



USAID
NGA POPULLI AMERIKAN
OD AMERIČKOG NARODA



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

QUARTERLY ACTIVITY REPORT JANUARY – MARCH 2010

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

Implemented by Checchi and Company Consulting, Inc.

April 30, 2010

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



USAID
NGA POPULLI AMERIKAN
OD AMERIČKOG NARODA



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

QUARTERLY ACTIVITY REPORT JANUARY – MARCH 2010

Submitted by:

David Greer

Chief of Party, SEAD Program

Address: Sejdi Kryeziu st. no H9, Pristina, Kosovo

Email: dgreer@checchiconsulting.com

www.checchiconsulting.com

DISCLAIMER

The contents are the sole responsibility of Checchi and Company Consulting, Inc. and do not necessarily reflect the views of USAID or the United States Government.

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

TABLE OF CONTENTS

PROJECT OVERVIEW	2
EXECUTIVE SUMMARY	2
SUMMARY OF PROGRESS JANUARY 2010 – MARCH 2010	3
PROJECT START-UP AND ADMINISTRATION	3
CROSSCUTTING ISSUES	4
<i>Focus Group Meetings</i>	4
OBJECTIVE 1: SUPPORT LOCAL INSTITUTIONS TO IMPROVE THE MEANS AND MECHANISMS FOR THE ENFORCEMENT OF OBLIGATIONS AND CONTRACTS	4
<i>Legal Education - The University of Pristina Law Faculty</i>	4
<i>The Kosovo Judicial Institute – Continuing Legal Education for Judges</i>	5
<i>The Kosovo Council of Advocates – Mandatory Continuing Legal Education for Attorneys</i>	6
<i>Legal Information Materials</i>	6
OBJECTIVE 2: ENFORCEMENT OF JUDGMENTS	7
<i>Systemic Reform leading to improved enforcement of judgments</i>	7
<i>Reducing Backlogged Cases – The Pristina Municipal Court Pilot Project</i>	8
OBJECTIVE 3: DEVELOP AND IMPLEMENT AN APPROPRIATE AND EFFECTIVE ALTERNATIVE DISPUTE RESOLUTION SYSTEM	9
<i>Arbitration:</i>	10
<i>Mediation:</i>	11
ACTIVITIES PLANNED FOR NEXT QUARTER	12
<i>OBJECTIVE 1: Support Local Institutions to Improve the Means and Mechanisms for the Enforcement of Obligations and Contracts</i>	12
<i>OBJECTIVE 2: Enforcement of Judgments</i>	12
<i>OBJECTIVE 3: Develop and Implement an Appropriate and Effective Alternative Dispute Resolution System</i>	12

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 will focus 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 second quarter, technical assistance efforts built significant momentum across all components.

In Component 1, the Project secured Ministry of Justice consent to include the Project in legislative drafting 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 component activities will rest, and therefore constitutes a threshold issue for further development of standard form contracts, training programs for lawyers and judges, and other legal information materials. Additionally, the Project negotiated the scope of its assistance to the University of Pristina Law Faculty, and began examining resource requirements to go farther than improved clinical training programs for law students; this and to develop a full Masters of Law degree program in contract and commercial law.

In Component 2, the Project team continued its broad and detailed analysis of systems necessary for improved functioning of Enforcement of Judgments. This analysis revealed that, in addition to legislative amendment of the primary law, the Law on Execution Procedures, many changes will also be required in the function of pledge registries, cadastres, bank supervision, and data exchange between government agencies. The Project prepared for the Central Bank, and received provisional support for the promulgation of, a regulation that enhances supervisory efforts to ensure bank compliance with enforcement actions. Additionally, the Project team launched a pilot project at the Pristina Municipal Court to test possible approaches to reducing the tremendous backlog of civil cases awaiting enforcement, particularly with regard to utilities cases. This endeavor is certain to prove challenging, but the Project team successfully brought the Court, enforcement clerks, and representatives of the two major utilities (energy and post and telecom) together to develop an action plan and began testing approaches to reducing backlog.

In Component 3, the Project built 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 developing action plans for laying the foundation for the launch of capable arbitration activities. Additionally, the component team began working closely with the Mediation Commission at the Ministry of Justice to begin drafting all the secondary legislation necessary to implement mediation activities in commercial cases.

All three components came near to finalizing the programmatic assessment. Included in the assessment process was a wide range of interviews with business and the legal community, focus groups, and surveys.

SUMMARY OF PROGRESS JANUARY 2010 – MARCH 2010

Project Start-Up and Administration

Checchi completed staffing of the original Project and determined the need to augment the technical staff with additional junior advisors in each of the components. The Project budget was revised to reflect actual costs of startup, and forecast for future activities. USAID budget approval was received, including the addition of three additional junior advisors. Recruitment for these advisors is anticipated in the next quarter.

Project IT equipment was received and installed, and the Project vehicle and generator were shipped, with arrival anticipated in April.

Problems and Implementation Issues

1. **IT Equipment Delivery.** The Project's shipment of IT equipment was delayed due to problems with vendor supply, but this equipment arrived in late January.
2. **Development of Work Plan, Implementation Time Line, and PMP.** With the change of Chief of Party, final development of these documents was delayed. With the arrival of the new Chief of Party in mid-January, these documents were addressed as a high-priority, and final submission and approval was concluded in early February.
3. **Conduct of Assessments:** The mobilization of expatriate long-term advisors and a new Chief of Party in January enabled the Project to begin the process of thorough assessments in all components of the Project. These assessments were drafted concurrently with the launch of a number of technical activities. Finalization and publication of the assessments is scheduled for the next quarter.
4. **Work Plan:** The assessment revealed that the timing of a number of planned activities is likely to shift due to the activities' dependency on other events. For example, the Law on Obligations will constitute the basis for the development of standard form contracts, and the Project team believes that tying the standard forms to the new law will help the business community more quickly adapt to implementation of the new law as well as ensure that the final product is sustainable, and has lasting value. In enforcement, there is little appetite for constituting a high-level committee of counterparts (the "CERC") to coordinate enforcement reform policy; rather, the Ministry and others see much greater efficacy in working directly through a Ministry of Justice constituted legislative working group. Additionally, close review of the legislative framework governing arbitration and mediation suggests that the Project should approach these two ADR activities separately.

In addition to finalization of Project start-up activities, the development of the work plan, PMP, and implementation time-line – conceptualizing key Project objectives and activities, and translating them into an actionable work plan – the conduct of broad component assessments absorbed the majority of the Project’s technical attention during the quarter. Developing these documents involved numerous meetings with key Project counterparts, other donors, and USAID implementing partners in order to develop the Project’s priorities and strategic vision, as well as surveys, focus groups, and analysis of laws, processes and systems. Preparation of these documents, and their final approval, constituted important achievements during the quarter, and were accomplished while simultaneously building significant momentum for a number of meaningful technical interventions.

During the quarter, the Project team met with numerous key counterparts across the spectrum of both public and private sectors, as well as with numerous USAID implementing partners and other donors. The purpose of these meetings was continued development of the cooperative relationships that will translate into an effective and successful programmatic approach to achieving Project goals.

Crosscutting Issues

FOCUS GROUP MEETINGS

SEAD has engaged Management Development Associates to conduct five focus group sessions. The focus groups began at the end of March and will be completed in early April. The focus groups seek to elicit information regarding the use of contracts, enforcement issues, and ADR, and to validate independently what the Project team is learning through interviews with individuals in the public and private sectors.

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.

During the quarter, the component team continued to gauge opportunities and the current dynamic for pursuing the Project’s objectives in these areas. Much of the Project’s activities were directed at the preparation of an assessment report and recommendations for programmatic interventions.

LEGAL EDUCATION - THE UNIVERSITY OF PRISTINA LAW FACULTY

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, attempting to offer progressively more elective clinical components along with its primary mandatory courses, have developed and implemented several training clinical 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 curricula in recent years, it is clear that the Law Faculty is experiencing “reform fatigue” and is not readily willing to yet again restructure and revise its undergraduate curriculum to provide further clinical training in contract and commercial law.

Solution

This general situation, however, also presents an opportunity. The Law Faculty is eager to develop an additional 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 course, as it 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 coming quarter, the Project will explore the needs of the faculty, and, together with USAID, determine the feasibility of pursuing this assistance. If the decision is to do so, a Memorandum of Understanding will be prepared.

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 section for judicial training, which later was transformed in February 2000 as the 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. On 23 February, 2006, the Kosovo Assembly adopted the Law on Establishing the Kosovo Judicial Institute. This Law establishes the KJI as an independent professional body and the judicial training institution within the judicial system of Kosovo that shall perform its functions based on principles of legality, impartiality and efficiency, with a responsibility to provide professional training for all judges and prosecutors in Kosovo's justice system. It is the only national institution in Kosovo solely dedicated to advancing effective training for the judiciary and prosecutors.

Donor input into the KJI has been organized, well-structured, and follows a published training schedule. From 2000, when the KJI was established, until the present, with the assistance of other donor organizations, it has conducted more than 630 training sessions. With ten years of experience in developing and providing trainings for judges and prosecutors KJI has proven to be successful in demonstrating capacity to offer a wide-range of courses on a systematic basis.

The KJI is a well run institution that receives enormous donor support. The SEAD Project will seek to expand the 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 will primarily fit into the KJI's CLEP 2010 and focus not only on understanding relevant legal provisions, such as the applicable Law on Obligations, but other issues as well (e.g., enforcement of judgments). SEAD will employ the same proven approach to developing sustainable training courses pioneered by the USAID EMSG Project.

List of courses SEAD plans to develop for KJI – CLEP includes:

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 Mediation (roundtable – discussion);
6. Alternative Dispute Resolution of Business Disputes (conference);
7. Court referred ADR;
8. Contract on Sale of Goods under the Law on Obligations and the CISG (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, current law requires continuing legal education for advocates. 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

KCA training programs will have to be treated differently from those of the KJI, as there does not appear to be a ready-made mechanism that the Project can "plug in" to an existing training scheme. While ABA/ROLI has worked with the KCA to develop a mandatory CLE program, initial information indicates that implementation is still in progress.

Solution

As the CLE program is not fully prepared, the Project cannot at this point commit to developing training programs. The Project will anticipate the launch of the MCLE program, however, by ensuring that the materials developed for the KJI can readily be plugged into the MCLE program for attorneys, and will ensure that the courses can be offered once training calendars are developed. SEAD will undoubtedly need to connect its programmatic objectives to the CLE program through identification of topics/fields for trainings, production of modules and train-the-trainer (TOT) activities.

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 a more coherent system of enforcement by judicial officials. The Project is tasked to develop a number of standard form contracts with 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. By all indications, the Government of Kosovo intends to seek passage of sweeping changes to contract law – the Law on Obligations – in November of 2010. As such, in order to ensure that these forms are firmly grounded in applicable law, the Project will delay development of these forms and instead focus on providing assistance to the government in finalizing this law for passage.

Solution

SEAD has 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 replacement might entail. For this purpose, the present law will be reviewed and compared, point by point, with the 2004 draft by experts who can be dedicated to the job.

SEAD will support the Ministry of Justice working group in this task by

- 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 will be invited to observe these

roundtables, and feedback will be communicated to the working group experts as the draft is finalized;

b. working with other donors, particularly UNDP and the EU Twinning Project, SEAD will ensure that the working group is 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 has already been done by EU Twinning);

c. enabling the Government to promulgate the law in its final form to the business community in advance of its passage, and will engage in public education and publication of summary materials to highlight key changes to ensure that the adoption of the law is as painless as possible

Additionally, SEAD will raise, and seek determination of two related issues with regard to this legislative drafting effort: 1) whether to re-style the name of the draft “The Civil Code of the Republic of Kosovo”; and 2) whether to undertake some steps toward additional codification, for example, incorporating norms on leasing, or pledge, in order to ensure that in the event of a conflict between these several laws, there is clear and coherent guidance to implementation.

OBJECTIVE 2: Enforcement of Judgments

Objective one can be broadly characterized as having two subcomponents: Reform of the system of enforcement, potentially including the introduction of private bailiffs; and reduction of the enormous backlogs of unenforced civil judgments.

During the quarter, the component team continued to gauge opportunities and the current dynamic for pursuing the Project’s objectives in these areas. Much of the Project’s activities were directed at the preparation of an assessment report and recommendations for programmatic interventions.

In addition to a broad and thorough analysis of the systemic and legal issues that inform challenges to improved enforcement of judgments, the component team took two intermediate term steps to address issues in both subcomponent areas.

SYSTEMIC REFORM LEADING TO IMPROVED ENFORCEMENT OF JUDGMENTS

Enforcement of Judgments through bank accounts

According to statistics available from the court system, there are huge numbers of adjudicated civil cases awaiting execution. Approximately 95,000 civil cases are awaiting execution (including many that have not even been noticed to defendants/judgment debtors!) in the municipal courts of Kosovo, almost all seeking monetary recoveries. In addition, there are more than 1,300 cases waiting for execution in Commercial Court of Pristina. Thus, this is a problem of very significant magnitude.

As revealed by the enforcement requests in an overwhelming number of cases, creditors would strongly prefer to collect their monetary claims via transfer from the debtor’s bank accounts. The reason is clear. A monetary transfer from the debtor’s account to the creditor’s account is, in principle, fast and simple to implement, and yields cash rather than un-saleable movable or immovable property.

Although enforcement through bank accounts has clear advantages, in Kosovo it is rarely effective. Through the court decision, the court orders the bank to transfer the amount of the judgment from the debtor’s account into the account of the creditor. But frequently, banks evade this obligation. Courts and creditors complain that banks protect their clients, by providing information about the court decision to their account holder, the judgment debtor. This

information of the debtors about the existence of the court decision enables them to withdraw or transfer their money into another bank account.

One reason for this problem is the absence of evidence to prevent it. In fact, the banks do not keep this evidence, and thus cannot make it available to courts that have requested enforcement against a judgment debtor's account.

The Project proposed, and prepared for the Central Bank of Kosovo, a regulation that would address this problem by making it a requirement that banks report their actions to the Central Bank, and provide evidence of those actions both to the court and to the Central Bank. Under the proposal, banks would be required to report all court orders received directly to the Central Bank, and would also be required to provide as evidence of compliance an excerpt of their account records for the stated account for the relevant period. By providing this evidence directly to the court that issued the order, the bank would expose itself to punishment if it had failed to comply with the court order. By providing this evidence to the Central Bank as well, the bank would demonstrate its compliance with the court order and with its obligation to provide evidence to the court, and would expose itself to sanction from the Central Bank if it failed to do so.

The Project expects that the Central Bank will promulgate this regulation in the near future. Additionally, the Project has asked the Ministry of Justice to include similar provisions, anticipating this regulation, in draft legislation on the Central Bank.

REDUCING BACKLOGGED CASES – THE PRISTINA MUNICIPAL COURT PILOT PROJECT

The Project's plan for dealing with backlogged utility cases involves three basic elements:

- 1) Dealing with the problem of logistical issues such as outdated or incorrect addresses, in part by taking advantage of the information that the utility companies have available to them through their normal business operations and similar strategies, and in part by trying to increase the resources available to enforce judgments;
- 2) Achieving increased collections of backlogged cases through improved mechanisms for bank collections and wage and salary garnishment at debtors' places of employment; and
- 3) Reducing caseloads by legislative revisions of the 2008 Law on Executive Procedure that will make it possible *ex officio* to dismiss or suspend enforcement efforts on cases for which actual collection has become impossible.

Problems and Implementation Issues

PMC Pilot Project

One significant problem is an ongoing lack of cooperation with Pristina Municipal Court, and the tepid response to the joint project with the major creditors and the Project. While the President of PMC has expressed support to participate, the enforcement office itself has not agreed, and has not participated fully. They have resisted undertaking any kind of written planning to provide a schedule for enforcement officers to deliver enforcement notices in authentic document cases or to make seizure attempts. They are not devoting the level of resources or manpower to the project that we believe will be necessary to make significant forward progress. Additionally, the Judicial Council also is not a strong ally in this effort.

Solution

The Project believes that making the cooperative program work will require a much more serious effort on the part of the KJC, and more bargaining to induce forward movement. Ultimately, because

the Enforcement Office of PMC claims that their priorities require that the workforce of the Office be devoted to work other than making home visits and delivering notices on backlogged cases, we believe that it will be hard to get genuine commitment on cooperation until such time as the KJC and others make a commitment to providing additional resources, and accountability, to the Enforcement Office.

CERC – Court Enforcement Reform Committee

In our initial work planning, SEAD suggested the development of a Court Enforcement Reform Committee (CERC) to serve as the critical liaison between the Government of Kosovo and the SEAD Project. The goal was to present a single coherent interface that would enable the Project to obtain reliable commitments from the Government and to provide analysis and argument to the Government in a manner that would presumably influence the choices made by Government decision-makers as it redesigned the enforcement system in Kosovo. In the scheme proposed, the CERC would consist of both experts from outside the government, as well as agencies within the government other than the Ministry of Justice, that would have expertise and experience to offer to the drafters within the Ministry as they engaged in the drafting process.

As discussed with USAID, however, the concept of a CERC was not entirely well-adapted to changes to the specific policy environment of Kosovo. For one thing, the Ministry working group is itself intended to incorporate outside expertise directly into the drafting and advisory process within the Ministry; the Minister of Justice can appoint outside individuals to the working group, as well as include governmental institutions (such as the Judicial Council) that have a role to play in the issues under discussion. Thus, the Ministry working group (an institution embodied in the formal rules of the Kosovo government governing the drafting of legislation) plays exactly the role that had been envisioned for the CERC, and thus there should be no need for the CERC as an institution outside the government. Second, because outsiders can be incorporated into the Ministry working group, it would make more sense to attempt to include well-informed and thoughtful professionals directly into the working group, rather than having them form an outside group intended to influence the Ministry, as contemplated in the design of the CERC. Thus, the Project intends to move away from the CERC proposal, and instead direct our attention to the Ministry's working group going forward.

Solution

SEAD proposes to select a high-quality team of local professionals, highly respected in the Kosovo legal and governmental community that are experienced and knowledgeable on enforcement issues, to serve both as our Project advisors on enforcement issues, and as our suggested slate of candidates for inclusion on the Ministry's working group. This team of individuals will be of great value, in ensuring the quality of SEAD proposals, and the probability of adoption of those proposals into the Ministry's legislative draft. We believe that in the majority of cases it will be necessary, that we hire these individuals to make their professional expertise available to the Ministry, and by doing so we will considerably expand the depth of expertise and experience on which the Ministry will be able to draw in its drafting exercise.

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

During the quarter, the Project made significant progress on its ADR assessment. The Project completed the review of the Laws on Arbitration and Mediation, compiled comparative information from other jurisdictions, and conducted meetings with key stakeholders. As a result of the assessment

process, SEAD believes that the unified approach to the development of commercial ADR under the auspices of a high-level (e.g. governmental) ADR Committee is not practical.

Implementation of mediation is more complicated for several reasons: 1) the role of the Mediation Commission (e.g., although responsible for promulgating regulations, commission members are seconded from other full time responsibilities, and do not commit much time to the effort); 2) the broad scope of the law, which results in a large number of stakeholders; and 3) the involvement of several donors, which complicates relations with the Mediation Committee and Ministry of Justice and requires extensive donor coordination. Moreover, many of the mediation stakeholders, including the other donors, are only concerned with mediation. Therefore, insistence on a completely unified approach would burden the development of commercial arbitration with irrelevant issues and delay the introduction of commercial arbitration.

ARBITRATION:

Law on Arbitration: The Law on Arbitration adopted in 2007 was intended to be the sole law on commercial arbitration and to replace the arbitration chapter of the Law on Contested Procedures. However, an amended Law on Contested Procedures was adopted in 2008 and retained provisions on arbitration that conflict with the Law on Arbitration and international standards. The most significant conflicts deal with recourse against an arbitral award and jeopardize the finality of an arbitral award. SEAD recommends that the conflict be addressed through an amendment to the Law on Contested Procedures that provides that all arbitration will be conducted in accordance with the Arbitration Law (a similar provision is included in the Mediation Law). SEAD is drafting a memorandum for the Ministry of Justice (the competent body for the Law on Contested Procedure) on the procedure for enacting such amendment.

The Arbitration Law itself is consistent with international standards and allows the flexibility that makes arbitration attractive to businesses. Therefore, additional secondary legislation is not necessary. However, rules and regulations that will facilitate implementation of the Arbitration Law should be in the form of regulations adopted by institutional sponsors of arbitration.

Development of ADR Infrastructure/Pilot ADR Centers: During the reporting period, the Project continued discussions with the major proponents of commercial ADR, the Kosovo Chamber of Commerce and the American Chamber of Commerce in Kosovo. The Project has obtained the agreement of KCC and AmCham to work together with SEAD on common issues (development of procedural rules, arbitrator training and ethics, relations with the courts and attorneys, and general public education and outreach). In addition, SEAD will provide individualized support to both organizations to build their capacity to organize arbitration proceedings, develop a protocol for appointing arbitrators, and member outreach. The Project will prepare an MOU or other document to outline the terms of the cooperation.

In that regard, the Project translated and analyzed the Regulation on the KCC's Arbitral Tribunal that was adopted in 1999. The Regulation needs to be updated in accordance with the Law on Arbitration and to incorporate revisions to the UNCITRAL Model Laws on International Commercial Arbitration and Conciliation as well as EU Directives.

Outreach: In addition to the focus group meetings discussed above, in order to gauge the level of awareness of ADR mechanisms among the business and legal communities and determine what types of ADR services should be developed, the Project has undertaken the following activities.

- Prepared an ADR survey that AmCham distributed to its members electronically in late March.
- Reached agreement with the KCC to implement the same survey among its members during the next quarter through in-person interviews conducted by KCC interns.
- Met with AmCham's newly formed Legal Committee, which supports development of ADR services at AmCham.
- Conducted interviews with SMEs throughout Kosovo suggested by KPEP.

MEDIATION:

Unlike the Law on Arbitration that is focused and does not require secondary legislation, the Mediation Law covers a very broad range of disputes and delegates extensive rule-making authority to a Mediation Council operating under the Ministry of Justice. The Mediation Law specifically requires the Mediation Council to adopt regulations on mediator training, certification and registration and mediation fees as well as adopt a Code of Ethics. In addition, regulations on such important provisions as confidentiality and time periods are needed as well as coordination with other specific laws that provide for mediation (Criminal Procedure Code, Law on Copyright and Related Rights, Law on Consumer Protection, and Law on Agricultural Land).

The Project had an introductory meeting with the Chair of the Mediation Council in February. While she confirmed that the Council needs expert assistance, she was reluctant to discuss any concrete type of assistance. This is because the Mediation Council is continually being approached by various donors (EU Twinning Project, UNDP and CSSP) as well as Partners Kosovo, and does not have a clear mandate from the MOJ on how it should proceed. In a later meeting the Minister of Justice told SEAD that all coordination and assistance should go through the Minister. Despite this instruction to SEAD, it appears that the other donors have been in direct contact with the Mediation Commission. In an effort to coordinate donor assistance, SEAD met with donors and Partners Kosovo individually and will organize a donor coordination meeting during the next quarter.

Problems and Implementation Issues

Mediation Commission

The Commission does not have the capacity or incentive to complete the secondary legislation needed to begin implementation of the Mediation Law. Members are not willing to work without compensation, and most members are also performing “double –duty” with their full time professional attention focused elsewhere (e.g., the Chair of the Commission also has full time responsibilities involved in managing penal probation services at the Ministry of Justice).

Solution

The Project will recommend to the Minister of Justice that at least the Chair of the Commission should work full time only on mediation commission business, until such time as the commission is fully functional, necessary implementing regulations are promulgated, and the commission is capable of operating without such involvement.

Amendment of Law on Contested Procedure

Presently, the language of the Law on Contested Procedures, which was passed *after* the law on Arbitration but was seemingly drafted without regard to the existence of the Law on Arbitration, creates uncertainty about the recognition and enforceability of arbitral awards.

Solution

The Project will draft model language for the amendment of this legislation, and propose to the Minister of Justice that amendment of this law be placed on the legislative agenda for 2011.

KCC

The KCC will appoint the President of its Arbitration Tribunal at its annual meeting, which is scheduled for June. Until then, SEAD does not have a high-level counterpart to work with at the KCC. In addition, progress has been delayed as a result of the appointment of a new KCC President in April.

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 finalize and publish the Program Assessment.

The component team will continue negotiations with the UP Law Faculty on designing an approach to developing a LL.M. program in Contract and Commercial Law.

Development of training modules for KJI and KCA will commence.

The Project will hold a 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.

SEAD short-term Public Education and Outreach Advisor Dr. Mark West will be in Kosovo in April to develop a strategic plan for the Project's activities, in particular media relations to ensure that the issues addressed by the Project (including Project activities, but by no means limited to Project activities) stay on the media agenda.

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

OBJECTIVE 2: ENFORCEMENT OF JUDGMENTS

The component team will finalize and publish the Program Assessment.

On May 26th, an international conference, co-sponsored with the EU BERP Program, on problems and potentials for reform of systems for the enforcement of judgments will take place, with the goal to advance the policy reform debate.

The formation of a legislative working group under the Ministry of Justice is expected in the next quarter. The component team will support this working group's efforts.

The component team will continue to advance the efforts of the PMC Pilot Program, likely through an MOU between USAID, KJC, and the PMC.

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

The component team will finalize and publish the Program Assessment.

The component team will prepare proposals and model drafts of potential amendments to legislation and regulations, to provide potential paths for advancing an effective system of mediation to the Assembly, Ministry of Justice and Mediation Commission.

The Project will host first the Mediation donor coordination meeting in April with the goal of organizing donor assistance and effectively utilizing resources, including consensus on dividing responsibilities and seeking the establishment of mediation expert working group.

The Project will organize a workshop for the Mediation Commission to provide basic information needed for the Commission to undertake its responsibilities.

SEAD will organize workshops for KCC, AmCham and other stakeholders on development of commercial arbitration, as well as identify experts and other arbitration associations that can assist the chambers of commerce in developing their institutional ability to provide commercial arbitration services, and assist KCC and AmCham in developing strategic plans for building ADR services at their institutions.

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