a Regulation that takes advantage of the Central Bank's powers to compel compliance and establish a greater evidentiary trail upon which liability and sanctions for non-compliance can be based. This regulation nevertheless leaves a gap in that it is impossible to identify all accounts of the debtor without the Central Bank database. In the first quarter of Year Two, the Project, together with USAID support at the Ministry of Economy and Finance and at the Central Bank, will continue to pursue promulgation of this regulation.

(b) Enforcement of Judgments through earnings from work

Another critical element of an effective enforcement system is the garnishment or seizure of wages or other employment earnings from a debtor's employer. Debtors that are not entrepreneurs are less likely to have a "fat" bank account, and as a result the most likely source of seizable assets is the debtors' earnings, to be seized with the assistance of the debtor's employer through wage garnishment. The Law on Executive Procedure, as in most other countries, contemplates the seizure of a portion of the debtor's earnings in each pay period till the debt is fully paid, with the seized portion deducted by the employer from the paycheck of the debtor and forwarded directly to the court.

Ideally, this would be a path to debt recovery for every employed debtor. However, in Kosovo, it is often impossible to find the debtor's employer. The best available source of information would be through the Tax Administration: the employer reports the names and identity numbers of employees as a normal part of the employer's tax reporting.

The Project has proposed, therefore, that courts be authorized to obtain information from the Tax Administration, and from the Pension Fund of Kosovo, which also obtains employment information from the Tax Administration. This will require amendments to the Law on Tax Administration Procedures, which the Project will pursue as and if the opportunity to do so arises.[1]

Strategic Reforms to Enforcement Institutions

A major element of Project objectives in legislation is to enact and implement a fundamental reform to the institutions of enforcement. There is wide consensus in the legal and policy-making communities at this point that there should be a fundamental revision of this system.

The experience of many of Kosovo's regional neighbors with the adoption of systems of private bailiffs, or alternatively, dual systems that provide both state enforcement agents and private enforcement agents (and in some cases, that reserve certain kinds of enforcement actions, such as enforcement of government claims, for the state agents) has generally been quite positive. For that reason, there has grown a likelihood that Kosovo will move in this direction.

Early in Year Two the Project will commence, together with the Ministry of Justice, development of a Law on Private Bailiffs. A working group will be formed and, (again together with the Balkans Enforcement Reform Project (BERP)), this law will be developed for adoption in the first half of 2011 (depending upon the outcome of early elections). This will establish the basis for creation of an avenue for the enforcement of civil judgments that will not depend upon the resources and personnel of the courts.

A private bailiff system, however, requires strong monitoring and control of the actions of private bailiffs by some governmental or government-authorized agency. Therefore, passage of the law allowing for this is the "easy" part of the task. Once the draft is finalized – even prior to final passage – the Project will work closely with whatever government Ministry of Agency will be responsible for regulating private bailiffs (most likely this will be the Ministry of Justice).

The Project will also be working to build public understanding and opinion in this area. There is already clear public understanding that the institutions of court enforcement are not working effectively, and this is clearly not in the best interests of ordinary persons, despite the opportunities for occasional exploitation of one's creditors. Focus groups and business sector interviews support the conclusion that that fact alone will generate significant public support for a persuasive and credible reform. Nevertheless, a significant amount of public education and outreach on these reform proposals will be a necessary part of the Project's efforts to advance this reform objective.

Backlog Reduction

In Year One the Project developed and piloted approaches to reduce and eventually clear the large backlog of unenforced civil judgments, so the litigants in those cases can achieve some satisfactory resolution of their cases. This is crucial to building confidence in the court system so that new

[1] This legislation was only quite recently revised with the assistance of the IMF and, particularly with the advent of early elections, political willingness to reopen this legislation is non-existent in the near future.

litigants will bring their disputes to court for resolution, knowing they have a reasonable chance of having their disputes addressed.

Lending additional urgency to this effort is the reality that, if Kosovo continues to maintain a large backlog when it implements some version of a private bailiff system, the difficulty of ultimately reducing that backlog becomes significantly greater. Because the creditors in backlogged cases have already paid enforcement fees to the government to have their cases enforced, they are entitled to the service as promised; however, with the development of private bailiffs, the personnel available to enforce those backlogged cases becomes totally uninterested in doing so – after all, they have not been paid for their services; it is only the government that has been paid. As a result, private bailiffs resist working on holdover cases that were filed before private bailiffs were created. Governments rarely are willing or able to repay those enforcement fees, or to pay them to the new bailiffs. Thus the holdover cases effectively become orphans, wards of a state no longer able to care for them.

Reducing Backlogged Cases – The Pristina Municipal Court Pilot Project

The Project's Pristina Municipal Court (PMC) Pilot Project for backlog reduction combined the resources of utility company judgment creditors, and their knowledge of neighborhoods and judgment debtor addresses, with the resources of the courts. This initiative involved a cooperative effort between the major creditors, in particular KEK (the electric company) and PTK (post and telecom), and the Pristina Municipal Court, to implement court decisions. Teams consisting of creditor representatives and court enforcement agents have worked together to deliver enforcement notifications, and to undertake specific enforcement actions including seizure of movables or cash and the creation of debtor installment-payment agreements. The initiative has attracted good support from the creditors, who have promised their support for an effort to generalize the program over a wider geographical range.

The PMC Pilot Project led to the enforcement of over 650 judgments that otherwise would have remained in the backlog. These cases were effectively enforced in approximately only 30 days of effort.

Reducing Backlogged Cases – SEAD Program Backlog Reduction Initiative (BRI)

In order to build upon this unexpectedly high rate of success through the PMC Pilot initiative, the Project developed an expanded initiative that will focus additional resources on expanding this effort to other courts, where cases will be categorized for efficient enforcement that can then be "batch" processed under the same approach as that piloted at PMC. The Project proposed an expansion of this initiative to USAID and the KJC in the last quarter of Year One and received support to launch what is essentially a wider and broader implementation of the PMC Pilot approach. The Kosovo Judicial Council (KJC) has embraced the possibilities that this approach demonstrates, and the Project will work to support the KJC to develop a means for it to apply its own resources to the problem, through the creation of a special, temporary task force, or units, that will be focused to supplement the work of existing enforcement personnel. This task force, once constituted, will be closely coordinated with, and in many respects build upon, the Project's own interventions at backlog reduction.

The Backlog Reduction Initiative consists of two parts: first, an effort to create a database of all or most of the 100,000 enforcement cases now in the backlog of Kosovo courts, for the purpose of identifying cases that are appropriate for specific enforcement-oriented actions; and second, addressing those cases through implementation teams analogous to those that have been developed as part of the PMC pilot project.

The goal of this initiative is to take advantage of more efficient case processing methods, essentially by undertaking batch processing of similar cases. The Project will isolate batches of cases, for example, those that require delivery of notification, or seizure of movables, or dismissal, or sending of

letters to banks or employers, and provide the batches to implementation teams that will be to perform those actions quickly and efficiently on all the cases in the batch. In addition, the Project expects to identify significant numbers of cases that are either against a single debtor (permitting, for example, simultaneous delivery of all cases to the debtor); or that are in fact duplicative cases involving exactly the same claim, so that all but one of the cases can be dismissed. By carefully working through the caseload, identifying the actual characteristics of each case, combined court, creditor and Project resources will be focused to facilitate the efficient reduction of backlog.

The database created through the process of reading cases will be used to identify cases that are good candidates for specific enforcement-oriented actions, such as notification delivery, sending of specific letters or orders to third party banks or employers, undertaking seizure of movables, and so on. This will depend on identifying in the database action-oriented fact patterns that suggest cases are in fact good candidates for those actions. Identified by case file numbers, the cases will then be pulled from the docket files and passed to implementation teams for implementation.

With the creation of a database consisting of all or most of the cases in enforcement dockets, categorization will facilitate the operation of implementation teams. These teams will consist of one or more enforcement agents in the court with jurisdiction over the specific cases, combined with creditor representatives who will provide the resources necessary to enforce the cases – resources that too often are missing in the current courts, such as transportation, storage, local knowledge of neighborhoods and addresses, or data processing. They will be assisted and monitored by Project staff. These implementation teams will then undertake the actions suggested by the database queries that represent the appropriate fact patterns. By working on cases in groups or batches requiring similar or identical actions, the approach will ensure, first, that the teams actually take those actions, and second, that they can take them more quickly and efficiently than would be possible if they identified the appropriate action for each case separately and then undertook it.

In order to implement this approach, it is necessary to obtain from the Kosovo Judicial Council a ruling that this approach is to be permitted. Article 5.2 of the current Law on Executive Procedure states: "The court has a duty to receive cases for procedure according to the order the proposals for execution arrive, except if the nature of the credit or special circumstances requires the court to act differently." Since batch processing of cases intrinsically requires that cases will be dealt with in an order unrelated to the order in which the execution proposals were filed, this approach might be incompatible with law if there were not the existence of "special circumstances." To forestall that concern, the Project approached the Judicial Council with a formal proposal to declare that the existence of the large backlog constituted a "special circumstance" permitting the treatment of cases out of temporal order. The KJC has accepted this proposal. The Project has drafted a KJC Decision and formal resolution to that effect, which will be adopted early in the first quarter of Year Two, thereby clearing the way legally for the backlog reduction initiative to begin.

To undertake the reading of cases and the creation of the database, the Project will retain ten interns, in conjunction with the KJC, (with the additional benefit of assisting the KJC to provide the internships needed to help recent law graduates acquire the practice experience required to become licensed attorneys). The Project has also hired a database expert and a coordinator to manage the team of interns and work with courts and creditors to create implementation teams. A capable team to implement the backlog reduction plan is in place, and case categorization will commence in the first quarter of Year Two.

Reducing Backlogged Cases – KJC Special Enforcement Units in the Municipal Courts

The second element of the Project's backlog reduction plan involves deploying additional enforcement manpower to the Kosovo courts. One key failing of the current enforcement system has been the systematic under-resourcing of the enforcement effort, as well as providing inadequate compensation, incentives, and management for that effort. In response to this situation, the Project

proposed to the KJC that providing additional manpower, managed and, if possible, compensated differently than the existing agents, was a necessary step to resolving backlogged cases.

The Project proposed that the KJC create new Special Enforcement Units (essentially a temporary Task Force of Enforcement Agents) to deal with the large volume of authentic documents cases (which constitute nearly two thirds of the total backlog), to provide that manpower and management. The Project proposal called for the KJC to fund positions for some 30 additional agents to be located in five municipal courts around the country, but organized around a central management office in Pristina. The agents would be assigned to each court by the KJC management office, but their assignments would be relatively short-term in nature, so that they could rotate between offices.

The KJC embraced this proposal, making only minor changes. These agents will be based in the five municipal courts with the largest backlogs. As with the Decision establishing Special Circumstances, the Project has drafted an additional KJC decision that will be adopted in the first quarter of Year Two that will establish this initiative.

The Special Enforcement Units will coordinate closely with the SEAD Backlog Reduction Initiative. As the Project team categorizes cases in preparation for systematic enforcement, it will be particularly productive to bring additional human resources to bear on those cases. The Project will closely coordinate with the Secretariat of the KJC to ensure that the case categorization team works through the caseload of a court before a Special Enforcement Unit works in that court, allowing maximum benefit from preparing cases for enforcement activity by grouping them into batches or groups of cases that can be processed quickly.

Combining the additional resources and improved management and monitoring of the Special Enforcement Units with the possibilities for more efficient processing made possible by the case categorization of the BRI, this initiative has the potential to yield significant impact on the size of the backlog, and is also a quite serious demonstration of commitment by the KJC to genuinely address the issue.

Lessons Learned

The commitment and determination of the Kosovo legal community to address the problems of enforcement in a serious way has been impressive. However, that is independent of the real costs that must be faced. While everyone wants the problems of the enforcement system to be solved, there is less certainty of the commitment of the larger public to the real steps that must be performed to make enforcement a viable reality.

The Project, (and the KJC), is cognizant of the need to be sensitive to public perceptions as Kosovo contemplates the move towards private enforcement system. The Project will be quite focused on how the public perceives this change, and pay considerable attention to managing and working with those perceptions as this initiative progresses, and other reforms are developed.

An additional lesson learned relates to the importance of regional experience in confronting similar problems. There is no question that the fact that nearly all of Kosovo's regional neighbors have dealt with similar problems and found (or failed to find) effective solutions that contribute greatly to the resolution of problems similar to those Kosovo faces. This has had a strongly motivating and reassuring effect as Kosovo's policymakers contemplate changes to achieve a new enforcement system. The importance of regional experience in identifying problems and concerns should not be underestimated. For example, the problems faced by Macedonia in dealing with its "orphaned" backlog (over 500,000 cases that continue to languish) as it moved to a private enforcement model presents an important cautionary lesson for the Project and for Kosovo's policymakers, a lesson the Project will make sure is clearly understood.

Steps to Improve Performance and Impact

Going forward it will be necessary to exert even more attention to public opinion and to seeking the views and support of relevant stakeholders and interest groups in the outcomes of the reform process. The reforms undertaken to date have largely technical and nuanced, and the Project has conducted significant outreach to the legal and business communities on the less radical reforms directed at streamlining existing processes. However, particularly with regard to the introduction of the rather dramatic change that will attend the introduction of a private bailiff system, these more ambitious reforms cannot ultimately succeed unless public support is both attracted and maintained.

Additionally, as the Project moves forward with creating a database to implement the case categorization project, it is important to take account of other court databases and court management software currently extant in Kosovo. While others have paid attention to the operation of the court system, there has been relatively little attention paid to the post-judgment collection process, and the case categorization effort is a natural opportunity to create a database that can be used in managing the enforcement caseload going forward; should Kosovo adopt a private bailiff system, that database would also be of great assistance to the efficiency and effectiveness of private bailiffs. The Project would also like to be able to incorporate other databases, such as those of KEK and PTK, into the database, to extend the comprehensiveness and accuracy of data at greatly reduced cost and effort.

The Project must maintain awareness of the importance of close connections between enforcement procedures and enforcement reforms. Though meaningful coordination has been difficult to implement under the conditions encountered in Kosovo, with a legislative agenda that required moving quickly towards amendments in this calendar year, the Project must be cognizant going forward that, as institutional reform of the enforcement process progresses, this will require careful harmonization with the enforcement procedures. Despite the fact that reform of enforcement procedure is anticipated this year (2010), it is likely that the need will arise to revisit enforcement procedure issues again as institutional reform progresses. This can be a positive process, but it may raise political concerns should it become necessary to revisit a law so recently amended.

Finally, there is great value in being very aware of the sensitivities of existing actors in the legal system as reforms unfold. Court presidents, judges, and existing enforcement agents, as well as the staff of the KJC, will have strong feelings about the nature of enforcement reform, and can present both political and technical challenges to the implementation of reform. The Project will make sure that reform efforts take those interests into account.

OBJECTIVE 3: Develop and Implement an Appropriate and Effective Alternative Dispute Resolution System

During year one, the project made significant progress towards its year one goal to establish the basic framework for providing ADR services to the business community. The project's approach to this task was informed by the comprehensive ADR assessment that was completed during the second quarter: the ADR assessment report was published during the third quarter. As a result of the assessment process, the Project concluded that the legislative framework and standards for arbitration and mediation should be dealt with separately, while a common approach should be taken to education and outreach. Thus, objective 3 can be broadly characterized as having two subcomponents: development of arbitration/establish commercial ADR centers; and development of mediation/support to the mediation commission. As with all activities, extensive public education and outreach are a key factor in advancing programmatic objectives.

DEVELOPMENT OF ARBITRATION/ESTABLISH PILOT COMMERCIAL ADR CENTERS

During the assessment process, the Project determined that the business organizations that were most ready to sponsor and support commercial arbitration and mediation were the Kosovo Chamber of

Commerce (KCC) and the American Chamber of Commerce in Kosovo (AmCham). Accordingly, the Project has focused its efforts on those organizations. While the Project is cognizant of the fact that members of smaller business organizations, such as the industry associations established by the USAID KPEP Project, need access to ADR, those organizations are not as active as the larger Chambers, and they are not sufficiently resourced to coordinate such an activity. Accordingly, the Project's approach will be to include those businesses in its outreach efforts and steer their cases to one of the Chambers or to the independent mediation centers that the Project will establish in Year Two (see below).

The Project signed MOUs with the Kosovo Chamber of Commerce and the American Chamber of Commerce in Kosovo, witnessed by USAID Kosovo, at signing ceremonies on July 7 and 14, respectively. The MOUs outline the support that the Project will provide in establishing arbitration tribunals at the Chambers. The signing ceremonies received significant media coverage and served as the first major step to raise awareness among the business and legal communities of the potential use and benefits of ADR.

Project short-term expert, Mark Appel (Executive Vice President of the International Center for Dispute Resolution, the international branch of the American Arbitration Association) conducted workshops for the Chambers on the Fundamentals of Arbitration Institutions during the third quarter.

Based on the workshops, the Project team assisted the Chambers with the preparation of strategic plans for the establishment and ongoing operation of an arbitration tribunal at each Chamber. The strategic plans have been approved by the Boards of the Chambers.

AmCham formed an ADR Working Group during the third quarter. The Project hosted several meetings of the working group and draft Qualifications for Arbitrators and Rules of Procedure were prepared and approved by the AmCham Board.

During the fourth quarter, SEAD organized a conference on "Alternative Dispute Resolution (ADR) in Kosovo: Resolving Business Disputes—A New Approach" in cooperation with the Chambers. Project short-term experts Mark Appel and Professor Alan Uzelac participated in the conference. Attended by approximately 150 representatives of the business and legal community, the conference served as the second major step in the Project's effort to raise awareness and build demand among the business and legal communities for ADR.

Problems and Implementation Issues

Amendment of Law on Contested Procedure and other legislation

The July 11 memorandum to the Minister of Justice highlighted the conflict between the Law on Arbitration and the arbitration chapter of the Law on Contested Procedures and recommended an amendment to the Law on Contested Procedures to remove the arbitration chapter. Per the instructions of the Minister, Project staff contacted the MOJ's Office of Legal Support to discuss this. The Head of the Office stated that he would like to make several changes to the Law on Contested Procedures and proposed to include the amendment of the arbitration chapter in one comprehensive amendment. Such amendment would require lengthy consultations and drafting that could take several years, while a simple amendment to remove the conflicting chapter would be a much easier process that could be accomplished during 2011.

Solution

The Project will again approach the Ministry regarding this more limited amendment as the Ministry of Justice prepares for the 2011 legislative agenda early in the next quarter. The Project has already drafted model language for the amendment. Additionally, through the Project's role in supporting

drafting of both the Law on Obligations, and particularly the Law on Execution Procedures, these new laws will facilitate the use of ADR clauses in contracts, and will ensure that the procedures for recognizing and enforcing both Mediation Agreements and Arbitral Awards are "clean" and reflect international practice.

KOSOVO CHAMBER OF COMMERCE

As previously reported, the KCC lacks leadership for the ADR Project. While the President delegated responsibility for the project to the General Secretary who has met with the Project several times to discuss the strategic plan, that individual has numerous other responsibilities. He can provide oversight for the ADR initiative, but cannot take the leadership role. The KCC had been considering offering the position of President of the arbitration tribunal to a local expert with significant interest in ADR. The Project fully supported this candidate. However, the KCC delayed making an offer and the candidate joined a USAID project and is no longer interested in the position at the KCC, nor in taking an active role in the KCC's effort to reestablish its arbitration tribunal(though he does remain available to serve as an arbitrator). The KCC subsequently made a public announcement of the vacancy but has not identified a qualified candidate. The General Secretary has brought other KCC staff into the ADR Working Group, including the Director of Public Relations, the Director of Training, but the leadership void remains.

Solution

After the ADR Conference, the KCC General Secretary proposed that the KCC and AmCham work together, with the support of the Project, to establish a single independent arbitration tribunal in Kosovo. While this proposal has merit, particularly given the lack of local capacity to implement ADR and the fact that the initial caseload will be very small, AmCham has rejected this proposal, primarily due to the fact that KCC is considered to be a highly political organization. Therefore, the Project will continue to assist the KCC to identify a President for its tribunal.

AMERICAN CHAMBER OF COMMERCE

While the AmCham ADR Working Group is small, the Executive Director and staff are making a concerted effort to include others in the initiative. For example, AmCham identified the IPKO lawyer that participated in and made a significant contribution to the ADR Conference. Nonetheless, except for the draft rules of procedure prepared by one member, it has not been easy to juggle the schedules and commitments of the working group members to mobilize them to develop the other necessary internal regulations or documents.

Solution

The Project will take the lead in preparing all rules, regulations and other internal documents necessary for establishing AmCham's ADR services and continue to hold regular ADR working group meetings to review documents and progress. The Project will also work directly with AmCham's public relations company to develop its marketing strategy and outreach materials.

DEVELOPMENT OF MEDIATION/SUPPORT TO THE MEDIATION COMMISSION:

The Law on Mediation delegates the responsibility for adopting implementing regulations and setting mediation policy to a five member Mediation Commission composed of representatives of different bodies, with the representative of the Ministry of Justice serving as Chairperson. Unfortunately the members had no knowledge or experience with mediation and little motivation to perform their duties. The problem was compounded by the presence of several donors/implementers and the inability of the Mediation Commission to coordinate their activities. As a result, during Year 1, the Project has

focused its efforts on building the capacity of the Mediation Commission and providing significant technical assistance and donor coordination.

Activities

The Project participated in December 2009 Conference on Mediation in Kosovo: Maximizing Potential organized by Partners Kosovo and CSSP.

Pursuant to recommendations made at December Mediation Conference, the Project supported the Mediation Commission in establishing an Advisory Body (that includes international donors and local stakeholders) to assist the Commission; the Commission appointed the Project as the coordinator of the Advisory Body.

The Project prepared a mediation work plan that was submitted to the Mediation Commission during the second quarter.

The Project developed and conducted a workshop during the third quarter for the Mediation Commission and members of the Mediation Advisory Body to equip them with an understanding of mediation, in order to enable them to fulfill the Commission's mandate under the Mediation Law.

The Project organized and hosted a meeting of the Mediation Commission and the Advisory Body during which the draft Mediators Code of Conduct and the draft Regulation on Mediator Training and Certification were discussed

Preparation of implementing regulations: the Project has taken the lead in preparing draft implementing regulations for the Mediation Commission, including obtaining and incorporating comments from the Mediation Advisory Body. Current status:

> Mediators Code of Conduct adopted by Mediation Commission on Sept. 15, 2010.
>
> Final draft Regulation on Mediator Training and Certification forwarded to Mediation Commission on Sept. 13.
>
> Draft Regulation on Announcement of/Selection for Mediator Training forwarded to Mediation Commission on Sept. 17.
>
> Draft Regulation on Grievance and Discipline prepared.

The Project prepared and submitted a Concept Memorandum to the KJC regarding a pilot court-referred mediation project that would work with two Municipal Courts—Gjilan and Peja. The KJC is expected to approve the Concept early in the next quarter, and it is expected that the KJC will allocate Euro 10,000 from its 2011 budget to pay mediator fees for court-referred cases.[2] The mediation centers will be independent from the court and the Project will support the operating expenses during the two year pilot period. In addition to the court-referred cases, the mediation centers will be able to accept pre-litigation cases for which parties will have to pay mediator fees.

[2] Although the Euro 10,000 amount is a reasonable forecast for the first year of the Pilot Project, it is possible that the Project will be required to supplement this amount if demand exceeds this forecast.

Problems and Implementation Issues

MEDIATION COMMISSION

Working with the Mediation Commission continues to be a challenge. Although the Project has assumed responsibility for preparing drafts of the necessary implementing regulations, the Commission has been very slow to review the drafts. Moreover, the Advisory Body has not been very useful as few of the local members of the Advisory Body attend meetings.

Solution

The Project will continue to seek Mediation Commission formal adoption of the work plan, which the Project will update to include realistic dates for adoption of implementing regulations although as a practical matter, this work plan is being implemented even in the absence of approval and it may come to pass that the plan is approved retrospectively after it has been completed. The Project will also organize another Mediation Commission/Advisory Body meeting to review the draft Regulations on Grievance & Discipline and on Announcement/Selection for Mediator Training.

MINISTRY OF JUSTICE

Before mediation can begin, the Minister of Justice must issue a regulation on mediator fees. Although the Project submitted a recommendation on this to the Minister in June 2010 and cited this issue in the Pilot Court-Referred Mediation Concept Memorandum, the regulation has not been issued. In addition to issuing this regulation, the Ministry needs to provide a secretariat (logistical and administrative assistance) to the Mediation Commission to handle the training and certification process and the mediator licenses to be issued by the Ministry of Justice. While UNDP has reported that it will provide support for a mediation "secretariat", the timetable for this is unclear. Over the long-term, the mediation secretariat functions are to be taken over by an Office of the [Three] Professions (attorneys, notaries and mediators. The Project will work with the Ministry and provide support as needed to the secretariat as well.

Solution

The Project will continue to work closely with the Ministry of Justice to advance final promulgation of necessary implementing regulations, and the pilot court-referred mediation project, as well as to advance adoption of the regulation on mediator fees. The Project will also work closely with the Ministry as it designs and begins to provide the administrative support needed to begin the process of mediator certification and licensing.

Donor Coordination

While the Project continues to devote substantial time and effort to donor coordination, the Project believes that this is important. However, it may also result in delays due to having to compromise on timing and process to accommodate the other donors' internal rules. For example, rather than duplicating training programs, the Project had anticipated using some of the mediators to be trained by the EU Twinning Project in the pilot court-referred mediation project. However, there have been several delays in the EU Twinning Project; its training strategy has not yet been approved by the Mediation Commission and it is unclear when training will start.

Solution

The Project will maintain flexibility in this approach for some time yet, but will also be poised to assume greater responsibility with this activity if it becomes apparent that further delay will occur.

Lessons Learned/Steps to Improve Activity Performance and Impact

The major lessons learned relate to acknowledging the lack of capacity and commitment of local partners and the need to establish specific benchmarks for continued donor assistance.

Mediation Commission: While the Project was well aware of the general lack of capacity of the Mediation Commission members, it was surprising that the members were not as willing to take as much significant responsibility for developing mediation as their roles require. As the initial complaints of the Commission members were 1) lack of compensation for additional work and 2) lack of needed knowledge and information, the Project maintained that the combination of 1) compensation paid by the Ministry of Justice and 2) a workshop specifically designed to meet the request of the Mediation Commission, would alleviate the problem. However, the situation remains largely the same even after the Project intervened with the Ministry and provided the additional knowledge through the workshop and regular contact. As such, going forward, the Project will involve the Minister of Justice more directly to ensure that the commission more fully embraces its functions.

Kosovo Chamber of Commerce: Due to the KCC's size and resources relative to the AmCham, early expectations were that the KCC would demonstrate a greater capacity to more affirmatively pursue the steps necessary to re-energize commercial arbitration. Given the range of activities the KCC engages in, however, this has not proven to be the case. In the near future, a KCC team will need to be fully dedicated to completing the tasks necessary to fully establish its tribunal. The Project will continue to work with the KCC leadership to assign a representative who works full-time only on implementing the Project developed strategic plan, and is accountable for its completion.

CROSSCUTING OUTREACH and PUBLIC EDUCATION

Project outreach and education is crosscutting across Project components, and is generally directed at advancing knowledge about reforms and inculcating a "culture of contract" reflecting European and international best practices. Much of these efforts are directed at introducing new institutions such as Arbitration and Mediation, or on informing various interested audiences about the progress of reform (i.e., with the Law on Obligations) in order to encourage and facilitate private sector participation and involvement in reform processes. The challenge is a bit more complicated with regard to Enforcement of Judgments; however, as in this area the Project seeks to change perceptions about the courts and their ability to follow through in resolving disputes. Nevertheless, ongoing outreach and public education activities are integrated closely with ***all*** project activities, and the Project maintains close engagement with various media organizations in order to ensure that the Project's main thematic messages are communicated clearly, consistently, and often. (See Appendix B).

Lessons Learned/Steps to Improve Activity Performance and Impact

The Project cast a wide net across all affected audiences in the conduct of its Public Outreach. Results from Year One, however, demonstrate that this approach will fail to attain sufficient levels of gender balance in the audiences reached. The Project will in Year Two target women's business association and also utilize other measures to ensure that we more adequately reach this audience.

ACTIVITIES PLANNED FOR NEXT QUARTER

OBJECTIVE 1: SUPPORT LOCAL INSTITUTIONS TO IMPROVE THE MEANS AND MECHANISMS FOR THE ENFORCEMENT OF OBLIGATIONS AND CONTRACTS

The component team will enter into an MOU with the UP Law Faculty on designing an approach to the development of a LL.M. program in Contract and Commercial Law, and will begin

implementation of a strategic plan to design, obtain accreditation, and prepare professors and teaching materials to offer the curriculum in 2011.

Development and delivery of training modules for KJI and KCA will continue, and negotiation on topics for training in Year Two will take place.

The Project will continue its series of roundtables with the business community (and involving representatives of the legislative working group and other interested donors) to elicit feedback on the draft Law on Obligations.

The Project will continue to implement its public information and outreach campaign for businesses throughout Kosovo, through the Chambers of Commerce, on both general contract law and ADR.

The legislative drafting working group will continue its work on the draft Law on Obligations, and the Project will retain a legal editor for the text, and will begin preparation of the Explanatory Note to accompany the law when it is sent to the Assembly.

OBJECTIVE 2: SUPPORT LOCAL INSTITUTIONS TO IMPROVE THE MEANS AND MECHANISMS FOR THE ENFORCEMENT OF JUDGMENTS

The legislative drafting working group on the Law on Executive Procedures will finalize the draft law and it will be provided to the government and the assembly. Following completion of this law, the Project will commence immediate preparation of a draft Law on Private Bailiffs.

The Project will launch its Case Categorization and Backlog Reduction Initiative in Lipjan Court.

The Project will continue to seek Central Bank of Kosovo promulgation of a regulation that will lead to greater commercial bank compliance with enforcement actions.

The Project will continue to support the KJC as it seeks to determine whether to set up its special task for backlog reduction, and should the KJC Board decide to do so, the Project will assist the KJC in the organization and operational design of the task force.

OBJECTIVE 3: DEVELOP AND IMPLEMENT AN APPROPRIATE AND EFFECTIVE ALTERNATIVE DISPUTE RESOLUTION SYSTEM

Continue to assist KCC and AmCham with implementation of strategic plans for establishing and operating arbitration tribunals. Arbitrator Qualifications, Rules of Procedure and Code of Conduct should be completed during the quarter and recruitment of arbitrators will begin.

Continue to assist Mediation Commission in drafting implementing legislation—all regulations should be completed by end of quarter.

Support participation of Mediation Commission in SEEMF workshop in October and organize special meeting of Mediation Commission and SEEMF leadership to discuss pending issues.

Assist KJC in developing procedures for referral of cases to mediation. Begin to develop operating procedures and forms as well as outreach materials for pilot court-referred mediation centers.

Prepare for mediator training if necessary.

Continue to develop ADR focused outreach activities, including a simulated mediation for television.

Appendix A. Progress Against Indicators and Targets

PROGRESS AGAINST INDICATORS AND TARGETS
USAID KOSOVO SEAD Program
October, 1 2009 – September, 30 2010

Intermediate Results	Indicator/Definitions	Data Source	Frequency	Baseline	Target	Result
	Performance Indicator Sheets 1 – 9					
1. Constitutions, Laws and Legal Systems Improved	**Change in Enforcing Contracts score in the World Bank's Doing Business Indicator.** **Definition:** Defined by World Bank Doing Business indicator **Disaggregated by:** - Costs as % claim - Number of Procedures **Unit:** Ranking	www.doingbusiness.org	Annual	156		N/A[1]
2. Justice System Improved	**Number of campaigns supported by SEAD to foster public awareness and respect for rule of law** **Definition:** Campaigns include all organized public outreach activities to spread awareness and respect for the rule of law, using, for example electronic and print media, public meetings, plays etc. **Disaggregated by**: Campaigns **Unit:** counts	Project Records	Quarterly	0	20	25[2]
3. Justice System Improved	**Number of SEAD-assisted courts with improved case management** **Definition:** Examples of improvement case documents are available to parties upon request; statistical data on cases is routinely compiled. System manages flow of cases through scheduling set by procedural law; data elements are coherent and compatible with related information systems such as those of the police, prosecution and correction agencies; cases are uniquely identified, registered, indexed and filed. **Disaggregated by**: **Unit:** Number of courts	Project Records	Quarterly	0	1	1[3]

[1] The data appearing on this sheet is part of the Doing Business Report published in June 2009 by the World Bank. It measures and compares regulations to the life cycle of a small to medium sized domestic business in 183 countries. This is an annual indicator. The Project had no interaction with the WB DB Team for 2010 reporting, which occurred prior to the Project launch. The Project is closely coordinating with the WB DB Team for the report to be issued in 2011.
[2] During the reporting period, the Project organized 25 outreach events. In total 569 people participated in these events. 439 male, 130 female. 332 Lawyers and judges, 184 business community and 53 civil society (NGOs and Media). Additionally, the Project directly communicated (e.g., provided copies of assessments, fact sheets, newsletters, etc., to 1110 people.)
[3] Project activities during year 2010 were preparatory only via the Pristina Municipal Court Pilot Project. The Project will commence with activities in more courts in Year two.

Appendix A. Progress Against Indicators and Targets

Intermediate Results	Indicator/Definitions	Data Source	Frequency	Baseline	Target	Result
5. Justice System Improved	**Number of justice personnel that receive SEAD training** **Definition:** Personnel Includes judges, magistrates, prosecutors, advocates, inspectors and court staff. Training refers to a training or education events whether short-term or long-term, in-country or abroad **Disaggregated by**: Gender **Unit:** Number of personnel	Project Records	Quarterly	0	90	332[4]
5. Justice System Improved	**The number of legal institutions and associations supported by SEAD** **Definitions:** Includes both governmental and non –governmental institutions and associations that focus on administering and improving the legal system **Disaggregated by**: Institutions **Unit:** Number of Institutions and Associations	Project Records	Quarterly	0	5	9[5]
6. Justice System Improved	**Number of new legal courses or curricula developed by SEAD** **Definition:** Legal courses or curricula improve the skills and capacity of legal or justice sector personnel, including lawyers, judges. Prosecutors, civilian police and correction officials including courses in law schools or specialized training institutions. Courses may also be aimed at broader public awareness through schools or other educational institutions. **Disaggregated by**: Institutions **Unit:** Number of courses or curricula	Project Records / SEAD project database	Quarterly	0	6[6]	6[7]
7. Justice System Improved [8]	**Ratio of all dispositions to new case filings in courts assisted by SEAD** **Definition:** Annual Ratio of dispositions to new case filings in courts assisted by SEAD in the area of case management. Courts as defined by specific jurisdiction **Disaggregated by**: N/A **Unit:** Ratio	KJC statistical records / SEAD project database	Quarterly	0	NA	0.4085[9]

[4] Project Staff has organized 25 events (roundtables, conferences, trainings etc). In total 569 people participated in these events, 439 male and 130 female. 332 Lawyers and judges**,** 184 business community and 53 civil society (NGOs and Media)

[5] The Project supported the following institutions: 1.Kosovo Judicial Council; 2.Kosovo Judicial Institute; 3.Kosovo Chamber of Commerce; 4.Kosovo Chamber of Advocates; 5.American Chamber of Commerce in Kosovo; 6. Prishtina Municipal Court 7.Ministry of Justice 8.Mediation Commission, 9. University of Pristina Law Faculty.

[6] The Project will prepare and entire curriculum for a LL.M. Program and 8 for the KJI and KCA in Year Two

[7] The Project already developed 3 training courses and 3 other prepared by other USAID Projects were updated and revised.

[8] Indicators 7, 8, and 9 are not directly related to Project Programmatic activities; however, the Project collects this data by agreement with USAID.

[9] Ratio of all execution case dispositions to the number of new execution case filings in all municipal courts for the year (beginning the fourth quarter of 2009 to the end of the third quarter 2010). Based on KJC Statistical Data. The Project found the execution case dispositions in all municipal courts for the above mentioned quarters, divided each of those by the respective reported new execution case fillings in all municipal courts, then took the ratio for each of those two quarters, between the execution case dispositions and the new execution case fillings for the same quarter. First quarter of 2010 and the second quarter of 2010 and took the average of those two numbers. 1st quarter of 2010 is 0.4494 and the second quarter of 2010 is 0.3676. The average of those two is 0.4085

Appendix A. Progress Against Indicators and Targets

Intermediate Results	Indicator/Definitions	Data Source	Frequency	Baseline	Target	Result
8. Justice System Improved	**Mean case dispositions time in courts** **Definition:** Mean case disposition time is measured from filing to the date parties are notified of case resolution by the court. Courts as defined by specific jurisdiction. Disaggregated by: N/A **Unit:** Mean	KJC statistical records / SEAD project database	Quarterly	0	NA	7.92 Years[10]
8. Justice System Improved	**Ratio of new case filings to case dispositions in courts** **Definition:** Annual ratio of new case filings to case dispositions in courts assisted by SEAD in the area of case management. Courts as defined by specific jurisdiction. Disaggregated by: N/A **Unit:** Ratio	KJC statistical records / SEAD project database	Quarterly	0	NA	2.4728[11]
I. Obligations and contracts enforced						
Intermediate Results	**Indicator/Definitions**	**Data Source**	**Frequency**	**Baseline**	**Target**	**Result**
1.1.1 Legislation consistent with international standards is designed, enacted and implemented.	1.1.1 Milestone Indicator: New legislation (Law on Obligations) enacted **Definition:** This is a process indicator leading to a preferred outcome: new law on Obligations enacted. As defined by SEAD, the key milestones which must be met include 1) assessment of issues in existing system and regional and international practice; 2) Working Group convened with authority to draft; 3) draft developed and reviewed by international expert and Project staff; 4) revised draft submitted to Parliament; 5) new enforcement law enacted. **Desegregated**: Laws enacted **Unit:** Yes/no answers, determined by project personnel in consultation with experts at each step along the continuum.	Assessment report / draft legislation	Quarterly	0	Law enacted	No[12]

[10] Total number of execution cases in all municipal courts at the beginning of each reporting period for each quarter between fourth quarter 2009 and third quarter 2010. Divided number of execution cases disposed of during that quarter, the ratio of cases in the court, number of execution cases in all municipal courts, in the beginning of reporting period, divided the number of cases disposed of during that quarter is the quarterly mean disposition rate, divided by four yields the annual disposition rate during that quarter and then taking an average of all four quarters, yields the mean disposition rate for the year. Based on the KJC Statistical Data

[11] Ratio of new case filings: execution cases in all municipal courts for the 4th quarter 09 to the 3rd quarter 2010 to case disposition, execution cases in all municipal courts same period.

[12] During the reporting period the Project continued to support the Ministry of Justice and the legislative drafting working group on Law on Obligations

Appendix A. Progress Against Indicators and Targets

Intermediate Results	Indicator/Definitions	Data Source	Frequency	Baseline	Target	Result
1.2.1 Legal professionals become competent through clinical training and CLE programs in contract and transactional law.	**1.2.1 Training courses developed and implemented for a) lawyers; b) judges; c) law students** **Definition:** SEAD will develop and deliver training in contract and transactional law to lawyers, judges, and law students. Lawyers consist of those practicing commercial law, as identified by the Chamber of Commerce or other professional group with appropriate information. Law students comprise those completing a masters level degree in law. Judges include a sample of those sitting at the municipal court level, as decided by SEAD. **Desegregated:** Types of Training and Courses developed **Unit:** This indicator will provide the number of training courses developed for legal professionals.	Project Personnel	Quarterly	0	6[13]	0[14]
1.3.1 Increased confidence among the business community in the quality of contracts written	**1.3.1** Business community outreach programs developed and conducted **Definition:** One component of confidence building is awareness. The project assumes that the quality of contracts prepared will improve as a result of project trainings. The business community must be made aware of project initiatives that will train legal professionals and create standardized formats for commercial contracts. Campaigns may comprise, but not be limited to, print and broadcast media. **Desegregated:** Campaigns **Unit:** Whether outreach campaigns have been developed and delivered: yes/no and the number of outreach campaigns conducted	Sub-contractor, grantee or other SEAD partner	Quarterly	0	20	25[15] 42 media appearances[16]
1.3.2 Increased confidence among the business community in the quality of contracts written	**1.3.2 # of business community members expressing confidence in the quality of contracts** **Defined:** A scale will be used to determine confidence, with 1 expressing high confidence and 5 expressing low/no confidence in the quality of contracts. Results will be determined through a survey of business community members, possibly conducted with a chamber of commerce as partner. **Desegregated:** N/A **Unit:** Confidence scale	SEAD partner survey	Quarterly	Very Low	Increased increment of 7%	0[17]
Intermediate Results	**Indicator/Definitions**	**Data Source**	**Frequency**	**Baseline**	**Target**	**Result**

[13] The Project Developed 8 courses for the KJI and KCA that will be delivered in Q1 of Year Two.
[14] The Project developed 6 courses. These courses will be delivered in Year Two (the Project launched after the KJI annual training plan was already developed, and the courses are to deliver were plugged into the KJI schedule for October– December 2010.
[15] During the reporting period, the Project has organized 25 outreach events. In total 569 people participated in these events. 439 male and 130 female. 332 Lawyers and judges, 184 business community and 53 civil society (NGOs and Media)
[16] See the Media Monitoring Sheet – Appendix B.
[17] Focus groups and Surveys will be conducted at the one year anniversary point – February and March 2011.

Appendix A. Progress Against Indicators and Targets

1.3.3 Increased confidence among the business community in the quality of contracts written.	**1.3.3** Standardized formats for contracts are a) developed and b) used. [18] **Definition:** The indicator is a simple measure of whether or not standardized formats for contracts have been developed and if they are being used. Use will be determined through periodic surveys. **Desegregated:** Forms of contracts **Unit:** As to the development of standardized contract formats, the project will make a yes/no determination and collect information on the number and types of formats developed. With reference to use, a survey questionnaire will be developed and delivered to members of the bar.		Quarterly	0	0	0
Objective 2: Effective enforcement of judgments system						
Intermediate Results	**Indicator/Definitions**	**Data Source**	**Frequency**	**Baseline**	**Target**	**Result**
2.1.1 Backlog of enforcement cases stemming from utility billings in municipal courts reduced	**2.1.1** Means developed for disposing of utility cases outside the normal municipal court system **Defined:** Through an organized and negotiated process with the utilities, court officials, and other relevant actors, the SEAD project will seek to develop an alternative means for disposing of utility cases that will not rely on municipal court systems and procedures, as currently structured. This is a one- time, yes/no indicator, although there will be staff follow up over time to gauge continuing effectiveness and to determine if any further adjustments have been made. To be effective, the means developed will need to be accepted by the court and put into practice. By "disposing" of utility cases, SEAD means that they are removed from the municipal court docket pending alternative resolution. **Desegregated:** Utility company, **Unit:** Yes/No question	Pristina Municipal Court or legal departments of the utilities / SEAD project database	Quarterly	0	NA	Yes[19]

[18] In consultation with USAID, standard form contracts will be developed following adoption of the new Law on Obligations to ensure that the standard forms are relevant to the legal framework and possess lasting and sustainable value to users.

[19] This measure is no longer applicable as it has become clear that neither the legal basis nor market conditions will support out of court resolution; the issue will be resolved through application of the PMC Pilot court methodology, backlog reduction efforts, and the introduction of Private Bailiffs.

Appendix A. Progress Against Indicators and Targets

Intermediate Results	Indicator/Definitions	Data Source	Frequency	Baseline	Target	Result
2.1.2 Backlog of enforcement cases stemming from utility billings in municipal courts reduced	**2.1.2 # of existing utility enforcement cases in Pristina Municipal Court reduced** **Defined:** The indicator includes all enforcement cases stemming from utility billings in the Pristina Municipal Court. Utility cases comprise ***(to be determined at a later date by the project).*** The project expects that some reductions will be achieved in cases that have been in enforcement dockets for 2 years or longer. **Desegregated:** Utility Companies **Unit:** Simple count for baseline and analysis over time. The # of cases counted should go down over time	Pristina Municipal Court / Court Statistics	Quarterly	26,886[20]	KEK: 10 cases PTK: 610 cases	KEK: 12 cases for PMC only ; 39,000 Euros PTK (for PMC only): 640 cases; 110, 744.13 Euros
2.2.1 Backlog of civil execution cases in municipal courts reduced	**2.2.1 % reduction in civil execution cases older than 24 months in targeted courts (Pristina Municipal Court)** **Definition:** This indicator will measure the percent reduction in civil execution cases older then 24 months in targeted courts (in this case, the Pristina Municipal Court, and perhaps other courts to be determined later). Calculated by subtracting the number of backlogged cases (defined as older than 24 months) for the current year from the number of backlogged cases last year and calculating that number as a percentage (the difference divided by last year's figure). Civil execution cases include the execution of authentic documents such as invoices, bills, and checks as well as the execution of court judgments in civil and criminal matters. **Disaggregated by:** N/A **Unit:** Simple count for baseline and analysis over time. The # of cases counted should go down over time	Pristina Municipal Court / Court Statistics	Quarterly		N/A[21]	N/A
2.2.2 Backlog of civil execution cases in municipal courts reduced	**2.2.2 # of civil cases enforced with USG assistance.** **Defined:** Number of civil cases enforced in the Pristina Municipal Court (which comprises the largest backlog of cases). Enforcement is defined as the point when the final decision is actually executed (money paid, property seized, etc). **Disaggregated by:** **Unit:** Simple count for baseline and analysis over time. The # of cases counted should go down over time	Pristina Municipal Court / Court Statistics	Quarterly	N/A	500	652 cases (PTK and KEK); 149,744 Euros

[20] Based on KJC statistics 17,008 out of 26,886 cases are utility cases.
[21] PMC and KJC does not maintain this data

Appendix A. Progress Against Indicators and Targets

Intermediate Results	Indicator/Definitions	Data Source	Frequency	Baseline	Target	Result
2.3.1 Legislation consistent with international standards is designed, enacted and implemented.	**2.3.1 New enforcement legislation (amendments and/or secondary legislation) enacted** **Definition:** This is a process indicator leading to a preferred outcome: new enforcement law enacted. As defined by SEAD, the key milestones which must be met include 1) assessment of issues in existing enforcement system and regional and international practice; 2) CERC formed with authority to draft; 3) study tour by drafters and decision makers to observe key regional models; 4) draft developed and reviewed by international expert panel; 5) revised draft submitted to Parliament; 6) new enforcement law enacted. **Unit:** Yes/no answers, determined by project personnel in consultation with experts at each step along the continuum.	Assessment report, CERC reports, draft legislation/ Project staff in discussions with key stakeholders.	Quarterly	0	Enforcement Legislation Enacted	No[22]
2.4.1 New enforcement system implemented	**2.4.1 Agents engaged in enforcement** **Definition:** Enforcement positions consist of those responsible for some action within the enforcement process. Engagement means that the personnel in the positions are formally vested with authority to act. **Disaggregated by:** **Unit:** Simple percentage	Court statistics, SEAD Project Staff	Quarterly	60[23]	50%[24]	50%[25]
2.4.2 New enforcement system implemented	**2.4.2 % of newly-initiated enforcement cases finally disposed of** **Defined:** Newly-initiated enforcement cases are those first filed in the enforcement docket during the period under review. Disposition means those cases fully enforced, settled or dropped, not excluding cases otherwise finally disposed of but appealed to a reviewing authority **Unit:** simple percentage	court statistics, SEAD project staff	Quarterly	26,886	NA	N/A[26]

[22] The Assessment on Enforcement of Judgments completed. During the reporting period the Project is working with MoJ on Executive Procedures Law, amendment of the Law on Tax Administration, Law on Payment Transaction, and Law on KJC. The Working Group has completed a set of draft amendments on Law on Executive Procedures to be submitted to the parliament.
[23] Enforcement Agents
[24] As of January 2011, there will be 90 enforcement agents in place
[25] The Project has submitted a proposal to KJC to create special enforcement unit, which would involve 30 new trained enforcement agents.
[26] The information is not available

Appendix A. Progress Against Indicators and Targets

Intermediate Results	Indicator/Definitions	Data Source	Frequency	Baseline	Target	Result
2.5.1 Enforcement personnel trained on new enforcement procedures[27]	**2.5.1 % and number of approved enforcement personnel trained** **Definition:** Enforcement personnel include enforcement agents (state or private), court officials, self-governing organization staff, and regulatory agency staff. The indicator also includes those having received training of trainers course work. **Disaggregated by:** Gender **Unit:** percentage and number of those trained	participant lists, reporting by SEAD partner(s) / Participants List	Quarterly	0	0	0
Objective 3: Effective alternative dispute resolution systems						
Intermediate Results	**Indicator/Definitions**	**Data Source**	**Frequency**	**Baseline**	**Target**	**Result**
3.1.1 Amendments and legislation passed to make ADR system more effective	**3.1.1 Amendments and legislation passed to make ADR system more effective.** **Definition:** This milestone indicator will gauge the progress of legislation/regulations/standards: 1. Legislative working group(s) drafts strategic plan for development of legislative amendments and/or secondary legislation; 2. Amendments and/or secondary legislation drafted, reviewed and submitted to Parliament; 3. Amendments and/or secondary legislation passed/promulgated/implemented. **Disaggregated by: N/A** **Unit:** Determination by project staff and relevant stakeholders when/if each milestone is met	SEAD project staff, interviews, reports / SEAD project staff, review of drafts, parliamentary reports, organization reports	Quarterly	0	All regulations and procedures needed to implement the laws are in place, promulgated and implemented	No (1 regulation promulgated)[28]
3.2.1 National ADR Association established to oversee ADR professional training and certification and enforce professional standards	**3.2.1 National ADR Association established** **Definition:** This indicator follows the process of establishing a new national ADR association. The milestones include the following: - *Terms of Reference for National ADR Association developed (including legal structure, composition, competencies and human and financial resources)*	Project staff, interviews, reports / SEAD project and partners	Quarterly	0	NA	No[29]

[27] USAID JSP was extended and continues to conduct enforcement agent training throughout the reporting period.

[28] There are two separate laws: Arbitration and Mediation. Arbitration--The Project team advised the Minister of Justice of the need to amend the Law on Contested Procedures to eliminate conflict with Law on Arbitration. Mediation --Project drafted a workplan for the Mediation Committee and established a working/advisory group. Four implementing regulations drafted (Code of Conduct, Announcement/Selection for Mediator Training, Training and Certification, Grievance and Discipline).The Code of Conduct has been approved in the last quarter

[29] 1 regulation promulgated. Pursuant to Mediation Law, Mediation Commission is oversight body. During the reporting period , the Project conducted a workshop for the Mediation Commission and assisted with drafting regulations on training/certification and ethics/disciplinary standards, ethics code adopted as described in 3.1.1. For arbitration, the institutions that will sponsor arbitration will perform oversight function (See 3.3.1)

	- *ADR training and certification standards and professional standards/disciplinary procedures established* - *ADR training curricula (three levels), protocols and training manuals developed; initial set of ADR trainings completed and ADR professionals certified* - *National association(s) becomes a member of a regional or international ADR association* - *National association(s) becomes financially sustainable* **Disaggregated by:** **Unit:** Determination by project staff and relevant stakeholders when/if each milestone is met					
Intermediate Results	**Indicator/Definitions**	**Data Source**	**Frequency**	**Baseline**	**Target**	**Result**
3.3. **1** Two ADR Centers established and staffed by trained and certified ADR professionals	**3.3.1** Establishment of ADR centers **Defined:** These are ADR centers established by organizations interested in providing ADR services to the business community. The milestones that will enable us to determine progress include: - *Business organizations to sponsor pilot ADR centers identified* - *Sponsoring organizations apply for and receive SEAD grants to fund start-up costs of ADR centers* - *Rules of procedure, policies and operating procedures for pilot ADR centers in place.(to come - 0)* - *Pilot ADR centers develop strategic plans for business development and recruitment of ADR professionals* - *ADR centers become financially sustainable* **Disaggregated by:** **Unit:** Determination by project staff and relevant stakeholders when/if each milestone is met	SEAD project staff, interviews, report reviews / SEAD partners, SEAD project staff	Quarterly	0	ADR center(s) established	*No*[30]

[30] During the reporting period the Project entered into MoUs with two institutions where the ADR Centers will be established (Kosovo Chamber of Commerce and American Chamber of Commerce in Kosovo); and assisted in developing strategic plans that were approved by their respective Boards.

Appendix A. Progress Against Indicators and Targets

Intermediate Results	Indicator/Definitions	Data Source	Frequency	Baseline	Target	Result
3.4.1 Business community and citizens use ADR	**3.4.1** Outreach campaign(s) developed and implemented **Defined:** Outreach campaigns are designed to promote ADR to the business and legal community by informing them of the benefits of mediation as a means to amicably and cost-effectively resolve disputes. Means for achieving outreach will be through print and broadcast media, a series of quarterly round table events, and the development of other informational materials. **Disaggregated by:** (to be determined) **Unit:** Simple count of number of campaigns; SEAD project determination about whether or not campaigns actually developed and implemented	SEAD project staff, interviews, reports / SEAD project staff, partners	Quarterly	0	5	6[31]
3.4. 2 Business community and citizens use ADR[32]	3.4.2 # of court-referred ADR cases **Defined:** Court-referred ADR cases are those in which the court instructs the parties to seek resolution through ADR. **Disaggregated by:** - Municipality **Unit:** simple count	SEAD project staff, partners / partners in ADR centers, national ADR association, court records	Quarterly	0	5	0
3.4. 3 Business community and citizens use ADR	**3.4.3** # and % of cases that are enforced by the courts **Defined:** This indicator tracks enforcement following an ADR resolution at the pilot ADR centers **Disaggregated by:** - Municipality **Unit of Measure:** simple count	SEAD staff, ADR centers, court statistics/reports, national ADR association / Courts, ADR centers, national ADR association, etc.	Quarterly	0	5	0

[31]During the reporting period the Project prepared ADR survey that was implemented by AmCham and KCC; Marilyn Zelin, Senior Legal Advisor published an article in Koha Ditore and AmCham magazine, *Horizons*; two MoU signing ceremonies (KCC and AmCham) and international conference on ADR received large media attention.

[32] During the reporting period KJC approved establishing pilot court-referred mediation project in two locations; centers will be established 2Q of Year Two, with mediation fees paid out of KJC budget.

APPENDIX B. MEDIA MONITORING SHEET

"ENFORCING CIVIL JUDGMENTS IN KOSOVO: A CALL FOR SYSTEMIC REFORM"

No:	Date	Name of Media	Type	Program	Title	Comments
1	26 May, 2010	Top Channel	TV	News	International Conference on Systems of Enforcing Civil Judgments	This was main news story for four times during the day of the conference
2	26 May, 2010	RTK	TV	News	International Conference on Systems of Enforcing Civil Judgments	The conference appeared three times during the day, in the main news 7.30 pm and evening news at 11.00 pm
3	26 May, 2010	RTV 21		News	International Conference on Systems of Enforcing Civil Judgments	This was main news story for four times during the day of the conference
4	26 May, 2010	KTV	TV	News	International Conference on Systems of Enforcing Civil Judgments	This was main news story for four times during the day of the conference
5	26 May, 2010	Alsat	TV	News	International Conference on Systems of Enforcing Civil Judgments	Story on the main news
6	26 May, 2010	Radio Dukagjini	Radio	News	Ambassador Dell requests from Kosovo Institutions a reform of a justice system	Appeared three times in the radio news
7	26 May, 2010	Radio Kosova	Radio	News	International Conference on Systems of Enforcing Civil Judgments	Story in the main news
8	27 May, 2010	Koha Ditore	Newspaper		"100,000 Unexecuted Cases"	"The Minister of Justice, Haki Demolli, admitted that the situation towards the execution of judicial cases is very bad, he promised that the Ministry of Justice will work in order to improve the current situation… Ambassador Dell said: 'If court decisions are unexecuted citizens will lose their trust about courts and the quality of the Rule of Law will be damaged…
9	27 May, 2010	Zeri	Newspaper		"100,000 Unexecuted Cases"	"U.S Ambassador in Kosovo Christopher Dell, continues to request from the Kosovo institutions the reforming of the justice system. He said that currently there is nothing more important than the strengthening of the rule of law in Kosovo. The U.S diplomat spoke at a conference where the enforcement of civil judgments was discussed…From the latest published data there are 100,000 unexecuted cases…"
10	27 May, 2010	Epoka e Re	Newspaper		"100,000 Civil Cases Decisions Unfinished"	"Yesterday was held the international conference "Enforcement of Judgments" which was organized from USAID-SEAD and BERP…"
11	27 May, 2010	Kosova Sot	Newspaper		"Courts in Chaos"	
12	27 May, 2010	Lajm	Newspaper		Virus of Judicial System"	"U.S. Ambassador Christopher Dell said that Kosovo Judicial System has been damaged because there are close to 100 thousand unexecuted cases that 'sleep' in the cupboards of judges, the Ministry of Justice plans to develop a modern draft law on executive procedure in Kosovo."
13	27 May, 2010	Info Press	Newspaper		100,000 Unexecuted Cases	"U.S. Ambassador in Kosovo Christopher Dell, continues to request from the Kosovo Institutions the reforming of the justice system…"
14	27 May, 2010	Bota Sot	Newspaper		"Dell: 100,000 Unexecuted Cases…"	
15	26 May, 2010	Kosova Press	Newspaper		100,000 Unexecuted Cases	Conference Proceedings
16	28 May, 2010	RTK	TV	Morning Program	David Greer, Chief of Party for USAID SEAD Program, talks about the enforcement of judgments	
USAID SEAD Regional Roundtable - Mitrovica						
17	15 June, 2010	Kosova Sot	Newspaper		David Greer and Teki Shehu, legal advisors presented their experiences and practices on contracting, mediation and arbitration.	A round table organized by SEAD (Systems for Enforcing Agreements and Decisions) and KCC (Kosovo Chamber of Commerce) was held in Mitrovica with a topic on: International practices on contracting, Alternative Dispute Resolution and the

"MEMORANDUM OF UNDERSTANDING BETWEEN USAID| SEAD PROGRAM AND KCC"

No:	Date	Name of Media	Type	Program	Title	Comments
18	07 July, 2010	RTK	TV	Morning Program "Miremengjesi Kosove" 8:15 to 8 40	Memorandum of Understanding between SEAD Program and KCC	David Greer and Safet Gerxhaliu were invited in the Morning Show to talk about the signing of the MOU for the establishment of arbitration tribunal .
19	07 July, 2010	RTK	TV	News 17.00	Memorandum of Understanding was signed between SEAD Program and KCC for the establishment of arbitration tribunal	In order to improve the Business environment in Kosovo, through the establishment of arbitration mechanisms, Kosovo Chamber of Commerce and USAID Program sign a Memorandum of Understanding.

20	07 July, 2010	RTK	TV	News 19.30	Memorandum of Understanding was signed between SEAD Program and KCC for the establishment of arbitration tribunal	In order to improve the Business environment in Kosovo, through the establishment of arbitration mechanisms, Kosovo Chamber of Commerce and USAID Program sign a Memorandum of Understanding.
21	07 July, 2010	RTK	TV	News 11.00 pm	Memorandum of Understanding was signed between SEAD Program and KCC for the establishment of arbitration tribunal	In order to improve the Business environment in Kosovo, through the establishment of arbitration mechanisms, Kosovo Chamber of Commerce and USAID Program sign a Memorandum of Understanding.
22	07 July, 2010	RTV 21	TV	Main news 6.30	Memorandum of Understanding between SEAD Program and KCC	Story on the main news
23	07 July, 2010	Klan TV	TV	Main news	Memorandum of Understanding between SEAD Program and KCC	Story on the main news
24	07 July, 2010	Arta TV	TV	Every 2 hours	Memorandum of Understanding between SEAD Program and KCC	Story in the main news
25	07 July, 2010	Alsat	T V	Main news	Memorandum of Understanding between SEAD Program and KCC	Story on the main news
26	07 July, 2010	Fan TV	TV	Main news	Memorandum of Understanding between SEAD Program and KCC	Story on the main news
27	08 July, 2010	Koha Ditore	Newspaper	Koha Ditora Newspaper	The establishment of arbitration tribunal in KCC	Arbitration Tribunal, which will operate within the Kosovo Chamber of Commerce will be a place where businesses will be able to solve their problems over the implementation of the agreements they have between themselves or with public organizations in the country. Kosovo Chamber of Commerce has signed an agreement with the USAID SEAD Program regarding the establishment of the Arbitration Tribunal
28	08 July, 2010	Lajm	Newspaper	Lajm Newspaper	KCC and USAID SEAD Program sign a Memorandum of Understanding	Kosovo Chamber of Commerce and the USAID SEAD Program, Systems for enforcing agreements and decisions on Wednesday signed a Memorandum of Understanding that aims to resolve of business problems through the establishment of the arbitration tribunal.
29	08 July, 2010	Infopress	Newspaper	Infopress Newspaper	Kosova with Commercial Arbitration	The signing of the memorandum of understanding formalizes the formal start of cooperation between the Kosovo Chamber of Commerce and USAID SEAD Program for the establishment of arbitration tribunal. The partnership between SEAD and KCC will focus on promoting awareness on alternative dispute resolutions within the business community.
30	08 July, 2010	Bota Sot	Newspaper	Bota Sot Newspaper	KCC and USAID SEAD Program sign a Memorandum of Understanding	Kosovo Chamber of Commerce and USAID on Wednesday signed a Memorandum of Understanding for establishment of the arbitration tribunal in the KCC. David Greer has said that he development of a high quality arbitration services in Kosovo will bolster the business environment so Kosovo can become more attractive to foreign businesses . While acting Safet Gerxhaliu KCC, said the signing of this memorandum will be another qualitative step.
31	08 July, 2010	Tribuna Shqiptare	Newspaper	Tribuna Shqiptare Newspaper	Economic disputes out of Court	In order to develop a suitable climate for the economy, Kosovo Chamber of Commerce and USAID SEAD Program signed a memorandum of understanding, which aims to support reforms in the judiciary by providing an efficient system for the resolvment of disputes.

32	08 July, 2010	Epoka e re	Newspaper	Epoka e Re Newspaper	Memorandum of Understanding between SEAD Program and KCC	Kosovo Chamber of Commerce and USAID Systems for Enforcing Agreements and Decisions (SEAD) Program, on Wednesday signed a Memorandum of Understanding, which aims at solving the problems of the business through the establishment of arbitration tribunal. David Greer director of SEAD Program said that the development of a high quality arbitration services in Kosovo will bolster the business environment so Kosovo can become more attractive for foreign investments.
33	08 July, 2010	Kosova Press	Website	http://www.kosovapress.com/ks/index.php?cid=1,3,105822	Greer: It will solve the problems of business community	Access date: July 7th and July 8
34	08 July, 2010	Koha Net	Website	http://www.koha.net/index.php?cid=1,5,27418	The establishment of arbitration tribunal in KCC	Access date: July 7th and July 8
35	08 July, 2010	Kosova Info	Website	http://kosova.info/2010/07/oek-dhe-usaid-i-memorandum-mirekuptimi/	KCC and USAID into a Memorandum of Understanding	Access date: July 7th and July 8

"MEMORANDUM OF UNDERSTANDING BETWEEN SEAD PROGRAM AND AMCHAM"

No:	Date	Name of Media	Type	Program	Title	Comments
36	14 July, 2010	Ekonomia e Kosoves	Website	http://ekonomia-ks.com/?page=1,3,6733	AmCham and USAID, arbitration for the improvement of foreign investments.	In an effort to improve the business environment for more foreign investment, Kosovo American Chamber (AmCham) and the USAID program 'System for Enforcing Agreements and Decisions (SEAD), today signed a Memorandum of Understanding for the establishment of the arbitration tribunal to Am Cham for resolving commercial disputes.
37	14 July, 2010	RTK	Website	http://www.rtklive.com/?cid=1&newsId=40037&mfx^F&!Q5e86V^7&&dM#cfg0!Ur*&PcponsRP1~0Pccf0d8(vx03d_pdx9w6pd*MD737dae0zzc^dw3Fdqs&&W-73*drZT&&iQI^f87	AmCham establishes arbitration tribunal	Local Businesses will have the opportunity soon to address AmCham for their various disputes. AmCham and USAID Program signed a Memorandum of Understanding for the establishment of Arbitration Tribunal
38	14 July, 2010	Kosova Live	Website	http://www.kosovalive.com/?cid=1,2	AmCham and USAID, arbitration for the improvement of foreign investments.	
39	14 July, 2010	"Lajm"	Newspaper	Newspaper	A Memorandum of Understanding for the establishment of Arbitration Tribunal	Local Businesses will have the opportunity soon to address AmCham for their various disputes. Amcham and USAID Program signed a Memorandum of Understanding for the establishment of Arbitration Tribunal. USAID Mission Director Patricia Rader said that: Without effective mechanisms for arbitration in Kosovo, "foreign investors will seek other countries where there is a more efficient system for resolving commercial disputes
40	17 July,2010	"Epoka e Re"	Newspaper	Newspaper	AmCham and USAID, arbitration for the improvement of foreign investments.	In an effort to improve the business environment for more foreign investment, Kosovo American Chamber (Am Cham) and the USAID program 'System for Enforcing Agreements and Decisions (SEAD), today signed a Memorandum of Understanding for the establishment of the arbitration tribunal to Am Cham for resolving commercial disputes.
41	14 July, 2010	Radio Kosova	Radio	Radio News Program	AmCham and USAID, arbitration for the improvement of foreign investments.	The story on the MoU Signing between AmCham and USAID SEAD was broadcasted in the main news (2.00 pm, 5.00 pm and 7.00 pm)
42	19 July, 2010	Radio Blue Sky	Radio	Radio Program on Economy	Interview with David Greer on the importance of arbitration tribunal	15 minute interview with David Greer was broadcasted on July 19, 2010 at 7.00 pm.