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

FINAL REPORT

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Submitted by:

Checchi and Company Consulting, Inc.

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EXECUTIVE SUMMARY

Checchi and Company Consulting, Inc, is pleased to present the final report for the Systems for Enforcing Agreements and Decisions Program (SEAD). The development of this report has been a joint effort of expatriate and Kosovar Program staff. The report includes an overview, a report on objectives and results, a description of Program activities and achievements, and a discussion of Program impacts. This report also incorporates the Program's activities for the final quarter.

SEAD worked closely with a wide range of Kosovar counterpart institutions across its component objectives including the Kosovo Judicial Council (KJC) and several individual courts, the Ministry of Justice (MOJ) and its subordinate Mediation Commission, the Central Bank of Kosovo (CBK), the Kosovo Chamber of Commerce (KCC), the American Chamber of Commerce (AmCham) in Kosovo, the Assembly of the Republic of Kosovo, the Kosovo Chamber of Advocates (KCA), the Kosovo Judicial Institute (KJI), the University of Pristina Law Faculty, and several other public and private sector counterparts and partners, as well as with other USAID and other donor projects. The Program enjoyed a fruitful and cooperative relationship with all its partners.

The major accomplishments of SEAD include extensive participation in and support for drafting Kosovo's new framework commercial law, the Law on Obligations, which will enter force at the end of 2012, as well as drafting a new Law on Execution Procedures that has been adopted by the Government of Kosovo, and is expected to receive Assembly attention in the fall of 2012. A comprehensive Master of Law Program in Contract and Commercial Law was successfully introduced and implemented at the University of Pristina Law Faculty. Nine Standard Form Contracts with accompanying legal commentary and guidelines for general use (layperson users' guides) were widely distributed to the business community, and hundreds of judges, lawyers, arbitrators, mediators, and enforcement clerks received practical training on a variety of commercial and other legal topics. A Registry of Account Holders, accessible to courts and enforcement personnel was established at the Central Bank of Kosovo to facilitate the enforcement of judgments against bank accounts, and an agreement between the KJC and the Tax Administration (TAK) on sharing employer information was brokered. A Standard Operating Procedures Manual for Enforcement was created, and adopted by the KJC. In an innovative approach to reducing the judgment backlog, the Project negotiated a MOU between major utility company creditors and the KJC to combine resources and more efficiently and effectively enforce judgments. Over 100,000 backlogged paper judgment files were entered into an electronic database, facilitating more efficient management of the case load, and SEAD developed methodology for attacking the backlog with major creditors leading to over 27,000 additional field executions, and the closure of more than 7,000 cases with a value of nearly €7 million. All the regulations required to implement the Law on Mediation were drafted by SEAD, and were adopted and promulgated by the MOJ and the Mediation Commission, and nearly 90 mediators were trained, laying the groundwork for the establishment of two pilot mediation centers. To date the centers have mediated nearly 100 cases to conclusion. SEAD also developed a protocol for judicial referral of cases to mediation which was adopted, and promulgated nationally, by the KJC. Two independent Arbitration Associations, at the AmCham and at the KCC were opened and were operating, with cases filed at both. Finally, thousands of Kosovar businesses and citizens were educated and informed about SEAD activities and successful reforms, leading to enhanced rule of law and a better environment for economic growth.

PROJECT OVERVIEW

The SEAD Task Order was executed by USAID and Checchi and Company Consulting, Inc. on September 30, 2009. The overarching goal of the SEAD Program was 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 was 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 focused 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 supported the establishment of an accessible and effective alternative dispute resolution system able to provide efficient, reliable and respected mediation and arbitration services.

Working with local institutions and interested donors to jointly address enforcement concerns, SEAD identified and implemented crucial reforms that directly improved the overall attractiveness of Kosovo for business development and foreign investment. Throughout implementation of the Program, and to the extent practical, SEAD undertook to correct and complete the relevant legal framework, the implementation of laws, and the development of local capacities. Priority was given to policy reforms identified as impediments to public trust in the legal and business environments and as constraints to business development and investment.

TASKS/SOW: ILLUSTRATIVE ACTIVITIES AND EXPECTED RESULTS

The tasks assigned to SEAD under the Task Order can be summarized as follows:

OBJECTIVE 1:

- Expand clinical training as part of the Law School Curriculum;
- Develop training programs on contract law as part of Continuing Legal Education (CLE) for legal professionals and judges, leading to a stronger curriculum of CLE and better trained lawyers and judges;
- Establish standardized forms for common transactions;
- Educate the public through business associations to raise awareness of the existence of standards and the value of good drafting, leading to increased awareness on the part of the business community of the benefits of using well-crafted written contracts.

OBJECTIVE 2:

- Procedural shortcomings in the Law on Executive Procedures are identified, and amendments introduced;

- Identify causes, whether due to actions or processes, leading to execution backlog and propose means to solve problems;
- Court backlogs reduced by means developed to avoid actions burdening the courts;
- Provide training for judges, execution clerks, and attorneys in order to improve performance;
- Reevaluate the role of judges in the enforcement process, and filing procedures and enforcement processes and propose solutions to improve the system, or transfer responsibility to a private system.

OBJECTIVE 3:¹

- Ensure implementation of primary and secondary ADR laws and regulations to ensure framework is harmonized with international practices and to facilitate introduction of ADR;
- Standards and certification processes are developed and in place for ADR professionals;
- Cadre of competent Kosovar ADR professionals established, including training;
- Work to ensure ADR clauses included in contracts;
- Organizations interested in developing independent arbitration centers identified and assisted;
- Outreach conducted and businesses use ADR.

SUMMARY OF PROJECT RESULTS

The SEAD Program met all of its objectives, and in several areas conducted additional activities beyond those expected. Most notably, the areas where SEAD was able to accomplish more than had originally been envisioned include:

- Development and adoption of a new Law on Obligations, the basic framework law for contracts (and torts);
- Establishment a Master of Laws in Contract and Commercial Law at the University of Pristina Law Faculty;
- Establishment and operation of two pilot mediation centers.

Summary of results related to specific objectives:

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

- *Developed the capacity of Kosovar judges, lawyers, and businesses to better implement commercial laws and introduce further commercial law reforms.* SEAD provided accredited mandatory Continuing Legal Education training for judges and lawyers at the Kosovo Judicial Institute (KJI) and the Kosovo Chamber of Advocates (KCA), that met each institution’s needs

¹ The TO also called for the creation of a “National Association or other oversight body to ensure the development and delivery of ethical and professional services”; however, the Mediation Commission already existed, and arbitration services are commonly self-regulating. As such, in consultation with USAID, it was decided that no activities would be undertaken to create an additional association or oversight body.

and integrated a variety of commercial law topics into their formal training programs. SEAD trained over 1100 participants in highly regarded and evaluated training courses.

- *Increased the commercial sector's understanding of commercial legislation, ADR, contract usage, and developments in the enforcement of judgments.* SEAD hosted a monthly series of regional roundtables with Kosovo businesses, in addition to a wide range of additional outreach activities culminating in a national media campaign designed to raise awareness and encourage greater private sector knowledge and use of the commercial law framework and well-drafted contracts.
- *Developed nine standard form contracts with accompanying legal commentary and guidelines for general use.* The standard forms were developed to aid businesses in implementing the the SEAD supported new Law on Obligations. More than 3,500 copies were distributed in both paper and digital formats to Kosovo businesses.

OBJECTIVE 2 – Support Local Institutions to Improve the Means and Mechanisms for the Enforcement of Judgments:

- *Contributed to a more efficient and transparent administration of justice through improvements to the systems for enforcing judgments through the courts.* SEAD introduced several measures to improve court infrastructure and performance in enforcing judgments, including creating systems to allow information exchange between the courts, banks and the tax administration that made it possible to locate debtors and their assets, and developing standard operating procedures for court enforcement clerks. SEAD also developed, with the MOJ, an entirely new law on Execution Procedures, which in addition to streamlining procedures for court enforcement, introduces private professional court bailiffs.
- *Developed and implemented the joint KJC-SEAD Backlog Reduction Initiative (BRI).* The methodology for BRI involved changing court practices by declaring the backlog a “Special Circumstance” under the law on Execution Procedures, which freed the courts to enforce judgments more efficiently. The KJC hired an additional 30 law-trained enforcement clerks to form Special Enforcement Units (SEU) deployed to the 5 courts with the largest backlogs; SEAD employed 30 interns to support the SEU’s. By digitizing cases for “batch” processing based on geographical proximity and involving major utility company judgment creditors, courts improved their performance by up to 175%; over 100,000 paper case files were entered into a database, and more than 28,000 additional execution attempts leading to final resolution of more than 7,000 additional cases worth more than €7 million were finally enforced and closed.
- OBJECTIVE 1 – Develop and Implement an Appropriate and Effective Alternative Dispute Resolution System: *Drafted all the necessary regulations and trained a cadre of mediators in order for mediation to take place.* Although the 2008 Law on Mediation had been passed and entered force, none of 7 regulations required for mediation to actually occur had been drafted or promulgated. Working with the MOJ Mediation Commission, the MOJ, and other donors, these regulations were finalized and promulgated and nearly 90 mediators were trained and licensed.
- *Opened and operated 2 pilot mediation centers, which conducted the first ever successful mediations in Kosovo, and established mediation as a viable dispute resolution alternative.* Prior to SEAD opening two pilot mediation centers, in Gjilan and Peja, no mediation as contemplated by the Law on Mediation had occurred, and there was a general skepticism, by both potential users and courts, of the efficacy of mediation. The SEAD supported centers changed this, and although the centers are only a small start, several tens of cases were mediated successfully, and

hundreds more were in the pipeline, indicating a very tangible shift in the perception of mediation.

- *Developed mechanisms and drafted a KJC protocol for court referral of cases to mediation.* In order to increase the potential volume of cases for the SEAD supported mediation centers, SEAD worked with the KJC and the courts in Gjilan and Peja to develop a systematic case review and referral process for the selection of cases to refer. The approach, proven successful in the Project's pilot centers, was adopted and promulgated nationally by the KJC.
- *Developed capacity of two arbitration fora, the American Chamber of Commerce in Kosovo (AmCham) ADR Center and the Kosovo Chamber of Commerce (KCC) Permanent Tribunal of Arbitration (PTA).* The Project entered into a Memoranda of Understanding with both chambers of commerce to establish their organizational capacity to provide arbitration services to business and provided ongoing support by drafting arbitration rules, ethics rules, and through extensive training to nearly 40 arbitrators. By Program end, both the AmCham ADR Center and the KCC PTA were receiving and adjudicating cases.

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

USAID identified three main areas to be addressed under this objective: 1) Continuing legal education in contract law and drafting for lawyers and judges; 2) clinical education in contract law and drafting for law students; and 3) standard form contracts for common transactions for use by business and legal communities, to be accompanied by outreach and public education efforts leading to greater contract usage.

Additionally, early in the Program, in consultation with USAID, SEAD also identified support to legislative drafting efforts to modernize and improve the foundational contract law for Kosovo – the Law on Obligations as a crucial additional activity. A revised draft of the existing law (the 1978 Yugoslav law) which was largely based on German law had been developed in 2004 and was languishing without focused USAID or donor support. Involvement in the development of the overarching contract law found in the Law on Obligations was a key foundation from which other Program activities (in particular the standard form contracts) flowed, SEAD provided this support to the MOJ’s legislative drafting working group.

Kosovo business practices in the main do not reflect international practice. A culture of contracts is emerging, but slowly, written contracts are not widely used by businesses outside of “contract intensive” industries such as insurance or banking. When they are used, in some cases they are not read by the parties. “Handshake” deals are still very commonplace. The traditional notion of “*Besa e Shqiptare*” word of honor still in many instances governs how parties go about concluding transactions. This practice, based in tradition and custom, is a good foundation for performance, but also creates problems. First, the verbal handshake deal is incapable of taking into account minutiae and detail, e.g., partial performance, liquidated damages, means to deal with changed circumstances, etc. Second, and most importantly, common understanding of the terms and conditions of the contract are not generally possible, in other words, there is no “meeting of the minds” between the parties and disputes are almost certain to follow as the parties walk away from their handshake believing that they have the same things in mind. All too often, however, they do not, and disputes often follow. Finally, using ADR mechanisms, particularly arbitration, is foreclosed when there is no written contract with an ADR clause. SEAD engaged throughout the life of the project in broad based public education and outreach through round tables, trainings, conferences, social and digital media targeting business and legal communities, and a broad appeal country-wide media campaign utilizing television, billboards, public events, and web and social media.

Objective 1 therefore one can be broadly characterized as having had three subcomponents: Legislation, Legal Education (including educational training programs for judges and practicing attorneys, as well as for law students); and Standard Form Contracts with related legal information materials covering the most problematic transactions encountered by Kosovo businesses, all of which were coupled with outreach and public education efforts.

A. Legislation

Law on Obligations – Support to Ministry of Justice Working Group

In consultation with USAID, the Project undertook in early 2010 to provide substantial support to the MOJ Legislative Drafting working group on the Law on Obligations. The law in force at the time, with some minor modifications and supplemented by a patchwork of UNMIK regulations and *ad hoc* donor-initiated legislation, was the 1978 Law on Obligations of the Federal Republic of Yugoslavia. This legislative basis for contracting practice was outdated, and its implementation was further confused by a lack of harmonization with related legislation. This law, however, was the law that the business community was familiar and comfortable with.

Notwithstanding the practical history of the Law on Obligations, and the level of knowledge that business and the legal community had with it, in 2004, an attempt to revise the 1978 law by a German Agency for Technical Cooperation GTZ (now GIZ) Project resulted in a draft that largely imported German legal institutions and terminology. That draft introduced new provisions (and foreign institutions), and the drafters did not sufficiently take into account existing Kosovo business practices. The 2004 draft remained the working draft, however, until SEAD successfully persuaded the MOJ working group that modification to existing law and practice in Kosovo was a more prudent course of action than importing an entirely new set of rules for contracts. SEAD argued successfully that Kosovo should also follow the path that other former Yugoslav Republics, particularly Slovenia – a EU member state – had pursued, by updating the law and incrementally introducing European Union directives and private and public law norms and standards in Kosovo (including the EU *Acquis*).

SEAD seized the opportunity early in its first year to adjust its programmatic interventions to focus on the process of further developing this legislation in order to support legislation reflecting Kosovo business culture and custom while simultaneously advancing provisions which reflect European and international best practices. SEAD committed staff to participate in drafting the law through formal membership in the MOJ working group and subsequently engaged both Kosovar and European Private and Public Law experts to conduct reviews of the legislation to ensure its compliance with other Kosovar and EU law.

The use of the Slovenian experience was instructive: the Slovene approach tracked closely the 1978 Yugoslav law, and on a path to EU accession the Slovenes had modified the basic framework law to incorporate EU directives and norms. SEAD supported this approach to build a legislative platform of transactional legal rules that would be familiar to the business community in Kosovo. SEAD advocated this approach for two primary reasons: 1) the costs to business of implementing the wholesale import of a foreign model would have been considerable, almost certainly requiring all businesses to rebuild their transactions practice from the ground up; and 2) the importation of a wholly new model would have been less likely to be rapidly embraced and implemented by the business community, severely undercutting if not running directly counter to the Rule of Law objectives of USAID and SEAD. Ultimately, the SEAD supported draft, based on the Slovene model, would become the new Law on Obligations - the fundamental legislation governing contract and commercial law (as well as torts) in Kosovo. The draft law was over 770 pages and included more than 1,000 articles.

In the drafting process SEAD sought to solicit and provide to the working group considerable business and legal community feedback. Such feedback was a necessary part of drafting a law that meshed with existing practice. SEAD hosted a series of round tables with the business community from several sectors,

and the legal community, to discuss proposals for the law. The round tables solicited feedback, where little or no public feedback on the draft had been solicited in the years following the completion of the 2004 “German Draft”. SEAD staff communicated this feedback to the MOJ working group, so that these events simultaneously served to educate the working group and the business community beginning the process of achieving buy-in from both. Such feedback also formed the basis for future development of other SEAD outputs, such as standardized form contracts for common transactions, and legal education programs for law students, practicing attorneys, and judges.

SEAD in its second year continued support to the working group to review the new draft Law on Obligations, and make revisions as appropriate. The draft, including explanatory notes, was translated from Albanian into English and Serbian, with SEAD staff conducting frequent reviews and formatting for consistency. A legal editor was retained to review and compare the Albanian and Serbian versions, editing grammar and terminology, and harmonizing the two official languages of the draft to ensure no conflicts or inconsistencies were present. After a series of working group meetings supported by SEAD, the draft was submitted to the MOJ in mid-June 2011, with the Ministry subsequently circulating the draft for internal review. SEAD sponsored a round table in July to introduce the draft to key members of the Government, and a similar event for Assembly committee members was held early in 2012 to coincide with the start of Assembly consideration of the draft.

The Assembly’s first reading of the draft law took place in December 2011. As the legislation committee began its review, SEAD staff continued to be engaged, providing committee members with background on the draft, as well as assistance re-writing minor amendments and changes in language. The legislation committee then appointed its own committee of experts to review the law once more, before the draft proceeded again to the Assembly for a second reading.

Throughout, SEAD timed its programmatic interventions around the new law’s approval, particularly for release of its new standard form contracts and training programs, and a host of outreach activities educating the business community and public at large about the new law. After more than two years of continued assistance from the SEAD Program, the new Law on Obligations, Kosovo’s first landmark piece of commercial legislation in over 30 years, was adopted by the Assembly on May 10, 2012.

The Program’s final quarter activities coincided with the new law’s approval, the President’s signature and publication in the Official Gazette.

B. Legal Education

Develop a Master of Laws (LL.M.) Curriculum in Contract and Commercial Law with the University of Pristina Law Faculty

One objective of the Project was development of a cadre of legal professionals capable of advising the business community on transactional issues. In parallel with commercial law training for judges and lawyers, SEAD engaged with the University of Pristina Law Faculty to design and implement a Master’s in Contract and Commercial Law program.

For a wide range of reasons, ranging from a history of low demand from the business community, the legacy of socialist doctrine in law and legal education, and weak capacity at the University of Pristina, Kosovo has only a very small cadre of legal professionals capable of addressing the needs of the business community. Even though hundreds of students graduate from the University of Pristina Law Faculty each

year, there was scant undergraduate, and no advanced studies, focused on commercial and contract law that would enable new and practicing attorneys to develop specialized transactional skills. Particularly lacking were clinical and practical skills.

Although the SEAD Task Order called only for the introduction of two clinical training courses at the undergraduate level, initial consultation with the Law Faculty on doing so revealed that the University was neither willing to, nor capable of introducing such courses. Having undergone several curriculum reform initiatives over the previous years, and having introduced a number of donor-initiated clinical courses the Faculty was not open to revisions to the undergraduate curriculum. SEAD instead advanced, in partnership with the Law Faculty, the design, accreditation, and implementation of a more ambitious intervention – the design and implementation of a Master of Laws (LL.M.) in Contract and Commercial Law.

In October 2010, SEAD and Law Faculty began design of the new program in contracts and commercial law, in accordance with a Memorandum of Understanding signed between the Faculty of Law at the University of Pristina and SEAD. SEAD provided extensive support to the Faculty during the process of securing LL.M. Program accreditation. Project staff met with the Kosovo Accreditation Agency several times, after having supported the Law Faculty's accreditation application, submitting additional information per the Agency's request, and a presentation of the Program to the Accreditation Agency's international consultants by the Chief of Party. In the meantime, SEAD staff continued Program coordination – in particular, recruiting international law professors recognized in their fields from the US, UK, Austria and the Netherlands to teach program courses during the 2011-2012 term. Numerous meetings were also held with Prof. Dr. Bajram Ukaj, Dean of the Law Faculty, to establish criteria for student admissions, a student application review process and to prepare teaching materials. In July 2011, the LL.M. Program was accredited by the Kosovo Accreditation Agency.

The LL.M. Program conforms to requirements set out by the Bologna process.² Its combination of Kosovar and international law faculty and interactive teaching methodology strengthens students' ability to perform a lawyer's daily work, such as negotiating and drafting contracts and resolving legal, local, regional and international commercial issues. The LL.M. lays the foundation for educating lawyers with specialization in transactions, developing law practitioners who are competent in their field of expertise to represent business clients. Students were able to take advantage of internationally recognized instructors in the Program without leaving Kosovo.

The LL.M. curriculum offers legal subjects relevant to the business community, taught (in its first year) by a three person team. This team consisted of a senior law professor from the Civil Law Department of the Law Faculty; a junior instructor from the Law Faculty; and an international commercial law professor or practicing lawyer from the European Union or the US. Based on this design, the program sought to train not only the students who participated, but, more importantly, the cadre of young law instructors who had been assigned to work with the foreign law professors and lawyers. The latter was the goal particularly sought by SEAD to elevate the capacity of the Faculty to provide improved methods and materials for training future lawyers. Junior assistant professors in particular, working closely with international instructors via distance learning technology, would benefit considerably from their international counterparts' teaching methodology and course materials. The LL.M Program's fall and

² <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/about/>

spring semesters would create a new group of law instructors at the University of Pristina who, working alongside their international counterparts, embraced modern pedagogical approaches to carry forward as their careers advanced toward full professorship.

The international instructors' components, while complementary to material presented by the senior Kosovar professors, offered substantive principles and practical skills that could stand as independent learning experiences. The contributions of the senior law professors are important to the students' knowledge of doctrine and theory, but it was be the interaction of the junior and foreign instructors, with a focus on simulations and business problems – practical skills, in other words – which was SEAD's particular focus. These interactions carried the promise of equipping junior instructors with pedagogical skills that enable the Law Faculty to incorporate more modern teaching methodologies and updated materials in a lasting, sustainable manner.



Students take notes during a Property Law class conducted in the fall semester via video-conferencing for the LL.M. Program. The instructor, Amina Rasool, taught the course from the United Kingdom with her junior law faculty counterpart, Haxhi Gashi.

The LL.M. core curriculum offered legal subjects relevant to the business community that other master's program's at the Law Faculty did not. Two required courses in particular tested students' study and learning commitment - Negotiation and Drafting of Commercial Contracts, and Business Accounting and Economics for Lawyers. Both courses emphasized weekly practical exercises, with substantial homework assignments. These courses also demanded greater engagement from assistant instructors paired with international faculty, and, coincidentally or not, these junior faculty members later rose to the occasion by participating substantially in class lectures, grading assignments and collaborating with their international counterparts to develop midterm and final exams.

By the first week of August, in advance of the first semester, the University began remodeling the distance-learning lab, with Dean Ukaj in agreement that the lab would be reserved exclusively for LL.M. Program instruction and activities.

Among the “firsts” the LL.M. afforded was the opportunity for students to earn academic credit for a moot court course and competition. Law students from Kosovo had participated in moot court competitions in previous years, but only on an ad hoc basis, without official recognition from the Law Faculty. Six LL.M. students were encouraged to enroll in the moot court class with a chance to represent Kosovo in the VIS International Commercial Arbitration Moot court competition in Vienna.

Moot Court students from the LL.M. Program took advantage of the opportunity to work alongside students from the American University in Kosovo (AUK) in preparation for the competition. The MOJ and AUK together sponsored a team’s trip to Vienna, so that both LL.M. students and AUK students could join forces to draft memoranda and present oral arguments on a problem based on an international sales transaction subject to the United Nations Convention on Contracts for the International Sale of Goods (CISG). In Vienna, the entire team presented arguments during four pleading sessions as claimant and respondent.



“For students, it was a great opportunity to participate in this competition, because it helped us to foster our studies of international commercial law and trained us how to use the methods of alternative dispute resolution during our practice in the future. Our team did a very good job. The competition was very strong, and every year it is getting stronger.” – Nora Makolli, LL.M. student and member of the VIS moot court team.

The 2011-2012 VIS moot court team representing Kosovo in Vienna.

Throughout the first year of the LL.M Program, the SEAD team provided support to the Faculty in administering the LL.M., coordinating lectures, liaising with students and international faculty, monitoring attendance and participation, etc. Generally, although challenging at times, the implementation of the LL.M. in its first year went relatively smoothly.

In its final quarter, SEAD staff ensured the LL.M.’s sustainability by handing over to the Dean and Civil Law Faculty the tools needed to launch the Master’s Program into its second year. SEAD began by restyling the video-taped “teaser” promoting the LL.M. to prospective students, that the Law Faculty can easily post to its web site, or ask local broadcast media to run as it did last year. Staff also organized and compiled all international instructors’ course syllabi and materials, and presented bound hard copy and electronic versions for all Law Faculty and next year’s second class. In addition, SEAD upgraded the distance learning classroom, replacing the sound system, updating the classroom’s laptop and two desktops, and making other repairs. As SEAD comes to a close, there is little doubt that the LL.M., supported by the University’s own funding and law faculty, will enter its second year with a full class of students ready to profit from the advanced study in contract and commercial law.

C. Training for Judges and Attorneys

THE KOSOVO JUDICIAL INSTITUTE – CONTINUING LEGAL EDUCATION FOR JUDGES

Since February 2000, the Kosovo Judicial Institute (KJI) has developed and increased its capacity to offer training and continuing legal education for judges, prosecutors and other legal professionals in Kosovo. The KJI is a well-run institution that, since its inception, has received tremendous amounts of donor support.

SEAD has contributed to KJI's success by expanding its training dedicated to commercial and contract law. Over the life of the Program, SEAD has worked closely with the KJI, coordinating and conducting training, and developing training materials for courses on commercial and contract law targeted at members of the judiciary. These courses typically drew between 10-30 participants, satisfying legal professionals' need for continuing legal education credits.

Although the KJI had held civil law training sessions prior to SEAD, few were dedicated to commercial or contract law, nor did they cover the new Law on Obligations. SEAD designed its materials and recruited its instructors from among staff or other local experts versed in the changes of the law, even conducting a wholly new training session after the law had passed the Assembly in June. SEAD throughout employed trainers who have benefited from previous Training of Trainers courses, or who demonstrated significant experience delivering judicial or advocate continuing legal education courses.

Courses developed and delivered by SEAD include:

1. Execution Procedure I
2. Execution Procedure II
3. International Standards in Civil Enforcement
4. Construction Contracts
5. Law on Mediation
6. Law on Arbitration
7. Commercial Contracts (Contract on Licensing, Leasing, Storage and Control of Goods)
8. Contracts on Loans - Interest and Late Payment
9. CISG – The Convention on the International Sales of Goods
10. Pre-Contractual Duties and Formation of Contracts

SEAD developed and delivered more than 29 training workshops for the KJI from 2010 to 2012. These training sessions were created with Kosovo's new Law on Obligations in mind with materials updated to reflect the law's substantive changes. In total, SEAD trained 553 judges, lawyers and judicial clerks (443 men; 110 women) on a wide range of topics. The table below illustrates year-by-year training:

SEAD Training: Kosovo Judicial Council 2010-2012

<u>Year</u>	<u>Training Sessions</u>	<u>Men</u>	<u>Women</u>
2010	4	35	12
2011	15	274	71
2012	10	134	27

Total attendees 2010-2012: 553

THE KOSOVO CHAMBER OF ADVOCATES – MANDATORY CONTINUING LEGAL EDUCATION FOR ATTORNEYS

In general, advocates have had some degree of access to continuing legal education, as continuing legal education for lawyers in Kosovo is mandatory. However, until recently, the Kosovo Chamber of Advocates’ training had been ad-hoc and lacking a coherent program. Donors for the most part have supported legal training for the KCA’s membership, and starting in 2011, the KCA launched its formal MCLE program. Attorneys in Kosovo with three or more years of experience are required to earn 10 MCLE credits each year, while attorneys with less than three years of experience must earn 15. Courses developed by SEAD were worth five credits.

SEAD approached training development and delivery for the KCA much in the same way as it did with the KJI. During the life of the Program, SEAD delivered the following courses to KCA:

1. Execution Procedure I
2. Execution Procedure II
3. International Standards in Civil Enforcement
4. Construction Contracts
5. Law on Mediation
6. Law on Arbitration
7. Commercial Contracts (Contract on Licensing, Leasing, Storage and Control of Goods)
8. Contracts on Loans - Interest and Late Payment
9. CISG – The Convention on the International Sales of Goods
10. Pre-Contractual Duties and Formation of Contracts

One KCA training “Contracts on Loans, Interest and Late Payment” in particular, in February 2012, drew a record number of 163 attorneys. The training was the largest single-day session offered in the KCA MCLE program.



The SEAD training on loan contracts was held at the University of Pristina Law Faculty on a Sunday to accommodate the large number of participants.

SEAD developed and delivered 14 training workshops for the KCA in the period 2011-2012. These

“I would like to thank SEAD...for supporting the education of Kosovo’s attorneys, and for keeping attorneys updated on changes in the Law on Obligations,” Ibrahim Dobruna, KCA President.

training sessions were created with emphasis on Kosovo’s new Law on Obligations with course lecture and materials updated to reflect and underscore the law’s substantive changes. In total, SEAD trained 675 lawyers (584 men; 91 women). The table below illustrates year-by-year participation:

SEAD Training: Kosovo Chamber of Advocates 2011-2012

<u>Year</u>	<u>Training Sessions</u>	<u>Men</u>	<u>Women</u>
2011	8	180	39
2012	6	404	52

Total attendees 2011-2012: 675

SEAD delivered training at the KCA through June 2012, with its last course taking place in SEAD’s final quarter, on Saturday, June 30, 2012. The final course was particularly well-timed, coinciding with the Assembly’s adoption and the President’s signature of the new Law on Obligations in June 2012.

D. Standard Form Contracts

Standard form contracts, or templates, for common commercial transactions were contemplated by the original SEAD tasking as follows:

“Standardization increases certainty while lowering the costs of the transaction and the likelihood of default. Standard form language also leads to more consistent application by courts when defaults are challenged. Such support should be accompanied by appropriate publications and public education to raise awareness of the existence of new standards and the value of proper drafting. These efforts should also target lawyers, as many of them are not aware the recent changes in laws and circumstances in Kosovo and, since their usual contracts often do not reflect currently available legal realities. A lawyer may not be needed for every commercial transaction but legal professionals should certainly be involved in designing standardized legal forms and contract provisions needed to conduct business in a modern commercial environment. Standardized forms are not readily available in Kosovo and both business owners and legal professionals have expressed the desire to have such forms.”³

At start-up, in consultation with USAID, the decision was taken to phase development and promulgation of the standard forms to follow finalization of the new Law on Obligations, which was already on the Government Legislative Agenda (the law is discussed in greater detail above). This was important to avoid developing forms based on soon to be obsolete legislation and avoid the risk of creating confusion on applicable law by users. Delaying development had additional advantages as well, granting the project time to investigate thoroughly business demand and identify which transactions which were problematic for business, lawyers, and courts. Finally, development of standardized forms which were based on newly developed legislation would assist and speed implementation of the new law in practice.

In SEAD’s second year, the first of nine standard forms – on Construction Contracts – was developed, and promulgated in partnership with the Kosovo Construction Association. Developed by SEAD and a prominent Kosovar attorney and law professor, the Standard Form Construction Contract included a thorough legal commentary and a laypersons users’ guide, or notes for general use. The Construction Contract was developed prior to completion of the Law on Obligations in order to field-test the approach of combining commentary and notes for general use, and because construction transactions are somewhat different than other, typical commercial transactions, being governed by other laws (such as the Law on Construction, etc.).

The commentary and notes accompanying the standard forms were considered by SEAD to be the most necessary and useful parts of the standard form, and although not strictly called for by the SEAD Task Order, provided the greatest impact. In many ways the Standard Forms and accompanying materials merge the efforts of the entire Program, to more closely bind private commercial behavior to public institutions, to provide tools for businesses that when used bring transactional practices on par with

³ IQC DFD-I-00-04-00170-00 Task Order No.03

international and European practice, and elevate the “culture of contract” in Kosovo. These sections of the standard forms provided the more important, from a development impact standpoint, “why” to accompany the “what” that the templates and forms offered. The complete set is designed not only to arm businesses with the tools, but also with the necessary knowledge and understanding of how the use of contracts benefits their operations by allowing for more precise distribution of risk. The form contracts also ensure that ADR – particularly arbitration – is available in the event of dispute.

In order to identify which transactions should be covered by the remaining standard forms, SEAD conducted two independent inquiries to identify “common” transactions by: 1) an analysis of commercial court case data; and 2) a national survey of Kosovo businesses. SEAD also decided to dedicate at least a portion of the final number (three of the nine contracts ultimately developed) to agricultural sector transactions, given that agriculture, broadly defined, accounts for roughly half of the country’s economic activity.

The national survey on contract use was conducted by SEAD and Foundation Together Kosova by collecting and analyzing data regarding contract use from 469 companies in 16 municipalities, covering all seven regions of the country. Businesses were asked how often they used contracts, and when they did, which types of contracts and what terms were most important. Survey results painted a discouraging picture of the use of contracts showing that only 65% of surveyed businesses use written contracts, and of these, only 45% reported they read even some of the terms, including those regarding payment or deadlines. A full 21% reported that they usually or sometimes read their contracts, while an astounding 15% said they rarely or never read all parts of their contractual agreements.

Broken down into sectors, less than half (41%) of trade and production companies responding to the survey reported they always or often used contracts; that figure fell to 21% percent for agricultural companies. Trade and production companies surveyed reported that late payment and non-payment as most frequent issues with contracts, especially sales contracts (31%). Delays delivering products and general misinterpretation of contract conditions (sometimes simply the duration of the contract, or which party should execute what decision) were also regular concerns. Notwithstanding these findings, 57% of trade and production companies surveyed reported they respected contractual agreements in contrast with only 18% of agricultural companies. Types of contracts all business used most were employment contracts (46.9%), services contracts (44.3%), leases (43.1%) and sales contracts (41.4%). The survey in particular asked respondents to indicate their top three choices of contract templates they would be most likely to use. Sales contracts captured the most interest, with contracts for leases, employment, transportation, construction, labor and services all captured in the top 10.

In parallel, SEAD conducted a review of cases at the Pristina Commercial Court, analyzing which types of contract matters were most frequently litigated. This review was conducted by SEAD staff working together with Commercial Court staff, and was completed in April 2011.

A random sample of 150 cases from 2009 and 2010 found that the majority of these cases concerned insurance contracts (85) and banking contracts (61). However, outside of these types of financial sector organizations, there were 16 cases related to sales contracts, 19 concerning services contracts, 11 involving transportation of goods, and 4 regarding leases. This data, aligned with the Foundation Together Kosova survey data, showed that of manufacturing and trading companies using contracts, those

doing so most frequently relied on written leases, contracts for sales, transportation and services. All of these types of contracts fell into the top ten contracts businesses indicated they used most, as a first, second or third choice, illustrated in the chart below:

Top Three Contract Templates Requested by Kosovo Businesses

<u>Contract Type</u>	1st Choice	2nd Choice	3rd Choice	<u>Total</u>
Sales	32.2	6.4	2.6	41.2
Leases	13.0	9.2	3.2	25.4
Employment	6.8	6.8	9.2	22.8
Carriage (Transportation)	2.6	7.5	5.5	15.6
Licenses	3.6	6.4	5.5	15.6
Goods/Services (commodities)	4.3	3.8	4.5	12.6
Services (general)	1.1	5.3	5.1	11.5

Taken together, the commercial court research and survey informed SEAD as to standard forms potentially most useful to businesses and agricultural concerns: sales, leases, transport of goods, supply of services and employment. SEAD staff, together with a private international attorney with extensive experience in the Balkans in drafting leases, employment and sales contracts, began development of 5 general commercial standard form contracts and 3 agricultural sector contracts, with accompanying user's guides and commentary. SEAD partnered with the USAID Kosovo Private Enterprise Program (KPEP) – a project with extensive contacts in the agricultural sector -to begin drafting standard form contracts, for sales, transportation and brokerage specifically targeted to agricultural concerns, with the intention of ensuring that distribution of the forms reached potential users along the entire value chain of agricultural production and distribution, and to ensure that the identification of subject matter was most appropriate.



USAID Kosovo Mission Director Maureen Shauket, President of the Board of Governors of AmCham Kosovo, Erolld Belegu, Secretary of the KCC Berat Rukiqi, USAID KPEP Chief of Party Maury Wray-Bridges, and USAID SEAD Chief of Party David Greer deliver opening remarks at event releasing Standard Form Contract, June 2012.

In the Project’s final quarter, all contracts were published and promulgated, following a public release event which included the USAID Mission Director, the President of AmCham, the KCC, and representatives of several other business associations, government, and the legal community. All the materials were distributed in three languages, with forms for sales, leases, transportation, supply of services and employment bound in one volume, while the three contracts for agricultural businesses comprised a separate volume. SEAD distributed 3,500 copies of the standard form contracts to the legal and business community in hard copy and on USB. The forms’ release was timed to correspond with the Assembly’s adoption of the new Law on Obligations, and, with about 150 participants in attendance, the contracts’ introduction ended SEAD activities on a high note, with a lasting and sustainable suite of tools for business to use, encouraging Kosovo’s new culture of contracts to grow.

OBJECTIVE 2: ENFORCEMENT OF JUDGMENTS

Within the Enforcement of Judgments Component, the SEAD Program engaged in an array of activities which can be grouped into two broadly defined areas: 1) systemic reform (streamlined systems), and 2) backlog reduction. The two areas were parallel activities and complementary in most respects. Some aspects of backlog reduction will benefit from elements of systemic reform; however, generally speaking,

systemic reform will lead to mostly prospective impact, and will only saliently facilitate backlog reduction efforts. The backlog reduction efforts will inform systemic reform activities, but will not result in streamlined systems.

Systemic reform efforts included:

- Working with the Central Bank to promulgate rules for commercial banks that lead to greater commercial bank compliance with enforcement actions;
- Working with the Tax Administration and the Pension Fund to provide select taxpayer data (employer name and address) to the courts if creditors and enforcement agents cannot otherwise find employer data, which is a common problem. (This is to facilitate wage garnishment in satisfaction of enforcement actions);
- Developing and conducting, together with the Kosovo Judicial Institute, training programs for judges, and with the Kosovo Chamber of Advocates, training programs for lawyers (once Mandatory Continuing Legal Education for lawyers begins);
- Working with the Ministry of Justice (MOJ) and the Kosovo Judicial Council (KJC), as well as with other donors, to develop new legislation that leads to streamlined procedures, harmonized legislation and establishes the institution of Private Bailiffs.

Backlog reduction efforts entailed:

- Working with the Pristina Municipal Court (PMC) and major utilities creditors the Kosovo Electric Corporation (KEK) and the Post and Telecom of Kosovo (PTK) to combine resources and to more effectively work through backlogged authentic documents utilities cases in a Pilot Project to test methodologies and approaches to clearing backlog; the approach proved viable, so it was extended
- Working with the KJC to establish a Special Enforcement Units for Backlogged Authentic Documents Cases (KJC SEU's), and supporting these units with categorization of cases into a database for batch processing and improved management of the backlogged cases in the 5 courts with the largest backlogs – Prishtina, Ferizaj, Peja, Prizren, and Gjakova.

E. Enforcement of Judgments - Streamlining Procedures

Kosovo courts were, and to a large extent given resource and infrastructure constraints, 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 for the parties to a lawsuit. 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 information 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 in the past was generally not made available to the courts).

The SEAD Task Order noted: “There are a myriad of other factors that contribute to the lack of appropriate and timely enforcement of civil judgments and most of these issues are interrelated and mutually reinforcing. One of the most significant barriers to enforcing judgments is the fact that Kosovo's courts are bogged down with minor claims and utility bills.”

The Project’s approach to enforcement involved both prospective and retrospective interventions and activities. A significant backlog of unenforced judgments – over 100,000, with half or more consisting of utility bill claims (authentic document cases) – continue to be a serious management problem for the courts, with concomitant impact on faith and confidence in the ability of the justice system to enforce rights. Prospective reforms to streamline processes and introduce the institution of professional court judgment enforcement officers – often called private bailiffs, are important to ensure the future efficient function of the courts. Prospective efforts, however, would have little impact on backlog reduction, serving only to prevent the recurrence of backlog; similarly, backlog reduction efforts would not serve to prevent recurrence absent parallel prospective reforms. Additionally, with only 33 months under the SEAD Task Order, there was scant time to fully introduce all the reforms necessary to wholly transform the nature of Kosovo’s enforcement system. As such, the SEAD prioritized, in consultation with USAID, a number of activities that were identified in the SEAD Program Assessment as activities that were most likely to have lasting and sustainable impact, those that could be accomplished during the duration of SEAD, and those that were most likely to “jump-start” the reform process.

SEAD’s prospective activities centered on support to the MOJ Legislative Drafting Group tasked with developing a new Law on Executive Procedures (LEP), the primary law governing enforcement. A central feature of this law is the introduction of a highly regulated professional court enforcement officer – private bailiff – regime. Anticipating a continued role for courts in, first, continuing efforts to eliminate backlogged judgments, and second, a continued role in enforcing family, child, and labor cases, the draft legislation addressed a number of procedural inefficiencies and streamlined systems. SEAD also addressed two key institutional linkages that, although not expressly called for by the Task Order, have considerable potential to improve the ability of courts to identify and locate debtors and their assets by brokering an agreement between the KJC and the Tax Administration of Kosovo on the exchange of employment information, to facilitate wage garnishment; and working with the Central Bank of Kosovo to establish a Registry of Account Holders to facilitate enforcement against bank accounts. Both initiatives were completed, although they will require subsequent follow up to ensure full implementation. Backlog reduction efforts were underway for the latter half of SEAD. In addition to working with the KJC to promulgate performance standards, as an additional chapter in KJC Standard Operating Procedures and Court Operations manual that includes emphasis on prioritizing bank enforcement and wage garnishment in lieu of seizure of movable property to satisfy judgments, where these alternatives are available, SEAD embarked on an ambitious effort in April of 2011 to develop a database of judgments for court use in managing the backlog while in parallel including major creditor utility companies in the process, to utilize their knowledge of debtor location and their other resources. At Program end, this Backlog Reduction Initiative had resulted in the categorization and entry into the database of over 100,000 of the backlogged judgments, over 28,000 field executions (attempts to collect), and the final closure of 7,638 cases leading to the collection of more than €7 million.

Revisions to the Law on Executive Procedures

Through the final quarter of the Program, SEAD continued to support the efforts of the MOJ Legislative Drafting Working Group. The Program for two years worked together on this effort with experts from the Balkans Enforcement Reform Project (BERP), a regional project of the Netherlands and GIZ, and periodically with other donors, including EU Twinning and EULEX. During the final weeks of, the draft was finalized, including translation and formatting in three languages, and ready for the MOJ to submit to the Government for adoption and submission to the Assembly.

The MOJ Working Group developed a Draft Law that accomplished two objectives – streamlining procedures, and introducing the institution of bailiffs. This decision was made in order to maintain an accelerated drafting schedule and to introduce complete a comprehensive package of reforms simultaneously.

Progress on a wholesale redrafting of this new law, which will replace the two laws currently in force (a 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), and will introduce the framework for the institution of private bailiffs, was underway throughout the year. A draft was virtually completed in May of 2011; however, participation by working group members in a number of working groups, and the complexity of introducing an entirely new institutional framework, delayed finalizing the draft, which languished for another year. The Working Group failed to reach a consensus on only one (but very important) issue – mechanisms for oversight and monitoring of bailiffs (the debate revolved around whether a committee including representatives of the court system (and others), or the other working group members' position that only the MOJ be responsible for these functions, should be the model contained in the final draft).

After a year of dialog, the working group accepted a compromise position: the final draft gives to the MOJ powers to control, inspect and supervise the work of private bailiffs, but retains a crucial role in determining the number of bailiffs to be licensed. This is important to ensure that there is sufficient information flow from judiciary to MOJ, and further ensures that responsibility of the MOJ to appoint additional bailiffs in the event that backlog begins to grow is non-discretionary, and triggered by a KJC decision that additional bailiffs are needed. This draft was distributed to all stakeholders for discussion. Comments received from various institutions were discussed within MOJ Working Group sessions, and most suggestions, especially those coming from the EULEX team of judges, are included in final version. The final version as the Government Draft was adopted in First Reading by the Assembly in mid-September of 2012, shortly after the close of SEAD.

Other procedural revisions to existing enforcement practices

There are two other important revisions to existing enforcement practices that were pursued by SEAD: 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

Weaknesses in the system of collection through bank accounts were widely understood. Though there are clear requirements on banks to promptly comply and clear penalties for non-compliance, it was relatively easy for banks to evade these requirements, because information about bank accounts can only be obtained from banks, and evidentiary requirements of compliance were inadequate.

SEAD proposed a three phase strategy to establish the institutional framework to facilitate streamlined and improved commercial bank compliance with judgment enforcement. The first phase involved the development of a regulation that strengthens recordkeeping requirements and encourages expeditious processing of judgment claims presented by courts to commercial banks. Phase two was the establishment of a central database of account holders at the Central Bank. This database will contain sufficient information about account holders and their accounts and will serve as a central information resource for the courts to identify debtor accounts for attachment (under the current system, enforcement agents largely have to cast a wide net and seek confirmation from commercial banks as to whether a debtor may or may not have an account at a particular bank, requiring no less than two face to face contacts with each bank, in the course of determining whether a debtor has accounts at any of the banks, and again a third in-person visit to formally attach a debtor's account). Phase three, not contemplated within SEAD as it would have required additional time and resources beyond the scope of the Program, and as such was only developed at the conceptual level for the Central Bank, involves the establishment of a central clearing mechanism for judgments, where enforcement against bank accounts would be accomplished through a Central Bank clearing mechanism (analogous to how checks are processed). This mechanism would eliminate the need for presentation of enforcement actions to commercial banks. Instead, enforcement agents would present enforcement actions to the Central Bank, where debiting of debtor accounts and crediting of creditor accounts would be processed.

For phase one, SEAD 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. The Central Bank promulgated this regulation in February of 2011, and again with revisions six months later. SEAD worked closely with the KJC to develop and promulgate an instruction to courts on reporting to the Central Bank enforcement actions sought against bank accounts, to ensure that the Central Bank has sufficient information upon which to base inspection.

SEAD continued to work with the Central Bank, courts, and the KJC to institutionalize implementation. In addition to achieving buy-in from commercial banks on populating the database with their existing account records, with a roundtable held together with the Kosovo Bank Association, SEAD subcontracted the development of the database and user interface for the Registry, and developed instructions for court enforcement personnel to utilize the Registry, which were promulgated by the KJC as part of the SEAD developed enforcement chapter for inclusion in the KJC Standard Operating Procedures and Court Operations Manual.

For phase two, SEAD prepared and proposed to the Central Bank a Regulation on Establishment of Account Holder Registry. The Central Bank promulgated this Regulation in April of 2012. The Central Bank of Kosovo (CBK) database will include all banks' accounts identified from personal identification number or business registration number of account holders, with authority to initialize transfers between

accounts in the database. Information required includes: Name, last name, personal identification number if it is a private account holder or business registry number for legal entities, and account number. All the accounts owned by a person or legal entity can be immediately identified.

A secure link was established within CBK and the KJC so that information on bank client's accounts will be available online to KJC. The court can send a request for a balance inquiry for the account and order a direct transfer from a judgment debtor account to the account of creditor through a process defined by Law on Enforcement Procedure. Enforcement of judgments will become significantly more certain and speedy with establishment of this database. In the SEAD's final quarter, commercial banks were populating the database with account information, with full account data from all banks expected to be fully uploaded by the end of September 2012.

Because of the weakness of court information technology resources, implementing the Registry was neither seamless, nor easy, and several actions are still required to firmly implement court actions that fully utilize the newly available bank account information, independent of the installation of a Registry of Account Holders. SEAD recommends that the KJC follow through to ensure that the Registry is being utilized fully. Because enforcement against bank accounts was considered at best inefficient and at worst a complete waste of time by enforcement clerks for so many years, changing institutional focus is required. The KJC will need to ensure that its performance review of enforcement personnel includes emphasis on ensuring that enforcement judges and clerks are utilizing this heretofore unavailable resource which, by itself can significantly reduce the number of procedural and logistical steps in the enforcement process for those debtors who have accounts with sufficient funds to satisfy claimed judgment amounts.

(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 large 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 is through the Tax Administration: the employer reports the names and identity numbers of employees as a normal part of the employer's tax reporting.

SEAD proposed, therefore, that courts be authorized to obtain information from the Tax Administration, and/or from the Pension Fund of Kosovo, which also obtains employment information from the Tax Administration. In the long term, it will be desirable to introduce amendments to the Law on Tax Administration Procedures to memorialize the SEAD brokered *ad hoc* arrangement of an intergovernmental agreement between KJC and TAK. In the short term, however, SEAD worked closely with the KJC and TAK in the development of an agreement to facilitate limited information sharing (sufficient to achieve the goal of streamlining garnishment while at the same time balancing the Tax

Administration's interest in fostering sufficient safeguards on information to not undermine the confidentiality necessary for a voluntary compliance system), which was signed by the Chairman of the KJC and the Director of TAK in June of 2011. The transfer of, and development of procedures and mechanisms for the exploitation of, employer information to facilitate enforcement against earnings was implemented, and procedures for exploiting this information resource by the court included in SEAD developed enforcement chapter to the KJC SOP and Court Operations Manual. A secure link between TAK and KJC is established and employer information is available to courts through KJC. Early results of this activity also revealed some limitations, however, with the TAK data. For example, some KJC employees, who had been employed already for some years by KJC, could not be located in the TAK data. As such, this informational resource will not be a fully utilizable resource until such time as TAK has developed and fielded taxpayer information databases that are current and complete.

F. Case Categorization and Backlog Reduction Initiative

More than 100,000 civil judgments sit in the files of enforcement clerks across the country awaiting enforcement. Thousands of those cases have waited five years or more for enforcement. Enforcement cases based on authentic documents constitute nearly two-thirds of the existing caseload in enforcement cases, comprising over 60,000 cases. Nearly 45,000 of those cases are in the enforcement offices of only five municipal courts.

Generally, the problem exists for two broad reasons:

1. Inadequate incentives and resources in the courts themselves and for enforcement agents; there is little if any additional resource commitment planned in the near future.
2. Non-functioning collection mechanisms, which fail for a wide variety of reasons including:
 - Shortage of information about debtors and their assets
 - Failure to recognize and use the available information
 - Unwillingness or inability to enforce court orders
 - Minimal control in the hands of the creditor
 - Unnecessary procedural obstacles (arising in both of the applicable laws, the 1978 and 2008 Laws on Execution Procedures).

Solutions that had been tried in the past, but generally failed, included:

- Mediation-related payment agreements.
- Cutting off service to non-payers; although normally an effective incentive for payment, this was a futile game under the conditions of Kosovo, where (for example) people repeatedly reattach their lines to the power grid without facing meaningful penalties.

There was no single solution to effectively resolve the backlog problem. Also, there is no formal definition of backlog, making the statistical representation of what actually constitutes backlog problematic. Generally, however, SEAD and the donor community used an "older than two years" classification.

SEAD engaged in several related activities to improve efficiency and establish greater information flow on debtors and assets to the courts, such as the Registry of Account Holders at the CBK and an agreement with the Tax Administration. Ultimately, however, with less than 80 non-law trained enforcement clerks

in the courts, even augmented by 30 additional KJC Special Enforcement Unit Personnel to implement the SEAD developed Backlog Reduction Initiative, all of them under-resourced (poor or non-existent IT resources, a shortage or absence of vehicles, lack of incentive pay, etc.), meaning there was no easy, nor quick, solution, and certainly none available to be achieved during the 33 month duration of SEAD. As such, SEAD focused on ensuring a sound methodology and approach was developed and sustainably embedded in the KJC and courts, the institutions ultimately responsible for achieving elimination of the backlog.

The SEAD Task Order sought the development of means to reduce or eliminate the backlog. In Year One SEAD 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 was crucial to building increased confidence in the court system so that new litigants will bring their disputes to court for resolution, knowing they have a reasonable chance of having their disputes addressed.

SEAD started with a pilot program at the Prishtina Municipal Court (PMC), Kosovo's largest, and also the court with the largest backlog. The PMC Pilot Project, negotiated by SEAD together with the PMC enforcement agents and major utilities creditors, integrated the resources and efforts of judgment creditors and enforcement agents in order to more effectively and efficiently enforce judgments. The PMC Pilot generally worked as follows: employees of the utility companies accompany enforcement agents into the field on a limited basis, bringing with them company-provided transportation, the capacity for warehousing seized movable property, and the special familiarity that the utility companies' employees have with neighborhoods and addresses. KEK meter readers and PTK postal delivery agents are able to locate debtors better than enforcement agents because of their daily detailed work in specific neighborhoods.

From the inception of the PMC Pilot Project in April 2010, the utilities reported that 293 cases, with a total monetary value of €99,159.04 , were enforced (through the end of June 2010). It bears mention that the PMC Pilot project was implemented with limited resources (1 day of effort per week, at most, by joint utility creditor - enforcement agent teams; and there were some weeks when no joint efforts were taken, for various reasons). Admittedly, results during this period involved a relatively modest number of cases (and value) compared to the overall number of backlogged judgments, but nevertheless demonstrated the viability of the approach.

The PMC methodology aimed to alleviate the logistical problems attendant to enforcement, such as outdated or incorrect addresses by taking advantage of the information that the utility companies have available to them through their normal business operations, and by utilizing these creditors' resources to supplement those of the enforcement agents to locate debtors. The methodology was crafted to minimize the problems arising from three core issues connected to enforcement of authentic documents cases:

- 1) Because of large-scale movements of population, many addresses on execution titles no longer are accurate, and the debtor in question simply no longer resides at the stated address. As a result, notification of the case cannot be made (in authentic document cases), and in any case, execution against cash or movables cannot be made without finding the residence of the debtor.
- 2) The execution agents, even if they find the debtors, are not able to seize either cash or movable property: lacking both transportation and warehousing, they cannot seize movables; and lacking the persuasive power of seizure of movables, they cannot persuade debtors to turn over their cash.

3) The most devastating to any easy solution, the execution agents claimed, with some plausibility, that they simply do not have the time or manpower to devote to these cases. They maintain that it is their responsibility to enforce upwards of 4,000 non-criminal penal cases (involving administrative fines) annually, and with a total of seven enforcement agents to handle those cases, they are overwhelmed with work even without touching normal civil enforcement cases. These cases are given priority over civil judgments because if they do not handle those penal cases the defendants may be jailed.

SEAD sought to expand this approach to additional courts in a more formalized Backlog Reduction Initiative (BRI). The BRI consisted of two parts: first, creating a database of all or most of the 100,000+ enforcement cases in the backlog, for the purpose of identifying cases that are appropriate for specific enforcement-oriented actions; and second, addressing those cases through KJC Special Enforcement Unit implementation teams.

In Year Two SEAD developed an expanded initiative that focused additional resources on expanding the effort to other courts, where cases were categorized for efficient enforcement that could then be “batch” processed under the same approach as that piloted at PMC. SEAD 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 KJC embraced the possibilities that this approach demonstrated, and SEAD supported the KJC to develop a means for it to apply its own resources to the problem, through the creation of special units that supplement the work of existing enforcement personnel. These Special Enforcement Units (SEU’s) were recruited and retained by the KJC, and trained by SEAD. The SEU’s began working in the 5 municipal courts with the largest authentic document backlog. The SEU’s are closely coordinated with and supported by SEAD’s own team of legal interns who categorized backlogged cases in Pristina (10 clerks), Gjakova (5), Prizren (5), Peja (5) and Ferizaj (5).

The KJC Decision on establishing declaring Special Circumstances and establishing the KJC Special Enforcement Units was drafted, and adopted and promulgated by KJC; KJC hired 30 additional staff and SEAD trained them and equipped them. The database was designed and fielded, (more than 100,000 of the backlogged judgments were ultimately categorized in the database). A MOU with KEK and PTK, witnessed by KJC was entered into; and a major international conference and a high profile press conference, attended by the KJC Chair and the Deputy Prime Minister and Minister of Justice, in addition to round tables, were held to build support for the effort, and ensure public awareness of the reforms and improved court performance.

By Program end, the following results were achieved. The first table shows the number of cases categorized, and the number of field executions conducted; the second, the number of cases closed and Euro collected. It bears mention that, although the SEU’s were the primary recipient of SEAD support, SEAD teams sought to categorize all cases in the courts visited (note as well that SEAD sought to categorize the cases in as many courts as possible, and not just in the 5 SEU courts), in order to ensure that the KJC had the best information and tools that could be developed during the life of SEAD.

GRAND TOTAL	Cases categorized	Field Executed	PTK/VALA, KEK, water supply, Heating
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	107683	28707
TOTAL EURO VALUE CLAIMED		22,629,771.78

GRAND TOTAL	Closed cases (since SEU's became operational in April 2011) PTK/VALA, KEK, Water/Heating and other civil cases	
	7638	
TOTAL EURO VALUE COLLECTED	6,516,493.87	

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

The Program built the capacity of Kosovo institutions to offer arbitration and mediation to the business community. Commercial ADR services are available at the Permanent Arbitration Tribunal at the KCC and AmCham in Kosovo. Modern procedural rules were developed, approximately 50 arbitrators were trained, and secretariats now have the capacity to administer ADR proceedings. The Program assisted the Mediation Commission in drafting implementing regulations under the Mediation Law and assisted the KJC in developing a Protocol for Referral of Court Cases to Mediation. In addition, the Program established two Mediation Centers and trained thirty mediators.

<p>FUNDAMENTALS OF ADR INSTITUTIONS</p> <p>Modern Legislation</p> <p>Judicial Support</p> <p>Fair Procedural Rules</p> <p>Trained, Experienced and Trusted Arbitrators</p> <p>Expert Administration</p>

The Program met the objective of developing and implementing an appropriate and effective alternative dispute resolution system in Kosovo. ADR institutions have been established; implementing regulations have been developed and approved; ADR professionals have been trained; judges and court staff have been trained on recognition and enforcement of arbitral awards and on procedures for referring cases to mediation; lawyers are familiar with arbitration and mediation and the benefits of these mechanisms for their clients; and businesses and local citizens are using the alternative dispute resolution mechanisms.

The Program's approach to this task was informed by the comprehensive ADR assessment that was completed during the second quarter of the Program. The results of the assessment—Report and Recommendations on Developing and Implementing an Appropriate and Effective Alternative Dispute Resolution System-- were published in April 2010. Given the existing legislation, separate Laws on Arbitration and Mediation, SEAD, together with USAID, concluded that the most efficient method for developing arbitration and mediation in Kosovo was to adopt a two-pronged approach. Thus, SEAD Program efforts to foster the development of a fully functional system for Alternative Dispute Resolution (ADR) can be broadly characterized as having two areas of activity: development of arbitration/establish

commercial ADR centers; and development of mediation/support to the mediation commission. As both forms of ADR were conceptually relatively new in Kosovo, extensive public education and outreach was a key factor in advancing programmatic objectives.

G. Commercial Arbitration – Support to Establishment of ADR Centers

During the first and second quarter of the Project, the Project determined that the business organizations that were most ready to sponsor and support commercial arbitration and mediation were the KCC and AmCham. Accordingly, in July 2010, and following coordination with USAID and extensive consultation with the leadership of both Chambers, SEAD signed a MOU with each Chamber, which outlined the mutual responsibilities of the Program and the Chambers in developing the capacity of the Chambers to offer commercial arbitration and mediation. SEAD organized a signing ceremony for each Chamber that was attended by members of the Chambers and interested Government of Kosovo officials. The 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.

To inform a strategic planning process, SEAD organized a workshop on the Fundamentals of Arbitration Institutions, which was led by a SEAD short-term expert. Following the workshop, SEAD organized a conference on “Alternative Dispute Resolution (ADR) in Kosovo: Resolving Business Disputes—A New Approach” in cooperation with the Chambers. SEAD short-term experts focused on the fundamentals of ADR institutions and on the development of ADR in South East Europe, and the Chambers presented their plans for offering ADR services. The Chair of the KJC, also spoke at the Conference and stressed the judiciary’s strong support for ADR. Attended by approximately 150 representatives of the business and legal community, the conference served as the second major step in SEAD’s effort to raise awareness and build demand among the business and legal communities for ADR.

Pursuant to the MoUs, the Project assisted the Chambers with the following:

- Develop strategic plans for establishing ADR centers
- Draft organizational documents
- Recruit and train staff
- Draft rules of procedure (Kosovo Arbitration Rules)
- Recruit and train arbitrators

The next milestone in the development of arbitration was drafting procedural rules. The Program assisted the Chambers in drafting the Kosovo Arbitration Rules 2011. The Kosovo Arbitration Rules are a set of model rules that are based on the 2010 UNCITRAL Model Rules for Commercial Arbitration and modified for institutional arbitration. They are consistent with international best practices. The drafting process began with a workshop led by a SEAD short-term expert during which the first draft of the rules was prepared. The Program continued to provide technical assistance in the drafting process, including obtaining comments from several international experts. In addition to developing procedural rules, SEAD provided technical assistance on development of fee schedules. Each Chamber adopted its own version of the Kosovo Rules and fee schedules. The Program also provided technical assistance for drafting Rules of Procedure for Commercial Mediation, which have been adopted by the AmCham ADR Center (at

Project end KCC was focusing exclusively on arbitration services, reflecting institutional priorities to focus on its legislatively mandated services).

Expert Administration. Simultaneously with drafting the Kosovo Arbitration Rules, SEAD assisted the Chambers in drafting organizational documents for their ADR centers, recruiting Secretaries General that would be responsible for day-to-day operation of the ADR centers and case management, and initially equipping the centers. The KCC established the Permanent Arbitration Tribunal (PAT) and AmCham established the AmCham ADR Center. The PAT is managed by a three member Presidency and the AmCham ADR Center is managed by a five member Board of Directors (the Program’s COP and Senior Legal Advisor served on the initial Board).



“The establishment of Kosovo institutions that offer businesses an opportunity to resolve commercial disputes outside of conventional systems is an essential, widely accepted part of a framework for Rule of Law, and will contribute to Kosovo’s economic growth.” U.S. Embassy Charge d’affaires Michael Murphy addresses participants at launch event for ADR Centers.

The Program assisted the Chambers in recruiting and training arbitrators. As arbitration was new in Kosovo and there were no experienced arbitrators, SEAD stressed the importance of recruiting experienced and respected professionals with a demonstrated interest in developing professional arbitration in Kosovo. An open call for applications was published and candidates were required to submit written applications, attend interviews, and provide recommendations. Over 200 applications were received by the Chambers and 50 candidates were selected to attend an intensive training program organized by the Program. SEAD designed an interactive training program specifically for the Chambers in consultation with the experienced international arbitrators who led the training. The training used a case study approach that followed the arbitration of the case pursuant to the Kosovo Arbitration Rules. Given the number of candidates and the need to ensure that the training would provide the candidates

with the essential information and skills to effectively arbitrate cases, the training was conducted three times, with approximately fifteen participants in each group. The Program conducted additional refresher training in December 2011.

In addition, the Program provided assistance in drafting a Code of Conduct for Arbitrators, which was adopted by the ADR Center during the Project's final quarter.

In September 2011, SEAD organized an event to celebrate the formal opening of the KCC Permanent Arbitration Tribunal and the AmCham ADR Center. The opening event was attended by representatives of the Kosovo Government, the judiciary, and leaders of the business and legal communities. As with the previous ADR events, the opening ceremony received significant media coverage, thereby contributing to building awareness and demand for ADR in Kosovo. Since that time the PAT and AmCham ADR Center have been actively engaged in their own promotional efforts directed at their members as well as other businesses and organizations operating in Kosovo.

Most cases come to arbitration because parties have agreed to use arbitration *before* a dispute arises by including an arbitration clause in the main contract governing their relationship. Although parties can agree to go to arbitration after a dispute has arisen by signing a submission agreement, it is not very common—the likelihood of parties agreeing to arbitrate when they are already disagreeing is rather small. Therefore, it is critical to educate the business and legal community about the importance of planning for disputes in advance and including appropriate ADR clauses in contracts. As ADR was relatively unknown prior to the beginning of the Program, there are very few existing contracts that provide for ADR. Therefore, as discussed below, both the PAT and ADR Center are focusing on outreach activities. Moreover, the Program's overall efforts to promote the use of written contracts, through its media campaign and through the standard form contracts, emphasize the importance of ADR (the standard form contracts of course include model ADR clauses, and extensive commentary on their use).

In December 2011, the AmCham ADR Center hosted a Workshop on Commercial Arbitration for Legal Professionals. Thirty four persons attended the Workshop, both AmCham members and non-members. As there was an attendance fee (EUR 45 for AmCham members and EUR 65 for non-members), the ADR Center succeeded in conducting this Workshop without financial support from SEAD. Several companies that attended the Workshop, including ProCredit Bank and Sharrcem, are including AmCham ADR clauses in their contracts.

Additionally, the ADR Center has signed a MOU with the International Civilian Office in Kosovo (ICO) regarding use of the Center's ADR services. Due to the anticipated closing of the ICO office in 2012, ICO management anticipates contractual disputes over termination of contracts. Therefore, ICO included clauses providing for mediation and arbitration at the Center in approximately 280 employment and procurement contracts. Further, the ADR Center is discussing arrangements similar to the MOU with ICO with other international organizations and businesses in Kosovo.

The ADR Center organized a study visit—Commercial Arbitration and Investment Perspectives-- to Austria and Slovenia for AmCham members and arbitrators in April 2012. The trip included visits to the American Chamber of Commerce in Slovenia; the Chamber of Commerce and Industry of Slovenia and the Permanent Arbitration Tribunal attached to the Slovenian Chamber of Commerce; the Austrian International Permanent Arbitration Tribunal; the Foreign Direct Investment Agency of Slovenia; and meetings with Slovenian and Austrian companies. Five persons registered for the trip, which was sufficient to fund the travel expenses of the Secretary General. Further, as a result of their joint efforts in

organizing the study visit, the ADR Center and the Permanent Arbitration Tribunal attached to the Slovenian Chamber of Commerce signed an agreement regarding joint efforts to promote arbitration in cross-border transactions between Kosovar and Slovenian companies.

PAT is coordinating its outreach activities with KCC management. The KCC is promoting PAT's services in the weekly meetings with the head of KCC regional offices and PAT regularly meets with the heads of individual offices.

PAT has also participated in a number of regional activities as part of the PAT's outreach strategy is to build relationships with the Chambers of Commerce and ADR institutions in other jurisdictions. In that regard, the Secretary General attended the 19th Annual Croatian Days of Arbitration and Mediation in Zagreb in November and participated in a week-long internship at the Bulgarian Court of Arbitration in January 2012 (internship was organized and funded by Partnership Project between the DIHK (*The Association of German Chambers of Industry and Commerce*) and the Chambers of Economy of the CEFTA countries). In addition PAT signed an Agreement on Regional Cooperation in Arbitration supported by GIZ Albania. Parties to the agreement are: German Institution of Arbitration (DIS), Albania, Bosnia & Herzegovina, Macedonia, Montenegro, Serbia, and Kosovo (Serbia signed a separate version of the agreement that Kosovo was not a party to).

Two cases were submitted to arbitration at PAT. The first case was relatively small (approximately EUR 26,000). It was conducted by one arbitrator who issued an award in favor of the Claimant. The second case, which was submitted during the final quarter, is larger (€250,000) and there is a panel of three arbitrators. The Claimant had initially filed the case with the Commercial Court, but the Court declined to take the case on the basis of the arbitration clause in the contract, which provided for "arbitration at the Arbitration Court in Kosovo". These results illustrate that the Kosovo Arbitration Rules are effective, the arbitrators trained by the Program have the capacity to conduct arbitration in accordance with the Kosovo Rules, and, perhaps most importantly, the courts are aware of and acting in accordance with the Law on Arbitration.

The ADR Center received its first case shortly after the Center was opened. The case was based on an arbitration clause providing for arbitration in Kosovo. After receiving the Request for Arbitration, the parties were able to settle the case. Thus the availability of ADR services succeeded in keeping the dispute out of the courts. Two more cases were submitted to the ADR Center during the Program's final quarter. In one case, the Complainant was a company that attended the Workshop for Legal Professionals described above and as a result, included an AmCham ADR Center arbitration clause in a contract. The second case was submitted by a Complainant that had learned about the ADR Center and signed a submission agreement with the Respondent to engage in a two-step mediation/arbitration process at the ADR Center.

A critical element in rationalizing the legal framework for arbitration is to eliminate any potential conflicts between the Law on Arbitration and other legislation. As highlighted in the ADR Assessment, Chapter 31 of the Law on Contested Procedures contains provisions on arbitration that are different than in the Law. Therefore during the first year of the Program, SEAD prepared and submitted a Concept Proposal (with supporting documents) for an Amendment to the Law on Contested Procedures to the MOJ Office of Legal Services and the Minister of Justice placed the amendment on the 2011 Legislative Agenda. Although SEAD's proposal was for a simple amendment, as the MOJ Office of Legal Services intended to make several changes to the Law on Contested Procedures, it decided to include the amendment of the arbitration

chapter in one comprehensive amendment, which significantly delayed the procedure. SEAD participated in a working group formed by the MOJ to work on the amendment. The working group finished the draft amendment, which was forwarded to the Assembly. It is expected to be passed during 2012.

The Program assisted the PAT and AmCham ADR Center in drafting procedural rules for commercial mediation. These rules have been adopted by the ADR Center as it intends to offer mediation.

H. Development of Mediation/Support to Mediation Commission

The Law on Mediation designates a five member Mediation Commission as the oversight body to ensure the development and delivery of ethical and professional mediation services. The Law specifically delegates the responsibility for adopting implementing regulations and setting mediation policy to the Commission. The Commission, which is composed of representatives of several different bodies, with the representative of the MOJ serving as Chairperson, was established in April 2009. However the members had no knowledge or experience with mediation and no financial or administrative support from the GOK. The problem was compounded by the presence of several donors/implementers and the inability of the Mediation Commission to coordinate their activities. Although SEAD's scope of work was to build capacity and facilitate the development of mediation services focused in the commercial sector, commercial mediation could not begin until implementing regulations for mediation in general were in place. As such, SEAD focused on developing all the necessary threshold regulatory instruments necessary for any mediation to occur, as a necessary condition precedent for establishing capacity to provide more narrowly focused commercial mediation services. As a result, during Year One of the Program, SEAD devoted considerable efforts to building the capacity of the Mediation Commission to perform its duties, and to working with the multiple donors engaged in developing Mediation in Kosovo.

In that regard, during the first quarter of the Program, SEAD participated in a Conference on Mediation in Kosovo: Maximizing Potential, organized by two other organizations working on mediation, Partners Kosovo and CSSP. Pursuant to recommendations made at this Conference, SEAD supported the Mediation Commission in establishing an Advisory Body that included international donors and local stakeholders to assist the Commission. The Commission appointed SEAD as the coordinator of the Advisory Body. The Program then developed and conducted a workshop for the Mediation Commission and Kosovo members of the Advisory Body to equip them with an understanding of mediation to enable them to fulfill the Commission's mandate under the Mediation Law, and assisted the Commission with the preparation of a comprehensive work plan.

SEAD took the lead in drafting the implementing regulations, including hosting drafting sessions and collecting comments from members of the Mediation Commission and Advisory Group. By the end of Year 2 of the Program, all implementing regulations had been adopted and promulgated by the Commission/MOJ.

SEAD worked closely with the mediation experts engaged by the EU Standards for the Ministry of Justice, Twinning Project, to develop and conduct a mediator training program that fulfilled the

<p>Regulation on Selection for Training</p> <p>Regulation on Training and Certification</p> <p>Regulation on Licensing and Registration</p> <p>Code of Conduct</p> <p>Regulation on Grievance and Disciplinary Procedures</p> <p>Decision on Tariffs</p>
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requirements of the Regulation on Training and Certification (basic 40 hour training program plus a practical component consisting of six supervised mediation sessions). Based on the available resources as well as SEAD's plan to open two pilot mediation centers (discussed below), the Mediation Commission, EU Twinning and SEAD agreed that three separate trainings would be conducted—in Pristina, Gjilan and Peja, for 15 persons in each location. The training in Gjilan and Peja took place between May and July 2011. Prior to the opening of the Gjilan and Peja Mediation Centers in July 2011, SEAD conducted an additional two-day training session for the mediators in those cities, which included additional supervised sessions and instruction on working with the Mediation Center.

In addition to organizing and conducting the training, SEAD assisted the Mediation Commission with the selection of candidates for the training in accordance with the Regulation on the Selection of Participants. In response to the public call for applications, 184 applications were received. In order to facilitate an efficient selection process, SEAD developed a review procedure and participated in the initial review of applications, as well as observed during the interviews.

The Mediation Law provides that “a court may suggest that the parties try to resolve their dispute through mediation at any stage prior to completion of the court procedure.” To ensure that this alternative was readily available to the courts, as well as the business community and general public, the Program developed a concept for a pilot-mediation program in two locations that would accept cases referred by the courts as well as submitted directly by the parties. During Year 2 of the Program, SEAD submitted a Concept Memorandum to the KJC and the KJC, and SEAD signed a MOU outlining the terms of their cooperation on a pilot court-referred mediation project that would work with the Municipal and District Courts in Gjilan and Peja. SEAD would establish and operate an independent mediation center in each location through June 2012 and pay mediator fees for any cases submitted directly by the public. The KJC would pay the mediator fees for court-referred cases and allocated €10,000 for that purpose. In accordance with the MOU, SEAD, in consultation with the KJC and the pilot courts, developed a Protocol for Referring Cases to Mediation Centers and conducted training for judges in the pilot courts. (This protocol was subsequently adopted by KJC for national application and applied to other donor-initiated pilot mediation centers).

The Gjilan and Peja Mediation Centers were officially opened at ceremonies in July 2011. Attended by representatives of the KJC, courts, MOJ, the Mediation Commission, local businesses and lawyers, as well as the mediators, the opening ceremonies received significant media coverage and helped raise awareness of the availability and benefits of mediation.



Acting USAID Mission Director Jose Garzon cuts the ribbon to open the SEAD Mediation Center in Peja, assisted by Deputy Prime Minister and Minister of Justice Hajredin Kuci and Chair of the Kosovo Judicial Council Enver Peci, as Peja Court President Afherdita Mulhaxla and SEAD Program COP David Greer observe.

Following the opening ceremonies, the Program organized a series of weekly roundtables and almost daily individual meetings with local businesses and attorneys to further inform and build demand for mediation. The Program also worked closely with the pilot court judges and staff to select cases for referral and present mediation to the parties. Although referrals started slowly, after the first successful cases, the number of referrals increased. As a result, prior to the end of the Program, 76 cases were referred to mediation, of which 41 were successfully resolved and the agreements attained in mediation were confirmed by the referring judge.

“I am extremely happy that mediation is a reality in Peja and that our judges are referring cases to the Mediation Center and that a number of these cases have been settled successfully.”

Judge Afherdita Mulhaxha, President Peja Municipal Court

During the final quarter of the Program, SEAD supported establishment of the Kosovo Mediators Association, including assistance in drafting the organizational documents and registering the Association with the Ministry of Public Affairs. The Association is led by a small group of dedicated mediators, including mediators from the Program’s Mediation Centers in Peja and Gjilan. The Association is poised to play an important role in the continued development of the mediation and assume some of the responsibilities of the Mediation Commission in overseeing the profession.

I. Public Education and Outreach Activities:

In many ways the unarticulated goals for the SEAD Program entailed instigating and incentivizing private sector behavior change. The technical goals of the Program, clearly defined and articulated, led to systemic changes that improved framework legislation, improved legal service skills, increased efficiency in enforcing judgments, and established previously unavailable ADR forums. The broader Rule of Law impact, as well as economic growth and business environment change that flow from Program impact, however, can be realized fully only if the private sector is aware of the changes, and embraces them, ultimately leading to a transactional culture that increasingly utilizes, and pays greater attention to, contracts (especially *written* contracts). Kosovo does not have a “Culture of Contract” and business relationships, even in contract intensive industries such as insurance or finance, still find many parties do not read the agreements they sign. Business practices in rural areas and the agricultural sector are even further from contemporary practice, as the use of a contract is eschewed as indicating a lack of trust and honor. Any explanation of the myriad reasons for the lack of a “Culture of Contract” in Kosovo is imprecise, but generally speaking, for a mix of historical, cultural, political, and institutional reasons, Kosovo businesses simply do not see value and utility in using contracts as a mechanism to distribute risk in transactions, and build common understanding of their obligational relationships. The perception (and reality) of poor court performance, and faith and confidence in the justice system contributes to conditions, but does not stand alone as the reason. As such, the Program’s outreach and public education was multi-faceted, and sought to be broadly inclusive in order to achieve the dual goals of increasing faith and confidence in judicial institutions in order to demonstrate that utilizing written contracts had utility, but also to educate, inform, and explain why written contracting simply makes sense.

Fostering broad behavior change is challenging particularly with only 33 months available under the Task Order. Nevertheless, SEAD maintained a sustained level of outreach via a variety of avenues ranging from traditional round tables and conferences, to include television and other media spots, social media, and closed the project with a wide ranging media campaign using television, radio, web and social media, and billboards, all of which were designed to attract traffic to the SEAD web site – www.kontrata.info – where information and, most importantly, SEAD developed tools for business – standard form contracts – were available for download. The theme of the campaign – “Put it on Paper” was the core message of the campaign, which linked all SEAD activities into one straightforward admonition to business, and included a range of additional information supporting the admonition.

Notable Activities:

Objective 1:

i) Roundtables with Business Community on the Law on Obligations:

The Project organized an ongoing series of Roundtable Discussions on Law on Obligations (in cooperation with AmCham members and KCC) to enable the business community to discuss and express their views about the draft Law on Obligations, and the impact the draft law may have on businesses. Discussions focused mainly on general rules and principles of contracting and commercial transactions, covering Articles 1 through 180. The specific comments were tracked in an annotated transcript provided to the MOJ Working Group. Around 100 participants participated in this activity.

MOJ Working Group on the Law on Obligations aimed to ensure that new contract laws most effectively improved the legal framework for business, and included the business community’s feedback.

Astoundingly, prior to the SEAD's commencement of work with the working group, no previous efforts to include the private sector in discussion had occurred.

ii) Regional Roundtables with KCC members

In two years SEAD conducted 13 regional roundtables as part of the outreach campaign to the business community throughout Kosovo. Each roundtable would bring together more than 40 business leaders to talk about modern contracting practices, alternative dispute resolution mechanisms, and reforms to the system of enforcement of court judgments in Kosovo.

This joint endeavor by SEAD and KCC was aimed at inculcating business leaders with the benefits of using written contracts. SEAD engaged in active discussion with regional business leaders on the benefits of ADR clauses, and informing them about SEAD efforts to resolve the problems associated with enforcing judgments in the courts. Participants engaged in active discussion on the issues of enforcement of judgments, and voiced a great deal of support for the introduction of the institution of private bailiffs as a way of ensuring the rule of law. These roundtables were a successful forum for engaging in dialogue about an exchanging of information on developments in commercial law and rule of law in Kosovo.

iii) MOU signing ceremony with University of Pristina and SEAD

On October 18, 2010 the University of Pristina Faculty of Law and the SEAD, signed a MOU for the development of a Master of Laws (LL.M.) Program in Contract and Commercial Law. The signing, held at the Faculty of Law, was attended by Faculty of Law students, Enver Hoxhaj, the Minister of Education, Bajram Berisha, Pro Rector of University of Pristina, Bajram Ukaj, Dean of the Law Faculty, who signed on behalf of the Law Faculty, and Acting USAID Mission Director Azza El Abd, who witnessed the signing of the MOU on behalf of USAID.

The purpose of the signing ceremony was to formally launch and publicize cooperation between University of Pristina Faculty of Law and SEAD in order to develop, establish, and introduce a Master of Laws (LL.M.) in Contract and Commercial Law.

iv) Other LL.M. Outreach activities:

The Outreach team developed a separate outreach activity for the LL.M. Program. It informed all prospective LL.M. applicants through a Facebook page and developed four webinars and a teaser which were broadcast in prime time on the television station RTK.

v) Launch of Standard Form Contracts

SEAD launched its standard forms to the business community in a public event presentation held together with the KCC, AmCham and the USAID Kosovo Private Enterprise Program, and brought together more than 150 business leaders to release these tools. The event was also attended by member of government – notably the Minister of Labor and Social Welfare as well as representatives from the judiciary. The USAID Mission Director was the keynote speaker for the event. Media attention was high and a number of web portals published articles on the event.

Objective 2:

i) Enforcement of Judgment Conference

On May 29, 2009 Kosovo's top magistrates, business leaders, and European partners assembled for the Civil Judgment Enforcement Conference. More than one hundred attendees participated in the day-long conference addressing the crisis of unenforced judgments and SEAD efforts to address the issue. Joining the discussions were all the key judiciary leaders, including: KJC Chair Enver Peci, Kosovo Constitutional Court President Enver Hasani, and former Supreme Court President Rexhep Haxhimusa. The conference focused attention on the enormous backlog of unresolved judgments – estimated to be more than 100,000 – the difficulties faced by key institutions that add to the crisis, and concrete solutions to overcome it. U.S. Ambassador Dell was the keynote speaker, accompanied by Minister of Justice Haki Demolli and others. The event was widely covered in print and television media, and was followed by an interview with the SEAD COP the next day on the morning television program “Good Morning Kosovo”.

ii) Second Conference on Civil Judgment Enforcement Reform

On June 8, 2010, SEAD, together with the Balkans Enforcement Reform Project (BERP) and the EU Twining Project organized its second conference on “Civil Judgment Enforcement Reform”. The conference brought together key figures from the courts, government institutions, the private sector and European partners. Over two hundred attendees participated in a day-long conference to introduce discussion of the long-term solution to the problems that impede the enforcement of civil judgments; the introduction of the institution of private bailiffs; and reporting on solutions that have been implemented to streamline processes, resolve problems, and tackle the backlog of unenforced civil judgments. The event was widely covered in print and television media, and was followed by an interview with the SEAD COP the next day on the morning television program “Good Morning Kosovo”.

iii) Press Conference on “Backlog Reduction Initiative”

On March 21, 2011 USAID and the KJC organized a press conference to present the results of the Backlog Reduction Initiative. Over one hundred attendees participated in a press conference and the media covered the activity broadly.

Other outreach activities related to the second objective included:

iv) Roundtable discussion on implementing the Central Bank Instruction on Enforcement of Executive Decisions by Debiting Client's Accounts and establishing a unique Registry of Account Holders at the CBK.

On November 9, 2011 (in Vushtrri) and December 8, 2011 (in Prishtina) the Project, Kosovo Judicial Council and the Central Bank of the Republic of Kosovo hosted a roundtable discussions to discuss the Central Bank Instruction on Enforcement of Executive Decisions by Debiting Client's Accounts and Establishing a unique Registry of Account Holders at the CBK.

The goal of these roundtables was to have an open discussion and inform the commercial banks, judges and lawyers on the importance of this Instruction and the Establishment of the Registry of Account Holders at the CBK.

Objective 3:

It is critical to educate the business and legal community about the availability of ADR mechanisms as a new approach to resolving their disputes. ADR was relatively unknown prior to the beginning of the

Program. Moreover, the Program's overall effort to promote the use of written contracts emphasized the importance of ADR and the standard form contracts include model ADR clauses.

A number of outreach activities were organized to raise the awareness of the business community.

i) MoU Signing with Kosovo Chamber of Commerce and American Chamber of Commerce

In July 2010, the Project signed a MOU with the both AmCham and the KCC. Both MOU's were signed in public ceremonies, with Chamber members and representatives of Government and the judiciary. The ceremonies received significant media coverage

ii) Conference "Alternative Dispute Resolution (ADR) in Kosovo: Resolving Business Disputes—A New Approach"

SEAD held a conference on "Alternative Dispute Resolution (ADR) in Kosovo: Resolving Business Disputes—A New Approach" in cooperation with the Chambers of Commerce. And SEAD short-term experts. The event was widely covered in print and television media, and was followed by an interview with the SEAD COP the next day on the morning television program "Good Morning Kosovo".

iii) Launch of Mediation Centers:

In July 2011, SEAD held public ribbon-cutting/opening ceremonies of the Program's Mediation Centers in Gjilan and Peja. The Opening Ceremony for both Centers brought together key figures from the Municipal Courts, District Courts and other government institutions, as well as the private sector. In Gjilan, Chair of the KJC Enver Peci and a Deputy Minister of Justice participated in the ceremony; in Peja Chair of the KJC Enver Peci and Deputy Prime Minister and Minister of Justice Hajredin Kuci participated in the ceremony. Over 100 attendees participated in these two events to commemorate and announce an important step forward in providing a basis for the amicable resolution of disputes, which is a fundamental component of building strong rule of law in Kosovo.

iv) Launch of ADR Centers with KCC and AmCham

In September 2011, SEAD organized an event to celebrate the formal opening of the KCC PAT and the AmCham ADR Center. The opening event was attended by representatives of the Government, the judiciary, and leaders of the business and legal communities. As with the previous ADR events, the opening ceremony received significant media coverage, thereby contributing to building awareness and demand for ADR in Kosovo. Since that time the PAT and AmCham ADR Center have been actively engaged in promotional efforts directed at their members as well as other businesses and organizations operating in Kosovo.

SEAD MEDIA CAMPAIGN

The Media Campaign developed by the Program sought to capture the lessons learned from other outreach activities reach a wider audience. The Media Campaign was launched near the end of the program, and was intended to coincide with the passage of the Law on Obligations and the release of the SEAD Standard Form Contracts in order to widely disseminate the news of the new law, and the availability of new tools, as well as to build on SEAD's efforts in ADR and enforcement, ensuring that the results of the Project were publicized.

The media campaign consisted of the following products: three “teasers” (or trailers); three documentaries on Contract Law, ADR, and Enforcement of Judgments; billboards, DVDs, a Facebook page; web advertisements; and newspaper advertisements. The documentaries and teasers will also be used in the future by Program partners (ADR Centers, Mediation Centers, Mediation Commission, and Mediators Association) to build awareness and demand.

Other cross cutting activities:

SEAD also focused on television morning shows, articles for daily newspapers, and trying to bring journalists together on different events organized by the program. An important element of SEAD activities was news media outreach, which included a series of journalists’ forums in which print, broadcast, and news media representatives were invited to the SEAD offices for monthly behind-the-scenes discussions on key developments in the systems for the enforcement of judgments and decisions.

APPENDIX – LIST OF MATERIALS SUBMITTED WITH SEAD PROGRAM FINAL REPORT

1. Select SEAD Program Information and Outreach Materials

Fact Sheets

Success Stories

2. Component 1 – Commercial Law and Legal Education

Agricultural Sector Contracts

Commercial Sector Contracts (including Construction Contract)

Training Materials

Business Survey Report

Focus Group Report on Contracts

Explanatory Note on the Draft Law on Obligations

MOU – SEAD and University of Prishtina Law Faculty

Self-Assessment Report for Accreditation of LLM

SEAD LLM Progress Report

3. Component 2 – Enforcement of Judgments

Enforcement of Judgments Assessment

Backlog Reduction Initiative Documents

BRI Proposal for USAID and KJC

SEAD BRI and KJC Special Office Executive Summary

Analysis – Establishment of a temporary Office for Authentic Document Enforcement

Proposal to establish temporary Office for Authentic Document Enforcement

SEAD Program Proposal to initiate a Judgment Backlog Reduction Initiative

KJC Decision and Regulation

KJC Decision to establish Special Units of Enforcement Officers

Proposed Regulation

4. Component 3 - Alternative Dispute Resolution

ADR Assessment

Arbitration

Kosovo Chamber of Commerce

MOU Between SEAD and KCC

Arbitration Rules KCC PTA

Decision on Costs

American Chamber of Commerce (AmCham)

MOU Between SEAD and AmCham

Arbitration Rules AmCham ADR

Decision on Costs

Arbitrators Training Materials

Concept on Amendment to Law on Contested Procedures

Memo on Arbitration Ethics

Mediation

Kosovo Judicial Council (KJC)

A proposal for referral of Court Cases to Private Mediation

Mediation Commission and MoJ regulations